



## ENVIRONMENTAL PERMITTING MEMORANDUM

To: Brad Deal, PE  
Attn: Ron Nelson  
From: Colter Williams, PWS; Marcus Rubenstein, CPESC  
Kimley-Horn  
Date: April 1, 2024  
Re: **Brannen Pond Road Drainage Repairs Project**  
**Bulloch County, GA**

---

The following memorandum summarizes the proposed roadway and culvert replacement project, and the environmental regulations associated due to the project's proximity to federal and state jurisdictional aquatic resources and their buffers. The project is located near the intersection of Brannen Pond Connector and Cleary Lane in Bulloch County, Georgia. Coordinates to the approximate center point of the project are (32.349051, -81.659073). Based on a review of photographs and desktop databases, the aquatic system that the roadway crosses would likely be considered jurisdictional by the United States Army Corps of Engineers (USACE) and contain buffered waters of the State (Georgia Environmental Protection Division (GAEPD)).

Based on review of federal and state regulations and conversations with Brian Moore at the USACE Savannah District, the project meets the requirements of a Nationwide Permit (NWP) 3(a) for maintenance activity and will not require coordination with the USACE or submittal of a Pre-Construction Notification (PCN). The USACE however does appreciate projects abiding by regional conditions to ensure that installations of new culverts in WOTUS are designed to allow for the passage of aquatic organisms, maintain baseflows, and control flood events. Furthermore, based on the orientation of the existing and proposed roadway to the stream, the project will likely be exempt from the State of Georgia stream buffer variance processes. A conceptual design plan is included in Attachment A.

### **Regulatory Background and Methodology**

#### *Federal Regulations*

Section 404 of the Clean Water Act (Section 404) is administered by the USACE and regulates most discharges of dredge or fill material into waters of the U.S., including wetlands. The phrase "*discharges of dredge or fill material*" essentially includes all land disturbing activities within jurisdictional waters accomplished via use of mechanized equipment. Waters of the U.S. (WOTUS) are currently defined under the 1986 WOTUS Definition (33 CFR Part 328) which includes most relatively permanent

waterways (i.e., intermittent, or perennial streams/creeks, rivers, tributaries, etc.), water bodies (i.e., ponds, lakes, etc.), and wetlands.

Federally regulated streams are identified based on the presence of a channel bed and bank, and an ordinary high-water mark (OHWM). The OHWM is defined as “*the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas*” (33 CFR 328.3(c)(7)).

The definition of a Section 404 jurisdictional wetland is, “*those areas that are inundated or saturated by surface or ground water (hydrology) at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation (hydrophytes) typically adapted for life in saturated soil conditions (hydric soils). Wetlands generally include swamps, marshes, bogs, and similar areas*” (33 CFR 328.3(b)). The 1987 *United States Army Corps of Engineers Wetlands Delineation Manual* (Wetland Manual) and associated regional supplement (Version 2.0) is the legally mandated system for identifying Section 404 jurisdictional wetlands and is based upon satisfying three criteria--hydrophytic vegetation, hydric soils, and wetland hydrology. All other waters, such as streams and lakes, are established as jurisdictional or non-jurisdictional in accordance with defining criteria outlined in USACE regulations (Part 328 of Title 33, Code of Federal Regulations) and relevant court cases and guidance.

#### *State and Local Issuing Authority (LIA) Regulations*

The Georgia Erosion and Sedimentation Act (GESA) of 1975, as amended in 2003 (O.C.G.A 12-7-1) is administered by the Georgia Environmental Protection Division (EPD). Amongst its charges, this statute regulates land-disturbing activities, erosion and sediment controls, and the protection of buffered State waters.

GESA establishes buffers along the banks of all State waters, “as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action.” The State mandated stream buffer is 25-feet. The field study included an assessment of onsite aquatic features using accepted guidance documents that the State of Georgia relies upon to assess buffered waters of the State. Jurisdictional wetlands are not considered buffered waters of the State and are not regulated by the GESA. Additionally, ephemeral non-trout streams do not require State buffers.

#### **Project Understanding**

Brannen Road was previously a dirt road that was re-constructed into a two-lane asphalt road sometime between 2010 and 2013. As part of the roadway improvements, dual 60-inch culverts were constructed to control the hydrology of the area. During Hurricane Ida in 2021, the roadway was breached and resulted in the existing dual 60-inch culverts to be blown out, and the roadway to be overtopped. As a result, portions of the roadway collapsed, and the culverts no longer serve a proper function to control the hydrology of the area.

The proposed project intends to restore the roadway to pre-existing conditions, however, will up-size the proposed culverts to dual 10-foot by 7-foot box culverts. The culvert up-sizing will allow for the project to comply with the Savannah Districts 2021 Regional Conditions for roadways and culvert installation in perennial streams. The proposed culverts will be same length as the previous culverts,

and the roadway fill footprint will not be widened from previous conditions, resulting in no new temporary or permanent discharge of fill material in WOTUS.

### **Nationwide Permits – (USACE)**

Nationwide Permits are general permits that are approved every five years by the USACE and are required for unavoidable impacts to jurisdictional waters of the United States. The current Nationwide Permits are set to expire on March 14, 2026. There are currently fifty-nine (59) Nationwide Permits that an applicant may request authorization for coverage under. One of the Nationwide Permits applicants may request coverage under is Nationwide Permit 3(a) – Maintenance.

The Nationwide Permit (NWP) 3(a) covers *“The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure’s configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the 4 repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.”*

### **Savannah District – 2021 Regional Conditions (Part C(2))**

While an NWP 3(a) does not require the submittal of a PCN, if new temporary or permanent impacts occur outside of the footprint of the existing roadway fill, a PCN may be required by the USACE.

*“A PCN is required for use of any NWP that results in temporary and/or permanent adverse effects to 0.1 acre or more of wetlands, other special aquatic sites, and other waters (such as lakes and ponds), or 0.01 acre of stream.”*

### **Stream Buffer Variance – (GAEPD)**

A Stream Buffer Variance (SBV) from the GAEPD is required for disturbance to the 25-foot buffer of State waters *“as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action.”* However, the roadway crossing is considered exempt from the SBV process as described in the exemption criteria (391-3-7.05(1)(c)) *“where roadway drainage structures must be constructed within the twenty-five (25) foot buffer area of any state waters or the fifty (50) foot buffer of any trout stream and cause a width of disturbance of not more than 50 feet within the buffer.”*



Brannen Pond Rd

Upper Black Creek

Cleary Rd

Brannen Pond Rd

Upper Black Creek

(2) 10' x 7' RCBC

## **Summary**

Given the project understanding, and based on conversations with the USACE Savannah District, the project will meet the requirements of a Nationwide Permit (NWP) 3(a) for maintenance activity and will not require completion of a Pre-Construction Notification (PCN). Additionally, due to the nature of the project as a repair to an existing roadway, the project will be exempt from the stream buffer variance processes for the State.

Following detailed grading and drainage design, a site plan along with this memorandum may be submitted to the agencies for their concurrence of "No Permit Required".