



Viasat, Inc.

Environmental Assessment / Finding of No Significant Impact

na0455

Tuscaloosa County, Alabama

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TABLE OF CONTENTS

LIST OF APPENDICES	ii
LIST OF ACRONYMS AND ABBREVIATIONS.....	iii
1.0 EXECUTIVE SUMMARY	1
2.0 PROPOSED ACTION.....	1
3.0 PURPOSE AND NEED.....	2
4.0 PHYSICAL SETTING AND SITE LOCATION	2
5.0 LOCAL ZONING AND PLANNING REQUIREMENTS	2
6.0 PUBLIC CONTROVERSY	2
7.0 ALTERNATIVES AND NO-ACTION ALTERNATIVE	3
8.0 AFFECTED ENVIRONMENT.....	4
8.1 OFFICIALLY DESIGNATED WILDERNESS AREAS	4
8.2 OFFICIALLY DESIGNATED WILDLIFE PRESERVES	4
8.3 ENDANGERED SPECIES ACT	4
8.4 MIGRATORY BIRD TREATY ACT	5
8.5 SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT	6
8.6 NATIVE AMERICAN RELIGIOUS SITES	6
8.7 FLOODPLAIN EXECUTIVE ORDER 11988.....	7
8.8 SIGNIFICANT CHANGE IN SURFACE FEATURES.....	7
8.9 HIGH INTENSITY WHITE LIGHTS.....	9
8.10 RADIOFREQUENCY RADIATION.....	9
9.0 SUMMARY CONCLUSION	10
10.0 REFERENCES	10

LIST OF APPENDICES

Appendix A Figures

Overall Site Plan

Figure 1 – USGS Topographic Map of the Project

Figure 2 – Site Layout Map

Figure 3 – FEMA Floodplain Map

Figure 4 – National Hydrography Dataset/National Wetland Inventory Map

Appendix B Zoning and Building Permit

Appendix C Public Involvement

Appendix D Endangered Species Act Consultation Documentation

Appendix E SHPO Concurrence Letter, Summary of Tribal Correspondence

Appendix F Wetland Delineation Data Sheets

Appendix G USACE Nationwide Permit 57 and ADEM Section 401 Water Quality Certification
for Nationwide Permit 57

LIST OF ACRONYMS AND ABBREVIATIONS

ADEM	Alabama Department of Environmental Management
AGL	above ground level
AL	Alabama
AHC	Alabama Historical Commission
APE	Area of Potential Effect
BLM	Bureau of Land Management
CATEX	Categorical Exclusion
CFR	Code of Federal Regulations
CWA	Clean Water Act
DNH	Determination of No Hazard to Air Navigation
EA	Environmental Assessment
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
FEMA	Federal Emergency Management Agency
FONSI	Finding of No Significant Impact
FR	Federal Register
GAP	Gap Analysis Program
GIS	geographic information system
Google	Google Inc
IPaC	Information for Planning and Consultation
NEPA	National Environmental Policy Act
NFHL	National Flood Hazard Layer
NHD	National Hydrography Dataset
NPS	National Park Service
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NWI	National Wetlands Inventory
NWP	Nationwide Permit
PEM	palustrine emergent
Project	na0455 satellite earth station
SHPO	State Historic Preservation Office
Tetra Tech	Tetra Tech, Inc.
TCNS	Tower Construction Notification System
U.S.	United States
USACE	United States Army Corps of Engineers
USC	United States Code
USDA	United States Department of Agriculture
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
Viasat	Viasat, Inc.
WQC	Water Quality Certification
WUS	Waters of the United States

1.0 EXECUTIVE SUMMARY

Tetra Tech, Inc. (Tetra Tech) prepared a Federal Communications Commission (FCC) National Environmental Policy Act (NEPA) Environmental Assessment (EA) for the Viasat, Inc. (Viasat) proposed na0455 satellite earth station site located in Fosters, Tuscaloosa County, Alabama (AL) (hereafter referred to as the Project). This FCC NEPA EA was prepared in accordance with FCC's environmental review rules applicable to new communication towers as codified in 47 Code of Federal Regulations (CFR) Part 1, Subpart I – *Procedures Implementing the National Environmental Policy Act of 1969*. The following is a summary of our findings and is not intended to replace more detailed information contained elsewhere in this report.

Viasat proposes to construct, own, and operate the na0455 satellite earth station site which will consist of an approximate 25 feet by 28 feet lease parcel and associated access and utility easements (see Overall Site Plan and Figure No. 2 in Appendix A); these activities are hereafter referred to as the proposed action. Based on the analyses completed as part of this EA, the proposed action does not appear to have the potential to cause a significant effect on the environment as outlined in 47 CFR, Chapter 1, Part 1, Subpart I, §1.1307 – Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared. However, field assessment of the proposed Project indicates that the Project is located within a delineated wetland. According to FCC clarifying policies, procedures, and guidelines provided on FCC's Tower and Antenna Siting website (FCC 2021), an EA shall be prepared if the Project is located within a wetland.

As a result, the preparation and submittal of this NEPA EA fulfills this FCC Wireless Telecommunications Bureau requirement.

2.0 PROPOSED ACTION

The Project consists of an approximate 25 feet by 28 feet lease parcel and associated access and utility easements that comprise the na0455 satellite earth station. An enclosed fenced compound measuring approximately 12 feet by 25 feet will be located on the lease parcel and contain a reflector with a modified feed boom, a transceiver, and associated equipment (see Figure No. 2 and Overall Site Plan in Appendix A). No additional workspace or staging areas are required for the Project. Proposed plans include an approximately 660-foot-long by 20-foot-wide access road beginning at US-11 South/US-43 and following the extent of an existing driveway southeast before continuing generally southeast across a maintained lawn and herbaceous field to the pad location. A secondary utility easement measuring approximately 150-foot-long by 10-foot-wide is proposed west of the pad location, traveling north and east from the access road. The total Project area measures approximately 0.38 acre (ac) (0.15 hectare [ha]). In accordance with FCC NEPA environmental review requirements, the assessment of potential impacts must include the proposed footprint (limits of disturbance) of all proposed construction and operation areas (*i.e.*, lease area, workspace areas, staging areas, temporary access roads, permanent access roads, and power and fiber connections).

3.0 PURPOSE AND NEED

The purpose of the proposed action is to improve broadband internet access within rural areas of the country, specifically the Project area. Satellite earth stations provide the necessary link between data satellites and local communities for internet connections.

4.0 PHYSICAL SETTING AND SITE LOCATION

The Project site is located in the southwestern portion of Tuscaloosa County, about 780 feet southeast of the intersection of Holley Springs Lane and United States (U.S.) Highway 11 South/ U.S. Highway 43. The approximate center of the site is located at 33°5'34.54"N, 87°41'5.73"W. The surrounding area is predominately undeveloped wooded land with sparse residential development and commercial development concentrated at the intersection of Holley Springs Lane and Highway 11/U.S. Highway 43. A Project site location map adapted from the United States Geological Survey (USGS) 7.5-minute topographic quadrangle map (Fosters, AL) (USGS 2020a) is provided as Figure 1 (Appendix A). A Project site layout map is provided as Figure 2 (Appendix A). Photographic records of the Project site can be found in the Figures and Photographs Attachment of Appendix C.

Currently, the Project site consists of an area recently disturbed by the construction of the adjacent shopping center that is currently unmaintained herbaceous vegetation. A portion of the previously disturbed herbaceous field has been field determined to meet the criteria of a wetland. The delineated wetlands and waterbodies at the Project site are depicted on Figure No. 2 and extend further to the south and east outside of the survey area.

The area adjacent to the north of the Project site is an overhead electrical powerline and access road for the existing shopping center, forests and herbaceous vegetation to the south, east and west.

5.0 LOCAL ZONING AND PLANNING REQUIREMENTS

As reported by the Tuscaloosa County Public Works Department, the Project site is located within Fosters, Tuscaloosa County, AL, which is an unincorporated area outside of Tuscaloosa County (see Appendix B). There are no building permits, zoning or land use ordinances at this location.

6.0 PUBLIC CONTROVERSY

Public notice of the proposed action was published within The Tuscaloosa News, a newspaper with general circulation within the Project area, on September 22, 2021 (see Proof of Publication in Appendix C). The County District Commissioner for District 4, which includes the Project area, was contacted on September 17, 2021 and made aware of the Project (see correspondence within Appendix C). Controversial comments regarding this project have not been received. There is no known public controversy regarding land use or environmental issues for this proposed Project.

7.0 ALTERNATIVES AND NO-ACTION ALTERNATIVE

Viasat's primary objective is reduce costs of broadband internet while increasing capacity over their network. The construction of a satellite earth station within the geographic area of service is required to meet the objective.

The No-Action Alternative was considered and would result in not implementing the proposed Project and therefore, would avoid the wetland impacts associated with the Project. Under the No-Action Alternative, Viasat would not be able to meet its objective of reducing costs of broadband internet while increasing capacity over their network.

The federal government is pursuing policies to encourage deployment of broadband internet services to rural communities and to make them more affordable. Consequently, the No-Action Alternative would likely require the development of other broadband internet infrastructure to meet the current and growing demand for affordable broadband internet service. Therefore, the No-Action Alternative was considered but rejected from further consideration because it did not meet the Purpose and Need of the Project.

Site selection of each satellite earth station is primarily driven by the need for coverage in the desired geographical area. The specific geographic area and tolerance is proprietary. Criteria for site selection also includes a clear view of the sky from the site, site accessibility, property owner consent, zoning considerations, and financial requirements. Sites must also avoid or minimize potential adverse impacts to the environment.

The majority of land within the desired geographic area is undeveloped wooded land with FEMA mapped zone AE floodplains to the south and NWI mapped wetlands to the northeast, southeast and south / southwest. Residential development exists to the northwest. In evaluating site options, Viasat determined the site should be located on previously developed land and within close proximity to electrical power and fiber optic to collocate development, reduce overall extent of disruption on the community, and minimize environmental impacts.

Three alternative sites located within the desired geographic area were evaluated. All three locations were located on commercial or municipal property near the intersection of Holley Springs Lane and Highway 11/U.S. Highway 43. The alternatives have clear views of the sky and are within approximately one third of a mile radius from the preferred location. Property owner consent could not be reached for any of the three alternative sites.

Based on the inability to obtain landowner consent, the disturbed nature of the site, as well as the majority of the surrounding area being undeveloped wooded land, mapped NWI wetland, and/or FEMA mapped floodplain the proposed site is preferred.

8.0 AFFECTED ENVIRONMENT

8.1 OFFICIALLY DESIGNATED WILDERNESS AREAS

47 CFR §1.1307(a)(1) – Facilities that are to be located in an officially designated wilderness area.

Tetra Tech performed a desktop review of applicable and readily-available geographic information systems (GIS) databases and other documentation for the Project site to identify, assess, and confirm whether the proposed Project is located within a federally-designated wilderness area. This included review of federal lands owned and/or administered by the National Park Service (NPS), Bureau of Land Management (BLM), U.S. Forest Service (USFS), and U.S. Fish and Wildlife Service (USFWS) (USGS 2018), including specifically federally-designated wilderness areas (USGS–Gap Analysis Program [GAP] 2018). Based on this review, the Project site is not located on any federally-owned or -administered lands or within a federally-designated wilderness area, and therefore will have no significant effect on officially designated wilderness areas.

8.2 OFFICIALLY DESIGNATED WILDLIFE PRESERVES

47 CFR §1.1307(a)(2) – Facilities that are to be located in an officially designated wildlife preserve.

Tetra Tech performed a desktop review of applicable and readily-available GIS databases and other documentation for the Project site to identify, assess, and confirm whether the proposed Project is located within a federally-designated wildlife preserve. This included review of federal lands owned and/or administered by the NPS, BLM, USFS, and USFWS (USGS 2018), including specifically federally-designated wildlife preserves (USGS–GAP 2018, USFWS 2019). Based on this review, the Project site is not located on any federally-owned or -administered lands or within a federally-designated wildlife preserve, and therefore will have no significant effect on officially designated wildlife preserves.

8.3 ENDANGERED SPECIES ACT

47 CFR §1.1307(a)(3) – Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

Tetra Tech utilized the online USFWS Information for Planning and Consultation (IPaC) system to identify the list and designated critical habitat of federally-listed endangered, threatened, and proposed species with the potential to occur in the Project area (see Appendix D) pursuant to the Endangered Species Act of 1973, as amended (16 United States Code [USC] §§ 1531-1544). Tetra Tech also performed an initial desktop review of publicly-available USFWS online databases for habitat requirements for the listed species.

Federally-listed endangered, threatened, or proposed species and potential habitat identified by the USFWS include the following:

- Indiana bat (*Myotis sodalis*) which inhabits wooded areas, especially areas that contain dead or dying trees with loose tree bark;
- Northern long-eared bat (*Myotis septentrionalis*) which inhabits wooded areas, especially areas that contain trees with loose or peeling bark;
- Wood stork (*Mycteria americana*) which inhabits freshwater and estuarine wetlands, such as cypress, freshwater marshes, mangrove swamps, narrow tidal creeks, or flooded tidal pools;
- Inflated heelsplitter (*Potamilus inflatus*) which inhabits soft, stable substrates such as sand, mud, silt, and sandy-gravel in slow to moderate currents, and is usually collected on the protected side of bars in water with depths up to 20 feet;
- Ovate clubshell (*Pleurobema perovatum*) which inhabits sand/gravel shoals and runs of small rivers and large streams with moderate currents and depths that are typically less than three feet; and,
- Monarch Butterfly (*Danaus plexippus*) which inhabits a variety of habitats throughout North America and various additional locations across the globe. The monarch butterfly needs milkweed (*Asclepias* spp.) for breeding.

Tetra Tech also performed field observations to document habitats within the Project area. This information was evaluated by a biologist to assess the potential occurrence of suitable habitat within and adjacent to the Project site. Habitat within the Project area consists of unmaintained herbaceous vegetation surrounded by forests, rural residences, and a shopping center, which does not support habitat for any of the identified species.

Based on this investigation, no federally-designated critical habitat and no potential habitat for federally-listed endangered, threatened, or proposed species is present on or within the vicinity of the proposed Project site. Therefore, the proposed action will have no effect, and thereby no significant effect, on federally-listed endangered, threatened, or proposed species.

8.4 MIGRATORY BIRD TREATY ACT

47 CFR §1.1307(d), Note to paragraph (d): Pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under part 17 of this chapter, if the proposed antenna structure will be over 450 feet in height above ground level (AGL) and involves either: 1. Construction of a new antenna structure; 2. Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraph I(C)(1)(3) of Appendix B to part 1 of this chapter; or 3. Addition of lighting or adoption of a less preferred lighting style as defined in § 17.4(c)(1)(iii) of this chapter. The Bureau shall consider whether to require an EA for other antenna structures subject to § 17.4(c) of this chapter in accordance with § 17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in § 17.4(c) of this chapter.

The proposed action will not include the construction of an antenna structure over 450 feet in height, therefore the requirements of 47 CFR §1.1307(d) are not applicable to the proposed Project and no Migratory Bird Treaty assessment was conducted.

8.5 SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

47 CFR §1.1307(a)(4) – Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places, and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties.

FCC NEPA EA Screening Questions – If the facilities may physically or visually affect a property significant in American history that is listed, or is eligible for listing, in the National Register of Historic Places, as determined in accordance with the Nationwide Programmatic Agreement or the Collocation Programmatic Agreement.

Tetra Tech performed an in-field Phase I Cultural Resources Investigation for the proposed action. This study was conducted in accordance with the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716-42, September 29, 1983); the National Historic Preservation Act of 1966, as amended; Executive Order 11593; the regulations of the Advisory Council on Historic Preservation (36 CFR 800); and the applied research and survey methods set forth in the Alabama Historical Commission (AHC) *Alabama Guidelines: Preparing Reports for Historic Architectural Resources Under Section 106 of the National Preservation Act of 1966, as Amended* (AHC 2003) and *Policy for Archaeological Survey and Testing in Alabama* (AHC 2006). Per the FCC's guidance on April 19, 2022, Form 620 and attachments to Form 620 should not be included with submission of the EA, therefore the Phase I Cultural Resources Investigation is not included as an Appendix to this EA (FCC 2022).

No direct or indirect impacts to historic properties are anticipated as a result of the Project. Based on the results of the survey, the proposed action is anticipated to have no adverse effects on prehistoric or historic cultural resources listed in or eligible for listing in the National Register of Historic Places (NRHP) and no additional cultural resource investigations are recommended. The Alabama Historical Commission concurred with these findings (Appendix E).

8.6 NATIVE AMERICAN RELIGIOUS SITES

47 CFR §1.1307(a)(5) – Facilities that may affect Indian religious sites.

Tetra Tech used the FCC's online Tower Construction Notification System (TCNS) and reasonable and good faith efforts to determine if federally-recognized Tribes may attach religious and cultural significance to historic properties that may be affected by the proposed undertaking. These efforts were made in accordance with the Nationwide Programmatic Agreement for review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communication Commission, Section IV.B. Per the FCC's guidance on April 19, 2022, Form 620 and attachments to Form 620 should not be included with submission of the EA, therefore the Form 620 is not included as an Appendix to this EA (FCC 2022).

After such reasonable and good faith efforts, Tetra Tech determined that no federally-recognized Tribes attach religious and cultural significance to historic properties within the proposed

undertaking. To date, no federally-recognized tribe has provided comments regarding religious and cultural significance to historic properties in the area. Appendix E contains a table summarizing the results of TCNS notification and Tribal outreach efforts.

Based on the information contained within the Form 620, as well as the results of the Phase I Cultural Resources Investigation, the proposed action is anticipated to have no adverse effect, significant or otherwise, on properties listed on the NRHP or currently determined eligible for listing, including historic properties to which Indian Tribes may attach religious and cultural significance.

8.7 FLOODPLAIN EXECUTIVE ORDER 11988

47 CFR §1.1307(a)(6) – Facilities to be located in a floodplain.

Tetra Tech performed a desktop review of applicable and readily-available GIS data to identify, assess, and confirm whether the proposed Project is located within a federally-designated (Federal Emergency Management Agency [FEMA]) floodplain or flood zone. This included review of the FEMA National Flood Hazard Viewer (FEMA 2020). Based on review of these sources, the Project site is located within the FEMA Flood Insurance Rate Map (FIRM) Panel 01125C0660G (effective January 16, 2014). Based on this FIRM panel, the Project site is located in FEMA-designated Flood Zone X, area with minimal flood hazard (Figure 3, Appendix A). As the proposed action will not be located within a federally-designated floodplain or flood zone, and the small footprint of the Project will not change the overall topography or land cover, the proposed Project will have no significant effect on floodplains or flood zones.

8.8 SIGNIFICANT CHANGE IN SURFACE FEATURES

47 CFR §1.1307(a)(7) – Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion).

Tetra Tech performed a desktop review of publicly-available aerial photography and wetland and waterbody online databases to identify the presence, location, and extent of potential Waters of the United States (WUS) within and adjacent to the Project area, including: USFWS National Wetlands Inventory (NWI) (USFWS 2020); USGS National Hydrography Dataset (NHD) (USGS 2020b); County Soil Survey/Hydric Soils List/Hydric Inclusion Soils List (United States Department of Agriculture-Natural Resources Conservation Service [USDA-NRCS] (2021); and USGS Topographic Quadrangle Maps (USGS 2020a). Based on this desktop review, wetlands or waterbodies (potential WUS) were not mapped at the Project site. Wetlands are mapped to the north, east and south of the site.

On September 18, 2021, Tetra Tech performed on-site observations which identified the site as previously disturbed. Wetland characteristics, consisting of saturated soil conditions, hydric soils and potential hydrophytic vegetation were also observed onsite. On October 7, 2021, a Tetra Tech wetland scientist completed an in-field survey which documented areas that meet the criteria as potential WUS within the survey area. Areas that exhibited characteristics as potential WUS were assessed based on the vegetative, soil, and hydrologic indicators as established in the *USACE 1987 Wetlands Delineation Manual* and also the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region* (Version 2.0) (USACE 2010). Wetlands that were identified and delineated were subsequently classified in

accordance with the *Classification of Wetlands and Deepwater Habitats of the United States* (Cowardin et al. 1979).

One palustrine emergent (PEM) wetland was identified and delineated within the proposed Project area. The wetland was dominated by an herbaceous layer consisting of 95% absolute areal cover. Trees were absent from the Project area, and the shrub stratum, which was dominated by sapling loblolly pine (*Pinus taeda*), comprised ten percent of the absolute areal cover. The woody vine stratum, dominated by the upland vine species common dewberry (*Rubus flagellaris*), comprised five percent of the absolute areal cover. Historical aerial photography from 2010 (Google Inc. [Google] 2021) suggests that the wetland is relatively recent in formation. Available aerial imagery indicates that the surface of this area was cleared and graded for the building of an adjacent shopping complex, only after which, the aerial signature suggests the presence of wetlands. During the in-field survey of the Project area, various areas within the wetland were documented to have been previously disturbed with fill material (primarily asphalt and concrete), and fill material was also observed within the uppermost layer of the soil profile. Although not within the defined limits of the Project, field survey also documented two ephemeral drainages

Based on this in-field review, potential WUS are present in and adjacent to the Project site as depicted in Figure No. 2. Therefore, the proposed action has the potential to affect to surface features associated with wetlands or waterbodies.

On March 15, 2021, the USACE issued Nationwide Permit 57 – Electrical Utility Line and Telecommunications Activities (NWP 57), included in Appendix G, permitting the construction, maintenance, repair, and removal of telecommunication facilities in WUS that do not result in the loss of greater than ½ acre of WUS, including wetlands. The Corps NWP 57 decision document dated January 4, 2021 (86 FR 2744) states it has satisfied the requirements of NEPA because the decision document included an EA. The Corps' EA has determined that Projects meeting the conditions of NWP 57, singularly or cumulatively, will not have a significant impact on the quality of the human environment.

On March 15, 2021, the Alabama Department of Environmental Management (ADEM) approved the 401 Water Quality Certification (WQC) for NWP 57 (Appendix G) also determining that if the Section 401 WQC conditions for NWP 57 are met, Projects meeting those conditions will not have a significant impact on water quality.

As established in the March 15, 2021 USACE issued NWP 57, there are 32 general conditions that pertain to NWP 57 (refer to Appendix G to review the published permit and the complete list of general conditions pertaining to NWP 57). Based on the results of the EA, the following general conditions of NWP 57 may apply to the proposed Project:

- General Condition No. 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 [CWA]).
- General Condition No. 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.

- General Condition No. 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.
- General Condition No. 21 (Discovery of Previously Unknown Remains and Artifacts): Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they 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 NRHP.

Tetra Tech contacted the USAE Mobile District (see Appendix G) and confirmed that NWP 57 was valid for use and that NWP 57 also has an associated conditioned general water quality certification. The proposed construction of the Project would result in impacts of 0.016-acre of impacts to WUS, and Viasat has committed to meeting all applicable conditions of NWP 57 and the associated Section 401 WQC, including, but not limited to the conditions listed above. Therefore, the Project will not have a significant change in surface features. Viasat will adhere to the USACE recommendations to closely review and adhere to the NWP 57 terms and conditions as well as the water quality certification conditions. This includes, but not limited to, ensuring the contractor and any subcontractors working on the project are made aware of the permit terms and conditions and that they must abide by them in order to maintain valid coverage.

8.9 HIGH INTENSITY WHITE LIGHTS

47 CFR §1.1307(a)(8) – Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

High intensity whites are not proposed for this Project; therefore, no significant effect on designated residential neighborhoods is expected.

8.10 RADIOFREQUENCY RADIATION

47 CFR §1.1307(b) – ...if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§ 1.1310 and 2.1093 of this chapter.

Viasat completed a radiation hazard analysis of proposed satellite earth stations in January 2019 and concluded protection of the general public from exposure to levels of radiofrequency radiation in excess of the limits defined 47 CFR §§ 1.1310 and 2.1093 is fulfilled by the design of the facility. As designed, earth stations point radiofrequency radiation skyward in narrow beams, with significant reductions at angles toward the horizon. Fencing around the pad which houses the satellite earth station provide protection from public exposure. Only authorized workers are allowed within the satellite earth stations and are trained in precautions working around the satellite earth stations, including not standing in front of the refractor when engaged.

9.0 SUMMARY CONCLUSION

Based on the results of this EA, the proposed action will not cause a significant effect on the environment as outlined in 47 CFR, Chapter 1, Part 1, Subpart I, § 1.1307 – *Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.*

As a result, a Finding of No Significant Impact by the FCC is appropriate for this proposed action.

10.0 REFERENCES

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USGS. 2020a. USGS 7.5 Minute Quadrangles/DRG (Digital Raster Graphic). DRG used: (Fosters, AL). Available at: <https://ngmdb.usgs.gov/topoview/viewer/#12/33.0629/-87.6875>. Accessed October 28, 2021

USGS. 2020b. National Hydrography Dataset (NHD) v2.2. Tuscaloosa County, Alabama. Available at: <https://apps.nationalmap.gov/downloader/#/>. Accessed October 2021.

APPENDIX A

Figures

Overview Site Map

Figure 1 – USGS Topographic Map of the Project

Figure 2 – Site Location Map of the Project

Figure 3 – FEMA Floodplain Map of the Project

Figure 4 – National Hydrography Dataset/National Wetland Inventory Map of the Project



SURVEY NOTE:

THIS SITE PLAN WAS GENERATED WITHOUT THE USE OF A SURVEY. PROPERTY LINES AND EASEMENTS SHOWN ON THESE PLANS ARE ESTIMATED.

FIBER UTILITY NOTE:

THE FIBER P.O.C. & ROUTING SHOWN ON THIS SITE PLAN IS PRELIMINARY. FINAL FIBER P.O.C. & ROUTING WILL BE DETERMINED BY A FUTURE UTILITY COORDINATION.

POWER UTILITY NOTE:

THE POWER P.O.C. & ROUTING SHOWN ON THIS SITE PLAN IS PRELIMINARY. FINAL POWER P.O.C. & ROUTING WILL BE DETERMINED BY A FUTURE UTILITY COORDINATION.

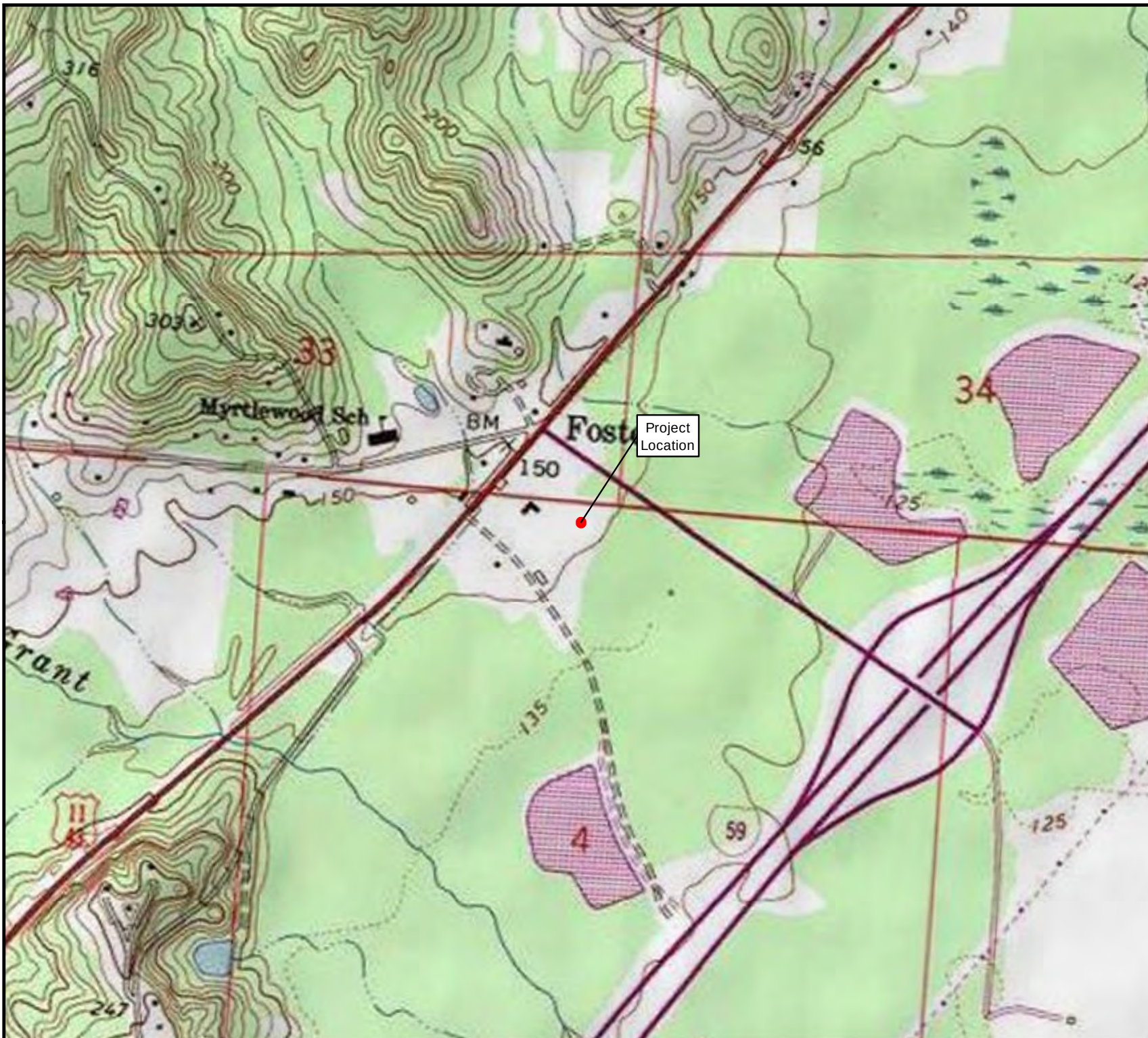


FIGURE 1.
USGS TOPOGRAPHIC MAP
na0455

FOSTERS,
ALABAMA

LEGEND
 Project Location

N
SCALE: 1 IN = 1,000 feet
Feet 0 500 1,000
Date: 9/7/2021

Prepared By:  TETRA TECH

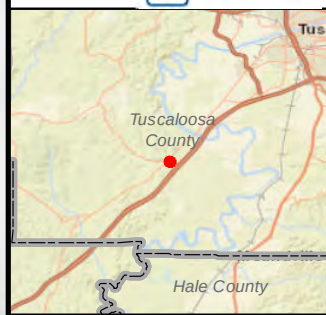




FIGURE 2.
SITE LOCATION
na0455

FOSTERS,
ALABAMA

LEGEND

 Project Location

**Delineated Aquatic
Resources**

 Ephemeral Stream

 PEM Wetland



SCALE: 1 IN = 200 feet

Feet 0 100 200

Date: 10/27/2021

Prepared By:  TETRA TECH





FIGURE 3.
FEMA FLOODPLAINS
na0455

FOSTERS,
ALABAMA

LEGEND

- Project Location
- Base Flood Elevation
- Flood Hazard Zones**
 - 1% Annual Chance Flood Hazard
 - Regulatory Floodway
 - Special Floodway
 - Area of Undetermined Flood Hazard
 - 0.2% Annual Chance Flood Hazard
 - Future Conditions 1% Annual Chance Flood Hazard
 - Area with Reduced Risk Due to Levee



SCALE: 1 IN = 200 feet

Feet 0 100 200

Date: 9/9/2021

Prepared By: **Tt TETRA TECH**

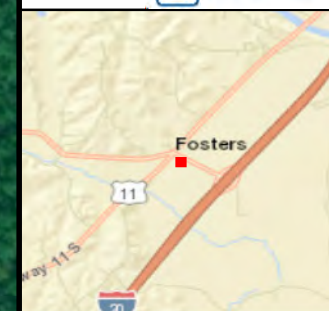


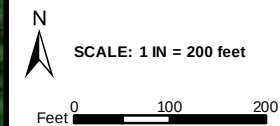


FIGURE 4.
NATIONAL HYDROGRAPHY
AND NATIONAL WETLAND
INVENTORY DATA MAP
na0455

FOSTERS,
ALABAMA

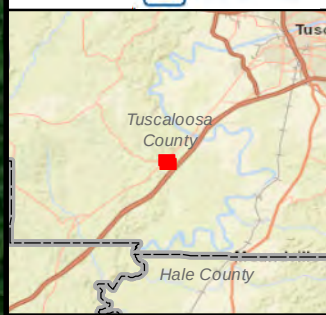
LEGEND

-  Project Location
-  National Hydrography Dataset
-  National Wetland Inventory
- Delineated Aquatic Resources**
 -  Ephemeral Stream
 -  PEM Wetland



Date: 10/27/2021

Prepared By:  **TETRA TECH**



APPENDIX B

Zoning and Building Permit

Patrick Massie

From: Katherine Parris <kparris@tuscco.com>
Sent: Wednesday, November 17, 2021 11:16 AM
To: Patrick Massie
Subject: RE: NA0455 Building Permit & Zoning request

CAUTION: This email was sent from outside of Ledcor's network. Please be careful while clicking links, opening attachments, or replying to this email.

Fosters is in the unincorporated portion of Tuscaloosa County. There are no building permits, zoning or land use ordinances outside of the boundaries of a municipality. If you have any questions, please let me know.

Katherine Parris, EI

Civil Engineer II
Tuscaloosa County Public Works Department
2810 35th Street
Tuscaloosa, Alabama 35401
Phone: 205-345-6600 Ext. 5216

From: Patrick Massie <Patrick.Massie@ledcor.com>
Sent: Wednesday, November 17, 2021 10:10 AM
To: Katherine Parris <kparris@tuscco.com>
Subject: NA0455 Building Permit & Zoning request

Hello Katherine,

Ledcor is providing Site Acquisition services on behalf of ViaSat. The location of the satellite has been assigned this address, **14780 Holley Springs Ln, Fosters, AL. 35463** by your local E911 Administrator.

Please respond to this email confirming that no Zoning or Building Permits are required for this site.

If you need any additional information, please let me know.

Thank you,

Patrick Massie
Ledcor Technical Services
p –502-680-0103
www.ledcor.com

FORWARD. TOGETHER.

From: [Patrick Massie](#)
To: [Holly Scoville](#)
Subject: FW: Permitting requirements for Ledcor Technical Services
Date: Wednesday, November 3, 2021 12:36:14 PM

FYI

From: Plan Review <planreview@tuscaloosa.com>
Sent: Wednesday, November 3, 2021 12:31 PM
To: Patrick Massie <Patrick.Massie@ledcor.com>
Cc: Howard Stuart <hstuart@tuscaloosa.com>
Subject: RE: Permitting requirements for Ledcor Technical Services

CAUTION: This email was sent from outside of Ledcor's network. Please be careful while clicking links, opening attachments, or replying to this email.

Patrick:

This site is outside our City Limits, Police and Planning Jurisdiction therefore no permit will be required from the City of Tuscaloosa. Thank you for checking.

Barry L Falls, Plans Examiner

Mobile: 205-361-4154

Desk: 205-248-5315

From: Patrick Massie <Patrick.Massie@ledcor.com>
Sent: Wednesday, November 3, 2021 10:43 AM
To: Plan Review <planreview@tuscaloosa.com>
Subject: Permitting requirements for Ledcor Technical Services

CAUTION: External email.

Hello Barry,

Ledcor is providing Site Acquisition services on behalf of ViaSat. I have attached a Site Plan for review. The Viasat satellite will be within the Zayo leased compound and is noted on the plan as the 25'x28' (700 sq.ft.) structure in the SW corner on the plan. The local E911 Administrator assigned the Viasat satellite compound the following address: [14780 Holley Springs Lane., Fosters, Alabama 35463](#)

Please confirm that no Zoning or Building Permits are required for this site.

If you need any additional information, please let me know.

Patrick Massie

Ledcor Technical Services

p –502-680-0103

www.ledcor.com

FORWARD. TOGETHER.

TUSCALOOSA COUNTY

9-1-1 COMMUNICATION DISTRICT

7400 Richard M Pierce Parkway • Northport, Alabama 35473 • Ph. (205) 710-6775 • Fax (205) 330-7711

911 Addressing / Mapping

Address Permit No. 2021-321
Commission District – 4

Rod Coleman, Director

Date: September 30, 2021

Parcel ID: 63-35-08-33-0-000-027.000

Permission is granted to: ViaSat Inc.

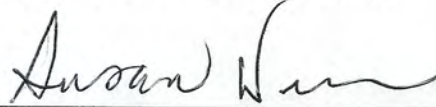
To (erect/ remodel/ place: One (1) new structure

To be used as: A satellite dish

Contractor or Engineer:

This permit is issued subject to the condition that the party receiving the same will fully comply with any county regulations as made and provided to regulate the erection, removal, repair and alteration of buildings in Tuscaloosa County, otherwise this permit shall become null and void and the party be liable to such penalties as may be provided for violation of said regulations.

Cost / Fee: 0



Susan Wesson
Tuscaloosa County 9-1-1
Addressing Coordinator

Address of Property:

14780 Holley Springs Lane

Fosters, AL 35463

APPENDIX C

Public Involvement

LOCALiQ

The Gadsden Times
The Tuscaloosa News

PO Box 631247 Cincinnati, OH 45263-1247

PROOF OF PUBLICATION

Tetra Tech, Inc.
1500 Citywest BLVD
Houston TX 77042-2300

STATE OF ALABAMA, COUNTY OF TUSCALOOSA

The Tuscaloosa News, a newspaper printed and published in the city of Tuscaloosa, and of general circulation in the County of Tuscaloosa, State of Alabama, and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspapers in the issue dated:

09/22/2021

and that the fees charged are legal.
Sworn to and subscribed before on 09/22/2021

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$59.40

Order No: 6314144

Customer No: 621175

PO #:

of Copies:
-1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

SHELLY HORA
Notary Public
State of Wisconsin

NOTICE

Viasat, Inc. is proposing a new build, Satellite Access Node (SAN) Facility not to exceed 20 feet in height near 13474 Hwy 11 S, Fosters, Tuscaloosa County, AL 35463 on the east side of Hwy 11, approximately 758 feet southeast from the intersection with Holley Springs Ln. Public comments regarding potential effects from this site on historic properties may be submitted within 30 days from the date of this publication to, Tetra Tech, C/O Viasat Comments, 301 Ellicott St., Buffalo, NY 14203, or by email viasatsitecomments@tetratech.com, or by phone 1-833-460-0529.
11- 9/22/21 (6314144)



The Gadsden Times
The Tuscaloosa News

Order Confirmation

Not an Invoice

Account Number:	621175
Customer Name:	Tetra Tech, Inc.
Customer Address:	Tetra Tech, Inc. 1500 Citywest BLVD Houston TX 77042-2300
Contact Name:	Trey Towers
Contact Phone:	
Contact Email:	trey.towersiii@tetrattech.com
PO Number:	

Date:	09/20/2021
Order Number:	6314144
Prepayment Amount:	\$ 0.00

Column Count:	1
Line Count:	28.0000
Height in Inches:	0.0000

Print

Product	#Insertions	Start - End	Category
TUS Tuscaloosa News	1	09/22/2021 - 09/22/2021	Public Notices
TUS tuscaloosaneews.com	1	09/22/2021 - 09/22/2021	Public Notices

Total Order Confirmation

\$59.40

NOTICE

Viasat, Inc. is proposing a new build, Satellite Access Node (SAN) Facility not to exceed 20 feet in height near 13474 Hwy 11 S, Fosters, Tuscaloosa County, AL 35463 on the east side of Hwy 11, approximately 758 feet southeast from the intersection with Holley Springs Ln. Public comments regarding potential effects from this site on historic properties may be submitted within 30 days from the date of this publication to, Tetra Tech, C/O Viasat Comments, 301 Ellicott St., Buffalo, NY 14203, or by email viasatsitecomments@tetra-tech.com, or by phone 1-833-460-0529.

11- 9/22/21 (6314144)

From: [TowersIII, Trey](#)
To: district4@tuscco.com
Subject: Satellite Earth Station – Tuscaloosa County
Date: Friday, September 17, 2021 3:04:00 PM
Attachments: [Viasat_Rnd2_USGS_Fig1_na0455.pdf](#)

Good afternoon Commissioner Murray,

Viasat, Inc. is proposing to construct a satellite earth station (na0455), located at 13474 Highway 11 S, Town of Fosters, Tuscaloosa County, Alabama (35463). Please find the attached project location map for your reference. Direct impacts generally associated with these projects typically include approximately 700 square feet. The satellite earth station will be approximately 20 feet in height and include a pad location, access road, and utility connections.

As part of the review process, Tetra Tech will initiate consultation with the State Historic Preservation Office. A site file search of SHPO records will be conducted for previously recorded archaeological sites and historic properties within 1.0 mile of the Project. A site visit will be completed by a qualified archaeologist to observe for archaeological resources and historic properties within the project's area of potential affect, which is typically no more than 500 feet from the project.

We are reaching out to you for information regarding the potential location of locally historic sites within the vicinity of the project that may not be identified within the review process described above.

Trey Towers | Environmental Scientist III/ Biologist
Office: 832.252.2096
trey.towersiii@tetrattech.com

Tetra Tech, Inc.
1500 CityWest Blvd | Suite 1000 | Houston, TX 77042 | www.tetrattech.com

PLEASE NOTE: This message, including any attachments, may include privileged, confidential and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system.

From: [Microsoft Outlook](#)
To: district4@tuscco.com
Subject: Relayed: Satellite Earth Station – Tuscaloosa County
Date: Friday, September 17, 2021 3:05:01 PM
Attachments: [Satellite Earth Station Tuscaloosa County.msg](#)

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:
district4@tuscco.com (district4@tuscco.com) <mailto:district4@tuscco.com>
Subject: Satellite Earth Station – Tuscaloosa County

APPENDIX D

Endangered Species Act Consultation Documentation



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Alabama Ecological Services Field Office
1208 B Main Street
Daphne, AL 36526-4419
Phone: (251) 441-5181 Fax: (251) 441-6222



In Reply Refer To:

September 13, 2021

Consultation Code: 04EA1000-2021-SLI-1402

Event Code: 04EA1000-2021-E-03467

Project Name: na0455

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

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, 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. Please note that new information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. 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.).

Note that due to the volume of emails received by our office, we cannot accept project consultation requests by email.

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. Also 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. 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.

The purpose of the process and consultation under 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.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at:

<http://www.fws.gov/migratorybirds/pdf/management/usfwscommunicationtowerguidance.pdf>

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.

We can be reached at:

US Fish and Wildlife Service

1208 Main Street

Daphne, AL 36526

Attachment(s):

- Official Species List
 - USFWS National Wildlife Refuges and Fish Hatcheries
 - Migratory Birds
-

- Wetlands

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:

Alabama Ecological Services Field Office

1208 B Main Street

Daphne, AL 36526-4419

(251) 441-5181

Project Summary

Consultation Code: 04EA1000-2021-SLI-1402

Event Code: Some(04EA1000-2021-E-03467)

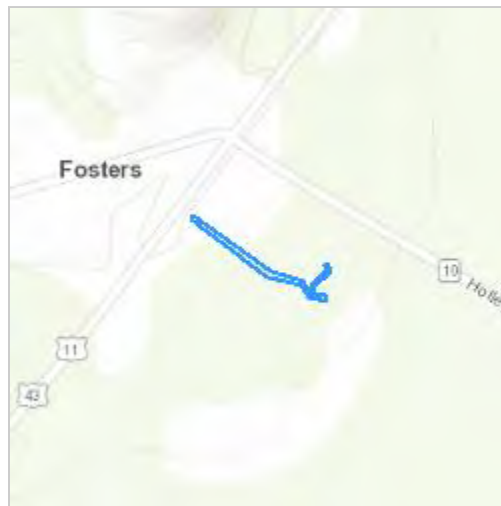
Project Name: na0455

Project Type: ** OTHER **

Project Description: satellite earth station

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@33.09338395,-87.68597490035367,14z>



Counties: Tuscaloosa County, Alabama

Endangered Species Act Species

There is a total of 6 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
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. The location of the critical habitat is not available. 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

Birds

NAME	STATUS
Wood Stork <i>Mycteria americana</i> Population: AL, FL, GA, MS, NC, SC No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/8477	Threatened

Clams

NAME	STATUS
Inflated Heelsplitter <i>Potamilus inflatus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7286	Threatened
Ovate Clubshell <i>Pleurobema perovatum</i> There is final critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/5430	Endangered

Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

Critical habitats

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

USFWS National Wildlife Refuge Lands And Fish Hatcheries

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

Migratory Birds

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

-
1. The [Migratory Birds Treaty Act](#) of 1918.
 2. The [Bald and Golden Eagle Protection Act](#) of 1940.
 3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern](#) (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
Prairie Warbler <i>Dendroica discolor</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 1 to Jul 31

Probability Of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

No Data (—)

A week is marked as having no data if there were no survey events for that week.

Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.

■ probability of presence ■ breeding season | survey effort — no data

SPECIES JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

Prairie Warbler
BCC Rangewide
(CON)



Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Measures for avoiding and minimizing impacts to birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Nationwide conservation measures for birds <http://www.fws.gov/migratorybirds/pdf/management/nationwidestandardconservationmeasures.pdf>

Migratory Birds FAQ

Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the migratory birds potentially occurring in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [AKN Phenology Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering, migrating or present year-round in my project area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may refer to the following resources: [The Cornell Lab of Ornithology All About Birds Bird Guide](#), or (if you are unsuccessful in locating the bird of interest there), the [Cornell Lab of Ornithology Neotropical Birds guide](#). If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

Proper Interpretation and Use of Your Migratory Bird Report

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

Wetlands

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

THERE ARE NO WETLANDS WITHIN YOUR PROJECT AREA.

APPENDIX E

SHPO Concurrence Letter, Summary of Tribal Correspondence

SHPO Consultation



ALABAMA HISTORICAL COMMISSION

468 South Perry Street
Montgomery, Alabama 36130-0900

Lisa D. Jones
Executive Director
State Historic Preservation Officer

Tel: 334-242-3184
Fax: 334-242-1083

November 3, 2021

Arianne Capirci
301 Ellicott Street
Buffalo, NY 14203

Re: AHC 22-0035
CRA
na0455 Satellite Earth Station
Tuscaloosa County

Dear Ms. Capirci:

Upon review of the cultural resource assessment conducted for the above referenced project, we concur with the author's finding that project activities will have no effect on cultural resources eligible for or listed on the National Register of Historic Places. Therefore, we concur with the determination of No Effect to Historic Properties.

Consultation with the State Historic Preservation Office does not constitute consultation with Tribal Historic Preservation Offices, other Native American tribes, local governments, or the public. If archaeological materials are encountered during construction, the procedures codified at 36 CFR 800.13(b) will apply. Archaeological materials consist of any items, fifty years old or older, which were made or used by man. These items include but are not limited to, stone projectile points (arrowheads), ceramic sherds, bricks, worked wood, bone and stone, metal, and glass objects. The federal agency or the applicant receiving federal assistance should contact our office immediately. If human remains are encountered, the provisions of the Alabama Burial Act (*Code of Alabama* 1975, §13A-7-23.1, as amended; Alabama Historical Commission Administrative Code Chapter 460-X-10 Burials) should be followed. This stipulation shall be placed on the construction plans to ensure contractors are aware of it.

We appreciate your commitment to helping us preserve Alabama's historic archaeological and architectural resources. Should you have any questions, please contact Amanda McBride at 334.230.2692 or Amanda.McBride@ahc.alabama.gov. Have the AHC tracking number referenced above available and include it with any future correspondence.

Sincerely,

Lee Anne Wofford
Deputy State Historic Preservation Officer

LAW/amh

na0455 Satellite Earth Station

106, Section <Section.106@ahc.alabama.gov>

Thu 11/4/2021 11:21 AM

To: Capirci, Arianne <Arianne.Capirci@tetrattech.com>

⚠ CAUTION: This email originated from an external sender. Verify the source before opening links or attachments. ⚠

Tribal Correspondence

From: [Vangie P. Robinson](#)
To: [TowersIII, Trey](#)
Subject: TCNS Notification No. 237751 - NA0455 Viasat, Inc.
Date: Tuesday, October 12, 2021 11:42:00 AM

CAUTION: This email originated from an external sender. Verify the source before opening links or attachments.

October 12, 2021

Robert Peltier

-

The Choctaw Nation of Oklahoma has reviewed the information provided on the **(NA0455) (TCNS# 237751)** Telecommunications tower located in **(Fosters, Tuscaloosa County, Alabama)** . The Choctaw Nation Historic Preservation Department concurs that there should be **(no historic properties effect)** to any known historic properties and that work should proceed as planned. However, as the project is located in an area that is of general historic interest to the Tribe, we request that work be stopped and our office be contacted immediately if any Native American cultural materials or human remains are encountered. If you have any questions, please contact our office at **580-924-8280 ext. 2559**.

Thank you

Vangie Robinson

TCNS Review Specialist

Choctaw Nation of Oklahoma

Historic Preservation Office

P.O. Box 1210

Durant, Ok 74701

(580) 924-8280 Ext. 2590

(580) 920-3181 Fax

vrobinson@choctawnation.com



This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure. If you have received this message in error, you are hereby notified that we do not consent to any reading, dissemination, distribution or copying of this message. If you have received this communication in error, please notify the sender immediately and destroy the transmitted

information. Please note that any view or opinions presented in this email are solely those of the author and do not necessarily represent those of the Choctaw Nation.

Table 1. Summary of Tower Construction Notification System Notification (TCNS) and Tribal Outreach Efforts for na0455 Satellite Earth Station

Tribal Nation	Date Submitted to Tribal Nation	Type of Submittal¹	Date Response Received²	Interest in Site²
Alabama-Coushatta Tribe of Texas	10/8/2021	Email	N/A	No Interest
Coushatta Indian Tribe	10/8/2021	Email	N/A	No Interest
Jena Band of Choctaw Indians	10/8/2021	Email	10/21/2021	Unaware of Sacred Sites or Significant Cultural Resources
Mississippi Band of Choctaw Indians	10/8/2021	Email	N/A	No Interest
Choctaw Nation of Oklahoma	10/8/2021	Email	10/12/2021	No Historic Properties Effect
Seminole Nation of Oklahoma	9/16/2021	TCNS	N/A	No Interest
Cherokee Nation	10/8/2021	Email	10/19/2021	No Interest
Muscogee (Creek) Nation	10/12/2021	Mail	N/A	No Interest
Eastern Shawnee Tribe of Oklahoma	9/16/2021 ³	Mail	9/26/2021	No Adverse Effect
Alabama Quassarte Tribal Town	9/16/2021	TCNS	N/A	No Interest
Thlopthlocco Tribal Town	10/8/2021	Email	N/A	No Interest
Shawnee Tribe	10/8/2021	Email	N/A	No Interest
Poarch Band of Creek Indians	9/16/2021	TCNS	N/A	No Interest
Tunica-Biloxi Tribe of LA	9/16/2021	TCNS	N/A	No Interest
1 Email – Tribe received Form 620 and Cultural report via electronic mail, Mail – Tribe received Form 620 and Cultural report via USPS Registered Certified Mail, TCNS – Tribe indicated that no response means they have no interest 2 N/A – Tribes were referred to the Federal Communications Commission (FCC) for purposes of contacting federally-recognized Indian Tribes. The FCC contacted these Tribal Nations on November 25, 2021 consistent with procedures outlined in the FCC's Wireless Infrastructure Second Report and Order (1). As described in the Wireless Infrastructure Second Report and Order (2), if Viasat, Inc. (Viasat) or the FCC did not receive a statement of interest regarding the Project from any Tribe within 15 calendar days of November 25, 2021, Viasat's obligations under Section IV of the Nationwide Programmatic Agreement with respect to these Tribal Nations were complete. 3 Eastern Shawnee Tribe of Oklahoma provided a response of No Adverse Effect before Viasat was prepared to submit communication to the Tribe. Due to this response, the Eastern Shawnee Tribe of Oklahoma was not sent any communications through USPS Registered Certified Mail; this date reflects the date that the FCC TCNS notification was sent to the Tribe.				

APPENDIX F

Wetland Delineation Sheets

U.S. Army Corps of Engineers WETLAND DETERMINATION DATA SHEET – Atlantic and Gulf Coastal Plain Region See ERDC/EL TR-07-24; the proponent agency is CECW-CO-R	OMB Control #: 0710-xxxx, Exp: Pending Requirement Control Symbol EXEMPT: (Authority: AR 335-15, paragraph 5-2a)
--	--

Project/Site: Fosters AL Site City/County: Fosters/Tuscaloosa Sampling Date: 10/07/2021
 Applicant/Owner: Viasat State: AL Sampling Point: Wetland
 Investigator(s): Hal Mitchell Section, Township, Range: S4, T24N, R4E
 Landform (hillside, terrace, etc.): Flat Local relief (concave, convex, none): Concave Slope (%): 2
 Subregion (LRR or MLRA): LRR P, MLRA 133A Lat: 33.092905 Long: -87.684877 Datum: WGS-84
 Soil Map Unit Name: Falkner Silt Loam, 0 to 2 percent slopes NWI classification: N/A
 Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No (If no, explain in Remarks.)
 Are Vegetation , Soil , or Hydrology significantly disturbed? Are "Normal Circumstances" present? Yes X No
 Are Vegetation , Soil , or Hydrology naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes <u>X</u> No <u> </u> Hydric Soil Present? Yes <u>X</u> No <u> </u> Wetland Hydrology Present? Yes <u>X</u> No <u> </u>	Is the Sampled Area within a Wetland? Yes <u>X</u> No <u> </u>
Remarks: Area previously disturbed with fill (asphalt and concrete) in some areas. Aerial imagery from 2010 indicates the surface was cleared and graded for the building of the adjacent shopping building.	

HYDROLOGY

Wetland Hydrology Indicators: <u>Primary Indicators (minimum of one is required; check all that apply)</u> <u> </u> Surface Water (A1) <u> </u> High Water Table (A2) <u>X</u> Saturation (A3) <u> </u> Water Marks (B1) <u> </u> Sediment Deposits (B2) <u> </u> Drift Deposits (B3) <u> </u> Algal Mat or Crust (B4) <u> </u> Iron Deposits (B5) <u> </u> Inundation Visible on Aerial Imagery (B7) <u>X</u> Water-Stained Leaves (B9) <u> </u> Aquatic Fauna (B13) <u> </u> Marl Deposits (B15) (LRR U) <u> </u> Hydrogen Sulfide Odor (C1) <u> </u> Oxidized Rhizospheres on Living Roots (C3) <u> </u> Presence of Reduced Iron (C4) <u> </u> Recent Iron Reduction in Tilled Soils (C6) <u> </u> Thin Muck Surface (C7) <u> </u> Other (Explain in Remarks)		<u>Secondary Indicators (minimum of two required)</u> <u> </u> Surface Soil Cracks (B6) <u> </u> Sparsely Vegetated Concave Surface (B8) <u>X</u> Drainage Patterns (B10) <u> </u> Moss Trim Lines (B16) <u> </u> Dry-Season Water Table (C2) <u> </u> Crayfish Burrows (C8) <u> </u> Saturation Visible on Aerial Imagery (C9) <u>X</u> Geomorphic Position (D2) <u> </u> Shallow Aquitard (D3) <u>X</u> FAC-Neutral Test (D5) <u>X</u> Sphagnum Moss (D8) (LRR T, U)
Field Observations: Surface Water Present? Yes <u> </u> No <u>X</u> Depth (inches): <u> </u> Water Table Present? Yes <u> </u> No <u>X</u> Depth (inches): <u> </u> Saturation Present? Yes <u>X</u> No <u> </u> Depth (inches): <u>0</u> (includes capillary fringe)	Wetland Hydrology Present? Yes <u>X</u> No <u> </u>	
Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available: Remarks: Poorly drained area. Disturbance has created a depressional area where rainwater and runoff collect and saturate.		

VEGETATION (Five Strata) – Use scientific names of plants.

 Sampling Point: Wetland

Tree Stratum (Plot size: <u>30</u>)	Absolute % Cover	Dominant Species?	Indicator Status																	
1. _____	_____	_____	_____	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>2</u> (A) Total Number of Dominant Species Across All Strata: <u>3</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>66.7%</u> (A/B)																
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
=Total Cover				Prevalence Index worksheet: <table style="width: 100%;"> <tr> <td style="width: 50%;">Total % Cover of:</td> <td style="width: 50%;">Multiply by:</td> </tr> <tr> <td>OBL species <u>55</u></td> <td>x 1 = <u>55</u></td> </tr> <tr> <td>FACW species <u>10</u></td> <td>x 2 = <u>20</u></td> </tr> <tr> <td>FAC species <u>30</u></td> <td>x 3 = <u>90</u></td> </tr> <tr> <td>FACU species <u>10</u></td> <td>x 4 = <u>40</u></td> </tr> <tr> <td>UPL species <u>5</u></td> <td>x 5 = <u>25</u></td> </tr> <tr> <td>Column Totals: <u>110</u> (A)</td> <td><u>230</u> (B)</td> </tr> <tr> <td colspan="2" style="text-align: center;">Prevalence Index = B/A = <u>2.09</u></td> </tr> </table>	Total % Cover of:	Multiply by:	OBL species <u>55</u>	x 1 = <u>55</u>	FACW species <u>10</u>	x 2 = <u>20</u>	FAC species <u>30</u>	x 3 = <u>90</u>	FACU species <u>10</u>	x 4 = <u>40</u>	UPL species <u>5</u>	x 5 = <u>25</u>	Column Totals: <u>110</u> (A)	<u>230</u> (B)	Prevalence Index = B/A = <u>2.09</u>	
Total % Cover of:	Multiply by:																			
OBL species <u>55</u>	x 1 = <u>55</u>																			
FACW species <u>10</u>	x 2 = <u>20</u>																			
FAC species <u>30</u>	x 3 = <u>90</u>																			
FACU species <u>10</u>	x 4 = <u>40</u>																			
UPL species <u>5</u>	x 5 = <u>25</u>																			
Column Totals: <u>110</u> (A)	<u>230</u> (B)																			
Prevalence Index = B/A = <u>2.09</u>																				
50% of total cover: _____ 20% of total cover: _____																				
Sapling Stratum (Plot size: <u>30</u>)																				
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
=Total Cover																				
50% of total cover: _____ 20% of total cover: _____																				
Shrub Stratum (Plot size: <u>15</u>)																				
1. <u>Pinus taeda</u>	<u>10</u>	<u>Yes</u>	<u>FAC</u>																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
=Total Cover																				
50% of total cover: <u>5</u> 20% of total cover: <u>2</u>																				
Herb Stratum (Plot size: <u>5</u>)																				
1. <u>Rhynchospora corniculata</u>	<u>55</u>	<u>Yes</u>	<u>OBL</u>																	
2. <u>Acalypha gracilens</u>	<u>10</u>	<u>No</u>	<u>FAC</u>																	
3. <u>Symphyotrichum pilosum</u>	<u>10</u>	<u>No</u>	<u>FAC</u>																	
4. <u>Solidago altissima</u>	<u>10</u>	<u>No</u>	<u>FACU</u>																	
5. <u>Juncus validus</u>	<u>5</u>	<u>No</u>	<u>FACW</u>																	
6. <u>Helianthus angustifolius</u>	<u>5</u>	<u>No</u>	<u>FACW</u>																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
9. _____	_____	_____	_____																	
10. _____	_____	_____	_____																	
11. _____	_____	_____	_____																	
=Total Cover																				
50% of total cover: <u>48</u> 20% of total cover: <u>19</u>																				
Woody Vine Stratum (Plot size: <u>15</u>)																				
1. <u>Rubus flagellaris</u>	<u>5</u>	<u>Yes</u>	<u>UPL</u>																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
=Total Cover																				
50% of total cover: <u>3</u> 20% of total cover: <u>1</u>																				
Remarks: (If observed, list morphological adaptations below.)																				

Hydrophytic Vegetation Present? Yes X No _____

VEGETATION (Four Strata) – Use scientific names of plants.

 Sampling Point: Wetland

Tree Stratum (Plot size: _____)	Absolute % Cover	Dominant Species?	Indicator Status																	
1. _____	_____	_____	_____	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: _____ (A) Total Number of Dominant Species Across All Strata: _____ (B) Percent of Dominant Species That Are OBL, FACW, or FAC: _____ (A/B)																
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
			_____ = Total Cover	Prevalence Index worksheet: <table style="width: 100%;"> <tr> <td style="width: 50%;">Total % Cover of:</td> <td style="width: 50%;">Multiply by:</td> </tr> <tr> <td>OBL species _____</td> <td>x 1 = _____</td> </tr> <tr> <td>FACW species _____</td> <td>x 2 = _____</td> </tr> <tr> <td>FAC species _____</td> <td>x 3 = _____</td> </tr> <tr> <td>FACU species _____</td> <td>x 4 = _____</td> </tr> <tr> <td>UPL species _____</td> <td>x 5 = _____</td> </tr> <tr> <td>Column Totals: _____ (A)</td> <td>_____ (B)</td> </tr> <tr> <td colspan="2">Prevalence Index = B/A = _____</td> </tr> </table>	Total % Cover of:	Multiply by:	OBL species _____	x 1 = _____	FACW species _____	x 2 = _____	FAC species _____	x 3 = _____	FACU species _____	x 4 = _____	UPL species _____	x 5 = _____	Column Totals: _____ (A)	_____ (B)	Prevalence Index = B/A = _____	
Total % Cover of:	Multiply by:																			
OBL species _____	x 1 = _____																			
FACW species _____	x 2 = _____																			
FAC species _____	x 3 = _____																			
FACU species _____	x 4 = _____																			
UPL species _____	x 5 = _____																			
Column Totals: _____ (A)	_____ (B)																			
Prevalence Index = B/A = _____																				
			50% of total cover: _____ 20% of total cover: _____																	
Sapling/Shrub Stratum (Plot size: _____)																				
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
			_____ = Total Cover	Hydrophytic Vegetation Indicators: _____ 1 - Rapid Test for Hydrophytic Vegetation _____ 2 - Dominance Test is >50% _____ 3 - Prevalence Index is ≤3.0 ¹ _____ Problematic Hydrophytic Vegetation ¹ (Explain)																
			50% of total cover: _____ 20% of total cover: _____																	
Herb Stratum (Plot size: _____)																				
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
9. _____	_____	_____	_____																	
10. _____	_____	_____	_____																	
11. _____	_____	_____	_____																	
12. _____	_____	_____	_____																	
			_____ = Total Cover	Definitions of Four Vegetation Strata: Tree – Woody plants, excluding vines, 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height. Sapling/Shrub – Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall. Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall. Woody Vine – All woody vines greater than 3.28 ft in height.																
			50% of total cover: _____ 20% of total cover: _____																	
Woody Vine Stratum (Plot size: _____)																				
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
			_____ = Total Cover																	
			50% of total cover: _____ 20% of total cover: _____																	
Remarks: (If observed, list morphological adaptations below.)				Hydrophytic Vegetation Present? Yes _____ No _____																

SOIL

Sampling Point: Wetland

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)								
Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type ¹	Loc ²		
0-3	10YR 3/1	100					Loamy/Clayey	
3-6	10YR 4/1	95	5YR 4/6	5	C	M	Sandy	
6-16	10YR 8/2	90	5YR 4/6	10	C	M	Sandy	Prominent redox concentrations
¹ Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.							² Location: PL=Pore Lining, M=Matrix.	
Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)							Indicators for Problematic Hydric Soils³:	
☐ Histosol (A1)			☐ Thin Dark Surface (S9) (LRR S, T, U)				☐ 1 cm Muck (A9) (LRR O)	
☐ Histic Epipedon (A2)			☐ Barrier Islands 1 cm Muck (S12)				☐ 2 cm Muck (A10) (LRR S)	
☐ Black Histic (A3)			(MLRA 153B, 153D)				☒ Coast Prairie Redox (A16)	
☐ Hydrogen Sulfide (A4)			☐ Loamy Mucky Mineral (F1) (LRR O)				(outside MLRA 150A)	
☐ Stratified Layers (A5)			☐ Loamy Gleyed Matrix (F2)				☐ Reduced Vertic (F18)	
☐ Organic Bodies (A6) (LRR P, T, U)			☐ Depleted Matrix (F3)				(outside MLRA 150A, 150B)	
☐ 5 cm Mucky Mineral (A7) (LRR P, T, U)			☐ Redox Dark Surface (F6)				☐ Piedmont Floodplain Soils (F19) (LRR P, T)	
☐ Muck Presence (A8) (LRR U)			☐ Depleted Dark Surface (F7)				☐ Anomalous Bright Floodplain Soils (F20)	
☐ 1 cm Muck (A9) (LRR P, T)			☐ Redox Depressions (F8)				(MLRA 153B)	
☒ Depleted Below Dark Surface (A11)			☐ Marl (F10) (LRR U)				☐ Red Parent Material (F21)	
☐ Thick Dark Surface (A12)			☐ Depleted Ochric (F11) (MLRA 151)				☐ Very Shallow Dark Surface (F22)	
☐ Coast Prairie Redox (A16) (MLRA 150A)			☐ Iron-Manganese Masses (F12) (LRR O, P, T)				(outside MLRA 138, 152A in FL, 154)	
☐ Sandy Mucky Mineral (S1) (LRR O, S)			☐ Umbric Surface (F13) (LRR P, T, U)				☐ Barrier Islands Low Chroma Matrix (TS7)	
☐ Sandy Gleyed Matrix (S4)			☐ Delta Ochric (F17) (MLRA 151)				(MLRA 153B, 153D)	
☒ Sandy Redox (S5)			☐ Reduced Vertic (F18) (MLRA 150A, 150B)				☐ Other (Explain in Remarks)	
☐ Stripped Matrix (S6)			☐ Piedmont Floodplain Soils (F19) (MLRA 149A)					
☐ Dark Surface (S7) (LRR P, S, T, U)			☐ Anomalous Bright Floodplain Soils (F20)					
☐ Polyvalue Below Surface (S8)			(MLRA 149A, 153C, 153D)					
(LRR S, T, U)			☐ Very Shallow Dark Surface (F22)					
			(MLRA 138, 152A in FL, 154)					
Restrictive Layer (if observed):								
Type: _____								
Depth (inches): _____								
Remarks:						Hydric Soil Present? Yes ☒ No ☐		
The surface layer may include distrubance/fill material.								

U.S. Army Corps of Engineers WETLAND DETERMINATION DATA SHEET – Atlantic and Gulf Coastal Plain Region See ERDC/EL TR-07-24; the proponent agency is CECW-CO-R	OMB Control #: 0710-xxxx, Exp: Pending Requirement Control Symbol EXEMPT: (Authority: AR 335-15, paragraph 5-2a)
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Project/Site: Fosters AL Site City/County: Fosters/Tuscaloosa Sampling Date: 10/07/2021

Applicant/Owner: Viasat State: AL Sampling Point: Upland

Investigator(s): Hal Mitchell Section, Township, Range: S4, T24N, R4E

Landform (hillside, terrace, etc.): Flat Local relief (concave, convex, none): Convex Slope (%): 3

Subregion (LRR or MLRA): LRR P, MLRA 133A Lat: 33.092796 Long: -87.684961 Datum: WGS-84

Soil Map Unit Name: Falkner Silt Loam, 0 to 2 percent slopes NWI classification: N/A

Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No (If no, explain in Remarks.)

Are Vegetation , Soil , or Hydrology significantly disturbed? Are "Normal Circumstances" present? Yes X No

Are Vegetation , Soil , or Hydrology naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes <u> </u> No <u>X</u> Hydric Soil Present? Yes <u> </u> No <u>X</u> Wetland Hydrology Present? Yes <u> </u> No <u>X</u>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; text-align: center;"> Is the Sampled Area within a Wetland? </td> <td style="width: 40%; text-align: center;"> Yes <u> </u> No <u>X</u> </td> </tr> </table>	Is the Sampled Area within a Wetland?	Yes <u> </u> No <u>X</u>
Is the Sampled Area within a Wetland?	Yes <u> </u> No <u>X</u>		
Remarks: Area previously disturbed with fill (asphalt and concrete) in some areas. Aerial imagery from 2010 indicates the surface was cleared and graded for the building of the adjacent shopping building.			

HYDROLOGY

Wetland Hydrology Indicators: <u>Primary Indicators (minimum of one is required; check all that apply)</u> <u> </u> Surface Water (A1) <u> </u> High Water Table (A2) <u> </u> Saturation (A3) <u> </u> Water Marks (B1) <u> </u> Sediment Deposits (B2) <u> </u> Drift Deposits (B3) <u> </u> Algal Mat or Crust (B4) <u> </u> Iron Deposits (B5) <u> </u> Inundation Visible on Aerial Imagery (B7) <u> </u> Water-Stained Leaves (B9) <u> </u> Aquatic Fauna (B13) <u> </u> Marl Deposits (B15) (LRR U) <u> </u> Hydrogen Sulfide Odor (C1) <u> </u> Oxidized Rhizospheres on Living Roots (C3) <u> </u> Presence of Reduced Iron (C4) <u> </u> Recent Iron Reduction in Tilled Soils (C6) <u> </u> Thin Muck Surface (C7) <u> </u> Other (Explain in Remarks)		<u>Secondary Indicators (minimum of two required)</u> <u> </u> Surface Soil Cracks (B6) <u> </u> Sparsely Vegetated Concave Surface (B8) <u> </u> Drainage Patterns (B10) <u> </u> Moss Trim Lines (B16) <u> </u> Dry-Season Water Table (C2) <u> </u> Crayfish Burrows (C8) <u> </u> Saturation Visible on Aerial Imagery (C9) <u> </u> Geomorphic Position (D2) <u> </u> Shallow Aquitard (D3) <u> </u> FAC-Neutral Test (D5) <u> </u> Sphagnum Moss (D8) (LRR T, U)	
Field Observations: Surface Water Present? Yes <u> </u> No <u>X</u> Depth (inches): <u> </u> Water Table Present? Yes <u> </u> No <u>X</u> Depth (inches): <u> </u> Saturation Present? Yes <u> </u> No <u>X</u> Depth (inches): <u> </u> (includes capillary fringe)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; text-align: center;"> Wetland Hydrology Present? </td> <td style="width: 40%; text-align: center;"> Yes <u> </u> No <u>X</u> </td> </tr> </table>	Wetland Hydrology Present?	Yes <u> </u> No <u>X</u>
Wetland Hydrology Present?	Yes <u> </u> No <u>X</u>		
Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available: Remarks: Bermed area.			

VEGETATION (Five Strata) – Use scientific names of plants.

 Sampling Point: Upland

Tree Stratum (Plot size: <u>30</u>)	Absolute % Cover	Dominant Species?	Indicator Status																	
1. <u>Populus deltoides</u>	<u>5</u>	<u>Yes</u>	<u>FAC</u>	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: <u>2</u> (A) Total Number of Dominant Species Across All Strata: <u>4</u> (B) Percent of Dominant Species That Are OBL, FACW, or FAC: <u>50.0%</u> (A/B)																
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
5 = Total Cover																				
50% of total cover: <u>3</u>		20% of total cover: <u>1</u>																		
Sapling Stratum (Plot size: <u>30</u>)																				
1. _____	_____	_____	_____	Prevalence Index worksheet: <table style="width: 100%;"> <tr> <th style="text-align: left;">Total % Cover of:</th> <th style="text-align: left;">Multiply by:</th> </tr> <tr> <td>OBL species <u>0</u></td> <td>x 1 = <u>0</u></td> </tr> <tr> <td>FACW species <u>0</u></td> <td>x 2 = <u>0</u></td> </tr> <tr> <td>FAC species <u>20</u></td> <td>x 3 = <u>60</u></td> </tr> <tr> <td>FACU species <u>75</u></td> <td>x 4 = <u>300</u></td> </tr> <tr> <td>UPL species <u>0</u></td> <td>x 5 = <u>0</u></td> </tr> <tr> <td>Column Totals: <u>95</u> (A)</td> <td><u>360</u> (B)</td> </tr> <tr> <td colspan="2" style="text-align: right;">Prevalence Index = B/A = <u>3.79</u></td> </tr> </table>	Total % Cover of:	Multiply by:	OBL species <u>0</u>	x 1 = <u>0</u>	FACW species <u>0</u>	x 2 = <u>0</u>	FAC species <u>20</u>	x 3 = <u>60</u>	FACU species <u>75</u>	x 4 = <u>300</u>	UPL species <u>0</u>	x 5 = <u>0</u>	Column Totals: <u>95</u> (A)	<u>360</u> (B)	Prevalence Index = B/A = <u>3.79</u>	
Total % Cover of:	Multiply by:																			
OBL species <u>0</u>	x 1 = <u>0</u>																			
FACW species <u>0</u>	x 2 = <u>0</u>																			
FAC species <u>20</u>	x 3 = <u>60</u>																			
FACU species <u>75</u>	x 4 = <u>300</u>																			
UPL species <u>0</u>	x 5 = <u>0</u>																			
Column Totals: <u>95</u> (A)	<u>360</u> (B)																			
Prevalence Index = B/A = <u>3.79</u>																				
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
_____ = Total Cover																				
50% of total cover: _____		20% of total cover: _____																		
Shrub Stratum (Plot size: <u>15</u>)																				
1. <u>Pinus taeda</u>	<u>10</u>	<u>Yes</u>	<u>FAC</u>	Hydrophytic Vegetation Indicators: <u>1</u> - Rapid Test for Hydrophytic Vegetation <u>2</u> - Dominance Test is >50% <u>3</u> - Prevalence Index is ≤3.0 ¹ <u>_____</u> Problematic Hydrophytic Vegetation ¹ (Explain)																
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
10 = Total Cover																				
50% of total cover: <u>5</u>		20% of total cover: <u>2</u>																		
Herb Stratum (Plot size: <u>5</u>)																				
1. <u>Cynodon dactylon</u>	<u>55</u>	<u>Yes</u>	<u>FACU</u>	Definitions of Five Vegetation Strata: Tree – Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH). Sapling – Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and less than 3 in. (7.6 cm) DBH. Shrub - Woody Plants, excluding woody vines, approximately 3 to 20 ft (1 to 6 m) in height. Herb – All herbaceous (non-woody) plants, including herbaceous vines, regardless of size, <u>and</u> woody plants, except woody vines, less than approximately 3 ft (1 m) in height. Woody Vine – All woody vines, regardless of height.																
2. <u>Solidago altissima</u>	<u>20</u>	<u>Yes</u>	<u>FACU</u>																	
3. <u>Symphyotrichum pilosum</u>	<u>5</u>	<u>No</u>	<u>FAC</u>																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
9. _____	_____	_____	_____																	
10. _____	_____	_____	_____																	
11. _____	_____	_____	_____																	
80 = Total Cover																				
50% of total cover: <u>40</u>		20% of total cover: <u>16</u>																		
Woody Vine Stratum (Plot size: <u>15</u>)																				
1. _____	_____	_____	_____	Hydrophytic Vegetation Present? Yes <u>_____</u> No <u>X</u>																
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
_____ = Total Cover																				
50% of total cover: _____		20% of total cover: _____																		
Remarks: (If observed, list morphological adaptations below.)																				

VEGETATION (Four Strata) – Use scientific names of plants.

 Sampling Point: Upland

Tree Stratum (Plot size: _____)	Absolute % Cover	Dominant Species?	Indicator Status																	
1. _____	_____	_____	_____	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: _____ (A) Total Number of Dominant Species Across All Strata: _____ (B) Percent of Dominant Species That Are OBL, FACW, or FAC: _____ (A/B)																
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
_____ = Total Cover				Prevalence Index worksheet: <table style="width: 100%;"> <tr> <td style="width: 50%;">Total % Cover of:</td> <td style="width: 50%;">Multiply by:</td> </tr> <tr> <td>OBL species _____</td> <td>x 1 = _____</td> </tr> <tr> <td>FACW species _____</td> <td>x 2 = _____</td> </tr> <tr> <td>FAC species _____</td> <td>x 3 = _____</td> </tr> <tr> <td>FACU species _____</td> <td>x 4 = _____</td> </tr> <tr> <td>UPL species _____</td> <td>x 5 = _____</td> </tr> <tr> <td>Column Totals: _____ (A)</td> <td>_____ (B)</td> </tr> <tr> <td colspan="2">Prevalence Index = B/A = _____</td> </tr> </table>	Total % Cover of:	Multiply by:	OBL species _____	x 1 = _____	FACW species _____	x 2 = _____	FAC species _____	x 3 = _____	FACU species _____	x 4 = _____	UPL species _____	x 5 = _____	Column Totals: _____ (A)	_____ (B)	Prevalence Index = B/A = _____	
Total % Cover of:	Multiply by:																			
OBL species _____	x 1 = _____																			
FACW species _____	x 2 = _____																			
FAC species _____	x 3 = _____																			
FACU species _____	x 4 = _____																			
UPL species _____	x 5 = _____																			
Column Totals: _____ (A)	_____ (B)																			
Prevalence Index = B/A = _____																				
50% of total cover: _____ 20% of total cover: _____																				
Sapling/Shrub Stratum (Plot size: _____)																				
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
_____ = Total Cover				Hydrophytic Vegetation Indicators: _____ 1 - Rapid Test for Hydrophytic Vegetation _____ 2 - Dominance Test is >50% _____ 3 - Prevalence Index is ≤3.0 ¹ _____ Problematic Hydrophytic Vegetation ¹ (Explain)																
50% of total cover: _____ 20% of total cover: _____																				
Herb Stratum (Plot size: _____)																				
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
6. _____	_____	_____	_____																	
7. _____	_____	_____	_____																	
8. _____	_____	_____	_____																	
9. _____	_____	_____	_____																	
10. _____	_____	_____	_____																	
11. _____	_____	_____	_____																	
12. _____	_____	_____	_____																	
_____ = Total Cover				Definitions of Four Vegetation Strata: Tree – Woody plants, excluding vines, 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height. Sapling/Shrub – Woody plants, excluding vines, less than 3 in. DBH and greater than 3.28 ft (1 m) tall. Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall. Woody Vine – All woody vines greater than 3.28 ft in height.																
50% of total cover: _____ 20% of total cover: _____																				
Woody Vine Stratum (Plot size: _____)																				
1. _____	_____	_____	_____																	
2. _____	_____	_____	_____																	
3. _____	_____	_____	_____																	
4. _____	_____	_____	_____																	
5. _____	_____	_____	_____																	
_____ = Total Cover																				
50% of total cover: _____ 20% of total cover: _____																				
Hydrophytic Vegetation Present?				Yes _____ No <u>X</u>																
Remarks: (If observed, list morphological adaptations below.)																				

SOIL

Sampling Point: Upland

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)								
Depth (inches)	Matrix		Redox Features				Texture	Remarks
	Color (moist)	%	Color (moist)	%	Type ¹	Loc ²		
0-16	10YR 3/1	100					Loamy/Clayey	Fill material?
¹ Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.				² Location: PL=Pore Lining, M=Matrix.				
Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)				Indicators for Problematic Hydric Soils³:				
☐ Histosol (A1)				☐ Thin Dark Surface (S9) (LRR S, T, U)	☐ 1 cm Muck (A9) (LRR O)			
☐ Histic Epipedon (A2)				☐ Barrier Islands 1 cm Muck (S12)	☐ 2 cm Muck (A10) (LRR S)			
☐ Black Histic (A3)				(MLRA 153B, 153D)	☐ Coast Prairie Redox (A16)			
☐ Hydrogen Sulfide (A4)				☐ Loamy Mucky Mineral (F1) (LRR O)	(outside MLRA 150A)			
☐ Stratified Layers (A5)				☐ Loamy Gleyed Matrix (F2)	☐ Reduced Vertic (F18)			
☒ Organic Bodies (A6) (LRR P, T, U)				☐ Depleted Matrix (F3)	(outside MLRA 150A, 150B)			
☐ 5 cm Mucky Mineral (A7) (LRR P, T, U)				☐ Redox Dark Surface (F6)	☐ Piedmont Floodplain Soils (F19) (LRR P, T)			
☐ Muck Presence (A8) (LRR U)				☐ Depleted Dark Surface (F7)	☐ Anomalous Bright Floodplain Soils (F20)			
☐ 1 cm Muck (A9) (LRR P, T)				☐ Redox Depressions (F8)	(MLRA 153B)			
☐ Depleted Below Dark Surface (A11)				☐ Marl (F10) (LRR U)	☐ Red Parent Material (F21)			
☐ Thick Dark Surface (A12)				☐ Depleted Ochric (F11) (MLRA 151)	☐ Very Shallow Dark Surface (F22)			
☐ Coast Prairie Redox (A16) (MLRA 150A)				☐ Iron-Manganese Masses (F12) (LRR O, P, T)	(outside MLRA 138, 152A in FL, 154)			
☐ Sandy Mucky Mineral (S1) (LRR O, S)				☐ Umbric Surface (F13) (LRR P, T, U)	☐ Barrier Islands Low Chroma Matrix (TS7)			
☐ Sandy Gleyed Matrix (S4)				☐ Delta Ochric (F17) (MLRA 151)	(MLRA 153B, 153D)			
☐ Sandy Redox (S5)				☐ Reduced Vertic (F18) (MLRA 150A, 150B)	☐ Other (Explain in Remarks)			
☐ Stripped Matrix (S6)				☐ Piedmont Floodplain Soils (F19) (MLRA 149A)				
☐ Dark Surface (S7) (LRR P, S, T, U)				☐ Anomalous Bright Floodplain Soils (F20)				
☐ Polyvalue Below Surface (S8)				(MLRA 149A, 153C, 153D)				
(LRR S, T, U)				☐ Very Shallow Dark Surface (F22)				
				(MLRA 138, 152A in FL, 154)				
Restrictive Layer (if observed):								
Type: <u>Compaction</u>								
Depth (inches): <u>16</u>								
Hydric Soil Present?						Yes <u> </u> No <u> X </u>		
Remarks:								
Disturbed area that was likely built up to create access to the site.								

APPENDIX G

USACE Nationwide Permit 57 and ADEM Section 401 Water Quality Certification for Nationwide Permit 57

From: [CESAM-RD](#)
To: [Stetter, Matt](#)
Subject: RE: Permit Application - NWP 57; Tuscaloosa Co., AL
Date: Friday, December 3, 2021 2:50:06 AM
Attachments: [Nationwide Permit 57 effective 15 March 2021-Alabama.pdf](#)

CAUTION: This email originated from an external sender. Verify the source before opening links or attachments.

Mr. Stetter,

Nationwide Permit 57 is valid for use in the State of Alabama and within the Regulatory boundaries of the Mobile District.

NWP 57 does not require that your client obtain an individual 401 water quality certification (WQC) from the Alabama Department of Environmental Management (ADEM) as they have already issued a conditioned General WQC for the sixteen 2021 Nationwide Permits, which includes NWP 57. Attached you will find a copy of a NWP 57 summary document with copy of the ADEM WQC attached for reference.

Even though you have determined the proposed project meets the terms of a non-PreConstruction Notification NWP, please ensure your client is aware they should closely review and must adhere to the attached NWP 57 Terms and Conditions and State Water Quality Certification Conditions, and that they must comply with all terms and conditions of the Nationwide Permit in order to maintain valid permit coverage while implementing their project. They also need to ensure any contractors/sub-contractors working on the project on their behalf are made aware of the permit terms and conditions they must abide by in order to maintain valid coverage under NWP 57.

Respectfully,

Leslie E. Turney
Chief, North Branch
US Army Corps of Engineers – Regulatory Division
Mobile District – Birmingham Field Office
600 Vestavia Parkway, Suite 203
Vestavia Hills, Alabama 35216
Main Office Line: (251) 690-2658
Cell: (205) 213-9623
leslie.e.turney@usace.army.mil

TO SUBMIT AN APPLICATION TO THE NORTH BRANCH ELECTRONICALLY, PLEASE SEND TO: CESAM-RD@sam.usace.army.mil

* Need information on the Regulatory Program? Visit our website:
www.sam.usace.army.mil/Missions/Regulatory.aspx

From: Stetter, Matt <Matt.Stetter@tetrattech.com>
Sent: Monday, November 29, 2021 4:41 PM
To: CESAM-RD <CESAM-RD@usace.army.mil>
Subject: [Non-DoD Source] Permit Application - NWP 57

My client has a small telecommunications project impacting less than 1/10 of an acre of PEM wetland in Tuscaloosa County, AL. This project does not require submittal of a PCN to the Corps, it meets all published NWP 57 conditions, as well as Alabama Department of Environmental Management Section 401 conditions.

Is NWP 57 valid for use in the Mobile District? And, if so, does it require an individual 401 Certification?

Thank you for your time addressing this question in the use of NWP 57,

Matt

Matthew Stetter | Project Manager | Tetra Tech
Direct (716) 541-9229 | Main (716) 849-9419 | Cell (814) 229-9970 | matt.stetter@tetrattech.com

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2021 Nationwide Permits In Effect As of March 15, 2021

57. Electric Utility Line and Telecommunications Activities. Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Electric utility lines and telecommunication lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in pre-construction contours of waters of the United States. An “electric utility line and telecommunication line” is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the electric utility line or telecommunication line crossing of each waterbody.

Electric utility line and telecommunications substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of electric utility lines or telecommunication lines,

including overhead lines and substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and electric utility lines or telecommunication lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, 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. After construction, 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.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the electric utility line is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the electric utility line to protect navigation.

Note 2: For electric utility line or telecommunications activities 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. Electric utility line and telecommunications activities must comply with 33 CFR 330.6(d).

Note 3: Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For 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)(4) 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).

2021 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 or her 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 Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. 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. Permittees 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 activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

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 designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical

habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). 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 species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) 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 species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference 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.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) 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.

(f) 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.

(g) 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 that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects 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) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places 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 (see 33 CFR 330.4(g)(1)). 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 commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or 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.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has 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. 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. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to

those waters. The district engineer may authorize activities under these NWP's only after she or he determines 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) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-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. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-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. 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. If restoring riparian areas

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

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

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, 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)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal

agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(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 or federal, 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. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority 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)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. 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 CWA 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 authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot 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.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 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 review by, or 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 and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review 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. 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) (i) 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.
- (ii) For linear projects where one or more single and complete crossings require pre-construction notification, 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 (including those single and complete crossings authorized by an NWP but do not require PCNs).

This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) 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 and intermittent 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 or 3/100-acre of stream bed 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) 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 NWP activity that requires permission from, or review by, 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, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. 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 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 (iii) 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 that 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.



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December 14, 2020

Colonel Sebastien P. Joly
Commander, Mobile District
U.S. Army Corps of Engineers
P.O. Box 2288
Mobile, AL 36628-0001

RE: Clean Water Act (CWA) Section 401 Water Quality Certification (WQC), U.S. Army Corps of Engineers (COE) 2020 Proposed Issuance of Alabama Nationwide Permits (ALNWP) For Activities Within the State of Alabama

Dear Colonel Joly:

This office has completed a review of the above-referenced notice and all associated materials submitted related to the proposed ALNWP. Any comments made during the public notice period have also been forwarded to the Department for review.

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas

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29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
 - A. Seaweed Mariculture Activities
 - B. Finfish Mariculture Activities
 - C. Electric Utility Line and Telecommunications Activities **(NWP 57)**
 - D. Utility Line Activities for Water and Other Substances
 - E. Water Reclamation and Reuse Facilities

Because action pertinent to WQC is required by Section 401(a)(1) of the CWA, 33 U.S.C. Section 1251, et seq., we hereby issue certification that there is reasonable assurance that the discharge resulting from the proposed activities as submitted will not violate applicable water quality standards established under Section 303 of the CWA and Title 22, Section 22-22-9(g), Code of Alabama, 1975, provided the applicant acts in accordance with the following conditions as specified. We further certify that there are no applicable effluent limitations under Sections 301 and 302 nor applicable standards under Sections 306 and 307 of the CWA in regard to the activities specified. This certification shall expire at the same time as the expiration date for the above-referenced Alabama Nationwide Permits for activities within the State of Alabama.

To minimize adverse impacts to State waters, by copy of this letter we are requesting the Mobile District Corps of Engineers to incorporate the following as special conditions as appropriate to the type, location, scope, duration, and potential impact of each activity in Alabama authorized by the COE NWP's:

1. During project implementation, the applicant shall ensure compliance with applicable requirements of ADEM. Admin. Code Chapter 335-6-6 [National Pollutant Discharge Elimination System (NPDES)], Chapter 335-6-10 (Water Quality Criteria), and Chapter 335-6-11 (Water Use Classifications for Interstate and Intrastate Waters).

2. ADEM permit coverage may be required prior to commencing and/or continuing certain activities/operations relating to or resulting from the project. If an applicant has any questions regarding ADEM regulated activity or the need for NPDES permit coverage, the applicant can contact ADEM's Water Division at (334) 271-7823. If an applicant has any questions regarding ADEM regulated activity or the need for air permit coverage, the applicant can contact ADEM's Air Division at (334) 271-7869. If the applicant has any questions regarding ADEM regulated activity or the need for hazardous, toxic, and/or solid waste permit coverage, the applicant can contact ADEM's Land Division at (334) 271-7730.
3. Upon the loss or failure of any treatment facility, Best Management Practice (BMP), or other control, the applicant shall, where necessary to maintain compliance with this certification, suspend, cease, reduce or otherwise control work/activity and all discharges until effective treatment is restored. It shall not be a defense for the applicant in a compliance action that it would have been necessary to halt or reduce work or other activities in order to maintain compliance with the conditions of this certification.
4. The applicant shall retain records adequate to document activities authorized by this certification for a period of at least three years after completion of work/activity authorized by the certification. Upon written request, the applicant shall provide ADEM with a copy of any record/information required to be retained by this paragraph.
5. The applicant shall conduct or have conducted, at a minimum, weekly comprehensive site inspections until completion of the proposed activity to ensure that effective BMPs are properly designed, implemented, and regularly maintained (i.e. repair, replace, add to, improve, implement more effective practice, etc.) to prevent/minimize to the maximum extent practicable discharges of pollutants in order to provide for the protection of water quality.
6. The applicant shall implement a project-specific or a detailed general BMP Plan prepared by an ADEM recognized qualified credentialed professional (QCP) applicable to and commensurate with activities of the type proposed. Effective BMPs shall be implemented and continually maintained for the prevention and control of turbidity, sediment, and other sources of pollutants, including measures to ensure permanent revegetation or cover of all disturbed areas, during and after project implementation.
7. The applicant shall implement a Spill Prevention Control and Countermeasures (SPCC) Plan for all temporary and permanent onsite fuel or chemical storage tanks or facilities consistent with the requirements of ADEM Admin. Code R. 335-6-6-.12(r), Section 311 of the Federal Water Pollution Control Act, and 40 CFR Part 112. The applicant shall maintain onsite or have readily available sufficient oil & grease absorbing material and flotation booms to contain and clean-up fuel or chemical spills and leaks. The applicant shall immediately notify ADEM after becoming aware of a significant visible oil sheen in the vicinity of the proposed activity. In the event of a spill with the potential to impact groundwater or other waters of the State, the applicant should immediately call the National Response Center at 1-800-424-8802 and the Alabama Emergency Management Agency at 1-800-843-0699. The caller should be prepared to report the name, address and telephone number of person reporting spill, the exact location of the spill, the company name and location, the material spilled, the estimated quantity, the source of spill, the cause of the spill, the nearest downstream water with the potential to receive the spill, and the actions taken for containment and cleanup.

8. Additional, effective BMPs shall be fully implemented and maintained on a daily basis as needed to prevent to the maximum extent possible potential discharges of pollutants from activities authorized by this certification, directly to or to a tributary or other stream segment, that have the potential to impact a State water currently considered impaired [waterbody is identified on the Alabama 303(d) list, a total maximum daily load (TMDL) has been finalized for the waterbody, and/or the waterbody is otherwise considered a Tier 1 water pursuant to ADEM Admin. Code Ch. 335-6-10]. The applicant shall inspect all BMPs as often as is necessary (daily if needed) for effectiveness, need for maintenance, and the need to implement additional, effective BMPs. Additional effective BMPs shall immediately be implemented as needed to ensure full compliance with ADEM requirements and the protection of water quality in the impaired waterbody.
9. All construction and worker debris (e.g. trash, garbage, etc.) must be immediately removed and disposed in an approved manner. If acceptable offsite options are unavailable, effective onsite provisions for collection and control of onsite worker toilet wastes or gray waste waters (i.e. port-o-let, shower washdown, etc.) must be implemented and maintained. Soil contaminated by paint or chemical spills, oil spills, etc. must be immediately cleaned up or be removed and disposed in an approved manner. Also, the applicant shall manage and dispose of any trash, debris, and solid waste according to applicable state and federal requirements.
10. All materials used as fill, or materials used for construction of structures in a waterbody, must be non-toxic, non-leaching, non-acid forming, and free of solid waste or other debris. This requirement does not preclude the use of construction materials authorized by the COE that are typically utilized in marine or other aquatic applications.
11. The applicant shall implement appropriate measures to minimize the potential for a decrease of instream dissolved oxygen concentrations as a result of project implementation. In addition, the applicant shall ensure that the activities authorized by this certification do not significantly contribute to or cause a violation of applicable water quality standards for instream dissolved oxygen.
12. The applicant shall implement appropriate, effective BMPs, including installation of floating turbidity screens as necessary, to minimize downstream turbidity to the maximum extent practicable. The applicant shall visually monitor or measure background turbidity. The applicant must suspend operations should turbidity resulting from project implementation exceed background turbidity by more than 50 NTUs. Operations may resume when the turbidity decreases to within acceptable levels.
13. The applicant shall evaluate, characterize, and as necessary, conduct regular analysis of any material proposed to be dredged/removed/disturbed in order to ensure that potential pollutants are not present in concentrations that could cause or contribute to a violation of applicable water quality standards. Information regarding the evaluation, characterization, or detailed results of any analyses shall be made available to ADEM upon request.
14. If upland disposal areas are utilized, the applicant shall be responsible for the condition of the disposal area, including the structural integrity of any embankments, until the disposal area is permanently reclaimed or adequately stabilized, to ensure that sediment and/or turbidity in the return water and/or stormwater runoff will not cause substantial visible contrast with the receiving waters, or result in an increase of 50 NTUs above background turbidity levels in the receiving waters.
15. For proposed activities associated with new or updated docks, marinas, multiple boat slips, floating docks, large or multiple piers, etc. or that increase the number of berthing areas, the applicant shall

ensure that these facilities are equipped with appurtenances (i.e. trash receptacles, receptacles for fish offal and carcasses, SPCC for fueling facilities, and a sewage pump out system where appropriate) as needed to protect water quality.

16. The applicant is encouraged to consider additional pollution prevention practices, low impact development (LID), and other alternatives to assist in complying with applicable regulatory requirements and possible reduction/elimination of pollutant discharges. LID is an approach to land development or re-development that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to implement these sustainable ideas such as bio-retention facilities, rain gardens, vegetated rooftops, rain barrels, and permeable pavements. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed.
17. The applicant is encouraged to consider and implement a site design plan/strategy for post-construction hydrology to mimic pre-construction hydrology to the extent feasible, and for post-construction stormwater runoff peak flows and total stormwater volume to minimize potential downstream channel and stream bank erosion.
18. In recognition that projects are site specific in nature and conditions can change during project implementation, ADEM reserves the right to require the submission of additional information or require additional management measures to be implemented, as necessary on a case-by-case basis, in order to ensure the protection of water quality. Liability and responsibility for compliance with this certification are not delegable by contract or otherwise. The applicant shall ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by the applicant complies with this certification. Any violations resulting from the actions of such person may be considered violations of this certification.
19. Issuance of a certification by ADEM neither precludes nor negates an operator/owner's responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals. This certification does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, trespass, or any infringement of Federal, State, or local laws or regulations, and in no way purports to vest in the applicant title to lands now owned by the State of Alabama, nor shall it be construed as acquiescence by the State of Alabama of lands owned by the State of Alabama that may be in the applicant's possession.

Please feel free to contact me at 334/394-4304 in the event you have any questions.

Sincerely,



Anthony Scott Hughes, Chief
Field Operations Division

File: WQ401

c: Nashville District COE & EPA Region IV