

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB NUMBER 100991
FAP NUMBER NHPP-0038 (55)
INDEPENDENCE CO. LINE – EATON STRS. & APPRS. (S)
ROUTE 25, SECTION 6
LAWRENCE COUNTY**

Submitted Pursuant to 42 U.S.C. 4332(2)

By the

U.S. Department of Transportation

Federal Highway Administration

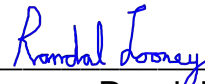
And the

Arkansas Department of Transportation

April 2021

April 5, 2021

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

The Environmental Division reviewed the referenced project and has determined it falls within the definition of the Tier 3 Categorical Exclusion as defined by the ARDOT/FHWA Programmatic Agreement on the processing of Categorical Exclusions. The following information is included for your review and, if acceptable, approval as the environmental documentation for this project.

The purpose of this project is to replace bridges M0603 and M0604 on Highway 25 over Caney Creek (Site 1), bridge M0611 on Highway 25 over Morgan Creek (Site 2), and bridge M3317 on Highway 25 over Little Cypress Creek (Site 3). The total length of the project is 0.56 mile and is located in Lawrence County. A project location map is attached.

The existing Highway 25 roadway at Site 1 consists of two 12' wide paved travel lanes with 3' wide unpaved shoulders. The existing Highway 25 roadway at Sites 2 and 3 consists of two 10' wide paved travel lanes with 4' wide unpaved shoulders.

Proposed improvements to all sites include two 12' wide paved travel lanes with 8' (2' paved) wide shoulders. All four bridge structures will be replaced by R.C. box culverts. Replacement of bridge M0611 will include a temporary detour to the west and bridge M3317 will include a temporary detour to the east. Approximately 6.0 acres of additional right of way and 1.7 acres of temporary construction easement will be required for this project.

Design data for this project is as follows:

| Design Year | Average Daily Traffic | Percent Trucks | Design Speed |
|-------------|-----------------------|----------------|--------------|
| 2023 | 1,700 | 5 | 55 mph |
| 2043 | 2,100 | 5 | 55 mph |

There are no relocations, environmental justice issues, prime farmland, or cultural resources associated with this project. State Historic Preservation Officer clearance is attached. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits.

Based on the ARDOT noise policy, a noise analysis is not required for this project. The bridge replacements will not involve adding capacity, substantially changing the roadway alignment, or exposing noise sensitive land uses to traffic noise sources. In compliance with federal guidelines, local authorities will not require notification.

The official species list obtained through US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation website identifies the following federally listed species as having the potential to occur in the project area: the endangered gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Snuffbox (*Epioblasma triquetra*), Scaleshell (*Leptodea leptodon*), and pondberry (*Lindera melissifolia*); and the threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Red Knot (*Calidris canutus rufa*), Piping Plover (*Charadrius melodus*), northern long-eared bat (*Myotis septentrionalis*), Rabbitsfoot (*Theliderma cylindrica*), and Missouri bladderpod (*Physaria filiformis*). The official species list is attached.

There are no known caves in the project location, though it is in the karst region, and no nearby records of gray bats, so it has been determined that the project "may affect, but is not likely to adversely affect" the gray bat. Due to the lack of riverine gravel bars, marshes, or suitable wetland habitat in the project area, it has been determined that the project will have "no effect" for the listed birds. Due to the lack of streams large enough for mussel beds, glades, and suitable wetland habitat in the project area, it has been determined that the project "may affect, but is not likely to adversely affect" the listed mussels and plants. The MA Letter and USFWS concurrence is attached.

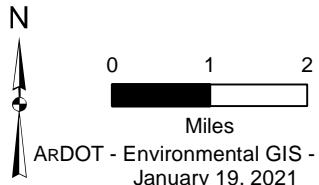
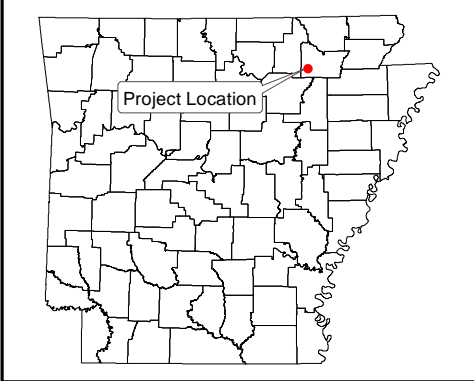
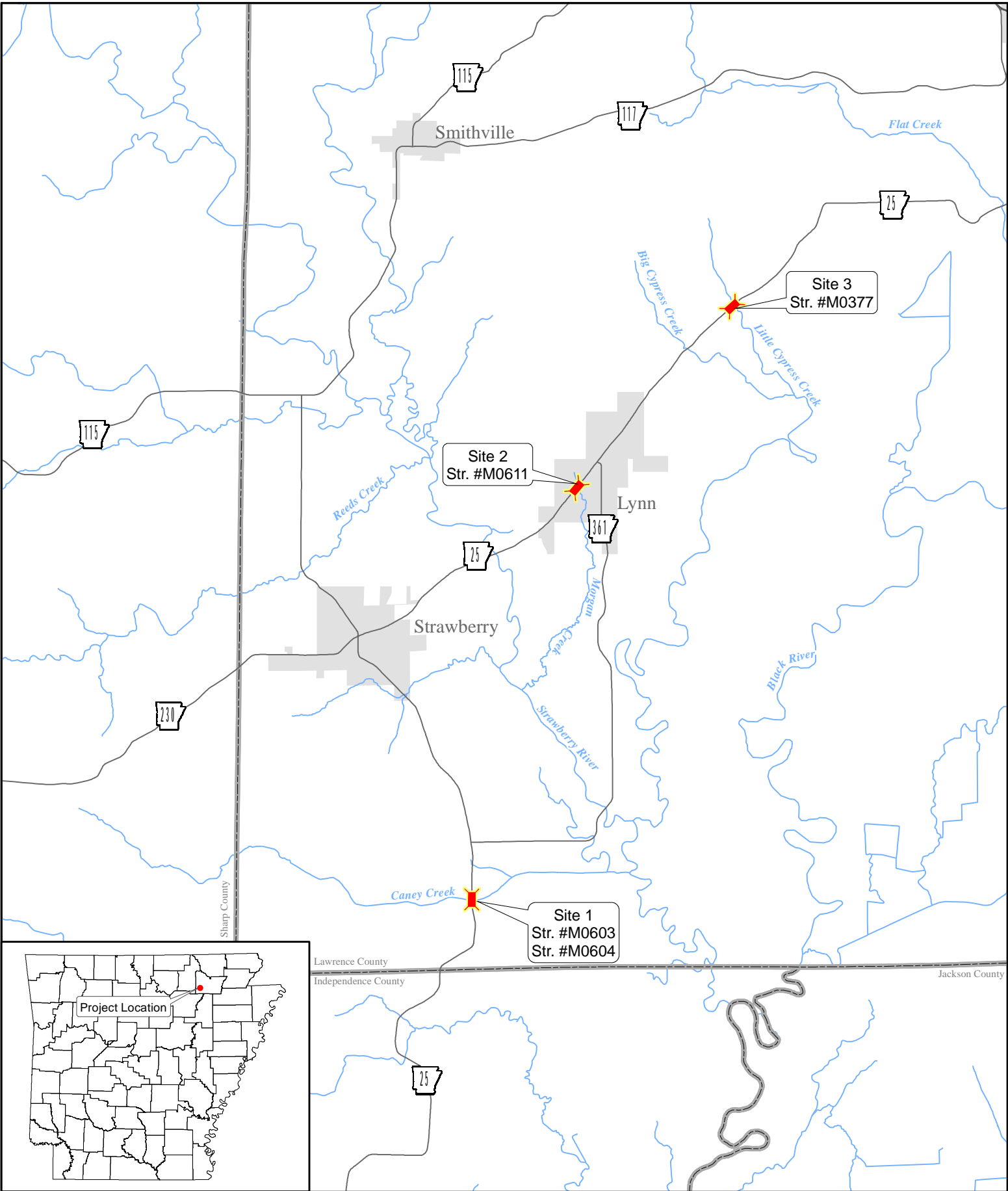
Utilizing the FHWA's Programmatic Biological Opinion for Transportation Projects within the range of the IBAT and NLEB, it has been determined that the project "may affect, but is not likely to adversely affect" the Indiana bat and northern long-eared bat, due to the removal of an estimated 3.05 acres of trees. Tree clearing will be restricted to occur outside the Indiana bat pup season, May 1 to July 31. As mitigation for the clearing 3.05 acres of trees, ARDOT will contribute \$41,902 to the previously approved Indiana Bat Mitigation Research Project. All offsite locations will require coordination with USFWS. The LAA Consistency Letter is attached.

Permanent stream impacts to the perennial Caney, Morgan, and Little Cypress Creeks are estimated at less than 300 feet and less than 0.1 acres per stream crossing. The isolated wetland at the Caney Creek "relief" bridge is exempt from Clean Water Act protection. Construction of the proposed project should be allowed under the terms of a Nationwide 14 Section 404 Permit for Linear Transportation Projects as defined in the Federal Register 82(4):1860-2008.


Lawrence County participates in the National Flood Insurance Program. All three sites lie within Zone A, Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a substantial floodplain encroachment or a risk to property or life.

This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxic (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or any other factor that would cause a meaningful increase in MSAT impacts of the project from that of the no-build alternative.

No other adverse environmental impacts were identified. The checklist used to verify consideration of potential environmental impacts is attached.



Job 100991
 Independence Co. Line - Eaton
 Strs. & Apprs. (Hwy. 25)
 Lawrence County

 Project Location



Asa Hutchinson
Governor
Stacy Hurst
Secretary

February 12, 2021

Mr. John Fleming
Division Head
Environmental Division
Arkansas Department of Transportation
P.O. Box 2261
Little Rock, AR 72203-2261

Re: Lawrence County – General
Section 106 Review – FHWA
Independence County Line - Eaton
Strs. & Apprs. (S)
Route 25, Section 6
ARDOT Job Number 100991
AHPP Tracking Number 105914.01

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Project Identification Form for the above-referenced job in Section 27, Township 15 North, Range 3 West; Section 25, Township 16 North, Range 3 West; and Section 8, Township 16 North, Range 2 West in Lawrence County, Arkansas. As described, the undertaking entails the replacement of four bridges: M0603, M0604, M0611, and M3317. The total survey area comprises 7.68 acres. In correspondence dated May 26, 2020, the AHPP concurred that Bridges M0603, M0604, M0611, and M3317 are not eligible for inclusion in the National Register.

Based on the provided information, including the results of the field investigation, the AHPP concurs with a finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)**.

Tribes that have expressed an interest in the area include the Cherokee Nation, the Osage Nation, the Quapaw Nation, and the Shawnee Tribe. We recommend consultation in accordance with 36 CFR § 800.2(c)(2).

Thank you for the opportunity to review this undertaking. If you have any questions, please contact Eric Mills of my staff at (501) 324-9784 or eric.mills@arkansas.gov.

Sincerely,

/s/ Eric Mills for

Scott Kaufman
Director, AHPP

cc: Mr. Randal Looney, Federal Highway Administration
Dr. Melissa Zabecki, Arkansas Archeological Survey



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Arkansas Ecological Service Field Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032



February 4, 2021

Mr. John Fleming
c/o Joe Ledvina
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, Arkansas 72209

Consultation Code: 04ER1000-2021-SLI-0493

RE: ARDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs.

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) has reviewed your assessment and determinations for Arkansas Department of Transportation (ARDOT) Job #100991 Independence Co. Line - Eaton Strs. & Apprs. which proposes replacing four bridges with 4-sided box culverts. One crossing a stream on the existing alignment using a temporary detour to the west, one over a stream on the existing alignment using a temporary detour to the east, one over a stream on a new location to the east, and one over a former stream channel on a new location to the east in Lawrence County, Arkansas. This action may rely on the revised February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the Indiana Bat (IBAT) (*Myotis sodalis*) and/or Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). We received your request and the associated Project Submittal Form on January 28, 2021.

This letter provides the Service's response as to whether the Project may rely on the BO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) for its effects to the IBAT and/or NLEB.

ARDOT stated the following:

ARDOT proposes to replace 4 bridges on Highway 25 in Lawrence County with 4-sided box culverts. Approximately 3.05 acres of trees will be cleared, mostly around the structure at Caney Creek, which will be installed on a new location to the east.

The official species list from IPaC identifies the following listed species as having the potential to occur in the project area: the endangered Gray Bat (*Myotis grisescens*), Indiana Bat (*Myotis sodalis*), Snuffbox (*Epioblasma triquetra*), Scaleshell (*Leptodea leptodon*), and Pondberry (*Lindera melissifolia*); and the threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Red

Knot (*Calidris canutus rufa*), Piping Plover (*Charadrius melodus*), Northern Long-eared Bat (*Myotis septentrionalis*), Rabbitsfoot (*Quadrula cylindrica cylindrica*), and Missouri Bladderpod (*Physaria filiformis*).

The Arkansas Determination Key reached a determination of “no effect” for the listed birds, due to the lack of marsh, sandbar, and seasonally-flooded wetland habitat in the project area. Inspections of the four bridges found no evidence of bats using the bridges. We request your concurrence with that determination.

The Arkansas Determination key reached a determination of "may affect, but not likely to adversely affect" for the Gray Bat. Gray Bats are not known from the project area, though suitable habitat may occur. The Arkansas Determination key reached a determination of "may affect, but not likely to adversely affect" for the listed plants and mussels, due to lack of habitat in the project area. We request your concurrence with that determination.

Following the Programmatic Biological Opinion, a determination of "may affect, likely to adversely affect" was reached for IBAT and/or NLEB. A special provision prohibiting tree clearing during the pup season—from May 1 to July 31—will be placed in the job contract. To compensate for clearing approximately 3.05 acres of trees in suitable habitat, a deduction of \$41,902 will be made from the previously approved IBAT tracking research project (see attached mitigation worksheet). We request your concurrence with that determination.

ARDOT has determined that the Project is likely to adversely affect (LAA) the IBAT and/or the NLEB. The Service concurs with these determinations, because of the proximity of known species sites and foraging range to the project location and the occurrence of suitable foraging habitat for these species that exists on and adjacent to the site. A determination of LAA for IBAT and/or the NLEB is appropriate based on the amount and distance from the existing roadway of suitable habitat being lost. The conservation measures being proposed, active season clearing but with a special provision prohibiting tree clearing during the pup season from May 1 to July 31 that will be placed in the job contract, negative bridge survey results, and the proposed implementation of all required AMMs will help to mitigate the effects in accordance with the PBO.

Conclusion

As stated in the Consistency Letter, "The Service concurs with these “NLAA” determinations for Gray Bat, Snuffbox, Scaleshell, Pondberry, Rabbitsfoot, and Missouri Bladderpod and “no effect” determinations for Eastern Black Rail, Red Knot, and Piping Plover. No further consultation for this project is required for these species. The verification letter confirms you may rely on effect determinations provided in the Arkansas Determination Key for project review and guidance for federally listed species to satisfy agency consultation requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat. 884, as amended 16

U.S.C. 1531 et seq.; ESA)." This concurrence concludes your ESA Section 7 responsibilities relative to these species for this Project, subject to the Reinitiation Notice below.

The Service has reviewed the effects of the proposed Project, which includes the ARDOT's commitment to implement any applicable mitigation measures, as indicated on the Project Submittal Form. We confirm that the proposed Project's effects are consistent with those analyzed in the BO. The Service has determined that projects consistent with the conservation measures and scope of the program analyzed in the BO are not likely to jeopardize the continued existence of the IBAT and/or the NLEB. In coordination with your agency and the other sponsoring federal transportation agencies, the Service will reevaluate this conclusion annually in light of any new pertinent information under the adaptive management provisions of the BO.

Incidental Take: Indiana Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of IBATs. As described in the Incidental Take Statement (ITS) of the BO, such taking will be difficult to detect. The Service determined that it is appropriate to measure the amount or extent of incidental taking resulting from BO projects using the proposed acreage of tree removal from IBAT suitable habitat as a surrogate for the numbers of individuals taken.

The proposed Project will remove 3.05 acres of trees from habitat that is suitable for the IBAT. All tree removal will occur during the active season but outside of the pupping season and comply with all other conservation measures in the BO. Based on the BO, 0.0 acres are anticipated to not result in adverse effects, and 3.05 acres are anticipated to result in adverse effects.

The ARDOT uses the mitigation ratio of 2.25 for each habitat type from Table 3 of the BO¹ to calculate the compensatory mitigation required to offset these adverse impacts for a total of 6.9² acres of trees that is suitable for the IBAT. Mitigation will be provided in the form of a deduction of \$41,902 from the previously approved IBAT tracking research project to compensate for adverse impacts to the IBAT associated with this project.

Based on the mitigation identified above² and the information provided in Table 2 of Exhibit E in the In Lieu Fee (ILF) Instrument¹, the Federal Transportation Agency will deduct \$41,902 from the previously approved IBAT tracking research funding account prior to the start of construction, in order to comply with the mitigation requirements of the program of transportation projects reviewed in the BO. These calculations are based on the 2020 Land Use Values in Table 2 of Exhibit E in TCF's ILF Instrument, which are applicable even if the project construction should occur in a different calendar year.

¹ https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ILF_ratios_transportation_agencies.pdf

² XX acres * XX ratio

³ https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ExhibitE_Table2_FeeSchedule_LandValues.pdf

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the BO as a surrogate measure of IBAT take and exempted from the prohibitions against incidental taking. Such exemption is effective as long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the BO's ITS.

The sole RPM of the BO's ITS requires the federal transportation agencies to ensure that state/local transportation agencies, who choose to include eligible projects under the programmatic action, incorporate all applicable conservation measures in the project proposals submitted to the Service for ESA section 7 compliance using the BO. The implementing terms and conditions for this RPM require the federal transportation agencies to offer training to appropriate personnel about using the BO, and about promptly reporting sick, injured, or dead bats (regardless of species) (or any other federally listed species) located in project action areas.

Northern Long-eared Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of NLEBs. However, the Project is consistent with the BO, and such projects will not cause take of NLEB that is prohibited under the ESA section 4(d) rule for this species (50 CFR §17.40(o)). Therefore, the take of NLEBs resulting from this project does not require exemption from the Service.

Reporting Dead or Injured Bats

The ARDOT, its state/local cooperators, and any contractors must take care when handling dead or injured IBATs and/or NLEBs, or any other federally listed species that are found at the Project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Reinitiation Notice

This letter concludes consultation for the proposed Project, which qualifies for inclusion in the BO issued to the federal transportation agencies. To maintain this inclusion, a reinitiation of this Project-level consultation is required where the ARDOT's discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. the amount or extent of incidental take of IBAT is exceeded;
2. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the BO;
3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or

4. a new species is listed or critical habitat designated that the Project may affect.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the Project removes trees from more than 3.05 acres of habitat suitable for the IBAT.
- the Project takes more than 5 IBATs resulting from work on the replacing four bridges with 4-sided box culverts.

In instances where the amount or extent of incidental take is exceeded, the Federal Highway Administration/Arkansas Department of Transportation is required to immediately request a reinitiation of formal consultation. Please note that the Service cannot exempt from the applicable ESA prohibitions any Action-caused take that exceeds the amount or extent specified in the ITS of this BO that may occur before the reinitiated consultation is concluded.

We appreciate your continued efforts to ensure that this Project is fully consistent with all applicable provisions of the BO. If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,



Melvin L. Tobin
Field Supervisor

cc: Project File

Read File

Filename: <C:\Users\lilewis\Documents\PROJECTS\FY2021\ARDOT\ArDOT Job 100991\ArDOT Job 100991 - Comments.docx>



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480
<http://www.fws.gov/arkansas-es>

In Reply Refer To:

January 22, 2021

Consultation Code: 04ER1000-2021-SLI-0493

Event Code: 04ER1000-2021-E-01421

Project Name: ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies endangered, threatened, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). **This letter only provides an official species list and technical assistance; if you determine that listed species and/or designated critical habitat may be affected in any way by the proposed project, even if the effect is wholly beneficial, consultation with the Service will be necessary.**

If you determine that this project will have no effect on listed species and their habitat in any way, then you have completed Section 7 consultation with the Service and may use this letter in your project file or application.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found on our website.

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered, threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

If your project involves in-stream construction activities, oil and natural gas infrastructure, road construction, transmission lines, or communication towers, please review our project specific guidance at <http://www.fws.gov/arkansas-es/IPaC/ProjSpec.html>.

The karst region of Arkansas is a unique region that covers the **northern third of Arkansas** and we have specific guidance to conserve sensitive cave-obligate and bat species. **Please visit <http://www.fws.gov/arkansas-es/IPaC/Karst.html> to determine if your project occurs in the karst region and to view karst specific-guidance.** Proper implementation and maintenance of best management practices specified in these guidance documents is necessary to avoid adverse effects to federally protected species and often avoids the more lengthy formal consultation process.

If your species list includes any mussels, Northern Long-eared Bat, Indiana Bat, Yellowcheek Darter, Red-cockaded Woodpecker, or American Burying Beetle, your project may require a presence/absence and/or habitat survey prior to commencing project activities. Please check the appropriate species-specific guidance on our website to determine if your project requires a survey. We strongly recommend that you contact the appropriate staff species lead biologist (see office directory or species page) prior to conducting presence/absence surveys to ensure the appropriate level of effort and methodology.

Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or designated critical habitat, and if so, to consult with the Service further. Similarly, it is the responsibility of the Federal action agency or project proponent, not the Service, to make "no effect" determinations. If you determine that your proposed action will have "no effect" on threatened or endangered species or their respective critical habitat, you do not need to seek concurrence with the Service. Nevertheless, it is a violation of Federal law to harm or harass any federally-listed threatened or endangered fish or wildlife species without the appropriate permit.

Through the consultation process, we will analyze information contained in a biological assessment that you provide. If your proposed action is associated with Federal funding or permitting, consultation will occur with the Federal agency under section 7(a)(2) of the ESA. Otherwise, an incidental take permit pursuant to section 10(a)(1)(B) of the ESA (also known as a habitat conservation plan) is necessary to harm or harass federally listed threatened or endangered fish or wildlife species. In either case, there is no mechanism for authorizing incidental take "after-the-fact." For more information regarding formal consultation and HCPs, please see the Service's Consultation Handbook and Habitat Conservation Plans at www.fws.gov/endangered/esa-library/index.html#consultations.

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days.** This verification can be completed formally or informally as desired. The Service recommends that verification be

completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. **Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.**

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2021-SLI-0493

Event Code: 04ER1000-2021-E-01421

Project Name: ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)

Project Type: BRIDGE CONSTRUCTION / MAINTENANCE

Project Description: Replacing four bridges with 4-sided box culverts. One crossing a stream on the existing alignment using a temporary detour to the west, one over a stream on the existing alignment using a temporary detour to the east, one over a stream on a new location to the east, and one over a former stream channel on a new location to the east.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.04195995,-91.21346569153428,14z>



Counties: Lawrence County, Arkansas

Endangered Species Act Species

There is a total of 11 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

| NAME | STATUS |
|--|------------|
| Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6329 | Endangered |
| Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/5949 | Endangered |
| Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045 | Threatened |

Birds

| NAME | STATUS |
|---|------------|
| Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477 | Threatened |
| Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/6039 | Threatened |
| Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864 | Threatened |

Clams

| NAME | STATUS |
|--|------------|
| Rabbitsfoot <i>Quadrula cylindrica cylindrica</i> There is final critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/5165 | Threatened |
| Scaleshell Mussel <i>Leptodea leptodon</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5881 | Endangered |
| Snuffbox Mussel <i>Epioblasma triquetra</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4135 | Endangered |

Flowering Plants

| NAME | STATUS |
|---|------------|
| Missouri Bladderpod <i>Physaria filiformis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5361 | Threatened |
| Pondberry <i>Lindera melissifolia</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1279 | Endangered |

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
110 South Amity Suite 300
Conway, AR 72032-8975
Phone: (501) 513-4470 Fax: (501) 513-4480
<http://www.fws.gov/arkansas-es>

IPaC Record Locator: 142-98616426

January 22, 2021

Subject: Consistency letter for 'ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Arkansas Determination Key for project review and guidance for federally listed species (Arkansas Dkey).

Dear Joseph Ledvina:

The U.S. Fish and Wildlife Service (Service) received on **January 22, 2021** your effect determination(s) for the 'ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)' (the Action) using the Arkansas DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance in the Service's Arkansas DKey, you made the following effect determination(s) for the proposed Action:

| Species | Determination |
|---|----------------------|
| Proposed Threatened Eastern Black Rail (<i>Laterallus jamaicensis ssp. jamaicensis</i>) | No Effect |
| Threatened Red Knot (<i>Calidris canutus rufa</i>) | No Effect |
| Threatened Piping Plover (<i>Charadrius melodus</i>) | No Effect |
| Endangered Gray Bat (<i>Myotis grisescens</i>) | NLAA |
| Endangered Indiana Bat (<i>Myotis sodalis</i>) | May Affect |
| Threatened Northern Long-eared Bat (<i>Myotis septentrionalis</i>) | May Affect |
| Threatened Missouri bladderpod (<i>Physaria filiformis</i>) | NLAA |
| Endangered Pondberry (<i>Lindera melissifolia</i>) | NLAA |
| Threatened Rabbitsfoot (<i>Quadrula cylindrica cylindrica</i>) | NLAA |
| Endangered Snuffbox (<i>Epioblasma triquetra</i>) | NLAA |
| Endangered Scaleshell (<i>Leptodea leptodon</i>) | NLAA |

Status

The Service concurs with the NLAA determination(s) for the species listed above. Your agency has met consultation requirements by informing the Service of the “No Effect” determinations. No further consultation for this project is required for these species. This letter confirms you may rely on effect determinations provided in the Arkansas Determination Key for project review and guidance for federally listed species to satisfy agency consultation requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.; ESA).

The Service recommends that your agency contact the Arkansas Ecological Services Field Office or re-evaluate this key in IPaC if: 1) the scope, timing, duration, or location of the proposed project changes, 2) new information reveals the action may affect listed species or designated critical habitat; 4) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Arkansas Ecological Services Field Office should take place before project changes are final or resources committed.

FHWA projects should not use this key for Northern Long-eared Bat determinations. Please complete the FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat Release date: December 2, 2019

The key is intended for projects funded or authorized by FHWA, FRA, or FTA, that may affect the endangered Indiana bat and/or the threatened northern long-eared bat, which requires consultation with the USFWS under Section 7 of the ESA.

Bald and Golden Eagle Protection Act: The following resources are provided to project proponents and consulting agencies as additional information. Bald and golden eagles are not included in this section 7(a)(2) consultation and this information does not constitute a determination of effects by the Service.

The Service developed the National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with Bald Eagles when and under what circumstances the protective provisions of the BGEPA may apply to their activities. The guidelines should be consulted prior to conducting new or intermittent activity near an eagle nest. This document may be downloaded from the following site: <https://www.fws.gov/southeast/our-services/permits/eagles/>

To determine if your proposed activity is likely to take or disturb Bald Eagles, complete our step-by-step online self-certification process, which is located at <https://www.fws.gov/southeast/our-services/eagle-technical-assistance/>.

If the recommendations detailed in the National Bald Eagle Management Guidelines cannot be followed, you may apply for a permit to authorize removal or relocation of an eagle nest in certain instances. The application form is located at <http://www.fws.gov/forms/3-200-72.pdf>.

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)

2. Description

The following description was provided for the project 'ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)':

Replacing four bridges with 4-sided box culverts. One crossing a stream on the existing alignment using a temporary detour to the west, one over a stream on the existing alignment using a temporary detour to the east, one over a stream on a new location to the east, and one over a former stream channel on a new location to the east.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.04195995,-91.21346569153428,14z>



Species Protection Measures

Bridges and Culverts

<https://www.fws.gov/southeast/pdf/species-protective-measures/bridge-and-culvert-projects.pdf>

Qualification Interview

1. Have you made an effects determination of "no effect" for all species in the area of the project? A "no effect" determination means the project will have no beneficial effect, no short-term adverse effects, and no long-term adverse effects on any of the species on the IPaC-generated species list for the proposed project or those species habitat. A project with effects that cannot be meaningfully measured, detected or evaluated, effects that are extremely unlikely to occur, or entirely beneficial effects should not have a "no effect" determination. (If unsure, select "No").
No
 2. Is the action authorized, funded, or being carried out by a Federal agency?
Yes
 3. Choose the agency you represent in this consultation with the U.S. Fish and Wildlife Service:
d. Federal Highway Administration
 4. Will project proponents follow [Special Provisions for avoidance and minimization](#) measures for listed species in Arkansas?
Yes
 5. [Semantic] Does the project intersect designated critical habitat for the Leopard Darter?
Automatically answered
No
 6. [Semantic] Does the project intersect designated critical habitat for the Neosho Mucket?
Automatically answered
No
 7. [Semantic] Does the project intersect designated critical habitat for Yellowcheek Darter?
Automatically answered
No
 8. [Semantic] Does the project intersect designated critical habitat for Rabbitsfoot?
Automatically answered
No
 9. [Semantic] Does the project intersect the American burying beetle consultation area?
Automatically answered
No
 10. [Semantic] Does the project intersect the red-cockaded woodpecker AOI?
Automatically answered
No
 11. [Semantic] Does the project intersect the Eastern black rail AOI?
Automatically answered
Yes
-

12. Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
No
 13. Does the project take place in marshy or flooded open field habitat?
No
 14. [Semantic] Does the project intersect the red knot AOI?
Automatically answered
Yes
 15. [Semantic (same answer as "8.1.3")] Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
Automatically answered
No
 16. [Semantic (same answer as "8.2")] Does the project take place in marshy or flooded open field habitat?
Automatically answered
No
 17. [Semantic] Does the project intersect the Piping Plover AOI?
Automatically answered
Yes
 18. [Semantic (same answer as "8.1.3 or 9.3")] Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
Automatically answered
No
 19. [Semantic] Does the project intersect the Whooping Crane AOI?
Automatically answered
No
 20. [Semantic] Does the project intersect the interior least tern AOI?
Automatically answered
No
 21. [Semantic] Does the project intersect the Gray Bat AOI?
Automatically answered
Yes
 22. Does the project involve changes to an existing bridge or large culvert?
Yes
 23. Does the project involve changes to an existing bridge or large culvert?
Yes
 24. Were bats of any species noted on inspection?
No
-

25. [Semantic] Does the project intersect the Ozark Big-eared Bat AOI?
Automatically answered
No
26. [Semantic] Does the project intersect the Indiana bat AOI?
Automatically answered
Yes
27. [Semantic] Does the project intersect the Northern Long-eared bat AOI?
Automatically answered
Yes
28. [Semantic] Does the project intersect the Benton County Cave Crayfish AOI?
Automatically answered
No
29. [Semantic] Does the project intersect the Hell Creek Cave Crayfish AOI?
Automatically answered
No
30. [Semantic] Does the project intersect the Ozark cavefish AOI?
Automatically answered
No
31. [Semantic] Does the project intersect the Missouri bladderpod AOI?
Automatically answered
Yes
32. [Semantic] Does the project intersect the Geocarpon AOI?
Automatically answered
No
33. [Semantic] Does the project intersect the running buffalo clover AOI?
Automatically answered
No
34. [Semantic] Does the project intersect the Pondberry AOI?
Automatically answered
Yes
35. [Semantic] Does the project occur within the survey coordination area?
Automatically answered
No
-

36. Does the project contain any of the following activity types:
Boat Ramps,
Bridges,
Culverts,
Development,
Dams or Impoundments (including berms and levees),
Streambank Stabilization (or other streambank work),
Pipeline and linear projects,
Water intakes/withdrawals, or
Stream or ditch relocation?
Yes
37. Does the project include Streambank Stabilization (or other streambank work)?
No
38. Does the project include Boat Ramps?
No
39. Does the project include Bridges and Culverts?
Yes
40. Does the project include the Bridges and Culverts species [protective measures](#), as applicable to the project and site characteristics?
Yes
41. Does the project include Dams and Impoundments (including berms or levees)?
No
42. Does the project include Development?
No
43. Is the project a Pipeline or Linear Project?
No
44. Does the project include Water Intakes/Withdrawals?
No
45. Does the project include Stream or Ditch Relocation?
No
46. [Semantic] Does the project intersect the rabbitsfoot AOI?
Automatically answered
Yes
47. [Semantic] Does the project intersect the neosho mucket AOI?
Automatically answered
No
48. [Semantic] Does the project intersect the Spectaclecase AOI?
Automatically answered
No
-

49. [Semantic] Does the project intersect the snuffbox AOI?
Automatically answered
Yes
50. [Semantic] Does the project intersect the speckled pocketbook AOI?
Automatically answered
No
51. [Semantic] Does the project intersect the ouachita rock pocketbook AOI?
Automatically answered
No
52. [Semantic] Does the project intersect the fat pocketbook AOI?
Automatically answered
No
53. [Semantic] Does the project intersect the Curtis pearlymussel AOI?
Automatically answered
No
54. [Semantic] Does the project intersect the scaleshell AOI?
Automatically answered
Yes
55. [Semantic] Does the project intersect the pink mucket AOI?
Automatically answered
No
56. [Semantic] Does the project intersect the Arkansas fatmucket AOI?
Automatically answered
No
57. [Semantic] Does the project intersect the winged mapleleaf AOI?
Automatically answered
No
58. [Semantic] Does the project intersect the leopard darter AOI?
Automatically answered
No
59. [Semantic] Does the project intersect the Yellowcheek darter AOI?
Automatically answered
No
60. [Semantic] Does the project intersect the Ozark hellbender AOI?
Automatically answered
No
61. [Semantic] Does the project intersect the harperella AOI?
Automatically answered
No
-

62. [Semantic] Does the project intersect the pallid sturgeon AOI?

Automatically answered

No



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Arkansas Ecological Services Field Office
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Phone: (501) 513-4470 Fax: (501) 513-4480
<http://www.fws.gov/arkansas-es>

IPaC Record Locator: 142-98616780

January 28, 2021

Subject: Consistency letter for the 'ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)' project (no current TAILS record) under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request to verify that the **ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)** (Proposed Action) may rely on the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, and may affect, and is likely to adversely affect the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*). Consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) is required.

This "may affect - likely to adversely affect" determination becomes effective when the lead Federal action agency or designated non-federal representative requests the Service rely on the PBO to satisfy the agency's consultation requirements for this project. Please provide this consistency letter to the lead Federal action agency or its designated non-federal representative for review, and as the agency deems appropriate, transmit to this Service Office for verification that the project is consistent with the PBO.

This Service Office will respond by letter to the requesting Federal action agency or designated non-federal representative within 30 calendar days to:

- verify that the Proposed Action is consistent with the scope of actions covered under the PBO;
- verify that all applicable avoidance, minimization, and compensation measures are included in the action proposal;
- identify any action-specific monitoring and reporting requirements, consistent with the monitoring and reporting requirements of the PBO, and
- identify anticipated incidental take.

ESA Section 7 compliance for this Proposed Action is not complete until the Federal action agency or its designated non-federal representative receives a verification letter from the Service.

For Proposed Actions that include bridge/structure removal, replacement, and/or maintenance activities: If your initial bridge/structure assessments failed to detect Indiana bats, but you later detect bats during construction, please submit the Post Assessment Discovery of Bats at Bridge/Structure Form (User Guide Appendix E) to this Service Office. In these instances, potential incidental take of Indiana bats may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency accordingly.

The following species may occur in your project area and **are not** covered by this determination:

- Eastern Black Rail *Laterallus jamaicensis ssp. jamaicensis* Threatened
 - Gray Bat *Myotis grisescens* Endangered
 - Missouri Bladderpod *Physaria filiformis* Threatened
 - Piping Plover *Charadrius melodus* Threatened
 - Pondberry *Lindera melissifolia* Endangered
 - Rabbitsfoot *Quadrula cylindrica cylindrica* Threatened
 - Red Knot *Calidris canutus rufa* Threatened
 - Scaleshell Mussel *Leptodea leptodon* Endangered
 - Snuffbox Mussel *Epioblasma triquetra* Endangered
-

Project Description

The following project name and description was collected in IPaC as part of the endangered species review process.

Name

ArDOT Job #100991 Independence Co. Line - Eaton Strs. & Apprs. (S)

Description

Replacing four bridges with 4-sided box culverts. One crossing a stream on the existing alignment using a temporary detour to the west, one over a stream on the existing alignment using a temporary detour to the east, one over a stream on a new location to the east, and one over a former stream channel on a new location to the east. Approximately 3.05 acres of trees will be cleared.

Determination Key Result

Based on your answers provided, this project is likely to adversely affect the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required. However, also based on your answers provided, this project may rely on the conclusion and Incidental Take Statement provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

Qualification Interview

1. Is the project within the range of the Indiana bat^[1]?

[1] See [Indiana bat species profile](#)

Automatically answered

Yes

2. Is the project within the range of the Northern long-eared bat^[1]?

[1] See [Northern long-eared bat species profile](#)

Automatically answered

Yes

3. Which Federal Agency is the lead for the action?

A) *Federal Highway Administration (FHWA)*

4. Are *all* project activities limited to non-construction^[1] activities only? (examples of non-construction activities include: bridge/abandoned structure assessments, surveys, planning and technical studies, property inspections, and property sales)

[1] Construction refers to activities involving ground disturbance, percussive noise, and/or lighting.

No

5. Does the project include *any* activities that are **greater than** 300 feet from existing road/rail surfaces^[1]?

[1] Road surface is defined as the actively used [e.g. motorized vehicles] driving surface and shoulders [may be pavement, gravel, etc.] and rail surface is defined as the edge of the actively used rail ballast.

No

6. Does the project include *any* activities **within** 0.5 miles of a known Indiana bat and/or NLEB hibernaculum^[1]?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

7. Is the project located **within** a karst area?

Yes

8. Will the project include *any* type of activity that could impact a **known** hibernaculum^[1], or impact a karst feature (e.g., sinkhole, losing stream, or spring) that could result in effects to a **known** hibernaculum?

[1] For the purpose of this consultation, a hibernaculum is a site, most often a cave or mine, where bats hibernate during the winter (see suitable habitat), but could also include bridges and structures if bats are found to be hibernating there during the winter.

No

9. Is there *any* suitable^[1] summer habitat for Indiana Bat or NLEB **within** the project action area^[2]? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR Section 402.02). Further clarification is provided by the [national consultation FAQs](#).

Yes

10. Will the project remove *any* suitable summer habitat^[1] and/or remove/trim any existing trees **within** suitable summer habitat?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

Yes

11. Will the project clear more than 20 acres of suitable habitat per 5-mile section of road/rail?

No

12. Have presence/probable absence (P/A) summer surveys^{[1][2]} been conducted^{[3][4]} **within** the suitable habitat located within your project action area?

[1] See the Service's [summer survey guidance](#) for our current definitions of suitable habitat.

[2] Presence/probable absence summer surveys conducted within the fall swarming/spring emergence home range of a documented Indiana bat hibernaculum (contact local Service Field Office for appropriate distance from hibernacula) that result in a negative finding requires additional consultation with the local Service Field Office to determine if clearing of forested habitat is appropriate and/or if seasonal clearing restrictions are needed to avoid and minimize potential adverse effects on fall swarming and spring emerging Indiana bats.

[3] For projects within the range of either the Indiana bat or NLEB in which suitable habitat is present, and no bat surveys have been conducted, the transportation agency will assume presence of the appropriate species. This assumption of presence should be based upon the presence of suitable habitat and the capability of bats to occupy it because of their mobility.

[4] Negative presence/probable absence survey results obtained using the [summer survey guidance](#) are valid for a minimum of two years from the completion of the survey unless new information (e.g., other nearby surveys) suggest otherwise.

No

13. Does the project include activities **within documented Indiana bat habitat**^{[1][2]}?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry triangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

No

14. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors?

Yes

15. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors occur^[1]?

[1] Coordinate with the local Service Field Office for appropriate dates.

C) During both the active and inactive seasons

16. When in the active season will the removal or trimming of habitat or trees occur **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors?

B) During the active season but not between May 1 and July 31

17. Does the project include activities **within documented NLEB habitat**^{[1][2]}?

[1] Documented roosting or foraging habitat – for the purposes of this consultation, we are considering documented habitat as that where Indiana bats and/or NLEB have actually been captured and tracked using (1) radio telemetry to roosts; (2) radio telemetry triangulation/triangulation to estimate foraging areas; or (3) foraging areas with repeated use documented using acoustics. Documented roosting habitat is also considered as suitable summer habitat within 0.25 miles of documented roosts.)

[2] For the purposes of this key, we are considering documented corridors as that where Indiana bats and/or NLEB have actually been captured and tracked to using (1) radio telemetry; or (2) treed corridors located directly between documented roosting and foraging habitat.

No

18. Will the removal or trimming of habitat or trees occur **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors?

Yes

19. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors occur?

C) During both the active and inactive seasons

20. Will any tree trimming or removal occur **within** 100 feet of existing road/rail surfaces?

Yes

21. Will **more than** 10 trees be removed **between** 0-100 feet of the road/rail surface *during* the active season^[1]?

[1] Areas containing more than 10 trees will be assessed by the local Service Field Office on a case-by-case basis with the project proponent.

Yes

22. Will *any* tree trimming or removal occur **between** 100-300 feet of existing road/rail surfaces?

No

23. Are *all* trees that are being removed clearly demarcated?

Yes

24. Will the removal of habitat or the removal/trimming of trees involve the use of **temporary** lighting?

No

25. Will the removal of habitat or the removal/trimming of trees include installing new or replacing existing **permanent** lighting?

No

26. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?

No

27. Does the project include slash pile burning?

No

28. Does the project include *any* bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?

Yes

29. Is there *any* suitable habitat^[1] for Indiana bat or NLEB **within** 1,000 feet of the bridge? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

[1] See the Service's current [summer survey guidance](#) for our current definitions of suitable habitat.

Yes

30. Has a bridge assessment^[1] been conducted **within** the last 24 months^[2] to determine if the bridge is being used by bats?

[1] See [User Guide Appendix D](#) for bridge/structure assessment guidance

[2] Assessments must be completed no more than 2 years prior to conducting any work below the deck surface on all bridges that meet the physical characteristics described in the Programmatic Consultation, regardless of whether assessments have been conducted in the past. Due to the transitory nature of bat use, a negative result in one year does not guarantee that bats will not use that bridge/structure in subsequent years.

Yes

SUBMITTED DOCUMENTS

- 100991 M0604 Bridge Culvert Bat Assessment Form April 2020.pdf <https://ecos.fws.gov/ipac/project/RTC6SC7PSNDI3CZIPVEX5UGUIY/projectDocuments/98680306>
- 100991 M0603 Bridge Culvert Bat Assessment Form April 2020.pdf <https://ecos.fws.gov/ipac/project/RTC6SC7PSNDI3CZIPVEX5UGUIY/projectDocuments/98680307>
- 100991 M0611 Bridge Culvert Bat Assessment Form April 2020.pdf <https://ecos.fws.gov/ipac/project/RTC6SC7PSNDI3CZIPVEX5UGUIY/projectDocuments/98680308>
- 100991 M3317 Bridge Culvert Bat Assessment Form April 2020.pdf <https://ecos.fws.gov/ipac/project/RTC6SC7PSNDI3CZIPVEX5UGUIY/projectDocuments/98680309>

31. Did the bridge assessment detect *any* signs of Indiana bats and/or NLEBs roosting in/under the bridge (bats, guano, etc.)^[1]?

[1] If bridge assessment detects signs of *any* species of bats, coordination with the local FWS office is needed to identify potential threatened or endangered bat species. Additional studies may be undertaken to try to identify which bat species may be utilizing the bridge prior to allowing *any* work to proceed.

Note: There is a small chance bridge assessments for bat occupancy do not detect bats. Should a small number of bats be observed roosting on a bridge just prior to or during construction, such that take is likely to occur or does occur in the form of harassment, injury or death, the PBO requires the action agency to report the take. Report all unanticipated take within 2 working days of the incident to the USFWS. Construction activities may continue without delay provided the take is reported to the USFWS and is limited to 5 bats per project.

No

32. Will the bridge removal, replacement, and/or maintenance activities include installing new or replacing existing **permanent** lighting?

No

33. Does the project include the removal, replacement, and/or maintenance of *any* structure other than a bridge? (e.g., rest areas, offices, sheds, outbuildings, barns, parking garages, etc.)

No

34. Will the project involve the use of **temporary** lighting *during* the active season?

No

35. Will the project install new or replace existing **permanent** lighting?

No

36. Does the project include percussives or other activities (**not including tree removal/trimming or bridge/structure work**) that will increase noise levels above existing traffic/background levels?

No

37. Are *all* project activities that are **not associated with** habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives, limited to actions that DO NOT cause any additional stressors to the bat species?

Examples: lining roadways, unlighted signage, rail road crossing signals, signal lighting, and minor road repair such as asphalt fill of potholes, etc.

Yes

38. Will the project raise the road profile **above the tree canopy**?

No

39. Are the project activities that are not associated with habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives consistent with a No Effect determination in this key?

Automatically answered

Yes, other project activities are limited to actions that DO NOT cause any additional stressors to the bat species as described in the BA/BO

40. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because tree removal that occurs within the Indiana bat's active season (but not between May 1 - July 31) occurs greater than 0.5 miles from the nearest hibernaculum, is not greater than 300 feet from the existing road/rail surface, and is not in documented Indiana bat roosting/foraging habitat or travel corridors.

41. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the tree removal/trimming that occurs outside of the Indiana bat's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.

42. Is the habitat removal portion of this project consistent with a Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because tree removal that occurs within the NLEB's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, and is not in documented NLEB roosting/foraging habitat or travel corridors, and a visual emergence survey has not been conducted

43. Is the habitat removal portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the tree removal/trimming that occurs outside of the NLEB's active season occurs greater than 0.5 miles from the nearest hibernaculum, is less than 100 feet from the existing road/rail surface, includes clear demarcation of the trees that are to be removed, and does not alter documented roosts and/or surrounding summer habitat within 0.25 miles of a documented roost.

44. Is the bridge removal, replacement, or maintenance activities portion of this project consistent with a No Effect determination in this key?

Automatically answered

Yes, because the bridge has been assessed using the criteria documented in the BA and no signs of bats were detected

45. **General AMM 1**

Will the project ensure *all* operators, employees, and contractors working in areas of known or presumed bat habitat are aware of *all* FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable Avoidance and Minimization Measures?

Yes

46. **Hibernacula AMM 1**

Will the project ensure that on-site personnel will use best management practices^[1], secondary containment measures, or other standard spill prevention and countermeasures to avoid impacts to possible hibernacula?

[1] Coordinate with the appropriate Service Field Office on recommended best management practices for karst in your state.

Yes

47. **Hibernacula AMM 1**

Will the project ensure that, where practicable, a 300 foot buffer will be employed to separate fueling areas and other major containment risk activities from caves, sinkholes, losing streams, and springs in karst topography?

Yes

48. Tree Removal AMM 1

Can *all* phases/aspects of the project (e.g., temporary work areas, alignments) be modified, to the extent practicable, to avoid tree removal^[1] in excess of what is required to implement the project safely?

Note: Tree Removal AMM 1 is a minimization measure, the full implementation of which may not always be practicable. Projects may still be NLAA as long as Tree Removal AMMs 2, 3, and 4 are implemented and LAA as long as Tree Removal AMMs 3, 5, 6, and 7 are implemented.

[1] The word “trees” as used in the AMMs refers to trees that are suitable habitat for each species within their range. See the USFWS’ current summer survey guidance for our latest definitions of suitable habitat.

Yes

49. Tree Removal AMM 3

Can tree removal be limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits)?

Yes

50. For Indiana bat, if applicable, compensatory mitigation measures are required to offset adverse effects on the species (see Section 2.10 of the BA). Please select the mechanism in which compensatory mitigation will be implemented:

6. Not Applicable

Project Questionnaire

1. Have you made a No Effect determination for *all* other species indicated on the FWS IPaC generated species list?

No

2. Have you made a May Affect determination for *any* other species on the FWS IPaC generated species list?

Yes

3. How many acres^[1] of trees are proposed for removal between 0-100 feet of the existing road/rail surface?

[1] If described as number of trees, multiply by 0.09 to convert to acreage and enter that number.

7.2

4. **Please verify:**

All tree removal will occur greater than 0.5 mile from any hibernaculum.

Yes, I verify that all tree removal will occur greater than 0.5 miles from any hibernaculum.

5. Is the project location 0-100 feet from the edge of existing road/rail surface?

Yes

6. Is the project location 100-300 feet from the edge of existing road/rail surface?

No

7. **Please verify:**

No documented Indiana bat roosts or surrounding summer habitat within 0.25 mile of documented roosts will be impacted between May 1 and July 31.

Yes, I verify that no documented Indiana bat roosts or surrounding summer habitat within 0.25 mile of documented roosts will be impacted during this period.

8. **Please verify:**

No documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted between June 1 and July 31.

Yes, I verify that no documented NLEB roosts or surrounding summer habitat within 150 feet of documented roosts will be impacted during this period.

9. Please describe the proposed bridge work:

Replacement of 4 bridges with 4-sided box culverts. Two will be on new location and two will be on the existing alignment using temporary detours to maintain traffic

10. Please state the timing of all proposed bridge work:

During the active season, beginning in March or April

11. Please enter the date of the bridge assessment:

October 16, 2019

12. You have indicated that the following Avoidance and Minimization Measures (AMMs) will be implemented as part of the proposed project:

- *Tree Removal AMM 1*
- *Tree Removal AMM 3*
- *General AMM 1*
- *Hibernacula AMM 1*

Avoidance And Minimization Measures (AMMs)

This determination key result includes the commitment to implement the following Avoidance and Minimization Measures (AMMs):

TREE REMOVAL AMM 1

Modify all phases/aspects of the project (e.g., temporary work areas, alignments) to avoid tree removal.

TREE REMOVAL AMM 3

Ensure tree removal is limited to that specified in project plans and ensure that contractors understand clearing limits and how they are marked in the field (e.g., install bright colored flagging/fencing prior to any tree clearing to ensure contractors stay within clearing limits).

GENERAL AMM 1

Ensure all operators, employees, and contractors working in areas of known or presumed bat habitat are aware of all FHWA/FRA/FTA (Transportation Agencies) environmental commitments, including all applicable AMMs.

HIBERNACULA AMM 1

For projects located within karst areas, on-site personnel will use best management practices, secondary containment measures, or other standard spill prevention and countermeasures to avoid impacts to possible hibernacula. Where practicable, a 300 foot buffer will be employed to separate fueling areas and other major containment risk activities from caves, sinkholes, losing streams, and springs in karst topography.

Determination Key Description: FHWA, FRA, FTA Programmatic Consultation For Transportation Projects Affecting NLEB Or Indiana Bat

This key was last updated in IPaC on December 29, 2020. Keys are subject to periodic revision.

This decision key is intended for projects/activities funded or authorized by the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and/or Federal Transit Administration (FTA), which may require consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) for the endangered **Indiana bat** (*Myotis sodalis*) and the threatened **Northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects](#). The programmatic biological opinion covers limited transportation activities that may affect either bat species, and addresses situations that are both likely and not likely to adversely affect either bat species. This decision key will assist in identifying the effect of a specific project/activity and applicability of the programmatic consultation. The programmatic biological opinion is not intended to cover all types of transportation actions. Activities outside the scope of the programmatic biological opinion, or that may affect ESA-listed species other than the Indiana bat or NLEB, or any designated critical habitat, may require additional ESA Section 7 consultation.

**ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST
FOR CONSIDERATION OF POTENTIAL IMPACTS**

ARDOT Job Number 100991 FAP Number NHPP-0038 (55)

Job Title Independence Co. Line – Eaton Strs. & Apprs. (S)

| Environmental Resource | None | Minimal | Major | Comments-required for each item |
|--------------------------------|------|---------|-------|--|
| Air Quality | X | | | No air quality/MSAT impacts |
| Cultural Resources | X | | | SHPO clearance attached |
| Economic | X | | | No adverse impacts |
| Endangered Species | | X | | May affect LAA Indian Bat and NLEB |
| Environmental Justice/Title VI | X | | | EJ populations impacts not anticipated |
| Fish and Wildlife | | X | | Temporary impacts during construction |
| Floodplains | | X | | Zone A SFHA |
| Forest Service Property | X | | | None in project area |
| Hazardous Materials/Landfills | X | | | No sites in project area |
| Land Use | | X | | 6.0 acres of new Right of Way, 1.7 acres of TCE |
| Migratory Birds | X | | | Migratory Bird SP included |
| Navigation/Coast Guard | X | | | No navigable waterways involved |
| Noise Levels | X | | | No increases due to project |
| Prime Farmland | X | | | No Prime Farmland impacted |
| Protected Waters | X | | | None occur in project area |
| Public Recreation Lands | X | | | None in project area |
| Public Water Supply/WHPA | X | | | WHP SP included |
| Relocates | X | | | No relocations |
| Section 4(f)/6(f) | X | | | No impacts to 4f/6f resources |
| Social | X | | | No impacts to the social environment |
| Underground Storage Tanks | X | | | No USTs in project area |
| Visual | X | | | No changes to visual environment |
| Streams | | X | | Less than 300' & 0.1 acre of impacts to each of the three streams |
| Water Quality | | X | | Temporary impacts during construction |
| Wetlands | | X | | Wetlands in project area are exempt under the Navigable Waters Protection Rule |
| Wildlife Refuges | X | | | None in the project area |

Section 401 Water Quality Certification Required? No

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type Nationwide Permit 14

Remarks: Lynn Waterworks well 0.45 miles from project. Two fuel ASTs once were located 25' north of the centerline of Station 307+00. Petroleum contaminated soil may be present in the area.

Signature of Evaluator  Date 3/30/2021

ROADWAY DESIGN REQUEST

Job Number 100991 FAP No. NHPP-0038(55) County Lawrence

Job Name Independence Co. Line – Eaton Strs. & Apprs. (S)

Design Engineer Landon Miller Environmental Staff _____

Detailed Project Description The purpose of the project is to replace four structures: Bridge Number M3317, Log Mile 14.30, Bridge Number M0611, Log Mile 10.50, Bridge Number M0603, Log Mile 1.39 and Bridge Number M0604, Log Mile 1.45.

A. Existing Conditions:

Roadway Width: 30^{'(1)}/28^{'(2,3)} Shoulder Type/Width: 3'(Unpaved)⁽¹⁾ / 4'(Unpaved)^(2,3)

Number of Lanes and Width: 2@ 12^{'(1)}/10^{'(2,3)} Existing Right-of-Way: _____

Sidewalks? N/A Location: _____ Width: _____

Bike Lanes? N/A Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 40' Shoulder Type/Width: 8' (2'paved)

Number of Lanes and Width: 2 @ 12' Proposed Right-of-Way: varies

Sidewalks? N/A Location: _____ Width: _____

Bike Lanes? N/A Location: _____ Width: _____

C. Construction Information:

If detour: Where: Site 2 & Site 3 Length: 755'⁽²⁾ & 697'⁽³⁾

D. Design Traffic Data:

2023 ADT: 1700 2043 ADT: 2100 % Trucks: 5%

Design Speed: 55 m.p.h.

E. Approximate total length of project: 0.558 mile(s)

F. Justification for proposed improvements: To replace deficient bridges

G. Total Relocatees: 0 Residences: 0 Businesses: 0

H. Have you coordinated with any outside agencies (e.g., FHWA, City, County, etc.)? No

| Agency/Official | Person Contacted | Date |
|-----------------|------------------|------|
| | | |
| | | |
| | | |