

**TIER 3 CATEGORICAL EXCLUSION**

**ARDOT JOB NUMBER 040746**

**FAP NUMBER CMF-9142(48)**

**TRUCKERS DR. – HOWARD NICKELL RD. (FAYETTEVILLE) (S)**

**ROUTE 112, SECTION 1**

**WASHINGTON COUNTY**

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

By the

U.S. Department of Transportation

Federal Highway Administration

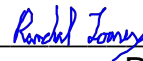
And the

Arkansas Department of Transportation

November 2020

November 2, 2020

Date of Approval



\_\_\_\_\_  
Randal Looney  
Environmental Coordinator  
Federal Highway Administration

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

The purpose of this project is to widen Highway 112 from Truckers Drive to Howard Nickell Road in the City of Fayetteville, Washington County. Roundabouts would also be constructed in place of the existing Highway 112 intersections at Van Asche Drive and Howard Nickell Road. This project will connect other portions of Highway 112 that are currently programmed to be widened north and south of this location. Total length of the project is 1.4 mile. A project location map is attached.

The existing roadway consists of two 10' wide paved travel lanes with 1'-3' wide unpaved shoulders. There is minimal existing right of way data available for this section of Highway 112.

The proposed roadway would include four 11' wide paved travel lanes with a 16' wide raised median and concrete curb-and-gutter. There would be a 5' wide sidewalk along the east and north sides of the highway and a 12' wide paved multi-use path along the west and south sides of the highway. The existing metal arch culverts carrying Clabber Creek across Highway 112 would be replaced with a quad-barreled reinforced concrete box culvert countersunk one foot. The proposed average right of way width would be approximately 180'. Approximately 33.5 acres of additional right of way and 0.8 acre of temporary construction easements would be required for this project.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2022	9,900 vpd	5	45 mph
2042	13,000 vpd		

There are no anticipated impacts to wetlands, environmental justice populations, cultural resources, or public water supplies associated with this project. There are two residential relocations anticipated as a result of the proposed project. *Public Law 91-646, Uniform Relocation Assistance Act of 1970*, as amended, will apply. Approximately 2.2 acres of prime farmland would be converted to highway right of way. The prime farmland worksheet and State Historic Preservation Officer clearance are attached.

The official species list obtained through the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation website lists the following species as possibly occurring within the project area: Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Red Knot (*Calidris canutus rufa*), Piping Plover (*Charadrius melodus*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), Indiana bat (*Myotis sodalis*), Ozark cavefish (*Troglichthys rosae*), and Missouri bladderpod (*Physaria filiformis*).

The USFWS has determined that the project will have “no effect” on the Eastern Black Rail, Piping Plover, Red Knot, Ozark cavefish, and Missouri bladderpod due to lack of habitat and distance to known populations. Based on the limited suitable habitat being affected along existing roadway, culvert, and right-of-way, distance to known occurrences, and implementation of best management practices, it has been determined the project “may affect, but is not likely to adversely affect” Ozark big-eared and gray bats.

Utilizing the FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) determination key, it has been determined that the project is “likely to adversely affect” the Indiana bat and northern long-eared bat. To mitigate for the impacts to approximately three acres of suitable habitat, ARDOT will be deducting \$27,477 from the approved Indiana Bat tracking research funding.

Coordination with the USFWS also revealed that the Arkansas Darter (*Etheostoma cragini*), a state critically-imperiled species, is found in Clabber Creek. The USFWS and Arkansas Game and Fish Commission jointly requested that the design of the Highway 112 stream crossing over Clabber Creek ensure that passage for aquatic species is maintained. The countersinking of the reinforced concrete box culvert was included in the project design as a result of this request and will encourage the formation of a natural stream bottom within the culvert to minimize impacts to the Arkansas Darter. USFWS coordination is attached.

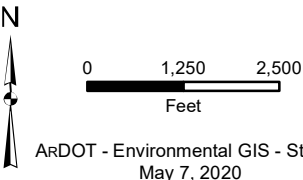
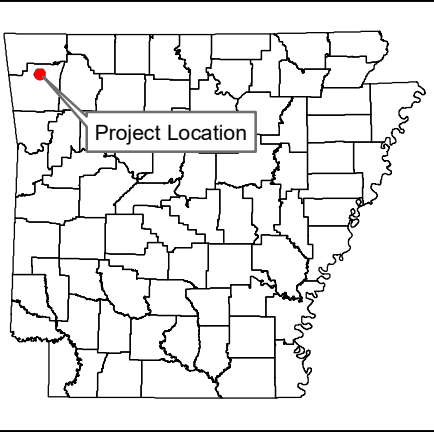
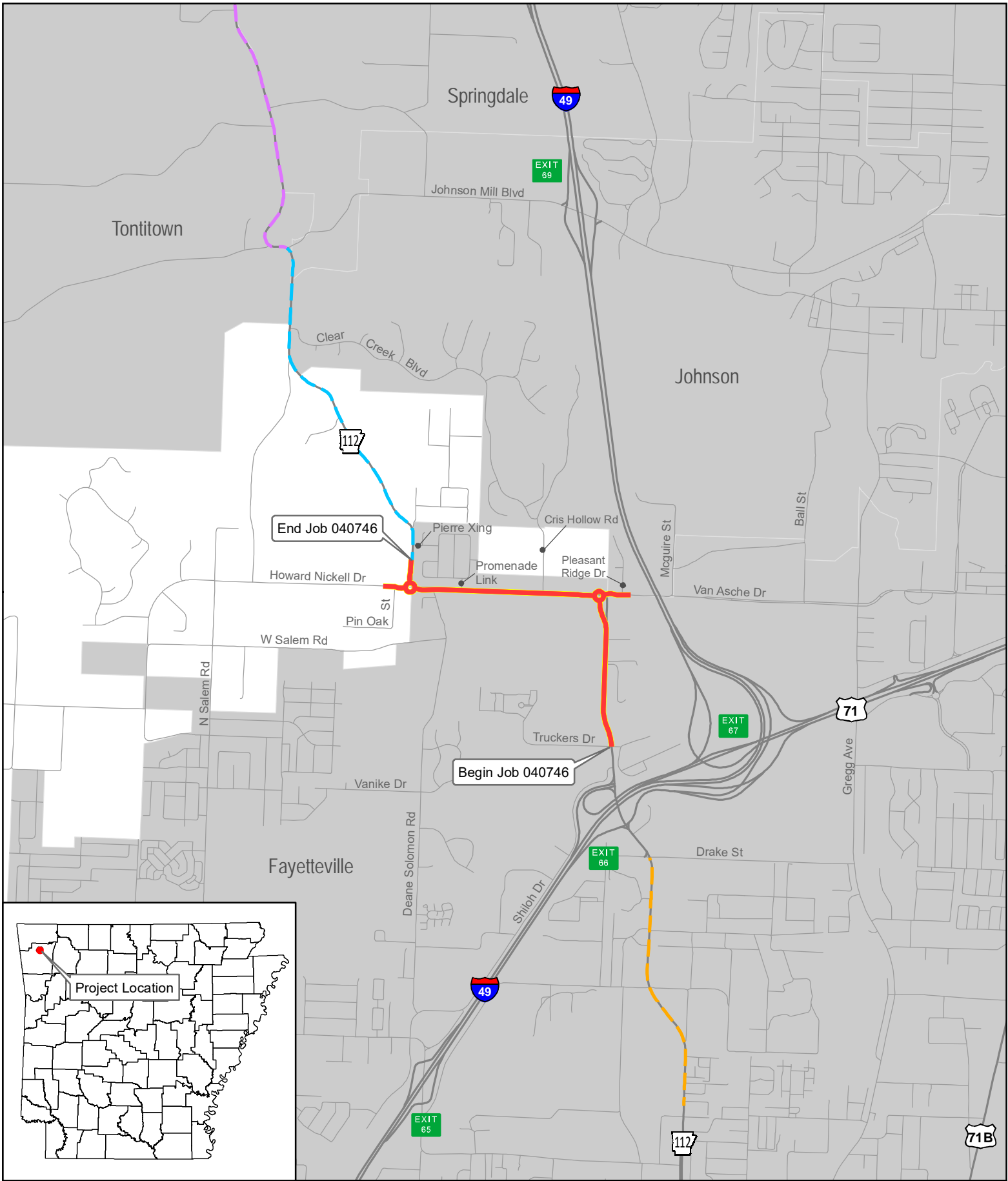
The project will have a discharge of dredged or fill material into waters of the United States impacting approximately 125 linear feet of Clabber Creek. The project should be authorized by Nationwide Permit 14 for Linear Transportation Projects as defined in Federal Register 82(4):1860-2008.

Noise predictions were made for this project using the FHWA Traffic Noise Model Version 2.5. As detailed in the attached noise assessment report, a total of two noise sensitive receptors were predicted to experience noise impacts under both future build conditions and existing conditions. Future noise impacts would be minor (noise levels not exceeding a 1 to 2 dBA increase), and no substantial increases ( $\geq 10$  dBA) were predicted.

The City of Fayetteville participates in the National Flood Insurance Program. The project lies within a Zone AE Special Flood Hazard Area and regulatory floodway. 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 would constitute a substantial floodplain encroachment or a risk to property or life.

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

An open-forum public involvement meeting was held on March 5, 2020. A synopsis of the public involvement meeting is attached.



**Job 040746**  
**Truikers Dr. – Howard Nickell Rd.**  
**(Fayetteville) (Hwy. 112)**  
**Washington County**

- Project Location
- Programmed Jobs
- Job 040720
- Job 040752
- Job 040758



Asa Hutchinson  
Governor  
Stacy Hurst  
Secretary

August 27, 2020

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

Re: Washington County – Fayetteville  
Section 106 Review – FHWA  
Truckers Dr. – Howard Nickell Rd.  
(Fayetteville) (S)  
Route 112, Section 1  
ARDOT Job Number 040746  
AHPP Tracking Number 106130.01

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Project Identification Form (PIF) for the above-referenced job in Washington County. As described, the proposed undertaking entails the construction of major widening and two roundabouts on Highway 112 north of Truckers Drive in Fayetteville. The survey included proposed right-of-way and temporary construction easement totaling 23 acres.

There are two archeological sites within the area of potential effects (APE): 3WA1480 and 3WA1481. Site 3WA1480 is undetermined for eligibility to the National Register of Historic Places (NRHP) (AHPP Tracking Number 77102). Site 3WA1480 is recorded as the location of the 1894 R.R. Dinwiddie House. In 2011, Historic Preservation Associates, LLC (HPA) documented the site using archival research. The home was removed between 1964 and 1982. Neither HPA nor the present investigation found evidence of the site. The AHPP considers Site 3WA1480 not eligible for inclusion in the NRHP.

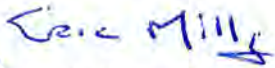
Site 3WA1481 is recorded as the location of a structure documented through archival research. There are no extant remains of the structure and the present investigation did not find any archeological evidence of the site. The AHPP considers Site 3WA1481 not eligible for inclusion in the NRHP.

Based on the provided information and the negative results of the investigation, the AHPP concurs with the finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)**. In the event of a post-review discovery of historic properties within the APE, please contact the AHPP and other consulting parties in accordance with 36 CFR § 800.13(b)(3).

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

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

Sincerely,

  
FOR  
Scott Kaufman  
Director, AHPP

cc: Mr. Randal Looney, Federal Highway Administration  
Dr. George Sabo III, Arkansas Archeological Survey

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

<b>PART I (To be completed by Federal Agency)</b> Job 040746	3. Date of Land Evaluation Request	4. Sheet 1 of _____
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1. Name of Project	5. Federal Agency Involved
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2. Type of Project	6. County and State
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<b>PART II (To be completed by NRCS)</b>	1. Date Request Received by NRCS	2. Person Completing Form
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3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form). YES <input type="checkbox"/> NO <input type="checkbox"/>	4. Acres Irrigated   Average Farm Size
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5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: _____ % _____	7. Amount of Farmland As Defined in FPPA Acres: _____ % _____
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8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS
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<b>PART III (To be completed by Federal Agency)</b>	<b>Alternative Corridor For Segment</b>			
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	Corridor A	Corridor B	Corridor C	Corridor D
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A. Total Acres To Be Converted Directly				
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B. Total Acres To Be Converted Indirectly, Or To Receive Services				
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C. Total Acres In Corridor				
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<b>PART IV (To be completed by NRCS) Land Evaluation Information</b>				
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A. Total Acres Prime And Unique Farmland				
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B. Total Acres Statewide And Local Important Farmland				
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C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
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D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				
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<b>PART V (To be completed by NRCS) Land Evaluation Information Criterion Relative value of Farmland to Be Serviced or Converted (Scale of 0 - 100 Points)</b>				
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<b>PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))</b>	<b>Maximum Points</b>			
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1. Area in Nonurban Use	15			
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2. Perimeter in Nonurban Use	10			
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3. Percent Of Corridor Being Farmed	20			
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4. Protection Provided By State And Local Government	20			
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5. Size of Present Farm Unit Compared To Average	10			
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6. Creation Of Nonfarmable Farmland	25			
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7. Availability Of Farm Support Services	5			
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8. On-Farm Investments	20			
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9. Effects Of Conversion On Farm Support Services	25			
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10. Compatibility With Existing Agricultural Use	10			
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TOTAL CORRIDOR ASSESSMENT POINTS	160			
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<b>PART VII (To be completed by Federal Agency)</b>				
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Relative Value Of Farmland (From Part V)	100			
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Total Corridor Assessment (From Part VI above or a local site assessment)	160			
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<b>TOTAL POINTS (Total of above 2 lines)</b>	<b>260</b>			
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1. Corridor Selected:	2. Total Acres of Farmlands to be Converted by Project:	3. Date Of Selection:	4. Was A Local Site Assessment Used?  YES <input type="checkbox"/> NO <input type="checkbox"/>
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5. Reason For Selection:
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Signature of Person Completing this Part:	DATE
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*Joshua Graham*

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



IN REPLY REFER TO:

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

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



June 24, 2020

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

Consultation Code: 04ER1000-2020-R-1044

RE: ArDOT Job #040476 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) has reviewed your assessment and determinations for Arkansas Department of Transportation (ARDOT) Job #040476 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S), a major widening of Hwy 112 including roundabouts and replacement of the Clabber Creek culvert in Washington County, Arkansas. This action may rely on the revised February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the Indiana Bat (IBAT) (*Myotis sodalis*) and/or Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). We received your request and the associated Project Submittal Form on June 8, 2020.

This letter provides the Service's response as to whether the Project may rely on the BO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) for its effects to the IBAT and/or NLEB.

The ARDOT has determined that the Project is likely to adversely affect (LAA) the IBAT and/or the NLEB. The Service concurs with these determinations because of the proximity of known species sites and foraging range to the project location and the occurrence of suitable foraging habitat for these species that exists on and adjacent to the site. A determination of LAA for IBAT and/or the NLEB is appropriate based on the amount and distance from the existing roadway of suitable habitat being lost. The conservation measures being proposed, avoidance of active season clearing, and the proposed implementation of all required AMMs will help to mitigate the effects in accordance with the PBO. The Service concurs with your determination of "may affect, but is not likely to adversely affect" for the Ozark Big-eared Bat (*Corynorhinus (=Plecotus) townsendii ingens*) and Gray Bat (*Myotis grisescens*) based on limited suitable habitat being affected along existing roadway, culvert, and right of way, distance to known species locations, and implementation of best management practices. The Service also agrees with your assessment for all other listed species identified.

This concurrence concludes your ESA Section 7 responsibilities relative to these species for this Project, subject to the Reinitiation Notice below.

#### Conclusion

The Service has reviewed the effects of the proposed Project, which includes the ARDOT's commitment to implement any applicable mitigation measures, as indicated on the Project Submittal Form. We confirm that the proposed Project's effects are consistent with those analyzed in the BO. The Service has determined that projects consistent with the conservation measures and scope of the program analyzed in the BO are not likely to jeopardize the continued existence of the IBAT and/or the NLEB. In coordination with your agency and the other sponsoring federal transportation agencies, the Service will reevaluate this conclusion annually in light of any new pertinent information under the adaptive management provisions of the BO.

#### Incidental Take: Indiana Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of IBATs. As described in the Incidental Take Statement (ITS) of the BO, such taking will be difficult to detect. The Service determined that it is appropriate to measure the amount or extent of incidental taking resulting from BO projects using the proposed acreage of tree removal from IBAT suitable habitat as a surrogate for the numbers of individuals taken.

The proposed Project will remove 3.0 acres of trees from habitat that is suitable for the IBAT. All tree removal will occur during the active season but outside of the pupping season and comply with all other conservation measures in the BO. Based on the BO, 5.7 acres are anticipated to not result in adverse effects, and 3 acres are anticipated to result in adverse effects.

The ARDOT uses the mitigation ratio of 1.5 for each habitat type from Table 3 of the BO<sup>1</sup> to calculate the compensatory mitigation required to offset these adverse impacts for a total of 4.5<sup>2</sup> acres of trees that is suitable for the IBAT. Mitigation will be provided in the form of a deduction of \$27,477 from the approved Indiana Bat tracking research funding to compensate for adverse impacts to the IBAT associated with this project.

Based on the mitigation identified above<sup>2</sup> and the information provided in Table 2 of Exhibit E in the In Lieu Fee (ILF) Instrument<sup>1</sup>, the Federal Transportation Agency will deduct \$27,477 from the previously approved IBAT tracking research funding account prior to the start of construction, in order to comply with the mitigation requirements of the program of transportation projects reviewed in the BO. These calculations are based on the 2020 Land Use Values in Table 2 of Exhibit E in TCF's ILF Instrument, which are applicable even if the project construction should occur in a different calendar year.

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<sup>1</sup> [https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT\\_ILF\\_ratios\\_transportation\\_agencies.pdf](https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ILF_ratios_transportation_agencies.pdf)

<sup>2</sup> XX acres \* XX ratio

<sup>3</sup> [https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT\\_ExhibitE\\_Table2\\_FeeSchedule\\_LandValues.pdf](https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ExhibitE_Table2_FeeSchedule_LandValues.pdf)

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the BO as a surrogate measure of IBAT take and exempted from the prohibitions against incidental taking. Such exemption is effective as long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the BO's ITS.

The sole RPM of the BO's ITS requires the federal transportation agencies to ensure that state/local transportation agencies who choose to include eligible projects under the programmatic action, incorporate all applicable conservation measures in the project proposals submitted to the Service for ESA section 7 compliance using the BO. The implementing terms and conditions for this RPM require the federal transportation agencies to offer training to appropriate personnel about using the BO, and about promptly reporting sick, injured, or dead bats (regardless of species) (or any other federally listed species) located in project action areas.

#### *Northern Long-eared Bat*

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of NLEBs. However, the Project is consistent with the BO, and such projects will not cause take of NLEB that is prohibited under the ESA section 4(d) rule for this species (50 CFR §17.40(o)). Therefore, the take of NLEBs resulting from this project does not require exemption from the Service.

#### Reporting Dead or Injured Bats

The ARDOT, its state/local cooperators, and any contractors must take care when handling dead or injured IBATs and/or NLEBs, or any other federally listed species that are found at the Project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

#### Reinitiation Notice

This letter concludes consultation for the proposed Project, which qualifies for inclusion in the BO issued to the federal transportation agencies. To maintain this inclusion, a reinitiation of this Project-level consultation is required where the ARDOT's discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. the amount or extent of incidental take of IBAT is exceeded;
2. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the BO;

3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or
4. a new species is listed or critical habitat designated that the Project may affect.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the Project removes trees from more than 3.0 acres of habitat suitable for the IBAT.

In instances where the amount or extent of incidental take is exceeded, the Federal Highway Administration/Arkansas Department of Transportation is required to immediately request a reinitiation of formal consultation. Please note that the Service cannot exempt from the applicable ESA prohibitions any Action-caused take that exceeds the amount or extent specified in the ITS of this BO that may occur before the reinitiated consultation is concluded.

An additional concern is maintaining adequate fish passage and the population of Arkansas Darter (*Etheostoma cragini*) in Clabber Creek, a species ranked by the state as S1 — Critically imperiled. The Service has been in communication with the Arkansas Game and Fish Commission and both of our agencies recommend that the design of the crossing incorporate either a bottomless box culvert or bridge span to ensure that passage remains and to minimize the effects to these darters and their habitat.

We appreciate your continued efforts to ensure that this Project is fully consistent with all applicable provisions of the BO and conservation of at-risk and imperiled species. If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at (501) 513-4489 or [lindsey\\_lewis@fws.gov](mailto:lindsey_lewis@fws.gov).

Sincerely,



Melvin L. Tobin  
Field Supervisor

cc: Project File  
Read File  
Filename: <C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\ARDOT 040746\ARDOT Job #040746 Truckers Dr. - Howard Nickell Rd. - Comments.docx>



## United States Department of the Interior



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

In Reply Refer To:

October 22, 2020

Consultation Code: 04ER1000-2020-SLI-1044

Event Code: 04ER1000-2021-E-00242

Project Name: 040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

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

To Whom It May Concern:

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

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

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

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

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

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

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

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

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

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

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## Project Summary

Consultation Code: 04ER1000-2020-SLI-1044

Event Code: 04ER1000-2021-E-00242

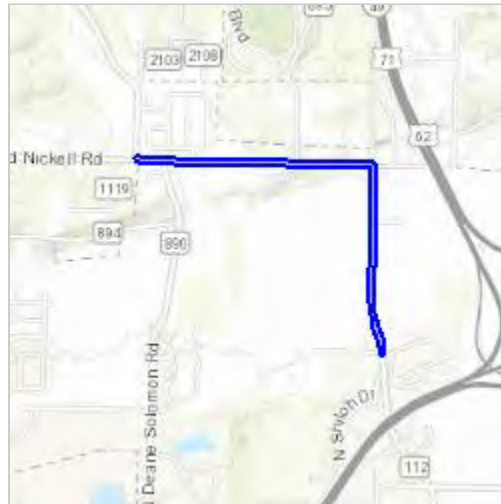
Project Name: 040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

Project Type: TRANSPORTATION

Project Description: Major widening of Hwy 112 including roundabouts.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/36.11331556877339N94.1807417152996W>



Counties: Washington, AR

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## Endangered Species Act Species

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

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 1 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

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

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

## Mammals

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

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## Birds

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

## Fishes

NAME	STATUS
Ozark Cavefish <i>Amblyopsis rosae</i> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> <li>▪ Buffer of Ozark Cavefish Areas</li> </ul> Species profile: <a href="https://ecos.fws.gov/ecp/species/6490">https://ecos.fws.gov/ecp/species/6490</a>	Threatened

## Flowering Plants

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

## Critical habitats

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



## United States Department of the Interior



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

IPaC Record Locator: 152-22062198

June 08, 2020

Subject: Consistency letter for the '040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)' project (TAILS 04ER1000-2020-R-1044) under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request to verify that the **040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)** (Proposed Action) may rely on the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, and may affect, and is likely to adversely affect the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*). Consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) is required.

This "may affect - likely to adversely affect" determination becomes effective when the lead Federal action agency or designated non-federal representative requests the Service rely on the PBO to satisfy the agency's consultation requirements for this project. Please provide this consistency letter to the lead Federal action agency or its designated non-federal representative for review, and as the agency deems appropriate, transmit to this Service Office for verification that the project is consistent with the PBO.

This Service Office will respond by letter to the requesting Federal action agency or designated non-federal representative within 30 calendar days to:

- verify that the Proposed Action is consistent with the scope of actions covered under the PBO;
- verify that all applicable avoidance, minimization, and compensation measures are included in the action proposal;
- identify any action-specific monitoring and reporting requirements, consistent with the monitoring and reporting requirements of the PBO, and
- identify anticipated incidental take.

ESA Section 7 compliance for this Proposed Action is not complete until the Federal action agency or its designated non-federal representative receives a verification letter from the Service.

**For Proposed Actions that include bridge/structure removal, replacement, and/or maintenance activities:** If your initial bridge/structure assessments failed to detect Indiana bats, but you later detect bats during construction, please submit the Post Assessment Discovery of Bats at Bridge/Structure Form (User Guide Appendix E) to this Service Office. In these instances, potential incidental take of Indiana bats may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency accordingly.

The following species may occur in your project area and **are not** covered by this determination:

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

## **Project Description**

The following project name and description was collected in IPaC as part of the endangered species review process.

### **Name**

040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

### **Description**

Major widening of Hwy 112 including roundabouts.

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## Determination Key Result

Based on your answers provided, this project is likely to adversely affect the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required. However, also based on your answers provided, this project may rely on the conclusion and Incidental Take Statement provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

## Qualification Interview

1. Is the project within the range of the Indiana bat<sup>[1]</sup>?

[1] See [Indiana bat species profile](#)

**Automatically answered**

*Yes*

2. Is the project within the range of the Northern long-eared bat<sup>[1]</sup>?

[1] See [Northern long-eared bat species profile](#)

**Automatically answered**

*Yes*

3. Which Federal Agency is the lead for the action?

*A) Federal Highway Administration (FHWA)*

4. Are *all* project activities limited to non-construction<sup>[1]</sup> activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

*No*

5. Does the project include *any* activities that are **greater than** 300 feet from existing road/rail surfaces<sup>[1]</sup>?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

*No*

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6. Does the project include *any* activities **within** 0.5 miles of a known Indiana bat and/or NLEB hibernaculum<sup>[1]</sup>?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

*No*

7. Is the project located **within** a karst area?

*Yes*

8. Will the project include *any* type of activity that could impact a **known** hibernaculum<sup>[1]</sup>, or impact a karst feature (e.g., sinkhole, losing stream, or spring) that could result in effects to a **known** hibernaculum?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

*No*

9. Is there *any* suitable<sup>[1]</sup> summer habitat for Indiana Bat or NLEB **within** the project action area<sup>[2]</sup>? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR Section 402.02). Further clarification is provided by the [national consultation FAQs](#).

*Yes*

10. Will the project remove *any* suitable summer habitat<sup>[1]</sup> and/or remove/trim any existing trees **within** suitable summer habitat?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

*Yes*

11. Will the project clear more than 20 acres of suitable habitat per 5-mile section of road/rail?

*No*

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12. Have presence/probable absence (P/A) summer surveys<sup>[1][2]</sup> been conducted<sup>[3][4]</sup> **within** the suitable habitat located within your project action area?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] Presence/probable absence summer surveys conducted within the fall swarming/spring emergence home range of a documented Indiana bat hibernaculum (contact local Service Field Office for appropriate distance from hibernacula) that result in a negative finding requires additional consultation with the local Service Field Office to determine if clearing of forested habitat is appropriate and/or if seasonal clearing restrictions are needed to avoid and minimize potential adverse effects on fall swarming and spring emerging Indiana bats.

[3] For projects within the range of either the Indiana bat or NLEB in which suitable habitat is present, and no bat surveys have been conducted, the transportation agency will assume presence of the appropriate species. This assumption of presence should be based upon the presence of suitable habitat and the capability of bats to occupy it because of their mobility.

[4] Negative presence/probable absence survey results obtained using the [summer survey guidance](#) are valid for a minimum of two years from the completion of the survey unless new information (e.g., other nearby surveys) suggest otherwise.

*No*

13. Does the project include activities **within documented Indiana bat habitat**<sup>[1][2]</sup>?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry triangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

*No*

14. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors?

*Yes*

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15. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors occur<sup>[1]</sup>?

[1] Coordinate with the local Service Field Office for appropriate dates.

*B) During the inactive season*

16. Does the project include activities **within documented NLEB habitat**<sup>[1][2]</sup>?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry biangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

*No*

17. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors?

*Yes*

18. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors occur?

*B) During the inactive season*

19. Will *any* tree trimming or removal occur **within** 100 feet of existing road/rail surfaces?

*Yes*

20. Will *any* tree trimming or removal occur **between** 100-300 feet of existing road/rail surfaces?

*Yes*

21. Are *all* trees that are being removed clearly demarcated?

*Yes*

22. Will the removal of habitat or the removal/trimming of trees include installing new or replacing existing **permanent** lighting?

*Yes*

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23. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?  
*No*
24. Does the project include slash pile burning?  
*No*
25. Does the project include *any* bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?  
*No*
26. Does the project include the removal, replacement, and/or maintenance of *any* structure other than a bridge? (e.g., rest areas, offices, sheds, outbuildings, barns, parking garages, etc.)  
*No*
27. Will the project involve the use of **temporary** lighting *during* the active season?  
*No*
28. Will the project install *any* new or replace any existing **permanent** lighting in addition to the lighting already indicated for habitat removal (including the removal or trimming of trees) or bridge/structure removal, replacement or maintenance activities?  
*Yes*
29. Is there *any* suitable habitat **within** 1,000 feet of the location(s) where **permanent** lighting (other than the lighting already indicated for habitat removal (including the removal or trimming of trees) or bridge/structure removal, replacement or maintenance activities) will be installed or replaced?  
*Yes*
30. Does the project include percussives or other activities (**not including tree removal/trimming or bridge/structure work**) that will increase noise levels above existing traffic/background levels?  
*No*
-

31. Are *all* project activities that are **not associated with** habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives, limited to actions that DO NOT cause any additional stressors to the bat species?

Examples: lining roadways, unlighted signage , rail road crossing signals, signal lighting, and minor road repair such as asphalt fill of potholes, etc.

Yes

32. Will the project raise the road profile **above the tree canopy**?

No

33. Are the project activities that are not associated with habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives consistent with a No Effect determination in this key?

**Automatically answered**

*Yes, other project activities are limited to actions that DO NOT cause any additional stressors to the bat species as described in the BA/BO*

34. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

**Automatically answered**

*Yes, because the tree removal/trimming that occurs outside of the Indiana bat's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.*

35. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

**Automatically answered**

*Yes, because the tree removal that occurs outside the Indiana bat's active season is 100-300 feet from the existing road/rail surface, and is not in documented roosting/foraging habitat or travel corridors.*

36. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

**Automatically answered**

*Yes, because the tree removal/trimming that occurs outside of the NLEB's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.*

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37. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

**Automatically answered**

*Yes, because the tree removal that occurs outside the NLEB's active season is 100-300 feet from the existing road/rail surface, and is not in documented roosting/foraging habitat or travel corridors.*

38. **General AMM 1**

Will the project ensure *all* operators, employees, and contractors working in areas of known or presumed bat habitat are aware of *all* FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable Avoidance and Minimization Measures?

Yes

39. **Hibernacula AMM 1**

Will the project ensure that on-site personnel will use best management practices<sup>[1]</sup>, secondary containment measures, or other standard spill prevention and countermeasures to avoid impacts to possible hibernacula?

[1] Coordinate with the appropriate Service Field Office on recommended best management practices for karst in your state.

Yes

40. **Hibernacula AMM 1**

Will the project ensure that, where practicable, a 300 foot buffer will be employed to separate fueling areas and other major containment risk activities from caves, sinkholes, losing streams, and springs in karst topography?

Yes

41. **Tree Removal AMM 1**

Can *all* phases/aspects of the project (e.g., temporary work areas, alignments) be modified, to the extent practicable, to avoid tree removal<sup>[1]</sup> in excess of what is required to implement the project safely?

Note: Tree Removal AMM 1 is a minimization measure, the full implementation of which may not always be practicable. Projects may still be NLAA as long as Tree Removal AMMs 2, 3, and 4 are implemented and LAA as long as Tree Removal AMMs 3, 5, 6, and 7 are implemented.

[1] The word "trees" as used in the AMMs refers to trees that are suitable habitat for each species within their range. See the USFWS' current summer survey guidance for our latest definitions of suitable habitat.

Yes

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42. **Tree Removal AMM 3**

Can tree removal be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits)?

Yes

43. **Lighting AMM 2**

Does the lead agency use the BUG (Backlight, Uplight, and Glare) system developed by the Illuminating Engineering Society<sup>[1][2]</sup> to rate the amount of light emitted in unwanted directions?

[1] Refer to [Fundamentals of Lighting - BUG Ratings](#)

[2] Refer to [The BUG System—A New Way To Control Stray Light](#)

Yes

44. **Lighting AMM 2**

Will the **permanent** lighting used during removal of suitable habitat and/or the removal/trimming of trees within suitable habitat be designed to be as close to 0 for all three BUG ratings as possible, with a priority of "uplight" of 0 and "backlight" as low as practicable?

Yes

45. **Lighting AMM 2**

Does the lead agency use the BUG (Backlight, Uplight, and Glare) system developed by the Illuminating Engineering Society<sup>[1][2]</sup> to rate the amount of light emitted in unwanted directions?

[1] Refer to [Fundamentals of Lighting - BUG Ratings](#)

[2] Refer to [The BUG System—A New Way To Control Stray Light](#)

Yes

46. **Lighting AMM 2**

Will the **permanent** lighting (other than any lighting already indicated for tree clearing or bridge/structure removal, replacement or maintenance activities) be designed to be as close to 0 for all three BUG ratings as possible, with a priority of "uplight" of 0 and "backlight" as low as practicable?

Yes

---

47. For Indiana bat, if applicable, compensatory mitigation measures are required to offset adverse effects on the species (see Section 2.10 of the BA). Please select the mechanism in which compensatory mitigation will be implemented:

*6. Not Applicable*

## Project Questionnaire

1. Have you made a No Effect determination for *all* other species indicated on the FWS IPaC generated species list?

*No*

2. Have you made a May Affect determination for *any* other species on the FWS IPaC generated species list?

*Yes*

3. How many acres<sup>[1]</sup> of trees are proposed for removal between 0-100 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

*5.7*

4. How many acres<sup>[1]</sup> of trees are proposed for removal between 100-300 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

*3.0*

5. **Please verify:**

All tree removal will occur greater than 0.5 mile from any hibernaculum.

*Yes, I verify that all tree removal will occur greater than 0.5 miles from any hibernaculum.*

6. Is the project location 0-100 feet from the edge of existing road/rail surface?

*Yes*

7. Is the project location 100-300 feet from the edge of existing road/rail surface?

*Yes*

8. **Please verify:**

No documented Indiana bat roosts or surrounding summer habitat within 0.25 mile of documented roosts will be impacted between May 1 and July 31.

---

*Yes, I verify that no documented Indiana bat roosts or surrounding summer habitat within 0.25 mile of documented roosts will be impacted during this period.*

**9. Please verify:**

No documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted between June 1 and July 31.

*Yes, I verify that no documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted during this period.*

**10. You have indicated that the following Avoidance and Minimization Measures (AMMs) will be implemented as part of the proposed project:**

- *General AMM 1*
- *Hibernacula AMM 1*
- *Lighting AMM 2*
- *Tree Removal AMM 1*
- *Tree Removal AMM 3*

## **Avoidance And Minimization Measures (AMMs)**

This determination key result includes the commitment to implement the following Avoidance and Minimization Measures (AMMs):

### **GENERAL AMM 1**

Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs.

### **HIBERNACULA AMM 1**

For projects located within karst areas, on-site personnel will use best management practices, secondary containment measures, or other standard spill prevention and countermeasures to avoid impacts to possible hibernacula. Where practicable, a 300 foot buffer will be employed to separate fueling areas and other major containment risk activities from caves, sinkholes, losing streams, and springs in karst topography.

### **LIGHTING AMM 2**

When installing new or replacing existing permanent lights, use downward-facing, full cut-off lens lights (with same intensity or less for replacement lighting); or for those transportation agencies using the BUG system developed by the Illuminating Engineering Society, be as close to 0 for all three ratings with a priority of "uplight" of 0 and "backlight" as low as practicable.

---

**TREE REMOVAL AMM 1**

Modify all phases/aspects of the project (e.g., temporary work areas, alignments) to avoid tree removal.

**TREE REMOVAL AMM 3**

Ensure tree removal is limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).

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## **Determination Key Description: FHWA, FRA, FTA Programmatic Consultation For Transportation Projects Affecting NLEB Or Indiana Bat**

This key was last updated in IPaC on December 02, 2019. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which may require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered **Indiana bat** (*Myotis sodalis*) and the threatened **Northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects](#). The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.

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**NOISE ASSESSMENT REPORT**  
**SCREENING LEVEL NOISE ANALYSIS**  
**AR DOT JOB NUMBER 040746**  
**TRUCKERS DR. – HOWARD NICKELL RD. (FAYETTEVILLE) (S)**

***Fundamentals of Sound and Noise***

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

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

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

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

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

***Noise Impact and Abatement Criteria***

Traffic noise impacts are determined by comparing design year Leq(h) values to: (1) a set of Noise Abatement Criteria (NAC) for different land use categories; and (2) existing Leq(h) values. A noise impact occurs when design year (future build) levels approach or exceed the NAC value or a substantial increase in noise occurs. An approach is considered to be 1 dBA less than the NAC value. A substantial increase is defined as 10 dBA or greater than existing noise levels.

A *noise sensitive receptor* (receptor) is defined as a representative location of a noise sensitive area for various land uses. Most receptors associated with highway traffic noise analysis are categorized as NAC Activity Category B (residential) and C (e.g., parks, hospitals, schools, places of worship). Since the NAC value for Activity Categories B and C is 67 dBA, noise impacts would occur at 66 dBA or greater.

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

### ***Screening Level Noise Analysis***

A screening level noise analysis (screening analysis) may be performed for projects that are unlikely to cause noise impacts and/or where noise abatement measures are likely to be unfeasible for acoustical or engineering reasons. Factors common to these types of projects include low traffic volumes, slower speeds, the presence of few or no receptors, and the need for roadway access points (e.g., driveways, roadway intersections, etc.). For screening analysis purposes, the ARDOT noise policy requires determining noise levels within 4 dBA of the NAC value. The screening analysis threshold would therefore be 63 dBA for Activity Categories B and C.

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

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

### ***Project Evaluation and Screening Analysis Results***

Activity Category B (residential) receptors were identified in the Van Asche Dr./Hwy. 112 project corridor. However, noise abatement measures were determined to not be feasible because driveways are required to access the

roadway, and due to the presence of intersections. A screening analysis was therefore considered an appropriate level of noise assessment for this project.

TNM modeling was completed using the existing year 2021 and design year 2041 (future build) traffic and roadway information. Receivers were extended from the centerline of Van Asche Dr./Hwy. 112 to distances correlating to approximately 66 dBA for existing and future build conditions, and 63 dBA for future build conditions. The tenth value was used for rounding the decibel levels (e.g., 65.8 dBA reported as 66 dBA). The model calculation tables and input data are attached.

A total of two receptors were predicted to experience noise impacts within a distance of 95 feet under future build conditions, both of which were predicted to experience noise impacts within a distance of 75 feet under existing conditions. A total of 19 receptors were predicted to experience noise levels within the 63 dBA screening analysis threshold at a distance of 155 feet under future build conditions. The predicted noise impact and screening analysis threshold distances and receptors are attached.

No substantial increases ( $\geq 10$  dBA) were predicted. Because noise levels in the project area are already dominated by traffic noise from the existing roadway, the impacts caused by the proposed project would be minor (e.g., noise levels not exceeding a 1 to 2 dBA increase).

As previously noted, access points such as driveways and intersections are needed along the project corridor. For engineering reasons, it would not be possible to construct an effective noise barrier accommodating these access points. A detailed noise analysis is therefore not recommended for this project.

Project construction operations typically increase noise levels. These increases would be temporary and have minimal to minor adverse effects on land uses and activities in the project area. Local ordinances may prohibit construction activities or restrict noise levels or high noise levels between certain time periods (e.g., nighttime and/or weekend work). Temporary construction noise reduction measures such as nighttime and/or weekend work restrictions may also be considered.

### ***Planning Information for Local Officials***

The ARDOT encourages local communities and developers to practice noise compatibility planning. As presented in **Table 1**, noise level predictions for future build conditions were made at incremental distances. As previously described, Activity Category B exterior areas would be impacted within a distance of

approximately 95 feet and reach the screening level threshold within 155 feet from the centerline of Van Asche Dr./Hwy. 112. These predictions do not represent noise levels at every location at a particular distance back from the roadway. Noise levels will vary with changes in terrain and other site conditions.

**Table 1. Noise Levels for Compatibility Planning**

<b>Distance (ft)*</b>	<b>Leq(h), dBA**</b>
95	66
155	63
250	58
400	53

\* Perpendicular to centerline of Van Asche Dr./Hwy. 112

\*\* Rounded to tenth value

**Table 2** presents the NAC. This information is included to inform local officials and planners of anticipated noise levels so that future development will be compatible. In compliance with federal guidelines, a copy of this screening analysis will be transmitted to the City of Fayetteville and the Northwest Arkansas Regional Planning Commission for land use planning purposes.

**Table 2. Noise Abatement Criteria (NAC)**

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

\* Includes undeveloped lands permitted for this activity category.

## NOISE DATA WORKSHEET

Job No:

Job Name:

Roadway Reference:

County:

Design Year:

Year(s) To Be Modeled:

Roadway Cross-Sections:

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

Operating Speed:

Traffic Data:

YEAR	ADT	%TRUCK	DHV	CARS	MT	HT	CARS/2	MT/2	HT/2
					10%	90%			
				0	0	0	0	0	0
2022	9,900	5%	990	941	5	45	470	2	22

## NOISE DATA WORKSHEET

Job No:

Job Name:

Roadway Reference:

County:

Design Year:

Year(s) To Be Modeled:

Roadway Cross-Sections:

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

Operating Speed:

Traffic Data:

YEAR	ADT	%TRUCK	DHV	CARS	MT	HT	CARS/2	MT/2	HT/2
					10%	90%			
				0	0	0	0	0	0
2042	13,000	5%	1300	1235	7	59	618	3	29

RESULTS: SOUND LEVELS

Job 040746

ARDOT  
M.Pearson

3 June 2020  
TNM 2.5  
Calculated with TNM 2.5

RESULTS: SOUND LEVELS

PROJECT/CONTRACT: Job 040746  
RUN: Existing 2022  
BARRIER DESIGN: INPUT HEIGHTS

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

ATMOSPHERICS: 68 deg F, 50% RH

Receiver

Name	No.	#DUs	Existing	No Barrier			Increase over existing		Type Impact	With Barrier			
			LAeq1h	LAeq1h	Crit'n	Calculated	Crit'n	Sub'l Inc		Calculated	Noise Reduction		Calculated minus Goal
			Calculated	Calculated							Calculated	Goal	
			dBA	dBA	dBA	dB	dB		dBA	dB	dB	dB	
25	1	1	0.0	71.6	66	71.6	10	Snd Lvl	71.6	0.0	8	-8.0	
50	2	1	0.0	68.3	66	68.3	10	Snd Lvl	68.3	0.0	8	-8.0	
75	3	1	0.0	66.3	66	66.3	10	Snd Lvl	66.3	0.0	8	-8.0	
100	4	1	0.0	64.9	66	64.9	10	----	64.9	0.0	8	-8.0	
125	5	1	0.0	62.8	66	62.8	10	----	62.8	0.0	8	-8.0	
150	6	1	0.0	60.8	66	60.8	10	----	60.8	0.0	8	-8.0	
175	7	1	0.0	59.2	66	59.2	10	----	59.2	0.0	8	-8.0	
200	9	1	0.0	57.8	66	57.8	10	----	57.8	0.0	8	-8.0	
250	10	1	0.0	55.5	66	55.5	10	----	55.5	0.0	8	-8.0	
300	11	1	0.0	53.7	66	53.7	10	----	53.7	0.0	8	-8.0	
350	12	1	0.0	52.2	66	52.2	10	----	52.2	0.0	8	-8.0	
400	13	1	0.0	51.0	66	51.0	10	----	51.0	0.0	8	-8.0	
500	14	1	0.0	48.9	66	48.9	10	----	48.9	0.0	8	-8.0	

Dwelling Units	# DUs	Noise Reduction		
		Min	Avg	Max
		dB	dB	dB
All Selected	13	0.0	0.0	0.0
All Impacted	3	0.0	0.0	0.0
All that meet NR Goal	0	0.0	0.0	0.0

RESULTS: SOUND LEVELS

Job 040746

ARDOT  
M.Pearson

3 June 2020  
TNM 2.5  
Calculated with TNM 2.5

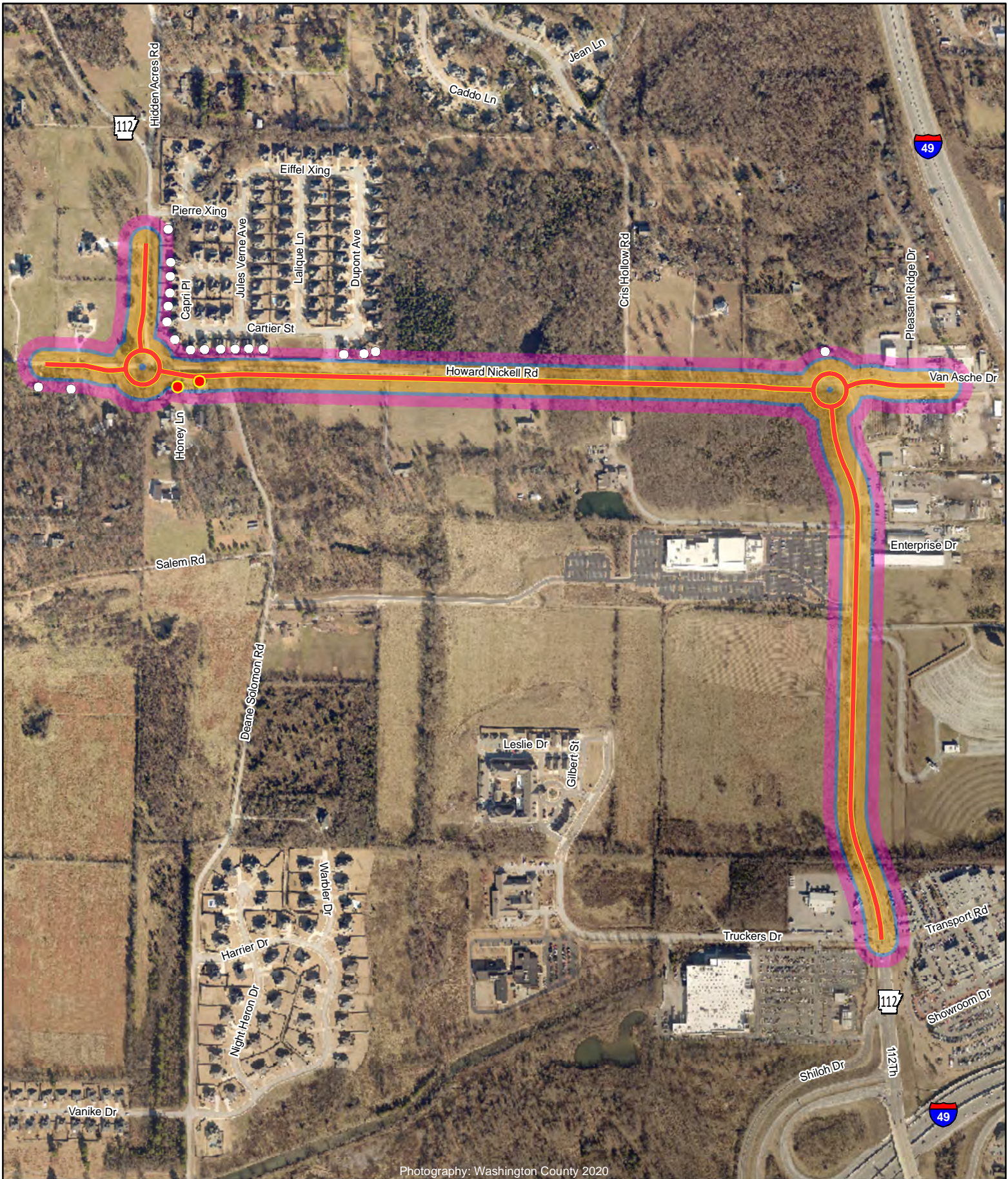
RESULTS: SOUND LEVELS

PROJECT/CONTRACT: Job 040746  
RUN: Proposed 2042  
BARRIER DESIGN: INPUT HEIGHTS

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

ATMOSPHERICS: 68 deg F, 50% RH

Receiver													
Name	No.	#DUs	Existing	No Barrier			Increase over existing		Type Impact	With Barrier		Calculated Goal	Calculated minus Goal
			L <sub>Aeq1h</sub>	L <sub>Aeq1h</sub>	Crit'n	Calculated	Crit'n	Calculated		Crit'n	L <sub>Aeq1h</sub>		
			dBA	dBA	dBA	dB	dB		dBA	dB	dB	dB	
40	1	1	0.0	70.6	66	70.6	10	Snd Lvl	70.6	0.0	8	-8.0	
65	2	1	0.0	68.2	66	68.2	10	Snd Lvl	68.2	0.0	8	-8.0	
95	3	1	0.0	66.3	66	66.3	10	Snd Lvl	66.3	0.0	8	-8.0	
115	4	1	0.0	65.3	66	65.3	10	----	65.3	0.0	8	-8.0	
140	5	1	0.0	64.2	66	64.2	10	----	64.2	0.0	8	-8.0	
155	6	1	0.0	63.0	66	63.0	10	----	63.0	0.0	8	-8.0	
190	7	1	0.0	60.7	66	60.7	10	----	60.7	0.0	8	-8.0	
215	9	1	0.0	59.4	66	59.4	10	----	59.4	0.0	8	-8.0	
250	10	1	0.0	57.7	66	57.7	10	----	57.7	0.0	8	-8.0	
300	11	1	0.0	55.7	66	55.7	10	----	55.7	0.0	8	-8.0	
350	12	1	0.0	54.1	66	54.1	10	----	54.1	0.0	8	-8.0	
400	13	1	0.0	52.8	66	52.8	10	----	52.8	0.0	8	-8.0	
500	14	1	0.0	50.6	66	50.6	10	----	50.6	0.0	8	-8.0	
Dwelling Units		# DUs	Noise Reduction										
			Min	Avg	Max								
			dB	dB	dB								
All Selected		13	0.0	0.0	0.0								
All Impacted		3	0.0	0.0	0.0								
All that meet NR Goal		0	0.0	0.0	0.0								



Photography: Washington County 2020

N



### Noise Level Distances

Job 040746  
 ARDOT - Environmental GIS - Strawn  
 June 8, 2020

- Project Location
- Impacted Receptor
- Receptor
- 75 ft - Existing
- 95 ft - Proposed
- 155 ft - Proposed

# PUBLIC INVOLVEMENT MEETING SYNOPSIS

**Job Number 040746**

**Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)**

**Washington County**

**March 5, 2020**

An open forum public involvement meeting for the proposed Highway 112 widening was held at Mount Comfort Church of Christ in Fayetteville from 4:00 – 7:00 p.m. on March 5, 2020. A public officials meeting was held the same day and at the same location at 2:00 p.m. Efforts to involve minorities and the public in the meeting included:

- Display advertisement placed in the *North Arkansas Democrat-Gazette* on February 26 and March 4, 2020
- Public service announcements on La Zeta 95.7 FM from March 2-5, 2020
- Letters sent to local public officials
- Flyers distributed in the project area

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

- Layouts of the preliminary project design (scaled to 1" = 50')
- Aerial photograph displays of the project area

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

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

<b>TABLE 1</b>	
<b>Public Participation</b>	<b>Totals</b>
Attendance at meeting (including ARDOT staff)	91
Comments received	49

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

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

<b>TABLE 2</b>	
<b>Response</b>	<b>Total</b>
Believes project is needed	35
Does not believe project is needed	10
No response	3
Indicated both a need and no need for the project	1
Believes project will have beneficial impacts	28
Believes project will have adverse impacts	16
Did not indicate beneficial or adverse impacts	4
Indicated both beneficial and adverse impacts	1
Has knowledge of cultural sites in project area	1
Has knowledge of environmental sites in project area	7

A listing of comments concerning the proposed project follows:

- Leave sidewalk on west side of Belclaire neighborhood
- Allow left turn access from Belclaire Estates by moving median
- Suggestion of a turn lane rather than a median
- Believes a traffic light will work instead
- Believes roundabouts on highways are dangerous, light preferred
- Believes big trucks and the elderly will have trouble with the roundabouts
- Knowledge of federal wetlands in the area
- Knowledge of area where water collects along west side of Belclaire Estates
- Knowledge of an underground spring and well south of Howard Nickell Rd
- Knowledge of septic tanks in the project area
- Someone heard there was an endangered fish in the area
- Neighborhood pool and park at north end of project, leave sidewalk access
- Believes starting construction before April 2022 would be beneficial
- Move the turnaround near the Highway 112 business center further south to avoid taking parking and the service drive for deliveries
- There are some improvements to Highway 112 (box culverts and shoulders) that need repair sooner than this project is being proposed
- Leave the new traffic signal at Van Asche instead of putting in a round-a-bout
- Stoplight needed at Howard Nickell/Highway 412
- Replace privacy fence for impacted subdivision (Lynn Leigh Hill)

- Project would ease traffic congestion
- Project should extend widening to Ruppel Road
- Lowering the hills will improve safety
- Continue the widening on Highway 112 north, past the creek
- Add a traffic “caution light” at Chris Hollow Road intersection and Deane Solomon intersection to improve safety
- Need PSA to help promote how to use roundabouts prior to construction
- ABF feels property will be negatively affected and has specific requests
- Likes the sidewalk and bike path proposal
- Provide safe access to the bike path on the south side of 112 from Belclaire Estates
- Closing a north driveway for Station 120-125 will impact traffic during peak flows. Driveway was required by fire marshal.
- Relocate bike greenway to the east side to limit ROW on the west
- Ensure roundabouts are large enough for large truck traffic
- Need raised medians in the roundabouts

Attachments: Public handouts, including blank comment form  
Small-scale display copies

SS:DN:am

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

**ARDOT JOB NUMBER 040746  
TRUCKERS DR. – HOWARD NICKELL ROAD (HWY. 112) (FAYETTEVILLE)  
WASHINGTON COUNTY**

**LOCATION:  
MOUNT COMFORT CHURCH OF CHRIST  
3249 WEST MOUNT COMFORT ROAD  
FAYETTEVILLE, AR  
4:00 – 7:00 P.M.  
THURSDAY, MARCH 5, 2020**

Make your comments on this form and leave it with ARDOT personnel at the meeting or mail it by 4:30 p.m. on **Friday, March 20, 2020** to: Arkansas Transportation Dept., Environmental Div., P.O. Box 2261, Little Rock, AR, 72203-2261. Email: [environmentalpimeetings@ardot.gov](mailto:environmentalpimeetings@ardot.gov).

Yes  No

Do you feel there is a need for the proposed widening of Highway 112 from Truckers Drive to Howard Nickell Road, to include roundabouts located at Van Asche Drive and Howard Nickell Road in Fayetteville? Comment (optional) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

(Continue on Back)

Yes    No

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

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

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

Name : \_\_\_\_\_ (Please Print)

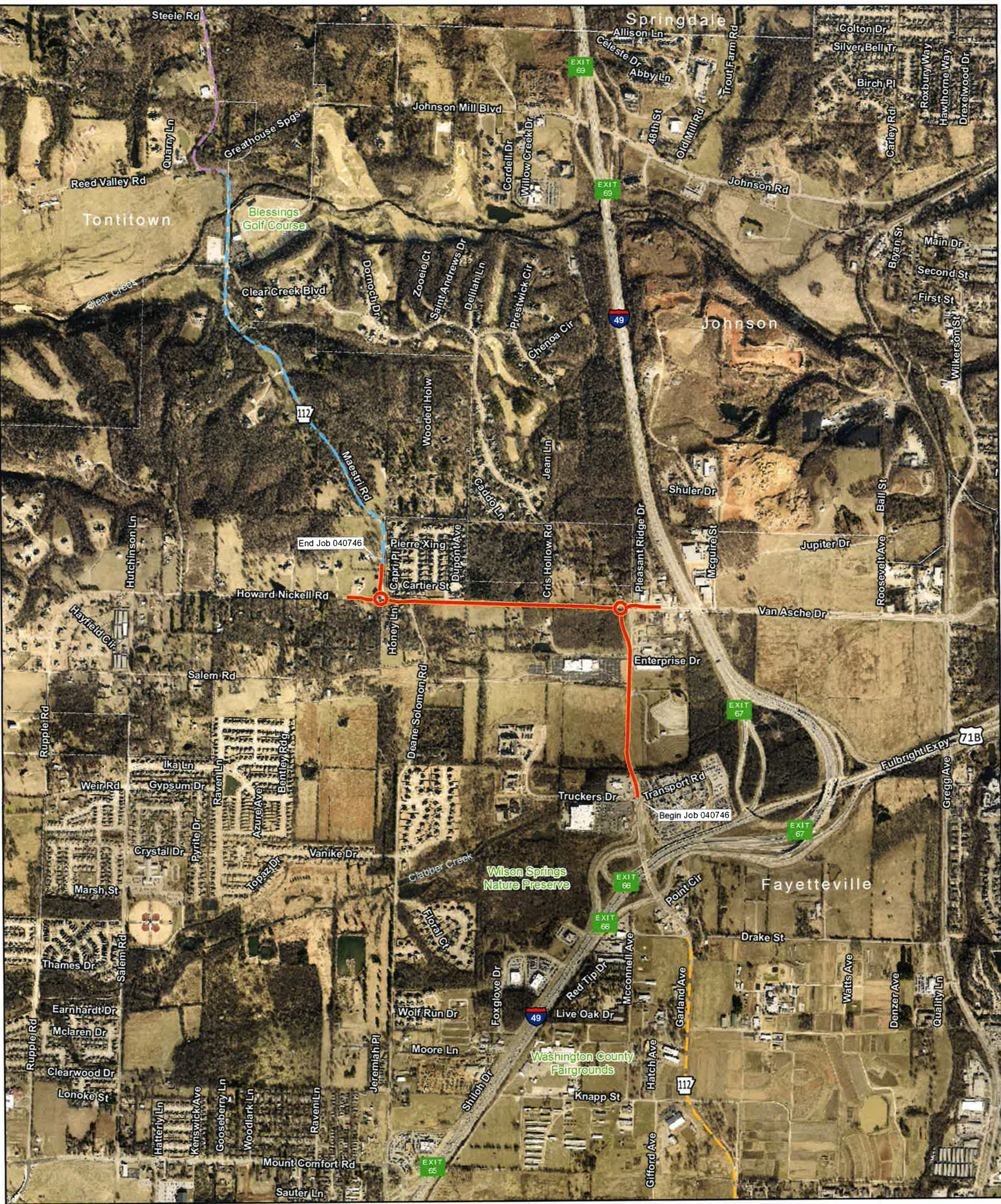
Address: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_--\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E-mail: \_\_\_\_\_

Please make additional comments here. \_\_\_\_\_  
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For additional information, please visit our website at [www.ardot.gov](http://www.ardot.gov).





Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

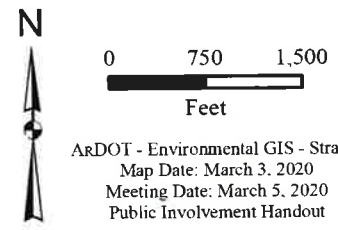
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**AR DOT**  
 ARKANSAS DEPARTMENT  
 OF TRANSPORTATION

**PRELIMINARY**  
**SUBJECT TO REVISION**

Job 040746  
 Truckers Drive – Howard Nickell Road  
 (Fayetteville) (Highway 112)  
 Washington County



- Project Location
- Programmed Jobs
- Job 040720
- Job 040752
- Job 040758

**ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST  
FOR CONSIDERATION OF POTENTIAL IMPACTS**

ARDOT Job Number 040746 FAP Number CMF-9142(48)  
Job Title Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

Environmental Resource	None	Minimal	Major	Comments
Air Quality	X			No impacts anticipated
Cultural Resources	X			"No historic properties affected"
Economic	X			No impacts anticipated
Endangered Species		X		Bat PBO: LAA / other bats: NLAA
Environmental Justice/Title VI	X			No impacts anticipated
Fish and Wildlife		X		Minor impacts during construction
Floodplains		X		Within Zone AE SFHA, regulatory floodway
Forest Service Property	X			Not within USFS administrative boundary
Hazardous Materials/Landfills	X			No impacts anticipated
Land Use		X		33.5 acres proposed ROW, 0.8 acre TCE
Migratory Birds	X			No impacts anticipated
Navigation/Coast Guard	X			No impacts anticipated
Noise Levels		X		Two sensitive receptors impacted
Prime Farmland		X		2.2 acres prime farmland converted
Protected Waters		X		Ecologically Sensitive springs/seeps*
Public Recreation Lands	X			No impacts anticipated
Public Water Supply/WHPA	X			None in project area
Relocatees		X		Two residential relocations
Section 4(f)/6(f)	X			No impacts anticipated
Social	X			No impacts anticipated
Underground Storage Tanks	X			No impacts anticipated
Visual		X		Minor for adjacent landowners
Streams		X		125 linear feet stream impacts
Water Quality		X		Minor impacts during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? Yes  
 Short-term Activity Authorization Required? Yes  
 Section 404 Permit Required? Yes Type Nationwide Permit #14

Remarks: \*ADEQ Ecologically Sensitive Waters, springs and seeps, are found in the project area, Water Pollution Control and Vegetated Buffer Special Provisions will be added to the project contract.

Signature of Evaluator *Simon Stafford* Date October 27, 2020

**ROADWAY DESIGN REQUEST**

Job Number 040746 FAP No. \_\_\_\_\_ County Washington

Job Name Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

Design Engineer Nick Dail Environmental Staff \_\_\_\_\_

Brief Project Description Major widening with a roundabout at Van Asche Dr./Hwy. 112 and  
a roundabout at Howard Nickell Rd./Hwy. 112

A. Existing Conditions:

Roadway Width: 22'-26' Shoulder Type/Width: 1'-3' unpaved

Number of Lanes and Width: 2 @ 10' Existing Right-of-Way: See footnote <sup>(1)</sup>

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

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

B. Proposed Conditions:

Roadway Width: 64'(16' Raised Median) Shoulder Type/Width: C.C.C.&G.

Number of Lanes and Width: 4 @ 11' Proposed Right-of-Way: 180'

Sidewalks? Yes Location: Lt. & Rt.<sup>(2)</sup> Width: 5'-12'<sup>(2)</sup>

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

C. Construction Information:

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

D. Design Traffic Data:

2022 ADT: 9,900 2042 ADT: 13,000 % Trucks: 5%

Design Speed: 45 m.p.h.

E. Approximate total length of project: 1.44 mile(s)

F. Justification for proposed improvements: Capacity Improvements

G. Total Relocates: 2 Residences: 2 Businesses: 0

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

Agency/Official	Person Contacted	Date

<sup>(1)</sup> Minimal Existing Right of Way data is available for this job

<sup>(2)</sup> 12' sidepath to be constructed along the west and south sides of Hwy. 112, 5' sidewalk to be constructed along the east and north sides of Hwy. 112

**TIER 3 CATEGORICAL EXCLUSION  
RE-EVALUATION**

**ARDOT JOB 040746  
FAP CMF-9142(48)  
TRUCKERS DR. – HOWARD NICKELL RD. (FAYETTEVILLE) (S)  
ROUTE 112, SECTION 1  
WASHINGTON COUNTY**

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

By the

U.S. Department of Transportation  
Federal Highway Administration

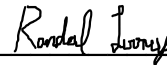
And the

Arkansas Department of Transportation

January 2024

January 2, 2024

Date of Approval



\_\_\_\_\_  
Randal Looney  
Environmental Coordinator  
Federal Highway Administration

A Tier 3 Categorical Exclusion was approved on November 2, 2020 by the Federal Highway Administration under the ARDOT/FHWA Programmatic Agreement on the Processing of Categorical Exclusions. An additional roundabout at a proposed mixed-use development and new access road at the Fellowship Church have since been added to the project design. The proposed typical section has not changed. A project location map showing the location of the design changes is attached.

There are no anticipated relocations or impacts to wetlands, cultural resources, underground storage tanks, hazardous materials sites, public water supplies, or environmental justice populations associated with the proposed design changes. No additional noise impacts were identified.

Although the proposed design modifications would add additional construction area to the proposed project, other modifications to reduce the project footprint had previously been implemented since the approval of the Categorical Exclusion, resulting in less overall right of way, temporary construction easements, and Important Farmland impacts. The current project design is expected to require 23.6 acres of proposed right of way, 1.3 acres of temporary construction easements, and the conversion of 1.4 acres of Prime Farmland. The revised Important Farmland worksheet and State Historic Preservation Officer clearance are attached.

The attached official species list obtained through the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation website lists the following species as possibly occurring within the project area: Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Red Knot (*Calidris canutus rufa*), Piping Plover (*Charadrius melodus*), Gray Bat (*Myotis grisescens*), Northern Long-eared Bat (*Myotis septentrionalis*), Ozark Big-eared Bat (*Corynorhinus townsendii ingens*), Indiana Bat (*Myotis sodalis*), Benton County Cave Crayfish (*Cambarus aculabrum*), Ozark Cavefish (*Troglichthys rosae*), Neosho Mucket (*Lampsilis rafinesqueana*), and Missouri bladderpod (*Physaria filiformis*). The list also includes the proposed Alligator Snapping Turtle (*Macrochelys temminckii*), proposed Tricolored Bat (*Perimyotis subflavus*) and the candidate Monarch Butterfly (*Danaus plexippus*).

Utilizing the attached FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) determination key, it was determined that the project "may affect, and is likely to adversely affect," the Indiana Bat and Northern Long-eared Bat. For the impacts to approximately three acres of suitable habitat \$32,098 will be deducted from the approved Indiana Bat tracking research funding and suitable habitat will be cleared in the winter.

The project would have “no effect” on the Ozark Big-eared Bat, Eastern Black Rail, Piping Plover, and Red Knot due to the limited scope of the project, lack of habitat, and distance to known populations as indicated in the attached USFWS Arkansas DKey consistency letter. The Arkansas DKey also determined that the project “may affect, but is not likely to adversely affect,” the Benton County Cave Crayfish, Missouri bladderpod, Neosho Mucket, and Gray Bat. The project would not jeopardize the existence of the Alligator Snapping Turtle or the Tricolored Bat.

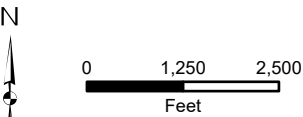
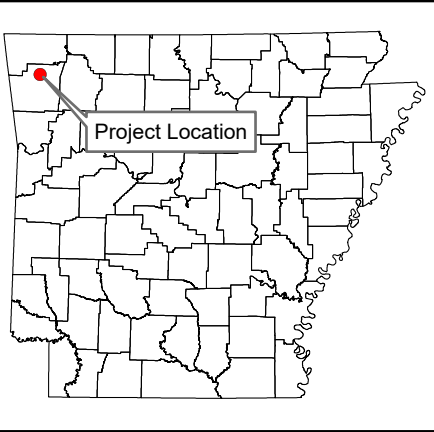
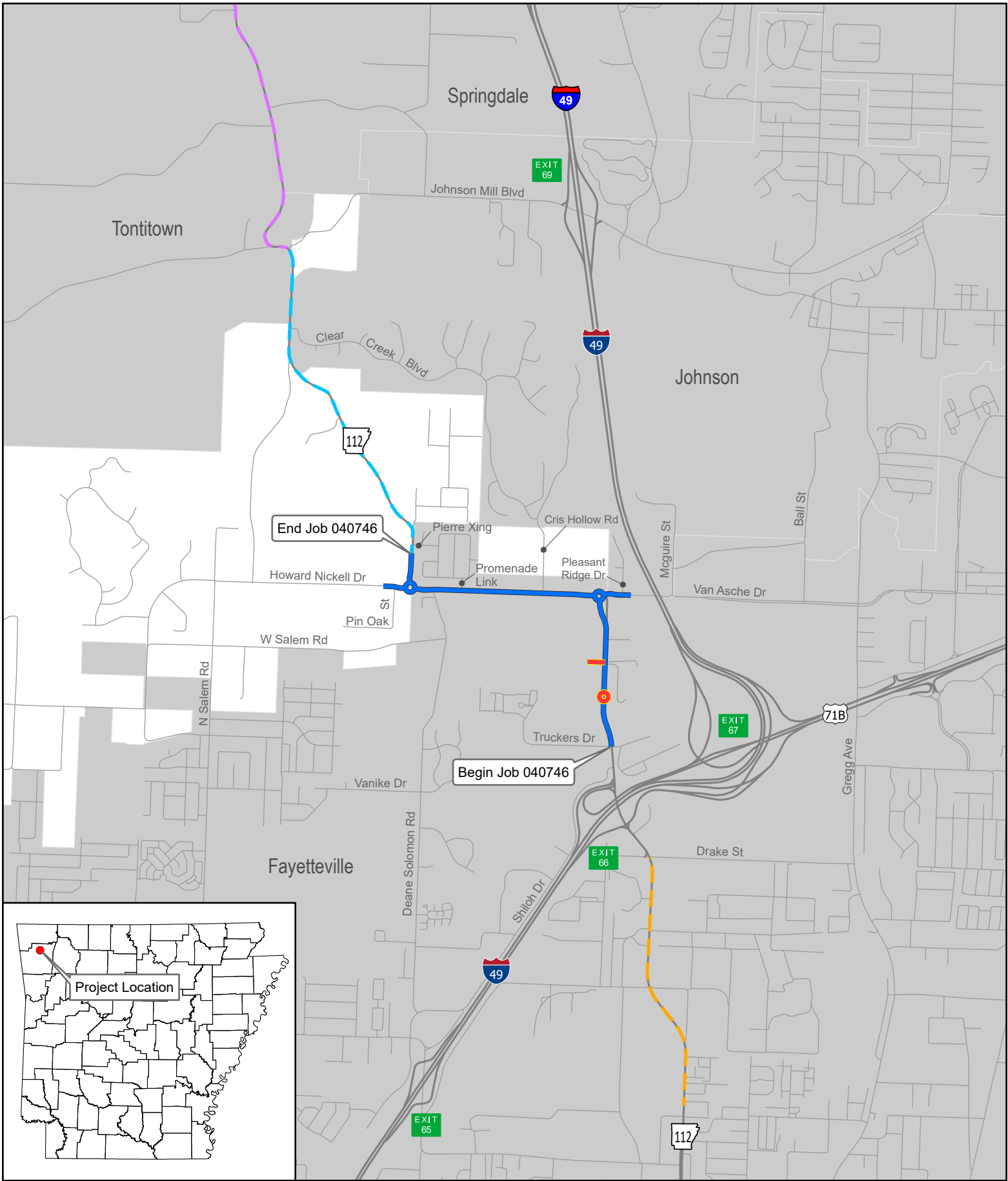
The Monarch Butterfly is a candidate species and is not federally protected under the Endangered Species Act. The USFWS recommends agencies implement conservation measures for candidate species in action areas as these are species that may warrant future protection under the Endangered Species Act. Native wildflowers will be planted after construction as a conservation measure.

Coordination with the USFWS also revealed that the Arkansas Darter (*Etheostoma cragini*), a state critically imperiled species, is found in Clabber Creek. The USFWS and Arkansas Game and Fish Commission jointly requested that the design of the Highway 112 stream crossing over Clabber Creek ensure that passage for aquatic species is maintained. The countersinking of the reinforced concrete box culvert was included in the project design as a result of this request to encourage the formation of a natural stream bottom within the culvert to minimize impacts to the Arkansas Darter.

The project would have a discharge of dredged or fill material into Waters of the United States impacting approximately 125 linear feet of Clabber Creek. The project should be authorized by a Section 404 Nationwide Permit 14 for Linear Transportation Projects as defined in Federal Register 86(245): 73522-73583.

The City of Fayetteville participates in the National Flood Insurance Program. The project lies within a Zone AE Special Flood Hazard Area and regulatory floodway. 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 would constitute a substantial floodplain encroachment or a risk to property or life.

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



**Job 040746**  
**Trukers Dr. – Howard Nickell Rd.**  
**(Fayetteville) (Hwy. 112)**  
**Washington County**

- Design Changes
- Project Location
- Job 040720
- Job 040752
- Job 040758



**Asa Hutchinson**  
Governor  
**Stacy Hurst**  
Secretary

December 15, 2022

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

RE: Washington County: Fayetteville  
Section 106 Review: FHwA  
Proposed Undertaking: Truckers Dr. – Howard Nickell Rd.  
(Fayetteville) (S)  
Route 112, Section 1  
ARDOT Job Number: 040746  
AHPP Tracking Number: 106130.02

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the addendum of the project identification form for the above referenced undertaking in Washington County, Arkansas in Section 28, Township 17 North, Range 30 West. The proposed undertaking involves widening Highway 112 and constructing two roundabouts.

The AHPP concurred with the original scope of work on August 27, 2020 (AHPP Tracking Number 106130.01); the above-mentioned addendum proposes the construction of an additional roundabout, for a total of three. The third roundabout will be located between Truckers Drive and the Highway 112 intersection with West Van Asche Drive in Fayetteville.

Two previously recorded archeological sites (3WA1480 and 3WA1481) are located within the project area but will not be affected. Eight additional shovel tests were excavated, all of which were negative for cultural materials. A total of three structures were identified within the projected area but were determined to not be eligible for inclusion in the National Register of Historic Places (NRHP) (AHPP Tracking Number 106130).


Based on the provided information, the AHPP still concurs with the finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)** for the proposed undertaking and that no further archeological work is needed.

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

Thank you for the opportunity to review this undertaking. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, call Kathryn Bryles at 501-324-9784 or email [kathryn.bryles@arkansas.gov](mailto:kathryn.bryles@arkansas.gov).

Sincerely,

Kathryn  
Bryles

 Digitally signed by  
Kathryn Bryles  
Date: 2022.12.15  
09:46:48 -06'00'

*for*

Scott Kaufman  
Director, AHPP

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

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

<b>PART I (To be completed by Federal Agency)</b>	Job 040746	3. Date of Land Evaluation Request	4. Sheet 1 of _____
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1. Name of Project	5. Federal Agency Involved
2. Type of Project	6. County and State

<b>PART II (To be completed by NRCS)</b>		1. Date Request Received by NRCS	2. Person Completing Form
3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form). YES <input type="checkbox"/> NO <input type="checkbox"/>		4. Acres Irrigated   Average Farm Size	
5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: _____ % _____	7. Amount of Farmland As Defined in FPPA Acres: _____ % _____	
8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS	

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

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

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

<b>PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))</b>	Maximum Points			
1. Area in Nonurban Use	15			
2. Perimeter in Nonurban Use	10			
3. Percent Of Corridor Being Farmed	20			
4. Protection Provided By State And Local Government	20			
5. Size of Present Farm Unit Compared To Average	10			
6. Creation Of Nonfarmable Farmland	25			
7. Availability Of Farm Support Services	5			
8. On-Farm Investments	20			
9. Effects Of Conversion On Farm Support Services	25			
10. Compatibility With Existing Agricultural Use	10			
<b>TOTAL CORRIDOR ASSESSMENT POINTS</b>	<b>160</b>			

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

1. Corridor Selected:	2. Total Acres of Farmlands to be Converted by Project:	3. Date Of Selection:	4. Was A Local Site Assessment Used?  YES <input type="checkbox"/> NO <input type="checkbox"/>
-----------------------	---	-----------------------	--

5. Reason For Selection:

Signature of Person Completing this Part: \_\_\_\_\_ DATE \_\_\_\_\_

*Joshua Graham*

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



IN REPLY REFER TO:

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

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



September 22, 2023

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

Project code: 2023-0005028

RE: ARDOT Job 040746 Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) is responding to your re-initiation of project plans, mitigation calculations, and request to verify that the proposed Arkansas Department of Transportation (ARDOT) Job 040746 Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S), Washington County, Arkansas (Project) may rely on the February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the federally listed endangered Indiana Bat (IBAT) (*Myotis sodalis*) and federally listed threatened Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). We received your request and the associated likely to adversely affect (LAA) Consistency Letter on September 21, 2023.

This letter provides the Service's response as to whether the Project may rely on the BO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) for its effects to the IBAT and NLEB. This letter also responds to your request for Service concurrence that the Project may affect, but is not likely to adversely affect (NLAA) ESA listed species and designated critical habitats other than the IBAT and/or NLEB.

ARDOT determined the Project is LAA the IBAT and NLEB. The Service concurs with this determination because of the proximity of known species sites and foraging range to the project location and the occurrence of suitable foraging habitat for this species that exists on and adjacent to the site. A determination of LAA for IBAT and NLEB is appropriate based on the distance from the existing roadway and amount of suitable habitat being lost. The conservation measures being proposed, site assessment and bridge survey results, and the proposed implementation of all required avoidance and minimization measures (AMMs) will help to mitigate the effects in accordance with the BO.

As stated in the Consistency Letter, the Service concurs with the "No Effect" and "NLAA" determination(s) for the listed species identified. No further consultation for this project is required for these species. The verification letter confirms you may rely on effect determinations

provided in the Arkansas Determination Key for project review and guidance for federally listed species to satisfy agency consultation requirements under Section 7(a)(2) of the ESA.

ARDOT determined the Project will not jeopardize the continued existence of Tricolored Bat (*Perimyotis subflavus*) or Monarch Butterfly (*Danaus plexippus*). The Monarch Butterfly is a candidate species and as such, is not federally protected under the Endangered Species Act. However, the Service recommends agencies implement conservation measures for candidate species in action areas, as these are species, by definition, that may warrant future protection under the ESA. ARDOT will plant native wildflowers after construction as a conservation measure.

On September 13, 2022, the Service published a proposal in the Federal Register to list the Tricolored Bat (*Perimyotis subflavus*) as endangered under the ESA. Species proposed for listing are not afforded protection under the ESA. However, as soon as a listing becomes effective (typically 30 days after publication of the final rule in the Federal Register), the prohibitions against “take” will apply. Therefore, if this project or other future or existing projects have the potential to adversely affect Tricolored Bat after the potential new listing goes into effect, we recommend that the effects of the project on Tricolored Bat and their habitat be analyzed under ESA Section 7. Projects or programs with an existing Section 7 biological opinion may require re-initiation of consultation.

The Tricolored Bat is a small insectivorous bat that typically overwinters in caves, abandoned mines and tunnels, and road-associated culverts (southern portion of the range) and spends the rest of the year in forested habitats, typically roosting among live and dead leaf clusters. For more information on Tricolored Bats and the proposed rule, please see: <https://www.fws.gov/species/tricolored-bat-perimyotis-subflavus>.

The Service reviewed the effects of the proposed Project, which includes ARDOT’s commitment to implement any applicable mitigation measures, as indicated on the Project Submittal Form. We confirm that the proposed Project’s effects are consistent with those analyzed in the BO. The Service determined that projects consistent with the conservation measures and scope of the program analyzed in the BO are not likely to jeopardize the continued existence of IBAT and NLEB. In coordination with your agency and the other sponsoring Federal transportation agencies, the Service will re-evaluate this conclusion annually in-light-of any new pertinent information under the adaptive management provisions of the BO.

Incidental Take: Indiana Bat and Northern Long-eared Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of IBAT and NLEB. As described in the Incidental Take Statement (ITS) of the BO, quantifying the specific number of individuals affected is not practicable. Therefore, the Services uses a surrogate (acreage of tree removal) to prove a means of expressing and monitoring take of the IBAT and NLEB.

The proposed Project will remove 9.2 acres of trees from habitat that is suitable for the IBAT and/or NLEB. Based on the BO, 6.0 acres are anticipated to not result in adverse effects, and 3.2 acres are anticipated to result in adverse effects. ARDOT uses the mitigation ratio of 1.5 from Table 3 of the BO<sup>1</sup> to calculate the compensatory mitigation required to offset these adverse impacts for a total of 4.8 acres of trees that is suitable for the IBAT and/or NLEB.

In order to comply with the mitigation requirements of the BO, the ARDOT will deduct \$32,098 from the Indiana Bat Tracking Project as compensatory mitigation, to compensate for clearing approximately 3.2 acres of trees in suitable habitat within 1 year of this letter or prior to the start of construction, whichever is earliest. These calculations are based on the mitigation identified above<sup>2</sup> and the 2021 Land Use Values in Table 2 of Exhibit E in TCF's ILF Instrument<sup>3</sup>. The deduction of species conservation credits and/or in-lieu fee contributions shall occur prior to construction of a transportation project covered under this programmatic consultation.

Exceptions to this program stipulation include emergency projects that do not require a letting prior to construction. In these cases, purchase of credits and/or in-lieu fee contributions shall occur within three months of completion of the project. This timeframe allows for measuring the acres of habitat affected by the emergency project and for financial processing.

### **Reasonable and Prudent Measures**

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the BO as a surrogate measure of IBAT and/or NLEB incidental take and exempted from the prohibitions of Section 9 of the ESA. Such exemption is effective as long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the BO's ITS.

The sole RPM of the BO's ITS requires the Federal Transportation Agencies to ensure that state/local transportation agencies, who choose to include eligible projects under the programmatic action, incorporate all applicable conservation measures in the project proposals submitted to the Service for ESA Section 7 compliance using the BO. The implementing terms and conditions for this RPM require the Federal Transportation Agencies to offer training to appropriate personnel about using the BO, and promptly report sick, injured, or dead bats (regardless of species) or any other federally listed species located at the project site.

### **Reporting Dead or Injured Bats**

The Federal transportation agency, its state/local cooperators, and any contractors must take care when handling dead or injured IBATs and/or NLEBs, or any other federally listed species that are found at the project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible

<sup>1</sup> [https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT\\_ILF\\_ratios\\_transportation\\_agencies.pdf](https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ILF_ratios_transportation_agencies.pdf)

<sup>2</sup> XX acres \* XX ratio

<sup>3</sup> <https://www.fws.gov/media/exhibit-e-fee-schedule-range-wide-indiana-bat-lieu-fee-program>

for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO has been exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Re-initiation Notice

This letter concludes consultation for the proposed Project, which qualifies for inclusion in the BO issued to the Federal transportation agencies. To maintain this inclusion, a re-initiation of this Project-level consultation is required where the ARDOT's discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. the amount or extent of incidental take of IBAT and NLEB is exceeded;
2. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the BO;
3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or
4. a new species is listed or critical habitat designated that the Project may affect.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the Project removes trees from more than 3.2 acres of habitat suitable for the IBAT and NLEB.
- the Project takes more than 5 IBATs and/or NLEBs resulting from a bridge, culvert, or structure activity at no more than 10 bridges, culverts, or structures range-wide in a 12 month period.<sup>4</sup>

In instances where the amount or extent of incidental take is exceeded, the Federal Highway Administration/Arkansas Department of Transportation is required to immediately request a re-initiation of formal consultation.

An additional concern is maintaining adequate fish passage and the population of Arkansas Darter (*Etheostoma cragini*) in Clabber Creek, a species ranked by the state as S1 — Critically imperiled. The Service has been in communication with the Arkansas Game and Fish Commission and both of our agencies recommend that the design of the crossing incorporate either a bottomless box culvert or bridge span to ensure that passage remains and to minimize the effects to these darters and their habitat.

Mr. John Fleming

5

We appreciate your continued efforts to ensure that this Project is fully consistent with all applicable provisions of the BO. If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at [lindsey\\_lewis@fws.gov](mailto:lindsey_lewis@fws.gov) or (501) 513-4489.

Sincerely,

Chris Davidson  
Acting Field Supervisor

cc: Project File  
Read File

Filename: <https://doimspp->

[my.sharepoint.com/personal/lindsey\\_lewis\\_fws\\_gov/Documents/Documents/PROJECTS/FY2023/ARDO T/Logged/ARDOT Job 040746 - Truckers Ln Re-initiation/20230922\\_Ltr\\_ARDOT Job 040746\\_Concurrence\\_signed.docx](https://doimspp-my.sharepoint.com/personal/lindsey_lewis_fws_gov/Documents/Documents/PROJECTS/FY2023/ARDO%20T/Logged/ARDOT%20Job%20040746%20-%20Truckers%20Ln%20Re-initiation/20230922_Ltr_ARDOT%20Job%20040746_Concurrence_signed.docx)

<sup>4</sup> Annual reports will be completed each year as described in the *Monitoring and Reporting* section of the BO to track the number of projects range-wide where incidental take of IBAT and/or NLEB is reasonably certain to occur from bridge, culvert, or structures activities per annual reporting year.



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Arkansas Ecological Services Field Office  
110 South Amity Suite 300  
Conway, AR 72032-8975  
Phone: (501) 513-4470 Fax: (501) 513-4480

In Reply Refer To:

August 22, 2023

Project Code: 2023-0005028

Project Name: 040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

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

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, 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.*).

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 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 IPaC system by completing the same process used to receive the enclosed list.

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.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2) (c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

**Migratory Birds:** In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/program/migratory-bird-permit/what-we-do>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

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 Code 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

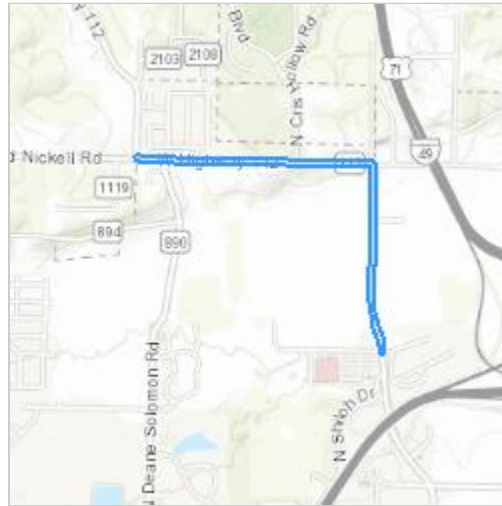
(501) 513-4470

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## PROJECT SUMMARY

Project Code: 2023-0005028  
Project Name: 040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)  
Project Type: Road/Hwy - Maintenance/Modification  
Project Description: Major widening of Hwy 112 including roundabouts.  
Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.11331556877339,-94.1807417152996,14z>



Counties: Washington County, Arkansas

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## ENDANGERED SPECIES ACT SPECIES

There is a total of 14 threatened, endangered, or candidate species on this species list.

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

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

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

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

## MAMMALS

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/6329">https://ecos.fws.gov/ecp/species/6329</a>	Endangered
Indiana Bat <i>Myotis sodalis</i> There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/5949">https://ecos.fws.gov/ecp/species/5949</a>	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>	Endangered
Ozark Big-eared Bat <i>Corynorhinus (=Plecotus) townsendii ingens</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/7245">https://ecos.fws.gov/ecp/species/7245</a>	Endangered
Tricolored Bat <i>Perimyotis subflavus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/10515">https://ecos.fws.gov/ecp/species/10515</a>	Proposed Endangered

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**BIRDS**

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/10477">https://ecos.fws.gov/ecp/species/10477</a>	Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/6039">https://ecos.fws.gov/ecp/species/6039</a>	Threatened
Red Knot <i>Calidris canutus rufa</i> There is <b>proposed</b> critical habitat for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/1864">https://ecos.fws.gov/ecp/species/1864</a>	Threatened

**REPTILES**

NAME	STATUS
Alligator Snapping Turtle <i>Macrochelys temminckii</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/4658">https://ecos.fws.gov/ecp/species/4658</a>	Proposed Threatened

**FISHES**

NAME	STATUS
Ozark Cavefish <i>Amblyopsis rosae</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/6490">https://ecos.fws.gov/ecp/species/6490</a>	Threatened

**CLAMS**

NAME	STATUS
Neosho Mucket <i>Lampsilis rafinesqueana</i> There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/3788">https://ecos.fws.gov/ecp/species/3788</a>	Endangered

**INSECTS**

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

## CRUSTACEANS

NAME	STATUS
Benton County Cave Crayfish <i>Cambarus aculabrum</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/5011">https://ecos.fws.gov/ecp/species/5011</a>	Endangered

## FLOWERING PLANTS

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

## CRITICAL HABITATS

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

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

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## **IPAC USER CONTACT INFORMATION**

Agency: Arkansas Department of Transportation  
Name: mickey matthews  
Address: 10324 I-30  
City: Little Rock  
State: AR  
Zip: 72203  
Email: mickey.matthews@ardot.gov  
Phone: 5015692594

## **LEAD AGENCY CONTACT INFORMATION**

Lead Agency: Federal Highway Administration

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# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Arkansas Ecological Services Field Office  
110 South Amity Suite 300  
Conway, AR 72032-8975  
Phone: (501) 513-4470 Fax: (501) 513-4480

In Reply Refer To:

August 22, 2023

Project code: 2023-0005028

Project Name: 040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

Subject: Consistency letter for '040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Arkansas Determination Key for project review and guidance for federally listed species (Arkansas Dkey).

Dear mickey matthews:

The U.S. Fish and Wildlife Service (Service) received on **August 22, 2023** your effect determination(s) for the '040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)' (the Action) using the Arkansas DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

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

<b>Species</b>	<b>Listing Status</b>	<b>Determination</b>
Benton County Cave Crayfish ( <i>Cambarus aculabrum</i> )	Endangered	NLAA
Eastern Black Rail ( <i>Laterallus jamaicensis ssp. jamaicensis</i> )	Threatened	No effect
Gray Bat ( <i>Myotis grisescens</i> )	Endangered	NLAA
Indiana Bat ( <i>Myotis sodalis</i> )	Endangered	May affect
Missouri Bladderpod ( <i>Physaria filiformis</i> )	Threatened	NLAA
Neosho Mucket ( <i>Lampsilis rafinesqueana</i> )	Endangered	NLAA
Ozark Big-eared Bat ( <i>Corynorhinus (=Plecotus) townsendii ingens</i> )	Endangered	No effect
Ozark Cavefish ( <i>Amblyopsis rosae</i> )	Threatened	NLAA
Piping Plover ( <i>Charadrius melodus</i> )	Threatened	No effect
Red Knot ( <i>Calidris canutus rufa</i> )	Threatened	No effect

## Status

**Consultation with the Service is not complete.** Further consultation or coordination with the Arkansas Ecological Services Office is necessary for those species with a determination of “may affect” (MA) listed above. Please contact our office at 501-513-4470, [arkansas\\_es\\_clearance@fws.gov](mailto:arkansas_es_clearance@fws.gov), or your agency point of contact in the Arkansas Ecological Services Office to discuss methods to avoid or minimize potential adverse effects to those species.

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

FHWA projects should not use the Arkansas Dkey for the Northern Long-eared Bat (NLEB) or Indiana Bat. Please complete the FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat determination key. This key is intended for projects funded or authorized by FHWA, FRA, or FTA, that may affect the endangered Indiana bat and/or the threatened NLEB, which requires consultation with the Service under Section 7 of the ESA.

The Service recommends that your agency contact the Arkansas Ecological Services Field Office or re-evaluate this key in IPaC if: 1) the scope, timing, duration, or location of the proposed project changes, 2) new information reveals the action may affect listed species or designated critical habitat; 3) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Arkansas Ecological Services Field Office should take place before project changes are final or resources committed.

This letter only covers the listed species in the above table. The following species may also occur in the Action area:

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
- Monarch Butterfly *Danaus plexippus* Candidate
- Northern Long-eared Bat *Myotis septentrionalis* Endangered
- Tricolored Bat *Perimyotis subflavus* Proposed Endangered

If you determine your project may affect additional listed or proposed listed species not covered by the Arkansas ESFO DKey, please contact our office at 501-513-4470, [arkansas\\_es\\_clearance@fws.gov](mailto:arkansas_es_clearance@fws.gov), or your agency point of contact Arkansas ESFO to discuss methods to avoid or minimize potential adverse effects to those species. Candidate species are not afforded protection under the ESA; however, we recommend they be considered in project planning and that conservation measures be implemented to avoid or minimize impacts to individuals or their habitat as much as possible.

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

The Service developed the National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with Bald Eagles when and under what circumstances the protective provisions of the Bald and Golden Eagle Protection Act may apply to their activities. The guidelines should be consulted prior to conducting new or intermittent activity near an eagle nest. Activity specific guidelines begin on page 10 of the document. To access a copy of the National Bald Eagle Management Guidelines please visit the Service's Bald and Golden Eagle Management webpage and scroll down to the Guidance and Tools section: <https://www.fws.gov/library/collections/bald-and-golden-eagle-management>

If the recommendations detailed in the National Bald Eagle Management Guidelines cannot be followed, you may apply for a permit to authorize removal or relocation of an eagle nest in certain instances. To obtain an application form or contact information for Regional Migratory Bird Permit Offices please visit the Service's Bald and Golden Eagle Management webpage and scroll down to the Permits section: <https://www.fws.gov/library/collections/bald-and-golden-eagle-management>

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**Action Description**

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

**1. Name**

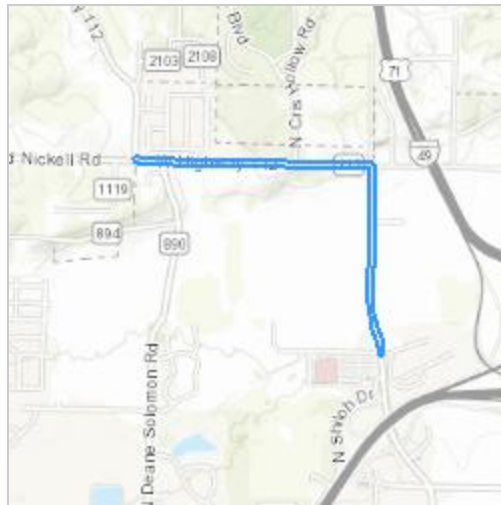
040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

**2. Description**

The following description was provided for the project '040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)':

Major widening of Hwy 112 including roundabouts.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.11331556877339,-94.1807417152996,14z>



**Species Protection Measures**

Bridges and Culverts

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

Pipeline and Linear Projects

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

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## QUALIFICATION INTERVIEW

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

*No*

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

*Yes*

3. Are you the the action agency or the designated non-federal representative?

*Yes*

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

*d. Federal Highway Administration*

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

*Yes*

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

**Automatically answered**

*No*

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

**Automatically answered**

*No*

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

**Automatically answered**

*No*

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

**Automatically answered**

*No*

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

**Automatically answered**

*No*

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

**Automatically answered**

*No*

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12. [Semantic] Does the project intersect the Eastern black rail AOI?  
**Automatically answered**  
*Yes*
  13. Will the project take place in freshwater herbaceous wetlands and/or wet prairies?  
*No*
  14. [Semantic] Does the project intersect the red knot AOI?  
**Automatically answered**  
*Yes*
  15. Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?  
*No*
  16. Does the project take place in marshy or flooded open field habitat?  
*No*
  17. [Semantic] Does the project intersect the Piping Plover AOI?  
**Automatically answered**  
*Yes*
  18. [Semantic] Does the project intersect the Whooping Crane AOI?  
**Automatically answered**  
*No*
  19. [Semantic] Does the project intersect the interior least tern AOI?  
**Automatically answered**  
*No*
  20. [Semantic] Does the project intersect the Gray Bat AOI?  
**Automatically answered**  
*Yes*
  21. Does the project involve changes to an existing bridge or large culvert?  
*No*
  22. [Semantic] Does the project intersect the Ozark Big-eared Bat AOI?  
**Automatically answered**  
*Yes*
  23. Are there any caves within 0.5 mile of the project area?  
*No*
  24. Does the project occur in a subdivision or urban area?  
*Yes*
  25. [Semantic] Does the project intersect the Indiana bat AOI?  
**Automatically answered**  
*Yes*
  26. [Semantic] Does the project intersect the Benton County Cave Crayfish AOI?  
**Automatically answered**  
*Yes*
-

27. Does the project involve boring?  
*No*
28. [Semantic] Does the project intersect the Hell Creek Cave Crayfish AOI?  
**Automatically answered**  
*No*
29. [Semantic] Does the project intersect the Ozark cavefish AOI?  
**Automatically answered**  
*Yes*
30. [Semantic] Does the project intersect the Missouri bladderpod AOI?  
**Automatically answered**  
*Yes*
31. [Semantic] Does the project intersect the Geocarpon AOI?  
**Automatically answered**  
*No*
32. [Semantic] Does the project intersect the running buffalo clover AOI?  
**Automatically answered**  
*No*
33. [Semantic] Does the project intersect the Pondberry AOI?  
**Automatically answered**  
*No*
34. Does the project contain any of the following activity types: Dams or Impoundments (including berms or levees), Municipal or industrial effluent discharge, Mining, Mine reclamation, Disposal of mine wastewater or tailings, Construction of natural gas or oil well pads, Construction greater than 40 acres, Dredging or snag removal, Energy development within floodplain, or OHV trail construction or maintenance?  
*No*
35. Does the project contain any of the following activity types: Boat Ramps, Bridges, Culverts, Residential or Commercial Development, Streambank Stabilization (or other streambank work), Pipeline and linear projects, Water intakes/withdrawals, Forest conversion within 100 feet of occupied streams, or Stream or ditch relocation, straightening, or armoring?  
*Yes*
36. Does the project include Streambank Stabilization (or other streambank work)?  
*No*
37. Does the project include Boat Ramps?  
*No*
38. Does the project include Bridges and Culverts?  
*Yes*
-

39. Does the project include the Bridges and Culverts species [protective measures](#), as applicable to the project and site characteristics?  
*Yes*
40. Does the project include Development?  
*No*
41. Is the project a Pipeline or Linear Project?  
*Yes*
42. Does the project include the Pipeline and Linear Projects species [protective measures](#), as applicable to the project and site characteristics?  
*Yes*
43. Does the project include Water Intakes/Withdrawals?  
*No*
44. Does the project include Stream or Ditch Relocation, Straightening, or Armoring?  
*No*
45. [Semantic] Does the project intersect the rabbitsfoot AOI?  
**Automatically answered**  
*No*
46. [Semantic] Does the project intersect the neosho mucket AOI?  
**Automatically answered**  
*Yes*
47. [Semantic] Does the project intersect the Neosho mucket survey coordination area?  
**Automatically answered**  
*No*
48. [Semantic] Does the project intersect the Spectaclecase AOI?  
**Automatically answered**  
*No*
49. [Semantic] Does the project intersect the snuffbox AOI?  
**Automatically answered**  
*No*
50. [Semantic] Does the project intersect the speckled pocketbook AOI?  
**Automatically answered**  
*No*
51. [Semantic] Does the project intersect the ouachita rock pocketbook AOI?  
**Automatically answered**  
*No*
52. [Semantic] Does the project intersect the fat pocketbook AOI?  
**Automatically answered**  
*No*
-

53. [Semantic] Does the project intersect the Curtis pearlymussel AOI?  
**Automatically answered**  
*No*
54. [Semantic] Does the project intersect the scaleshell AOI?  
**Automatically answered**  
*No*
55. [Semantic] Does the project intersect the pink mucket AOI?  
**Automatically answered**  
*No*
56. [Semantic] Does the project intersect the Arkansas fatmucket AOI?  
**Automatically answered**  
*No*
57. [Semantic] Does the project intersect the winged mapleleaf AOI?  
**Automatically answered**  
*No*
58. [Semantic] Does the project intersect the leopard darter AOI?  
**Automatically answered**  
*No*
59. [Semantic] Does the project intersect the Yellowcheek darter AOI?  
**Automatically answered**  
*No*
60. [Semantic] Does the project intersect the Ozark hellbender AOI?  
**Automatically answered**  
*No*
61. [Semantic] Does the project intersect the harperella AOI?  
**Automatically answered**  
*No*
62. [Semantic] Does the project intersect the pallid sturgeon AOI?  
**Automatically answered**  
*No*
63. [Semantic] Does the project intersect the interior least tern range?  
**Automatically answered**  
*No*
-

## **IPAC USER CONTACT INFORMATION**

Agency: Arkansas Department of Transportation

Name: mickey matthews

Address: 10324 I-30

City: Little Rock

State: AR

Zip: 72203

Email: mickey.matthews@ardot.gov

Phone: 5015692594

## **LEAD AGENCY CONTACT INFORMATION**

Lead Agency: Federal Highway Administration

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## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Arkansas Ecological Services Field Office  
110 South Amity Suite 300  
Conway, AR 72032-8975  
Phone: (501) 513-4470 Fax: (501) 513-4480

In Reply Refer To:

August 22, 2023

Project code: 2023-0005028

Project Name: 040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

Subject: Consistency letter for the '040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)' project under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request dated August 22, 2023 to verify that the **040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)** (Proposed Action) may rely on the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, and may affect, and is likely to adversely affect the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*). Consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) is required.

This "may affect - likely to adversely affect" determination becomes effective when the lead Federal action agency or designated non-federal representative requests the Service rely on the PBO to satisfy the agency's consultation requirements for this project. Please provide this consistency letter to the lead Federal action agency or its designated non-federal representative for review, and as the agency deems appropriate, transmit to this Service Office for verification that the project is consistent with the PBO.

This Service Office will respond by letter to the requesting Federal action agency or designated non-federal representative within 30 calendar days after receiving request for verification to:

- verify that the Proposed Action is consistent with the scope of actions covered under the PBO;
- verify that all applicable avoidance, minimization, and compensation measures are included in the action proposal;
- identify any action-specific monitoring and reporting requirements, consistent with the monitoring and reporting requirements of the PBO, and
- identify anticipated incidental take.

ESA Section 7 compliance for this Proposed Action is not complete until the Federal action agency or its designated non-federal representative receives a verification letter from the Service.

If the Proposed Action is modified, or new information reveals that it may affect the Indiana bat and/or Northern long-eared bat in a manner or to an extent not considered in the PBO, further review to conclude the requirements of ESA Section 7(a)(2) may be required.

**For Proposed Actions that include bridge/culvert or structure removal, replacement, and/or maintenance activities:** If your initial bridge/culvert or structure assessments failed to detect Indiana bats, but you later detect bats prior to, or during construction, please submit the Post Assessment Discovery of Bats at Bridge/Culvert or Structure Form (User Guide Appendix E) to this Service Office. In these instances, potential incidental take of Indiana bats may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency accordingly.

The following species may occur in your project area and **are not** covered by this determination:

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
  - Benton County Cave Crayfish *Cambarus aculabrum* Endangered
  - Eastern Black Rail *Laterallus jamaicensis ssp. jamaicensis* Threatened
  - Gray Bat *Myotis grisescens* Endangered
  - Missouri Bladderpod *Physaria filiformis* Threatened
  - Monarch Butterfly *Danaus plexippus* Candidate
  - Neosho Mucket *Lampsilis rafinesqueana* Endangered
  - Ozark Big-eared Bat *Corynorhinus (=Plecotus) townsendii ingens* Endangered
  - Ozark Cavefish *Amblyopsis rosae* Threatened
  - Piping Plover *Charadrius melodus* Threatened
  - Red Knot *Calidris canutus rufa* Threatened
-

- Tricolored Bat *Perimyotis subflavus* Proposed Endangered

## **PROJECT DESCRIPTION**

The following project name and description was collected in IPaC as part of the endangered species review process.

### **NAME**

040746 - Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

### **DESCRIPTION**

Major widening of Hwy 112 including roundabouts.

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## DETERMINATION KEY RESULT

Based on your answers provided, this project is likely to adversely affect the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required. However, also based on your answers provided, this project may rely on the conclusion and Incidental Take Statement provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

## QUALIFICATION INTERVIEW

1. Is the project within the range of the Indiana bat<sup>[1]</sup>?

[1] See [Indiana bat species profile](#)

**Automatically answered**

Yes

2. Is the project within the range of the Northern long-eared bat<sup>[1]</sup>?

[1] See [Northern long-eared bat species profile](#)

**Automatically answered**

Yes

3. Which Federal Agency is the lead for the action?

A) *Federal Highway Administration (FHWA)*

4. Are *all* project activities limited to non-construction<sup>[1]</sup> activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

No

5. Does the project include *any* activities that are **greater than** 300 feet from existing road/rail surfaces<sup>[1]</sup>?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

No

6. Does the project include *any* activities **within** 0.5 miles of a known Indiana bat and/or NLEB hibernaculum<sup>[1]</sup>?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

7. Is the project located **within** a karst area?

Yes

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8. Will the project include *any* type of activity that could impact a **known** hibernaculum<sup>[1]</sup>, or impact a karst feature (e.g., sinkhole, losing stream, or spring) that could result in effects to a **known** hibernaculum?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

9. Is there *any* suitable<sup>[1]</sup> summer habitat for Indiana Bat or NLEB **within** the project action area<sup>[2]</sup>? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR Section 402.02). Further clarification is provided by the [User's Guide for the Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat](#).

Yes

10. Will the project remove *any* suitable summer habitat<sup>[1]</sup> and/or remove/trim any existing trees **within** suitable summer habitat?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

Yes

11. Will the project clear more than 20 acres of suitable habitat per 5-mile section of road/rail?

No

12. Have presence/probable absence (P/A) summer surveys<sup>[1][2]</sup> been conducted<sup>[3][4]</sup> **within** the suitable habitat located within your project action area?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] Presence/probable absence summer surveys conducted within the fall swarming/spring emergence home range of a documented Indiana bat hibernaculum (contact local Service Field Office for appropriate distance from hibernacula) that result in a negative finding requires additional consultation with the local Service Field Office to determine if clearing of forested habitat is appropriate and/or if seasonal clearing restrictions are needed to avoid and minimize potential adverse effects on fall swarming and spring emerging Indiana bats.

[3] For projects within the range of either the Indiana bat or NLEB in which suitable habitat is present, and no bat surveys have been conducted, the transportation agency will assume presence of the appropriate species. This assumption of presence should be based upon the presence of suitable habitat and the capability of bats to occupy it because of their mobility.

[4] Negative presence/probable absence survey results obtained using the [summer survey guidance](#) are valid for a minimum of two years from the completion of the survey unless new information (e.g., other nearby surveys) suggest otherwise.

No

---

13. Does the project include activities **within documented Indiana bat habitat**<sup>[1][2]</sup>?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry biangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

*No*

14. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors?

*Yes*

15. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors occur<sup>[1]</sup>?

[1] Coordinate with the local Service Field Office for appropriate dates.

*B) During the inactive season*

16. Does the project include activities **within documented NLEB habitat**<sup>[1][2]</sup>?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry biangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

*No*

17. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors?

*Yes*

18. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors occur?

*B) During the inactive season*

19. Will *any* tree trimming or removal occur **within** 100 feet of existing road/rail surfaces?

*Yes*

20. Will *any* tree trimming or removal occur **between** 100-300 feet of existing road/rail surfaces?

*Yes*

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21. Are *all* trees that are being removed clearly demarcated?  
Yes
22. Will the removal of habitat or the removal/trimming of trees include installing new or replacing existing **permanent** lighting?  
No
23. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?  
No
24. Does the project include slash pile burning?  
No
25. Does the project include *any* bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?  
No
26. Does the project include the removal, replacement, and/or maintenance of *any* structure other than a bridge? (e.g., rest areas, offices, sheds, outbuildings, barns, parking garages, etc.)  
No
27. Will the project involve the use of **temporary** lighting *during* the active season?  
No
28. Will the project install new or replace existing **permanent** lighting?  
Yes
29. Is there *any* suitable habitat **within** 1,000 feet of the location(s) where **permanent** lighting will be installed or replaced?  
Yes
30. Does the project include percussives or other activities (**not including tree removal/trimming or bridge/structure work**) that will increase noise levels above existing traffic/background levels?  
No
31. Are *all* project activities that are **not associated with** habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives, limited to actions that DO NOT cause any additional stressors to the bat species?  
  
Examples: lining roadways, unlighted signage , rail road crossing signals, signal lighting, and minor road repair such as asphalt fill of potholes, etc.  
Yes
32. Will the project raise the road profile **above the tree canopy**?  
No
-

33. Are the project activities that are not associated with habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives consistent with a No Effect determination in this key?

**Automatically answered**

*Yes, other project activities are limited to actions that DO NOT cause any additional stressors to the bat species as described in the BA/BO*

34. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

**Automatically answered**

*Yes, because the tree removal/trimming that occurs outside of the Indiana bat's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.*

35. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

**Automatically answered**

*Yes, because the tree removal that occurs outside the Indiana bat's active season is 100-300 feet from the existing road/rail surface, and is not in documented roosting/foraging habitat or travel corridors.*

36. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

**Automatically answered**

*Yes, because the tree removal/trimming that occurs outside of the NLEB's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.*

37. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

**Automatically answered**

*Yes, because the tree removal that occurs outside the NLEB's active season is 100-300 feet from the existing road/rail surface, and is not in documented roosting/foraging habitat or travel corridors.*

38. **General AMM 1**

Will the project ensure *all* operators, employees, and contractors working in areas of known or presumed bat habitat are aware of *all* FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable Avoidance and Minimization Measures?

Yes

---

39. **Hibernacula AMM 1**

Will the project ensure that on-site personnel will use best management practices<sup>[1]</sup>, secondary containment measures, or other standard spill prevention and countermeasures to avoid impacts to possible hibernacula?

[1] Coordinate with the appropriate Service Field Office on recommended best management practices for karst in your state.

Yes

40. **Hibernacula AMM 1**

Will the project ensure that, where practicable, a 300 foot buffer will be employed to separate fueling areas and other major containment risk activities from caves, sinkholes, losing streams, and springs in karst topography?

Yes

41. **Tree Removal AMM 1**

Can *all* phases/aspects of the project (e.g., temporary work areas, alignments) be modified, to the extent practicable, to avoid tree removal<sup>[1]</sup> in excess of what is required to implement the project safely?

Note: Tree Removal AMM 1 is a minimization measure, the full implementation of which may not always be practicable. Projects may still be NLAA as long as Tree Removal AMMs 2, 3, and 4 are implemented and LAA as long as Tree Removal AMMs 3, 5, 6, and 7 are implemented.

[1] The word "trees" as used in the AMMs refers to trees that are suitable habitat for each species within their range. See the USFWS' current summer survey guidance for our latest definitions of suitable habitat.

Yes

42. **Tree Removal AMM 3**

Can tree removal be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits)?

Yes

43. **Lighting AMM 2**

Does the lead agency use the BUG (Backlight, Uplight, and Glare) system developed by the Illuminating Engineering Society<sup>[1]</sup> to rate the amount of light emitted in unwanted directions?

[1] Refer to [The BUG System—A New Way To Control Stray Light](#)

Yes

44. **Lighting AMM 2**

Will the **permanent** lighting be designed to be as close to 0 for all three BUG ratings as possible, with a priority of "uplight" of 0 and "backlight" as low as practicable?

Yes

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45. For Indiana bat, if applicable, compensatory mitigation measures are required to offset adverse effects on the species (see Section 2.10 of the BA). Please select the mechanism in which compensatory mitigation will be implemented:

5. *Unknown*

## PROJECT QUESTIONNAIRE

1. Have you made a No Effect determination for *all* other species indicated on the FWS IPaC generated species list?

*No*

2. Have you made a May Affect determination for *any* other species on the FWS IPaC generated species list?

*Yes*

3. How many acres<sup>[1]</sup> of trees are proposed for removal between 0-100 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

*6.0*

4. How many acres<sup>[1]</sup> of trees are proposed for removal between 100-300 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

*3.2*

5. **Please verify:**

All tree removal will occur greater than 0.5 mile from any hibernaculum.

*Yes, I verify that all tree removal will occur greater than 0.5 miles from any hibernaculum.*

6. Is the project location 0-100 feet from the edge of existing road/rail surface?

*Yes*

7. Is the project location 100-300 feet from the edge of existing road/rail surface?

*Yes*

8. **Please verify:**

No documented Indiana bat roosts or surrounding summer habitat within 0.25 mile of documented roosts will be impacted between May 1 and July 31.

*Yes, I verify that no documented Indiana bat roosts or surrounding summer habitat within 0.25 mile of documented roosts will be impacted during this period.*

9. **Please verify:**

No documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted between June 1 and July 31.

*Yes, I verify that no documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted during this period.*

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10. You have indicated that the following Avoidance and Minimization Measures (AMMs) will be implemented as part of the proposed project:

- *Hibernacula AMM 1*
- *Tree Removal AMM 1*
- *Lighting AMM 2*
- *Tree Removal AMM 3*
- *General AMM 1*

## **AVOIDANCE AND MINIMIZATION MEASURES (AMMS)**

This determination key result includes the commitment to implement the following Avoidance and Minimization Measures (AMMs):

### **HIBERNACULA AMM 1**

For projects located within karst areas, on-site personnel will use best management practices, secondary containment measures, or other standard spill prevention and countermeasures to avoid impacts to possible hibernacula. Where practicable, a 300 foot buffer will be employed to separate fueling areas and other major containment risk activities from caves, sinkholes, losing streams, and springs in karst topography.

### **TREE REMOVAL AMM 1**

Modify all phases/aspects of the project (e.g., temporary work areas, alignments) to avoid tree removal.

### **LIGHTING AMM 2**

When installing new or replacing existing permanent lights, use downward-facing, full cut-off lens lights (with same intensity or less for replacement lighting); or for those transportation agencies using the BUG system developed by the Illuminating Engineering Society, be as close to 0 for all three ratings with a priority of "uplight" of 0 and "backlight" as low as practicable.

### **TREE REMOVAL AMM 3**

Ensure tree removal is limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).

### **GENERAL AMM 1**

Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs.

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## **DETERMINATION KEY DESCRIPTION: FHWA, FRA, FTA PROGRAMMATIC CONSULTATION FOR TRANSPORTATION PROJECTS AFFECTING NLEB OR INDIANA BAT**

This key was last updated in IPaC on October 11, 2022. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which may require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered **Indiana bat** (*Myotis sodalis*) and the threatened **Northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects](#). The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.

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## **IPAC USER CONTACT INFORMATION**

Agency: Arkansas Department of Transportation

Name: mickey matthews

Address: 10324 I-30

City: Little Rock

State: AR

Zip: 72203

Email: mickey.matthews@ardot.gov

Phone: 5015692594

## **LEAD AGENCY CONTACT INFORMATION**

Lead Agency: Federal Highway Administration

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**ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST  
FOR CONSIDERATION OF POTENTIAL IMPACTS**

ARDOT Job Number 040746 FAP Number CMF-9142(48)

Job Title Truckers Dr. – Howard Nickell Rd. (Fayetteville) (S)

Environmental Resource	None	Minimal	Major	Comments
Air Quality	X			No impacts anticipated
Cultural Resources	X			"No historic properties affected"
Economic	X			No impacts anticipated
Endangered Species		X		"No effect", "NLAA", and PBO "LAA"
Environmental Justice/Title VI	X			No impacts anticipated
Fish and Wildlife		X		Temporary impacts during construction
Floodplains		X		Within Zone AE SFHA & floodway
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No impacts anticipated
Land Use		X		Total 23.6 acres ROW, 1.3 acres TCE
Migratory Birds	X			No impacts anticipated
Navigation/Coast Guard	X			None in project area
Noise Levels	X			Two sensitive receptors impacted
Prime Farmland		X		Conversion of 1.4 acres Prime Farmland
Protected Waters		X		ESW: WPC SP
Public Recreation Lands	X			No impacts anticipated
Public Water Supply/WHPA	X			No impacts anticipated
Relocatees	X			No relocations anticipated
Section 4(f)/6(f)	X			No impacts anticipated
Social	X			No impacts anticipated
Underground Storage Tanks	X			No impacts anticipated
Visual	X			No impacts anticipated
Streams		X		Impacts to 125 lf of Clabber Creek
Water Quality		X		Temporary impacts during construction
Wetlands	X			No impacts anticipated
Wildlife Refuges	X			No impacts anticipated

Section 401 Water Quality Certification Required? Yes  
 Short-term Activity Authorization Required? Yes  
 Section 404 Permit Required? Yes Type Nationwide Permit #14

Remarks: Ecologically Sensitive Waterways in project area – Water Pollution Control and Vegetated Buffer  
Special Provisions added to project contract.

Signature of Evaluator *Simon Steffeld* Date December 22, 2023



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

March 6, 2025

Regulatory Division

**NATIONWIDE PERMIT NO. SWL 2024-00378**

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

Dear Mr. Seagraves:

Please refer to your recent request concerning Department of the Army permit requirements pursuant to Section 404 of the Clean Water Act. You requested authorization for the placement of dredged and fill material in waters of the United States associated with replacing two metal arched culverts in Clabber Creek with a quad-barreled box culvert. The project is associated with widening State Highway 112 from Truckers Drive to Howard Nickell Road in the City of Fayetteville. The project will consist of widening (and two roundabouts) approximately 1.5 miles of Highway 112 to four 11-foot-wide lanes, with a 16-foot-wide raised median and curb and gutter. The project will also construct a 5-foot-wide sidewalk along the east and north sides of the highway and a 12-foot-wide paved multi-use path along the west and south sides of the highway. The project is likely to adversely affect the Indiana Bat (*Myotis sodalis*) and Northern Long-eared Bat (*Myotis septentrionalis*), and the state critically-imperiled Arkansas Darter (*Etheostoma cragini*) is known to occur in Clabber Creek. Clabber Creek is designated as an Ecologically Sensitive Waterbody and the Arkansas Department of Energy and Environment (ADEE), Division of Environmental Quality (DEQ), issued the individual water quality certification on January 6, 2025. The project will impact approximately 0.028 acres of Clabber Creek. At the request of the U.S. Fish and Wildlife Service and the Arkansas Game and Fish Commission, ARDOT will countersink the bottom of the box culvert 1 foot in depth to encourage the formation of a natural stream bottom within the culvert. The project will require the acquisition of approximately 33.5 acres of right-of-way. The stream crossing lies within a Zone A Special Flood Hazard Area and ARDOT determined that adjacent properties would not be impacted nor have a greater flood risk than existed before construction of the project. The project will not impact any cultural resources. The Federal Highway Administration approved the project as a Tier 3 Categorical Exclusion on November 2, 2020. The project is located in sections 27, 28, 29 and 33, T. 17 N., R 30 W., Washington County, Arkansas. A vicinity map, project location maps and general plans are enclosed.

The proposed activities are authorized by Department of the Army Nationwide Permit (NWP) **No. 14** (copy enclosed), provided you comply with the General Conditions therein, and the following **Special Condition**. We have highlighted the General Conditions of the NWP that are the most pertinent to your project. You should become familiar with the conditions and maintain a copy of the permit at the worksite for ready reference. If changes are proposed in the design or location of the project, you should submit revised plans to this office for approval before construction of the change begins.

**Special Condition:**

**ARDOT agrees to consult with the U.S. Fish and Wildlife Service for any off-site tree clearing activities which would occur during the Northern Long-eared Bat and Indiana Bat summer active period, March 15 through November 14.**

Please pay particular attention to General Condition No. 12 which stipulates that appropriate erosion and siltation controls be used during construction and all exposed soil be permanently stabilized. Erosion control measures must be implemented before, during and after construction. Also, in order to fully comply with the conditions of the NWP, you must submit the enclosed compliance certification within 30 days of completion of the project. This is required pursuant to General Condition No. 30 of the permit. We have also enclosed a copy of the individual Section 401 water quality certification (WQC). If you have any questions regarding the WQC, please contact Mr. Jim Wise at [jim.wise@adeq.state.ar.us](mailto:jim.wise@adeq.state.ar.us) or (501) 682-0631.

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

Your cooperation in the Regulatory Program is appreciated. If you have any additional questions about this permit or any of its provisions, please contact Mr. Johnny McLean at (501) 324-5295 and refer to Permit No. **SWL 2024-00378, Highway 112 widening from Truckers Drive to Howard Nickell Road, (ARDOT Job No. 040746).**

Sincerely,



Chris Joyner  
Chief, Evaluation Branch

Copy Furnished:

US Fish and Wildlife Service, Mr. Lindsey Lewis

AR Dept. of Energy and Env., Div. of Envir. Quality, Water Quality Planning Branch, Mr. Jim  
Wise

Chief, Regulatory Enforcement

**PERMITTEE COMPLIANCE CERTIFICATION**

**PERMIT NO.:** SWL 2024-00378, Highway 112 widening Truckers Drive to Howard Nickell Road (Clabber Creek), (ARDOT Job No. 040746)

**NWP/S NO.:** 14

**PERMITTEE NAME:** ARDOT

**DATE OF ISSUANCE:** March 6, 2025

**PROJECT MANAGER:** Johnny McLean

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

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

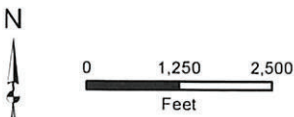
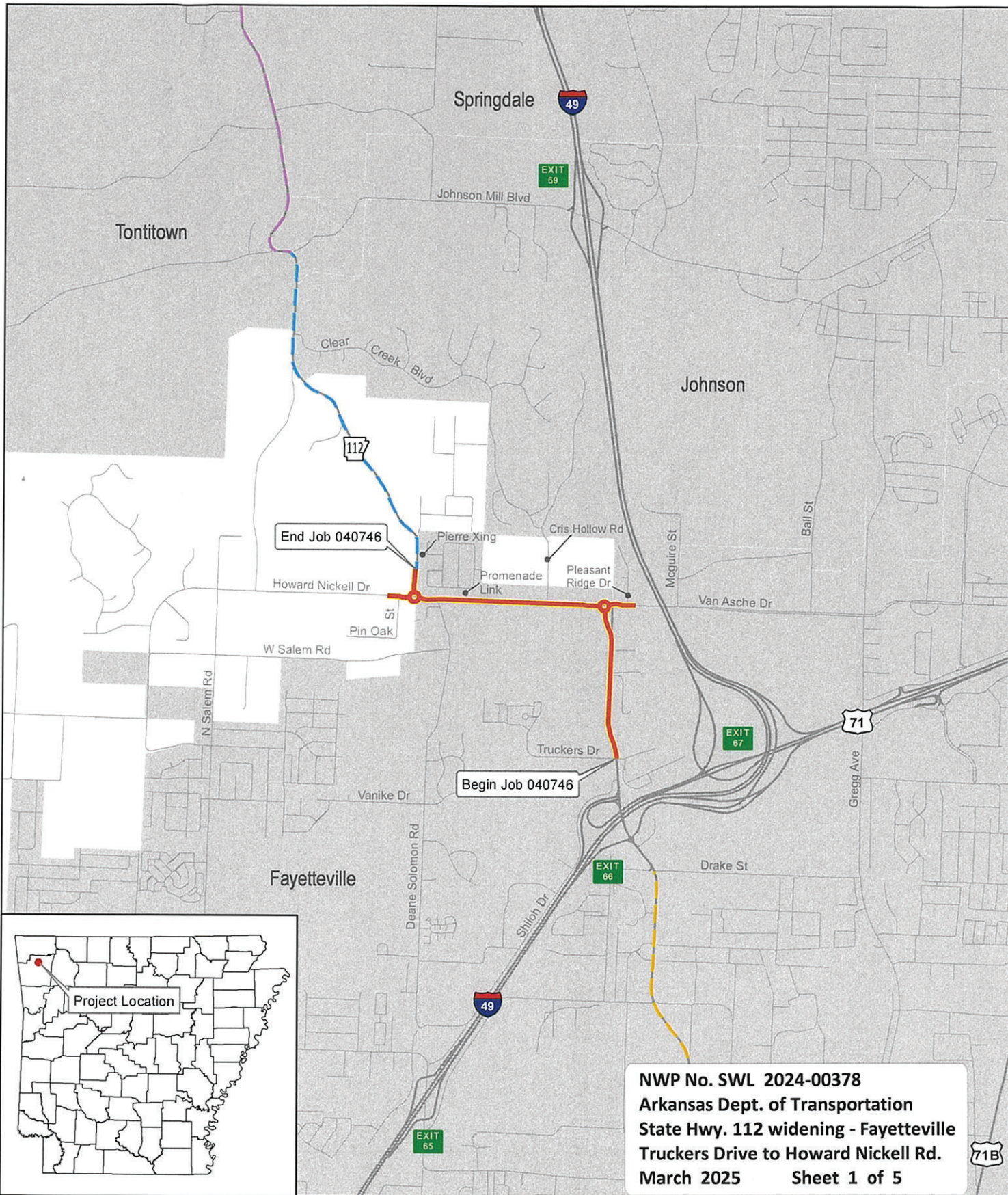
**Please note that your permitted activity is subject to a compliance inspection by a US Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.**

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

**DATE WORK COMPLETED:** \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE OF PERMITTEE**

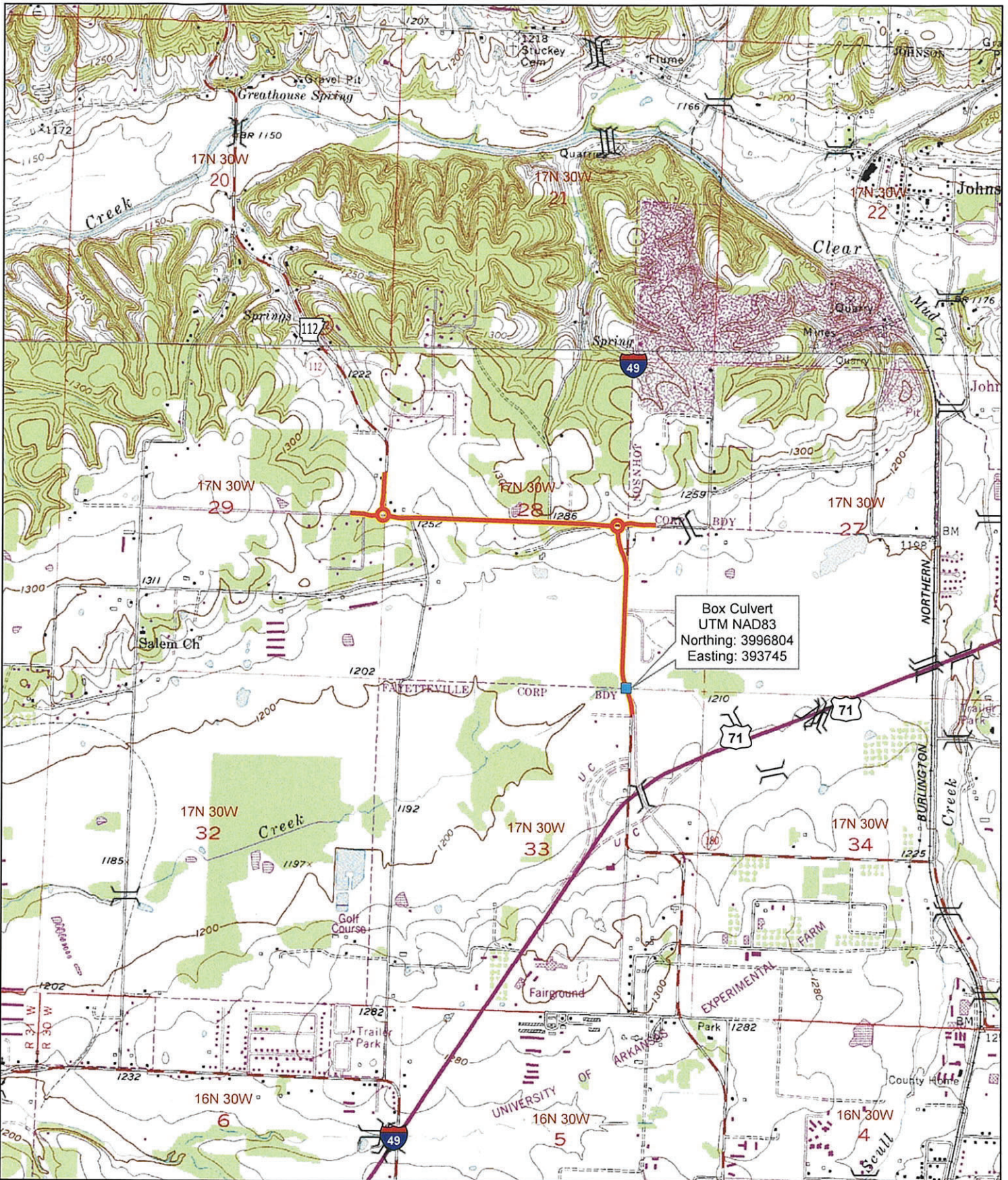
\_\_\_\_\_  
**DATE**



ArDOT - Environmental GIS - Strawn  
May 7, 2020

Job 040746  
Trucker's Drive – Howard Nickell Rd.  
(Fayetteville) (Hwy. 112)  
Washington County

- Project Location
- Programmed Jobs
- Job 040720
- Job 040752
- Job 040758



Box Culvert  
 UTM NAD83  
 Northing: 3996804  
 Easting: 393745



Scale - 1:24,000

ARDOT - Environmental GIS - Strawn  
 June 25, 2021

Job 040785  
 Truckers Dr. – Howard Nickell Rd.  
 (Fayetteville)  
 Washington County

Project Location

USGS Topographic Map:  
 Fayetteville 1982

ARKANSAS DEPARTMENT OF TRANSPORTATION  
CONSTRUCTION PLANS FOR STATE HIGHWAY

DATE REVISION	DATE FILED	DATE REVISION	DATE FILED	FED. DIST. NO.	STATE	FED. AID PROGRAM	SHEET NO.	TOTAL SHEETS
				6	ARK.			
JOB NO. 040746								
② TRUCKERS DR.-HOWARD NICKELL RD. (FAYETTEVILLE) (S)								

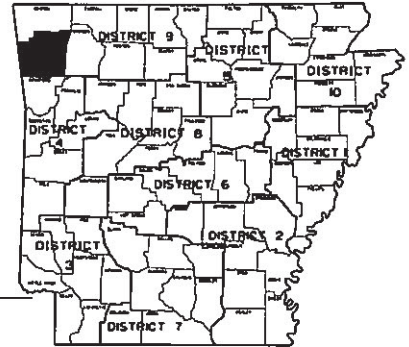
**TRUCKERS DR. - HOWARD  
NICKELL RD.  
(FAYETTEVILLE) (S)**

WASHINGTON COUNTY  
ROUTE 112 SECTION 1

FED. AID PROJ. ----- (---)

**JOB 040746**

NOT TO SCALE



ARK. HWY. DIST. NO. 4

DESIGN TRAFFIC DATA

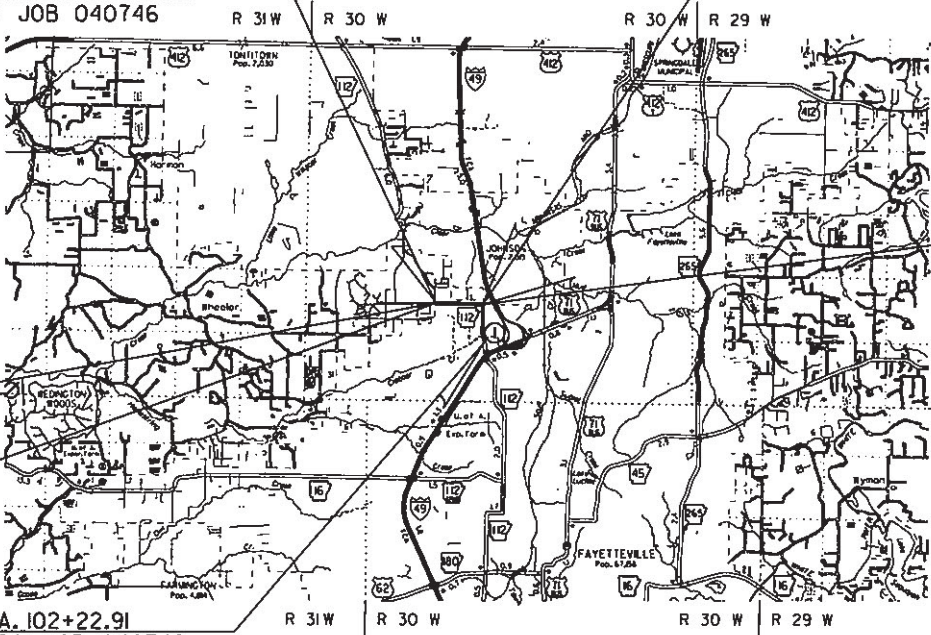
DESIGN YEAR.....	2042
2022 ADT.....	9900
2042 ADT.....	13000
2042 D.V.....	1430
DIRECTIONAL DISTRIBUTION.....	0.60
TRUCKS.....	5%
DESIGN SPEED.....	45 MPH

PROJECT AREA  
STA. 306+90.00  
END HWY. 112 NORTH  
& JOB 040746

STA. 200+00.00  
BEGIN HWY. 112 WEST  
LOG MILE 2.85

STA. 133+02.18  
END HWY. 112 NORTH

STA. 102+22.91  
BEGIN JOB 040746  
& HWY. 112 NORTH  
LOG MILE 2.25



**PRELIMINARY**  
SUBJECT TO REVISION

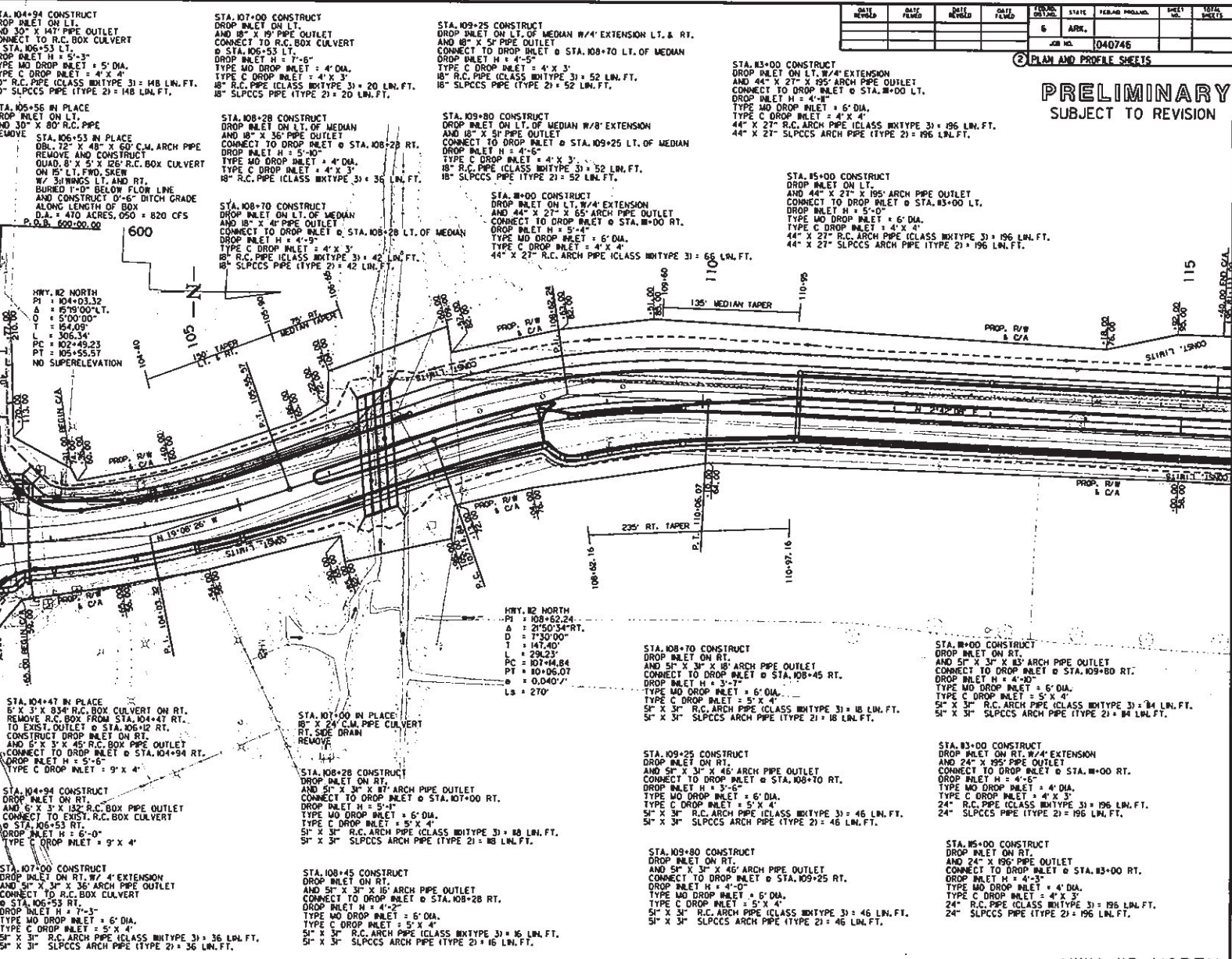
PROJECT	END PROJECT
03°	N 36° 07' 10"
00°	W 94° 11' 38"

LENGTH OF PROJECT CALCULATED ALONG C.L.			
GROSS LENGTH OF PROJECT	7590.28	FEET OR	1.438 MILES
NET . . . . . ROADWAY	7554.86		1.431 MILES
NET . . . . . BRIDGES	35.42		0.007 MILES
NET . . . . . PROJECT	7590.28		1.438 MILES

DATE REVISION	DATE REVISION	DATE REVISION	DATE REVISION	TOTAL SHEETS	STATE	FEDERAL PROJECT	SHEET NO.	TOTAL SHEETS
				6	ARK.		040746	

2 PLAN AND PROFILE SHEETS

**PRELIMINARY**  
SUBJECT TO REVISION



STA. 104+94 CONSTRUCT  
DROP INLET ON LT.  
AND 30" X 147" PIPE OUTLET  
CONNECT TO R.C. BOX CULVERT  
@ STA. 106+53 RT.  
DROP INLET H = 5'-3"  
TYPE MO DROP INLET = 5' DIA.  
TYPE C DROP INLET = 4' X 4'  
18" R.C. PIPE (CLASS MNTYPE 3) = 18 LN. FT.  
18" SLPPCS PIPE (TYPE 2) = 18 LN. FT.

STA. 107+00 CONSTRUCT  
DROP INLET ON LT.  
AND 18" X 19" PIPE OUTLET  
CONNECT TO R.C. BOX CULVERT  
@ STA. 106+53 LT.  
DROP INLET H = 7'-6"  
TYPE MO DROP INLET = 4' DIA.  
TYPE C DROP INLET = 4' X 3'  
18" R.C. PIPE (CLASS MNTYPE 3) = 20 LN. FT.  
18" SLPPCS PIPE (TYPE 2) = 20 LN. FT.

STA. 109+25 CONSTRUCT  
DROP INLET ON LT. OF MEDIAN W/4' EXTENSION LT. & RT.  
AND 18" X 5" PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 108+70 LT. OF MEDIAN  
DROP INLET H = 4'-5"  
TYPE C DROP INLET = 4' X 3'  
18" R.C. PIPE (CLASS MNTYPE 3) = 52 LN. FT.  
18" SLPPCS PIPE (TYPE 2) = 52 LN. FT.

STA. 113+00 CONSTRUCT  
DROP INLET ON LT. W/4' EXTENSION  
AND 44" X 27" X 195" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 110+00 LT.  
DROP INLET H = 4'-8"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 4' X 4'  
44" X 27" R.C. ARCH PIPE (CLASS MNTYPE 3) = 196 LN. FT.  
44" X 27" SLPPCS ARCH PIPE (TYPE 2) = 196 LN. FT.

STA. 108+28 CONSTRUCT  
DROP INLET ON LT. OF MEDIAN  
AND 18" X 36" PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 108+28 RT.  
DROP INLET H = 5'-0"  
TYPE MO DROP INLET = 4' DIA.  
TYPE C DROP INLET = 4' X 3'  
18" R.C. PIPE (CLASS MNTYPE 3) = 36 LN. FT.

STA. 109+80 CONSTRUCT  
DROP INLET ON LT. OF MEDIAN W/8' EXTENSION  
AND 18" X 5" PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 109+25 LT. OF MEDIAN  
DROP INLET H = 4'-5"  
TYPE C DROP INLET = 4' X 3'  
18" R.C. PIPE (CLASS MNTYPE 3) = 52 LN. FT.  
18" SLPPCS PIPE (TYPE 2) = 52 LN. FT.

STA. 115+00 CONSTRUCT  
DROP INLET ON LT.  
AND 44" X 27" X 195" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 113+00 LT.  
DROP INLET H = 5'-0"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 4' X 4'  
44" X 27" R.C. ARCH PIPE (CLASS MNTYPE 3) = 196 LN. FT.  
44" X 27" SLPPCS ARCH PIPE (TYPE 2) = 196 LN. FT.

STA. 108+70 CONSTRUCT  
DROP INLET ON LT. OF MEDIAN  
AND 18" X 4" PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 108+28 LT. OF MEDIAN  
DROP INLET H = 4'-9"  
TYPE C DROP INLET = 4' X 3'  
18" R.C. PIPE (CLASS MNTYPE 3) = 42 LN. FT.  
18" SLPPCS PIPE (TYPE 2) = 42 LN. FT.

STA. 110+00 CONSTRUCT  
DROP INLET ON LT. W/4' EXTENSION  
AND 44" X 27" X 195" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 110+00 RT.  
DROP INLET H = 5'-4"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 4' X 4'  
44" X 27" R.C. ARCH PIPE (CLASS MNTYPE 3) = 66 LN. FT.

HWY. 112 NORTH  
PI = 104+00.00  
TA = 1519.00' LT.  
EA = 5'00'00"  
L = 306.34'  
PC = 102+49.23  
PT = 105+55.57  
NO SURVEILLATION

HWY. 112 NORTH  
PI = 108+62.24  
TA = 2150.34' RT.  
EA = 7'30'00"  
L = 147.40'  
PC = 107+44.84  
PT = 109+06.07  
b = 0.0407'  
LS = 270'

STA. 104+47 IN PLACE  
REMOVE R.C. BOX FROM STA. 104+47 RT.  
TO EXIST. OUTLET @ STA. 106+12 RT.  
CONSTRUCT DROP INLET ON RT.  
AND 5" X 3" X 45" R.C. BOX PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 104+94 RT.  
DROP INLET H = 5'-6"  
TYPE C DROP INLET = 9' X 4'

STA. 107+00 IN PLACE  
REMOVE R.C. BOX FROM STA. 107+00 RT.  
REMOVE  
REMOVE

STA. 108+70 CONSTRUCT  
DROP INLET ON RT.  
AND 5" X 3" X 18" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 108+45 RT.  
DROP INLET H = 3'-7"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 5' X 4'  
5" X 3" R.C. ARCH PIPE (CLASS MNTYPE 3) = 18 LN. FT.  
5" X 3" SLPPCS ARCH PIPE (TYPE 2) = 18 LN. FT.

STA. 110+00 CONSTRUCT  
DROP INLET ON RT.  
AND 5" X 3" X 18" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 109+80 RT.  
DROP INLET H = 4'-0"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 5' X 4'  
5" X 3" R.C. ARCH PIPE (CLASS MNTYPE 3) = 14 LN. FT.  
5" X 3" SLPPCS ARCH PIPE (TYPE 2) = 14 LN. FT.

STA. 104+94 CONSTRUCT  
DROP INLET ON RT.  
AND 6" X 3" X 132" R.C. BOX PIPE OUTLET  
CONNECT TO EXIST. R.C. BOX CULVERT  
@ STA. 106+53 RT.  
DROP INLET H = 6'-0"  
TYPE C DROP INLET = 9' X 4'

STA. 108+28 CONSTRUCT  
DROP INLET ON RT.  
AND 5" X 3" X 18" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 107+00 RT.  
DROP INLET H = 5'-11"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 5' X 4'  
5" X 3" R.C. ARCH PIPE (CLASS MNTYPE 3) = 18 LN. FT.  
5" X 3" SLPPCS ARCH PIPE (TYPE 2) = 18 LN. FT.

STA. 109+25 CONSTRUCT  
DROP INLET ON RT.  
AND 5" X 3" X 46" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 108+70 RT.  
DROP INLET H = 3'-5"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 5' X 4'  
5" X 3" R.C. ARCH PIPE (CLASS MNTYPE 3) = 46 LN. FT.  
5" X 3" SLPPCS ARCH PIPE (TYPE 2) = 46 LN. FT.

STA. 113+00 CONSTRUCT  
DROP INLET ON RT. W/4' EXTENSION  
AND 24" X 195" PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 110+00 RT.  
DROP INLET H = 4'-6"  
TYPE MO DROP INLET = 4' DIA.  
TYPE C DROP INLET = 4' X 3'  
24" R.C. PIPE (CLASS MNTYPE 3) = 196 LN. FT.  
24" SLPPCS PIPE (TYPE 2) = 196 LN. FT.

STA. 107+00 CONSTRUCT  
DROP INLET ON RT. W/4' EXTENSION  
AND 5" X 3" X 36" ARCH PIPE OUTLET  
CONNECT TO R.C. BOX CULVERT  
@ STA. 106+53 RT.  
DROP INLET H = 7'-3"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 5' X 4'  
5" X 3" R.C. ARCH PIPE (CLASS MNTYPE 3) = 36 LN. FT.  
5" X 3" SLPPCS ARCH PIPE (TYPE 2) = 36 LN. FT.

STA. 108+45 CONSTRUCT  
DROP INLET ON RT.  
AND 5" X 3" X 16" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 108+28 RT.  
DROP INLET H = 4'-2"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 5' X 4'  
5" X 3" R.C. ARCH PIPE (CLASS MNTYPE 3) = 16 LN. FT.  
5" X 3" SLPPCS ARCH PIPE (TYPE 2) = 16 LN. FT.

STA. 109+80 CONSTRUCT  
DROP INLET ON RT.  
AND 5" X 3" X 46" ARCH PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 109+25 RT.  
DROP INLET H = 4'-0"  
TYPE MO DROP INLET = 6' DIA.  
TYPE C DROP INLET = 5' X 4'  
5" X 3" R.C. ARCH PIPE (CLASS MNTYPE 3) = 46 LN. FT.  
5" X 3" SLPPCS ARCH PIPE (TYPE 2) = 46 LN. FT.

STA. 115+00 CONSTRUCT  
DROP INLET ON RT.  
AND 24" X 195" PIPE OUTLET  
CONNECT TO DROP INLET @ STA. 113+00 RT.  
DROP INLET H = 4'-3"  
TYPE MO DROP INLET = 4' DIA.  
TYPE C DROP INLET = 4' X 3'  
24" R.C. PIPE (CLASS MNTYPE 3) = 196 LN. FT.  
24" SLPPCS PIPE (TYPE 2) = 196 LN. FT.

HWY. 112 NORTH

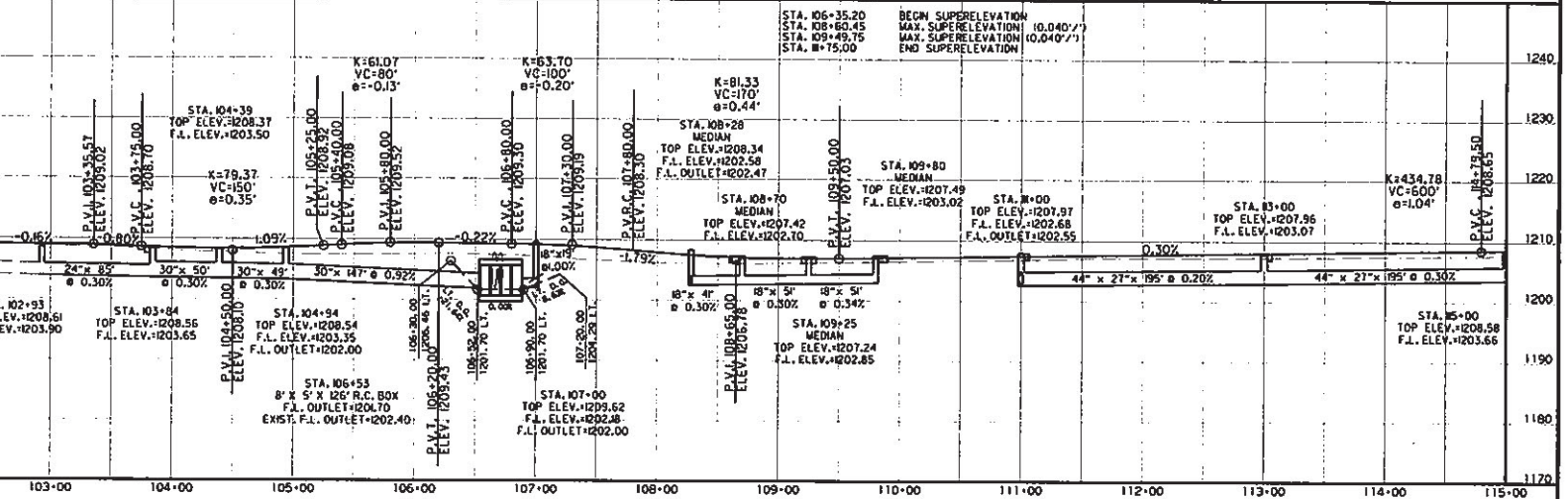
Sheet 4 of 5

DATE REVISION	DATE REVISION	DATE REVISION	DATE REVISION	PROJECT NO.	STATE	FEDERAL PROJECT NO.	SHEET NO.	TOTAL SHEETS
				6	ARK.			
							040746	

2 PLAN AND PROFILE SHEETS

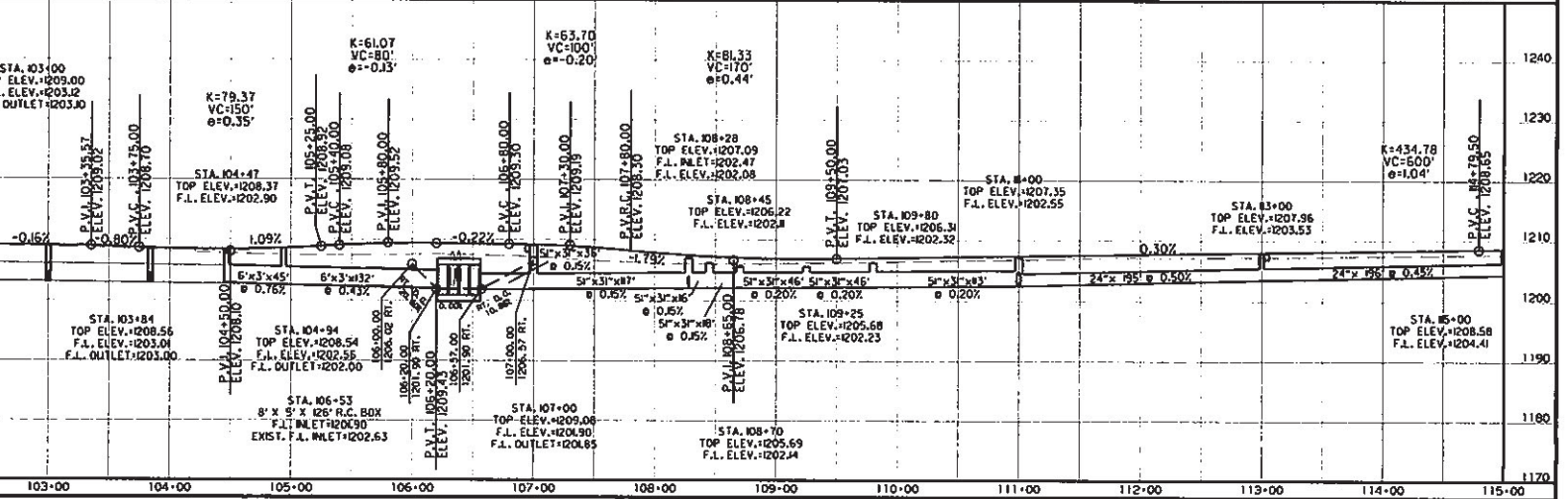
**PRELIMINARY**  
SUBJECT TO REVISION

LEFT SIDE OF HWY. 112 NORTH



HORIZONTAL AND VERTICAL CONTROL DATA.

RIGHT SIDE OF HWY. 112 NORTH



# Nationwide Permit No. 14

**Linear Transportation Projects.** Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material 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 of dredged or fill material 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 of dredged or fill material, 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 of dredged or fill material 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 of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) 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)

## 2021 Nationwide Permit General Conditions

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

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

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's

expense on authorized facilities in navigable waters of the United States.

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

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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

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

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

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be

free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

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

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

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

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

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

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

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

construction elevations. The affected areas must be revegetated, as appropriate.

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

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

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

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

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

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

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

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such

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

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP

activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

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

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

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate

documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant

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

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

(b) For 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 general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

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

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

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

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

activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

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

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

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

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

agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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

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

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

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

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

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

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

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

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

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

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a

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

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

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

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

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

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

nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

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

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

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the

implementation of any required compensatory mitigation, whichever occurs later.

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

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

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN, and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the

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

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

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

compensatory mitigation or other mitigation measures.

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

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

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

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of

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

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

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

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

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

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

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

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

revoked in accordance with the procedures at 33 CFR 330.5.

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

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

### **District Engineer's Decision**

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

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the

environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45

calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

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

#### **Further Information**

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

#### **Nationwide Permit Definitions**

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

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

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

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

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

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

*Enhancement:* The manipulation of the physical, chemical, or biological characteristics of an aquatic

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

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

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

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

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

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

*Loss of waters of the United States:* Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

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

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

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

*Ordinary High Water Mark:* The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed

on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

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

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

*Pre-construction notification:* A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required, and the project proponent wants confirmation that the activity is authorized by nationwide permit.

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

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

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

*Restoration:* The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose

of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

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

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

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

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

crossings of such features cannot be considered separately.

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

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

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

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

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

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

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

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

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

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

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



## DIVISION OF ENVIRONMENTAL QUALITY

Sarah Huckabee Sanders  
GOVERNOR

Shane E. Khoury  
SECRETARY

January 6, 2025

Mr. Josh Seagraves  
Environmental Division Head  
AR Department of Transportation  
10324 Interstate 30  
Little Rock, AR 72209  
(josh.seagraves@ardot.gov)

RE: 401 Water Quality Certification – **DEQ No. 20240372**  
Howard Nickell Road (ArDOT Job 040746)

Dear Mr. Seagraves,

The Division of Environmental Quality (DEQ) has completed the review of the above referenced 401 Water Quality Certification application to make improvements to Highway 112. The project is located west of Fayetteville, Arkansas in Washington County. The crossing over Clabber Creek (36.110083, -94.180565) will be removed and replaced with a concrete box culvert.

DEQ has determined that there is a reasonable assurance that this activity will be conducted in a manner which, according to the Arkansas Pollution Control and Ecology Commission's (APC&EC) Rule 2, will comply with applicable water quality requirements.

Pursuant to §401 of the Clean Water Act, DEQ hereby issues a water quality certification for the above referenced project and **U.S. Corps of Engineers Project No. SWL-2024-00378**. This certification is based on the plans, specifications, and supporting information supplied by the project proponent at the time of this response. The following conditions shall be applicable:

- 1) In accordance with APC&EC Rule 2.305, the applicant shall obtain a Short Term Activity Authorization (STAA) when performing work in the wetted area of waters of the state as defined by Arkansas Code Annotated (A.C.A.) §8-4-102. Activities approved under a STAA are subject to the provisions that no permanent or long-term impairment of beneficial uses is likely to result from such activity. More information can be obtained by visiting <https://www.adeq.state.ar.us/water/planning/instream/> or <https://eportal.adeq.state.ar.us/>
- 2) The applicant shall implement all practicable best management practices (BMPs) and provide and maintain natural buffers with native vegetation, except where unfeasible or unavailable, to avoid excessive impacts of pollutants to waters of the state, 40 CFR §122.26(c).
- 3) The applicant will take all reasonable measures to prevent the spillage or leakage of any chemicals, oil, grease, gasoline, diesel, or other fuels. In the unlikely event such spillage or leakage occurs, the applicant must contact DEQ immediately.
- 4) The applicant shall limit construction to low flow periods as much as possible to minimize adverse effects on water quality and aquatic life.

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- 5) If the construction will disturb equal to or greater than one (1) acre and less than five (5) acres, the applicant shall comply with the requirements in Rule 6.203 for stormwater discharge associated with a small construction site, as defined in APC&EC Rule 6. If the construction 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 of the disturbance. More information can be obtained by contacting the NPDES Stormwater Section of DEQ at (501) 683-0962.
- 6) To the extent practicable, the project construction activities shall include BMPs selected to preserve the existing native species and include re-planting and re-establishment of native riparian vegetative features if disturbed.

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

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

If you have any questions, please contact Mr. Jim Wise ([jim.wise@adeq.state.ar.us](mailto:jim.wise@adeq.state.ar.us)) (501) 682-0663.

Sincerely,



Joe Martin  
Deputy Associate Director, Office of Water Quality

cc: Johnny McLean, [johnny.McLean@usace.army.mil](mailto:johnny.McLean@usace.army.mil)  
Daniel Bagby, EPA  
Chris Davidson, USFWS  
Jennifer Sheehan, AGFC  
Amy Huneycutt, DEQ Inspector Supervisor  
Lindsay Zweifel, [Lindsay.zweifel@ardot.gov](mailto:Lindsay.zweifel@ardot.gov)