

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB NUMBER 080613
FAP NUMBER NHPP-0058(56)
PINEY CREEK BRANCH STR. & APPRS.
ROUTE 333, SECTION 1
POPE 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

March 2020

3/20/2020

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

The Environmental Division reviewed the referenced project and 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 the Highway 333 bridge over Piney Creek Branch in Pope County. The project length is 0.3 mile. A project location map is attached.

The existing roadway has two 10' wide paved travel lanes with 4' wide unpaved shoulders. Average existing right of way width is 90'. The existing bridge (#M4000) is 62' x 29' and weight-restricted.

The proposed roadway will have two 11' wide paved travel lanes with 4' wide (2' paved) shoulders. The existing bridge will be replaced with a triple-barrel 12' x 10' box culvert. Average proposed right of way width is 150'. Approximately 1.7 acres of new right of way will be acquired.

Design data for this project is as follows:

Design Year	Average Daily Traffic (vpd)	Percent Trucks	Design Speed (mph)
2021	750	3	40
2041	920		

There are no relocations, environmental justice concerns, floodplains, hazardous materials, underground storage tanks, wetlands, or cultural resources associated with this project. State Historic Preservation Officer clearance is attached. Approximately 1.7 acres of Prime Farmland will be converted to highway right of way. Form NRCS-CPA-106 is attached.

Based on the ARDOT noise policy, a noise analysis is not required for this project. The bridge replacement 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.

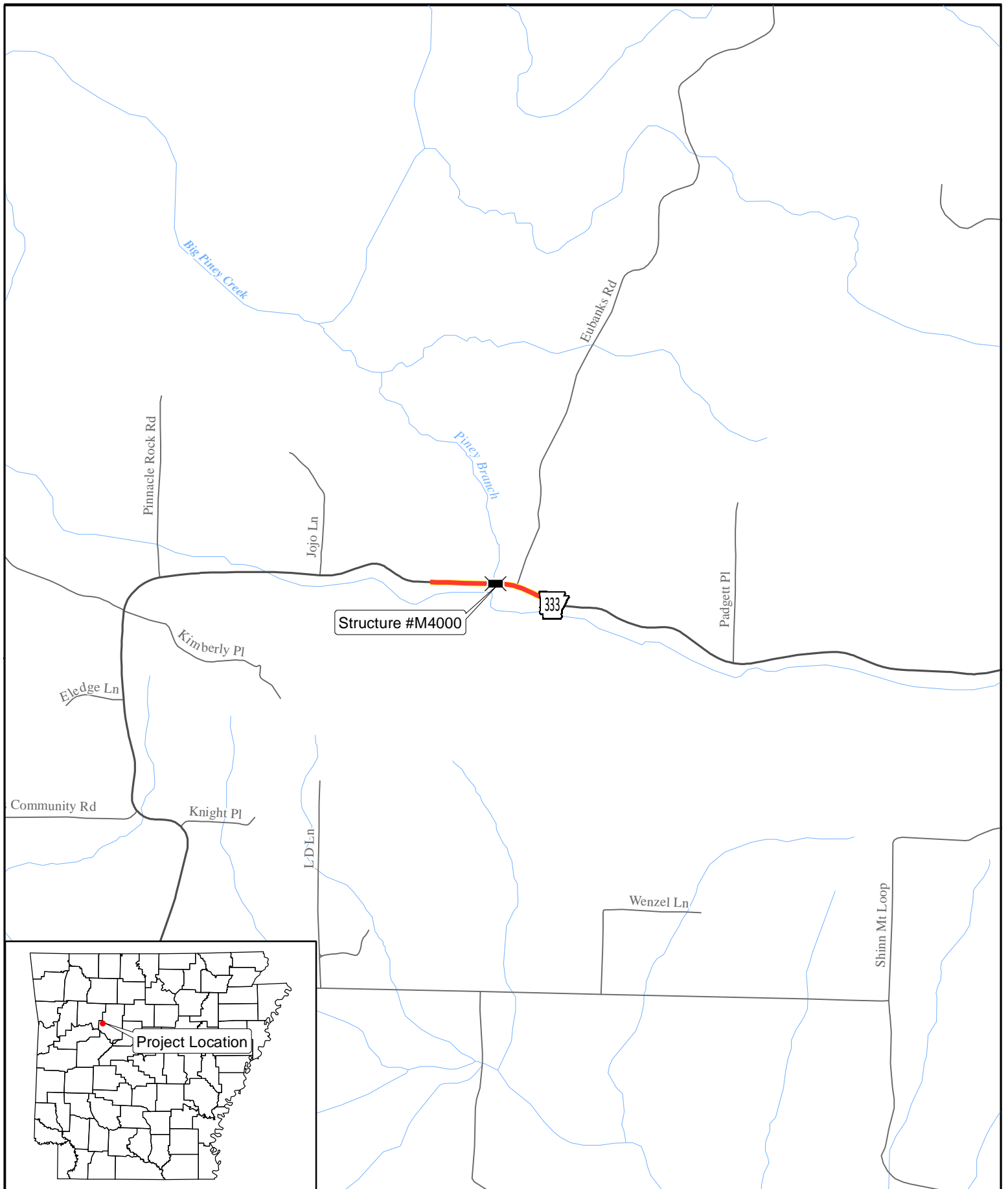
This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxic (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or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

The attached official species list obtained through the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) website lists the following federally-listed species as potentially occurring in the project area: the endangered gray bat (*Myotis grisescens*); the endangered Indiana bat (*Myotis sodalis*); the threatened northern long-eared bat (*Myotis septentrionalis*); the endangered Ozark big-eared bat (*Corynorhinus townsendii ingens*); the proposed threatened Easter Black Rail (*Laterallus jamaicensis ssp. jamaicensis*); the threatened Piping Plover (*Charadrius melodus*); the threatened Red Knot (*Calidris canutus rufa*); the endangered Whooping Crane (*Grus americana*); and the threatened Missouri bladderpod (*Physaria filiformis*).

Consultation with the USFWS via IPaC determined that the project "may affect, but is not likely to adversely affect" the Indiana bat and northern long-eared bat. It was also determined that the project "may affect, but is not likely to adversely affect" the gray bat and Ozark big-eared bat based on the minimal clearing of suitable foraging habitat. A "no effect" determination was made for the remaining federally-listed species due to a lack of suitable habitat in the project area. The USFWS correspondence is attached.

Permanent stream impacts are estimated at 160'. 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.

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



Structure #M4000

333

Pinnacle Rock Rd

Eubanks Rd

Piney Branch

Jojo Ln

Padgett Pl

Kimberly Pl

Eledge Ln

Community Rd

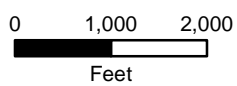
Knight Pl

L/D Ln

Wenzel Ln

Shinn Mt Loop

Project Location



ARDOT - Environmental GIS - Hopkins
October 24, 2019

Job 080613
Piney Creek Branch Str. & Apprs.
(Hwy. 333)
Pope County





ARKANSAS HERITAGE



March 13, 2020

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

Re: Pope County – General
Section 106 Review – FHWA
Piney Creek Branch Strs. & Apprs. (S)
Route 333, Section 1
ARDOT Job Number 080613
AHPP Tracking Number 102826.01

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Project Identification Form (PIF) for the above-referenced job in Pope County. As described, the proposed undertaking entails replacing Bridge M4000 on Highway 333 in Pope County.

In correspondence dated January 16, 2019 (AHPP Tracking Number 102826), the AHPP concurred that Bridge M4000 is not eligible for inclusion in the National Register of Historic Places. Based on the provided information and the results of the field investigation, the AHPP concurs with the finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)**. In the event of a post-review discovery of historic properties within the area of potential effects, please contact the AHPP and other consulting parties in accordance with 36 CFR § 800.13(b)(3).

Tribes that have expressed an interest in the area include the Cherokee Nation (Ms. Elizabeth Toombs), the Chickasaw Nation (Ms. Karen Brunso), the Muscogee (Creek) Nation (Ms. Corain Lowe-Zepeda), the Osage Nation (Dr. Andrea Hunter), the Quapaw Nation (Mr. Everett Bandy), the Shawnee Tribe (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. If you have any questions, please contact Eric Mills of my staff at (501) 324-9784 or eric.mills@arkansas.gov. Please refer to the AHPP Tracking Number above in any correspondence.

Sincerely,

Scott Kaufman
Director, AHPP

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

**FARMLAND CONVERSION IMPACT RATING
FOR CORRIDOR TYPE PROJECTS**

PART I (To be completed by Federal Agency)	Job 080613	3. Date of Land Evaluation Request	4. Sheet 1 of _____
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1. Name of Project	5. Federal Agency Involved
2. Type of Project	6. County and State

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 <input type="checkbox"/> NO <input type="checkbox"/>		4. Acres Irrigated Average Farm Size	
5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: _____ % _____	7. Amount of Farmland As Defined in FPPA 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				
B. Total Acres To Be Converted Indirectly, Or To Receive Services				
C. Total Acres In Corridor				

PART IV (To be completed by NRCS) Land Evaluation Information	Corridor A	Corridor B	Corridor C	Corridor D
A. Total Acres Prime And Unique Farmland				
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				

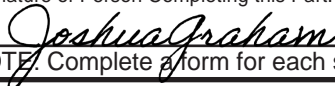
PART V (To be completed by NRCS) Land Evaluation Information Criterion Relative value of Farmland to Be Serviced or Converted (Scale of 0 - 100 Points)

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

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

1. Corridor Selected:	2. Total Acres of Farmlands to be Converted by Project:	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:

Signature of Person Completing this Part: _____ DATE _____

 NOTE: Complete a form for each segment with more than one Alternate Corridor



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 11, 2020

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

Consultation code: 04ER1000-2020-R-0260

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) has reviewed your request, assessment, and determinations for Arkansas Department of Transportation (ARDoT) Job Number 080613 - Piney Creek Str. & Apprs., Pope 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 request and the associated Project Submittal Form on February 6, 2020.

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

The ArDOT proposes to replace the Hwy 333 bridge over Piney Creek Branch in Pope County. The official species list obtained through the U.S. Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) website identified the endangered Gray Bat (*Myotis grisescens*), the endangered Indiana Bat (*Myotis sodalis*, IBAT), the threatened Northern Long-eared Bat (*Myotis septentrionalis*, NLEB), the endangered Ozark Big-eared Bat (*Corynorhinus (=Plecotus) townsendii ingens*), the proposed threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the endangered Whooping Crane (*Grus americana*), and the threatened Missouri Bladderpod (*Physaria filiformis*) as potentially occurring in the project area. See attached species list.

Mist net surveys for this project were conducted July-August of 2019. No IBAT or NLEB were captured, but a single Gray Bat was captured. A bridge assessment was conducted on January 7, 2020. Feces was found on top of the bridge abutments. USFWS personnel determined that this was not bat guano. No further evidence of bats was found at this bridge. ArDOT made a "may affect, not likely to adversely affect" determination for IBAT and NLEB, based on negative mist net survey results and limited scope of suitable summer roosting habitat clearing. A "may affect, not likely to adversely affect" determination was made for Gray Bat and Ozark Big-eared Bat based on the limited scope of suitable foraging habitat clearing.

A “no effect” determination was made for Eastern Black Rail, Piping Plover, Whooping Crane, and Missouri Bladderpod based on the lack of suitable habitat in the project area and distance to known occurrence records.

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. Due to the limited habitat being affected along existing roadway, bridge crossing, adjacent right-of-way, negative mist net finding, negative bridge assessment, the distance to known species locations or hibernacula, the implementation of BMPs, limited scope of active season clearing, and the standard provisions for stream sediment control and water quality conservation measures, the Service concurs with your determination of NLAA for Gray Bat, and Ozark Big-eared Bat. Furthermore, we agree with your assessment for all other listed species identified. This concurrence concludes your ESA Section 7 responsibilities relative to these species for this action.

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.

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 080613 - Piney Creek Str. & Apprs\AFO Letter -ARDOT Job 080613 - Piney Creek - 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 03, 2020

Consultation Code: 04ER1000-2020-SLI-0260

Event Code: 04ER1000-2020-E-00810

Project Name: 080613 - Piney Creek Branch Str. & Apprs. (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: 04ER1000-2020-SLI-0260

Event Code: 04ER1000-2020-E-00810

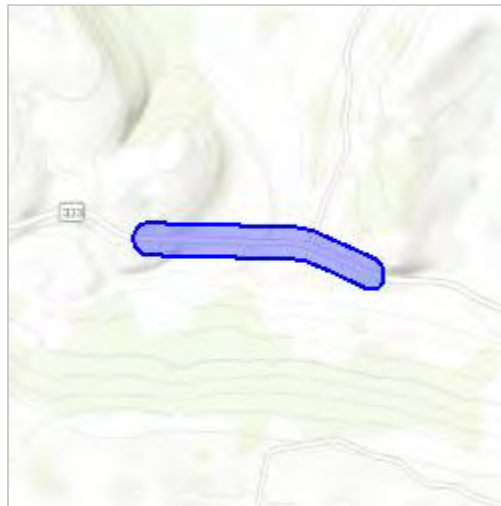
Project Name: 080613 - Piney Creek Branch Str. & Apprs. (S)

Project Type: BRIDGE CONSTRUCTION / MAINTENANCE

Project Description: This is a bridge replacement project in Pope County Arkansas, on state Hwy 333, passing over Piney Creek. Length of proposed project area is approximately 1650 feet.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.41397828708455N93.2196453983313W>



Counties: Pope, AR

Endangered Species Act Species

There is a total of 9 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
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	Proposed 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. Your location is outside the critical habitat. 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
Whooping Crane <i>Grus americana</i> Population: U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/758	Experimental Population, Non- Essential

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>

IPaC Record Locator: 765-20158481

February 06, 2020

Subject: Consistency letter for the '080613 - Piney Creek Branch Str. & Apprs. (S)' project (TAILS 04ER1000-2020-R-0260) 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 **080613 - Piney Creek Branch Str. & Apprs. (S)** (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 (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, but is not 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 - not 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 with a request for review, and as the agency deems appropriate, to submit for concurrence verification through the IPaC system. The lead Federal action agency or designated non-federal representative should log into IPaC using their agency email account and click "Search by record locator". They will need to enter the record locator **765-20158481**.

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* (Proposed Threatened)
 - Gray Bat, *Myotis grisescens* (Endangered)
 - Missouri Bladderpod, *Physaria filiformis* (Threatened)
 - Ozark Big-eared Bat, *Corynorhinus (=Plecotus) townsendii ingens* (Endangered)
 - Piping Plover, *Charadrius melodus* (Threatened)
 - Red Knot, *Calidris canutus rufa* (Threatened)
 - Whooping Crane, *Grus americana* (Experimental Population, Non-Essential)
-

Project Description

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

Name

080613 - Piney Creek Branch Str. & Apprs. (S)

Description

This is a bridge replacement project in Pope County Arkansas, on state Hwy 333, passing over Piney Creek. Length of proposed project area is approximately 1650 feet.

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?

No

8. 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

9. 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

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

No

11. 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.

Yes

SUBMITTED DOCUMENTS

- [080613_E039FINALdocx.pdf https://ecos.fws.gov/ipac/project/QJKBKGFA3ZBLDNG3V5R2N6VVTE/projectDocuments/19227584](https://ecos.fws.gov/ipac/project/QJKBKGFA3ZBLDNG3V5R2N6VVTE/projectDocuments/19227584)

12. Did the presence/probable absence (P/A) summer surveys detect Indiana bats and/or NLEB^[1]?

[1] P/A summer surveys conducted within the fall swarming/spring emergence home range of a documented Indiana bat hibernaculum (contact local Service Field Office for appropriate home range) 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.

No

13. Were the P/A summer surveys conducted **within** the fall swarming/spring emergence range of a documented Indiana bat hibernaculum^[1]?

[1] Contact the local Service Field Office for appropriate distance from hibernacula.

No

14. 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

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

Yes

16. 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

17. 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?

C) During the active season both during and outside of the period May 1 to July 31

18. Will the removal or trimming of habitat or trees **within** suitable but **undocumented Indiana bat** roosting/foraging habitat or travel corridors that occurs between May 1 and July 31 be limited such that all trees can be visually assessed for use by bats?

No

19. 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 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

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

Yes

21. 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

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

Yes

23. 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

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

Yes

25. Are *any* trees being removed **greater than** 9 inches diameter at breast height (dbh)?

Yes

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

No

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

No

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

No

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

No

30. Does the project include slash pile burning?

Yes

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

Yes

32. 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

33. 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

- *bridge inspection report.pdf* <https://ecos.fws.gov/ipac/project/QJKBKGFA3ZBLDNG3V5R2N6VVTE/projectDocuments/20158409>
-

34. 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

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

No

36. 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

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

No

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

No

39. 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

40. 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

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

No

42. Is the slash pile burning portion of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because it is near suitable habitat and >0.5 miles from any hibernaculum

43. 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

44. Is the location of this project consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because no bats were detected during presence/probable absence surveys conducted during the summer survey season and outside of the fall swarming/spring emergence periods. Additionally, all activities were at least 0.5 miles from any hibernaculum.

45. 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

46. 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

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.

2.17

4. How many acres^[1] of trees are proposed for removal between 100-300 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.

0.28

5. Please describe the proposed bridge work:

The existing bridge will be demolished and replaced either upstream or downstream of existing.

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

Demolition and new bridge construction will likely start in March of 2021

7. Please enter the date of the bridge assessment:

11/20/2019

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.

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 02, 2019. 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 080613 FAP Number NHPP-0058(56)

Job Title Piney Creek Branch Str. & Apprs. (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			In attainment area; no MSAT
Cultural Resources	X			SHPO clearance attached
Economic	X			No adverse impacts
Endangered Species		X		USFWS consultation attached
Environmental Justice/Title VI	X			EJ populations not identified in area
Fish and Wildlife		X		Temporary during construction
Floodplains	X			No mapped floodplains in project area
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			Not identified in project area
Land Use		X		2.6 acres new ROW acquired
Migratory Birds		X		Migratory Bird SP included
Navigation/Coast Guard	X			No navigable waterways involved
Noise Levels	X			No traffic noise level increases
Prime Farmland		X		1.7 acres PF acquired
Protected Waters		X		WPC SP- ERW
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA	X			None in project area
Relocatees	X			Relocations not required
Section 4(f)/6(f)	X			No 4(f) / 6(f) resources in project area
Social	X			No adverse impacts
Underground Storage Tanks	X			None identified in project area
Visual	X			No adverse impacts on visual quality
Streams		X		NW 14
Water Quality		X		Temporary decline 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:

An IWQC may be required depending on final consultation with ADEQ.

Signature of Evaluator Mary Pearson Date 03/06/2020

Date Sent: February 28, 2020

ROADWAY DESIGN REQUEST

Job Number 080613 FAP No. _____ County Pope

Job Name Piney Creek Branch Str. & Apprs. (S)

Design Engineer Nick Dail Environmental Staff _____

Brief Project Description Replace existing bridge.

A. Existing Conditions:

Roadway Width: 28' Shoulder Type/Width: 4' Unpaved

Number of Lanes and Width: 2-10' Existing Right-of-Way: 90'

Sidewalks? No Location: _____ Width: _____

Bike Lanes? No Location: _____ Width: _____

B. Proposed Conditions:

Roadway Width: 30' Shoulder Type/Width: 4' (2' Paved)

Number of Lanes and Width: 2-11' Proposed Right-of-Way: 150'

Sidewalks? No Location: _____ Width: _____

Bike Lanes? No Location: _____ Width: _____

C. Construction Information:

If detour: Where: _____ Length: _____

D. Design Traffic Data:

2021 ADT: 750 2041 ADT: 920 % Trucks: 3%
Design Speed: 40 m.p.h.

E. Approximate total length of project: 0.32 mile(s)

F. Justification for proposed improvements: Bridge replacement required

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

H. Have you coordinated with any outside agencies (e.g., FHWA, City, County, etc.)? _____

Agency/Official	Person Contacted	Date