



Biological Evaluation Form

Main CSJ: 2964-10-005

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Date of Evaluation: April 4, 2017

Project has no Federal nexus.

Proposed Letting Date: March 2022

Project not assigned to TxDOT under the NEPA Assignment MOU

District(s): Dallas

County(ies): Dallas, Ellis

Roadway Name: SL 9

Limits From: IH 35E

Limits To: IH 45 in Wilmer/Hutchins

Project Description: The proposed project is an approximately 10-mile new location frontage road system through Dallas and Ellis counties, Texas, that would begin at I-35E, near Red Oak, and continue in an easterly direction through the city of Lancaster to end at I-45 near Ferris (Figures 1 and 2). The total project area (existing right-of-way [ROW] and proposed ROW) is approximately 727.02 acres. The total proposed ROW is approximately 541.23 acres. Since the project crosses numerous other transportation facilities, it would utilize approximately 182.44 acres of existing ROW. Temporary construction easements would not be required. Permanent drainage easements would be required in several locations and total approximately 3.35 acres.

The proposed project would be built in phases based on traffic needs and project funding. Phase I would construct a single two-way frontage road. The limits of this frontage road would begin at the intersection with the southbound I-35E frontage road and end at the intersection of Business 45 and Malloy Bridge Road, just west of I-45. When traffic growth warrants the need for more lanes, then Phase II would commence. A second frontage road would be built as part of Phase II, and the I-45 southbound frontage road would extend from north of Malloy Bridge Road to south of the future SL 9 interchange. The ultimate SL 9 section of the proposed project consists of a future six-lane divided freeway with 3-lane frontage roads in each direction. The SL 9 main lanes, ramps, and direct connectors at I-35E and I-45 would be constructed as part of Phase II.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT.

Endangered Species Act (ESA)

Yes Is the action area of the proposed project within the range of federally protected species?

Yes Did the USFWS IPaC system identify any endangered species that may occur or could potentially be affected by the proposed project activities?

Date that the [IPaC system](#) was accessed: January 11, 2017

Yes Is the action area of the proposed project in suitable habitat of federally protected species?

No Would the proposed project affect protected species and/or their habitat?



*Explain:

The following federally protected species have the potential to occur within the proposed project area: Black-capped Vireo (Vireo atricapilla), Golden-cheeked Warbler (Dendroica chrysoparia), Interior Least Tern (Sterna antillarum), Piping Plover (Charadrius melodus), Red Knot (Calidris canutus rufa), and Whooping Crane (Grus americana). However, suitable habitat for the Black-capped Vireo, Golden-cheeked Warbler, Piping Plover, Red Knot, and Whooping Crane was not observed within the proposed action area as verified by a qualified biologist in October 2014, January 2015, and September 2015. Additional photographs were taken at specific locations within the proposed project area in March 2017 to further support a lack of suitable habitat for the Black-capped Vireo and the Golden-cheeked Warbler.

Suitable habitat for Interior Least Tern is present along a small portion of Tenmile Creek (Photos 16 and 17; Figure 8b). The habitat quality is low due to the narrow and incised channel, frequent inundation during the nesting season, and low visibility around the sandbar. Site visits performed in 2014 and 2015 indicate absence. Presence/absence survey guidelines for the Interior Least Tern, provided by the USFWS to permitted staff, would be followed the nesting season prior to the start of construction and can be provided upon request. Only permitted individual(s) would conduct the presence/absence survey during the nesting season from May through late July immediately prior to the start of construction. Therefore, in addition to the habitat quality, TxDOT has determined no effect to Interior Least Tern.

Resources consulted or activities conducted to make effect determination (if applicable):

- TPWD County List USFWS Critical Habitat Maps Species Expert Consulted
- Aerial Photography Coastal Areas Maps Site Visit
- Topographic Map Species Study Conducted Karst Zone Maps
- Ecological Mapping System of Texas (EMST) Natural Diversity Database (NDD)

Other:

Site visits were conducted in October 2014, January 2015, and September 2015 by qualified biologists. Additional photographs were taken at specific locations within the proposed project area in March 2017 to further support a lack of suitable habitat for the Black-capped Vireo and the Golden-cheeked Warbler.

Migratory Bird Treaty Act (MBTA)

- Yes Is there potential for nesting birds to be present in the project action area during construction?
- No Were active nests identified during the site survey?
- Yes Will BMPs will be incorporated to protect migratory bird nests?

Bald and Golden Eagle Protection Act (BGEPA)

- No Does the proposed project have the potential to impact Bald or Golden Eagles?



Comments:

No impacts to Bald Eagles or their habitat is anticipated as a result of implementation of the proposed SL 9 project as verified by a qualified biologist.

Fish and Wildlife Coordination Act (FWCA)

Yes Does the project have impacts on one or more Waters of the U.S. or wetlands?

No Is the project covered by a Nationwide Permit?

Yes Is the project covered by an Individual Permit from the USACE?

Comments:

Detailed drainage design for the proposed SL 9 project has not been completed at this time. Based upon the March 10, 2017 schematic, it is anticipated that the proposed project would involve temporary and permanent impacts to a number of potentially jurisdictional water bodies and would be authorized under a United States Army Corps of Engineers (USACE) Section 404 Individual Permit (IP).

Executive Order 13112 on Invasive Species

Yes Would the proposed project be in compliance with EO 13112?

Comments:

In accordance with Executive Order 13112 on Invasive Species, seeding and replanting with TxDOT-approved seed mixes containing native species would be done where feasible. Soil disturbance would be minimized in the proposed project area in order to minimize invasive species establishment.

Executive Memorandum on Environmentally and Economically Beneficial Landscaping

Yes Would landscaping be included in the proposed projects?

*Describe the landscaping activities:

Seeding and replanting of disturbed areas with TxDOT-approved seed mixes that are in compliance with Executive Memorandum on Beneficial Landscaping would be done where feasible.

Yes Would the proposed project be in compliance with the Executive Memorandum on Beneficial Landscaping?

Farmland Protection Policy Act (FPPA)

Yes Would the project require new ROW or permanent easements (Do not include temporary easements)?



Biological Evaluation Form

- Yes Is the project located in a “non-urbanized area” that contain areas mapped as prime, unique, statewide important or locally important farmland by the NRCS Web Soil Survey or Census Bureau?
- Yes Is the proposed action a linear project?
- Yes Was the score on Part IV of FPPA Form SCS-CPA 106 equal to or greater than 60?

General Comments

Findings

Endangered Species Act (ESA)

According to the U.S. Fish and Wildlife Service (USFWS), the project action area is within the range and in suitable habitat of a federally protected species. Based on the following information, the proposed project will not affect protected species and/or their habitat and will not impact areas that have been designated as critical habitat by the USFWS.

The following federally protected species have the potential to occur within the proposed project area: Black-capped Vireo (*Vireo atricapilla*), Golden-cheeked Warbler (*Dendroica chrysoparia*), Interior Least Tern (*Sterna antillarum*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), and Whooping Crane (*Grus americana*). However, suitable habitat for the Black-capped Vireo, Golden-cheeked Warbler, Piping Plover, Red Knot, and Whooping Crane was not observed within the proposed action area as verified by a qualified biologist in October 2014, January 2015, and September 2015. Additional photographs were taken at specific locations within the proposed project area in March 2017 to further support a lack of suitable habitat for the Black-capped Vireo and the Golden-cheeked Warbler.

Suitable habitat for Interior Least Tern is present along a small portion of Tenmile Creek (Photos 16 and 17; Figure 8b). The habitat quality is low due to the narrow and incised channel, frequent inundation during the nesting season, and low visibility around the sandbar. Site visits performed in 2014 and 2015 indicate absence. Presence/absence survey guidelines for the Interior Least Tern, provided by the USFWS to permitted staff, would be followed the nesting season prior to the start of construction and can be provided upon request. Only permitted individual(s) would conduct the presence/absence survey during the nesting season from May through late July immediately prior to the start of construction. Therefore, in addition to the habitat quality, TxDOT has determined no effect to Interior Least Tern.

Consultation with the U.S. Fish and Wildlife Service (USFWS) will not be required. The USFWS IPaC website was accessed on January 11, 2017.

Essential Fish Habitat (EFH)

Tidally influenced waters do not occur within the project action area. Coordination with National Marine Fisheries Service is not required.

Coastal Barrier Resources Act (CBRA)

This project is not located within a designated CBRA map unit. Coordination with the U.S. Fish and Wildlife Service (USFWS) is not required.

Marine Mammal Protection Act (MMPA)

Marine mammals are protected under the Marine Mammal Protection Act (MMPA). The Texas coast provides suitable habitat and is within range of several marine mammals including the West Indian Manatee (*Trichechus manatus*), and bottlenose dolphin (*Tursiops truncatus*).

The project area does not contain suitable habitat for marine mammals. Coordination with NMFS is not required.

Migratory Bird Treaty Act (MBTA)

The Migratory Bird Treaty Act (MBTA) states that it is unlawful to kill, capture, collect, possess, buy, sell, trade, or transport any migratory bird, nest, young, feather, or egg in part or in whole, without a federal permit issued in accordance within the Act's policies and regulations.

A site survey did not identify active nests within the project action area. While no impact to migratory birds is expected, TxDOT will take all appropriate actions to prevent the take of migratory birds, their active nests, eggs, or young should they be



discovered on the project site. Direction to contractors is provided on the standard EPIC sheet.

Bald and Golden Eagle Protection Act (BGEPA)

The proposed project does not have the potential to impact Bald or Golden Eagles.

Fish and Wildlife Coordination Act (FWCA)

The Fish and Wildlife Coordination Act (FWCA) of 1958 requires that federal agencies obtain comments from USFWS and TPWD. This coordination is required whenever a project involves impounding, diverting, or deepening a stream channel or other body of water.

The proposed project is authorized under Section 404 of the Clean Water Act Individual Permit; coordination under FWCA is addressed during the permitting process with the USACE.

Executive Order 13112 on Invasive Species (EO 13112)

Re-vegetation of disturbed areas would be in compliance with the Executive Order on Invasive Species (EO 13112). Regionally native and non-invasive plants will be used to the extent practicable in landscaping and re-vegetation.

Executive Memorandum on Beneficial Landscaping

Landscaping would be a part of the proposed project activities. Revegetation of disturbed areas will be in compliance with the Executive Memorandum on Environmentally and Economically Beneficial Landscaping. Regionally native and noninvasive plants will be used to the extent practicable in landscaping and revegetation.

Seeding and replanting of disturbed areas with TxDOT-approved seed mixes that are in compliance with Executive Memorandum on Beneficial Landscaping would be done where feasible.

Farmland Protection Policy Act (FPPA)

The purpose of the Farmland Protection Policy Act (FPPA) is to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to non-agricultural uses. The proposed project would convert farmland subject to the FPPA to non-agricultural, transportation use, and the combined scores of the relative value of the farmland and the site assessment, as documented with the appropriate NRCS form and supporting documentation, are such that the NRCS opinion for reducing the impact must be solicited and alternative actions must be considered.



Suggested Attachments

Aerial Map (with delineated project boundaries)

USFWS T&E List

TPWD T&E List

Species Impact Table

NDD EOID List and Tracked Managed Areas (Required for TPWD Coordination)

NOAA EFH Mapper Printout

USFWS CBRA Mapper Printout

EMST Project MOU Summary Table (Required for TPWD Coordination)

TPWD SGCN List

FPPA Documentation

NRCS Web Soil Survey Map

Census Bureau Urbanized Area Map

Landscaping Plans

Photos (Required for TPWD Coordination)

Previous TPWD Coordination Documentation (if applicable)