

TIER 3 CATEGORICAL EXCLUSION

ARDOT JOB NUMBER 080661

FAP NUMBER 9990

EAST CITY LIMITS CLARKSVILLE – HWY. 64 (S)

ROUTE I-40, SECTION 21

JOHNSON COUNTY

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

By the

U.S. Department of Transportation

Federal Highway Administration

And the

Arkansas Department of Transportation

June 2020

6/2/2020

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

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

The purpose of this project is to rehabilitate 4.23 miles of Interstate 40 from the East City Limits of Clarksville to Highway 64. Work will include diamond grinding of the roadway, polymer overlay of two bridges, and hydro-demolition of four bridges. All work will take place within existing right of way. A project location map is attached.

The project will not involve relocations, endangered species, prime farmlands, wetlands, underground storage tanks, hazardous materials, any environmental justice issues, or cultural resources. This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxic concerns. The Cultural Resources clearance is attached.

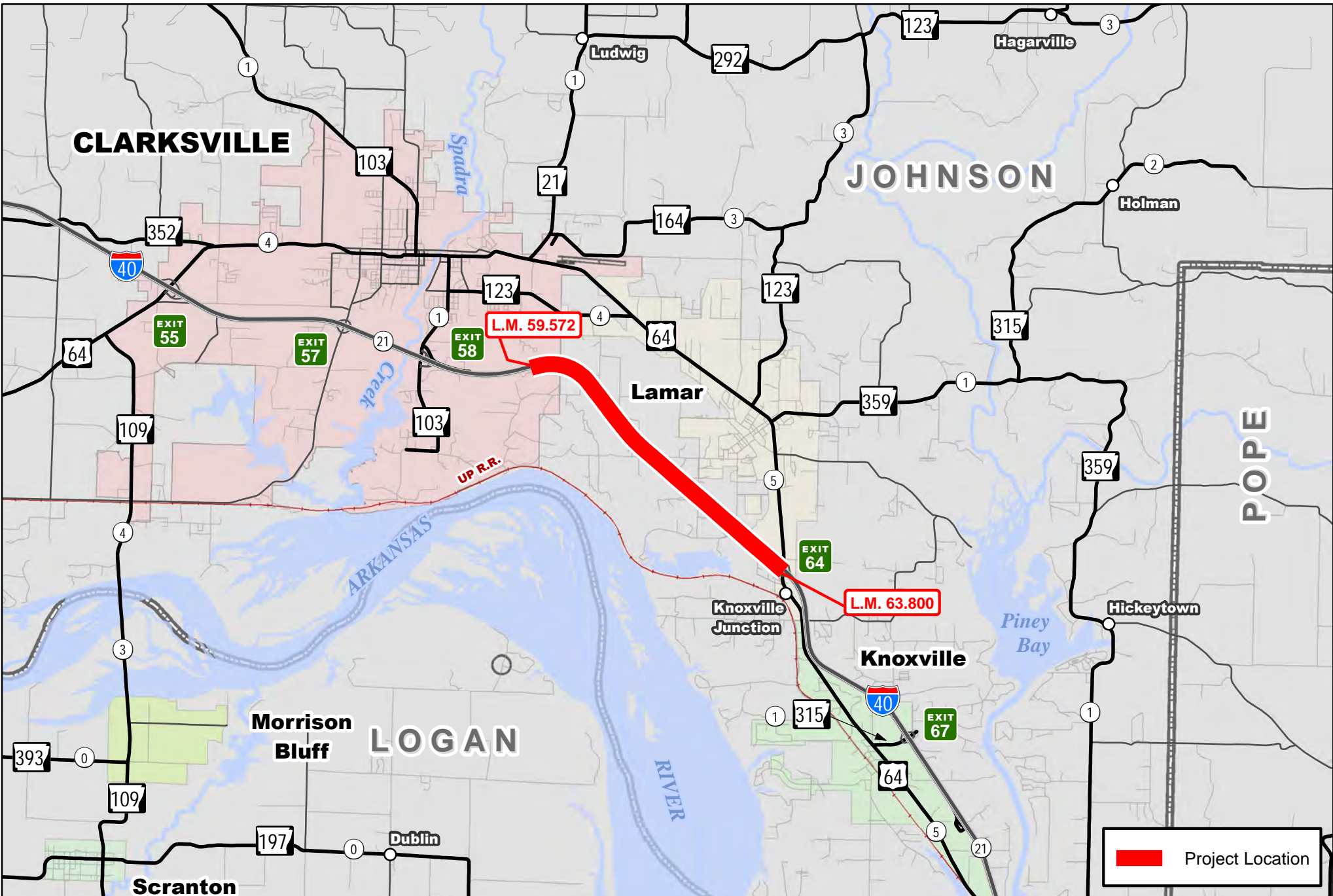
Based upon the ARDOT noise policy, a noise analyses is not required for this job. Construction will take place on existing location with only minor changes to the existing roadways. Any increases in roadway noise levels would not be attributable to the proposed projects, but instead result from traffic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

The official species list obtained through US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation website identifies the following federally-listed species as having the potential to occur in the project area: gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), American burying beetle (*Nicrophorus americanus*), northern long-eared bat (*Myotis septentrionalis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), and Missouri bladderpod (*Physaria filiformis*). The USFWS species list is attached.

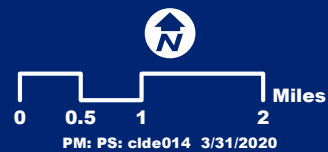
A bridge survey by USFWS personnel found no evidence of bats using the bridges; therefore, it has been determined that the proposed project "may affect, but is not likely to adversely affect" (NLAA) the listed bat species. The NLAA Consistency Letter for the Indiana and northern long-eared bat is attached. Due to the limited impact of the project activities outside of the existing roadway, the lack of suitable habitat in the project area, and the distance to known populations, it has been determined that the project "may affect, but is not likely to adversely affect" the American burying beetle and the Missouri bladderpod and will have "no effect" on

the listed bird species. The “may affect” (MA) Consistency Letter and USFWS concurrence are attached.

The project 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 for the construction of this project.



Job 080661
East City Limits Clarksville – Hwy. 64 (F)
 I-40 Sec. 21
 Johnson County



Document Path: C:\work\AHTDC\DCI\4\Home\Projects\RP\080661.mxd



INTEROFFICE MEMORANDUM

May 27, 2020

TO: Assessments

FROM: Wm. Lane Shields, Cultural Resources Section

SUBJECT: Cultural Resources Clearance
Job Number 080661
East City Limits Clarksville - Hwy. 64
Route I-40, Section 21
Johnson County

This project was job BB0802 and a Cultural Resources Clearance was issued for it on August 5, 2019. In addition to changing the job number, 0.428 miles has been added to the start (west end). The proposed construction activities have not changed. The project will diamond grind the existing roadway and all work will be within existing disturbances. No new right of way or temporary construction easements will be required. The added length falls within the original research buffer and other than the distance, the original Interoffice Memorandum remains valid.

The proposed project will occur completely inside the current ROW along the existing roadway travel surface and no cultural resources will be impacted. This project is subject to the 1999 MOA and falls under the exempted Work Category "Reconstruction". The project is not considered an undertaking and requires no further work or Section 106 review.

From: [Lewis, Lindsey](#)
To: [Ledvina, Joseph](#)
Subject: Re: [EXTERNAL] ArDOT job #080661 (formerly BB0802)
Date: Wednesday, April 22, 2020 4:11:33 PM

CAUTION: This email originated from outside of ArDOT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Joe,

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

"The Service has received your concurrence verification letter and request to verify that the Proposed Action may rely on the concurrence provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C 1531 et seq.). Based on the information you provided, you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, may affect, but is not likely to adversely affect (NLAA) Indiana Bat and Northern Long-Eared Bat. The Service verification letter confirms the concurrence that this action may rely on the PBO."

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

The Service has no additional comments or concerns and agrees with the determinations and concurrences made through the Arkansas Dkey and Indiana Bat and Northern Long-eared Bat (PBO) Dkey.

Thanks,

Lindsey Lewis
Biologist

US Fish & Wildlife Service
Arkansas Field Office

110 South Amity Rd., Suite 300
Conway, Arkansas 72032

(501) 513-4489 - voice
(501) 513-4480 - fax
Lindsey.Lewis@fws.gov
<http://www.fws.gov/arkansas-es/>

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

From: Ledvina, Joseph <Joseph.Ledvina@ardot.gov>
Sent: Wednesday, April 22, 2020 2:32 PM
To: Lewis, Lindsey <lindsey_lewis@fws.gov>
Subject: [EXTERNAL] ArDOT job #080661 (formerly BB0802)

Lindsey,

ArDOT proposes to conduct a rehabilitation project on I-40, from a few miles east of AR 103 to US 64, including diamond grinding of the roadway and hydrodemolition of the surface of three overpasses and the bridge over Cabin Creek. All work is to be carried out on the existing roadway and using appropriate erosion control BMPs. US Fish and Wildlife Service personnel surveyed these structures on September 6, 2019 and found no evidence of bat use.

IPaC lists eight threatened or endangered species in the area of this project, including the endangered gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus (=Plecotus) townsendii ingens*), and American burying beetle (*Necrophorus americanus*) and the threatened northern long-eared bat (*Myotis septentrionalis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), and Missouri bladderpod (*Physaria filiformis*).

Following the Programmatic Biological Opinion, a determination of "**may affect, not likely to adversely affect**" was reached for Indiana bat and/or NLEB (see attached NLAA consistency letter). We request your concurrence with that determination.

The Arkansas DKey led us to determinations of "**no effect**" for the listed bird species, and a determination of "**may affect, not likely to adversely affect**" for all remaining species (see attached MA consistency letter). We request your concurrence with that determination.

Please let me know if you need anything else,

Joe



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:

April 22, 2020

Consultation Code: 04ER1000-2019-SLI-1389

Event Code: 04ER1000-2020-E-01991

Project Name: ArDOT Job #080661

Subject: Updated list of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

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

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

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

Please visit our website at <http://www.fws.gov/arkansas-es/IPaC/home.html> for species-specific guidance to avoid and minimize adverse effects to federally endangered,

threatened, proposed, and candidate species. Our web site also contains additional information on species life history and habitat requirements that may be useful in project planning.

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

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

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

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

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

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to

federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, **the accuracy of this species list should be verified after 90 days**. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

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

Attachment(s):

- Official Species List

Official Species List

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

This species list is provided by:

Arkansas Ecological Services Field Office

110 South Amity Suite 300

Conway, AR 72032-8975

(501) 513-4470

Project Summary

Consultation Code: 04ER1000-2019-SLI-1389

Event Code: 04ER1000-2020-E-01991

Project Name: ArDOT Job #080661

Project Type: TRANSPORTATION

Project Description: Diamond grinding pavement on I-40 and hydrodemolition of several bridge decks. Renamed job #BB0802.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.43220899867943N93.40960709738764W>



Counties: Johnson, AR

Endangered Species Act Species

There is a total of 9 threatened, endangered, or candidate species on this species list.

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

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

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

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

Mammals

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6329	Endangered
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened
Ozark Big-eared Bat <i>Corynorhinus (=Plecotus) townsendii ingens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7245	Endangered

Birds

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Proposed Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Insects

NAME	STATUS
American Burying Beetle <i>Nicrophorus americanus</i> Population: Wherever found, except where listed as an experimental population No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/66	Endangered

Flowering Plants

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

Critical habitats

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



United States Department of the Interior



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

IPaC Record Locator: 745-21386311

April 22, 2020

Subject: Consistency letter for the 'ArDOT Job #080661' project (TAILS 04ER1000-2019-R-1389) under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request to verify that the **ArDOT Job #080661** (Proposed Action) may rely on the concurrence provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, and may affect, but is not likely to adversely affect the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*). Consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) is required.

This "may affect - not likely to adversely affect" determination becomes effective when the lead Federal action agency or designated non-federal representative requests the Service rely on the PBO to satisfy the agency's consultation requirements for this project.

Please provide this consistency letter to the lead Federal action agency or its designated non-federal representative with a request for review, and as the agency deems appropriate, to submit for concurrence verification through the IPaC system. The lead Federal action agency or designated non-federal representative should log into IPaC using their agency email account and click "Search by record locator". They will need to enter the record locator **745-21386311**.

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:

- American Burying Beetle, *Nicrophorus americanus* (Endangered)
 - Eastern Black Rail, *Laterallus jamaicensis ssp. jamaicensis* (Proposed Threatened)
 - Gray Bat, *Myotis grisescens* (Endangered)
 - Missouri Bladderpod, *Physaria filiformis* (Threatened)
 - Ozark Big-eared Bat, *Corynorhinus (=Plecotus) townsendii ingens* (Endangered)
 - Piping Plover, *Charadrius melodus* (Threatened)
 - Red Knot, *Calidris canutus rufa* (Threatened)
-

Project Description

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

Name

ArDOT Job #080661

Description

Diamond grinding pavement on I-40 and hydrodemolition of several bridge decks. All direct impacts will be restricted to existing pavement, and erosion control BMPs will be in place. Renamed job #BB0802.

Determination Key Result

Based on your answers provided, this project(s) may affect, but is not likely to adversely affect the endangered Indiana bat and/or the threatened Northern long-eared bat, therefore, consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required. However, also based on your answers provided, this project may rely on the concurrence provided in the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

Qualification Interview

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

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

Automatically answered

Yes

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

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

Automatically answered

Yes

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

A) Federal Highway Administration (FHWA)

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

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

No

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

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

No

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

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

No

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

No

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

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

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

Yes

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

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

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)?

Yes

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

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

Yes

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

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

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

Yes

SUBMITTED DOCUMENTS

- *Fwd Bridge Bat Surveys.msg* <https://ecos.fws.gov/ipac/project/X2XFJWKJWBHSPFKHCHBTBSKACY/projectDocuments/21386258>

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

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

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

No

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

No

19. 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

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

No

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

No

22. 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?

Yes

23. Will the activities that use percussives (**not including tree removal/trimming or bridge/structure work**) and/or increase noise levels above existing traffic/background levels be conducted *during* the active season^[1]?

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

Yes

24. Will *any* activities that use percussives (**not including tree removal/trimming or bridge/structure work**) and/or increase noise levels above existing traffic/background levels be conducted *during* the inactive season^[1]?

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

Yes

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

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

Yes

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

No

27. Are the project activities that use percussives (not including tree removal/trimming or bridge/structure work) consistent with a Not Likely to Adversely Affect determination in this key?

Automatically answered

Yes, because the activities are within 300 feet of the existing road/rail surface, greater than 0.5 miles from a hibernacula, and conducted during the active season within undocumented habitat.

28. Are the project activities that use percussives (not including tree removal/trimming or bridge/structure work) and/or increase noise levels above existing traffic/background levels consistent with a No Effect determination in this key?

Automatically answered

Yes, because the activities are within 300 feet of the existing road/rail surface, greater than 0.5 miles from a hibernacula, and conducted during the inactive season

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

Automatically answered

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

30. **General AMM 1**

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

Yes

Project Questionnaire

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

No

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

Yes

3. Please describe the proposed bridge work:

Hydrodemolition and resurfacing

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

beginning June 2020

5. Please enter the date of the bridge assessment:

2019-09-06

Avoidance And Minimization Measures (AMMs)

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

GENERAL AMM 1

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

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

This key was last updated in IPaC on December 02, 2019. Keys are subject to periodic revision.

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

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



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: 745-21385846

April 22, 2020

Subject: Consistency letter for 'ArDOT Job #080661' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Arkansas Determination Key for project review and guidance for federally listed species (Arkansas Dkey).

Dear Joseph Ledvina:

The U.S. Fish and Wildlife Service (Service) received on **April 22, 2020** your effect determination(s) for the 'ArDOT Job #080661' (the Action) using the Arkansas DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

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

Species	Determination
Endangered American Burying Beetle (<i>Nicrophorus americanus</i>)	NLAA
Proposed Threatened Eastern Black Rail (<i>Laterallus jamaicensis ssp. jamaicensis</i>)	No Effect
Threatened Red Knot (<i>Calidris canutus rufa</i>)	No Effect
Threatened Piping Plover (<i>Charadrius melodus</i>)	No Effect
Endangered Gray Bat (<i>Myotis grisescens</i>)	NLAA
Endangered Ozark Big-eared Bat (<i>Corynorhinus townsendii ingens</i>)	NLAA
Endangered Indiana Bat (<i>Myotis sodalis</i>)	May Affect
Threatened Northern Long-eared Bat (<i>Myotis septentrionalis</i>)	May Affect
Threatened Missouri bladderpod (<i>Physaria filiformis</i>)	NLAA

Consultation Status

Consultation with the Service is not complete. Further consultation or coordination with the Arkansas Ecological Services Office is necessary for those species with a determination of "may affect" listed above. Please contact our office at 501-513-4470, arkansas_es_clearance@fws.gov,

or your agency point of contact in the Arkansas Ecological Services Office to discuss methods to avoid or minimize potential adverse effects to those species.

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

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

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

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

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

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

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

Action Description

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

1. Name

ArDOT Job #080661

2. Description

The following description was provided for the project 'ArDOT Job #080661':

Diamond grinding pavement on I-40 and hydrodemolition of several bridge decks.
All direct impacts will be restricted to existing pavement, and erosion control
BMPs will be in place. Renamed job #BB0802.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/35.43220899867943N93.40960709738764W>



Species Protection Measures

Qualification Interview

1. Have you made an effects determination of "no effect" for all species in the area of the project? A "no effect" determination means the project will have no beneficial effect, no short-term adverse effects, and no long-term adverse effects on any of the species on the IPaC-generated species list for the proposed project or those species habitat. A project with effects that cannot be meaningfully measured, detected or evaluated, effects that are extremely unlikely to occur, or entirely beneficial effects should not have a "no effect" determination. (If unsure, select "No").

No

2. Choose the Federal agency you represent in this consultation with the U.S. Fish and Wildlife Service:

d. Federal Highway Administration

3. Will project proponents follow [Special Provisions for avoidance and minimization](#) measures for listed species in Arkansas?

Yes

4. [Semantic] Does the project intersect designated critical habitat for the Leopard Darter?

Automatically answered

No

5. [Semantic] Does the project intersect designated critical habitat for the Neosho Mucket?

Automatically answered

No

6. [Semantic] Does the project intersect designated critical habitat for Yellowcheek Darter?

Automatically answered

No

7. [Semantic] Does the project intersect designated critical habitat for Rabbitsfoot?

Automatically answered

No

8. [Semantic] Does the project intersect the American burying beetle consultation area ?

Automatically answered

Yes

9. [Semantic] Is the project located within the ABB Areas for Ozark NF or Ouachita NF?
Automatically answered
No
10. Will the project involve 3.0 acres or greater of ground-disturbing activities (including, but not limited to grubbing, bulldozing, tree and shrub removal, disking/plowing, compaction by heavy machinery, timber harvest or timber stand improvement)?
No
11. [Semantic] Does the project intersect the red-cockaded woodpecker AOI?
Automatically answered
No
12. [Semantic] Does the project intersect the Eastern black rail AOI?
Automatically answered
Yes
13. Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
No
14. Does the project take place in marshy or flooded open field habitat?
No
15. [Semantic] Does the project intersect the red knot AOI?
Automatically answered
Yes
16. [Semantic (same answer as "8.1.3")] Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?
Automatically answered
No
17. [Semantic (same answer as "8.2")] Does the project take place in marshy or flooded open field habitat?
Automatically answered
No
18. [Semantic] Does the project intersect the Piping Plover AOI?
Automatically answered
Yes
-

19. [Semantic (same answer as "8.1.3 or 9.3")] Will the project affect sand and gravel areas or shorelines along rivers, lakes, or reservoirs?

Automatically answered

No

20. [Semantic] Does the project intersect the Whooping Crane AOI?

Automatically answered

No

21. [Semantic] Does the project intersect the interior least tern AOI?

Automatically answered

No

22. [Semantic] Does the project intersect the Gray Bat AOI?

Automatically answered

Yes

23. [Semantic] Is the project located within the Ozark-St. Francis National Forest or the Ouachita National Forest?

Automatically answered

No

24. Does the project involve changes to an existing bridge or large culvert?

Yes

25. Does the project involve changes to an existing bridge or large culvert?

Yes

26. Were bats of any species noted on inspection?

No

27. [Semantic] Does the project intersect the Ozark Big-eared Bat AOI?

Automatically answered

Yes

28. [Semantic] Is the project located within the Ozark-St. Francis National Forest (cAOI is Ozark_StFrancis NF.zip)?

Automatically answered

No

29. Are there any caves within 0.5 mile of the project area?

No

30. Does the project occur in a subdivision or urban area?

No

31. Does the project involve blasting of any type or tree removal of greater than 10 acres?

No

32. [Semantic] Does the project intersect the Ozark Big-eared Bat cAOI?

Automatically answered

No

33. Will the activity affect the roosting environment of cave-dwelling bats (e.g., prescribed fire where smoke may enter hibernacula, filling of karst feature with material or liquid of any type, change in the structure or opening of the cave or feature)?

No

34. [Semantic (same answer as "1.6")] Will project proponents follow [Special Provisions for avoidance and minimization measures](#) for listed species in Arkansas?

Automatically answered

Yes

35. [Semantic] Does the project intersect the Indiana bat AOI?

Automatically answered

Yes

36. [Semantic] Does the project intersect the Northern Long-eared bat AOI?

Automatically answered

Yes

37. [Semantic] Does the project intersect the Benton County Cave Crayfish AOI?

Automatically answered

No

38. [Semantic] Does the project intersect the Hell Creek Cave Crayfish AOI?

Automatically answered

No

39. [Semantic] Does the project intersect the Ozark cavefish AOI?

Automatically answered

No

40. [Semantic] Does the project intersect the Missouri bladderpod AOI?

Automatically answered

Yes

41. [Semantic] Does the project intersect the Geocarpon AOI?

Automatically answered

No

42. [Semantic] Does the project intersect the running buffalo clover AOI?

Automatically answered

No

43. [Semantic] Does the project intersect the Pondberry AOI?

Automatically answered

No

Project Questionnaire

1. How many acres is the project?

34

2. **If the project includes forest conversion, report the appropriate acreages below. Otherwise, type '0' in questions 1-3.**

1. Estimated total acres of forest conversion:

0

2. If known, estimated acres of forest conversion from April 1 to October 31

0

3. If known, estimated acres of forest conversion from June 1 to July 31

0

5. **If the project includes timber harvest, report the appropriate acreages below. Otherwise, type '0' in questions 4-6.**

4. Estimated total acres of timber harvest

0

5. If known, estimated acres of timber harvest from April 1 to October 31

0

6. If known, estimated acres of timber harvest from June 1 to July 31

0

8. **If the project includes prescribed fire, report the appropriate acreages below. Otherwise, type '0' in questions 7-9.**

7. Estimated total acres of prescribed fire

0

8. If known, estimated acres of prescribed fire from April 1 to October 31

0

9. If known, estimated acres of prescribed fire from June 1 to July 31

0

11. If the project includes new wind turbines, report the megawatts of wind capacity below. Otherwise, type '0' in question 10.

10. What is the estimated wind capacity (in megawatts) of the new turbine(s)?

0

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

ARDOT Job Number 080661 FAP Number 9990

Job Title East City Limits Clarksville – Hwy. 64 (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No air quality/MSAT impacts
Cultural Resources	X			CR clearance memo attached
Economic	X			No adverse impacts
Endangered Species		X		A “no effect” and “NLAA” determination was made
Environmental Justice/Title VI	X			No impacts anticipated
Fish and Wildlife		X		Temporary during construction
Floodplains	X			None impacted by project
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No sites in project area
Land Use	X			Will not be impacted by project
Migratory Birds		X		Migratory Bird SP included
Navigation/Coast Guard	X			No navigable waterways involved
Noise Levels	X			No increases due to project
Prime Farmland	X			None impacted by project
Protected Waters	X			None in the project area
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA	X			No impacts anticipated
Relocates	X			No relocations
Section 4(f)/6(f)	X			4f/6f resources not present
Social	X			No impacts to the social environment
Underground Storage Tanks	X			No USTs in project area
Visual	X			No changes to visual environment
Streams	X			No impacts anticipated
Water Quality	X			No impacts anticipated
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 None

Remarks: _____

Signature of Evaluator  Date 5/27/2020