

TIER 3 CATEGORICAL EXCLUSION

ARDOT JOB NUMBER 100881
FAP NUMBER CMF-9227(68)
Parker Rd. – South (Hwy. 1B) (Jonesboro) (S)
Route 1B, Section 17B
Craighead County, Arkansas

Submitted Pursuant to Title 42 U.S. Code §4332(2)
By the
U.S. Department of Transportation
Federal Highway Administration
And the
Arkansas Department of Transportation

Prepared by
Fisher Arnold, Inc.
Memphis, TN 38125

December 17, 2018

12/19/2018

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

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

The City of Jonesboro is proposing to widen a segment of Highway (Hwy.) 1B (Harrisburg Road) and improve the Hwy. 1B/East (E.) Parker Road intersection. The purpose of the project is to improve the capacity and Level of Service of Hwy. 1B and accommodate future traffic growth. The proposed project extends from approximately 250 feet north of E. Parker Road to 360 feet south of Forest Hill Road, for a total project length of approximately 0.4 mile. Figure 1 shows the project location, and Figure 2 shows the intersection improvements (see Appendix A).

The existing cross sections are described as follows. All lanes are paved and 11-foot wide. The shoulders on both sides of the roadway in the project corridor are paved and vary in width between 1 and 4 feet.

Hwy. 1B on north side of E. Parker Road intersection: Two northbound travel lanes; one southbound through lane; one dedicated left turn lane; and one dedicated right turn lane.

Hwy. 1B on south side of E. Parker Road intersection: One southbound travel lane; one northbound through lane; one dedicated left turn lane; one shared through/right turn lane; concrete curb on east side of roadway.

Hwy. 1B south of E. Parker Road intersection to south of Forest Hill Road: One northbound travel lane and one southbound travel lane.

E. Parker Road east of Hwy. 1B intersection: One eastbound travel lane; one westbound dedicated left turn lane; and one westbound shared through/right turn lane.

The proposed modifications to the existing cross sections are described as follows. All Hwy. 1B lanes will be 11-foot wide, with the exception of left turn lanes, which will be 12-foot wide. The east side of Hwy.1B will be comprised of typical curb and gutter with a 3-foot wide green space and 5-foot wide sidewalk. The west side of Hwy. 1B will be comprised of 4.5-foot wide green space and 10-foot wide multi-use path. All E. Parker Road lanes will be 12-foot wide. A curb and gutter tie-in

at the southeast Hwy. 1B intersection and 8-foot wide open shoulder east of the intersection will be provided. Hwy. 1B shoulder widths will vary between 1 and 8 feet.

Hwy. 1B on north side of E. Parker Road intersection: One additional southbound through lane will be provided.

Hwy. 1B on south side of E. Parker Road intersection: One center turn lane and one additional northbound through lane will be provided, and the shared through/right turn lane will be reconfigured as a southbound through lane.

Hwy. 1B south of E. Parker Road intersection: One additional northbound travel lane, one additional southbound travel lane, and one continuous center turn lane will be provided.

Hwy. 1B south of Forest Hill Road: A 360-foot segment of roadway will be tapered to allow the transition from five lanes to two lanes to merge into the existing roadway.

E. Parker Road east of Hwy. 1B intersection: One dedicated right turn lane will be provided, and the existing shared through/right turn lane will be reconfigured as a westbound through lane.

Approximately 2.6 acres of permanent right of way will be required for the project, along with approximately 0.60 acre of temporary construction easement. The current and forecast design traffic data for Hwy. 1B are shown in the table below.

Design data for the project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed (mph)
2019	22,600	3	35
2039	33,600	3	35

There are no relocations, wetlands, environmental justice issues, prime farmland, or endangered species associated with this project. No adverse impacts to threatened and endangered species or cultural resources are anticipated from this project. Correspondence from the U.S. Fish and Wildlife Service and the State Historic Preservation Officer are provided in Appendix B. Field inspections found

no evidence of existing underground storage tanks or hazardous waste deposits. The ARDOT Environmental Assessments Form is included as Appendix D.

Higginbottom Creek and an associated tributary are in the project area and may be impacted by the project. The U.S. Army Corps of Engineers (USCOE) issued Nationwide 14 Section 404 Permit for the project (Appendix B).

Minor noise impacts are anticipated as a result of this project. A screening level noise analysis is provided in Appendix C. Project limits were reduced after the screening level noise analysis was conducted. There will be ten residences impacted by noise due to the proposed project. These residences need driveway access to the proposed roadway and this access would require gaps in a noise barrier proposed for mitigating noise impacts. Those gaps would render a noise barrier ineffective.

Craighead County participates in the National Flood Insurance Program. The project is located in Zone AE floodplain with a floodway. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before project construction. None of the encroachments will constitute a substantial floodplain encroachment or a risk to property or life.

The City of Jonesboro held a Public Involvement Meeting for this project on December 7, 2017. The public comments from this meeting are provided in Appendix E.

APPENDIX A

Figures



Figure 1
Project Location

APPENDIX B

Agency Correspondence



THE DEPARTMENT OF ARKANSAS
HERITAGE

Asa Hutchinson
Governor

Stacy Hurst
Director

Arkansas Arts Council

Arkansas Natural
Heritage Commission

Arkansas State Archives

Delta Cultural Center

Historic Arkansas Museum

Mosaic Templars
Cultural Center

Old State House Museum



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Little Rock, AR 72201

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website:
www.arkansaspreservation.com

An Equal Opportunity Employer

May 23, 2017

Mr. Tim Alexander
Project Manager
Fisher Arnold Engineering Integration
9180 Crestywyn Hills Drive
Memphis, TN 38125

RE: Craighead County – Jonesboro
Section 106 Review – FHWA
Proposed Undertaking: Widen Segment of Harrisburg Road From Two-
lane Road to Five-lane Road, East Parker Road to Entrance to Memorial
Park Cemetery
AHPP Tracking Number: 98377

Dear Mr. Alexander:

This letter is in response to your inquiry regarding properties of archeological, historical, or architectural significance in the area of the proposed referenced project. The staff of the Arkansas Historic Preservation Program (AHPP) has reviewed records pertaining to the area in question.

There are no recorded cultural resources located within this undertaking. However, due to the scarcity of cultural resources surveys conducted in the vicinity of the undertaking, we recommend that a cultural resources survey be conducted in the areas of potential effect (APE).

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

Thank you for the opportunity to review this undertaking. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Tim Dodson of my staff at 501-324-9784.

Sincerely,

Marian Boyd
Interim Director, AHPP

cc: Mr. John Fleming
Mr. Randal Looney, Federal Highway Administration
Dr. Andrea Hunter, Osage Nation
Dr. Ann Early, Arkansas Archeological Survey

TD:tr



THE DEPARTMENT OF ARKANSAS
HERITAGE

Asa Hutchinson
Governor

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July 5, 2017

Mr. Tim Alexander
Project Manager
Fisher Arnold, Inc.
9180 Crestwyn Hills Drive
Memphis, TN 38125

RE: Craighead County – General
Section 106 Review – FHWA
Report Entitled: *Phase I Cultural Resources Survey for the Harrisburg
Road Improvements, Craighead County, Arkansas*
AHPP Tracking Number: 98377.01

Dear Mr. Alexander:

The staff of the Arkansas Historic Preservation Program (AHPP) has reviewed the above-referenced Phase I cultural resources report. Based on the information presented in this report, we find that the project will have a *No Adverse Effect on Historic Properties*.

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

Thank you for the opportunity to review this undertaking. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Tim Dodson of my staff at 501-324-9784.

Sincerely,

Marian Boyd
Interim Director, AHPP

cc: Mr. Randall Looney, Federal Highway Administration
Mr. John Fleming, AHTD
Dr. Andrea Hunter, Osage Nation
Dr. Ann Early, Arkansas Archeological Survey



United States Department of the Interior



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

In Reply Refer To:
Consultation Code: 04ER1000-2017-SLI-0811
Event Code: 04ER1000-2017-E-01107
Project Name: Harrisburg Road Widening Project

May 26, 2017

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

To Whom It May Concern:

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

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

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

If your project involves in-stream construction activities, oil and natural gas infrastructure, road construction, transmission lines, or communication towers, please review our project

implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

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

Attachment(s):

- Official Species List

Official Species List

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

This species list is provided by:

Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2017-SLI-0811

Event Code: 04ER1000-2017-E-01107

Project Name: Harrisburg Road Widening Project

Project Type: TRANSPORTATION

Project Description: A segment of Harrisburg Road in Jonesboro, AR is being widened to accommodate growing traffic needs.

Project Location:

Approximate location of the project can be viewed in Google Maps:

<https://www.google.com/maps/place/35.80035056119357N90.69409359511715W>



Counties: Craighead, AR

Endangered Species Act Species

There is a total of 5 threatened, endangered, or candidate species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area. Please contact the designated FWS office if you have questions.

Mammals

NAME	STATUS
Indiana Bat (<i>Myotis sodalis</i>) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered

Clams

NAME	STATUS
Fat Pocketbook (<i>Potamilus capax</i>) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2780	Endangered
Rabbitsfoot (<i>Quadrula cylindrica cylindrica</i>) There is a final critical habitat designated for this species. Your location is outside the designated critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5165	Threatened
Scaleshell Mussel (<i>Leptodea leptodon</i>) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5881	Endangered

Flowering Plants

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

Critical habitats

There are no critical habitats within your project area.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
110 S. Amity Road, Suite 300
Conway, Arkansas 72032
Tel.: 501/513-4470 Fax: 501/513-4480



June 7, 2017

Tim Alexander
Fisher Arnold, Inc.
9180 Crestwyn Hills Drive
Memphis, TN 38125

Dear Mr. Alexander:

The U.S. Fish and Wildlife Service (Service) has reviewed the information supplied in your letter, dated May 3, 2016, regarding proposed widening of Harrisburg Road from a two-lane road to a five-lane road near the city of Jonesboro, Craighead County, Arkansas. Our comments are submitted in accordance with the Endangered Species Act (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.).

The Service does not concur with the determination of "may affect, not likely to adversely affect" for the Northern Long-eared Bat (*Myotis septentrionalis*), Indiana Bat (*Myotis sodalis*), Rabbitsfoot (*Quadrula cylindrica cylindrica*), Scaleshell (*Leptodea leptodon*), and Fat Pocketbook (*Potamilus capax*). Our non-concurrence is based on the following reason: Northern Long-eared Bat, Rabbitsfoot, Scaleshell, and Fat Pocketbook do not occur in the action area and/or the action will not have direct or indirect effects to the above listed species due to absence of suitable habitat within the project footprint and areas outside the project footprint. As such, your determination of may affect, but not likely to adversely affect these species would not be appropriate.

Please be aware Bald Eagle is not protected under the ESA. Bald Eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.). Refer to the Service's website at www.fws.gov/southeast/our-services/permits/eagles/#national-rules-and-regulations for management guidelines and conservation measures.

We appreciate your interest in the conservation of endangered species. If you have any questions, please contact the Arkansas Ecological Services Staff at (501) 513-4487.

Sincerely,

Melvin Tobin
Project Leader



DEPARTMENT OF THE ARMY
MEMPHIS DISTRICT CORPS OF ENGINEERS
167 NORTH MAIN STREET B-202
MEMPHIS, TENNESSEE 38103-1894

July 5, 2017

Mr. Tim Alexander
Fisher Arnold Engineering Integration
9180 Crestwyn Hills Drive
Memphis, Tennessee 38125

Dear Mr. Alexander:

This is in reference to your request dated May 03, 2017, for our Preliminary Jurisdiction Determination (PJD) along a roadway improvement project for a segment of Harrisburg Road in Jonesboro, Arkansas, as shown on the enclosed map. Our PJD is that Higginbottom Creek and its unnamed tributary may be waters of the United States. Based on our PJD a Section 404 permit would be required if the proposed project would entail the discharge of dredged or fill material into either of these features.

The PJD is included for concurrence. If you agree with this PJD, please sign the form and return it to the address listed above. If the PJD is not returned within 30 days of the date of this letter, we will assume your concurrence. A PJD cannot be appealed. If you object to this PJD, please see Section I.E. of the attached Notification of Administrative Appeal Options and Process and Request for Appeal form, on how to proceed or call the Memphis District, Regulatory Branch for assistance at the number listed below.

The Memphis District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, we invite you to complete a customer service survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. Your comments, positive or negative, will not affect any current or future dealings with the Corps of Engineers.

Your cooperation in the regulatory program is appreciated. If you have questions, please contact Damon McDermott at (901) 544-0732 and refer to File No. MVM-2017-161.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger S. Allan", is located below the "Sincerely," text.

Roger S. Allan
Supervisor
Regulatory Branch

Enclosures



DEPARTMENT OF THE ARMY
MEMPHIS DISTRICT CORPS OF ENGINEERS
167 NORTH MAIN STREET B-202
MEMPHIS, TENNESSEE 38103-1894

November 3, 2017

Mr. Tim Alexander
Fisher Arnold Engineering Integration
9180 Crestwyn Hills Drive
Memphis, Tennessee 38125

Dear Mr. Alexander:

This is in reference to your request for a Nationwide Permit verification for roadway improvement projects along Harrisburg Road in Jonesboro, Arkansas, as shown on the enclosed map. As proposed your projects meet the criteria of Nationwide Permit (NWP) No. 14 for Linear Transportation Projects pursuant to Federal Register, Volume 82, Number 4, dated January 6, 2017.

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

The attached general and state conditions must be met. Note specifically General Conditions 9, 12, 18 and 20 concerning management of water flows, soil erosion and sediment control, endangered species and historic properties. If all conditions cannot be met an individual permit may be required.

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

The decision regarding these actions is based on information found in the administrative record, which documents the district's decision-making process, the basis for the decision and the final decision.

The attached certification form must be signed and returned to the Corps of Engineers within 30 days after project completion.

The Memphis District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, we invite you to

complete a customer service survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. Your comments, positive or negative, will not affect any current or future dealings with the Corps of Engineers.

Your cooperation in the regulatory program is appreciated. If you have questions, please contact Damon McDermott at (901) 544-0732 and refer to File No. MVM-2017-161.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger S. Allan".

Roger S. Allan
Supervisor
Regulatory Branch

Enclosures

APPENDIX C

Screening Level Noise Analysis

Bowlby & Associates, Inc.

504 Autumn Springs Court, #11
Franklin, Tennessee 37067-8278
(615) 771-3006, Fax (615) 771-3406
cpatton@bowlbyassociates.com

October 3, 2017

Mr. Tim Alexander, Project Manger
Fisher Arnold
9180 Crestwyn Hills Drive
Memphis, TN 38125

Dear Mr. Alexander:

**Subject: Screening Level Noise Analysis
Harrisburg Road Widening and Improvements
(East Parker Road to Jonesboro Memorial Park Cemetery)
Jonesboro, Arkansas
ARDOT Job # 100881**

As directed by Arkansas Highway and Transportation Department Environmental Division staff we have conducted a screening level noise analysis on the Harrisburg Road Widening and Improvements project. This letter serves as our reporting on that analysis.

Fundamentals of Sound and Noise

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

Sound levels fluctuate with time depending on the sources of the sound audible at a specific location. In addition, the degree of annoyance associated with certain sounds varies by time of day, depending on other ambient sounds affecting the listener and the activities of the listener. The time-varying fluctuations in sound levels at a fixed location can be quite complex, so they are typically reported using statistical or mathematical descriptors that are a function of sound intensity and time. A commonly used descriptor of the equivalent sound level is Leq, which

Mr. Tim Alexander

October 3, 2017

Page 2

represents the equivalent of a steady, unvarying level over a defined period of time containing the same level of sound energy as the time varying noise environment. Leq(h) is a sound level averaged over one hour. For highway projects, the Leq(h) is commonly used to describe traffic-generated sound levels at locations of outdoor human use and activity (such as residences).

Noise Impact Criteria

Traffic noise impacts take place when the predicted traffic noise levels approach or exceed the noise abatement standard, or when the predicted traffic noise levels exceed the existing noise level by ten dB(A) (decibels on the A-scale). The noise abatement standard of 67 dB(A) is used for sensitive noise receptors such as residences (Activity Category B), and exterior frequent human use areas near schools, churches, parks and cemeteries (Activity Category C). The noise abatement standard of 72 dB(A) is used for sensitive commercial noise receptors, such as outdoor seating areas of restaurants or office buildings. The term "approach" is considered to be one dB(A) less than the noise abatement standard.

Traffic noise analyses

This Type I project of roadway improvements includes adding a southbound through lane to the north side of the Harrisburg Road intersection with East Parker Road. From the south side of the intersection to Lakewood Drive the project will include the addition of a southbound lane, a center turn lane, and a northbound through lane. From Lakewood Drive to approximately 600 feet north of the cemetery entrance, the project improvements include the addition of a center turn lane. This report contains a "Screening Level" traffic noise analysis utilizing the Federal Highway Administration's Traffic Noise Model 2.5 (TNM), proposed roadway information, and projected traffic volumes for 2037.

Traffic noise analyses were performed for the project utilizing TNM to calculate traffic noise levels from the proposed 5-lane, 3-lane and 2-lane cross-sections Harrisburg Road. The 5-lane section consisted of four 12-foot paved travel lanes with one 12-foot center turn lane. The 3-lane section consisted of two 12-foot paved travel lanes with one 12-foot center turn lane. An array of receivers was placed at 10-foot intervals away from Harrisburg Road to determine the approximate distance from the proposed edge of roadway pavement (EOP) to the 66 dB(A) traffic noise level. The model assumed an at-grade condition, no intervening buildings, and a "grass" default ground type.

A 5-lane cross section with posted speed of 35mph was utilized between East Parker Road and Medallion Drive. A 5-lane cross section with posted speed of 45mph was utilized between Medallion Drive and Lakewood Drive. A 3-lane cross section with posted speed of 45mph was utilized from Lakewood Drive to the entrance of Jonesboro Memorial Park Cemetery.

Effects of Project

The traffic noise predictions for the project resulted in the following distances to impact for Category B and C land uses:

- 125 feet from East Parker Road to Medallion Drive
- 175 feet from Medallion Drive to Lakewood Drive
- 155 feet from Lakewood Drive to the entrance to Jonesboro Memorial Park Cemetery

From East Parker Road to Medallion Drive there are nine single family residences within 125 feet of the proposed project. There is one single family residence between Medallion Drive and Lakewood Drive within 175 feet of the proposed project. From Lakewood Drive to the entrance of Jonesboro Memorial Park Cemetery there are twenty-nine residential apartments within the Dogwood Estates Apartments complex and one cemetery within 155 feet of the proposed project.

In summary, our analysis predicted ten single family residences, twenty-nine apartments and one cemetery as impacted by the project.

Traffic Noise Abatement

Since noise impacts are expected to result from the project, noise abatement may be needed. Based upon ARDOT's *Policy on Highway Traffic Noise Abatement*, it is generally not feasible to provide noise abatement on non-access controlled roadways. The need to provide access to the roadway from adjacent properties may require further noise abatement analysis.

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

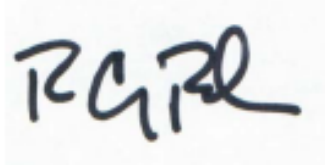
Any excessive project noise, due to construction operations, should be of short duration and have a minimum adverse effect on land uses or activities associated with this project area.

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

Mr. Tim Alexander
October 3, 2017
Page 4

If you have any questions or need further information, please contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "CPATTON", is centered below the text "Sincerely yours,". The signature is written in a cursive, somewhat stylized font.

Clay Patton
Senior Project Manager

APPENDIX D

ARDOT Environmental Impacts Assessment Form

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

ARDOT Job Number 100881 FAP Number CMF-9227(68)

Job Title Parker Rd. – South (Hwy. 1B) (Jonesboro) (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No impacts; project located in AQ attainment area
Cultural Resources	X			SHPO clearance (5/23/17)
Economic	X			No adverse impacts
Endangered Species	X			USFWS correspondence (6/7 /17)
Environmental Justice/Title VI	X			EJ populations not located in area
Fish and Wildlife	X			USFWS correspondence (6/7 /17)
Floodplains	X			Zone AE Floodlain with a Floodway
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			None identified in project area
Land Use		X		2.61 acres new ROW; 0.60 acre TCE
Migratory Birds	X			No structures with nests in project footprint
Navigation/Coast Guard	X			No navigable waterway concerns
Noise Levels		X		Noise analysis enclosed (10/3/17)
Prime Farmland	X			Not located in project footprint
Protected Waters	X			None located in project area
Public Recreation Lands	X			None located in project footprint
Public Water Supply/WHPA		X		Drinking Water SP required
Relocatees	X			No relocations necessary
Section 4(f)/6(f)	X			4(f) / 6(f) resources not in project footprint
Social	X			No adverse social impacts identified
Underground Storage Tanks	X			None located in project area
Visual	X			No adverse visual quality impacts
Streams		X		STAA required by ADEQ
Water Quality		X		404 permit issued by USACE (11/3/17)
Wetlands	X			None in project footprint
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? No
 Short-term Activity Authorization Required? Yes
 Section 404 Permit Required? Yes Type NW 14

Remarks:

Signature of Evaluator Jim Alexander Date 11/19/18

APPENDIX E

Public Comments

CITY OF JONESBORO
CITIZEN COMMENT FORM - SUMMARY

ARDOT JOB NUMBER 100881
WIDENING OF HIGHWAY 1B FROM FOREST HILL ROAD TO PARKER ROAD
CRAIGHEAD COUNTY

LOCATION:
MUNICIPAL CENTER
MAIN LOBBY
4:00 – 7:00 P.M.
THURSDAY, DECEMBER 7, 2017

Yes No

8

0

Do you feel there is a need for the intersection improvements at the intersection of the Highway 49 at Parker Road?
Comment (optional). _____

Comments:

There need to be a light at Forest Hill.
Traffic light at Forest Hill is needed, particularly if this project is only funded to Forest Hill.
Would like to see the project go past the Fire Station entrance.

7

1

Do you feel that the proposed design presented at this meeting will improve the traffic flow through the area? Please explain. _____

Comments:

Yes - There needs to be a light at Forest Hill.
Yes - Five time better than current
Yes - I believe it will help

7

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

4

3

Do you have any concerns related to the proposed design (e.g. change in access, etc.) or suggestions for additions/modifications? _____

Comments:

Yes – Needs to go past the Fire Station entrance. The curve past the church should be changed.
Yes – Traffic access to Hwy 1B from Forest Hill.
Yes - Improve visibility for south through curve past Central Baptist Church.
Yes - Craighead Forest Road needs a light. It will be impossible to cross 5 lanes of traffic when turning left.

5

1

Do you feel that the proposed design will result in any impacts (Beneficial or Adverse) on your property and/or community (e.g. economic, environmental, social, etc.)? Please explain. _____

Comments:

5 lanes will take away from the beauty of the area.

Beneficial

Beneficial, Social

Beneficial – Better traffic flow for all businesses

Will be very adverse to Mardis Subdivision without light.

Beneficial, Economic, Environmental, Social

Additional Comments:

1. Bike trail should not be on Hwy 1. It should be on S. Culberhouse. It is too dangerous to ride a bike on S. Culberhouse because of the hills & S. Culberhouse is close to the park than Harrisburg Rd.
2. Improve signal light timing for traffic light at Parker Road and 1B to allow Southbound traffic to clear out rather than back up through intersections north.
3. Highly support project, long overdue. Recommend doing the entire project to Fire Station, don't delay. Perhaps a light at Forest Hill.

Eight (8) Comment forms returned.

Twenty-six (26) attendees.

CITY OF JONESBORO

CITIZEN COMMENT FORM

**AHTD JOB NUMBER 100881
WIDENING OF HIGHWAY 1B FROM FOREST HILL ROAD TO PARKER ROAD
CRAIGHEAD COUNTY**

**LOCATION:
MUNICIPAL CENTER
MAIN LOBBY**

4:00 – 7:00 P.M.

THURSDAY, DECEMBER 7, 2017

Make your comments on this form and leave it with City of Jonesboro personnel at the meeting or mail it within 15 days to: City of Jonesboro, Engineering Department, P.O. Box 1845, Jonesboro, AR 72403 or Email: clight@jonesboro.org.

Yes No

Do you feel there is a need for the widening of Highway 1B from Forest Hill Road to Parker Road?

Comment (optional). None

Do you feel that the proposed design presented at this meeting will improve the traffic flow through the area? Please explain. See attached sheet

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

(Continued on back)

Yes No

Do you have any concerns related to the proposed design (e.g. change in access, etc.) or suggestions for additions/modifications? See attached sheet

Do you feel that the proposed design will result in any impacts (Beneficial or Adverse) on your property and/or community (e.g. economic, environmental, social, etc.)? Please explain. See attached sheet

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

Name: _____ (Please Print)

Address: _____ Phone: (____) _____

E-mail: _____

Please make additional comments here.

See attached sheets

Shared Use Path Comments:

There are at least 10 street/driveway crossings for the shared use path in this approximate ¼ mile stretch. Several of these crossings have high traffic volumes throughout the day (Walmart x2, Gladiolus Dr., Exxon and Forest Hill Rd.). As a cyclist and a certified League of American Bicyclists Cycling Instructor, I have concerns regarding the safety of pedestrians and cyclists at these conflict points. While a shared use path could be beneficial in this area if proper consideration is given to these multiple crossings, it also has the potential to be virtually unusable if proper consideration is not given to these conflict points. Below is some information taken from the AASHTO (The American Association of State Highway Transportation Officials) Guide for the Development of Bicycle Facilities:

Separation between Shared Use Paths and Roadways: When two-way shared use paths are located immediately adjacent to a roadway, some operational problems are likely to occur. In some cases, paths along highways for short sections are permissible, given an appropriate level of separation between facilities. Some problems with paths located immediately adjacent to roadways are as follows:

1. Unless separated, they require one direction of bicycle traffic to ride against motor vehicle traffic, contrary to normal rules of the road.
2. When the path ends, bicyclists going against traffic will tend to continue to travel on the wrong side of the street. Likewise, bicyclists approaching a shared use path often travel on the wrong side of the street in getting to the path. Wrong-way travel by bicyclists is a major cause of bicycle/automobile crashes and should be discouraged at every opportunity.
3. At intersections, motorists entering or crossing the roadway often will not notice bicyclists approaching from their right, as they are not expecting contra-flow vehicles. Motorists turning to exit the roadway may likewise fail to notice the bicyclist. Even bicyclists coming from the left often go unnoticed, especially when sight distances are limited.
4. Many bicyclists will use the roadway instead of the shared use path because they have found the roadway to be more convenient, better maintained, or safer. Bicyclists using the roadway may be harassed by some motorists who feel that in all cases bicyclists should be on the adjacent path.
5. Although the shared use path should be given the same priority through intersections as the parallel highway, motorists falsely expect bicyclists to stop or yield at all cross-streets and driveways. Efforts to require or encourage bicyclists to yield or stop at each cross-street and driveway are inappropriate and frequently ignored by bicyclists.
6. Stopped cross-street motor vehicle traffic or vehicles exiting side streets or driveways may block the path crossing.
7. Because of the proximity of motor vehicle traffic to opposing bicycle traffic, barriers are often necessary to keep motor vehicles out of shared use paths and bicyclists out of traffic lanes. These barriers can represent an obstruction to bicyclists and motorists, can complicate maintenance of the facility, and can cause other problems as well.

Forest Hill Rd. Intersection Comments:

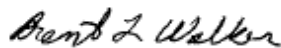
Traffic turning left (north) onto Harrisburg Rd. from Forest Hill Rd. and Gladiolus Dr. will likely continue to have difficulty finding adequate gaps in traffic to safely pull out. This difficulty will likely increase with the addition of multiple lanes and the installation of a traffic light at Forest Hill Rd. in the future is nearly

inevitable. The possibility of adding an entrance to the Gladiolus Apartments from Forest Hill Rd. should be investigated. This would involve a creek/ditch crossing, but has the potential to alleviate congestion from the Harrisburg Rd./Gladiolus Dr. intersection and more readily justify the expeditious installation of a traffic light at Harrisburg Rd. and Forest Hill Rd. Furthermore, the installation of a traffic light would allow traffic exiting Central Baptist Church to use the rear entrance/exit to Forest Hill Rd. during heavy traffic times thus reducing the need for officers to direct traffic on Harrisburg Rd. This is by no means a cure-all and may have detrimental effects that outweigh the benefits, but it should at least be investigated at the conceptual level.

Overall Project Comments:

Overall the project has great potential to benefit the citizens of Jonesboro. I am excited to see bicycle and pedestrian accommodations in the initial plan! I strongly encourage all parties involved to consider realistic expectations of growth in the area and the potential future improvements to the I-555 and Harrisburg Rd. interchange so that the improvements made now are not found to be insufficient in short order. Thank you for the work you do for the citizens of Jonesboro and all of Northeast Arkansas. You have a difficult and often thankless job, but your efforts do not go unnoticed.

Sincerely,



Brent L. Walker
League of American Bicyclists, League Cycling Instructor 5297
2509 Cottonwood St.
Jonesboro, AR 72401
870-273-2278
BRENTLWALKER@GMAIL.COM

TIER 3 CATEGORICAL EXCLUSION RE-EVALUATION

**ARDOT JOB NUMBER 100881
FAP NUMBER CMF-9227(68)
PARKER RD. – SOUTH (HWY. 1B) (JONESBORO) (S)
ROUTE 1B, SECTION 17B
CRAIGHEAD COUNTY, ARKANSAS**

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

Prepared by
Fisher Arnold, Inc.
9180 Crestwyn Hills Drive
Memphis, TN 28125

October 2020

October 28, 2020
Date of Approval

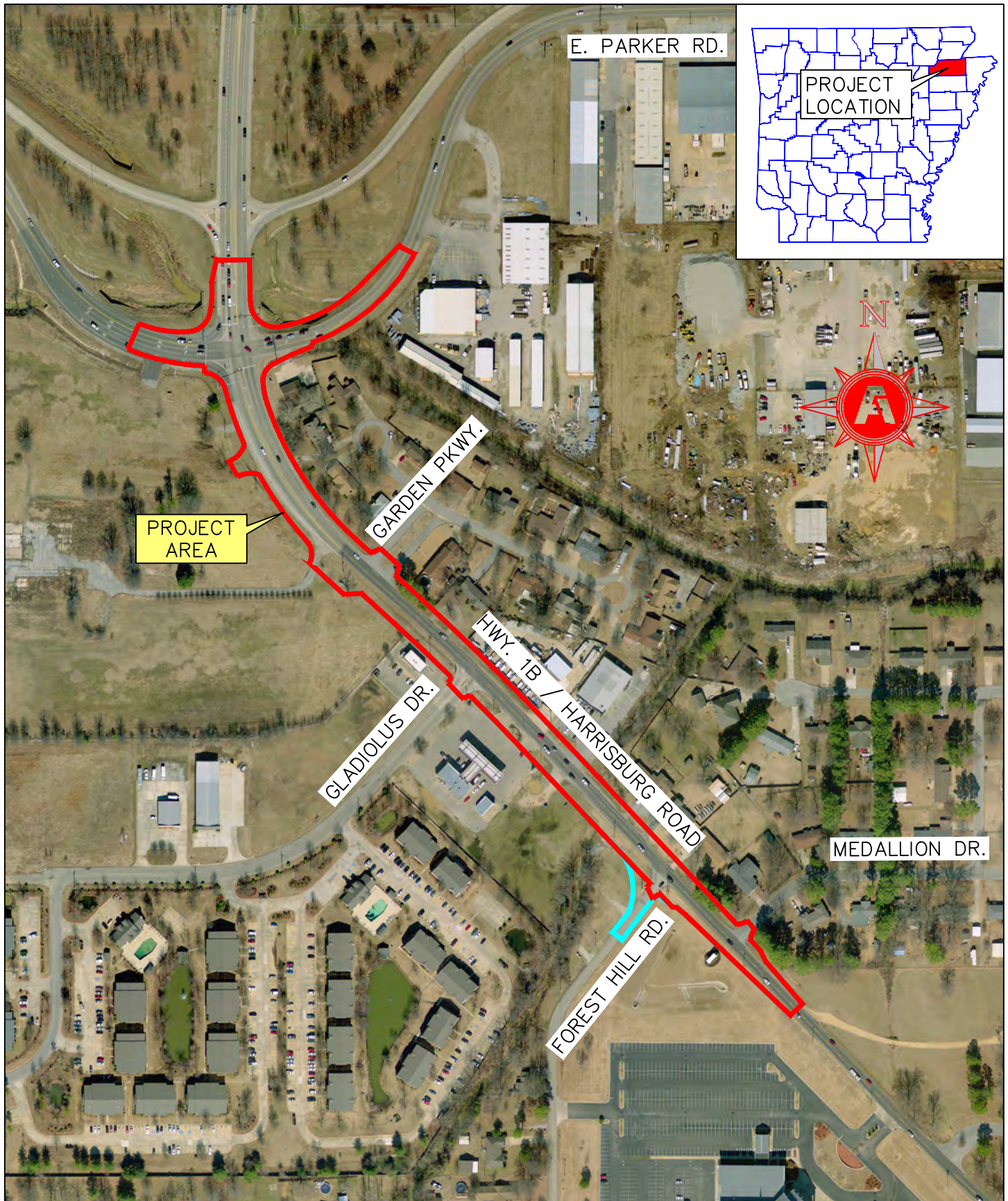
Randal Looney
Randal Looney
Environmental Coordinator
Federal Highway Administration

A Tier 3 Categorical Exclusion for the subject job was approved by the FHWA on December 19, 2018. The design has been modified since that time. Design modifications include installing a traffic signal at the intersection of Forest Hill Road and Highway 1B / Harrisburg Road and reducing the total amount of right away required beyond slope limits from 10' to 5'.

Approximately 2.6 acres of new right of way was originally proposed for the project. Although an additional area of new right of way is required to install the traffic signal, the overall new right of way total has been reduced to 1.67 acres due to the slope limit reduction. A project location map showing the additional traffic signal acquisition area is attached.

The design changes were reviewed and additional environmental impacts were not identified. The State Historic Preservation Officer clearance concurring with the previous finding of "no historic properties affected" for the proposed project is attached.

The project will remain a Tier 3 Categorical Exclusion as defined by the ARDOT/FHWA Programmatic Agreement on the processing of Categorical Exclusions.



LEGEND

- ORIGINAL PROJECT EVALUATION LIMITS
- RE-EVALUATION PROJECT LIMITS

JOB 100881
 PARKER RD. — SOUTH
 (HWY. 1B)(JONESBORO) (S)
 LOCATION MAP
 (RE-EVALUATION)

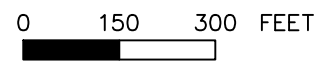


FIGURE 1



ARKANSAS HERITAGE



January 27, 2020

Ms. Karen Clancy
NEPA Project Manager
Fisher Arnold
9180 Crestwyn Hills Drive
Memphis, TN 38125

Re: Craighead County – Jonesboro
Section 106 Review (Additional Information) – FHWA
Proposed Undertaking – Harrisburg Road Improvements
AHPP Tracking Number 98377.02

Dear Ms. Clancy:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the information regarding the addendum to the Harrisburg Road Improvements project in Sections 31 and 32, Township 14 North, Range 4 East in Jonesboro, Craighead County, Arkansas.

The 2017 AHPP finding of no adverse effect was in error. Based on the results of the cultural resources investigation there are no historic properties as defined in 36 CFR § 800.16(l)(1) within the original area of potential effects (APE). Therefore, the proper finding is no historic properties affected in accordance with 36 CFR § 800.4(d)(1). Based on our research of the amended APE, the AHPP concurs with a finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)**.

Tribes that have expressed an interest in the area include the Osage Nation (Dr. Andrea Hunter), the Quapaw Nation (Mr. Everett Bandy), and the Shawnee Tribe (Ms. Tonya Tipton). We recommend consultation in accordance with 36 CFR § 800.2(c)(2).

Please refer to the AHPP Tracking Number above in all correspondence. If you have any questions, please contact Eric Mills of my staff at (501) 324-9784 or eric.mills@arkansas.gov. Please refer to the AHPP Tracking Number above in any correspondence.

Sincerely,

Scott Kaufman
Director, AHPP

cc: Mr. Randall Looney, Federal Highway Administration
Mr. John Fleming, Arkansas Department of Transportation
Dr. Ann Early, Arkansas Archeological Survey


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

ARDOT Job Number 100881 FAP Number CMF-9227(68)
Job Title Parker Rd. – South (Hwy. 1B) (Jonesboro) (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No impacts; project located in AQ attainment area
Cultural Resources	X			SHPO clearance (5/23/17 and 1/27/20)
Economic	X			No adverse impacts
Endangered Species	X			USFWS correspondence (6/7/17)
Environmental Justice/Title VI	X			EJ populations not located in area
Fish and Wildlife	X			USFWS correspondence (6/7/17)
Floodplains	X			No floodplain impacts
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			None identified in project area
Land Use		X		1.67 acres new ROW; 0.209 acre TCE
Migratory Birds	X			No structures with nests in project footprint
Navigation/Coast Guard	X			No navigable waterway concerns
Noise Levels		X		Noise analysis completed; minor impacts, abatement not feasible
Prime Farmland	X			None located in project footprint
Protected Waters	X			None located in project area
Public Recreation Lands	X			None located in project footprint
Public Water Supply/WHPA		X		Drinking Water SP required
Relocates	X			No relocations necessary
Section 4(f)/6(f)	X			4(f) / 6(f) resources not in project footprint
Social	X			No adverse social impacts identified
Underground Storage Tanks	X			None located in project area
Visual	X			No adverse visual quality impacts
Streams		X		STAA required by ADEQ
Water Quality		X		404 permit issued by USACE (11/3/17)
Wetlands	X			None in project footprint
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? No
 Short-term Activity Authorization Required? Yes
 Section 404 Permit Required? Yes Type NW 14

Remarks:

Signature of Evaluator  Date 10/14/2020

Nationwide Permit No. 14

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

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

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

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

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

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

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

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

Nationwide Permit General Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Transferee)

(Date)

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

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

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

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

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

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

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

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

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

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
- (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal

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

- (7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;
 - (8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;
 - (9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and
 - (10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.
- (c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.
- (d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.
- (2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss

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

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

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

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

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

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

District Engineer's Decision

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

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

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

Further Information

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