

TIER 3 CATEGORICAL EXCLUSION

ARDOT JOB NUMBER 061631
FAP NUMBER NHPP-9065(29)
HWY. 5 - HWY. 89 (CABOT) P.E.
ROUTE 67, SECTION 11
LONOKE COUNTY

Submitted Pursuant to 42 U.S.C. 4332(2)

By the

U.S. Department of Transportation

Federal Highway Administration

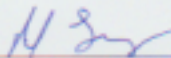
And the

Arkansas Department of Transportation

May 2020

May 12, 2020

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

The Environmental Division reviewed the referenced project and has determined it falls within the definition of the Tier 3 Categorical Exclusion as defined by the ARDOT/FHWA Programmatic Agreement on the processing of Categorical Exclusions. The following information is included for your review and, if acceptable, approval as the environmental documentation for this project.

The purpose of this project is to improve capacity on Highway 67 (future Interstate 57) main lanes and interchanges in the City of Cabot, Lonoke County. The proposed project would widen the main lanes between the interchanges at Highways 5/321/367 and Highway 89 (construction job number 061642) and improve those same interchanges by converting them to single point urban interchanges, (SPUIs) (construction job number 061371). Total length of the project is 3.1 miles. A project location map is attached.

The existing Highway 67 typical section consists of four 12' wide paved travel lanes with 6' wide paved shoulders on the inside and 10' wide paved shoulders on the outside. Existing right of way width averages between 270'-450'.

The proposed improved cross section of Highway 67 would consist of six 12' wide paved travel lanes with 12' wide paved shoulders on the inside and 10' wide paved shoulders on the outside. The twin bridges over Bayou Two Prairie will also be replaced to accommodate the extra travel lanes. All work for the main lane widening, including the bridge replacements, will occur within existing right of way.

The interchange improvements on Highway 67 at Highways 5/321/367 and Highway 89 would involve the conversion of both interchanges from partial cloverleaf designs to single point urban interchanges (SPUIs). Instead of intersections on either side of Highway 67 where the ramps meet the non-controlled highways, all traffic meets at a single intersection and traffic signal in the middle of the overpass bridge over the freeway. This will allow for better traffic flow and improved safety by adding slip ramps, reducing the overall number and proximity of traffic signals within and immediately adjacent to the interchanges, and reducing the number of conflict points.

The interchange improvements also involve a new roundabout to be constructed at the intersection of Highway 89 and Rockwood Drive (the southbound frontage road), replacement of the overpasses at both interchanges to accommodate the SPUI, minor widening of the adjacent highways to add capacity for turning movements at major intersections, and adding 5' wide sidewalks to the adjacent highways. Additional cross section and design information are on the attached design sheets. Approximately 7.2 acres of additional right of way will be required for construction of the interchange improvements.

Design data for Highway 67 in the project area is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2020	38,000 vpd	11	70 mph
2040	54,000 vpd		

There are no impacts to prime farmland, public water supplies, environmental justice/Title VI populations, known hazardous materials or underground storage tanks, or cultural resources associated with this project. There is one residential relocation anticipated as a result of the proposed project; *Public Law 91-646, Uniform Relocation Assistance Act of 1970*, as amended, will apply. Cultural resources clearances are attached.

This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxic (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or any other factor that would cause a meaningful increase in MSAT impacts of the project from that of the no-build alternative.

Construction of this project will impact approximately 3.1 acres of forested wetlands and relocate approximately 1,055 linear feet of ephemeral stream. Mitigation for the wetland impacts (27.06 credits) will be debited from the ARDOT Ink Bayou Mitigation Bank. Mitigation for the stream impacts (3,288.3 credits) will be debited from the ARDOT Bayou Meto Mitigation Bank. Construction should be allowed under the terms of a Nationwide Permit 23 for Approved Categorical Exclusions.

The attached official species list obtained through the U.S. Fish and Wildlife Service Information for Planning and Consultation website lists the Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*) as protected species potentially occurring in the project area. Based on the lack of habitat and distance to known species occurrences, it has been determined that the proposed project will have “no effect” on all listed species.

A traffic noise impact analysis (noise analysis) was completed for the proposed project in accordance with the ARDOT noise policy. The noise analysis was used to: determine noise impacts under current conditions and predicted conditions if the project is constructed (“future” or “build”); predict noise impacts resulting from

project construction; identify noise sensitive land use locations (receptors); and evaluate potential noise abatement measures.

The following residential areas south of Highway 67 were identified as Noise Study Areas (NSA), with each single-family residence representing a potential receptor:

1. NSA 1 – Subdivision east of Exit 16 (Highways 5/321/367) in the vicinity of Southfork Drive and Ewing Lane.
2. NSA 2 – Subdivision west of Exit 19 (Highway 89) in the vicinity of Dakota Street and Dakota Drive.
3. NSA 3 – Maple Hill Estates mobile home park and residences east of Exit 19 (Highway 89) and north of Locust Street.

The FHWA Traffic Noise Model 2.5 (TNM) software was used to predict existing and future noise impacts. TNM modeling was completed using existing year 2017 and design year 2041 traffic and roadway information. For residences, the ARDOT noise policy considers A-weighted sound levels in decibels (dBA) of 66 dBA and above as noise impacts.

The following table summarizes the total number receptors for each NSA, the total number of receptors predicted to experience noise impacts under existing and future conditions, and the predicted dBA increase under future conditions. According to the ARDOT noise policy, the noise level increases would be considered minor. No substantial noise level increases (≥ 10 dBA) were predicted.

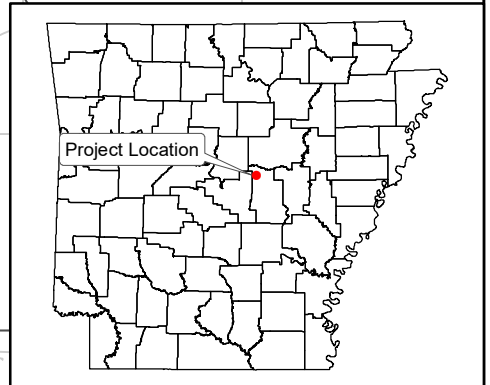
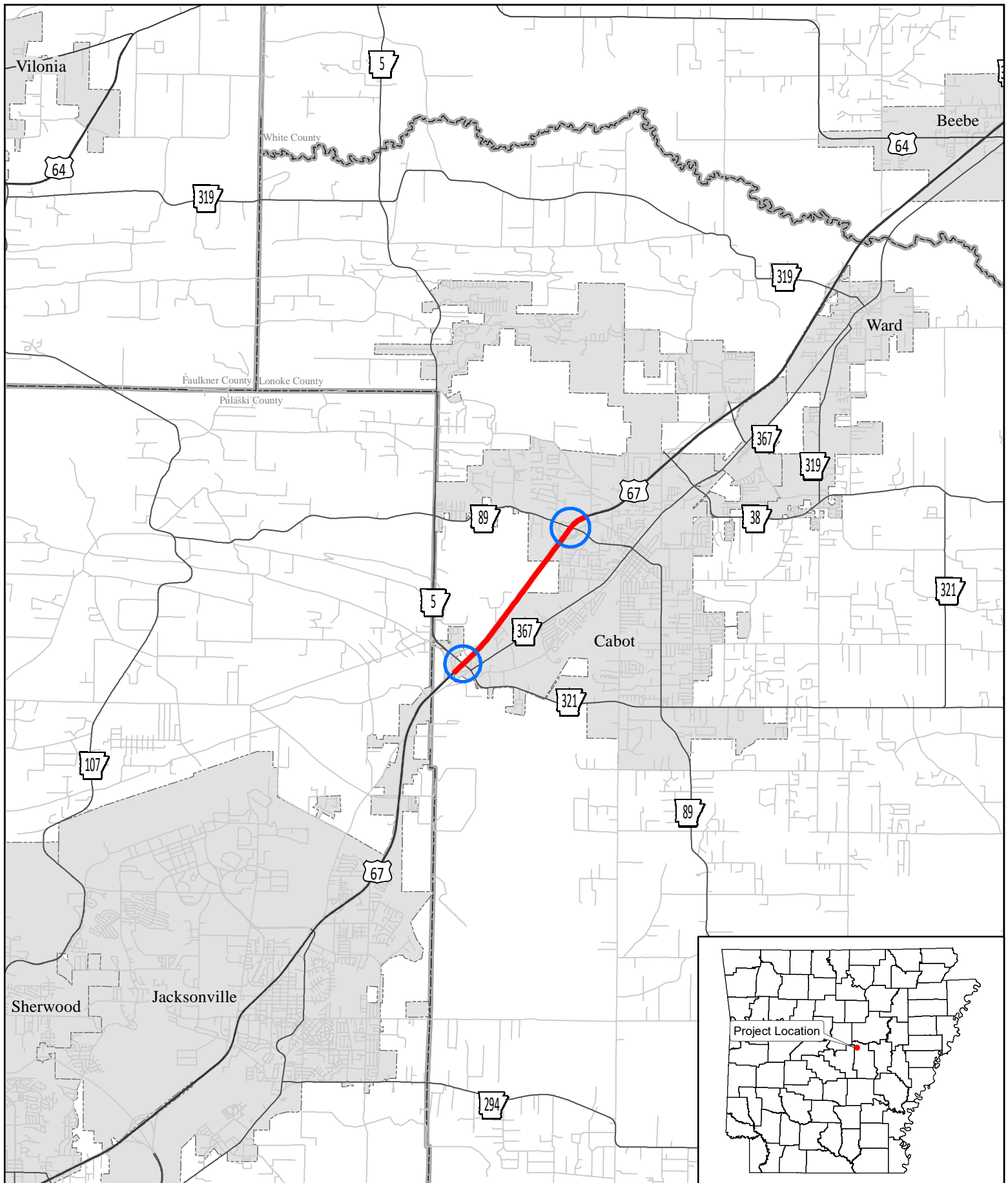
NSA	Receptors	Existing Impacts (2017)	Future Impacts (2041)	Future Noise Level Increase (dBA)
1	37	14	20	2 - 3
2	20	2	5	2 - 3
3	16	4	8	2 - 5

Noise barriers were determined to be the only available potential abatement measure to reduce noise levels for impacted areas. Based on the noise barrier analysis, a preliminary determination was made that noise barriers would be feasible (e.g., constructible) and reasonable (e.g., cost effective) for NSA 1. Noise barriers were not found to be reasonable for NSA 2 or NSA 3.

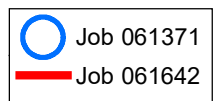
A neighborhood noise meeting will be held to solicit input from residents who would benefit from a noise barrier. The ARDOT will consider residents' input when making the final decision about noise barrier construction. The noise analysis report will be available upon completion.

The City of Cabot participates in the National Flood Insurance Program. The project lies within Zone A and AE Special Flood Hazard Areas. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a substantial floodplain encroachment or risk to property or life.

Open-forum public involvement meetings were held for the interchange improvements on April 18, 2019, and the main lane widening on August 29, 2019. Synopses of both public involvement meetings are attached.



Job 061631
Construction Job Locations





ARKANSAS DEPARTMENT OF TRANSPORTATION


ARDOT.gov | IDriveArkansas.com | Lorie H. Tudor, P.E., Director

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261 | Phone: 501.569.2000

INTEROFFICE MEMORANDUM

April 20, 2020

TO: Job File

FROM: Richard Jenkins, Cultural Resources 

SUBJECT: Cultural Resources Clearance
Job Number 061371
Hwy.67 Intchng. Impvts. (Cabot) (S)
Route 67, Section 11
Lonoke County

The revised right-of-way (ROW) for the above mentioned job will consist of an approximate 400-foot permanent roadway easement that will be necessary to facilitate turning movements at the intersection of Highway 5 and Rockwood Drive. The location of the revised ROW is between Stations 1028+66 and is located within paved and disturbed areas and will not have any impacts to historic properties. The revised location falls within the ARDOT study area previously surveyed under the current project number. No cultural resources were identified by that survey (Arkansas Historic Preservation Program Tracking Number 101637.02). No further Section 106 review is required.



ARKANSAS DEPARTMENT OF TRANSPORTATION


ARDOT.gov | IDriveArkansas.com | Scott E. Bennett, P.E., Director

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261 | Phone: 501.569.2000

INTEROFFICE MEMORANDUM

January 27, 2020

TO: Job File

FROM: Richard Jenkins, Cultural Resources 

SUBJECT: Cultural Resources Clearance
Job Number 061642
Hwy. 5 – Hwy. 89 (Widening) (S)
Route 67, Section 11
Lonoke County

The Arkansas Department of Transportation (ARDOT) proposes to widen 2.73 miles of Highway 67 from 4 lanes to 6 lanes in Lonoke County. No new right-of-way (ROW) will be acquired.

An examination of the Arkansas Archeological Survey's records was conducted for previously recorded archeological sites and was negative. A records evaluation of the Arkansas Historic Preservation Program's database for historic properties was also negative. The Cabot topographic quadrangle map was examined for cemeteries, likely historic structures, and landforms conducive to hold archeological sites along the project's route; none were found. The General Land Office map showed no cultural features near the project. The 1936 Lonoke County Highway map shows few structures near this project.

The proposed road improvements will occur in previously disturbed areas inside the current ARDOT ROW. This undertaking has no potential to cause effects on historic properties as defined in 36 CFR 800.3(a)(1); therefore, the project requires no further work or Section 106 review.

PUBLIC INVOLVEMENT SYNOPSIS

Job Number 061631
Hwy. 5 – Hwy. 89 (Cabot) P.E.
Lonoke County
Thursday, August 29, 2019

An open forum Public Involvement meeting for the proposed Highway 67 widening between Highway 5 and Highway 89 at the Veterans Park Event Center in Cabot from 4:00 – 7:00 p.m. on Thursday, August 29, 2019. Efforts to involve minorities and the public in the meeting included:

- Display advertisement placed in the *Arkansas Democrat-Gazette* on Sunday, August 25, 2019.
- Display advertisement placed in *The Leader* on Wednesday, August 21, 2019 and Wednesday, August 28, 2019.
- Public Service Announcement ran on Cumulus Media – Power 92.3 FM from Monday, August 26, 2019 – Thursday, August 29, 2019.
- Outreach letters mailed to public officials.
- Distribution of flyers in the project area.

The following information was available for inspection and comment. Small-scale copies of the displays are attached.

- Displays of an aerial-based project location map.
- Preliminary project design plans.

Handouts for the public included a comment sheet and a small-scale project location map.

Table 1 describes the results of the public participation at the meeting.

TABLE 1	
Public Participation	Totals
Attendance at meeting (including ARDOT staff)	69
Comments received	8

ARDOT staff reviewed all comments received and evaluated their contents. The summary of comments listed below reflects the personal perception or opinion of the person or organization making the statement. The sequencing of the comments is random and is not intended to reflect importance or numerical values. Some of the comments were combined and/or paraphrased to simplify the synopsis process.

An analysis of the responses received as a result of the public survey is shown in Table 2.

TABLE 2	
Survey Results	Totals
Feels that the proposed Highway 67 widening is needed	7
Does not feel proposed widening is needed	1
Knowledge of cultural resources in project area	0
Knowledge of environmental constraints in project area	0
Believes beneficial impacts due to the proposed project	5
Adverse impacts due to the proposed project	2
Did not indicate beneficial or adverse impacts	1

A listing of general comments concerning the proposed project follows:

- The proposed project would result in noise impacts and loss of trees along the right of way.
- A noise barrier should be included in the proposed project.
- The proposed project will help grow the community and help ease traffic congestion in central Arkansas.
- The speed limit should be reduced to 60-65 mph instead of 70 mph or greater.
- All construction should occur at the same time.
- The highway pavement condition has deteriorated considerably, causing a very rough ride.
- Excessive commuter traffic necessitates additional lanes.
- More people will be drawn to the area with improved roads and reduced traffic congestion.
- The proposed widening should be extended to exit 21.
- Area drainage, especially for residences along South Rockwood, should be considered in the project plans.

Attachments:

Blank Comment Form
Small-Scale Project Location Map

RJ *[Signature]*
DN *[Signature]*
SS:tt

**ARKANSAS DEPARTMENT OF TRANSPORTATION (ARDOT)
CITIZEN COMMENT FORM**

**AHTD JOB NUMBER 061631
Hwy. 5 – Hwy. 89 (Cabot) P.E.
LONOKE COUNTY**

**LOCATION:
VETERANS PARK EVENT CENTER
508 NORTH LINCOLN STREET
CABOT, AR
4:00 – 7:00 P.M.
THURSDAY, AUGUST 29, 2019**

Make your comments on this form and leave it with ARDOT personnel at the meeting or mail it by 4:30 p.m. on **Friday, September 13, 2019** to: Arkansas Department of Transportation, Environmental Division, Post Office Box 2261, Little Rock, Arkansas 72203-2261. Email: environmentalpimeetings@ardot.gov.

Yes No
☐ ☐

Do you feel there is a need for the proposed widening of Highway 67 between the Highway 5 and Highway 89 interchanges in Lonoke County? Comment (optional) _____

Do you feel that the proposed improvements project will have any impacts (☐ Beneficial or ☐ Adverse) on your property and/or community (economic, environmental, social, etc.)? Please explain. _____

☐ ☐ Do you have a suggestion that would make this proposed project better serve the needs of the community? _____

☐ ☐ Does your home or property offer any limitations to the project, such as septic systems, that the Department needs to consider in its design? _____

(Continued on back)

5

☐

☐

Name : _____ (Please Print)

Please make additional comments here.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface.





Notes:

PUBLIC INVOLVEMENT SYNOPSIS

Job Number 061371

Hwy. 67 Intchng. Impvts. (Cabot) (Hwy. 67)

Lonoke County

Thursday, April 18, 2019

An open forum Public Involvement meeting was held for the proposed Highway 67 interchange improvements at Highways 5/321/367 and Highway 89 at the Veterans Park Event Center from 4:00 – 7:00 p.m. on Thursday, April 18, 2019. Efforts to involve minorities and the public in the meeting included:

- Display advertisement placed in the *Arkansas Democrat-Gazette* on Sunday, April 14, 2019.
- Display advertisement placed in *The Leader* on Wednesday, April 10, 2019 and Wednesday, April 17, 2019.
- Public Service Announcement ran on Cumulus Media - Power 92.3 FM. from Monday, April 15, 2019 through Thursday, April 18, 2019.
- Outreach letters mailed to public officials.
- Distribution of flyers in the project area.

The following information was available at the meetings for review and comment:

- Displays of an aerial-based project location map.
- Preliminary project design plans.

Public handouts included a comment form and a small-scale project location map. Copies of these handouts are attached to this synopsis.

Table 1 summarizes public participation at the meeting.

TABLE 1	
Public Participation	Totals
Attendance at Public Involvement meeting (including ARDOT staff)	84
Total comment forms received	21
Total letters received	1
Total comments received	22

ARDOT staff reviewed all the comments received. The summary below reflects the perception or opinion of the person or organization making the comment(s). The order in which the comments are listed is random and does not reflect the number of times comments were made or their significance. Not all commenters responded to every Comment Form question, and some responses were ambiguous. A few of the comments were combined and/or paraphrased to simplify this synopsis.

Table 2 summarizes responses to Comment Form questions.

TABLE 2	
Survey Results	Totals
Feels that the proposed Highway 67 interchange improvements are needed	21
Does not feel that the proposed improvements are needed	0
Knowledge of cultural resources in project area	0
Knowledge of environmental constraints in project area	0
Home or property limitations	1
Suggestions to better serve the needs of the community	7
Beneficial impacts due to the proposed project	9
Adverse impacts due to the proposed project	4

Comments regarding the proposed roundabout at Hwy. 89 and Rockwood Rd. included:

- Do not put in a traffic circle. This would cause more accidents and increased difficulty in accessing Walmart and surrounding stores/restaurants/banks.
- Adding the traffic circle is even more reason for me to sell my home.
- Pedestrian access and safety does not appear to be addressed in the proposed design.
- The proposed traffic circle at Hwy. 89 and Rockwood Rd. would further restrict pedestrian access and make it even MORE hazardous for those who "exercise" their right to walk, unless you build a pedestrian/bicycle bridge over the circle intersection.
- A sidewalk and bicycle lane should be provided the full length of the new Hwy. 89 interchange over Hwy. 67.
- The proposed traffic circle at Hwy. 89 and Rockwood Rd. also does not appear to be a satisfactory solution for traffic management at this intersection. At low to moderate traffic volume, it might facilitate traffic flow, but at the higher traffic

congestion periods this area sees, it will create a worse situation than we have now.

- I also question the desirability of having a signalized entrance/exit crisscross intersection at the middle of the Hwy. 67 overpass. In trying to relieve choke points at other places, it will create a bigger choke point at peak traffic times. This non-traditional design will create more confusion, resulting in reduced traffic flow capacity, especially during peak times.
- Based on the curb & gutter line designations it appears that reasonable access may be cut off for many of the businesses close to the Rockwood Rd. intersection south of Hwy. 89.
- Do not put in a roundabout at Hwy. 89 and Rockwood Rd., too much industrial traffic (18-wheelers and lumber trucks).
- Completely rehab the Hwys. 5 and 89 frontage roads to allow them to handle big trucks with heavy loads. This will provide additional options to access Walmart.
- The traffic circle is not going to handle the flow of traffic during the Christmas season. Please consider multi-lane roads and widening.
- Consider a roundabout at Locust Street instead of the existing light.

Comments regarding traffic lights include:

- Add lighting at the interchanges.
- Please add a traffic light at First Street and Hwy. 321.
- Make sure all traffic lights are synced to help with traffic flow.
- Add a roundabout at Hwys. 5/321/367 intersection instead of a stop light.

Comments regarding specific property impacts include:

- Moyer Family state: The project will render my property unusable for business and uninhabitable. The current right of way is 38ft from our home. The proposal will put it approximately 15-18 ft reducing my acreage by 21-25%.
- Noise level already high.
- New Life Church request: During construction of the project, please remove trees in front of New Life Church. The trees are in ARDOT right of way.
- Sharp Family Dentistry state: Storm water drainage along the northbound Hwys. 5/321 off ramp is poor. Any additional sediment siltation from ramp demolition would lead to flooding at Sharp Family Dentistry. Ensure contract addresses their concern.
- FAB&T state: The proposed easement line eliminates our drive and renders the drive-thru unusable at our Rockwood Rd. location. Request visit by ARDOT.

Comments regarding walkability for pedestrians:

- Great to see this project will provide for pedestrian traffic. This project is fantastic.
- The bridges are outdated. We need sidewalks, pedestrian crossovers on both sides at both locations.

Additional comments:

- All three intersections on Hwy. 89 need to be multilane commercial roundabouts like in Conway by Sam's Club. Traffic stalls for several hours at both locations.
- Project will help traffic back-ups during morning and evening commutes.
- This project will provide for better traffic flow.
- Happy to see improvements being made, happy to see more uses of the roundabouts.
- Traffic getting off the highway is a nightmare.
- Better traffic flow equals happier community and smoother travel.

Attachments:

Blank Comment Form

Small-Scale Project Location Map

RJ

DN




SS:tt

**ARKANSAS DEPARTMENT OF TRANSPORTATION (ARDOT)
CITIZEN COMMENT FORM**

**AHTD JOB NUMBER 061371
Hwy. 67 Intchng. Impvts. (Cabot) (Hwy. 67)
LONOKE COUNTY**

**LOCATION:
VETERANS PARK EVENT CENTER
508 NORTH LINCOLN STREET
CABOT, AR
4:00 – 7:00 P.M.
THURSDAY, APRIL 18, 2019**

Make your comments on this form and leave it with ARDOT personnel at the meeting or mail it by 4:30 p.m. on **Friday, May 3, 2019** to: Arkansas Department of Transportation, Environmental Division, Post Office Box 2261, Little Rock, Arkansas 72203-2261. Email: environmentalmeetings@ardot.gov.

Yes No
☐ ☐

Do you feel there is a need for the proposed Highway 67 interchange improvements at the Highway 5/321/367 and Highway 89 interchanges in Lonoke County? Comment (optional)_____

☐ ☐

Do you know of any historical sites, family cemeteries, or archaeological sites in the project area? Please note and discuss with staff. _____

☐ ☐

Do you know of any environmental constraints, such as endangered species, hazardous waste sites, existing or former landfills, or parks and public lands in the vicinity of the project? Please note and discuss with ARDOT staff. _____

(Continued on back)

Yes

☐

No

☐

Does your home or property offer any limitations to the project, such as septic systems, that the Department needs to consider in its design? _____

☐☐

Do you have a suggestion that would make this proposed project better serve the needs of the community? _____

Do you feel that the proposed improvements project will have any impacts (☐ Beneficial or ☐ Adverse) on your property and/or community (economic, environmental, social, etc.)? Please explain. _____

It is often necessary for ARDOT to contact property owners along potential routes. If you are a property owner along or adjacent to the route under consideration, please provide information below. Thank you.

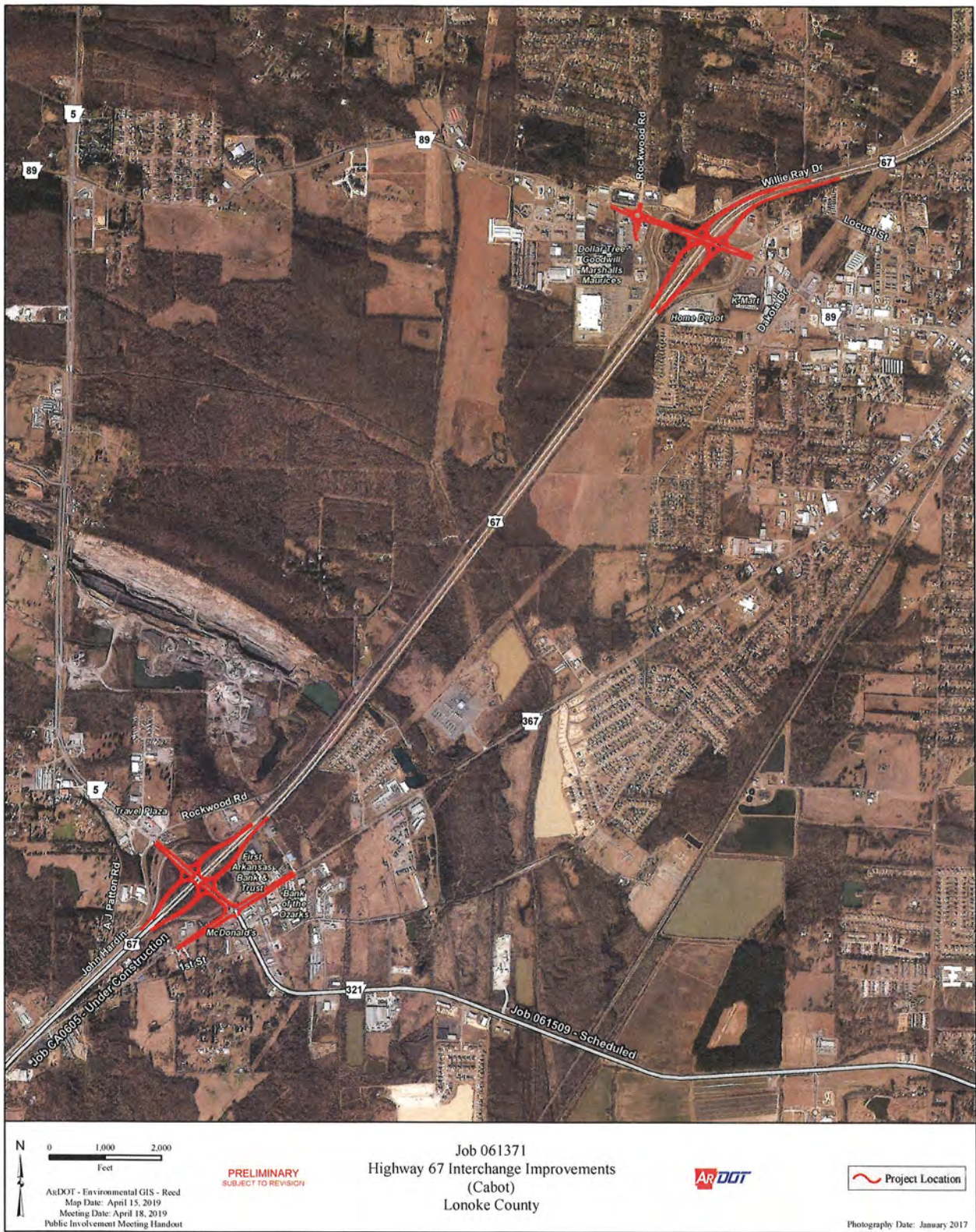
Name : _____ (Please Print)

Address: _____ Phone: (_____) _____ -- _____

E-mail: _____

Please make additional comments here. _____

For additional information, please visit our website at www.ardot.gov



Notes:



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480
<http://www.fws.gov/arkansas-es>

In Reply Refer To:

April 13, 2020

Consultation Code: 04ER1000-2020-SLI-0763

Event Code: 04ER1000-2020-E-01849

Project Name: 061631 Hwy. 5 - Hwy. 89 P.E.

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

To Whom It May Concern:

The enclosed species list identifies endangered, threatened, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). **This letter only provides an official species list and technical assistance; if you determine that listed species and/or designated critical habitat may be affected in any way by the proposed project, even if the effect is wholly beneficial, consultation with the Service will be necessary.**

If you determine that this project will have no effect on listed species and their habitat in any way, then you have completed Section 7 consultation with the Service and may use this letter in your project file or application.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found on our website.

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered,

threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

If your project involves in-stream construction activities, oil and natural gas infrastructure, road construction, transmission lines, or communication towers, please review our project specific guidance at <http://www.fws.gov/arkansas-es/IPaC/ProjSpec.html>.

The karst region of Arkansas is a unique region that covers the **northern third of Arkansas** and we have specific guidance to conserve sensitive cave-obligate and bat species. **Please visit <http://www.fws.gov/arkansas-es/IPaC/Karst.html> to determine if your project occurs in the karst region and to view karst specific-guidance.** Proper implementation and maintenance of best management practices specified in these guidance documents is necessary to avoid adverse effects to federally protected species and often avoids the more lengthy formal consultation process.

If your species list includes any mussels, Northern Long-eared Bat, Indiana Bat, Yellowcheek Darter, Red-cockaded Woodpecker, or American Burying Beetle, your project may require a presence/absence and/or habitat survey prior to commencing project activities. Please check the appropriate species-specific guidance on our website to determine if your project requires a survey. We strongly recommend that you contact the appropriate staff species lead biologist (see office directory or species page) prior to conducting presence/absence surveys to ensure the appropriate level of effort and methodology.

Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with the Service further. Similarly, it is the responsibility of the Federal action agency or project proponent, not the Service, to make "no effect" determinations. If you determine that your proposed action will have "no effect" on threatened or endangered species or their respective critical habitat, you do not need to seek concurrence with the Service. Nevertheless, it is a violation of Federal law to harm or harass any federally-listed threatened or endangered fish or wildlife species without the appropriate permit.

Through the consultation process, we will analyze information contained in a biological assessment that you provide. If your proposed action is associated with Federal funding or permitting, consultation will occur with the Federal agency under section 7(a)(2) of the ESA. Otherwise, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA (also known as a habitat conservation plan) is necessary to harm or harass federally listed threatened or endangered fish or wildlife species. In either case, there is no mechanism for authorizing incidental take "after-the-fact." For more information regarding formal consultation and HCPs, please see the Service's Consultation Handbook and Habitat Conservation Plans at www.fws.gov/endangered/esa-library/index.html#consultations.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to

federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days.** This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

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

Attachment(s):

- Official Species List

Official Species List

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

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2020-SLI-0763

Event Code: 04ER1000-2020-E-01849

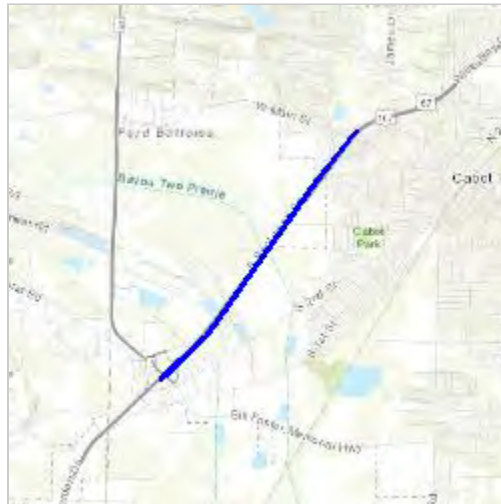
Project Name: 061631 Hwy. 5 - Hwy. 89 P.E.

Project Type: TRANSPORTATION

Project Description: widen 67/167 and re-configure Hwy. 5 and 89 interchanges

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/34.96441295156332N92.04802127870951W>



Counties: Lonoke, AR

Endangered Species Act Species

There is a total of 3 threatened, endangered, or candidate species on this species list.

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

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

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

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

Birds

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Proposed Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Critical habitats

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

ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST FOR CONSIDERATION OF POTENTIAL IMPACTS

ARDOT Job Number 061631 FAP Number NHPP-9065(29)

Job Title Hwy. 5 – Hwy. 89 (Cabot) P.E.

Environmental Resource	None	Minimal	Major	Comments
Air Quality		X		Minimal impacts anticipated
Cultural Resources	X			No impacts anticipated
Economic		X		Improved capacity on future Interstate 57
Endangered Species	X			"No effect" on all listed species
Environmental Justice/Title VI	X			No impacts anticipated
Fish and Wildlife		X		Temporary impacts during construction
Floodplains		X		Project within Zones A/AE SFHAs
Forest Service Property	X			Not within a National Forest boundary
Hazardous Materials/Landfills	X			No impacts anticipated
Land Use		X		7.2 acres proposed right of way
Migratory Birds	X			Migratory Bird SP added
Navigation/Coast Guard	X			No navigable waterways in project area
Noise Levels		X		33 receptors impacted across three areas
Prime Farmland	X			No impacts anticipated
Protected Waters	X			Water Pollution Control SP added
Public Recreation Lands	X			No impacts anticipated
Public Water Supply/WHPA	X			None in project area
Relocates		X		One residential relocation
Section 4(f)/6(f)	X			No impacts anticipated
Social	X			No impacts anticipated
Underground Storage Tanks	X			No impacts anticipated
Visual		X		Minor changes to visual environment
Streams		X		1055 linear feet of stream relocation
Water Quality		X		Temporary impacts during construction
Wetlands		X		3.1 acres wetland impacts
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? No

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type Nationwide Permit No. 23

Remarks:

Signature of Evaluator  Date May 12, 2020

Date Sent: March 23, 2020**ROADWAY DESIGN REQUEST**Job Number 061371 FAP No. _____ County LonokeJob Name Hwy. 67 Intchng. Impvts. (Cabot) (S)Design Engineer Taylor Clark Environmental Staff _____Brief Project Description Construct two SPUI Interchanges, Bridge Replacement, Construct Roundabout, and Widening of Hwy. 5, Hwy. 367, and Hwy. 89**A. Existing Conditions:**

Roadway Width:	<u>(1)42'-52'</u> <u>(2)42'-65'</u> <u>(3)24'-44'</u> <u>(4)25'-34'</u>	Shoulder Type/Width:	<u>(1)1' Paved</u> <u>(2)3'-16' Paved</u> <u>(3)1'-4' Paved</u> <u>(4)4' Inside & 6' Outside</u>
Number of Lanes and Width:	<u>(1)4 @ 10' to 5 @ 10'</u> <u>(2)3 @ 12' to 4 @ 11' & 1 @ 12'</u> <u>(3)2 @ 11' to 3 @ 12'</u> <u>(4)1 @ 15' to 2 @ 12'</u>	Existing Right-of-Way:	<u>(1)(5)79'-230'</u> <u>(2)(5)131'-190'</u> <u>(3)124' Average</u> <u>(4)295'-2000'</u>
Sidewalks?	<u>No</u>	Location:	<u>N/A</u> Width: <u>N/A</u>
Bike Lanes?	<u>No</u>	Location:	<u>N/A</u> Width: <u>N/A</u>

B. Proposed Conditions:

Roadway Width:	<u>(1)58'-82'</u> <u>(2)58'-85'</u> <u>(3)24'-81'</u> <u>(4)25'-58'</u>	Shoulder Type/Width:	<u>(1)1' Gutter</u> <u>(2)1' Gutter</u> <u>(3)1' Gutter</u> <u>(4)4' Inside & 6' Outside</u>
Number of Lanes and Width:	<u>(1)4 @ 11' & 1 @ 12' to 4 @ 11' & 3 @ 12'</u> <u>(2)4 @ 11' & 1 @ 12' to 4 @ 11', 2 @ 12', & 1 @ 15'</u> <u>(3)2 @ 11' to 5 @ 11' & 2 @ 12'</u> <u>(4)1 @ 15' to 4 @ 12'</u>	Proposed Right-of-Way:	<u>(1)(5)98'-1055'</u> <u>(2)(5)131'-225'</u> <u>(3)137' Average</u> <u>(4)295'-2000'</u>
Sidewalks?	<u>(1)(2)(3)Yes</u> <u>(4)No</u>	Location:	<u>Lt. & Rt. N/A</u> Width: <u>5'</u> <u>N/A</u>
Bike Lanes?	<u>(1)(2)(3)(4)No</u>	Location:	<u>N/A</u> Width: <u>N/A</u>

C. Construction Information:If detour: Where: N/A Length: N/A**D. Design Traffic Data:**

2020 ADT:	<u>37000</u>	2040 ADT:	<u>51000</u>	% Trucks:	<u>7</u>
Design Speed:	<u>30-50</u>	m.p.h.			

E. Approximate total length of project: $\frac{(1)0.49}{(2)0.48} \text{ mile(s)}$
 $\frac{(3)0.59}{(4)2.86} \text{ mile(s)}$

F. Justification for proposed improvements: Traffic Relief and Bridge Replacement

G. Total Relocates: 1 Residences: 1 Businesses: 0

H. Have you coordinated with any outside agencies (e.g., FHWA, City, County, etc.)? Yes

Agency/Official	Person Contacted	Date
City of Cabot		

(1) Hwy. 89
 (2) Hwy. 5
 (3) Hwy. 367
 (4) Ramps
 (5) Right of Way in the areas of the interchanges will be included with Ramps.

Date Sent: January 21, 2020

ROADWAY DESIGN REQUEST

Job Number 061642 FAP No. _____ County Lonoke

Job Name Hwy. 5 – Hwy. 89 (Widening) (S)

Design Engineer Garver Environmental Staff _____

Brief Project Description Main lane reconstruction and widening from 4 lanes to 6 lanes

A. Existing Conditions:

Roadway Width: Var. (128' Avg.) Shoulder Type/Width: Paved (6' in./10' out.)

Number of Lanes and Width: 4-12' Existing Right-of-Way: Var. (270'-450')

Sidewalks? N/A Location: _____ Width: _____

Bike Lanes? N/A Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 118' Shoulder Type/Width: Paved (12' in./10' out.)

Number of Lanes and Width: 6-12' Proposed Right-of-Way: N/A

Sidewalks? N/A Location: _____ Width: _____

Bike Lanes? N/A Location: _____ Width: _____

C. Construction Information:

If detour: Where: N/A Length: _____

D. Design Traffic Data:

2020 ADT: 38000 2040 ADT: 54000 % Trucks: 11
Design Speed: 70 m.p.h.

E. Approximate total length of project: 3.134 mile(s)

F. Justification for proposed improvements: Capacity and structural improvements needed

G. Total Relocates: 0 Residences: 0 Businesses: 0

H. Have you coordinated with any outside agencies (e.g., FHWA, City, County, etc.)? N/A

Agency/Official	Person Contacted	Date

Nationwide Permit No. 14

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

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

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32.) (Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and

distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization.

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

1. **Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of

aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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

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

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

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

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

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

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

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

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

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction

notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

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

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

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

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP

activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (54

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

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that

may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

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

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

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

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

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

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

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

mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects.

Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

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

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

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

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

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

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

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

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

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a

forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

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

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

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

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

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

the letter, and the letter must contain the following statement and signature:

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

(Transferee)

(Date)

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

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation.

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

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army

Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

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

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP

may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

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

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal

and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

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

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

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

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

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

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

of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

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

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

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

In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

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

District Engineer's Decision

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless

additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

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