US Army Corps of Engineers®

Supplement
Environmental Assessment for the Middle Rio Grande Restoration Project, Bernalillo and Sandoval Counties, New Mexico

Prepared
by

U.S. ARMY CORPS OF ENGINEERS
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September 26, 2014

U.S. ARMY CORPS OF ENGINEERS
ALBUQUERQUE DISTRICT

FINDING OF NO SIGNIFICANT IMPACT
to the
SUPPLEMENT ENVIRONMENTAL ASSESSMENT
for the
MIDDLE RIO GRANDE RESTORATION PROJECT, BERNALILLO AND SANDOVAL COUNTIES, NEW MEXICO

This proposed action is to construct additional restoration features and activities for the Middle Rio Grande Restoration Project within the Pueblo of Sandia Site 1D north, including spoil of material along the levee; rehabilitation of a dump site within the Corrales Site 1A; and use of a staging area for restoration work at the San Antonio Oxbow Site 3A. With the exception of Site 1D North, all of these sites were discussed and analyzed in the original Environmental Assessment for the Middle Rio Grande Restoration Project, Bernalillo and Sandoval Counties, New Mexico dated June 2011 (EA). The proposed action would allow further restoration at these sites. This proposed action and the No Action alternative were considered in this Supplemental Environmental Assessment (SEA). If the No Action Alternative was chosen, this work would not be completed in order to benefit the ecosystem.

In order to comply with the Endangered Species Act, the Corps requested a letter amendment concurrence from the U.S. Fish and Wildlife Service for the Middle Rio Grande Bosque Restoration Project Biological Opinion (BO, dated April 15, 2011) for these actions. The Corps has determined that the proposed actions at Corrales Site 1A and Oxbow Site 3A do not have any effect on any of the listed species. The Corps has determined that the proposed action at Site 1D North has no effect on the New Mexico meadow jumping mouse, no adverse effect on the Yellow Billed Cuckoo but a potential positive benefit, and no adverse effect on the Southwestern Willow Flycatcher but a potential positive benefit. The Corps has also determined that the proposed action at Site 1D North 'may affect but is not likely to adversely modify designated Critical Habitat of the Rio Grande silvery minnow and 'may affect but is not likely to adversely affect' the minnow and would provide positive benefit to the species. Construction at Site 1D North would not occur until a letter amendment concurrence has been received. The terms and conditions in this 2011 BO will be implemented for this action.

This project is in compliance with the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470 et seq.]. Cultural resources surveys have been conducted on all of the proposed action areas. Section 106 consultation with the New Mexico State Historic Preservation Officer has been completed. The State Historic Preservation Officer concurrence to No Adverse Effect to Historic Properties determination was received on September 9, 2014.

The Clean Water Act (CWA) provides for protection of waters of the United States from impacts associated with discharges of dredged or fill material in aquatic habitats, including wetlands, as defined under Section 404 of the CWA. This proposed action is covered under the original 404(b) (1) analysis and under Nationwide 33 (Temporary Construction, Access, and Dewatering) due to the potential need to dewater at the bank of the river at Site 1D north, and Nationwide 27 (Stream and Wetland Restoration Activities) for work that would take place in the San Antonio Oxbow. An email was received from the New Mexico Environment Department stating that separate 401 State Water Quality compliance was not needed due to the water quality measures required in the Biological Opinion.

Conditions to be adhered to during the implementation of these activities includes: 1) project activities within the bosque will occur only between August 15 and April 15 of any given year, and 2) all conditions listed in the original EA will continue to be adhered to.

The planned action would result in only minor and temporary impacts on air quality, water quality, and noise levels during implementation due to heavy equipment use. The following elements have been analyzed and would not be significantly affected by the planned action: socioeconomic environment, air quality, water quality, noise levels, floodplains, riparian areas, wetlands, waters of the United States, cultural resources and biological resources. These elements were analyzed in the EA.

The planned action has been fully coordinated with Federal, tribal, and local governments with jurisdiction over the ecological, cultural, and hydrologic resources of the project area. Based upon these factors and others discussed in the original EA and this SEA, the planned action would not have a significant effect on the human environment. Therefore, an Environmental Impact Statement will not be prepared for this project.

26 Sep 14
Date

Patrick J. Dagon
Lieutenant Colonel, U.S. Army
District Commander

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SUPPLEMENT ENVIRONMENTAL ASSESSMENT
for the
Middle Rio Grande Restoration Project, Bernalillo and Sandoval Counties, New Mexico

Background

The *Middle Rio Grande Restoration Project, Bernalillo and Sandoval Counties, New Mexico Environmental Assessment* (EA) and Feasibility Study were completed in June 2011. A Biological Opinion for the project was also completed in April 2011. These documents are available at: http://www.spa.usace.army.mil/Missions/Environmental/EnvironmentalComplianceDocuments/EnvironmentalAssessmentsFONSI.aspx. The Feasibility Study and EA included an analysis of various restoration measures and alternatives to help address key hydrologic and ecological problems along the Rio Grande. Features included improving habitat quality and increasing the amount of native bosque plant communities, implementing measures to reestablish fluvial processes, creating new wetland habitat, reducing fire hazard, recreating hydraulic connections, protecting and enhancing areas of potential habitat for listed species, and creating opportunities for educational and recreational features. Alternatives including these features were proposed at 17 locations (Sites 1A, 1B, 1C, 1D, 1E, 1F, 1G, 2A, 3A, 4A, 4B, 4C, 5A, 5B, 5C, 5D, and 5E) in the bosque along the Rio Grande in Bernalillo and Sandoval Counties (Figure 1).

The challenges regarding habitat loss, a reduction in different habitat types, invasion by non-native vegetation, and changes in the hydrologic cycle and inundation were proposed to be met by the recommended plan. A Finding of No Significant Impact (FONSI) was signed on June 6, 2011; and project implementation began in November 2011.

Purpose and Need

The authority for this study was derived from a series of Congressional actions authorizing studies for projects on the Rio Grande, particularly in the Middle Rio Grande. Section 401 of the Water Resources Development Act of 1986 (Public Law 99-662) dated 17 November 1986, authorized studies in the Middle Rio Grande. Additional authorization is contained in House of Representatives Resolution 107-258, 2002. This authorization provides funds to evaluate environmental restoration, to include recreational components.

This Supplement EA (SEA) includes features that would meet the original study intent above. Some of these types of features were reduced at other sites in Reach 1 at the request of the Village of Corrales. The addition of these sites at Site 1D North allows the implementation of these features in the reach to still occur and provide the improvement of habitat quality, fluvial processes and hydraulic connections in the floodplain.

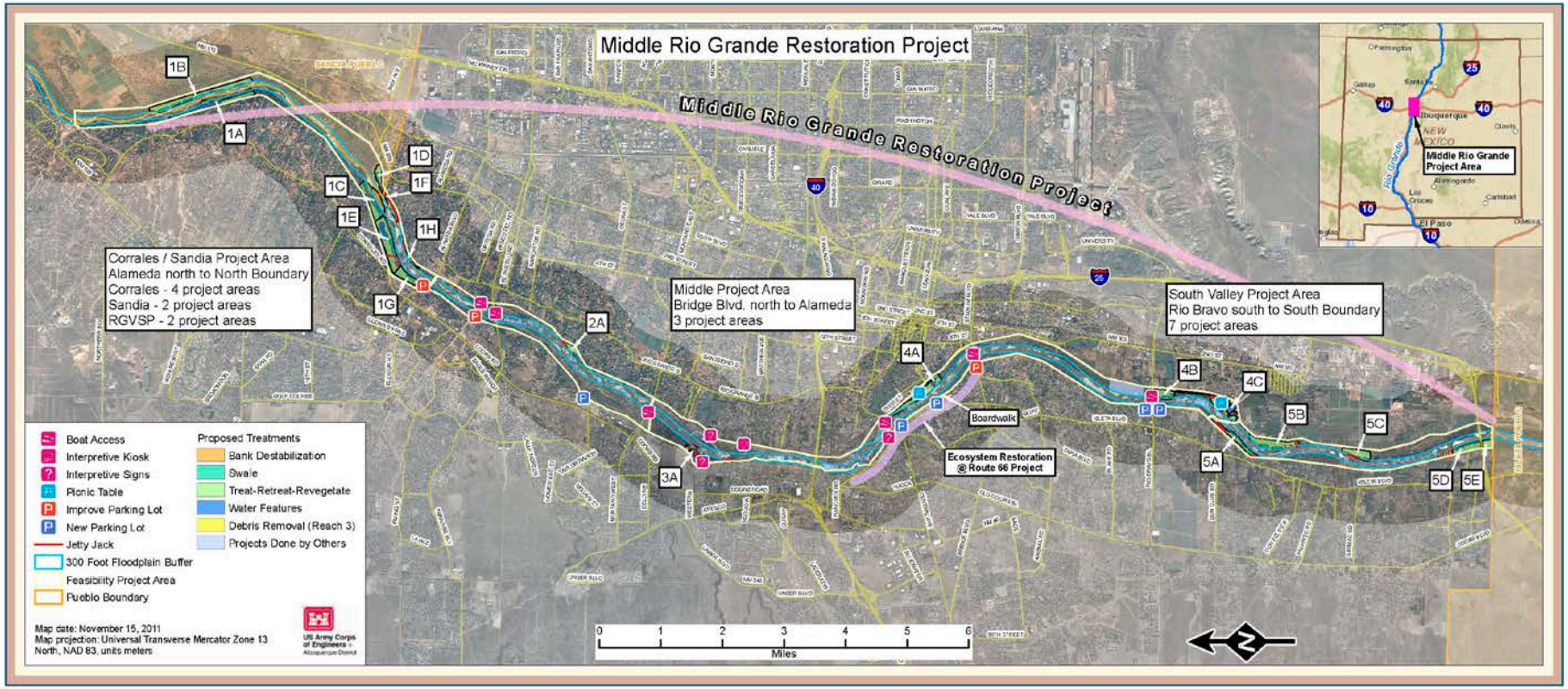

Figure 1. Middle Rio Grande Restoration Project

Public Review
Public review of the Draft Supplement Environmental Assessment occurred from August 18 to September 1, 2014. Copies were made available at the Albuquerque Main Library, Los Griegos Library, Taylor Ranch Library and Corrales Community Library. A Notice of Availability was published in the Albuquerque Journal on August 10, 2014 and an affidavit of publication was received.

Comments were received from the U.S. Fish and Wildlife Service (Service) in regard to the proposed action at Site 1D North (see Appendix B). The Service requested information in regard to temperature monitoring at the proposed terrace location in Site 1D North as well as survey data for Yellow Billed Cuckoo at that site. This information will be addressed in ongoing coordination with the Service in order to receive a letter amendment concurrence for Site 1D North. No other comments were received.

Description of Proposed Action and Alternative

Site 1D North
The proposed action is to construct additional restoration features on Pueblo of Sandia lands by expanding what is currently known as Site 1D to the north by an additional 123 acres. The original plan for Site 1D included removal of non-native vegetation and revegetation with native species of approximately 18.74 acres and excavation of two swales of 2.44 acres within the 18.74 acre area, south of the North Diversion Channel (NDC). This would be constructed at the same time as the proposed action.

During the design of Site 1D, many problems were identified that precluded the features requiring excavation and they were eliminated from the project. Instead, the opportunity to complete similar features immediately north of the area, and still within the boundary of the Pueblo of Sandia, was identified. The revised plan consists of expanding Site 1D to include the area immediately north of the NDC with the following changes: limit construction action in the area south of the NDC to treat and retreat revegetation, and include the creation of three wetland marsh/willow swale habitat features (10.5 acres) and bank terracing /wetland swale (2.2 acres), north of the NDC (Figure 2). The addition of willow swales and bank terrace in Site 1D North also replaces those features that were not constructed in Corrales at their request.

Swales and wet meadows would be constructed by excavating to the shallow groundwater which is approximately one to three feet for swales and three to five feet for wet meadows at these locations. These areas would be planted with coyote willow (*Salix exigua*) and other native riparian vegetation as described in the original EA under willow swale construction. Bank terracing would require excavation along the bank to allow inundation by flows starting at approximately 2500 cfs. Bank terracing excavation would be performed as described in the original EA. The proposed action would not alter the function or performance of the original Albuquerque Levee. The proposed action has been coordinated with and approved by the Pueblo of Sandia.

Pueblo of Sandia Spoil Locations

The material excavated from Site 1D North would be placed along the top of the engineered levee and at the top or landward toe of the spoil bank in that area as well as to the north. The material would be used to provide a better surface on top of the levee and widen it in areas. It would also be used to create turn-around areas as shown in Figure 3. The proposed action has been coordinated with and approved by the Pueblo of Sandia.

Site 1A Dump Site

Site 1A is located in the bosque within the boundaries of the Village of Corrales, at the east end of Romero Road. Within Site 1A, a historic trash dump was discovered and is located in between the levee and the river (river right), north of the foot trail (Figure 4). The dump site consists of 4 partially exposed piles. The estimated total acreage is 0.25 acres. The dump site was observed after the Romero Fire (2012). It is proposed that the remainder of the site be covered with approximately 4-6 inches of clean soil and seeded. The proposed action has been coordinated with and approved by the Village of Corrales and Middle Rio Grande Conservancy District.

Site 3A Staging Area

The proposed action includes the use of property owned by the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) and Bosque School (Figure 5) as a staging area for the construction at Site 3A, San Antonio Oxbow. This proposed staging area is located at the southwest corner of Montaño Blvd. and the river. This staging area was not previously identified but the restoration work at Site 3A was discussed in the original EA. Both property owners have been coordinated with an approved use of the site. The site would be restored to its original state once the project is completed.

Construction of all of the proposed actions above would occur only between August 15 and April 15. Construction would take place starting in the Fall of 2014 through April 15, 2016 with no work occurring between April 15-August 15 per the Migratory Bird Treaty Act. Construction would also during winter low flows.

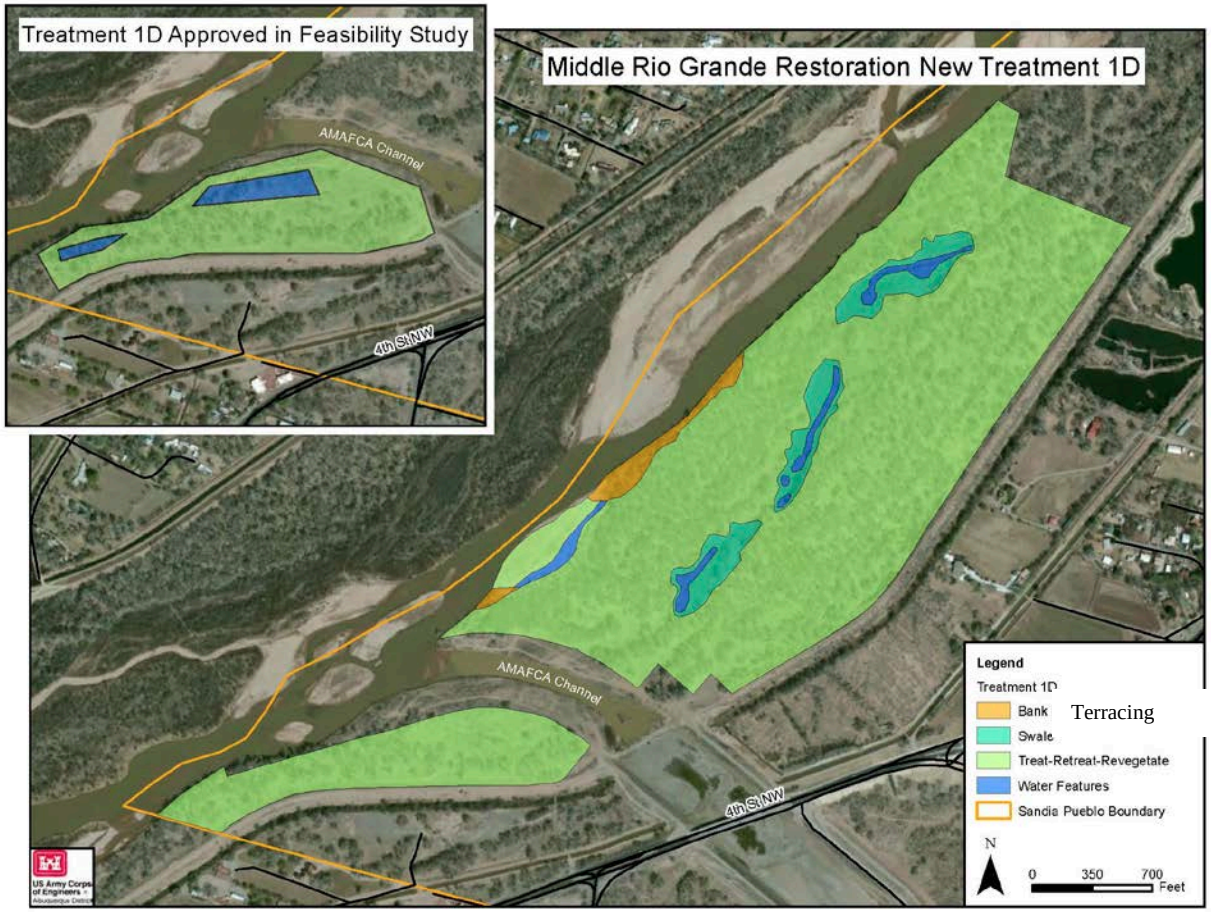

Figure 2. Proposed Action at Site 1D North

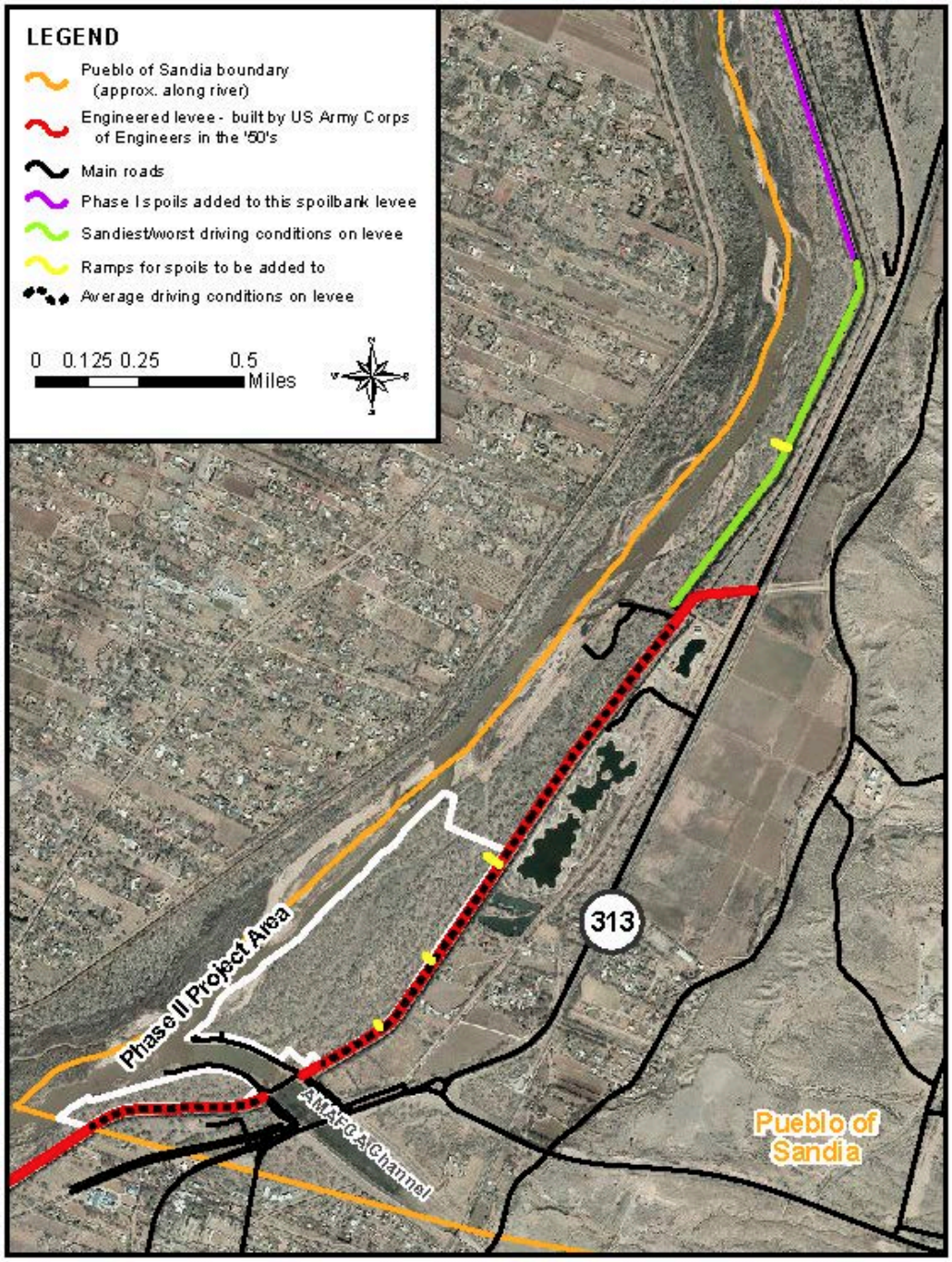

Figure 3. Proposed spoil locations at Site 1D North and north (map created by Pueblo of Sandia)

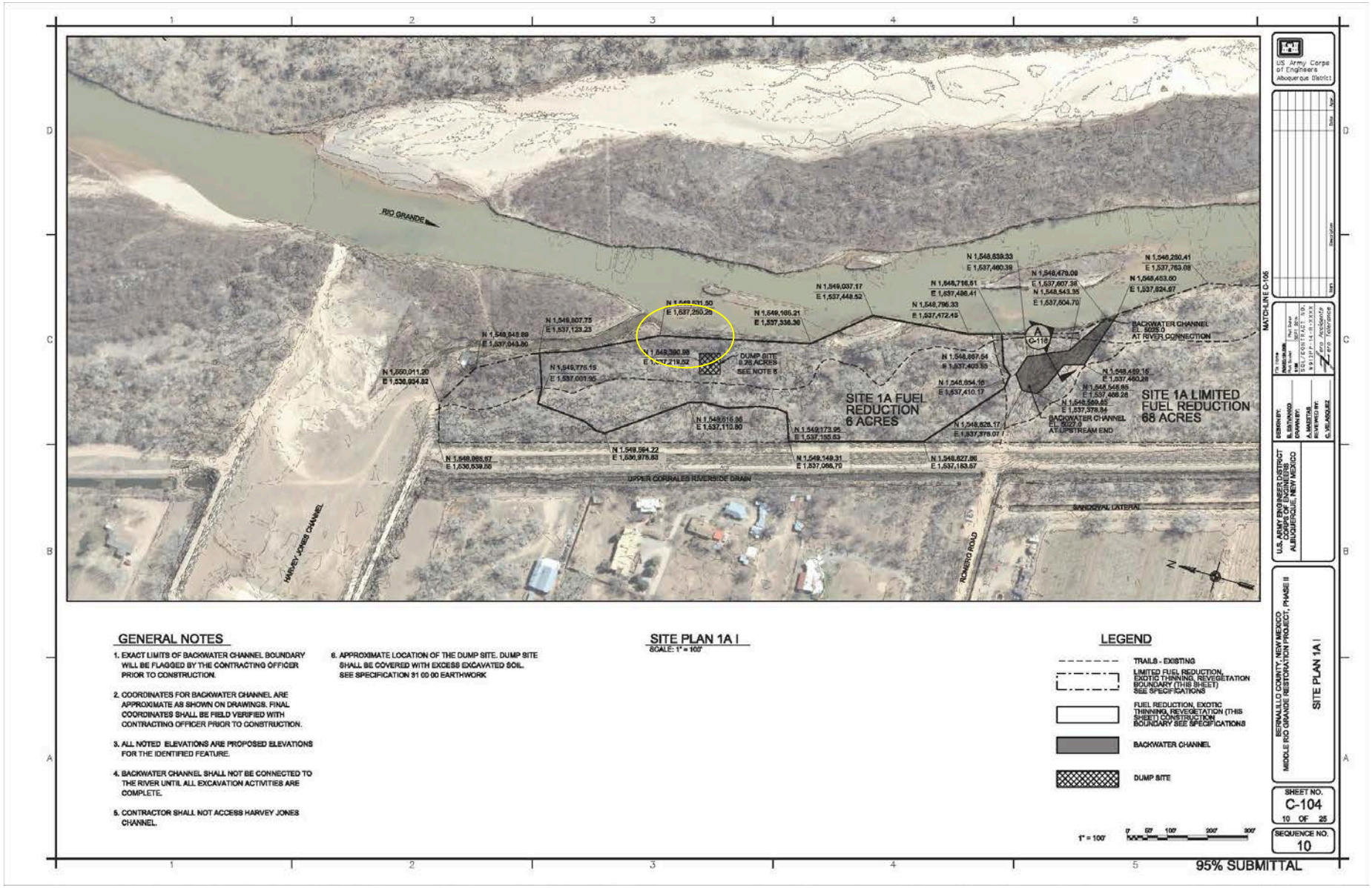

Figure 4. Site 1A Dump Site

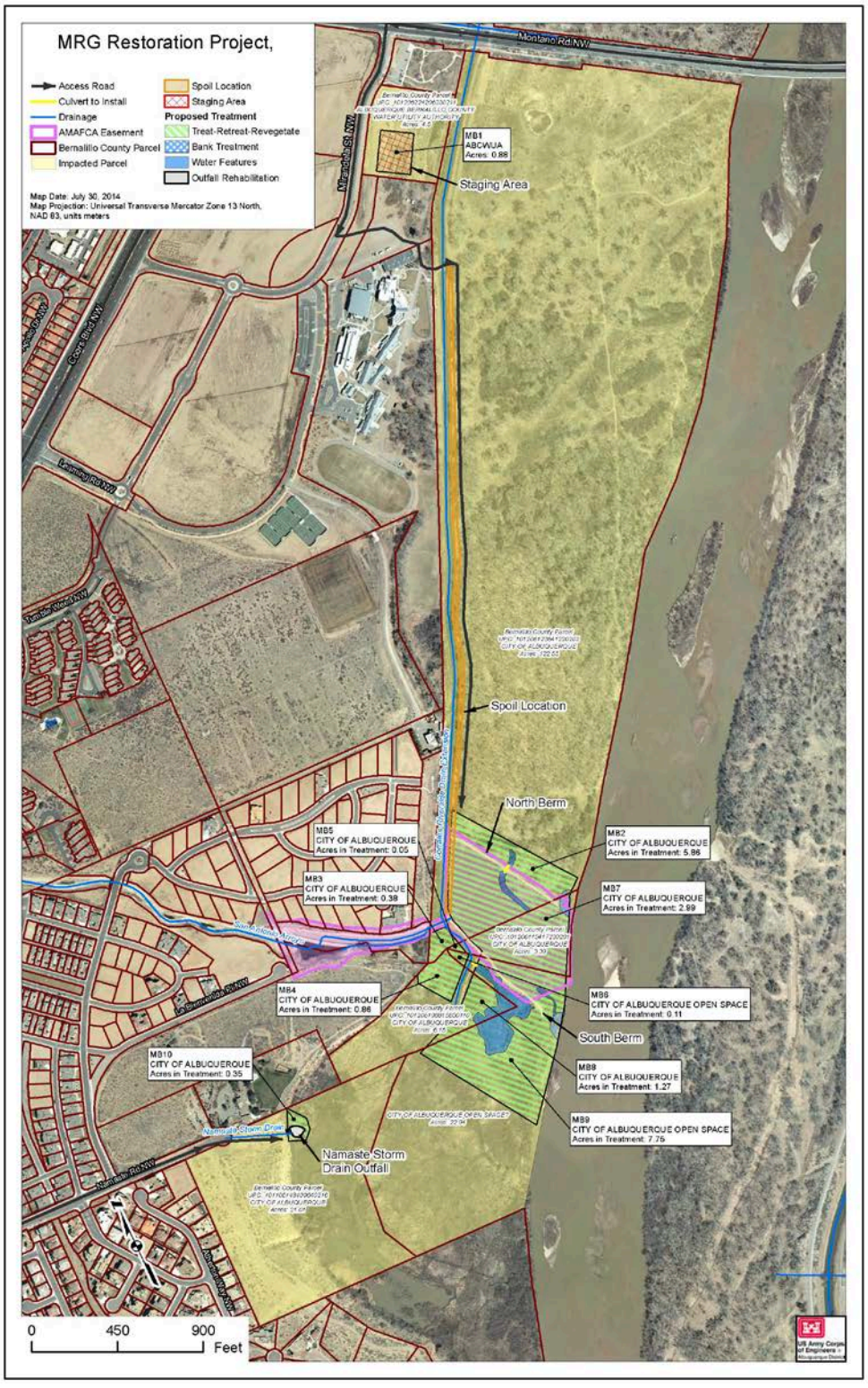

Figure 5. Proposed Staging Area on ABCWUA and Bosque School land

Existing Conditions

Site 1D North

Sites 1D North is comprised of riparian habitat with a mixture of native and non-native vegetation present. The habitat is mainly cottonwood (*Populus deltoides* ssp. *wislizenii*) and Goodding's willow (*Salix gooddingii)* overstory with an open understory. Patches of native understory exist, consisting of New Mexico olive (*Forestiera neomexicana),* coyote willow (*Salix exigua*), and some Russian olive (*Elaeagnus angustifolia*) and salt cedar (*Tamarix chinensis*).

Site 1D North includes lower topographic areas which are proposed to be utilized for willow swales and wet meadow areas. These lower topography areas are naturally closer to the ground water table. The area proposed for bank terracing is adjacent to an existing high flow channel that was previously constructed through the Middle Rio Grande Endangered Species Collaborative Program (Program). The bank terracing is proposed to match up with the high flow channel to allow for additional overbank flow connection.

Pueblo of Sandia Spoil Locations

Site 1D North spoil locations are proposed at Site 1D North and to the north along the existing engineered and spoil bank levee. The levee in this area is sandy. Vegetation along the edge of the levee includes native cottonwood (riverside) and a mixture of native and non-native vegetation (as described above) along the land side.

Site 1A Dump Site

Site 1A is comprised of riparian habitat with a mixture of native and non-native vegetation (same species as listed for Site 1D North). After the Romero fire in 2012, the dump site was partially cleaned by the Corrales Fire Department and all recyclable materials were removed. The dump site was inspected by Corps of Engineers staff in June 2014. Subsurface debris was observed during the initial clean-up. Broken glass is the predominant material remaining on the site. Other materials observed include brick, porcelain, broken cinder blocks and rusted tin. The debris is intermingled with fine fluvial deposits. The historic debris present is described under Cultural Resources below.

Site 3A Staging Area

The Site 3A proposed staging area is comprised of mostly gravel with sparse vegetation. Vegetation is comprised of weed species (*Kochia* sp. and *Salsola* sp.) (see photography of site in Appendix A).

Foreseeable Effects and Cumulative Impacts

General effects and impacts that are discussed in the original EA are also described in Table 1. A detailed discussion of proposed action specific foreseeable impacts follows.

Cultural Resources

Pursuant to 36 CFR 800.2, original scoping for the MRG Ecosystem Restoration Project was conducted in 2008. No tribal concerns were identified at that time. The Corps is continuing to work closely with the Pueblo of Sandia on Site 1D North. To date, the Corps has received no indication of tribal concerns with the project. The Corps is aware of two traditional cultural properties that occur within the Rio Grande Floodway; these would not be affected by the Site 1D North or the Site 3AOxbow staging area proposed actions. No traditional cultural properties are known to occur within or immediately adjacent to Site 1D North or the Site 3A staging area. Other than surface water flows in the Rio Grande, no Indian Trust Assets are known to occur in or adjacent to the project areas; water flows in the Rio Grande would not be affected by the project.

The Site 3A staging area and point of access is located on two land parcels: the first owned by the Albuquerque Bernalillo County Water Utility Authority and the second owned by Bosque School. The access point/route is covered with chipped gravel and is a part of Bosque School's parking lot and driveway. This eastern portion of the access point/route was surveyed by the Corps in 2013 (Everhart 2013). While the easement parcels total 7.62 acres, portions of this area cannot be used for staging. On the east side of both parcels is a wetland pond, recently enlarged, and on the west side of both parcels is the rather steep earthen bank on the east side of Mirandela Street, NW, that will be unusable for staging. Removing these areas from consideration, the APE for the proposed 2014 Site 3A staging area and access point/route is approximately 4.31 acres. On May 14, 2014, a Corps archaeologist conducted an initial site visit to the area and on May 21, 2014, performed a records search of the NM Archaeological Records Management Section's NMCRIS database. The project area has previously been surveyed for cultural resources by Marron & Associates, Inc. in 2003 (Brown and Brown 2003; NMCRIS No. 82487); their survey resulted in no archaeological sites recorded within this project area. The ground surface of the proposed staging area has been previously disturbed by grading with heavy equipment and currently small piles of dirt and rocks as well as debris such as tree stumps, wood chips, and tree limbs occur in the area.

On May 21, 2014, the Corps archaeologist conducted an intensive pedestrian re-survey covering the usable portion of the staging area, a total of 4.31 acres (Figure 5). The Corps archaeologist walked the access route during the site visit; however, since the access route is covered with chipped gravel and is a part of Bosque School's parking lot and driveway, it was not re-surveyed. One brown chert flake was observed outside of the staging area. While several archaeological sites including LA18125 (the St. Joseph site); LA33223 (the Montano Pueblo); LA138927; LA138928; and LA138929 occur in the vicinity, no other artifacts or evidence of cultural resources were observed during the survey. The Corps considers the re-survey of this staging area and site visit to the access

point/route as an addendum to the associated 2013 Corps survey report (Everhart 2013 [NMCRIS No. 127705; USACE-ABQ-2013-003]). The negative survey for the Site 3A staging area and access route is entitled *A Cultural Resources Inventory of 4.31 Acres, An Addendum to A Cultural Resources Inventory of 28.33 Acres for the MRG Ecosystem Restoration Project, Site 3A-Oxbow Project Area, Bernalillo County, New Mexico* (Everhart 2014 [NMCRIS No. 130685; USACE-ABQ-2014-005]). On June 24, 2014, the SHPO concurred with the Corps determination of "No Historic Properties Effected" for use of 2014 Site 3A-Oxbow staging area and access point/route (HPD Consultation No. 099314; Appendix A).

Site 1D has been expanded to include the area (124 acres) located north of the North Diversion Channel (Figure 2). The Corps had previously conducted an archaeological survey for this area (Walt, Marshall, and Musello 2005) while working on the Bosque Wildfire Project; the Rinconada Slough/Channel (LA146162) is located within the 1D Project Area. Section 106 consultation for the Bosque Wildfire Project and the Rinconada Slough was conducted with the SHPO in 2005 (HPD Consultation No's. 074700 and 074948; Appendix A). During that 2005 consultation, the SHPO concurred with the Corps determination that the Rinconada Slough was not eligible for listing on the National Register of Historic Places and that if fuel reduction and habitat restoration work such as clearing and grubbing with heavy equipment to remove dense dead and down vegetative debris and exotic plant species and replanting should occur in the area where the Rinconada Slough is located, it would result in No Adverse Effect to Historic Properties. The Corps continues to be of the opinion that habitat restoration activities currently planned for the 1D Project Area would result in No Adverse Effect to Historic Properties.

It was recently brought to the attention of the Corps that a historic trash dump was located in the 1A Project Area. The Corps conducted a site visit to the historic dump (Isolated Occurrence No. 1) on May 14, 2014. The next day, a Corps archaeologist conducted a NMCRIS database search and reviewed Corps project records. The 1A Project Area had been previously surveyed for cultural resources for the Corps by the University of New Mexico's Office of Contract Archeology in 2008 (Cordero, Steffgen, and Hogan 2009, Survey Area 12). The historic trash dump may have been missed during that 2008 survey due to the thick density of vegetation in the area. The trash dump was exposed and then discovered sometime after the 2012 Romero wildfire.

Similarly, fuel reduction and habitat restoration work, much of which will be conducted by operating heavy equipment in the area and replanting is planned for the 1A Project Area. IO No. 1 consists of approximately four to eight small pickup-sized loads of trash and debris covering an area of about 25 meters wide x 35 meters in length; approximately 0.87 hectare (0.25 acre). These dumped debris piles have been affected an unknown number of high water river flows in the past and they are in a water-swept, deflated, and sediment covered condition. Similar to several other illegal historic trash dumps that have been discovered in the bosque during the Bosque Wildfire and MRG Ecosystem Restoration Projects, the Corps documented the historic trash in the field and considers this historic trash dump as an isolated occurrence. The trash/debris dumps include

several hundred historic artifacts that are visible on the ground surface and include numerous fragments of clear and brown bottle glass, window glass, miscellaneous small pieces of metal, tin cans, wire nails, rolled roofing and asphalt shingles, vehicle parts such as a sparkplug and a piece of a headlamp, piles of stucco, plaster, asbestos shingles, bricks and composite blocks, and blocks of concrete and other debris. The historic trash and debris was illegally dumped in the bosque, perhaps during several dumping events. Based upon the presence of a post-1947 integral-type Auto-Lite A9 spark plug and a probable mid-1950s Clorox bottle, the artifacts in the dump date to about the 1950's. In this case, since a recreational hiking trail already traverses the trash dump, for public safety reasons (e.g., broken glass) and at the request of the village of Corrales, the project plans to cover the trash dump with approximately six inches of clean soil. The Corps is of the opinion that habitat restoration activities planned for the 1A Project Area would result in No Adverse Effect to Historic Properties.

On August 6, 2014, the Corps submitted our determinations that habitat restoration activities in the 1A and 1D Project Areas that would affect the Rinconada Slough and IO No. 1 would result in No Adverse Effect to Historic Properties. The SHPO concurred with the Corps determination of No Adverse Effect to Historic Properties for the 1A and 1D Project Areas on September 6, 2014 (HPD Consultation No. 99730, Appendix A).

Hazardous, Toxic and Radioactive Waste (HTRW)

The proposed action includes rehabilitation of a dump site at Site 1A in Corrales. The dump site has minimal risk to human health, except for injuries caused by the broken glass. There are no observed risks to aquatic and terrestrial receptors from the material observed on the surface. The site is inhibiting plant growth, due to the poor soil and disturbance (both the dump and fire). Therefore, there would be a benefit to human health and safety by rehabilitating the site.

Water Quality

The Clean Water Act (CWA) provides for protection of waters of the United States from impacts associated with discharges of dredged or fill material in aquatic habitats, including wetlands, as defined under Section 404 of the CWA. This proposed action is covered under the original 404(b) (1) analysis and under Nationwide 33 (Temporary Construction, Access, and Dewatering) due to the potential need to dewater at the bank of the river at Site 1D north, and Nationwide 27 (Stream and Wetland Restoration Activities) (see Appendix C) for work that would take place in the San Antonio Oxbow. An email was received from the New Mexico Environment Department stating that separate 401 State Water Quality compliance was not needed due to the water quality measures required in the Biological Opinion.

Threatened and Endangered Species

Southwestern Willow Flycatcher

The Endangered Southwestern Willow Flycatcher (*Empidonax traillii extimus*) (flycatcher) was discussed in the original EA. The flycatcher is known to use the Rio Grande in the project area as a migratory pathway but has not been detected at any of the

proposed sites. The closest known flycatcher breeding area is at Isleta Pueblo approximately 25 miles south of the project site. Migrants have been detected throughout the Albuquerque Reach.

There is no potential habitat for the flycatcher within the Site 1D area. The proposed willow swales and wet habitat would create 10.5 acres of potential stopover habitat for the flycatcher. Implementation would be performed between August 15 – April 15, outside of the flycatcher migratory and nesting season. Therefore, there would be no negative effect on the species by the proposed action at Site 1D North, but a potential positive benefit exists. There is no potential habitat within the Site 1D spoil areas, Site 1A Dump Site or Site 3A Staging Area. **Therefore, there would be no effect on the species by the proposed action at those sites.**

Yellow-Billed Cuckoo

The Yellow-billed Cuckoo (*Coccyzus americanus*) is proposed for listing as federally threatened along with proposed Critical Habitat. In New Mexico, the species is found in riparian zones with dense understory vegetation (USFWS 2011). In New Mexico, the species was historically rare Statewide, but common in riparian areas along the Pecos and Rio Grande, as well as uncommon to common locally along portions of the Gila, San Francisco and San Juan rivers (Bailey 1928; Hubbard 1978). Current information is inadequate to judge trends, but the species was fairly common in the mid-1980s along the Rio Grande between Albuquerque and Elephant Butte Reservoir, and along the Pecos River in southeastern New Mexico. Numbers may have increased there in response to tamarisk (*Tamarix* spp.) colonization of riparian areas formerly devoid of riparian vegetation (Howe 1986). A review on the status of the species in New Mexico concluded that the species would likely decline in the future due to loss of riparian woodlands (Howe 1986). In the eastern third of the state, nonnative salt cedar has provided habitat for approximately 1000 pairs of yellow-billed cuckoos in historically unforested areas. Efforts are underway to remove the salt cedar, through spraying and subsequent removal (Howe 2004), resulting in a substantial loss of cuckoo habitat. In the western portion of the state, damage to native riparian habitat is occurring. Along the Rio Grande, understory is being removed to reduce fire risk, and land is being converted to agriculture. Throughout New Mexico, grazing is impacting the quality of riparian habitat available to yellow-billed cuckoos (Howe 2004).

Yellow-Billed Cuckoo nests in dense riparian shrub habitat in stands typically at least 25 acres in size (Elphick et al., 2001). They arrive in New Mexico beginning in late April and early May and nest from late May through August (Howe, 1986). Mature cottonwood forest with well-developed willow understory appear to be important characteristics of habitat for Yellow-Billed Cuckoo (Buffington et al., 1997; Gaines and Laymon, 1984). While willows appear to be a preferred nest tree, the species will also nest in dense salt cedar stands (Howe, 1986). Nests are constructed of sticks and are located in dense foliage. Yellow-Billed Cuckoo may nest up to three times a year, with a clutch size of two to six eggs. They may occasionally parasitize nests of other birds, particularly when food is abundant. Yellow-Billed Cuckoos feeds primarily on caterpillars but will also consume bird eggs, frogs, lizards, berries, and other fruits (Erlich

et al., 1988). Cuckoo forages primarily in the foliage layer of shrubby and woody vegetation. Populations fluctuate markedly in response to variation in caterpillar abundance. Population declines resulting from loss or disturbance of riparian habitat have been consistently reported in the West (Finch, 1992).

Yellow-Billed Cuckoo surveys have not been conducted on the Pueblo. There is little to no potential habitat as described above. Site 1D North would be assessed in the Fall 2014 to confirm that no potential habitat exists. The project would provide potential habitat at Site 1D North. There is no potential habitat at the other sites (Site 1D Spoil Locations, Site 1A Dump Site or Site 3A Staging Area**). Therefore, there would be no negative effect to the Yellow-Billed Cuckoo or its proposed Critical Habitat.** The Site 1D North project area may provide potential habitat for the Cuckoo after construction.

New Mexico Meadow Jumping Mouse

The New Mexico meadow jumping mouse *(Zapus hudsonius luteus)* is a federally endangered species. The New Mexico meadow jumping mouse (jumping mouse) is endemic to New Mexico, Arizona, and a small area of southern. The jumping mouse is grayish-brown on the back, yellowish-brown on the sides, and white underneath. The species is about 7.4 to 10 inches (187 to 255 mm) in total length, with elongated feet (1.2 inches (30.6 mm)) and an extremely long, bicolored tail (5.1 inches (130.6 mm)). It nests in dry soils, but uses moist, streamside, dense riparian/wetland vegetation up to an elevation of about 8,000 feet. The jumping mouse appears to only utilize two riparian community types: 1) persistent emergent herbaceous wetlands (i.e., beaked sedge and reed canary grass alliances); and 2) scrub-shrub wetlands (i.e., riparian areas along perennial streams that are composed of willows and alders). It especially uses microhabitats of patches or stringers of tall dense sedges on moist soil along the edge of permanent water (ECOS, 2014). This suitable habitat is likely only found when wetland vegetation achieves full growth potential associated with perennial flowing water (E. Hein, USFWS, personal communication 4/19/2013).

Jumping mouse habitat does not exist in the proposed action area. **Therefore, there would be no affect to New Mexico meadow jumping mouse.**

Rio Grande Silvery Minnow

The Endangered Rio Grande silvery minnow (*Hybognathus amarus*) was discussed in the original EA. The minnow is known to occur within the area of Site 1D North. The proposed action at Site 1D is also within Critical Habitat of the minnow.

As discussed in the original EA, project features such as bank terracing provide potential habitat for the Rio Grande silvery minnow. In a Biological Opinion for this project dated April 15, 2011, the U.S. Fish and Wildlife Service (USFWS) provided Reasonable and Prudent Measures (RPMs) to minimize impacts of incidental take of the silvery minnow resulting from the proposed action**. These RPMs would continue to be followed during construction of the proposed features at Site 1D, mainly the bank terrace.** Also, the bank terrace would provide 2.2 acres of potential habitat for the minnow. **The Corps**

would measure temperature at different depths within the terrace feature and provide this data to the USFWS.

Therefore, the Proposed Action may affect but is not likely to adversely modify designated Critical Habitat of the Rio Grande silvery minnow. The Proposed Action may affect but is not likely to adversely affect the Rio Grande silvery minnow, and it would provide positive benefits to the species.

The other proposed actions (Site 1D spoil areas, Site 1A Dump Site, and Site 3A Staging Area) do not connect with the river and therefore, no silvery minnow habitat is present. **Therefore, there would be no effect to minnow and no modification to minnow critical habitat by the proposed actions at these sites.**

In summary, the Corps has determined that the proposed actions at site Corrales Site 1A and Oxbow Site 3A do not have any effect on any of the listed species. The Corps has determined that the proposed action at Site 1D North has no effect on the New Mexico meadow jumping mouse, no adverse effect on the Yellow Billed Cuckoo but a potential positive benefit, and no adverse effect on the Southwestern Willow Flycatcher but a potential positive benefit. The Corps has also determined that the proposed action at Site 1D North 'may affect but is not likely to adversely affect modify' designated Critical Habitat of the Rio Grande silvery minnow and 'may affect but is not likely to adversely affect' the minnow and would provide positive benefit to the species. **Concurrence on these determinations has been requested from the USFWS (Appendix B). Work proposed at Site 1D North would not be initiated until final concurrence is received from USFWS. This coordination is proposed to be completed by December 30, 2014.**

Summary of Effects
Consistent with analysis in the 2011 EA, the following Foreseeable Effects and Cumulative Impacts are anticipated.

Table 1. Summary of Effects

Existing Environment	*Foreseeable Effects*
Physiography, Geology, Soils	Short-term adverse effect on soils; Positive effect on soil moisture from water features
Hydrology and Hydraulics	No negative effects on river H&H, potential positive effects by reconnecting the floodplain
Water Quality	Short-term adverse effect during construction; Beneficial effect by water features
Air Quality and Noise	Short-term adverse effects during construction
Aesthetics	Short-term negative effects during construction with long-term positive effects
Vegetation Communities	Short-term negative effects during construction with long-term positive effects
Floodplains and Wetlands	Long –term positive effect; Minor adverse effect during construction

Fish and Wildlife	Short-term negative effects during construction with long-term positive effects
Hazardous, Toxic and Radioactive Waste	Long-term positive effects to safety. No adverse HTRW impacts.
Endangered and Protected Species	No adverse effect to: Southwestern Willow Flycatcher, Yellow-Billed Cuckoo, Rio Grande silvery minnow critical habitat or proposed Yellow-Billed Cuckoo Critical Habitat,; May affect but is not likely to adversely affect Rio Grande silvery minnow; Potential positive benefits to RGSM, Yellow-Billed Cuckoo and SWFL by high flow channel, bank terracing, riparian restoration and swale/wet meadow construction
Cultural Resources	No Adverse Effect to Historic Properties
Socioeconomic Considerations	Short-term positive effects with increase in construction jobs; Long-term positive effects on improved aesthetics, access and recreation.
Land Use and Recreational Resources	No adverse effect
Indian Trust Assets	No effect
Environmental Justice	No adverse effect
Noxious Weeds	Positive short and long term effects
Cumulative Effects	Positive effect of this project and others in the area

Best Management Practices (BMPs) there were discussed in the original EA and would be implemented under the proposed action include: (1) construction sequencing as described in Section 2; (2) sediment management; (3) equipment inspection; (4) compliance with water quality permits; (5) adherence to schedule and best management practices to avoid impacts to endangered, protected, or avian nesting species; (6) equipment cleaning prior to entering and before leaving project areas to avoid transfer of weed seed; (7) adherence to all recommendations in the Fish and Wildlife Coordination Act Report and Biological Opinion; and (8) oversight by a qualified biologist to monitor adherence to these conditions during construction.

Previously authorized projects in this area include the Ecosystem Restoration @ RT 66 Project and the Albuquerque BioPark Restoration project which were both funded under the Corps 1135 Ecosystem Restoration authority. Numerous MRGESCP projects have also been constructed in the Albuquerque Reach and north to Bernalillo. The project area is maintained according to general guidelines in the Middle Rio Grande Flood Control Acts of 1941 and 1950. It is also within the *Facilities of the Middle Rio Grande Floodway Project* which resulted in the construction of additional levees and dams between Espanola and San Marcial, NM (USACE 2002a, 2003a, and 2007b). Section 401 of the Water Resources Development Act of 1986 (Public Law 99-662) dated 17 November 1986, authorized studies I the Middle Rio Grande. Additional authorization is

contained in House of Representatives Resolution 107-258, 2002. The proposed action would not alter the function of any of these projects. Use of spoil along levee sections would be installed per design approval by the Levee Safety Inspection Officer.

No-Action Alternative
The No Action alternative has not changed from the original EA. Throughout the Middle Rio Grande Valley, the river, floodplain, and associated fish and wildlife populations would be expected, in general, to continue to experience adverse effects from new and ongoing Federal, State, and private water resource development projects. Increasing urbanization and development within the historic floodplain, moreover, would continue to eliminate remnant riparian areas located outside the levees, putting increased pressure on the habitat and wildlife in the riparian zone within the floodway. Local agencies would continue to perform maintenance of non-native vegetation as they are able, but features connecting the bosque and river would not be constructed.

Preparers and Reviewers
Ondrea Hummel, Biologist - Environmental Resources Section
William DeRagon - Environmental Resources Section, Quality Control
Julie Alcon - Environmental Resources Section, Quality Control
Gregory Everhart, Archaeologist - Environmental Resources Section
Justin Reale, Environmental Engineer – Hazardous, Toxic and Radioactive Waste Section
Bryan Estvanko, Engineer – Civil Engineering Section

Consultation and Coordination
The following entities were consulted and/or coordinated with regarding this project:
U.S. Fish and Wildlife Service
U.S. Bureau of Reclamation
State Historic Preservation Office
City of Albuquerque Open Space
Albuquerque Bernalillo County Water Utility Authority
New Mexico Interstate Stream Commission
Bosque School
Village of Corrales
Corrales Fire Department
Middle Rio Grande Conservancy District
Albuquerque Metropolitan Arroyo Flood Control Authority

Mailing List for Draft Supplement Environmental Assessment
U.S. Bureau of Reclamation, Mr. Mike Hamman, Mr. Hector Garcia
U.S. Fish and Wildlife Service, Mr. Wally Murphy
City of Albuquerque, Open Space Division, Dr. Matt Schmader
Albuquerque Bernalillo County Water Utility Authority, Mr. Rick Billings
Bosque School, Kirk Ward
Middle Rio Grande Conservancy District, Mr. Subas Shah
Pueblo of Sandia, Honorable Stuart Paisano
U.S. Environmental Protection Agency, Ms. Rhonda Smith

New Mexico Interstate Stream Commission, Ms. Grace Haggerty, Ms. Page Pegram
Village of Corrales, Mr. John Avila
Corrales Fire Department, Mr. Anthony Martinez
Albuquerque Metropolitan Arroyo Flood Control Authority, Mr. Jerry Lovato, Mr. Kurt Wagner
New Mexico Forestry Division, Ms. Daniela Roth
New Mexico Department of Game and Fish, Mr. Matt Wunder, Mr. Mike Sloane
Bernalillo County Public Works Division, Brian Kent
City of Albuquerque Public Works Department, Kenny Daggett
Ciudad Soil and Water Conservation District, Ms. Carol Moritz
New Mexico Surface Water Quality Bureau, Mr. Neal Schaeffer
The Enclave at Oxbow Home Owners Association
Oxbow Village Home Owners Association
Oxbow Park Home Owners Association
Westside Coalition of Neighborhood Associations

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Appendix A. Cultural Resources Coordination

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE NM 87109-3435

074700

June 13, 2005

Planning, Project and Program Management Division
Planning Branch
Environmental Resources Section

Rec'd 7-8-2005
CODE

Ms. Katherine Slick
State Historic Preservation Officer
New Mexico State Historic Preservation Bureau
228 East Palace Avenue, Room 320
Santa Fe, New Mexico 87501

Re: Consultation No's. 070666, 070902, 071170, 071230, 071915, and 072057

Dear Ms. Slick:

Pursuant to 36 CFR Part 800, the U.S. Army Corps of Engineers (Corps), Albuquerque District, is seeking your concurrence in our determination of "No Historic Properties Affected" for the proposed **Bosque Wildfire Project, New Mexico,** fire prevention work located on the Pueblo of Sandia Reservation. This is one in a series of fire prevention work phases being conducted in portions of the Rio Grande's *bosque* (riparian areas) that occur in the greater Albuquerque area of New Mexico (for your convenience see the brief description of our previous consultations for the Bosque Wildfire Project in the attached table). These bosque areas have high fuel loads and are in imminent danger of damage from wildfire and/or that have limited or no access for fire fighting purposes. The project is being conducted under the authority of Section 114 of the Energy and Water Appropriations Act of 2004 (Public Law 108-137).

Between October 10, 2004, and January 10, 2005, a Corps' contractor, Cibola Research Consultants, conducted a Class III cultural resources inventory of approximately 490 acres within the Pueblo of Sandia Reservation. The Cibola Research report, enclosed for your review, is entitled **A Cultural Resources Survey for the Bosque Wildfire Project - Pueblo of Sandia, Bernalillo and Sandoval Counties, New Mexico** (Cibola Research

Consultants Report No. 378; NMCRIS No. 91077). The Sandia Pueblo bosque project area is located east of the Rio Grande channel and west of the riverside drains and flood control levees, and extends to the reservation boundary on the north and the south.

The Cibola Research Consultants survey discovered 5 historic archaeological sites: LA146158 (Corrales Gauging Station), LA146160 (Irrigation Diversion Works), LA146161 (Cable-Car Platform-support), LA146162 (Rinconada Slough/Flood control Channel), and LA146163 (the Middle Rio Grande Conservancy District's [MRGCD] Corrales Siphon). None of these sites would be affected by the proposed action. The Corps agrees with Cibola Research Consultants' recommendations regarding eligibility that the first four sites are not eligible. The Corps also agrees that the MRGCD's Corrales Siphon (LA146163), constructed in 1933 and still in use today, is eligible for listing on the National Register of Historic Places under criterion c (its distinctive characteristics) and possibly under criterion a, because it is directly related to the agricultural development of the Middle Rio Grande Valley and because it symbolically represents the dedicated work of many New Mexicans in furthering the State's and MRGCD's efforts at modernizing the historic, although inefficient, acequia systems of the valley.

As noted for the previous project work areas, the Sandia Pueblo bosque is also located in an area where it is now a part of the active floodplain, and prehistorically, was a part of the meandering river channel. The area has also been previously disturbed by earth-moving activities related to the construction of flood control levees and the river-side drain and the operations and maintenance and rehabilitation thereof. Therefore, it is highly unlikely that cultural resources of significant antiquity or that would retain archaeological integrity would be found in the project area.

Activities being planned include the removal of dead and down vegetation, the removal of non-native plant species, the removal of non-essential jetty-jacks, and the restoration of disturbed areas by replanting native vegetation. Work may also include the installation of a temporary and/or permanent emergency access bridge(s) from which access to the bosque could be made possible for fire fighting purposes. Maintenance work on the flood control levees may also be necessary.

Consultation with Sandia Pueblo has been conducted and they have reviewed the enclosed Cibola Research Consultants survey

report. No traditional cultural properties are reported to occur in the immediate vicinity of the bosque project area. The Pueblo of Sandia has already initiated some vegetation removal activities to reduce the threat from wildfire. For the Bosque Wildfire Project as a whole, consultation has been conducted with Tribes with concerns in Bernalillo and Sandoval Counties; no comments regarding the proposed project activities were received.

Based on the information provided in the Cibola Research Consultants' report, the Corps is of the opinion that there would be "No Historic Properties Affected" by the implementation of the fire prevention activities proposed for Sandia Pueblo's bosque. If you have any questions or require additional information regarding the Bosque Wildfire Project, please contact Mr. Gregory Everhart, archaeologist, at (505) 342-3352 or Mr. John Schelberg, archaeologist, at (505) 342-3359.

Sincerely,

Julie A. Hall
Chief, Environmental Resources Section

confirmed w/ Phil Young. by phone the number should be LA 146162 7-12-2005 ODE

06 JUL 2005
Date

I CONCUR P. Young 07/06/05
for KATHERINE SLICK
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER

→ LA 146142 eligibility found to be NOT DETERMINED at present pending Archival research. If Avoided No Effect. otherwise depending on nature of the work per LA Site Record recommendation for treatment it will be No ADVERSE EFFECT.

Enclosures

Copy Furnished: (w/enclosure)

Honorable Stuwart Paisano
Governor, Pueblo of Sandia
481 Sandia Loop
Bernalillo, New Mexico 87004

Mr. Sam Montoya
Cultural Resources Administrator
Pueblo of Sandia
481 Sandia Loop
Bernalillo, New Mexico 87004

Mr. Don Klima, Director
Advisory Council on Historic Preservation
Office of Planning and Review
12136 W. Bayaud Ave., #330
Lakewood, Colorado 80228-2115

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE NM 87109-3435

074948

July 15, 2005

Planning, Project and Program Management Division
Planning Branch
Environmental Resources Section

Recd back 7-28-2005
GDE

Ms. Katherine Slick
State Historic Preservation Officer
New Mexico State Historic Preservation Bureau
228 East Palace Avenue, Room 320
Santa Fe, New Mexico 87501

Re: Consultation No's. 074641 and 074700

Dear Ms. Slick:

The U.S. Army Corps of Engineers (Corps), Albuquerque District, recently submitted a cultural resources survey report as part of a series of fire prevention work phases for the **Bosque Wildfire Project, New Mexico.** The report by Cibola Research Consultants covered an inventory of approximately 490 acres within the Pueblo of Sandia Reservation, entitled **A Cultural Resources Survey for the Bosque Wildfire Project - Pueblo of Sandia, Bernalillo and Sandoval Counties, New Mexico** (Cibola Research Consultants Report No. 378; NMCRIS No. 91077). The Bosque Wildfire Project is being conducted under the authority of Section 114 of the Energy and Water Appropriations Act of 2004 (Public Law 108-137).

As per your request for additional clarification regarding the effect recommendation for LA146162, the Rinconada Slough/Channel site, your concern was discussed in a telephone conversation on July 12, 2005, between Mr. Phil Young of your staff, and Mr. Gregory Everhart of the Corps (and see SHPO consultation response dated July 6, 2005, to our consultation letter dated June 13, 2005; copy attached for your convenience). Subsequent to the Young-Everhart conversation, Mr. Everhart contacted Mr. Henry Walt, the Corps' Contractor for the Bosque Wildfire cultural survey on the Sandia Pueblo Reservation, who in turn contacted Mr. Michael Marshall, who was also a primary contributor to the cultural investigation and survey report for

this project.

Mr. Walt and Mr. Marshall are both of the opinion, to the best of their knowledge based on their investigation for this site, that there is no additional archival information available regarding historic documentation or construction drawings for the Rinconada Slough/Channel site. Since it appears that there is little information or other documentary evidence available regarding historic modification and/or human use of this old river channel, the Corps would continue to agree with the Cibola Research Consultants' recommendation regarding eligibility, that LA146162 is not eligible for listing on the National Register of Historic Places.

Currently, the riparian bosque area near LA146162 is not a Bosque Wildfire project area. The Corps has no rehabilitation activities planned in the immediate vicinity of LA146162, and the area is not considered as a fire reduction-rehabilitation priority. It is, at this time, unknown if this area may be considered as a project area for future Corps' rehabilitation activities on Pueblo of Sandia Reservation land. There is a remote possibility; however, that the area within and/or near LA146162 may be added as a Bosque Wildfire project local within the next year or two. If the area is added as a project area and considering the urgency with which fire prevention and rehabilitation efforts are being conducted, there is the possibility that heavy equipment may be used for jetty-jack and vegetation clearing and removal. As with previous project areas, an effort has been made to keep equipment use to a minimum and thus far, archaeological sites (all historic earthen agricultural or flood control features) are being avoided to the maximum extent possible. Disturbance within the project areas is considered to be insignificant.

In considering the above and based on the information provided in the Cibola Research Consultants' report, the Corps is of the opinion that there would be "No Adverse Effect to Historic Properties" by the proposed action within and/or near the LA146162 site. Consultation has been conducted and project planning is being closely coordinated with Sandia Pueblo.

In regard to the other four archaeological sites discovered during the Cibola Research Consultants survey, LA146158 (Corrales Gauging Station), LA146160 (Irrigation Diversion Works), LA146161 (Cable-Car Platform-support), and LA146163 (the Middle Rio Grande Conservancy District's [MRGCD] Corrales Siphon), they will be avoided if project activities occur in the

vicinity of these sites. Therefore, the Corps is of the opinion that there will be "No Historic Properties Affected" for these four sites by the proposed action.

If you have any questions or require additional information regarding the Bosque Wildfire Project, please contact Mr. Gregory Everhart, archaeologist, at (505) 342-3352 or Mr. John Schelberg, archaeologist, at (505) 342-3359.

Sincerely,

Julie A. Hall
Chief, Environmental Resources Section

07/21/05
Date

I CONCUR

for KATHERINE SLICK
NEW MEXICO STATE HISTORIC
PRESERVATION OFFICER

Enclosures

Copy Furnished: (w/enclosures)

Mr. Don Klima, Director
Advisory Council on Historic Preservation
Office of Planning and Review
12136 W. Bayaud Ave., #330
Lakewood, Colorado 80228-2115

Bosque Wildfire, New Mexico

Summary of Consultation with the NM State Historic Preservation Officer
as of July 15, 2005

Description of Survey, from Report Title	Survey Report No., date, and NMCRIS No.	Date for Corps' Letter Transmittal	SHPO-HPD Consultation No. and Date of Concur
Corps' Burn Areas Survey - 127 Acres	COE-2004-002, April 14, 2004, NMCRIS No. 87583	23-Mar-04	070666, March 30, 2004 - SHPO Requested Additional Information
Corps' Burn Areas Survey - Additional Information Submitted		15-Apr-04	070902, April 20, 2004
Corps' Two Staging Areas Survey - 2.1 Acres	COE-2004-004, May 19, 2004, NMCRIS No. 88363	19-May-04	071170, May 27, 2004
Corps' Temporary Emergency Access Bridges Survey - 1.1 Acres	COE-2004-005, June 2, 2004, NMCRIS No. 88531	3-Jun-04	071230, June 15, 2004
Corps' Addendum to Temporary Emergency Access Bridges Survey - 3.0 Acres	COE-2004-009, July 23, 2004, NMCRIS No. 89604	10-Aug-04	071915, August 12, 2004
OCA Survey - Progress Report w/Prelim. Survey Results - Approx 1,098 Acres	OCA/UNM (Estes) No. 185-839, August 27, 2004, NMCRIS No. 89833	31-Aug-04	072057, August 31, 2004, Conditional Concur pending submittal of Final Report
Cibola Research Consultants Survey on Sandia Pueblo - 490 Acres	Cibola Research-(Walt etal) No. 378, April 1, 2005, NMCRIS No. 91077	13-Jun-05	074641 & 074700, July 6, 2005, Conditional Concur pending further clarification regarding LA146162
Cibola Research Consultants Survey on Sandia Pueblo - 490 Acres; Submittal of clarifarication regarding LA146162		15-Jul-05	*

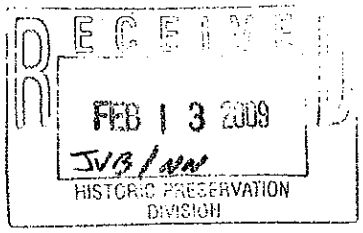
HPD Log # 074948
SHPO concur dated
07-21-2005

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE NM 87109-3435

February 12, 2009

086258

Planning, Project and Program Management Division
Planning Branch
Environmental Resources Section



Ms. Katherine Slick
State Historic Preservation Officer
New Mexico Department of Cultural Affairs
Historic Preservation Division
Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, New Mexico 87501

Rec'd 3-9-2009
GDE

Dear Ms. Slick:

Pursuant to 36 CFR Part 800, the U.S. Army Corps of Engineers (Corps), Albuquerque District, is seeking your concurrence in our determination of "No Historic Properties Effected" for the Middle Rio Grande Bosque Ecosystem Restoration Project Feasibility Study. The Corps is planning, in coordination with numerous other Federal, State, Tribal, and local entities, for the restoration project with an Area of Potential Effect (APE) that would cover approximately 668 acres within 16 parcels of the Rio Grande bosque. The project areas are in the City of Albuquerque as well as portions of Sandoval and Bernalillo Counties, New Mexico. The proposed project areas are located within the Rio Grande Floodway (the river's floodplain inside the flood control levees and riverside drains); proceeding on the north from the north side of Corrales, downstream to the south, to the north boundary of the Pueblo of Isleta. Most of the land is managed by the Middle Rio Grande Conservancy District under permit from the U.S. Bureau of Reclamation. Project land is also within the Rio Grande Valley State Park that is jointly managed by the City of Albuquerque's Open Space Division and New Mexico State Parks Division. The Corps is the Lead Federal Agency for the proposed project and the Middle Rio Grande Conservancy District (MRGCD) is the local sponsor.

The Middle Rio Grande Bosque Ecosystem Restoration Project is being conducted under the authority derived from a series of Congressional actions authorizing projects on the Rio Grande, particularly in the Middle Rio Grande Valley. These authorizations began with the basic Middle Rio Grande flood control authorization in Public Law No. 228, 77th Congress, 1st Session, H.R. 4911, dated 18 August 1941. The most recent legislation is in Section 401 of the Water Resources Development Act of 1986 (Public Law 99-662), dated 17 November 1986, that authorized the Middle Rio Grande Flood Control Project from Bernalillo to Belen, New Mexico. Additional authorization is contained in the 2002 House of Representatives Resolution 107-258.

Consulting parties in the Section 106 process for the proposed restoration project include the Corps, Bureau of Reclamation, MRGCD, the City of Albuquerque, and your office. Consistent with the Department of Defense's American Indian and Alaska Native Policy, signed by Secretary of Defense William S. Cohen on October 28, 1998, and based on the State of New Mexico Indian Affairs Department and Historic Preservation Division's 2008 Native American Consultations List, American Indian Tribes/Pueblos that have indicated they have concerns within Sandoval and Bernalillo Counties have been contacted regarding the proposed project. These tribes include the Pueblo de Cochiti, the Comanche Indian Tribe, the Hopi Tribe, the Pueblo of Isleta, the Pueblo of Jemez, the Jicarilla Apache Nation, the Pueblo of Laguna, the Navajo Nation, the Pueblo of Ohkay Owingeh, the Pueblo of San Felipe, the Pueblo of San Ildefonso, the Pueblo of Sandia, the Pueblo of Santa Ana, the Pueblo of Santa Clara, the Pueblo of Santo Domingo, the White Mountain Apache Tribe, the Pueblo of Ysleta del Sur, and the Pueblo of Zia. Scoping letters were mailed to the above tribes on October 2, 2008. To date, the Corps has received six (6) tribal responses; from the White Mountain Apache Tribe, the Hopi Tribe, the Pueblo of Laguna, the Pueblo of Santa Ana, the Navajo Nation, and the Pueblo of Isleta. None have concerns regarding the proposed project. Currently, there are no known tribal concerns and no traditional cultural properties are known to occur within or adjacent to the project areas.

The proposed project, very similar to the Corps' ongoing Bosque Wildfire and the recent Route 66 Restoration projects, is designed for the benefit of wildlife and habitat diversity. Specifically, the riparian restoration project will provide for the removal of exotic plant species, such as the invasive tamarisk and Russian olive, removal of dead and down vegetation debris, the thinning and removal of other vegetation, the removal of some Kellner jetty-jacks that are now deemed unnecessary for flood protection, the installation of high water flow channels, moist soil depressions, and rehabilitation of wetland areas, and re-vegetation of disturbed areas.

Please find enclosed for your review, the positive archaeological survey report entitled **A 667.6 Acre Cultural Resource Survey of the Rio Grande Floodway for the Middle Rio Grande Bosque Restoration Feasibility Project, Bernalillo and Sandoval Counties, New Mexico** (dated January 20, 2009, UNM-OCA Report No. 185-996; NMCRIS No. 111640) and associated documentation that covers the 16 project areas. The archaeological survey was conducted between September 2 and 8, 2008, by the University of New Mexico's Office of Contract Archeology (OCA) and the survey results are reported by Robin M. Cordero, Tracy Steffgen, and Patrick Hogan.

As noted for other Corps' projects and restoration activities located within the Rio Grande Floodway, segments of historic acequias and/or drainage ditches were abandoned when they were cut off by MRGCD construction of the valley's modern irrigation system and the flood control levees and riverside drains in the 1930s. Wide areas near the river were affected by years of flooding prior to the MRGCD work. There was a significant amount of rehabilitation of the MRGCD system that included the levees and riverside drains that was conducted by the Corps and the Bureau of Reclamation in the 1950s and 1960s. Several segments of historic acequia remnants and other structures have been documented during the above noted Corps projects; these all being in a weathered and dilapidated condition, having been subjected to river inundation and flooding. To date, no prehistoric archaeological sites have been discovered within the Rio Grande Floodway. The Corps is aware of two traditional cultural properties that occur within the Rio Grande Floodway. All National Register of Historic Places (NRHP) eligible historic properties recorded within the Rio Grande Floodway during recent Corps' projects have generally been linear, earthen ditch or drain remnants which are

relatively easily recognizable. Due to localized areas of dense vegetation, OCA's survey did not cover 26-percent of the project area; however, given the linear nature and large size of previously recorded NRHP eligible properties, as well as the generally disturbed nature of the bosque due to the river's aggredation, degradation, and relatively frequent channel movement, the Corps finds that OCA's identification efforts that covered 74-percent of the APE are sufficient for this project.

The OCA survey documented five (5) structures as historic sites: LA160891, LA160892, LA160893, LA160894, and LA160895. These five earthen structures are reported as abandoned segments of acequias or drainage ditches. There were no artifacts or other features associated with these five sites. No other artifacts or historic properties were observed during the OCA survey. As detailed below, the Corps is of the opinion that LA160891 is a non-eligible historic ditch segment and that OCA's LA160892, LA160893, LA160894, and LA160895, all earthen structures, are not archaeological sites. As a part of this documentation package, the Corps has added sponsor comments to OCA's site forms and note that LA160892, LA160893, LA160894, and LA160895 are not archaeological sites.

The proposed project plans to conduct vegetation removal and riparian restoration activities in the vicinity of the five earthen structures recorded by OCA. OCA recommended that all five sites are not eligible for nomination to the National Register of Historic Properties (NRHP). The Corps concurs with the OCA recommendation of non-eligibility for LA160891 and finds that the other four sites are natural in origin.

The Corps has reviewed UNM/OCA's LA160891 site documentation and compared that information with recent aerial imagery, the 1922 Reclamation Service maps that were prepared from data collected during 1917/1918 field surveys, and Bureau of Reclamation's 2001 GIS data on the locations of the Rio Grande channel for the years of 2001, 1992, 1972, 1962, 1949, and 1935. The Corps agrees with OCA's recommendation that LA160891 is not eligible for nomination to the NRHP. From the available information, the Corps is of the opinion that LA160891 is a field ditch that may have been associated with the Corrales Ditch/Sandoval Lateral, and therefore, may date as early as ca. 1850 to as late as the mid-1930s MRGCD construction. The Corps, however, is of the opinion that because it is not a part of a major active acequia or primary lateral, and the salient

information was recorded during survey, it is not eligible for nomination to the NRHP.

For OCA's LA160892, LA160893, LA160894, and LA160895 structures, all generally described as earthen, abandoned segments of ditches or drains, none are shown on the 1922 Reclamation Service maps. The Corps has reviewed the available mapping and river channel documentation, and the locations of these four "sites" at one time or another post-1935, were a part of the active river channel. Therefore, they are of a more recent and natural origin and are more likely remnants of naturally occurring river high flow channels/banks. In one case, for LA160895, it may also be related to fire-fighting activities that occurred a few years ago. From the available documentation, the Corps is of the opinion that these four earthen structures are the result of natural river flow or recent activity in the bosque and are therefore not historic properties and not eligible for nomination to the NRHP.

The project's proposed riparian restoration activities will occur in the vicinity of two previously recorded historic archaeological sites: LA118060, an old remnant spur line of the Atchison, Topeka and Santa Fe Railway (previously determined not eligible for nomination to the NRHP), and LA145559, documented as a northeast trending internal drain (previously determined eligible for nomination to the NRHP under criterion d of 36 CFR 60.4). Proposed work near LA118060 would not affect the railroad spur remnant. OCA (2009:29; the enclosed report) indicates that they believe Estes (2005; NMCRIS No. 89833) misidentified LA145559 as an internal drain and that it is actually a natural overflow river channel. Estes's (2005:61-63) description of the LA145559 internal drain presents an unlikely "southwest to northeast" direction and unusual dimensions for a drain ditch: "The width of the ditch varies from 17 meters at the southwestern end, and narrows to 3 meters wide near its outlet." The Corps has reviewed the 1922 Reclamation Service maps and the 2001 Bureau of Reclamation river channel documentation, and found that LA145559 is located 675-feet north of the internal drain shown on the 1922 Reclamation Service map and that LA145559 was a part of the active river channel in 1935. The Corps therefore agrees with OCA that LA145559 is in fact not an archaeological site. The documentation package includes a site update form for LA145559 with a map.

In summary, based upon the above information and available documentation, the Corps is seeking your concurrence with our determination that OCA's LA160891 field ditch is not eligible for nomination to the NRHP and that OCA's LA160892, LA160893, LA160894, and LA160895 as well as the LA145559 internal drain are in fact not archaeological sites and therefore are not eligible for nomination to the NRHP. The LA118060 railroad spur was previously determined not eligible and would not be affected by the project. Therefore, the Corps is seeking your concurrence with our determination that the proposed Middle Rio Grande Bosque Ecosystem Restoration Project would result in "No Historic Properties Effected" because there are no NRHP eligible sites within the APE.

Pursuant to 36 CFR 800.13, should previously unknown artifacts or other historic properties be encountered during construction, work would cease in the immediate vicinity of the resource. A determination of significance would be made and further consultation, on measures to avoid, minimize, and/or mitigate potential adverse effects, with your office, the Bureau of Reclamation, MRGCD, the City of Albuquerque, and with American Indian Tribes that have cultural concerns in the area will take place. If you have any questions or require additional information regarding the proposed Middle Rio Grande Bosque Ecosystem Restoration Project, please contact Gregory D. Everhart, Archaeologist at (505) 342-3352, Lance Lundquist, Archaeologist at (505) 342-3671, or myself at (505) 342-3281.

Sincerely,

John D. Schelberg

for Julie Alcon,
Chief, Environmental Resources
Section

3/4/09
Date

I CONCUR

Norman Nelson

for KATHERINE SLICK
NEW MEXICO STATE HISTORIC
PRESERVATION OFFICER

Enclosures

Copy furnished w/ enclosures:

Jeff Hansen, Archaeologist
U.S. Bureau of Reclamation
Albuquerque Area Office
555 Broadway Blvd., NE, Suite 100
Albuquerque, New Mexico 87102-2352

Ray Gomez
Middle Rio Grande Conservancy District
1931 Second Street, SW
Albuquerque, New Mexico 87105

Dr. Matt Schmader, Director
City of Albuquerque
Open Space Division
Post Office Box 1293
Albuquerque, New Mexico 87103

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

June 4, 2013

Planning, Project and Program Management Division
Planning Branch
Environmental Resources Section

96989

NMHPD Consultation No. 086258

Dr. Jeff Pappas
State Historic Preservation Officer
Historic Preservation Division
Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, New Mexico 87501

JUN 05 2013

Dear Dr. Pappas:

Pursuant to 36 CFR Part 800, the U.S. Army Corps of Engineers (Corps), Albuquerque District, is continuing our Section 106 consultation regarding the Middle Rio Grande Ecosystem Restoration Project located in the Middle Rio Grande Valley (MRG) that covers portions of Sandia Pueblo, Bernalillo County, the City of Albuquerque, and Isleta Pueblo, in central New Mexico. The Corps is seeking your concurrence in our determination of No Historic Properties Affected for restoration activities and access to the Site 3A-Oxbow project area. The project sponsor is the Middle Rio Grande Conservancy District. The Corps is currently preparing to proceed with restoration activities in the Site 3A project area, commonly known as the Oxbow. Site 3A is owned by the City of Albuquerque; the Middle Rio Grande Conservancy District has a right-of-way on the spoil bank levee/service road. Original Section 106 consultation with your office for the MRG Ecosystem Restoration Project, covering 667.6 acres in 16 parcels, was conducted in 2009 (NMHPD Consultation No. 086258, Enclosure 1). However, during the 2009 Section 106 consultation with your office, specific access routes to the Oxbow project area had not been identified.

For several years, the Corps has been consulting and coordinating with numerous Federal, state, tribal, and local entities along the MRG on ecosystem restoration and wildfire reduction projects. The current Site 3A-Oxbow project area is one of several project areas in the Rio Grande bosque being restored as part of the MRG Ecosystem Restoration Project; the Restoration Project has been removing non-native vegetation, accumulated dead and down vegetation that contributes to an excessive fuel load and therefore poses a fire hazard, and old Kellner jetty-jacks that the Corps has determined no longer necessary for flood protection purposes. Project activities include construction of earthen features for creation of wildlife habitat and replanting of native vegetation. The primary Site 3A-Oxbow project area is located in the northern portion of the Oxbow; work in this project area will involve re-shaping the river bank and creating back water channels to allow river flow to flow into the area to enhance

habitat and wet meadow formation (Enclosure 3; Report Figure 1). The project also includes access from the north to this Oxbow area on the existing spoil bank levee/service road (Enclosure 4; Report Figure 2). Areas proposed for spoiling excess earthen materials include the existing spoil bank levee/service road and then, if necessary, a second area immediately south of the Montaño Road bridge. The Restoration Project also includes the rehabilitation of the Namaste and Oxbow Storm Drain Outfall structures and access to those areas (Enclosure 5; Report Figure 3).

A portion of the Site 3A-Oxbow project area was surveyed in 2008 by Corps contract with the University of New Mexico's Office of Contract Archeology (Cordero, Steffgen and Hogan 2009; NMCRIS No. 111640). No archaeological sites or artifacts were documented by UNM-OCA during their survey. The 2008 UNM-OCA survey included the primary Oxbow project area and the Namaste Road storm drain outfall; however, due to impenetrable vegetation and/or high (river/ground water) water levels, the southern portion of the project area, including the Oxbow storm drain outfall and vegetation reduction area, was not surveyed.

On January 15 and March 7, 2013, a Corps archaeologist conducted a search of the NM Archaeological Records Management Section's (ARMS) NMCRIS database. The search found that in addition to the 2008 UNM-OCA survey, two previous archaeological surveys may have covered portions of the current project area: Brown and Brown 2003 (NMCRIS No. 82487) and Wells and Colby 2002 (NMCRIS No. 74473). However, ARMS map server alignments for these two surveys were too vague to determine if they actually covered portions of the current Site 3A-Oxbow project area.

On March 11 and March 20, 2013, a Corps archaeological survey covered two parcels totaling 28.33 acres that included the un-surveyed portion of the Site 3A project areas and access routes. The Corps survey report entitled *A Cultural Resources Inventory of 28.33 Acres for the MRG Ecosystem Restoration Project, Site 3A-Oxbow Project Area, Bernalillo County, New Mexico* is enclosed for your review (Enclosure 2). Two isolated artifacts, a single ceramic redware sherd and a single white chalcedony biface, were recorded in the field and are not considered eligible for nomination to the National Register of Historic Places under 36 CFR 60.4.

Original scoping for the MRG Ecosystem Restoration Project was conducted in 2008 (see Enclosure 1). No tribal concerns were identified at that time. Survey of the two access routes and the un-surveyed portion of the Site 3A-Oxbow project area does not constitute a change in the project description; therefore, no new scoping letters have been sent to tribes that have concerns within Bernalillo County. To date, the Corps has received no indication of tribal concerns with the project and no traditional cultural properties are known to occur within or immediately adjacent to the Site 3A-Oxbow project area.

In summary, the Corps is seeking your concurrence in our determination of No Historic Properties Affected for restoration activities and access to the Site 3A-Oxbow project area. The Corps is also seeking your concurrence in our determination that the two isolated artifacts are not eligible for nomination to the National Register.

Pursuant to 36 CFR 800.13, should previously unknown artifacts or historic properties be encountered during construction, work would cease in the immediate vicinity of the resource. A determination of significance would be made, and further consultation with your office and with tribes interested in the project area would be conducted to determine the best course of action. If there are changes to the project for future construction phases, additional survey and consultation may be required.

If you have any questions or require additional information concerning the Middle Rio Grande Ecosystem Restoration Project's Site 3A-Oxbow project area, located in the City of Albuquerque, please contact Gregory D. Everhart, archaeologist at (505) 342-3352 or me at (505) 342-3281. You may also provide comments to the above address.

Sincerely,

Julie Alcon
Chief, Environmental Resources Section

Jan 11- 2013
Date

I CONCUR _____
JEFF PAPPAS
NEW MEXICO STATE HISTORIC PRESERVATION OFFICER

Enclosures

La Luz (State Register property (SR 331)) is 300 meters north of the APE but is not identified in the consultation

Copy furnished w/Enclosures:

Mark Hungerford, Archaeologist
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555 Broadway Blvd., NE, Suite 100
Albuquerque, New Mexico 87102-2352

Ray Gomez
Middle Rio Grande Conservancy District
1931 Second Street, SW
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Dr. Matthew Schmader, Superintendent
Open Space Division
City of Albuquerque
Post Office Box 1293
Albuquerque, New Mexico 87103

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

May 29, 2014

Planning, Project and Program Management Division
Planning Branch
Environmental Resources Section

NMHPD Consultation No's. 86258 and 96989

9934

RECEIVED
JUN - 2 2014
HISTORIC PRESERVATION DIVISION

Dr. Jeff Pappas
State Historic Preservation Officer
Historic Preservation Division
Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, New Mexico 87501

Dear Dr. Pappas:

Pursuant to 36 CFR Part 800, the U.S. Army Corps of Engineers (Corps), Albuquerque District, is continuing our Section 106 consultation regarding the Middle Rio Grande (MRG) Ecosystem Restoration Project, located in the MRG Valley, that covers portions of Sandia Pueblo, Bernalillo County, the City of Albuquerque, and Isleta Pueblo in central New Mexico. The Corps is seeking your concurrence in our determination of No Historic Properties Affected for the use of a newly proposed staging area and access route to the Site 3A-Oxbow project area (see Enclosed NIAF, Figures 1 and 2). The project sponsor is the Middle Rio Grande Conservancy District. The Corps is currently preparing to proceed with restoration activities in the Site 3A project area, commonly known as the Oxbow. The newly proposed staging area and access route includes two parcels: the first owned by the Albuquerque Bernalillo County Water Utility Authority and the second owned by Bosque School (see Enclosed NIAF, Figure 2).

Pursuant to 36 CFR 800.4, the area of potential effect is the proposed staging area and access route. The access route is covered with chipped gravel and is a part of Bosque School's parking lot and driveway. While the easement parcels total 7.62 acres, portions of this area cannot be used for staging. On the east side of both parcels is a wetland type pond, recently enlarged, and on the west side of both parcels is the rather steep earthen bank on the east side of Mirandela Street NW, that will be unusable for staging. The ground surface of the proposed staging area has been previously disturbed by grading with heavy equipment and currently small piles of dirt and rocks as well as debris such as tree stumps, wood chips, and tree limbs occur in the area.

On May 14, 2014, a Corps archaeologist conducted an initial site visit to the area and on May 21, 2014, performed a NMCRIS database records search. The project area has previously been surveyed for cultural resources by Marron & Associates, Inc. in 2003 (Brown and Brown 2003; NMCRIS No. 82487); their survey resulted in no archaeological sites recorded within this project area. On May 21, 2014, the Corps archaeologist conducted an intensive pedestrian

survey covering the usable portion of the staging area, a total of 4.31 acres. The eastern portion of the access route was surveyed by the Corps in 2013 (Everhart 2013). The Corps archaeologist walked the access route during the site visit; however, since the access route is covered with chipped gravel and is a part of Bosque School's parking lot and driveway, it was not re-surveyed. One brown chert flake was observed outside of the staging area. While several archaeological sites including LA18125 (the St. Joseph site); LA33223 (the Montano Pueblo); LA138927; LA138928; and LA138929 occur in the vicinity, no other artifacts or evidence of cultural resources was observed during the survey. The Corps considers the survey of this staging area and site visit to the access route as an addendum to the associated 2013 Corps survey report (NMCRIS No. 127705; USACE-ABQ-2013-003). The Addendum for this negative survey, entitled *A Cultural Resources Inventory of 4.31 Acres, An Addendum to A Cultural Resources Inventory of 28.33 Acres for the MRG Ecosystem Restoration Project, Site 3A-Oxbow Project Area, Bernalillo County, New Mexico* is enclosed for your review (Enclosure 3).

Pursuant to 36 CFR 800.2, original scoping for the MRG Ecosystem Restoration Project was conducted in 2008. No tribal concerns were identified at that time. Survey of the newly proposed staging area and access route does not constitute a change in the project description; therefore, no new scoping letters have been sent to tribes that have concerns within Bernalillo County. The Corps is working closely with the Pueblo of Sandia on portions of this project. To date, the Corps has received no indication of tribal concerns with the project and no traditional cultural properties are known to occur within or immediately adjacent to the Site 3A-Oxbow project area.

In summary, the Corps is seeking your concurrence in our determination that use of a newly proposed staging area and access route to the Site 3A-Oxbow project area would result in No Historic Properties Affected. The single isolated artifact, located outside of the project area was documented in the field exhausting its research potential and is not considered eligible for listing on the National Register of Historic Places; the Corps is seeking your concurrence with that determination.

Pursuant to 36 CFR 800.13, should previously unknown artifacts or historic properties be encountered during construction, work would cease in the immediate vicinity of the resource. A determination of significance would be made, and further consultation with your office and with tribes interested in the project area would be conducted to determine the best course of action. If there are changes to the project for future construction phases, additional survey and consultation may be required.

If you have any questions or require additional information concerning the Middle Rio Grande Ecosystem Restoration Project's Site 3A-Oxbow project area's new staging area and access route, located within the City of Albuquerque, please contact Gregory D. Everhart,

Archaeologist at (505) 342-3352 or me at (505) 342-3281. You may also provide comments to the above address.

Sincerely,

Gregory D Everhart

Acting for Julie A. Alcon
Chief, Environmental Resources Section

June 24, 2014
Date

I CONCUR for

John R Eddy

JEFF PAPPAS
NEW MEXICO STATE HISTORIC
PRESERVATION OFFICER

Enclosures

Copy furnished w/Enclosures:

Mr. Ray Gomez
Middle Rio Grande Conservancy District
1931 Second Street SW
Albuquerque, New Mexico 87105

Dr. Matthew Schmader, Superintendent
Open Space Division
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

Mark Hungerford, Archaeologist
U.S. Bureau of Reclamation
Albuquerque Area Office
555 Broadway Boulevard NE, Suite 100
Albuquerque, New Mexico 87102-2352

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE, NM 87109-3435

August 6, 2014

99730

Planning, Project and Program Management Division
Planning Branch
Environmental Resources Section

NMHPD Consultation No's. 74700, 74948, 86258, and 96989

Dr. Jeff Pappas
State Historic Preservation Officer
Historic Preservation Division
Bataan Memorial Building
407 Galisteo Street, Suite 236
Santa Fe, New Mexico 87501

Rec'd 9-9-2014
GDE

Dear Dr. Pappas:

Pursuant to 36 CFR Part 800, the U.S. Army Corps of Engineers (Corps), Albuquerque District, is continuing our Section 106 consultation regarding the Middle Rio Grande (MRG) Ecosystem Restoration Project, located in the MRG Valley, that covers portions of Sandia Pueblo, Bernalillo and Sandoval Counties, and the City of Albuquerque in central New Mexico. The Corps is seeking your concurrence in our determination of No Adverse Effect to Historic Properties for construction activities that would affect two historic properties, the Rinconada Slough/Channel (LA146162) and a recently discovered historic trash dump, both located within the Middle Rio Grande Floodway's bosque (Figures 1 - 4). The project sponsors for Phase 2 of this habitat rehabilitation project are the Middle Rio Grande Conservancy District and the Pueblo of Sandia. The Corps is currently preparing to proceed with restoration activities that have the potential to affect historic properties in the Site 1A and 1D project areas. The Rinconada Slough/Channel (LA146162) is on land owned by the Pueblo of Sandia and the historic trash dump is located near Corrales.

The Corps had previously conducted an archaeological survey for the area that is now the 1D Project Area (Walt, Marshall, and Musello 2005) and conducted Section 106 consultation regarding the Rinconada Slough with your office in 2005 while working on the Bosque Wildfire Project (HPD Consultation No's. 074700 and 074948). The Corps is continuing to coordinate this project with the Pueblo of Sandia. During that 2005 consultation, your office concurred with our determination that the Rinconada Slough was not eligible for listing on the National Register of Historic Places and that if fuel reduction and habitat rehabilitation work such as clearing and grubbing with heavy equipment to remove dense dead and down vegetative debris and exotic plant species and replanting should occur in the area where the Rinconada Slough is located it would result in No Adverse Effect to Historic Properties. For the current MRG Ecosystem Restoration Project, Project Area 1D has been expanded to include the area located north of the North Diversion Channel (124 acres) where the Rinconada Slough is located (Figures 1 and 2). Pursuant to 36 CFR 800.4, the area of potential effect is the 1D Project Area. The current project includes clearing and grubbing in and near the Rinconada Slough as well as habitat rehabilitation

activities such as the construction of water features and swales that would occur in the 1D Project Area but away from the Rinconada Slough (Figure 2). The Corps therefore, is verifying your concurrence with our determination that habitat rehabilitation work in the 1D Project Area would result in No Adverse Effect to Historic Properties.

Pursuant to 36 CFR 800.4, the area of potential effect for the 1A Project Area is 6.0 acres (Figure 4). Similarly, fuel reduction and habitat rehabilitation work, much of which will be conducted by operating heavy equipment in the area and replanting is planned for this project area. It was recently brought to the attention of the Corps that a historic trash dump was located in the 1A Project Area. The Corps conducted a site visit to the historic dump (Isolated Occurrence No. 1) on May 14, 2014. The next day after the site visit, a Corps archaeologist conducted a NMCRIS database search and reviewed Corps project records. The 1A Project Area had been previously surveyed for cultural resources for the Corps by the University of New Mexico's Office of Contract Archeology in 2008 (Cordero, Steffgen, and Hogan 2009, Survey Area 12 [Figure 2]; Figures 3 and 4). The historic trash dump may have been missed during that 2008 survey due to the thick density of vegetation in the area. The trash dump was exposed and then discovered sometime after the 2012 Romero wildfire. After the fire, the dump was partially cleaned by the Corrales Fire Department and all recycled materials were removed.

IO No. 1 consists of approximately 4 to 8 small pickup-sized loads of trash and debris covering an area of about 25meters wide x 35 meters in length; approximately 0.87 hectare (0.25 acre). These dumped debris piles have been affected an unknown number of high water river flows in the past and they are in a water-swept, deflated, and sediment covered condition. Similar to several other illegal historic trash dumps that have been discovered in the Bosque during the Bosque Wildfire and MRG Ecosystem Restoration Projects, the Corps documented the historic trash in the field and considers this historic trash dump as an isolated occurrence. The trash/debris dumps include several hundred historic artifacts that are visible on the ground surface and include numerous fragments of clear and brown bottle glass, window glass, miscellaneous small pieces of metal, tin cans, wire nails, rolled roofing and asphalt shingles, vehicle parts such as a sparkplug and a piece of a headlamp, piles of stucco, plaster, asbestos shingles, bricks and composite blocks, and blocks of concrete and other debris (Table 1 and Photographs). The historic trash and debris was illegally dumped in the Bosque, perhaps during several dumping events. Based upon the presence of a post-1947 integral-type Auto-Lite A9 spark plug and a probable mid-1950s Clorox bottle, the artifacts in the dump date to about the 1950's. In this case, since a recreational hiking trail already traverses the trash dump, for public safety reasons (e.g., broken glass) and at the request of the village of Corrales, the project plans to cover the trash dump with approximately 6 inches of clean soil. The Corps is seeking your concurrence that operating heavy equipment in the 1A Project Area for fuel reduction and replanting activities, and covering IO No. 1 with soil, would result in No Adverse Effect to Historic Properties.

Pursuant to 36 CFR 800.2, original scoping for the MRG Ecosystem Restoration Project was conducted in 2008. No tribal concerns were identified at that time. No new scoping letters have been sent to tribes that have concerns within Bernalillo and Sandoval Counties. The Corps is working closely with the Pueblo of Sandia on portions of this project. To date, the Corps has received no indication of tribal concerns with the project and no traditional cultural properties are known to occur within or immediately adjacent to the Phase 2 project areas.

In summary, the Corps is reconfirming your 2005 concurrence in our determination that using heavy equipment for fuel reduction and habitat rehabilitation work and planting in the 1D Project Area that will affect the Rinconada Slough, would result in No Adverse Effect to Historic Properties. The Corps is also seeking your concurrence that using heavy equipment for fuel reduction and habitat rehabilitation work and planting that will be conducted in the 1A Project Area and covering IO No. 1 with soil, would result in No Adverse Effect to Historic Properties.

Pursuant to 36 CFR 800.13, should previously unknown artifacts or historic properties be encountered during construction, work would cease in the immediate vicinity of the resource. A determination of significance would be made, and further consultation with your office and with tribes interested in the project area would be conducted to determine the best course of action. If there are changes to the project for future construction phases, additional survey and consultation may be required.

If you have any questions or require additional information concerning the Middle Rio Grande Ecosystem Restoration Project's Site 1A and 1D project areas, please contact Gregory D. Everhart, Archaeologist at (505) 342-3352 or me at (505) 342-3281. You may also provide comments to the above address.

Sincerely,

Andrea Hummel

for Julie A. Alcon
Chief, Environmental Resources Section

I Concur John A Eck for Jeff Pappas
New Mexico State Historic Preservation Officer

Date Aug 6 2014
? Aug. - sic
= Sept.
GDE

Enclosures

Copy furnished w/Enclosures:

Mr. Ray Gomez
Middle Rio Grande Conservancy District
1931 Second Street SW
Albuquerque, New Mexico 87105

Dr. Matthew Schmader, Superintendent
Open Space Division
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

Mr. Mark Hungerford, Archaeologist
U.S. Bureau of Reclamation
Albuquerque Area Office
555 Broadway Blvd. NE, Suite 100
Albuquerque, New Mexico 87102

References.

Cordero, Robin M., Tracy Steffgen, and Patrick Hogan

2009 A 667.6 Acre Cultural Resources Survey of the Rio Grande Floodway for the Middle Rio Grande Bosque Restoration Feasibility Project, Bernalillo and Sandoval Counties, New Mexico. UNM-OCA Report No. 185-996 (NMCRIS No. 111640). University of New Mexico, Office of Contract Archeology. Albuquerque. Prepared for the U.S. Army Corps of Engineers, Albuquerque District, Albuquerque.

Walt, Henry, Michael Marshall, and Chris Musello

2005 A Cultural Resources Survey for the Bosque Wildfire Project – Pueblo of Sandia, Bernalillo and Sandoval Counties, New Mexico. Report No. 378 (NMCRIS No. 91077). Cibola Research Consultants, Corrales, New Mexico. Prepared for the Pueblo of Sandia and the U.S. Army Corps of Engineers, Albuquerque District, Albuquerque.

NMCRIS INVESTIGATION ABSTRACT FORM (NIAF)

1. NMCRIS Activity No.: 130685	2a. Lead (Sponsoring) Agency: U.S. Army Corps of Engineers, Albuquerque District	2b. Other Permitting Agency(ies):	3. Lead Agency Report No.: USACE-ABQ-2014-005

4. Title of Report: A Cultural Resources Inventory of 4.31 Acres, An Addendum to A Cultural Resources Inventory of 28.33 Acres for the MRG Ecosystem Restoration Project, Site 3A-Oxbow Project Area, Bernalillo County, New Mexico

Author(s) Gregory D. Everhart

5. Type of Report
X Negative ☐ **Positive**

6. Investigation Type
☐ Research Design **X** Survey/Inventory ☐ Test Excavation ☐ Excavation ☐ Collections/Non-Field Study
☐ Overview/Lit Review ☐ Monitoring ☐ Ethnographic study ☐ Site specific visit ☐ Other

7. Description of Undertaking (what does the project entail?):
Archaeological survey of 4.31 acres covering a proposed staging area. This addendum survey is associated with NMCRIS 127705 and NMCRIS 111640.

8. Dates of Investigation:
from: May 14, 2014 to: May 23, 2014

9. Report Date: May 28, 2014

10. Performing Agency/Consultant:
U.S. Army Corps of Engineers, Albuquerque District
Principal Investigator: Gregory D. Everhart
Field Supervisor: Gregory D. Everhart
Field Personnel Names: Gregory D. Everhart

11. Performing Agency/Consultant Report No.:
USACE-ABQ-2014-005

12. Applicable Cultural Resource Permit No(s):
NM-14-193

13. Client/Customer (project proponent):
Contact:
Address:
Phone: ( )

14. Client/Customer Project No.:

15. Land Ownership Status ***(Must be indicated on project map):***

Land Owner	Acres Surveyed	Acres in APE
Albuquerque Bernalillo County Water Utility Authority	2.96	2.96
Bosque School	1.35	1.35
TOTALS	4.31	4.31

16 Records Search(es):

Date(s) of ARMS File Review May 21, 2014	**Name of Reviewer(s) Gregory D. Everhart**	
Date(s) of NR/SR File Review May 21, 2014	**Name of Reviewer(s) Gregory D. Everhart**	
Date(s) of Other Agency File Review	**Name of Reviewer(s)**	**Agency**

17. Survey Data:

a. Source Graphics ☐ **NAD 27** **X NAD 83**

X USGS 7.5' (1:24,000) topo map ☐ **Other topo map, Scale:**

X GPS Unit **Accuracy X<1.0m** ☐**1-10m** ☐ **10-100m** ☐**>100m**

b. USGS 7.5' Topographic Map Name **USGS Quad Code**

Los Griegos, NM	35106-B6

c. County(ies): Bernalillo

17. Survey Data (continued):

d. Nearest City or Town: Albuquerque

e. Legal Description:

Township (N/S)	Range (E/W)	Section	¼ ¼ ¼
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Projected legal description? Yes [ ] , No [ ] **Unplatted [X]**

f. Other Description (e.g. well pad footages, mile markers, plats, land grant name, etc.):

The project area is located within an unplatted, northwest portion of the Town of Albuquerque Land Grant and (to the north) the adjacent and incomplete portions of Sections 25 and 36, T.11 N, R.2 E (see USGS Los Griegos, NM 7.5-Minute quadrangle map); and near the southwest corner of the Elena Gallegos Land Grant.

18. Survey Field Methods:

Intensity: X 100% coverage ☐ <100% coverage

Configuration: X block survey units ☐ linear survey units (l x w): ☐ other survey units (specify):

Scope: X non-selective (all sites recorded) ☐ selective/thematic (selected sites recorded)

Coverage Method: X systematic pedestrian coverage ☐ other method (describe)

Survey Interval (m): 10 Crew Size: 1 Fieldwork Dates: May 21, 2014

Survey Person Hours: 1 Recording Person Hours: 0.5 Total Hours: 1.5

Additional Narrative: The intensive pedestrian survey was conducted by walking linear transects spaced less than 15 meters apart.

19. Environmental Setting (NRCS soil designation; vegetative community; elevation; etc.): The area along the western margin of the bosque and west of the Corrales Riverside Drain is reported as occasionally flooded Vinton and Brazito soils. Vegetation in the proposed staging area immediately south of the Montano Road river bridge and north of Bosque School is a disturbed area with a few cottonwood trees, some tamarisk, and various grasses and weeds.

20. **a. Percent Ground Visibility: 80 b. Condition of Survey Area (grazed, bladed, undisturbed, etc.): The proposed staging area is mostly disturbed from numerous modern construction type activities.**

21. CULTURAL RESOURCE FINDINGS ☐ Yes, See Page 3 X No, Discuss Why: The newly proposed staging area and access route to the Site 3A Oxbow project area, located south of Montano Blvd and adjacent to and north of Bosque School, has previously been disturbed. The ground surface of the proposed staging area has been previously disturbed by grading with heavy equipment and currently debris such as tree stumps, wood chips, and tree limbs occur in the area. Parts of the area have been leveled by blading. A remnant pile of rocks in the area appears to be the type and size of rock used for filling gabion baskets, perhaps for use as rip-rap in the construction of the nearby, larger Montaño Bridge a number of years ago; this area may have been used for staging for that project. The area was a wooded bosque until July 2005 when development of the general area began and removal of the majority of the trees in this area was initiated, and with the 2007 construction of local access roads to serve Bosque School, as evidenced by Google Earth historic imagery.	
22. Required Attachments (check all appropriate boxes): X USGS 7.5 Topographic Map with sites, isolates, and survey area clearly drawn X Copy of NMCRIS Mapserver Map Check ☐ LA Site Forms - new sites (*with sketch map & topographic map*) ☐ LA Site Forms (update) - previously recorded & un-relocated sites (*first 2 pages minimum*) ☐ Historic Cultural Property Inventory Forms X List and Description of isolates, if applicable ☐ List and Description of Collections, if applicable	23. Other Attachments: X Photographs and Log ☐ Other Attachments *(Describe)*:
24. I certify the information provided above is correct and accurate and meets all applicable agency standards. Principal Investigator/Responsible Archaeologist: Gregory D. Everhart Signature Gregory D. Everhart Date 5-28-2014 Title (if not PI):	
25. Reviewing Agency: U.S. Army Corps of Engineers, Albuquerque District Reviewer's Name/Date [illegible] 5/28/14 Accepted (X) Rejected ( ) Tribal Consultation (if applicable): X Yes ☐ No	26. SHPO Reviewer's Name/Date: HPD Log #: SHPO File Location: Date sent to ARMS:

CULTURAL RESOURCE FINDINGS

[fill in appropriate section(s)]

1. NMCRIS Activity No.:	2. Lead (Sponsoring) Agency:	3. Lead Agency Report No.:
130685	U.S. Army Corps of Engineers, Albuquerque District	USACE-ABQ-2014-005

SURVEY RESULTS:

Sites discovered and registered: 0
Sites discovered and NOT registered: 0
Previously recorded sites revisited (*site update form required*): **0**
Previously recorded sites not relocated *(site update form required):* 0
TOTAL SITES VISITED: 0
Total isolates recorded: 1 **Non-selective isolate recording?** ☐
Total structures recorded (*new and previously recorded, including acequias*): **0**

MANAGEMENT SUMMARY: This report is a part of the extensive Middle Rio Grande (MRG) Ecosystem Restoration Project located in the MRG Valley that covers portions of Sandia Pueblo, Bernalillo County, the City of Albuquerque, and Isleta Pueblo, in central New Mexico. The original archaeological survey for the project was completed by UNM-OCA (Cordero, Steffgen and Hogan 2009; NMCRIS No. 111640). This negative survey report is an Addendum to the more recent Corps survey NMCRIS No. 127705 (Everhart 2013). The current project includes the newly proposed staging area and access route to the Project's Site 3A-Oxbow project area. The ground surface of the proposed staging area and access route has been disturbed in the past. The proposed access point from the staging area connects with the access route on the existing spoil bank levee/service road as noted in the 2013 Corps survey report that is specific to this 3A-Oxbow project area, at a point where there is a culvert crossing of the Lower Corrales Riverside Drain immediately north and east of Bosque School.

Pursuant to 36 CFR 800.4, the area of potential effect is the proposed staging area and access route; the usable portion of the staging area is a total of 4.31 acres. While the two easement parcels total 7.62 acres (the first, on the north, owned by the Albuquerque Bernalillo County Water Utility Authority [4.5 acres], and the second, on the south, owned by Bosque School [3.12 acres]; see Figure 2) portions of this area cannot be used for staging. On the east side of both parcels is a wetland type pond, recently enlarged, and on the west side of both parcels is the rather steep earthen bank on the east side of Mirandela Street, NW, that is unusable for staging. The ground surface of the proposed staging area has been previously disturbed by grading with heavy equipment and currently debris such as piles of dirt and rock, tree stumps, wood chips, and tree limbs occur in the area. A remnant pile of rock in the staging area appears to be the type and size of rock used for filling gabion baskets, perhaps for use as rip-rap in the construction of the nearby Montaño Bridge that was enlarged a number of years ago; this area may have been used for staging for that project.

On May 14, 2014, a Corps archaeologist conducted an initial site visit to the staging area and access route and on May 21, 2014, performed a NMCRIS database records search. The project area has previously been surveyed for cultural resources by Marron & Associates, Inc. in 2003 (Brown and Brown 2003; NMCRIS No. 82487); their survey resulted in no archaeological sites recorded within this project area. The afternoon of May 21, the Corps archaeologist conducted an archaeological survey covering the proposed staging area. The intensive pedestrian survey was conducted by walking linear transects spaced closer than 15 meters apart (4.31 acres). One brown chert flake was observed on the newly excavated bank of the pond, outside of the staging area. The eastern portion of the access route was surveyed by the Corps in 2013 (Everhart 2013) and it was visited during the May 14, 2014 site visit. Since the access route has been bladed and is covered with chipped gravel for use as a part of Bosque School's parking lot and driveway, the access route was not re-surveyed. While several archaeological sites including LA18125 (the St. Joseph site); LA33223 (the Montano Pueblo); LA138927; LA138928; and LA138929 occur in the vicinity, no other artifacts or evidence of cultural resources was observed during the survey. The single isolated flake was documented in the field exhausting its research potential and is not considered eligible for listing on the National Register of Historic Places. It is the Corps opinion that use of a newly proposed staging area and access route to the Site 3A-Oxbow project area would result in No Historic Properties Affected.

IF REPORT IS NEGATIVE YOU ARE DONE AT THIS POINT.

SURVEY LA NUMBER LOG

Sites Discovered:

LA No.	Field/Agency No.	Eligible? (Y/N, applicable criteria)

Previously recorded revisited sites:

LA No.	Field/Agency No.	Eligible? (Y/N, applicable criteria)

MONITORING LA NUMBER LOG *(site form required)*

Sites Discovered (*site form required*) **:** **Previously recorded sites** ***(Site update form required):***

LA No.	Field/Agency No.	LA No.	Field/Agency No.

Areas outside known nearby site boundaries monitored? Yes ☐, No ☐ If no explain why:

TESTING & EXCAVATION LA NUMBER LOG (*site form required)*

Tested LA number(s)	Excavated LA number(s)

Artifact	Number	Measurements, mm	Material and color	Location: UTM Z13N, NAD83
Secondary flake	1	36 long x 24 wide x 4 thick	Chert; beige	346577 E; 3890617N

Photo No. 1. Secondary flake, dorsal, May 21, 2014.

Photo No. 2. Secondary flake, ventral, May 21, 2014.

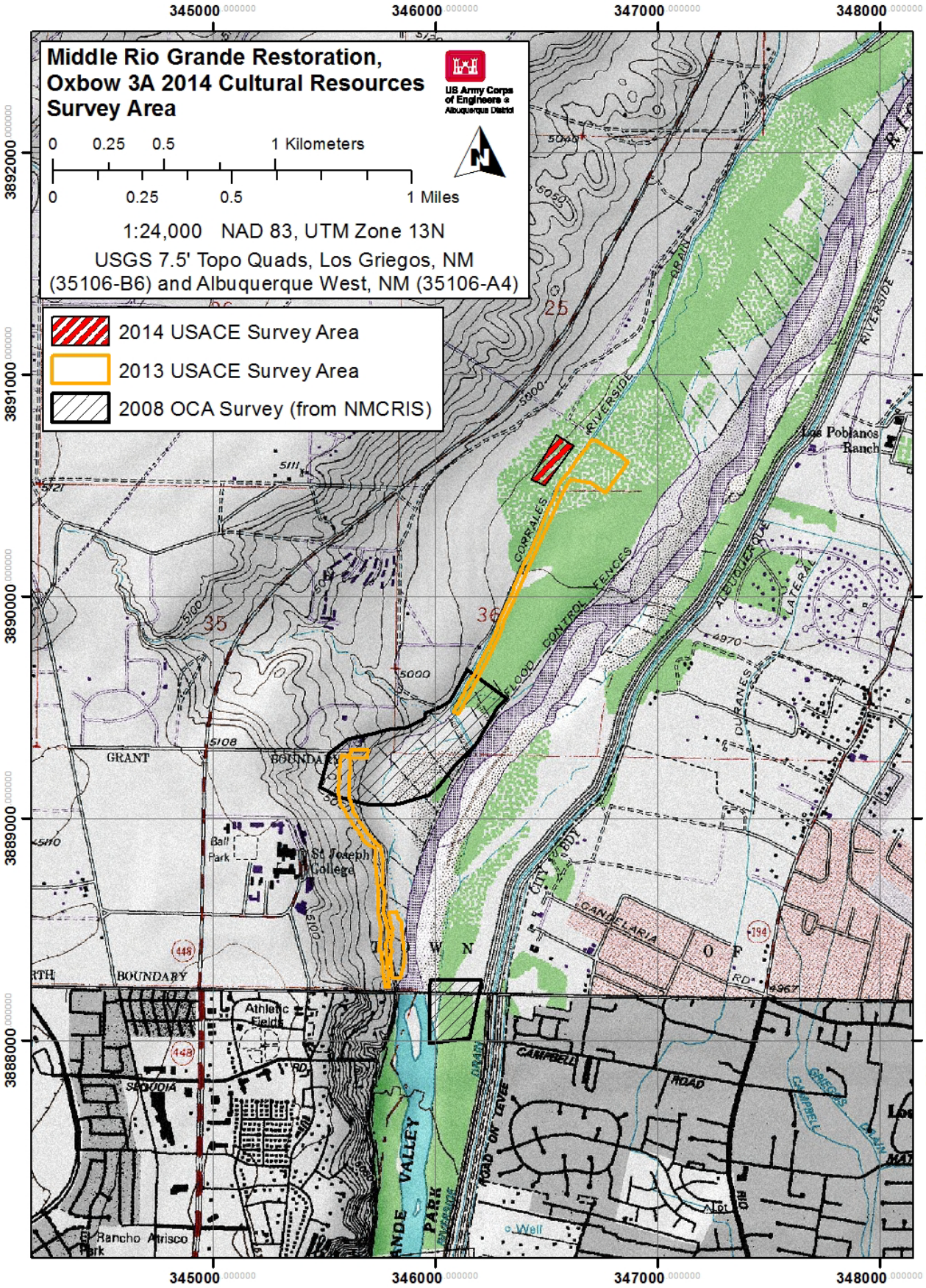

Figure 1. Middle Rio Grande Ecosystem Restoration Project's Site 3A-Oxbow project area; proposed new 2014 staging area and access route.

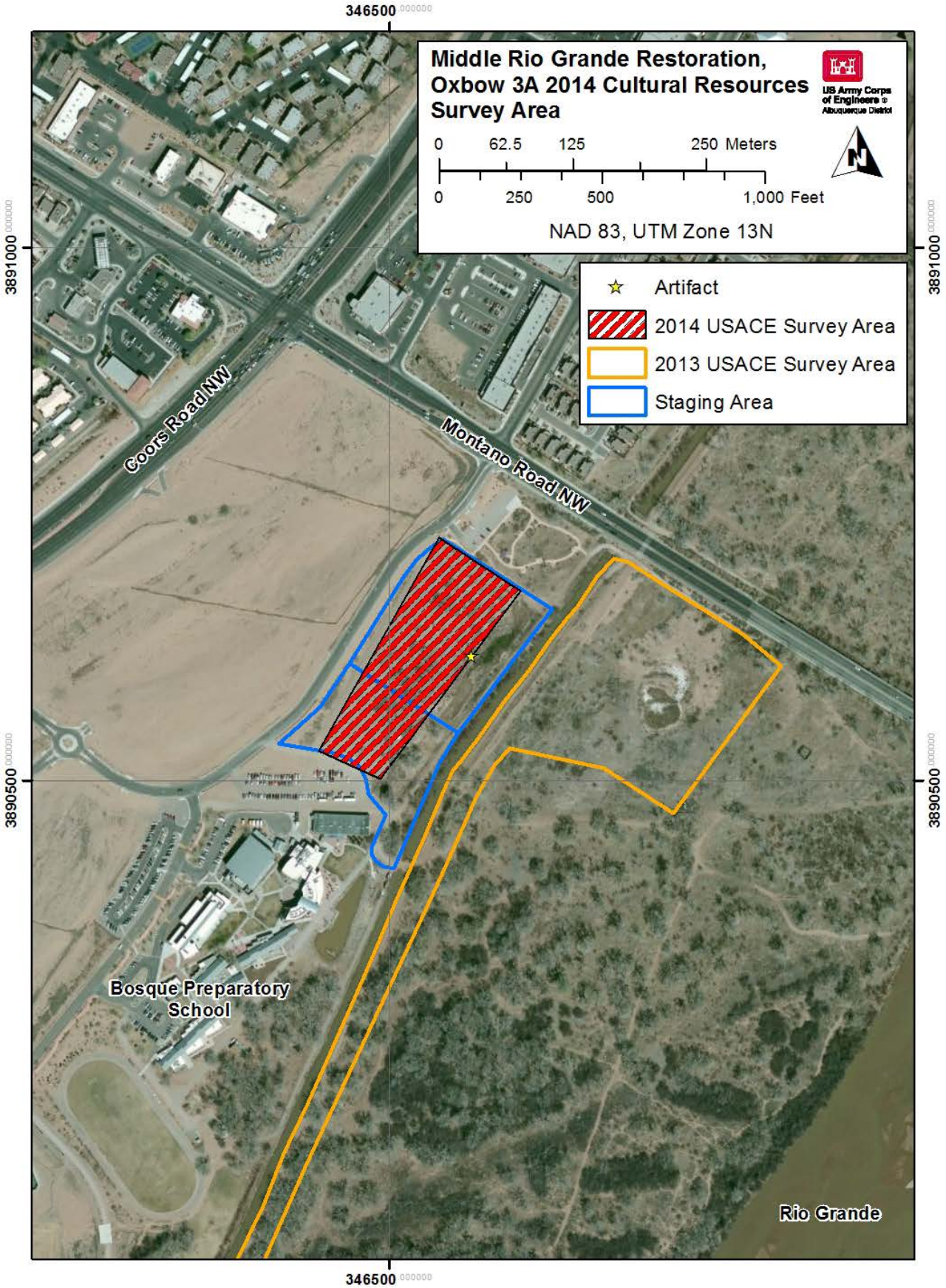

Figure 2. Middle Rio Grande Ecosystem Restoration Project's Site 3A-Oxbow project area; proposed new 2014 staging area and access route. Two landownership parcels: the first, on the north (4.5 acres) owned by the Albuquerque Bernalillo County Water Utility Authority, and the second, on the south, owned by Bosque School (3.12 acres).

Photograph No. 13. Proposed staging area located north of Bosque School, view to the north. May 25, 2014.

Photograph No. 9. Near the center of the proposed staging area located north of Bosque School, view to the south. May 25, 2014.

Photograph No. 12. Proposed staging area located north of Bosque School, view to the south. May 25, 2014.

Photograph No. 12. Proposed access route located north and east of Bosque School, view to the east. May 25, 2014.

References

Brown, Kenneth L., and Marie E. Brown

2003 **A Class III Survey of 87 Hectares (215 Acres) for the Subdivision of Lands of Ray A. Graham III on the West Mesa by ASW Realty Partners Development, Bernalillo County, New Mexico**. Marron and Associates, Report No. 0004 (NMCRIS No. 82487). Prepared for ASW Realty Partners.

Cordero, Robin M., Tracy Steffgen, and Patrick Hogan

2009 **A 667.6 Acre Cultural Resurce Survey of the Rio Grande Floodway for the Middle Rio Grande Bosque Restoration Feasibility Project, Bernalillo and Sandoval Counties, New Mexico**. OCA-UNM Report No. 185-996 (NMCRIS No. 111640). University of New Mexico, Office of Contract Archeology, Albuquerque. Prepared for U.S. Army Corps of Engineers, Albuquerque District, Contract No. W912PP-06-D-0001, Delivery Order No. 0010.

Everhart, Gregory D.

2013 **A Cultural Resources Inventory of 28.33 Acres for the MRG Ecosystem Restoration Project, Site 3A-Oxbow Project Area, Bernalillo County, New Mexico**. Corps Report No. USACE-ABQ-2013-003 (NMCRIS No. 127705). Prepared for U.S. Army Corps of Engineers, Albuquerque District, Albuquerque.

Appendix B. USFWS Coordination

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
4101 JEFFERSON PLAZA NE
ALBUQUERQUE NM 87109-3435

August 8, 2014

Planning, Projects and Program Management Division
Planning Branch
Environmental Resources Section

Mr. Wally Murphy
Field Supervisor
U.S. Fish and Wildlife Service
Ecological Services Field Office
2105 Osuna NE
Albuquerque, NM 87113

The U.S. Army Corps of Engineers Albuquerque District (Corps) would like to request a letter amendment concurrence for the **Middle Rio Grande Bosque Restoration Project, Bernalillo and Sandoval Counties, New Mexico** Biological Opinion (BO) dated April 15, 2011 (Cons. # 22420-2010-F-0077).

Under this amendment, the Corps is proposing to expand Site 1D on lands owned by the Pueblo of Sandia. Site 1D originally included 16 acres on the south side of the North Diversion Channel. The proposed addition would include 123 acres on the north side of the North Diversion Channel (and will be referred to as Site 1D North herein). Restoration features at this site would include fuel reduction within the 123 acres, bank terracing (2.2 acres), swale and wet meadow (10.5 acres) and revegetation within those features and throughout the site (Figure 1). The material excavated from Site 1D North would be placed along the top of the engineered levee and the top and landward toe of the spoil bank levees in that area as well as to the north. The material would be used to provide a better surface on top of the levee and widen it in areas. It would also create turn around areas as shown in Figure 2.

Swales and wet meadows would be constructed by excavating to the shallow groundwater which is approximately one to three feet at these locations. These areas would be planted with coyote willow (*Salix exigua*) and other native riparian vegetation as described in the original BO under willow swale construction (starting on page 14 of the BO). Bank terracing would require excavation along the bank to allow inundation to occur starting at approximately 2500 cfs. Bank terracing

excavation would be performed as described in the original BO (starting on page 14 of the BO). The proposed action has been coordinated with and approved by the Pueblo of Sandia.

The original BO considered the potential effects to the federally-listed endangered Rio Grande silvery minnow (*Hybognathus amarus*) (minnow), and endangered Southwestern Willow Flycatcher (*Empidonax traillii extimus*) (flycatcher). Site 1D North proposes to create and improve habitat for both the minnow and flycatcher in the Albuquerque reach of the Rio Grande.

Southwestern Willow Flycatcher

There is no potential habitat for flycatcher within the Site 1D area. The proposed willow swales and wet habitat at Site 1D North would create 10.5 acres of potential stopover habitat for the flycatcher. Implementation would be performed between August 15 – April 15, outside of the flycatcher migratory and nesting season. Therefore, there would be no negative effect on the species by the proposed action at Site 1D North, but a potential positive benefit exists.

Rio Grande silvery minnow

The minnow is known to occur within the area of Site 1D North. The proposed action at Site 1D is also within Critical Habitat of the minnow. Site 1D North would provide potential habitat for the minnow by excavating 2.2 acres terrace habitat adjacent to an existing terrace. The top terrace would be planted with coyote willow as has been done on all terrace constructions. This provides vegetated wet habitat when the terraces begin to overbank during higher flows. This proposed construction would occur in critical habitat during low flows in order to limit potential adverse effects during construction. Potential effects to minnow are also decreased by excavation the terrace adjacent to the river last with minimal to no contact with the water surface. Monitoring of water quality and implementation of conservation measures per the RPMs #1 and #2 in the original BO would occur. Therefore, the Corps has determined that the proposed action may affect, but is not likely to adversely affect, the endangered silvery minnow during construction, and it would provide potential habitat for the species. The proposed action may affect, but is not likely to adversely modify silvery minnow critical habitat. To date, the Corps has not incurred any take as identified in the original BO and has determined that the proposed expansion of Site 1D would be covered under the existing BO as long as the RPMs are adhered to during construction.

New Mexico Meadow Jumping Mouse

The New Mexico meadow jumping mouse *(Zapus hudsonius luteus)* has been listed as a Federally endangered species since the original BO was finalized. The New Mexico meadow jumping mouse (jumping mouse) is endemic to New Mexico and Arizona. The jumping mouse is grayish-brown on the back, yellowish-brown on the sides, and white underneath. It nests in dry soils, but uses moist, streamside, dense riparian/wetland vegetation up to an elevation of about 8,000 feet. The jumping mouse appears to only utilize two riparian community types: 1) persistent emergent herbaceous wetlands (i.e., beaked sedge and reed canary grass alliances); and 2) scrub-shrub wetlands (i.e., riparian areas along perennial streams that are composed of willows and alders). It especially uses microhabitats of patches or stringers of tall dense sedges on moist soil along the edge of permanent water (ECOS, 2014). This suitable habitat is likely only found when wetland vegetation achieves full growth potential associated with perennial flowing water (E. Hein, USFWS, personal communication 4/19/2013).

Jumping mouse habitat does not exist in the proposed action area. Therefore, there would be no affect to New Mexico meadow jumping mouse.

Yellow-Billed Cuckoo

The Yellow-billed Cuckoo (*Coccyzus americanus*) (Cuckoo) is proposed for listing as Federally threatened. In New Mexico, the species is found in riparian zones with dense understory vegetation (USFWS 2011). Current information is inadequate to judge trends, but the species was fairly common in the mid-1980s along the Rio Grande between Albuquerque and Elephant Butte Reservoir, and along the Pecos River in southeastern New Mexico. Numbers may have increased there in response to tamarisk (*Tamarix* spp.) colonization of riparian areas formerly devoid of riparian vegetation (Howe 1986).

Yellow-Billed Cuckoo nests in dense riparian shrub habitat in stands typically at least 25 acres in size (Elphick et al., 2001). They arrive in New Mexico beginning in late April and early May and nest from late May through August (Howe, 1986). Mature cottonwood forest with well-developed willow understory appear to be important characteristics of habitat for Yellow-Billed Cuckoo (Buffington et al., 1997; Gaines and Laymon, 1984). While willows appear to be a preferred nest tree, the species will also nest in dense salt cedar stands (Howe, 1986). Cuckoo forages primarily in the foliage layer of shrubby and woody vegetation. Population declines resulting from loss or

disturbance of riparian habitat have been consistently reported in the West (Finch, 1992).

The habitat within Site 1D does not contain dense understory foliage of the magnitude described above. While it is unknown if Cuckoo occurs on the Pueblo since surveys have not been conducted at this time, the potential habitat described above does not exist. Therefore, there would be no affect to the Cuckoo.

There are no other federally-listed species in the action area.

The Middle Rio Grande Restoration Project to date has improved approximately 700 acres of riparian habitat. Approximately 75 of those acres provide beneficial habitat to flycatcher and 25 of those acres provide beneficial habitat to minnow. We would appreciate your timely concurrence to these relatively minor additions to the restoration effort.

Please contact Mrs. Ondrea Hummel, Ecologist, Environmental Resources Section, at the above address, phone (505) 342-3375, fax (505)342-3668, or email to Ondrea.C.Hummel@usace.army.mil with any questions or comments.

Sincerely,

Ondrea Hummel

for Julie Alcon
Chief, Environmental Resources Section

Enclosures

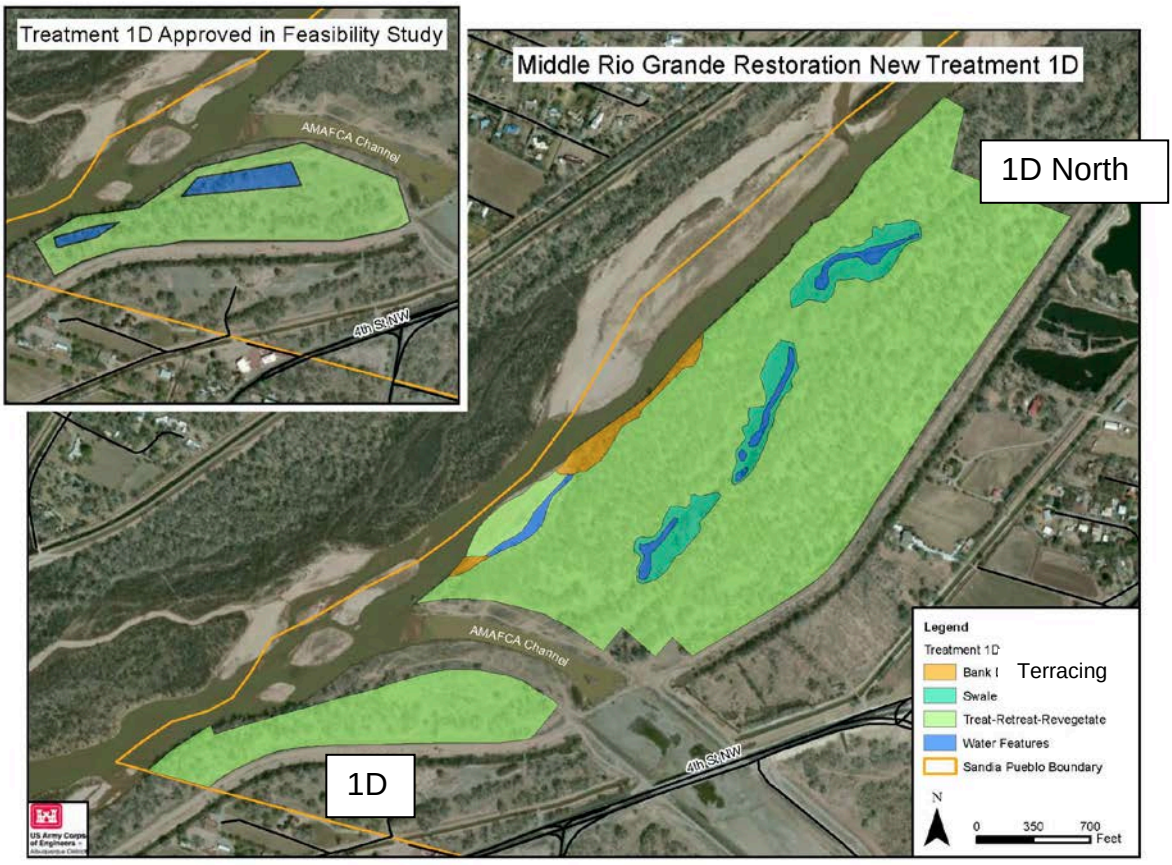

Figure 1. Proposed Action at Site 1D North

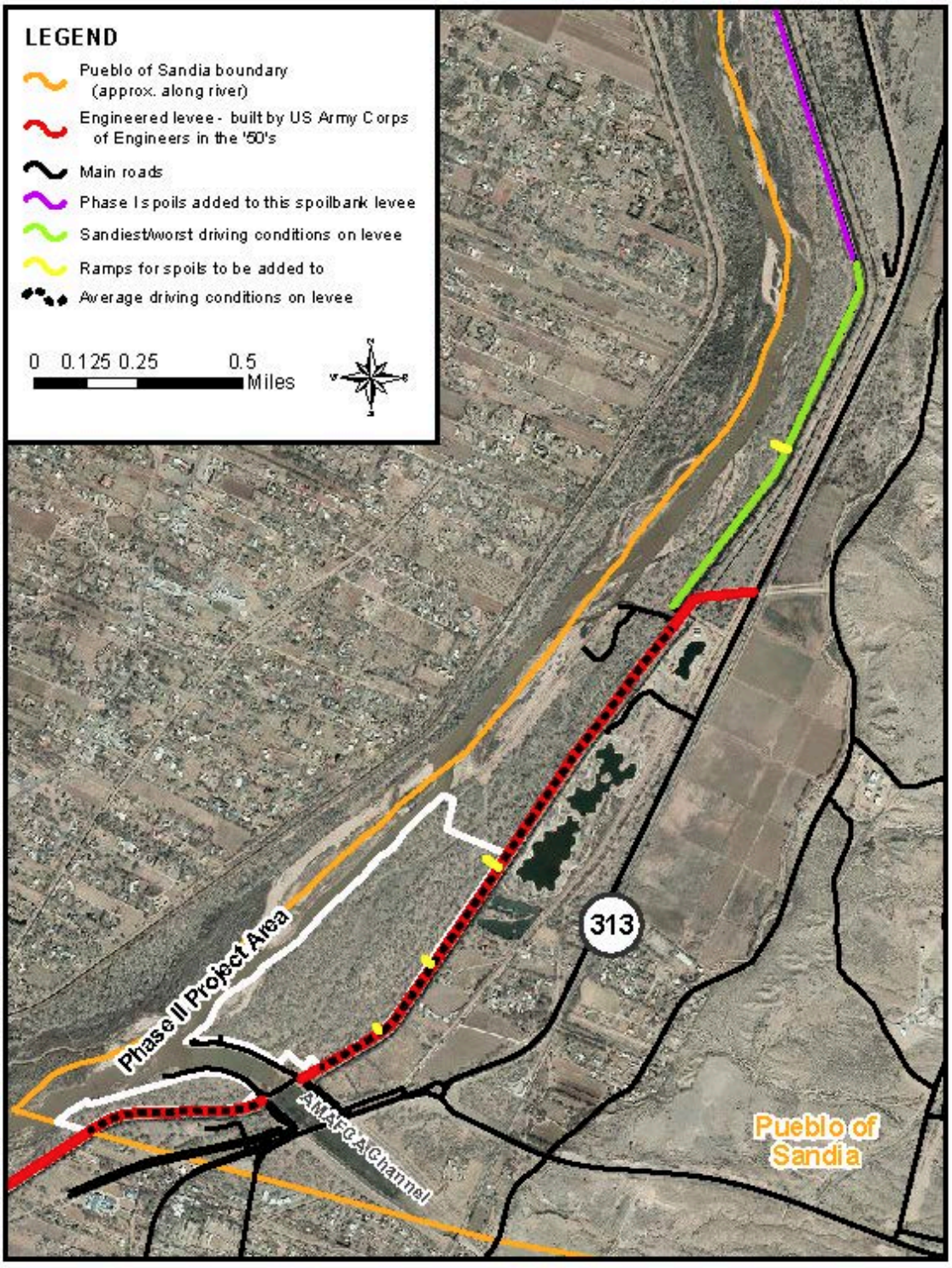

Figure 2. Proposed spoil locations at Site 1D North and north (map created by Pueblo of Sandia)

Appendix C. Nation Wide Permits

Nationwide Permit Summary

US Army Corps of Engineers®
Albuquerque District

NATIONWIDE PERMIT 27
Aquatic Habitat Restoration, Establishment, and Enhancement Activities
Effective Date: March 19, 2012
Expiration Date: March 18, 2017
(NWP Final Notice, 77 FR 10275, para. 27)

Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: The removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; reestablishment of submerged aquatic vegetation in areas where those plant communities previously existed; reestablishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

Reversion: For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS

Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 31), except for the following activities:

(1) Activities conducted on non-federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;

(2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Sections 10 and 404)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

NATIONWIDE PERMIT GENERAL CONDITIONS

General Conditions: The following general conditions must be followed in order for any authorization by a NWP to be valid:

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

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

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

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

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

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

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

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

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, 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.

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

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

15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. **Wild and Scenic Rivers.** No 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. 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).

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 the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

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

non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. 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) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at *http://www.fws.gov/*, or *http://www.fws.gov/ipac* and *http://www.noaa.gov/fisheries.html*, respectively.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

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

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-federal applicant that he or she cannot begin work 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 (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. **Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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 adverse effects to the aquatic environment are 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 effects of the proposed activity are minimal, and provides a project-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 minimal adverse effects on the aquatic environment. 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 minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) 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)–(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)).

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

(5) 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.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) 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 project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory 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.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of 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 effects of the project to the minimal level.

24. **Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer

may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

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

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

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

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

29. **Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: “When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. **Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and 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 work 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 work and mitigation.

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

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may 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 (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project 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);

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

(5) If the proposed activity will result in the loss of greater than 1⁄10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation

should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs(b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than ½-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, 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 (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), 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 telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are 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.

(3) 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.

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

D. 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. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized

by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the 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 assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are 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 effects on the aquatic environment are 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 no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project 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 project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project 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 effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When 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.

E. 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.

F. Definitions

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

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

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

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

Discharge: The term “discharge” means any discharge of dredged or fill material.

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

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

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

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

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

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

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

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

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

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

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

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

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

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

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

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

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a

course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

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

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

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

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

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

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

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

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

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

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted

aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent—meaning bordering, contiguous, or neighboring—to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)–(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

ADDITIONAL INFORMATION

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

In New Mexico:

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

In Southeastern Colorado:

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

In Southern New Mexico and Western Texas:

Las Cruses Regulatory Office
505 S. Main St., Suite 142
Las Cruces, NM 88001
Telephone: (575) 556-9939

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

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

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

This nationwide permit is effective March 19, 2012, and expires on March 18, 2017.

Summary Version: March 19, 2012

Nationwide Permit Summary

US Army Corps of Engineers®
Albuquerque District

NATIONWIDE PERMIT 33
Temporary Construction, Access, and Dewatering
Effective Date: March 19, 2012
Expiration Date: March 18, 2017
(NWP Final Notice, 77 FR 10278, para. 33)

Temporary Construction, Access, and Dewatering. Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

NATIONWIDE PERMIT GENERAL CONDITIONS

General Conditions: The following general conditions must be followed in order for any authorization by a NWP to be valid:

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

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

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

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate

through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

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

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

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

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

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

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

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, 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.

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

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

15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. **Wild and Scenic Rivers.** No 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. 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).

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 the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

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

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

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. 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) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at *http://www.fws.gov/*, or *http://www.fws.gov/ipac* and *http://www.noaa.gov/fisheries.html*, respectively.

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the

Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

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

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-federal applicant that he or she cannot begin work 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 (16 U.S.C. 470h–2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. **Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum

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

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

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

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. **Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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 adverse effects to the aquatic environment are 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 effects of the proposed activity are minimal, and provides a project-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 minimal adverse effects on the aquatic environment. 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 minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) 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)–(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)).

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

(5) 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.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) 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 project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory 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.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of 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 effects of the project to the minimal level.

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

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

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

27. **Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific

conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

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

29. **Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. **Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and 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 work 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 work and mitigation.

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

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the

permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may 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 (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed project;

(3) A description of the proposed project; the project’s purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project 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);

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

(5) If the proposed activity will result in the loss of greater than 1⁄10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs(b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 project's adverse environmental effects to a minimal level.

(2) For 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, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, 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 (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), 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 telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are 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.

(3) 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.

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

D. 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. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the 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 assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are 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 effects on the aquatic environment are 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 no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project 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 project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project 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 effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When 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.

E. 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.

F. Definitions

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

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

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

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

Discharge: The term "discharge" means any discharge of dredged or fill material.

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

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

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

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

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

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

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

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

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

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

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

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

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

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

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

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

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

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

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

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete

project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

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

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

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

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

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

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

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

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

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent—meaning bordering, contiguous, or neighboring—to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)–(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

ADDITIONAL INFORMATION

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

In New Mexico:

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

In Southeastern Colorado:

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

In Southern New Mexico and Western Texas:

Las Cruses Regulatory Office
505 S. Main St., Suite 142
Las Cruces, NM 88001
Telephone: (575) 556-9939

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

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

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

This nationwide permit is effective March 19, 2012, and expires on March 18, 2017.

Summary Version: March 19, 2012