

**TIER 3 CATEGORICAL EXCLUSION**

**ARDOT JOB NUMBER 100098  
FAP NUMBER NHPP-0047(73)  
DITCH NO. 6 STR. & APPRS. (S)  
ROUTE 148, SECTION 2  
BRIDGE NUMBER M2052  
MISSISSIPPI COUNTY**

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

By the

U.S. Department of Transportation  
Federal Highway Administration

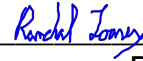
And the

Arkansas Department of Transportation

November, 2020

November 5, 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 replace a bridge on Highway 148 over Ditch No. 6 in Mississippi County. Total length of the project is 0.04 mile. The attached figure illustrates the project location.

The existing roadway consists of two 10' wide paved travel lanes with 4' wide unpaved shoulders. The existing bridge (M2052) is a 23' x 148' structure. The existing right of way width is 80'.

Proposed improvements include construction of a sextuple 12'x14'x60' reinforced concrete box culvert. The roadway will consist of two 11' wide paved travel lanes with 4' wide shoulders (2' paved). The proposed right of way width will be 260', and the project could approximately 1.2 acres of additional right of way.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2021	380	10	60 mph
2041	470	10	60 mph

There are no relocations, prime farmlands, wetlands, underground storage tanks, hazardous materials, or any environmental justice issues associated with this project.

Based on the ARDOT'S noise policy, a noise analysis is not required for this project. The project does not involve added capacity, construction of new through lanes or auxiliary lanes, substantial changes in the horizontal or vertical alignment of the roadway, or exposure of noise sensitive land uses to a new or existing highway noise source.

ARDOT Bridge M2052 is a steel Warren pony truss built in 1938 that spans Ditch Number 6 on Highway 148 in Mississippi County. Through consultation between the Arkansas Historic Preservation Program and National Register staff, the bridge was deemed eligible for the National Register of Historic Places in 2019. It is eligible for inclusion due to its association with Arkansas Highway and Transportation Era (1923-1939) context under Criterion A. As part of the ARDOT Historic Bridge Process, the Historic Bridge Analysis Committee determined that

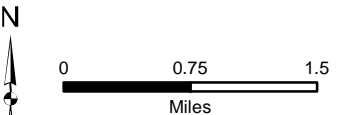
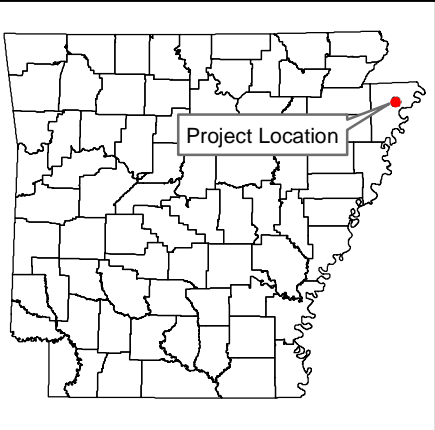
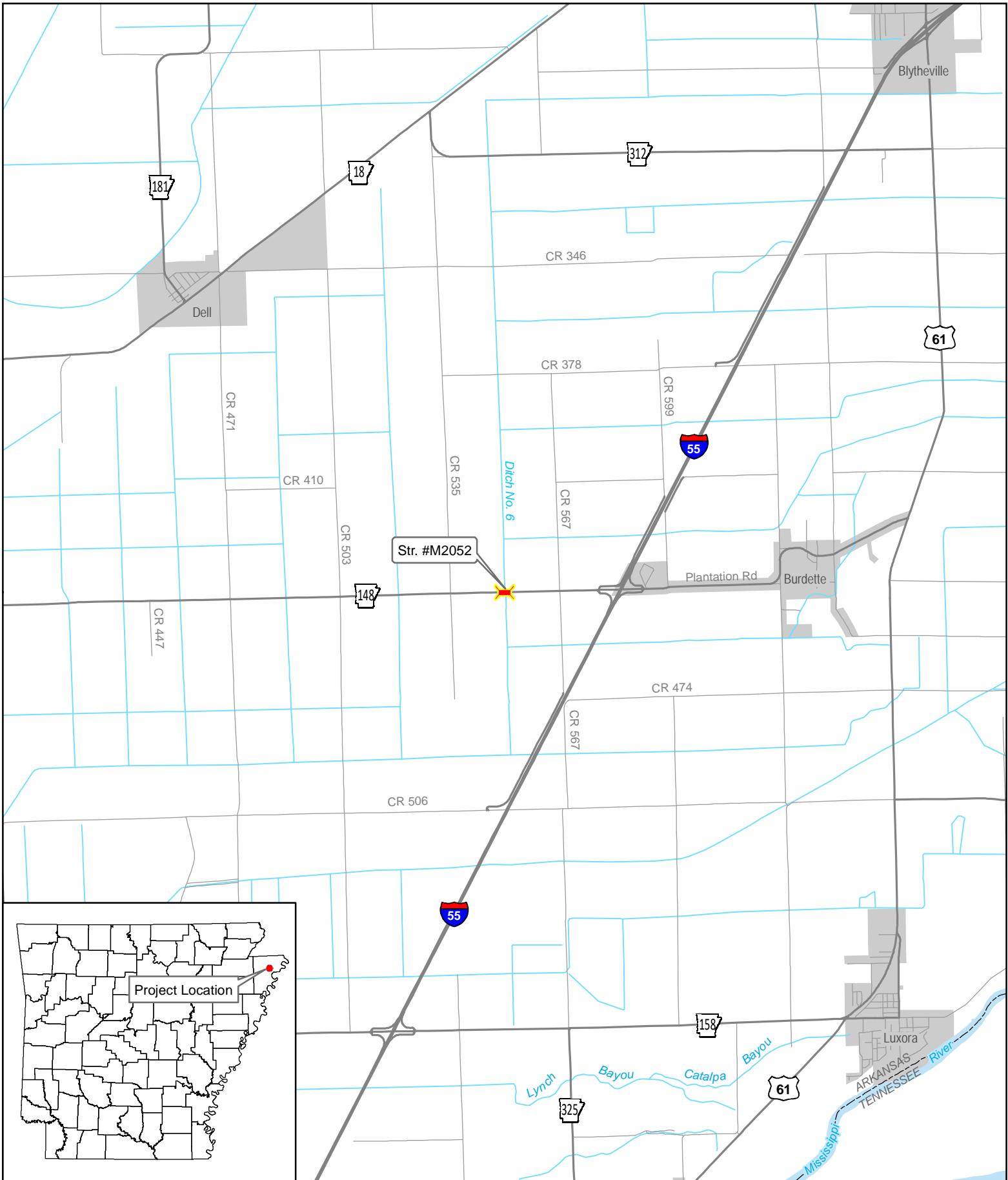
the ARDOT could not rehabilitate or reuse the bridge, and it is not the policy of the ARDOT to retain ownership of the bridge after it is removed from vehicular service. Finding no other prudent or feasible alternative to demolition, the bridge was marketed to federal and state agencies, county, and local governments, as well as the local and state historical societies for relocation of the bridge. No interest letters were received. As no entity was found willing to take ownership of the relocated bridge, a Memorandum of Agreement (MOA) was executed between the FHWA, ARDOT, and State Historic Preservation Officer (SHPO) stipulating mitigation for the demolition of the bridge. This mitigation includes architectural documentation and photographs to SHPO standards, as well as laser scanning. The Programmatic Section 4(f) evaluation for the historic bridge is attached and includes the approved MOA. No other historic or cultural resources will be impacted as part of the proposed project. Concurrence from the SHPO is attached.

The official species list obtained through the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation website lists the Piping Plover (*Charadrius melodus*) as a protected species potentially occurring in the proposed project. Based on the lack of habitat, distance to known species, and scope of the project, it has been determined that the proposed project will have "no effect" on the aforementioned federally listed species.

Stream impacts due to the construction of the proposed project are estimated to be less than 0.1 acre. Construction should be covered under the terms of a Nationwide Permit 14 for Linear Transportation Projects as defined in Federal Register 82 (4): 1860 – 2008. Preconstruction notification is not required.

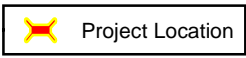
This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxic (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or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

No other adverse environmental impacts were identified. No public involvement will be needed for the project. The checklist used to verify consideration of potential environmental impacts is attached.



ARDOT - Environmental GIS - Strawn  
October 7, 2019

Job 100098  
Ditch No. 6 Str. & Apprs.  
(Hwy. 148)  
Mississippi County





Asa Hutchinson  
Governor  
Stacy Hurst  
Secretary

September 8, 2020

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

Re: Mississippi County – General  
Section 106 Review – FHWA  
Ditch No. 6 Strs. & Apprs. (S)  
Route 148, Section 2  
ARDOT Job Number 100098  
AHPP Tracking Number 104742.03

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Project Identification Form (PIF) for the above-referenced job. The proposed undertaking entails the replacement of Bridge M2052 spanning Ditch No. 6 on Highway 148 in Mississippi County. The present survey included proposed right-of-way totaling 1.2 acres.

In correspondence dated October 30, 2019, the AHPP recommended Bridge M2052 eligible for inclusion in the National Register of Historic Places (AHPP 104742.01). Removal of the bridge will result in an adverse effect to the historic property. The Federal Highway Administration will mitigate the adverse effect through execution of a standard historic bridge memorandum of agreement (MOA).

Considering the provided information, the results of the investigation, and the forthcoming MOA, the AHPP concurs with the finding of **no adverse effect pursuant to 36 CFR § 800.5(b)**. 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 and PIF. If you have any questions, please contact Eric Mills of my staff at (501) 324-9784 or [eric.mills@arkansas.gov](mailto:eric.mills@arkansas.gov).

Sincerely,

  
FOR Scott Kaufman  
Director, AHPP

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

# *DITCH NUMBER 6 BRIDGE*

*BRIDGE NUMBER M2052*



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

ARDOT Job Number 100098

Ditch No. 6 Str. & Apprs. (S)

Mississippi County

October 2020

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

# Programmatic Section 4(f) Evaluation – Historic Bridges

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## 1 Why is this report being prepared?

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

## 2 What would the project accomplish?

The Arkansas Department of Transportation (ARDOT), in conjunction with the Federal Highway Administration (FHWA), proposes the construction of a new bridge across Ditch Number 6 along Highway 148 in Mississippi County, Arkansas. The project improves safety and transportation needs in northeast Arkansas. As part of the project, a historic bridge will be replaced.

ARDOT Bridge Number M2052 (Ditch Number 6 Bridge) consists of a steel pony truss span with timber stringer approach spans. The total length of the bridge is 148 feet. The bridge carries two 10-foot wide travel lanes with a deck width of approximately 22 feet. The Bridge Inspection Report dated November 18, 2019, lists the deck and substructure condition as poor (code 4) and the superstructure as fair (code 5).

Plans show the replacement structure will be a sextuple, reinforced concrete box culvert measuring approximately 60 feet in length. Pipe culverts are planned at the bridge ends for added drainage. Following current standards, the roadway plans show two 11-foot wide paved travel lanes, each with a 4-foot shoulder for a 30-foot wide roadway.

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

ARDOT Bridge Number M2052 (Ditch Number 6 Bridge), constructed in 1938, contains one 76-foot Warren (with verticals) pony truss span and

### What does Section 4(f) protect?

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

### What is a pony truss bridge?

The truss is only viewed on either side of the road. The top of a pony truss bridge does not connect above the roadway.



### What is a Warren (with verticals) truss?

Neville, a Belgian engineer, and Francis Nash, a British engineer, developed the Warren truss design. Highway departments used this design widely in the 1920s-1930s. A Warren truss is made of equal triangles to distribute the stress throughout the structure. A Warren truss with verticals also has a bar between the parallel bottom and top chords.



four timber stringer approach spans. This truss also displays unusual bracing on the outside of the verticals (Figure 1). The substructure consists of timber beams resting on timber piles and abutments, and the railings consist of metal posts with guardrails.

The Ditch Number 6 Bridge was determined eligible for inclusion in the National Register of Historic Places (NRHP) in 2019. It is eligible under Criterion A for its association with the Arkansas Highway and Transportation Era (1923-1939) development. The bridge is also significant under Criterion C as an example of a pony truss with the Warren (with verticals) design. The Ditch Number 6 Bridge is not considered a National Historic Landmark.

Ditch Number 6 Bridge



Figure 1

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

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

**What are the National Register Criteria for evaluation?**

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

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

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

**What are the qualifications for a National Historic Landmark?**

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

**Table 1**

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

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

**5 Could the project avoid demolishing the historic bridge?**

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

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

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

**No Action**

This alternative involves no improvements to the existing facilities and continues providing only routine maintenance. The roadway across the bridge is too narrow for current design standards with the truss showing many points of collision damage. The deck and substructure are in poor condition, and the bridge has weight restrictions posted.

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

**Rehabilitation of the Existing Structure**

Two rehabilitation alternatives were considered for this project.

*Rehabilitation Alternative One* rehabilitates the existing historic bridge for two-way traffic operations. To meet current design standards, the alternative requires a minimum roadway width of 30 feet, adding at least 8 feet to the current bridge. Widening it compromises its historic integrity. In evaluating rehabilitation for less than design standards, the bridge is narrow for two-way traffic and would remain weight posted due to the its design, which was not meant to carry today’s vehicle weight or loads. In pthis area, seismic retrofitting is required, involving a carbon fiber wrap. This addition compromises the integrity of design and materials, as well as creating barriers to inspection. *Rehabilitation Alternative One* is not prudent as it impacts the historic integrity of the structure and results in unacceptable safety and operational problems.

*Rehabilitation Alternative Two* rehabilitates the existing historic bridge for one-way traffic operations and constructs a new bridge for one-way traffic operations in the opposite direction. The seismic retrofit requirement exists with any rehabilitation. A couplet bridge still leaves the weight posting on one direction of the roadway. *Rehabilitation Alternative Two* is not prudent as it impacts the historic integrity of the structure and results in unacceptable safety and operational problems.

**New Location**

The *New Location Alternative* constructs a new bridge according to the approved ARDOT project design criteria in a new location with the owner maintaining possession of the historic bridge, either preserving it in place or at another location. ARDOT owns the Ditch Number 6 Bridge. The design of the proposed bridge on a new location is feasible; however, it is ARDOT policy to no longer retain bridges following their removal from the highway system.

A new bridge can be built to current, minimum design standards with another entity accepting ownership of the historic bridge for relocation. Preservation in place was not a prudent option due to the introduction of curves into a straight roadway resulting in safety concerns. ARDOT marketed the bridge on April 13, 2020, to find an entity willing to accept the bridge (see Appendix A for marketing correspondence). No entity was

**What is meant by feasible?**

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

**What is meant by prudent?**

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

found willing to assume the bridge ownership and maintenance responsibility following its relocation. The New Location Alternative is not prudent as it would either result in additional maintenance costs of extraordinary magnitude creating liability concerns or unacceptable safety or operational problems.

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

The FHWA and the SHPO reached an agreement through the Section 106 process (36 CFR 800) of NHPA (16 USC 470) on measures to minimize harm. These measures have been incorporated into this project. Through a Memorandum of Agreement (MOA), it was agreed that ARDOT Bridge Number M2052 would be documented to the Arkansas Historic Preservation Program’s (AHPP) architectural documentation standards and then demolished. A copy of the MOA, which includes all agreed-upon mitigation stipulations, can be found in Appendix B.

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

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

**Table 2**  
Section 4(f) Analysis Summary

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

\* No entity was found willing to accept title for the bridge.

Based on the above considerations, no feasible and prudent alternative exists to avoid the use of the historic bridge. The proposed action includes all possible planning to minimize the harm to the historic bridge resulting from such use.

## **8 What are the recommendations on this project?**

ARDOT recommends that the Ditch Number 6 Bridge is documented to AHPP architectural documentation standards and demolished as agreed under the stipulations in the MOA (Appendix B).

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

# Appendix A: Marketing Correspondence

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## ARKANSAS DEPARTMENT OF TRANSPORTATION

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

## ENVIRONMENTAL DIVISION

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261 | Phone: 501.569.2281 | Fax: 501.569.2009

April 13, 2020

RE: Historic Bridge M2052  
Job Number 100098  
Ditch No. 6 Str. & Apprs. (S)  
Mississippi County  
Historic Bridge Marketing Request

To Whom it May Concern:

The Arkansas Department of Transportation (ARDOT) is planning to replace Bridge Number M2052 (National Ditch Number 6 Bridge) on Highway 148 in Mississippi County. This bridge was determined eligible to the National Register of Historic Places (NRHP) through consultation with the State Historic Preservation Officer's staff. A location map and further information about the bridge is enclosed.

The Fixing America's Surface Transportation (FAST) Act, 23 USC § 144 (g)(5) states: "Any State which proposes to demolish a historic bridge for a replacement project ... shall first make the bridge available for donation to a State, locality, or responsible private entity..." As part of the mitigation process, the ARDOT is offering to donate Bridge Number M3817 to any government or entity that demonstrates a willingness to accept title for, relocate it for use at another site, preserve the historic features of, and assume the financial responsibility for the continued maintenance on the structure.

Normally, the ARDOT, through the Federal Highway Administration (FHWA), can reimburse costs associated with preservation up to the demolition estimate expense. However, the reimbursement funds allocated to this bridge will be exhausted during the dismantling and relocation process.

ARDOT Bridge Number M2052  
Job Number 100098  
Marketing Request  
Page 2 of 2

If you are interested in acquiring this bridge, please respond with a letter of interest within 45 days from the date of this letter. For further information, contact Nikki Senn at (501) 569-2979.

Sincerely,



for John Fleming  
Division Head  
Environmental Division

Enclosures  
JF:NS:cb

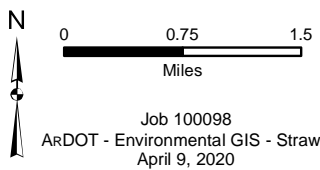
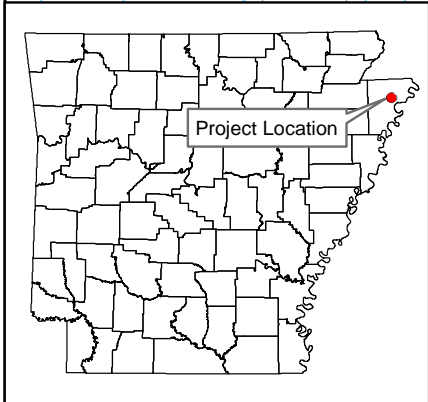
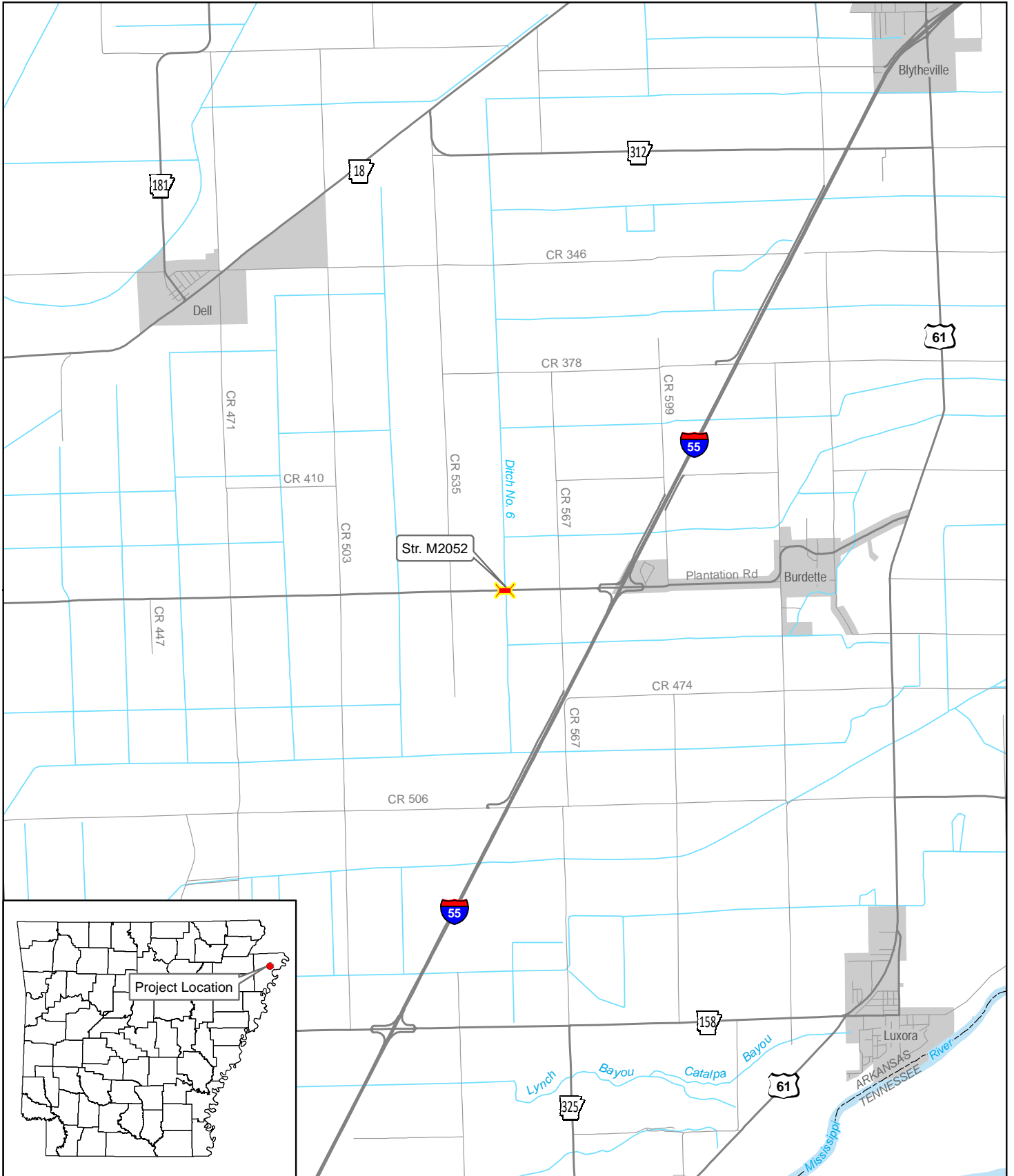
c: Assistant Chief Engineer - Planning  
Bridge Division  
District 10 Engineer

ARDOT Job Number 100098  
Historic Bridge Marketing Description




ARDOT Bridge Number M2052 on State Highway 148 was determined eligible for inclusion in the National Register of Historic Places in 2019. The bridge was constructed over National Ditch Number 6 in 1938. The truss span is 76 feet long and just under 22 feet wide.

Sixteen pony trusses with the Warren design remain in service in Arkansas. These trusses are associated with the Arkansas Highway and Transportation Department Era (1923-1939) context.



Project Location  
Mississippi County

 Project Location

**Job 100098  
Bridge M2052 Marketing Contacts**

Marketing Groups	Greeting	Name	Title	Agency	Address 1	Address 2	City
Mayor	Mayor Sullivan	James Sullivan		City of Burdette	P.O. Box 20		Burdette, AR 72321
Mayor	Mayor Sanders	James Sanders		City of Blytheville	124 W. Walnut		Blytheville, AR 72315
townofdell@att.net	Mayor Moody	Danny Moody		City of Dell	100 Main Street		Dell, AR 72426
Chamber of Commerce	Mr. Curl	Billy Curl	President	Greater Blytheville Area Chamber of Commerce	300 West Walnut Street		Blytheville, AR 72315
County Judge	Judge Nelson	The Honorable John Alan Nelson		Mississippi County Judge	200 W. Walnut, Room 204		Blytheville, AR 72315
County Historical Society	Ms. Thompson	Glynda Thompson	President	Mississippi County Museum and Historical & Genealogical Society	209 W. Hale	P.O. Box 483	Osceola, AR 72370
FHWA	Ms. Hoang	Vivien Hoang	Arkansas Division Administrator	Federal Highway Administration	700 West Capitol Ave, Suite 3130		Little Rock, AR 72201
SHPO, and Parks and Tourism	Secretary Hurst	Stacy Hurst	Arkansas State Historic Preservation Officer	Department of Arkansas Parks, Heritage and Tourism	1100 North Street		Little Rock, AR 72201
Arkansas Historical Association	Mr. Christ	Mark Christ	President	Arkansas Historical Association	Department of History, University of Arkansas	416 Old Main	Fayetteville, AR 72701
Preserve Arkansas	Ms. Patton	Rachel Patton	Executive Director	Preserve Arkansas	P.O. Box 305		Little Rock, AR 72203-0305
Arkansas Game and Fish Commission	Mr. Fitts	Pat Fitts	Director	Arkansas Game and Fish Commission	2 Natural Resources Drive		Little Rock, AR 72205
Arkansas Game and Fish Commission	Mr. Bowman	Darrell Bowman	Assistant Chief of Fisheries Management	Arkansas Game and Fish Commission	2 Natural Resources Drive		Little Rock, AR 72205
Arkansas Game and Fish Commission	Mr. Wentz	Tate Wentz	Stream Team Biologist	AGFC Stream Team Region III	915 East Sevier Street		Benton, AR 72015

**Job 100098  
Bridge M2052 Marketing Contacts**

Marketing Groups	Greeting	Name	Title	Agency	Address 1	Address 2	City
US Corps of Engineers	Colonel Miller	Colonel Eric M. Noe	Commander and District Engineer	U.S. Army Corps of Engineers	Little Rock District, P.O. Box 867	P.O. Box 867	Little Rock, AR 72203-0867
US Corps of Engineers	Colonel Miller	Colonel Zachary L. Miller	Commander and District Engineer	U.S. Army Corps of Engineers	Memphis District, 167 North Main Street Room B-202		Memphis, TN 38103-1894
Metro Planning Org, if applicable	Ms. Cochran	Cecelie Cochran	MPO Director	Northeast Arkansas Transportation Planning Commission	300 S. Church Street		Jonesboro, Arkansas 72401
Metro Planning Org, if applicable	Mr. Pillow	Alan Pillow	MPO Planner I	Northeast Arkansas Transportation Planning Commission	300 S. Church Street		Jonesboro, Arkansas 72401
Central Arkansas Water	Ms. Lawson	Raven Lawson	Watershed Protection Manager	Central Arkansas Water	221 East Capitol Avenue, P.O. Box 1789	P.O. Box 1789	Little Rock, AR 72203
United States Forest Service	District Ranger	Sylamore Ranger District	Ozark-St. Francis National Forest	United States Forest Service	1001 E. Main Street	P.O. Box 1270	Mountain View, AR 72560
Arkansas Trails Council	Mr. Sprague	Mike Sprague	Executive Secretary	Arkansas Trails Council, Dept. of Parks and Tourism	One Capitol Mall		Little Rock, AR 72201
City of Fayetteville	Mr. Jack	Ted Jack	Park Planning Superintendent	City of Fayetteville, Parks and Recreation Department	113 West Mountain Street		Fayetteville, AR 72701
City of Bentonville	Mr. Wright	David Wright	Director	City of Bentonville, Parks and Recreation Department	215 SW A Street		Bentonville, AR 72712
City of Springdale	Mr. Wolf	Chad Wolf	Director	City of Springdale, Parks and Recreation Department	P O Box 42		Springdale, AR 72764
City of Paragould	Ms. Austin	Pat Austin	Director	City of Paragould, Parks and Recreation Department	3404 Linwood Drive		Paragould, AR 72450

**Job 100098  
Bridge M2052 Marketing Contacts**

Marketing Groups	Greeting	Name	Title	Agency	Address 1	Address 2	City
City of Marion	Mr. Rawls	Andy Rawls	Parks and Recreation Department Head	City of Marion	3821 Complex Drive		Marion, AR 72364
City of West Memphis	Mr. Parker	Lorenzo Parker	Director	City of West Memphis, Parks and Recreation Department	P.O. Box 1728		West Memphis, AR 72303
City of Jonesboro	Mr. Kapales	Danny Kapales	Director	City of Jonesboro, Parks and Recreation Department	3009 Dan Avenue		Jonesboro, Arkansas 72401
City of Hot Springs	Mr. Whittington	Anthony Whittington	Director	City of Hot Springs, Parks and Recreation Department	111 Opera		Hot Springs, AR 71902
Arkansas Department of Parks, Heritage and Tourism (ADPHT)/ Arkansas State Parks	Mr. Thomas	Jordan Thomas	Chief Planner & Landscape Architect	Division of Arkansas State Parks	One Capitol Mall, 4B.215		Little Rock, AR 72201
Arkansas Natural Resources Commission/ Arkansas Unpaved Roads Program	Mr. Stake	Steve Stake	Grants Coordinator	Arkansas Unpaved Roads	101 E Capitol, Suite 350		Little Rock, AR 72201
Nature Conservancy	Ms. Wasson	Joy Wasson	Program Director	The Nature Conservancy	601 N University Ave # 2		Little Rock, AR 72205
Bridge Division			Bridge Division Head				
ACE-Planning			Assistant Chief Engineer-Planning				
District Engineer			District Engineer, District 10				

**Appendix B: Memorandum of Agreement**

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MEMORANDUM OF AGREEMENT  
AMONG THE  
FEDERAL HIGHWAY ADMINISTRATION,  
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER  
AND THE ARKANSAS DEPARTMENT OF TRANSPORTATION  
REGARDING  
ARDOT JOB NUMBER 100098  
DITCH NO. 6 STR. & APPRS. (S)  
HIGHWAY 148, MISSISSIPPI COUNTY, ARKANSAS  
ARDOT BRIDGE NUMBER M2052

WHEREAS, the Federal Highway Administration (FHWA) and the Arkansas Department of Transportation (ARDOT) wish to construct a new bridge across Ditch Number 6 along Highway 148 in Mississippi County; and the old Ditch Number 6 Bridge (Bridge) will be demolished as part of completing ARDOT Job Number 100098; and

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

WHEREAS, the FHWA has marketed the Bridge to federal and state agencies, the Mississippi County Judge, the Cities of Burdette, Blytheville, and Dell, the chamber of commerce, the regional metro planning organization, other interested parties, and state and local historical societies; and

WHEREAS, during the recent marketing period, no entities were found willing to accept title for the Bridge for preservation and reuse at another location; and

WHEREAS, through the Programmatic Section 4(f) Evaluation process, the FHWA has determined that no feasible and prudent alternative to the demolition of the historic bridge exists; and

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

ARDOT Job Number 100098  
Memorandum of Agreement  
Page 2 of 8

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

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

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

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

### STIPULATIONS

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

#### I. MITIGATION OF ADVERSE EFFECT TO THE HISTORIC PROPERTY

- A. The ARDOT will produce architectural documentation for the Bridge that meets the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* set forth in 48 FR 44716 and the Arkansas Historic Preservation Program's (AHPP) 2016 *Survey Procedures Manual: Guidelines for Historic and Architectural Surveys in Arkansas*. Documentation for the Bridge will include the AHPP Arkansas Architectural Resources Form and color digital photographs.
- B. The documentation will be provided for curation to the AHPP, the Arkansas State Library, the Arkansas Studies Institute, the Arkansas State Archives, and the Torreyson Library at the University of Central Arkansas.
- C. The Bridge will be laser scanned and the data housed in ARDOT's Environmental Division file server.

ARDOT Job Number 100098  
Memorandum of Agreement  
Page 3 of 8

D. No construction will be undertaken on the historic property until all fieldwork portions of the required mitigation have been completed.

E. The FHWA shall ensure that adequate time and funding are provided in order to carry out all aspects of the required mitigation.

## II. HUMAN REMAINS

Human remains are not expected to be discovered on this undertaking; however, if they are encountered during implementation of the project, all activity in the vicinity of the discovery shall cease. The treatment of human remains shall follow the guidelines developed for the *Arkansas Burial Law* (Act 753 of 1991, as amended) and the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* published February 23, 2007. As such, a permit will be obtained from the AHPP prior to exaction of any remains.

## III. DURATION

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

## IV. PROFESSIONAL QUALIFICATIONS STANDARDS

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

## V. POST-REVIEW DISCOVERY SITUATIONS

Pursuant to 36 CFR § 800.13, if cultural material is discovered during implementation of the project, the FHWA shall ensure that all construction activities cease in the area of the discovery and the consulting parties are notified. The FHWA, in consultation with the SHPO, shall determine if the discovery is eligible for inclusion in the NRHP. If so, the FHWA and the ARDOT will develop a treatment plan for historic properties, which shall be

ARDOT Job Number 100098  
Memorandum of Agreement  
Page 4 of 8

reviewed by the SHPO. Disputes arising from such review shall be resolved in accordance with Stipulation VI.

#### VI. DISPUTE RESOLUTION

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

#### VII. MONITORING

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

#### VIII. AMENDING THE MEMORANDUM OF AGREEMENT

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

#### IX. TERMINATING THE MEMORANDUM OF AGREEMENT

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

ARDOT Job Number 100098

Memorandum of Agreement

Page 5 of 8

X. FAILURE TO CARRY OUT THE MEMORANDUM OF AGREEMENT

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

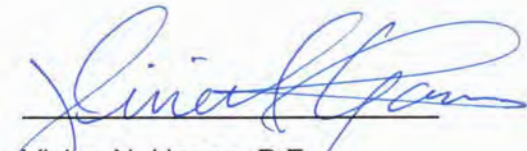
XI. FULFILLMENT OF SECTION 106 RESPONSIBILITIES

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

ARDOT Job Number 100098  
Memorandum of Agreement  
Page 6 of 8

Signatory

FEDERAL HIGHWAY ADMINISTRATION



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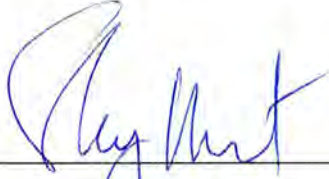
Vivien N. Hoang, P.E.  
Arkansas Division Administrator

9/29/2020  
Date

ARDOT Job Number 100098  
Memorandum of Agreement  
Page 7 of 8

Signatory

ARKANSAS STATE HISTORIC PRESERVATION OFFICER



Secretary Stacy Hurst  
Arkansas State Historic Preservation Officer

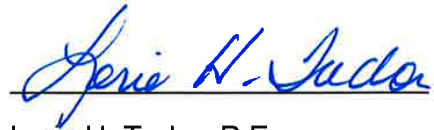


Date

ARDOT Job Number 100098  
Memorandum of Agreement  
Page 8 of 8

Signatory

ARKANSAS DEPARTMENT OF TRANSPORTATION



Lorie H. Tudor, P.E.  
Director



Date

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

ARDOT Job Number 100098 FAP Number NHPP-0047(73)

Job Title Ditch No. 6 Str. & Apprs. (S)

Environmental Resource	None	Minimal	Major	Comments
Air Quality	X			No Impacts
Cultural Resources		X		Historic bridge to be demolished, will be mitigated to SHPO standards
Economic	X			No impacts
Endangered Species	X			No effect determination
Environmental Justice/Title VI	X			No protected populations
Fish and Wildlife		X		Temporary impacts during construction
Floodplains	X			No impacts
Forest Service Property	X			None in the project area
Hazardous Materials/Landfills	X			None in project area
Land Use	X			No impacts
Migratory Birds		X		Migratory Bird SP included
Navigation/Coast Guard	X			None in the project area
Noise Levels	X			No increase due to project
Prime Farmland	X			No impacts
Protected Waters	X			None in the project area
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA	X			None in the project area
Relocates	X			No relocations
Section 4(f)/6(f)	X			No 4(f)/6(f) resources
Social	X			No impacts to social environment
Underground Storage Tanks	X			No UST's in project area
Visual	X			No changes to visual environment
Streams		X		During construction
Water Quality		X		Temporary during construction
Wetlands	X			None in the project area
Wildlife Refuges	X			None in the project area

Section 401 Water Quality Certification Required? No

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type NW14

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature of Evaluator Katheryn Rose Date 9/3/2020

**ROADWAY DESIGN REQUEST**Job Number 100098 FAP No. NHPP-0047(73) County MississippiJob Name Ditch No. 6 Str. & Apprs. (S)Design Engineer Michael Baker Environmental Staff \_\_\_\_\_

Detailed Project Description The purpose of this project is to replace the existing bridge with a sextuple 12' x 14' x 60' R.C. box culvert. The roadway will be closed while the bridge is removed and the box culvert is constructed. During the road closure, traffic will be directed to detour using other nearby highways.

**A. Existing Conditions:**Roadway Width: 28' Shoulder Type/Width: 4'/UnpavedNumber of Lanes and Width: 2 @ 10' Existing Right-of-Way: 80'Sidewalks? No Location: \_\_\_\_\_ Width: \_\_\_\_\_Bike Lanes? No Location: \_\_\_\_\_ Width: \_\_\_\_\_**B. Proposed Conditions:**Roadway Width: 30' Shoulder Type/Width: 4' (2' Paved)Number of Lanes and Width: 2 @ 11' Proposed Right-of-Way: 260'Sidewalks? No Location: \_\_\_\_\_ Width: \_\_\_\_\_Bike Lanes? No Location: \_\_\_\_\_ Width: \_\_\_\_\_**C. Construction Information:**If detour: Where: Other exist. hwys. Length: Approx. 12 miles**D. Design Traffic Data:**2021 ADT: 380 2041 ADT: 470 % Trucks: 10Design Speed: 60 m.p.h.E. Approximate total length of project: 0.044 mile(s)F. Justification for proposed improvements: Existing bridge is posted and needs to be replaced.G. Total Relocatees: 0 Residences: 0 Businesses: 0H. Have you coordinated with any outside agencies (e.g., FHWA, City, County, etc.)? Yes

Agency/Official	Person Contacted	Date
Mississippi County Judge	Judge Nelson	June 26, 2020

## **Nationwide Permit 14 - Linear Transportation Projects**

Effective Date: February 25, 2022; Expiration Date: March 14, 2026  
(NWP Final Notice, 86 FR 73522)

**Nationwide Permit 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 NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these 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 NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan

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

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(Transferee)

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(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 NWP, 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.

### **2021 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.

## **2021 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).

## **2021 Nationwide Permit Definitions**

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

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

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

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

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

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

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

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

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

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

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This

term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic

characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

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

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

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

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

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

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or

improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

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

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

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

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

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

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

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

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

## **ADDITIONAL INFORMATION**

Information about the U.S. Army Corps of Engineers Regulatory Program, including nationwide permits, may also be accessed at

<http://www.swt.usace.army.mil/Missions/Regulatory.aspx> or  
<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>