

**TIER 3 CATEGORICAL EXCLUSION**

**ARDOT JOB NUMBER 061620  
FAP NUMBER HSIP-0026(42)  
HWY. 70 – OAKGROVE RD. (SAFETY IMPVTS.) (S)  
ROUTE 227, SECTION 0  
GARLAND COUNTY**

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

By the

U.S. Department of Transportation

Federal Highway Administration

And the

Arkansas Department of Transportation

February 2020

2/18/2020

Date of Approval



Randal Looney  
Environmental Coordinator  
Federal Highway Administration

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

The purpose of this project is to provide safety improvements to Highway 227 between Highway 70 and Oakgrove Road. Total length of the project is 2.9 miles. A project location map is attached.

The existing roadway has two 10' wide paved travel lanes. Shoulders do not exist on some segments; where present, unpaved shoulders range from a width of a few inches up to 2'. The average right of way width is 84'.

Proposed improvements include paving and widening shoulders to 2', installing shoulder rumble stripes, and surfacing with ultra-thin bonded wearing course in select sections. Existing pipe and box culverts will be extended. The average right of way width will be 86'. Approximately 0.3 acre 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 (mph)
2020	4,200	2	55
2040	5,200		

There are no environmental justice concerns, floodplains, hazardous materials/landfills, prime farmlands, relocations, underground storage tanks, or cultural resources associated with this project. State Historic Preservation Officer clearance is attached.

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

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

The official species list obtained through the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) website identified the endangered the threatened northern long-eared bat (*Myotis septentrionalis*), the threatened Missouri bladderpod (*Physaria filiformis*), and the endangered harperella (*Ptilimnium nodosum*) as

potentially occurring in the project area. A 'may affect, not likely to adversely affect' determination for the northern long-eared bat was provided through programmatic consultation with the USFWS via IPaC.

The Final 4(d) Rule and its accompanying Programmatic Biological Opinion applies to the project's activities that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts the incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the project limits; therefore, the project may proceed without any restrictions. All offsite locations will require coordination with the USFWS.

A 'no effect' determination was made for Missouri bladderpod due to lack of suitable habitat and distance to known occurrences. A 'may affect, not likely to adversely affect' determination was made for harperella. Potentially suitable habitat exists near the project area, where Highway 227 crosses Mazarn Creek. Surveys for harperella will be conducted in Summer 2020. The USFWS concurred on November 14, 2019. The official species list and USFWS correspondence are attached.

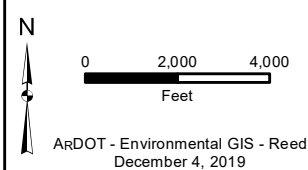
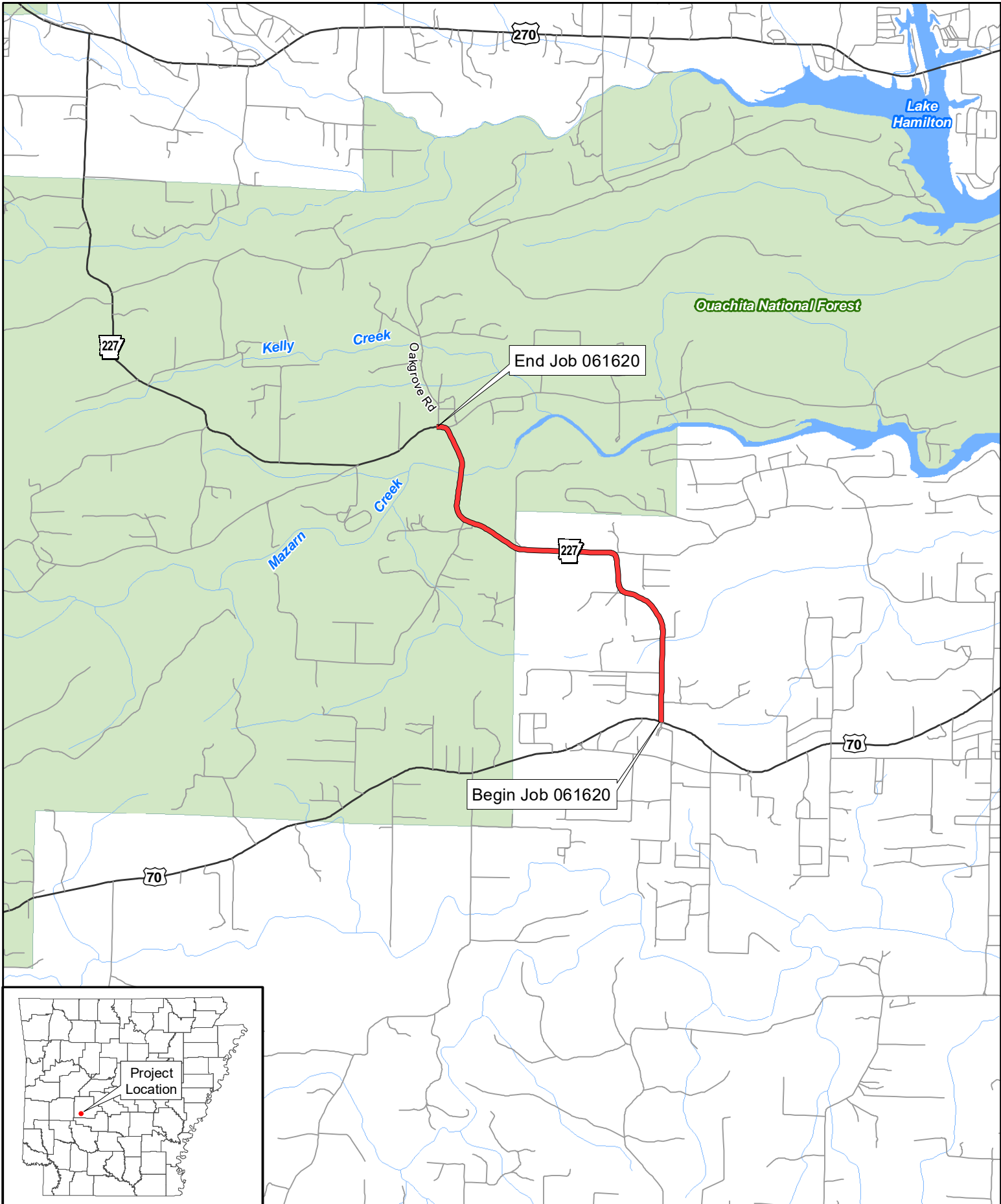
Temporary stream impacts are estimated at 120'. Permanent stream impacts are estimated at a total of 63' for the extension of pipe and box culverts. Permanent wetland impacts are estimated at 0.31 acre. ARDOT proposes the use of 2.1 wetland credits to mitigate the 0.31 acre of wetland impacts at ARDOT's Upper Saline Mitigation Bank located in Saline County. Construction of the proposed project should be allowed under the terms of a Nationwide 14 Section 404 Permit for Linear Transportation Projects as defined in the Federal Register 82(4):1860-2008.

A Public Involvement meeting was held on November 14, 2019; the meeting synopsis is attached.

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

### *Commitments*

Commitments for this project have been made to conduct wetland mitigation and harperella surveys.



Job 061620  
Hwy. 70 - Oakgrove Rd.  
(Safety Impvts.) (Hwy. 227)  
Garland County





# INTEROFFICE MEMORANDUM

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October 17, 2018

**TO:** Environmental Job Files

**FROM:** Wm. Lane Shields

**SUBJECT:** Archeological Clearance  
Job Number 061620  
Hwy. 70 - Oakgrove Rd. (Safety Impvts.)(S)  
Route 227, Section 0  
Garland County

This job proposes to apply an ultrathin bonded wearing course, add shoulder rumble stripes and add two foot wide shoulders to most of the route from Hempwallace at U.S. 70, north to approximately the intersection with Oakgrove Road at Sunshine in Garland County. The total distance is 2.9 miles. There is one bridge along the corridor; Structure 06973 over Mazarn Creek. No new right of way (ROW) or temporary construction easements will be required.

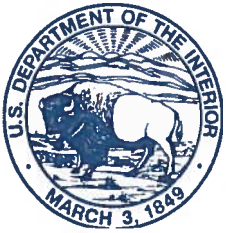
An archeological and historic records review was conducted for this project which includes the Arkansas Archeological Survey (AAS) site files of documented Native American and historical archeological sites, structures or features as well as the Arkansas Historic Preservation Program (AHPP) recorded structures and site/properties files. The National Register of Historic Places (NRHP) eligibility status is determined by the AHPP but presented in three databases. The NRHP status for archeological sites is in the AAS database, the status for architectural sites is in the AHPP database, and the ARDOT tracks the status for bridges.

The AAS site files revealed 11 recorded archeological sites within a 1 mi./1.6 km buffer around the project corridor. None intersects the project corridor. Four archeological projects are within the buffer, none of which intersect the corridor. There are no AHPP structures within the same investigation buffer area. Bridge 06973 over Mazarn Creek, constructed in 2004, is too recent for a NRHP evaluation.

The GLO plat for T3S-R21W dates to 1845. Multiple fields and several roads are plotted but the corridor only crosses a road from Caddo Cove to Hot Springs south of Mazarn Creek. Other records reviewed include the 1936 Polk County highway map and a total of seven versions of United States Geological Survey (USGS) quadrangles from 1955 to 1986. The county map shows houses along the route in the relatively dense rural pattern that is common to the time. The road follows that 1936 alignment fairly closely. No community focal points such as churches or schools are shown; although, there is a cemetery about half a mile north of Sunshine that is still in use. The USGS maps are at scales that do not show structures except for two versions of a 1966 Hempwallace quadrangle.

The entire route, including the half mile gap north of Mazarn Creek where shoulder work will not occur was examined via MMHIS. Existing disturbances are wider than the proposed work. All work will take place within the existing ROW, and the nearby recorded cultural resources will not be directly or indirectly impacted. As a result, this project is subject to the 1999 MOA and falls under the exempted Work Category "Reconstruction". The project is not considered an undertaking and requires no further archeological research, fieldwork or Section 106 review.

WLS:fc



IN REPLY REFER TO:

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Arkansas Ecological Service Field Office  
110 South Amity Road, Suite 300  
Conway, Arkansas 72032



November 14, 2019

Mr. John Fleming  
c/o Matthew Schrum  
Arkansas Department of Transportation  
10324 Interstate 30  
Little Rock, Arkansas 72209

Consultation Code: 04ER1000-2020-TA-0125

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) has reviewed your assessment and determinations for Arkansas Department of Transportation (ArDOT) Job 061620 - Hwy. 70 Oakgrove Rd. (Safety Impvts.) (S), Garland County, Arkansas. We received your email and determination on November 7, 2019.

The project was described and assessed as follows (abbreviated):

ArDOT proposes a safety improvements project on Hwy 227, between Hwy. 70 and Oakgrove Rd. in Garland County AR. This project will include minor shouldering widening, rumble strip installation, some resurfacing, and culvert extension. The net length of the project is 3,675 feet, at 4 sites, over 2.9 miles of highway.

The official species list obtained through the Service Information for Planning and Consultation (IPaC) website identified the threatened Northern Long-eared Bat (*Myotis septentrionalis*), the endangered Harperella (*Ptilimnium nodosum*), and the threatened Missouri Bladderpod (*Physaria filiformis*) as potentially occurring in the project area.

A “may affect, not likely to adversely affect” determination for Northern Long-eared Bat was provided through programmatic consultation with the Service via IPaC. This was due to the approximately 2.08 acres of forest habitat along the road that will be cleared for widening. Please see attached Service Official Species List and Programmatic Biological Opinion concurrence letter for Northern Long-eared Bat.

A “no effect” determination was made for Missouri Bladderpod, due to lack of suitable habitat and distance to known occurrences.

A “may affect, not likely to adversely affect” determination was made for Harperella. Suitable habitat exists within the action area, where highway 227

crosses Mazarn Creek, just south of site 3. No changes will be made to the bridge over Mazarn Creek. Surveys for *Harperella* will be conducted in summer 2020, as it is currently past the survey window for this species.

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

Due to the limited potential offsite effects, limited scope of the action, minimal tree removal, the distance to known species locations, little to no direct stream effects, surveys proposed for *Harperella* that will be conducted in summer 2020, and the standard provisions for stream sediment control and water quality conservation measures, the Service concurs with your determinations of "not likely to adversely affect" for Northern Long-eared Bat and *Harperella*. The Service also agrees with your assessment for the other species identified. This concurrence concludes your ESA Section 7 responsibilities relative to these species for this action.

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

For further assistance or if you have any questions, please contact Lindsey Lewis at (501) 513-4489 or [lindsey\\_lewis@fws.gov](mailto:lindsey_lewis@fws.gov).

Sincerely,



Melvin L. Tobin  
Field Supervisor

cc: Project File  
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\ArDOT job 061620\AFO Letter - job 061620 - Hwy. 70 Oakgraove Rd. - Comments.docx





## United States Department of the Interior



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

In Reply Refer To:

October 25, 2019

Consultation Code: 04ER1000-2020-SLI-0125

Event Code: 04ER1000-2020-E-00270

Project Name: 061620 - Hwy 70 - Oakgrove Rd. (Safety Impvts.) (S)

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

To Whom It May Concern:

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment(s):

- Official Species List

## Official Species List

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

This species list is provided by:

**Arkansas Ecological Services Field Office**

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

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## Project Summary

Consultation Code: 04ER1000-2020-SLI-0125

Event Code: 04ER1000-2020-E-00270

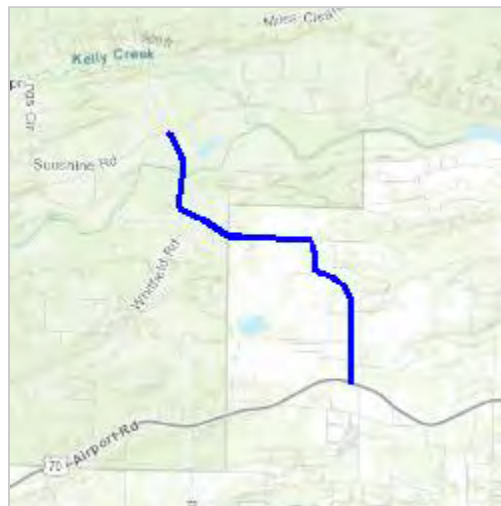
Project Name: 061620 - Hwy 70 - Oakgrove Rd. (Safety Impvts.) (S)

Project Type: TRANSPORTATION

Project Description: This is a safety improvements job along Hwy 227 in Garland County AR. Improvements include cutting rumble strips, minor shoulder widening, and UTBWC.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/34.46105276413194N93.2170008726525W>



Counties: Garland, AR

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## Endangered Species Act Species

There is a total of 3 threatened, endangered, or candidate species on this species list.

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

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

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

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

### Mammals

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

### Flowering Plants

NAME	STATUS
Harperella <i>Ptilimnium nodosum</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/3739">https://ecos.fws.gov/ecp/species/3739</a>	Endangered
Missouri Bladderpod <i>Physaria filiformis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/5361">https://ecos.fws.gov/ecp/species/5361</a>	Threatened

### Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

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## United States Department of the Interior



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

In Reply Refer To:

October 25, 2019

Consultation Code: 04ER1000-2020-TA-0125

Event Code: 04ER1000-2020-E-00271

Project Name: 061620 - Hwy 70 - Oakgrove Rd. (Safety Impvts.) (S)

Subject: Verification letter for the '061620 - Hwy 70 - Oakgrove Rd. (Safety Impvts.) (S)' project under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions.

Dear Matthew Schrum:

The U.S. Fish and Wildlife Service (Service) received on October 25, 2019 your effects determination for the '061620 - Hwy 70 - Oakgrove Rd. (Safety Impvts.) (S)' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. This IPaC key assists users in determining whether a Federal action is consistent with the activities analyzed in the Service's January 5, 2016, Programmatic Biological Opinion (PBO). The PBO addresses activities excepted from "take"<sup>[1]</sup> prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

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

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

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

- Harperella, *Ptilimnium nodosum* (Endangered)
- Missouri Bladderpod, *Physaria filiformis* (Threatened)

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

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

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**Action Description**

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

**1. Name**

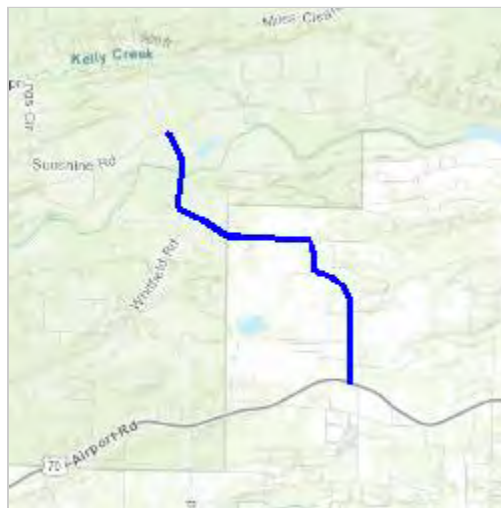
061620 - Hwy 70 - Oakgrove Rd. (Safety Impvts.) (S)

**2. Description**

The following description was provided for the project '061620 - Hwy 70 - Oakgrove Rd. (Safety Impvts.) (S)':

This is a safety improvements job along Hwy 227 in Garland County AR. Improvements include cutting rumble strips, minor shoulder widening, and UTBWC.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/34.46105276413194N93.2170008726525W>

**Determination Key Result**

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

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

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

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

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

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

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## Determination Key Result

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

## Qualification Interview

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

Yes

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

No

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

No

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

**Automatically answered**

No

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

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

**Automatically answered**

No

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

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

**Automatically answered**

No

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## Project Questionnaire

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

1. Estimated total acres of forest conversion:

2.08

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

2.08

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

2.08

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

4. Estimated total acres of timber harvest

0

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

0

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

0

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

7. Estimated total acres of prescribed fire

0

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

0

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

0

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

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

# PUBLIC INVOLVEMENT SYNOPSIS

Job Number 061620

Hwy 70 – Oakgrove Rd. (Safety Impvts.) (S)

Garland County

Thursday, November 14, 2019

An open forum Public Involvement meeting for the proposed Hwy. 227 improvements project was held at the Lake Hamilton Intermediate School (Gymnasium), 104 Wolf St. in Percy, from 4:00 – 7:00 p.m. on Thursday, November 14, 2019. Efforts to involve minorities and the public in the meeting included:

- Display advertisement placed in the *Sentinel-Record* on Tuesday, October 29, 2019 and Sunday, November 10, 2019.
- Letters mailed to public officials.
- Distribution of flyers in the project area.

The following information was available at the meetings for review and comment:

- Displays of an aerial-based project location map (scale: 1 inch = 600 feet).
- Preliminary project design plans (scale: 1 inch = 100 feet).

Public handouts included a Comment Form and a small-scale project location map. Copies of these handouts are attached to this synopsis.

Table 1 summarizes public participation at the meeting.

TABLE 1	
Public Participation	Totals
Attendance at Public Involvement meeting (including ARDOT staff)	43
Comment Forms received	15

*ARDOT staff reviewed all the comments received. The summary below reflects the perception or opinion of the person or organization making the comment(s). The order in which the comments are listed is random and does not reflect the number of times comments were made or their significance. Not all commenters responded to every Comment Form question, and some responses were ambiguous. A few of the comments were combined and/or paraphrased to simplify this synopsis.*

Table 2 summarizes responses to Comment Form questions.

<b>TABLE 2</b>	
<b>Survey Results</b>	<b>Totals</b>
Feel proposed project is needed	13
Do not feel proposed project is needed	2
Beneficial impacts due to the proposed project	9
Adverse impacts due to the proposed project	2
Offered suggestions to better serve the needs of the community	11

Comments regarding why the proposed project is needed included:

- Highway not elevated on the outside of curves on Sunshine Rd.
- Slow drivers down on sharp curves
- Highway resurfacing is needed

Comments regarding beneficial impacts included:

- Increased safety
- Improved traffic flows
- Enhanced property values and economic opportunities

Comments regarding adverse impacts included:

- Increased stormwater runoff to DeLee subdivision

Comments regarding how the project could better serve the needs of the community included:

- Pave all 8 miles of Hwy. 227 (e.g, extend project to Hwy. 270 intersection) and improve roadway grades
- Decrease the speed limit, particularly at curves
- Repair Sunshine Rd. from Hwy 70 to Hwy. 270
- Improve pavement at the two 90 degree turns at and south of the intersection of Moore Rd. and Hwy. 227
- Consider additional lighting

Job Number 061620 – Public Involvement Synopsis

November 14, 2019

Page 3 of 3

- Lengthen/expand turn lane at Hwy. 70

Attachments:

Blank Comment Form

Small-Scale Project Location Map

RJ

DN



MP:am



**ARKANSAS DEPARTMENT OF TRANSPORTATION (ARDOT)  
CITIZEN COMMENT FORM**

**ARDOT JOB NUMBER 061620  
Hwy 70 – Oakgrove Rd. (Safety Impvts) (S) Hwy. 227  
GARLAND COUNTY**

**LOCATION:  
LAKE HAMILTON INTERMEDIATE SCHOOL (GYMNASIUM)  
104 WOLF ST.  
PEARCY, AR 71964  
4:00 – 7:00 P.M.  
NOVEMBER 14, 2019**

Make your comments on this form and leave it with ARDOT personnel at the meeting or mail it by 4:30 p.m. on **Friday, November 29, 2019** to: Arkansas Department of Transportation, Environmental Division, P.O. Box 2261, Little Rock, AR, 72203-2261. Email: [environmentalpi meetings@ardot.gov](mailto:environmentalpi meetings@ardot.gov).

Yes    No

    Do you feel there is a need for the proposed safety improvements on Hwy. 227 (Sunshine Road) from Hwy. 70 to Oakgrove Road in Garland County? Comment (optional) \_\_\_\_\_

Do you feel that the proposed project will have any impacts ( Beneficial or  Adverse) on your property and/or community (economic, environmental, social, etc.)? Please explain. \_\_\_\_\_

    Do you have a suggestion that would make this proposed project better serve the needs of the community? \_\_\_\_\_

    Does your home or property offer any limitations to the project, such as septic systems, that the Department needs to consider in its design? \_\_\_\_\_

(Continue on Back)

Yes      No

      Do you know of any historical sites, family cemeteries, or archaeological sites in the project area? Please note and discuss with staff. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

Name: \_\_\_\_\_ (Please Print)

Address: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_--\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E-mail: \_\_\_\_\_

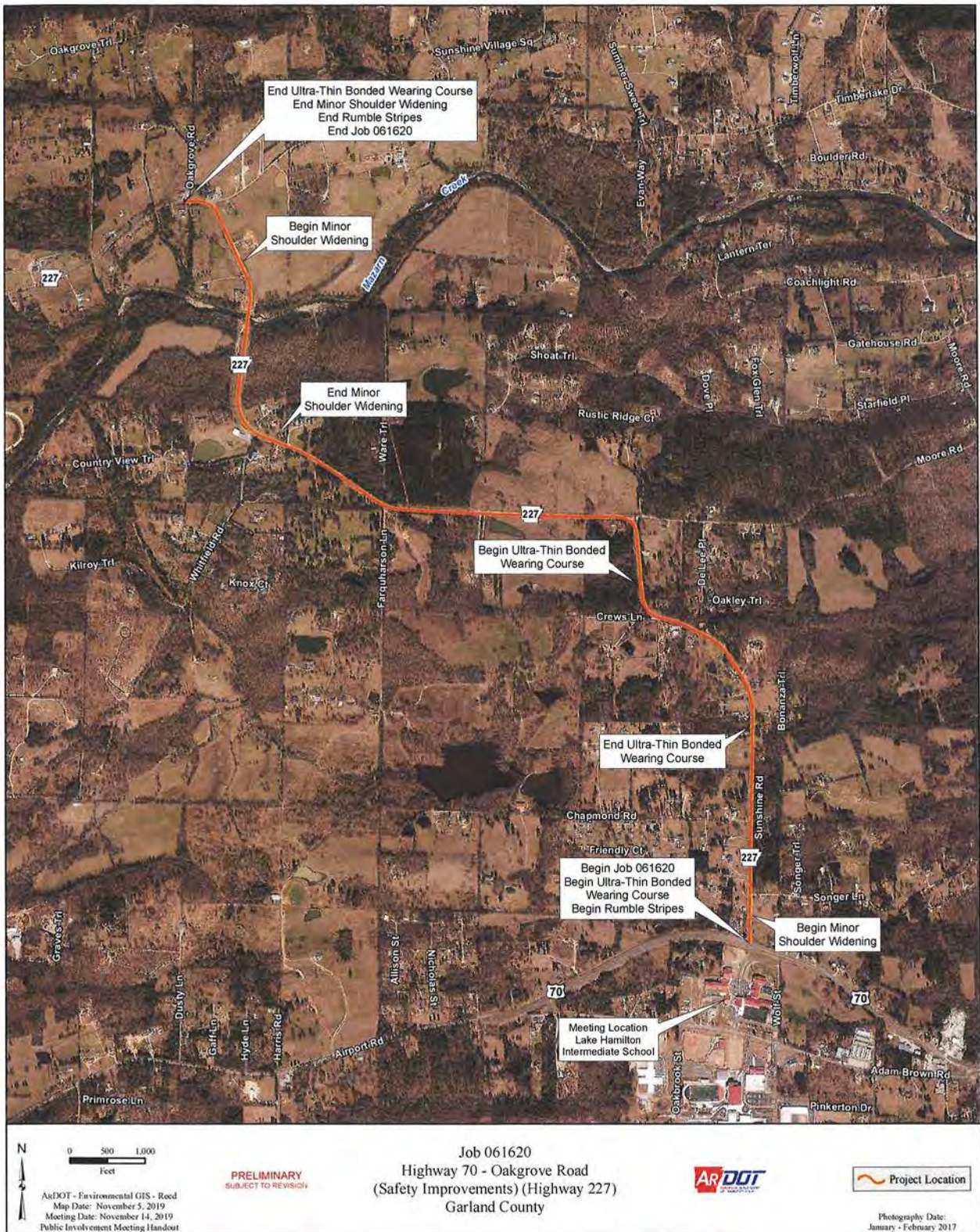
Do you have suggestions that would make this proposed project better serve the needs of the community? Please make additional comments here. \_\_\_\_\_

\_\_\_\_\_  
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For additional information, please visit our website at [www.ardot.gov](http://www.ardot.gov)







Notes:

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

ARDOT Job Number 061620 FAP Number HSIP-0026(42)

Job Title Hwy. 70 – Oakgrove Rd. (Safety Impvts.) (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			In AQ attainment area; no MSAT concerns
Cultural Resources	X			SHPO clearance attached
Economic	X			No adverse impacts
Endangered Species		X		NLAA & 'may affect, not likely to adversely affect' determinations; USFWS correspondence attached
Environmental Justice/Title VI	X			EJ populations not identified
Fish and Wildlife		X		Temporary impacts during construction
Floodplains	X			None in project area
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			None in project area
Land Use		X		0.3 acre new ROW
Migratory Birds	X			None impacted by the project
Navigation/Coast Guard	X			No navigable waterways involved
Noise Levels	X			No permanent impacts
Prime Farmland	X			None in project area
Protected Waters	X			None in project area
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA	X			None in project area
Relocatees	X			No relocations needed
Section 4(f)/6(f)	X			No 4(f)/6(f) resources in project area
Social	X			No adverse impacts
Underground Storage Tanks	X			None identified in project area
Visual	X			No adverse impacts
Streams		X		Total of 63' impacts; NWP 14
Water Quality		X		Temporary during construction
Wetlands		X		0.31 acre impacts; mitigation bank credits
Wildlife Refuges	X			None in project area

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

Remarks: \_\_\_\_\_

Signature of Evaluator Mary Pearson Date 12/12/19

**ROADWAY DESIGN REQUEST**

Job Number 061620 FAP No. HSIP-0026(42) County Garland

Job Name Hwy. 70 – Oakgrove Rd. (Safety Impvts.) (S)

Design Engineer Nick Dail Environmental Staff \_\_\_\_\_

Brief Project Description Minor Shoulder Widening, Ultra-Thin Bonded Wearing Course, Shoulder Rumble Stripes

A. Existing Conditions:

Roadway Width: 24' Shoulder Type/Width: 2' Unpaved

Number of Lanes and Width: 2 – 10' Existing Right-of-Way: 84'

Sidewalks? No Location: \_\_\_\_\_ Width: \_\_\_\_\_

Bike Lanes? No Location: \_\_\_\_\_ Width: \_\_\_\_\_

B. Proposed Conditions:

Roadway Width: 24' Shoulder Type/Width: 2' Paved

Number of Lanes and Width: 2 – 10' Proposed Right-of-Way: 86'

Sidewalks? No Location: \_\_\_\_\_ Width: \_\_\_\_\_

Bike Lanes? No Location: \_\_\_\_\_ Width: \_\_\_\_\_

C. Construction Information:

If detour: Where: n/a Length: n/a

D. Design Traffic Data:

2020 ADT: 4200 2040 ADT: 5200 % Trucks: 2.0%  
Design Speed: 55 m.p.h.

E. Approximate total length of project: 2.89 mile(s)

F. Justification for proposed improvements: Safety Improvements

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





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

July 28, 2020

Regulatory Division

**NATIONWIDE PERMIT NO. MVK 2020-00531**

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 upgrading State Highway 227 between Highway 70 and Oak Grove Road near the Community of Sunshine. Upgrades include widening to create 2-foot-wide paved shoulders, installing shoulder rumble strips and resurfacing. Three existing pipe and box culverts in unnamed tributaries to Mazarn Creek will be extended. Total length of the project is 2.9 miles and approximately 0.3 acres of additional right-of-way will be required. Permanent impacts to the unnamed tributaries will be less than 100 linear feet and 0.1 acres. Adverse impacts to roadside wetlands will be approximately 1.47 acres. ArDOT determined that the project may affect but is not likely to adversely affect the Northern Long-eared Bat (*Myotis septentrionalis*) and the plant, Harperella (*Ptilimnium nodosum*). There are no cultural resources impacts. The Federal Highway Administration determined that the project falls within the definition of the Tier 3 Categorical Exclusion on February 18, 2020. The project is located on State Highway 227 approximately three miles west of Lake Hamilton, in sections 15, 22, 23 and 26, T. 3 S., R. 21 W., Garland County, Arkansas. A vicinity map, project location map and wetland impact maps are enclosed.

The proposed activities are authorized by Department of the Army Nationwide Permit (NWP) No. 23 (copy enclosed), provided that the following **Special 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 1.47 acres of wetlands with 9.85 wetland credits from their Upper Saline River Mitigation Bank. ArDOT will provide documentation of the mitigation bank transaction to the U.S. Army Corps of Engineers Little Rock District Transportation Program Manager.**
- 2. ArDOT agrees to prohibit the off-site clearing of trees within 150 feet of any known Northern Long-eared Bat (NLEB) occupied maternity roost tree during the pup rearing season (June 1 through July 31) or within 0.25 miles of any NLEB hibernaculum.**
- 3. ArDOT agrees to conduct surveys for the Federally endangered plant, Harperella, before construction of the project begins.**

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

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

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

The NWP determination will be valid until March 18, 2022. If NWP No. 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. **MVK 2020-00531, State Highway 227 Highway Improvements West of Lake Hamilton (ArDOT Project No. 061620).**

Sincerely,

  
Sarah Chitwood  
Chief, Regulatory Division

Enclosures

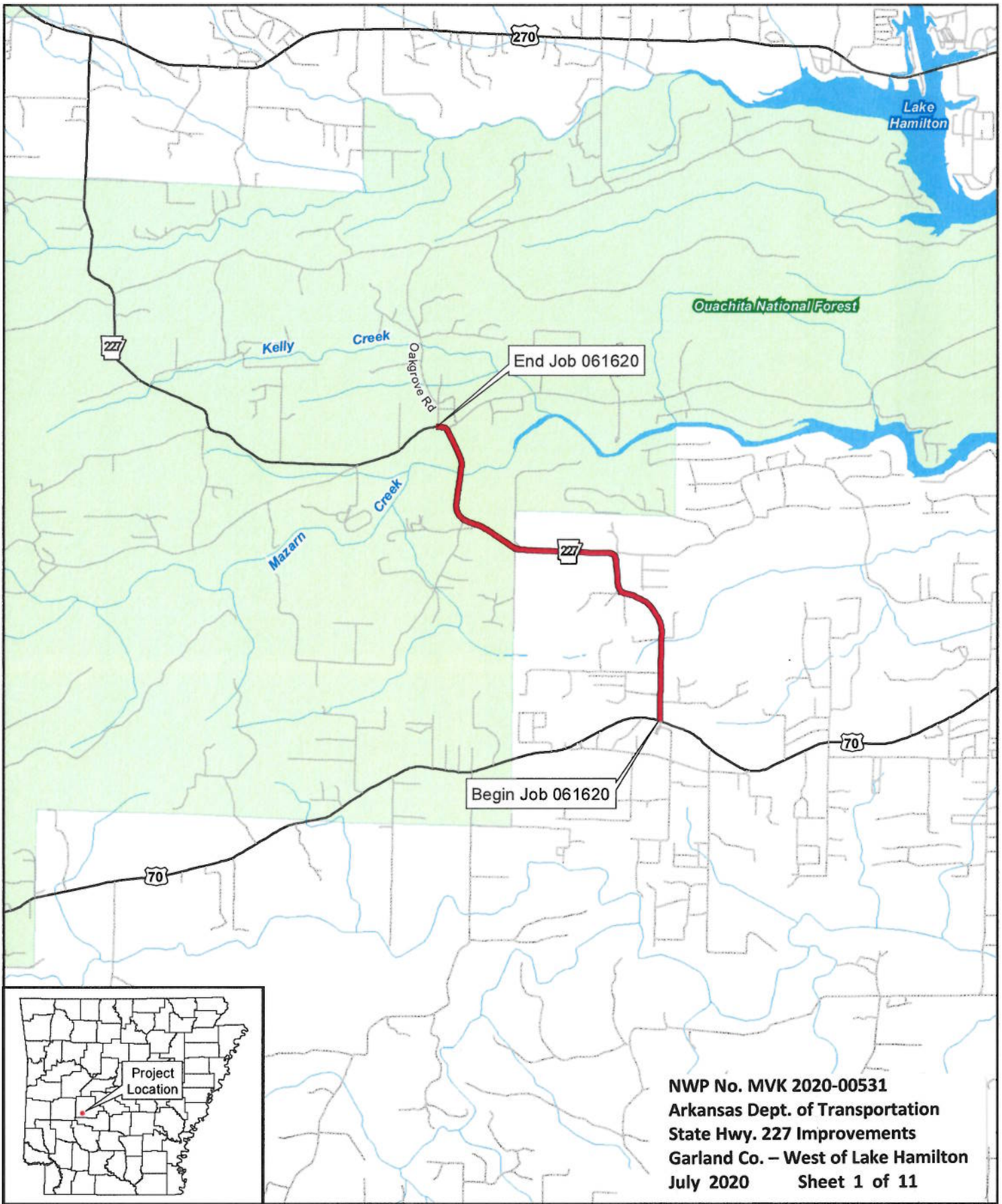
Copy Furnished:

Vicksburg District Regulatory, w/cy encls.

Ms. Melanie Treat, Arkansas Department of Environmental Quality, w/cy encls.

Mr. Lindsey Lewis, U.S. Fish & Wildlife Service, w/cy encls.

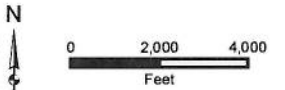




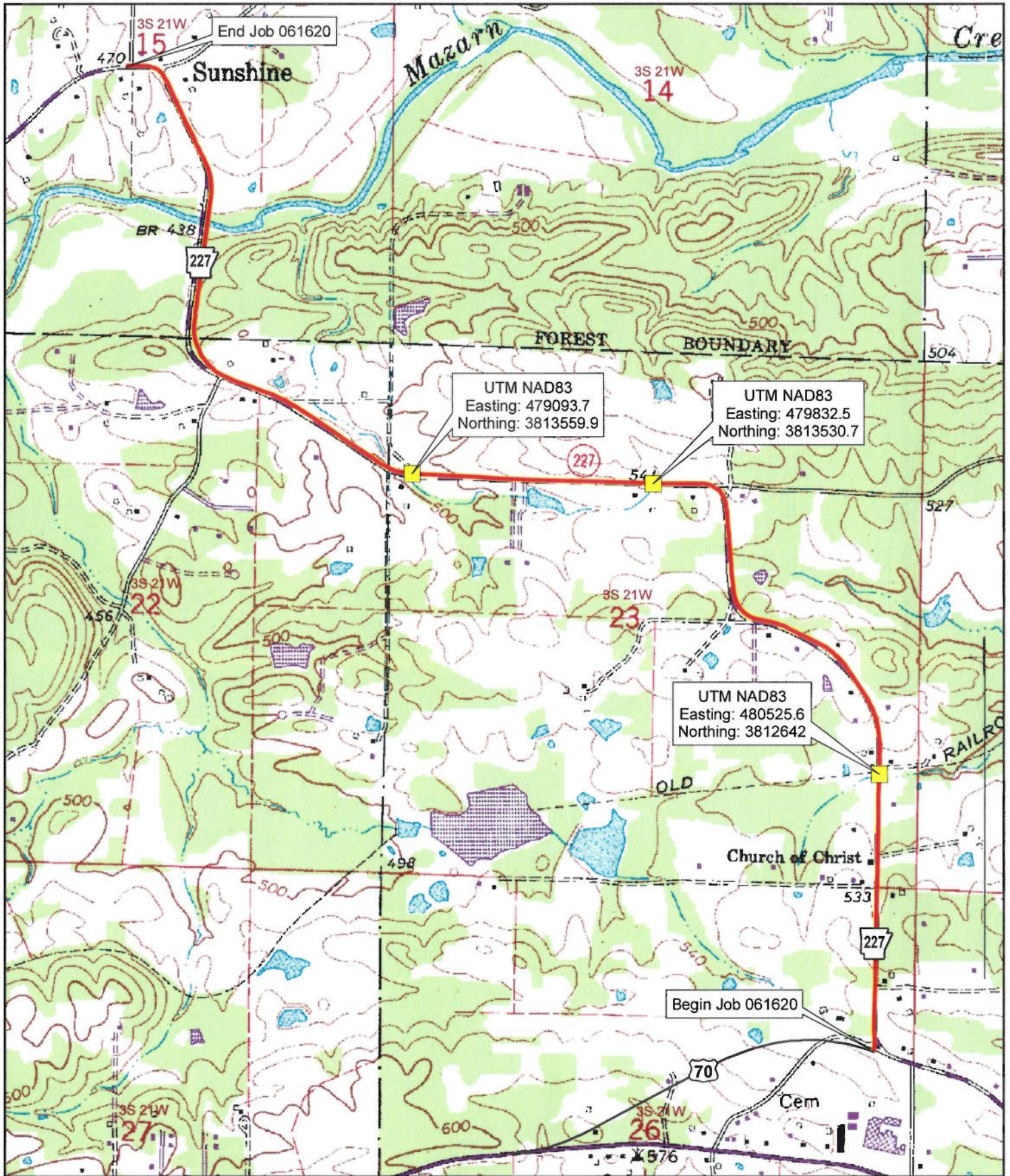
**NWP No. MVK 2020-00531**  
**Arkansas Dept. of Transportation**  
**State Hwy. 227 Improvements**  
**Garland Co. – West of Lake Hamilton**  
**July 2020      Sheet 1 of 11**

**Job 061620**  
**Hwy. 70 - Oakgrove Rd.**  
**(Safety Impvts.) (Hwy. 227)**  
**Garland County**

 **Project Location**



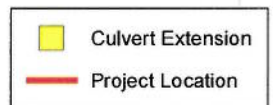




ARDOT - Environmental GIS - Reed  
January 30, 2020

Job 061620  
Hwy. 70 - Oakgrove Rd.  
(Safety Impvts.) (Hwy. 227)  
Garland County

Sheet 2 of 11



USGS Topographic Map:  
Hempwallace 1976





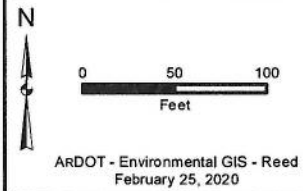
Wetland 2  
0.09 acres

Wetland 1  
0.08 acres

Sagebrush St

Songer Ln

227

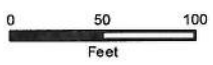
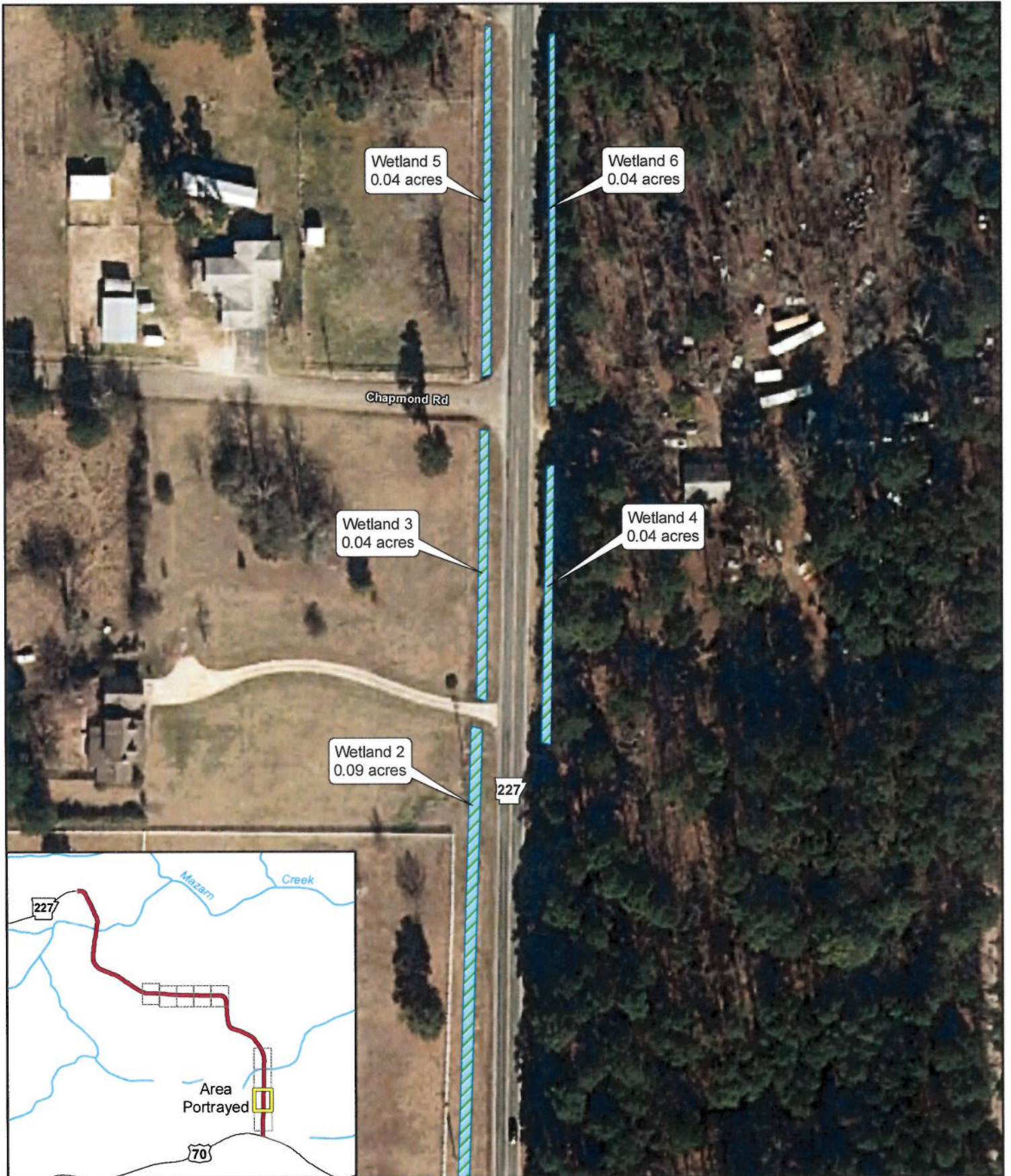


Job 061620  
Wetland Impacts  
Sheet 3 of 11

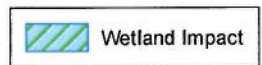
 Wetland Impact

Photography Date:  
January - February 2017

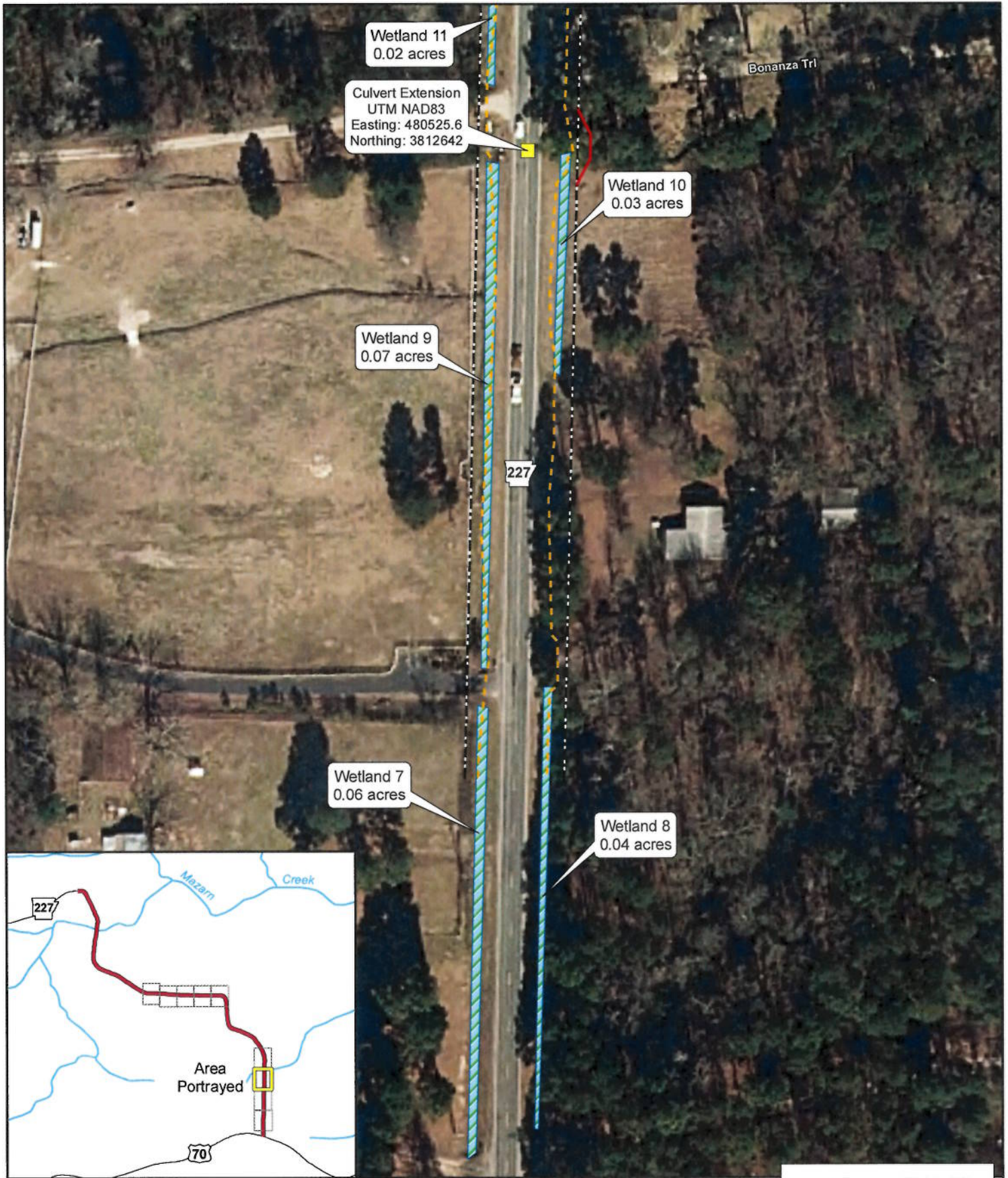




Job 061620  
Wetland Impacts  
Sheet 4 of 11







Wetland 11  
0.02 acres

Culvert Extension  
UTM NAD83  
Easting: 480525.6  
Northing: 3812642

Bonanza Trl

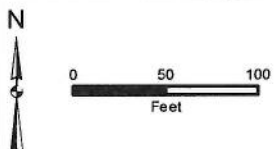
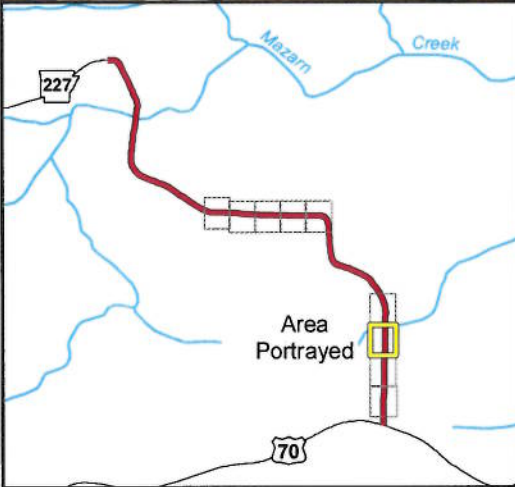
Wetland 10  
0.03 acres

Wetland 9  
0.07 acres

227

Wetland 7  
0.06 acres

Wetland 8  
0.04 acres



Job 061620  
Wetland Impacts  
Sheet 5 of 11

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

Photography Date:  
January - February 2017





Wetland 11  
0.02 acres

Culvert Extension  
UTM NAD83  
Easting: 480525.6  
Northing: 3812642

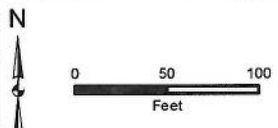
Wetland 9  
0.07 acres

Wetland 10  
0.03 acres

Bonanza Trl

Job 061620  
Wetland Impacts  
Sheet 6 of 11

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



Photography Date:  
January - February 2017

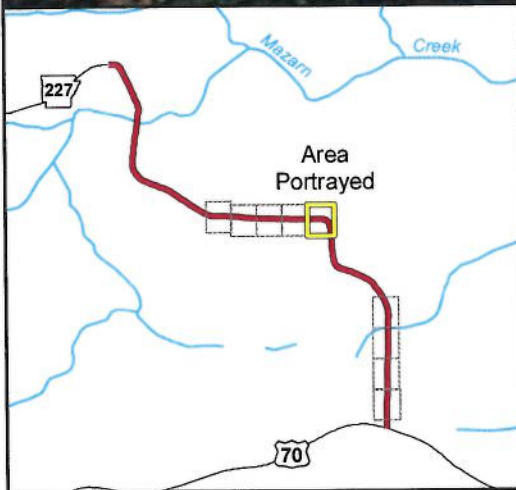




Wetland 12  
0.9 acres

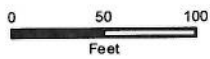
227

Moore Rd



Area  
Portrayed

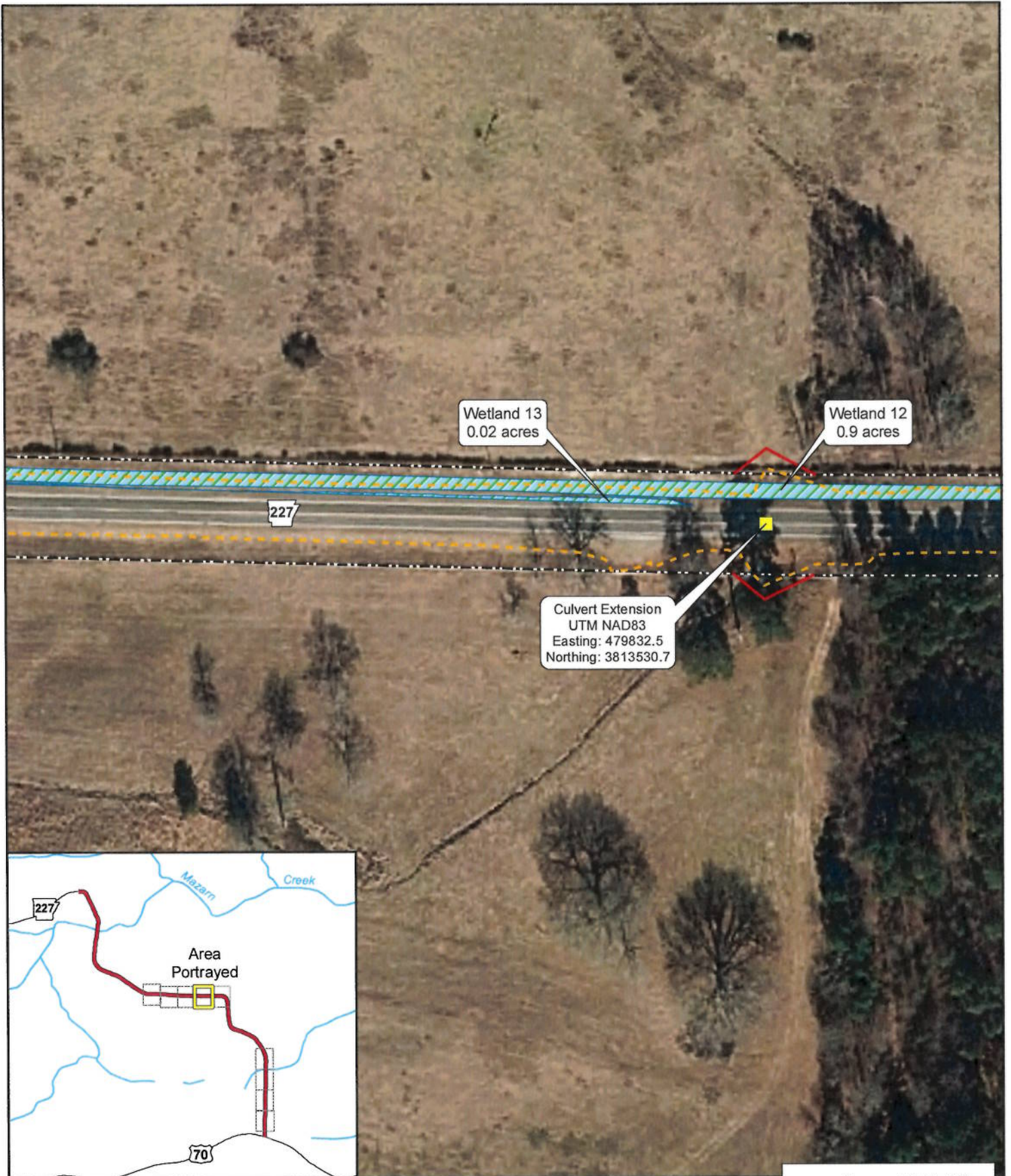
Job 061620  
Wetland Impacts  
Sheet 7 of 11



- - - Construction Limits
- - - Existing Right of Way
- Wetland Impact

Photography Date:  
January - February 2017

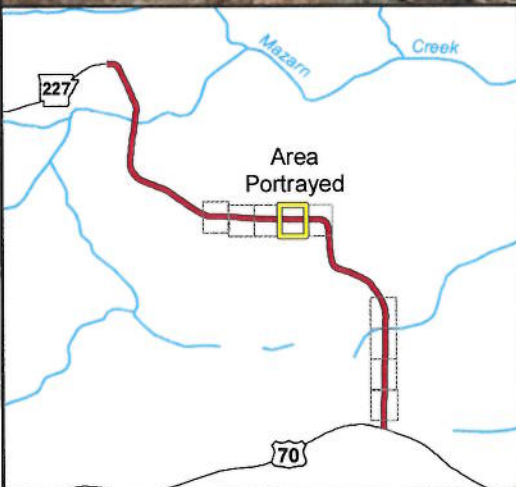




Wetland 13  
0.02 acres

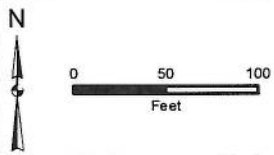
Wetland 12  
0.9 acres

Culvert Extension  
UTM NAD83  
Easting: 479832.5  
Northing: 3813530.7



Job 061620  
Wetland Impacts  
Sheet 8 of 11

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

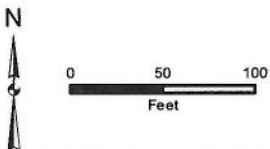


Photography Date:  
January - February 2017





Job 061620  
Wetland Impacts  
Sheet 9 of 11



ARDOT - Environmental GIS - Reed  
February 25, 2020

Photography Date:  
January - February 2017





Wetland 12  
0.9 acres

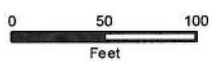
227

Mazam Creek

227

Area Portrayed

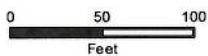
70



Job 061620  
Wetland Impacts  
Sheet 10 of 11

-  Construction Limits
-  Existing Right of Way
-  Wetland Impact





ARDOT - Environmental GIS - Reed  
February 25, 2020

Job 061620  
Wetland Impacts  
Sheet 11 of 11

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

Photography Date:  
January - February 2017

# 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 NWP's 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 NWP's 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 NWP's 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 NWP's, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

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

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

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

(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 NWP's. 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 NWP's.

(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 NWP’s 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 NWP’s 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 NWP, 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)



**MAR 16 2017**

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

RE: Public Notice: Re-issuance of Nationwide Permits

Dear Colonel Dixon:

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

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

Therefore, pursuant to §401(a)(1) of the Clean Water Act, the ADEQ hereby issues water quality certification for all NWP with the exception of NWP 14, 29, and 43, contingent upon the following conditions:

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

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

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

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

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

Sincerely,



Caleb Osborne  
Associate Director, Office of Water Quality

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