




## INTEROFFICE MEMORANDUM

November 15, 2023

**TO:** Master Files

**FROM:** John Fleming, Division Head, Environmental Division 

**SUBJECT:** Job 040889  
FAP NHFP-9150(39)  
I-540/Hwy. 255 Intchg. Impvts. (Zero St.) (Fort Smith) (S)  
Route I-540, Section 1  
Sebastian County  
Tier 1 Categorical Exclusion

After appropriate environmental review, it has been determined that the subject job is a Tier 1 Categorical Exclusion as described by the ARDOT/FHWA Programmatic Agreement on Categorical Exclusion Documentation and Processing. A public hearing will not be offered for this project.

The purpose of this project is to improve the I-540/Highway 255 interchange in Fort Smith, Arkansas. The project will realign the I-540 southbound on-ramp to intersect 36<sup>th</sup> Street with a button-hook intersection and consolidate the ramp with 36<sup>th</sup> street at the intersection with Highway 255 (Zero St.). The project will require 0.1 acre of proposed right of way. A project location map is attached.

The project will not involve relocations, underground storage tanks, hazardous materials, noise impacts, environmental justice issues, important farmland, floodplains, or cultural resources. This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxic concerns. The State Historic Preservation Officer's clearance is attached.

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

A public involvement meeting was held on October 12, 2023, and the project information was available on the ARDOT website from October 7 to October 27, 2023. The meeting synopsis 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: Indiana Bat (*Myotis sodalis*), Northern Long-eared Bat (*Myotis septentrionalis*), 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*), American Burying Beetle (*Nicrophorus americanus*), and Monarch Butterfly (*Danaus plexippus*). The official USFWS Species list is attached.

Using the FHWA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and the Northern Long-eared Bat (PBO) determination key, it has been determined the project will have “no effect” on the Indiana Bat and the Northern Long-eared Bat.

The ABB Final 4(d) Rule applies to the project’s activities that have the potential to affect American burying beetles. The Final 4(d) Rule exempts the incidental take of American burying beetles from take prohibitions in the ESA. The exemptions apply as long as the activities do not occur on certain conservation lands in the Southern Plains Analysis Areas. Within Arkansas, these conservation lands are entirely within the existing boundaries of Fort Chaffee. This project occurs outside of the existing boundaries of Fort Chaffee; therefore, the project can proceed without restrictions. The USFWS Consultation Letters are attached.

The Eastern Black Rail, Piping Plover, Red Knot and Rabbitsfoot were also identified as possibly occurring within the project area. Based on the lack of habitat and distance to known species, it has been determined that the project will have “no effect” on these species.

The Monarch Butterfly is a candidate species, and as such, is not federally protected under the ESA. 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. ARDOT has determined that this action will not jeopardize the continued existence of the Monarch Butterfly.

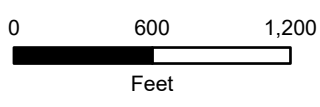
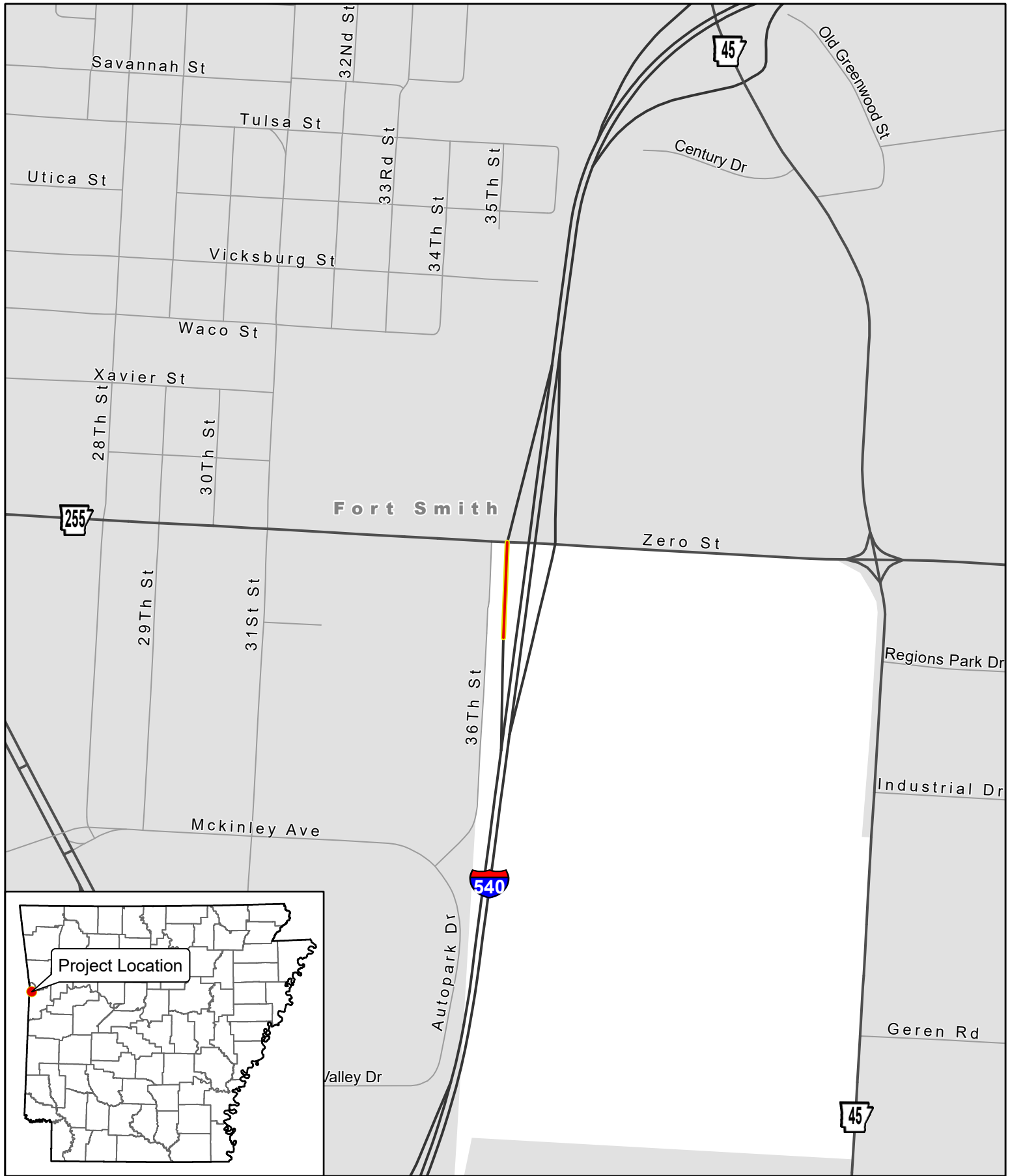
The Alligator Snapping Turtle is currently a proposed threatened species, and the Tricolored Bat is a proposed endangered species; however, the proposed project will not jeopardize the continued existence of either species.

Waters of the United States will not be impacted by this project; therefore, a Section 404 permit will not be required.

#### Attachments

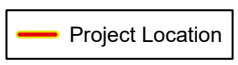
c: Program Management  
Right of Way  
Roadway Design  
District 4  
FHWA

JF:JG:sw



ARDOT – Environmental GIS – Nilz  
June 20, 2023

Job 040889  
I-540/Hwy. 255 Intchg. Impvts.  
(Zero St.) (Fort Smith)  
Sebastian County





Sarah Huckabee Sanders  
Governor  
Shea Lewis  
Interim Secretary

July 18, 2023

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

RE: Sebastian County: Fort Smith  
Section 106 Review: FHWA  
Proposed Undertaking: I-540/Hwy. 255 Intchn. Impvts. (Zero St.) (Fort Smith) (S)  
Route 540, Section 1  
ArDOT Job Number: 040889  
AHPP Tracking Number: 111281

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) has reviewed the Project Identification Form (PIF) for the above-referenced undertaking in Sections 3 and 34, Townships 7 and 8 North, Range 32 West in Sebastian County. The project proposes to make interchange improvements at the I-540/Hwy. 255 Interchange and signal improvements at the intersection to Hwy. 255 and 36<sup>th</sup> Street in Fort Smith. The total proposed right-of-way (ROW) is 0.096 acres. Two bridges (A5101 and B5101) are near the project area and have been determined eligible for the National Register of Historic Places (NRHP) (AHPP Tracking Number 110219.03A). Neither bridge will be affected by this undertaking. No shovel tests were excavated in the project area, as it is highly disturbed by previous road and highway construction.

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

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

Sincerely,  
Jessica H.  
Cogburn  
for

Digitally signed by Jessica  
H. Cogburn  
Date: 2023.07.18  
11:14:21 -05'00'

Scott Kaufman  
State Historic Preservation Officer and Director, AHPP

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

## PUBLIC INVOLVEMENT SYNOPSIS

Job 040889

I-540/Hwy. 255 Intchng. Impvts. (Zero St.) (Fort Smith)

Sebastian County

Thursday, October 12, 2023

An in-person public involvement (PI) meeting for the proposed improvements at the I-540/Hwy. 255 interchange was held at the Cavanaugh Free Will Baptist Church in Fort Smith, AR from 4:00 – 7:00 p.m. on Thursday, October 12, 2023. The project information was also made available on the ARDOT’s website from October 7, 2023 through October 27, 2023. Efforts to involve minorities and the public in the meeting included:

- Display advertisement placed in the *Southwest Times Record* on October 1 & 8, 2023.
- Letters were mailed to Public Officials on September 28, 2023.
- ARDOT staff distributed flyers on September 29, 2023.
- Flyers mailed to citizens on October 3, 2023.

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, project location map, and comment form are attached.

Table 1 summarizes the PI meeting participation.

<b>TABLE 1</b>	
<b>Public Participation</b>	<b>Totals</b>
Citizens registered at meeting	38
Online registration	1
Number of website viewers (English/Spanish)	804/145
<b>Total Comments Received</b>	<b>10</b>
In-Person comment forms received	7
Online comment forms received	2
Mailed comment forms received	1

*ARDOT staff reviewed all comments received and evaluated their contents. The summary of comments listed below reflects the personal perception or opinion of the person or organization making the statement. The sequencing of the comments is random and is not intended to reflect importance or numerical values. Some of the comments were combined and/or paraphrased to simplify the synopsis process.*

An analysis of the responses received as a result of the public survey is shown in Table 2.

TABLE 2	
Survey Results	Totals
Feels proposed project is needed/ not needed	8/2
Beneficial impacts due to the proposed project	5
Adverse impacts due to the proposed project	2
Knowledge of cultural resources in the project area	0
Knowledge of environmental constraints in the project area	0
Had a suggestion to better serve the needs of the community	1
Property limitations to the project	0

Suggestions regarding how the project could better serve community needs included:

- Currently there are visibility issues with the signage. Please verify the project has the appropriate signage well in advance of the intersection so approaching traffic can get into the proper lanes in time.
- During construction the barricades should have proper night reflectors and vertical plastic blinds atop the barricades to block oncoming headlights.

General Comments

- This is a very difficult interchange for some to navigate safely so the improvements will be a welcomed effort.
- The owner of Harrison Robinson Buick GMC believes the project will negatively affect traffic into his business by making it difficult for customers to enter and exit his business.
- The owner of Bill White Volkswagen believes the project long term is beneficial because it enhances traffic flow, but construction will negatively impact his business. He asks ARDOT to make an increased effort during construction to not negatively impact his and other surrounding businesses.
- The additional right turn at the I-540 off ramp proposed is an improvement for safety and reduced congestion.
- This project will improve traffic flow.

Job 040889 - Public Involvement Synopsis

October 12, 2023

Page 3 of 3

Attachments:

Public Meeting Notice

Public Involvement Exhibit

Blank Comment Form

DN:JG:sw



## PUBLIC INVOLVEMENT MEETING NOTICE

I-540/Hwy. 255 Intchng. Impvts. (Zero St.) (Fort Smith ) I-540/Hwy. 255  
Job 040889  
(Sebastian County)



### You're Invited!

Visit anytime during the scheduled hours.

**What:** The Arkansas Department of Transportation (ARDOT) will conduct a Public Involvement Meeting to discuss the proposed improvements on Zero St. and I-540/Hwy. 255 in Fort Smith, AR (Sebastian County).

**When:** Thursday, October 12, 2023  
4:00 p.m.- 7:00 p.m.

**Where:** Cavanaugh Free Will Baptist Church  
(2nd Floor - Rooms 209 & 210)  
2828 Briarcliff Avenue  
Fort Smith, AR 72908

Link to Project Information:

[www.ardot.gov/publicmeetings](http://www.ardot.gov/publicmeetings)

Website availability begins **October 07, 2023**  
and ends at 4:30 p.m. on **October 27, 2023.**

For further assistance, contact Ricardo Ramirez:  
Phone: (501) 569-2000 or e-mail: [Ricardo.ramirez@ardot.gov](mailto:Ricardo.ramirez@ardot.gov)

#### 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](mailto: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, ARDOT 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 ARDOT's programs and activities, as well as ARDOT's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding ARDOT's nondiscrimination policies may be directed to Civil Rights Officer Joanna P. McFadden (ADA/504/Title VI Coordinator), PO Box 2261, Little Rock, Arkansas 72203-2261, (501) 569-2298, (Voice/TTY 711), or to the following email address: [Joanna.Mcfadden@ardot.gov](mailto: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 audio tape and in Braille.

Job 040889  
I-540/Highway 255  
Interchange Improvements  
(Zero Street) (Fort Smith)  
Sebastian County



PRELIMINARY  
Subject To Revision



**Project Location**

0 1,000 2,000 Feet

Photography Date: 2022

ArDOT - Environmental GIS - Nilz  
October 2, 2023  
Public Involvement Exhibit

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

**ARDOT JOB 040889  
I-540/Hwy. 255 Intchnng. Impvts. (Zero St.) (Fort Smith) I-540/Hwy. 255  
SEBASTIAN COUNTY**

**LOCATION:  
CAVANAUGH FREE WILL BAPTIST CHURCH  
(2<sup>ND</sup> FLOOR – ROOMS 209/210)  
2828 BRIARCLIFF AVE.  
FORT SMITH, AR 72908  
4:00PM – 7:00PM  
THURSDAY, OCTOBER 12, 2023**

Make your comments on this form and mail it by 4:30 p.m. on **Friday, October 27, 2023** to: Arkansas Department of Transportation, Environmental Division, P.O. Box 2261, Little Rock, AR, 72203-2261. Email: [environmentalpimeetings@ardot.gov](mailto:environmentalpimeetings@ardot.gov).

Yes      No

Do you feel there is a need for the proposed interchange improvements on Zero St. and I-540/Hwy. 255 in Fort Smith, AR (Sebastian County)?  
Comment (optional)

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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. \_\_\_\_\_

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

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

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(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. \_\_\_\_\_

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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. \_\_\_\_\_

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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: (\_\_\_\_) \_\_\_\_\_--\_\_\_\_\_

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E-mail: \_\_\_\_\_

Please make additional comments here. \_\_\_\_\_

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For additional information, please visit our website at

[www.ardot.gov/publicmeetings](http://www.ardot.gov/publicmeetings)





## 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:

October 30, 2023

Project Code: 2023-0098042

Project Name: 040889 - I-540/Hwy. 255 Intchnng. Impvts. (Zero St.) (Fort Smith) (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 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 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 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:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.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/program/migratory-bird-permit/what-we-do>.

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/library/collections/threats-birds>.

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/partner/council-conservation-migratory-birds>.

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.

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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

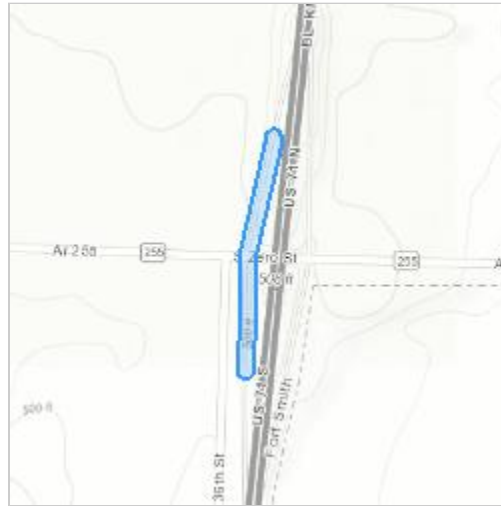
(501) 513-4470

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## PROJECT SUMMARY

Project Code: 2023-0098042  
Project Name: 040889 - I-540/Hwy. 255 Intchng. Impvts. (Zero St.) (Fort Smith) (S)  
Project Type: Road/Hwy - Maintenance/Modification  
Project Description: Interchange improvements in Sebastian County, AR.  
Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.327469750000006,-94.39541160893353,14z>



Counties: Sebastian County, Arkansas

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## 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 Fisheries<sup>1</sup>, 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.

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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
Indiana Bat <i>Myotis sodalis</i> There is <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/5949">https://ecos.fws.gov/ecp/species/5949</a>	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9045">https://ecos.fws.gov/ecp/species/9045</a>	Endangered
Tricolored Bat <i>Perimyotis subflavus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/10515">https://ecos.fws.gov/ecp/species/10515</a>	Proposed Endangered

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**BIRDS**

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/10477">https://ecos.fws.gov/ecp/species/10477</a>	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 <b>final</b> critical habitat for this species. Your location does not overlap the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/6039">https://ecos.fws.gov/ecp/species/6039</a>	Threatened
Rufa Red Knot <i>Calidris canutus rufa</i> There is <b>proposed</b> critical habitat for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/1864">https://ecos.fws.gov/ecp/species/1864</a>	Threatened

**REPTILES**

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

**INSECTS**

NAME	STATUS
American Burying Beetle <i>Nicrophorus americanus</i> Population: Wherever found, except where listed as an experimental population No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/66">https://ecos.fws.gov/ecp/species/66</a>	Threatened
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Candidate

**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: Sarah Hallett

Address: 10324 I-30

City: Little Rock

State: AR

Zip: 72209

Email sarah.hallett@ardot.gov

Phone: 5015692078

## **LEAD AGENCY CONTACT INFORMATION**

Lead Agency: Federal Highway Administration

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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:

June 27, 2023

Project code: 2023-0098042

Project Name: 040889 - I-540/Hwy. 255 Intchn. Impvts. (Zero St.) (Fort Smith) (S)

Subject: Consistency letter for '040889 - I-540/Hwy. 255 Intchn. Impvts. (Zero St.) (Fort Smith) (S)' project for a No Effect determination for the American burying beetle

Dear Sarah Hallett:

The U.S. Fish and Wildlife Service (Service) received on **June 27, 2023** your effect determination(s) for the '040889 - I-540/Hwy. 255 Intchn. Impvts. (Zero St.) (Fort Smith) (S)' (the Action) using the American burying beetle (*Nicrophorus americanus*) determination key 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 consideration of the Action and the assistance in the Service's American burying beetle determination key, you have determined that your proposed action will have No Effect on the American burying beetle.

Your agency has met consultation requirements for these species by informing the Service of your "no effect" determination. No further consultation for this project is required for the American burying beetle. This consistency letter confirms you may rely on effect determinations you reached by considering the American burying beetle DKey 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).

Coordination with your local Ecological Services Office is complete for the American burying beetle. If your project may affect additional listed species, please contact your local Ecological Services Field Office for assistance with those species. Thank you for considering Federally-listed species during your project planning.

This letter covers only the American burying beetle. It **does not** apply to the following ESA-protected species that also may occur in the Action area:

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
- Eastern Black Rail *Laterallus jamaicensis ssp. jamaicensis* Threatened

- Indiana Bat *Myotis sodalis* Endangered
- Monarch Butterfly *Danaus plexippus* Candidate
- Northern Long-eared Bat *Myotis septentrionalis* Endangered
- Piping Plover *Charadrius melodus* Threatened
- Red Knot *Calidris canutus rufa* Threatened
- Tricolored Bat *Perimyotis subflavus* Proposed Endangered

If your project may affect additional listed species, you must evaluate additional DKeys for other species, or submit a request for consultation for the additional species to your local Ecological Services Field Office.

The Service recommends that your agency contact the Service or re-evaluate the project in IPaC if: 1) the scope or location of the proposed project is changed significantly, 2) new information reveals that the action may affect listed species or designated critical habitat; 3) the action is modified in a manner that causes effects to listed species or designated critical habitat; or 4) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation should take place before project changes are final or resources committed.

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**Action Description**

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

**1. Name**

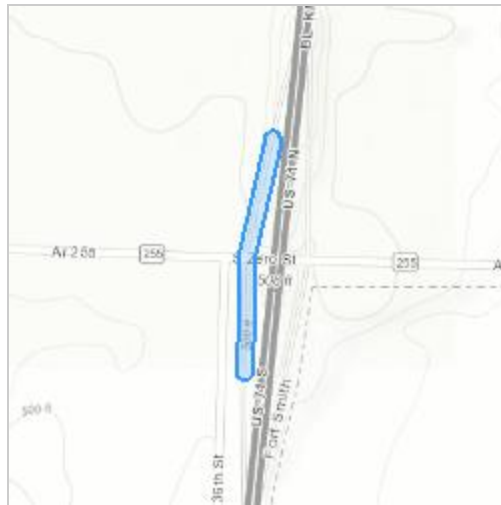
040889 - I-540/Hwy. 255 Intchng. Impvts. (Zero St.) (Fort Smith) (S)

**2. Description**

The following description was provided for the project '040889 - I-540/Hwy. 255 Intchng. Impvts. (Zero St.) (Fort Smith) (S)':

Interchange improvements in Sebastian County, AR.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.327469750000006,-94.39541160893353,14z>



## **QUALIFICATION INTERVIEW**

1. Is the action authorized, funded, or being carried out by a Federal agency?

*Yes*

2. Have you determined that the proposed action will have “no effect” on the American burying beetle? (If you are unsure select "No")

*Yes*

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## **PROJECT QUESTIONNAIRE**

Please select the activity that best matches your proposed action.

*8. Soil disturbance related to road construction and maintenance*

If you chose 13 above, please describe below. If you did not choose 13 above, please type "0".

0

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## **IPAC USER CONTACT INFORMATION**

Agency: Arkansas Department of Transportation

Name: Sarah Hallett

Address: 10324 I-30

City: Little Rock

State: AR

Zip: 72209

Email sarah.hallett@ardot.gov

Phone: 5015692078

## **LEAD AGENCY CONTACT INFORMATION**

Lead Agency: Federal Highway Administration

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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:

June 27, 2023

Project code: 2023-0098042

Project Name: 040889 - I-540/Hwy. 255 Intchnng. Impvts. (Zero St.) (Fort Smith) (S)

Subject: Consistency letter for the '040889 - I-540/Hwy. 255 Intchnng. Impvts. (Zero St.) (Fort Smith) (S)' project under the amended February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion (dated March 23, 2023) for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (NLEB).

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) has received your request dated June 27, 2023 to verify that the **040889 - I-540/Hwy. 255 Intchnng. Impvts. (Zero St.) (Fort Smith) (S)** (Proposed Action) may rely on the amended February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion (dated March 23, 2023) for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) to satisfy requirements under section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 *et seq.*).

Based on the information you provided (Project Description shown below), you have determined that the Proposed Action will have no effect on the endangered Indiana bat (*Myotis sodalis*) or the endangered 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.

**For Proposed Actions that include bridge/culvert or structure removal, replacement, and/or maintenance activities:** If your initial bridge/culvert or structure assessments failed to detect Indiana bats and/or NLEB use or occupancy, yet later detected prior to, or during construction, please submit the Post Assessment Discovery of Bats at Bridge/Culvert or Structure Form (User Guide Appendix E) to this Service Office within 2 working days of the incident. In these instances, potential incidental take of Indiana bats and/or NLEBs may be exempted provided that the take is reported to the Service.

If the Proposed Action may affect any other federally-listed or proposed species and/or designated critical habitat, additional consultation between the lead Federal action agency and this Service Office is required. If the proposed action has the potential to take bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act may also be required. In either of these circumstances, please advise the lead Federal action agency accordingly.

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

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
  - American Burying Beetle *Nicrophorus americanus* Threatened
  - Eastern Black Rail *Laterallus jamaicensis ssp. jamaicensis* Threatened
  - Monarch Butterfly *Danaus plexippus* Candidate
  - 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**

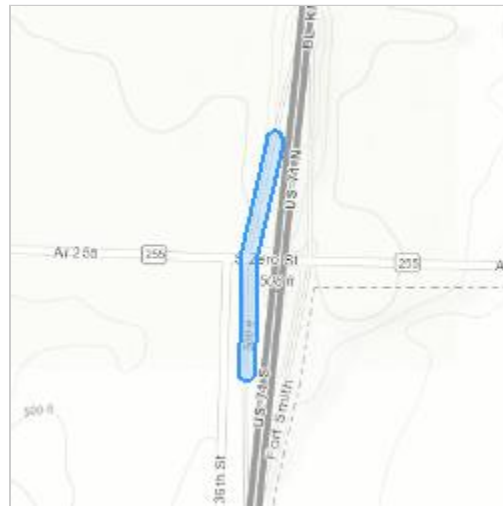
040889 - I-540/Hwy. 255 Intchng. Impvts. (Zero St.) (Fort Smith) (S)

### **DESCRIPTION**

Interchange improvements in Sebastian County, AR.

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The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.327469750000006,-94.39541160893353,14z>



## DETERMINATION KEY RESULT

Based on the information you provided, you have determined that the Proposed Action will have no effect on the endangered Indiana bat and/or the endangered northern long-eared bat.

Therefore, no consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required for these two species.

## QUALIFICATION INTERVIEW

1. Is the project within the range of the Indiana bat<sup>[1]</sup>?

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

**Automatically answered**

Yes

2. Is the project within the range of the northern long-eared bat<sup>[1]</sup>?

[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<sup>[1]</sup> 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<sup>[1]</sup>?

[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<sup>[1]</sup>?

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

No

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

No

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8. Is there *any* suitable<sup>[1]</sup> summer habitat for Indiana Bat or NLEB **within** the project action area<sup>[2]</sup>? (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 [User's Guide for the Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat](#).

No

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

No

10. Does the project include slash pile burning?

No

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

No

12. 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

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

No

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

No

15. 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

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

No

17. Is the location of this project consistent with a No Effect determination in this key?

**Automatically answered**

*Yes, because the project action area is not within suitable Indiana bat and/or NLEB summer habitat and is outside of 0.5 miles of a hibernaculum.*

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

This key was last updated in IPaC on June 14, 2023. 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 endangered **northern long-eared bat** (NLEB) (*Myotis septentrionalis*).

This decision key should only be used to verify project applicability with the Service's [amended February 5, 2018, FHWA, FRA, FTA Programmatic Biological Opinion \(dated March 23, 2023\) 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.

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## **IPAC USER CONTACT INFORMATION**

Agency: Arkansas Department of Transportation

Name: Sarah Hallett

Address: 10324 I-30

City: Little Rock

State: AR

Zip: 72209

Email sarah.hallett@ardot.gov

Phone: 5015692078

## **LEAD AGENCY CONTACT INFORMATION**

Lead Agency: Federal Highway Administration

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

ARDOT Job 040889 FAP NHFP-9150(39)

Job Title I-540/Hwy. 255 Intchnq. Impvts. (Zero St.) (Fort Smith) (S)

Environmental Resource	None	Minimal	Major	Comments
Air Quality	X			No air quality/MSAT impacts
Cultural Resources	X			SHPO clearance included
Economic	X			No adverse impacts
Endangered Species	X			A "no effect" determination for all species.
Environmental Justice/Title VI	X			No impacts anticipated
Fish and Wildlife		X		Minimal during construction
Floodplains	X			No floodplains within the area
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			No impacts anticipated
Land Use		X		Will require 0.1 acre of new ROW
Migratory Birds	X			No impacts anticipated
Navigation/Coast Guard	X			No navigable waterways involved
Noise Levels	X			No increases due to project
Important Farmland	X			Within city limits, none in the area
Protected Waters	X			None in the project area
Public Recreation Lands	X			None in the project area
Public Water Supply/WHPA	X			None in the project area
Relocates	X			No relocations
Section 4(f)/6(f)	X			No 4f/6f resources present
Social	X			No impacts to the social environment
Underground Storage Tanks	X			No USTs in project area
Visual	X			No changes to visual environment
Streams	X			No impacts anticipated
Water Quality	X			No impacts anticipated
Wetlands	X			No impacts anticipated
Wildlife Refuges	X			No impacts anticipated

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

Remarks:

An in-person public involvement meeting was held on October 12, 2023.

Signature of Evaluator  Date 11/7/2023