

North Carolina Department of Transportation
NEPA CONSULTATION FORM
STIP Project No. U-5928
WBS Element 44822
Federal Aid Project No. STBGDA-0501(041)

A. Project Description, Location, and Purpose:

- a. Consultation Phase: Construction
 - b. Project Description: This project is located within Wake County in the Town of Apex. This project involves extending the existing Apex Peakway to the south from S. Salem Street with a grade separation of S. Salem Street and the CSX Railroad tracks. With the Town of Apex growing rapidly, this project would result in the completion of an important connection of Apex Peakway that is currently missing. This connection will provide a continuous route from NC 55 near US 1 westward around the Town and back to Center Street/Ten Ten Road.
 - c. State Project: U-5928
Federal Project: STBGDA-0501(041)
 - d. Document Type: CE Checklist – Type III
2019 Construction Consultation
2021 Construction Consultation
- | | |
|--|-------------------|
| | January 29, 2018 |
| | June 18, 2019 |
| | December 23, 2021 |

B. Consultation Phase: (Check one)

Construction

C. NEPA/SEPA Class of Action Initially Approved as: (Check one)

FHWA Class II (CE) January 29, 2018

Additional Notes: **Type III**

D. Changes in Proposed Action & Environmental Consequences:

There have not been any notable changes to the designs since the approval of the CE Construction Consultation in December 2021.

However, the process for identifying threatened and endangered species for a project study area has been modified to be a study area specific evaluation, rather than a county wide evaluation. VHB queried the USFWS IPaC database in on April 21, 2023 to determine a current list of T&E species requiring evaluation for this project. Those species noted include Cape Fear shiner, Atlantic pigtoe, red-cockaded woodpecker (RCW), and Michaux’s sumac. No surveys were required for the federally listed aquatic species due to the lack of perennial stream channels within the study area. The 2021 Natural Resource Technical Report Addendum No. 3, completed for the Dec 2021 Consultation,

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included updated surveys (July 1, 2021) for the red-cockaded woodpecker, bald eagle, and Michaux's sumac. In addition, the tricolored bat is proposed for listing in the second half of 2023 and a PBO has been issued as of December 15, 2022 concerning the Northern long-eared bat. Updated biological conclusions for all proposed species and federally listed species are included below.

Cape Fear shiner

Habitat Description: The Cape Fear shiner is known only from the Cape Fear River watershed. In general, habitat occurs in streams with clean gravel, cobble, or boulder substrates. It is most often observed inhabiting slow pools, riffles, and slow runs associated with water willow (*Justicia americana*) beds, which it uses for cover. Juveniles can be found inhabiting slackwater, among large rock outcrops and in flooded side channels and pools. Spawning occurs May through June, when water temperatures reach 66 degrees Fahrenheit.

Biological Conclusion: No Effect

There are two streams located within the study area. However, both are intermittent, making them unsuitable habitat for the Cape Fear shiner. At the time of assessment in August 2016, stream SA supported 0 to 2 inches of water, which flowed at either a very slow trickle or was stagnant. There was no water present further downstream from the assessment area. The stream substrate of SA consisted of sand and gravel. Stream SB, located within a transmission line right-of-way, contained between 1 and 8 inches of water with very low flow. The stream bed substrate was composed of cobble, gravel, and sand. Neither stream supported water willow populations, large rock outcrops, flooded side channels or pools, or other habitat structures considered important for the Cape Fear shiner. Additionally, a North Carolina Natural Heritage Program (NCNHP) data explorer report, dated June 14, 2021, indicates no occurrences of this species within 1.0 mile of the study area. Critical habitat for the Cape Fear shiner does not exist within the study area. Due to the intermittent flow regime of these streams and lack of known occurrences, this project should have no effect on this species.

Atlantic pigtoe

Habitat Description: Atlantic pigtoe prefers coarse sand and gravel and is rarely found in silt and detritus. The species has been found in small and large streams that maintain clean, silt-free substrates.

Biological Conclusion: No Effect

No perennial streams occur within the study area. The two streams present are classified as intermittent and did not exhibit flowing water during the May 21, 2019 site visit. Therefore, suitable habitat for this species is not present. A NCNHP data explorer report, dated June 14, 2021, indicates no occurrences of this species within 1.0 mile of the study area. Critical habitat for the Atlantic pigtoe does not exist within the study area. Due to the intermittent flow regime of these streams, this project will have no effect on this species.

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Michaux's sumac

Habitat Description: Michaux's sumac grows in sandy or rocky open woods in association with basic soils. Apparently, this plant survives best in areas where some form of disturbance has provided an open area. Several populations in North Carolina are on highway rights-of way, roadsides, or on the edges of artificially maintained clearings. Two other populations are in areas with periodic fires, and two populations exist on sites undergoing natural succession. One population is situated in a natural opening on the rim of a Carolina bay.

Biological Conclusion: No Effect

Residential development and roadside/ railroad rights-of-way dominate the study area. Suitable habitat areas were identified along forested edges, regularly maintained rights-of-way, and open areas exhibiting access to full sunlight. These areas were visually surveyed on July 1, 2021. No specimens were observed. A NCNHP data explorer report, dated June 14, 2021, indicates no occurrences of this species within 1.0 mile of the study area. Due to the lack of observed specimens and no known occurrences the biological conclusion for this species is no effect.

Red-cockaded Woodpecker

The RCW is listed for Wake County but personal communication between Division 5 staff and Gary Jordan at USFWS determined the listing is an error and surveys are no longer required for this species in Wake County.

Northern long-eared bat

The USFWS has revised the previous programmatic biological opinion (PBO) in conjunction with the Federal Highway Administration (FHWA), the US Army Corps of Engineers (USACE), and NCDOT for the northern long-eared bat (NLEB) (*Myotis septentrionalis*) in eastern North Carolina (December 15, 2022). The Revised PBO covers the entire NCDOT program in Divisions 1-8, including all NCDOT projects and activities. Although this programmatic covers Divisions 1-8, NLEBs are currently only known to occur in 27 counties but may potentially occur in 3 additional counties within Divisions 1-8 (note: Division 5 is not located within any of these 30 counties). NCDOT, FHWA, and USACE have agreed to two Conservation Measures which will avoid/minimize mortality of NLEBs. These Conservation Measures only apply to the 30 current known/potential counties shown on Figure 2 of the Revised PBO and do not include any parts of Division 5. NCDOT, FHWA, and USACE have agreed to three Monitoring and Reporting Requirements to monitor the impacts of incidental take. All projects in Division 5 where planning has commenced prior to May 5, 2023 are not required to adhere to Monitoring and Reporting Requirement 3.

NCDOT staff and/or consultants must follow the NCDOT Bat Habitat Assessment SOP by filling out Bat Habitat Assessment Forms for projects that affect bridges and culverts. These forms will be submitted to NCDOT Biological Surveys Group (BSG) using the Survey 123 application or emailed to clknepp@ncdot.gov. BSG staff will enter the forms into its database even if no bat presence is detected. If NLEBs are detected at a bridge or culvert, the Service will be notified.

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The programmatic determination for NLEB for the NCDOT program is May Affect, Likely to Adversely Affect. The PBO provides incidental take coverage for NLEB and will ensure compliance with Section 7 of the Endangered Species Act for ten years for all NCDOT projects with a federal nexus in Divisions 1-8. This level of incidental take is authorized from the effective date of a final listing determination through December 31, 2030.

Tricolored bat

On September 14, 2022, the U.S. Fish and Wildlife Service announced a proposal to list the tricolored bat (*Perimyotis subflavus* - PESU) as endangered under the Endangered Species Act. Given the proposal to list PESU as Federally Endangered, NCDOT and its federal partners, FHWA and USACE are initiating a conference programmatic consultation to address impacts to this species. USFWS has not provided an official effective listing date, but it is anticipated to occur in the second half of 2023. Upon listing, USFWS is expected to provide habitat descriptions and an area of influence/distribution range for PESU. When this information is provided, it will help to inform NCDOT's determinations on habitat that could be impacted by NCDOT actions.

No bridges or culverts exist within the study area that meet the minimum requirements for survey. A NCNHP data explorer report dated April 21, 2023, revealed no documented occurrences of this species within 1.0 mile of the study area. At this time, no biological conclusion is required for this species; however, the biological conclusion would be Unresolved once listed.

Bald Eagle

Habitat for the bald eagle primarily consists of mature forest in proximity to large bodies of open water for foraging. Large dominant trees are utilized for nesting sites, typically within 1.0 mile of open water. A desktop-GIS assessment of the project study area, as well as the area within a 1.13-mile radius (1.0 mile plus 660 feet) of the project limits, was performed on July 8, 2016 using color aerial photography. An approximately two-acre pond located within the study area may provide a marginal feeding source. Since there was possible foraging habitat within the review area, a survey of the project study area and the area within 660 feet of the study area was conducted on July 1, 2021. No nests or eagles were observed. The survey study area is highly developed with only fragmented patches of forests, which does not provide ideal habitat for bald eagles to nest. A NCNHP data explorer report, dated June 14, 2021, indicates no occurrences of this species within 1.0 mile of the study area. An Eagle Act permit will not be required.

E. Conclusion:

The above environmental document has been reevaluated as required by 23 CFR 771. It was determined that the current proposed action is essentially the same as the original proposed action. Proposed changes, if any, are noted below in Section D. It has been determined that anticipated social, economic, and environmental impacts were accurately described in the above referenced document(s) unless noted otherwise herein. Therefore, the original Administration Action remains valid.

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F. Coordination

Project personnel have discussed the current parameters with qualified representatives from the project team, municipality, NCDOT and FHWA. The LAPP project manager, (Russell Dalton), hereby verifies the involvement of the following staff and their incorporation of their technical input:

Design Engineer:	Tim Goins, PE	7/14/2023
Environmental Specialist:	Lauren Triebert, PE	7/14/2023
FHWA (if applicable):	Joseph Geigle, PE	7/14/2023
Other:	Name	Date

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G. Consultation Approval for NCDOT Project U-5928

Prepared By:

7/14/23

Lauren Triebert, PE

Date

Lauren Triebert, PE; Environmental Review Manager
VHB Engineering NC, P.C.

Prepared For:

7/14/23 028411

Date

Russell H Dalton
Russell Dalton, PE; Traffic Engineering Manager
Town of Apex, NC

Reviewed By:

08/01/2023

Date

DocuSigned by:

Chris Murray

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Chris Murray, SPWS
North Carolina Department of Transportation
Division 5 Project Engineer for Planning and Env. Studies

Approved

In adherence with 23 CFR 771 (NEPA) or NC General Statute Chapter 113A Article 1 (SEPA), NCDOT approves this Consultation.

or

Certified

NCDOT staff certifies if FHWA signature was previously required or where changes have resulted in FHWA signature being required.

08/01/2023

Date

DocuSigned by:

Ben Upshaw

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Ben Upshaw, P.E.
North Carolina Department of Transportation
NCDOT Division 5 Project Development Engineer
for
Brandon Jones, P.E.
North Carolina Department of Transportation
NCDOT Division 5 Division Engineer

FHWA Approved:

FHWA signature required for Type I(B) CE, Type II(B) CE, Type III CE, FONSI or ROD.

08/08/2023

Date

DocuSigned by:

Joseph P. Geigle

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Joseph Geigle for Edward Parker, PE, Division Administrator
Federal Highway Administration

H. Project Commitments (as of July 2023)

**Apex Peakway
Southwest Connector
Construct Operational Improvements, Apex
Wake County
Federal-Aid Project STBGDA-0501(041)
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Town of Apex

The Town will provide areas for school buses to safely turn around at the Apex Peakway roadway closure during construction in response to a request from the Wake County Public Schools Transportation Planner.

NCDOT Environmental Coordination and Permitting Unit

~~As part of final design, construction impacts to jurisdictional features will be identified and quantified; the appropriate environmental permits will be obtained from USACE and NCDEQ DWR. A USACE NWP 23 and a USACE Section 404 permit based on a NCDEQ DWR 401 WQC are likely required for this project based on preliminary jurisdictional impacts.~~

Final impact calculations have been made and are included, along with permit drawings, in a Section 404/401 permit application, submitted July 14, 2023. If this permit is not approved, the Town will need to revise as needed and resubmit for approval prior to construction.

NCDOT Environmental Analysis Unit

~~As a project requirement for PBO compliance, after project completion, the construction contract administrator will submit the actual amount of tree clearing reported in tenths of acres to the NCDOT Environmental Analysis Unit. This information should be submitted at:~~

~~<https://connect.ncdot.gov/site/construction/biosurveys/Lists/Northern%20Long%20Eared%20Bat/AllItems.aspx>~~

~~Questions can be directed to Melissa Miller with the NCDOT Environmental Analysis Unit – Biological Surveys at mrmiller2@ncdot.gov.~~

Northern long-eared bat

Biological Conclusion: May Affect, Likely to Adversely Affect

~~The US Fish and Wildlife Service (USFWS) has revised the previous programmatic biological opinion (PBO) in conjunction with the Federal Highway Administration (FHWA), the US Army Corps of Engineers (USACE), and NCDOT for the northern long-eared bat (NLEB) (*Myotis septentrionalis*) in eastern North Carolina. The PBO covers the entire NCDOT program in Divisions 1-8, including all NCDOT projects and activities.~~

~~Although this programmatic covers Divisions 1-8, NLEBs are currently only known in 19 counties in Divisions 1-8 but may potentially occur in 11 additional counties within Divisions 1-8. NCDOT, FHWA, and USACE have agreed to two conservation measures which will avoid/minimize mortality of NLEBs. These conservation measures only apply to the 30 known/potential counties shown on Figure 2 of the PBO at this time. The programmatic determination for NLEB for the NCDOT program is May Affect, Likely to Adversely Affect. The PBO provides incidental take coverage for NLEB and will ensure compliance with Section 7 of the Endangered Species Act for ten years for all NCDOT projects with a federal nexus in Divisions 1-8, which includes Wake County, where this project is located. This level of incidental take is authorized from the effective date of a final listing determination through December 31, 2030.~~

~~Measures to Avoid/Minimize Mortality~~

- ~~1) No tree clearing will occur within 150 feet of a known maternity roost tree May 1- June 30 in order to protect non-volant young. Winter roost trees are not considered maternity roost trees.~~
- ~~2) At individual project sites where a total of 1.0 acre or more of tree clearing will occur, no tree clearing will occur during the portion of the day that the air temperature is <40 degrees Fahrenheit in order to protect NLEBs that may be in torpor. This restriction is only subject to the known/potential range (30 coastal counties) that is shown in Figure 2.~~

~~Based on a NCNHP data explorer report dated June 14, 2021, there are no known maternity roosts within 1.0 mile of the project site. Additionally, Wake County where the project is located is not included on Figure 2 in the PBO. Based on this information the conservation measures in the PBO do not apply to this project.~~

Threatened and Endangered Species Surveys

Surveys for the Bald Eagle and Michaux's sumac were last conducted on 7/1/2021. The project currently has a let date of September 30, 2023; should let be delayed into 2024, updated surveys will be required.

Tricolored bat

NCDOT Division 5 will resolve Section 7 for the tricolored bat prior to project letting, should it become listed as endangered prior to project construction.