



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

February 16, 2018

Mr. Angel Correa
Division Administrator
Federal Highway Administration
700 West Capitol, Room 3130
Little Rock, Arkansas 72201-3298

Re: Job Number 061438
FAP Number PEN-0026(31)
Bryant Rd. – Hwy. 298 West
(Safety Impvts.) (Sel. Secs.) (S)
Garland County
Tier 3 Categorical Exclusion

Dear Mr. Correa:

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

The purpose of this project is to improve safety on selected sections of Highway 7. Total length of the proposed improvements is approximately 2.5 miles at 11 sections between Highway 5 and Highway 298 in Garland County. A project location map is enclosed showing the location of each section. The following is a summary of work to be performed at each section:

- Site 1A:** Extend passing lane that was shortened to accommodate the turn lane at Site 1.
- Site 1:** Add northbound left turn lane at Randallwood Drive.
- Site 2:** Add southbound left turn lane at Surrey Road.
- Site 3:** Widen shoulders from 2' wide to 6' wide.
- Site 3A:** Stripe southbound left turn lane at Brookhill Ranch Road.
- Site 3B:** Extend passing lane that was shortened to accommodate the turn lane at Site 3A.
- Site 4:** Add two-way left turn lane.
- Site 5:** Widen shoulders from 2' wide to 8' wide and extend guardrail.
- Site 6:** Upgrade traffic signal at DeSoto Boulevard.

Site 7: Add two-way left turn lane.

Site 8: Add northbound left turn lane at Highway 298 West.

Approximately 5.9 acres of additional right of way and 1.5 acre of temporary construction easements will be required for this project.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Average Running Speed	Design Speed
2017	7,900 vpd	4	53 mph (Sites 1, 1A, 2, 3, 3A, 3B) 50 mph (Site 8)	45 mph (Sites 4, 5, 6, 7)
2037	10,000 vpd	4		

There are no relocations, wetlands, cultural resources, or environmental justice issues associated with this project. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits. Approximately 0.7 acre of Prime Farmland will be converted to highway right of way. Form NRCS-CPA-106 for Prime Farmland and State Historic Preservation Officer clearance are enclosed.

Noise predictions have been made for this project utilizing the Federal Highway Administration's Traffic Noise Model 2.5 procedures. A noise assessment is enclosed.

A species list from the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation website lists the following six federally-listed species with ranges that include the proposed project: the northern long-eared bat (*Myotis septentrionalis*), Arkansas Fatmucket (*Lampsilis powellii*), Pink Mucket (*Lampsilis abrupta*), Rabbitsfoot (*Theliderma cylindrica*), harperella (*Ptilimnium nodosum*), and Missouri bladderpod (*Physaria filiformis*). A 'no effect' determination was made for all species, except the northern long-eared bat, due to the lack of habitat. Please see the enclosed species list and USFWS correspondence.

The Final 4(d) Rule and Programmatic Biological Opinion applies to the project's activities that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts the incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the project limits; therefore, the project can proceed without restrictions. All offsite locations will require coordination with USFWS. The 4(d) Rule Streamlined Checklist is enclosed.

An unnamed tributary to Glazypeau Creek will be relocated to accommodate the widening of Highway 7, resulting in approximately 245 linear feet of stream impacts. Construction of the proposed project should be allowed under the terms of a Nationwide 23 Section 404 Permit for Approved Categorical Exclusions as defined in Federal Register 82(4):1860-2008.

Garland County participates in the National Flood Insurance Program. Portions of Sites 3 and 4 of the proposed project lie within Zone A Special Flood Hazard Areas. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a significant floodplain encroachment or a significant risk to property or life.

A Public Involvement meeting was held for the proposed project on Tuesday, December 5, 2017 at the Walnut Valley Baptist Church in Garland County. There were 84 meeting attendees and 50 comment forms received. A Public Involvement Synopsis is enclosed.

If you have any questions, please contact the Environmental Division at (501) 569-2281.

APPROVED

Environmental Specialist
Federal Highway Administration
Date: 2/20/2018

Sincerely,



John Fleming
Division Head
Environmental Division

Enclosures

JF:SS:fc

c: Program Management
Right of Way
Roadway Design
District 6
Master File



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

95942.41
FHWA

January 18, 2018

Ms. Stacy Hurst
Arkansas Historic Preservation Program
1100 North Street
Little Rock, Arkansas 72201

RECEIVED
ARDOT
JAN 23 2018
ENVIRONMENTAL
DIVISION

AHPP
JAN 18 2018

Re: Job Number 061438
Bryant Rd.-Hwy. 298 West
(Safety Impvts.) (Sel. Secs.) (S)
Garland County

Dear Ms. Hurst:

Please find enclosed a Project Identification Form (PIF) for the above referenced project. This project proposes to make safety improvements in Garland County on State Highway 7. If you have any questions or require additional information about the project, please contact William McAlexander of my staff at 501-569-2078.

Sincerely,

Brenda Price

for John Fleming
Division Head
Environmental Division

Enclosure:
PIF

JF:DW:WM:fc

Date 1/19/2018
No known historic properties will be affected by this undertaking. This effect determination could change should new information come to light.
William McAlexander
Arkansas State Historic Preservation Officer

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

PART I (To be completed by Federal Agency) Job 061438		3. Date of Land Evaluation Request 2/5/18	4. Sheet 1 of
1. Name of Project Bryant Rd. - Hwy 298 West (Safety Impvts.) (Hwy 7)		5. Federal Agency Involved FHWA	
2. Type of Project Safety Impvts.		6. County and State Garland 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 NO	4. Acres Irrigated Average Farm Size
5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: %	7. Amount of Farmland As Defined in FPPA Acres: %	
8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS	

PART III (To be completed by Federal Agency)	Alternative Corridor For Segment			
	Corridor A	Corridor B	Corridor C	Corridor D
A. Total Acres To Be Converted Directly				
B. Total Acres To Be Converted Indirectly, Or To Receive Services				
C. Total Acres In Corridor				

PART IV (To be completed by NRCS) Land Evaluation Information				
A. Total Acres Prime And Unique Farmland	.65			
B. Total Acres Statewide And Local Important Farmland				
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				

PART V (To be completed by NRCS) Land Evaluation Information Criterion Relative value of Farmland to Be Serviced or Converted (Scale of 0 - 100 Points)

PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))	Maximum Points			
1. Area in Nonurban Use	15	10		
2. Perimeter in Nonurban Use	10	5		
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	0		
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	25		

PART VII (To be completed by Federal Agency)				
Relative Value Of Farmland (From Part V)	100	100		
Total Corridor Assessment (From Part VI above or a local site assessment)	160	25		
TOTAL POINTS (Total of above 2 lines)	260	125		

1. Corridor Selected: <input type="checkbox"/> New <input checked="" type="checkbox"/> Existing	2. Total Acres of Farmlands to be Converted by Project: .65 acres of Prime 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:  DATE: 2/16/18

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

ARDOT JOB NUMBER 061438

NOISE ANALYSIS

Fundamentals of Sound and Noise

“Noise” is defined as an unwanted sound. Sounds are described as noise if they interfere with an activity or disturb the person hearing them. Sound is measured in a logarithmic unit called a decibel (dB). The human ear is more sensitive to middle and high frequency sounds than it is to low frequency sounds, so sound levels are weighted to more closely reflect human perceptions. These “A-weighted” sounds are measured using the decibel unit dB(A). Because the dB(A) is based on a logarithmic scale, a 10 dB(A) increase in sound level is generally perceived as twice as loud while a 3 dB(A) increase is just barely perceptible to the human ear.

Sound levels fluctuate with time depending on the sources of the sound audible at a specific location. In addition, the degree of annoyance associated with certain sounds varies by time of day, depending on other ambient sounds affecting the listener and the activities of the listener. The time-varying fluctuations in sound levels at a fixed location can be quite complex, so they are typically reported using statistical or mathematical descriptors that are a function of sound intensity and time. A commonly used descriptor of the equivalent sound level is Leq , which represents the equivalent of a steady, unvarying level over a defined period of time containing the same level of sound energy as the time varying noise environment. $Leq(h)$ is a sound level averaged over one hour. For highway projects, the $Leq(h)$ is commonly used to describe traffic-generated sound levels at locations of outdoor human use and activity (such as residences).

Noise Impact Criteria

Traffic noise impacts take place when the predicted traffic noise levels approach or exceed the noise abatement standard, or when the predicted traffic noise levels exceed the existing noise level by ten dB(A) (decibels on the A-scale). The noise abatement standard of 67 dB(A) is used for sensitive noise receptors such as residences, schools, churches, and parks. The term “approach” is considered to be one dB(A) less than the noise abatement standard.

The number of noise receptors was estimated for this project utilizing the Federal Highway Administration’s Traffic Noise Model 2.5, existing and proposed roadway information, existing traffic information, and projected traffic levels for 2037.

Traffic noise analyses

Traffic noise analyses were performed for the project utilizing a roadway cross-section for Highway 7 passing lanes consisting of three 12-foot paved travel lanes with six and eight foot wide shoulders.

Effects of Project

The traffic noise estimates for the project resulted in a noise abatement distance of 125 feet from the centerline of Highway 7. One sensitive receptor located along the proposed project location is predicted to experience noise impacts resulting from noise levels that approach or exceed 67dBA during the design year.

Traffic Noise Abatement

Since noise impacts are predicted within 500 feet of the proposed project, the feasibility and reasonableness of potential noise abatement measures must be evaluated. Based upon ARDOT's "Policy on Highway Traffic Noise Abatement", any noise abatement effort using barrier walls or berms is not warranted for this project. In order to provide direct access to the highway from adjacent properties, breaks in the barrier walls or berms would be required. These necessary breaks for highway access would render any noise barrier ineffective.

To avoid noise levels in excess of design levels, any future receptors should be located a minimum of 10 feet beyond the distance that the noise abatement standard is projected to occur. This distance should be used as a general guide and not a specific rule since the noise will vary depending upon the roadway grades and other noise contributions.

Any excessive project noise, due to construction operations, should be of short duration and have a minimum adverse effect on land uses or activities associated with this project area.

In compliance with Federal guidelines, a copy of this analysis will be transmitted to the West Central Planning and Development District for possible use in present and future land use planning.

Based upon the ARDOT's Policy on Highway Traffic Noise Abatement, a noise analysis is not required for turn lanes or shoulder widening. The majority of this

ARDOT Job 061438

Noise Analysis

Page 3 of 3

project does not involve added capacity, construction of new through lanes or auxiliary lanes, changes in the horizontal or vertical alignment of the roadway or exposure of noise sensitive land uses to a new or existing highway noise source.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Arkansas Ecological Service Field Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032



January 29, 2018

Mr. John Fleming
c/o Kayti Ewing
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, Arkansas 72209

Dear Mr. Fleming,

The U.S. Fish and Wildlife Service (Service) has reviewed your assessment and determinations for Arkansas Department of Transportation (ArDOT) Job Number 061438, Garland County, Arkansas. The project was described and assessed as follows (abbreviated):

The Arkansas Department of Transportation (ArDOT) is proposing safety improvements along Highway 7, from Bryant Road to Highway 298, in Garland County. The existing roadway consists of two 12' lanes with 2' to 6' shoulders, and three 12' lanes with 2' to 6' to 8' shoulders. Proposed safety improvements include geometric improvements, shoulder widening and adding passing lanes, and turn lanes at 10 sites along Highway 7.

A review of IPaC listed the following six federally listed species: Northern Long-eared Bat (*Myotis septentrionalis*), Arkansas Fatmucket (*Lampsilis powellii*), Pink Mucket (*Lampsilis abrupta*), Rabbitsfoot (*Quadrula cylindrica cylindrica*), Harperella (*Ptilimnium nodosum*), and Missouri Bladderpod (*Physaria filiformis*).

Garland County is within the consultation area of the federally listed Northern Long-eared Bat. The project and its activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost, which exempts the project from incidental take of Northern Long-eared Bats, according to the final 4(d) rule and accompanying programmatic biological opinion. The project will have a winter clearing only restriction included in the job contract, which prohibits tree clearing during April 1 to October 1. Approximately 7.2 acres of forested areas will be cleared in the proposed project. See the attached final 4(d) form. Arkansas Natural Heritage Commission (ANHC) records indicate the closest known occurrence is a known mist-net capture of a northern long-eared bat approximately 4.0 miles west of the proposed project location. Any and all offsite areas used for this project that result in tree clearing shall require separate USFWS clearance.

The Missouri Bladderpod is found on open limestone, dolomite, sandstone and shale glades, barrens, and outcrops within prairies. Harperella is known to occur in flashy, scour-prone stream systems. Both species are prevalent in western Garland County; however, there are no known occurrences or suitable habitat within the project area; therefore, it is our determination that the project will have 'no effect' on these plant species.

The federally listed mussel species are not likely to occur within the project area based on the absence of suitable habitat, it has been determined that the project will have 'no effect' on the three federally listed mussel species.

Due to the limited size of the area being cleared off existing roadway and within right of way, habitat types, distance to known species locations, and the special provision for winter clearing bat avoidance and stream conservation measures, the Service concurs with the determination and assessments.

The Service has reviewed your determination that the proposed action will not result in any prohibited incidental take for Northern Long-eared Bat. This project may affect the Northern Long-eared Bat; however, there are no effects beyond those previously disclosed in the Service's programmatic biological opinion for the final 4(d) rule dated January 5, 2016. Any taking that may occur incidental to this project is not prohibited under the final 4(d) rule (50 CFR §17.40(o)). This project is consistent with the description of the proposed action in the programmatic biological opinion, and the 4(d) rule does not prohibit incidental take of the Northern Long-eared Bat that may occur as a result of this project. Therefore, the programmatic biological opinion satisfies the "action agency" responsibilities under ESA section 7(a)(2) relative to the Northern Long-eared Bat for this project.

Please keep in mind that you must report any departures from the plans submitted; results of any surveys conducted; or any dead, injured, or sick Northern Long-eared Bats that are found to this office. If this project is not completed within one year of this letter, you must update your determination and resubmit the required information.

For further assistance or if you have any questions, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,



Melvin L. Tobin
Field Supervisor



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:
Consultation Code: 04ER1000-2018-SLI-0405
Event Code: 04ER1000-2018-E-00640
Project Name: 061348 Bryant Rd. - Hwy. 298 West

January 24, 2018

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

To Whom It May Concern:

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

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

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered, threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

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

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

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

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

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

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days.** This verification can be

completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

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

Attachment(s):

- Official Species List

Official Species List

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

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2018-SLI-0405

Event Code: 04ER1000-2018-E-00640

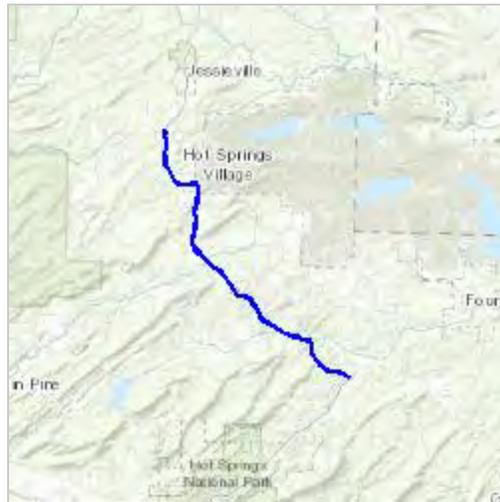
Project Name: 061348 Bryant Rd. - Hwy. 298 West

Project Type: TRANSPORTATION

Project Description: The Arkansas Department of Transportation is proposing safety improvements along Highway 7, from Bryant Road to Highway 298, in Garland County. Proposed safety improvements include geometric improvements in select locations, shoulder widening in selected sections, and the extension of an existing, continuous turn lane.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/34.62820564323886N93.05545797400173W>



Counties: Garland, AR

Endangered Species Act Species

There is a total of 6 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. 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.

Mammals

NAME	STATUS
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

Clams

NAME	STATUS
Arkansas Fatmucket <i>Lampsilis powellii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2213	Threatened
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. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5165	Threatened

Flowering Plants

NAME	STATUS
Harperella <i>Ptilimnium nodosum</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/3739	Endangered
Missouri Bladderpod <i>Physaria filiformis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5361	Threatened

Critical habitats

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

Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form

Federal agencies should use this form for the optional streamlined consultation framework for the northern long-eared bat (NLEB). This framework allows federal agencies to rely upon the U.S. Fish and Wildlife Service’s (USFWS) January 5, 2016, intra-Service Programmatic Biological Opinion (BO) on the final 4(d) rule for the NLEB for section 7(a)(2) compliance by: (1) notifying the USFWS that an action agency will use the streamlined framework; (2) describing the project with sufficient detail to support the required determination; and (3) enabling the USFWS to track effects and determine if reinitiation of consultation is required per 50 CFR 402.16.

This form is not necessary if an agency determines that a proposed action will have no effect to the NLEB or if the USFWS has concurred in writing with an agency's determination that a proposed action may affect, but is not likely to adversely affect the NLEB (i.e., the standard informal consultation process). Actions that may cause prohibited incidental take require separate formal consultation. Providing this information does not address section 7(a)(2) compliance for any other listed species.

Information to Determine 4(d) Rule Compliance:

YES NO

Information to Determine 4(d) Rule Compliance:	YES	NO
1. Does the project occur wholly outside of the WNS Zone ¹ ?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Have you contacted the appropriate agency ² to determine if your project is near known hibernacula or maternity roost trees?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Could the project disturb hibernating NLEBs in a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Could the project alter the entrance or interior environment of a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Does the project remove any trees within 0.25 miles of a known hibernaculum at any time of year?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Would the project cut or destroy known occupied maternity roost trees, or any other trees within a 150-foot radius from the maternity roost tree from June 1 through July 31.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

You are eligible to use this form if you have answered yes to question #1 **or** yes to question #2 **and** no to questions 3, 4, 5 and 6. The remainder of the form will be used by the USFWS to track our assumptions in the BO.

Agency and Applicant³ (Name, Email, Phone No.): Arkansas State Highway and Transportation Dept. (AHTD), Kayti Ewing, anne.ewing@ardot.gov, 501-569-2083

Project Name: 061438 Bryant Rd.-Hwy. 298 West (Safety Impvts.)(Sel. Secs.)(S)

Project Location (include coordinates if known): Garland County, 34.618136°, -93.043162°

Basic Project Description (provide narrative below or attach additional information): ArDOT plans to add a two-way left turn lane in two locations, widening shoulders in two locations, add a left turn lane in three locations, upgrade a signal, and re-stripe an area, all along Highway 7 in Garland County between Bryant Road and Hwy. 298. Highway 7 will be widened to maintain length of passing lanes for 0.2 mile. Add left turn lane in northbound direction to Randalwood Dr. for 0.2 mile. Add left turn lane in southbound direction from south of McGinnis Circle to south of Surrey Rd. for 0.2 mile. Shoulder widening from Blueberry Trail to Lac Trail for 0.6

¹ <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>

² See <http://www.fws.gov/midwest/endangered/mammals/nleb/nhisites.html>

³ If applicable - only needed for federal actions with applicants (e.g., for a permit, etc.) who are party to the consultation.

mile. A left turn lane will be striped in the southbound direction for 0.5 mile, no new construction. Highway 7 will be widened to maintain length of passing lanes for 0.3 mile. A two-way left turn lane will be added for 0.8 mile from just north of Glazypeau Rd. to just south of Locket Mountain Rd. Guardrail will be extended and shoulders widened on right side for 0.3 mile. A traffic signal will be upgraded at Highway 7 and DeSoto Blvd. A two-way left turn lane with sidewalks and curb and gutter will be added for 0.5 mile. A left turn lane will be added in the northbound direction to Highway 298 for 0.3 mile.

General Project Information	YES	NO
Does the project occur within 0.25 miles of a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the project occur within 150 feet of a known maternity roost tree?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the project include forest conversion ⁴ ? (if yes, report acreage below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Estimated total acres of forest conversion	~ 7.2 acre	
If known, estimated acres ⁵ of forest conversion from April 1 to October 31		
If known, estimated acres of forest conversion from June 1 to July 31 ⁶		
Does the project include timber harvest? (if yes, report acreage below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated total acres of timber harvest		
If known, estimated acres of timber harvest from April 1 to October 31		
If known, estimated acres of timber harvest from June 1 to July 31		
Does the project include prescribed fire? (if yes, report acreage below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated total acres of prescribed fire		
If known, estimated acres of prescribed fire from April 1 to October 31		
If known, estimated acres of prescribed fire from June 1 to July 31		
Does the project install new wind turbines? (if yes, report capacity in MW below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated wind capacity (MW)		

Agency Determination:

By signing this form, the action agency determines that this project may affect the NLEB, but that any resulting incidental take of the NLEB is not prohibited by the final 4(d) rule.

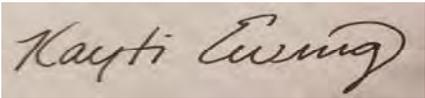
If the USFWS does not respond within 30 days from submittal of this form, the action agency may presume that its determination is informed by the best available information and that its project responsibilities under 7(a)(2) with respect to the NLEB are fulfilled through the USFWS January 5, 2016, Programmatic BO. The action agency will update this determination annually for multi-year activities.

The action agency understands that the USFWS presumes that all activities are implemented as described herein. The action agency will promptly report any departures from the described activities to the appropriate USFWS Field Office. The action agency will provide the appropriate USFWS Field Office with the results of any surveys conducted for the NLEB. Involved parties will promptly notify the appropriate USFWS Field Office upon finding a dead, injured, or sick NLEB.

⁴ Any activity that temporarily or permanently removes suitable forested habitat, including, but not limited to, tree removal from development, energy production and transmission, mining, agriculture, etc. (see page 48 of the BO).

⁵ If the project removes less than 10 trees and the acreage is unknown, report the acreage as less than 0.1 acre.

⁶ If the activity includes tree clearing in June and July, also include those acreage in April to October.

Signature:  Date Submitted: 1/24/2018

PUBLIC INVOLVEMENT SYNOPSIS

Job Number 061438

Bryant Rd. – Hwy. 298 West (Safety Impvts.) (Sel. Secs.) (S)

Garland County

Tuesday, December 5, 2017

An open forum public involvement meeting for the proposed safety improvements on Highway 7 from Bryant Road to Highway 298 was held at Walnut Valley Baptist Church in Garland County from 4:00 – 7:00 p.m. on Tuesday, December 5, 2017. Efforts to involve minorities and the public in the meeting included:

- Display advertisement placed in the *Hot Springs Village Voice* on November 28, 2017 and December 5, 2017.
- Display advertisement placed in the *Sentinel Record* on November 26, 2017 and December 3, 2017.
- Public service announcement on KVRE Community Calendar from December 2, 2017 through December 5, 2017.
- Letters sent to local public officials.
- Flyers distributed in the project area.

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

- Preliminary design plan layout (scale: 1"=50')
- Aerial maps of the project area

Handouts for the public included a comment form and a small-scale project location map. Copies of these are attached.

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

TABLE 1	
Public Participation	Totals
Attendance at meeting (including AHTD staff)	84
Comments received	50

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 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 Question	Total
Supports safety improvements	43
Does not support safety improvements	4
Did not indicate support for or against improvements	3
Knowledge of cultural resources sites	3*
Knowledge of environmental constraints	2**
Beneficial impacts due to the proposed project	31
Adverse impacts due to the proposed project	3
Neither beneficial nor adverse impacts	16

*Commenters mentioned Shiloh Cemetery

**Commenters mentioned cultural sites and bird species

A summarized listing of comments concerning the proposed project follows:

- The project will address safety concerns and sites with crash histories.
- A southbound left-turn lane should be added into the transfer station at Bryant Road.
- A left-turn lane should be added at Brookhill Ranch (Site 3A) as this is a dangerous intersection in a curve with a history of crashes.
- The shoulder should be widened and a right-turn lane added at Brookhill Ranch.
- A traffic signal should be added at Brookhill Ranch.
- A driveway warning sign should be added on southbound Highway 7 at Site 5.
- The project is overdue.
- The state should hold funds from Hot Springs due to no maintenance of Highway 7.
- Room should be left for possible future sewer lines.
- The project design should minimize impacts to residential property owners.
- A turn lane should be added from Surrey Road to Brookhill Ranch.
- A traffic signal should be added at Highway 192.
- Improvements should be continued from Strawberry to Highway 298.
- The speed limit should be reduced from Hot Springs Village to Highway 298.
- The center turn lane should run the entire length of the project.
- Guardrail should be installed on the other side of Norfolk near the overlook.
- There should be more highway lighting instead of the safety improvements.
- A warning sign should be installed at Gerrard.

Job Number 061438 - Public Involvement Synopsis

December 5, 2017

Page 3 of 3

- Highway 7 should be four lanes with a center turn lane all the way to Jessieville school for a long-term solution to the growing population of Garland County.

Attachments:

Public handouts, including blank comment form

Small-scale display copies

RJ 
DN 

SS:cb

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

**AHTD JOB NUMBER 061438
Bryant Rd. – Hwy. 298 West (Safety Impvts.) (Sel. Secs) (Hwy. 7)
GARLAND COUNTY**

**LOCATION:
WALNUT VALLEY BAPTIST CHURCH
(FELLOWSHIP HALL)
1698 N. HIGHWAY 7
HOT SPRINGS VILLAGE, AR
4:00 – 7:00 P.M.
TUESDAY, DECEMBER 5, 2017**

Make your comments on this form and leave it with ARDOT personnel at the meeting or mail it by 4:30 p.m. on **Wednesday, December 20, 2017** to: Arkansas Department of Transportation, Environmental Division, Post Office Box 2261, Little Rock, Arkansas 72203-2261. Email: environmentalpimeetings@ardot.gov.

Yes No
 Do you feel there is a need for the proposed safety improvements on selected sections of Highway 7 between Bryant Rd. and Hwy. 298 West in Garland County? Comment (optional) _____

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

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

Yes No

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

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

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

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

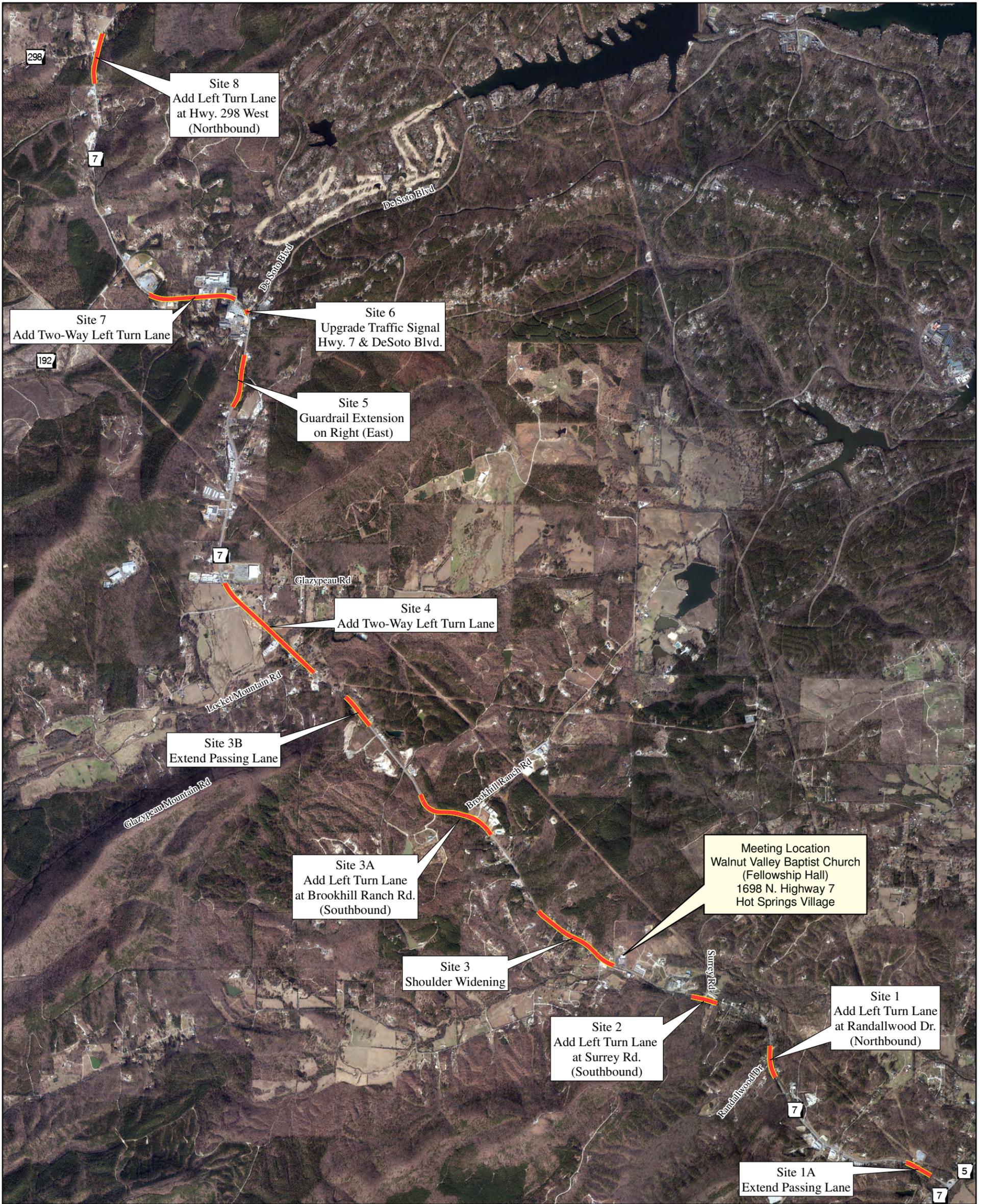
Name : _____ (Please Print)

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

E-mail: _____

Please make additional comments here. _____

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



N
 0 1,500 3,000
 Feet
 ARDOT - Environmental GIS - Dudley
 Map Date: November 30, 2017
 Meeting Date: December 5, 2017
 Public Involvement Handout



Job 061438
 Bryant Rd. - Hwy. 298 West
 (Safety Impvts.) (Sel. Secs.) (Hwy. 7)
 Garland County

Preliminary
 Subject
 To
 Revision



Photography: 2017 ADOP

Notes:

ARDOT ENVIRONMENTAL IMPACTS ASSESSMENT FORM

ARDOT Job Number 061438 FAP Number PEN-0026(31)

Job Title Bryant Rd. – Hwy. 298 West (Safety Impvts.) (Sel. Secs.) (S)

Environmental Impacts	None	Minor	Significant	Comments
Air Quality	X			
Construction Impacts		X		Temporary during construction
Cultural Resources	X			SHPO clearance enclosed
Economic	X			
Endangered Species		X		USFWS clearance enclosed
Energy Resources	X			
Environmental Justice/Title VI	X			
Fish and Wildlife		X		Minor loss of habitat
Floodplains	X			
Forest Service Property	X			
Hazardous Materials/Landfills	X			
Land Use Impacts		X		5.9 acres ROW, 1.5 acre TCE
Migratory Birds	X			
Navigation/Coast Guard	X			
Noise Levels		X		
Prime Farmland		X		0.7 acre prime farmland
Protected Waters	X			
Public Recreation Lands	X			
Public Water Supply/WHPA	X			Wellhead Protection SP added
Relocatees	X			
Section 4(f)/6(f)	X			
Social	X			
Underground Storage Tanks	X			
Visual Impacts	X			
Stream Impacts		X		
Water Quality		X		Temporary during construction
Wetlands	X			
Wildlife Refuges	X			

Section 401 Water Quality Certification Required? Yes
 Short-term Activity Authorization Required? Yes
 Section 404 Permit Required? Yes Type Nationwide Permit #23

Remarks: _____

Signature of Evaluator Susan Staffeld Date February 6, 2018

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 1A) FAP No. _____ County Garland

Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)

Design Engineer Stephen Sichmeller Environmental Staff _____

Brief Project Description Widen Hwy. 7 to maintain length of passing lanes.

A. Existing Conditions:

Roadway Width: 28' Shoulder Type/Width: 2'
 Number of Lanes and Width: 2-12' Existing Right-of-Way: 80'
 Sidewalks? _____ Location: _____ Width: _____
 Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 50' Shoulder Type/Width: 8'/6'
 Number of Lanes and Width: 3-12' Proposed Right-of-Way: 130'
 Sidewalks? _____ Location: _____ Width: _____
 Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
 Running Speed: 53 m.p.h.

E. Approximate total length of project: 0.170 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

Date Sent: January 24, 2018

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 1) FAP No. _____ County Garland

Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)

Design Engineer Stephen Sichmeller Environmental Staff _____

Brief Project Description Add left turn lane in northbound direction to Randalwood Dr.

A. Existing Conditions:

Roadway Width: 36' Shoulder Type/Width: 6'

Number of Lanes and Width: 2-12' Existing Right-of-Way: 80'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 48' Shoulder Type/Width: 6'

Number of Lanes and Width: 3-12' Proposed Right-of-Way: 90'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
Running Speed: 53 m.p.h.

E. Approximate total length of project: 0.197 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 2) FAP No. _____ County Garland

Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)

Design Engineer Stephen Sichmeller Environmental Staff _____

Brief Project Description Add left turn lane in Southbound direction to Surrey Rd.

A. Existing Conditions:

Roadway Width: 28' Shoulder Type/Width: 2'

Number of Lanes and Width: 2-12' Existing Right-of-Way: 90'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 44' Shoulder Type/Width: 4'

Number of Lanes and Width: 3-12' Proposed Right-of-Way: 125'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
 Running Speed: 53 m.p.h.

E. Approximate total length of project: 0.161 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 3) FAP No. _____ County Garland
 Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)
 Design Engineer Stephen Sichmeller Environmental Staff _____
 Brief Project Description Shoulder widening.

A. Existing Conditions:

Roadway Width: 28' Shoulder Type/Width: 2'
 Number of Lanes and Width: 2-12' Existing Right-of-Way: 80'
 Sidewalks? _____ Location: _____ Width: _____
 Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 36' Shoulder Type/Width: 6'
 Number of Lanes and Width: 2-12' Proposed Right-of-Way: 135'
 Sidewalks? _____ Location: _____ Width: _____
 Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
 Running Speed: 53 m.p.h.

E. Approximate total length of project: 0.568 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 3A) FAP No. _____ County Garland
 Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)
 Design Engineer Stephen Sichmeller Environmental Staff _____
 Brief Project Description Stripe left turn lane in Southbound direction to Brookhill Ranch Rd.

A. Existing Conditions:

Roadway Width: 50' Shoulder Type/Width: 6'8'
 Number of Lanes and Width: 3-12' Existing Right-of-Way: 145'
 Sidewalks? _____ Location: _____ Width: _____
 Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 50' Shoulder Type/Width: 6'8'
 Number of Lanes and Width: 3-12' Proposed Right-of-Way: _____
 Sidewalks? _____ Location: _____ Width: _____
 Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
 Running Speed: 53 m.p.h.

E. Approximate total length of project: 0.529 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

Date Sent: January 24, 2018

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 3B) FAP No. _____ County Garland

Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)

Design Engineer Stephen Sichmeller Environmental Staff _____

Brief Project Description Widen Hwy. 7 to maintain length of passing lanes.

A. Existing Conditions:

Roadway Width: 28' Shoulder Type/Width: 2'

Number of Lanes and Width: 2-12' Existing Right-of-Way: 80'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 50' Shoulder Type/Width: 6'/8'

Number of Lanes and Width: 3-12' Proposed Right-of-Way: 190'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
Running Speed: 53 m.p.h.

E. Approximate total length of project: 0.229 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 4) FAP No. _____ County Garland
 Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)
 Design Engineer Stephen Sichmeller Environmental Staff _____
 Brief Project Description Widen Hwy. 7 to add two way left turn lane.

A. Existing Conditions:

Roadway Width: 28' Shoulder Type/Width: 2'
 Number of Lanes and Width: 2-12' Existing Right-of-Way: 80'
 Sidewalks? _____ Location: _____ Width: _____
 Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 44' Shoulder Type/Width: 4'
 Number of Lanes and Width: 3-12' Proposed Right-of-Way: 125'
 Sidewalks? _____ Location: _____ Width: _____
 Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
 Design Speed: 45 m.p.h.

E. Approximate total length of project: 0.770 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 5) FAP No. _____ County Garland

Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)

Design Engineer Stephen Sichmeller Environmental Staff _____

Brief Project Description Guardrail extension and shoulder widening on Rt.

A. Existing Conditions:

Roadway Width: 40' Shoulder Type/Width: 2'

Number of Lanes and Width: 3-12' Existing Right-of-Way: 135'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 46' Shoulder Type/Width: 2'8'

Number of Lanes and Width: 3-12' Proposed Right-of-Way: 185'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
 Design Speed: 45 m.p.h.

E. Approximate total length of project: 0.327 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

ROADWAY DESIGN REQUEST

Job Number 061438
 (SITE 6) FAP No. _____ County Garland

Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)

Design Engineer Stephen Sichmeller Environmental Staff _____

Brief Project Description Traffic signal upgrade.

A. Existing Conditions:

Roadway Width: 42' Shoulder Type/Width: 4'/2'

Number of Lanes and Width: 3-12' Existing Right-of-Way: 80'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 42' Shoulder Type/Width: 4'/2'

Number of Lanes and Width: 3-12' Proposed Right-of-Way: 110'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%

Design Speed: 45 m.p.h.

E. Approximate total length of project: 0.000 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

ROADWAY DESIGN REQUEST

Job Number 061438
 (SITE 7) FAP No. _____ County Garland

Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)

Design Engineer Stephen Sichmeller Environmental Staff _____

Brief Project Description Widen Hwy. 7 to add two way left turn lane.

A. Existing Conditions:

Roadway Width: 28' Shoulder Type/Width: 2'

Number of Lanes and Width: 2-12' Existing Right-of-Way: 80'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 36' Shoulder Type/Width: C.C.C.&G

Number of Lanes and Width: 3-12' Proposed Right-of-Way: 120'

Sidewalks? Yes Location: Lt./Rt. Width: 5'

Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%

Design Speed: 45 m.p.h.

E. Approximate total length of project: 0.521 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date

Date Sent: January 24, 2018

ROADWAY DESIGN REQUEST

Job Number 061438
(SITE 8) FAP No. _____ County Garland

Job Name Bryant Rd. – Hwy. 298 West (Safety Impvts.)(Sel. Secs.) (S)

Design Engineer Stephen Sichmeller Environmental Staff _____

Brief Project Description Add left turn lane in Northbound direction to Hwy. 298.

A. Existing Conditions:

Roadway Width: 28' Shoulder Type/Width: 2'

Number of Lanes and Width: 2-12' Existing Right-of-Way: 90'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 44' Shoulder Type/Width: 4'

Number of Lanes and Width: 3-12' Proposed Right-of-Way: 125'

Sidewalks? _____ Location: _____ Width: _____

Bike Lanes? _____ Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2017 ADT: 7900 2037 ADT: 10000 % Trucks: 4%
Running Speed: 50 m.p.h.

E. Approximate total length of project: 0.311 mile(s)

F. Justification for proposed improvements: Safety improvements.

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date



DEPARTMENT OF THE ARMY

VICKSBURG DISTRICT, CORPS OF ENGINEERS

4155 CLAY STREET

VICKSBURG, MISSISSIPPI 39183-3435

REPLY TO
ATTENTION OF:

August 21, 2018

RECEIVED
ARDOT

AUG 23 2018

ENVIRONMENTAL
DIVISION

Operations Division

SUBJECT: Department of the Army Regulatory Requirements for the ArDOT Job Number 061438 Bryant Road – Highway 298 West Project, Located in Multiple Sections of T2S-R19W, Garland County, Arkansas

Mr. John Fleming
Arkansas State Highway
and Transportation Department
Post Office Box 2261
Little Rock, Arkansas 72203-2261

Dear Mr. Fleming:

Based upon the information furnished (enclosure 1), it appears that Department of the Army Section 10/404 permit requirements for the proposed work will be authorized by Nationwide Permit No. 14, as specified in the January 6, 2017, *Federal Register*, Issuance and Reissuance of Nationwide Permits; Final Rule; Notice (82 FR 1860-2008), provided the activity complies with the Special Conditions (enclosure 2), the General Conditions (enclosure 3), and the Regional Conditions (enclosure 4). It is your responsibility to read and become familiar with the enclosed conditions in order for you to ensure that the activity authorized herein complies with the Nationwide Permit.

This verification is valid until March 18, 2022, unless the Nationwide Permit is modified, suspended, or revoked. Activities which are under construction, or that are under contract to commence, in reliance upon a Nationwide Permit will remain authorized provided the activity is completed within 12 months of the date of any subsequent modification, expiration, or revocation of the Nationwide Permit. Upon completion of the activity authorized by this Nationwide Permit, please fill out the enclosed certification of compliance (enclosure 5) and return it to our office.

This verification was based upon a preliminary determination that there appear to be jurisdictional areas on the property subject to regulation pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act. A copy of the appeals form is enclosed for your review (enclosure 6).

This verification of Department of the Army regulatory requirements does not convey any property rights, either in real estate or material or any exclusive privileges, and does not authorize any injury to property or invasion of rights or local laws or regulations, or obviate the requirement to obtain State or local assent required by law for the activity discussed herein.

Thank you for advising us of your plans. If you change your plans for the proposed work, or if the proposed work does not comply with the conditions of the Nationwide Permit, please contact Mr. Jerry Bourne, telephone (601) 631-5441 or email Gerald.G.Bourne@usace.army.mil. In any future correspondence concerning this project, please refer to Identification No. MVK-2018-223.

Sincerely,

A handwritten signature in black ink that reads "Cori Carraway". The signature is written in a cursive style with a large, looping 'C' at the beginning and a long, sweeping tail at the end.

Cori Carraway
Chief, Permit Section
Regulatory Branch

Enclosures



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

February 16, 2018

Mr. Angel Correa
Division Administrator
Federal Highway Administration
700 West Capitol, Room 3130
Little Rock, Arkansas 72201-3298

Re: Job Number 061438
FAP Number PEN-0026(31)
Bryant Rd. – Hwy. 298 West
(Safety Impvts.) (Sel. Secs.) (S)
Garland County
Tier 3 Categorical Exclusion

Dear Mr. Correa:

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

The purpose of this project is to improve safety on selected sections of Highway 7. Total length of the proposed improvements is approximately 2.5 miles at 11 sections between Highway 5 and Highway 298 in Garland County. A project location map is enclosed showing the location of each section. The following is a summary of work to be performed at each section:

- Site 1A:** Extend passing lane that was shortened to accommodate the turn lane at Site 1.
- Site 1:** Add northbound left turn lane at Randallwood Drive.
- Site 2:** Add southbound left turn lane at Surrey Road.
- Site 3:** Widen shoulders from 2' wide to 6' wide.
- Site 3A:** Stripe southbound left turn lane at Brookhill Ranch Road.
- Site 3B:** Extend passing lane that was shortened to accommodate the turn lane at Site 3A.
- Site 4:** Add two-way left turn lane.
- Site 5:** Widen shoulders from 2' wide to 8' wide and extend guardrail.
- Site 6:** Upgrade traffic signal at DeSoto Boulevard.

Enclosure 1

Site 7: Add two-way left turn lane.

Site 8: Add northbound left turn lane at Highway 298 West.

Approximately 5.9 acres of additional right of way and 1.5 acre of temporary construction easements will be required for this project.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Average Running Speed	Design Speed
2017	7,900 vpd	4	53 mph (Sites 1, 1A, 2, 3, 3A, 3B) 50 mph (Site 8)	45 mph (Sites 4, 5, 6, 7)
2037	10,000 vpd	4		

There are no relocations, wetlands, cultural resources, or environmental justice issues associated with this project. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits. Approximately 0.7 acre of Prime Farmland will be converted to highway right of way. Form NRCS-CPA-106 for Prime Farmland and State Historic Preservation Officer clearance are enclosed.

Noise predictions have been made for this project utilizing the Federal Highway Administration's Traffic Noise Model 2.5 procedures. A noise assessment is enclosed.

A species list from the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation website lists the following six federally-listed species with ranges that include the proposed project: the northern long-eared bat (*Myotis septentrionalis*), Arkansas Fatmucket (*Lampsilis powellii*), Pink Mucket (*Lampsilis abrupta*), Rabbitsfoot (*Theilerma cylindrica*), harperella (*Ptilimnium nodosum*), and Missouri bladderpod (*Physaria filiformis*). A 'no effect' determination was made for all species, except the northern long-eared bat, due to the lack of habitat. Please see the enclosed species list and USFWS correspondence.

The Final 4(d) Rule and Programmatic Biological Opinion applies to the project's activities that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts the incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the project limits; therefore, the project can proceed without restrictions. All offsite locations will require coordination with USFWS. The 4(d) Rule Streamlined Checklist is enclosed.

Site 7: Add two-way left turn lane.

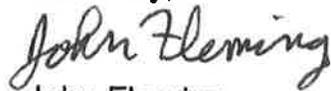
Site 8: Add northbound left turn lane at Highway 298 West.

An existing reinforced concrete box culvert at Site 2 will be extended and permanently impact 26 linear feet (less than 0.1 acre) of an unnamed tributary to the South Fork of the Saline River. To accommodate the extension of the existing passing lane, approximately 245 linear feet (less than 0.1 acre) of an unnamed tributary to Glazypeau Creek will be permanently moved at Site 3b. At Site 7, an existing reinforced concrete box culvert will be extended and permanently impact 28 feet (less than 0.1 acre) of an unnamed tributary to Mill Creek. At Site 8, an existing reinforced concrete box culvert will be extended and permanently impact 25 feet (less than 0.1 acre) of an unnamed tributary to Coleman Creek. Total impacts to waters of the United States for construction at these selected sections are estimated at less than 0.1 acre.

The proposed project will not impact State or Federal lands, National or State wild or scenic rivers. The project will impact tributaries that are within one mile of South Fork Saline River which is designated as an Ecologically Sensitive Water; therefore, an individual water quality certification request will be submitted to ADEQ concurrently with this request. ARDOT design standards must comply with FEMA-approved local floodplain ordinances.

Please review this project for concurrence that construction can proceed under the terms of a Nationwide 14 for Linear Transportation Projects. If additional information is required, please contact Kayti Ewing or Josh Seagraves of my staff at (501) 569-2522.

Sincerely,

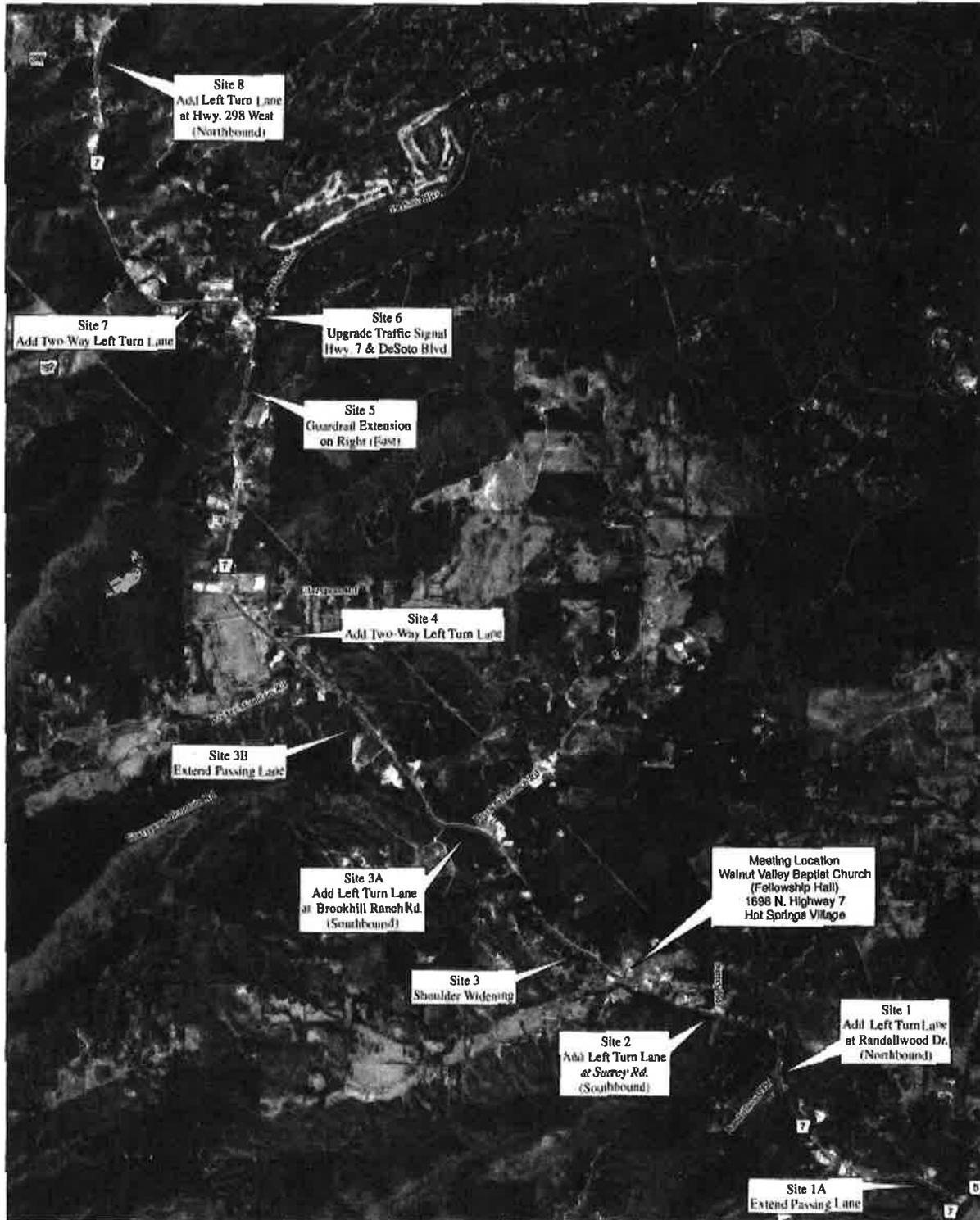


John Fleming
Division Head
Environmental Division

JF:JS:KE:ym

Enclosures

Categorical Exclusion
Supporting Illustrations
Proposed Construction Plans

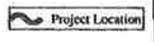


ARNDT - Environmental GIS - Dorely
 Map Date: November 30, 2017
 Meeting Date: December 5, 2017
 Public Involvement Handout



Job 061438
 Bryant Rd. - Hwy. 298 West
 (Safety Impvts.) (Sel. Secs.) (Hwy. 7)
 Garland County

Preliminary
 Subject
 To
 Revision



2017 ADOP

Notes:

ARDOT ENVIRONMENTAL IMPACTS ASSESSMENT FORM

ARDOT Job Number 061438 FAP Number PEN-0026(31)

Job Title Bryant Rd. - Hwy. 298 West (Safety Impvts.) (Sel. Secs.) (S)

Environmental Impacts	None	Minor	Significant	Comments
Air Quality	X			
Construction Impacts		X		Temporary during construction
Cultural Resources	X			SHPO clearance enclosed
Economic	X			
Endangered Species		X		USFWS clearance enclosed
Energy Resources	X			
Environmental Justice/Title VI	X			
Fish and Wildlife		X		Minor loss of habitat
Floodplains	X			
Forest Service Property	X			
Hazardous Materials/Landfills	X			
Land Use Impacts		X		5.9 acres ROW, 1.5 acre TCE
Migratory Birds	X			
Navigation/Coast Guard	X			
Noise Levels		X		
Prime Farmland		X		0.7 acre prime farmland
Protected Waters	X			
Public Recreation Lands	X			
Public Water Supply/WHPA	X			Wellhead Protection SP added
Relocatees	X			
Section 4(f)/6(f)	X			
Social	X			
Underground Storage Tanks	X			
Visual Impacts	X			
Stream Impacts		X		
Water Quality		X		Temporary during construction
Wetlands	X			
Wildlife Refuges	X			

Section 401 Water Quality Certification Required? Yes

Short-term Activity Authorization Required? Yes

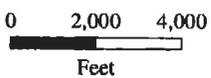
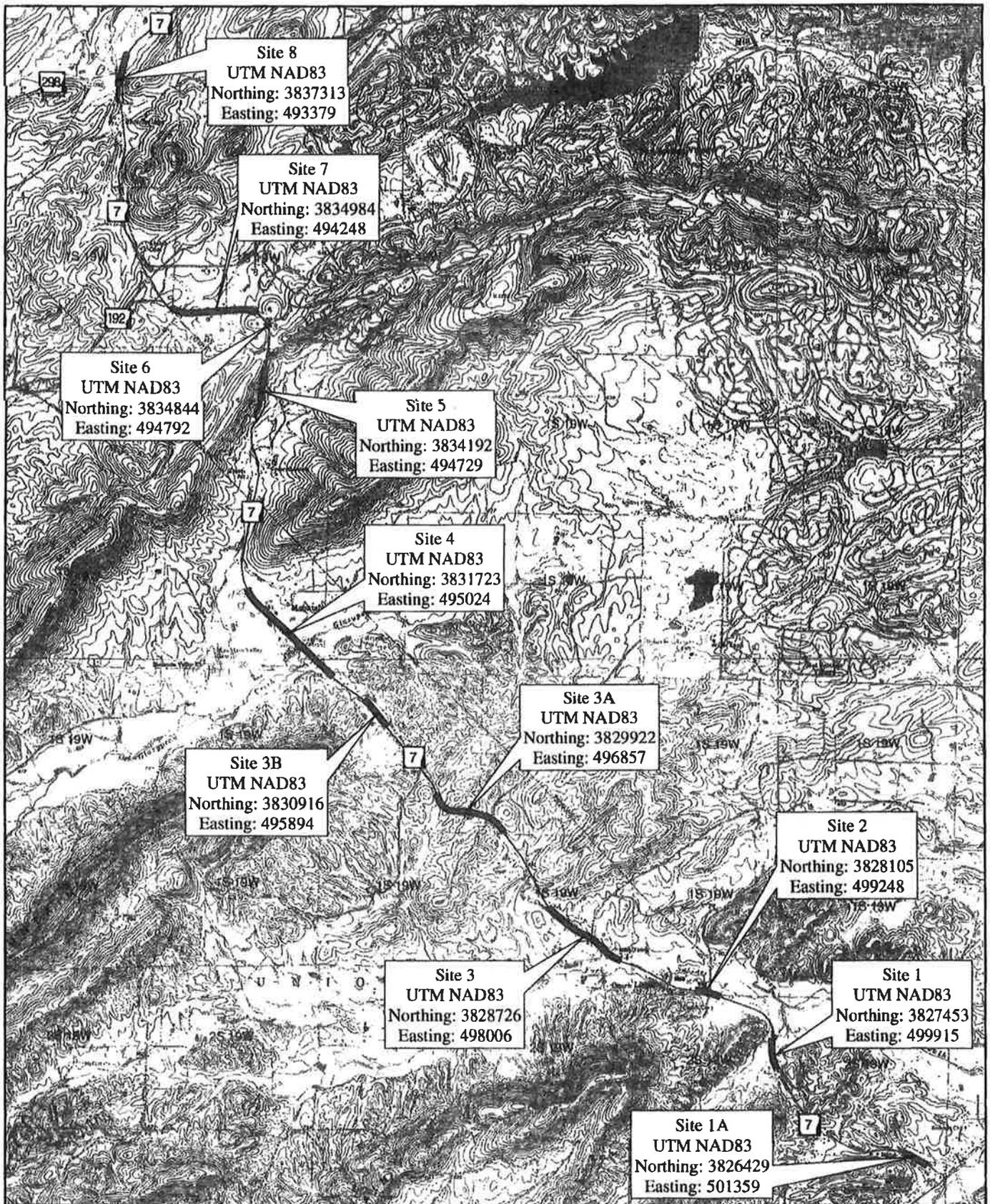
Section 404 Permit Required? Yes

Type Nationwide Permit #23

Remarks: _____

Signature of Evaluator Susan Staffeld

Date February 6, 2018

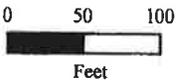
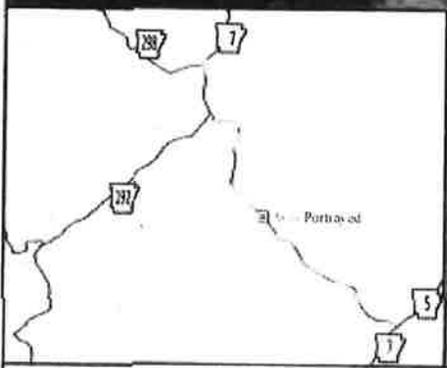
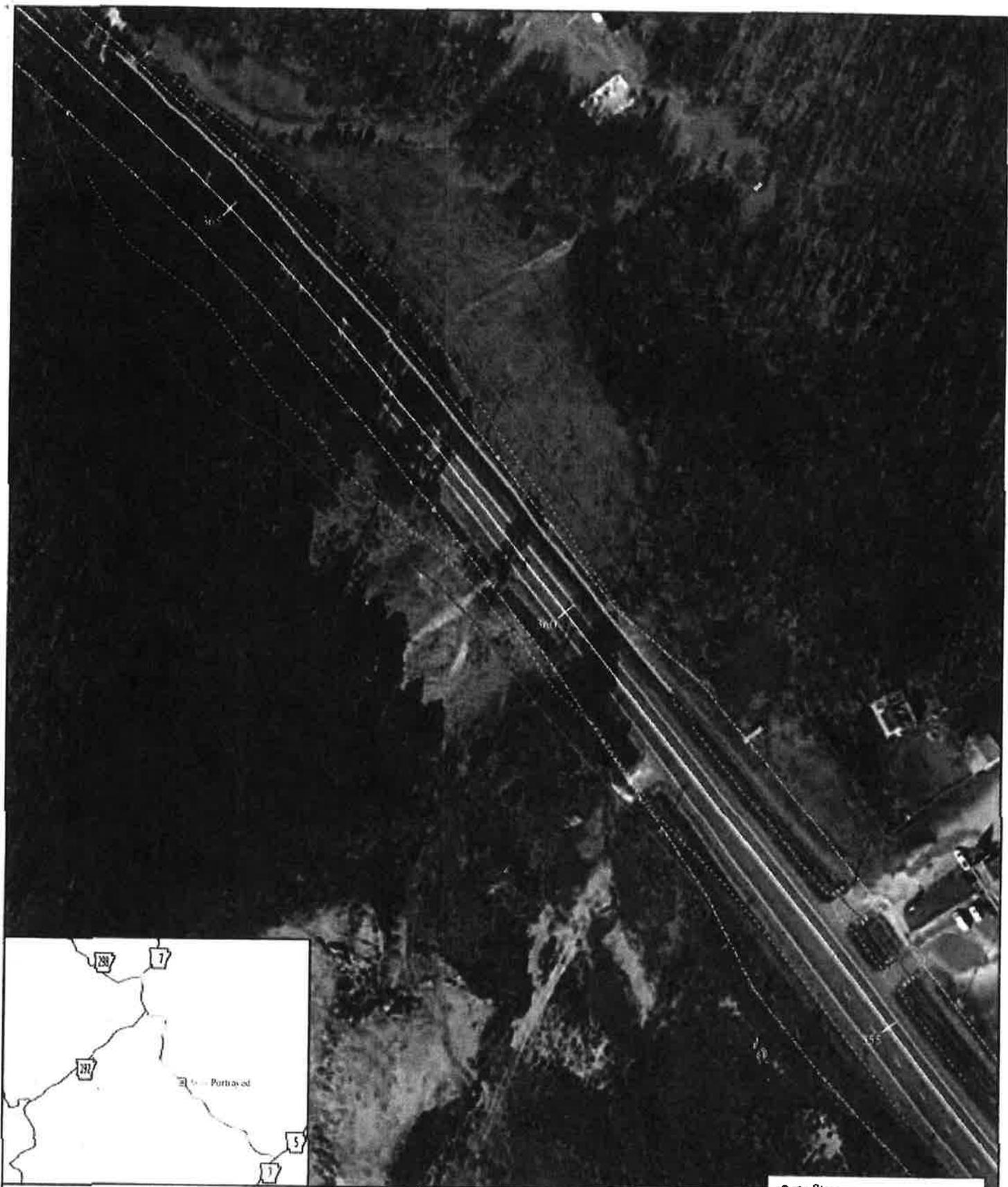


ARDOT - Environmental GIS - Dudley
February 23, 2018

Job 061438
Bryant Rd. - Hwy. 298 West
(Safety Impvts.)(Sel. Secs.)(Hwy. 7)
Garland County

Project Location

USGS Topographic Maps:
Fountain Lake 1988; Jessieville 1988;
Hot Springs North 1976



ARDOT - Environmental GIS - Hopkins
January 25, 2018

Job 061438
Site 3B
Stream Impacts

-  Stream
-  Stream Impacts
-  Proposed Centerline
-  Proposed Construction Limits
-  Proposed Right-of-Way
-  Existing Right-of-Way

SPECIAL CONDITIONS
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.) (Authorities: 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).

2017 Nationwide Permits General Conditions, Further Information, and Definitions

A. 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 NWP's 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 NWP's 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 NWP's 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 NWP, 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 NWP's 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 NWP's, 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.

B. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the 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.

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

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

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, 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.

C. 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).

DEPARTMENT OF THE ARMY
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FINAL
NATIONWIDE PERMIT REGIONAL CONDITIONS
IN ARKANSAS

Regional Condition No. 1. For Nationwide Permits (NWP) 7 and 12, intake structures shall be constructed with screening to prevent the entry of fish.

Regional Condition No. 2. For NWPs 4, 5, 12, 13, 14, 15, 18, 19, 20, 23, 25, 29, 30, 35, 36, 39, 40, 42, 43, 51, 52, and 53 in the following listed waters, the prospective permittee shall provide written notification to the appropriate District. Notification will be to the District Engineer according to *General Condition No. 32 (Federal Register, Vol. 82, No. 4, FR 1860-2008)*.

- **Fens** - A peat-accumulating wetland that receives some drainage from surrounding mineral soil and usually supports marshlike vegetation.
- **Bogs** - A peat-accumulating wetland that has no major inflows or outflows and supports acidophilic mosses, particularly sphagnum.
- **Groundwater seeps** - Wetlands at the base of steep slopes where the groundwater surface intersects with the land surface.
- **Dune depressional wetlands** - Wetlands in shallow depressions that have no major outflows but receive runoff from the surrounding land, located between sandy ridges in northeast Arkansas and southeast Missouri. These wetlands often support pondberry (*Lindera melissifolia*), a federally-listed endangered plant.
- **Cache River and adjacent wetlands** - From the mouth upstream to AR Highway 18 near Grubbs.

Regional Condition No. 3. NWP No. 44 cannot be used to authorize mining activities within areas of government-managed navigation systems on rivers designated as navigable under the Rivers and Harbors Act of 1899 (33 U.S. Code 403).

Regional Condition No. 4. For NWPs 4, 5, 12, 13, 14, 15, 18, 19, 20, 23, 25, 27, 29, 30, 35, 36, 39, 40, 41, 42, 43, 44, 51, 52, and 53 in the waters listed below, the prospective permittee shall provide written notification to the appropriate District. Notification will be to the District Engineer according to *General Condition No. 32 (Federal Register, Vol. 82, No. 4, FR 1860-2008)*. This notification shall be used to review the project to ensure that the proposed project will have "no effect" on federally listed threatened or endangered (T&E) species and to determine if the project would have a minimal impact on the aquatic environment. The application will be coordinated with

the U.S. Fish and Wildlife Service and other agencies as determined appropriate by the Corps of Engineers. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed (refer to NWP General Condition No. 18). The list of waters may be revised periodically in the case of future updates to the status of T&E species.

In addition to the waterbodies listed below, the following federal concern species are known to occur in various wetland areas, or cave streams:

Ashley, Clay, Jackson, Lawrence, Woodruff, and Craighead Counties; Species: *Lindera melissifolia*, Pondberry - LE

Benton County; Species: *Amblyopsis rosae*, Ozark Cavefish - LE

Benton and Stone Counties; Species: *Cambarus aculabrum*, Cave Crayfish - LE

Alum Fork Saline River - Saline County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Antoine River - Clark and Pike Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Archey Creek - Pope and Van Buren Counties – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

Arkansas River - Arkansas, Conway, Crawford, Desha, Faulkner, Franklin, Jefferson, Johnson, Lincoln, Logan, Perry, Pope, Pulaski, Sebastian, and Yell Counties – Species: *Scaphirhynchus albus*, pallid sturgeon - LE, *Sternula antillarum athalassos*, Interior Least Tern - LE

Beech Creek - Cleburne and Stone Counties – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

Big Brushy Creek - Montgomery County – Species: *Ptilimnium nodosum*, harperella - LE

Big Creek - Cleburne, Independence, and White Counties – Species: *Lampsilis streckeri*, Speckled Pocketbook - LE

Black River - Clay, Lawrence, and Randolph Counties – Species: *Epioblasma triquetra*, Snuffbox - LE, *Lampsilis abrupta*, Pink Mucket - LE, *Leptodea leptodon*, Scaleshell - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Brush Creek - Perry and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Buffalo Creek - Polk County – Species: *Percina pantherina*, leopard darter - LT

Buffalo River - Baxter, Marion, Newton, and Searcy Counties – Species: *Epioblasma triquetra*, Snuffbox - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Caddo River Above DeGray Lake - Clark, Montgomery, and Pike Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Caddo River Below DeGray Lake - Clark County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Clear Fork - Scott County – Species: *Ptilimnium nodosum*, harperella - LE

Cossatot River Above Gillham Lake - Howard and Polk Counties – Species: *Percina pantherina*, leopard darter - LT

Cossatot River Below Gillham Lake - Howard and Sevier Counties – Species: *Leptodea leptodon*, Scaleshell – LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT, *Quadrula fragosa*, Winged Mapleleaf - LE

Current River - Clay and Randolph Counties – Species: *Lampsilis abrupta*, Pink Mucket - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Devils Fork Little Red River - Cleburne County – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

Dry Fork Fourche LaFave River - Perry and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Eleven Point River - Randolph County – Species: *Cryptobranchus alleganiensis bishopi*, Ozark Hellbender - LE, *Lampsilis abrupta*, Pink Mucket - LE

Fiddlers Creek - Montgomery and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Fourche LaFave River - Perry, Scott, and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Frog Bayou - Crawford County – Species: *Leptodea leptodon*, Scaleshell - LE

Illinois River - Benton, Washington Counties – Species: *Lampsilis rafinesqueana*, Neosho Mucket - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Irons Fork - Polk County – Species: *Ptilimnium nodosum*, harperella - LE

Irons Fork Ouachita River - Garland, Montgomery, and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Kings River - Carroll and Madison Counties – Species: *Epioblasma triquetra*, Snuffbox - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

L' Anguille River - Lee and St. Francis Counties: - Species: *Potamilus capax*, Fat Pocketbook - LE

Left Hand Chute Little River - Mississippi and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

Lewis Creek - Polk County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Little Brushy Creek - Montgomery County – Species: *Ptilimnium nodosum*, harperella - LE

Little Missouri River below Lake Greeson - Clark, Hempstead, Nevada, Ouachita, and Pike Counties – Species: *Lampsilis abrupta*, Pink Mucket - LE *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT *Quadrula fragosa*, Winged Mapleleaf - LE

Little River Above Millwood Lake - Little River and Sevier Counties – Species: *Arcidens wheeleri*, Ouachita Rock Pocketbook – LE *Lampsilis abrupta*, Pink Mucket - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Little River Below Millwood Lake - Hempstead and Little River Counties – Species: *Arcidens wheeleri*, Ouachita Rock Pocketbook - LE

Middle Fork Little Red River - Cleburne, Searcy, Stone, and Van Buren Counties – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook, LE *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Middle Fork Saline River - Garland, Perry, and Saline Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Mississippi River - Chicot, Crittenden, Desha, Lee, Mississippi, and Phillips Counties – Species: *Potamilus capax*, Fat Pocketbook - LE, *Scaphirhynchus albus*, pallid sturgeon - LE, *Sternula antillarum athalassos*, Interior Least Tern - LE

Mountain Fork River - Polk County – Species: *Percina pantherina*, leopard darter - LT

Muddy Creek - Montgomery County – Species: *Ptilimnium nodosum*, harperella - LE

Muddy Fork Illinois River - Washington County – Species: *Lampsilis rafinesqueana*, Neosho Mucket - LE

Myatt Creek - Fulton County – Species: *Leptodea leptodon*, Scaleshell - LE

North Fork Creek - Garland County – Species: *Ptilimnium nodosum*, harperella - LE

North Fork Ouachita River - Montgomery County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

North Fork Saline River - Perry and Saline Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Ouachita River, Lower - Bradley, Calhoun, Clark, Dallas, Hot Spring, Ouachita, and Union Counties – Species: *Arcidens wheeleri*, Ouachita Rock Pocketbook - LE, *Cumberlandia monodonta*, Spectaclecase - LE, *Lampsilis abrupta*, Pink Mucket - LE, *Lampsilis powellii*, Arkansas Fatmucket - LT, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT, *Quadrula fragosa*, Winged Mapleleaf - LE

Ouachita River, Upper - Montgomery and Polk Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Rainy Creek - Montgomery County – Species: *Ptilimnium nodosum*, harperella - LE

Red River - Hempstead, Lafayette, Little River and Miller Counties – Species: *Sternula antillarum athalassos*, Interior Least Tern - LE

Right Hand Chute Little River & Ditches - Craighead, Mississippi, and Poinsett Counties – Species: *Leptodea leptodon*, Scaleshell - LE, *Potamilus capax*, Fat Pocketbook - LE

Robinson Creek - Polk and Sevier Counties – Species: *Percina pantherina*, leopard darter - LT

Rolling Fork Below DeQueen Reservoir - Sevier County – Species: *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Saline River - Ashley, Bradley, Cleveland, Dallas, Drew, Grant and Saline Counties – Species: *Lampsilis abrupta*, Pink Mucket - LE, *Lampsilis powellii*, Arkansas Fatmucket - LT, *Leptodea leptodon*, Scaleshell - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT, *Quadrula fragosa*, Winged Mapleleaf - LE

Saline River Below Dierks Reservoir - Howard and Sevier Counties – Species: *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

South Fork Little Red River - Van Buren County – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

South Fork Ouachita River - Montgomery County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

South Fork Saline River - Garland and Saline Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

South Fork Spring River - Fulton and Sharp Counties – Species: *Epioblasma florentina curtisii*, Curtis Pearlymussel - LE, *Leptodea leptodon*, Scaleshell – LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

South Fourche LaFave River - Perry and Yell Counties – Species: *Leptodea leptodon*, Scaleshell - LE, *Ptilimnium nodosum*, harperella - LE

Spring River - Fulton, Lawrence, Randolph, and Sharp Counties – Species: *Cryptobranchus alleganiensis bishopi*, Ozark Hellbender - LE, *Epioblasma florentina curtisii*, Curtis Pearlymussel - LE, *Epioblasma triquetra*, Snuffbox - LE, *Lampsilis abrupta*, Pink Mucket - LE, *Leptodea leptodon*, Scaleshell - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

St. Francis River - Clay, Craighead, Crittenden, Cross, Greene, Lee, Phillips, Poinsett, and St. Francis Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Clark Corner Cutoff - St. Francis County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Cross County Ditch - Cross County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 10 - Craighead and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 123 - Poinsett County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 60 - Craighead and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 61 - Poinsett County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 9 - Poinsett County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Iron Mines Creek - Poinsett County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Little Bay Ditch - Craighead and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Little Slough Ditch - Craighead County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, St. Francis Bay - Cross County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, St. Francis Floodway - Lee and St. Francis Counties – Species: *Leptodea leptodon*, Scaleshell - LE, *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Straight Slough - Cross and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

Strawberry River - Fulton, Independence, IZard, Lawrence, and Sharp Counties – Species: *Epioblasma triquetra*, Snuffbox – LE, *Leptodea leptodon*, Scaleshell - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Turkey Creek - Stone County – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

Tyronza River - Crittenden, Cross, Mississippi, and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

War Eagle Creek - Benton, Madison and Washington Counties – Species: *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

White River - Arkansas, Baxter, Desha, Independence, Izard, Jackson, Marion, Monroe, Phillips, Prairie, Stone, White, and Woodruff Counties – Species: *Cryptobranchus alleganiensis bishopi*, Ozark Hellbender - LE, *Epioblasma triquetra*, Snuffbox - LE, *Lampsilis abrupta*, Pink Mucket - LE, *Leptodea leptodon*, Scaleshell - LE, *Potamilus capax*, Fat Pocketbook - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Legend:

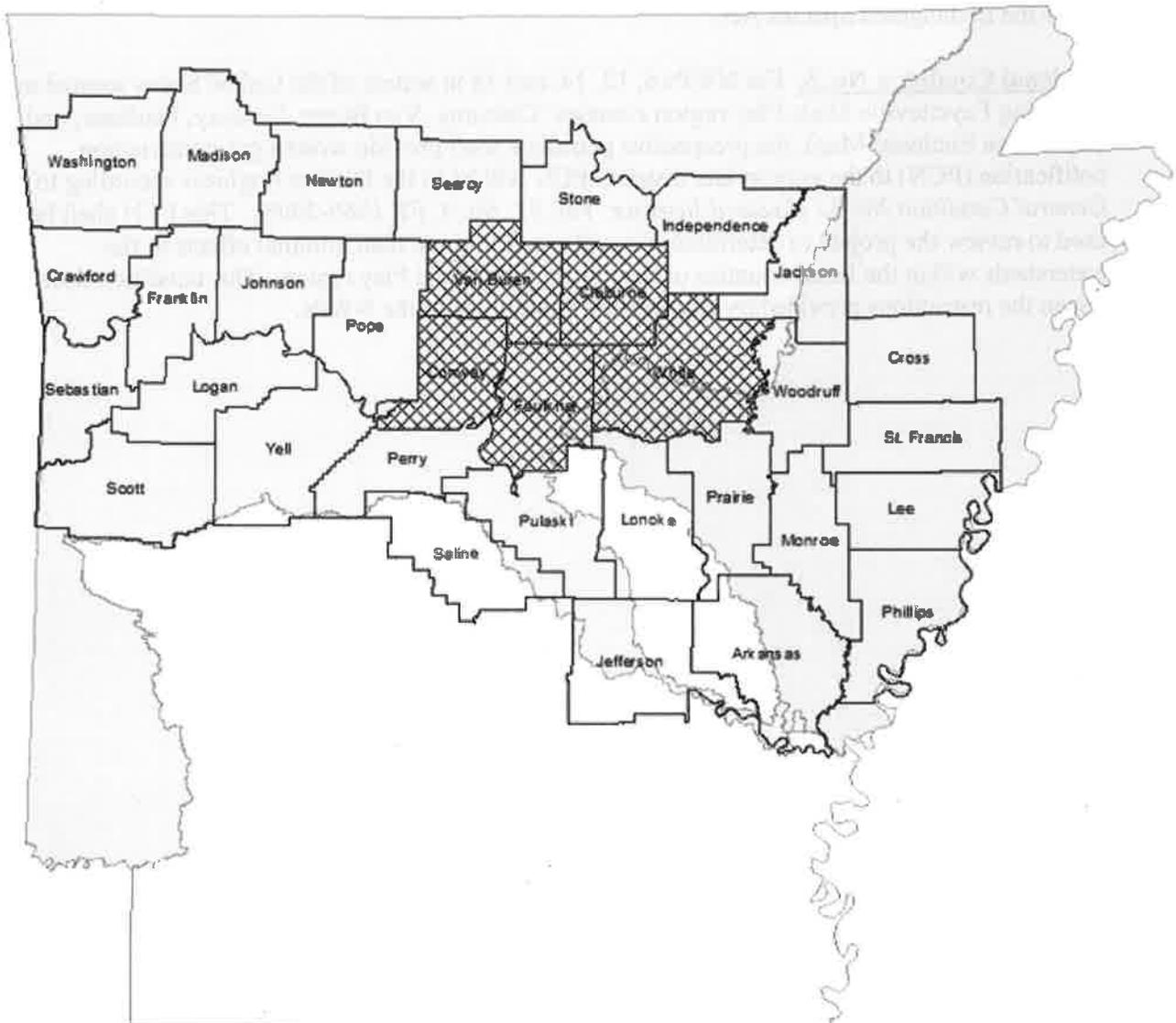
LE - Listed Endangered; the U.S. Fish and Wildlife Service has listed these species as endangered under the Endangered Species Act.

LT - Listed Threatened; the U.S. Fish and Wildlife Service has listed these species as threatened under the Endangered Species Act.

Regional Condition No. 5. For NWP 6, 12, 14, and 18 in waters of the United States located in the following Fayetteville Shale Play region counties: Cleburne, Van Buren, Conway, Faulkner, and White (See Enclosed Map), the prospective permittee shall provide written pre-construction notification (PCN) to the appropriate district. PCN will be to the District Engineer according to *General Condition No. 32 (Federal Register, Vol. 82, No. 4, FR 1860-2008)*. This PCN shall be used to review the project to determine if it will result in more than minimal effects to the watersheds within the listed counties of the Fayetteville Shale Play region. This condition does not lessen the restrictions provided by any General Conditions of the NWPs.



Fayetteville Shale Natural Gas Play Regional Condition No. 5



Regional Condition No. 5 Counties		Arkansas Regulatory Boundaries	
	Fayetteville Shale Play Counties		Little Rock District
	Cleburne		Memphis District
	Conway		Vicksburg District
	Faulkner		
	Van Buren		
	White		



**US Army Corps
of Engineers**
Little Rock District
Enclosure 4

ADEQ

ARKANSAS
Department of Environmental Quality

August 7, 2018

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

RECEIVED
ARDOT
AUG 09 2018
ENVIRONMENTAL
DIVISION

RE: 401 Water Quality Certification- **ADEQ No. 20180146** – ARDOT Job No. 061438 Highway 7, Culvert Extensions on tributaries to South Fork Saline River, Garland County, Arkansas

Dear Mr. Fleming:

The Arkansas Department of Environmental Quality (“ADEQ”) has completed its review of the above referenced project for the Arkansas Department of Transportation (ARDOT), to facilitate the extension of two culverts on Hwy. 7 on tributaries less than one mile of South Fork Saline River. The project is located in Section 2, Township 2 South, Range 19 West (Lat. 34.594387, Lon. -93.006909) and Section 35, Township 1 S, Range 19 West (Lat. 34.594807, Lon. -93.008901), in Garland County, Arkansas.

The ARDOT Job No. 061438 project site is less than 1 mile from South Fork Saline River. This project requires an individual water quality certification from ADEQ for activities which impact Extraordinary Resource Waters and their tributaries (within 1 mile) as defined in Regulation No. 2, Water Quality Standards.

ADEQ has determined that there is a reasonable assurance that this activity will be conducted in a manner which, according to the Arkansas Pollution Control and Ecology Commission’s Regulation No.2, will not physically alter a significant segment of the waterbody and will not violate the water quality criteria.

Pursuant to §401(a)(1) of the Clean Water Act, the ADEQ hereby issues water quality certification for this project: **ADEQ No. 20180146**, contingent upon the following conditions:

1. The applicant shall implement all practicable best management practices (BMPs) to avoid excessive impacts of sedimentation and turbidity to the surface waters.
2. The applicant will take all reasonable measures to prevent the spillage or leakage of any chemicals, oil, grease, gasoline, diesel, or other fuels. In the unlikely event such spillage or leakage occurs, the applicant must contact ADEQ immediately.
3. The applicant shall contact ADEQ to determine if a Short Term Activity Authorization (STAA) is needed when performing work in the wetted area of any waterbody. More information can be obtained by contacting the Water Division Planning Section of ADEQ at 501-682-0040.
4. The applicant shall limit construction to low flow periods as much as possible to minimize adverse effects on water quality and aquatic life.

5. If a construction site will disturb equal to or greater than one (1) acre and less than five (5) acres, the applicant shall comply with the requirements in Reg. 6.203 for Stormwater discharge associated with a small construction site, as defined in APC&EC Regulation No. 6. If the construction site will disturb five (5) acres or more, the applicant shall comply with the terms of the Stormwater Construction General Permit Number ARR150000 prior to the start of construction. BMPs must be implemented regardless of the size. More information can be obtained by contacting the NPDES Stormwater Section of ADEQ at (501) 682-0621.

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

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

Please contact Mrs. Melanie Treat, at (501) 682-0040 if you have any questions regarding this certification.

Sincerely,



Caleb J. Osborne
Associate Director, Office of Water Quality

cc: Wanda Boyd, EPA,
Melvin Tobin, USFWS,
Jennifer Sheehan, AGFC,
Travis Harmon, ADEQ District 5 Inspector
Amy Beck, ADEQ District 5 Inspector
Lindsay Zweifel, ARDOT, Lindsay.Zweifel@ardot.gov
Dorothy Rhodes, ARDOT, Dorothy.Rhodes@ARDOT.gov

**CERTIFICATION OF COMPLIANCE
WITH DEPARTMENT OF THE ARMY PERMIT**

Nationwide Permit Number: NWP 14

Identification Number: MVK-2018-223

Name of Permittee: Mr. John Fleming - AHTD

Issued Date: 8/21/2018

Evaluator name: Mr. Gerald Bourne

Expiration Date: 3/18/2022

Compliance Location: Garland County, AR; 34.579499, -92.984752;
Project located approximately 7 miles
north/northeast of Hot Springs, AR, along
Highway 7.

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

USACE, Vicksburg District
ATTN: Regulatory Branch
4155 Clay Street
Vicksburg, Mississippi 39183-3435

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

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

Date work was completed: _____

Signature of Permittee

Date Signed

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Mr. John Fleming - AHTD		File Number: MVK-2018-223	Date: 21 August 2018
Attached is:			See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
<input type="checkbox"/>	PERMIT DENIAL		C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION		D
<input checked="" type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Mr. Gerald Bourne
Environmental Specialist
USACE Regulatory Branch Vicksburg District
4155 Clay Street
Vicksburg, MS 39180
601-631-5441

If you only have questions regarding the appeal process you may also contact:

Administrative Appeals Review Officer
Mississippi Valley Division
U.S. Army Corps of Engineers
1400 Walnut Street
Vicksburg, MS 39181-0080
601-634-5820

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: