



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, KANSAS CITY DISTRICT
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KANSAS CITY, MISSOURI 64106-2824

**Environmental Assessment and Evaluation of Impacts of
Easement Administration Actions on a Wetland Reserve
Program (WRP) Easement for the Reconstruction and
Realignment of a Non-Federal Flood Protection Levee under
Public Law 84-99**

RUSHVILLE SUGAR LAKE LEVEE

Platte County, Missouri

July 2020

Finding of No Significant Impact
RUSHVILLE SUGAR LAKE LEVEE
Platte County, Missouri

Summary

The Rushville-Sugar Lake levee was overtopped and breached as a result of the 2019 flooding event. The United States Army Corps of Engineers (USACE) made the determination that the proposed levee repair project was eligible for the PL 84-99 program. Additionally, the project involves an easement held by the Natural Resource Conservation Service (NRCS) under the United States Department of Agriculture (USDA), as the reconstruction and realignment of a portion of the levee would disturb a Wetlands Reserve Program (WRP) Easement in Platte County, Missouri. This Environmental Assessment (EA), prepared by the USACE, evaluates the proposed project for potential impacts considering policy and guidance from both the NRCS and USACE.

No Action Alternative

The “No Action” alternative assumes the proposed project does not proceed, and current conditions would continue. This alternative leaves agricultural croplands and other infrastructure, which was once protected by the levee prior to the flood event, exposed to future flooding. This alternative would pose long term risks to commerce, residential structures, and agricultural activities in the project area. The area would be subject to the continuous threat of flooding unless flood protection is restored.

Requester’s Preferred Alternative

The recommended course of action is in-place repair of the riverside and landside slope erosion of the levee. The project would repair crown erosion with placement of fill to bring the levee back to previous protection level, and would repair the partial breach to restore the levee embankment to its original grades. The recommended repair for the full breach area is to set back the levee landside approximately 100 feet. This setback would cross through the WRP easement, resulting in approximately 3.5 acres of existing wetland being outside of the levee protected area. This alternative would require that the NRCS allows the proposed realignment of the levee through the WRP easement, and a new easement is acquired. All areas requiring in-place repair, additional fill, or sod damage would require seeding and mulching. Seeding and mulching would be done to repair sod damages.

Summary of Environmental Impacts

All practicable means to avoid and minimize adverse environmental effects have been incorporated into the requester’s preferred alternative. The requester’s preferred alternative would not result in impacts to federally-listed threatened or endangered species or their designated critical habitat. It would have no impact to sites listed on or eligible for inclusion on the National Register of Historic Places. The proposed

alternative would be considered a benefit to wetland habitat as mitigation is planned to create 9 acres in the place of the 3.5 acres lost to the WRP easement.

Public Involvement

This review went out for a 30-day public review and comment period on [MMDDYYYY] and ended on [MMDDYYYY].

Conclusion

All applicable laws and regulations were considered in the evaluation of this assessment under the PL 84-99 program. It is my determination that the recommended plan does not constitute a major federal action that would significantly affect the human environment; therefore, preparation of an Environmental Impact Statement is not required.

Date: _____
William C. Hannan, Jr.
Colonel, Corps of Engineers
District Commander

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1.0 INTRODUCTION

Beginning in March 2019, and extending through December 2019, the Missouri River experienced major flooding. A bombogenesis (or bomb cyclone) generated in excess of 2 ¼ inches of rain over vast areas within the Missouri River Basin. This rainfall landed on heavy wet snowpack in the plains over large portions of Kansas, Nebraska, Iowa, South Dakota and North Dakota. As a result, a tremendous amount of runoff was generated when rainfall landed on wet snow that held over 3 inches of snow water equivalent. Soil conditions throughout the basin were already saturated from an extremely wet 2018 winter, again increasing runoff and flooding tributaries which led to extreme and devastating flooding along the Missouri River. The Rushville-Sugar Lake levee was overtopped and breached as a result of this flooding.

The United States Army Corps of Engineers (USACE) would be the federal sponsor of the levee repair, under Public Law 84-99 (PL 84-99), Rehabilitation Assistance for Non-Federal Flood Control Projects. PL 84-99 projects constructed by non-federal interests must meet criteria and standards set forth by the USACE. The USACE made the determination that the proposed levee repair project was eligible for the PL 84-99 program.

Additionally, the Natural Resource Conservation Service (NRCS) has received a request to allow the project applicant, a private landowner, to proceed with a project to reconstruct and realign a portion of a levee through a Wetlands Reserve Program (WRP) Easement in Platte County, Missouri. The WRP easement is held by the United States Department of Agriculture and Natural Resource Conservation Service (USDA-NRCS).

In reconstructing and realigning the levee, the applicant proposes the modification of the existing easement. Thus, there is a need for NRCS to decide whether to change its WRP easements to allow for the realignment. The WRP easements are held in perpetuity by NRCS for the purposes of restoring and protecting the functions and values of wetlands: for the conservation of wildlife, and to improve water quality, floodwater retention, groundwater recharge, open space, aesthetics and education. These benefits must be maintained for the action to be approved. NRCS policy also requires that any impacts be minimized to the greatest extent practicable and that any remaining adverse impacts be mitigated by enrollment of other lands providing equal or greater conservation functions and values, no net loss or acres, and not encompass more than 10 percent of the easement area. This assessment will review aspects of the proposed project in accordance to the USACE PL 84-99 program and the NRCS WRP easement requirements.

1.1 Purpose and Need

The Platte County Drainage District No. 1 Section 1 project is a levee system that reduces the occurrence of flooding to approximately 9,135 acres of Missouri River floodplain in Buchanan and Platte Counties, Missouri. This levee system has two segments, Platte County Section 1 and Rushville-Sugar Lake. Platte County Section 1 segment consists 1.98 miles of earthen levee and 2 gravity drains. The Rushville-Sugar Lake segment contains 10.2 miles of earthen levee and 5 gravity drains. Both segments are built along the Missouri River. The levee is operated and maintained by the local sponsors, Platte County Drainage District and Rushville-Sugar Lake. The area behind the levee is a combination of agricultural, commercial, and residential development. The leveed area daytime population is 158 and estimated property value is approximately \$40.5 million.

The Platte County Section 1 and Rushville-Sugar Lake levee system protects approximately 8,085 acres of agricultural cropland, the town of Winthrop, the communities of Armour and Sugar Lake, 17 businesses, 169 residences, 52 barns, 166 machine sheds and outbuildings, 1 irrigation system, 21 grain

bins, approximately 11.5 miles of paved State Highway, approximately 16.4 miles of asphalt surfaced county roads, approximately 9 miles of gravel surfaced county roads, approximately 3.6 miles of private drives, approximately 1.2 miles of railroad embankment, and numerous miles of overhead power, telephone, and fiber optic lines.

1.2 Scope

The project would repair crown erosion with placement of fill to bring the levee back to previous protection level and would repair the partial breach to restore the levee embankment to its original grades. The recommended repair for the full breach area is to set back the levee landside approximately 100 feet. This setback would cross through the WRP easement, resulting in approximately 3.5 acres of existing wetland being outside of the levee protected area. This analysis includes the review of the levee repair and associated project impacts. The analysis also focuses on the impacts of allowing the proposed changes to the NRCS WRP easements and the subsequent effects. The decision whether to authorize the easement modification is a small component of the overarching project and the only aspect of the project over which NRCS has authority. Attachment 2 details the breached and damaged areas of the levee.

1.3 Project Location

The proposed project takes place in Platte County, Missouri, southwest of the city limits of Rushville, Missouri, along the Missouri River. The levee provides protection for land between approximate River Miles 418-428.

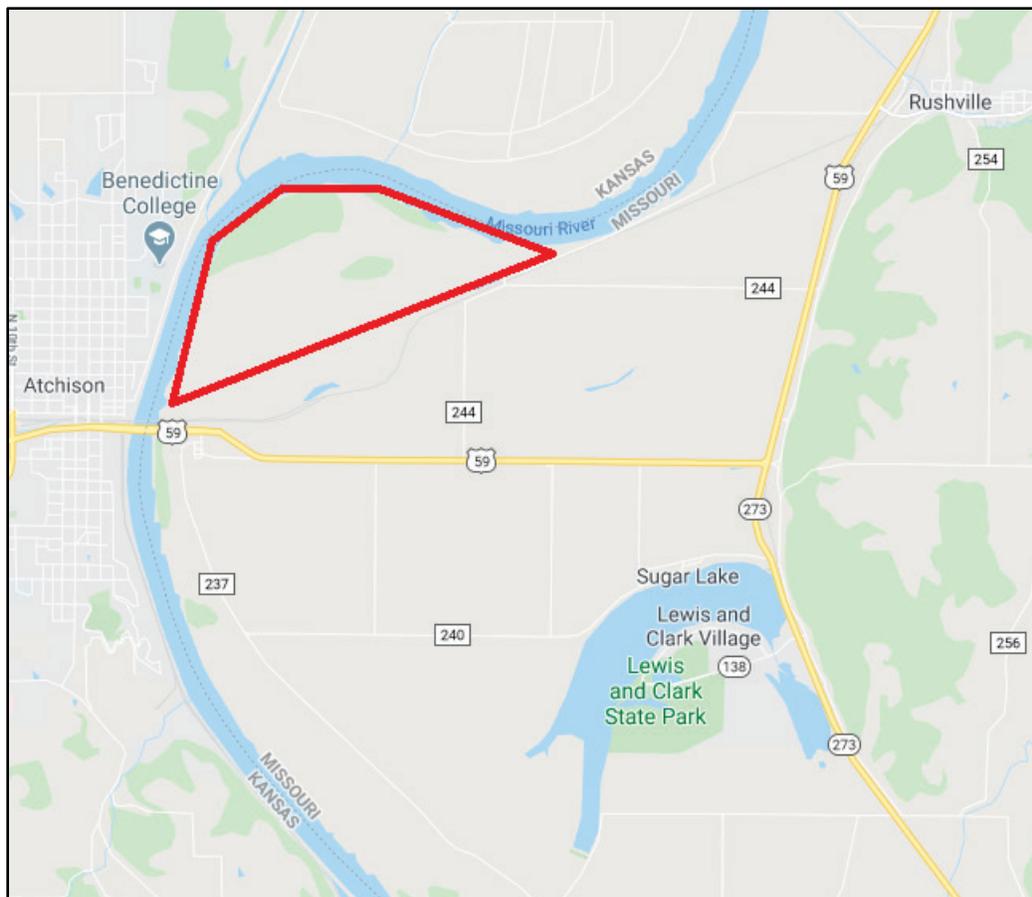


Figure 1. Project Location.

2.0 ALTERNATIVES

The proposed project considers three alternatives, including the no action alternative, in order to establish and analyze an array of reasonable alternatives in compliance with the National Environmental Policy Act (NEPA). The non-federal sponsor was given the option to pursue non-structural alternatives and chose not to pursue that option, therefore non-structural alternatives will not be proposed or analyzed for this project.

2.1 Alternative 1 – No Action Alternative

The No Action alternative assumes that no project would be implemented and existing conditions would remain the same. This alternative would continue to expose agricultural croplands and other infrastructure, previously protected by the levee, to continued risk of future flooding. This alternative could jeopardize the operations of commerce, residential structures, and agricultural activities in the project area. The area would be subject to the continuous threat of flooding unless some level of flood protection is restored.

2.2 Alternative 2 – Repairing and Realigning the Levee

The recommended course of action is in-place repair of the riverside and landside slope erosion of the levee. The project would repair crown erosion of the levee with placement of fill to bring the levee back to previous protection levels, and would repair the partial breach to restore the levee embankment to its original grades. The recommended repair for the full breach area is to set back the levee landside approximately 100 feet. This setback would cross through the WRP easement, resulting in approximately 3.5 acres of existing wetland being outside of the levee protected area. This alternative would require that the NRCS allows the proposed realignment of the levee through the WRP easement, and a new easement is acquired. All areas requiring in-place repair, additional fill, or sod damage would require seeding and mulching. Seeding and mulching would be done to repair sod damages.

2.3 Alternative 3 – Multiple Setbacks to Repair and Realign the Levee

Alternative 3 proposes multiple setbacks and levee realignment. Areas with riverside and landside slope erosion and crown erosion require grading to bring the levee back to pre-flood protection and stability levels. This alternative proposes the levee be setback in areas with slope and crown erosion. This alternative proposes that the full breach be repaired in place. However, multiple setbacks in damaged areas would substantially increase costs and reduce the amount of protected land. Repairing the full breach in place would require a substantial amount of fill considering the scour hole created under the alignment by recent flooding events. The scour hole is approximated to be fifteen feet deep and one hundred feet long. This alternative would include grading and erosion repair to bring the levee back to pre-flood protection levels. Seeding and mulching would be done to repair sod damages.

2.4 Evaluation of Alternatives

A total of three alternatives were proposed, including the no action alternative. These alternatives were evaluated based on technical feasibility, ability to meet the project purpose and need, economics, and environmental considerations.

Alternative 1, the no action alternative, is technically feasible but would have a negative impact to the project sponsor as leaving a levee unrepaired leaves agriculture and surrounding public and private amenities unprotected from further damage, causing property loss. The no action alternative could also have negative environmental impacts as future flooding events could degrade terrestrial habitat. This could result in economic strain and displacement of residents. Failure to reconstruct the levee would

adversely affect the county and municipal governments and special districts, such as school districts. Losses in agricultural production on lands formerly protected by the levee would also be incurred.

Alternative 2 proposes only one strategic re-alignment and proposes to repair in place where possible. Alternative 2 is technically feasible, meets the project purpose and need, and is economically beneficial to the project sponsor. This alternative would not require additional borrow to fill scour holes that would significantly increase the cost of the project. Alternative 2 would result in a net increase of wetland acres due to mitigation efforts associated with impacts to the NRCS WRP easement.

Alternative 3, which proposes to use multiple levee setbacks at breach stations and sites of damage was determined to be technically feasible and meet the project purpose and need. However, additional material required for fill and additional costs for realignments would cause this alternative to be nearly three times as expensive as Alternative 2.

Alternative 2 was selected as the Preferred Alternative.

3.0 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

Section 3.0 describes the existing conditions and discusses the potential impacts that would result from the Preferred Alternative.

The discussion is organized by the following major resource topics: Water Resources including Wetlands, Land use, Soils, Fish and Wildlife including Threatened and Endangered Species, Cultural Resources, and Socioeconomics.

The analyses presented in this section quantify the potential impacts associated with the proposed action wherever possible. Where impacts cannot be quantified, the analyses present a qualitative assessment of the potential impacts. This EA generally describes impacts as either “temporary” or “permanent.” In addition, a subset of temporary impacts would include areas that would be disturbed intermittently for shorter periods during a construction or maintenance phase. The following descriptors qualitatively characterize impacts on the respective resources:

- **Beneficial:** A positive change in the condition or appearance of the resource or a change that moves the resource toward a desired condition.
- **Adverse:** A change that moves the resource away from a desired condition or detracts from its appearance or condition.
- **Direct:** An effect on a resource by an action at the same place and time. For example, soil compaction from construction traffic is a direct impact on soils.
- **Indirect:** An effect from an action that occurs later or perhaps at a different place and often to a different resource, but is still reasonably foreseeable.
- **Short-term:** impacts generally occur during construction or for a limited time thereafter, generally less than two years, by the end of which the resources recover their pre-construction conditions.
- **Long-term:** impacts last beyond the construction period, and the resources may not regain their preconstruction conditions for a longer period of time.

3.1 Water Quality

Water Resources are evaluated as part of this assessment in accordance with guidance from the USACE and including considerations of the NRCS. WRP objectives include protecting, restoring, and enhancing wetlands for the protection and improvement of water quality and attenuation of floodwater. (Title 440 Part 528.100 B (ii) and (iii)). This action would require permitting under the Clean Water Act (CWA),

Section 404. The proposed action would implement General Permit 41; Permanent Protection/Repair of Flood Damaged Structures, Damaged Lands and/or Fills. General Permit 41 authorizes the repair of levees to preexisting elevation. The project description of General Permit 41 is to excavate or place fill material for the permanent protection of and/or the repair of existing damaged structures, damaged land areas, and/or damaged fill areas, that are the result of the disaster event.

Requestor's Preferred Alternative

Construction activities of the levee realignment and other project activities could temporary increase soil erosion during construction, resulting in a temporary affect to water quality. Short-term impacts from construction are not likely to have more than a minor adverse impact on water quality from sedimentation or equipment use. There would be no long-term water quality effects.

No Action Alternative

Water quality could be negatively impacted by the No Action alternative. In absence of the project, over eight thousand acres of land would be unprotected by flood control measures, potentially causing soil and land debris to be swept into the river, contributing to turbidity and degradation of water quality and water resources.

3.1.1 Wetlands

Wetlands are defined by the USACE (33 CFR 328.3, 1986) and the U.S. EPA (40 CFR 230.3, 1980) as "areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." Many wetlands and other aquatic features, including ephemeral, intermittent, and perennial streams, are considered Waters of the U.S. by the USACE and deemed "jurisdictional" under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

All wetland impacts occur on NRCS easement lands. The NRCS completed an evaluation of the wetland impacts and proposed mitigation. The USACE accepts the NRCS evaluation, which is consistent with USACE guidance and policy. The full report, including mitigation plans, can be found in Attachment 3. Approximately 3.5 acres of wetland would be displaced by the proposed action. Mitigation is planned to replace the disturbed wetlands. The NRCS WRP has provided the landowners the opportunity to protect, restore, and enhance wetlands on their property and establish long-term conservation and wildlife practices and protection. The easement owner has provided a letter supporting the propose project to realign the levee through the existing easement (Attachment 4). The WRP easement would be amended to account for the levee setback. An additional WRP easement is proposed in the riverside area of the levee, due to extensive flood damage and scouring that renders the land unusable for agricultural purposes.

WRP objectives include protecting, restoring, and enhancing wetlands for the "protection and enhancement of open space and aesthetic quality" (Title 440 Part528.100 B. (v)) with landowners retaining the rights to quite enjoyment. Natural areas are land and water units where natural conditions are maintained and they have been designated as "natural areas" by government, foundations, organizations and/or private landowners. There are no officially designated natural or scenic areas near the WRP easements.

Requestor's Preferred Alternative

The Requester's Preferred Alternative would be considered a benefit to wetlands. The mitigation to wetlands proposed for the project would result in 9 acres of created wetlands. This is an increase from the 3.5 acres of displaced wetlands, and in addition to the remaining acres of the WRP, protected by the

preferred alternative to setback the levee. The Wetland Delineation Report and mitigation area can be found in Attachment 3

No Action Alternative

The No Action Alternative would leave wetlands unprotected and susceptible to future flood events, including wetlands currently under NRCS WRP easement. Wetlands could be impacted by the erosion and sedimentation from flooding, potentially degrading the quality of wetland habitat.

3.1.2 Floodplain

Land in the project area is considered by FEMA Flood Plain maps to be areas with reduced risks due to levee protection. Areas on the river side of the levee are considered to be part of the Regulatory Floodway. Executive Order 11988, Floodplain Management, requires federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. NRCS policies have the same requirement (7 CFR 650.25).

NRCS policy (190-GM, Part 411) requires NRCS to integrate riparian area management into all plans and alternatives. Although Federal law does not specifically regulate riparian areas, portions of riparian areas, such as wetlands and other waters of the U.S. may be subject to Federal regulation and are addressed in the preceding sections.

Requester's Preferred Alternative

The Requester's Preferred Alternative would not adversely affect the existing floodplain. A levee setback would provide 3.5 more acres of available floodplain to accommodate natural fluctuations in water level. The Preferred Alternative would not directly or indirectly support floodplain development.

No Action Alternative

The No Action Alternative would continue the unprotected status of the current levee damage and breaches. The land behind the levee would no longer be considered to be an area of reduced risk due to levee protection. The No Action Alternative would not directly or indirectly support development in the flood plain. In the absence of the proposed project, development in the area behind or in front of the damaged levee system would be unlikely due to flood risk.

3.2 Land Use

The Rushville-Sugar Lake levee contributes to the protection of approximately 8,085 acres of agricultural cropland. Agriculture is the primary land use of the project area, however, adjacent land uses consist of residential communities, businesses, and highways. A portion of the levee protected area also consists of the NRCS WRP easement. Details of the NRCS WRP easement are included in Attachment 4.

Requester's Preferred Alternative

The Requester's Preferred Alternative would provide a long-term benefit to land use. Protection of the project area from flood events by the repair and realignment of the levee would allow the existing uses of the project area to resume. Agriculture, commercial and residential activity would be benefited from the preferred alternative. The preferred alternative would not alter or impair the majority of existing land use. Approximately 3.5 acres of land used for the WRP easement would be impacted long-term by being riverside of the levee, however wetland conditions are anticipated to continue and not be subjected to change or development.

No Action Alternative

The No Action Alternative would have a negative impact on land use. The land use for the protected area before flood damage includes agriculture, residential, and commercial use and development. The absence of flood protection would likely inhibit these land uses on a long-term basis as the land would be susceptible to continuous flooding, impairing the ability of current land use to continue.

3.3 Soils

The majority of soils protected by the levee area are silty clay and silt loam. The area is classified as rarely flooded due to the previous protection offered by the levee. Up to 90% of the levee protected area is classified by the United States Department of Agriculture (USDA) as Prime Farmland. Prime Farmland is defined as land having the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is available for these uses. The wetland easement area makes up a majority of the remaining portion of land that is not classified as Prime Farmland.

Requester's Preferred Alternative

The Requester's Preferred Alternative would promote long term protection of soils in the levee area. Flood protection measures reduce erosion and sedimentation caused by floodwater that can be damaging to the soil profile, soil health, and suitable use of the project area. The preferred alternative would assist in maintaining the designated status of Prime Farmland of most of the agricultural area within the levee protection zone. The preferred alternative would also contribute to the protection of wetland and hydric soil of the NRCS WRP easement.

No Action Alternative

The No Action alternative would leave thousands of acres of Prime Farmland vulnerable to repeated flood damage. This could cause the loss or significant degradation of Prime Farmland. Soils would be repeatedly disturbed, displaced, or altered by sedimentation and erosion of continued flood events. This alternative would also leave wetland protected by the NRCS WRP easement vulnerable to damage from future flood events.

3.4 Fish and Wildlife

This section will evaluate the potential impact on fish and wildlife, including federally listed threatened and endangered species, and migratory birds, and incorporates the coordination done between USACE and the USFWS.

White-tailed deer and wild turkey are plentiful in the region and are known to inhabit suburban areas. Waterfowl numbers vary depending on available habitat, but the Missouri River does support fall and spring migrations. Mourning dove numbers vary yearly depending on nesting conditions. Ring-necked pheasant and bobwhite quail may possibly be found in very small numbers on the area. Squirrel and cottontail rabbit numbers are generally healthy. Non-game species are likely present in less developed areas. A wide array of mammals, birds, reptiles, and amphibians can be found in and around the Missouri River.

Requestor's Preferred Alternative

The Requestor's Preferred Alternative would not have long term or adverse impacts to fish and wildlife. Construction activities may temporarily disturb foraging habits of wildlife in the area, but it is expected to return to normal upon the completion of construction activities.

No Action Alternative

The No Action alternative may affect terrestrial habitat for fish and wildlife as the area would be unprotected by flood control measures, leaving the potential for sustained or repeated damage to existing habitat. Foraging and migratory habits by local game species could be disturbed by flood events.

3.4.1 Threatened and Endangered Species

The Endangered Species Act of 1973 (ESA) provides protection and conservation for threatened and endangered wildlife and plants. Per the ESA, it is against the law to harm, hurt, shoot, pursue, lure, wound, kill, destroy, harass, gig, spear, ensnare, trap, capture, collect, or to attempt to engage in such conduct with any threatened or endangered (T&E) species, or to adversely impact critical habitat. The USFWS Lists the Indiana and Northern Long-ear bats as potentially present in the project area. An Information for Planning and Consultation Report (IPaC) was generated for the proposed project. It, and all coordination with the USFWS can be found in attachment 6.

Requestor's Preferred Alternative

The proposed project may result in short-term adverse impacts to the migration and foraging habits and patterns of wildlife. The United States Fish and Wildlife Service was contacted for coordination regarding federally listed threatened and endangered species under Section 7 of the Endangered Species Act. USACE also requested comments in compliance with the United States Fish and Wildlife Consultation Act, and other applicable feedback regarding the project. The USFWS concurred with the determination that the proposed project would have no affect on federally listed threatened or endangered species. The USFWS did not offer further comments.

No Action Alternative

The No Action Alternative may affect terrestrial habitat for threatened and endangered species as the area would be unprotected by flood control measures, leaving the potential for sustained or repeated damage to existing habitat. Foraging and migratory habits by local game species could be disturbed by flood events.

3.4.2 Migratory Birds

The Migratory Bird Treaty Act (16 U.S.C. 703-712) makes it illegal to take, possess, import, export, transport, sell, purchase, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid Federal permit. WRP objectives include protecting, restoring, and enhancing wetlands for "migratory bird habitat" and "species of concern" (Title 440 Part 528.100 B. (i)).

Figure 2 is a tabular chart indicating migratory birds with potential to occur in the area, and the probability of presence summary, which illustrates the likelihood of presence during months and breeding seasons of the year.

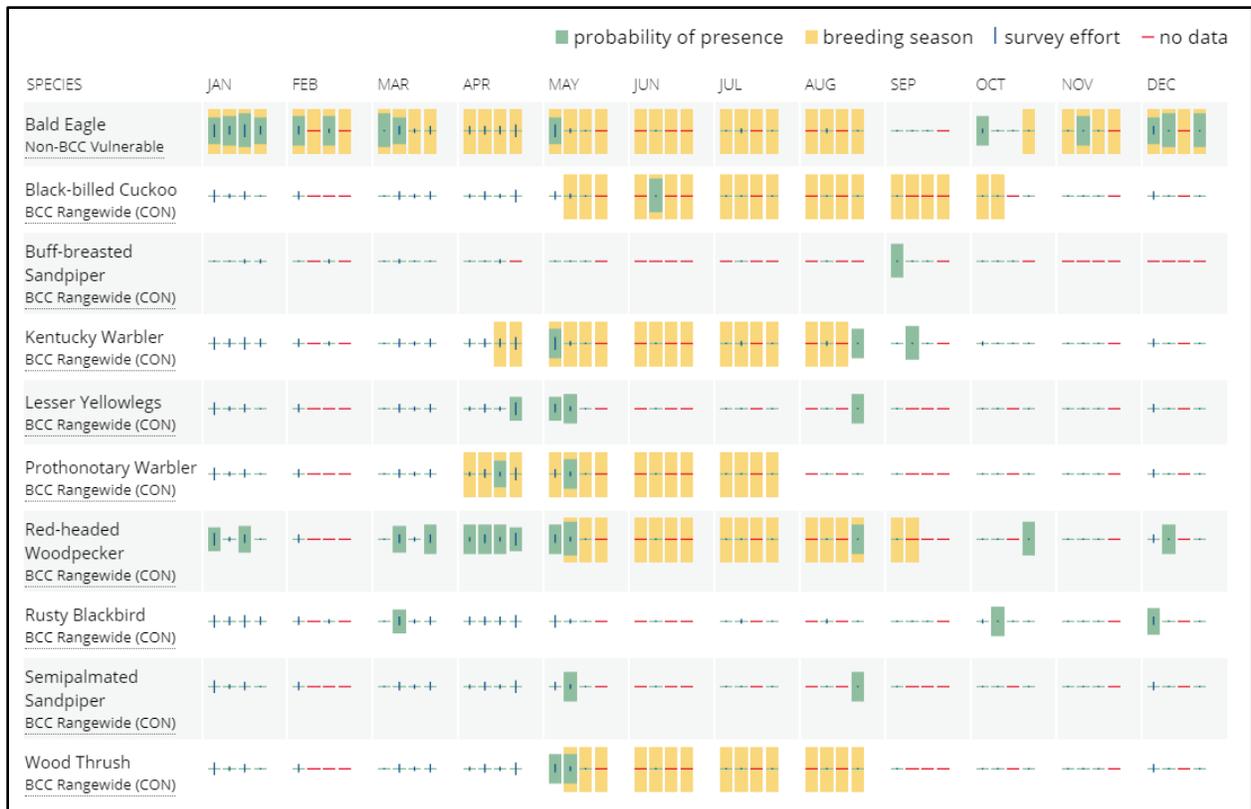


Figure 2. Migratory Birds Probability of Presence Summary.

Requester’s Preferred Alternative

The proposed project may result in short-term impacts to the migration and foraging habits and patterns of migratory birds. Wildlife activity is anticipated to return to normal upon the completion of construction activities. The proposed project would not result in the disturbance or take of any migratory birds or their nests.

No Action Alternative

The No Action alternative may affect terrestrial habitat for migratory birds, as the area would be unprotected by flood control measures, leaving the potential for sustained or repeated damage to existing habitat. Foraging and migratory habits by local game species could be disturbed by flood events.

3.5 Cultural and Historic Resources

According to the National Historic Preservation Act (NHPA) of 1966, cultural resources include prehistoric and historic archaeological resources, as well as architectural resources. Prehistoric resources include evidence of human activity that predates the advent of written records. Historic archaeological resources often include battlegrounds, campsites, roads, or other structures representing the recorded history period of a region. Architectural resources include those of historic or aesthetic significance (typically more than 50 years in age) and often include buildings, bridges, dams, or entire districts with significant structures.

Requester’s Preferred Alternative

The Kansas City District Archeologist has reviewed the proposed project area and determined the proposed repairs would have no impact on cultural resource sites listed on or eligible for listing on the

National Register of Historic Places. The results of the review are being coordinated with the State Historic Preservation Officer. No archeological sites are recorded in the proposed borrow locations or within the leveed area. The Shipwrecks of the Nutz, Hesperian, Arabian, Emille no2, Delta, Missouri Mail, Pontiac, US Mail, Sully, and Delaware are recorded in the vicinity of the Rusville Sugar Lake Levee, but would be unlikely to be affected by the project actions as planned because the project work is limited to the existing levee areas and locations that were previously surveyed for previous levee repair actions or areas that have already been severely disturbed by previous flood effects or River Channel Migrations. Given these conditions, it is unlikely that the project will have an effect on sites listed on or eligible for inclusion on the National Register of Historic Places (NRHP).

No Action Alternative

The No Action Alternative is not anticipated to have adverse effects to the proposed project area, as no cultural or historic resources have been observed or recorded in the area. In the unlikely event that items of archeological nature are found, all project activities must halt until the findings can be evaluated by a qualified archeologist.

3.6 Socioeconomic and Environmental Justice

Initial screening of potential Environmental Justice conditions and populations within the immediate vicinity of the proposed project was conducted using U.S. EPA’s EJSCREEN software (EPA v.2017). The environmental and socioeconomic indicators were comparable or lower in value than the state and national averages. There are no Superfund or hazardous toxic waste sites on or near the project area. Table 1 displays the results of the Environmental Justice screening.

Table 1. Environmental Justice Screening Report.

Selected Variables Environmental Indicators	Value	State Avg.	State %tile	EPA Region Avg.	EPA Region %tile	USA Avg.	USA %tile
Particulate Matter (PM 2.5 in µg/m ³)	7.62	8.29	18	7.77	41	8.3	30
Ozone (ppb)	44.2	43.1	62	42.5	76	43	54
NATA* Diesel PM (µg/m ³)	0.244	0.447	31	0.367	<50th	0.479	<50th
NATA* Air Toxics Cancer Risk (risk per MM)	25	32	4	27	<50th	32	<50th
NATA* Respiratory Hazard Index	0.32	0.42	5	0.36	<50th	0.44	<50th
Traffic Proximity and Volume (daily traffic count/distance to road)	38	370	30	330	30	750	21
Lead Paint Indicator (% pre-1960s housing)	0.48	0.29	77	0.34	69	0.28	75
Superfund Proximity (site count/km distance)	0.016	0.099	16	0.1	16	0.13	12
RMP Proximity (facility count/km distance)	0.44	0.63	63	0.94	47	0.74	57
Hazardous Waste Proximity (facility count/km distance)	0.43	0.99	57	0.8	59	4	49
Wastewater Discharge Indicator (toxicity-weighted concentration/m distance)	4.9E-05	1.6	44	0.97	40	14	51
Demographic Indicators							
Demographic Index	13%	27%	21	26%	25	36%	15
Minority Population	0%	20%	4	19%	3	39%	1
Low Income Population	26%	34%	39	32%	44	33%	44
Linguistically Isolated Population	0%	1%	72	2%	66	4%	45
Population with Less Than High School Education	10%	11%	55	10%	63	13%	52
Population under Age 5	3%	6%	16	6%	14	6%	16
Population over Age 64	12%	16%	31	15%	33	15%	40

Requester's Preferred Alternative

A review of the socioeconomics of the project area, including an Environmental Justice screening revealed that there would be no adverse impact to minority or other potential environmental justice communities. Percentages of minority or environmental justice communities is comparable to state and national averages; thus, minority communities would not be disproportionately impacted by this action.

No Action Alternative

The No Action alternative would negatively impact the socioeconomics of the project area on a long-term basis due to the risk to damage and loss of property and commerce opportunities from potential future flood events. Future flooding would further damage farmland soil, cause structural damage, and inhibit or damage roadways in the project area, resulting in a negative economic impact.

4.0 CUMULATIVE EFFECTS

A cumulative impact is defined as “the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions” (40 CFR§1508.7). Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time. These actions include on-site and off-site projects conducted by government agencies, businesses, or individuals that are affecting or would affect the same environmental resources as would be affected by the proposed action.

CEQ defines a cumulative impact as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions” (40 CFR § 1508.7).

The cumulative action identification and analysis methods are based on the policy guidance and methodology originally developed by CEQ (1997) and an analysis of current case law. Cumulative impacts were determined by adding the impacts of the alternatives being considered with other past, present, and reasonably foreseeable future actions. Potentially affected resources include Water Resources, Soils, Land Use, Fish and Wildlife, Cultural and Historic Resources, and Socioeconomics. The geographic boundary for the cumulative impact analysis was considered the extent of the Federal project. The temporal boundary consisted of the time the Federal project was constructed. Past construction, operations, and maintenance of the Federal projects would have affected the assessed resources; however, those effects are reflected in the baseline conditions described for the affected environment. No reasonably foreseeable future actions were identified within the geographic scope. The proposed action is not anticipated to contribute noticeably to overall cumulative impacts for the subject resources.

5.0 CONCLUSION

After evaluating the anticipated environmental, economic, and social effects of the proposed levee repair project, it is my determination that the project fits the description and scope of analysis of a non-tiered Environmental Assessment for the proposed project under the Public Law 84-99 Emergency Levee Rehabilitation Program. It is also my determination that the project meets the requirements of the NRCS to approve the proposed action of modification to the WRP easement. Therefore, the project does not constitute a major Federal action that would significantly affect the quality of the human environment and preparation of an EIS is not required.

6.0 SIGNATORIES

Date: _____

Preparer:

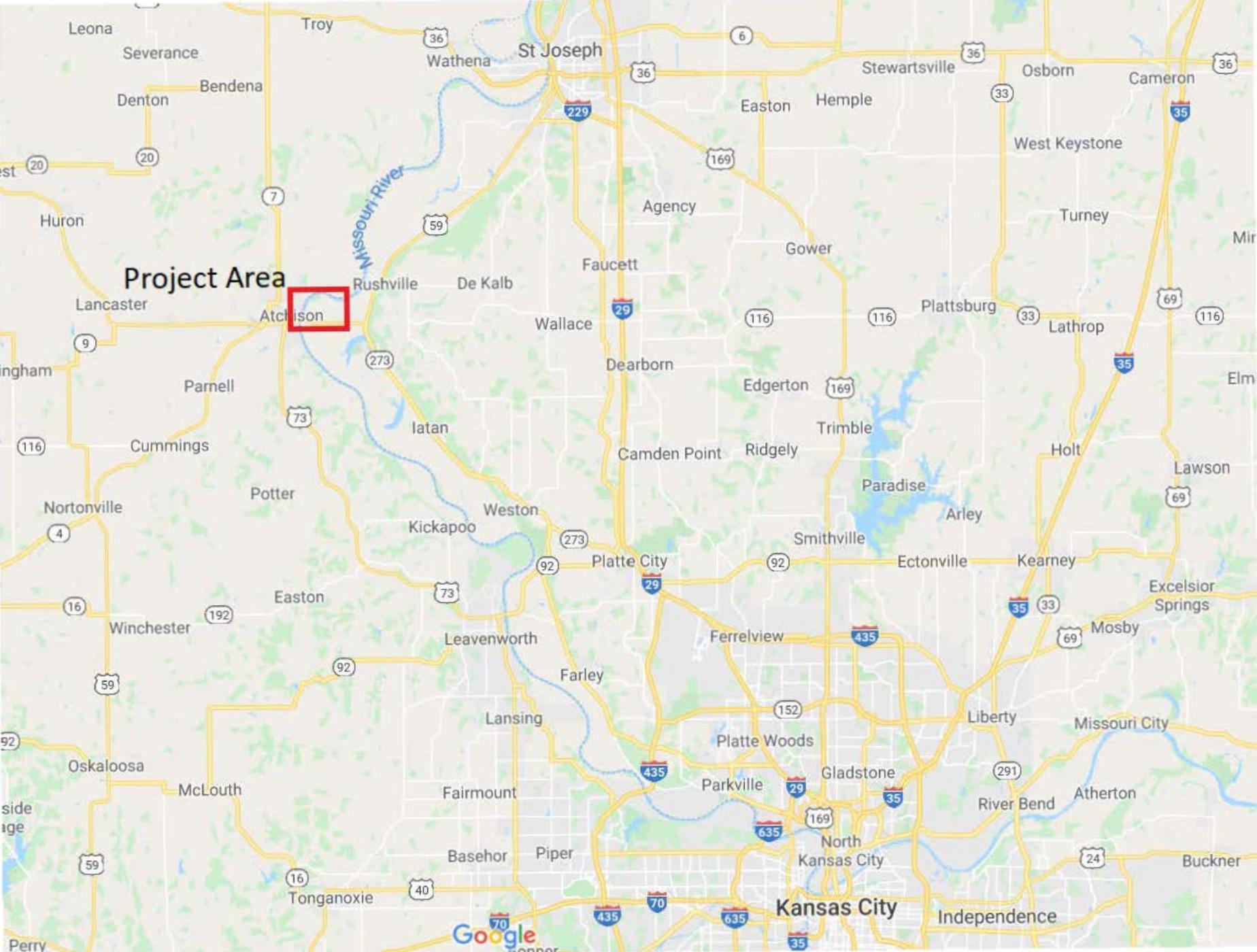
Julie Adkins
NEPA Specialist

Date: _____

Reviewer:

Jason Farmer
Environmental Resources Section Chief

Attachment 1
Location and
Vicinity Maps



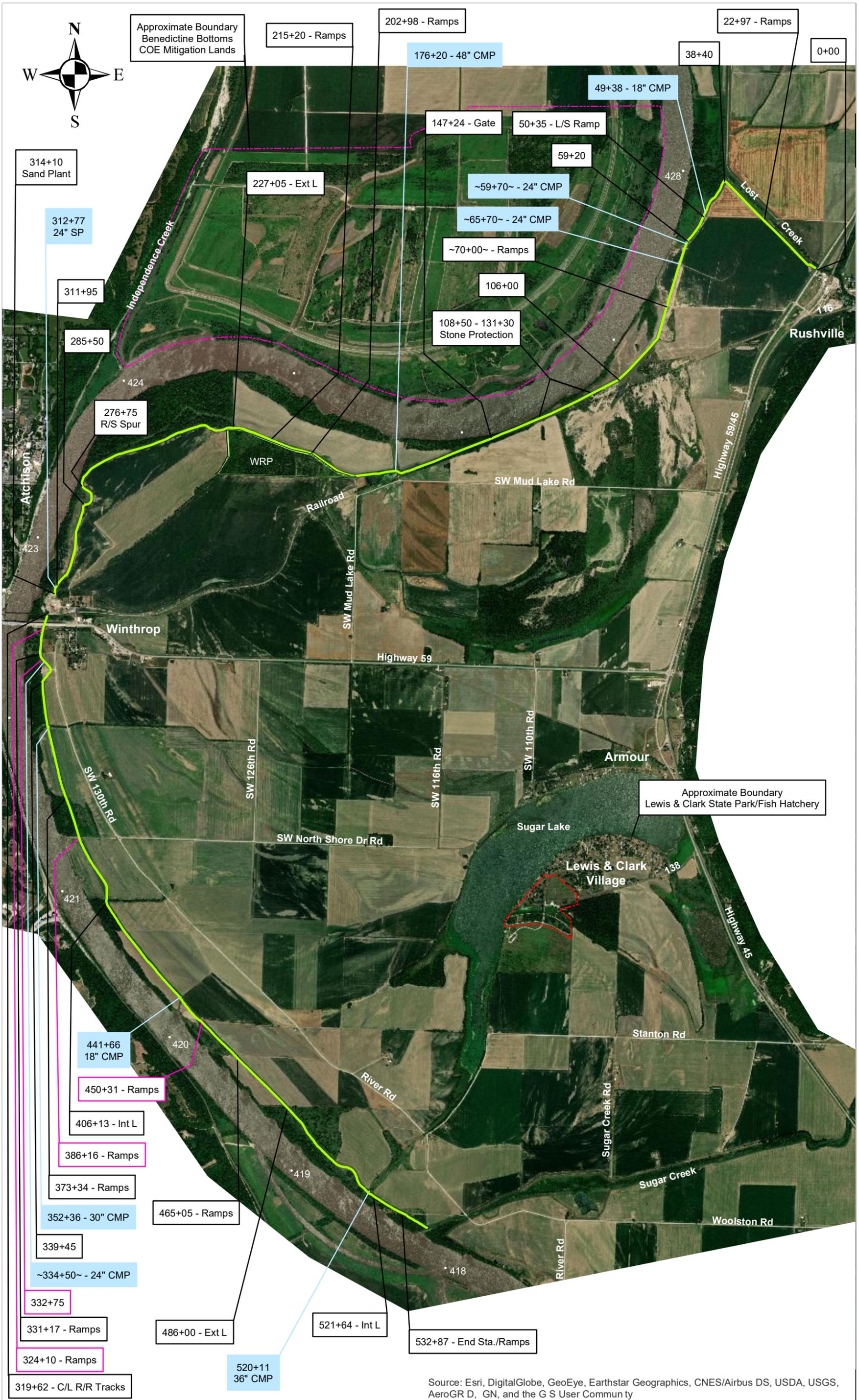
Project Area

Atchison

Missouri River

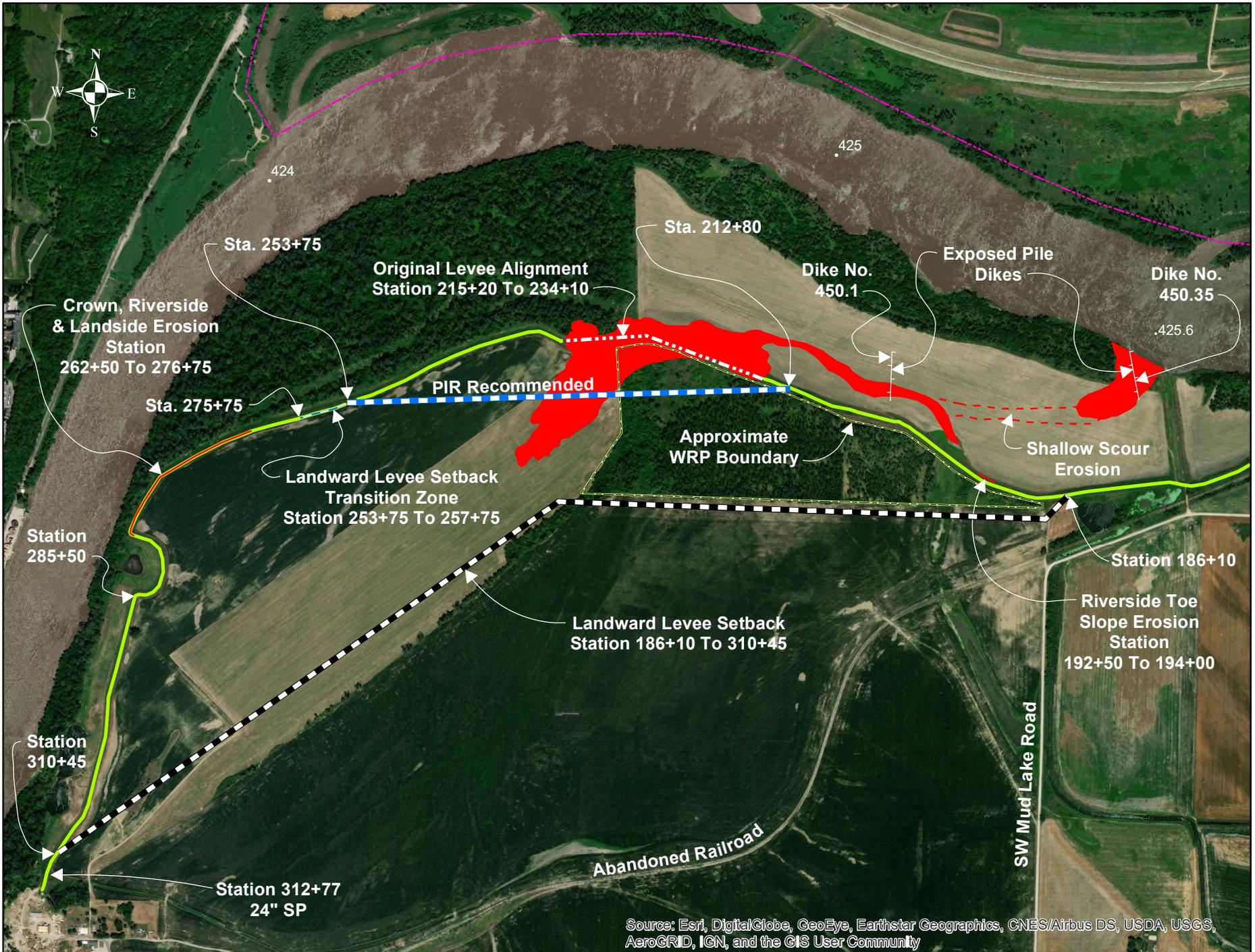
Kansas City

Google

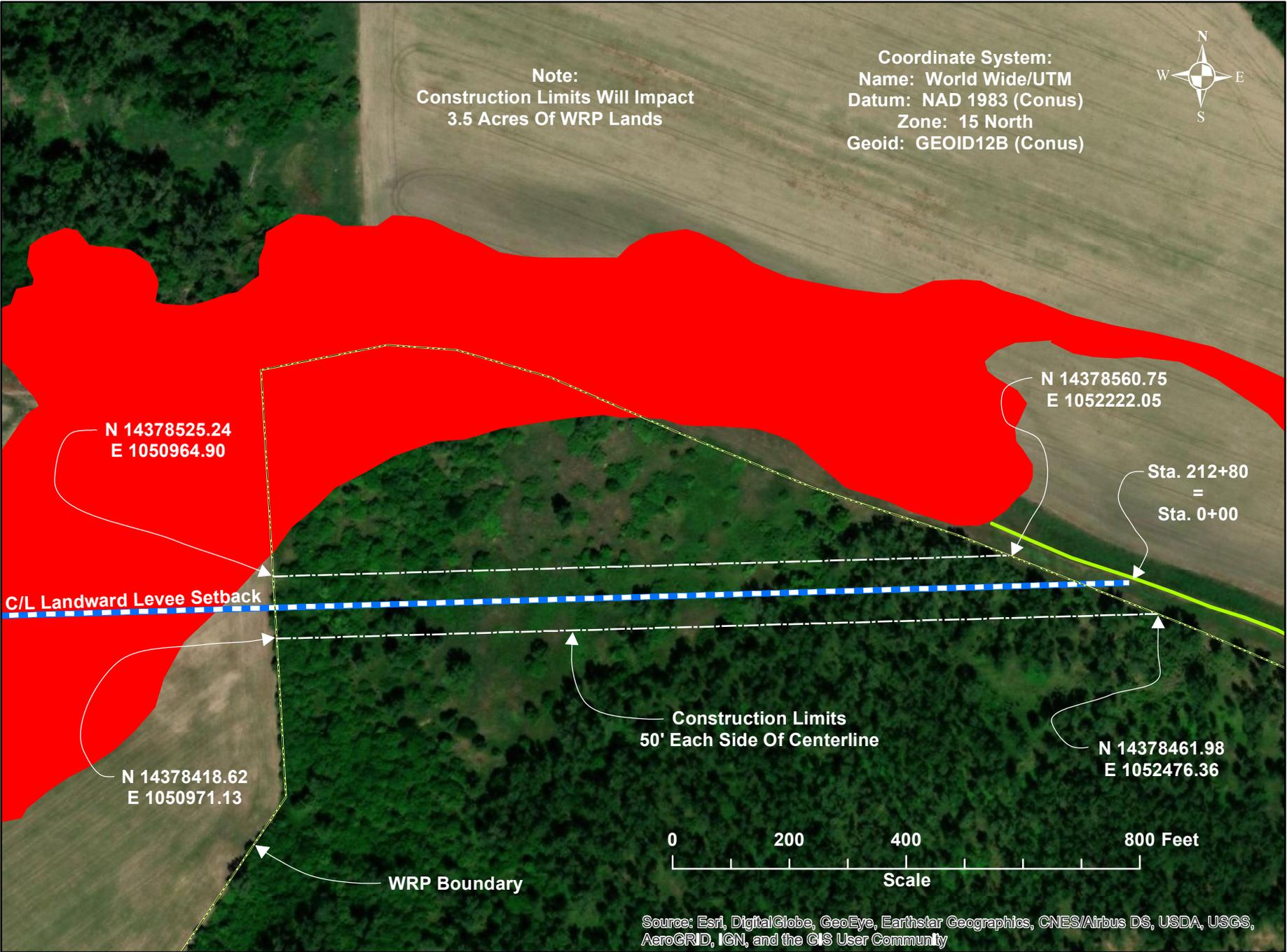


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGR D, GN, and the G S User Community

Attachment 2
Existing and Proposed
Alignment
and
Breach and Borrow sites

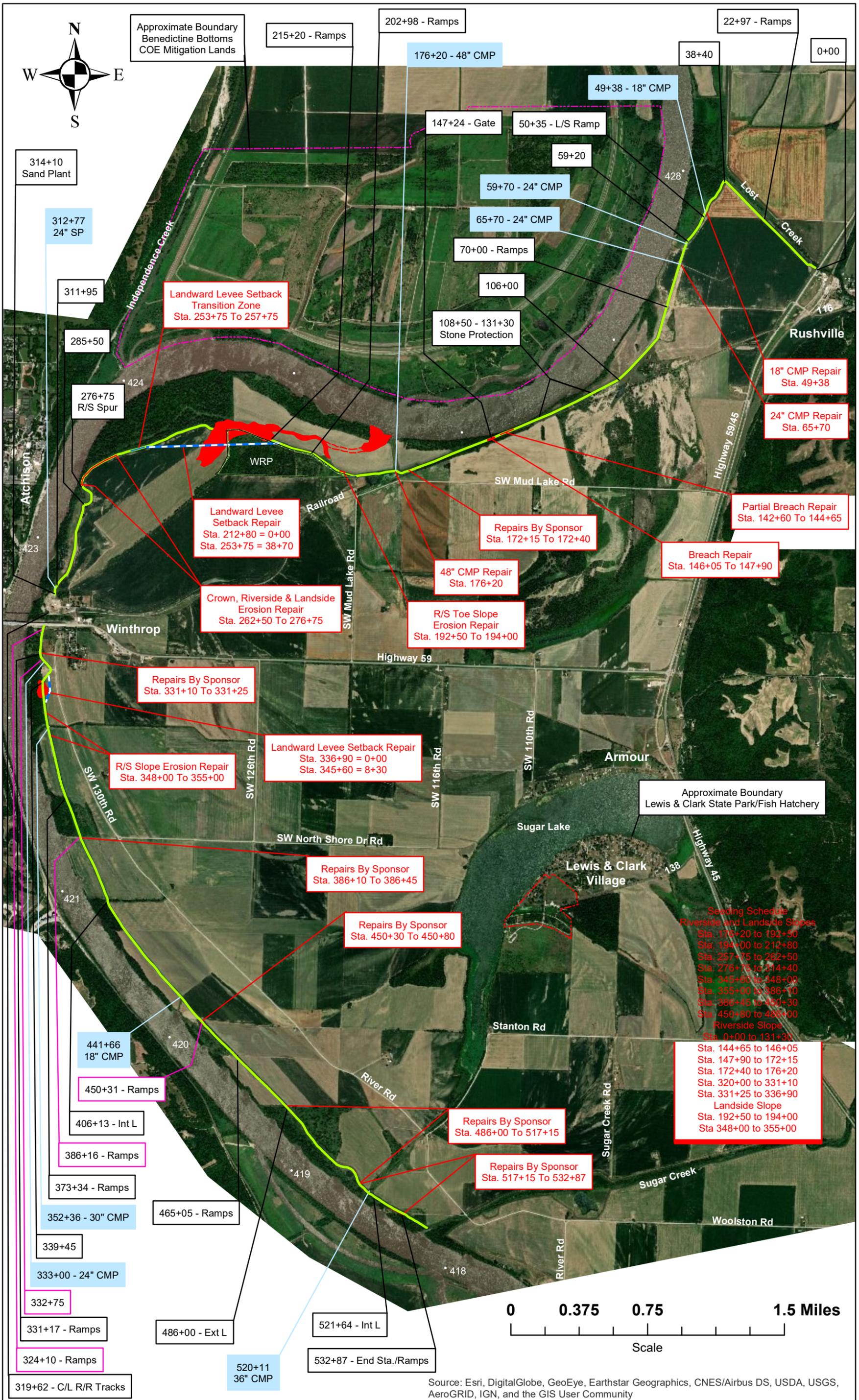






Rushville Sugar Lake Levee Association

WRP Easement
For
Landward Levee Setback



Attachment 3
Wetland Delineation
Report
and
Mitigation Site

MISSOURI - WETLAND EVALUATION TECHNIQUE - BIOLOGICAL VALUE

Landowner Sonnesomer EWRP

Appraiser D. Kacirek

Characteristic	Value	Existing Score	Mitigated Score
Wetland Land Use Not Including Appraised Wetland (Acres of surrounding section as wetlands and farmed wetlands not including prior converted wetlands)			
1 . < 25 acres of section land use as wetland	10	<input type="radio"/>	<input type="radio"/>
2 . 25-50 acres of section land use as wetland	8	<input checked="" type="radio"/>	<input checked="" type="radio"/>
3 . 50-100 acres of section land use as wetland	6	<input type="radio"/>	<input type="radio"/>
4 . 100-160 acres of section land use as wetland	4	<input type="radio"/>	<input type="radio"/>
5 . > 160 acres of section land use as wetland	1	<input type="radio"/>	<input type="radio"/>
		8	8

Distance to Ungrazed Woodland or Woody Cover			
1 . < 250 ft. or > 95% of section as cropland	1	<input checked="" type="radio"/>	<input checked="" type="radio"/>
2 . 250-660 ft.	4	<input type="radio"/>	<input type="radio"/>
3 . 660 ft.-1/4 mile	7	<input type="radio"/>	<input type="radio"/>
4 . > 1/4 mile	10	<input type="radio"/>	<input type="radio"/>
		1	1

Concealment Cover (Percent wetland with dense woody or herbaceous cover)			
1 . Zero; or agricultural crops; or grazed	1	<input type="radio"/>	<input type="radio"/>
2 . <1%	4	<input type="radio"/>	<input type="radio"/>
3 . 1-5%	6	<input type="radio"/>	<input type="radio"/>
4 . 5-10%	8	<input type="radio"/>	<input type="radio"/>
5 . > 10%	10	<input checked="" type="radio"/>	<input checked="" type="radio"/>
		10	10

Stream System Interaction (Does not include recharge from adjacent upland Drainage)			
1 . Subject to recharge from channel at full bank flow	10	<input type="radio"/>	<input type="radio"/>
2 . Recharge from channel at over bank flow twice or more per year	7	<input type="radio"/>	<input type="radio"/>
3 . Recharge from channel at over bank flow once per year	4	<input type="radio"/>	<input type="radio"/>
4 . Recharge from channel at over bank flow less than annually or nondepressional without water storage	1	<input checked="" type="radio"/>	<input checked="" type="radio"/>
		1	1

Total Score = 48 54
 Maximum Score Possible = 90 90

Fish and Wildlife Index = 0.53 0.60

Action Score for Existing Condition = 0.53
Action = Mitigation Required

Action Scale			
Score	0.00 - 0.35	0.36 - 0.75	0.76 - 1.00
Action	Minimal Effect	Mitigation Required	Consult with NRCS State Office

MISSOURI - WETLAND EVALUATION TECHNIQUE - HYDROLOGICAL VALUE

Landowner Sonnesomer EWRP

Appraiser D. Kacirek

Characteristic	Value	Existing Score	Mitigated Score
Stream System Interaction (Does not include recharge from adjacent upland drainage)			
1 . Subject to recharge from channel at full bank flow	10	<input type="radio"/>	<input type="radio"/>
2 . Recharge from channel at over bank flow twice or more per year	7	<input type="radio"/>	<input type="radio"/>
3 . Recharge from channel at over bank flow once per year	4	<input type="radio"/>	<input type="radio"/>
4 . Recharge from channel at over bank flow less than annually; or nondepressional without water storage	1	<input checked="" type="radio"/>	<input checked="" type="radio"/>
		1	1
Concealment Cover (Percent wetland with dense woody or herbaceous cover)			
1 . Trees and shrubs (>25% canopy coverage of overstory trees with herbaceous and woody understory)	10	<input type="radio"/>	<input type="radio"/>
2 . Trees and shrubs (>25% canopy coverage of overstory trees) with little herbaceous and woody understory	8	<input checked="" type="radio"/>	<input checked="" type="radio"/>
3 . Woody and herbaceous (10 – 25% canopy coverage of overstory trees)	6	<input type="radio"/>	<input type="radio"/>
4 . Primarily herbaceous (10% overstory canopy coverage)	4	<input type="radio"/>	<input type="radio"/>
5 . Cropped (agricultural crops)	1	<input type="radio"/>	<input type="radio"/>
		8	8
Size (acres)			
1 . < 2 Ac.	1	<input type="radio"/>	<input type="radio"/>
2 . 2 - 5 Ac.	5	<input type="radio"/>	<input type="radio"/>
3 . 5 - 10 Ac.	10	<input type="radio"/>	<input type="radio"/>
4 . 10 - 15 Ac.	15	<input checked="" type="radio"/>	<input checked="" type="radio"/>
5 . > 15 Ac.	20	<input type="radio"/>	<input type="radio"/>
		15	15
Erosion and Sediment Control			
1 . Stabilizes ephemeral, gully, scour channel or streambank erosion	10	<input type="radio"/>	<input type="radio"/>
2 . Traps sheet and rill sediment; or effective in trapping sediment at high flows (Connected with stream system at high flows)	5	<input type="radio"/>	<input type="radio"/>
3 . Provides little erosion or sediment control (adjacent area adequately protected)	1	<input checked="" type="radio"/>	<input checked="" type="radio"/>
		1	1
Percent Wetland as Herbaceous Emergent Hydrophytic Vegetation (Canopy coverage of cattails, rushes, sedges, smartweeds)			
1 . < 5%	1	<input type="radio"/>	<input type="radio"/>
2 . 5 - 10%	4	<input type="radio"/>	<input type="radio"/>
3 . 10 - 25%	6	<input checked="" type="radio"/>	<input checked="" type="radio"/>
4 . 25 - 50%	8	<input type="radio"/>	<input type="radio"/>
5 . > 50%	10	<input type="radio"/>	<input type="radio"/>
		6	6

Total Score = 31 31
 Maximum Score Possible = 60 60
 Fish and Wildlife Index = 0.52 0.52
Action Score for Existing Condition = 0.52
Action = Mitigation Required

Action Scale

Score	0.00 - 0.35	0.36 - 0.75	0.76 - 1.00
Action	Minimal Effect	Mitigation Required	Consult with NRCS State Office

MISSOURI - WETLAND EVALUATION TECHNIQUE - BIOLOGICAL VALUE

Landowner Sonnesomer EWRP

Date 4/10/2020

Acres of Wetland 10

County Buchanan, Missouri

Appraiser D. Kacirek

Farm # _____ Tract # _____

Field # _____ Wetland # _____

Characteristic	Value	Existing Score	Mitigated Score
Surface Water Present March-October Consecutive Days (Long-term average)			
1 . > 3 months per year	10	<input type="radio"/>	1
2 . 2-3 months per year	8	<input type="radio"/>	
3 . 1-2 months per year	6	<input type="radio"/>	
4 . 15-30 days per year	4	<input type="radio"/>	
5 . < 15 days per year	1	<input checked="" type="radio"/>	
			4

Surface Water Conditions (Frequency) on ALL or Portion of the Wetland for at least 15 Consecutive Days			
1 . Annually (100%)	10	<input type="radio"/>	1
2 . 3 out of 5 years (60%)	8	<input type="radio"/>	
3 . 1 out of 2 years (50%)	6	<input type="radio"/>	
4 . 2 out of 5 years (40%)	4	<input type="radio"/>	
5 . < 2 out of 5 years (< 40%) <u>or</u> < 15 consecutive days	1	<input checked="" type="radio"/>	
			4

Wetland Vegetation (Obligate and Facultative Wet)			
1 . Good overstory and understory plant diversity, subcanopy usually present, herbaceous vegetation usually present	10	<input type="radio"/>	6
2 . > 25% woody overstory canopy coverage with limited overstory and good understory plant diversity	8	<input type="radio"/>	
3 . > 25% woody overstory canopy coverage with limited overstory and limited understory plant diversity; or emergent with good plant diversity	6	<input checked="" type="radio"/>	
4 . < 25% woody overstory canopy coverage with limited overstory and understory plant diversity; or emergent with poor plant diversity	4	<input type="radio"/>	
5 . Reed canary grass other cool-season or warm-season grasses, agricultural crops; or primarily non-wetland species	1	<input type="radio"/>	
			6

Size (Total acres of wetland evaluation)			
1 . < 0.5 Ac. <u>or</u> primarily non-wetland species (i.e. fescue, timothy, alfalfa, etc.)	1	<input type="radio"/>	20
2 . 0.5 - 1 Ac.	5	<input type="radio"/>	
3 . 1 - 3 Ac.	10	<input type="radio"/>	
4 . 3 - 5 Ac.	15	<input type="radio"/>	
5 . > 5 Ac.	20	<input checked="" type="radio"/>	
			20



Section 17 T.55 R. 37

S-8

S-1

S-2

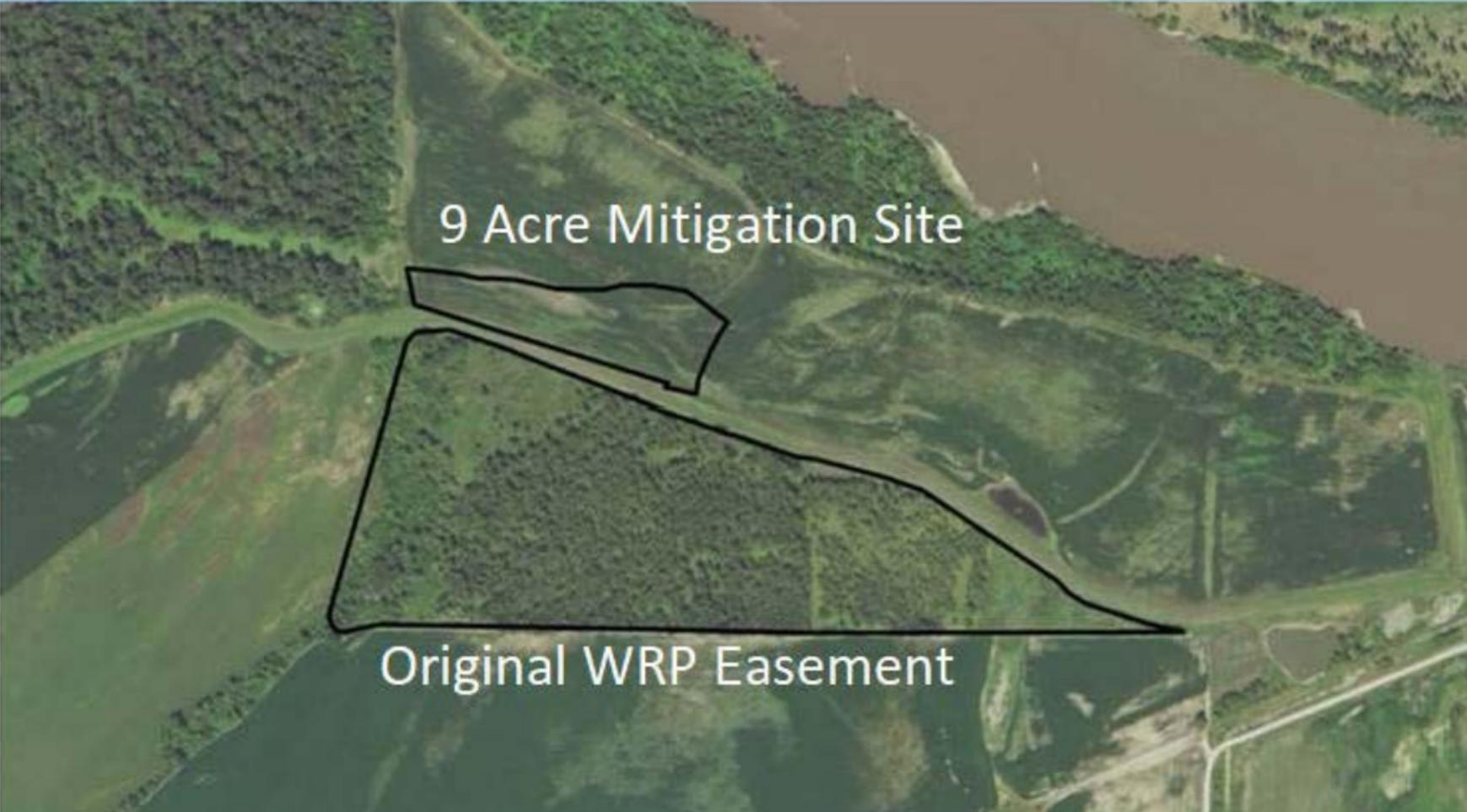
S-3

S-4

S-7

S-6

S-5



9 Acre Mitigation Site

Original WRP Easement

Attachment 4
Easement Owner Letter
of Support

May 6, 2020

Dear Sirs,

In reference to the proposed levee repair in southern Buchanan county Missouri, Sonnenmoser Family Investments LLC is very much in favor of this project. Our support includes running the new levee through any existing wetlands easement we own, using borrow from our property, and using existing farmland as mitigation for wetlands easement lost to the new levee.

Best Regards,

Sonnenmoser Family Investments, LLC

By Mark Sonnenmoser

Attachment 5

USFWS Coordination



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Missouri Ecological Services Field Office
101 Park Deville Drive
Suite A
Columbia, MO 65203-0057
Phone: (573) 234-2132 Fax: (573) 234-2181

In Reply Refer To:

May 26, 2020

Consultation Code: 03E14000-2020-SLI-2310

Event Code: 03E14000-2020-E-05793

Project Name: Rushville Sugar Lake Levee

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

To Whom It May Concern:

This response has been generated by the Information, Planning, and Conservation (IPaC) system to provide information on natural resources that could be affected by your project. The U.S. Fish and Wildlife Service (Service) provides this response under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), the Migratory Bird Treaty Act (16 U.S.C. 703-712), and the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

Threatened and Endangered Species

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 may be affected by your proposed project. The species list fulfills the requirement for obtaining a Technical Assistance Letter from 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.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. **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.

Consultation Technical Assistance

Refer to the Midwest Region [S7 Technical Assistance](#) website for step-by-step instructions for making species determinations and for specific guidance on the following types of projects: projects in developed areas, HUD, pipelines, buried utilities, telecommunications, and requests for a Conditional Letter of Map Revision (CLOMR) from FEMA.

Federally Listed Bat Species

Indiana bats, gray bats, and northern long-eared bats occur throughout Missouri and the information below may help in determining if your project may affect these species.

Gray bats - Gray bats roost in caves or mines year-round and use water features and forested riparian corridors for foraging and travel. If your project will impact caves, mines, associated riparian areas, or will involve tree removal around these features particularly within stream corridors, riparian areas, or associated upland woodlots gray bats could be affected.

Indiana and northern long-eared bats - These species hibernate in caves or mines only during the winter. In Missouri the hibernation season is considered to be November 1 to March 31. During the active season in Missouri (April 1 to October 31) they roost in forest and woodland habitats. Suitable summer habitat for Indiana bats and northern long-eared bats consists of a wide variety of forested/wooded habitats where they roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags 5 inches diameter at breast height (dbh) for Indiana bat, and 3 inches dbh for northern long-eared bat, that have exfoliating bark, cracks, crevices, and/or hollows), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. Tree species often include, but are not limited to, shellbark or shagbark hickory, white oak, cottonwood, and maple. Individual trees may be considered suitable habitat when they exhibit the characteristics of a potential roost tree and are located within 1,000 feet (305 meters) of other forested/wooded habitat. Northern long-eared bats have also been observed roosting in human-made structures, such as buildings, barns, bridges, and bat houses; therefore, these structures should also be considered potential summer habitat and evaluated for use by bats. If your project will impact caves or mines or will involve clearing forest or woodland habitat containing suitable roosting habitat, Indiana bats or northern long-eared bats could be affected.

Examples of unsuitable habitat include:

- Individual trees that are greater than 1,000 feet from forested or wooded areas;
 - Trees found in highly-developed urban areas (e.g., street trees, downtown areas);
 - A pure stand of less than 3-inch dbh trees that are not mixed with larger trees; and
 - A stand of eastern red cedar shrubby vegetation with no potential roost trees.
-

Using the IPaC Official Species List to Make No Effect and May Affect Determinations for Listed Species

1. If IPaC returns a result of “There are no listed species found within the vicinity of the project,” then project proponents can conclude the proposed activities will have **no effect** on any federally listed species under Service jurisdiction. Concurrence from the Service is not required for **No Effect** determinations. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records. An example ["No Effect" document](#) also can be found on the S7 Technical Assistance website.

2. If IPaC returns one or more federally listed, proposed, or candidate species as potentially present in the action area of the proposed project other than bats (see #3 below) then project proponents can conclude the proposed activities **may affect** those species. For assistance in determining if suitable habitat for listed, candidate, or proposed species occurs within your project area or if species may be affected by project activities, you can obtain [Life History Information for Listed and Candidate Species](#) through the S7 Technical Assistance website.

3. If IPaC returns a result that one or more federally listed bat species (Indiana bat, northern long-eared bat, or gray bat) are potentially present in the action area of the proposed project, project proponents can conclude the proposed activities **may affect** these bat species **IF** one or more of the following activities are proposed:

- a. Clearing or disturbing suitable roosting habitat, as defined above, at any time of year;
- b. Any activity in or near the entrance to a cave or mine;
- c. Mining, deep excavation, or underground work within 0.25 miles of a cave or mine;
- d. Construction of one or more wind turbines; or
- e. Demolition or reconstruction of human-made structures that are known to be used by bats based on observations of roosting bats, bats emerging at dusk, or guano deposits or stains.

If none of the above activities are proposed, project proponents can conclude the proposed activities will have **no effect** on listed bat species. Concurrence from the Service is not required for **No Effect** determinations. No further consultation or coordination is required. Attach this letter to the dated IPaC species list report for your records. An example ["No Effect" document](#) also can be found on the S7 Technical Assistance website.

If any of the above activities are proposed in areas where one or more bat species may be present, project proponents can conclude the proposed activities **may affect** one or more bat species. We recommend coordinating with the Service as early as possible during project planning. If your project will involve removal of over 5 acres of suitable forest or woodland habitat, we recommend you complete a Summer Habitat Assessment prior to contacting our office to expedite the consultation process. The Summer Habitat Assessment Form is available in Appendix A of the most recent version of the [Range-wide Indiana Bat Summer Survey Guidelines](#).

Other Trust Resources and Activities

Bald and Golden Eagles - Although the bald eagle has been removed from the endangered species list, this species and the golden eagle are protected by the Bald and Golden Eagle Act and the Migratory Bird Treaty Act. Should bald or golden eagles occur within or near the project area please contact our office for further coordination. For communication and wind energy projects, please refer to additional guidelines below.

Migratory Birds - The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Service. The Service has the responsibility under the MBTA to proactively prevent the mortality of migratory birds whenever possible and we encourage implementation of recommendations that minimize potential impacts to migratory birds. Such measures include clearing forested habitat outside the nesting season (generally March 1 to August 31) or conducting nest surveys prior to clearing to avoid injury to eggs or nestlings.

Communication Towers - Construction of new communications towers (including radio, television, cellular, and microwave) creates a potentially significant impact on migratory birds, especially some 350 species of night-migrating birds. However, the Service has developed [voluntary guidelines for minimizing impacts](#).

Transmission Lines - Migratory birds, especially large species with long wingspans, heavy bodies, and poor maneuverability can also collide with power lines. In addition, mortality can occur when birds, particularly hawks, eagles, kites, falcons, and owls, attempt to perch on uninsulated or unguarded power poles. To minimize these risks, please refer to [guidelines](#) developed by the Avian Power Line Interaction Committee and the Service. Implementation of these measures is especially important along sections of lines adjacent to wetlands or other areas that support large numbers of raptors and migratory birds.

Wind Energy - To minimize impacts to migratory birds and bats, wind energy projects should follow the Service's [Wind Energy Guidelines](#). In addition, please refer to the Service's [Eagle Conservation Plan Guidance](#), which provides guidance for conserving bald and golden eagles in the course of siting, constructing, and operating wind energy facilities.

Next Steps

Should you determine that project activities **may affect** any federally listed species or trust resources described herein, please contact our office for further coordination. Letters with requests for consultation or correspondence about your project should include the Consultation Tracking Number in the header. Electronic submission is preferred.

If you have not already done so, please contact the Missouri Department of Conservation (Policy Coordination, P. O. Box 180, Jefferson City, MO 65102) for information concerning Missouri Natural Communities and Species of Conservation Concern.

We appreciate your concern for threatened and endangered species. Please feel free to contact our office with questions or for additional information.

Karen Herrington

Attachment(s):

- Official Species List
 - USFWS National Wildlife Refuges and Fish Hatcheries
 - 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:

Missouri Ecological Services Field Office

101 Park Deville Drive

Suite A

Columbia, MO 65203-0057

(573) 234-2132

Project Summary

Consultation Code: 03E14000-2020-SLI-2310

Event Code: 03E14000-2020-E-05793

Project Name: Rushville Sugar Lake Levee

Project Type: LAND - FLOODING

Project Description: Levee re-alignment on NRCS WRP easement

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/39.57271505137743N95.08754328028013W>



Counties: Buchanan, MO

Endangered Species Act Species

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

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

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA 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. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Fishes

NAME	STATUS
Pallid Sturgeon <i>Scaphirhynchus albus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7162	Endangered

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.

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.

FRESHWATER EMERGENT WETLAND

- [PEM1A](#)
- [PEM1Ad](#)
- [PEM1Ax](#)
- [PEM1C](#)

FRESHWATER FORESTED/SHRUB WETLAND

- [PFO1/SS1A](#)
- [PFO1/SS1C](#)
- [PFO1A](#)
- [PSS1A](#)
- [PSS1C](#)
- [PSS1Cx](#)

FRESHWATER POND

- [PUBFx](#)
- [PUBG](#)
- [PUBGx](#)
- [PUBH](#)

RIVERINE

- [R2UBH](#)
-

From: [Adkins, Julie M CIV USARMY CENWK \(US\)](#)
To: [Kelly, Kaitlyn J](#)
Subject: Rushville Lake Levee realignment through NRCS WRP Easement
Date: Wednesday, June 3, 2020 7:28:00 AM
Attachments: [Species List Missouri Ecological Services Field Office.pdf](#)

Good morning,

The USACE has been tasked with working together with the NRCS to draft an environmental assessment for a levee repair that involves realignment through an existing WRP easement. The levee was breached during last year's flood event, and damaged in multiple places. The desire is to set back the breach, which involves cutting through the easement.

NRCS has asked USACE to take lead on the NEPA portion and will adapt our EA to their needs. This is new territory for me, and I am not sure if USFWS has different criteria for evaluating projects with NRCS and the Corps, but I wanted to give you the context for it. I have attached the IPaC generated for the area. We are seeking a determination on potentially affected species in accordance with Section 7 of the ESA, as well as any commentary relevant to the Fish and Wildlife Coordination Act.

Project info:

The Platte County Drainage District No. 1 Section 1 project is a levee system that reduces the occurrence of flooding to approximately 9,135 acres of Missouri River floodplain in Buchanan and Platte Counties, Missouri. This levee system has two segments, Platte County Section 1 and Rushville-Sugar Lake. The Rushville-Sugar Lake segment contains 10.2 miles of earthen levee and 5 gravity drains. Both segments are built along the Missouri River. The levee is operated and maintained by the local sponsors, Platte County Drainage District and Rushville-Sugar Lake. The area behind the levee is combination of agricultural, commercial, and residential development.

The recommended course of action is in-place repair (re-grading) of the riverside and landside slope erosion with additional fill as needed. The project would repair crown erosion with placement of fill to bring the levee back to previous protection levels, and would repair the partial breach to restore the levee embankment to its original grades. The recommended repair for the full breach area is to set back the levee landside approx. 100'. This setback would cross through the WRP easement, relocating approximately 13 acres of protected wetland to outside the levee protected area. The levee itself crosses approximately 5.5 acres of the easement.

The WRP owner has provided a written letter of support for this action. NRCS has also signaled support for this action. If there's more information that I can provide you, please let me know. This is new territory for us too and I understand it may be a different process for you. If you can, it would be helpful to me to know if your process for evaluating this project is any different. Since these are emergency levee repairs, it would be greatly appreciated if this project's review could be expedited. Please feel free to call any time.

Thank you

Julie Adkins
PMP-R NEPA Specialist
NWK 816.389.3064

From: [Kelly, Kaitlyn J](#)
To: [Adkins, Julie M CIV USARMY CENWK \(US\)](#)
Subject: [Non-DoD Source] Re: [EXTERNAL] Rushville Lake Levee realignment through NRCS WRP Easement
Date: Friday, July 10, 2020 3:40:32 PM

Thank you for looking into the presence of suitable trees for listed bat species on the project area. It appears that with the trees being unsuitable, there is no anticipated effect to listed bat species.

Let me know if there is any other assistance I can provide for this project.

Have a good weekend,

Kaitlyn Kelly
Fish and Wildlife Biologist
U.S. Fish & Wildlife Service
Missouri Ecological Services Field Office
Office phone: (573) 234-5012

Attachment 6
State Historic
Preservation Office
Coordination

Attachment 7
Overview of Agricultural
Conservation Easement
Program

Part 528 – Agricultural Conservation Easement Program

Subpart R – ACEP Easement Subordination, Modification, Exchange, and Termination

528.170 Overview of Easement Administration Action Authority

A. Overview

- (1) Once an ACEP easement is in place, including easements enrolled under predecessor programs, the United States holds vested rights and interests that authorize NRCS to make determinations necessary to administer easement rights and interests on behalf of the United States. Any easement administration action decision affecting these vested rights and interests are made at the sole discretion of NRCS, and the consideration of an easement administration action does not vest any rights or privileges in the landowner, an ACEP-ALE eligible entity or easement holder, or third party, and are thus are not program benefits subject to appeal.
- (2) An easement administration action means the subordination, modification, exchange, or termination of rights or interests of the United States in an ACEP easement.
- (3) This subpart implements easement administration action provisions in accordance with 7 CFR Section 1468.6, which provides NRCS certain administrative mechanisms to ensure that the protection of the viability of agricultural land, grazing uses and related conservation values, and the wetland restoration and protection efforts through NRCS conservation easements will be achieved over the long-term.
- (4) After an ACEP easement has been recorded, NRCS will not consider or approve any request for an easement administration action except where NRCS has first determined, in accordance with the sequencing considerations under the National Environmental Policy Act (NEPA), that the criteria in 7 CFR Section 1468.6 and this part are met. NRCS is not required to subordinate, exchange, modify, or terminate any of its rights or interests in an easement, and such easement administration actions are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.
- (5) The requestor of the easement administration action (project proponent) is responsible to provide all required documentation to NRCS.

B. Easement Administration Action Terms and Definitions

- (1) “Easement modification” means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area.
- (2) “Easement exchange” means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, relinquishes all or a portion of its real property rights or interests in an easement that are replaced by real property rights or interests granted through an easement that has equivalent or greater conservation value, acreage, and economic value to the United States on land that is not adjacent to the original easement area.
- (3) “Easement subordination” means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to subordinate all or a portion of its real property rights or interests in an easement. As determined by NRCS, the subordination must

be in the public interest or further the practical administration of the program, minimally affect the easement acreage, and increase or have limited negative effects on the conservation values of the easement area.

- (4) “Easement termination” means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to terminate its rights or interests in an easement or portion thereof to facilitate a project that addresses a compelling public need for which there is no practicable alternative and such termination action will result in equivalent or greater conservation value and economic value to the United States, and NRCS is provided compensation for such termination.

C. Easement Administration Action Threshold Criteria and Requirements

- (1) Easement Subordination.—As determined by NRCS, in its sole discretion and in accordance with the NEPA sequencing considerations, a subordination action must meet the following requirements:
 - (i) Is concurred with in writing by the landowner, and, for ACEP-ALE, the eligible entity who holds title to the easement.
 - (ii) Is in the public interest or will further the practical administration and management of the easement area or the program.
 - (iii) Increases conservation functions and values or has a limited negative effect on conservation functions and values.
 - (iv) Will result in no net loss of easement acres.
 - (v) Is at no cost to the Federal Government.
 - (vi) Will only minimally affect the original easement area, generally not more than 1 percent of the original easement area, except under specific circumstances described in paragraph E(2) below.
 - (vii) Meets all other requirement of 7 CFR Section 1468.6 and this part.
- (2) Easement Modification or Easement Exchange.—As determined by NRCS, in its sole discretion and in accordance with the NEPA sequencing considerations, an easement modification or exchange action must meet the following requirements:
 - (i) Is in the public interest.
 - (ii) Is concurred with in writing by the landowner, and, if ACEP-ALE, the eligible entity who holds title to the easement.
 - (iii) Is in the public interest or will further the practical administration and management of easement area or the program.
 - (iv) There is no reasonable alternative that will avoid impacting the easement area or if the easement area cannot be avoided entirely, then the preferred alternative must minimize impacts to the easement area and its conservation functions and values to the greatest extent practicable and any remaining adverse impacts must be mitigated, as determined by NRCS, at no cost to the Government.
 - (v) The action is consistent with the original intent of the easement and the purposes of the program.
 - (vi) Will result in equal or greater conservation functions and values to the United States. Additionally, the replacement of easement acres as part of an easement exchange must occur in the same 8-digit watershed and within the same State.
 - (vii) Will result in equal or greater economic value to the United States. NRCS will make the determination of equal or greater economic value to the United States based upon an approved valuation methodology in place at the time of the easement administration action request unless the terms of the easement require a different methodology, in which case NRCS will comply with the terms of the easement. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the

easement administration action results in equal or greater economic value to the United States.

- (viii) Will result in no net loss of acres in the program.
 - (ix) Will not affect more than 10 percent of the original easement area, except under specific circumstances described in paragraph E(2) below.
 - (x) Modification or exchange of all or a portion of an interest in land enrolled in ACEP-ALE may not increase any payment to an easement holder.
 - (xi) Meets all other requirements of 7 CFR Section 1468.6 and this subpart.
- (3) Easement Termination.—As determined by NRCS, in its sole discretion and in accordance with the NEPA sequencing considerations, an easement termination action must meet the following requirements:
- (i) Is in the Federal Government’s interest.
 - (ii) Is concurred with in writing by the landowner, and, if ACEP-ALE, the eligible entity who holds title to the easement.
 - (iii) Addresses a compelling public need for the easement administration action for which there is no practicable alternative that will avoid impacting the easement area even with avoidance and minimization, and will further the practical administration and management of the easement area or the program.
 - (iv) The United States will be fully compensated for the fair market values of the rights or interest in the land including any costs and damages related to the termination. NRCS will enter into a compensatory agreement with the proponent of the termination that identifies the costs for which the United States must be reimbursed, including but not limited to the value of the easement itself based upon current valuation methodologies, repayment of legal boundary survey costs, legal title work costs, associated easement purchase and restoration costs, legal filing fees, costs relating to the termination, and any damages determined appropriate by NRCS.
 - (v) Will not affect more than 10 percent of the original easement area, except under specific circumstances described in paragraph E(2) below.
 - (vi) Meets all other requirements of 7 CFR Section 1468.6 and this subpart.

D. Federal Action and NEPA Sequencing

- (1) This part clarifies that the preferred easement administration action is always avoidance of impacts to the easement area, followed by minimization of impacts to the easement area or rights and interests held by the United States.
- (2) An easement administration action affecting an ACEP easement constitutes a Federal action that may adversely affect the environment, and, therefore, NRCS must evaluate any easement administration action under the NEPA found at 42 U.S.C. Section 4321 et seq. In addition to NEPA regulations promulgated by the Council of Environmental Quality, NRCS has supplemental NEPA regulation at 7 CFR Part 650 and its NEPA policy at Title 190, General Manual (GM), Part 410. Under NEPA, NRCS must evaluate the consequences of, and alternatives to, the requested easement administration action.
 - (i) Because any easement administration action of an ACEP-ALE easement constitutes a Federal action that has the potential to convert important farmland to nonfarm use, NRCS also has a responsibility to evaluate any ACEP-ALE easement administration action under the Farmland Protection Policy Act at 7 U.S.C. Section 4201 et seq. and 7 CFR Part 658.
 - (ii) Because any easement administration action of an ACEP-WRE easement constitutes a Federal action that may have an adverse impact on wetland resources, NRCS also has a responsibility to evaluate any ACEP-WRE easement administration action request under Executive Order 11990.

- (3) NRCS must adhere to a clearly established evaluation sequence when deciding whether to approve or deny a request for an easement administration action, including whether there are practicable alternatives to the easement administration action and the project proponent is willing to adjust the requested action to avoid, minimize, or compensate for the impacts to the easement area. The preferred alternative is always to avoid the easement area. If the easement area cannot be avoided entirely, then the preferred alternative must be based on least impact to the original easement area.
- (i) Avoidance.—If there are practicable alternatives or other measures that will avoid impacts of the proposed activity on the ACEP easement, NRCS must deny the easement administration action request.
 - (ii) Minimization.—If a practicable alternative is not available that avoids adverse impacts to the ACEP easement, then NRCS will identify and inform the project proponent about measures that may minimize adverse impacts to the ACEP easement, and may request the project proponent also provide minimization options. If the project proponent is willing and able to minimize impacts to the ACEP easement, then NRCS may continue to evaluate the merits of the easement administration action request. If there are practicable alternatives or other measures that will minimize the adverse impacts of the proposed activity on the ACEP easement, and the project proponent does not select such alternatives or measures, then NRCS must deny the easement administration action request.
 - (iii) Compensation.—If NRCS determines that adverse impacts cannot be avoided or minimized, then NRCS may only continue to evaluate the merits of the easement administration request if the project proponent is willing and able to compensate for lost ACEP conservation and economic value by providing lands or measures that meet the specific requirements based on the easement administration action type and is able to meet the requirement that all easement administration actions other than easement termination will result in no net loss of acres enrolled in the program. Compensation may include, but is not limited to, enrolling new acres in ACEP or increasing the protection and function of already enrolled acres. If adverse impacts cannot be avoided, minimized, or adequately compensated for, NRCS must deny the easement administration action request.

E. Additional Criteria

- (1) Easement subordinations or modifications that only involve the easement area itself or land physically adjacent to the easement area, are preferred to easement exchanges that involve lands that are not physically adjacent to the original easement area. Easement exchanges are limited to circumstances where there are no available lands adjacent to the original easement area that will meet the easement subordination or easement modification requirements.
- (2) The scope of the easement area that may be affected by an easement subordination is limited to 1 percent of the easement area, and for all other easement administration actions is limited to 10 percent of the original easement area. NRCS may only exceed these limits if NRCS determines it is impracticable to achieve the purposes for which the easement was acquired on the original easement area. NRCS may make such determination if there are offsite landscape changes such as catastrophic changes to hydrology, complete loss of agricultural infrastructure, or contamination from hazardous materials from adjacent properties.
- (3) To meet the “public interest” criterion for easement subordinations, modifications, or exchanges, or the “compelling public need” criterion for easement terminations, the resulting easement configuration must not only be in the public interest or address a compelling public need, but the project proponent must also demonstrate that it is in the public’s interest or there is a compelling public need for the easement administration action itself.

For example, a proponent seeks to modify an easement boundary to construct a commercial office building and parking lot. The building and parking lot would be constructed on a portion of the existing easement area that includes endangered species habitat. The proponent proposes to replace the acres removed from the easement area with twice as many acres that also offer endangered species habitat. In this example, there may be a compelling public need for the resulting easement configuration by expanding the protection of endangered species habitat, but there is not a compelling public need for the easement administration action itself that would relinquish existing protection for endangered species on the existing easement area for the purposes of a private business enterprise. NRCS will not relinquish Federal protection on a particular land area unless the activity that will replace the Federal ACEP protection of that land area is also for purposes of a compelling public need.

- (4) Because easement administration actions could impact the total acres enrolled in the program, all easement administration actions, with the exception of terminations, must result in no net loss of acreage enrolled in the program.
- (5) ACEP easements represent a significant public investment in agricultural land and wetland protection and, therefore, easement administration actions are a limited exception to normal business processes and should rarely be recommended or approved under ACEP.

528.171 Easement Administration Action Procedural Requirements

A. Procedural Requirements

- (1) Easement administration actions generally evolve from situations that could not be anticipated when the easement was established, such as a new highway or bridge construction project.
- (2) Easement administration actions may be initiated by NRCS or proposed by a landowner, an ACEP-ALE easement holder, or a third-party project proponent able to demonstrate that it has the concurrence of the landowner and for ACEP-ALE easements, the ACEP-ALE easement holder, to submit a request for the easement administration action. The ability of a landowner or third party to request an easement administration action does not create any new rights or benefits in a landowner, easement holder, or in an authorized third party, and there is no right of approval created in the landowner, easement holder, or authorized third party. This guidance simply acknowledges the sources of information by which NRCS may consider easement administration actions and that the landowner's concurrence, and for ACEP-ALE easements, the ACEP-ALE easement holder's concurrence, is a necessary precondition for NRCS to consider approval of any easement administration action.
- (3) Easement administration actions cannot be authorized to correct a violation of the easement. All easement violations must be fully remediated by the landowner or other identified party, prior to NRCS reviewing or approving an easement administration action proposed by the party responsible for the violation.
- (4) The party requesting the easement administration action (project proponent) is responsible for providing a project proposal with all necessary supporting documentation to NRCS.
- (5) All criteria and requirements outlined 7 CFR Part 1468.6 and this part must be met before an easement administration action request may be recommended or approved by NRCS. Evaluation of an easement administration action request should be conducted in a stepwise manner as outlined below, such that if the request does not meet one of the criteria, there is no need to continue the evaluation of the remaining criteria as the request cannot be approved. Before an easement administration action request may be recommended for approval, the State conservationist must—

- (i) Have written concurrence from the landowners, and easement title holders, if ALE, that they concur with the proposed easement administration action.
 - (ii) Determine the easement administration action type to be evaluated and proceed in order through the individual threshold criteria identified in section 528.170C above that are applicable to the specific type of easement administration action being evaluated to determine whether all applicable criteria can be satisfied.
 - (iii) Evaluate the easement administration action request under NEPA, NRCS NEPA compliance policy at 190-GM-410, and this part, including the consequences of, and alternatives to, the requested easement administration action. NRCS must conduct an environmental evaluation (EE) (Form NRCS-CPA-52, “Environmental Evaluation Worksheet”) to determine the level of NEPA analysis required according to NRCS policy and regulations. The project proponent must provide sufficient information for NRCS to conduct the EE analysis and may request the project proponent to provide additional information.

Note: If NRCS finds under the NEPA analysis that the easement administration action has not been sufficiently analyzed and an environmental analysis (EA) or environmental impact statement (EIS) is required, then the project proponent must provide all of the necessary environmental compliance documentation to allow NRCS to evaluate the proposed action under NEPA, NRCS NEPA compliance policy at 190-GM-410, and this part. Failure by NRCS to complete the EE (Form NRCS-CPA-52) correctly will not eliminate the need for an EA or EIS by the project proponent and may delay NRCS response to the project proponent.
 - (vi) Evaluate any ACEP-ALE, including Farm and Ranch Lands Protection Program (FRPP) considered enrolled in ACEP-ALE, easement administration action under the Farmland Protection Policy Act (FPPA) found at 7 U.S.C. Section 4201 et seq. as described in paragraph (6) below, and evaluate any ACEP-WRE easement administration action under Executive Order 11990.
 - (v) Determine whether the easement administration action is appropriate, considering the purposes of the program and the facts surrounding the request for easement administration action.
- (6) Additionally, easement administration actions affecting an ACEP-ALE easement have the potential to convert important farmland to nonfarm use; therefore, under the FPPA, the State conservationist is required to use the land evaluation and site assessment (LESA) system to establish a farmland conversion impact rating score on the portion of ACEP-ALE parcel that could foreseeably be converted to nonfarm use as a direct or indirect result of the easement administration action. The State conservationist must also score the alternatives to the easement administration actions demonstrated by the project proponent and any other practicable alternatives proposed by NRCS.
- (i) The State conservationist will use these scores as an indicator of whether an easement administration action will have adverse impacts on the farmland greater than those of any demonstrated or practicable alternative or exceed the recommended allowable level.
 - (ii) NRCS will not relinquish Federal protection on a protected parcel if the easement administration action will have an adverse impact on the farmland greater than those of a practicable alternative or exceed the recommended allowable level.
 - (iii) The project proponent must demonstrate—
 - What alternatives to the easement administration action were considered and whether the alternative actions would lessen the adverse impact to farmland based on their farmland conversion impact rating score.
 - The easement administration action, to the extent practicable, is compatible with State, local government, and private programs and policies to protect farmland.

- (7) The State conservationist will determine whether the requested easement administration action is appropriate.
- (i) If the State conservationist decides the easement administration action is not appropriate, the State conservationist will notify the project proponent that the request is denied and no appeal is available.
 - (ii) If the State conservationist determines the easement administration action is appropriate, then the project proponent's request, along with all supporting documentation from the State conservationist, will be submitted to the director of the Easement Programs Division (EPD). The supporting documentation for the request must include, at minimum—
 - A letter of determination and findings from the State conservationist, including a summary of the proposal, impacts to the easement, and a statement from the State conservationist concurring with proposed easement administration action and recommending its approval.
 - Evaluation under NEPA, providing a copy of the NEPA analysis and applicable FPPA or Executive Order 11990 documentation.
 - A map and description of the proposed easement administration action.
 - Evidence that easement administration action meets all of the requirements outlined in this part.
 - Written support from the local conservation district, and for ACEP-WRE, the U.S. Fish and Wildlife Service, in support of the easement administration action.
 - Evidence that the easement administration action is appropriate, considering the requirements and purposes of the program and the facts surrounding the request for easement administration action.
 - Concurrence of the landowner, and for ACEP-ALE easements only, the concurrence of the ACEP-ALE easement holder.
 - For ACEP-ALE easements only, written concurrence from the landowner that they have been afforded the opportunity to consult a tax professional.
 - Any additional materials necessary to provide sufficient information for EPD to determine that the request is consistent with ACEP.
- (8) The EPD director will review the submitted materials and make the determination to approve or deny the easement administration action request. The EPD director has delegated authority to approve or deny easement subordination, modification, or exchanges and to deny easement termination requests. If easement termination is requested, the EPD director will review the submitted materials and if the EPD director recommends approval, he or she will provide the materials to the Chief for final determination. Easement termination may only be approved by the Chief, and such approval may not be delegated. At least 90 days prior to taking any termination action, written notice of such termination action will be provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.
- (9) The project proponent is responsible for all costs associated with actions involved in the easement administration actions. Easement administration actions may involve many of the same processes that were necessary when the original easement was recorded, including a determination of value, easement boundary survey and description, title search, removal or subordination of any intervening title encumbrances, a new policy of title insurance, and recording of the deed of easement amendment.
- (10) Approved easement administration actions made in an amended easement or an subordination agreement, must be duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, removal or subordination of unacceptable title encumbrances, and recordation.

- (11) If NRCS denies an easement administration action request at any level, the State conservationist will notify the project proponent that the request is not approved. A decision to deny an easement administration action request is not appealable as such decision is in the sole discretion of NRCS and does not affect any right or benefit of the landowner, title holder, third party, or the project proponent has in ACEP.

528.172 Infrastructure Project Requests

A. Infrastructure project requests are subject to the same easement administration action requirements as any other easement administration action request, but, given the involvement of a project proponent other than the original landowner, further information to address this type of request is provided herein.

B. As the amount of land subject to ACEP conservation easements continues to increase over time, the number of requests to allow infrastructure projects will increase as well. Infrastructure projects may include, but are not limited to—

- (1) Overhead and buried electrical transmission lines.
- (2) Transportation projects, including road and bridge widening or rerouting.
- (3) Airport expansion or installation.
- (4) Wind and solar power generation farms.
- (5) Various types of pipelines, such as crude oil, natural gas, water supply, sewer, or carbon dioxide.

C. The first response to a request for an easement administration action to allow any infrastructure project is a request from the State conservationist to the proponent to avoid NRCS easement lands. The infrastructure project proponent is responsible for providing sufficient evidence to NRCS that all criteria for an easement administration action have been met, including that impacts to the easement lands cannot be avoided. In circumstance where it has been clearly demonstrated that avoidance of the ACEP easement is not practicable, NRCS may consider easement administration action request affecting an ACEP easement, on a case-by-case basis, using the procedures identified in this subpart.

D. NRCS will review an easement administration action request for infrastructure projects the same as any other request, including whether practicable alternatives exist to avoid the impacts to the ACEP easement. However, NRCS will minimize the potential for conflict with infrastructure projects by coordinating with applicable agencies regarding proposed or permitted routes, rights-of-way, and NRCS enrollment activities. If NRCS at any level is provided notice of an infrastructure project that has the potential to affect one or more NRCS easements, the State program manager in the affected State must be notified immediately. The State program manager will consult with the State conservationist, EPD, and the State program managers in other affected States as necessary and will provide direction to the field on how to proceed.

E. NRCS will avoid enrolling land into ACEP where the intended purpose of the enrollment is to interfere with a permitted infrastructure project. To assist potential project proponents in similarly avoiding existing NRCS easements, each NRCS State office should share Geographic Information System (GIS) shapefiles showing closed easement locations with electrical companies, gas pipeline companies, States departments of transportation, and other Federal agencies on an annual basis for planning purposes and to facilitate avoidance of ACEP easements when planning for infrastructure. Any information shared must be in accordance with the guidance provided in subpart A, section 528.2 of this part.

F. States should notify EPD and the regional Office of the General Counsel (OGC) immediately of any eminent domain proceedings. NRCS easement lands are not subject to condemnation through eminent domain proceedings, except Federal transportation projects where the U.S. Department of

Transportation (DOT) has specific authority to set aside Federal lands (23 U.S.C. Section 317) for such Federal transportation projects. State conservationists should confer with DOT regarding any potential actions and request that DOT not exercise that authority on existing ACEP easements.

G. The right to grant a right-of-way for a proposed infrastructure project that may cross land encumbered by a WRE easement resides primarily with NRCS as the holder of the majority of the surface rights and partly with the landowner as the remaining fee title owner. The rights and interests conveyed to the United States under a WRE easement give NRCS authority to restrict projects from and on easement lands, and WRE lands may not be condemned by State or local entities. NRCS must ensure that lands subject to WRE easements support the intended conservation purposes for which the easements were acquired.

H. The right to grant a right-of-way for an infrastructure project to go across land encumbered by an ALE is often addressed in the terms of the agricultural land easement deed itself, and involves rights and interests of the landowner, the easement holder, and NRCS under the United States right of enforcement. Where a right-of-way may impact the scope of the United States' right of enforcement, NRCS will notify the project proponent of this easement administration action process and that NRCS will address its interests in the land according to these policies and procedures.

I. Projects permitted by such Federal agencies as the Federal Energy Regulatory Commission, Federal Aviation Administration, Department of Energy, Department of State, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, or others, require analysis of environmental impacts, in accordance with NEPA. Under these circumstances, NRCS may request cooperating agency status and participate in the permitting agency or Department's NEPA process. NRCS must conduct an EE on Form NRCS-CPA-52 to determine the level of NEPA analysis required according to NRCS policy and regulations. If NRCS is not a cooperating agency, it must conduct its own independent NEPA analysis. Instances in which NRCS is not a cooperating agency will likely occur when permitting of infrastructure is done by a State or local government agency, and there is no Federal permitting agency. Under these circumstances, NRCS must comply with all Federal laws, including NEPA, if it considers taking any action relative to ACEP easements. Again, the proponent of the infrastructure project must provide the documentation needed for NRCS to complete its environmental review.

J. EPD will contact the appropriate Federal permitting agency or Department and will notify State conservationists of new infrastructure projects and proposed multistate infrastructure routes. If a State is contacted by a Federal permitting agency, department, or infrastructure project proponent, it will notify EPD immediately. State offices will maintain contacts with appropriate Federal, State, and local permitting agencies.

K. In cooperation with the permitting agency, States will ascertain whether proposed or permitted infrastructure routes will impact existing ACEP easements and will notify EPD and OGC of any projects that may be impacted.

L. When the proposed infrastructure lies entirely within the boundaries of a single State, the State conservationist or his or her designee serves as the responsible Federal official (RFO). When the proposed infrastructure crosses multiple States, EPD and the appropriate regional conservationist will coordinate with the affected States to determine which State conservationist will serve as the agency RFO.

528.173 Title Corrections and Legal Adjustments

A. The State conservationist may preliminarily determine that a minor title correction or legal adjustment may be appropriate and submit to the EPD director a request for review and approval of the proposed title correction or legal adjustment. The EPD director will review the submitted materials and make the determination to approve or deny the proposed title correction or legal

adjustment, and will provide in writing, their determination and associated requirements for executing any approved title correction or legal adjustment actions. Title corrections and other legal adjustments include—

- (1) Typographical errors.
- (2) Minor changes in legal descriptions as a result of survey or mapping errors.
- (3) Address changes.
- (4) Internal changes on an FRPP or ALE easement that will have a neutral or a positive easement benefit such as the adjustment of a building envelope boundary.
- (5) Relocation of easement access.
- (6) Temporary work areas.
- (7) Acceptance of overlay easements to enhance easement protections.
- (8) Donations of easements.
- (9) The addition of additional interests or protections such as unification of legal estates.

B. Title corrections and other legal adjustments are case specific and may require different documentation based on the nature of the request that is submitted. At minimum a signed decision memorandum and completed EE (Form NRCS-CPA-52) analyzing the action and its alternatives are required. Additionally, based on the specific action being proposed, draft deeds, agreements or memorandums of understanding, legal surveys, or other supporting documents must be submitted to the EPD Director by the State conservationist as part of the request package. For example, the relocation of a building envelope on an ACEP-ALE requires that the landowner or entity provide a legal survey prior to approval. The EPD Director may request any additional documentation that is necessary to fully analyze the request and render a decision.

C. Execution of an approved title correction or legal adjustment action may also require OGC review, approval, and action to execute the change. The State conservationist must consult with OGC prior to submitting a title correction or legal adjustment request for EPD Director approval. Requests approved by the EPD Director may require the State conservationist to receive specific direction or final approval from OGC prior to proceeding with the title correction or legal adjustment.

D. Subdivision of an FRPP or ALE easement that is described with specificity in the terms and conditions of an entity-held easement deed is not considered a title correction or other legal adjustment and does not require EPD Director review unless such review is required by a deed term.