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100 North Senate Avenue
 Indianapolis, Indiana 46204
 (317) 232-8603
 (800) 451-6027
 www.IN.gov/idem
 September 22, 2010

VIA CERTIFIED MAIL HAND DELIVERY

Mr. Nathan Saxe
 Indiana Department of Transportation
 100 N. Senate Avenue, Room N642
 Indianapolis, IN 46204

Dear Mr. Saxe:

SCANNED TO ELECTRONIC FILE

103-0001-1P
 PROJECT NUMBER

09-24-10
 DATE

ms
 INITIAL

EVANSVILLE INDIANAPOLIS ILLINOIS

Re: Section 401 Water Quality Certification
 Project: I-69 Section 2
 IDEM No.: 2010-275-63-JWR-A
 COE No.: LRL-2010-466-djd
 INDOT Des. No. 0500440
 County: Daviess, Gibson & Pike

Office of Water Quality staff has reviewed your application for Section 401 Water Quality Certification dated June 18, 2010, and received June 22, 2010. According to the application, you propose to construct I-69 Section 2 of 6 which will be a 4-lane interstate facility between SR 64 in Gibson County and US 50 in Daviess County. The total project length for Section 2 is approximately 28 miles. The construction of the interstate facility will impact 14 wetlands totaling 4.98 acres of emergent wetland, 0.03 acre of scrub shrub wetland, and 10.33 acres of forested wetland. The project will also impact 0.72 acre of aquatic bed wetland and 11 jurisdictional ponds totaling 3.83 acres. Additionally, the project will impact 121 streams totaling 45,645 linear feet. Approximately 8,615 linear feet of the 45,645 linear feet total will be bridged or spanned resulting in no permanent fill discharged below the ordinary high water mark. Total permanent stream impacts associated with this project will be 37,030 linear feet. The impacts are necessary to construct the road bed and other transportation related infrastructure such as bridges, culverts, and ramps. Only clean fill material is proposed to be discharged into the aquatic environments. The project is located within numerous sections in Gibson, Pike and Daviess Counties in the Patoka (05120209) and Lower White (05120202) watersheds. The project begins at SR 64 near Oakland City in Gibson County and extends north and northeast to US 50 near the city of Washington in Daviess County.

As compensatory mitigation for the forested wetland impacts, you will create 30.99 acres of forested wetland. As compensatory mitigation for scrub shrub wetland impacts and jurisdictional pond impacts, you will create 3.92 acres of scrub shrub wetland. As compensatory

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mitigation for emergent wetland impacts and aquatic bed impacts, you will create 11.4 acres of emergent wetland. As compensatory mitigation for stream impacts, you will recreate approximately 7,605 linear feet of stream channel onsite and create 29,425 linear feet of stream with forested riparian corridor at 4 offsite mitigation locations.

The four off-site compensatory mitigation sites are known as the Cornelius site, Corn site, Purcell site, and Cooper/Buck site. All four of these sites contain the cumulative compensatory mitigation requirements for Section 2 and Section 3 of I-69. In addition to these sites, another site has been included to provide contingency mitigation wetland acreage. The site is known as the Bartley site and it consists of 136 acres with an existing 71.6 acre forested upland/wetland complex. It is proposed to create 50.2 acres of forested wetland and 6.4 acres of emergent wetland as contingency wetland mitigation at this site. Any unused compensatory mitigation acreage at the Bartley site will be used for future Indiana Department of Transportation projects or included in a proposed Statewide Umbrella Mitigation Bank.

Based on available information, it is the judgment of this office that the proposed project will comply with the applicable provisions of 327 IAC 2 and Sections 301, 302, 303, 306, and 307 of the Clean Water Act if the recipient of the certification complies with the conditions set forth below. Therefore, subject to the following conditions, the Indiana Department of Environmental Management (IDEM) hereby grants Section 401 Water Quality Certification for the project described in your application received June 22, 2010, and modifications dated August 31, 2010, September 14, 2010, and September 15, 2010. Any changes in project design or scope not detailed in the application described above or modified by the conditions below are not authorized by this certification.

CONDITIONS OF THE SECTION 401 WATER QUALITY CERTIFICATION:

The recipient of the certification shall:

- 1) Deposit any dredged material in a contained upland disposal area to prevent sediment runoff to any waterbody.
- 2) Install erosion control methods prior to any soil disturbance to prevent soil from leaving the construction site. Appropriate erosion control methods include, but are not limited to, straw bale barriers, silt fencing, erosion control blankets, phased construction sequencing, and earthen berms. Monitor and maintain erosion control structures and devices regularly, especially after rain events, until all soils disturbed by construction activities have been permanently stabilized.
- 3) Install silt fence or other erosion control measures around the perimeter of any wetlands and/or other waterbodies to remain undisturbed at the project site.
- 4) Allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials:
 - a) to enter the property of the recipient of the certification;
 - b) to have access to and copy at reasonable times any records that must be kept under

- the conditions of this certification;
- c) to inspect, at reasonable times, any monitoring or operational equipment or method; collection, treatment, pollution management or discharge facility or device; practices required by this certification; and any mitigation wetland site;
 - d) to sample or monitor any discharge of pollutants or any mitigation wetland site.
- 5) Complete all approved discharges no later than two (2) years of the date of issuance of this Section 401 Water Quality Certification. The applicant may request a one (1) year extension to the Section 401 Water Quality Certification by submitting a written request ninety (90) days prior to the deadline stated above. The written request shall contain an account of which discharges and mitigation have been completed and list the reasons an extension is requested.
 - 6) Implement the mitigation plan as described in correspondence from Samuel Sarvis, Deputy Commissioner-INDOT, dated August 31, 2010, and Jeremy Kieffner, Bernardin, Lochmueller & Associates, dated September 14, 2010 (referred to collectively hereinafter as the “mitigation plan”), and as modified by the conditions of this certification. The wetlands and streams created or restored pursuant to the mitigation plan shall be referred to hereinafter as the “mitigation wetland” or “mitigation wetlands.”
 - 7) Complete all activities necessary to create the mitigation wetlands within one (1) year of the effective date of this certification, unless IDEM grants a written extension upon request. These activities include excavation, grading, installation of hydrologic controls, and planting.
 - 8) Monitor the mitigation wetland sites for a minimum period of seven (7) years. If the sites do not meet the success criteria, specified in **Condition 9 and 10**, within seven (7) years then monitoring will continue for an additional three (3) years for a total of ten (10) years. For IDEM to release the mitigation sites from this monitoring requirement, you must demonstrate to IDEM, through your monitoring reports, that the sites meet or exceed the success criteria. If the sites fail to meet the success criteria within the seven (7) year monitoring period then corrective actions will be required. These corrective actions may include additional grading, planting, relocation, or other actions deemed necessary by IDEM to meet the success criteria. Corrective actions often include extended monitoring to verify the effectiveness of the corrective action. Extended monitoring may constitute the sole corrective action if IDEM believes that the sites need more time to meet the success criteria. Once you believe that the sites meet or exceed all of the success criteria listed below, you may submit a proposed final monitoring report to IDEM and suspend monitoring. If IDEM confirms that the mitigation sites meet or exceed all of the success criteria, then IDEM shall notify you that the mitigation is complete and that you may permanently discontinue monitoring.
 - 9) Ensure that the 5 mitigation wetland sites meet all of the following success criteria at the end of monitoring:
 - a) The area of wetland established, as measured by a wetland delineation, must meet or

- exceed the 46.31 acres of wetland compensatory mitigation required.
- b) The wetlands actually established must consist of 30.99 acres of forested wetland, 3.92 acres of scrub shrub wetland, and 11.4 acres of emergent wetland.
 - c) Greater than 50% of the dominant vegetation species must have a wetland indicator of FAC (i.e., facultative) or wetter.
 - d) The hydrology at the mitigation wetland sites must meet the wetland hydrology criteria contained in the United States Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1 (January, 1987).
 - e) The combined surface areal coverage of *Phalaris arundinacea* (reed canary grass) and *Typha spp.* (cattail) at each site shall not exceed 15%.
 - f) The mitigation wetland sites are free of the following exotic species: *Lythrum salicaria* (purple loosestrife), *Phragmites australis* (common reed), and *Myriophyllum spicatum* (water milfoil).
 - g) Native plant species excluding *Typha spp.* (cattail) must have an areal cover of at least 70% at each site.
 - h) At each site, no more than 10% of the surface area coverage of the mitigation wetland may be open water, bare ground, or a combination of the two. Open water and bare ground are defined as areas with less than 10% areal vegetative cover.
 - i) No single species within the wetland mitigation planting zones shall constitute more than 25% of the surviving species.
 - j) No more than 15% of the volunteer species listed in the mitigation plan may be counted as part of meeting live stem density survival rates at each site.
 - k) For forested areas, the average density of live individuals of tree species shall be at least 200 stems per acre.
 - l) For scrub shrub areas, the average density of live individuals of shrub shall be at least 300 stems per acre.
 - m) Any additional success criteria specified in the mitigation plan.
- 10) Ensure that the stream mitigation areas meet all of the following success criteria at the end of monitoring:
- a) Approximately 29,425 linear feet of stream channel shall be functioning on the sites.
 - b) The mean channel width, depth, channel slope, sinuosity, bankfull dimensions, and bank characteristics of the stream channel mitigation areas shall match the mitigation design plans in Attachment 4 with the range of natural variability.
 - c) All stream channels shall have 50 foot wide forested riparian corridors on each side of the channel. The forested riparian corridor plantings shall consist of two zones. Zone B shall extend from the top of bank out 25 feet. Zone C shall extend out 25 feet from Zone B.
 - d) A total of 67.55 acres of forested riparian corridor shall be present at the end of monitoring.
 - e) At least 240 live stems/acre shall be alive and showing signs of growth at the end of monitoring.
 - f) No single species within the forested riparian corridor area shall constitute more than 40% of the surviving species.

- g) No more than 20% of the volunteer species identified in the mitigation plan may be counted as part of meeting live stem density survival rates.
 - h) The forested riparian corridor is free from *Elaeagnus umbellata* (autumn olive), *Elaeagnus angustifolia* (russian olive), *Rosa multiflora* (multiflora rose), and *Lonicera maackii*, *L. morrowii*, *L. tatarica* (honeysuckle).
 - i) Any additional success criteria specified in the mitigation plan.
- 11) Monitor the mitigation wetland sites during the 1st, 2nd, 3rd, 5th, and 7th years, starting one full growing season after construction and planting, to determine whether they are achieving the success criteria specified in **Condition 9 and 10** of this certification. You must complete corrective actions as are necessary to ensure the mitigation wetland sites will achieve the success criteria within the required period. These corrective actions may include additional grading, plantings, or relocation of the mitigation sites, along with extended monitoring. Describe, in the monitoring reports, any corrective actions taken to ensure success of the mitigation sites.
- 12) Permanently and clearly identify on-site all mitigation wetlands after construction of the mitigation wetlands. If the mitigation wetlands to be established are adjacent to or near existing wetlands, then permanent stakes/markers must distinguish the mitigation wetland from the existing wetland.
- 13) Submit annual monitoring reports of the mitigation wetland sites to this office by December 31 of each year until released from monitoring by this office. These reports shall contain information concerning what steps you have taken to create the mitigation wetlands and whether the wetlands are achieving each of the success criteria specified in **Condition 9 and 10**. The reports shall include the following:
- a) The IDEM identification number.
 - b) As-built plans (in the first year's report).
 - c) Discussion of hydrology at the mitigation site.
 - d) Discussion of plant community development at the mitigation wetland site.
 - e) Discussion of methods or means used to determine compliance with the success criteria.
 - f) Photographs representative of the mitigation wetland site and sampling points.
 - g) Identification of any problems with meeting the success criteria.
 - h) Recommendations for correcting any problems identified.
 - i) Wetland delineation for the mitigation wetland in the final monitoring report.
- 14) Submit as-built plans with the first year's monitoring report for the mitigation stream and/or wetland. As-built plans shall include the final grade elevations at one foot contours, including a plan view and cross sections. For relocated streams, this shall include a longitudinal profile, and lateral cross sections at the apex of each meander and at the midpoint between meanders. For wetlands, this shall include a cross section along the primary axis and secondary axis. In addition, as-built plans shall include locations and elevations of structures (e.g., culvert inverts, outfalls, inlets, berms, piezometers, wells, etc.), including markers specified in Condition 11. As-built plans shall also

include the species and quantities of each species that were planted. Deviations from the approved mitigation plan must be highlighted and explained.

- 15) File a signed and recorded environmental notice, which describes the compensatory mitigation sites contained in the mitigation plan, with the department within sixty (60) days of the release from monitoring requirements. You may substitute a copy of a properly recorded deed restriction or conservation easement protecting the mitigation site(s) to satisfy this condition.
- 16) Allow no construction equipment, temporary run-arounds, coffer dams, temporary causeways, temporary crossings, or other such structures to enter or be constructed within any streams identified within Section 2 of I-69, unless specifically stated, depicted, or detailed in the aforementioned correspondence and project plans. As indicated in the application, only 19 streams of the 121 call for temporary crossings. A modification of this Section 401 Water Quality Certification is required from this office if any of the aforementioned items are needed for project construction.
- 17) Ensure any temporary crossing constructed in the 19 streams are constructed of material that will not erode, that will maintain near normal stream flows, and that proper erosion and sediment control measures are installed and maintained to prevent sediment from entering the stream during construction.
- 18) Remove any temporary causeway or other approved temporary structures used to facilitate construction or access upon completion of construction activities.
- 19) Ensure all relocated stream channels are seeded and stabilized before stream flows are released into the new channels.
- 20) All stream pump-around activities must be discharged in a manner that does not cause erosion at the outlet. Cofferdam dewatering activities must use filter bags, upland sediment basins/traps, or a combination of other appropriate sediment control measures to minimize the discharge of sediment-laden water into waters of the U.S. All sediment control measures must be installed and maintained in good working order. For stream pump-around activities, the in-stream material used to construct the dam must be constructed of non sediment producing sources. Examples include sand bags and sheet pile walls.
- 21) Clearly mark all construction limits and perform no work outside of those limits.
- 22) Plant native trees and shrubs along any streams captured into roadside side ditches on the outside right-of-way line.
- 23) Ensure no excavation or grade work is conducted below the ordinary high water mark on the 19 streams identified as being bridged in the application received June 22, 2010.

This certification does not relieve the recipient of the responsibility of obtaining any other permits or authorizations that may be required for this project or related activities from

IDEM or any other agency or person. You may wish to contact the Indiana Department of Natural Resources at 317-232-4160 (toll free at 877-928-3755) concerning the possible requirement of natural freshwater lake or floodway permits. In addition, you may wish to contact IDEM's Stormwater Permits Section at 317-233-1864 concerning the possible need for a 327 IAC 15-5 (Rule 5) permit if you plan to disturb greater than one (1) acre of soil during construction.

This certification does not:

- (1) authorize impacts or activities outside the scope of this certification;
- (2) authorize any injury to persons or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations;
- (3) convey any property rights of any sort, or any exclusive privileges;
- (4) preempt any duty to obtain federal, state or local permits or authorizations required by law for the execution of the project or related activities; or
- (5) authorize changes in the plan design detailed in the application.

Failure to comply with the terms and conditions of this Section 401 Water Quality Certification may result in enforcement action against the recipient of the certification. If an enforcement action is pursued, the recipient of the certification could be assessed up to \$25,000 per day in civil penalties. The recipient of the certification may also be subject to criminal liability if it is determined that the Section 401 Water Quality Certification was violated willfully or negligently.

This certification is effective eighteen (18) days from the mailing of this notice unless a petition for review and a petition for stay of effectiveness are filed within this 18-day period. If a petition for review and a petition for stay of effectiveness are filed within this period, any part of the certification within the scope of the petition for stay is stayed for fifteen (15) days, unless or until an Environmental Law Judge further stays the certification in whole or in part.

This decision may be appealed in accordance with IC 4-21.5, the Administrative Orders and Procedures Act. The steps that must be followed to qualify for review are:

- 1) You must petition for review in writing that states facts demonstrating that you are either the person to whom this decision is directed, a person who is aggrieved or adversely affected by the decision, or a person entitled to review under any law.
- 2) You must file the petition for review with the Office of Environmental Adjudication (OEA) at the following address:

Office of Environmental Adjudication
100 North Senate Avenue
IGCN Room N1049
Indianapolis, IN 46204

- 3) You must file the petition within eighteen (18) days of the mailing date of this decision. If the eighteenth day falls on a Saturday, Sunday, legal holiday, or other day that the OEA offices are closed during regular business hours, you may file the petition the next

day that the OEA offices are open during regular business hours. The petition is deemed filed on the earliest of the following dates: the date it is personally delivered to OEA; the date that the envelope containing the petition is postmarked if it is mailed by United States mail; or, the date it is shown to have been deposited with a private carrier on the private carrier's receipt, if sent by private carrier.

Identifying the certification, decision, or other order for which you seek review by number, name of the applicant, location, or date of this notice will expedite review of the petition.

Note that if a petition for review is granted pursuant to IC 4-21.5-3-7, the petitioner will, and any other person may, obtain notice of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings by requesting copies of such notices from OEA.

If you have procedural questions regarding filing a petition for review you may contact the Office of Environmental Adjudication at 317-232-8591.

If you have any questions about this certification, please contact Jason Randolph, Project Manager, of my staff at 317-233-0467, or you may contact the Office of Water Quality through the IDEM Environmental Helpline (1-800-451-6027).

Sincerely,



Martha Clark Mettler
Deputy Assistant Commissioner
Office of Water Quality

cc: Deb Snyder, USACE-Louisville, Indianapolis Field Office
Robin McWilliams-Munson, USFWS
Danny Gautier, IDNR
Kathy Garra, EPA-Region 5
✓ Jeremy Kieffner, Bernardin, Lochmueller and Associates.