

Appendix F
Agency Correspondence

December 9, 2025

Aaron Murra
District 8 Engineer
North Dakota Department of Transportation
503 38th Street South
Fargo, ND 58103

Subject: Information Request
Proposed Agassiz Transmission Line & Substation Project

To Whom it May Concern:

Minnkota Power Cooperative (MPC), a not-for-profit electric cooperative, is proposing to construct and operate the Agassiz Transmission Line & Substation Project (Project), an approximately 1.25-mile double-circuit 345-kilovolt (kV) tap transmission line and associated 345/34.5-kV substation south of Harwood, North Dakota in Cass County. The transmission line will consist of 345-kV galvanized steel monopole structures in a new 150-foot-wide transmission line right-of-way. It will tie in to the existing MPC Maple River–Bison 345-kV transmission line east of 57th Street North; travel north adjacent to an existing MPC 69-kV distribution line and 230-kV transmission line; cross northeast across Cass County Road 81, U.S. Interstate 29, and the BNSF Railroad; and terminate at the proposed Agassiz Substation (see Figure 1, enclosed). The proposed substation will be on approximately 15 acres northwest of the intersection of 64th Avenue North and 45th Street North in the Reed Township, and within the extraterritorial zoning jurisdiction of the City of Harwood.

In addition to the North Dakota Public Service Commission (NDPSC) jurisdictional Agassiz Transmission Line (and Substation) Project, MPC is also proposing a separate, non-jurisdictional fiber optic line. The fiber optic line will primarily use existing transmission structures between the existing Maple River and Bison Substations before transitioning to the newly proposed transmission line structures and terminating at the proposed Agassiz Substation (see Figure 2, enclosed). The fiber installation is intended solely to support communication and control functions for MPC's system and is not included within the PSC's permitting jurisdiction.

MPC is seeking a Certificate of Corridor Compatibility and Route Permit (CCC/RP) for the Project from the NDPSC along with other applicable state and local permits for both jurisdictional, and non-jurisdictional facilities. MPC anticipates filing a CCC/RP Consolidated Application with the NDPSC in the first quarter of 2026, with other state and local permit applications filed in the first and second quarters of 2026. MPC and Burns & McDonnell are initiating consultation with designated agencies and officers to solicit comments, identify potential concerns, and obtain relevant information to support route and site selection and design.

We request that your agency review the proposed Project and advise whether you are aware of any environmental sensitivities, existing or planned developments, land use constraints, property interests, or other regulatory compliance issues within or near the Project area that should be considered in the NDPSC siting and permitting process. MPC welcomes any feedback for minimizing impacts as well.



Please provide any written comments or available information by January 9, 2025. Responses will be incorporated into the NDPSC CCC/RP application as documentation of coordination and consultation under NDAC § 69-06-01-05, along with other state and local permit application materials, as appropriate. You will also be notified of the availability of the NDPSC CCC/RP application once it has been submitted, and will have the opportunity to comment further at that time.

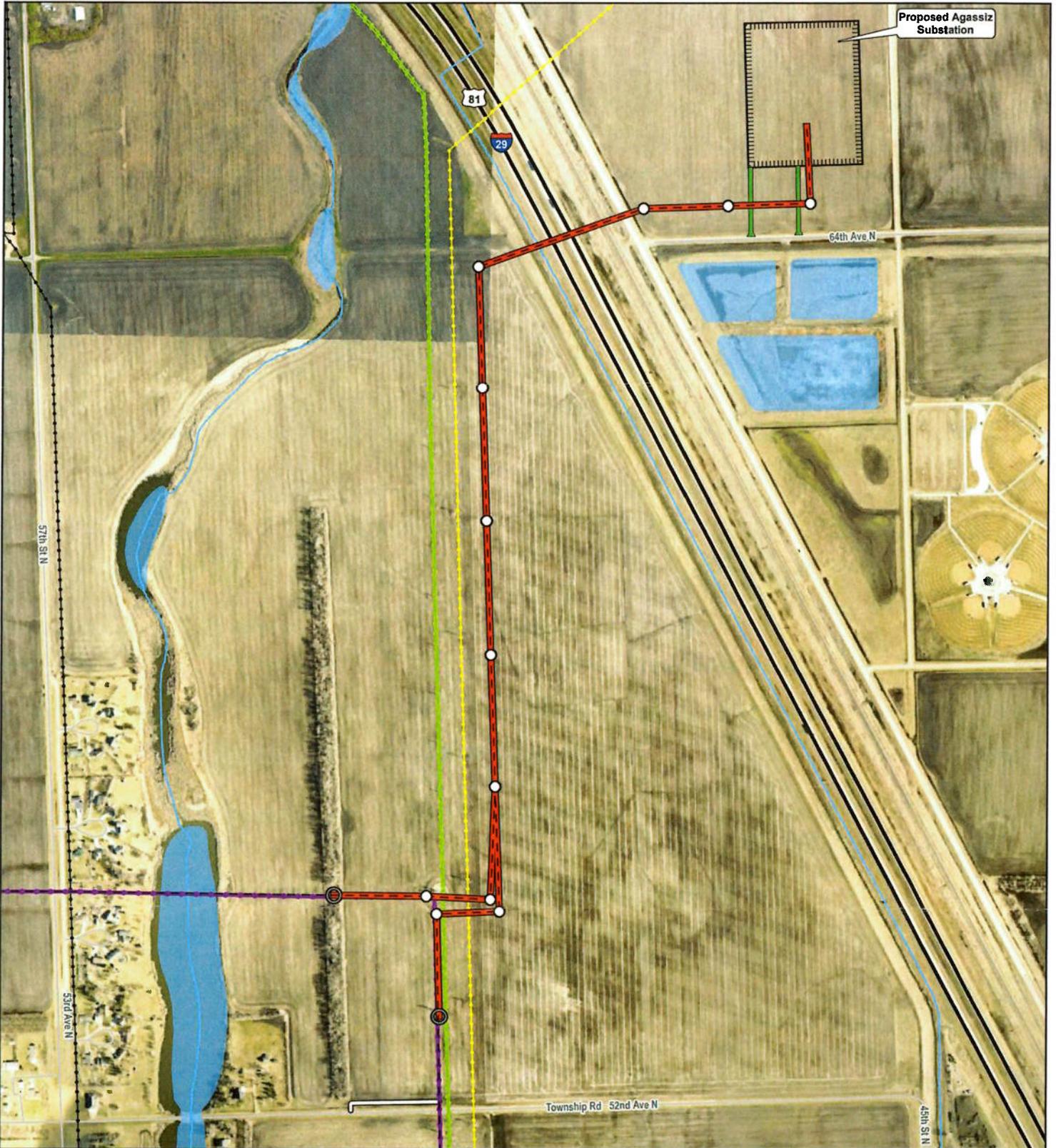
Responses and questions can be directed to Kara Hempy-Mayer at Burns & McDonnell at klhempymayer@burnsmcd.com or (612) 219-9523. We appreciate your assistance as we evaluate siting information and the permitting processes.

Sincerely,

A handwritten signature in black ink that reads "Kara Hempy-Mayer".

Kara Hempy-Mayer
Burns & McDonnell
Project Manager
(612) 219-9523
klhempymayer@burnsmcd.com

Enclosure: Preliminary Overview Figures 1 and 2



Proposed Agassiz Substation

81

29

64th Ave N

57th St N

52nd Ave N

Township Rd 52nd Ave N

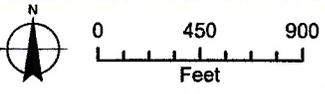
45th St N

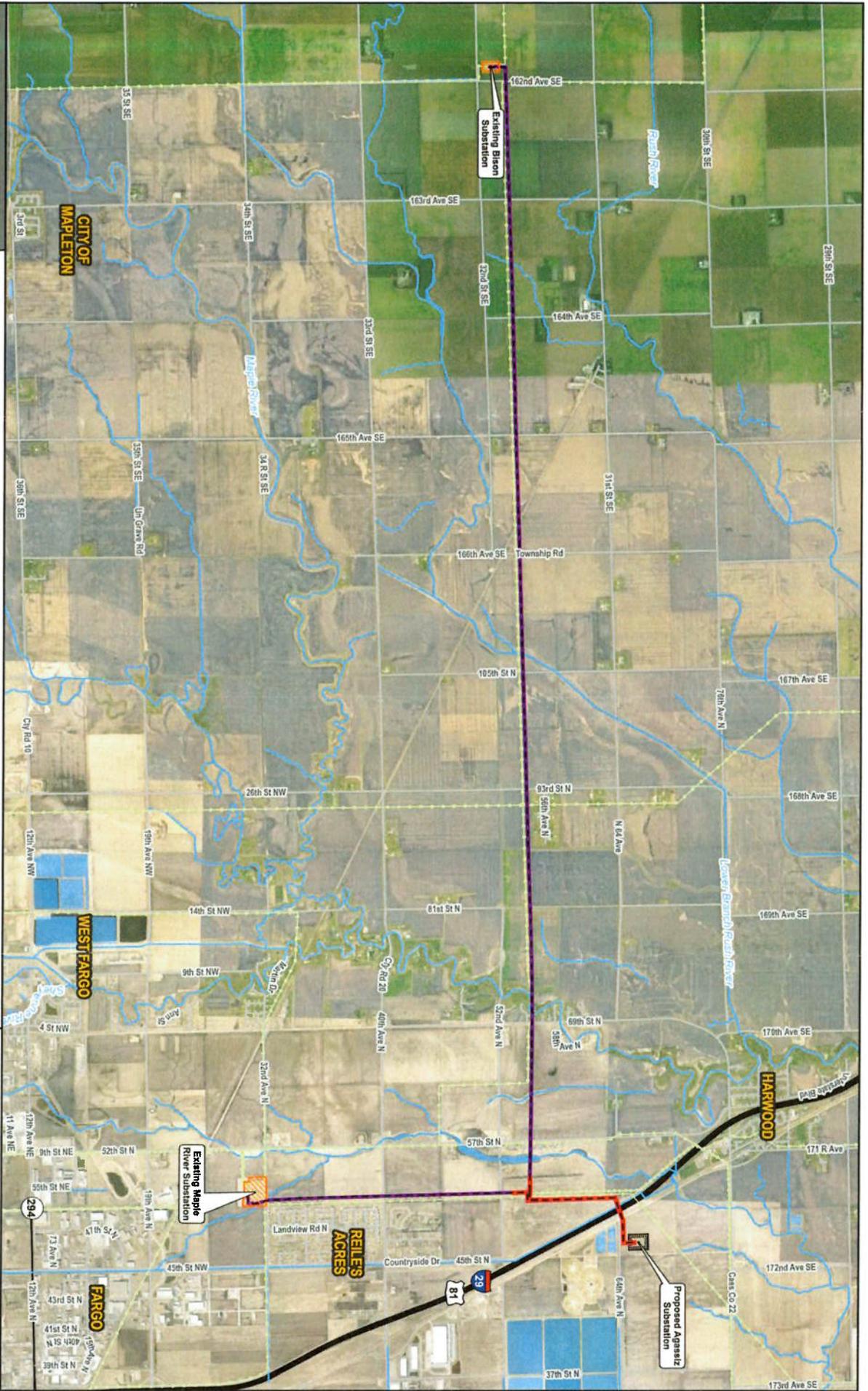


- Proposed New Structure
- Proposed Structure Replacement
- Proposed Route
- Non-Jurisdictional Fiber Optic Line
- Proposed Access Road
- Proposed Substation
- Temporary Off-ROW Access Road
- Stream/River
- Lake, Pond, or Reservoir
- Other 69-kV Utility Line
- MPC Wisner Tap-Maple River / Maple River-Kragnes 69-kV Distribution Line
- MPC Maple River-Winger 230-kV Transmission Line
- MPC Maple River-Bison 345-kV Transmission Line

Figure 1
Project Overview
 Agassiz Transmission Line
 & Substation Project
 Minnkota Power Cooperative
 Cass County, North Dakota

Scale: 1:9,600
 Date: 12/8/2025
 Data Sources:
 Burns & McDonnell,
 ESRI, HIFLD





BURNS MEDONNELL
NEW TECHNOLOGICAL CORP.

Minnkota Power COOPERATIVE

- Proposed Route
- Proposed Substation
- Existing Substation
- Non-Jurisdictional Fiber Optic Line
- Other Utility Line
- MPC Maple River-Bison 345-kV Transmission Line

Stream/River
 Lake, Pond, or Reservoir

Scale: 1:72,000
 Date: 8/20/2025
 Burns & McDonnell
 ESRI, HEREID, Celsius

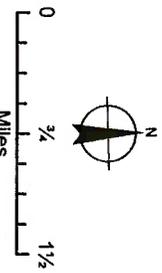


Figure 2
Non-Jurisdictional Fiber Optic Line Overview
 Agassiz Transmission Line & Substation Project
 Minnkota Power Cooperative
 Cass County, North Dakota

Phone Log

Caller	Kevin Gorder, City of Fargo Engineering Office
Call Recipient	Kara Hempy-Mayer, Environmental Permitting PM, Burns & McDonnell
Date	December 12, 2025
Time	11:36 a.m. (central time)
Subject	Agassiz Project and Otter Tail Transmission Line

Call Log:

This is the transcript of a voice message left by the City of Fargo Engineering Office on 12/12/25.

“Hi Kara – Kevin Gorder from the City of Fargo Engineering Office. I got your letter here, uh, Agassiz, um, Substation, between Fargo and Harwood. I just had a couple questions on it; I guess um, one thing that’s uh, we also got an e-mail yesterday from Otter Tail Power and it seems like you guys are putting a line kind of almost in the same spot, or in real similar proximity to each other, possibly, and I’m just trying to figure out how they play together, if they can be combined, or what, as we look at land use and all the stuff that we would be concerned about, um, as this very large project comes together and then what the rest of the land use looks like up around there. So just curious if you knew about the one with Otter Tail Power and their design, it’s almost parallel and, I don’t think it’s on top of yours, but anyway, just curious how the two interact. I also did leave a message for Otter Tail Power so I have not heard from back, back from them yet either so, um, if you have a chance to call us if you wanted to chit chat, my number here in Fargo is 701-476-6775. Thanks Kara.”

Agassiz Transmission Line and Substation Project
City of Fargo - Minnkota Power Cooperative Meeting Notes

Location: Microsoft Teams (virtual)

Date/Time: Monday, December 22, 2025 / 2:30-3:00 pm (Central)

Attendees:

City of Fargo

Kevin Gorder, Division Engineer

Nicole Crutchfield, Director of Planning & Development

Matt Jennings, Right-of-Way Management

Burns & McDonnell

Kara Hempy-Mayer

Minnkota Power Cooperative (MPC)

Kara Laframboise

Vogel Law Firm

Bennett Johnson

Discussion Topics:

- Potential future development of other transmission projects in the Agassiz Project Study Area, with no detailed plans, design, or routes identified.
- Details and location of the Agassiz Project.
- City of Fargo potential future transportation needs in the Study Area based on the city's development plan.
- Opportunities for collaboration; MPC to review plans and provide a response to the City of Fargo.



Direct Dial: 701.258.7899
200 N 3rd St, Ste 201 | Bismarck, ND 58501
PO Box 2097 | Bismarck, ND 58502-2097
Fax: 701.258.9705
bjohnson@vogellaw.com

January 2, 2026

VIA EMAIL ONLY

Kevin Gorder
Division Engineer
City of Fargo | Engineering
KGorder@FargoND.gov

Re: Minnkota Power Cooperative Agassiz Substation—64th Avenue N.

Dear Mr. Gorder:

Thank you for responding to Minnkota Power Cooperative's ("MPC") agency introduction letter regarding its proposed Agassiz substation and associated transmission line. During our meeting on December 22, you noted that you have concerns regarding the preservation of right of way to the north of 64th Avenue N. due to the City of Fargo's inability to locate utilities and expand right of way to the south of 64th Avenue N. as a result of already existing easements and FEMA accredited levees prohibiting such action.

On December 23, you provided additional information and documentation to MPC's consultant, Burns & McDonnell, describing the requirements of City of Fargo's Land Development Code, the City of Harwood's jurisdiction, and the potential future need to adjust 64th Avenue N. to the north to the extent agreeable between the municipalities. MPC appreciates the time and effort your team has taken to outline these considerations and your concerns related to MPC's proposed development.

After careful review, MPC has evaluated the requested items in the context of engineered design and construction requirements. At this time, we must respectfully advise that we are unable to accommodate any further changes to the location of the Agassiz substation and associated transmission line. The project's design and construction constraints limit MPC's ability to make modifications without adversely affecting feasibility, compliance, or overall project integrity.

Currently, the proposed transmission line right of way associated with the Agassiz substation is to be located 130 feet from the centerline of 64th Avenue N. This location is compliant with and exceeds the minimum set back requirements of the applicable ordinance of the City of Harwood, as well as the City of Fargo Land Development Code. While not specifically applicable here, this location is also compliant with and exceeds the minimum setback requirements of North Dakota law regarding accommodation of utilities on state and county highway right of way. *See N.D.C.C. § 24-01-42* (requiring a 100 feet setback for state highways and 75 feet for county highway right of way).

January 2, 2026
Page 2

While the proposed location is currently compliant with applicable setbacks, design and construction limitations prohibit further accommodation. Additional accommodation for the potential future relocation and expansion of 64th Avenue N. would require a complete redesign of the necessary structures for the transmission line and associated substation. Further, adjustments to the entrance point of the transmission line to the substation, such as to the west as opposed to the south as previously discussed, would not be approved by the North Dakota Department of Transportation due to the requirement of a perpendicular crossing over Interstate 29.

Please note that this determination was made after thorough consideration, and we believe the project, as currently designed, satisfies the applicable requirements to the extent practicable.

We appreciate your understanding and continued coordination. Should you have any questions or require clarification regarding our review, please feel free to contact us.

Regards,

A handwritten signature in black ink, appearing to read 'BJ', with a long vertical stroke extending downwards from the bottom of the signature.

Bennett L. Johnson

cc: Shannon Mikula, Minnkota Power Coopertive
Kara Laframboise, Minnkota Power Cooperative
Kara Hempy-Mayer, Burns & McDonnell

From: [Murra, Aaron D.](#)
To: [Hempy-Mayer, Kara L](#)
Subject: RE: Harwood sub station
Date: Friday, December 19, 2025 11:09:17 AM
Attachments: [image001.png](#)
[sub_station251211104056.pdf](#)

Kara,

In order to cross NDDOT R/W you will need to apply for a NDDOT Utility permit through our Fargo District Office. Information can be found on the attached link.

<https://www.dot.nd.gov/construction-and-planning/transportation-plans-programs/utility-permit-information>

Thank you!

Aaron Murra, P.E.
Fargo District Engineer - NDDOT

amurra@nd.gov
701.239.8901 Office
503 38th Street South
Fargo ND | 58103



From: [Hempy-Mayer, Kara L](#)
To: ["Murra, Aaron D."](#)
Cc: [Schaffer, Jacob R](#)
Subject: RE: Harwood sub station
Date: Friday, December 19, 2025 3:57:00 PM
Attachments: [image001.png](#)

Hi Aaron,

Thank you for the information. The project will be applying for a NDDOT Utility Occupancy permit for the portion of the project crossing I-29.

Thank you,
Kara

Kara Hempy-Mayer

Associate Environmental Scientist

[she]

[Burns & McDonnell](#)

5600 American Blvd W, Suite 300, Bloomington, MN 55437

M +1 612-219-9523 | **E** klhempymayer@burnsmcd.com

From: Murra, Aaron D. <amurra@nd.gov>
Sent: Friday, December 19, 2025 11:08 AM
To: Hempy-Mayer, Kara L <klhempymayer@burnsmcd.com>
Subject: RE: Harwood sub station

Kara,

In order to cross NDDOT R/W you will need to apply for a NDDOT Utility permit through our Fargo District Office. Information can be found on the attached link.

<https://www.dot.nd.gov/construction-and-planning/transportation-plans-programs/utility-permit-information>

Thank you!

Aaron Murra, P.E.

Fargo District Engineer - NDDOT

amurra@nd.gov

701.239.8901 Office

503 38th Street South

Fargo ND | 58103



United States Department of Agriculture

December 19, 2025

Natural Resources
Conservation Service

Bismarck State Office
PO Box 1458
Bismarck, ND
58502-1458

Voice 701.530.2000
Fax 855-813-7556

Kara Hempy-Mayer
Burns & McDonnell
5600 American Blvd W, Suite 300
Bloomington, MN 55437

Dear Ms. Hempy-Mayer:

The Natural Resources Conservation Service (NRCS) has reviewed your letter December 9, 2025, regarding the Proposed Agassiz Transmission Line and Substation Project in Cass County of North Dakota.

NRCS has a major responsibility with the Farmland Protection Policy Act (FPPA) in documenting conversion of farmland (i.e., Prime, Statewide Importance and/or Local Importance) to non-agricultural use when a federal funding source is utilized. The proposed project is not supported by federal funding; therefore, FPPA does not apply, and no further action is needed.

If you have additional questions pertaining to FPPA, please contact Lance Duey, Assistant State Soil Scientist, NRCS, Bismarck, North Dakota, at (701) 530-2109.

Sincerely,

**JORDAAN THOMPSON
LARSON**

Digitally signed by JORDAAN
THOMPSON LARSON

Date: 2025.12.19 14:37:57 -06'00'

JORDAAN THOMPSON-LARSON
Acting State Soil Scientist

Helping People Help the Land

USDA is an equal opportunity provider, employer, and lender.

From: [Anderson, Fred J.](#)
To: [Hempy-Mayer, Kara L](#)
Subject: N.D. Geological Survey: Comments on the Proposed Minnkota Power Cooperative Agassiz Transmission Line & Substation Project
Date: Tuesday, December 30, 2025 1:30:03 PM
Attachments: [image001.png](#)

Dear Ms. Mayer,

The North Dakota Geological Survey appreciates the notification and opportunity to review and provide comment on these communications and electrical transmission development projects.

After a review of the project locations and proposed routes, I would not note any major geologic concerns with the proposed projects at this time.

We have recently completed several geologic mapping projects in the Fargo area that you may find informative during your continued planning and design work.

Here are the titles and links to the relevant publications of interest:

- Bedrock Geologic Map of Cass County: [BedrockGeology_Cass_County.pdf](#)
- Brenna Formation Mapping in Cass County: [Offshore Glaciolacustrine Deposits of Glacial Lake Agassiz: The Brenna Formation in Cass County, North Dakota](#)
- Cass County Landslide Map: [Cass_County.pdf](#)
- 24K Landslides and Surface Geology Maps: [North Dakota Geological Survey](#)

Please feel free to contact our offices if you have any questions regarding these publications or additional information needs.

Regards,

Fred J. Anderson
Surface Geology Section Manager

701.328.8000 • fjanderson@nd.gov



www.dmr.nd.gov • 600 E Boulevard Ave, Dept. 474 • Bismarck, ND 58505

From: [Nygard, Jeremy S CIV USARMY CENWO \(USA\)](#)
To: [Hempy-Mayer, Kara L](#)
Subject: NWO-2025-01808-BIS, Burns & McDonnell; Minnkota Power Cooperative; Agassiz Transmission Line & Substation Project
Date: Friday, January 2, 2026 9:41:15 AM
Attachments: [image001.png](#)
[image002.png](#)
[NWO-2025-01808_20250102_SOV_NWP57.pdf](#)
[Eng_Form_6082_2024Nov_FINAL.pdf](#)
[NWP_57_Fact_Sheet_2021.pdf](#)

Good Morning Kara Hempy-Mayer,

Our office has reviewed the information you provided regarding the proposed project and determined that a U.S. Army Corps of Engineers Section 404 permit may be required for your project if any waters or wetlands are impacted. Please see attached letter, blank application form, and Nationwide Permit 57 fact sheet. Thank you,

v/r

Jeremy Nygard
Regulatory Program Assistant
U.S. Army Corps of Engineers
North Dakota Regulatory Office
3319 University Drive
Bismarck, ND 58504
Direct: 701-989-6425
Office General Line: 701-255-0015



Check out our new Nation-wide [Recommended Minimum Standards for Aquatic Resource Delineation Reports!](#)

Please Note: In our aim to improve efficiency, the North Dakota Regulatory Office prefers that all submissions and requests be sent electronically to the *NEW* [Regulatory Request System \(RRS\)](#) or to: CENWO-OD-RND@usace.army.mil instead of a hard copy by mail. Please split large attachments (>25 MB) into multiple emails if needed. We will continue to accept and issue paper documents that meet our file requirements upon request in order to accommodate those with limited computer access.



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

January 2, 2026

NWO-2025-01808-BIS

Burns & McDonnell
Attn: Ms. Kara Hempy-Mayer
5600 American Blvd W, Suite 300
Bloomington, MN 55437

Dear Ms. Hempy-Mayer:

This is in response to your solicitation letter received on December 16, 2025 requesting Department of the Army (DA), United States Army Corps of Engineers (Corps) comments on the proposed Minnkota Power Cooperative, Agassiz Transmission Line & Substation Project. The project is located in the SW $\frac{1}{4}$ of Section 4 and E $\frac{1}{2}$ of Section 9, Township 140 North, Range 49 West, Cass County, North Dakota.

Corps Regulatory Offices administers Section 404 of the Clean Water Act. Section 404 of the Clean Water Act regulates the discharge of dredge or fill material (temporarily or permanently) in waters of the United States. Waters of the United States may include, but are not limited to, rivers, streams, ditches, coulees, lakes, ponds, and their adjacent wetlands. Fill material includes, but is not limited to, rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mines or other excavation activities and materials used to create any structure or infrastructure in waters of the United States.

Enclosed for your information is the fact sheet for Nationwide Permit 57, Electric Utility Line and Telecommunications Activities. Utility lines are already authorized by Nationwide Permit 57 provided the utility line can be placed without any change to pre-construction contours and all other proposed construction activities and facilities are in compliance with the Nationwide's permit conditions and 401 Water Quality Certification. On Tribal Lands, Water Quality Certification is denied for all Nationwide Permits. Applicants must work with EPA to obtain individual water quality certification. Please note the pre-construction notification requirements on page 2 of the fact sheet. If a project involves any one of the seven notification requirements, the project proponent must submit a DA application. Furthermore, a project must also be in compliance with the "Regional Conditions for Nationwide Permits within the State of North Dakota", found on pages 23 thru 30 of the fact sheet.

In the event your project(s) requires approval from the U.S. Army Corps of Engineers and cannot be authorized by Nationwide Permit(s), a Standard or Individual Permit will be required. A project that requires a Standard or Individual Permit is intensely reviewed and will require the issuance of a public notice. A Standard or Individual

Permit generally requires a minimum of 120 days for processing but based on the project impacts and comments received through the public notice may extend well beyond 120 days.

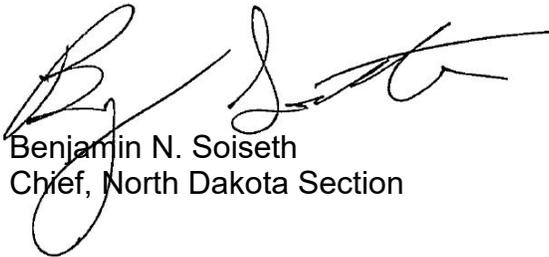
This correspondence letter does not approve the proposed construction work or does not verify the proposed project complies with the Nationwide Permit(s).

If any of these projects require a Section 404 permit, please complete and submit the enclosed Department of the Army permit application (ENG Form 6082) to the U.S. Army Corps of Engineers, North Dakota Regulatory Office, 3319 University Drive, North Dakota 58504 or to the email address below. If you are unsure if a permit is required, you may submit an application; include a project location map, description of work, and construction methodology.

The North Dakota Regulatory office prefers that all submissions are sent electronically to the following email address: CENWO-OD-RND@usace.army.mil instead of a hard copy by mail. Please split large attachments (>25 MB) into multiple emails if needed.

Please refer to identification number NWO-2025-01808-BIS in any correspondence concerning this project. If you have any questions, please contact Jeremy Nygard at U.S. Army Corps of Engineers, North Dakota Regulatory Office, 3319 University Drive, Bismarck, North Dakota 58504-7565, by email at Jeremy.S.Nygaard@usace.army.mil, or telephone at 701-989-6425. For more information regarding our program, please visit our website at <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx>.

Sincerely,



Benjamin N. Soiseth
Chief, North Dakota Section

Enclosure

U.S. Army Corps of Engineers (USACE)
NATIONWIDE PERMIT PRE-CONSTRUCTION NOTIFICATION (PCN)

For use of this form, see 33 CFR 330; the proponent agency is CECW-COR.

**Form Approved -
 OMB No. 0710-0003
 Expires: 2027-10-31**

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Regulatory Program of the Corps of Engineers (Corps); Final Rule 33 CFR 320-332.

Principal Purpose Information provided on this form will be used in evaluating the nationwide permit pre-construction notification.

Routine Uses This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of the agency coordination process.

Disclosure Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued.

The public reporting burden for this collection of information, 0710-0003, is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR RESPONSE TO THE ABOVE EMAIL.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see *sample drawings and/or instructions*) and be submitted to the district engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
--------------------	----------------------	------------------	------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

<p>5. APPLICANT'S NAME</p> <p>First - Middle - Last -</p> <p>Company -</p> <p>Company Title -</p> <p>E-mail Address -</p>	<p>8. AUTHORIZED AGENT'S NAME AND TITLE (<i>agent is not required</i>)</p> <p>First - Middle - Last -</p> <p>Company -</p> <p>E-mail Address -</p>
<p>6. APPLICANT'S ADDRESS</p> <p>Address-</p> <p>City - State - ZIP - Country -</p>	<p>9. AGENT'S ADDRESS</p> <p>Address-</p> <p>City - State - ZIP - Country -</p>
<p>7. APPLICANT'S PHONE NOs. with AREA CODE</p> <p>a. Residence b. Business c. Fax d. Mobile</p>	<p>10. AGENT'S PHONE NOs. with AREA CODE</p> <p>a. Residence b. Business c. Fax d. Mobile</p>

STATEMENT OF AUTHORIZATION

11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this nationwide permit pre-construction notification and to furnish, upon request, supplemental information in support of this nationwide permit pre-construction notification.

 SIGNATURE OF APPLICANT DATE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME or TITLE (*see instructions*)

25. Is any portion of the nationwide permit activity already complete? Yes No If Yes, describe the completed work:

26. List the name(s) of any species listed as endangered or threatened under the Endangered Species Act that might be affected by the proposed NWP activity or utilize the designated critical habitat that might be affected by the proposed NWP activity. (see instructions)

27. List any historic properties that have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic property or properties. (see instructions)

28. For a proposed NWP 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, identify the Wild and Scenic River or the "study river":

29. If the proposed 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 federally authorized civil works project, have you submitted a written request for section 408 permission from the Corps district having jurisdiction over that project? Yes No

If "yes", please provide the date your request was submitted to the Corps district:

30. If the terms of the NWP(s) you want to use require additional information to be included in the PCN, please include that information in this space or provide it on an additional sheet of paper marked Block 30. (see instructions)

31. Pre-construction notification is hereby made for one or more nationwide permit(s) to authorize the work described in this notification. I certify that the information in this pre-construction notification is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

The pre-construction notification must be signed by the person who desires to undertake the proposed activity (applicant) and, if the statement in Block 11 has been filled out and signed, the authorized agent.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

**Instructions for Preparing a
Department of the Army
Nationwide Permit (NWP) Pre-Construction Notification (PCN)**

Blocks 1 through 4. To be completed by the Corps of Engineers.

Block 5. Applicant's Name. Enter the name and the e-mail address of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the name of the organization and responsible officer and title. If more than one party is associated with the preconstruction notification, please attach a sheet of paper with the necessary information marked Block 5.

Block 6. Address of Applicant. Please provide the full address of the party or parties responsible for the PCN. If more space is needed, attach an extra sheet of paper marked Block 6.

Block 7. Applicant's Telephone Number(s). Please provide the telephone number where you can usually be reached during normal business hours.

Blocks 8 through 11. To be completed, if you choose to have an agent.

Block 8. Authorized Agent's Name and Title. Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, consultant, or any other person or organization. Note: An agent is not required.

Blocks 9 and 10. Agent's Address and Telephone Number. Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

Block 11. Statement of Authorization. To be completed by the applicant, if an agent is to be employed.

Block 12. Proposed Nationwide Permit Activity Name or Title. Please provide a name identifying the proposed NWP activity, e.g., Windward Marina, Rolling Hills Subdivision, or Smith Commercial Center.

Block 13. Name of Waterbody. Please provide the name (if it has a name) of any stream, lake, marsh, or other waterway to be directly impacted by the NWP activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

Block 14. Proposed Activity Street Address. If the proposed NWP activity is located at a site having a street address (not a box number), please enter it in Block 14.

Block 15. Location of Proposed Activity. Enter the latitude and longitude of where the proposed NWP activity is located. Indicate whether the project location provided is the center of the project or whether the project location is provided as the latitude and longitude for each of the "corners" of the project area requiring evaluation. If there are multiple sites, please list the latitude and longitude of each site (center or corners) on a separate sheet of paper and mark as Block 15.

Block 16. Other Location Descriptions. If available, provide the Tax Parcel Identification number of the site, Section, Township, and Range of the site (if known), and / or local Municipality where the site is located.

Block 17. Directions to the Site. Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site. You may also provide a description of the location of the proposed NWP activity, such as lot numbers, tract numbers, or you may choose to locate the proposed NWP activity site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed NWP activity site if known. If there are multiple locations, please indicate directions to each location on a separate sheet of paper and mark as Block 17.

Block 18. Identify the Specific Nationwide Permit(s) You Propose to Use. List the number(s) of the Nationwide Permit(s) you want to use to authorize the proposed activity (e.g., NWP 29).

Block 19. Description of the Proposed Nationwide Permit Activity. Describe the proposed NWP activity, including the direct and indirect adverse environmental effects the activity would cause. The description of the proposed activity 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. Identify the materials to be used in construction, as well as the methods by which the work is to be done.

Provide sketches when necessary to show that the proposed NWP activity complies with the terms of the applicable NWP(s). Sketches usually clarify the activity and result in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed NWP activity (e.g., a conceptual plan), but do not need to be detailed engineering plans.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 19.

Block 20. Description of Proposed Mitigation Measures. Describe any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed NWP activity. The description of 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 additional mitigation measures.

Block 21. Purpose of Nationwide Permit Activity. Describe the purpose and need for the proposed NWP activity. What will it be used for and why? Also include a brief description of any related activities associated with the proposed project. Provide the approximate dates you plan to begin and complete all work.

Block 22. Quantity of Wetlands, Streams, or Other Types of Waters Directly Affected by the Proposed Nationwide Permit Activity. For discharges of dredged or fill material into waters of the United States, provide the amount of wetlands, streams, or other types of waters filled, flooded, excavated, or drained by the proposed NWP activity. For structures or work in navigable waters of the United States subject to Section 10 of the Rivers and Harbors Act of 1899, provide the amount of navigable waters filled, dredged, or occupied by one or more structures (e.g., aids to navigation, mooring buoys) by the proposed NWP activity.

For multiple NWPs, or for separate and distant crossings of waters of the United States authorized by NWPs 12 or 14, attach an extra sheet of paper marked Block 21 to provide the quantities of wetlands, streams, or other types of waters filled, flooded, excavated, or drained (or dredged or occupied by structures, if in waters subject to Section 10 of the Rivers and Harbors Act of 1899) for each NWP. For NWPs 12 and 14, include the amount of wetlands, streams, or other types of waters filled, flooded, excavated, or drained for each separate and distant crossing of waters or wetlands. If more space is needed, attach an extra sheet of paper marked Block 22.

Block 23. Identify Any Other Nationwide Permit(s), Regional General Permit(s), or Individual Permit(s) Used to Authorize Any Part of Proposed Activity or Any Related Activity. List 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. For linear projects, list other separate and distant crossings of waters and wetlands authorized by NWPs 12 or 14 that do not require PCNs. If more space is needed, attach an extra sheet of paper marked Block 23.

Block 24. Compensatory Mitigation Statement for Losses of Greater Than 1/10-Acre of Wetlands and/or of Greater Than 3/100-Acre of Stream Bed When Pre-Construction Notification is Required. Paragraphs (c) and (d) of NWP general condition 23 require compensatory mitigation at a minimum one-for-one replacement ratio for all wetland losses that exceed 1/10-acre and/or for all losses of stream bed that exceed 3/100-acre, unless the district engineer determines in writing that either some other form of mitigation is more environmentally appropriate or the adverse environmental effects of the proposed NWP activity are no more than minimal without compensatory mitigation, and provides an activity-specific waiver of this requirement. Describe the proposed compensatory mitigation for wetland losses greater than 1/10 acre and/or for losses of stream bed that exceed 3/100-acre, or provide an explanation of why the district engineer should not require wetland and/or stream compensatory mitigation for the proposed NWP activity. If more space is needed, attach an extra sheet of paper marked Block 24.

Block 25. Is Any Portion of the Nationwide Permit Activity Already Complete? Describe any work that has already been completed for the NWP activity.

Block 26. List the Name(s) of Any Species Listed As Endangered or Threatened under the Endangered Species Act that Might be Affected by the Nationwide Permit Activity. If you are not a federal agency, and if any listed species or designated critical habitat might be affected or is in the vicinity of the proposed NWP activity, or if the proposed NWP activity is located in designated critical habitat, list the name(s) of those endangered or threatened species that might be affected by the proposed NWP activity or utilize the designated critical habitat that might be affected by the proposed NWP activity. If you are a Federal agency, and the proposed NWP activity requires a PCN, you must provide documentation demonstrating compliance with Section 7 of the Endangered Species Act.

Block 27. List Any Historic Properties that Have the Potential to be Affected by the Nationwide Permit Activity. If you are not a Federal agency, and if any historic properties have the potential to be affected by the proposed NWP activity, list the name(s) of those historic properties that have the potential to be affected by the proposed NWP activity. If you are a Federal agency, and the proposed NWP activity requires a PCN, you must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

Block 28. List the Wild and Scenic River or Congressionally Designated Study River if the Nationwide Permit Activity Would Occur in such a River. If the proposed NWP activity will occur in a river in the National Wild and Scenic River System or in a river officially designated by Congress as a "study river" under the Wild and Scenic Rivers Act, provide the name of the river. For a list of Wild and Scenic Rivers and study rivers, please visit <http://www.rivers.gov/>.

Block 29. Nationwide Permit Activities that also Require Permission from the Corps Under 33 U.S.C. 408. If the proposed NWP activity also requires permission from the Corps under 33 U.S.C. 408 because it will temporarily or permanently alter, occupy, or use a Corps federal authorized civil works project, indicate whether you have submitted a written request for section 408 permission from the Corps district having jurisdiction over that project.

Block 30. Other Information Required For Nationwide Permit Pre-Construction Notifications. The terms of some of the Nationwide Permits include additional information requirements for preconstruction notifications:

- * NWP 3, Maintenance –information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals.
- * NWP 31, Maintenance of Existing Flood Control Facilities –a description of the maintenance baseline and the dredged material disposal site.
- * NWP 33, Temporary Construction, Access, and Dewatering –a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- * NWP 44, Mining Activities –if reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification.
- * NWP 45, Repair of Uplands Damaged by Discrete Events –documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration.
- * NWP 48, Commercial Shellfish Aquaculture Activities –(1) a map showing the boundaries of the project area, with latitude and longitude coordinates for each corner of the project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area (a detailed survey is not required).
- * NWP 49, Coal Remining Activities –a document describing how the overall mining plan will result in a net increase in aquatic resource functions must be submitted to the district engineer and receive written authorization prior to commencing the activity.
- * NWP 50, Underground Coal Mining Activities –if reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification.

If more space is needed, attach an extra sheet of paper marked Block 30.

Block 31. Signature of Applicant or Agent. The PCN must be signed by the person proposing to undertake the NWP activity, and if applicable, the authorized party (agent) that prepared the PCN. The signature of the person proposing to undertake the NWP activity shall be an affirmation that the party submitting the PCN possesses the requisite property rights to undertake the NWP activity (including compliance with special conditions, mitigation, etc.).

DELINEATION OF WETLANDS, OTHER SPECIAL AQUATIC SITES, AND OTHER WATERS

Each 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 wetland delineation manual and regional supplement published 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. The 45 day PCN review period will not start until the delineation is submitted or has been completed by the Corps.

DRAWINGS AND ILLUSTRATIONS

General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number. For linear projects (e.g. roads, subsurface utility lines, etc.) gradient drawings should also be included. Please submit one original, or good quality copy, of all drawings on 8½x11 inch plain white paper (electronic media may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.

ADDITIONAL INFORMATION AND REQUIREMENTS

For proposed NWP activities that involve discharges into waters of the United States, water quality certification from the State, Tribe, or EPA must be obtained or waived (see NWP general condition 25). Some States, Tribes, or EPA have issued water quality certification for one or more NWPs. Please check the appropriate Corps district web site to see if water quality certification has already been issued for the NWP(s) you wish to use. For proposed NWP activities in coastal states, state Coastal Zone Management Act consistency concurrence must be obtained, or a presumption of concurrence must occur (see NWP general condition 26). Some States have issued Coastal Zone Management Act consistency concurrences for one or more NWPs. Please check the appropriate Corps district web site to see if Coastal Zone Management Act consistency concurrence has already been issued for the NWP(s) you wish to use.

Nationwide Permit 57: Electric Utility Line and Telecommunications Activities (2021)

Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Electric utility lines and telecommunication lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in pre-construction contours of waters of the United States. An “electric utility line and telecommunication line” is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the electric utility line or telecommunication line crossing of each waterbody.

Electric utility line and telecommunications substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of electric utility lines or telecommunication lines,



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including overhead lines and substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and electric utility lines or telecommunication lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)



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Note 1: Where the electric utility line is constructed, installed, or maintained in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the electric utility line to protect navigation.

Note 2: For electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Electric utility line and telecommunications activities must comply with 33 CFR 330.6(d).

Note 3: Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For activities that require pre-construction notification, the PCN must include 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 that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

General Conditions

1. Navigation.

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



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

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

2. Aquatic Life Movements.

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

3. Spawning Areas.

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

4. Migratory Bird Breeding Areas.

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

5. Shellfish Beds.

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

6. Suitable Material.

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



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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 Structures and Fills.

Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.



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14. Proper Maintenance.

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

15. Single and Complete Project.

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

16. Wild and Scenic Rivers.

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

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

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

17. Tribal Rights.

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or



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critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with



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“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 that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties.

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.



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(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects 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 commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on 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.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify



the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

21. Discovery of Previously Unknown Remains and Artifacts.

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

22. Designated Critical Resource Waters.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity



proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation.

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, 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. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

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

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

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

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



mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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

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

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

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

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

24. Safety of Impoundment Structures.

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with



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established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality.

(a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management.

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions.

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



28. Use of Multiple Nationwide Permits.

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot 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.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications.

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

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

(Transferee)

(Date)

30. Compliance Certification.

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



(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

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

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

32. Pre-Construction Notification.

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

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



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(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. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

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

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

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete



crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (*e.g.*, a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent 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 or 3/100-acre of stream bed 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

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



documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

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

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

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

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

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

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via 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 engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms



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and conditions of the NWP, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that



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will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's



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submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

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



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Regional Conditions Omaha District State of North Dakota

The following Nationwide permit (NWP) regional conditions will be used in the State of North Dakota for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58. Regional conditions are placed on NWPs to ensure projects result in no more than minimal adverse impacts to the aquatic environment to address local resources concerns.

A. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO ALL NWPS FOR LIMITED REVOCATION OF NWPS

For all NWPs, permittees must notify the Corps in accordance with General Condition 32 Preconstruction Notification (PCN) requirements for regulated activities located within or comprised of the following:

1. Wetlands Classified as Peatlands:

For purposes of this condition, peatlands are permanently or seasonally waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12-inches) or more thick. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Any peat-covered areas, including fens, bogs, and muskegs, are all peatlands.

- a. Reserved
- b. All NWPs listed above are revoked for use in peatlands.

2. Waters Adjacent to Natural Springs:

PCN required for any regulated activity 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. Springs do not include drain tile outlets.

3. Bank Stabilization Activities:

PCN required for any regulated activity that involves bank stabilization impacting an area greater than 1/10 of an acre below the Ordinary High Water Mark or includes features that extend out from the existing bank line greater than 25% of the bankfull channel width.

4. Specific Waterways:

PCN required for any regulated activity occurring in or under the Missouri River, including Lake Sakakawea and Lake Oahe. In addition, a PCN is required for any activity occurring in an off channel area (e.g. marinas and bays) of any of these waterways.

B. PRECONSTRUCTION NOTIFICATION REQUIREMENTS APPLICABLE TO SPECIFIC NWP.

5. **Reserved**

C. BEST MANAGEMENT PRACTICES

Best Management Practices

In addition to Regional Conditions 1 through 5, additional required best management practices apply to NWPs within the Omaha District. These follow and are available at: <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nation-Wide-Permit-Information/>



US Army Corps
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Omaha District

**2021 Nationwide Permits
Regional Conditions
Omaha District
Required Best Management Practices**

The following Nationwide Permit (NWP) regional condition best management practices are required for Montana, Nebraska, North Dakota, South Dakota, and Wyoming in the Omaha District for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58. 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 resources concerns.

A. REQUIRED BEST MANAGEMENT PRACTICE APPLICABLE TO MONTANA, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA, AND WYOMING

1. Suitable Material

Permittees are reminded of General Condition No. 6 which prohibits use of unsuitable material. A list of materials prohibited or restricted as fill material in waters of the United States can be found at:

<http://www.nwo.usace.army.mil/Media/FactSheets/FactSheetArticleView/tabid/2034/Article/12320/prohibited-restricted-materials.aspx>

B. NORTH DAKOTA REQUIRED BEST MANAGEMENT PRACTICES

2. Minimum Culvert Width:

For all NWPs in jurisdictional streams, the culvert opening width of a stream crossing shall not be less than the mean bank to bank width as measured from the Ordinary High Water Mark in the affected stream reach. In stable stream channels, the Ordinary High Water Mark is often found at the point where over-bank flow begins during a flood event. In incised stream channels that do not frequently access a floodplain or upper terrace, the Ordinary High Water Mark is generally located within the entrenched channel. The Ordinary High Water Mark may be identified by observing indicators such as a distinct change in slope, a change in vegetation characteristics, or a change in sediment characteristics, see 33 CFR 328.3(e).

3. Culvert Countersink Depth:

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

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	20% of pipe diameter
Box culvert	All drainage sizes	1.0 ft

a. The stream flow line shall be defined as the longitudinal average of the low flow stream channel.

b. The slope of the culvert should be parallel to the slope of the stream flow line.

c. The culvert invert depression depth shall be measured at the culvert for culverts installed at a slope less than the slope of the stream flow line.

4. Spawning Areas:

Spawning areas and seasons can be accessed on the North Dakota Game and Fish Department's website at: <http://gf.nd.gov/gnf/conservation/docs/spawning-restriction-exclusions.pdf>

5. Intake Structures:

a. 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.

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

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

i. The intakes shall be floating.

ii. At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.

iii. If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.

iv. 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.

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

- i. The intakes shall be submerged.
 - ii. At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
 - iii. The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
 - iv. 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.
- e. Intakes and associated Utility lines that are proposed to cross sandbars in areas designated as piping plover critical habitat are prohibited.
- f. 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.

6. 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:

- a. 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 Water Mark. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- b. Any boat dock shall be anchored to the top of the high bank.
- c. 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.
- d. Section 10 Waters located in the State of North Dakota area:
 - i. Bois de Sioux River
 - ii. James River Missouri River
 - iii. Red River of the North
 - iv. Upper Des Lacs Lake
 - v. Yellowstone River



US Army Corps
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Omaha District

**2021 Nationwide Permits
Regional Conditions
State of North Dakota
Section 401 Water Quality Certification**

The following Nationwide permit (NWP) regional conditions pertaining to Section 401 Water Quality Certification (WQC) will be used in the State of North Dakota for NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58.

The Environmental Protection Agency is responsible for providing WQC for activities that occur on Indian Lands in the State of North Dakota.

The North Dakota Department of Environmental Quality is responsible for providing WQC for Section 404 activities that occur in the State of North Dakota, excluding Indian Lands.

WQC by NWP follows:

- **NWP 12 – Oil or Natural Gas Pipeline Activities**
 - EPA denied for all activities.
 - NDDEQ denied for activities affecting Class I, IA, II and III rivers and streams, and classified lakes listed in Appendixes I and II of the State Water Quality Standards and certified for activities affecting all other waters in the State.
- **NWP 21 – Surface Coal Mining Activities**
 - EPA denied for all activities.
 - NDDEQ certified for all activities.
- **NWP 29 – Residential Developments**
 - EPA denied for all activities.
 - NDDEQ certified with the condition that the project will not result in a stream bank loss exceeding 300 linear feet in Class I, IA, II and III rivers and streams. Projects that cannot meet the condition will require an individual certification.
- **NWP 39 – Commercial and Institutional Developments**
 - EPA denied WQC for all activities.
 - NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.
- **NWP 40 – Agricultural Activities**
 - EPA denied WQC for all activities.
 - NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.
- **NWP 42 – Recreational Facilities**
 - EPA denied WQC for all activities.

-NDDEQ certified with the condition that the project will not result in a stream bank loss or relocation of 150 linear feet of any river or stream. Projects that cannot meet the condition will require an individual certification.

- **NWP 43 – Stormwater Management Facilities**

- EPA denied WQC for all activities.
 - NDDEQ certified for all activities.

- **NWP 44 – Mining Activities**

- EPA denied WQC for all activities.
 - NDDEQ certified for all activities.

- **NWP 48 – Commercial Shellfish Mariculture Activities**

- EPA waived WQC for all activities.
 - NDDEQ certified for all activities.

- **NWP 50 – Underground Coal Mining Activities**

- EPA denied WQC for all activities.
 - NDDEQ certified for all activities.

- **NWP 51 – Land-Based Renewable Energy Generation Facilities**

- EPA denied for all activities.
 - NDDEQ certified for all activities.

- **NWP 52 – Water-Based Renewable Energy Generation Pilot Projects**

- EPA denied WQC for all activities.
 - NDDEQ certified with the condition that a copy of the PCN is provided to NDDEQ for projects in, over or under Class I, IA, II and III rivers and streams, and classified lakes for compliance purposes.

- **NWP 55 – Seaweed Mariculture Activities**

- EPA denied WQC for all activities.
 - NDDEQ N/A

- **NWP 56 – Finfish Mariculture Activities**

- EPA denied WQC for all activities.
 - NDDEQ N/A

- **NWP 57 – Electric Utility Line and Telecommunications Activities**

- EPA denied for all activities.
 - NDDEQ certified for all activities.

- **NWP 58 – Utility Line Activities for Water and Other Substances**

- EPA denied WQC for all activities.
 - NDDEQ certified with the condition that the lines do not carry oil and gas production water, produced water, or brine water. Pipelines that carry oil or gas production water,

produced water, or brine water, collectively called saltwater pipelines, in, over or under Class I, IA, II and III rivers and streams, and classified lakes require individual certification with conditions based on the specific waterbody, location on the water, type of construction, and safety controls applied prior, during, or after construction.

From: [Hempy-Mayer, Kara L](#)
To: [Nygard, Jeremy S CIV USARMY CENWO \(USA\)](#)
Subject: RE: NWO-2025-01808-BIS, Burns & McDonnell; Minnkota Power Cooperative; Agassiz Transmission Line & Substation Project
Date: Monday, January 5, 2026 12:27:00 PM
Attachments: [image001.png](#)
[image002.png](#)

Hi Jeremy Nygard,

Thank you for the information, we'll take this into account as we complete our analysis.

Kara

Kara Hempy-Mayer

Associate Environmental Scientist

[she]

[Burns & McDonnell](#)

5600 American Blvd W, Suite 300, Bloomington, MN 55437

M +1 612-219-9523 | **E** klhempymayer@burnsmcd.com

From: Nygard, Jeremy S CIV USARMY CENWO (USA) <Jeremy.S.Nygard@usace.army.mil>
Sent: Friday, January 2, 2026 9:38 AM
To: Hempy-Mayer, Kara L <klhempymayer@burnsmcd.com>
Subject: NWO-2025-01808-BIS, Burns & McDonnell; Minnkota Power Cooperative; Agassiz Transmission Line & Substation Project

Good Morning Kara Hempy-Mayer,

Our office has reviewed the information you provided regarding the proposed project and determined that a U.S. Army Corps of Engineers Section 404 permit may be required for your project if any waters or wetlands are impacted. Please see attached letter, blank application form, and Nationwide Permit 57 fact sheet. Thank you,

v/r

Jeremy Nygard
Regulatory Program Assistant
U.S. Army Corps of Engineers
North Dakota Regulatory Office
3319 University Drive
Bismarck, ND 58504
Direct: 701-989-6425
Office General Line: 701-255-0015

From: [Townes, Daniel W CTR OSD OUSD A-S \(USA\)](#)
To: [Hempy-Mayer, Kara L](#)
Cc: [Lignowski, Michael J CTR OSD OUSD A-S \(USA\)](#)
Subject: Proposed Agassiz Transmission Line & Substation Project
Date: Monday, January 5, 2026 10:06:49 AM
Attachments: [DOD Siting Clearinghouse Informal Request Form 2023 1.pdf](#)

Good morning Ms. Hempy-Mayer,

My name is Dan Townes with the Department of War (DoW) Military Aviation and Installation Assurance Siting Clearinghouse.

Recently, the Secretary of Defense received a letter from you requesting a review of the Agassiz Transmission Line & Substation Project in Cass County, North Dakota. This request was forwarded to the Department of Defense Military Aviation and Installation Assurance Siting Clearinghouse.

The Military Aviation and Installation Assurance Siting Clearinghouse (Clearinghouse) is the dedicated public entry for Department of Defense energy project review requests. Requests mailed directly to the Secretary of Defense can take considerable time to reach us and results in increased processing time.

Based on the information provided to Secretary of Defense, this request lacks sufficient data to conduct a review. Please complete the attached form and return it to us along with a shapefile or KMZ file of the study area.

For complete instructions on how to request an Informal Review, please refer to our website <https://www.dodclearinghouse.osd.mil>. Select the Project Review tab and then, Informal Review.

Thank you.

Respectfully,

Dan Townes
Military Aviation and Installation Assurance Siting Clearinghouse
Office of the Assistant Secretary of War (Energy Resilience and Optimization)
NIPR: daniel.w.townes.ctr@mail.mil



DOD Military Aviation and Installation Assurance Siting Clearinghouse



DOD Siting Clearinghouse – Informal Review Request Form

To request an informal review, please fill out this form with all the available information for your project(s) and email this form, a shapefile and/or KMZ file of the proposed location, and any relevant documentation to the Clearinghouse at osd.dod-siting-clearinghouse@mail.mil. If necessary, you may also submit coordinates in Decimal Degrees (preferred) or DMS (Degrees, Minutes, Seconds) for each component of the project (e.g., each wind turbine or transmission line tower) in Excel format.

Date of Request:

PROJECT POINT OF CONTACT		
First Name	Last Name	
Organization		
Address		
City	State	Zip Code
Email	Phone Number	

PROJECT DETAILS
Project Name
Project Developer
Project County and State
Type of Project [Select all that apply]

For the following questions, please fill out **ONLY** the sections applicable to the project type. If the project does not yet have a defined layout, please provide coordinates to indicate the general footprint, such as boundary corners.

WIND TURBINE	
Number of Structures	Turbine Type
Hub Height (ft)	Maximum Blade Tip Height at Top of Rotation (ft)
Associated Meteorological Evaluation Towers (if applicable). Please provide the structure heights and coordinates of the METs if not they are not already included in the KMZ provided for your project. Please provide information on the types of sensors that will be used.	
Turbine Farm boundary corner coordinates boundary corner coordinates (if a shapefile and/or KMZ file cannot be provided)	

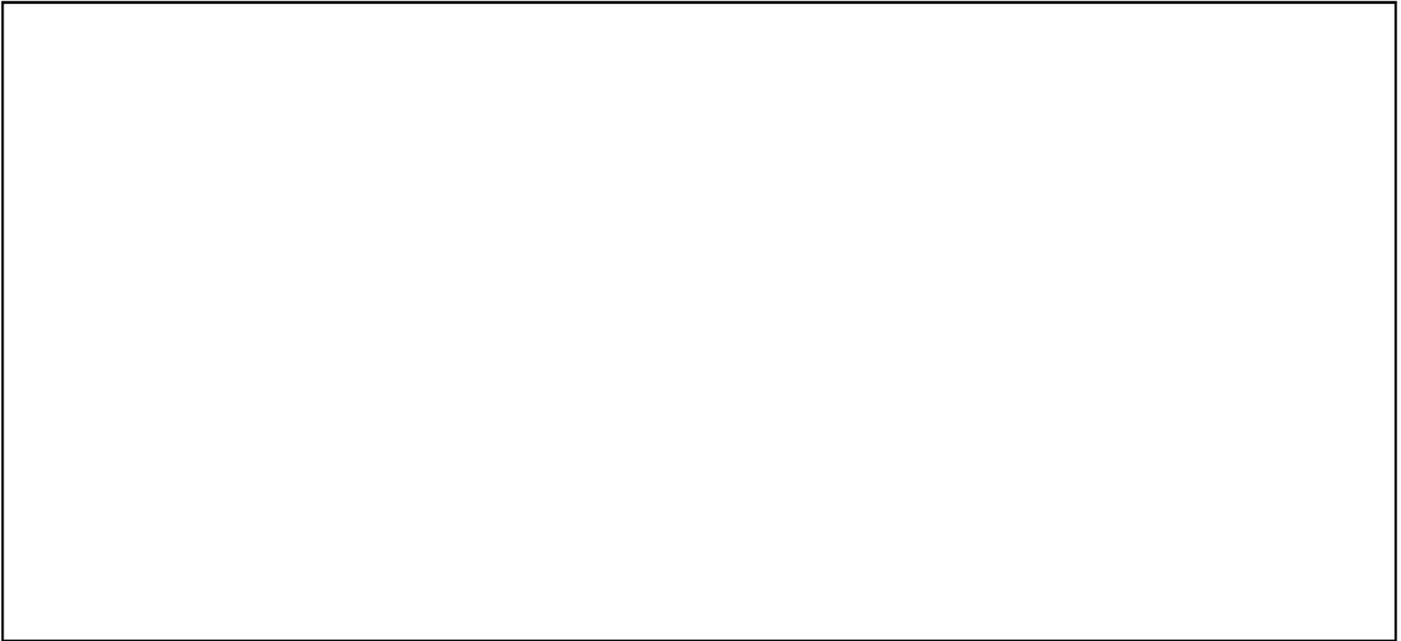
SOLAR		
Solar Technology (e.g., photovoltaic, concentrated solar power)		
Solar Panel Height (at maximum tilt) or Tower Height (ft)		
Acreage	Axis Tracking? <input type="checkbox"/>	Anti-Reflective Panels? <input type="checkbox"/>
Solar Panel or Heliostat Array boundary corner coordinates (if a shapefile and/or KMZ file cannot be provided)		
Associated Transmission Infrastructure (if applicable)		
Maximum Pole Height (ft)	Grid Point of Interconnection Coordinates	Rate Voltage of Line (kV)

GEOTHERMAL	
Acreage	Structure Height (ft)
Geothermal Layout boundary corner coordinates (if a shapefile and/or KMZ file cannot be provided)	

ENERGY STORAGE		
Acreage	Structure Height (ft)	
Project boundary corner coordinates (if a shapefile and/or KMZ file cannot be provided)		
Associated Transmission Infrastructure (if applicable)		
Maximum Pole Height (ft)	Grid Point of Interconnection Coordinates	Rate Voltage of Line (kV)

TRANSMISSION, UTILITY, OR POWER LINES	
Type of structure (wood, concrete, steel etc.):	
Height (ft)	Length of Line (ft)
Substation Tie-In	
Rated Voltage of Line (kV)	
Transmission Tower and Terminal Point Coordinates.	
<i>Please include a map of the transmission route (if shapefile and/or KMZ file is not provided)</i>	

Any additional information about your project you wish to disclose?

A large, empty rectangular box with a thin black border, intended for the user to provide additional information about their project.

If the request for an informal review includes trade secrets or otherwise commercial information that is proprietary or competition sensitive, we encourage that the documents be marked accordingly. Documents should be marked as "Proprietary" or "Business Sensitive" to help ensure they are properly safeguarded upon receipt. Do not mark documents as "Confidential," as that can be easily mistaken for a national security classification. Proprietary information which is customarily and actually treated as private will be protected under Exemption 4 to the Freedom of Information Act (FOIA) to the extent permitted by law. Requests are not otherwise shared outside of DoD and will only be used to assess potential impacts on military missions.

From: [Schaffer, Jacob R](#)
To: osd.dod-siting-clearinghouse@mail.mil
Cc: daniel.w.townes.ctr@mail.mil; michael.j.lignowski.ctr@mail.mil; [Hempy-Mayer, Kara L](#)
Subject: Proposed Agassiz Transmission Line & Substation Project
Date: Tuesday, January 6, 2026 1:48:03 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[Agassiz DoD-DoW Informal Request_2026-01-06.zip](#)

Good afternoon Mr. Townes,

In response to your request for additional information, please find the attached DOD Siting Clearinghouse Informal Review Request Form, a Project KMZ, and Project Infrastructure Coordinates. If you or your team require any additional information to support this request, please do not hesitate to let me know.

We appreciate your review and look forward to your response.

Jacob Schaffer

Senior Environmental Scientist

[Burns & McDonnell](#)

5600 American Blvd W, Suite 300, Bloomington, MN 55437

M +1 651-485-5826 | E jrschaffer@burnsmcd.com

BURNS  **McDONNELL**



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From: Townes, Daniel W CTR OSD OUSD A-S (USA) <daniel.w.townes.ctr@mail.mil>
Sent: Monday, January 5, 2026 10:02 AM
To: Hempy-Mayer, Kara L <klhempymayer@burnsmcd.com>
Cc: Lignowski, Michael J CTR OSD OUSD A-S (USA) <michael.j.lignowski.ctr@mail.mil>
Subject: Proposed Agassiz Transmission Line & Substation Project

Good morning Ms. Hempy-Mayer,

My name is Dan Townes with the Department of War (DoW) Military Aviation and Installation Assurance Siting Clearinghouse.



DOD Military Aviation and Installation Assurance Siting Clearinghouse



DOD Siting Clearinghouse – Informal Review Request Form

To request an informal review, please fill out this form with all the available information for your project(s) and email this form, a shapefile and/or KMZ file of the proposed location, and any relevant documentation to the Clearinghouse at osd.dod-siting-clearinghouse@mail.mil. If necessary, you may also submit coordinates in Decimal Degrees (preferred) or DMS (Degrees, Minutes, Seconds) for each component of the project (e.g., each wind turbine or transmission line tower) in Excel format.

Date of Request:

PROJECT POINT OF CONTACT		
First Name	Jacob	Last Name Schaffer
Organization	Burns & McDonnell Engineering Company, Inc.	
Address	5600 American Boulevard West, Suite 300	
City	Bloomington	State MN Zip Code 55437
Email	jrschaffer@burnsmcd.com	Phone Number 651-485-5826

PROJECT DETAILS		
Project Name	Agassiz Transmission Line & Substation Project	
Project Developer	Minnkota Power Company, Inc.	
Project County and State	Cass County, North Dakota	
Type of Project [Select all that apply]	<input type="checkbox"/> Project Type #2 <input type="checkbox"/> Project Type #3 <input type="checkbox"/> Project Type #4	

For the following questions, please fill out **ONLY** the sections applicable to the project type. If the project does not yet have a defined layout, please provide coordinates to indicate the general footprint, such as boundary corners.

WIND TURBINE	
Number of Structures	Turbine Type
Hub Height (ft)	Maximum Blade Tip Height at Top of Rotation (ft)
Associated Meteorological Evaluation Towers (if applicable). Please provide the structure heights and coordinates of the METs if not they are not already included in the KMZ provided for your project. Please provide information on the types of sensors that will be used.	
Turbine Farm boundary corner coordinates boundary corner coordinates (if a shapefile and/or KMZ file cannot be provided)	

SOLAR		
Solar Technology (e.g., photovoltaic, concentrated solar power)		
Solar Panel Height (at maximum tilt) or Tower Height (ft)		
Acreage	Axis Tracking? <input type="checkbox"/>	Anti-Reflective Panels? <input type="checkbox"/>
Solar Panel or Heliostat Array boundary corner coordinates (if a shapefile and/or KMZ file cannot be provided)		
Associated Transmission Infrastructure (if applicable)		
Maximum Pole Height (ft)	Grid Point of Interconnection Coordinates	Rate Voltage of Line (kV)

GEOHERMAL	
Acreage	Structure Height (ft)
Geothermal Layout boundary corner coordinates (if a shapefile and/or KMZ file cannot be provided)	

ENERGY STORAGE		
Acreage	Structure Height (ft)	
Project boundary corner coordinates (if a shapefile and/or KMZ file cannot be provided)		
Associated Transmission Infrastructure (if applicable)		
Maximum Pole Height (ft)	Grid Point of Interconnection Coordinates	Rate Voltage of Line (kV)

TRANSMISSION, UTILITY, OR POWER LINES	
Type of structure (wood, concrete, steel etc.):	Steel
Height (ft) 75 to 180	Length of Line (ft) 9,150
Substation Tie-In	Newly proposed substation for tie-in.
Rated Voltage of Line (kV)	345 kV
Transmission Tower and Terminal Point Coordinates. See attached Spreadsheet for duplicate information. Format is as follows: Structure Number, Feature Description (New vs. Replacement), and Coordinates. 1279 Tower Replacement @ 46.95239301, -96.87564475	
Please include a map of the transmission route (if shapefile and/or KMZ file is not provided)	

Any additional information about your project you wish to disclose?

Minnkota Power Cooperative is proposing to construct and operate the proposed Agassiz Transmission Line & Substation Project (Project), an approximately 1.74-mile double-circuit 345-kilovolt (kV) tap transmission line and associated 345/34.5-kV substation south of Harwood in Cass County, North Dakota. The Project will be networked and serve MPC distribution cooperative-member, Cass County Electric Cooperative. The transmission line will consist of 345-kV weathered and galvanized steel structures (14 total structures) in a new 150-foot-wide transmission line right-of-way (ROW) adjacent to existing transmission ROW. The Project will tie into the existing Minnkota Maple River–Bison 345-kV transmission line and terminate at the proposed Agassiz Substation.

If the request for an informal review includes trade secrets or otherwise commercial information that is proprietary or competition sensitive, we encourage that the documents be marked accordingly. Documents should be marked as "Proprietary" or "Business Sensitive" to help ensure they are properly safeguarded upon receipt. Do not mark documents as "Confidential," as that can be easily mistaken for a national security classification. Proprietary information which is customarily and actually treated as private will be protected under Exemption 4 to the Freedom of Information Act (FOIA) to the extent permitted by law. Requests are not otherwise shared outside of DoD and will only be used to assess potential impacts on military missions.

Structure Number	Feaure Description	Latitude	Longitude
1279	Replacement	46.95239301	-96.87564475
1B	New	46.95233642	-96.87339446
2B	New	46.95224967	-96.87183440
1281	Replacement	46.95030207	-96.87314608
1A	New	46.95202950	-96.87315064
2A	New	46.95204347	-96.87161802
3	New	46.95413872	-96.87164796
4	New	46.95635871	-96.87167126
5	New	46.95859285	-96.87169470
6	New	46.96081717	-96.87171804
9	New	46.96373814	-96.86559565
7A/7B	New	46.96284017	-96.87173926
8A/8B	New	46.96373407	-96.86766214
10A/10B	New	46.96374208	-96.86357163

Jan 5, 2026

Ms. Kara Hempy-Mayer

Burns & McDonnell Engineering, Inc.
5600 American Blvd W
Suite 300
Bloomington, MN 55437
klhempymayer@burnsmcd.com
612-219-9523

Dear Ms. Hempy-Mayer,

This is in response to your request for a review of the environmental impacts associated with the Proposed Agassiz Transmission Line and Substation Project, located in Cass County, North Dakota.

The proposed project has been reviewed by Department of Water Resources (DWR) and the following comments are provided:

- Initial review indicates the project does not require a conditional or temporary permit for water appropriation. However, if surface water or groundwater will be diverted for construction of any future projects identified in the plan, a water permit will be required per North Dakota Century Code § 61-04-02. Please consult with the DWR Water Appropriation Division if you have any questions at (701) 328-2754 or appropinfo@nd.gov.

- Projects that take place within the ordinary high water mark of a North Dakota navigable waterbody (as outlined in North Dakota Century Code ch. 61-33) require prior authorization to construct from DWR. The Project(s), as described, does not appear to take place within a currently identified navigable waterbody, and does not require a North Dakota state sovereign land permit. For further information, contact Amy Winkelman, State Sovereign Land Manager, at awinkelman@nd.gov, (701)328-4935 or Travis Thyberg, State Sovereign Land Specialist, at tbthyberg@nd.gov (701)328-4988.

- There is a FEMA National Flood Insurance Program (NFIP) regulatory floodplain identified or mapped where this proposed project is to take place. Impacted areas are designated to be in NFIP Zone AE, with floodway. The State of North Dakota has no formal NFIP permitting authority, as all NFIP permitting decisions are considered by impacted NFIP participating communities, which is the community with zoning authority for the area in question. Please work directly with the local floodplain administrator of the zoning authority impacted to achieve NFIP and community compliance. Tyler Spomer, NFIP Coordinator, 701-328-2452, tispomer@nd.gov.

- The DWR Regulatory Division's Engineering and Permitting Section and Water Resource Districts are responsible for regulating drainage in North Dakota. The DWR is also responsible for regulating the construction or modification of any dike (levee), diversion, wetland restoration, or other device. Consequently, the DWR requests to be notified regarding a proposed project's impacts, if any, to water resources, such as watercourses (i.e. streams or rivers), agricultural surface drains, wetlands (i.e. ponds, sloughs, lakes, or any series thereof) with a contributing watershed area of 80 acres or more, and dikes, diversions, wetland restorations, and other water control devices, as any modifications may require a drainage permit(s) or construction permit(s) from the DWR. Specifically, the project is located near or crosses a structure associated

with Construction Permit No. 2606 as well as surface drains associated with Surface Drain Permit No. 2446, copies of which are enclosed. The DWR requests to be notified regarding modifications or impacts to either of these structures as permitting requirements may apply. For more information on these requirements, please visit the Regulation & Appropriation tab on the DWR website (dwr.nd.gov) or contact the Regulatory Division directly at 701-328-2750 or dwrregpermits@nd.gov.

Documents Added :
CP-2606_ROD.pdf
DR_2446_BulkScan.pdf

Thank you for the opportunity to provide review comments. Should you have further questions, please contact me at 701-328-4970 or kyrkoski@nd.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kyle Yrkoski".

Kyle Yrkoski
Planner III

KY:mg/1570

October 2, 2020

Mr. Roger Kluck
City of Fargo
225 4th St N
Fargo, ND 58102

RE: Application to Construct No. 2606 – Fargo North Side Flood Risk Management Levee (FM-16-A1)

Dear Mr. Kluck:

The Office of the State Engineer (OSE) has reviewed your construction permit application. The State Engineer has approved your application and signed Construction Permit No. 2606 which is enclosed with this letter.

The issued permit is subject to the conditions listed on the permit. Our office suggests that you file the permit with the county recorder's office. Our office also recommends compliance with the North Dakota Department of Environmental Quality's Construction and Environmental Disturbance Requirements (enclosed).

In accordance with North Dakota Administrative Code § 89-08-02-03.1, you must notify the State Engineer of the completion of your project. A Construction Completion Notification form (enclosed) is provided that, if completed and returned to the OSE, will fulfill the notification of completion requirement.

Please feel free to contact me at 701-328-4288, or kahuber@nd.gov if you have any questions.

Sincerely,



Kelsey Huber
Water Resource Engineer

KAH/1271

Enclosures: Permit to Construct or Modify No. 2606
ND DEQ Construction and Environmental Disturbance Requirements
Construction Completion Notification SFN 60895

cc: Southeast Cass Water Resource District – Dan Jacobson (Electronic)
USACE Regulatory Division (Electronic)
ND DEQ – Peter Wax (Electronic)

CONSTRUCTION PERMIT NO. 2606

This permit authorizes the permittee to construct or modify a structure, pursuant to North Dakota Century Code § 61-16.1-38.

Name of Permittee: **City of Fargo**
225 4th St N
Fargo, ND 58102

Structure Type: **Dike**

Purpose: **Flood Protection**

Location and Waterway on which Project will be constructed:

Location: **NE ¼ of Section 9, N ½ of Section 10, Section 11, S ½ of Section 12, and the N ½ of Section 13 Township 140 North, Range 49 West, Cass County**

Stream: **Cass County Drain 10**

Basin: **Upper Red**

Design Data:

Earthen Dike

a. Length	15,220	Feet
b. Top Width	10	Feet
c. Maximum Height	8	Feet
d. Minimum Height	2	Feet
e. Side Slopes	4:1	Dry
	4:1	Wet

Fargo Lagoons Earthen Embankment Acting as a Dike

a. Length	10,100	Feet
b. Top Width	12	Feet
c. Maximum Height	-	Feet
d. Minimum Height	-	Feet
e. Side Slopes	4:1	Dry
	3:1	Wet

Location Map: **See Permit Map**

CONSTRUCTION PERMIT NO. 2606 (CONTINUED)

CONDITIONS TO PERMIT

1. This permit applies to the specific project and project location described and depicted in the permit application.
2. The Permittee, project owner, project sponsor, landowner, and any associated parties may be liable for all activity conducted and all effects caused by the construction, modification, and operation of the dam, dike, or other device as described in the application and this permit. Consequently, the receipt of this permit does not relieve the Permittee, project owner, project sponsor, landowner, or any associated parties from liability resulting from the construction, modification, and operation of the dam, dike, or other device, as approved under this permit.
3. In accordance with North Dakota Century Code chapter 61-03, section 61-04-11, and section 61-16.1-38, this permit and the project approved under this permit are subject to changes, conditions, or modifications as in the judgement or discretion of the State Engineer may be necessary for safety or the protection of property. Such changes, conditions, or modifications, if required, will be at the expense of the Permittee, project owner, project sponsor, or any associated parties.
4. The Permittee is responsible for obtaining all property rights necessary to construct the project described and depicted in the permit application.
5. Access to the project for the purpose of inspection shall not be denied to the county water resource district of jurisdiction, State Engineer staff, or State Water Commission staff.
6. By constructing this structure, the Permittee acknowledges responsibility for its safety and maintenance. This maintenance will include correction of slumping or erosion problems, removal of all woody vegetation and maintenance of vegetative cover.
7. If prior to or during construction, items of substantial archeological value are discovered or a deposit of such items are disturbed, the Permittee shall cease construction activities in the area so affected. The State Engineer shall be promptly notified of the discovery and construction will not resume until the State Engineer gives written permission.
8. In accordance with North Dakota Administrative Code section 89-08-02-03.1, construction must be completed and the State Engineer must be notified of completion in writing within two years from the date of final approval or the permit is void. The two-year period does not begin until any appeal is complete.
9. In accordance with North Dakota Administrative Code section 89-08-02-07, the Permittee shall provide the State Engineer with As-Built plans after the dam, dike, or other device has been constructed.

CONSTRUCTION PERMIT NO. 2606 (CONTINUED)

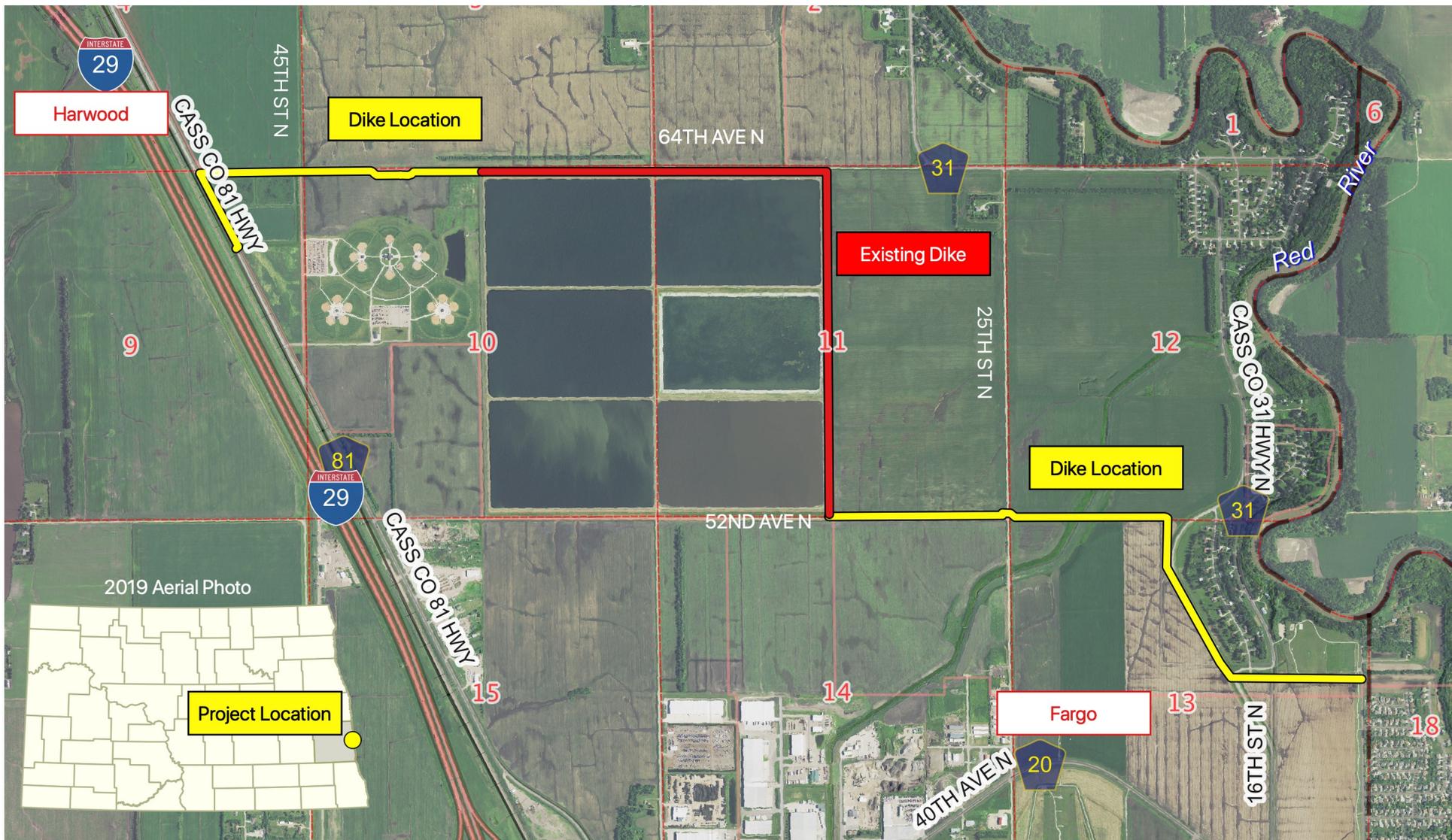
10. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.





John Paczkowski, P.E.
Interim State Engineer

Date: 09/25/2020



Construction Permit Application No. 2606
City of Fargo

Fargo Northside Management Levee (FM-16-A1)



Date: 9/16/2020
Prepared by: CWN

Sections 9,10, 11,12,13, T140N, R49W, Cass County

TECHNICAL MEMORANDUM

DATE: **September 17, 2020**

TO: **JP** John Paczkowski, P.E., Interim State Engineer

FROM: **ac** Aaron Carranza, P.E., Director, Regulatory Division
ML Matt Lindsay, P.E., Manager, Engineering and Permitting Section
KH Kelsey Huber, E.I.T., Water Resource Engineer

SUBJECT: **Construction Permit Application No. 2606 – Fargo North Side Flood Risk Management Dike**

Construction Permit Application No. 2606 (Application) was initially received on February 24, 2020, from the City of Fargo (City) for the construction of an earthen dike, referred to as the North Side Flood Risk Management Levee (FM-16-A1), containing a pump station within Cass County Drain No. 10 and located in the NE ¼ of Section 9, N ½ of Section 10, S ½ of Section 11, S ½ of Section 12, and the N ½ of Section 13, Township 140 North, Range 49 West, Cass County (Dike). The Application was last updated August 6, 2020. The Dike was designed under the supervision of Kurt Lysne, P.E. (PE-6871).

BACKGROUND

The Dike is part of Fargo's in-town dike system, a system that is intended to provide flood protection to a majority of the City. According to the Application materials, the Dike is intended to provide flood protection to approximately 2,600 acres located in north Fargo, east of I-29 and south of 64th Avenue North.

PERMIT TO CONSTRUCT

According to North Dakota Century Code (N.D.C.C.) § 61-16.1-38 and North Dakota Administrative Code (N.D.A.C.) § 89-08-02-01, a permit is required from the Office of the State Engineer (OSE) for the construction or modification of a structure capable of diverting 50 acre-feet or more of water, which is based upon the volume protected as measured from the effective top of the dike. The Application states the Dike protects 2,600 acres of land and is proposed to be constructed to a height between 2 and 8 feet. Based on this information, the Dike will produce a protected volume greater than 50 acre-feet, thus, a construction permit is required.

COMPLETE APPLICATION

According to N.D.C.C. § 61-16.1-38 and N.D.A.C. § 89-08-02-02, a completed construction permit application must include the following:

1. Complete plans and specifications

The City provided a properly completed Application to the OSE on August 6, 2020, along with plans and specifications sealed on August 3, 2020, by Brett Bailly, P.E (PE-6087).

Given the Dike ties into the Fargo lagoons (also referred to by FEMA as Waste Stabilization Ponds or WSPs) such that the outer north and east lagoon embankments will act as a dike, a purpose likely not considered in the original design, more information was requested by the OSE regarding embankment design with respect to the lagoon embankment acting as a dike. In response, the City provided the City of Fargo Waste Stabilization Ponds Levee Certification Report, which provides supporting documentation used for certifying the lagoon dike system in accordance with 44 CFR 65.10 of the National Flood Insurance Program (NFIP) (see file).

In addition, Gregory Thompson, PE, and Charles Hubbard, PE, signed a letter dated July 30, 2020, stating:

[T]he FEMA certification language that states *“this certification is made solely to the Federal Emergency Management Agency for purposes of obtaining accreditation for the Fargo WSPs levee”* is also applicable to certification and accreditation for a levee system providing flood risk reduction to other land and structures, provided of course that the flood protection elements into which the certified element is incorporated are similarly compliant.

The original plan set for the Fargo lagoons was sealed by James McLaughlin, P.E. (PE-347), September 23, 1971 (see Waste Stabilization Ponds plan set). Improvements to the Waste Stabilization Ponds are described in the 2010 Construction Documents For Wastewater Treatment Facility Improvements plan set and specifications (City of Fargo Project Number: 5657, Ulteig Project Number: 09.01002) and were signed and sealed by Timothy J. Paustian, P.E. (PE-4688), Karla J. Olson, P.E. (PE-5571), and Cassie McNames, P.E. (PE-5839), on January 7, 2010.

2. Evidence establishing a property right for the property that will be affected by the construction of the dam, dike, or other device

According to the Application, the construction limits of the Dike exist entirely on land owned by the City of Fargo. I verified the City's ownership using Cass County's GIS Public Map Service (<https://gisweb.casscountynd.gov/WAB/Link/>) on August 10, 2020, and found some parcels listed the Fargo Municipal Airport Authority as the owner. In response, the City provided signed easements for those parcels (see file).

For any additional property that may be adversely affected by the construction and operation of the Dike, the City's engineer, Alexa Ducioame, P.E. (PE-10599) of Moore Engineering, Inc. provided FM-16-A1 North Fargo Flood Management Levee Impact Analysis Memorandum dated February 20, 2020 (Hydraulic Analysis). In addition, Moore Engineering, Inc. provided the HEC-RAS model, which accompanies the analysis (see file). The impact analysis utilized an existing unsteady state HEC-RAS (v5.0.7) computer model, which was originally developed for the Fargo-Moorhead Diversion project 2019 CLOMR model submission to FEMA (FM Diversion model).

In order to simulate the steady state FEMA Flood Insurance Study (FIS) 100-year flood event in a dynamic manner, a multiplier of 0.92 was applied to the inflow hydrographs for the Period of Record (POR) hydrology developed by the USACE at the Red River near Enloe and Wild Rice River near Abercrombie. A multiplier was not added to other tributaries. The FIS 100-year equivalent flood event has an approximate stage of 39.3

feet and a peak discharge of 29,300 cfs at the USGS Fargo Gage (05054000 Red River of the North at Fargo, ND).

To evaluate the proposed Dike's impacts, water surface levels from an existing conditions model (pre-project) were compared with a proposed conditions model (post-project). The existing conditions model includes certified levees, levees in the process of being certified, as well as emergency levees. According to the City's engineer, "[t]he only difference between 100-year FIS hydrology model with revised existing geometry and 100-year FIS hydrology model with revised existing geometry + levee is the inclusion of the Fargo North Project."

Along the Dike, the maximum impact during a 100-year event was approximated to be 0.03 feet west of the Fargo Lagoons and east of I-29. Past discussions with City Engineer, Nathan Boerboom, indicate that the majority of effects from the Dike will be temporary until additional in-town dikes and the FM Area Diversion Project are constructed. Additionally, the effects from the Dike inherently have several areas of uncertainty, including relative accuracy of source LiDAR and survey data utilized for the model, model accuracy as calibrated to historic runoff events, and engineering subjectivity with respect to hydraulic model data inputs, and engineering calculations. **Given this uncertainty and the temporary nature of the effects identified, I do not recommend the State Engineer place specific conditions on the permit relative to acquisition of property rights, such as easements or fee title, for the affected properties identified in the hydraulic impact analysis and HEC-RAS model.**

WATER RESOURCE DISTRICT AND OTHER AGENCY COMMENTS

An opportunity to comment was solicited to the Southeast Cass Water Resource District (District) on March 11, 2020, according to N.D.C.C. § 61-16.1-38 (see file). A response from Carol Harbeke Lewis, Secretary-Treasurer with the District, was received on April 16, 2020, stating the District has no comment (see file).

The North Dakota Department of Environmental Quality and the United States Army Corps of Engineers were carbon copied on the March 11, 2020 solicitation. No comments were received from either of these agencies.

DESIGN AND SPECIFICATIONS

According to the Application materials, design plans, and specifications, the Dike proposed to be constructed is earthen, with a cumulative length of approximately 15,220 feet, top width of 10 feet, 4:1 side slopes (interior and exterior), minimum height of 2 feet (892 feet NAVD88) and a maximum height of 8 feet (897 feet NAVD88). The proposed Dike will tie into an existing Fargo Lagoon embankment, certified by FEMA in 2013 for flood protection, as well as Cass County Highway 81 to the west and University Drive North to the east.

Dike construction shall conform to Section 3600 of City of Fargo Standard Specifications for flood control levees (see Section No. 030 Sheet No. 1 of North Side Flood Risk Management Levee FM-16-A1 plan set for typical cross-section).

FARGO LAGOONS EMBANKMENT

The Dike incorporates the existing north and east outer embankments of the Fargo lagoons as part of a continuous line of protection in the Fargo North Side Flood Risk Management Dike system. According to the Waste Stabilization Ponds plan set, the north and east outer lagoons

embankment have a 3:1 exterior (river side) side slope and 4:1 interior (waste pond) side slope, and a top width of 12 feet (see UN-627 of Waste Stabilization Ponds plan set).

HARWOOD LAGOONS

A portion of the Dike is proposed to be constructed within the sludge zone of the Harwood Lagoons. According to the Application materials, the lagoon cells are to be dewatered and sludge removed to the permanent easement line prior to construction of the Dike (see Section No. 210 of Sheet No. 16 of the North Side Flood Risk Management Levee Project No. FM-16-A1 Specifications).

RE-LOCATED PUMP STATION WITHIN CASS COUNTY DRAIN NO. 10

According to the Application materials, a pump station is proposed to be relocated within Cass County Drain No. 10 along the centerline of the proposed Dike. According to the City, the “pump station will include a gated control structure that will prevent flood waters from backing into the protected area. The pump station and the levee will be constructed, operated, and maintained by the City of Fargo.”

Braun Intertec Corporation completed a Geotechnical Evaluation Report in accordance with stability and performance criteria established by FEMA for Riverine Structures and found the proposed Dike and pump station complied with 44 CFR 65.10 of the NFIP (see May 20, 2020, Geotechnical Evaluation Report).

In addition, relocation of a pump station within Cass County Drain No. 10 is considered a modification to a drain, requiring a surface drainage permit according to NDAC § 89-02-01-03. The City’s Surface Drain Permit Application No. 5476 was determined not to be drainage of statewide or interdistrict significance and was therefore referred to the Southeast Cass Water Resource District on September 14, 2020, for review under N.D.C.C. § 61-32-03 and N.D.A.C. § 89-02-01-08.

RECOMMENDATIONS

Based on the information provided in the Application and my review of the Fargo North Side Flood Risk Management Dike, I have no recommended changes to the proposed Dike design. **I recommend the State Engineer approve Construction Permit Application No. 2606 subject to the conditions stated in the permit.**



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.



CONSTRUCTION COMPLETION NOTIFICATION
 NORTH DAKOTA STATE WATER COMMISSION
 REGULATORY DIVISION
 SFN 60895 (10/2019)

OFFICE OF
 THE STATE
 ENGINEER
 USE ONLY

Mail To:
 Office of the State Engineer
 900 East Boulevard Ave
 Bismarck, ND 58505-0850

Contact Info:
 (P) (701) 328-2750
 (F) (701) 328-3696
 www.swc.nd.gov

For structures that require a construction permit from the State Engineer, this form is to be submitted to the State Engineer upon completion of the structure in accordance with North Dakota Administrative Code **89-08-02-03.1**. As built plans of the structure must be submitted with this form in accordance with North Dakota Administrative Code **89-08-02-07**. For structures that do not require a construction permit, the State Engineer requests that the owner of the structure complete applicable sections of this form for the State Engineer's records. As built plans are not required for structures not requiring a construction permit.

89-08-02-03.1: *Construction must be completed and the State Engineer must be notified of completion in writing within two years from the date of final approval or the permit is void. The two-year period does not begin until any appeal is complete.*

89-08-02-07: *As a condition on all construction permits, the owner of the dam, dike, or other device will provide the state engineer with "as built" plans within six months after the dam, dike, or other device has been constructed to provide details of the modifications that occurred during construction.*

1. General Information

Type Of Structure (choose one) Dam Dike Other (Diversion, Pond, Lagoon, etc.) _____

Name Of Structure

Legal Description	¼	¼	Section	Township	Range
-------------------	---	---	---------	----------	-------

Construction Permit Number (if applicable)	Water Use Permit Number (if applicable)
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Construction Permit Approval Date (if applicable)

2. Verification Of Construction (complete sections A, B or C as applicable)

A. For Structures Requiring A Construction Permit

This structure has been built or modified in accordance with the construction permit. As built plans are attached.

Yes No *(If no, please complete section C)*

Completion Date

B. For Structures Not Requiring A Construction Permit

This structure has been built in accordance with the submitted plans

Yes No *(If no, please complete section C)*

List Any Modifications From The Submitted Plans That Occurred During Construction

Completion Date

C. This Structure Will Not Be Constructed Yes

Reason

3. Ownership And Maintenance (complete all)			
A. Owner Of The Property On Which The Structure Is Located			
Name Or Agency			
Agency Contact Person (if applicable)			
Mailing Address	City	State	ZIP Code
Email Address	Home Telephone Number		
Work Telephone Number	Cell Telephone Number		
B. Agency Or Individual Responsible For Operation And Maintenance Of The Structure			
<input type="checkbox"/> Land Owner Listed Above <input type="checkbox"/> Other (if other, please complete information below)			
Name Or Agency			
Agency Contact Person (if applicable)			
Mailing Address	City	State	ZIP Code
Email Address	Home Telephone Number		
Work Telephone Number	Cell Telephone Number		
(Signature Of Owner or Agency Representative)	(Print Name)	(Date)	

NORTH DAKOTA STATE WATER COMMISSION
APPLICATION TO DRAIN

RR2

APP

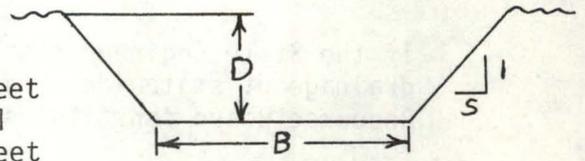
A. Location:

- 1) Water Resource District SOUTHEAST CASS
- 2) Location of land to be drained:
 - 1/4 ACC 1/4 Sec. 9 Twp. 140 Rge. 49W
 - 1/4 NW 1/4 Sec. 15 Twp. 140 Rge. 49W
 - 1/4 SW 1/4 Sec. 15 Twp. 140 Rge. 49W
- 3) Location of outlet end of proposed drain: Not Applicable
- 4) Watercourse, draw, natural drainway, drain or ditch into which water will drain into: Natural draw, twp ditch, & drain 40
(Name)

This application must be accompanied by a map showing the location of the proposed drain or drains.

B. DESCRIPTION:

- 1) Pond, slough, or lake to be drained
 - a. Maximum surface area NA acres
 - b. Average depth NA feet
- 2) 595 acres contributes surface water to the pond, slough or lake to be drained.
- 3) Proposed drain ditch
 - a. Length of drain 28,875 tot feet
 - b. Drain design:
 - 1. Bottom width (B) 8 feet
 - 2. Side Slope (S) 8 : 1
 - 3. Maximum cut (D) 1.5 feet
- 4) Purpose for draining pond, slough, or lake ease of farming existing cropland



C. INVESTIGATION:

- 1) Section 61-16.1-41 NDCC requires that you conduct an investigation.
 - a) Does your investigation indicate that the water drained will exceed the capacity of the waterway (identified in No A-4 above) No
 - b) Does your investigation indicate that the water drained will flood or adversely affect lands of lower landowners No
(If the answer is yes to (a) or (b) above, you are required to obtain flowage easements and have them filed in the office of the county register of deeds and attach a copy to this application.)
 - c) What method was used to conduct the investigation Above land was assessed for drainage via drain 40
- 2) Is the proposed drainage a result of a township, county, or other water management plan? No If so, please describe on attached sheets.

D. CONSTRUCTION:

- 1) I propose to start construction of the drain on or before July 10, 1986, and will be completed on or before Sep 1, 1986.
- 2) The proposed drain will be constructed by Local Contractor under the supervision of Lougheed Bros using laser.

Date Submitted: June 19, 1986

Signed: Lougheed Bros
 (Print or type name, address, and telephone number below)
Lougheed Bros Tenant
RR2 Box 88
Gardner, ND. 58036
Telephone No. 701-860-6623

Mail to: State Engineer
 North Dakota State Water Commission
 900 East Boulevard
 Bismarck, North Dakota 58505

Signed: John & Suzanne
a partner

* * * * *

The State Engineer has determined:

- This application involves drainage of statewide or interdistrict significance.
- This application does not involve drainage of statewide or interdistrict significance.

Date 6-26-86

Vernon Sahy
State Engineer

* * * * *

This application to drain is hereby:

- approved
- disapproved

Date 7/17/86

Fred Helberg
Chairman or Secretary
Water Resource Board

If the State Engineer has determined that this application does not involve drainage of statewide or interdistrict significance, approval by the Water Resource Board constitutes a permit to drain.

If the State Engineer has determined that this application involves drainage of statewide or interdistrict significance, approval by both the Water Resource Board and the State Engineer must be given to constitute a permit to drain.

This application which involves drainage of statewide or interdistrict significance is hereby:

- approved
- disapproved

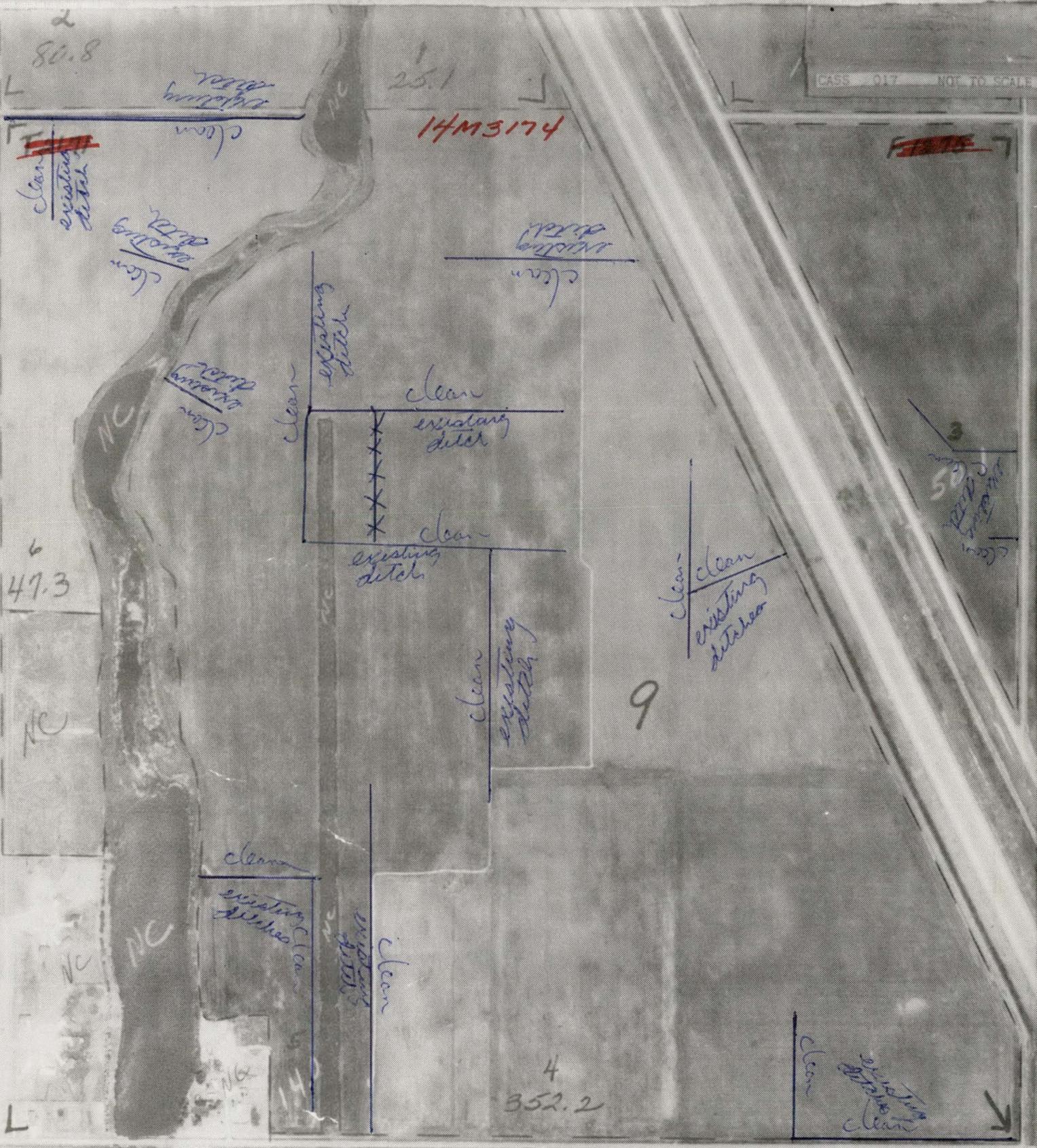
Date _____

State Engineer



28,875 total Feet

1986



245 T10

REED

99

1986

CASS 017 NOT TO SCALE

241 U11

REED

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existing ditch

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existing ditch

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existing ditch

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existing ditch

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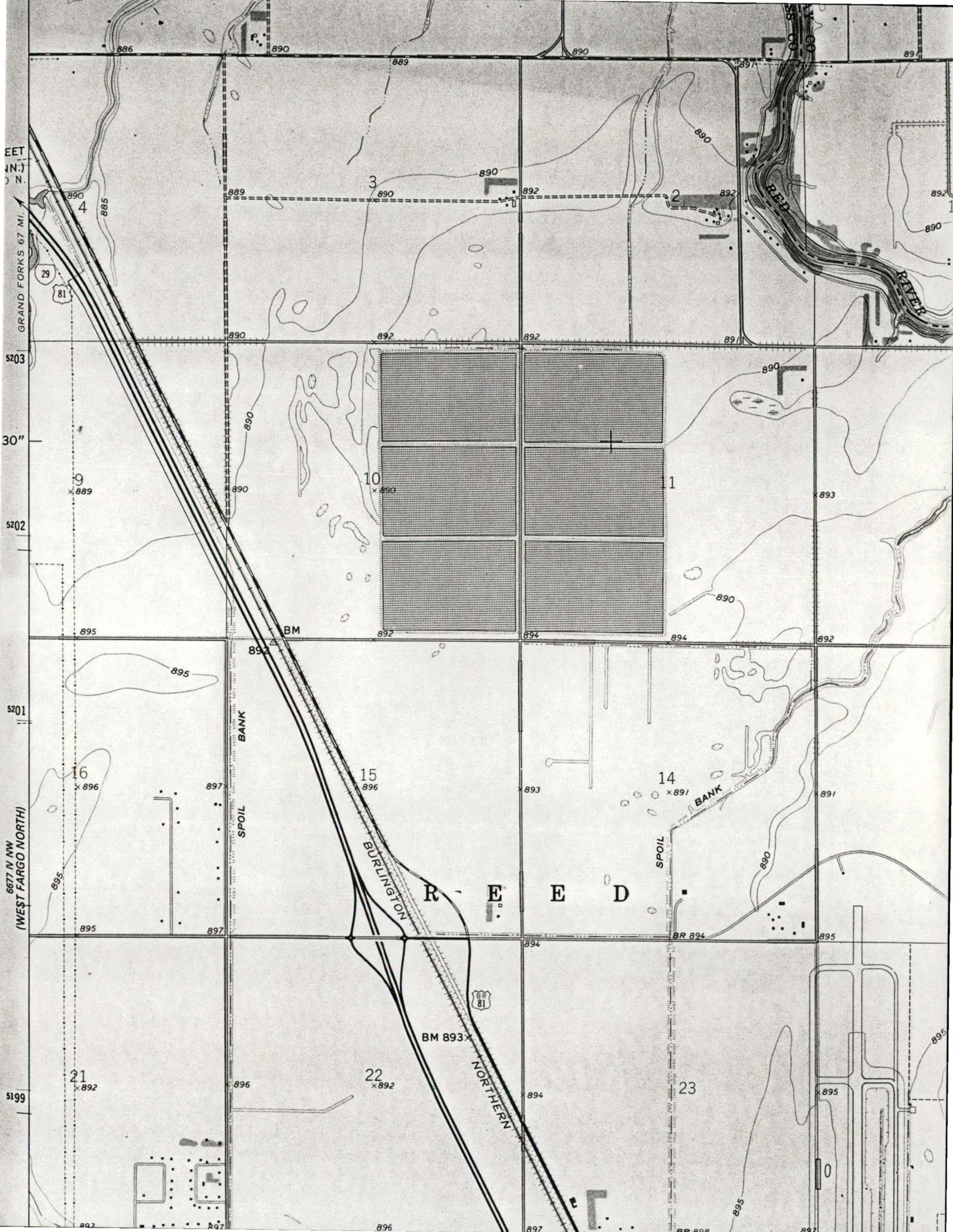
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EET (N.J.)
D N.
GRAND FORKS 67 MI.

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5202

5201

6877 N NW
(WEST FARGO NORTH)

5199

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SPOIL
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SPOIL
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BURLINGTON

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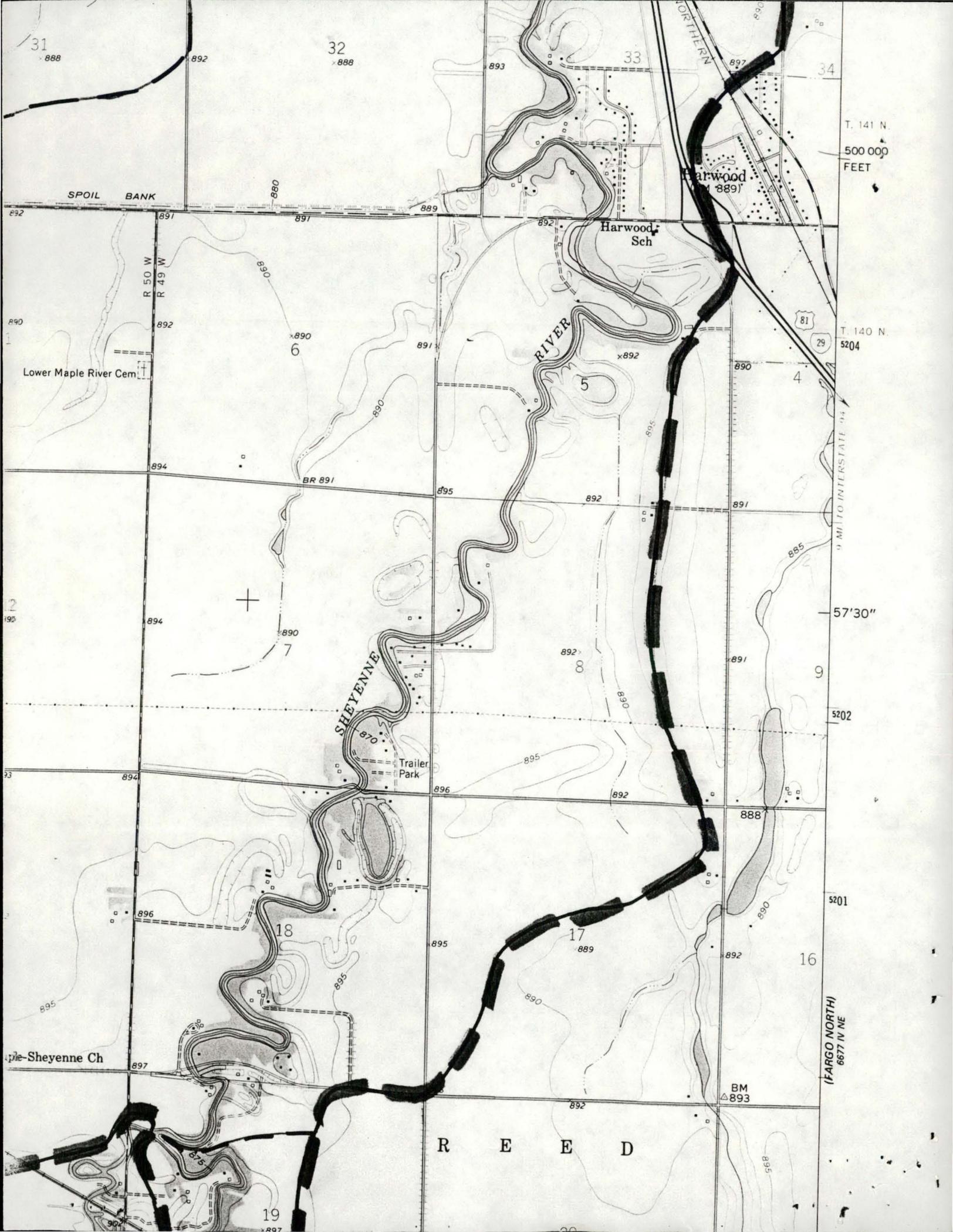
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SPOIL BANK

Harwood
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Harwood
Sch

Lower Maple River Cem

RIVER

SHEYENNE

Trailer
Park

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9 MILE TO INTERSTATE 94

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5202

Trailer
Park

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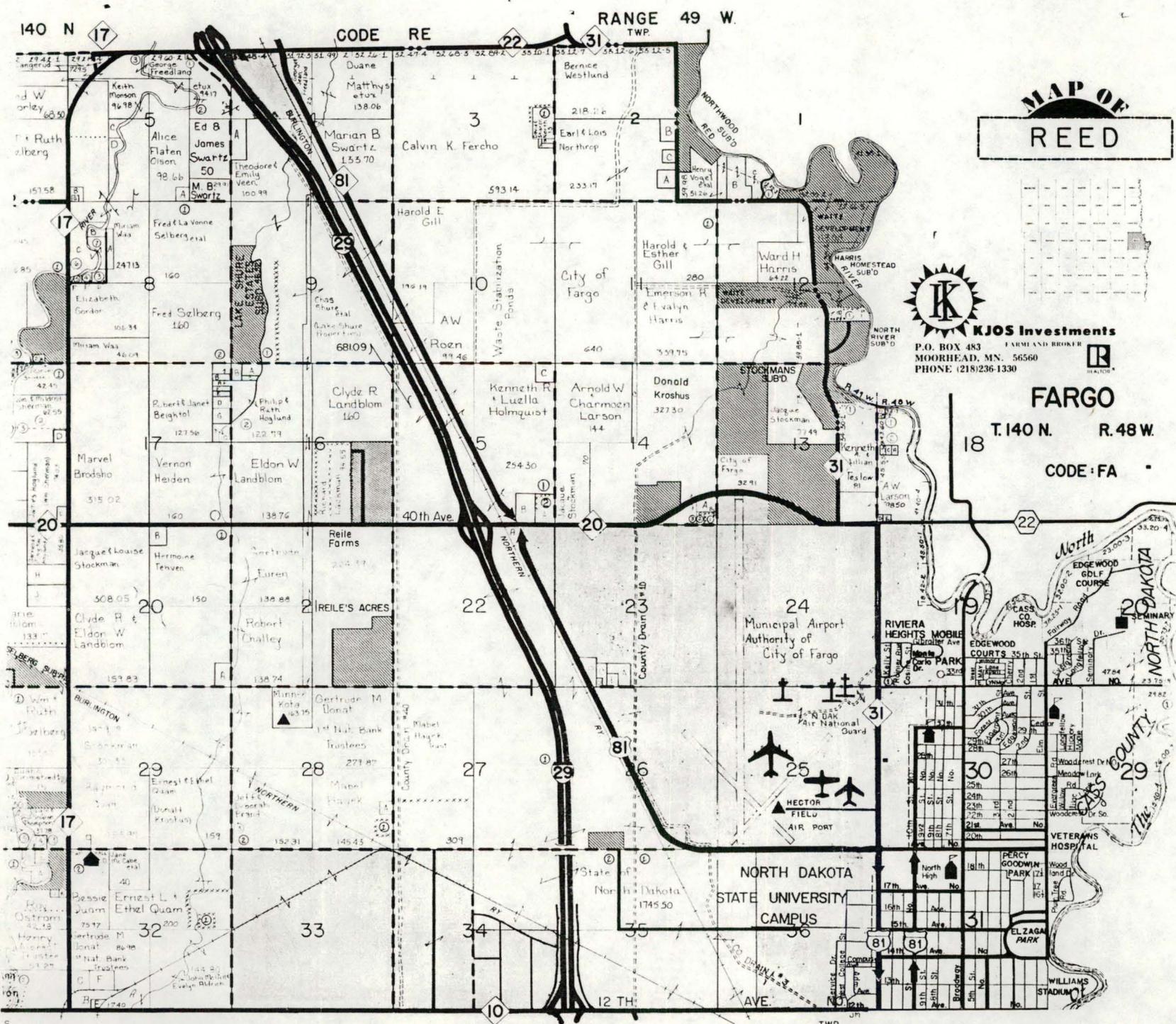
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(FARGO NORTH)
6677 IV NE

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KJOS Investments
 FARM AND BROKER
 P.O. BOX 483
 MOORHEAD, MN. 56560
 PHONE (218)236-1330

FARGO
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North Dakota State Water Commission

GOVERNOR GEORGE A. SINNER
CHAIRMAN

VERNON FAHY
SECRETARY & STATE ENGINEER

July 9, 1986

Carol M. Harbeke, Sec.-Tr.
Southeast Cass WRD
P. O. Box 2806
Fargo, ND 58108

RE: Application to Drain No. 2446

Dear Carol:

The State Engineer has determined that the enclosed drainage application is not of statewide or interdistrict significance. It is therefore, the responsibility of the Water Resource District's Board of Managers, to approve or deny the Application to Drain, pursuant to Section 61-16.1-41, North Dakota Century Code. The original application containing the determination made by the Board, should be forwarded to the State Engineer with copies to be sent to the applicant. In accordance with the Drainage Rules, Section 89-02-01-16, the Water Resource District should consider the following in evaluating a drainage permit application:

1. Whether the flow or quantity of water to be drained will overburden the watercourse into which the water will be drained.
2. Whether the drainage will flood or adversely affect the lands of lower proprietors.
3. Whether easements are required, and if so, whether easements acquired are adequate.
4. Whether consideration was given to the Water Resource Policy contained in Section 61-01-26, North Dakota Century Code, which include, but not limited to, the following:
 - a) Whether it is shown that there will be a significant decrease in the water quality resulting from the proposed drainage project.
 - b) Whether, in evaluating the entire watershed, the resultant drainage will significantly increase flooding problems in the watershed.
 - c) Whether the permanent storage of water on partials in the application area is beneficial.

- d) Whether the area's erosion potential will be increased significantly due to the drainage of the water and the subsequent lack of wetlands to retard erosion.
 - e) Whether type four and five wetlands as defined in the drainage rules exist in the application area, and if so, those wetlands shall not be drained unless overriding circumstances exist.
 - f) Whether the agricultural productivity resulting from the drainage project will increase significantly.
 - g) Whether the drainage project will decrease local flooding problems.
 - h) Whether fish and wildlife values were considered.
5. If this project requires the use of roadway right-of-way, the board or applicant should obtain written approval from the governmental entity having jurisdiction over the roadway.
6. Any other factors deemed important by the Water Resource District. You will notice this application is "after the fact," and for a clean out.

The Water Resource board shall also check to ensure that the application has been signed by the landowner(s) and filed in their name. The signature of the tenant may also be included, but is not required. I talked with Dean Lougheed on June 23, 1986 and informed him the application was not signed, so rather than delay the review process, I proceeded without it being signed.

Since Permit No. 2446 has been declared not of statewide or interdistrict significance, the water resource district is not required to hold a public hearing on the matter, however, they may do so if deemed necessary.

If you should have any questions concerning this application, please feel free to contact me.

Sincerely yours,

Lloyd E. Scott, RLS
Regulatory Section

LS:mb
Encl.

cc: Lougheed Brothers
RR #2, Box 88
Gardner, ND 58036

From: [Schumacher, John D.](#)
To: [Hempy-Mayer, Kara L](#)
Subject: Proposed Agassiz Transmission Line & Substation Project
Date: Thursday, January 8, 2026 10:41:45 AM
Attachments: [image001.png](#)

Kara Hempy-Mayer
Project Manager
Burns & McDonnell

RE: [Proposed Agassiz Transmission Line & Substation Project](#)

The North Dakota Game and Fish Department has reviewed this project for wildlife concerns. We do not believe it will have significant adverse effects on wildlife or wildlife habitat based on the information provided.

J.D. Schumacher

Resource Biologist

701.328.6321 • jdschumacher@nd.gov • gf.nd.gov

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