



TRANSPORTATION CABINET

Frankfort, Kentucky 40622
www.transportation.ky.gov/

Steven L. Beshear
Governor

Michael W. Hancock, P.E.
Secretary

May 14, 2012

CALL NO. 303
CONTRACT ID NO. 121015
ADDENDUM # 2

Subject: Clark County, FD04 SPP 025 0089 005-007
Letting May 18, 2012

- (1) Revised - Plan Sheets - R2 & R2C
- (2) Revised - Front Sheet of Proposal
- (3) Revised - Table of Contents - Page 2 of 98
- (4) Revised - Project Identification & Description - Page 4 of 98
- (5) Revised - Special Note for Working Days - Page 17 of 98
- (6) Added - Utility Notes - Pages 20(a)-20(b) of 98
- (7) Added - Department of the Army - Pages 37(a)-37(hh) of 98
- (8) Revised - Bid Items - Pages 94-98 of 98

Proposal revisions are available at <http://transportation.ky.gov/Construction-Procurement/>.

Plan revisions are available at <http://www.lynnimaging.com/kytransportation/>.

If you have any questions, please contact us at 502-564-3500.

Sincerely,

A handwritten signature in blue ink that reads "Ryan Griffith".

Ryan Griffith
Director
Division of Construction Procurement

RG:ks
Enclosures



An Equal Opportunity Employer M/F/D

PREPARED BY _____ DATE _____
 CHECKED BY _____ DATE _____
 APPROVED BY _____ DATE _____

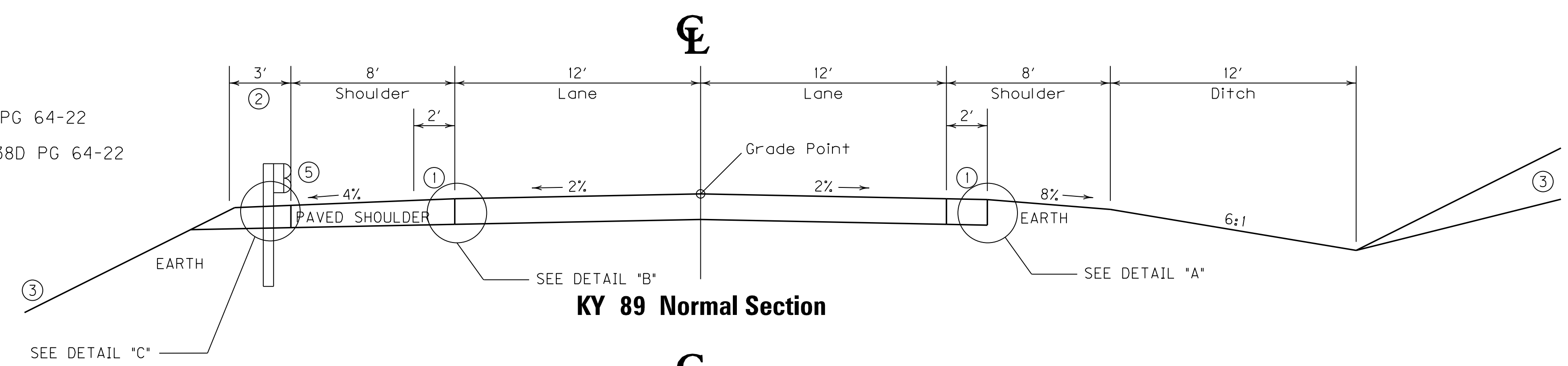
MAINLINE PAVEMENT DESIGN

APPROXIMATELY 13.75" BASE ——— 4" DGA BASE
 3 - 3.25" CL2 ASPH BASE 1.00D PG 64-22
 APPROXIMATELY 1.25" SURFACE ——— 1.25" CL2 ASPH SURFACE 0.38D PG 64-22

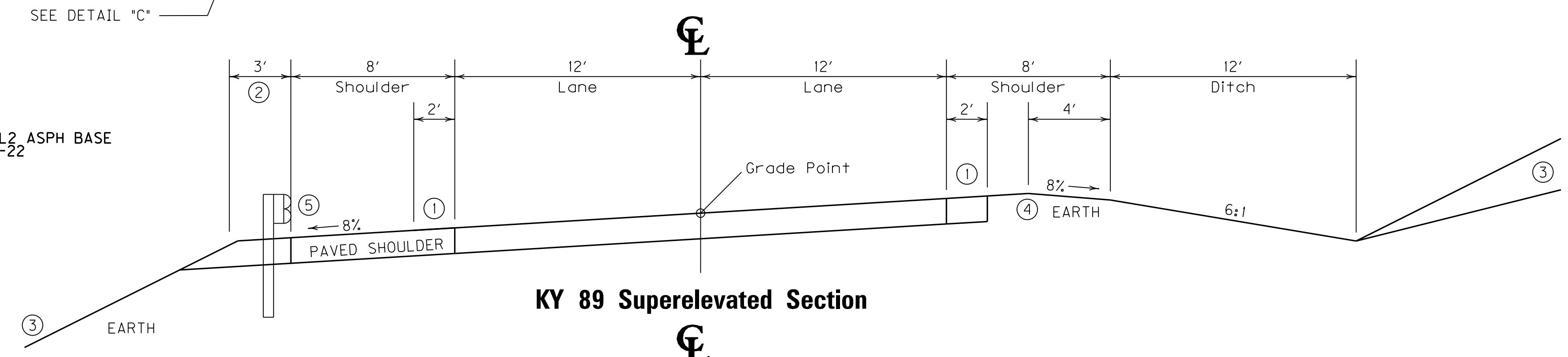
MAINLINE SHOULDER PAVEMENT DESIGN

APPROXIMATELY 13.75" BASE ——— 10.5" DGA BASE
 3.25" CL2 ASPH BASE 1.00D PG 64-22
 APPROXIMATELY 1.25" SURFACE ——— 1.25" CL2 ASPH SURFACE 0.38D PG 64-22
 FULL-DEPTH COMPACTED EARTH (FOR NON GUARDRAIL LOCATIONS)
 FULL-DEPTH DGA BASE (FOR GUARDRAIL LOCATIONS)
 ASPHALT SEAL: (TWO APPLICATIONS OF THE FOLLOWING)
 - EMULSIFIED ASPHALT RS-2 (2.4 LBS/SQ YD)
 - ASPHALT SEAL AGGREGATE (20LBS/SQ YD) (SIZE NO. 8 OR 9M)

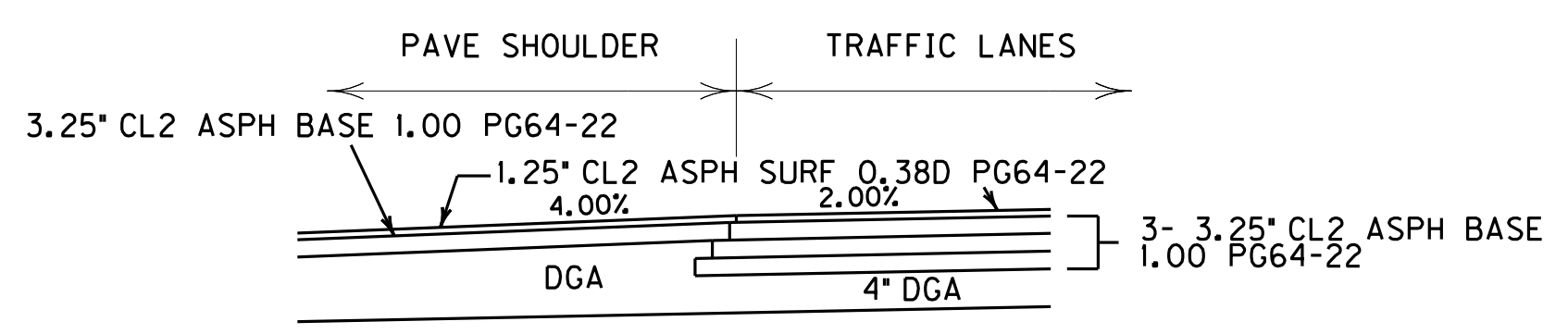
TYPICAL SECTIONS



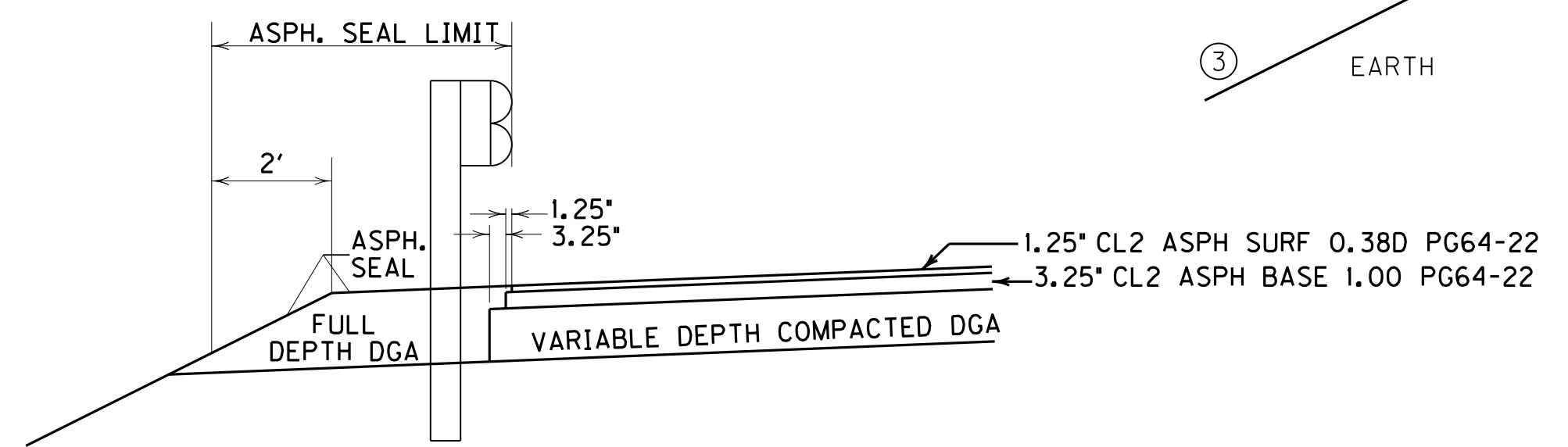
KY 89 Normal Section



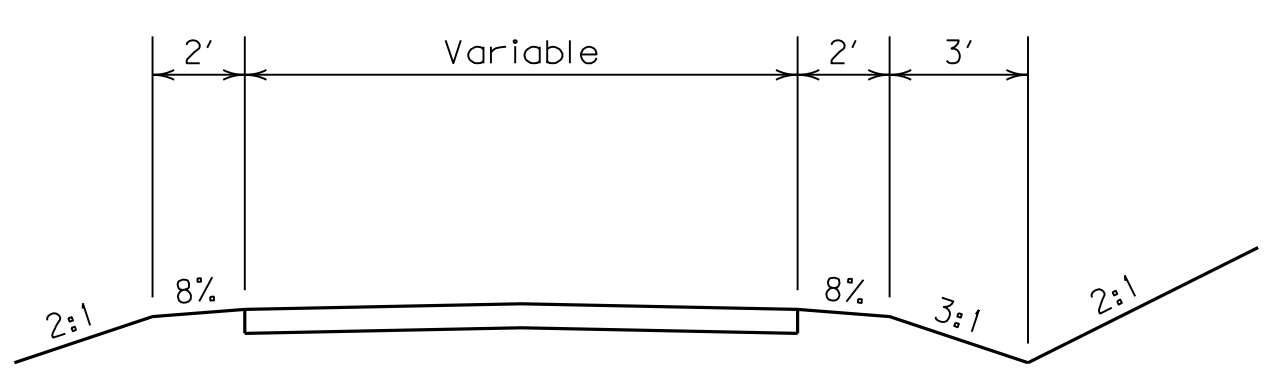
KY 89 Superelevated Section



DETAIL "B"



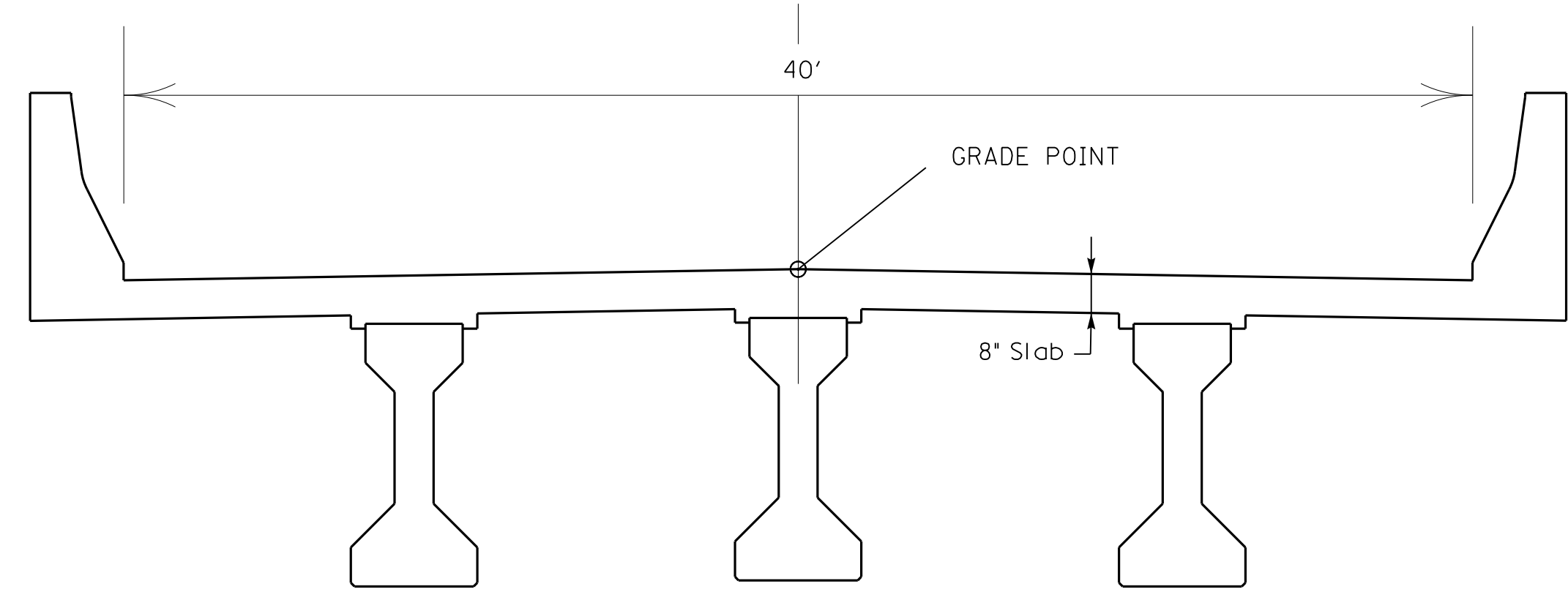
DETAIL "C" (FOR GUARDRAIL LOCATIONS)



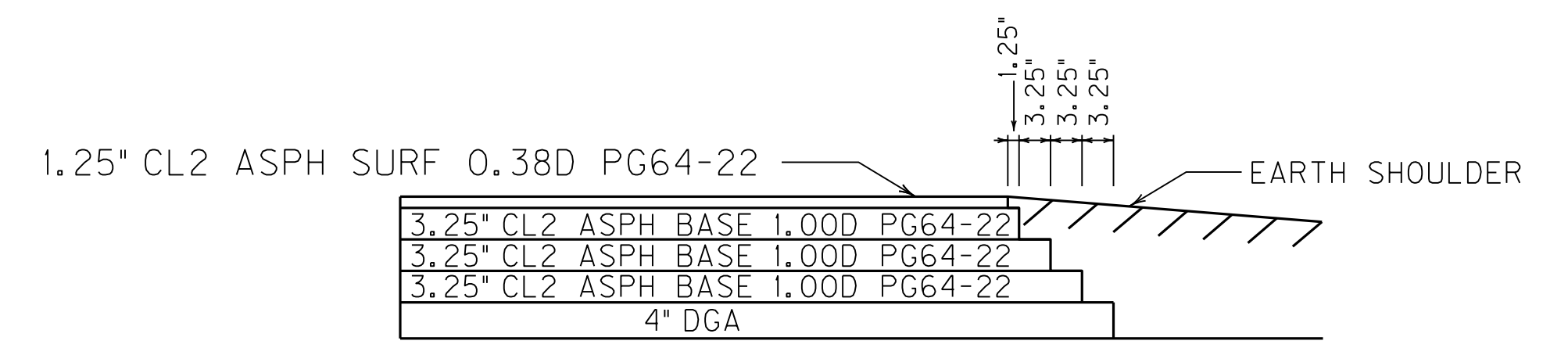
Entrances

ENTRANCE PAVEMENT

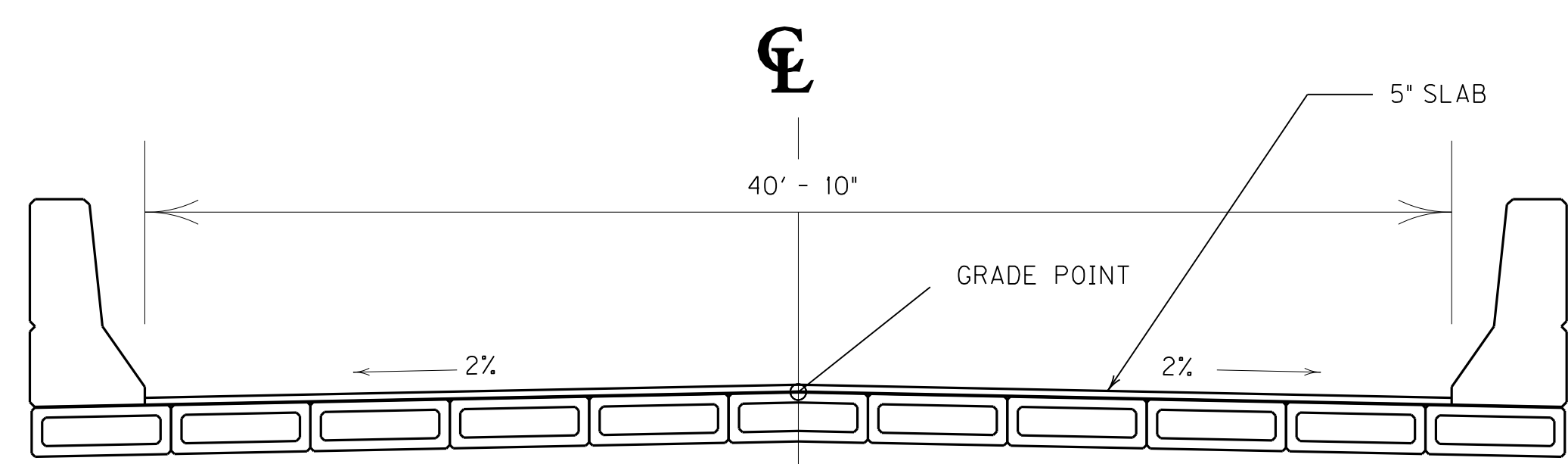
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**TYPICAL PCIB BRIDGE SECTION
 STA. 257 + 45 TO STA. 258 + 95**



DETAIL "A" (FOR NON-GUARDRAIL LOCATIONS)



**TYPICAL CB17 X 48 P.P.C.D.U. SIMPLE
 SPAN BRIDGE SECTION
 STA. 269 + 71 TO 270 + 13**

- Note: See cross sections for slopes outside the limits of the shoulder
- ① 2' rumble strip
 - ② Shoulders shall be widened 3' where guardrail is to be installed
 - ③ 2:1 minimum, 4:1 desirable
 - ④ 12% maximum breakover
 - ⑤ Shoulder paved to face of guardrail

USER: \$\$\$USER\$\$\$
 DATE: \$\$\$DATE\$\$\$
 FILE NAME: \$\$\$designsfiles\$\$\$specifications\$\$\$
 E-SHEET NAME: R00200TS

REVISD 5-9-12

TYPICAL SECTIONS

MAINLINE PAVEMENT DESIGN

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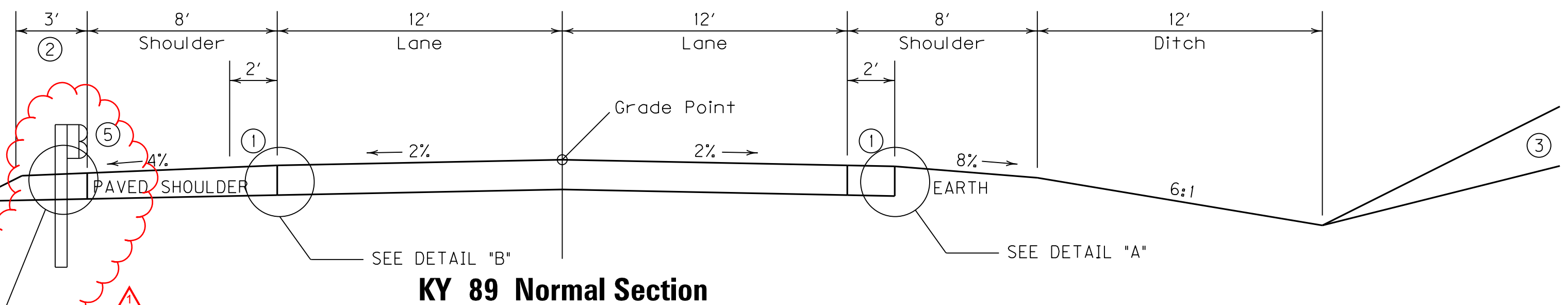
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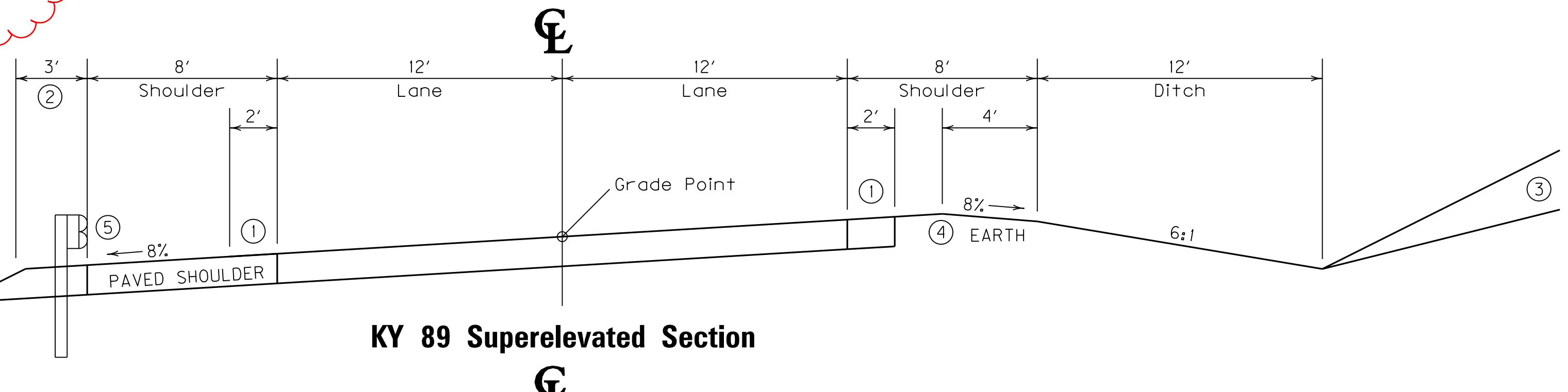
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FULL-DEPTH COMPACTED EARTH (FOR NON GUARDRAIL LOCATIONS)

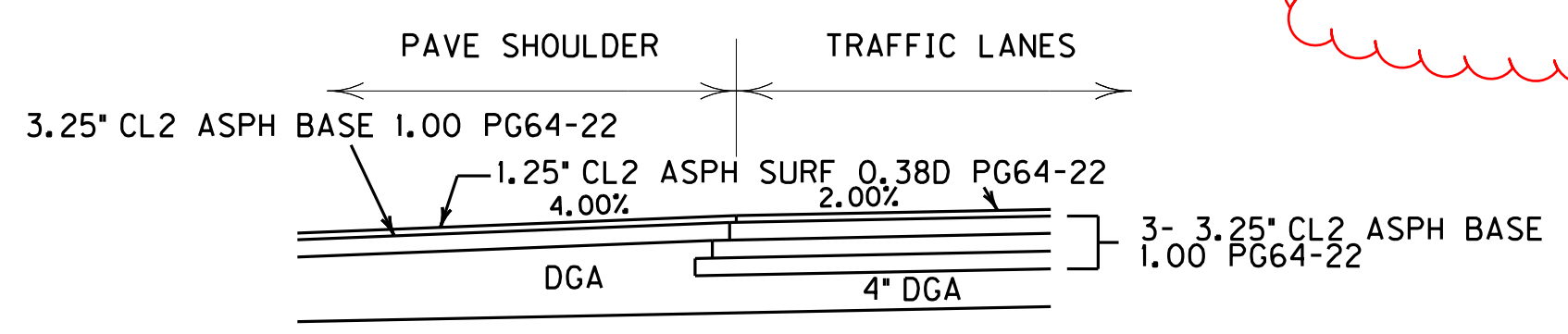
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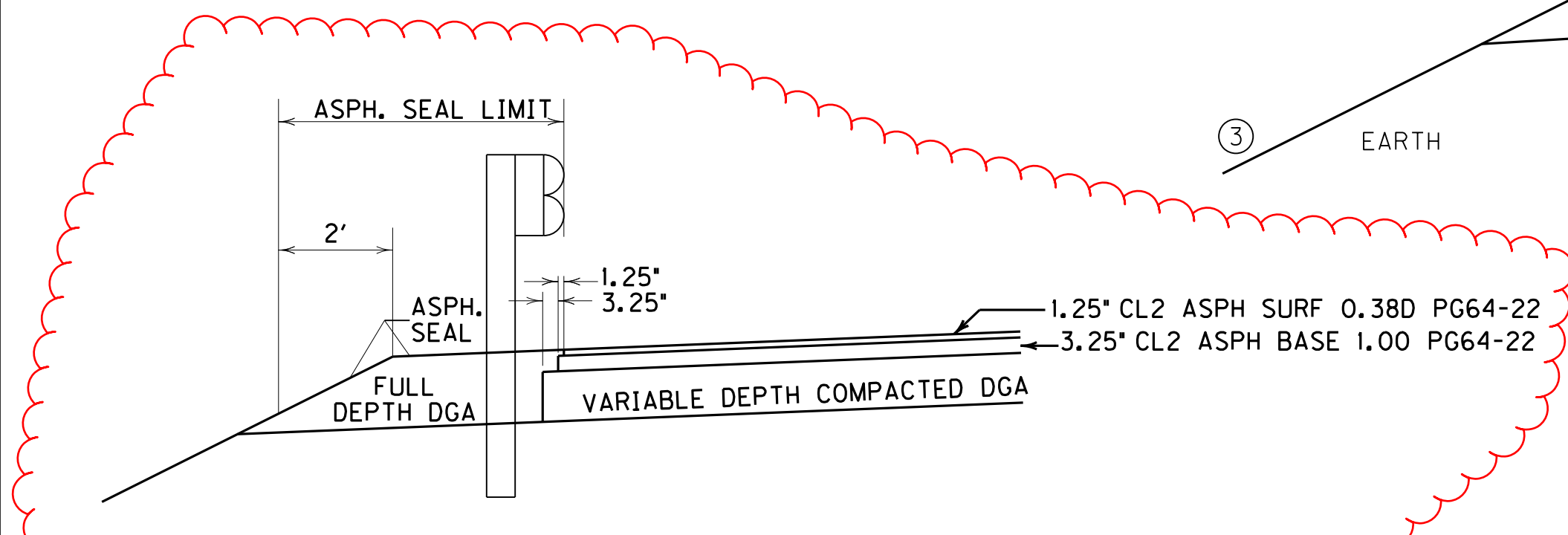
KY 89 Normal Section



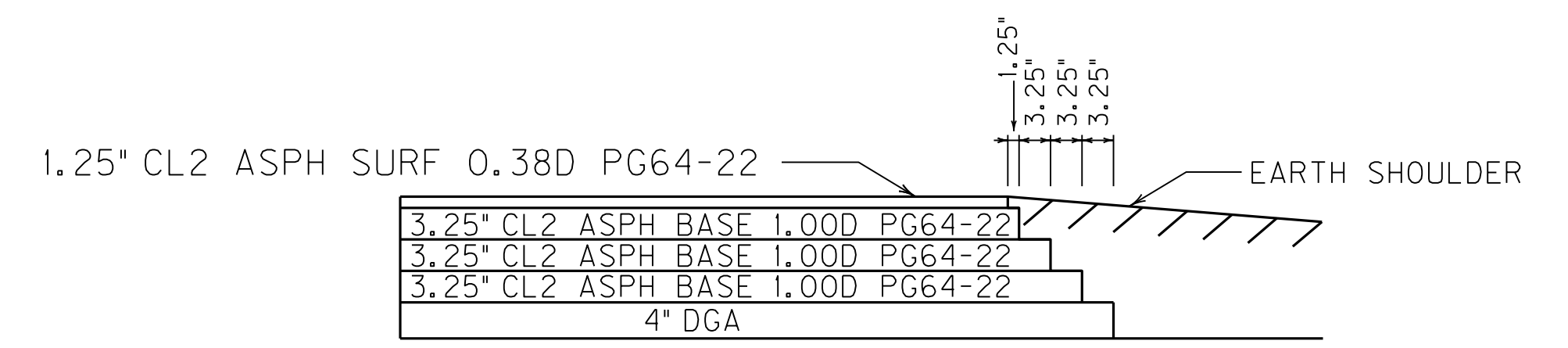
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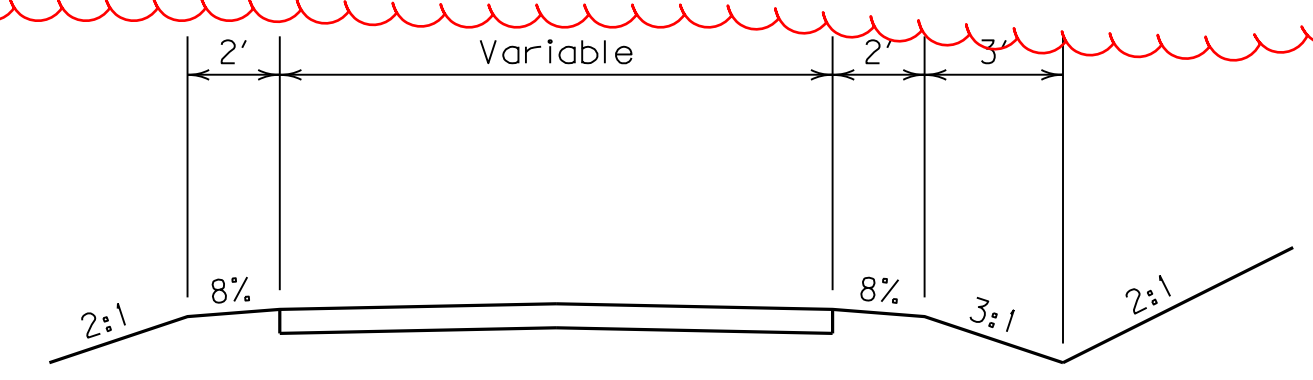
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DETAIL "C" (FOR GUARDRAIL LOCATIONS)



DETAIL "A" (FOR NON-GUARDRAIL LOCATIONS)

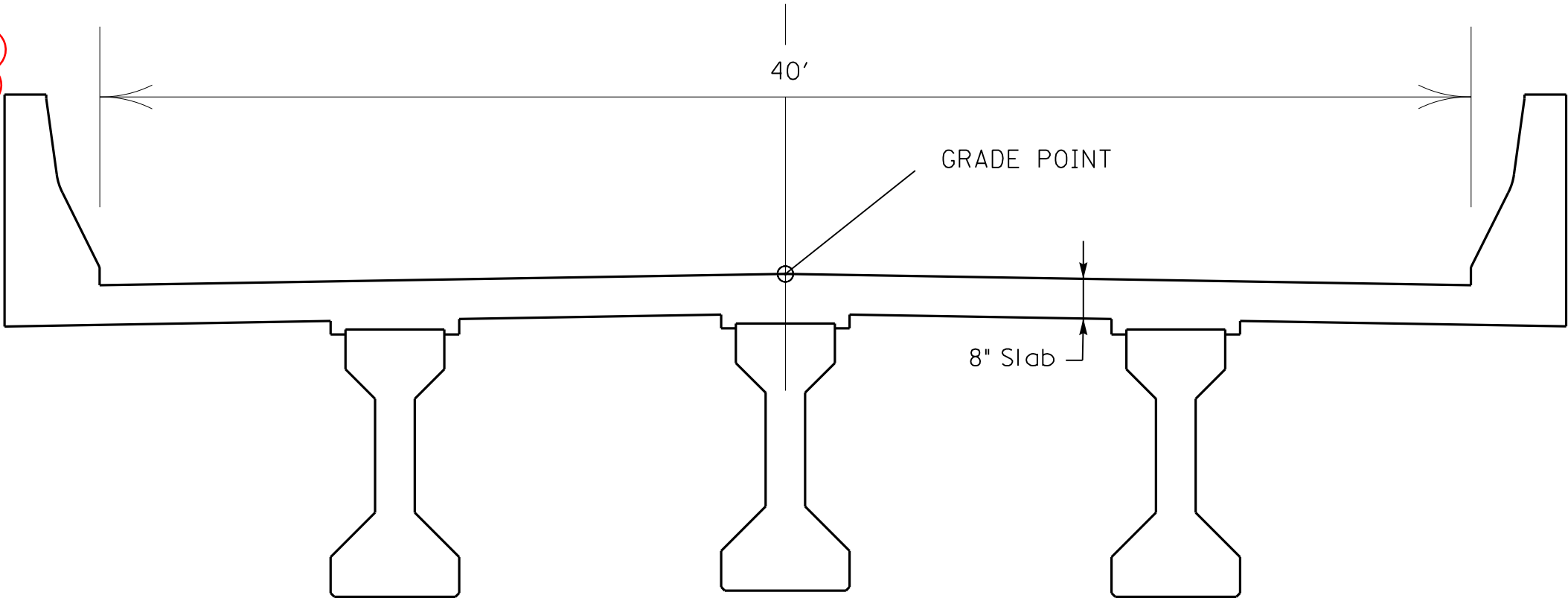


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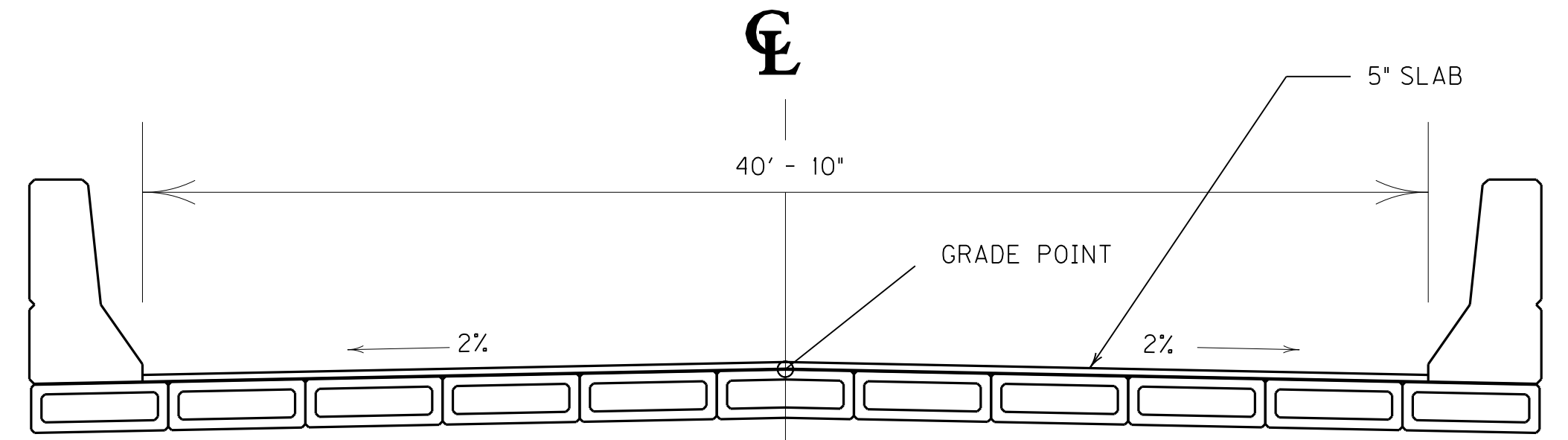
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USER: \$\$\$USER\$\$\$
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 E-SHEET NAME: R00200TS

PAVING AREAS

ITEM	S	Q	U	D	ENTRANCE	DIVERSIONS	MAINLINE SHOULDER	R	E	Y	A	R	D	S	TOTAL PROJECT
1.25' CL2 ASPH. SURF. 0.380 PG64-22	25284	2614	6423				4711								39032
2' CL2 ASPH. BASE 1.000 PG64-22		2656													2656
3.25' CL2 ASPH. BASE 1.000 PG64-22	25472						4772								30244
3.25' CL2 ASPH. BASE 1.000 PG64-22	25961														25961
3.25' CL2 ASPH. BASE 1.000 PG64-22	26450														26450
4' DGA BASE	26940	2723													29663
2.25' CL2 ASPH. BASE 1.00 PG64-22			6499												6499
2.25' CL2 ASPH. BASE 1.00 PG64-22			6637												6637
12" DGA BASE			6774												6774
10.5" DGA BASE							4932								4932
EMULSIFIED ASPHALT RS-2							2141								2141
ASPHALT SEAL AGGREGATE (SIZE NO. 8 OR 9M)							2141								2141

PAVING SUMMARY

ITEM CODE	ITEM	UNIT	MAINLINE	ENTRANCE	DIVERSIONS	MAINLINE SHOULDER	TOTAL PROJECT
301	CL 2 ASPH SURF 0.380 PG64-22	TON	1740	180	442	342	2704
212	CL 2 ASPH BASE 1.000 PG64-22	TON	13922	293	1626	853	16694
1	DGA BASE ①	TON	6196	627	4674	7416 ④	18913
291	EMULSIFIED ASPHALT RS-2 ⑤	TON				5	5
100	ASPHALT SEAL AGGREGATE ⑥	TON				43	43

NOTES

- ALL ASPHALT MIXTURES SHALL BE ESTIMATED AT 110 LBS. PER SQ. YD. PER INCH OF DEPTH, UNLESS NOTED OTHERWISE.
- ① ESTIMATED AT 115 LBS. PER SQ. YD. PER INCH OF DEPTH.
 - ② ESTIMATED AT 100 LBS. PER SQ. YD. PER INCH OF DEPTH.
 - ③ ESTIMATED AT 95 LBS. PER SQ. YD. PER INCH OF DEPTH.
 - ④ INCLUDES 1,508 TONS USED FOR FULL DEPTH DGA ON GUARDRAIL SECTIONS
 - ⑤ ESTIMATED AT 2.4 LBS. PER SQ. YD.
 - ⑥ ESTIMATED AT 20 LBS. PER SQ. YD.

△ REVISED 5-9-12

PAVING AREAS

ITEM	S					U					Y					A					TOTAL PROJECT
	MAINLINE	ENTRANCE	DIVERSIONS	MAINLINE SHOULDER		ENTRANCE	DIVERSIONS	MAINLINE SHOULDER		ENTRANCE	DIVERSIONS	MAINLINE SHOULDER		ENTRANCE	DIVERSIONS	MAINLINE SHOULDER					
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⑥ ESTIMATED AT 20 LBS. PER SQ. YD.





CALL NO. 303

CONTRACT ID. 121015

CLARK COUNTY

FED/STATE PROJECT NUMBER FD04 SPP 025 0089 005-007

DESCRIPTION WINCHESTER-IRVINE ROAD (KY 89)

WORK TYPE GRADE & DRAIN WITH BRIDGE

PRIMARY COMPLETION DATE 156 WORKING DAYS

LETTING DATE: May 18, 2012

Sealed Bids will be received electronically through the Bid Express bidding service until 10:00 AM EASTERN DAYLIGHT TIME May 18, 2012. Bids will be publicly announced at 10:00 AM EASTERN DAYLIGHT TIME.

ROAD PLANS

REQUIRED BID PROPOSAL GUARANTY: Not less than 5% of the total bid.

TABLE OF CONTENTS

PART I	SCOPE OF WORK
	<ul style="list-style-type: none">• PROJECT(S), COMPLETION DATE(S), & LIQUIDATED DAMAGES• CONTRACT NOTES• STATE CONTRACT NOTES• ASPHALT MIXTURE• DGA BASE• DGA BASE FOR SHOULDERS• INCIDENTAL SURFACING• FUEL AND ASPHALT PAY ADJUSTMENT• COMPACTION OPTION A• SPECIAL NOTE(S) APPLICABLE TO PROJECT• LIQUIDATED DAMAGES• RIGHT OF WAY NOTES• UTILITY CLEARANCE• KPDES STORM WATER PERMIT, BMP AND NOI• COMMUNICATING ALL PROMISES• PERMIT(S)
PART II	SPECIFICATIONS AND STANDARD DRAWINGS
	<ul style="list-style-type: none">• SPECIFICATIONS REFERENCE• SUPPLEMENTAL SPECIFICATIONS• [SN-9T] DRY-LAID ROCK FENCES• [SP-69] EMBANKMENT AT BRIDGE END BENT STRUCTURES
PART III	EMPLOYMENT, WAGE AND RECORD REQUIREMENTS
	<ul style="list-style-type: none">• LABOR AND WAGE REQUIREMENTS• EXECUTIVE BRANCH CODE OF ETHICS• KENTUCKY EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1978• PROJECT WAGE RATES
PART IV	INSURANCE
PART V	BID ITEMS

CONTRACT ID - 121015

ADMINISTRATIVE DISTRICT - 07

PROJECT(S) IDENTIFICATION AND DESCRIPTION:

COUNTY - CLARK PCN - DE02500891215
FD04 SPP 025 0089 005-007
WINCHESTER-IRVINE ROAD (KY 89) WIDEN KY 89(WINCHESTER-IRVINE ROAD) SECTION 4 FROM MP 5.02
TO MP 6.53. GRADE & DRAIN WITH BRIDGE. SYP NO. 07-08301.00.
GEOGRAPHIC COORDINATES LATITUDE 37^53'49" LONGITUDE 84^03'24"

COMPLETION DATE(S):

156 WORKING DAYS

APPLIES TO ENTIRE CONTRACT

**7-8301.00
SPECIAL NOTE
FOR
WORKING DAYS**

Project Working Days

This project shall have an allotment of **156 Working Days** for the completion of **all** work associated with this project. Liquidated damages shall be assessed according to Section 108 of the 2008 Kentucky Standard Specifications for Road and Bridge Construction. Contrary to Section 108 of the 2008 Kentucky Standard Specifications for Road and Bridge Construction, contract extensions associated with this project may only be adjusted at the discretion of the Engineer.

UTILITY NOTES TO BE INCLUDED IN THE PROPOSAL
SPECIAL NOTES FOR UTILITY CLEARANCE
IMPACT ON CONSTRUCTION

CLARK COUNTY
WINCHESTER – IRVINE ROAD (KY-89)
Widen KY-89 from milepost 5.02
to milepost 6.53
SECTION 4
JL03 025 81209
ITEM NO. 7-8301.00

CLARK ENERGY

The company anticipates delivery of their relocation plan and estimate package approximately May 18, 2012. Consequently, the company's facilities are not expected to be relocated until approximately the end of July, 2012.

While the company has estimated their work to be complete at the end of July, weather (in this area and throughout the region) may cause unexpected delays.

EAST KENTUCKY POWER COMPANY

While the company has facility in the area, no relocation was necessary.

EAST CLARK COUNTY WATER DISTRICT

The company has completed the relocation of their facilities on this project

TENNESSEE GAS TRANSMISSION COMPANY

The company's relocation agreement has been prepared and forwarded to them for signature. Once the agreement has been fully executed, the company will receive approval to begin work; however, the company has estimated that approximately 180 days will be required to complete the relocation of their facilities.

While the company has estimated their work to require 180 days, weather (in this area and throughout the region) may cause unexpected delays.

AT&T -- KENTUCKY

The company's facilities are not expected to be relocated until approximately the end of August, 2012.

While the company has estimated their work to be complete at the end of August, weather (in this area and throughout the region) may cause unexpected delays.

PROTECTION OF UTILITY FACILITIES

The location of utilities provided in the contract documents has been furnished by the facility owners and/or by reviewing record drawings, and may not be accurate. It will be the roadway Contractor's responsibility to locate utility facilities prior to excavating by calling the various utility facility owners, and by examining any supplemental information supplied by the Cabinet. The Contractor shall determine the exact location and elevation of underground utility facilities, by hand-digging if necessary, to expose utilities prior to beginning excavation in the area of underground utility facilities. The cost for repair, and any other associated costs, for any damage to utility facilities caused by the roadway Contractor's operation will be borne by the roadway Contractor.

BEFORE YOU DIG

The contractor is instructed to call 1-800-752-6007 to reach KY 811, the One-Call System for information on the location of existing underground utilities. The call is to be placed a minimum of two (2) and no more than ten (10) business days prior to excavation. The contractor should be aware that owners of underground facilities are not required to be members of the KY 811 One-Call Before-U-Dig (BUD) service. The contractor must coordinate excavation with the utility owners, including those whom do not subscribe to KY 811. It may be necessary for the contractor to contact the County Court Clerk to determine what utility companies have facilities in the area.

RAILROAD FACILITIES

There is not a railroad facility associated with this project.

N O T I C E

**DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
(NATIONWIDE PERMIT & GENERAL WQC AUTHORIZATION)**

PROJECT: Clark County, Item No. 7-8301
KY 89 Major Widening

The Section 404 & 401 activities for this project have been previously permitted under the authority of the Department of the Army Nationwide Permit No. 14 “Linear Transportation Projects” & Division of Water General Water Quality Certification. In order for these authorizations to be valid, the attached conditions must be followed. The contractor shall post a copy of this Nationwide Permit & General WQC in a conspicuous location at the project site for the duration of construction and comply with the general conditions as required.

To more readily expedite construction, the contractor may elect to alter the design or perform the work in a manner different from what was originally proposed and specified. Prior to commencing such alternative work, the contractor shall obtain **written** permission from the Division of Construction and the Corps of Engineers. A copy of any request to the Corps of Engineers to alter this proposal and subsequent responses shall be forwarded to the Division of Environmental Analysis, DA Permit Coordinator, for office records and for informational purposes.



TRANSPORTATION CABINET

Frankfort, Kentucky 40622
www.transportation.ky.gov/

Steven L. Beshear
Governor

Michael W. Hancock, P.E.
Secretary

May 7, 2012

Department of the Army
Corps of Engineers
ATTN: Lee Anne Devine (CELRL-OP-FS)
Regulatory Branch
P.O. Box 59
Louisville, KY 40201-0059

Kentucky Division of Water
Ms. Barbara Scott
200 Fair Oaks Lane, 4th floor
Frankfort, KY 40601

SUBJECT: Department of the Army Permit; **Letter of Notification**
Clark County,
KY 89 (Widening & Realignment)

Dear Ms. Devine & Ms. Scott:

The Kentucky Transportation Cabinet (KYTC) respectfully notifies the U.S Army Corps of Engineers by submission of this letter that impacts to waters of the U.S. will occur as a result of the referenced project. The project will entail a culvert replacement on KY 89 (see attachments), in Clark County.

We have reviewed the impacts associated with this project and find that they meet the provisions of Nationwide permit No. 14 & General WQC with no mitigation. There are no impacts to ephemeral, intermittent or perennial streams greater than 500' in length or that have an impact area over 0.1 acres in size to waters of the U.S. All impacts are less than 300' in length. There are no wetlands located within the project corridor nor will any special aquatic sites be impacted by this project; therefore no stream or wetland mitigation is proposed. All waste generated by the construction shall be placed within upland areas of the median, outside of waters of the United States.

Section 106 of the National Historic Preservation Act has been addressed through consultation with the KY SHPO. This project is state-funded and, as such, the KYTC has addressed issues related to the NHPA. Attached for your consideration is correspondence from the SHPO that indicates that the project will have No Adverse Effect on historic properties.

Section 7 of the Endangered Species Act (ESA) has been addressed through consultation with the US Fish and Wildlife Service. This project is state funded and, as such, the KYTC has attempted to address issues related to the ESA. Attached for your



consideration is a copy of the endangered species list for Clark County, provided by USFWS, and correspondence from USFWS that indicates that the project will have not likely to adversely affect on federally listed endangered species and a IBCMOA for the taking of potential summer roosting habitat.

If you have any questions or need additional information, please contact me at 502-564-7250 or by email: RoyC.Collins@ky.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy C. Collins III". The signature is stylized with a large, sweeping initial "R" and "C".

Roy C. Collins III
Division of Environmental Analysis
Kentucky Transportation Cabinet



US Army Corps of Engineers.

Nationwide Permit No. 14, Linear Transportation Projects

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States.

- a. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States.
- b. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.
- c. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, 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. 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.
- d. This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Valid from March 19, 2012 through March 18, 2017



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENTAL PROTECTION CABINET

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

DIVISION OF WATER

200 FAIR OAKS LANE

FRANKFORT, KENTUCKY 40601

www.kentucky.gov

General Certification--Nationwide Permit # 14 Linear Transportation Projects

This General Certification is issued March 19, 2012, in conformity with the requirements of Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341), as well as Kentucky Statute KRS 224.16-050.

For this and all nationwide permits, the definition of surface water is as per 401 KAR 10:001 Chapter 10, Section 1(80): Surface Waters means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

Agricultural operations, as defined by KRS 224.71-100(1) conducting activities pursuant to KRS 224.71-100 (3), (4), (5), (6), or 10 are deemed to have certification if they are implementing an Agriculture Water Quality Plan pursuant to KRS 224.71-145.

For all other operations, the Commonwealth of Kentucky hereby certifies under Section 401 of the Clean Water Act (CWA) that it has reasonable assurances that applicable water quality standards under Kentucky Administrative Regulations Title 401, Chapter 10, established pursuant to Sections 301, 302, 304, 306 and 307 of the CWA, will not be violated for the activity covered under NATIONWIDE PERMIT 14, namely Linear Transportation Projects, provided that the following conditions are met:

1. The activity will not occur within surface waters of the Commonwealth identified by the Kentucky Division of Water as Outstanding State or National Resource Water, Cold Water Aquatic Habitat, or Exceptional Waters.
2. The activity will not occur within surface waters of the Commonwealth identified as perpetually-protected (e.g. deed restriction, conservation easement) mitigation sites.
3. The activity will impact less than 1/2 acre of wetland/marsh.
4. The activity will impact less than 300 linear feet of surface waters of the Commonwealth. Stream realignment greater than 100 feet is not covered under this general water quality certification.

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5. For a single and complete linear transportation project, the cumulative length of impacts less than 300 linear feet of surface waters within each Hydrologic Unit Code (HUC) 14 watershed will not exceed 500 linear feet.
6. Stream impacts covered under this General Water Quality Certification and undertaken by those persons defined as an agricultural operation under the Agricultural Water Quality Act must be completed in compliance with the Kentucky Agricultural Water Quality Plan (KWQP).
7. The Kentucky Division of Water may require submission of a formal application for an individual certification for any project if the project has been determined to likely have a significant adverse effect upon water quality or degrade the waters of the Commonwealth so that existing uses of the water body or downstream waters are precluded.
8. Activities that do not meet the conditions of this General Water Quality Certification require an Individual Section 401 Water Quality Certification.
9. Activities qualifying for coverage under this General Water Quality Certification are subject to the following conditions:
 - Erosion and sedimentation pollution control plans and Best Management Practices must be designed, installed, and maintained in effective operating condition at all times during construction activities so that violations of state water quality standards do not occur (401 KAR 10:031 Section 2 and KRS 224.70-100).
 - Sediment and erosion control measures, such as check-dams constructed of any material, silt fencing, hay bales, etc., shall not be placed within surface waters of the Commonwealth, either temporarily or permanently, without prior approval by the Kentucky Division of Water's Water Quality Certification Section. If placement of sediment and erosion control measures in surface waters is unavoidable, design and placement of temporary erosion control measures shall not be conducted in such a manner that may result in instability of streams that are adjacent to, upstream, or downstream of the structures. All sediment and erosion control devices shall be removed and the natural grade restored within the completion timeline of the activities.
 - Measures shall be taken to prevent or control spills of fuels, lubricants, or other toxic materials used in construction from entering the watercourse.
 - Removal of riparian vegetation in the utility line right-of-way shall be limited to that necessary for equipment access.
 - To the maximum extent practicable, all in-stream work under this certification shall be performed under low-flow conditions.

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- Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances in which such in-stream work is unavoidable, then it shall be performed in such a manner and duration as to minimize turbidity and disturbance to substrates and bank or riparian vegetation.
- Any fill shall be of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters and/or cause violations of water quality standards. If rip-rap is utilized, it should be of such weight and size that bank stress or slump conditions will not be created because of its placement.
- If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when such work will be done.
- Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the KDOW shall be notified immediately by calling (800) 928-2380.

Non-compliance with the conditions of this general certification or violation of Kentucky state water quality standards may result in civil penalties.



STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENTAL PROTECTION CABINET

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

DIVISION OF WATER

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General Certification--Nationwide Permit # 14 Linear Transportation Projects

This General Certification is issued March 19, 2012, in conformity with the requirements of Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341), as well as Kentucky Statute KRS 224.16-050.

For this and all nationwide permits, the definition of surface water is as per 401 KAR 10:001 Chapter 10, Section 1(80): Surface Waters means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

Agricultural operations, as defined by KRS 224.71-100(1) conducting activities pursuant to KRS 224.71-100 (3), (4), (5), (6), or 10 are deemed to have certification if they are implementing an Agriculture Water Quality Plan pursuant to KRS 224.71-145.

For all other operations, the Commonwealth of Kentucky hereby certifies under Section 401 of the Clean Water Act (CWA) that it has reasonable assurances that applicable water quality standards under Kentucky Administrative Regulations Title 401, Chapter 10, established pursuant to Sections 301, 302, 304, 306 and 307 of the CWA, will not be violated for the activity covered under NATIONWIDE PERMIT 14, namely Linear Transportation Projects, provided that the following conditions are met:

1. The activity will not occur within surface waters of the Commonwealth identified by the Kentucky Division of Water as Outstanding State or National Resource Water, Cold Water Aquatic Habitat, or Exceptional Waters.
2. The activity will not occur within surface waters of the Commonwealth identified as perpetually-protected (e.g. deed restriction, conservation easement) mitigation sites.
3. The activity will impact less than 1/2 acre of wetland/marsh.
4. The activity will impact less than 300 linear feet of surface waters of the Commonwealth. Stream realignment greater than 100 feet is not covered under this general water quality certification.

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5. For a single and complete linear transportation project, the cumulative length of impacts less than 300 linear feet of surface waters within each Hydrologic Unit Code (HUC) 14 watershed will not exceed 500 linear feet.
6. Stream impacts covered under this General Water Quality Certification and undertaken by those persons defined as an agricultural operation under the Agricultural Water Quality Act must be completed in compliance with the Kentucky Agricultural Water Quality Plan (KWQP).
7. The Kentucky Division of Water may require submission of a formal application for an individual certification for any project if the project has been determined to likely have a significant adverse effect upon water quality or degrade the waters of the Commonwealth so that existing uses of the water body or downstream waters are precluded.
8. Activities that do not meet the conditions of this General Water Quality Certification require an Individual Section 401 Water Quality Certification.
9. Activities qualifying for coverage under this General Water Quality Certification are subject to the following conditions:
 - Erosion and sedimentation pollution control plans and Best Management Practices must be designed, installed, and maintained in effective operating condition at all times during construction activities so that violations of state water quality standards do not occur (401 KAR 10:031 Section 2 and KRS 224.70-100).
 - Sediment and erosion control measures, such as check-dams constructed of any material, silt fencing, hay bales, etc., shall not be placed within surface waters of the Commonwealth, either temporarily or permanently, without prior approval by the Kentucky Division of Water's Water Quality Certification Section. If placement of sediment and erosion control measures in surface waters is unavoidable, design and placement of temporary erosion control measures shall not be conducted in such a manner that may result in instability of streams that are adjacent to, upstream, or downstream of the structures. All sediment and erosion control devices shall be removed and the natural grade restored within the completion timeline of the activities.
 - Measures shall be taken to prevent or control spills of fuels, lubricants, or other toxic materials used in construction from entering the watercourse.
 - Removal of riparian vegetation in the utility line right-of-way shall be limited to that necessary for equipment access.
 - To the maximum extent practicable, all in-stream work under this certification shall be performed under low-flow conditions.

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- Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances in which such in-stream work is unavoidable, then it shall be performed in such a manner and duration as to minimize turbidity and disturbance to substrates and bank or riparian vegetation.
- Any fill shall be of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters and/or cause violations of water quality standards. If rip-rap is utilized, it should be of such weight and size that bank stress or slump conditions will not be created because of its placement.
- If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when such work will be done.
- Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the KDOW shall be notified immediately by calling (800) 928-2380.

Non-compliance with the conditions of this general certification or violation of Kentucky state water quality standards may result in civil penalties.



US Army Corps of Engineers

Nationwide Permit No. 14, Linear Transportation Projects

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States.

- a. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States.
- b. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.
- c. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, 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. 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.
- d. This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Valid from March 19, 2012 through March 18, 2017

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 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.

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 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 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. 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 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).

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 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. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to 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 might be affected by the proposed work or that utilize the designated critical habitat that might 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. 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 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, 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) 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/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

20. 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. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(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 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 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)). 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, 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 on 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. 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 (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, 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. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you 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, and 52 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 31, 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.

23. 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 for resource losses) 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 either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, 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. 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 minimal adverse effects on the aquatic environment.

(2) 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.

(3) 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) – (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)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) 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.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, 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 restoration or 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. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing 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 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 programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory 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.

(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.

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 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. 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.

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)). 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 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 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.

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 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 work 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 work and mitigation.

31. 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 in the vicinity of the project, or to notify the Corps pursuant to general condition 20 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 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 (see 33 CFR 330.4(g)) has been 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 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 project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; 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 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);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral 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 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, as 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, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. 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 NWP's and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For 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, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, 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 (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 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.

The comments must explain why the agency believes the adverse 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 NWP, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are 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.

(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 with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. 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. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. 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 activity 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 activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences 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. 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 proposed compensatory mitigation 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, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. 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: (a) 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; (b) 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 (c) 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, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed 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 or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. 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.



STEVEN L. BESHEAR
GOVERNOR

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HERITAGE COUNCIL**

MARCHETA SPARROW
SECRETARY

THE STATE HISTORIC PRESERVATION OFFICE
300 WASHINGTON STREET
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-7005
FAX (502) 564-5820
www.heritage.ky.gov

LINDY CASEBIER
ACTING EXECUTIVE DIRECTOR AND
STATE HISTORIC PRESERVATION OFFICER

January 20, 2012

Mr. David Waldner, P. E., Director
Division of Environmental Analysis
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622

**Re: KY 89 Improvements and Widening, MP 5.02 to MP 6.53
State-funded project
Clark County, Kentucky
KYTC Item No. 7-8301.00**

Dear Mr. Waldner:

Pursuant to Section 106 of the National Historic Preservation Act of 1966 (16 U. S. C. Sec. 470f) and implementing regulations at 36 C. F. R. Part 800, the Kentucky State Historic Preservation Office received for review and comment information on identified sites within the jurisdictional permitting area as defined by the Army Corps of Engineers for this project. We agree with your eligibility determinations. With the State Level I Documentation provided for the Bridge 025B00018N along with the context sensitive design for the new bridge, we concur with your recommendation of **No Adverse Effect**.

As far as comments pertaining to the design of the new bridge, it is desirable that it be compatible with nearby historic resources. The historic bridge is concrete, so the continued use of concrete for the new bridge would be a compatible material, and it is our feeling that the use of concrete for the new railing is a better option than the metal railing. The metal railing does evoke the design of the current railing; however, it does not have the same qualities of mass and implied permanence that concrete conveys. Thank you for coordinating with our office, and if you have questions, please contact Vicki Birenberg of my staff at (502) 564-7005, extension 127.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindy Casebier".

Lindy Casebier
Acting Executive Director and
State Historic Preservation Officer

cc: Amanda Abner – KYTC - DEA
LC:vmb



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Kentucky Ecological Services Field Office
330 West Broadway, Suite 265
Frankfort, Kentucky 40601
(502) 695-0468

August 4, 2011

Mr. David Waldner
Division of Environmental Analysis
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622

Re: FWS 2011-B-0392; KYTC Item No. 7-8301, Biological Assessment for running buffalo clover, Indiana bat, and gray bat in association with the proposed widening and realignment of KY 89 in Clark County, Kentucky

Dear Mr. Waldner:

Fish and Wildlife Service (Service) personnel have reviewed the biological assessment (BA) dated November 23, 2010 regarding the gray bat, Indiana bat, and running buffalo clover in association with the above referenced project proposal. Fish and Wildlife Service (Service) biologists have reviewed the information provided, and offer the following comments .

The biological assessment is adequate and supports the conclusion of "not likely to adversely affect" for the gray bat, Indiana bat, and running buffalo clover. Based on our review of the information, we concur with these determinations. Please ensure that the minimization measures associated with gray bat foraging habitat and Indiana bat seasonal clearing restrictions (October 15 – March 31) are fully implemented. In view of this, we believe that the requirements of Section 7 of the Endangered Species Act (Act) have been fulfilled. However, obligations under Section 7 of the Act must be reconsidered if: (1) new information reveals that the proposed action may affect listed species in a manner or to an extent not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered in this biological assessment, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

If you have any questions or if we can be of further assistance, please contact Phil DeGarmo at 502-695-0468 x110.

Sincerely,

Virgil Lee Andrews, Jr.
Field Supervisor



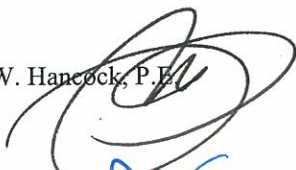
TRANSPORTATION CABINET


Frankfort, Kentucky 40622
www.transportation.ky.gov/


Steven L. Beshear
Governor


Michael W. Hancock, P.E.
Secretary


MEMORANDUM

TO: Michael W. Hancock, P.E. 
Secretary

THROUGH: Steve Waddle, P.E. 
State Highway Engineer

THROUGH: Kevin Damron, P.E. 
Deputy State Highway Engineer

THROUGH: Rebecca Goodman 
Office of Legal Services

FROM: David Waldner, P.E., Director 
Division of Environmental Analysis

DATE: April 24, 2012

SUBJECT: Indiana Bat Conservation Memorandum of Agreement (IBCMOA)
Widening of KY 89
Clark County, Kentucky
KYTC Item Number: 7-8301

Attached for signature is an Indiana Bat Conservation Memorandum of Agreement (IBCMOA) to mitigate impacts to potential summer roosting habitat for *Myotis sodalis* (Indiana bat) which will result from the proposed project.

The action proposed is to widen KY 89 in Clark County. This agreement will account for the removal of approximately 14.95 acres of potential Indiana bat summer roosting habitat during a time when the area is potentially occupied by listed bats. The project occurs within an area USFWS has deemed "potential habitat" for the Indiana bat and thus will require a payment of \$43,355.00 to the Indiana bat Conservation Fund. After the payment has been processed contractors will be free to remove the trees anytime of the year.

I recommend execution of this document as I do not see a more cost-effective option for moving this project forward. If you require additional information, please contact me at (502) 564-7250.





United States Department of the Interior

FISH AND WILDLIFE SERVICE
Kentucky Ecological Services Field Office
330 West Broadway, Suite 265
Frankfort, Kentucky 40601
(502) 695-0468

April 24, 2012

Mr. David Waldner
Division of Environmental Analysis
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622

Re: FWS 2011-B-0392; Indiana Bat Conservation MOA for KYTC 7-8301, Widening of KY 89
in Clark County, Kentucky

Dear Mr. Waldner:

Enclosed please find a copy of the Indiana Bat Conservation MOA (MOA) for KYTC signature. Upon review, please provide a signed copy to our office and Kentucky Natural Lands Trust (KNLT) so that KNLT may provide KYTC with an invoice for the amount specified in section 6.4 of the Conservation MOA. Execution of the Conservation MOA and the Indiana Bat Conservation Fund (IBCF) contribution that it requires will allow KYTC to be in compliance with the Endangered Species Act, relative to the Indiana bat. In order to fulfill ESA requirements associated with the Corps of Engineers and/or other federal nexus agencies (e.g., FHWA), please provide them with a copy of this letter and executed Conservation MOA for their records.

In addition to the Indiana bat, KYTC developed a Biological Assessment (BA) that addressed concerns regarding potential adverse effects to federally listed species that are known or have the potential to occur in Clark County, Kentucky. Our office provided concurrence with KYTC's species effects determination and the BA in a correspondence dated August 4, 2011. Since then, the project has not changed; therefore, our determination remains the same with respect to the species evaluated in the BA with the exception of the Indiana bat.

If you have any questions regarding the information that we have provided, please contact Phil DeGarmo of my office at (502) 695-0468 extension 110.

Sincerely,

for Virgil Lee Andrews, Jr.
Field Supervisor

**INDIANA BAT CONSERVATION
MEMORANDUM OF AGREEMENT
BETWEEN THE
U.S. FISH AND WILDLIFE SERVICE
AND
KENTUCKY TRANSPORTATION CABINET**

This Memorandum of Agreement (MOA) is entered into by the United States Department of the Interior, U.S. Fish and Wildlife Service (Service) and the Kentucky Transportation Cabinet (KYTC) to promote the survival and recovery of the Indiana bat (*Myotis sodalis*), a federally listed endangered species. Together, the Service and the KYTC are referred to as "Cooperators."

Section 1: PURPOSE AND OBJECTIVES

The Indiana bat is a federally listed endangered species native to a large portion of the eastern United States and the Commonwealth of Kentucky. This MOA will implement recovery-focused conservation measures that will be undertaken by the Cooperators and afford a measurable conservation benefit for the Indiana bat as set forth in the Service's Indiana Bat Mitigation Guidance as modified January 3, 2011 and hereby incorporated by reference. These measures will be implemented in association with the proposed project as detailed in section 4 of this MOA. All measures will be implemented according to the terms of this MOA. The Cooperators understand and intend that the benefits resulting from this MOA may also provide conservation benefits for other federal protected species and native fish and wildlife.

Section 2: AUTHORITY

This MOA is hereby entered into under the authorities of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA), Fish and Wildlife Act of 1956 (16 U.S.C. 742a. *et seq.*), and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*). Section 5 of the ESA provides that, "The Secretary...shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species..." and "shall utilize land acquisition and other authority under the Fish and Wildlife Act, as amended, and the Migratory Bird Conservation Act, as appropriate". Section 7(a) (1) of the ESA further directs Federal agencies to "utilize their authorities in furtherance of the purposes of this Act [ESA] by carrying out programs for the conservation of endangered species and threatened species." The Fish and Wildlife Act of 1956 provides that the Secretary shall "...take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources...." Finally, the Fish and Wildlife Coordination Act states that the Secretary is authorized "to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat..."

The authorization for any incidental take of the Indiana bat, as defined in section 9 of the ESA, and resulting from impacts that may be associated with the qualified project(s), as defined in section 4 of this MOA, is provided through the Service's incidental take statement and January 3, 2011 intra-Service biological opinion, which is incorporated herein by this reference. This biological opinion covers the Service's development of conservation agreements for the Indiana bat, which includes this MOA, that are based on implementation of the Indiana Bat Mitigation Guidance and provides incidental take of Indiana bats in the form of up to 2,500 acres of forested Indiana bat habitat per year through 2016.

Section 3: STATEMENT OF MUTUAL INTEREST

The mission of the Service is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Service's major responsibilities are for endangered species, threatened species, migratory birds, marine mammals, and freshwater and anadromous fish. The Service recognizes the ability and interest of KYTC to contribute to the conservation and recovery of the Indiana bat, and recognizes KYTC as a partner in the recovery and habitat conservation of the species. KYTC recognizes the Service's mission and its interest in developing partnerships to protect, restore, and manage important habitats on private and public lands for federal listed species. The Cooperators understand the collaboration for this MOA is voluntary.

Section 4: PROJECT DESCRIPTION

On August 4, 2011, the Service issued concurrence for a Biological Assessment for the construction of the proposed project; as part of the project description KYTC committed to seasonal tree clearing to avoid direct effects on summer roosting Indiana bats. However, KYTC can no longer adhere to those seasonal clearing restrictions and proposes to widen KY 89 between mile points 5.02 to 6.53 in Clark County, Kentucky during the timeframe when summer roosting Indiana bats are anticipated to occupy forested habitat within the limits of the project. The following information was derived and calculated from the KYTC's April 24, 2012 correspondence and attachments.

The proposed project would result in the direct loss of 14.95 acres of forested habitat from one (1) Indiana bat habitat type as depicted in Table 1 below.

Table 1

Habitat Type	Forested Acreage Removed
Potential Habitat	14.95 acres

These Indiana bat habitat impacts are the impacts that are covered by this agreement and that were analyzed by the Service to assess the direct, indirect, and cumulative effects of the proposed project on Indiana bats.

Section 5: EFFECTIVE DATE AND TERMS OF AGREEMENT

This MOA is valid for the KYTC' consideration for 90 days from the date of the Service's signature below, shall be deemed effective on the last date signed below, and shall remain in effect until all terms of the agreement have been fulfilled, except as modified in Section 8 hereof.

The KYTC has determined that the removal of all Indiana bat habitat will likely occur during the timeframe when the Indiana bat is anticipated to be present (i.e., occupied), which is between the dates of April 1 – October 14. However, the KYTC may also choose to conduct tree clearing during the timeframe when the Indiana bat is not anticipated to be present (i.e.; unoccupied), which is between the dates of October 15 – March 31. The Indiana Bat Conservation Fund contribution amount that is identified in section 6.4 of the MOA is based on the assumption that all tree removal associated with the project will be conducted during the occupied timeframe. If additional forested areas not considered in Section 4 of this agreement are to be removed, then KYTC must coordinate with the Service to determine if additional modification of this agreement is necessary, and, if found necessary, KYTC will seek such modification.

Section 6: SPECIFIC OBLIGATIONS OF THE COOPERATORS

The KYTC and the Service agree to fulfill the following conditions to minimize the potential level of take of the Indiana bat, compensate for adverse effects on the Indiana bat that may result from construction of the project, and promote future conservation and recovery of the Indiana bat:

6.1 The Service will take the necessary steps to ensure that the project covered under this MOA meets federal requirements for compliance with the National Environmental Policy Act (NEPA) and ESA. If the KYTC has NEPA requirements beyond the scope of this MOA, the KYTC or other Federal action agency are responsible for those additional requirements.

With regard to the ESA, the Biological Opinion authorizes incidental take of Indiana bats associated with forested habitat removal. As such, paragraphs 6.3 and 6.4 are incorporated to ensure compliance with the Reasonable and Prudent Measures and Terms and Conditions of the biological opinion. The KYTC acknowledges that any divergence from these measures and conditions may result in a violation of Section 9 of the ESA.

6.2 The KYTC will take the necessary steps to ensure that the project covered under this MOA meets federal requirements for compliance with the National Historic Preservation Act (NHPA).

6.3 The project proposed by the KYTC, as described in Section 4, will result in the incidental take of Indiana bats in the form of habitat loss totaling not more than 14.95 acres of potential Indiana bat summer habitat. The KYTC may remove this habitat during the occupied and/or unoccupied time as stated in Section 5. Forested habitat associated with the proposed project, but not considered in this MOA, shall not be removed without further coordination with the Service.

6.4 The KYTC shall contribute \$43,355.00 to the Indiana Bat Conservation Fund (IBCF) administered by the Kentucky Natural Lands Trust (KNLT). This contribution is based on 14.95 acres of potential Indiana bat summer habitat using the process identified in the Indiana Bat Mitigation Guidance. Funds shall be provided to KNLT within thirty (30) days of the last signature to this MOA and upon receipt of an invoice from KNLT. The KYTC shall provide the Service with a copy of the check or transaction receipt within seven (7) business days of payment that shows the date and amount of the deposit.

In summary, this MOA provides recovery based conservation benefits for the Indiana bat in form of contributions to the IBCF which, in turn, will fund Indiana bat habitat protection, conservation, restoration and/or priority monitoring and research projects for the Indiana bat.

Section 7: COOPERATION

Both the Service and KYTC acknowledge that it is their desire to facilitate the processes set forth in this MOA by open communication and cooperation. Both parties agree to exercise their rights and obligations under this MOA in good faith. If at any time the KYTC has questions regarding this MOA or the Guidance, the Service agrees to make itself available for consultation in a timely fashion.

Section 8: MODIFICATION OR TERMINATION

Modifications to this MOA may be proposed by either party in writing and will become effective upon being reduced to a written instrument and being signed by duly authorized representatives of the Cooperators.

The KYTC or the Service may terminate this MOA at any time within or prior to thirty (30) days of the last signature to this MOA upon written notification from the other signatory party. Failure to fulfill the provisions, as specified, within paragraph 6.4 will result in automatic termination of this MOA.

Section 9: OTHER PROVISIONS

9.1 The Cooperators hereto agree that they shall be liable for the negligent or wrongful acts or omissions of their employees, agents, and assigns only to the extent liable under applicable law. Nothing in this MOA shall be interpreted or construed as constituting a waiver by any party of sovereign immunity or statutory limitation on liability.

9.2 Each provision of this MOA shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the MOA shall be prohibited or invalid under application law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this MOA.

9.3 No provision of this MOA shall be interpreted as or constitute a commitment or requirement that either party take actions in contravention of applicable laws, either substantive or procedural.

9.4 Nothing in the MOA shall be interpreted as or constitute a commitment or requirement that the Service obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341, or any other law or regulation.

9.5 Third Parties Not to Benefit: This MOA does not grant rights or benefits of any nature to any party not named or identified in this MOA.

9.6 Merger: This MOA contains the sole and entire MOA of the parties. No oral representations of any nature form the basis of or may amend this MOA. This MOA may be extended, renewed, or amended only when agreed to in writing by the parties.

9.7 Waiver: Failure to enforce any provision of this agreement by either party shall not constitute waiver of that provision, nor a waiver of a claim for subsequent breach of the same type, nor a waiver of any other term of this agreement. The waiver of any provision must be express and evidenced in writing.

9.8 Assignment: No part of this agreement shall be assigned to any other party.

Section 10: NOTICES AND AUTHORIZED REPRESENTATIVES

Notices shall be made in writing to the persons at the addresses listed below and may be given by personal delivery, mail or by telecopy (FAX) to the duly authorized representatives listed below. If there are changes in a party's representative, each party shall notify the other party, in writing, within thirty (30) days of the change in their representative.

U.S. Fish and Wildlife Service
Virgil Lee Andrews, Jr.
Field Office Supervisor
330 West Broadway, Room 265
Frankfort, Kentucky 40601
502/695-0468 (telephone)
502/695-1024 (fax)

Kentucky Transportation Cabinet
Division of Environmental Analysis
200 Mero Street
Frankfort, Kentucky 40622
Contact: Mr. David Waldner
502/564-7250 (telephone)

Each party hereby indicates its acceptance of the terms of the MOA as outlined herein by its signature below. The parties hereto have executed this MOA as of the last written date below:

U.S. Department of the Interior, Fish and Wildlife Service

BY: Michael G. Felt
TITLE: Field Supervisor
DATE: 4/24/12


for

Kentucky Transportation Cabinet

BY: [Signature]
TITLE: Secretary
DATE: 5/1/12

Approved as to Form and Legality:

[Signature]
KYTC Office of Legal Services
DATE: 4/25/12



U.S. Fish & Wildlife Service
Kentucky Ecological Services Field Office

U.S. Fish & Wildlife Service
Kentucky Ecological Services Field Office

U.S. Fish & Wildlife Service
330 West Broadway, Rm 265
Frankfort, KY 40601
Phone: 502-695-0468
Fax: 502-695-1024

Endangered, Threatened, & Candidate Species in <u>CLARK</u> County, KY			
Group	Species	Common name	Special Comments
Mammals	<i>Myotis grisescens</i>	gray bat	
	<i>Myotis sodalis</i>	Indiana bat	
Plants	<i>Lesquerella globosa</i>	globe bladderpod	
	<i>Trifolium stoloniferum</i>	running buffalo clover	

NOTES:

* Key to notations: E = Endangered, T = Threatened, C = Candidate, CH = Critical Habitat
 **Key to notations: K = Known occurrence record within the county, P = Potential for the species to occur within the county based upon historic range, proximity to known occurrence records, biological, and physiographic characteristics.

CONTRACT ID: 121015
COUNTY: CLARK
PROPOSAL: FD04 SPP 025 0089 005-007

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LINE NO	ITEM	DESCRIPTION	APPROXIMATE QUANTITY	UNIT	UNIT PRICE	AMOUNT
SECTION 0001 ROADWAY						
0010	00001	DGA BASE (REVISED: 5-14-12)	18,913.000	TON		
0020	00071	CRUSHED AGGREGATE SIZE NO 57	11.000	TON		
0030	00078	CRUSHED AGGREGATE SIZE NO 2	6.000	TON		
0031	00100	ASPHALT SEAL AGGREGATE (ADDED: 5-14-12)	43.000	TON		
0040	00212	CL2 ASPH BASE 1.00D PG64-22	16,694.000	TON		
0041	00291	EMULSIFIED ASPHALT RS-2 (ADDED: 5-14-12)	5.000	TON		
0050	00301	CL2 ASPH SURF 0.38D PG64-22	2,704.000	TON		
0060	00440	ENTRANCE PIPE-15 IN	220.000	LF		
0070	00441	ENTRANCE PIPE-18 IN	116.000	LF		
0080	00443	ENTRANCE PIPE-24 IN	144.000	LF		
0090	00445	ENTRANCE PIPE-30 IN	72.000	LF		
0100	00464	CULVERT PIPE-24 IN	61.000	LF		
0110	00466	CULVERT PIPE-30 IN	68.000	LF		
0120	00498	CULVERT PIPE-42 IN EQUIV	57.500	LF		
0130	00499	CULVERT PIPE-48 IN EQUIV	60.000	LF		
0140	01000	PERFORATED PIPE-4 IN	280.000	LF		
0150	01010	NON-PERFORATED PIPE-4 IN	72.000	LF		
0160	01020	PERF PIPE HEADWALL TY 1-4 IN	4.000	EACH		
0170	01028	PERF PIPE HEADWALL TY 3-4 IN	2.000	EACH		
0180	01396	METAL END SECTION TY 3-42 IN	2.000	EACH		

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LINE NO	ITEM	DESCRIPTION	APPROXIMATE QUANTITY	UNIT	UNIT PRICE	AMOUNT
0190	01451	S & F BOX INLET-OUTLET-24 IN	1.000	EACH		
0200	01452	S & F BOX INLET-OUTLET-30 IN	2.000	EACH		
0210	01825	ISLAND CURB AND GUTTER	100.000	LF		
0220	02014	BARRICADE-TYPE III	40.000	EACH		
0230	02091	REMOVE PAVEMENT	3,520.000	SQYD		
0240	02200	ROADWAY EXCAVATION	246,497.000	CUYD		
0250	02242	WATER	79.000	MGAL		
0260	02351	GUARDRAIL-STEEL W BEAM-S FACE	3,205.000	LF		
0270	02355	GUARDRAIL-STEEL W BEAM-S FACE A	124.000	LF		
0280	02360	GUARDRAIL TERMINAL SECTION NO 1	8.000	EACH		
0290	02363	GUARDRAIL CONNECTOR TO BRIDGE END TY A	4.000	EACH		
0300	02381	REMOVE GUARDRAIL	2,855.000	LF		
0310	02391	GUARDRAIL END TREATMENT TYPE 4A	14.000	EACH		
0320	02397	TEMP GUARDRAIL	750.000	LF		
0330	02429	RIGHT-OF-WAY MONUMENT TYPE 1	72.000	EACH		
0340	02432	WITNESS POST	72.000	EACH		
0350	02483	CHANNEL LINING CLASS II	1,929.000	TON		
0360	02545	CLEARING AND GRUBBING 40 ACRES	(1.00)	LS		
0370	02555	CONCRETE-CLASS B	185.000	CUYD		
0380	02562	SIGNS	279.000	SQFT		
0390	02650	MAINTAIN & CONTROL TRAFFIC	(1.00)	LS		

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COUNTY: CLARK
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LINE NO	ITEM	DESCRIPTION	APPROXIMATE QUANTITY	UNIT	UNIT PRICE	AMOUNT
0400	02651	DIVERSIONS (BY-PASS DETOURS) STA. 206+02.60	(1.00)	LS		
0410	02651	DIVERSIONS (BY-PASS DETOURS) STA. 213+50	(1.00)	LS		
0420	02651	DIVERSIONS (BY-PASS DETOURS) STA. 224+26.55	(1.00)	LS		
0430	02651	DIVERSIONS (BY-PASS DETOURS) STA. 245+97.75	(1.00)	LS		
0440	02651	DIVERSIONS (BY-PASS DETOURS) STA. 274+40.08	(1.00)	LS		
0450	02696	SHOULDER RUMBLE STRIPS-SAWED	14,882.000	LF		
0460	02701	TEMP SILT FENCE	8,347.000	LF		
0470	02703	SILT TRAP TYPE A	28.000	EACH		
0480	02704	SILT TRAP TYPE B	28.000	EACH		
0490	02705	SILT TRAP TYPE C	28.000	EACH		
0500	02706	CLEAN SILT TRAP TYPE A	84.000	EACH		
0510	02707	CLEAN SILT TRAP TYPE B	84.000	EACH		
0520	02708	CLEAN SILT TRAP TYPE C	84.000	EACH		
0530	02709	CLEAN TEMP SILT FENCE	25,041.000	LF		
0540	02726	STAKING	(1.00)	LS		
0550	02731	REMOVE STRUCTURE 10 X 5 RCBC	(1.00)	LS		
0560	02731	REMOVE STRUCTURE 14.5 WIDE CULVERT	(1.00)	LS		
0570	02731	REMOVE STRUCTURE 3 SPAN BRIDGE	(1.00)	LS		
0580	02731	REMOVE STRUCTURE 3 X 3 BOX CULVERT	(1.00)	LS		
0590	02731	REMOVE STRUCTURE 4 X 2 DOUBLE CULVERT	(1.00)	LS		
0600	02731	REMOVE STRUCTURE 6 X 8.5 RCB	(1.00)	LS		

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LINE NO	ITEM	DESCRIPTION	APPROXIMATE QUANTITY	UNIT	UNIT PRICE	AMOUNT
0610	02731	REMOVE STRUCTURE SINGLE SPAN BRIDGE	(1.00)	LS		
0620	05950	EROSION CONTROL BLANKET	5,926.000	SQYD		
0630	05952	TEMP MULCH	133,100.000	SQYD		
0640	05966	TOPDRESSING FERTILIZER	7.000	TON		
0650	05985	SEEDING AND PROTECTION	132,382.000	SQYD		
0660	06510	PAVE STRIPING-TEMP PAINT-4 IN	17,750.000	LF		
0670	06514	PAVE STRIPING-PERM PAINT-4 IN WHITE	16,638.000	LF		
0680	06514	PAVE STRIPING-PERM PAINT-4 IN YELLOW	15,067.000	LF		
0690	08100	CONCRETE-CLASS A	2.100	CUYD		
0700	08150	STEEL REINFORCEMENT	15.000	LB		
0710	10020NS	FUEL ADJUSTMENT	41,179.000	DOLL	1.00	41,179.00
0720	10030NS	ASPHALT ADJUSTMENT	34,916.000	DOLL	1.00	34,916.00
0730	20063EN9T	DRY-LAID ROCK FENCE	248.000	LF		
0740	21589NN	METAL END SECTION TY 3-48 IN (EQUIV)	2.000	EACH		
0750	23131ER701	PIPELINE VIDEO INSPECTION	120.000	LF		
SECTION 0002 BRIDGE-CULVERT						
0760	02231	STRUCTURE GRANULAR BACKFILL	208.400	CUYD		
0770	02998	MASONRY COATING	589.000	SQYD		
0780	03299	ARMORED EDGE FOR CONCRETE	175.300	LF		
0790	08001	STRUCTURE EXCAVATION-COMMON	1,277.000	CUYD		
0800	08002	STRUCTURE EXCAV-SOLID ROCK	1,502.000	CUYD		

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PROPOSAL: FD04 SPP 025 0089 005-007

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LINE NO	ITEM	DESCRIPTION	APPROXIMATE QUANTITY	UNIT	UNIT PRICE	AMOUNT
0810	08003	FOUNDATION PREPARATION 26530	(1.00)	LS		
0820	08003	FOUNDATION PREPARATION 26804	(1.00)	LS		
0830	08003	FOUNDATION PREPARATION 26805	(1.00)	LS		
0840	08003	FOUNDATION PREPARATION 26806	(1.00)	LS		
0850	08019	CYCLOPEAN STONE RIP RAP	717.000	TON		
0860	08033	TEST PILES	30.000	LF		
0870	08039	PRE-DRILLING FOR PILES	180.000	LF		
0880	08046	PILES-STEEL HP12X53	192.000	LF		
0890	08100	CONCRETE-CLASS A	976.400	CUYD		
0900	08104	CONCRETE-CLASS AA	296.200	CUYD		
0910	08150	STEEL REINFORCEMENT	127,123.000	LB		
0920	08151	STEEL REINFORCEMENT-EPOXY COATED	78,436.000	LB		
0930	08633	PRECAST PC I BEAM TYPE 3	749.200	LF		
0940	08662	PRECAST PC BOX BEAM CB17-48	478.500	LF		
0950	21532ED	RAIL SYSTEM TYPE III	393.900	LF		
SECTION 0004 MOB AND DEMOB						
0970	02568	MOBILIZATION (NO MORE THAN 5%)		LUMP		
0980	02569	DEMobilIZATION (AT LEAST 1.5%)		LUMP		
		TOTAL BID				