



NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**

STATE OF NEVADA
Department of Conservation & Natural Resources

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

Clean Water Act Section 401 Water Quality Certification Application

Please refer to the "Clean Water Act Section 401 Water Quality Certification Application Guidance" document for assistance with completing this application.

A. Pre-Filing Meeting	
Please provide the date that a pre-filing meeting was requested from Nevada Division of Environmental Protection (NDEP) Bureau of Water Quality Planning (BWQP).	June 15, 2023
<i>Note: If a pre-filing meeting has not been requested, please schedule a pre-filing meeting with NDEP BWQP.</i>	

B. Contact Information	
Project Proponent Information	
Company Name:	Address: Post Office Box 1307
Applicant Name: Christian P. Erdman, Trustee	City: Crystal Bay
Phone: (775) 741-4342 Fax:	State: NV
Email: cperdman@ix.netcom.com	Zip Code: 89402
Agent Information	
Company Name: Agan Consulting Corporation	Address: Post Office Box 9180
Agent Name: Kevin M. Agan	City: Incline Village
Phone: (775) 832-9300 Fax:	State: Nevada
Email: kevin@aganconsulting.com	Zip Code: 89450

C. Project General Information			
Project Location			
Project/Site Name: Erdman Trust - New Buoy (1)		Name of receiving waterbody: Lake Tahoe	
Address: 53 Somers Loop		Type of waterbody present at project location (<i>select all that apply</i>): <input type="checkbox"/> Perennial River or Stream <input type="checkbox"/> Intermittent River or Stream <input type="checkbox"/> Ephemeral River or Stream <input checked="" type="checkbox"/> Lake/Pond/Reservoir <input type="checkbox"/> Wetland <input type="checkbox"/> Other: _____	
City: Crystal Bay			
County: Washoe			
State: NV			
Zip Code: 89402			
Latitude (UTM or Dec/Deg): 39.220787		Longitude (UTM or Dec/Deg): -120.005139	
Township: 16N	Range: 18E	Section: 30	¼ Section: E

Project Details		
Project purpose:	Private Recreational Use.	
Describe current site conditions: Attachments can include, but are not limited to, relevant site data, photographs that represent current site conditions, or other relevant documentation.	Sandy lakebed and shoreline lakeward of upland property. Please refer to the attached site mapping and photographs.	
Describe the proposed activity including methodology of each project element:	Installation of a new secondary mooring buoy that is not located with prime fish habitat. Please refer to the attached support documentation.	
Estimate the nature, specific location, and number of discharge(s) expected to be authorized by the proposed activity:	12 SF (< 3 CY) of a new buoy concrete anchor block per attached buoy site mapping.	
Provide the date(s) on which the proposed activity is planned to begin and end and the approximate date(s) when any discharge(s) may commence:	May - June 2024.	
Provide a list of the federal permit(s) or license(s) required to conduct the activity which may result in a discharge into regulated waters (see mandatory attachments):	USACE NWP 10 (Buoy).	
Provide a list of all other federal, state, interstate, tribal, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization:	TRPA Buoy Permit; NDSL Buoy Permit; USACE Buoy Permit (NWP-10); NDEP 401 Certification/Waiver.	
Total area of impact to regulated waterbodies (acres):	12 SF of lakebed (buoy anchor coverage) total.	
Total distance of impact to regulated waterbodies (linear feet):	N/A	
Amount excavation and/or fill discharged within regulated waters (acres, linear feet, and cubic yards):	Temporary:	Permanent: 12 SF (< 3 CY Fill)
Amount of dredge material discharged within regulated waters (acres, linear feet, and cubic yards):	Temporary:	Permanent: None
Describe the reason(s) why avoidance of temporary fill in regulated waters is not practicable (if applicable):	Placement of 12 SF (< 3 CY) concrete buoy anchor block to be located in marginal sandy fish habitat area per agency permit action.	

Describe the Best Management Practices (BMPs) to be implemented to avoid and/or minimize impacts to regulated waters: Examples include sediment and erosion control measures, habitat preservation, flow diversions, dewatering, hazardous materials management, water quality monitoring, equipment or plans to treat, control, or manage discharges, etc.	Barge or Buoy Boat with crane. Please refer to attached support documentation.
Describe how the activity has been designed to avoid and/or minimize adverse effects, both temporary and permanent, to regulated waters:	Immediate Installation (1 day, weather pending).
Describe any compensatory mitigation planned for this project (if applicable):	None required per agency permit action.

D. Signature		
Name and Title (Print):	Phone Number:	Date:
Kevin M. Agan, Owner's Agent	(775) 832-9300	02/29/24
 Signature of Responsible Official		

Mandatory Attachments:

- **Federal Permit or License Identification:**
 - Project proponents seeking a federal general permit or license must include a copy of the draft federal license or permit and any readily available water quality-related materials that informed the development of the draft federal license or permit, or;
 - Project proponents seeking a federal individual permit or license must include a copy of the federal permit or license application and any readily available water quality-related materials that informed the development of the federal license or permit application.
- **Site Map** - A map or diagram of the proposed project site including project boundaries in relation to regulated waters, local streets, roads, and highways.
- **Engineered Drawings** - Engineered drawings are preferred to be submitted at the 70% design level. If only conceptual designs are available at the time of application, plans for construction should be submitted prior to the start of the project. Specific locations of the proposed activities and details of specific work elements planned

for the project should be identified (e.g., staging areas, concrete washouts, perimeter controls, water diversions, or other BMPs).

Submit the completed application materials to NDEP (ndep401@ndep.nv.gov) with the appropriate U.S. Army Corps of Engineers Regulatory Office copied on the communication (<http://www.spk.usace.army.mil/Missions/Regulatory/Contacts/Contact-Your-Local-Office/>).

AGAN CONSULTING CORPORATION

LAND & SHOREZONE CONSULTANTS

February 29, 2024

Mr. Zachary Carter, Environmental Scientist
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, NV 89701

**Subject: New Secondary Mooring Buoy – Erdman Trust Property
53 Somers Loop, Crystal Bay, Nevada
Washoe County APN: 123-221-02
USACE No. SPK-2005-00907**

Dear Zack,

Attached please find for your review the support documentation pertaining to the installation of a new secondary mooring buoy to be located lakeward of the above-referenced property:

- Signed Nevada Division of Environmental Protection 401 Water Quality Certification Application;
- Project Description/Construction Methodology Documentation (for reference purposes);
- Tahoe Regional Planning Agency Buoy Permit/Approved Site Mapping (for reference purposes);
- Nevada Division of State Lands Buoy Permit/Exhibit Drawing (for reference purposes);
- Current Washoe County Assessor Parcel Mapping;
- Recorded Grant Deed (Current Ownership);
- Site Photograph (Existing Conditions).

Mr. Zachary Carter, Environmental Scientist
Nevada Division of Environmental Protection
February 29, 2024
Page 2

We hope the attached information allows you to process the required 401 Certification at your earliest opportunity. Should you have any comments or questions, please feel free to contact me directly at kevin@aganconsulting.com. Thank you.

Sincerely yours,



Kevin M. Agan
Principal Consultant

KMA:
Attachments

pc: Ms. Kirsten Grabreck, USACE Project Manager

**ERDMAN TRUST PROPERTY
SECONDARY MOORING BUOY
WASHOE COUNTY APN: 123-221-02
TRPA FILE NO. MOOR2021-1919**

Project Description

Existing Conditions: The subject lakefront property is located at 53 Somers Loop, Crystal Bay, Nevada. This acreage property has a single-family main residence, secondary caretaker's residence as well as related recreation facilities (i.e. picnic, swimming, shoreline access, etc.). This property currently has one fully-permitted mooring buoy located lakeward of it (TRPA File No. MOOR2009-2464) with the owner seeking authorization for a new secondary mooring buoy in accordance with the available agency regulatory provisions.

Proposed Activity: Based a recent TRPA buoy permit being issued for this secondary mooring buoy, the property owner is seeking the remaining agency authorizations to have it installed for the 2024 Lake Tahoe Boating Season. The addition of one new mooring buoy will comply with the two (2) TRPA mooring maximum capacity for this property within the prescribed setback and spacing regulations per the attached project site mapping.

Fish Habitat Mitigation: The shoreline area of this development is located adjacent and within a mapped "Feeding and Escape Cover Habitat" per the official TRPA Fish Habitat Mapping. However, the new buoy anchor block for this secondary mooring buoy will be located lakeward of this prime fish habitat within a sandy substrate indicative of "marginal" habitat requiring no fish habitat mitigation.

Scenic Mitigation: These new mooring buoys will be subject to the annual TRPA buoy scenic mitigation fees in addition to the annual mooring registration fees in accordance with TRPA Code Section 84.3.3.G.

**ERDMAN TRUST PROPERTY
SECONDARY MOORING BUOY
WASHOE COUNTY APN: 123-221-02
TRPA FILE NO. MOOR2021-1919**

Construction Methodology

Construction Methodology: Besides the regular maintenance, placement, and servicing of the mooring buoy(s), they will be serviced and positioned as necessary by a crane mounted on a barge or “buoy boat” to maintain proper buoy spacing. The primary color of the buoy floats will comply with the U.S. Coast Guard and Nevada Revised Statutes, Section 488.257 (2013) regulations. The fabrication and placement of buoy(s) will be primarily on the barge or boat and cleanly placed onto the lakebed by crane to the approved location.

Spill Prevention: No containers of fuel, paint, stain, or other hazardous materials may be stored on the barge, boat or shoreline. All equipment, tools, or other materials will be properly stored on the barge or boat in order to avoid any discharge into the lake or onto the shoreline during the buoy installation activity. All construction waste will be collected and disposed of at the nearest approved dumpster or sanitary landfill site. A spill response kit will be located on the barge or boat at all times.



Mail

PO Box 5310
Stateline, NV 89449-5310

Location

128 Market Street
Stateline, NV 89449

Contact

Phone: 775-588-4547
Fax: 775-588-4527
www.trpa.gov

**FOR
REFERENCE**

CONDITIONAL PERMIT

PROJECT DESCRIPTION: One new mooring buoy, lakeward of and accessory to **APN:** 123-221-02

PERMITTEE: Christian P Erdman Revocable Trust

FILE NUMBER: MOOR2021-1919

COUNTY/LOCATION: Washoe County / 53 Somers Loop

Having made the findings required by Agency ordinances and rules, TRPA staff approved the project on **January 17, 2024**, subject to the standard conditions of approval attached hereto (Attachment S) and the special conditions found in this permit.

This permit shall expire on **January 17, 2027** without further notice and the project shall be completed by the expiration date. The expiration date shall not be extended unless the project is determined by TRPA to be the subject of legal action which delayed or rendered impossible the diligent pursuit of the permit.

NO CONSTRUCTION OR INSTALLATION SHALL COMMENCE UNTIL:

- (1) TRPA RECEIVES A COPY OF THIS PERMIT UPON WHICH THE PERMITTEE, OR AUTHORIZED REPRESENTATIVE, HAS ACKNOWLEDGED RECEIPT OF THE PERMIT AND ACCEPTANCE OF THE CONTENTS OF THE PERMIT;
- (2) ALL PRE-CONSTRUCTION CONDITIONS OF APPROVAL ARE SATISFIED AS EVIDENCED BY TRPA'S ACKNOWLEDGEMENT OF THIS PERMIT; AND
- (3) THE PERMITTEE OBTAINS A STATE LANDS LEASE OR PERMIT, IF NECESSARY. THE STATE LANDS LEASE OR PERMIT AND THE TRPA PERMIT ARE INDEPENDENT OF EACH OTHER AND MAY HAVE DIFFERENT EXPIRATION DATES AND RULES REGARDING EXTENSIONS.

Digitally signed by Matt
Miller
Date: 2024.01.17
16:14:40 -08'00'

1/17/2024

TRPA Executive Director/Designee

Date

PERMITTEE'S ACCEPTANCE: I have read the permit and the conditions of approval and understand and accept them. I also understand that I am responsible for compliance with all the conditions of the permit and am responsible for my agents' and employees' compliance with the permit conditions. I also understand that if the property is sold, I remain co-liable for the permit conditions until or unless the new owner acknowledges the transfer of the permit and notifies TRPA in writing of such acceptance. I also understand that certain mitigation fees associated with this permit are non-refundable once paid to TRPA. I understand that it is my sole responsibility to obtain any and all required approvals from any other state, local or federal agencies that may have jurisdiction over this project whether or not they are listed in this permit.

Signature of Permittee

TIR

Date 23 Feb 2024

PERMIT CONTINUED ON NEXT PAGE

APN: 123-221-02
FILE NO. MOOR2021-1919

Mooring Registration Fees Paid (1): Amount \$ 180 Paid _____ Receipt No. _____
Mooring Registration Number: 10636

Notes:

- (1) See Special Condition 3.A., below.

Required plans determined to be in conformance with approval: Date: _____

TRPA ACKNOWLEDGEMENT: The permittee has complied with all pre-construction conditions of approval as of this date:

TRPA Executive Director/Designee

Date

SPECIAL CONDITIONS

1. This permit specifically authorizes the placement of one (1) new (additional) mooring buoy and anchoring device lakeward of an accessory to APN 123-221-02. The project includes the recognition of the existing mooring buoy's location, pursuant to the coordinates below. The total number of moorings now authorized for the parcel is two (2), and there are no other moorings (buoys, boat lifts, or boat slips) associated with this parcel. This permit does not require fish habitat mitigation as the new mooring buoy will be in marginal habitat.

Mooring Buoy Locations				
<i>Status</i>	<i>Mooring ID</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Allocation Number</i>
New (additional)	13129	39.220787°	-120.005139°	TRPA-20-MOOR-143
Existing	7967	39.220961°	-120.005341°	N/A

2. The Standard Conditions of Approval listed in Attachment S shall apply to this permit. Notifying TRPA and a pre-grade inspection is not required prior to commencement of construction.
3. Prior to permit acknowledgement the following conditions of approval must be satisfied:
- A. The annual mooring registration fees of \$180 required under Article 10 of TRPA Rules of Procedure shall be paid. Please reference the provided invoice for payment options.
- B. The site plan shall be revised to include the following:
- (1) Correct the coordinates of the proposed and existing mooring buoys to those listed in the table above.
- (2) Indicate the size of the mooring buoy float in the construction details.

4. The permittee and contractor/installer shall certify mooring buoys and anchoring devices were installed, relocated, and maintained in accordance with the approved plans by submitting Attachment B: Buoy Final Certification Form to TRPA **within two (2) weeks** of placement of mooring buoy(s). Failure to submit the form is grounds for enforcement action, including revocation of the permit and removal of the mooring buoy(s).
5. Mooring registration and scenic mitigation fees shall be paid annually for each permitted mooring pursuant to Article 10 of TRPA Rules of Procedure. These fees are non-refundable and the due date is subject to change.
6. Best Management Practices (BMPs) installed on the property shall be maintained in perpetuity to ensure effectiveness which may require BMPs to be periodically reinstalled or replaced.
7. Buoy anchoring devices shall not be relocated without prior TRPA approval.
8. The permittee shall affix the mooring registration tag(s) to the mooring buoy(s) authorized with this permit at the time of placement. The permittee shall maintain the tag(s) and if lost or stolen, notify TRPA immediately for a replacement. The permittee authorizes TRPA to verify the presence of a TRPA buoy identification tag as required by subsection 82.7.4 of the TRPA Code of Ordinances.
9. Only one watercraft shall be moored to each mooring buoy and associated anchor. One anchoring device per mooring buoy is authorized.
10. The permittee shall inspect and maintain floats, chains, and anchoring devices to prevent loss or damage to watercraft and structures.
11. Buoys shall comply with the construction specifications in the approved plans and those set forth in the California Waterway Marking System or as otherwise recommended by the US Army Corps of Engineers or Coast Guard.
12. No lights on buoys are authorized by this permit.
13. Disturbance of the lake bottom shall be kept to the minimum necessary for the placement of buoy anchors. No removal or relocation of rock or other natural materials from Lake Tahoe is authorized by this permit.
14. The spill prevention and containment measures proposed shall be implemented during construction and TRPA shall be notified immediately of any discharge or release of hazardous material.
15. **Locate all underground and underwater utilities.** If your project might disturb underwater utilities, call the regional Underground Service Alert (USA North: 1-800-227-2600) prior to placement or construction. California and Nevada state law both require the permittee to call USA DIGS at least 48 hours prior to commencement of construction.
16. This permit does not authorize any construction activities, staging, ground disturbance or other activities within the backshore or on the upland portions of the project area.

17. The permittee shall be responsible for contacting other regulatory agencies with potential jurisdiction over the approved buoy project to determine the permitting requirements of those agencies. Agencies with permitting jurisdiction in Nevada include but are not limited to: U.S. Army Corps of Engineers, U.S. Coast Guard, NV Division of State Lands, NV Division of Environmental Protection, and NV Department of Wildlife.
18. This approval is based on the Permittee's representation that all plans and information contained in the subject application are true and correct. Should any information or representation submitted in connection with the project application be incorrect or untrue, TRPA may rescind this approval, or take other appropriate action.
19. Violation of any of the conditions of this permit, including annual registration requirements, shall be grounds for enforcement action including revocation of the permit. The process for the determination of the enforcement action, including notice and hearings, shall be pursuant to Article IX of TRPA's Rules of Procedure. If the permit is revoked, the permittee hereby agrees to remove the buoy(s) within 30 days, and alternatively, if the buoy(s) is not removed within 30 days, authorizes TRPA to remove the buoy(s) at the permittee's expense.
20. To the maximum extent allowable by law, the Permittee agrees to indemnify, defend, and hold harmless TRPA, its Governing Board (including individual members), its Planning Commission (including individual members), its agents, and its employees (collectively, TRPA) from and against any and all suits, losses, damages, injuries, liabilities, and claims by any person (a) for any injury (including death) or damage to person or property or (b) to set aside, attack, void, modify, amend, or annul any actions of TRPA. The foregoing indemnity obligation applies, without limitation, to any and all suits, losses, damages, injuries, liabilities, and claims by any person from any cause whatsoever arising out of or in connection with either directly or indirectly, and in whole or in part (1) the processing, conditioning, issuance, administrative appeal, or implementation of this permit; (2) any failure to comply with all applicable laws and regulations; or (3) the design, installation, or operation of any improvements, regardless of whether the actions or omissions are alleged to be caused by TRPA or Permittee.

Included within the Permittee's indemnity obligation set forth herein, the Permittee agrees to pay all fees of TRPA's attorneys and all other costs and expenses of defenses as they are incurred, including reimbursement of TRPA as necessary for any and all costs and/or fees incurred by TRPA for actions arising directly or indirectly from issuance or implementation of this permit. TRPA will have the sole and exclusive control (including the right to be represented by attorneys of TRPA's choosing) over the defense of any claims against TRPA and over their settlement, compromise or other disposition. Permittee shall also pay all costs, including attorneys' fees, incurred by TRPA to enforce this indemnification agreement. If any judgment is rendered against TRPA in any action subject to this indemnification, the Permittee shall, at its expense, satisfy and discharge the same.

END OF PERMIT



**TAHOE
REGIONAL
PLANNING
AGENCY**

Mail

PO Box 5310
Stateline, NV 89449-5310

Location

128 Market Street
Stateline, NV 89449

Contact

Phone: 775-588-4547
Fax: 775-588-4527
www.trpa.gov

ATTACHMENT B: BUOY FINAL CERTIFICATION FORM

PROJECT DESCRIPTION: 1 new mooring buoy, located lakeward of APN: 090-324-003

PERMITTEE: Rajit K. Agrawal, Trustee

FILE NUMBER: MOOR2022-0048

COUNTY/LOCATION: Placer County / 9910 Lake Street

CONTRACTOR OR INSTALLER: _____

The named permittee and contractor or installer certify the following were constructed pursuant to the TRPA approved plans and permit:

- ☐ Buoy anchoring device(s) are in approved locations and in a safe, operable condition
- ☐ Buoy float(s) and anchoring device(s) match approved specifications
- ☐ Buoy ID tag(s) are installed
- ☐ Fish habitat mitigation placed, if required
- ☐ Replaced anchoring device(s) removed from the lake and no unauthorized anchors remain
- ☐ Construction debris removed from Lake Tahoe

Comments:

DECLARATION:

I hereby declare under penalty of perjury that all information submitted as part of this certification is true and accurate to the best of my knowledge. I am the owner of the subject property, or have been authorized in writing by the owner(s) of the subject property to represent this request, and I have obtained authorization to submit this request from any other necessary parties holding an interest in the subject property. I understand it is my obligation to obtain such authorization, and I further understand that TRPA accepts no responsibility for informing these parties or obtaining their authorization. I understand that should any information or representation submitted in connection with this certification be inaccurate, erroneous, or incomplete, TRPA may rescind any approval, registration, or take other appropriate action. I understand that additional information may be required by TRPA to review this request.

Signature:

Contractor or Installer

At _____ Date: _____
County

Owner/Permittee

At _____ Date: _____
County

Submission of this form is the responsibility of the Permittee

Email completed form and required photographs to shoreline@trpa.gov

02/2024



**TAHOE
REGIONAL
PLANNING
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128 Market St.
Stateline, NV

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trpa@trpa.org
www.trpa.org

HOURS
Mon, Wed, Thurs, Fri
9 am-12 pm/1 pm-4 pm
Closed Tuesday

New Applications Until 3:00 pm

ATTACHMENT S

STANDARD CONDITIONS OF APPROVAL FOR SHOREZONE PROJECTS

I. CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION

The following conditions shall be satisfied prior to commencement of any construction activity within the project area, including, but not limited to, filling, dredging, grading, excavation, clearing of trees, and other activities associated with construction. Failure to satisfy these conditions of approval prior to commencement of construction activity shall be grounds for revocation of the permit.

NOTE: TRPA reviews and approves projects as required under Tahoe Regional Planning Agency (TRPA) Rules, Regulations, and Ordinances only. TRPA does not review and shall not be responsible for any elements contained in the plans (i.e., structural, electrical, mechanical, etc.) which are not required for review under said Rules, Regulations, and Ordinances.

- A. The permittee shall submit final construction drawings and plans showing revegetation, slope stabilization, and drainage improvements. Revegetation, slope stabilization, and drainage improvement plans shall be designed in conformance with the TRPA Best Management Practices (BMP) Handbook.
 - 1) Revegetation plans shall show areas to be revegetated, specifications for revegetation, and temporary fencing for vegetation protection. Only native species adaptable to the Lake Tahoe Basin shall be used for landscaping or revegetation. A list of acceptable species is available from TRPA.
 - 2) Slope stabilization plans shall show all methods of stabilization to be used to stabilize all existing and proposed cut and fill slopes and areas otherwise denuded of vegetation. Said plans shall also show temporary and permanent erosion control devices, temporary sediment barriers, and measures to be taken for dust control.
 - 3) Drainage plans shall show all drainage facilities for all existing and proposed impervious surfaces and utility trenches. Drainage facilities shall be designed to be capable of retaining runoff waters for a 20-year, 1-hour storm event. Calculations demonstrating the proposed facilities' retention capabilities may be required. Whenever possible, utilities shall occupy common trenches to minimize site disturbance.
- B. A security shall be posted with TRPA to ensure compliance with the conditions of the permit. In most cases, the security shall be determined by TRPA and will typically be equal to 110% of the estimated costs of the revegetation, drainage improvements, slope stabilization plans, and other conditions of approval. For further information on acceptable types of securities, see Attachment J.
- C. The permittee shall submit all required air quality, water quality, excess coverage, and shorezone mitigation fees.
- D. Prior to any activity commencing, the permittee shall contact TRPA at least 48 hours in advance and arrange for a pre-grading inspection to verify that all the temporary erosion and water quality control measures and protective fencing for vegetation are in place and installed properly.
- E. The applicant shall identify temporary disposal sites, if any, and permanent disposal sites for all dredged material, including appropriate authorization from property owners.

- F. All existing disturbed areas and areas disturbed as a result of construction activity authorized by the permit, or otherwise occurring on the subject project during the time period when the permit is valid, shall be revegetated using only those species contained on TRPA's list of acceptable species. All required vegetation shall be completed by completion of the project.
- G. The permittee shall return a signed copy of the permit form stating that the permit was received and that the permit is understood, and the contents accepted prior to any activity or grading occurring within the project area. Plans shall not be stamped approved without TRPA receiving a copy of the signed permit.
- H. It is the permittee's obligation to locate all subsurface facilities and/or utilities prior to any grading, dredging or other subsurface activity. The permittee is responsible for contacting the Northern Underground Service Alert (USA, usually known as USA DIGS 1-800-227-2600) prior to commencement of any activity on the site.

II. CONSTRUCTION-RELATED CONDITIONS

The following conditions shall apply to construction activity on the site:

A. General Construction Requirements

- 1) The TRPA permit and the final construction drawings shall be present on site from the time construction commences until the final TRPA site inspection.
- 2) Prior to commencement of construction, the applicant shall submit a construction completion schedule to TRPA. Construction shall be completed by the date set forth in the approved construction schedule. Extensions of the schedule may be granted provided the request is made in writing and the application fee submitted prior to the expiration of the completion schedule. An additional security may be required to be posted to ensure completion or abatement of the project. To approve the extension, TRPA must make either of the following findings:
 - i. The project was diligently pursued, as defined in Subparagraph 2.2.4.C of the TRPA Code of Ordinances, during each building season (May 1 - October 15) since commencement of construction.
 - ii. That events beyond the control of the permittee, which may include, but are not limited to, engineering problems, labor disputes, natural disasters, or weather problems have prevented diligent pursuit of the project.
- 3) The permittee shall allow TRPA to enter and inspect the site at any time to determine compliance with the permit.
- 4) No construction methods shall be utilized that will degrade the water of Lake Tahoe or other lakes within the Lake Tahoe Basin.
- 5) Violation of any of the conditions of approval shall be grounds for revocation of the permit. Failure to commence construction within the approval period shown on the permit face shall result in the expiration of the permit, without notice, by operation of law, on the date shown on the permit face.
- 6) This approval is based on the permittee's representation that all plans and information contained in the subject application are true and correct. Should any information or representation submitted in connection with the project application be incorrect or untrue, TRPA may rescind this approval or take other appropriate action.
- 7) Information contained in special reports prepared for the project, including, but not limited to, visual analysis and substrate reports, are considered conditions of project approval, except when noted in the Special Conditions of Approval.

- 8) Any normal construction activities creating noise in excess of TRPA noise standards shall be considered exempt from said standards provided all such work is conducted between the hours of 8:00 am and 6:30 pm.
- 9) For projects with an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), the mitigation measures contained in the document are considered conditions of project approval, except when noted in the Special Conditions of Approval. Final plans shall be designed to include all EA/EIS mitigation measures. Where discrepancies exist between the final plans and the EA/EIS, the mitigation measures outlined in the EA/EIS shall take precedence, unless specifically noted *in writing* by TRPA.

B. Grading and Site Disturbance Activities

- 1) There shall be no grading, filling, clearing of vegetation, or other disturbance of soil on site between October 15 and May 1 of each year.
- 2) There shall be no grading, filling, clearing of vegetation, or other disturbance of the soil during inclement weather and during the resulting period of time when the site is covered with snow or is saturated, muddy or unstable.
- 3) No rocks or other natural materials shall be relocated, including rock removal by blasting, that are not indicated on the approved plans without first obtaining TRPA approval.
- 4) All material obtained from excavation work shall be contained within the foundations, retaining walls, or by a similar means approved by TRPA, or the excavated material shall be disposed of at a site approved by TRPA.
- 5) Soil and construction materials shall not be tracked off-site. Grading operations shall cease in the event a danger of violating this condition exists. The site shall be cleaned and the road right-of-way shall be swept clean when necessary.
- 6) The length of open trenches (excluding foundations) shall not exceed 50 feet at the end of each working day, unless approved by TRPA.
- 7) Loose soil mounds or surfaces shall be protected from wind and water erosions by being appropriately covered or contained when active construction is not occurring.
- 8) All excavated material shall be stored upslope from excavated areas. No material shall be stored in stream environment zones, backshore, or other saturated areas.
- 9) No grading, filling, clearing of vegetation, operation of equipment, or disturbance of the soil shall take place in areas where any historic or prehistoric ruins or monuments or objects of antiquity are present or could be damaged by grading. If any historic or prehistoric ruins or monuments or objects of antiquity are discovered, all grading, filling, clearing of vegetation, operation of equipment, or disturbance of the soil shall immediately cease and shall not recommence until a recovery plan is approved by TRPA.
- 10) Maximum excavation depth shall not exceed five feet, unless otherwise approved by TRPA.
- 11) If groundwater is encountered during construction, cease work and contact TRPA immediately to discuss possible changes in design or dewatering options.
- 12) Gravel, cobble, or small boulders shall not be disturbed or removed to leave exposed sandy areas before, during, or after construction. Only the boulders designated on the site plan to be moved shall be moved to an appropriate location.
- 13) Disturbance of the lake bed materials shall be kept to the minimum necessary for project construction.

C. Winterization

- 1) All construction sites shall be winterized no later than October 15 of each year as follows:
 - i. Inactive winter sites shall contain erosion and drainage improvements necessary to prevent discharge from the site including, but not limited to:
 - (a) Installation of temporary erosion controls
 - (b) installation of temporary protective fencing of vegetation
 - (c) Stabilization of all disturbed areas
 - (d) Cleanup and removal of all construction slash and debris
 - (e) Installation of permanent mechanical stabilization and drainage improvements, where feasible
 - (f) Removal of all spoil piles
 - ii. Active winter sites shall comply with the following:
 - (a) Installation of all permanent mechanical erosion control devices, including paving of all driveway and parking areas
 - (b) Installation of all permanent drainage improvements
 - (c) Parking of vehicles, equipment, and storage of materials shall be restricted to paved areas
- 2) Work shall be performed in such a manner that the project can be winterized within 24 hours.

D. Construction Equipment

- 1) Equipment of a size and type that will do the least amount of damage to the environment shall be used. Cleaning of equipment, including cement mixers, is not permitted unless approved in writing by TRPA.
- 2) Vehicles or heavy equipment shall not be allowed in stream environment zones, backshore, or other saturated areas unless specifically authorized by TRPA. All vehicles and heavy equipment shall be confined to the area within the vegetative protection fencing unless specifically authorized by TRPA.
- 3) Idling time for all diesel-powered equipment shall not exceed 5 minutes.
- 4) Construction vehicles leaving the site shall be cleaned to prevent dust, silt, mud, and dirt from being released or tracked off-site.
- 5) Existing power sources or clean-fuel generators rather than temporary diesel power generators shall be used whenever feasible.

E. Vegetation Protection

- 1) All trees and natural vegetation which are to remain shall be fenced for protection. Scarring of trees shall be avoided. Scarred trees shall be repaired with tree seal.
- 2) Fencing specified shall be at least 48 inches high and shall be constructed of metal posts and either orange construction fencing or metal mesh fencing also at least 48 inches high (Section 33.6.1). Job sites with violations of the fencing standards will be required to re-fence the job site with a high gauge metal fencing.

- 3) No material or equipment shall enter or be placed in the areas protected by fencing or outside the construction areas without prior approval from TRPA. Fences shall not be moved without prior approval (Section 33.6).
- 4) To reduce soil disturbance and damage to vegetation, the area of disturbance during the construction of a structure shall be limited to the area between the footprint of the building and the public road. For the remainder of the site the disturbance areas shall not exceed 12 feet from the footprint of the structure, parking area or cut/fill slope. The approved plans should show the fencing and approved exceptions (Section 36.2).

F. Best Management Practices

- 1) Construction activities shall comply with the BMP Handbook.
- 2) Temporary and permanent BMPs shall be installed in accordance with the approved plans. Temporary and permanent BMPs may be field fit by the Environmental Compliance Inspector where appropriate.
- 3) At all times during construction, environmental protection and erosion control devices shall be maintained in a functioning state. Such devices include, but are not limited to, sediment barriers, dust control devices, and vegetative protection.
- 4) Required BMPs (slope stabilization, infiltration facilities, revegetation, etc.) shown on the approved plans have been determined from representations submitted by the applicant and not confirmed by field inspection. Modification of the required BMPs necessary to correct inadequacies may be added at the time of the pre-grade inspection and shall be incorporated into the TRPA permit and site plans as additional conditions of approval.

G. Air Quality

- 1) Fugitive dust shall not exceed 40 percent opacity and not go beyond the property boundary or into waters of the region at any time during project construction.
- 2) No open burning of removed vegetation shall occur during infrastructure improvements.
- 3) Water shall be applied as needed to prevent dust impacts from extending off-site. Operational water truck(s) shall be on-site, as required, to control fugitive dust.

H. Noise and Vibration

- 1) All construction equipment, including vibration-inducing impact equipment, on construction sites shall be operated as far away from vibration-sensitive uses as reasonably possible.
- 2) Earthmoving and ground-disturbing operations shall be phased so as not to occur simultaneously in areas close to sensitive uses, to the extent feasible. The total vibration level produced could be significantly less if each vibration source is operated at separate times.
- 3) To prevent structural damage, minimum setback requirements for different types of ground vibration-producing activities (e.g. pile driving) for the purpose of preventing damage to nearby structures shall be established based on the proposed pile driving activities and locations, once determined. Factors to be considered include the specific nature of the vibration activity (e.g. type and duration of pile driving), local soils conditions, and the fragility / resiliency of the nearby structures. Established setback requirements (i.e. 55 feet) can be breached if a project-specific, site specific analysis is conducted by a qualified geotechnical engineer or ground vibration specialist that indicates that no structural damage would occur at nearby buildings or structures or provides further recommendations (e.g. alternative pile driving methods, site monitoring requirements) to avoid damaging nearby structures.

I. Archaeological Resources

- 1) If evidence of any prehistoric or historic-era subsurface archaeological features or deposits are discovered during construction-related earth-moving activities (e.g. ceramic shard, trash scatters, lithic scatters), all ground-disturbing activity in the area of the discovery shall be halted and the appropriate jurisdiction and TRPA shall be notified immediately. A qualified archaeologist shall be retained to assess the significance of the find. If the find is a prehistoric archaeological site, the appropriate Native American group shall be notified.
- 2) If the archaeologist determines that the find does not meet NRHP, NVSHRP, or CRHR standards of significance, as applicable, for cultural resources, construction may proceed.
- 3) If the archaeologist determines that further information is needed to evaluate significance, a data recovery plan shall be prepared.
- 4) If the find is determined to be significant by the qualified archaeologist (i.e. because the find is determined to constitute either an historical resource or a unique archaeological resource), the archaeologist shall work with the project applicant to avoid disturbance to the resources, and if complete avoidance is not feasible in light of project design, economics, logistics, and other factors, follow accepted professional standards in recording any find including submittal of the recordation forms required by the applicable SHPO and location information to the appropriate information center.

J. Buoys

- 1) Buoys shall comply with the construction specifications set forth in the California Waterway Marking System or as otherwise recommended by the US Army Corps of Engineers or Coast Guard.

K. Pier Construction

- 1) No pier demolition or construction shall occur between May 1 and October 1 (spawning season) unless prior approval is obtained from the California Department of Fish and Wildlife or Nevada Department of Wildlife and TRPA.
- 2) Best practical control technology shall be employed to prevent earthen materials to be resuspended as a result of pier construction and from being transported to adjacent lake waters. The permittee shall install a turbidity screen around the entire project site (in the water) prior to construction. This screen may be removed upon project completion only upon satisfactory inspection by TRPA to ensure that all suspended materials have settled.

III. **CONDITIONS TO BE SATISFIED PRIOR TO COMPLETION OF THE PROJECT:**

- A. Rehabilitation and cleanup of the site following construction shall include, but not be limited to, removal of all construction waste and debris.
- B. Upon completion of the project, as a condition of the release of the security, TRPA shall conduct a final site inspection to verify that all required improvements and revegetation are properly installed and that all conditions of the permit have been satisfied.
- C. Replanting of all exposed surfaces, as shown on the revegetation and slope stabilization plans, shall be completed within one year following the commencement of construction, unless the approved construction schedule establishes otherwise.
- D. Revegetation of compacted dirt areas not to be surfaced shall be in accordance with guidelines established in Chapter 4 of the Best Management Practices Handbook.


IV. **ONGOING CONDITIONS**

The following ongoing conditions shall apply for the life of project:

A. Operational Requirements

- 1) All Best Management Practices shall be maintained in perpetuity to ensure effectiveness which may require BMPs to be periodically reinstalled or replaced.
- 2) No naturally occurring vegetation shall be manipulated or disturbed except in accordance with Chapter 30. No planting of new vegetation, or manipulation of naturally occurring vegetation, shall be permitted in the shorezone, unless such activities comply with the standards in Chapter 30.
- 3) Indigenous vegetation, appropriate to the backshore shall not be removed or damaged in the backshore, unless otherwise authorized under TRPA permit pursuant to Section 85.5 or Subsection 61.3.3 of the Code of Ordinances. Landscaping installed for the purpose of scenic quality may be maintained pursuant to Subsection 61.3.3.
- 4) All shorezone structures shall maintain compliance with the project description and approved plans associated with the permit. Any modifications, including demolition, expansion, relocation, and reconstruction, may require further TRPA review and approval pursuant to Code of Ordinances Chapters 80-85.
- 5) The use of wood preservatives on wood in contact with the water is prohibited and extreme care shall be taken to ensure that wood preservatives are not introduced into Lake Tahoe. Spray painting and the use of tributyltin is prohibited.
- 6) No containers of fuel, paint, or other hazardous materials shall be stored in the lakezone or shorezone.



SHEET 1 of 1	DRAWING CTA	SCALE AS NOTED	DATE JANUARY 2024	JOB SHOREZONE	REVISIONS	EXISTING/NEW MOORING BUOYS	APN:123-221-02, 03		AGAN CONSULTING CORPORATION LAND & SHOREZONE CONSULTANTS SITE EVALUATIONS • PROJECT COORDINATION • PERMIT ASSISTANCE FIRST OFFICE BOX 9100 INCLINE VILLAGE, NEVADA, 89406 1200 COUNTRY CLUB DRIVE, SUITE 100 ESCALANTE, NEVADA, 89841 TELEPHONE: (775) 835-9000 • (951) 381-1486 WWW.AGANCONSULTING.COM
						ERDMAN PROPERTY 53 SOMERS LOOP CRYSTAL BAY WASHOE COUNTY NEVADA			



FOR
REFERENCE

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF STATE LANDS

901 S. Stewart St., Ste. 5003
Carson City, Nevada 89701-5246

THE STATE OF NEVADA, acting through the Division of State Lands pursuant to NRS 321.595, NRS 322.100, and NRS 445A does hereby grant a permit to:

Permit Number: 5352

Name: Christian P. Erdman et al

Mailing Address: PO Box 1307

Crystal Bay, NV 89450

Parcel Number: 123-221-02

1. The physical address in which this facility is to be located is: 53 Somers Loop, Crystal Bay, Nevada

County: Washoe Waterway: Lake Tahoe
SEC: 30 TWP: 16 NORTH RGE: 18 EAST

2. Permittee is authorized: to anchor TWO (2) single, residential-use mooring buoys to the bed of Lake Tahoe below elevation 6223.0 feet, subject to the attached conditions and approved site plan.

3. Proof of financial responsibility in amount of: \$2,000,000.00

has been established in the following manner:

POLICY NUMBER: CPS3190538

4. Conditions for permit approval: SEE ATTACHED CONDITIONS

5. NOTICE: A permit given by the Division of State Lands does not give any property rights in real estate or material nor does it obviate the necessity of obtaining federal, local or regional assent to the work authorized.

6. NOTICE: A permit given by the Division of State Lands does not relieve the Permittee from the acquisition of all local, regional, state and federal permits and approvals as required by law.

7. NOTICE: The public shall not be denied reasonable access to or the use of any State Lands.

PERMIT TERM: (10) YEARS

Beginning: Friday, April 1, 2022

Ending: Wednesday, March 31, 2032 unless sooner terminated as provided.

ANNUAL FEE RATE: \$500.00

*See Permit Conditions for fee schedule established by NAC 322.195

Given under the hand of the Administrator of the Division of State Lands

This 6th day of April, Year 2022

Ellery Staehler
ELLERY STAHLER
Deputy Administrator
for Charles Donohue, Administrator Division of State Lands



Permit Conditions

1. The Permittee understands and agrees that this permit shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.
2. The Permittee understands and agrees that in the event any action is filed in relation to this permit, the unsuccessful party shall pay to the successful party, in addition to all sums either party may be called upon to pay, a reasonable sum for the successful party's attorney's fees. Any lawsuit brought to resolve a dispute arising from this permit must be brought either in the county where the permitted structure is located or in Carson City, Nevada.
3. The Permittee understands and agrees that the failure of the State of Nevada, acting through the Division of State Lands and the State Land Registrar, to insist upon strict performance of any of the conditions, covenants and agreements pertaining to this permit or to exercise any option herein conferred in any one or more instance, shall not be construed to be a waiver or relinquishment of any such conditions, covenants and agreements.
4. The Permittee understands and agrees that the State of Nevada, acting through the Division of State Lands and the State Land Registrar, will not waive and intends to assert all available immunities and statutory limitations in all cases, including, without limitation, the provisions of Nevada Revised Statutes Chapter 41.
5. The Permittee agrees to indemnify, defend, and hold harmless the State of Nevada and its agents from and against any and all liability, damages, losses, debts, obligations, judgments, expenses or actions, including reasonable attorneys' fees, for personal injuries, property damage, or for loss of life or property resulting from, or in any way connected with the condition or use of the premises covered herein, including any hazard, deficiency, defect or other matter, known or unknown, arising out of or in any way connected with the projects and related activities. This does not exclude the State of Nevada's right to participate in its own defense in any litigation that may arise from this authorized use.
6. The Permittee understands and agrees that the TWO (2) single, residential-use mooring buoys in Lake Tahoe below elevation 6223.0 feet must be located lakeward of APN: 123-221-02 in an area not closer than twenty (20) feet from each adjacent property line extended lakeward at a right angle to the shore according to the attached approved site plan. Per NAC 322, a mooring buoy must not be placed closer than fifty (50) feet from another buoy.
7. Per NRS 488.257, a mooring buoy must be white in color and have a horizontal blue band around the circumference of the buoy which is at least three inches in width and centered midway between the top of the buoy and the water line. A mooring buoy which is placed within an area other than an area designated by the Wildlife Commission as an anchoring or mooring area must display a quick flashing white light between sunset and sunrise. If a vessel is moored to such a buoy, only the vessel must display between sunset and sunrise a white light clearly visible in all directions.
8. The Permittee understands and agrees that no rocks or other material may be moved or relocated at or around the buoy sites.
9. The Permittee understands and agrees that the TWO (2) single, residential-use mooring buoys in Lake Tahoe below elevation 6223.0 feet must be maintained in good repair at all times.
10. The Permittee understands and agrees that at no time will the Permittee deny the general public access to the waters of Lake Tahoe in, under, and around the mooring buoys or other structures for fishing or other recreational uses.
11. The Permittee agrees to indemnify, defend, and hold harmless the State of Nevada and its agents from and against any and all liability for personal injuries, property damage, or for loss of life or property resulting from, or in any way connected with the condition or use of the premises covered herein, including any hazard, deficiency, defect or other matter, known or unknown, arising out of or in any way connected with the projects and related activities. This does not exclude the State of Nevada's right to participate in its own defense in any litigation that may arise from this authorized use.
12. The Permittee understands and agrees that the insurance coverage must remain in effect at all times as evidenced by a current and valid Certificate of Insurance and Policy Endorsement naming the State of Nevada, Division of State Lands, its officers, employees and immune contractors as defined in NRS 41.0307 provided to the Division of State Lands. If the insurance coverage expires, the Permittee shall immediately remove the mooring buoys from Lake Tahoe.
13. The Permittee understands and agrees that no other structures are permitted or allowed under this permit.
14. The Permittee understands and agrees that a permit from the State Land Registrar is required prior to commencement of any future changes, relocation or replacement of the mooring buoys as approved under this permit.

15. The Permittee understands and agrees that the Division of State Lands and the State Land Registrar are required, pursuant to NRS 322.120, to assess an annual use fee for this permit. Per the fee schedule established under NAC 322.195, the fee for this permit for TWO (2) single, residential-use buoys in Lake Tahoe below elevation 6223.0 is FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) The fee is payable on or before April 1st every year. Should NAC 322.195 be amended or updated, the Division of State Lands and the State Land Registrar reserve the right to adjust the permit fees accordingly.

FEE SCHEDULE

Commercial Mooring Buoy.....	\$350
Mooring Buoy.....	\$250
Commercial Pier.....	\$1,500
Single Use Residential Pier.....	\$750
Multiple Use Residential Pier.....	\$750
Any Other Pier.....	\$750

16. Permittee understands and agrees this navigable water permit has a TEN (10) year term and will expire and become void on March 31, 2032. Should the applicant desire to continue utilizing the structures placed upon state land beyond said expiration date, the applicant shall submit the appropriate application along with the required application fee and all required supporting documentation to the State Land Registrar for the consideration of issuing a new permit at least 90 days prior to the expiration date.

17. A mooring registration tag issued by the Tahoe Regional Planning Agency shall be affixed and visible on the authorized buoys at all times.

18. The Permittee understands and agrees that the State Land Registrar may cancel a permit for failure of the holder to comply with NAC 322 or with any condition under which the permit was granted. Failure to concur with or comply with any of the conditions contained herein will cause this permit to become invalid and require the immediate removal of the TWO (2) single, residential-use buoys.

19. The Permittee understands and agrees that the buoys authorized under this permit will conform with the placement depicted on the Final Site Plans approved on January 21, 2022, and on file in the office of the Division of State Lands and are incorporated hereto and hereby included in this authorization.

20. This permit replaces permit number 5128, which authorized ONE (1) single, residential-use mooring buoy, and was in effect from March 6, 2020 until March 5, 2030. The Permittee understands and agrees that the following conditions apply to the installation of ONE (1) new mooring buoy which will conform to the approved site plan.

21. Best Management Practices (BMPs) shall be applied and precautions shall be taken: to prevent and control releases of: debris, sediment, any transport of sediments, and to prevent and control turbidity in the Lake during the project activities. BMP's applicable to buoy installations and relocations, shall be utilized at the project areas in accordance with plans submitted to and approved by NDSL.

22. Disturbance to the lake bed shall be kept to a minimum.

23. There shall be no discharge of substances that would cause a violation of water quality standards of Lake Tahoe or the State of Nevada.

24. Any heavy equipment (barge, crane, etc.) to be used in the lake and shorezone areas must be steam cleaned at least once before working in Lake Tahoe or adjacent areas. All equipment shall be cleaned to ensure no contamination of invasive species (i.e. quagga mussels). All equipment shall be inspected for leaks daily prior to use. All leaks shall be repaired immediately. All equipment fueling and storage of fuels shall be conducted offsite and at least 200 feet away from the Lake.

25. If a visible sediment plume or hydrocarbon sheen results from project activities, the work shall cease and NDSL shall be notified as soon as practicable of any release. All hydrocarbon sheens or releases shall be reported to the NDEP Spill Reporting Hotline within 24 hours of occurrence at 1-888-331-6337.

Project 2028 / 2029

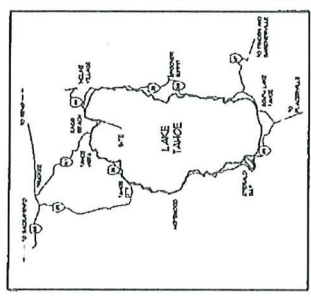
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LAND & SHOREZONE CONSULTANTS
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APR. 12-21-02, 03
BUCK / ERDMAN PROPERTIES
53 / 59 SCHMERS LOOP
WASHOE COUNTY
NEVADA

RESIDENTIAL FENCE PROJECT
CRYSTAL BAY
WASHOE COUNTY
NEVADA

PROJECT	CRYSTAL BAY
DATE	APR. 12-21-02, 03
SCALE	AS SHOWN
BY	AGAN CONSULTING CORPORATION
CHECKED BY	AGAN CONSULTING CORPORATION
APPROVED BY	AGAN CONSULTING CORPORATION
DATE	APR. 12-21-02, 03

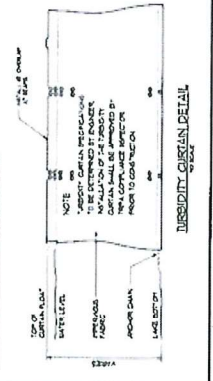
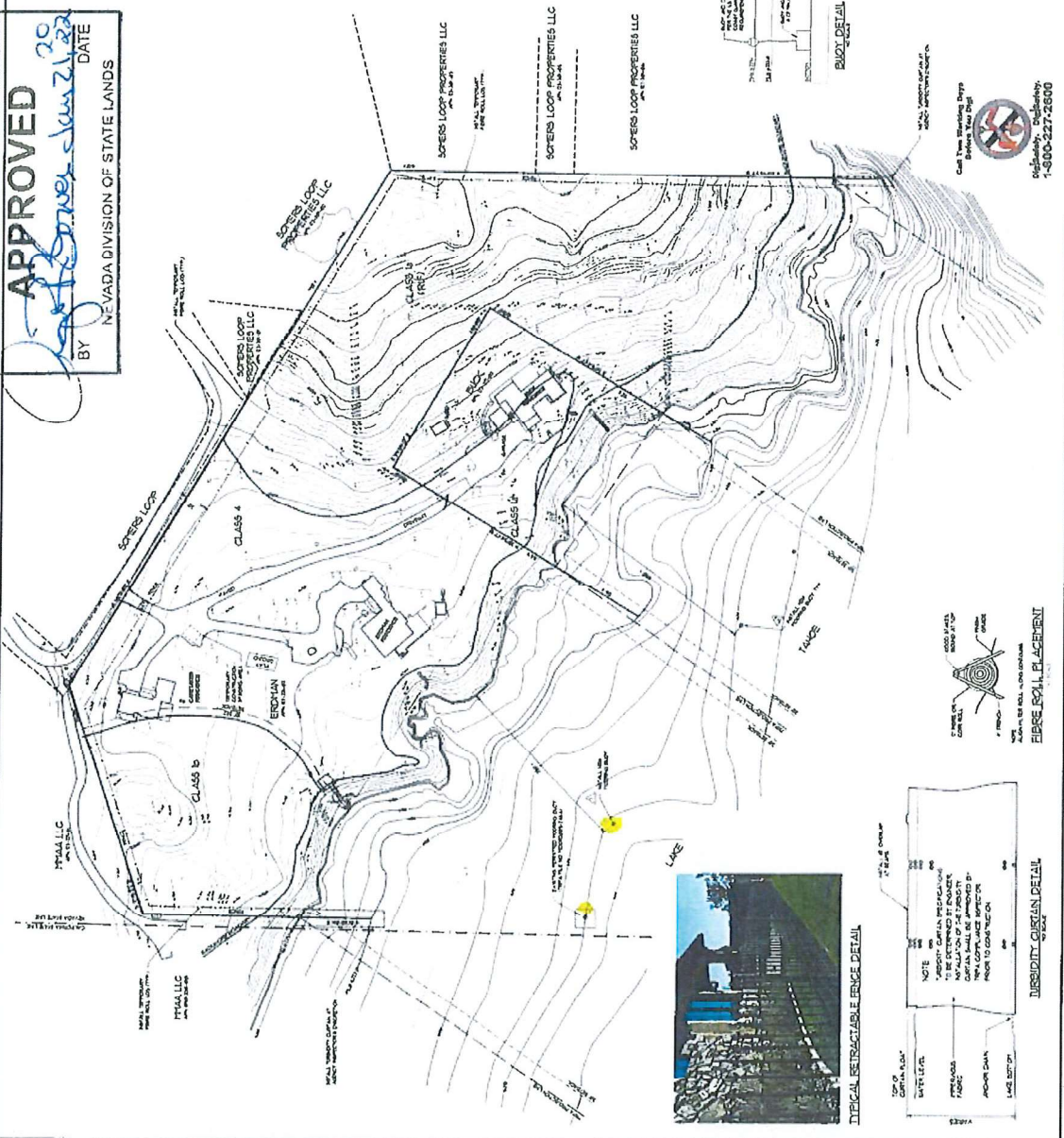


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PROJECT	CRYSTAL BAY
DATE	APR. 12-21-02, 03
SCALE	AS SHOWN
BY	AGAN CONSULTING CORPORATION
CHECKED BY	AGAN CONSULTING CORPORATION
APPROVED BY	AGAN CONSULTING CORPORATION
DATE	APR. 12-21-02, 03

APPROVED
BY [Signature]
DATE 2/22/20
NEVADA DIVISION OF STATE LANDS



1-800-227-2600

Assessor's Map Number

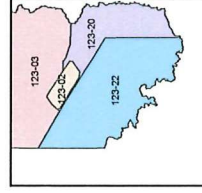
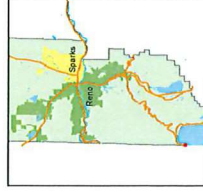
123-22

STATE OF NEVADA
WASHOE COUNTY
ASSESSOR'S OFFICE
Joshua G. Wilson, Assessor
1001 East Ninth Street
Building 1000
Reno, NV 89512
(775) 328-2331



0 50 100 150 200
Feet

1 inch = 200 feet



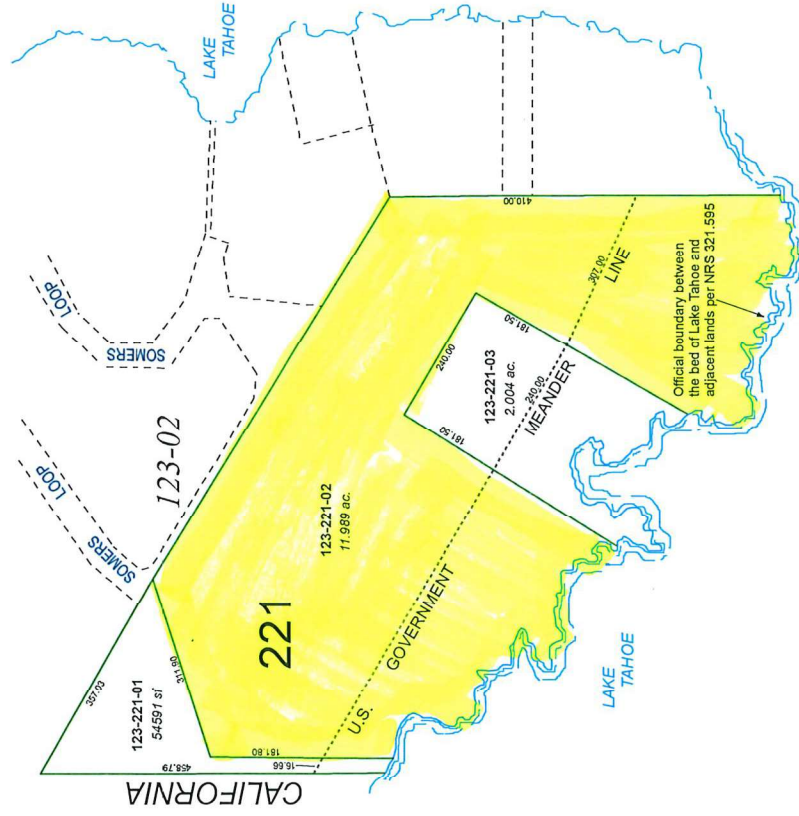
created by: CFB 05/26/2010

last updated: CFB 09/22/2014

area previously shown on map(s)
123-02

NOTE: This map was prepared for the use of the Washoe County Assessor's Office and is for illustrative purposes only. It does not represent a survey of the premises. No liability is assumed as to the sufficiency or accuracy of the data contained herein.

**PORTION OF THE E 1/2 SECTION 30
T16N - R18E**



**FOR
REFERENCE**

APN: 123-221-02


After recording, return Quitclaim Deed
and mail future property tax statements to:

Christian Pardee Erdman, Trustee
Christian Pardee Erdman Revocable Trust
P.O. Box 1307
Crystal Bay, Nevada 89402

DOC #5408613

09/27/2023 12:26:31 PM
Electronic Recording Requested By
MAUPIN COX & LEGOY
Washoe County Recorder
Kalie M. Work
Fee: \$43.00 RPTT: \$0
Page 1 of 3

The undersigned hereby affirms that this document submitted for
recording does not contain the social security number of any person or
persons per N.R.S. 239B.030.


Signature of Declarant or Agent

QUITCLAIM DEED

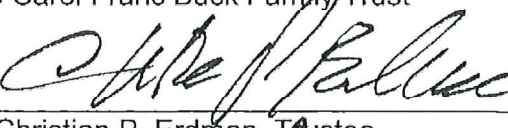
Without consideration, Christian P. Erdman, as Trustee under The Carol Franc Buck Family Trust Agreement (As Restated) dated August 25, 2004, and Christian P. Erdman, a married man dealing with his separate property, hereby quitclaim to Christian Pardee Erdman, Trustee of the Christian Pardee Erdman Revocable Trust under agreement dated November 4, 2022, all of their right, title, and interest in the real property situated in the County of Washoe, State of Nevada, and more specifically described on "Exhibit A" attached hereto and incorporated herein by this reference.

Together with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: 27 Sept, 2023

The Carol Franc Buck Family Trust

By


Christian P. Erdman, Trustee

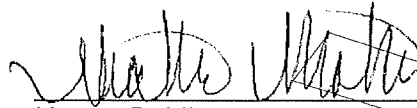

Christian P. Erdman

FOR
REFERENCE

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This Quitclaim Deed was acknowledged before me on 9/27, 2023,
by Christian P. Erdman, both in his individual capacity and as Trustee of The Carol Franc
Buck Family Trust.




Notary Public

COPY

EXHIBIT A

[Legal Description]

BEGINNING at a point on the state line between California and Nevada, said point being South 1952.16 feet from the Northerly boundary of Section 30, Township 16 North of Range 18 East, M.D.B.&M., and North 224.55 feet from the 191st mile post on said state line; then Southerly and along said state line 459.55 feet to the meander line of Lake Tahoe; thence Southerly 60° East and along said meander line of Lake Tahoe, 811 feet, thence Southerly 65° East 307 feet to a point on said meander line; thence North 410 feet; then North 59°11' West 1140 feet to the point of beginning; said premises being a portion of what is designated as Lots 2 and 11 of Section 30, Township 16 North, Range 18 East, M.D.B.&M.

EXCEPTING THEREFROM that portion conveyed by Deed recorded December 7, 1962, Document No. 373043, Deed Records.

ALSO EXCEPTING THEREFROM that portion conveyed by Deed recorded January 15, 1938, Book 112, Page 580, Deed Records.

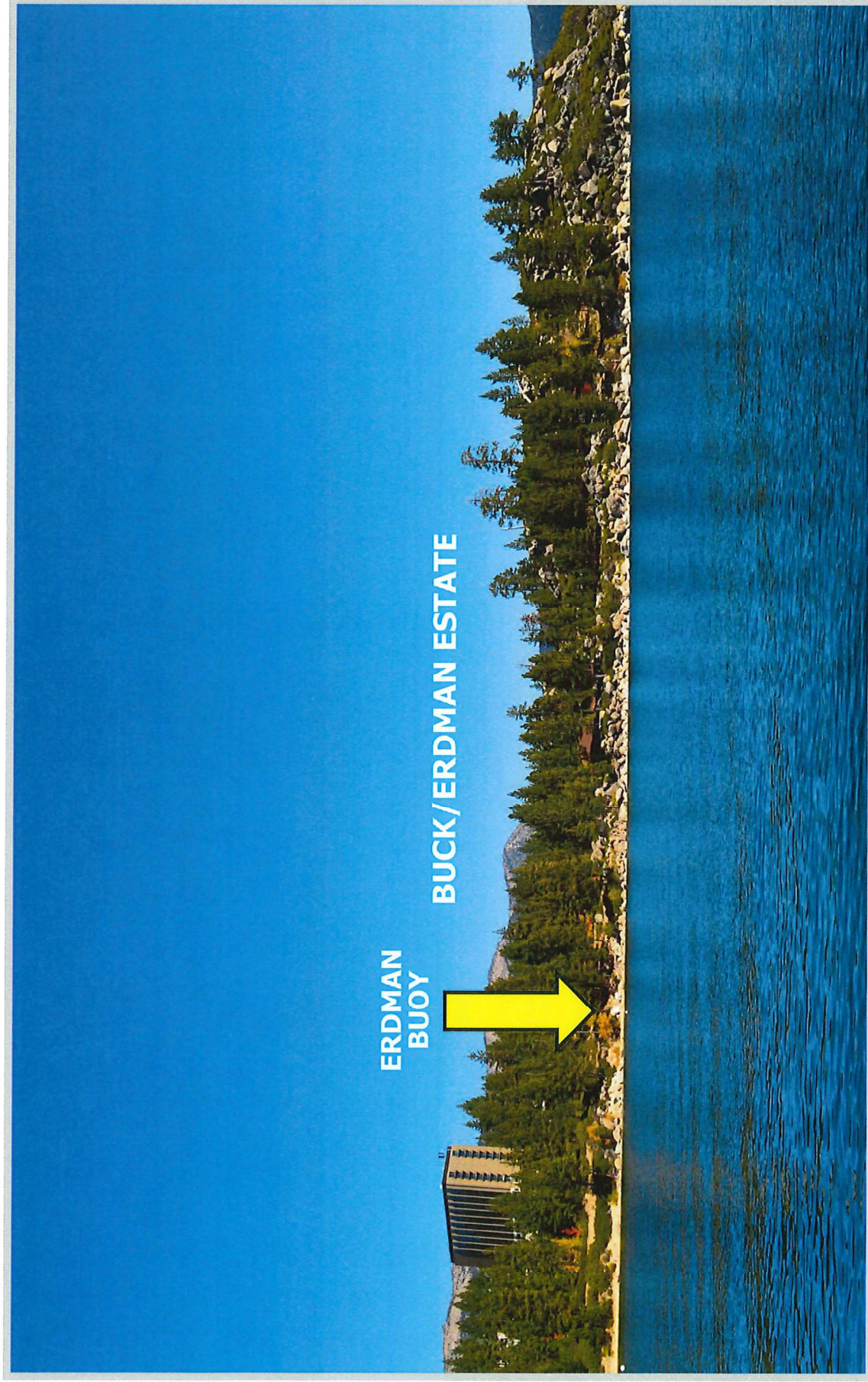
ALSO EXCEPTING THEREFROM any portion lying within the State of California.

FURTHER EXCEPTING any portion of the above described property lying within the bed of Lake Tahoe below the line of natural ordinary high water and also excepting any artificial accretions to said land waterward of said land of natural ordinary high water, or if lake level has been artificially lowered, excepting any portion below such elevation as may be established as the boundary by boundary line agreement with the state or by quiet title action in which the state is a party.

Assessor's Parcel Number 123-221-02

Street Address: 53 Somers Loop, Crystal Bay, Nevada 89402

(The above legal description was contained in the Quitclaim Deed dated November 20, 1996, recorded as Document Number 2054626 in the official records of the Washoe County Recorder on December 9, 1996.)



VIEWING NORTHEASTERLY AT SUBJECT ESTATE

EXISTING CONDITIONS

BUCK/ERDMAN PROPERTIES

Nationwide Permit 10 - Mooring Buoys

Effective Date: February 25, 2022; Expiration Date: March 14, 2026
(NWP Final Notice, 86 FR 73522)

Nationwide Permit 10 - Mooring Buoys. Non-commercial, single-boat, mooring buoys.
(Authority: Section 10)

2021 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 NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. **Suitable Material**. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
7. **Water Supply Intakes**. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. **Adverse Effects From Impoundments**. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. **Management of Water Flows**. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. **Fills Within 100-Year Floodplains**. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. **Equipment**. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. **Soil Erosion and Sediment Controls**. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary

high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

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

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

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

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

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

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

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

18. **Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered

species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or 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 <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

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

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

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

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

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district

engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2021 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 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.

2021 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).

2021 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 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 NWP, 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)).

ADDITIONAL INFORMATION

Information about the U.S. Army Corps of Engineers Regulatory Program, including nationwide permits, may also be accessed at

<http://www.swt.usace.army.mil/Missions/Regulatory.aspx> or
<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>