



**United States Department of the Interior**  
**FISH AND WILDLIFE SERVICE**  
Ecological Services Program



Oklahoma Ecological Services Field Office  
9014 East 21<sup>st</sup> Street  
Tulsa, Oklahoma 74129  
(918) 581-7458 (Office) / (918) 581-7467 (Fax)

Date:

To:

Project Name:

Consultation Code:

Dear Project Proponent:

Thank you for using the U.S. Fish and Wildlife Service (Service) Oklahoma Ecological Services Field Office (ESFO) online project review process. By providing this letter in conjunction with your complete project review package, you are certifying that you have accurately completed the USFWS Online Project Review Process for the referenced project in accordance with all instructions provided, using the best available information to reach your conclusions. Concurrence with “not likely to adversely affect” determinations does not provide any exemption for violations of section 9 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (ESA) or “take” of federally-listed species. The Federal action agency is ultimately responsible for ensuring compliance with the ESA and any take that occurs due to your proposed action would be considered a violation under section 9 of the ESA.

This letter and the enclosed project review package complete the review of your project in accordance with the ESA. This letter also provides information for your project review under the National Environmental Policy Act (National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C.4321-4347, 83 Stat. 852), as amended.

A copy of this letter, with all forms completed, and the project review package must be emailed to **okprojectreview@fws.gov** for this certification to be valid. This letter and the project review package will be maintained in Service records. **Please allow the Oklahoma ESFO 45 days to review your information. If the Oklahoma ESFO determines that the package is not complete, or that additional coordination is necessary, we will contact you. If, after 45 days from the date of your email submittal of your project review package, the Oklahoma ESFO has not contacted you, consider your section 7 consultation complete.**

The proposed action consists of:

Project start and completion dates:

Federal agency or federal program providing a permit, grant, authorization, loan, etc. associated with the proposed project and how that agency is associated with your project:

Federal Agency/Program Point of Contact (name, phone, and email address):

The species conclusions table in the enclosed project review package summarizes your ESA conclusions. These conclusions resulted in “not likely to adversely affect/modify” determinations for listed species and critical habitat in relation to potential effects of your proposed project. We certify that the use of the online project review process in strict accordance with the instructions provided as documented in the enclosed project review package results in reaching the appropriate determinations. Therefore, we concur with determinations of “not likely to adversely affect” for listed species and critical habitat reached by proper use of this process. For projects where this particular determination is reached, additional coordination with this office is not needed.

Candidate species are not legally protected pursuant to the ESA. However, the Service encourages efforts to avoid or minimize adverse impacts to them from project effects. Some federal agencies have standing policies that grant limited protections to candidate species. Conservation of candidate species now may preclude future needs to federally list them as endangered or threatened, at which point their legal protection would become required. Please contact this office for additional coordination if your project action area contains candidate species.

Should project plans change or if additional information on the distribution of listed species or critical habitat becomes available, this determination may be reconsidered. You should re-visit the Service's Information, Planning, and Conservation (IPaC) website at <http://ecos/fws.gov/ipac/> within 90 days of project initiation to ensure species information is correct. If new species or critical habitat is identified, this letter is no longer valid and a new project package should be submitted to the Oklahoma ESFO.

Information about the online project review process including instructions and use, species information, and other information regarding project reviews within Oklahoma is available at our website: <http://www.fws.gov/southwest/es/oklahoma/>. If you have any questions, please call 918-581-7458 or send an email message to [OKProjectReview@fws.gov](mailto:OKProjectReview@fws.gov).

Sincerely,  
/s/ Kenneth Collins  
Field Supervisor

Enclosures:

1) ENTIRE PROJECT REVIEW PACKAGE (check those you are including):

- Species Conclusion Table (required)
- IPaC Species List and Action Area map (required)
- This letter (Online Concurrence Letter) (required)
- Additional maps (recommended for adequate review)

2) Other relevant project data/documents

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**ENDANGERED, THREATENED AND CANDIDATE SPECIES, DESIGNATED  
CRITICAL HABITAT, BALD EAGLE AND MIGRATORY BIRD ASSESSMENTS**

**For**

<b>USFWS Project Code</b>		2022-0073436			
Email used to request IPaC official species list			jwhitaker@olsson.com		
County	McClain	JP Number	35588(04) & 35589(04)	Project Number	J3-5588(004)PM & J3-5589(004)PM
Road Number	I-35	Water Body Name		Unnamed tributaries to the Canadian River	
ROW Date	NA	Let Date	2023	Project Length	6.9 miles
Project General Location		0.5 miles south of Norman, OK			
Project Description & Statement from Oracle		GRADE, DRAIN, BRIDGE & SURFACE I-35: FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE			

Prepared for:  
Oklahoma Department of Transportation  
Environmental Programs Division  
200 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105

Prepared by:

Biologist Name	Nathan Hillis & Julianne Whitaker
Company/Agency Name	Olsson
Address	11600 Broadway Extension, Suite 300
City, State Zip	Oklahoma City, OK 73114

Report Date:	10/24/2022
Field Survey Date	10/06/2022
Field Survey Biologist(s)	Nathan Hillis & Hannah Clark

Form Date: September 15, 2022

## 1. PROJECT OVERVIEW

### 1.1 Federal Nexus

This biological assessment, prepared by the above named Company/Agency for the Oklahoma Department of Transportation (ODOT), addresses the above named project in compliance with Section 7(c) of the Endangered Species Act (ESA) of 1973, as amended. Section 7 of the ESA requires that, through consultation with the U.S. Fish and Wildlife Service (Service), federal actions do not jeopardize the continued existence of any threatened, endangered, or proposed species or result in the destruction or adverse modification of critical habitat. This assessment evaluates the potential effects of the proposed transportation project on species that are federally listed under the ESA. Specific project design elements are identified that avoid or minimize adverse effects of the proposed project on listed species and designated critical habitat.

### 1.2. Project Description

Grade, Drain, Surface and Bridge

#### Description of the existing bridge/roadway facility and reason for proposed project

The existing I-35 roadway has four 12ft. wide asphalt driving lanes and 10 ft. wide outside and 4 ft. wide inside asphalt shoulders, and a 35 ft wide sod median. The existing I-35 bridge, NBI 14258 is a 2-10ft.X10ft.X139ft RCB with a clear roadway width of 38 ft. and an approach roadway consisting of four 12 ft. wide driving lanes and 10 ft. wide outside and 4 ft. wide inside asphalt shoulders, and a 35 ft wide sod median. The bridge has a sufficiency rating of 65 and is functionally obsolete. The existing I-35 bridges, NBI 14298 (2-10ft.X10ft.X139ft RCB), 14335 3-10ft.X10ft.X108ft. RCB) and 14352 (12ft.X14ft.X12ft RCB.) each have a clear roadway width of 38 ft. and an approach roadway consisting of four 12 ft. wide driving lanes and 10 ft. wide outside and 4 ft. wide inside asphalt shoulders, and a 35 ft. wide sod median. The bridges have a sufficiency rating of 66 and are functionally obsolete. The existing I-35 bridges, NBI 22008 and 22007 have a clear roadway width of 52 ft. and 64 ft., respectively, and an approach roadway each consisting of four 12ft. wide asphalt driving lanes and 10 ft. wide outside and 4 ft. wide inside asphalt shoulders. The bridges have a sufficiency rating of 98 and are not at risk of becoming structurally deficient or functionally obsolete. The current Annual Average Daily Traffic (AADT) is 34,500 vehicles per day (vpd) with a future 20-year AADT of 45,000 vpd.

I-35 is a major travel corridor connecting multiple states and carrying large volumes of commercial traffic. With the growth of the Oklahoma City metropolitan area, I-35 does not meet the current traffic demand. The purpose of the project is to correct operational deficiencies of I-35, improve safety, and enhance local and regional connectivity.

#### Description of proposed improvements

The proposed improvement consists of widening I-35 to the outside by adding one 12 ft. asphalt lane of traffic in each direction. Inside shoulders to be increased to at least 10 ft. asphalt shoulders with a median barrier wall running the extent of the project. Bridge-sized RCBs shall be extended to clear zone w/ wings and apron to stay within R/W. Span bridges will be left as is with design exceptions as required. Any metal cross drains will be upgraded to concrete. Improvements will occur along the existing alignment with no new R/W being acquired. The road will remain open with the project phased to maintain two lanes of traffic in each direction during construction.

Check if any of the following is expected s part of the proposed action

- Work within OHWM is expected
- Project is OFF-SET alignment  or NEW alignment
- Project involves **NO OFF EXISTING PAVEMENT** work
- Project requires new ROW (permanent &/or temporary)

**1.3. Project Area and Setting**

Project Location		Environmental Study Footprint		Ecoregion & Game Type	
<u>Section Range &amp; Township</u>	<u>Lat/Long NAD 83)</u>	<u>Dimensions</u>	<u>Acreage</u>	<u>Level IV Ecoregion (Woods et al. 2005)</u>	<u>Game Type (Duck and Fletcher 1943)</u>
S5 & 6 T7N R2W S10, 11, 14, 15, 23, 24, 25, T8N R3W S30 & 31 T8N R2W	97.4329787W 35.1055667N to 97.4903023W 35.1878582N	Variable from 285 feet to 2000 feet wide x 6.9 miles	294.1	Cross Timbers Transition (27o) of the Central Great Plains	Tallgrass Prairie & Bottomland

**Action Area:**

The action area includes the Environmental Study Footprint, a 1 mile buffer of the footprint for tricolored bats and 6.2 miles downstream of the Canadian River tributaries from where the streams cross I-35 for the Peppered chub and Arkansas River shiner.

**2. FEDERALLY LISTED SPECIES AND DESIGNATED CRITICAL HABITAT**

**Species Range and Occurrence Evaluation (Check  all that apply)**

Species	IPaC <sup>1</sup>	Watershed <sup>2</sup>	Water Body <sup>3</sup>	Records <sup>4</sup>
	Check if Yes	Check if YES	Check if Yes	Check if Yes
Red-cockaded Woodpecker	<input type="checkbox"/>			<input type="checkbox"/>
Whooping Crane	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Gray Bat	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Indiana Bat	<input type="checkbox"/>			<input type="checkbox"/>
Ozark Big-eared Bat	<input type="checkbox"/>			<input type="checkbox"/>
Peppered Chub	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>
Neosho Mucket	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ouachita Rock Pocketbook	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scaleshell Mussel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Winged Mapleleaf	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Harperella	<input type="checkbox"/>			<input type="checkbox"/>
American Burying Beetle	<input type="checkbox"/>			<input type="checkbox"/>
Eastern Black Rail	<input type="checkbox"/>			<input type="checkbox"/>
Piping Plover	<input checked="" type="checkbox"/>			<input type="checkbox"/>
Red Knot	<input checked="" type="checkbox"/>			<input type="checkbox"/>

Species	IPaC <sup>1</sup>	Watershed <sup>2</sup>	Water Body <sup>3</sup>	Records <sup>4</sup>
	Check if Yes	Check if YES	Check if Yes	Check if Yes
Northern Long-eared Bat	<input type="checkbox"/>			<input type="checkbox"/>
Arkansas River Shiner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Leopard Darter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Neosho Madtom	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ozark Cavefish	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
American Alligator	<input type="checkbox"/>			<input type="checkbox"/>
Rabbitsfoot Mussel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tri-colored Bat	<input checked="" type="checkbox"/>			<input type="checkbox"/>
Monarch Butterfly	<input checked="" type="checkbox"/>			<input type="checkbox"/>
Rattlesnake-master Borer Moth	<input type="checkbox"/>			<input type="checkbox"/>

<sup>1</sup>Species is on the Proposed Project’s IPaC List

<sup>2</sup>Action Area is within a watershed associated with occupied water bodies

<sup>3</sup>Action Area includes an occupied water body

<sup>4</sup>Project site within 5 miles of known records

Designated or Proposed Critical Habitat	Action Area includes Designated Critical Habitat (Check <input checked="" type="checkbox"/> if Yes)
Whooping Crane	<input type="checkbox"/>
Peppered Chub	<input checked="" type="checkbox"/>
Arkansas River Shiner	<input checked="" type="checkbox"/>
Leopard Darter	<input type="checkbox"/>
Neosho Mucket	<input type="checkbox"/>
Rabbitsfoot	<input type="checkbox"/>

Action area is adjacent to McAlester Army Ammunition Plant or Camp Gruber/Cherokee WMA

All of part of the action area is within the 10 mile **gray bat** priority area (ODOT will check)

All of part of the action area is within the 2 mile **gray bat** priority area (ODOT will check)

Action area is within what percentage **Whooping Crane** migratory corridor **95%**

Action area is within 15 miles of Salt Plains NWR, Hackberry Flat, or Foss Reservoir.

Action area is within the historic range of the **Red-cockaded Woodpecker**

Action area is within 10 miles of the McCurtain County Wilderness Area

Action area is within 10 miles of the Pushmataha Wildlife Management Area

### 3. ENVIRONMENTAL BASELINE

#### 3.1. Ecological Processes and Conditions

Soils (Use Soil Map of Oklahoma by Carter and Gregory 2008)

Soil Class	CENTRAL ROLLING RED PRAIRIES
Soil Name	Pond Creek-Norge-Minco-Lovedale-Bethany & Port-Dale-Yahola-Gaddy-Gracemore-McClain-Reinach
Soil Type	Mollisols & Entisols
Soil Characteristics	Very deep and humus-rich soils on gentle slopes (6%) & very deep soils on nearly level slopes (1%)

Climate (Use Woods et al. 2005)

Precipitation	Mean annual inches	29-38
Growing Season	Number of days	205-225
Mean Temperatures	Summer min/max	70/94
	Winter min/max	23/49

River System

There are seven mapped intermittent unnamed tributary crossings of the Canadian River within the Environmental Study Footprint.
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Land Use and Land Ownership

From Woods et al. 2005	Mixture of rangeland and cropland. The main crops are small grains, grain sorghum, alfalfa, and soybeans. Oil and gas fields occur.
From Field investigation	Based on the field investigation, the land use within the Environmental Study Footprint is predominantly right-of-way associated with I-35 with areas of riparian corridors associated with creek crossings.

Terrestrial and Aquatic Community Descriptions (based on field site visit)

<p>The community types present within the Environmental Study Footprint include maintained rights-of-way and wooded riparian areas. The most abundant community type within the Environmental Study Footprint is maintained rights-of-way. The rights-of-way were mowed at the time of the site visit and the vegetation consisted predominantly of Bermuda grass (<i>Cynodon dactylon</i>), green foxtail (<i>Setaria viridis</i>) and Johnsongrass (<i>Sorghum helepense</i>). The wooded riparian areas are associated with the numerous intermittent streams that cross through the Environmental Study Footprint. Vegetation present in these riparian areas consists of American elm (<i>Ulmus americana</i>), black willow (<i>Salix nigra</i>), post oak (<i>Quercus stellata</i>), Hackberry (<i>Celtis occidentalis</i>) and poison ivy (<i>Toxicodendron radicans</i>).</p> <p>There are seven blue line unnamed tributaries to the Canadian River running through the Environmental Study Footprint. Two emergent wetlands were identified during the field visit. One was associated with the drainages and the stream at exit 106. The other was associated with a drainage north of E Ladd Road. Both of these were overwhelmingly dominated by broadleaf cattail (<i>Typha latifolia</i>). These areas tend to back up in wet periods.</p>
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**3.2 Species Habitat Analysis**

- Pedestrian survey of entire NEPA study footprint (including 300-foot work zone buffer in karst areas)
- Bridge/Structure inspected for bat use (Complete the Bridge Inspection Form)

SPECIES	HABITAT	
Whooping Crane	Shallowly-submerged sandbars in large river channels occur within the <b>0.25 miles of the NEPA Environmental Study Footprint.</b>	<input type="checkbox"/>
	If within the 75% migration corridor, provide the number of acres of emergent wetlands that occur within the <b>NEPA Environmental Study Footprint.</b>	enter acres.
	Croplands suitable for foraging occur within the <b>0.25 miles of the NEPA Environmental Study Footprint</b> and is within the 95% migration corridor.	<input checked="" type="checkbox"/>
Peppered Chub	Sandy-bottomed main channel rivers, designated as occupied water bodies or their direct tributaries, with slow moving shallow water, occur within <b>0.25 upstream and 6.2 miles downstream of the NEPA Environmental Study Footprint.</b>	<input checked="" type="checkbox"/>
Piping Plover	Sparsely vegetated sandy or gravelly shorelines and islands associated with the major river systems occur within the <b>0.25 miles of the NEPA Environmental Study Footprint.</b>	<input type="checkbox"/>
	Salt flats or mudflats associated with reservoirs occur within the <b>0.25 miles of the NEPA Environmental Study Footprint.</b>	<input type="checkbox"/>
Red Knot	Mudflats associated with reservoirs occur within the <b>0.25 miles of the NEPA Environmental Study Footprint.</b>	<input type="checkbox"/>
Arkansas River Shiner	Sandy-bottomed main channel rivers, designated as occupied water bodies or their direct tributaries, with slow moving shallow water, occur within <b>0.25 upstream and 6.2 miles downstream of the NEPA Environmental Study Footprint.</b>	<input checked="" type="checkbox"/>
Tricolored Bat	Limestone karsts features occur within <b>0.5 mile of the NEPA Environmental Study Footprint.</b>	<input type="checkbox"/>
	Live or dead trees/and or snags with a DBH of $\geq 3$ inches occur within the <b>NEPA Environmental Study Footprint.</b>	<input checked="" type="checkbox"/>
	Barns or sheds occur within the <b>NEPA Environmental Study Footprint.</b>	<input type="checkbox"/>
	Linear treed features such as fencerows, riparian forests, and other wooded corridors occur within <b>1 mile of the NEPA Environmental Study Footprint.</b> Wooded corridors may be dense or loose aggregates of trees with variable amounts of canopy closure.	<input checked="" type="checkbox"/>

SPECIES	HABITAT	
	Number of acres of forested/wooded area within the <b>NEPA Environmental Study Footprint</b> (include shapefiles). Include forests and woodlots, as well as linear features such as fencerows, riparian forests, and other wooded corridors. Wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure.	Unknown
	Acres of trees within 100 feet from pavement	Unknown
	Acres of trees between 100- 300 feet from pavement	Unknown
	Acres of trees greater than 300 feet from pavement	Unknown
Monarch Butterfly	Presence of milkweed ( <i>Asclepias sp.</i> ) species within the <b>NEPA Environmental Study Footprint</b> .	<input checked="" type="checkbox"/>
	Presence of flowering or potentially flowering nectar plants ( <i>defined as forbs that can provide nectar for monarchs at some point in the growing season</i> ) within the <b>NEPA Environmental Study Footprint</b> .	<input checked="" type="checkbox"/>
	Presence of additional native habitat within the <b>NEPA Environmental Study Footprint</b> .	<input checked="" type="checkbox"/>

**4. ANALYSIS OF EFFECTS**

**4.1 Direct Effects**

Species/ Resource	Habitat impacts expected from project activities	<u>Describe specific ACTIONS of the project and the results of those actions on species habitats</u> , including indirect impacts to prey or drinking water, as well as improvements to habitat as a result of specific actions.  <u>If habitat is checked yes within the action area identified above will not be impacted, describe why.</u> If no habitat is present within the action area, do not enter here.
Whooping Crane	<input checked="" type="checkbox"/>	Croplands suitable for foraging occur within the 0.25 miles of the NEPA Environmental Study Footprint, however no impact to these areas will occur as all construction will remain within the existing R/W. Because these cropland areas occur adjacent to a 4-lane divided interstate highway, it is unlikely that they are used by Whooping Cranes for foraging areas. In the unlikely event that cranes were using these cropland areas during construction, the primary impacts would be deterrence from increased noise and activity.
Arkansas River Shiner	<input checked="" type="checkbox"/>	Seven unnamed tributaries intersect the proposed project area within 6.2 miles upstream of the occupied Canadian River and designated critical habitat for the Arkansas River shiner. Temporary impacts to water quality in the Canadian River downstream of the proposed project and within the action area could occur from construction activities within these tributaries during construction. Given the distance to Canadian River and the and that bridge-size RCBs will only be extended to clear zone within R/W and routine stormwater controls will be in place, impacts from construction would be minimal.
Peppered Chub	<input checked="" type="checkbox"/>	Seven unnamed tributaries intersect the proposed project area within 6.2 miles upstream of the occupied Canadian River and designated critical habitat for the Peppered Chub. Temporary impacts to water quality in the Canadian River downstream of the proposed project and within the action area could occur from construction activities within these tributaries during construction. Given the distance to Canadian River and the and that bridge-size RCBs will only be extended to clear zone within R/W and routine stormwater controls will be in place, impacts from construction would be minimal. However, the species has been extirpated from the state of Oklahoma. No effects to the species expected.
Arkansas River Shiner Critical Habitat	<input checked="" type="checkbox"/>	The occupied Canadian River is designated critical habitat for the Arkansas River shiner and occurs within the action area of the project (0.48 miles east). Seven unnamed tributaries intersect the proposed project area within 6.2 miles upstream of the occupied Canadian River. Temporary impacts to water quality in the Canadian River downstream of the proposed project and within the action area could occur from construction activities within these tributaries during construction. Given the distance to Canadian River and the and that bridge-size RCBs will only be extended to clear zone within R/W and

		routine stormwater controls will be in place, impacts from construction would be minimal.
Peppered Chub Critical Habitat	<input checked="" type="checkbox"/>	The Canadian River is designated critical habitat for the Peppered Chub and occurs within the action area of the project (0.48 miles east). Seven unnamed tributaries intersect the proposed project area within 6.2 miles upstream of the occupied Canadian River. Temporary impacts to water quality in the Canadian River downstream of the proposed project and within the action area could occur from construction activities within these tributaries during construction. Given the distance to Canadian River and the and that bridge-size RCBs will only be extended to clear zone within R/W and routine stormwater controls will be in place, impacts from construction would be minimal. However, the species has been extirpated from the state of Oklahoma.
Tricolored Bat	<input checked="" type="checkbox"/>	Some tree clearing could be associated with the road widening and/or extensions of drainage structures. The proposed action may render any structures associated with the stream crossing temporarily unsuitable for roosting during construction activities; however, roosting suitability could be improved by the extension of the RCBs.
Monarch Butterfly	<input checked="" type="checkbox"/>	Native perennial plant vegetation, that includes the presence of flowering or potentially flowering nectar plants, within the existing R/W will be impacted during construction activities. Since the existing R/W is mowed regularly and contains primarily Bermuda grass, these areas were quite small and sporadic, generally around overpass embankments. Any impacts to these areas would be temporary.

**4.2 Indirect Effects**

Long-term habitat alterations

Species/ Resource	Identify long-term, permanent changes in habitat
Whooping Crane	None
Arkansas River Shiner	None
Peppered Chub	None
Tricolored Bat	There could be some permanent loss of treed habitat adjacent to roadway through removal associated with road widening or extensions of drainage structures.
Monarch Butterfly	None

Indirect land use impacts

Development is already taking place at the I-35/SH-9 interchange and would not be the result of the capacity expansion project.

**4.3 Interrelated and Interdependent Actions and Activities**

Although this is a capacity expansion project, all work will be within existing R/W and no utility relocations are anticipated. Increased development may occur at the I-35/SH-9 interchange, but this development is already taking place and would not be the result of the widening I-35. Therefore, no interrelated or interdependent actions and activities are expected as a result of the proposed project.

<b>USFWS TAILS Number:</b>	
<b>ODOT Project JP Number:</b>	

<b>SPECIES / DESIGNATED CRITICAL HABIT</b>	<b>CONCLUSION</b>		<b>ESA SECTION 7</b>			<b>NOTES AND DOCUMENTATION</b> Check <input checked="" type="checkbox"/> all that apply			
	Species Habitat present within the action area	Project Activities expected to impact habitat	No Effect	May affect, not likely to adversely affect	May affect, Likely to adversely affect	Field Studies	ONHI database / ABB	USFWS occupied waterbodies & watersheds	Whooping Crane Migration Corridor
Whooping Crane	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Piping Plover	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Red Knot	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Arkansas River Shiner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Peppered Chub	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Arkansas River Shiner Critical Habitat	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Peppered Chub Critical Habitat	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tricolored Bat	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Monarch Butterfly	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**CONCLUSIONS**

No Effect	Piping Plover, Red Knot, Peppered Chub
May affect, not likely to adversely affect	Whooping Crane, Arkansas River Shiner, Arkansas River Shiner Critical Habitat, Peppered Chub Critical Habitat
May affect, likely to adversely affect	
Not likely to jeopardize the continued existence of the species – Proposed & Candidate species only	Tricolored Bat, Monarch Butterfly
Appropriate Effect Determination has been made under the FHWA NLEB/Ibat Programmatic BA & BO	<input type="checkbox"/>
Appropriate Effect Determination for NLEB has been made under the BO for the final 4(d) rule	<input type="checkbox"/>

**RECOMMENDED AVOIDANCE AND MINIMIZATION MEASURES**

If **Whooping Cranes** are seen at or within one mile of the proposed work site, the Resident Engineer shall immediately contact the ODOT Biologist. The location and time a Whooping Crane was seen shall be recorded and provided to the ODOT Biologist. If there is a confirmed sighting and/or Whooping Cranes are observed within one mile of the proposed work site, all construction activities shall cease until it is determined that Whooping Cranes have left the project vicinity without being harassed. An 8x10 photograph of the Whooping Crane along with a written description of the bird, as well as ODOT contact information, shall be posted at the construction site at all times.

Appropriate Best Management Practices to minimize impacts from storm water discharges and sedimentation in streams, as established by the Oklahoma Department of Environmental Quality, shall be conscientiously implemented throughout the proposed construction periods, in order to minimize any potential impacts to any listed species. The effectiveness of erosion controls shall be maintained for the duration of construction activities. Hazardous materials, chemicals, fuels, lubricating oils, and other such substances shall be stored at least 100 feet outside of the ordinary high water mark (OHWM). Refueling of construction equipment shall also be conducted at least 100 feet from the OHWMs. Sediment and erosion controls shall be installed around staging areas to prohibit discharge of materials from these sites. Construction waste materials and debris shall be stockpiled at least 25 feet outside of the OHWMs, and these materials shall be removed and disposed of properly following completion of the project. Preventative measure must be taken to prohibit the discharge of contaminants into any surface waters.

Suitable **riparian foraging habitat** for threatened and endangered bat species occurs within the proposed project’s action area. The removal and trimming of trees and shrubs will be restricted to areas within the actual limits of construction, and all aspects of the project (e.g. temporary work areas, alignments) will be modified to avoid tree removal, if possible. Tree removal and trimming will be limited to that specified in the project plans provided to contractors.

ODOT, as a Certificate of Inclusion partner in the Nationwide **Monarch Butterfly** CCAA for Energy and Transportation lands, will adhere to the conservation measures, as well as minimize threats to the monarch butterfly as stipulated in this CCAA.

**5. BALD AND GOLDEN EAGLE PROTECTION ACT ASESSMENT**

**5.1. Bald Eagle Assessment**

The Bald Eagle (*Haliaeetus leucocephalus*) is a large predatory bird protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Activities that would disturb eagles are prohibited under the Bald and Golden Eagle Protection Act. “Disturb” means to agitate an eagle to the degree that causes or is likely to (1) cause injury, (2) interfere with breeding, feeding or sheltering behavior, or (3) nest abandonment.

Potential Bald Eagle Habitat Present	w/in NEPA Footprint	w/in 660 ft Buffer of NEPA Footprint	DO NOT LEAVE BLANK
Presence of Cottonwood, Sycamore, Pecan or Pine	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cottonwood, pecan, and sycamore trees were observed within the 660 ft buffer. They were concentrated in the riparian areas associated with the small creeks that flow through the Environmental Study Footprint.
Open foraging areas with large trees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Edge habitat is located within the 660 ft buffer. This habitat is associated with riparian and agricultural areas.
Distance to closest <u>perennial</u> water bodies	River or Lake	0.5 miles	The Canadian River is 0.5 miles northeast of the of the Environmental Study Footprint. The footprint passes over seven unnamed tributaries of the Canadian River. Several small ponds are present within the vicinity.
	Stream or Pond	within	
Potential Bald Eagle Nests Observed	<input type="checkbox"/>	<input type="checkbox"/>	The closest known nest is ~10 miles southeast of the project location.
Bald Eagles Observed in the general vicinity	<input type="checkbox"/>	<input type="checkbox"/>	No bald eagles were observed within the Environmental Study Footprint during the time of survey. However, individual eagles have been reported flying over the Canadian River.
General Description of Bald Eagle Nesting Habitat and Impact Determination, within the NEPA Footprint and within 660-ft of the NEPA Footprint	There is limited bald eagle habitat found within the 660 ft buffer of the environmental study footprint. There are some areas of edge habitat associated with the wooded riparian areas and agricultural fields; however, there are limited large trees present suitable for nesting. Habitat is marginal, but the Canadian River is close by and open foraging fields with edge habitats are available. It is possible this area could be utilized by Bald Eagles.		
Station #s for Buffered Bald Eagle Habitat	Entire extents of the project.		
In order to avoid impacts to Bald Eagles, if Bald Eagles or their habitat are observed during the biological assessment, a survey for eagles and their nests will be conducted within 660 feet of the work zone, during the winter prior to, and within one year of, the start of construction. If a nest is found, appropriate conservation measures based on the National Bald Eagle Management Guidelines will be implemented.			

**6. MIGRATORY BIRD TREATY ACT (MBTA) ASSESSMENT**

**6.1 Structure Assessment**

Cliff Swallows (*Petrochelidon pyrrhonota*) and Barn Swallows (*Hirundo rustica*) are small colonial and semi-colonial nesting birds protected by the federal Migratory Bird Treaty Act. Barn Swallows use man-made structures for nesting and live in close association with humans. Both species commonly use bridges and culverts in Oklahoma for nesting. Other migratory birds can also nest on transportation structures.

Identify <u>ALL</u> structures including pipe culverts. LABEL according to instructions within the cells below. Describe structure type. Identify roadway over what feature. Identify named streams where possible. Provide shapefiles and map according to LABEL, identifying pos/neg swallow structures	Approx. Number of Cliff Swallow Nests	Approx. Number of Barn Swallow Nests	Approx. Number of Eastern Phoebe Nests
C22 – Station 666+50 I-35 over unnamed tributary of the Canadian River (NBI 14258).	75	21	0
C19 – Station 685+00 E. Ladd Rd over I-35 (NBI 30965).	0	0	0
C21 – 97.4430188W 35.1186027N I-35 northbound on-ramp at E. Ladd Rd.	0	0	0
C20 – Station 689+00 I-35 over unnamed tributary of the Canadian River.	0	0	0
C18 – Station 721+50 I-35 over unnamed tributary of the Canadian River. (NBI 14298)	0	23	0
C17 – Station 763+50 I-35 over unnamed tributary of the Canadian River (NBI 14335)	10	0	0
C16 Station 801+25 I-35 over unnamed tributary of the Canadian River	0	0	0
C15 97.4768776W 35.1514711N I-35 southbound off-ramp at exit 104A	0	0	0
C14 Station 842+50 N. Main St over drainage (NBI 14261)	0	0	0
C13 Station 850+50 Highway 74 over I-35 (NBI 14496)	0	0	0
C12 Station 909+25 I-35 over unnamed tributary to the Canadian River, 0.5 miles north of Burr Oak Rd.	0	0	3
C11 Station 924+50 I-35 over unnamed tributary to the Canadian River (NBI 14352)	0	0	5
C8 Station 969+00 Highway 9 over I-35 (NBI 29473)	100	0	0
C7 97.4950750W 35.1815456N Highway 9 over drainage, 800' east of S. Harvey Ave	0	0	0
C5 97.4961794W 35.1819256 Highway 9 over drainage, 400' east of S. Harvey Ave	4	0	0
C6 97.4976799W 35.1819889N S. Harvey Ave over drainage, 120' south of Highway 9	0	0	0
C9 97.4973798W 35.1826041N S. Harvey Ave over drainage, 130' north of Highway 9	0	0	0



Identify <u>ALL</u> structures including pipe culverts. LABEL according to instructions within the cells below. Describe structure type. Identify roadway over what feature. Identify named streams where possible. Provide shapefiles and map according to LABEL, identifying pos/neg swallow structures	Approx. Number of Cliff Swallow Nests	Approx. Number of Barn Swallow Nests	Approx. Number of Eastern Phoebe Nests
C10 97.4944988W 35.1837078N S. Harvey Ave over drainage, 1000' northeast of intersection of Highway 9 and S. Harvey Ave	0	0	0
C1 97.4924417W 35.1834303N W. Adkins Hill Rd over unnamed tributary of the Canadian River	0	0	0
C2 97.4928548W 35.1836416N I-35 NB over unnamed tributary of the Canadian River (NBI 22007)	100	20	0
C3 97.4930760W 35.1837046N I-35 SB over unnamed tributary of the Canadian River (NBI 22008)	100	10	0
C4 97.4933169W 35.1838306N I-35 over unnamed tributary of the Canadian River (NBI 27477)	100	0	0
Other MB and Nests Observed	No other migratory bird nests were observed		
Based on existing plans, no work on suitable drainage structures will occur		<input type="checkbox"/>	
In order to avoid impacts to migratory birds, if structures are being used by these birds, any activities that may destroy active nests, eggs or birds shall be completed between September 1, and February 28, when nests are not occupied. If seasonal avoidance cannot be accomplished, structures shall be protected from new nest establishment prior to March 1, by means that do not result in death or injury to these birds.			

**6.2 Birds of Conservation Concern**

<u>Species Identified on IPaC list</u>	<u>Breeding Season</u>
American Golden-plover ( <i>Pluvialis dominica</i> )	Breeds elsewhere
Boblink ( <i>Dolichonyx oryzivorus</i> )	May 20 to July 31
Chestnut-collared Longspur ( <i>Calcarius ornatus</i> )	Breeds elsewhere
Chimney Swift ( <i>Chaetura pelagica</i> )	March 15 to August 25
Hudsonian Godwit ( <i>Limosa haemastica</i> )	Breeds elsewhere
Kentucky Warbler ( <i>Oporornis formosus</i> )	April 20 to August 20
Lesser Yellowlegs ( <i>Tringa flavipes</i> )	Breeds elsewhere
Little Blue Heron ( <i>Egretta caerulea</i> )	March 10 to October 15
Prothonotary Warbler ( <i>Protonotaria citrea</i> )	April 1 to July 31
Red-headed Woodpecker ( <i>Melanerpes erythrocephalus</i> )	May 10 to September 10
Sprague's Pipit ( <i>Anthus spragueii</i> )	Breeds elsewhere
Willet ( <i>Tringa semipalmata</i> )	April 20 to August 5
There is no suitable habitat found within the project footprint for American Golden-plovers, Hudsonian Godwits, Kentucky Warblers or Western Willets. The Chestnut-collared Longspur migrates through shortgrass prairie, fallow fields, and cropfields. In the winter, they move to the southern Great Plains, where they use shortgrass prairie where there is little to no shrub cover. Fallow fields and cropfields occur within the action area but these areas will not be impacted by	

construction activities. Lesser Yellowlegs use a wide variety of fresh and brackish wetlands, including mudflats, marshes, lake and pond edges, wet meadows, sewage ponds, and flooded agricultural fields during migration and in the winter. Pond edges occur within the action area, but these areas will not be impacted by construction activities. Sprague’s Pipit use native mixed-grass prairie, usually with vegetation no more than 6–12 inches tall, where they tolerate some grazing of this habitat. They also utilize crops such as alfalfa, wheat, and soy fields during migration. These habitats occur within the action area but will not be impacted by construction activities. Bobolinks breed in open areas preferring large fields with a mixture of grasses and broad-leaved plants like legumes and dandelions. These habitats occur within the action area but will not be impacted by construction activities. Chimney Swifts breed in urban and suburban habitats most commonly in areas with a large concentration of chimneys for nest sites and roosts. In rural areas they also nest in hollow trees, tree cavities, or caves. These habitats occur within the action area but will not be impacted by construction activities. Little Blue Herons nest and forage in many kinds of wetlands, including swamps, marshes, ponds, streams, lagoons, tidal flats, canals, ditches, fish hatcheries, and flooded fields. They nest mostly in shrubs and small trees in standing water or upland sites on islands, including artificial islands created from dredged material. These habitats occur within the action area but will not be impacted by construction activities. Prothonotary Warblers breed in flooded bottomland forests, wooded swamps, and forests near lakes and streams. They tend to avoid forest patches smaller than about 250 acres or forest borders less than 100 feet wide. These habitats occur within the action area but will not be impacted by construction activities. Red-headed Woodpeckers breed in deciduous woodlands with oak or beech, groves of dead or dying trees, river bottoms, burned areas, recent clearings, beaver swamps, orchards, parks, farmland, grasslands with scattered trees, forest edges, and roadsides. Dead or partially dead trees for nest cavities are an important part of their habitat. Pine or snags that may be present in the study area could provide nesting habitat, and could be directly impacted by tree removal.

In order to avoid impacts to ground nesting and tree nesting USFWS Birds of Conservation Concern, ground disturbance and/or the removal of trees and shrubs will be restricted to areas within the actual limits of construction, and all aspects of the project (e.g. temporary work areas, alignments) will be modified to avoid ground disturbance and/or tree removal, if possible.

**6.3 Interior Least Tern**

Sparsely vegetated islands or sandbars along large rivers, with nearby areas of shallow water, occur within the 0.25 miles of the NEPA Environmental Study Footprint.	<input type="checkbox"/>
No habitat within 0.25 miles.	

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## 8. FIGURES

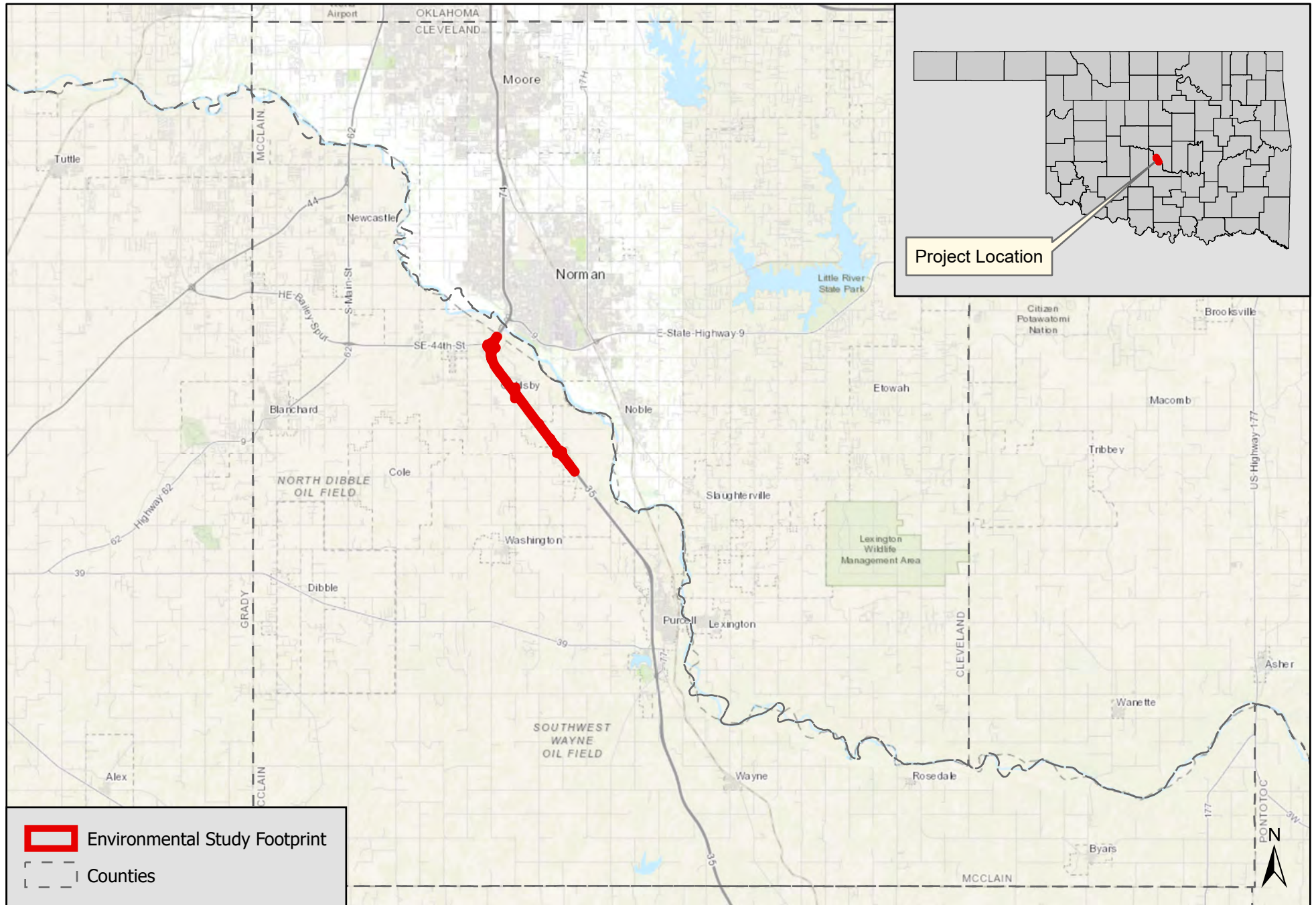
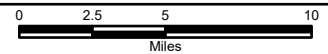


Figure 1

Project Location  
 McClain County JP 35588(04) & 35589(04)  
 I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE





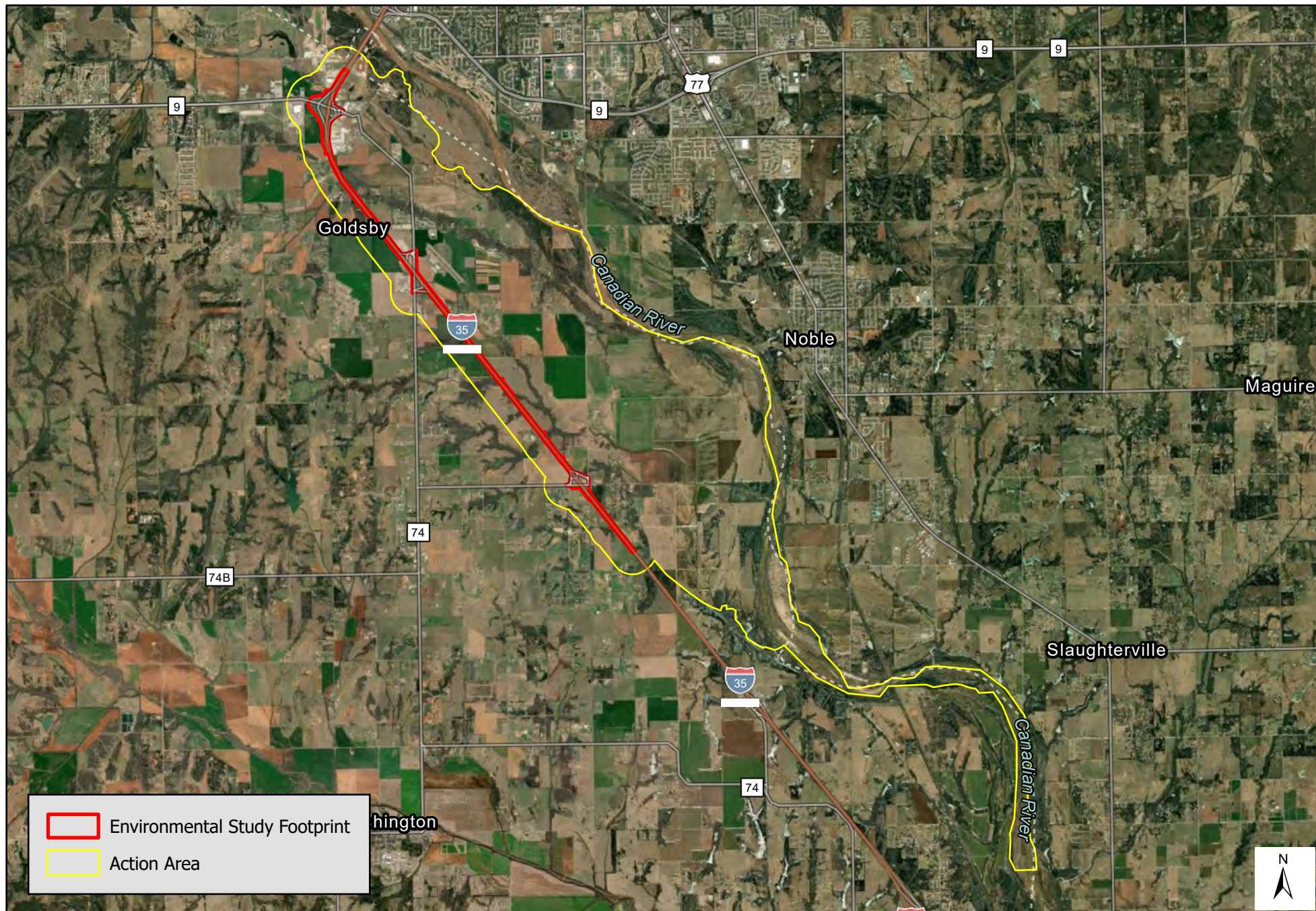
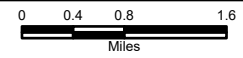


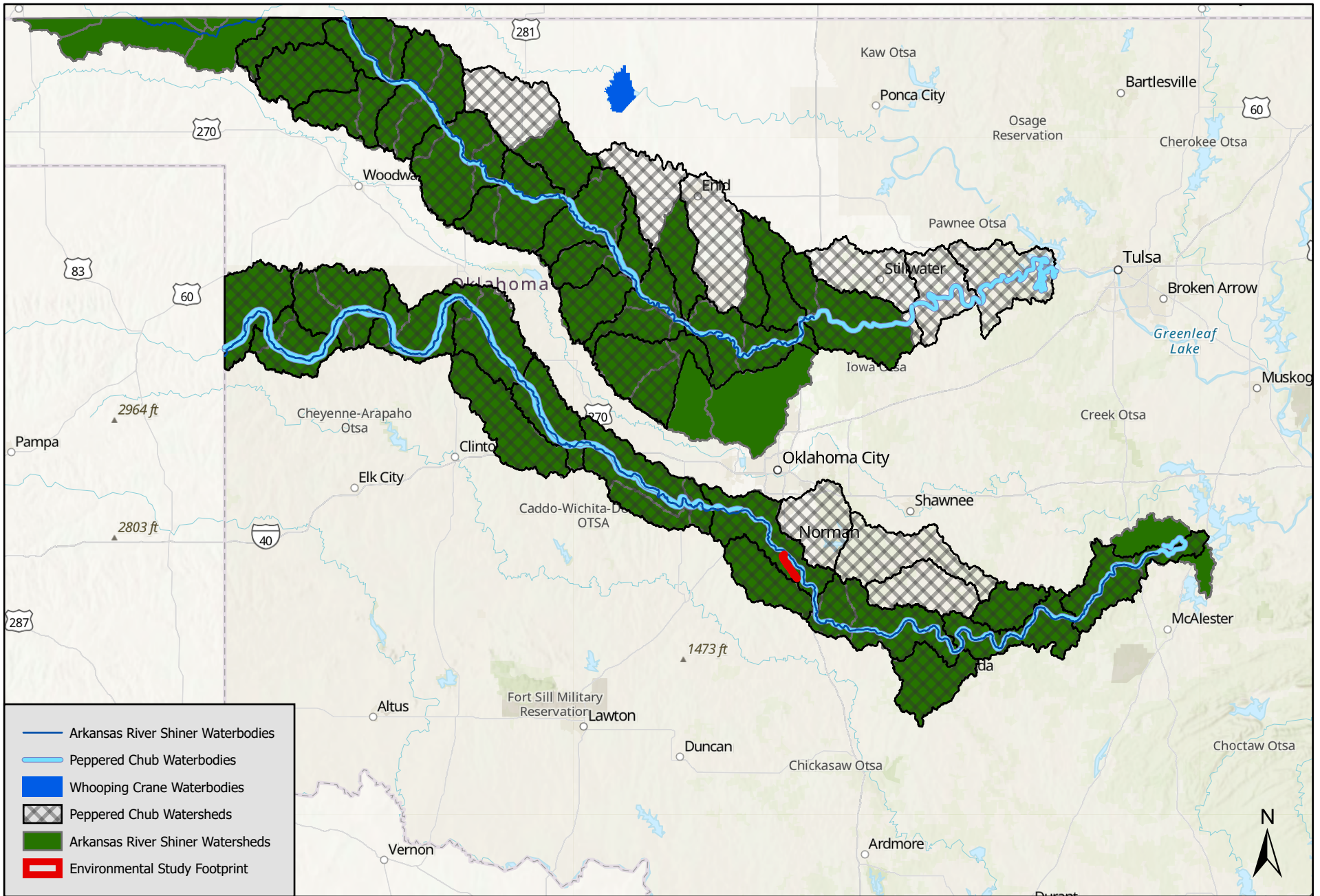
Figure 2

Environmental Study Footprint and Action Area  
 McClain County JP 35588(04) & 35589(04)

I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE





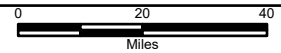


Project Location and Listed Species Occupied Water Bodies and Associated Watersheds

McClain County JP 35588(04) & 35589(04)

I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE

Figure 3





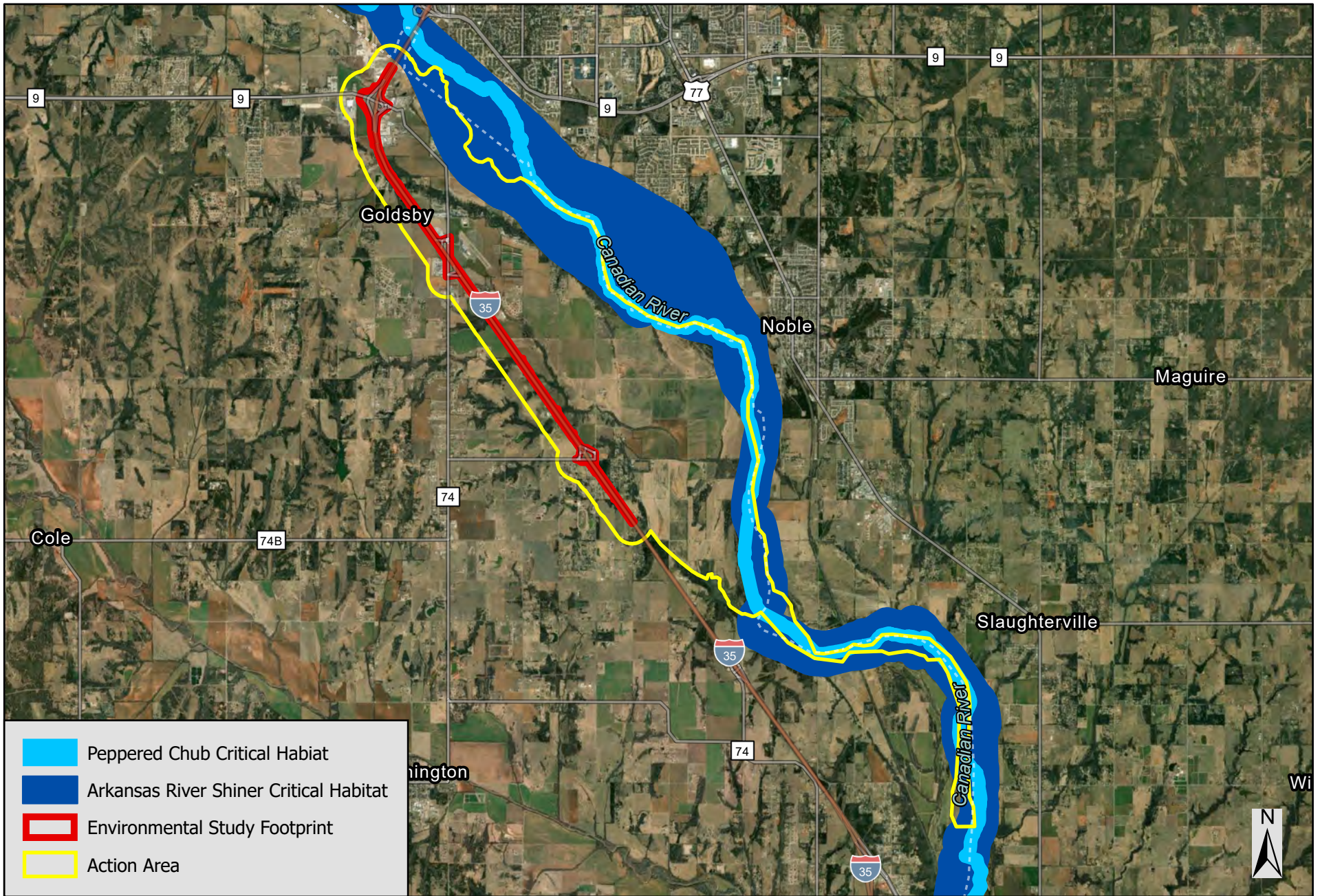


Figure 4 Environmental Study Footprint and Action Area in Relation to Peppered Chub and Arkansas River Shiner Critical Habitat  
 McClain County JP 35588(04) & 35589(04)  
 I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE



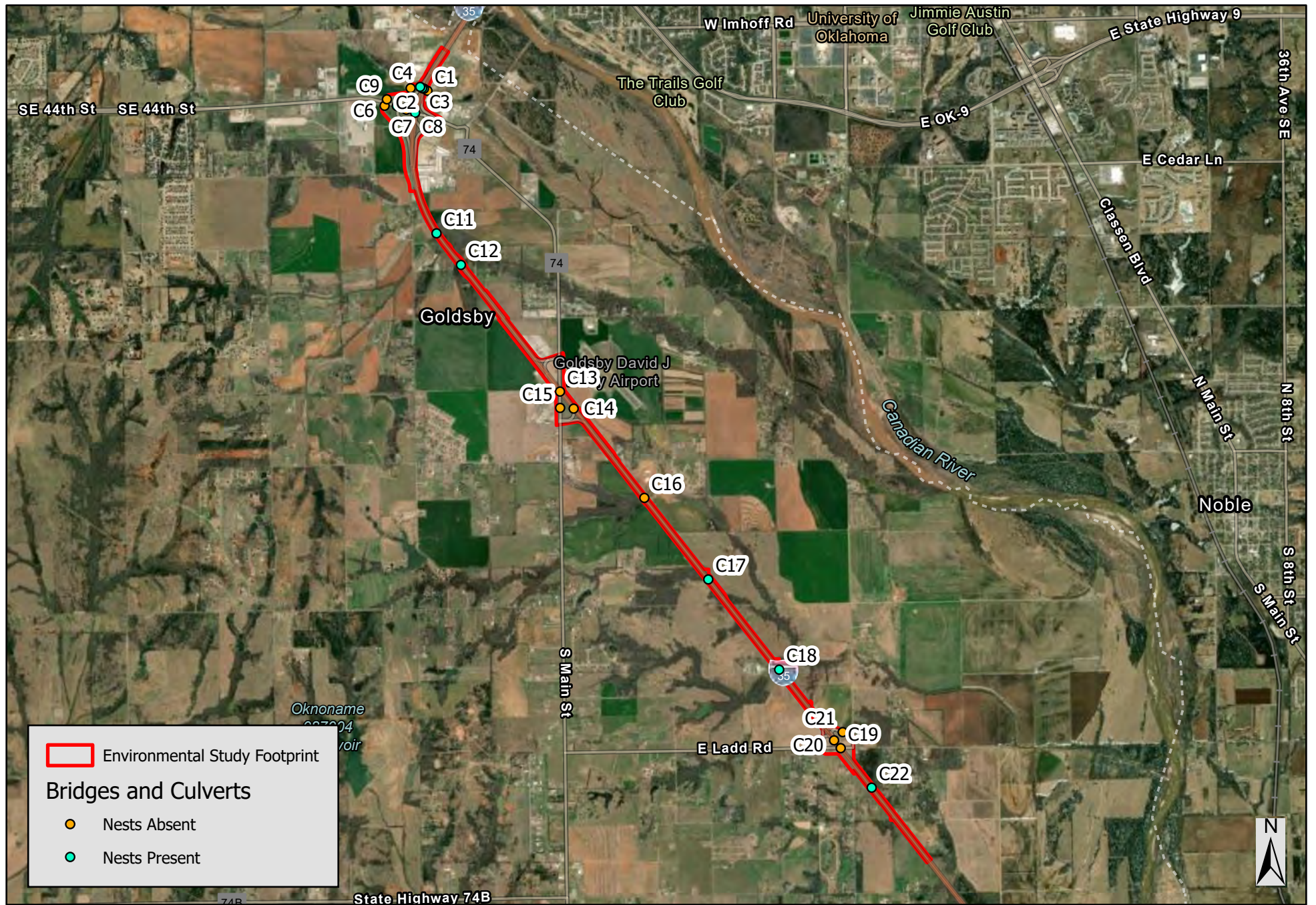


Figure 5

Bridges and Culverts and Migratory Bird Nests Present or Absent  
 McClain County JP 35588(04) & 35589(04)

I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE

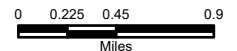










Figure 5b

**Bridges and Culverts and Migratory Bird Nests Present or Absent**

McClain County JP 35588(04) & 35589(04)

I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE

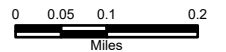






Figure 5c

Bridges and Culverts and Migratory Bird Nests Present or Absent

McClain County JP 35588(04) & 35589(04)

I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE

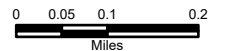






Figure 5d

Bridges and Culverts and Migratory Bird Nests Present or Absent

McClain County JP 35588(04) & 35589(04)

I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE





Figure 5e

Bridges and Culverts and Migratory Bird Nests Present or Absent  
 McClain County JP 35588(04) & 35589(04)  
 I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE

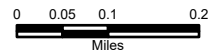




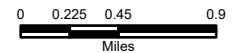


Figure 6

Photo Point Locations

McClain County JP 35588(04) & 35589(04)

I-35: GRADE, DRAIN, BRIDGE & SURFACE FROM THE SH-74 INTERCHANGE, EXTEND NORTH 2.75 MILES TO THE CLEVELAND COUNTY LINE & FROM 1 MILE SOUTH OF LADD ROAD, EXTEND NORTH 4.15 MILES TO THE SH-74 INTERCHANGE







1. Southern boundary looking south, P1.



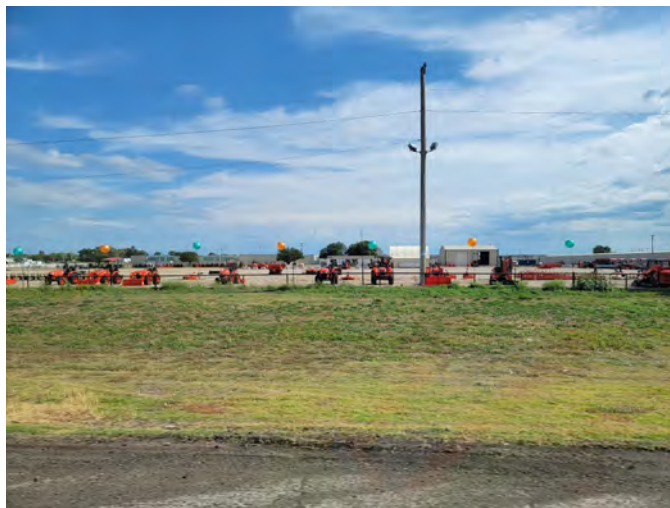
2. Southern boundary looking west, P1.



3. Southern boundary looking east, P1.



4. I-35, looking north near Wades RV, P2.



5. Great Plains of Norman on the east side of the Project, P2.



6. Mid Continent Truck Sales, P3





7. Schultz Roof Truss Inc. near SH-9 and I-35, P3.



8. Total Truck and Trailer northwest of SH-9 and I-35, P3



9. Bridge at C1



10. Bridge at C2



9. Bridge at C3



9. Bridge at C4





13. Bridge at C5



14. Culvert at C6



15. Bridge at C7



16. Bridge at C8



17. Bridge at C9



18. Culvert at C10





13. Bridge at C11



14. Bridge at C12



15. Bridge at C13



16. Bridge at C14



17. Bridge at C15



18. Bridge at C16





13. Bridge at C17



14. Bridge at C18



15. Bridge at C19



16. Culvert at C20



17. Bridge at C21



18. Bridge at C22



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Oklahoma Ecological Services Field Office  
9014 East 21st Street  
Tulsa, OK 74129-1428  
Phone: (918) 581-7458 Fax: (918) 581-7467

In Reply Refer To:  
Project Code: 2022-0073436  
Project Name: McClain County, JP No. 35588(04) & 35589(04)

December 19, 2022

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

### To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

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

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

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

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

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

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

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

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

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Attachment(s):

- Official Species List
  - USFWS National Wildlife Refuges and Fish Hatcheries
  - Migratory Birds
  - Wetlands
-

## **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:

### **Oklahoma Ecological Services Field Office**

9014 East 21st Street

Tulsa, OK 74129-1428

(918) 581-7458

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## Project Summary

Project Code: 2022-0073436

Project Name: McClain County, JP No. 35588(04) & 35589(04)

Project Type: Road/Hwy - Maintenance/Modification

Project Description: Widen I-35 within existing R/W

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@35.12656525,-97.44002570256603,14z>



Counties: Cleveland and McClain counties, Oklahoma

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## Endangered Species Act Species

There is a total of 7 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.

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
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

### Birds

NAME	STATUS
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
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
Whooping Crane <i>Grus americana</i> Population: Wherever found, except where listed as an experimental population 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/758">https://ecos.fws.gov/ecp/species/758</a>	Endangered

## Fishes

NAME	STATUS
Arkansas River Shiner <i>Notropis girardi</i> Population: Arkansas River Basin (AR, KS, NM, OK, TX) There is <b>final</b> critical habitat for this species. Your location overlaps the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/4364">https://ecos.fws.gov/ecp/species/4364</a>	Threatened
Peppered Chub <i>Macrhybopsis tetranema</i> There is <b>final</b> critical habitat for this species. Your location overlaps the critical habitat. Species profile: <a href="https://ecos.fws.gov/ecp/species/532">https://ecos.fws.gov/ecp/species/532</a>	Endangered

## Insects

NAME	STATUS
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 2 critical habitats wholly or partially within your project area under this office's jurisdiction.

NAME	STATUS
Arkansas River Shiner <i>Notropis girardi</i> <a href="https://ecos.fws.gov/ecp/species/4364#crithab">https://ecos.fws.gov/ecp/species/4364#crithab</a>	Final
Peppered Chub <i>Macrhybopsis tetranema</i> <a href="https://ecos.fws.gov/ecp/species/532#crithab">https://ecos.fws.gov/ecp/species/532#crithab</a>	Final

# **USFWS National Wildlife Refuge Lands And Fish Hatcheries**

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

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## Migratory Birds

Certain birds are protected under the Migratory Bird Treaty Act<sup>1</sup> and the Bald and Golden Eagle Protection Act<sup>2</sup>.

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

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1. The [Migratory Birds Treaty Act](#) of 1918.
  2. The [Bald and Golden Eagle Protection Act](#) of 1940.
  3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

**The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern \(BCC\) list](#) or warrant special attention in your project location.** To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and around your project area, visit the [E-bird data mapping tool](#) (Tip: enter your location, desired date range and a species on your list). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list, including how to properly interpret and use your migratory bird report, can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME	BREEDING SEASON
American Golden-plover <i>Pluvialis dominica</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds elsewhere
Bald Eagle <i>Haliaeetus leucocephalus</i> This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.	Breeds Sep 1 to Jul 31
Bobolink <i>Dolichonyx oryzivorus</i> This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.	Breeds May 20 to Jul 31

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NAME	BREEDING SEASON
<p>Chestnut-collared Longspur <i>Calcarius ornatus</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds elsewhere
<p>Chimney Swift <i>Chaetura pelagica</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Mar 15 to Aug 25
<p>Hudsonian Godwit <i>Limosa haemastica</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds elsewhere
<p>Kentucky Warbler <i>Oporornis formosus</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Apr 20 to Aug 20
<p>Lesser Yellowlegs <i>Tringa flavipes</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p> <p><a href="https://ecos.fws.gov/ecp/species/9679">https://ecos.fws.gov/ecp/species/9679</a></p>	Breeds elsewhere
<p>Little Blue Heron <i>Egretta caerulea</i></p> <p>This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA</p>	Breeds Mar 10 to Oct 15
<p>Prothonotary Warbler <i>Protonotaria citrea</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Apr 1 to Jul 31
<p>Red-headed Woodpecker <i>Melanerpes erythrocephalus</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds May 10 to Sep 10
<p>Sprague's Pipit <i>Anthus spragueii</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p> <p><a href="https://ecos.fws.gov/ecp/species/8964">https://ecos.fws.gov/ecp/species/8964</a></p>	Breeds elsewhere
<p>Willet <i>Tringa semipalmata</i></p> <p>This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.</p>	Breeds Apr 20 to Aug 5

## Probability Of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds. Please make sure you read and understand the FAQ "Proper Interpretation and Use of Your Migratory Bird Report" before using or attempting to interpret this report.

### Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is  $0.25/0.25 = 1$ ; at week 20 it is  $0.05/0.25 = 0.2$ .
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

### Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

### Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the 10km grid cell(s) your project area overlaps. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

### No Data (—)

A week is marked as having no data if there were no survey events for that week.

### Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information. The exception to this is areas off the Atlantic coast, where bird returns are based on all years of available data, since data in these areas is currently much more sparse.

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■ probability of presence   ■ breeding season   | survey effort   — no data

SPECIES      JAN    FEB    MAR    APR    MAY    JUN    JUL    AUG    SEP    OCT    NOV    DEC

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Additional information can be found using the following links:

- Birds of Conservation Concern <https://www.fws.gov/program/migratory-birds/species>
- Measures for avoiding and minimizing impacts to birds <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>

- Nationwide conservation measures for birds <https://www.fws.gov/sites/default/files/documents/nationwide-standard-conservation-measures.pdf>

## **Migratory Birds FAQ**

**Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.**

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

**What does IPaC use to generate the list of migratory birds that potentially occur in my specified location?**

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the 10km grid cell(s) which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [Rapid Avian Information Locator \(RAIL\) Tool](#).

**What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?**

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

**How do I know if a bird is breeding, wintering or migrating in my area?**

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may query your location using the [RAIL Tool](#) and look

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at the range maps provided for birds in your area at the bottom of the profiles provided for each bird in your results. If a bird on your migratory bird species list has a breeding season associated with it, if that bird does occur in your project area, there may be nests present at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

### **What are the levels of concern for migratory birds?**

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

### **Details about birds that are potentially affected by offshore projects**

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

### **What if I have eagles on my list?**

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the Eagle Act should such impacts occur.

### **Proper Interpretation and Use of Your Migratory Bird Report**

The migratory bird list generated is not a list of all birds in your project area, only a subset of birds of priority concern. To learn more about how your list is generated, and see options for identifying what other birds may be in your project area, please see the FAQ "What does IPaC use to generate the migratory birds potentially occurring in my specified location". Please be

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aware this report provides the "probability of presence" of birds within the 10 km grid cell(s) that overlap your project; not your exact project footprint. On the graphs provided, please also look carefully at the survey effort (indicated by the black vertical bar) and for the existence of the "no data" indicator (a red horizontal bar). A high survey effort is the key component. If the survey effort is high, then the probability of presence score can be viewed as more dependable. In contrast, a low survey effort bar or no data bar means a lack of data and, therefore, a lack of certainty about presence of the species. This list is not perfect; it is simply a starting point for identifying what birds of concern have the potential to be in your project area, when they might be there, and if they might be breeding (which means nests might be present). The list helps you know what to look for to confirm presence, and helps guide you in knowing when to implement conservation measures to avoid or minimize potential impacts from your project activities, should presence be confirmed. To learn more about conservation measures, visit the FAQ "Tell me about conservation measures I can implement to avoid or minimize impacts to migratory birds" at the bottom of your migratory bird trust resources page.

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# Wetlands

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

## FRESHWATER EMERGENT WETLAND

- [PEM1Fh](#)
- [PEM1C](#)
- [PEM1F](#)
- [PEM1/SS1A](#)
- [PEM1J](#)
- [PEM1Ch](#)
- [PEM1/FO1A](#)
- [PEM1Fx](#)
- [PEM1A](#)

## FRESHWATER FORESTED/SHRUB WETLAND

- [PFO1/EM1A](#)
- [PSS1/EM1C](#)
- [PFO1Ah](#)
- [PSS1A](#)
- [PFO1C](#)
- [PSS/EM1A](#)
- [PSS1/EM1Ch](#)
- [PSS1Ax](#)
- [PSS2A](#)
- [PFO1A](#)
- [PFO1F](#)
- [PSS1C](#)
- [PFO1/SS1A](#)
- [PFO1Ax](#)

## FRESHWATER POND

- [PUBFx](#)
-

- [PUBFh](#)
- [PUSC<sub>x</sub>](#)
- [PUBHh](#)
- [PUSA<sub>x</sub>](#)
- [PUBH<sub>x</sub>](#)
- [PUSCh](#)

RIVERINE

- [R5UBF](#)
- [R2UBH](#)
- [R4SBC](#)
- [R2USC](#)
- [R2USA](#)

LAKE

- [L1UBH<sub>x</sub>](#)
-



## **IPaC User Contact Information**

Agency: Oklahoma Department of Transportation  
Name: Kait Taylor  
Address: 111 E. Chesapeake St.  
Address Line 2: ODOT Highway Program at Oklahoma Biological Survey  
City: Norman  
State: OK  
Zip: 73019  
Email: ktaylor@odot.org  
Phone: 4053255070

## **Lead Agency Contact Information**

Lead Agency: Federal Highway Administration

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