MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application

This document constitutes the Environmental Assessment, 404(b)(1) Guidelines Evaluation, as applicable, Public Interest Review, and Statement of Findings for the subject application.

Note: The U.S. Coast Guard (USCG) as lead federal agency for the project and has prepared an Environmental Assessment (EA) for the project, in regards to their authority under the General Bridge Act of 1946 (33 U.S.C. 525 et seq.), titled; *FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project,* dated August 14, 2019.

1.0 Introduction and Overview: Information about the proposal subject to one or more of the Corps' regulatory authorities is provided in Section 1, detailed evaluation of the activity is found in Sections 2 through 11 and findings are documented in Section 12 of this memorandum. Further, summary information about the activity including administrative history of actions taken during project evaluation is attached (ORM2 Summary) and incorporated in this memorandum.

1.1 Applicant: Burlington Northern Santa Fe Railway Company (BNSF)

1.2 Activity location: The proposed project would be located on Sand Creek, Lake Pend Oreille, and adjacent wetlands, within Sections 15, 22, 23, 25, 26, 27, and 36, of Township 57 North, Range 2 West, near latitude 48.261554° N and longitude –116.532741° W, in Bonner County, Sandpoint, Idaho.

1.3 Description of activity requiring a Department of the Army (DA) permit:
The permanent discharge of 11,220 cubic yards of rock into 0.88 acre of Sand Creek and Lake Pend Oreille, and 0.28 acres of adjacent wetlands; and the temporary discharge of 3,680 cubic yards of rock into 0.38 acres of open water in Sand Creek and Lake Pend Oreille. The discharges of fill material are associated with the construction of a 2.2-mile-long second mainline track west of the existing BNSF mainline to connect the North Algoma Siding track (MP 5.1) south of Sandpoint, to the Sandpoint Junction switch (MP 2.9), where the BNSF and the Montana Rail Link (MRL) mainlines converge in Sandpoint:

- 0.29-acre permanent fill in Lake Pend Oreille along the lakeshore edge at the south end of the project where the new track will connect to the existing BNSF Algoma Siding north switch.

- 0.01-acre permanent fill and 0.03-acre of temporary fill in Lake Pend Oreille at the south end of Bridge 3.9 to accommodate the transition from the bridges to the existing upland grade.
- 0.57-acre of permanent fill and 0.30-acre temporary fill in Lake Pend Oreille at the north end of the Bridge 3.9 to accommodate the transition from bridges to the existing upland grade. This fill will essentially match the length of the existing fill on which the existing BNSF mainline is built.
- 0.05-acre temporary fill from construction activities to install the Bridge 3.1 upland pilings along the water line north of the navigation channel.
- 0.01-acre permanent fill in Sand Creek at the south end of Bridge 3.1 to accommodate the transition from bridge to new rail grade.
- 0.28-acre of permanent wetland fill at the south end of Bridge 3.1 between the existing rail grade and the multi-use pedestrian path.

A DA permit under Section 404 of the Clean Water Act (33 U.S.C. 1344) is required for the discharge of dredged or fill material into waters of the United States (U.S.), including wetlands associated with bridges and causeways.

The DA also has the authority to issue permits under Section 10 of the Rivers & Harbors Act of 1899 (33 U.S.C. 403) for the discharge of fill material into navigable waters of the U.S. A DA permit is required for work or structures, except bridges and causeways, waterward of the ordinary high water mark located in or over navigable waters of the United States, including the excavation, dredging or deposition of material in navigable waters, or any alteration obstructing or affecting the course, location, condition, or capacity of the navigable waterway. The only portion of this project that requires Section 10 authorization is the discharge of fill material at the south end of the project near Mile Post 5.1.

The project will also involve the construction of two permanent and two temporary work bridges in navigable waters of the U.S. All work and structures associated with the bridges fall under the regulatory authority of the U.S. Coast Guard (USCG). The USCG has the authority to issue or deny permits for bridges and causeways in or over navigable waters of the United States under the General Bridge Act of 1946 (33 U.S.C. 525 et seq.). The Coast Guard permits the location and plans of bridges and causeways and imposes any necessary conditions relating to the construction, maintenance, and operation of these bridges in the interest of public navigation. A bridge permit is the written approval of the location and plans of the bridge or causeway to be constructed or modified across a navigable waterway of the United States.

**See attachment A detailing the federal regulatory authorities of the project.*

1.3.1 Proposed avoidance and minimization measures:
During the pre-application phase the applicant was able to modify its plans and utilize different construction methods to reduce project impacts by 0.17 acre of temporary nearshore fill and 1.97 acres of permanent nearshore fill in Lake Pend Oreille and Sand Creek.
To ensure temporary impacts are reduced to the maximum extent, a project-specific Water Quality Monitoring and Protection Plan (WQMPP) and a Storm Water Pollution Prevention Plan (SWPPP) have been prepared, and will be implemented, for the project. The discharge of fill material, and associated construction activities, in nearshore locations and wetlands will occur at the earliest stages of the project to take advantage of performing that work while lake levels are lower and wetland areas are relatively dry. A Temporary Erosion and Sediment Control Plan and BMPs would be installed to reduce erosion from exposed soils and maintained throughout the Project construction to ensure effectiveness.

1.3.2 Proposed compensatory mitigation:
The applicant proposed to purchase 8.87 functional units from the Valencia Wetland Mitigation bank to offset unavoidable impacts to waters of the U.S.
**See section 8 for a more detailed description of proposed compensatory mitigation.*

1.4 Existing conditions and any applicable project history:
The proposed project will occur within existing BNSF owned right of way, directly abutting existing fills associated with the existing mainline tracks. The current track configuration includes two mainline tracks that switch to a single track from the north end of the Algoma Siding (Algoma Switch), through the bridges over Lake Pend Oreille, Sand Creek and Bridge Street, and up to the Sandpoint Junction of the BNSF Main line and Montana Rail link Main line, just north of the Sandpoint Amtrak Station.

1.5 Permit Authority: Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act (33 USC 403).
Note: The only portion of this project that requires Section 10 authorization is the discharge of fill material at the south end of the project near Mile Post 5.1.

2.0 Scope of review for National Environmental Policy Act (i.e. scope of analysis), Section 7 of the Endangered Species Act (i.e. action area), and Section 106 of the National Historic Preservation Act (i.e. permit area)

2.1 Determination of scope of analysis for National Environmental Policy Act (NEPA):

The scope of analysis includes the specific activity requiring a Department of the Army permit. Other portions of the entire project are not included because the

Corps does not have sufficient control and responsibility to warrant federal review.

Final description of scope of analysis: The Corps NEPA scope of analysis includes the discharge of fill material within waters of the U.S.
See attachment B detailing areas of the project within the Corps scope of analysis.

The U.S. Coast Guard (USCG) as lead federal agency for the project and has prepared an EA for the project titled, *FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project,* dated August 14, 2019. The USCG's NEPA scope of analysis includes areas and activities outside of the Corps scope related to its respective regulatory authority.

2.2 Determination of the "Corps action area" for Section 7 of the Endangered Species Act (ESA): The action area for this project includes all work within waters of the United States related to the discharge of fill material.
Note: The USCG has determined the ESA action area for the project in its role as lead federal agency. The Corps action area is within the USCG determined action area for the project.

2.3 Determination of permit area for Section 106 of the National Historic Preservation Act (NHPA):

The permit area includes those areas comprising waters of the United States that will be directly affected by the proposed work or structures , as well as activities outside of waters of the U.S. because all three tests identified in 33 CFR 325, Appendix C(g)(1) have been met.

Final description of the permit area: The permit area includes all work in waters of the U.S., including wetlands, and those upland areas directly related to the discharge of fill material.
Note: The USCG has determined the APE for the project in its role as lead federal agency. The Corps permit area is within the USCG determined APE.

3.0 Purpose and Need

3.1 Purpose and need for the project as provided by the applicant and reviewed by the Corps:
The purpose of the project is to reduce the delay of freight and passenger rail traffic on the BNSF interstate mainline by constructing a second mainline track

connection between its Algoma Siding track south of Lake Pend Oreille (BNSF MP 5.1+/-) and the Sandpoint Junction (MP 2.9+/-), where BNSF and the Montana Rail Link (MRL) main line tracks join.

The project need is based on continued growth of freight rail service demands in the northern tier high volume traffic corridor between the Midwest (Chicago Terminus) and the West Coast. The single main line and portions of the over-water rail bridges date from the early 1900's. Rail traffic volumes have risen steadily for the past three decades resulting in this portion of the interstate main line becoming a constraint to interstate commerce in the region. This project will relieve congestion of rail traffic, and reduce hold times on sidings and wait times at grade crossings both locally and regionally.

For further information related to the need for the project refer to Section 1.2 of the USCG EA for the project titled; FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project, dated August 14, 2019.

3.2 Basic project purpose, as determined by the Corps: Reduce rail traffic delays on BNSF interstate mainline.

3.3 Water dependency determination: The activity does not require access or proximity to or siting within a special aquatic site to fulfill its basic purpose. Therefore, the activity is not water dependent. The construction and use of a second main line rail track does not require being sited within a special aquatic site to meet its basic purpose.

3.4 Overall project purpose, as determined by the Corps: Reduce the delay of freight and passenger rail traffic on the BNSF freight rail system between its Algoma main line track south of Sandpoint (BNSF MP 5.1) and the Sandpoint Junction (MP 2.9), where BNSF and the MRL main line tracks converge just north of the Sandpoint Amtrak Station.

4.0 Coordination

4.1 The results of coordinating the proposal on Public Notice (PN) are identified below, including a summary of issues raised, any applicant response and the Corps' evaluation of concerns.

The public notice for the project was issued on February 26, 2018 and was set to end on March 28, 2018. In response to numerous requests for an extension, the public comment period was extended an additional 30 days beyond the originally published closing date, per 33 CFR 325.2(d)(2), and closed on April 30, 2018.

Were comments received in response to the PN? Yes, approximately 3,700 comments were received in response to the PN.

Were comments forwarded to the applicant for response? Yes

Was a public meeting and/or hearing requested and, if so, was one conducted? Yes, a public meeting/hearing was requested but was not held by the Corps. Both the Idaho Department of Lands and the US Coast Guard held public meetings for the project. The Corps attended these meetings in support of the State and the USCG's processes.

Comments received in response to public notice:
Due the large volume of comments received, and that a large number of those comments were repeat form submissions, the comments received have been compiled, paraphrased, and grouped in the following comment categories.

Comment: *Rail Traffic*
Comments were received assuming that the proposed project would increase train capacity of the BNSF main line, requesting discussion of the magnitude of potential rail traffic increases, and the environmental effects analysis considering the alleged rail traffic increases. Some of the comments reference the future rail traffic projections for Idaho's rail network projected by the Idaho Transportation Department (ITD) and presented in the Idaho State Rail Plan. Others reference future rail traffic projection methods used to evaluate potential environmental effects from other unrelated rail projects.

Applicant's Response:
Additional detail was added to the discussion on train capacity on the main line through Sandpoint and across LPO in Section 1.2 (Purpose and Need) of the USCG EA for the project titled; *FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project,* dated August 14, 2019 (Final EA). The added discussion clarifies that this Project does not add any origin or destination facilities; therefore, it would not drive increases or decreases in rail traffic, but instead is designed to increase efficiency of movement by rail. The factors driving a continued increase in train traffic in the study area will exist with or without construction of a second main line track and associated bridges. Adding a second main line track along this segment would not increase capacity of the rail line because there are other constraints on the main lines leading into the Sandpoint and Lake Pend Oreille (LPO) area. The ITD's future rail traffic projection is now discussed in this section. The Final EA continues to acknowledge the trend observed over the past 30 year of increasing train traffic and the reasonable expectation that this trend would continue; however, rail traffic projection methods used in evaluating the potential environmental effects

of the other projects mentioned by commenters are not applicable to this Project because, unlike the other projects referenced, this Project would not result in any new freight or passenger origins or destinations along the rail line.

Corps Evaluation:
Per Paragraph 7 of Appendix B to 33 CFR Part 325 and USACE Regulatory Guidance Letter 88-13, the Corps scope of analysis is limited to impacts directly related to construction of the regulated activity within the permit area. Use and day to day operations of the proposed second mainline track after completion of the regulated construction activities are outside of the Corps scope of analysis.

Comment: *Air Quality*
Comments raised concerns regarding potential air quality impacts, and called for a quantitative air emissions analysis to be performed for both the construction and operation phases of the Project.

Applicant's Response:
An operational air emissions analysis was determined to not be required because the Project would not modify train traffic volumes (see the rail traffic topic above) and a transportation conformity analysis for construction is not required because the study area is located within a limited PM10 maintenance area. However, due to the anticipated construction duration and public concern, a conformity analysis for construction was conducted and found the total annual emissions of PM10 associated with project construction would be below allowable de minimis thresholds. The results of this analysis have been added to USCG Final EA in Section 3.1 (Air Quality).

Corps Evaluation:
The Corps scope of analysis is limited to impacts directly related to construction of the regulated activity within the permit area. Emissions related to construction of the project within the Corps regulatory authority would be negligible. Air emissions related to the operations of the BNSF railway are outside of the Corps scope of analysis.

Comment: *Climate Change*
Comments were received regarding potential climate change impacts related to the continued operation of the BNSF main rail line resulting in increased fossil fuel use and transportation.

Applicant's Response:
Verbiage related to this has been added to the USCG Final EA, Section 3.1 (Air Quality).

Corps Evaluation: *See section 7.1.1*

Comment: *Fugitive Coal Dust*
Comments were received related to potential impacts from fugitive coal dust emissions from trains.

Applicant's Response:
Discussion and references related to the topic of fugitive coal dust are detailed in the USCG Final EA Section 3.1.

Corps Evaluation:
Potential impacts related to the operations of the BNSF railway are outside of the Corps scope of analysis.

Comment: *ESA Compliance*
Comments were received claiming that the analysis of the potential effects to bull trout, in the biological assessment for the project, was incomplete or inadequate for various reasons and that conclusions regarding these effects were unsupported because consultation under Section 7 of the Endangered Species Act had not been completed.

Applicant's Response:
Consultation with the U.S. Fish and Wildlife Service has now been completed, and the U.S. Fish and Wildlife Service has issued a Biological Opinion for the Project that determined the Project will not jeopardize the survival and recovery of bull trout or adversely modify its designated critical habitat. Reference to the Biological Opinion has been added to the USCG Final EA, Section 3.8 (Endangered Species Act-Listed Species and Critical Habitat), and the complete Biological Opinion has been provided in the Final EA's Appendix F.

Corps Evaluation: *See section 10.1*

Comment: *Roadway Vehicle Traffic Impacts*
Comments were received, related to general roadway vehicle traffic circulation, identified concerns over road closures and access to specific parts of town during Project construction and potential increases in local traffic volumes in Sandpoint during construction.

Applicant's Response:
A discussion of estimated delivery truck trips and construction worker commute trips was added to the USCG Final EA, Section 3.15 (Traffic) along with statements about road closure coordination and local street use with the City of Sandpoint.

Corps Evaluation:
The Corps scope of analysis is limited to impacts directly related to construction of the regulated activity within the permit area. Anticipated traffic impacts associated with construction of the regulated activity are expected to be minor and temporary.

Comment: *Migratory Birds*
Concerns were raised by commenters about the level of review and evaluation of potential effects to bald eagles, osprey, and other predatory birds.

Applicant's Response:
Migratory birds are addressed in the USCG Final EA, Section 3.7 (Fish and Wildlife).

Corps Evaluation:
Migratory birds may be temporarily disturbed due to construction related noise. The project occurs along an existing rail bridge and near a local highway. The additional noise and disturbance generated by construction of the regulated activity is expected to have extremely minor impacts due to these urbanized surroundings.

Comment: *Navigation*
Comments were received concerning the potential effects to navigation associated with the design and construction of the temporary and permanent bridges, specifically due to the alignment of the existing and new bridge piers, changes in surface water currents and turbulence, changes in sediment transport and shoaling patterns, and anticipated vessel traffic during construction.

Applicant's Response:
A bridge permit application was submitted to the USCG and potential effects to navigation were evaluated under that review process. USCG's statement that the current Bridge 3.1 and 3.9 designs meet the reasonable needs of navigation has been added to the USCG Final EA and cited. Additional information has been added to Section 3.2 (Geology, Soils, and Topography) of the USCG Final EA related to potential changes to surface water currents and turbulence and potential changes in sediment transport associated with new bridge piers.

Corps Evaluation:
The discharges of fill material associated with the project will not extend past the line of navigation and will have negligible impacts to sediment transportation in Sand Creek and Lake Pend Oreille.

Comment: *Potential Derailments and Spills*
Many comments focused on the risk of hazardous materials spills associated with potential train derailments occurring in the project area, particularly over Lake Pend Oreille. Questions were raised related to what BNSF does to ensure safe operations and prevent derailments and what the response strategies would be for different kinds of potential spills, including oil spills and contaminant spills that may be denser than water or even water soluble, considering the range of weather conditions experienced in the Lake Pend Oreille region.

Applicant's Response:
Clarification and additional detail have been added to the discussion of the single versus double track main line configuration train capacity in the USCG Final EA Section 1.0 (Introduction). The Federal Railroad Administration accident statistics and additional detail regarding BNSF's approach to preventing derailments have been added to Section 3.14 (Hazardous Materials and Wastes) to further characterize derailment risk. Additional details regarding spill response planning for different types of spills under different weather conditions have been added to Section 3.14.

Corps Evaluation:
Issues directly related to the operations of the BNSF railway are outside of the Corps scope of analysis.

Comment: *Support for the project*
Comments were received voicing support for the project due to potential benefits to the economy of the Northwest, and requesting the Corps swift approval of a permit for the project.

Applicant's Response: N/A

Corps Evaluation: N/A

4.2 Were additional issues raised by the Corps including any as a result of coordination with other Corps offices? No

4.3 Were comments raised that do not require further discussion because they address activities and/or effects outside of the Corps' purview? Yes, comments outside of the Corps' scope have been included above in section 4.1.

5.0 Alternatives Analysis (33 CFR Part 325 Appendix B(7), 40 CFR 230.5(c) and 40 CFR 1502.14). An evaluation of alternatives is required under NEPA for all

jurisdictional activities. An evaluation of alternatives is required under the Section 404(b) (1) Guidelines for projects that include the discharge of dredged or fill material. NEPA requires discussion of a reasonable range of alternatives, including the no action alternative, and the effects of those alternatives; under the Guidelines, practicability of alternatives is taken into consideration and no alternative may be permitted if there is a less environmentally damaging practicable alternative.

5.1 Site selection/screening criteria: In order to be practicable, an alternative must be available, achieve the overall project purpose (as defined by the Corps), and be feasible when considering cost, logistics and existing technology.

Criteria for evaluating alternatives as evaluated and determined by the Corps: Alternatives must ensure impacts to aquatic resources are minimized to the maximum extent practicable while still meeting the applicant's project purpose and need. In order to meet the applicant's purpose and need, the alternative must reduce the delay of freight and passenger rail traffic on the BNSF interstate mainline while maintaining rail safety.

5.2 Description of alternatives

5.2.1 No action alternative: Under the No Action Alternative, the current track configuration would stay the same (two main line tracks that switch to a single main line track through Sandpoint and over the Sand Creek and LPO bridges). This includes continued, ongoing inspection and maintenance of the single track, bridges, and associated infrastructure in compliance with the 1995 Interstate Commerce Commission Termination Act and the 1970 Federal Railroad Safety Act.

The No Action Alternative is projected to result in continued and increased levels of trains waiting on the main line, on existing sidings, and in rail yards, with associated continued and increased idling emissions and noise at locations where trains wait for clearance as well as increased time to clear trains from local and regional at-grade crossings. Rail traffic in this corridor has increased as a result of population growth, changing market conditions, and the corresponding increase in the demand for freight, a general trend that will likely continue over time.

Analysis: The No Action Alternative does not meet the purpose or need of the Project and does not address specific conditions that currently result in delays to passenger and freight service or delays of traffic at local and regional road crossings.

5.2.2 Off-site alternatives

Off-site alternative 1: This alternative includes shifting BNSF traffic to tracks owned by other railroads. Shifting large rail traffic volume to another railroad assumes that another local competing railroad, (i.e., Union Pacific Railroad (UPRR)) is interested in allowing BNSF trains to utilize its corridor. Such a proposal would likely result in disruption to the current competing railroad operations and to preserve UPRR's current and future operations, a new main line track would be needed adjacent to the existing UPRR main line. This may require construction of approximately 32 miles of new main line track along the existing UPRR main line, between a point north of Sandpoint, where the BNSF and UPRR main lines run closely together, to a close running point near Athol, Idaho, where another separate connection between the two competing railroads could be created.

Analysis: This alternative would not be practicable due to economic feasibility. BNSF is not guaranteed sufficient rail capacity on the UPRR line. At an estimated average cost of $6 million per rail mile, the cost of constructing 32 miles of new main line track adjacent to the UPRR main line would be nearly twice the cost of constructing a new main line track adjacent to the existing BNSF main line. After factoring in the additional cost of purchasing real estate and negotiating an agreement with another railroad, the total cost becomes economically impractical and would impose an unreasonable cost on rail customers. For these reasons, shifting rail traffic to another railroad is not a viable business option and is considered economically infeasible.

This alternative also results in larger environmental impacts than the applicant's preferred alternative. Developing up to 32 miles of new main line track along the existing UPRR main line would require a substantial amount of property (as much as 770 acres), resulting in social and environmental impacts that far exceed those of the proposed project. Based upon a 100-foot ROW containing 53 acres of jurisdictional waters, aquatic impacts are estimated between 13 and 18 acres (representing 25 to 33 percent of waters of the U.S. within the ROW).

Off-site alternative 2: This alternative includes developing a new alternate route for the BNSF railroad that would consist of property acquisition to accommodate a new 100-foot ROW to meet up with the existing track configuration.

Analysis: This alternative would not be practicable due to economic and technical feasibility. The cost to construct an entirely new route would far exceed

the cost of an alternative that utilizes an existing rail corridor and is considered economically infeasible. Large tracts of property to build new tracks outside the BNSF transportation corridor are not available. In addition, available property may be further constrained by track grade requirements, which cannot exceed 1 percent, making this alternative infeasible from a technical perspective.

This alternative also would result in larger environmental impacts than the applicant's preferred alternative. Developing a new ROW for an alternate route would require acquisition of a substantial amount of private property. A crossing of the Pend Oreille River and several other waterways would be required and would occur outside an existing transportation corridor, presumably resulting in even more acres of aquatic impacts than off-site alternative 1.

5.2.3 On-site alternatives

On-site alternative 1 (applicant's preferred alternative): This alternative involves the construction of an approximately 2.2-mile-long second main line track west of the existing BNSF main line to connect the Algoma main line track (MP 5.1) south of Sandpoint, to the Sandpoint Junction switch (MP 2.9), where the BNSF and the MRL main lines converge in Sandpoint. Approximately 0.5 mile of rail grade was already constructed at the time of the US 95 Sandpoint Bypass Project on the west side of the existing tracks and will be utilized by this alternative. Impacts to waters of the U.S. would include 0.88 acre of permanent and 0.38 acre of temporary nearshore fill below the ordinary high water mark (OHWM) elevation of 2,062.50 feet, associated with bridge abutments and the south switch and 0.28 acre of wetland fill in one location between the rail grade and the multiuse public pathway south of Bridge 3.1 (see section 1.3 for detailed project description).

Analysis: This alternative is considered practicable and fits the overall project purpose.

On-site alternative 2: This alternative considers the location of the new second mainline track on the east side of the existing main line. Track designs would remain generally the same as the applicant's preferred alternative including constructing a new bridge over LPO east of the existing rail bridge (Bridge 3.9). This alternative would require substantially more nearshore fills than what is required for the applicant's preferred alternative. Providing an equivalent area for a rail grade on the east side of the existing tracks would require approximately 2.9 acres of permanent nearshore fill from Bridge 3.1 (Sand Creek) to Bridge 3.9 (LPO). An estimated 1.2 acres of additional nearshore fill would also be needed for an adequate staging area. A large barge landing area for staging access, would result in both lake-bottom dredging and adjacent fill of up to 2 acres.

Analysis: This alternative is considered practicable and fits the overall project purpose. However, it would result it much larger permanent and temporary impacts to waters of the U.S.

On-site alternative 3: This alternative represents a design modification to extend the north end of the proposed new bridge (Bridge 3.9) to the upland area to eliminate all permanent nearshore fills to this area.

Analysis: This alternative would not be practicable due to rail safety and security concerns associated with having a structure under which public access would be difficult to control. This design alternative allows for the potential for camping and campfires, as well as boats mooring, underneath the rail line/bridge. These potential trespass activities represent safety and security risks to the railroad, its infrastructure, and the public.

5.3 Evaluate alternatives and whether or not each is practicable under the Guidelines or reasonable under NEPA: On-site alternatives 1 and 2 are considered practicable. The off-site alternatives and on-site alternative 3 are considered to not be practicable due to feasibility issues, and the no action alternative would not meet the overall project purpose.

5.4 Least environmentally damaging practicable alternative under the 404(b)(1) Guidelines (if applicable) and the environmentally preferable alternative under NEPA: On-site alternative 1 represents the least damaging/environmentally preferred alternative. Between the two alternatives considered to be practicable, on-site alternative 1 would result in the least temporary and permanent impacts to waters of the U.S.

6.0 Evaluation for Compliance with the Section 404(b)(1) Guidelines. The following sequence of evaluation is consistent with 40 CFR 230.5

6.1 Practicable alternatives to the proposed discharge consistent with 40 CFR 230.5(c) are evaluated in Section 5. The statements below summarize the analysis of alternatives.

In summary, based on the analysis in Section 5.0 above, the no-action alternative, which would not involve discharge into waters, is not practicable.

For those projects that would discharge into a special aquatic site and are not water dependent, the applicant has demonstrated there are no practicable alternatives that do not involve special aquatic sites.

It has been determined that there are no alternatives to the proposed discharge that would be less environmentally damaging. (Subpart B, 40 CFR 230.10(a)). The proposed discharge in this evaluation is the practicable alternative with the least adverse impact on the aquatic ecosystem, and it does not have other significant environmental consequences.

Further information related to effects of the proposed activity for the portions of the project beyond the discharge of fill material are addressed in the USCG EA for the project titled; FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project, dated August 14, 2019.

6.2 Candidate disposal site delineation (Subpart B, 40 CFR 230.11(f)). Each disposal site shall be specified through the application of these Guidelines:

Discussion: N/A

6.3 Potential impacts on physical and chemical characteristics of the aquatic ecosystem (Subpart C 40 CFR 230.20). See Table 1:

Table 1 – Potential Impacts on Physical and Chemical Characteristics

Physical and Chemical Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Substrate					x	
Suspended particulates/ turbidity			x			
Water			x			
Current patterns and water circulation		x				
Normal water fluctuations		x				
Salinity gradients		x				

Discussion:
Substrate – The proposed nearshore fills will permanently replace 0.88 acres of lake bed substrate, and temporary fills will impact 0.38 acres of lake bed substrate. Once construction work has been completed the temporary fills will be removed in their entirety and lake bed substrate will be restored to pre-construction elevations.

Suspended particulates/ turbidity – The discharge of fill material, and associated construction activities, in nearshore locations and wetlands will occur at the

earliest stages of the project to take advantage of performing that work while lake levels are lower and wetland areas are relatively dry. A Temporary Erosion and Sediment Control Plan and BMPs would be installed to reduce erosion from exposed soils and maintained throughout the Project construction to ensure effectiveness. These efforts and the conditions set forth in the IDEQ 401 WQC would ensure that any potential effects would be negligible.

Water, and Current patterns and water circulation – The discharge of clean rock fill will have negligible effects on water. The proposed bridge approach fills will not affect the flow of Sand Creek into the lake and will have no effect on water circulation in Lake Pend Oreille.

Salinity gradients will not be affected by the proposed discharge of fill material, and Normal water fluctuations will not be impacted as Pend Oreille Lake levels are controlled by Albeni Falls Dam.

6.4 Potential impacts on the living communities or human uses (Subparts D, E and F):

6.4.1 Potential impacts on the biological characteristics of the aquatic ecosystem (Subpart D 40 CFR 230.30). See Table 2:

Table 2 – Potential Impacts on Biological Characteristics

Biological characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Threatened and endangered species					x	
Fish, crustaceans, mollusk, and other aquatic organisms					x	
Other wildlife				x		

Discussion:
Threatened and endangered species; and Fish, crustaceans, mollusk, and other aquatic organisms – See section 10.1.2 for ESA consultation history. The proposed project will permanently fill 0.88 acres of nearshore lake habitat. This nearshore area is only inundated during the summer months when water temperatures are too high to support salmonids such as bull trout. Impacts to other aquatic organisms will be minor.

Other wildlife – Other wildlife may be disturbed due to construction related noise. The project occurs along an existing rail bridge and near a local highway. The additional noise and disturbance generated by construction activities is expected to have minor impacts due to these urbanized surroundings.

6.4.2 Potential impacts on special aquatic sites (Subpart E 40 CFR 230.40). See Table 3:

Table 3 – Potential Impacts on Special Aquatic Sites						
Special Aquatic Sites	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Sanctuaries and refuges	x					
Wetlands					x	
Mud flats	x					
Vegetated shallows	x					
Coral reefs	x					

Discussion: The proposed project would result in the loss of 0.28 acres of wetlands. This loss will result in minor effects to special aquatic sites within the watershed and will be mitigated through the purchase of mitigation banking credits.

6.4.3 Potential impacts on human use characteristics (Subpart F 40 CFR 230.50). See Table 4:

Table 4 – Potential Impacts on Human Use Characteristics						
Human Use Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Municipal and private water supplies		x				
Recreational and commercial fisheries		x				
Water-related recreation				x		
Aesthetics			x			
Parks, national and historical monuments, national seashores,	x					

Table 4 – Potential Impacts on Human Use Characteristics						
Human Use Characteristics	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
wilderness areas, research sites, and similar preserves						

Discussion:
Municipal and private water supplies – There are no water intakes within the project's impact area.

Recreational and commercial fisheries – The project will not impact migration and spawning areas, or reduce food web organisms. No effect is expected.

Water-related recreation – Recreation near the work area would be temporarily affected due to construction related noise. No impacts are expected to water-related recreation after construction is completed.

Aesthetics – The proposed fills are similar to those already in place on site and will not alter the aesthetics associated with the aquatic ecosystem.

There are no Parks, national and historical monuments, national seashores, wilderness areas, research sites, or and similar preserves within the project impact area.

6.5 Pre-testing evaluation (Subpart G, 40 CFR 230.60):

The following has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. See Table 5:

Table 5 – Possible Contaminants in Dredged/Fill Material	
Physical characteristics	x
Hydrography in relation to known or anticipated sources of contaminants	
Results from previous testing of the material or similar material in the vicinity of the project	
Known, significant sources of persistent pesticides from land runoff or percolation	
Spill records for petroleum products or designated (Section 331 of CWA) hazardous substances	
Other public records or significant introduction of contaminants from	

Table 5 – Possible Contaminants in Dredged/Fill Material	
industries, municipalities, or other sources	
Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities	

Discussion: The proposed discharge fill will consist of clean rock material obtained from a source free of contamination.

It has been determined that testing is not required because the proposed material is not likely to be a carrier of contaminants because it is comprised of sand, gravel or other naturally occurring inert material.

6.6 Evaluation and testing (Subpart G, 40 CFR 230-61):

Discussion: N/A

6.7 Actions to minimize adverse impacts (Subpart H). The following actions, as appropriate, have been taken through application of 40 CFR 230.70-230.77 to ensure minimal adverse effects of the proposed discharge. See Table 6:

Table 6 – Actions to Ensure Adverse Effects are Minimized	
Actions concerning the location of the discharge	x
Actions concerning the material to be discharged	x
Actions controlling the material after discharge	x
Actions affecting the method of dispersion	
Actions affecting plant and animal populations	x
Actions affecting human use	x

Discussion: All appropriate and practicable steps to minimize adverse effects have been taken, including discharging fill material during drawdown and low flow periods to work in the dry, utilizing appropriate BMPs, re-vegetating with native plant species, and monitoring for noxious weeds.

6.8 Factual Determinations (Subpart B, 40 CFR 230.11). The following determinations are made based on the applicable information above, including actions to minimize effects and consideration for contaminants. See Table 7:

Table 7 – Factual Determinations of Potential Impacts						
Site	N/A	No Effect	Negligible Effect	Minor Effect (Short Term)	Minor Effect (Long Term)	Major Effect
Physical substrate					x	
Water circulation, fluctuation and salinity		x				
Suspended particulates/turbidity			x			
Contaminants	x					
Aquatic ecosystem and organisms					x	
Proposed disposal site	x					
Cumulative effects on the aquatic ecosystem			x			
Secondary effects on the aquatic ecosystem		x				

Discussion: *See Sections 6.2-6.7, above, for additional reference.*

6.9 Findings of compliance or non-compliance with the restrictions on discharges (40 CFR 230.10(a-d) and 230.12). Based on the information above, including the factual determinations, the proposed discharge has been evaluated to determine whether any of the restrictions on discharge would occur. See Table 8:

Table 8 – Compliance with Restrictions on Discharge		
Subject	Yes	No
1. Is there a practicable alternative to the proposed discharge that would be less damaging to the environment (any alternative with less aquatic resource effects, or an alternative with more aquatic resource effects that avoids other significant adverse environmental consequences?)		x
2. Will the discharge cause or contribute to violations of any applicable water quality standards?		x
3. Will the discharge violate any toxic effluent standards (under Section 307 of the Act)?		x
4. Will the discharge jeopardize the continued existence of endangered or threatened species or their critical habitat?		x
5. Will the discharge violate standards set by the Department of		x

Table 8 – Compliance with Restrictions on Discharge		
Subject	Yes	No
Commerce to protect marine sanctuaries?		
6. Will the discharge cause or contribute to significant degradation of waters of the U.S.?		x
7. Have all appropriate and practicable steps (Subpart H, 40 CFR 230.70) been taken to minimize the potential adverse impacts of the discharge on the aquatic ecosystem?	x	

7.0 General Public Interest Review (33 CFR 320.4 and RGL 84-09)

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest as stated at 33 CFR 320.4(a). To the extent appropriate, the public interest review below also includes consideration of additional policies as described in 33 CFR 320.4(b) through (r). The benefits which reasonably may be expected to accrue from the proposal are balanced against its reasonably foreseeable detriments.

7.1 All public interest factors have been reviewed in relation to actions within the Corps permit area, as defined in section 2.1, and those that are relevant to the proposal are considered and discussed in additional detail. See Table 9 and any discussion that follows.

Further information related to effects of the proposed activity for the portions of the project beyond the discharge of fill material are addressed in the USCG EA for the project titled; FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project, dated August 14, 2019.

Table 9: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
1. Conservation:				x		
2. Economics: See below for discussion.					x	
3. Aesthetics: See below for discussion.				x		
4. General Environmental Concerns:				x		

Table 9: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
5. Wetlands: See below for discussion.			x			
6. Historic Properties: See below for discussion.				x		
7. Fish and Wildlife Values: See below for discussion.				x		
8. Flood Hazards:				x		
9. Floodplain Values:				x		
10. Land Use:				x		
11. Navigation: See below for discussion.				x		
12. Shoreline Erosion and Accretion:				x		
13. Recreation: See below for discussion.				x		
14. Water Supply and Conservation:				x		
15. Water Quality: See below for discussion.				x		
16. Energy Needs:				x		
17. Safety:				x		
18. Food and Fiber Production: See below for discussion.					x	
19. Mineral Needs: See below for discussion.					x	
20. Consideration of Property Ownership: See below for discussion.					x	
21. Needs and Welfare of the People:				x		

Additional discussion of effects on factors above:

Economics: The proposed project will add a short term boost to the economy by employing personnel during project construction.

Aesthetics: The proposed project may have negligible short term effects to aesthetics during construction.

Wetlands: The proposed project would result in the loss of 0.28 acres of wetlands. This loss will result in minor effects to special aquatic sites within the watershed and will be mitigated through the purchase of mitigation banking credits.

Historic Properties: *See section 10.3, below, for additional reference.*

Fish and Wildlife Values: In their Biological Opinion, dated May 3, 2019, the USFWS concluded that the proposed project will not jeopardize the survival and recovery of bull trout or adversely modify its designated critical habitat.

Navigation: The proposed project will not have adverse effects to navigation on Lake Pend Oreille.

Recreation: The proposed project may have negligible short term effects to recreation in the immediate vicinity during construction.

Water Quality: To ensure temporary impacts are reduced to the maximum extent, a project-specific Water Quality Monitoring and Protection Plan (WQMPP) and a Storm Water Pollution Prevention Plan (SWPPP) have been prepared, and will be implemented, for the project. The discharge of fill material, and associated construction activities, in nearshore locations and wetlands will occur at the earliest stages of the project to take advantage of performing that work while lake levels are lower and wetland areas are relatively dry. Also, a Temporary Erosion and Sediment Control Plan and BMPs would be installed to reduce erosion from exposed soils and maintained throughout the project construction to ensure effectiveness.

Consideration of Property Ownership: The proposed project is on BNSF owned right of way, and is in accordance with their short and long term plans for the property.

7.1.1 Climate Change. The proposed activities within the Corps federal control and responsibility likely will result in a negligible release of greenhouse gases into the atmosphere when compared to global greenhouse gas emissions. Greenhouse gas emissions have been shown to contribute to climate change. Aquatic resources can be sources and/or sinks of greenhouse gases. For instance, some aquatic resources sequester carbon dioxide whereas others release methane; therefore, authorized impacts to aquatic resources can result in either an increase or decrease in atmospheric greenhouse gas. These impacts are

considered de minimis. Greenhouse gas emissions associated with the Corps federal action may also occur from the combustion of fossil fuels associated with the operation of construction equipment, increases in traffic, etc. The Corps has no authority to regulate emissions that result from the combustion of fossil fuels. These are subject to federal regulations under the Clean Air Act and/or the Corporate Average Fuel Economy (CAFE) Program. Greenhouse gas emissions from the Corps action have been weighed against national goals of energy independence, national security, and economic development and determined not contrary to the public interest.

7.2 The relative extent of the public and private need for the proposed structure or work:

The project is intended to improve rail traffic and reduce delays allowing for improved transport of freight, supporting the public economy. BNSF will be able to use their private property in accordance with their short and long term plans, and improve their commercial railroad operations.

7.3 If there are unresolved conflicts as to resource use, explain how the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work was considered.

Discussion: There were no unresolved conflicts identified as to resource use.

7.4 The extent and permanence of the beneficial and/or detrimental effects that the proposed work is likely to have on the public and private use to which the area is suited:

Detrimental effects are expected to be minimal and temporary.

Beneficial effects are expected to be minimal and permanent.

The project is proposed in accordance with the applicants short and long-term plans for their property and continued railroad operations.

8.0 Mitigation(33 CFR 320.4(r), 33 CFR Part 332, 40 CFR 230.70-77, 40 CFR 1508.20 and 40 CFR 1502.14)

8.1 Avoidance and Minimization: When evaluating a proposal including regulated activities in waters of the United States, consideration must be given to avoiding and minimizing effects to those waters. Avoidance and minimization measures are described above in Sections 1 and 3.

Were any other mitigative actions including project modifications discussed with the applicant implemented to minimize adverse project impacts? (see 33 CFR 320.4(r)(1)(i)) Yes

Mitigation for the impacts to 1.26 acres of nearshore fills was separately considered by interested Lake Pend Oreille (LPO) and Sand Creek stakeholders through a collaborative, consensus-based process conducted by the applicant. Participating stakeholders included the U.S. Fish and Wildlife Service (USFWS), IDFG, DEQ, and other representatives from the Avista Clark Fork project and the Panhandle Chapter of Trout Unlimited. BNSF also separately requested meetings with interested Tribes in April 2018 to initiate mitigation discussions, and the Kootenai Tribe of Idaho subsequently requested participation in the collaborative stakeholder process.

These stakeholder meetings explored feasible options to mitigate impacts to the project's affected nearshore areas and aquatic resources, ranging from providing support to implement the strategies contained in the LPO Geographic Response Plan (GRP) to providing funding for off-site fish and/or habitat restoration projects underway or planned in the LPO watershed. However, the stakeholders were unable to identify any projects in the watershed currently in need of financial or other in-kind support.

Consequently, BNSF is proposing to provide compensatory mitigation for both the nearshore impacts and the wetland impacts via purchase of credits at the Valencia Wetland Mitigation Bank. The Bank's goal and objective of restoring numerous classes of palustrine wetlands, including open-water wetland complexes such as nearshore areas of LPO impacted by the project, will provide significant improvements to aquatic resources and contribute positively to long-term functions in the watershed.

BNSF has also developed a restoration planting plan as an additional mitigative measure to offset any impacts from the project. The plantings in the riparian restoration areas will provide equivalent or better function and value on the existing creek and lake shoreline areas. Efforts will focus on establishing increased vegetative species richness, density, and structural diversity than what currently exists. This will be accomplished by replanting and seeding with native species.

8.2 Is compensatory mitigation required to offset environmental losses resulting from proposed unavoidable impacts to waters of the United States? Yes

Provide rationale: Yes, the proposed project would result in unavoidable loss of waters of the U.S. To ensure there is no net loss of waters, compensatory mitigation is being required for the project.

8.3 Type and location of compensatory mitigation

8.3.1 Is the impact in the service area of an approved mitigation bank? Yes

If yes, does the mitigation bank have appropriate number and resource type of credits available? Yes

8.3.2 Is the impact in the service area of an approved in-lieu fee program? No

8.3.3 Selected compensatory mitigation type/location(s). See Table 10:

Table 10 – Mitigation Type and Location	
Mitigation bank credits	x
In-lieu fee program credits	
Permittee-responsible mitigation under a watershed approach	
Permittee-responsible mitigation, on-site and in-kind	
Permittee-responsible mitigation, off-site and/or out of kind	

8.3.4 Does the selected compensatory mitigation option deviate from the order of the options presented in §332.3(b)(2)-(6)? No

If yes, provide rationale for the deviation, including the likelihood for ecological success and sustainability, location of the compensation site relative to the impact site and their significance within the watershed, and/or the costs of the compensatory mitigation project (see 33 CFR §332.3(a)(1)): N/A

8.4 Amount of compensatory mitigation: 8.87 functional units (credits)

Rationale for required compensatory mitigation amount: Amount of credits were determined using the 1999 MDT Montana Wetland Assessment. The Valencia Mitigation Bank's banking instrument utilizes this assessment in all credit determinations.

9.0 Consideration of Cumulative Impacts

(40 CFR 230.11(g) and 40 CFR 1508.7, RGL 84-9) Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually

minor direct and indirect but collectively significant actions taking place over a period of time. A cumulative effects assessment should consider how the direct and indirect environmental effects caused by the proposed activity requiring DA authorization (i.e., the incremental impact of the action) contribute to cumulative effects, and whether that incremental contribution is significant or not. .

9.1 Identify/describe the direct and indirect effects caused by the proposed activity: Project activities would permanently fill 0.88 acres of Lake Pend Oreille and Sand Creek and 0.28 acre of adjacent wetlands. Additionally, there would be the temporary fill impacts to 0.38 acre of open water. No indirect effects are expected from the proposed discharges of fill material.

Direct and indirect effects caused by the proposed activity for the portions of the project beyond the discharge of fill material are further addressed in the USCG EA for the project titled; FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project, dated August 14, 2019.

9.2 The geographic scope for the cumulative effects assessment is: Limited Lake Pend Oreille and Sand Creek.

9.3 The temporal scope of this assessment covers: ORM2 database accounts for authorized impacts dating back to 1983 within the geographic area. Reasonably foreseeable future impacts include development similar to the proposal which has occurred since the late 1800s with European settlement of the area. Future conditions are expected to be similar to the existing conditions due to a relatively stable development rate, and limited amount of private land available around the lake as the majority of lands surrounding Pend Oreille Lake federally owned and controlled.

9.4 Describe the affected environment: Lake Pend Oreille and the Pend Oreille River comprise one of the largest water bodies in the state of Idaho. It is a natural lake that has been enlarged by the construction of the Albeni Falls Dam near Oldtown, ID, a multi-purpose project on the Pend Oreille River operated by the Corps of Engineers. It covers an area exceeding 90,000 acres of water and has a shoreline of 226 miles. The Albeni Falls Project is operated to maintain a water surface elevation of 2062.5 feet NGVD during summer recreation season and can be drawn down to 2051 feet NGVD during the winter. There are several communities around the lake including Hope, East Hope, Bayview, Laclede, Priest River, Dover and Sandpoint.

9.5 Determine the environmental consequences: Impacts associated with the proposed action are described in Section 9.1.

9.6 Discuss any mitigation to avoid, minimize or compensate for cumulative effects: See Section 1.3.1 and Section 8 for avoidance and minimization measures which also apply to cumulative impacts.

9.7 Conclusions regarding cumulative impacts:

When considering the overall impacts that will result from the proposed activity, in relation to the overall impacts from past, present, and reasonably foreseeable future activities, the incremental contribution of the proposed activity to cumulative impacts in the area described in section 9.2, are not considered to be significant . Compensatory mitigation will be required to help offset the impacts to eliminate or minimize the proposed activity's incremental contribution to cumulative effects within the geographic area described in Section 9.2. Mitigation required for the proposed activity is discussed in Section 8.0.

10.0 Compliance with Other Laws, Policies, and Requirements

10.1 **Section 7(a)(2) of the Endangered Species Act (ESA):** Refer to Section 2.2 for description of the Corps action area for Section 7.

10.1.1 Has another federal agency been identified as the lead agency for complying with Section 7 of the ESA with the Corps designated as a cooperating agency and has that consultation been completed? Yes

If yes, identify that agency, the actions taken to document compliance with Section 7 and whether those actions are sufficient to ensure the activity(s) requiring DA authorization is in compliance with Section 7 of the ESA:

The USCG is lead federal agency for the project. The Corps has reviewed the documentation provided by the agency and determined it is sufficient to confirm Section 7 ESA compliance for this permit authorization, and additional consultation is not necessary.

For further information related to the Endangered Species Acts consultation for the project refer to Section 3.8 of the USCG EA for the project titled; FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project, dated August 14, 2019.

10.1.2 Are there listed species or designated critical habitat present or in the vicinity of the Corps' action area? Yes

Effect determination(s), including no effect, for all known species/habitat, and basis for determination(s):
Bull Trout (Salvelinus confluentus)
Likely to adversely affect

The USFWS Biological Opinion, dated May 3, 2019, concluded that the project will not jeopardize the survival and recovery of bull trout or adversely modify its designated critical habitat.

North American Wolverine (Gulo gulo luscus)
Not likely to jeopardize
Project area is not suitable habitat for this mammal. Impacts associated with this project are not anticipated to have an effect on the wolverine or its habitat.

10.1.3 Consultation with either the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service was initiated and completed as required, for any determinations other than "no effect" (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation). Based on a review of the above information, the Corps has determined that it has fulfilled its responsibilities under Section 7(a)(2) of the ESA. The documentation of the consultation is incorporated by reference.

10.2 **Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Essential Fish Habitat (EFH).** N/A, there is no essential fish habitat in Bonner County, Idaho.

10.3 **Section 106 of the National Historic Preservation Act (Section 106):** Refer to Section 2.3 for permit area determination.

10.3.1 Has another federal agency been identified as the lead federal agency for complying with Section 106 of the National Historic Preservation Act with the Corps designated as a cooperating agency and has that consultation been completed? Yes

If yes, identify that agency, and whether the undertaking they consulted on included the Corps undertaking(s). Briefly summarize actions taken by the lead federal agency.

The USCG is lead federal agency for the project. The USCG consulted with the ID SHPO and also coordinated with local tribes regarding the proposed project. The Corps has reviewed the documentation provided by the agency and determined it is sufficient to confirm Section 106 compliance for this permit authorization, and additional consultation is not necessary.

For further information related to the Section 106 consultation for the project refer to Section 3.9 of the USCG EA for the project titled; FINAL ENVIRONMENTAL ASSESSMENT BNSF Sandpoint Junction Connector Project, dated August 14, 2019.

10.3.2 Known historic properties present? Yes; 001, Rock Wall 1, 10BR38, and 10BR1026.

Effect determination and basis for that determination: The proposed project will have no adverse effect to historic properties. The ID SHPO concurred with the determination on August 8, 2018.

10.3.3 Consultation was initiated and completed with the appropriate agencies, tribes and/or other parties for any determinations other than "no potential to cause effects" (see the attached ORM2 Summary sheet for consultation type, begin date, end date and closure method of the consultation). Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 106 of the NHPA. Compliance documentation incorporated by reference.

10.4 Tribal Trust Responsibilities

10.4.1 Was government-to-government consultation conducted with Federally-recognized Tribe(s)? Yes, the Kootenai Tribe requested consultation with the USCG and USACE on the project. USACE participated in a supporting role as the USCG took the lead on the government-to-government consultation in its role as LFA.

USACE sent tribal coordination letters with the public notice for the project to: the Confederated Salish and Kootenai Tribes of the Flathead Reservation, the Coeur d'Alene Tribe, the Kalispel Tribe of Indians, the Kootenai Tribe of Idaho, and the Spokane Tribe of Indians. No comments were received from the notified tribes beyond the Kootenai Tribe's request for consultation.

The Corps has determined that it has fulfilled its tribal trust responsibilities.

10.4.2 Other Tribal including any discussion of Tribal Treaty rights? N/A

10.5 Section 401 of the Clean Water Act – Water Quality Certification (WQC)

10.5.1 Is a Section 401 WQC required, and if so, has the certification been issued, waived or presumed? An individual water quality certification is required and has been issued by the certifying agency. The Idaho Department of Environmental Quality issued its final 401 water quality certification for the project on March 22, 2019.

10.6 Coastal Zone Management Act (CZMA)

10.6.1 Is a CZMA consistency concurrence required, and if so, has the concurrence been issued, waived or presumed? N/A, a CZMA consistency concurrence is not required.

10.7 Wild and Scenic Rivers Act

10.7.1 Is the project located 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? No

The Corps has determined that it has fulfilled its responsibilities under the Wild and Scenic Rivers Act.

10.8 Effects on Corps Civil Works Projects (33 USC 408)

10.8.1 Does the applicant also require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would alter, occupy or use a Corps Civil Works project? No, there are no federal projects in or near the vicinity of the proposal.

10.9 Corps Wetland Policy (33 CFR 320.4(b))

10.9.1 Does the project propose to impact wetlands? Yes

10.9.2 Based on the public interest review herein, the beneficial effects of the project outweigh the detrimental impacts of the project.

11.0 Special Conditions

11.1 Are special conditions required to protect the public interest, ensure effects are not significant and/or ensure compliance of the activity with any of the laws above? Yes

11.2 Required special condition(s)

Special condition(s):
a. All work associated with the permit shall be performed during the low pool period for Lake Pend Oreille to reduce potential turbidity impacts.

Rationale: Ensure turbidity impacts are minimized to the maximum extent.

Special condition(s):
b. Permittee shall provide proof of the purchase of 8.87 wetland mitigation credits from the Valencia Wetland Mitigation Bank to the Corps prior to any work taking place in waters of the U.S., including wetlands.

Rationale: Ensure that agreed upon compensatory mitigation is implemented.

Special condition(s):
c. This DA permit verification does not authorize you to take an endangered species, in particular the bull trout. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA), (e.g. an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which you must comply).
The U.S. Fish and Wildlife Service (USFWS) Biological Opinion, dated May 3, 2019, contains terms and conditions they agreed would make the potential impacts of your project discountable and not likely to adversely affect listed species or their designated critical habitat.
Your authorization under this DA permit verification is conditional upon your compliance with all of those terms and conditions that are incorporated by reference into this permit verification. Failure to comply with the terms and conditions associated with the consultation mentioned above, where take of the listed species occurs, would constitute an unauthorized take and it would constitute non-compliance with the Corps authorization. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its Biological Opinion, and with ESA.

Rationale: Ensure compliance with ESA and the USFWS BO.

Special condition(s):
d. The permittee understands and agrees that, if future operations by the U.S. require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.
e. The permittee shall install and maintain at the permittee's expense, any safety lights and signals, as prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities in navigable waters of the United States.

Rationale: Special conditions requested by the U.S. Coast Guard to be used for any permit/verification on navigable waters of the U.S. regulated under the Rivers and Harbors Act.

Special condition(s):
f. Permittee is responsible for all work done by any contractor. Permittee shall ensure any contractor who performs the work is informed of and follows all the terms and conditions of this authorization, including any Special Conditions listed above. Permittee shall also ensure these terms and conditions are incorporated into engineering plans and contract specifications.

Rationale: Ensure applicant knows they are responsible for complying with terms and conditions of the permit, including all actions taken by their contractor.

12.0 Findings and Determinations

12.1 Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed deminimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

12.2 Presidential Executive Orders (EO):

12.2.1 EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians: This action has no substantial effect on one or more Indian tribes, Alaska or Hawaiian natives.

12.2.2 EO 11988, Floodplain Management: Alternatives to location within the floodplain, minimization and compensatory mitigation of the effects were considered above.

12.2.3 EO 12898, Environmental Justice: The Corps has determined that the proposed project would not use methods or practices that discriminate on the basis of race, color or national origin nor would it have a disproportionate effect on minority or low-income communities.

12.2.4 EO 13112, Invasive Species: There are no invasive species issues involved in this proposed project.

12.2.5 EO 13212 and EO 13302, Energy Supply and Availability: The proposal is not one that will increase the production, transmission, or conservation of energy, or strengthen pipeline safety.

12.3 Findings of No Significant Impact: Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an environmental impact statement will not be required.

12.4 Compliance with the Section 404(b)(1) Guidelines: Having completed the evaluation above, I have determined that the proposed discharge complies with the Guidelines.

12.5 Public interest determination: Having reviewed and considered the information above, I find that the proposed project is not contrary to the public interest.

PREPARED BY:

Shane Slate, Project Manager
Regulatory Division

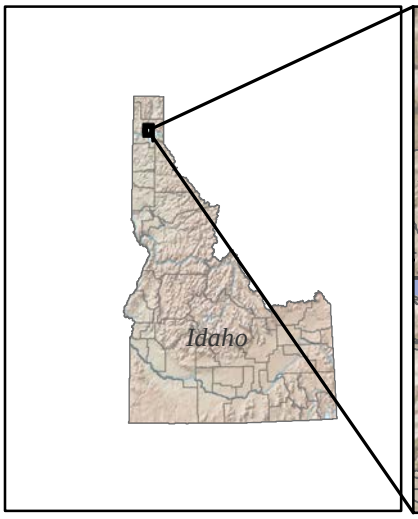
Date: November 20, 2019

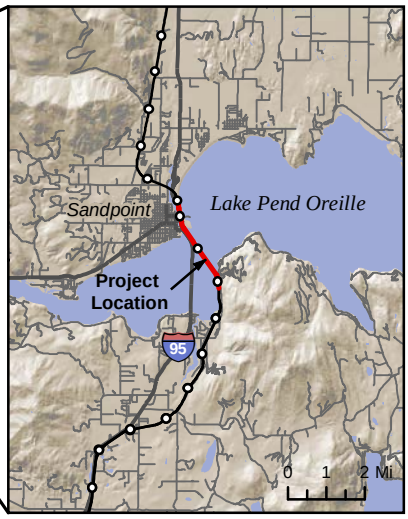
APPROVED BY:

Kelly J. Urbanek,
Chief, Regulatory Division

Date: 11/20/19

Attachment A



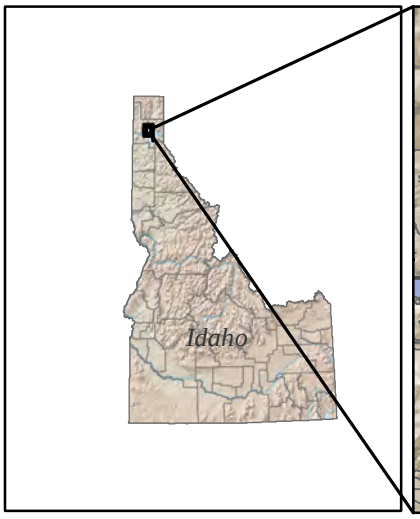


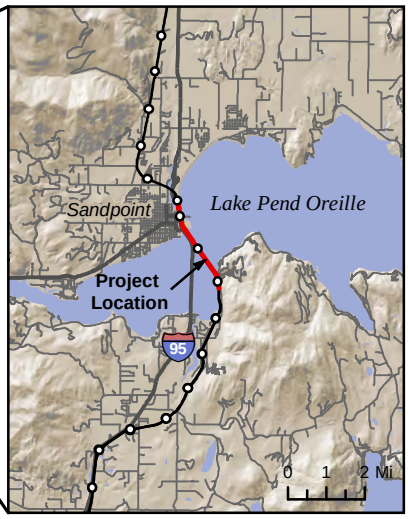
JURISDICTIONAL IMPACT OVERVIEW MAP

USACE REF. NO.: NWW-2007-1303
PROJECT: BNSF SANDPOINT JUNCTION CONNECTOR
APPLICANT: BNSF RAILWAY CO.
BNSF LOCATION: MONTANA DIVISION, KOOTENAI RIVER SUBDIVISION, MP 2.9 - 5.1
PLSS: IN PARTS OF S15, 22, 23, 25, 26 & 36 T57 R2W - BOISE MERIDIAN
NORTH END (MP 2.9): 48°16'54.10"N, 116°32'49.35"W
SOUTH END (MP 5.1): 48°14'56.24"N, 116°31'24.02"W
WATERWAY: LAKE PEND OREILLE & SAND CREEK
CITY: SANDPOINT
COUNTY: BONNER
STATE: IDAHO
DATE: NOVEMBER 2017

DATA SOURCES: ESRI (AERIAL), NATURAL EARTH (STATE MAP), BNSF (TRACK AND MILEPOSTS)

Attachment B



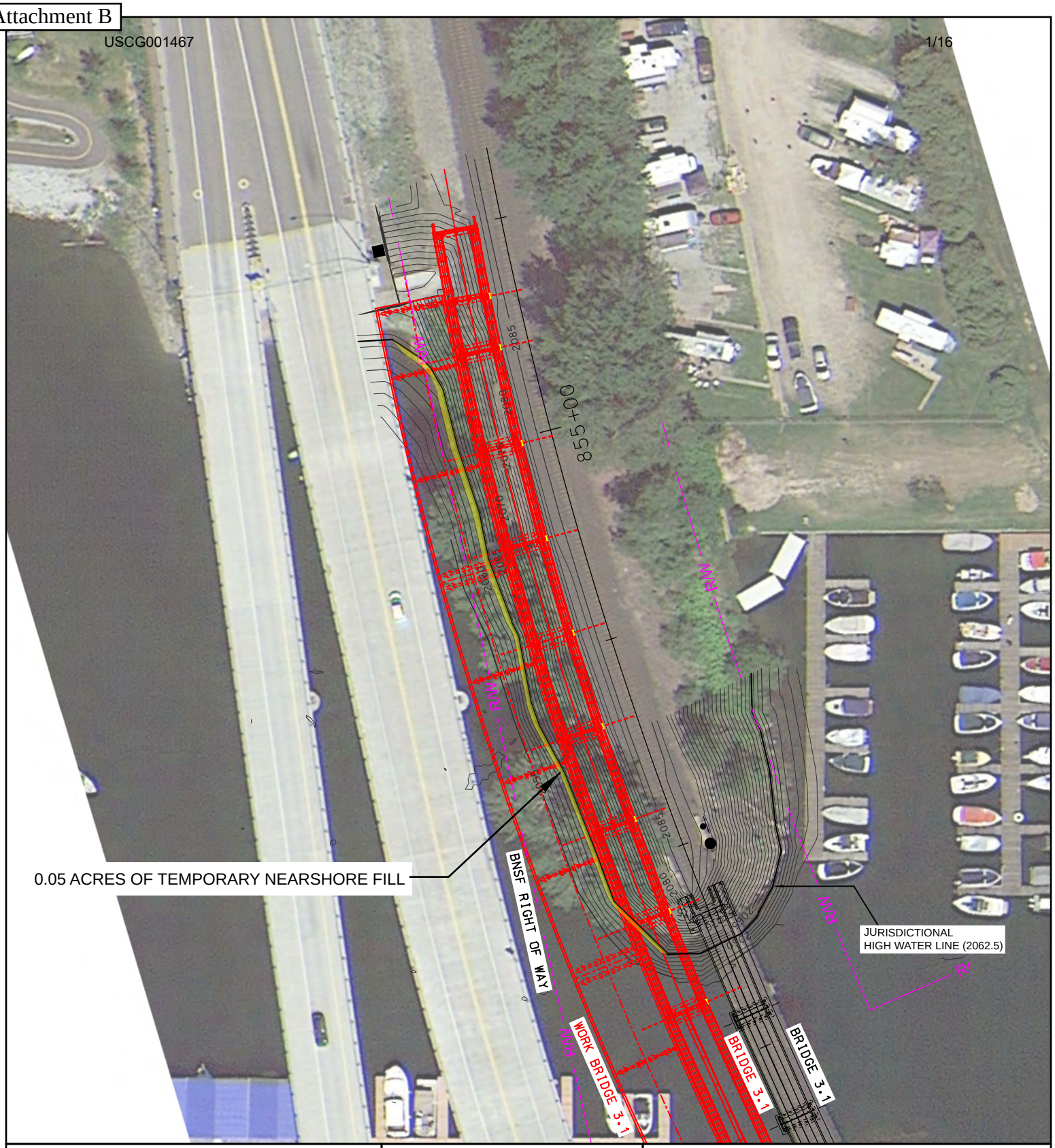


CORPS PERMIT AREA OVERVIEW MAP

USACE REF. NO.: NWW-2007-1303
PROJECT: BNSF SANDPOINT JUNCTION CONNECTOR
APPLICANT: BNSF RAILWAY CO.
BNSF LOCATION: MONTANA DIVISION, KOOTENAI RIVER SUBDIVISION, MP 2.9 - 5.1
PLSS: IN PARTS OF S15, 22, 23, 25, 26 & 36 T57 R2W - BOISE MERIDIAN
NORTH END (MP 2.9): 48°16'54.10"N, 116°32'49.35"W
SOUTH END (MP 5.1): 48°14'56.24"N, 116°31'24.02"W
WATERWAY: LAKE PEND OREILLE & SAND CREEK
CITY: SANDPOINT
COUNTY: BONNER
STATE: IDAHO
DATE: NOVEMBER 2017

DATA SOURCES: ESRI (AERIAL), NATURAL EARTH (STATE MAP), BNSF (TRACK AND MILEPOSTS)

USCG001467 1/16



LEGEND

— = EXISTING (TYPICAL)

— = PROPOSED

= NEARSHORE FILL AREA (TEMPORARY)

N

30' 0 15' 30' 60'

GRAPHIC SCALE

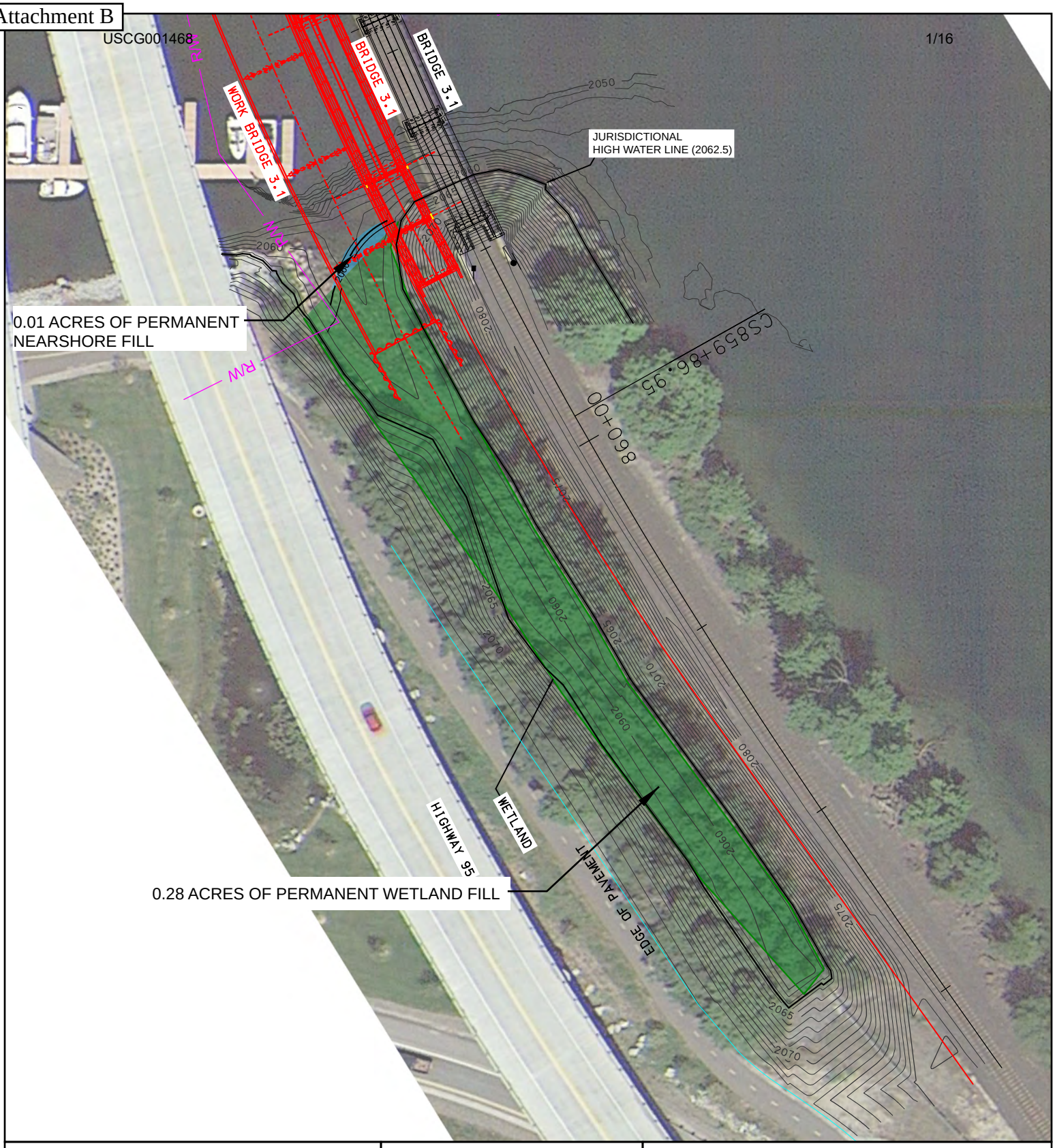
(1) JURISDICTIONAL IMPACTS
BNSF BRIDGE 3.1 NORTH END

USACE REF. NO.: NWW-2007-1303
PROJECT: BNSF SANDPOINT JUNCTION CONNECTOR
BNSF LOCATION: MONTANA DIVISION, KOOTENAI SUBDIVISION, MP 2.9-5.1
CITY: SANDPOINT
COUNTY: BONNER
STATE: IDAHO
DATE: NOVEMBER 2017

BASED ON: HANSON PRELIMINARY PLANS (30%, NOV. 2017)

Attachment B

USCG001468 1/16



LEGEND

— = EXISTING (TYPICAL)

— = PROPOSED

= NEARSHORE FILL AREA (PERMANENT)

= WETLAND FILL AREA (PERMANENT)

N

30' 0 15' 30' 60'

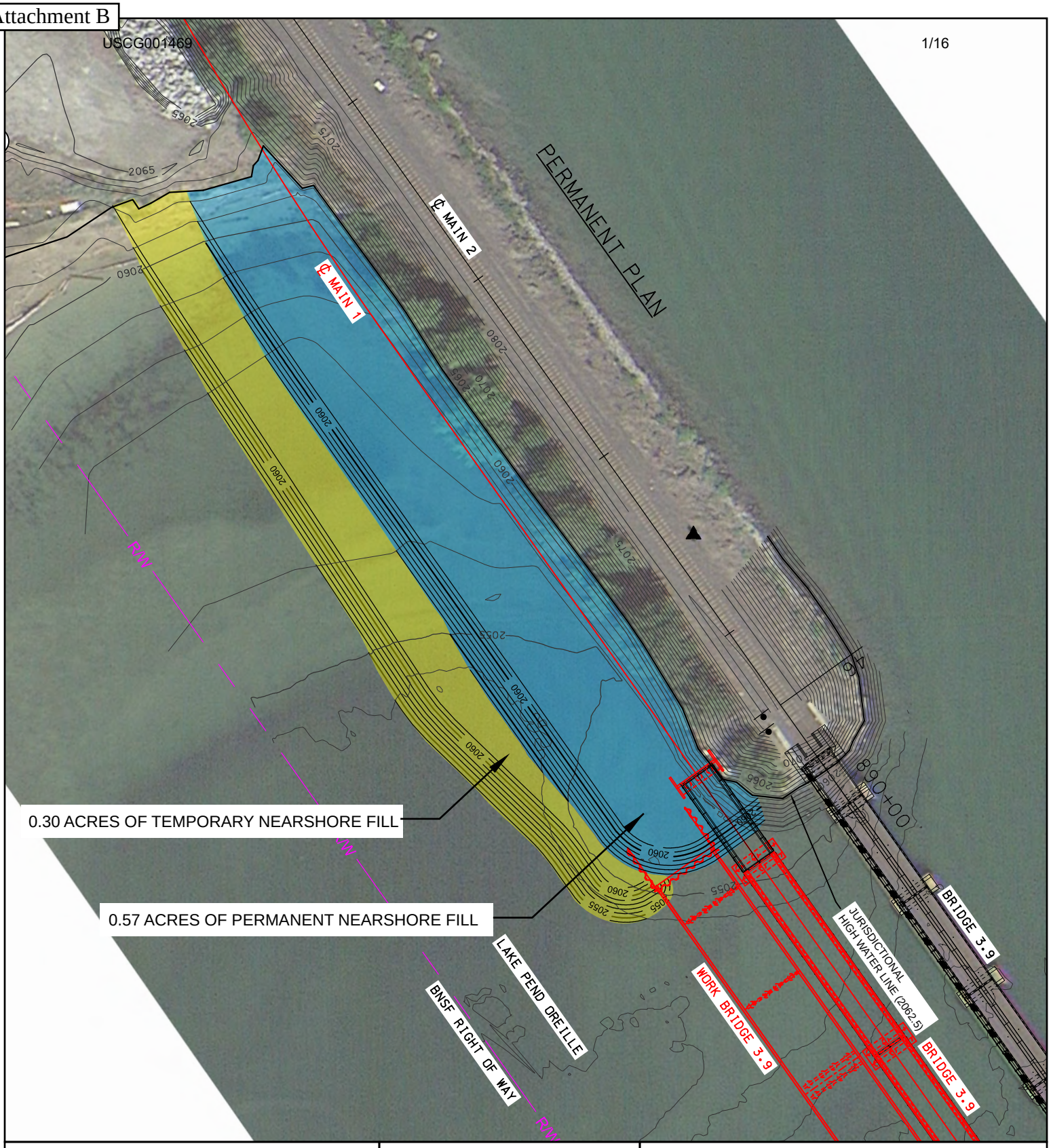
GRAPHIC SCALE

(2) JURISDICTIONAL IMPACTS BNSF BRIDGE 3.1 SOUTH END

USACE REF. NO.: NWW-2007-1303
PROJECT: BNSF SANDPOINT JUNCTION CONNECTOR
BNSF LOCATION: MONTANA DIVISION, KOOTENAI SUBDIVISION, MP 2.9-5.1
CITY: SANDPOINT
COUNTY: BONNER
STATE: IDAHO
DATE: NOVEMBER 2017

BASED ON: HANSON PRELIMINARY PLANS (30%, NOV. 2017)

Attachment B



LEGEND

— = EXISTING (TYPICAL)

— = PROPOSED

= NEARSHORE FILL AREA (PERMANENT)

= NEARSHORE FILL AREA (TEMPORARY)

N

30' 0 15' 30' 60'

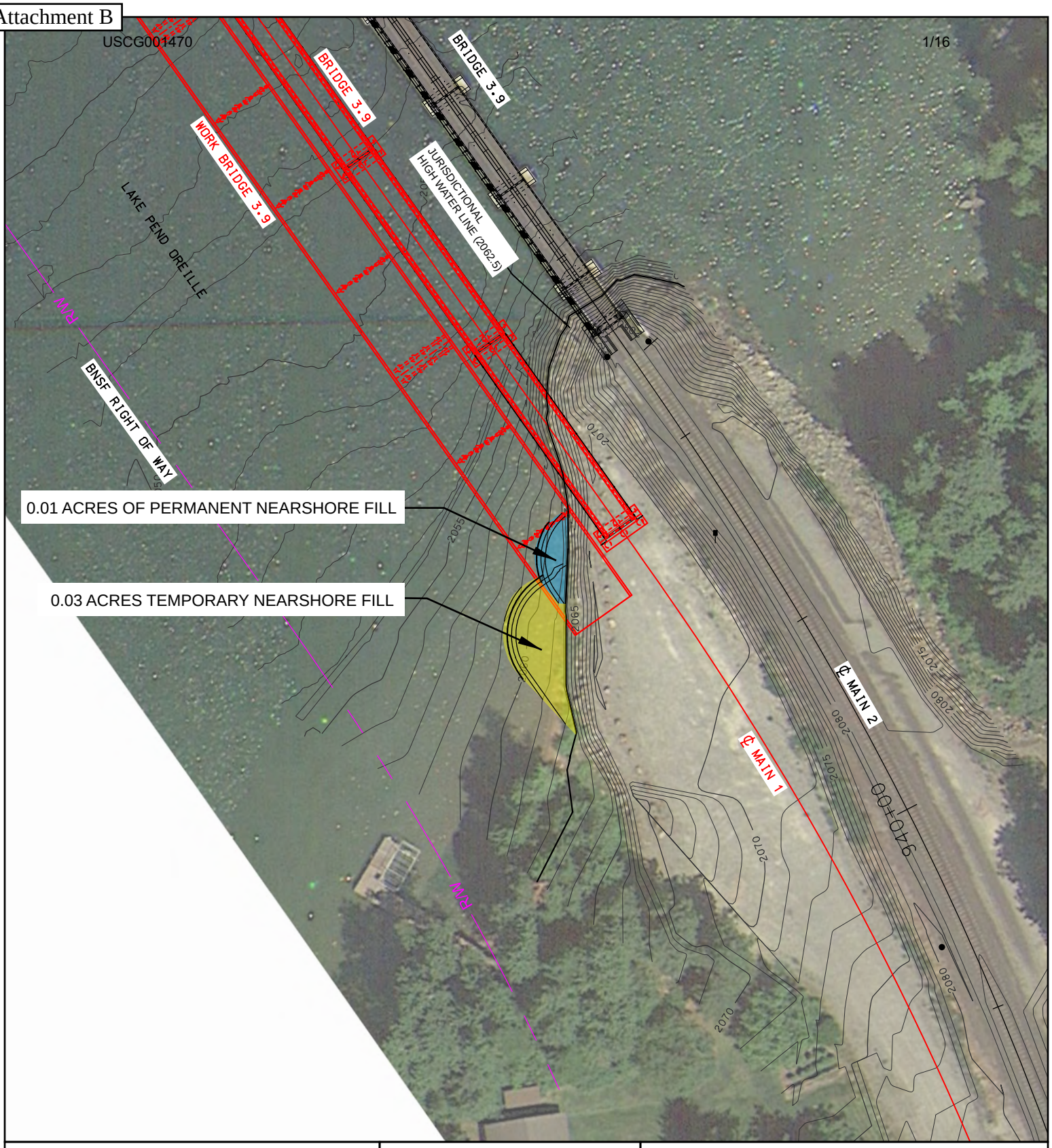
GRAPHIC SCALE

(3) JURISDICTIONAL IMPACTS BNSF BRIDGE 3.9 NORTH END

USACE REF. NO.: NWW-2007-1303
PROJECT: BNSF SANDPOINT JUNCTION CONNECTOR
BNSF LOCATION: MONTANA DIVISION, KOOTENAI SUBDIVISION, MP 2.9-5.1
CITY: SANDPOINT
COUNTY: BONNER
STATE: IDAHO
DATE: NOVEMBER 2017

BASED ON: HANSON PRELIMINARY PLANS (30%, NOV. 2017)

Attachment B



LEGEND

— = EXISTING (TYPICAL)

— = PROPOSED

= NEARSHORE FILL AREA (PERMANENT)

= NEARSHORE FILL AREA (TEMPORARY)

N

30' 0 15' 30' 60'

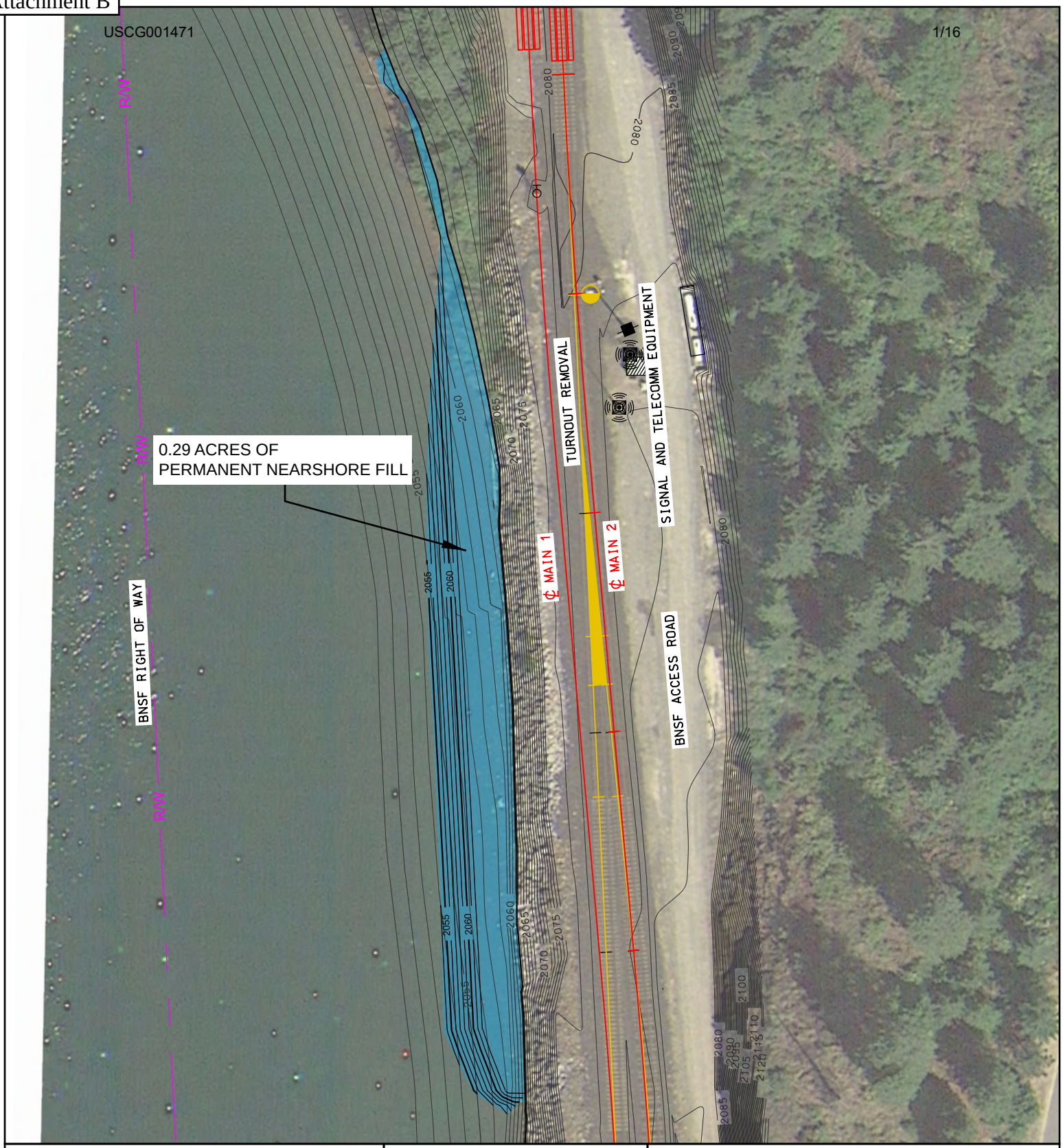
GRAPHIC SCALE

(4) JURISDICTIONAL IMPACTS BNSF BRIDGE 3.9 SOUTH END

USACE REF. NO.: NWW-2007-1303
PROJECT: BNSF SANDPOINT JUNCTION CONNECTOR
BNSF LOCATION: MONTANA DIVISION, KOOTENAI SUBDIVISION, MP 2.9-5.1
CITY: SANDPOINT
COUNTY: BONNER
STATE: IDAHO
DATE: NOVEMBER 2017

BASED ON: HANSON PRELIMINARY PLANS (30%, NOV. 2017)

Attachment B



LEGEND

— = EXISTING (TYPICAL)

— = PROPOSED

— = REMOVALS

= NEARSHORE FILL AREA (PERMANENT)

N

30' 0 15' 30' 60'

GRAPHIC SCALE

(5) JURISDICTIONAL IMPACTS
EAST ALGOMA TURNOUT

USACE REF. NO.: NWW-2007-1303
PROJECT: BNSF SANDPOINT JUNCTION CONNECTOR
BNSF LOCATION: MONTANA DIVISION, KOOTENAI SUBDIVISION, MP 2.9-5.1
CITY: SANDPOINT
COUNTY: BONNER
STATE: IDAHO
DATE: NOVEMBER 2017

BASED ON: HANSON PRELIMINARY PLANS (30%, NOV. 2017)