



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
BILLINGS REGULATORY OFFICE
POST OFFICE BOX 2256
BILLINGS, MONTANA 59103-2256

December 10, 2013

Regulatory Branch
Montana State Program
Corps No: **NWO-2013-01643-MTB**

Subject: City of Whitefish, East 2nd Street Reconstruction

Mr. John Wilson
City of Whitefish Public Works Department
Post Office Box 158
Whitefish, Montana 59937

Dear Mr. Wilson:

We have reviewed the Montana joint application you submitted for Department of the Army (DA) authorization to discharge fill material into Cow Creek, an unnamed tributary and adjacent wetlands located in Section 32, Township 31 North, Range 21 West, in Flathead County, Montana.

Specifically, you requested authorization for the following work in waters of the U.S.:

Work Item	Description
a.	Reconstruction of 3,700 feet of East Second Street, including full reconstruction of the street, installing a bicycle/pedestrian path along the south side of the street and replacing the existing crossings at Cow Creek and the unnamed tributary of Cow Creek. A total of 0.348 acre of wetland would be impacted by the project along with ~120 linear feet of Cow Creek and ~120 linear feet of the unnamed tributary.
b.	Approximately 0.696 acre of wetland will be created along the eastern boundary of the project to meet the 2:1 mitigation requirements. This will expand the adjacent, existing wetland area.

Under the authority of Section 404 of the Clean Water Act (CWA), DA permits are required for the discharge of fill material into waters of the U.S. Waters of the U.S. include the area below the ordinary high water mark of stream channels and lakes or ponds connected to the tributary system, and wetlands adjacent to these waters. Isolated waters and wetlands, as well as man-made channels and ditches, may be waters of the U.S. in certain circumstances, which must be determined on a case-by-case basis.

An approved jurisdictional determination (JD) has been completed for your project. The JD will be made available to you upon request, or it may be viewed at our website at <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Montana.aspx>. The JD will be available on the website within 30 days. If you are not in agreement with the JD, you may request an administrative appeal under Corps of Engineers (Corps) regulations found at 33 C.F.R. 331. The Request for Appeal must be received within 60 days from the date of this correspondence. If you would like more information on the jurisdictional appeal process,

contact this office. It is not necessary to submit a Request for Appeal if you do not object to the JD.

Based on the information you provided, this office has determined that your work is authorized by DA Nationwide Permit (NWP) No. 14, found in the February 21, 2012 Federal Register (76 FR 9174), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this NWP and lists the General Conditions that must be adhered to for this authorization to remain valid. Please note that deviations from the reviewed and approved plans and specifications of your project could require additional authorization from this office.

In addition to conditions referenced above, the following **Special Conditions** apply:

Condition	Description
1.	The project will be constructed as designed, proposed and described in the Montana Joint Application and drawings received in this office on September 3, 2013 with revised drawings received on November 26, 2013.
2.	Channel plugs or other materials used for diversion of the stream flow must be clean and free of loose material. Examples of materials acceptable for use as channel plugs include clean sandbags, rock covered with plastic or geotextile, or plastic irrigation dams. All temporary channel plug materials must be removed when the project is completed. If sandbags are used, the sand must be disposed of in an upland area upon completion of the project.
3.	Completely remove all waste material generated by the project to an upland disposal site. Do not dispose of waste material within 50 feet of any existing or proposed wetland area, pond or lake, drainage channel, irrigation ditch, or stream.
4.	Mitigation shall be accomplished as specified in the enclosed mitigation plan entitled "Second Street Reconstruction Project: Wetland Mitigation Plan" dated August 2013. This includes annual monitoring, adaptive management and long-term maintenance of the site as described in the document.
5.	The permittee must submit yearly monitoring reports on the status of the mitigation site to the Corps. The first report is due on November 1 after the first growing season following completion of the mitigation work. Subsequent reports shall be submitted on or before November 1 for a period of 5 years, or until the Corps determines the mitigation site to be successful. These reports shall include the following at a minimum: (1) All plant species along with their estimated relative frequency and percent cover; (2) Any fauna noted as utilizing the mitigation site; and (3) Photographs showing all representative areas of the mitigation site taken at least once each year during the growing season.
6.	The permittee agrees that the created wetlands will be considered successful and self-sustaining when the following conditions have been met without intervention in the form of irrigation, removal of undesirable vegetation or replanting of desirable vegetation during the last three (3) years of a five (5) consecutive year period or as determined by the Corps: a. At least 80% (determined by ocular estimate of herbaceous and shrub foliar cover) of the mitigation site is vegetated, at least 50% of the total number of dominant species present will consist of species rated as facultative or wetter, and at least 50% of the dominant species present shall have been planted species. b. Trees and shrubs, to include volunteer specimens, will have a survival rate of at least 85%. Species composition shall be representative of species planted.

	c. Disturbed areas shall be monitored following the project construction and noxious weeds (i.e., Canada thistle, purple loosestrife, leafy spurge and other invasive exotic species) controlled in accordance with Montana State law.
7.	If the mitigation area is considered to be failing after a period of 3 years, the permittee will undertake action, as directed by the Corps, to remedy the failure.
8.	<p>This Corps permit does not authorize you to take an endangered species, in particular the bull trout (<i>Salvelinus confluentus</i>). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) [e.g., an ESA Section 10 permit, or a biological opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply]. The U.S. Fish & Wildlife Service (USFWS) Programmatic BO, dated September 17, 2013 contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with the incidental take of that BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with ESA. Copies of the BO can be found at the following link:</p> <p>http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Montana.aspx</p> <p>Attached for your reference are pertinent excerpts. The attached Project Reporting Form must be filled out and returned to this office within 60 days from project completion in order to remain in compliance with ESA and this NWP verification.</p>

Although an Individual DA permit involving a public interest review will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal, and local permits as required. The Montana Department of Environmental Quality provided the enclosed CWA Section 401 water quality certification for this NWP which includes General Conditions, all of which must be complied with for that certification to remain valid. This does not eliminate the need to obtain other permits that may be required by that agency.

This verification will be valid until **March 18, 2017**. In accordance with the terms and conditions of the NWPs, you are responsible for all work accomplished. If a contractor or other authorized representative will be accomplishing the work authorized by an NWP on your behalf, it is strongly recommended that they be provided a copy of this letter and the enclosed conditions so that they are aware of the limitations of the applicable NWP. Any activity that fails to comply with all of the terms and conditions of the NWP will be considered unauthorized and subject to appropriate enforcement action.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office. In compliance with General Condition 30, the enclosed Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at <http://per2.nwp.usace.army.mil/survey.html>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

Please contact Duane Mitchell at (509) 527-7156 if you have any questions and reference Corps File Number **NWO-2013-01643-MTB**.

Sincerely,

for 
Todd N. Tillinger
Montana Program Manager

Enclosures:

Compliance Certification
NWP 14 Fact Sheet with Regional Conditions
Mitigation Plan
SLOPES Conservation Measures
SLOPES Reporting Form

COMPLIANCE CERTIFICATION

Corps File Number: NWO-2013-01643-MTB
Name of Permittee: City of Whitefish
County: Flathead County, Montana
Date of Issuance: December 10, 2013
COE Project Manager: Duane Mitchell

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US Army Corps of Engineers
Billings Regulatory Office
Post Office Box 2256
Billings, Montana 59103-2256

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the conditions of this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Appendix A: Conservation Measures and Exclusions under SLOPES

SLOPES Conservation Measures

1. All work should be performed in the dry when possible. Any work in flowing water must be completed by working from the top of the bank and work areas must be isolated from flowing or open water using cofferdams, silt curtains, sandbags or other approved means to keep sediment from entering flowing or open water, unless isolating the area and working in the channel would result in less habitat disturbance.
2. The Corps will check with appropriate sources to determine whether or not listed fish are present or likely to be present during any proposed in-water work. Where necessary, work timeframes will be added as special permit conditions to minimize adverse impacts to listed fish.
 - a. Bull trout: For projects involving in-channel or riparian disturbance (e.g., excavation or construction within the bank-full channel or a 35 ft buffer each side of channel) the following timing stipulations will apply as the period when activities are allowable to minimize adverse impacts: (1) July 1 to September 30 in foraging, migration or over-wintering habitats; and (2) May 1 to August 31 in spawning and rearing habitats.
 - b. Kootenai white sturgeon: In-channel disturbance is limited to the period between August 1 to April 1.
3. Only the minimum amount of native material necessary to maintain the function of the structure or fill will be removed.
4. Woody debris removal will be completed in the following priority: (1) Pull and release whole logs or trees downstream; (2) pull whole logs and trees and place in the riparian area; (3) remove whole logs or trees for replacement within the same stream reach or a reach nearby; and (4) pull, cut only as necessary, and release logs and trees downstream.
5. Replacement of existing stream crossings will be designed to promote natural sediment transport, allow maximum fluvial debris movement, and improve horizontal and vertical continuity and connectivity of the stream-floodplain systems where practicable.
6. If replacing a bridge with a culvert, the culvert must be sized to allow for equal or increased cross sectional area of the ordinary high water channel as compared to the previously existing bridge. The new culvert must be an open bottom arch or box, or must be oversized and countersunk into the substrate to allow unimpeded natural movement of existing streambed material.
7. Utility stream crossings shall be perpendicular to the watercourse, or nearly so, and designed in the following priority: (1) directional drilling, boring and jacking; and (2) dry trenching or plowing.
8. If trenching or plowing are used, all work shall be completed in the dry and backfilled with native material and any large wood displaced by trenching or plowing will be returned to its original position wherever feasible.
9. Install utility lines or cables using a static plow or knifing method.

10. At stream crossings, the area along the bank disturbed by the utility work will be revegetated with native species. A revegetation plan must be submitted with the application specifying species, planting or seeding rates and maintenance measures to ensure 80% cover (ground or canopy) after three years.
11. All pits and other excavations associated with utility installation will be placed where they will not cause damage to the streambed or streambanks, or allow wastewater or spoil material to enter the water. Erosion and sediment control measures must be put in place prior to beginning work and remain in place until the work is completed and the trench is backfilled and stabilized.
12. Structural fills with materials such as concrete shall be placed into tightly sealed forms or cells that do not contact the waterway until fully cured.
13. Any intake structure shall meet NOAA screening criteria.
14. All construction impacts must be confined to the minimum area necessary to complete the project and boundaries of clearing limits associated with site access and construction will be clearly marked to avoid or minimize disturbance of riparian vegetation, wetlands and other sensitive sites.
15. Project operations must cease under high flow conditions that may result in inundation of the project area.
16. If native woody riparian vegetation must be removed for temporary access purposes, the vegetation must be cut flush with the ground surface or folded over. The root mass must be left intact, and any exposed soil must be reseeded with native grasses or forbs after construction is completed.
17. Each non-native tree or shrub that must be removed as a result of the project, will be replaced with a native species of tree or shrub in accordance with NRCS recommendations for native species appropriate for the project location.
18. The design of any proposed stabilization structures must incorporate bioengineering principles.
19. Any structure that protrudes into the river must be designed by a professional engineer/hydrologist experienced in the design of such structures.
20. The largest riprap/rock material must be keyed into the toe of the bank.
21. Existing channel form and dimension must be maintained to the maximum extent possible.
22. If using wood, it must be intact, hard, and undecayed to partly decaying with untrimmed root wads to provide functional refugia habitat for fish. Wood must be obtained from outside of the channel.
23. Unless naturally-occurring material is present at the site, appropriate measures must be taken to ensure retention of fine soil particles beneath riprap/rock material. Measures can include the use of coarse sand and fine gravel, suitable biodegradable geotextile material, or a 50/50 mixture of native streambed material taken from the toe trench where riprap will be keyed into the river bed, and topsoil from sloping of the upper bank area placed behind the riprap/rock.
24. Clean natural angular rock or stone may be used to anchor or stabilize large wood, fill scour holes, prevent scouring or undercutting of an existing structure, or to construct a

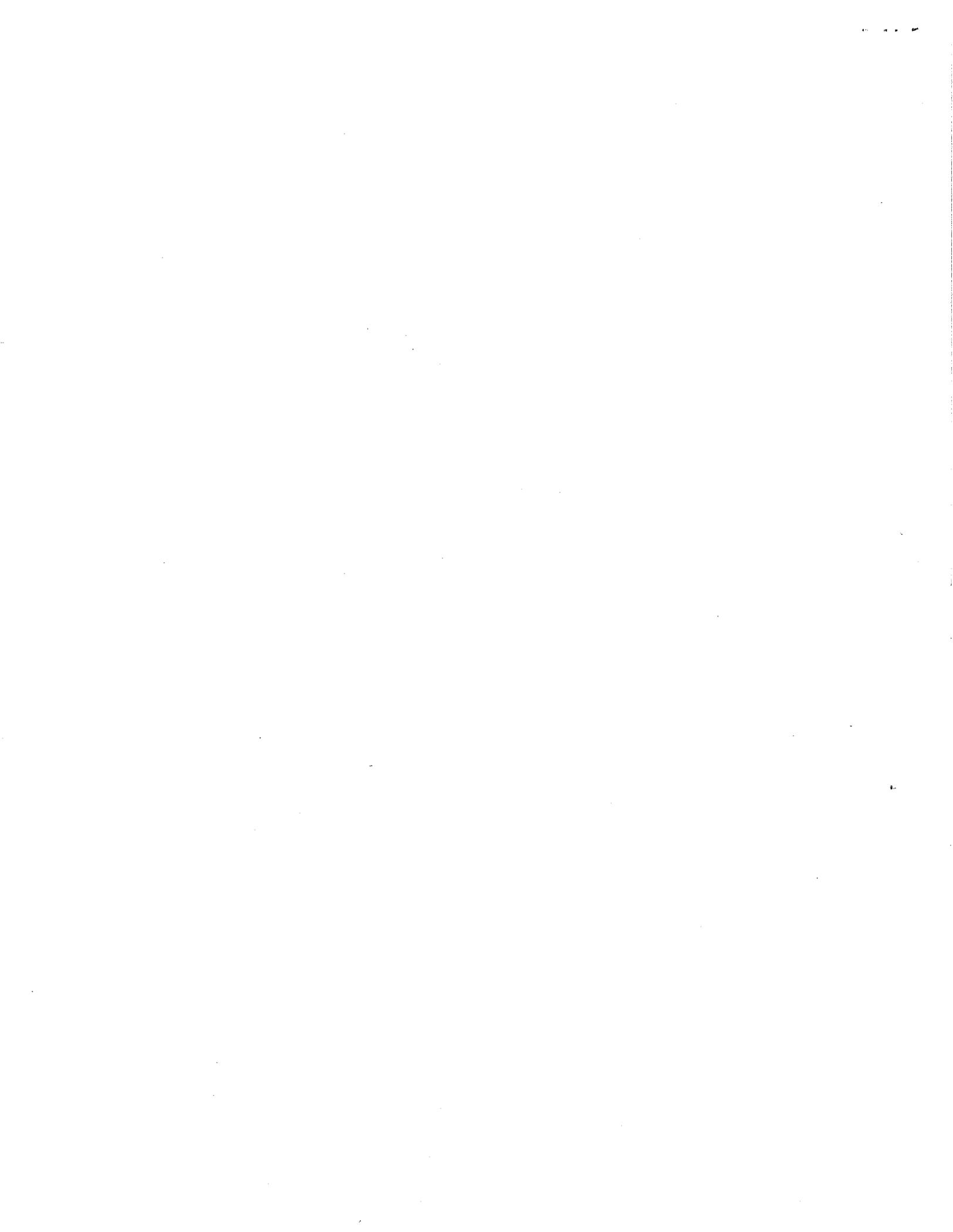
- barb, weir or other properly designed and approved in-water structure. The use of rock or stone must comply with the Corps policy on prohibited materials.
25. Rock riprap shall be individually placed without end dumping.
 26. All repairs of previously existing bank protection structures (unless such repairs are exempt from Section 404 compliance) shall incorporate bioengineering principles, with minimal use of clean natural rock or stone and maximum revegetation of the bankline above the ordinary high water mark.
 27. If the entire structure has been destroyed or damaged beyond repair, replacement of the structure shall utilize bioengineering principles and methods, and will incorporate native vegetation.
 28. Stabilization activities shall not exceed 300 linear feet per continuous run of material.
 29. Where applicable, the applicant shall follow mitigation requirements as defined in the Montana Stream Mitigation Procedures. (Includes Idaho, to the extent applicable.)
 30. Stabilization activities shall involve the discharge of no more than 1 cubic yard per linear foot below ordinary high water (OHW).
 31. No refueling of equipment will take place within 100 linear feet of OHW or the wetland boundary.
 32. Equipment must have a five gallon capacity spill kit on board at all times when working near water.
 33. Within the first planting season post-construction, the stabilized bank shall be revegetated with native or other approved species.
 34. A revegetation plan must be submitted with the application specifying species, planting or seeding rates and maintenance measures to ensure 80% coverage after three years.
 35. Replacement of existing or new permanent stream crossings shall be designed to promote natural sediment and debris transport and maximize connectivity of the stream-floodplain system. If the crossing will occur near a known or suspected spawning area, only full span bridges or streambed simulation may be used.
 36. Culvert replacements or modifications shall be done in the dry (could be accomplished by temporary dewatering), unless it can be confirmed by a qualified fisheries biologist that no listed fish are present during instream activities.
 37. Appropriate grade controls shall be included to prevent culvert failure caused by changes in stream elevation.
 38. Road crossing and bridge structures shall be designed to direct surface drainage into areas or features designed to prevent erosion of soil and entry of other pollutants directly into waterways or wetlands (such as biofiltration swales or other treatment facilities).
 39. Cleaning of culverts and trash racks and removal of drift material shall be conducted by working from the top of the bank, unless isolating the area and working in the channel would result in less habitat disturbance. Only the minimum amount of wood, sediment and other natural debris necessary to maintain structure function shall be removed. All large wood recovered during cleaning will be placed downstream. All routine work will be done in the dry, using work area isolation if necessary.
 40. No part of water control structure, such as barbs, may exceed bank full elevation, including all rock buried in the bank key.

41. Maximum barb length will not exceed 1/4 of the bankfull channel width.
42. Structures that protrude into the stream (barbs, vanes, spurs) must be designed by a qualified engineer, or geomorphologist.
43. Trenches excavated for a bank key above ordinary high water shall be backfilled with soil and planted with native vegetation.
44. Rock shall be individually placed without end dumping.
45. All stream and wetland restoration activities shall include adequate precautions to prevent post-construction stranding of juvenile or adult fish which must be described in detail in the application.
46. Any proposals to add spawning gravel must first be reviewed and approved by the local state fisheries biologist. Spawning gravel must be inspected by either a state fisheries biologist or a qualified fisheries biologist familiar with the site's characteristics and requirements.

Activities Excluded from the SLOPES Protocol

1. Oil and gas exploration or production, construction or upgrading of a gas, sewer or water line to support a new or expanded service area, and foundations for transmission towers.
2. Utility crossings involving open trenches where the trench material is sidecast in the stream and flow is not diverted around the open trench, (a.k.a. wet trenching).
3. Instream work involving utility lines greater than 6 inches in diameter.
4. Outfalls where none previously existed
5. Intakes where none previously existed
6. Unscreened intakes
7. Any instream structure that could become a barrier to fish movement during low flows.
8. Any regulated excavation greater than 10 cubic yards total.
9. Temporary bypass channels in excess of 300 linear feet.
10. Dewatering that places a stream into a pipe more than 300 feet long or for more than 30 days.
11. Riprap that extends above the ordinary high water mark.
12. Stabilization methods in stream environments that do not include a vegetative component.
13. New sea walls, retaining walls or bulkheads, where none previously existed.
14. Any project utilizing broken, poured or precast concrete.
15. Any project utilizing treated lumber or wood.
16. Any project that exceeds one cubic yard of riprap per linear foot below ordinary high water.
17. Stream or wetland impacts for new road construction within 300 feet of occupied bull trout or Kootenai River white sturgeon streams.
18. Bridge abutments below ordinary high water of occupied streams where none previously existed.

19. Channel maintenance that does not involve work area isolation to retain suspended sediment.
20. A replacement bridge without full removal of the existing bridge, support structures and approach fill.
21. Pond construction or expansion in streams or wetlands.
22. Large dam removal projects (>10' head difference).
23. Projects that involve relocating more than 300 feet of channel (cumulative total for the entire project).
24. Use of concrete logs, cable (wire rope) or chains to permanently anchor any structure.



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**SECOND STREET RECONSTRUCTION PROJECT:
WETLAND MITIGATION PLAN**



Prepared by:

Calypso Ecological Consulting, LLP
P.O. Box 5438
Whitefish, MT 59937

Prepared for:

Applied Water Consulting, LLC
P.O. Box 7667
Kalispell, MT 59904

**August 2013
Whitefish, MT**

1.0 Introduction

East Second Street is located within the town of Whitefish, MT in Flathead County (Figure 1). The City of Whitefish is proposing to reconstruct East Second Street from a point 350 feet west of Wild Rose Lane. The project extends east to 200 feet past the northeasterly BNSF railroad crossing. The project includes full reconstruction of the street, including a bicycle/pedestrian path along the south side of the street, relocating existing overhead utilities underground, and improving the road crossing at the railroad. The total length of the project is approximately 3,700 feet. Specifically, the property is located in Section 32, Township 31 North, Range 21 West within Flathead County, Montana (Figure 1). The western area near Cow Creek is approximately 3,020 feet in elevation above mean sea level (amsl) while the area to the east near the BNSF railroad is approximately 3,050 feet in elevation.

Cow Creek, a perennial stream, flows north-south within the western portion of the project area. Currently, Cow Creek is channeled through three corrugated steel culverts (1-24", 1-30", and 1-36"). Two of the culverts (24" and 36") are perched above the grade and only convey water at elevated stream stages. Cow Creek has incised a relatively steep channel with grasses and other shrubs growing along the banks. Riparian wetlands border the channel on either side of the stream.

A second perennial tributary of Cow Creek flows generally south-north within the eastern portion of the project area. Both riparian and emergent wetlands occur adjacent to this stream in a topographically low-lying area that is generally inundated with water in the spring and remains dominantly saturated throughout the year. Currently, an 18" corrugated steel culvert connects this wetland area to low lying areas north of the BNSF railroad. In addition, water running from the northwest through the adjacent field, hits the railroad embankment to the east and fills the low-lying areas north of the railroad tracks. The resulting wetland to the north follows a ditch that is very narrow in certain areas and wider in other areas. Overall, these eastern wetlands have relatively steep embankments to the existing road and railroad tracks. Finally, the City of Whitefish's mountain bike course is constructed on the western margin of the southeasterly wetland.

These wetlands were delineated in September 2012 by Calypso Ecological Consulting, LLP and wetland impacts to these areas were calculated (see attached wetland delineation report). All wetlands within the project limits should be considered jurisdictional and are therefore protected under Section 404 of the Clean Water Act. A total of 15,185 ft² (0.348 acres) of wetland is proposed to be permanently impacted by reconstruction of East Second Street within the project boundary. Road reconstruction is estimated to impact 2,000 ft² (0.046 acres) at Wetland 1 along Cow Creek in the western portion of the project, 580 ft² (0.013 acres) at Wetland 2 along Cow Creek in the western portion of the project, 9,645 ft² (0.221 acres) at Wetland 3 along a tributary of Cow Creek in the eastern portion of the project, and 2,960 ft² (0.068 acres) at Wetland 4 along a tributary of Cow Creek in the eastern portion of the project (Appendix 1).

The *1990 Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines* requires that wetland mitigation be addressed in the following sequence:

Figure 1. Location of Second Street Reconstruction Project



- (1) Avoid potential impacts to the maximum extent practicable.
- (2) Minimize unavoidable impacts to the extent appropriate and practicable.
- (3) Compensate for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required.

Avoidance and Minimization: With the relocation of East Second Street, unavoidable wetland impacts will occur at the four identified wetland areas. Wetland impacts, however, were minimized at these areas by utilizing the existing roadway to the greatest extent practicable throughout the entire project. There will be minimal stream channel alterations and construction activities will be performed during periods of low flow to minimize impact to stream flow or water quality. An improvement for natural resources includes a proposed installation of a box culvert with a stable gravel substrate at Cow Creek that will significantly improve fish passage and more readily allow for migration of fish upstream during periods of low flow.

Compensation: A compensatory wetland mitigation site directly adjacent to part of an existing wetland within the project area is established and viable. Based on Wetland Compensatory Mitigation Ratios from the Montana Regulatory Program (COE 2005), 0.348 acres of wetland will be disturbed, thus 0.696 acres are required to be mitigated as in-kind creation (establishment) of new wetland area to meet a 2:1 wetland mitigation ratio. The overall intent of this mitigation plan is to mitigate the impacts onsite through expansion of the southeastern-most wetland that occurs along a perennial stream within the project boundaries.

Expansion of the wetland would occur through excavation to groundwater or within a foot of groundwater on both the north and south sides of the existing wetland, proposing to create 31,051 ft² (0.712 acres) of both scrub-shrub and emergent wetland. This exceeds the required amount of wetland (30,370 ft² and 0.696 acres) by a small amount to assure that the correct acreage of wetland will be established. Approximately 5,160 ft² (0.118 acres) of scrub/shrub wetland would be created and approximately 25,890 ft² (0.594 acres) of emergent wetland would be created to replace the percentages of those wetland types that were impacted. Overall, 27,414 ft² (0.629 acres) would become created wetland north of the existing creek and 3,637 ft² (0.083 acres) would become created wetland south of the existing creek for a total creation of 0.712 acres (Appendix 2). Excavated areas would be revegetated with native emergent and woody wetland vegetation species. The City of Whitefish will complete the mitigation project after impacting the four wetland areas.

2.0 Baseline Information

2.1 Impact Wetland Areas. Wetlands in the project impact area (Figure 1 and Appendix 1) were delineated by Calypso Ecological Consulting, LLP on September 30, 2012. The results of this delineation are presented in a Wetland Delineation Report dated August 2013. These wetlands are presumed to be jurisdictional by the U.S. Army Corps of Engineers but final review of the wetland delineation report still needs to be conducted.

The four wetland areas are well vegetated with both scrub-shrub and emergent wetland vegetation. At the time of the delineation, the perennial creeks had 2 to 4 inches of water but water is much deeper in the spring. The surrounding uplands are either used for residential development, are farmed for hay, or are used for an adjacent bike and dog park.

The four wetland areas fell into several wetland community or habitat types. Vegetation throughout much of the main wetland areas near Cow Creek can be classified as an *Alnus incana* community type (Hansen et. al, 1995). Vegetation throughout much of the main wetland along the tributary to Cow Creek in the eastern portion is a mix of habitat and community types, including *Salix bebbiana*, *Carex utriculata*, *Typha latifolia*, and *Phalaris arundinacea*. The edges of many of these wetlands tend to be dominated by facultative weedy grasses, similar to upland vegetation that is adjacent to the wetlands. These are dominated by *Agrostis stolonifera*, *Elymus repens*, and *Poa pratensis*. Specific details of the four delineated wetland areas are as follows (Appendix 1):

1. **Wetland 1:** Wetland 1 can be classified as scrub-shrub wetland and occurs along the east and west sides of Cow Creek on the south side of East Second Street. Scattered *Betula papyrifera* exist in the overstory, while facultative weedy grasses *Poa pratensis* and *Agrostis stolonifera* are dominant in the understory. Disturbance to this wetland area is due to roadway widening of East Second Street, relocation of aboveground utilities underground, and replacing the existing corrugated steel culverts currently channeling Cow Creek. The existing culverts (1-24", 1-30", and 1-36") will be replaced with a 4' by 10' box culvert. The box culvert will be counter-sunk with the bottom below the streambed to allow for a more natural stream channel and allow for enhanced fish passage.
2. **Wetland 2:** Wetland 2 can also be classified as scrub-shrub wetland and occurs along the east and west sides of Cow Creek on the north side of East Second Street. The dominant vegetation is tall shrubs that include *Alnus incana*, *Cornus sericea*, *Crataegus douglasii*, and *Salix bebbiana*. The herbaceous layer is comprised of *Carex utriculata*, *Glyceria borealis*, *Equisetum arvense*, *Geum macrophyllum*, *Rubus idaeus*, and *Veronica americana*. Disturbance to this wetland area is due to roadway widening of East Second Street, relocation of aboveground utilities underground, and replacing the existing corrugated steel culverts currently channeling Cow Creek. The existing culverts (1-24", 1-30", and 1-36") will be replaced with a 4' by 10' box culvert. The box culvert will be counter-sunk with the bottom below the streambed to allow for a more natural stream channel and allow for enhanced fish passage.
3. **Wetland 3 and wetland mitigation site:** Wetland 3 can be classified as a mixed scrub-shrub and emergent wetland. The area directly adjacent to the perennial tributary of Cow Creek is dominated by *Typha latifolia*, *Carex utriculata*, *Carex crawfordii*, *Salix bebbiana*, *Calamagrostis canadensis*, *Alopecurus pratensis*, *Mentha arvensis*, *Equisetum arvense*, *Juncus alpinoarticulatus*, and *Eleocharis palustris*. As you move north and south of the creek, the vegetation becomes emergent and is dominated by facultative weedy grasses including *Agrostis stolonifera* and *Poa pratensis*. Some *Cirsium arvense* is present here with low cover. Disturbance to this wetland area is due to widening of East Second Street and installation of underground utilities, pushing the roadway to the south toward Wetland 3. The existing 18" culvert will be removed and replaced with a larger 24" corrugated metal pipe culvert to maintain hydraulic connection to the wetland areas on the north side of East Second Street.
4. **Wetland 4:** Wetland 4 can be classified as an emergent wetland within a widened ditch area adjacent to both East Second Street and the BNSF railroad tracks. It has low cover of *Salix bebbiana* and *Salix geyeriana* and high cover of *Phalaris arundinacea* and *Typha latifolia*, indicating a rather disturbed wetland. A small amount of *Alopecurus pratensis* is also present. Disturbance to this wetland area is due to widening of East Second Street at the intersection with BNSF. Reconstruction will expand the roadway and embankments to the east.

A full species list of plants found at the wetland mitigation site and in the surrounding wetland areas is presented in Table 1.

Table 1. Existing Plant Species at East Second Street mitigation site
 * = non-native species

Native Emergent marsh:	Native Scrub-shrub:	Non-native Emergent Marsh:
<i>Typha latifolia</i>	<i>Salix bebbiana*</i>	<i>Phalaris arundinacea</i>
<i>Eleocharis palustris*</i>	<i>Salix geyeriana*</i>	<i>Alopecurus pratensis</i>
<i>Carex utriculata*</i>	<i>Alnus incana*</i>	<i>Cirsium arvense</i>
<i>Calamagrostis canadensis*</i>	<i>Cornus sericea*</i>	<i>Agrostis stolonifera</i>
<i>Carex crawfordii*</i>	<i>Crataegus douglasii</i>	<i>Poa pratensis</i>
<i>Juncus balticus*</i>		
<i>Juncus alpino-articulatus</i>		
<i>Glyceria borealis</i>		
<i>Equisetum arvense</i>		
<i>Mentha arvensis</i>		
<i>Geum macrophyllum*</i>		
<i>Alisma plantago-aquatica</i>		

Soils of these wetland areas include Alluvial land, well drained and Stryker silty clay loam, 0-3% slope (NRCS, 2007).

2.2 Mitigation Area Wetlands

Proposed road reconstruction, utility relocation, and bike/pedestrian path installation along East Second Street will permanently impact a total of 0.348 acres of wetland. Construction activities will also temporarily impact a total of 0.054 acres of wetland. Table 2 lists each wetland area and the calculated wetland impact at each location.

Table 2. Acres of Permanent and Temporary Wetland Impact

Wetland	Permanent Impact Area (ft ²)	Permanent Impact Area (acres):	Temporary Impact Area (ft ²)	Temporary Impact Area (acres)
1	2,000	0.046	1,130	0.026
2	580	0.013	490	0.011
3	9,645	0.221	665	0.015
4	2,960	0.068	70	0.002
TOTAL	15,185	0.348	2,355	0.054

As stated above, the City of Whitefish is proposing to mitigate for this permanent wetland loss onsite and in-kind through the expansion of the southeastern-most wetland within the project boundaries. This wetland mitigation is proposed to be completed after road reconstruction is completed and after impacting the four wetland areas. Overall, expansion of the wetland would occur through excavation to groundwater or within a foot of groundwater on both the north and south sides of the existing creek, creating approximately 31,051 ft² (0.712 acres) of both scrub-shrub

and emergent wetland. This exceeds the required amount of wetland by a small amount to assure that the correct acreage of wetland will be established. Approximately 5,160 ft² (0.118 acres) of scrub/shrub wetland would be created and approximately 25,890 ft² (0.594 acres) of emergent wetland would be created to replace the percentages of those wetland types that were impacted. Overall, 27,414 ft² (0.629 acres) would become created wetland north of the existing creek and 3,637 ft² (0.083 acres) would become created wetland south of the existing creek for a total creation of 0.712 acres (Appendix 2).

Currently, these areas proposed for excavation are dominated by non-native, facultative grasses such as *Agrostis stolonifera*, *Elymus repens*, and *Poa pratensis*. Some of the delineated emergent wetland, particularly north of the existing creek, is also dominated by these facultative grasses. An added bonus of the proposed mitigation proposal is that these weedy, marginal wetlands will also be excavated in order to restore wetland hydrology to the area. These marginal wetlands will be reseeded with a more diverse mix of true wetland plants, enhancing part of the wetland that wasn't slated for disturbance.

3.0 Goals and Objectives

The goals and objectives of the proposed mitigation activity are to expand a section of the existing wetland area along the southeastern wetland within the project area to create additional wetland that meets a 2:1 wetland mitigation ratio by:

- Excavating the north and south sides of the existing wetland to groundwater or within a foot of groundwater to convey hydrology to current non-wetland areas;
- Revegetating newly created wetland area with seeded and planted native wetland plant material with a diversity of appropriate species;
- Building two berms along the eastern city property line to prevent water from draining onto the adjacent neighbor's property. Some of the excavated material will be used to create these berms, although most of the excavated material will be hauled off-site.

4.0 Site Selection

The site selected for wetland mitigation is directly adjacent to a section of existing wetland at the south east end of the property (Figure 1 and Appendix 1). The selected area is within the 100-year floodplain and maintains little elevational change from existing wetlands, providing an easier and appropriate site to excavate to groundwater that will convey wetland hydrology to this area. The site is currently dominated by non-native agronomic grasses.

5.0 Practicability

Several attributes contribute to the practicability of this wetland mitigation project: (1) it is accessible using an existing developed paved road that is adjacent to the property; (2) the proposed mitigation site is directly adjacent to an existing wetland, allowing for natural vegetative regeneration and connectivity to existing wetland hydrology; (3) there is little elevation difference between the wetland and upland areas, resulting in less overall excavation of soil; (4) due to similar soil types between the existing wetland and upland areas, soil does not have to be imported; (5) plant species within the existing wetland are common and easier to find in local nurseries; and (6) some of the excavated soil

will be kept on site to build berms to prevent water from draining onto the adjacent neighbor's property.

6.0 Mitigation Work Plan

The proposed mitigation approach is to restore a minimum of 0.696 acres (proposal is aiming to create 0.712 acres) of emergent and scrub-shrub wetland habitat to mitigate for the 0.348 acres of emergent and scrub-shrub wetland that will be impacted by the reconstruction of East Second Street. Within the newly created wetland, native plant material will be direct seeded and planted with appropriate native species from approved nurseries to enhance diversity and wetland function.

6.1 Maps and Drawings. Figure 1 shows the general project location. Appendix 1 shows the location of the areas of wetland impact due to road construction and Appendix 2 shows the proposed area of mitigated wetland creation.

6.2 Construction Methods, Timing, and Sequence. The following is a general sequence of construction:

6.2.1 Excavation

- Maximum construction limits will be clearly surveyed and staked on the ground prior to construction.
- Using an excavator, remove existing facultative vegetation that is adjacent to the wetland down to groundwater, approximately 1 to 3 feet (5 feet maximum), according to designated dimensions (Appendix 1). Excavation should return wetland hydrology to this area, excavating to groundwater or within a foot of groundwater. The bottom of the excavated area should be a relatively flat ground.
- To the north there will be a 3:1 slope that rises to the newly reconstructed road.
- Along the eastern city property boundary, there will be two berms, measuring 2 feet in width and 1.4 feet in height, that will be built using excavated material from the created wetland (Appendix 1). The northern berm will be approximately 160 feet in length while the southern berm will be approximately 39 feet in length. All additional soils will need to be hauled away from the project site.

6.2.2 Soil Addition

Given that alluvial land, adjacent to wetland areas 1 and 2, and Stryker silty clay loam soils, adjacent to wetland areas 3 and 4, have developed from alluvium and fine-textured material (NRCS 2013), it is unlikely that soil addition will be necessary at this site. Silty fines and clay should be present when the area adjacent to the wetland is excavated.

6.2.3 Planting Strategies and Methods

- Scrub-shrub vegetation should be planted directly adjacent to the existing stream on the north and south sides of the stream, widening the riparian vegetation along the stream. Most of this will be done by planting containerized material. The remaining mitigation area should be seeded with emergent wetland vegetation.
- Two berms will be constructed along the eastern city property boundary using excavated material from the created wetland (Appendix 1). All additional soils will need to be hauled away from the project site.

6.2.3.1 Emergent Vegetation

- ☛ Direct seeding of emergent wetland herbaceous material can be done using some or all of the species listed in Table 3, depending on availability and desire for diversity. Weedy species currently present on the site are not recommended for re-seeding. Supplementary species listed in Table 3, while not currently present at this wetland site, are common wetland species in lower Flathead Valley wetlands that also work well in revegetation projects. They could be used to add diversity and cover to the site.
- ☛ Herbaceous material should be hand seeded and lightly raked in during the spring of the first year of restoration activities. Seed rates should target 150-200 seeds/ft². The higher density for wetland seed is in part to compensate for the higher seed mortality inherent with smaller seed sizes. No fertilizer application is necessary.
- ☛ If quicker plant cover is desired or if wetland plants are only available in containers, some emergent wetland plants can be also be planted. Any planted material should be watered in at the time of planting.

6.2.3.2 Scrub-Shrub Vegetation

- ☛ Shrubs from Table 3 should be planted adjacent to the existing scrub-shrub vegetation to widen this wetland type on either side of the creek. This should be planted with containerized material during the first year of restoration activities. Ungulate browse should be expected so some fencing may be necessary. *one row? How close to stream?*
- ☛ Planting density for shrubs is an 8-10 foot center. Mortality will occur and riparian areas often have thicker shrub cover so a slightly higher planting density should be considered.
- ☛ Planted material should be watered in at the time of planting. It may be beneficial to water containerized material several times in the first month or two after planting if rainfall is low.

Table 3. Wetland Plant Species Recommended for Revegetation at East Second Street

Emergent Marsh Plant Species		
<i>Calamagrostis canadensis</i>	blue-joint reedgrass	taller grass
<i>Carex crawfordii</i>	Crawford's sedge	typical of wet meadow; shallow water and edges
<i>Carex utriculata</i>	beaked sedge	plant in shallow water and edges of wetland
<i>Eleocharis palustris</i>	creeping spikerush	good colonizer, plant in shallow water and edges
<i>Equisetum arvense</i>	field horsetail	good ground cover
<i>Genns macrophyllum</i>	large-leaf avens	large leaved wild flower
<i>Juncus balticus</i>	Baltic rush	excellent soil stabilizer, can tolerate drought
Scrub-shrub Plant Species		
<i>Alnus incana</i>	speckled alder	
<i>Salix bebbiana</i>	Bebb's willow	
<i>Salix georgiana</i>	Geyer's willow	
<i>Crataegus douglasii</i>	black hawthorn	
<i>Cornus sericea</i>	redosier dogwood	
Emergent Marsh Plants not present at site but can be considered – common to many wetlands		
<i>Carex vesicaria</i>	inflated sedge	
<i>Carex praegracilis</i>	meadow sedge	
<i>Carex pellita</i>	woolly sedge	
<i>Deschampsia cespitosa</i>	tufted hairgrass	
<i>Juncus ensifolius</i>	swordleaf rush	
<i>Juncus longistylis</i>	meadow rush	
<i>Scirpus acutus</i>	hardstem bulrush	

6.2.3.3 Berm Area Vegetation

The berms along the eastern property boundary should be seeded with native upland grasses. Suggested species to seed include Idaho fescue (*Festuca idahoensis*), bluebunch wheatgrass (*Pseudoroegneria spicata*), or blue wildrye (*Elymus glaucus*).

6.3 Water Supply and Connections to Existing Waters.

The mitigation site exists within a stream and groundwater driven system. The newly created wetland is adjacent and will be connected to a section of existing wetland adjacent to a perennial creek that is permanently saturated/inundated. Wetland plants will likely only need to be watered in at the time of planting, as there should be ample water supply to support wetland vegetation.

6.4 Native Vegetation Proposed for Planting.

Appropriate native wetland plants are recommended to be planted and/or seeded. Plant material must be obtained from approved native plant nurseries.

6.5 Allowances for Natural Vegetative Regeneration.

The proposed mitigation site is directly adjacent to an existing wetland, providing an excellent source of seed for additional natural revegetation.

6.6 Control of Exotic Invasive Vegetation.

Currently small populations of *Cirsium arvense* (Canada thistle), a Category I noxious weed, exist in and adjacent to the East Second Street wetlands. These should be controlled prior to restoration. No other noxious weed species were noted in the area, but other non-native grasses were prevalent. Non-native grasses are difficult or impossible to control, and the best practice to keep them from invading bare ground is to plant rapidly colonizing native species early and at relatively high densities.

6.7 Elevations and Slopes.

As stated above, there is little elevational difference between the existing wetland at the mitigation site and the adjacent upland that would be converted to wetland. Along each side of the existing wetland, approximately 1 to 3 feet (maximum of 5 feet) of soil would require excavation to reach groundwater or within a foot above groundwater, supplying wetland hydrology to the newly created wetland (Appendix A). The bottom of the excavated area would remain relatively flat.

To the north there will be a 3:1 slope that rises to the newly reconstructed road. Finally, there will be two mildly steep berms, each approximately 2 feet in height, that will be built using excavated material from the created wetland to prevent water from draining onto the neighbor's property (Appendix 1). The northern berm will measure approximately 160 feet in length while the southern berm will measure approximately 39 feet in length.

6.8 Erosion Control Measures.

Erosion control during construction will be accomplished using standard construction best management practices (BMPs). Silt fencing will be installed at all new road construction areas to minimize sedimentation prior to excavation and filling. Water will be passed through the roadway construction area via a temporary culvert (similar to the existing un-perched culvert).

SEP - 8 2013

6.9 Site Management and Maintenance.

The site is owned, managed, and maintained by the City of Whitefish. Annual inspections will be carried out to ensure that the wetland habitat is developing as intended.

7.0 Performance Standards

The mitigation project proposes a 2:1 wetland mitigation ratio that creates emergent marsh and scrub-shrub vegetation at similar percentages to the wetland habitats that are being impacted by the road reconstruction. The project will be considered successful when the mitigation area develops sufficient cover of emergent and scrub-shrub vegetation in the location of the created wetland, and meets the U.S. Army Corps of Engineers 1987 Manual's definition of a wetland. Wetland characteristics must include hydric soil characteristics, adequate hydrology, and a prevalence of wetland vegetation by or before five years after disturbance.

8.0 Contingency Measures

Contingency measures may include the following:

- Supplemental seeding or planting of vegetation species that do not successfully establish within the mitigation area within the monitoring period;
- Additional topographical modification necessary to address unanticipated surface or groundwater flow components; or
- Control of noxious weeds if established in unacceptable covers.

9.0 Monitoring and Long-Term Management

The wetland mitigation project along East Second Street will be managed and maintained by the City of Whitefish. Annual inspections will be carried out to ensure that the wetland habitat is developing as intended. Monitoring should include:

- Overall site condition;
- Vegetation species present and overall vegetative cover;
- Observed problems within the project boundaries;
- Any recommended corrective measures; and
- Site photographs.

9.0.1 Monitoring Success Criteria

Monitoring will take place each year for five years, until success criteria are met, at which time monitoring may cease. The newly created wetland areas must meet the U.S. Army Corps of Engineers 1987 Manual's definition of a wetland as well as meet any other criteria outlined by the U.S. Army Corps of Engineers upon review of this document. These criteria can often include attainment of a certain total vegetative cover, survival of a certain amount of planted material, and keeping cover of noxious weeds to a low percentage.

10.0 Financial Assurances

The site is owned, managed, and maintained by the City of Whitefish. The landowner is responsible for providing and managing mitigation funds, as well as providing for long-term management and protection of the mitigation project.

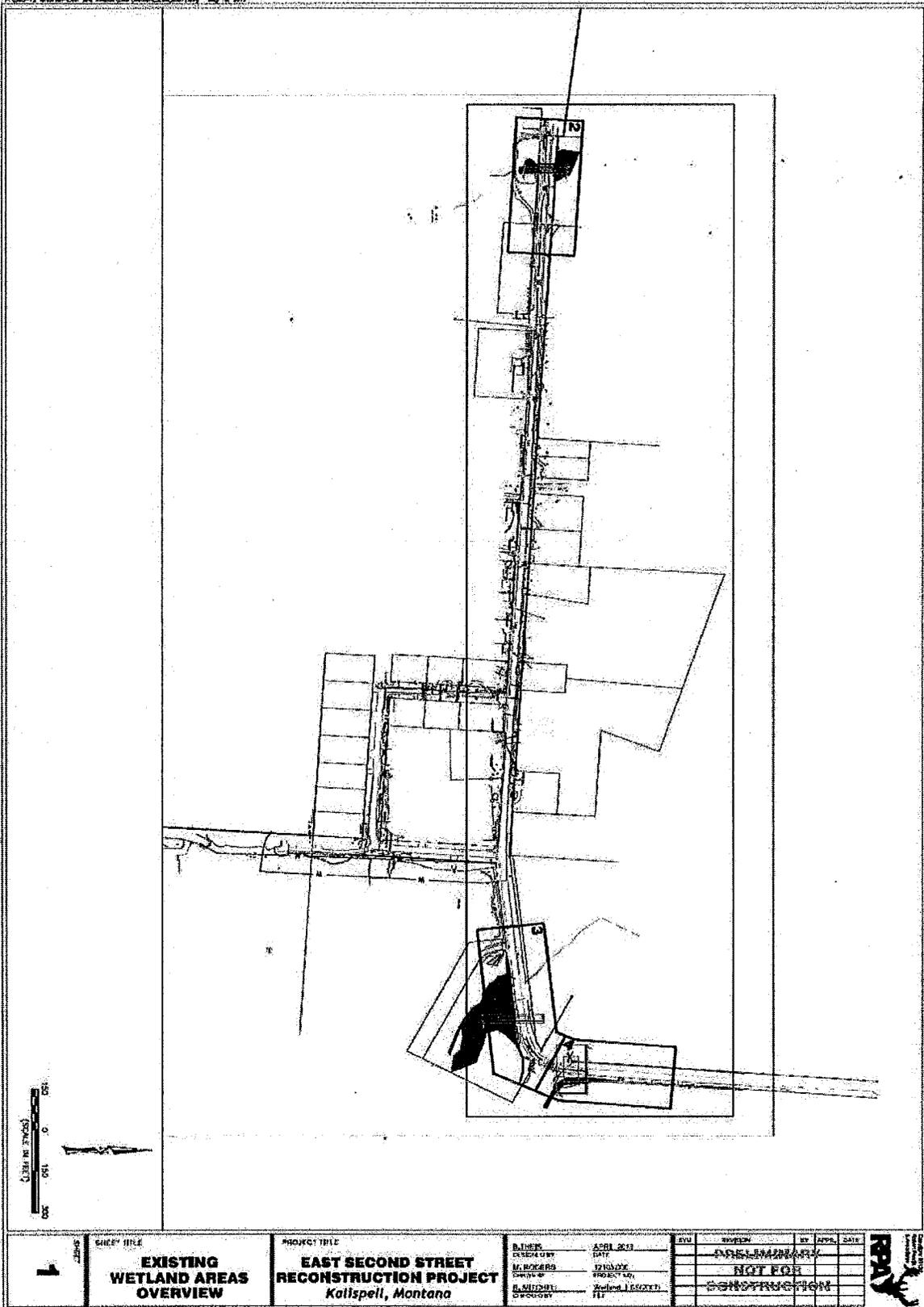
11.0 References

- Hansen, P., R. Pfister, K. Boggs, B.J. Cook, J. Joy and D.K. Hinkley. 1995. *Classification and management of Montana's riparian and wetland sites*. Montana Forest and Conservation Experiment Station Miscellaneous Publication 54, Missoula.
- Post, Buckley, Schuh, & Jernigan (PBS&J). 2008. *Cooper Farms Subdivision Wetland Delineation and Preliminary Impact Assessment*. Wetland delineation report for U.S. Army Corps of Engineers, Helena, MT, 25pp.
- U.S. Army Corps of Engineers (COE). 2005. *Wetland Compensatory Mitigation Ratios*. Montana Regulatory Program, Helena, MT.
- U.S. Department of Agriculture (USDA). 1946. *Soil Survey of the Upper Flathead Valley Area Montana*. Soils Conservation Service in cooperation with Montana Agriculture Experiment Station. Kalispell, MT, 67 pp.

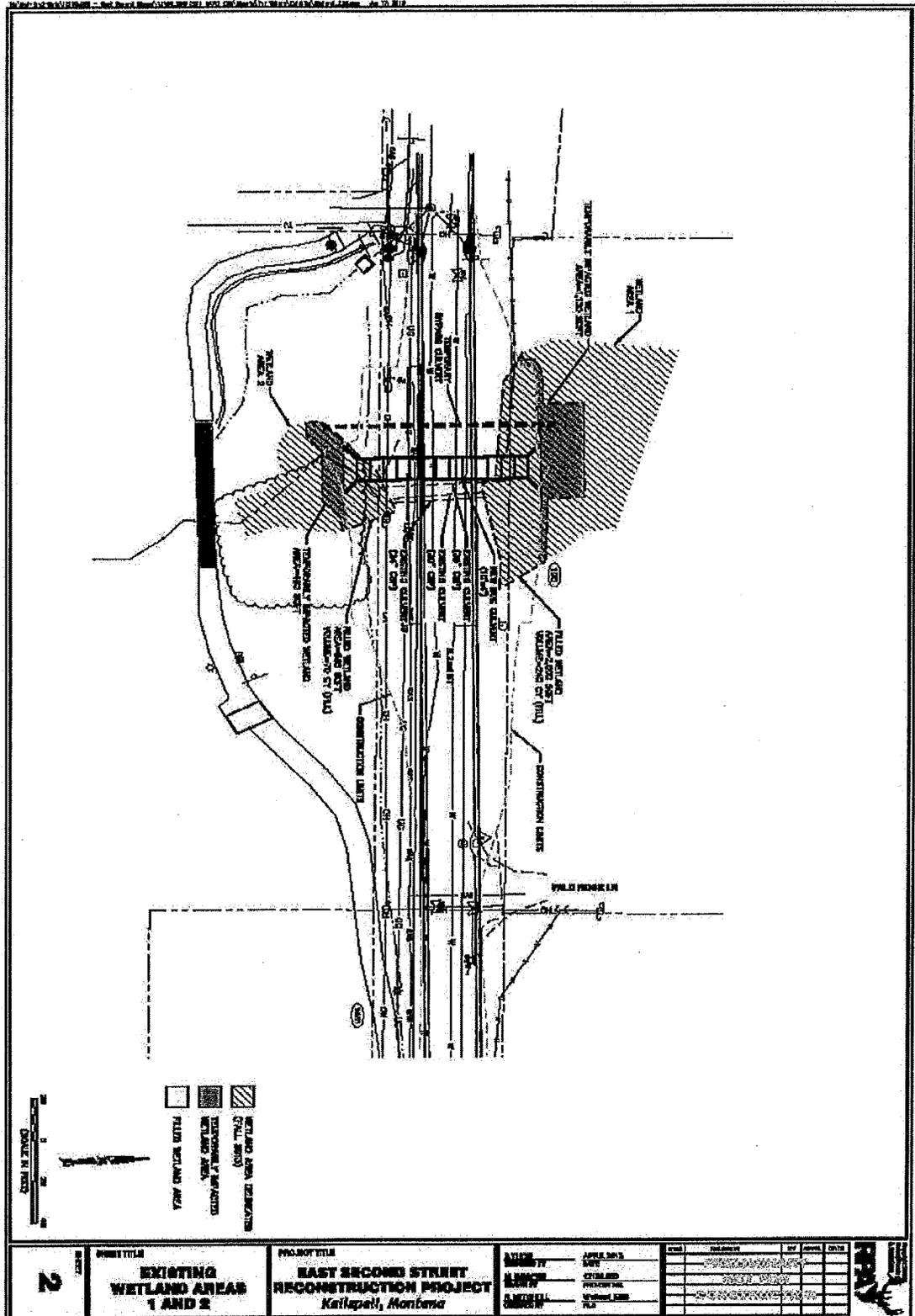
Appendix 1. Second Street Reconstruction: Wetland Delineation

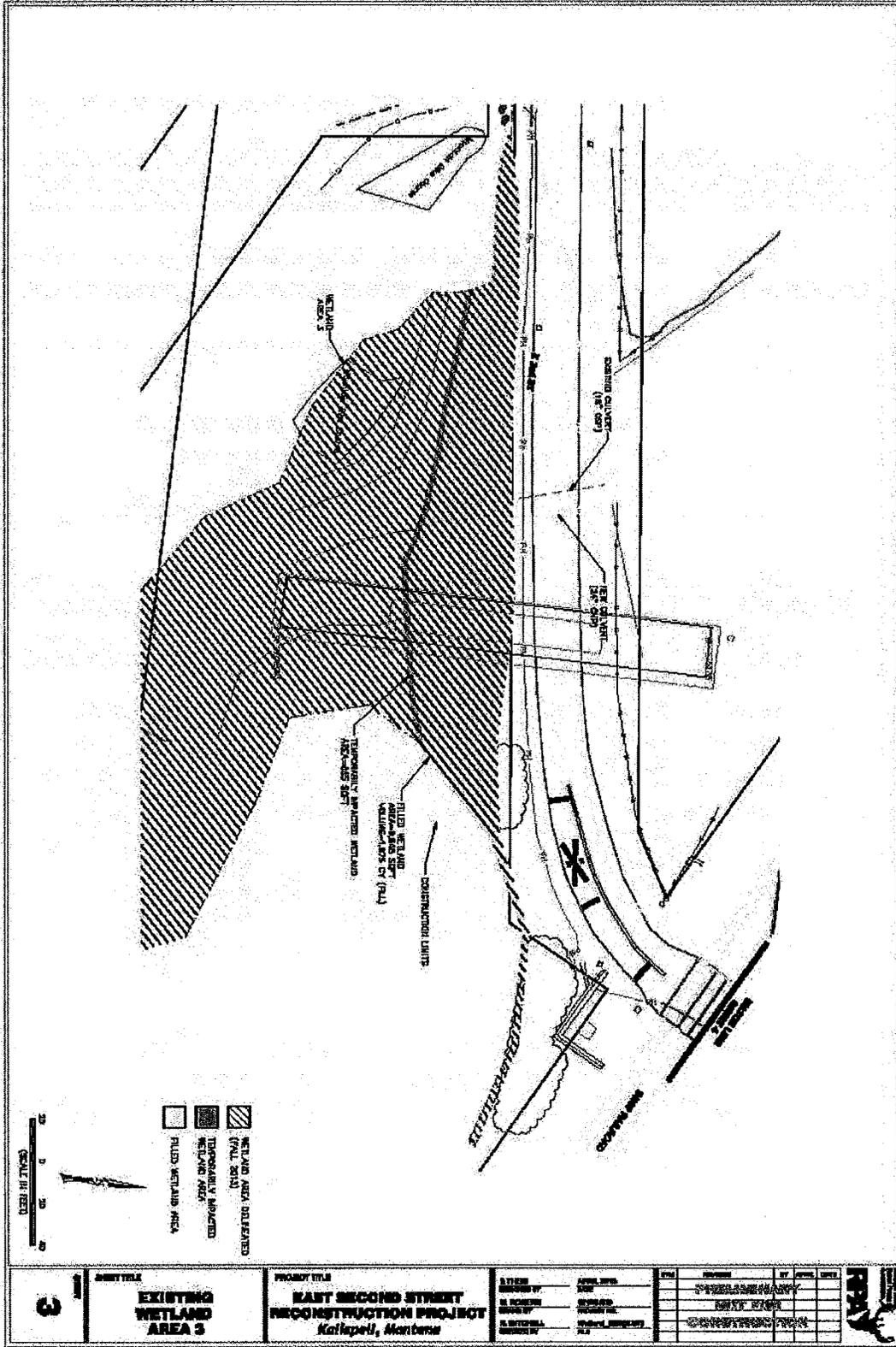
- **Map of wetland boundary and delineation plots**
- **Map of proposed impact to wetland area**





	SHEET TITLE EXISTING WETLAND AREAS OVERVIEW	PROJECT TITLE EAST SECOND STREET RECONSTRUCTION PROJECT <i>Kallispell, Montana</i>	DESIGNER M. ROGERS	DATE APRIL 2013	ERM REVIEWED DATE APRIL 2013	BY DATE	APPROVED DATE	DATE	
	DESIGNER M. ROGERS	CHECKED BY DATE	PROJECT NO. PROJECT LOCATION PROJECT NUMBER						





0 25 50 75 100
FEET
SCALE IN FEET

-  NEW WETLAND AREA (FINAL STATE)
-  TEMPORARILY IMPACTED WETLAND AREA
-  PLUDD WETLAND AREA
-  WETLAND AREA RELEASED

6

EXISTING WETLAND AREA 3

PROJECT TITLE
KANT SECOND STREET RECONSTRUCTION PROJECT
 Kalispell, Montana

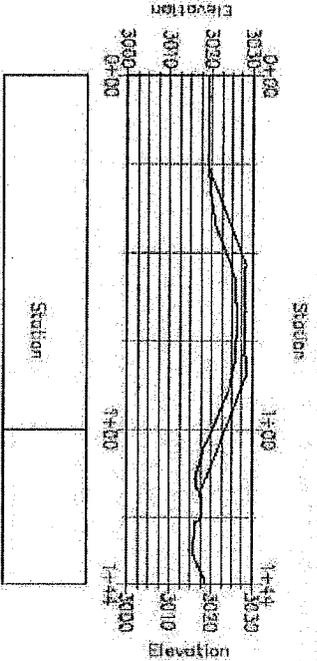
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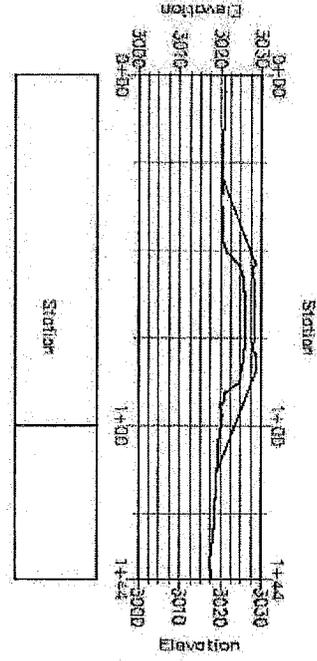
NO.	DESCRIPTION	DATE	BY	FOR
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2	ISSUED FOR PERMIT			
3	ISSUED FOR PERMIT			



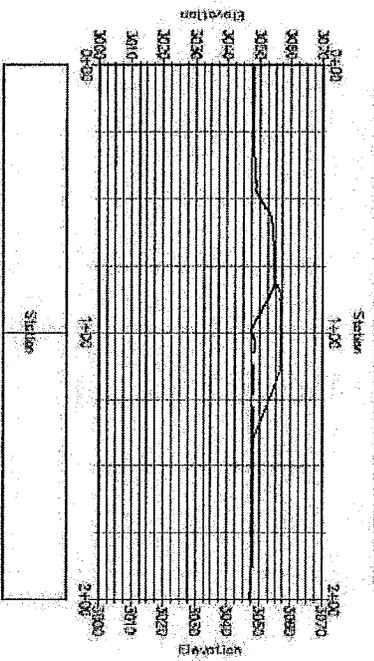
Alignment - Wetland Cross Section A PROFILE



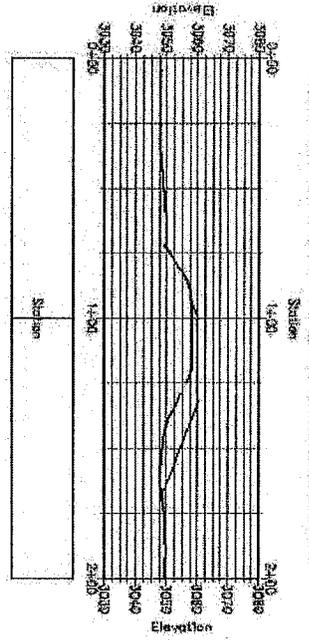
Alignment - Wetland Cross Section B PROFILE



Alignment - Wetland Cross Section C PROFILE



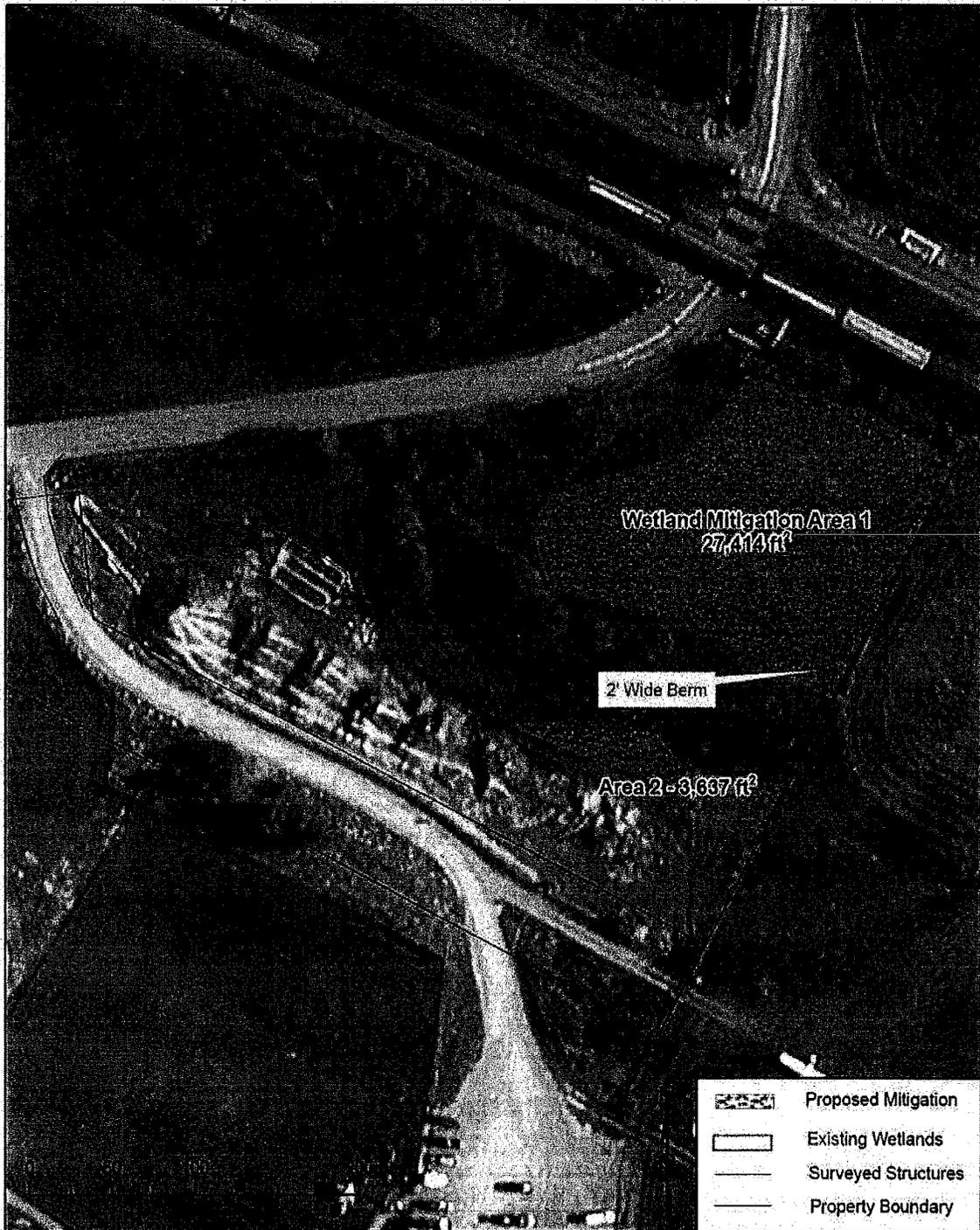
Alignment - Wetland Cross Section D PROFILE



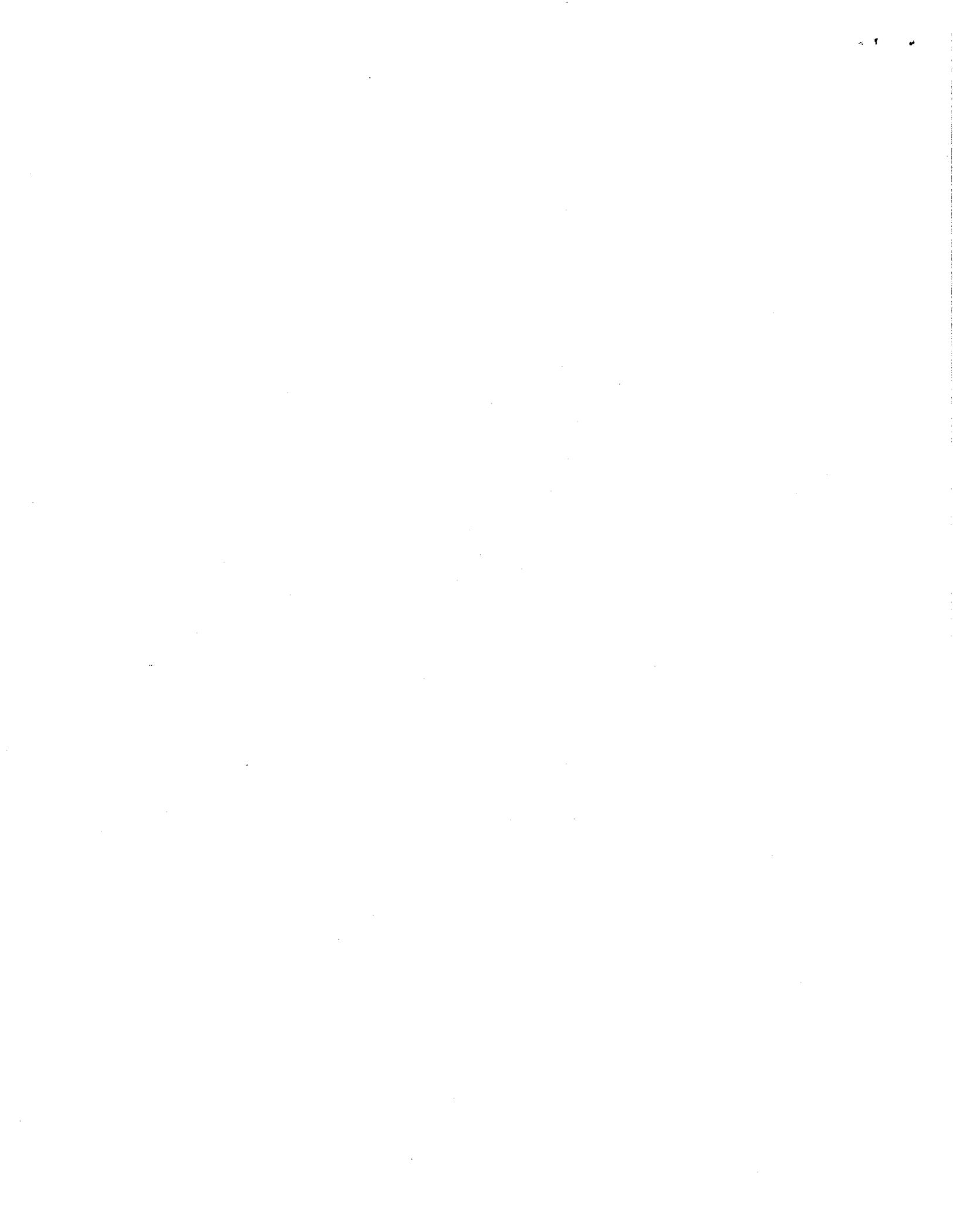
5	PROJECT TITLE	PROJECT TITLE	DATE	NO.	REV.	BY	CHK.	DATE
	SELECTED WETLAND AREA SECTIONS	EAST SECOND STREET RECONSTRUCTION PROJECT <i>Kalihepi, Montana</i>	DATE: _____	NO.: _____	REV.: _____	BY: _____	CHK.: _____	DATE: _____

Appendix 2. Second Street Reconstruction: Wetland Mitigation

- Map of proposed wetland mitigation location



	PROJ NO: 540-12	DRAWN: BJB	WHITEFISH E 2ND STREET MITIGATION LOCATION MAP	FIGURE
	LOCATION: Whitefish, MT	PROJ MGR: R. NOBLE		2
	1 inch = 75 feet	CHECKED:		
	FILE NAME: Mitigation	DATE: Aug/20/2013		



PROJECT COMPLETION REPORT FORM

This form should be completed and returned to the Corps within 60 days of completion of the project. The Corps and USFWS have implemented this permit authorization program to save permit applicants time and money. The return of these monitoring forms is essential to carry out the program.

1. Corps File No. NWO-2013-01643-MTB
2. Applicant. City of Whitefish
3. Location, including any compensatory mitigation site (County and 5th field HUC). * Cow Creek, un-named tributary to Cow Creek and adjacent wetlands. The project is located in the City of Whitefish in Section 32, Township 31 North, Range 21 West, Flathead County, Montana. 8th digit HUC - 17010210
4. Project Description. Reconstruction of 3,700 feet of East Second Street, including full reconstruction of the street, installing a bicycle/pedestrian path along the south side of the street and replacing the existing crossings at Cow Creek and the un-named tributary of Cow Creek. A total of 0.348 acre of wetland would be impacted by the project along with ~120 linear feet of Cow Creek and ~120 linear feet of the un-named tributary. Approximately 0.696 acre of wetland will be created along the eastern boundary of the project to meet the 2:1 mitigation requirements. This will expand the adjacent, existing wetland area.
5. Corps Project Manager Duane Mitchell
6. Construction start and end dates. March 3, 2014 – November 15, 2014
7. Attach photos of habitat conditions at the project site, including any compensatory mitigation site. (**before, during and after action**).
8. Projects with the following work elements must include these data (if applicable):
 - a. Work cessation – Dates work ceased due to high flows.
 - b. Site preparation – Riparian area cleared within 150 feet of the ordinary high water mark; upland area cleared; new impervious area created.
 - c. Streambank stabilization – Type and amount of materials used; project size (one bank or two, width and linear feet).
9. Were any bull trout handled, captured, or killed as a result of this project? If yes, please elaborate.

I certify that the project was completed in accordance with the conditions of permit

(NWO-2013-01643-MTB).

Name: _____ Signature: _____ Date: _____



**Montana Department of
ENVIRONMENTAL QUALITY**

Brian Schweitzer, Governor

P. O. Box 200901

Helena, MT 59620-0901

(406) 444-2544

Website: www.deq.mt.gov

April 20, 2012

**Water Quality Certification In Accordance With Section 401 of the Clean Water Act For
The 2012 Nationwide Permits in Montana**

A. Certification

DEQ is granting Section 401 Water Quality Certification (certification) for Nationwide Permits 1, 2, 4-11, 15-22, 24-25, 28-36, 38-44 and 46-50 with the general conditions in part D. below.

B. Special Conditions for Specific Nationwide Permits

- 1) DEQ is granting certification for Nationwide Permits #3, #14, and #23 with the general conditions in part D. below and the following condition: DEQ Water Protection Bureau – Discharge Permitting Program must be notified by the permittee within 48 hours of commencement of the regulated activity. Notification must be sent to WPBPublicNotices@mt.gov or fax (406) 444-1374 Attention Water Protection Bureau. Notification shall include at minimum (a) the permittee name, (b) the project name, (c) the Nationwide Permit used and Army Corp. of Engineers file number for the project, (d) the Township, Range and Section, and (e) the project or regulated activity location in decimal latitude and longitude to the millionth degree (six significant figures to the right of the decimal point).
- 2) DEQ is granting certification of Nationwide Permit #12 (utility line activities) with the general conditions in part D. below for projects where a static or vibratory plow is used. For all other projects that qualify under this Nationwide Permit, DEQ denies certification.
- 3) DEQ is granting certification of Nationwide Permit #13 (bank stabilization), Nationwide Permit #37 (emergency watershed protection and rehabilitation), and Nationwide Permit #45 (repair of uplands damaged by discrete events) with the general conditions in part D. below for all projects equal to or less than 300 feet in length.

C. Denial

DEQ denies certification for Nationwide Permit #27 (stream and wetland restoration), Nationwide Permit #51 (land based renewable energy generation facilities), and Nationwide Permit #52 (water based energy renewable energy generation facilities).

D. General Conditions for Nationwide Permits

The following general conditions apply to all certified Nationwide Permits as provided in A and B above.

1) This certification does not authorize the placement or construction of septic/leach/stormwater systems or other sewage treatment facilities in wetlands.

2) This certification does not authorize construction of dams, except for aquatic restoration projects and temporary dams associated with construction activity.

3) This certification requires that materials used in stream bank or shore stabilization projects adhere to the Montana Department of Environmental Quality's December 5, 2000 guidelines for materials for stream bank stabilization (also attached). Tires may not be used to stabilize any banks or shores in state waters.

4) This certification requires that all equipment be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. Equipment cannot continue operating in or near the water if a leak is discovered. All such leaks will be properly repaired prior to equipment being allowed on the project. Leaks that occur after the equipment is moved to the project site will be fixed that same day or the next day or be removed from the project area. If equipment is to be operated in or near water, a spill containment kit shall be available at the project site.

5) This certification requires that all permittees shall, to the maximum extent practicable, incorporate and construct design features that eliminate bridge deck run-off containing sediment, salt, or other pollutants from discharging directly into state water. To the extent practicable, bridge deck discharge, should be directed to a detention basin of unspecified size prior to discharge into state waters.

6) This certification requires that riprap projects, to the extent practicable, avoid the use of geotextile fabric as riprap underlayment. To the extent practicable, riprap voids shall incorporate approximately 30-50% fines/soil and viable plant material and/or root-stock. (A technique specification example is available upon request).

Policy on Streambank Stabilization

This policy outlines the guidelines for approved materials to be used for streambank stabilization in Montana. This policy and a draft Environment Assessment were provided to the public for comment via public notice MT-00-10 issued September 18, 2000. Comments were accepted until October 17, 2000. The draft Environmental Assessment is adopted as the final Environmental Assessment with the Responses to Comments incorporated.

Signed into policy 12/05/00 by Bonnie Lovelace, Chief, Water Protection Bureau and 12/06/00 by Jan Sensibaugh, Administrator, Permitting & Compliance Division.

For answers to questions or copies of the Response to Comments by mail or e-mail, contact Marilyn Pelo, Water Protection Bureau, at (406) 444-0574 or mpelo@state.mt.us.

GUIDELINES FOR MATERIALS FOR STREAMBANK STABILIZATION

The following guidelines represent the efforts of a work group composed of Conservation District representatives, natural resource consultants, environmental interests, and state and federal regulatory agencies. They are suggested by the Montana Department of Environmental Quality and not necessarily endorsed by all the work group members. These guidelines are only for use in areas where the use of high-density, angular rock is not practicable. (The term "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes [40 CFR 230.3(q)]). Sandstone or broken concrete may be acceptable alternatives to high-density, angular rock in certain situations, although local regulation may prohibit their use. The use of any river training device/structure may directly or cumulatively alter the ecology of Montana rivers and streams. Cumulative impact considerations may preclude the use of any river training device.

Bank stabilization projects are sometimes authorized under the following jurisdictions: Local Conservation District – Natural Streambed & Land Conservation Act (310); Montana Department of Fish Wildlife and Parks – Stream Protection Act (SPA124); County Floodplain Administrator – Floodplain Permit; U.S. Army Corps of Engineers – Section 404/10 Permit; Montana Department of Environmental Quality – 75-5-318, MCA Authorization; Montana Department of Natural Resources and Conservation – Navigable Rivers Land Use License/Easement.

The following optional design concepts should be considered in conjunction with the guidelines to minimize environmental/aesthetic concerns:

- Utilize rock only in the lower* portion or toe of the riprap with woody structures/features, biodegradable fabric, etc. in the upper* portions.
* The elevation at which the mean annual flow occurs is the division between "upper" and "lower."
- Incorporate soil in the upper portions of the project with appropriate woody (usually willow) plantings as near average water elevations as possible and herbaceous plantings elsewhere.
- Provide a temporary or permanent buffer strip (streamside area where protection promotes growth and sustenance of woody vegetation) along the project length to provide for vegetation stability where grazing or recreational use may impact plant growth.
- Preferably, plantings should be on slopes of 3:1 or flatter and irrigated, if possible.

(Note: Numerous documents with more detailed information are available. Contact the Natural Resource Conservation Service or the Department of Natural Resources and Conservation for their "Stream Project Manual.")

COMPLIANCE CERTIFICATION

Project: (Please attach copy of the completed "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies.")

Upon completion of project activity, sign this certificate and return it to the following address:

Montana Department of Environmental Quality
Permitting & Compliance Division/Water Protection Bureau
Box 200901
Helena, MT 59620-0901

Please answer the following questions:

1. What is the source of the concrete rubble?
2. What is the type of concrete rubble (curb/gutter, foundation, etc.)?
3. What was the cost of the rubble?
(The recipient of the rubble cannot be compensated for accepting the rubble without a landfill license.)

I hereby certify that the project work performed is in compliance with all applicable permits and in compliance with the "Guidelines for Materials for Streambank Stabilization."

Signature of Project Owner

Date

I hereby certify that I provided the concrete rubble used in the project and that I did not compensate the owner for accepting the rubble.

Signature of Concrete Rubble Provider

Date

Nationwide Permit 14

Linear Transportation Projects

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

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

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands.

(Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

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 NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 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 45 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 45 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 stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (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.

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.

**2012 Nationwide Permits
Regional Conditions
Omaha District
State of Montana**

The following Nationwide Permit regional conditions will be used in the State of Montana. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

Wetlands Classified as Peatlands – Revoked for Use

All Nationwide Permits, with the exception of 3, 5, 6, 20, 27, 32, and 38, are revoked for use in peatlands in Montana.

“Peatlands” are waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Any type of peat-covered terrain, including fens, bogs, and muskegs, are all peatlands

Wetlands Classified as Peatlands – Pre-construction Notification Requirement

For Nationwide Permits 3, 5, 6, 20, 27, 32, and 38 permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity impacting peatlands in Montana.

Waters Adjacent to Natural Springs – Pre-construction Notification Requirement

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in Montana.

For purposes of this condition, a spring is defined as any location where there is groundwater flow emanating from a distinct point. Springs do not include seeps or other groundwater discharge areas where there is no distinct point source.

Riffle and Pool Complexes – Pre-construction Notification Requirement

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into riffle and pool complexes.

Riffle and pool complexes are special aquatic sites and sometimes characterize steep gradient sections of streams. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas adjacent to riffles and are characterized by slower stream velocities, a smooth water surface, and finer substrate material.

Scrub-Shrub and Forested Wetlands – Pre-construction Notification Requirement

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into scrub-shrub and/or forested wetlands.

Forested wetlands are characterized by woody vegetation that is 20 feet tall or taller and normally possess an overstory of trees and an understory of young trees or shrubs and an herbaceous layer. Scrub-shrub wetlands include areas dominated by wood vegetation that is less than 20 feet tall including true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

Yellowstone River (including the Special River Management Zone) – Pre-construction Notification Requirement

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities within the Yellowstone River and impoundments.

Milk River, Missouri River, Bitterroot River, Clark Fork River (tributary to the Columbia River), the Flathead River above Flathead Lake, and Flathead Lake – Pre-construction Notification Requirement

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities in these waterways and their impoundments.

Indian Reservations in Montana – Pre-construction Notification Requirement

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities within the boundaries of any Indian Reservation in Montana.

Channel Straightening and Relocation Activities – Pre-construction Notification Requirement

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to straightening, relocating and/or shortening an existing perennial stream channel. For all nationwide permits, except NWP 27, the total channel length reduction for all ephemeral, intermittent or perennial channels must be less than 100 feet. This requirement may be waived by the Corps for impacts to man-made ditches, canals or conveyances on a case-specific basis.

Bank and Shoreline Stabilization Activities (except activities located in the Special River Management Zone of the upper Yellowstone River) – Pre-construction Notification Requirement

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any non-bioengineered bank stabilization activity involving all new bank or shoreline stabilization, including activities extending the length of previously stabilized areas. The following additional requirements apply to all bank and shoreline stabilization for all Nationwide Permits:

For bank revetments such as riprap, root wads, rock or log toes, or any bioengineered revetment, a. through c. apply:

- a. The revetment must conform to the existing bankline.
- b. The revetment must not extend above the elevation of the existing top of the bank (i.e., no new levees).
- c. The revetment must not wholly or partially block flows from entering a side channel or an overflow

channel.

For bank stabilization structures that project into the stream, such as weirs, barbs or vanes, d. through i. apply:

- d. The bank-end of the structure can be no higher than the ordinary high water mark.

- e. The top of the structure must decrease in elevation as it extends away from the bank.
- f. The structure must angle upstream from the bank.
- g. The structure must be keyed into the bed and the bank.
- h. The structure must not wholly or partially block flows from entering a side channel or an overflow channel.
- i. The structure cannot extend out more than 25% of the bankfull channel width from the existing bank.

For the purposes of this condition, bioengineering is defined as bank stabilization methods utilizing predominantly live and/or dead vegetation. Bioengineering can sometimes include minor amounts of soil, rock, and/or large dead wood.

Special River Management Zone of the Upper Yellowstone River – Bank Stabilization Activities - All Nationwide Permits

For bank stabilization activities associated with any Nationwide Permit, including maintenance of bank stabilization, the following apply:

For bank revetments such as riprap, root wads or any bioengineered revetment, a. through e. apply:

- a. Revetments must conform to the existing eroded or eroding bankline, unless such work is determined by the Corps to be biologically or geomorphically beneficial for the upper Yellowstone River.
- b. Revetment slopes must be flatter than the angle of repose for the selected revetment material. For example, rock riprap normally needs to be placed on a slope flatter than 1.5H:1V (1.5 Horizontal to 1 Vertical).
- c. Revetments are only permissible under Nationwide Permits if they are parallel to and near the lateral boundaries of the Special River Management Zone.
- d. Revetments must not extend above the elevation of the adjacent natural bank height (i.e., no new levees).
- e. Revetments must not wholly or partially block flows from entering a side channel, secondary channel, or an overflow channel, unless such work is determined by the Corps to be necessary for maintaining or restoring the geomorphic integrity of the upper Yellowstone River.

For bank stabilization structures that project into the stream, such as weirs, barbs, hard points, or vanes, f. through k. apply:

- f. Bank stabilization structures must not wholly or partially block flows from entering a side channel, secondary channel, or an overflow channel, unless such work is determined by the Corps to be necessary for maintaining or restoring the geomorphic integrity of the upper Yellowstone River.
- g. Bank stabilization structures are only permissible under Nationwide Permits if they result in an effective bankline that is approximately parallel to and near the lateral boundaries of the Channel Migration Zone.
- h. Bank stabilization structures must be keyed into the bank far enough to prevent flanking.
- i. Bank stabilization structures cannot occupy more than 10% of the bankfull channel area. Bankfull channel area pertains to the specific primary or secondary channel in question, and is not the aggregate channel area of all primary and secondary channels in multi-channel reaches.
- j. Bank stabilization structures must not present hazardous obstructions to boating, floating, or other river uses.
- k. Bank stabilization structures that are low in elevation, project only a short distance out from the bank, and angle upstream are more likely to qualify for Nationwide Permits because they typically result in less adverse impact on aquatic resources than structures that are tall, long, and point downstream.

Special River Management Zone of the Upper Yellowstone River - Sediment Management – All Nationwide Permits

Sediment removal is allowable only to maintain function of existing facilities and structures, or as necessary to maintain or restore the geomorphic integrity of the upper Yellowstone River. Diversion or removal of sediment or alluvium from the river channel and adjacent wetlands for other purposes is not allowed in the Special River Management Zone (SRMZ) under a Nationwide Permit. Examples of sediment diversion or removal not allowed under a Nationwide Permit include hydraulic dredging and mining and mechanical excavation to obtain aggregate, fill material, or minerals, including gold. Processing of material for the purpose of obtaining select minerals or a specific gradation of material, where only a portion of the sediment or alluvium is removed and the remainder returned to the SRMZ, is not allowed under a Nationwide Permit in the SRMZ.

Special River Management Zone of the Upper Yellowstone River – Dams – All Nationwide Permits

New dams, diversions, and/or impoundments are not authorized under a Nationwide Permit in the Special River Management Zone. These projects typically have more than minimal adverse impacts and must be reviewed under standard (individual) permit procedures.

Special River Management Zone of the Upper Yellowstone River - Constructed Ponds and Stream Channels – All Nationwide Permits

Construction of ponds and new artificial stream channels is prohibited under a Nationwide Permit in the Special River Management Zone, unless they are necessary and appropriate elements of a stream or wetland restoration project.

Special River Management Zone of the Upper Yellowstone River - Placement and Removal of Temporary Fills – All Nationwide Permits

Temporary fills in waters of the United States must be placed on a horizontal marker layer such as fabric or certified weed-free straw to delineate the pre-project ground elevation and facilitate complete fill removal and site restoration.

Borrow Site Identification – All Nationwide Permits

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

Temporary Vegetation Impacts – All Nationwide Permits

Limit clearing of riparian or wetland vegetation to the absolute minimum necessary. Where temporary riparian or wetland vegetation impacts are unavoidable, mow or cut off the vegetation above the ground, leaving the topsoil and root mass intact. Restore disturbed areas to original or pre-construction contours and use seeding and planting as necessary to re-establish desirable vegetative cover, utilizing native species in areas where native species were impacted.

Erosion and Sediment Control Blanket – All Nationwide Permits

All erosion control blanket or fabric used in or adjacent to waters of the U.S. must be comprised of degradable material to ensure decomposition. Do not use material that includes stabilized netting or stabilized open mesh, as those products take a long time to degrade and they can trap small animals, birds, amphibians and fish. This prohibition also applies to mesh materials used for wattles, rolled materials, and bank wraps. Erosion control blanket or fabrics that break down within 24 months are acceptable. Non-degradable blankets or fabric may be allowed on a case-specific basis if it will be buried beneath riprap or structures and it is not likely to be exposed. Non-degradable blanket or fabric that becomes exposed within waters of the U.S. must be removed.

Counter-Sinking Riprap Associated with Culvert Installation – All Nationwide Permits

When riprap inlet and outlet protection is used below the ordinary high water mark, it must be placed to match the adjacent culvert bottom elevations. Where culvert bottom elevations are lower than the stream bed elevation, the riprap must be lower than the stream bed and match the culvert elevation.

Minimum Culvert Size – All Nationwide Permits

Culverts installed in ephemeral, intermittent, and perennial streams must completely span the bankfull width of the stream channel. This requirement can be waived by the Corps for culverts installed in man-made ditches or canals. For the purpose of this condition bankfull width is defined as the width of the channel at the elevation where overbank or out-of-bank flow begins.

REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS

Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and Nationwide Permit 12 – Utility Line Activities - Intakes in the Yellowstone River or the Missouri River in Blaine, Chouteau, Custer, Dawson, Fergus, Garfield, McCone, Petroleum, Phillips, Prairie, Richland, Roosevelt, Valley and Wibaux Counties. Inlet screens will be installed on all pump intakes, with a screen mesh opening size no larger than 0.25 inches. Water intake velocities must not to exceed 0.5 feet per second through the mesh. Intakes must be located in the deepest water available and be elevated off the bottom of the river bed.

Nationwide Permit 11 – Temporary Recreational Structures. Temporary recreational structures within the Special River Management Zone of the upper Yellowstone River can be installed no earlier than 7 calendar days in advance of an event and must be removed no later than 7 calendar days after the event concludes.

Nationwide Permit 12 – Utility Line Activities. Trench excavation and backfill for utility lines is prohibited within the Ordinary High Water Mark of main and secondary flow channels and in adjacent wetlands within the Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 12 - Utility Line Activities. Permittees must notify the Corps in accordance with General Condition No. 31 (Pre-Construction Notification) prior to initiating any utility line activity that involves the discharge of dredged or fill material into open water such as lakes, ponds and perennial streams, or into wetlands, intermittent streams, or ephemeral streams when surface water is present.

The following activities normally do not usually involve a discharge of dredged or fill material and do not normally require a Section 404 permit:

- 1) Utility line activities involving only directional drilling or boring under the waterway where the bed and banks of the waterway and wetlands are not disturbed;

2) Utility line suspension over the waterway where wetlands and the bed and banks of the waterway are not disturbed;

3) Plowing or knifing methods of utility line installation where the soil or substrate is briefly separated and the utility line placed in the crease before the soil falls back into place; and

4) Permits are required for all of the above activities (1 through 3) in waters regulated under Section 10 of the Rivers and Harbors Act.

Nationwide Permit 13 – Bank Stabilization – Special River Management Zone of the Upper Yellowstone River

a. Temporary bank stabilization is prohibited during spring runoff.
b. Construction of temporary or permanent levees is prohibited within the Special River Management Zone.
c. Only bank stabilization that is parallel to and adjacent to the valley wall and/or Special River Management Zone boundary is allowed. All other bank stabilization must be reviewed under Standard Permit procedures. Bank stabilization along roads, ditches, fills, or structures already located along the valley wall is allowed under this Nationwide Permit.

Nationwide Permit 14 – Linear Transportation Projects. The construction of new transportation facilities in waters of the U.S. within the Special River Management Zone (SRMZ) of the upper Yellowstone River is prohibited under this Nationwide Permit and must be reviewed under Standard Permit procedures. The replacement, reconstruction, and upgrading of existing transportation facilities are allowed under this Nationwide Permit within the SRMZ.

Nationwide Permit 17 – Hydropower Projects. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 21 – Surface Coal Mining Activities. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 23 – Approved Categorical Exclusions. All permittees must notify the Corps in accordance with the General Condition No. 31 (Pre-Construction Notification) prior to initiating any activities authorized under this permit.

Nationwide Permit 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. The construction of water control structures, dikes, berms, current deflectors, bank stabilization, and ponds is prohibited within the Channel Migration Zone of the upper Yellowstone River unless it is demonstrated that the proposed features contribute to the restoration or rehabilitation of previously lost or impaired functions of the upper Yellowstone River and adjacent aquatic areas.

Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities. All permittees must notify the Corps in accordance with the General Condition No. 31 (Pre-Construction Notification) prior to initiating any aquatic habitat restoration, establishment or enhancement activities.

Notifications for pond projects must demonstrate there will be no net loss of emergent wetlands (if present) once the pond site matures in order for the project to qualify for NWP 27. Monitoring will be required to assure no net loss of emergent wetlands.

NWP 27 will not be used to authorize berms, dams, or similar structures for on-stream ponds on perennial, intermittent, or ephemeral streams unless they are necessary and appropriate elements of a stream or wetland restoration project.

Post-construction monitoring is required for wetland restoration, establishment, and enhancement projects exceeding ½ acre in size, and for stream restoration, establishment, and enhancement projects exceeding 500 feet in length.

Nationwide Permit 29 – Residential Developments. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 30 – Moist Soil Management for Wildlife. Fire breaks within the Channel Migration Zone of the upper Yellowstone River must be reclaimed and restored within six months after the fire event ends.

Nationwide Permit 33 – Temporary Construction, Access, and Dewatering.

- a. Temporary bank stabilization is prohibited during spring runoff within the Special River Management Zone of the upper Yellowstone River.
- b. Construction of temporary levees is prohibited within the Special River Management Zone.

Nationwide Permit 39 – Commercial and Institutional Developments

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 40 – Agricultural Activities. Only those activities associated with the reduction of existing adverse impacts on the upper Yellowstone River are authorized by this Nationwide Permit. Examples of allowable projects include work associated with livestock management, moving livestock watering areas off the river or out of the Channel Migration Zone, removal of irrigation systems from the Channel Migration Zone, and the removal or conversion of irrigation systems from flood irrigation to sprinkler irrigation.

Nationwide Permit 42 – Recreational Facilities. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 43 – Stormwater Management Facilities. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 44 – Mining Activities. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 45 – Repair of Uplands Damaged by Discrete Events. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 49 – Coal Remining Activities. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 50 – Underground Coal Mining Activities. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

GENERAL CONDITIONS (REGIONAL ADDITIONS)

General Condition 6 – Suitable Material

The use of precast or cast in place concrete materials or structures for permanent stream bank or shoreline stabilization, or as a component of a stream channelization or relocation project, is prohibited in Montana. Articulated concrete matting or similar material may be used on a case-specific basis such as for boat ramps, bridge pier scour protection, low water fords, culvert aprons, etc.

The use of clean brick, broken concrete and cinder block (in lieu of rock riprap) for fill can be considered on a case-specific basis. A list of materials prohibited or restricted as fill material in waters of the United States within Montana can be found at <http://www.nwo.usace.army.mil/html/od-rmt/mtspecific.html>.

DEFINITIONS

“Discrete Event,” as used in Nationwide Permit 3 – Maintenance and Nationwide Permit 45 – Repair of Uplands Damaged by Discrete Events does not include runoff or stream flow events equal to or less than the bankfull discharge.

