

EDWARD F. POOLOS
DIRECTOR

JEFFERY W. KITCHENS
DEPUTY DIRECTOR



KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

CATEGORICAL EXCLUSION FROM ENVIRONMENTAL REVIEW

City of Fort Payne Water Works Board
DeKalb County

SRF Project No. FS010445-02

October 01, 2025

The Alabama Department of Environmental Management has made **\$4,078,896** in financial assistance available to the **City of Fort Payne Water Works Board** using funds from the Infrastructure Investment and Jobs Act (**IIJA**) loan program. In accordance with State and Federal regulations that govern the program, the Alabama Department of Environmental Management has conducted a review to assess potential impacts upon the environment that may result from implementation of this project.

The purpose of this project is to address various critical infrastructure needs for the City of Fort Payne Water Works Board water system. The proposed project is to replace old cast iron water main piping that has lead joints and lead service connections with new ductile iron water line and new service material. This project will also upgrade these service connections with new AMR meters.

The Alabama Department of Environmental Management has determined that the project qualifies for a Categorical Exclusion (CE) from further environmental study under the guidelines specified by the State Environmental Review Process (SERP) which specifically include actions which are solely directed toward minor rehabilitation of existing facilities, functional replacement of equipment, or towards the construction of new ancillary facilities adjacent or appurtenant to existing facilities. However, this decision may be reconsidered if significant adverse information concerning the potential environmental impacts of the project is discovered.

Comments relative to this project should be submitted in writing to Mr. Cade Runyan, E.I., SRF Section, Permits and Services Division, Alabama Department of Environmental Management, Post Office Box 301463, Montgomery, Alabama 36130-1463, no later than 30 days after the date of this CE. The Alabama Department of Environmental Management will not take formal action to proceed with the project without carefully evaluating any public comments opposing the project.

Edward Poolos
Director

JWK/MBM/TCR/kbh



Birmingham Office
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Office
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)

Coastal Office
1615 South Broad Street
Mobile, AL 36605
(251) 450-3400
(251) 479-2593 (FAX)

The Categorical Exclusion is promulgated in the State Environmental Review Process (SERP) in Part IV, Section C: Categorical Exclusions for Drinking Water State Revolving Fund Projects: (Italicized sections apply.)

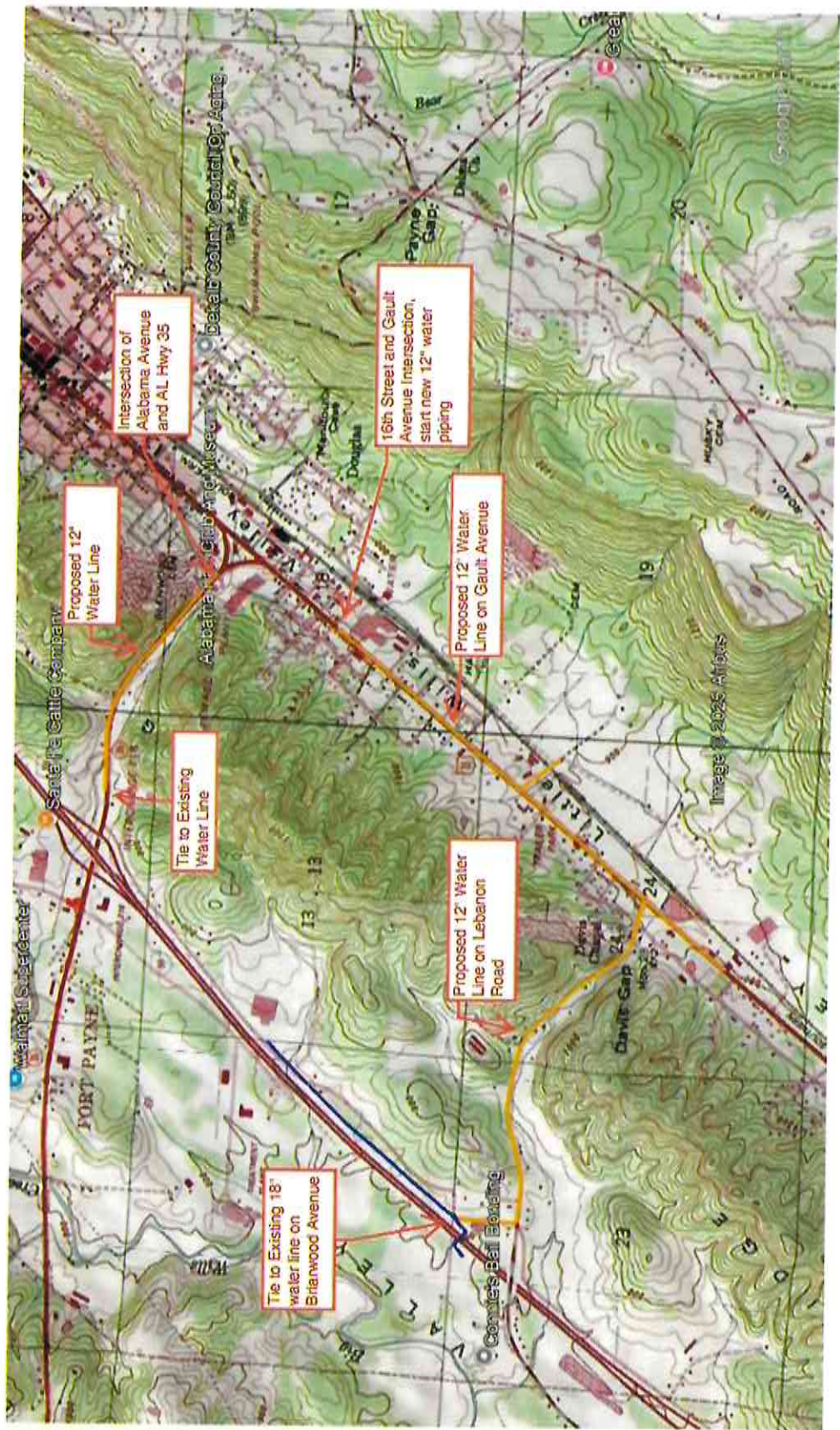
1. The following drinking water projects are eligible for categorical exclusions:
 - a. Actions intended solely for minor rehabilitation, functional replacement, or ancillary facilities adjacent or appurtenant to existing facilities.
 - b. Minor construction, including:
 1. New wells or replacement wells for water supply purposes if ancillary to the existing system;
 2. Improvements not intended to increase capacity of the system;
 3. Facilities for the disinfection of public water supplies;
 4. Facilities such as looping that will result solely in the provision of adequate public water system pressure;
 5. Construction of water tanks;
 6. Construction of new water lines in previously disturbed areas within one mile of the existing distribution system.
 - c. Projects where funding is being provided for planning and/or engineering costs only (in which case the requirements of IV.C.1.a-d do not apply).
2. In order to determine if a drinking water project is eligible for a CE, all of the following must not apply:
 - a. The action is known or expected to directly or indirectly adversely impact any of the following:
 1. Cultural or historical resources;
 2. Endangered or Threatened Species and/or their critical habitats;
 3. Environmentally important natural resource areas such as floodplains, wetlands, prime agricultural land, or aquifer recharge zones.
 - b. The action is not cost effective.
 - c. The action will cause significant public controversy.
 - d. The action will create a new or expanded surface drinking water source.

This project complies with the above requirements and has been determined to be eligible for a Categorical Exclusion.

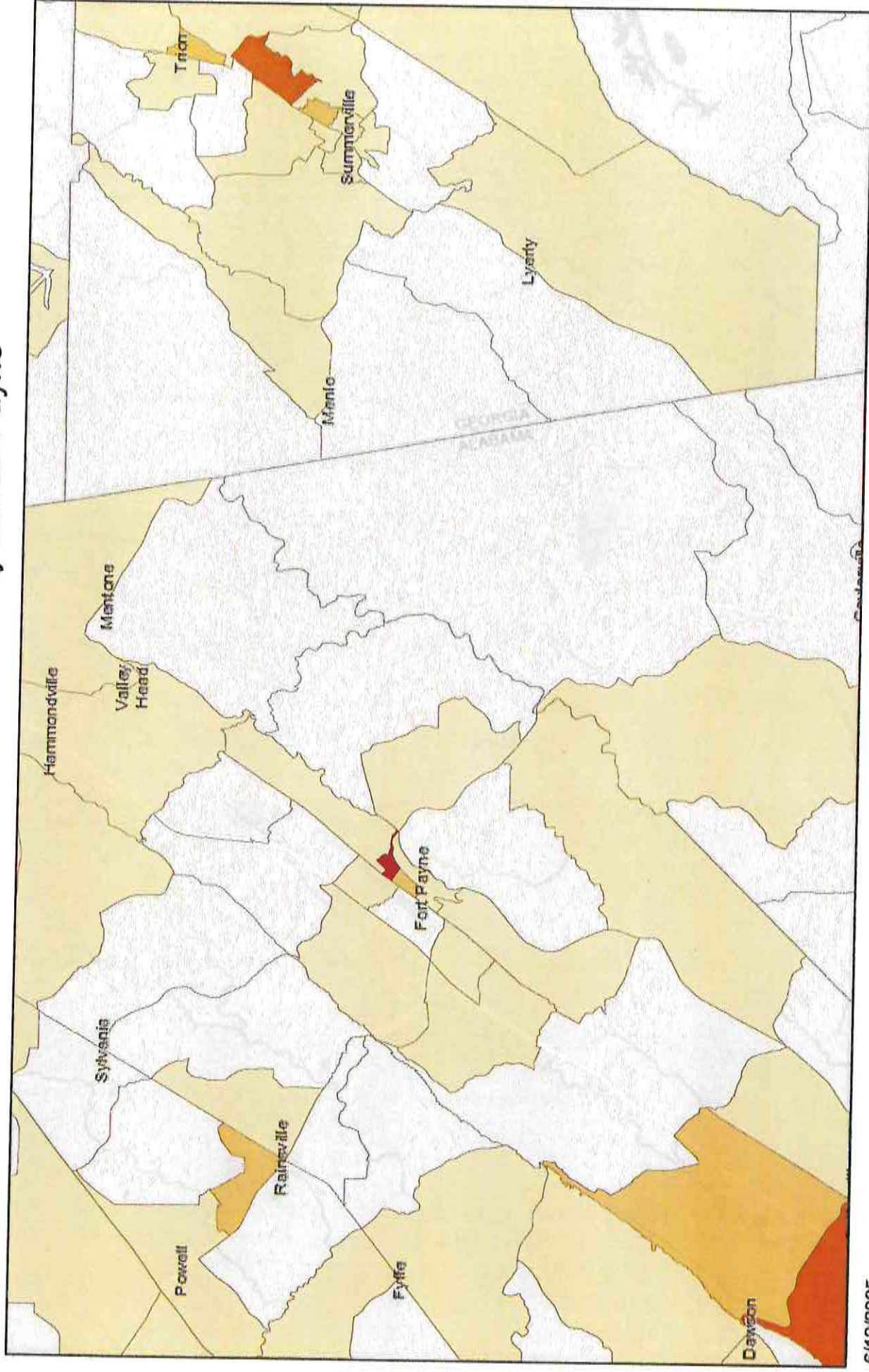
16th Street South to Lebanon Road Water Line Replacement Project



16th Street South to Lebanon Road Water Line Replacement Project

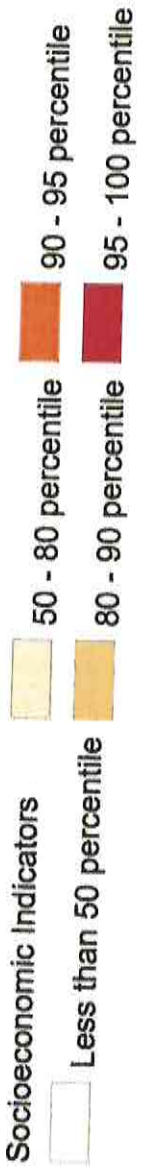


Water Works Board of the City of Fort Payne

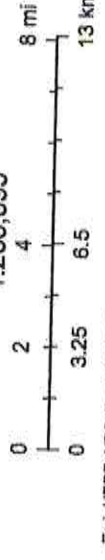


6/12/2025

Socioeconomic Indicators

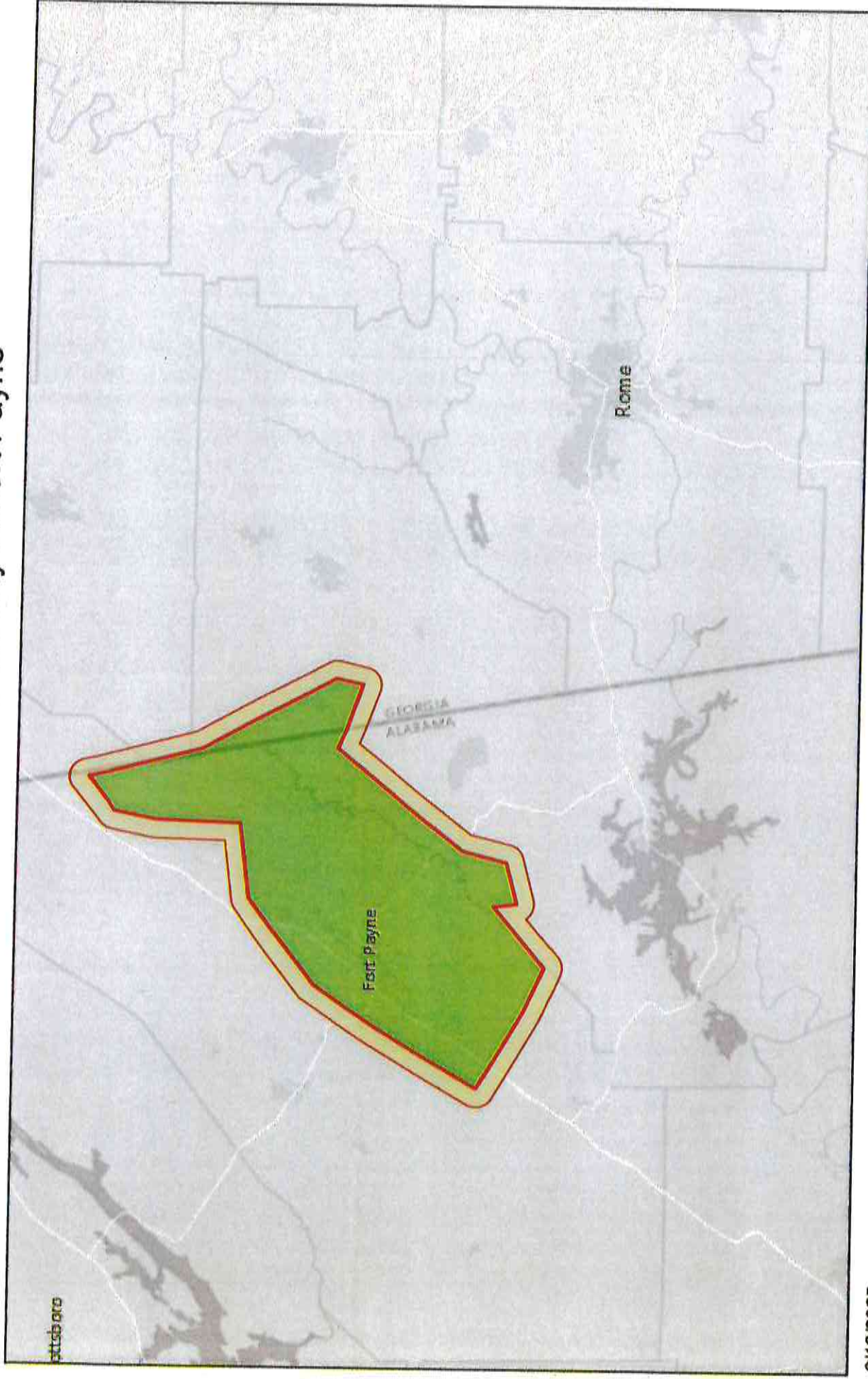


1:288,895



Esri, HERE, NPS, Esri, HERE, Garmin, USGS, EPA, NPS

Water Works Board of the City of Fort Payne



6/12/2025



Water Works Board of the City of Fort Payne

1:577,791

0 4 8 16 mi

0 5 10 20 km

Esri, HERE, NPS, Esri, HERE, Garmin, USGS, EPA, NPS

EJAM Report

Site 1 (ejam_uniq_id 1)
with 1 mile buffer
Population: 25,326

EJScreen Multisite Report

This report summarizes environmental and socioeconomic information for user-defined areas, and combines that data into environmental justice and supplemental indexes.

Toxic Releases to Air	2,000	21,000	58	4,600	72
Traffic Proximity and Volume (daily traffic count/distance to road)	110,000	630,000	34	1,700,000	18
Lead Paint Indicator (% pre-1960s housing)	0.20	0.19	64	0.3	48
Superfund Proximity (site count/km distance)	0.00	0.10	79	0.39	56
RMP Proximity (facility count/km distance)	0.17	0.36	53	0.57	41
Hazardous Waste Proximity (facility count/km distance)	0.5	0.7	60	3.5	34
Underground Storage Tanks (UST) indicator	1.0	1.9	57	3.6	52
Wastewater Discharge Indicator (toxicity-weighted concentration/distance)	57	23,000	44	700,000	50
Drinking Water Non-Compliance	0.8	4.11	67	2.2	76
SOCIOECONOMIC INDICATORS					
Demographic Index USA	1.36	1.49	51	1.34	58
Supplemental Demographic Index USA	2.19	1.95	73	1.64	81
% Low Income	43%	38%	60	30%	73
% in limited English-speaking Households	4%	1%	90	5%	72
% Unemployed	5%	6%	58	6%	56
% with Less Than High School Education	21%	13%	80	11%	83
% under Age 5	6%	6%	63	5%	65
% over Age 64	18%	19%	54	18%	59
% People of Color	23%	38%	41	40%	40

Environmental Justice & Supplemental Indexes

The environmental justice and supplemental indexes are a combination of environmental and socioeconomic information. For each of the environmental indicators in EJScreen, there is an EJ Index and a Supplemental Index. The indexes for a selected area are compared to those for all other locations in the state or nation. For more information and calculation details on the EJ and supplemental indexes, please visit the [EJScreen website](#).

EJ INDEXES

The EJ Indexes help users screen for potential EJ concerns. To do this, the EJ index combines data on low income and people of color populations with a single environmental indicator.

SELECTED VARIABLES	PERCENTILE IN STATE	PERCENTILE IN USA
EJ INDEXES		
Particulate Matter EJ Index	20	57
Ozone EJ Index	67	37
Nitrogen Dioxide (NO2) EJ Index	57	36
Diesel Particulate Matter EJ Index	55	38
Toxic Releases to Air EJ Index	64	73
Traffic Proximity and Volume EJ Index	47	32
Lead Paint EJ Index	59	57
Superfund Proximity EJ Index	79	56
RMP Proximity EJ Index	57	53
Hazardous Waste Proximity EJ Index	63	48
Underground Storage Tanks EJ Index	58	63
Wastewater Discharge EJ Index	50	61
Drinking Water Non-Compliance EJ Index	78	86
SUPPLEMENTAL EJ INDEXES		
Particulate Matter Supplemental EJ Index	18	66
Ozone Supplemental EJ Index	73	35
Nitrogen Dioxide (NO2) Supplemental EJ Index	63	33
Diesel Particulate Matter Supplemental EJ Index	57	35
Toxic Releases to Air Supplemental EJ Index	72	84
Traffic Proximity and Volume Supplemental EJ Index	48	28
Lead Paint Supplemental EJ Index	62	61
Superfund Proximity Supplemental EJ Index	79	56
RMP Proximity Supplemental EJ Index	60	56
Hazardous Waste Proximity Supplemental EJ Index	72	52
Underground Storage Tanks Supplemental EJ Index	61	68
Wastewater Discharge Supplemental EJ Index	54	70
Drinking Water Non-Compliance Supplemental EJ Index	80	90

SELECTED VARIABLES	VALUE
BREAKDOWN BY RACE	
% Hispanic or Latino	16%
% Black or African American (non-Hispanic, single race)	3%
% Asian (non-Hispanic, single race)	0%
% American Indian and Alaska Native (non-Hispanic, single race)	0%
% Native Hawaiian and Other Pacific Islander (non-Hispanic, single race)	0%
% Other race (non-Hispanic, single race)	1%
% Two or more races (non-Hispanic)	2%
% White (non-Hispanic, single race)	77%
BREAKDOWN BY GENDER	
% Male	48%
% Female	52%
LIMITED ENGLISH SPEAKING BREAKDOWN	
% Spanish lang (as % of limited English hhlds)	91%
% Other Indo-European lang (as % of limited English hhlds)	8%
% Asian-Pacific Island lang (as % of limited English hhlds)	1%
% Other lang (as % of limited English hhlds)	0%

Note: Diesel particulate matter index is from the EPA's Air Toxics Data Update, which is the Agency's ongoing, comprehensive evaluation of air toxics in the United States. This effort aims to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that the air toxics data presented here provide broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations.

Appendix A
Concurrence Letters

Historical Commission
Fish & Wildlife
Corp of Engineers
TARCOG
TVA



June 10, 2025

Alabama Historical Commission
468 South Perry Street
Montgomery, AL 36130
Attn: Lee Anne Hewett

Re: 16th Street to Lebanon Road Water Line Replacement SRF Project #FS010445-02

Dear Sir:

The Water Works Board of the City of Fort Payne has applied for SRF funding to improve the old cast iron water lines along US11 from 16th Street South to Lebanon Road. The project will consist of the construction of ductile iron water lines and new services. All piping on this project will be located inside existing right of ways or other previously disturbed property. Clearance from your department is required prior to the project commencing. Please review and comment as needed.

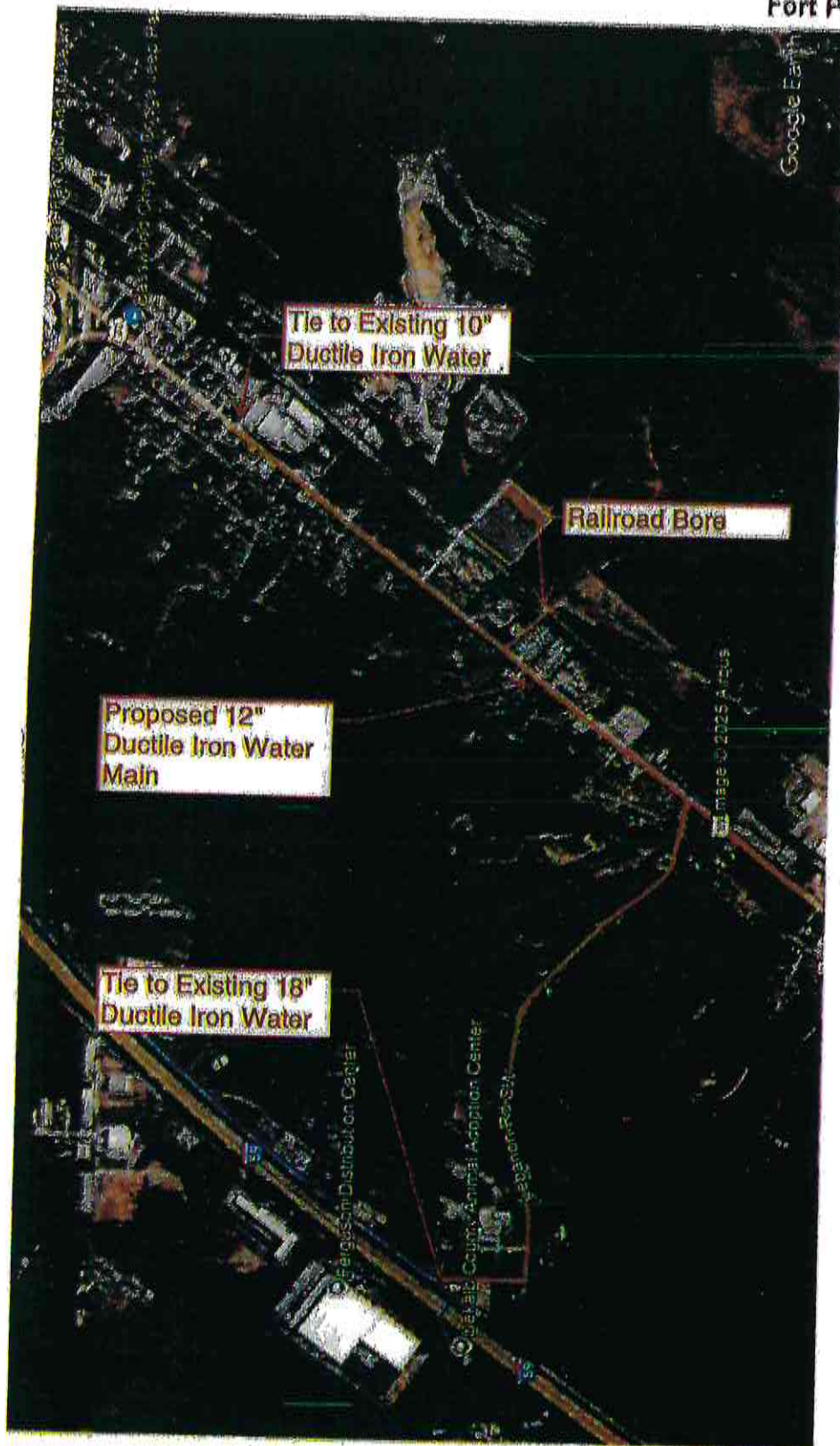
If you have any questions, please feel free to call me.

Sincerely,
Greenhill Engineering Consultants, Inc.

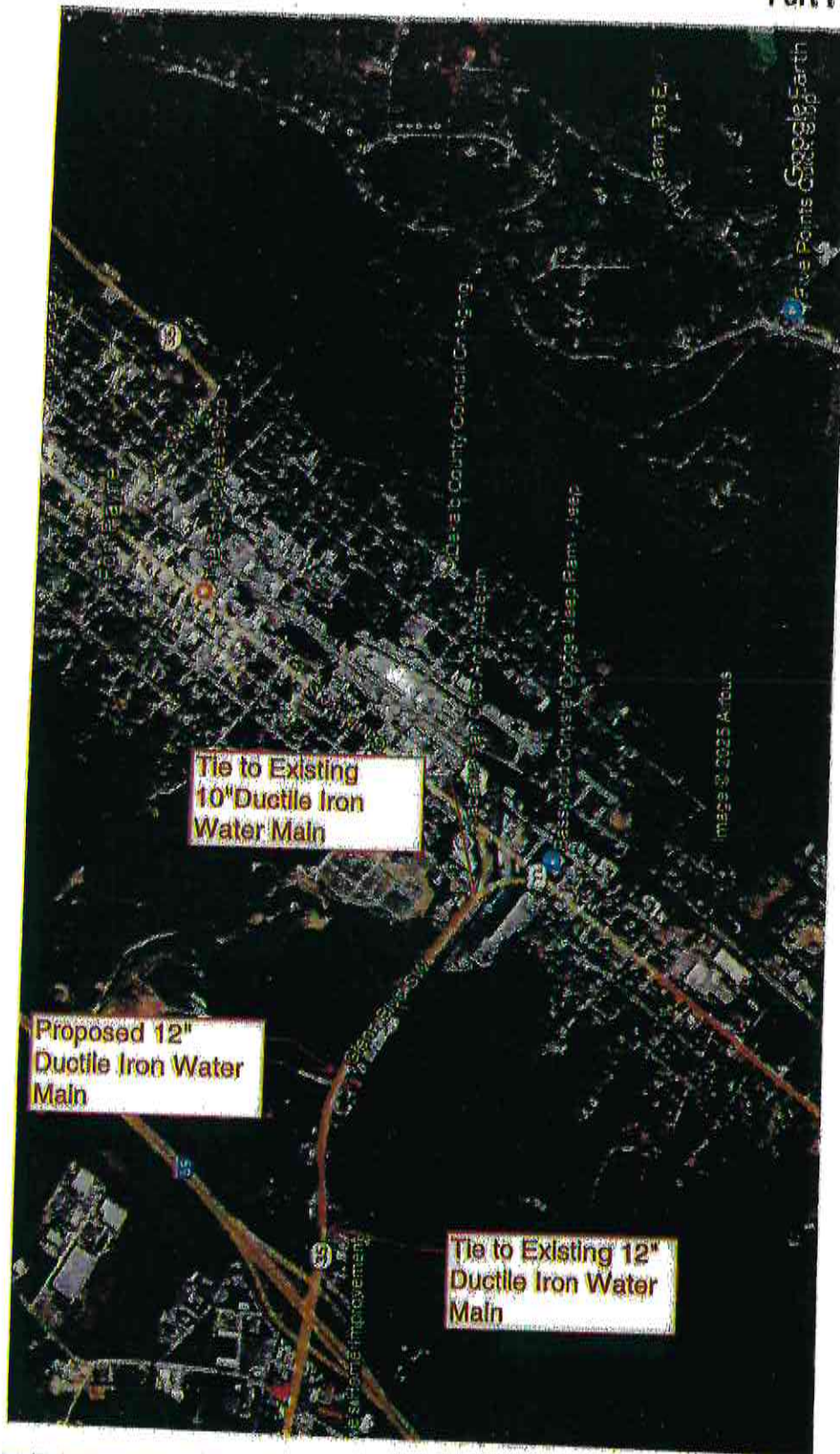
A handwritten signature in blue ink that reads "Curtis H. O'Daniel, Jr.".

Curtis H. O'Daniel, Jr., P.E.

Historical Comm. Letter
SRF Project #FS010445-02
Fort Payne Water



Historical Comm. Letter
SRF Project #FS010445-02
Fort Payne Water





ALABAMA HISTORICAL COMMISSION
STATE HISTORIC PRESERVATION OFFICE
SECTION 106 PROJECT REVIEW CONSULTATION FORM

Federal laws exist to ensure that federal agencies or their designated applicants carefully consider historic preservation in federally funded, licensed, or permitted projects. Section 106 of the National Historic Preservation Act of 1966, as amended directs this review. <http://www.achp.gov/106summary.html>. At a minimum, submission of this completed form and attachments constitutes a request for review by the Alabama Historical Commission, which is the Alabama State Historic Preservation Office (SHPO). **The responsibility for preparing documentation, including the identification of archaeological and architectural properties and the assessment of potential effects resulting from the project, rests with the federal or state agency, or its designated applicant.** The role of the Alabama SHPO is to review, comment, and consult with federal/state agencies or their designees. The Alabama SHPO's ability to complete a timely project review largely depends on the quality of the material submitted. Some applicants may find it advantageous to hire a professional consultant with expertise in archaeology, history and/or architectural history.

PROJECT NAME

16th Street South to Lebanon Road Water Line Replacement

FEDERAL AGENCY PROVIDING FUNDS, LICENSE, OR PERMIT

FEDERAL PROJECT NUMBER

FS010445-02

FEDERAL AGENCY CONTACT NAME AND E-MAIL/PHONE NUMBER

STATE AGENCY PROVIDING FUNDS, LICENSE, OR PERMIT (IF APPLICABLE)

ADEM - SRF Program

STATE AGENCY CONTACT NAME AND E-MAIL ADDRESS, PHONE NUMBER, MAILING ADDRESS

Cory Price, CLP@adem.alabama.gov, phone: 334-271-7864

AHC NUMBER (If project has been previously submitted)

NA

APPLICANT NAME:

Water Works Board of the City of Fort Payne

APPLICANT MAILING ADDRESS:

153 20th Street NE, Fort Payne, AL 35967

APPLICANT TELEPHONE:

256-845-0449

APPLICANT EMAIL:

brandon@fpwater.com

CONTACT NAME (if different than applicant):

Brandon Light, Executive Director

CONTACT MAILING ADDRESS:

153 20th Street NE, Fort Payne, AL 35967

CONTACT TELEPHONE:

256-845-0449

CONTACT EMAIL (Person to whom AHC should email response letter):

brandon@fpwater.com

CONTRACTOR TYPE: ☐ ARCHAEOLOGIST; ☐ ARCHITECTURAL HISTORIAN; ☐ NONE; ☒ OTHER: Engineer

CONTRACTOR NAME:

Greenhill Engineering Consultants, Inc.

CONTRACTOR MAILING ADDRESS:

2412 Beck Industrial Blvd W, Fort Payne, AL 35968

CONTRACTOR TELEPHONE:

256-997-7266

CONTRACTOR EMAIL:

codaniel@greenhilleng.com

PROJECT LOCATION

STREET ADDRESS

intersection of 16th Street S and Gault Avenue

CITY

Fort Payne

COUNTY

DeKalb

ZIP CODE

35967

LATITUDE / LONGITUDE: USE DECIMAL DEGREES EXAMPLE: 32.3722N, -86.3083W

34.426881, -85.735764

PROJECT DESCRIPTION

Will the project involve any of the following? Check all that apply.

- ☐ exterior rehabilitation work;
- ☐ interior rehabilitation work;
- ☐ cellular equipment located on buildings;
- ☐ streetscapes/sidewalks/lighting;
- ☒ new construction; and/or
- ☐ demolition

Describe the overall project in DETAIL. Be sure to describe any items checked above. Use additional pages if necessary.

Installation of a new ductile iron water line to replace an old cast iron line with lead joints, project will commence at the intersection of 16th Street South and Gault Avenue (US Hwy 11), thence continue along US Hwy 11 south to County Road 51 (Lebanon Road), new water line will continue westward along Lebanon Road towards Interstate 59 to Briarwood Avenue where proposed water line will connect to an existing water line on Briarwood Avenue. Also piping will extend westward along State Hwy 35 from the intersection of Alabama Avenue and Alabama Hwy 35 for a distance of approximately 4200 feet, connecting to an existing water line before reaching Interstate 59. All piping will be located in City, State or County road right of ways.

AREA OF POTENTIAL EFFECT (APE)

The APE varies with project types and can be direct or indirect (physical, visual, auditory, etc.). The APE is defined as "the geographic area or areas within which an undertaking may cause changes in the character of use of historic properties, if any such properties exist." Factors to consider when determining the APE include; topography, vegetation, existing development, orientation of an existing resource to the project, physical siting of a resource, and existing and planned future development. For example:

- 1) Rehabilitation, renovation, and/or demolition of a historic building or structure, or new construction: the APE might include the building itself and the adjacent setting.
- 2) Streetscapes: the APE might include the viewshed from the street.
- 3) Pedestrian/bicycle facilities: the APE might extend the length of the corridor and for some distance on both sides of the corridor.
- 4) Underground utilities: the APE would usually be limited to the area of ground disturbance.

Attach a map indicating the precise location of the project and the boundaries of the APE, preferably a clear color copy of a USGS topographic quadrangle map (7.5 minute). For projects in urban areas, also include a city map that shows more detail. USGS topographic maps can be printed from this website: <https://ngmdb.usgs.gov/topoview/viewer/>. City maps can be printed using www.google.com/maps.

Provide current, high resolution color photographs that illustrate the project area and the entire APE as defined above.

ARCHAEOLOGY (Ground Disturbing Activities)

Has the ground in the project area been disturbed other than by agriculture (i.e. grading, grubbing, clear cutting, filling, etc.)?

☒ Yes ☐ No ☐ Don't know ☐ N/A

If yes, describe in detail. Use additional pages as necessary. Photographs are helpful.
Project will located in the right of ways of State, County and City Streets.

Describe the present use and condition of the property. Use additional pages as necessary.
Road right of ways.

To your knowledge, has a Cultural Resource Assessment (CRA) been conducted in the proposed project area?

☐ Yes ☐ No ☒ Don't know ☐ N/A

If yes, attach a copy of the cultural resources assessment report.

ARCHITECTURAL INFORMATION

Above-ground properties within the Area of Potential Effect (APE) should be evaluated for the eligibility for the National Register of Historic Places. It is the federal agency's (or their designee) responsibility to identify properties in the APE, apply the National Register (NR) criteria, and determine whether a property is eligible or not. Those determinations are sent to our office for review and comment. All properties evaluated should be accompanied by current photographs, and these locations should be keyed to a good quality USGS topographic map. Some applicants may find it advantageous to hire a historic preservation professional with expertise in history and/or architectural history to complete the identification and evaluation of historic properties. The Alabama Historical Commission publishes a GIS map of properties that have been documented by or through our office. The map includes properties listed in the National Register of Historic Places, Alabama Register of Landmarks & Heritage, Alabama Historic Cemetery Register, county architectural surveys, and other files. The GIS map can be accessed here: <https://ahc.alabama.gov/historicpreservationmap.aspx> The GIS map should function as a research tool, not an up-to-the-minute inventory about every historic and/or architecturally significant property in the state. This tool allows researchers to investigate and review potentially significant properties according to the best data that is available in the Alabama Historical Commission's files. The absence of a property from the map does not imply that an unidentified property lacks historic or architectural importance.

1) Within the APE, are there properties listed in or eligible for the National Register of Historic Places?

☐ YES If yes, identify the properties by name, address, and photo number.

☒ NO If no, identify the properties by name, address, and photo number. Provide an explanation as to why properties identified are not eligible for the National Register. A discussion of the National Register seven aspects of integrity and the applicable National Register criteria must be included. Refer to the National Park Service's website: https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf Use additional pages as necessary.

EFFECTS DETERMINATION

An effect occurs when an action alters the characteristics of a property that may qualify it for the National Register of Historic Places. How will this project affect any of the properties identified in the previous section? Will the project take away or change anything within the boundaries of a historic property? Will the project change the view from or the view to any historic properties? Will the project introduce any audible or atmospheric elements? Will the project result in the transfer, lease, or sale of any of the identified properties? Use additional sheets as necessary.

CHECKLIST: Did you provide the following information?

☒ Completed form.

☒ Photographs* of current site conditions and all identified historic properties keyed to a site map.

☒ Maps with project area, APE, and any historic properties marked and identified.

☐ For new construction, rehabilitations, etc., attach work plans, drawings, etc.

☒ Other supporting documents (if necessary to explain the project).

☒ Description of present use and condition of the project area.

*A note about photographs: Digital photos must be current, high resolution, and adequately show the resource. Take photographs of the overall property and the exterior of each building on the property, including outbuildings. Include views of the overall setting, views of the building in its immediate surrounding showing the relationship of the building to neighboring buildings, and views of significant landscape features (i.e. tree lined approaches, stone walls, formal gardens, etc.). Exterior views of the building should include full views of each side (if possible) and views of important architectural details. Key all photographs to a site map.

If the project involves rehabilitation, include photographs of the building(s) involved and especially the areas of the building slated for rehab work. Label each exterior view to a site map and label all interior views. If the project involves new construction, include photographs of the surrounding area looking out from the project site. Include photographs of any buildings that are located on the project property or on adjoining property.

NOTE: Section 106 regulations provide for a 30-day response time by the Alabama SHPO from the date of receipt. Project activities may not begin until our office has reviewed this information and issued comments.

Upon receipt, applications and attachments become the property of the State of Alabama.

For questions regarding this form or the Section 106 Review Process, contact Amanda McBride,
Section 106 Coordinator, at 334.230.2692 or Amanda.McBride@ahc.alabama.gov.

All projects must be submitted digitally

E-mail this form and supporting documents to Section.106@ahc.alabama.gov. This is the only approved e-mail address for project submission. Projects sent to any other e-mail address will not be accepted. The attachment size cannot exceed 19 MB. Alternatively, you may submit projects with larger attachments through an online system to be determined by the AHC.

Please limit your submission to cultural resources information only.

Contact Amanda McBride for any questions on digital submissions



June 10, 2025

US Fish & Wildlife
1208-B Main Street
Daphne, AL 36526
Attn: William Pearson, Field Supervisor

Re: 16th Street to Lebanon Road Water Line Replacement SRF Project #FS010445-02

Dear Sir:

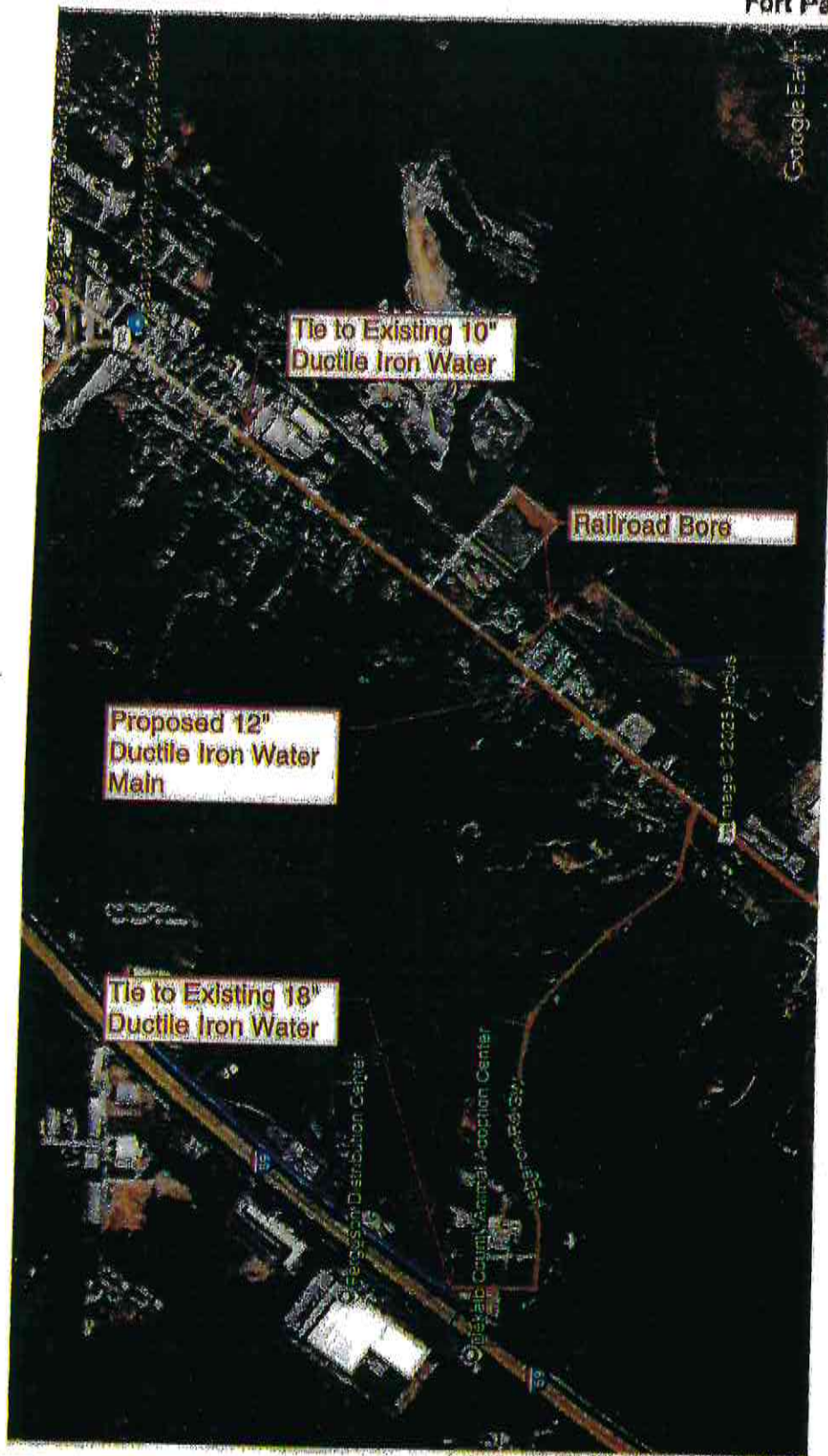
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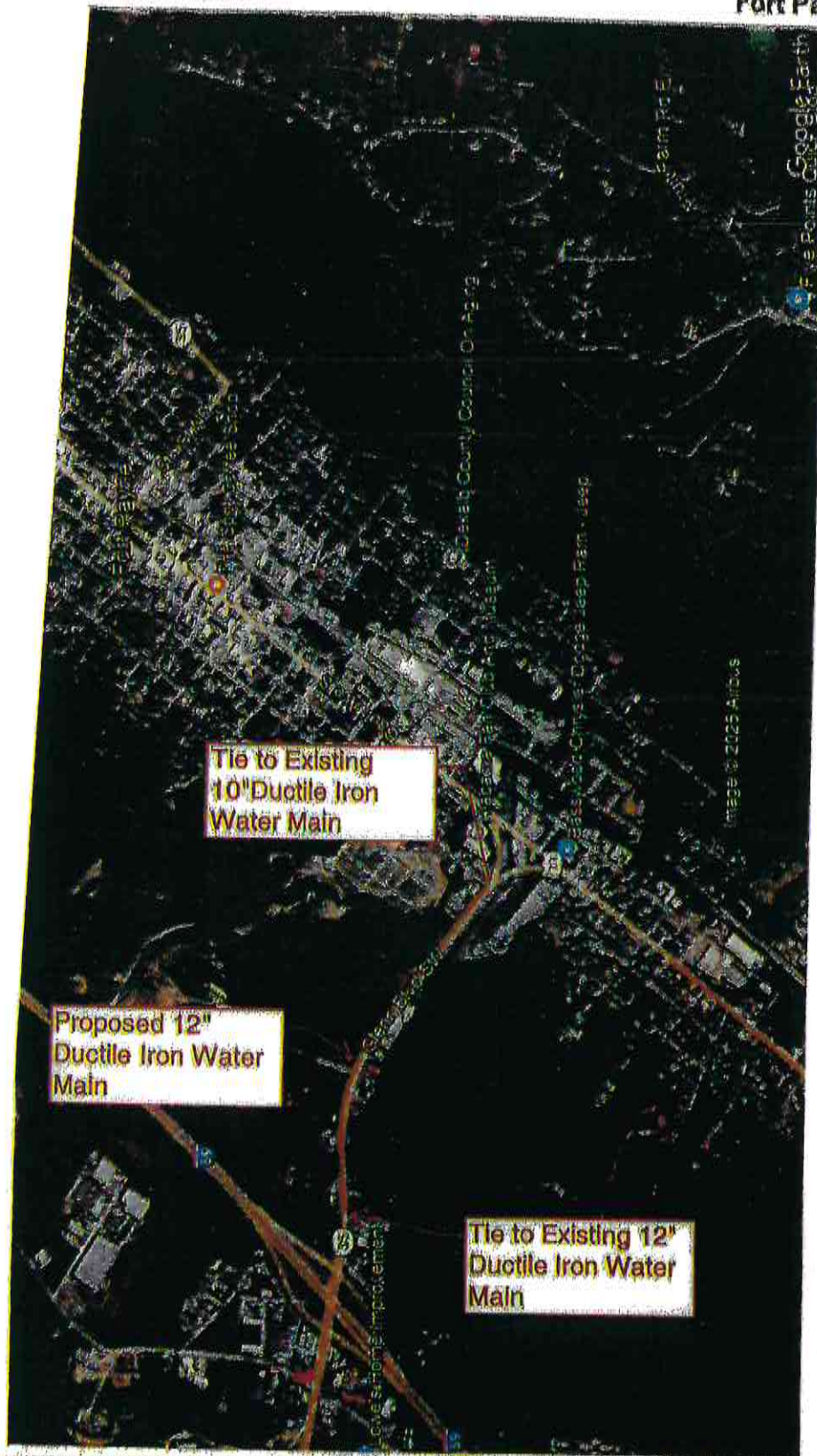
Sincerely,
Greenhill Engineering Consultants, Inc.

A handwritten signature in blue ink, appearing to read "Curtis H. O'Daniel, Jr.".

Curtis H. O'Daniel, Jr., P.E.



US Fish & Wildlife Letter
SRF Project #FS010445-02
Fort Payne Water





June 10, 2025

Corps of Engineers, Regulatory Division
Attn: William E. Sinclair
2424 Danville Road SW, Suite N
Decatur, AL 38603

Re: 16th Street to Lebanon Road Water Line Replacement SRF Project #FS010445-02

Dear Sir:

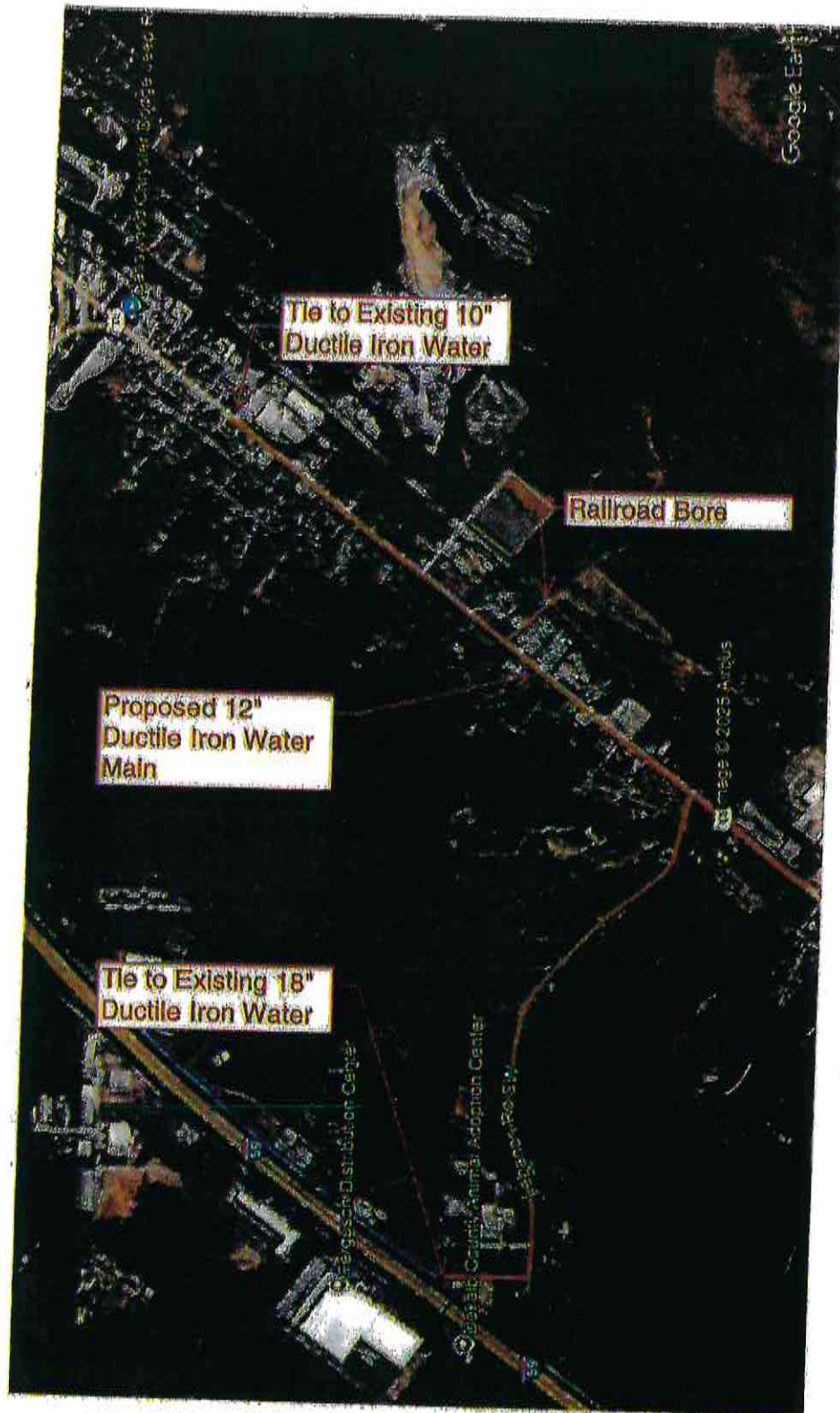
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Curtis H. O'Daniel, Jr., P.E.







June 10, 2025

Top of Alabama Regional Council of Governments
PO Box 1087
Huntsville, AL 35807
Attn: D.C. Schafer

Re: 16th Street to Lebanon Road Water Line Replacement SRF Project #FS010445-02

Dear Sir:

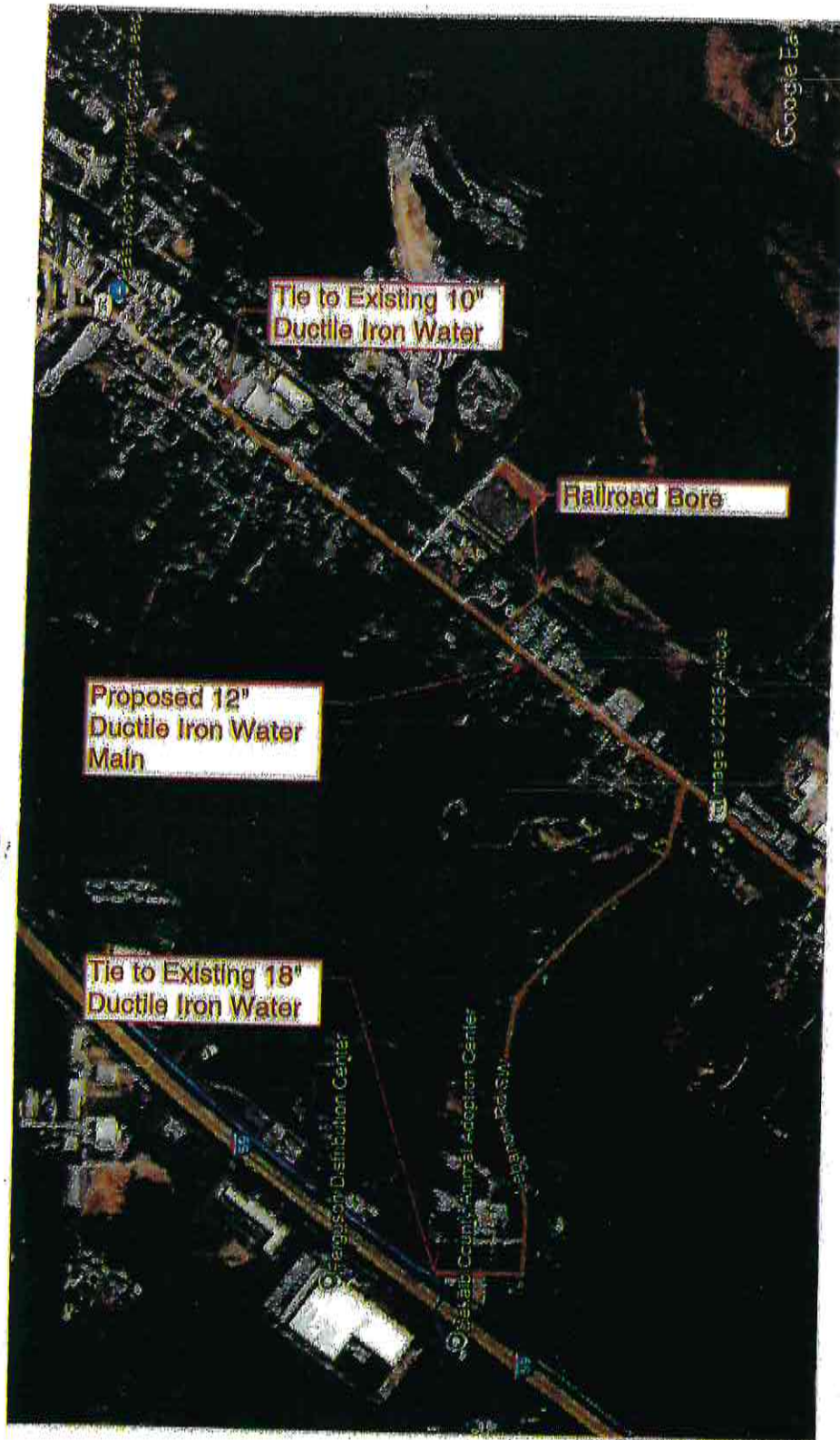
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Curtis H. O'Daniel, Jr., P.E.







June 10, 2025

Tennessee Valley Authority
Guntersville Region, Western Region
Reservoir Land Use and Permitting
John Falco
3941 Brashers Chapel Road
Guntersville, AL 35976

Re: 16th Street to Lebanon Road Water Line Replacement SRF Project #FS010445-02

Dear Sir:

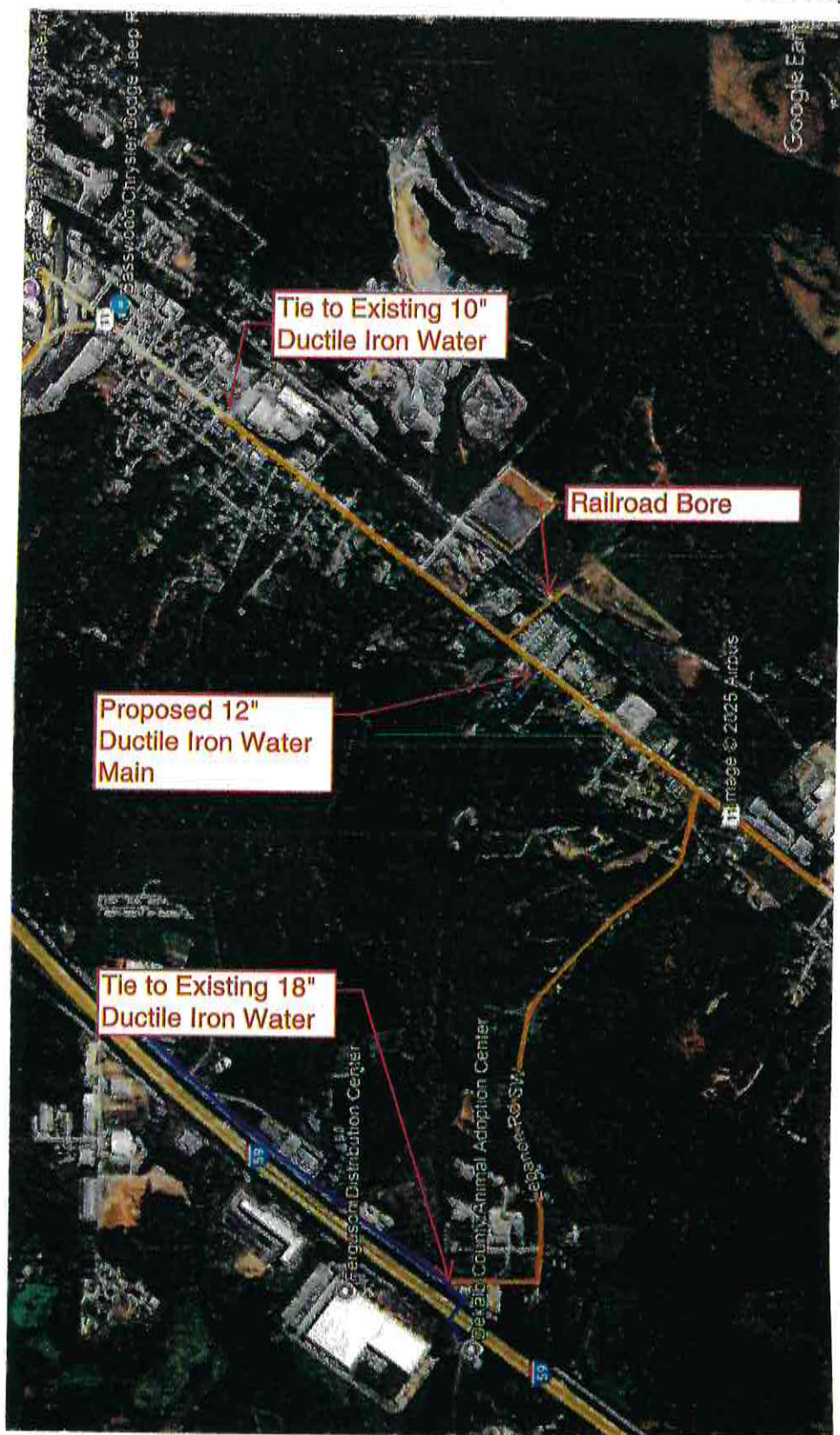
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Curtis H. O'Daniel, Jr., P.E.



Appendix B
Concurrence Letter Responses



ALABAMA HISTORICAL COMMISSION

468 South Perry Street
Montgomery, Alabama 36130-0900

Lisa D. Jones
Executive Director
State Historic Preservation Officer

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

June 12, 2025

Brandon Light
153 20th Street NE
Fort Payne, AL 35967

Re: AHC 25-0846
16th Street South to Lebanon Road Water Line Replacement
DeKalb County

Dear Mr. Light:

We concur with the above referenced project provided all construction activities will occur within **existing and previously disturbed** highway right-of-way and/or other previously disturbed areas. For the purposes of this letter, previous disturbance is defined as mechanical disturbance to either culturally sterile subsoil, or the maximum depth of the proposed undertaking. It should be noted that agricultural plowing does not typically meet this threshold of disturbance, nor do previously undisturbed portions of the ROW that require clearing of additional vegetation. Any area that is to be involved and does not fall into one of the above categories will require a cultural resource assessment by a professional archaeologist. Submit the resulting report to our office for review and determination prior to project initiation.

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

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

Sincerely,

Lee Anne Hewett
Deputy State Historic Preservation Officer

LAH/AMH/nj



TARCOG

Top of Alabama Regional Council of Governments

Area Agency on Aging • Economic Development District • Regional Planning Agency

Connie Spears
President

James Lucas
Vice President

John Myers
Secretary

Bob Joslin
Treasurer

Larry Chesser
Ex-Officio

Michelle Gilliam Jordan, FAICP | Executive Director

06/13/25

Brandon Light, Executive Director
Water Works Board of the City of Fort Payne
153 20th Street NE
Fort Payne, AL 35967

CLEARINGHOUSE MEMO

RE: DeKalb County: Water Works Board of the City of Fort Payne: State Revolving Fund (SRF) Grant Funding: (SRF project #FS010445-02) upgrade/replace of old cast iron water lines.

The Clearinghouse of the Top of Alabama Regional Council of Governments, in accordance with Executive Order 12372 and State Executive Order Eight, has reviewed the above-referenced Action.

The project consists if the installation of replacement/size upgrading of ductile iron water lines, and new service connectors, along Hwy US 11, from 16th Street, south, to Lebanon Road. Per the submitted review exhibits, all project work will occur on existing public right of ways, or other previously-disturbed/utility property.

The Project is based on a professionally prepared engineering analysis, and this review assumes the submitted project facts, and that any associated Project EID finds that the execution of the above listed activities conforms to all statutory regulations. The project's activity, replacing/upgrading outdated, problematic cast iron water transmission lines, will upgrade the system's overall reliability, longevity, efficiency and capacity, and enhance public health related standards; all actions deemed desirable and necessary goals.

This project is consistent with the Fort Payne Water Works' long-standing goal of providing reliable, well-maintained and efficient water services to the public, and full compliance with applicable environmental agency regulations. We therefore find this project to be in conformance with, and support of, critical utility service needs and recognized goals for utility planning within the TARCOG region, and we concur with, and endorse it.

Sincerely,

D. C. Schafer

Area-wide Clearinghouse

Cc. Curtis H. O'Daniel, Jr., P.E.
Greenhill Engineering Consultants, Inc.

Phone:
256-830-0818

Fax:
256-830-0843

PO 1087
Huntsville, AL 35805

Tarcog.us



United States Department of the Interior

FISH AND WILDLIFE SERVICE

1208-B Main Street
Daphne, AL 36526

JUL 07 2025



2025-0111017

Mr. Curtis O'Daniel
Fort Payne City
2412 Beck Industrial Blvd
Fort Payne, AL 35968

Dear Mr. O'Daniel:

Thank you for your letter dated June 10, 2025, for the proposed Fort Payne water line improvements. It consists of construction of ductile iron water lines and new services along US 11 from 16th Street South to Lebanon. We have reviewed the information and are providing the following comments in accordance with the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.)

Federally Listed Species

Finelined Pocketbook (*Hamiota altilis*) - Threatened

Your proposed project's trenching activities intersect with an unnamed stream on Lebanon Road. Upon our review it is connected to the Big Wills creek further downstream. Records of the federally listed finelined pocketbook exist in the Big Wills Creek. Though there are no current records for this species in the unnamed stream, because of the occurrence of the finelined pocketbook in Big Wills Creek we suggest implementing BMP's (best management practices) into the proposed project.

Recommended Best Management Practices

We recommend incorporating the following measures into the project design to protect water quality of the unnamed stream as well as Big Wills Creek:

- Develop an erosion control plan tailored to the site. All erosion controls should be inspected routinely, especially during and immediately following significant rain events, to insure no impacts to nearby surface waters and aquatic habitat. Immediate corrective action should be taken if erosion or sedimentation is observed.
- Avoid spillage of materials onto the bank and into the water.
- Maintain naturally vegetated buffers (preferably 100 feet or greater) adjacent to any ditches, drainages, and the creek itself, to reduce erosion.
- Immediately revegetate any disturbed areas with a native species or an annual grass.

- Execute any work that results in exposed earth during periods when significant rainfall is not predicted and when waters are low.
- Conduct any work that involves clearing large tracts of land in phases, where practicable, with rapid revegetation upon completion of each phase.
- Avoid impacts of heavy equipment by use of matting, install absorbent pads for potential equipment leaks, etc.
- Avoid placing access routes for heavy equipment through, or adjacent to, springs or permanent and seasonal seeps.
- Restore site of instream work to natural conditions after completion of activity.

For additional information regarding best management practices, consult the Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas (March 2018), available on-line at: <https://alabamasoilandwater.gov/wp-content/uploads/2021/03/2018-Handbook-Vol-1.pdf>

If you have any questions or need additional information, please contact Ms. McKenzie Davis of my staff at McKenzie_Davis@fws.gov. Please refer to the reference number located at the top of this letter in future phone calls or written correspondence.

Sincerely,

A handwritten signature in blue ink, appearing to read "William J. Pearson".

William J. Pearson
Field Supervisor
Alabama Ecological Services Field Office

Curt O'Daniel

From: Falco, John Michael <jfalco@tva.gov>
Sent: Friday, June 13, 2025 8:10 AM
To: Curt O'Daniel
Subject: TVA No Objection SRF Project FS010445-02
Attachments: image2025-06-12-063256.pdf

Thank you for contacting the Tennessee Valley Authority (TVA) about the planned improvements to water lines along 16th Street to Lebanon Road (SRF Project FS010445-02).

If constructed as proposed in the enclosed plans and map, this work would not be considered an obstruction affecting navigation, flood control, or public lands or reservations, and thereby requiring approval by TVA under Section 26a of the TVA Act. The project would be outside the Tennessee River watershed and outside the influence of the TVA reservoir system. Therefore, TVA has no objection to your proceeding with the proposed work if constructed and installed in accordance with the plans as submitted and at the location you have identified outside TVA jurisdiction.

TVA has issued guidance stating that certain structures, while obstructions across, along, or in certain tributaries of the Tennessee River, do not need a Section 26a permit from TVA, because they have an indiscernible effect on navigation, flood control or public lands or reservations.

TVA hereby clarifies that, going forward, the construction of the following obstructions across, along, or in an upstream tributary reach of the Tennessee River, does not require a Section 26a permit from TVA: (n) Underground, submarine, or aerial utility pipes and lines and their support structures, anchors or foundations.

TVA assumes no liability and undertakes no obligation or duty (in tort, contract, strict liability, or otherwise) to you or to any third party for any damages to property (real or personal) or personal injuries (including death) arising out of or in any way connected with your construction, operation, or maintenance of the facility that is the subject of this letter.

TVA's rules governing the approval of construction pursuant to Section 26a of the TVA Act are codified in Part 1304 of Title 18 in the Code of Federal Regulations. You can review these rules and other information about TVA's Section 26a jurisdiction on TVA's website at www.tva.com/26aregulations. If you revise your plans or the location of your project, we encourage you to review the rules and contact TVA to ensure a Section 26a permit is not required. This construction may require other local, state, or federal permits.

John Falco
Program Manager, West Region
Public Land Management



W. 256-932-6152 E. jfalco@tva.gov
3941 Brasher Chapel Road, Guntersville Alabama 35976

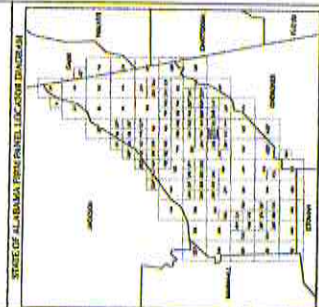
Public Land Information Center (tva.com) is your single source for questions about public land topics. 1-800-882-5263 between 8 a.m. and 6 p.m. Eastern (7 a.m. and 5 p.m. Central) or email plc@tva.gov. For more information about Section 26a permitting, visit [Shoreline Permits](#). To submit an application [apply online](#) or visit [TVA.com](#)

NOTICE: This electronic message transmission contains information that may be TVA SENSITIVE, TVA RESTRICTED, or TVA CONFIDENTIAL. Any misuse or unauthorized disclosure can result in both civil and criminal penalties. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the content of this information is prohibited. If you have received this communication in error, please notify me immediately by email and delete the original message.

Appendix C
City of Fort Payne Flood Map
FEMA Flood Panels

[illegible]

the following information is provided for the purpose of assisting you in your selection of a product. The information is provided for informational purposes only and is not intended to constitute an offer of insurance. The information is provided for informational purposes only and is not intended to constitute an offer of insurance. The information is provided for informational purposes only and is not intended to constitute an offer of insurance.

[illegible]

LEGEND

- Levee
- Delta Conveyance Project (DAP)
- Delta Cross Connection Project (DCCP)
- Other Features

Scale: 10 Miles

North Arrow

Map Description: The map shows the Delta Conveyance Project (DAP) and the Delta Cross Connection Project (DCCP) in the Sacramento-San Joaquin River Delta. The DAP includes the Delta Cross Connection Project (DCCP) and the Delta Conveyance Project (DAP). The DCCP is a 10-mile long project that will provide a new route for water from the Sacramento River to the San Joaquin River. The DAP is a 10-mile long project that will provide a new route for water from the Sacramento River to the San Joaquin River. The map shows the Delta Conveyance Project (DAP) and the Delta Cross Connection Project (DCCP) in the Sacramento-San Joaquin River Delta. The DAP includes the Delta Cross Connection Project (DCCP) and the Delta Conveyance Project (DAP). The DCCP is a 10-mile long project that will provide a new route for water from the Sacramento River to the San Joaquin River. The DAP is a 10-mile long project that will provide a new route for water from the Sacramento River to the San Joaquin River.

[illegible]



September 4, 2025

Thomas Cade Runyan, EI
Environmental Engineering Specialist, Senior
ADEM – Permits and Services Division: SRF Section
Montgomery, AL

Re: 16th Street to Lebanon Road Water Line Replacement SRF Project #FS010445-02, results of Corps of Engineers review letter: SAM-2025-00455-WPD

Dear Sir:

The Corp of Engineers has reviewed our request and agrees that our project is applicable to be covered under the Nation Wide Permit-58, therefore we will proceed utilizing the Nation Wide Permit -58 for this water line project stated above..

If you have any questions, please feel free to call me.

Sincerely,
Greenhill Engineering Consultants, Inc.

A handwritten signature in black ink, reading "Curtis H. O'Daniel, Jr.", is positioned above the printed name.

Curtis H. O'Daniel, Jr., P.E.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MOBILE DISTRICT
600 VESTAVIA PARKWAY, SUITE 203
VESTAVIA HILLS, AL 35203

September 2, 2025

North Branch
Regulatory Division

SUBJECT: Department of the Army File Number SAM-2025-00455-WPD, Water Works Board of City of Fort Payne – water line replacement, DeKalb County, Alabama

Water Works Board of City of Fort Payne
Attention: Mr. Brandon Light, Executive Director
153 20th Street Northeast
Fort Payne, Alabama 35967

Transmitted electronically to brandon@fpwater.com

Dear Mr. Light:

We are responding to your request for authorization to replace potable water distribution lines along U.S. Highway 11 from 16th Street South to Lebanon Road and along Lebanon Road. The proposed work is centered near Latitude 34.415268 North, Longitude -85.746437 West and will impact four apparent unnamed tributaries to Big Wills Creek in Fort Payne, DeKalb County, Alabama.

The regulated activity associated with the project described above includes the discharge of fill material, including temporary side casting of excavated pipeline trench material into approximately 0.02-acre of potential waters of the United States (U.S.) as a result of the open-trench installation of replacement water pipeline. The temporarily side-cast material will be utilized to backfill the pipeline trenches to pre-construction elevations and contours. The work appears to be authorized by a Nationwide Permit (NWP), specifically, NWP 58. No further application or notification to the Mobile District Corps of Engineers is required for your project.

This letter does not verify permit eligibility, but indicates that your project may meet the requirements of this permit. **It is your responsibility to ensure that the work is performed in accordance with the terms and general conditions of this permit, as well as State 401 Water Quality Certification conditions prior starting work in waters of the U.S.** A copy of the above-referenced NWP and its associated Regional and General Conditions and State Water Quality Certification are attached for your review and compliance.

A change in location or project plans may require re-evaluation of your project. Proposed changes should be coordinated with this office prior to construction. Failure to comply with all terms and conditions of the Nationwide Permit invalidates the authorization and could result in a violation of Section 301 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all other local, State, and other Federal permits that may apply to this project.

An electronic copy of this letter is being provided to your agent, Greenhill Engineering Consultants, Inc., Attention: Curtis H. O'Daniel, Jr., at codaniel@greenhilleng.com.

If you have any questions, please contact me at (205) 213-9623 or by email at leslie.e.turney@usace.army.mil.

Sincerely,

**Leslie E.
Turney**

Digitally signed by
Leslie E. Turney
Date: 2025.09.02
13:32:16 -05'00'

Leslie E. Turney, Chief
North Branch
Regulatory Division

2021 Nationwide Permits In Effect As of March 15, 2021 (expires March 14, 2026)

58. Utility Line Activities for Water and Other Substances. Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWP 12 or 57, respectively. This NWP also authorizes associated utility line facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, stormwater, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

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

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

Foundations for above-ground utility lines: This NWP authorizes the construction or maintenance of foundations for above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary.

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

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

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

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; or (2)

the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

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

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

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

Note 6: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

2021 Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees

should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by

NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

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

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

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

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

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

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

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

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP

general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant

habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section

106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally

significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

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

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

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

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the

project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

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

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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

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

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

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

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

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

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

issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

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

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

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

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a

commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

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

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

(Transferee)

(Date)

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

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

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

(c) The signature of the permittee certifying the completion of the activity and mitigation.

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

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

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

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the

district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

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

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-

construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

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

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

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

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

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



Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

December 14, 2020

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

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

Dear Colonel Joly:

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

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

JAN 14 2021

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
- A. Seaweed Mariculture Activities
- B. Finfish Mariculture Activities
- C. Electric Utility Line and Telecommunications Activities
- D. Utility Line Activities for Water and Other Substances **(NWP 58)**
- E. Water Reclamation and Reuse Facilities

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

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

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

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

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

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

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

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

Sincerely,


Anthony Scott Hughes, Chief
Field Operations Division

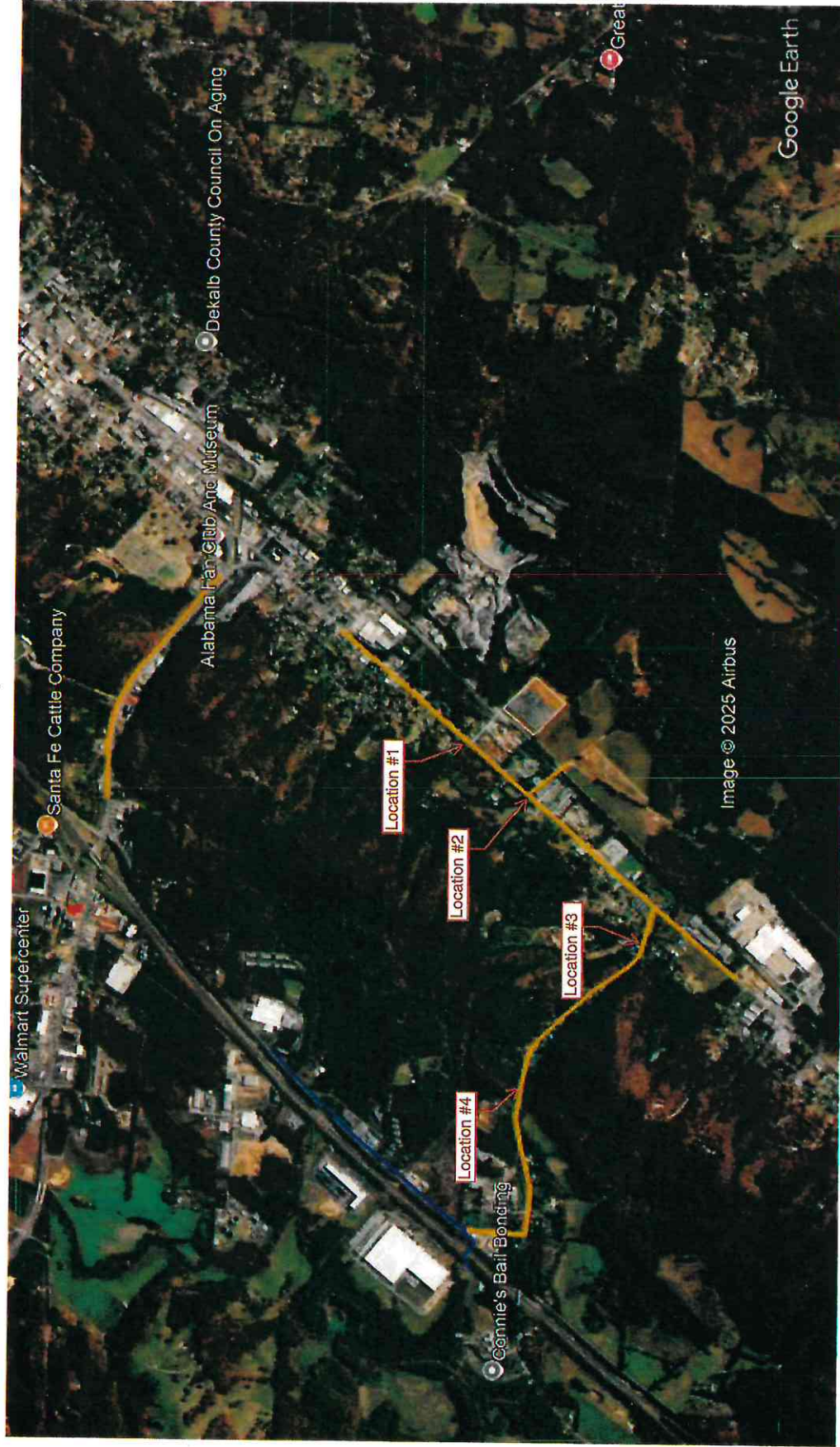
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c: Nashville District COE & EPA Region IV

16th Street to Lebanon Road Water Line Replacement



16th Street to Lebanon Road Water Line Replacement



15

Stream Name	Latitude	°N	Longitude	°W	Street Address	City	State	County	Sec	Township	Range
Unnamed Tributry to Wills Creek	34°25'17.21"		85°44'27.95"		2115 Gault Avenue	South Fort Payne	AL	DeKalb	13	7S	8E
Unnamed Tributry to Wills Creek	34°25'05.76"		85°44'33.28"		2221 Gault Avenus	South Fort Payne	AL	DeKalb	24	7S	8E
Unnamed Tributry to Wills Creek	34°24'46.00"		85°45'04.48"		208 County Road 51	Fort Payne	AL	DeKalb	24	7S	8E
Unnamed Tributry to Wills Creek	34°25'03.66"		85°45'34.65"		1195 County Road 51	Fort Payne	AL	DeKalb	23	7S	8E

The drawings, specifications and other documents prepared by Greenhill Engineering Corporation, Inc., for the PROJECT are the property of Greenhill Engineering Corporation, Inc. and shall remain the property of Greenhill Engineering Corporation, Inc. and shall not be used for any other project without the written consent of Greenhill Engineering Corporation, Inc.

GEC
GREENHILL ENGINEERING
FORT PAYNE, ALABAMA
PHONE: 205-844-4322
FAX: 205-844-4323
EMAIL: gcec@greenhilleng.com

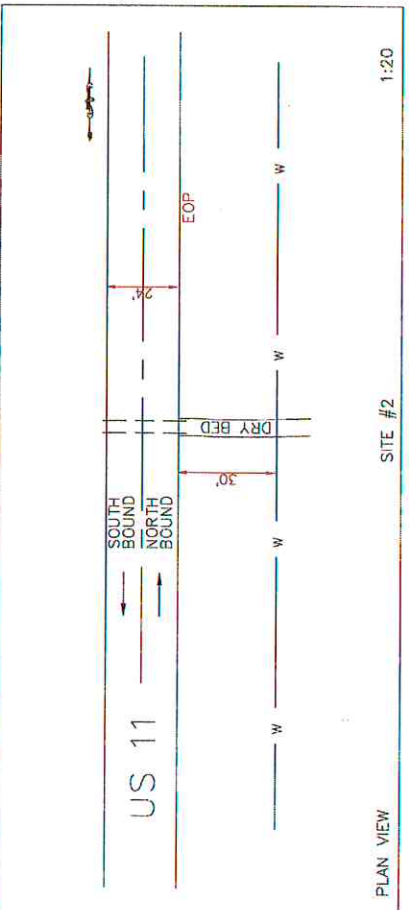
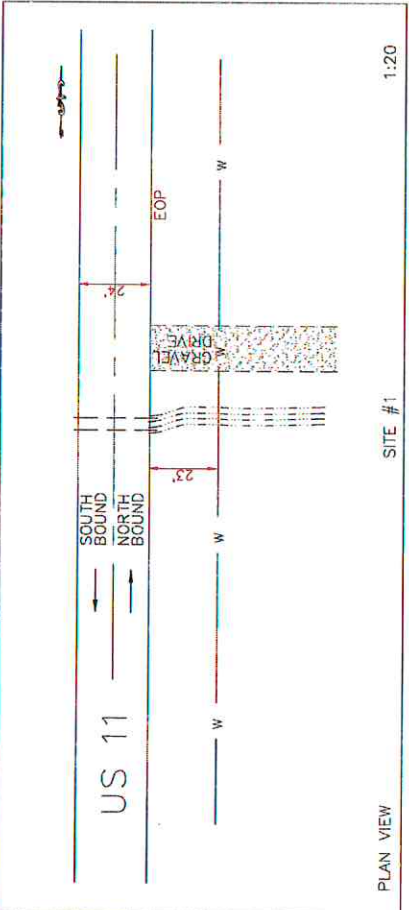
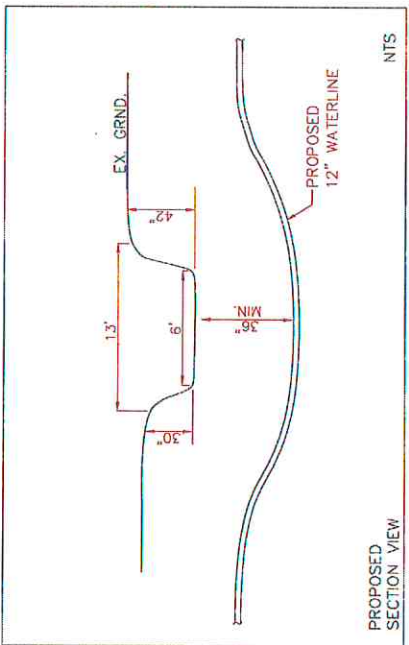
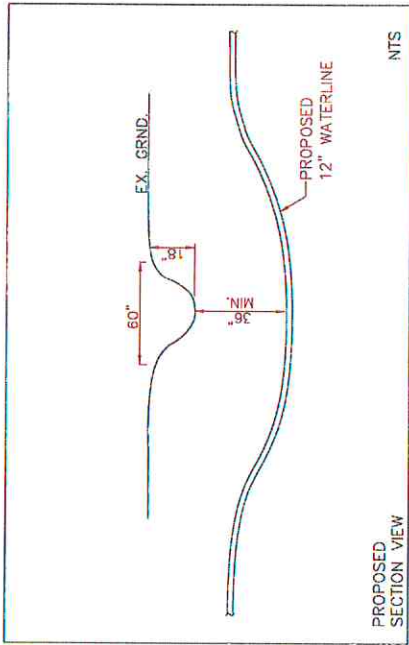
CURTIS H. DOWELL, PE
No. 22519

THE WATERWORKS BOARD
OF THE
CITY OF FORT PAYNE
16 ST. S. TO LEBENON RD
WATERLINE REPLACEMENT

No.	Revision/Issue	Date

Sheet No.
CREEK CROSSINGS
1 & 2

Project No.
8/21/25
Drawn By
R. MILLER
Checked By



The drawings, specifications and other documents prepared by Greenhill Engineering Company, Inc. for the PROJECT are herewith provided. Greenhill Engineering Company, Inc. shall be deemed to warrant the accuracy of the drawings and specifications and shall be deemed to warrant the accuracy of the drawings and specifications and shall be deemed to warrant the accuracy of the drawings and specifications.

GEC
GREENHILL ENGINEERING
FORT PAYNE, ALABAMA
PHONE: 205-244-8222
FAX: 205-244-8223
WWW.GREENHILL-ENGINEERING.COM

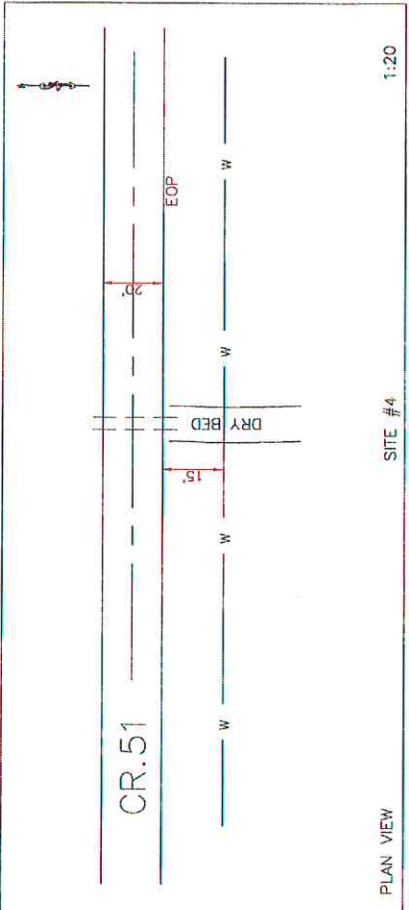
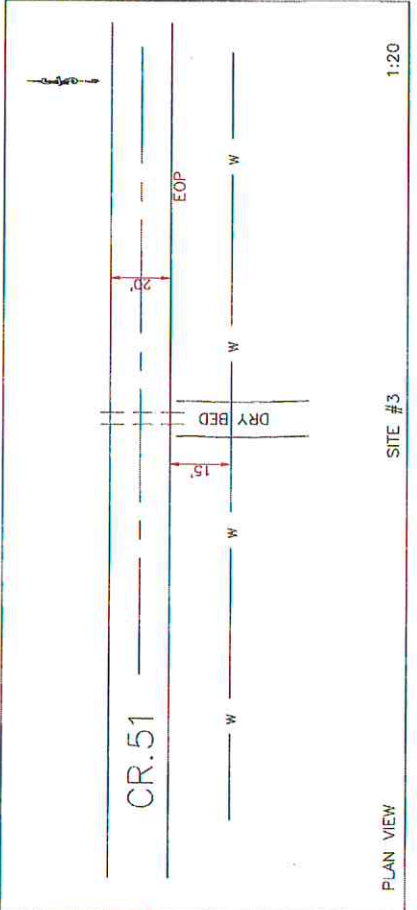
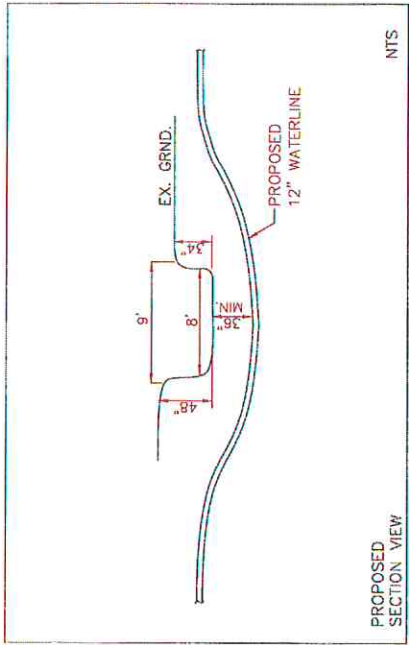
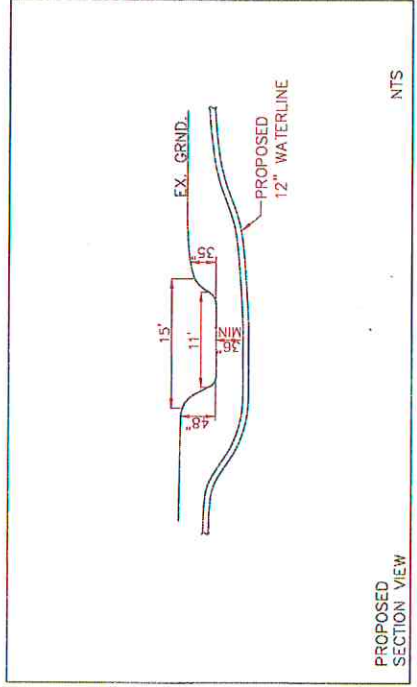
CLINTIS H. O'DANIEL, JR.
No. 22519

THE WATERWORKS BOARD
OF THE
CITY OF FORT PAYNE
16 ST. S. TO LEBENON RD
WATERLINE REPLACEMENT

No.	Revision/Issue	Date

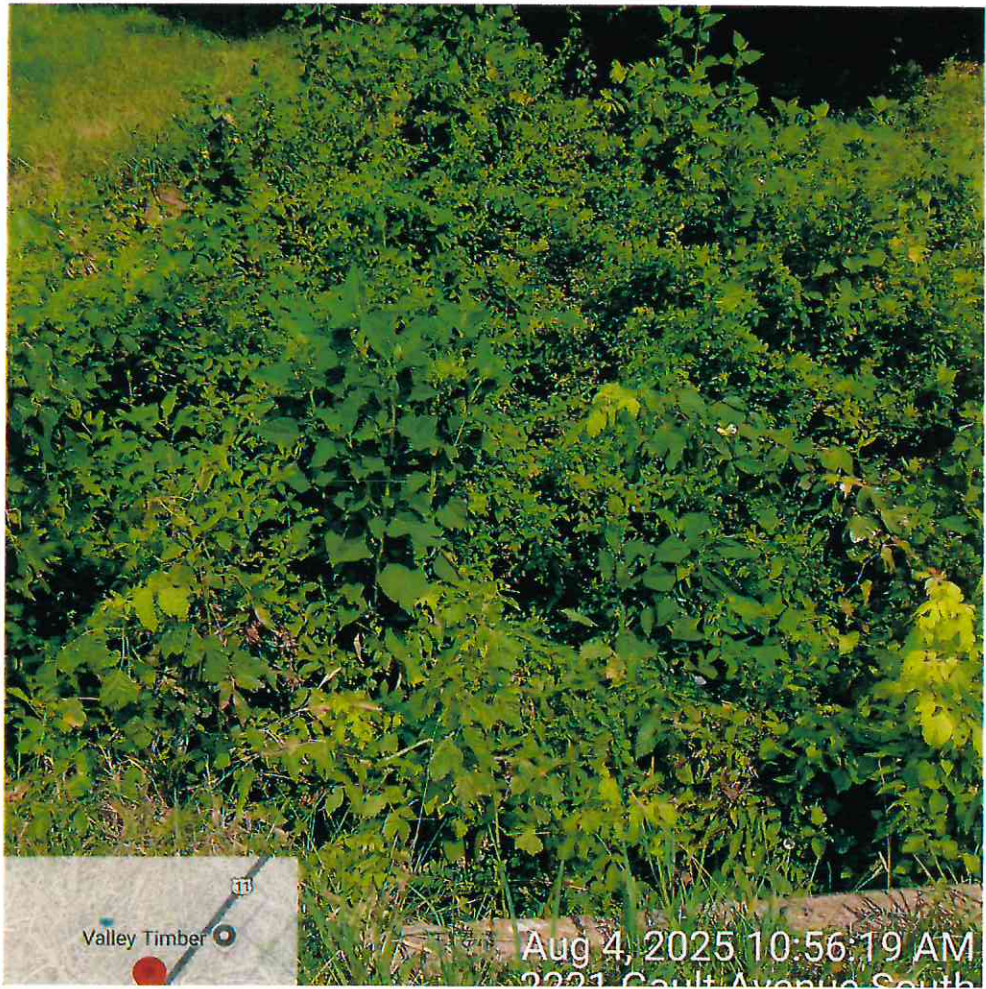
SHIRLEY BIRD
CREEK CROSSINGS
3 & 4

Project No.	28-1-136
Drawn By	J. HALL
Check By	J. HALL
Date	8/21/2025
Sheet No.	3





Aug 4, 2025 10:58:24 AM
2115 Gault Avenue South
Fort Payne
DeKalb County
Alabama



Valley Timber

11

Aug 4, 2025 10:56:19 AM
2221 Gault Avenue South



