December 17, 2019

CONSTRUCTION MEMORANDUM
19-10

TO: District Deputy Commissioners
District Construction Directors
District Technical Services Directors
District Area Engineers
District Project Management Director
Project Management Director
Environmental Services
Stormwater Team Lead
District LPA Coordinators
Field Engineers
Project Engineers/Supervisors

FROM: Gregory G. Pankow, P.E., Director
Division of Construction Management and District Support

SUBJECT: Notice of Termination, NOT

SUPERSEDES: Construction Memorandum 17-01

A Notice of Termination, NOT, must be obtained on any contract that requires a Construction Stormwater General Permit or a Rule 5 (327 IAC 15-5) permit before the contract can be accepted and closed out. In order to successfully obtain an NOT, State law requires 70% uniform density of permanent vegetation for turf areas. Until the NOT is successfully obtained for these contracts, weekly and post event inspections are required to be completed. This memorandum will apply to all currently active contracts.

Obtaining answers to the following questions will be covered in this memo:

1. What are the required procedures to obtain an NOT?
2. What is the NOT documentation process?
3. What to do if the NOT is not obtained?
4. What is the process to close-out a contract?
1. What are the required procedures to obtain an NOT?
There are three different contract types that should be reviewed when deciding what is required to successfully obtain a NOT.

**Type 1 - Single Signature Contracts** comprise the majority of Department contracts, not including design/build contracts. For this type of contract, follow the process described in *Appendix A* for Single Signature Contracts NOT Process.

**Type 2 - Co-signature Contracts** are either design/build contracts or contain an item for Design/Build Storm Water Management. For either of these types of contracts, follow the process described in *Appendix B* for Co-signature Contracts NOT Process.

**Type 3 - Local Public Agency, LPA, Contracts** will need to follow the appropriate process based on the type of contract. The LPA’s employee in responsible charge will fulfill the role of the Department’s Environmental Services Division, ES. For this type of contract, follow the process described in *Appendix C* for Local Public Agency, LPA, NOT Process. The documentation of an LPA’s NOT determination may be used for process reviews performed by the Department on those contracts as a means of quality assurance for the process.

2. What is the NOT documentation process?
The documentation process is relatively self-explanatory and is intended to provide a consistent and uniform methodology to access the condition of any particular contract site for an NOT review. Guidance and pictures to assist with the process are available in *Appendix D*, Photographic Documentation Instructions.

3. What to do if the NOT is not obtained?
ES or the LPA employee in responsible charge will inform the PE/S when the project does not meet the requirements of 70% uniform density of permanent vegetation. In this situation, the Contractor must stabilize the project and continue to perform stormwater maintenance along with weekly and post-event inspections until the NOT is obtained. The Contractor should be paid additional costs for corrections if it is determined that all prior work was performed as required by the Specifications.

- Additional costs will be reviewed for payment on a case by case basis. Additional costs may include, but are not limited to, document preparation on projects that go beyond the original contract completion date due to the NOT, additional seeding or work needed for storm water management items, etc.

- For unhealthy vegetation areas soil mitigation measures may be considered by the Department.

- Costs and potential costs should be discussed with the AE, especially if the magnitude of the costs are estimated to be high. The Department may wish to consider additional options.

- A time extension will not be required if obtaining the NOT causes contract time to overrun. It is the Department’s intent that the time it takes to get the NOT after the original completion date be covered by a Final Inspection Time Waiver just as if you had added extra work to the contract at the final inspection.

4. What is the process to close-out a contract?
The following procedures provide information on documenting that the NOT has been obtained and
completing the contract closeout process. The PE/S will no longer need to wait for the response letter from IDEM prior to beginning the contract closeout process.

**Type 1 - Single Signature Contracts:**
ES will provide the PE/S a copy of the Department’s NOT submittal to IDEM. The submittal will be date stamped by the IDEM Office of Water Quality.

**Type 2 - Co-signature Contracts:**
ES and the Contractor will each sign the NOT. The Contractor shall then provide the PE/S and ES a copy of the NOT submittal form to IDEM. The submittal form shall be date stamped by the IDEM Office of Water Quality. If the Contractor chooses to mail the submittal form to IDEM, they shall provide the PE/S and ES with a copy of the completed and signed submittal form, proof of certified mail, and a written statement that the site met the requirements for NOT and the submittal was sent to IDEM.

**Type 3 - Local Public Agency, LPA, Contracts:**
The LPA’s employee in responsible charge will provide the PE/S a copy of the IDEM NOT submittal form date stamped by the IDEM Office of Water Quality. If the LPA’s employee chooses to mail the submittal to IDEM, they shall provide the PE/S with a copy of the completed and signed submittal form, proof of certified mail, and a written statement that the site met the requirements for NOT and the submittal was sent to IDEM.

When reviewing the NOT submittal form, please verify that it is completely filled out including the Permit Number. Permit numbers begin with the prefix “INR”. IDEM will not process the submittal form unless the permit number has been included.

For each particular type of contract, enter the above described information into the SiteManager correspondence log. Information to attach includes a copy of the IDEM date stamped NOT submittal form, a written statement that the site meets the requirements for NOT and, if applicable, proof of certified mail.

Appendices A, B, and C contain information outlining the steps for the NOT process for single, co-signature, and LPA contract types respectively.

Appendix D contains documentation guidance as well as five pages of pictures that will help determine the different percentages of uniform density of permanent vegetation and Percentage of Green. **If the turf is green and looks healthy, go ahead and contact ES or the LPA’s employee in responsible charge even if the density may not appear to be 70%**.

If you have questions relating to this memo, please contact the Field Engineer assigned to your district.

ATTACHMENTS: Appendixes A, B, C, and D
Single Signature Contracts NOT Process

Step 1:

- The Contractor and the PE/S will evaluate the project and agree that 70% uniform density of permanent vegetation has been obtained.
- All temporary stormwater Best Management Practices, BMP, shall be removed prior to applying for the NOT.
- The PE/S will confirm and document that:
  - All temporary stormwater BMPs have been removed.
  - No further earth disturbing activities are planned for the project.
  - All excess silt accumulations have been removed, areas have been dressed, and vegetation has been re-established to all bare areas in accordance with the contract requirements.
  - Both parties agree that the site meets the 70% uniform density of permanent vegetative coverage for turf areas.
- The PE/S will document actual site conditions by taking photographs as detailed in Appendix D.

Step 2:

- The PE/S will notify ES of their desire to request NOT by:
  - Emailing the request to the Stormwater Team Lead of ES and copying the appropriate persons involved with the contract (Area Engineer, Project Manager, and District Stormwater Specialist).
  - Attach the documentation, listed in Step 1 above, to the email along with a written statement of agreement from the Contractor and site photographs as described in Appendix D.
- The ES Manager or Stormwater Team Lead will determine if the site meets the requirements for NOT based on the provided documentation, site visits, and other sources.
- If documentation confirms that the site meets NOT requirements, ES will notify the PE/S and copy the appropriate persons involved with the contract (AE, PM, District Stormwater Specialist) of the decision to sign the NOT. They will also provide the PE/S with a copy of the NOT submittal to IDEM, which will be date stamped by the IDEM Office of Water Quality.
- If documentation fails to confirm that the site meets NOT requirements, ES may schedule a field review with District Construction and the Contractor to discuss additional work that needs to be completed or considered. When any necessary work is completed, start back at the beginning of Step 1.
Step 3:

- The PE/S will enter the above described information into the SiteManager correspondence log and attach a copy of the NOT submittal into SiteManager. The PE/S will no longer need to wait for the response letter from IDEM prior to closing out the contract.

NOTES:
At the end of the allowable time for a contract, District Construction will make a decision on how to proceed if documentation fails to confirm that the site meets the requirements for NOT. Normally, the Department will keep the contract open until the requirements of NOT are met. Weekly and post event site inspection reports and maintenance must continue until the requirements for NOT are met.
Co-signature Contracts NOT Process

Step 1:

- The Contractor and the PE/S will evaluate the project and agree 70% uniform density of permanent vegetation has been obtained.
- All temporary Stormwater Best Management Practices, BMP, shall be removed prior to applying for the NOT.
- The Contractor and the PE/S will confirm and document that:
  - All temporary stormwater BMPs have been removed.
  - No further earth disturbing activities are planned for the project.
  - All excess silt accumulations have been removed, areas have been dressed, and vegetation has been re-established to all bare areas in accordance with the contract requirements.
  - Both parties agree that the site meets the 70% uniform density of permanent vegetation coverage for turf areas.
- The Contractor and the PE/S will document actual site conditions by taking photographs as detailed in Appendix D.

Step 2:

- The Contractor shall send email notification to the Stormwater Team Lead of ES requesting the NOT. The appropriate persons involved with the contract shall be copied on all e-mail correspondence (PE/S, Area Engineer, Project Manager, District Stormwater Specialist). The email should include:
  - A request to the Team Lead of ES for a conformation of the site meeting the requirements for NOT and ES’s willingness to sign the NOT.
  - Attach documentation, listed in Step 1 above, including a written statement of agreement from the Contractor and site photographs as described in Appendix D.
- The ES Manager or Stormwater Team Lead will determine if the site meets the requirements for NOT based on the provided documentation, site visits, and other sources.
- If the documentation confirms that the site meets the requirements of NOT, ES will notify the Contractor of the decision to sign the NOT.
  - The Contractor shall prepare and sign the NOT form.
  - The Contractor shall deliver the signed form to ES for signature.
The Contractor shall deliver the ES and Contractor signed form to the IDEM Office of Water Quality for a date stamp, or submit the form by certified mail.

The Contractor shall provide the PE/S and ES a copy of the NOT submittal form which will be date stamped by the IDEM Office of Water Quality. If the submittal form was mailed, the contractor will provide the submitted form and proof of certified mail. The contractor will also provide a written statement that the site meets the requirements for NOT.

If documentation fails to confirm that the site meets the requirements for NOT, ES may schedule a field review with District Construction and the Contractor to discuss work that needs to be completed or considered. When any necessary work is completed start back at the beginning of Step 1.

**Step 3:**
- The PE/S will enter the above described information into the SiteManager correspondence log and attach a copy of the NOT submittal. A written statement that the site meets the requirement for NOT and, if applicable proof of certified mail will also be entered into the correspondence log within SiteManager. The PE/S will no longer need to wait for the response letter from IDEM prior to closing out the contract.

**NOTES:**
At the end of the allowable time for a contract, District Construction will make a decision on how to proceed if documentation fails to confirm that the site meets the requirements for NOT. Normally, the Department will keep the contract open until the requirements of NOT are met. Weekly and post event site inspection reports and maintenance must continue until the requirements for NOT are met.
Local Public Agency (LPA) Contracts NOT Process

Step 1:
- The Contractor and PE/S will evaluate the project and agree 70% uniform density of permanent vegetation has been obtained.
- All temporary storm water management features shall be removed prior to the application for the NOT.
- PE/S will confirm and document that:
  - All temporary storm water features have been removed.
  - No further earth disturbing activities are planned for the project.
  - All excess silt accumulations have been removed, areas have been dressed, and vegetation has been re-established to all bare areas in accordance with the contract requirements.
  - Both parties agree that the site meets the 70% uniform density of permanent vegetation coverage for turf areas.
- The PE/S will document actual site conditions by taking photographs as detailed in Appendix D.

Step 2:
- PE/S notifies the LPA’s employee in responsible charge requesting the NOT by:
  - Emailing the request to the LPA’s employee, and copy the appropriate persons involved with the contract (Area Engineer, Project Manager, District Stormwater Specialist).
  - Attach the documentation, listed in Step 1 above, including a written statement of agreement from the Contractor and site photographs as described in Appendix D.
- The LPA’s employee will determine if the site meets the requirements for NOT based on the provided documentation, site visits, and other sources.
- If documentation confirms that the site meets the requirements for NOT, the LPA’s employee will notify the PE/S and copy the appropriate persons involved with the contract (Area Engineer, Project Manager, District Stormwater Specialist) of the decision to sign the NOT.
  - The LPA’s employee will prepare and sign the NOT form.
  - The LPA’s employee will deliver the form to IDEM for a time-date stamp, or submit it by certified mail.
- If documentation fails to confirm that the site meets the requirements for NOT, the LPA’s employee may schedule a field review with District Construction and the Contractor to
discuss work that needs to be completed or considered. When any necessary work is completed start back at the beginning of Step 1.

Step 3:
- The PE/S will enter the above described information into the SiteManager correspondence log and attach a copy of the NOT form submitted to IDEM. A written statement that the site meets the requirements for NOT and, if applicable, proof of certified mail will also be entered into the correspondence log within SiteManager. The PE/S will no longer need to wait for the response letter from IDEM prior to closing out the contract.

NOTES:
At the end of the allowable time for a contract, District Construction will make a decision on how to proceed if documentation fails to confirm that the site meets the requirements for NOT. Normally, the Department will keep the contract open until the requirements of NOT are met. Weekly and post event site inspection reports and maintenance must continue until the requirements for NOT are met.

The documentation of an LPA’s NOT determination may be used for process reviews performed by the Department on those contracts as a means of quality assurance for the process.
Photographic Documentation Instructions

The site conditions will be documented as follows:

- Take at least one (1) panoramic photograph and four (4) perpendicular spot photographs, taken from chest height, at locations showing the least vegetated turf areas. These photos shall be taken in a digital format. They should provide characteristic information of the area. Additional panoramic and perpendicular photographs should be taken in areas of interest for stormwater protection such as at bridges, pipe inlets and outlets, and areas of steep or long slopes.

- Panoramic photographs of turf areas must be in focus and show as much of the vegetated areas as possible.

- Perpendicular spot photographs should be taken in a standing position with the camera at chest height directly above areas of the least vegetated turf. Showing the tips of your boots in the photo is acceptable.

The photographs for both the panoramic and perpendicular spot locations should be taken at a time of day that best minimizes shadows. This time period normally occurs between 10:00 am and 2:00 pm. When taking panoramic photographs, ensure the general focus of the photo is on the turf areas offset from the road. Do not center the road in the picture as indicated in Image 1 of this appendix. Pick a time of day when a good representation of the area can be seen as indicated in Image 2.

Environmental Services, or the LPA’s employee in responsible charge, will base their decision on the information obtainable from the photographs taken. They will review the overall look of the turf, its health and coverage, and the general slope conditions in the area. The photographs at the end of this appendix show variations in the percentage of vegetative density. An area density showing less growth but occurring on a flat area, with low potential for erosion, may be sufficient for NOT. However, if the same density is located on a steep slope with higher erosion potential it may be determined that the density is not acceptable.

Yellow color of vegetation may be viewed as being unhealthy and may require soil enrichment as indicated in Image 3.
Example of both poor placement of the roadway within the picture and poor lighting conditions.

Image 2
Example showing a good representation of the area.

Image 3
Yellow vegetation may be viewed as unhealthy and may require soil enrichment.
A series of pictures have been taken and analyzed using the INDOT Vegetation Analyzer. Some sample images and results are shown as follows:

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<th>Pictures taken by Sony DSC-F505 camera under acceptable light intensity with less than 50% of green</th>
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<tbody>
<tr>
<td><img src="image1.png" alt="Picture 1" /></td>
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<tr>
<td>Percentage of Green: 46.88%</td>
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<tr>
<td>Percentage of Gray Shades: 8.44%</td>
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<tr>
<td>Pictures taken by Sony DSC-F505 camera under acceptable light intensity with more than 50% of green but less than 60% of green</td>
</tr>
<tr>
<td>---</td>
</tr>
</tbody>
</table>
| Percentage of Green: 53.66%  
Percentage of Gray Shades: 6.48% |
| Percentage of Green: 59.13%  
Percentage of Gray Shades: 8.67% |
Pictures taken by Sony DSC-F505 camera under acceptable light intensity with more than 60% of green but less than 70% of green

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<th>Percentage of Green</th>
<th>Percentage of Gray Shades</th>
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<td>6.74%</td>
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<th>Percentage of Green</th>
<th>Percentage of Gray Shades</th>
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<td>66.87%</td>
<td>7.01%</td>
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Pictures taken by Sony DSC-F505 camera under acceptable light intensity with more than 70% of green but less than 80% of green

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<th>Percentage of Green: 76.22%</th>
<th>Percentage of Gray Shades: 7.86%</th>
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<td>Percentage of Green: 77.17%</td>
<td>Percentage of Gray Shades: 6.42%</td>
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Pictures taken by Sony DSC-F505 camera under acceptable light intensity with more than 80% of green but less than 90% of green

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<td>Percentage of Gray Shades: 8.12%</td>
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<table>
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<th>Percentage of Green: 86.37%</th>
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<tr>
<td>Percentage of Gray Shades: 6.99%</td>
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