

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB NUMBER BR0406
FAP NUMBER STPB-0004(78)
OSAGE CREEK STR. & APPRS. NO. 2 (S)
CO. RD. 1785
BENTON 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

October 2019

10/15/2019

Date of Approval

M L

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 Memorandum of 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 the Osage Creek Bridge (01785) on Benton County Road 1785. Total length of the project is 0.34 mile. A project location map is attached.

The existing roadway consists of two 10' wide paved travel lanes with 4' wide unpaved shoulders. The existing right of way width is approximately 90'. The existing bridge is 25.5' wide by 452' long.

The proposed roadway will consist of two 11' wide paved travel lanes with 5' wide paved shoulders. The proposed bridge will be 31.2' wide by 502.2' long. The proposed right of way width will average 165'. The project will require 4.4 acres of additional right of way. Of this acreage, approximately 1.5 acres is Prime Farmland. Form NRCS-CPA-106 is attached.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2018	420	4	40 mph
2038	550	4	40 mph

The project will not involve relocations, underground storage tanks, hazardous materials, any environmental justice issues, or cultural resources. The State Historic Preservation Officer's clearance is attached. No public involvement will be offered for the project.

The official species list obtained through the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation website lists gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), Piping Plover (*Charadrius melodus*), Ozark cavefish (*Amblyopsis rosae*), Neosho Mucket (*Lampsilis rafinesqueana*), Rabbitsfoot (*Theliderma cylindrica*), and Missouri bladderpod (*Physaria filiformis*) as species potentially occurring in the proposed project area.

Due the lack of suitable habitat and distance to known species locations, it has been determined that the project will have “no effect” on Piping Plover and Missouri bladderpod. Programmatic consultation with USFWS through IPaC provided a “may affect, not likely to adversely affect” determination for the Indiana bat and northern long-eared bat. A winter clearing restriction will be placed in the job contract prohibiting the clearing of trees between March 15 and November 14.

The Ozark big-eared bat, gray bat, and the Ozark cavefish are known from Logan Cave, approximately 1 mile north of the project area; however, the project lies outside its recharge area. The nearest known population of Neosho Mucket and Rabbitsfoot is approximately four miles downstream. The project area was surveyed and no live or fresh dead mussels were found. A Water Pollution Control Special Provision will be added to the job contract. Due to the implementation of BMPs, winter clearing, time-of-day restrictions, and the negative mussel survey, it has been determined that this project may affect, but is not likely to adversely affect the aforementioned species. The USFWS concurred on October 7, 2019.

The project will have a discharge of dredged or fill material into waters of the United States associated with the bridge replacement; therefore, a Section 404 permit will be required. The project should be authorized by Nationwide Permit 14 for Linear Transportation Projects as defined in Federal Register 82(4): 1860-2008. Due to the proximity of the Illinois River (an Extraordinary Resource Water) to the project area, a Water Pollution Control Special Provision and a Vegetated Buffer Special Provision will be provided in the contract.

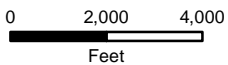
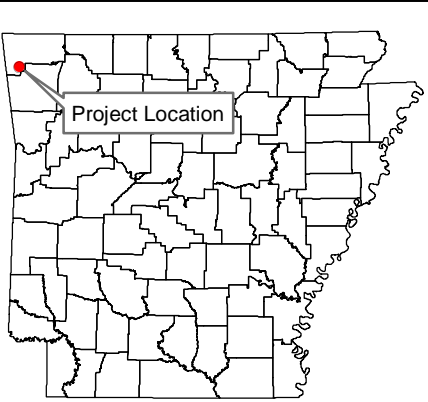
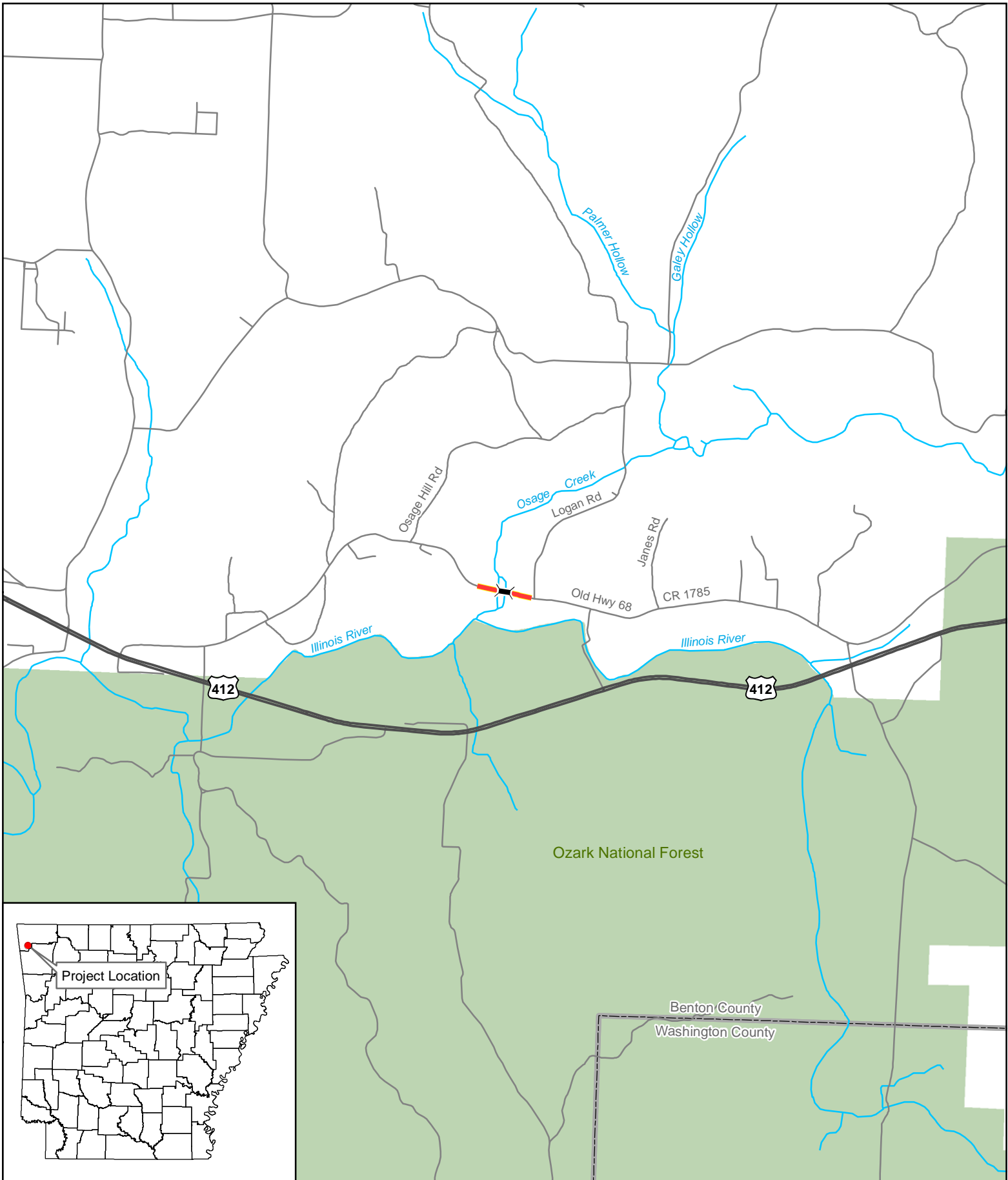
Benton County participates in the National Flood Insurance Program. The project is located in Zone A, Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before project construction. 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.

Based on the ARDOT noise policy, a noise analysis is not required for this project. Replacing the bridge will not involve adding capacity or exposing noise sensitive land uses to a new traffic noise source. In compliance with federal guidelines, local authorities will not require notification.

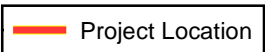
Job Number BR0406
Tier 3 Categorical Exclusion
Page 3 of 3

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



ARDOT - Environmental GIS - Strawn
October 11, 2019

Job BR0406
Osage Creek Str. & Apprs. No. 2
Benton County





THE DEPARTMENT OF ARKANSAS
HERITAGE

Asa Hutchinson
Governor

Stacy Hurst
Director

April 11, 2019

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

Arkansas Arts Council

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Arkansas Historic
Preservation Program

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Arkansas Natural
Heritage Commission

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Arkansas State Archives

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Delta Cultural Center

•

Historic Arkansas Museum

•

Mosaic Templars
Cultural Center

•

Old State House Museum

RE: Benton County — General
Section 106 Review — FHWA
Response Letter: PIF for Bridge 01785 Replacement
ARDOT Job Number BR0406
AHPP Tracking Number 99549.01

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the April 9, 2019 Project identification Form (PIF) regarding the proposed replacement of the Old Highway 68 Bridge 01785 over Osage Creek in Benton County. The area of potential effect (APE) is approximately 4.4 acres (1.8 hectares).

Based on the provided information detailing the methodology and results of the cultural resources investigation, we concur with the finding of No Historic Properties Affected pursuant to 36 CFR § 800.4(d)(1). We request the Arkansas Department of Transportation contact the AHPP if the project parameters change or in the event of an inadvertent discovery pursuant to Section 107.10(b) and (c)(2) of the Arkansas Highway and Transportation Department *Standard Specifications for Highway Construction* (2014).

Tribes that have expressed an interest in the area include the Cherokee Nation (Ms. Elizabeth Toombs), the Muscogee (Creek) Nation (Ms. Corain Lowe-Zepeda), the Osage Nation (Dr. Andrea Hunter), the Shawnee Tribe of Oklahoma (Ms. Tonya Tipton), and the United Keetoowah Band of Cherokee Indians (Ms. Erin Thompson and Charlotte Wolfe). We recommend consultation in accordance with 36 CFR § 800.2(c)(2).

Thank you for the opportunity to review this undertaking. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Eric Mills of my staff at 501-324-9784 or email eric.mills@arkansas.gov.

Sincerely,

Scott Kaufman
Director, AHPP

cc: Mr. Randall Looney, Federal Highway Administration
Dr. Ann Early, Arkansas Archeological Survey



1100 North Street
Little Rock, AR 72201

(501) 324-9880
fax: (501) 324-9184

info@arkansaspreservation.org
www.arkansaspreservation.com

FARMLAND CONVERSION IMPACT RATING FOR CORRIDOR TYPE PROJECTS

PART I (To be completed by Federal Agency)	Job BR0406	3. Date of Land Evaluation Request 9/16/2019	4. Sheet 1 of
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1. Name of Project Osage Creek Str. & Apprs. No. 2 (S)	5. Federal Agency Involved FHWA
2. Type of Project Bridge Replacement	6. County and State Benton County, Arkansas

PART II (To be completed by NRCS)		1. Date Request Received by NRCS	2. Person Completing Form
3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form).		YES NO	4. Acres Irrigated Average Farm Size
5. Major Crop(s)	6. Farmable Land in Government Jurisdiction	7. Amount of Farmland As Defined in FPPA	
	Acres: %	Acres: %	
8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS	

PART III (To be completed by Federal Agency)	Alternative Corridor For Segment			
	Corridor A	Corridor B	Corridor C	Corridor D
A. Total Acres To Be Converted Directly	4.4			
B. Total Acres To Be Converted Indirectly, Or To Receive Services				
C. Total Acres In Corridor	6.8			

PART IV (To be completed by NRCS) Land Evaluation Information				
A. Total Acres Prime And Unique Farmland	1.5			
B. Total Acres Statewide And Local Important Farmland				
C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				

PART V (To be completed by NRCS) Land Evaluation Information Criterion Relative value of Farmland to Be Serviced or Converted (Scale of 0 - 100 Points)

PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))	Maximum Points				
1. Area in Nonurban Use	15	15			
2. Perimeter in Nonurban Use	10	10			
3. Percent Of Corridor Being Farmed	20	10			
4. Protection Provided By State And Local Government	20	0			
5. Size of Present Farm Unit Compared To Average	10	2			
6. Creation Of Nonfarmable Farmland	25	0			
7. Availability Of Farm Support Services	5	5			
8. On-Farm Investments	20	0			
9. Effects Of Conversion On Farm Support Services	25	0			
10. Compatibility With Existing Agricultural Use	10	0			
TOTAL CORRIDOR ASSESSMENT POINTS	160	42			

PART VII (To be completed by Federal Agency)				
Relative Value Of Farmland (From Part V)	100	100		
Total Corridor Assessment (From Part VI above or a local site assessment)	160	42		
TOTAL POINTS (Total of above 2 lines)	260	142		

Corridor Selected: Adjacent to existing	2. Total Acres of Farmlands to be Converted by Project: 1.5 acres of Prime Farmland	3. Date Of Selection:	4. Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input type="checkbox"/>
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5. Reason For Selection:

Best location for new bridge.



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



October 7, 2019

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

Consultation Code: 04ER1000-2019-I-1206

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) has reviewed your re-initiation request, assessment, and determinations for Arkansas Department of Transportation (ARDoT) Job Number BR0406 Osage Creek Str. & Apprs. No. 2 (S), Old Hwy. 68 Bridge replacement over Osage Creek in Benton 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 (*Myotis sodalis*) and/or Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). We received your re-initiation request and the associated Project Submittal Form on October 2, 2019.

The project was described and assessed as follows (abbreviated):

The Arkansas Department of Transportation is proposing to replace the Old Hwy. 68 Bridge over Osage Creek. The project should have no affect on the Piping Plover (*Charadrius melodus*) and Missouri Bladderpod (*Physaria filiformis*) due to limited scope of the project, lack of habitat, and distance to known populations.

The Ozark Big-eared Bat (*Corynorhinus townsendii ingens*), Gray Bat (*Myotis grisescens*), and the Ozark Cavefish (*Amblyopsis rosae*) are known from Logan Cave approximately one mile to the north. However, the project is outside the recharge area. The nearest known population of Neosho Mucket (*Lampsilis rafinesqueana*) and Rabbitsfoot (*Theliderma cylindrica*) is approximately four miles downstream. The project area was surveyed and no live or fresh dead mussels were found. Implementation of Best Management Practices and the addition of the water pollution control special provision to the contract will minimize potential effects to the aquatic species. ARDoT has determined the project may affect, but is not likely to adversely affect, the following species; Gray Bat, Ozark Big-eared Bat, Ozark Cavefish, Neosho Mucket, and Rabbitsfoot.

FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO)

determination key within IPaC provided a determination of may affect, but is not likely to adversely affect (NLAA) for the endangered Indiana Bat (*Myotis sodalis*) and/or the threatened Northern Long-eared Bat (*Myotis septentrionalis*).

The Service has received your concurrence verification letter and request to verify that the Proposed Action may rely on the concurrence 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 (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, 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, may affect, but is not likely to adversely affect (NLAA) Indiana Bat and Northern Long-eared Bat. The Service concurs that this action may rely on the PBO.

Please keep in mind that you must report any departures from the plans submitted; results of any surveys conducted; or any dead, injured, or sick listed bats that are found to this office. If this project is not completed within one year of this letter, you must update your determination and resubmit the required information.

Furthermore, due to the limited size of the area being affected along an existing bridge crossing, roadway and adjacent new right-of-way, the distance to known species locations or hibernacula, the implementation of BMPs, winter clearing and time of day restrictions, negative listed mussel survey results, mitigation provided, and the standard provisions for stream sediment control and water quality conservation measures, the Service agrees with your determinations of "not likely to adversely affect" for Ozark Cavefish, Neosho Mucket, Rabbitsfoot, Ozark Big-eared Bat, and Gray Bat. The Service also agrees with your assessment for all other listed species identified. This concurrence concludes your ESA Section 7 responsibilities relative to these species for this action.

For further assistance or if you have any questions, 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\FY2020\ARDOT\ArDOT Job BR0406\AFO Letter -Job BR0406 - Osage Creek Str. Apprs. No. 2 (S) - 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:

October 02, 2019

Consultation Code: 04ER1000-2019-SLI-1206

Event Code: 04ER1000-2020-E-00022

Project Name: BR0406 - Osage Creek Str. & Apprs. No. 2 (S)

Subject: Updated list of threatened and endangered species that may occur in your proposed project location, and/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: 04ER1000-2019-SLI-1206

Event Code: 04ER1000-2020-E-00022

Project Name: BR0406 - Osage Creek Str. & Apprs. No. 2 (S)

Project Type: TRANSPORTATION

Project Description: Replace the bridge over Osage Creek on existing alignment.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/36.18014229109804N94.40060913562775W>



Counties: Benton, AR

Endangered Species Act Species

There is a total of 10 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. Your location is outside the critical habitat. 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
Ozark Big-eared Bat <i>Corynorhinus (=Plecotus) townsendii ingens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7245	Endangered

Birds

NAME	STATUS
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. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened

Fishes

NAME	STATUS
Ozark Cavefish <i>Amblyopsis rosae</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6490	Threatened

Clams

NAME	STATUS
Neosho Mucket <i>Lampsilis rafinesqueana</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/3788	Endangered
Rabbitsfoot <i>Quadrula cylindrica cylindrica</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5165	Threatened

Crustaceans

NAME	STATUS
Benton County Cave Crayfish <i>Cambarus aculabrum</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5011	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

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>

In Reply Refer To:

October 02, 2019

Consultation Code: 04ER1000-2019-I-1206

Event Code: 04ER1000-2020-E-00028

Project Name: BR0406 - Osage Creek Str. & Apprs. No. 2 (S)

Subject: Concurrence verification letter for the 'BR0406 - Osage Creek Str. & Apprs. No. 2 (S)' project 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 dated to verify that the **BR0406 - Osage Creek Str. & Apprs. No. 2 (S)** (Proposed Action) may rely on the concurrence provided in the 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, may affect, but is not likely to adversely affect (NLAA) the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*).

The Service has 14 calendar days to notify the lead Federal action agency or designated non-federal representative if we determine that the Proposed Action does not meet the criteria for a NLAA determination under the PBO. If we do not notify the lead Federal action agency or designated non-federal representative within that timeframe, you may proceed with the Proposed Action under the terms of the NLAA concurrence provided in the PBO. This verification period allows Service Field Offices to apply local knowledge to implementation of the PBO, as we may identify a small subset of actions having impacts that were unanticipated. In such instances, Service Field Offices may request additional information that is necessary to verify inclusion of the proposed action under the PBO.

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 is modified, or new information reveals that it may affect the Indiana bat and/or Northern long-eared bat in a manner or to an extent not considered in the PBO, further review to conclude the requirements of ESA Section 7(a)(2) may be required. If the Proposed Action may affect any other federally-listed or proposed species, and/or any designated critical habitat, additional consultation 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 contact this Service Office.

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

- Benton County Cave Crayfish, *Cambarus aculabrum* (Endangered)
 - Gray Bat, *Myotis grisescens* (Endangered)
 - Missouri Bladderpod, *Physaria filiformis* (Threatened)
 - Neosho Mucket, *Lampsilis rafinesqueana* (Endangered)
 - Ozark Big-eared Bat, *Corynorhinus (=Plecotus) townsendii ingens* (Endangered)
 - Ozark Cavefish, *Amblyopsis rosae* (Threatened)
 - Piping Plover, *Charadrius melodus* (Threatened)
 - Rabbitsfoot, *Quadrula cylindrica cylindrica* (Threatened)
-

Project Description

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

Name

BR0406 - Osage Creek Str. & Apprs. No. 2 (S)

Description

Replace the bridge over Osage Creek on existing alignment.

Determination Key Result

Based on your answers provided, this project(s) may affect, but is not 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 concurrence 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 biangulation/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.

B) During the inactive season

16. 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

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

Yes

18. 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?

B) During the inactive season

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

Yes

20. Will the tree removal alter *any* **documented** Indiana bat or NLEB roosts and/or alter any surrounding summer habitat **within** 0.25 mile of a documented roost?

No

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

No

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

Yes

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

No

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

No

25. Does the project include slash pile burning?

No

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

Yes

27. 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

28. 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

- *report.pdf* <https://ecos.fws.gov/ipac/project/Z4ZWFGZ6KZBZZI22UX4ZRQWC5I/projectDocuments/17474106>
-

29. 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

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

No

31. 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

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

No

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

No

34. 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

35. 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

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

No

37. 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

38. 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 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

39. 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 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

40. 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

41. 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

42. 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

43. 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

44. 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

45. Tree Removal AMM 2

Can *all* tree removal activities be restricted to when Indiana bats are not likely to be present (e.g., the inactive season)^[1]?

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

Automatically answered

Yes

46. Tree Removal AMM 2

Can *all* tree removal activities be restricted to when Northern long-eared bats are not likely to be present (e.g., the inactive season)^[1]?

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

Automatically answered

Yes

47. 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

48. Tree Removal AMM 4

Can the project avoid cutting down/removal of *all* (1) **documented**^[1] Indiana bat or NLEB roosts^[2] (that are still suitable for roosting), (2) trees **within** 0.25 miles of roosts, and (3) documented foraging habitat any time of year?

[1] The word documented means habitat where bats have actually been captured and/or tracked.

[2] 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 biangulation/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.)

Yes

49. Lighting AMM 1

Will *all* **temporary** lighting used during the removal of suitable habitat and/or the removal/trimming of trees within suitable habitat be directed away from suitable habitat during the active season?

Yes

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.

2.6

4. Please describe the proposed bridge work:

Replace the existing structure on existing alignment

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

the project is scheduled to let in November 2019

6. Please enter the date of the bridge assessment:

03/21/2018

Avoidance And Minimization Measures (AMMs)

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

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.

LIGHTING AMM 1

Direct temporary lighting away from suitable habitat during the active season.

TREE REMOVAL AMM 1

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

TREE REMOVAL AMM 2

Apply time of year restrictions for tree removal when bats are not likely to be present, or limit tree removal to 10 or fewer trees per project at any time of year within 100 feet of existing road/rail surface and **outside of documented** roosting/foraging habitat or travel corridors; visual emergence survey must be conducted with no bats observed.

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).

TREE REMOVAL AMM 4

Do not remove **documented** Indiana bat or NLEB roosts that are still suitable for roosting, or trees within 0.25 miles of roosts, or **documented** foraging habitat any time of year.

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

This key was last updated in IPaC on March 16, 2018. 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 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 BR0406 FAP Number STPB-0004(78)

Job Title Osage Creek Str. & Apprs. No. 2 (S)


Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No MSAT impacts anticipated
Cultural Resources	X			SHPO clearance attached
Economic	X			No economic impacts
Endangered Species		X		NLAA
Environmental Justice/Title VI	X			No protected populations in project area
Fish and Wildlife		X		Temporary impacts during construction
Floodplains		X		Floodplain SP required
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No sites in project area
Land Use	X			Will not be impacted by project
Migratory Birds		X		Migratory Bird SP will be added
Navigation/Coast Guard	X			None in project area
Noise Levels	X			No increases due to project
Prime Farmland		X		1.5 acres impacted
Protected Waters	X			None in project area, Illinois River close
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA		X		Wellhead Protection SP added
Relocates	X			No relocations
Section 4(f)/6(f)	X			4(f)/6(f) resources not present
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		Temporary impacts during construction
Water Quality		X		Temporary impacts during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? Yes

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type NW-14

Remarks: _____

Signature of Evaluator  Date October 8, 2019

Date Submitted 11/27/2018

Date Returned _____

STATE AID DESIGN REQUEST

Job Number BR0406 FAP Number STPB-0004(78) County Benton

Job Name Osage Creek Str. & Apprs. No. 2 (S)

Design Engineer Phillip Ammons Environmental Staff TT/LS/MM

Brief Project Description: Widening apprs. & bridge replacement on existing alignment.

A. Existing Conditions:

1. roadway Width: Metric _____ English Approx. 26'
2. Shoulder Width: Metric _____ English 4'
3. Number of Lanes and Width: Metric _____ English 2 - 10'
4. Existing Right-of-Way: Metric _____ English Approx. 90'

B. Proposed Improvements:

1. Roadway Width: Metric _____ English 33' Max.
2. Shoulder Width: Metric _____ English 5'
3. Number of Lanes and Width: Metric _____ English 2 - 11'
4. Average Right-of-Way: Metric _____ English Approx. 165'

If bridge(s) will be replaced by culverts give dimensions: N/A

C. Construction Information:

If detour: Where County Roads 230 and 9 Length: English

D. Design Data:

2018: ADT: 420 2038: ADT: 550 Trucks: 4.0 %

Design Speed: 40 m.p.h

E. Approximate total length of project: _____ kilometer(s) 0.34 mile(s)

F. Justification for proposed improvements: Bridge Replacement

G. Total Relocates: 0 Residences: _____ Businesses: _____

H. Have you coordinated with any of the following: (Provide name and date.)

County Officials Benton County Judge

State Agency _____

Federal Agency _____