



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
CORPS OF ENGINEERS
INDIANAPOLIS REGULATORY OFFICE
8902 OTIS AVENUE, SUITE S106B
INDIANAPOLIS, INDIANA 46216

January 28, 2013

Operations Division
Regulatory Branch (North)
ID No. LRL-2004-1209-dlz

Mr. Thomas J. Warrner
Indiana Department of Transportation
100 North Senate Avenue, Room N642
Indianapolis, IN 46204

Dear Mr. Warrner:

This is in regard to your application dated July 5, 2012, for a Department of Army (DA) permit to authorize the proposed revised mitigation plan for DA permit LRL-2004-1209 issued September 9, 2005. Stream bank stabilization activities will be completed along 1,925 linear feet of Laughrey Creek and an unnamed tributary one mile upstream of the SR-262 bridge (Des. No. 0710010). The mitigation project is located in Section 29, Township 4 North, Range 2 West, Dillsboro in Dearborn County, Indiana. We have reviewed the submitted data relative to Section 404 of the Clean Water Act.

We have determined that the proposed project is authorized under the provisions of our Nationwide Permit (NWP) 33 CFR 330 (27) for Aquatic Habitat Restoration, Enhancement and Establishment Activities as published in the Federal Register on February 21, 2012. We require compliance with the enclosed Terms and General Conditions of the NWP. Compliance and with the Individual Section 401 Water Quality Certification (WQC) issued by the Indiana Department of Environmental Management (IDEM) dated October 2, 2012, is also required. You must comply with any conditions imposed in the WQC as it is part of your NWP 27 authorization. Additionally, you must comply with the following Special Conditions:

1. Tree removal is prohibited during the period of April 1 - September 30 to avoid the potential for incidental take of the federally endangered Indiana bat in an occupied roost tree.
2. The stream and wetland mitigation, monitoring, and reporting shall be performed in accordance with the "SR-48 Stream Mitigation Plan, INDOT Des. No. 0710010", dated June 8, 2012. The mitigation shall be constructed within eighteen months of issuance of permit.

3. Monitoring reports will be submitted to the U.S. Army Corps of Engineers, Indianapolis Regulatory Office by December 31 of each year in which monitoring was conducted. An as-built report will be submitted within 60 days of completion of the mitigation construction
4. The total successful stream and wetland mitigation shall consist of no less than 1,925 linear feet of stream bank stabilization and 4.5 acres of riparian restoration in accordance with the approved mitigation plan referenced in Special Condition 2.
5. The permittee shall permanently protect the entire mitigation area(s) through the implementation of the Corps approved deed restriction. A draft copy of the deed restriction for the mitigation area(s) shall be submitted within 90 days of the issuance of this Department of the Army permit for Corps review and approval. A signed and recorded copy of the deed restriction shall be submitted within 30 days following notification from the Corps to record the final deed restriction. The Corps shall be notified in writing prior to the transfer of the mitigation site to another entity or individual. Permanent protection shall transfer with the property.
6. The permittee's responsibility to complete the required compensatory mitigation as set forth in the above Special Conditions will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.

This authorization is valid for a period of 2 years. The enclosed Compliance Certification should be signed and returned upon completion of the project. Please note that this NWP does not obviate the need to obtain other Federal, state, and local authorizations that may be required.

Attached to this RGP verification is a preliminary jurisdictional determination (JD), a Notification of Appeal Process (NAP) fact sheet, and Request for Appeal (RFA) form. However, a preliminary jurisdictional determination is not appealable and impacting "waters of the U.S." identified in the preliminary JD will result in you waiving the right to request an approved JD at a later date. An approved JD may be requested (which may be appealed), by contacting me for further instruction.

If you have any questions concerning this matter, please contact Daniel Zay by writing to the above address or by calling 317-543-9424. Any correspondence should reference our assigned Identification Number LRL-2004-1209-dlz.

Sincerely,

A handwritten signature in black ink, appearing to read "Laban C. Lindley". The signature is written in a cursive style with a large, looping initial "L".

Laban C. Lindley
Team Leader
Indianapolis Regulatory Office

Enclosures

Copy Furnished: IDEM (Randolph)

CELRL-OP-FN
Application LRL-2004-1209-dlz

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Memorandum Documenting National Permit Verification

Applicant: Indiana Department of Transportation

Project Locations (*Waterway, Section, Township, Range, City, County, State*):
Laughery Creek and an unnamed tributary, Section 29, Township 4 North, Range 2 West, Dillsboro, Dearborn County, Indiana.

Pre-Construction Notification Receipt Date: 7/6/2012 **Complete?** Yes No

Additional Information Requested Date: 8/23/2012

Pre-Construction Notification Complete Date: 1/14/2013

Waters of the US:

*see Preliminary JD dated: no Preliminary JD required

Authority: Section 10 Section 404 Section 103

Project Description (*Describe activities in waters of the U.S. considered for verification*):

This permit action addresses the mitigation requirements of the RGP 01 dated 9/8/2005. The permit authorized the extension of an existing box culvert by 575 linear feet with a 150 linear foot riprap apron at the outlet and 2,250 linear feet of ephemeral channel relocation. The impacts where part of the SR-48 intersection realignment with US-50 near Lawrenceburg, Indiana. The permit action predates the 2008 Mitigation Rule.

The applicant proposes to conduct bank stabilization and riparian habitat restoration along 1,610 linear feet of the north bank of Laughery Creek. In addition, bank stabilization and riparian restoration would be conducted on both banks along 315 linear feet of a small unnamed tributary. Restoration treatments requiring placement of material below the OHWM include: native stone placed along 65 feet of the tributary near the confluence, native stone along 50 linear feet of the Laughery Creek channel, 480 linear feet of wood toe structure with vegetated bank overlay and bank shaping, 870 feet of stone toe installation with bank shaping, boulders and cobble to construct one stream barb, and riprap placed for key trenches. The total length of material placement is 1,465 linear feet and will not exceed 0.15 acres. Riparian restoration in addition to the stream bank stabilization would include approximately 4.5 acres of riparian forest, herbaceous bank vegetation and prairie restoration.

Type of Permit Requested: NWP # 27 RGP #

Pre-construction Notification Required: Yes No

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SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification for the Above-Numbered Permit Application

Waiver required to begin work (see GC 31 (a)(2) as applied to appropriate NWP):

Yes No

Rationale:

Coordination with Agencies/Tribes Needed: Yes No Date:

Resolution:

Commenting Agencies: SHPO, USFWS

Substantive Issues Raised and Corps Resolution (Consideration of Comments):

Compliance with Other Federal Laws (If specific law is not applicable write N/A):

a) Endangered Species Act:

Name of species present: Indiana bat (*Myotis soldalis*) locally present.

Effects determination: Not likely to adversely affect.

Date of Service(s) concurrence: 3/8/2012

Basis for "not likely to adversely affect" determination: Habitat enhancement project will avoid removing habitat trees and permittee will observe a seasonal tree removal restriction for incidental tree removals. Otherwise complies with GP General Conditions.

Additional information (optional):

b) Magnuson-Stevens Act (Essential Fish Habitat): N/A

Name of species present:

Effects determination:

Date of Service(s) concurrence: Basis for "no effect" determination:

Additional information (optional):

c) Section 106 of the National Historic Preservation Act:

Known site present: yes no

Survey required/conducted: yes no

Effects determination: No effect.

Rationale: No historic properties present.

Date consultation complete (if necessary): 3/26/2012

Additional information (optional): See supplemental 106 documentation.

d) Section 401 Water Quality Certification:

Individual certification required: yes no

Issued 10/2/2012 Waived Denied

e) Coastal Zone Management Act: N/A

Individual certification required: yes no

Issued Waived Denied

Additional information (optional):

f) Wild and Scenic Rivers Act: N/A

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SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification for the Above-Numbered Permit Application

Project located on designated or “study” river: yes no

Managing Agency:

Date written determination provided that the project will not adversely affect the Wild and Scenic River designation or study status:

Additional information (optional):

g) Other

Special Conditions Required (include rationale for each required condition/explanation for requiring no special conditions): yes no

1. The project as proposed would not result in more than minimal individual or cumulative adverse impact, would not be contrary to the public interest, and meets all the terms and conditions of NWP 27, provided the following special condition is adhered to: Tree removal is prohibited during the period of April 1 – September 30 to avoid the potential for incidental take of the federally endangered Indiana bat in an occupied roost tree.
2. The stream and wetland mitigation, monitoring, and reporting shall be performed in accordance with the “SR-48 Stream Mitigation Plan, INDOT Des. No. 0710010”, dated June 8, 2012. The mitigation shall be constructed within eighteen months of issuance of permit. – *Projects authorized under the Indiana Regional General Permit 01 that result in the loss of greater than 0.10 acre of special aquatic sites (including wetlands) and/or 300 linear feet of stream, require mitigation. USACE Regulations at 33 CFR 332 requires that a mitigation plan be submitted that outlines the mitigation steps.*
3. Monitoring reports will be submitted to the U.S. Army Corps of Engineers, Indianapolis Regulatory Office by December 31 of each year in which monitoring was conducted. An as-built report will be submitted within 60 days of completion of the mitigation construction. -*USACE Regulations at 33 CFR 332.6 requires monitoring of compensatory mitigation projects to ensure the project is successful in meeting its performance standards and accomplishing its objectives. Monitoring is required for a minimum of five years, and the submittal of reports are required to determine if the mitigation is meeting the required standards and objectives.*
4. The total successful stream and wetland mitigation shall consist of no less than 1,925 linear feet of stream bank stabilization and 4.5 acres of riparian restoration in accordance with the approved mitigation plan referenced in Special Condition 2. – *USACE Regulations at 33 CFR 332.3(k) require that the amount and type of compensatory mitigation must be clearly stated in the special conditions of the general permit verification.*

5. The permittee shall permanently protect the entire mitigation area(s) through the implementation of the Corps approved deed restriction. A draft copy of the deed restriction for the mitigation area(s) shall be submitted within 90 days of the issuance of this Department of the Army permit for Corps review and approval. A signed and recorded copy of the deed restriction shall be submitted within 30 days following notification from the Corps to record the final deed restriction. The Corps shall be notified in writing prior to the transfer of the mitigation site to another entity or individual. Permanent protection shall transfer with the property. *USACE Regulations at 33 CFR 332.7 requires that compensatory mitigation projects must be provided long-term protection through real estate instruments or other available mechanisms, as appropriate.*

6. The permittee's responsibility to complete the required compensatory mitigation as set forth in the above Special Conditions will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers. *-Regulatory Guidance Letter (RGL) No 08-03 dated 10 OCT 2008, requires this special condition be included in all DA permits that require permittee-responsible mitigation.*

Compensatory Mitigation Determination: The applicant has avoided and minimized impacts to the maximum extent practicable.

- (1) Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level?
 yes no *[If "no," do not complete the rest of this section and include an explanation of why not here]* The proposed project has been designed to avoid and minimize impacts to the aquatic environment to the maximum extent practicable, and adverse effects would not be more than minimal.

- (2) Is the impact in the service area of an approved mitigation bank? yes no
 - i. Does the mitigation bank have appropriate number and resource type of credits available? yes no

- (3) Is the impact in the service area of an approved in-lieu fee program? yes no
 - i. Does the in-lieu fee program have appropriate number and resource type of credits available? yes no

- (4) Check the selected compensatory mitigation option(s):
 - mitigation bank credits
 - in-lieu fee program credits
 - permittee-responsible mitigation under a watershed approach

permittee-responsible mitigation, on-site and in-kind

permittee-responsible mitigation, off-site and out-of-kind

- (5) If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project):

A previous mitigation option in the watershed of the impacted resources was discarded after considerable coordination and design because of withdrawal of support by the property owner. Another alternative site was discarded because of access complications. A thorough search for additional options resulted in no sites in the watershed that were suitable or available for mitigation. On-site and in-kind mitigation was not a practical alternative because of generally steep terrain limiting design options. Also development pressures adjacent to the project area would impact the sustainability of any proposed on-site mitigation. The majority of the impacted stream length was to ephemeral streams and ditches.

The preferred alternative is located along Laughrey Creek . Laughrey Creek is the second watershed approximately 4.5 miles downstream of the impact site near the Ohio River. The mitigation site is 11 miles upstream of the Laughrey Creek/Ohio River confluence. Laughrey Creek and Tanner Creek (impact site) watersheds have similar threats to stream functions and services, the main issues being excess sediment loading from agriculture and habitat impacts from landuse changes.

Although out-of-kind mitigation, the mitigation proposal provides reasonable replacement to the functions and services of the impacted streams in terms of stabilizing an actively eroding stream segment, providing fish and invertebrate in-stream habitat and providing a relatively large area of riparian habitat enhancement. The restoration proposal has good potential to address a significant sediment issue in the Laughrey watershed. The proposed bioengineering techniques constitute a significant expenditure to address stream-bank stabilization.

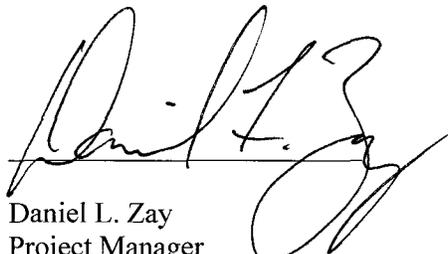
CELRL-OP-FN (Application LRL-2004-1209)

SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification for the Above-Numbered Permit Application

Determination (*Reference D. District Engineer's Decision*):

The proposed activity would result in no more than minimal individual and cumulative adverse environmental effects and would not be contrary to the public interest provided the Special Conditions listed above are adhered to. This project complies with all terms and conditions Nationwide Permit 27.

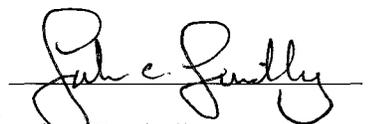
PREPARED BY:



Daniel L. Zay
Project Manager
Indianapolis Regulatory Office

Date: 1/28/13

APPROVED BY:



Laban C. Lindley
Team Leader
Indianapolis Regulatory Office

Date: 1/29/13

**REGULATORY-SECTION 106/Appendix C-
DOCUMENTATION**

Project Manager: Daniel Zay Date: January 22, 2013
first and last name
Applicant: of Transportation Indiana Department Project Name: SR-48 relocation Mitigation for LRL-2004-1209-dlz
ID#: Des. No. 070010

Type of permit: Section 10 Section 404 Section 10 / 404
 NWP# 27 PCN RGP LOP IP Violation

Potential to Affect Historic Properties (to be made by the Regulatory project manager or in consultation with the Regulatory Archaeologist, if necessary):

The undertaking has no potential to affect historic properties, Section 106 is complete, no need to consult with SHPO; 36 C.F.R 800.3(a)(1), Appendix C, Section (3)(b), USACE Interim Guidance April 25, 2005.

Rationale (check all that apply):

- Area has been extensively disturbed by previous work; Area created in modern times;
- Limited nature and scope of undertaking; No historic structures in the permit area or immediate viewshed; The proposed work area is not visually prominent
- Other _____

The undertaking has the potential to affect historic properties or the potential is unknown (submit to regulatory archaeologist along with the following information.

- Map of project area, any off-site mitigation areas, and coordinates;
- Project plans or Public Notice;
- Any correspondence from SHPO or another Federal Agency (if included with permit application);
- Photo(s) of the project area(s) (if included);
- Information about houses, buildings, structures, etc. [including estimated construction dates] (if included);
- Previous Cultural Resources Work [predetermination reports, survey reports, etc.] (if included);
- Cultural Resources Survey Report / EIS / EA/other federal agency determination (if included).

Effect Determination (to be made in consultation with the Regulatory Archaeologist):

- No effects to historic properties; 36 C.F.R. §800.4(d)(1), 33 C.F.R. §325, Appendix C, Section (7)(b), USACE Interim Guidance April 25, 2005 (SHPO concurrence required within 30 days)
- No adverse effects to historic properties; 36 C.F.R. §800.5(d)(1); 33 C.F.R. §325, Appendix C(7)(c), USACE Interim Guidance April 25, 2005 (SHPO concurrence required within 30 days)
- Adverse effect to historic properties 36 C.F.R. §800.5(d)(2) and 33 C.F.R. §325, Appendix C(7)(d), USACE Interim Guidance April 25, 2005 (SHPO concurrence, MOA will be required)

Rationale:

- No Effect: Archaeological and/or Structures survey identified no cultural resources; Archaeological and/or Structures survey identified resources but they are not eligible for the National Register (NR);
- No Adverse Effect: NR-eligible properties are present, but will not be adversely impacted by undertaking;
- Adverse Effect: Eligible properties present and will be adversely impacted by undertaking.

Date Section 106 complete (Choose One):

- SHPO concurred with the Corps' effect determination on [add date] SHPO concurrence w/ FHWA, 3/26/2012
- Memorandum of Agreement (MOA) accepted by the Advisory Council on Historic Preservation on [add date] (Note: this only applies to adverse effect determinations.)