

TIER 3 CATEGORICAL EXCLUSION

**VARIOUS JOB NUMBERS
VARIOUS FAP NUMBERS
VARIOUS PROJECT NAMES
VARIOUS ROUTES, SECTIONS
VARIOUS COUNTIES**

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

By the

U.S. Department of Transportation

Federal Highway Administration

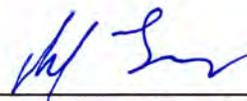
And the

Arkansas Department of Transportation

February 2020

2/18/2020

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

The Environmental Division reviewed the referenced projects and has determined they fall 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 these projects.

The purpose of these projects is to rehabilitate deteriorated highway pavement. More information on the location and scope of each project can be found in Table 1. The existing cross sections will not change as a result of the proposed projects and no additional right of way will be required. Project location maps are attached.

There are no relocations, environmental justice issues, wetlands, prime farmlands or cultural resources associated with these projects. In addition, there are existing underground storage tanks or hazardous waste deposits involved with these projects.

The official species lists obtained through the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) website lists the Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*), gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), pondberry (*Lindera melissifolia*), and Missouri bladderpod (*Physaria filiformis*) as protected species potentially occurring in the proposed project areas. Due to the limited scope of the projects' actions, lack of suitable habitat, and distance to known species occurrences, it has been determined that these projects will have "no effect" on the aforementioned species. The 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 "no effect" consistency letter for the project dated January 22, 2020.

The official species lists also include Ouachita Rock Pocketbook (*Arcidens wheeleri*), Pink Mucket (*Lampsilis abrupta*), Rabbitsfoot (*Theliderma cylindrica*), Fat Pocketbook (*Potamilus capax*), yellowcheek darter (*Etheostoma moorei*) and its critical habitat, and Speckled Pocketbook (*Lampsilis streckeri*) as species potentially occurring in the project areas. It has been determined that these projects "may affect, but is not likely to adversely affect" the federally listed species and critical habitat listed above. A Water Pollution Control Special Provision will be added to the contracts to minimize potential affects for Job Numbers 030512 and 080597. The USFWS concurred on January 28, 2020. The USFWS's official species list is attached along with the consistency and concurrence letters.

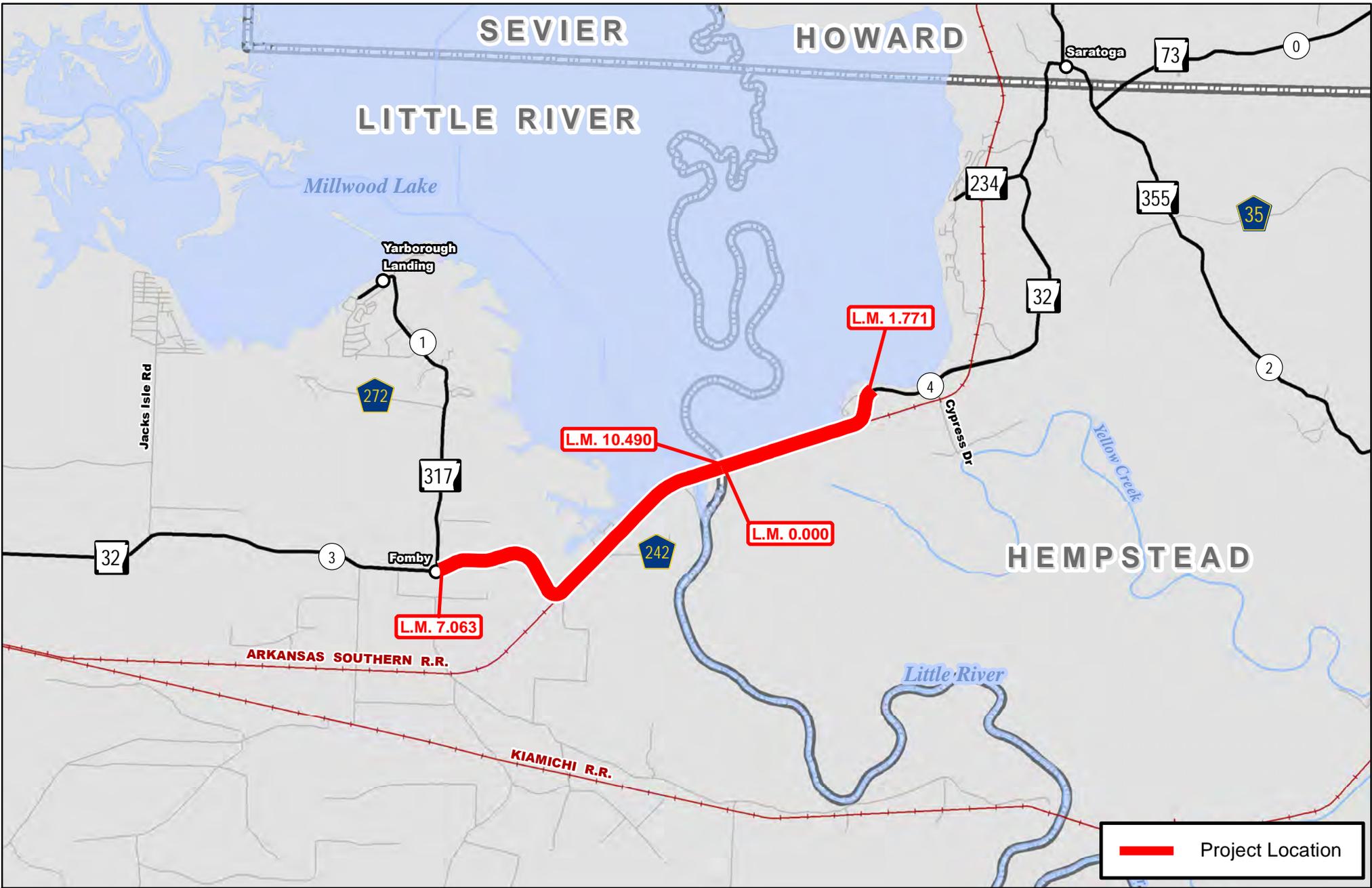
These projects will not have a discharge of dredged or fill material into waters of the United States; therefore, a Section 404 permit will not be required.

Based upon the ARDOT noise policy, noise analyses are not required for pavement preservation jobs. Construction will take place on existing location with only minor changes to the existing roadways. Any increases in roadway noise levels would not be attributable to the proposed projects, but instead result from traffic volume increases due to growth. In compliance with federal guidelines, local authorities will not require notification.

These projects have been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and have not been linked with any special mobile source air toxic (MSAT) concerns. As such, these projects 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 projects from that of the no-build alternative.

2020 Pavement Preservation Projects

Job Number	FAP No.	Job Name	County	Route/Section	Scope
030512	STPR-2941(1)	Hwy. 317 – East (S)	Hempstead & Little River	Hwy. 32, Secs. 3 & 4	Overlay/ Add Guardrail
080597	NHPP-0071(40)	Hwy. 65B – Hwy. 95 (Clinton) (S)	Van Buren	Hwy. 65, Sec. 8	UTBWC
101020	STPR-0056(54)	Marked Tree - Lepanto	Poinsett	Hwy. 140, Sec. 1	Patching & Level (2") & Overlay
101034	NHPP-0061(23)	Pocahontas – Corning (Sel. Secs.) (S)	Clay & Randolph	Hwy. 67, Secs. 19 & 20	Overlay (Sec. 19: 0.37-8.55; Sec. 20: 4.54-6.95); Level & Overlay (Sec. 20: 8.87-11.84)

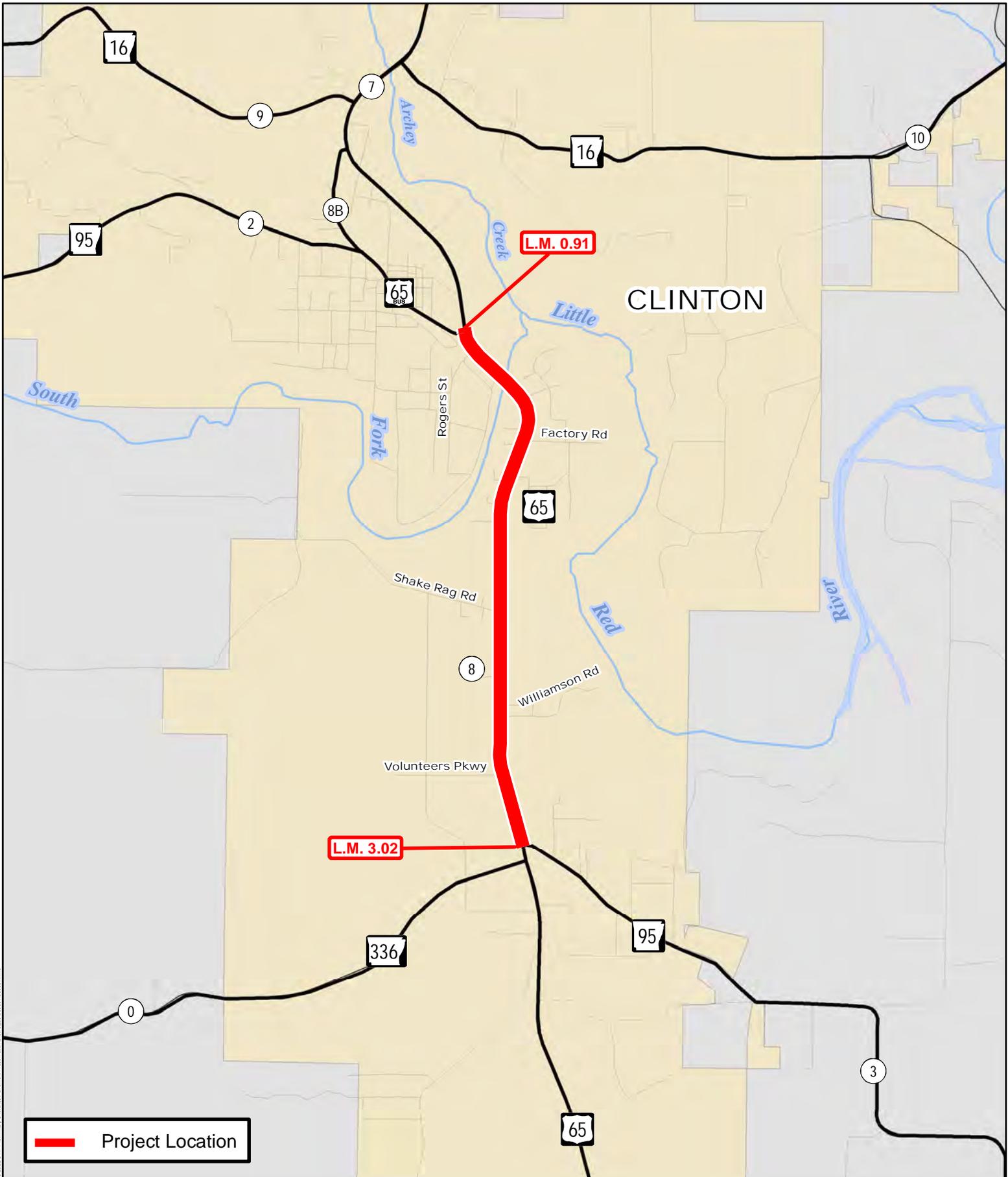


 Project Location

Job 030512
Hwy. 317 – East (S)
Hwy. 32, Secs. 3 & 4
Hempstead & Little River Counties



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Job 080597

Hwy. 65B - Hwy. 95 (Clinton) (S)

Hwy. 65, Sec. 8

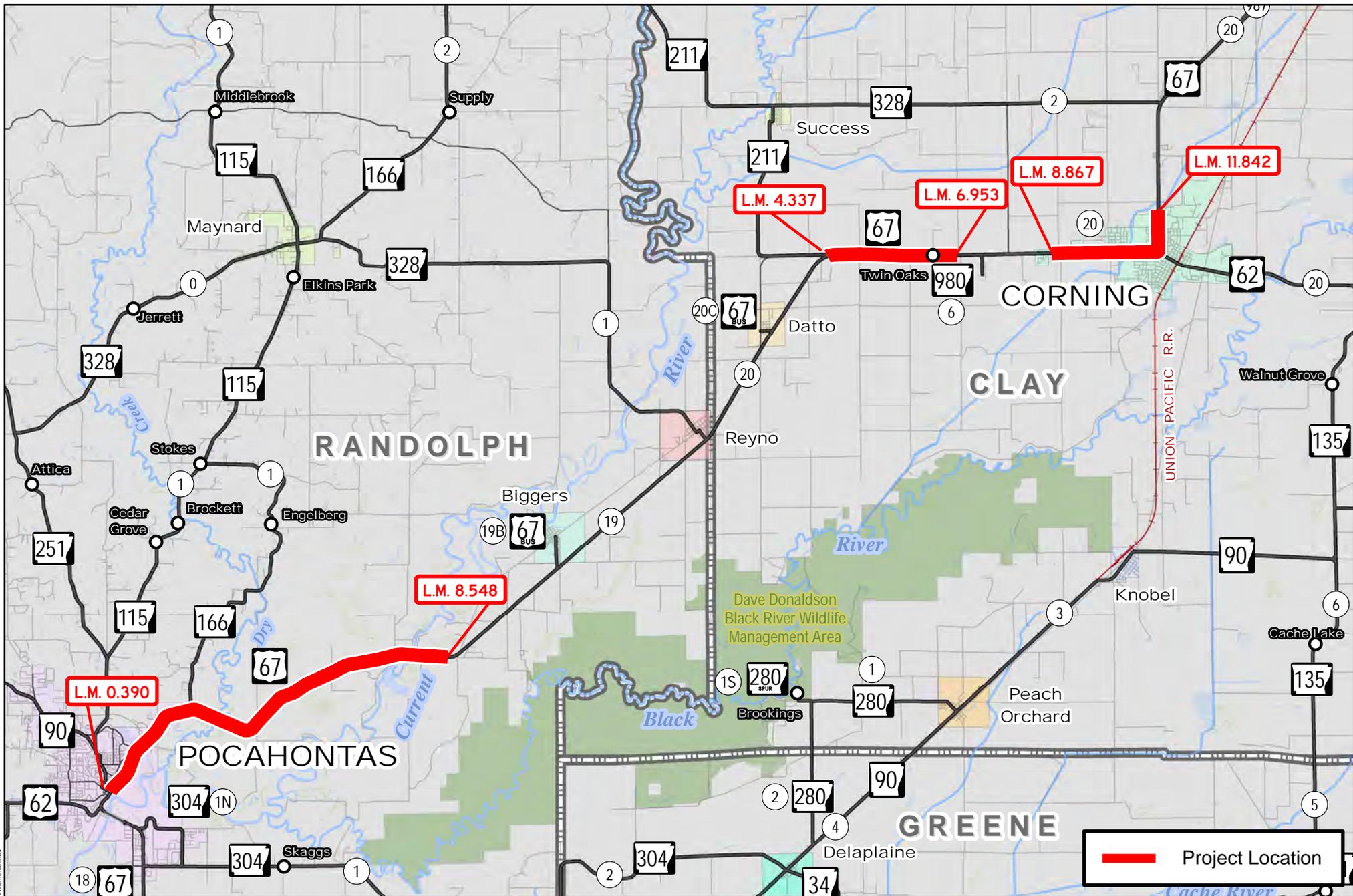
Van Buren County



PM: PS: JL40961: 10/5/2018



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Job 101034
 Pocahontas - Corning (Sel. Secs.) (S)
 Hwy. 67, Secs. 19 & 20
 Randolph & Clay Counties



PM: PS: clde014: 9/16/2019

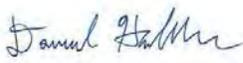




INTEROFFICE MEMORANDUM

October 9, 2019

TO: Job File

FROM: Daniel Hildebran, Cultural Resources


SUBJECT: Cultural Resources Clearance
Job Number 030512
Hwy. 317 - East (S)
Route 32, Sections 3 & 4
Hempstead & Little River Counties

This project proposes to overlay 5.26 miles of Highway 32 in Hempstead & Little River Counties. A records check of the Arkansas Archeological Survey's database shows four sites (3HE0004, 3LR0112, 3LR0113, and 3LR0114) near the right-of-way (ROW). No historic structures were shown on the Arkansas Historic Preservation Program's database in or near the project.

The project will require no new ROW. All work will be within the existing ROW and the extremely limited scope of the project does not have the potential to affect any undisturbed land surfaces or potential historic properties.

This project is subject to the 1999 MOA and falls under the exempted Work Category "Resurfacing". This project is not considered an undertaking and requires no further work or Section 106 review.



INTEROFFICE MEMORANDUM

January 14, 2020

TO: Job File

FROM: Shelby Linck, Cultural Resources Section, Environmental Division

SL

SUBJECT: Cultural Resources Clearance
Job Number 080597
Hwy. 65B - Hwy. 95 Clinton (S)
Route 65, Section 8
Van Buren County

The Arkansas Department of Transportation (ARDOT) proposes to complete Ultra-Thin Bonded Wearing Course (UTBWC) on a portion of Highway 65 stretching from Log Mile (L.M.) 0.850 to L.M. 2.956. This includes UTBWC on one bridge — ARDOT Bridge Number 07114. This bridge was built in 2011 and is not old enough to evaluate its eligibility for inclusion in the National Register of Historic Places (NRHP). No new right-of-way (ROW) will be acquired. All work will occur within the existing roadway.

An examination of the Arkansas Archeological Survey's (ARAS) records was conducted for previously recorded archeological sites located on or adjacent to the proposed project area. According to ARAS records, two archeological sites were identified on or immediately adjacent to the proposed project area: sites 3VB103 and 3VB0052. These sites have been destroyed due to previous disturbance. Based on records check at the Arkansas Historic Preservation Program (AHPP) for NRHP properties, VB0165/Bridge Number 01486 is the only previously recorded historic structure located on or immediately adjacent to the proposed project area. This historic property is no longer extant.

In addition to checking ARAS and AHPP records, nineteenth through twentieth century maps were examined. The 1840 General Land Office plat maps of Township 11 North, Range 14 West show no development in the area. The 1892

Cultural Resources Clearance

Job Number 080597

Page 2 of 2

Mountain View, AR quadrangle map shows the original alignment of Highway 65 and the development of Clinton, AR. The 1936 Van Buren County map shows various structures mapped along the corridor with significant development in Clinton. None of these structures, if still extant, will be affected by pavement preservation along the course of Highway 65. No cemeteries were found nearby.

The proposed project will occur in already disturbed areas inside the current ROW. This project, as designed, does not have the potential to affect any undisturbed land surfaces or potential cultural resources. Therefore, this project is subject to the 1999 Memorandum of Agreement (MOA) and falls under the exempted work category "Resurfacing." Per the MOA, this project is not considered an "undertaking" and requires no further Section 106 review.



ARKANSAS DEPARTMENT OF TRANSPORTATION

ArDOT.gov | IDriveArkansas.com | Scott E. Bennett, P.E., Director

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261

Phone: 501.569.2000 | Voice/TTY 711 | Fax: 501.569.2400

175338
FLWA

January 29, 2020

Secretary Stacy Hurst
Arkansas Historic Preservation Program
1100 North Street
Little Rock, Arkansas 72201

AHPP
JAN 29 2020

RE: Pavement Preservation Jobs
Various Routes & Sections
Various Counties

Dear Secretary Hurst:

The Arkansas Department of Transportation (ARDOT) proposes to mill and inlay on the existing paved surface for different highways across the state. All work will occur inside the existing ARDOT right-of-way. Jobs with these types of activities are referred to as pavement preservation.

These activities are not covered by the existing 1999 Memorandum of Agreement when historic properties are on or adjacent to the project. As agreed upon during phone correspondence with Eric Mills on January 15, 2020, the table on the following page is presented to address the pavement preservation jobs with recorded historic properties and National Register of Historic Places unevaluated archeological sites, cemeteries, and bridges. It is ARDOT's opinion that these jobs have no potential to cause effect to historic properties pursuant to 36 CFR 800.3(1).

If you have any questions or need additional information, contact Daniel Hildebran of my staff at (501) 569-2595.

Date 1-30-20
No known historic properties will be affected by this undertaking. This effect determination could change should new information come to light.

Arkansas State Historic Preservation Officer

Sincerely,


for John Fleming
Division Head
Environmental Division

JF:KB:DH:cb

Pavement Preservation Jobs

Page 2 of 4

Job Number	Job Name	County	Route	Section	Log Miles	Activity Type	Historic Properties, Sites, & Bridges (Nad 83 UTM's)
A50001	Hwy. 9 – Hwy. 167 (Sel. Secs.) (S)	Fulton & Sharp	62	13 & 14	0.000 – 15.492; 0.000-1.610	Mill & Inlay	3SH0294, 3SH0296, 3FU0117, 3FU0035, 3FU0100; M1123 (617580.85, 4015386.64) M1121 (614711.97, 4016516.82) M1120 (609915.22, 4022037.75) M1119 (609799.36, 4023546.26) A1533 (609604.20, 4023890.72) A1532 (605655.22, 4025365.76)
030514	Hwy. 372 – Hwy. 278 (S)	Nevada	371	5	11.596-16.947	Overlay	3NE0077, 3NE0165 M0498 (472900.18, 3718461.99) M3112 (471122.90, 3721633.70)
030519	Winters Creek – Johns Branch (S)	Sevier	71	5	4.118-8.418	Overlay	3SV0212, 3SV0309 M1345 (392224.12, 3748665.55)
030521	Hwys. 70 & 71 Impvts. (De Queen) (Sel. Secs.) (S)	Sevier	70;71	1;6	5.172-8.635; 12.530-13.394	Mill & Inlay	3SV0183, 3SV0322 03630 (376366.50, 3768014.53)
050407	Hwy. 67 – Hwy. 385 (Kensett) (S)	White	36	4	0.000-1.781	Mill & Inlay	M0817 (620153.57, 3901170.99) M0814 (586619.16, 3909476.33) 02820 (591892.56, 3908485.95)

Pavement Preservation Jobs
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Job Number	Job Name	County	Rte	Sec	Log Miles	Activity Type	Historic Properties, Sites, & Bridges (Nad 83 UTM's)
101020	Marked Tree - Lepanto (S)	Poinsett	140	1	0.000-9.120	Patching/ Leveling/ Overlay	3PO0402, 3PO0636 02502 (734181.09, 3937686.87) 02503 (740457.65, 3944342.15) M1988 (736110.95, 3941073.92)



ARKANSAS DEPARTMENT OF TRANSPORTATION

ArDOT.gov | IDriveArkansas.com | Scott E. Bennett, P.E., Director

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261

Phone: 501.569.2000 | Voice/TTY 711 | Fax: 501.569.2400

105317
FHWA

January 24, 2020

Secretary Stacy Hurst
Arkansas Historic Preservation Program
1100 North Street
Little Rock, Arkansas 72201

AHPP
JAN 24 2020

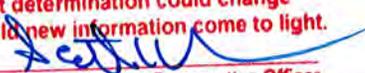
RE: Pavement Preservation Jobs
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These activities are not covered by an existing 1999 Memorandum of Agreement when historic properties are on or adjacent to the project. As agreed upon during phone correspondence with Eric Mills on January 15, 2020, the table on the following page is presented to address the pavement preservation jobs with recorded historic properties and National Register of Historic Places unevaluated archeological sites, cemeteries, and bridges. It is ARDOT's opinion that these jobs have no potential to cause effect to historic properties pursuant to 36 CFR 800.3(1).

If you have any questions or need additional information, contact Richard Jenkins of my staff at (501) 569-2357.

Date 1-27-20
No known historic properties will be affected by this undertaking. This effect determination could change should new information come to light.

Arkansas State Historic Preservation Officer

Sincerely,


for John Fleming
Division Head
Environmental Division

JF:KB:RJ:cb

Pavement Preservation Jobs
Page 2 of 5

Job Number	Job Name	County	Route	Section	Log Miles	Activity Type	Historic Properties, Sites, & Bridges (Nad 83 UTMs)
110687	Prairie Co. Line - Prairie Co. Line. (S)	Monroe	79	8	0.00-4.92	Mill & Inlay	02391 (645450.2, 3831039.7) M1461 (648092.3, 3836316.7)
110688	Hwy. 39 – Hwy. 362 (S)	Monroe	49	9	16.20-18.23	Mill & Inlay	M0923 (673766.2, 3837566.5) 02431 (673789.4, 3837552.4)
020698	Hwy. 82 – Hwy. 159 (Lake Village) (S)	Chicot	65	21	0.00–2.62	Mill & Inlay	CH0128; Unnamed Cemetery
020690	Hwy. 114 – Breakaway Rd. (S)	Lincoln	11	3	8.41-14.60	Overlay and add 2 foot shoulders	M0341 (619347.2, 3760384.5) M0342 (619093.4, 3767545.8) 01229 (619108.0, 3766685.4)
020694	Hwy's. 1B, 130, & 152 Imvpts. (DeWitt) (S)	Arkansas	1 130 152	4B 6 1	0.00-0.69 24.57-25.31 0.00-2.13	Mill & Inlay Level & Overlay Level & Overlay	AR0301; AR0211 (Dewitt Commercial Hist. Dist.) M0019 (653000.6, 3795276.9) M4068 (652771.3, 3795265.9)
061586	Hwy. 270 – Cedar Creek (S)	Garland	70	9	0.00-3.22	Mill & Inlay	Morning Star Cemetery
070492	Co. Rd. 178 - Hwy. 367 (S)	Ouachita	278	8	6.00-12.30	Patching/Level & Thin Overlay	M0084 (503862.5, 3712964.2)

Pavement Preservation Jobs
Page 3 of 5

Job Number	Job Name	County	Route	Section	Log Miles	Activity Type	Historic Properties, Sites, & Bridges (Nad 83 UTM's)
101034	Pocahontas – Corning (Sel. Secs.) (S)	Randolph & Clay	67	19 & 20	0.39-8.54 4.33-6.95 8.86-11.8	Level & Overlay	RA0079 (Pocahontas Commercial Historic District) 00431 (715388.0, 4032259.1) 00432 (713944.5, 4032240.3) 00496 (691357.9, 4019120.2) 00497 (690183.2, 4018891.3) 00498 (690059.1, 4018855.3) 00499 (689563.2, 4018606.9) 00500 (688821.0, 4018275.5) 00501 (687755.9, 4017626.4) 00502 (687071.2, 4016872.5) 00503 (685637.8, 4017249.1) 00504 (685238.8, 4017420.4) 00505 (684834.5, 4017375.1) 00506 (684627.1, 4017324.1) 00507 (683737.0, 4016535.0) (Continued on next page)

Pavement Preservation Jobs
Page 4 of 5

Job Number	Job Name	County	Route	Section	Log Miles	Activity Type	Historic Properties, Sites, & Bridges (Nad 83 UTM's)
101034	Pocahontas – Corning (Sel. Secs.) (S)	Randolph & Clay	67	19 & 20	0.39-8.54 4.33-6.95 8.86-11.8	Level & Overlay	00508 (685899.0, 4017137.0) 00509 (688165.7, 4017911.7) 00510 (683388.1, 4016203.5) 00730 (688564.0, 4018109.0) A0615 (692110.8, 4019206.8)
A10002	Hwy. 77 - Hwy. 38 (I-40 Frontage Roads) (West Memphis) (S)	Crittenden	I-40	52	277.7 - 280.5	Mill & Inlay	B2673 (758241.1, 3894525.7) C2673 (758296.2, 3894570.2)
A10003	W. of Marvell – Hwy. 1 (S)	Phillips	49	10	6.40-17.38	Mill & Inlay	M0928 (694509.6, 3825816.5)
A10004	Forrest City - West (S)	St. Francis	I-40	51	228.2 – 239.8	UTBWC	B3614 (697620.9, 3876944.7) B3617 (699764.5, 3878618.4)
A20002	Wilmar – Monticello (Sel. Secs.) (S)	Drew	278	14 & 15X	0.00-0.85 4.80-10.60	Mill & Inlay	DR0371(Monticello Commercial Historic District); DR0325 (Ridgeway Hotel Hist. Dist.) M0091 (608392.2, 3722247.6)

Pavement Preservation Jobs
Page 5 of 5

Job Number	Job Name	County	Route	Section	Log Miles	Activity Type	Historic Properties, Sites, & Bridges (Nad 83 UTM's)
A20003	Sheridan Rd. - Burnett St. (Pine Bluff) (S)	Jefferson	79 365	9B 14	2.40-3.04 20.84-18.69	Mill & Inlay	M1199 (587962.8, 3788843.8)
A70002	Ouachita C0. Line – Hwy. 167 (S)	Calhoun	278	10	0.00-15.07	Overlay Mill & Inlay	CA0005 (Calhoun County Courthouse) 02721 (526861.4, 3715794.9) 02722 (530055.7, 3713158.0) 02837 (544961.9, 3710695.7) 02838 (547072.0, 3710975.3 02839 (547772.1, 3710965.4)



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



January 28, 2020

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

Dear Mr. Fleming:

Thank you for your email of January 23, 2020. The U.S. Fish and Wildlife Service (Service) is responding to your request, regarding an Arkansas Department of Transportation (ArDOT) proposal to overlay Highway 32 in Hempstead and Little River Counties, Arkansas. The project was described and assessed as follows (abbreviated and summarized):

The project is a mill and overlay of approximately 5.3 miles of Hwy. 32. I have attached the IPAC list for your convenience. The project should have no effect on the Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*) due to limited scope of the project, lack of habitat, and distance to known populations.

ArDOT will be adding the water pollution control special provision to the contract to protect water quality. ArDot has determined the overlay "may affect, but is not likely to adversely affect" the Ouachita Rock Pocketbook (*Arcidens wheeleri*). ArDOT is seeking concurrence with this determination..

The Service has reviewed our records for these species and assessed the habitats in these areas. Due to the limited effects from overlaying existing roadway, distance to known species locations, and standard special provision for water quality, pollution, and sediment control conservation measures, the Service concurs with the determination of "may affect, not likely to adversely affect" for all species identified in the assessment.

If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,

Melvin L. Tobin
Field Supervisor

Mr. John Fleming

2

cc: Project File

Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\ArDOT Job #
030512\Comments-ArDOT Job 030512.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 21, 2020

Consultation Code: 04ER1000-2020-SLI-0430

Event Code: 04ER1000-2020-E-00955

Project Name: 030512 - Hwy. 317 – East (S)

Subject: 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-0430

Event Code: 04ER1000-2020-E-00955

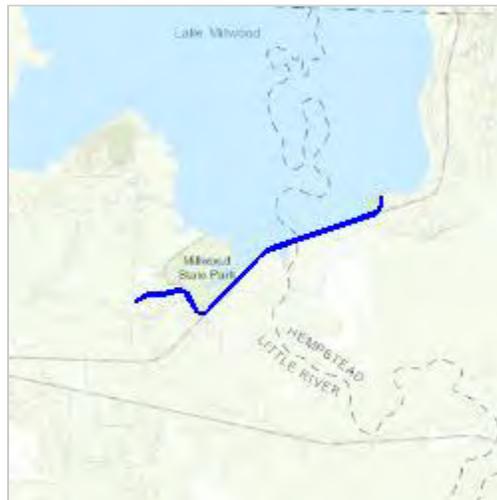
Project Name: 030512 - Hwy. 317 – East (S)

Project Type: TRANSPORTATION

Project Description: Overlay of the asphalt

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/33.6906716020806N93.97151962892025W>



Counties: Hempstead, AR | Little River, AR

Endangered Species Act Species

There is a total of 4 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.

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

Clams

NAME	STATUS
Ouachita Rock Pocketbook <i>Arkansia wheeleri</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4509	Endangered

Critical habitats

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



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



January 28, 2020

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

Dear Mr. Fleming:

Thank you for your email of January 23, 2020. The U.S. Fish and Wildlife Service (Service) is responding to your request regarding an Arkansas Department of Transportation (ArDOT) Job # 080597 proposal to overlay Highway 65 in Van Buren County, Arkansas. The project was described and assessed as follows (abbreviated and summarized):

The project is an overlay of approximately 2.1 miles of Hwy. 65. I have attached the IPAC list for your convenience. The project should have no effect on the Gray Bat (*Myotis grisescens*), Missouri Bladderpod (*Physaria filiformis*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*) due to limited scope of the project, lack of habitat, and distance to known populations. 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 likely to no effect (NE) consistency letter (attached) for the project.

ArDOT will be adding the water pollution control special provision to the contract to protect water quality. ArDot has determined the overlay "may affect, but is not likely to adversely affect", the following species; Yellowcheek Darter (*Etheostoma moorei*) and Speckled Pocketbook (*Lampsilis streckeri*). ArDOT is seeking concurrence with this determination.

The Service has reviewed our records for these species and assessed the habitats in these areas. Due to the limited effects from overlaying existing roadway, distance to known species locations, and standard special provision for water quality, pollution, and sediment control conservation measures, the Service concurs with the determination of "may affect, not likely to adversely affect" for all species identified in the assessment.

Mr. John Fleming

2

If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melvin L. Tobin".

Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\ArDOT Job
080597\Comments-ArDOT Job 080597.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 21, 2020

Consultation Code: 04ER1000-2020-SLI-0425

Event Code: 04ER1000-2020-E-00942

Project Name: 080597 - Hwy. 65B – Hwy. 95 (Clinton) (S)

Subject: 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-0425

Event Code: 04ER1000-2020-E-00942

Project Name: 080597 - Hwy. 65B – Hwy. 95 (Clinton) (S)

Project Type: TRANSPORTATION

Project Description: Ultra thin bonded wearing course.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.5756043664808N92.45197493251061W>



Counties: Van Buren, 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

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

Fishes

NAME	STATUS
Yellowcheek Darter <i>Etheostoma moorei</i> There is final critical habitat for this species. Your location overlaps the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/7871	Endangered

Clams

NAME	STATUS
Speckled Pocketbook <i>Lampsilis streckeri</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7869	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 is 1 critical habitat wholly or partially within your project area under this office's jurisdiction.

NAME	STATUS
Yellowcheek Darter <i>Etheostoma moorei</i> https://ecos.fws.gov/ecp/species/7871#crithab	Final



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: 185-19902640

January 21, 2020

Subject: Consistency letter for the '080597 - Hwy. 65B – Hwy. 95 (Clinton) (S)' project (TAILS 04ER1000-2020-R-0425) 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 **080597 - Hwy. 65B – Hwy. 95 (Clinton) (S)** (Proposed Action) may rely on the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action will have no effect on the endangered Indiana bat (*Myotis sodalis*) or the threatened Northern long-eared bat (*Myotis septentrionalis*). If the Proposed Action is not modified, **no consultation is required for these two species.**

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)
 - Piping Plover, *Charadrius melodus* (Threatened)
 - Red Knot, *Calidris canutus rufa* (Threatened)
 - Speckled Pocketbook, *Lampsilis streckeri* (Endangered)
 - Yellowcheek Darter, *Etheostoma moorei* (Endangered)
-

Project Description

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

Name

080597 - Hwy. 65B – Hwy. 95 (Clinton) (S)

Description

Applying an ultra thin bonded wearing course.

Determination Key Result

Based on the information you provided, you have determined that the Proposed Action will have no effect on the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, no 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 for these two species.

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.

No

11. 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

12. 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

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

No

14. Does the project include slash pile burning?

No

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

No

16. 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

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

No

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

No

19. 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

20. Are *all* project activities limited to actions that DO NOT cause any stressors to the bat species, including as described in the BA/BO (i.e., habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives)?

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

Yes

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

No

22. Are *all* project activities consistent with a No Effect determination in this key?

Automatically answered

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

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.



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



January 28, 2020

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

Dear Mr. Fleming:

Thank you for your email of January 23, 2020. The U.S. Fish and Wildlife Service (Service) is responding to your request, regarding an Arkansas Department of Transportation (ArDOT) Job # 101020 proposal to overlay Highway 140 in Poinsett County, Arkansas. The project was described and assessed as follows (abbreviated and summarized):

The project is an overlay of approximately 9.1 miles of Hwy. 140. I have attached the IPAC list for your convenience. The project should have no effect on the Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), and Pondberry (*Lindera melissifolia*) due to limited scope of the project, lack of habitat, and distance to known populations.

ArDOT will be adding the water pollution control special provision to the contract to protect water quality. ArDot has determined the overlay "may affect, but is not likely to adversely affect" the following species: Fat Pocketbook (*Potamilus capax*). ArDOT is seeking concurrence with this determination.

The Service has reviewed our records for these species and assessed the habitats in these areas. Due to the limited effects from overlaying existing roadway, distance to known species locations, and standard special provision for water quality, pollution, and sediment control conservation measures, the Service concurs with the determination of "may affect, not likely to adversely affect" for all species identified in the assessment.

If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,

Melvin L. Tobin
Field Supervisor

Mr. John Fleming

2

cc: Project File

Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\ArDOT job
101020\Comments-ArDOT Job 101020.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 21, 2020

Consultation Code: 04ER1000-2020-SLI-0431

Event Code: 04ER1000-2020-E-00957

Project Name: 101020 - Marked Tree – Lepanto (S)

Subject: 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-0431

Event Code: 04ER1000-2020-E-00957

Project Name: 101020 - Marked Tree – Lepanto (S)

Project Type: TRANSPORTATION

Project Description: overlay asphalt

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.57366308464515N90.4100278114184W>



Counties: Poinsett, AR

Endangered Species Act Species

There is a total of 5 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.

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

Clams

NAME	STATUS
Fat Pocketbook <i>Potamilus capax</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2780	Endangered

Flowering Plants

NAME	STATUS
Pondberry <i>Lindera melissifolia</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1279	Endangered

Critical habitats

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



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



January 28, 2020

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

Dear Mr. Fleming:

Thank you for your email of January 23, 2020. The U.S. Fish and Wildlife Service (Service) is responding to your request, regarding an Arkansas Department of Transportation (ArDOT) Job # 101034 proposal to overlay Highway 67 in Randolph County, Arkansas. The project was described and assessed as follows (abbreviated and summarized):

The project is an overlay of approximately 13.7 miles of Hwy. 67. I have attached the IPAC list for your convenience. The project should have no effect on the Gray Bat (*Myotis grisescens*), Missouri Bladderpod (*Physaria filiformis*), Pondberry (*Lindera melissifolia*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*) due to limited scope of the project, lack of habitat, and distance to known populations. 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 likely to no effect (NE) consistency letter (attached) for the project.

ArDOT will be adding the water pollution control special provision to the contract to protect water quality. ArDot has determined the overlay "may affect, but is not likely to adversely affect" the following species; Rabbitsfoot (*Theiladerma cylindrica*) and Pink Mucket (*Lampsilis abrupta*). ArDOT is seeking concurrence with this determination.

The Service has reviewed our records for these species and assessed the habitats in these areas. Due to the limited effects from overlaying existing roadway, distance to known species locations, and standard special provision for water quality, pollution, and sediment control conservation measures, the Service concurs with the determination of "may affect, not likely to adversely affect" for all species identified in the assessment.

Mr. John Fleming

2

If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at (501) 513-4489 or lindsey_lewis@fws.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melvin L. Tobin".

Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2020\ARDOT\ArDOT job
101034\Comments-ArDOT Job 101034.docx



United States Department of the Interior



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

In Reply Refer To:

January 22, 2020

Consultation Code: 04ER1000-2020-SLI-0436

Event Code: 04ER1000-2020-E-00967

Project Name: 101034 - Pocahontas – Corning (Sel. Secs.) (S)

Subject: 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-0436

Event Code: 04ER1000-2020-E-00967

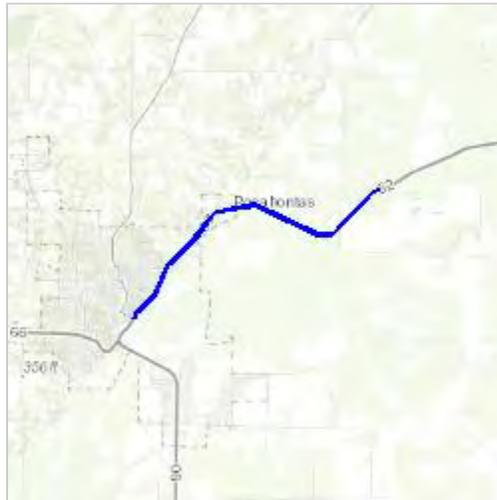
Project Name: 101034 - Pocahontas – Corning (Sel. Secs.) (S)

Project Type: TRANSPORTATION

Project Description: Overly of Hwy. 67

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/36.274045738652205N90.95718876178648W>



Counties: Randolph, 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

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

Clams

NAME	STATUS
Pink Mucket (pearlymussel) <i>Lampsilis abrupta</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7829	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

Flowering Plants

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

Critical habitats

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



United States Department of the Interior



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

IPaC Record Locator: 288-19919292

January 22, 2020

Subject: Consistency letter for the '101034 - Pocahontas – Corning (Sel. Secs.) (S)' project (TAILS 04ER1000-2020-R-0436) 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 **101034 - Pocahontas – Corning (Sel. Secs.) (S)** (Proposed Action) may rely on the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action will have no effect on the endangered Indiana bat (*Myotis sodalis*) or the threatened Northern long-eared bat (*Myotis septentrionalis*). If the Proposed Action is not modified, **no consultation is required for these two species.**

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)
 - Pink Mucket (pearlymussel), *Lampsilis abrupta* (Endangered)
 - Piping Plover, *Charadrius melodus* (Threatened)
 - Pondberry, *Lindera melissifolia* (Endangered)
 - Rabbitsfoot, *Quadrula cylindrica cylindrica* (Threatened)
 - Red Knot, *Calidris canutus rufa* (Threatened)
-

Project Description

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

Name

101034 - Pocahontas – Corning (Sel. Secs.) (S)

Description

Overly of Hwy. 67

Determination Key Result

Based on the information you provided, you have determined that the Proposed Action will have no effect on the endangered Indiana bat and/or the threatened Northern long-eared bat. Therefore, no 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 for these two species.

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.

No

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

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

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

No

11. 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

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

No

13. Does the project include slash pile burning?

No

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

No

15. 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

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

No

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

No

18. 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

19. Are *all* project activities limited to actions that DO NOT cause any stressors to the bat species, including as described in the BA/BO (i.e., habitat removal, tree removal/trimming, bridge and/or structure activities, temporary or permanent lighting, or use of percussives)?

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

Yes

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

No

21. Are *all* project activities consistent with a No Effect determination in this key?

Automatically answered

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

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 See Table FAP Number See Table

Job Title See Table

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No air quality/MSAT impacts
Cultural Resources	X			CR clearances attached
Economic	X			No adverse impacts
Endangered Species		X		No effect & NLAA determinations
Environmental Justice/Title VI	X			EJ populations not impacted
Fish and Wildlife	X			No impacts due to scope of the project
Floodplains	X			No impacts expected
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			No impacts expected
Navigation/Coast Guard	X			No navigable waterways involved
Noise Levels	X			No increases due to project
Prime Farmland	X			None in project area
Protected Waters	X			Water Pollution Control SP included
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA		X		None in project area
Relocatees	X			No relocations
Section 4(f)/6(f)	X			4f/6f resources not impacted
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			No impacts due to the scope of the project
Water Quality	X			No impacts due to the scope of the project
Wetlands	X			None in the project area
Wildlife Refuges	X			None in the project area

Section 401 Water Quality Certification Required? No
 Short-term Activity Authorization Required? No
 Section 404 Permit Required? No Type N/A

Remarks:
Water Pollution Control SP required – 030512 & 080597

Signature of Evaluator *Joshua Graham* Date 2-4-2020