

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB 040866
FAP NHPP-0072(67)
BARON FORK & FLY CREEK STRS. & APPRS. (S)
ROUTE 45, SECTION 3
WASHINGTON 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

July 2022

July 27, 2022

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.

ARDOT is proposing to replace two bridges (03096 and 03097) and a box culvert on Highway 45 in Washington County, Arkansas. The total project length is 1.2 miles. A project location map is attached.

Bridge 03096 (Site 1) over Baron Fork will be replaced with a new bridge on new location to the south of the existing location. Channel realignment of Baron Fork upstream of the bridge will also be completed at Site 1. Bridge 03097 (Site 2) over Fly Creek will be replaced with a new bridge on new location to the north of the existing location and will also include construction of a box culvert. Highway 45 will be widened from two 10' travel lanes with 3' unpaved shoulders to two 11' travel lanes with 4' shoulders (2' paved). Existing right of way width averages 80'. The proposed right of way width will average 135'. Total proposed new right of way is 8.1 acres and temporary construction easement is 7.8 acres.

Design data for this project is as follows:

Design Year	Average Daily Traffic	Percent Trucks	Design Speed
2023	1,200	5	45 mph (Site 1)
2043	1,400		55 mph (Site 2)

There are no relocations, environmental justice issues, wetlands, or cultural resources associated with this project. Field inspections found no evidence of existing underground storage tanks or hazardous waste deposits. Approximately 2.8 acres of prime farmland and 0.7 acre of Farmland of Statewide Importance will be impacted. A NRCS-CPA-106 Form addressing these impacts is attached.

The official species list obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation identified the following species as potentially occurring within the project boundaries: gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), monarch butterfly (*Danaus plexippus*), and Missouri bladderpod (*Physaria filiformis*). See attached USFWS species list.

Utilizing the Arkansas Determination Key and based on the lack of suitable habitat, it has been determined that the project will have “no effect” on the Eastern Black Rail, Piping Plover, Red Knot, and Missouri bladderpod, and it has been determined that the project “may affect but is not likely to adversely affect” the gray bat and Ozark big-eared bat. The USFWS concurred on June 6, 2022.

Utilizing the Programmatic Biological Opinion (PBO) for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat, it has been determined that the project “may affect but is not likely to adversely affect” the Indiana bat. In order to comply with the mitigation requirements of the PBO, ARDOT will deduct \$7,505 from the approved Indiana Bat Spring Migration Research Project. ARDOT will conduct bat surveys on this project during the 2022 or 2023 survey seasons. The USFWS concurred on June 6, 2022.

The Final 4(d) Rule applies to the project’s activities that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts the incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150’ of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the project limits; therefore, the project can proceed without restrictions.

The monarch butterfly is a candidate species and as such is not federally protected under the Endangered Species Act. However, the USFWS recommends agencies implement conservation measures for candidate species in action areas as these are species, by definition, that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure.

Permanent impacts to Baron Fork due to channel realignment total 1,529 linear feet (2.34 acres). Permanent impacts to an unnamed intermittent tributary of Baron Fork total 501 linear feet (0.19 acre) due to channel realignment. Permanent impacts to a second unnamed intermittent tributary to Baron Fork total 205 linear feet (0.12 acre) due to box culvert construction. Permanent stream impacts total 2,235 linear feet (2.65 acres). Construction of the proposed project should be allowed under the terms of a Nationwide 23 Section 404 Permit for Approved Categorical Exclusions. Incorporating natural channel design features into the relocation of the Baron Fork may offset the need to provide additional compensatory mitigation for this project. Otherwise, stream credits will be purchased from an approved mitigation bank that services the area.

Washington County participates in the National Flood Insurance Program. The project lies within the Zone A Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted

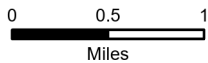
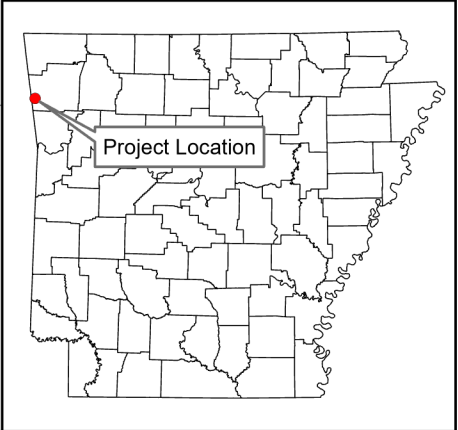
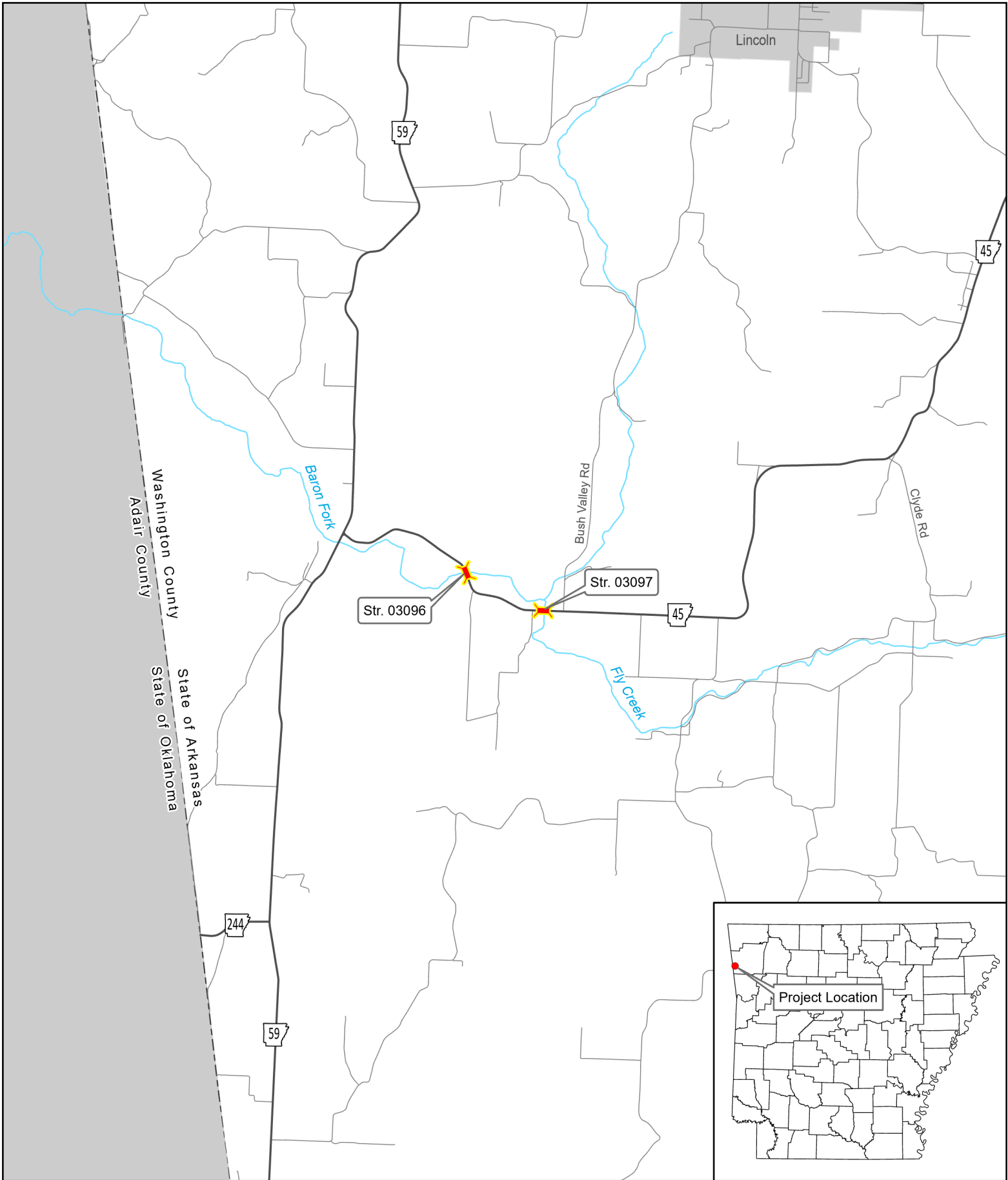
nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a substantial floodplain encroachment or risk to property or life.

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

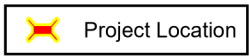
Based on the ARDOT noise policy, a noise analysis is not required for this project. The bridge replacements will not involve adding capacity, substantially changing the roadway alignment, or exposing noise sensitive land uses to traffic noise sources. In compliance with federal guidelines, local authorities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

Phase I Virtual Public Involvement (VPI) information was made available for comments from May 26 to June 10, 2022. The VPI synopsis is attached.

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



Job 040866
Baron Fork & Fly Creek
Strs. & Apprs. (Hwy. 45)
Washington County





Asa Hutchinson
Governor
Stacy Hurst
Secretary

July 12, 2022

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

RE: Washington County: General
Section 106 Review: FHwA
Proposed Undertaking: Baron Fork & Fly Creek Strs. & Apprs. (S)
Route 45, Section 3
ARDOT Job Number: 040866
AHPP Tracking Number: 109011.01

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Project Identification Form for the above referenced undertaking in Sections 22 and 26, Township 14 North, Range 33 West in Washington County, Arkansas. The proposed undertaking entails the replacement of ARDOT Bridges 03096 and 03097 on Highway 45 east of Dutch Mills. The total project length is 1.17 miles, with a proposed right-of-way of 7.6 acres and a temporary construction easement of 7.7 acres.

An architectural resources survey recorded 2 properties, both of which were recommended as not eligible for inclusion in the National Register of Historic Places (NRHP) (AHPP Tracking Number 109011).

A total of 148 shovel tests were excavated. Two sites, 3WA1587 and 3WA1588 are within the area of potential effect. Thirty-four shovel tests were positive at site 3WA1587. Thirty-one shovel tests were positive at site 3WA1588. Both sites appear to be lithic workshops from the Archaic period and neither site produced any diagnostic artifacts. The AHPP concurs that both 3WA1587 and 3WA1588 are undetermined in their eligibility for inclusion in the National Register of Historic Places (NRHP) and that the portions within the right-of-way are not recommended for further work due to a lack of intact deposits and low research potential.


Based on the provided information, the AHPP concurs with the finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)** for the proposed undertaking and that no further archeological work is needed.

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

Thank you for the opportunity to review this undertaking. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, call Kathryn Bryles at 501-324-9784 or email kathryn.bryles@arkansas.gov.

Sincerely,

Kathryn
Bryles

 Digitally signed by
Kathryn Bryles
Date: 2022.07.12
15:07:24 -05'00'

for
Scott Kaufman
Director, AHPP

cc: Dr. Melissa Zabecki, Arkansas Archeological Survey

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

PART I (To be completed by Federal Agency) Job 040866	3. Date of Land Evaluation Request	4. Sheet 1 of _____
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1. Name of Project	5. Federal Agency Involved
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2. Type of Project	6. County and State
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PART II (To be completed by NRCS)	1. Date Request Received by NRCS	2. Person Completing Form
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3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form). YES <input type="checkbox"/> NO <input type="checkbox"/>	4. Acres Irrigated Average Farm Size
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5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: _____ % _____	7. Amount of Farmland As Defined in FPPA Acres: _____ % _____
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8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS
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PART III (To be completed by Federal Agency)	Alternative Corridor For Segment
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	Corridor A	Corridor B	Corridor C	Corridor D
A. Total Acres To Be Converted Directly				
B. Total Acres To Be Converted Indirectly, Or To Receive Services				
C. Total Acres In Corridor				

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

PART V (To be completed by NRCS) Land Evaluation Information Criterion Relative value of Farmland to Be Serviced or Converted (Scale of 0 - 100 Points)	
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PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))	Maximum Points	Corridor A	Corridor B	Corridor C	Corridor D
1. Area in Nonurban Use	15				
2. Perimeter in Nonurban Use	10				
3. Percent Of Corridor Being Farmed	20				
4. Protection Provided By State And Local Government	20				
5. Size of Present Farm Unit Compared To Average	10				
6. Creation Of Nonfarmable Farmland	25				
7. Availability Of Farm Support Services	5				
8. On-Farm Investments	20				
9. Effects Of Conversion On Farm Support Services	25				
10. Compatibility With Existing Agricultural Use	10				
TOTAL CORRIDOR ASSESSMENT POINTS	160				

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

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

Signature of Person Completing this Part: _____ DATE _____

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



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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



June 6, 2022

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

Project code: 2022-0002356

RE: ARDOT Job 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) is responding to your re-initiation, project plans, mitigation calculations, and request to verify that the proposed Arkansas Department of Transportation (ARDOT) Job 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S), Washington County, Arkansas (the Project) may rely on the February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the federally listed endangered Indiana Bat (IBAT) (*Myotis sodalis*) and/or federally listed threatened Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). We received your request and the associated LAA Consistency Letter on June 3, 2022.

This letter provides the Service's response as to whether the Project may rely on the BO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) for its effects to the IBAT and/or NLEB. This letter also responds to your request for Service concurrence that the Project may affect, but is not likely to adversely affect (NLAA) ESA listed species and/or designated critical habitats other than the IBAT and NLEB.

ARDOT proposes to replace two bridges along Hwy. 45 over Baron Fork and Fly Creek in Washington County, Arkansas and provides the follow assessment of the action:

The official species list obtained from the Information for Planning and Consultation (IPaC) identified the following endangered and threatened species as potentially occurring within the project boundaries; the endangered Gray Bat (*Myotis grisescens*), the endangered Indiana Bat (*Myotis sodalis*), the threatened Northern Long-eared Bat (*Myotis septentrionalis*), the endangered Ozark Big-eared Bat (*Corynorhinus (=Plecotus) townsendii ingens*), the threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the candidate Monarch Butterfly (*Danaus plexippus*), and the threatened Missouri Bladderpod (*Physaria filiformis*).

The “Arkansas Determination Key (DKey)”, “FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or IBAT”, and “NLEB Consultation and 4(d) Rule Consistency” determination keys were evaluated for this project.

“No effect” determinations were given for Eastern Black Rail, Piping Plover, and Red Knot.

“May affect, not likely to adversely affect” (NLAA) determinations were given for Gray Bat, Ozark Big-eared Bat, and Missouri Bladderpod.

ARDOT contests the NLAA determination for Missouri Bladderpod, as no suitable glade habitat is being impacted. Additionally, the nearest occurrence record for this species is approximately 32 miles NE of the project area at Blue Springs Park along the shore of Beaver Lake. ARDOT proposes a “no effect” determination. The Service agrees with this assessment and concurs with the supplemental determination of “no effect”.

A “may affect, likely to adversely affect” determination was made for the IBAT. In order to comply with the mitigation requirements of the BO, the ARDOT will contribute \$7,505 to The Conservation Fund (TCF), the Program Sponsor, within 1 year of this letter or prior to the start of construction, whichever is earliest. See the attached IBAT Mitigation Calculator Spreadsheet. ARDOT will conduct bat surveys on this project during the 2022 or 2023 survey seasons, and may reinstate consultation before the November 2023, letting, depending on the results of these surveys. Suitable IBAT habitat clearing required for construction totals 2.1 acres, 1.3 acres 0-100’ from existing road, and 0.8 acres 100-300’ from existing road. A Special Clearing Requirements for Indiana and Northern Long-eared Bats Special Provision will be placed on the job contract to ensure no direct impacts to IBATs. A Water Pollution Control Special Provision will be placed on the job contract to minimize the impacts of project activities on aquatic insects, an important food source for this species.

Upon assessment of the environmental effects of this project, ARDOT has concluded that this project would not jeopardize the continued existence of the NLEB. The final 4(d) rule applies to the project’s activities that have the potential to affect NLEBs. The final 4(d) rule exempts the incidental take of NLEBs from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the project limits; therefore, the project can proceed without restrictions.

The Monarch Butterfly is a candidate species and as such is not federally protected under the Endangered Species Act. However, the Service recommends agencies implement conservation measures for candidate species in action areas as these are species, by definition, that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure.

Utilizing the FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the range of the IBAT and NLEB, it has been determined that the project "may affect, and is likely to adversely affect" the IBAT. Compensatory mitigation, in the form of a \$7,505 contribution to the IBAT migration study program, will be deducted for adverse impacts to the IBAT associated with this project.

ARDOT has determined that the Project is likely to adversely affect (LAA) the IBAT. The Service concurs with these determinations, because of the proximity of known species sites and foraging range to the project location and the occurrence of suitable foraging habitat for these species that exists on and adjacent to the site. A determination of LAA for IBAT is appropriate based on the distance from the existing roadway and amount of suitable habitat being lost. The conservation measures being proposed, active season clearing restriction provision based on the site assessment and bridge survey results, and the proposed implementation of all required AMMs will help to mitigate the effects in accordance with the BO.

As stated in the Consistency Letter, the Service concurs with the "no effect" and "NLAA" 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 DKey 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)."

A Bridge and Structure Assessment was conducted and found no signs of any bat activity on the Baron Fork & Fly Creek Bridges. A Special Clearing Requirements for Indiana and Northern Long-eared Bats Special Provision will be placed on the job contract to ensure no direct impacts to IBATs. A Water Pollution Control Special Provision will be placed on the job contract to minimize the impacts of project activities on aquatic insects, an important food source for this species.

Conclusion

The Service has reviewed the effects of the proposed Project, which includes the ARDOT's commitment to implement any applicable mitigation measures, as indicated on the Project Submittal Form. We confirm that the proposed Project's effects are consistent with those analyzed in the BO. The Service has determined that projects consistent with the conservation measures and scope of the program analyzed in the BO are not likely to jeopardize the continued existence of the IBAT and/or the NLEB. In coordination with your agency and the other

sponsoring Federal Transportation Agencies, the Service will re-evaluate this conclusion annually in light of any new pertinent information under the adaptive management provisions of the BO.

Incidental Take: *Indiana Bat*

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

The proposed Project will remove 0.8 acre of trees from habitat that is suitable for the IBAT. All tree removal will occur in winter and comply with all other conservation measures in the BO. Based on the BO, 1.3 acre are anticipated to not result in adverse effects, and 0.8 acre are anticipated to result in adverse effects.

ARDOT uses the mitigation ratio of 1.5 from Table 3 of the BO¹ to calculate the compensatory mitigation required to offset these adverse impacts for a total of 1.20 acres of trees that is suitable for the IBAT.

In order to comply with the mitigation requirements of the BO, the ARDOT will contribute \$7,505 to TCF, the Program Sponsor, within 1 year of this letter or prior to the start of construction, whichever is earliest. These calculations are based on the mitigation identified above² and the 2021 Land Use Values in Table 2 of Exhibit E in TCF's ILF Instrument³. If payment is made later than 1 year from the date of this letter, the mitigation cost may change as a result of updated land use values in Table 2 of Exhibit E. The Federal Transportation Agency or designated non-federal representative must notify TCF at least five days prior to payment so that TCF can verify that the appropriate land value has been used. At the time of payment, the Federal Transportation Agency or designated non-federal representative shall notify the Service of compliance with the compensatory mitigation requirements as described above.

The purchase of species conservation credits and/or in-lieu fee contributions shall occur prior to construction of a transportation project covered under this programmatic consultation. Exceptions to this program stipulation include emergency projects that do not require a letting prior to construction. In these cases, purchase of credits and/or in-lieu fee contributions shall occur within three months of completion of the project. This timeframe allows for measuring the acres of habitat affected by the emergency project and for financial processing.

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the BO as a surrogate measure of IBAT take and exempted from the prohibitions

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

² XX acres * XX ratio

³ <https://www.fws.gov/media/exhibit-e-fee-schedule-range-wide-indiana-bat-lieu-fee-program>

against incidental taking. Such exemption is effective as long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the BO's ITS.

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

Northern Long-eared Bat

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

Reporting Dead or Injured Bats

The ARDOT, its state/local cooperators, and any contractors must take care when handling dead or injured IBATs and/or NLEBs, or any other federally listed species that are found at the Project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed.

Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Re-initiation Notice

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

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

3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or
4. a new species is listed or critical habitat designated that the Project may affect.

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

- the Project removes trees from more than 0.8 acre of habitat suitable for the IBAT.
- the Project takes more than 5 IBATs resulting from work on the Baron Fork and Fly Creek Bridges.

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

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

Sincerely,



Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2022\ARDOT\ARDOT Job 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)\20220603_Ltr_ARDOT Job 040866 - Baron Fork & Fly Creek_LCL.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:

February 02, 2022

Project Code: 2022-0002313

Project Name: 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

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

To Whom It May Concern:

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

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

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

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

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

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

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

Under the ESA, it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" end

Attachment(s):

- **Official Species List**

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. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened
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	Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> There is proposed critical habitat for this species. The location of the critical habitat is not available. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

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.

VIRTUAL PUBLIC INVOLVEMENT SYNOPSIS

Job Number 040866

Baron Fork & Fly Creek Strs. & Apprs. (S)

Washington County

Thursday, May 26, 2022 through Friday, June 10, 2022

A Phase I Virtual Public Involvement (VPI) meeting for the replacement of the bridge structures over Baron Fork & Fly Creek along Highway 45 in Washington County was hosted on the ARDOT website between May 26, 2022 to June 10, 2022. Efforts to involve minorities and the public in the meeting included:

- Display advertisements placed in the *Northwest Arkansas Democrat Gazette* on Sunday, May 22, 2022 and Sunday, June 5, 2022.
- Letters were mailed to Public Officials on May 18, 2022.
- Flyers mailed to citizens.

The following information and links were available on the ARDOT website:

- Short video presentation about the project
- Public meeting notice
- Project location map
- Project design plans
- Typical section plans
- Online comment form
- Interactive project map
- Frequently asked questions with answers

Copies of the public meeting notice, comment form, and project location map are attached.

Table 1 summarizes the VPI meeting participation.

TABLE 1	
Public Participation	Totals
Online registration of attendance at Phase I VPI	5
Number of website viewers (English/Spanish)	130/44
Online Comments Received	0

No comments were received.

Attachments:

Public Meeting Notice
Blank Comment Form
Project Location Map

DN:TT:sw



ONLINE VIRTUAL PUBLIC INVOLVEMENT MEETING

WHAT: Online Virtual Public Meeting via a pre-recorded presentation, to gather public input, on the proposed plans to replace two bridge structures on Hwy. 45 in Washington County.

WHEN: **Thursday, May 26, 2022 through Friday, June 10, 2022. Comments will be accepted until 4:30 p.m. Friday, June 10, 2022.**

Purpose

The Arkansas Department of Transportation (ARDOT) will conduct an online public involvement meeting. **The public is invited to listen, view meeting materials and provide written comments. The site will be available for comments until 4:30 p.m. on Friday, June 10, 2022.**

[Link To Virtual Meeting: https://www.ardot.gov/publicmeetings](https://www.ardot.gov/publicmeetings)

In order to access the virtual public meeting, visit the link above. Once on the website, simply scroll down to view the Public meeting of your interest. This web site will provide project materials and handouts that would have been shown at the in-person meetings. A separate link will provide a Spanish version of the presentation. There will also be an option to send online comment forms to ARDOT's staff, or you can print the form and mail it to, P.O. Box 2261, Little Rock, AR 72203-2261. If you do not have internet access, please contact Karla Sims at 501-569-2000 to ask questions about the proposed project and how to access project information at karla.sims@ardot.gov

Virtual Web Link:

Visit: <https://www.ardot.gov/publicmeetings>

**Thursday, May 26, 2022
through Friday, June 10, 2022**

Special Accommodations: Anyone needing project information or special accommodations under the Americans with Disabilities Act (ADA) is encouraged to write to Ruby Jordan-Johnson, P.O. Box 2261, Little Rock, AR 72203-2261, call (501)569-2379, fax (501) 569-2009 or email

environmentalpimeetings@ardot.gov.

Hearing or speech impaired, please contact the Arkansas Relay System at (Voice/TTY 711). Requests should be made at least four days prior to the public meeting.

NOTICE OF NONDISCRIMINATION: The Arkansas Department of Transportation (ARDOT) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the Department's programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to Joanna P. McFadden EEO/DBE Officer (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: joanna.mcfadden@ardot.gov

Free language assistance for Limited English Proficient individuals is available upon request.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

**ARKANSAS DEPARTMENT OF TRANSPORTATION (ARDOT)
CITIZEN COMMENT FORM**

**ARDOT JOB 040866
BARON FORK & FLY CREEK STRS. & APPRS. (S) (HWY.45)
WASHINGTON COUNTY**

**LOCATION:
ONLINE VIRTUAL PUBLIC INVOLVEMENT MEETING
THURSDAY, MAY 26, 2022 THROUGH FRIDAY, JUNE 10, 2022**

Make your comments on this form and mail it by 4:30 p.m. on **Friday, June 10, 2022** to: Arkansas Department of Transportation, Environmental Division, P.O. Box 2261, Little Rock, AR, 72203-2261. Email: environmentalpimeetings@ardot.gov.

Yes No

Do you feel there is a need for the proposed replacement of two bridge structures on Hwy. 45 in Washington County? Comment (optional)

Do you feel that the proposed project will have any impacts (Beneficial or Adverse) on your property and/or community (economic, environmental, social, etc.)? Please explain. _____

Do you have a suggestion that would make this proposed project better serve the needs of the community? _____

Does your home or property offer any limitations to the project, such as septic systems, that the Department needs to consider in its design?

(Continue on Back)

Yes No

Do you know of any historical sites, family cemeteries, or archaeological sites in the project area? Please note and discuss with staff. _____

Do you know of any environmental constraints, such as endangered species, hazardous waste sites, existing or former landfills, or parks and public lands in the vicinity of the project? Please note and discuss with ARDOT staff. _____

It is often necessary for the ARDOT to contact property owners along potential routes. If you are a property owner along or adjacent to the route under consideration, please provide information below. Thank you.

Name: _____ (Please Print)

Address: _____ Phone: (____) _____ -- _____

E-mail: _____

Please make additional comments here. _____

For additional information, please visit our website at

<https://www.ardot.gov/publicmeetings>



Job 040866
Baron Fork & Fly Creek
Strs. & Apprs. (Hwy. 45)
Washington County



Preliminary Subject to Revision



Proposed Channel Realignment

Str. 03096

Str. 03097

Project Location

0 750 1,500 Feet

AR DOT - Environmental GIS - Strawn
Map Date: May 6, 2022
Virtual Public Involvement Exhibit

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

ARDOT Job 040866 FAP NHPP-0072(67)

Job Title Baron Fork & Fly Creek Strs. & Apprs. (S)

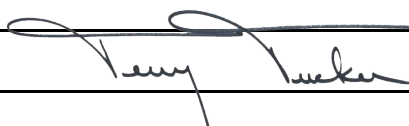
Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No impacts anticipated
Cultural Resources	X			SHPO attached
Economic	X			No impacts anticipated
Endangered Species		X		LAA, see USFWS consultation
Environmental Justice/Title VI	X			No impacts anticipated
Fish and Wildlife		X		Temporary during construction
Floodplains		X		Zone A Special Flood Hazard Area
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No impacts anticipated
Land Use		X		8.1 acres of new ROW, 7.8 acres TCE
Migratory Birds		X		Migratory Bird SP included
Navigation/Coast Guard	X			None in project area
Noise Levels	X			No impacts anticipated
Prime Farmland		X		2.8 acres, NRCS-CPA-106 attached
Protected Waters	X			No impacts anticipated
Public Recreation Lands	X			No impacts anticipated
Public Water Supply/WHPA	X			None in project area
Relocatees	X			No impacts anticipated
Section 4(f)/6(f)	X			No impacts anticipated
Social	X			No impacts anticipated
Underground Storage Tanks	X			No impacts anticipated
Visual	X			No impacts anticipated
Streams		X		2.65 acres of permanent impacts
Water Quality		X		Temporary during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? No

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type NW-23

Remarks: WPC SP: karst and T & E species

Signature of Evaluator  Date July 23, 2022

Date Sent: May 31, 2022

ROADWAY DESIGN REQUEST

Job Number 040866 FAP No. _____ County Washington

Job Name Baron Fork & Fly Creek Strs. & Apprs. (S)

Design Engineer Austin Hales Environmental Staff _____

Detailed Project Description Replacement of two bridge structures and one box culvert. The proposed bridges and box culvert will be constructed on new location, adjacent to the existing structures. Overlay and minor widening of Hwy. 45 between Sites 1 and 2. Baron Fork channel realignment upstream of the bridge structure.

A. Existing Conditions:

Roadway Width: 26' Shoulder Type/Width: 3'/Unpaved

Number of Lanes and Width: 2 @ 10' Existing Right-of-Way: 80'

Sidewalks? No Location: N/A Width: N/A

Bike Lanes? No Location: N/A Width: N/A

B. Proposed Conditions:

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

Number of Lanes and Width: 2 @ 11' Proposed Right-of-Way: VAR. (135' AVG.)

Sidewalks? No Location: N/A Width: N/A

Bike Lanes? No Location: N/A Width: N/A

C. Construction Information:

If detour: Where: N/A Length: N/A

D. Design Traffic Data:

2023 ADT: 1,200 2043 ADT: 1,400 % Trucks: 5

Design Speed: 45⁽¹⁾ 55⁽²⁾ m.p.h.

E. Approximate total length of project: 1.17 mile(s)

F. Justification for proposed improvements: Structure replacements.

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

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

Agency/Official	Person Contacted	Date

**TIER 3 CATEGORICAL EXCLUSION
RE-EVALUATION**

**ARDOT JOB 040866
FAP NHPP-0072(67)
BARON FORK & FLY CREEK STRS. & APPRS. (S)
ROUTE 45, SECTION 3
WASHINGTON 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

August 2023

August 30, 2023
Date of Approval

Randal Looney
Randal Looney
Environmental Coordinator
Federal Highway Administration

A Tier 3 Categorical Exclusion was completed for the subject job on July 27, 2022. Since that time, design changes were made at Site 1 along the Baron Fork Creek. Site investigations discovered significant bank erosion occurring along the Baron Fork where the stream began to migrate toward the Highway 45 infrastructure. In order to correct this problem, the project scope was amended by realigning the stream channel in a way that limits future bank erosion. In addition, to protect the future stability of the bank, the immediate area adjacent to the channel realignment would need to be continuously maintained as an ARDOT mitigation area. To accomplish this, an increase in 9.6 acres of right of way is required bringing the total proposed right of way for this job to 17.7 acres. However, a reduction of 5.7 acres of temporary construction easement (TCE) results in a total of 2.1 acres of TCE for this project.

There are no relocations, wetlands, underground storage tanks, noise impacts, or cultural resources associated with this project. Approximately 3.4 acres of Important Farmland will be impacted. A NRCS-CPA-106 Form is attached addressing these impacts.

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 toxics (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or any other factor that would cause a meaningful increase in MSAT impacts of the project from that of the no-build alternative.

The official species list obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation identified the following species as potentially occurring within the project boundaries: Gray Bat (*Myotis grisescens*), Indiana Bat (*Myotis sodalis*), Northern Long-eared Bat (*Myotis septentrionalis*), Ozark Big-eared Bat (*Corynorhinus townsendii ingens*), Tricolored Bat (*Perimyotis subflavus*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), Alligator Snapping Turtle (*Macrochelys temminckii*), Monarch Butterfly (*Danaus plexippus*), and Missouri bladderpod (*Physaria filiformis*). The official USFWS list is attached.

Utilizing the "Arkansas Multi-Species Determination Key" it has been determined that the project will have "no effect" on Eastern Black Rail, Piping Plover, and Red Knot, and "may affect but is not likely to adversely affect" Gray Bat, Ozark Big-eared Bat, and Missouri bladderpod. The USFWS concurrence determinations are attached.

Utilizing the "FHWA Programmatic Biological Opinion (PBO) for Transportation Projects within the Range of Indiana Bat and Northern Long-Eared Bat" it has been determined that the project "may affect but is not likely to adversely affect" Indiana

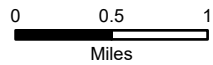
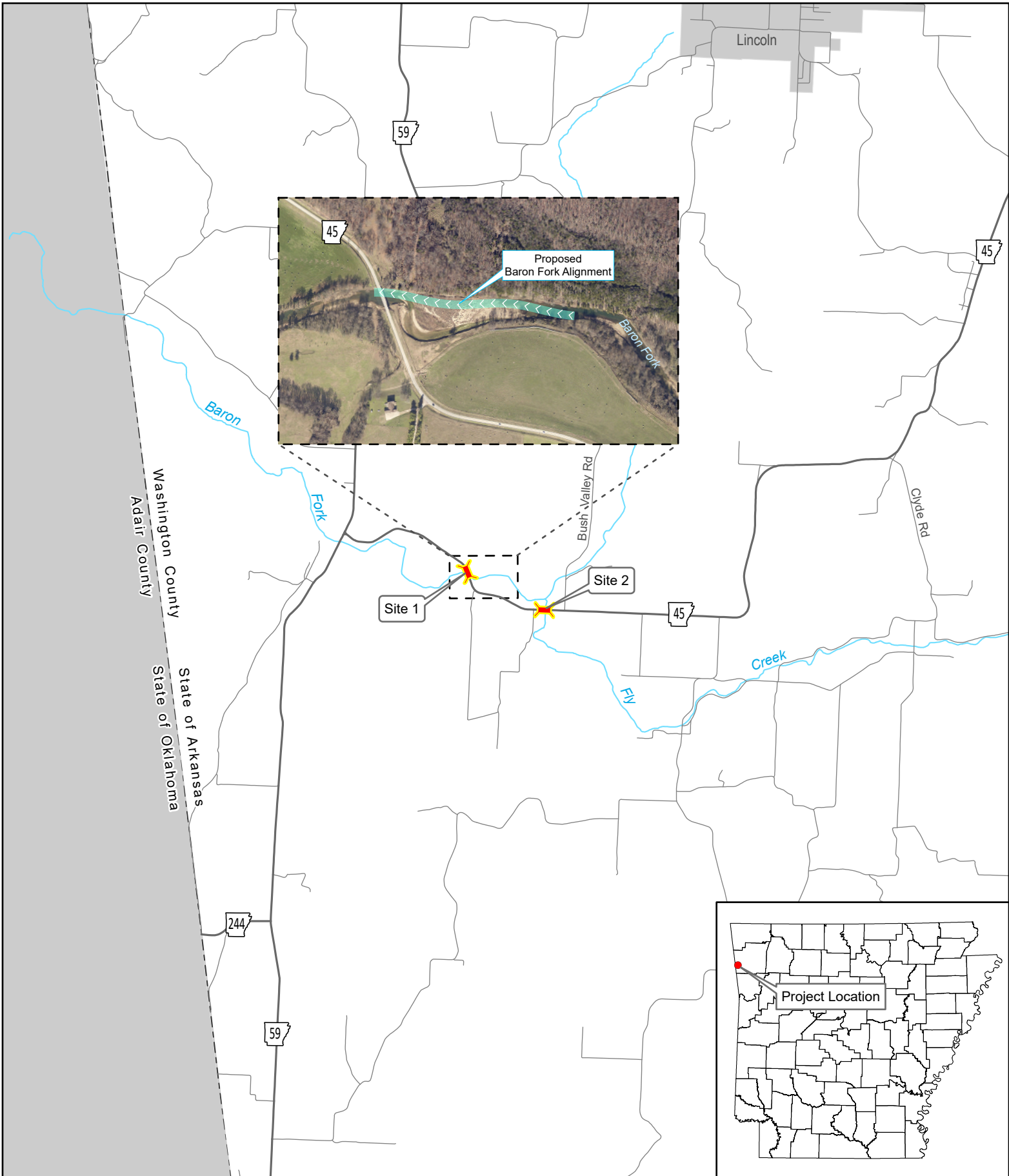
Bat and Northern Long-eared Bat. This action will not jeopardize the continued existence of Tricolored Bat and Alligator Snapping Turtle. The USFWS Concurrence Letter dated July 21, 2023, is attached.

The Monarch Butterfly is a candidate species, and as such, is not federally protected under the Endangered Species Act. However, the USFWS recommends agencies implement conservation measures for candidate species in action areas as these are, by definition, species that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure.

Permanent stream impacts total 736 linear feet (0.31 acre), while temporary stream impacts total 142 linear feet (0.27 acre). Approximately 1,529 linear feet (2.34 acres) of the Baron Fork stream channel will be restored and a riparian buffer will be planted. Stream impacts resulting from this project will be mitigated on-site with the Baron Fork stream restoration activities. Construction of the proposed project should be allowed under the terms of a Nationwide 27 Section 404 Permit for Aquatic Habitat Restoration, Enhancement, and Establishment Activities.

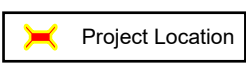
Washington County participates in the National Flood Insurance Program. The project lies within Zone A, Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should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

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



ARDOT - Environmental GIS - Strawn
August 18, 2023

Job 040866
Baron Fork & Fly Creek
Strs. & Apprs. (Hwy. 45)
Washington County





Sarah Huckabee Sanders
Governor
Shea Lewis
Interim Secretary

August 22, 2023

Mr. John Fleming
Division Head
Environmental Division
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72203-2261

RE: Washington County: General
Section 106 Review: FHWA
Proposed Undertaking: Baron Fork & Fly Creek Strs. & Apprs. (S)
Route 45, Section 3
ArDOT Job Number: 040866
AHPP Tracking Number: 109011.02

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) has reviewed the addendum to the cultural resources survey report for the above-mentioned undertaking in Sections 22 and 23, Township 14 North, Range 33 West. The project proposes to replace two bridges (03096 and 03097), a R. C. Box culvert on Hwy. 45, and a stream alignment. The AHPP previously concurred with the undertaking on July 12, 2022 (AHPP Tracking Number 109011.01). This addendum covers an additional 4.5 acres of proposed right-of-way (ROW), bringing the total surveyed area to 19.8 acres. A total of eight shovel tests were excavated in the additional proposed ROW, all of which were negative for cultural materials.

Based on the provided information, the AHPP concurs with the finding of **no historic properties affected pursuant to 36 CFR § 800.4(d)(1)** for the entire proposed undertaking.

Thank you for the opportunity to review this PIF. Please refer to the AHPP Tracking Number listed above in all correspondence. If you have any questions, please call Jessica Cogburn of my staff at 501-324-9357 or email jessica.cogburn@arkansas.gov.

Sincerely,
Jessica H.
Cogburn
for

Digitally signed by Jessica
H. Cogburn
Date: 2023.08.22
12:02:00 -05'00'

Scott Kaufman
State Historic Preservation Officer and Director, AHPP

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

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

PART I (To be completed by Federal Agency) Job 040866	3. Date of Land Evaluation Request	4. Sheet 1 of _____
--	------------------------------------	---------------------

1. Name of Project	5. Federal Agency Involved
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2. Type of Project	6. County and State
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PART II (To be completed by NRCS)	1. Date Request Received by NRCS	2. Person Completing Form
--	----------------------------------	---------------------------

3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form). YES <input type="checkbox"/> NO <input type="checkbox"/>	4. Acres Irrigated Average Farm Size
---	--

5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: _____ % _____	7. Amount of Farmland As Defined in FPPA Acres: _____ % _____
------------------	---	--

8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS
--	---	---

PART III (To be completed by Federal Agency)	Alternative Corridor For Segment			
---	---	--	--	--

	Corridor A	Corridor B	Corridor C	Corridor D
--	------------	------------	------------	------------

A. Total Acres To Be Converted Directly				
---	--	--	--	--

B. Total Acres To Be Converted Indirectly, Or To Receive Services				
---	--	--	--	--

C. Total Acres In Corridor				
----------------------------	--	--	--	--

PART IV (To be completed by NRCS) Land Evaluation Information				
--	--	--	--	--

A. Total Acres Prime And Unique Farmland				
--	--	--	--	--

B. Total Acres Statewide And Local Important Farmland				
---	--	--	--	--

C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
---	--	--	--	--

D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				
--	--	--	--	--

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

PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))	Maximum Points			
--	-----------------------	--	--	--

1. Area in Nonurban Use	15			
-------------------------	----	--	--	--

2. Perimeter in Nonurban Use	10			
------------------------------	----	--	--	--

3. Percent Of Corridor Being Farmed	20			
-------------------------------------	----	--	--	--

4. Protection Provided By State And Local Government	20			
--	----	--	--	--

5. Size of Present Farm Unit Compared To Average	10			
--	----	--	--	--

6. Creation Of Nonfarmable Farmland	25			
-------------------------------------	----	--	--	--

7. Availability Of Farm Support Services	5			
--	---	--	--	--

8. On-Farm Investments	20			
------------------------	----	--	--	--

9. Effects Of Conversion On Farm Support Services	25			
---	----	--	--	--

10. Compatibility With Existing Agricultural Use	10			
--	----	--	--	--

TOTAL CORRIDOR ASSESSMENT POINTS	160			
----------------------------------	-----	--	--	--

PART VII (To be completed by Federal Agency)				
---	--	--	--	--

Relative Value Of Farmland (From Part V)	100			
--	-----	--	--	--

Total Corridor Assessment (From Part VI above or a local site assessment)	160			
---	-----	--	--	--

TOTAL POINTS (Total of above 2 lines)	260			
--	------------	--	--	--

1. Corridor Selected:	2. Total Acres of Farmlands to be Converted by Project:	3. Date Of Selection:	4. Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input type="checkbox"/>
-----------------------	---	-----------------------	--

5. Reason For Selection:

Signature of Person Completing this Part:	DATE
---	------

Joshua Graham

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



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

In Reply Refer To:

July 21, 2023

Project Code: 2022-0002356

Project Name: 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S) (BATS)

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

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, 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.*).

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.

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.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2) (c)). For projects other than major construction activities, the Service suggests that a biological

evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/birds/policies-and-regulations.php>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php>.

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 Code 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

Project Code: 2022-0002356
Project Name: 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S) (BATS)
Project Type: Road/Hwy - New Construction
Project Description: This project is a copy for the purposes of evaluating the NLEB/IBAT determination key.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.8755905,-94.46769716001322,14z>



Counties: Washington County, Arkansas

ENDANGERED SPECIES ACT SPECIES

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

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

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

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

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

MAMMALS

NAME	STATUS
Gray Bat <i>Myotis grisescens</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6329	Endangered
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location does not overlap 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	Endangered
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
Tricolored Bat <i>Perimyotis subflavus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10515	Proposed 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	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 does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> There is proposed critical habitat for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened

REPTILES

NAME	STATUS
Alligator Snapping Turtle <i>Macrochelys temminckii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4658	Proposed Threatened

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

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.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: Arkansas Department of Transportation

Name: Matthew Schrum

Address: 10324 I30

City: Little Rock

State: AR

Zip: 72209

Email: matthew.schrum@ardot.gov

Phone: 5015692083



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:

February 02, 2022

Project code: 2022-0002313

Project Name: 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

Subject: Consistency letter for '040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)' for specified federally threatened and endangered species and designated critical habitat that may occur in your proposed project area consistent with the Arkansas Determination Key for project review and guidance for federally listed species (Arkansas Dkey).

Dear Matthew Schrum:

The U.S. Fish and Wildlife Service (Service) received on **February 02, 2022** your effect determination(s) for the '040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)' (the Action) using the Arkansas DKey within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

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

Species	Listing Status	Determination
Eastern Black Rail (<i>Laterallus jamaicensis ssp. jamaicensis</i>)	Threatened	No effect
Gray Bat (<i>Myotis grisescens</i>)	Endangered	NLAA
Indiana Bat (<i>Myotis sodalis</i>)	Endangered	May affect
Missouri Bladderpod (<i>Physaria filiformis</i>)	Threatened	NLAA
Northern Long-eared Bat (<i>Myotis septentrionalis</i>)	Threatened	May affect
Ozark Big-eared Bat (<i>Corynorhinus (=Plecotus townsendii ingens)</i>)	Endangered	NLAA
Piping Plover (<i>Charadrius melodus</i>)	Threatened	No effect
Red Knot (<i>Calidris canutus rufa</i>)	Threatened	No effect

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

FHWA projects should not use the Arkansas Dkey for the Northern Long-eared Bat (NLEB) or Indiana Bat. Please complete the FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat determination key. This key is intended for projects funded or authorized by FHWA, FRA, or FTA, that may affect the endangered Indiana bat and/or the threatened NLEB, which requires consultation with the Service under Section 7 of the ESA.

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

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

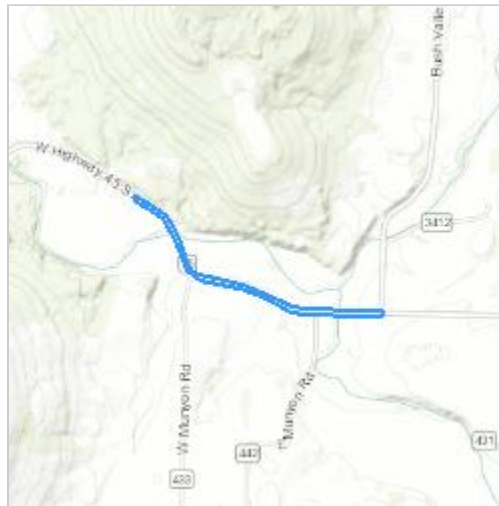
040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

2. Description

The following description was provided for the project '040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)':

This project is a double bridge replacement along Hwy. 45, over Baron Fork and Fly Creek, in Washington County, AR.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.8755905,-94.46769716001322,14z>



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. Is the action authorized, funded, or being carried out by a Federal agency?
Yes
 3. Are you the the action agency or the designated non-federal representative?
Yes
 4. Choose the agency you represent in this consultation with the U.S. Fish and Wildlife Service:
d. Federal Highway Administration
 5. Will project proponents follow [Special Provisions for avoidance and minimization](#) measures for listed species in Arkansas?
Yes
 6. [Semantic] Does the project intersect designated critical habitat for the Leopard Darter?
Automatically answered
No
 7. [Semantic] Does the project intersect designated critical habitat for the Neosho Mucket?
Automatically answered
No
 8. [Semantic] Does the project intersect designated critical habitat for Yellowcheek Darter?
Automatically answered
No
 9. [Semantic] Does the project intersect designated critical habitat for Rabbitsfoot?
Automatically answered
No
 10. [Semantic] Does the project intersect the American burying beetle consultation area?
Automatically answered
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. Does the project involve changes to an existing bridge or large culvert?
Yes
 24. Does the project involve changes to an existing bridge or large culvert?
Yes
-

25. Were bats of any species noted on inspection?
No
26. [Semantic] Does the project intersect the Ozark Big-eared Bat AOI?
Automatically answered
Yes
27. Are there any caves within 0.5 mile of the project area?
No
28. Does the project occur in a subdivision or urban area?
No
29. Does the project involve blasting of any type or tree removal of greater than 10 acres?
No
30. [Semantic] Does the project intersect the Ozark Big-eared Bat cAOI?
Automatically answered
No
31. 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
32. [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
33. [Semantic] Does the project intersect the Indiana bat AOI?
Automatically answered
Yes
34. [Semantic] Does the project intersect the Northern Long-eared bat AOI?
Automatically answered
Yes
35. [Semantic] Does the project intersect the Benton County Cave Crayfish AOI?
Automatically answered
No
36. [Semantic] Does the project intersect the Hell Creek Cave Crayfish AOI?
Automatically answered
No
37. [Semantic] Does the project intersect the Ozark cavefish AOI?
Automatically answered
No
-

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

Automatically answered

Yes

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

Automatically answered

No

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

Automatically answered

No

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

Automatically answered

No

From: [Lewis, Lindsey](#)
To: [Schrum, Matthew C.](#)
Subject: Re: [EXTERNAL] 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)
Date: Friday, July 21, 2023 3:21:00 PM

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Matt,

As stated in the Consistency Letter, the Service concurs with the "No Effect" and "NLAA" 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 will "not likely adversely affect" 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. If the Proposed Action is modified, or new information reveals that it may affect the Indiana Bat and/or Northern Long-eared Bat in a manner or to an extent not considered in the PBO, further review to conclude the requirements of ESA Section 7(a)(2) may be required.

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

The Service has no additional comments or concerns and agrees with the determinations, bridge assessment, bat survey results, justifications provided, non-jeopardy determinations, and concurrences made through the Arkansas Dkey and FHWA 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/>

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From: Schrum, Matthew C. <Matthew.Schrum@ardot.gov>
Sent: Friday, July 21, 2023 1:56 PM
To: Lewis, Lindsey <lindsey_lewis@fws.gov>
Subject: RE: [EXTERNAL] 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

Lindsey,
ARDOT proposes to replace two bridges over Baron Fork and Fly Creek on Hwy. 45 in Washington County, 1.0 mile east of Dutch Mills. This project will include ~1200' of stream mitigation activities (channel restoration and riparian buffer establishment) along Baron Fork, to repair severe bank erosion. See the attached pdf and kmz designs.

The official species list obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation identified the following endangered and threatened species as potentially occurring within the project boundaries; the endangered Gray Bat (*Myotis grisescens*), the endangered Indiana Bat (*Myotis sodalis*), the endangered Northern Long-eared Bat (*Myotis septentrionalis*), the endangered Ozark Big-eared Bat (*Corynorhinus (=Plecotus) townsendii ingens*), the proposed endangered Tricolored Bat (*Perimyotis subflavus*), the threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the proposed threatened Alligator Snapping Turtle (*Macrochelys temminckii*), the candidate Monarch Butterfly (*Danaus plexippus*), and the threatened Missouri bladderpod (*Physaria filiformis*). See attached USFWS species list.

The "AFO Arkansas Multi-Species Determination Key" and "FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat" determination keys were evaluated for this project. The project is currently scheduled to let 11-2023. Acoustic surveys for Indiana Bat and Northern Long-eared Bat were conducted in June 2023. A Kaleidoscope Pro Auto-ID analysis did not give positive MLE results for either species. USFWS gave their approval of the survey report 07/21/2023.

“May affect, not likely to adversely affect” determinations were given for Indiana Bat, Northern Long-eared Bat, Gray Bat, Ozark Big-eared Bat, and Missouri bladderpod.

“No effect” determinations were given for Eastern Black Rail, Piping Plover, and Red Knot.

This action will not jeopardize the continued existence of Tricolored Bat and Alligator Snapping Turtle.

If you need any other information, please let me know.

Matthew Schrum
Aquatic Biologist
Environmental Division
Arkansas DOT
Office: (501) 569-2083
Cell: (573) 330-6449

From: Schrum, Matthew C.
Sent: Tuesday, July 18, 2023 4:10 PM
To: Lewis, Lindsey <lindsey_lewis@fws.gov>
Subject: RE: [EXTERNAL] 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

Lindsey,
I've not sent you a survey report for this job yet, correct?
-Matt

From: Schrum, Matthew C.
Sent: Tuesday, May 30, 2023 11:36 AM
To: Lewis, Lindsey <lindsey_lewis@fws.gov>
Subject: RE: [EXTERNAL] 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

Lindsey,
The bat survey plan form for 040866 is attached, with a kmz and pdf of the 45% designs. Proposed detector locations are included in the kmz. If you need anything else, please let me know.
-Matt

From: Lewis, Lindsey <lindsey_lewis@fws.gov>
Sent: Monday, June 6, 2022 4:35 PM
To: Schrum, Matthew C. <Matthew.Schrum@ardot.gov>
Subject: Re: [EXTERNAL] 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

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Matt,

Please see the attached letter.

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/>

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From: Schrum, Matthew C. <Matthew.Schrum@ardot.gov>
Sent: Monday, June 6, 2022 7:56 AM
To: Lewis, Lindsey <lindsey_lewis@fws.gov>
Subject: RE: [EXTERNAL] 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

Lindsey,

ARDOT proposes to replace two bridges along Hwy. 45 over Baron Fork and Fly Creek in Washington County, AR. See the attached 45% plans and KMZ.

The official species list obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) identified the following endangered and threatened species as potentially occurring within the project boundaries; the endangered gray bat (*Myotis grisescens*), the endangered Indiana bat (*Myotis sodalis*), the threatened northern long-eared bat (*Myotis septentrionalis*), the endangered Ozark big-eared bat (*Corynorhinus (=Plecotus) townsendii ingens*), the threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the candidate monarch butterfly (*Danaus plexippus*), and the threatened Missouri bladderpod (*Physaria filiformis*). See attached USFWS species list.

The "AR DKey", "FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat", and "Northern Long-eared Bat (NLEB) Consultation and 4(d) Rule Consistency" determination keys were evaluated for this project.

“No effect” determinations were given for Eastern Black Rail, Piping Plover, and Red Knot.

“May affect, not likely to adversely affect” (NLAA) determinations were given for gray bat, Ozark big-eared bat, and Missouri bladderpod.

ARDOT contests the NLAA determination for Missouri bladderpod, as no suitable glade habitat is being impacted. Additionally, the nearest occurrence record for this species is approximately 32 miles NE of the project area at Blue Springs Park along the shore of Beaver Lake. ARDOT proposes a “no effect” determination.

A “may affect, likely to adversely affect” determination was made for the Indiana bat. In order to comply with the mitigation requirements of the BO, the ARDOT will contribute \$7,505 to TCF, the Program Sponsor, within 1 year of this letter or prior to the start of construction, whichever is earliest. See the attached IBAT Mitigation Calculator Spreadsheet. ARDOT will conduct bat surveys on this project during the 2022 or 2023 survey seasons, and may reinitiate consultation before the November 2023 letting, depending on the results of these surveys. Suitable IBAT habitat clearing required for construction totals 2.1 acres, 1.3 acres 0-100’ from existing road, and 0.8 acres 100-300’ from existing road. A Special Clearing Requirements for Indiana and Northern Long-eared Bats Special Provision will be placed on the job contract to ensure no direct impacts to Indiana bats. A Water Pollution Control Special Provision will be placed on the job contract to minimize the impacts of project activities on aquatic insects, an important food source for this species.

Upon assessment of the environmental effects of this project, ARDOT has concluded that this project would not jeopardize the continued existence of the northern long-eared bat. The Final 4(d) Rule applies to the project’s activities that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts the incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the project limits; therefore, the project can proceed without restrictions.

The monarch butterfly is a candidate species and as such is not federally protected under the Endangered Species Act. However, The USFWS recommends agencies implement conservation measures for candidate species in action areas as these are species, by definition, that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure.

Matthew Schrum
Aquatic Biologist
Environmental Division
Arkansas DOT
Office: (501) 569-2083
Cell: (573) 330-6449

From: Lewis, Lindsey <lindsey_lewis@fws.gov>
Sent: Friday, June 3, 2022 11:00 AM
To: Schrum, Matthew C. <Matthew.Schrum@ardot.gov>
Subject: Re: [EXTERNAL] 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

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Matt,

Unless I'm missing something, it looks like you answered on the questionnaire that the clearing would be during the inactive season, but the mitigation sheet indicates calculations for active season clearing. You may need to correct something here before we proceed.

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/>

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From: Schrum, Matthew C. <Matthew.Schrum@ardot.gov>
Sent: Friday, June 3, 2022 9:25 AM
To: Lewis, Lindsey <lindsey_lewis@fws.gov>
Subject: [EXTERNAL] 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S)

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Lindsey,
ARDOT proposes to replace two bridges along Hwy. 45 over Baron Fork and Fly Creek in Washington County, AR. See the attached 45% plans and KMZ.

The official species list obtained from the US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation (IPaC) identified the following endangered and threatened species as potentially occurring within the project boundaries; the endangered gray bat (*Myotis grisescens*), the endangered Indiana bat (*Myotis sodalis*), the threatened northern long-eared bat (*Myotis septentrionalis*), the endangered Ozark big-eared bat (*Corynorhinus (=Plecotus) townsendii ingens*), the threatened Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), the threatened Piping Plover (*Charadrius melodus*), the threatened Red Knot (*Calidris canutus rufa*), the candidate monarch butterfly (*Danaus plexippus*), and the threatened Missouri bladderpod (*Physaria filiformis*). See attached USFWS species list.

The "AR DKey", "FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat", and "Northern Long-eared Bat (NLEB) Consultation and 4(d) Rule Consistency" determination keys were evaluated for this project.

"No effect" determinations were given for Eastern Black Rail, Piping Plover, and Red Knot.

"May affect, not likely to adversely affect" (NLAA) determinations were given for gray bat, Ozark big-eared bat, and Missouri bladderpod.

ARDOT contests the NLAA determination for Missouri bladderpod, as no suitable glade habitat is being impacted. Additionally, the nearest occurrence record for this species is approximately 32 miles NE of the project area at Blue Springs Park along the shore of Beaver Lake. ARDOT proposes a "no effect" determination.

A "may affect, likely to adversely affect" determination was made for the Indiana bat. In order to comply with the mitigation requirements of the BO, the ARDOT will contribute \$20,169 to TCF, the Program Sponsor, within 1 year of this letter or prior to the start of construction, whichever is earliest. See the attached IBAT Mitigation Calculator Spreadsheet. ARDOT will conduct bat surveys on this project during the 2022 or 2023 survey seasons, and may reinstate consultation before the November 2023 letting, depending on the results of these surveys. Suitable IBAT habitat clearing required for construction totals 2.1 acres, 1.3 acres 0-100' from existing road, and 0.8 acres 100-300' from existing road. A Special Clearing Requirements for Indiana and Northern Long-eared Bats Special Provision will be placed on the job contract to ensure no direct impacts to Indiana bats. A Water Pollution Control Special Provision will be placed on the job contract to minimize the impacts of project activities on aquatic insects, an important food source for this species.

Upon assessment of the environmental effects of this project, ARDOT has concluded that this project would not jeopardize the continued existence of the northern long-eared bat. The Final 4(d) Rule applies to the project's activities that have the potential to affect northern long-eared bats. The Final 4(d) Rule exempts the incidental take of northern long-eared bats from take prohibitions in the Endangered Species Act. The exemptions apply as long as the activities do not occur within 0.25 mile of a known hibernaculum or within 150 feet of a known occupied maternity roost from June 1 to July 31. No known hibernacula or maternity roosts exist within the project limits; therefore, the project can proceed without restrictions.

The monarch butterfly is a candidate species and as such is not federally protected under the Endangered Species Act. However, The USFWS recommends agencies implement conservation measures for candidate species in action areas as these are species, by definition, that may warrant future protection under the Act. ArDOT will plant native wildflowers after construction as a conservation measure.

Matthew Schrum
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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

In Reply Refer To:

July 21, 2023

Project code: 2022-0002356

Project Name: 040866 - Baron Fork & Fly Creek Strs. & Apprs. (S) (BATS)

Subject: Concurrence verification letter for the '040866 - Baron Fork & Fly Creek Strs. & Apprs. (S) (BATS)' project under the revised February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat.

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request to verify that the **040866 - Baron Fork & Fly Creek Strs. & Apprs. (S) (BATS)** (Proposed Action) may rely on the concurrence provided in the February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action is within the scope and adheres to the criteria of the PBO, including the adoption of applicable avoidance and minimization measures, and may affect, but is not likely to adversely affect (NLAA) the endangered Indiana bat (*Myotis sodalis*) and/or the threatened Northern long-eared bat (*Myotis septentrionalis*).

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

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

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

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

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
 - Eastern Black Rail *Laterallus jamaicensis ssp. jamaicensis* Threatened
 - Gray Bat *Myotis grisescens* Endangered
 - Missouri Bladderpod *Physaria filiformis* Threatened
 - Monarch Butterfly *Danaus plexippus* Candidate
 - Ozark Big-eared Bat *Corynorhinus (=Plecotus) townsendii ingens* Endangered
 - Piping Plover *Charadrius melodus* Threatened
 - Red Knot *Calidris canutus rufa* Threatened
 - Tricolored Bat *Perimyotis subflavus* Proposed Endangered
-

PROJECT DESCRIPTION

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

NAME

040866 - Baron Fork & Fly Creek Strs. & Apprs. (S) (BATS)

DESCRIPTION

This project is a copy for the purposes of evaluating the NLEB/IBAT determination key.

DETERMINATION KEY RESULT

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

QUALIFICATION INTERVIEW

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

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

Automatically answered

Yes

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

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

Automatically answered

Yes

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

A) *Federal Highway Administration (FHWA)*

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

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

No

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

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

No

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

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

No

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

Yes

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

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

No

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

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

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

Yes

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

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

Yes

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

No

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

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

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

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

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

Yes

SUBMITTED DOCUMENTS

- *040866 Bat Acoustic Survey Report.pdf* <https://ipac.ecosphere.fws.gov/project/ESITNIIWCJH25IPHTC2M6QRX4I/projectDocuments/129402303>

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

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

No

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

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

No

15. 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

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

Yes

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

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

C) During both the active and inactive seasons

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

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

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

No

20. 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

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

Yes

22. What time of year will the removal or trimming of habitat or trees **within** suitable but **undocumented NLEB** roosting/foraging habitat or travel corridors occur?
C) During both the active and inactive seasons
23. Will *any* tree trimming or removal occur **within** 100 feet of existing road/rail surfaces?
Yes
24. Will *any* tree trimming or removal occur **between** 100-300 feet of existing road/rail surfaces?
Yes
25. Are *any* trees being removed **greater than** 9 inches diameter at breast height (dbh)?
Yes
26. Are *all* trees that are being removed clearly demarcated?
Yes
27. Will the removal of habitat or the removal/trimming of trees involve the use of **temporary** lighting?
No
28. Will the removal of habitat or the removal/trimming of trees include installing new or replacing existing **permanent** lighting?
No
29. Does the project include wetland or stream protection activities associated with compensatory wetland mitigation?
No
30. Does the project include slash pile burning?
Yes
31. Does the project include *any* bridge removal, replacement, and/or maintenance activities (e.g., any bridge repair, retrofit, maintenance, and/or rehabilitation work)?
Yes
32. Is there *any* suitable habitat^[1] for Indiana bat or NLEB **within** 1,000 feet of the bridge? (includes any trees suitable for maternity, roosting, foraging, or travelling habitat)

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

Yes

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

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

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

Yes

SUBMITTED DOCUMENTS

- *Bridge Culvert Bat Assessment Form April 2020 - Fly Creek.pdf* <https://ipac.ecosphere.fws.gov/project/ESITNIIWCJH25IPHTC2M6QRX4I/projectDocuments/109395890>

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

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

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

No

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

No

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

No

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

No

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

No

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

No

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

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

Yes

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

No

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

Automatically answered

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

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

Automatically answered

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

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

Automatically answered

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

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

Automatically answered

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

46. **General AMM 1**

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

Yes

47. **Hibernacula AMM 1**

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

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

Yes

48. **Hibernacula AMM 1**

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

Yes

PROJECT QUESTIONNAIRE

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

No

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

Yes

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

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

1.3

4. How many acres^[1] of trees are proposed for removal between 100-300 feet of the existing road/rail surface?

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

0.8

5. Please describe the proposed bridge work:

The bridges over Baron Fork and Fly Creek are being replaced.

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

The project is currently set to let November 2023, and construction would likely begin 2-3 months afterward.

7. Please enter the date of the bridge assessment:

09/15/2021

AVOIDANCE AND MINIMIZATION MEASURES (AMMS)

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

GENERAL AMM 1

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

HIBERNACULA AMM 1

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

DETERMINATION KEY DESCRIPTION: FHWA, FRA, FTA PROGRAMMATIC CONSULTATION FOR TRANSPORTATION PROJECTS AFFECTING NLEB OR INDIANA BAT

This key was last updated in IPaC on January 26, 2022. 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.

IPAC USER CONTACT INFORMATION

Agency: Arkansas Department of Transportation

Name: Matthew Schrum

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

ARDOT Job 040866 – Re-Evaluation FAP NHPP-0072(67)

Job Title Baron Fork & Fly Creek Strs. & Apprs. (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No impacts anticipated
Cultural Resources	X			SHPO clearance attached
Economic	X			No impacts anticipated
Endangered Species	X			No effect and NLAA determinations
Environmental Justice/Title VI	X			No impacts anticipated
Fish and Wildlife		X		Temporary during construction
Floodplains		X		Zone A Special Flood Hazard Area
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No impacts anticipated
Land Use		X		17.7 acres of proposed ROW; 2.1 TCE
Migratory Birds		X		Migratory Bird SP included
Navigation/Coast Guard	X			None in project area
Noise Levels	X			No impacts anticipated
Important Farmlands		X		3.4 acres of Important Farmland
Protected Waters	X			None in project area
Public Recreation Lands	X			No impacts anticipated
Public Water Supply/WHPA	X			None in project area
Relocates	X			No relocates from project
Section 4(f)/6(f)	X			No impacts anticipated
Social	X			No impacts anticipated
Underground Storage Tanks	X			No impacts anticipated
Visual	X			No impacts anticipated
Streams		X		736 linear feet of permanent impacts
Water Quality		X		Temporary decline during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? No

Short-term Activity Authorization Required? Yes

Section 404 Permit Required? Yes Type NW Permit 27

Remarks: WPC SP is required.

A Pre-Construction Notification is required.

Signature of Evaluator  Date 8/25/2023