

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB 100993
FAP STPB-0061(19)
HWY. 67 – ENGELBERG STRS. & APPRS. (S)
ROUTE 166, SECTION 1
RANDOLPH COUNTY**

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

By the

U.S. Department of Transportation

Federal Highway Administration

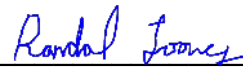
And the

Arkansas Department of Transportation

October 2021

November 1, 2021

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

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

The purpose of this project is to replace three structurally deficient bridges on Highway 166 in Randolph County: Bridge M2164 over Gaines Creek (Site 1), Bridge M2165 over the Fourche River (Site 2), and Bridge M2166 over the Fourche River Relief (Site 2). Bridge M2166 was previously condemned and replaced with a temporary non-bridge length pipe culvert. In addition, two relief structures at Site 2 on private driveways will be replaced due to relocation of the entrances. Total length of the project is 0.6 mile. A project location map is attached.

The existing Highway 166 roadway at Site 1 consists of two 10' wide paved travel lanes with 3' wide unpaved shoulders. The existing Highway 166 roadway width at Site 2 consists of two 10' wide travel lanes with 2' wide paved shoulders. Existing right of width at these locations is 100'.

Proposed improvements include the following structure replacements: Bridge M2164 replaced with a box culvert, Bridge M2165 replaced with a bridge, Bridge M2166 and the temporary pipe culvert replaced with a bridge, and the private driveway structures will be replaced with box culverts. Proposed improvements on Highway 166 at Sites 1 and 2 include two 10' wide paved travel lanes with 4' (2' paved) wide shoulders. Proposed right of way width at Site 1 is 125' and at Site 2 is 150'. Approximately 5.6 acres of additional right of way and 1.1 acres of temporary construction easement will be required for this project.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2022	200	5	40 mph
2042	250	5	40 mph

Based on the ARDOT noise policy, a noise analysis is not required for this project. The bridge replacements will not involve adding capacity, substantially changing the roadway alignment, or exposing noise sensitive land uses to traffic noise sources. In compliance with federal guidelines, local authorities will not require notification.

The official species list was obtained through the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation website and lists the following species as possibly occurring within the project area: gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), Indiana bat (*Myotis sodalis*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Red Knot (*Calidris canutus rufa*), Piping Plover (*Charadrius melodus*), Pink Mucket (*Lampsilis abrupta*), pondberry (*Lindera melissifolia*), Rabbitsfoot (*Theliderma cylindrica*), Curtis Pearlymussel (*Epioblasma curtisii*), monarch butterfly (*Danaus plexippus*) and Missouri bladderpod (*Physaria filiformis*). The official species list is attached.

The monarch butterfly is a candidate species and as such is not federally protected under the Endangered Species Act. However, the USFWS recommends agencies implement conservation measures for candidate species in action areas as these are species, by definition, that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure. 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. Utilizing the Arkansas Determination Key, it has been determined that the project "may affect, but is not likely to adversely affect" the gray bat, Pink Mucket, pondberry, Rabbitsfoot, Snuffbox Mussel, and Missouri bladderpod.

Utilizing the FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat determination key, it has been determined that the project "may affect, but is not likely to adversely effect," the Indiana bat and northern long-eared bat. The attached concurrence from the USFWS was received on September 21, 2021.

The project will have approximately 738 linear feet of stream impacts. This includes 125 linear feet of Gaines Creek, approximately 288 linear feet of an unnamed intermittent tributary will be relocated to the south road side ditch, approximately 150 linear feet of the Fourche River Relief, and approximately 175 linear feet of the Fourche River. Compensatory mitigation will be coordinated with US Army Corps of Engineers. No compensatory mitigation banks service this area.

The project will have a discharge of dredged or fill material into waters of the United States; therefore, a Section 404 permit will be required. The project should be authorized by Nationwide Permit 14 for Linear Transportation Projects as defined in the Federal Register 82(4): 1860-2008.

There are no relocations or environmental justice issues associated with this project. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits. Approximately 2.1 acres of Prime Farmland and 1.9

acres of Statewide Importance will be impacted. Form NRCS-CPA-106 is attached.

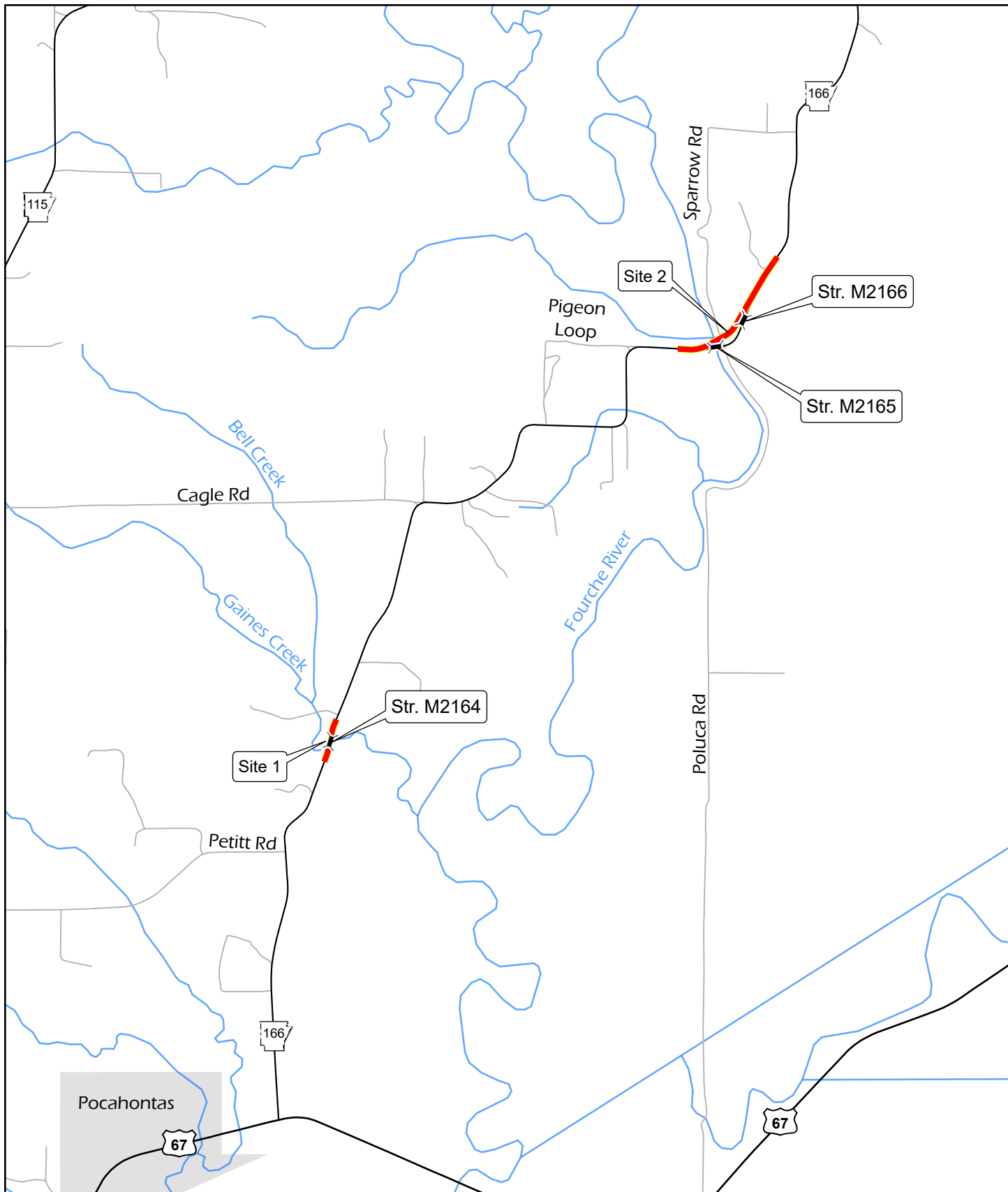
ARDOT Bridge M2165 over the Fourche River is a steel Warren (with verticals) truss design with a polygonal top chord. The bridge, built in 1942, is eligible for inclusion in the National Register of Historic Places. As part of the ARDOT Historic Bridge Process, the Historic Bridge Analysis Committee (HBAC) met and determined that ARDOT could not rehabilitate or reuse the bridge as a couplet. ARDOT's policy is not to retain ownership of a bridge taken out of vehicular service. The HBAC recommended marketing the bridge to federal, state and local entities for its reuse either preserved in place or relocated. Independence County responded requesting that the bridge be relocated for pedestrian use under their ownership. After HBAC reviewed and accepted Independence County's proposal, a Memorandum of Agreement (MOA) was executed between the FHWA, State Historic Preservation Officer (SHPO), Independence County, and ARDOT approving transfer of ownership and relocation of the bridge to Independence County for use at a planned Batesville trail system. No other structures or archeological sites eligible for or listed in the National Register of Historic Places will be impacted by the proposed project. The Programmatic Section 4(f) evaluation for the historic bridge is attached and includes the approved MOA. No other historic or cultural resources will be impacted as part of the proposed project. Concurrence from the SHPO is attached.

Randolph County participates in the National Flood Insurance Program. The project lies within 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 a risk to property or life.

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.

A virtual public involvement meeting was held on Tuesday, April 6, 2021. A synopsis of the meeting and comments received is attached.

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



0 1,000 2,000
Feet

ARDOT - Environmental GIS - Dudley
September 9, 2021

Job 100993
Hwy. 67 - Engelberg Strs. & Apprs.
(Hwy. 166)
Randolph County

 Project Location



Asa Hutchinson
Governor
Stacy Hurst
Secretary

August 19, 2021

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

RE: Randolph County: General
Section 106 Review: FHwA
Proposed Undertaking: Hwy. 67 – Engelberg Strs. & Apprs. (S)
Route 166, Section 1
ARDOT Job Number: 100993
AHPP Tracking Number: 103990.02

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the cultural resources project identification form (PIF) for the above referenced undertaking in Sections 1 and 11, Township 19 North, Range 1 East and Section 6, Township 19 North, Range 2 East south of Engelberg in Randolph County, Arkansas. The proposed project entails the replacement of three bridges, ARDOT Bridge Numbers M2164, M2165, and M2166 on Highway 166. The proposed survey area totals 6.68 acres, which includes 5.62 acres of additional right-of-way and 1.06 acres of temporary construction easement. A total of thirty-six shovel tests were excavated in the areas of potential effect (APE), all of which were negative for cultural materials. In a letter dated June 6, 2019 (AHPP Tracking Number 103990), the AHPP concurred that bridges M2164 and M2166 were not eligible for inclusion in the National Register of Historic Places (NRHP) and that bridge M2165 is eligible for the NRHP. A Memorandum of Agreement (MOA) has been established to mitigate the adverse effect this undertaking will have on bridge M2165, which will be moved to a new location.

Based on the provided information, the AHPP concurs with the finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)** regarding the replacement of bridges M2164 and M2166 for the proposed undertaking. In regard to bridge M2165, the AHPP concurs with the finding of **adverse effect pursuant to 36 CFR § 800.5(a)(1)** and that the executed MOA will resolve this affect.

Tribes that have expressed an interest in the area include the Cherokee Nation, the Osage Nation, the Quapaw Nation, and the Shawnee Tribe. We recommend consultation in accordance with 36 CFR § 800.2(c)(2).

Thank you for the opportunity to review this undertaking. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, call Jessica Cogburn at 501-324-9357 or email jessica.cogburn@arkansas.gov.

Sincerely,

Jessica H.
Cogburn

 Digitally signed by Jessica H.
Cogburn
Date: 2021.08.19 14:11:41 -05'00'

for
Scott Kaufman
Director, AHPP

cc: Mr. Randal Looney, Federal Highway Administration
Dr. Melissa Zabecki, Arkansas Archeological Survey

From: [Lewis, Lindsey](#)
To: [Matthews, Mickey W.](#)
Subject: Re: [EXTERNAL] 100993
Date: Tuesday, September 21, 2021 1:46:37 PM

CAUTION: This email originated from outside of ARDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mickey,

The Service has reviewed the determination key results and consistency letters you have provided and concurs with the "no effect" and "may affect, but not likely to adversely affect" determinations for this action. 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).

The Service has received your concurrence verification letter and request to verify that the Proposed Action may rely on the concurrence provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C 1531 et seq.). Based on the information you provided (Project Description shown below), you have determined that the Proposed Action will have no effect on the endangered Indiana bat (*Myotis sodalis*) or the threatened Northern long-eared bat (*Myotis septentrionalis*). If the Proposed Action is not modified, no consultation is required for these two species. The Service verification letter confirms the concurrence that this action may rely on the PBO.

The Service recommends that your agency contact the Arkansas Ecological Services Field Office or re-evaluate this key in IPaC if: 1) the scope, timing, duration, or location of the proposed project changes, 2) new information reveals the action may affect listed species or designated critical habitat; 4) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Arkansas Ecological Services Field Office should take place before project changes are final or resources committed.

The Service has no additional comments or concerns and agrees with the determinations, justifications provided, and concurrences made through the Arkansas Dkey and FHWA PBO.

Thanks,

Lindsey Lewis

Biologist

US Fish & Wildlife Service
Arkansas Field Office
110 South Amity Rd., Suite 300
Conway, Arkansas 72032

(501) 513-4489 - voice
(501) 513-4480 - fax
Lindsey_Lewis@fws.gov
<http://www.fws.gov/arkansas-es/>

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

From: Matthews, Mickey W. <Mickey.Matthews@ardot.gov>
Sent: Monday, September 20, 2021 12:36 PM
To: Lewis, Lindsey <lindsey_lewis@fws.gov>
Subject: [EXTERNAL] 100993

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Lindsey,

Ardot is replacing two bridges and one culvert on HWY. 166 in Randolph County. The culvert was installed as emergency work after the Fourche River Relief Bridge closure.

I have attached the IPAC species list for your convenience. The project should have no effect on the Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), and monarch butterfly (*Danaus plexippus*) due to limited scope of the project, lack of habitat, and distance to known populations as indicated in the USFWS Arkansas DKey consistency letter (attached). The Arkansas DKey determined the project is not likely to affect the following species: gray bat (*Myotis grisescens*), Pink Mucket (*Lampsilis abrupta*), Pondberry (*Lindera melissifolia*), Rabbitsfoot (*Theliderma cylindrica*), Curtis Pearlymussel (*Epioblasma curtisii*), and Missouri bladderpod (*Physaria filiformis*) and may affect the northern Long-eared bat (*Myotis septentrionalis*) and Indiana bat (*Myotis sodalis*).

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 provided a not likely to Adversely Affect consistency letter (attached) for the project.

The Arkansas Department of Transportation is requesting concurrence with these effects determinations. Please contact me if you have any questions.

Mickey Matthews
Lead Natural Resources Specialist
Environmental Division-Natural Resources Section
Arkansas Department of Transportation
10324 I-30 P.O. Box 2261
Little Rock, Arkansas 72203
Office: (501) 569-2594
Fax: (501) 569-2009



United States Department of the Interior



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

In Reply Refer To:

September 14, 2021

Consultation Code: 04ER1000-2021-SLI-1597

Event Code: 04ER1000-2021-E-04689

Project Name: 100993 - Hwy. 67 - Engelberg Strs. & Apprs. (S) Site 1

Subject: List of threatened and endangered species that may occur in your proposed project location 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

Endangered Species Act Species

There is a total of 12 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. The location of the critical habitat is not available. 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

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. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> There is proposed critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Clams

NAME	STATUS
Curtis Pearlymussel <i>Epioblasma florentina curtisii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5628	Endangered
Pink Mucket (pearlymussel) <i>Lampsilis abrupta</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7829	Endangered
Rabbitsfoot <i>Quadrula cylindrica cylindrica</i> There is final critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/5165	Threatened

Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

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
Pondberry <i>Lindera melissifolia</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1279	Endangered

Critical habitats

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

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

PART I (To be completed by Federal Agency) Job 100993		3. Date of Land Evaluation Request 10/12/2021	4. Sheet 1 of 1
1. Name of Project Hwy. 67 - Engelberg Strs. & Apprs. (S)		5. Federal Agency Involved FHWA	
2. Type of Project Multiple bridge replacements		6. County and State Randolph County, AR	
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	4.04 acres			
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	2.13 acres			
B. Total Acres Statewide And Local Important Farmland	1.91 acres			
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)	100			
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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	15			
2. Perimeter in Nonurban Use	10	10			
3. Percent Of Corridor Being Farmed	20	5			
4. Protection Provided By State And Local Government	20	0			
5. Size of Present Farm Unit Compared To Average	10	8			
6. Creation Of Nonfarmable Farmland	25	0			
7. Availability Of Farm Support Services	5	5			
8. On-Farm Investments	20	0			
9. Effects Of Conversion On Farm Support Services	25	0			
10. Compatibility With Existing Agricultural Use	10	0			
TOTAL CORRIDOR ASSESSMENT POINTS	160	43	0	0	0

PART VII (To be completed by Federal Agency)					
Relative Value Of Farmland (From Part V)	100	100	0	0	0
Total Corridor Assessment (From Part VI above or a local site assessment)	160	43	0	0	0
TOTAL POINTS (Total of above 2 lines)	260	143	0	0	0

1. Corridor Selected: New adjacent to existing	2. Total Acres of Farmlands to be Converted by Project: 4.04 acres of Imp. Farmland	3. Date Of Selection:	4. Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input type="checkbox"/>
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5. Reason For Selection:

Signature of Person Completing this Part: Joshua Graham DATE **10/12/2021**
NOTE: Complete a form for each segment with more than one Alternate Corridor



PROGRAMMATIC SECTION 4(F) EVALUATION FOR FEDERALLY-AIDED HIGHWAY PROJECTS THAT NECESSITATE THE USE OF HISTORIC BRIDGES

ARDOT Job 100993

Hwy. 67-Engelberg Strs. & Apprs. (S)

Randolph County

September 2021

Submitted Pursuant to 49 USC Section 303 and 23 USC Section 138 by the U.S. Department of Transportation Federal Highway Administration and the Arkansas Department of Transportation.



U.S. Department of Transportation
Federal Highway
Administration

Arkansas Department
of Transportation



Programmatic Section 4(f) Evaluation – Historic Bridges

1 Why is this report being prepared?

Section 4(f) of the Department of Transportation Act of 1966 declared a national policy to make a special effort to preserve the natural beauty of the countryside, public parks and recreation lands, wildlife and waterfowl refuges, and historic sites. The current Section 4(f) legislation permits the Secretary of Transportation to approve a project that requires the use of historic bridge structures scheduled to be replaced or rehabilitated with Federal funds. Approval depends on a determination that no feasible and prudent alternative to the use of the property existed, and all possible planning occurred to minimize harm to the property resulting from such use. These determinations, pursuant to 49 United States Code (USC) Section 303 and 23 USC Section 138, are described in this Programmatic Section 4(f) Evaluation.

2 What would the project accomplish?

The Arkansas Department of Transportation (ARDOT), in conjunction with the Federal Highway Administration (FHWA), proposes construction of a new bridge across the Fourche River along Highway 166 in Randolph County, Arkansas. The project improves safety and transportation needs in northeastern Arkansas. As part of the project, a historic bridge will be replaced.

ARDOT Bridge Number M2165 (Fourche River Bridge) main span is a steel Warren (with verticals and a polygonal top chord) pony truss design. The total length of the bridge including approach spans measures 157 feet. It has two 10-foot wide travel lanes and a clear roadway width of approximately 20-feet. The current travel surface does not have shoulders on the bridge. The Bridge Inspection Report dated March 29, 2021, lists the condition of the deck as good (code 7) and the superstructure and substructure as poor (code 4).

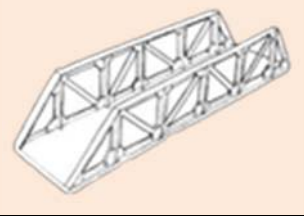
The new bridge is planned as a continuous steel W-beam structure, a type of multi-beam bridge, measuring approximately 171 feet long with a 28-foot wide roadway. The new bridge roadway plans show two 10-foot wide paved travel lanes, each with a 4-foot shoulder, meeting current design standards.

What does Section 4(f) protect?

Section 4(f) properties include significant publicly owned parks, recreation areas, and wildlife or waterfowl refuges, or any publicly or privately owned historic site listed or eligible for listing in the National Register of Historic Places with national, state, or local significance. The ARDOT considers historic bridges as historic sites.

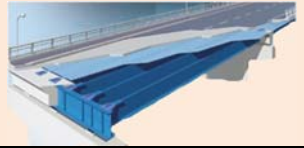
What is a Warren truss?

Neville, a Belgian engineer, and Francis Nash, a British engineer, developed the Warren truss design, which was popularly used by highway departments in the 1920s through the 1930s. The Warren truss is comprised of equilateral triangles to distribute the stress throughout the structure. Generally, the truss had parallel bottom and top chords, but occasionally a polygonal top chord, or curved top, was used.



What is a steel stringer or multi-beam bridge?

The primary structure of the bridge consists of three or more parallel rolled beams also called stringers.



3 What Section 4(f) properties are being impacted?

ARDOT Bridge Number M2165 (Fourche River Bridge) contains one 90-foot variant of a steel Warren (with verticals) pony truss design, which shows a polygonal top chord, and two steel stringer/multi-beam approach spans (Figure 1). The main truss span has a reinforced concrete deck atop steel floor beams with steel gusset plates. Timber piles and reinforced concrete pier caps support the structure. The guardrail consists of W-beam rail attached to concrete posts. An unknown builder constructed this truss bridge in 1942.

ARDOT, through consultation with the State Historic Preservation Officer (SHPO) staff, determined the Fourche River Bridge as eligible for inclusion in the National Register of Historic Places (NRHP) in 2019. The bridge is eligible under Criterion C as a good example of a Warren (with verticals and a polygonal top chord) pony truss design. The polygonal top chord makes it a variation of the standard Warren truss design. Although it is not the earliest example of this type, it is the oldest unreconstructed one, which makes it a good example of a Warren pony truss variant. While eligible for the NRHP, the Fourche River Bridge is not considered a National Historic Landmark.

What are the National Register Criteria for evaluation?

Properties that possess significance in American history, architecture, archeology, engineering, and culture that retain aspects of integrity, and:

- A) associated with an event, broad patterns, or trends of history;
- B) associated with an important person(s);
- C) embody typical features of a type, period, or construction method, that represent the work of a master, or possess high artistic values; or
- D) that have yielded, or will likely yield, significant information for history or prehistory.

(National Register Bulletin 15: <https://www.nps.gov/NR/PUBLICATIONS/bulletins/nrb15/>)

Fourche River Bridge



Figure 1

What are the qualifications for a National Historic Landmark?

A National Historic Landmark is a property selected by the Secretary of the Interior for its national historic significance. The property should “possess exceptional value in honoring or showing the history of the United States,” according to the National Park Service (<https://www.nps.gov/nhl/learn/intro.htm>).

4 Does this project qualify for the Section 4(f) programmatic for historic bridges?

The FHWA may apply the programmatic Section 4(f) evaluation to projects that meet the criteria shown in Table 1.

Table 1

Criteria To Use Programmatic Section 4(f) Evaluation For Federally-Aided Highway Projects That Necessitate The Use of Historic Bridges

The bridge is to be replaced or rehabilitated with Federal funds.	✓
The project will require the use of a historic bridge structure that is eligible for inclusion or listed in the NHRP.	✓
The bridge is not a National Historic Landmark.	✓
The FHWA Division Administrator determines that the facts of the project match those set forth in the FHWA Section 4(f) Policy Paper issued March 1, 2005.	✓
Agreement has been reached among the FHWA, SHPO, and the Advisory Council on Historic Preservation through procedures pursuant to Section 106 of the National Historic Preservation Act (NHPA).	✓

What is meant by feasible?

Per 23 CFR 774.17, Feasible and prudent avoidance alternative definitions:
(2) An alternative is not feasible if it cannot be built as a matter of sound engineering judgment.

What is meant by prudent?

Per 23 CFR 774.17, *Feasible and prudent avoidance alternative definitions*:
(3) An alternative is not prudent if:
(i) It compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;
(ii) It results in unacceptable safety or operational problems;
(iii) After reasonable mitigation, it still causes:
(A) Severe social, economic, or environmental impacts
(B) Severe disruption to established communities;
(C) Severe disproportionate impacts to minority or low income populations; or
(D) Severe impacts to environmental resources protected under other Federal statutes;
(iv) It results in additional construction, maintenance, or operational costs of an extraordinary magnitude;
(v) It causes other unique problems or unusual factors; or
(vi) It involves multiple factors in paragraphs (3)(i) through (3)(v) of this definition, that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

5 Could the project avoid demolishing the historic bridge?

For a Programmatic Section 4(f) Evaluation and Approval for FHWA Projects That Necessitate the Use of Historic Bridges to be applied to a project, each of the three following alternatives must be supported by circumstances, studies, and consultations on the project:

- 1) No Action,
- 2) Rehabilitation of the Existing Structure, and
- 3) Build on New Location and Retain the Existing Structure.

To this effect, ARDOT established a Historic Bridge Analysis Committee (HBAC) to evaluate viable alternatives for the preservation of historically significant bridges through retention, rehabilitation, or to justify their removal, if necessary. The HBAC evaluated the required alternatives to determine if a feasible and prudent alternative exists to the proposed impacts on this historic bridge. The results of the discussion are listed below.

No Action

This alternative involves no improvements to the existing structure and continues providing only routine maintenance. The roadway across the bridge is too narrow for two-way traffic, and it has been weight restricted.

This alternative does nothing to improve the existing roadway width or conditions of the bridge and would not alleviate safety issues. It is not prudent to leave the bridge in this condition, resulting in safety and operational issues.

Rehabilitation of the Existing Structure

Two rehabilitation alternatives were considered for this project.

Rehabilitation Alternative One rehabilitates the existing historic bridge for two-way traffic operations. The alternative would require a minimum width of 30 feet to meet current design standards. This bridge clear roadway width measures approximately 20 feet. Widening would compromise its historic integrity. In evaluating rehabilitation for less than design standards, the bridge remains narrow for two-way traffic, and the weight restriction still exists due to the original design. *Rehabilitation Alternative One* is not prudent as it impacts the historic integrity of the structure and results in unacceptable safety and operational problems.

Rehabilitation Alternative Two rehabilitates the existing historic bridge for one-way traffic operations and constructs a new bridge for one-way traffic operations in the opposite direction. The bridge would not need to be widened for one-way traffic; however, it would remain weight restricted. The couplet bridge would create a safety issue due to the curves on both ends of the bridge. *Rehabilitation Alternative Two* is not feasible or prudent due to unacceptable safety and operational problems.

New Location

The *New Location Alternative* constructs a new bridge according to the approved ARDOT project design criteria in new locations with the owner maintaining possession of the historic bridge, either preserving it in place or at another location. ARDOT owns the Fourche River Bridge. The design of the proposed bridge on a new location is feasible; however, it is the policy of ARDOT to no longer retain bridges following their removal from the highway system.

A new bridge can be built to current, minimum design standards with another entity accepting ownership of the historic bridge for preservation in place or relocation. ARDOT marketed the bridge on December 18, 2019, to find an entity willing to accept it (see Appendix A for marketing correspondence). Independence County submitted an interest letter and preservation plan stating it was willing to accept ownership and maintenance responsibility of the bridge for relocation. The *New Location Alternative* building a new bridge and transferring ownership to Independence County is feasible and prudent.

6 How will the ARDOT mitigate for the harm being done to the historic property?

The FHWA and the SHPO reached an agreement through the Section 106 process (36 CFR 800) of NHPA (16 USC 470) on measures to minimize harm. These measures have been incorporated into this project. Through a Memorandum of Agreement (MOA), it was agreed that ARDOT Bridge Number M2165 would be transferred with a Historic Bridge Preservation Covenant including preservation stipulations that apply to Independence County. A copy of the MOA, which includes all agreed-upon mitigation stipulations, can be found in Appendix B.

7 What are the findings of the alternatives analysis and this evaluation?

Table 2 contains a summary of the analysis and decision-making information included in this evaluation.

Table 2

Section 4(f) Analysis Summary

Alternative	Feasible	Prudent	Uses Section 4(f) Property	Harm to Section 4(f) Property
No Action	Yes	No	No	None
Rehabilitation One	Yes	No	Yes	Adverse Effect
Rehabilitation Two	No	No	Yes	Adverse Effect
New Location One	Yes	Yes	Yes	Adverse Effect*

* *Relocation diminishes the bridge's integrity of location.*

Based on the above considerations, the only feasible and prudent option to demolition is the *New Location Alternative*. The proposed action includes all possible planning to minimize the harm to the historic bridge resulting from such use.

8 What are the recommendations on this project?

ARDOT recommends that the Fourche River Bridge be relocated for future use on a trail system in Batesville. The historic bridge will be relocated with the historic preservation responsibilities transferred from the current owner, ARDOT, to the new owner, Independence County, as agreed under the MOA (Appendix B).

The above documentation illustrates that the proposed project complies with all requirements of the Programmatic Section 4(f) Evaluation for Federal-aid highway projects that require the use of a historic bridge.

Appendix A: Marketing Correspondence



ARKANSAS DEPARTMENT OF TRANSPORTATION

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

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

Phone: 501.569.2000 | Voice/TTY 711 | Fax: 501.569.2400

December 18, 2019

RE: Historic Bridge M2165
Job Number 100993
Hwy. 67 – Engelberg
Strs. & Apprs. (S).
Randolph County
Historic Bridge Marketing Request

The Arkansas Department of Transportation (ARDOT) is planning to replace Bridge Number M2165 on Highway 166 in Randolph County. This bridge was determined eligible for inclusion in the National Register of Historic Places (NRHP) through coordination with the State Historic Preservation Officer's staff in June 2019. A location map and further information about the bridge is enclosed.

The Fixing America's Surface Transportation (FAST) Act, 23 USC § 144 (g)(5) states: "Any State which proposes to demolish a historic bridge for a replacement project ... shall first make the bridge available for donation to a State, locality, or responsible private entity..." As part of the mitigation process, the ARDOT is offering to donate Bridge Number M2165 to any government or entity that demonstrates a willingness to accept its title, maintain it in place or relocate it for use at another site, preserve the historic features, and assume the financial responsibility for the continued maintenance on the structure.

The ARDOT, through the Federal Highway Administration (FHWA), can reimburse costs associated with preservation up to the demolition estimate expense for bridges preserved in place. The demolition estimated reimbursement will be determined by the FHWA, not to exceed 100 % of the costs of demolition of the bridge, which will be based on the estimate by ARDOT. The costs associated with preservation could include rehabilitation of the bridge or minor modifications for recreational use.

If the bridge is relocated, the reimbursement funds allocated to this bridge will be exhausted during the careful dismantling and relocation process.

ARDOT Bridge Number M2165
Job Number 100993
Marketing Request
Page 2 of 60

If you are interested in acquiring this bridge, please respond with a letter of interest within 45 days from the date of this letter. If multiple letters of interest are received, preference will be given to the entity accepting the bridge preserved in place. For further information, contact Nikki Senn at (501) 569-2979.

Sincerely,


for John Fleming
Division Head
Environmental Division

Enclosures
JF:NS:cb

c: Assistant Chief Engineer - Planning
Bridge Division
District 10 Engineer

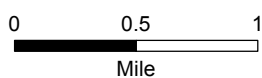
ARDOT Job Number 100993
Historic Bridge Marketing Description



ARDOT Bridge Number M2165, on State Highway 166, was determined eligible for inclusion in the National Register of Historic Places(NRHP) through coordination with the State Historic Preservation Officer's staff in June 2019.

An unknown builder constructed the bridge over the Fourche River in 1942. The truss span is a steel variant of a Warren (with verticals) pony truss design with a polygonal top chord. The span has a reinforced concrete deck, timber piles, reinforced concrete pier caps, both movable and fixed bearings, and metal railing. It measures 90 feet long and just under 20 feet wide.

Ten other Warren pony truss bridges with the same elements remain in service, but only two are older than Bridge Number M2165, and both have been reconstructed. Although an earlier version is listed in the NRHP, ARDOT Bridge Number M2165 was determined eligible for inclusion in the NRHP due to its age and original condition. It is locally significant as the last Warren pony truss in Randolph County as part of the Arkansas Highway System.



Job 100993
ARDOT - Environmental GIS - Dudley
December 4, 2019

Historic Bridge
Randolph County



Marketing Groups	Name	Title	Agency	Address 1	Address 2	City
Mayor	The Honorable Keith Sutton		City of Pocahontas	410 N. Marr St.		Pocahontas, AR 72455
Mayor	The Honorable Dennis Kerley		City of Maynard	P.O. Box 486		Maynard, AR 72444
Chamber of Commerce	Tim Scott	Executive Director	Randolph County Chamber of Commerce	107 E. Everett Street		Pocahontas, AR 72455
County Judge	The Honorable Rusty McMillon		Greene County Judge	320 W. Court Street, Room 107		Paragould, AR 72450
County Judge	The Honorable Mike Patterson		Clay County Judge	P.O. Box 385		Piggott, AR 72454
County Judge	The Honorable David Jansen		Randolph County Judge	Randolph County Courthouse	107 West Broadway	Pocahontas, AR 72455
County Historical Society	Venus Allen	President	Greene County Historical & Genealogical Society	P.O. Box 121		Paragould, AR 72451-0121
County Historical Society	Scot Stout	Coordinator	Clay County Genealogical & Historical Society	361 W. Main Street		Piggott, AR 72454
County Historical Society	Laura Hodge	President	Randolph County Historical & Genealogical Society	P.O. Box 4		Maynard, AR 72444
FHWA	Angel Correa	Arkansas Division Administrator	Federal Highway Administration	700 West Capitol Ave, Suite 3130		Little Rock, AR 72201
SHPO, and Parks and Tourism	Stacy Hurst	Arkansas State Historic Preservation Officer	Department of Arkansas Parks, Heritage and Tourism	1100 North Street		Little Rock, AR 72201
Arkansas Historical Association	Mark Christ	President	Arkansas Historical Association	Department of History, University of Arkansas	416 Old Main	Fayetteville, AR 72701
Preserve Arkansas	Rachel Patton	Executive Director	Preserve Arkansas	P.O. Box 305		Little Rock, AR 72203-0305
Arkansas Game and Fish Commission	Pat Fitts	Director	Arkansas Game and Fish Commission	2 Natural Resources Drive		Little Rock, AR 72205
US Corps of Engineers	Colonel Eric M. Noe	Commander and District Engineer	U.S. Army Corps of Engineers	Little Rock District, P.O. Box 867	P.O. Box 867	Little Rock, AR 72203-0867
US Corps of Engineers	Colonel Zachary L. Miller	Commander and District Engineer	U.S. Army Corps of Engineers	Memphis District, 167 North Main Street Room B-202		Memphis, TN 38103-1894
Metro Planning Org, if applicable	Cecelie Cochran	MPO Director		300 S. Church Street		Jonesboro, Arkansas 72401

Marketing Groups	Name	Title	Agency	Address 1	Address 2	City
Central Arkansas Water	Raven Lawson	Watershed Protection Manager	Central Arkansas Water	221 East Capitol Avenue, P.O. Box 1789	P.O. Box 1789	Little Rock, AR 72203
United States Forest Service	Mena/Oden District Ranger	Oachita National Forest	United States Forest Service	1603 Highway 71 North		Mena, AR 71953
United States Forest Service	Forest Supervisor's Office	Oachita National Forest	United States Forest Service	100 Reserve Street	P.O. Box 1270	Hot Springs, AR 71902
Arkansas Trails Council	Mike Sprague	Executive Secretary	Arkansas Trails Council, Dept. of Parks and Tourism	One Capitol Mall		Little Rock, AR 72201
City of Fayetteville	Ken Eastin	Park Planner II	City of Fayetteville, Parks and Recreation Department	113 West Mountain Street		Fayetteville, AR 72701
City of Bentonville	David Wright	Director	City of Bentonville, Parks and Recreation Department	215 SW A Street		Bentonville, AR 72712
City of Springdale	Chad Wolf	Interim Director	City of Springdale, Parks and Recreation Department	600 Ash Street		Springdale, AR 72765
City of Paragould	Pat Austin	Director	City of Paragould, Parks and Recreation Department	3404 Linwood Drive		Paragould, AR 72450
City of Marion	Mike Carolan	Parks and Recreation Director	City of Marion	343 Marion Blvd.		Marion, AR 72364
City of West Memphis	Lorenzo Parker	Director	City of West Memphis, Parks and Recreation Department	P.O. Box 1728		West Memphis, AR 72303
City of Jonesboro	Danny Kapales	Director	City of Jonesboro, Parks and Recreation Department	3009 Dan Avenue		Jonesboro, Arkansas 72401
City of Hot Springs	Anthony Whittington	Director	City of Hot Springs, Parks and Recreation Department	111 Opera		Hot Springs, AR 71902
Arkansas State Parks	Jordan Thomas	Chief Planner & Landscape Architect	Arkansas State Parks	One Capitol Mall, 4B.215		Little Rock, AR 72201

INDEPENDENCE COUNTY JUDGE ROBERT GRIFFIN

Independence County Courthouse • 192 East Main Street • Batesville, Arkansas 72501

2019-2020
Quorum CourtTim Stewart
District 1Mark Biram
District 2Brent Henderson
District 3Brad Covington
District 4Bill Lindsey
District 5Tammy Pearce
District 6Anna King
District 7Kenny Hurley
District 8Johnathan Abbott
District 9Charles Jordan
District 10Dennis Stephens
District 11

12-18-2020

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

Dear Mr. Fleming,


I am interested in the historic bridge herein named. Bridge Number M2165 on Highway 166 in Randolph County. We hope to add this to the historic preservation program in our county efforts.

We intend to create a walking/biking (non-motorized) trail along the Poke Bayou here in Batesville and we will have a couple of crossings over the Bayou where that these bridges can give long service and be displayed as well. I intend to seek a grant to build this trail along the Bayou, beginning on AR Highway 25 north of Batesville and connecting with AR Highway 167 on the south side of Batesville. This donated bridge might be the difference in expediting this project.

It might be worth noting that Independence County, Batesville and Southside jointly own Ramsey Mountain and intend to create a trail on that property as well. AR 167 will connect the termination of the Bayou trail to the Ramsey property.

Should we not get the grant for the trail, we have three county roads where this bridge can serve the public for years to come as well. We have adequate storage space to keep these treasures safe until deployed. I would appreciate your consideration for our needs.

Sincerely,


Robert Griffin, Independence County Judge

Cell 501-454-3163 Office 870-793-8800



ARKANSAS DEPARTMENT OF TRANSPORTATION

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

BRIDGE DIVISION

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261 | Phone: 501.569.2361 | Fax: 501.569.2623

March 19, 2021

The Honorable Robert Griffin
Independence County Courthouse
192 East Main Street
Batesville, AR 72501

RE: Historic Bridge M2165
Job Number 100993
Hwy. 67 – Engelberg Strs. &
Apprs. (S)
Randolph County

Dear Judge Griffin:

The ARDOT Historic Bridge Analysis Committee has identified Independence County as the preferred recipient of historic Bridge Number M2165 (Fourche River Bridge).

The first step for the bridge ownership transfer is an Independence County Quorum Court resolution stating that Independence County is willing to assume ownership of the Fourche River Bridge during the ARDOT Job 100993 construction project. Once the resolution is received by ARDOT, we will develop a Memorandum of Agreement between Independence County, the ARDOT, the Federal Highway Administration, and the Arkansas State Historic Preservation Officer for the relocation of the bridges and the transfer of ownership.

If you have any questions, please contact Nikki Senn at Nikki.Senn@ardot.gov.

Sincerely,

Mar 19 2021 1:55 PM

DocuSign

Charles R. Ellis
Bridge Engineer

CRE:NS:cl

Resolution Requested By:
Judge Griffin

RESOLUTION 2021-05

A RESOLUTION DECLARING APPROVAL OF TRANSFER OF OWNERSHIP OF HISTORIC BRIDGE (BRIDGE M2165)

WHEREAS, the Arkansas Department of Transportation (ARDOT) presently holds the ownership of the Fourche River Bridge (Bridge Number M2165) in Randolph County;

WHEREAS, the ARDOT will transfer ownership to Independence County of Fourche River Bridge during the ARDOT Job 100993.

WHEREAS, the ARDOT requires the Quorum Court of the County of Independence, State of Arkansas, to approve said transfer.

WHEREAS, once the resolution is received by the ARDOT, they will develop a Memorandum of Agreement among the Federal Highway Administration, the Arkansas State Historic Preservation Officer, Independence County, and the ARDOT for the relocation and transfer of ownership of the bridge.

NOW, THEREFORE, BE IT RESOLVED BY THE QUORUM COURT OF INDEPENDENCE COUNTY, ARKANSAS THAT THE TRANSFER OF OWNERSHIP OF BRIDGE NUMBER M2165 TO THE COUNTY IS APPROVED.

DATE APPROVED:

4-12-2021

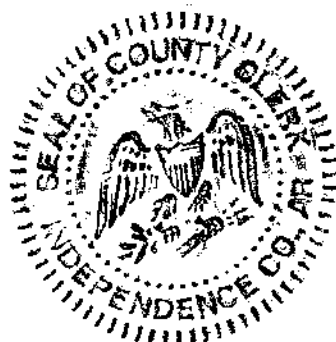
APPROVED BY:

County Judge of Independence County

ATTEST:

Tracey Mitchell by SR

County Clerk of Independence County



FILED

APR 13 2021

1:38 P.M.

TRACEY MITCHELL
COUNTY & PROBATE CLERK
SR D.C.

2021/34

Appendix B: Memorandum of Agreement

MEMORANDUM OF AGREEMENT
AMONG THE
FEDERAL HIGHWAY ADMINISTRATION,
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER,
INDEPENDENCE COUNTY, ARKANSAS,
AND THE
ARKANSAS DEPARTMENT OF TRANSPORTATION
REGARDING
ARDOT JOB 100993
HWY. 67 – ENGELBERG STRS. & APPRS. (S)
HIGHWAY 166, RANDOLPH COUNTY, ARKANSAS
ARDOT BRIDGE NUMBER M2165

WHEREAS, the Federal Highway Administration (FHWA) and Arkansas Department of Transportation (ARDOT) wish to construct a new bridge across Fourche River along Highway 166 in Randolph County; and the old Fourche River Bridge (Bridge) will be demolished as part of completing ARDOT Job 100993; and

WHEREAS, the Bridge is a historic property determined eligible for inclusion in the National Register of Historic Places (NRHP) through consultation with the State Historic Preservation Officer (SHPO); and

WHEREAS, the FHWA has marketed the Bridge to federal and state agencies, the Clay, Greene, Independence, and Randolph County Judges, the Cities of Bentonville, Fayetteville, Hot Springs, Jonesboro, Paragould, Pocahontas, Marion, Maynard, Springdale, and West Memphis, area chambers of commerce, metropolitan planning organizations, and state and local historical societies; and

WHEREAS, Independence County (County) has agreed to accept title for the Bridge for preservation and reuse as a pedestrian crossing on a planned trail system or for vehicular use at another location; and

WHEREAS, through the Programmatic Section 4(f) Evaluation process, the FHWA has determined that relocating the bridge is a feasible and prudent alternative to the demolition of the historic bridge; and

WHEREAS, the FHWA and ARDOT have determined that this undertaking will have an adverse effect on a historic property and in accordance with the 36 Code of Federal Regulation (CFR) Part 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended [54 United States Code (USC) 306108], must address this effect; and

ARDOT Job 100993
Memorandum of Agreement
Page 2 of 8

WHEREAS, the definitions set forth in 36 CFR § 800.16 are applicable throughout this Memorandum of Agreement (MOA); and

WHEREAS, the FHWA has consulted with the Tunica-Biloxi Tribe of Louisiana, Inc., the Quapaw Nation (O-Gah-Pah), the Shawnee Tribe, the Osage Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma, for which the Bridge or sites and properties in the immediate area might have religious and cultural significance; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW THEREFORE, the FHWA, SHPO, and ARDOT agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of this undertaking on the Bridge.

STIPULATIONS

The FHWA, through ARDOT, shall ensure that the following stipulations are carried out.

I. MITIGATION OF ADVERSE EFFECT TO THE HISTORIC PROPERTY

Upon the transfer of the Fourche River Bridge, in order to mitigate the adverse effect on these historic properties, ARDOT will transfer the properties with an appropriate "Historic Bridge Preservation Covenant" as permitted in 36 CFR § 800.6. The "Historic Bridge Preservation Covenant" is to be inserted in all instruments of conveyance and will thereafter run with the Bridge. The "Historic Bridge Preservation Covenant" is found in Appendix A. The FHWA, ARDOT, and the County will inform the SHPO of any property transactions executed under this stipulation.

II. HUMAN REMAINS

Human remains are not expected to be discovered on this undertaking; however, if they are encountered during implementation of the project, all activity in the vicinity of the discovery shall cease and procedures shall follow those as outlined in Stipulation XII of the *Programmatic Agreement Among the FHWA, the SHPO, the ACHP, the Osage Nation, and ARDOT Regarding Section 106 Implementation for Federal-Aid Transportation*

ARDOT Job 100993
Memorandum of Agreement
Page 3 of 8

Projects. The treatment of human remains shall follow the guidelines developed for the *Arkansas Burial Law* (Act 753 of 1991, as amended) and the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* published February 23, 2007. As such a permit will be obtained from the AHPP prior to exaction of any remains.

III. DURATION

This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

IV. PROFESSIONAL QUALIFICATIONS STANDARDS

The FHWA shall ensure that all archeological investigations and other historic preservation activities pursuant to this MOA are carried out by, or under the direct supervision of, a person or persons meeting the appropriate qualifications set forth in the Secretary of the Interior's professional qualification standards (36 CFR Part 61).

V. POST-REVIEW DISCOVERY SITUATIONS

Pursuant to 36 CFR § 800.13, if cultural material is discovered during implementation of the project, the procedures shall follow those as outlined in Stipulation XI of the *Programmatic Agreement Among the FHWA, the SHPO, the ACHP, the Osage Nation, and ARDOT Regarding Section 106 Implementation for Federal-Aid Transportation Projects*.

VI. DISPUTE RESOLUTION

Should the SHPO or any consulting party to this MOA object within thirty (30) calendar days to any findings, proposed actions or determinations made pursuant to this MOA, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, it shall request further comments from the ACHP pursuant to 36 CFR § 800.7. Any ACHP comment provided in response to such a request shall be taken into account by the FHWA in accordance with 36 CFR § 800.6(b)(2) with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this MOA that are not subject to dispute shall remain unchanged.

ARDOT Job 100993
Memorandum of Agreement
Page 4 of 8

VII. MONITORING

The consulting parties or one or more parties in cooperation may monitor the undertaking and stipulations carried out pursuant to this MOA.

VIII. AMENDING THE MEMORANDUM OF AGREEMENT

Should any of the signatories to this MOA believe that the terms of this MOA are not being met or cannot be met, that party shall immediately notify the other signatories and request consultation to amend this MOA in accordance with 36 CFR § 800.6. The process to amend this MOA shall be conducted in a manner similar to that leading to the execution of this MOA.

IX. TERMINATING THE MEMORANDUM OF AGREEMENT

If any signatory to this MOA determines that its terms of this MOA will not or cannot be carried out, that party shall immediately consult with other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. In the event of termination, the FHWA shall comply with 36 CFR § 800.4 through 800.6 with regard to the undertaking covered by this MOA.

X. FAILURE TO CARRY OUT THE MEMORANDUM OF AGREEMENT

In the event that the FHWA does not carry out the terms of this MOA, the FHWA shall comply with 36 CFR § 800.4 through 800.6 with regard to the undertaking covered by this MOA.

XI. FULFILLMENT OF SECTION 106 RESPONSIBILITIES

Execution of this MOA and implementation of its terms evidences that the FHWA and ARDOT have taken into account the effect of the undertaking on the historic property and have fulfilled its Section 106 responsibilities under the NHPA of 1966, as amended.

ARDOT Job 100993
Memorandum of Agreement
Page 5 of 8

Signatory

FEDERAL HIGHWAY ADMINISTRATION



Vivien N. Hoang, P.E.
Arkansas Division Administrator

8/31/2021

Date

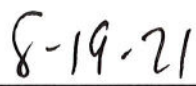
ARDOT Job 100993
Memorandum of Agreement
Page 6 of 8

Signatory

ARKANSAS STATE HISTORIC PRESERVATION OFFICER

A handwritten signature in black ink, appearing to read "Stacy Hurst", is written over a horizontal line.

Secretary Stacy Hurst
Arkansas State Historic Preservation Officer

A handwritten date "8-19-21" in black ink is written over a horizontal line.

Date

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Signatory

INDEPENDENCE COUNTY, ARKANSAS



The Honorable Robert Griffin
Independence County Judge

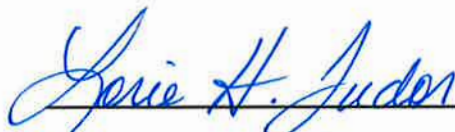
8-17-2021

Date

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Signatory

ARKANSAS DEPARTMENT OF TRANSPORTATION


Lorie H. Tudor, P.E.
Director

8/26/2021

Date

APPENDIX A
HISTORIC BRIDGE PRESERVATION COVENANT

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HISTORIC BRIDGE PRESERVATION COVENANT

Independence County, Arkansas (Grantee), by acceptance of the bridge titles from the Arkansas Department of Transportation (ARDOT), covenants and agrees, for itself, its heirs, its successor and assigns, and for every successor in interest to the historic properties herein described, or any part thereof, shall abide by each of the following covenants, each of which will be covenants running with each property.

The historic properties are described as the old Fourche River Bridge (ARDOT Bridge Number M2165), consisting of a Warren steel truss variant with verticals showing a polygonal top chord. The Fourche River Bridge truss span measures approximately 157 feet in length with a 19.7-foot roadway width. The Fourche River Bridge is located in the SW ¼ of the SW ¼ of the NW ¼ of Township 19 North, Range 2, Section 6 East on the Pocahontas, ARK 7.5 minute USGS topographic quadrangle where Highway 166 crosses the Fourche River in Randolph County. The Fourche River Bridge was recorded as constructed in 1942, but may have been relocated to the above described site as no background information was located.

The Grantee covenants and agrees that:

1. The Grantee has identified locations in which the Bridge will be reassembled following dismantling from their current location;
2. The Bridge will be preserved and maintained in accordance with the recommended approaches of the Secretary of the Interior's (SOI) Standards for the Treatment of Historic Properties;
3. No physical or structural changes or changes of color or surfacing, aside from those arising from the movement of the Bridge to their new location, will be made to the Bridge without first notifying, in writing, the Federal Highway Administration (FHWA) and ARDOT, and the Arkansas State Historic Preservation Officer (SHPO) consulted for written approval;
4. The Bridge will be opened to public access once relocation and restoration are completed. Should removal or restriction of public access become necessary, ARDOT will be notified in writing and the SHPO consulted as to the disposition of these historic properties;
5. Normally, the FHWA through ARDOT can reimburse costs associated with preservation. However, the cost reimbursement

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funds allocated to the Bridge will be exhausted when the Bridge is dismantled and relocated;

6. If Grantee is unable to fulfill its preservation responsibilities to the Bridge, which would dictate the abandonment or removal of the historic property, the Grantee must notify the FHWA, ARDOT, and the SHPO in writing and produce any documents required by the SHPO for mitigation of the adverse effect from abandonment or removal of the historic property;
7. Any proposed changes or modification of the historic property shall be in compliance with the SOI's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and must be reviewed and approved by the SHPO;
8. An authorized representative of ARDOT or SHPO shall be permitted at all reasonable times to examine the Bridge in order to ascertain if the above conditions are being observed. Prior to examination, the representative shall furnish properly written notification of their intent to inspect;
9. The failure of the FHWA, ARDOT, or the SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other remedy or the use of such right or remedy at any other time; and
10. These covenants shall be a binding servitude upon the real property that includes the Bridge, which shall be deemed to run with the property and shall be incorporated into any deed or other legal instrument by which the Grantee divests itself of the property.

In the event of violation of the above covenants, the FHWA, ARDOT, or SHPO may institute an injunction or suit to enjoin such violation or for damages by reason of any breach thereof.

These covenants shall be binding on the Grantee hereto, their successors, and assigns in perpetuity; however, the SHPO may, for good cause, and with the concurrence of FHWA, modify or cancel any or all of the foregoing restrictions upon written application of the Grantee, its successors or assigns.

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The acceptance of the delivery of the Historic Bridge Preservation Covenant shall constitute conclusive evidence of the agreement of the Grantee to be bound by the obligations herein set forth.

VIRTUAL PUBLIC INVOLVEMENT SYNOPSIS

Job 100993

Hwy. 67 – Engleberg Strs. & Apprs. (S)

Randolph County

Tuesday, April 6, 2021

A Phase II “Live” Virtual Public Involvement (VPI) meeting for the proposed replacement of three bridge structures on Highway 166 over Gaines Creek and Fourche River near Pocahontas, AR was held on Tuesday, April 6, 2021. Project information was made available on the ARDOT’s website from March 31, 2021 through April 21, 2021. Efforts to involve minorities and the public in the meeting included:

- Display advertisement placed in the *Star Herald* on Thursday, March 25 and Thursday, April 1, 2021
- Letters were mailed to Public Officials on April 1, 2021
- Flyers mailed to citizens

The following information and links were available on the ARDOT website:

- Short video presentation about the project
- Public meeting notice
- Project location map
- Project design plans
- Online comment form
- Interactive project map
- Frequently asked questions with answers

Copies of the public meeting notice, VPI exhibit, and comment form are attached.

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

TABLE 1	
Public Participation	Totals
Online registration of attendance at Phase II VPI	36
Number of website viewers (English/Spanish)	646/47
Online Comments Received	8

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

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

TABLE 2	
Survey Results	Totals
Feels there is a need for the proposed bridge replacements	7
Does not feel there is a need for the proposed bridge replacements	1
Property limitations to the project	1
Knowledge of cultural resources in the project area	0
Knowledge of environmental constraints in the project area	0
Beneficial impacts due to the proposed project	4
Adverse impacts due to the proposed project	4
Did not indicate beneficial or adverse impacts	0

A listing of general comments concerning the proposed project follows:

- The bridges which are to be replaced with R.C. Box culverts will be much safer than existing bridges.
- Bridges should be constructed with the thought of safety, growth, and impacts on the farmers in the area.
- The construction of the project will cause adverse impacts from the temporary detours to farmers, emergency personnel, bus routes, etc.
- Fourche Bridge (M2165) needs to start a quarter mile west of the existing bridge so that drainage flows in its natural direction to avoid overflow of Highway 166.
- Instead of two box culverts being installed near Fourche River, only install one.
- Concern about a levee to the north of Highway 166 near Fourche River.
- Building a bridge over the existing Highway 166 where water can flow under it would benefit the community.
- The relief water on east should be turned back to the Fourche River. The east side relief is concentrating water into the river drainage district ditches which are maxed out.
- Need to raise the Highway 166 roadway to prevent the flooding.
- Adjacent landowner to Bridge (M2164) is concerned about the temporary detour during construction over Gaines Creek.

- These improvements will change traditional flooding west of Fourche River where the river will now flood to the east. This will greatly damage the eastern farm lands and potentially bankrupt those farmers.
- New bridges should be at least 30' wide to allow farm equipment to properly pass over instead of detouring around these bridges.
- Lower the speed limits for the bridge approaches to improve driver awareness since farmers cross these bridges with equipment and livestock often.
- Landowner would like a drainage structure installed on field entrance like existing entrance had northwest of Bridge (M2165).
- Landowner would like the field entrance southwest of Bridge (M2165) raised so the elevation matches the Fourche River levee. Would also like the field entrance inside bank protected with rip-rap to prevent destruction during floods.
- Farmer would like field entrances to be wide enough for modern farm equipment.
- Landowner would like field entrance southwest of Bridge (M2165) to have its drainage structure smaller than the proposed design to prevent river from backing out.
- Landowner is concerned that Poluca Road's proposed design does not include a drainage to replace the existing.
- Sparrow Road should include a drainage structure underneath to allow water to flow east to the relief during flooding events to relieve some of the Fourche River elevation.

Attachments:

Public Meeting Notice

VPI Exhibit

Blank Comment Form

DN:JG:sw



You're invited!

WEBEX "LIVE" VIRTUAL PUBLIC INVOLVEMENT MEETING

WHAT: "Live" Virtual Public Involvement Meeting to discuss the proposed construction of three bridge structures on Hwy. 166 near Pocahontas, AR (Randolph County).

WHEN: Tuesday, April 06, 2021 from 5:30 to 6:30 p.m. Citizens will have an opportunity to ask questions and make comments.

Due to the COVID-19 restrictions, we are unable to conduct a public Involvement meeting in the traditional sense (no in-person meeting).

Purpose

The Arkansas Department of Transportation (ARDOT) will conduct a "Live" WebEx virtual public involvement meeting to discuss the proposed plans to construct three bridge structures on Hwy. 166 near Pocahontas, AR.

Project staff will give a brief presentation regarding the project. The public is invited to listen, view meeting materials and participate by asking questions and making comments with the appropriate ARDOT staff. The online website will be available for viewing from Wednesday, March 31, 2021 through Wednesday, April 21, 2021. Comments will be accepted until 4:30 p.m. on Wednesday, April 21, 2021.

Link To Virtual Meeting: <https://www.ardot.gov/publicmeetings>

In order to access the virtual public meeting, visit the link above. At the website location, simply scroll down to view the virtual public meeting of your interest. Once the Public Meeting is selected, you will be able to view the virtual public meeting website. This website will provide project materials and handouts that would have been shown at the in-person meeting. A separate link will provide a Spanish version of the presentation. There will also be an option to send online comment forms to ARDOT's staff, or you can print the form and mail it to, P.O. Box 2261, Little Rock, AR 72203-2261. If you do not have internet access, please contact Karla Sims at 501-569-2000 to ask questions about the project and how to access project information or email at karla.sims@ardot.gov.

Job No. 100993

Virtual Web Link:

Visit: <https://www.ardot.gov/publicmeetings>

- At the website location, select the public meeting of your interest.

**Tuesday, April 06, 2021
5:30 p.m. to 6:30 p.m.**

Special Accommodations: Anyone needing project information or special accommodations under the Americans with Disabilities Act (ADA) is encouraged to write to Ruby Jordan-Johnson, P.O. Box 2261, Little Rock, AR 72203-2261, call (501)569-2379, fax (501)569-2009 or email

environmentalpublicmeetings@ardot.gov.

Hearing or speech impaired, please contact the Arkansas Relay System at (Voice/TTY 711). Requests should be made at least four days prior to the public meeting.

Notice of Nondiscrimination

The Arkansas Department of Transportation (ARDOT) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the Department's programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to Joanna P. McFadden EEO/DBE Officer (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: joanna.mcfadden@ardot.gov. Free language assistance for Limited English Proficient individuals is available upon request.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

Job 100993
Highway 67 to Engleberg
Structures & Approaches
(Highway 166)
Randolph County



Preliminary Subject to Revision

End Job 100993
End Site 2

Begin Site 2

End Site 1

Begin Job 100993
Begin Site 1



Project Location



ArDOT - Environmental GIS - Dudley
Map: March 1, 2021
Virtual Public Involvement

ARKANSAS DEPARTMENT OF TRANSPORTATION (ARDOT)
CITIZEN COMMENT FORM

ARDOT JOB NUMBER 100993
Hwy. 67 - Engelberg Strs. & Apprs. (Hwy. 166)
RANDOLPH COUNTY

LOCATION:
ONLINE "LIVE" WEBEX VIRTUAL PUBLIC INVOLVEMENT MEETING
TUESDAY, APRIL 06, 2021 @ 5:30 P.M.

Make your comments on this form and mail it by **4:30 p.m. on Wednesday, April, 21 2021** to: Arkansas Department of Transportation, Environmental Division, P.O. Box 2261, Little Rock, AR, 72203-2261. Email: environmentalpimeetings@ardot.gov.

Yes No

☐ ☐ Do you feel there is a need for the proposed construction of three bridge structures on Hwy. 166 near Pocahontas, AR? Comment (optional)_____

Do you feel that the proposed project will have any impacts?

(☐ Beneficial or ☐ Adverse) on your property and/or community (economic, environmental, social, etc.)? Please explain. _____

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

(Continue on Back)

Yes No

☐☐

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

☐☐

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

☐☐

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

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

Name: _____ (Please Print)

Address: _____ Phone: (____) _____--

E-mail: _____

Please make additional comments here. _____

For additional information, please visit our website at <https://www.ardot.gov/publicmeetings>

At the website location, select the public meeting of your interest.



ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST FOR CONSIDERATION OF POTENTIAL IMPACTS

ARDOT Job 100993 FAP STPB-0061 (19)

Job Title Hwy. 67 – Engelberg Strs. & Apprs. (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No air quality/MSAT impacts
Cultural Resources		X		Historic bridge replaced and relocated
Economic	X			No adverse impacts
Endangered Species		X		"No effect" and "NLAA" determinations
Environmental Justice/Title VI	X			Not impacted, Phase II VPI meeting held
Fish and Wildlife		X		Minor impacts during construction
Floodplains	X			Zone A, no impacts anticipated
Forest Service Property	X			None in the project area
Hazardous Materials/Landfills	X			No sites in project area
Land Use		X		5.62 acres new ROW, 1.06 acres of TCE
Migratory Birds	X			Migratory Bird SP included
Navigation/Coast Guard	X			No navigable waterways involved
Noise Levels	X			No increases due to project
Prime Farmland		X		2.13 acres of Prime Farmland & 1.91 acres of Statewide Importance
Protected Waters	X			WPC SP included, IWQC required
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA	X			No impacts anticipated
Relocates	X			No relocations anticipated
Section 4(f)/6(f)		X		Historic bridge programmatic
Social	X			No impacts to the social environment
Underground Storage Tanks	X			No USTs in project area
Visual	X			No changes to visual environment
Streams		X		738 linear feet of stream impacts
Water Quality		X		Temporary decline during construction
Wetlands	X			None in the project area
Wildlife Refuges	X			None in the project area

Section 401 Water Quality Certification Required? Yes

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type Nationwide Permit 14

Remarks: IWQC for Lower Black: 303d for Turbidity; WPC SP for Karst Vulnerability Area
Historic Bridge M2165 is being relocated and ownership is transferred to Independence County.

Signature of Evaluator  Date 10/12/2021

Date Sent: February 22, 2021

ROADWAY DESIGN REQUEST

Job Number 100993 FAP No. _____ County Randolph

Job Name Hwy. 67 – Engelberg Strs. & Apprs. (S)

Design Engineer Austin Hales Environmental Staff _____

Detailed Project Description (1) Replace existing bridge with R.C. Box Culvert.

(2) Replace an existing bridge and non-bridge length pipe culvert with two bridges on new location and replace existing relief structures with R.C. Box Culverts.

A. Existing Conditions:

Roadway Width: (1) 26' (2) 24' Shoulder Type/Width: (1) 3' unpaved (2) 2' paved

Number of Lanes and Width: 2 @ 10' Existing Right-of-Way: 100'

Sidewalks? N/A Location: N/A Width: N/A

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

B. Proposed Conditions:

Roadway Width: 28' Shoulder Type/Width: 4' (2' Paved)

Number of Lanes and Width: 2 @ 10' Proposed Right-of-Way: (1) 125' (2) 150'

Sidewalks? N/A Location: N/A Width: N/A

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

C. Construction Information:

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

D. Design Traffic Data:

2022 ADT: 200 2042 ADT: 250 % Trucks: 5

Design Speed: 40 m.p.h.

E. Approximate total length of project: 0.57 mile(s)

F. Justification for proposed improvements: Bridges are structurally deficient, and non-bridge length pipe culvert is hydraulically inadequate.

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

H. Have you coordinated with any outside agencies (e.g., FHWA, City, County, etc.)? No

Agency/Official	Person Contacted	Date

(1) Site 1 – Log Mile 1.15 to Log Mile 1.29

(2) Site 2 – Log Mile 3.16 to Log Mile 3.59

Nationwide Permit No. 14

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

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

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

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

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

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

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

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

Nationwide Permit General Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Transferee)

(Date)

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

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

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

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

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

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

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

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

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

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

(2) Location of the proposed activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

District Engineer's Decision

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

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

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

Further Information

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