



414 Nicollet Mall
Minneapolis, MN 55401

October 9, 2017

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
Department 408
600 East Boulevard
Bismarck, ND 58505-0480

**Re: Submittal of Pre-Construction Record and Remaining Permits
Northern States Power Company
230 kV Transmission Line - McHenry & Ward Counties
Case No. PU-17-102**

Dear Mr. Nitschke:

On behalf of Northern States Power Company, doing business as Xcel Energy, enclosed for filing with the North Dakota Public Service Commission in the above referenced case, please find the following items:

- Record of a pre-construction conference
- Copies of recently obtained permits
 - NPDES Permit, Notices of Coverage (one for each substation and one for line construction)
 - Ward County Excavation Permit (Magic City Substation)
 - Ward County Building Permit (Magic City Substation)
 - Ward County Road Use Agreement
 - Ward County Utility Permit
 - US Army Corps of Engineers Permit for grading at the McHenry Substation

These permits represent all the remaining permits required for the project. Please feel free to contact me at (612) 330 5835 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Hillstrom', written over a horizontal line.

Tom Hillstrom

Enclosures

Cc: J. Lein

Pre-Construction Meeting Record and Notice of Intent to Begin Construction
230 kV Transmission Line, McHenry and Ward Counties
Case No. PU-17-102

Date: October 4, 2017

Attendees:

Jerry Lein – NDPSC
Damon Veillers – Interstate Engineering
Veronica Meyer-Interstate Engineering
Marsha Parlow _GRE
Crystal DeBruin – GRE
Noel Klinnert – Xcel Energy
Sean Lawler – Xcel Energy
John Bartunek – Xcel Energy
Tom Hillstrom –Xcel
Joe Samuel – Xcel
Dan Schilling – Xcel

Purpose of Conference: To review conditions contained within the PSC siting certification

Jerry Lein started by explaining that the commission approved the corridor certificate and route permit for the project. Jerry inquired as to whether any permits remained outstanding and requested that any newly acquired permits be packaged and submitted to PSC. Xcel and GRE agreed to do this.

The project schedule was discussed. Grading for the new Magic City substation and for work at the existing McHenry substation is scheduled to begin next week. The following schedule was tentatively set up with PSC's third party inspector (Veronica Meyer – Interstate Engineering)

- Grading to begin at McHenry on Monday October 9th
- Grading to begin at Magic City on Wednesday October 11th

Veronica will be on-site to monitor topsoil segregation. Utility construction crews will coordinate with Veronica to finalize timing.

NDPSC – Third Party Inspector Contact Info

Veronica Meyer

701 509 4922

Veronica.meyer@interstateeng.com

Tree Replacement requirements were reviewed.

- Inventory prior to any clearing
- Submit replacement plan to PSC for approval prior to any replacement work
- Work with landowners to find locations where people want trees and will provide some care

Jerry then went through all 34 order provisions, selected highlights below:

- Monthly updates will be submitted to ND PSC. No particular format required.
- At transmission structure locations, topsoil will be spread around the structure location with excess topsoil and all subsoil removed from the site or disposed of in accordance with landowner desires.
- ND PSC must be notified of any discovery of cultural resources during construction
- The commission and its third party have authority to stop construction if permit conditions or laws are violated.
- Use NRCS recommended seed mixes for grassland restoration. Any deviation would have to be approved by commission.
- Recommended to video road conditions prior to construction
- Utilities Construction contact for landowner issues identified as Sean Lawler

Xcel Representative for Landowner Issues

Sean Lawler

Desk - 612-330-1956

Mobile - 320.247.0309

Sean.W.Lawler@xcelenergy.com

- Jerry should be contacted directly and immediately if any extraordinary events occur during construction (including injuries to any person)

NDPSC Staff Contact Person

Jerry Lein

(701) 328-1035

jlein@nd.gov



August 22, 2017

North Dakota Pollutant Discharge Elimination System (NDPDES)
General Permit for Stormwater Discharges from Construction Activity
NOTICE OF COVERAGE

Permittee(s)

Owner Contact: John Bartunek
Xcel Energy
414 Nicollet Mall - 02
Floor 2
Minneapolis, MN 55401

Operator Contact: CC: Christopher Cotton

Coverage under the 2015 reissued construction general permit (NDR10-0000) is identified as follows:

Permit ID: Site Name:
NDR109388 **Magic City Substation**

Please remember to update the Stormwater Pollution Prevention (SWPP) plan as appropriate for site conditions. The best management practices (BMPs) and temporary structures must be inspected, maintained and adjusted until the site is stabilized following construction activities. Once the site is stabilized as outlined in the general permit, you may end permit coverage by filing a termination notice. Cities or counties may impose additional requirements and/or specific BMPs for construction affecting their storm drainage system. Please check with the local officials to be sure all local stormwater management considerations are addressed.

Additional Information

The permit conditions, forms and related information may be found on our web site at:

www.ndhealth.gov/wq/Storm/Construction/ConstructionHome.htm

Should you have any questions on the permit, please contact a stormwater staff person listed below.

Dallas Grossman
701.328.5242
dgrossma@nd.gov

Duane Sandvick
701.328.5260
dsandvick@nd.gov

Bill Giuliani
701.328.5285
wgiuliani@nd.gov



October 5, 2017

North Dakota Pollutant Discharge Elimination System (NDPDES)
General Permit for Stormwater Discharges from Construction Activity
NOTICE OF COVERAGE

Permittee(s)

Owner Contact: John Bartunek
Xcel Energy
414 Nicollet Mall - 02
Floor 2
Minneapolis, MN 55401

Operator Contact: Christopher Cotton - Xcel Energy

Coverage under the 2015 reissued construction general permit (NDR10-0000) is identified as follows:

Permit ID: **NDR109469** Site Name: **Minot Load Serving Project**

Please remember to update the Stormwater Pollution Prevention (SWPP) plan as appropriate for site conditions. The best management practices (BMPs) and temporary structures must be inspected, maintained and adjusted until the site is stabilized following construction activities. Once the site is stabilized as outlined in the general permit, you may end permit coverage by filing a termination notice. Cities or counties may impose additional requirements and/or specific BMPs for construction affecting their storm drainage system. Please check with the local officials to be sure all local stormwater management considerations are addressed.

Additional Information

The permit conditions, forms and related information may be found on our web site at:

www.ndhealth.gov/wq/Storm/Construction/ConstructionHome.htm

Should you have any questions on the permit, please contact a stormwater staff person listed below.

Dallas Grossman
701.328.5242
dgrossma@nd.gov

Duane Sandvick
701.328.5260
dsandvick@nd.gov

Bill Giuliani
701.328.5285
wgiuliani@nd.gov



October 2, 2017

North Dakota Pollutant Discharge Elimination System (NDPDES)
General Permit for Stormwater Discharges from Construction Activity
NOTICE OF COVERAGE

Permittee(s)

Owner Contact: Marsha Parlow
Great River Energy
12300 Elm Creek Boulevard
Maple Grove, MN 55369-4718

Operator Contact: Joseph Warner Jr
U. S. Sitework Inc.
11040 183rd Circle NW, Ste B
Elk River, MN 55330

Coverage under the 2015 reissued construction general permit (NDR10-0000) is identified as follows:

Permit ID: Site Name:
NDR109467 **McHenry Substation Upgrade**

Please remember to update the Stormwater Pollution Prevention Plan (SWPPP) as appropriate for site conditions. The best management practices (BMPs) and temporary structures must be inspected, maintained and adjusted until the site is stabilized following construction activities. Once the site is stabilized as outlined in the general permit, you may end permit coverage by filing a termination notice. Cities or counties may impose additional requirements and/or specific BMPs for construction affecting their storm drainage system. Please check with the local officials to be sure all local stormwater management considerations are addressed.

Additional Information

The permit conditions, forms and related information may be found on our web site at:

www.ndhealth.gov/wq/Storm/Construction/ConstructionHome.htm

Should you have any questions on the permit, please contact the Stormwater Department at 701.328.5210 or stormwater@nd.gov.

Bill Giuliani
Division of Water Quality
701.328.5285
wgiuliani@nd.gov

EXCAVATION PERMIT

Permit No. EX 2017-01 Year Aug. 2017

Owner Northern States Buss Street No. 3870 8th St S.E.

Occupancy Group U.

Contractor Owner - Northern States Buss

COUNTY of WARD
County Building Department

Date Aug. 31-2017

By: [Signature]
INSPECTOR

This card is to be posted where it can be seen from street as soon as construction is started



WARD COUNTY TREASURER

PO BOX 5005
Minot, ND 58702

*** ORIGINAL RECEIPT ***

Clerk: MistyH
Batch Number: 20170831-000046

Receipt#	Trans Date	Clerk	Batch#	Receipt Type	Receipt Total
10849	08/31/2017	mistyh	20170831-000046	MISC	25.00
Received Of			On Account Of		
Northern States Power Company			Tax Equalization Northern States Power Company Excavation Permit # 2017-01		
Line#	PT	Account	Description	Amount	
1	G	001.0000.202.1009	Excavation Permit # 2017-01	25.00	

Payment Type	Doc#	Description	Amount
CHECK	39680	Northern States Power Company	25.00

**WARD COUNTY
EXCAVATION APPLICATION**

PERMIT NO. EX2017-01

PROJECT SUMMARY:	
Project Name: <u>MAGIC CITY SUBSTATION - GRADING</u>	
Property Location (Legal Description - Lot, Block, Addition): <u>OLT 6 OF GOVT LOT 1 - S2/T154/RB2 - SUNDRE TWP</u>	
Property Address: <u>3810 86TH STREET SE</u>	
Owner of Property: <u>NORTHERN STATES POWER COMPANY</u>	
Is Property Located in the Floodplain: (If yes, check box) <input type="checkbox"/>	
CONTRACT INFORMATION:	
General Contractor: <u>OWNER</u>	Phone Number: <u>612-330-1956</u>
PROJECT DESCRIPTION:	
Square Feet of Work Being Done: <u>13 ACRES</u>	
Cubic Feet of Work: <u>32,000 CY</u>	
SAFETY:	
Protection of Adjoining Properties: <u>EXCAVATIONS WILL NOT AFFECT THE STABILITY OF ADJOINING PROPERTIES. BEST MANAGEMENT PRACTICES WILL BE UTILIZED, UTILITY LOCATES, EROSION CONTROL, SILT FENCE, SEED & BLANKET, ETC.</u>	
TO BE COMPLETED BY COUNTY STAFF:	
Reviewed by: <u>[Signature]</u>	
Comments: <u>storm water management plan submitted with appl.</u>	
Costs:	
Approved <u>[Signature]</u> 8-31-17	Denied

BUILDING PERMIT

Permit No. 2025 Year Oct 2017

Owner Kcell Energy NSP Street No. 3920 86th St. S.E.

Occupancy Utility Group U

Contractor owner

Date 10-5-2017

COUNTY of WARD
County Building Department

By: [Signature]
INSPECTOR

This card is to be posted where it can be seen from street as soon as construction is started

WARD COUNTY HIGHWAY DEPARTMENT AGREEMENT FOR USE AND RESTORATION OF HAUL ROAD

Agreement No. 07-2017

Dated 9-21-2017

WHEREAS, Northern States Power Company (hereinafter referred to as Permittee) has requested authorization to use Ward County Road 14, 16 & 23 to haul equipment and materials as set forth in the attached inspection report: Start Date: October 1, 2017 Finish Date: June 30, 2019

WHEREAS, in order to complete said project it may become necessary for the contractor to utilize a portion of the Ward County Highway System of Ward County for the conveyance of construction equipment and materials;

And WHEREAS, the Permittee or its assignee will restore that portion of said highway system, after it has been used to convey construction equipment and materials, to the condition which existed immediately prior to its use, and;

WHEREAS, the Permittee agrees to maintain said highway in a safe condition satisfactory to the County Engineer. Maintenance of gravel roads shall include dust control, blading, and gravel replacement as so determined. Maintenance of asphalt roads shall include repairing of road surface defects, deformities, and any other asphalt failures. All signing as determined shall be in accordance with the Manual of Uniform Traffic Control Devices.

WHEREAS, an inspection of the proposed route to be so utilized will be made, preferably not to exceed thirty days prior to expected initiation to its stated use, at which time the inspection team will determine and record the existing condition of the haul road, including the type, thickness and width of surfacing material in place, and;

WHEREAS, authorized representatives of the Ward County Highway Department and the Permittee, after making said inspection and recording the existing condition of the haul road, shall all sign the inspection report, agreeing to the conditions stated therein.

NOW THEREFORE, in consideration of the premises, the mutual and independent covenants and any and all other requirements, agreements and covenants, all as hereinafter more fully set forth, the parties hereto agree as follows:

That the portion of the Ward County Highway System as shown above, is maintained by Ward County and is that portion which is proposed for use as a haul road, and that, after use of said highway as a haul road for the purposes herein set forth, the Permittee hereby agrees to restore, to the satisfaction of the Ward County Engineer said highway to its existing condition, as reported in the Haul Road Inspection Report in accordance with measurements and observations of the inspection party at time of inspection.

IN WITNESS WHEREOF, the said parties hereto have caused this agreement to be signed by their respective and duly authorized officers.

Application Date: 9/18/2017

Permittee Name: Xcel Energy - Sean Lawler

Address: 414 Nicollet Mall

Minneapolis, MN 55401

Phone Number: 612-330-1956

By: [Signature]

Representative Signature

Title: Land Rights Agent

WARD COUNTY HIGHWAY DEPARTMENT
900 13TH STREET SE, MINOT, ND 58702
Phone: (701) 838-2810 Fax: (701) 838-3801

Sept. 21, 2017

Approved this date

[Signature]
Asst. County Engineer

COUNTY OF WARD
DEPARTMENT OF HIGHWAYS

APPLICATION FOR UTILITY PERMIT
ON
COUNTY HIGHWAY RIGHT OF WAY

Board of County Commissioners
Minot, North Dakota

Attn: County Highway Engineer

C.R. 16 _____

Application is hereby made for permission to place, construct and thereafter maintain a
Double Circuit 115/230kV Transmission Line _____ along/across County Highway 16 _____

feet from center line on the _____ (east, west, north or south) side of the county highway in
accordance with the sketch shown on the inside hereof, or attached thereto.

I. AERIAL CONSTRUCTION

Check one Single pole
 H-Frame
 Single pole & H-Frame
 Steel tower
 Other _____

Check one Open wire
 Cable
 Vertical
 Cross-arm
 Vertical & cross-arm

VOLTAGE _____ NUMBER OF CONDUCTORS _____ SIZE OF CONDUCTORS _____
Diameter of 1.716-inches per phase.

115/230kV _____ 6 _____
Minimum height of conductor: 39.3 _____ ft. along highway
39.3' _____ 39.3 _____ ft. at crossings over highway

EXTENT & LOCATION OF TREE TRIMMING AND/OR CLEARING:
None.

II. UNDERGROUND CONSTRUCTION

CONDUIT

Multiple tile
 Transite
 Clay tile

Sectional concrete
 Steel pipe
 Other _____

CASING

Steel pipe
 Sectional concrete
 Other _____

HDPE Innerduct

SIZE _____ DEPTH _____

VOLTAGE _____ NUMBER OF CONDUCTORS _____ SIZE OF CONDUCTORS _____

METHOD OF INSTALLING UNDER ROADBEDS (if open trench, explain why)

___ Open trench _____
___ Jacking _____
___ Boring _____ Type of casing _____

EXTENT & LOCATION OF TREE CLEARING:

III. Work to start on or after 9/1/2017 _____ and to be completed on or before 8/1/2019 _____

IV. The applicant in carrying on any and all of the work herein above mentioned or referred to in its application and in the Permit issued herefore, shall strictly conform to the terms of such Permit, and the regulations of the Board of County Commissioners, as set forth herein together with the Special Provisions, all of which are made a part hereof. The applicant specifically agrees to be bound hereby. The applicant shall also comply with the regulations of all other governmental agencies for the protection of the public. The work shall be accomplished in a manner that will not be detrimental to the highway and that will safeguard the public.

Dated this 31st date of JULY, 2017.

Northern States Power Co. d/b/a Xcel Energy
Name of company making application

Signature _____
Address 414 Nicollet Mall, Minneapolis, MN 55401

By Sean Lawler

XII. The Utility shall assume all liability for and save the County, its agents and employees, harmless from, any and all claims for damages, actions or causes of action arising out of the work to be done herein and the continuing uses by the Utility, including but not limited to the placing, constructing, reconstructing, maintaining and using of said utility under this application and Permit.

XIII. The Board of County Commissioners may require the Utility or its contractor, to furnish a deposit in the form of a certified check, surety bond or corporate undertaking, in favor of the Board of County Commissioners of Ward County, for any expense incurred by the County in the repairing of damage to any portion of the county highway right of way caused by work performed under a Permit, including any out of the ordinary engineering supervision and inspection expense provided by the County. In those instances wherein a deposit is required, the amount of the deposit shall be specified in the Special Provisions of the Permit. If a check is furnished, any monies remaining over and above such expense shall be returned to the applicant.

XIV. The permit issued does not in any way imply an easement on private property.

XV. The installations shall be made in conformity with all applicable laws, regulations and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public.

XVI. Upon completion of an installation, the Utility shall restore the county highway right of way to its original condition. The Utility shall then notify the office of the County Highway Engineer of the completion of the work so that inspection can be made to determine its acceptability.

AERIAL

I. There shall be only a single pole line on the county highway right of way on either side of the center line thereof.

II. Longitudinal installations on county highway shall normally be located in the outer five feet of the right of way. At crossings of the county highway, poles shall be placed at a minimum of thirty feet from the shoulder lines of the through roadbeds unless right of way widths are prohibitive to such location.

III. The location of all brace poles, anchors and anchor poles within the limits of the county highway right-of-way shall be approved by the County Highway Engineer.

IV. In those instances in which a Utility is issued a Permit or Permits for construction on both sides of the county highway right-of-way in a given area, such Permit is conditioned upon the Utility subsequently providing joint use to other Utilities upon reasonable terms mutually agreeable to the Utilities.

UNDERGROUND

I. All crossings of the roadbeds of the county highways shall be made by boring inside a casing or carrier pipe or by jacking, unless this procedure is modified in the Special Provisions of the Permit. The auger shall not lead the casing or carrier pipe by more than one inch. Open trenching shall be restricted to the area from 5 feet beyond the shoulder to the right-of-way line except as modified in the Special Provisions of the Permit.

II. When pipes with bells or flanges are installed, the crossings of the roadbeds of the county highway shall be made by boring inside a conduit as provided in paragraph I of this section or jacking a conduit of sufficient diameter to permit threading the carrier pipe through it.

III. All voids caused by jacking or boring shall be filled by pressure grouting. The grout material shall consist of a sand-cement slurry of at least two sacks of cement per cubic yard and a minimum of water to assure satisfactory placement.

IV. The underground utilities shall be so installed as virtually to preclude any necessity for disturbing the roadbeds to perform maintenance operations.

V. Underground installations shall be accomplished without damaging or destroying the principal root structure of specimen trees.

LOCATION SKETCH

I. A location sketch is required and shall show the location of proposed facility in relation to the center line of the county highway and other pertinent features such as right-of-way line curb line and edge of surfacing. The facility should also be referenced to adjacent land liners.

II. The sketch shall also clearly show the total length of the proposed utility, and clearly label any crossings.

COUNTY OF WARD
DEPARTMENT OF HIGHWAYS

APPLICATION FOR UTILITY PERMIT
ON
COUNTY HIGHWAY RIGHT OF WAY

Board of County Commissioners
Minot, North Dakota

Attn: County Highway Engineer

C.R. 23

Application is hereby made for permission to place, construct and thereafter maintain a
Double Circuit 115/230kV Transmission Line along/across County Highway 23

feet from center line on the Across (east, west, north or south) side of the county highway in
accordance with the sketch shown on the inside hereof, or attached thereto.

I. AERIAL CONSTRUCTION

Check one	<input type="checkbox"/> Single pole	Check one	<input checked="" type="checkbox"/> Open wire
	<input type="checkbox"/> H-Frame		<input type="checkbox"/> Cable
	<input type="checkbox"/> Single pole & H-Frame		<input type="checkbox"/> Vertical
	<input type="checkbox"/> Steel tower		<input type="checkbox"/> Cross-arm
	<input type="checkbox"/> Other _____		<input type="checkbox"/> Vertical & cross-arm

VOLTAGE	NUMBER OF CONDUCTORS	SIZE OF CONDUCTORS
115/230kV	6	Diameter of 1.716-inches per phase.
Minimum height of conductor:	37.1 ft. along highway	
37.1'	37.1 ft. at crossings over highway	

EXTENT & LOCATION OF TREE TRIMMING AND/OR CLEARING:
None.

II. UNDERGROUND CONSTRUCTION

CONDUIT	
<input type="checkbox"/> Multiple tile	<input type="checkbox"/> Sectional concrete
<input type="checkbox"/> Transite	<input type="checkbox"/> Steel pipe
<input type="checkbox"/> Clay tile	<input type="checkbox"/> Other _____

CASING	
<input type="checkbox"/> Steel pipe	<input type="checkbox"/> HDPE Innerduct
<input type="checkbox"/> Sectional concrete	
<input type="checkbox"/> Other _____	

SIZE	DEPTH	
VOLTAGE	NUMBER OF CONDUCTORS	SIZE OF CONDUCTORS

METHOD OF INSTALLING UNDER ROADBEDS (if open trench, explain why)
 Open trench _____
 Jacking _____
 Boring Type of casing _____

EXTENT & LOCATION OF TREE CLEARING:

III. Work to start on or after 9/1/2017 and to be completed on or before 8/1/2018

IV. The applicant in carrying on any and all of the work herein above mentioned or referred to in its application and in the Permit issued herefore, shall strictly conform to the terms of such Permit, and the regulations of the Board of County Commissioners, as set forth herein together with the Special Provisions, all of which are made a part hereof. The applicant specifically agrees to be bound hereby. The applicant shall also comply with the regulations of all other governmental agencies for the protection of the public. The work shall be accomplished in a manner that will not be detrimental to the highway and that will safeguard the public.

Dated this 31st date of JULY, 2017. Northern States Power Co. d/b/a Xcel Energy
Name of company making application

Signature [Signature] By Sean Lawler
Address 414 Nicollet Mall, Minneapolis, MN 55401

**Rules and Regulations of Board of County Commissioners
for Utilities on County Highways**

DEFINITIONS

Utility: Under this order "utility" shall mean and include all privately, publicly or co-operatively owned communication lines and facilities, any systems, lines and facilities for the distribution and transmission of electrical energy, oil, gas, water, sewer, steam and other pipe lines, railways, ditches, flumes or other structures which under the laws of this State or the ordinance of any village or city may be constructed, placed or maintained across, along or on county highway right of way. Dependent upon the meaning intended in the context, "Utility" shall also mean the utility company, inclusive of any wholly owned subsidiary.

GENERAL

- I. Except as otherwise permitted, utility construction and relocation on county highway right of way shall not be commenced until an application for a Permit has been made and such permit granted. The Permit sketch shall show the location of the proposed utility with reference to county highway center line. A copy of the sketch shall be provided for each copy of such permit.
- II. Utilities will be allowed to be in a corridor along the outside 10 foot of the right of way as long as it does not interfere with other Highway Department facilities. The utility shall be required to provide detailed as-builts of the construction work including alignment and elevation. These as-builts shall be provided in auto-cadd format and the surveying shall be done in accordance with Ward County Zoning Resolution No. 6 Subsection D of Article 24 Section 5.
- III. All Utilities will be required to comply with US EPA and ND Pollutant Discharge Elimination System requirements on each permitted utility project within County right of ways. This work shall include restoration of all right of ways to preconstruction grass coverage and filling of all trench settlement up to one year after completion of construction of the permitted line. Initial right of way restoration, to include re-topsoiling and seeding shall take place the same year as the construction takes place.
- IV. Burning or disking operations and/or the use of chemicals to control or kill trees, brush and other vegetation is prohibited without prior approval from the County Highway Engineer.
- V. All waterways and lines of drainage shall remain operative.
- VI. Wherever topsoil and sod are disturbed they shall be replaced and maintained satisfactorily until the turf is established.
- VII. The utility facility and installation shall not interfere with any existing utility facilities on the county highway right of way.
- VIII. When necessary, barricades, warning devices and flagmen shall be provided by the Utility during all phases of their construction and maintenance operations on county highway right of way.
- IX. At the time of construction of the utility and at the times of subsequent maintenance, prior approval shall be obtained from the County Highway Engineer for the cutting and trimming of trees within the county highway right of way. Wherever trees are cut the resulting stumps shall be removed unless otherwise provided in the Special Provisions of the Permit. Any holes caused by stump removal shall be backfilled, the area leveled and all materials associated therewith disposed of outside the county highway right of way. The utility shall advise the County Highway Engineer at least 48 hours in advance of its intent to start clearing and grubbing operations so that proper supervision can be provided.
- X. The Utility shall notify the County Highway Engineer of its intent to perform service and maintenance operations which will interfere with the flow of traffic on county highways and shall obtain his approval prior to performing such operations. However, the Company may perform service and maintenance operations on county highways including opening and disturbing the surface of the right of way without prior approval in those instances where an emergency exists that is dangerous to the life or safety of the public and which requires immediate repair. The Utility shall take all necessary and reasonable safety measures to protect the traveling public and shall notify the County Highway Engineer at the earliest possible moment.
- XI. If at any time Ward County, acting through its Board of County Commissioners, shall deem it necessary to make any improvements or changes on all or any part of the right of way of the county highway which affect a utility located on county highway right of way, then and in such event, the owner of the utility shall within 15 days after written notice from the Board of County Commissioners or its authorized agent, proceed to alter, change, vacate or remove said utility from the county highway right of way so as to conform to said county highway changes and as directed by the Board of County Commissioners. Such work shall be done without any cost whatsoever to Ward County and shall be completed within the date specified in said written notice. The Utility shall assume all liability and save Ward County harmless from any and all claims or damage of any nature whatsoever occasioned by reason of not having removed said utility within the time specified in said notice.

XII. The Utility shall assume all liability for and save the County, its agents and employees, harmless from, any and all claims for damages, actions or causes of action arising out of the work to be done herein and the continuing uses by the Utility, including but not limited to the placing, constructing, reconstructing, maintaining and using of said utility under this application and Permit.

XIII. The Board of County Commissioners may require the Utility or its contractor, to furnish a deposit in the form of a certified check, surety bond or corporate undertaking, in favor of the Board of County Commissioners of Ward County, for any expense incurred by the County in the repairing of damage to any portion of the county highway right of way caused by work performed under a Permit, including any out of the ordinary engineering supervision and inspection expense provided by the County. In those instances wherein a deposit is required, the amount of the deposit shall be specified in the Special Provisions of the Permit. If a check is furnished, any monies remaining over and above such expense shall be returned to the applicant.

XIV. The permit issued does not in any way imply an easement on private property.

XV. The installations shall be made in conformity with all applicable laws, regulations and codes covering said installations. All installations shall be made in conformity with regulations of governmental agencies for the protection of the public.

XVI. Upon completion of an installation, the Utility shall restore the county highway right of way to its original condition. The Utility shall then notify the office of the County Highway Engineer of the completion of the work so that inspection can be made to determine its acceptability.

AERIAL

I. There shall be only a single pole line on the county highway right of way on either side of the center line thereof.

II. Longitudinal installations on county highway shall normally be located in the outer five feet of the right of way. At crossings of the county highway, poles shall be placed at a minimum of thirty feet from the shoulder lines of the through roadbeds unless right of way widths are prohibitive to such location.

III. The location of all brace poles, anchors and anchor poles within the limits of the county highway right-of-way shall be approved by the County Highway Engineer.

IV. In those instances in which a Utility is issued a Permit or Permits for construction on both sides of the county highway right-of-way in a given area, such Permit is conditioned upon the Utility subsequently providing joint use to other Utilities upon reasonable terms mutually agreeable to the Utilities.

UNDERGROUND

I. All crossings of the roadbeds of the county highways shall be made by boring inside a casing or carrier pipe or by jacking, unless this procedure is modified in the Special Provisions of the Permit. The auger shall not lead the casing or carrier pipe by more than one inch. Open trenching shall be restricted to the area from 5 feet beyond the shoulder to the right-of-way line except as modified in the Special Provisions of the Permit.

II. When pipes with bells or flanges are installed, the crossings of the roadbeds of the county highway shall be made by boring inside a conduit as provided in paragraph I of this section or jacking a conduit of sufficient diameter to permit threading the carrier pipe through it.

III. All voids caused by jacking or boring shall be filled by pressure grouting. The grout material shall consist of a sand-cement slurry of at least two sacks of cement per cubic yard and a minimum of water to assure satisfactory placement.

IV. The underground utilities shall be so installed as virtually to preclude any necessity for disturbing the roadbeds to perform maintenance operations.

V. Underground installations shall be accomplished without damaging or destroying the principal root structure of specimen trees.

LOCATION SKETCH

I. A location sketch is required and shall show the location of proposed facility in relation to the center line of the county highway and other pertinent features such as right-of-way line curb line and edge of surfacing. The facility should also be referenced to adjacent land liners.

II. The sketch shall also clearly show the total length of the proposed utility, and clearly label any crossings.

WARD COUNTY
DEPARTMENT OF HIGHWAYS

UTILITY PERMIT

Preference: Project _____ C.R. _____

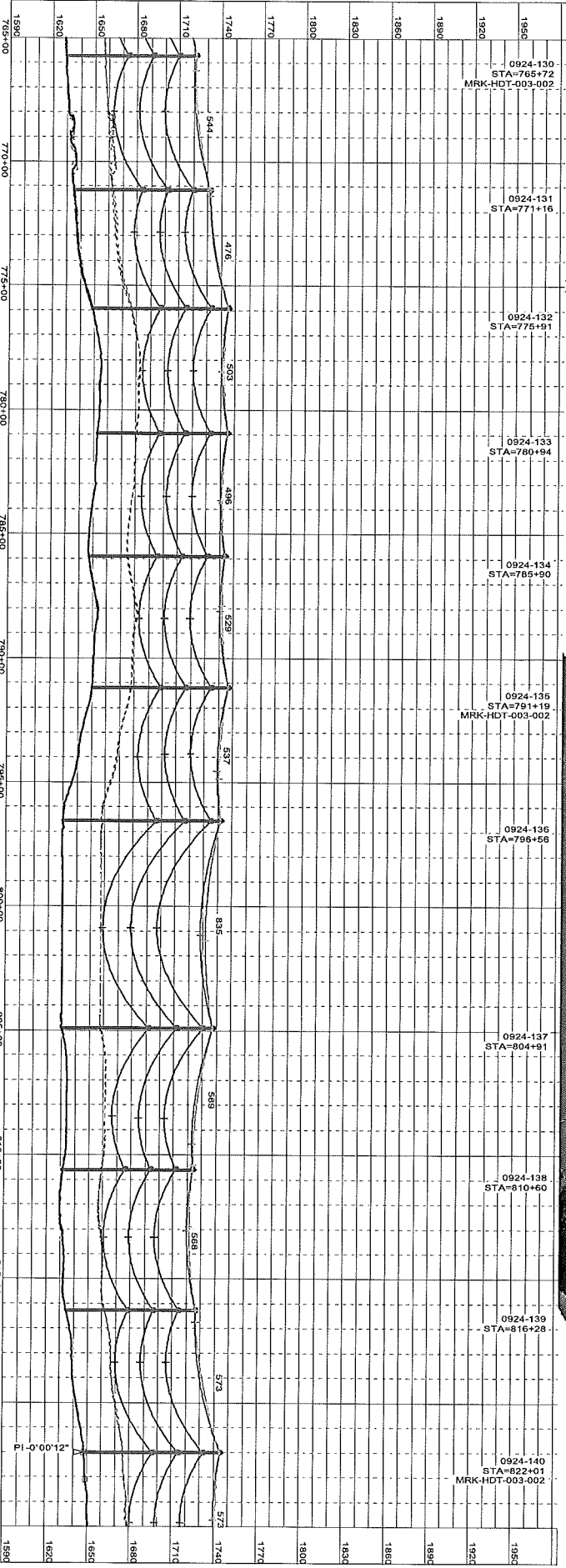
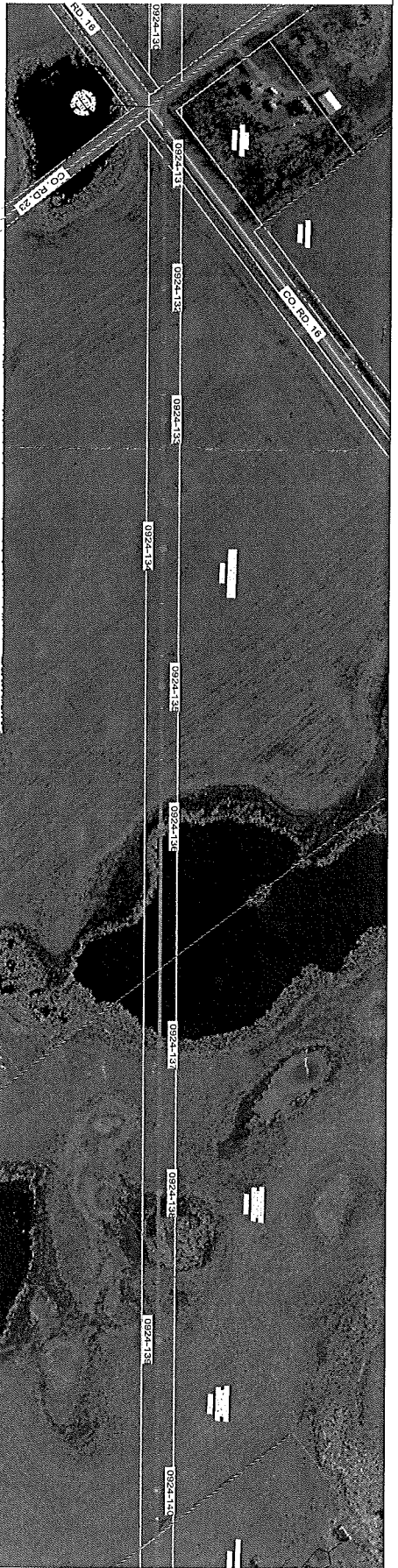
In accordance with the application herein, a Utility Permit is granted to _____
_____ to place, construct and thereafter maintain Double Circuit 115/230kV Transmission Line
on or across, or under the right-of-way of County Highway No. _____ in the location shown on the
sketch which is part of said application, or in such location as may be specified by the Department of
Highways in the Special Provisions hereof. The Applicant herefore further accepts the Additional
conditions herein by acceptance of the benefits and authority conferred by the issuance of this permit.

SPECIAL PROVISIONS:

1. IT SHALL BE THE APPLICANT'S COST FOR ADJUSTMENT OF RELOCATION OF THEIR FACILITY ON ANY FUTURE RIGHT-OF-WAY OR BACKSLOPE AREAS ACQUIRED BY THE COUNTY.
2. THE UTILITY SHALL HOLD WARD COUNTY HARMLESS FROM ANY AND ALL CLAIMS OR DAMAGE TO SAID UTILITY DUE TO NORMAL MAINTENANCE OF SAID HIGHWAY, HIGHWAY RIGHT-OF-WAY, HIGHWAY DRAINAGE, HIGHWAY SIGNING, ETC.
3. THE UTILITY SHALL ADEQUATELY IDENTIFY LOCATION OF SAID UTILITY FOR REASONABLE PROTECTION BY WARD COUNTY AND/OR ITS REPRESENTATIVES DURING NORMAL MAINTENANCE OPERATIONS. UPON REQUEST WILL SPECIFICALLY LOCATE UTILITIES.
4. THE APPLICANT SHALL BEAR THE COST FOR ADJUSTMENT OR RELOCATION OF ANY OF THEIR FACILITIES PRESENTLY LYING WITHIN THE RIGHT-OF-WAY OF ANY COUNTY HIGHWAY OR LYING WITHIN ANY FUTURE RIGHT-OF-WAY OR BACKSLOPE AREAS ACQUIRED BY THE COUNTY AT ANY TIME.
5. THE UTILITY SHALL HOLD THE COUNTY HARMLESS FROM ANY AND ALL CLAIMS OR DAMAGES TO SAID UTILITY'S FACILITIES REGARDLESS OF WHERE SUCH FACILITY MAY BE LOCATED.
6. ANY UTILITY TRENCH SHALL BE CLOSED WITHIN 30 DAYS FROM DATE OPENED.
7. IT SHALL BE THE POLICY OF WARD COUNTY TO ONLY ALLOW TELEPHONE, ELECTRIC, PETROLEUM PIPELINES AND CABLE UTILITIES TO BE IN A CORRIDOR ALONG THE OUTSIDE 10 FEET OF THE RIGHT-OF-WAY AS LONG AS IT DOES NOT INTERFERE WITH OTHER HIGHWAY DEPARTMENT FACILITIES. UTILITY BOXES MUST ALSO BE LOCATED IN THIS SAME CORRIDOR AND OUTSIDE OF THE ROADWAY CLEAR ZONE. ANY DEVIATION FROM THIS MUST BE APPROVED. THE UTILITY SHALL BE REQUIRED TO PROVIDE DETAILED AS-BUILTS OF THE CONSTRUCTION WORK INCLUDING ALIGNMENT AND EVALUATION. THESE AS-BUILTS SHALL BE PROVIDED IN AUTO-CADD OR SHAPEFILE FORMAT AND THE SURVEYING SHALL BE DONE USING STATE PLANE COORDINATES WITH A MINIMUM OF TWO REFERENCE POINTS LABELED ON THE DRAWING. THE COORDINATE BASIS SHALL BE NORTH AMERICAN DATUM OF 1983 ZONE 3301 (NORTH DAKOTA - NORTH). UNITS USED IN STATE PLANE COORDINATES SHALL BE US SURVEY FEET (1M = 39.37 INCHES)
8. THE UTILITY SHALL PROVIDE TO THE COUNTY ENGINEER THE FOLLOWING CONTACT LIST: THE PROJECT REPRESENTATIVE AND WHO HE REPRESENTS, THE PROJECT SUPERVISOR, THE PROJECT RESPONSIBLE PARTY AUTHORIZED TO COMMIT THE REPAIRS AND A LIST OF THE RESPONSIBLE PARTIES FOR EACH CONTRACTOR WITH ADDRESSES AND TELEPHONE NUMBERS.

Approved 8/24/2017
(date)
By [Signature]
Ward County Engineer

Permit No. 1256



PRELIMINARY - NOT FOR CONSTRUCTION

THE INFORMATION CONTAINED HEREIN IS FOR THE USE OF THE CLIENT AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

HORIZ. SCALE
 VERT. SCALE
 MCH SUB TO MGC SUB

2300 RV
 NH-270850-19
 0924-130 TO 0924-140
 0924-130 TO 0924-140
 0924-130 TO 0924-140



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640



April 18, 2017

North Dakota Regulatory Office

[NWO-2016-2481-BIS]

Great River Energy
Attn: Marsha Parlow
12300 Elm Creek Blvd
Maple Grove, Minnesota 55369

Dear Ms. Parlow:

We have reviewed your request for Department of the Army (DA) authorization regarding the McHenry substation expansion project. Work includes construction of new substation equipment to the substation accommodate two new transmission lines. Project impacts include permanently filling approximately 0.24 acres of wetlands to construct. The project is located in Section 2, Township 152 North, Range 80 West, McHenry County, North Dakota.

Based on the information you provided to this office, it has been determined that this project and the associated work is authorized by DA Nationwide Permit (NWP) No. 39, found in the January 6, 2017 Federal Register (82 FR 1860), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General, Regional and Water Quality Certification Conditions that must be adhered to for this authorization to remain valid. In addition, the Special Conditions listed below must also be adhered to for this DA authorization to remain valid. **Please note that any deviations from the original plans and specifications submitted to this office could require additional authorization from this office.**

This Nationwide Permit (NWP) verification is valid until **March 18, 2022**, which is the expiration date for this NWP. Should your project plans change, or if your activity is not complete by March 18, 2022, you must contact this office in writing for another permit determination. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence the authorized activity before March 18, 2022, you will have twelve (12) months from that date to complete the activity under the present terms and conditions of this NWP. If you need more than one additional year to complete the authorized activity, or if work has not commenced and is not under contract to commence, you will need to get a new verification under the 2022 NWPs or have the remaining work authorized by another type of DA Permit.

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

Great River Energy is responsible for all work accomplished in accordance with the terms and conditions of this NWP, **including the Regional Conditions specific to projects undertaken in North Dakota.** If a contractor or other authorized representative will be accomplishing the work authorized by this NWP on behalf of Great River Energy, it is

strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable NWP. Any activity that fails to comply with the terms and conditions of this NWP will be considered unauthorized and may result in an enforcement action.

Special Conditions***

a. **Compensatory mitigation for the authorized impacts to waters of the United States must be carried out in accordance with the proposed Wetland Mitigation Plan, which states that 0.24 acre credits will be secured through the Ducks Unlimited, Inc. North Dakota Aquatic Resource In-lieu Fee Program. You must secure these credits prior to conducting any project activities in waters of the United States. You must provide this office with a signed and dated Credit Transaction Notification Form within 30 days of the transaction. This permit is not valid until the transaction is completed.**

In compliance with General Condition 30, you are required to submit the following **project compliance certification within thirty (30) days of project completion.** [Please check all applicable statements.]

I certify that I have completed the project as permitted.

I certify that I have completed a modified version of the project.

I certify that I have completed all required mitigation.

Permittee's Signature:

Marsha Parlow

Date: *10/16/17*

per 5/8/17 email (attached)

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

If you have any questions concerning this determination, please contact Mr. Benjamin Reile of this office by letter or telephone at (701) 255-0015, extension [2013] and reference project number **NWO-2016-2481-BIS**.

Sincerely,

Patricia L. McQueary

Patricia L. McQueary
Regulatory Program Manager
North Dakota

Enclosures

Parlow, Marsha GRE-MG

From: Parlow, Marsha GRE-MG
Sent: Friday, June 02, 2017 1:40 PM
To: 'Reile, Benjamin D CIV USARMY CENWO (US)'
Subject: FW: Credit Sales Letter
Attachments: ND ILF Payment Receipt Letter Great River Energy 5.5.2017.pdf

Hi Ben,

I see that Toni Erhardt was the only one copied. I am sending this to you, in case you need it.

Marsha Parlow

Transmission Permitting Analyst

Great River Energy

12300 Elm Creek Boulevard

Maple Grove, MN 55369

Direct: 763-445-5215 | Fax: 763-445-5246 | Cell: 612-345-1212

WWW.GreatRiverEnergy.com

** Please consider the environment before you print this e-mail.*

From: Trenton Hieb [mailto:thieb@ducks.org]

Sent: Monday, May 08, 2017 1:27 PM

To: Parlow, Marsha GRE-MG <mparlow@GREnergy.com>; Erhardt, Toni R NWO <Toni.R.Erhardt@usace.army.mil>

Subject: Credit Sales Letter

EXTERNAL

All,

Please find the attached Credit Sales Letter for 0.24 acres associated with Permit # NWO-2016-2481-BIS. Ducks Unlimited has received payment and accepted responsibility for the mitigation. Thank you for using the DU-ILF program to meet your mitigation needs. Please call if you have any questions or concerns.

Thanks,

-Trent



Trenton Hieb

Biologist

Ecosystem Services - Mitigation

Great Plains Region
2525 River Road
Bismarck ND 58503

701-355-3573 (o)
701-720-6816 (c)



Great Plains Regional Office
2525 River Road
Bismarck, ND 58503-9011
(701) 355-3500 • Fax (701) 355-3575
www.ducks.org

DATE: May 5, 2017

Toni Erhardt
North Dakota Regulatory Program Manager
North Dakota Regulatory Office
1513 South 12th Street
Bismarck, ND 58504

RE: Statement of Receipt of In-Lieu Fee payment

Ducks Unlimited, Inc. (DU) is the authorized sponsor of the Ducks Unlimited – North Dakota In-lieu Fee program (DU-ND-ILF). DU signed an In-Lieu Fee agreement, effective March 6, 2014, with the US Army Corps of Engineers, Omaha District, to operate the program.

PERMITTEE:	Great River Energy
DA PERMIT NUMBER:	NWO-2016-2481-BIS
PROJECT LOCATION (town):	Velva, ND
AUTHORIZED IMPACT ACREAGE:	0.24 acres
Number of Credits Purchased:	0.24
Service Area of Purchased Credits:	Souris River Watershed

The credits purchased through this sale are **ADVANCED CREDITS**.

This letter confirms receipt of payment for the above authorized project.

By making this payment, Great River Energy permanently transfers responsibility for the mitigation liability to Ducks Unlimited, Inc. the ILF sponsor. By accepting the ILF payment, DU is responsible for use of these funds to provide compensatory mitigation for the above-described impacts.

DU signature: 
Paul R. Schmidt, Chief Conservation Officer

**FACT SHEET
NATIONWIDE PERMIT 39
(2017)**

COMMERCIAL AND INSTITUTIONAL DEVELOPMENTS

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/ or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation.

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements.

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

3. Spawning Areas.

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

4. Migratory Bird Breeding Areas.

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

5. Shellfish Beds.

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

6. Suitable Material.

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

7. Water Supply Intakes.

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

8. Adverse Effects from Impoundments.

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

9. Management of Water Flows.

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

10. Fills Within 100-Year Floodplains.

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

11. Equipment.

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

12. Soil Erosion and Sediment Controls.

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

13. Removal of Temporary Fills.

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

14. Proper Maintenance.

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

15. Single and Complete Project.

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

16. Wild and Scenic Rivers.

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

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

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

17. Tribal Rights.

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

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will

directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

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

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

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

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district

engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

19. Migratory Birds and Bald and Golden Eagles.

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

20. Historic Properties.

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

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought

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

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

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

21. Discovery of Previously Unknown Remains and Artifacts.

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid

construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters.

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

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

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

23. Mitigation.

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

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

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

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

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

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

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

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

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

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

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

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

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

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

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

24. Safety of Impoundment Structures.

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

25. Water Quality.

Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. *Specifically for North Dakota, the North Dakota Department of Health has denied water quality certification for projects that result in the loss or relocation of 150 feet or more of any river or stream are denied water quality certification and individual certification must be obtained. For projects proposed to affect any other waters, the North Dakota Department of Health has issued water quality certification provided the attached Construction and Environmental Disturbance Requirements are followed. On Tribal Lands, Water Quality Certification is denied for all Nationwide Permits. Applicants must work with EPA to obtain individual water quality certification. Contact: USEPA, Region 8, 401 Certification Program – 8WP-AAP, 1595 Wynkoop Street, Denver, Colorado 80202-1129. (303-312-6909)*

26. Coastal Zone Management.

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

27. Regional and Case-By-Case Conditions.

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

28. Use of Multiple Nationwide Permits.

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

29. Transfer of Nationwide Permit Verifications.

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

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

_____ (Transferee) _____ (Date)

30. Compliance Certification.

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any

required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

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

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

32. Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the

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

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

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and

other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

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

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

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

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

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

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination:

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

(2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or

involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

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

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

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

Further Information

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

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

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

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

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

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

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

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

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

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

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

5. **Spawning Areas**

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

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

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

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

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

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

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

REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS

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

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

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

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

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

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

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

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

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

Utility Lines

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

Nationwide Permit 11 – Temporary Recreational Structures – Boat Docks

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

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

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

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

Nationwide Permit 13 – Bank Stabilization

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

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

Nationwide Permit 23 – Approved Categorical Exclusions

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

GENERAL CONDITIONS (REGIONAL ADDITIONS)

General Condition 32 Notification– Pre-construction Notification

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

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



Construction and Environmental Disturbance Requirements

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

Soils

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

Surface Waters

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

Fill Material

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