

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

THE APPLICATION OF)
NEW CINGULAR WIRELESS PCS, LLC,)
A DELAWARE LIMITED LIABILITY COMPANY,)
D/B/A AT&T MOBILITY)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO.: 2021-00187
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF HICKMAN)

SITE NAME: INGRAM BARGE

* * * * *

NOTICE OF RECEIPT OF NECESSARY GRANT OR CONSENT

On July 7, 2021, the Kentucky Public Service Commission (“PSC”) issued a Certificate of Public Convenience and Necessity (“CPCN”) to New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a AT&T Mobility (“Applicant”) to construct a tower at 112 Bottery Road, Columbus, Hickman County, Kentucky (North Latitude 36° 45' 35.679142" by West Longitude 89° 06' 36.912318").

As part of the regulatory process for this facility, the Applicant has diligently pursued applicable federal regulatory approvals including documentation of compliance with the National Historic Preservation Act (NHPA) at 54 U.S.C. § 306108 and the Endangered Species Act (ESA) at 16 U.S.C. § 1531. The NHPA review of this project was completed on February 20, 2024, and documentation of the completion of this process is attached as **Exhibit A**. The ESA review of this project was completed on February 21, 2024, and documentation of the completion of this process is attached as

Exhibit B.

As discussed in KRS 278.020(1)(e) and associated PSC orders¹, the Applicant obtained all necessary grants and consents upon issuance of the documents attached as **Exhibit A** and **B** on February 21, 2024. Within the time period described in KRS 278.020(1)(e), the Applicant will begin construction in good faith and shall continue construction with reasonable diligence.

WHEREFORE, Applicant respectfully request that the PSC accept the foregoing filing and include it as part of the administrative record for this site.

Respectfully submitted,

David A. Pike

David A. Pike
and

F. Keith Brown

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Pike Legal Group, PLLC
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Attorney for New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility

¹ 2020 KY. PUC LEXIS 1177

LIST OF EXHIBITS

- EXHIBIT A - Memorandum of Agreement Among the Federal Communications Commission, Kentucky State Historic Preservation Office and AT&T Mobility, LLC

- EXHIBIT B - Correspondence from the Kentucky Ecological Services Field Office of the United State Fish & Wildlife Service

EXHIBIT A

**MEMORANDUM OF AGREEMENT AMONG THE FEDERAL
COMMUNICATIONS COMMISSION, KENTUCKY STATE HISTORIC
PRESERVATION OFFICE AND AT&T MOBILITY**

**MEMORANDUM OF AGREEMENT (MOA)
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
THE KENTUCKY STATE HISTORIC PRESERVATION OFFICE (SHPO), and
AT&T MOBILITY, LLC (AT&T)
REGARDING
THE PROPOSED 199-FOOT MONOPOLE TELECOMMUNICATIONS STRUCTURE
AT 112 BOTTERY ROAD, COLUMBUS, HICKMAN COUNTY, KENTUCKY
TCNS # 222445**

WHEREAS, AT&T proposes to construct a 199-foot (overall height) monopole telecommunications structure at 112 Bottery Road, also described as AT&T Site Ingram Barge (FA# 15246752), with coordinates of N 36° 45' 35.7" and W 89° 6' 36.9" in Columbus, Hickman County, Kentucky to support communications facilities for its FCC-licensed service (the Project); and

WHEREAS, AT&T is a licensee of the FCC and intends to use antennas on the tower in connection with the provision of its licensed service; and

WHEREAS, the FCC has determined that the Project is a federal undertaking subject to review under the National Historic Preservation Act (NHPA), as amended by Pub. L. No. 96-515 (54 U.S.C. § 306108); and

WHEREAS, AT&T, acting under delegation from the FCC, initiated review for the Project pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108), as required by the FCC rules at 47 CFR §§ 1.1307(a)(4), 1.1320; and

WHEREAS, AT&T has consulted with the SHPO pursuant to 36 CFR Part 800, as well as pursuant to the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (NPA), 47 CFR Part 1, App. C, and is a signatory to this MOA; and

WHEREAS, the FCC, in consultation with the SHPO, established the Area of Potential Effects (APE), consistent with Stipulation VI of the NPA, to include the area of potential ground disturbance and any property that will be physically altered or destroyed by the Project, as well as the geographic area in which the Project introduces new visual elements; and

WHEREAS, the FCC and the SHPO have determined that the Project may have an adverse effect on the following Historic Properties: the *Columbus-Belmont Civil War State Park* (NRHP No. 73000806), which is listed in the National Register of Historic Places (NRHP), and a specific segment of the *Trail of Tears National Historic Trail* (NHT) within the APE for visual effects, which is eligible for listing in the NRHP; and

WHEREAS, AT&T has consulted with the Cherokee Nation regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a concurring party participating in mitigation as described in Stipulation I.D; and

WHEREAS, AT&T has consulted with the National Historic Trails Program of the National Park Service (NPS) regarding the effects of the undertaking on historic properties and they have agreed to participate as an invited signatory to this MOA pursuant to Stipulation V of the NPA and will participate in the mitigation activities described in Section I below;

WHEREAS, AT&T has consulted with Kentucky State Parks regarding the effects of the undertaking on historic properties and they have agreed to participate as an invited signatory to this MOA pursuant to Stipulation V of the NPA and will participate in the mitigation activities as described in Stipulation I; and

WHEREAS, AT&T, consistent with the FCC's requirements for environmental review, has considered and evaluated a number of alternatives for the Project and concluded that these options are either unavailable to AT&T or do not meet the technical requirements necessary to satisfy the coverage needs of the telecommunications systems to be supported by the antennas; and

WHEREAS, members of the public were afforded a 30-day period to participate in and comment on this proceeding pursuant to a notice published in *The Hickman County Times* on December 9, 2020, and no objections pertaining to effects on Historic Properties were received; and

WHEREAS, local government officials were notified and afforded an opportunity to participate in and provide comments on this proceeding pursuant to Section V. of the NPA and no comments were received; and

WHEREAS, AT&T has made a reasonable and good faith effort to identify and notify Federally-recognized Tribal Nations that might attach religious and cultural significance to Historic Properties within the APE, including the Flandreau Santee Sioux Tribe, Omaha Tribe of Nebraska, Cherokee Nation, Delaware Nation, Ponca Tribe of Indians of Oklahoma, Absentee-Shawnee Tribe of Oklahoma, Bad River Band of Lake Superior Indians, Red Cliff Band of Superior Chippewa Indians of Wisconsin, Chickasaw Nation, Quapaw Nation, Cherokee Nation, Osage Nation, United Keetoowah Band of Cherokee Indians in Oklahoma, Eastern Shawnee Tribe of Oklahoma, Wyandotte Nation, Peoria Tribe of Indians of Oklahoma, Shawnee Tribe, and Lac Du Flambeau Band of Lake Superior Chippewa Indians none of the identified Tribal Nations have objected to the Project; and

WHEREAS, in accordance with Stipulation VII.D.2 of the NPA, AT&T has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with the specified and required documentation and the ACHP has declined to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, upon transfer of any ownership interest in the aforementioned Project, any and all assignees shall be subject to all terms and conditions of this agreement.

NOW, THEREFORE, the FCC, the SHPO, AT&T, NPS, Kentucky State Parks, and the Cherokee Nation agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on Historic Properties and agree that the following measures shall constitute full, complete and adequate mitigation under the NHPA, as amended, the implementing regulations of the ACHP, and the FCC's rules.

STIPULATIONS

The FCC, through coordination with AT&T and its assignees, shall ensure that the following measures are carried out following execution of this MOA:

I. MITIGATION OF ADVERSE EFFECT

AT&T shall complete a Landscape Context Study (LCS) for a study area of historic resources associated with the Trail of Tears National Historic Trail, Columbus-Belmont State Park, and the historic and contemporary town of Columbus, Kentucky. Measures involving historical or archaeological expertise shall be performed by a professional meeting the applicable Secretary of the Interior's Professional Qualifications Standards.

A. Landscape Context Study Subject and Purpose

1. The LCS will focus on research and documentation of the Project area that will be used to develop interpretative content to be hosted on websites owned by the NPS and Kentucky State Parks and linked via QR code on existing signage also owned by NPS and Kentucky State Parks.
2. The LCS will address four key historic contexts related to the sites' history:
 - a. Indian Removal Act of 1830 and forced relocation of Cherokee people to Indian Territory along the Trail of Tears (1838-1839);
 - b. Civil War military events associated with the study area (1861-1865);
 - c. Town of Columbus settled as Iron Banks (ca. 1800), renaming as Columbus (1820), role as a strategic transportation hub (nineteenth century); and the great Mississippi River flood of 1927, its impact on the town, including relocation (1927); and
 - d. State park establishment including Civilian Conservation Corps involvement in park development (1934).
3. The LCS is anticipated to provide information related to the history of the region as it pertains to the four contexts listed in Stipulation I.A.2;
4. The LCS will also document the current landscape conditions and features; evaluate the significance of the property in accordance with NRHP criteria;

assess the integrity of the cultural landscape; and identify features with heritage value, either potentially contributing to NRHP significance or important to the Cherokee Nation. The LCS will further provide limited treatment recommendations related to preservation of features contributing to the significance of the property as well as focusing on interpretive planning, as well as materials that can be used to inform virtual interpretation and be made available to the public using a web site or other source using QR code technology.

B. LCS Scope of Work (see Appendix A):

1. Initial Meeting
 - a. AT&T will conduct a teleconference meeting with representatives of the Cherokee Nation, SHPO, NPS, and Kentucky State Parks, prior to initiating work on the Project. During the call, AT&T will confirm the schedule, plans for site visit, communication procedures, and scope of work for the Project.
2. Background Information Collection and Review
 - a. AT&T will subsequently meet separately with representatives of the Cherokee Nation to collect research information. AT&T will also collect primary and secondary source documents available online or electronically from public repositories and agencies, assemble all available information, and review same ahead of the initial site visit for research and field survey.
3. Base Map Preparation
 - a. Using available GIS data, aerial photography, and topographic information, AT&T will prepare a base map to be used in documenting existing conditions during field investigations.
4. Site Visit for Research and Fieldwork
 - a. AT&T will travel to Columbus, Kentucky, to conduct research and field investigations in support of historic and existing conditions documentation.
 - i. Research will include review of documentary resources available at the state park property, visits to local repositories, such as the county courthouse, Hickman County Historical Society, and nearby universities, as well as state records repositories in Frankfort, Kentucky.
 - ii. Research may also be conducted at the National Archives and Records Administration in College Park, Maryland. As with all repositories, this research effort will be dependent on the availability of access due to COVID-19 restrictions.

- b. Field investigations will focus on a walk-over survey of the Project area to document landscape features through mapping, photography, and notation.
- 5. Initial Draft LCS (75% complete)
 - a. Following completion of field investigations and research, AT&T will begin development of the introduction, historic contexts, and existing conditions documentation. These foundational efforts will be followed by preparation of a preliminary significance evaluation, integrity assessment, and identification of contributing features.
 - b. The initial draft LCS, at an approximately 75% level of completion, will be provided in electronic format and submitted to consulting parties for a single 30-day review and comment period.
- 6. Revised Draft LCS (95% complete)
 - a. Based on comments provided by the consulting parties, AT&T will refine and revise the LCS. This draft will also add any outstanding material not provided in the 75% draft document. AT&T will also draft initial interpretive programming materials for review and comment by the consulting parties.
 - b. The draft LCS at an approximately 95% level of completion and the initial draft interpretive programming materials will be provided in electronic format to consulting parties for one (1) 30-day review and comment period.
- 7. Final LCS
 - a. Based on final review comments from the SHPO and consulting parties, AT&T will finalize the LCS to address any recommended edits, additions, or other changes, and complete the interpretive programming materials in a format that is ready for use in developing a website or posting for QR code access.
- 8. Submittal
 - a. After final approval from the SHPO, AT&T shall provide one (1) electronic and one (1) hard copy of the LCS document and the interpretive program materials to the SHPO, NPS, Kentucky State Parks, and the Cherokee Nation.

C. NPS QR Tag Placement

- 1. NPS will provide two (2) QR tags at AT&T's expense at a cost of \$10.00 each for a total cost with shipping of \$26.00 to be installed on existing interpretive signage in *Columbus-Belmont Civil War State Park*.

2. The QR tags will link to interpretive programming materials developed as part of the LCS to be hosted at no cost on NPS's website.
3. NPS will be responsible for the installation of the QR tags.

D. Kentucky State Parks QR Tag Placement

1. At no cost to AT&T, Kentucky State Parks will also provide QR tags to be installed on existing interpretive signage in *Columbus-Belmont Civil War State Park*.
2. The QR tags will link to interpretive programming materials developed as part of the LCS to be hosted at no cost on Kentucky State Parks' website.
3. Kentucky State Parks will be responsible for the installation of the QR tags.

E. Construction Monitoring

1. At the request of the Cherokee Nation, the Applicant will contract with a Secretary of the Interior-qualified archaeologist to provide archaeological monitoring during the construction of the telecommunications facility.

II. REPORTING

Following the execution of this MOA and until it expires or is terminated, AT&T shall provide all parties to this MOA an annual summary report and a final report when the Project proponent completes the mitigation, detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and/or objections received in carrying out the terms of this MOA.

III. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FCC shall consult with such party to resolve the objection. If the FCC determines that such objection cannot be resolved, the FCC will:

- A. Forward all documentation relevant to the dispute, including the FCC's proposed resolution, to the ACHP. The ACHP's policy is to provide the FCC with its advice on the resolution of any objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FCC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The FCC will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day period, the FCC may make a final decision on the dispute and proceed accordingly. Prior

to reaching such a final decision, the FCC shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.

- C. The FCC's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

IV. REMOVAL

In the event that AT&T abandons the facilities at the Project site, AT&T will remove all of its antennas and equipment and restore the Project area to the same condition as existed prior to commencement of the Project.

V. DURATION

This MOA will expire if its terms are not carried out within a period of five (5) years from the date of its execution. Prior to such time, the FCC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

VI. POST-REVIEW DISCOVERIES

In the event that AT&T discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by the Project, AT&T shall promptly stop work and notify the FCC, the SHPO and any potentially affected Indian tribe.

If AT&T and the SHPO concur that the discovered resource is eligible for listing in the NRHP, AT&T will consult with the SHPO, and Indian tribes as appropriate, to evaluate measures that will avoid, minimize, or mitigate adverse effects. Upon agreement regarding such measures, AT&T shall implement them and notify the FCC of its action.

If AT&T and the SHPO cannot reach agreement regarding the eligibility of a post-review discovery, the matter will be referred to the FCC for review. If AT&T and the SHPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to the FCC for appropriate action.

If AT&T discovers any human or burial remains during implementation of the Project, AT&T shall cease work immediately, notify the SHPO and FCC, and adhere to applicable State and Federal laws regarding the treatment of human or burial remains.

VII. AMENDMENTS

This MOA may be amended prior to its expiration or termination when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VIII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Section VII above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Project, the FCC must either (a) execute a MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The FCC shall notify the signatories as to the course of action it will pursue.

Execution of this MOA and implementation of its terms evidence that the FCC has taken into account the effects of this Project on Historic Properties and afforded the ACHP an opportunity to comment.

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AMONG
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AT&T MOBILITY, LLC (AT&T)
REGARDING
THE PROPOSED 199-FOOT MONOPOLE TELECOMMUNICATIONS STRUCTURE
AT 112 BOTTERY ROAD, COLUMBUS, HICKMAN COUNTY, KENTUCKY
TCNS # 222445**

**SIGNATORY:
Federal Communications Commission**

Paul D'Ari

Paul D'Ari
Senior Legal Counsel, Competition and Infrastructure Policy Division
Wireless Telecommunications Bureau

2/20/2024

Date

**MEMORANDUM OF AGREEMENT (MOA)
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
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AT&T MOBILITY, LLC (AT&T)
REGARDING
THE PROPOSED 199-FOOT MONOPOLE TELECOMMUNICATIONS STRUCTURE
AT 112 BOTTERY ROAD, COLUMBUS, HICKMAN COUNTY, KENTUCKY
TCNS # 222445**

SIGNATORY:

**Kentucky State Historic Preservation Office (SHPO)
Kentucky Heritage Council**



1/7/2024

Craig Potts
Executive Director and State Historic Preservation Officer
Kentucky Heritage Council

Date

Approved as to form and legality:

Donna Schnitzer

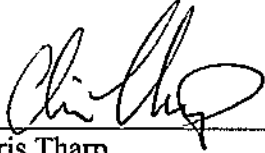
1.18.2024

Legal Counsel
Tourism, Arts and Heritage Cabinet

Date

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AMONG
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REGARDING
THE PROPOSED 199-FOOT MONOPOLE TELECOMMUNICATIONS STRUCTURE
AT 112 BOTTERY ROAD, COLUMBUS, HICKMAN COUNTY, KENTUCKY
TCNS # 222445**

**SIGNATORY:
AT&T Mobility, LLC**



Chris Tharp
Area Manager, AT&T Mobility, LLC

1-4-24

Date

**MEMORANDUM OF AGREEMENT (MOA)
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THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
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AT&T MOBILITY, LLC (AT&T)
REGARDING
THE PROPOSED 199-FOOT MONOPOLE TELECOMMUNICATIONS STRUCTURE
AT 112 BOTTERY ROAD, COLUMBUS, HICKMAN COUNTY, KENTUCKY
TCNS # 222445**

**INVITED SIGNATORY:
National Historic Trails Program of the National Park Service (NPS)**

Carole Wendler


December 18, 2023

Carole Wendler
Acting Superintendent
National Park Service, National Trails

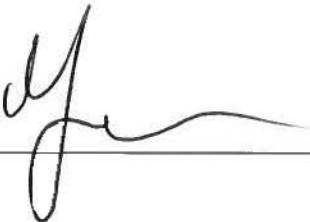
Date

**MEMORANDUM OF AGREEMENT (MOA)
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
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AT&T MOBILITY, LLC (AT&T)
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AT 112 BOTTERY ROAD, COLUMBUS, HICKMAN COUNTY, KENTUCKY
TCNS # 222445**

**INVITED SIGNATORY:
Kentucky State Parks**



Russ Meyer
Commissioner
Kentucky State Parks



Date
2/8/24

**MEMORANDUM OF AGREEMENT (MOA)
AMONG
THE FEDERAL COMMUNICATIONS COMMISSION (FCC),
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AT&T MOBILITY, LLC (AT&T)
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AT 112 BOTTERY ROAD, COLUMBUS, HICKMAN COUNTY, KENTUCKY
TCNS # 222445**

**CONCURRING PARTY:
Cherokee Nation**

Chad Harsha
Secretary of Natural Resources
Cherokee Nation

Date

EXHIBIT B

**CORRESPONDENCE FROM THE KENTUCKY ECOLOGICAL
SERVICES FIELD OFFICE OF THE UNITED STATES FISH &
WILDLIFE SERVICE**



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Kentucky Ecological Services Field Office
J C Watts Federal Building, Room 265
330 West Broadway
Frankfort, KY 40601-8670

Phone: (502) 695-0467 Fax: (502) 695-1024

Email Address: kentuckyes@fws.gov

<https://www.fws.gov/office/kentucky-ecological-services>

In Reply Refer To:
Project Code: 2024-0051972
Project Name: Ingram Barge (W3586b)

February 21, 2024

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 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 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:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.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/program/migratory-bird-permit/what-we-do..>

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/library/collections/threats-birds>.

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/partner/council-conservation-migratory-birds>.

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.

Attachment(s):

- Official Species List

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:

Kentucky Ecological Services Field Office

J C Watts Federal Building, Room 265

330 West Broadway

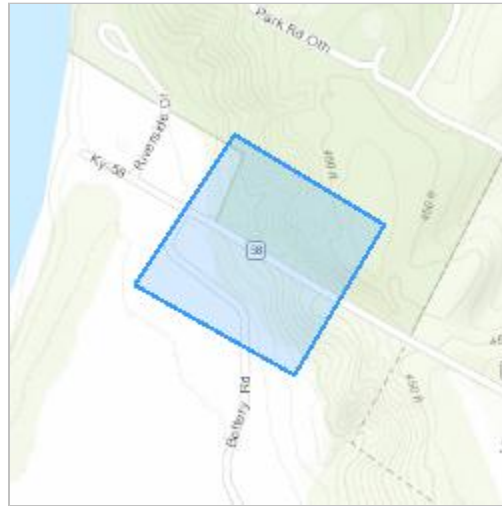
Frankfort, KY 40601-8670

(502) 695-0467

PROJECT SUMMARY

Project Code: 2024-0051972
Project Name: Ingram Barge (W3586b)
Project Type: Communication Tower New Construction
Project Description: Telecommunications Tower
Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.76026377340732,-89.11029676484753,14z>



Counties: Hickman County, Kentucky

ENDANGERED SPECIES ACT SPECIES

There is a total of 8 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. Note that 3 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, 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.

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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
<p>Gray Bat <i>Myotis grisescens</i></p> <p>No critical habitat has been designated for this species. This species only needs to be considered under the following conditions:</p> <ul style="list-style-type: none"> ▪ The project area includes potential gray bat habitat. <p>Species profile: https://ecos.fws.gov/ecp/species/6329 General project design guidelines: https://ipac.ecosphere.fws.gov/project/XICSHIXG2ZCGVGBQ7SZ7GRCP2Y/documents/generated/6422.pdf</p>	Endangered
<p>Indiana Bat <i>Myotis sodalis</i></p> <p>There is final critical habitat for this species. Your location does not overlap the critical habitat. This species only needs to be considered under the following conditions:</p> <ul style="list-style-type: none"> ▪ The project area includes known 'summer 1' habitat. <p>Species profile: https://ecos.fws.gov/ecp/species/5949 General project design guidelines: https://ipac.ecosphere.fws.gov/project/XICSHIXG2ZCGVGBQ7SZ7GRCP2Y/documents/generated/6422.pdf</p>	Endangered
<p>Northern Long-eared Bat <i>Myotis septentrionalis</i></p> <p>No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045 General project design guidelines: https://ipac.ecosphere.fws.gov/project/XICSHIXG2ZCGVGBQ7SZ7GRCP2Y/documents/generated/6422.pdf</p>	Endangered

BIRDS

NAME	STATUS
Whooping Crane <i>Grus americana</i> Population: U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/758	Experimental Population, Non-Essential

REPTILES

NAME	STATUS
Alligator Snapping Turtle <i>Macrochelys temminckii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/4658	Proposed Threatened

FISHES

NAME	STATUS
Pallid Sturgeon <i>Scaphirhynchus albus</i> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> The species may be affected by projects that significantly impact the Mississippi River. Species profile: https://ecos.fws.gov/ecp/species/7162 General project design guidelines: https://ipac.ecosphere.fws.gov/project/XICSHIXG2ZCGVGBQ7SZ7GRCP2Y/documents/generated/5224.pdf	Endangered

CLAMS

NAME	STATUS
Fat Pocketbook <i>Potamilus capax</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2780 General project design guidelines: https://ipac.ecosphere.fws.gov/project/XICSHIXG2ZCGVGBQ7SZ7GRCP2Y/documents/generated/5639.pdf	Endangered

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

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United States Department of the Interior



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In Reply Refer To:
Project code: 2024-0051972
Project Name: Ingram Barge (W3586b)

February 21, 2024

Federal Nexus: yes
Federal Action Agency (if applicable):

Subject: Record of project representative's no effect determination for 'Ingram Barge (W3586b)'

Dear Delana Gilmore:

This letter records your determination using the Information for Planning and Consultation (IPaC) system provided to the U.S. Fish and Wildlife Service (Service) on February 21, 2024, for 'Ingram Barge (W3586b)' (here forward, Project). This project has been assigned Project Code 2024-0051972 and all future correspondence should clearly reference this number. **Please carefully review this letter.**

Ensuring Accurate Determinations When Using IPaC

The Service developed the IPaC system and associated species' determination keys in accordance with the Endangered Species Act of 1973 (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) and based on a standing analysis. All information submitted by the Project proponent into IPaC must accurately represent the full scope and details of the Project.

Failure to accurately represent or implement the Project as detailed in IPaC or the Northern Long-eared Bat Rangewide Determination Key (Dkey), invalidates this letter. **Answers to certain questions in the DKey commit the project proponent to implementation of conservation measures that must be followed for the ESA determination to remain valid.**

Determination for the Northern Long-Eared Bat

Based upon your IPaC submission and a standing analysis, your project has reached the determination of "No Effect" on the northern long-eared bat. To make a no effect determination, the full scope of the proposed project implementation (action) should not have any effects (either

positive or negative), to a federally listed species or designated critical habitat. Effects of the action are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. (See § 402.17).

Under Section 7 of the ESA, if a federal action agency makes a no effect determination, no consultation with the Service is required (ESA §7). If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required except when the Service concurs, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat [50 CFR §402.02, 50 CFR§402.13].

Other Species and Critical Habitat that May be Present in the Action Area

The IPaC-assisted determination for the northern long-eared bat does not apply to the following ESA-protected species and/or critical habitat that also may occur in your Action area:

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
- Fat Pocketbook *Potamilus capax* Endangered
- Gray Bat *Myotis grisescens* Endangered
- Indiana Bat *Myotis sodalis* Endangered
- Monarch Butterfly *Danaus plexippus* Candidate
- Pallid Sturgeon *Scaphirhynchus albus* Endangered
- Whooping Crane *Grus americana* Experimental Population, Non-Essential

You may coordinate with our Office to determine whether the Action may affect the animal species listed above and, if so, how they may be affected.

Next Steps

Based upon your IPaC submission, your project has reached the determination of "No Effect" on the northern long-eared bat. If there are no updates on listed species, no further consultation/coordination for this project is required with respect to the northern long-eared bat. However, the Service recommends that project proponents re-evaluate the Project in IPaC if: 1) the scope, timing, duration, or location of the Project changes (includes any project changes or amendments); 2) new information reveals the Project may impact (positively or negatively) federally listed species or designated critical habitat; or 3) a new species is listed, or critical habitat designated. If any of the above conditions occurs, additional coordination with the Service should take place to ensure compliance with the Act.

If you have any questions regarding this letter or need further assistance, please contact the Kentucky Ecological Services Field Office and reference Project Code 2024-0051972 associated with this Project.

Action Description

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

1. Name

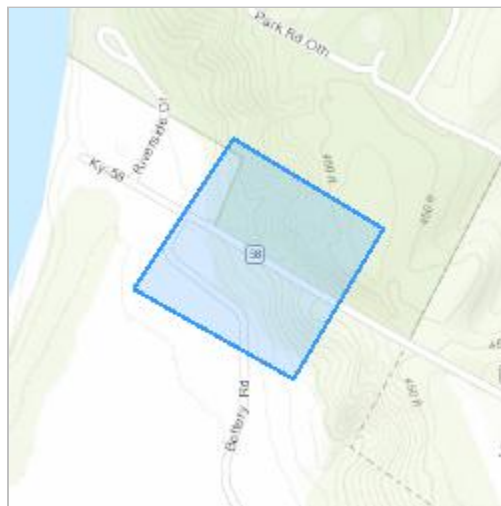
Ingram Barge (W3586b)

2. Description

The following description was provided for the project 'Ingram Barge (W3586b)':

Telecommunications Tower

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.76026377340732,-89.11029676484753,14z>



DETERMINATION KEY RESULT

Based on the information you provided, you have determined that the Proposed Action will have no effect on the Endangered northern long-eared bat (*Myotis septentrionalis*). Therefore, no consultation with the U.S. Fish and Wildlife Service pursuant to Section 7(a)(2) of the Endangered Species Act of 1973 (87 Stat. 884, as amended 16 U.S.C. 1531 *et seq.*) is required for those species.

QUALIFICATION INTERVIEW

1. Does the proposed project include, or is it reasonably certain to cause, intentional take of the northern long-eared bat or any other listed species?

Note: Intentional take is defined as take that is the intended result of a project. Intentional take could refer to research, direct species management, surveys, and/or studies that include intentional handling/encountering, harassment, collection, or capturing of any individual of a federally listed threatened, endangered or proposed species?

No

2. The action area does not overlap with an area for which U.S. Fish and Wildlife Service currently has data to support the presumption that the northern long-eared bat is present. Are you aware of other data that indicates that northern long-eared bats (NLEB) are likely to be present in the action area?

Bat occurrence data may include identification of NLEBs in hibernacula, capture of NLEBs, tracking of NLEBs to roost trees, or confirmed NLEB acoustic detections. Data on captures, roost tree use, and acoustic detections should post-date the year when white-nose syndrome was detected in the relevant state. With this question, we are looking for data that, for some reason, may have not yet been made available to U.S. Fish and Wildlife Service.

No

3. Does any component of the action involve construction or operation of wind turbines?

Note: For federal actions, answer 'yes' if the construction or operation of wind power facilities is either (1) part of the federal action or (2) would not occur but for a federal agency action (federal permit, funding, etc.).

No

4. Is the proposed action authorized, permitted, licensed, funded, or being carried out by a Federal agency in whole or in part?

Yes

5. Is the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), or Federal Transit Administration (FTA) funding or authorizing the proposed action, in whole or in part?

No

6. Are you an employee of the federal action agency or have you been officially designated in writing by the agency as its designated non-federal representative for the purposes of Endangered Species Act Section 7 informal consultation per 50 CFR § 402.08?

Note: This key may be used for federal actions and for non-federal actions to facilitate section 7 consultation and to help determine whether an incidental take permit may be needed, respectively. This question is for information purposes only.

Yes

7. Is the lead federal action agency the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC)? Is the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC) funding or authorizing the proposed action, in whole or in part?

Yes

8. Have you determined that your proposed action will have no effect on the northern long-eared bat? Remember to consider the [effects of any activities](#) that would not occur but for the proposed action.

If you think that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, answer “No” below and continue through the key. If you have determined that the northern long-eared bat does not occur in your project’s action area and/or that your project will have no effects whatsoever on the species despite the potential for it to occur in the action area, you may make a “no effect” determination for the northern long-eared bat.

Note: Federal agencies (or their designated non-federal representatives) must consult with USFWS on federal agency actions that may affect listed species [50 CFR 402.14(a)]. Consultation is not required for actions that will not affect listed species or critical habitat. Therefore, this determination key will not provide a consistency or verification letter for actions that will not affect listed species. If you believe that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, please answer “No” and continue through the key. Remember that this key addresses only effects to the northern long-eared bat. Consultation with USFWS would be required if your action may affect another listed species or critical habitat. The definition of [Effects of the Action](#) can be found here: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

Yes

PROJECT QUESTIONNAIRE

Will all project activities be completed by April 1, 2024?

No

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Email Address: kentuckyes@fws.gov

<https://www.fws.gov/office/kentucky-ecological-services>

In Reply Refer To:
Project code: 2024-0051972
Project Name: Ingram Barge (W3586b)

February 21, 2024

Subject: Consistency letter for the project named 'Ingram Barge (W3586b)' for specified threatened and endangered species that may occur in your proposed project location consistent with the Kentucky Determination Key (DKey)

Dear Delana Gilmore:

The U.S. Fish and Wildlife Service (Service) received on **February 21, 2024** your effect determination(s) for the 'Ingram Barge (W3586b)' (Action) using the Kentucky (DKey) within the Information for Planning and Consultation (IPaC) system. The Service developed this system in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat.884, as amended; 16 U.S.C. 1531 et seq.).

Based on your answers and the assistance of the Service’s Kentucky DKey, you made the following effect determination(s) for the proposed Action:

Species	Listing Status	Determination
Fat Pocketbook (<i>Potamilus capax</i>)	Endangered	No effect
Gray Bat (<i>Myotis grisescens</i>)	Endangered	No effect
Pallid Sturgeon (<i>Scaphirhynchus albus</i>)	Endangered	No effect

Consultation Status

No Effect Determinations: Species with No effect determinations are those for which you determined the proposed Action would have “no effect” on the species. There is no statutory requirement for the federal action agency to request concurrence with that determination; however, the federal action agency should document the supporting information for this determination in their files. This documentation would typically demonstrate a lack of suitable habitat within the action area, show that no impacts to suitable habitat would occur, or provide

information that the species is not reasonably certain to occur in the action area even though suitable habitat is present.

Coordination with the Kentucky Ecological Services Office is complete. Thank you for considering Federally listed species during your project planning.

The Service recommends that your agency contact the Kentucky Ecological Services Field Office or re-evaluate the Action in IPaC if: 1) the scope, timing, duration, or location of the Action changes, 2) new information reveals the Action may affect listed species or designated critical habitat, or 3) a new species is listed or critical habitat designated. If any of the above conditions occurs, additional consultation with the Kentucky Ecological Services Field Office should take place before project changes are final or resources committed.

The following species and/or critical habitats may also occur in your project area and **are not** covered by this conclusion:

- Alligator Snapping Turtle *Macrochelys temminckii* Proposed Threatened
- Indiana Bat *Myotis sodalis* Endangered
- Monarch Butterfly *Danaus plexippus* Candidate
- Northern Long-eared Bat *Myotis septentrionalis* Endangered
- Whooping Crane *Grus americana* Experimental Population, Non-Essential

To address effects to other federally listed or proposed species and/or their designated critical habitat, you can request project-specific review by following the instructions in the “Next Steps” section of your species list letter, or you may use another determination key, if available.

Additional Coordination

To request additional technical assistance or consultation, please email your request to KentuckyES@fws.gov and include relevant site-specific information. The Kentucky Ecological Services Field Office will respond within 30 days of your submittal.

Action Description

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

1. Name

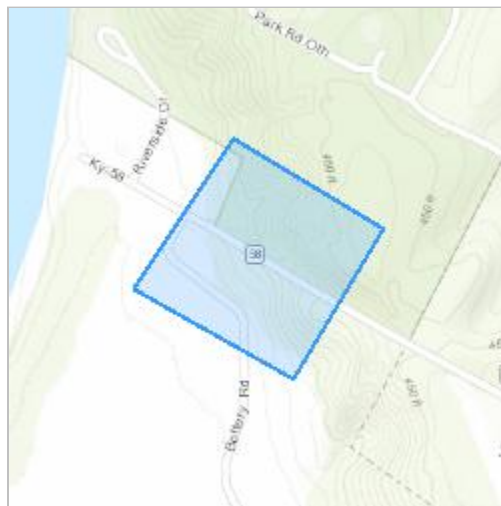
Ingram Barge (W3586b)

2. Description

The following description was provided for the project 'Ingram Barge (W3586b)':

Telecommunications Tower

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@36.76026377340732,-89.11029676484753,14z>



QUALIFICATION INTERVIEW

1. Will the proposed Action involve Federal funding, permitting, or authorization, or will it be carried out by a Federal Agency?
Yes
2. Are you the lead Federal Action Agency or designated non-federal representative requesting concurrence on behalf of the lead Federal Action Agency?
Yes
3. [Hidden Semantic] Does the action area intersect critical habitat?
Automatically answered
No
4. Will the proposed Action involve construction or operation of wind turbines?
No
5. Will the proposed Action involve blasting (other than a fireworks display)?
No
6. Will the proposed Action involve a new point source discharge from a facility other than a water treatment plant or storm water system?
No
7. Will the proposed Action involve the creation of a new water-borne contaminant source (e.g. leachate pond, pits containing chemicals that are not NSF/ANSI 60 compliant)?
No
8. Will the proposed Action include the removal, replacement, repair and/or maintenance of an existing bridge or culvert?
No
9. Will the proposed Action involve perennial stream loss that would require an individual permit under 404 of the Clean Water Act?
No
10. Will the proposed Action involve discharge of sediment into a stream?
No
11. Does the Action Area contain any caves (including their associated sinkholes, fissures, or other karst features), rockshelters, underground quarries, or abandoned mine portals (including associated underground workings)?
No
12. [Hidden Semantic] Does the Action Area intersect the Kentucky AOI of the gray bat?
Automatically answered
Yes
13. Will the proposed Action involve drilling or boring?
Yes

14. Prior to the drilling or boring, will the project proponent conduct appropriate preliminary evaluations to ensure that proposed drilling or boring is unlikely to encounter karst voids or other voids?

Yes

15. Will the project proponent contact the Field Office if potentially suitable gray bat hibernacula or roosting habitat is encountered during drilling or boring?

Yes

16. Based on the responses you have provided, we believe that the proposed Action is consistent with the type of Actions programmatically evaluated by the Service's Kentucky Field Office under the standing analyses that support this determination key. These Actions typically conclude with "no effect" or "may affect - not likely to adversely affect" determinations for the gray bat.

What is your effect determination for the **gray bat**?

Note: IPaC will not provide a concurrence for "no effect" determinations, because there is no statutory requirement to request concurrence from the Service. IPaC will provide concurrence for "May affect – not likely to adversely affect" determinations. If you choose "May affect – likely to adversely affect" or "Unsure," additional coordination with the Service is recommended.

1. "No effect"

17. Will the proposed Action involve a new point source discharge into a stream or change an existing point source discharge (e.g., outfalls; leachate ponds)?

No

18. Will the proposed Action include any activities that would alter stream flow, such as hydropower energy production, impoundments, intake structures, diversion structures, and/or turbines?

No

19. Will the proposed Action involve dredging or in-stream gravel mining?

No

20. Will the proposed Action involve resource extraction (e.g., mining, oil/gas, logging), including exploration activities?

No

21. Will the proposed Action involve stream impacts (perennial or intermittent) that would require an individual permit under 404 of the Clean Water Act?

No

22. Will the proposed Action involve activities that would contribute measureable nonpoint source pollution to streams (e.g., sediment, nutrients, etc.)? See the following EPA webpage for more examples of nonpoint source pollution and activities that can produce it: <https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution>

No

23. [Hidden Semantic] Does the action area include the 1/2-mile buffer of a stream or river in which any species covered under this key occurs or may occur?

Automatically answered

Yes

24. Will the proposed Action disturb the channel or bank of a perennial or intermittent stream?

No

25. Will the proposed Action disturb the channel or bank of an ephemeral stream?

No

26. Will the proposed Action involve vegetation removal within 200 feet of a perennial stream bank?

No

27. Will the proposed Action involve excavation or grading, including for the construction or improvement of an access road?

No

28. [Hidden Semantic] Does the project area intersect the AOI of the fat pocketbook (*Potamilus capax*)?

Automatically answered

Yes

29. Based on the responses you have provided, we believe that the proposed Action is consistent with the type of Actions programmatically evaluated by the Service's Kentucky Field Office under the standing analyses that support this determination key. These Actions typically conclude with "no effect" or "may affect - not likely to adversely affect" determinations for the fat pocketbook.

What is your effect determination for the **fat pocketbook**:

Note: IPaC will not provide a concurrence for "no effect" determinations, because there is no statutory requirement to request concurrence from the Service. IPaC will provide concurrence for "May affect – not likely to adversely affect" determinations. If you choose "May affect – likely to adversely affect" or "Unsure," additional coordination with the Service is recommended.

1. "No effect"

30. [Hidden Semantic] Does the project area intersect the AOI of the pallid sturgeon (*Scaphirhynchus albus*)?

Automatically answered

Yes

31. Based on the responses you have provided, we believe that the proposed Action is consistent with the type of Actions programmatically evaluated by the Service's Kentucky Field Office under the standing analyses that support this determination key. These Actions typically conclude with "no effect" or "may affect - not likely to adversely affect" determinations for the pallid sturgeon.

What is your effect determination for the **pallid sturgeon**:

Note: IPaC will not provide a concurrence for "no effect" determinations, because there is no statutory requirement to request concurrence from the Service. IPaC will provide concurrence for "May affect – not likely to adversely affect" determinations. If you choose "May affect – likely to adversely affect" or "Unsure," additional coordination with the Service is recommended.

1. *"No effect"*

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