

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB NUMBER 101054
FAP NUMBER NHPP-1638(4)
HWY. 230 STRS. & APPRS. (S)
ROUTE 230, SECTIONS 5,6, & 7
CRAIGHEAD AND LAWRENCE COUNTIES**

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

By the

U.S. Department of Transportation

Federal Highway Administration

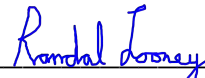
And the

Arkansas Department of Transportation

April 2021

April 5, 2021

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

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

The purpose of this project is to replace 10 structures with four bridges and six box culverts along Highway 230 in Craighead and Lawrence Counties. Total length of the project is 2.5 miles. It extends from Alicia, in Lawrence County, to Bono in Craighead County, Arkansas. A project location map is attached.

The existing roadway consists of two 10' wide paved travel lanes with 3' wide unpaved shoulders. Existing right of way width varies from 90' to 170'. Proposed improvements include two 11' wide paved travel lanes with 4' (2' paved) shoulders. The proposed right of way width will vary from 100' to 285'. Approximately 15.5 acres of additional right of way and 4.4 acres of temporary construction easements will be required for construction.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2021	680	8	55 mph
2041	760	8	55 mph

There are no relocations, environmental justice, or economic impacts associated with this project. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits. Approximately 7.2 acres of Prime Farmland and 0.5 acre of Farmland of Statewide Importance will be converted to highway right of way. Form NRCS-CPA-106 is attached.

Based on the ARDOT noise policy, a noise analysis is not required for this project. The bridge replacements will not involve adding capacity, substantially changing the roadway alignment, or exposing noise sensitive land uses to traffic noise sources. In compliance with federal guidelines, local authorities will not require notification.

The official species list was obtained through the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation website and lists the following species as potentially occurring in the project area: gray bat (*Myotis grisescens*), Northern long-eared bat (*Myotis septentrionalis*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Red Knot (*Calidris canutus rufa*), Piping Plover

(*Charadrius melodus*), Missouri bladderpod (*Physaria filiformis*), and Pondberry (*Lindera melissifolia*). Please see the attached species list.

It has been determined that the project will have “no effect” on the Eastern Black Rail, Piping Plover, and Red Knot due to lack of habitat and distance to known populations. The Arkansas Determination Key provided a may affect, but is not likely to adversely affect determination for the Missouri bladderpod. This species inhabits glades in the Ozarks and Ouachita’s; the proposed project is well within the Mississippi River Alluvial Plain; therefore, it has been determined that the project will have “no effect” on the Missouri bladderpod. The Arkansas Determination Key provided a “may affect, but is not likely to adversely affect” determination for pondberry and gray bat. The results of the Arkansas Determination Key are attached.

Any take that may occur as result of the project is not prohibited under the ESA Section 4(d) rule adopted for the northern long-eared bat. See attached NLEB 4(d) verification letter. The USFWS concurred with these determinations on September 14, 2020.

The project will have a discharge of dredged or fill material into waters of the United States associated with the bridges and culverts at eight of the ten sites; therefore, a Section 404 permit will be required. The project will impact 0.7 acre of the Village Creek wetland/stream complex at Site 1. Site 2 impacts will be approximately 0.6 acre of the Lick Pond Slough wetland/stream complex. Site 3 will impact approximately 161’ of Podo Creek. Site 4 will impact approximately 176’ of an unnamed tributary to West Cache River. Site 5 will impact approximately 246’ of the West Cache River. Site 8 will impact approximately 236’ of the East Cache River. Site 9 will impact approximately 255’ of Gum Slough. Site 10 will impact approximately 189’ of Whaley Slough Ditch. Unavoidable impacts to 1.3 acres of wetlands will be compensated through ARDOT’s Glaise Creek Mitigation Bank. The project should be authorized by Nationwide Permit 23 for Approved Categorical Exclusions as defined in Federal Register 82(4): 1860-2008.

The Cache River is designated as an impaired waterbody for silt turbidity and has a total maximum daily limit for silt turbidity. A Water Pollution Control-Special Provision will be attached to the project contract.

Public drinking water wells are located within the vicinity of this project and will require a Wellhead Protection –Special Provision.

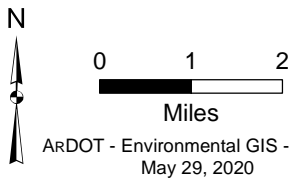
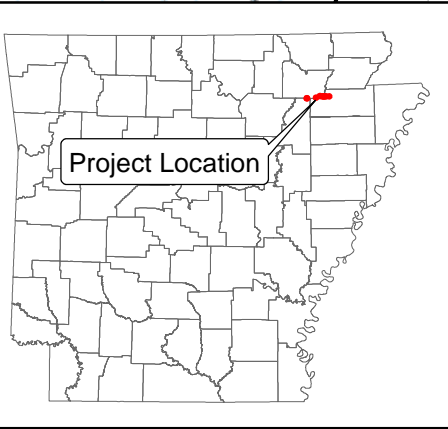
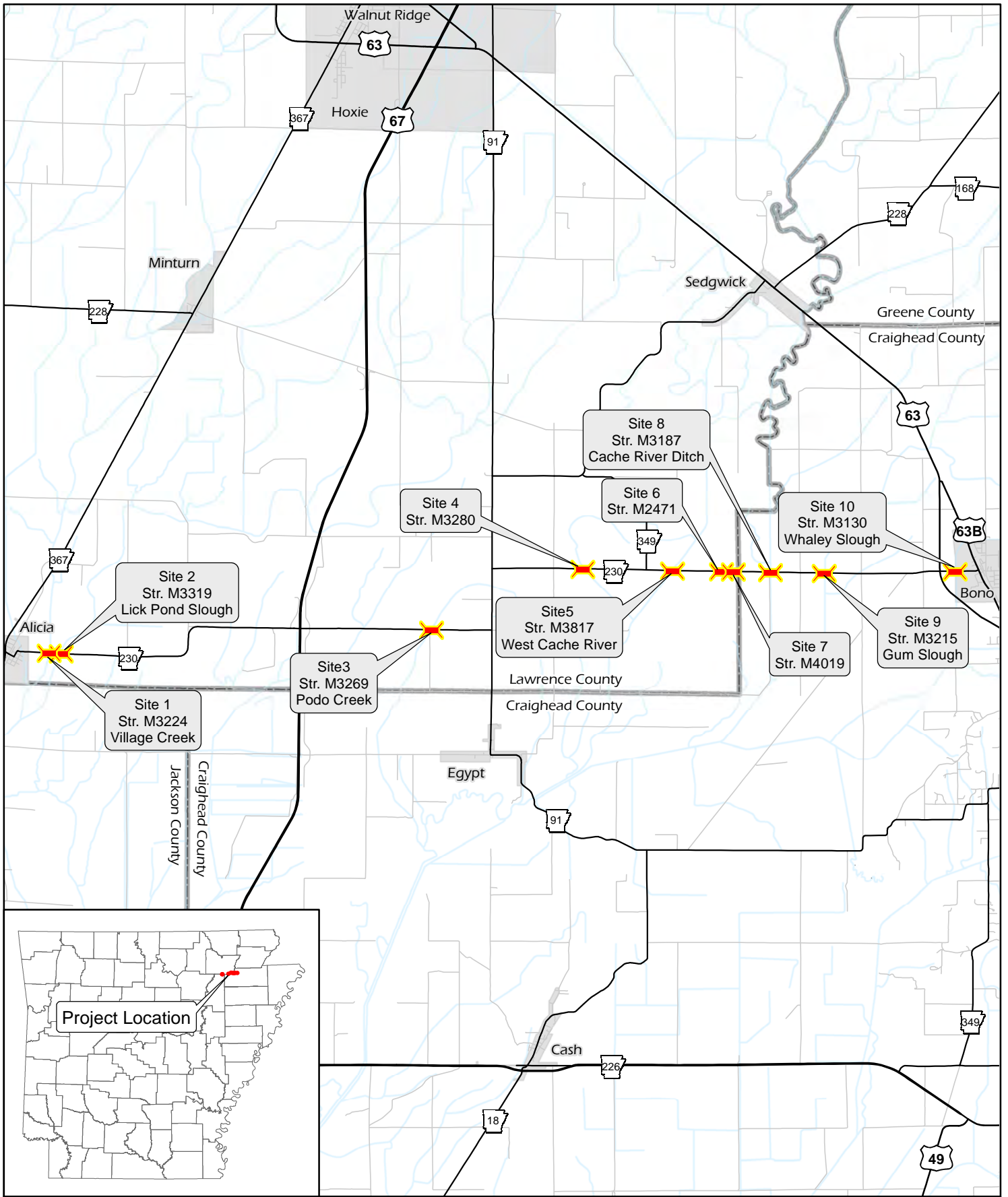
The Parker pony truss bridge carrying Highway 230 over the East Cache River (M3187) was determined eligible for inclusion in the NRHP as part of a Request for Technical Assistance in 2017 for Job Number 100869. The Parker pony truss bridge carrying Highway 230 over the West Fork of the Cache River (M3817) was

determined eligible for inclusion in the NRHP as part of an Architectural Resource Survey in 2020 regarding historic structures found on this job. As part of the ARDOT Historic Bridge Process, the Historic Bridge Analysis Committee (HBAC) met and determined that ARDOT could not rehabilitate or reuse the bridges as part of the couplets in place, and that ARDOT was not willing to retaining ownership of bridges not in vehicular service. ARDOT marketed the bridges to federal, state, and local entities for reuse at a different location. Independence County, Arkansas, responded requesting that the bridges be relocated for pedestrian use under their ownership. After the HBAC reviewed and accepted the Independence County proposal, a Memorandum of Agreement (MOA) with a Historic Bridge Preservation Covenant was executed by the Federal Highway Administration, Arkansas Historic Preservation Program, Independence County, and ARDOT granting transfer of ownership of the bridge to the Independence County and approving the bridges' relocation to Batesville. No other structures or archeological sites eligible for or listed on the National Register of Historic Places will be impacted by the proposed project. The State Historic Preservation Officer Clearance, Bridge MOA, and the Programmatic Section 4(f) Evaluation are attached.

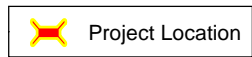
This project has been determined to generate minimal air quality impacts for *Clean Air Act* criteria pollutants and has not been linked with any special mobile source air toxic (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location,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

Craighead and Lawrence Counties participate in the National Flood Insurance Program. All the projects lie within a Zone A, Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a substantial floodplain encroachment or risk to property or life.

No other adverse environmental impacts were identified. The checklist used to verify consideration of potential environmental impacts is attached.



Job 101054
Hwy. 230 Strs. & Apprs.
Craighead & Lawrence Counties





Asa Hutchinson
Governor
Stacy Hurst
Secretary

August 27, 2020

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

Re: Craighead and Lawrence Counties - General
Section 106 Review - FHWA
Hwy. 230 Strs. & Apprs. (S)
Route 230, Sections 5, 6, and 7
ARDOT Job Number 101054
AHPP Tracking Number 105966.02

Dear Mr. Fleming:

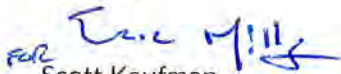
The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Project Identification Form (PIF) for the above-referenced job in Craighead and Lawrence Counties. The proposed undertaking entails the replacement of 10 bridges on Highway 230 between Alicia and Bono. Eight of the bridges (M3224, M3319, M3269, M3280, M2471, M4019, M3215, and M3130) are determined not eligible for inclusion in the National Register of Historic Places (NRHP). Bridges M3817 and M3187 are determined eligible for inclusion in the NRHP (AHPP Tracking Number 105966). The Arkansas Department of Transportation and AHPP executed a memorandum of agreement in 2018 to govern the mitigation of adverse effects to Bridges M3817 and M3187. The present survey included proposed right-of-way and temporary construction easement totaling 23 acres.

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

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

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

Sincerely,


Scott Kaufman
Director, AHPP

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

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

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

Signature of Person Completing this Part:	DATE
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Joshua Graham

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



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:

September 02, 2020

Consultation Code: 04ER1000-2020-SLI-1421

Event Code: 04ER1000-2020-E-03595

Project Name: 101054 - Hwy. 230 Strs. & Apprs. (S)

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.**

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

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

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

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

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

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

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

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

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

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to

federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days.** This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

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

Attachment(s):

- Official Species List
-

Official Species List

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

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2020-SLI-1421

Event Code: 04ER1000-2020-E-03595

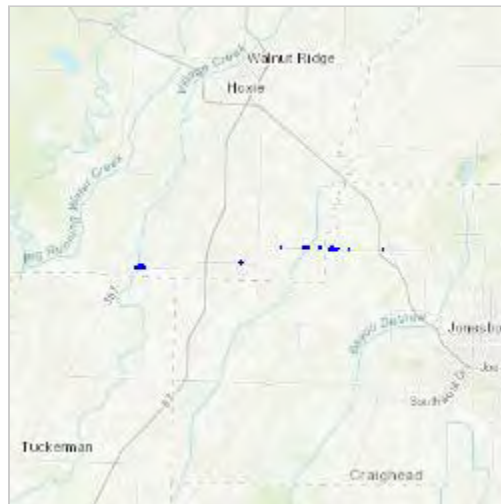
Project Name: 101054 - Hwy. 230 Strs. & Apprs. (S)

Project Type: BRIDGE CONSTRUCTION / MAINTENANCE

Project Description: Replace 10 bridges on Hwy. 230 in Lawrence and Craighead Counties.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.90971338465454N90.86258908312362W>



Counties: Craighead, AR | Lawrence, AR

Endangered Species Act Species

There is a total of 7 threatened, endangered, or candidate species on this species list.

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

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

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

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

Mammals

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6329	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Birds

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

Flowering Plants

NAME	STATUS
Missouri Bladderpod <i>Physaria filiformis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5361	Threatened
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 UNDER THIS OFFICE'S JURISDICTION.



United States Department of the Interior



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

In Reply Refer To:

September 11, 2020

Consultation Code: 04ER1000-2020-TA-1421

Event Code: 04ER1000-2020-E-03742

Project Name: 101054 - Hwy. 230 Strs. & Apprs. (S)

Subject: Verification letter for '101054 - Hwy. 230 Strs. & Apprs. (S)' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Arkansas Determination Key for project review and guidance for federally listed species (Arkansas Dkey).

Dear Mickey Matthews:

The U.S. Fish and Wildlife Service (Service) received on **September 03, 2020** your effect determination(s) for the '101054 - Hwy. 230 Strs. & Apprs. (S)' (the Action) using the Arkansas DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

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

Species	Determination
Proposed Threatened Eastern Black Rail (<i>Laterallus jamaicensis ssp. jamaicensis</i>)	No Effect
Threatened Red Knot (<i>Calidris canutus rufa</i>)	No Effect
Threatened Piping Plover (<i>Charadrius melodus</i>)	No Effect
Endangered Gray Bat (<i>Myotis grisescens</i>)	NLAA
Threatened Northern Long-eared Bat (<i>Myotis septentrionalis</i>)	May Affect
Threatened Missouri bladderpod (<i>Physaria filiformis</i>)	NLAA
Endangered Pondberry (<i>Lindera melissifolia</i>)	NLAA

Status

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

The Service recommends that your agency contact the Arkansas Ecological Services Field Office or re-evaluate this key in IPaC if: 1) the scope, timing, duration, or location of the proposed project changes, 2) new information reveals the action may affect listed species or designated critical habitat; 4) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Arkansas Ecological Services Field Office should take place before project changes are final or resources committed.

FHWA projects should not use this key for Northern Long-eared Bat determinations. Please complete the FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat Release date: December 2, 2019

The key is intended for projects funded or authorized by FHWA, FRA, or FTA, that may affect the endangered Indiana bat and/or the threatened northern long-eared bat, which requires consultation with the USFWS under Section 7 of the ESA.

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

The Service developed the National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with Bald Eagles when and under what circumstances the protective provisions of the BGEPA may apply to their activities. The guidelines should be consulted prior to conducting new or intermittent activity near an eagle nest. This document may be downloaded from the following site: <https://www.fws.gov/southeast/our-services/permits/eagles/>

To determine if your proposed activity is likely to take or disturb Bald Eagles, complete our step-by-step online self-certification process, which is located at <https://www.fws.gov/southeast/our-services/eagle-technical-assistance/>.

If the recommendations detailed in the National Bald Eagle Management Guidelines cannot be followed, you may apply for a permit to authorize removal or relocation of an eagle nest in certain instances. The application form is located at <http://www.fws.gov/forms/3-200-72.pdf>.

Action Description

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

1. Name

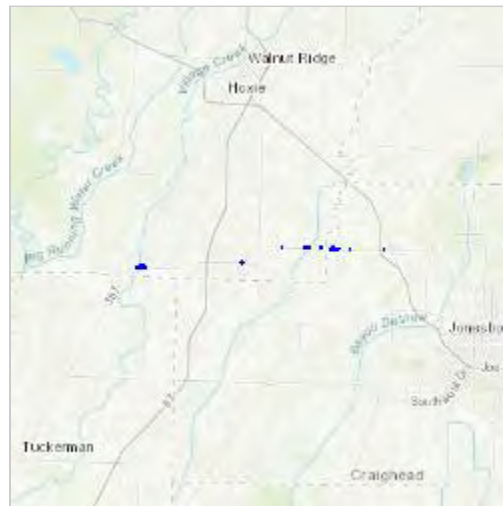
101054 - Hwy. 230 Strs. & Apprs. (S)

2. Description

The following description was provided for the project '101054 - Hwy. 230 Strs. & Apprs. (S)':

Replace 10 bridges on Hwy. 230 in Lawrence and Craighead Counties.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.90971338465454N90.86258908312362W>



Species Protection Measures

Qualification Interview

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

No

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

Yes

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

d. Federal Highway Administration

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

Yes

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

Automatically answered

No

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

Automatically answered

No

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

Automatically answered

No

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

Automatically answered

No

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

Automatically answered

No

10. [Semantic] Does the project intersect the red-cockaded woodpecker AOI?
Automatically answered
No
11. [Semantic] Does the project intersect the Eastern black rail AOI?
Automatically answered
Yes
12. Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
No
13. Does the project take place in marshy or flooded open field habitat?
No
14. [Semantic] Does the project intersect the red knot AOI?
Automatically answered
Yes
15. [Semantic (same answer as "8.1.3")] Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
Automatically answered
No
16. [Semantic (same answer as "8.2")] Does the project take place in marshy or flooded open field habitat?
Automatically answered
No
17. [Semantic] Does the project intersect the Piping Plover AOI?
Automatically answered
Yes
18. [Semantic (same answer as "8.1.3 or 9.3")] Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
Automatically answered
No
19. [Semantic] Does the project intersect the Whooping Crane AOI?
Automatically answered
No
-

20. [Semantic] Does the project intersect the interior least tern AOI?
Automatically answered
No
21. [Semantic] Does the project intersect the Gray Bat AOI?
Automatically answered
Yes
22. Does the project involve changes to an existing bridge or large culvert?
Yes
23. Does the project involve changes to an existing bridge or large culvert?
Yes
24. Were bats of any species noted on inspection?
No
25. [Semantic] Does the project intersect the Ozark Big-eared Bat AOI?
Automatically answered
No
26. [Semantic] Does the project intersect the Indiana bat AOI?
Automatically answered
No
27. [Semantic] Does the project intersect the Northern Long-eared bat AOI?
Automatically answered
Yes
28. [Semantic] Does the project intersect the Benton County Cave Crayfish AOI?
Automatically answered
No
29. [Semantic] Does the project intersect the Hell Creek Cave Crayfish AOI?
Automatically answered
No
30. [Semantic] Does the project intersect the Ozark cavefish AOI?
Automatically answered
No
-

31. [Semantic] Does the project intersect the Missouri bladderpod AOI?

Automatically answered

Yes

32. [Semantic] Does the project intersect the Geocarpon AOI?

Automatically answered

No

33. [Semantic] Does the project intersect the running buffalo clover AOI?

Automatically answered

No

34. [Semantic] Does the project intersect the Pondberry AOI?

Automatically answered

Yes

Project Questionnaire

1. **If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.**

1. Estimated total acres of forest conversion:

3.4

2. 2. If known, estimated acres of forest conversion from April 1 to October 31

0

3. 3. If known, estimated acres of forest conversion from June 1 to July 31

0

4. **If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.**

4. Estimated total acres of timber harvest

0

5. 5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. 6. If known, estimated acres of timber harvest from June 1 to July 31

0

7. **If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.**

7. Estimated total acres of prescribed fire

0

8. 8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. 9. If known, estimated acres of prescribed fire from June 1 to July 31

0

10. If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?

0



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:

September 11, 2020

Consultation Code: 04ER1000-2020-TA-1421

Event Code: 04ER1000-2020-E-03747

Project Name: 101054 - Hwy. 230 Strs. & Apprs. (S)

Subject: Verification letter for the '101054 - Hwy. 230 Strs. & Apprs. (S)' project under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions.

Dear Mickey Matthews:

The U.S. Fish and Wildlife Service (Service) received on September 11, 2020 your effects determination for the '101054 - Hwy. 230 Strs. & Apprs. (S)' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. This IPaC key assists users in determining whether a Federal action is consistent with the activities analyzed in the Service's January 5, 2016, Programmatic Biological Opinion (PBO). The PBO addresses activities excepted from "take"^[1] prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based upon your IPaC submission, the Action is consistent with activities analyzed in the PBO. The Action may affect the northern long-eared bat; however, any take that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o). Unless the Service advises you within 30 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the PBO satisfies and concludes your responsibilities for this Action under ESA Section 7(a)(2) with respect to the northern long-eared bat.

Please report to our office any changes to the information about the Action that you submitted in IPaC, the results of any bat surveys conducted in the Action area, and any dead, injured, or sick northern long-eared bats that are found during Action implementation. If the Action is not completed within one year of the date of this letter, you must update and resubmit the information required in the IPaC key.

This IPaC-assisted determination allows you to rely on the PBO for compliance with ESA Section 7(a)(2) only for the northern long-eared bat. It **does not** apply to the following ESA-protected species that also may occur in the Action area:

- Eastern Black Rail, *Laterallus jamaicensis ssp. jamaicensis* (Proposed Threatened)
- Gray Bat, *Myotis grisescens* (Endangered)
- Missouri Bladderpod, *Physaria filiformis* (Threatened)
- Piping Plover, *Charadrius melodus* (Threatened)
- Pondberry, *Lindera melissifolia* (Endangered)
- Red Knot, *Calidris canutus rufa* (Threatened)

If the Action may affect other federally listed species besides the northern long-eared bat, a proposed species, and/or designated critical habitat, additional consultation between you and this Service office is required. If the Action may disturb bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act is recommended.

[1]Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [ESA Section 3(19)].

Action Description

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

1. Name

101054 - Hwy. 230 Strs. & Apprs. (S)

2. Description

The following description was provided for the project '101054 - Hwy. 230 Strs. & Apprs. (S)':

Replace 10 bridges on Hwy. 230 in Lawrence and Craighead Counties.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.90971338465454N90.86258908312362W>

**Determination Key Result**

This Federal Action may affect the northern long-eared bat in a manner consistent with the description of activities addressed by the Service's PBO dated January 5, 2016. Any taking that may occur incidental to this Action is not prohibited under the final 4(d) rule at 50 CFR §17.40(o). Therefore, the PBO satisfies your responsibilities for this Action under ESA Section 7(a)(2) relative to the northern long-eared bat.

Determination Key Description: Northern Long-eared Bat 4(d) Rule

This key was last updated in IPaC on May 15, 2017. Keys are subject to periodic revision.

This key is intended for actions that may affect the threatened northern long-eared bat.

The purpose of the key for Federal actions is to assist determinations as to whether proposed actions are consistent with those analyzed in the Service's PBO dated January 5, 2016.

Federal actions that may cause prohibited take of northern long-eared bats, affect ESA-listed species other than the northern long-eared bat, or affect any designated critical habitat, require ESA Section 7(a)(2) consultation in addition to the use of this key. Federal actions that may affect species proposed for listing or critical habitat proposed for designation may require a conference under ESA Section 7(a)(4).

Determination Key Result

This project may affect the threatened Northern long-eared bat; therefore, consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.) is required. However, based on the information you provided, this project may rely on the Service's January 5, 2016, *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions* to fulfill its Section 7(a)(2) consultation obligation.

Qualification Interview

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

Yes

2. Have you determined that the proposed action will have "no effect" on the northern long-eared bat? (If you are unsure select "No")

No

3. Will your activity purposefully **Take** northern long-eared bats?

No

4. [Semantic] Is the project action area located wholly outside the White-nose Syndrome Zone?

Automatically answered

No

5. [Semantic] Is the project action area located within 0.25 miles of a known northern long-eared bat hibernaculum?

Note: The map queried for this question contains proprietary information and cannot be displayed. If you need additional information, please contact your State wildlife agency

Automatically answered

No

6. [Semantic] Is the project action area located within 150 feet of a known occupied northern long-eared bat maternity roost tree?

Note: The map queried for this question contains proprietary information and cannot be displayed. If you need additional information, please contact your State wildlife agency

Automatically answered

No

Project Questionnaire

If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.

1. Estimated total acres of forest conversion:

2.3

2. If known, estimated acres of forest conversion from April 1 to October 31

0

3. If known, estimated acres of forest conversion from June 1 to July 31

0

If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.

4. Estimated total acres of timber harvest

0

5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. If known, estimated acres of timber harvest from June 1 to July 31

0

If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.

7. Estimated total acres of prescribed fire

0

8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. If known, estimated acres of prescribed fire from June 1 to July 31

0

If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?
0



The East Cache River Bridge

Bridge Number M3187

And

The West Fork Cache River Bridge

Bridge Number M3817



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

ARDOT Job Number 101054

Hwy. 230 Strs. & Apprs. (S)

Craighead and Lawrence Counties

March 2021

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

Programmatic Section 4(f) Evaluation – Historic Bridges

1 Why is this report being prepared?

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

2 What would the project accomplish?

The Arkansas Department of Transportation (ARDOT), in conjunction with the Federal Highway Administration (FHWA), proposes to replace ten bridges on Highway 230 between Alicia and Bono in Lawrence and Craighead Counties. The project improves safety and transportation needs in northeastern Arkansas. As part of the project, two historic bridges will be replaced.

ARDOT Bridge Number M3187 (East Cache River Bridge) and ARDOT Bridge Number M3817 (West Fork Cache River Bridge) are steel bridges designed as single-span Parker pony trusses. The truss span for Bridge M3187 is approximately 101 feet long. The Bridge Inspection Report dated September 17, 2020, lists the condition of the deck as fair (code 5) and the superstructure and substructure as poor (code 4). The truss span for Bridge M3817 is approximately 82 feet long. The Bridge Inspection Report dated November 20, 2020, lists the condition of the deck as satisfactory (code 6) and the superstructure and substructure as poor (code 4). Both bridges have a clear deck width of approximately 24 feet containing two 10-foot wide travel lanes.

The new bridges will be composite prestressed concrete girder structures. To meet current standards, the new bridges' plans show a roadway width

What properties are protected by Section 4(f)?

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

What is a pony truss bridge?

The metal truss is only viewed on either side of the road. The top of the truss does not connect above the roadway. The pony truss may also be called a low truss.



of 30-foot with two 11-foot wide paved travel lanes and a 4-foot shoulder on each side.

3 What Section 4(f) property is being impacted?

The East Cache River Bridge consists of a single steel 101-foot Parker pony truss span with timber stringer approach spans for a total bridge length of 170 feet (Figure 1). Maintenance staff assembled the East Cache River Bridge in 1968 using a “salvage” truss on Highway 230 in its current location west of Bono in Craighead County.

East Cache River Bridge



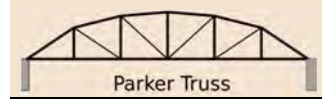
Figure 1

The West Fork Cache River Bridge consists of a single steel 82-foot Parker pony truss span with steel stringer or multi-beam approach spans for a total bridge length of 198 feet (Figure 2). Maintenance staff assembled the West Fork Cache River Bridge around 1974-1975 on Highway 230 in Lawrence County.

Both of these truss spans were likely built in the 1930s. The bridges exhibit rivet connections typical of early Twentieth Century construction methods. During the 1960s and 1970s, the Arkansas Highway Department (now known as the ARDOT) often relocated and reused trusses. These bridges illustrate the versatility and portability of steel pony trusses.

What is a Parker truss?

Charles H. Parker patented the Parker truss in 1870. It is a variation of the Pratt truss using less metal and resulting in lower cost. The Parker truss exhibits a polygonal (multi-angle or curved) top chord with inclined end posts, and with varying vertical lengths shortening from the center outward. The design of the diagonals is also important to note.



What does a riveted connection indicate?

Rivets attached or fastened structural steel on bridges from about 1900, replacing pin-connections. Rivet connections remained widely used through the mid-century. Rivets often appear as round (button-like) objects on the steel. Though, a shaft actually connects the round heads on either side, fastening the steel elements together. High-strength bolts began replacing rivets in the 1950s in Arkansas. By the 1970s, welding became the standard method of joining structural steel in bridges across the country.



West Fork Cache River Bridge



Figure 2

The East Cache River Bridge and the West Fork Cache River Bridge were determined eligible for inclusion in the National Register of Historic Places (NRHP) in 2017 and 2020, respectively. Both are NRHP eligible under Criterion A for association with the Arkansas Highway and Transportation Department Era (1923-1939) context and under Criterion C as good examples of the Parker pony truss design. Neither the East Cache River Bridge nor the West Fork Cache River Bridge is considered a National Historic Landmark.

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

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

Table 1

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

The bridges are to be replaced or rehabilitated with Federal funds.	√
The project requires the use of historic bridge structures that are eligible for inclusion or listed in the NHRP.	√
Neither bridge is a National Historic Landmark.	√
The FHWA Division Administrator determines that the facts of the project match those set forth in the FHWA Section 4(f) Policy Paper issued March 1, 2005.	√
Agreement has been reached among the FHWA, State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation through procedures pursuant to Section 106 of the National Historic Preservation Act (NHPA).	√

What are the National Register Criteria for evaluating a property's significance?

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

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

(National Register Bulletin No.15,

https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf)

What is a National Historic Landmark?

Properties are selected by the Secretary of the Interior for national historic significance. The property should "possess exceptional value in showing the history of the United States," per the National Park Service (<https://www.nps.gov/orgs/1582/index.htm>).

5 Could the project avoid demolishing the historic bridge?

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

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

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

No Action

This alternative involves no improvements to the existing facilities and continues providing only routine maintenance. The roadway across the bridges is too narrow for current design standards. The superstructures and substructures are in poor condition.

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

Rehabilitation of the Existing Structure

Two rehabilitation alternatives were considered for this project.

Rehabilitation Alternative One rehabilitates the existing historic bridges for two-way traffic operations. To meet minimum design standards for a two-way bridge, Bridge Numbers M3187 and M3817 would require expansion from a 24-foot to a 30-foot clear roadway width. This action would impact their integrity of design, which is one factor in their NRHP eligibility. The bridges would remain posted with weight restrictions because the original design cannot accommodate current allowable loads even with full rehabilitation. Rehabilitation to less than design standards requires the complete reconstruction of the timber substructures. This alternative also requires seismic retrofitting involving a carbon fiber wrap.

What is meant by feasible or prudent?

Per 23 CFR 774.17, *Feasible and prudent* avoidance alternative definitions:

(2) An alternative is not feasible if it cannot be built as a matter of sound engineering judgment.

(3) An alternative is not prudent if:

(i) It compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;

(ii) It results in unacceptable safety or operational problems;

(iii) After reasonable mitigation, it still causes:

(A) Severe social, economic, or environmental impacts

(B) Severe disruption to established communities;

(C) Severe disproportionate impacts to minority or low income populations; or

(D) Severe impacts to environmental resources protected under other Federal statutes;

(iv) It results in additional construction, maintenance, or operational costs of an extraordinary magnitude;

(v) It causes other unique problems or unusual factors; or

(vi) It involves multiple factors in paragraphs (3)(i) through (3)(v) of this definition, that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

The addition of the wrap compromises the integrity of design and materials for the bridges as well as creates a barrier to inspection. *Rehabilitation Alternative One* is not prudent due to unacceptable safety and operational problems. Widening or seismic retrofit of the bridges would also compromise their historic integrity; therefore, it is not a prudent option.

Rehabilitation Alternative Two rehabilitates the existing historic bridges for one-way traffic operations and constructs a new bridge beside each for one-way traffic operations in the opposite direction. With this option, the issue of the weight restriction. This option requires the same seismic retrofitting and complete substructure reconstruction as the previous rehabilitation alternative. *Rehabilitation Alternative Two* is not a prudent option due to unacceptable safety and operational problems, along with alteration of the historic integrity of the bridges.

New Location

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

ARDOT can build new bridges to current, minimum design standards on a new alignment with another entity accepting ownership of the historic bridges. ARDOT marketed the bridges for relocation on June 15, 2020, to find an entity willing to accept ownership for one or both of the bridges (see Appendix A for marketing correspondence). Independence County agreed to assume ownership of both bridges following dismantling and relocation. The bridges will be re-erected later along the Poke Bayou on a proposed walking trail to connect Highway 25 to Highway 167. Therefore, *New Location Alternative Two* is both feasible and prudent.

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

The FHWA, ARDOT, and the SHPO reached an agreement through the Section 106 process (36 C.F.R. 800) of NHPA (16 U.S.C. 470) on measures to minimize harm, and these measures have been incorporated into this project. Through a Memorandum of Agreement (MOA), it was resolved that ARDOT Bridge Numbers M3187 and M3817 would be transferred with a Historic Bridge Preservation Covenant including the historic preservation stipulations that apply to Independence County. A copy of the

Could an outside entity maintain the bridge in place or use it at another location?

The Surface Transportation & Uniform Relocation Assistance Act of 1987, Historic Bridges Section 144(g) requires states to market a historic bridge before its replacement. Following this directive, when no other alternatives are found to be feasible or prudent, the ARDOT markets historic bridges to federal and state agencies, county and local governments, as well as state and local historical societies. Any interested responsible parties must demonstrate willingness to accept title for, preserve the features of historic significance, and assume financial responsibility for the continued maintenance on the structure (23 U.S.C. 144).

MOA, including all agreed-upon mitigation stipulations, can be found in Appendix B.

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

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

Table 2

Section 4(f) Analysis Summary

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

Based on the considerations in Table 2, the *New Location Alternative* is the only feasible and prudent option. The proposed action includes all possible planning to minimize harm to the historic bridge resulting from such use.

8 What are the recommendations moving forward on this project?

The ARDOT recommends that the East Cache River Bridge (ARDOT Bridge Number M3187) and the West Fork Cache River Bridge (ARDOT Bridge Number M3817) be relocated for future use on the Poke Bayou walking trail. The historic bridges will be relocated with historic preservation responsibilities transferred from the current owner, the ARDOT, to the new owner, Independence County, as agreed under the MOA (Appendix B).

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

Appendix A: Marketing Correspondence



ARKANSAS DEPARTMENT OF TRANSPORTATION

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

ENVIRONMENTAL DIVISION

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

June 15, 2020

RE: Historic Bridges M3187 and M3817
Job Number 101054
Hwy 230 Strs. & Apprs.
Craighead and Lawrence Counties
Historic Bridge Marketing Request

To Whom It May Concern:

The Arkansas Department of Transportation (ARDOT) is planning to replace Bridge Number M3187 (East Cache River Bridge - Bono) in Craighead County and Bridge Number M3817 (West Fork Cache River Bridge) in Lawrence County on Highway 230. These bridges were determined eligible to the National Register of Historic Places (NRHP) through consultation with the State Historic Preservation Officer's staff. A location map and further information about the bridge is enclosed.

The Fixing America's Surface Transportation (FAST) Act, 23 USC § 144 (g)(5) states: "Any State which proposes to demolish a historic bridge for a replacement project ... shall first make the bridge available for donation to a State, locality, or responsible private entity..." As part of the mitigation process, the ARDOT is offering to donate Bridge Numbers M3187 and M3817 to any government or entity that demonstrates a willingness to accept title for, relocate for use at another site, preserve the historic features of, and assume the financial responsibility for the continued maintenance on either one or both structures.

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

ARDOT Bridge Numbers M3187 and M3817
Job Number 101054
Marketing Request
Page 2 of 2

If you are interested in acquiring one or both of these bridges, please respond with a letter of interest within 45 days from the date of this letter. For further information, contact Nikki Senn at (501) 569-2979 or Nikki.Senn@ardot.gov.

Sincerely,



John Fleming
Division Head
Environmental Division

Enclosures

JF:NS:cb

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

ARDOT Job Number 101054
Historic Bridge Marketing Description



Figure 1: ARDOT Bridge Number M3187

ARDOT Bridge Number M3187, on State Highway 230, was determined eligible for inclusion in the National Register of Historic Places in 2017. The bridge displays the Parker pony truss design. The truss span is approximately 100 feet in length and 24 feet wide.

Bridge Number M3187 was a “salvage” truss relocated to its current location over the East Cache River in 1968 replacing a timber trestle bridge. The bridge was likely constructed in the 1930s. The original build date and builder remain unknown. No other history for the bridge, including original location, has been found. During the 1960s and 1970s, the ARDOT often relocated and reused trusses. This bridge illustrates the versatility and portability of the pony truss.

Bridge Number M3187 is one of 10 bridges displaying the Parker pony truss design still in use on the highway system in Arkansas.

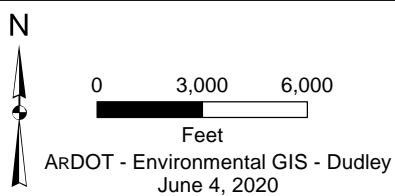
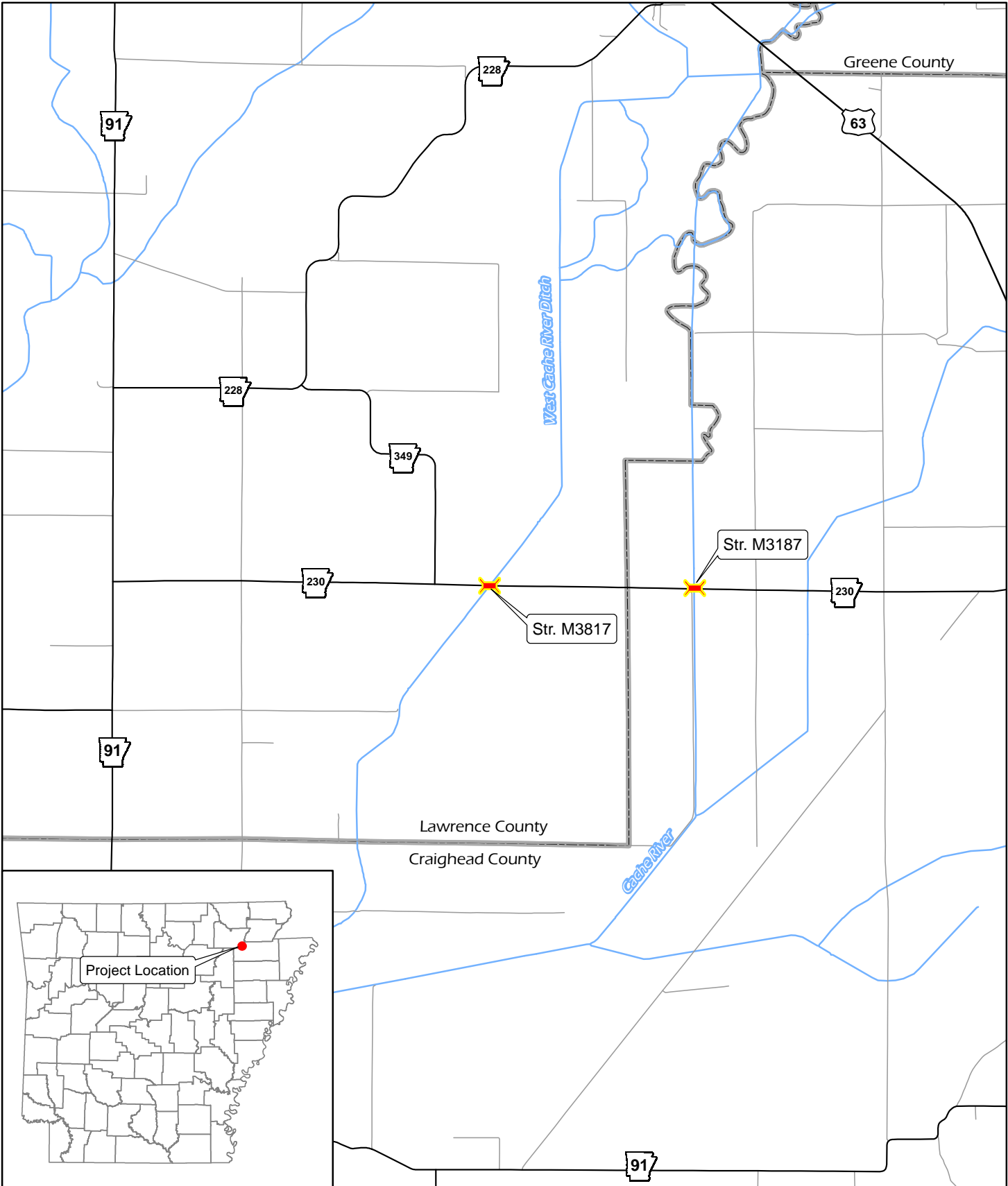
ARDOT Job Number 101054
Historic Bridge Marketing Description



Figure 2: ARDOT Bridge Number M3817

ARDOT Bridge Number M3817, on State Highway 230, was determined eligible for inclusion in the National Register of Historic Places in 2020. The truss span is 82 feet long and 24 feet wide, and it was likely built using the Standard Plan for an 80' Low Truss Span (Drawing Number 2445).

The bridge was likely constructed in the 1930s and moved to its current location over the West Fork of the Cache River in 1974-75. The bridge is one of 10 pony trusses with the Parker design still in service; these trusses are associated with the Arkansas Highway and Transportation Department Era (1923-1939) context. No other history for the bridge, including original location, has been found. The bridge exhibits the rivet connections typical of an early Twentieth Century bridge. During the 1960s and 1970s, the ARDOT often relocated and reused trusses. This bridge illustrates the versatility and portability of the pony truss.



Project Location
Craighead & Lawrence Counties



ARDOT Job 101054
Bridge Marketing Addresses

June 2020

Marketing Groups	Greeting	Name	Title	Agency	Address 1	Address 2	City
Mayor	Mayor Shaw	Danny Shaw		City of Bono	P.O. Box 127		Bono, AR 72416
Mayor	Mayor Perrin	Harold Perrin		City of Jonesboro	300 S. Church St.		Jonesboro, AR 72401
Mayor	Mayor Snapp	Charles Snapp		City of Walnut Ridge	300 W. Main		Walnut Ridge, AR 72476
Chamber of Commerce	Mr. Lawrence	Dave Lawrence	Chair	Lawrence County Chamber of Commerce	P.O. Box 842		Walnut Ridge, AR 72476
County Judge	Judge Thomison	The Honorable John Thomison		Lawrence County Judge	315 West Main, Room 1		Walnut Ridge, AR 72476
County Judge	Judge Day	The Honorable Marvin Day		Craighead County Judge	511 Union, Room 119		Jonesboro, AR 72401
County Historical Society	Ms. Allen	Venus Allen	President	Greene County Historical & Genealogical Society	P.O. Box 121		Paragould, AR 72451-0121
County Historical Society	Mr. Walter	Jon Walter	President	Lawrence County Historical Society	P.O. Box 261		Walnut Ridge, AR 72476
County Historical Society	Ms. Hodge	Laura Hodge	President	Randolph County Historical & Genealogical Society	P.O. Box 4		Maynard, AR 72444
Arkansas Historical Association	Mr. Christ	Mark Christ	President	Arkansas Historical Association	Department of History, University of Arkansas	416 Old Main	Fayetteville, AR 72701
Preserve Arkansas	Ms. Patton	Rachel Patton	Executive Director	Preserve Arkansas	P.O. Box 305		Little Rock, AR 72203-0305
Arkansas Game and Fish Commission	Mr. Fitts	Pat Fitts	Director	Arkansas Game and Fish Commission	2 Natural Resources Drive		Little Rock, AR 72205
Arkansas Game and Fish Commission	Mr. Bowman	Darrell Bowman	Assistant Chief of Fisheries Management	Arkansas Game and Fish Commission	2 Natural Resources Drive		Little Rock, AR 72205
Arkansas Game and Fish Commission	Mr. Wentz	Tate Wentz	Stream Team Biologist	AGFC Stream Team Region III	915 East Sevier Street		Benton, AR 72015
Arkansas Game and Fish Commission	Mr. Burnley	Tim Burnley	Stream Habitat Programs' Coordinator	Arkansas Game and Fish Commission	201 E. 5th Street		Mountain Home, AR 72653

Marketing Groups	Greeting	Name	Title	Agency	Address 1	Address 2	City
Arkansas Game and Fish Commission	Mr. Saunders	Sean Saunders	Region I Stream Team Coordinator	Arkansas Game and Fish Commission			
US Corps of Engineers	Colonel Miller	Colonel Eric M. Noe	Commander and District Engineer	U.S. Army Corps of Engineers	Little Rock District, P.O. Box 867	P.O. Box 867	Little Rock, AR 72203-0867
US Corps of Engineers	Colonel Miller	Colonel Zachary L. Miller	Commander and District Engineer	U.S. Army Corps of Engineers	Memphis District, 167 North Main Street Room B-202		Memphis, TN 38103-1894
Metro Planning Org, if applicable	Ms. Cochran	Cecelie Cochran	MPO Director	Northeast Arkansas Transportation Planning Commission	300 S. Church Street		Jonesboro, Arkansas 72401
Metro Planning Org, if applicable	Mr. Pillow	Alan Pillow	MPO Planner I	Northeast Arkansas Transportation Planning Commission	300 S. Church Street		Jonesboro, Arkansas 72401
Central Arkansas Water	Ms. Lawson	Raven Lawson	Watershed Protection Manager	Central Arkansas Water	221 East Capitol Avenue, P.O. Box 1789	P.O. Box 1789	Little Rock, AR 72203
United States Forest Service	District Ranger	Mena/Oden District Ranger	Oachita National Forest	United States Forest Service	1603 Highway 71 North		Mena, AR 71953
United States Forest Service	District Ranger	Sylamore Ranger District	Ozark-St. Francis National Forest	United States Forest Service	1001 E. Main Street	P.O. Box 1270	Mountain View, AR 72560
Arkansas Trails Coucil	Mr. Sprague	Mike Sprague	Executive Secretary	Arkansas Trails Council, Dept. of Parks and Tourism	One Capitol Mall		Little Rock, AR 72201
City of Fayetteville	Mr. Jack	Ted Jack	Park Planning Superintendent	City of Fayetteville, Parks and Recreation Department	113 West Mountain Street		Fayetteville, AR 72701
City of Bentonville	Mr. Wright	David Wright	Director	City of Bentonville, Parks and Recreation Department	215 SW A Street		Bentonville, AR 72712
City of Springdale	Mr. Wolf	Chad Wolf	Director	City of Springdale, Parks and Recreation Department	P O Box 42		Springdale, AR 72764
City of Paragould	Ms. Austin	Pat Austin	Director	City of Paragould, Parks and Recreation Department	3404 Linwood Drive		Paragould, AR 72450

Marketing Groups	Greeting	Name	Title	Agency	Address 1	Address 2	City
City of Marion	Mr. Rawls	Andy Rawls	Parks and Recreation Department Head	City of Marion	3821 Complex Drive		Marion, AR 72364
City of West Memphis	Mr. Parker	Lorenzo Parker	Director	City of West Memphis, Parks and Recreation Department	P.O. Box 1728		West Memphis, AR 72303
City of Jonesboro	Mr. Kapales	Danny Kapales	Director	City of Jonesboro, Parks and Recreation Department	3009 Dan Avenue		Jonesboro, Arkansas 72401
City of Hot Springs	Mr. Whittington	Anthony Whittington	Director	City of Hot Springs, Parks and Recreation Department	111 Opera		Hot Springs, AR 71902
Arkansas Department of Parks, Heritage and Tourism (ADPHT)/ Arkansas State Parks	Mr. Thomas	Jordan Thomas	Chief Planner & Landscape Architect	Division of Arkansas State Parks	One Capitol Mall, 4B.215		Little Rock, AR 72201

Appendix B: Memorandum of Agreement

MEMORANDUM OF AGREEMENT
AMONG THE
FEDERAL HIGHWAY ADMINISTRATION,
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER,
INDEPENDENCE COUNTY, ARKANSAS,
AND THE
ARKANSAS DEPARTMENT OF TRANSPORTATION,
REGARDING
ARDOT JOB NUMBER 101054
HWY. 230 STRS. & APPRS. (S)
HIGHWAY 230, CRAIGHEAD AND LAWRENCE COUNTIES, ARKANSAS
ARDOT BRIDGE NUMBERS M3187 AND M3817

WHEREAS, the Federal Highway Administration (FHWA) and the Arkansas Department of Transportation (ARDOT) propose constructing new bridges across the East Cache River and the West Fork of the Cache River along Highway 230 in Craighead and Lawrence Counties; and

WHEREAS, ARDOT Job Number 101054 will include relocation of the old East Cache River Bridge, also known as ARDOT Bridge Number M3187, and the West Fork Cache River Bridge, also known as ARDOT Bridge Number M3817, (Bridges); and

WHEREAS, the Bridges are historic properties determined eligible for inclusion in the National Register of Historic Places (NRHP) in consultation with the State Historic Preservation Officer (SHPO); and

WHEREAS, the FHWA has marketed the Bridges to state and federal agencies, the Craighead and Lawrence County Judges, the Cities of Bono, Jonesboro, and Walnut Ridge, area chambers of commerce, the area metro planning organization, other interested parties, and state and local historical societies, as well as posted it on the ARDOT website; and

WHEREAS, Independence County (County) has agreed to accept title for the Bridges from the State for either pedestrian use on a planned trail system, if funding is obtained, or vehicular use in new locations, if the trail grants are not awarded to the County; and

WHEREAS, through the Programmatic Section 4(f) Evaluation process, the FHWA has determined that relocating the bridges is a feasible and prudent alternative to the demolition of the historic bridges; and

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

WHEREAS, the definitions set forth in 36 CFR § 800 are applicable throughout this Memorandum of Agreement (MOA); and

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

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

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

STIPULATIONS

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

I. MITIGATION OF ADVERSE EFFECT TO THE HISTORIC PROPERTIES

Upon the transfer of the East Cache River and West Fork Cache River Bridges, in order to mitigate the adverse effect on these historic properties, the ARDOT will transfer the properties with an appropriate "Historic Bridge Preservation Covenant" as permitted in 36 CFR § 800.6. The "Historic Bridge Preservation Covenant" is to be inserted in all instruments of conveyance and will thereafter run with the Bridges. The "Historic Bridge

Preservation Covenant” is found in Appendix A. The FHWA, the ARDOT, and the County will inform the SHPO of any property transactions executed under this stipulation.

II. HUMAN REMAINS

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

III. DURATION

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

IV. PROFESSIONAL QUALIFICATION STANDARDS

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

V. POST-REVIEW DISCOVERY SITUATIONS

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

VI. DISPUTE RESOLUTION

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

VII. MONITORING

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

VIII. AMENDING THE MEMORANDUM OF AGREEMENT

Should any of the signatories to this MOA believe that the terms of this MOA are not being met or cannot be met, that party shall immediately notify the other signatories and request consultation to amend this MOA in accordance with 36 CFR § 800. The process to amend this MOA shall be conducted in a manner similar to that leading to the execution of this MOA.

IX. TERMINATING THE MEMORANDUM OF AGREEMENT

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

X. FAILURE TO CARRY OUT THE MEMORANDUM OF AGREEMENT

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


XI. FULFILLMENT OF SECTION 106 RESPONSIBILITIES

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

ARDOT Job Number 101054
Memorandum of Agreement
Page 6 of 9

Signatory

FEDERAL HIGHWAY ADMINISTRATION



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

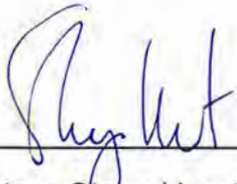
3/25/2021

Date

ARDOT Job Number 101054
Memorandum of Agreement
Page 7 of 9

Signatory

ARKANSAS STATE HISTORIC PRESERVATION OFFICER



Secretary Stacy Hurst
Arkansas State Historic Preservation Officer

1-18-21

Date

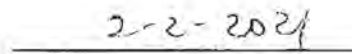
ARDOT Job Number 101054
Memorandum of Agreement
Page 8 of 9

Signatory

INDEPENDENCE COUNTY, ARKANSAS

A handwritten signature in black ink, appearing to read "Robert Griffin", written over a horizontal line.

The Honorable Robert Griffin
Independence County Judge

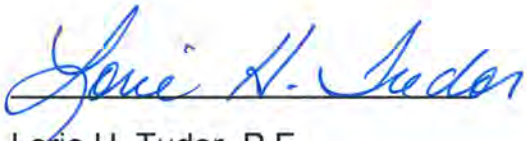
A handwritten date "2-2-2024" written in black ink over a horizontal line.

Date

ARDOT Job Number 101054
Memorandum of Agreement
Page 9 of 9

Signatory

ARKANSAS DEPARTMENT OF TRANSPORTATION



Lorie H. Tudor, P.E.
Director

JDW *RLT*

3/16/21

Date

APPENDIX A
HISTORIC BRIDGE PRESERVATION COVENANT

HISTORIC BRIDGE PRESERVATION COVENANT

Independence County, Arkansas (Grantee), by acceptance of the bridge titles from the Arkansas Department of Transportation (the ARDOT), covenants and agrees, for itself, its heirs, its successor and assigns, and for every successor in interest to the historic properties herein described, or any part thereof, shall abide by each of the following covenants, each of which will be covenants running with each property.

The historic properties are described as the old East Cache River Bridge (ARDOT Bridge Number M3187) and the West Fork Cache River Bridge (ARDOT Bridge Number M3817 Bridge), each consisting of a one Parker pony truss. The East Cache River Bridge truss span measures approximately 100 feet in length with a 24-foot roadway width, and the West Fork Cache River Bridge truss span measures approximately 82 feet in length with a 24-foot roadway width. The East Cache River Bridge is located in the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 27, Township 15 North, Range 2 East on the Bono 7.5 minute USGS topographic quadrangle where Highway 230 crosses the East Cache River in Craighead County. The West Fork Cache River Bridge is located in the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 29, Township 15 North, Range 2 East on the Podo Creek 7.5 minute USGS topographic quadrangle where Highway 230 crosses the West Fork of the Cache River in Lawrence County. The East Cache River Bridge and the West Fork Cache River Bridge were likely constructed in the 1930s and relocated to the above sites in 1968 and 1975, respectively.

The Grantee covenants and agrees that:

1. The Grantee has identified locations in which the Bridges will be reassembled following dismantling from their current location;
2. The Bridges will be preserved and maintained in accordance with the recommended approaches of the Secretary of the Interior's (SOI) Standards for the Treatment of Historic Properties;
3. No physical or structural changes or changes of color or surfacing, aside from those arising from the movement of the Bridges to their new location, will be made to the Bridges without first notifying, in writing, the Federal Highway Administration (FHWA) and the Arkansas Department of Transportation (ARDOT), and the Arkansas State Historic Preservation Officer (SHPO) consulted for written approval;

4. The Bridges will be opened to public access once relocation and restoration are completed. Should removal or restriction of public access become necessary, the ARDOT will be notified in writing and the SHPO consulted as to the disposition of these historic properties;
5. Normally, the FHWA through the ARDOT can reimburse costs associated with preservation. However, the cost reimbursement funds allocated to these Bridges will be exhausted when the Bridges are dismantled and relocated;
6. If Grantee is unable to fulfill its preservation responsibilities to the Bridges, which would dictate the abandonment or removal of the historic properties, the Grantee must notify the FHWA, the ARDOT, and the SHPO in writing and produce any documents required by the SHPO for mitigation of the adverse effect from abandonment or removal of the historic properties;
7. Any proposed changes or modification of the historic properties shall be in compliance with the SOI's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and must be reviewed and approved by the SHPO;
8. An authorized representative of the ARDOT or SHPO shall be permitted at all reasonable times to examine the Bridges in order to ascertain if the above conditions are being observed. Prior to examination, the representative shall furnish properly written notification of their intent to inspect;
9. The failure of the FHWA, the ARDOT, or the SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other remedy or the use of such right or remedy at any other time; and
10. These covenants shall be a binding servitude upon the real property that includes the Bridges, which shall be deemed to run with the property and shall be incorporated into any deed or other legal instrument by which the Grantee divests itself of the property.

In the event of violation of the above covenants, the FHWA, ARDOT, or SHPO may institute an injunction or suit to enjoin such violation or for damages by reason of any breach thereof.

These covenants shall be binding on the Grantee hereto, their successors, and assigns in perpetuity; however, the SHPO may, for good cause, and with the concurrence of FHWA, modify or cancel any or all of the foregoing restrictions upon written application of the Grantee, its successors or assigns.

The acceptance of the delivery of the Historic Bridge Preservation Covenant shall constitute conclusive evidence of the agreement of the Grantee to be bound by the obligations herein set forth.

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

ARDOT Job Number 101054 FAP Number NHPP-1638(4)

Job Title Hwy. 230 Strs. & Apprs. (S)

Environmental Resource	None	Minimal	Major	Comments-required for ea ch item
Air Quality	X			No air quality impacts
Cultural Resources		X		SHPO clearance attached
Economic	X			No economic impacts
Endangered Species		X		See USFWS concurrence
Environmental Justice/Title VI	X			No EJ issues with the project
Fish and Wildlife		X		Temporary during construction
Floodplains		X		Within Zone A, Special Flood Hazard Areas
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No hazardous materials identified
Land Use		X		15.5 additional acres required
Migratory Birds	X			Migratory Bird SP to be included
Navigation/Coast Guard	X			None in project area
Noise Levels	X			No noise impacts
Prime Farmland		X		NRCS-CPA-106 attached
Protected Waters		X		WPC SP will be required
Public Recreation Lands	X			No recreational lands impacted
Public Water Supply/WHPA		X		WHP SP to be included
Relocatees	X			No relocatees
Section 4(f)/6(f)		X		Historic Bridge impacted, 4(f) attached
Social	X			No social impacts
Underground Storage Tanks	X			No UST's impacted
Visual	X			No visual impacts
Streams		X		Nationwide 23
Water Quality		X		Temporary decline during construction
Wetlands		X		1.3 acres impacted; Nationwide 23
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? Y

Short-term Activity Authorization Required? Y

Section 404 Permit Required? Y Type NWP 23

Remarks: _____

Signature of Evaluator  Date March 29, 2021

Date Sent: August 20, 2020

ROADWAY DESIGN REQUEST

Job Number 101054 FAP No. NHPP-1638(4) County Lawrence and Craighead

Job Name Hwy. 230 Strs. & Apprs. (S)

Design Engineer Neel-Schaffer Environmental Staff TT/JK/MM

Brief Project Description Structures and Approachs

A. Existing Conditions:

Roadway Width: 26' Shoulder Type/Width: 3' unpaved

Number of Lanes and Width: 2-10' Existing Right-of-Way: Var. (90'-170')

Sidewalks? N/A Location: _____ Width: _____

Bike Lanes? N/A Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 30' Shoulder Type/Width: 4' (2' paved)

Number of Lanes and Width: 2-11' Proposed Right-of-Way: Var. (100'-285')

Sidewalks? N/A Location: _____ Width: _____

Bike Lanes? N/A Location: _____ Width: _____

C. Construction Information:

If detour: Where: Various locations Length: Various lengths

D. Design Traffic Data:

2021 ADT: 680 2041 ADT: 760 % Trucks: 8
Design Speed: 55 m.p.h.

E. Approximate total length of project: 2.473 mile(s)

F. Justification for proposed improvements: Structure replacement

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

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

Agency/Official	Person Contacted	Date



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

August 26, 2022

Regulatory Division

NATIONWIDE PERMIT NO. MVM 2022-00220

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

Dear Mr. Fleming:

Please refer to your recent request concerning Department of the Army permit requirements pursuant to Section 404 of the Clean Water Act. You requested authorization for the placement of dredged and fill material in waters of the United States associated with replacing the existing bridges and upgrading the approaches over ten channels along State Highway 230. The channels include Village Creek, Lick Pond Slough, Podo Creek, West Cache River, Cache River Ditch, Gum Slough Ditch, Whaley Slough Ditch and three unnamed tributaries. Bridges will be constructed on new alignment over Village Creek, Lick Pond Slough, West Cache River and Cache River Ditch. Box culverts will be constructed on existing alignment in the other six channels and temporary detour roads will be constructed at each site to maintain traffic. The existing roadway consists of two 10-foot-wide paved travel lanes with 3-foot-wide unpaved shoulders. Proposed improvements include two 11-foot-wide paved travel lanes with 4-foot-wide (2-foot paved) shoulders. Construction of the bridges at Village Creek and Lick Pond Slough will permanently impact approximately 1.66 acres of wetlands. Construction of the culverts at two of the unnamed channels (Sites 6 and 7) adjacent to the Cache River channels will temporarily impact approximately 1.15 acres of wetlands and permanently impact approximately 0.18 acres of wetlands. ArDOT determined that the project may affect but is not likely to adversely affect Pondberry (*Lindera melissifolia*) and the Gray Bat (*Myotis grisescens*), and the project may affect the Northern Long-eared Bat (*Myotis septentrionalis*) and Indiana Bat (*Myotis sodalis*). ArDOT performed bat surveys in July 2022, and determined that there were no Northern Long-eared or Indiana bats present. Two Parker pony truss bridges over the Cache River channels are eligible for the National Register of Historic Places and will be relocated to Independence County for pedestrian use. Total length of the project is 2.5 miles and approximately 15.5 acres of new right-of-way will be needed for construction of the project. The project was approved by the Federal Highway Administration as a Tier 3 Categorical Exclusion on April 5, 2021. The project is located between Alicia and Bono, on State Highway 230, in sections 34 and 35, T. 15 N., R. 81 W., section 35, T. 15 N., R. 1 E., sections 26, 27, 28, 29 and

30, T. 15 N., R. 2 E., and section 30, T. 15 N., R. 3 E., Lawrence and Craighead Counties, Arkansas. A vicinity map, location maps and wetland impacts maps are enclosed.

The proposed activities are authorized by Department of the Army Nationwide Permit (NWP) **No. 23** (copy enclosed), provided that the following **Special Condition** and General Conditions therein are met. For your convenience, we have highlighted the General Conditions of the NWP that are the most pertinent to your project. You should become familiar with the conditions and maintain a copy of the permit at the worksite for ready reference. If changes are proposed in the design or location of the project, you should submit revised plans to this office for approval before construction of the change begins.

Special Condition:

ArDOT agrees to mitigate for the adverse impacts to 1.84 acres of wetlands with 15.8 wetland credits from their Glaise Creek Mitigation Bank. ArDOT will provide documentation of the mitigation bank transaction to the U.S. Army Corps of Engineers Little Rock District Transportation Program Manager.

Please pay particular attention to General Condition No. 12 which stipulates that appropriate erosion and siltation controls be used during construction and all exposed soil be permanently stabilized. Erosion control measures must be implemented before, during and after construction. Also, in order to fully comply with the conditions of the NWP, you must submit the enclosed compliance certification within 30 days of completion of the project. This is required pursuant to General Condition No. 30 of the permit.

For your information, we have enclosed a copy of the Arkansas Department of Energy and Environment (E&E), Division of Environmental Quality (DEQ) Section 401 water quality certification conditions, which are conditions of your permit. If you have any questions regarding the water quality certification, please contact Mr. Jim Wiseman at instreamactivityinfo@adeq.state.ar.us or (501) 682-0631.

The NWP determination will be valid until March 14, 2026. If NWP **No. 23** is modified, suspended, or revoked during this period, your project may not be authorized unless you have begun or are under contract to begin the project. If work has started or the work is under contract, you would then have twelve (12) months to complete the work.

Your cooperation in the Regulatory Program is appreciated. If you have any additional questions about this permit or any of its provisions, please contact Mr. Johnny McLean at (501)

324-5295 and refer to Permit No. **MVM 2022-00220, State Highway 230 Structures and Approaches between Alicia and Bono (ArDOT Project No. 101054).**

Sincerely,

Sarah Chitwood
Chief, Regulatory Division

Enclosures

Copy Furnished:

Memphis District Regulatory, w/cy encls.

US Fish and Wildlife Service, Mr. Lindsey Lewis

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

PERMITTEE COMPLIANCE CERTIFICATION

PERMIT NO.: MVM 2022-00220, State Highway 230 Structures and Approaches between Alicia and Bono (ArDOT Project No. 101054)

NWP/S NO.: 23

PERMITTEE NAME: ArDOT

DATE OF ISSUANCE: _____

PROJECT MANAGER: Johnny McLean

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

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

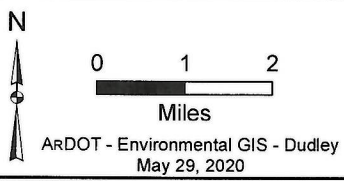
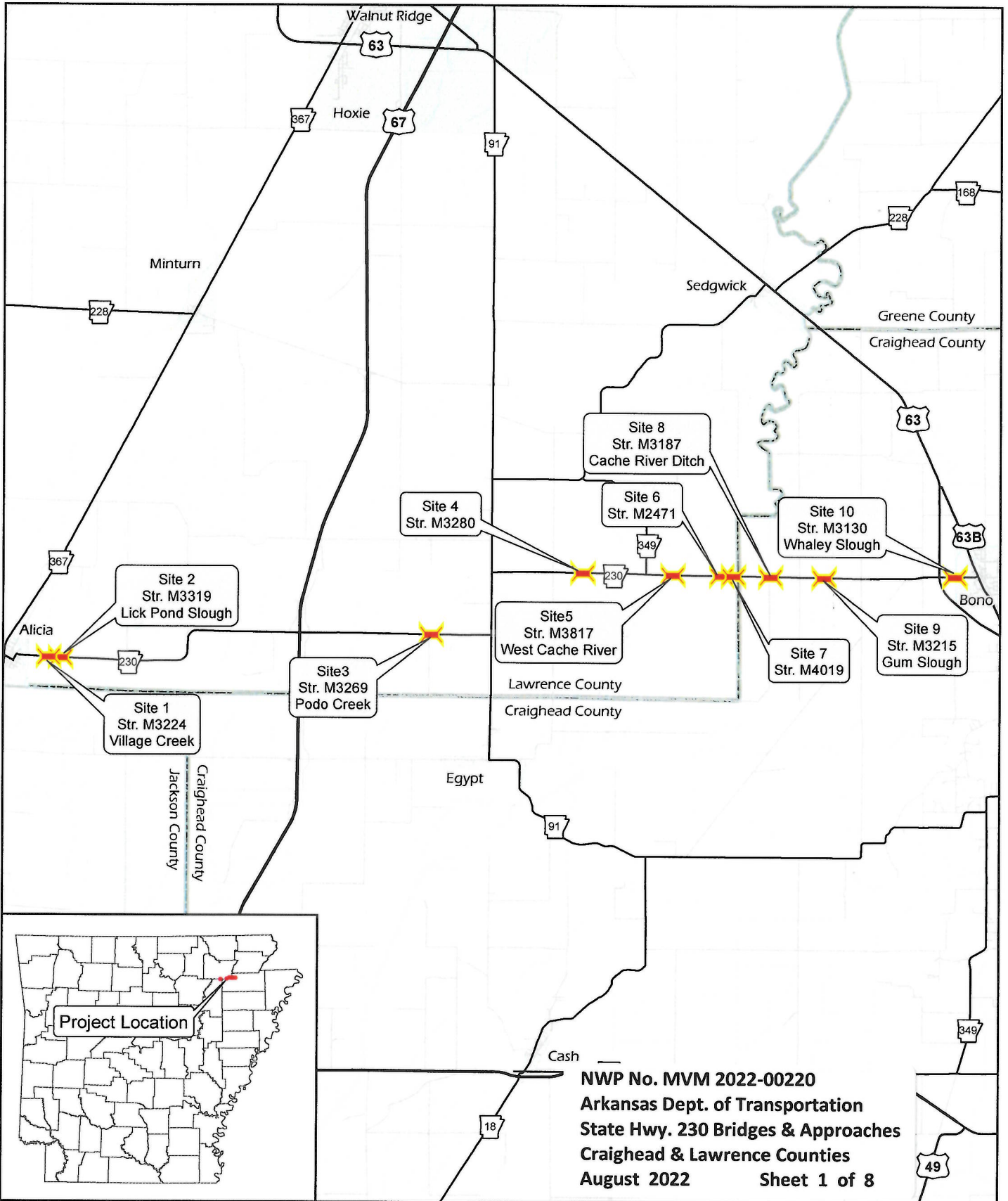
Please note that your permitted activity is subject to a compliance inspection by a US Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

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

DATE WORK COMPLETED: _____

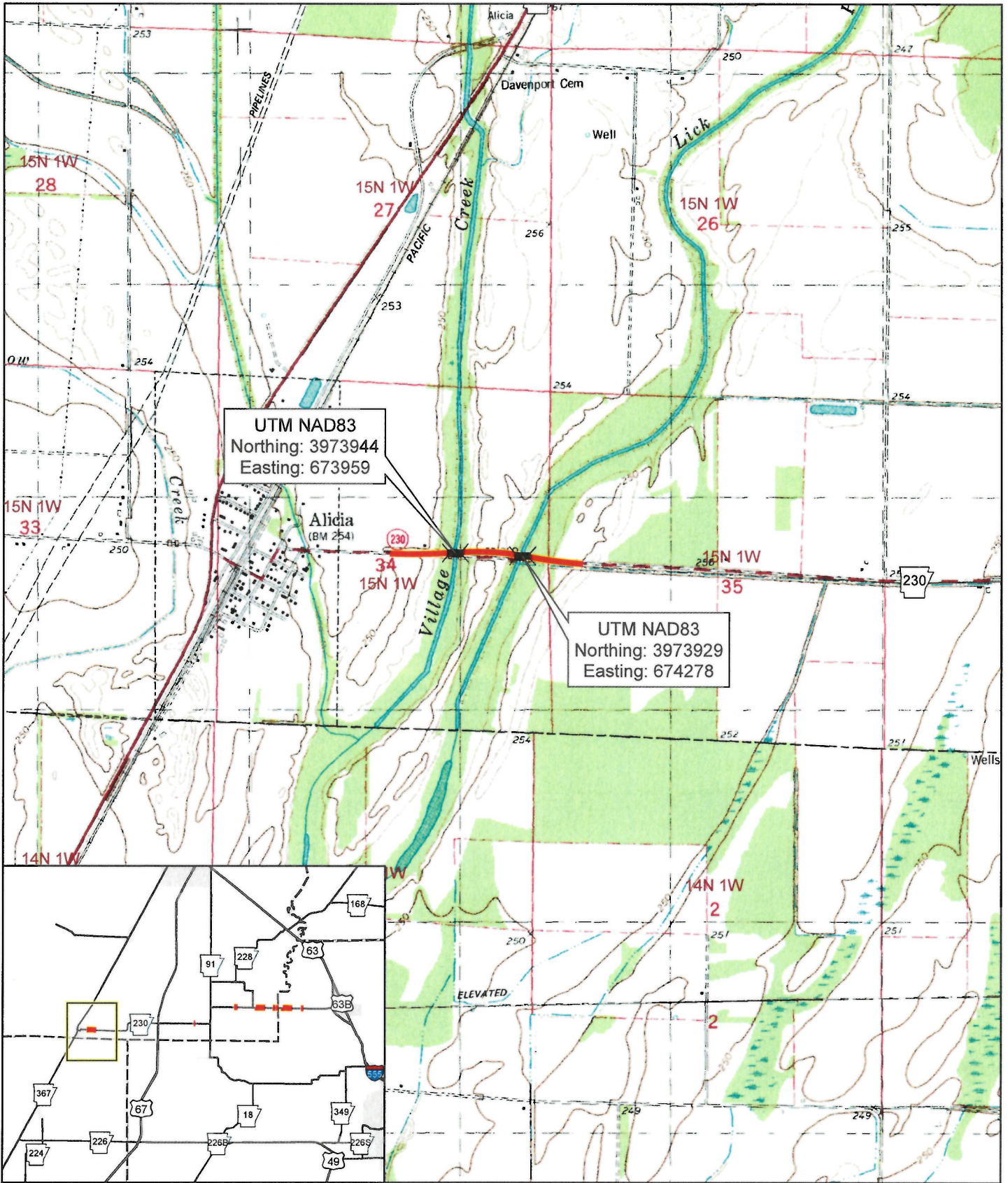
SIGNATURE OF PERMITTEE

DATE



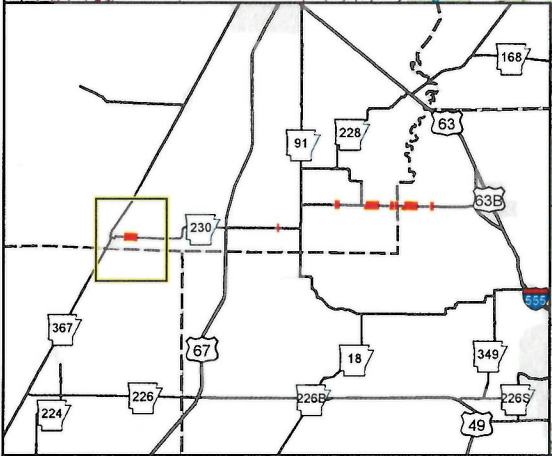
Job 101054
Hwy. 230 Strs. & Apprs.





UTM NAD83
 Northing: 3973944
 Easting: 673959

UTM NAD83
 Northing: 3973929
 Easting: 674278



N

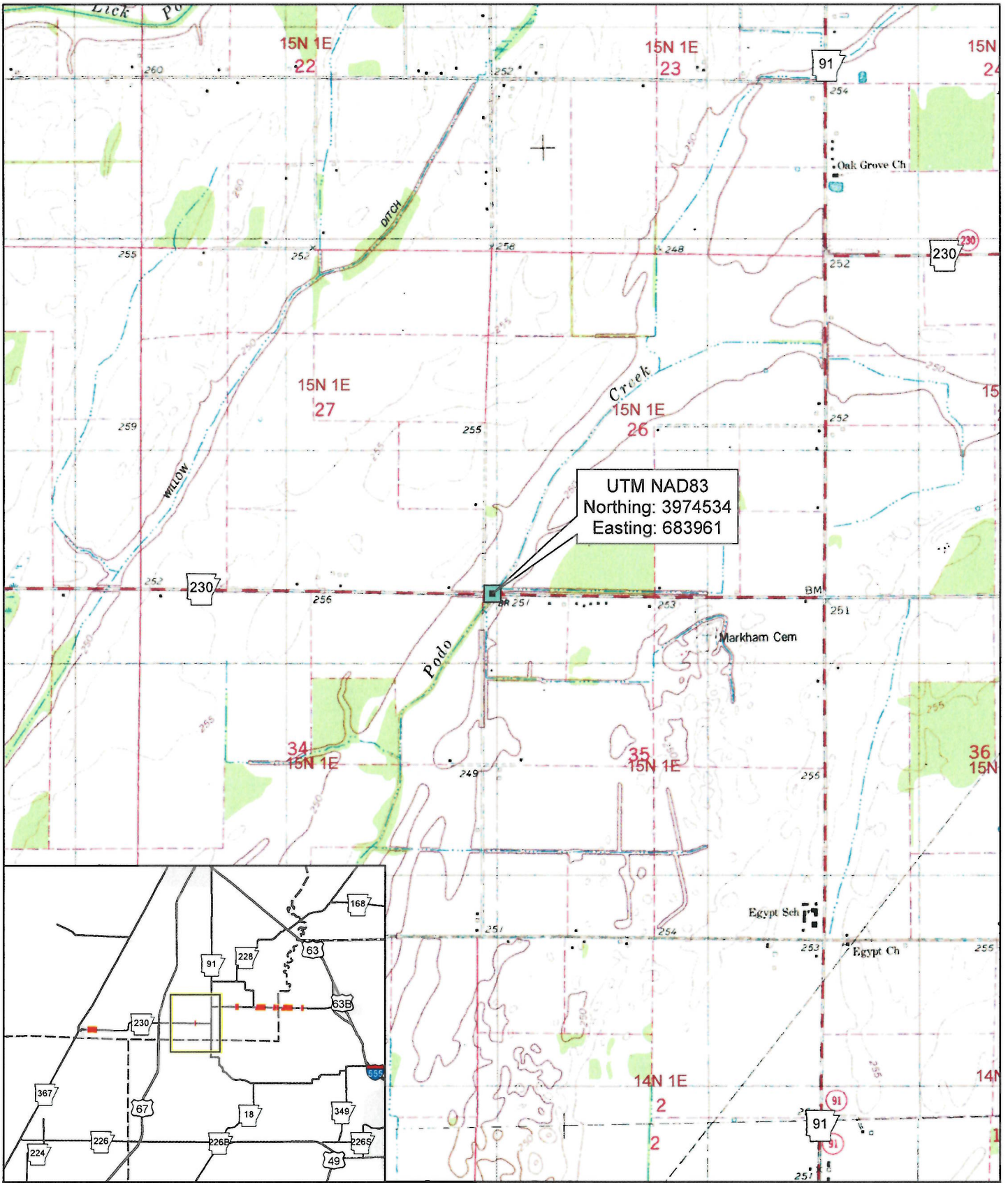
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ARDOT - Environmental GIS - Dudley
April 27, 2022

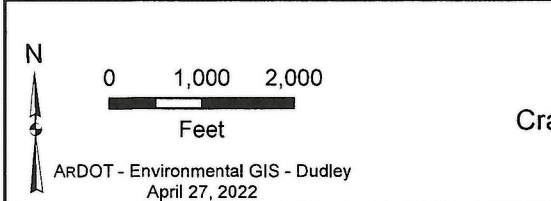
Job 101054
 Hwy 230 Strs. & Apprs.
 Craighead & Lawrence Counties
 Sheet 1 of 5

	Project Location
	Box Culvert
	Bridge

USGS Topographic Maps;
 Alicia 1980; Swifton East 1980



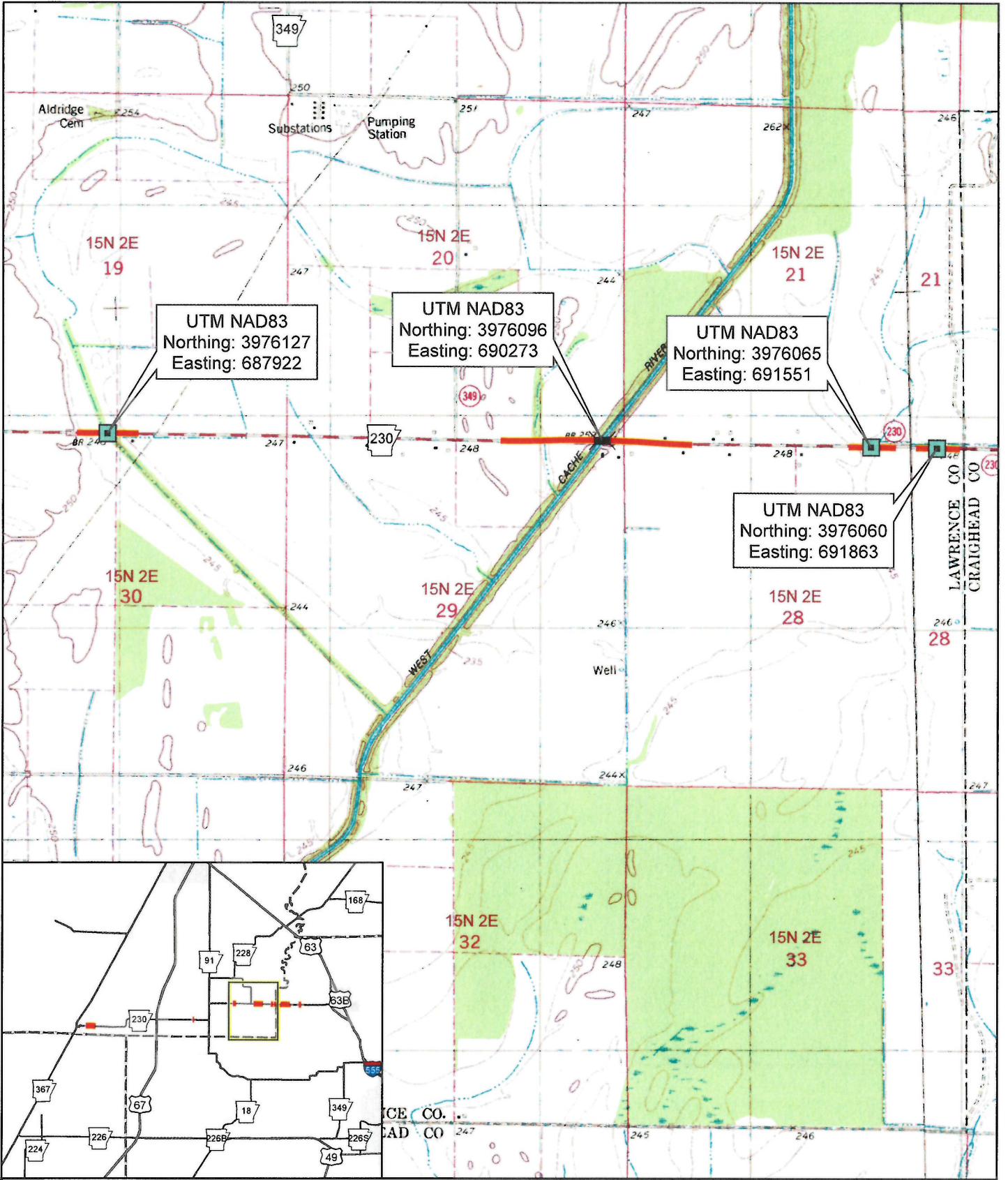
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Job 101054
 Hwy 230 Strs. & Apprs.
 Craighead & Lawrence Counties

- Project Location
- Box Culvert
- Bridge

USGS Topographic Maps;
 Cash 1980; Podo Creek 1980

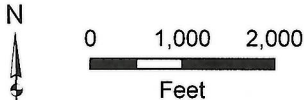
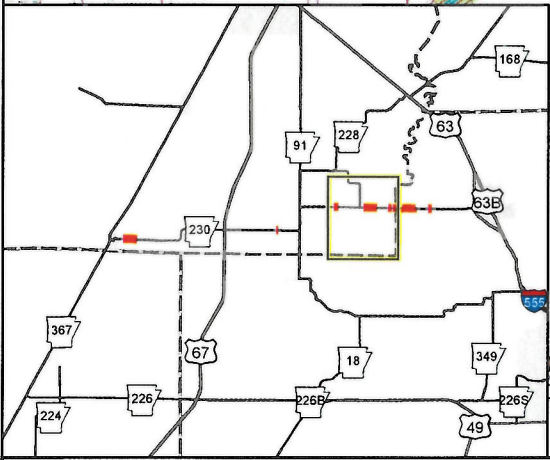


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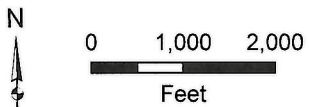
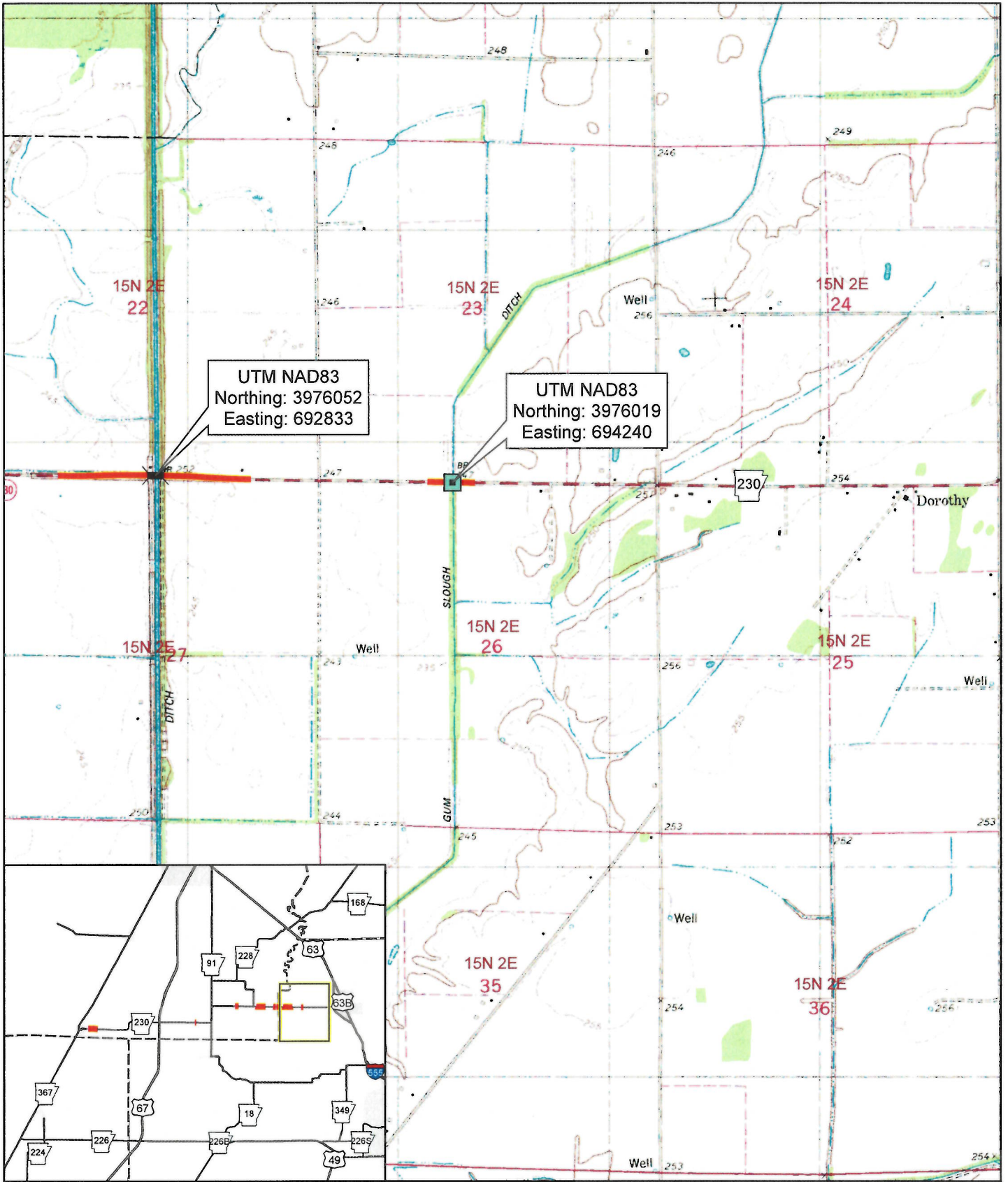


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 April 27, 2022

Job 101054
 Hwy 230 Strs. & Apprs.
 Craighead & Lawrence Counties

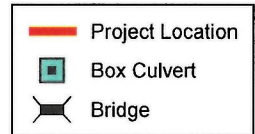
	Project Location
	Box Culvert
	Bridge

USGS Topographic Maps;
 Bono 1980; Podo Creek 1980

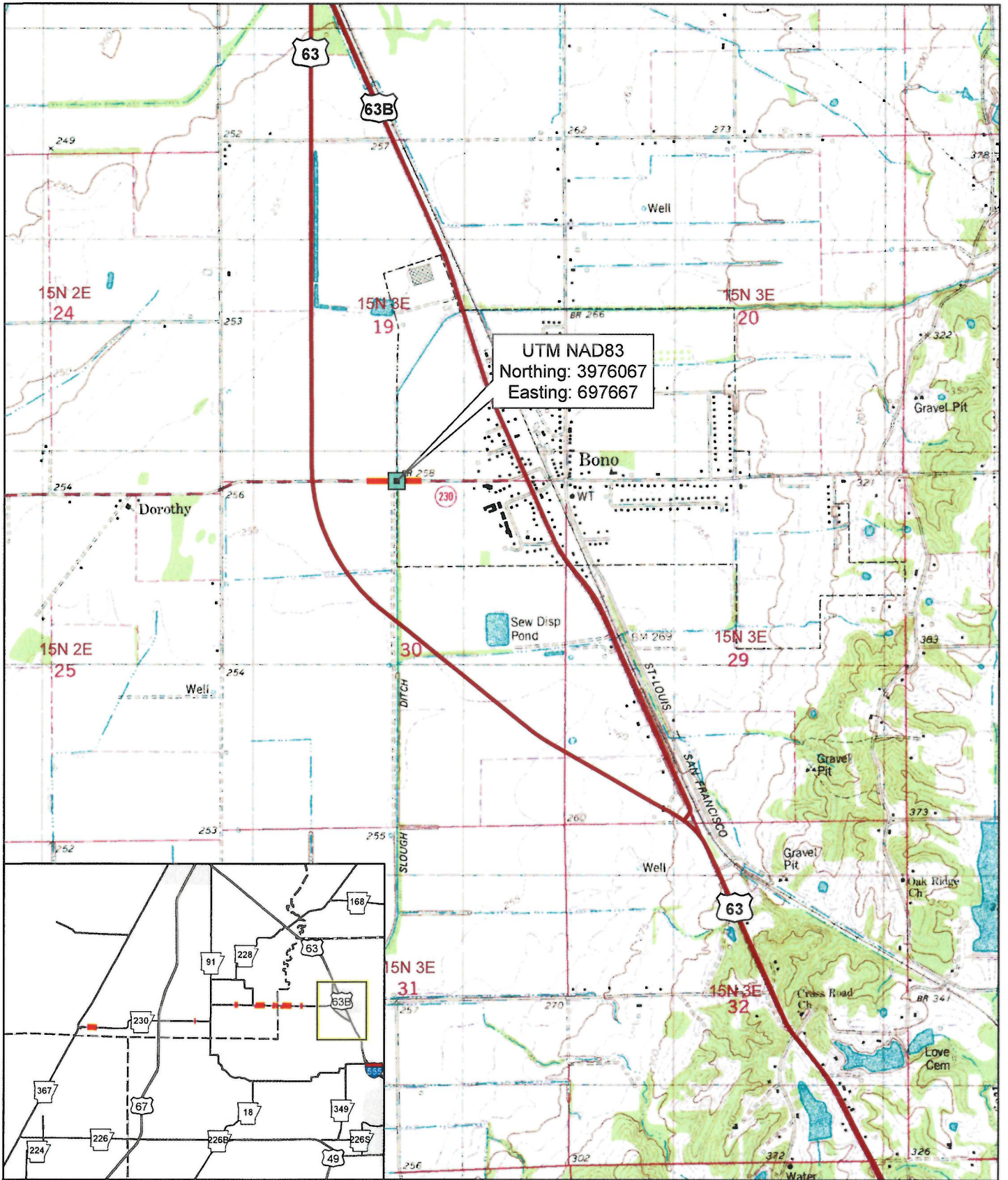


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April 27, 2022

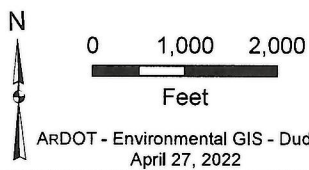
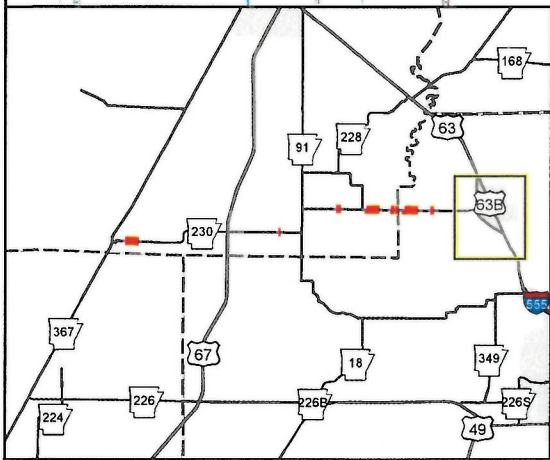
Job 101054
Hwy 230 Strs. & Apprs.
Craighead & Lawrence Counties



USGS Topographic Maps;
Bono 1980



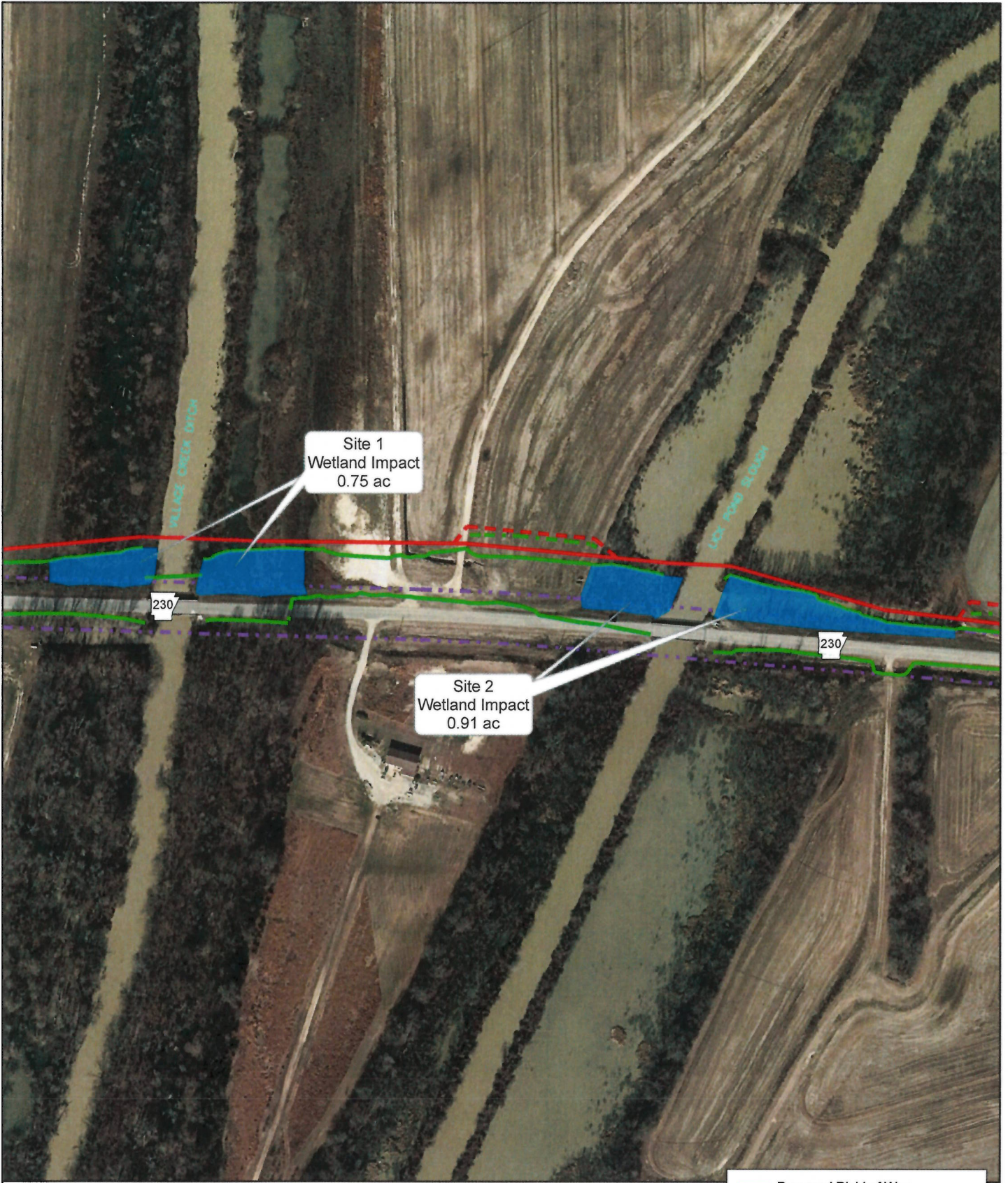
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Job 101054
 Hwy 230 Strs. & Apprs.
 Craighead & Lawrence Counties

- Project Location
- Box Culvert
- Bridge

USGS Topographic Maps;
 Bono 1980

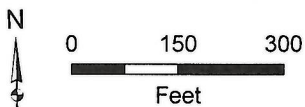


Site 1
Wetland Impact
0.75 ac

Site 2
Wetland Impact
0.91 ac

230

230

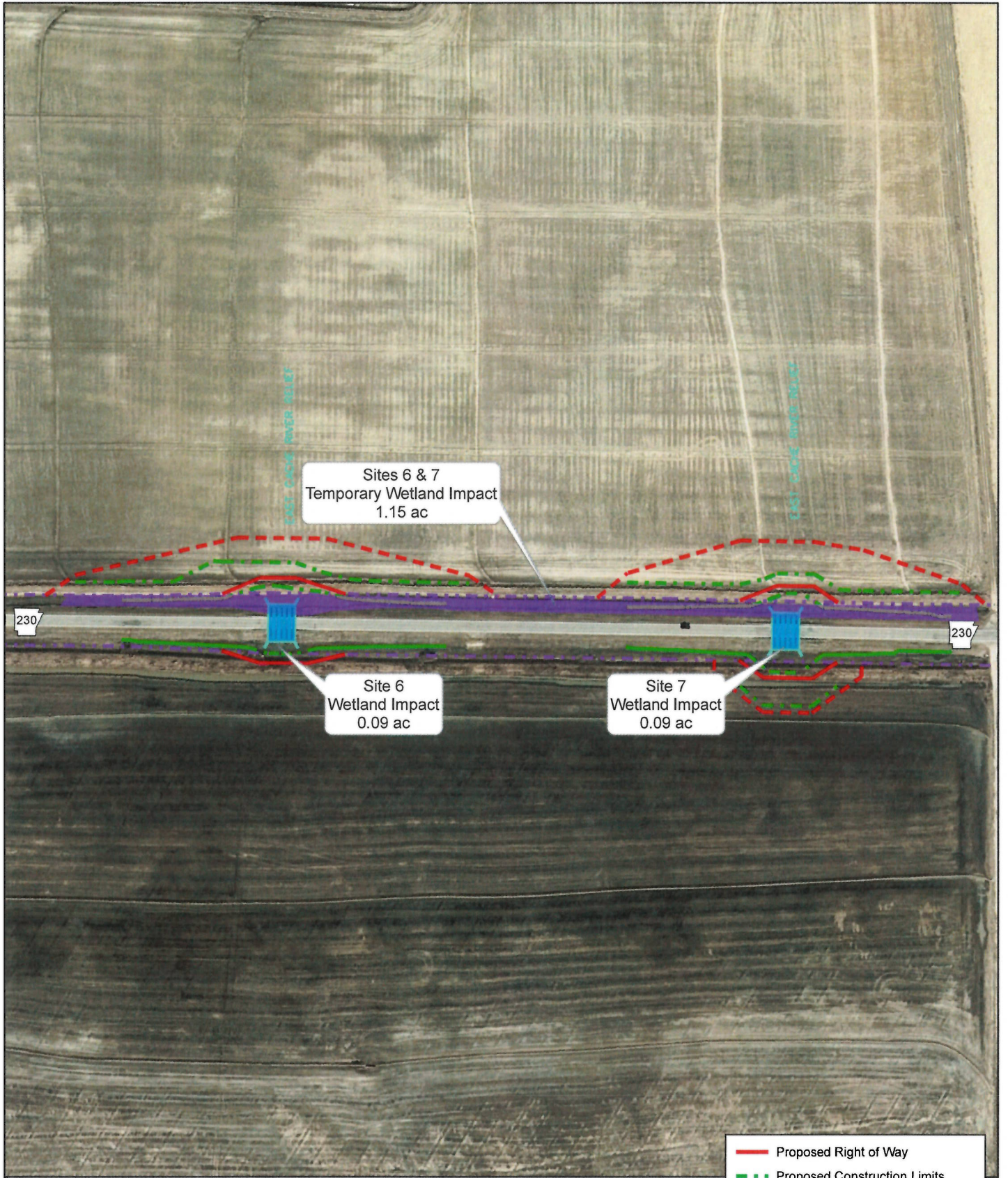


ARDOT - Environmental GIS - Dudley
April 28, 2022

Job 101054
Wetland Impacts
Sites 1 & 2

- Proposed Right of Way
- - - Proposed Construction Limits
- - - Existing Right of Way
- - - Temporary Construction Easement
- Wetland Impact

Photography: 2017 ADOP

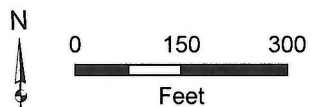


Sites 6 & 7
Temporary Wetland Impact
1.15 ac

Site 6
Wetland Impact
0.09 ac

Site 7
Wetland Impact
0.09 ac

- Proposed Right of Way
- - - Proposed Construction Limits
- - - Existing Right of Way
- - - Temporary Construction Easement
- Wetland Impact
- Temporary Wetland Impact



Job 101054
Wetland Impacts
Sites 6 & 7

ARDOT - Environmental GIS - Dudley
April 28, 2022

Photography: 2017 ADOP

Nationwide Permit No. 23

Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letter(s). (Authorities: Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

2021 Nationwide Permit General Conditions

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

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

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

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

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise

designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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

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

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

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

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

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

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

capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

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

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

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

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

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

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

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

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

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

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

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

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed

activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

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

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district

engineer may add species-specific permit conditions to the NWP.

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

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

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

19. Migratory Birds and Bald and Golden Eagles.

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

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

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)).

When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

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

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps,

after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated

critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

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

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

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

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

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

mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

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

district engineer, the district engineer may approve the use of permittee-responsible mitigation.

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

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

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

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an

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

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

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

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

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the

permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

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

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

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

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

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

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

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

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

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

(Transferee)

(Date)

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

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation.

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

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

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification

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

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN, and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

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

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

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide

an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

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

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

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

construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

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

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

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

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

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

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other

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

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

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

District Engineer’s Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the

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

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

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

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

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that

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

Further Information

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

Nationwide Permit Definitions

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

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

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

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

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

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

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

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

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

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses

spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

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

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

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

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of

loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

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

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

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

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

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

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

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction

notification is not required, and the project proponent wants confirmation that the activity is authorized by nationwide permit.

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

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

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

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

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

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and

services and help improve or maintain local water quality. (See general condition 23.)

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

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

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

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

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention

ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

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

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

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

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

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

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

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation,

such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

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



ARKANSAS

ENERGY & ENVIRONMENT

November 18th, 2020

Colonel Eric M. Noe, District Commander
Little Rock District Corps of Engineers
P.O. Box 867
Little Rock, Arkansas 72203-0867

RE: Public Notice: Re-issuance of Nationwide Permits 2020

Dear Colonel Noe,

The Arkansas Department of Energy and Environment (E&E), Division of Environmental Quality (DEQ) has completed its review of the above referenced public notice for re-issuance of the U.S. Army Corps of Engineers Nationwide Permits (NWP) for the State of Arkansas.

DEQ has determined discharges from projects covered under these NWP will comply with water quality requirements according to Arkansas Pollution Control and Ecology Commission's (APC&EC) Rule 2.

Therefore, pursuant to §401(a)(1) of the Clean Water Act, the DEQ hereby issues water quality certification for all NWP, contingent upon the following conditions:

- 1) An individual water quality certification request must be submitted to DEQ for activities which may impact Extraordinary Resource Waters, Ecologically Sensitive Waterbodies, and Natural Scenic Waterways as identified in APC&EC Rule 2, Water Quality Standards for Surface Waters of the State of Arkansas. In order to determine compliance with the standards set forth in APC&EC Rule 2.203 for these Outstanding Resource Waters, projects covered under NWP on these waters shall be reviewed by DEQ.
- 2) In accordance with APC&EC Rule 2.305, the applicant shall obtain a Short Term Activity Authorization (STAA) when performing work in the wetted area of waters of the state as defined by Arkansas Code Annotated (A.C.A.) §8-4-102. Activities approved under a STAA, are subject to the provisions that no permanent or long-term impairment of beneficial uses is likely to result from such activity. More information can be obtained by visiting <https://www.adeq.state.ar.us/water/planning/instream/> or <https://eportal.adeq.state.ar.us/>.
- 3) The applicant shall implement all practicable best management practices (BMP) to avoid excessive impacts of turbidity to waters of the state, 40 CFR §122.26(c).
- 4) The applicant will take all reasonable measures to prevent the spillage or leakage of any chemicals, oil, grease, gasoline, diesel, or other fuel in accordance with A.C.A. §8-4-217. In the unlikely event such spillage or leakage occurs, the applicant must contact E&E Emergency Response at 501-682-0716 immediately.

- 5) If a construction site will disturb equal to or greater than one (1) acre and less than five (5) acres, the applicant shall comply with the requirements in APC&EC Rule 6.203 for Stormwater discharge associated with a small construction site, as defined in APC&EC Rule No. 6. If the construction site will disturb five (5) acres or more, the applicant shall comply with the terms of the Stormwater Construction General Permit Number ARR150000 prior to the start of construction. BMPs must be implemented regardless of the size. More information can be obtained by contacting the NPDES Stormwater Section of DEQ at (501) 682-0623.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Blanz', with a long horizontal flourish extending to the right.

Robert E. Blanz, Ph.D., P.E.
Associate Director, Office of Water Quality

Cc: Sarah Chitwood, Regulatory Division Chief USACE
Lisa Boyle, Project Manager USACE
Wanda Boyd, U.S. EPA