DEPARTMENT OF THE ARMY
**U.S. ARMY CORPS OF ENGINEERS**
**BOISE REGULATORY OFFICE**
**720 EAST PARK BOULEVARD, SUITE 245**
**BOISE, IDAHO 83712-7757**

May 22, 2026

WALLA WALLA DISTRICT
REGULATORY DIVISION

SUBJECT: NWW-2026-00133, US-91 Park Lawn to Siphon Rd, Chubbuck
Key No. 21860

Todd Hubbard
Idaho Transportation Department, District 5
5151 South 5th Avenue
Pocatello, Idaho 83204

Dear Mr. Hubbard:

We have determined that your proposed project, Park Lawn to Siphon Rd, Chubbuck Key No. 21860, is authorized in accordance with Department of the Army (DA) **Nationwide Permit (NWP) No. 46: Discharges in Ditches**. This project is located along US-91 (Yellowstone Avenue) between Park Lawn Avenue and Siphon Road within Section 3 of Township 6 South, Range 34 East, with a center point of coordinates 42.934969º N latitude and -112.466508º W longitude, in Chubbuck, Bannock County, Idaho. Please refer to File Number NWW-2026-00133 in all future correspondence with our office regarding this project.

Project activities include the discharge of approximately 1,924 cubic yards of dirt and topsoil into Chester Drain to facilitate the installation of 2,000 linear feet of piping for the purpose of future road widening of US-91. The work entails placement of bedding material and approximately 2,000 linear feet of 36-inch diameter corrugated polyethylene pipe, followed by backfilling. Additionally, the trench will be filled with native topsoil, topped with coarse aggregate, and compacted to prepare the area for concrete placement. All work will impact 0.672 acres of ditch and adjacent wetlands. All work shall be done in accordance with the enclosed drawings, titled: *US-91, Park Lawn to Siphon Road, Chester Drain, Bannock County, Idaho, Idaho Transportation Department (5 Sheets); Dated October 14, 2024.*

DA permit authorization is necessary because your project may involve the discharge of fill material into waters of the U.S. This authorization is outlined in Section 404 of the Clean Water Act (33 U.S.C. 1344).

You must comply with all general, regional, and special conditions, for this

verification letter to remain valid and to avoid possible enforcement actions. The general and regional permit conditions for *NWP No. 46: Discharges in Ditches* are attached and also available online[1]. In addition, you must also comply with the special conditions listed below.

The following Special Conditions include:

Special Condition 1: The permittee is responsible for all work done by any contractor or agent. The permittee shall ensure any contractor who performs the work is informed of and follows all the terms and conditions of this authorization.

Special Condition 2**:** Your permit has been issued while Monarch Butterfly is proposed as "threatened" under the Endangered Species Act (ESA). Should the Monarch Butterfly be listed under the ESA prior to the completion of the project, please contact the U.S. Army Corps of Engineers for an evaluation of effect determination.

Special Condition 3: Your permit has been issued while Suckley's Cuckoo Bumble Bee is proposed as "endangered" under the Endangered Species Act (ESA). Should the Suckley's Cuckoo Bumble Bee be listed under the ESA prior to the completion of the project, please contact the U. S. Army Corps of Engineers for an evaluation of effect determination.

You must also comply with the conditions detailed in the attached Section 401 Water Quality Certification (WQC) issued by the Idaho Department of Environmental Quality (IDEQ) on December 16, 2025. If you have any questions regarding the conditions set forth in the WQC, please contact IDEQ directly at 208-236-6160, Pocatello Regional Office.

Nationwide Permit General Condition 30 (Compliance Certification) requires that every permittee who has received NWP verification must submit a signed certification regarding the completed work and any required mitigation. This Compliance Certification form is enclosed for your convenience and must be completed and returned to us within 30 days of your project's completion.

This letter of authorization does not convey any property rights, or any exclusive privileges and does not authorize any injury to property or excuse you from compliance with other Federal, State, or local statutes, ordinances, regulations, or requirements which may affect this work.

This verification is valid until March 15, 2031, unless the NWP is modified,

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[1] http://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Nationwide-Permits/

suspended or revoked. If your project, as permitted under this NWP verification, is modified in any way you must contact our office prior to commencing any work activities. In the event that you have not completed construction of your project by March 15, 2031, please contact us at least 60-days prior to this date. A new application and verification may be required.

We actively use feedback to improve our delivery and provide you with the best possible service. If you would like to provide feedback, please take our online survey[2]. If you have questions or if you would like a paper copy of the survey, please contact the Walla Walla District Regulatory. For more information about the Walla Walla District Regulatory program, you can visit us online[3].

If you have any questions or need additional information about this permit authorization, you can contact Jacob Cordtz by phone at 208-433-4466, by mail at the address in the letterhead, or email at Jaocb.W.Cordtz@usace.army.mil. For informational purposes, a copy of this letter has been sent to: Idaho Department of Environmental Quality.

Sincerely,

Tracy Peak

Tracy Peak
Deputy Chief, Regulatory Division

Encls
Transfer of Nationwide Permit Form
Compliance Certification
Nationwide Permit 46 Terms and Condition
General Water Quality Certification
Drawings titled: *US-91, Park Lawn to Siphon Road, Chester Drain, Bannock County, Idaho, Idaho Transportation Department (5 Sheets); Dated October 14, 2024.*

[2] https://regulatory.ops.usace.army.mil/customer-service-survey/
[3] http://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/

# TRANSFER OF NATIONWIDE PERMIT

When the structures or work authorized by this Nationwide Permit, **NWW-2026-00133, Park Lawn to Siphon Rd, Chubbuck Key No. 21860**, 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, the associated liabilities and compliance with the terms and conditions the transferee must sign and date below.

Name of New Owner:

Street Address:

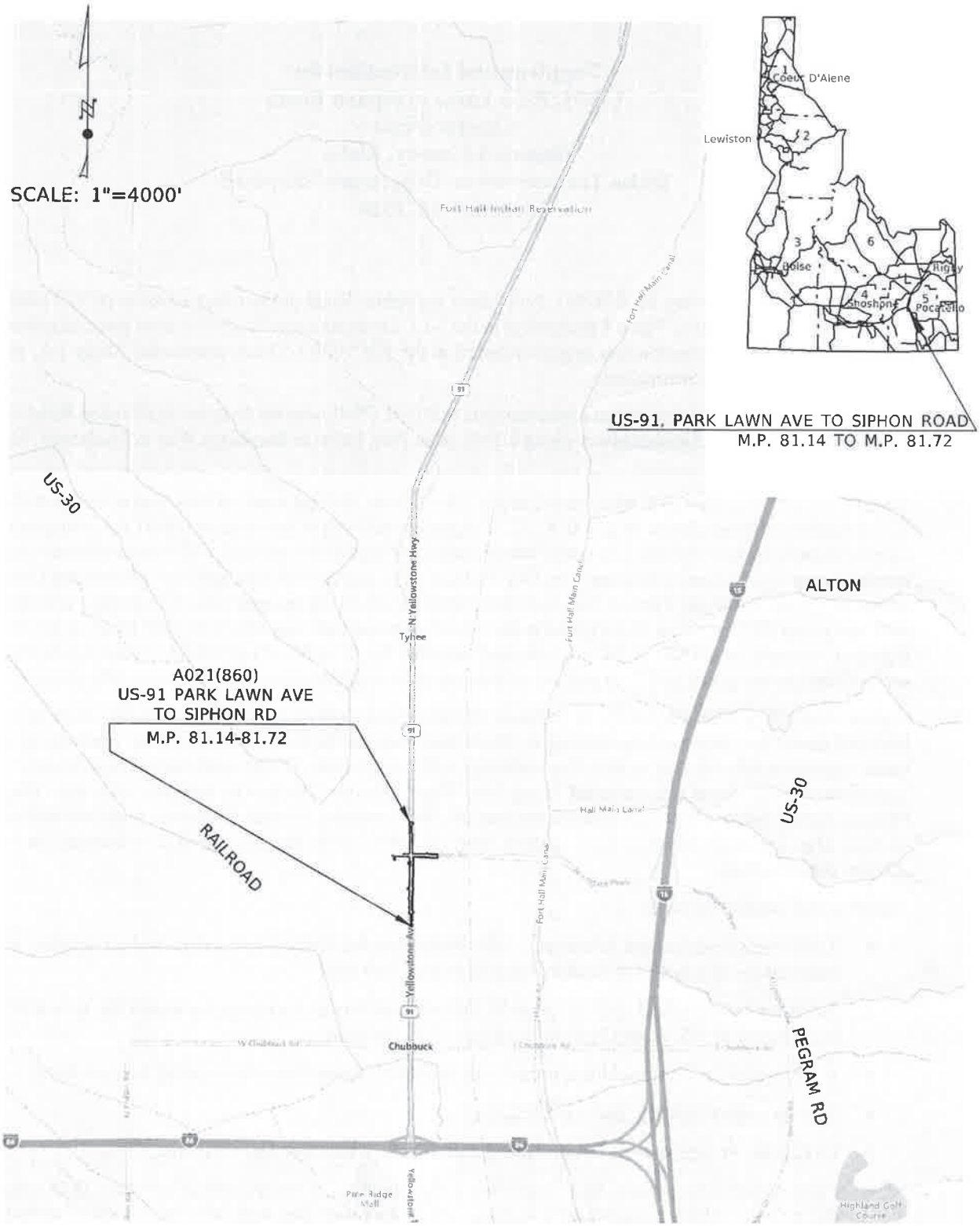
Mailing Address:

City, State, Zip:

Phone Number:

_____ _____

*Signature of TRANSFEREE* *DATE*

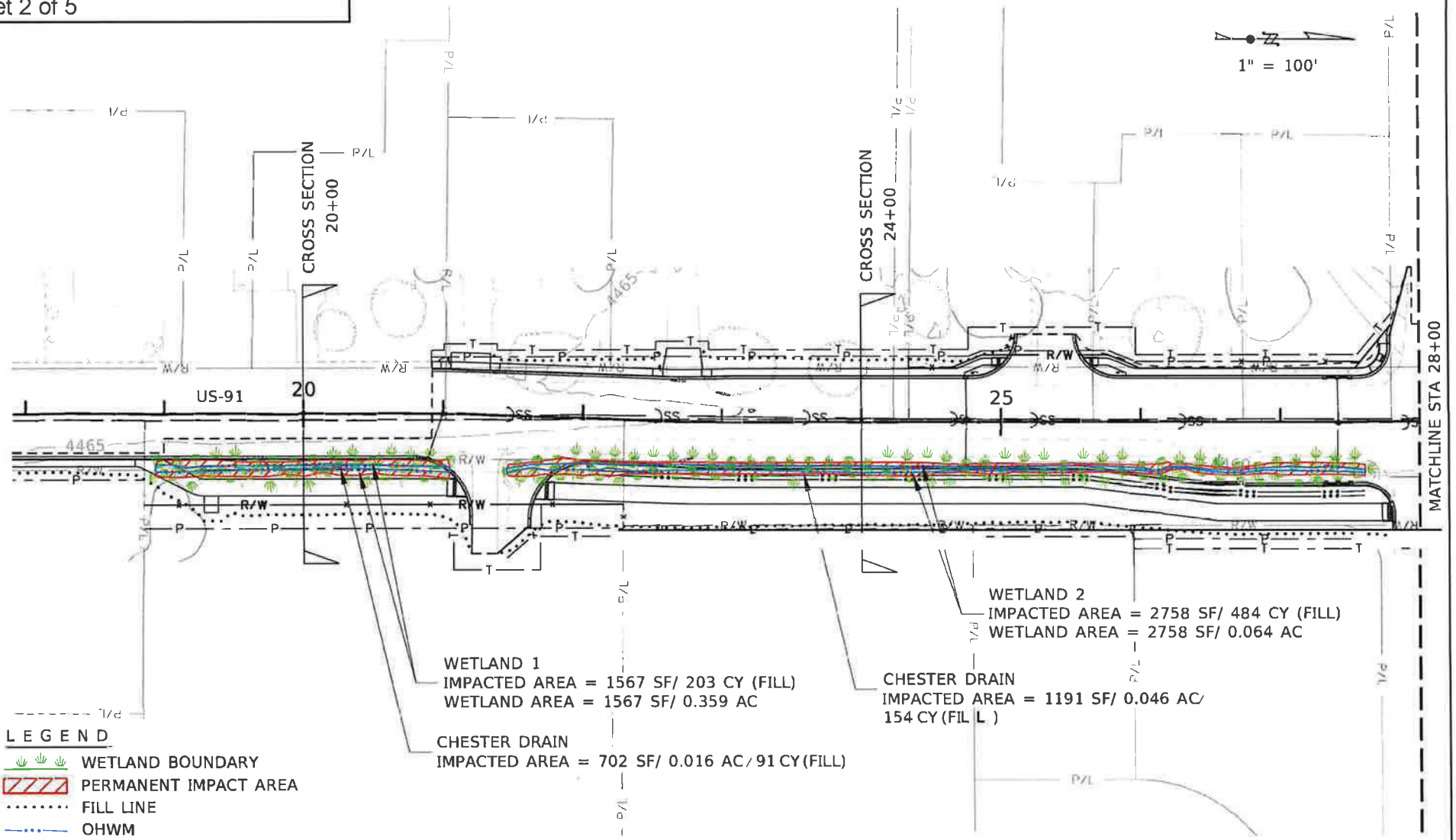



VICINITY MAP

US-91, Park Lawn to Siphon Rd
Chester Drain
Bannock County, Idaho
Idaho Transportation Department
October 14, 2024
Sheet 1 of 5

(C) 2024 Microsoft Corporation (C) 2024 TomTom

US-91, Park Lawn to Siphon Rd
Bannock County, Idaho
Chester Drain
Idaho Transportation Department
October 14, 2024
Sheet 2 of 5

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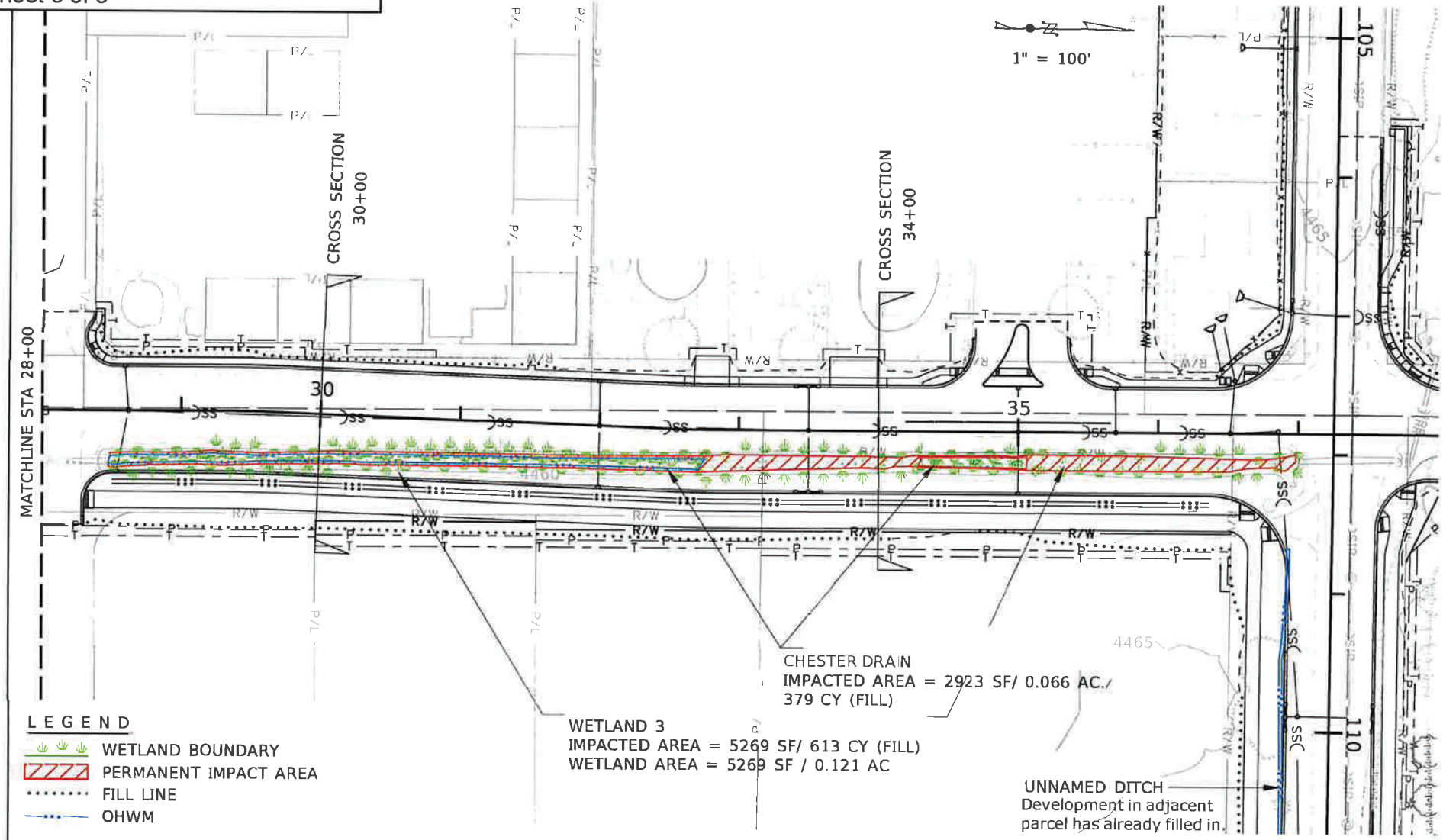
|---|---|---|---|---|---|
| DESIGNED N. PARKS | SCALES SHOWN ARE FOR 8.5" X 11" PRINTS ONLY | IDAHO TRANSPORTATION DEPARTMENT<br>YOUR Safety→YOUR Mobility→YOUR Economic Opportunity | PROJECT NO. | 404 PERMIT APPLICATION | ENGLISH |
| DESIGN CHECKED | | | A021(860) | US-91, PARK LAWN AVE TO SIPHON ROAD CHUBBUCK | COUNTY BANNOCK |
| DETAILED Z. PRATT | CADD FILE NAME 21860 404 plan D001.dgn | | | | KEY NUMBER 21860 |
| DRAWING CHECKED | DRAWING DATE: 9/13/24 | DAVID EVANS AND ASSOCIATES INC. | | | |

US-91, Park Lawn to Siphon Rd
Chester Drain
Bannock County, Idaho
Idaho Transportation Department
October 14, 2024
Sheet 3 of 5

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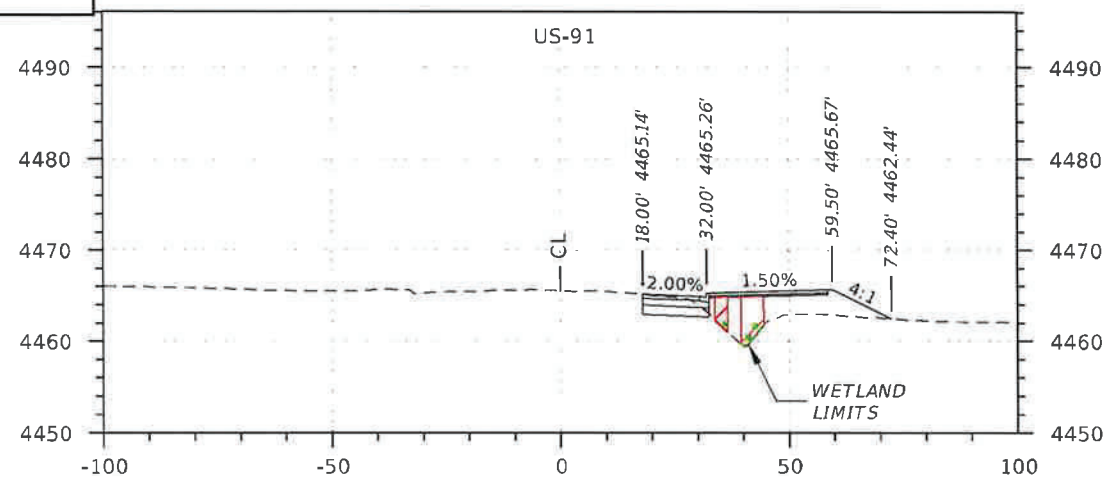
| DESIGN CHECKED | | | A021(860) | US-91, PARK LAWN AVE TO SIPHON ROAD CHUBBUCK | COUNTY BANNOCK |
| DETAILED Z. PRATT | CADD FILE NAME 21860 404 plan D002.dgn | DAVID EVANS AND ASSOCIATES INC. | | | KEY NUMBER 21860 |
| DRAWING CHECKED | DRAWING DATE: 9/13/24 | | | | |

US-91, Park Lawn to Siphon Rd
Chester Drain
Bannock County, Idaho
Idaho Transportation Department
October 14, 2024
Sheet 4 of 5

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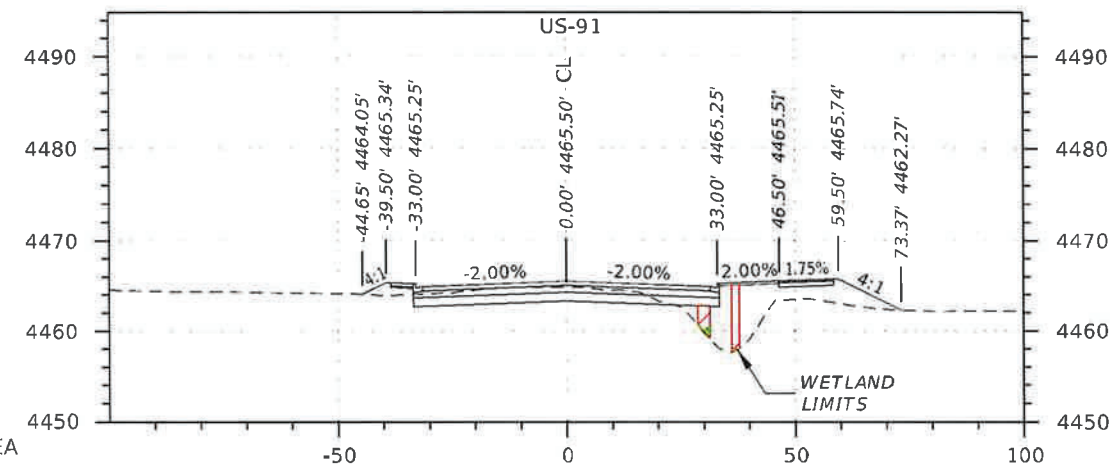


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LEGEND

- WETLAND BOUNDARY
- PERMANENT IMPACT AREA
- FILL LINE
- OHWM

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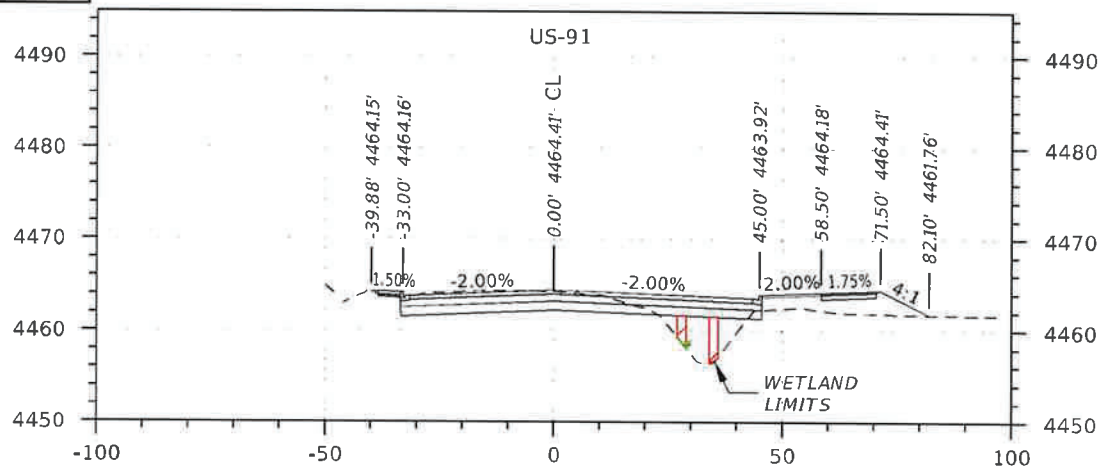
| DESIGNED N. PARKS | SCALES SHOWN ARE FOR 8.5" X 11" PRINTS ONLY | IDAHO TRANSPORTATION DEPARTMENT<br>YOUR Safety→YOUR Mobility→YOUR Economic Opportunity | PROJECT NO. | 404 PERMIT APPLICATION | ENGLISH |
| DESIGN CHECKED | | | A021(860) | US-91, PARK LAWN AVE TO SIPHON ROAD CHUBBUCK | COUNTY BANNOCK |
| DETAILED Z. PRATT | CADD FILE NAME 21860 404 xsec D001.dgn | | | | KEY NUMBER 21860 |
| DRAWING CHECKED | DRAWING DATE: 9/13/24 | DAVID EVANS AND ASSOCIATES INC. | | | |

US-91, Park Lawn to Siphon Rd
Chester Drain
Bannock County, Idaho
Idaho Transportation Department
October 14, 2024
Sheet 5 of 5

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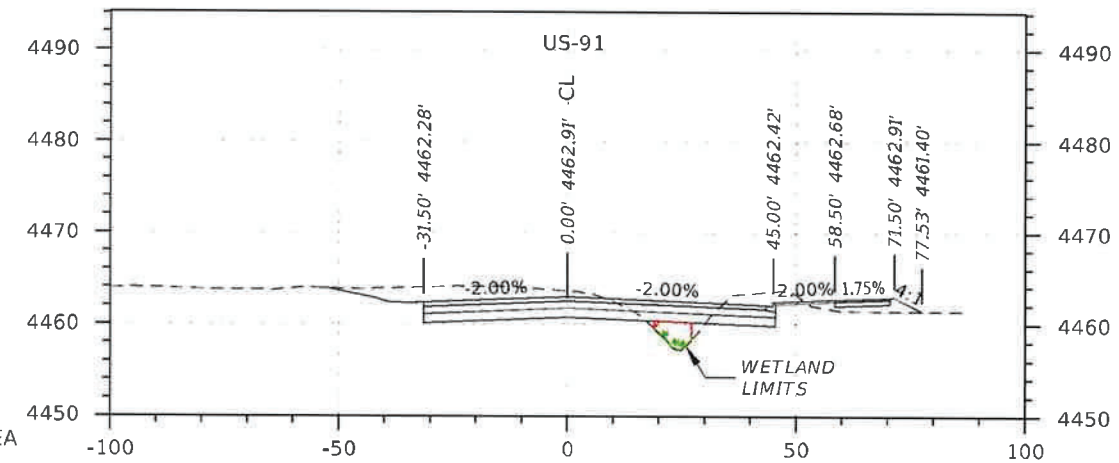


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LEGEND

- WETLAND BOUNDARY
- PERMANENT IMPACT AREA
- FILL LINE
- OHWM

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| DESIGNED N. PARKS | SCALES SHOWN ARE FOR 8.5" X 11" PRINTS ONLY | IDAHO TRANSPORTATION DEPARTMENT<br>YOUR Safety→YOUR Mobility→YOUR Economic Opportunity | PROJECT NO. | 404 PERMIT APPLICATION | ENGLISH |
| DESIGN CHECKED | | | A021(860) | US-91, PARK LAWN AVE TO SIPHON ROAD CHUBBUCK | COUNTY BANNOCK |
| DETAILED Z. PRATT | CADD FILE NAME 21860 404 xsec D001.dgn | | | | KEY NUMBER 21860 |
| DRAWING CHECKED | DRAWING DATE: 9/13/24 | DAVID EVANS AND ASSOCIATES INC. | | | |

# NATIONWIDE PERMIT 46

## Discharges in Ditches

Discharges of dredged or fill material into non-tidal ditches that are (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge of dredged or fill material must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

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**WATER QUALITY CERTIFICATION, NWP 46**:

Agency responsible for administration of water quality, based on project location is listed below. If **DENIED,** then an Individual Water Quality Certification or Waiver of Certification is required, prior to the commencement of any work activities and/or issuance of a DA verification, authorization and/or permit.

**State of Idaho**: **GRANTED, with exception:** IDEQ denies certification for any activities authorized by this NWP that may result in a discharge to high quality (Class 1) wetlands

**Coeur d'Alene Tribal Lands**: **DENIED**

**Shoshone-Bannock Tribal Lands**: **DENIED**

**Shoshone-Paiute Tribal Lands: WAIVED**

**U.S. Environmental Protection Agency for all other Tribal Lands**: **PARTIALLY DENIED**:

- The project must not involve a discharge into special aquatic resources
- The project must meet the general or NWP specific certification conditions
- If the project requires a Pre-Construction Notification (PCN) it must meet the detailed requirements for plan development, implementation, and reporting as specified in Condition 1

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# 2026 Nationwide Permits
# Regional Conditions
# Walla Walla District Regulatory Division (State of Idaho)

March 15, 2026

The following Nationwide Permit (NWP) regional conditions are required in the state of Idaho and apply to all 2026 NWPs.[1] Regional conditions are established by individual Corps Districts to ensure projects result in no more than minimal adverse impacts to the aquatic environment and to address local resources concerns. This document also includes regional notes to the NWP General Conditions with local agency contact information and online resources for applicants.

The term "pre-construction notification" or "PCN" used in this document refers to a request submitted by a project proponent to the Corps for confirmation that a particular activity is authorized by NWP. A PCN may be required by the terms and conditions of an NWP (e.g., general conditions) or by regional condition.

## REGIONAL CONDITIONS

A. Single and Complete Projects

- When a PCN is required for a project involving multiple phases, the applicant shall include information about previously authorized discharges of fill material into waters of the United States in order for the District to determine the "single and complete project" (defined at 33 CFR 330.2(i)) and evaluate cumulative impacts, as appropriate.

- Discharges of dredged or fill material into waters of the U.S., including wetlands, for the purpose of meeting local setback requirements are not authorized under an NWP.

B. Vegetation Preservation and Replanting

- To avoid impacts to aquatic habitat and to reduce sedimentation and erosion, permittee shall avoid and minimize the removal of vegetation in waters of the U.S. to the maximum extent practicable. Areas subject to temporary vegetation removal in waters of the U.S. during construction shall be replanted with appropriate native[2] species by the end of the first growing season, unless conditioned otherwise. Permittee shall avoid introducing or spreading noxious or invasive plants.[3]

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1 For the list of 2026 Nationwide Permits please see: https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Nationwide-Permits/

2 Idaho Department of Transportation, Native Plants for Idaho Roadside Restoration and Revegetation Programs: https://itd.idaho.gov/wp-content/uploads/2016/06/RP171Roadside_Revegetation.pdf

3 Idaho's Noxious Weeds, 10th Edition, 2022, published by the University of Idaho with Idaho State Dept. of

C. De-watering & Re-watering (as applicable)

- Cofferdams shall be constructed of non-erosive material such as concrete jersey barriers, bulk bags, water bladders, sheet pile, and other similar non-erosive devices. Cofferdams may not be constructed by using mechanized equipment to push streambed material through flowing water.

- Diversion channels constructed to bypass flow around the construction site shall be lined with plastic, large rock, pipe or otherwise protected from erosion prior to releasing flows into or through the diversion channel.

- Water removed from within the coffered area shall be pumped to a sediment basin or otherwise treated to remove suspended sediments prior to its return to the waterway.

- To prevent unwanted passage of fish, if present, from the coffered area, water pipe intakes shall be screened with openings measuring < 3/32 inch to prevent entrainment of fish trapped in the coffered area.

- Should fish be present within the coffered areas, the applicant shall contact their local Idaho Department of Fish and Game (IDFG) office prior to performing fish removal or salvage. Fish shall be collected by electrofishing, seining or dip net, or otherwise removed and returned to the waterway upstream of the project area. If electrofishing is used, the National Marine Fisheries Service (NMFS) guidelines for electrofishing should be followed[4], unless conditioned otherwise.

- Stream channels that have been dewatered during project construction shall be re-watered slowly to avoid lateral and vertical erosion of the de-watered channel, prevent damage to recently reclaimed work areas and/or damage to permitted work.

D. In-Water Structures and Complexes

- PCN notification in accordance with General Condition 32 is required for all non-federal applicants with activities involving gabion baskets placed below the ordinary high water mark.

- Designs for stream meanders, riffle and pool complexes, pool stream structures, rock/log barbs, rock J-hooks, drop structures, sills, engineered log jams or similar structures/features shall be based on site-specific conditions and include a

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Agriculture, Bureau of Land Management, U.S. Forest Service: https://www.uidaho.edu/-/media/uidaho-responsive/files/extension/publications/bul/bul0816.pdf?la=en&rev=c13c535d5c0748c6be789f99dcd0a110.

4 Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (June 2000): https://media.fisheries.noaa.gov/dam-migration/electro2000.pdf

rationale for the proposed structures/features.

E. Temporary Sidecasting

- Excavated materials from trenching activities may not be temporarily sidecast into flowing waters, unless waived by the district engineer, to prevent the release of sediment. Material temporarily sidecast within waters of the U.S., including wetlands, shall be removed within 30 days, unless waived by the District. All practicable measures shall be implemented and maintained during temporary sidecasting activities within waters of the U.S, including wetlands (e.g., utilization of cofferdams, construction mats for equipment access across wetlands, sidecasting material while the ground is frozen, etc.).

F. Suitability of Sediments for Open Water Disposal and use as Fill Material

- Sampling for determination of suitability of sediments for open water disposal or for use as fill, must comply with the Sediment Evaluation Framework for the Pacific Northwest (SEF).[5]

G. Erosion Control

- During construction, and until the site is stabilized, the permittee shall ensure all practicable measures are implemented and maintained to prevent erosion and runoff. Temporary stockpiles of excavated or dredged material shall be stabilized to prevent erosion. Once soils or slopes have been stabilized, permittee shall completely remove and properly dispose of or re-use all non-biodegradable components of installed control measures.

- Permanent erosion control blanket or fabric used to stabilize the banks of waters of the U.S. shall be comprised of biodegradable material, to ensure decomposition and reduced risk to fish, wildlife and public safety, unless waived by the District. If non-biodegradable materials are proposed, the applicant must demonstrate how the use of such materials will not cause harm to fish, wildlife and public safety. Temporary erosion control blanket or fabric may be non-biodegradable.

H. Reporting of Wetland Credits Purchased by Federal Permittees under EO 11990

- Federal agencies with projects that require compensatory mitigation for loss of wetlands under Executive Order 11990: Protection of Wetlands, and who propose to purchase credits from an approved wetland and/or stream mitigation bank must provide proof of purchase to the Corps within 30 days of when the credits are purchased. Purchase of credits from an approved mitigation bank

5 Northwest Regional Sediment Evaluation Team (RSET). Sediment Evaluation Framework for the Pacific Northwest. Prepared by the RSET Agencies, finalized May 2018: https://www.nwd.usace.army.mil/Missions/Civil-Works/Navigation/RSET/.

must be in accordance with the Mitigation Banking Instrument of Record. This condition applies to all federal projects with wetland credit purchases, even when a PCN is not required.

## REGIONAL NOTES TO THE GENERAL CONDITIONS

General Condition 4. Migratory Bird Breeding Areas. For additional information please contact the U.S. Fish and Wildlife Service at (208) 918-2155. Contact information is also available online at: https://www.fws.gov/office/idaho-fish-and-wildlife/contact-us.

General Condition 9. Management of Water Flows. To obtain information on the State of Idaho's definition of high water, please refer to Idaho Department of Water Resources (IDAPA 37.03.07. Rule 62.03.04.a). For culverts or bridges located in a community qualifying for the national flood insurance program, the minimum size culvert shall accommodate the 100-year flood design flow frequency (IDAPA 37.03.07. Rule 62.03.04.c).

General Condition 12. Soil Erosion and Sediment Controls. For additional information refer to the Idaho Department of Environmental Quality Catalog of Stormwater Best Management Practices for Idaho Cities and Counties, available online at: https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/guidance/. (Note: Use the search tool for "Storm Water Program".)

General Condition 18. Endangered Species. For information on Endangered Species Act (ESA) listed species in Idaho, please contact the U.S. Fish and Wildlife Service (USFWS) at (208) 918-2155, or the National Marine Fisheries Service (NMFS) at (208) 378-5696. The USFWS manages terrestrial and freshwater species, while the NMFS manages marine and anadromous species under the ESA. To help determine the presence of listed species and/or their critical habitat, online mapping resources are also available at:

- USFWS Information for Planning and Consultation (IPaC): https://ipac.ecosphere.fws.gov/.
- NMFS National ESA Critical Habitat Mapper: https://www.fisheries.noaa.gov/resource/map/national-esa-critical-habitat-mapper.
- NMFS Essential Fish Habitat (EFH) Mapper: https://www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper.

General Condition 20. Historic Properties. Property is generally considered "historic" if it is at least 50 years old and is not limited to buildings. For additional information on the potential for cultural resources in proximity to the project site, please contact the Idaho State Historic Preservation Office, located in Boise, Idaho, at (208) 334-3847.

# 2026 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 or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the

movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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

4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

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

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

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

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

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows, including tidal 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. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil reaeration techniques) to break up the

compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

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 Structures and Fills.** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. 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. Permittees 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 activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

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 designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). 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 species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) 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 species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference 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 or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee 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 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 that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects 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) No activity is authorized under any NWP which may have the potential to cause effects on properties listed, or eligible for listing, in the National Register of Historic Places 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 (see 33 CFR 330.4(g)(1)). 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 on 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 commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or 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 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.

(d) Where the non-federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has 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 on historic properties or that NHPA section 106 consultation has been completed. 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.** Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activities authorized by NWPs, must immediately notify the district engineer of what they 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 NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines 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) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-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. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-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. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because 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. If restoring riparian areas involves planting vegetation, only native species should be planted. 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)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

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

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

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

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

24. **Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state or federal, 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.** (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity

which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

(c) The district engineer or certifying authority 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)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. 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 CWA 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 authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

(b) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of 1/3 acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a

specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1⁄3-acre.

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which as a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

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

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

_____
(Transferee)

_____
(Date)

30. **Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The successful completion 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 review by, or 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 and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) 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. 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) (i) 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.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, 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 (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) 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 waters, wetlands, and other special aquatic sites 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. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) 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 NWP activity that requires permission from, or review by, 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, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and

supporting materials if the district engineer has established tools and procedures for electronic submittals.

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

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 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 (iii) 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 that 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 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.

**B. 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 single and complete crossings of waters of the United States that require PCNs 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 of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, 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.

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 an 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 activity-specific conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed NWP activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, 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. However, compensatory mitigation shall not be required for activities authorized by NWP 27 because those activities must result in net increases in aquatic resource functions and services (see the text of NWP 27). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal when determining whether the net adverse environmental effects of the proposed NWP activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the

district engineer determines that the proposed 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 that 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 NWP 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 review period (unless additional time is required to comply with general conditions 16, 18, 20, and/or 31), 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.

**C. 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).

**D. Nationwide Permit 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 ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). 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.

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.

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. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation 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 or wetlands 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. 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.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

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: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

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.

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 course 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. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. 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 jurisdictional 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 NWPs, a waterbody is a “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)).

# Idaho Department of Environmental Quality
# Final Section 401 Water Quality Certification

December 16, 2025

*2026 US Army Corps of Engineers § 404 Nationwide Permits (NWPs)*

Pursuant to Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); 40 CFR § 121; and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has the authority to review and certify that any discharge of dredged or fill material into waters of the United States will comply with water quality requirements under state law and the Clean Water Act. DEQ provided a 30-day public notice to solicit comments on the draft certification on October 6, 2025, through November 5, 2025, and considered all comments in making the final certification decision and establishing conditions.

This certification does not authorize activities by any other federal or state agency or any private individual or entity and does not relieve the permittee of the responsibility to obtain all other required approvals, authorizations, or permits that may be necessary for the project. This includes, but is not limited to, obtaining authorization from the owner of any private water conveyance system, where such approval is required, for use of that system in connection with the permitted activities.

This certification is granted with conditions and applies only to the activities authorized under the 2026 NWPs and associated Regional Conditions. All discharges under these activities must comply with 33 U.S.C. § 1341, 40 CFR § 121, and other applicable water quality requirements, including 33 U.S.C. § 1311(a); Idaho Code § 39-108; and IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400 (Appendix D).

Modifications to a grant of certification will be processed in accordance with the requirements of Clean Water Act § 401 in effect at the time the modification is proposed. This certification is valid for the duration of activities authorized and conducted under the 2026 NWPs.

## 1 Antidegradation Review

Idaho's antidegradation policy (IDAPA 58.01.02.051), establishes three tiers of water quality protection. All discharges authorized under the 2026 NWPs must comply with Tier I, II, and III requirements of this policy.

**Tier I Protection.** The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality

necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).

**Tier II Protection**. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).

**Tier III Protection**. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities do not lower water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ employs a water-body-by-water-body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved *DEQ Integrated Report* and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

## 1.1 Pollutants of Concern

The primary pollutant of concern, for projects permitted under the 2026 NWPs administered by the USACE, is sediment. In locations where heavy metals are present due to mining activities, or where high concentrations of nutrients may be associated with sediments, additional considerations may be necessary. If the project reduces riparian vegetation, then temperature (thermal loading) may also be of concern.

The procedures outlined in the *Sediment Evaluation Framework for the Pacific Northwest* (RSET 2018) may be applied to assess and characterize sediment to determine the suitability of dredged material for unconfined aquatic placement, to determine the suitability of postdredge surfaces, and to predict effects on water quality during dredging. Additional details are provided in section 2.5.

As part of the § 401 water quality certification, DEQ requires the applicant to comply with various conditions to protect water quality and meet all of Idaho's water quality standards.

## 1.2 Receiving Water Body Level of Protection

The USACE NWPs authorize the discharge of dredged or fill material associated with regulated activities within waters of the United States under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. In Idaho, jurisdictional waters can potentially receive direct discharges from activities authorized under the NWPs.

All waters in Idaho that receive discharges from activities authorized under an NWP will receive, at minimum, Tier I antidegradation protection because Idaho's Tier I antidegradation policy applies to all state waters (IDAPA 58.01.02.052.01). Water bodies that fully support their aquatic life or recreational uses are considered *high-quality waters* and will receive Tier II antidegradation protection (IDAPA 58.01.02.051.02). Because of the statewide applicability, the antidegradation review will assess whether the NWP permit complies with both Tier I and Tier II antidegradation provisions (IDAPA 58.01.02.052.03).

Although Idaho does not currently have any Tier III designated outstanding resource waters (ORWs), it is possible for a water body to be designated as an ORW during the term of the NWPs (which are reissued every 5 years). Because of this potential, the antidegradation review also assesses whether the permit complies with the ORW requirements of Idaho's antidegradation policy (IDAPA 58.01.02.051.03).

In accordance with IDAPA 58.01.02.052.05, to determine the beneficial use support status of the receiving water body, DEQ uses the most recent Integrated Report approved by the US Environmental Protection Agency (EPA), which is available on DEQ's website at Monitoring and Assessment.

In the Integrated Report, all state waters are placed into at least one of five primary reporting categories. Category 1 (waters wholly within designated wilderness) and Category 2 (waters fully supporting assessed beneficial uses) are considered high-quality waters that must receive Tier II antidegradation protection.

Unassessed waters are identified as Category 3 in DEQ's Integrated Report. These waters require a case-by-case determination made by DEQ based on information available at the time of the application for permit coverage (IDAPA 58.01.02.052.05.b). For activities authorized under this certification that occur in unassessed waters, DEQ has determined that compliance with the conditions of the applicable NWP, Regional Conditions, and the conditions of this certification will ensure consistency with the requirements of IDAPA 58.01.02.052.

Impaired waters are identified in Categories 4 and 5 of the Integrated Report. Category 4(a) contains impaired waters for which a total maximum daily load (TMDL) has been approved by EPA. Category 4(b) contains impaired waters for which controls other than a TMDL have been approved by EPA. Category 5 contains waters identified as *impaired* for which a TMDL is needed. These waters are Tier I waters for the use which is impaired. With the exception, if the aquatic life uses are impaired for any of these three pollutants—dissolved oxygen, pH, or temperature—and the biological or aquatic habitat parameters show a healthy, balanced biological community, then the water body will receive Tier II protection, in addition to Tier I protection, for aquatic life uses (IDAPA 58.01.02.052.05.c.i).

DEQ's Monitoring and Assessment web page provides access to the state's current map-based Integrated Report, which presents information in a searchable format.

Water bodies can be in multiple categories for different causes. If additional information or clarification about the support status of the receiving water body is needed or assistance is

required for using the interactive mapper, contact the appropriate DEQ regional or state office (Table 1).

**Table 1. DEQ regional and state office contact information.**

| Office | Address | Phone Number |
|---|---|---|
| Boise | 1445 N. Orchard Street<br>Boise, ID 83706 | (208) 373-0550 |
| Coeur d'Alene | 2110 Ironwood Parkway<br>Coeur d'Alene, ID 83814 | (208) 769-1422 |
| Idaho Falls | 900 N. Skyline, Suite B<br>Idaho Falls, ID 83402 | (208) 528-2650 |
| Lewiston | 1118 "F" Street<br>Lewiston, ID 83501 | (208) 799-4370 |
| Pocatello | 444 Hospital Way, #300<br>Pocatello, ID 83201 | (208) 236-6160 |
| Twin Falls | 650 Addison Ave. W., Suite 110<br>Twin Falls, ID 83301 | (208) 736-2190 |
| State Office | 1410 N. Hilton Street<br>Boise, ID 83706 | (208) 373-0502 |

## 1.3 Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses will be maintained and protected.

Narrative (non-numeric) effluent limitations in the NWPs and associated Regional Conditions for the USACE Walla Walla District, and this water quality certification address best management practices (BMPs) aimed at minimizing impacts to the aquatic environment and are focused on sediment and turbidity impacts including: shoreline and riverbank vegetation protection and restoration, dewatering requirements, erosion and sediment controls, soil stabilization requirements, pollution prevention measures, prohibited discharges, and wildlife and habitat considerations. Excavation and fill work should be conducted in dry or low water conditions to the maximum extent practicable. Working in a dry setting minimizes the project's impacts to surface waters, helps meet sediment stabilization requirements outlined in the certification, and supports compliance with the Tier I provisions of Idaho's water quality standards.

Although the NWPs do not contain specific (numeric) effluent limitations for sediment or turbidity, the conditions identified in the permits and in this water quality certification will ensure compliance with DEQ's water quality standards, including the narrative sediment criteria (IDAPA 58.01.02.200.08) and turbidity criteria (IDAPA 58.01.02.250.02.e). The criterion states, "Turbidity shall not exceed background turbidity by more than 50 nephelometric turbidity units (NTU)[1] instantaneously or more than 25 NTU for more than 10 consecutive days" (IDAPA 58.01.02.250.02.e). If a visible plume is observed, the permittee must implement corrective

[1]*NTU is a unit of measure of the concentration of suspended particles in the water (turbidity). It is determined by shining a light through a sample and measuring the incident light scattered at right angles from the sample.*

measures and conduct turbidity monitoring consistent with section 2.7 (Table 2) (IDAPA 58.01.02.054.01).

If an EPA-approved TMDL exists for the receiving water body, projects must comply with all wasteload and load allocation requirements applicable to the pollutant(s) of concern.

For activities requiring a preconstruction notification (PCN), the USACE will evaluate the NWP activities on a case-by-case basis to ensure they do not result in more than minimal individual or cumulative adverse environmental effects (33 U.S.C. § 1344(e)). The USACE has agreed to forward project verification letters to the appropriate DEQ regional and state offices (Table 1) for all authorized activities. This process will help keep DEQ informed of authorized activities statewide and support evaluation of whether additional conditions are needed when the USACE reissues the NWPs.

### 1.3.1 DEQ's Determination

DEQ concludes that the activities authorized under the 2026 NWPs will comply with Idaho's Tier I requirements (IDAPA 58.01.02.051.01 and 58.01.02.052.07), provided they are conducted in accordance with the limitations and associated requirements of the 2026 NWPs, Regional Conditions, and this water quality certification. The conditions in this certification ensure that water quality is maintained at levels necessary to protect both existing and designated uses, consistent with the Tier I provisions of IDAPA 58.01.02.051.01 and 58.01.02.052.07.

## 1.4 Protection of High-Quality Waters (Tier II Protection)

Water bodies that fully support their beneficial uses are recognized as high-quality waters and receive Tier II protection in addition to Tier I protection (IDAPA 58.01.02.051.02; 58.01.02.052.05.a).

The USACE is prohibited from authorizing projects under an NWP that would result in more than minimal individual or cumulative impacts to the aquatic environment (33 U.S.C. § 1344(e)). As required by the National Environmental Policy Act (NEPA), the USACE has evaluated both the individual and cumulative environmental effects of NWP activities. DEQ acknowledges that short-term water quality impacts, such as temporary increases in sediment, may occur as a result of authorized activities. However, DEQ has determined that compliance with permit terms and conditions—including the USACE Regional Conditions and the conditions in this water quality certification—will ensure no long-term adverse impacts to water quality or beneficial use support (IDAPA 58.01.02.052.03).

As a general principle, DEQ interprets "degradation" under antidegradation review as a permanent or long-term adverse change in water quality (DEQ 2024). Temporary or short-term reductions in water quality do not constitute significant degradation requiring Tier II analysis, provided that reasonable measures are implemented to minimize those effects (e.g., the certification conditions in section 2) (IDAPA 58.01.02.052.03 and 58.01.02.080.02).

For certain NWPs, project proponents must submit a PCN to the USACE before beginning regulated activities. This case-by-case review process allows the district engineer to determine

whether additional conditions or mitigation are necessary to ensure the activity will not result in more than minimal individual or cumulative impacts on the aquatic environment.

DEQ denies certification for NWPs 16, 23, 44, and 53 (section 3.1). Activities authorized under these NWPs will require individual certification from DEQ.

DEQ grants certification with conditions for NWPs 3, 12, 13, 14, 21, 29, 39, 40, 42, 43, 49, 50, 51, 52, 57, 58, and 59. This certification applies only to the activities described in section 3.2 and is subject to the conditions specified therein. Activities that exceed the limits outlined in section 3.2 for these NWPs must obtain an individual § 401 water quality certification. DEQ will review individual requests to determine whether additional conditions—or denial—are necessary to ensure no lowering of water quality occurs in Tier II waters.

### 1.4.1 DEQ's Determination

DEQ concludes that the activities authorized under the 2026 NWPs will comply with Idaho's Tier II requirements (IDAPA 58.01.02.051.02 and 58.01.02.052.08), provided they are conducted in accordance with the limitations and requirements of the 2026 NWPs, Regional Conditions, and this water quality certification. The conditions in this certification ensure that high-quality waters—those fully supporting their beneficial uses—are maintained and protected, consistent with Tier II provisions.

## 1.5 Protection of Outstanding Resource Waters (Tier III Protection)

Idaho's antidegradation policy requires that the quality of ORWs be maintained and protected from the impacts of point and nonpoint source activities (IDAPA 58.01.02.051.03).

DEQ denies certification for any activities on any ORW (section 3.1) and requires that any activities proposed on an ORW apply for individual certification (section 2.4).

### 1.5.1 DEQ's Determination

DEQ concludes that the activities authorized by the 2026 NWPs and this certification will comply with Idaho's Tier III requirements under IDAPA 58.01.02.051.03 providing permitted activities are carried out in compliance with the limitations and associated requirements of the 2026 NWPs, Regional Conditions, and conditions of this water quality certification.

# 2 Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

Appendix A includes a summary of DEQ's certification conditions.

## 2.1 General Conditions

To ensure compliance with water quality standards and Idaho law this certification applies only to the activities authorized in the 2026 NWPs and associated Regional Conditions. All discharges under these activities must comply with 33 U.S.C. § 1341, 40 CFR § 121, and other applicable water quality requirements, including without limitation, 33 U.S.C. § 1311(a), Idaho Code § 39-108, IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. If ownership of the project changes, the certification holder must notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator must request, in writing, the transfer of this water quality certification to the new name. This condition ensures that, if ownership changes, DEQ has the minimum information to support ongoing compliance with 33 U.S.C. § 1341, 40 CFR 121, this water quality certification, and other applicable water quality requirements, including without limitation, Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.
2. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
3. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the federal permit.
4. The applicant must provide access to the project site upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
5. Projects must be conducted in a manner that complies with numeric and narrative criteria in Idaho's water quality standards, including criteria for sediment, turbidity, temperature, and dissolved oxygen.

## 2.2 Design, Implementation, and Maintenance of Best Management Practices

The following condition is necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.350, and IDAPA 58.01.02.401.

1. BMPs must be properly designed, implemented, and maintained to protect beneficial uses and minimize pollutant loading to surface waters. Proper installation and operation of BMPs are required to ensure the provisions of IDAPA 58.01.02.052 are met. To ensure that BMPs are operating properly and to demonstrate that degradation has not occurred, the permittee must monitor and evaluate BMP effectiveness daily during project activities to ensure that water quality standards are met. BMP inspection logs

and documentation of corrective measures (if necessary) must be maintained on site, along with a copy of this certification and provided to DEQ upon request.

DEQ publishes the Idaho Catalog of Storm Water Best Management Practices, which identifies approved practices for controlling erosion and sediment during and following construction. Alternative sources of BMPs may be used only where consistent with state water quality standards and the conditions of this certification.

## 2.3 Total Maximum Daily Load Compliance

The following condition is necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.055.

- If an EPA-approved TMDL exists for the receiving water body, projects must comply with all wasteload and load allocation requirements applicable to the pollutant(s) of concern.

Approved TMDLs are found on DEQ's Total Maximum Daily Loads web page or by contacting the appropriate regional office contact (Table 1).

## 2.4 Outstanding Resource Waters

If any waters are designated as ORWs during the term of the NWPs, permittees must notify the appropriate DEQ regional office (Table 1) and obtain an individual § 401 water quality certification prior to project authorization. This ensures no lowering of water quality in any ORW in compliance with Idaho's Antidegradation Policy (IDAPA 58.01.02.051.03).

## 2.5 Fill Material

The following conditions are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. Fill material subject to suspension will be free of easily suspended fine material. Only clean materials may be placed as fill.
2. If dredged material is proposed for reuse as fill material and there is a possibility the materials may be contaminated, then the permittee must assess and characterize sediment to determine the suitability of dredged material for unconfined-aquatic placement; determine the suitability of postdredge surfaces; and predict the effect on water quality during dredging. Sediment assessment and characterization following the procedures in the *Sediment Evaluation Framework for the Pacific Northwest* (RSET 2018) satisfies this requirement.
3. When sand is utilized as fill material, appropriate BMPs must be implemented to ensure sand will not be easily dispersed (e.g., filter fabric anchored over the sand or other confinement).

4. Temporary fills must be removed in their entirety on or before construction completion.

## 2.6 Erosion and Sediment Control

The following conditions are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. BMPs for sediment and erosion control suitable to prevent exceedances of Idaho's water quality standards and consistency with TMDLs must be selected and installed before starting construction at the site.
2. Temporary and permanent erosion and sediment control measures must be installed around the perimeter of the project or work areas to control and prevent excess sediment from entering waters of the United States.
3. Temporary and permanent erosion and sediment control measures must be installed at the earliest practicable time consistent with good construction practices and must be maintained as necessary throughout the project.
4. Structural fill or bank protection must consist of materials that are placed and maintained to withstand predictable high flows in the waters of the United States.
5. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation and replaced or augmented if they are not effective. BMP inspection logs and documentation of corrective measures (if necessary) must be maintained on site, along with a copy of this certification and provided to DEQ upon request.
6. All excess dredged or fill material generated by the authorized activity must be contained and properly disposed of so it does not enter waters of the United States or cause water quality degradation.
7. Disturbed project areas suitable for vegetation must be seeded or revegetated to stabilize soils and prevent erosion to the maximum extent practicable (EPA 2000).
8. Maximum fill slopes must be material that is structurally stable once placed and does not slough into the stream channel during construction, during periods before revegetation, or after vegetation is established.
9. Sediment from disturbed areas or sediment that can be tracked by vehicles onto pavement must not leave the site in amounts reasonably expected to enter waters of the United States. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces to prevent track-out.

## 2.7 Turbidity

The following conditions are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.051, IDAPA 58.01.02.200.08, IDAPA 58.01.02.210, IDAPA 58.01.02.250.02.e, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. Sediment resulting from activities—including BMP failures, construction mishaps, spills, or any unplanned event—must be mitigated to prevent violations of Idaho's turbidity standards. Any violation of this standard must be reported to the appropriate DEQ regional office immediately (Table 1).
2. Throughout the life of the project, the applicant must implement, maintain, monitor, and adaptively manage BMPs—such as silt curtains, geotextile fabrics, and silt fences—to minimize instream sediment suspension, turbidity, and the potential for spills or mishaps to affect surface waters.
3. Visual observation is acceptable to determine whether project activities, BMPs, or unanticipated events (e.g., construction mishaps or spills) are contributing to increased turbidity. If a sediment plume is observed, the project may be causing an exceedance of water quality standards, and the permittee must inspect BMPs and the project activity area to identify the cause. If the BMPs, site conditions, or any incident are contributing to turbidity, the permittee must take corrective measures and modify the activity, address the incident, and implement additional or revised BMPs.
4. If a visible sediment plume persists after corrective measures have been implemented, turbidity monitoring consistent with Table 2 and Appendix C is required.
    a. A properly and regularly calibrated turbidimeter is required for field measurements. The turbidimeter must be calibrated before each use or in accordance with the manufacturer's recommendations. Calibration logs must be maintained and made available to DEQ upon request. Instantaneous grab samples must be collected upstream of the disturbance to determine background turbidity and downstream within the visible plume to evaluate project impacts. Location, date, time, and turbidity values must be recorded for each sample.
    b. Results from the downstream sampling location must be compared to the upstream sample location or background turbidity to determine whether project activities are causing an exceedance of Idaho's water quality standards. If the downstream turbidity is 50 nephelometric turbidity units (NTUs) or greater than the upstream turbidity, then the project is causing an exceedance of the water quality standards. Any exceedance of the turbidity standard must be reported to the appropriate DEQ regional office (Table 1) within 24 hours of the sample event.
    c. Work (or earth-disturbing activities) may resume when turbidity readings return to within 50 NTU above background. If turbidity has exceeded 25 NTU above background for more than 10 consecutive days, work may resume once readings have remained below 25 NTU above background for at least 24 consecutive hours.

d. Daily turbidity monitoring logs must be available to DEQ upon request. Logs must describe all exceedances, the causes (including spills or incidents, if applicable), corrective measures taken, and the effectiveness of those measures.

**Table 2. Turbidimeter monitoring and sampling when a plume is observed.**

| Turbidity Above Background[a] | Monitoring/Sampling Frequency[a] | Additional Actions Required |
|---|---|---|
| 0 to 24 NTU | Visual monitoring every 2 hours. No sampling required. | None |
| 25 to 49 NTU | Collect samples every 2 hours. | Continue work for up to 8 hours within any 24-hour period, then STOP work until turbidity returns to acceptable levels. |
| 25 NTU for 10 or more consecutive days | Sample before and after implementing corrective actions, following instructions[b] | STOP work, implement corrective actions, and follow instructions[b]; notify DEQ regional office |
| 50 NTU or more | Sample before and after implementing corrective actions, following instructions[c] | STOP work, implement corrective actions, and follow instructions[c]; notify DEQ regional office |

a. For any required turbidity sampling, collect and report three measurements at each monitoring location. Use the maximum value of the three measurements to determine compliance following Table 2 directions.
b. Instructions: If BMPs appear to be functioning properly, the permittee must modify the activity or implement corrective actions, such as installing additional or modifying existing BMPs, until turbidity measurements indicate turbidity standards are met. Sampling may cease once a sediment plume is no longer observed. Work may resume when the sediment plume is no longer visible and turbidity measurements remain consecutively below 25 NTU.
c. Instructions: If BMPs appear to be functioning properly, the permittee must modify the activity or implement corrective actions, such as installing additional or modifying existing BMPs, until turbidity measurements indicate turbidity standards are met. Sampling may cease once a sediment plume is no longer observed. Work may resume when the sediment plume is no longer visible and turbidity measurements remain below 50 NTU.

## 2.8 In-Water Work

The following conditions are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. When practicable, equipment must work from an upland site to minimize disturbance of waters of the United States.
2. Construction affecting the streambed or streambanks must generally occur during low-flow periods, and where practicable, coincide with suitable in-water work periods for aquatic life.
3. To the maximum extent practicable, where fill is needed, temporary crossings must be installed perpendicular to the channel and located in areas that will result in the least environmental impact. Temporary crossings must be stabilized with clean gravel or treated with other measures that are equally effective in reducing impacts. All temporary crossings must be removed as soon as practicable after project completion or when they are no longer needed.
4. To the maximum extent practicable, heavy equipment operating in wetlands must be placed on mats or suitably designed pads to prevent damage to wetland soil and vegetation. However, during winter conditions, mats or pads may not be required if the

ground is adequately frozen and construction activities are expected to result in minimal impacts.

5. In-water activities in spawning areas must be avoided to the maximum extent practicable during spawning and incubation periods.
6. Prior to project commencement, the applicant should consider contacting the Idaho Department of Lands (IDL) and Idaho Department of Fish and Game (IDFG) offices for potential permit applicability.
7. Prior to the start of in-water work, the applicant must contact the local IDFG Regional Office to determine if spawning areas are present in the work area, and if so, the applicant must work with IDFG to determine an appropriate work window so as not to disturb spawning fish, incubating fish eggs, or newly emerged fry.
8. Wastewater from concrete washout and equipment cleaning must be managed to prevent discharge to waters of the United States. Control measures must be maintained to prevent or minimize the potential for wet concrete, slurry, or wash water from entering waters of the United States.
9. Activities that construct and maintain intake structures must include adequate fish exclusion screening devices in accordance with the National Marine Fisheries Services *Fish Screening Criteria for Anadromous Salmonids* (NMFS 1997) to minimize and prevent fish entrainment or capture. Stranded fish found in dewatered segments must be moved to a location with water (preferably downstream) by IDFG. A collection permit must be obtained from IDFG, and the applicant may consult with IDFG to coordinate fish salvage.
10. To the maximum extent practicable, equipment operating over water or directly adjacent to the channel must utilize environmentally acceptable lubricants or hydraulic fluids that are less toxic to fish and other aquatic organisms.

## 2.9 Vegetation Protection and Restoration

The following conditions are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. To the maximum extent practicable, locate staging areas and access points in open, upland areas.
    a. Fencing and other protective barriers must be used to clearly mark construction areas.
    b. To the maximum extent practicable, minimize disturbance of native vegetation to reduce soil erosion, sediment delivery to waterways, and impacts to aquatic biota, including Bull Trout.
2. Existing riparian vegetation within the project area must remain undisturbed to the maximum extent practicable. Where disturbance is unavoidable, implement BMPs to

minimize impacts and replant disturbed areas with native riparian species that provide equivalent or improved shading, bank stability, and habitat functions within the current or next appropriate planting season.

3. Where project activities unavoidably remove native riparian or wetland vegetation, successfully reestablish native species within the current or next appropriate planting season to the maximum extent practicable. Restoration must achieve, at minimum, pre-project levels of water quality benefit or result in an overall ecosystem improvement.

## 2.10 Management of Hazardous or Deleterious Materials

The following conditions are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.051, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.400, IDAPA 58.01.02.800, and IDAPA 58.01.02.850.

1. Petroleum products and hazardous, toxic, and/or deleterious materials must not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the United States. Adequate measures and controls must ensure that those materials will not enter waters of the United States because of high water, precipitation runoff, wind, storage facility failure, accidents, or unauthorized third-party activities.
2. Secondary containment must be provided for all chemical materials stored or used on-site to prevent spills, leaks, or releases to waters of the United States. Containment systems must be designed and maintained in accordance with applicable industry standards and manufacturer recommendations.
3. Daily inspections of all fluid systems on equipment to be used in or near waters of the United States must ensure no leaks or potential leaks exist before equipment use. A logbook of daily equipment inspections must be kept on site and provided to DEQ upon request.
4. Equipment and machinery must not be refueled, repaired, or serviced within waters of the United States.
5. Equipment and machinery must be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment capability before entering waters of the United States. Any wastewater or wash water must not enter waters of the United States and be properly disposed.
6. Emergency spill response procedures must be in place and include a spill response kit (e.g., oil absorbent booms or other equipment).
7. If an unauthorized release of hazardous material to waters of the United States or to land occurs and there is a likelihood it will enter waters of the United States, the responsible persons in charge must:
    a. Make every reasonable effort to abate and stop a continuing spill.

b. Make every reasonable effort to contain spilled material so it will not reach waters of the United States.

c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office (Table 1) during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802).

8. Collect, remove, and properly dispose of spill and cleanup materials in accordance with all federal, state, and local regulations.

## 2.11 Mixing Zones

The following condition meets Idaho's water quality standards, including without limitation, IDAPA 58.01.02.060.

No mixing zones are authorized through this certification. If a mixing zone, or alternatively, a point of compliance, is desired, the permittee must apply for an individual certification and must contact the appropriate DEQ regional office (Table 1) to request authorization for a mixing zone.

## 2.12 Culverts

The following conditions to control erosion, sediment, and turbidity are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.200 and IDAPA 58.01.02.250.

1. To prevent road surface and culvert bedding material from entering a stream, culvert crossings must include BMPs to retain road base and culvert bedding material. For perennial waters, the permittee should consider Idaho's "Stream Channel Alterations Rules" (IDAPA 37.03.07). Another source of BMPs for culvert installation are found in the "Rules Pertaining to the Idaho Forest Practices Act" (IDAPA 20.02.01). Examples of BMPs include, but are not limited to, parapets, wing walls, inlet and outlet rock armoring, compaction, suitable bedding material, antiseep barriers such as bentonite clay, or other acceptable roadway retention systems.
2. Culverts must be sized appropriately to maintain the natural drainage patterns.
3. Culverts must not constrict the stream channel or direct flow toward the streambank. Adequate grade control must be installed to prevent channel erosion or sediment buildup.
4. Culverts for fish-bearing waterways must be installed so they do not impede fish passage.

5. The culvert outflow must be armored with riprap to provide erosion control. This riprap must be clean, angular, dense rock that is free of fines and resistant to aquatic decomposition.

## 2.13 Treated Wood

The following conditions are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.200 and IDAPA 58.01.02.210. These conditions ensure that toxic chemicals are not introduced into waters of the United States.

1. The *Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments* (DEQ 2008) must be considered when using treated wood materials in the aquatic environment. The DEQ guidance references *Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments* (Western Wood Preservers Institute et al. 2011). This BMP document provides recommended guidelines for producing and installing treated wood products for use in sensitive environments.
2. All treated wood must be treated in a manner consistent with the pesticide's EPA-approved labeling. As a matter of good industry practice, pressure-treated wood ties must also be treated in accordance with standards established by the American Wood Protection Association. Additionally, only wood treated with ACQ, ACZA, CA-B, and copper naphthenate may be used. Wood treated with creosote, CCA, pentachlorophenol (Penta), or any other prohibited chemical will not be covered under this water quality certification.
3. Adhere to the manufacturer's guidelines for proper storage, handling, and usage.
4. Materials must be stored out of direct soil or standing water, away from drainage conveyances adjacent to waters of the United States and covered until needed for use.
5. Set up a controlled workspace or designated work area with barriers to capture and contain debris to prevent it from spreading.
6. Collect and properly dispose of sawdust and wood scraps in accordance with federal, state, and local regulations. Treated wood waste must not be burned or composted.

## 2.14 Dredge Material Management

This condition ensures that there is no unauthorized discharge from upland disposal sites according to 33 U.S.C. § 1311(a) and Idaho's water quality requirements, including without limitation, Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

1. Upland disposal of dredged material must prevent the material from reentering waters of the United States.

## 2.15 Pollutants/Toxins

In conformance with IDAPA 58.01.02.200, the use of chemicals such as sterilants, growth inhibitors, fertilizers, and deicing salts during construction must be limited to the best estimate of optimum application rates. All reasonable measures must be taken to avoid excess application and introduction of chemicals into waters of the United States.

# 3 Project Certification

Appendix B includes a summary of DEQ's certification decisions.

## 3.1 Certification Denied: Individual Certification Required

*DEQ denies certification for NWPs 16, 23, 44, and 53, as well as for all projects in high-quality (Class I) wetlands. To identify wetland classifications, contact the Idaho Department of Fish and Game.*

DEQ cannot certify that the following activities will comply with water quality requirements. Applicants must request an individual § 401 water quality certification before the activity can proceed. Upon review of an individual certification request, DEQ may:

- Grant certification;
- Grant certification with conditions necessary to meet water quality requirements;
- Deny certification for projects that will not meet water quality requirements; or
- Expressly waive certification (40 CFR § 121.7).

DEQ also denies certification for all activities proposed to occur in waters designated as ORWs for the duration of the permit. This denial is necessary to comply with Idaho's antidegradation policy (IDAPA 58.01.02.051.03) and implementation procedures (IDAPA 58.01.02.052.09.g).

**NWP 16—Return Water from Upland Contained Disposal Areas**

Return water from upland disposal areas may contribute turbidity, sediment, and other pollutants to receiving waters that exceed Idaho's water quality standards, requiring site-specific review.

**NWP 23—Approved Categorical Exclusions**

DEQ is unable to determine that the broad range of activities receiving categorical exclusions under NEPA will meet state water quality requirements because the exclusions lack sufficient detail to evaluate potential water quality impacts. Individual certification is required.

**NWP 44—Mining Activities**

Mining activities may generate sediment, metals, and other pollutants that may pose elevated risks to water quality. Since impacts depend on site-specific geology, hydrology, and

operational practices, these activities require individual certification to ensure compliance with state water quality standards.

**NWP 53—Removal of Low-Head Dams**

Dam removals may mobilize contaminated sediments and alter downstream water quality in ways that require site-specific conditions and are best addressed through individual review.

## 3.2 Certification Granted with Conditions

*DEQ grants certification with conditions for NWPs 3, 12, 13, 14, 21, 29, 39, 40, 42, 43, 49, 50, 51, 52, 57, 58, and 59.*

DEQ recognizes that these activities may have the potential to disturb large areas of an assessment unit, that may result in permanent and significant impairment of designated or existing beneficial uses. The conditions of the NWPs, associated Regional Conditions, and this certification are not sufficient to ensure that projects of this scale will fully protect designated beneficial uses or prevent degradation of high-quality waters.

To comply with Idaho's antidegradation implementation procedures (IDAPA 58.01.02.052), protect beneficial uses, and meet surface water quality criteria for sediment (IDAPA 58.01.02.200.08), DEQ must evaluate certain projects individually through an individual § 401 water quality certification.

### 3.2.1 NWPs 3, 12, 13, 14, 29, 49, 57, 58, and 59

The proposed 2026 NWPs 3, 12, 13, 14, 29, 49, 57, 58, and 59 require preconstruction notification (PCN) for certain activities so the USACE district engineer can determine whether an activity will result in minimal environmental impacts. While PCN review provides an additional safeguard under the USACE's permitting program, it does not ensure compliance with Idaho's antidegradation implementation procedures (IDAPA 58.01.02.052).

DEQ's § 401 review focuses on Idaho water quality standards and antidegradation requirements. Activities that remain within the limits specified below are covered by the general certification with conditions. Activities that exceed these limits require an individual § 401 water quality certification.

**NWP 3—Maintenance**

Certification is granted for activities that:

- Do not expand the existing permanent project footprint by more than 0.1 acre within waters of the United States.
- Do not involve activities authorized by paragraph (b) of NWP 3.

When records of the original authorization or footprint are incomplete or unavailable—such as for older transportation infrastructure—the best available information may be used to determine whether the activity maintains the existing footprint, rather than expanding it by more than 0.1 acre.

**NWP 12—Oil or Natural Gas Pipeline Activities**

Certification is granted for activities that:

- Result in no more than 0.1 acre of permanent wetland loss.
- Result in no more than 500 linear feet of permanent streambed impact.

**NWP 13—Bank Stabilization**

Certification is granted for activities that:

- Do not result in more than 0.1 acre of permanent loss of waters of the United States.
- Do not exceed 500 linear feet of permanent streambed or streambank impact.
- Do not exceed 1 cubic yard of fill per linear foot.

**NWP 14—Linear Transportation Projects**

Certification is granted for activities that:

- Do not result in more than 0.1 acre of permanent loss of waters of the United States.
- Do not cause permanent loss of more than 300 linear feet of streambed.

**NWP 29—Residential Developments**

Certification is granted for activities that:

- Do not result in more than 0.1 acre of permanent loss of waters of the United States.
- Do not cause permanent loss of more than 300 linear feet of streambed.

**NWP 49—Coal Remining Activities**

Certification is granted for activities that:

- Result in no more than 0.5 acre of permanent loss of waters of the United States.

**NWP 57—Electric Utility Line and Telecommunications Activities**

Certification is granted for activities that:

- Do not result in more than 0.1 acre of permanent loss of waters of the United States.
- Do not exceed 500 linear feet of permanent streambed impacts.

**NWP 58—Utility Line Activities for Water and Other Substances**

Certification is granted for activities that:

- Do not result in more than 0.1 acre of permanent loss of waters of the United States.
- Do not exceed 500 linear feet of permanent streambed impacts.

**NWP 59—Water Reclamation and Reuse Facilities**

Certification is granted for activities that:

- Result in no more than 0.5 acre of total loss of waters of the United States.
- Result in no more than 300 linear feet of permanent streambed loss.

### 3.2.2 NWPs 21, 39, 40, 42, 43, 50, 51, and 52

These NWPs may involve activities with a higher potential for pollutant discharges and land-disturbing impacts (e.g., sediment, nutrients, metals, hydrocarbons, and other pollutants). Many are land-intensive or industrial in nature and therefore present elevated risks to water quality. Because the federal NWP program does not require project-specific demonstration of compliance with Idaho's antidegradation procedures, DEQ limits certification to activities that protect Idaho water quality standards.

Certification is granted for activities that:

- Do not exceed 300 linear feet of permanent streambed loss, or
- Do not result in more than 0.5 acre of permanent loss of waters of the United States.

Activities exceeding these limits, or otherwise likely to cause permanent degradation of surface waters, are not covered by this general certification and require an individual § 401 water quality certification.

Based on DEQ's 2010 Beneficial Use Reconnaissance Program (BURP) monitoring of 48 wadeable streams, the median bankfull width was 19.7 feet. At this width, a 0.5-acre loss corresponds to approximately 1,105 linear feet of stream (about 0.2 miles). DEQ cannot certify that permanent streambed losses of this magnitude, measured solely under the 0.5-acre limit, would avoid permanent degradation of surface waters.

Using both linear-foot and acreage-based metrics accounts for differences in how aquatic resources may be affected. For example, a project may result in a small acreage of impact while permanently altering a long segment of stream channel or may affect fewer linear feet of stream while causing a large loss of wetlands or open waters. Applying both measures supports consistent implementation of Idaho's antidegradation requirements, particularly for high-quality waters, impaired waters, and waters with approved TMDLs.

Applicable NWPs:

- NWP 21—Surface Coal Mining Activities
- NWP 39—Commercial and Institutional Developments
- NWP 40—Agricultural Activities
- NWP 42—Recreational Activities
- NWP 43—Stormwater Management Activities
- NWP 50—Underground Coal Mining Activities
- NWP 51—Land-Based Renewable Energy Generation Facilities
- NWP 52—Water-Based Renewable Energy Generation Pilot Projects

## 3.3 Certification Granted

*DEQ grants § 401 water quality certification for NWPs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 15, 17, 18, 19, 20, 22, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 48, 54, 55, and A.*

These NWPs authorize activities that, when implemented in accordance to their terms and conditions, are expected to result in only minimal adverse environmental effects and can be reasonably conditioned to ensure compliance with Idaho's water quality standards and antidegradation implementation procedures (IDAPA 58.01.02.052).

Certification is granted provided the activity complies with all the following conditions:

- Terms and conditions of the applicable NWP.
- Regional Conditions established by the USACE Walla Walla District.
- Conditions necessary to ensure compliance with water quality standards, outlined in this certification (section 2).

These NWPs generally involve activities of limited scope, scale, or intensity and are designed to authorize projects with minimal individual and cumulative adverse effects on the aquatic environment. When conducted in accordance with Regional Conditions and the general conditions of this certification, these activities can be implemented without lowering water quality or degrading high-quality waters. As a result, DEQ can certify these NWPs in full while relying on the safeguards provided through existing permit conditions and state oversight.

# 4 Right to Appeal Final Certification

The final § 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the "Rules of Administrative Procedure before the Board of Environmental Quality" (IDAPA 58.01.23), within 35-days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Tambra Phares, Boise State Office at (208) 373-0187 or by email at tambra.phares@deq.idaho.gov.

Mary Anne Nelson, PhD
Surface & Wastewater Division Administrator
Idaho Department of Environmental Quality

# References

DEQ (Idaho Department of Environmental Quality). 2008. *Guidance for the Use of Wood Preservatives and Preserved Wood Products in or Around Aquatic Environments*. Boise, ID: DEQ. https://www2.deq.idaho.gov/admin/LEIA/api/document/download/4838

DEQ (Idaho Department of Environmental Quality). 2024. *Final Idaho Antidegradation Implementation Procedures.* Boise, ID: DEQ. https://www2.deq.idaho.gov/admin/LEIA/api/document/download/4834

EPA (US Environmental Protection Agency). 2000. *National Menu of Best Management Practices (BMPs) for Stormwater.* https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater

NMFS (National Marine Fisheries Service). 1997. *Fish Screening Criteria for Anadromous Salmonids.* https://media.fisheries.noaa.gov/dam-migration/southwest_region_1997_fish_screen_design_criteria.pdf

RSET (Northwest Regional Sediment Evaluation Team). 2018. *Sediment Evaluation Framework for the Pacific Northwest*. Prepared by the RSET Agencies. https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/2548

Western Wood Preservers Institute, Wood Preservation Canada, Southern Pressure Treaters' Association, and Southern Forest Products Association. 2011. *Best Management Practices: For the Use of Treated Wood in Aquatic and Wetland Environments.* Vancouver, WA: Western Wood Preservers Institute. https://preservedwood.org/wp-content/uploads/BMP_Specifiers_Guide.pdf

# Appendix A. Summary of § 401 Certification Conditions

**Section 1. General Conditions (Apply to All NWPs in Idaho)**

- Projects must comply with Idaho's numeric and narrative water quality criteria, including for sediment, turbidity, temperature, and dissolved oxygen.
- Approved erosion and sediment control practices must be properly designed, installed, maintained, and monitored daily during construction.
- BMP inspection logs and documentation of corrective measures (if necessary) must be maintained. Records must be kept on site along with a copy of this certification.
- DEQ may inspect projects at any time to verify compliance with the § 401 water quality certification.
- A copy of this water quality certification must be kept on-site and provided to all contractors.

**Section 2. Additional Conditions**

- BMPs must be properly designed, implemented, and maintained to protect beneficial uses and minimize pollutant loading to surface waters.
- If an EPA-approved TMDL exists for a receiving water body that requires a load reduction for a pollutant of concern, then the project must be consistent with the provisions of that TMDL (IDAPA 58.01.02.055.05).
- An individual § 401 water quality certification is required for project activities in ORWs.

**Section 3. Certification Scope**

- This certification is granted with conditions and applies only to the activities authorized under the 2026 NWPs and associated Regional Conditions.
- Modifications to a grant of certification will be processed in accordance with the requirements of Clean Water Act § 401 in effect at the time the modification is proposed.

**Section 4. Certification Decisions**

**4.1 Certification is Denied: Individual Certification Required**

*DEQ denies certification for NWPs 16, 23, 44, and 53, as well as for all projects in high quality (Class I) wetlands. To identify wetland classifications, contact the Idaho Department of Fish and Game.*

Individual § 401 water quality certification is required before these activities may proceed:

- NWP 16 — Return Water from Upland Contained Disposal Areas
- NWP 23 — Approved Categorical Exclusions

- NWP 44 — Mining Activities
- NWP 53 — Removal of Low-Head Dams

### 4.2 Certification Granted with Conditions

*DEQ grants certification with conditions for NWPs 3, 12, 13, 14, 21, 29, 39, 40, 42, 43, 49, 50, 51, 52, 57, 58, and 59.*

Certification applies only within the thresholds and limitations specified in section 3. Projects exceeding these limits must obtain an individual § 401 water quality certification.

### 4.3 Full Certification Granted with General Conditions

*DEQ grants § 401 water quality certification for all other NWPs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 15, 17, 18, 19, 20, 22, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 48, 54, 55, and A.*

Certification is granted for activities that comply with the applicable NWP terms, the USACE Regional Conditions, and the conditions of this certification.

# Appendix B. Summary of DEQ's Certification Decisions

*DEQ denies certification for all projects in high-quality (Class I) wetlands. To identify wetland classifications, contact the Idaho Department of Fish and Game.*

| NWP # | NWP Title | DEQ 401 Decision |
|---|---|---|
| 1 | Aids to Navigation | Granted |
| 2 | Structures in Artificial Canals | Granted |
| 3 | Maintenance | Granted for activities that:<br>• Do not expand the existing permanent project footprint by more than 0.1 acre within waters of the United States.<br>• Do not involve activities authorized by paragraph (b) of NWP 3. |
| 4 | Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities | Granted |
| 5 | Scientific Measurement Devices | Granted |
| 6 | Survey Activities | Granted |
| 7 | Outfall Structures and Associated Intake Structures | Granted |
| 8 | Oil and Gas Structures on the Outer Continental Shelf | Granted |
| 9 | Structures in Fleeting and Anchorage Areas | Granted |
| 10 | Mooring Buoys | Granted |
| 11 | Temporary Recreational Structures | Granted |
| 12 | Oil or Natural Gas Pipeline Activities | Granted for activities that:<br>• Result in no more than 0.1 acre of permanent wetland loss.<br>• Result in no more than 500 linear feet of permanent streambed impact. |
| 13 | Bank Stabilization | Granted for activities that:<br>• Do not result in more than 0.1 acre of permanent loss of waters of the United States.<br>• Do not exceed 500 linear feet of permanent streambed or streambank impact.<br>• Do not exceed 1 cubic yard of fill per linear foot. |
| 14 | Linear Transportation Projects | Granted for activities that:<br>• Do not result in more than 0.1 acre of permanent loss of waters of the United States.<br>• Do not cause permanent loss of more than 300 linear feet of streambed. |
| 15 | US Coast Guard Approved Bridges | Granted |
| 16 | Return Water From Upland Contained Disposal Areas | Denied |
| 17 | Hydropower Projects | Granted |
| 18 | Minor Discharges | Granted |
| 19 | Minor Dredging | Granted |
| 20 | Response Operations for Oil or Hazardous Substances | Granted |

| NWP # | NWP Title | DEQ 401 Decision |
|---|---|---|
| 21 | Surface Coal Mining Activities | Granted for activities that:<br>• Do not exceed 300 linear feet of permanent streambed loss, or<br>• Do not result in more than 0.5 acre of permanent loss of waters of the United States. |
| 22 | Removal of Vessels | Granted |
| 23 | Approved Categorical Exclusions | Denied |
| 24 | Indian Tribe or State Administered Section 404 Program | Granted |
| 25 | Structural Discharges | Granted |
| 27 | Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities | Granted |
| 28 | Modifications of Existing Marinas | Granted |
| 29 | Residential Developments | Granted for activities that:<br>• Do not result in more than 0.1 acre of permanent loss of waters of the United States.<br>• Do not cause permanent loss of more than 300 linear feet of streambed. |
| 30 | Moist Soil Management for Wildlife | Granted |
| 31 | Maintenance of Existing Flood Control Facilities | Granted |
| 32 | Completed Enforcement Actions | Granted |
| 33 | Temporary Construction, Access, and Dewatering | Granted |
| 34 | Cranberry Production Activities | Granted |
| 35 | Maintenance Dredging of Existing Basins | Granted |
| 36 | Boat Ramps | Granted |
| 37 | Emergency Watershed Protection and Rehabilitation | Granted |
| 38 | Cleanup of Hazardous and Toxic Waste | Granted |
| 39 | Commercial and Institutional Developments | Granted for activities that:<br>• Do not exceed 300 linear feet of permanent streambed loss, or<br>• Do not result in more than 0.5 acre of permanent loss of waters of the United States. |
| 40 | Agricultural Activities | Granted for activities that:<br>• Do not exceed 300 linear feet of permanent streambed loss, or<br>• Do not result in more than 0.5 acre of permanent loss of waters of the United States. |
| 41 | Reshaping Existing Drainage and Irrigation Ditches | Granted |
| 42 | Recreational Activities | Granted for activities that:<br>• Do not exceed 300 linear feet of permanent streambed loss, or<br>• Do not result in more than 0.5 acre of permanent loss of waters of the United States. |
| 43 | Stormwater Management Facilities | Granted for activities that:<br>• Do not exceed 300 linear feet of permanent streambed loss, or<br>• Do not result in more than 0.5 acre of permanent loss of waters of the United States. |

| NWP # | NWP Title | DEQ 401 Decision |
|---|---|---|
| 44 | Mining Activities | Denied |
| 45 | Repair of Uplands Damaged by Discrete Events | Granted |
| 46 | Discharges in Ditches | Granted |
| 48 | Commercial Shellfish Mariculture Activities | Granted |
| 49 | Coal Remining Activities | Granted for activities that:<br>• Result in no more than 0.5 acre of permanent loss of waters of the United States. |
| 50 | Underground Coal Mining Activities | Granted for activities that:<br>• Do not exceed 300 linear feet of permanent streambed loss, or<br>• Do not result in more than 0.5 acre of permanent loss of waters of the United States. |
| 51 | Land-Based Renewable Energy Generation Facilities | Granted for activities that:<br>• Do not exceed 300 linear feet of permanent streambed loss, or<br>• Do not result in more than 0.5 acre of permanent loss of waters of the United States. |
| 52 | Water-Based Renewable Energy Generation Pilot Projects | Granted for activities that:<br>• Do not exceed 300 linear feet of permanent streambed loss, or<br>• Do not result in more than 0.5 acre of permanent loss of waters of the United States. |
| 53 | Removal of Low-Head Dams | Denied |
| 54 | Living Shorelines | Granted |
| 55 | Seaweed Mariculture Activities | Granted |
| 57 | Electric Utility Line and Telecommunications Activities | Granted for activities that:<br>• Do not result in more than 0.1 acre of permanent loss of waters of the United States.<br>• Do not exceed 500 linear feet of permanent streambed impacts. |
| 58 | Utility Line Activities for Water and Other Substances | Granted for activities that:<br>• Do not result in more than 0.1 acre of permanent loss of waters of the United States.<br>• Do not exceed 500 linear feet of permanent streambed impacts. |
| 59 | Water Reclamation and Reuse Facilities | Granted for activities that:<br>• Result in no more than 0.5 acre of total loss of waters of the United States.<br>• Result in no more than 300 linear feet of permanent streambed loss. |
| A | Activities to Improve Passage of Fish and Other Aquatic Organisms | Granted |

# Appendix C. Turbidity Monitoring Overview

## TURBIDITY MONITORING DECISION TREE

PROJECT ACTIVITIES OCCURRING IN OR NEAR WATER

**STEP 1** Conduct Visual Monitoring

Is there a visible sediment plume or any indication of increased turbidity?

YES → STEP 2 | NO → END

**STEP 2** Inspect BMPs and Activity Area for:

- ✓ BMP failures
- ✓ Construction mishaps
- ✓ Spills or leaks
- ✓ Any unanticipated event causing turbidity

Is the cause identified and correctable?

NO → STEP 3 | YES → Implement corrective actions. Modify BMPs or activities as needed. After corrections, visually monitor again.

Does the plume persist? YES → STEP 3 | NO → END

**STEP 3** Begin Turbidity Monitoring

Collect grab samples:

1. Upstream (background conditions)
2. Downstream (within the visible plume)

✓ Record date, time, location, and turbidity sample results.

**STEP 4** Compare Results

Is downstream turbidity ≥ 50 NTU above background?

YES → STEP 5 | NO → END

A water quality exceedance has occurred.

- ✓ Report to DEQ regional office within 24 hours.
- ✓ Implement additional corrective measures.
- ✓ Continue monitoring until conditions improve.

**STEP 5** Pause Work and Monitor Turbidity Levels

Have turbidity levels returned to the appropriate thresholds?

YES → END | NO → STEP 5

| IF TURBIDITY WAS: | THE APPROPRIATE THRESHOLD IS: |
|---|---|
| ≥ 50 NTU over background | < 50 NTU over background |
| > 25 NTU over background for >10 days | < 25 NTU over background for 24 consecutive hours |

**END** Continue project activities and maintain routine BMP inspections.

# Appendix D: IDAPA 58 Citation Index

Rule 58.01.02 - WATER QUALITY STANDARDS

1. § 58.01.02.000 - LEGAL AUTHORITY
2. § 58.01.02.051 - ANTIDEGRADATION POLICY
3. § 58.01.02.052 - ANTIDEGRADATION IMPLEMENTATION
4. § 58.01.02.053 - PUBLIC PARTICIPATION
5. § 58.01.02.054 - BENEFICIAL USE SUPPORT STATUS
6. § 58.01.02.055 - WATER QUALITY LIMITED WATERS AND TMDLS
7. § 58.01.02.056. - 059 - RESERVED
8. § 58.01.02.060 - MIXING ZONE POLICY
9. § 58.01.02.080 - VIOLATION OF WATER QUALITY STANDARDS
10. § 58.01.02.200 - GENERAL SURFACE WATER QUALITY CRITERIA
11. § 58.01.02.210 - NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE
12. § 58.01.02.250 - SURFACE WATER QUALITY CRITERIA FOR AQUATIC LIFE DESIGNATIONS
13. § 58.01.02.251 - SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS
14. § 58.01.02.252 - SURFACE WATER QUALITY CRITERIA FOR WATER SUPPLY USE DESIGNATIONS
15. § 58.01.02.253 - SURFACE WATER QUALITY CRITERIA FOR WILDLIFE AND AESTHETICS USE DESIGNATIONS
16. § 58.01.02.400 - RULES GOVERNING POINT SOURCE DISCHARGES
17. § 58.01.02.800 - HAZARDOUS AND DELETERIOUS MATERIAL STORAGE
18. § 58.01.02.850 - HAZARDOUS MATERIAL SPILLS