

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

INTER OFFICE MEMORANDUM

May 31, 2017

TO: Master Files

FROM: John Fleming, Division Head, Environmental Division 

SUBJECT: AHTD Job Number 110621
FAP Number NHPP-0039(22)
Hog Tusk Creek Str. & Apprs. (S)
Bridge Number M2506
Lee County
Tier 2 Categorical Exclusion

The Environmental Division has reviewed the referenced project and it falls within the definition of a Tier 2 Categorical Exclusion under 23 Code of Federal Regulations, Section 771.117, and the AHTD/FHWA Memorandum of Agreement on the processing of Categorical Exclusions. A public hearing will not be offered for this project.

The purpose of this project is to replace a structurally deficient bridge with a reinforced concrete box culvert at Hog Tusk Creek on Highway 238 in Lee County, Arkansas. The total length of the project is approximately 0.15 mile. A project location map is attached.

Highway 238 consists of two 10-foot paved travel lanes with no shoulders. The existing right of way width is approximately 80 feet.

The existing 55' x 26' bridge (M2506) consists of three spans composed of timber girders with a concrete deck and an asphalt overlay supported by timber pile bents. The bridge is structurally deficient with a sufficiency rating of 29.8.

The bridge will be replaced on existing location with a quadruple 10' x 9' x 64' reinforced concrete box culvert. The new approaches will consist of two 11-foot wide paved travel lanes with 2-foot wide shoulders. Highway 238 will be closed during construction and a signed detour route will be utilized. The detour route will include the use of Highway 78 during construction. The new right of way width will be 300 feet. Approximately 0.42 acre of additional right of way will be required for this project. All

of the new right of way is Farmland of Statewide Importance. Form NRCS-CPA-106, the Farmland Conversion Impact Rating, is attached.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2018	385	15	55 mph
2038	400	15	55 mph

No environmental justice issues, hazardous waste deposits, relocatees, protected waters, or underground storage tanks are associated with this project. A floodplain permit will not be required. Cultural resource impacts are not anticipated; concurrence from the State Historic Preservation Officer is attached.

Construction of the reinforced concrete box culvert will impact less than 0.1 acre of waters of the United States. Wetlands have been identified to the northeast and southwest of Highway 238 around Hog Tusk Creek. Less than 0.1 acre of forested bottomland hardwood wetlands will be filled to allow for the wider structure and approaches. Construction should be covered under the terms of Nationwide Permit 14 for Linear Transportation Crossings in Federal Register 82(4):1860-2008.

The US Fish and Wildlife Service's Information for Planning and Consultation (IPaC) identified the federally protected endangered Pallid Sturgeon (*Scaphirhynchus albus*) and threatened Piping Plover (*Charadrius melodus*) as potentially occurring around the project area. Pallid Sturgeon are only known to occur in the Mississippi River at the eastern edge of Lee County. Piping plover occasionally rest along shorelines of lakes, ponds, rivers, and open wetlands while migrating through Arkansas, however, rest stops last just a few days and do not reoccur at the same location from year to year. Hog Tusk Creek has been channelized and does not provide optimal habitat for Piping Plover which would likely avoid the area during any construction activity. Considering the above information, there will be no effect on any endangered species.

Based upon the AHTD's *Policy on Highway Traffic Noise Abatement*, a noise analysis is not required for this project. The project meets the criteria for a Type III project established in 23 CFR 772. Therefore, the project requires no analysis for highway traffic noise impacts. Type III projects do not involve added capacity, construction of new through lanes or auxiliary lanes, changes in the horizontal or vertical

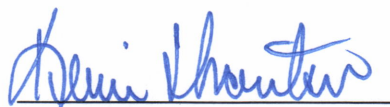
AHTD Job Number 110621
Tier 2 Categorical Exclusion
Page 3 of 3

alignment of the roadway, or exposure of noise sensitive land uses to a new or existing highway noise source.

Attachments:

Project Location Map
SHPO Clearance
USFWS Coordination
Form NRCS-CPA-106
Environmental Study Checklist
Design Sheet

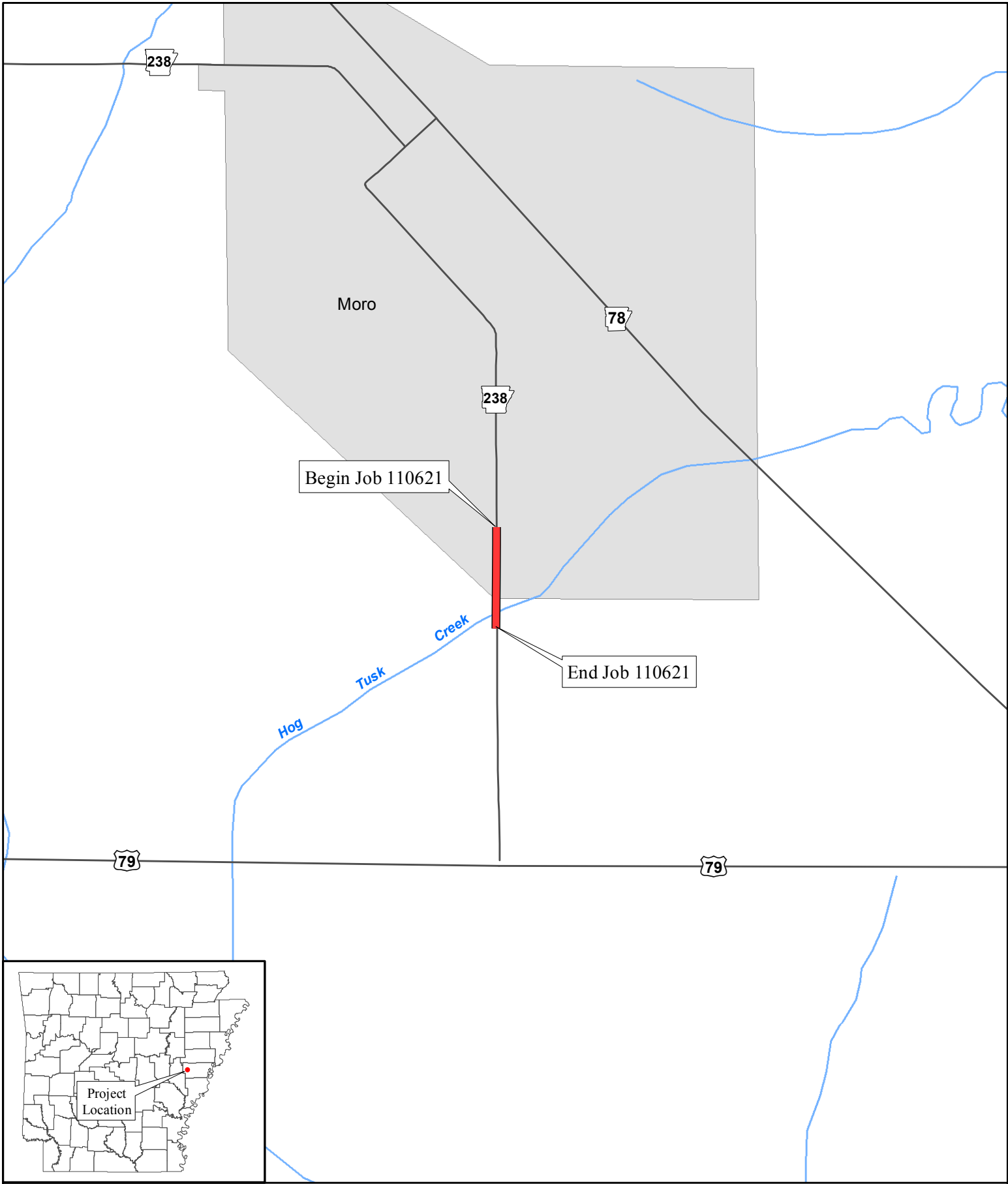
Approved:



Kevin Thornton
Assistant Chief Engineer-Planning

JF:KS:fc

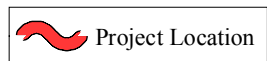
c: Program Management
Right of Way
Roadway Design
District 1
FHWA
Master File



0 500 1,000
Feet

AHTD - Environmental GIS - Reed
May 2, 2017

Job 110621
Hog Tusk Creek Str. & Apprs.
Lee County





THE DEPARTMENT OF ARKANSAS
HERITAGE

Asa Hutchinson
Governor

Stacy Hurst
Director

May 1, 2017

Mr. John Fleming
Division Head
Environmental Division
Arkansas State Highway and Transportation Department
PO Box 2261
Little Rock, AR 72203-2261

RECEIVED
AHTD

MAY 11 2017

ENVIRONMENTAL
DIVISION

RE: Lee County – General
Section 106 Review – FHWA
Request for Technical Assistance
AHTD Job Number 110621
Hog Tusk Creek Str. & Apprs. (S)
AHPP Tracking Number 98137

Dear Mr. Fleming:

This letter is written in response to your inquiry regarding properties of architectural or historical significance in the area of the proposed referenced project. The staff of the Arkansas Historic Preservation Program has reviewed the documents for the structures included in your letter of April 27, 2107. We have determined that the bridge is ineligible for inclusion in the National Register of Historic Places. We concur that this undertaking will have no effect on historic properties.

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

Once the undertaking is further along in the planning stages, we look forward to reviewing the proposed project. If you should have any questions or comments, please do not hesitate to contact Theresa Russell of my staff at (501)-324-9357.

Sincerely,

Marian Boyd
Interim Director, AHPP

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

Arkansas Arts Council

Arkansas Natural
Heritage Commission

Arkansas State Archives

Delta Cultural Center

Historic Arkansas Museum

Mosaic Templars
Cultural Center

Old State House Museum



ARKANSAS HISTORIC
PRESERVATION PROGRAM



1100 North Street
Little Rock, AR 72201

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

e-mail:

info@arkansaspreservation.org

website:

www.arkansaspreservation.com

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United States Department of the Interior



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

In Reply Refer To:

May 16, 2017

Consultation Code: 04ER1000-2017-SLI-0777

Event Code: 04ER1000-2017-E-01049

Project Name: AHTD Job 110621 Hog Tusk Creek Str. & Apprs. (S)

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

To Whom It May Concern:

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

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

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

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

specific guidance at <http://www.fws.gov/arkansas-es/IPaC/ProjSpec.html>.

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

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

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

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

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days.** This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and

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

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

Attachment(s):

- Official Species List

Official Species List

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

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2017-SLI-0777

Event Code: 04ER1000-2017-E-01049

Project Name: AHTD Job 110621 Hog Tusk Creek Str. & Apprs. (S)

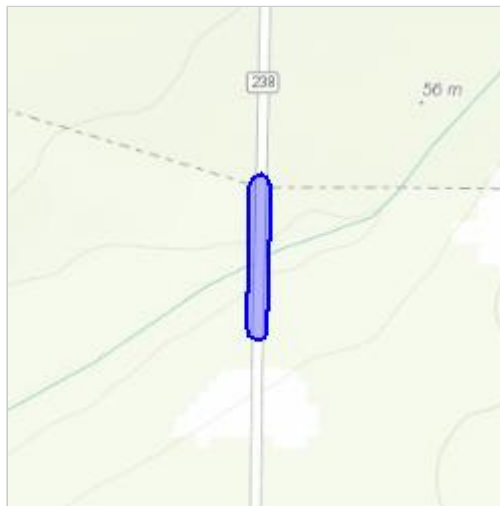
Project Type: TRANSPORTATION

Project Description: Replacement of Bridge on Hwy 238 over Hog Tusk Creek with quadruple reinforced concrete box culverts.

Project Location:

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

<https://www.google.com/maps/place/34.783048204875726N90.98832294344905W>



Counties: Lee, AR

Endangered Species Act Species

There is a total of 2 threatened, endangered, or candidate species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area. Please contact the designated FWS office if you have questions.

Birds

NAME	STATUS
Piping Plover (<i>Charadrius melodus</i>) Population: except Great Lakes watershed There is a final critical habitat designated for this species. Your location is outside the designated critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened

Fishes

NAME	STATUS
Pallid Sturgeon (<i>Scaphirhynchus albus</i>) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7162	Endangered

Critical habitats

There are no critical habitats within your project area.

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

PART I (To be completed by Federal Agency) Job 110621		3. Date of Land Evaluation Request 5/24/17	4. Sheet 1 of _____
1. Name of Project Hog Tusk Creek – Str..& Apprs.		5. Federal Agency Involved FHWA	
2. Type of Project Bridge Replacement		6. County and State Lee AR.	
PART II (To be completed by NRCS)		1. Date Request Received by NRCS	2. Person Completing Form
3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form).		YES NO	4. Acres Irrigated Average Farm Size
5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: %	7. Amount of Farmland As Defined in FPPA Acres: %	
8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS	

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

PART IV (To be completed by NRCS) Land Evaluation Information				
A. Total Acres Prime And Unique Farmland				
B. Total Acres Statewide And Local Important Farmland	0.42			
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				

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

PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))	Maximum Points				
1. Area in Nonurban Use	15	15			
2. Perimeter in Nonurban Use	10	10			
3. Percent Of Corridor Being Farmed	20	20			
4. Protection Provided By State And Local Government	20	0			
5. Size of Present Farm Unit Compared To Average	10	0			
6. Creation Of Nonfarmable Farmland	25	0			
7. Availability Of Farm Support Services	5	5			
8. On-Farm Investments	20	0			
9. Effects Of Conversion On Farm Support Services	25	0			
10. Compatibility With Existing Agricultural Use	10	0			
TOTAL CORRIDOR ASSESSMENT POINTS	160	50			

PART VII (To be completed by Federal Agency)				
Relative Value Of Farmland (From Part V)	100	100		
Total Corridor Assessment (From Part VI above or a local site assessment)	160	50		
TOTAL POINTS (Total of above 2 lines)	260	150		

1. Corridor Selected: New	2. Total Acres of Farmlands to be Converted by Project: 1 0.42 acres Statewide Importance	3. Date Of Selection:	4. Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input type="checkbox"/>
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5. Reason For Selection:

Signature of Person Completing this Part: *Don Dur* DATE 5-29-17

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

AHTD ENVIRONMENTAL IMPACTS ASSESSMENT FORM


AHTD Job Number 110621 FAP Number NHPP-0039(22)

Job Title Hog Tusk Creek Str. & Apprs. (S)

Environmental Impacts	None	Minor	Significant	Comments
Air Quality	X			
Construction Impacts		X		Temporary
Cultural Resources	X			
Economic	X			
Endangered Species	X			
Energy Resources	X			
Environmental Justice/Title VI	X			
Fish and Wildlife	X			
Floodplains	X			
Forest Service Property	X			
Hazardous Materials/Landfills	X			
Land Use Impacts	X			
Migratory Birds		X		Bird SP
Navigation/Coast Guard	X			
Noise Levels	X			
Prime Farmland		X		0.42 acre Farmland of Statewide Importance.
Protected Waters	X			
Public Recreation Lands	X			
Public Water Supply/WHPA	X			
Relocatees	X			
Section 4(f)/6(f)	X			
Social	X			
Underground Storage Tanks	X			
Visual Impacts	X			
Stream Impacts		X		NWP 14 Section 404 Permit
Water Quality		X		Temporary during construction
Wetlands		X		Less than 0.1 acres
Wildlife Refuges	X			

Section 401 Water Quality Certification Required? No
 Short-term Activity Authorization Required? Yes
 Section 404 Permit Required? Yes Type NWP14

Remarks: No Mitigation will be required for the 404 permit

Signature of Evaluator  Date 5-30-17

ROADWAY DESIGN REQUESTJob Number 110621 FAP No. _____ County LeeJob Name Hog Tusk Creek Strs. & Apprs. (S)Design Engineer Primary Environmental Staff _____Brief Project Description Replace Bridge with R.C. Box Culvert

A. Existing Conditions:

Roadway Width: 20' Shoulder Type/Width: N/ANumber of Lanes and Width: 2-10' Existing Right-of-Way: 80'Sidewalks? N/A Location: _____ Width: _____Bike Lanes? N/A Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 22' Shoulder Type/Width: 2-2'Number of Lanes and Width: 2-11' Proposed Right-of-Way: 200'Sidewalks? N/A Location: _____ Width: _____Bike Lanes? N/A Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2018 ADT: 385 2038 ADT: 400 % Trucks: 15Design Speed: 55 m.p.h.E. Approximate total length of project: 0.15 mile(s)F. Justification for proposed improvements: Bridge replacement

G. Total Relocates: _____ Residences: _____ Businesses: _____

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

Agency/Official	Person Contacted	Date



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

September 6, 2017

Mr. John Fleming
AHTD
P.O. Box 2261
Little Rock, Arkansas 72203-2261

RECEIVED
AHTD
SEP 11 2017
ENVIRONMENTAL
DIVISION

Dear Mr. Fleming

This is in response to your request to replace the existing bridge over Hog Tusk Creek on Highway 238 with a quadruple (10' x 9' x 64') concrete box culvert in Lee County, Arkansas, as shown on the attached map.

Based on a review of recent maps, aerial photography, and the information submitted by you, the proposed work meets the criteria of Nationwide Permit (NWP) No. 14 (Linear Transportation Projects), pursuant to the Federal Register, Volume 82, Number 4, dated January 6, 2017.

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

No impacts to federally listed threatened or endangered species are expected to occur. The attached general and state conditions must be met. Note specifically General Conditions 9, 12, 18 and 20 concerning management of water flows, soil erosion and sediment control, endangered species and historic properties. If all conditions cannot be met an individual permit may be required.

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

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

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

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

If you have questions, please contact Emily McCann at (901) 544-0731 and refer to File No. MVM-2017-256.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger S. Allan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Roger S. Allan
Supervisor
Regulatory Branch

Enclosures

Certificate of Completion

Permit Name: MVM-2017-256

Name of Permittee: Arkansas State Highway and Transportation Department

Date of Issuance: September 6, 2017

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

**Regulatory Branch
Corps of Engineers Memphis District
167 N Main Street Room B202
Memphis, TN 38103-1894**

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

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

Signature of Permittee

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.) (Authorities: Sections 10 and 404)

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

Note 2: Some discharges 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).



**US Army Corps
of Engineers®**

Memphis District

Nationwide Permit Conditions

The following General Conditions must be followed in order for any authorization by NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the US Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US.
- (c) The permittee understands and agrees that, if future operations by the US 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 US. No claim shall be made against the US 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.
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 US 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 and storm water management activities, 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 US during periods of low-flow or no-flow.
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. No 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. 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, US Forest Service, US Fish and Wildlife Service).
 17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
 18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
 - (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.
 - (c) Non-federal permittees must submit a pre-construction notification (PCN) to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project 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 PCN must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. 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 PCN. 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 project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until 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 Corps.
 - (d) As a result of formal or informal consultation with the USFWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a 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 USFWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the US to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS at <http://www.fws.gov> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the USFWS's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the USFWS to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect 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. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, 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 and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and 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 or that consultation under Section 106 of the NHPA is complete.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work 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 (16 U.S.C. 470h-2(k)) 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 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 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 US 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, and 38, notification is required in accordance with general condition 31, 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 adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the US 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 adverse effects to the aquatic environment are 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 effects of the proposed activity are minimal, and provides a project-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 minimal adverse effects on the aquatic environment. 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 minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

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 USEPA 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 US 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 US 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 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 work 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(f)(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 work and mitigation.

(3) 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) – (14) must be approved by the district engineer before the permittee begins work in waters of the US, 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)).

(4) 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.

(5) 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.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) 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 project resulting in the loss of greater than 1/2-acre of waters of the US, 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. 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 establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory 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.

(h) Where certain functions and services of waters of the US are permanently adversely affected, such as the conversion of 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 effects of the project to the 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

31. Pre-Construction Notification (PCN). (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a 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. 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 in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may 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 project;
- (3) A description of the project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the US expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project 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);
- (4) The PCN must include a delineation of wetlands, other special aquatic sites, and 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 waters of the US. The 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
- (5) 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 effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of PCN Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require PCN notification and result in the loss of greater than 1/2-acre of waters of the US, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require PCN notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require PCN notification, 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 (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMF-S). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse 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 PCN 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 to the aquatic environment of the proposed activity are 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 PCN 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.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMF-S 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.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of PCN notifications to expedite agency coordination.

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.

F. Definitions

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

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

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

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

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s).

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

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

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

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

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

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

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

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of

the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

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

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

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

DEPARTMENT OF THE ARMY
Little Rock District
Corps of Engineers
Post Office Box 867
Little Rock, Arkansas 72203-0867

FINAL
NATIONWIDE PERMIT REGIONAL CONDITIONS
IN ARKANSAS

Regional Condition No. 1. For Nationwide Permits (NWP) 7 and 12, intake structures shall be constructed with screening to prevent the entry of fish.

Regional Condition No. 2. For NWPs 4, 5, 12, 13, 14, 15, 18, 19, 20, 23, 25, 29, 30, 35, 36, 39, 40, 42, 43, 51, 52, and 53 in the following listed waters, the prospective permittee shall provide written notification to the appropriate District. Notification will be to the District Engineer according to *General Condition No. 32 (Federal Register, Vol. 82, No. 4, FR 1860-2008)*.

- **Fens** - A peat-accumulating wetland that receives some drainage from surrounding mineral soil and usually supports marshlike vegetation.
- **Bogs** - A peat-accumulating wetland that has no major inflows or outflows and supports acidophilic mosses, particularly sphagnum.
- **Groundwater seeps** - Wetlands at the base of steep slopes where the groundwater surface intersects with the land surface.
- **Dune depressional wetlands** - Wetlands in shallow depressions that have no major outflows but receive runoff from the surrounding land, located between sandy ridges in northeast Arkansas and southeast Missouri. These wetlands often support pondberry (*Lindera melissifolia*), a federally-listed endangered plant.
- **Cache River and adjacent wetlands** - From the mouth upstream to AR Highway 18 near Grubbs.

Regional Condition No. 3. NWP No. 44 cannot be used to authorize mining activities within areas of government-managed navigation systems on rivers designated as navigable under the Rivers and Harbors Act of 1899 (33 U.S. Code 403).

Regional Condition No. 4. For NWPs 4, 5, 12, 13, 14, 15, 18, 19, 20, 23, 25, 27, 29, 30, 35, 36, 39, 40, 41, 42, 43, 44, 51, 52, and 53 in the waters listed below, the prospective permittee shall provide written notification to the appropriate District. Notification will be to the District Engineer according to *General Condition No. 32 (Federal Register, Vol. 82, No. 4, FR 1860-2008)*. This notification shall be used to review the project to ensure that the proposed project will have "no effect" on federally listed threatened or endangered (T&E) species and to determine if the project would have a minimal impact on the aquatic environment. The application will be coordinated with

the U.S. Fish and Wildlife Service and other agencies as determined appropriate by the Corps of Engineers. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed (refer to NWP General Condition No. 18). The list of waters may be revised periodically in the case of future updates to the status of T&E species.

In addition to the waterbodies listed below, the following federal concern species are known to occur in various wetland areas, or cave streams:

Ashley, Clay, Jackson, Lawrence, Woodruff, and Craighead Counties; Species: *Lindera melissifolia*, Pondberry - LE

Benton County; Species: *Amblyopsis rosae*, Ozark Cavefish - LE

Benton and Stone Counties; Species: *Cambarus aculabrum*, Cave Crayfish - LE

Alum Fork Saline River - Saline County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Antoine River - Clark and Pike Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Archey Creek - Pope and Van Buren Counties – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

Arkansas River - Arkansas, Conway, Crawford, Desha, Faulkner, Franklin, Jefferson, Johnson, Lincoln, Logan, Perry, Pope, Pulaski, Sebastian, and Yell Counties – Species: *Scaphirhynchus albus*, pallid sturgeon - LE, *Sternula antillarum athalassos*, Interior Least Tern - LE

Beech Creek - Cleburne and Stone Counties – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

Big Brushy Creek - Montgomery County – Species: *Ptilimnium nodosum*, harperella - LE

Big Creek - Cleburne, Independence, and White Counties – Species: *Lampsilis streckeri*, Speckled Pocketbook - LE

Black River - Clay, Lawrence, and Randolph Counties – Species: *Epioblasma triquetra*, Snuffbox - LE, *Lampsilis abrupta*, Pink Mucket - LE, *Leptodea leptodon*, Scaleshell - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Brush Creek - Perry and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Buffalo Creek - Polk County – Species: *Percina pantherina*, leopard darter - LT

Buffalo River - Baxter, Marion, Newton, and Searcy Counties – Species: *Epioblasma triquetra*, Snuffbox - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Caddo River Above DeGray Lake - Clark, Montgomery, and Pike Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Caddo River Below DeGray Lake - Clark County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Clear Fork - Scott County – Species: *Ptilimnium nodosum*, harperella - LE

Cossatot River Above Gillham Lake - Howard and Polk Counties – Species: *Percina pantherina*, leopard darter - LT

Cossatot River Below Gillham Lake - Howard and Sevier Counties – Species: *Leptodea leptodon*, Scaleshell – LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT, *Quadrula fragosa*, Winged Mapleleaf - LE

Current River - Clay and Randolph Counties – Species: *Lampsilis abrupta*, Pink Mucket - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Devils Fork Little Red River - Cleburne County – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

Dry Fork Fourche LaFave River - Perry and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Eleven Point River - Randolph County – Species: *Cryptobranchus alleganiensis bishopi*, Ozark Hellbender - LE, *Lampsilis abrupta*, Pink Mucket - LE

Fiddlers Creek - Montgomery and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Fourche LaFave River - Perry, Scott, and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Frog Bayou - Crawford County – Species: *Leptodea leptodon*, Scaleshell - LE

Illinois River - Benton, Washington Counties – Species: *Lampsilis rafinesqueana*, Neosho Mucket - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Irons Fork - Polk County – Species: *Ptilimnium nodosum*, harperella - LE

Irons Fork Ouachita River - Garland, Montgomery, and Yell Counties – Species: *Ptilimnium nodosum*, harperella - LE

Kings River - Carroll and Madison Counties – Species: *Epioblasma triquetra*, Snuffbox - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

L' Anguille River - Lee and St. Francis Counties: - Species: *Potamilus capax*, Fat Pocketbook - LE

Left Hand Chute Little River - Mississippi and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

Lewis Creek - Polk County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Little Brushy Creek - Montgomery County – Species: *Ptilimnium nodosum*, harperella - LE

Little Missouri River below Lake Greeson - Clark, Hempstead, Nevada, Ouachita, and Pike Counties – Species: *Lampsilis abrupta*, Pink Mucket - LE *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT *Quadrula fragosa*, Winged Mapleleaf - LE

Little River Above Millwood Lake - Little River and Sevier Counties – Species: *Arcidens wheeleri*, Ouachita Rock Pocketbook – LE *Lampsilis abrupta*, Pink Mucket - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Little River Below Millwood Lake - Hempstead and Little River Counties – Species: *Arcidens wheeleri*, Ouachita Rock Pocketbook - LE

Middle Fork Little Red River - Cleburne, Searcy, Stone, and Van Buren Counties – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook, LE *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Middle Fork Saline River - Garland, Perry, and Saline Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Mississippi River - Chicot, Crittenden, Desha, Lee, Mississippi, and Phillips Counties – Species: *Potamilus capax*, Fat Pocketbook - LE, *Scaphirhynchus albus*, pallid sturgeon - LE, *Sternula antillarum athalassos*, Interior Least Tern - LE

Mountain Fork River - Polk County – Species: *Percina pantherina*, leopard darter - LT

Muddy Creek - Montgomery County – Species: *Ptilimnium nodosum*, harperella - LE

Muddy Fork Illinois River - Washington County – Species: *Lampsilis rafinesqueana*, Neosho Mucket - LE

Myatt Creek - Fulton County – Species: *Leptodea leptodon*, Scaleshell - LE

North Fork Creek - Garland County – Species: *Ptilimnium nodosum*, harperella - LE

North Fork Ouachita River - Montgomery County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

North Fork Saline River - Perry and Saline Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

Ouachita River, Lower - Bradley, Calhoun, Clark, Dallas, Hot Spring, Ouachita, and Union Counties – Species: *Arcidens wheeleri*, Ouachita Rock Pocketbook - LE, *Cumberlandia monodonta*, Spectaclecase - LE, *Lampsilis abrupta*, Pink Mucket - LE, *Lampsilis powellii*, Arkansas Fatmucket - LT, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT, *Quadrula fragosa*, Winged Mapleleaf - LE

Ouachita River, Upper - Montgomery and Polk Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Rainy Creek - Montgomery County – Species: *Ptilimnium nodosum*, harperella - LE

Red River - Hempstead, Lafayette, Little River and Miller Counties – Species: *Sternula antillarum athalassos*, Interior Least Tern - LE

Right Hand Chute Little River & Ditches - Craighead, Mississippi, and Poinsett Counties – Species: *Leptodea leptodon*, Scaleshell - LE, *Potamilus capax*, Fat Pocketbook - LE

Robinson Creek - Polk and Sevier Counties – Species: *Percina pantherina*, leopard darter - LT

Rolling Fork Below DeQueen Reservoir - Sevier County – Species: *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Saline River - Ashley, Bradley, Cleveland, Dallas, Drew, Grant and Saline Counties – Species: *Lampsilis abrupta*, Pink Mucket - LE, *Lampsilis powellii*, Arkansas Fatmucket - LT, *Leptodea leptodon*, Scaleshell - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT, *Quadrula fragosa*, Winged Mapleleaf - LE

Saline River Below Dierks Reservoir - Howard and Sevier Counties – Species: *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

South Fork Little Red River - Van Buren County – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

South Fork Ouachita River - Montgomery County – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

South Fork Saline River - Garland and Saline Counties – Species: *Lampsilis powellii*, Arkansas Fatmucket - LT

South Fork Spring River - Fulton and Sharp Counties – Species: *Epioblasma florentina curtisii*, Curtis Pearlymussel - LE, *Leptodea leptodon*, Scaleshell – LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

South Fourche LaFave River - Perry and Yell Counties – Species: *Leptodea leptodon*, Scaleshell - LE, *Ptilimnium nodosum*, harperella - LE

Spring River - Fulton, Lawrence, Randolph, and Sharp Counties – Species: *Cryptobranchus alleganiensis bishopi*, Ozark Hellbender - LE, *Epioblasma florentina curtisii*, Curtis Pearlymussel - LE, *Epioblasma triquetra*, Snuffbox - LE, *Lampsilis abrupta*, Pink Mucket - LE, *Leptodea leptodon*, Scaleshell - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

St. Francis River - Clay, Craighead, Crittenden, Cross, Greene, Lee, Phillips, Poinsett, and St. Francis Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Clark Corner Cutoff - St. Francis County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Cross County Ditch - Cross County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 10 - Craighead and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 123 - Poinsett County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 60 - Craighead and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 61 - Poinsett County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Ditch No 9 - Poinsett County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Iron Mines Creek - Poinsett County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Little Bay Ditch - Craighead and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Little Slough Ditch - Craighead County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, St. Francis Bay - Cross County – Species: *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, St. Francis Floodway - Lee and St. Francis Counties – Species: *Leptodea leptodon*, Scaleshell - LE, *Potamilus capax*, Fat Pocketbook - LE

St. Francis River, Straight Slough - Cross and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

Strawberry River - Fulton, Independence, Izard, Lawrence, and Sharp Counties – Species: *Epioblasma triquetra*, Snuffbox – LE, *Leptodea leptodon*, Scaleshell - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Turkey Creek - Stone County – Species: *Etheostoma moorei*, yellowcheek darter - LE, *Lampsilis streckeri*, Speckled Pocketbook - LE

Tyronza River - Crittenden, Cross, Mississippi, and Poinsett Counties – Species: *Potamilus capax*, Fat Pocketbook - LE

War Eagle Creek - Benton, Madison and Washington Counties – Species: *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

White River - Arkansas, Baxter, Desha, Independence, IZard, Jackson, Marion, Monroe, Phillips, Prairie, Stone, White, and Woodruff Counties – Species: *Cryptobranchus alleganiensis bishopi*, Ozark Hellbender - LE, *Epioblasma triquetra*, Snuffbox - LE, *Lampsilis abrupta*, Pink Mucket - LE, *Leptodea leptodon*, Scaleshell - LE, *Potamilus capax*, Fat Pocketbook - LE, *Quadrula cylindrica cylindrica*, Rabbitsfoot - LT

Legend:

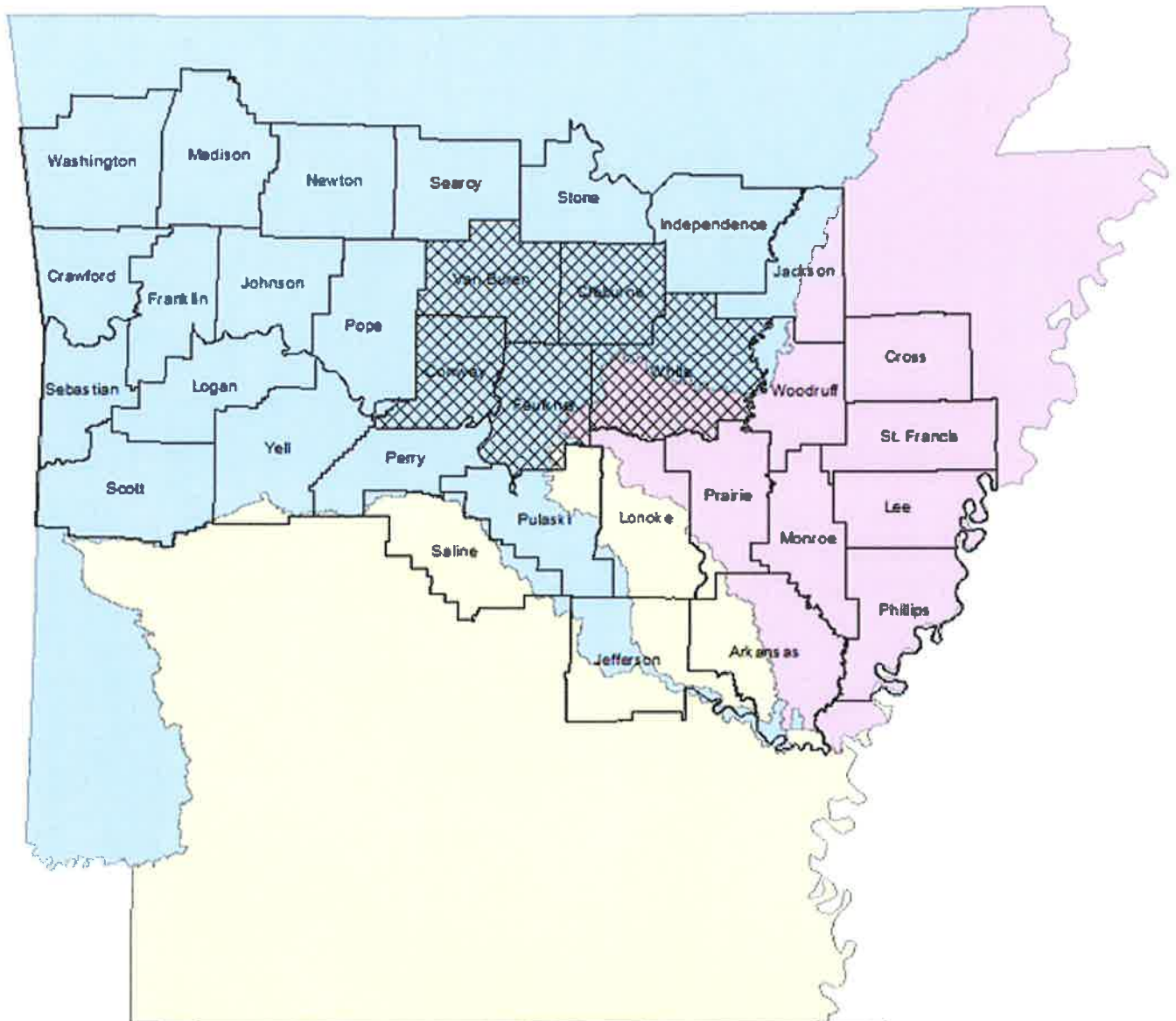
LE - Listed Endangered; the U.S. Fish and Wildlife Service has listed these species as endangered under the Endangered Species Act.

LT - Listed Threatened; the U.S. Fish and Wildlife Service has listed these species as threatened under the Endangered Species Act.

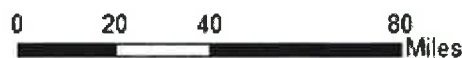
Regional Condition No. 5. For NWP 6, 12, 14, and 18 in waters of the United States located in the following Fayetteville Shale Play region counties: Cleburne, Van Buren, Conway, Faulkner, and White (See Enclosed Map), the prospective permittee shall provide written pre-construction notification (PCN) to the appropriate district. PCN will be to the District Engineer according to *General Condition No. 32 (Federal Register, Vol. 82, No. 4, FR 1860-2008)*. This PCN shall be used to review the project to determine if it will result in more than minimal effects to the watersheds within the listed counties of the Fayetteville Shale Play region. This condition does not lessen the restrictions provided by any General Conditions of the NWPs.



Fayetteville Shale Natural Gas Play Regional Condition No. 5



Regional Condition No. 5 Counties		Arkansas Regulatory Boundaries	
	Fayetteville Shale Play Counties		Little Rock District
	Cleburne		Memphis District
	Conway		Vicksburg District
	Faulkner		
	Van Buren		
	White		



**US Army Corps
of Engineers**
Little Rock District