



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 31, 2013

Operations Division
Regulatory Branch (North)
ID No. LRL-2012-677-dlz

Mr. Charles Leser
Madison County Board of Commissioners
2830 West 8th Street
Anderson, IN 46011

Dear Mr. Leser:

This is in regard to the letters of October 3, 2012 and December 5, 2012, from USI Consultants concerning 0.89 miles of proposed road improvements on County Road 300 East near Emporia, Indiana (Des. No. 0901982). The project includes bridge rehabilitation of the Fall Creek and Sly Fork crossings, installation of twin flood bypass culverts and vertical grade changes that would result in regrading of side slopes in some road segments. Approximately 114.75 cubic yards of riprap would be placed along 209 linear feet of stream bank for scour protection associated with the bridge work. The road changes would result in impacts to 6 wetlands for a total impact of 0.315 acres and the relocation of 752 linear feet of an unnamed tributary to Fall Creek. The tributary would be displaced a short distance to the east to accommodate side slope changes. The project is located in Sections 9, 10, 15 and 16, Township 18 North, Range 8 East, Emporia, Madison County, Indiana. We have reviewed the submitted data relative to Section 404 of the Clean Water Act (CWA).

The Louisville, Detroit, and Chicago Districts issued Regional General Permit (RGP) No. 1 pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 CWA on December 15, 2009, for certain activities having minimal impact in Indiana. We have verified that the proposed work with the provided mitigation is considered to have minimal impact on the aquatic environment and is within the provisions of the RGP. Compliance with the enclosed RGP General Conditions and the Individual Section 401 Water Quality Certification (WQC) issued by the Indiana Department of Environmental Management (IDEM) dated January 3, 2013, is required. You must comply with any conditions imposed in the WQC as it is part of your RGP authorization. Additionally, you must comply with the following Special Conditions:

1. The permittee shall provide proof of purchase of 0.64 emergent wetland bank credits (0.64 acres) from the Central Indiana Mitigation Bank within 60 days from the date of this authorization.

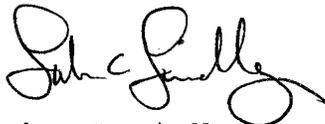
2. Stream mitigation, monitoring, and reporting shall be performed in accordance with the "Madison County Road 300 East Compensatory Mitigation Plan", (Des. No. 0901982) dated October 2, 2012 and planting list dated January 28, 2013. The mitigation shall be constructed within one year of completion of the proposed project.
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 is conducted. Monitoring will be required for a minimum of five years and continue until the success criteria are achieved.
4. The total successful stream mitigation shall consist of 740 linear feet by 6 feet of planting including a minimum area of 470 SY area of bare root tree and shrubs. Prairie grasses with a suitable cover crop will be planted to stabilize the slopes along the relocated stream in accordance with the 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. Your 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.

Upon completion of the work authorized by this RGP, the enclosed Compliance Certification form must be completed and returned to this office. This authorization is valid until December 15, 2014.

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-2012-677-dlz.

Sincerely,

A handwritten signature in black ink, appearing to read "Laban C. Lindley". The signature is fluid and cursive, with the first name being the most prominent.

Laban C. Lindley
Team Leader
Indianapolis Regulatory Office

Enclosures

Copy Furnished: IDEM (Randolph)
USI Consultants (Wendling)

CELRL-OP-FN
Application: LRL-2012-677-dlz

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification

Applicant: Madison County Board of Commissioners.

Project Location (*Waterway, Section, Township, Range, City, County, State*): Sly Fork and Fall Creek Sections 9, 10, 15 and 16, Township 18 North, Range 8 East, Emporia, Madison County, Indiana.

Pre-Construction Notification Receipt Date: 10/3/2012 **Complete?** Yes No

Additional Information Requested Date: 11/27/2012

Pre-Construction Notification Complete Date: 12/6/2012

Waters of the US:

*see Jurisdictional Determination form(s) and/or Preliminary JD letter(s) dated: Preliminary JD 10/31/12.

Authority: Section 10 Section 404 Section 103

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

The project purpose is to improve road safety by widening lanes and shoulders to current standards and correct vertical sight distance to improve safe stopping distances. The applicant proposes to replace the existing bridge on CR 300 East over Fall Creek with a single span concrete bridge resulting in the removal of the existing bridge piers. The project includes rehabilitation and widening of the bridge over Sly Fork with the piers lengthened to accommodate the widening. Twin flood bypass culverts will be installed just north of the Sly Fork bridge. A total of 114.75 cubic yards of riprap will be placed along the stream banks and piers for scour protection.

Six small emergent wetlands will be nominally impacted by fill for a total impact of 0.315 acres. An unnamed tributary 752 feet in length that discharges into Fall Creek will be relocated eastward to accommodate the new fill slopes. The relocated ditch will be widened to allow for some sinuosity and the banks will be replanted with native prairie grass species to stabilize the side slopes. The back slope of the ditch will be planted with bare root trees and shrubs (470 sy) to replace those lost in the stream relocation.

The functions of the ditch impacted by relocation would be replaced in-kind by the proposed ditch construction and associated plantings. The impacts to the jurisdictional wetlands will be mitigation by the purchase of 0.64 acres of palustrine emergent wetland credits at the Central Indiana Mitigation Bank.

Type of Permit Requested: NWP

RGP # 01

Pre-construction Notification Required: Yes No

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

Yes No

Rationale:

Coordination with Agencies/Tribes Needed: Yes No Date:

Resolution:

Commenting Agencies: IDNR, SHPO, and 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*) regionally present.

Effects determination: Not Likely to Adversely Effect.

Date of Service(s) concurrence: 12/12/2012

Basis for "effect" determination: No suitable habitat present and otherwise complies with NWP general conditions.

b) Magnuson-Stevens Act (Essential Fish Habitat): NA.

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: NA.

Known site present: yes no

Survey required/conducted: yes no

Effects determination: No historic properties affected.

Rationale: Reference attached 106 documentation.

Date consultation complete (if necessary): 1/21/2011

Additional information (optional):

d) Section 401 Water Quality Certification:

Individual certification required: yes no

Issued 1/3/2013 Waived Denied

e) Coastal Zone Management Act: NA.

Individual certification required: yes no

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Issued Waived Denied

Additional information (optional):

f) Wild and Scenic Rivers Act: NA.

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 permittee shall provide proof of purchase of 0.64 emergent wetland bank credits (0.64 acres) from the Central Indiana Mitigation Bank within 60 days from the date of this authorization. – *Projects authorized under the 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 332.3(k)(4) require that if a mitigation bank is used to provide the required compensatory mitigation, the special conditions must indicate whether a mitigation bank or in-lieu fee program will be used, and specify the number and resource type of credits the permittee is required to secure.*
2. The ditch relocation mitigation, monitoring, and reporting shall be performed in accordance with the “Madison County Road 300 East Compensatory Mitigation Plan” (Des. No. 0901982), dated October 2, 2012 and planting list date January 28, 2013. The mitigation shall be constructed within one year of completion of the proposed project. *Projects authorized under the Indiana Regional General Permit #1 that result in loss of greater than 0.1 acre or 300 linear feet of special aquatic sites (including wetlands) require mitigation. USACE regulations at 33 CFR 332 requires that a mitigation plan be submitted that outlines compensatory mitigation construction and monitoring.*
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 is conducted. Monitoring will be required for a minimum of five years and continue until the success criteria are achieved. – *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 is required to determine if the mitigation is meeting the required standards and objectives.*

4. The total successful stream mitigation shall consist of 740 linear feet by 6 feet of planting including a minimum area of 470 SY area of bare root tree and shrubs. Prairie grasses with a suitable cover crop will be planted to stabilize the slopes along the relocated stream in accordance with the mitigation plan referenced in Special Condition 2. *USACE regulations at 33 CFR 332.3(k) require that the amount and type of compensatory mitigation 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. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 1 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 October 10, 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

- (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):

The wetland impacts are being mitigated at an approved mitigation bank. Impacts to the relocated ditch are being mitigated on site and in-kind with a newly constructed ditch. The hydrology in the ditch and the proposed design will have a high likelihood of success and be a suitable replacement for the functions and values of the impacted feature.

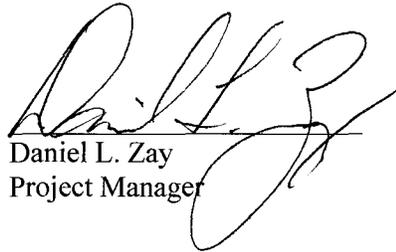
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Determination (*Reference D. District Engineer's Decision*):

The proposed activity, with proposed mitigation (if applicable) 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 of RGP 01 including any applicable regional conditions.

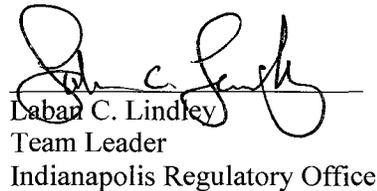
PREPARED BY:



Daniel L. Zay
Project Manager

Date: 1/31/13

APPROVED BY:



Laban C. Lindley
Team Leader
Indianapolis Regulatory Office

Date: 1/31/13

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

Project Manager: Daniel Zay Date: January 31, 2013
Indiana Dept. ^{first and last name} of Transportation road and bridge LRL-2012-677-dlz
Applicant: Transportation Project Name: improvements ID#: Des. No. 0901982
Type of permit: Section 10 Section 404 Section 10 / 404
 NWP# 03 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 letter 1/21/2011
 Memorandum of Agreement (MOA) accepted by the Advisory Council on Historic Preservation on [add date] (Note: this only applies to adverse effect determinations.)