# ARKANSAS STATE HIGHWAY
# AND
# TRANSPORTATION DEPARTMENT

Scott E. Bennett
Director
Telephone (501) 569-2000
Voice/TTY 711

P.O. Box 2261
Little Rock, Arkansas 72203-2261
Telefax (501) 569-2400
www.arkansashighways.com

June 21, 2017

Mr. Angel Correa
Division Administrator
Federal Highway Administration
700 West Capitol, Room 3130
Little Rock, Arkansas 72201-3298

Re: Job Number 090402
FAP Number STPR-0004(50)
Bridge Number 04196
Little Osage Creek Str. & Apprs. (S)
Benton County
Tier 3 Categorical Exclusion

Dear Mr. Correa:

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

The purpose of this project is to replace the bridge over Little Osage Creek on Highway 264 in Benton County. Total length of the project is 0.56 mile. A project location map is enclosed.

The existing roadway consists of two 12-foot wide paved travel lanes with no shoulders. Existing right of way width averages 60 feet. The existing bridge (#04196) is a 259' x 28' structure with eight 19-foot precast concrete slab spans and two 50-foot simple

composite I-beam spans supported by concrete piers and abutments on spread footings. This bridge is structurally deficient and has a sufficiency rating of 6.0.

Proposed improvements include two 12-foot wide paved travel lanes with 8-foot wide shoulders. The proposed right of way width will vary from 110 to 200 feet. The new bridge will be a 301' x 43' concrete structure with continuous W-beam units. The new bridge will be built 50-feet upstream of the existing bridge and will require a work road 35-feet upstream from the proposed bridge site. Approximately 6.6 acres of additional right of way will be required for this project.

Design data for this project is as follows:

| Design Year | Average Daily Traffic | Percent Trucks | Design Speed |
|---|---|---|---|
| 2015 | 5,300 | 7 | 60 mph |
| 2035 | 7,000 | 7 | 60 mph |

There are no relocations or environmental justice issues associated with this project. No impacts to cultural resources are anticipated; concurrence from the State Historic Preservation Officer is enclosed. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits. Approximately 3.5 acres of prime farmland will be converted to highway right of way, Form NRCS-CPA-106 is enclosed.

Benton County participates in the National Flood Insurance Program. All of the floodplain encroachments within this bridge construction project will be designed to comply with the county's local flood damage prevention ordinance. The project lies within Zone A, Special Flood Hazard Area (Panel 245 of 560) Benton County, Arkansas (see enclosed map). The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a significant floodplain encroachment or a significant risk to property or life.

Noise predictions have been made for this project utilizing the Federal Highway Administration's TNM (Traffic Noise Model) 2.5 procedures. These predictions indicate that there will be no unacceptable increase in noise levels extending beyond the project right of way limits and that no noise sensitive receptors are affected. In compliance with federal guidelines, local authorities will not require notification. The Noise Analysis is enclosed.

Stream impacts include the replacement of the bridge over Little Osage Creek, the relocation of a 1,200-foot segment of an unnamed intermittent tributary on the northwestern approach, and relocation of a 575-foot segment of an unnamed intermittent tributary on the southeast approach. Stream segments will be relocated to a new roadside ditch to allow for roadway realignment, wider shoulders, and flatter safety slopes. No wetlands will be impacted. Construction of the proposed project should be allowed under the terms of a Standard Individual Section 404 permit with 7,042.5 stream credits required for compensatory mitigation. Mitigation will occur through the acquisition and restoration of an adjacent parcel of land or through purchase from an established mitigation bank in the service area.

On September 24, 2014, AHTD Environmental Division personnel conducted a field survey of the proposed project area. The purpose of the field survey was to determine the potential for the occurrence of the federally protected gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), a cave crayfish (*Cambarus aculabrum*), and Ozark cavefish (*Amblyopsis rosae*). Ozark cavefish and gray bats have been identified within the Cave Springs Cave located approximately 2.5 miles east of the project area.

On October 26, 2016, AHTD Environmental Division personnel met with natural resource agencies to discuss potential impacts to Species of Greatest Conservation Need like the least darter (*Etheostoma microperca*) and Arkansas darter (*Etheostoma cragini*). These species are known to inhabitant Little Osage Creek and the Healing Spring Run Branch located approximately 80 feet from the exiting bridge. Special provisions will be included to avoid construction activities at and around the Healing Spring Run Branch and the Little Osage Creek confluence to minimize any impacts to these species.

Although no indicators of karst features (i.e. sinkholes and/or cave openings) were encountered during site visits, bats are likely to utilize Little Osage Creek as a primary foraging corridor. Erosion control and BMP's will be used to reduce the likelihood that sediments or hazardous chemicals will enter Little Osage Creek minimizing potential impacts to foraging bats during construction. Special Provisions will be included in the contract that outlines procedures for any caves or karst features encountered during construction and to limit the clearing of any trees from March 15 to November 14 during the active seasons of bat species. No prohibited take will occur for northern long-eared bats following the guidance of the Programmatic Biological Opinion and Final 4(d) Rule . The Department requested US Fish and Wildlife Service (USFWS) concurrence in our determination that the proposed project is not likely to adversely affect any federally protected species. On June 1, 2015, the USFWS issued their concurrence. USFWS correspondence is enclosed.

If you have any questions, please contact the Environmental Division at 569-2281.

APPROVED
Environmental Specialist
Federal Highway Administration
Date: 6-22-2017

Sincerely,

John Fleming

John Fleming
Division Head
Environmental Division

Enclosures

JF:TT:fc

c: Program Management
Right of Way
Roadway Design
Bridge Division
District 9
Master File


N

0 500 1,000

Feet

AHTD Environmental GIS - Dudley
May 22, 2017

Job 090402
Little Osage Creek Str. & Apprs.
(Hwy. 264)
Benton County

Project Location

# ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

98298
FHWA

Scott E. Bennett, P.E.
Director
Telephone (501) 569-2000
Voice/TTY 711

P.O. Box 2261
Little Rock, Arkansas 72203-2261
Telefax (501) 569-2400
www.arkansashighways.com

May 12, 2017

RECEIVED
AHTD
MAY 16 2017
ENVIRONMENTAL DIVISION

AHPP
MAY 12 2017

Ms. Stacy Hurst
Arkansas Historic Preservation Program
1100 North Street
Little Rock, AR 72201

RE: AHTD Job No. 090402
Little Osage Creek Str. & Apprs. (S)
Benton County

Dear Ms. Hurst:

Enclosed for your review is a Project Identification Form regarding the above referenced project. Please provide your effect finding as soon as possible. If you have any questions, contact Richard Jenkins of my staff at 569-2357.

Sincerely,

John Fleming

John Fleming
Division Head
Environmental Division

Enclosure
PIF

JF:DW:RJ:ym

Date: MAY 12 2017
No known historic properties will be affected by this undertaking. This effect determination could change should new information come to light.

Russell
Arkansas State Historic Preservation Office

MAY 12 2017

U.S. DEPARTMENT OF AGRICULTURE
Natural Resources Conservation Service

NRCS-CPA-106
(Rev. 1-91)

# FARMLAND CONVERSION IMPACT RATING FOR CORRIDOR TYPE PROJECTS

| PART I (To be completed by Federal Agency) Job 090402 | 3. Date of Land Evaluation Request 6/7/17 | 4. Sheet 1 of 1 |
|---|---|---|
| 1. Name of Project Little Osage Creek Str. & Apprs.(S). | 5. Federal Agency Involved FHWA | |
| 2. Type of Project Bridge Replacement | 6. County and State Benton, 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 | | 3.5 | | | |
| B. Total Acres To Be Converted Indirectly, Or To Receive Services | | | | | |
| C. Total Acres In Corridor | | 10.9 | | | |
| **PART IV (To be completed by NRCS) Land Evaluation Information** | | | | | |
| A. Total Acres Prime And Unique Farmland | | 3.5 | | | |
| B. Total Acres Statewide And Local Important Farmland | | | | | |
| 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** | 5 | | | |
| 4. Protection Provided By State And Local Government | **20** | 0 | | | |
| 5. Size of Present Farm Unit Compared To Average | **10** | 3 | | | |
| 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** | 38 | | | |
| **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** | 38 | | | |
| **TOTAL POINTS** (Total of above 2 lines) | **260** | 138 | | | |

| 1. Corridor Selected: | 2. Total Acres of Farmlands to be Converted by Project: | 3. Date Of Selection: | 4. Was A Local Site Assessment Used? |
|---|---|---|---|
| Location adjacent to existing | 3.5 acres of Prime Farmland | June 7, 2017 | YES ☐ NO ☐ |

5. Reason For Selection:

Best location for bridge replacement

Signature of Person Completing this Part: John Baber

DATE: June 7, 2017

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

# AHTD JOB NUMBER 090402

# NOISE ANALYSIS

## *Fundamentals of Sound and Noise*

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

Sound levels fluctuate with time depending on the sources of the sound audible at a specific location. In addition, the degree of annoyance associated with certain sounds varies by time of day, depending on other ambient sounds affecting the listener and the activities of the listener. The time-varying fluctuations in sound levels at a fixed location can be quite complex, so they are typically reported using statistical or mathematical descriptors that are a function of sound intensity and time. A commonly used descriptor of the equivalent sound level is Leq, which represents the equivalent of a steady, unvarying level over a defined period of time containing the same level of sound energy as the time varying noise environment. Leq(h) is a sound level averaged over one hour. For highway projects, the Leq(h) is commonly used to describe traffic-generated sound levels at locations of outdoor human use and activity (such as residences).

## *Noise Impact Criteria*

Traffic noise impacts take place when the predicted traffic noise levels approach or exceed the noise abatement standard, or when the predicted traffic noise levels exceed the existing noise level by ten dB(A) (decibels on the A-scale). The noise abatement standard of 67 dB(A) is used for sensitive noise receptors such as residences, schools, churches, and parks. The term "approach" is considered to be one dB(A) less than the noise abatement standard.

The number of noise receptors was estimated for this project utilizing the Federal Highway Administration's Traffic Noise Model 2.5, existing and proposed roadway information, existing traffic information, and projected traffic levels for 2035.

## *Traffic noise analyses*

Traffic noise analyses were performed for the project utilizing a roadway cross-section for Highway 264 consisting of two 12-foot paved travel lanes and 8-foot wide paved shoulders.

***Effects of Project***

The traffic noise estimates for the project resulted in a noise abatement distance of 85 feet from the centerline of Highway 264. No sensitive receptors located along the proposed project location are predicted to experience noise impacts resulting from noise levels that approach or exceed 67 dB(A) during the design year.

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

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

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

**From:** Lewis, Lindsey
**To:** Thesing, Benjamin D.
**Subject:** Re: Little Osage Creek Str. & Apprs. (S) job 090402
**Date:** Monday, June 01, 2015 12:26:24 PM

---

Ben,

Based on your description of the project location and the use of cave and clearing SPs, the Service concurs with your determination that, "the proposed project is not likely to adversely affect any endangered species."

Thanks,

Lindsey Lewis
Biologist

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

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

On Mon, Jun 1, 2015 at 11:55 AM, Thesing, Benjamin D. <Benjamin.Thesing@ahtd.ar.gov> wrote:

> Lindsey,
>
> There are plans to replace the bridge crossing the Little Osage Creek on Highway 264 in Benton County (36.253839°, -94.270734°). Check out the attached documents and let us know if further coordination is needed. The Indiana bat, gray bat, Ozark big-ear bat, northern long-eared bat, Benton cave crayfish, and the Ozark cavefish have been recorded in Benton County. Candidate Arkansas darters have been found in species just upstream from the project area. Site Visit shows no known caves used by any of the listed species are within or adjacent to the proposed project boundaries. Bats potentially utilize Little Osage Creek for foraging. Looks like the bridge will be going directly adjacent to current location on the north side of the road with no trees. It is our opinion that the proposed project is not likely to adversely affect any endangered species. Cave and clearing SPs will be put in place.
>
> -Ben
>
> Ben Thesing
> Environmental Analyst I
> Arkansas State Highway & Transportation Dept.
> PO BOX 2261, Little Rock, AR 72203
> P: 501-569-2594 F: 501-569-2009

# AHTD ENVIRONMENTAL IMPACTS ASSESSMENT FORM

**AHTD Job Number** 090402 **FAP Number** STPR-0004(50)

**Job Title** Little Osage Creek Str. & Apprs. (S)

| Environmental Impacts | None | Minor | Significant | Comments |
|---|---|---|---|---|
| Air Quality | X | | | |
| Construction Impacts | | X | | Temporary |
| Cultural Resources | X | | | SHPO clearance enclosed |
| Economic | X | | | |
| Endangered Species | X | | | USFWS concurrence received 6/1/2016 |
| Energy Resources | X | | | |
| Environmental Justice/Title VI | X | | | |
| Fish and Wildlife | | X | | Temporary during construction |
| Floodplains | | X | | Within FEMA 100 year flood plain |
| 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 | | NRCS-CPA-106 enclosed |
| Protected Waters | | X | | Little Osage is an ESW |
| 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 | | Standard Individual with Mitagation Req |
| Water Quality | | X | | Temporary during construction |
| Wetlands | X | | | |
| Wildlife Refuges | X | | | |

Section 401 Water Quality Certification Required? Yes

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type Standard Individual

Remarks: USFWS concurred that the project will not likely adversely affect listed species.

NLEB 4(d). 7,042.5 stream credits required for compensatory mitigation.

Signature of Evaluator [signature] Date 6/20/17

5/17/2011

Date Sent: 3/23/2017

# ROADWAY DESIGN REQUEST

Job Number 090402 FAP No. _____ County Benton

Job Name Little Osage Creek Str. & Apprs. (S)

Design Engineer Mark Earl Environmental Staff _____

Brief Project Description Bridge replacement

A. Existing Conditions:

Roadway Width: 24' Shoulder Type/Width: 0'

Number of Lanes and Width: 2-12' lanes Existing Right-of-Way: 0' to 60'

Sidewalks? no Location: _____ Width: _____

Bike Lanes? no Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 40' Shoulder Type/Width: 8' paved

Number of Lanes and Width: 2, 12' lanes Proposed Right-of-Way: 110' to 200'

Sidewalks? no Location: _____ Width: _____

Bike Lanes? no Location: _____ Width: _____

C. Construction Information:

If detour: Where: New location Length: _____

D. Design Traffic Data:

2015 ADT: 5300 2035 ADT: 7000 % Trucks: 7

Design Speed: _____ m.p.h.

E. Approximate total length of project: 0.565 mile(s)

F. Justification for proposed improvements: Bridge is posted and Structurally Deficient

G. Total Relocatees: 0 Residences: 0 Businesses: 0

H. Have you coordinated with any outside agencies (e.g., FHWA, City, County, etc.)? no

| Agency/Official | Person Contacted | Date |
|---|---|---|
| | | |
| | | |
| | | |

Date Submitted to Environmental Division: 5/22/17

# BRIDGE INFORMATION - PRELIMINARY-REVISED

Job Number: 090402 FAP Number: NHPP-0004(50) County: Benton
Job Name: Little Osage Creek Str. & Apprs. (S)
Design Engineer: Kyle Yeary Environmental Staff: Ben Thesing/Terry Tucker

**A. Description of Existing Bridge**:

1. Bridge Number: 04196 over Little Osage Creek
2. Location: Rte.: 264 Section: 3 Log Mile: 2.44
3. Length: 259.6 ft Br. Rdwy. Width: 24.0 ft Deck Width (Out-to-Out): 28.0 ft
4. Type Construction: Ten spans, eight 19' precast concrete slab spans and two 50' composite I-beam spans supported by concrete wall bents and abutments on spread footings.
5. Deficiencies: Inadequate load capacity.
6. HBRRP Eligibility: Qualif. Code: SD Sufficiency Rating: 6.0
7. Are any Condition Component Ratings at 3 or less? Yes, superstructure and substructure.

**B. Proposed Improvements:**

1. Length: 301.4 ft Br. Rdwy. Width: 40.0 ft Deck Width (Out-to-Out): 43.2 ft
2. Travel Lanes: Two 12' lanes.
3. Shoulder Width: 8' shoulders on both sides of roadway.
4. Sidewalks? No. Location: N/A Width: N/A ft

**C. Construction Information:**

1. Location in relation to existing bridge: Approximately 50' upstream from existing bridge.
2. Superstructure Type: Continuous composite w-beam unit.
3. Span Lengths: 52'-65'-65'-65'-52'
4. Substructure Type: Multi-column intermediate bents on drilled shafts, abutments on steel h-piles.
5. Ordinary High Water Elev. (OHW): 1091 No. of Bents inside OHW Contours: 2
6. Concrete Volume below OHW: TBD $yd^3$ Vol. Bent Excavation: TBD $yd^3$ Vol. Backfill: TBD $yd^3$
7. Is Channel Excavation below OHW Required? No. Surface Area: N/A $ft^2$ Volume: N/A $yd^3$
8. Is Fill below OHW Req'd.? No. Surface Area: N/A $ft^2$ Volume: N/A $yd^3$
9. Is Riprap below OHW required? No. Volume: N/A $yd^3$

**D. Work Road Information:**

1. Is Work Road(s) required? Yes. Location: Approximately 35' upstream from proposed bridge, will not interfere with area of avoidance.
   Top Width: 20.0 ft
2. Is Fill below OHW required? Yes. Surface Area: TBD $ft^2$ Volume: TBD $yd^3$
3. Are Pipes required to meet Backwater Criteria? Yes. Waterway Opening: As required to maintain low flows.

**E. Detour Information:**

1. Is a detour bridge required? No. Location in relation to Existing Br.: N/A
2. Length: N/A ft Br. Rdwy. Width: N/A ft Deck Elevation: N/A
3. Volume of Fill below OHW: N/A $yd^3$ Surface Area: N/A $ft^2$

**F. Coordination with Outside Agencies** (e.g., FHWA, City, County, C of E, USCG):
Has Bridge Division coordinated with any outside agencies? No.

| Agency | Person Contacted | Date |
|---|---|---|
| | | |
| | | |

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

December 6, 2018

Regulatory Division

NATIONWIDE PERMIT NO. **SWL 2018-00095**

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

Dear Mr. Fleming:

Please refer to your recent request concerning Department of the Army permit requirements pursuant to Section 404 of the Clean Water Act. You requested authorization for the placement of dredged and fill material in waters of the United States associated with replacing the bridge over Little Osage Creek and upgrading the approaches on State Highway 264. The bridge over Little Osage Creek will be constructed approximately 50 feet upstream from the existing bridge and will be 301-feet-long by 43-feet-wide. The upgraded approaches will be two 12-foot-wide lanes with 8-foot-wide shoulders. Little Osage Creek is designated as an Ecologically Sensitive Waterbody by the Arkansas Department of Environmental Quality (ADEQ). Widening the roadway embankment will require the relocation of two unnamed tributaries that are spring influenced and parallel the existing highway. Both streams flow intermittently. The relocated stream segment on the north side of the highway is 1,200 feet in length and the relocated stream segment on the south side of the highway is 575 feet in length. Federally protected species that potentially occur in the area include the Gray Bat *(Myotis grisescens)*, Indiana Bat *(Myotis sodalis)*, Northern Long-eared Bat *(Myotis septentrionalis)*, Ozark Big-eared Bat *(Corynorhinus townsendii ingens)*, Cave Crayfish *(Cambarus aculabrum)* and Ozark Cavefish *(Amblyopsis rosea)*. Special Provisions will be included in the ArDOT construction contract that control water pollution, outline the procedures for avoiding impacts to migratory bird species, limit the clearing of any trees during the active seasons of the bat species, outline the procedures for any caves or karst features encountered during construction and prohibit work within the 50-foot-wide buffer on either side of Little Osage Creek. No prohibited take will occur for the Northern Long-eared Bat following the guidance of the Programmatic Biological Opinion and Final 4(d) Rule. The U.S. Fish and Wildlife Service concurred with ArDOT's determination that the project may affect but is not likely to adversely affect any threatened or endangered species. There are no cultural resources impacts. The project was approved as a Tier 3 Categorical Exclusion by the Federal Highway Administration on June 22, 2017. The project is located approximately two miles west of the City of Cave Springs in section

10, T. 18 N., R. 31 W., Benton County, Arkansas. Project location maps, a temporary work road drawing and the mitigation credits worksheet are enclosed.

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

**Special Conditions:**

**1. ArDOT agrees to mitigate for the adverse impacts to 1,775 linear feet of streams with the permittee-responsible mitigation plan titled, Mitigation Plan, ArDOT Job No. 090402, Little Osage Creek Structure and Approaches (S), Benton County, Arkansas, and dated September 2018.**

**2. The clearing of trees shall be prohibited from March 15 to November 14 to avoid potential impacts to the Federally listed bat species.**

**3. Should any cave openings be exposed during excavation activities authorized by this permit, ArDOT shall stop work immediately and contact the Little Rock District Corps of Engineers Regulatory Division. The Corps of Engineers will initiate the Federal and State coordination necessary to determine if threatened or endangered species are present. ArDOT shall make all practical and reasonable efforts to protect the site from further damage. These efforts should include, but are not limited to, the construction of a ring levee with silt fence and straw bales as soon as possible around the opening to reduce silt-laden runoff from entering the opening.**

Please pay particular attention to General Condition No. 12 which stipulates that appropriate erosion and siltation controls be used during construction and all exposed soil be permanently stabilized. Erosion control measures must be implemented before, during and after construction.

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

Also, in order to fully comply with the conditions of the NWP, you must submit the enclosed compliance certification within 30 days of completion of the project. This is required pursuant to General Condition No. 30 of the permit.

The NWP determination will be valid until March 18, 2022. If NWP **No. 23** is modified, suspended, or revoked during this period, your project may not be authorized unless you have begun or are under contract to begin the project. If work has started or the work is under contract, you would then have twelve (12) months to complete the work.

Your cooperation in the Regulatory Program is appreciated. If you have any additional questions about this permit or any of its provisions, please contact Mr. Johnny McLean at (501) 324-5295 and refer to Permit No. **SWL 2018-00095, Little Osage Creek Structure and Approaches on State Highway 264 near Cave Springs (ArDOT Project No. 090402).**

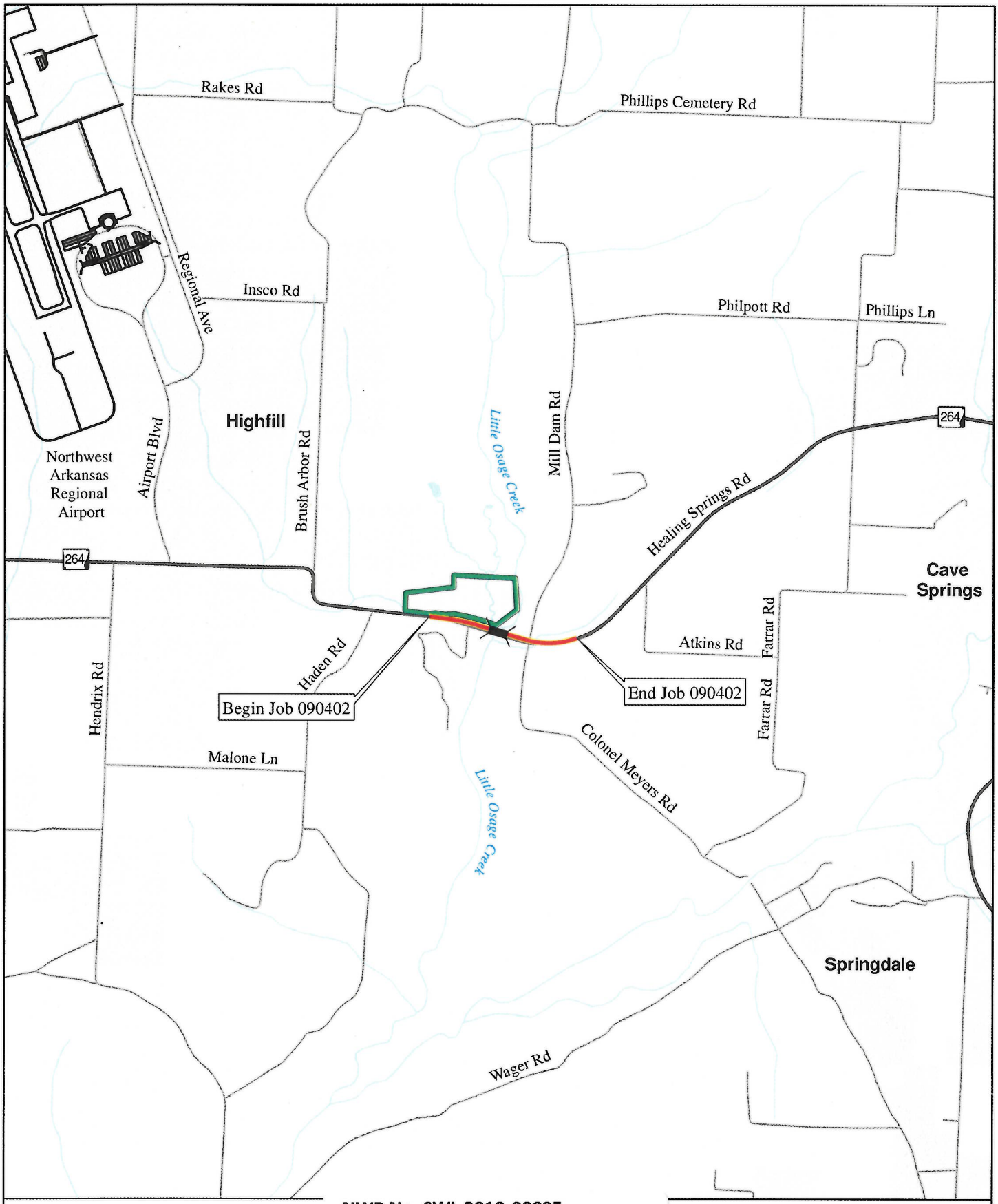
Sincerely,

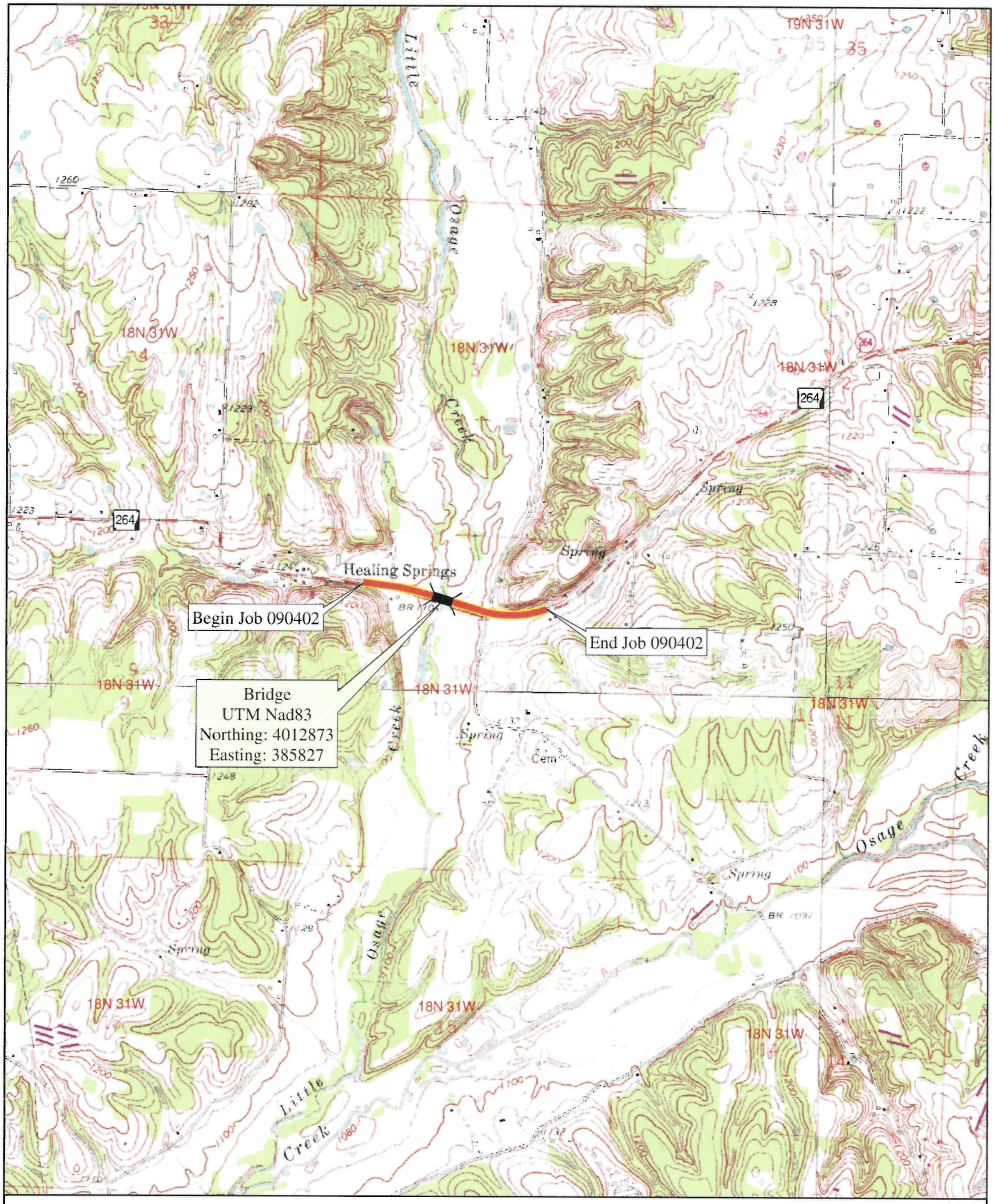
Sarah Chitwood

Sarah Chitwood
Chief, Regulatory Evaluation Branch

Enclosures

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


Rakes Rd
Phillips Cemetery Rd
Regional Ave
Insco Rd
Philpott Rd
Phillips Ln
Highfill
Airport Blvd
Brush Arbor Rd
Little Osage Creek
Mill Dam Rd
264
Northwest Arkansas Regional Airport
Healing Springs Rd
Cave Springs
Haden Rd
Atkins Rd
Farrar Rd
Hendrix Rd
Begin Job 090402
End Job 090402
Malone Ln
Colonel Meyers Rd
Little Osage Creek
Springdale
Wager Rd
N
0 1,000 2,000
Feet
Job 090402
ARDOT - Environmental GIS - Dudley
February 22, 2018
NWP No. SWL 2018-00095
Arkansas Dept. of Transportation
Little Osage Creek Bridge and Apprs.
State Hwy. 264 West of Cave Springs
December 2018 Sheet 1 of 5
Project Location
Mitigation Site




N

0 1,000 2,000

Feet

ARDOT - Environmental GIS - Dudley
October 11, 2017

Job 090402
Little Osage Creek
Str. & Apprs. (Hwy. 264)
Benton County

**Sheet 2 of 5**

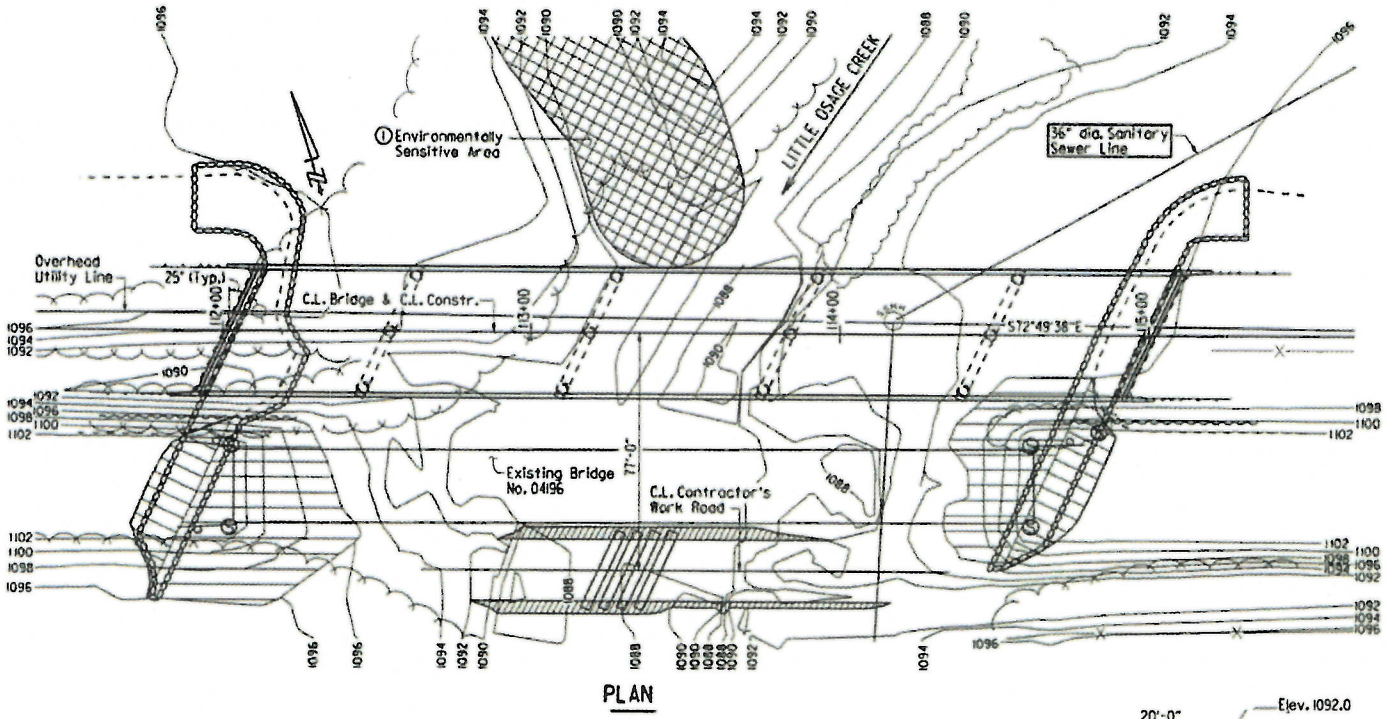
Project Location

USGS Topographic Map:
Centerton 1982


Job 090402
ARDOT - Environmental GIS - Dudley
February 23, 2018

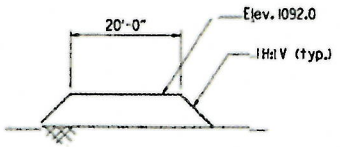
Figure 2

6-26-17
11-16-17 Rev.




PLAN

① This location shown is a highly environmentally sensitive area. No construction activities shall occur within or disturb the location shown. See Roadway Plans and Special Provision Job Number 090402 "Restraining Condition" for additional information.



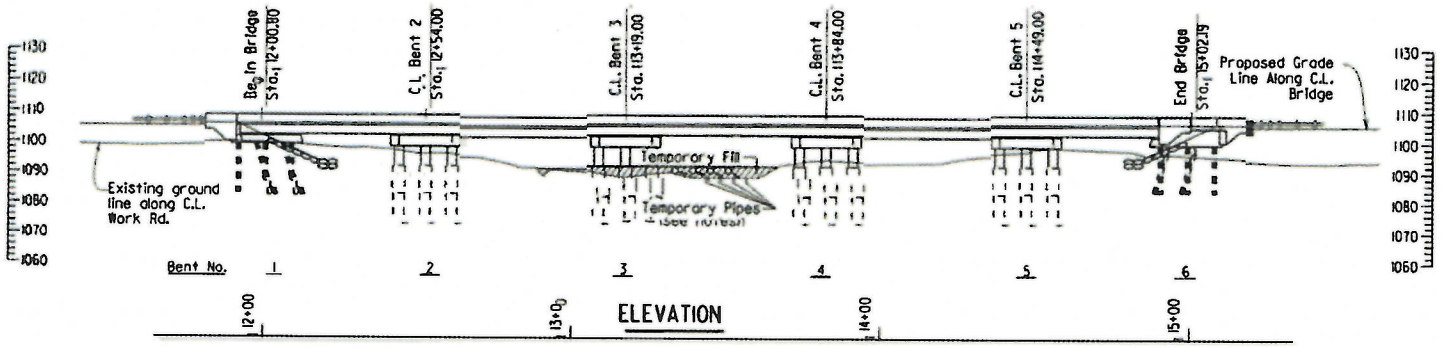

TYPICAL SECTION OF WORK ROAD

NOTES:
The temporary fill to construct the work road(s) shown has been permitted to facilitate construction of the project. The Contractor shall determine and provide temporary culverts of a size and number that will be sufficient to maintain low stream flows and assist passage of aquatic wildlife.

The Contractor may submit an alternative work road plan for approval by the Engineer showing details of and describing the proposed modifications. A primary objective of any proposed modifications should be to minimize the reduction of waterway opening in the floodplain. The top of the alternative work road shall not exceed the elevation shown. A determination will be made by the Engineer within ten (10) business days concerning the necessity or practicability of the request. A modification of the Section 404 Permit and additional review time by the Corp of Engineers may be required if the alternative work road increases the volume of temporary fill that has been permitted for the project. The contract time will not be extended for the time required to consider or approve any alternate work road(s) submittals.

Any additional work or expenses incurred preparing, submitting or completing the alternate work road(s) plan shall be at no additional cost to the Department. See Subsection 110.05(c) in the Standard Specifications for additional information. The Contractor is responsible for maintenance of the work road(s) during the contract period.

| APPROXIMATE QUANTITIES (Below Elevation 1091.0) | |
|---|---|
| Work Road Fill Area | 2,970 sq. ft. |
| Work Road Fill Volume | 325 cu. yds. |




ELEVATION

CONCEPTUAL WORK PLAN
FOR TEMPORARY FILL
BRIDGE OVER LITTLE OSAGE CREEK
JOB NUMBER 090402

## ADVERSE IMPACT
## FACTORS FOR RIVERINE SYSTEMS WORKSHEET

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Stream Type Impacted | Ephemeral 0.1 | | | Intermittent 0.4 | | | Perennial-OHWM width | | | |
| | | | | | | | <15' 0.4 | 15'-30' 0.6 | >30' 0.8 | |
| Priority Area | Tertiary 0.1 | | | Secondary 0.4 | | | Primary 0.8 | | | |
| Existing Condition | Functionally Impaired 0.1 | | | Moderately Functional 0.8 | | | Fully Functional 1.6 | | | |
| Duration | Temporary 0.05 | | | Recurrent 0.1 | | | Permanent 0.3 | | | |
| Activity | Clearing 0.05 | Utility Crossing/Bridge Footing 0.15 | Below Grade Culvert 0.3 | Armor 0.5 | Detention 0.75 | Morpho-logic Change 1.5 | Impound-ment (dam) 2.0 | Pipe >100' 2.2 | Fill 2.5 | |
| Cumulative Linear Impact | <100' 0 | 100'-200' 0.05 | 201-500' 0.1 | 501-1000' 0.2 | >1000 linear feet (LF) 0.1 reach 500 LF of impact (example: scaling factor for 5,280 LF of impacts = 1.1) | | | | | |

| Factor | Dominant Impact Type 1 | Dominant Impact Type 2 | Dominant Impact Type 3 | Dominant Impact Type 4 | Dominant Impact Type 5 |
|---|---|---|---|---|---|
| Stream Type Impacted | Intermittent | Intermittent | blank | blank | blank |
| Priority Area | Secondary | Secondary | blank | blank | blank |
| Existing Condition | Functionally Impa | Functionally Impa | blank | blank | blank |
| Duration | Permanent | Permanent | blank | blank | blank |
| Activity | Fill | Fill | blank | blank | blank |
| Cumulative Linear Impact | blank .4 | blank .4 | blank | blank | blank |
| Sum of Factors | M = 4.1 | 4.1 | 0 | 0 | 0 |
| Linear Feet of Stream Impacted in Reach | LF= 1200 | 575 | | | 0 |
| M X LF | 4,920.00 | 2357.5 | 0 | 0 | 0 |

**Total Mitigation Credits Required = (M X LF) =** 7277.5

# Nationwide Permit No. 23

**Approved Categorical Exclusions**. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:
(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and
(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.
The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.
Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)
Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at: http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

**Nationwide Permit General Conditions**

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

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.
(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.
(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non- Federal applicant of the Corps' determination within 45 days of receipt of a complete pre- construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.
(d) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where

it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
(e) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.
(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

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

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

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

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment,

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

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

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

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

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

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

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

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

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

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

(Transferee)

_____

(Date)

_____

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

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

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

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre- construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:
(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received

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

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

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

(2) Location of the proposed activity;

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

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

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

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

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

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

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

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

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

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

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

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that

they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

**District Engineer's Decision**

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

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

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

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

reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

**Further Information**

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

ADEQ
ARKANSAS
Department of Environmental Quality

July 9, 2018

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

RE: 401 Water Quality Certification – SWL-2018-00095-ARDOT Job No. 090402, HWY. 264 Little Osage Creek Bridge Replacement, Benton County, Arkansas

Dear Colonel Dixon:

The Arkansas Department of Environmental Quality ("ADEQ") has completed its review of the above referenced project for the Arkansas Department of Transportation, P.O. Box, 2261, Little Rock, Arkansas, for the placement of dredged and fill material in waters of the United States associated the replacement of the existing bridge over Little Osage Creek. The bridge will be relocated 50-feet upstream from the existing bridge and will require a road to complete construction. Impacts to Little Osage Creek will only be temporary. Additional erosion and sediment controls will be included in the contract to protect the waterbody. This project is located two miles west of Cave Springs, in Section 10, Township 18 North, Range 31 West (Lat. 36.253825, Lon. -94.27061), in Benton County, Arkansas.

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

Pursuant to §401(a)(1) of the Clean Water Act, the ADEQ hereby **issues** water quality certification for this project: **SWL-2018-00095**, contingent upon the following conditions:

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

minimize adverse effects on water quality and aquatic life.

6. If a construction site will disturb equal to or greater than one (1) acre and less than five (5) acres, the applicant shall comply with the requirements in Reg. 6.203 for Stormwater discharge associated with a small construction site, as defined in APC&EC Regulation No. 6. If the construction site will disturb five (5) acres or more, the applicant shall comply with the terms of the Stormwater Construction General Permit Number ARR150000 prior to the start of construction. BMPs must be implemented regardless of the size. More information can be obtained by contacting the NPDES Stormwater Section of ADEQ at (501) 682-0621.

In issuing this certification, ADEQ does not assume any liability for the following:

A. Damages to the proposed project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes.
B. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity specified in this certification.
C. Design or construction deficiencies associated with this proposed project.

Please contact Ms. Lazendra Hairston, at (501) 682-0946 if you have any questions regarding this certification. **Please reference ADEQ No. 20180083.**

Sincerely,

Caleb J. Osborne
Associate Director, Office of Water Quality

cc: Johnny McLean, USACE, Johnny.L.McLean@usace.army.mil
Wanda Boyd, EPA,
Melvin Tobin, USFWS,
Jennifer Sheehan, AGFC,
Keith Waters, ADEQ District 9 Inspector