



United States Department of the Interior



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In Reply Refer To:

January 01, 2021

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Event Code: 02EKOK00-2021-E-01407

Project Name: Rural Industrial Park Rail Switching Enhancement Project

Subject: Verification letter for the 'Rural Industrial Park Rail Switching Enhancement Project' project under the January 5, 2016, Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-eared Bat and Activities Excepted from Take Prohibitions.

Dear Brian Bigbie:

The U.S. Fish and Wildlife Service (Service) received on January 01, 2021 your effects determination for the 'Rural Industrial Park Rail Switching Enhancement Project' (the Action) using the northern long-eared bat (*Myotis septentrionalis*) key within the Information for Planning and Consultation (IPaC) system. This IPaC key assists users in determining whether a Federal action is consistent with the activities analyzed in the Service's January 5, 2016, Programmatic Biological Opinion (PBO). The PBO addresses activities excepted from "take"^[1] prohibitions applicable to the northern long-eared bat under the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based upon your IPaC submission, the Action is consistent with activities analyzed in the PBO. The Action may affect the northern long-eared bat; however, any take that may occur as a result of the Action is not prohibited under the ESA Section 4(d) rule adopted for this species at 50 CFR §17.40(o). Unless the Service advises you within 30 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the PBO satisfies and concludes your responsibilities for this Action under ESA Section 7(a)(2) with respect to the northern long-eared bat.

Please report to our office any changes to the information about the Action that you submitted in IPaC, the results of any bat surveys conducted in the Action area, and any dead, injured, or sick northern long-eared bats that are found during Action implementation. If the Action is not completed within one year of the date of this letter, you must update and resubmit the information required in the IPaC key.

This IPaC-assisted determination allows you to rely on the PBO for compliance with ESA Section 7(a)(2) only for the northern long-eared bat. It **does not** apply to the following ESA-protected species that also may occur in the Action area:

- American Burying Beetle *Nicrophorus americanus* Threatened
- Least Tern *Sterna antillarum* Endangered
- Neosho Mucket *Lampsilis rafinesqueana* Endangered
- Piping Plover *Charadrius melodus* Threatened
- Rabbitsfoot *Quadrula cylindrica cylindrica* Threatened
- Red Knot *Calidris canutus rufa* Threatened
- Whooping Crane *Grus americana* Endangered

If the Action may affect other federally listed species besides the northern long-eared bat, a proposed species, and/or designated critical habitat, additional consultation between you and this Service office is required. If the Action may disturb bald or golden eagles, additional coordination with the Service under the Bald and Golden Eagle Protection Act is recommended.

[1]Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [ESA Section 3(19)].

Action Description

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

1. Name

Rural Industrial Park Rail Switching Enhancement Project

2. Description

The following description was provided for the project 'Rural Industrial Park Rail Switching Enhancement Project':

The City of Tulsa - Rogers County Port Authority has been awarded a federal grant by the U.S. Department of Transportation under the FY2020 Infrastructure For Rebuilding America (INFRA) Program. In accordance with the National Environmental Protection Act, the Project described below is being submitted to USDOT for consideration of Categorical Exclusion pursuant to 23 CFR Section 771.116.

The Project will consist of rail improvements, new rail construction, and industrial lead enhancement in a rural area of unincorporated Rogers County, Oklahoma and outlying area of Inola, Oklahoma. The proposed project will include the following specific elements and components: Two new 4,300' drop and pull tracks will be constructed in existing right-of-way on the north side of the rail spur between S 4210 Road and S 4200 Road in southern Rogers County in the SW 1/4 & SE 1/4 of Section 17, T19N, R17E. One new approximately 8,000' clear loop track will be constructed on Port Authority property in the NE 1/4 of Section 19, T19N, R17E. A new 7 degree 30 minute curve wye track connector will be constructed and an existing wye arm realigned, connecting the mainline track to the existing industrial lead, in existing Port Authority right-of-way in the NW 1/4 of Section 15, T19N, R17E. Improvements to the existing lead track will include an estimated 3000 6x8x8'6" crossties, 109 5/8" x 6" spikes, 2 switch tie package, approximately 13,000 TF surface and the installation of approximately 14,000 linear feet of rail track from 90 lb to 115 lb rail.

All rights-of-way and/or property where the proposed trackage improvements are to occur are publicly owned and regularly maintained. Rights-of-way are sprayed and mowed to limit the growth of foliage on the railroad track and ballast area.

The areas where new track construction will occur are developed electric utility corridors and/or are adjacent to industrial operations.

Construction of the Project is expected to commence on May 2021 and occur over an 18 month period.

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.11860246313812,-95.54152763481508,14z>



Determination Key Result

This Federal Action may affect the northern long-eared bat in a manner consistent with the description of activities addressed by the Service's PBO dated January 5, 2016. Any taking that may occur incidental to this Action is not prohibited under the final 4(d) rule at 50 CFR §17.40(o). Therefore, the PBO satisfies your responsibilities for this Action under ESA Section 7(a)(2) relative to the northern long-eared bat.

Determination Key Description: Northern Long-eared Bat 4(d) Rule

This key was last updated in IPaC on May 15, 2017. Keys are subject to periodic revision.

This key is intended for actions that may affect the threatened northern long-eared bat.

The purpose of the key for Federal actions is to assist determinations as to whether proposed actions are consistent with those analyzed in the Service's PBO dated January 5, 2016.

Federal actions that may cause prohibited take of northern long-eared bats, affect ESA-listed species other than the northern long-eared bat, or affect any designated critical habitat, require ESA Section 7(a)(2) consultation in addition to the use of this key. Federal actions that may affect species proposed for listing or critical habitat proposed for designation may require a conference under ESA Section 7(a)(4).

Determination Key Result

This project may affect the threatened Northern long-eared bat; therefore, consultation with the Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.) is required. However, based on the information you provided, this project may rely on the Service's January 5, 2016, *Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions* to fulfill its Section 7(a)(2) consultation obligation.

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 northern long-eared bat? (If you are unsure select "No")
No
3. Will your activity purposefully **Take** northern long-eared bats?
No
4. [Semantic] Is the project action area located wholly outside the White-nose Syndrome Zone?
Automatically answered
No
5. Have you contacted the appropriate agency to determine if your project is near a known hibernaculum or maternity roost tree?

Location information for northern long-eared bat hibernacula is generally kept in state Natural Heritage Inventory databases – the availability of this data varies state-by-state. Many states provide online access to their data, either directly by providing maps or by providing the opportunity to make a data request. In some cases, to protect those resources, access to the information may be limited. A web page with links to state Natural Heritage Inventory databases and other sources of information on the locations of northern long-eared bat roost trees and hibernacula is available at www.fws.gov/midwest/angered/mammals/nleb/nhisites.html.

Yes

6. Will the action affect a cave or mine where northern long-eared bats are known to hibernate (i.e., hibernaculum) or could it alter the entrance or the environment (physical or other alteration) of a hibernaculum?
No
 7. Will the action involve Tree Removal?
Yes
-

8. Will the action only remove hazardous trees for the protection of human life or property?
Yes

Project Questionnaire

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

1. Estimated total acres of forest conversion:

0

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

0

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

0

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

4. Estimated total acres of timber harvest

0

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

0

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

0

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

7. Estimated total acres of prescribed fire

0

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

0

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

0

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

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

0
