

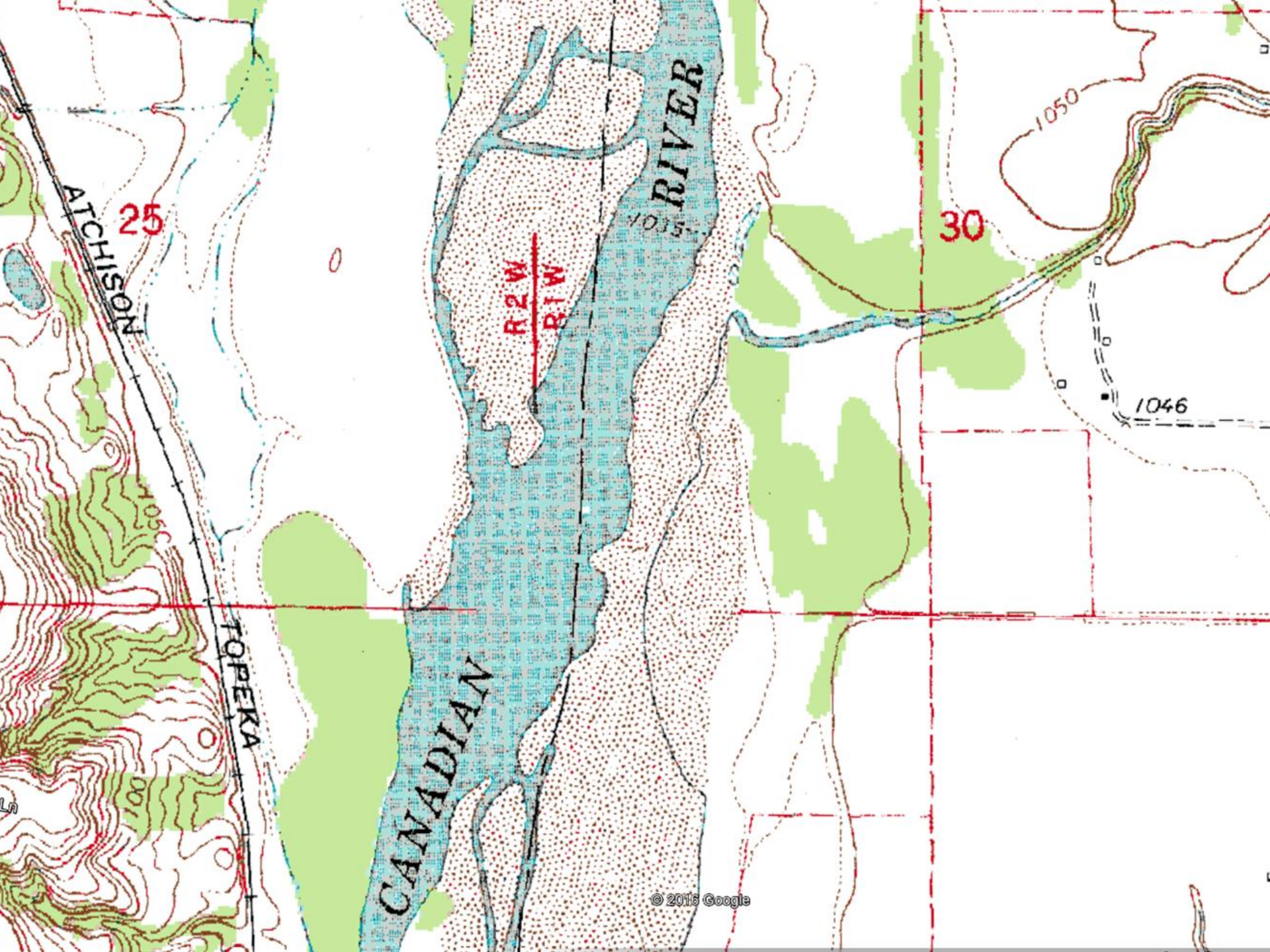
404 PERMITTING

PERMIT DETERMINATION, SUBMITTAL, & COMPLIANCE

Samantha Tepper
404 Permit Coordinator

SECTION 404 OF THE CLEAN WATER ACT

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged and fill material into waters of the United States (WOTUS). The phrase "waters of the United States" defines the extent of geographic jurisdiction of the Section 404 program. The term includes such waters as rivers, lakes, streams and most wetlands. Regulated activities include fills for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and conversion of wetlands to uplands for farming and forestry.



ATCHISON
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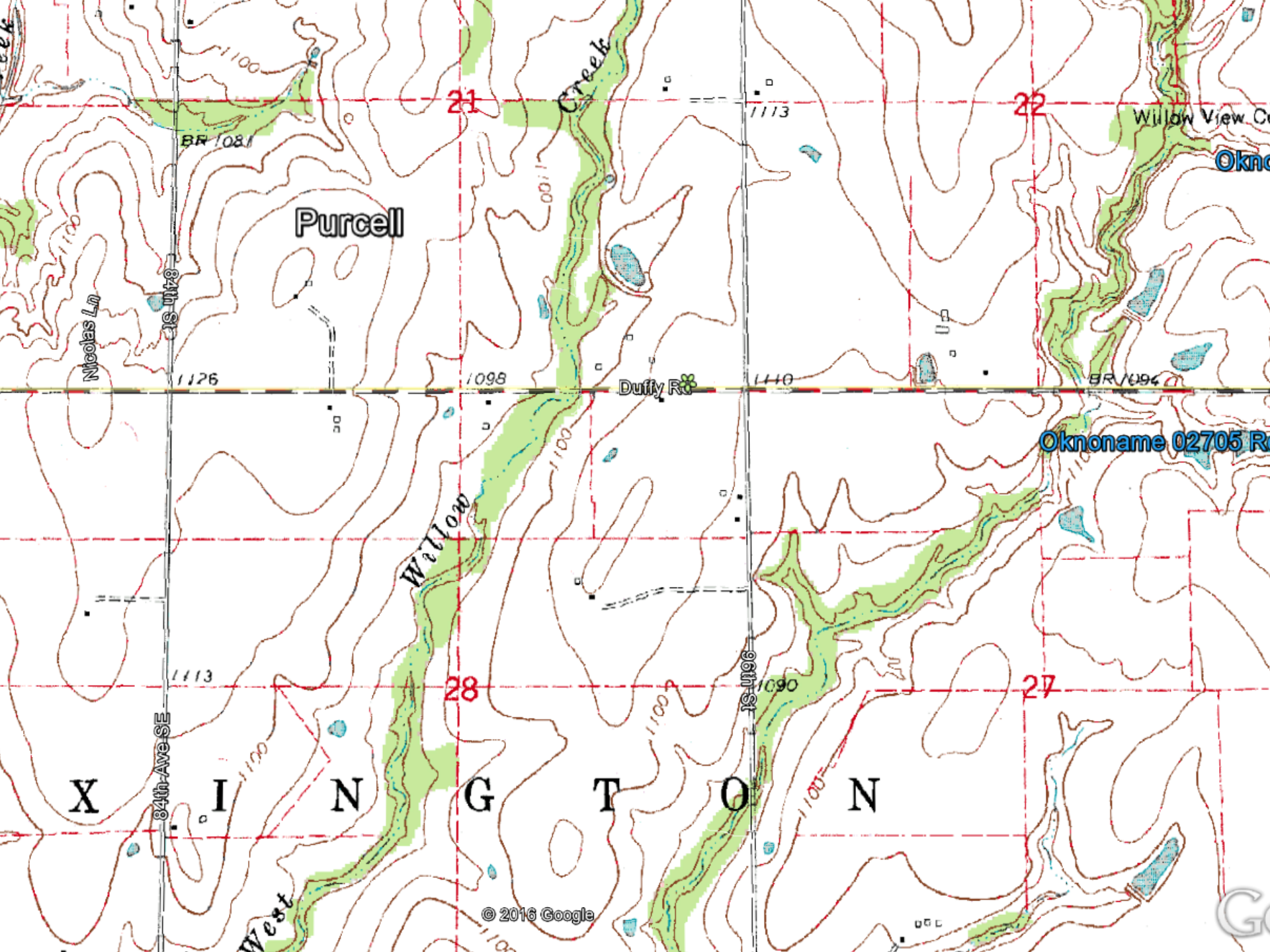
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R2W
R1W

CANADIAN
RIVER

TOPEKA

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Purcell

Willow Creek

21

22

28

27

X I N G T O N

West

Duffy Rd

84th Ave SE

90th St

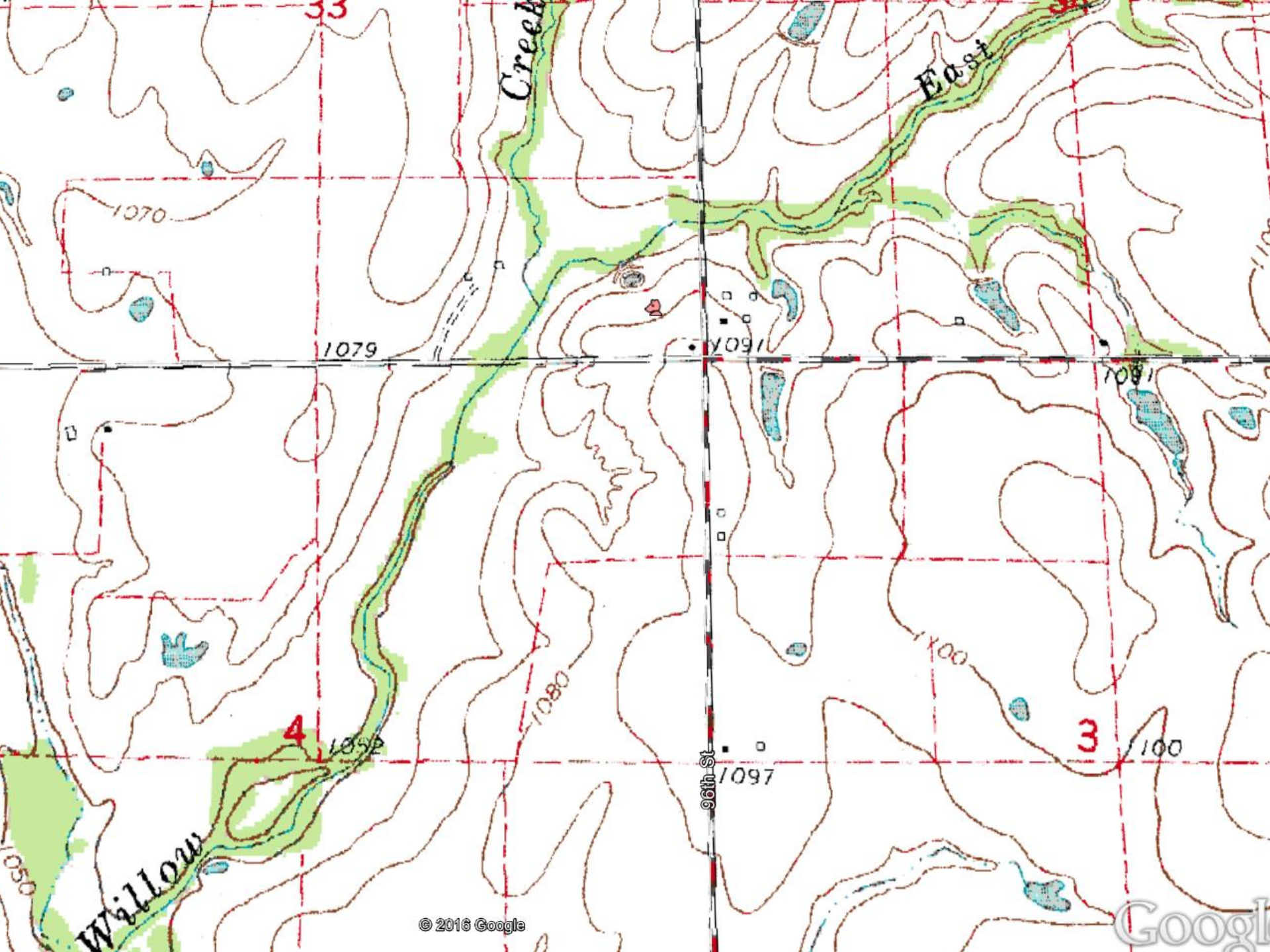
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NATIONWIDE PERMITS

- 52 total Nationwide Permits (NWP) for various activities which might impact WOTUS
- NWP 14 – Linear Transportation
 - NWP 03- Maintenance
 - NWP 06- Survey Activities
 - NWP 13- Streambank Stabilization
- Thresholds within the NWP's
- That is how you make your permit determination – we'll discuss this more
- 2012 Permit is about to expire but that's OK
 - Good for one year after the start of construction
 - Example: construction starts March 17, 2017
 - Permit valid until March 17, 2018
 - If you need more time let the USACE know you need to update your permit

NATIONWIDE PERMIT 14 CONDITIONS

- Can be found on the Tulsa District website
- <http://www.swt.usace.army.mil/Portals/41/docs/missions/regulatory/NWP/NW14%20-%20Linear%20Transportation%20Projects.pdf>
- Just a few of them
 - Adverse effects from impoundments
 - Soil erosion & sediment control
 - Removal of temporary fills

INDIVIDUAL PERMITS

- >0.5 ac of fill in WOTUS
- OR wetland impacts
 - Threshold at discretion of the USACE
- Major rivers
 - Regardless of impacts
- Interstate
 - Regardless of impacts
 - Willis Bridge
- Time is a major factor
 - Generally 9-12 months MINIMUM
- Requires separate 401 Water Quality Certification from DEQ
 - DEQ will review and make comments/requests
 - Will also be reviewed by the EPA

GENERAL PERMITS

- Work within Critical Resource Waters of Oklahoma
- Tulsa District has 4 GP's
 - GP 14 for transportation crossings
 - Has 401 Water Quality Certification from DEQ
 - DEQ still gets a 15 day comment period
 - Helps speed up the GP process for transportation projects
- Critical Resource Waters of Oklahoma
 - <http://www.swt.usace.army.mil/portals/41/docs/missions/regulatory/wqc/crw.pdf>

SECTION 10 WATERS

- Navigable waters/channels in Oklahoma
 - Mostly barge traffic
 - Requires coordination with Coast Guard
 - <http://www.swt.usace.army.mil/Missions/Regulatory/Section10Waters.aspx>

A FEW THINGS

- **There is no such thing as a SELF ISSUED PERMIT!**
- All must be submitted to the USACE
- Necessary so the USACE concurs with the determination
 - CYA Principle
- And they issue an acknowledgement of receipt with a USACE tracking number for any on site inspections
- Most especially for Non-Federally funded projects



PERMIT DETERMINATION

THRESHOLDS

REGULATORY THRESHOLDS FOR NWP 14

- No PCN
 - <0.1 ac of fill in WOTUS
 - No Wetland Impacts
- PCN
 - >0.1 ac of fill
 - **Limited to ½ acre for WOTUS**
 - Wetland Impacts
 - No threshold
 - T & E Species Issues
 - Section 10 Water
 - Historic Properties
- PCN with Mitigation
 - If the USACE Requires
 - Generally over .2 ac

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
SECTION 404 PERMIT APPLICATION FORM FOR
COUNTY PROJECTS**

DATE: _____

Project No.:		J/P:		Facility:		County:	
Description:							
Let Date:		Division:		Programmed Construction Project Cost:			

Sta or Str. No.	Location			Waterbody Critical Resource Water?	Type	Description		Calculations			
	Latitude	Longitude	Legal			Existing Structure/Condition	New Structure	Area acre	Cubic Yards of Fill*	Linear Feet of Impacts	Notes
Structure name and Station from plans	Decimal Degrees	Decimal Degrees	Township, Range, Section	Name of Waterbody and if it is a Critical Resource Water	See below	Size, Type, and Condition of Structure	Size and Type of Structure	Area of Fill below OHWM	Cubic Yards of fill	Length of Impacts to Blue Line Stream	Number 1, 2, etc. List note description below

AVOIDANCE AND MINIMIZATION:

Provide a brief explanation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts.

Types: BP--Bank Protection, CC--Channel Change, Chan--Channel Work, RCB--Reinforced Concrete Box, SB--Span Bridge,** Wet--Wetlands, Misc--Miscellaneous
**Wetland Information will need to be added from the delineation report by the Consultant

*Only necessary if impacts are over 0.1 acres

Notes:

- Number 1, 2, etc. Describe note here
- Note whether the impact is fill or excavation in existing channel
 - Note type of fill (rip rap, drilled shafts, dirt, etc.)
 - Note Ordinary High Water Mark (OHWM) elevation
 - Note any other important information pertaining to the calculations and impacts

FHWA Approved Clearance type: CE: _____ FONSI/EA: _____ EIS: _____ Date: _____ Pending: _____ None: _____

Applicant: Name: County Commissioner Name Phone No: _____

Address: County Address

Application Prepared By: Name: Consultant Name or County Name Phone No: _____

Processing Agent: Consultant or County Address

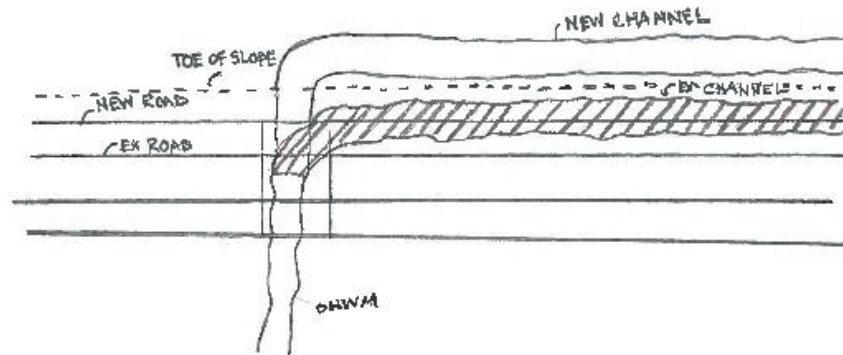
APPLICATION

- Any fill below the Ordinary High Water Mark (OHWM)
- OHWM – demarcation in the field; shelving, bed & bank, vegetation line, ETC.
- Typically designers use Q2
 - Which is typically pretty close to OHWM
- Examples-

IMPACT EXAMPLES

COUNTY:	PROJ. NO.:	J.P. NO.:	DATE:
DESCRIPTION:			SHY. OF
CALCULATED BY:	DATE:	CHECKED BY:	DATE:

 AREA OF DISTURBANCE

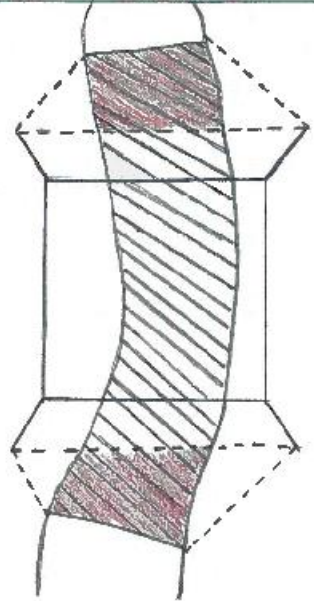


WIDENING (ADDING SHOULDERS, 4-LANE, ETC.) OR OFFSET WITH CHANNEL CHANGE.

IMPACT EXAMPLES

COUNTY:	PROJ NO.:	J.P. NO.:	DATE:
DESCRIPTION:			SHT. OF
CALCULATED BY:	DATE:	CHECKED BY:	DATE:


-  AREA OF DISTURBANCE
-  CHANNEL WORK ASSOCIATED WITH RCB




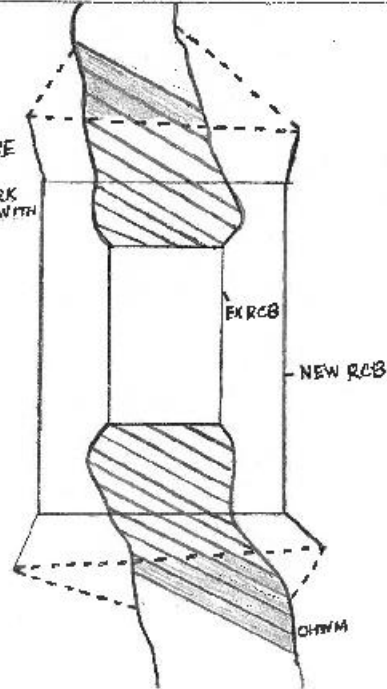
NEW RCB

IMPACT EXAMPLES

COUNTY:	PROJ. NO.:	J.P. NO.:	DATE:
DESCRIPTION:			SH. OF
CALCULATED BY:	DATE:	CHECKED BY:	DATE:

 AREA OF DISTURBANCE

 CHANNEL WORK ASSOCIATED WITH RCB




REPLACING RCB

IMPACT EXAMPLES

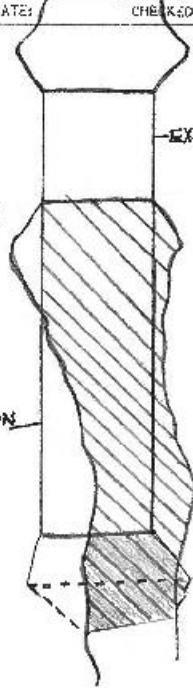
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DESCRIPTION:			SH. OF
CALCULATED BY:	DATE:	CHECKED BY:	DATE:

 AREA OF DISTURBANCE

 CHANNEL WORK ASSOCIATED WITH RCB

EXTENSION

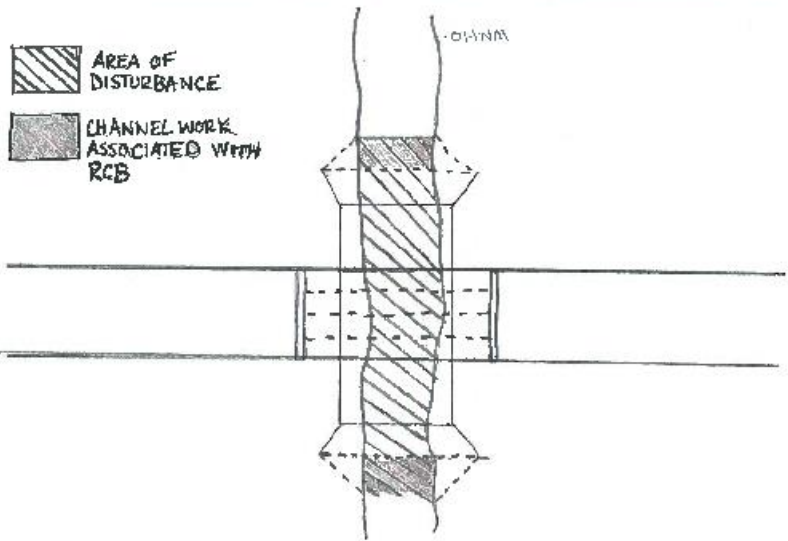
EX RCB



EXTENDING RCB

IMPACT EXAMPLES

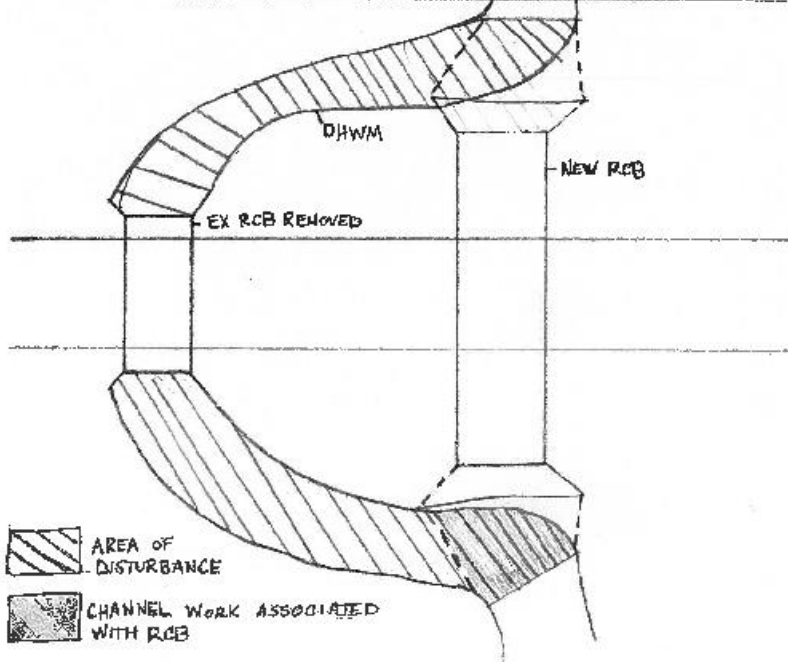
COUNTY:	PROJ. NO.:	J.P. NO.:	DATE:
DESCRIPTION:			SHT. OF
CALCULATED BY:	DATE:	CHECKED BY:	DATE:



REPLACING SPAN BRIDGE WITH RCB

IMPACT EXAMPLES

COUNTY:	PRD. NO.:	J.P. NO.:	DATE:
DESCRIPTION:			SHT. OF
CALCULATED BY:	DATE:	CHECKED BY:	DATE:



REPLACING RCB AND CHANNEL CHANGE



**FEDERALLY FUNDED
PROJECTS**
SUBMITTAL CHECKLIST

COMPLETING THE CHECKLIST

Submitted by:

Who is filling out the form (CED or Consultant)

Organization:

ODOT for State Highway Projects or Name of County/City for LG Projects

Phone No:

Phone no of person completing the form

Submittal Date:

Date of submittal to USACE

County:

County Name

JP No:

JP number for construction project

Highway No:

State highway number or County Road number

Project Description from
Oracle:

Construction Let Date/RW
Date for USACE properties

Earlier of Oracle or Request Memo

COMPLETING THE CHECKLIST

Applicant Information

ODOT - Provide Applicant Information below

Oklahoma Department of Transportation, 200 NE 21st Street. Oklahoma City, OK 73105

County

Provide County Commissioner's Name and Address

NEPA Completed? *Please check one*

Yes (INCLUDE Cultural Resources Section and Biological Studies Section from the NEPA Document)

No - Project has no federal funds (INCLUDE Cultural Resources Recon from ODOT and species list from USFWS website for the project area) (County projects with no federal funds)

COMPLETING THE CHECKLIST

The project is being submitted as a No PCN Required to USACE for their records

The project is being submitted as a PCN with No Mitigation Required to USACE because *(Check one)*

Loss of Wetlands *(Provide information on why mitigation is not needed)*

Loss of Waters greater than 0.1 AC *(Provide information on why mitigation is not needed)*

Adverse impact on an endangered species or historic property

Section 10 Waters

COMPLETING THE CHECKLIST

The project is being submitted as a General Permit to USACE because of Critical Resource Water

The project is being submitted as a PCN with Mitigation to USACE because of Loss of Waters and Wetlands between 0.1 and 0.5 AC

Note: Loss of Waters and Wetlands greater than 0.5 AC requires an IP. STOP - Use IP Form from USACE website)

SUPPORTING DOCUMENTS

PCN Calculations with Avoidance & Minimization Statement from Designer
(All Projects)

Plans (All Projects)

Waters and Wetlands Delineation and Calculations (All Projects)

SUPPORTING DOCUMENTS

Threatened & Endangered Species Coordination *(Please check one)*

Project has no effect on T&E Species and hence does not require coordination with USFWS (attach ODOT Memo and T&E Species Report) *(Projects with NEPA)*

Project has had informal consultation with USFWS for T&E Species (attach USFWS coordination and ODOT T&E Species Report) *(Projects with NEPA)*

Project has had formal consultation with USFWS for T&E Species (attach USFWS formal consultation info) *(Projects with NEPA)*

Project may require formal or informal consultation with USFWS for T&E Species through USACE (attach USFWS Online Project Review Package for projects) *(County projects with no federal funds)*

SUPPORTING DOCUMENTS

- Check the Biological Studies NEPA Summary Form
 - Now called the biological tracking form (either work fine)

No coordination

- No effect all species

Informal

- May affect, unlikely to adversely affect for one or multiple species

Formal Section 7 Consultation

- May affect, likely to adversely affect for one or more species
- Critical Habitat

SUPPORTING DOCUMENTS

Section 106 Coordination *(Please check one)*

Project has no potential historic or archeological sites (Include Recon Report from ODOT (County projects with no federal funds) or memo from ODOT CR Specialist (Projects with NEPA)

Project has had consultation with SHPO for potential historic properties or archeological sites (attach ODOT Section 106 Consultation package) (Projects with NEPA)

Project may require consultation with SHPO for potential historic properties or archeological sites (Include Recon Report from ODOT) (County projects with no federal funds)

SUPPORTING DOCUMENTS

Mitigation Plan if applicable (All Projects)

Detailed Avoidance and Minimization Statement if applicable (All Projects)

NON FEDERALLY FUNDED PROJECTS

SUBMITTAL CHECKLIST

COMPLETING THE CHECKLIST

Submitted by:

Who is filling out the form (CED or Consultant)

Organization:

ODOT for State Highway Projects or Name of County/City for LG Projects

Phone No:

Phone no of person completing the form

Submittal Date:

Date of submittal to USACE

County:

County Name

JP No:

JP number for construction project

Highway No:

State highway number or County Road number

Project Description
from Oracle:

Construction Let
Date/RW Date for
USACE properties

Earlier of Oracle or Request Memo

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Applicant Information

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COMPLETING THE CHECKLIST

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Section 10 Waters

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Note: Loss of Waters and Wetlands greater than 0.5 AC requires an IP. STOP - Use IP Form from USACE website)

SUPPORTING DOCUMENTS



PCN Calculations with Avoidance & Minimization Statement from Designer (All Projects)



Plans (All Projects)



Waters and Wetlands Delineation and Calculations (All Projects)



SUPPORTING DOCUMENTS

THREATENED & ENDANGERED SPECIES COORDINATION

Project has no effect on T&E Species and hence does not require coordination with USFWS (attach ODOT Memo and T&E Species Report) (Projects with NEPA)

Project has had informal consultation with USFWS for T&E Species (attach USFWS coordination and ODOT T&E Species Report) (Projects with NEPA)

Project has had formal consultation with USFWS for T&E Species (attach USFWS formal consultation info) (Projects with NEPA)

Project may require formal or informal consultation with USFWS for T&E Species through USACE (attach USFWS Online Project Review Package for projects) (County projects with no federal funds)

<https://www.fws.gov/southwest/es/oklahoma/okesfo%20permit%20home.htm>

SUPPORTING DOCUMENTS

Project has no potential historic or archeological sites (**Include Recon Report from ODOT** (County projects with no federal funds) or memo from ODOT CR Specialist (Projects with NEPA)

Project has had consultation with SHPO for potential historic properties or archeological sites (attach ODOT Section 106 Consultation package) (Projects with NEPA)

Project may require consultation with SHPO for potential historic properties or archeological sites (**Include Recon Report from ODOT**) (County projects with no federal funds)

SUPPORTING DOCUMENTS

Mitigation Plan if applicable (All Projects)

Detailed Avoidance and Minimization Statement if applicable (All Projects)

NON FEDERALLY FUNDED PROJECTS

- USACE may require additional studies/coordination
 - Biological Report
 - Cultural Resources Report
 - ETC
- Dependent on project impacts, endangered species, ETC
- Extremely important to send non-federally funded projects to the USACE to ensure that all federal 'loops' get closed
 - With NEPA these loops are already closed
 - Imperative that these loops are addressed

SUBMITTING THE CHECKLIST FOR BOTH FEDERALLY FUNDED & NON FEDERALLY FUNDED PROJECTS

- Submit the checklist and supporting documents to the Local Government Project Manager
 - They will submit to the USACE
 - Keep POC streamlined for each division
- Checklist with supporting documents needs to be submitted ASAP
- To save hassle on the back end submit to USACE 1 year prior to project let
- Provide complete and accurate supporting documents to the PM's
- If it's too good to be true it probably is
 - Environmental clearance in 2 weeks is NOT probable, feasible OR realistic
 - Especially the Eastern portion of the state!
 - CRW's
 - T&E Species
 - Critical habitat



COMPLIANCE

PERMIT COMPLIANCE

COMPLIANCE

- **Section 404 of the Clean Water Act**
 - Federal regulation
 - Must comply with all of the agencies that are involved with our projects
 - And any plan notes that have to do with them
 - i.e. Species Notes- USFWS, SHPO, Tribal, ETC
 - Soil erosion & sediment control
 - WOTUS = Waters of the state
 - Sediment = fill = illegal discharge
 - Notes are on the plans for a reason
 - Basically, if we are not in compliance with other federal and state regulations we are out of compliance with our 404 permit
 - Pay attention to the permit conditions
 - 404 plan notes page in the future

QUESTIONS?

THANK YOU!