

STATE OF NEBRASKA
DEPARTMENT OF TRANSPORTATION

to: Justin Luther: justin.luther@dot.gov
Nebraska FHWA:
nebraska.fhwa@dot.gov

Date:	12/21/23	Control No.:	13294
Attention:		Justin Luther	
Reference:		LCLC-5233(4)	
		City Project #: 702614	
		RTSD Project # 5919	

We are sending you ☒ Attached ☐ Under separate cover via _____ the following items:

☐ Plans ☐ Prints ☐ Agreement(s) ☐ Specifications
☐ Estimate(s) ☐ Correspondence ☒ Other **ESA Consultation**

[illegible]

THESE ARE TRANSMITTED AS CHECKED BELOW:

☐ For your use ☐ For review and comment ☐ Return _____ corrected prints
☐ As requested ☐ Return for corrections
☒ For approval ☐ Submit _____ copies for distribution ☐ Other _____

Remarks: This project was re-evaluated for the uplisting of northern long-eared bat and the proposed endangered species tri-colored bat. The tri-colored bat evaluation required an Individual Project Level Evaluation resulting in a "No Effect" determination, requiring FHWA approval.

<p>IF ENCLOSURES ARE NOT AS NOTED, KINDLY NOTIFY US AT ONCE</p>		<p>Division:</p>
<p>Person to Contact and Phone No.:</p> <p>Matthew Greiner, 402-479-9948</p>		<p>NDOT Planning and Project Development</p>
<p>Copy(s) To:</p> <p>File</p>		<p>Signature:</p> <p><i>Matthew Greiner</i></p>

Memorandum

DATE **12/21/2023**

TO Justin Luther, FHWA
 Taylor Peters, FHWA

FROM Matthew Greiner, NDOT Environmental Specialist III

SUBJECT Re-evaluation due to up-listing of NLEB and proposed endangered
 species TCB
 33rd and Cornhusker; LCLC-5233(4); CN 13294
 Threatened & Endangered Species Concurrence

NDOT is reevaluating the project 33rd and Cornhusker; LCLC-5233(4); CN 13294 due to the Federal listing of the Northern Long-Eared Bat (NLEB) as an Endangered Species in March 2023 and due to the proposal to list Tri-Colored Bat (TCB) as an endangered species. The biological assessment for this Project was initially reviewed through NDOT's Programmatic Agreement Among the FHWA, USFWS, NDOT, and NGPC for the Determination of Effects to State and Federal Listed Species from the Federal-Aid Highway Program (January 2017) on 09/21/2022 and received concurrence from the USFWS and NGPC on 10/19/2022 and 10/3/2022, respectively. This project was evaluated as part of a batched consultation for eastern black rail which was approved by USFWS on 7/17/2021 and NGPC on 7/16/2021. It was determined that with implementation of conservation conditions, the Project **may affect but is not likely to adversely affect eastern black rail and northern long-eared bat**. The Project would have "no effect" to all other state or federally listed species or their designated critical habitat.

Threatened and Endangered Species Review

NDOT has reinitiated consultation for NLEB per guidance from the USFWS and NGPC dated 05/22/2023 via utilizing the *FHWA, FRA, FTA Programmatic Consultation for Transportation Projects Affecting Northern Long-eared Bat or Indiana Bat Determination Key* within the USFWS's Information Planning and Consultation (IPAC) tool. NDOT received a no effect consistency letter from IPAC from the USFWS on 12/15/2023.

The tricolored bat is currently a species proposed to be listed as an endangered species under the Endangered Species Act. Since the TCB is a proposed endangered species, it has yet to be included under the *FHWA, FRA, and FTA Programmatic Consultation for Transportation Projects Affect Northern Long-eared Bat or Indiana Bat Determination Key*. Therefore, the effects of the Project on TCB were evaluated in the attached Individual Project Level Evaluations. With the justifications presented in the IPLE, this Project would have "No Effect" to Tri-colored bat.

Therefore, NDOT has updated the determination for this Project to **"may affect but is not likely to adversely affect eastern black rail"** with no species-specific conservation conditions required. This Project would have no effect on all other state or federally listed species or their designated critical habitat. The general conservation conditions (A1-8) and Specific Impacts/Activities conservation conditions (S1-6) were updated per the March 2023 *NDOT's Programmatic Agreement Among the FHWA, USFWS, NDOT, and NGPC for the Determination of Effects to State and Federal Listed Species From the Federal-Aid Highway Program*.

The following conservation conditions will be included in the NEPA document:

Conservation Conditions: *Responsible Party for conservation condition shown in parentheses.*

Listed below are the required Conservation Conditions that apply to this project. These measures are not subject to change without the prior written approval of the NDOT Environmental Section. **Copy and paste the conditions listed below verbatim in the NEPA document, the Green Sheet, and in the contract documents:**

1. **General Conservation Conditions for All Projects (Responsible Party for the measure is found in parentheses)**. These conditions are numbered beginning with an "A" to designate application to ALL projects.
 - A-1 **Changes in Project Scope.** If there is a change in the project scope, the project limits, or environmental commitments, the Highway Project Manager shall coordinate with the NDOT Environmental Section to evaluate potential impacts prior to implementation. Environmental commitments are not subject to change without prior written approval from the NDOT Environmental Section. *(District Construction)*
 - A-2 **Conservation Conditions.** Conservation conditions are to be fully implemented within the project limits as shown on the plans. *(District Construction, Contractor)*
 - A-3 **Early Construction Starts.** Contractor requests for early construction starts must be coordinated by the Project Construction Engineer with the NDOT Environmental Section for approval to ensure avoidance of listed species sensitive lifecycle timeframes. Early start requests may require consultation with the USFWS and NGPC. Agency coordination time will vary depending on species and project location. *(District Construction, Contractor)*
 - A-4 **T&E Species.** If federal or state listed species are observed during construction, the Highway Project Manager will contact NDOT Environmental Section to determine if additional species conservation conditions would be required prior to continuing project construction activities. Contact NDOT Environmental for a reference of federal and state listed species. Coordination with the USFWS and NGPC may be required depending on the species identified and construction activities. *(NDOT Environmental, District Construction, Contractor)*
 - A-5 **Refueling.** Refueling will be conducted outside of those sensitive areas identified on the plans, in the contract, and/or marked in the field. *(Contractor)*
 - A-6 **Restricted Activities.** The following project activities shall, to the extent possible, be restricted to between the beginning and ending points (stationing, reference posts, mile markers, and/or section-township-range references) of the project, within the right-of-way designated on the project plans: borrow sites, burn sites, construction debris waste disposal areas, concrete and asphalt plants, haul roads, stockpiling areas, staging areas, and material storage sites.

For activities outside the project limits, the contractor should refer to the Nebraska Game and Park Commission website to determine which species ranges occur within the off-site area. The contractor should plan accordingly for any species surveys that may be required to approve the use of a borrow site, or other off-site activities. The

contractor should review the T&E Matrix agreement (on NDOT's website), where species survey protocols can be found, to estimate the level of effort and timing requirements for surveys.

Any project related activities that occur outside of the project limits must be environmentally cleared/permitted with the Nebraska Game and Parks Commission as well as any other appropriate agencies by the contractor and those clearances/permits submitted to the District Construction Project Manager prior to the start of the above listed project activities. The contractor shall submit information such as an aerial photo showing the proposed activity site, a soil survey map with the location of the site, a plan-sheet or drawing showing the location and dimensions of the activity site, a minimum of 4 different ground photos showing the existing conditions at the proposed activity site, depth to ground water and depth of pit, and the "Platte River depletion status" of the site. The contractor must receive notice of acceptance from NDOT environmental, prior to starting the above listed project activities. These project activities cannot adversely affect state and/or federally listed species or designated critical habitat. (*NDOT Environmental, District Construction, Contractor*).

- A-7 Waste/Debris.** Construction waste/debris will be disposed of in areas or a manner that will not adversely affect state and/or federally listed species and/or designated critical habitat. (*Contractor*)
- A-8 Post Construction Erosion Control.** Erosion control activities carried out by NDOT Maintenance or others after construction is complete, but prior to project close-out, shall adhere to any standard conservation conditions for species designated for the project limits during construction. (*NDOT Maintenance, District Construction, Contractor*)
- S-1 Fencing.** When project-related fence construction/relocation work is required to be done prior to the start of construction, and if the fence work occurs outside urban or cropland areas that are not within swift fox or mountain plover range, then fencing can be installed/relocated at any time using the following criteria:
- a. the fencing is temporary in nature and/or consists of only hand-driven posts
 - b. the work does not compact the soils (ex. through the use of heavy equipment) or cause soil disturbance beyond the driving of posts
 - c. within the **whooping crane** migration corridor, work occurring within a half of a mile of wetlands or perennial waters will occur between the hours of 10:00 am to 4:00pm when the work is between March 6 – April 29 or October 9 – November 15

If the fencing work cannot meet these criteria, then NDOT Right-of-Way Division shall coordinate with NDOT Environmental Section prior to the completion of Right-of-way negotiations.

- S-2 Platte River Depletions.** To the maximum extent practical, efforts will be made to design the project and select borrow sites to prevent depletions to the Platte River. If there is any potential to create a depletion, NDOT (during design) and the Contractor (for borrow sites) shall follow the current Platte River depletion protocols for coordination, minimization, and mitigation. In general, the following are considered de minimis depletions, but may still require agency coordination; a project which: a) creates an

annual depletion less than 0.1 acre feet, b) creates a detention basin that detains water for less than 72 hours, c) diverted water that will be returned to its natural basin within 30 days, or d) creates a one-time depletion of less than 10 acre feet. (*NDOT Roadway Design, Contractor*)

- S-3 Revegetation.** All permanent seeding and plantings (excluding managed landscaped areas) shall use species and composition native to the project vicinity as shown in the Plan for the Roadside Environment. However, within the first 16 feet of the road shoulder or within high erosion prone locations, tall fescue or perennial ryegrass may be used at minimal rates to provide quick groundcover to prevent erosion, unless state or federally listed threatened or endangered plants were identified in the project area during surveys. If listed **plants** were identified, any seed mix requirements identified during resource agency consultations shall be used for the project. (*NDOT Environmental*)
- S-6 Permanent LED Lighting (NDOT Design Commitment):** Only LED roadway luminaires listed on the NDOT “Nebraska Qualified Material Vendors List” will be considered for use on Nebraska highway lighting projects. Proposed changes to the following LED lighting requirements would require resource agency (USFWS and/or NGPC) coordination and approval prior to installation:

- Nominal CCT – 3000 +/- 300 K
- BUG Ratings – Maximum nominal Backlight (N/A), Uplight (0), Glare (N/A)
- Lumen Output – N/A

Any proposed changes to the listed requirement(s) must be presented to the NDOT Environmental Section for Agency Coordination and approval.

Eastern Black Rail: No conservation measures specified for this species.

Individual Project Level Evaluation

Project Name: North 33rd and Cornhusker
Federal-aid number: LCLC-5233(4)/ City Project #: 702614 / RTSD
Project # 5919
Control Number: 13294

This Individual Project Level Evaluation, in association with the completed Habitat Evaluation Form, the Matrix and associated conservation conditions, the Overview of Effects and Required Conservation Conditions sheet, and the associated appendices

constitutes the complete Biological Assessment documentation for the above-referenced project.

1. SPECIES TO BE EVALUATED INDIVIDUALLY

Note, these are the species to be evaluated in-depth, separate from the evaluation completed for the remaining state and federally listed species documented through the Habitat Assessment form and Matrix.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Tricolored Bat	<i>Perimyotis subflavus</i>	Proposed Endangered

2. SPECIES EVALUATION

Tricolored Bat (*Perimyotis subflavus*) – Proposed Endangered Species

Life History Information

Tricolored Bats (*Perimyotis subflavus*) (TCB) are a small insectivorous bat with a unique tricolored fur that distinguishes it in eastern North America. Adult TCBs exhibit fur coloration ranging from dark at the base, lighter in the middle, to dark at the tip (Barbour and Davis 1969, P. 115). Both males and females are colored alike, but females are consistently heavier than males (LaVal and LaVal 1980, p.44). The TCB range is known throughout 39 States, including Nebraska, 4 Canadian Provinces, and several Central American Countries. The species range and distribution has been expanding westward in recent decades and is attributed to an increase in trees along rivers, and an increase in suitable winter roosting sites, such as abandoned mines and other human-made structures (Benedict et al. 2000, p. 77; Geluso et al. 2005, p. 406; slider and Kurta 2011, p. 380).

During the spring, summer, and fall (i.e., non-hibernating seasons) TCB primarily roost among live and dead leaf clusters of live or recently dead deciduous hardwood trees. In addition, TCB have been observed roosting during summer among pine needles, eastern red cedar, and within artificial roosts such as barns, porch roofs, and bridges (Veilleux et al. 2003, p. 1071; Perry and Thill 2007, pp. 976–977; Thames 2020, p. 32; Jones and Pagels 1968, entire; Barbour and Davis 1969, p. 116). Female TCB exhibit high site fidelity, returning year after year to the same summer roosting locations (Allen 1921, p. 54; Veilleux and Veilleux 2004a, p. 197).

During the winter, TCB hibernate (i.e., reduce their metabolic rates, body temperatures, and heart rate) in caves and mines, although in the southern U.S., where caves are sparse, TCB often hibernate in road-associated culverts (Sandel et al. 2001, p. 174; Katzenmeyer 2016, p. 32; Limon et al. 2018, entire; Bernard et al. 2019, p. 5; Lutsch 2019, p. 23; Meierhofer et al. 2019, p. 1276) and sometimes tree cavities (Newman 2020, p. 14) and abandoned water wells (Sasse et al. 2011, p. 126). TCB are one of the first cave- hibernating species to enter hibernation in the fall and one

of the last to leave in the spring in Missouri and Pennsylvania (LaVal and LaVal 1980, p. 29; Merritt 1987, p.102). Hibernating TCB do not typically form large clusters; most commonly roost singly, but sometimes in pairs, or in small clusters of both sexes away from other bats (Hall 1962, p. 29; Barbour and Davis 1969, p. 117; Mumford and Whitaker 1982, p. 169; Raesly and Gates 1987, p. 19; Briggler and Prather 2003, p. 408; Vincent and Whitaker 2007, p. 62). In road associated-culverts in the southern U.S., however, TCB exhibit shorter torpor bouts and move within and between culverts throughout the winter (Anderson et al. undated).

TCB are opportunistic feeders and consume small insects including caddisflies (Trichoptera), flying moths (Lepidoptera), small beetles (Coleoptera), small wasps and flying ants (Hymenoptera), true bugs (Homoptera), and flies (Diptera) (Whitaker 1972, p. 879; LaVal and LaVal 1980, p. 24; Griffith and Gates 1985, p. 453; Hanttula and Valdez 2021, p. 132). TCB emerge early in the evening and forage at treetop level or above (Davis and Mumford 1962, p. 397; Barbour and Davis 1969, p. 116) but may forage closer to ground later in the evening (Mumford and Whitaker 1982, p. 170). TCB forage most commonly over waterways and forest edges (Barbour and Davis 1969, p. 116; Mumford and Whitaker 1982, pp. 170–171; Hein et al. 2009, p. 1204). Maximal distance traveled from roost areas to foraging grounds was 4.3 kilometers (km; 2.7 miles) for reproductive (pregnant or lactating) adult females in Indiana (Veilleux et al. 2003, p.1074) and 24.4 km (15.2 miles) (mean=11.4 km; 7.1 miles) for male TCB in Tennessee (Thames 2020, p. 61).

Male and female TCB converge at cave and mine entrances between mid-August and mid-October to swarm and mate. Females typically give birth to two young, rarely one or three between May and July (Allen 1921, p. 55; Barbour and Davis 1969, p. 117; Cope and Humphrey 1972, p. 9). Adults often abandon maternity roosts soon after weaning, but young remain longer (Whitaker 1998, p. 653). TCB are considered juveniles (i.e., subadults) when entering their first hibernation and most probably do not mate their first fall (Fujita and Kunz 1984, p. 3).

TCB disperse from winter hibernacula to summer roosting habitat in the spring. Fraser et al. 2012 (p. 5) concluded that at least some TCB engage in latitudinal migration that is more typically associated with hoary bats (*Lasiurus cinereus*), eastern red bats, and silver-haired bats, and this behavior is more common for males than for females. The maximum migration distance on record is a female TCB who migrated a straight-line distance of 243 km (151 miles) from her winter hibernaculum in southern Tennessee to a summer roost in Georgia (Samoray et al. 2019, p. 17). Other migration records between winter hibernacula and summer habitat include less than 80 km (50 miles) (Barbour and Davis 1969, p. 117), 44 km (27 miles) (Samoray et al. 2019, p. 18), and 137 km (85 miles) (Griffin 1940, p. 237). Hibernaculum to hibernaculum movement up to 209 km (130 miles) has also been documented between two consecutive winters (Lutsch 2019, p. 38).

Survey History

NDOT biologist Matthew Greiner and Environmental Supervisor Jeff Hartman surveyed the bridge sized structures over deadmans run within the Project area. The bridge on Cornhusker Hwy (HWY 6) at MM 316.32 and the concrete box culvert at 33rd and Baldwin Avenue were surveyed for signs of bat usage on 12/18/2023 and found no evidence that any bat species were using these structures.

Habitat Evaluation and Suitability

This project occurs within the city limits of Lincoln, Nebraska, northeast of UNL's East Campus on 33rd Street and Cornhusker Highway. The project occurs in a primarily residential/ business area. The project crosses one waterway, Deadmans Run, at two locations: one on N 33rd Street and Baldwin Avenue and the other on Cornhusker Hwy (HWY 6) at MM 316.32. Deadmans Run has extremely limited trees and is primarily an open waterway with concrete lining. Approximately 0.61 miles upstream from the 33rd Street and Baldwin culvert, there is a treed corridor on Deadmans Run connected to a small, wooded area on the east side of the east campus. Within the immediate project area, all trees are associated with urban housing. The entire project area has previously established lighting due to occurring within the city limits of Lincoln. Tri-colored bats generally require well-connected forested areas and forested riparian corridors for roosting and foraging habitat. Therefore, due to the lack of major forested areas, lack of habitat connectivity, and the well-lit nature of the project, there is no suitable habitat for TCB on this Project.

Analysis and Determination of Effects

Since the TCB is a proposed endangered species it is not yet included within the *FHWA, FRA, FTA Programmatic Consultation for Transportation Projects affecting NLEB or Indiana Bat* determination key. Therefore, impacts to TCB is being evaluated via this Individual Project Levels Evaluation. Due to the lack of suitable habitat and a negative bat survey on the two-bridge sized structure on this project, this project would have no effect to TCB.

Determination

This Project will have "No Effect" on Tri-Colored Bat or its habitat.

3. CONSERVATION MEASURES (if applicable)

N/A

4. COORDINATION

NDOT has not conducted early coordination with the USFWS or NGPC regarding the no effect determination for tri-colored bat.

5. LITERATURE CITED

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6. ADDITIONAL INFORMATION

This section should contain a statement that field notes, photographs, etc., are in the consultant project file and at the Nebraska Department of Transportation Environmental Services Office.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Nebraska Ecological Services Field Office
9325 B South Alda Rd., Ste B
Wood River, NE 68883-9565
Phone: (308) 382-6468 Fax: (308) 384-8835



In Reply Refer To:

December 15, 2023

Project code: 2024-0027164

Project Name: 33rd and Cornhusker; LCLC-5233(4); CN 13294

Subject: Consistency letter for the '33rd and Cornhusker; LCLC-5233(4); CN 13294' 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 December 15, 2023 to verify that the **33rd and Cornhusker; LCLC-5233(4); CN 13294** (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 assessment failed to detect Indiana bats and/or NLEBs 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:

- Monarch Butterfly *Danaus plexippus* Candidate
- Pallid Sturgeon *Scaphirhynchus albus* Endangered
- Piping Plover *Charadrius melodus* Threatened
- Tricolored Bat *Perimyotis subflavus* Proposed Endangered
- Western Prairie Fringed Orchid *Platanthera praeclara* Threatened

PROJECT DESCRIPTION

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

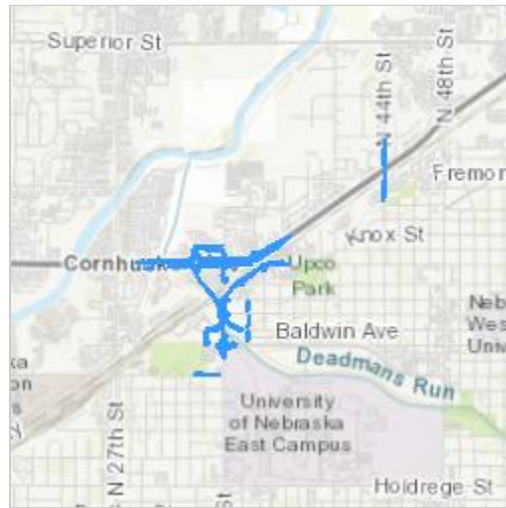
NAME

33rd and Cornhusker; LCLC-5233(4); CN 13294

DESCRIPTION

See project description in Biological Assessment

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@40.8353566,-96.67415229525284,14z>



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^[1]?

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

Automatically answered

No

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

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

Automatically answered

Yes

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

A) *Federal Highway Administration (FHWA)*

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

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

No

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

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

No

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

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

No

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

No

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

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

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

Yes

12. 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.

No

13. 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.)

Yes

14. Is there *any* suitable habitat^[1] for Indiana bat or NLEB **within** 1,000 feet of the structure? (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.

No

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

No

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

Yes

17. Is there *any* suitable habitat **within** 1,000 feet of the location(s) where **permanent** lighting will be installed or replaced?

No

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

Yes

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

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

Yes

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

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

Yes

21. 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

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

No

23. 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.

24. 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 is more than 1,000 feet from the nearest suitable habitat and is therefore considered unsuitable for use by bats

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

Automatically answered

Yes, because the structure is more than 1,000 feet from the nearest suitable habitat and is therefore considered unsuitable for use by bats

26. Is the permanent lighting portion of this project consistent with a No Effect determination in this key?

Automatically answered

Yes, because the lighting will be more than 1,000 feet from the nearest suitable habitat

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

This key was last updated in IPaC on October 30, 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.

IPAC USER CONTACT INFORMATION

Agency: Nebraska Department of Transportation

Name: Matthew Greiner

Address: 1500 Nebraska Parkway

City: Lincoln

State: NE

Zip: 68502

Email: matthew.greiner@nebraska.gov

Phone: 4024794419

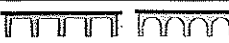







LEAD AGENCY CONTACT INFORMATION

Lead Agency: Federal Highway Administration

Bridge/Structure Bat Assessment Form

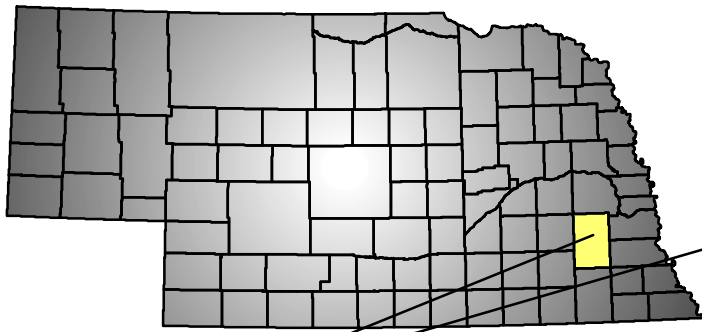
Date & Time of Assessment <u>12/18/23 10:00</u>	DOT Project Number <u>13294</u>	Route/Facility Carried <u>US-6</u>	County <u>Lancaster</u>
Federal Structure ID <u>SN 006-36312</u>	Structure Coordinates (latitude and longitude) <u>40°55'33.32"N 96°40'40.51"W</u>	Structure Height (approximate) <u>~50'</u>	Structure Length <u>~170'</u>
Structure Type (check one)		Structure Material (check all that apply)	
Bridge Construction Style		Deck Material Beam Material End/Back Wall Material	
<input type="radio"/> Cast-in-place  <input checked="" type="radio"/> Pre-stressed Girder 		<input type="checkbox"/> Metal <input type="checkbox"/> None <input checked="" type="checkbox"/> Concrete	
<input type="radio"/> Flat Slab/Box  <input type="radio"/> Steel I-beam 		<input checked="" type="checkbox"/> Concrete <input checked="" type="checkbox"/> Concrete <input type="checkbox"/> Timber	
<input type="radio"/> Truss  <input type="radio"/> Covered 		<input type="checkbox"/> Timber <input type="checkbox"/> Steel	
<input type="radio"/> Parallel Box Beam  <input type="radio"/> Other:		<input type="checkbox"/> Open grid <input type="checkbox"/> Timber <input type="checkbox"/> Other:	
Culvert Type		Culvert Material	
<input type="radio"/> Box		<input type="checkbox"/> Metal	
<input type="radio"/> Pipe/Round		<input type="checkbox"/> Concrete	
<input type="radio"/> Other:		<input type="checkbox"/> Plastic	
Other Structure		<input type="checkbox"/> Stone/Masonry	
		<input type="checkbox"/> Other:	
Crossings Traversed (check all that apply)		Surrounding Habitat (check all that apply)	
<input type="checkbox"/> Bare ground <input type="checkbox"/> Open vegetation		<input type="checkbox"/> Agricultural <input type="checkbox"/> Grassland	
<input type="checkbox"/> Rip-rap <input type="checkbox"/> Closed vegetation		<input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Ranching	
<input checked="" type="checkbox"/> Flowing water <input type="checkbox"/> Railroad		<input checked="" type="checkbox"/> Residential-urban <input type="checkbox"/> Riparian/wetland	
<input type="checkbox"/> Standing water <input type="checkbox"/> Road/trail - Type:		<input type="checkbox"/> Residential-rural <input type="checkbox"/> Mixed use	
<input type="checkbox"/> Seasonal water <input type="checkbox"/> Other:		<input type="checkbox"/> Woodland/forested <input type="checkbox"/> Other:	
Areas Assessed (check all that apply)			
Check all areas that apply. If an area is not present in the structure, check the "not present" box.			
Document all bat indicators observed during the assessment. Include the species present, if known, and provide photo documentation as indicated.			
Area (check if assessed)	Assessment Notes	Evidence of Bats (include photos if present)	
<input type="checkbox"/> All crevices and cracks: <input checked="" type="checkbox"/> Bridges/culverts: rough surfaces or imperfections in concrete <input type="checkbox"/> Other structures: soffits, rafters, attic areas	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
<input checked="" type="checkbox"/> Concrete surfaces (open roosting on concrete)	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
<input type="checkbox"/> Spaces between concrete end walls and the bridge deck	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
<input type="checkbox"/> Crack between concrete railings on top of the bridge deck 	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
<input checked="" type="checkbox"/> Vertical surfaces on concrete I-beams	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
<input type="checkbox"/> Spaces between walls, ceiling joists	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
<input type="checkbox"/> Weep holes, scupper drains, and inlets/pipes	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
<input type="checkbox"/> All guiderails	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
<input checked="" type="checkbox"/> All expansion joints	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Guano <input type="checkbox"/> Staining	<input type="checkbox"/> Audible <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Species
Name: <u>Matthew Gerner</u>		Signature: <u>[Signature]</u>	

Bridge/Structure Bat Assessment Form

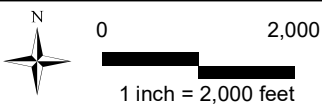
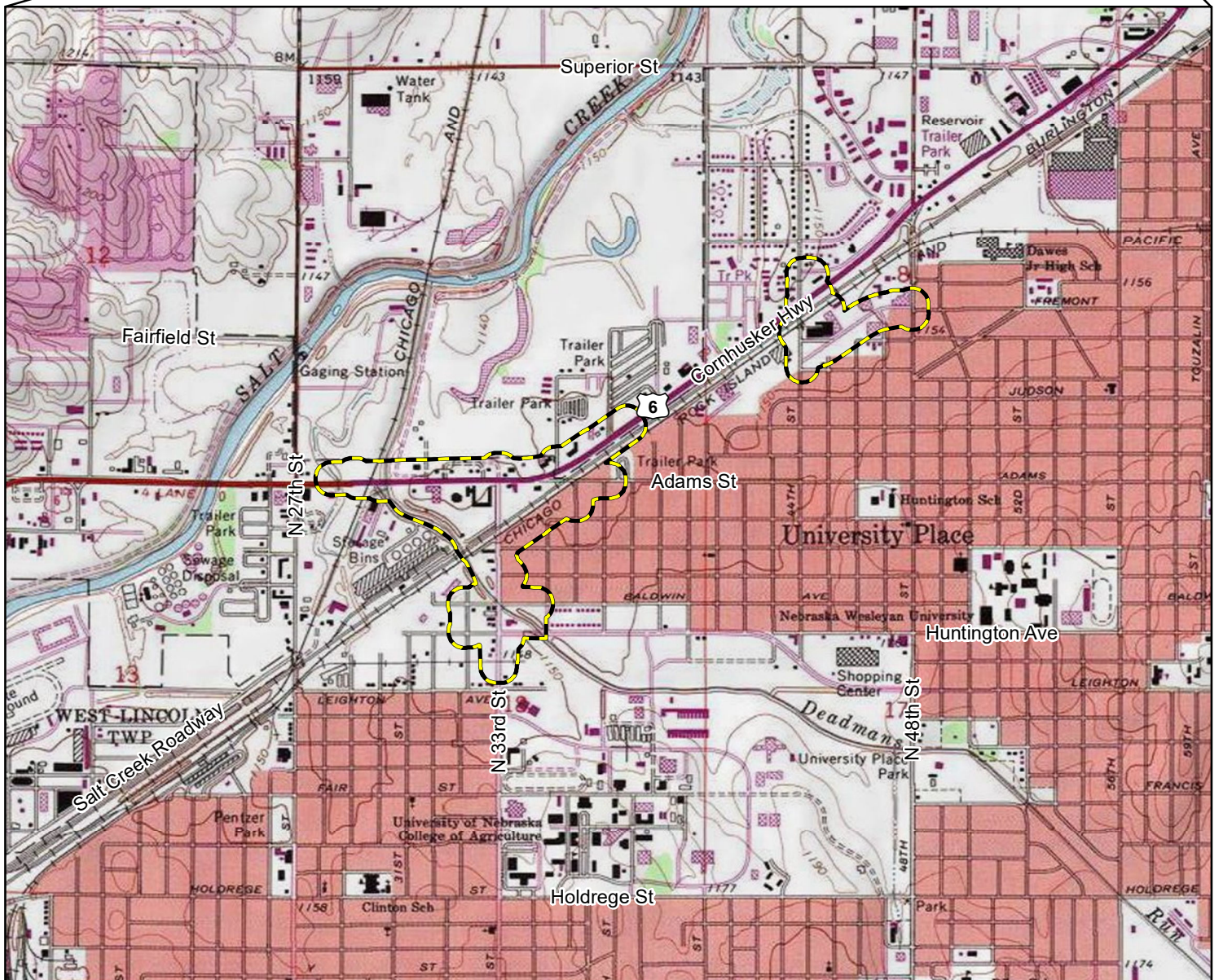
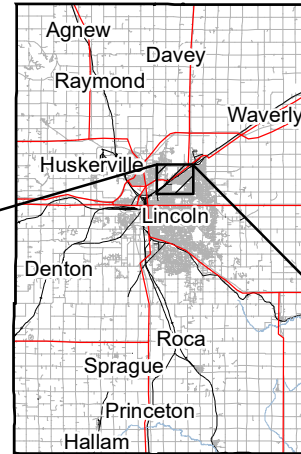
Date & Time of Assessment: 11/19/23 9:30	DOT Project Number: 13294	Route/Facility Carried: 33rd St + Baldwin Ave	County: Lancaster
Federal Structure ID: N/A	Structure Coordinates (latitude and longitude): 40°50'11.84"N 96°40'20.00"W	Structure Height (approximate): 30'	Structure Length: 128'
Structure Type (check one)		Structure Material (check all that apply)	
Bridge Construction Style <input type="radio"/> Cast-in-place  <input type="radio"/> Pre-stressed Girder  <input type="radio"/> Flat Slab/Box  <input type="radio"/> Steel I-beam  <input type="radio"/> Truss  <input type="radio"/> Covered  <input type="radio"/> Parallel Box Beam  <input type="radio"/> Other: _____		Deck Material <input type="checkbox"/> Metal <input type="checkbox"/> None <input type="checkbox"/> Concrete <input type="checkbox"/> Timber <input type="checkbox"/> Open grid <input type="checkbox"/> Other: _____ Beam Material <input type="checkbox"/> Concrete <input type="checkbox"/> Steel <input type="checkbox"/> Timber <input type="checkbox"/> Other: _____ End/Back Wall Material <input type="checkbox"/> Concrete <input type="checkbox"/> Timber <input type="checkbox"/> Stone/Masonry <input type="checkbox"/> Other: _____	
Culvert Type <input checked="" type="radio"/> Box <input type="radio"/> Pipe/Round <input type="radio"/> Other: _____		Culvert Material <input type="checkbox"/> Metal <input type="checkbox"/> Concrete <input type="checkbox"/> Plastic <input type="checkbox"/> Stone/Masonry <input type="checkbox"/> Other: _____	
Other Structure <input type="radio"/> _____		Creosote Evidence <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Unknown Notes: Deadmans Run	
Crossings Traversed (check all that apply)		Surrounding Habitat (check all that apply)	
<input type="checkbox"/> Bare ground <input type="checkbox"/> Open vegetation <input type="checkbox"/> Rip-rap <input type="checkbox"/> Closed vegetation <input checked="" type="checkbox"/> Flowing water <input type="checkbox"/> Railroad <input type="checkbox"/> Standing water <input type="checkbox"/> Road/trail - Type: _____ <input type="checkbox"/> Seasonal water <input type="checkbox"/> Other: _____		<input type="checkbox"/> Agricultural <input type="checkbox"/> Grassland <input type="checkbox"/> Commercial <input type="checkbox"/> Ranching <input type="checkbox"/> Residential-urban <input type="checkbox"/> Riparian/wetland <input type="checkbox"/> Residential-rural <input type="checkbox"/> Mixed use <input type="checkbox"/> Woodland/forested <input type="checkbox"/> Other: _____	
Areas Assessed (check all that apply) Check all areas that apply. If an area is not present in the structure, check the "not present" box. Document all bat indicators observed during the assessment. Include the species present, if known, and provide photo documentation as indicated.			
Area (check if assessed)	Assessment Notes	Evidence of Bats (include photos if present)	
<input type="checkbox"/> All crevices and cracks: Bridges/culverts: rough surfaces or imperfections in concrete Other structures: soffits, rafters, attic areas	<input checked="" type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
<input checked="" type="checkbox"/> Concrete surfaces (open roosting on concrete)	<input checked="" type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
<input type="checkbox"/> Spaces between concrete end walls and the bridge deck	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
<input type="checkbox"/> Crack between concrete railings on top of the bridge deck 	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
<input type="checkbox"/> Vertical surfaces on concrete I-beams	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
<input type="checkbox"/> Spaces between walls, ceiling joists	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
<input checked="" type="checkbox"/> Weep holes, scupper drains, and inlets/pipes	<input checked="" type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
<input type="checkbox"/> All guiderails	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
<input type="checkbox"/> All expansion joints	<input type="checkbox"/> Not present	<input type="checkbox"/> Visual - live # dead # <input type="checkbox"/> Audible <input type="checkbox"/> Species <input type="checkbox"/> Guano <input type="checkbox"/> Odor <input type="checkbox"/> Photos <input type="checkbox"/> Staining	
Name: Matthew Greiner		Signature: 	

NEBRASKA

LANCASTER COUNTY



Project Location



Study Area

**North 33rd & Cornhusker
Wetland Delineation**
Lincoln, Nebraska
Project No. A17-3604
Location Map
Figure 1



From: [Peters, Taylor \(FHWA\)](#)
To: [Greiner, Matthew](#); [luther, justin](#)
Cc: [Hartman, Jeff](#); [Bavougian, Christina](#); pjinfne@dot.gov
Subject: RE: NDOT Project: Approval request T&E Re-evaluation memo for 33rd and Cornhusker; CN 13294
Date: Friday, January 19, 2024 11:40:36 AM

Hello Matthew, thank you for speaking with me. As discussed, everything looks good, but just to check the “No Effect” vs. “Will not jeopardize continued existence” for TCB. If the change is warranted, please feel free to make it and send it off with no further FHWA review. Have a good weekend!

From: Greiner, Matthew <Matthew.Greiner@nebraska.gov>
Sent: Thursday, December 21, 2023 12:16 PM
To: Luther, Justin (FHWA) <Justin.Luther@dot.gov>
Cc: Peters, Taylor (FHWA) <taylor.peters@dot.gov>; Hartman, Jeff <jeff.hartman@nebraska.gov>; Bavougian, Christina <christina.bavougian@nebraska.gov>; pjinfne (FHWA) <pjinfne@dot.gov>
Subject: NDOT Project: Approval request T&E Re-evaluation memo for 33rd and Cornhusker; CN 13294

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning, Justin,

NDOT respectfully requests your review and approval of the attached threatened and endangered species re-evaluation memo with an IPLE addressing impacts to tri-colored bat for the unassigned project 33rd and Cornhusker (CN 13294). NDOT has determined that this project **“May affect, but is not likely to adversely affect eastern black rail.”** This project would have no effect on all other federally and state listed threatened and endangered species or their designated critical habitat.

The Project required a re-evaluation due to the up-listing of the northern long-eared bat (NLEB) as an endangered species and to address the effects on the proposed endangered species tri-colored bat (TCB). NLEB was evaluated through the *FHWA, FRA, FTA Programmatic Consultation for Transportation Projects Affecting Northern Long-eared Bat or Indiana Bat Determination Key* in IPaC and received a no effect consistency letter from the USFWS. The proposed endangered species TCB has yet to be included in any Programmatic. Therefore, NDOT addressed the potential effects of the Project on TCB through an Individual Project Level Evaluation (IPLE). NDOT determined with the justifications presented in the IPLE that this Project would have “No Effect” on TCB. Per the NDOT’s Programmatic Agreement Among the FHWA, USFWS, NDOT, and NGPC for the Determination of Effects to State and Federal Listed Species from the Federal-Aid Highway Program (March 2023), unassigned projects with an IPLE require FHWA approval. Attached are the threatened and endangered species re-evaluation memo, the original biological assessment, and concurrence letters from the USFWS and NGPC.

Please let me know if FHWA would like to share this re-evaluation memo documentation with the USFWS and NGPC and I will provide the review request letters to the USFWS and NGPC. The USFWS and NGPC won't concur upon "'No effect" determinations. The USFWS and NGPC have previously provided concurrence for the Easter Black Rail determination of "May affect, not likely to adversely affect".

Thank you and please let me know if you have any questions or concerns,

Happy Holidays!

Matthew Greiner, M.S.

Environmental Specialist III – Threatened and Endangered Species

Nebraska Department of Transportation

1500 Nebraska Parkway, Lincoln NE 68502

OFFICE 402-479-4419

HOURS 8:00AM – 4:30PM

Matthew.greiner@nebraska.gov