



SOLICITATION DOCUMENTS

TAHOE MEADOWS ACCESS RAMP PROJECT



MT ROSE HIGHWAY, WASHOE COUNTY

NEVADA

BID SET

Tahoe Meadows Access Ramp Committee

Engineer of Record:

Bowman

1150 Corporate Blvd

Reno, NV 89502

Environmental Engineer of Record:

NCE

300 E. 2nd Street, Suite 1210

Reno, NV 89501

SCOPE OF WORK: Truckee Meadows Parks Foundation (TMPF) hereby invites qualified, licensed in Nevada contractor firms or individuals (Bidders) to submit written bids to install a new decomposed granite ramp (hereinafter may refer to ramp as path, pathway, or walkway which is synonymous to the same improvement), jute netting, application of native seed and extending existing storm drain with flared end section. Area of work to be performed shown on attached approved NDOT plans. **This project is partially federally funded by the Nevada Department of Transportation.**

BID DEADLINE: All bids must be received by TMPF office, at Rosewood Nature Study Area building at 6800 Pembroke Dr, Reno, NV 89502 by **May 16, 2025 no later than 2:00 p.m., Pacific Time.** Bids received after the established deadline will be returned to the Bidder, and will not receive any consideration in the evaluation process. Bids will not be publicly opened (disclosed), in accordance with NRS 332.061(2).

DOCUMENTS AND ADDENDA are available through TMPF. Documents will be electronically delivered free of charge upon request by either phone at 775-453-0278, or e-mail at heidi@tmparksfoundation.org.

Bid documents obtained from any source other than TMPF may not be accurate or complete and each Bidder assumes all risks by its reliance on such documents. A Bidder who has not obtained bid documents from TMPF will not be notified of Addenda issued by TMPF, which could contain material changes thereto (such as additions or changes to the specifications, extensions of time, etc.).

INQUIRIES: Questions regarding this solicitation should be directed to Heidi Anderson, Executive Director, TMPF at 775-353-0278, or email to heidi@tmparksfoundation.org. To ensure a timely response, inquiries should be made by close of business on **May 9, 2025**. Information in response to inquiries may be published as an Addendum to all prospective bidders.

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**Tahoe Meadows Access Ramp Project
Washoe County, NV
ADVERTISEMENT FOR BIDS**

The Work consists of performing or providing all labor, materials, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, as required by the Contract Documents.

The Work generally includes but is not limited to: install new decomposed granite ramp, jute netting, application of native seed, extending existing storm drain with flared end section. Area of work to be performed shown on attached and approved NDOT plans.

Information for bidders:

1. Contact Information

- a. Any questions should be directed to **HEIDI ANDERSON**, Executive Director, TMPF at **775-453-0278** or e-mail heidi@tmparksfoundation.org. Bidders shall initiate all contact with TMPF during the period beginning with the issuance and ending with the award of any Contract, or the completion, if no Contract is awarded. This will ensure that all issues are appropriately coordinated and that all Prospective Bidders are afforded equal treatment. Communication between the Prospective Bidders and any non-designated TMPF contact regarding the selection of an Offeror is prohibited from the time of advertisement until a resulting contract is recommended for award. Failure of a Prospective Offeror or any of its representatives to comply with this paragraph may result in its bid being rejected.
- b. Bidders should thoroughly review the bid package and submit written questions by e-mail to the TMPF Executive Director no later than close of business on the day designated on the Cover Page. TMPF will distribute responses to questions to all Prospective Bidders via electronic notification from TMPF staff.

2. Pre-Bid and Pre-Construction Meetings

- a. Bidders are strongly encouraged to attend the optional pre-bid conference on Monday, May 5, 2025 at 1pm at the Rosewood Nature Study Area building but not required. There is no video conference call-in option offered for the conference.
- b. Pre-construction conference will be scheduled prior to commencement of work and upon execution of contract with successful contractor.

3. Site Access and Inspection

- a. Survey and project boundary establishment is being provided by Bowman, but will be for a maximum of two trips to the site. Please contact Bob LaRiviere at blariviere@bowman.com.

- b. Testing and inspections will be required and should be included as a part of the bid and include but limited to:
 - i. Post grading/project layout
 - ii. Compaction testing post ramp installation
 - iii. Post jute and post CMP is installed and ripped
 - iv. Final inspection and punch list creation
 - v. Final inspection with punch list items completed and full project completionContractor may propose to combine one or more of the identified milestone inspections, should it be considered expedient and cost effective for the project.

4. Plans and Documentation

- a. Electronic files can be available upon request, with a signed release form.
- b. Refer to sample contract for change order instructions.
- c. TMPF will be responsible to secure extension of the NDOT right-of-way permit Permit 218755-24 before expiration date and provide copy of approved permit to successful contractor.

5. Construction Requirements

- a. Must follow all environmental requirements as stated in the attached documents labeled 404, 401, and working in waters.
- b. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- c. Due to the presence of nesting birds, onsite mobilization must start **within 7 days after September 2, 2025 and project must be completed within 90 days of start.**
- d. The landing at the top of the ramp will start at the edge of the asphalt so as to not cut any of the existing asphalt.
- e. 12" of compacted soils can be used under the 4" DG ramp as long as the soils have been screened.
- f. NDOT Specifications to be followed for any earthwork done; refer to section 207 of NDOT standard specifications for all backfill.
- g. Testing and inspections will be required and should be included as a part of the bid.
- h. Project staging location: United States Forest Service Plaza Parking Lot at Mt Rose Summit. Contractor is responsible for securing its equipment, supplies and materials at the staging area and removing and cleaning the site to pre-staging condition at the end of the project.

6. Notice of Award

- a. Upon completion of negotiations, TMPF shall issue a Notice of Award, notifying the Successful Bidder of the award and attaching the Contract to be executed by the Successful Bidder(s) and returned to TMPF.
- b. A binding Contract will not exist between the parties until (i) certificates of insurance and other required documents have been validated and (ii) TMPF has executed the Contract. In preparing the required insurance documentation, Bidder shall refer to the example insurance certificate and associated forms provided as Attachment L to this Bid Package. The failure to execute and return any documents required herein, shall cause TMPF to rescind the award and enter into negotiations with the next highest ranked Bidder.
- c. Successful contractor must submit certificate of insurance with Truckee Meadows Parks Foundation listed as additional insured within 72 hours of signing contract.

7. Conflict of Interest

- a. An official of TMPF, who is authorized on behalf of the TMPF Executive Director to negotiate, make, accept or approve, or take part in negotiating, making, accepting, or approving this Contract, payments under this Contract, or work under this Contract, shall not be directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of, or for TMPF, who is authorized on behalf of TMPF to exercise any legislative, executive, supervisory or other similar functions in connection with this Contract, shall become directly or indirectly interested personally in this Contract or in any part hereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to this Contract.
- b. Each party represents that it is unaware of any financial or economic interest of any public officer or employee of TMPF relating to this Contract. Notwithstanding any other provision of this Contract, if such interest becomes known, TMPF may immediately terminate this Contract for default or convenience, based on the culpability of the parties.
- c. The Company represents and warrants that it has, in accordance with the current policy of TMPF, disclosed the ownership and principals of the Company on Exhibit F (Certificate – Disclosure of Ownership/Principals), and that it has a continuing obligation to update this disclosure whenever there is a material change in the information contained therein.

Attachment A
BID SCHEDULE
Tahoe Meadows Access Ramp Project
(Use Black Ink to Complete Bid Schedule)

<u>BID ITEM</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>DESCRIPTION</u>	<u>UNIT PRIC E</u>	<u>AMOUNT</u>
1	1	LS	Mobilization <div style="text-align: right;">_____doll ars</div> <div style="text-align: right;">_____cents</div>	/LS	
2	1	LS	Traffic Control <div style="text-align: right;">_____doll ars</div> <div style="text-align: right;">_____cen</div> <div style="text-align: right;">ts</div>	/LS	
4	1	LS	SWPPP <div style="text-align: right;">_____doll ars</div> <div style="text-align: right;">_____cents</div>	/LS	
5	9400	SF	Clearing and Grubbing <div style="text-align: right;">_____doll ars</div> <div style="text-align: right;">_____cen</div> <div style="text-align: right;">ts</div>	/SF	
6	2	EA	Remove Header Board <div style="text-align: right;">_____doll ars</div> <div style="text-align: right;">_____cen</div> <div style="text-align: right;">ts</div>	/EA	
7	340	CY (fill)	Earthwork (contractor to verify) <div style="text-align: right;">_____dollars</div>	/CY	

			_____ cents		
8	2445	SF	4" DG Ramp _____doll ars _____cen ts	/SF	
9	33	LF	24" RCP Culvert Extension _____doll ars _____cen ts	/LF	
10	1	EA	24" Flared End Section _____doll ars _____cen ts	/SF	
11	3	CY	CL 300 Rip Rap Bedding _____doll ars _____cents	/CY	
12	11	CY	CL 300 Rip Rap _____doll ars _____cen ts	/CY	
13	5780	SF	Seeding _____doll ars _____cents	/SF	
14	5780	SF	Jute Netting	/SF	

			_____doll ars _____cents		
15	1	LS	Testing and Inspection _____doll ars _____cents	/LS	

ALT=Alternative
LS=Lump Sum

CY=Cubic Yard
SF=Square Feet

EA=Each
SY=Square Yards

HR=Hour

LF=Lineal Feet
* =Contingent Item

BASE BID – TOTAL \$ _____

TOTAL (in words)

_____ **Dollars and**

_____ **Cents**

BIDDER [COMPANY] NAME: _____

AUTHORIZED SIGNATURE: _____

DATE: _____.

If the Bidder is given written notice of the acceptance of this Bid within thirty (30) calendar days of the time set for opening of Bids, the Bidder agrees to execute a Contract for the work and compensation stated herein.

Very truly yours,

Date: _____

Nevada License No. _____



JOE LOMBARDO, Governor

Attachment B
S TATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
District II
310 Galletti Way
Sparks, Nevada 89431
775-888-3040

TRACY LARKIN-THOMASON P.E., Director

August 9, 2024

US Forest Service
Attn: Matthew Zumstein
1536 S. Carson Street
Carson City, NV 89701

RE: **APPROVED Permit**
Permit 218755-24

Dear Permittee:

The Nevada Department of Transportation, District 2 Permit Office has accepted your application and has **APPROVED** your permit for the following location and work.

Permit Application Location:

- On SR 431 (Mount Rose Hwy, Tahoe Meadows Ophir Creek Trailhead); MP 6.68/6.72 WA.

Permit Application Work:

- Install new DG walkway, Jute Netting, and extend existing storm drain and flared end section in Washoe County.

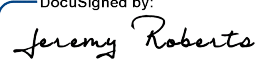
As the PERMITTEE it is your responsibility to know and understand the Standard and Supplemental Terms and Conditions associated with this permit. It is the PERMITTEE's responsibility to obtain any additional permits and/or approvals from the other agencies as may be required by Federal law, State law, local or tribal ordinances.

- All work authorized under this permit shall be completed within **ONE YEAR** from the date of this letter, **August 9, 2024**.
- The District 2 Permit Inspector for this permit is: Shawn Fitzpatrick; sfitzpatrick@dot.nv.gov, (775) 834-8330, option 2.
- This approved permit package, shall be available at all times during construction. All PERMITTEE contractors and subcontractors connected with this permit shall have a complete copy of this permit package on the work site at all times. The permit activity may be ordered to cease by the District 2 Permit Inspector if a copy of the complete permit package is not onsite.
- PERMITTEE shall contact the District 2 Permit Inspector to provide a five (5) working day notice prior to beginning any work on this permit.

- For emergencies 24 hours a day, contact the District 2 Permits Emergency phone number at (775) 834-8344.
- Should NDOT ITS Fiber Optic Line be encountered during work, immediately contact the NDOT ITS TOTS 24/7 phone number at 1-(877)-638-6777.
- All formal requests shall be processed through the District 2 Permit Office, submit all requests to the D2permits@dot.nv.gov. This includes, but not limited to:
 - Letters of Request (modify work hours, holiday work requests)
 - Construction time extensions
 - Amendments

If you have any questions or need additional information, contact the District 2 Permit Office, option 1 at (775) 834-8330 or D2Permits@dot.nv.gov.

Sincerely,

DocuSigned by:

CAEEC42D04334DE...

Jeremy Roberts
District 2 Permits Supervisor

JR/smg

cc: Kathleen Meyer kmeyer@bowman.com
Shawn Fitzpatrick
District File

DISTRICT 2 PERMIT OFFICE STANDARD TERMS AND CONDITIONS

V5. 5/6/2024

NEVADA DEPARTMENT OF TRANSPORTATION 310 Galletti Way, Sparks, NV, 89431



District 2 Permit No.: 218755-24	
Applicant: US Forest Service	
Route: SR 431	
Milepost: WA 6.68 to 6.72	
Work Order No: 20151261	Fee: Waived
Type of Activity: Install ADA accessible ramp to access Tahoe Meadows South Trailhead. Regrade, install jute netting for erosion & extend existing storm drain	
FOR DEPARTMENT USE ONLY	

**REVOCABLE PERMIT FOR OCCUPANCY OF
NEVADA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY**
(Under the provisions of NRS 408.423, 408.210 and NAC 408)

Location where construction, installation or removal is to occur:

SR 431	Mt. Rose Hwy
<small>Local name of highway</small>	<small>Street address or nearest cross street</small>
6.68	6.72
<small>between Milepost</small>	<small>and Milepost</small>

Scope of work and additional information:

- On SR 431 (Mount Rose Hwy, Tahoe Meadows Ophir Creek Trailhead)
- i. HES "P" 365+25 77' Rt. (WA 6.68/6.68) to HES "P" 367+40 77' Rt. (WA 6.72/6.72),
 - ii. Install new DG walkway, Jute Netting, and extend existing storm drain and flared end section.

SPECIFIC TERMS AND CONDITIONS APPURTENANT TO THIS PERMIT ARE
LISTED IN THE STANDARD AND SUPPLEMENTAL TERMS AND CONDITIONS.

US Forest Service
<small>Name of PERMITTEE</small>
1536 S. Carson St.
<small>Address</small>
Carson City, NV 89701
<small>City, State, Zip</small>
5.21.24
<small>Date of Application</small>
Kathleen Meyer

Matthew Zumstein – District Ranger
<small>Name and Title (Please Print)</small>
775.885.2766
<small>Telephone</small>
Matthew.zumstein@usda.gov
<small>Email</small>
KMeyer@bowman.com

Permittee Initials DS
ME

Permittee Representative

Permittee Representative Email

Permittee Initials 

PERMITTEE hereby acknowledges that he or she has read the *Terms and Conditions Relating to Right-of-Way Occupancy Permits* booklet (2021 ed.) and the Additional Terms and Conditions of this permit. By signing this permit, the permittee agrees to all terms and conditions appurtenant to this permit.

*** ACKNOWLEDGEMENT OF THE TERMS AND CONDITIONS LISTED IN THE STANDARD AND SUPPLEMENTAL TERMS AND CONDITIONS OF THIS PERMIT. ***

PERMITTEE INITIAL

DS
ME

Reviewed By:

DocuSigned by:

Jeff Freeman

District 2 Engineering Services Manager

08/09/2024

Date

Permittee:

Matthew Zisman

08/13/2024

Name

Date

DocuSigned by:

Matthew Zisman

Signature

This Right-of-Way Occupancy permit is granted to the PERMITTEE in accordance with the provisions of Chapter 408 NRS, and subject to the terms and conditions stipulated to perform the activity described.

STATE OF NEVADA, DEPARTMENT OF TRANSPORTATION

Approved By:

DocuSigned by:

Bhupinder Sandhu

Director of District Engineer

08/13/2024

Date

NDOT District 2 Permit Office
310 Galletti Way, Sparks, NV 89431

Permittee Initials

DS
ME

V5. 05/06/2024

Permittee Initials 

1. On SR 431 (Mount Rose Hwy, Tahoe Meadows Ophir Creek Trailhead)
 - i. HES "P" 365+25 77' Rt. (WA 6.68/6.68) to HES "P" 367+40 77' Rt. (WA 6.72/6.72),
 - ii. Install new DG walkway, Jute Netting, and extend existing storm drain and flared end section.

All work shall be in accordance with attached plans by CFA dated 08/08/2024 (Mt. Rose Accessibility). Any conflicts between the attached plans and NDOT Standards and Specifications shall be documented in writing and submitted to the District 2 Permit Office for acceptance prior to implementation. Written requests to deviate from NDOT Standards and Specifications must identify the standard, identify the proposed deviation, identify any proposed mitigation, suggest how proposed deviation and mitigation meets the intent of NDOT Standards and Specifications and suggest why the deviation is reasonable and safe. Deviation letters must be signed and stamped by an engineer registered in the State of Nevada.

General

2. PERMITEE agrees to all the District 2 Permit Office Standard Terms and Conditions listed within this document as well as all Terms and Conditions listed in the Supplemental Terms and Conditions.
3. This approved permit package, shall be available at all times during construction. All Permittee contractors and subcontractors connected with this permit shall have a complete copy of this permit package on the work site. The permit activity may be ordered to cease by the District 2 Representative if a copy of the complete permit package is not available.
4. All work authorized by this permit will be completed within one year from date of issuance thereof, or this permit will be revoked; except upon written request, the PERMITTEE may be given, at the discretion of NDOT, an extension.
5. PERMITTEE's shall contact the District 2 Permit Office at (775) 834-8330, 2 or by email at D2PermitInspection@dot.nv.gov, to have a pre-construction meeting, with the District 2 Permit Inspector, prior to commencement of any work.
6. PERMITTEE shall contact the District 2 Permit Inspector at (775) 834-8330, option 2 or by email at D2PermitInspection@dot.nv.gov, a minimum of five (5) working days prior to the anticipated beginning of construction and five (5) working days prior to any lane closure (NDOT accepted temporary traffic control plans).
7. The standard hours of work shall be from 7:00 AM to 3:30 PM, daily, Monday through Friday, provided all through lanes of traffic are unrestricted by activity in progress. If traffic is restricted by activity in progress, hours of work shall be from 9:00 PM to 5:30 AM, nightly, Sunday night through Friday morning. Any change in work will be changed in the Supplemental Terms and Conditions.

Permittee Initials 

8. No work shall be allowed in the NDOT right-of-way from 5:00 AM the working day before a holiday through 7:00 PM the working day after a holiday, unless prior written approval has been given by the District 2 Permit Office. To obtain approval, submit a formal Letter of Request to the District 2 Permit Inspector. The letter shall be addressed to the District 2, District Engineer, Bhupinder Sandhu, signed by the PERMITTEE and submitted at least five (5) working days prior to the holiday.

NDOT recognized holidays are as follows:

- January 1, New Year's Day
- Third Monday in January, Martin Luther King Day
- Third Monday in February, President's Day
- Last Monday in May, Memorial Day
- June 19, Juneteenth National Independence Day
- July 4, Independence Day
- First Monday in September, Labor Day
- Last Friday in October, Nevada Day
- November 11, Veteran's Day
- Fourth Thursday in November, Thanksgiving Day
- Fourth Friday in November, Family Day
- December 25, Christmas Day

9. All work performed under this permit or for routine maintenance or emergency situations will be in accordance with the current editions of the State of Nevada:

- i. Terms and Conditions Relating to Right-of-Way Occupancy Permits (2021)
<https://www.nevadadot.com/Home/ShowDocument?id=8440>
- ii. Standard Specifications for Road and Bridge Construction (2014)
<https://www.nevadadot.com/home/showdocument?id=6916>
- iii. Standard Plans for Road and Bridge Construction (2022)
<https://www.dot.nv.gov/home/showpublisheddocument/21537/638150725828230000>
- iv. Access Management System and Standards (2017)
<https://www.nevadadot.com/home/showpublisheddocument?id=11581>
- v. The American Association of State Highway and Transportation Officials (AASHTO) publications (2024) <https://store.transportation.org/>
- vi. National Electrical Safety Code (2023) https://forms1.ieee.org/NESC-2023.html?LT=LG_WB_Innovate_LM_NESC_Innovate_Carousel
- vii. "A Guide for Accommodating Utilities within Highway Right-of-Way" (2005)
<https://store.transportation.org/Item/PublicationDetail?ID=1361>
- viii. "A Policy on the Accommodations and Installation of Utilities on State and Federal-Aid Highways, within the State of Nevada"
<https://www.leg.state.nv.us/nac/NAC-408.html>

10. All work will be accomplished to the satisfaction of the District 2, District Engineer, Bhupinder Sandhu. All construction will be in conformance with the requirements, rules, and regulations of the State of Nevada Public Utilities Commission, the State of Nevada Industrial Insurance System and the State of Nevada Labor Commission.

Permittee Initials DS
ME

11. Advertising within the NDOT right-of-way is restricted per NRS 405.110. It is the PERMITTEE's responsibility to understand and comply with all applicable local, state and federal requirements regarding advertising within the right-of-way.
12. NDOT right-of-way permits are issued with the understanding that any particular action will not be considered as establishing any precedent on the question of the expediency of permitting any kind of right-of-way occupancy to be erected within the right-of-way of state highways, or as to any utility or acceptability of any such permits as to any other or future situations.
13. PERMITTEE agrees to indemnify, defend and save harmless the State of Nevada and its officers, agents, and employees against any and all liability, loss, damage, cost and expense which it or they may incur, suffer, or be required to pay by reason of death, disease, or bodily injury to any person or persons, or injury to, destruction of, or loss of use of any property, including property belonging to the State of Nevada, arising out of or incident to activities contemplated by this permit, and proximately caused, in whole or in part, by any act or omission of the PERMITTEE, or its contractors, agents, or the employees of any one or all of them, or by the officers, agents, or employees of the State of Nevada, unless it is established by the PERMITTEE that the proximate cause was the willful misconduct or gross negligence of the officers, agents, or employees of the State of Nevada. Costs and expenses will include but are not limited to, the amount of the judgment, court costs, litigation expenses, expert witness fees, and reasonable attorney fees.
14. Contact "UNDERGROUND SERVICE ALERT" not less than two (2) working days, but not more than fourteen (14) days, before starting any excavation. Contact by telephone at 811 or online at www.usanorth811.org and comply with all instructions so received.
15. PERMITTEE shall submit an email to D2DigAlert@dot.nv.gov for all NDOT locates. Supply the permit number, route with mile post, plan sheets, location sketch and work schedule. Email submittal must be done not less than five (5) working days before starting any excavation.
16. No pavement shall be cut.
17. All work within the NDOT right-of-way shall be in compliance with the Americans with Disabilities Act.
18. PERMITTEE shall be responsible for maintaining the integrity of the roadway surface during construction. Dust, dirt, mud, gravel, etc. carried onto the roadway surface shall be removed on a regular basis (at least once a day or as requested by NDOT personnel). Failure to comply may result in NDOT having the roadway cleaned and the cost for the clean-up billed to the PERMITTEE.
19. PERMITTEE shall not store equipment, materials or spoils in right-of-way outside of normal working hours.

Permittee Initials 

20. In the event of forecasted inclement weather conditions, PERMITTEE shall ensure that permit activities are ceased, and that the right-of-way has been prepared and is safe for weather related maintenance activities and motorists.

Traffic Control

21. The Department Standard Plans for Traffic Control shall apply to this permit unless a Site-Specific Traffic Control Plan (SPTCP) is submitted to the District 2 Permit Inspector. Refer to Condition 9, Section iii, for the Standard Plans.

22. All persons working in the NDOT right-of-way shall wear OSHA approved reflective clothes, not limited to hats and vests. All vehicles occupying the public Right-of-Way shall be equipped with reflective markings and an overhead strobe light. Survey staff shall use all possible caution while performing facility or topographic surveys.

23. PERMITTEE shall only use legalized Interstate Exits as turnarounds. PERMITTEE shall not use Emergency Vehicle Turnarounds as a means of travel or use for U-Turns. Any incident arising from activities pertaining to the permitted access will be considered as willful misconduct and result in revocation of access.

24. If an incident (accident/crash) occurs within the placed temporary traffic control, the PERMITTEE shall not modify or tamper with the existing traffic control devices. All traffic control devices shall remain for the incident investigation team. Temporary incident signage (pink color) may be placed to alert motorists of an incident event. The PERMITTEE shall receive verbal or written approval prior to modifying or removing temporary traffic control devices after the incident.

Amendments, Letters of Request, Transfers, and Time Extensions

25. An Amendment may add, take away or change the terms and conditions of this permit. When initiated by the PERMITTEE, a formal request shall be made to District 2 Permit Office. Upon completion of the construction and NDOT's acceptance of the work, all construction shall be considered complete, and no Amendments may be issued. Any future improvements shall require a new encroachment permit.

26. All formal requests shall be processed through the District 2 Permit Office. This includes, but not limited to:

- i. Amending the accepted Additional Terms and Conditions
- ii. Time extension for permitted construction activities
- iii. Construction hours of operations
- iv. Allowance the day before, during, and after scheduled holiday or special event.

27. PERMITTEE may not transfer, convey, or assign this permit, or any privilege or responsibility contained here.

Permittee Initials 

28. A formal request letter, addressed to the District 2, District Engineer, Bhupinder Sandhu, shall be signed and submitted by the PERMITTEE to the District 2 Permit Office. During permitted construction, coordinate any formal requests through the District 2 Inspector. NDOT will not be responsible for any administration delay as a result of the PERMITTEE or a representative of the PERMITTEE not submitting the formal request to the District 2 Permit Office for processing.

Additional Permits and Surveys

29. Prior to commencement of any work within the NDOT right-of-way, PERMITTEE must:

- i. Obtain any and all other permits required by Federal and State law or local ordinances.
- ii. Obtain and abide by any and all environmental permits applicable under, but not limited to, the “Clean Air Act” the “Clean Water Act” and “Endangered Species Act.”

30. For any activity to be performed within Washoe County, PERMITTEE is required to contact the Washoe County Air Quality Management Division at (775) 784-7200, to ensure compliance with the county dust control regulations.

31. PERMITTEE shall not disturb NDOT survey control points. PERMITTEE shall coordinate reestablishment of disturbed survey monuments with NDOT Location Division, Gary Nelson at (775) 888-7486. Monuments shall be replaced by a Nevada Licensed Professional Land Surveyor (PLS), per NDOT “Special Instructions for Survey, Mapping, or GIS Consultants” and Nevada Revised Statute (NRS).

Gates and Fencing

32. Any Control of Access fence to be removed shall be surveyed by an NDOT approved Nevada Professional Licensed Surveyor (PLS). The PLS shall contact Gary Nelson at (775) 888-7486 for survey control information. In addition, the PLS shall confirm that the existing Control of Access fence is coinciding with the property line. If there is any discrepancy the PLS shall contact Greg Bigby at (775) 888-7470 to resolve the issue. A copy of the boundary survey shall be submitted to the District 2 Permit Office.

33. Temporary construction fence shall be placed prior to removal of the Control of Access fence. After construction is completed, the new fence shall be surveyed and staked by an approved Nevada Professional Licensed Surveyor (PLS), and a copy of the boundary survey submitted to the District 2 Permit Office. PERMITTEE’s Contractor shall not access the fence removal operation or the new fence construction from the NDOT right-of-way, roadway or ramp, at any time during the permit work.

34. Permittee shall not disturb any right-of-way fencing.

35. All staging areas must be at least 100’ away from the terminus of a livestock or wildlife fence as well as any escape features such as 1-way gates or escape ramps.

Permittee Initials DS
ME

Hydraulics

36. PERMITTEE shall conform to Appendix “E” - Hydraulic Guide for Fiber Optic/Utility Line Installation” of the State of Nevada, Terms and Conditions Relating to Right-of-Way Occupancy Permits, 2021 Edition, for all new utility and fiber optic installations within the NDOT right-of-way. Any utility installation crossing an irrigation or water drainage channel shall be concrete encased and placed to the depth specified in Appendix “E” below the elevation of the channel bottom.

37. PERMITTEE shall not remove or replace storm drainpipe during construction. If field constraints exist requiring the removal of the pipe, the Permittee shall submit an amendment or letter of request prior to the storm drainpipe being replaced. NDOT shall specify the pipe material, class and size. The pipe joints shall be per NDOT Standard Detail DS-4. PERMITTEE shall not encase the storm drain.

Stormwater

38. PERMITTEE shall conform to Section “XI ENVIRONMENTAL” of the State of Nevada, Terms and Conditions Relating to Right-of-Way Occupancy Permits, 2021 Edition, in its entirety.

39. Permittee shall confirm if coverage under a National Pollutant Discharge Elimination System - Stormwater Construction General Permit is required.

40. PERMITTEE shall maintain an ongoing dust control program, including watering of open areas, conforming to the latest Federal, State, and County air pollution regulations. PERMITTEE shall submit a dust control plan for approval to the appropriate air pollution control division and the approved plan shall be available at the job site, prior to commencement of any work within the right-of-way.

41. PERMITTEE shall ensure that contractors and subcontractors, that are moving equipment and materials from the project site into the right-of-way, where noxious weeds are present, shall wash and clean equipment prior to being moved.

Environmental

42. If any species are listed by either the US Fish and Wildlife (USFWS) or by the State, the PERMITTEE must have a qualified biologist complete a field assessment and determine species presence or absence and contact the appropriate agencies to determine what mitigation methods are required if found. PERMITTEE must submit copies of any reports and documentation of any required agency consultations to NDOT.

43. The PERMITTEE must follow all BMPs to avoid impacts to all federal or state listed species and must submit copies of any reports and documentation of any required agency consultations to NDOT.

Permittee Initials 

44. BATS: If bats are identified roosting within the permitted area contact the Nevada Department of Wildlife (NDOW) for proper guidance. An avoidance area with a 100' radius must be maintained until formal guidance is received. For information on how to contact NDOW go to: <https://www.ndow.org/contact-us>

45. MIGRATORY BIRD TREATY ACT (MBTA): Vegetation/structure removal shall be conducted to conform with the MBTA to avoid impacts to listed migratory birds (50 CFR 10.13) that may be actively utilizing vegetation or structures for nesting. When possible, vegetation and structure removal should not occur during avian breeding season (generally March 1 through July 31), but raptors and owls may begin nesting as early as January. As these dates are a general guideline, active nests may be observed outside this range. If vegetation/structure removal must occur during avian breeding season, nesting surveys must be conducted by a qualified biologist. If nesting sites are found within the project limits, US Fish and Wildlife must be consulted to determine a suitable buffer area around the nest site. Buffer areas around the nest site should be flagged as an avoidance area and no disturbance should occur within the avoidance area while the nest is occupied with eggs and/or young. Once young have left the nest, the avoidance area can be removed, and work can resume. For more information on the Migratory Bird Treaty Act go to: <https://fws.gov/law/migratory-bird-treaty-act-1918>

46. NOXIOUS WEEDS: The PERMITTEE shall complete the Noxious Weed Management Checklist/Plan Appendix I (<https://www.dot.nv.gov/home/showpublisheddocument/14452/636668977566870000>) describing how they will prevent the introduction and spread of noxious weeds. The PERMITTEE must keep a copy of the completed Noxious Weed Management Checklist/Plan on site while working within the Department's right-of-way. At Department's request, the PERMITTEE shall provide a copy of the Noxious Weed Management Checklist/Plan to NDOT Environmental Services for review and approval. For more information Nevada noxious weeds, go to: <http://agri.nv.gov/NoxiousWeeds/>

Emergency.....

47. Emergency is defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate the loss of, or damage to, life, health, property, or essential public services. Emergency work is not scheduled work, if emergency work can be scheduled an applicable permit will be needed.

48. For emergencies during business hours, 8:00am to 5:00pm contact the District 2 Permit Office at 775-834-8330, option 1, and during non-business hours, 5:00pm to 8:00am contact the District 2 Permit Inspection Team at (775) 834-8330, option 2.

Permittee Initials DS
ME

49. Provide the following information to the District 2 Permit Office when providing notification of emergency work.

- i. PERMITTEE's contact information for the emergency.
- ii. Location of the emergency. (City/Route)
- iii. Description of the emergency.
- iv. Description of the traffic impact. (Traffic Control needs)
- v. Estimated time to complete emergency work.

50. For emergencies, conducted without a permit, the permittee shall submit a permit application to the District 2 Permit Office upon initial completion of the emergency work by the next business day.

51. Should NDOT ITS Fiber Optic Line be encountered during work, immediately contact the NDOT ITS TOTS 24/7 phone number at 1-(877)-638-6777.

Enforcement

52. Inspection staff will communicate with permittee of potential violation/enforcement action. PERMITTEE has two weeks to resolve the issue.

53. Permit Office Staff will send first violation/enforcement letter outlining the deficiency identified, PERMITTEE has 30 days to resolve the issues. If no resolution is reached, escalate to next step.

54. Permit Office will send second violation/enforcement letter outlining the deficiency identified. PERMITTEE has 30 days to resolve issues. If no resolution is reached, escalate to next step.

55. Permit Office will send third violation/enforcement letter outlining the deficiency. PERMITTEE has 30 days to resolve issues. If no resolution is reached, escalate to next step.

56. Permit Office will send violation/enforcement to the Attorney General's Office outlining the deficiency. PERMITTEE will need to address concerns with the AG's office from here.

Field Acceptance and Final Completion

57. PERMITTEE shall submit "As-built" plans to the District 2 Permit Office showing the exact locations and depths, on both plan and profile, within thirty (30) days of completion of construction.

Permittee Initials 

58. PERMITTEE shall return all highway appurtenances, disturbed or destroyed, to a condition equal to or better than the original condition, and in accordance with NDOT Standard Plans and Specifications.

59. All disturbed areas, left undeveloped for longer than twenty (20) days, shall be stabilized by the application of an approved dust palliative. PERMITTEE shall be responsible for the condition of the disturbed area until vegetation is established.

60. PERMITTEE shall maintain noxious weed control in disturbed areas, until the desired vegetation is established.

Permittee Initials 

DISTRICT 2 PERMIT OFFICE SUPPLEMENTAL TERMS AND CONDITION

V5. 5/3/2024

NEVADA DEPARTMENT OF TRANSPORTATION 310 Galletti Way, Sparks, NV, 89431

General

1. The hours of work shall be from 7:00 AM to 3:30 PM, daily, Monday through Friday, provided all through lanes of traffic are unrestricted by activity in progress. If traffic is restricted by activity in progress, hours of work shall be from 9:00 PM to 5:30 AM, nightly, Sunday night through Friday morning. Any change in work hours must receive prior written approval from the District 2 Permit Office, submitted at least five (5) working days prior to the day you wish to work adjusted hours.
2. PERMITTEE shall file and record with this property, the right of maintenance for all structures and features within the NDOT right-of-way to legally obligate the current and future owner to the maintenance responsibilities. A copy of the recorded document must be submitted to District 2 Permit Office prior to the release of the permit.
3. No potholing of the roadway without written authorization.
4. All existing utilities to be replaced or designated to be abandoned, shall be completely removed from the NDOT right-of-way.
- 5.

Backfill

6. All backfill material shall conform to the NDOT Standard Specifications: Section 207 for granular backfill and Section 302 for aggregate base. Material shall be from a NDOT source-accepted pit. Submittals for materials, certified by the NDOT Headquarters lab, dated within one year of construction, are due prior to the beginning of construction.

Pavement Markings

7. All pavement markings damaged by construction activities shall be replaced. Striping limits shall be adjusted in the field by the District 2 Permit Inspector.
8. All permanent pavement markings shall be either hot applied or preformed thermoplastic and shall conform to the NDOT Standard Specifications Section 634 for pavement marking film.

Testing

9. PERMITTEE shall supply a certified testing technician for compaction tests of aggregate base and asphaltic concrete, at the direction of the District 2 Permit Inspector.
10. PERMITTEE's contractor shall submit material test results, performed or certified by the NDOT Materials Division, dated within one year of the submission, prior to the beginning of construction.

Permittee Initials DS
ME

Signs and Guideposts

11. PERMITTEE shall re-install signs, object markers, milepost panels, marker posts and guideposts disturbed during construction by the end of the working day.
12. All vertical drop-offs three inches (3") or greater, that are within the roadway clear zone, shall be protected by an NDOT approved method.

Traffic Control

13. PERMITTEE shall not use the NDOT right-of-way for construction truck staging or deliveries. All truck staging and deliveries shall be accomplished outside of the NDOT right-of-way.
14. PERMITTEE shall maintain two-way traffic at all times during construction.
15. PERMITTEE shall set up traffic control to accommodate for the needs of pedestrians and/or bicyclists.
16. The work of setting up and tearing down traffic control devices as required shall be completed each day within the hours specified on the permit and/or on the approved traffic control plan. All traffic control devices shall be completely removed from the roadway and sidewalk at the end of the work period.
17. All traffic control shall conform to the Manual on Uniform Traffic Control Devices, "Chapter 6," and the State of Nevada, Standard Plans for Road and Bridge Construction, 2022 Edition.
18. Regardless of traffic control operations, do not stop public traffic for more than a 20-minute duration and do not delay it for more than 30 minutes total, regardless of the number of work zones. Any proposed traffic control plan must meet the duration of delay restrictions (20 minutes stopped, 30 minutes total delay). Should these delay restrictions be exceeded, work will be immediately suspended. If work is suspended, submit a written revised construction plan which addresses the delay problem. Upon approval of the plan the construction operations may resume.
19. All Category 1 & 2 Traffic Control Devices used on NDOT roadways shall be National Cooperative Highway Research Program (NCHRP) Report 350 compliant. PERMITTEE and/or contractor shall have manufacturer's certificates of compliance available at the project site.
20. All traffic control devices are subject to being rated by the District 2, Permit Inspector for serviceability condition to the current American Traffic Safety Services Association (ATSSA) publication "Quality Standards for Work Zone Traffic Control Devices" which is available from the American Traffic Safety Services Association, 15 Riverside Parkway, Fredericksburg, VA 22406, Phone: (540) 368-1701. Any device determined by the Inspector to not meet these quality standards shall be replaced with an acceptable device.

Permittee Initials 

21. Any appurtenance installed that represents a hazard to the travelling public shall be protected in accordance with the AASHTO Roadside Design Guide, current edition, and approved by NDOT prior to installation.

Maintenance

22. Maintenance and repair of driveway(s), drainage, sidewalks, signage, pavement markings and any other facility appurtenances installed in the NDOT right-of-way shall be the responsibility of the PERMITTEE in perpetuity, unless specifically outlined in the following conditions. Any future modifications to these facilities shall require a new Standard Encroachment Permit.

23. PERMITTEE will ensure that the continuing responsibility for upkeep and repair of any new facility erected or installed in connection to this permit will be transferred to the PERMITTEE's successors in interest or assigns.

Stormwater

24. RCP implementation shall occur until all permitted work is complete and NDOT acceptance is granted.

Environmental

25. NDOT Environmental requires the utility owner, permittee, to have a Hazardous Material (asbestos) Mitigation Plan prior to and implemented during construction. After construction PERMITTEE is asked to submit as-built records showing the hazardous to NDOT Environmental.

26. The permit area has been screened by NDOT for the potential to contain naturally occurring asbestos (NOA) and erionite. Based on NDOT screening there is potential these minerals may be present at the site. The PERMITTEE shall evaluate the soil and rock that may be disturbed for the potential of containing NOA or erionite. This can be done by looking at the geology and/or sampling and analyzing the earthen material. Once the potential for NOA and erionite are determined the PERMITTEE is responsible for determining the procedures necessary to reduce exposure to their employees and the general public to NOA or erionite fibers. At a minimum dust control measures should include no visual dust evident on or leaving the project site. Based upon the length of the project and the concentration of the NOA and erionite detected in soil or rock the PERMITTEE may employ other procedures to protect workers and the general public. These could include, but not be limited to the following: control of access, cleaning of equipment before it leaves the site, use of personal protective equipment, monitoring of personnel for exposure, and monitoring ambient air. The PERMITTEE is responsible for the health and safety of their employees as it relates to NOA and erionite.

Permittee Initials DS
ME

Field Acceptance and Final Completion

27. PERMITTEE shall coordinate with District 2 Permit Inspector to determine restoration and re-seeding requirements.

Permittee Initials  ^{DS}

Attachment E

CONSTRUCTION PLANS
WASHOE VALLEY, NEVADA 89704
APN: 048-042-02



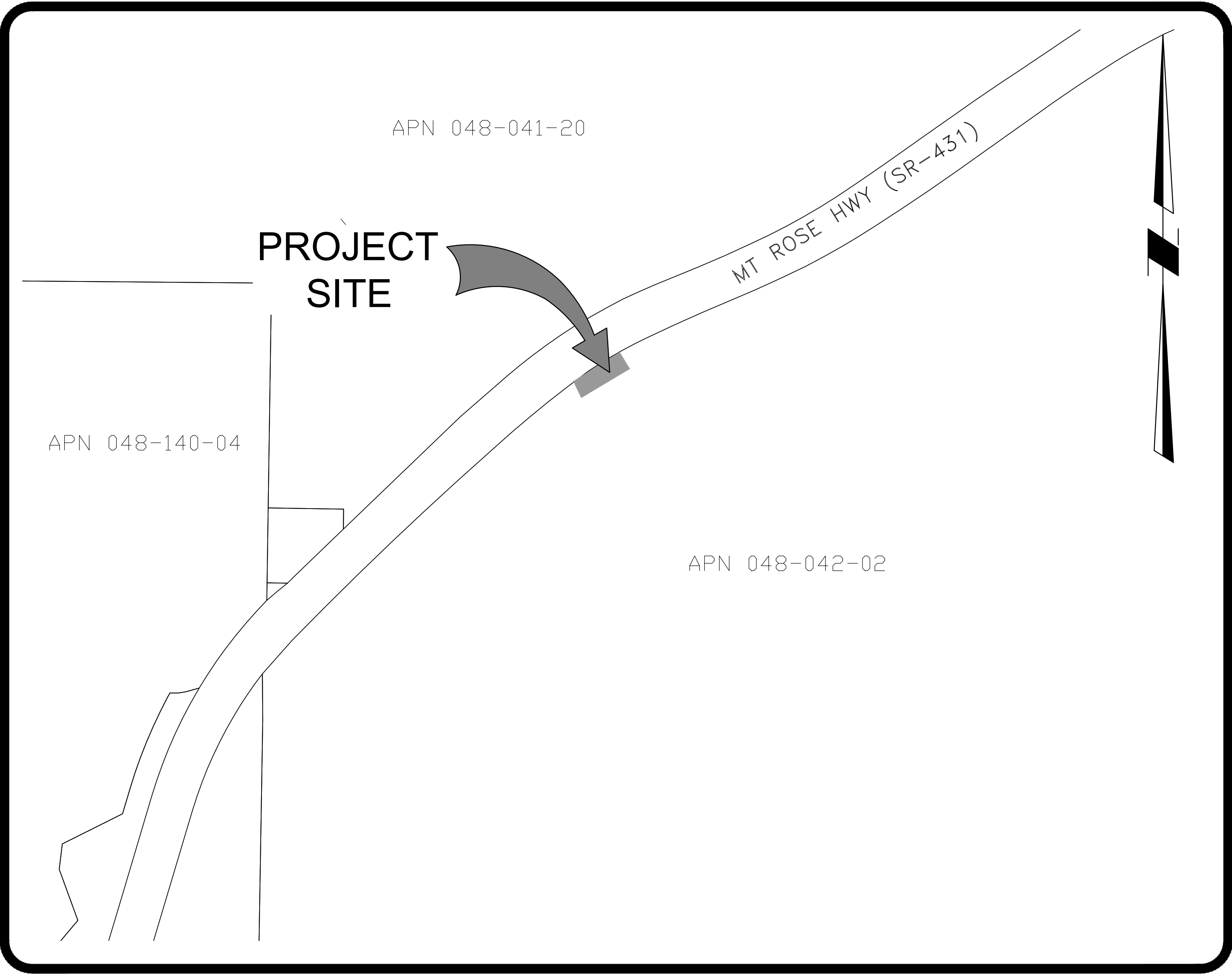
OWNER / DEVELOPER:
TRUCKEE MEADOWS PARKS FOUNDATION
50 Cowan Drive
Reno NV 89509
(775) 453-0278
TAHOE MEADOWS ACCESS RAMP COMMITTEE
(775) 544-5654

CIVIL:
CFA, A BOWMAN COMPANY
1150 CORPORATE BOULEVARD
RENO, NEVADA 89502
(775) 856-1150 VOICE
(775) 856-1160 FAX
CONTACT: KATHLEEN MEYER, P.E.
EMAIL: KMEYER@BOWMAN.COM



Know what's below.
Call before you dig.

CAUTION – NOTICE TO CONTRACTOR
1. THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AND FEATURES AS SHOWN ON THESE PLANS IS BASED ON THE BEST INFORMATION AVAILABLE TO THE ENGINEER. THE INFORMATION IS NOT TO BE RELIED ON AS BEING EXACT OR COMPLETE.
2. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO VERIFY THESE LOCATIONS AND/OR ELEVATIONS AT THE PROPOSED POINTS OF CONNECTION AND IN AREAS OF POSSIBLE CONFLICT PRIOR TO BEGINNING CONSTRUCTION. SHOULD THE CONTRACTOR FIND ANY DISCREPANCIES BETWEEN THE CONDITIONS EXISTING IN THE FIELD AND THE INFORMATION SHOWN ON THESE DRAWINGS, HE SHALL NOTIFY THE ENGINEER BEFORE PROCEEDING WITH CONSTRUCTION.
3. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO REMOVE OR RELOCATE ALL EXISTING UTILITIES AND FEATURES WHICH CONFLICT WITH THE PROPOSED IMPROVEMENTS SHOWN ON THE PLANS. CONTRACTOR SHALL OBTAIN APPROVALS FROM THE GOVERNING AGENCIES, THE ENGINEER, AND THE UTILITY COMPANIES PRIOR TO SUCH REMOVAL AND/OR RELOCATION.
4. THE CONTRACTOR ASSUMES ALL RISK FOR ANY CONSTRUCTION PERFORMED WITH PRELIMINARY OR NONAPPROVED PLANS.
5. CONTRACTOR TO PROVIDE TRAFFIC CONTROL IN CONFORMANCE WITH THE LATEST EDITION OF MUTCD WHENEVER CONSTRUCTION IS IN PROGRESS WITHIN THE PUBLIC TRAVEL WAY.



VICINITY MAP

SCALE: N.T.S.

Sheet List Table

Sheet Number	Sheet Title
1	TITLE
2	SITE PLAN
3	DETAILS
4	DETAILS

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS NEVADA STATE PLANE, WEST ZONE NAD83(94) BASED ON REAL TIME KINEMATIC (RTK) GPS OBSERVATIONS UTILIZING CORRECTIONS FROM THE NORTHERN NEVADA COOPERATIVE REAL TIME NETWORK. COORDINATES AND DISTANCES HEREON ARE AT GROUND LEVEL BASED ON A COMBINED GRID TO GROUND FACTOR OF 1.0002630.

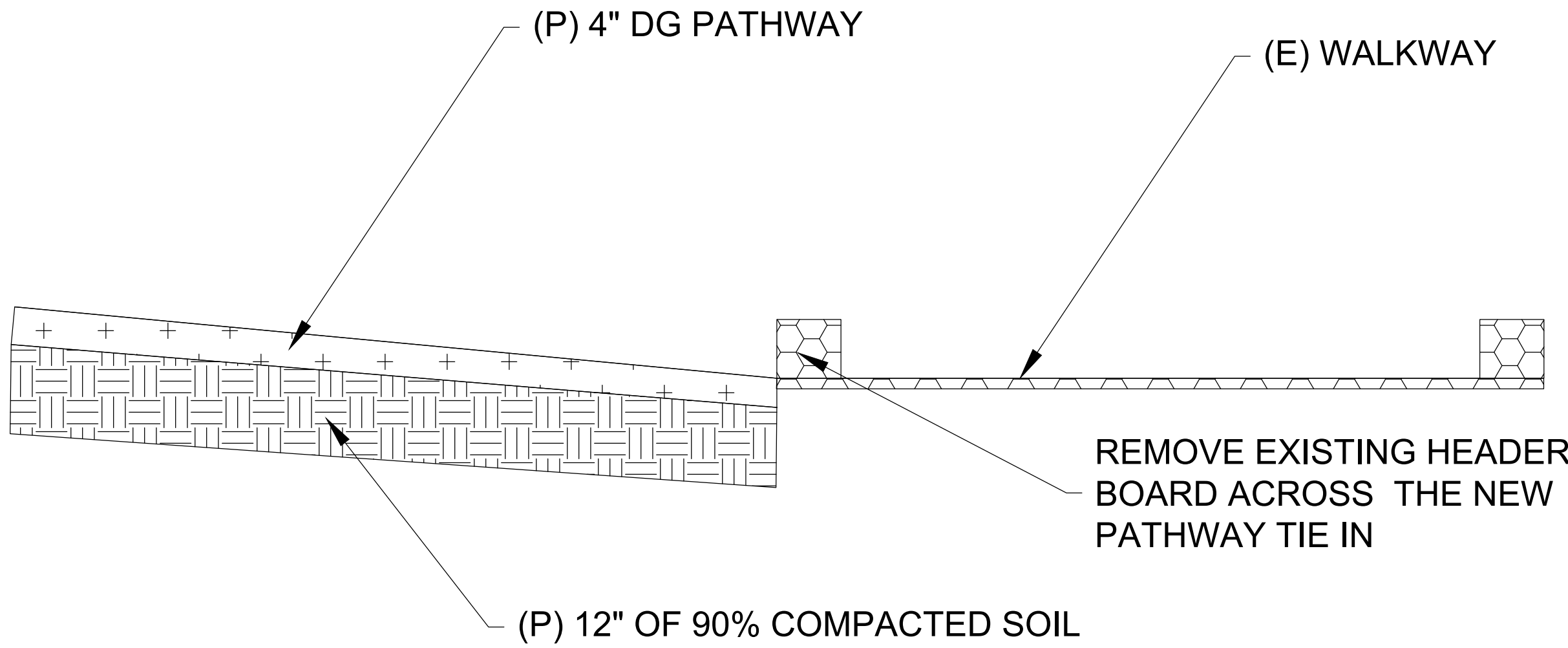
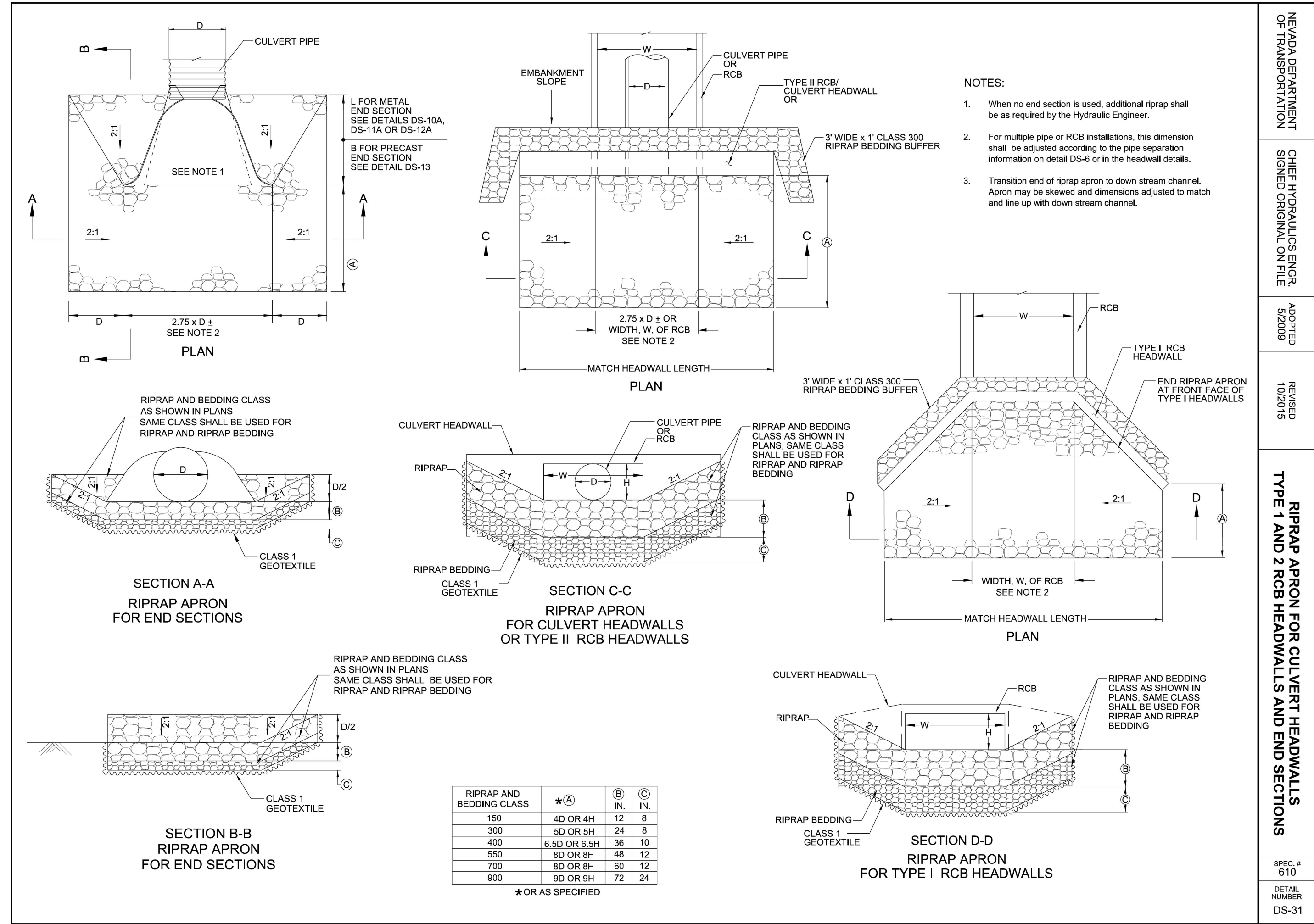
BASIS OF ELEVATIONS:

THE BASIS OF ELEVATIONS FOR THIS SURVEY IS THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAV88) BASED UPON NDOT HIGHWAY MONUMENT # 929146 BEING A 4 1/2" DIA BRASS CAP - STAMPED "O" 430+57.32 P.T. DIST 54.95 HAVING AN ELEVATION OF 8548.54'.

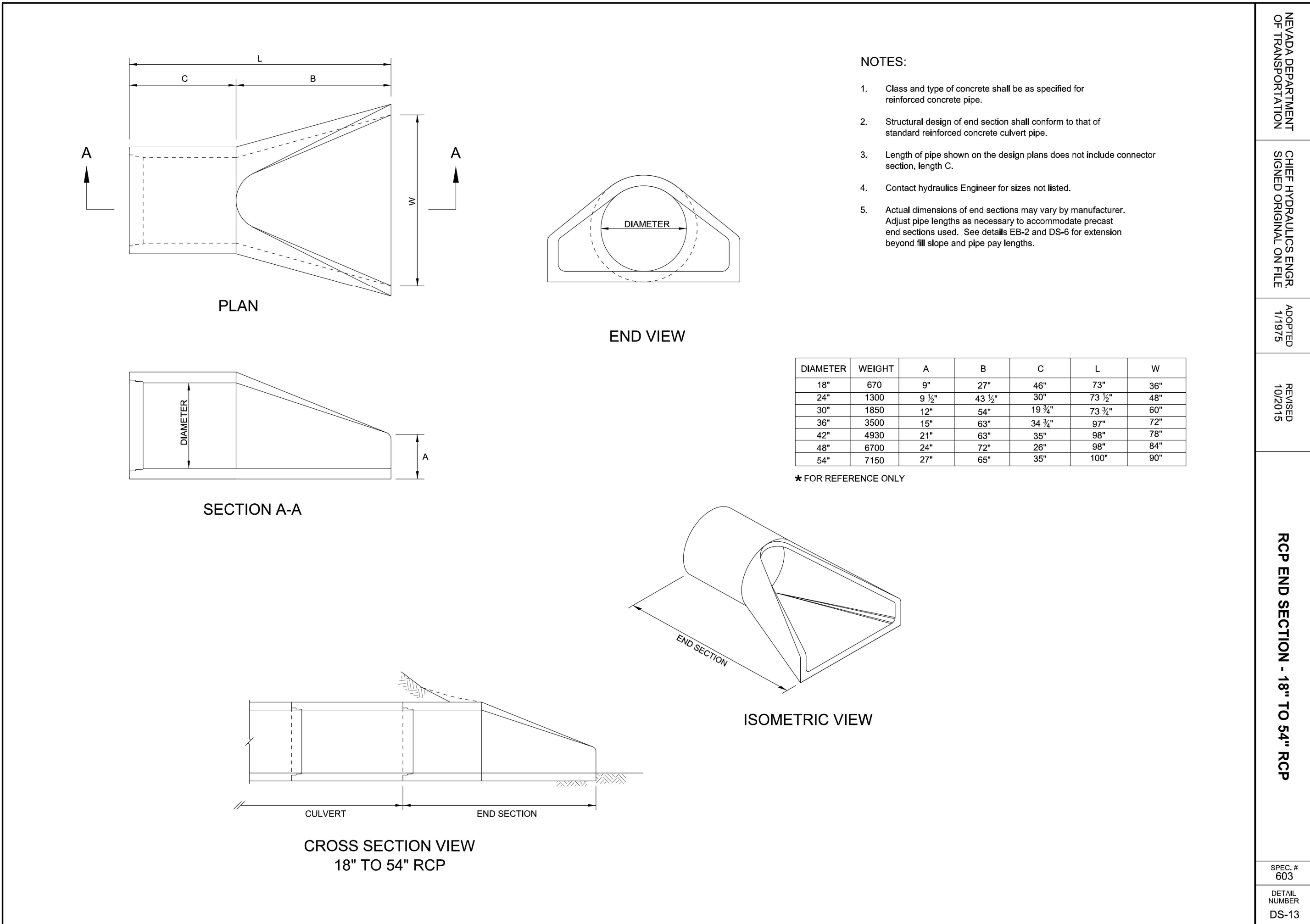
GENERAL NOTES:

- ALL WORK IN THE NDOT R/W SHALL CONFORM TO NDOT STANDARDS SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION (SILVER BOOK) 2014 EDITION AND THE STANDARD PLANS FOR ROAD AND BRIDGE CONSTRUCTION, 2010 EDITION AS PUBLISHED BY THE NEVADA DEPARTMENT OF TRANSPORTATION.
- NO WORK SHALL BE CONDUCTED ON HWY 431 UNTIL AN OCCUPANCY PERMIT HAS BEEN ISSUED BY NDOT. ALL WORK SHALL COMPLY WITH THE CONDITIONS OF THE OCCUPANCY PERMIT.
- CONTRACTOR IS RESPONSIBLE FOR PREPARATION AND SUBMITTAL OF A SITE SPECIFIC TRAFFIC CONTROL PLAN, INCLUDING PHASING AND EXPECTED HOURS OF CONSTRUCTION, PRIOR TO START OF CONSTRUCTION ACTIVITIES.

Missing or invalid reference
File: X:\Projects\19086.00\Images\Document2.pdf
Sheet: 1
* PLANT SPECIFICS TBD



1 PROPOSED PATH MEETING WITH EXISTING PATH
3 N.T.S.



REVISIONS	DATE	MARK	BY

PROFESSIONAL SEAL:

KATHLEEN MEYER
Exp. 12/31/25
CIVIL
No. 28935
08/08/2024

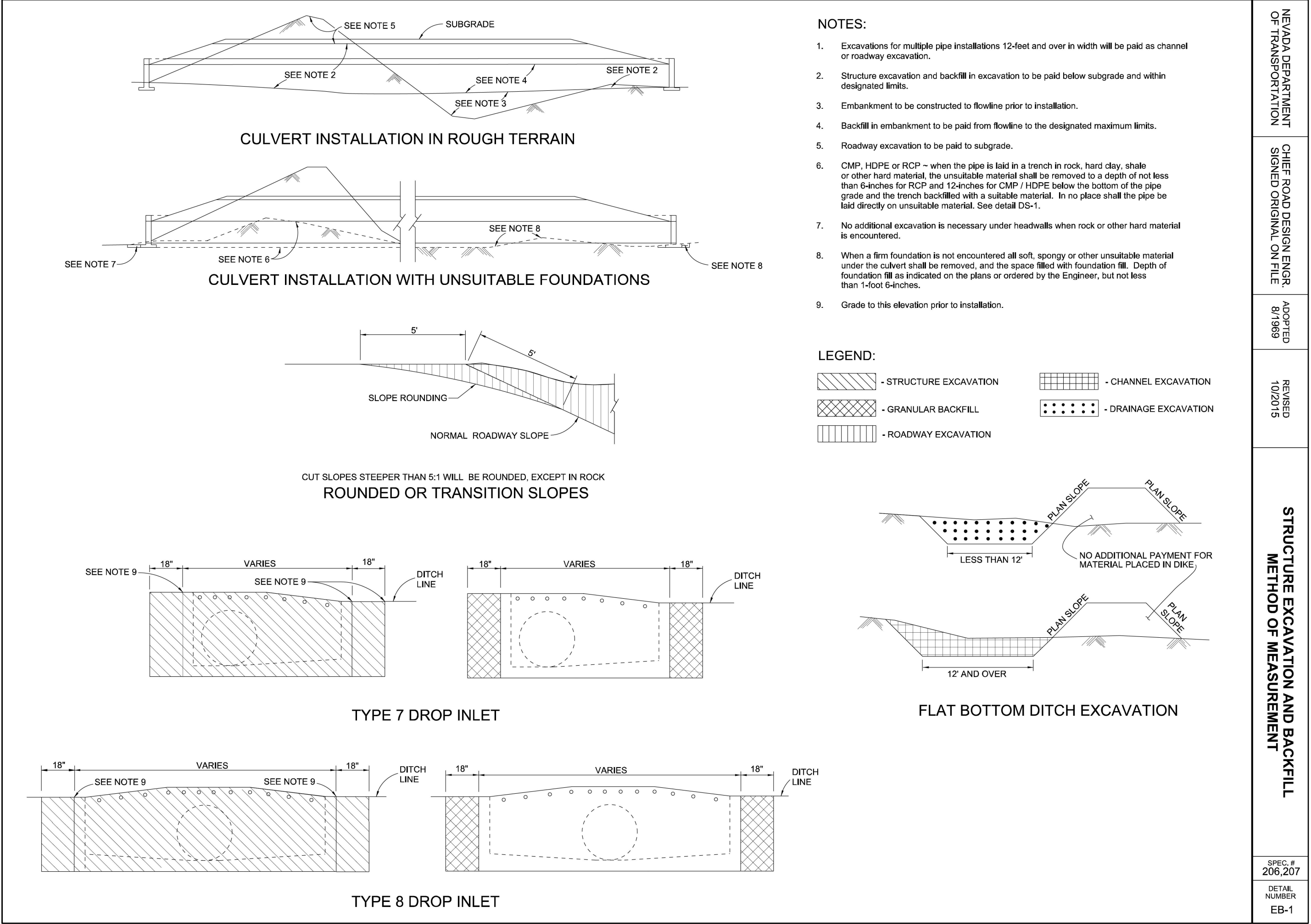
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LAND SURVEYORS
LAND USE PLANNERS
1150 CORPORATE BLVD. | RENO, NV 89502
775-856-1150 MAIN | CFARENO.COM

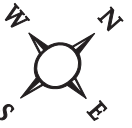
NEVADA

MT. ROSE ACCESSIBILITY
NDOT OCCUPANCY PERMIT APPLICATION
DETAILS

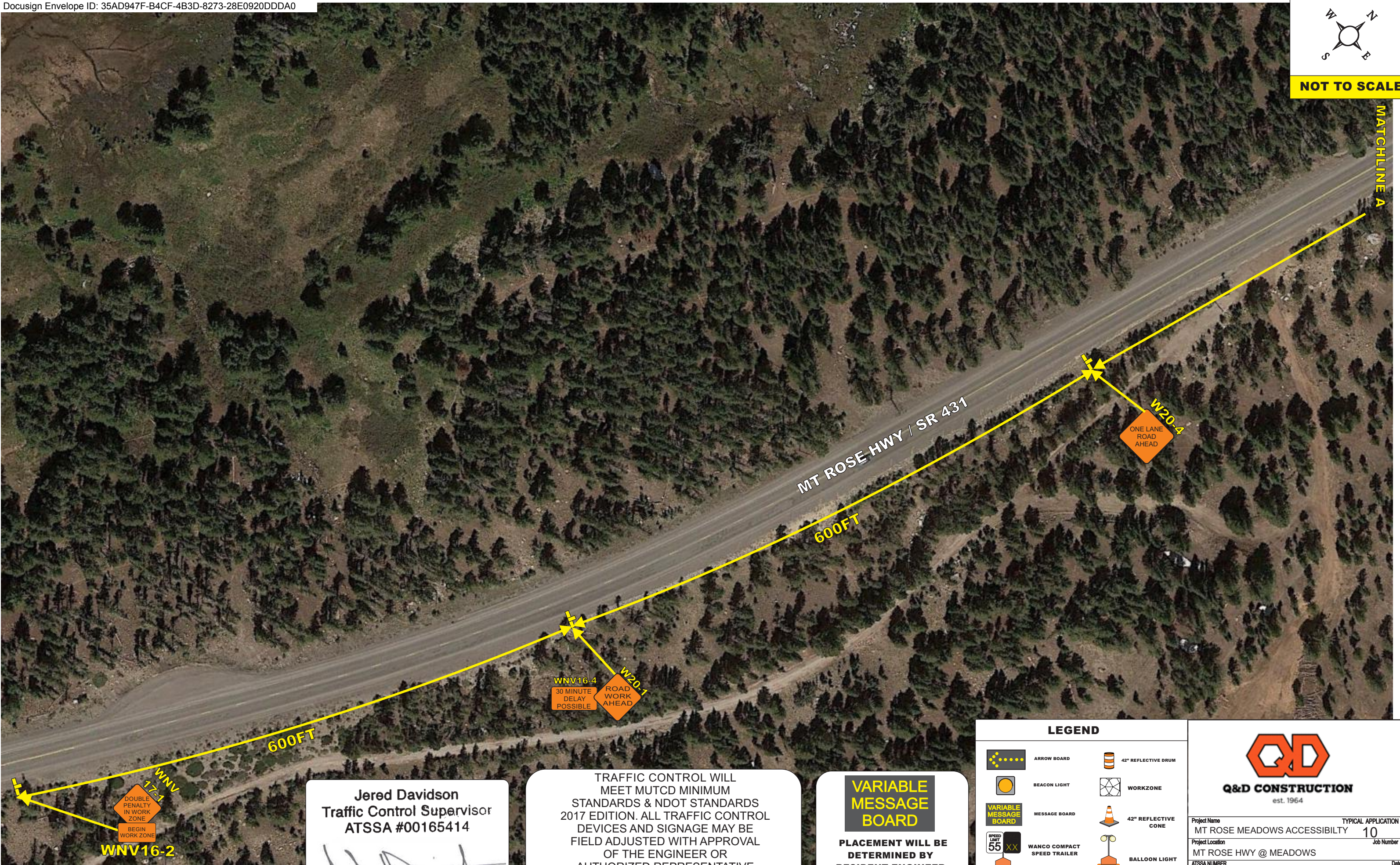
JOB NO. 19086.00
DESIGNED BY KK
CHECKED BY KK
DATE 08-08-24

SHEET 3 OF 4





NOT TO SCALE



Jered Davidson
Traffic Control Supervisor
ATSSA #00165414














TRAFFIC CONTROL WILL MEET MUTCD MINIMUM STANDARDS & NDOT STANDARDS 2017 EDITION. ALL TRAFFIC CONTROL DEVICES AND SIGNAGE MAY BE FIELD ADJUSTED WITH APPROVAL OF THE ENGINEER OR AUTHORIZED REPRESENTATIVE. ALL EXISTING SIGNS CONFLICTING WITH CONSTRUCTION SIGNS NEED TO BE COVERED.

VARIABLE MESSAGE BOARD

PLACEMENT WILL BE DETERMINED BY RESIDENT ENGINEER OR AUTHORIZED REPRESENTATIVE

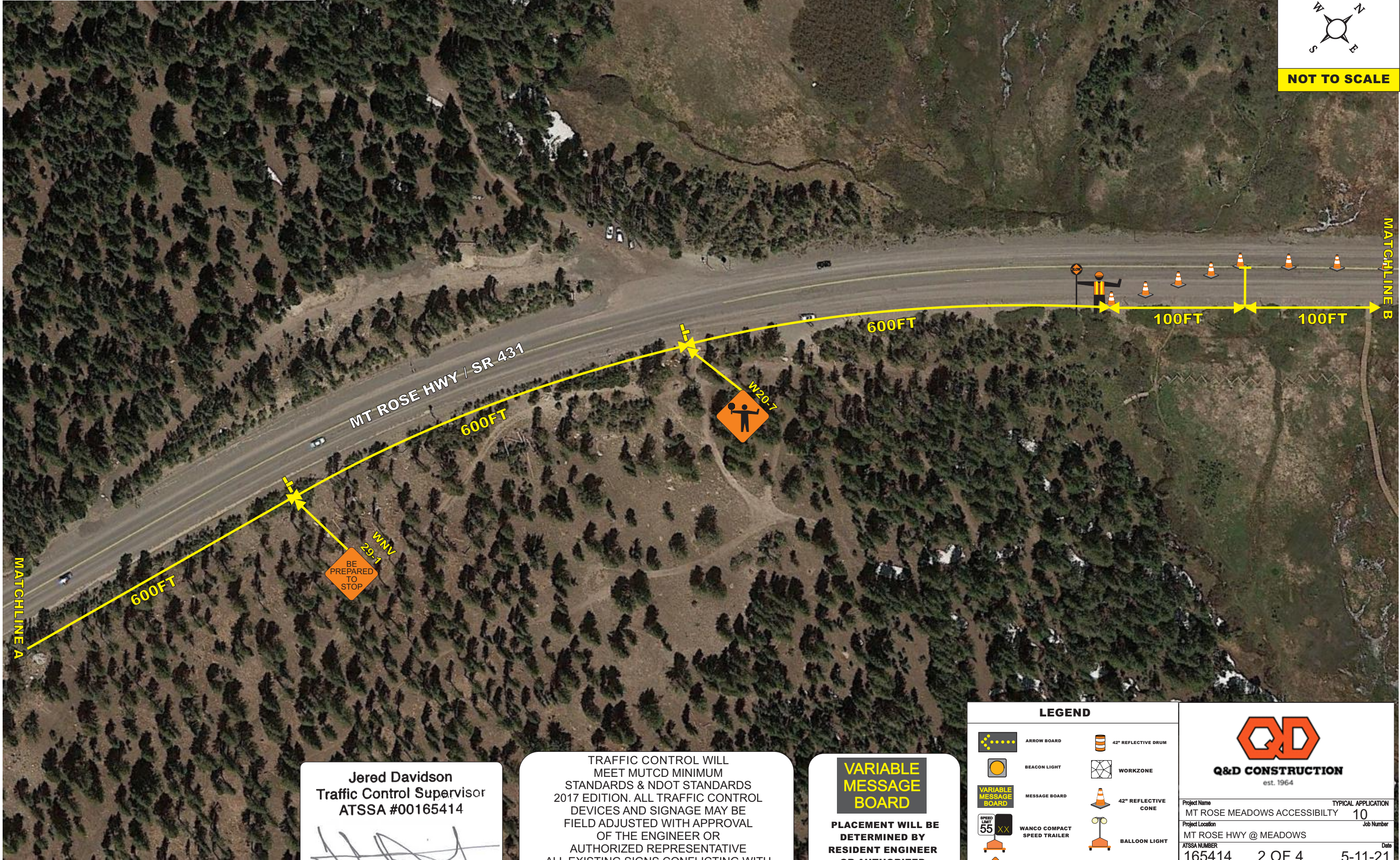
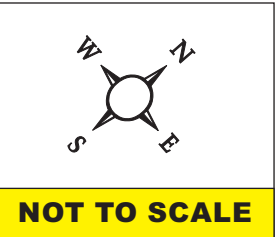
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	BEACON LIGHT		WORKZONE
	MESSAGE BOARD		42" REFLECTIVE CONE
	WANCO COMPACT SPEED TRAILER		BALLOON LIGHT
	DIAMOND GRADE REFLECTIVE SIGN		PORTABLE SIGN STAND



Q&D CONSTRUCTION
est. 1964

Project Name	MT ROSE MEADOWS ACCESSIBLTY	TYPICAL APPLICATION
Project Location	MT ROSE HWY @ MEADOWS	10
ATSSA NUMBER	165414	1 OF 4
Prepared By	JERED DAVIDSON	5-11-21













Jered Davidson
Traffic Control Supervisor
ATSSA #00165414




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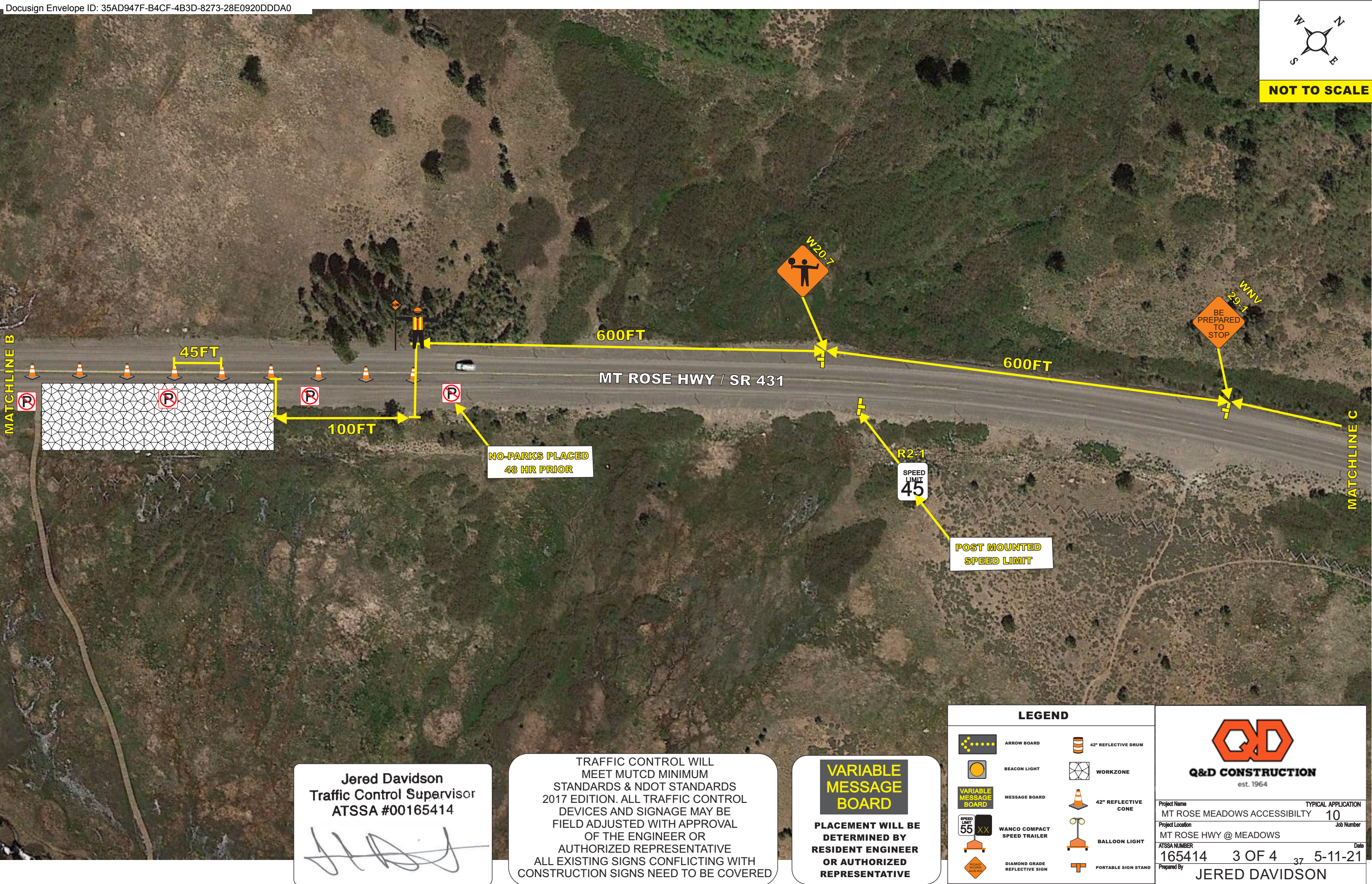
PLACEMENT WILL BE DETERMINED BY RESIDENT ENGINEER OR AUTHORIZED REPRESENTATIVE

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Q&D CONSTRUCTION
est. 1964

Project Name	MT ROSE MEADOWS ACCESSIBILITY	TYPICAL APPLICATION
Project Location	MT ROSE HWY @ MEADOWS	Job Number
ATSSA NUMBER	165414	Date
Prepared By	JERED DAVIDSON	36 5-11-21













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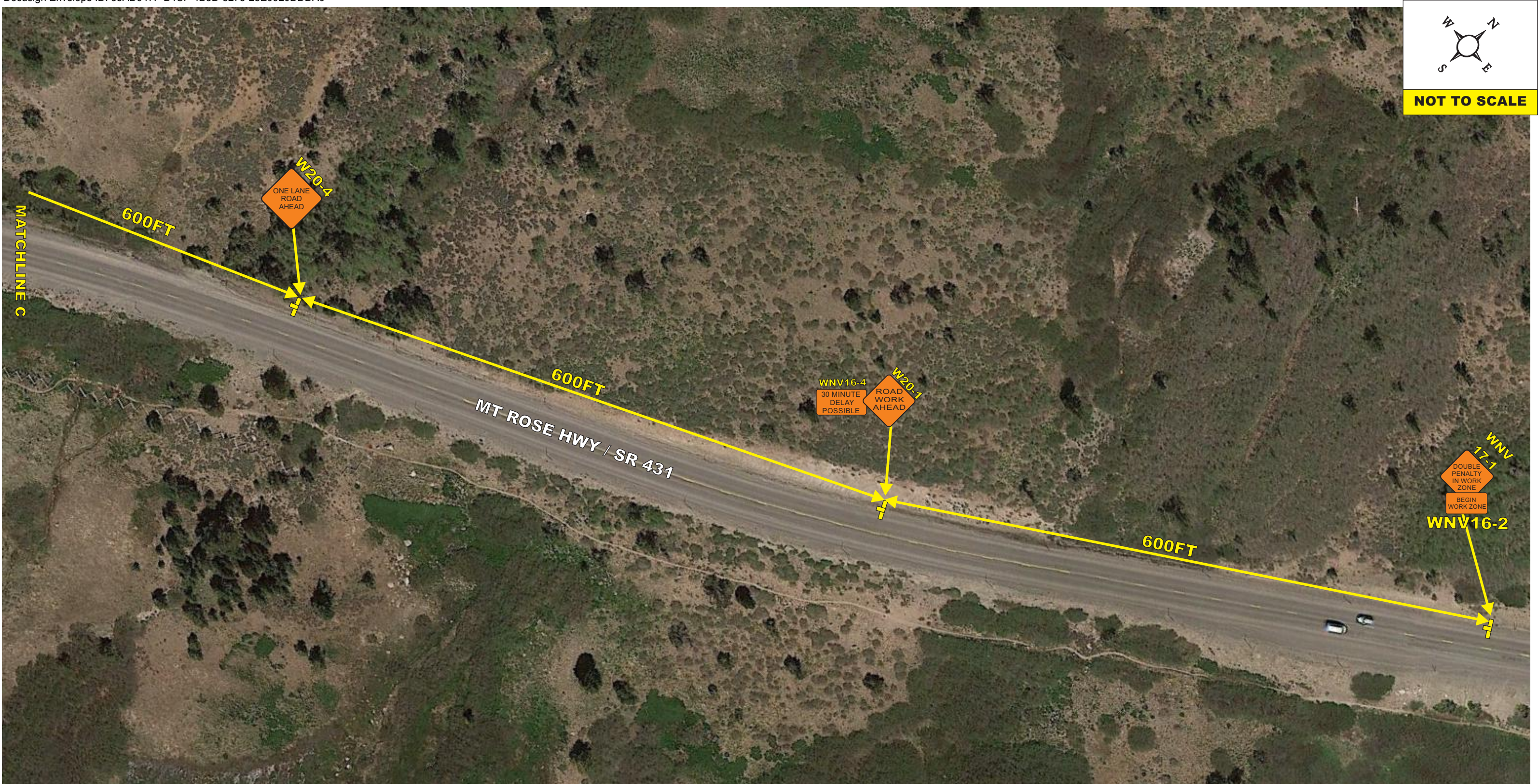
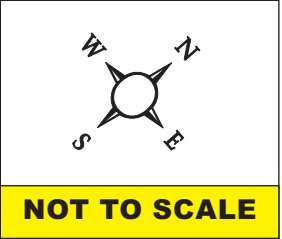
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ATSSA NUMBER	165414	3 OF 4
Prepared By	JERED DAVIDSON	Date
		5-11-21













Jered Davidson
Traffic Control Supervisor
ATSSA #00165414




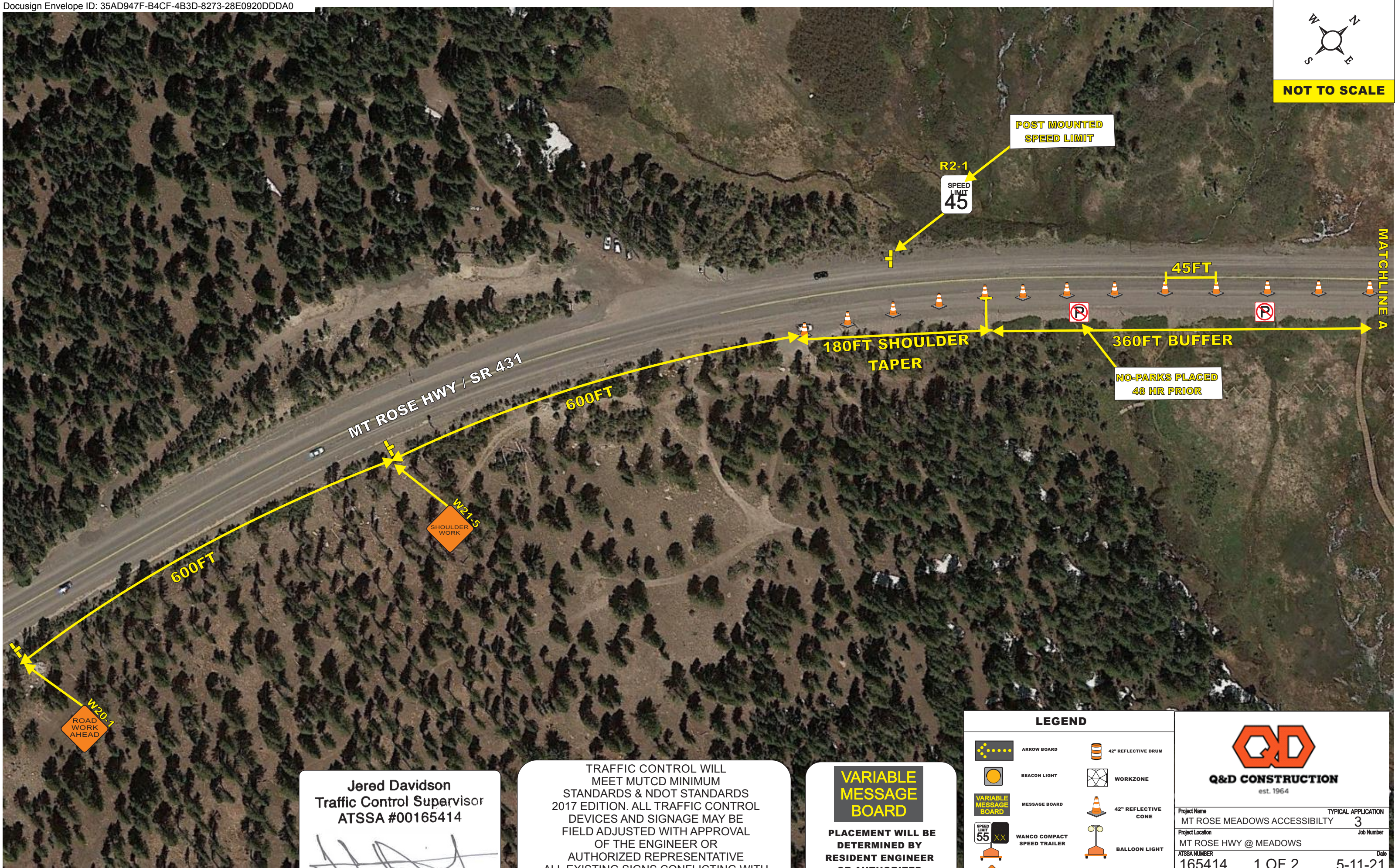
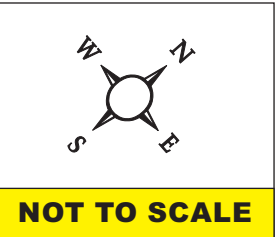
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Project Name	MT ROSE MEADOWS ACCESSIBILITY
Project Location	MT ROSE HWY @ MEADOWS
ATSSA NUMBER	165414
Prepared By	JERED DAVIDSON
TYPICAL APPLICATION	10
Job Number	
Date	5-11-21













Jered Davidson
Traffic Control Supervisor
ATSSA #00165414




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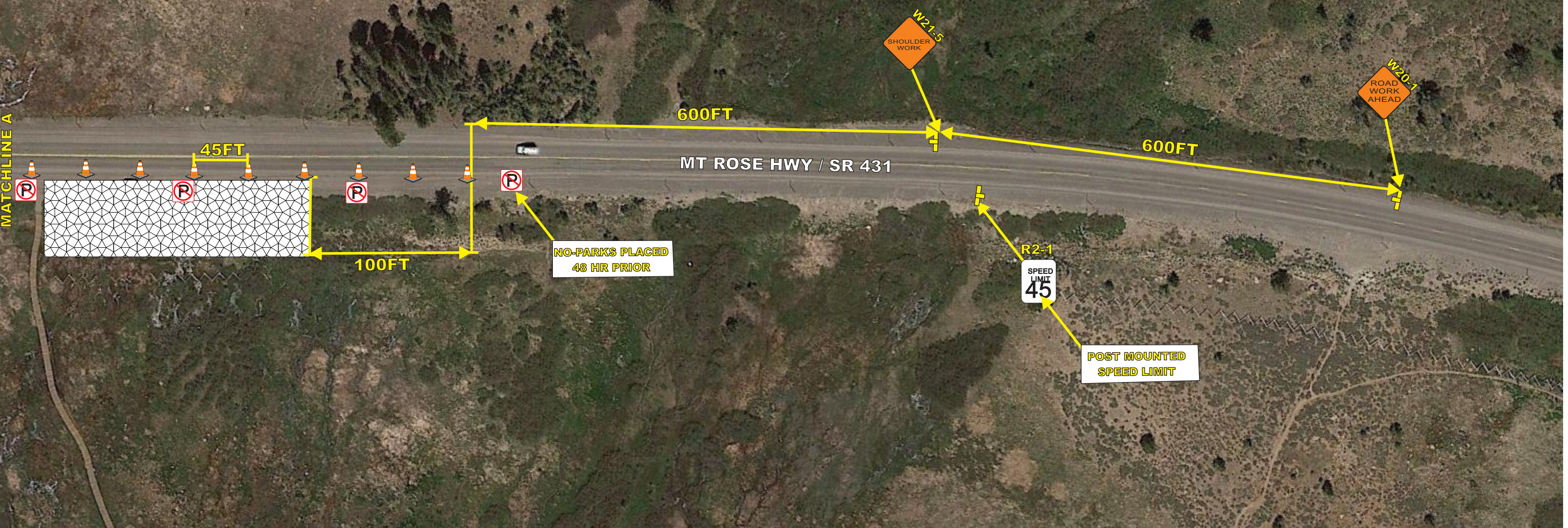
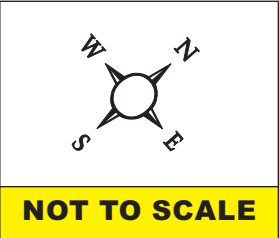
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Q&D CONSTRUCTION
est. 1964

Project Name	MT ROSE MEADOWS ACCESSIBILITY	TYPICAL APPLICATION	3
Project Location	MT ROSE HWY @ MEADOWS	Job Number	
ATSSA NUMBER	165414	Date	5-11-21
Prepared By	JERED DAVIDSON		




Jered Davidson
Traffic Control Supervisor
ATSSA #00165414

TRAFFIC CONTROL WILL MEET MUTCD MINIMUM STANDARDS & NDOT STANDARDS 2017 EDITION. ALL TRAFFIC CONTROL DEVICES AND SIGNAGE MAY BE FIELD ADJUSTED WITH APPROVAL OF THE ENGINEER OR AUTHORIZED REPRESENTATIVE. ALL EXISTING SIGNS CONFLICTING WITH CONSTRUCTION SIGNS NEED TO BE COVERED.

VARIABLE MESSAGE BOARD

PLACEMENT WILL BE DETERMINED BY RESIDENT ENGINEER OR AUTHORIZED REPRESENTATIVE

LEGEND			
	ARROW BOARD		42" REFLECTIVE DRUM
	BEACON LIGHT		WORKZONE
	MESSAGE BOARD		42" REFLECTIVE CONE
	WANCO COMPACT SPEED TRAILER		BALLOON LIGHT
	DIAMOND GRADE REFLECTIVE SIGN		PORTABLE SIGN STAND



Q&D CONSTRUCTION
est. 1964

Project Name	MT ROSE MEADOWS ACCESSIBILITY		TYPICAL APPLICATION
Project Location	MT ROSE HWY @ MEADOWS		3
ATSSA NUMBER	165414	2 OF 2	Date
Prepared By	JERED DAVIDSON		

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION

OCCUPANCY PERMIT
COMPLETION NOTICE

(To be completed by Permittee)

Upon completion of work, complete this card and return it to
the District Office.

Permit No. _____ Milepost No. _____

Permittee Name & Address: _____

Type of Work: _____

The above work was completed on: _____

Date

NDOT
035-005
07-19

Signature of Permittee

41



Attachment F
DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

May 29, 2024

Regulatory Division (SPK-2024-00193)

Truckee Meadows Park Foundation
Attn: Ms. Heidi Anderson
50 Cowan Drive
Reno, Nevada 89509-1009
heidi@tmparksfoundation.org

Dear Ms. Anderson:

We are responding to your March 5, 2024, pre-construction notification for a Department of the Army (DA) permit for the Tahoe Meadows Access Ramp Project. The approximately 0.51-acre project site is located on Mount Rose Highway, Latitude 39.302070°, Longitude -119.91784°, Washoe County, Nevada (Enclosure 1).

Based on the information you provided to this office, the Tahoe Meadows Access Ramp project involves the discharge of fill material into 0.35 acre of waters of the U.S. for the construction of an accessibility ramp and culvert extension, subject to Section 404 of the Clean Water Act. The specific activities that require DA authorization are the construction of an accessibility ramp and extending a culvert 33 feet. These activities will result in permanent effects to 0.35 acre of freshwater scrub wetlands, freshwater emergent wetlands, and an intermittent stream, including the permanent loss of 0.05 acre of freshwater scrub wetlands, freshwater emergent wetlands, and intermittent stream. The proposed activities would be conducted in accordance with the "NDOT Occupancy Permit Application for Surface Improvements" plans dated April 9, 2024 (Enclosure 2).

We have determined that activities in waters of the U.S. associated with the project are authorized by Nationwide Permit Number (NWP) 14, *Linear Transportation Projects*, and NWP 18, *Minor Discharges*. You must comply with all terms and conditions of the NWP and applicable regional conditions. Enclosed is information about the NWP terms and conditions, including applicable regional conditions (Enclosure 3). You should pay particular attention to General Condition 11. In addition, your work must comply with the following special conditions:

1. At least 7 days prior to initiation of construction activities in waters of the U.S. authorized by this verification, you shall notify this office in writing of the anticipated start date for the work.
2. You and your authorized contractor shall allow representatives from this office to inspect the activity authorized by this verification at any time deemed necessary to ensure that work is being or has been accomplished in accordance with the terms and conditions of this verification.

3. You are responsible for all work authorized herein and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of this verification. You shall ensure that a copy of the verification and associated drawings are available for quick reference at the project site until all construction activities in waters of the U.S. authorized by this verification are completed.

4. You shall comply with all terms and conditions of the enclosed May 13, 2024, Section 401 Water Quality Certification (Enclosure 4).

Within 30 days after completion of the authorized work, you must sign the enclosed Compliance Certification and return it to this office (Enclosure 5).

This verification is valid until March 14, 2026, when the existing NWP's are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date the NWP is modified, reissued, or revoked, you will have 12 months from the date of the modification, reissuance or revocation to complete the activity under the present terms and conditions. Failure to comply with the general and regional conditions of this NWP, or the project-specific special conditions of this authorization, may result in the suspension or revocation of your authorization.

We would appreciate your feedback on this permit action including your interaction with our staff and processes. For more information about our program or to complete our Regulatory Program national customer service survey, visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Please refer to identification number SPK-2024-00193 in any correspondence concerning this project. If you have any questions, please contact Ethan Schindler at the Reno Regulatory Field Office, 300 Booth Street, Room 3050, Reno, Nevada 89509-1328, by email at ethan.w.schindler@usace.army.mil, or telephone at (775) 799-8235.

Sincerely,

Ethan Schindler

Ethan Schindler
Project Manager
Nevada Section

Enclosures

cc (w/ encls):

Ms. Debra Lemke, NCE, dlemke@ncenet.com

Nevada Division of Environmental Protection, ndep401@ndep.nv.gov

COMPLIANCE CERTIFICATION

Permit File Name: Tahoe Meadows Access Ramp Project

Action ID: SPK-2024-00193

Nationwide Permit Number: 14 & 18

Permittee: Truckee Meadows Park Foundation
Attn: Ms. Heidi Anderson
50 Cowan Drive
Reno, Nevada 89509-1009

County: Washoe County

Date of Verification: May 29, 2024

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers
Sacramento District
Nevada Section
1325 J Street
Sacramento CA 95814-2922
SPKRegulatoryMailbox@usace.army.mil

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 terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the U.S. Army Corps of Engineers.

* * * * *

I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.

Permittee Signature

Date

Enclosure 5



U S Army Corps of
Engineers
Sacramento District

2021 Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide
Permits – February 25, 2022

14. Linear Transportation Projects. Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material 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 of dredged or fill material 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, including the use of temporary mats, 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 of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. 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 of dredged or fill material in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404).

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes

of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges of dredged or fill material 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).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

A. Regional Conditions

1. [Regional Conditions for California](#)
2. [Regional Conditions for Nevada and Utah](#)

B. Nationwide Permit General Conditions

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

Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

☐ 1. Navigation.

- ☐ (a) No activity may cause more than a minimal adverse effect on navigation.
- ☐ (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on

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U.S. ARMY CORPS OF ENGINEERS – SACRAMENTO DISTRICT

1325 J ST. – SACRAMENTO, CA 95814

www.spk.usace.army.mil

www.facebook.com/sacramentodistrict

www.youtube.com/sacramentodistrict

www.twitter.com/USACESacramento

www.flickr.com/photos/sacramentodistrict

district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

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

☐ 18. **Endangered Species.**

☐ (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

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

☐ (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of

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

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

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

☐ (f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA

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

☐ (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <https://www.fws.gov/> or <https://www.fws.gov/ipac/> and <https://www.fisheries.noaa.gov/topic/endangered-species-conservation> respectively.

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

☐ **20. Historic Properties.**

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

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

☐ (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-

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

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

☐ (e) Prospective permittees should be aware that section 110(k) of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps,

after consultation with the Advisory Council on Historic Preservation (ACHP), determine that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

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

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

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

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

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

☐ (d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

☐ (e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss

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

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

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

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

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

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

agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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

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

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

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

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

☐ 24. **Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety

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

☐ **25. Water Quality.**

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

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

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

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

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

☐ **28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

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

limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

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

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

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

(Transferee)

(Date)

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

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

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

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

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

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

☐ **32. Pre-Construction Notification.**

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

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

☐ (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or

that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

☐ (2) Location of the proposed activity;

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

☐ (4)

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

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

NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

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

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

☐ (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

☐ (8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must

state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

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

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

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

☐ (d) Agency Coordination:

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

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

☐ (3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete

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

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

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

C. District Engineer's Decision

☐ 1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings

of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

☐ 2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

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

compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

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

D. Further Information

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

E. Nationwide Permit Definitions

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

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

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

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

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

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

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

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

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

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

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

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

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island,

artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

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

Waterbody: For purposes of the NWPs, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).



U S Army Corps of
Engineers
Sacramento District

2021 Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide
Permits – February 25, 2022

18. Minor Discharges. Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged dredged or fill material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge of dredged or fill material will not cause the loss of more than 1/10 acre of waters of the United States; and
- (c) The discharge of dredged or fill material is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if:

- (1) The discharge of dredged or fill material or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or
- (2) the discharge of dredged or fill material is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404).

A. Regional Conditions

- 1. [Regional Conditions for California](#)
- 2. [Regional Conditions for Nevada and Utah](#)

B. Nationwide Permit General Conditions

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

Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1

through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

☐ 1. Navigation.

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

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

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

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

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

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- ☐ 6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
- ☐ 7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
- ☐ 8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- ☐ 9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
- ☐ 10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
- ☐ 11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- ☐ 12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.
- ☐ 13. **Removal of Temporary Fills.** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
- ☐ 14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
- ☐ 15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
- ☐ 16. **Wild and Scenic Rivers.**
 - ☐ (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
 - ☐ (b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.
 - ☐ (c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <https://www.rivers.gov/>.
- ☐ 17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- ☐ 18. **Endangered Species.**
 - ☐ (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”
 - ☐ (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify

that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

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

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

an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

☐ (f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

☐ (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <https://www.fws.gov/> or <https://www.fws.gov/ipac/> and <https://www.fisheries.noaa.gov/topic/endangered-species-conservation> respectively.

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

☐ 20. **Historic Properties.**

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

☐ (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal

permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

□ (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

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

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

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

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

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

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

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

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

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

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

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

☐ (d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

☐ (e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will

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

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

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

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

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

☐ (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used

by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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

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

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

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

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

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

☐ 25. **Water Quality.**

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

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

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

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

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

☐ **28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

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

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

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

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

(Transferee)

(Date)

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

The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

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

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

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

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

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

☐ **32. Pre-Construction Notification.**

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

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

☐ (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

- ☐ (1) Name, address and telephone numbers of the prospective permittee;
- ☐ (2) Location of the proposed activity;
- ☐ (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- ☐ (4)
 - ☐ (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to

allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

☐ (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

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

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

☐ (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

☐ (7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species

proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

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

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

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

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

☐ (d) Agency Coordination:

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

☐ (2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-

acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

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

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

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

C. District Engineer's Decision

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

□ 2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

□ 3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity

complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

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

D. 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. NWP's do not grant any property rights or exclusive privileges.
4. NWP's do not authorize any injury to the property or rights of others.
5. NWP's do not authorize interference with any existing or proposed Federal project (see general condition 31).

E. Nationwide Permit Definitions

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

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

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

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

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

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

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

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses

spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

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

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

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

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

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWP's, an open water is any area that in a year with normal patterns of precipitation has water

flowing or standing above ground to the extent that an ordinary high-water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

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

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

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

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

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

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

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

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

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their

hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

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

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

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

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

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

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

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

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

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

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

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

Waterbody: For purposes of the NWPs, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

***Final 2021 Nationwide Permit (NWP) Regional Conditions
for the States of Nevada and Utah***
(Effective February 25, 2022 until March 14, 2026)

A. Regional Conditions for the States of Nevada and Utah:

1. The permittee shall submit a pre-construction notification (PCN), in accordance with General Condition 32, in the following circumstances:

a. Activities involving new bank stabilization that do not incorporate bioengineering techniques. Bioengineering techniques include using live plants alone or in combination with dead or inorganic materials, including rock, sand, or gravel;

b. Activities resulting in a discharge of dredged or fill material in waters of the U.S. on Tribal Lands; and,

c. Activities involving the permanent channelization, realignment, or relocation of streams.

2. The use of NWPs 4, 5, 7, 12 - 15, 17, 18, 21 - 23, 25, 29 – 31, 33, 34, 39 - 51, 57, or 58, authorizing the discharge of dredged and/or fill material is prohibited:

a. in peatlands¹ containing histosols, including bogs and fens; and,

b. below the ordinary high-water mark of the Great Salt Lake containing bioherms (microbialites).

B. 401 Water Quality Certification (401 WQC) Regional Conditions for Nevada:

1. For NWPs 3, 5 – 7, 13, 14, 18 – 20, 23, 25, 27, 31 – 33, 36 – 38, 41, 45, 46 and 59, on **tribal lands within U.S. Environmental Protection Agency (EPA) Region 9² boundaries in the State of Nevada**, the permittee shall comply with all terms and conditions of the attached October 12, 2021, 401 WQC granted by the U.S. EPA, Region 9.

¹A peatland is defined as a wetland with saturated organic soil (greater than or equal to 16 inches in thickness) that is classified as a histosol in the Natural Resources Conservation Service (NRCS) Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at: [http://www.nrcs.usda.gov/Internet/ DOCUMENTS/nrcs142p2_053171.pdf](http://www.nrcs.usda.gov/Internet/DOCUMENTS/nrcs142p2_053171.pdf)

²EPA, Region 9 401 WQC does not apply to activities proceeding in the territories of the 25 tribes in Region 9 that have been approved as Section 401 certifying authorities – the Navajo Nation, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk, White Mountain Apache Tribe, Table Mountain Rancheria, Resighini Rancheria, La Posta Band of Diegueno Mission Indians. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

2. For NWP 43, on **tribal lands within U.S. Environmental Protection Agency (EPA) Region 9² boundaries in the State of Nevada**, the permittee shall comply with all terms and conditions of the attached December 11, 2020, 401 WQC granted by the U.S. EPA, Region 9.

C. 401 Water Quality Certification (401 WQC) Regional Conditions for Utah:

1. For all NWPs, except those that involve dam maintenance/rehabilitation or reservoir dewatering, on **non-tribal lands within the State of Utah**, the permittee shall comply with all terms and conditions of the attached December 8, 2020, 401 WQC granted by the State of Utah, Department of Environmental Quality.

2. For NWPs 3, 5 – 7, 13 – 15, 18 – 20, 23, 25, 27, 30 – 33, 36 – 38, 41, 45, 46, and 59, on **Indian country³ in the State of Utah (except Indian country lands of the Navajo Nation and the Confederated Tribes of the Goshute Reservation)** the permittee shall comply with all terms and conditions of the attached October 12, 2021, 401 WQC granted by the U.S. EPA, Region 8.

3. For NWPs 3, 5 – 7, 13 – 15, 18 – 20, 23, 25, 27, 30 – 33, 36, 38, 41, 43, 45, 46, 57, and 59, except NWPs applied “after-the-fact” (i.e., after the discharge has occurred) or to NWPs where a waiver on limits has been granted by the District or Division Engineer, on the **Ute Mountain Ute Reservation in the State of Utah**, the permittee shall comply with all terms and conditions of the attached December 14, 2020, 401 WQC granted by Ute Mountain Ute Tribe.

³Indian country in Utah generally includes: (1) lands within the exterior boundaries of the following Indian reservations located within Utah, in part or in full: the Goshute Reservation, the Navajo Indian Reservation, the reservation lands of the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, the Uintah and Ouray Reservation (subject to federal court decisions removing certain lands from Indian country status within the Uintah and Ouray Reservation), and the Washakie Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas that are “Indian country” within the meaning of 18 U.S.C. section 1151.



Attachment G

May 13, 2024

Mr. Ethan Schindler
Regulatory Project Manager Nevada Section
U.S. Army Corps of Engineers Sacramento District
300 Booth Street Room 3050
Reno, NV 89509

Re: Nevada Division of Environmental Protection Clean Water Act Section 401 Water Quality Certification
Determination for Tahoe Meadows Access Ramp (NV-401-24-008; SPK-2024-00193)

Dear Mr. Schindler:

Enclosed is the Certification determination for the Tahoe Meadows Access Ramp Project (NV-401-24-008; SPK-2024-00193) proposed by NCE as acting agent for Truckee Meadows Parks Foundation. This 401 Water Quality Certification (Certification) determination has been submitted by Nevada Division of Environmental Protection (NDEP), Bureau of Water Quality Planning (BWQP) under the authority of the Clean Water Act Section 401, 40 CFR §121, and Nevada Revised Statutes Section 445A.620.

The project proposes activities with impacts or potential impacts to waters of the United States and requires a federal permit or license from the Army Corps of Engineers (USACE). Clean Water Act Section 401 requires state Certification of activities which may result in discharges to waters of the United States, in the state the discharge originates, before a federal permitting agency may issue a license or permit. To receive Certification, the proposed project must comply with State of Nevada regulations and provisions of the Clean Water Act Sections 301, 302, 303, 306, and 307. This water quality certification action has been issued in compliance with public notice procedures in the State of Nevada pursuant to Clean Water Act Section 401(a)(1) and Nevada Revised Statutes Section 445A.620.

This Certification determination contains important conditions developed for this project, including statements justifying the purpose of a condition and references to applicable federal or State law (40 CFR §121.7(d)(3)). All conditions set forth in this Certification shall be incorporated into any resulting federal license or permit (40 CFR §121.10). Failure to meet conditions of this Certification, requirements of any other permit issued by NDEP for this project, or any violation of NAC Chapter 445A or NRS Chapter 445A may result in the suspension of the federal permit or license. This Certification is subject to the acquisition of all necessary local, regional, State, and federal permits and approvals as required by law.

At NDEP's discretion and prior to initial operation under a federal license or permit which NDEP has issued Certification, NDEP shall be allowed to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other applicable water quality requirements will not be violated (§401(a)(4); NRS 445A.655).

All conditions of the Authorization to Discharge (Working in Waterways permit) issued by the Bureau of Water Pollution Control or any other permits issued by NDEP for the project must be followed pursuant to NRS 445A.475-445A.515 and NAC 445A.228-445A.272.

If you have any questions, please contact me via ndep401@ndep.nv.gov.

Sincerely,



Zachary Carter
Environmental Scientist III
Nonpoint Source Branch
Bureau of Water Quality Planning

cc: Donette Barreto, Bureau of Water Pollution Control, NDEP
Kristie Black, Bureau of Water Pollution Control, NDEP
Nancy Haley, Nevada Regulatory Section, U.S. Army Corps of Engineers
Debra Lemke, NCE
Heidi Anderson, Truckee Meadows Parks Foundation



**Nevada Division of Environmental Protection
Clean Water Act Section 401 Water Quality Certification**

The Nevada Division of Environmental Protection submits this Clean Water Act Section 401 Water Quality Certification (Certification) for:

Tahoe Meadows Access Ramp (NV-401-24-008; SPK-2024-00193) proposed by NCE as acting agent for Truckee Meadows Parks Foundation.

This project is located within wetlands and an unnamed tributary to Ophir Creek and proposes work in waters of the United States that are within the State of Nevada's jurisdiction. This Certification is formatted as follows:

- A. Proposed Project General Information
- B. General Conditions (including statutory citations)
- C. Special Conditions (including statutory citations)
- D. Condition Statements of Necessity

Nevada Division of Environmental Protection has examined the information furnished by the project proponent and certifies that there is reasonable assurance that the activity will comply with water quality requirements (Nevada Revised Statute (NRS) Chapter 445A, Nevada Administrative Code (NAC) Chapter 445A, and Clean Water Act Sections 301, 302, 303, 306, and 307), provided that the project proponent complies with all Certification conditions listed in Sections B, C, and D. All Certification conditions contained herein shall be incorporated as a condition of the federal license or permit for the project (CWA Section 401(d)). All conditions are justified as required by 40 CFR 121.7(d)(3), with statements justifying why a condition is necessary to assure that the discharge from a proposed project will comply with water quality requirement(s) and citations to appropriate federal and/or State water quality regulation(s) that authorizes the condition. This water quality certification action has been issued in compliance with public notice procedures in the State of Nevada pursuant to Clean Water Act Section 401(a)(1) and Nevada Revised Statutes Section 445A.620.

A. Proposed Project General Information

Project Number:	NV-401-24-008; SPK-2024-00193
Project Name:	Tahoe Meadows Access Ramp
Project Proponent:	NCE as acting agent for Truckee Meadows Parks Foundation
Federal Permit or License:	Nationwide Permit 14 – Linear Transportation Projects Nationwide Permit 18 – Minor Discharges
Pre-Filing Meeting Request Date:	7/19/2023
Certification Request Date:	3/6/2024
Reasonable Period of Time Deadline:	9/2/2024
Certifying Authority Decision:	Certification with Conditions
Date Certification Determination Submitted to Federal Permitting Agency:	5/13/2024

Amount of excavation or fill discharged in waters of the U.S. (linear feet, acres, and/or cubic yards):	Temporary: 0.30016 acres 7.33 linear feet 42.644 yd ³	Permanent: 0.0511 acres 518 linear feet 84.06 yd ³
Amount of dredge material discharged in waters of the U.S. (linear feet, acres, and/or cubic yards):	Temporary: 0 yd ³	Permanent: 0 yd ³
Total impact to waters of the U.S. (linear feet, acres, and/or cubic yards):	0.35126 acres (combined temporary and permanent impacts) 525.33 linear feet (combined temporary and permanent impacts)	
Project scope of work summary:	<p>The purpose of this project is to construct an access ramp between two existing boardwalks within the Tahoe Meadows Trail System within the Humboldt-Toiyabe National Forest. The access ramp will require the use of Nationwide Permit 14 (Linear Transportation Projects) and Nationwide Permit 18 (Minor Discharges) to extend an existing culvert, install outlet protection, and construct a new pathway. The project will impact wetlands and an unnamed ephemeral tributary to Ophir Creek in Washoe County, Nevada. Construction activities will include installation of a 33-foot extension of an existing 24-inch reinforced concrete pipe culvert, ungrouted rock riprap outlet protection, and a decomposed granite access ramp pathway. Stabilization of the impacted areas following construction will include revegetation, including seeding and willow staking, as well as installation of jute matting. A temporary drainage diversion plan has been developed in the event that flows are present within the channel during construction. The diversion will include a cofferdam constructed from gravel-filled bags and visqueen lining installed above the construction area to impound flows. Flows will be routed through a flexible pipe via gravity and discharged into a temporary velocity dissipating device prior to discharging to Ophir Creek. Additional best management practices will also include a temporary check dam installed downstream, installation of fiber rolls or silt fencing for erosion control, vegetation preservation, and revegetation. The project is anticipated to commence May 1, 2024, and is expected to conclude November 1, 2024.</p>	

A detailed project description, including measures to ensure that discharges to waters of the U.S. do not significantly impact water quality, is included in the Certification Request and in additional information attached to the Certification Request.

B. General Conditions

Condition Number	Condition Title	Condition Description and Reference to Federal and/or State Water Quality Requirement(s)
1	Permits and Licenses	All other required federal and State permits or licenses must be obtained prior to construction commencement to ensure compliance with all federal and State regulations (NRS 445A.300 - 445A.730; NAC 445A.228).
2	Water Quality Standards/Beneficial Uses	Any discharge associated with the proposed activity shall not exceed State water quality standards or impair the beneficial uses of any water of the State. Beneficial uses define the water quality criteria required to protect the uses of a waterbody and exceedances are a violation of State regulation. No exceedances of water quality standards or impairment of beneficial uses of the waterbody are permitted (NRS 445A.520; NRS445A.720; NAC 445A.118 - 445A.2234).
3	High Quality Waters	Any surface waters of the State whose quality is higher than the applicable water quality standards, as of the date when those standards become effective, must be maintained in their higher quality. No discharges of a pollutant may be made which

		will result in lowering the quality of these waters (NRS 445A.565).
4	Waters with Approved TMDLs and 303(d) Listed Waters	If the proposed project would discharge into a waterbody listed as impaired and on the current 303(d) list or has an approved TMDL, no discharges of a pollutant may be made which will result in further degradation of these waters without approval by NDEP. For the most current list of approved TMDLs for Nevada, please refer to NDEP's Water Quality Integrated Report (https://ndep.nv.gov/uploads/water-wqm-docs/IR2022FINAL_Report.pdf). Waters listed as impaired or with approved TMDLs are not meeting the requirements for their designated beneficial uses. NDEP requires review to ensure the proposed project will not exceed numeric or narrative water quality criteria for the waterbody and that BMPs for the project adhere to suggested BMPs outlined in applicable TMDLs (NRS 445A.520; NRS 445A.720; NAC 445A.228).
5	Best Management Practices (BMPs)	Work in or adjacent to waters of the State shall be performed in such a way that minimizes discharges of pollutants to the receiving waterbody. Best Management Practices to control and mitigate inputs of pollutants must be implemented and functional prior to commencement of work and shall be maintained and modified throughout the duration of work performed to assure that State water quality standards are met. Pollutants are defined as artificially made or induced alterations to the physical, chemical, or biological integrity of the water (NRS 445A.525; NAC 445A.121).
6	Equipment Use	<ol style="list-style-type: none"> Equipment used during project implementation must be in proper working condition and free from leaks to prevent discharge of debris, oil, grease, scum, and other floating materials to waters of the State which could have adverse effects on the chemical, physical, or biological function of the waterbody (NAC 445A.121). Equipment fueling, staging, maintenance, and repair must be conducted in an upland position where discharge of pollutants, incidental to these activities, do not have the potential to pollute waters of the State (NAC 445A.121). Equipment operation shall be conducted in a manner that minimizes impacts to waters of the State (NAC 445A.121).
7	Construction	Except those authorized by this Certification, no pollutants associated with this project shall be discharged or allowed to remain in a position where a pollutant can be carried to waters of the State by any means. Material permitted to enter waters of the State must be stabilized in a position to prevent excessive erosion. Pollutants are defined as artificially made or induced alterations to the physical, chemical, or biological integrity of the water. Pollutants can include, but are not limited to soil, sand, silt, rock, dredge material, chemical waste, biological material, heat, concrete, concrete washings, and discarded equipment (NRS 445A.400; NRS 445A.465).
8	Concrete	Wet and uncured concrete shall not be allowed to enter waters of the State. Impermeable covers must be placed over concrete not poured into forms to prevent degradation of waters of the State through seepage and leaching of uncured concrete (NRS 445A.465).
9	Invasive Species Management	Equipment and materials must be free from invasive species that could be discharged or carried into the waters of the State by any means. If BMPs incorporate natural materials, such as seeds, mulch, straw bales, or coir logs, they shall be certified as weed free. Equipment and materials must be free from invasive species to protect the physical, chemical, and biological integrity of waters of the State and to prevent the spread of invasive species throughout the State (NRS 445A.465; NRS 555.010; NRS 555.150).
10	Revegetation and Site Restoration	Disturbance of existing vegetation shall not exceed the minimum necessary to complete the project. If revegetation is proposed to restore and stabilize areas affected during construction, site-appropriate plant materials shall be used with an emphasis on native and/or adapted perennial vegetation. Site stabilization is necessary to prevent erosion, decrease sediment inputs into waters of the State, and reduce encroachment of invasive species in denuded areas since invasive

		species are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 445A.305).
11	Post-Construction	Upon completion of the project, affected areas must be returned to pre-construction elevations and contours. All temporary and excess materials and installments used during construction must be removed from the site to prevent pollutants from entering waters of the State by any means (NRS 445A.465).
12	Post-Project Reporting	Following project completion, the project proponent shall send NDEP digital color photographs (jpg/jpeg preferred) that are representative of waters impacted by the activity. Photos must include BMPs used to prevent erosion, control sediment, and protect water quality. Before, during, and after photos should be taken from a consistent photo point in the same direction using the same zoom and aspect. Major linear utility projects may provide representative photos of only the most sensitive sites (e.g., wetlands or channel crossings). Post-project reporting is necessary to ensure project BMPs were installed as proposed (NRS 445A.530).

C. Special Conditions

Condition Number	Condition Title	Condition Description and Reference to Federal and/or State Water Quality Requirement(s)
13	Temporary Bypass	The project proposal indicates that a temporary flow bypass will be constructed if flows are present within the channel during construction. If a temporary bypass is constructed to divert live stream flows around the construction area, this best management practice will be installed and maintained as necessary throughout project implementation to minimize discharges of sediment and construction-related materials to waters of the U.S. Impacted waters must be free from materials from controlled sources in amounts sufficient to change the existing color, turbidity, or other conditions in the receiving stream to such a degree as to create a public nuisance or in amounts sufficient to interfere with any beneficial uses or violate water quality standards (NRS 445A.720; NRS 445A.530; NRS 445A.525; NAC 445A.1239; NAC 445A.1736; NAC 445A.121).

D. Condition Statements of Necessity

The conditions above ensure compliance with applicable water quality requirements, minimization of individual and cumulative adverse effects on the aquatic environment, and the continued use and enjoyment of Nevada's water resources for future generations (NRS 445A.720). The State has an obligation to protect the beneficial uses of waterbodies across its jurisdiction through the development of water quality standards and criteria (NRS 445A.530; NAC 445A.118 - 445A.2234). Projects which require a federal license or permit must first receive certification from the state in which the discharge originates, or will originate, to verify that any proposed activity complies with federal, State, and local regulation (40 CFR §121; NRS 445A.620; NRS 445A.720). The conditions above have been developed for the proposed project because these activities have been determined to have an increased potential to pollute waters of the State and steps must be taken to ensure compliance with applicable water quality requirements (NRS 445A.525; NRS 445A.565). The State must develop limitations necessary to meet water quality standards, treatment standards, and schedules of compliance established pursuant to the laws of this State and any other federal law or regulation and is required to implement any applicable water quality standard established pursuant to NRS 445A.300 to 445A.730, inclusive, such limitations shall be established (NRS 445A.530; NAC 445A.118 - 445A.2234).

Pursuant to 40 CFR §121.7(d)(3), narrative statements justifying the conditions listed by number follows below:

1. Water Quality Certification does not negate the requirement for applicants to obtain all other required federal, State, and local permits, licenses, and authorizations prior to construction commencement which ensures compliance with all applicable water quality-related requirements (NRS 445A.300 - 445A.730; NAC 445A.228).
2. To protect Nevada's water resources, any discharge associated with a project occurring in waters of the State shall not exceed State water quality standards or impair the beneficial uses for the applicable waterbody (NRS 445A.520). Beneficial uses define the water quality criteria required to support the existing uses of a waterbody and exceedances are a violation of State law. To prevent the proposed activities from interfering with attainment of applicable beneficial uses no exceedances of water quality standards or impairment of beneficial uses of the waterbody are permitted (NRS 445A.520; NRS 445A.720; NAC 445A.118 - 445A.2234).
3. To protect the continued attainment of high-quality waterbodies, no discharges of a pollutant from a point source may be made which will result in lowering the quality of these waters. NDEP requires review to ensure the proposed project will not exceed applicable numeric or narrative water quality standards for the waterbody and that BMPs promote the chemical, physical, and biological integrity of these waters (NRS 445A.565; NRS 445A.720; NAC 445A.228).
4. To prevent further degradation of 303(d) listed waterbodies and waterbodies with an approved TMDL, no discharges of a pollutant from a point source may be made which will result in further degradation of these waters. For the most current list of approved TMDLs for Nevada, please refer to NDEP's Water Quality Integrated Report (https://ndep.nv.gov/uploads/water-wqm-docs/IR2022FINAL_Report.pdf). NDEP requires review to ensure the proposed project will not exceed applicable numeric or narrative water quality standards for the waterbody and that BMPs promote the chemical, physical, and biological integrity of these waters (NRS 445A.720; NAC 445A.228).
5. Best Management Practices are effective measures to control and mitigate point source inputs of pollutants into a waterbody. Prior to commencement of any work in waters of the State, BMPs designed for the project must be in place and shall be maintained throughout the duration of the project to ensure no more than minimal effects to the aquatic environment (NRS 445A.525; NAC 445A.121). A list of BMPs recommended by NDEP are available on the BWQP website: <https://ndep.nv.gov/water/rivers-streams-lakes/nonpoint-source-pollution-management-program/best-management-practices-toolbox>.
6. Equipment used in waters of the State must be in proper working condition and free from leaks. Any maintenance, repair, or staging of this equipment must be completed in an upland position to prevent discharge of debris, oil, grease, scum, and other floating materials to waters of the State which could have adverse effects on the aquatic environment (NRS 445A.520; NAC 445A.121.2).
7. Except those authorized by this Certification, no pollutants associated with this project will be discharged from a point source or allowed to remain in a position where a pollutant can be carried to waters of the State by any means and material permitted to enter waters of the State must be stabilized in a way that prevents excessive erosion. Adherence to this condition prevents violations of water quality standards and State law (NRS 445A.400).
8. Wet and uncured concrete negatively impacts the chemical and physical integrity of water if allowed to enter a waterbody and poses a serious hazard to aquatic life. No wet or uncured concrete shall be allowed to enter water of the State by any means. Impermeable covers shall be placed over any wet or uncured concrete to prevent leaching of this pollutant into a waterbody (NRS 445A.465).
9. Equipment and materials must be free from invasive species that could be discharged or carried into the waters of the State by any means. If BMPs incorporate natural materials, such as seeds, mulch, straw bales, or coir logs, they shall be certified as weed free. Equipment and materials must be free from invasive species to protect the

physical, chemical, and biological integrity of waters of the State and to prevent the spread of invasive species throughout the State (NRS 445A.465; NRS 555.010; NRS 555.150).

10. Disturbance of existing vegetation shall not exceed the minimum necessary to complete the project. If revegetation is proposed to restore and stabilize areas affected during construction, site-appropriate plant materials shall be used with an emphasis on native and/or adapted perennial vegetation. Site stabilization is necessary to prevent erosion, decrease sediment inputs into waters of the State, and reduce encroachment of invasive species in denuded areas since invasive species are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 445A.305).
11. All temporary and excess materials and installments used during construction shall be removed from the site upon project completion to prevent pollutants from entering waters of the State by any means. Affected areas must be returned to pre-construction elevations and contours to prevent unauthorized alterations to a waterbody once a project is complete (NRS 445A.465).
12. Following project completion, the project proponent shall send NDEP digital color photographs (jpg/jpeg preferred) that are representative of waters impacted by the activity. Photos must include BMPs used to prevent erosion, control sediment, and protect water quality. Before, during, and after photos should be taken from a consistent photo point in the same direction using the same zoom and aspect. Major linear utility projects may provide representative photos of only the most sensitive sites (e.g., wetlands or channel crossings). Post-project reporting is necessary to ensure project BMPs were installed as proposed. (NRS 445A.530).
13. The project proposal indicates that a temporary flow bypass will be constructed if flows are present within the channel during construction. If a temporary bypass is constructed to divert live stream flows around the construction area, this best management practice will be installed and maintained as necessary throughout project implementation to minimize discharges of sediment and construction-related materials to waters of the U.S. Impacted waters must be free from materials from controlled sources in amounts sufficient to change the existing color, turbidity, or other conditions in the receiving stream to such a degree as to create a public nuisance or in amounts sufficient to interfere with any beneficial uses or violate water quality standards (NRS 445A.720; NRS 445A.530; NRS 445A.525; NAC 445A.1239; NAC 445A.1736; NAC 445A.121).



Notice of Request for Section 401 Water Quality Certification Action - Bureau of Water Quality Planning

Web Posting: 3/20/2024

Deadline for Comments: 4/19/2024

**Tahoe Meadows Access Ramp
Washoe County**

**NCE
300 East 2nd Street
Reno, Nevada 89501**

Certification Action Number NV-401-24-008; SPK-2024-00193

The purpose of the project is to install a 33-foot extension of an existing 24-inch reinforced concrete pipe culvert, installation of a riprap outlet, and installation of a decomposed granite pathway (accessible access ramp). Post-construction activities include revegetation of disturbed areas through seeding, willow staking, and installation of permanent flexamat. The project proposes impacts to Ophir Creek along Mount Rose Highway (SR 431) in Washoe County, Nevada and is anticipated to occur between May 1 through November 1, 2024. The proposed activities will require the use of Nationwide Permit 14 (Linear Transportation Projects) and 18 (Minor Discharges) administered by U.S. Army Corps of Engineers.

A 401 certification (or a waiver of certification) is required for any federal license or permit that authorizes activities that may result in any discharge into waters of the United States. Nevada Division of Environmental Protection is in receipt of a complete request for certification in compliance with Clean Water Act Section 401 Certification regulations which the U.S. Environmental Protection Agency promulgated in 2023, codified as 40 CFR 121.

The Administrator is evaluating whether the proposed activity will comply with applicable water quality requirements. Certification actions are valid for the duration of the federal license or permit (typically five years). Any conditions contained within the certification action become a condition of the federal license or permit.

Persons wishing to comment on the application for consideration by the Administrator in making a determination regarding the certification action should submit their comments or request a hearing in writing, emailed no later than 5:00 P.M. on 4/19/2024:

Bureau of Water Quality Planning
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249
ndep401@ndep.nv.gov

The request for a hearing must be filed within the comment period and must indicate the interest of the person filing the request and the reasons why a hearing is warranted. All water quality-related comments or objections received within the thirty (30) day period will be considered in the formulation of final certification action regarding the application. If written comments indicate a significant degree of public interest in the proposed permit, the Administrator shall hold a public hearing. A public notice of such hearing will be issued not less than thirty (30) days prior to the hearing date.

The applications, proposed permits, comments received, and other information are on file and may be copied, or copies may be obtained by writing to the above address or by contacting Zachary Carter, Bureau of Water Quality Planning, at (775) 687-9456 or ndep401@ndep.nv.gov. The public notice for this project can be viewed at the following website: <https://ndep.nv.gov/posts/category/water>.

Please bring the forgoing notice to the attention of all persons interested in this matter.



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources

Joe Lombardo, *Governor*
James A. Settelmeyer, *Director*
Jennifer L. Carr, *Administrator*

May 13, 2024

Mr. Ethan Schindler
Regulatory Project Manager Nevada Section
U.S. Army Corps of Engineers Sacramento District
300 Booth Street Room 3050
Reno, NV 89509

Re: Nevada Division of Environmental Protection Clean Water Act Section 401 Water Quality Certification
Determination for Tahoe Meadows Access Ramp (NV-401-24-008; SPK-2024-00193)

Dear Mr. Schindler:

Enclosed is the Certification determination for the Tahoe Meadows Access Ramp Project (NV-401-24-008; SPK-2024-00193) proposed by NCE as acting agent for Truckee Meadows Parks Foundation. This 401 Water Quality Certification (Certification) determination has been submitted by Nevada Division of Environmental Protection (NDEP), Bureau of Water Quality Planning (BWQP) under the authority of the Clean Water Act Section 401, 40 CFR §121, and Nevada Revised Statutes Section 445A.620.

The project proposes activities with impacts or potential impacts to waters of the United States and requires a federal permit or license from the Army Corps of Engineers (USACE). Clean Water Act Section 401 requires state Certification of activities which may result in discharges to waters of the United States, in the state the discharge originates, before a federal permitting agency may issue a license or permit. To receive Certification, the proposed project must comply with State of Nevada regulations and provisions of the Clean Water Act Sections 301, 302, 303, 306, and 307. This water quality certification action has been issued in compliance with public notice procedures in the State of Nevada pursuant to Clean Water Act Section 401(a)(1) and Nevada Revised Statutes Section 445A.620.

This Certification determination contains important conditions developed for this project, including statements justifying the purpose of a condition and references to applicable federal or State law (40 CFR §121.7(d)(3)). All conditions set forth in this Certification shall be incorporated into any resulting federal license or permit (40 CFR §121.10). Failure to meet conditions of this Certification, requirements of any other permit issued by NDEP for this project, or any violation of NAC Chapter 445A or NRS Chapter 445A may result in the suspension of the federal permit or license. This Certification is subject to the acquisition of all necessary local, regional, State, and federal permits and approvals as required by law.

At NDEP's discretion and prior to initial operation under a federal license or permit which NDEP has issued Certification, NDEP shall be allowed to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other applicable water quality requirements will not be violated (§401(a)(4); NRS 445A.655).

All conditions of the Authorization to Discharge (Working in Waterways permit) issued by the Bureau of Water Pollution Control or any other permits issued by NDEP for the project must be followed pursuant to NRS 445A.475-445A.515 and NAC 445A.228-445A.272.

If you have any questions, please contact me via ndep401@ndep.nv.gov.

Sincerely,



Zachary Carter
Environmental Scientist III
Nonpoint Source Branch
Bureau of Water Quality Planning

cc: Donette Barreto, Bureau of Water Pollution Control, NDEP
Kristie Black, Bureau of Water Pollution Control, NDEP
Nancy Haley, Nevada Regulatory Section, U.S. Army Corps of Engineers
Debra Lemke, NCE
Heidi Anderson, Truckee Meadows Parks Foundation



**Nevada Division of Environmental Protection
Clean Water Act Section 401 Water Quality Certification**

The Nevada Division of Environmental Protection submits this Clean Water Act Section 401 Water Quality Certification (Certification) for:

Tahoe Meadows Access Ramp (NV-401-24-008; SPK-2024-00193) proposed by NCE as acting agent for Truckee Meadows Parks Foundation.

This project is located within wetlands and an unnamed tributary to Ophir Creek and proposes work in waters of the United States that are within the State of Nevada's jurisdiction. This Certification is formatted as follows:

- A. Proposed Project General Information
- B. General Conditions (including statutory citations)
- C. Special Conditions (including statutory citations)
- D. Condition Statements of Necessity

Nevada Division of Environmental Protection has examined the information furnished by the project proponent and certifies that there is reasonable assurance that the activity will comply with water quality requirements (Nevada Revised Statute (NRS) Chapter 445A, Nevada Administrative Code (NAC) Chapter 445A, and Clean Water Act Sections 301, 302, 303, 306, and 307), provided that the project proponent complies with all Certification conditions listed in Sections B, C, and D. All Certification conditions contained herein shall be incorporated as a condition of the federal license or permit for the project (CWA Section 401(d)). All conditions are justified as required by 40 CFR 121.7(d)(3), with statements justifying why a condition is necessary to assure that the discharge from a proposed project will comply with water quality requirement(s) and citations to appropriate federal and/or State water quality regulation(s) that authorizes the condition. This water quality certification action has been issued in compliance with public notice procedures in the State of Nevada pursuant to Clean Water Act Section 401(a)(1) and Nevada Revised Statutes Section 445A.620.

A. Proposed Project General Information

Project Number:	NV-401-24-008; SPK-2024-00193
Project Name:	Tahoe Meadows Access Ramp
Project Proponent:	NCE as acting agent for Truckee Meadows Parks Foundation
Federal Permit or License:	Nationwide Permit 14 – Linear Transportation Projects Nationwide Permit 18 – Minor Discharges
Pre-Filing Meeting Request Date:	7/19/2023
Certification Request Date:	3/6/2024
Reasonable Period of Time Deadline:	9/2/2024
Certifying Authority Decision:	Certification with Conditions
Date Certification Determination Submitted to Federal Permitting Agency:	5/13/2024

Amount of excavation or fill discharged in waters of the U.S. (linear feet, acres, and/or cubic yards):	Temporary: 0.30016 acres 7.33 linear feet 42.644 yd ³	Permanent: 0.0511 acres 518 linear feet 84.06 yd ³
Amount of dredge material discharged in waters of the U.S. (linear feet, acres, and/or cubic yards):	Temporary: 0 yd ³	Permanent: 0 yd ³
Total impact to waters of the U.S. (linear feet, acres, and/or cubic yards):	0.35126 acres (combined temporary and permanent impacts) 525.33 linear feet (combined temporary and permanent impacts)	
Project scope of work summary:	<p>The purpose of this project is to construct an access ramp between two existing boardwalks within the Tahoe Meadows Trail System within the Humboldt-Toiyabe National Forest. The access ramp will require the use of Nationwide Permit 14 (Linear Transportation Projects) and Nationwide Permit 18 (Minor Discharges) to extend an existing culvert, install outlet protection, and construct a new pathway. The project will impact wetlands and an unnamed ephemeral tributary to Ophir Creek in Washoe County, Nevada. Construction activities will include installation of a 33-foot extension of an existing 24-inch reinforced concrete pipe culvert, ungrouted rock riprap outlet protection, and a decomposed granite access ramp pathway. Stabilization of the impacted areas following construction will include revegetation, including seeding and willow staking, as well as installation of jute matting. A temporary drainage diversion plan has been developed in the event that flows are present within the channel during construction. The diversion will include a cofferdam constructed from gravel-filled bags and visqueen lining installed above the construction area to impound flows. Flows will be routed through a flexible pipe via gravity and discharged into a temporary velocity dissipating device prior to discharging to Ophir Creek. Additional best management practices will also include a temporary check dam installed downstream, installation of fiber rolls or silt fencing for erosion control, vegetation preservation, and revegetation. The project is anticipated to commence May 1, 2024, and is expected to conclude November 1, 2024.</p>	

A detailed project description, including measures to ensure that discharges to waters of the U.S. do not significantly impact water quality, is included in the Certification Request and in additional information attached to the Certification Request.

B. General Conditions

Condition Number	Condition Title	Condition Description and Reference to Federal and/or State Water Quality Requirement(s)
1	Permits and Licenses	All other required federal and State permits or licenses must be obtained prior to construction commencement to ensure compliance with all federal and State regulations (NRS 445A.300 - 445A.730; NAC 445A.228).
2	Water Quality Standards/Beneficial Uses	Any discharge associated with the proposed activity shall not exceed State water quality standards or impair the beneficial uses of any water of the State. Beneficial uses define the water quality criteria required to protect the uses of a waterbody and exceedances are a violation of State regulation. No exceedances of water quality standards or impairment of beneficial uses of the waterbody are permitted (NRS 445A.520; NRS445A.720; NAC 445A.118 - 445A.2234).
3	High Quality Waters	Any surface waters of the State whose quality is higher than the applicable water quality standards, as of the date when those standards become effective, must be maintained in their higher quality. No discharges of a pollutant may be made which

		will result in lowering the quality of these waters (NRS 445A.565).
4	Waters with Approved TMDLs and 303(d) Listed Waters	If the proposed project would discharge into a waterbody listed as impaired and on the current 303(d) list or has an approved TMDL, no discharges of a pollutant may be made which will result in further degradation of these waters without approval by NDEP. For the most current list of approved TMDLs for Nevada, please refer to NDEP's Water Quality Integrated Report (https://ndep.nv.gov/uploads/water-wqm-docs/IR2022FINAL_Report.pdf). Waters listed as impaired or with approved TMDLs are not meeting the requirements for their designated beneficial uses. NDEP requires review to ensure the proposed project will not exceed numeric or narrative water quality criteria for the waterbody and that BMPs for the project adhere to suggested BMPs outlined in applicable TMDLs (NRS 445A.520; NRS 445A.720; NAC 445A.228).
5	Best Management Practices (BMPs)	Work in or adjacent to waters of the State shall be performed in such a way that minimizes discharges of pollutants to the receiving waterbody. Best Management Practices to control and mitigate inputs of pollutants must be implemented and functional prior to commencement of work and shall be maintained and modified throughout the duration of work performed to assure that State water quality standards are met. Pollutants are defined as artificially made or induced alterations to the physical, chemical, or biological integrity of the water (NRS 445A.525; NAC 445A.121).
6	Equipment Use	<ul style="list-style-type: none"> a. Equipment used during project implementation must be in proper working condition and free from leaks to prevent discharge of debris, oil, grease, scum, and other floating materials to waters of the State which could have adverse effects on the chemical, physical, or biological function of the waterbody (NAC 445A.121). b. Equipment fueling, staging, maintenance, and repair must be conducted in an upland position where discharge of pollutants, incidental to these activities, do not have the potential to pollute waters of the State (NAC 445A.121). c. Equipment operation shall be conducted in a manner that minimizes impacts to waters of the State (NAC 445A.121).
7	Construction	Except those authorized by this Certification, no pollutants associated with this project shall be discharged or allowed to remain in a position where a pollutant can be carried to waters of the State by any means. Material permitted to enter waters of the State must be stabilized in a position to prevent excessive erosion. Pollutants are defined as artificially made or induced alterations to the physical, chemical, or biological integrity of the water. Pollutants can include, but are not limited to soil, sand, silt, rock, dredge material, chemical waste, biological material, heat, concrete, concrete washings, and discarded equipment (NRS 445A.400; NRS 445A.465).
8	Concrete	Wet and uncured concrete shall not be allowed to enter waters of the State. Impermeable covers must be placed over concrete not poured into forms to prevent degradation of waters of the State through seepage and leaching of uncured concrete (NRS 445A.465).
9	Invasive Species Management	Equipment and materials must be free from invasive species that could be discharged or carried into the waters of the State by any means. If BMPs incorporate natural materials, such as seeds, mulch, straw bales, or coir logs, they shall be certified as weed free. Equipment and materials must be free from invasive species to protect the physical, chemical, and biological integrity of waters of the State and to prevent the spread of invasive species throughout the State (NRS 445A.465; NRS 555.010; NRS 555.150).
10	Revegetation and Site Restoration	Disturbance of existing vegetation shall not exceed the minimum necessary to complete the project. If revegetation is proposed to restore and stabilize areas affected during construction, site-appropriate plant materials shall be used with an emphasis on native and/or adapted perennial vegetation. Site stabilization is necessary to prevent erosion, decrease sediment inputs into waters of the State, and reduce encroachment of invasive species in denuded areas since invasive

		species are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 445A.305).
11	Post-Construction	Upon completion of the project, affected areas must be returned to pre-construction elevations and contours. All temporary and excess materials and installments used during construction must be removed from the site to prevent pollutants from entering waters of the State by any means (NRS 445A.465).
12	Post-Project Reporting	Following project completion, the project proponent shall send NDEP digital color photographs (jpg/jpeg preferred) that are representative of waters impacted by the activity. Photos must include BMPs used to prevent erosion, control sediment, and protect water quality. Before, during, and after photos should be taken from a consistent photo point in the same direction using the same zoom and aspect. Major linear utility projects may provide representative photos of only the most sensitive sites (e.g., wetlands or channel crossings). Post-project reporting is necessary to ensure project BMPs were installed as proposed (NRS 445A.530).

C. Special Conditions

Condition Number	Condition Title	Condition Description and Reference to Federal and/or State Water Quality Requirement(s)
13	Temporary Bypass	The project proposal indicates that a temporary flow bypass will be constructed if flows are present within the channel during construction. If a temporary bypass is constructed to divert live stream flows around the construction area, this best management practice will be installed and maintained as necessary throughout project implementation to minimize discharges of sediment and construction-related materials to waters of the U.S. Impacted waters must be free from materials from controlled sources in amounts sufficient to change the existing color, turbidity, or other conditions in the receiving stream to such a degree as to create a public nuisance or in amounts sufficient to interfere with any beneficial uses or violate water quality standards (NRS 445A.720; NRS 445A.530; NRS 445A.525; NAC 445A.1239; NAC 445A.1736; NAC 445A.121).

D. Condition Statements of Necessity

The conditions above ensure compliance with applicable water quality requirements, minimization of individual and cumulative adverse effects on the aquatic environment, and the continued use and enjoyment of Nevada's water resources for future generations (NRS 445A.720). The State has an obligation to protect the beneficial uses of waterbodies across its jurisdiction through the development of water quality standards and criteria (NRS 445A.530; NAC 445A.118 - 445A.2234). Projects which require a federal license or permit must first receive certification from the state in which the discharge originates, or will originate, to verify that any proposed activity complies with federal, State, and local regulation (40 CFR §121; NRS 445A.620; NRS 445A.720). The conditions above have been developed for the proposed project because these activities have been determined to have an increased potential to pollute waters of the State and steps must be taken to ensure compliance with applicable water quality requirements (NRS 445A.525; NRS 445A.565). The State must develop limitations necessary to meet water quality standards, treatment standards, and schedules of compliance established pursuant to the laws of this State and any other federal law or regulation and is required to implement any applicable water quality standard established pursuant to NRS 445A.300 to 445A.730, inclusive, such limitations shall be established (NRS 445A.530; NAC 445A.118 - 445A.2234).

Pursuant to 40 CFR §121.7(d)(3), narrative statements justifying the conditions listed by number follows below:

1. Water Quality Certification does not negate the requirement for applicants to obtain all other required federal, State, and local permits, licenses, and authorizations prior to construction commencement which ensures compliance with all applicable water quality-related requirements (NRS 445A.300 - 445A.730; NAC 445A.228).
2. To protect Nevada's water resources, any discharge associated with a project occurring in waters of the State shall not exceed State water quality standards or impair the beneficial uses for the applicable waterbody (NRS 445A.520). Beneficial uses define the water quality criteria required to support the existing uses of a waterbody and exceedances are a violation of State law. To prevent the proposed activities from interfering with attainment of applicable beneficial uses no exceedances of water quality standards or impairment of beneficial uses of the waterbody are permitted (NRS 445A.520; NRS 445A.720; NAC 445A.118 - 445A.2234).
3. To protect the continued attainment of high-quality waterbodies, no discharges of a pollutant from a point source may be made which will result in lowering the quality of these waters. NDEP requires review to ensure the proposed project will not exceed applicable numeric or narrative water quality standards for the waterbody and that BMPs promote the chemical, physical, and biological integrity of these waters (NRS 445A.565; NRS 445A.720; NAC 445A.228).
4. To prevent further degradation of 303(d) listed waterbodies and waterbodies with an approved TMDL, no discharges of a pollutant from a point source may be made which will result in further degradation of these waters. For the most current list of approved TMDLs for Nevada, please refer to NDEP's Water Quality Integrated Report (https://ndep.nv.gov/uploads/water-wqm-docs/IR2022FINAL_Report.pdf). NDEP requires review to ensure the proposed project will not exceed applicable numeric or narrative water quality standards for the waterbody and that BMPs promote the chemical, physical, and biological integrity of these waters (NRS 445A.720; NAC 445A.228).
5. Best Management Practices are effective measures to control and mitigate point source inputs of pollutants into a waterbody. Prior to commencement of any work in waters of the State, BMPs designed for the project must be in place and shall be maintained throughout the duration of the project to ensure no more than minimal effects to the aquatic environment (NRS 445A.525; NAC 445A.121). A list of BMPs recommended by NDEP are available on the BWQP website: <https://ndep.nv.gov/water/rivers-streams-lakes/nonpoint-source-pollution-management-program/best-management-practices-toolbox>.
6. Equipment used in waters of the State must be in proper working condition and free from leaks. Any maintenance, repair, or staging of this equipment must be completed in an upland position to prevent discharge of debris, oil, grease, scum, and other floating materials to waters of the State which could have adverse effects on the aquatic environment (NRS 445A.520; NAC 445A.121.2).
7. Except those authorized by this Certification, no pollutants associated with this project will be discharged from a point source or allowed to remain in a position where a pollutant can be carried to waters of the State by any means and material permitted to enter waters of the State must be stabilized in a way that prevents excessive erosion. Adherence to this condition prevents violations of water quality standards and State law (NRS 445A.400).
8. Wet and uncured concrete negatively impacts the chemical and physical integrity of water if allowed to enter a waterbody and poses a serious hazard to aquatic life. No wet or uncured concrete shall be allowed to enter water of the State by any means. Impermeable covers shall be placed over any wet or uncured concrete to prevent leaching of this pollutant into a waterbody (NRS 445A.465).
9. Equipment and materials must be free from invasive species that could be discharged or carried into the waters of the State by any means. If BMPs incorporate natural materials, such as seeds, mulch, straw bales, or coir logs, they shall be certified as weed free. Equipment and materials must be free from invasive species to protect the

physical, chemical, and biological integrity of waters of the State and to prevent the spread of invasive species throughout the State (NRS 445A.465; NRS 555.010; NRS 555.150).

10. Disturbance of existing vegetation shall not exceed the minimum necessary to complete the project. If revegetation is proposed to restore and stabilize areas affected during construction, site-appropriate plant materials shall be used with an emphasis on native and/or adapted perennial vegetation. Site stabilization is necessary to prevent erosion, decrease sediment inputs into waters of the State, and reduce encroachment of invasive species in denuded areas since invasive species are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 445A.305).
11. All temporary and excess materials and installments used during construction shall be removed from the site upon project completion to prevent pollutants from entering waters of the State by any means. Affected areas must be returned to pre-construction elevations and contours to prevent unauthorized alterations to a waterbody once a project is complete (NRS 445A.465).
12. Following project completion, the project proponent shall send NDEP digital color photographs (jpg/jpeg preferred) that are representative of waters impacted by the activity. Photos must include BMPs used to prevent erosion, control sediment, and protect water quality. Before, during, and after photos should be taken from a consistent photo point in the same direction using the same zoom and aspect. Major linear utility projects may provide representative photos of only the most sensitive sites (e.g., wetlands or channel crossings). Post-project reporting is necessary to ensure project BMPs were installed as proposed. (NRS 445A.530).
13. The project proposal indicates that a temporary flow bypass will be constructed if flows are present within the channel during construction. If a temporary bypass is constructed to divert live stream flows around the construction area, this best management practice will be installed and maintained as necessary throughout project implementation to minimize discharges of sediment and construction-related materials to waters of the U.S. Impacted waters must be free from materials from controlled sources in amounts sufficient to change the existing color, turbidity, or other conditions in the receiving stream to such a degree as to create a public nuisance or in amounts sufficient to interfere with any beneficial uses or violate water quality standards (NRS 445A.720; NRS 445A.530; NRS 445A.525; NAC 445A.1239; NAC 445A.1736; NAC 445A.121).



Notice of Request for Section 401 Water Quality Certification Action - Bureau of Water Quality Planning

Web Posting: 3/20/2024

Deadline for Comments: 4/19/2024

**Tahoe Meadows Access Ramp
Washoe County**

**NCE
300 East 2nd Street
Reno, Nevada 89501**

Certification Action Number NV-401-24-008; SPK-2024-00193

The purpose of the project is to install a 33-foot extension of an existing 24-inch reinforced concrete pipe culvert, installation of a riprap outlet, and installation of a decomposed granite pathway (accessible access ramp). Post-construction activities include revegetation of disturbed areas through seeding, willow staking, and installation of permanent flexamat. The project proposes impacts to Ophir Creek along Mount Rose Highway (SR 431) in Washoe County, Nevada and is anticipated to occur between May 1 through November 1, 2024. The proposed activities will require the use of Nationwide Permit 14 (Linear Transportation Projects) and 18 (Minor Discharges) administered by U.S. Army Corps of Engineers.

A 401 certification (or a waiver of certification) is required for any federal license or permit that authorizes activities that may result in any discharge into waters of the United States. Nevada Division of Environmental Protection is in receipt of a complete request for certification in compliance with Clean Water Act Section 401 Certification regulations which the U.S. Environmental Protection Agency promulgated in 2023, codified as 40 CFR 121.

The Administrator is evaluating whether the proposed activity will comply with applicable water quality requirements. Certification actions are valid for the duration of the federal license or permit (typically five years). Any conditions contained within the certification action become a condition of the federal license or permit.

Persons wishing to comment on the application for consideration by the Administrator in making a determination regarding the certification action should submit their comments or request a hearing in writing, emailed no later than 5:00 P.M. on 4/19/2024:

Bureau of Water Quality Planning
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249
ndep401@ndep.nv.gov

The request for a hearing must be filed within the comment period and must indicate the interest of the person filing the request and the reasons why a hearing is warranted. All water quality-related comments or objections received within the thirty (30) day period will be considered in the formulation of final certification action regarding the application. If written comments indicate a significant degree of public interest in the proposed permit, the Administrator shall hold a public hearing. A public notice of such hearing will be issued not less than thirty (30) days prior to the hearing date.

The applications, proposed permits, comments received, and other information are on file and may be copied, or copies may be obtained by writing to the above address or by contacting Zachary Carter, Bureau of Water Quality Planning, at (775) 687-9456 or ndep401@ndep.nv.gov. The public notice for this project can be viewed at the following website: <https://ndep.nv.gov/posts/category/water>.

Please bring the forgoing notice to the attention of all persons interested in this matter.

Attachment H

NVW-53602

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION TEMPORARY DISCHARGE PERMIT AUTHORIZATION TO WORK IN WATERS OF THE STATE

In compliance with the provisions from Chapter 445A of the Nevada Revised Statutes (NRS), the Permittee,

**Truckee Meadows Parks Foundation
50 Cowan Dr.
Reno, NV 89509-1009**

is authorized to operate heavy equipment (rolling stock) and to work in Waters of the State, in the Ophir Creek (waterbody), for the construction of an ADA accessible ramp and culvert crossing, located approximately at:

**Latitude 39.302175°, Longitude -119.918015°
Between the staircases at the Ophir Creek Trailhead
Washoe County, Nevada**

in receiving waters named:

Ophir Creek

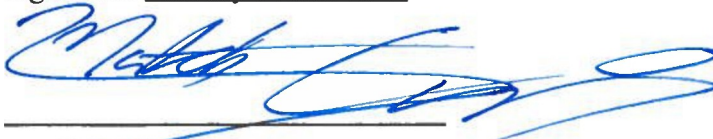
in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I and II hereof.

This permit shall become effective on 08/01/2024.

The first report due date is 09/28/2024.

This permit shall expire at midnight, 01/28/2025.

Signed this 26th day of June 2024



Miles, E. I.
Staff II, Associate Engineer
Bureau of Water Pollution Control
Nevada Division of Environmental Protection

Attachment I

September 6, 2023

Heidi Anderson
Truckee Meadows Parks Foundation
Tahoe Meadows Access Ramp Committee
50 Cowan Drive
Reno, NV 89509

RE: Results of Special Status Species Survey – Tahoe Meadows Access Ramp Project

Dear Ms. Anderson:

This biological letter report presents the results of special status species (SSS) database searches and a reconnaissance-level field survey for the Tahoe Meadows Access Ramp project (project). The purpose of the survey was to assess wildlife and botanical resources for the 0.53-acre project area that satisfies U.S. Fish and Wildlife Service (USFWS), United States Forest Service (USFS), Nevada Division of Forestry (NDF), Nevada Division of Natural Heritage (NDNH), and Nevada Department of Wildlife (NDOW) requirements to determine the potential project effects on plant and animal special status species and their habitats and assess the need for additional focused-level surveys prior to construction. The database searches included a 1-mile buffer of the project area defined as the biological study area (BSA). This letter report includes a description of the existing conditions of botanical and wildlife resources in the BSA, potential for SSS to occur, relevant biological resource maps, and a description of the potential project effects and proposed avoidance and mitigation measures.

A wide variety of taxa native to the state of Nevada have low population numbers, limited distributions, or are otherwise vulnerable to extinction or extirpation within the state and are therefore protected by state and federal laws. For the purposes of this letter report, the term SSS encompasses those species designated as federally threatened or endangered by the United States Fish and Wildlife Service, USFS sensitive species, NDF protected plants, NDOW protected animals and species of conservation priority, and NDNH at-risk species. Although they may include ecologically significant units, species, and/or sub-species, these taxa are collectively referred to as SSS.

Project Description

The project is located off the eastern shoulder of Mount Rose Highway (SR 431) in Washoe County, Nevada. The Tahoe Meadows Access Ramp Committee proposes to install an access ramp between two existing boardwalks of the Tahoe Meadows trail system within the Humboldt-Toiyabe National Forest. The 0.53-acre project area is on accessor's parcel number 048-042-02. The project is situated within the Mount Rose U.S. Geological Survey 7.5-minute Quadrangle map, within Township 17 North, Range 18 East, Sections 25 and 36 (**Appendix A, Figures 1 and 2**). At the northeastern corner of the site, the latitude is 39.302175 North, and the longitude is -119.918015 West. To access the project from Reno, follow Interstate 580 (I-580) south and take Exit 24 to merge onto SR 431 west. Continue for 16.8 miles to arrive at the Tahoe Meadows South Trailhead.

Construction activities will include a 33-foot extension of an existing 24-inch reinforced concrete pipe culvert, installation of a rip rap outlet for stabilization, grading, and installation of a decomposed granite pathway (access ramp). Post-construction site stabilization will include revegetation of disturbed areas through seeding and

P.O. Box 1760

Zephyr Cove, NV 89448
www.nce.net
(775) 588-2505

installation of permanent Flexamat or approved equivalent (approximately 6,000 square feet). Equipment will be staged within existing parking areas at the Tahoe Meadows Tahoe Rim Trail trailhead and/or Mount Rose Summit area approximately 1.5 miles to the northeast of the project area. It is possible that equipment may also be staged at Mount Rose Ski Tahoe resort, about 3.9 miles to the northeast.

The existing culvert is associated with an unnamed tributary to Ophir Creek. The Ophir Creek tributary begins west of the project area, travels under SR 431 via reinforced concrete pipe culverts, continues southeast through the project area, and ultimately connects to Ophir Creek approximately 250 feet southeast of the project area. The proposed access ramp will cross the tributary over the proposed extended culvert and connect the existing two boardwalks to improve accessibility to the Tahoe Meadows trails from SR 431.

Construction is proposed to commence as soon as environmental clearances are received, pending seasonal weather conditions. Construction is anticipated to take about three months.

Relevant Regulations

Federal and state regulations that are relevant to this assessment are described below.

Federal

Federal Endangered Species Act

The federal Endangered Species Act (ESA) protects plants and wildlife that are listed as endangered or threatened by the U.S. Fish and Wildlife Service (USFWS). Section 9 of the ESA prohibits the taking of endangered wildlife, where taking is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in such conduct” (50 Code of Federal Regulations 17.3). Under Section 7 of the ESA, federal agencies are required to consult with the USFWS or National Oceanic and Atmospheric Administration, National Marine Fisheries Service, as applicable, if their actions could adversely affect an endangered plant or wildlife species or its critical habitat. Section 10 of the ESA provides for issuance of incidental take permits to private parties provided a habitat conservation plan is developed.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA; 16 United States Code Section 703 et seq.) makes it unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, or kill migratory birds. The law applies to the removal of nests (such as swallow nests on bridges) occupied by migratory birds during the breeding season.

STATE OF NEVADA

Nevada Division of Natural Heritage Program

The NDNH systematically collects information on Nevada's at-risk biological features, including plants, animals, and ecological communities. Staff biologists and data management specialists consolidate natural resource information from diverse sources such as field surveys, museum collections, resource-management agencies, published and unpublished reports, and knowledgeable individuals. NDNH data include the existence, locations, numbers, condition, biology, and habitats of species and ecological communities. This comprehensive inventory is maintained in Geographic Information System (GIS) databases, online reports, and paper files, and is continually

updated, refined, and subjected to quality controls. The information becomes more complete each year and continues to change to reflect the current conditions of the landscape.

The following statutes and codes specify guidelines and provisions for those species afforded some level of protection by the state of Nevada, and which are included in the NDNH at-risk species list.

Nevada Revised Statutes (NRS) 503.610 and 503.620

Bald eagles (*Haliaeetus leucocephalus*), golden eagles (*Aquila chrysaetos*), and migratory birds are specifically protected under NRS 503.610 and NRS 503.620. Under these statutes, it is unlawful for any person or organization to, “kill, destroy, wound, trap, injure, possess dead or alive, or in any other manner to catch or capture, or to pursue with such intent,” bald eagles and golden eagles or other birds protected under the MBTA.

Nevada Administrative Code (NAC) 527.010 and Nevada Revised Statutes 527.260, 527.270, and 527.300

Under NRS 527.270, state law provides that a species or subspecies of native flora shall be regarded as threatened with extinction when the state Forester Firewarden, after consultation with competent authorities, determines that its existence is endangered, and its survival requires assistance because of overexploitation, disease, or other factors or because its habitat is threatened with destruction, drastic modification, or severe curtailment. These species are also on a state list of fully protected species of native flora (NAC 527.010), also known as the Critically Endangered Species List. The law also authorizes a program for the conservation, protection, restoration, and propagation of selected species of flora and for the perpetuation of the habitats of such species (NRS 527.260 and NRS 527.300).

Nevada Revised Statutes, Title 45

The Nevada Department of Wildlife manages fish and wildlife resources under the Title 45, “Wildlife,” of the NRS. Title 45 consists of provisions that address wildlife management, including protective measures that establish a program for the conservation, protection, restoration, propagation, and perpetuation of native fish and other vertebrate wildlife species.

Methods

NCE conducted background research to evaluate known occurrences of federal, state, and regionally listed SSS in the BSA. Background research was conducted, and the following databases were reviewed:

- United States Fish and Wildlife Service, Information for Planning and Consultation System (IPaC), March 31, 2023.
- Personal communication with Eric Miskow, NDNH, to request information on special status species occurrence data within the BSA, March 31, 2023.
- Personal communication with Danny Hanach, NDOW, to request information on special status species occurrence data within the BSA, March 31, 2023.
- Personal communication with Katie Andrie, NDOW, to request information on avoidance and minimization measures for wildlife species identified during the database search and reconnaissance-level field survey, August 8, 2023.

- Personal communication with Tim Kellison, USFS, to request information on special status species occurrence data within the BSA, April 21, 2023.

The results of the database research were used to assess the presence of any known SSS and their habitats in the BSA and project area. In addition, a determination was made during the reconnaissance-level field survey regarding the potential for each species, as identified by the database research, to occur within the project area.

Following the background research, an NCE scientist conducted a SSS reconnaissance-level field survey on July 21, 2023, to evaluate habitat and identify the presence or absence of SSS in the project area based on the database search results. The survey weather conditions were 66-79°F, clear skies, and 0-3 mile per hour winds. The survey occurred between 06:32 and 10:34 am. Survey equipment included binoculars, a smartphone utilizing the ESRI Field Maps application for data collection, and a Kestrel 3000 pocket weather meter. The survey involved walking meandering transects through the project area to document plant species and habitats. The survey was botanical in nature such that each plant was identified to the taxonomic level necessary to determine if it was special status or rare. The survey also involved observing and listening for birds and other animals, observing animal tracks and sign, documenting presence, or absence of SSS and their habitats, scanning nearby trees for raptor nests, and searching for suitable bat roost trees or structures.

Results

The results of the background research and the reconnaissance-level field survey were used to evaluate habitat and assess the potential for SSS to occur within the project area vicinity. **Appendix B** presents a list of SSS with the potential to occur in the project area identified by the background research and evaluated during the reconnaissance-level field survey. The right column in **Appendix B** lists the potential for occurrence in the project area for each species. SSS listed as “present” were observed in the project area vicinity during the surveys or have historical occurrence data within the project area, while SSS listed as “possible” were not observed during the surveys, but suitable habitat was present within the project area. A SSS listing “unlikely” is chosen if a SSS was not observed and would not be expected to occur in the project area vicinity because of limited habitat potential, except perhaps, as a transient. Any SSS listed as “absent” may be known to occur in the general vicinity of the project area, but none were observed, and the species is precluded from occurring there because habitat requirements are not met.

A USFWS species list was accessed through the IPaC website for the proposed project. The results of the IPaC report indicated no critical habitat exists within the project area (**Appendix C**). The IPaC species list includes North American wolverine (*Gulo gulo luscus*), Sierra Nevada red fox (*Vulpes vulpes necator*), California spotted owl (*Strix occidentalis occidentalis*), Sierra Nevada yellow-legged frog (*Rana sierrae*), Cui-ui (*Chasmistes cujus*), monarch butterfly (*Danaus plexippus*), and whitebark pine (*Pinus albicaulis*). No federally protected species or species identified in the IPaC report were observed during the reconnaissance-level survey.

NDNH provided occurrence data for mountain pocket gopher (*Thomomys monticola*), Trowbridge’s shrew (*Sorex trowbridgii*), Douglas squirrel (*Tamiasciurus douglasii*), little brown myotis (*Myotis lucifugus*), western jumping mouse (*Zapus princeps*), and Tahoe checkerspot (*Euphydryas editha tahoensis*) in the vicinity of the project area (**Attachment A, Figure 3**). Of these species, only Douglas squirrel was observed near the project area during the reconnaissance-level survey, which is on the NDNH watch list and a NDOW protected mammal. The protection status and potential for these NDNH species to occur in the project area is provided in **Appendix B**.

NDOW-protected species that may occur in the project area or surrounding vicinity include nesting birds and raptors, mule deer (*Odocoileus hemionus*), and Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) (**Attachment A, Figure 4**). The NDOW data request response indicated that California spotted owl, osprey (*Pandion haliaetus*), Cooper's hawk (*Accipiter cooperii*), northern goshawk (*Accipiter gentilis*), and bald eagle nest sites are present within ten miles of the project area, and that northern goshawk has been directly observed in the vicinity of the project area. The only NDOW protected species observed during the reconnaissance-level survey was Douglas squirrel.

USFS Lake Tahoe Basin Management Unit (LTBMU) provided occurrence locations of Bolander's bruchia moss (*Bruchia bolanderi*) and suitable habitat for Sierra Nevada yellow-legged frog within the BSA (**Attachment A, Figure 5**). The Humboldt-Toiyabe National Forest botanist suggested three-ranked hump-moss (*Meesia triquetra*), subalpine fireweed (*Epilobium howellii*), leathery grape-fern (*Sceptridium multifidum*), moonwort (*Botrychium* spp.), and Galena Creek rockcress (*Boechea rigidissima* var. *demote*) suitable habitat may be present in the project area. No Humboldt-Toiyabe USFS rare plant occurrences are present within a half-mile radius of the project area. No rare or special status plants were observed during the survey, but suitable habitat for various rare or special status plant and wildlife species is present in the project area. The analysis of potential for these species to occur in the project area is provided in **Appendix B**.

Vegetation in the project area is mixed forested/shrub and freshwater emergent wetland dominated by Lemmon's willow (*Salix lemmonii*), Baltic rush (*Juncus balticus*), sedges (*Carex* spp.), and various grasses. Sparse native and non-native upland plant species are present on the elevated shoulder of Mount Rose Highway. A complete list of plant species observed during the survey is presented in **Table 1**. An unnamed tributary to Ophir Creek flows southeast through the project area after exiting a concrete culvert under Mount Rose Highway. The tributary meets Ophir Creek approximately 250 feet southeast of the project area boundary. Representative photographs of the project area are included in **Appendix D**.

Table 1. Plant species observed during the July 21, 2023 reconnaissance-level survey.

Species Name	Common Name	Native; Y, N
<i>Achillea millefolium</i>	Common yarrow	Y
<i>Angelica capitellata</i>	Ranger's buttons	Y
<i>Barbarea orthoceras</i>	American rocket	Y
<i>Bistorta bistortoides</i>	Western bistort	Y
<i>Bromus sitchensis</i> var. <i>carinatus</i>	California brome	Y
<i>Caltha leptosepala</i>	White marsh marigold	Y
<i>Cardamine breweri</i>	Brewer's bitter cress	Y

Species Name	Common Name	Native; Y, N
<i>Carex douglasii</i>	Douglas sedge	Y
<i>Carex utriculata</i>	Northwest territory sedge	Y
<i>Castilleja applegatei</i>	Wavy leaf paintbrush	Y
<i>Claytonia lanceolata</i>	Lanceleaf springbeauty	Y
<i>Deschampsia cespitosa</i>	California hairgrass	Y
<i>Elymus glaucus</i>	Blue wildrye	Y
<i>Erythranthe primuloides</i>	Primrose monkeyflower	Y
<i>Erythranthe tilingii</i>	Larger mountain monkeyflower	Y
<i>Gayophytum diffusum</i>	Spreading groundsmoke	Y
<i>Geum macrophyllum</i>	Large leaved avens	Y
<i>Hordeum brachyantherum</i>	Meadow barley	Y
<i>Juncus balticus</i>	Baltic rush	Y
<i>Juncus xiphioides</i>	Iris leaved rush	Y
<i>Lupinus polyphyllus</i>	Bigleaf lupine	Y
<i>Melilotus albus</i>	White sweetclover	N
<i>Montia chamissoi</i>	Toad lily	Y
<i>Oreostemma alpigenum</i>	Tundra aster	Y
<i>Pedicularis groenlandica</i>	Elephant head lousewort	Y
<i>Penstemon rydbergii</i>	Rydberg's penstemon	Y

Species Name	Common Name	Native; Y, N
<i>Pinus contorta</i>	Lodgepole pine	Y
<i>Platanthera dilatata</i>	Scentbottle	Y
<i>Poa pratensis</i>	Kentucky blue grass	N
<i>Polytrichum</i> sp.	Haircap moss	Y
<i>Potentilla gracilis</i>	Slender cinquefoil	Y
<i>Primula tetrandra</i>	Alpine shooting star	Y
<i>Ranunculus alismifolius</i>	Plantainleaf buttercup	Y
<i>Salix lemmonii</i>	Lemmon's willow	Y
<i>Senecio triangularis</i>	Arrow leaved ragwort	Y
<i>Trifolium longipes</i>	Long stalked clover	Y
<i>Veronica serpyllifolia</i>	Thymeleaf speedwell	Y

Habitat for mule deer is present in the project area, but no mule deer individuals, including track and sign, were observed. Nesting bird habitat is present in the willows, shrubs, and freshwater emergent wetland in the project area, but no nesting birds were observed during the survey. Lodgepole pine (*Pinus contorta*) forest is present at the edge of the wetland (50 feet south of the project area), which provides habitat for the previously mentioned special status raptor species, but no raptors were observed during the survey. Numerous Belding's ground squirrels (*Urocitellus beldingi*) and burrows were observed in the project area. These burrows may provide shelter or nesting sites for special status species such as burrowing owls (*Athene cunicularia*); however, the location of the project area on the shoulder of Mount Rose Highway and high level of pedestrian activity in the vicinity reduces the likelihood of special status wildlife species from occurring in the project area. No potential bat roosts were identified during the survey. A complete list of wildlife species observed during the survey is presented in **Table 2**.

Table 2. Wildlife species observed during the July 21, 2023 reconnaissance-level survey.

Scientific Name	Common Name	Native; Y, N
Birds		
<i>Corvus brachyrhynchos</i>	American crow	Y

Scientific Name	Common Name	Native; Y, N
<i>Euphagus cyanocephalus</i>	Brewer's blackbird	Y
<i>Junco hyemalis</i>	Dark-eyed junco	Y
<i>Leiothlypis celata</i>	Orange-crowned warbler	Y
<i>Molothrus ater</i>	Brown-headed cowbird	N
<i>Poecile gambeli</i>	Mountain chickadee	Y
<i>Setophaga coronata</i>	Yellow-rumped warbler	Y
<i>Sitta canadensis</i>	Red-breasted nuthatch	Y
<i>Turdus migratorius</i>	American robin	Y
<i>Zonotrichia leucophrys</i>	White-crowned sparrow	Y
Mammals		
<i>Urocitellus beldingi</i>	Belding's ground squirrel	Y
<i>Tamiasciurus douglasii</i>	Douglas squirrel	Y
Insects		
<i>Anthocharis stella</i>	Stella orangetip	Y
<i>Bombus</i> sp.	Bumblebee	Y
<i>Papilio rutulus</i>	Western tiger swallowtail	Y
<i>Pieris rapae</i>	Cabbage white	Y
<i>Plebejus shasta</i>	Shasta blue	Y
<i>Vanessa cardui</i>	Painted lady	Y
Fish		
<i>Rhinichthys osculus</i>	Speckled dace	Y

Discussion and Recommendations

Vegetation within the project area provides suitable nesting habitat for migratory birds but is unlikely to support tree-nesting raptors. If a migratory bird or raptor, regardless of its federal or state status, were to nest within or near the project area prior to or during proposed construction activities, such activities could result in the abandonment of active nests or direct mortality to these birds. Construction activities that adversely affect the nesting success of special-status or non-special status migratory birds, including tree-nesting raptors, or result in mortality of individual birds constitute a violation of NRS 503.610, NRS 503.620, and The Federal Migratory Bird Treaty Act (16 U.S.C., sec. 703, Supp. I, 1989) which prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior.

Habitat for mule deer was found within the project area during the survey, but no individuals were observed. Mule deer are listed as “protected mammals” by NDOW and may occur in the project area or vicinity throughout the course of the project. According to NDOW’s analysis response, occupied mule deer distribution exists throughout the entire project area and portions of the four-mile buffer area. Considering the project size and proximity to Mount Rose Highway, no impacts to mule deer are expected.

Belding’s ground squirrel is not a special status species; however, considering the number of individuals and burrows present in the project area, there is a reasonable likelihood that construction activities can result in the mortality of individuals, especially if grading over burrows during the breeding season.

Sierra Nevada yellow legged frog is a federally endangered species possibly extinct from the state of Nevada. The potential for this species to occur is low considering its rarity and lack of occurrence data in the BSA. However, suitable stream and wet meadow habitat is present in the project area and BSA. Federal critical habitat is absent in the project area and BSA.

Many bat species are protected under NAC 503.030. Based on habitat present within the project area, it is possible that bats, including those listed by NDOW or the USFS as “protected”, “sensitive”, or “threatened”, could occur within the project vicinity as transients; however, no mitigation or avoidance measures are recommended as roosting is unlikely to occur in the project area considering no suitable roost structures or cavities were observed in the project area.

Wetlands provide suitable habitat for numerous special status plant species. No special status plants were observed during the survey of the project area; however, special status plants have potential to occur in future growing seasons.

Given the presence of habitat for various special status plant and wildlife species in the project area (and surrounding vicinity), including the potential for nesting birds and raptors, the following avoidance and minimization measures are recommended for the project:

- **Avoidance and minimization measure 1:** The USFWS and NDOW recommend completing all project activities that could result in nesting migratory bird and raptor take, such as tree, shrub, and other vegetation removal, outside the maximum migratory bird and raptor nesting season. September through January is a suitable timeframe for completing vegetation removal to minimize the potential to impact nesting birds and raptors.
- **Avoidance and minimization measure 2:** If project work, including vegetation removal or ground disturbance, must occur during the nesting season (typically February 1 through September 1), project proponents should hire a qualified biologist to conduct a nesting bird and raptor survey no more than 10

days prior to the beginning of vegetation removal activities. A copy of the survey shall be submitted to the project proponent prior to the start of construction activities.

- **Avoidance and minimization measure 3:** If nesting birds or raptors are detected within or near the project area during the survey, consultation with NDOW (and the USFWS, if necessary) is recommended to establish acceptable avoidance or minimization measures to avoid impacts. Avoidance measures could include the establishment of a suitable activity-free buffer around active nest sites. The size of the buffer, duration of buffer, acceptable activities, etc. will be established through consultation with the agencies. The avoidance or minimization plan shall be submitted to the project proponent for review and approval prior to the start of construction activities. These measures will ensure that no nesting birds or raptors are impacted by construction activities.
- **Avoidance and minimization measure 4:** If vegetation removal, grading, or other activities that may otherwise impact plants in the project area are planned in 2024 or subsequent growing seasons, a special status plant survey should be conducted prior to those activities. Appropriate avoidance buffers will be established around special status plants. If any special status plants cannot be avoided, a permit will be acquired from NDF prior to conducting activities resulting in impacts to the identified species.
- **Avoidance and minimization measure 5:** Grading or other ground disturbing activities that will destroy or block off Belding's ground squirrel burrow entrances should avoid the hibernation and mating seasons (fall to early summer). Mid to late-summer (August-September) would be the best time to conduct project activities. Grading should occur in a pattern that flushes individuals eastward out of the project area, towards the open wetland/meadow rather than towards Mount Rose Highway. A qualified biologist should conduct a burrow check and flush individuals from the project area immediately prior to grading and be onsite to monitor and move Belding's ground squirrels or other wildlife out of harm's way, as necessary during initial ground disturbing activities.
- **Avoidance and minimization measure 6:** A visual encounter survey (VES) for Sierra Nevada yellow-legged frog should be conducted prior to construction following USFWS protocol. A qualified biological monitor should be onsite during initial ground disturbing activities to monitor and move amphibian species out of harm's way, as necessary. If Sierra Nevada yellow-legged frogs are detected, the project proponent should consult with the USFWS prior to conducting any project activities.

Should you have any questions regarding the contents of this letter report, please contact NCE at 775-588-2505.

Sincerely,



Dylan Karlowicz

Staff Scientist



Dave Rios

Associate Scientist

Attachments

Appendix A - Figures

Figure 1: Project Location Map

Figure 2: Project Detail Map

Figure 3: Nevada Division of Natural Heritage Occurrence Map

Figure 4: Nevada Department of Wildlife Occurrence Map

Figure 5: USFS Biological Resources Map

Appendix B - Special Status Species Analysis Table

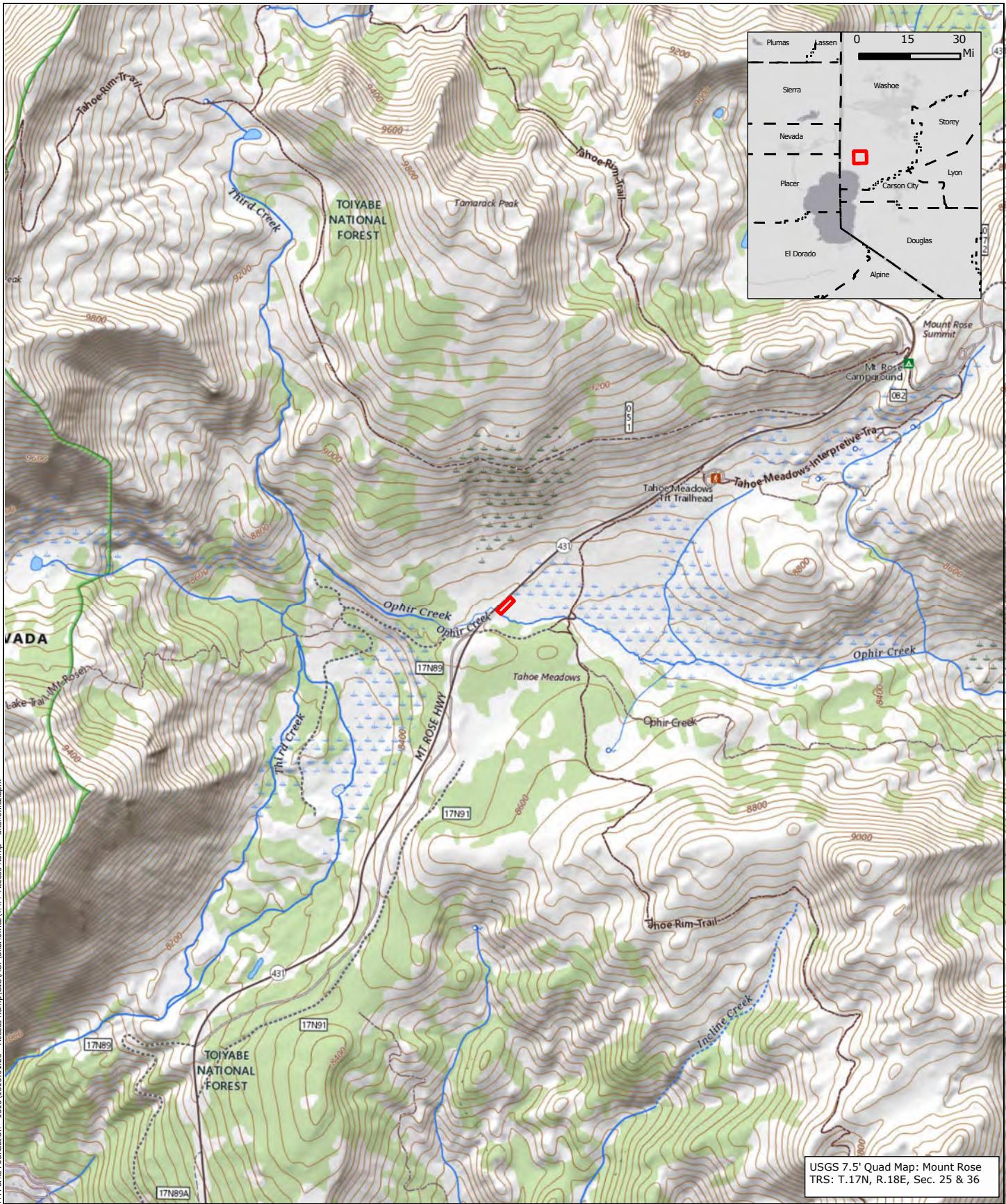
Appendix C - USFWS Information for Planning and Consultation Report

Appendix D - Photographs

Appendix A

Figures

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Legend
Project area



Tahoe Meadows Access Ramp

Project Location Map


1 in. = 2,000 ft.
0 1,000 2,000 ft.

FIGURE
1

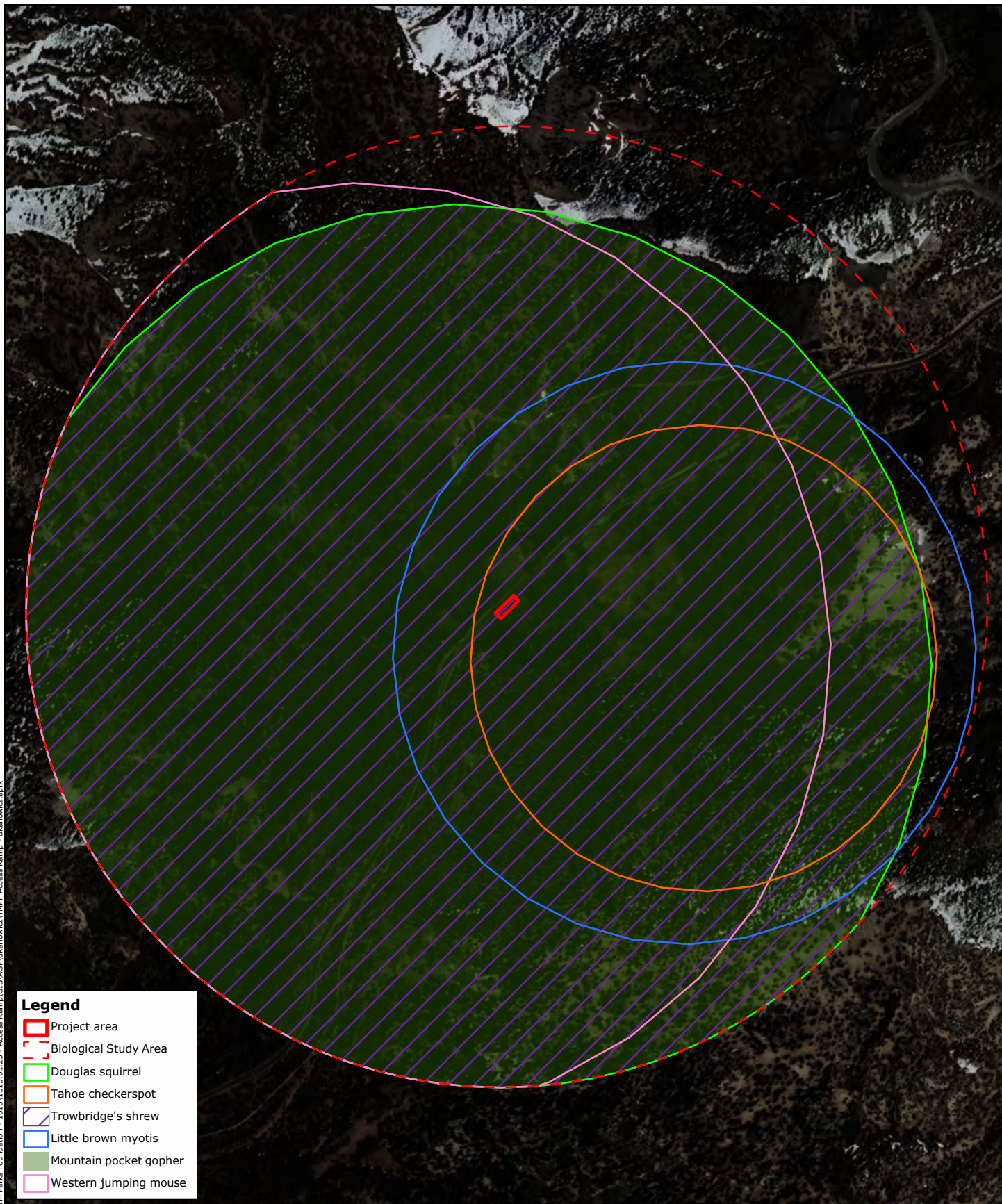
SOURCE USGS Topographic Basemap	JOB NUMBER 1315.01.25	DRAWN dkarowicz	DATE 4/4/2023	REVISED -	APPROVED drios
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Legend  Project area		Tahoe Meadows Access Ramp Project Location Detail Map		 1 in. = 200 ft.	FIGURE 2
SOURCE Bing Hybrid Basemap, NCE 2023	JOB NUMBER 1315.01.25	DRAWN dkarlowicz	DATE 4/21/2023	REVISED -	APPROVED drios

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Legend

-  Project area
-  Biological Study Area
-  Douglas squirrel
-  Tahoe checkerspot
-  Trowbridge's shrew
-  Little brown myotis
-  Mountain pocket gopher
-  Western jumping mouse



Tahoe Meadows Access Ramp

Nevada Division of Natural Heritage Occurrence Map

1 in. = 1,500 ft.
0 500 1,000 1,500 ft.

FIGURE
3

SOURCE
Bing Aerial Basemap, NDNH, NCE

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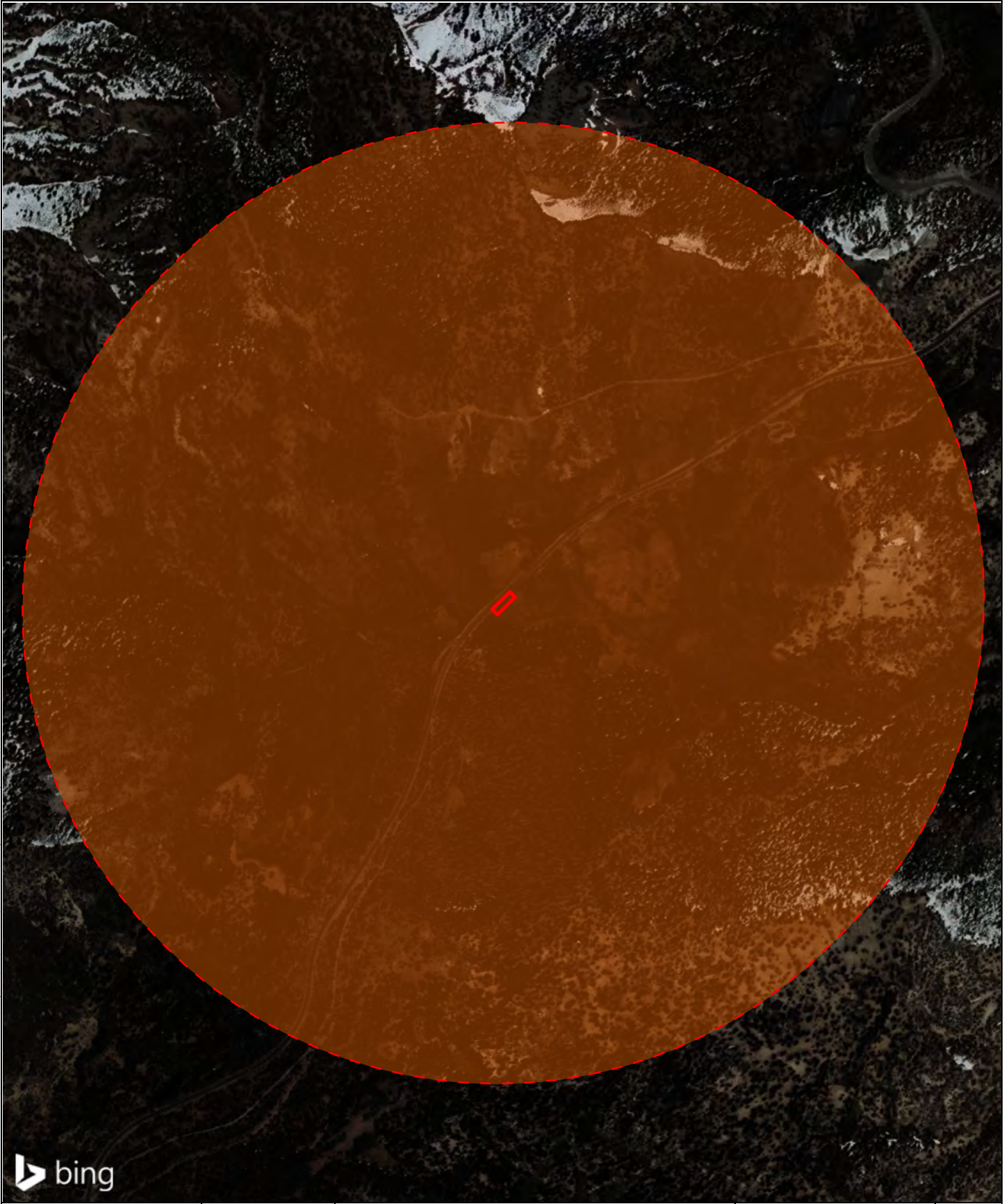
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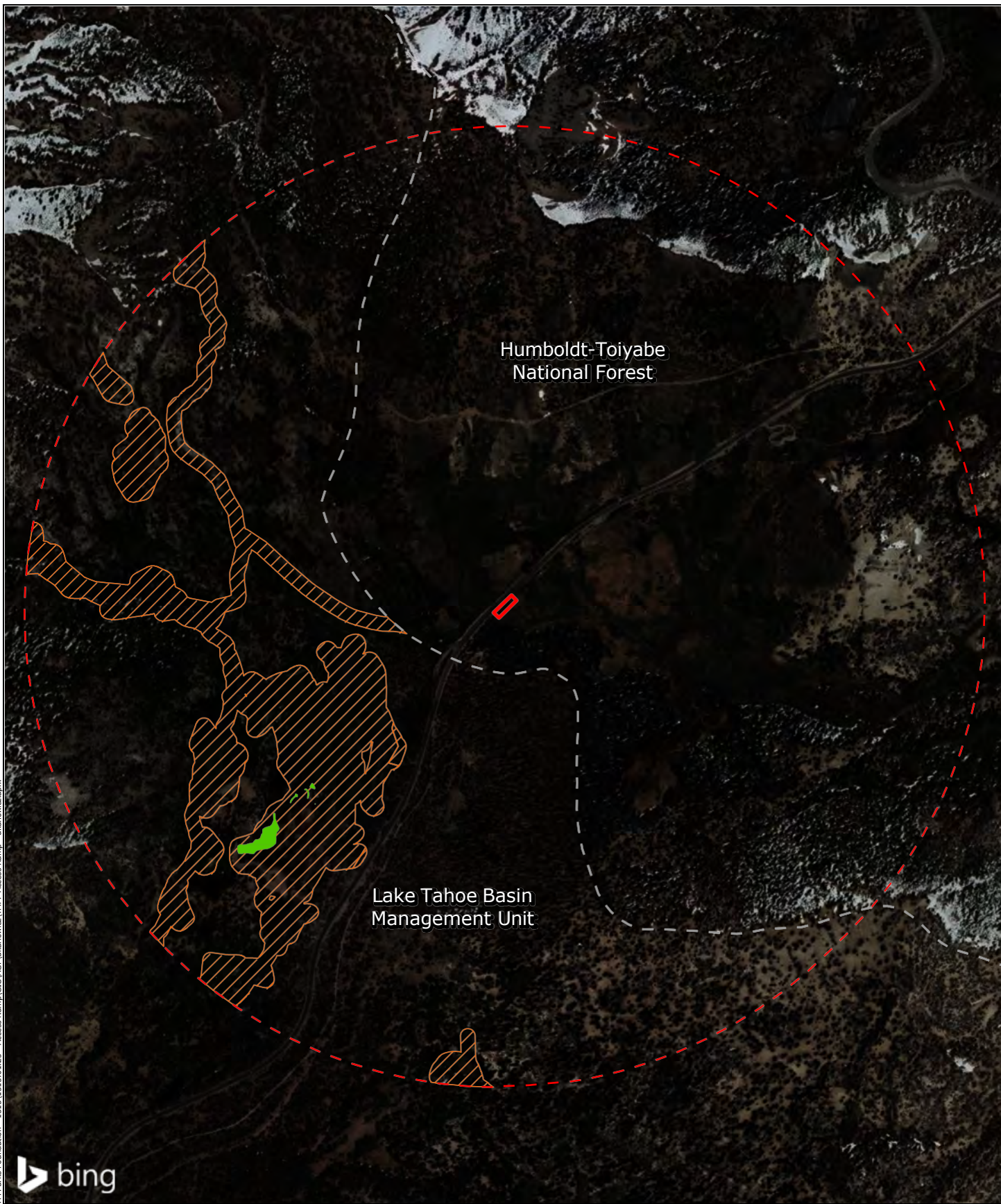
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Legend <div><div></div> Project area</div> <div><div></div> Biological Study Area</div> <div><div></div> Mule Deer Distribution</div>		 <div>Tahoe Meadows Access Ramp Nevada Department of Wildlife Occurrence Map</div>		1 in. = 1,500 ft. <div><div></div> 0 500 1,000 1,500 ft.</div>		FIGURE 4
SOURCE Bing Aerial Basemap, NCE, NDOW	JOB NUMBER 1315.01.25	DRAWN dkarlowicz	DATE 8/8/2023	REVISED -	APPROVED drios	

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- Project area
- Biological Study Area
- USFS Boundary
- SN<LF Suitable Habitat
- Bruchia bolanderi*
- Sierra Nevada yellow-legged frog

NCE

Tahoe Meadows

SOURCE
Bing Aerial Basemap, USFS, NCE

Tahoe Meadows Access Ramp
United States Forest Service USFS
Biological Resources Map

SOURCE
Bing Aerial Basemap, USFS, NCE

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1 in. = 1,500 ft.

0 500 1,000 1,500 ft.

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FIGURE
5

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Appendix B

Special Status Species Analysis Table

Scientific Name Common Name	Federal Status	State Status	Habitat Requirements	Potential for Occurrence
Mammals				
<i>Gulo gulo luscus</i> North American wolverine	PT	SI	Occupy a variety of habitats across North America including tundra, boreal forest, mixed forest, redwood forest, and coniferous forest. Dens are well-camouflaged and located in difficult to access areas. Avoids areas of human development or disturbance (USFWS 2018).	Unlikely. Suitable habitat may be present in the BSA, but the existing disturbance levels make this species unlikely to occur in the project area. No occurrence data for the species was provided by the database searches within the BSA. This species is remarkably rare.
<i>Myotis lucifugus</i> Little brown myotis	C	PM S S2	Use a wide range of habitats and human-made structures for resting and maternity sites. They typically roost in caves and mines in the winter, and they can be found in trees, artificial structures, bat houses, under rocks and in piles of wood in the summer (USFWS Species Profile). Foraging habitat requirements are generalized, occurring primarily over streams and other bodies of water, along the margins of lakes and streams or in woodlands near water. Winter hibernation sites such as caves, tunnels and abandoned mines generally have a relatively stable temperature of about 2 to 12 Celsius (Kunz and Reichard 2010).	Possible. Suitable habitat is present in the BSA. This species may occur in the project area as a transient, but no potential roosts were identified in the project area during the survey.
<i>Odocoileus hemionus</i> Mule deer		PM SI	Mule deer utilize various habitat types but prefer arid open areas and rocky hillsides, grasslands, cold desert shrubland and sagebrush, meadows, and upland forests (NDOW 2012).	Possible. Suitable habitat is present in the project area and BSA. Not observed during the survey but has a high likelihood to occur.
<i>Sorex trowbridgii</i> Trowbridge's shrew		S I S2 SI	Prefers mature coniferous forests, but also occurs in montane riparian, valley foothill hardwood and hardwood-conifer, red fir, and chaparral habitats with dense ground cover. Most common in redwood, Douglas fir, ponderosa pine, montane hardwood-conifer, and mixed conifer forests with well-developed shrub understories and litter layers (George 1989).	Possible. Historic NDNH occurrence in the BSA and suitable montane riparian and conifer habitat is present in the vicinity of the project area. Not observed during the survey.

Scientific Name Common Name	Federal Status	State Status	Habitat Requirements	Potential for Occurrence
<i>Tamiasciurus douglasii</i> Douglas Squirrel		S5 PM	Inhabits coniferous, mixed-coniferous, and subalpine forests. Prefers old-growth stands. Common year-long residents of conifer, hardwood-conifer, and riparian habitats from sea level to 3,333 m (11,000 ft) in the North Coast, Cascade, Klamath, Warner, and Sierra Nevada Ranges. May utilize a variety of shelters including tree cavities, hollow trees and logs, and ground burrows (Timossi et al 1995).	Present. Observed during the survey in the lodgepole pine forest south of the project area. May occur in the project area during construction.
<i>Thomomys monticola</i> Mountain pocket gopher		S S3	Occurs at elevations above 1,520 m (5,000 ft) in the Sierra Nevada. Habitat includes alpine dwarf-shrub, perennial grassland, and wet meadow habitats. Deep soils at the margins of mountain meadows are preferred (Ingles 1952).	Possible. Historic NDNH occurrence in the BSA and suitable habitat is present in the project area. Not observed during the survey. Burrows in the project area belong to Belding's ground squirrels.
<i>Vulpes vulpes necator</i> Sierra Nevada red fox	FE	PM SH	In the Sierra Nevada, prefers forests interspersed with meadows or alpine fell-fields. Open areas are used for hunting while forested habitats are used for cover and reproduction. Forest edges are utilized extensively (Seidensticker 1999). The Sierra Nevada Distinct Population Segment sightings have been limited to federal lands in Alpine, Fresno, Inyo, Madera, Mono and Tuolumne counties (USFWS).	Unlikely. Suitable habitat is present in BSA, including extensive forest edge and meadow habitat, but the existing disturbance levels in the project area make this species unlikely to occur. No occurrence data for the species was provided by the database searches within the BSA. This species is remarkably rare.
<i>Zapus princeps</i> Western jumping mouse		PM S S2	Habitat includes dense herbaceous cover near wet areas in a variety of coniferous forest, riparian, and grassland habitats throughout the Sierra Nevada. Moist soil is required for burrow construction. Hibernates in nests of grass, leaves, and other vegetation constructed underground or beneath logs or brush piles (Brylski 2008).	Possible. NDNH occurrence is present within the BSA. Suitable habitat is present in the project area. Not observed during the survey.
Birds				

Scientific Name Common Name	Federal Status	State Status	Habitat Requirements	Potential for Occurrence
<i>Accipiter gentilis</i> Northern goshawk	FSS	SI	Northern goshawks are distributed throughout California in middle to higher elevation forested areas, particularly in the North Coast Ranges through Sierra Nevada, Klamath, Cascade, and Warner Mountains (Zeiner et al. 1990). Locally, they can be yearlong residents and seasonal migrants. Goshawks usually nest on north-facing slopes near water and require mature conifer or aspen forests with large diameter trees, dense canopy cover, and an open understory interspersed with meadows or shrub patches. Open areas provide foraging opportunities, while logs, snags, and broken-top trees are used as "plucking posts" to de-feather prey. Nests are usually located within the largest tree in the stand, next to the bole of the tree, in the lower third of the canopy.	Possible. There have been documented sightings of northern goshawk within 1 mile of the project area. This species could pass through the project area, but suitable nesting habitat is not present in the project area.
<i>Strix occidentalis occidentalis</i> California spotted owl	PT FSS	S1 SI	An uncommon, permanent resident in suitable habitat. Resides in dense, old-growth, multi-layered mixed conifer, redwood, and Douglas-fir habitats from sea level up to approximately 2300 m (0-7600 ft). Often associated with sources of water (Garrett and Dunn 1981). May move downslope in winter along the eastern and western slopes of the Sierra Nevada, and in other areas. Uses dense, multi-layered canopy cover for roost seclusion.	Unlikely. Species was not observed during the surveys. Suitable habitat is present in the BSA, but habitat is absent in the project area. Species may occur in the project area as a transient between dusk and dawn.
Amphibians				
<i>Rana sierrae</i> Sierra Nevada yellow-legged frog	FE	SH	Inhabit the Sierra Nevada mountains in lakes, ponds, marshes, meadows, and streams at elevations ranging from 4,500 to 12,000 feet (1,370 to 3,660 meters). Their range extends from the western Sierra Nevada north of Fresno County and the eastern Sierra Nevada in Inyo and Mono counties. They are primarily found in National Forests and National Parks in Lassen, Plumas, Sierra, Nevada, Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo counties, California. Breeds in the shallows of ponds and lakes or in inlet streams and deposit their eggs underwater in clusters, which they attach to rocks, gravel, or vegetation (USFWS Species Profile).	Unlikely. Ophir creek, its tributaries, and wet meadows in the project area and BSA provide suitable habitat. Species was not observed during the survey. The database searches returned no detections of SNYLF in the vicinity. LTBMU-mapped suitable habitat is present in the BSA.

Scientific Name Common Name	Federal Status	State Status	Habitat Requirements	Potential for Occurrence
Fish				
<i>Chasmistes cujus</i> Cui-ui	FE	EF	Inshore areas of Pyramid Lake with extensive shoals and shallow bars. Spawning occurs in the Truckee River over gravel beds in shallow water (21-140 cm) where flow is rapid. Newly emerged young remain a few days or weeks in the spawning stream (NDOW 2012).	Absent. Species was not observed during the survey and is precluded from Ophir creek and its tributaries.
<i>Oncorhynchus clarkii henshawi</i> Lahontan cutthroat trout	FT	S3	Inhabits cool, well-oxygenated freshwater lakes, rivers, streams and requires spawning and nursery habitat characterized by cool water pools in close proximity to cover and velocity breaks, well vegetated and stable stream banks, and silt-free rocky substrate in riffle-run areas. Found in drainages of the Truckee, Humboldt, Carson, Walker, and Quinn Rivers (USFWS 1994).	Absent. Species was not observed during the survey and is precluded from Ophir creek and its tributaries.
Insects				
<i>Danaus plexippus</i> Monarch butterfly	C	S	Species occurs in various habitats across North America including fields, roadsides, open areas, grassland, tundra, wetlands, and mountains. During the breeding season, monarchs lay their eggs on obligate milkweed host plants (<i>Asclepias</i> spp.). Multiple generations can breed year-round. Species migrates from Nevada to the coastal regions of California in fall and return in the spring (USFWS Species Profile).	Possible. Project area contains suitable habitat, but no host plants were observed. Not observed during the survey but may occur as a transient during construction.
<i>Euphydryas editha tahoensis</i> Tahoe checkerspot		S1	There is little to no information about this subspecies available. General habitat for <i>Euphydryas editha</i> includes alpine tundra, savanna, lowland grassland, evergreen forests, coastal bluffs, chaparral, and coniferous and mixed woodlands. Host plants are in the family Scrophulariaceae (NatureServe 2023c).	Possible. 2022 and other historic NDNH occurrences are present in the BSA. <i>Castilleja</i> sp. in the project area may be suitable host plants.
Plants				

Scientific Name Common Name	Federal Status	State Status	Habitat Requirements	Potential for Occurrence
<i>Boechera rigidissima</i> var. <i>demota</i> Galena Creek rockcress	FSS		Occurs in fairly open stands. Sandy to rocky soils or outcrops derived from granitic or volcanic materials, mostly on moderate to steep northerly aspects, often in drainage ways, near meadow edges, or in other moisture accumulating microsites; generally in dry openings in <i>Abies</i> - <i>Pinus</i> - <i>Populus tremuloides</i> associations. Flowering late-spring to summer. Aspen, Jeffrey pine, ponderosa pine, white fir, red fir communities. 7,020 to 10,020 ft (USFS Rapid Assessment Chart).	Absent. Project area lacks suitable habitat. Not observed during the survey.
<i>Botrychium</i> spp. moonwort	FSS		<i>Botrychium</i> species are found in wet or moist soils such as marshes, meadows, and along the edges of lakes and streams; generally occur with mosses, sedges, rushes, and other riparian vegetation; 2,000-13,000 ft (USFS).	Possible. Suitable habitat is present in the project area. Not observed during the survey.
<i>Bruchia bolanderi</i> Bolander's bruchia moss	FSS	S1	Occurs as individual plants among grasses, or forms large colonies in openings, on moist, disturbed soil with organic content, shaded to partial sun in the alpine zone. Montane meadows and streambanks are favored habitats. The moss takes advantage of disturbed sites and minimal competition from other vegetation. Associated species are <i>Pinus contorta</i> and mosses <i>Aulacomnium palustre</i> and <i>Pohlia</i> spp. (Christy 1996).	Possible. Suitable habitat is present in the project area. Recent detections made by LTMBU within the BSA. Not observed during the survey.
<i>Epilobium howellii</i> Subalpine fireweed			Edge of wet meadows, seeps (not soggy), or near streams with partial shade, often willows. Found in transition zones from forest to wet meadow. Known from a streamside location in the vicinity of Burnside Lake and Carson Pass. Flowers July-August. Subalpine forests, riparian setting. 6,500 to 10,240 ft (USFS Rapid Assessment Chart).	Possible. Suitable habitat is present in the project area. Not observed during the survey.
<i>Meesia triquetra</i> three-ranked hump- moss	FSS		Fens, wet meadows and seeps within mesic upper montane coniferous forests and subalpine coniferous forests. Known from Carson RD. Wet areas in subalpine and upper montane coniferous forest. 4,250 to 9,700 ft. (USFS Rapid Assessment Chart).	Possible. Suitable habitat is present in the project area. Not observed during the survey.

Scientific Name Common Name	Federal Status	State Status	Habitat Requirements	Potential for Occurrence
<i>Pinus albicaulis</i> Whitebark pine	FT		Occurs in thin, rocky, and weakly developed soils at or near the upper limit of the tree line in the southern part of its range in cold, windy snow zones often growing in pure stands but sometimes mixing with several other coniferous species. Grows along the crest of the Sierra Nevada range northward into the Cascade Range (ICST 2020).	Absent. Project area lacks suitable habitat. Not observed during the survey.
<i>Sceptridium multifidum</i> leathery grape-fern	H-T WL		Meadow areas with a higher water table, seeps and springs within lodgepole and red fir forests, avalanche chutes with riparian vegetation. Known from Paiute Meadows, Bridgeport RD, and Carson Pass area Alpine CO. Habitat for the rare plant appears to be stable but limited on the Humboldt-Toiyabe. Unknown population distribution, possibly very rare for the eastern Sierra Nevada Mountains. Wet meadows, willows, side-hill seeps and springs above 4,600 ft (USFS Rapid Assessment Chart).	Possible. Suitable habitat is present in the project area. Not observed during the survey.
<p>Sources:</p> <p>United States Fish and Wildlife Service (USFWS)</p> <p>Nevada Division of Natural Heritage (NDNH)</p> <p>Nevada Department of Wildlife (NDOW)</p> <p>Nevada Division of Forestry (NDF)</p> <p>United States Forest Service (USFS)</p> <p><u>Federally Listed Species (ESA):</u></p> <p>C = Candidate</p> <p>FE = Federally Endangered</p> <p>FT = Federally Threatened</p> <p>FSC = Species of Concern</p> <p>PT = Proposed Threatened</p> <p>FCE = Candidate for Endangered</p> <p>FPD = Proposed for Delisting</p> <p><u>USFS:</u></p> <p>FSS = Forest Service Sensitive</p> <p>H-T WL: Humboldt-Toiyabe Watchlist</p> <p><u>NDF/BLM (NV):</u></p> <p>CE = Critically Endangered Plant</p> <p>S = NV BLM Sensitive</p> <p><u>Tahoe Regional Planning Agency</u></p> <p>SI = Special Interest Species</p> <p><u>NDNH:</u></p> <p>CI = Critically Imperiled</p> <p>I = Imperiled</p> <p><u>NDOW/State Conservation Status:</u></p> <p>EF = Endangered Fish</p> <p>PA = Protected Amphibian</p> <p>PM = Protected Mammal</p> <p>S1 = Critically Imperiled</p> <p>S2 = Imperiled</p> <p>S3 = Vulnerable</p> <p>S4 = Apparently Secure</p> <p>S5 = Secure</p> <p>SH = Possibly Extinct in NV</p>				

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Appendix C

USFWS Information for Planning and Consultation Report



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Reno Fish And Wildlife Office
1340 Financial Boulevard, Suite 234
Reno, NV 89502-7147
Phone: (775) 861-6300 Fax: (775) 861-6301



In Reply Refer To:

March 31, 2023

Project Code: 2023-0063298

Project Name: Truckee Meadows Park Foundation - ADA Access Ramp

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/birds/policies-and-regulations.php>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
- Migratory Birds

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Reno Fish And Wildlife Office

1340 Financial Boulevard, Suite 234

Reno, NV 89502-7147

(775) 861-6300

PROJECT SUMMARY

Project Code: 2023-0063298

Project Name: Truckee Meadows Park Foundation - ADA Access Ramp

Project Type: Drainage Project

Project Description: Truckee Meadows Park Foundation proposes to install an ADA ramp to the boardwalks of the Truckee Meadows South Trailhead which will need to cross an existing drainage.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@39.302006,-119.91835494077881,14z>



Counties: Washoe County, Nevada

ENDANGERED SPECIES ACT SPECIES

There is a total of 7 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
North American Wolverine <i>Gulo gulo luscus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5123	Proposed Threatened
Sierra Nevada Red Fox <i>Vulpes vulpes necator</i> Population: No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4252	Endangered

BIRDS

NAME	STATUS
California Spotted Owl <i>Strix occidentalis occidentalis</i> Population: Sierra Nevada No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7266	Proposed Threatened

AMPHIBIANS

NAME	STATUS
Sierra Nevada Yellow-legged Frog <i>Rana sierrae</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/9529	Endangered

FISHES

NAME	STATUS
Cui-ui <i>Chasmistes cujus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/456	Endangered

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CONIFERS AND CYCADS

NAME	STATUS
Whitebark Pine <i>Pinus albicaulis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1748	Threatened

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

MIGRATORY BIRDS

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

-
1. The [Migratory Birds Treaty Act](#) of 1918.
 2. The [Bald and Golden Eagle Protection Act](#) of 1940.
 3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern \(BCC\)](#) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.	Breeds Jan 1 to Aug 31
Black-throated Gray Warbler <i>Dendroica nigrescens</i> This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA	Breeds May 1 to Jul 20
California Gull <i>Larus californicus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds Mar 1 to Jul 31

NAME	BREEDING SEASON
Cassin's Finch <i>Carpodacus cassinii</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9462	Breeds May 15 to Jul 15
Evening Grosbeak <i>Coccothraustes vespertinus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 15 to Aug 10
Golden Eagle <i>Aquila chrysaetos</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities. https://ecos.fws.gov/ecp/species/1680	Breeds Dec 1 to Aug 31
Lewis's Woodpecker <i>Melanerpes lewis</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9408	Breeds Apr 20 to Sep 30
Olive-sided Flycatcher <i>Contopus cooperi</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/3914	Breeds May 20 to Aug 31

PROBABILITY OF PRESENCE SUMMARY

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.

2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)

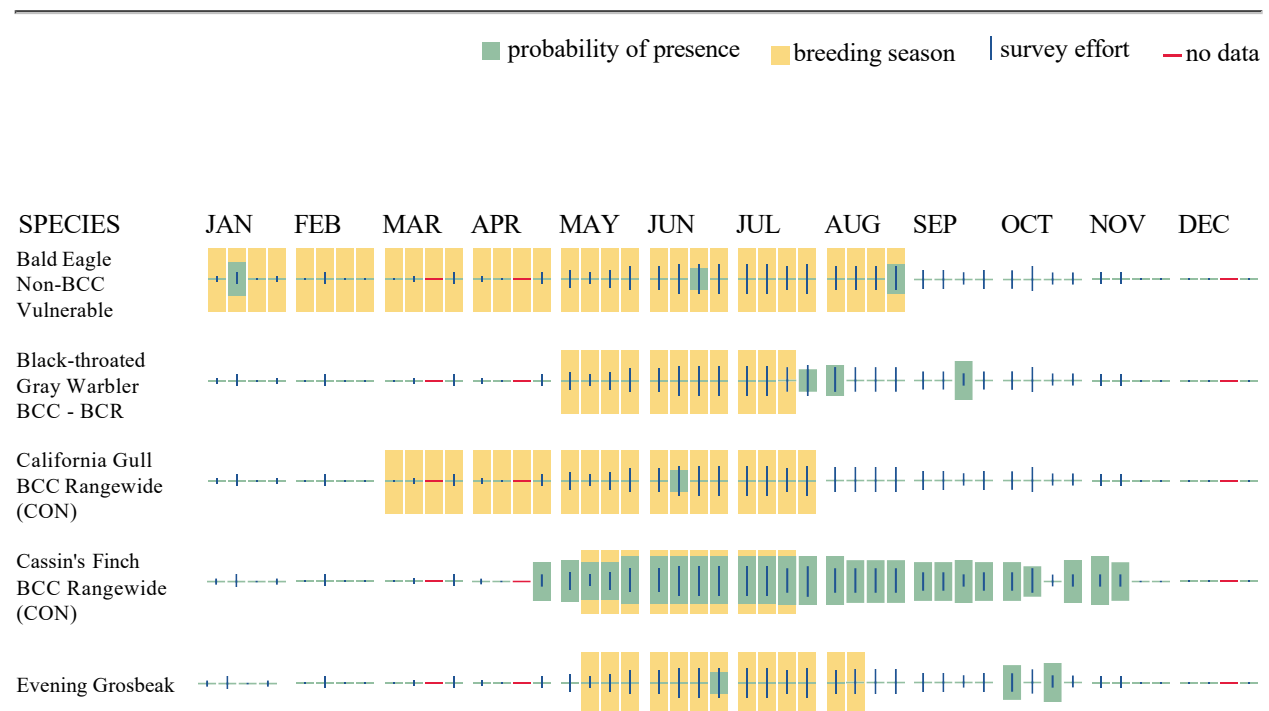
Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

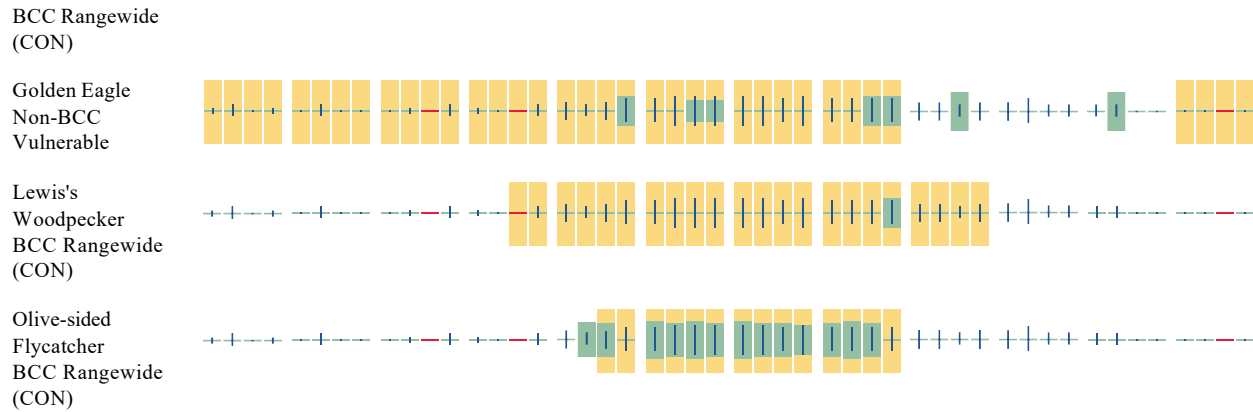
No Data (—)

A week is marked as having no data if there were no survey events for that week.

Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.





Additional information can be found using the following links:

- Birds of Conservation Concern <https://www.fws.gov/program/migratory-birds/species>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds>
- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>

MIGRATORY BIRDS FAQ

Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering or migrating in my area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the [RAIL Tool](#) and look at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides

birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

IPAC USER CONTACT INFORMATION

Agency: NCE

Name: Dylan Karlowicz

Address: PO Box 1760

City: Zephyr Cove

State: NV

Zip: 89448

Email: dkarlowicz@ncenet.com

Phone: 7755882505



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Appendix D Photographs



Photograph 1. Northeast-facing view of the project area.



Photograph 2. North-facing view of the project area.



Photograph 3. Southwest-facing view of the project area.



Photograph 4. Southeast-facing view of the project area.



Photograph 5. West-facing view of the project area.



Photograph 6. Northwest-facing view of the unnamed tributary to Ophir Creek.



Photograph 7. Belding's ground squirrel burrows and individuals were observed in the project area.

Attachment J

Roadside Stabilization (USFS)

16-20 lbs/acre seeding rate

- Blue wildrye (*Elymus glaucus*)
- Bluebunch wheatgrass (*Pseudoroegneria spicata*)
- Brewer's aster (*Aster breweri*)
- California brome (*Bromus carinatus*)
- Goldenrod (*Solidago canadensis*)
- Sandberg's bluegrass (*Poa secunda*)
- Silvery lupine (*Lupinus argenteus*)
- Yarrow (*Achillea millefolium*)

Wet Meadow Seed Mix (NCE)

20 lbs/acre

- Alpine shooting star (*Primula tetrandra*)
- Arrow leaved ragwort (*Senecio triangularis*)
- Baltic rush (*Juncus balticus*)
- Bigleaf lupine (*Lupinus polyphyllus*)
- California hairgrass (*Deschampsia cespitosa*)
- Douglas sedge (*Carex douglasii*)
- Elephant's head (*Geranium macranthum*)
- Longstalked sp. (*Claytonia virginica*)
- Meadow barley (*Hordeum brachyantherum*)
- Northwest territory sedge (*Carex utriculate*)
- Plantainleaf buttercup (*Ranunculus alismifolius*)
- Primrose monkeyflower (*Erythranthe primuloides*)
- Ranger's buttons (*Angelica capitellata*)
- Rydberg's penstemon (*Penstemon rydbergii*)
- White marsh marigold (*Caltha leptosepala*)

Additional Wet Meadow Revegetation Recommendations

- Harvest 5 willow stakes per willow removed. Plant willows stakes in a pattern representative of pre-project conditions.
- Stockpile existing topsoil to replace nutrient-rich soil and native seed bank following project completion, prior to seeding. Protect topsoil stockpile with BMPs (cover stockpile with geotextile fabric or other rolled erosion control product to prevent non-native establishment and erosion, fiber roll perimeter control, stockpile outside of the floodplain, etc.).

**ATTACHMENT K
SAMPLE CONTRACT**

**CONSTRUCTION SERVICES AGREEMENT
FOR**

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between **Truckee Meadows Parks Foundation**, within the State of Nevada (herein "**TMPF**") whose address is **50 Cowan Drive, Reno, Nevada 89509**, and _____, (the "Contractor"), a _____ whose address is _____.

WITNESSETH:

WHEREAS, TMPF intends to plan and design the _____ (herein the "Project"); and

WHEREAS, TMPF desires to retain the Contractor who will be responsible for providing the professional services more fully described below and in the exhibits attached hereto; and

WHEREAS, the Contractor is properly licensed pursuant to NRS Chapter 623, 623A, or 625, whichever is legally required for the services to be provided within the State of Nevada, and if applicable to the Contractor's business organization, is in compliance with NRS 623.349 for architects, interior designers, and residential designers and NRS 623A.250 for landscape architects, which requires that control and no less than two-thirds ownership of the business organization or association be held by persons registered or licensed in the State of Nevada pursuant to NRS Chapters 623, 623A, or 625, and possesses the special knowledge, skills and expertise to perform the services hereinafter set forth within the time required under this Agreement.

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth in Sections One through Ten hereof:

**SECTION ONE
CONTRACTOR RESPONSIBILITIES**

1.01 Description of Contractor's Services. For the compensation set forth in Section Seven, the Contractor hereby agrees to perform the basic services set forth in the Scope of Services, **Exhibit "A"** attached hereto and incorporated herein as a part of this Agreement and, if so requested, the additional services set forth in the Additional Compensation, **Exhibit "E"** attached hereto and incorporated herein as a part of this Agreement and to provide the submittals described in the Required Submittals **Exhibit "B,"** attached hereto.

1.02 Performance Standards. In performing the services set forth in this Agreement, the Contractor shall follow the practices consistent with the generally accepted standards in the profession of the services being provided to TMPF pursuant to this Agreement.

1.03 Document Review. The Contractor shall be responsible for reviewing each document prepared by the Contractor and its subContractors including, without limitation, the plans, drawings and specifications for the purpose of ensuring that such documents are technically sound, in conformance with applicable federal, state and local laws and other regulations, and do not violate or infringe upon any patent rights.

1.04 Waiver. TMPF's approval of any documents or services furnished by the Contractor shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy of its documents or services. TMPF's review, approval, acceptance or payment for any of the Contractor's services shall not be construed to operate as a waiver of any rights enjoyed by TMPF under this Agreement or of any cause of action arising out of the

performance of this Agreement. The Contractor shall remain liable for any damages to TMPF caused by the Contractor's negligent act or omission committed in the performance of this Agreement.

1.05 *Designation of Contractor's Representative.* The Contractor's representative is the individual identified in the Key Personnel List, **Exhibit "F"** attached hereto (the "Contractor Representative") to act in that capacity, who shall be responsible for the services required under this Agreement. The services specified by this Agreement shall be performed by the personnel identified in the Key Personnel List provided that such associates and employees perform under the personal supervision of the Contractor Representative.

If any person or subContractor who is expected to provide any of the services required under this Agreement is objectionable to TMPF for any reason, the Contractor shall, without additional compensation, replace such person or subContractor with someone acceptable to the TMPF.

If the Contractor's personnel are unable to complete their responsibilities for any reason under this Agreement, or the Contractor desires for any reason to substitute personnel assigned to the Project, the Contractor agrees to obtain the approval of TMPF for the substitution. TMPF shall not unreasonably deny approval unless TMPF adjudges the substitution not be in the interest of TMPF or the Project.

If the Contractor fails to make an acceptable replacement within thirty (30) days, TMPF may terminate this Agreement for default as provided in Section 10.03 of this Agreement.

1.06 *Correspondence Review.* The Contractor shall furnish TMPF Representative copies of each correspondence, if any, sent to any contractor involved with the Project, and to any regulatory agencies, for approval and review prior to mailing such correspondence.

1.07 *Cooperation with TMPF* The Contractor agrees that its officers, associates, employees and subContractors will cooperate with TMPF in providing the services under this Agreement and will be, with advance notice, available for consultation with TMPF at such reasonable times as to not conflict with TMPF's other responsibilities.

1.08 *Responsibility for Construction Document Revisions.*

A. *Applicability.* The Contractor's responsibility described in this Section applies only if the Contractor is responsible for providing a construction cost estimate and preparing construction documents for the Project.

B. *Responsibility for Revisions.* The Contractor does not warrant or represent that the bids or proposed price received by TMPF to construct the Project will come within the Construction Cost Budget set forth in the Scope of Services or as may be otherwise agreed upon in writing by parties. If the bids or proposed price received by TMPF exceeds the Construction Cost Budget, the Contractor agrees to cooperate with TMPF in revising the requirements of the Project as required to lower the cost to within the Construction Cost Budget and to modify the construction documents without additional compensation. In order to meet the Construction Cost Budget, the Contractor may, with the approval of TMPF, segregate portions of the work as separate alternate bid items so that bids received by TMPF to construct the Project will come within the Construction Cost Budget.

"Construction Cost Budget" as used herein means the monetary limit established by TMPF for construction of the Project which limit includes the cost of the Contractor's labor, materials, equipment, expenses, overhead and profit, but excludes the Project's soft costs, cost of change orders and other cost impacts encountered after award of the construction contract.

SECTION TWO TMPF RESPONSIBILITIES

2.01 **TMPF Representative.** The TMPF Executive Director or his authorized representative identified in the Key Personnel List is hereby designated as TMPF's representative (the "TMPF Representative") with respect to this Agreement. The TMPF Representative shall have complete authority to transmit instructions, receive information, interpret and define the TMPF's policies and decisions with respect to the services of the Contractor. The TMPF Representative is not authorized to change or waive any of the provisions set forth in Sections 1.01 through 10.27 of this Agreement.

2.02 **Review of Contractor's Services and Documents.** The services to be performed by the Contractor shall be subject to periodic review by the TMPF Representative. To prevent an unreasonable delay in the Project, the TMPF Representative will endeavor to examine and comment in writing on the documents furnished by the Contractor including, without limitation, the plans, drawings, specifications, test results, evaluations, and reports within twenty-one (21) days of receipt of such documents, unless the Contract provides for a different review time with respect to the document. Contractor's performance will be formally evaluated at design milestones (i.e. 70% design, 100% design, etc.) and the results will be considered during future SOQ evaluations.

2.03 **Access to Records.** TMPF shall, without charge, furnish a copy to, or make available for examination or use by, the Contractor, as it may request, any documents and data which TMPF has available including, without limitation, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, and other documents related to the services required under this Agreement. TMPF shall assist the Contractor in obtaining data and documents from public agencies and from private citizens and business firms whenever TMPF determines that such material is necessary for the completion of the services required by this Agreement.

2.04 **Cooperation with Contractor.** TMPF agrees that its officers and employees will cooperate with the Contractor in the performance of this Agreement and will be, with advance notice, available for consultation with the Contractor at such reasonable times as to not conflict with the Contractor's other responsibilities. TMPF shall provide access to the Contractor on to the Project site as may be required to perform the services under this Agreement.

SECTION THREE CHANGES TO CONTRACTOR'S SERVICES

3.01 **Requested Changes.** TMPF may at any time, by written order, make a change in the services to be performed by the Contractor under this Agreement.

3.02 **Adjustment of Compensation.** If the change requested by TMPF causes an increase or decrease in the cost or time required to perform any of the services required under this Agreement, an equitable adjustment shall be made in the compensation to be paid to the Contractor under Section Seven, or in the performance schedule under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Each claim for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of written notification of the change, unless TMPF grants in writing an extension. Provided proper notice has been given to TMPF as required herein, the claim for an adjustment shall be handled pursuant to the provisions of 10.20B and 10.20C of this Agreement. The failure to provide notification of the claim within the time required herein shall constitute a waiver of the right to seek any equitable or legal adjustment in compensation with respect to that change.

SECTION FOUR ADDITIONAL SERVICES OF CONTRACTOR

4.01 **Additional Services.** The Contractor shall provide the additional services described in the Additional Compensation if, and only if, so requested in writing by TMPF. Payment for the additional services will be made to the Contractor in accordance with Section Seven of this Agreement.

4.02 **Attendance at Meetings or Public Hearings.** The Contractor shall notify TMPF in advance of any additional costs which may be incurred prior to attending any meetings or public hearings as may be necessary in connection with the services performed by the Contractor under this Agreement.

SECTION FIVE SUBCONTRACTOR AGREEMENT

5.01 **SubContractor Provisions.** If, with the approval of TMPF as required pursuant to Section 10.07, the Contractor enters into an agreement with a subContractor for the performance of any of its obligations under this Agreement, the Contractor agrees to include in each subContractor agreement a provision that:

(i) the Contractor agrees to pay the subContractor when paid by TMPF for that portion of the services provided to TMPF and that no liability arises on the part of the Contractor for payment of the subContractor services until payment has been made by TMPF (reference 49 CFR 26). Failure of the Contractor to carry out the requirements of 49 CFR 26 is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the contracting agency deems appropriate. If TMPF has paid the Contractor for the subContractor services, the subContractor's only recourse is against the Contractor and not against TMPF, either through the institution of legal or equitable action or the attachment of any lien,

(ii) the subContractor shall have no more rights against TMPF than that of the Contractor,

(iii) the subContractor agrees to be bound by the terms, conditions and obligation of this Agreement unless TMPF has approved any deviation, change or modification in writing, and

(i) unless otherwise approved in writing by TMPF Representative, the subContractor shall obtain and maintain professional liability insurance (Errors and Omissions coverage) in connection with the subContractor services in an amount equal to that required of the Contractor in this Agreement.

(ii) The Contractor shall not assign or subcontract, any of the professional services performed under this Agreement without the prior written approval of TMPF. The Contractor will, subsequent to obtaining written approval from TMPF provide TMPF with a copy of the contract or agreement for professional services. The Contractor shall require its subcontractors to comply with all provisions of 48 CFR Chapter 1, Part 31, and, if the subcontract agreement exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00), the subcontract agreement shall also complete and sign RSOQ Form D - "AFFIDAVIT REQUIRED UNDER SECTION 112(c) of Title 23 United States Code, Act of August 27, 1958 and Part 29 of Title 49, Code of Federal Regulations, November 17, 1987," RSOQ Form E - "CERTIFICATION REQUIRED BY SECTION 1352 of TITLE 31, UNITED STATES CODE, RESTRICTIONS OF LOBBYING USING APPROPRIATED FEDERAL FUNDS," and "Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities," attached hereto and incorporated herein. comply with Paragraph 16 of this Article. The Contractor will be responsible for any costs or deficiencies resulting from noncompliance if the subcontractors fail to comply with 48 CFR Chapter 1, Part 31. Any attempted assignment of rights or delegation of duties under this Agreement without the prior written consent of TMPF shall be void.

SECTION SIX TERM OF AGREEMENT

6.01 **Term.** This Agreement shall commence on the day it is approved by TMPF (which date shall be inserted in the introductory paragraph of this Agreement) and shall remain in force and effect until the Project is completed unless terminated earlier pursuant to Section 10.02 or 10.03 of this Agreement. Such termination shall not release either party from any of its continuing obligations under this Agreement.

6.02 **Disputes.** This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Agreement or in connection with the subject matter hereof, nor shall this Section be construed to change the date or the time on which a cause of action arising out of the performance of this Agreement or in connection with the subject matter hereof, would otherwise accrue under the statutes of limitation or doctrines of law.

SECTION SEVEN COMPENSATION AND TERMS OF PAYMENT

7.01 **Compensation: Basic Services.** For the services to be performed by the Contractor under this Agreement and set forth in the Scope of Services, TMPF agrees to pay the Contractor the fee in the amount identified in the Fee Breakdown, **Exhibit "D"** attached hereto, pursuant to invoices submitted in accordance with Section 7.04 of this Agreement.

7.02 **Compensation: Additional Services.** For any services not set forth in the Scope of Services, TMPF shall pay to the Contractor a lump sum fee provided prior written approval for such services is given by the TMPF Representative.

7.03 **Compensation: Reimbursable Expenses.** The Contractor agrees that all of its direct and indirect expenses are included in the fee for Basic Services and the agreed upon compensation for any Additional Services, except as may be specifically allowed for reimbursable expenses as part of the Additional Compensation. The Contractor further agrees that all of its direct and indirect expenses are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of Title 48, Code of Federal Regulations (CFR) Part 31; and the expenses do not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR part 31.

7.04 **Payment Invoicing.** The Contractor may submit an invoice for payment for the services provided by the Contractor based on the manner or method of payment set forth in the Fee Breakdown. In the event the Agreement includes DBE Goals (see Section 10.14), each invoice shall include details of work performed by a listed DBE and the amount of the invoice that is attributable to the work performed. The invoice shall additionally track and include the amount of the work to date that is attributable to the work performed. The TMPF Representative will notify the Contractor of any problems regarding the invoice within fourteen (14) days from receipt thereof. If no response is received from the TMPF Representative within the aforementioned period of time, the Contractor may expect payment within a period of (60) days from the date of receipt by TMPF. If payment has not been received within the sixty (60) days, the Contractor agrees to contact the TMPF Representative to resolve the problem causing the delay. If resolution of the delay is not satisfactory to the Contractor, the Contractor may submit a claim pursuant to Section 10.21A of this Agreement.

7.05 **Right to Off-Set.** The TMPF Representative may subtract or offset from any unpaid invoice from the Contractor any claims which TMPF may have for failure of the Contractor to comply with the terms, conditions or covenants of this Agreement, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Contractor in the performance of the services under this Agreement including, without limitation, any error or deficiency in the report or other documents prepared by the Contractor. The TMPF Representative shall provide a written statement to the Contractor of the off-set which has been subtracted from any payment to the Contractor along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Contractor. If the Contractor disputes the right or amount of the off-set made by TMPF, the Contractor may file a claim pursuant to Section 10.21 of this Agreement.

7.06 **Final Payment.** Upon completion of the services required under this Agreement, and acceptance thereof by TMPF (which acceptance will not be unreasonably withheld), the Contractor will, within sixty (60) days of TMPF's acceptance, be paid the balance of any money due for such services.

SECTION EIGHT PERFORMANCE SCHEDULE

8.01 **Performance Schedule.** The Contractor shall perform and complete the services required under this Agreement according to the schedule (the "Performance Schedule") set forth in the Schedule of Performance, **Exhibit "B"** attached hereto. If the performance of services is delayed or submittals are not delivered in the time period as outlined in the Performance Schedule, the Contractor shall notify the TMPF Representative in writing of the reasons for the delay and include a plan which brings the Contractor's performance into compliance with the Performance Schedule.

SECTION NINE AUDIT: ACCESS TO RECORDS

9.01 **Records.** TMPF shall have the right to audit the Contractor's books, records and other documents directly pertinent to the performance of this Agreement. The Contractor agrees to maintain books, records and other documents directly pertinent to performance of this Agreement in accordance with generally accepted accounting principles and practices. The Contractor shall also maintain the financial information and data used to prepare or support the invoices submitted to TMPF. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards, procedures and guidelines of TMPF, or its designated representative. TMPF, the Nevada Department of Transportation (NDOT), the Federal Highway Administration (FHWA), the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Contractor will provide proper facilities for such access and inspection.

9.02 **Disclosure.** The Contractor shall be afforded the opportunity for an audit entrance and exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report, and that the final audit report will include the written comments, if any, of the Contractor.

9.03 **Period of Maintenance.** The books, records and other documents under Sections 9.01 and 9.02 of this Agreement shall be maintained for three (3) years after the date of the final payment for the services under this Agreement. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Agreement, or to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date that the arbitration, litigation or exception has been resolved.

9.04 **Subcontract Provisions.** The Contractor agrees to include Sections 9.01 through 9.03 of this Agreement in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of \$10,000.

SECTION TEN MISCELLANEOUS PROVISIONS

10.01 **Suspension.** TMPF may suspend, without cause, the performance by the Contractor under this Agreement for such period of time as TMPF, in its sole discretion, may prescribe by providing written notice to the Contractor. The suspension shall be effective as of the date set forth in the written notice. With such suspension, TMPF agrees to pay to the Contractor the amount of compensation, based on percentage of completion of the Project, earned as of the effective date of suspension less all previous payments. The Contractor shall not provide any further services under this Agreement after the effective date of suspension until otherwise notified in writing by TMPF. In no event shall TMPF be liable to the Contractor for services in excess of the percentage of the Project completed at the time of suspension.

If, after notice to resume performance has been given by TMPF the suspension was for a period in excess of ninety (90) days, which has resulted in an increase in the performance of the Agreement to the Contractor and:

- (i) the Contractor was not a contributing cause for the suspension,
- (ii) the Contractor has not received an equitable adjustment under another provision of this Agreement, and
- (iii) the Contractor could not mitigate the increase in the performance cost,

then the Contractor's fee shall be reviewed by TMPF and, if justified, equitably adjusted to provide for any additional expenses resulting from the suspension.

10.02. Termination for Convenience. TMPF reserves the right to terminate this Agreement without cause or default on the part of the Contractor with ten (10) days' prior written notification to the Contractor served pursuant to Section 10.19 of this Agreement. In the event of termination, without cause or default, TMPF agrees to pay to the Contractor the reasonable value for the services performed as of the date that notification of termination is received by the Contractor. In no event shall TMPF be liable to the Contractor for services in excess of the percentage completed at the time of termination.

10.03 Termination for Cause or Other Resolution.

A. Default. The occurrence of any of the following events shall constitute a default by the Contractor hereunder (herein "Event of Default"). If, during the term of this Agreement, the Contractor:

- (i) defaults in the due observance and performance of any term, condition or covenant contained in this Agreement,

- (ii) (a) voluntarily terminates operations or consent to the appointment of a receiver, trustee or liquidator of the Contractor for all or a substantial portion of its assets, (b) is adjudicated bankrupt or insolvent or files a voluntary petition in bankruptcy, or admits in writing to the inability to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law, or (e) if action shall be taken by the Contractor for the purpose of effecting any of the foregoing,

- (iii) allows any warrant, execution or other writ to be issued or levied upon any property or assets of the Contractor which continues unvacated and in effect for a period of thirty (30) days, or

- (iv) fails, in the judgment of TMPF, to provide the services hereunder properly and with proper dispatch in accordance with the time schedule set forth in this Agreement, and the default continues five (5) days after written notice is given to the Contractor pursuant to Section 10.18.

B. TMPF's Rights. Upon the occurrence of an Event of Default, and without prejudice to any other right or remedy it may have at law or equity, TMPF may:

- (i) terminate this Agreement, suspend payment of all pending invoices otherwise due to the Contractor hereunder, and finish this Agreement by such means as deemed appropriate by TMPF, reserving the right to deduct from any balance due Contractor the cost of completing this Agreement. In the event the cost of finishing the Contractor's performance of this Agreement exceeds the balance due the Contractor, the excess shall be paid by the Contractor to TMPF within five (5) days of invoicing by TMPF.

(ii) terminate this Agreement, and the obligations imposed hereunder, including the obligation of any further payment for the services of the Contractor except for the reasonable value for the services performed to the date of termination, or

(iii) continue with performance by the Contractor and serve within a reasonable time after completion of the Agreement a notice of claim or dispute pursuant to the procedure set forth in Section 10.21.

In the event that TMPF elects to implement (i) above, the costs and expenses of completing this Agreement shall be computed and audited by TMPF's designated representative. The audit shall be conducted in accordance with generally accepted accounting principles and the cost thereof shall be paid by the Contractor.

10.04 Ownership of Documents.

A. Architectural Works. To the extent that the Contractor's services involve the design of an architectural work as defined herein, the Contractor shall retain all common law and statutory rights of ownership, including copyrights, to the drawings and specifications prepared by the Contractor for this Project. The Contractor is deemed to be the author of the drawings and specifications as instruments of service to TMPF. Notwithstanding the foregoing, the Contractor hereby grants to TMPF the right to use (including the right of reproduction and use in the creation of new documents) the drawings and specifications for the purpose of completing the Project or for any subsequent maintenance, repair, renovation, remodeling or addition thereto. The rights granted herein to TMPF shall extend and include any new Contractor which TMPF may retain for the aforementioned purposes. The Contractor hereby releases TMPF, and any new Contractor retained by TMPF for the aforementioned purposes, from any and all claims in connection with the use or reproduction of the drawings and specifications. The Contractor agrees to execute such documents reasonably deemed necessary by TMPF to implement the rights granted to TMPF pursuant to this subsection including written permission to make changes or modifications to the plans.

B. Other Works. To the extent that the Contractor's services does not involve the design of an architectural work, TMPF shall have all common law and statutory rights of ownership, including copyrights, to the plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies, excepting any proprietary forms, templates, and checklists specifically listed TMPF ownership exclusion elsewhere in this Agreement) (collectively herein the "Documents") prepared or assembled by the Contractor, or any of its subContractors, for this Project. The Contractor hereby releases TMPF and any new Contractor retained by TMPF from any and all claims in connection with the use or reproduction of the Documents. The Contractor agrees to execute such documents reasonably deemed necessary by TMPF to implement the rights granted to TMPF pursuant to this subsection including written permission to make changes or modifications to the plans. The Contractor shall be entitled to retain a reproducible copy of the documents furnished to TMPF.

C. Definition of Architectural Work. For purposes of this Agreement, "architectural work" shall have the same definition as set forth in Architectural Works Copyright Protection Act of 1990, P. L. 101-650, Title VII, Section 70 et. seq.

D. Delivery of Documents. In the event of the completion, suspension or termination of this Agreement, TMPF shall have the right to require delivery of any and all of the plans, drawings, specifications, and all other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in the possession of TMPF.

E. Confidentiality. The plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies) (including the magnetic or electronic media of the aforementioned documents) which are prepared or assembled by the Contractor, or its subContractors, under this Agreement shall not be made available to any individual or organization without the prior written consent of TMPF. Except for marketing pamphlets and submittals to clients, the Contractor shall not publish,

submit for publication, or publicly display the Project without the written consent of TMPF. The obligations of confidentiality shall survive the termination of this Agreement.

F. Contractual Rights. Notwithstanding the provisions of 10.04 A above, TMPF is hereby licensed to use all design concepts developed by the Contractor and subContractors under this Agreement, including the right to construct derivative works of the Project, and to use the design concepts for other projects of TMPF. The design concepts include, but are not limited to, the form, aesthetic appeal, site layout, the arrangement and composition of spaces and elements, the use of colors and materials, system designs, construction methods and interior design.

10.05 Insurance. The Contractor shall procure and maintain, at its own expense, during the entire term of the Agreement, the following insurances:

A. Worker's Compensation Insurance. This insurance shall protect the Contractor and TMPF from employee claims based on job-related sickness, disease, or accident.

B. Commercial General Liability Insurance. This insurance shall protect the Contractor, its agents and vehicles used to provide the services required under this Agreement from claims of personal injury (including death) and property damage. Such coverage shall be in a minimum amount of \$1,000,000 combined single limit for the period of time covered by this Agreement. The Contractor's general liability insurance policies shall be endorsed to include TMPF as an additional insured.

C. Commercial Automobile Liability Insurance. This insurance shall protect the Contractor from claims of limits no less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Company and any auto used to the performance of services under this Contract. The policy must insure all vehicles owned by the Company and include coverage for hired and non-owned vehicles. The Contractor's automobile liability insurance policies shall be endorsed to include TMPF as an additional insured.

D. Professional Liability Insurance (Errors and Omissions Coverage). This insurance shall protect the Contractor from claims arising out of performance of professional services caused by a negligent act, error, or omission for which the insured is legally liable. Such coverage shall be in a minimum amount of \$1,000,000 for the period of time covered by this Agreement.

E. Cancellation or Modification of Coverage. The Contractor's Commercial General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Contractor's contractual liability to TMPF under this Agreement, and with respect to its Commercial General Liability Policy, to waive subrogation against TMPF its officers, agents, servants and employees. The policies shall provide that TMPF will be given thirty (30) days' notice in writing of any cancellation of, or material change in, the policies.

F. Certificates and Endorsements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed \$25,000 without the written approval of TMPF. The Contractor shall deliver to TMPF's authorized designated representative certificates indicating that such insurance is in effect before any services are provided under this Agreement and renewal certificates not less than 30 days prior to the expiration date of any policy.

G. Period of Coverage. If the insurance coverage is underwritten on a "claims made" basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state that coverage is "claims made" and the retroactive date. The Contractor shall maintain all insurance coverages

specified in Section 10.05 for the duration of this Agreement and liability coverage as required by Section 10.05 for two years following completion of this Agreement.

10.06 *Indemnity.*

A. *Claims Not Based Upon or Arising out of Professional Services.* Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Contractor shall defend, indemnify, and hold TMPF, its Commissioners, officers, employees, and agents (herein the "Indemnities"), harmless from any and all claims (including, without limitation, patent infringement, and copyright claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards, or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Claims") to the extent that such Claims are caused by the negligence, errors, omissions, recklessness, or intentional misconduct of the Contractor, its employees, subcontractors, agents, or anyone employed by the Contractor's subcontractors or agents (herein the "Contractor Parties"), which are not based upon or arising out of the professional services performed by the Contractor Parties in the performance of this Contract.

As part of its obligation hereunder, the Contractor shall, at its own expense, defend the Indemnities against the Claims brought against them, or any of them, which is caused by the negligence, errors, omissions, recklessness, or intentional misconduct of the Contractor, its employees, subcontractors, or agents, for and against which the Contractor is obligated to indemnify the Indemnities pursuant to this Section, unless the Indemnities, or any of them elect to conduct their own defense which, in such case, shall not relieve the Contractor of its obligation of indemnification set forth herein. If the Contractor or the Contractor's insurer fails to defend the Indemnities as required herein, the Indemnities shall have the right, but not the obligation, to defend the same and, if the Contractor is adjudicated by the trier of fact to be liable, the Contractor agrees to pay the direct and incidental costs of such defense (including reasonable attorney fees and court costs) which is proportionate to the liability of the Contractor.

B. *Claims Based Upon or Arising out of Professional Services.* Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Contractor shall indemnify and hold the Indemnities, harmless from any and all claims (including, without limitation, patent infringement and copyright claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards, or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Professional Liability Claims") to the extent that such Professional Liability Claims are caused by the negligence, errors, omissions, recklessness, or intentional misconduct of the Contractor Parties, which are based upon or arising out of the professional services performed by the Contractor Parties in the performance of this Contract.

If the Contractor Parties are adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid by the Contractor to the Owner, as reimbursement for the attorney's fees and costs incurred by the Owner in defending the Professional Liability Claims, in an amount proportionate to the liability of the Contractor.

As used in this Section 10.06, "agents" means those persons who are directly involved in and acting on behalf of TMPF or the Contractor, as applicable, in furtherance of the contract or the public work to which the Contract pertains.

10.07 *Assignment.* TMPF and the Contractor each bind itself and its partners, successors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement, except the Contractor shall not assign, sublet or transfer any obligation or benefit under this Agreement without the written consent of TMPF. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of TMPF.

10.08 *Waiver.* No consent or waiver, express or implied, by either party to this Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain

of any act, or failure to act of the other party, or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by TMPF or the failure of TMPF to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Contractor of any of its obligations hereunder.

10.09 Contractor Warranties. The Contractor hereby represents and warrants that:

(i) it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Agreement, and that it is authorized to do business in Washoe County and the State of Nevada,

(ii) it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,

(iii) its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Agreement, and

(iv) it has disclosed on the form attached hereto as **Exhibit "F"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Contractor, as well as all persons and entities holding more than a one percent (1%) interest in the Contractor or any principals of the Contractor. If the Contractor, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "F,"** the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Contractor shall notify TMPF in writing of any material change in the above disclosure on **Exhibit "F"** within fifteen (15) days of such change.

10.10 Contractor's Employees. The Contractor shall be responsible for maintaining satisfactory standards of competency, conduct and integrity, of personnel assigned to the Project, and shall be responsible for taking such disciplinary action with respect to such personnel as may be necessary. In the event the Contractor fails to remove any employee from the work of this Agreement whom TMPF deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by TMPF to be contrary to the public interest, TMPF reserves the right to require such removal as a condition for the continuation of this Agreement.

10.11 Independent Contractor. It is hereby expressly agreed and understood that in the performance of the services required herein, the Contractor and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of TMPF.

10.12 Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.

10.13 Compliance with Laws. The Contractor and any subContractors shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement including, without limitation, the Federal Occupational Health and Safety Act and all state and federal laws including without limitation, 49 CFR, Part 27 (American Disabilities Act); the Civil Rights Act of 1964, as amended by the Rehabilitation Act of 1973; and DOT Order 1050.2 (Exhibit G).

The Contractor shall provide all information and reports required by the regulations, or directives issued pursuant thereto, and shall permit access to its facilities as may be determined by TMPF or the FHWA to be pertinent to ascertain

compliance with such Regulations or directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to TMPF, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

The Contractor agrees to complete and sign RSOQ Form D - "AFFIDAVIT REQUIRED UNDER SECTION 112(c) of Title 23 United States Code, Act of August 27, 1958 and Part 29 of Title 49, Code of Federal Regulations, November 17, 1987," RSOQ Form E - "CERTIFICATION REQUIRED BY SECTION 1352 of TITLE 31, UNITED STATES CODE, RESTRICTIONS OF LOBBYING USING APPROPRIATED FEDERAL FUNDS," and "Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities," attached hereto and incorporated herein.

10.14 *Disadvantaged Business Enterprise Requirements (DBE).*

(a) There are no Disadvantaged Business Enterprise (DBE) program goals for this contract..

10.15 *Severability.* In the event that any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the parties hereto.

10.16 *Confidentiality.* The Contractor shall treat the information relating to the Project, which has been produced by the Contractor or provided by TMPF, as confidential and proprietary information of TMPF and shall not permit its release to other parties or make any public announcement or publicity release without TMPF's written authorization. The Contractor shall also require each subContractor to comply with this requirement. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication relieving the Contractor of its confidentiality obligation imposed herein.

10.17 *Site Inspection.* The Contractor represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Contractor's compensation as provided for in the Agreement is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

10.18 *Modification.* All modification or amendments to this Agreement are null and void unless reduced in writing and signed by the parties hereto.

10.19 *Notice.* Any written notice required to be given under Sections 1.01 through 10.27 of this Agreement shall be deemed to have been given when the written notice is (i) received by the party to whom it is directed by personal service or (ii) deposited with the United States Postal Service, postage prepaid, addressed to the TMPF Representative or the Contractor Representative, whomever is the proper recipient, and mailed to the address set forth in the introductory paragraph to this Agreement.

10.20 *Prohibition Against Contingent Fees.* The Contractor warrants that no person or entity has been employed or retained to solicit or secure this Agreement with the Agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid to that person. For breach or violation of this provision, TMPF shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation to be paid to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.21 *Claim or Dispute Resolution.*

A. *Notice of Claim or Dispute.* For each claim or dispute which the Contractor has against or with TMPF (except for any claim for an equitable adjustment under Section 3.02 which is subject to the 30-day limitation set forth therein), notice thereof must be submitted in writing to the TMPF Representative within a reasonable time after the claim or dispute arises, but no later than thirty (30) days after final payment is made to the Contractor. The

purpose of written notification is to place TMPF on notice so that proper measures can be taken to properly defend against the claim or dispute, and the failure to give such notice shall preclude the Contractor from subsequently mediating that particular claim or dispute pursuant to Section 10.21C of this Agreement, and the Contractor shall have no further recourse against TMPF. Pending a final decision on the claim or dispute under Sections 10.21B or 10.21C, the Contractor shall proceed diligently with the performance of this Agreement.

B. Resolution by Management. The TMPF Representative and the Contractor Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.21A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the TMPF Representative and the Contractor Representative, the claim or dispute shall be decided by the TMPF Board whose decision shall be reduced to writing and mailed or otherwise furnished to the Contractor. The decision of the TMPF Board shall be final and conclusive unless, within thirty (30) days after the date on which the Contractor receives its copy of such decision, the Contractor mails or otherwise furnishes to the TMPF Board a written request to mediate the claim or dispute, in which event the parties shall proceed pursuant to provisions of Section 10.21C. The failure to make such request shall preclude the Contractor from proceeding any further on the claim or dispute, and the Contractor shall have no further recourse against TMPF.

C. Resolution by Mediation. Upon receipt of the request to mediate authorized pursuant Section 10.03B or Section 10.21B, TMPF and the Contractor shall come to an agreement as to the appointment of a mediator for purposes of hearing the appeal. If the parties cannot agree upon an independent private mediator within 45 days after notice of the receipt of the request to mediate, the party may proceed to file a judicial action with the Judicial District Court, County of Washoe, State of Nevada. The mediation shall take place in Washoe County, Nevada, unless otherwise agreed to by the parties. The fees and expenses of the mediator shall be equally shared by both parties. Each party is responsible for their own costs, expenses, Contractor fees and attorney fees incurred in the presentation or defense of any claim, dispute or controversy that is subject to mediation between the parties. The decision of the mediator shall be non-binding.

D. Right of Judicial Action. Any claim, dispute, or other matter in question between the parties concerning any provisions of this Contract that cannot otherwise be resolved between the parties through the use of mediation required herein may be submitted for judicial action. Prior to the exercise of this right, the party seeking judicial relief shall have provided the other party 30 days prior written notice before filing such judicial action. Any such action is subject to the sole and exclusive jurisdiction of the Judicial District Court, County of Washoe, State of Nevada.

10.22 Attorney Fees. The prevailing party in any litigation brought to enforce the provisions of this Agreement shall be entitled to reasonable attorney fees and court costs.

10.23 Calendar Day. All references in this Agreement to days are to calendar days unless otherwise indicated.

10.24 Exhibits. All exhibits referenced in this Agreement are hereby incorporated by this reference as a part of this Agreement. Any conflict between the provisions of this Agreement and the Exhibits incorporated herein shall be governed by the provisions of this Agreement.

10.25 Request for Statements of Qualifications (RSOQ). All requirements set forth in the RSOQ are hereby incorporated by this reference as a part of this Agreement. Any conflict between the provisions of this Agreement and the Exhibits incorporated herein shall be governed by the provisions of this Agreement.

10.26 Counterparts; Electronic Delivery. This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile

or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

10.27 *Non-discrimination.* Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation apprenticeship. Contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

TMPF By _____ Executive Director or authorized representative	CONTRACTOR By _____ Contractor Signer's Name, Contractor's Business Name
ATTEST _____ N/A Date	
APPROVED AS TO FORM _____ Executive Director Initials Date	

LIST OF EXHIBITS

EXHIBIT “ A ”SCOPE OF SERVICES

EXHIBIT “ B ”PERFORMANCE SCHEDULE

EXHIBIT “ C ”FEE BREAKDOWN

EXHIBIT “ D ”ADDITIONAL COMPENSATION

EXHIBIT “ E ”KEY PERSONNEL LIST

EXHIBIT “ F ” DISCLOSURE OF OWNERSHIP/PRINCIPALS

EXHIBIT “ G ”DOT TITLE VI ASSURANCES (DOT ORDER 1050.2)

EXHIBIT A – SCOPE OF SERVICES

EXHIBIT B – PERFORMANCE SCHEDULE

Preliminary Schedule: At the preconstruction conference, the **CONTRACTOR** shall furnish to the **OWNER** a preliminary schedule for the Work showing its general plan for orderly completion of the Work and showing in detail its planned mobilization of plant and equipment, sequence of early operations, and timing of procurement of materials and equipment. The **CONTRACTOR** shall assist the **OWNER** in reviewing and evaluating such schedule.

Detailed Schedule: Within 7 calendar days after the preconstruction conference, the **CONTRACTOR** shall furnish to the **OWNER** a detailed schedule for orderly completion of the Work, showing its planned sequences of operations, and the dates for commencement and completion of all important features of the Work including Milestone(s) dates.

1. The schedule shall be comprehensive, covering both activities at the site of the Work and off-site activities such as design, procurement, and fabrication. The schedule shall be orderly and realistic and shall be revised as necessary to meet this requirement. The **CONTRACTOR** shall promptly advise the **ENGINEER** of any occurrence requiring substantial revision of the schedule and shall furnish a revised schedule within 3 calendar days of such occurrence.
 2. The detailed schedule and each revision thereof shall be subject to approval by the **ENGINEER** for conformity with the requirements of this Section. The **CONTRACTOR** shall assist the **OWNER** in reviewing and evaluating each schedule furnished. Disapproved schedules will be returned to the **CONTRACTOR**, shall be revised to correct the defects noted, and shall be resubmitted to the **OWNER** within 3 calendar days after receipt.
 3. The schedule will be acceptable to the **OWNER** as providing an orderly progression of the Work to completion within the Contract Time (Milestone(s)), but such acceptance will neither impose on the **OWNER** responsibility for the progress or scheduling of the Work nor relieve the **CONTRACTOR** from full responsibility therefor.
 4. Form of Schedules: The **CONTRACTOR** shall submit 3 copies of each schedule and revised schedule furnished. The preliminary and detailed schedules shall be of the bar chart, or precedence types, at the **CONTRACTOR**'s option. The precedence type schedule shall be in the form of a network diagram, activity listing, and input listing.
- B. Whenever there are changes in the Work, the **CONTRACTOR** shall proceed to immediately revise its schedule to accommodate the changed Work upon receipt of a written field order to make the changes, notwithstanding the fact that an agreement has not been reached regarding the cost of the changes. The **CONTRACTOR** shall complete the changed Work in accordance with the revised schedule. If, in the opinion of the **OWNER**, the **CONTRACTOR** is not performing the changed Work in accordance with the revised schedule, the **OWNER** may withhold certification of estimates for payment until such time that the **CONTRACTOR** does perform in accordance with the revised schedule.
- C. When required to perform and complete the changed Work in accordance with the revised schedule, the **CONTRACTOR** shall provide additional labor, materials, equipment, or other factors of production in excess of those in use before the changed Work was ordered.

EXHIBIT C – FEE BREAKDOWN

Description	Quantity	Unit of Measure	Rate	Total

Subtotal	
Overhead	
Profit	
Grand Total	

EXHIBIT D – ADDITIONAL COMPENSATION

Please insert a copy of the hourly rate for the various positions within the firm and a list of any additional costs (ie, travel, meals, photocopies, prints, etc).

EXHIBIT E – KEY PERSONNEL LIST

NAME	DISCIPLINE (SEE BELOW)	TITLE	RESIDENT OF UNITED STATES?	LICENSE #S NV P.E., NSBAIDRD, OR NSBLA	EDUCAT ION DEGREE / YEAR	YEARS OF EXPERIENCE	
						FIRM	CARE ER TOTA L

Disciplines: Architect, Chemical Engineer, Civil Engineer, Construction Inspector, Construction Manager, Corrosion Engineer, Cost Engineer/Estimator, Electrical Engineer, Engineer Intern, Environmental Engineer, Environmental Scientist, Environmental Manager, Fire Protection Engineer, Hydrologist, Interior Designer, Land Surveyor, Land Surveyor Intern, Landscape Architect, Mechanical Engineer, Structural Engineer

EXHIBIT F - DISCLOSURE OF OWNERSHIP/PRINCIPALS

1. Definitions

“TMPF” means Truckee Meadows Parks Foundation.

“TMPF Board” means the governing body of TMPF.

“Contracting Entity,” means the individual, partnership, or corporation seeking to enter into a contract with TMPF.

“Principal” means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

2. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting Entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted.

3. Incorporation

An updated and notarized Certificate shall be incorporated into the resulting contract, if any, between TMPF and the Contracting entity. Upon execution of such contract, the Contracting Entity is under a continuing obligation to notify TMPF in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify TMPF of any material change may result, at the option of TMPF, in a default termination (in whole or in part) of the contract, and/or a withholding of payments due the Contracting Entity.

Block 1: Contracting Entity	
Name:	
Address:	City / ST / Zip:
Telephone:	EIN or DUNS :
Block 2: Description / Subject Matter of Contract	
Services for:	Project Number:

Block 3: <u>Type of Business</u>
<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Other:

CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

Block 4: Disclosure of Ownership and Principals

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

The Contracting Entity shall continue the above list on a sheet of paper entitled “Disclosure of Ownership/Principals – Continuation” until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets:

Block 5: Disclosure of Ownership and Principals – Alternate

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

Contracting Party Certification (*Notarized signature required in event of contract award per section 4, “Incorporation”*)

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate.
I further certify that I am an individual authorized to contractually bind the above named Contracting Entity.

Signature

Date

Subscribed and sworn to before me this ____ day of _____, 20____

Notary Signature

EXHIBIT G - DOT TITLE VI ASSURANCES (DOT ORDER 1050.2)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *(Recipient)* or the *(Name of Appropriate Administration)* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *(Recipient)*, or the *(Name of Appropriate Administration)* as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the *(Recipient)* shall impose such contract sanctions as it or the *(Name of Appropriate Administration)* may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6)

in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the *(Recipient)* or the *(Name of Appropriate Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the *(Recipient)* to enter into such litigation to protect the interests of the *(Recipient)*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

DOT ORDER 1050.2A

Pertinent Non-Discrimination Authorities;

- ☐ Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- ☐ The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42U.S.C. §460 I), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- ☐ Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- ☐ Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- ☐ Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you

must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

☐ Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because

Project Number: 24-001
Project Name: Rosewood Regional Trailhead, Phase 1 Planning and Design
Federal Project No:
Attachment C
Attachment L



CERTIFICATE OF LIABILITY INSURANCE

PLE

SAM

DATE
(MM/DD/YYYY)
Month/Date/Year

Producer must
be licensed in
the state of
Nevada

2. PRODUCER Insurance Agent/Broker Name Insurance Agent/Broker Street Address or P.O. Box Insurance Agent/Broker City, State & Zip Code Contact Name & Phone Number	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
4. INSURED Company Name (as it appears on contract) Company Street Address or P.O. Box City, State & Zip Code	3. INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A: Name of Insurance Company	Enter NAIC#
	INSURER B: Name of Insurance Company (if applicable)	Enter NAIC#
	INSURER C: Name of Insurance Company (if applicable)	Enter NAIC#
	INSURER D: Name of Insurance Company (if applicable)	Enter NAIC#
	INSURER E: Name of Insurance Company (if applicable)	Enter NAIC#

Insured name must
match name stated on
the current contract with
Churchill County

5. COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

#	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	6. LIMITS														
1	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Enter Policy #	Enter	Enter Expiration Date	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">EACH OCCURENCE</td> <td style="width: 40%;">\$Enter Limit</td> </tr> <tr> <td>DAMAGE TO RENTED PREMISES (Each occurrence)</td> <td>\$</td> </tr> <tr> <td>MED EXP (Any one person)</td> <td>\$N/A</td> </tr> <tr> <td>PERSONAL & ADV INJURY</td> <td>\$Enter Limit</td> </tr> <tr> <td>GENERAL AGGREGATE</td> <td>\$Enter Limit</td> </tr> <tr> <td>PRODUCTS - COMP/OP AGG</td> <td>\$Enter Limit</td> </tr> <tr> <td></td> <td>\$</td> </tr> </table>	EACH OCCURENCE	\$Enter Limit	DAMAGE TO RENTED PREMISES (Each occurrence)	\$	MED EXP (Any one person)	\$N/A	PERSONAL & ADV INJURY	\$Enter Limit	GENERAL AGGREGATE	\$Enter Limit	PRODUCTS - COMP/OP AGG	\$Enter Limit		\$
EACH OCCURENCE	\$Enter Limit																		
DAMAGE TO RENTED PREMISES (Each occurrence)	\$																		
MED EXP (Any one person)	\$N/A																		
PERSONAL & ADV INJURY	\$Enter Limit																		
GENERAL AGGREGATE	\$Enter Limit																		
PRODUCTS - COMP/OP AGG	\$Enter Limit																		
	\$																		

Waiver of Subrogation and
Additional Insured endorsements
are required. Comments on the COI
are not sufficient

<input checked="" type="checkbox"/>	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____ <input type="checkbox"/> _____	<div style="border: 1px solid blue; padding: 5px; color: blue;"> ALL deductible and self-insured retention amounts must be listed, even if the amount is zero </div>			Enter Policy # (if required) Enter Effective Date Enter Expiration Date	COMBINED SINGLE LIMIT (Each Occurrence) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$Enter Limit \$ \$ \$
<input type="checkbox"/>	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> _____	Enter Policy # (if required)	Enter Effective Date	Enter Expiration Date	AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	\$Enter Limit \$ \$	
<input type="checkbox"/>	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$Enter Amount	Enter Policy # (if required)	Enter Effective Date	Enter Expiration Date	EACH OCCURRENCE AGGREGATE	\$Enter Limit \$Enter Limit \$ \$	
<input checked="" type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	Enter Policy #	Enter Effective Date	Enter Expiration Date	WC STATUTORY LIMITS OT H-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	\$ \$ \$	
<input type="checkbox"/>	OTHER 7.				<div style="border: 1px solid blue; padding: 5px; color: blue;"> County contract number and name must be included </div>		
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS TMPF Contract No.& Project Title							
CERTIFICATE HOLDER			CANCELLATION				

Project Number: 24-001

Project Name: Rosewood Regional Trailhead, Phase 1 Planning and Design

Federal Project No:

Attachment C

TMPF
50 Cowan Drive
Reno, NV 89509

All certificates &
endorsements must be sent
to County

ANY OF THE ABOVE DESCRIBED
LED BEFORE THE EXPIRATION DA
R AFFORDING COVERAGE WILL I
DAYS WRITTEN NOTICE TO THE

Must be signed by an
insurance agent
licensed in Nevada

HOLDER NAMED TO THE LEFT, BUT FAIL
SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY
KIND UPON THE INSURER, ITS AGENTS OR
REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2001/08)

© ACORD CORPORATION 1988

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Project Number: 24-001

Project Name: Rosewood Regional Trailhead, Phase 1 Planning and Design

Federal Project No:

Attachment C

ACORD 25 (2001/08)

POLICY NUMBER: _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER RIGHTS OF RECOVERY AGAINST OTHERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)Veterans Pathway Trailhead, Phase 1 Planning and Design

We waive any right of recovery we may have against the person or organization shown in the Schedule because of payments we make for injury or damage arising out of "your work" done under a contract with that person or organization. The waiver applies only to the person or organization shown in the Schedule.

**Waiver of Subrogation
Endorsement Form**

Copyright, Insurance Services Office, Inc. 1984

POLICY NUMBER: _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations applicable to this endorsement.)

WHO IS AN INSURED: Section II, amended to include as an insured the person or organization shown in the schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

**CG 20 10 11 85
Office, Inc., 1984**

Copyright Insurance Services



ELECTRONIC FILE TRANSFER AGREEMENT

This Agreement governs the transfer and use of electronic files from Bowman Consulting Group, Ltd. ("Bowman") to _____ (the "Transferee") on behalf of _____ (the "Owner").

At the direction of the Owner the Transferee desires for Bowman to prepare and deliver to it a copy of electronic files prepared for the Owner pursuant to Owner's contract with Bowman (herein the "Electronic Files") with respect to the project known as _____ (the "Project"), and Bowman is willing to provide such copy of the Electronic Files to Transferee. In consideration of such transfer, and other good and valuable consideration, Bowman, Owner and Transferee agree to the following terms and conditions:

1. Bowman will provide a copy of the Electronic Files to Transferee. This does not constitute a transfer of the underlying intellectual property created by Bowman which shall remain the property of Bowman. The Electronic Files are not construction or record documents, and are not intended for use for construction purposes. Differences may exist between the Electronic Files and corresponding hard-copy printed documents. In the event of a conflict between the Electronic Files and signed or sealed hard copy documents the hard copy documents shall govern. Transferee is responsible for determining whether any such conflict results.
2. The Electronic Files are to be used by Transferee for no purpose other than as a convenience in completing the existing plans for the Project and/or preparation of future improvement plans in connection with the Project. The Owner and Transferee acknowledge that the Electronic Files as they currently exist are for an ongoing and incomplete project and not in final form. The Electronic Files are provided to Transferee and Owner in "as is/where is" form, without any obligation on the part of Bowman to update, modify, or in any manner correct for the intended use of Owner. Transferee agrees not to use the Electronic Files for any other purpose, nor shall it release the Electronic Files to any other person, without the express written consent of Bowman. Transferee agrees not to undertake any reverse engineering to learn how these electronic files were created.
3. When transferring documents in electronic media format Bowman makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Bowman at the beginning of this Project. Transferee understands that the conversion of the information and data from the system and format used by Bowman to an alternate system or format cannot be accomplished without the possibility of inaccuracies, anomalies, and errors, and acknowledges and agrees that Bowman is not responsible to Owner, Transferee or any party claiming through Transferee for any inaccuracy, anomaly or error.
4. If the Electronic Files, or corresponding hard copy printed documents, are converted, changed, appealed to, or modified in any manner the Transferee agrees to assume all risk associated therewith, and to hold harmless and indemnify Bowman from and against all claims, liabilities, losses, damages and costs of defense arising therefrom or in connection therewith.
5. Bowman has no obligation to notify Transferee of, or provide Transferee with revisions or changes to the Electronic Files. The information contained in the Electronic Files is current as of the date thereof with no duty, express or implied, to update the information to reflect any changes in the

design, applicable law or regulations, or otherwise. Transferee is responsible for updating any such information. Transferee shall perform any acceptance tests that it deems advisable within thirty (30) days after the date hereof, after which Transferee shall be deemed to have accepted the data thus transferred.

6. Bowman provides no warranties or guarantees (a) as to suitability of the Electronic Files for other purposes, (b) of the durability of the Electronic Files or the media through which they are furnished, or (c) that the means or media of electronic transfer of the Electronic Files is free of computer virus. Transferee acknowledges that it has sole responsibility for assuring that such media is free of any viruses prior to any use thereof. In using or modifying the Electronic Files the Transferee is responsible for confirming the accuracy of data from the Electronic Files. Nothing in this agreement shall be construed to imply that any subsequent drawing or document based on the Electronic Files was reviewed or approved by Bowman.
7. Transfer of the Electronic Files does not transfer any license to use the underlying software nor does it extinguish the rights of Bowman to reuse the information in the course of its professional practice.
8. Transferee acknowledges its obligations to indemnify and hold Bowman harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the Electronic Files (or the plans, specifications and other information contained therein) from or through Transferee without the prior written authorization of Bowman. This Agreement may be executed in counterparts. If Owner does not sign below Transferee represents and warrants to Bowman that it has been authorized by Owner to execute this Agreement and accept the transfer of Electronic Files on behalf of Owner, and Transferee further agrees to indemnify and hold Bowman harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising by reason, in whole or in part, by the breach, misrepresentation or inaccuracy of such representation and warranty.

The undersigned parties agree to these terms and conditions on this _____ day of _____, _____.

Transferee:

Signature

Print Name

Company

Owner:

Signature

Print Name

Company

Bowman Consulting Group Ltd.

By: _____