APPENDIX D

Section 404 Permitting Information

U.S. Army Corps of Engineers

DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867

REPLY TO
ATTENTION OF

DEC 22 2009

Regulatory Division

NATIONWIDE PERMIT NO. **2009-00373**

Mr. Mike Hood
City of Little Rock
Public Works Department
701 West Markham Street
Little Rock, Arkansas 72201

Dear Mr. Hood:

Please refer to your application dated September 9, 2009, concerning Department of the Army permit requirements pursuant to Section 404 of the Clean Water Act. You requested authorization for the placement of dredged and fill material in waters of the United States associated with channel improvements to an unnamed intermittent tributary of Taylor Loop Creek. The project is located in section 19, T. 2 N. R. 13 W., Little Rock, Arkansas.

The proposed activity consists of construction and modification to an existing stream channel from an 8 to 10-foot bottom width to a 24-foot bottom width with a 2 to 1 ratio side slope. Approximately 200 linear feet of an existing overflow channel will be filled and moved for alignment with the existing channel, and the remaining 580 linear feet will be excavated. A 150 –foot portion of the channel consists of bedrock and may not require excavation or modification. The District Engineer has determined it is appropriate to waive the length of impacts to the stream for NWP 39, as you have demonstrated avoidance and minimization of impacts and onsite mitigation will be accomplished. The mitigation that you have proposed has been determined to meet all NWP general conditions (GC) and specifically GC 9 and GC 20 which specify the management of water flow and compensation for loss of stream functions and services.

The proposed activity is authorized by Department of the Army Nationwide Permit (NWP) **No. 39** (copy enclosed), provided that the conditions therein, and the following Special Conditions, are met. You should become familiar with the conditions and maintain a copy of the permit at the worksite for ready reference. If changes are proposed in the design or location of the facilities, you should submit revised plans to this office for approval before construction of the change begins.

Special Conditions:

1. The permittee shall implement appropriate erosion control methods to prevent erosion into the unnamed tributary and within Taylor Loop Creek during construction. After construction, all areas which are disturbed or newly created shall be seeded, replanted, or

given some type of equivalent protection against subsequent erosion.

2. To mitigate for unavoidable impacts to approximately 780 linear feet of an intermittent stream channel, you shall accomplish the following mitigation:

a. You shall fully implement the mitigation plan as described in the mitigation proposal document "Rahling Road Fire Station Channelization Mitigation Plan," USI Plan No. 0901010, dated November 2009. As indicated in the mitigation proposal, instead of riprap placement, you shall install open-space, geogrid reinforced turf to develop a more natural, stable channel. During construction, the existing forested area outside the limits of the channel modifications shall remain undisturbed in order to provide a riparian buffer between the channel and the development on both banks. If the existing forested area must be disturbed, you shall re-plant tree and shrub species as identified in Appendix B of the mitigation plan. Immediately downstream, you shall also repair the existing scour hole that has occurred at the north end of the concrete ditch paving to a grade to allow fish movement upstream and the creation of a pool downstream.

b. A riparian buffer area shall be developed on both sides of the stream channel for a distance of 25 feet and shall extend the length of the stream channel being modified. The riparian buffer mitigation area shall remain in its natural state. The area may not be converted to another use, including, but not limited to: clearing, spraying with herbicides, filling, leveling, draining, dumping, construction of any structure, or any other activity that would adversely impact the natural state of the area without obtaining a revision of the Department of the Army permit. Proposed resource management activities or maintenance activities involving alteration of the mitigation site must have prior approval from the Little Rock District Corps of Engineers.

3. Your responsibility to complete the required compensatory mitigation as set forth in Special Conditions 1 and 2 will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.

Please refer to NWP Condition No. 12, which stipulates that appropriate erosion and siltation controls be used during construction and all exposed soil be permanently stabilized. Erosion control measures must be implemented during and after construction of the proposed project to comply with this permit condition.

In order to fully comply with the conditions of the NWP, you must submit the enclosed compliance certification within 30 days of completion of the project. This is required pursuant to General Condition No. 26 of the permit.

This permit action is based upon a Corps of Engineers determination that the subject work is within the jurisdiction of the Department of the Army regulatory program. You may contact the Little Rock District Regulatory Division if you wish to discuss your options for appealing this determination.

The NWP determination will be valid for two years unless the NWP is modified, suspended, or revoked within the two-year period. If NWP **No. 39** is modified, suspended, or revoked during this period, your project may not be authorized unless you have begun or are under contract to begin the project. If work has started or the work is under contract, you would then have twelve months to complete the work. The authorization of this work by a NWP does not relieve you of complying with other applicable local, state or Federal laws. Specifically, this work may require approval by the Federal Emergency Management Agency pursuant to the requirements of flood plain management.

If you have any questions about this permit or any of its provisions, please contact me at (501) 324-5295 and refer to Permit No. **2009-00373**

Please submit your comments or suggestions on our Customer Service Survey: http://www.swl.usace.army.mil/regulatory/customersurvey.html

Sincerely,

M. Elaine Edwards

for Timothy Scott
Project Manager

Enclosures

PERMITTEE COMPLIANCE CERTIFICATION

NWP NO.: 39

PERMITTEE NAME: 2009-00373

DATE OF ISSUANCE: DEC 22 2009

PROJECT MANAGER: Timothy Scott

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US Army Corps of Engineers, Little Rock
ATTENTION: CESWL-RD
PO Box 867
Little Rock, Arkansas 72203-0867

Please note that your permitted activity is subject to a compliance inspection by a US Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

DATE WORK COMPLETED: _____

_____ _____

SIGNATURE OF PERMITTEE **DATE**

Nationwide Permits and Conditions

Nationwide Permit No. 39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Nationwide Permit General Conditions:

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, 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.

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 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. Culverts placed in streams must be installed to maintain low flow conditions.

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.

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 and storm water management activities, 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.

13. Removal of Temporary Fills. 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.

15. Wild and Scenic Rivers. No 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. 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.

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to 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 destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. 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. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

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

(e) Authorization of an activity by a 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 U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at http://www.fws.gov/ and http://www.noaa.gov/fisheries.html respectively.

18. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, 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. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and 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 or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining 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.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for 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, and 50 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, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are 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) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are 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 some other form of mitigation would be more environmentally appropriate and provides a project-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 minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) 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 project 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 a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. 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. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of 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 effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. 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)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. 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 section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not 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.

25. 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)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

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

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

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

27. 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, as a general rule, 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:

(1) Until 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) If 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 17 that listed species or critical habitat might affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that 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 (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot 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 project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; 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. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(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 project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. 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, but 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.

(3) 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.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. 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.

Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

Rahling Road Fire Station Channelization Mitigation Plan

for
the City of Little Rock, Arkansas
Public Works Department

USI Plans No. 0901010
November 2009

USI Consulting Engineers
Little Rock, Arkansas
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APPENDIX

Appendix A – Preliminary correspondence from USACE

Appendix B – List of Approved Shrubs and Trees from USACE

Background

The City of Little Rock (Little Rock) intends to construct a new fire station on a site at the intersection of Taylor Loop Road and Rahling Road. A rendering prepared by the architect hired for the project, Jackson Brown King Architects, is shown on the following page.

Channel improvements have been made upstream (south of Pilot Lane) and downstream (north of Taylor Loop Road) of the site. The existing site conditions are shown on Figure 1 – Offsite Mitigation Plan.

Little Rock has submitted an application seeking a Nationwide 404 Permit from the U. S. Army Corps of Engineers (USACE) to make channel improvements between Pilot Lane and Taylor Loop Road. Preliminary correspondence from the USACE, contained in Appendix A, indicates that Little Rock can obtain coverage under a Nationwide Permit, but mitigation will be required.

At this time, the architect for the project has not begun final design of the work on the site. However, it is assumed that the work will be consistent with the previously mentioned site rendering and that it will comply with all development requirements of the City of Little Rock, which include a detailed landscaping plan for the site.

On-Site Mitigation Plan

All on-site channelization work, including the mitigation requirements, will be constructed by the contractor who develops the site and constructs the fire station. It is assumed that the plans for the channelization project will be included in the plans for the fire station and that the mitigation requirements will be incorporated into those plans.

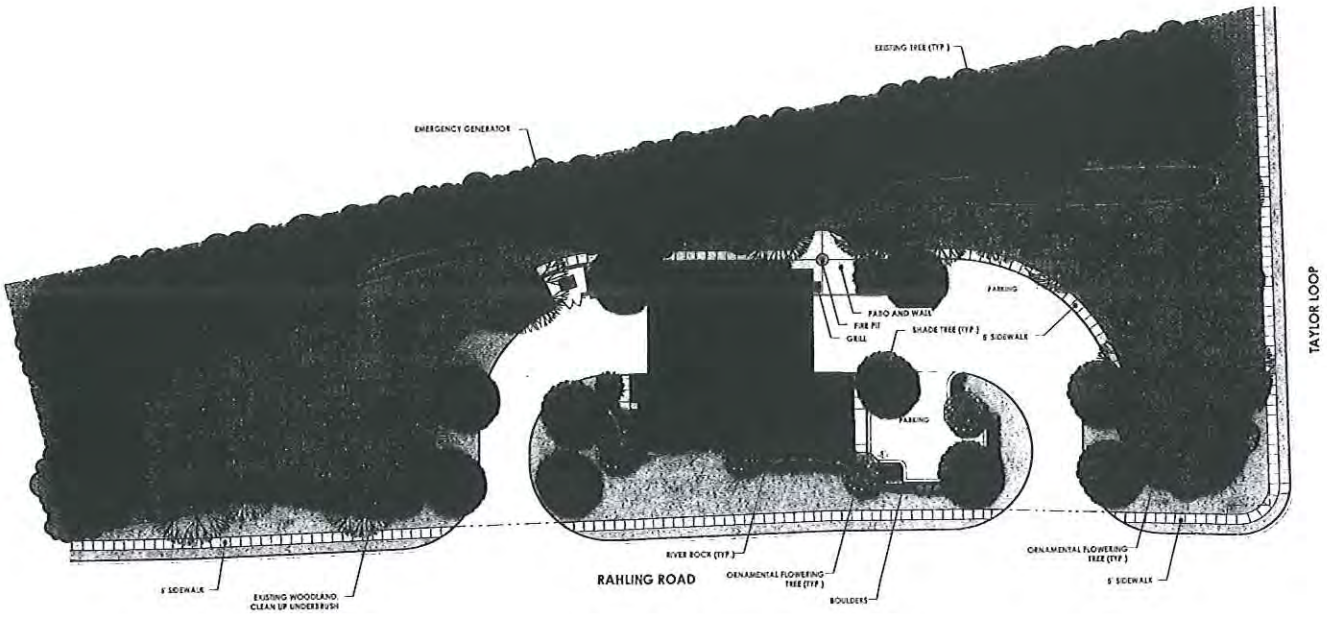
The initial channelization plans submitted to the USACE called for the channel improvements to be lined with riprap due to the steep grades associated with the channel. Based on comments received from the USACE, Little Rock has decided to delete the riprap from the project and replace it with a geogrid reinforced turf that provides a resistance to scour equivalent to riprap.

As shown on the architect's rendering for the site, existing woodland outside the limits of the channelization work will be left in place and not disturbed in order to provide a buffer between the channel and development. Where the existing woodland must be disturbed, the landscape architect will develop a landscaping plan for the site that will include shrubs and trees from the list included in Appendix B to create a buffer between the channel and development. The buffer will also provide shade for aquatic species.

Off-Site Mitigation Plan

Little Rock has not yet determined who will complete the work items included in the off-site mitigation plan. The work will be scheduled for completion in conjunction with or in advance of the work at the fire station site.

The improved channel north of Taylor Loop discharges into Taylor Loop Creek at the end of an existing concrete ditch paving section associated with the improved channel. There is some existing scour at the end of the concrete ditch paving that prevents aquatic species from entering the improved channel. As detailed on Figure 2, the scour at the end of the existing ditch paving will be repaired with concrete to allow the aquatic species to enter the channel and to prevent future scour at this location. A recessed area, approximately two (2) feet deep, will be left at the end of the channel to provide a pool for aquatic species.



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SCALE IN FEET

NORTH

WEST LITTLE ROCK FIRE SUB-STATION

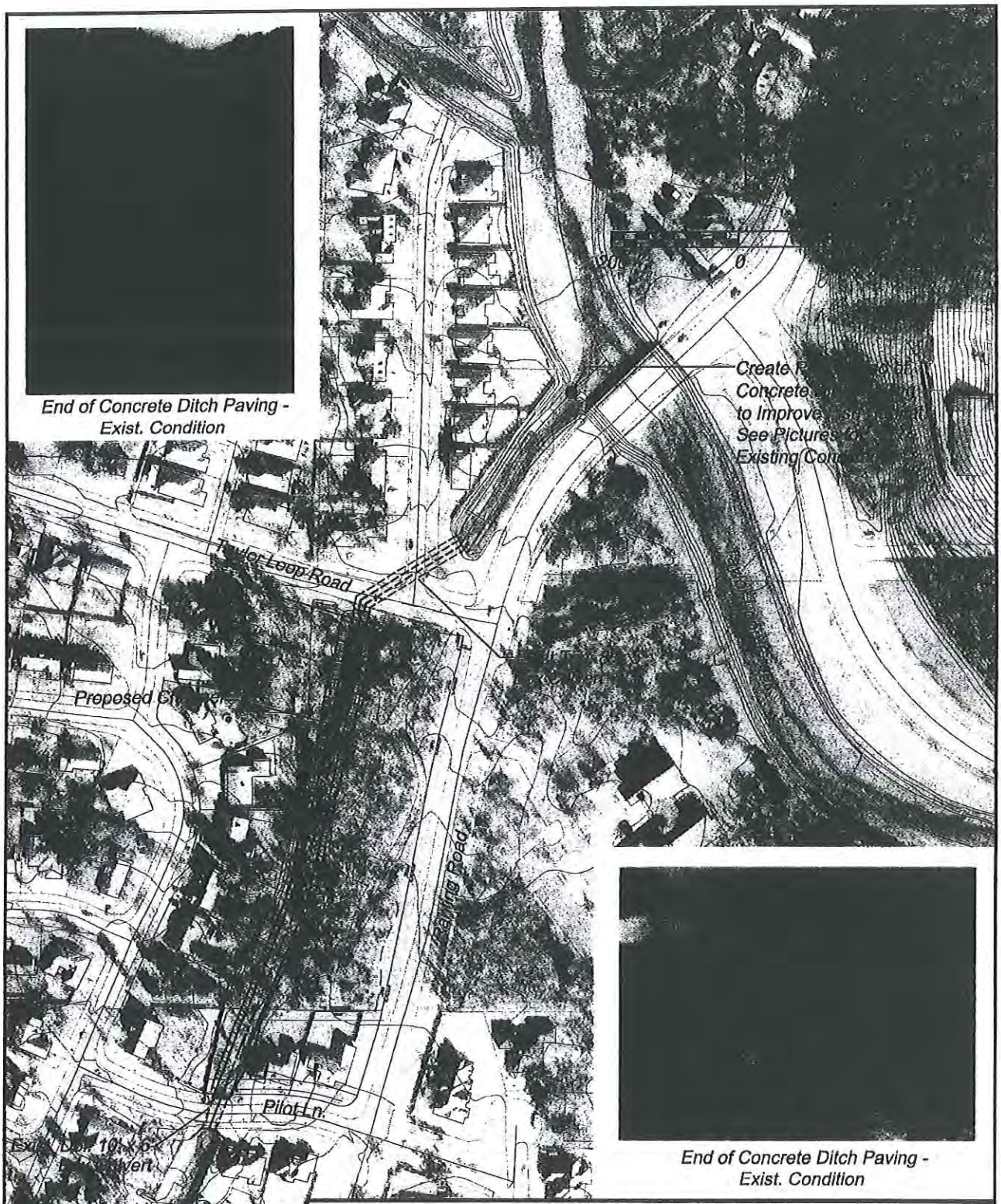
LITTLE ROCK, ARKANSAS

Jackson Brown King

Crafton Tull Sparks

JUNE 29, 2009

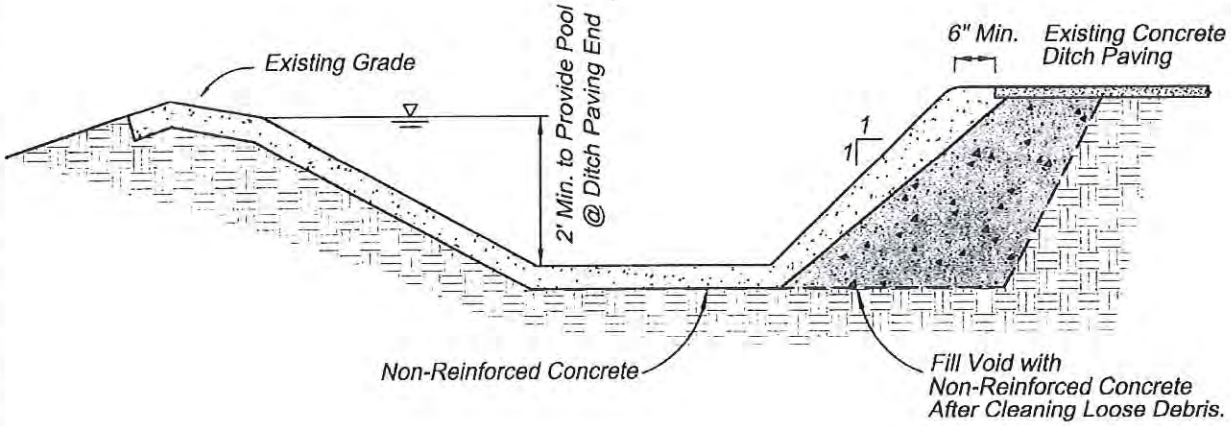
End of Concrete Ditch Paving - Exist. Condition



End of Concrete Ditch Paving - Exist. Condition

CITY OF LITTLE ROCK
PUBLIC WORKS DEPARTMENT
RAHLING ROAD FIRE STATION CHANNELIZATION
Figure 1. OFFSITE MITIGATION PLAN

USI Consulting Engineers	Little Rock, Arkansas	JOB	DATE	PLAN SCALE:	DRAWN	CKD	SHEET
© 2009 USI Consulting Engineers		0901010	09/04/09	1" =200'	HQ	VJW	1/1



Pool at Ditch Paving End
North of Site (Confluence with Taylor Loop Creek)

N.T.S

CITY OF LITTLE ROCK PUBLIC WORKS DEPARTMENT						
RAHLING ROAD FIRE STATION CHANNELIZATION Figure 2. OFFSITE MITIGATION POOL DETAIL						
USI Consulting Engineers Little Rock, Arkansas ©2009 USI Consulting Engineers	JOB	DATE	PLAN SCALE:	DRAWN	CKD	SHEET
	0901010	09/04/09		HQ	VJW	1/1

Appendix B

Vernon Williams

From: Hood, Mike [Mhood@littlerock.org]
Sent: Monday, September 14, 2009 2:22 PM
To: vjwilliams@usi-ce.com
Subject: FW: Fire station at Rahling and Taylor Loop - Permit requirements

rahling road.pdf (494 KB) RENDERING 15-09 - PDF.PDF (2. rahling 3.pdf (711 KB)

-----Original Message-----
From: Honeywell, Jon
Sent: Monday, September 14, 2009 7:16 AM
To: Hood, Mike; Vernon Williams
Subject: FW: Fire station at Rahling and Taylor Loop - Permit requirements

Please see the attached comments and requests from the COE on the Rahling Fire Station 404 permit.
Thanks,
JON

Jon Honeywell, P.E.
Civil Engineer III
City of Little Rock Public Works
501-371-4822
jhoneywell@littlerock.org

-----Original Message-----
From: Scott, Tim SWL [mailto:Tim.Scott@usace.army.mil]
Sent: Thursday, September 10, 2009 4:29 PM
To: Honeywell, Jon
Cc: Edwards, Elaine M SWL
Subject: FW: Fire station at Rahling and Taylor Loop - Permit requirements

Jon, just a few questions and request. I received your detailed channel plans, and if you could send me a pdf version so I can print some of them off at a smaller scale. Are The plans above you showed me concerning a fire station at this site are still applicable? Is the firestation still in the plans at this site, and is it being funded by stimulus money? I notice when I was onsite that there is not very much property to put a 8000 square foot building and the creek in the new plan appears to be moved closer to the center of the property.

Secondly, if this is a stimulus project, I talked to Joyce and I can expedite this under a nationwide even though your above our threshold for intermittent stream impacts. If I coordinate with the other state agencies, and our DE will waive the limit. I explained to Joyce that major channelization and concretinng has occurred upstream and downstream. The other state and fed agency will request mitigation and we will require it also. I will need a mitigation plan to start off this process.

I looked at all of the surrounding creek channels and they are void of shade and pools. When constructing your new channel, you could propose a meandering low flow channel with developed deeper pools. You should provide or leave some type of tree buffer at least on one side. You could also develop a plan where trees are planted somewhere along Taylor Loop creek to eventually provide shade in the future. Some type of instream work that provides deeper, cooler habitat in Taylor Creek may be possible. Also the concrete skirting that is present in the photo above has 2 large drop-offs that do not allow fish passage. If something could be done about that situation. These are just some suggestion to get you thinking. .

I will be out tomorrow but you can contact me Monday.

Timothy Scott
Environmental Specialist
Regulatory Division
Little Rock District
(501)324-5295
Fax: (501)324-6013

For more information on the Regulatory Program, visit our website at:
http://www.swl.usace.army.mil/regulatory/index.html

Please let us know how we are doing by submitting your comments or suggestions on our Customer Service Survey:
http://www.swl.usace.army.mil/regulatory/customersurvey.html

-----Original Message-----
From: Edwards, Elaine M SWL
Sent: Friday, June 26, 2009 9:34 AM
To: Scott, Tim SWL
Subject: FW: Fire station at Rahling and Taylor Loop - Permit requirements

Tim,

Thank you for being the Regulatory Project Manager on this one.

Elaine

-----Original Message-----
From: Honeywell, Jon [mailto:JHoneywell@littlerock.org]
Sent: Thursday, June 25, 2009 11:26 AM
To: Edwards, Elaine M SWL
Cc: Loe, Ronny; Hood, Mike
Subject: Fire station at Rahling and Taylor Loop - Permit requirements

Elaine,

Please see attached project drawing. The City is applying for a grant to build this new station and need to know permit requirements and time frame for obtaining any permits. We will be happy to meet with your office onsite or in your office to discuss. Thank you very much for your assistance.
If
you have any questions, please let me know.

Jon Honeywell, P.E.

Civil Engineer III

City of Little Rock Public Works

501-371-4822

jhoneywell@littlerock.org

Appendix B

Vernon Williams

From: Scott, Tim SWL [Tim.Scott@usace.army.mil]
Sent: Friday, October 30, 2009 11:25 AM
To: vjwilliams@usi-ce.com
Subject: Recommended plants

You should be able to find most of these at local nurseries or Little Rock has a tree growing nursery somewhere near their waste water facilities where they utilize their own trees.

For overstory tree species, I would use Green Ash, Willow or Water Oak, Sugarberry, Shumard Oak, Northern Pin Oak, Sycamore, River Birch, sweet gum, tulip poplar, Red or silver maple.

For Shrubs and small trees immediately adjacent to the stream- Any type of Hawthorn, Any type of dogwood, any type of native viburnums, Virginia Sweetspire, American hazelnut, witch hazel, smooth Alder, spice bush, decidous holly, Common Ninebark, black or red chokecherry

Timothy Scott
Environmental Specialist
Regulatory Division
Little Rock District
(501)324-5295
Fax: (501)324-6013

For more information on the Regulatory Program, visit our website at:
http://www.swl.usace.army.mil/regulatory/index.html

Please let us know how we are doing by submitting your comments or suggestions on our Customer Service Survey:
http://www.swl.usace.army.mil/regulatory/customersurvey.html

ADEQ

ARKANSAS
Department of Environmental Quality

March 13, 2007

Colonel Wally Z. Walters, District Engineer
Little Rock District Corps of Engineers
P. O. Box 867
Little Rock, Arkansas 72203-0867

RE: **Public Notice: Re-issuance of Nationwide Permits**

Dear Colonel Walters:

The Arkansas Department of Environmental Quality ("ADEQ") has completed its review of the above referenced public notice for re-issuance of the U.S. Army Corps of Engineers Nationwide Permits for the State of Arkansas.

ADEQ has determined there is a reasonable assurance that activities covered under these Nationwide Permits will be conducted in a manner which, according to the Arkansas Pollution Control and Ecology Commission's Regulation No.2, will not physically alter a significant segment of the waterbody and will not violate the water quality criteria.

Therefore, pursuant to §401(a)(1) of the Clean Water Act, the ADEQ hereby issues water quality certification for the **Re-issuance of Nationwide Permits** as it applies to the waters within the state of Arkansas contingent upon the following conditions:

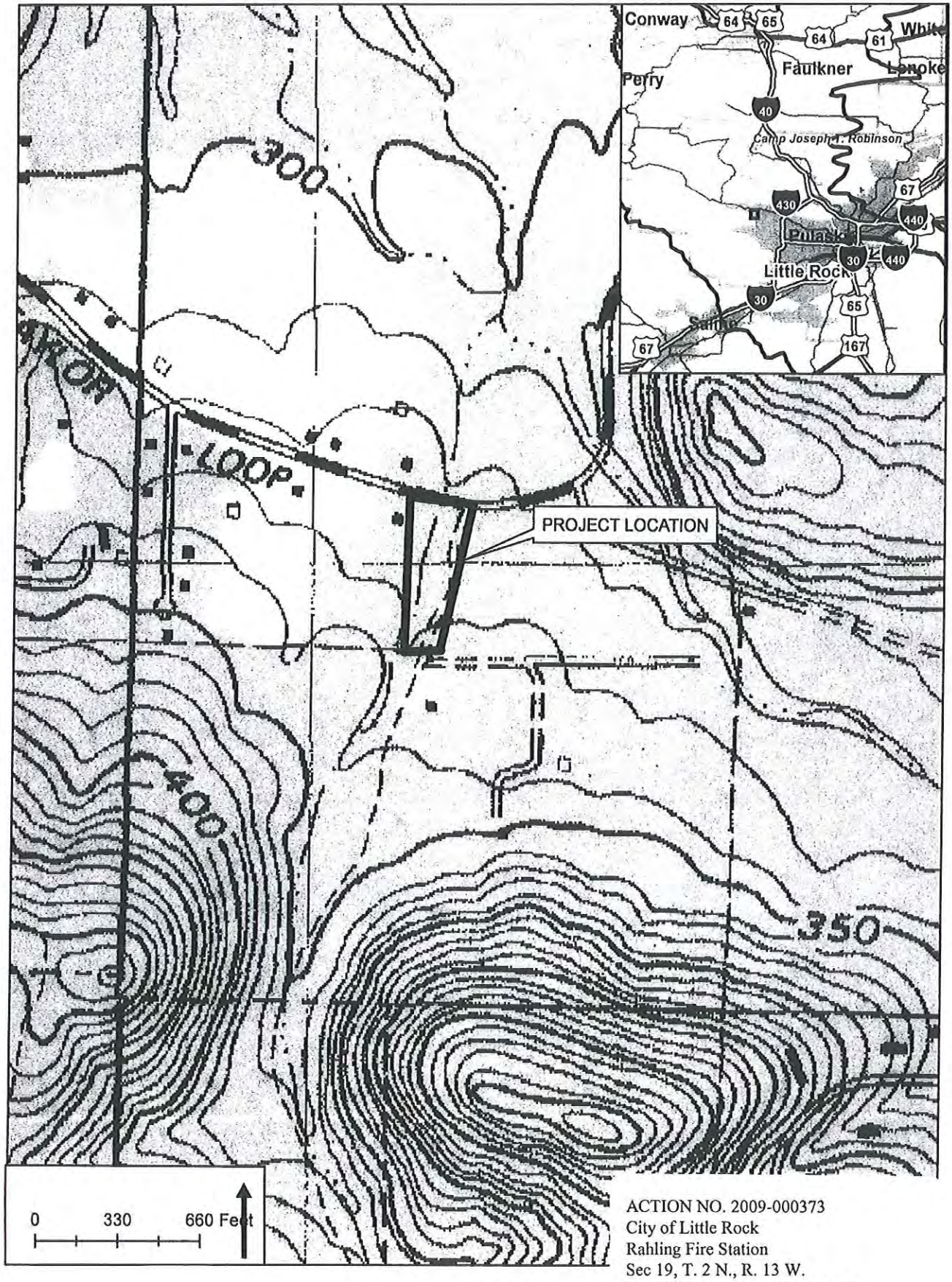
1) Individual Water Quality Certification requests must be submitted to ADEQ for any activity impacting Extraordinary Resource Waters, Ecologically Sensitive Waters, and Natural and Scenic Waters as identified in Regulation # 2..
2) Applicant shall contact ADEQ for a Short Term Activity Authorization needs determination for activities that have the potential to violate water quality criteria.
3) Applicant shall comply with NPDES Stormwater Program requirements.

Sincerely,

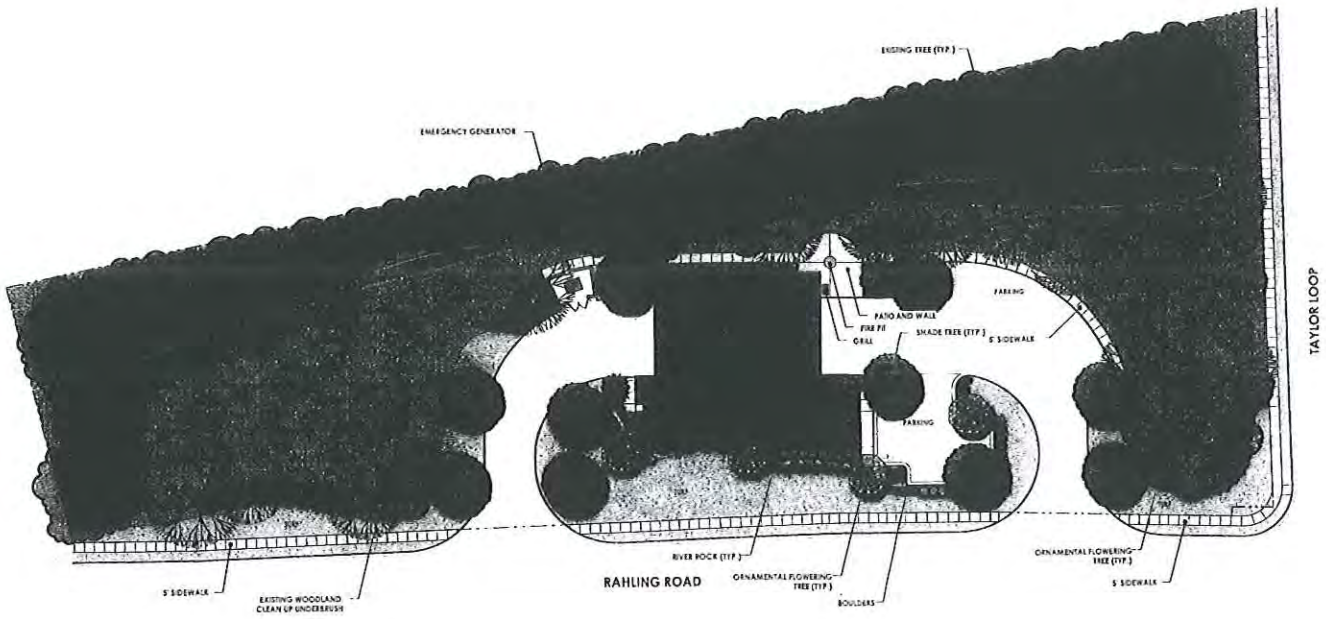
Teresa Marks
Director

cc: Wanda Boyd, Region VI, Environmental Protection Agency
Bradley Myers, Project Manager, Little Rock District COE

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY
8001 NATIONAL DRIVE / POST OFFICE BOX 8913 / LITTLE ROCK, ARKANSAS 72219-8913 / TELEPHONE 501-682-0744 / FAX 501-682-0798
www.adeq.state.ar.us



ACTION NO. 2009-000373
City of Little Rock
Rahling Fire Station
Sec 19, T. 2 N., R. 13 W.
Dec 2009 Sheet 1 of 7



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WEST LITTLE ROCK FIRE SUB-STATION

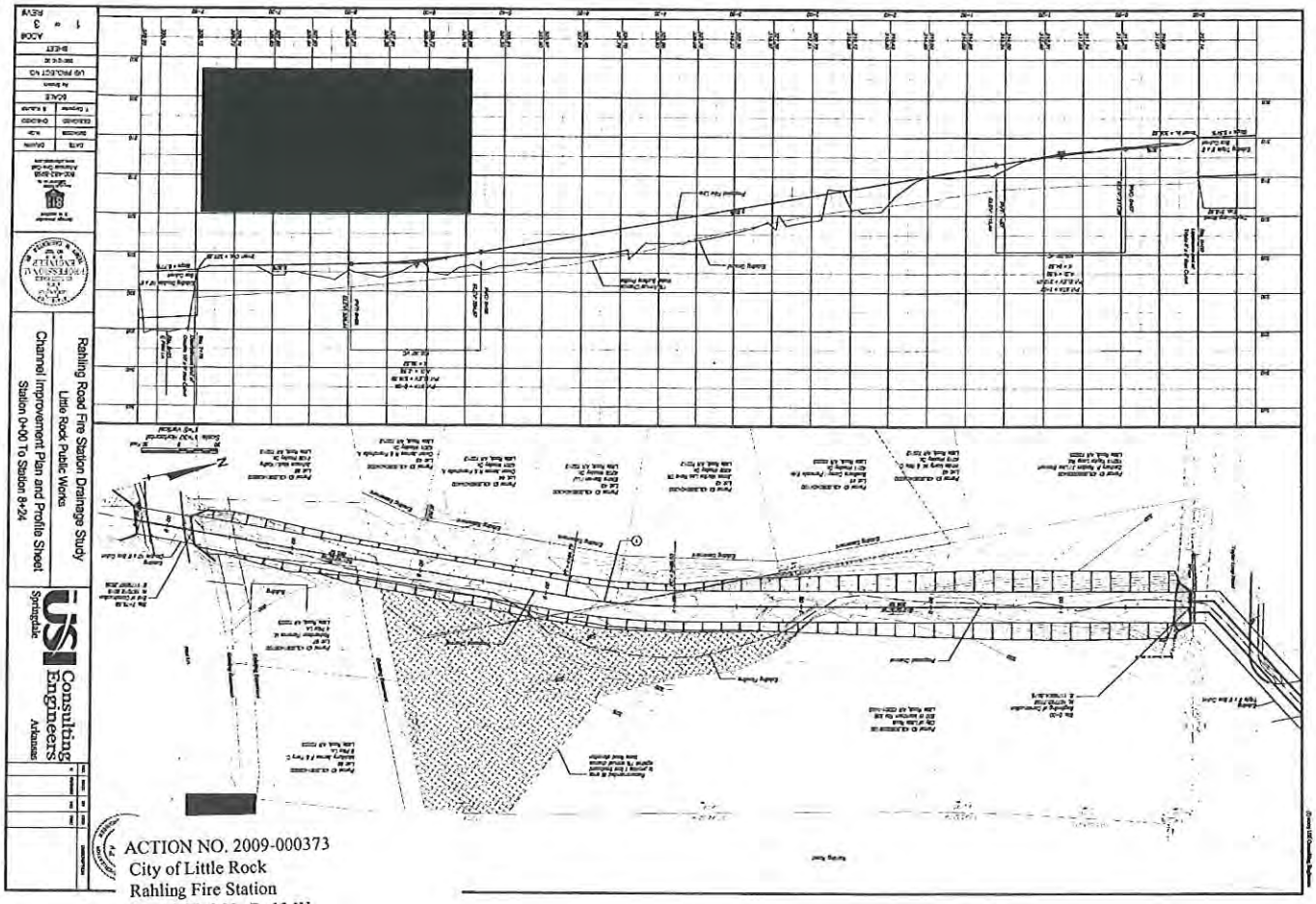
LITTLE ROCK, ARKANSAS

Jackson Brown King

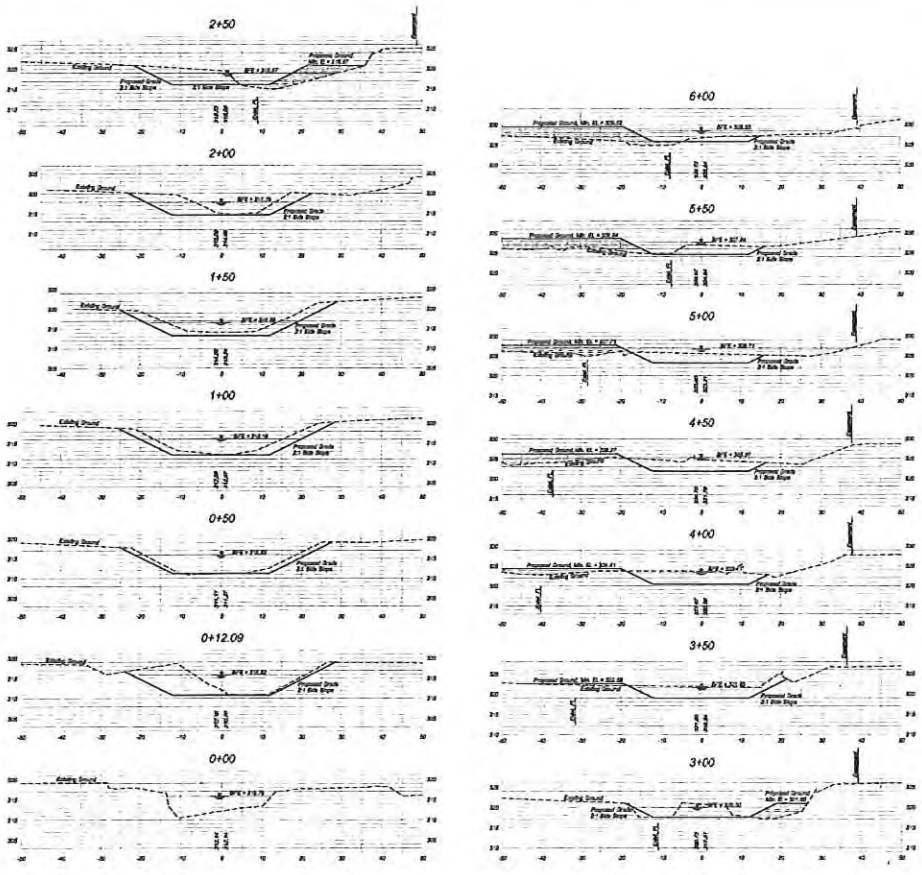
Crafton Tull Sparks

JUNE 29, 2009

ACTION NO. 2009-000373
City of Little Rock
Rahling Fire Station
Sec 19, T. 2 N., R. 13 W.
Dec 2009 Sheet 2 of 7



ACTION NO. 2009-000373
City of Little Rock
Rahling Fire Station
Sec 19, T. 2 N., R. 13 W.
Dec 2009 Sheet 3 of 7



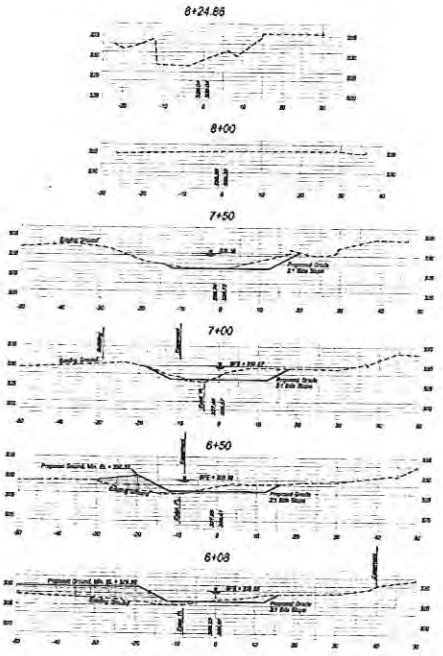
Consulting Engineers
Arkansas
Springdale

Rahling Road Fire Station Drainage Study
Little Rock Public Works

Channel Improvement Cross Section Sheet
Station 0+00 To Station 6+00

2 of 3

ACTION NO. 2009-000373
City of Little Rock
Rahling Fire Station
Sec 19, T. 2 N., R. 13 W.



STATION	AREAS Square Feet		VOLUMES Cubic Yards		CUMULATIVE VOLUMES Cubic Yards	
	CUT	FILL	CUT	FILL	CUT	FILL
0+00	0.00	0.00				
0+13.09	114.49	0.00	33.83	0.00	33.83	0.00
0+50	38.93	2.11	108.33	3.18	171.98	3.18
1+00	58.60	0.11	87.89	3.83	305.76	5.18
1+50	88.31	0.00	143.57	0.10	279.32	5.28
2+00	91.26	0.00	165.38	0.00	541.78	5.28
2+50	75.98	0.82	154.83	3.48	696.42	10.74
3+00	45.36	0.00	112.33	3.87	808.76	18.41
3+50	84.79	0.00	132.82	0.19	940.37	18.60
4+00	86.42	0.00	180.79	0.00	1121.12	18.60
4+50	91.01	0.00	164.14	0.00	1287.36	18.60
5+00	86.57	0.00	136.50	0.00	1423.78	18.60
5+50	63.59	0.00	103.89	0.00	1528.81	18.60
6+00	18.87	0.00	56.25	8.47	1587.62	33.07
6+38	14.38	5.42	4.99	1.63	1592.62	34.80
6+50	29.08	3.83	33.77	7.04	1626.38	31.84
7+00	44.68	2.71	68.47	3.88	1693.53	37.82
7+50	39.13	0.00	59.53	2.57	1753.57	40.33
8+00	0.00	0.00	24.87	0.00	1778.53	40.33
8+24.86	0.00	0.00	0.00	0.00	1778.53	40.33
			0.00	0.00	1778.53	40.33

Note: These quantities do not reflect overbank fills or cuts.

Rock lined Rip-rap Quantity:

Areas need to be covered by rip-rap:
(1) Channel bottom area : 15,600 sq. ft. = 1733 sq. yd.
(2) Both sides of channel: 14,800 sq. ft. = 1644 sq. yd.

Total area covered by rock: 3377 sq. yd.

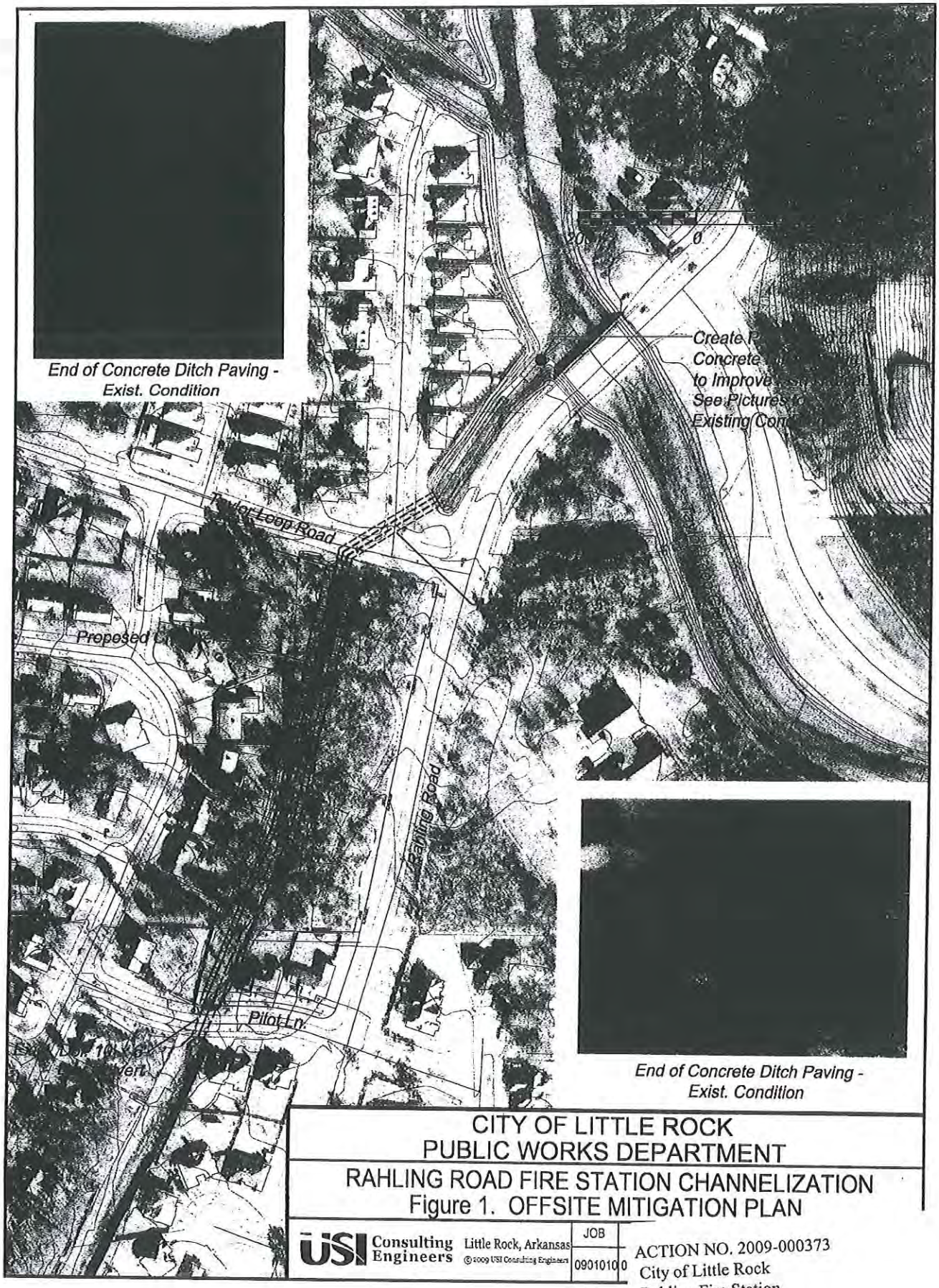
Total volume of rock: 1,700 cu. yd. (if the rock depth is 18")

Consulting Engineers
Springdale Arkansas

Rahling Road Fire Station Drainage Study
Little Rock Public Works

Channel Improvement Cross Section Sheet
Station 6+08 To Station 8+24.86

ACTION NO. 2009-000373
City of Little Rock
Rahling Fire Station
Sec 19, T. 2 N., R. 13 W.
Dec 2009 Sheet 5 of 7



CITY OF LITTLE ROCK
PUBLIC WORKS DEPARTMENT
RAHLING ROAD FIRE STATION CHANNELIZATION
Figure 1. OFFSITE MITIGATION PLAN

USI Consulting Engineers — Little Rock, Arkansas

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Rahling Fire Station
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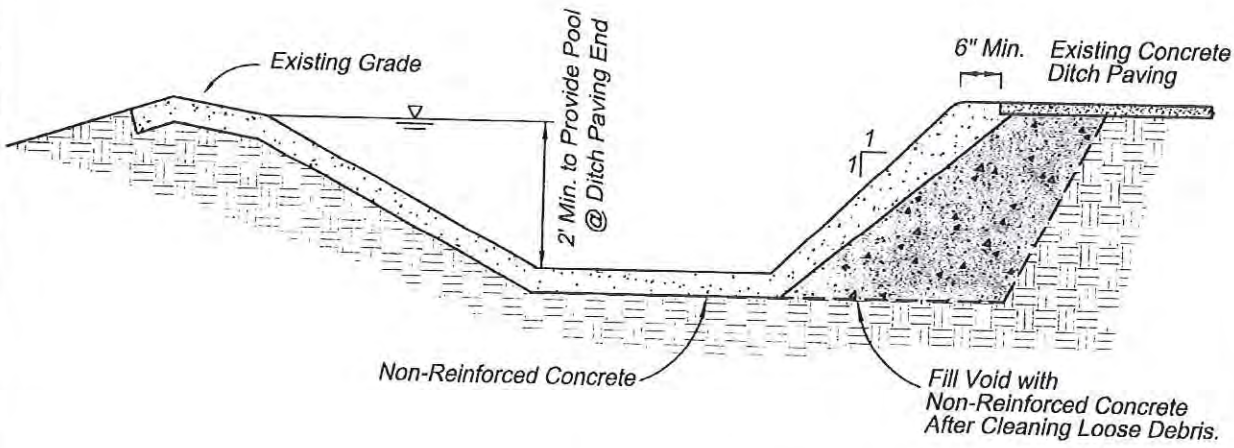

Pool at Ditch Paving End
North of Site (Confluence with Taylor Loop Creek)
N.T.S

CITY OF LITTLE ROCK
PUBLIC WORKS DEPARTMENT
RAHLING ROAD FIRE STATION CHANNELIZATION
Figure 2. OFFSITE MITIGATION POOL DETAIL

USI Consulting Engineers	Little Rock, Arkansas	JOB	DATE	PLAN SCALE:	DRAWN	CKD	SHEET
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Rahling Fire Station
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Dec 2009 Sheet 7 of 7