July 12, 2017

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

Re: Job Number 100870  
FAP Number NHPP-0028(44)  
Bridge Numbers M3818, M3220, & M3222  
Hwy. 34 Strs. & Apprs. (S)  
Greene 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 AHTD/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 replace three structurally deficient bridges on Highway 34 near the City of Marmaduke in Greene County. The total length of the project is approximately 0.46 mile. A project location map is enclosed.

The existing roadway consists of two 10-foot wide paved travel lanes with 2-foot wide paved shoulders. The existing right of way width along the route is approximately 80 feet. Information about the existing structures is provided in Table 1.

Proposed roadway improvements will include two 11-foot wide paved travel lanes with 4-foot wide shoulders. New right of way width will average 130 feet. Information about the proposed structures is provided in Table 2. The proposed structures will be built on the existing location and detours used to maintain traffic during construction.
Table 1

<table>
<thead>
<tr>
<th>Bridge Number</th>
<th>Stream</th>
<th>Sufficiency Rating</th>
<th>Existing Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>M3220</td>
<td>Hurricane Ditch</td>
<td>26.7</td>
<td>29’ x 132’ concrete deck on steel beams supported by timber pile bents</td>
</tr>
<tr>
<td>M3818</td>
<td>Big Slough Ditch</td>
<td>39.3</td>
<td>25’ x 169’ concrete deck on steel beams and main span truss supported by timber pile bents</td>
</tr>
<tr>
<td>M3222</td>
<td>Cottonwood Slough</td>
<td>22.4</td>
<td>29’ x 58’ concrete deck on timber beams supported by timber pile bents</td>
</tr>
</tbody>
</table>

Table 2

<table>
<thead>
<tr>
<th>Stream</th>
<th>Proposed Structure</th>
<th>Location of Detour/Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hurricane Ditch</td>
<td>33’ x 140’ continuous composite integral W-beam on steel shell pile bents</td>
<td>50’ downstream/952’</td>
</tr>
<tr>
<td>Big Slough Ditch</td>
<td>33’ x 196’ continuous composite integral W-beam on steel shell pile bents</td>
<td>50’ upstream/1,357’</td>
</tr>
<tr>
<td>Cottonwood Slough</td>
<td>Triple 10’ x 5’ x 72’ R.C. box culvert</td>
<td>65’ downstream/1,000’</td>
</tr>
</tbody>
</table>

Design data for this project is as follows:

<table>
<thead>
<tr>
<th>Design Year</th>
<th>Average Daily Traffic</th>
<th>Percent Trucks</th>
<th>Design Speed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>860</td>
<td>7</td>
<td>55 mph</td>
</tr>
<tr>
<td>2038</td>
<td>1,100</td>
<td>7</td>
<td>55 mph</td>
</tr>
</tbody>
</table>

There are no relocatees, wetlands, noise, or environmental justice issues associated with this project. Approximately 2.2 acres of new right of way will be required to construct this project, of which 0.7 acre is prime farmland. Form NRCS-CPA-106 is enclosed. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits. No impacts to cultural resources are anticipated; concurrence from the State Historic Preservation Officer is enclosed.

There are no wetlands associated with this project. Impacts at each of the crossings should be less than 0.1 acre. Construction in and across Hurricane Ditch, Big Slough Ditch, and
Cottonwood Slough should be allowed under terms of a Nationwide Permit 14 for Linear Transportation Projects as defined in the Federal Register 82 (4): 1860-2008.

The United States Fish and Wildlife Service’s (USFWS) Information IPaC database determined that the Indiana bat (Myotis sodalis), fat pocketbook mussel (Potamilus capax), rabbitsfoot mussel (Quadrula cylindrica cylindrica), scaleshell mussel (Letodea leptodon), and pondberry (Lindera melissifolia) may occur within the project area. Based on limited/suitable habitat and distance to known species locations it is determined that the project will have no effect on rabbitsfoot mussel, scaleshell mussel, and pondberry. Our records (2016 mussel database) indicate that Potamilus capax nearest occurrence is approximately 15 miles southeast within the adjacent 8-digit HUC (Little River Ditches) in Mississippi County, AR. The nearest records within the St. Francis HUC are 45 miles downstream near the confluence with the Little River Ditches; therefore, it is determined that the project is not likely to adversely affect the fat pocketbook mussel. A determination is made that the proposed project is not likely to adversely affect the Indiana bat based on limited habitat. The USFWS concurred on May 23, 2017 (enclosed).

Greene County participates in the National Flood Insurance Program. All of the floodplain encroachments within this highway construction project will be designed to comply with the county's local flood damage prevention ordinance. The project lies within the Zone A, Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a significant floodplain encroachment or a significant risk to property or life.

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

Sincerely,

[Signature]

John Fleming
Division Head
Environmental Division

Enclosures
JF:SL:fc

c: Program Management
   Right of Way
   Roadway Design
   District 10
   Master File
July 6, 2017

Mr. John Fleming
Division Head
Environmental Division
Arkansas State Highway and Transportation Department
PO Box 2261
Little Rock, AR 72203-2261

RE: Greene County – General
Section 106 Review – FHWA
Request for Technical Assistance
AHTD Job Number 100870
Hwy. 34 Strs. & Apprs. (S)
AHPP Tracking Number 98282.02

Dear Mr. Fleming:

Thank you for submitting additional information on AHTD Bridge M3818. The staff of the Arkansas Historic Preservation Program (AHPP) has reviewed this document and acknowledges that the 80’ Parker pony truss bridge was moved from an unknown location in 1974 and that there have been alterations to the end verticals. Therefore, we concur that AHTD Bridge M3818 is not eligible for listing in the National Register of Historic Places (NRHP) and this undertaking with have no effect on historic properties.

However, before the bridge is marketed, moved, or demolished, we are requesting a completed Arkansas Architectural Resource Form and thorough photo-documentation to accompany the known written history of the bridge.

Tribes that have expressed an interest in the area include the Delaware Nation (Mr. Jason Ross), the Osage Nation (Dr. Andrea Hunter), the Quapaw Tribe of Oklahoma (Mr. Everett Bandy), and the Shawnee Tribe of Oklahoma (Ms. Kim Jumper). We recommend that they be consulted in accordance with 36 CFR § 800.2 (c) (2).

Once the undertaking is further along in the planning stages, we look forward to reviewing the proposed project. If you should have any questions or comments, please do not hesitate to contact Theresa Russell of my staff at (501)-324-9357.

Sincerely,

Marian Boyd
Interim Director, AHPP

cc: Mr. Randal Looney, Federal Highway Administration
    Dr. Andrea Hunter, Osage Nation
    Dr. Ann Early, Arkansas Archeological Survey
In Reply Refer To:  
Consultation Code: 04ER1000-2017-SLI-0807  
Event Code: 04ER1000-2017-E-01099  
Project Name: 100870 Highway 34 Strs. & Apprs.

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

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: 04ER1000-2017-SLI-0807
Event Code: 04ER1000-2017-E-01099
Project Name: 100870 Highway 34 Strs. & Apprs.
Project Type: BRIDGE CONSTRUCTION / MAINTENANCE
Project Description: Replacement of three structures including Hurricane Ditch, Big Slough Ditch, and Cottonwood Slough.

Project Location:
Approximate location of the project can be viewed in Google Maps:
https://www.google.com/maps/place/36.186270692565486N90.31383991634357W

Counties: Greene, AR

Endangered Species Act Species
There is a total of 5 threatened, endangered, or candidate species on your 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. Please contact the designated FWS office if you have questions.
### Mammals

<table>
<thead>
<tr>
<th>NAME</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana Bat (<em>Myotis sodalis</em>)</td>
<td>Endangered</td>
</tr>
</tbody>
</table>

- No critical habitat has been designated for this species.
- Species profile: [https://ecos.fws.gov/ecp/species/5949](https://ecos.fws.gov/ecp/species/5949)

### Clams

<table>
<thead>
<tr>
<th>NAME</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fat Pocketbook (<em>Potamilus capax</em>)</td>
<td>Endangered</td>
</tr>
</tbody>
</table>

- No critical habitat has been designated for this species.
- Species profile: [https://ecos.fws.gov/ecp/species/2780](https://ecos.fws.gov/ecp/species/2780)

<table>
<thead>
<tr>
<th>NAME</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rabbitsfoot (<em>Quadrula cylindrica cylindrica</em>)</td>
<td>Threatened</td>
</tr>
</tbody>
</table>

- There is a **final** critical habitat designated for this species. Your location is outside the designated critical habitat.
- Species profile: [https://ecos.fws.gov/ecp/species/5165](https://ecos.fws.gov/ecp/species/5165)

<table>
<thead>
<tr>
<th>NAME</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scaleshell Mussel (<em>Leptodea leptodon</em>)</td>
<td>Endangered</td>
</tr>
</tbody>
</table>

- No critical habitat has been designated for this species.
- Species profile: [https://ecos.fws.gov/ecp/species/5881](https://ecos.fws.gov/ecp/species/5881)

### Flowering Plants

<table>
<thead>
<tr>
<th>NAME</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pondberry (<em>Lindera melissifolia</em>)</td>
<td>Endangered</td>
</tr>
</tbody>
</table>

- No critical habitat has been designated for this species.
- Species profile: [https://ecos.fws.gov/ecp/species/1279](https://ecos.fws.gov/ecp/species/1279)

### Critical habitats

There are no critical habitats within your project area.
Please save in the SS Folder

From: Lewis, Lindsey [mailto:lindsey_lewis@fws.gov]
Sent: Tuesday, May 23, 2017 8:53 AM
To: Bailey, William
Subject: Re: 100870 ES Concurrence

Bill,

The Service does not have any information indicating that there are any federally listed species in the affected area of this action due to the habitat type, disturbed environment, and distance to any known species locations. Therefore, the Service concurs with AHTD's assessment and determination.

Thanks,

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

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

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

On Tue, May 16, 2017 at 2:59 PM, Bailey, William <William.Bailey@ahtd.ar.gov> wrote:
Lindsey.....please take a look at the google earth kmz file attached and let us know if you concur with our determination. The project proposes to replace 3 bridges on Hwy. 34 in Greene County. The 3 bridges are located east of Marmaduke. The proposed construction will replace the Cottonwood Slough bridge with a box culvert and Hurricane Ditch and Big Slough Ditch with new bridges. The IPaC database determined that Indiana Bat (Myotis sodalis), Fat Pocketbook Mussel (Potamilus capax), Rabbitsfoot Mussel (Quadrula cylindrica cylindrica), Scaleshell Mussel (Letodea leptodon), and Pondberry (Lindera melissifolia) may occur within the project area. Based on limited/suitable habitat and distance to known species locations we have determined that the project will have no effect on Rabbitsfoot Mussel, Scaleshell Mussel, and Pondberry. Our records (2016 mussel database) indicate that Potamilus capax nearest occurrence is approximately 15 miles southeast within the adjacent 8-digit HUC (Little River Ditches) in Mississippi County, AR. The nearest records within the St. Francis HUC are 45 miles downstream near the confluence with the Little River Ditches. Based on proximity to the nearest known species, we determine the project is not likely to adversely affect the Fat
Pocketbook Mussel. Based on limited habitat (primarily agricultural land) and impacting less than 0.25 acre of trees, we determine that the proposed project is not likely to adversely affect the Indiana Bat.

For some reason it is not allowing me to italicize the scientific names.
FARMLAND CONVERSION IMPACT RATING
FOR CORRIDOR TYPE PROJECTS

PART I (To be completed by Federal Agency)

<table>
<thead>
<tr>
<th>Job 100870</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Date of Land Evaluation Request: 9/4/17</td>
</tr>
<tr>
<td>4. Sheet 1 of _____</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1. Name of Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hwy. 34 Strs. Apprs.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Type of Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridge replacement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. Federal Agency Involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>FHWA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. County and State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greene AR.</td>
</tr>
</tbody>
</table>

PART II (To be completed by NRCS)

<table>
<thead>
<tr>
<th>1. Date Request Received by NRCS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Person Completing Form</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Does the corridor contain prime, unique statewide or local important farmland?</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Acres Irrigated</th>
<th>Average Farm Size</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>5. Major Crop(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Farmable Land in Government Jurisdiction Acres:</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. Amount of Farmland As Defined in FPAA Acres:</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. Name Of Land Evaluation System Used</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>9. Name of Local Site Assessment System</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10. Date Land Evaluation Returned by NRCS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

PART III (To be completed by Federal Agency)

<table>
<thead>
<tr>
<th>Alternative Corridor For Segment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corridor A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A. Total Acres To Be Converted Directly</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>B. Total Acres To Be Converted Indirectly, Or To Receive Services</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>C. Total Acres In Corridor</th>
</tr>
</thead>
</table>

PART IV (To be completed by NRCS) Land Evaluation Information

<table>
<thead>
<tr>
<th>A. Total Acres Prime And Unique Farmland</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Total Acres Statewide And Local Important Farmland</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>C. Percentage Of Farmland in County Or Local Gov't, Unit To Be Converted</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>D. Percentage Of Farmland In Gov't Jurisdiction With Same Or Higher Relative Value</th>
</tr>
</thead>
</table>

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

<table>
<thead>
<tr>
<th>PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Points</td>
</tr>
<tr>
<td>1. Area in Nonurban Use</td>
</tr>
<tr>
<td>2. Perimeter in Nonurban Use</td>
</tr>
<tr>
<td>3. Percent Of Corridor Being Farmed</td>
</tr>
<tr>
<td>4. Protection Provided By State And Local Government</td>
</tr>
<tr>
<td>5. Size of Present Farm Unit Compared To Average</td>
</tr>
<tr>
<td>6. Creation Of Nonfarmable Farmland</td>
</tr>
<tr>
<td>7. Availability Of Farm Support Services</td>
</tr>
<tr>
<td>8. On-Farm Investments</td>
</tr>
<tr>
<td>9. Benefits Of Conversion On Farm Support Services</td>
</tr>
<tr>
<td>10. Compatibility With Existing Agricultural Use</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL CORRIDOR ASSESSMENT POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>160</td>
</tr>
</tbody>
</table>

PART VII (To be completed by Federal Agency)

<table>
<thead>
<tr>
<th>Relative Value Of Farmland (From Part V)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Corridor Assessment (From Part VI above or a local site assessment)</th>
</tr>
</thead>
<tbody>
<tr>
<td>160</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL POINTS (Total of above 2 lines)</th>
</tr>
</thead>
<tbody>
<tr>
<td>260</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1. Corridor Selected: Location Adjacent to existing</th>
</tr>
</thead>
<tbody>
<tr>
<td>New</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Total Acres of Farmlands to be Converted by Project: 0.7 acres of Prime Farmland</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>3. Date Of Selection:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>4. Was A Local Site Assessment Used?</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES</td>
</tr>
</tbody>
</table>

5. Reason For Selection:

Signature of Person Completing This Part: [Signature]

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

DATE: 5/31/17
### AHTD ENVIRONMENTAL IMPACTS ASSESSMENT FORM

<table>
<thead>
<tr>
<th>Environmental Impacts</th>
<th>None</th>
<th>Minor</th>
<th>Significant</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Quality</td>
<td>X</td>
<td></td>
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Section 401 Water Quality Certification Required? [ ] N [ ] Y  
Short-term Activity Authorization Required? [ ] Y  
Section 404 Permit Required? [ ] Y Type NWP 14  

Remarks:  

Signature of Evaluator [Signature] Date [5-31-2017]  

5/17/2011
ROADWAY DESIGN REQUEST

Job Number 100870  FAP No. NHPP-0028(44)  County Greene

Job Name Hwy. 34 Strs. & Apprs. (S)

Design Engineer Primary Environmental Staff

Brief Project Description Replace 3 existing bridge structures with 2 bridges at Hurricane Ditch and Big Slough and a Tri. 10’ x 5’ R.C. Box Culvert at Cottonwood Slough

A. Existing Conditions:

   Roadway Width: 20’  Shoulder Type/Width: 2’ Paved
   Number of Lanes and Width: 2-10’  Existing Right-of-Way: 80’
   Sidewalks? N/A  Location:  Width: 
   Bike Lanes? N/A  Location:  Width: 

B. Proposed Conditions:

   Roadway Width: 22’  Shoulder Type/Width: 4’ (2’ Paved)
   Number of Lanes and Width: 2-11’  Proposed Right-of-Way: 130’ Avg.
   Sidewalks? N/A  Location:  Width: 
   Bike Lanes? N/A  Location:  Width: 

C. Construction Information:

   If detour: Where: Hurricane Ditch Rt. of existing bridge Length: 952’
   Big Slough Lt. of existing bridge 1357’
   Cottonwood Ditch Rt. of existing bridge 1000’

D. Design Traffic Data:

   2018 ADT: 860  2038 ADT: 1100  % Trucks: 7
   Design Speed: 55 m.p.h.

E. Approximate total length of project: 0.46 mile(s)

F. Justification for proposed improvements: Bridges are structurally deficient

G. Total Relocatees: 0  Residences:  Businesses: 

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

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<th>Agency/Official</th>
<th>Person Contacted</th>
<th>Date</th>
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BRIDGE INFORMATION - PRELIMINARY

Job Number: 100870    FAP Number: NHPP-0028 (44)    County: Greene
Job Name: Hwy. 34 Strls. & Apprs. (S)
Design Engineer: Kyle Yeary    Environmental Staff: Nate Goddard

A. Description of Existing Bridge:
1. Bridge Number: M3220 over Hurricane Ditch
4. Type Construction: Three spans consisting of a concrete deck on steel beams supported by timber pile bents with timber caps.
5. Deficiencies: Inadequate load capacity.
7. Are any Condition Component Ratings at 3 or less? No

B. Proposed Improvements:
1. Length: 140.00 ft  Br. Rdwy. Width: 30.00 ft  Deck Width (Out-to-Out): 33.17 ft
2. Travel Lanes: 2 – 11’ Lanes
3. Shoulder Width: 4.00 ft
4. Sidewalks? No  Location: N/A  Width: N/A  ft

C. Construction Information:
1. Location in relation to existing bridge: Same Location
2. Superstructure Type: Continuous Composite Integral W-Beam Unit
3. Span Lengths: (48’ – 48’ – 44’)
4. Substructure Type: Steel Shell Pile Bents w/ Encasement at Intermediate Bents.
5. Ordinary High Water Elev. (OHW): 246  No. of Bents inside OHW Contours: 1
6. Concrete Volume below OHW: 0 yd³  Vol. Bent Excavation: 0 yd³  Vol. Backfill: 0 yd³
7. Is Channel Excavation below OHW Required? No  Surface Area: N/A ft²  Volume: N/A yd³
8. Is Fill below OHW Req’d.? No  Surface Area: N/A ft²  Volume: N/A yd³
9. Is Riprap below OHW required? No  Volume: N/A yd³

D. Work Road Information:
1. Is Work Road(s) required? TBD  Location: TBD  Top Width: TBD ft
2. Is Fill below OHW required? TBD  Surface Area: TBD ft²  Volume: TBD yd³
3. Are Pipes required to meet Backwater Criteria? TBD  Waterway Opening: TBD ft²

E. Detour Information:
1. Is a detour bridge required? Yes  Location in relation to Existing Br.: 50’ Downstream
3. Volume of Fill below OHW: TBD yd³  Surface Area: TBD ft²

F. Coordination with Outside Agencies (e.g., FHWA, City, County, C of E, USCG):
Has Bridge Division coordinated with any outside agencies? No

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BRIDGE INFORMATION - PRELIMINARY

Job Number: 100870  FAP Number: NHPP-0028(44)  County: Greene
Job Name: Hwy. 34 Strs. & Apprs. (S)  Design Engineer: Kyle Yearly
Environmental Staff: Nate Goddard

A. Description of Existing Bridge:
1. Bridge Number: M3818 over Big Slough Ditch
2. Location: Rte.: 34  Section: 4  Log Mile: 12.09
4. Type Construction: Four spans consisting of a concrete deck on steel beams and main span truss supported by timber pile bents with concrete caps under truss supports and timber caps elsewhere.
5. Deficiencies: Inadequate load capacity.
7. Are any Condition Component Ratings at 3 or less? No

B. Proposed Improvements:
1. Length: 196.10 ft  Br. Rdwy. Width: 30.00 ft  Deck Width (Out-to-Out): 33.17 ft
2. Travel Lanes: 2 – 11’ lanes
3. Shoulder Width: 4.0 ft
4. Sidewalks? No  Location: N/A  Width: N/A ft

C. Construction Information:
1. Location in relation to existing bridge: Same Location
2. Superstructure Type: Continuous Composite Integral W-Beam Unit
3. Span Lengths: (60’ – 75’ – 60’)
4. Substructure Type: Concrete filled steel shell pile bents w/ encasement at intermediate bents.
5. Ordinary High Water Elev. (OHW): 248  No. of Bents inside OHW Contours: 2
6. Concrete Volume below OHW: 0 yd³  Vol. Bent Excavation: 0 yd³  Vol. Backfill: 0 yd³
7. Is Channel Excavation below OHW Required? No  Surface Area: N/A ft²  Volume: N/A yd³
8. Is Fill below OHW Req’d.? No  Surface Area: N/A ft²  Volume: N/A yd³
9. Is Riprap below OHW required? No  Volume: N/A yd³

D. Work Road Information:
1. Is Work Road(s) required? TBD  Location: TBD  Top Width: TBD ft
2. Is Fill below OHW required? TBD  Surface Area: TBD ft²  Volume: TBD yd³
3. Are Pipes required to meet Backwater Criteria? TBD  Waterway Opening: TBD ft²

E. Detour Information:
1. Is a detour bridge required? Yes  Location in relation to Existing Br.: 50’ Upstream
3. Volume of Fill below OHW: TBD yd³  Surface Area: TBD ft²

F. Coordination with Outside Agencies (e.g., FHWA, City, County, C of E, USCG):
Has Bridge Division coordinated with any outside agencies? No

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BRIDGE INFORMATION - FINAL

Job Number: 100870  FAP Number: NHPP-0028(44)  County: Greene
Job Name: Hwy. 34 Strs. & Apprs. (S)
Design Engineer: Tammy Jernigan (Roadway)  Environmental Staff: Nate Goddard

A. Description of Existing Bridge:
1. Bridge Number: M3222 over Cottonwood Slough
2. Location: Rte.: 34  Section: 4  Log Mile: 12.52
4. Type Construction: Three spans consisting of a concrete deck on timber beams supported by timber pile bents with timber caps.
5. Deficiencies: Inadequate load capacity.
7. Are any Condition Component Ratings at 3 or less? No.

B. Proposed Improvements:
To be replaced with box culvert, contact Roadway Division for more information.
John Fleming
Arkansas Department of Transportation
10324 Interstate 30
P.O. Box 2261
Little Rock, AR 72203-2261

Dear Mr. Fleming:

This is in response to your request to replace three bridges on Highway 34 near the City of Marmaduke, Greene County, Arkansas, as shown on the attached maps. The bridges that will be impacted are over Hurricane Ditch, Big Slough Ditch, and Cottonwood Slough. The existing bridges at Hurricane Ditch and Big Slough Ditch will be removed and replaced with new bridges. The existing bridge at Cottonwood Slough will be removed and replaced with a triple barrel concrete box culvert.

Based on a review of recent maps, aerial photography, a site visit, and the information submitted by you, the proposed work meets the criteria of Nationwide Permit (NWP) No. 14 (Linear Transportation Projects), pursuant to the Federal Register, Volume 82, Number 4, dated January 6, 2017.

This verification is valid until the NWP is modified, reissued or revoked. All of the existing NWPs are scheduled to be modified, reissued or revoked prior to March 18, 2022. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have 12 months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

No impacts to federally listed threatened or endangered species are expected to occur. The attached general and state conditions must be met. Note specifically General Conditions 9, 12, 18 and 20 concerning management of water flows, soil erosion and sediment control, endangered species and historic properties. If all conditions cannot be met an individual permit may be required.

This permit conveys no property rights, either in real estate or material or any exclusive privileges. Furthermore, no injury to property or invasion of rights or any infringement of federal, state or local laws or regulations is authorized.

The enclosed certification form must be signed and returned to the Corps of Engineers within 30 days after project completion.
The Memphis District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, we invite you to complete our customer service survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/?p=regulatory_survey. Your comments, positive or negative, will not affect any current or future dealing with the Corps of Engineers.

If you have questions, please contact Josh Bright at (901) 544-0926 and refer to File No. MVM-2018-130.

Sincerely,

[Signature]

Roger S. Allan
Supervisor
Regulatory Branch

Enclosures
Certificate of Completion

Permit Name: MVM-2018-130

Name of Permittee: Arkansas Department of Transportation

Date of Issuance: April 6, 2018

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

Regulatory Branch
Corps of Engineers Memphis District
167 N Main Street Room B202
Memphis, TN 38103-1894

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

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

______________________________
Signature of Permittee
Job 100870
Hwy. 34 Strs. & Apprs.
Greene County
Colonel Robert G. Dixon  
District Commander  
U.S. Army Corps of Engineers  
P. O. Box 867  
Little Rock, Arkansas 72203-0867

RE: Public Notice: Re-issuance of Nationwide Permits

Dear Colonel Dixon:

The Arkansas Department of Environmental Quality (ADEQ) has completed its review of the above referenced public notice for re-issuance of the U.S. Army Corps of Engineers Nationwide Permits (NWPs) for the State of Arkansas.

ADEQ has determined that there is a reasonable assurance that the activities covered under most these NWPs 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.

Therefore, pursuant to §401(a)(1) of the Clean Water Act, the ADEQ hereby issues water quality certification for all NWPs with the exception of NWPs 14, 29, and 43, contingent upon the following conditions:

1) An individual water quality certification request must be submitted to ADEQ for Activities which may impact Extraordinary Resource Waters, Ecologically Sensitive Waterbodies, and Natural Scenic Waterways and their tributaries (within 1 mile) as defined in Regulation No. 2, Water Quality Standards.

2) 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 501-682-0946.

3) The applicant shall implement all practicable best management practices (BMPs) to avoid excessive impacts of sedimentation and turbidity to the surface waters.

4) 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.

5) The applicant shall limit construction to low flow periods as much as possible to minimize adverse effects on water quality and aquatic life.
6) 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.

For NWPs 14, 29, and 43, where a Pre-Construction Notification (PCN) is required, in addition to conditions 1-6 listed above, an individual water quality certification request must be submitted to ADEQ in cases and the activity occurs in:

a. Waterbodies on the most currently approved 303(d) list for turbidity/siltation, including tributaries of the listed stream (within 1 mile) and waters upstream of the listed segment (within 1 mile).

b. Waterbodies with an approved Total Maximum Daily Load (TMDL) for turbidity/siltation, including their tributaries (within 1 mile) and waters upstream of the listed segment (within 1 mile).

If you have additional questions regarding this certification, please contact Ms. Lazendra Hairston at (501) 682-0946.

Sincerely,

Caleb Osborne
Associate Director, Office of Water Quality

cc: Elaine Edwards, Chief Regulatory Division USACE
    Jim Ellis, Project Manager USACE
    Wanda Boyd, U.S. EPA,
2017 Nationwide Permit Summary

U.S. Army Corps of Engineers
Memphis District

NATIONWIDE PERMIT No. 14
(NWP Final Notice, 82 FR, 1984)

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

Nationwide Permit General Conditions

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


(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 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 NWPs 4 and 48, or 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 discharge 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, 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 related 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 on fill or fill 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
ingineer will coordinate with 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.

16. endangers or must not 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.

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 the 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
ingineer will coordinate with 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

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(a)(1)(B) Per-
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.


(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(a)).

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 identify federal and private historic properties, 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 to 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 historic properties affected, and no historic properties affected.

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 110(k) 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 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, SWRO/THPO, and 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, as 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 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 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 section 32 of the Act 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 only if 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 environmental 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 0.1/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 0.1/acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that a 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 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(g)(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 concerns.

Normally, the riparian area will be 25 to 50
feet wide on each side of the stream, but the
district engineer may require slightly wider
riparian areas to address documented water
quality or habitat loss concerns. If it is not
possible to restore or maintain/protect a
riparian area on both sides of a stream, or if
the waterbody is a lake or coastal waters,
then restoring or maintaining/protecting a
riparian area along a single bank or shoreline
may be sufficient. Where both wetlands and
open waters exist on the project site, the
district engineer will determine the
appropriate compensatory mitigation (e.g.,
riparian areas and/or wetlands
compensation) based on what is best for the
aquatic environment on a watershed basis. In
cases where riparian areas are determined to
be the most appropriate form of
minimization or compensatory mitigation,
the district engineer may waive or reduce the
requirement to provide wetland
compensatory mitigation for wetland losses.

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

(1) The prospective permittee is
responsible for proposing an appropriate
compensatory mitigation option if
compensatory mitigation is necessary to
ensure that the activity results in no more
than minimal adverse environmental effects.

For the NWPs, the preferred mechanism for
providing compensatory mitigation is
mitigation bank credits or in-lieu fee program
credits (see 33 CFR 332.3(b)(2) and (3)).

However, if an appropriate number and type
of mitigation bank or in-lieu credits are not
available at the time the FCN is submitted to
the district engineer, the district engineer
can approve the use of compensatory
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 352.3(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 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 determine 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 a mitigation bank or in-lieu fee
program credits are the proposed option, the
mitigation plan only needs to address the
baseline conditions at the project 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)(i)).

(7) Compensatory mitigation
will be used to increase the acreage 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.

(b) Permittees may propose the use of
mitigation banks, in-lieu fee programs, or
permittee-responsive 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-responsive
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-responsive
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.

(2) 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
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 received
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 15, 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 permi8te who receives an NWP verification letter from the Corps must provide a signed certification document certifying 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 area-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(f)(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 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) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(h)) has been fulfilled. The completed PCN 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 must seek 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 discussions of linear project design and any constraints 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, result 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 permits 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 to the Corps office having jurisdiction over that USACE project.

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

(d) Agency Coordination:

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

(2) Agency coordination is required for:

(i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;

(ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed;

(iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and

(iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expedient manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide a 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 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 Fish Habitat conservation recommendations, 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 electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. 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 proposed for 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[s]. 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, 39, 40, 42, 43, 44, 50, 51, 52, 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 the district engineer to deem the 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 within 1/2-mile of the proposed 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 general or specific. 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 the proposed compensation 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. 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.

E. 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).

F. Definitions

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

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

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

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

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

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s).

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a temporary or intermittent stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

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

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storms.

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

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

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

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity.

Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the increment in jurisdictional wetlands resulting from determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the areas or linear feet of stream bed that are filled or excavated as a result of the regulated activity.

Waters of the United States temporarily filled,
flooded, excavated, or drained, but restored to pre-construction condition and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

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

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

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

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit. Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources that are commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

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

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

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

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

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine systems. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

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

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

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

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

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

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

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

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

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

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

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

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

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