Environmental Document

AHTD JOB NUMBER CA0607

Highway 270 Widening
Fleetwood Dr. – Hwy. 227 (Widening)
Garland County, Arkansas

Submitted Pursuant to Issue No. 1, An Amendment to Provide Additional Funding for Highways, County Roads, City Streets, Bridges, and Surface Transportation
By the
Arkansas State Highway and Transportation Department

Prepared by
Gina Murphy
CDM Smith
Kansas City, MO

May 25, 2017

May 25, 2017
Date of Approval

John Fleming
Environmental Division Head
Arkansas State Highway and
Transportation Department

The Connecting Arkansas Program Manager (CAPM) has reviewed the referenced project as a Non-NEPA project.

The purpose of this project is to improve capacity and safety on Highway 270. Total length of the project is 1.97 miles and includes a 0.22 mile transition section. The project extends from Fleetwood Drive to Highway 227 in Garland County. The transition section occurs west of Fleetwood Drive and facilitates the change from the existing 2-lane roadway to the proposed 4-lane roadway. Figure 1 illustrates the project location.

The existing roadway consists of a minimum of two 11-foot wide paved travel lanes with shoulder widths varying between 1 and 5 feet. Existing right of way width varies from 80 to 120 feet.

Proposed improvements include widening the existing highway to an urban typical section comprised of four 11-foot wide through lanes with a 12-foot wide painted median, two 4-foot wide bike lanes, curb and gutter, two 3-ft wide grass berms, and two 5-ft wide sidewalks. The transition section will be widened to a rural typical section comprised of two 12-foot wide paved travel lanes with an 11-foot wide flush median and 8-foot wide shoulders. Including side roads, approximately 13.4 acres of additional right of way will be required for this project. The total right of way width along Highway 270 will range from 102 to 169 feet.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed	
			Urban	Rural
2016	16,500 vpd	4	45 mph	60 mph
2036	22,500 vpd	4	45 mph	60 mph

The project area lies within the current range of the federally listed threatened northern long-eared bat (Myotis septentrionalis), the endangered harperella (Ptilimnium nodosum), and the threatened Missouri bladderpod (Physaria filiformis). Due to the lack of suitable habitat present within the project area, a determination was made that the project will have ‘no effect’ on the listed plant species.

The Final 4(d) Rule applies to this project's activities that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts the incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost. No known hibernacula or maternity roosts exist within the distances noted above; therefore, the project can proceed without restrictions. All offsite locations will require coordination with USFWS. The USFWS coordination letter is attached.

One historic site was determined eligible for the National Register of Historic Places. This historic site will not be affected by the widening of Highway 270. The State Historic Preservation Officer concurrence letter is attached.

Two cemeteries are located west of Fleetwood Drive and outside the project limits. Neither cemetery will be impacted.

Three streams were identified in the project corridor. Expected permanent impacts are 388 linear feet (lf) of an unnamed tributary of the Ouachita River east of Blacksnake Road and 309 lf of an unnamed tributary of the Ouachita River at Crystal Hill Road. No impacts are associated with an unnamed tributary of the Ouachita River in the transition section east of Fleetwood Drive. No wetlands were identified in the project corridor. The proposed project should be allowed under the terms of Standard Individual 404 Permit from the U.S. Army Corps of Engineers.

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

This project will result in 24 relocations that include one residence, eleven businesses, ten storage units, and two landlord businesses. Relocation procedures, as outlined under Public Law 91-646, Uniform Relocation Assistance Act of 1970 (URAA), as amended, will be followed.

To minimize relocations and impacts to businesses, retaining walls were utilized. Two residences will have visual impacts associated with retaining walls approximately 6 feet above the ground surface.

Two potential hazardous materials sites are located near the proposed project: Superstop #123 (SE corner of Hwy. 227 and Hwy. 270) and the Piney Grocery (SE corner of Disney Street and Hwy. 270). Minor leaks in the underground storage tanks (USTs) were noted and issues corrected at Superstop #123, and the UST at the Piney Grocery was removed when minor leaks were detected. Small amounts of right of way will be required at both sites, but existing USTs will not be impacted. The potential for contaminated soils or groundwater does exist due to past leaks as noted. Should any hazardous or potentially hazardous materials be encountered during construction, the hazardous materials will be handled and disposed in accordance with applicable state, local, and federal laws and regulations.

A Public Information Meeting was held on December 8, 2016 at the Piney Baptist Church Activities Building in Hot Springs, Arkansas. A synopsis of the meeting is attached.

Listing of Commitments

- *Special Provision for Offsite Restraining Conditions for Northern Long-eared Bat*
- *Special Provision for Migratory Birds*
- *Special Provision for Special Flood Hazard Area*
- *Individual Section 404 permit*
- *URAA will be followed*
- *Short Term Activity Authorization*
- *NPDES Permit*

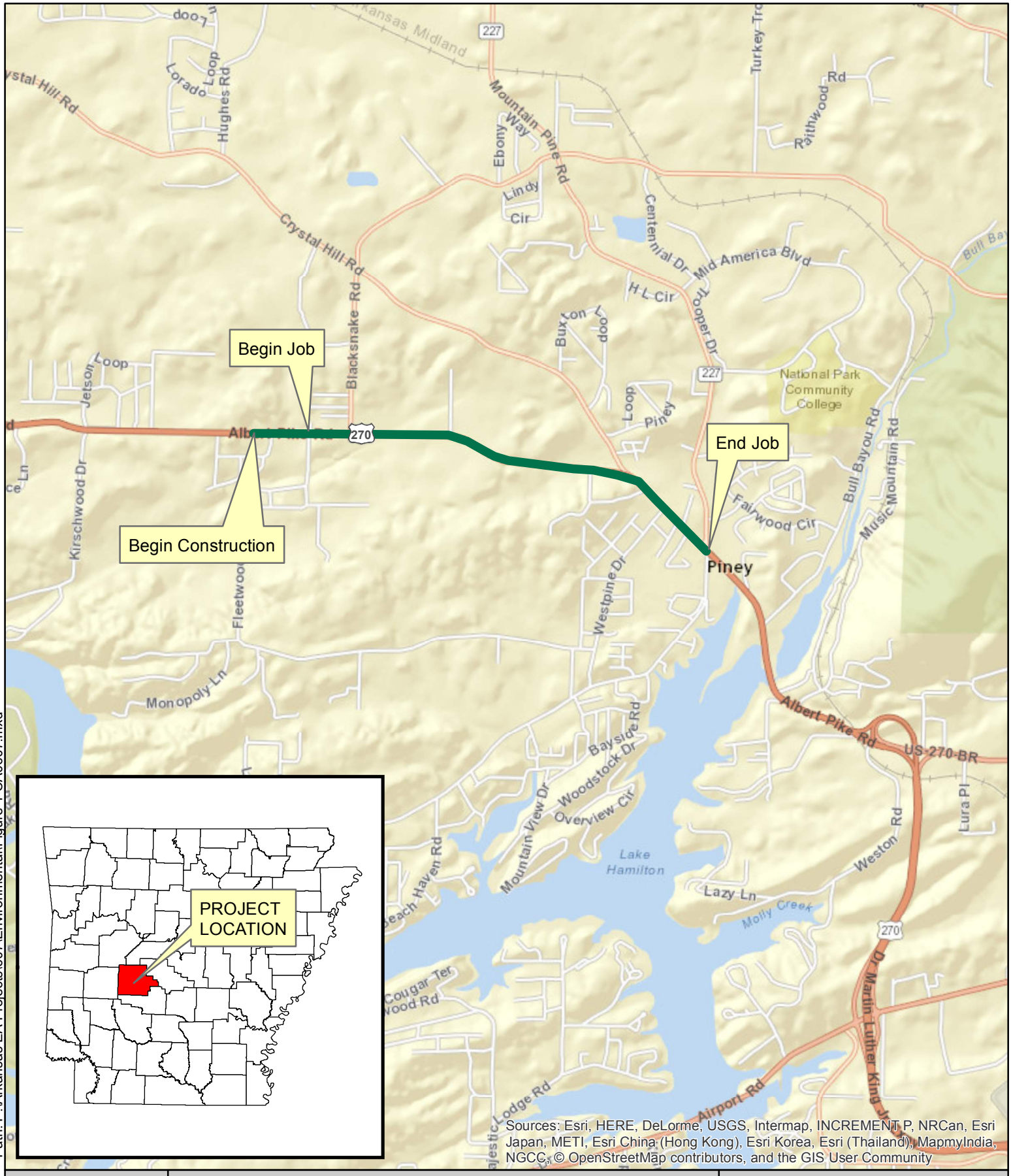

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Figure 1
Connecting Arkansas Program
Job Number CA0607
Fleetwood Drive to Hwy. 227 Widening
Garland County, Arkansas

ESRI GIS INFORMATION

Project Location

AHTD ENVIRONMENTAL IMPACTS ASSESSMENT FORM

AHTD Job Number CA0607 **FAP Number**

Job Title Fleetwood Dr. – Hwy. 227 (Widening)(S)

Environmental Impacts	None	Minor	Significant	Comments
Air Quality	X			
Construction Impacts		X		Temporary minor impacts
Cultural Resources	X			
Economic		X		There will be some business relocations and possible temporary loss of income.
Endangered Species		X		Special provision for offsite areas
Energy Resources	X			
Environmental Justice/Title VI				N/A for Non-NEPA projects
Fish and Wildlife	X			
Floodplains		X		SP for Special Flood Hazard Area
Forest Service Property	X			
Hazardous Materials/Landfills		X		Past UST leaks; Superstop #123 and the Piney Grocery.
Land Use Impacts	X			
Migratory Birds	X			SP for Migratory Birds
Navigation/Coast Guard	X			
Noise Levels				N/A for Non-NEPA projects
Prime Farmland				N/A for Non-NEPA projects
Protected Waters	X			
Public Recreation Lands	X			
Public Water Supply/WHPA	X			
Relocatees		X		24 relocations (1 residence; 11 businesses, 10 storage units, 2 landlord businesses).
Section 4(f)/6(f)				N/A for Non-NEPA projects
Social	X			
Underground Storage Tanks	X			USTs are not expected to be impacted.
Visual Impacts		X		2 homes (Sta 154+50) will have retaining walls 5'-8' above ground.
Stream Impacts		X		388 lf Stream 3; 309 lf Stream 4. No impacts at Stream 2.
Water Quality		X		Minor during construction
Wetlands	X			
Wildlife Refuges	X			

Section 401 Water Quality Certification Required? Yes

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type Individual

AHTD ENVIRONMENTAL IMPACTS ASSESSMENT FORM

Remarks: _____

_____

Signature of Evaluator Dina Murphy Date 05/04/17

From: Lewis, Lindsey
To: Ewing, Anne (Kayti)
Subject: Re: CA0607_USFWS Consultation
Date: Thursday, April 20, 2017 9:07:53 AM

Kayti,

The Service has reviewed your determination that the proposed action will not result in any prohibited incidental take for Norther Long-eared Bat (*Myotis septentrionalis*). This project may affect the Northern Long-eared Bat; however, there are no effects beyond those previously disclosed in the Service's programmatic biological opinion for the final 4(d) rule dated January 5, 2016. Any taking that may occur incidental to this project is not prohibited under the final 4(d) rule (50 CFR §17.40(o)). This project is consistent with the description of the proposed action in the programmatic biological opinion, and the 4(d) rule does not prohibit incidental take of the Northern Long-eared Bat that may occur as a result of this project. Therefore, the programmatic biological opinion satisfies the "action agency" responsibilities under ESA section 7(a)(2) relative to the Northern Long-eared Bat for this project.

Please keep in mind that you must report any departures from the plans submitted; results of any surveys conducted; or any dead, injured, or sick Northern Long-eared Bats that are found to this office. If this project is not completed within one year of this letter, you must update your determination and resubmit the required information.

Furthermore, due to the previously disturbed urban environment in and adjacent to the area being cleared, minimal adjacent habitat being disturbed, and distance to known species locations; the Service has no concerns or recommendations to provide as further technical assistance related to this action for any other species. No further action is required at this time.

Thanks,

Lindsey Lewis
Biologist

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

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

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

On Wed, Apr 19, 2017 at 8:33 AM, Ewing, Anne (Kayti) <Anne.Ewing@ahtd.ar.gov> wrote:

> Lindsey,

The Arkansas State Highway and Transportation Department (AHTD) plans to increase capacity on Highway 270 in Garland County between the Ouachita River Bridge and Highway 227. The existing roadway consists of two 11-foot paved travel lanes with shoulders varying from 1' to 5' wide. Proposed improvements include widening shoulders to 8.0' along the total length of the project (3.38 miles). From the Ouachita River Bridge to Black Snake Road, approximately 1.9 miles will be widened to four 12-foot travel lanes with an 11' painted median. From Black Snake Road to Highway 227, the remaining 1.5 miles will be widened to 5 lane curb and gutter with four 11-foot travel lanes and a 12' painted median with 4-foot bike lanes and 5-foot concrete walkways on either side. A 3-foot grass berm will separate the bike lanes and concrete walkways. Several pipe and box culverts will be replaced along Highway 270 and associated side roads to accommodate the new roadway width. I have provided a kmz file and a project location map.

Arkansas Natural Heritage Commission (ANHC) records indicate no known localities of any state or federally listed species in the project area; however, the project lies within the federally threatened northern long-eared bat (*Myotis septentrionalis*) consultation area. According to IPaC, harperella (*Ptilimnium nodosum*) and Missouri bladderpod (*Physaria filiformis*) are also known from Garland County. This project has been previously consulted on, see attached USFWS concurrence from December 23rd, 2015. I am reinitiating consultation because of changes in the IPaC species list (see attached most current species list) and the Final 4(d) Rule.

The federally listed plant species are not likely to be impacted since there is no potential habitat in the project area. Harperella is known to occur in flashy, scour-prone stream systems, whereas Missouri bladderpod occurs on shale and sandstone glades in the Ouachita Mountains, both of which are more prevalent in western Garland County. The federally listed mussel species are not likely to occur in the project area following the construction of Lake Hamilton, to the south, and Lake Ouachita, to the north. Based on the absence and prior destruction of suitable habitat, it has been determined that the project will have 'no effect' on harperella and Missouri bladderpod.

The widening of Highway 270 will require the removal of mixed oak-hickory-pine and riparian forests during highway construction. Although 15.8 acres of forested habitat will be cleared during highway construction, northern long-eared bats are known to prefer interior forests with high canopy densities and are sensitive to disturbance from adjacent urbanization (Timpone et al. 2009; Henderson and Broders 2008). Furthermore, there are no known roost trees within 100 feet or hibernacula within 0.25 mile near the project area. The activities associated with this project comply the Final 4(d) Rule for northern long-eared bats. Any and all offsite areas used for this project that result in tree clearing shall require separate USFWS clearance.

> Thanks,
>
> Kayti

THE DEPARTMENT OF ARKANSAS
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Asa Hutchinson
Governor

Stacy Hurst
Director

Arkansas Arts Council
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Arkansas Natural Heritage Commission
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Delta Cultural Center
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Historic Arkansas Museum
•
Mosaic Templars Cultural Center
•
Old State House Museum

ARKANSAS HISTORIC PRESERVATION PROGRAM

National Historic Preservation Act 1966-2016

323 Center Street, Suite 1500
Little Rock, AR 72201

(501) 324-9880
fax: (501) 324-9184
tdd: 711

e-mail:
info@arkansaspreservation.org
website:
www.arkansaspreservation.com

An Equal Opportunity Employer

February 24, 2016

Mr. Bill McAbee
CAP Environmental Program Manager
Arkansas State Highway and Transportation Department
Connecting Arkansas Program
P.O. Box 2261
Little Rock, AR 72203-2261

RE: Garland County - General
Section 106 Review – FHWA
Request for Technical Assistance
AHTD Job Number CA0607
Hwy. 270 (Widening) (S)
AHPP Tracking Number 94202.03

Dear Mr. McAbee:

The staff of the Arkansas Historic Preservation Program has reviewed the additional documentation submitted for this undertaking. Based on the information in the addendum, we concur that the structure, CDMS Addendum 1, is ineligible for inclusion in the National Register of Historic Places.

Once the undertaking is further along in the planning stages, we look forward to reviewing the cultural resources survey report of the proposed project. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Theresa Russell of my staff at (501)-324-9357.

Sincerely,

Frances McSwain

Frances McSwain
Deputy State Historic Preservation Officer

cc: Mr. Randal Looney, Federal Highway Administration
Mr. John Fleming, Arkansas Highway and Transportation Department
Ms. Tamara Francis-Fourkiller, Caddo Nation
Dr. Andrea Hunter, Osage Nation
Mr. Everett Bandy, Quapaw Tribe of Oklahoma
Ms. Kim Jumper, Shawnee Tribe of Oklahoma
Dr. Ann Early, Arkansas Archeological Survey
Mr. Robert W. Ball, CDM Smith

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February 2, 2016

Mr. Bill McAbee
CAP Environmental Project Manager
Arkansas State Highway & Transportation Department
Connecting Arkansas Program
P.O. Box 2261
Little Rock, AR 72203-2261

RE: Garland County – General
Section 106 Review – FHWA
Additional Location Information for Historic Structure CDMS6
AHTD Job Number CA0607
AHPP Tracking Number 94202.02

Dear Mr. McAbee:

We are in receipt of your map delineating the location of historic structure CDMS6. Based on the information presented in this map, we concur that CDMS6 is not within the proposed right of way and will not be impacted by the project. Finally, we concur that this project will no effect on historic properties.

Thank you for the opportunity to review this undertaking. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Bob Scoggin of my staff at 501-324-9270

Sincerely,

Frances McSwain

Frances McSwain
Deputy State Historic Preservation Officer

cc: Mr. Randal Looney, Federal Highway Administration
Ms. Tamara Francis-Fourkiller, Caddo Nation
Dr. Andrea Hunter, Osage Nation
Mr. Everett Bandy, Quapaw Tribe of Oklahoma
Ms. Kim Jumper, Shawnee Tribe of Oklahoma
Dr. Ann Early, Arkansas Archeological Survey

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December 21, 2015

Mr. Bill McAbee
CAP Environmental Project Manager
Arkansas State Highway & Transportation Department
Connecting Arkansas Program
P.O. Box 2261
Little Rock, AR 72203-2261

RE: Garland County – General
Section 106 Review – FHWA
Report Titled *Cultural Resources Survey of Arkansas State Highway and Transportation Department Connecting Arkansas Program Job CA0607, For the Proposed Widening of Highway 270 from Highway 227 to the Ouachita River in Garland County, Arkansas*
AHPP Tracking Number 94202.01

Dear Mr. McAbee:

The staff of the Arkansas Historic Preservation Program has reviewed the above-referenced cultural resources report. This report documents the phase I cultural resources survey conducted for the project and is acceptable.

Based on the information presented in this report, we concur that those portions of archeological site 3GA1051 within the proposed right of way would not contribute to NRHP eligibility of the site and no further work is recommended, although the NRHP eligibility of that portion of the site outside the proposed right of way is considered undetermined.

We would note that the report lists Request for Technical Assistance (RTA) structure CDMS 6 as ineligible, whereas our letter of October 10, 2015 lists the structure as eligible. Please submit a map or design plan page that shows CDMS 6 in relation to the project boundary, so that a determination of effect can be made in order to complete the review process.

Thank you for the opportunity to review this undertaking. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Bob Scoggin of my staff at 501-324-9270

Sincerely,

Frances McSwain

Frances McSwain
Deputy State Historic Preservation Officer

cc: Mr. Randal Looney, Federal Highway Administration
Ms. Tamara Francis-Fourkiller, Caddo Nation
Dr. Andrea Hunter, Osage Nation
Mr. Everett Bandy, Quapaw Tribe of Oklahoma
Ms. Kim Jumper, Shawnee Tribe of Oklahoma
Dr. Ann Early, Arkansas Archeological Survey

Jobs CA0607 and CA0612

Fleetwood Dr. – HWY. 227 (Widening) (S)
Ouachita River – Fleetwood Dr. (Widening) (S)

Garland County

Thursday, December 8, 2016

An open-forum public involvement meeting for the proposed CA0607 Fleetwood Drive to Highway 227 and the CA0612 Ouachita River to Fleetwood Drive widening projects on Highway 270 in Garland County was held at Piney Baptist Church (Activities Building), 3150 Albert Pike Road, Hot Springs, Arkansas from 4:00 – 7:00 p.m. on Thursday, December 8, 2016. A public officials meeting was held at 3:00 p.m. on the same day. Efforts to involve minorities and local property owners in the meeting included:

- Display ads placed in *The Sentinel Record* on Sunday, November 27, 2016 and Sunday, December 4, 2016.
- Display ads placed in *Hola Arkansas* on Friday, November 25, 2016 and Friday, December 2, 2016.
- Public Service Announcement ran on *Power 92.3 FM* from December 5-8, 2016.
- Letters to public officials mailed November 17, 2016 and emailed November 21, 2016.
- Letters to ministers mailed November 18, 2016 and emailed November 21, 2016.
- Fliers to adjacent property owners mailed November 18, 2016.
- Fliers to stakeholders and people interested in the project mailed November 18, 2016 and emailed November 21, 2016.
- Meeting notice fliers delivered door-to-door along project route December 1, 2016.
- News release distributed to the media on December 2, 2016.
- Meeting announcement was listed on ConnectingArkansasProgram.com and ArkansasHighways.com on November 15, 2016.

The following information was available at the public meeting for inspection and comment.

- Two sets of aerial photograph roll plots at a scale of 1" = 50', illustrating the entire length of the two proposed projects.
- Two sets of 22" x 34" aerial photographs on mounted boards at a scale of 1" = 500', illustrating the entire length of the two proposed projects.
- Three CAP informational boards

Handouts for the public included a comment sheet and small-scale maps illustrating the project locations, which were identical to the aerial photography display boards. Copies of these are attached to this synopsis.

Table 1 describes the results of public officials' participation at the 3 p.m. meeting.

Table 1	
Public Official Participation	**Total**
Attendance at meeting (including AHTD, CAP, and Buchart Horn staff)	**13**
Comment forms received	**1**

Rick Davis, County Judge for Garland County, submitted a comment. He stated that the project will help greatly with the traffic congestion at the Hwy 270/Hwy 227 intersection and will benefit the community economically. He also expressed a wish for the project to be completed in its entirety.

Table 2 describes the results of public participation at the 4-7 p.m. meeting. Attendees were asked to indicate which project(s) they had an interest in – CA0607, CA0612, or both.

Table 2					
Public Participation	**CA0607**	**CA0612**	**CA0607 CA0612**	**Not Indicated**	**Total**
Attendance at meeting (including AHTD, CAP, and Buchart Horn staff)	**39**	**11**	**55**	**2**	**107**
Comments received	**16**	**8**	**13**	**1**	**38**

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

An analysis of the responses received from the public survey is shown in Table 3.

Table 3					
Survey Results	**CA0607**	**CA0612**	**CA0607 CA0612**	**Not Indicated**	**Total**
Which project(s) are you interested in?	**14**	**9**	**14**	**1**	**38**
Supports improvements to Hwy. 270 (Albert Pike Rd.)	**14**	**9**	**14**	**1**	**38**
Does not support improvements to Hwy. 270 (Albert Pike Rd.)	**1**	**0**	**0**	**0**	**1**
Knowledge of historical, archeological or cemetery sites	**2**	**1**	**3**	**0**	**6**
Knowledge of area environmental constraints	**0**	**1**	**1**	**0**	**2**
Home or property offers limitations to the project that need to be considered during the design	**2**	**5**	**1**	**0**	**8**
Suggestion to better serve the needs of the community	**5**	**5**	**8**	**0**	**18**
Believes the project would have beneficial impacts	**1**	**6**	**9**	**1**	**17**
Believes the project would have adverse impacts	**7**	**1**	**0**	**0**	**8**
Additional Comments	**11**	**3**	**7**	**1**	**22**
Total Comments Received	**14**	**9**	**14**	**1**	**38**

The following is a listing of comments concerning issues associated with these projects.

Comments Regarding CA0607:

- 1 comment noted the existence of a cemetery just off the new highway on Highway 227.
- 1 comment noted that contact was made to the previous owner for a possible archeological dig.
- 4 comments expressed the need for the project and that it would be a benefit to the community.
- 1 comment questioned the need for five lanes.
- 1 comment asked that the speed limit be kept at 45 until past the jail.

- 6 comments stated their concerns about the loss of display area or loss of access, which would adversely affect their businesses and/or property due to the additional right-of-way required by the project.
- 3 comments requested that a proposed ditch behind the curb and gutter be eliminated, or that an underground drainage system be considered, to lessen the amount of ROW that would be required.
- 2 comments requested driveway relocations or additions.
- 1 comment proposed a retaining wall be relocated.
- 1 comment stated the concern for increased traffic and noise after the project's completion.
- 1 comment questioned the need for bicycle lanes and the additional ROW that they require.
- 1 comment listed items that would be impacted on their property during construction.
- 3 comments stated concerns about traffic and access problems during construction.

Comments Regarding CA0612:

- 1 comment stated that a dangerous condition exists currently at the intersection of Hwy 270 and Lodge Road and that extending the project westward to include the turn lane at the intersection might eliminate some crashes.
- 5 comments expressed the need for the project and its benefits.
- 4 comments listed numerous items that would be impacted on their property by the project design.
- 1 comment included the Chester and Evelyn Tucker Rock Pillars under historical sites, family cemeteries, or archaeological sites.
- 1 comment stated that the improvements to Dennis Road are not needed as it acts as a driveway, which has been personally maintained by the commenter, to two homes.
- 1 comment stated the negative impacts to their property due to the project's easement and their concerns about such.
- 2 comments expressed their wish to keep Jasmine Lane open to serve the properties as it currently does.
- 1 comment stated there are well and gas lines close to Jasmine Lane.
- 1 comment suggested a traffic signal at the Hwy 270/Treasure Isle Road intersection.
- 2 comments stated that straightening out the s-curve (one commenter specifically mentioned the curve by Treasure Isle Road) will make the roadway safer.
- 1 comment suggested improving the intersection at Treasure Isle Road.
- 1 comment expressed a preference for the light going in at Crystal Hill Road.

- 1 comment said that they were not sure if the proposed widening project has any impacts to their property or the community.
- 1 comment expressed it's in the State's best interest to purchase their home.

Comments Regarding Both CA0607 and CA0612:

- 2 comments noted the existence of Fleming Cemetery on the project.
- 1 comment listed Victory Tabernacle Church/"Greenwood Baptist" under historical sites, family cemeteries, or archaeological sites.
- 1 comment requested that the bicycle lanes need to be accommodated to link with the Lake Ouachita Vista Trails.
- 1 comment asked that bicycle lane markings be continued through the shoulder section.
- 1 comment stated that a dangerous condition exists currently at the intersection of Hwy 270 and Lodge Road and that extending the project westward to include the turn lane at the intersection might eliminate some crashes.
- 8 comments expressed the need for the project and its benefits.
- 1 comment stated that it would be beneficial to combine the two projects under one contract.
- 2 comments stated the need to expedite the project or that the construction of Phase 2 begin soon after the completion of Phase 1.
- 3 comments expressed the opinion that four lanes at the beginning of the CA0612 project be carried across the bridge.
- 1 comment listed items that would be impacted on their property due to the project design.
- 1 comment stated the need for repairs and lighting at Ski Motel Point Road.
- 1 comment pointed out that excess speed past bridge at Royal Shell area be addressed (not in either CA0607 or CA0612 projects).
- 1 comment requested that the entire project be completed.
- 1 comment suggested that Phase 1 be from Hwy 227/Hwy 270 intersection to Fleetwood Drive in order to reduce traffic congestion between the by-pass and Hwy 227.

Attachments:

- Blank comment form
- Public Officials Meeting sign-in sheet
- Public Meeting sign-in sheet
- 11x17 map handouts
- Small-scale copy of the display boards

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT (AHTD)

CITIZEN COMMENT FORM

AHTD JOB NUMBER CA0607 & CA0612
FLEETWOOD DRIVE – HIGHWAY 227 (HIGHWAY 270 WIDENING)
OUACHITA RIVER – FLEETWOOD DRIVE (HIGHWAY 270 WIDENING)
GARLAND COUNTY

LOCATION:
PINEY BAPTIST CHURCH (ACTIVITIES BUILDING)
3150 ALBERT PIKE RD., HOT SPRINGS, AR 71913
4:00 – 7:00 P.M.
THURSDAY, DECEMBER 8, 2016

Make your comments on this form and leave it with AHTD Connecting Arkansas Program personnel at the meeting or mail it within 15 days to: AHTD Connecting Arkansas Program, Attn: Jon Hetzel, 4701 Northshore Drive, North Little Rock, AR 72118.
Email: Info@ConnectingArkansasProgram.com.

Which Project(s) are you interested in?

☐ CA0607 Fleetwood Drive – Highway 227
☐ CA0612 Ouachita River – Fleetwood Drive

Yes	No	
☐	☐	Do you feel there is a need for the proposed widening of Highway 270 in Garland County?_____
☐	☐	Do you know of any historical sites, family cemeteries, or archaeological sites in the proposed area? Please note and discuss with staff._____
☐	☐	Do you know of any environmental constraints, such as endangered species, hazardous waste sites, existing or former landfills, or parks and public lands in the project vicinity? Please note and discuss with staff.

(Continued on back)

Yes	No	
☐	☐	Does your home or property offer any limitations to the project, such as septic systems, that need to be considered in the design?
☐	☐	Do you have a suggestion that would make this proposed project better serve the needs of the community?
☐	☐	Do you feel that the proposed widening project will have any impacts (Beneficial or Adverse) on your property and/or community (economically, socially, or environmentally, etc.)? Please explain.

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

Name : (*Please Print*)_____

Address: _____ Phone: (_____) _____--_____

_____

_____

E-mail:_____

Please make additional comments here._____

_____

_____

_____

_____

_____

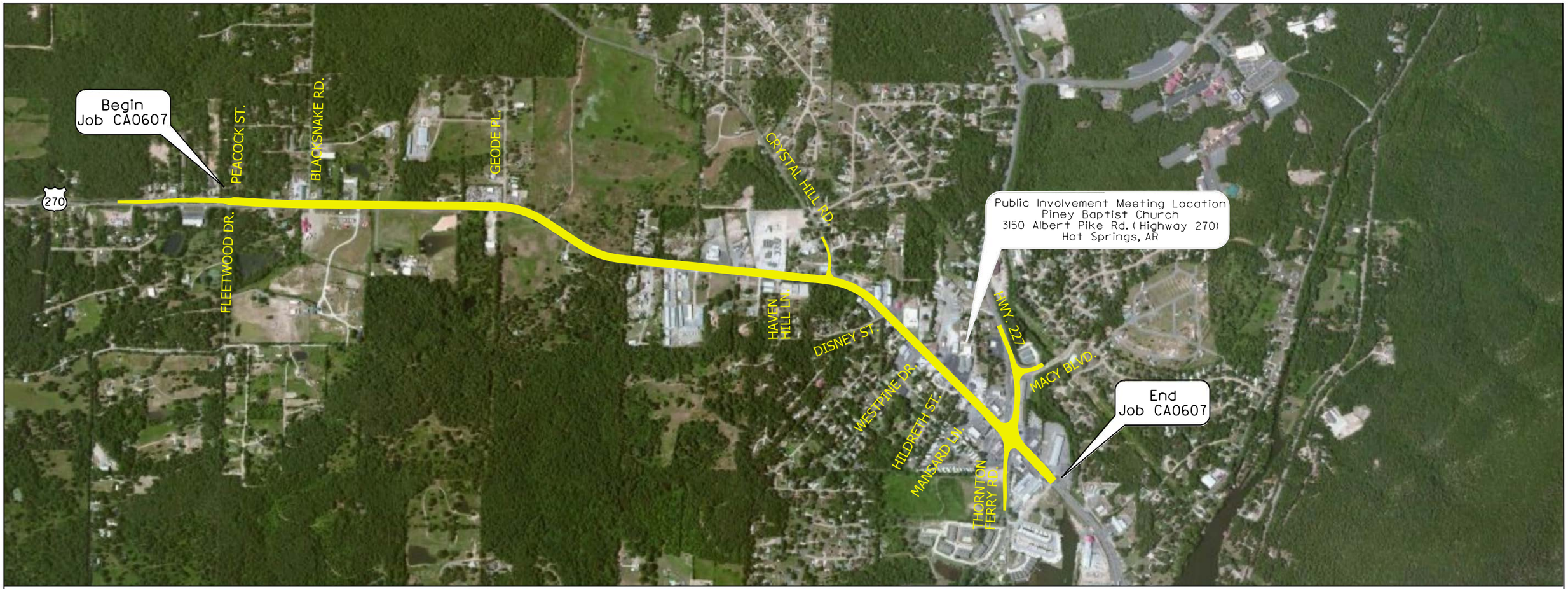
_____

_____

_____

For additional information, please visit our website at

www.ConnectingArkansasProgram.com



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0 500 1000
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Map Date: May 22, 2016
Meeting Date: June 30, 2016
Public Involvement Meeting Handout

CONNECTING ARKANSAS PROGRAM
CAP

Job CA0607

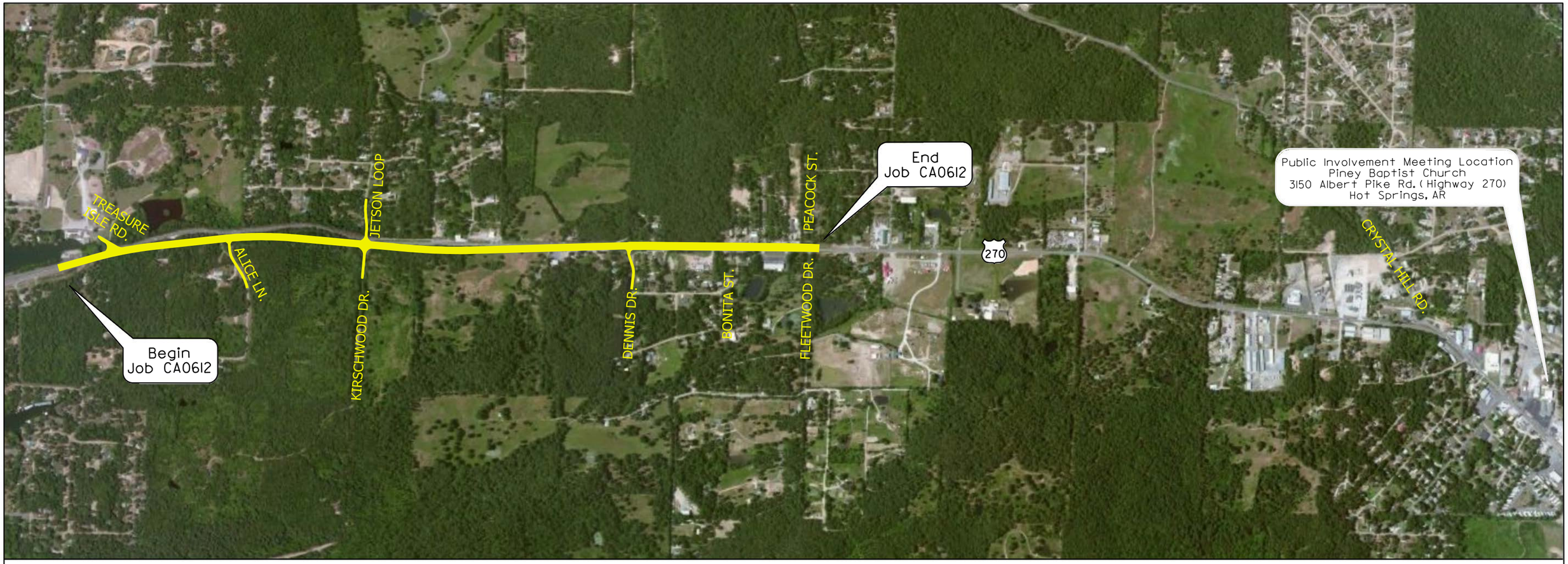
FLEETWOOD DRIVE - HWY. 227
(Widening) (S)

Garland County
Route 270 Section 5

Preliminary
Subject to Revision

Project Location

Notes: _____



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Map Date: May 22, 2016
Meeting Date: June 30, 2016
Public Involvement Meeting Handout

CONNECTING ARKANSAS PROGRAM
CAP

Job CA0612

OUACHITA RIVER - FLEETWOOD DR.
(Widening) (S)

Garland County
Route 270 Section 5

Preliminary
Subject to Revision

Project Location

Notes: _____

DATE SUBMITTED 3/16/2017

DESIGN INFORMATION

Job Number CA0607 FAP Number _____ County Garland

Job Name Highway 270 from Fleetwood Drive to Highway 227

Design Engineer Buchart Horn, Inc.

Brief Project Description This project proposes to widen approximately 1.75 miles of Highway 270 to five lanes with bike lanes, extending generally from Fleetwood Drive to Highway 227 in Garland County.

EXISTING CONDITIONS:

Roadway Width: 26'-48' Shoulder Width: 1' – 5'

Number of Lanes and Width: varies from 2-11' lanes to 4-12' lanes

Average Existing ROW Width 90'

PROPOSED CONDITIONS:

Roadway Width: 60' Shoulder Width: 0' Curb & Gutter

Number of Lanes and Width: 4 – 11' travel lanes, 12' painted median, and 2 – 4' bicycle lanes

Average Existing ROW Width Average width = 140' (varies from 102' to 169')

CONSTRUCTION INFORMATION:

If detour: Where NONE Length N/A

DESIGN DATA:

2016 ADT 16,500 vpd 2029 ADT 22,500 vpd %Trucks 4% Design Speed 45 mph

Approximate total length of project: 1.97 (includes 0.22 mi of transition section) mile(s)

Justification for improvements: To increase capacity and improve safety for the traveling public.

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

January 25, 2019

Regulatory Division

NATIONWIDE PERMIT NO. **MVK 2018-00133**

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 widening approximately 2.2 miles of U.S. Highway 270 within the City of Hot Springs. The existing roadway consists of two 11-foot-wide lanes with shoulder widths between 1 and 5-foot-wide. Proposed improvements include four 11-foot-wide lanes, two four-foot-wide bike lanes, curb and gutter, two 3-foot-wide grass berms and two 5-foot-wide sidewalks. The project will cross three unnamed tributaries to the Ouachita River (Lake Hamilton) and will permanently adversely impact Unnamed Tributary 3 (388 linear feet) and Unnamed Tributary 4 (309 linear feet). The project will require the acquisition of 13.4 acres of additional right-of-way and will relocate one residence, thirteen businesses and ten storage units. The project lies within the range of the Federally listed Northern Long-eared Bat (NLEB) *(Myotis septentrionalis)*, Harperella Plant *(Ptilimnium nodosum)* and Missouri Bladderpod Plant *(Physaria filiformis)*. ArDOT determined that the project will have no effect on the listed plant species and the Final 4(d) Rule applies to the project's activities that have the potential to affect the NLEB. There are no wetlands or cultural resources impacts. The project begins near Fleetwood Drive and ends near State Highway 227, in sections 3, 4 and 5, T. 3 S., R. 20 W., Garland County, Arkansas. A vicinity map, project location maps and stream mitigation worksheet are enclosed.

The proposed activities are authorized by Department of the Army Nationwide Permit (NWP) **No. 14** (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 697 linear feet of streams with 2,937 stream credits from their Upper Saline River 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.

For your information, we have enclosed a copy of the Arkansas Department of Environmental Quality (ADEQ) Section 401 Water Quality Certification conditions, which are conditions of your permit. If you have any questions concerning compliance with the conditions of the 401 certification, you should contact Mr. Jim Wise or Ms. Melanie Treat at the ADEQ, Water Division, 5301 Northshore Drive, North Little Rock, Arkansas 72118, telephone (501) 682-0040.

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.

The NWP determination will be valid until March 18, 2022. If NWP **No. 14** is modified, suspended, or revoked during this period, your project may not be authorized unless you have begun or are under contract to begin the project. If work has started or the work is under contract, you would then have twelve (12) months to complete the work.

Your cooperation in the Regulatory Program is appreciated. If you have any additional questions about this permit or any of its provisions, please contact Mr. Johnny McLean at (501) 324-5295 and refer to Permit No. **MVK 2018-00133, U.S. Highway 270 Widening in the City of Hot Springs (ArDOT Project No. CA0607).**

Sincerely,

Sarah Chitwood
Chief, Regulatory Evaluation Branch

Enclosures

Copy Furnished:
Vicksburg District Regulatory, w/cy encls.
Ms. Melanie Treat, Arkansas Department of Environmental Quality, w/cy encls.
Mr. Lindsey Lewis, U.S. Fish & Wildlife Service, w/cy encls.

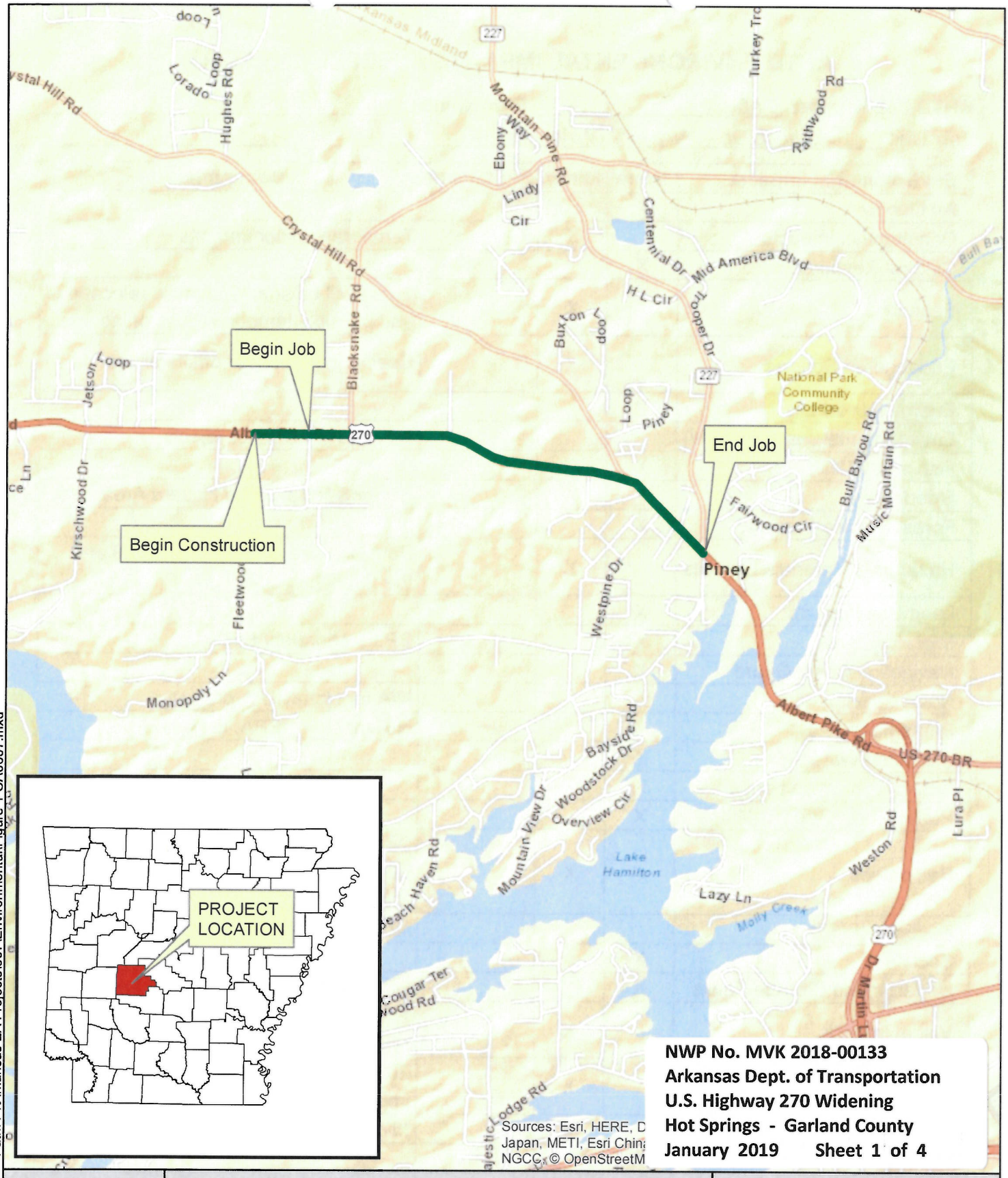
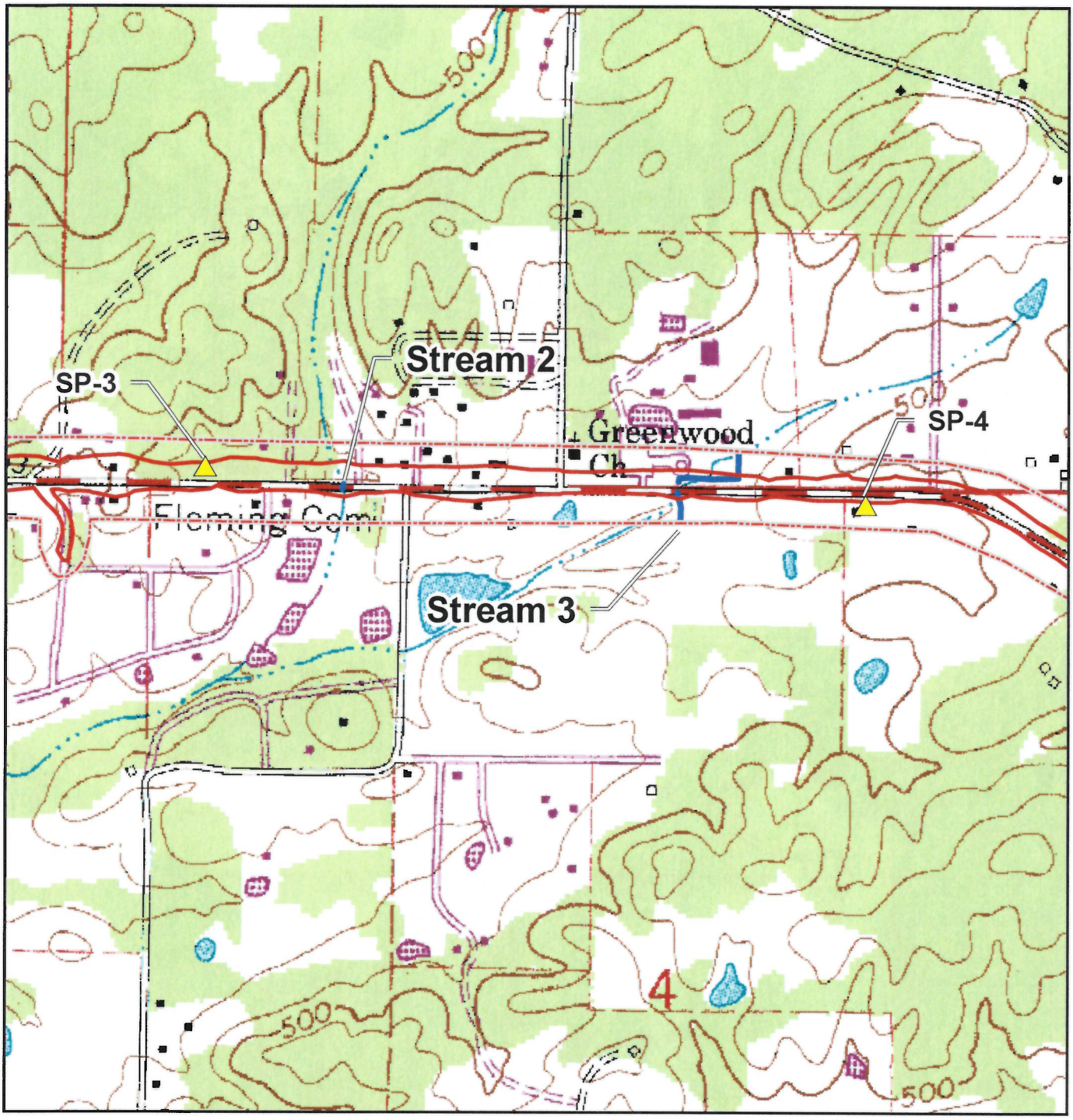


Figure 1
Connecting Arkansas Program
Job Number CA0607
Fleetwood Drive to Hwy. 227 Widening
Garland County, Arkansas

ESRI GIS INFORMATION



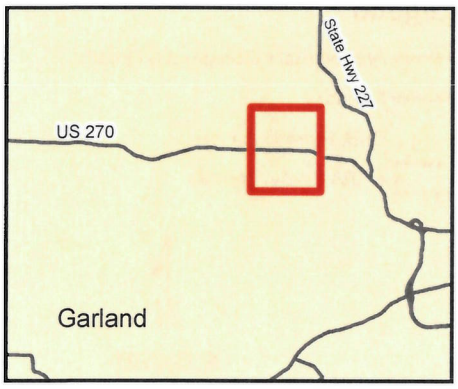


Figure 3b:
AHTD Job CA0607
Water Resources

Sheet 2 of 4

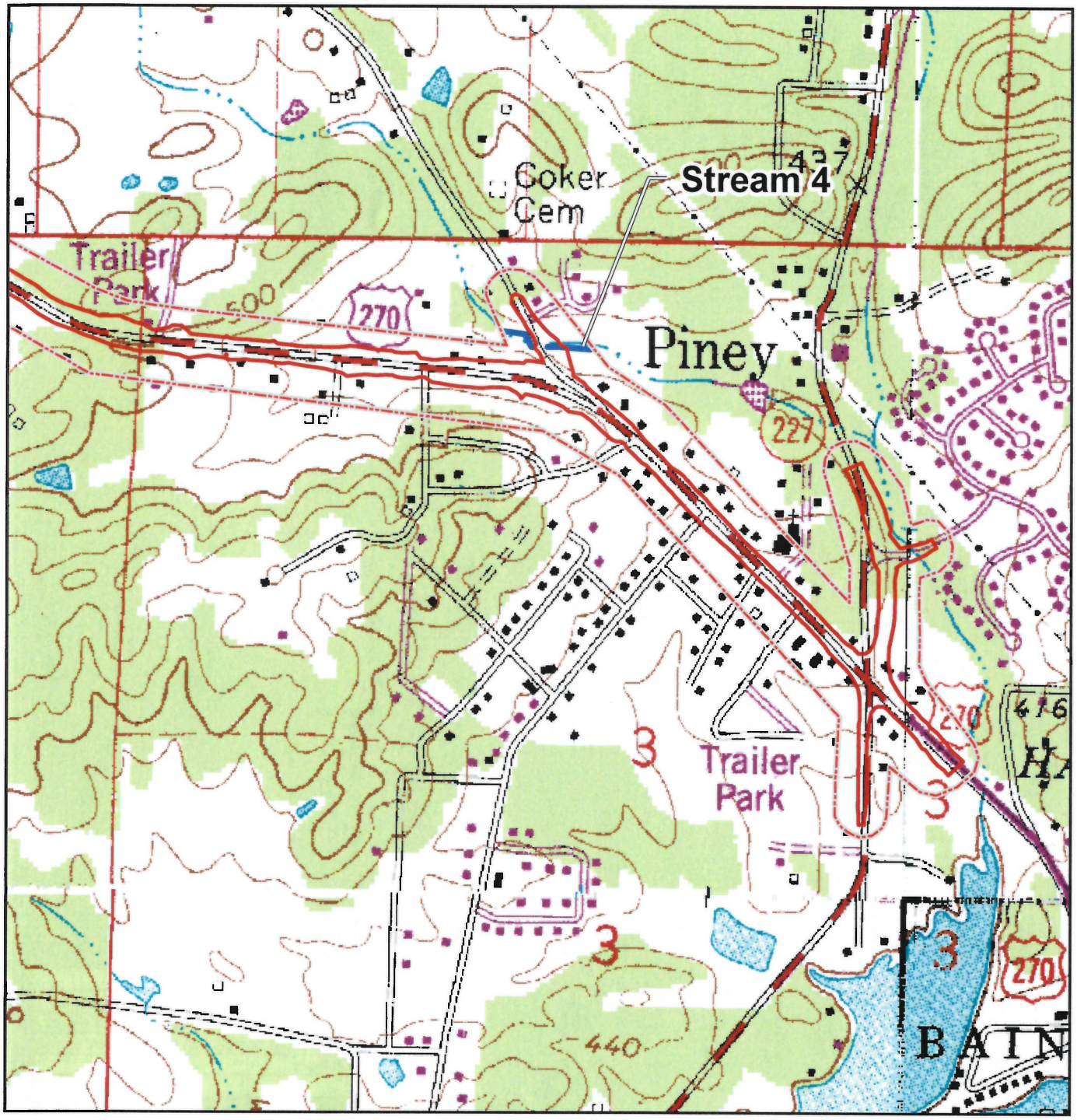
Legend

- Approximate Construction Limits
- Stream
- Data Form Location
- NEPA Study Corridor

0 750 1,500 Feet

N

1:9,000



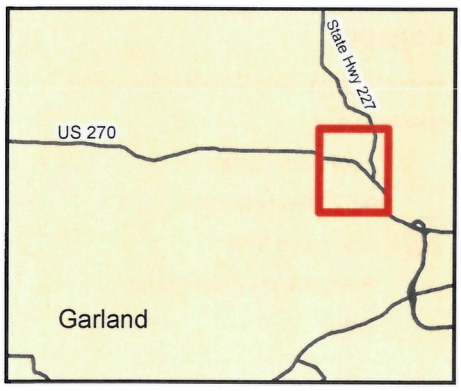


Figure 3c:
AHTD Job CA0607
Water Resources

Sheet 3 of 4

Legend

- Approximate Construction Limits
- Stream
- Data Form Location
- NEPA Study Corridor

0 750 1,500 Feet

N

1:9,000

ADVERSE IMPACT
FACTORS FOR RIVERINE SYSTEMS WORKSHEET

Stream Type Impacted	Ephemeral 0.1			Intermittent 0.4			Perennial 0.8		
Priority Area	Tertiary 0.1			Secondary 0.4			Primary 0.8		
Existing Condition	Impaired 0.1			Somewhat Impaired 0.8			Fully Functional 1.6		
Duration	Temporary 0.05			Recurrent 0.1			Permanent 0.3		
Activity	Clearing 0.05	Utility Crossing/Bridge Footing 0.15	Below Grade Culvert 0.3	Armor 0.5	Detention 0.75	Morpho-logic Change 1.5	Impound-ment (dam) 2.0	Pipe >100' 2.2	Fill 2.5
Linear Impact	<100' 0	100'-200' 0.05	201-500' 0.1	501-1000' 0.2	>1000 linear feet (LF) 0.1 reach 500 LF of impact (example: scaling factor for 5,280 LF of impacts = 1.1)				

Stream 3-Cul Stream 3-Mor **Stream 4-Fill**

Factor	Dominant Impact Type 1	Dominant Impact Type 2	Dominant Impact Type 3	Dominant Impact Type 4	Dominant Impact Type 5
Stream Type Impacted	0.4	0.4		0.4	
Priority Area	0.1	0.1		0.1	
Existing Condition	0.1	0.1		0.1	
Duration	0.3	0.3		0.3	
Activity	0.3	1.5		2.5	
Linear Impact	0	0.1		0.1	
Sum of Factors	M= 1.2	2.5		3.5	
Linear Feet of Stream Impacted in Reach	LF= 72.5	315.5		309	
M X LF	87	789		1,082	

Total Mitigation Credits Required = (M X LF) = 1,958

Outside HUC8 Watershed Proximity Factor - 1,958 x 1.5 = 2,937

Nationwide Permit No. 14

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

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

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

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

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

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

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, “District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Nationwide Permit General Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.
(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/.

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.
(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.
(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non- Federal applicant of the Corps' determination within 45 days of receipt of a complete pre- construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin

work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.
(d) 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.
(e) 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.
(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

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

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.
(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.
(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
(e) Prospective permittees should be aware that section 110k of the NHPA (54
U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal

lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.
(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:
(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).
(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.
(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).
(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.
(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).
(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).
(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is

provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.
(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

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

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

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

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

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

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

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

(Transferee)

_____

(Date)

_____

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:
(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
(c) The signature of the permittee certifying the completion of the activity and mitigation.

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

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

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

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

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

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

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

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

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

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

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

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

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

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

(2) Agency coordination is required for: (i) all NWP activities that require pre- construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.
(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision

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

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

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

3. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

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

ADEQ
A R K A N S A S
Department of Environmental Quality

MAR 16 2017

Colonel Robert G. Dixon
District Commander
U.S. Army Corps of Engineers
P.O. Box 867
Little Rock, Arkansas 72203-0867

RE: Public Notice: Re-issuance of Nationwide Permits

Dear Colonel Dixon:

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

ADEQ has determined that there is a reasonable assurance that the activities covered under most these NWPs will be conducted in a manner which, according to the Arkansas Pollution Control and Ecology Commission's Regulation No.2, will not physically alter a significant segment of the waterbody and will not violate the water quality criteria.

Therefore, pursuant to §40l(a)(l) of the Clean Water Act, the ADEQ hereby **issues** water quality certification for all NWPs with the exception of NWPs 14, 29, and 43, contingent upon the following conditions:

1) An individual water quality certification request must be submitted to ADEQ for Activities which may impact Extraordinary Resource Waters, Ecologically Sensitive Waterbodies, and Natural Scenic Waterways and their tributaries (within 1 mile) as defined in Regulation No. 2, Water Quality Standards.
2) The applicant shall contact ADEQ to determine if a Short Term Activity Authorization (STAA) is needed when performing work in the wetted area of any waterbody. More information can be obtained by contacting the Water Division Planning Section of ADEQ at 501-682-0946.
3) The applicant shall implement all practicable best management practices (BMPs) to avoid excessive impacts of sedimentation and turbidity to the surface waters.
4) The applicant will take all reasonable measures to prevent the spillage or leakage of any chemicals, oil, grease, gasoline, diesel, or other fuels. In the unlikely event such spillage or leakage occurs, the applicant must contact ADEQ immediately.
5) The applicant shall limit construction to low flow periods as much as possible to minimize adverse effects on water quality and aquatic life.

6) If a construction site will disturb equal to or greater than one (1) acre and less than five (5) acres, the applicant shall comply with the requirements in Reg.6.203 for Stormwater discharge associated with a small construction site, as defined in APC&EC Regulation No. 6. If the construction site will disturb five (5) acres or more, the applicant shall comply with the terms of the Stormwater Construction General Permit Number ARR 150000 prior to the start of construction. BMPs must be implemented regardless of the size. More information can be obtained by contacting the NPDES Stormwater Section of ADEQ at (501) 682-0621.

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

a. Waterbodies on the most currently approved 303(d) list for turbidity/siltation, including tributaries of the listed stream (within 1 mile) and waters upstream of the listed segment (within 1 mile).
b. Waterbodies with an approved Total Maximum Daily Load (TMDL) for turbidity/siltation, including their tributaries (within 1 mile) and waters upstream of the listed segment (within 1 mile).

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

Sincerely,

Caleb Osborne
Associate Director, Office of Water Quality

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