

TIER 3 CATEGORICAL EXCLUSION

ARDOT JOB NUMBER 090523

FAP NUMBER NHPP-0044(35)

WAR EAGLE CREEK STR. & APPRS. (YELLVILLE) (S)

ROUTE 23, SECTION 9

MADISON COUNTY

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

By the

U.S. Department of Transportation

Federal Highway Administration

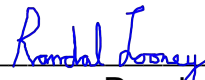
And the

Arkansas Department of Transportation

March 2021

March 4, 2021

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

The Environmental Division reviewed the referenced project and 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 replace Bridge No. 03583 over War Eagle Creek on Highway 23 in Madison County. Total length of the project is 0.33 mile. A project location map is attached.

The existing roadway has two 11' wide paved travel lanes with 2' wide paved shoulders. The existing bridge is 392' x 25' and in poor condition. Existing right of way width is 100'.

The proposed roadway will have two 12' wide paved travel lanes with 8' wide paved shoulders. The geometric design of the County Road 8530 intersection will also be improved. The proposed bridge will be approximately 420' x 40' and located west of the existing bridge. The average proposed right of way width will range from 170' to 210'. A total of 1.4 acres of Withrow Springs State Park property will be converted to transportation easement, and an additional 1.4 acres of new right of way outside of the park will be acquired.

Design data for this project is as follows:

Design Year	Average Daily Traffic (vpd)	Percent Trucks	Design Speed (mph)
2021	2,000	5	45
2040	2,400		

There are no relocations, environmental justice concerns, underground storage tanks/hazardous wastes, wetlands, or cultural resources associated with this project. State Historic Preservation Officer clearance is attached. Approximately 1.2 acres of Prime Farmland will be converted to transportation use; Form NRCS-CPA-106 is attached.

The project involves Withrow Springs State Park, which is an Arkansas Department of Parks, Heritage and Tourism, Division of Arkansas State Parks (ASP) property eligible for Section 4(f) protection as a recreational resource. Recreational activities at the park include hiking, floating, and fishing. The project

will require converting 1.4 acres of park property to permanent transportation easement. Another 1.7 acres of park property will be temporarily used as construction easement. As described in the attached Section 4(f) *de minimis* evaluation, the project is not anticipated to harm any of the park's recreational components.

The ASP used funding from the Land and Water Conservation Fund (LWCF) to acquire and develop Withrow Springs State Park. Section 6(f)(3) of the LWCF Act of 1965 prohibits the conversion of lands acquired with LWCF assistance to other uses without the concurrence of the Secretary of the Interior. The park land permanently converted to transportation easement will therefore be replaced with land of at least fair market and recreational value.

Noise modeling using the FHWA Traffic Noise Model 2.5 procedures indicated that traffic noise impacts would not occur. Sound level increases associated with the proposed project were predicted to be less than 1 decibel and would not be discernible. The noise assessment report is 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.

Madison County participates in the National Flood Insurance Program. The project lies within the Zone A, Special Flood Hazard Area. 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.

The attached official species list obtained through the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) website identifies the following species as potentially occurring in the project area: gray bat (*Myotis grisescens*); northern long-eared bat (*Myotis septentrionalis*); Ozark big-eared bat (*Corynorhinus townsendii ingens*); Indiana bat (*Myotis sodalis*); Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*); Red Knot (*Calidris canutus rufa*); Piping Plover (*Charadrius melodus*); Rabbitsfoot (*Theliderma cylindrica*); and Missouri bladderpod (*Physaria filiformis*).

It has been determined that the project will have “no effect” on the Eastern Black Rail, Piping Plover, and Red Knot due to lack of habitat and distance to known populations. The Arkansas Determination Key provided a “may affect, but is not likely to adversely affect” determination for gray bat, Rabbitsfoot and Missouri bladderpod. The results of the Arkansas Determination Key are attached.

FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) determination key, within IPaC, was not applicable because 0.23 acre of clearing will occur beyond 300 feet from the existing roadway. ARDOT determined the project “may affect, but is not likely to adversely affect” the Indiana bat and Ozark big-eared bat. For the impacts to approximately 4.09 acres of suitable bat habitat, ARDOT will be deducting \$40,925 from the approved Indiana Bat tracking research funding. As an additional conservation measure, ARDOT will use a consultant to monitor the construction noise potential impacts to War Eagle Cave to improve knowledge of potential impacts to hibernacula. The project may affect the northern long-eared bat, but incidental take is not prohibited. The 4d Rule Verification Letter and USFWS determinations concurrence are attached.

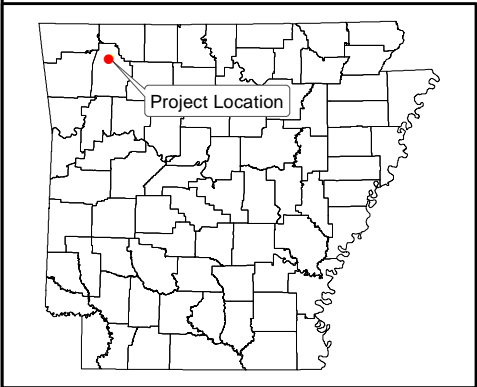
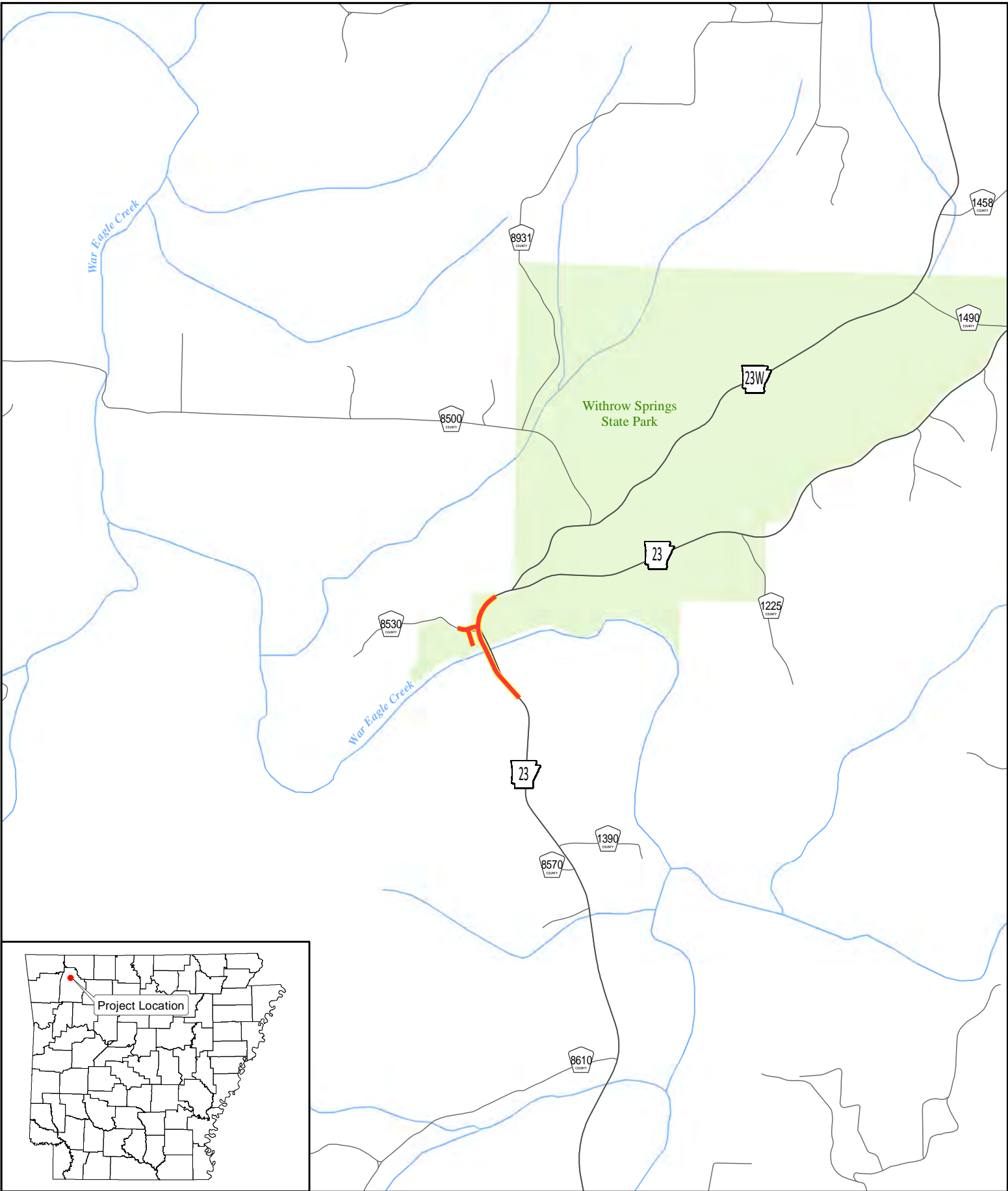
The project will have a discharge of dredged or fill material into waters of the United States associated with the relocation of ~900 linear feet of an unnamed tributary to War Eagle Creek; therefore, a Section 404 permit will be required. Compensatory mitigation for these impacts will be through the purchase of stream credits at one of two commercial banks servicing the project area. The project should be authorized by Nationwide Permit 23 for Approved Categorical Exclusions as defined in Federal Register 82(4): 1860-2008.

War Eagle Creek is on the National Rivers Inventory and designated as an Ecologically Sensitive Waterbody Spring and Seep. Correspondence to the National Park Service was sent, and no reply was received. A Water Pollution Control Special Provision is required.

No other adverse environmental impacts were identified. The checklist used to verify consideration of potential environmental impacts is attached.

Commitments


A commitment has been made for Indiana bat compensatory mitigation in association with this project. Additionally, potential construction noise impacts to the War Eagle Cave bat hibernacula will be monitored.



0 1,000 2,000
Feet

ARDOT - Environmental GIS - Hopkins
February 28, 2020

Job 090523
War Eagle Creek Str. & Apprs.
Madison County

 Project Location



Asa Hutchinson
Governor
Stacy Hurst
Secretary

June 15, 2020

Mr. John Fleming
Division Head
Environmental Division
Arkansas Department of Transportation
P.O. Box 2261
Little Rock, AR 72203-2261

Re: Madison County – General
Section 106 Review – FHWA
War Eagle Creek Str. & Apprs.
Route 23, Section 9
Proposed Undertaking – Replace Bridge 03583
ARDOT Job Number 090523
AHPP Tracking Number 102288.01

Dear Mr. Fleming:

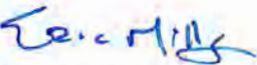
The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the project identification form for the above-referenced job. As described, the proposed undertaking entails replacing the Bridge 03583 over War Eagle Creek along Highway 23 in Madison County, Arkansas. In correspondence dated September 28, 2018, the AHPP concurred that Bridge 03583 is not eligible for inclusion in the National Register.

Based on the provided information, the AHPP concurs with the finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)** for the proposed undertaking.

Tribes that have expressed an interest in the area include the Cherokee Nation (Ms. Elizabeth Toombs), the Osage Nation (Dr. Andrea Hunter), and the Shawnee Tribe (Ms. Tonya Tipton). We recommend consultation in accordance with 36 CFR § 800.2 (c) (2).

Thank you for the opportunity to review this undertaking and report. If you have any questions, please contact Eric Mills of my staff at (501) 324-9784 or eric.mills@arkansas.gov.

Sincerely,


For Scott Kaufman
Director, AHPP

cc: Mr. Randal Looney, Federal Highway Administration
Dr. Ann Early, Arkansas Archeological Survey

**FARMLAND CONVERSION IMPACT RATING
FOR CORRIDOR TYPE PROJECTS**

PART I (To be completed by Federal Agency) Job 090523		3. Date of Land Evaluation Request	4. Sheet 1 of _____		
1. Name of Project		5. Federal Agency Involved			
2. Type of Project		6. County and State			
PART II (To be completed by NRCS)		1. Date Request Received by NRCS	2. Person Completing Form		
3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form). YES <input type="checkbox"/> NO <input type="checkbox"/>		4. Acres Irrigated Average Farm Size			
5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: _____ % _____	7. Amount of Farmland As Defined in FPPA Acres: _____ % _____			
8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS			
PART III (To be completed by Federal Agency)		Alternative Corridor For Segment			
		Corridor A	Corridor B	Corridor C	Corridor D
A. Total Acres To Be Converted Directly					
B. Total Acres To Be Converted Indirectly, Or To Receive Services					
C. Total Acres In Corridor					
PART IV (To be completed by NRCS) Land Evaluation Information					
A. Total Acres Prime And Unique Farmland					
B. Total Acres Statewide And Local Important Farmland					
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted					
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value					
PART V (To be completed by NRCS) Land Evaluation Information Criterion Relative value of Farmland to Be Serviced or Converted (Scale of 0 - 100 Points)					
PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))		Maximum Points			
1. Area in Nonurban Use	15				
2. Perimeter in Nonurban Use	10				
3. Percent Of Corridor Being Farmed	20				
4. Protection Provided By State And Local Government	20				
5. Size of Present Farm Unit Compared To Average	10				
6. Creation Of Nonfarmable Farmland	25				
7. Availability Of Farm Support Services	5				
8. On-Farm Investments	20				
9. Effects Of Conversion On Farm Support Services	25				
10. Compatibility With Existing Agricultural Use	10				
TOTAL CORRIDOR ASSESSMENT POINTS		160			
PART VII (To be completed by Federal Agency)					
Relative Value Of Farmland (From Part V)		100			
Total Corridor Assessment (From Part VI above or a local site assessment)		160			
TOTAL POINTS (Total of above 2 lines)		260			
1. Corridor Selected:	2. Total Acres of Farmlands to be Converted by Project:	3. Date Of Selection:	4. Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input type="checkbox"/>		
5. Reason For Selection:					

Signature of Person Completing this Part:

DATE

Joshua Graham

NOTE: Complete a form for each segment with more than one Alternate Corridor

**EVALUATION AND DOCUMENTATION OF A
DE MINIMIS FINDING TO SECTION 4(F) PROPERTY
FOR PUBLIC PARKS, RECREATION LANDS, AND
WILDLIFE AND WATERFOWL REFUGES**

ARDOT Job Number 090523
FAP Number NHPP-0044(35)
War Eagle Creek Str. & Apprs.
Madison County

Withrow Springs State Park
Arkansas Department of Parks, Heritage and Tourism
Division of Arkansas State Parks

January 2021

Federal Highway Administration
Arkansas Department of Transportation

What is Section 4(f)?

Section 4(f) is part of a law that was passed to protect public parks, recreation areas, wildlife/waterfowl refuges, and important historic sites from being harmed by transportation projects.

Does Section 4(f) apply to Withrow Springs State Park?

The Arkansas Department of Transportation (ARDOT) has proposed a project that involves Withrow Springs State Park property. Section 4(f) protections are applicable because Withrow Springs State Park is a publically accessible park managed and used for recreational purposes.

Certain types of Section 4(f) impacts can be recognized as “*de minimus*”, which means relatively minor. The intent of this evaluation is to demonstrate that impacts to Withrow Springs State Park will be relatively minor. We can have a *de minimis* finding on projects that meet the conditions shown in **Table 1**.

Table 1	
When Can We Use A <i>De Minimis</i> Finding on Section 4(f) Properties?	Does It Apply To This Project?
Did we specially design the project to protect the park as much as possible? Did we use mitigation and enhancement where it was suitable?	Yes
Did the officials with authority over the park have a chance to consider this information and agree that the project will not greatly harm the characteristics that make the park important?	Yes
Did the public have an opportunity to review and comment on the effects of the project on the park and the characteristics that make it important to them?	Yes

What is the proposed project?

The Highway 23 bridge crossing War Eagle Creek is in poor condition. The ARDOT, in conjunction with the Federal Highway Administration, is proposing to replace the bridge. Safety improvements include reducing the roadway curvature north of the bridge and

modifying the County Road 8530 intersection. The new alignment will be west of the existing alignment, allowing the bridge to remain in place to maintain traffic during construction. The existing bridge will be removed upon construction completion.

Why is Withrow Springs State Park important?

Withrow Springs State Park is owned by the Arkansas Department of Parks, Heritage and Tourism – Division of Arkansas State Parks (ASP). Recreational activities in the park include hiking, boating, swimming, fishing, camping, and picnicking. Amenities in the project footprint include:

- River access (see **Figure 1**)
- War Eagle Trailhead and Trail (see **Figure 2** and **Figure 3**)
- River access and War Eagle Trailhead parking lot (see **Figure 4**)

Although typically not visible due to its streambank location, the War Eagle Spring Cave entrance is adjacent to the proposed temporary construction easement. A portion of the cave system likely extends under the project footprint.



Figure 1



Figures 2 and 3



Figure 4

Can we avoid the park?

There are no feasible and prudent alternatives to replacing the existing bridge and reconstructing the approaches without impacting park land. The location of the bluff, the War Eagle Trail, and trail features such as the War Eagle Cave and an associated spring prevent the alignment from shifting east. Replacing the bridge on existing alignment would still require additional transportation easement from the park, and result in additional impacts due to the need to construct a temporary bridge and/or the temporary closing of the park's south entrance.

What will the project do to the park?

The new bridge and approaches will require the conversion of approximately 1.4 acres of park property to transportation easement. An additional 1.7 acres will be temporarily required as construction easement. As shown in **Figure 5**, the acreage to be converted includes the river access, War Eagle Trailhead, and associated parking area amenities.

Impacts resulting from project construction will include:

Adverse Impacts

- 1.4 acres of the 786-acre Withrow Springs State Park will be converted to transportation easement.
- River access and War Eagle Creek Trailhead parking capacity will be slightly reduced.
- The War Eagle Trail will be temporarily closed.
- The War Eagle Trail and river access for both boating and general recreation will be temporarily restricted during construction and bridge demolition.
- Approximately 6,800 cubic yards of cut and 38,000 cubic yards of fill will be required in and near the unnamed tributary to War Eagle Creek.
- Approximately 900 linear feet of the unnamed tributary will require relocation.
- The War Eagle Spring Cave will require protection.
- Noise levels will temporarily increase during construction and bridge demolition.

Beneficial Impacts

- The new bridge will be safer and replace an existing bridge that is in poor condition.
- The new roadway alignment will reduce the existing roadway curve north of the bridge.
- The County Road 8530 intersection improvements will increase safety by improving sight distances.

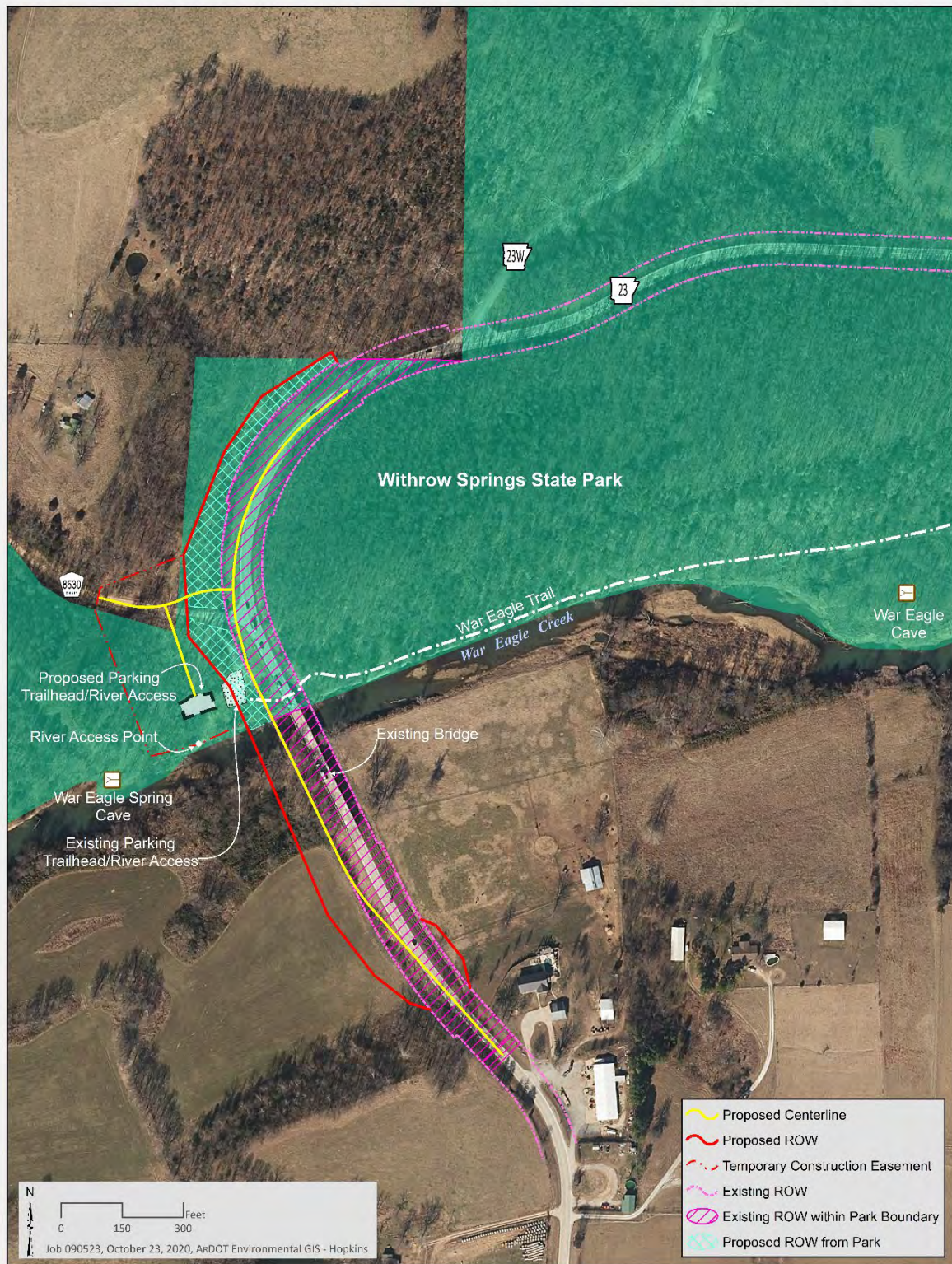


Figure 5

What did we do to reduce harm to the park?

Early coordination efforts between ARDOT and ASP officials included meetings held in May 2018 and October 2019. The coordination process resulted in shifting the proposed alignment from east to west of the existing bridge, and substantially reducing the project scope. Additional coordination efforts during Spring 2020 resulted in project design revisions to ensure river access is maintained and the parking area provides adequate space for vehicles with boat trailers to safely maneuver. Project design revisions were also made to ensure the channel for the relocated section of the unnamed tributary approximates its current size and dimension. The following measures were included in the proposed project to reduce harm to the park:

- The additional transportation easement acreage was minimized to the extent practicable.
- The War Eagle Trail length will be preserved.
- The park's south entrance will remain open during construction.
- Coordination with ASP officials about construction timing, clear zones, and park user diversions around the construction zone will be ongoing.
- Special provisions for boater safety, limiting the length of time War Eagle Creek can be inaccessible to river traffic, and protecting the War Eagle Spring Cave will be included in the project contract.
- The parking area, river access and trailhead will be restored upon project completion.

How did we involve the public in this evaluation?

Public Notice in the *Madison County Record* on Thursday, November 26, 2020 invited the public to review and comment on the proposed project's effects on Withrow Springs State Park. The Draft Section 4(f) Evaluation document was available on the ARDOT website and at the Huntsville and Eureka Springs public libraries. The public comment period occurred from November 30 through December 14, 2020. No public comments were received.

The ASP has agreed that this project will not have a harmful effect on Withrow Springs State Park. A copy of the concurrence is included in Appendix A.

What is the decision?

This evaluation concludes that the proposed project will not adversely affect the protected features, qualities, or activities that qualify the park for protection under Section 4(f), thus qualifying for a *de minimis* finding on Withrow Springs State Park.

APPENDIX A

CONCURRENCE STATEMENT

I concur with the assessment and the proposed minimization and mitigation of impacts to Withrow Springs State Park as detailed in the enclosed Section 4(f) Evaluation and Documentation of De Minimis Findings to Section 4(f) Property for Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges.

 Signature

Director of Arkansas State Parks Title

2-5-21 Date

NOISE ASSESSMENT REPORT
SCREENING LEVEL NOISE ANALYSIS
ARDOT JOB NUMBER 090523
WAR EAGLE CREEK STR. & APPRS. (S)

Fundamentals of Sound and Noise

Noise is defined as unwanted or undesirable sound. The three basic parameters of how noise affects people are summarized below.

Intensity is determined by the level of sound expressed in units of decibels (dB). A 3 dB change in sound level is barely perceptible to most people in a common outdoor setting. However, a 5 dB increase presents a noticeable change and a 10 dB sound level increase is perceived to be twice as loud. Outdoor conversation at normal levels at a distance of 3 feet becomes difficult when the sound level exceeds the mid-60 dBA range.

Frequency is related to the tone or pitch of the sound. The amplification or attenuation of different frequencies of sound to correspond to the way the human ear “hears” these frequencies is referred to as “A-weighting.” The A-weighted sound level in decibels is expressed as dBA.

Variation with time occurs because most noise fluctuates from moment to moment. A single level called the equivalent sound level (Leq) is used to compensate for this fluctuation. The Leq is a steady sound level containing the same amount of sound energy as the actual time-varying sound evaluated over the same time period. The Leq averages the louder and quieter moments, but gives more weight to the louder moments.

For highway noise assessment purposes, Leq is typically evaluated over the worst 1-hour period and written as Leq(h). The Leq(h) commonly describes sound levels at locations of outdoor human use and activity, and reflects the conditions that will commonly produce the worst traffic noise (e.g., the highest traffic volumes traveling at the highest possible speeds).

Noise Impact and Abatement Criteria

Traffic noise impacts are determined by comparing design year Leq(h) values to: (1) a set of Noise Abatement Criteria (NAC) for different land use categories; and (2) existing Leq(h) values. A noise impact occurs when design year (future build) levels approach, meet, or exceed the NAC value or when a substantial increase in noise occurs. “Approach” is defined as a level within 1 dBA of the NAC value, and a substantial increase is defined as 10 dBA or greater than existing noise levels. For screening level noise analysis (screening analysis) purposes, the

ARDOT *Policy on Highway Traffic Noise Abatement* requires determining noise levels within 4 decibels of the NAC.

A *noise sensitive receptor* (receptor) is defined as a representative location of a noise sensitive area for various land uses. Most receptors associated with highway traffic noise analysis are categorized as NAC Activity Category B (residential) and C (e.g., trails and trail crossings, campgrounds, schools). Since the NAC for Activity Categories B and C is 67 dBA, noise impacts would occur at the approach level of 66 dBA. The screening analysis threshold would be 63 dBA.

Consideration of noise abatement measures is required when the NAC value is approached or exceeded, or when a substantial increase is predicted. Noise barriers (e.g., walls or berms) are the most common noise abatement measures.

Screening Level Noise Analysis

A screening analysis may be performed for projects that are unlikely to cause noise impacts and/or where noise abatement measures are likely to be unfeasible for engineering reasons. Factors common to these types of projects include low traffic volumes, slower speeds, the presence of few or no receptors, and the need for roadway access points (e.g., driveways, Main Street scenarios, etc.).

Screening analysis results represent a worst-case scenario with higher sound levels than would be expected in detailed modeling, and may be used to determine the need for detailed analysis if noise impacts are likely and the placement of noise barriers is feasible. It may also be used for projects that lack receptors in order to assess impacts on undeveloped or developing land.

The FHWA Traffic Noise Model Version 2.5 (TNM) software program is used to predict existing and future Leq(h) traffic noise levels. The TNM straight line model uses the existing year and design year traffic and roadway information. Receivers (discrete points modeled in the TNM program) are incrementally placed away from the roadway centerline to determine the distances to which noise impacts and noise levels within 4 dBA of the NAC extend. The model assumes that the roadway and receivers were located at the same elevation with no intervening barriers such as topography or dense vegetation.

Project Evaluation and Screening Analysis Results

The proposed project will replace the existing Hwy. 23 bridge over War Eagle Creek. The Withrow Springs State Park boat launch area and the War Eagle

Trailhead are located in the project footprint, representing Activity Category C land uses.

Hwy. 23 has very low traffic volumes and only two potential receptors. Additionally, noise barriers would not be feasible due to both the terrain and established land uses requiring access points. A screening analysis was therefore considered appropriate for this project.

TNM modeling was completed using the existing year 2021 and design year 2041 (future build) traffic and roadway information. The purpose of the modeling was to determine the distances correlating to the 66 dBA noise impact level for Activity Category C receptors under existing and future build conditions. Receivers were incrementally extended from the centerline of Hwy. 23 to a maximum distance of 500 feet. The model calculation tables and input data are attached. The modeling results are summarized below.

Noise impacts were not predicted under existing and future build conditions. The noise level increases under future build conditions were less than 1 dB, which is undiscernible. A detailed noise analysis is not necessary for this project. Project construction operations typically increase noise levels. These increases would be temporary and have minor adverse effects on land uses and activities in the project area.

Table 1 presents the NAC values.

Table 1. Noise Abatement Criteria (NAC)

Activity Category	L_{eq(h)} dBA	Evaluation Location	Activity Description
A	57	Exterior	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B*	67	Exterior	Residential properties.
C*	67	Exterior	Active sport areas, amphitheaters, auditoriums, campgrounds, cemeteries, day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structure, radio stations, recording studios, recreation areas, Section 4(f) sites, schools, television studios, trails, and trail crossings.
D	52	Interior	Auditoriums, day care centers, hospitals, libraries, medical facilities, places of worship, public meeting rooms, public or nonprofit institutional structure, radio studios, recording studios, schools, and television studios.
E*	72	Exterior	Hotels, motels, offices, restaurants/bars, and other developed lands, properties or activities not included in A-D, or F.
F	---	---	Agriculture, airports, bus yards, emergency services, industrial, logging, maintenance facilities, manufacturing, mining, rail yards, retail facilities, shipyards, utilities (water resources, water treatment, electrical), and warehousing.
G	---	---	Undeveloped lands that are not permitted.

* Includes undeveloped lands permitted for this activity category.

NOISE DATA WORKSHEET

Job No: 090523

Job Name: War Eagle Creek Str. & Apprs.

Roadway Reference: Hwy. 23

County: Madison

Design Year: 2041

Year(s) To Be Modeled: 2021 2041

Roadway Cross-Sections: 2 11' lanes 2 2' shoulders total width = 26'

2021 EXISTING

Note: $DHV = (ADT)(K)$
 $DDHV = (ADT)(K)(D)$
K - Percent of ADT occuring in design hour
D - Directional Distribution

Operating Speed: 45

Kfactor 9%

Traffic Data:

YEAR	ADT	%TRUCK	DHV	CARS	MT	HT	CARS/2	MT/2	HT/2
					10%	90%			
				0	0	0	0	0	0
2021	2,000	5%	180	171	1	8	86	0	4

NOISE DATA WORKSHEET

Job No: 090523

Job Name: War Eagle Creek Str. & Apprs.

Roadway Reference: Hwy. 23

County: Madison

Design Year: 2041

Year(s) To Be Modeled: 2021 2041

Roadway Cross-Sections: 2 12' lanes 2 '8 shoulders total width = 40'

2041 PROPOSED

Operating Speed: 45

Kfactor 9%

Note: $DHV = (ADT)(K)$
 $DDHV = (ADT)(K)(D)$
K - Percent of ADT occuring in design hour
D - Directional Distribution

Traffic Data:

YEAR	ADT	%TRUCK	DHV	CARS	MT	HT	CARS/2	MT/2	HT/2
					10%	90%			
				0	0	0	0	0	0
2041	2,400	5%	216	205	1	10	103	1	5

RESULTS: SOUND LEVELS

Job 090523

ARDOT
M.Pearson

16 March 2020
TNM 2.5
Calculated with TNM 2.5

RESULTS: SOUND LEVELS

PROJECT/CONTRACT:

Job 090523

RUN:

Proposed 2041

BARRIER DESIGN:

INPUT HEIGHTS

Average pavement type shall be used unless
a State highway agency substantiates the use
of a different type with approval of FHWA.

ATMOSPHERICS:

68 deg F, 50% RH

Receiver

Name	No.	#DUs	Existing LAeq1h	No Barrier LAeq1h		Increase over existing		Type Impact	With Barrier			
				Calculated	Crit'n	Calculated	Crit'n Sub'l Inc		Calculated LAeq1h	Noise Reduction		Calculated minus Goal
										Calculated	Goal	
			dBA	dBA	dBA	dB	dB		dBA	dB	dB	dB
25	1	1	0.0	65.2	66	65.2	10	----	65.2	0.0	8	-8.0
50	2	1	0.0	61.7	66	61.7	10	----	61.7	0.0	8	-8.0
75	3	1	0.0	59.7	66	59.7	10	----	59.7	0.0	8	-8.0
100	4	1	0.0	58.3	66	58.3	10	----	58.3	0.0	8	-8.0
125	5	1	0.0	57.1	66	57.1	10	----	57.1	0.0	8	-8.0
150	6	1	0.0	56.1	66	56.1	10	----	56.1	0.0	8	-8.0
175	7	1	0.0	54.8	66	54.8	10	----	54.8	0.0	8	-8.0
200	9	1	0.0	53.3	66	53.3	10	----	53.3	0.0	8	-8.0
250	10	1	0.0	50.7	66	50.7	10	----	50.7	0.0	8	-8.0
300	11	1	0.0	48.6	66	48.6	10	----	48.6	0.0	8	-8.0
350	12	1	0.0	46.9	66	46.9	10	----	46.9	0.0	8	-8.0
400	13	1	0.0	45.5	66	45.5	10	----	45.5	0.0	8	-8.0
500	14	1	0.0	43.2	66	43.2	10	----	43.2	0.0	8	-8.0

Dwelling Units	# DUs	Noise Reduction		
		Min	Avg	Max
		dB	dB	dB
All Selected	13	0.0	0.0	0.0
All Impacted	0	0.0	0.0	0.0
All that meet NR Goal	0	0.0	0.0	0.0

RESULTS: SOUND LEVELS

Job 090523

ARDOT
M.Pearson

16 March 2020
TNM 2.5
Calculated with TNM 2.5

RESULTS: SOUND LEVELS

PROJECT/CONTRACT:

Job 090523

RUN:

Existing 2021

BARRIER DESIGN:

INPUT HEIGHTS

Average pavement type shall be used unless
a State highway agency substantiates the use
of a different type with approval of FHWA.

ATMOSPHERICS:

68 deg F, 50% RH

Receiver

Name	No.	#DUs	Existing LAeq1h	No Barrier LAeq1h			Increase over existing		Type Impact	With Barrier			
				Calculated	Crit'n	Calculated	Crit'n Sub'l Inc	Calculated LAeq1h		Noise Reduction		Calculated minus Goal	
									Calculated	Goal			
			dBA	dBA	dBA	dB	dB		dBA	dB	dB	dB	
25	1	1	0.0	64.1	66	64.1	10	----	64.1	0.0	8	-8.0	
50	2	1	0.0	60.8	66	60.8	10	----	60.8	0.0	8	-8.0	
75	3	1	0.0	58.9	66	58.9	10	----	58.9	0.0	8	-8.0	
100	4	1	0.0	57.4	66	57.4	10	----	57.4	0.0	8	-8.0	
125	5	1	0.0	55.3	66	55.3	10	----	55.3	0.0	8	-8.0	
150	6	1	0.0	53.4	66	53.4	10	----	53.4	0.0	8	-8.0	
175	7	1	0.0	51.7	66	51.7	10	----	51.7	0.0	8	-8.0	
200	9	1	0.0	50.4	66	50.4	10	----	50.4	0.0	8	-8.0	
250	10	1	0.0	48.1	66	48.1	10	----	48.1	0.0	8	-8.0	
300	11	1	0.0	46.3	66	46.3	10	----	46.3	0.0	8	-8.0	
350	12	1	0.0	44.8	66	44.8	10	----	44.8	0.0	8	-8.0	
400	13	1	0.0	43.5	66	43.5	10	----	43.5	0.0	8	-8.0	
500	14	1	0.0	41.4	66	41.4	10	----	41.4	0.0	8	-8.0	

Dwelling Units	# DUs	Noise Reduction		
		Min	Avg	Max
		dB	dB	dB
All Selected	13	0.0	0.0	0.0
All Impacted	0	0.0	0.0	0.0
All that meet NR Goal	0	0.0	0.0	0.0



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<http://www.fws.gov/arkansas-es>

In Reply Refer To:

November 03, 2020

Consultation Code: 04ER1000-2020-SLI-0735

Event Code: 04ER1000-2021-E-00383

Project Name: 090523 - War Eagle Creek Str. & Apprs. (S) BATS

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-0735

Event Code: 04ER1000-2021-E-00383

Project Name: 090523 - War Eagle Creek Str. & Apprs. (S) BATS

Project Type: TRANSPORTATION

Project Description: Replace the bridge on new alignment to the west.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/36.15094842888429N93.74024541702298W>



Counties: Madison, AR

Endangered Species Act Species

There is a total of 9 threatened, endangered, or candidate species on this species list.

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

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

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

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

Mammals

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6329	Endangered
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened
Ozark Big-eared Bat <i>Corynorhinus (=Plecotus) townsendii ingens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7245	Endangered

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	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

Clams

NAME	STATUS
Rabbitsfoot <i>Quadrula cylindrica cylindrica</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5165	Threatened

Flowering Plants

NAME	STATUS
Missouri Bladderpod <i>Physaria filiformis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5361	Threatened

Critical habitats

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



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IPaC Record Locator: 363-21043046

April 02, 2020

Subject: Consistency letter for '090523 - War Eagle Creek Str. & Apprs. (S)' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Arkansas Determination Key for project review and guidance for federally listed species (Arkansas Dkey).

Dear Mickey Matthews:

The U.S. Fish and Wildlife Service (Service) received on **March 31, 2020** your effect determination(s) for the '090523 - War Eagle Creek Str. & Apprs. (S)' (the Action) using the Arkansas DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance in the Service's Arkansas DKey, you made the following effect determination(s) for the proposed Action:

Species	Determination
Proposed Threatened Eastern Black Rail (<i>Laterallus jamaicensis ssp. jamaicensis</i>)	No Effect
Threatened Red Knot (<i>Calidris canutus rufa</i>)	No Effect
Threatened Piping Plover (<i>Charadrius melodus</i>)	No Effect
Endangered Gray Bat (<i>Myotis grisescens</i>)	NLAA
Endangered Ozark Big-eared Bat (<i>Corynorhinus townsendii ingens</i>)	May Affect
Endangered Indiana Bat (<i>Myotis sodalis</i>)	May Affect
Threatened Northern Long-eared Bat (<i>Myotis septentrionalis</i>)	May Affect
Threatened Missouri bladderpod (<i>Physaria filiformis</i>)	NLAA
Threatened Rabbitsfoot (<i>Quadrula cylindrica cylindrica</i>)	NLAA

Consultation Status

Consultation with the Service is not complete. Further consultation or coordination with the Arkansas Ecological Services Office is necessary for those species with a determination of "may affect" listed above. Please contact our office at 501-513-4470, arkansas_es_clearance@fws.gov,

or your agency point of contact in the Arkansas Ecological Services Office to discuss methods to avoid or minimize potential adverse effects to those species.

The Service concurs with these “NLAA” and “No Effect” determination(s) for the species listed above. No further consultation for this project is required for these species. This letter confirms you may rely on effect determinations provided in the Arkansas Determination Key for project review and guidance for federally listed species to satisfy agency consultation requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.; ESA).

FHWA projects should not use this key for Northern Long-eared Bat determinations. Please complete the FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat Release date: December 2, 2019

The key is intended for projects funded or authorized by FHWA, FRA, or FTA, that may affect the endangered Indiana bat and/or the threatened northern long-eared bat, which requires consultation with the USFWS under Section 7 of the ESA.

Bald and Golden Eagle Protection Act: The following resources are provided to project proponents and consulting agencies as additional information. Bald and golden eagles are not included in this section 7(a)(2) consultation and this information does not constitute a determination of effects by the Service.

The Service developed the National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with Bald Eagles when and under what circumstances the protective provisions of the BGEPA may apply to their activities. The guidelines should be consulted prior to conducting new or intermittent activity near an eagle nest. This document may be downloaded from the following site: <https://www.fws.gov/southeast/our-services/permits/eagles/>

To determine if your proposed activity is likely to take or disturb Bald Eagles, complete our step-by-step online self-certification process, which is located at <https://www.fws.gov/southeast/our-services/eagle-technical-assistance/>.

If the recommendations detailed in the National Bald Eagle Management Guidelines cannot be followed, you may apply for a permit to authorize removal or relocation of an eagle nest in certain instances. The application form is located at <http://www.fws.gov/forms/3-200-72.pdf>.

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

090523 - War Eagle Creek Str. & Apprs. (S)

2. Description

The following description was provided for the project '090523 - War Eagle Creek Str. & Apprs. (S)':

Replace the bridge on new alignment to the west.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/36.15098317654796N93.74033286611781W>



Species Protection Measures

Bridges and Culverts

<https://www.fws.gov/southeast/pdf/species-protective-measures/bridge-and-culvert-projects.pdf>

Pipeline and Linear Projects

<https://www.fws.gov/southeast/pdf/species-protective-measures/pipeline-and-linear-projects.pdf>

Qualification Interview

1. Have you made an effects determination of "no effect" for all species in the area of the project? A "no effect" determination means the project will have no beneficial effect, no short-term adverse effects, and no long-term adverse effects on any of the species on the IPaC-generated species list for the proposed project or those species habitat. A project with effects that cannot be meaningfully measured, detected or evaluated, effects that are extremely unlikely to occur, or entirely beneficial effects should not have a "no effect" determination. (If unsure, select "No").

No

2. Choose the Federal agency you represent in this consultation with the U.S. Fish and Wildlife Service:

d. Federal Highway Administration

3. Will project proponents follow [Special Provisions for avoidance and minimization](#) measures for listed species in Arkansas?

Yes

4. [Semantic] Does the project intersect designated critical habitat for the Leopard Darter?

Automatically answered

No

5. [Semantic] Does the project intersect designated critical habitat for the Neosho Mucket?

Automatically answered

No

6. [Semantic] Does the project intersect designated critical habitat for Yellowcheek Darter?

Automatically answered

No

7. [Semantic] Does the project intersect designated critical habitat for Rabbitsfoot?

Automatically answered

No

8. [Semantic] Does the project intersect the American burying beetle consultation area ?

Automatically answered

No

9. [Semantic] Does the project intersect the red-cockaded woodpecker AOI?

Automatically answered

No

10. [Semantic] Does the project intersect the Eastern black rail AOI?

Automatically answered

Yes

11. Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?

No

12. Does the project take place in marshy or flooded open field habitat?

No

13. [Semantic] Does the project intersect the red knot AOI?

Automatically answered

Yes

14. [Semantic (same answer as "8.1.3")] Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?

Automatically answered

No

15. [Semantic (same answer as "8.2")] Does the project take place in marshy or flooded open field habitat?

Automatically answered

No

16. [Semantic] Does the project intersect the Piping Plover AOI?

Automatically answered

Yes

17. [Semantic (same answer as "8.1.3 or 9.3")] Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?

Automatically answered

No

18. [Semantic] Does the project intersect the Whooping Crane AOI?

Automatically answered

No

19. [Semantic] Does the project intersect the interior least tern AOI?

Automatically answered

No

20. [Semantic] Does the project intersect the Gray Bat AOI?

Automatically answered

Yes

21. [Semantic] Is the project located within the Ozark-St. Francis National Forest or the Ouachita National Forest?

Automatically answered

No

22. Does the project involve changes to an existing bridge or large culvert?

Yes

23. Does the project involve changes to an existing bridge or large culvert?

Yes

24. Were bats of any species noted on inspection?

No

25. [Semantic] Does the project intersect the Ozark Big-eared Bat AOI?

Automatically answered

Yes

26. [Semantic] Is the project located within the Ozark-St. Francis National Forest (cAOI is Ozark_StFrancis NF.zip)?

Automatically answered

No

27. Are there any caves within 0.5 mile of the project area?

Yes

28. [Semantic] Does the project intersect the Indiana bat AOI?

Automatically answered

Yes

29. [Semantic] Does the project intersect the Northern Long-eared bat AOI?

Automatically answered

Yes

30. [Semantic] Does the project intersect the Benton County Cave Crayfish AOI?

Automatically answered

No

31. [Semantic] Does the project intersect the Hell Creek Cave Crayfish AOI?

Automatically answered

No

32. [Semantic] Does the project intersect the Ozark cavefish AOI?

Automatically answered

No

33. [Semantic] Does the project intersect the Missouri bladderpod AOI?

Automatically answered

Yes

34. [Semantic] Does the project intersect the Geocarpon AOI?

Automatically answered

No

35. [Semantic] Does the project intersect the running buffalo clover AOI?

Automatically answered

No

36. [Semantic] Does the project intersect the Pondberry AOI?

Automatically answered

No

37. [Semantic] Does the project occur within the survey coordination area?

Automatically answered

Yes

38. Have you contacted the Arkansas Ecological Services Office to determine if a species or suitable habitat survey is recommended for this project?

Yes

39. Was a species survey recommended by the Arkansas ES Field Office?

Yes

40. Has a presence/absence survey been conducted by a permitted biologist with valid survey results?

Yes

SUBMITTED DOCUMENTS

- 090523 - FieldDataSheet - War Eagle.xls.xlsx <https://ecos.fws.gov/ipac/project/AYVCPD2ZP5APLC7D7IRXLT7JKM/projectDocuments/21041176>

41. Does the project contain any of the following activity types:

Boat Ramps,
Bridges,
Culverts,
Development,
Dams or Impoundments (including berms and levees),
Streambank Stabilization (or other streambank work),
Pipeline and linear projects,
Water intakes/withdrawals, or
Stream or ditch relocation?

Yes

42. Does the project include Streambank Stabilization (or other streambank work)?

No

43. Does the project include Boat Ramps?

No

44. Does the project include Bridges and Culverts?

Yes

45. Does the project include the Bridges and Culverts species [protective measures](#), as applicable to the project and site characteristics?

Yes

46. Does the project include Dams and Impoundments (including berms or levees)?

No

47. Does the project include Development?

No

48. Is the project a Pipeline or Linear Project?

Yes

49. Does the project include the Pipeline and Linear Projects species species [protective measures](#), as applicable to the project and site characteristics?

Yes

50. Does the project include Water Intakes/Withdrawals?

No

51. Does the project include Stream or Ditch Relocation?

Yes

52. Does the project include the Stream or Ditch Relocation species [protective measures](#), as applicable to the project and site characteristics?

No

53. [Semantic] Does the project intersect the rabbitsfoot AOI?

Automatically answered

Yes

54. Were Rabbitsfoot found on the survey?

No

SUBMITTED DOCUMENTS

- 090523 - FieldDataSheet - War Eagle.xls.xlsx <https://ecos.fws.gov/ipac/project/AYVCPD2ZP5APLC7D7IRXLT7JKM/projectDocuments/21041176>

55. [Semantic] Does the project intersect the neosho mucket AOI?

Automatically answered

No

56. [Semantic] Does the project intersect the Spectaclecase AOI?

Automatically answered

No

57. [Semantic] Does the project intersect the snuffbox AOI?

Automatically answered

No

58. [Semantic] Does the project intersect the speckled pocketbook AOI?

Automatically answered

No

59. [Semantic] Does the project intersect the ouachita rock pocketbook AOI?

Automatically answered

No

60. [Semantic] Does the project intersect the fat pocketbook AOI?

Automatically answered

No

61. [Semantic] Does the project intersect the Curtis pearlymussel AOI?

Automatically answered

No

62. [Semantic] Does the project intersect the scaleshell AOI?

Automatically answered

No

63. [Semantic] Does the project intersect the pink mucket AOI?

Automatically answered

No

64. [Semantic] Does the project intersect the Arkansas fatmucket AOI?

Automatically answered

No

65. [Semantic] Does the project intersect the winged mapleleaf AOI?

Automatically answered

No

66. [Semantic] Does the project intersect the leopard darter AOI?

Automatically answered

No

67. [Semantic] Does the project intersect the Yellowcheek darter AOI?

Automatically answered

No

68. [Semantic] Does the project intersect the Ozark hellbender AOI?

Automatically answered

No

69. [Semantic] Does the project intersect the harperella AOI?

Automatically answered

No

70. [Semantic] Does the project intersect the pallid sturgeon AOI?

Automatically answered

No

Project Questionnaire

1. **If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.**

1. Estimated total acres of forest conversion:

2.68

2. 2. If known, estimated acres of forest conversion from April 1 to October 31

2.68

3. 3. If known, estimated acres of forest conversion from June 1 to July 31

2.68

4. **If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.**

4. Estimated total acres of timber harvest

0

5. 5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. 6. If known, estimated acres of timber harvest from June 1 to July 31

0

7. **If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.**

7. Estimated total acres of prescribed fire

0

8. 8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. 9. If known, estimated acres of prescribed fire from June 1 to July 31

0

10. **If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.**

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?

0



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<http://www.fws.gov/arkansas-es>

In Reply Refer To:

April 03, 2020

Consultation Code: 04ER1000-2020-TA-0735

Event Code: 04ER1000-2020-E-01768

Project Name: 090523 - War Eagle Creek Str. & Apprs. (S) BATS

Subject: Verification letter for the '090523 - War Eagle Creek Str. & Apprs. (S) BATS' project under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions.

Dear Mickey Matthews:

The U.S. Fish and Wildlife Service (Service) received on April 03, 2020 your effects determination for the '090523 - War Eagle Creek Str. & Apprs. (S) BATS' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. This IPaC key assists users in determining whether a Federal action is consistent with the activities analyzed in the Service's January 5, 2016, Programmatic Biological Opinion (PBO). The PBO addresses activities excepted from "take"^[1] prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based upon your IPaC submission, the Action is consistent with activities analyzed in the PBO. The Action may affect the northern long-eared bat; however, any take that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o). Unless the Service advises you within 30 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the PBO satisfies and concludes your responsibilities for this Action under ESA Section 7(a)(2) with respect to the northern long-eared bat.

Please report to our office any changes to the information about the Action that you submitted in IPaC, the results of any bat surveys conducted in the Action area, and any dead, injured, or sick northern long-eared bats that are found during Action implementation. If the Action is not completed within one year of the date of this letter, you must update and resubmit the information required in the IPaC key.

This IPaC-assisted determination allows you to rely on the PBO for compliance with ESA Section 7(a)(2) only for the northern long-eared bat. It **does not** apply to the following ESA-protected species that also may occur in the Action area:

- Eastern Black Rail, *Laterallus jamaicensis ssp. jamaicensis* (Proposed Threatened)
- Gray Bat, *Myotis grisescens* (Endangered)
- Indiana Bat, *Myotis sodalis* (Endangered)
- Missouri Bladderpod, *Physaria filiformis* (Threatened)
- Ozark Big-eared Bat, *Corynorhinus (=Plecotus) townsendii ingens* (Endangered)
- Piping Plover, *Charadrius melodus* (Threatened)
- Rabbitsfoot, *Quadrula cylindrica cylindrica* (Threatened)
- Red Knot, *Calidris canutus rufa* (Threatened)

If the Action may affect other federally listed species besides the northern long-eared bat, a proposed species, and/or designated critical habitat, additional consultation between you and this Service office is required. If the Action may disturb bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act is recommended.

[1]Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [ESA Section 3(19)].

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

090523 - War Eagle Creek Str. & Apprs. (S) BATS

2. Description

The following description was provided for the project '090523 - War Eagle Creek Str. & Apprs. (S) BATS':

Replace the bridge on new alignment to the west.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/36.15094842888429N93.74024541702298W>

**Determination Key Result**

This Federal Action may affect the northern long-eared bat in a manner consistent with the description of activities addressed by the Service's PBO dated January 5, 2016. Any taking that may occur incidental to this Action is not prohibited under the final 4(d) rule at 50 CFR §17.40(o). Therefore, the PBO satisfies your responsibilities for this Action under ESA Section 7(a)(2) relative to the northern long-eared bat.

Determination Key Description: Northern Long-eared Bat 4(d) Rule

This key was last updated in IPaC on May 15, 2017. Keys are subject to periodic revision.

This key is intended for actions that may affect the threatened northern long-eared bat.

The purpose of the key for Federal actions is to assist determinations as to whether proposed actions are consistent with those analyzed in the Service's PBO dated January 5, 2016.

Federal actions that may cause prohibited take of northern long-eared bats, affect ESA-listed species other than the northern long-eared bat, or affect any designated critical habitat, require ESA Section 7(a)(2) consultation in addition to the use of this key. Federal actions that may affect species proposed for listing or critical habitat proposed for designation may require a conference under ESA Section 7(a)(4).

Determination Key Result

This project may affect the threatened Northern long-eared bat; therefore, consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.) is required. However, based on the information you provided, this project may rely on the Service's January 5, 2016, *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions* to fulfill its Section 7(a)(2) consultation obligation.

Qualification Interview

1. Is the action authorized, funded, or being carried out by a Federal agency?

Yes

2. Have you determined that the proposed action will have "no effect" on the northern long-eared bat? (If you are unsure select "No")

No

3. Will your activity purposefully **Take** northern long-eared bats?

No

4. Is the project action area located wholly outside the White-nose Syndrome Zone?

Automatically answered

No

5. Is the project action area located within 0.25 miles of a known northern long-eared bat hibernaculum?

Note: The map queried for this question contains proprietary information and cannot be displayed. If you need additional information, please contact your State wildlife agency

Automatically answered

No

6. Is the project action area located within 150 feet of a known occupied northern long-eared bat maternity roost tree?

Note: The map queried for this question contains proprietary information and cannot be displayed. If you need additional information, please contact your State wildlife agency

Automatically answered

No

Project Questionnaire

If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.

1. Estimated total acres of forest conversion:

2.68

2. If known, estimated acres of forest conversion from April 1 to October 31

2.68

3. If known, estimated acres of forest conversion from June 1 to July 31

2.68

If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.

4. Estimated total acres of timber harvest

0

5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. If known, estimated acres of timber harvest from June 1 to July 31

0

If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.

7. Estimated total acres of prescribed fire

0

8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. If known, estimated acres of prescribed fire from June 1 to July 31

0

If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?

0

ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST FOR CONSIDERATION OF POTENTIAL IMPACTS

ARDOT Job Number 090523 FAP Number NHPP-0044(35)

Job Title War Eagle Creek Str. & Apprs. (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No MSAT; within attainment area
Cultural Resources	X			SHPO clearance attached
Economic	X			No adverse impacts
Endangered Species		X		NLAA; See USFWS concurrence
Environmental Justice/Title VI	X			EJ populations not in project area
Fish and Wildlife		X		Temporary during construction
Floodplains	X			No adverse impacts
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			None in project area
Land Use		X		Total of 2.8 new ROW acquired
Migratory Birds	X			Migratory Bird SP included
Navigation/Coast Guard	X			None in project area
Noise Levels	X			Noise impacts not predicted; report attach'd
Prime Farmland		X		1.2 PFL converted to transportation use
Protected Waters	X			WPC SP included; War Eagle Creek is NRI
Public Recreation Lands		X		(see Section 4(f)/6(f))
Public Water Supply/WHPA	X			None in project area
Relocates	X			No relocations required
Section 4(f)/6(f)		X		Section 4(f) Evaluation attached
Social	X			No adverse social impacts
Underground Storage Tanks	X			None in project area
Visual	X			No adverse visual impacts
Streams		X		NW23; relocation of 900' of stream
Water Quality		X		Temporary decline during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? Y

Short-term Activity Authorization Required? Y

Section 404 Permit Required? Y Type NWP 23

Remarks:

WPC SP and Vegetative Buffer SP: NRI- War Eagle Creek (coordination req'd); ESW Spring & Seep (Reg 2)

Signature of Evaluator Mary Pearson Date 01/07/2021

Date Sent: March 16, 2020

ROADWAY DESIGN REQUEST

Job Number 090523 FAP No. NHPP-0044(35) County Madison

Job Name War Eagle Creek Str. & Apprs.

Design Engineer George Davison Environmental Staff

Brief Project Description Replace one bridge

A. Existing Conditions:

Roadway Width: 26' Shoulder Type/Width: 2' paved

Number of Lanes and Width: 2 – 11' Existing Right-of-Way: 100'

Sidewalks? No Location: N/A Width: N/A

Bike Lanes? No Location: N/A Width: N/A

B. Proposed Conditions:

Roadway Width: 40' Shoulder Type/Width: 8' paved

Number of Lanes and Width: 2 – 12' Proposed Right-of-Way: 170'-210'

Sidewalks? No Location: N/A Width: N/A

Bike Lanes? No Location: N/A Width: N/A

C. Construction Information:

If detour: Where: N/A Length: N/A

D. Design Traffic Data:

2021 ADT: 2000 2041 ADT: 2400 % Trucks: 5%

Design Speed: 45 m.p.h.

E. Approximate total length of project: 0.328 mile(s)

F. Justification for proposed improvements: Functionally obsolete bridge

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

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

Agency/Official	Person Contacted	Date
Arkansas State Parks	Mike Wilson	5/24/2018



DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867
www.swl.usace.army.mil

March 17, 2022

Regulatory Division

NATIONWIDE PERMIT NO. SWL 2021-00290

Mr. John Fleming
Division Head, Environmental Division
Arkansas Department of Transportation
PO Box 2261
Little Rock, Arkansas 72203-2261

Dear Mr. Fleming:

Please refer to your recent request concerning Department of the Army permit requirements pursuant to Section 404 of the Clean Water Act. You requested authorization for the placement of dredged and fill material in waters of the United States associated with replacing the bridge over War Eagle Creek and upgrading the approaches. The existing bridge will be replaced with a five-span W-beam superstructure on drilled shaft concrete bents located approximately 50 feet downstream. The existing approaches consist of two 11-foot-wide travel lanes with 2-foot-wide shoulders. The upgraded approaches will be two 12-foot-wide travel lanes with 8-foot-wide shoulders. The project will also upgrade the adjacent canoe access and parking lot. Construction of the new bridge, including the temporary work pads, will temporarily impact approximately 229 linear feet of War Eagle Creek with 155 linear feet of temporary fill. Approximately 1,129 linear feet of an unnamed intermittent tributary to War Eagle Creek will be permanently relocated. War Eagle Creek is designated as an Ecologically Sensitive Waterbody by the Arkansas Department of Energy and Environment (ADEE) and an individual Section 401 water quality certification (WQC) was issued on December 17, 2021 (copy enclosed). ArDOT determined the project may affect but is not likely to adversely affect the Indiana Bat (*Myotis sodalis*), Ozark Big-eared Bat (*Corynorhinus townsendii ingens*), Gray Bat (*Myotis grisescens*), Rabbitsfoot (*Theliderma cylindrica*) and Missouri Bladderpod (*Physaria filiformis*). The project may affect the Northern Long-eared Bat (*Myotis septentrionalis*) but incidental take is not prohibited under the Endangered Species Act Section 4(d) Rule. For the impacts to approximately 4.09 acres of suitable bat habitat, ArDOT will be deducting \$40,925 from the approved Indiana Bat tracking research funding. As an additional conservation measure, ArDOT will use a consultant to monitor the construction noise potential impacts to War Eagle Cave to improve knowledge of potential impacts to hibernacula.

The proposed project will also require converting 1.4 acres of Withrow Springs State Park to permanent roadway easement. A Section 4(f) *de minimis* evaluation was completed and concluded that the project is not anticipated to harm any of the park's recreational components. There are no impacts to cultural resources. The Federal Highway Administration approved the project as a Tier 3 Categorical Exclusion on March 4, 2021. The project is located on State

Highway 23, approximately three miles north of Huntsville, in section 10, T. 17 N., R. 26 W., Madison County, Arkansas. A vicinity map, project location map, stream impacts map, temporary fill drawing and stream impacts worksheet are enclosed.

The proposed activities are authorized by Department of the Army Nationwide Permit (NWP) No. **23** (copy enclosed), provided that the General Conditions therein, and the following **Special Condition**, are met. Please pay particular attention to General Condition No. 12 which stipulates that appropriate erosion and siltation controls be used during construction and all exposed soil be permanently stabilized. Erosion control measures must be implemented during and after construction of the proposed project to comply with this permit condition. You should become familiar with the conditions and maintain a copy of the permit at the worksite for ready reference. If changes are proposed in the design or location of the facilities, you should submit revised plans to this office for approval before construction of the change begins.

Special Condition:

ArDOT agrees to mitigate for the adverse impacts to 155 linear feet of War Eagle Creek and 1,129 linear feet of the unnamed tributary with 6,525 stream credits through an approved bank before construction of the project begins.

We have also enclosed a copy of the individual Section 401 WQC. You must comply with the conditions specified in the certification as special conditions to this permit. If you have any questions regarding the WQC, please contact Mr. Joshua Nilz or Mr. Jim Wiseman at instreamactivityinfo@adeq.state.ar.us or (501) 682-0631.

In order to fully comply with the conditions of the NWP, you must submit the enclosed compliance certification within 30 days of completion of the project. This is required pursuant to NWP General Condition No. 30 of the permit.

The NWP determination will be valid until March 14, 2026. If NWP No. **23** is modified, suspended, or revoked during this period, your project may not be authorized unless you have begun or are under contract to begin the project. If work has started or the work is under contract, you would then have twelve (12) months to complete the work.

Your cooperation in the Regulatory Program is appreciated. If you have any additional questions about this permit or any of its provisions, please contact Mr. Johnny McLean at (501)

324-5295 and refer to Permit No. **SWL 2021-00290, ArDOT – War Eagle Creek Structures and Approaches on State Highway 23 North of Huntsville (ArDOT Job No. 090523).**

Sincerely,

Sarah Chitwood
Chief, Regulatory Division

Enclosures

cc:

US Fish and Wildlife Service, Mr. Lindsey Lewis
Environmental Protection Agency, Mr. Daniel Landeros
AR Dept. of Energy and Env., Div. of Envir. Quality, Water Quality Planning Branch,
Mr. Joshua Nilz or Mr. Jim Wiseman
Project Manager, Beaver Lake PO
Chief, Regulatory Enforcement

PERMITTEE COMPLIANCE CERTIFICATION

PERMIT NO.: SWL 2021-00290 NWP/S NO.: 23

PERMITTEE NAME: Arkansas Department of Transportation

DATE OF ISSUANCE: March 17, 2022

PROJECT MANAGER: Johnny McLean

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US Army Corps of Engineers, Little Rock
ATTENTION: CESWL-RD
PO Box 867
Little Rock, Arkansas 72203-0867

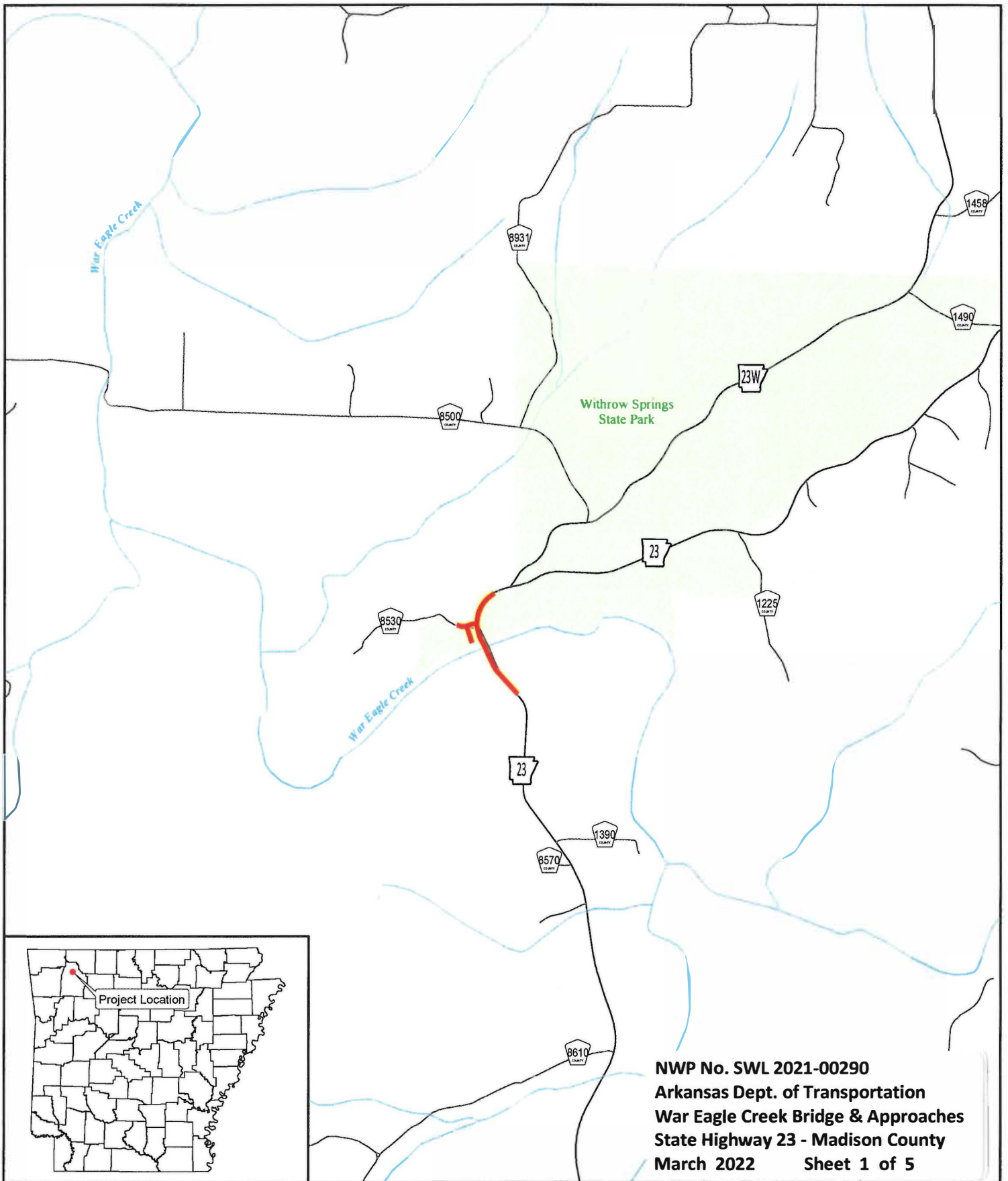
Please note that your permitted activity is subject to a compliance inspection by a US Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

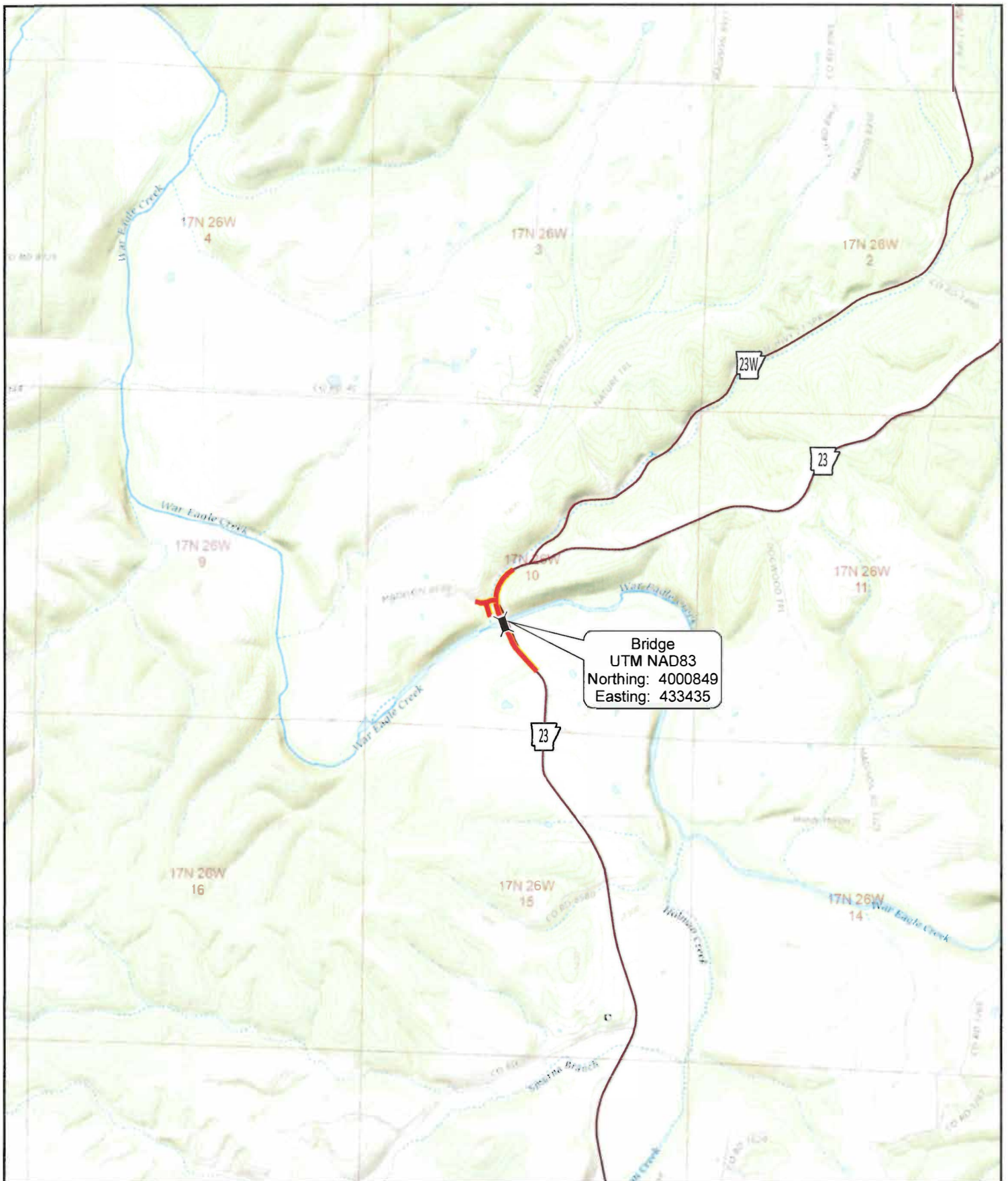
I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

DATE WORK COMPLETED: _____

SIGNATURE OF PERMITTEE

DATE





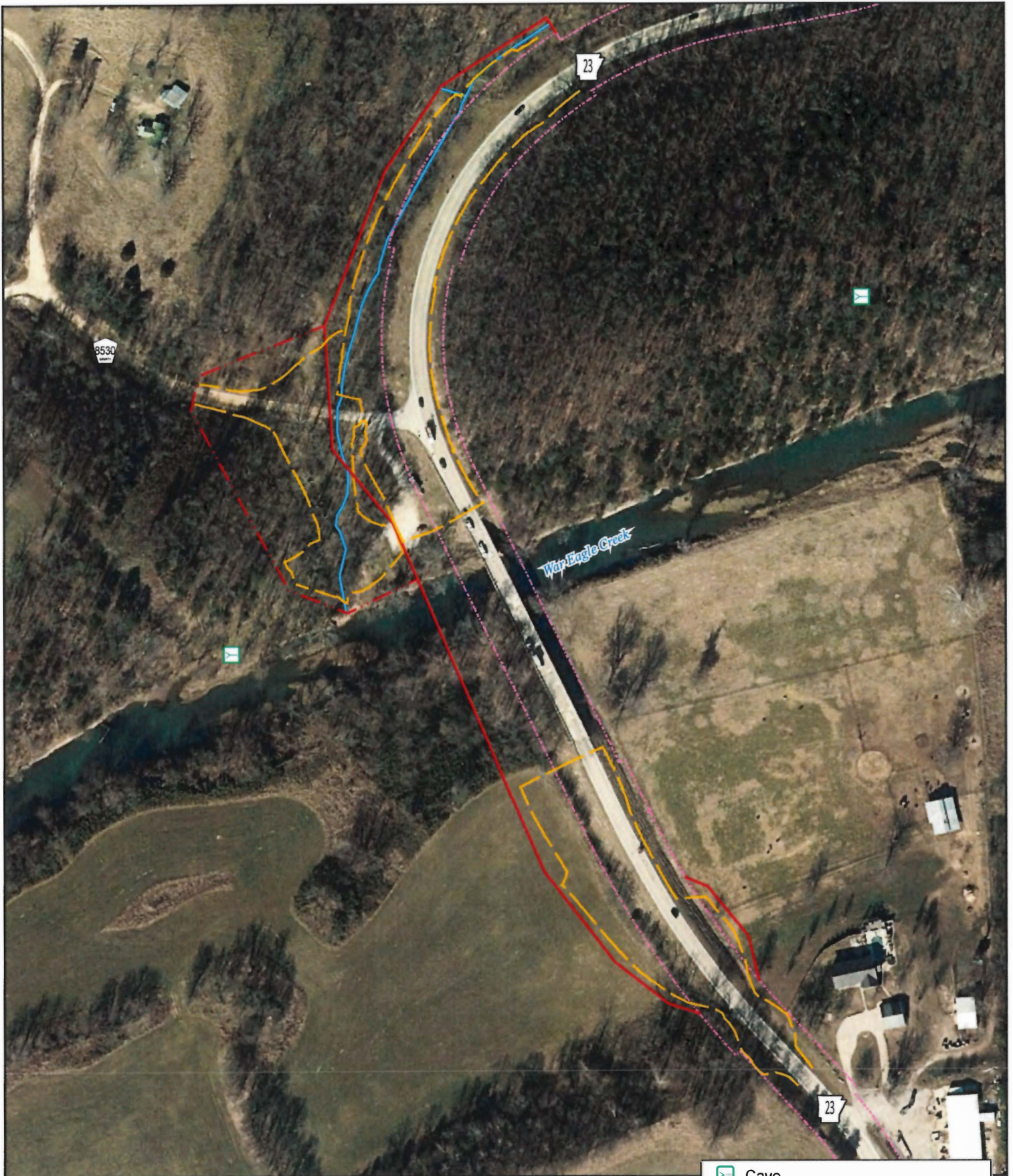
0 1,000 2,000
Feet

ARDOT - Environmental GIS - Hopkins
June 24, 2021

Job 090523
War Eagle Creek Str. & Apprs
(Hwy. 23)
Madison County

— Project Location







2017 USGS Topographic Map:
Strawberry

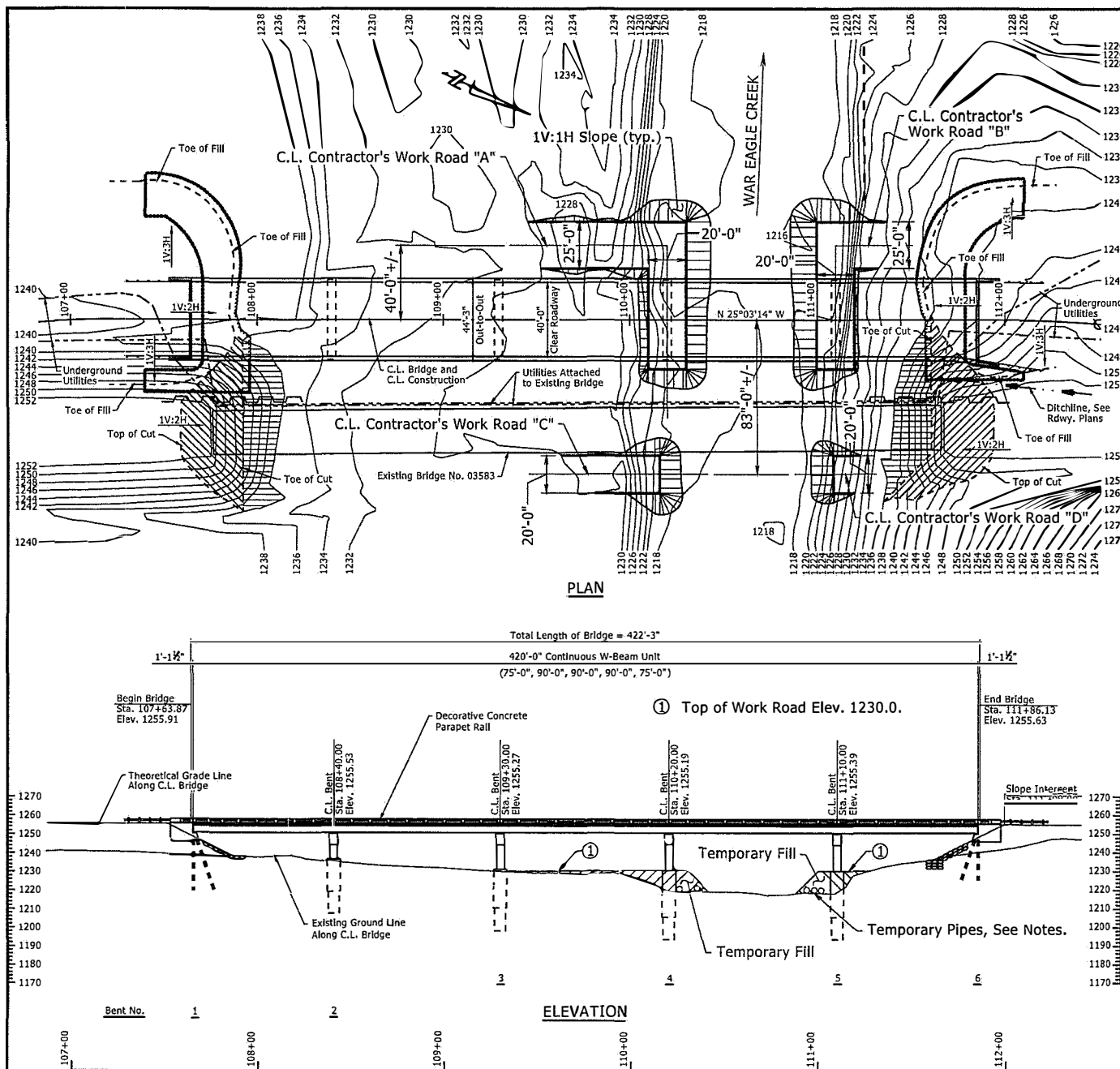


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Feet

Stream Impacts

Job 090523
ARDOT - Environmental GIS - Hopkins
June 24, 2021

-  Cave
-  Stream Impact
-  Proposed Construction Limits
-  Proposed Right of Way
-  Temporary Construction Easement
-  Existing Right of Way



**ADVERSE IMPACT
FACTORS FOR RIVERINE SYSTEMS WORKSHEET**

Stream Type Impacted	Ephemeral 0.1			Intermittent 0.4			Perennial-OHWM width		
							<15' 0.4	15-30' 0.6	>30' 0.8
Priority Area	Tertiary 0.1			Secondary 0.4			Primary 0.8		
Existing Condition	Functionally Impaired 0.1			Moderately Functional 0.8			Fully Functionally 0.3		
Duration	Temporary 0.05			Recurrent 0.1			Permanent 0.3		
Activity	Clearing 0.05	Utility Crossing/Bridge Footing 0.15	Below Grade Culvert 0.3	Armor 0.5	Detention 0.75	Morpho-Logical Change 1.5	Impoundment (dam) 2.0	Pipe >100', 2.2	Fill 2.5
Cumulative Linear Impact	<100' 0	100-200' 0.05	201-500' 0.1	501-1000 0.2	>1000 linear feet (LF) 0.1 reach 500 LF of impact (Example: scaling Factor for 5,280 LF of impacts = 1.1)				

Factor	Tributary	War Eagle	Dominant Impact Type 3	Dominant Impact Type 4	Dominant Impact Type 5
Stream Type Impacted	Intermittent	Perennial >30'	Blank	Blank	Blank
Priority Area	Primary	Primary	Blank	Blank	Blank
Existing Condition	Moderately Functional	Moderately Functional	Blank	Blank	Blank
Duration	Permanent	Temporary	Blank	Blank	Blank
Activity	Fill	Fill	Blank	Blank	Blank
Cumulative Linear Impact	0.3	0.3	Blank	Blank	Blank
Sum of Factors	M = 5.1	4.95	0	0	0
Linear Feet of Stream Impacted in Reach	LF = 1129	155	0	0	0
M X LF	5757.9	767.25+	0	0	0

Total Mitigation Credits Required = (M X LF) - 6,525.2

Nationwide Permit No. 23

Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letter(s). (Authorities: Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

2021 Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

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

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

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

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise

designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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

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

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

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

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

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

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

capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

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

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

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

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

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

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

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

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

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

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

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

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed

activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district

engineer may add species-specific permit conditions to the NWP.

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

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

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

19. Migratory Birds and Bald and Golden Eagles.

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

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

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)).

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

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

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

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

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

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

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

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated

critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

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

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

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

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

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

mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

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

district engineer, the district engineer may approve the use of permittee-responsible mitigation.

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

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

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

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an

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

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

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

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

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the

permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

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

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

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

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

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

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

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

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

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

(Transferee)

(Date)

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

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

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

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

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification

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

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

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

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

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

(2) Location of the proposed activity;

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

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

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

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide

an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

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

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

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-

construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

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

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

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

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

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

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other

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

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

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

District Engineer’s Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the

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

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

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands

or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that

would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

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).

Nationwide Permit Definitions

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

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse

impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

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

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

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

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

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

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

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

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

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

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

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of

loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

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

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

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

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

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

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

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction

notification is not required, and the project proponent wants confirmation that the activity is authorized by nationwide permit.

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

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

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

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

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

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and

services and help improve or maintain local water quality. (See general condition 23.)

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

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

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

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

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention

ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

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

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

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

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

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

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

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation,

such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

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



ARKANSAS ENERGY & ENVIRONMENT

December 17, 2021

Lindsey Zweifel
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209

RE: 401 Water Quality Certification – **DEQ No. 20210350** – ARDOT – War Eagle Creek Str. & Apprs., Madison County, AR.

Dear Lindsey Zweifel:

The Division of Environmental Quality (DEQ) has completed its review of the above referenced project for the Arkansas Department of Transportation to facilitate the replacement of the HWY 23 bridge, including reduction of roadway curvature north of the bridge and modifying the CR8530 intersection. The project is located in Madison County on War Eagle Creek at:

Latitude: 36.150111; Longitude: -93.739935

Therefore, this project requires an individual water quality certification from DEQ for activities which may impact Ecologically Sensitive Waterbodies (ESW) and their tributaries (within 1 mile) as defined in Rule 2, Water Quality Standards. The project is within the bounds of a designated ESW Cave, Springs, and/or Seep, described in Rule 2 as, “Numerous springs and spring-fed tributaries which support southern cavefish, Ozark cavefish, Arkansas darter, Least darter, Oklahoma salamander, Cave snails, Cave crawfish and other unique invertebrates.”

DEQ has determined that there is a reasonable assurance that this activity will be conducted in a manner which, according to the Arkansas Pollution Control and Ecology Commission’s Rule 2, will not physically alter a significant segment of the waterbody and will not permanently violate the water quality criteria.

Pursuant to §401(a)(1) of the Clean Water Act, the DEQ hereby **issues** water quality certification for this project: **DEQ No. 20210350 / Corp. No. SWL-2021-00290** contingent upon the following conditions:

- 1) In accordance with APC&EC Rule 2.305, the applicant shall obtain a Short Term Activity Authorization (STAA) when performing work in the wetted area of waters of the state as defined by Arkansas Code Annotated (A.C.A.) §8-4-102. Activities approved under a STAA, are subject to the provisions that no permanent or long-term impairment of beneficial uses is likely to result from such activity. More information can be obtained by visiting <https://www.adeq.state.ar.us/water/planning/instream/> or <https://eportal.adeq.state.ar.us/>

Division of Environmental Quality

5301 Northshore Drive, North Little Rock, AR 72118-5137.state.ar.us



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- 2) The applicant shall implement all practicable best management practices (BMPs) to avoid excessive impacts of turbidity to waters of the state, 40 CFR §122.26(c).
- 3) The applicant will take all reasonable measures to prevent the spillage or leakage of any chemicals, oil, grease, gasoline, diesel, or other fuels. In the unlikely event such spillage or leakage occurs, the applicant must contact DEQ immediately.
- 4) The applicant shall limit construction to low flow periods as much as possible to minimize adverse effects on water quality and aquatic life.
- 5) If a construction site will disturb equal to or greater than one (1) acre and less than five (5) acres, the applicant shall comply with the requirements in Rule 6.203 for Stormwater discharge associated with a small construction site, as defined in APC&EC Rule 6. If the construction site will disturb five (5) acres or more, the applicant shall comply with the terms of the Stormwater Construction General Permit Number ARR150000 prior to the start of construction. BMPs must be implemented regardless of the size. More information can be obtained by contacting the NPDES Stormwater Section of DEQ at (501) 682-0621.

In issuing this certification, DEQ does not assume any liability for the following:

- A. Damages to the proposed project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes.
- B. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity specified in this certification.
- C. Design or construction deficiencies associated with this proposed project.

If you have any questions, please contact Mr. Joshua Nilz or Mr. Jared Jaeger at instreamactivityinfo@adeq.state.ar.us at (501) 682-0631.

Sincerely,

A handwritten signature in black ink that reads "Bryan Leamons".

Bryan Leamons, P.E.
Senior Operations Manager, Office of Water Quality

cc: Johnny McLean, USACE project manager, Johnny.L.Mclean@usace.army.mil
Wanda Boyd, EPA,
Melvin Tobin, USFWS,
Jennifer Sheehan, AGFC,
Garrett Grimes, Water Quality District Inspector, grimes@adeq.state.ar.us
Cole Southerland, Water Quality District Inspector, Cole.Southerland@adeq.state.ar.us

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Lindsey Zweifel, Lindsay.Zweifel@ardot.gov

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