

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB NUMBER FA3610
FAP NUMBER STPR-0036(24)
PANTHER CREEK STR. & APPRS. (S)
COUNTY ROAD 36/5440
JOHNSON 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

May 2020

May 7, 2020
Date of Approval


Randal Looney
Environmental Coordinator
Federal Highway Administration

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

The purpose of this project is to replace the Johnson County Road 36/5440 bridge over Panther Creek. The existing bridge has a history of deck failures and other deficiencies and is too narrow, weight-restricted, and fracture critical. Total length of the project is approximately 0.4 mile. A project location map is attached.

The existing roadway consists of a 13.5' unpaved surface with no shoulders. The existing structure over Panther Creek is a 203' x 14' three-span bridge. Existing right of way width is approximately 40'.

The proposed improvements include two 10' wide paved travel lanes with 4' wide gravel shoulders. The proposed structure over Panther Creek would be a 272' x 27' four-span bridge constructed approximately 19' upstream of the existing bridge. The proposed right of way width would vary from 60'-155'. Approximately three acres of additional right of way and one acre of temporary construction easements would be required for this project.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2018	100	9	40 mph
2038	120		

There are no relocations or impacts to regulatory floodplains, public water supplies, or environmental justice populations associated with this project. Approximately 0.7 acre of prime farmland would be converted to county road right of way. Form NRCS-CPA-106 is attached. Coordination with the Arkansas Department of Environmental Quality is ongoing to remediate an illegal dump that would be impacted by the proposed project. No other hazardous materials were identified in the project area.

The attached official species list obtained from the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation website identified the following endangered and threatened species as potentially occurring within the project area: the endangered gray bat (*Myotis grisescens*), the endangered Indiana bat (*Myotis sodalis*), the threatened northern long-eared bat (*Myotis*

septentrionalis), the endangered Ozark big-eared bat (*Corynorhinus townsendii ingens*), the proposed threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the endangered Whooping Crane (*Grus americana*), the endangered American burying beetle (*Nicrophorus americanus*), and the threatened Missouri bladderpod (*Physaria filiformis*).

Due to the proposed tree clearing and resulting foraging habitat loss, it was determined that the project 'may affect, but is not likely to adversely affect' the federally-listed bat species. A 'no effect' determination was made for Eastern Black Rail, Piping Plover, Red Knot, Whooping Crane, American burying beetle, and Missouri bladderpod due to lack of suitable habitat in the project area and the distance to known occurrence records. USFWS concurrence is attached.

Total stream impacts are estimated at 231 linear feet. An unnamed tributary to Panther Creek enters on the east side of the project area, north of the road. Permanent impacts to this stream total 171 linear feet. Temporary impacts to Panther Creek due to work road construction total 60 linear feet. Construction of the proposed project should be allowed under the terms of a Section 404 Nationwide Permit 14 for Linear Transportation Projects as defined in the Federal Register 82(4):1860-2008.

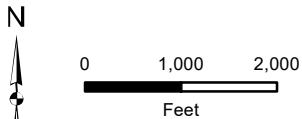
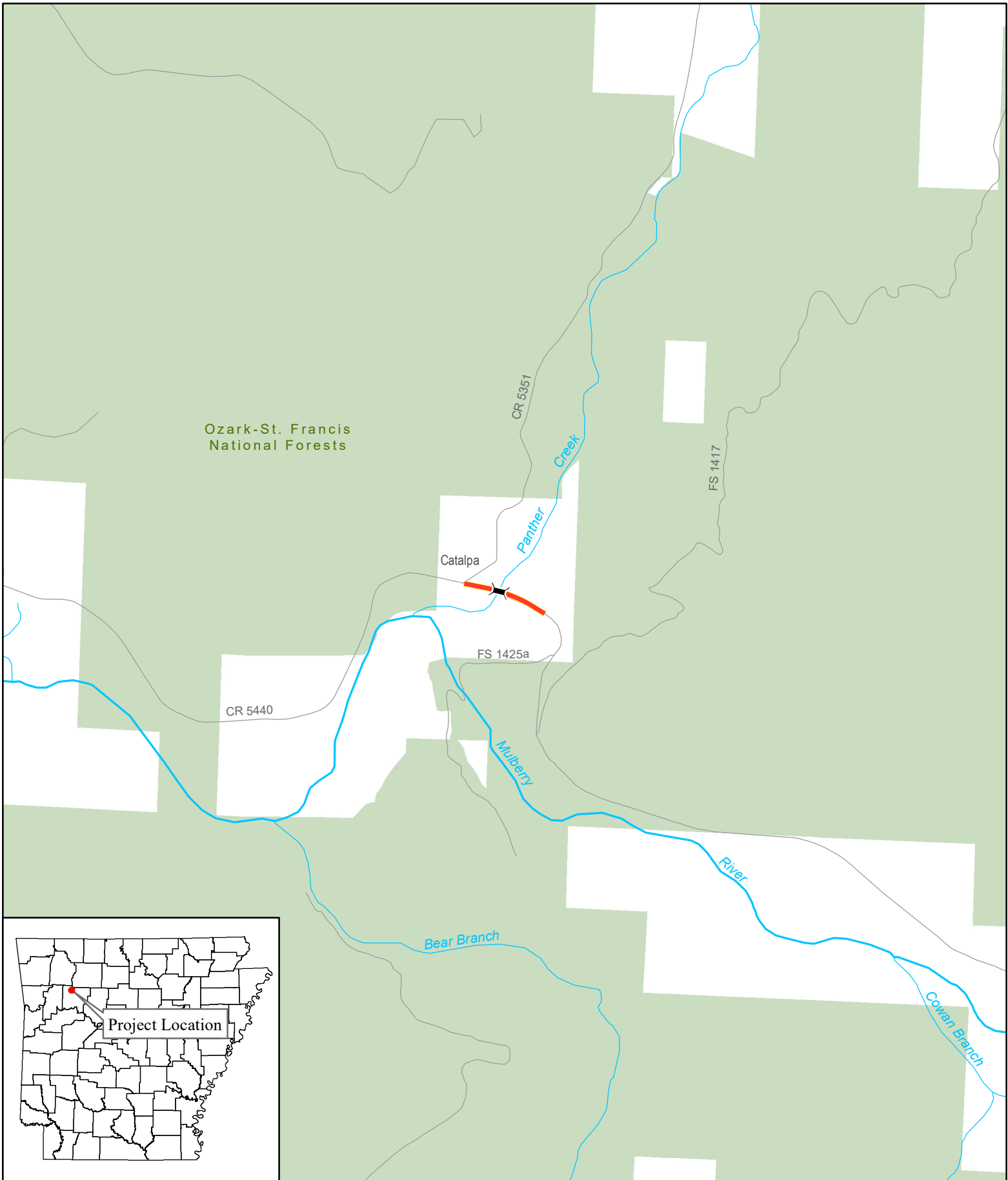
The proposed project is located approximately 0.3 mile upstream of the confluence of Panther Creek and the federally-designated Mulberry Wild and Scenic River (WSR). No work is proposed within the WSR designated corridor, but due to the proximity of the Mulberry WSR, the proposed project was evaluated under Section 7 of the Wild and Scenic Rivers Act which requires that federal agencies thoroughly consider impacts to WSRs as a result of their projects and/or decisions. The U.S. Forest Service (USFS) is the agency responsible for evaluating the impacts of federal projects on the Mulberry WSR under Section 7. The USFS determined in the attached evaluation that the proposed bridge replacement project does not "invade or unreasonably" diminish the values which lead to the Mulberry River being designated a WSR, the standard for projects on WSR tributaries but outside of the designated corridor.

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.

A National Register of Historic Places-eligible stone culvert, built by the Civilian Conservation Corps in 1936, is located on the proposed project providing


cross-drainage under County Road 36/5440. The proposed wider typical section does not allow the culvert to remain in use as a drainage structure without adversely affecting its historic integrity; instead, the culvert will be left in place, backfilled with a flowable select material that could be removed in the future, and covered with fill under the roadway embankment. The State Historic Preservation Officer has determined that the proposed project will have “no adverse effect” on the culvert’s historic integrity and the Federal Highway Administration determined that the proposed project does not constitute a “use” of this historic site under Section 4(f) of the U.S. Department of Transportation Act of 1966. No other cultural resources would be impacted by the proposed project. State Historic Preservation Office clearance is attached.

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



ARDOT - Environmental GIS - Strawn
February 20, 2020

Job FA3610
Panther Creek Str. & Apprs.
Johnson County

 Project Location



ARKANSAS HERITAGE



March 25, 2020

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

RE: Johnson County — Catalpa
Section 106 Review — FHWA
Panther Creek Str. & Apprs.
County Road 5440
ARDOT Job Number: FA3610
AHPP Tracking Number: 100111.03

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Cultural Resources Survey report for the above-referenced job in Johnson County. As described, the undertaking entails replacing a single lane bridge over Panther Creek on County Road 5440 in Catalpa. The AHPP concurs that Site 3JO0831 (AHPP Resource JO0050) is eligible for inclusion in the National Register of Historic Places (NRHP). The AHPP also concurs that Site 3JO0841 is not eligible for inclusion in the NRHP.

The Arkansas Department of Transportation (ARDOT) proposes to preserve Site 3JO0831 (AHPP Resource JO0050) in place through burial under the new roadbed and injection of a controlled low strength material (CLSM). The CLSM is self-levelling and self-compacting. The ARDOT materials department determined through testing that after curing, the CLSM will support the culvert, preserve its materials and design, and allow for removal with hand tools if ever deemed necessary. Based on these proposed means for preserving Site 3JO0831 (AHPP Resource JO0050) in place, the AHPP concurs with the finding of **no adverse effect pursuant to 36 CFR § 800.5(b)**.

Tribes that have expressed an interest in the area include the Cherokee Nation (Ms. Elizabeth Toombs), the Muscogee (Creek) Nation (Ms. Corain Lowe-Zepeda), the Osage Nation (Dr. Andrea Hunter), the Quapaw Nation (Mr. Everett Bandy), the Shawnee Tribe (Ms. Tonya Tipton), and the United Keetoowah Band of Cherokee Indians (Ms. Erin Thompson and Charlotte Wolfe). We recommend consultation in accordance with 36 CFR § 800.2(c)(2).

Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Eric Mills of my staff at 501-324-9784 or email eric.mills@arkansas.gov.

Sincerely,

FOR Eric Mills
Scott Kaufman
Director, AHPP

cc: Mr. Randall Looney, Federal Highway Administration
Dr. Ann Early, Arkansas Archeological Survey

Arkansas Historic Preservation Program
1100 North Street • Little Rock, AR 72201 • 501.324.9880
ArkansasPreservation.com

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

PART I (To be completed by Federal Agency)	Job FA3610	3. Date of Land Evaluation Request	4. Sheet 1 of _____
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1. Name of Project	5. Federal Agency Involved
2. Type of Project	6. County and State

PART II (To be completed by NRCS)		1. Date Request Received by NRCS	2. Person Completing Form
3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form). YES <input type="checkbox"/> NO <input type="checkbox"/>		4. Acres Irrigated Average Farm Size	
5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: _____ %	7. Amount of Farmland As Defined in FPPA Acres: _____ %	
8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS	

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

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

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

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

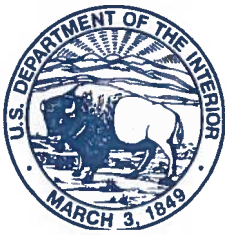
PART VII (To be completed by Federal Agency)					
Relative Value Of Farmland (From Part V)	100				
Total Corridor Assessment (From Part VI above or a local site assessment)	160				
TOTAL POINTS (Total of above 2 lines)	260				

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

Signature of Person Completing this Part: Joshua Graham DATE _____

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



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



January 7, 2020

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

Consultation Code: 04ER1000-2019-R-1585

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) reviewed your re-initiation request, assessment, and determinations for Arkansas Department of Transportation (ARDoT) Job Number # FA3610 Panther Creek Str. & Apprs., Forest Road 1003 bridge replacement over Panther Creek in Johnson County, Arkansas. We received your request on January 3, 2020. Our comments are submitted in accordance with the Endangered Species Act (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.).

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

The Arkansas Department of Transportation proposes to replace the bridge over Panther Creek on Forest Road 1003 in Johnson County, east of Oark. This is a state aid project. I've included a KMZ of the most current plans.

The official species list obtained from the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) identified the following endangered and threatened species within the project boundaries: the endangered Gray Bat (*Myotis grisescens*), the endangered Indiana Bat (*Myotis sodalis*), the threatened Northern Long-eared Bat (*Myotis septentrionalis*), the endangered Ozark Big-eared Bat (*Corynorhinus (=Plecotus) townsendii ingens*), the proposed threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the endangered Whooping Crane (*Grus americana*), the endangered American Burying Beetle (*Nicrophorus americanus*), and the threatened Missouri Bladderpod (*Physaria filiformis*).

We arrived at a "may affect, not likely to adversely affect" determination for Indiana Bat and Northern Long-eared Bat based on the minimal habitat being removed and negative survey results. We arrived at a "may affect, not likely to adversely affect" determination for the remaining bat species. Project associated forest-clearing represents the loss of potential foraging habitat for Gray Bat and Ozark Big-eared Bat.

We would like to request re-initiation of consultation on this project. The project lets in May, and the current clearing restrictions (only during inactive season) will greatly delay this project. Timing of clearing is the only aspect of this project that we wish to amend.

Mr. John Fleming

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Changing the timing of clearing to 'during the active season' is outside of the PBO. Our determination remains NLAA for all 4 bat species.


A "no effect" determination was made for Eastern Black Rail, Piping Plover, Red Knot, and Whooping Crane due to lack of suitable habitat in the project area and distance to known occurrences. A "no effect" determination was made for American Burying Beetle due to the project being outside of the 2-acre and 3-acre consultation areas. A "no effect" determination was made for Missouri Bladderpod due to lack of suitable habitat in the project area, and distance to known occurrence records.

Due to the limited size of the area being affected along an existing bridge crossing, roadway and adjacent right-of-way, the distance to known species locations or hibernacula, implementation of BMPs, negative survey results, and standard provisions for stream sediment control and water quality conservation measures, the Service concurs with your determination of "not likely to adversely affect" for Indiana Bat, Northern Long-Eared Bat, Ozark Big-eared Bat and Gray Bat. The Service also concurs with determinations for all other listed identified species. 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.

Sincerely,



Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\FA3610 Panther Creek Str. & Apprs\AFO Letter -Job FA3610 - 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:
Consultation Code: 04ER1000-2019-SLI-1585
Event Code: 04ER1000-2020-E-00636
Project Name: Panther Creek Str. & Apprs. (S) FA3610

December 10, 2019

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

To Whom It May Concern:

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment(s):

- Official Species List
-

Official Species List

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

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2019-SLI-1585

Event Code: 04ER1000-2020-E-00636

Project Name: Panther Creek Str. & Apprs. (S) FA3610

Project Type: BRIDGE CONSTRUCTION / MAINTENANCE

Project Description: This is a bridge replacement project on County Road 36 over Panther Creek in Johnson County Arkansas. Bridge replacement will be north (upstream) of the existing bridge with no detour during construction.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.69051560769665N93.52442215086293W>



Counties: Johnson, AR

Endangered Species Act Species

There is a total of 10 threatened, endangered, or candidate species on this species list.

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

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

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

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

Mammals

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6329	Endangered
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened
Ozark Big-eared Bat <i>Corynorhinus (=Plecotus) townsendii ingens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7245	Endangered

Birds

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Proposed Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened
Whooping Crane <i>Grus americana</i> Population: U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/758	Experimental Population, Non- Essential

Insects

NAME	STATUS
American Burying Beetle <i>Nicrophorus americanus</i> Population: Wherever found, except where listed as an experimental population No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/66	Endangered

Flowering Plants

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

Critical habitats

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



File Code: 2350**Date:** May 1, 2020**Route To:****Subject:** Mulberry Wild and Scenic River Section 7(a) Determination, Panther Creek Bridge Replacement**To:** Forest Supervisor, Ozark - St. Francis National Forests

The request for a Section 7(a) determination under the Wild and Scenic River Act (P.L. 90-542) for the Panther Creek Bridge Replacement near the Mulberry Wild and Scenic River (WSR) is approved. A regional staff review concurs with the Ozark - St. Francis National Forests analysis that the proposed action will not invade or unreasonably diminish the Outstandingly Remarkable Values for which the Mulberry WSR was designated. The bridge replacement will enhance water quality and free-flow in the long term.

For questions, please contact John Campbell, Wilderness & Wild and Scenic River Program Manager, at john.campbell@usda.gov or 404-805-8110.

KEN ARNEY
Regional Forester

Enclosure

cc: Robert Duggan, Amy Burt



Section 7(a) Wild and Scenic Rivers Act Determination

ArDOT Job Number FA3610
Panther Creek Str. & Apprs. (S)
Johnson County

The purpose of this document is to analyze whether the proposed bridge replacement on Johnson County Road 36/5440 over Panther Creek, a tributary of the Wild and Scenic River-designated Mulberry River, would invade or unreasonably diminish the recreation and fisheries outstandingly remarkable values for which the Mulberry River was designated by Congress. This document, prepared by the Arkansas Department of Transportation (ARDOT) in coordination with the Federal Highway Administration and the U.S. Forest Service (USFS) Ozark-St. Francis National Forests, analyzes the effects of the project on the Mulberry Wild & Scenic River (WSR) and the outstanding remarkable values (**Recreation & Fisheries**) for which the river was designated. The bridge must be replaced because it has substantial safety issues such as deck deficiencies, is weight-restricted, has inadequate roadway width, and is a fracture critical structure.

Section 7(a) of the Wild and Scenic Rivers Act provides a specific standard for review of developments below or above or on a stream tributary to a designated river. Such developments may occur as long as the project “will not invade the area or unreasonably diminish the outstanding remarkable values, (**Recreation & Fisheries**) identified in the area as of the date of designation...” This standard applies to projects outside the river corridor but on the same river or tributary.

Proposed Activity

The ArDOT is proposing the replacement of the Panther Creek Bridge crossing Panther Creek, a tributary 0.25 mile upstream of the Mulberry WSR. The bridge must be replaced because it has substantial safety issues such as deck deficiencies, is weight restricted, has inadequate roadway width, and is a fracture critical structure. The proposed bridge would be located approximately 20' upstream of the existing structure and would be a four-span continuous composite w-beam unit with trestle end bents on steel h-piles and multi-column intermediate bents on spread footings. There will also be in-stream temporary work roads consisting of clean riprap and pipes maintaining low flow conditions constructed 43' upstream and 70' downstream of the existing structure. Only one work road will be in place at any given time.

This project will have a short-term, very temporary indirect effect on the scenic value of the Mulberry WSR due to the construction activities taking place 0.25 miles upstream on the tributary to the main river channel. Implementation is planned to occur in the Fiscal Year of 2021-2022. It has been estimated that this project is anticipated to take 75 to 105 working days to complete.

In an effort to minimize potential impacts, any work within the stream channel will take place in low- flow periods and erosion and sedimentation control measures will be implemented. These will include but are not limited to:

- Installation of silt barriers at the base of cuts where applicable.
- Use of only native or non-persistent non-native species when seeding soil disturbance activities authorized by the US Forest Service.

Based on mandatory implementation of erosion control measures and the limited scope and short duration of work involved, permanent adverse effects resulting from the proposed management actions will be unlikely. Although some short-term temporary reasonable reduction of water quality may occur, overall stream health will be maintained and/or slightly improved. The bridge replacement will allow for improved current and future transportation needs of the area, while reducing the potential threat of stream degradation which could be caused by a failure of the Panther Creek Bridge.

Location

The Proposed Project is located in Township 12 North, Range 24 West, Section 22 in Johnson County Arkansas (35.6905°, -93.5249°) at the Highway 215 crossing of Panther Creek. (See the attached maps for descriptions of the project area.) Panther Creek is a tributary on Mulberry WSR with the confluence approximately 0.25 down from the project location. This section of the tributary is not part of the Wild and Scenic River designation or corridor, but can influence water flow as it enters Mulberry WSR.

The Mulberry WSR, one of six designated Wild & Scenic Rivers on the Ozark-St. Francis National Forests, is comprised of two segments: Recreational (36.6 mile) and Scenic (19.4 miles). The 36.6-mile Upper Mulberry Recreational segment is from its origin in T13N, R23W, Section 32 to Big Eddy Hollow in T11N, R23W, Section 13. The 19.4-mile Lower Mulberry is from Big Eddy Hollow to the Ozark-St. Francis National Forests Boundary. In addition, the Mulberry WSR contains the only designated river trail (26.8 miles) on the Forests. The river trail starts at Hwy 103 in Oark, AR and ends at the Forest Boundary near Mill Creek. Panther Creek flows into the Upper Mulberry Recreational segment of the Mulberry WSR, just east of Oark, AR.

Evaluation Criteria for Section 7(a)

Section 7(a) of the Wild and Scenic Rivers Act provides a specific standard for review of developments below or above or on a stream tributary to a designated river. Such developments may occur as long as the project “will not invade the area or unreasonably diminish the outstanding remarkable values, (**Recreation & Fisheries**) identified in the area

as of the date of designation...” This standard applies to projects outside the river corridor but on the same river or tributary.

The proposed bridge replacement is on Panther Creek approximately 0.25 mile upstream of its confluence with the Mulberry River. Although the project and all associated work is located outside of the designated Wild and Scenic River corridor and wholly located on private/county/state property, its location on a tributary of the Mulberry WSR, necessitates evaluation of the proposed bridge replacement project for potential effects under Section 7(a) of the Wild and Scenic Rivers Act.

The initial question to be addressed is whether or not the proposed project invades the designated river. The term invade is defined as encroachment or intrusion upon. If the project is determined to invade the designated river, the proponent would be advised to develop measures to eliminate this unacceptable effect.

If the proposed project does not invade the designated river, the next question to be answered, relative to the standard in Section 7(a), is whether or not the proposed project will “unreasonably diminish” any of the specified values. Given that the standard implies that some diminution of values may be determined reasonable, there are two questions to consider:

1. Does the proposed project cause diminution of the Recreation and Fisheries values of the designated river as present at the date of designation?
2. If there is diminution, is it unreasonable? This would suggest an evaluation of the magnitude of the loss. Factors to be considered include:
 - (1) Whether the value contributed to the designation of the river (i.e., outstandingly remarkable); and,
 - (2) The current condition and trends of the resource. (If diminution is determined unreasonable, measures may be recommended to reduce adverse effects to within acceptable levels.)

Rationale for Determination

The lead agency for environmental clearance of the proposed project is the Federal Highway Administration (FHWA). The project currently qualifies as an FHWA categorical exclusion under the 2019 Programmatic Agreement Between the Federal Highway Administration, Arkansas Division and the Arkansas Department of Transportation Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid

Highway Projects. The proposed project does not involve National Forest lands and does not require a USFS NEPA decision. Further rationale for the determination follows:

Invade

The proposed project is not anticipated to invade the Mulberry WSR and its associated Wild and Scenic River corridor. The existing bridge to be replaced over Panther Creek is approximately 0.25 mile upstream of the Mulberry WSR and the new bridge will be replaced immediately upstream of the existing bridge. There may be temporary work roads immediately downstream used for disassembly and removal of the existing bridge, but this work will not encroach upon the Mulberry WSR or its designated corridor.

Diminish

The proposed project is not anticipated to unreasonably diminish any of the specified values of the Mulberry River and its associated Wild and Scenic River corridor.

Outstanding Remarkable Values (ORV's)

Two outstandingly remarkable values were identified in the Final Environmental Impact Statement for Mulberry WSR Management Plan. Those values are Recreation and Fisheries. These outstanding remarkable values were the main criteria used to select Mulberry for wild and scenic designation. No significant long-term or cumulative adverse effects on these scenic and recreation resources are anticipated.

Recreation

The recreation outstandingly remarkable value description in the Mulberry River Wild and Scenic River Management Plan states that “canoeing, camping, swimming, and fishing are the primary forms of recreation.” All work will be conducted outside of the Wild and Scenic River corridor and best management practices will prevent indirect effects, such as sediment traveling off of the construction project, from affecting the Mulberry River. The proposed project will not permanently or temporarily limit or adversely affect recreational opportunities on the Mulberry WSR, and is not expected to unreasonably diminish the recreation values of the Mulberry WSR.

Fisheries

The fisheries outstandingly remarkable value description in the Mulberry River Wild and Scenic River Management Plan states that the Mulberry River “has been recognized by the Arkansas Game and Fish Commission as one of the premier smallmouth and spotted bass fisheries in Arkansas.” The proposed project will replace the existing bridge with a new bridge, which accommodates the movement

of fish and other aquatic organisms, and the new structure will be located upstream of the existing structure, moving the impacts further from the Mulberry River. There may be temporary impacts to water quality on Panther Creek, but these effects are anticipated to be minor and not reach the Mulberry WSR corridor through the use of sediment and erosion control best management practices during construction. The proposed project is not expected to unreasonably diminish the fisheries values of the Mulberry.

Other Values examined in relation to the MWSR

Scenic

The Mulberry WSR is identified as a state scenic river. It is located in a previously-disturbed area within the Catalpa community and the new bridge would be replaced upstream of the existing structure, further from the Mulberry River. The proposed project and new structure will not be visible from the Mulberry River and will not directly or indirectly affect the scenic integrity of the Wild and Scenic River corridor. The proposed project is not expected to unreasonably diminish the scenic values of the Mulberry WSR.

Wildlife

A bat survey was conducted for the proposed project in summer 2018 using the U.S. Fish and Wildlife Service protocols. One big brown bat (*Eptesicus fuscus*) and one evening bat (*Nycticeius humeralis*) were captured; no federally-listed species were identified. There will be some loss of habitat for multiple species of wildlife due to tree clearing, but these impacts are anticipated to be minor and mostly temporary in nature as the surrounding area revegetates following construction. The project area is also in the previously-disturbed Catalpa community. The proposed project is not expected to unreasonably diminish the wildlife values of the Mulberry WSR.

Determination under Section 7(a) of the Wild and Scenic River Act

I have reviewed the description of effects that are anticipated by ARDOT job number FA3610, Panther Creek Str. & Apprs. (S), a bridge replacement project on Panther Creek, a tributary to the Mulberry Wild & Scenic River corridor. The project will not "Invade the Area or Unreasonably Diminish" the values for which the Mulberry River was added to the National Wild and Scenic River System.

Recommended by:

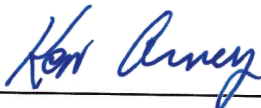


Lori Wood, Forest Supervisor
Ozark-St. Francis National Forests



Date

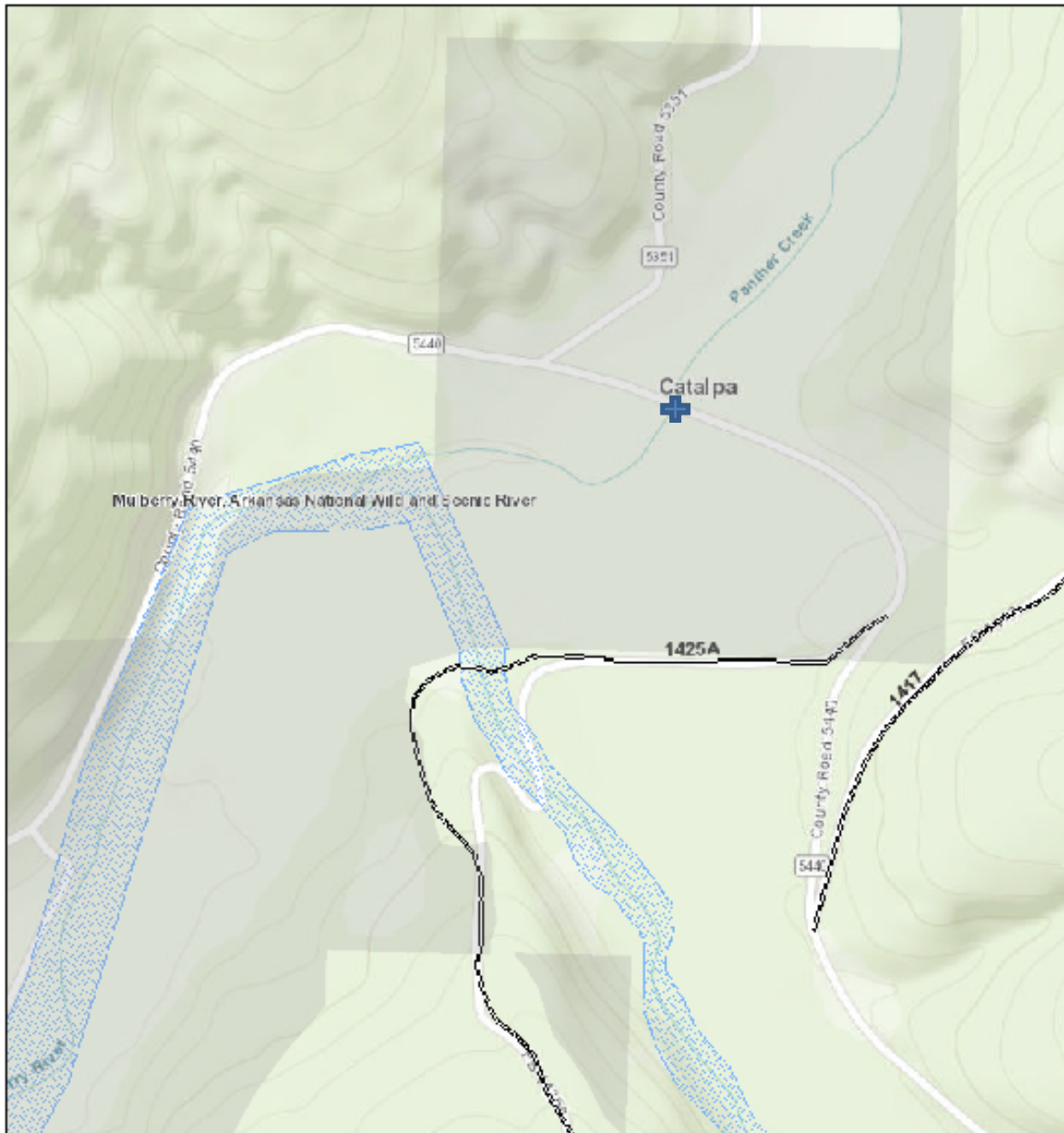
Approved by:



Ken Arney, Regional Forester
U.S. Forest Service, Region 8

Date

Panther Creek

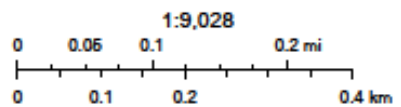


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PVT

Motor Vehicle Use Map: Trails

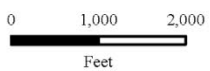
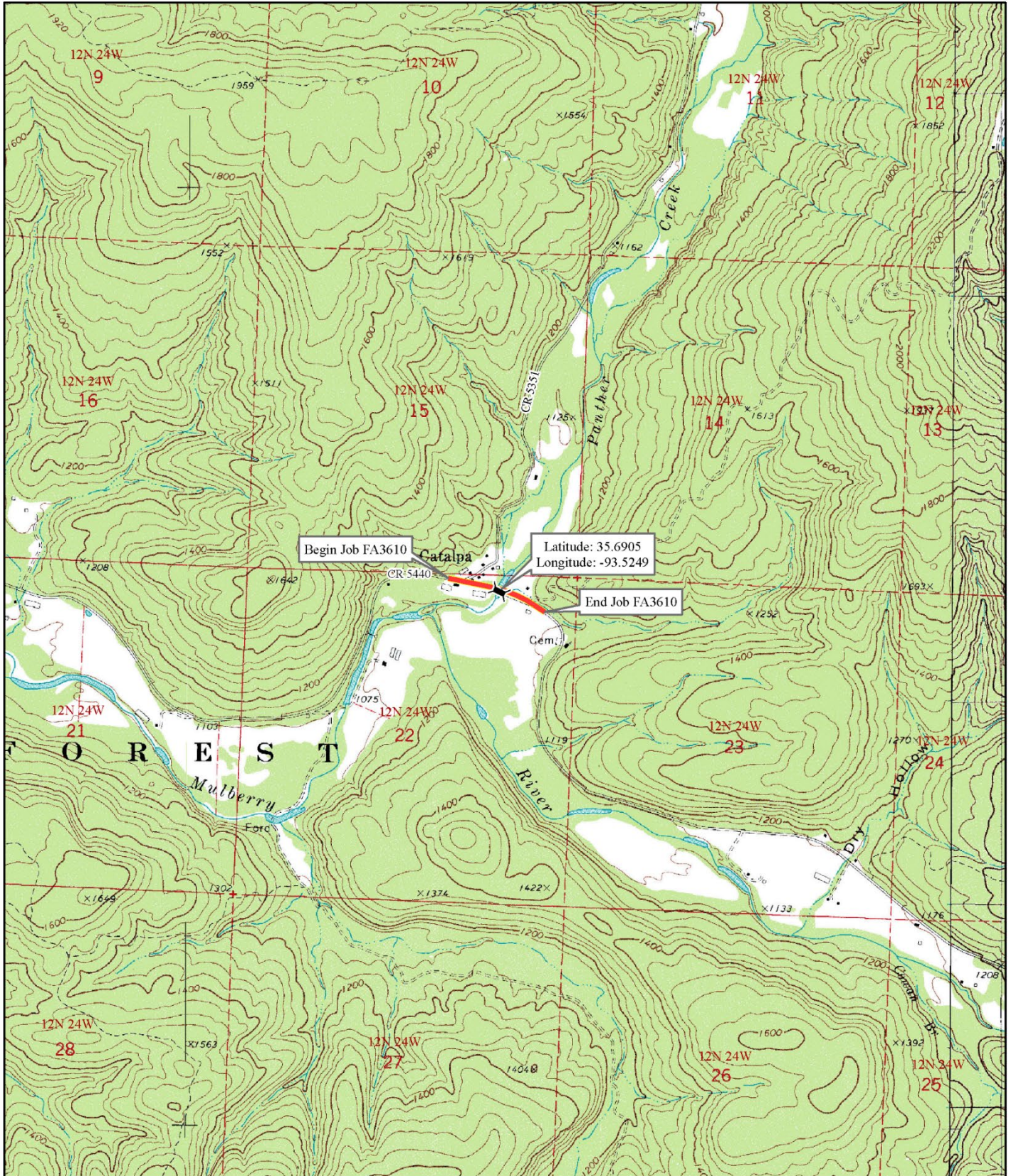
- Trails open to all vehicles, Yearlong
- Trails open to all vehicles, Seasonal
- Trails open to vehicles 60' or less in width, Yearlong
- Trails open to vehicles 60' or less in width, Seasonal



US Forest Service, Geospatial Service and Technology Center (GSTC), National Inventoried Roadless Area Program. Sources: Esri, HERE, Garmin, Intermap, Increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri

Ozark-St. Francis NF

Texas Parks & Wildlife, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METINASA, EPA, USDA | The USDA Forest Service makes no warranty, expressed or implied, including the



ARDOT - Environmental GIS - Strawn
March 7, 2018

Job FA3610
Panther Creek Str. & Apprs.
Johnson County

Project Location

USGS Topographic Map:
Oak 1973 USGS



Upper View of Johnson County Road 36/5440 Bridge over Panther Creek



Side View of Johnson County Road 36/5440 Bridge over Panther Creek



View Below of Johnson County Road 36/5440 Bridge over Panther Creek



View Looking Downstream on Panther Creek towards the Mulberry Wild & Scenic River

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

ARDOT Job Number FA3610 FAP Number STPR-0036(24)
Job Title Panther Creek Str. & Apprs.

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No impacts anticipated
Cultural Resources	X			"No adverse effect" on historic culvert
Economic	X			No impacts anticipated
Endangered Species	X			"May affect, not likely to adversely affect"
Environmental Justice/Title VI	X			No impacts anticipated
Fish and Wildlife	X			Temporary and minor impacts
Floodplains	X			No regulatory floodplains in project area
Forest Service Property	X			No OSFNF property impacted
Hazardous Materials/Landfills		X		Coordination with ADEQ on illegal dump
Land Use		X		3.0 acres proposed ROW, 1.0 acre TCE
Migratory Birds	X			Migratory Bird SP added to contract
Navigation/Coast Guard	X			No navigable waterways in project area
Noise Levels	X			No increases due to project
Prime Farmland		X		0.7 acre prime farmland converted
Protected Waters		X		Section 7 evaluation for Mulberry WSR*
Public Recreation Lands	X			No impacts anticipated
Public Water Supply/WHPA	X			Wellhead Protection SP added to contract
Relocatees	X			No relocations anticipated
Section 4(f)/6(f)	X			No impacts anticipated
Social	X			No impacts anticipated
Underground Storage Tanks	X			No impacts anticipated
Visual	X			Temporary and minor during construction
Streams		X		231 linear feet of stream impacts
Water Quality		X		Temporary during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? Yes
 Short-term Activity Authorization Required? Yes
 Section 404 Permit Required? Yes Type Nationwide 14

Remarks: .

*USFS has determined that the project will not "invade or unreasonably diminish" the Mulberry WSR

Signature of Evaluator Susan Stapfield Date May 6, 2020

Date Submitted May 30, 2018
Date Returned _____

STATE AID DESIGN REQUEST

Job Number: FA3610 FAP Number: STPR-00366() County: Johnson County
Job Name: Panther Creek Str. & Apprs. (S)
Design Engineer: Al Fleagle Environmental Staff _____
Brief Project Description: Replace existing obsolete bridge.

A. Existing Conditions:

1. Roadway Width: Metric _____ English 13'-6" (Varies)
2. Shoulder Width: Metric _____ English NONE
3. Number of Lanes and Width: Metric _____ English 1 @ 13'-6"
4. Existing Right-of-Way: Metric _____ English 40'

B. Proposed Improvements:

1. Roadway Width: Metric _____ English 28'-0"
 2. Shoulder Width: Metric _____ English 4'-0"
 3. Number of Lanes and Width: Metric _____ English 2 @ 10'-0"
 4. Average Right-of-Way: Metric _____ English Varies 60' to 155'
- If bridge(s) will be replaced by culverts give dimensions: N/A

C. Construction Information:

Detour: (if applicable)

Where: N/A

Approximate total length of detour: _____ kilometer(s) _____ mile(s)

D. Design Data:

2018 ADT: 100 2038 ADT: 120 Trucks: 9 %

Design Speed: 40 MPH

E. Approximate total length of project: _____ kilometer(s) 0.36 mile(s)

F. Justification for proposed improvements: To replace functionally obsolete bridge

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

H. Have you coordinated with any of the following: (Provide name and date.)

County Officials: Johnson County Judge 2/27/2018

State Agency: No

Federal Agency: No

BRIDGE INFORMATION – FINAL

Job Number: FA3610 FAP Number: STPR-0036(24) County: JohnsonJob Name: Panther Creek Str. & ApprsrDesign Engineer: Thomas Gerard Environmental Staff: Josh Seagraves**A. Description of Existing Bridge**

1. Bridge Number: 18067 over Panther Creek
2. Route: CR 36 Section: N/A Log Mile: N/A
3. Length: 203.0 Ft. Br. Rdwy. Width: 12.1 Ft. Deck Width (Out-to-Out) 14.0 Ft.
4. Type Construction: Timber deck with an asphalt overlay on steel girders spans supported by concrete columns and concrete footings
5. Deficiencies: Inadequate roadway width
6. HBRRP Eligibility: Qualif. Code: N/A Sufficiency Rating: 39.4
7. Are any Condition Component ratings at 3 or less? No

B. Proposed Improvements

1. Length: 272.167 Ft. Br. Rdwy. Width: 24.0 Ft. Deck Width (Out-to-Out) 27.167 Ft.
2. Travel Lanes: 2 -10' Lanes
3. Shoulder Width: 2' Shoulders on both sides of roadway
4. Sidewalks? No Location: N/A Width: N/A Ft.

C. Construction Information

1. Location in relation to existing bridge: Approximately 18.5' upstream
2. Superstructure Type: Continuous Composite W-Beam Unit
3. Span Lengths: 60' – 75' – 75' – 60'
4. Substructure Type: Trestle end bents on steel h-piles, multi-column intermediate bents on spread footings
5. Ordinary High Water Elev. (OHW): 1088.0 No. of Bents inside OHW Contours: 2
6. Cast Concrete Below OHW: 52.7 yd³ Bent Excavation: 216 yd³ Backfill: N/A yd³
7. Channel Excavation below OHW? No Surface Area: N/A ft² Volume: N/A yd³
8. Fill below OHW? No Surface Area: N/A ft² Volume: N/A yd³
9. Riprap below OHW? No Volume: N/A yd³

D. Work Road Information

1. Work Road(s) Req'd? Yes Location: 43' Up & 70' Down Top Width: 20 ft
2. Fill below OHW? Yes Surface Area: 4,262 ft² Volume: 511 ft³
3. Pipes Required for Backwater Criteria? No Waterway Opening: N/A ft²

E. Detour Information

1. Detour Bridge? No Location in relation to Existing Bridge: N/A
2. Length: N/A ft Br. Rdwy. Width: N/A ft Deck Elevation: N/A
3. Volume of Fill below OHW: N/A ft³ Surface Area: N/A ft²

F. Coordination with Outside Agencies

1. Has Bridge Division coordinated with any outside agencies? Y/N

Agency	Person Contacted	Date



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

July 22, 2020

Regulatory Division

NATIONWIDE PERMIT NO. SWL 2020-00208

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

Dear Mr. Fleming:

Please refer to your recent request concerning Department of the Army permit requirements pursuant to Section 404 of the Clean Water Act. You requested authorization for the placement of dredged and fill material in waters of the United States associated with replacing the bridge over Panther Creek and upgrading the approaches. The existing approaches consist of a single 12-foot-wide lane and a 14-foot-wide bridge that is 203 feet in length. Upgrades include two 10-foot-wide lanes and a 27-foot-wide bridge that is 272 feet in length. The new bridge will be constructed approximately 35 feet upstream from the existing bridge. The project will permanently impact approximately 27 linear feet of Panther Creek and approximately 171 linear feet of an adjacent unnamed tributary. Panther Creek is located approximately 0.25 miles upstream of the Mulberry River, which is a Wild and Scenic River (WSR) and Extraordinary Resource Water. No work is proposed within the WSR designated corridor but due to the proximity of the Mulberry River, the project was evaluated under Section 7 of the Wild and Scenic Rivers Act. The U.S. Forest Service determined that the bridge replacement project does not invade or unreasonably diminish the values which lead to the Mulberry River being designated a WSR. The project will require individual Section 401 Water Quality Certification (WQC) from the Arkansas Department of Environmental Quality (ADEQ). ArDOT determined that the project may affect but is not likely to adversely affect the Northern Long-eared Bat (*Myotis septentrionalis*), Gray Bat (*Myotis grisescens*) Indiana Bat (*Myotis sodalis*) and Ozark Big-eared Bat (*Corynorhinus townsendii ingens*) with the inclusion of the ArDOT Special Provisions for tree clearing activities. The U.S. Fish and Wildlife Service concurred with this determination. There are no cultural resources impacts. The Federal Highway Administration approved the project as a Tier 3 Categorical Exclusion on May 7, 2020. The project is located on Johnson County Road No. 36/5440 at the Community of Catalpa, in section 22, T. 12 N., R. 24 W., Johnson County, Arkansas. A vicinity map, project location map and temporary work roads drawing are enclosed.

The proposed activities are authorized by Department of the Army Nationwide Permit (NWP) No. 14 (copy enclosed), provided that the General Conditions therein and the **Special Conditions** below are met, and you obtain the required individual WQC from the ADEQ. 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 prohibit the on-site clearing of trees from April 1 through November 15 to avoid potential impacts to the Northern Long-eared Bat and Indiana Bat.**
- 2. ArDOT agrees to prohibit the off-site clearing of trees from March 15 through November 14 or within 0.5 mile of any Indiana Bat hibernaculum.**
- 3. 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.**
- 4. Should any cave openings be exposed during excavation activities authorized by this permit, ArDOT agrees to stop work immediately and initiate the Federal and State coordination necessary to determine if threatened or endangered species are present.**

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.

If you have any questions regarding the required individual Section 401 WQC, you should contact Mr. Jim Wise or Ms. Melanie Treat at the ADEQ, Water Division, 5301 Northshore Drive, North Little Rock, Arkansas 72118, telephone (501) 682-0040.

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

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

Your cooperation in the Regulatory Program is appreciated. If you have any additional questions about this permit or any of its provisions, please contact Mr. Johnny McLean at (501) 324-5295 and refer to Permit No. **SWL 2020-00208, Panther Creek Structure and Approaches near Catalpa (ArDOT Project No. FA3610)**.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Joyner".

Chris Joyner
Chief, Regulatory Evaluation Branch

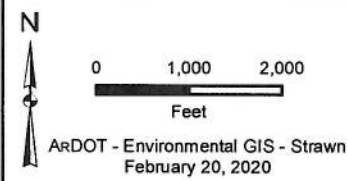
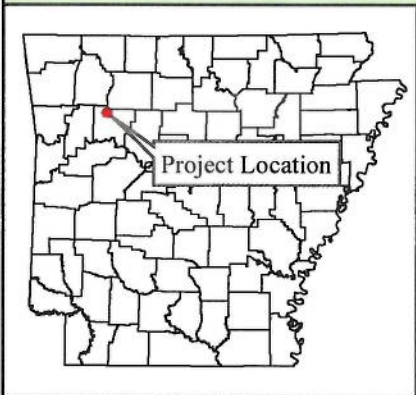
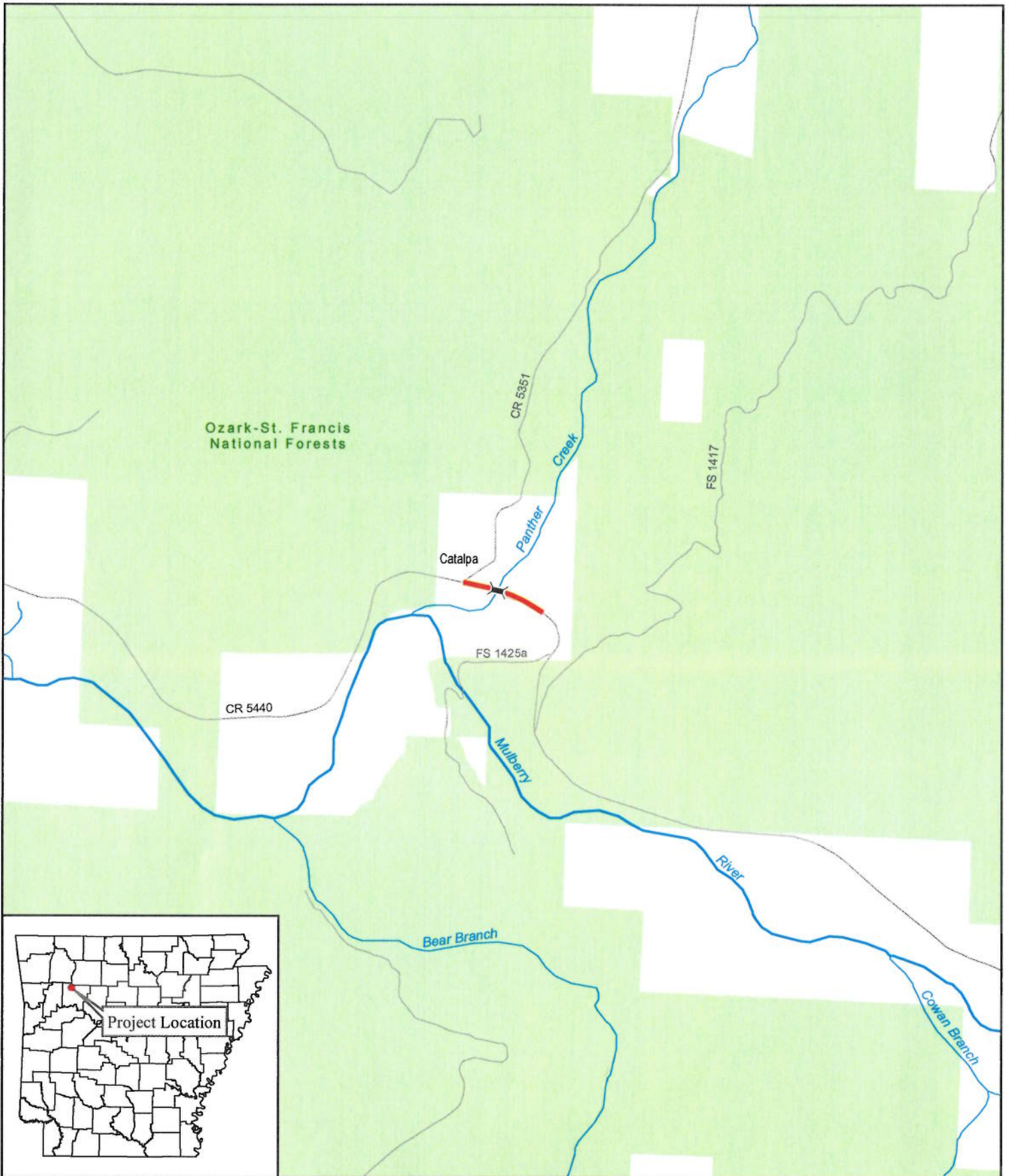
Enclosures

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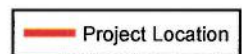
Ms. Melanie Treat, Arkansas Department of Environmental Quality, w/cy encls.

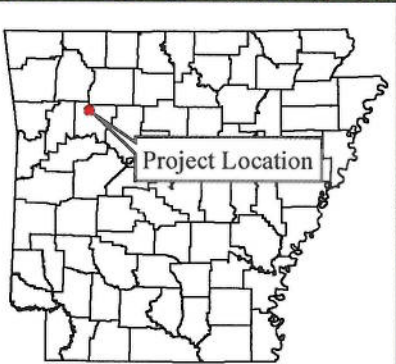
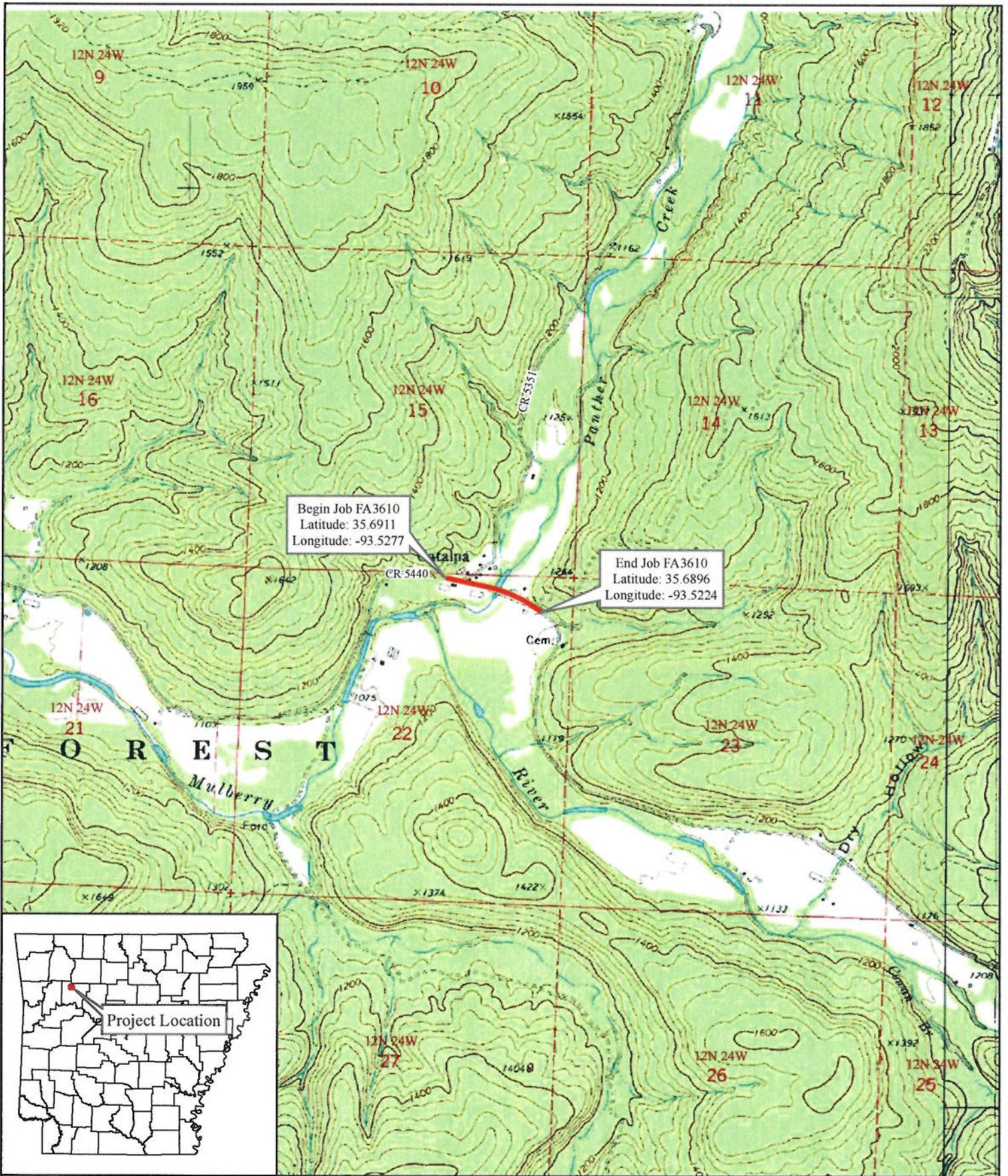
Mr. Lindsey Lewis, U.S. Fish & Wildlife Service, w/cy encls.

Regulatory Enforcement, w/cy encls.



NWP No. SWL 2020-00208
Arkansas Dept. of Transportation
Panther Creek Bridge and Approaches
Johnson County near Catalpa
July 2020 **Sheet 1 of 3**



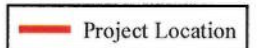


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ArDOT - Environmental GIS - Strawn
November 7, 2017

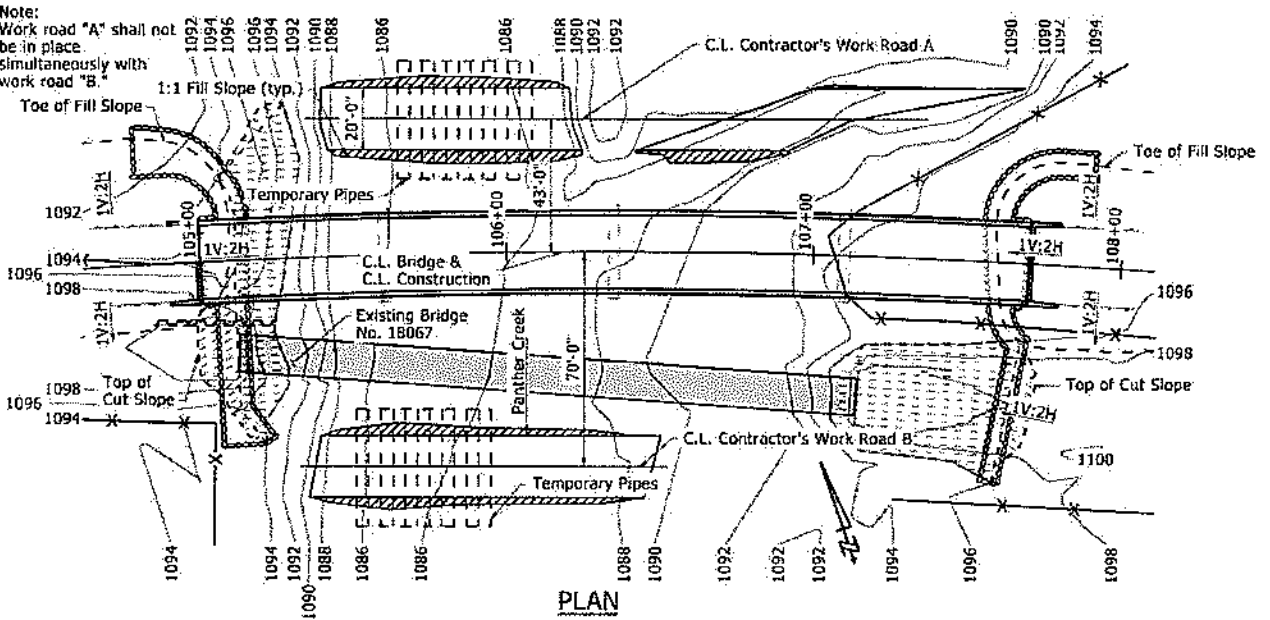
Job FA3610.
Panther Creek Strs. & Apprs.
Johnson County.

Sheet 2 of 3



USGS Topographic Map:
Oak 1973 USGS

Note:
Work road "A" shall not
be in place
simultaneously with
work road "B."



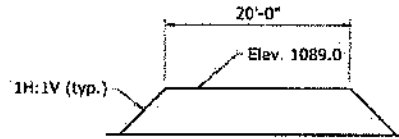
PLAN

Notes:

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

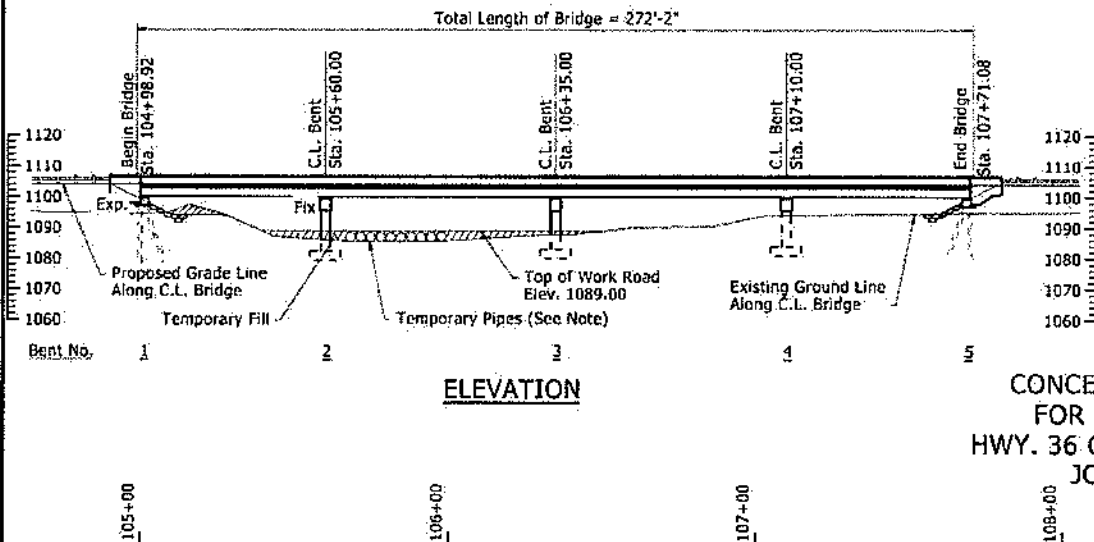
The Contractor may submit an alternative work road plan for approval by the Engineer showing details of and describing the proposed modifications. A primary objective of any proposed modifications should be to minimize the reduction of waterway opening in the floodplain. The top of the alternative work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

Any additional work or expenses incurred preparing, submitting, or completing the alternate work road plan shall be at no additional cost to the Department. See SP Job FA3616 "Construction in Special Flood Hazard Areas" and Section 110.05(c) in the Standard Specifications for additional information. The Contractor is responsible for maintenance of the work road(s) during the contract period.



TYPICAL SECTION
OF WORK ROAD

APPROXIMATE QUANTITIES (BELOW ELEVATION 1089.0)	
Work Pad "A" Fill Area	2,051 Sq. Ft.
Work Pad "A" Fill Volume	296 Cu. Yds.
Work Pad "B" Fill Area	2,201 Sq. Ft.
Work Pad "B" Fill Volume	215 Cu. Yds.



ELEVATION

CONCEPTUAL WORK PLAN
FOR TEMPORARY FILL
HWY. 36 OVER PANTHER CREEK
JOB NO. FA3610

Nationwide Permit No. 14

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

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

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

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

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

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

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

Nationwide Permit General Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Removal of Temporary 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 NWP.

(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 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 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

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

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

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

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

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for

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

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

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

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

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

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

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is

provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

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

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

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

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

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

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

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

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

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

(Transferee)

(Date)

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

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

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

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

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

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

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

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

(1) Name, address and telephone numbers of the prospective permittee;
(2) Location of the proposed activity;
(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and

other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

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

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

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

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and
(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

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

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

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

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

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

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

District Engineer's Decision

In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for

in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

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

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

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

Further Information

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