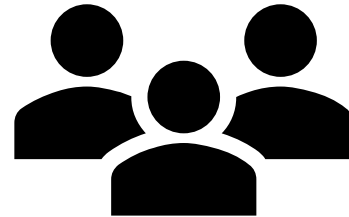
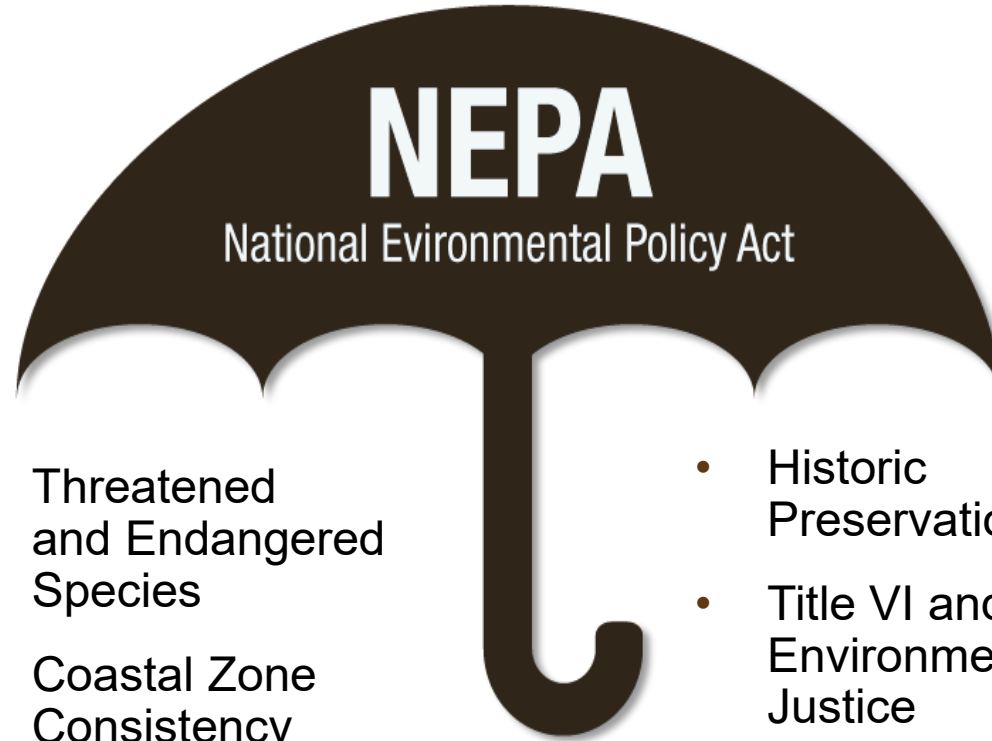


TIPS FOR
NAVIGATING
NEPA
EFFICIENTLY



- NEPA Umbrella
- Why was the 5323 Form Developed
- ~~Section 106~~
- T & E
 - Consultation Process
- Section 4f
 - De Minimis
 - Temporary Use
 - Enhancement
- Wetland Mitigation
- Public Involvement
- Connected Actions



- Public Involvement
- Wetland and Floodplain Permits
- Farmland Protection
- Water Quality Protection

- Threatened and Endangered Species
- Coastal Zone Consistency
- Air Quality Conformity

- Historic Preservation
- Title VI and Environmental Justice
- Recreation Area Protection

- Noise Abatement
- Sustainable Development
- Community Impact Assessment

Environmental Clearance Form (5323 Form)

- Prior to October 2019 – MDOT would concur with the Local Agency's environmental classification.
- Implemented October 1, 2019 (FY 2020) – MDOT is required to approve the Local Agency's environmental classification.
 - More documentation is required (maps, follow-up questions, permits, supporting documentation)
 - More time for review and approval – NEPA review will need to be completed much earlier in the process (2-6 months prior to the GI Submittal).

Threatened and Endangered Species Review



Section 7 Consultation

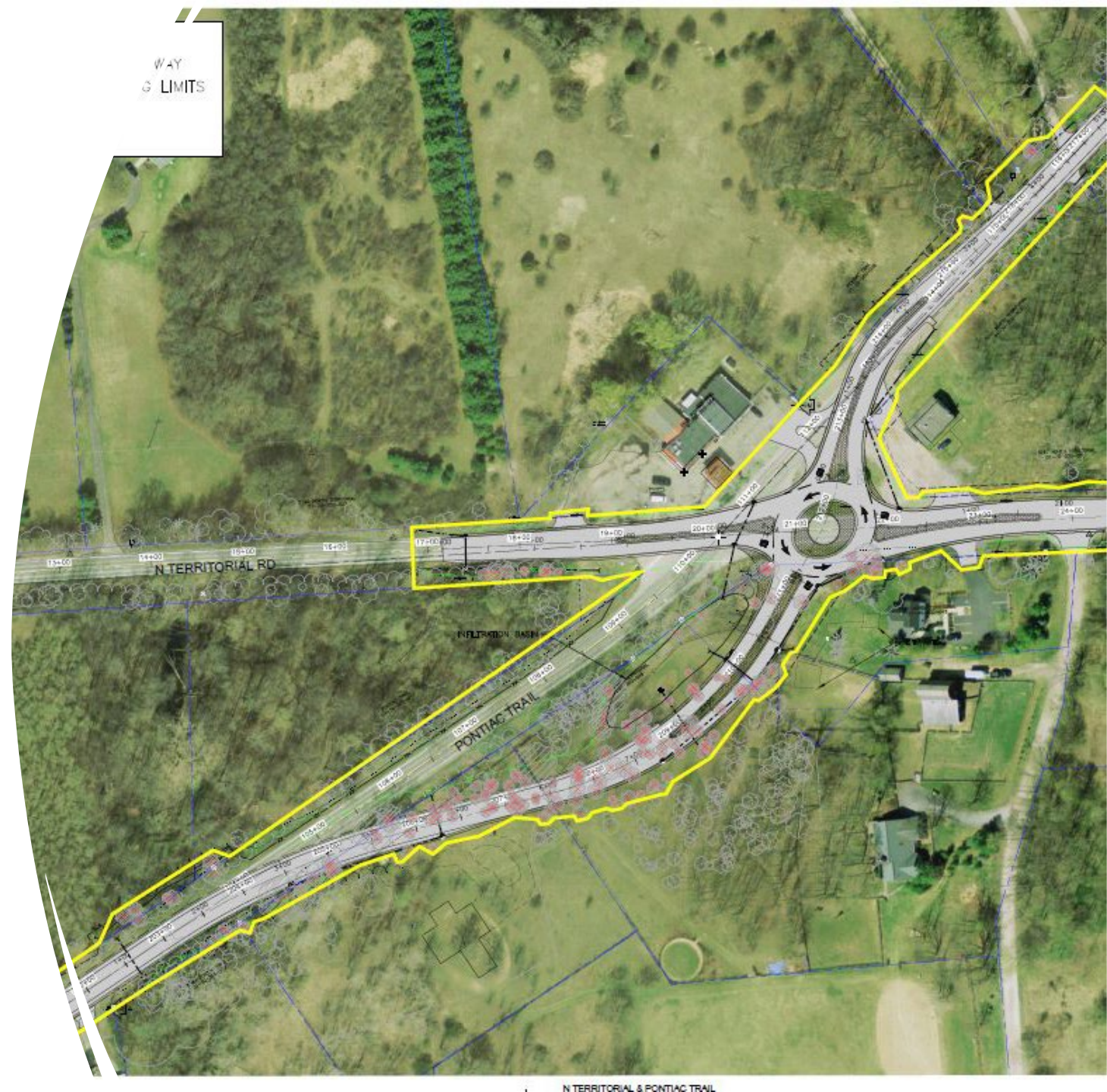
- When do you need to go through the consultation process?
 - If a project may affect a listed species or a critical habitat.
 - May affect on an individual level
- When can you skip the consultation process?
 - Exempt
 - “No effect” determination

Section 7 Consultation

- Traditional route
 - Species list
 - Determine potential effects
 - Develop a biological assessment
 - Email USFWS requesting consultation
- Determination Keys
 - Streamline the consultation process

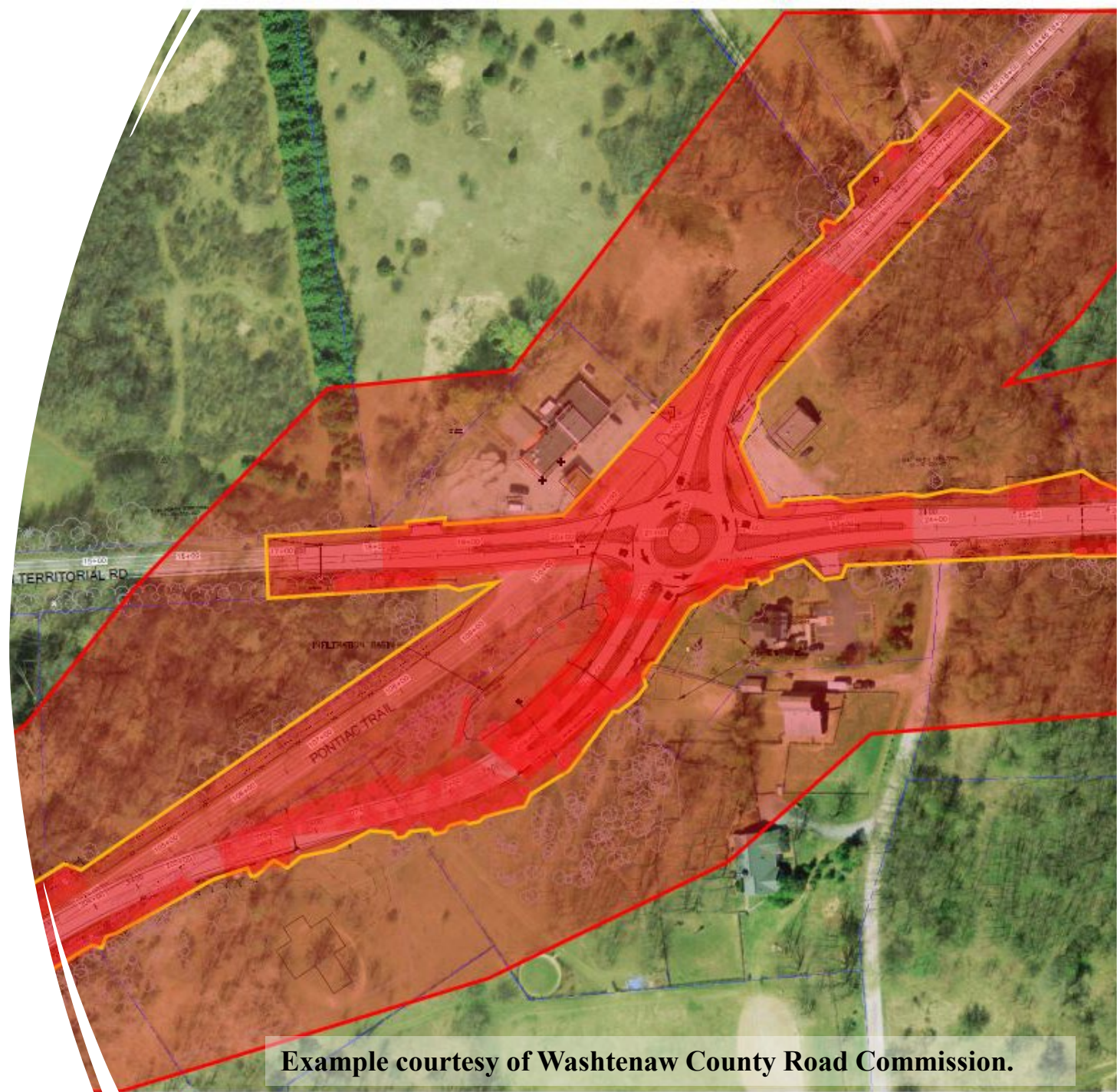
Biological Assessment

- Project description
 - Who, what, where, when, and how
- Project area vs action area
 - All areas that may be affected directly or indirectly by the action – not merely the immediate area



Biological Assessment

- Action area
- This example considers
 - Light trespass
 - Noise and vibration
 - Tree removal



Example courtesy of Washtenaw County Road Commission.

Biological Assessment

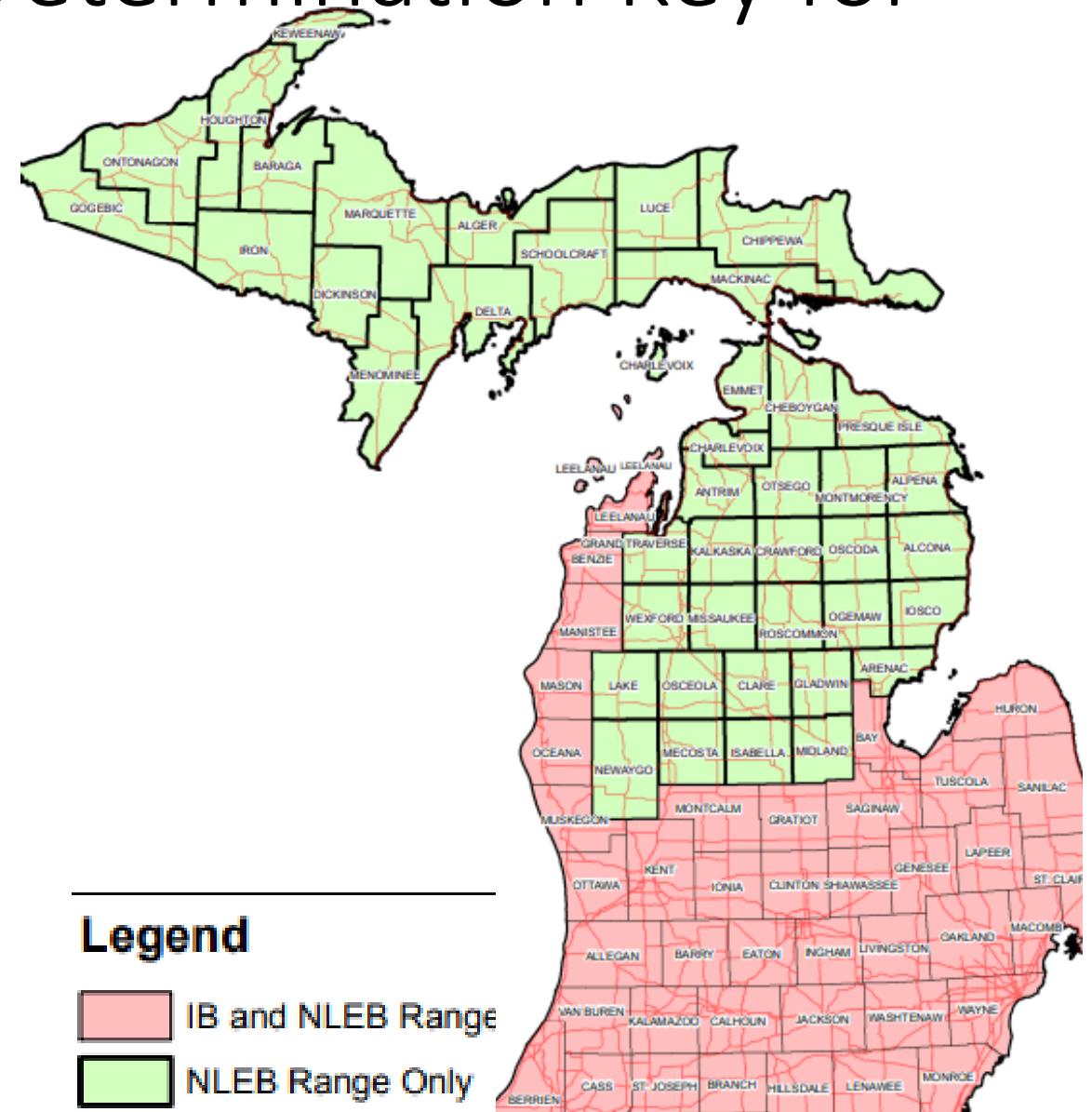
- Physical and biological attributes of the area
 - Topography, vegetation, condition
- Identify listed species that may be present
 - Describe current habitat conditions within the action area
- Describe how the action may affect each protected resource
 - Document conclusions and rationale

Determination Keys

- Not required
- Designed to assess simple, low impact projects
- Very general, site-specific information may warrant a different conclusion
- Only complete one key per project
- Can always go back and change a response

Selecting the Correct Determination Key for your Project

- 4(d) Key
 - Only covers NLEB
- Programmatic Consultation Key
 - Covers NLEB and Indiana bat



Selecting the Correct Determination Key for your Project

- Michigan determination key
 - Recommended
 - Assesses all federally listed species
 - Projects that don't qualify include wind energy development, purposeful take, communication towers, & aerial application of chemicals
 - All key submissions are audited by staff (30 days verification period)
 - Important to include a complete project description

Other Notes on IPaC

- Habitat v. Critical Habitat
 - Critical Habitat is designated through the species listing process
 - Habitat can exist even if it is not within a designated critical habitat boundary
- Monarch butterfly - IPaC species lists as a candidate species
 - Under review to determine if it warrants listing under the ESA
 - Encourage conservation efforts but not required



Other Notes on IPaC

13. Does your action area occur entirely within an already developed area with no natural habitat or trees present? For the purposes of this question, "already developed areas" are already paved, covered by existing structures, manicured lawns, industrial sites, or cultivated cropland, AND do not contain trees that could be roosting habitat. Be aware that listed species may occur in areas with natural, or semi-natural, vegetation immediately adjacent to existing utilities (e.g. roadways, railways) or within utility rights-of-way such as overhead transmission line corridors, and can utilize suitable trees, bridges, or culverts for roosting even in urban dominated landscapes (so these are NOT considered "already developed areas" for the purposes of this question).

☐ Yes

☐ No



Already developed area: Highly disturbed habitat that does not provide potential feeding, breeding, or sheltering resources for any listed species. This does not include areas such as road or transmission line rights-of-ways, other roadside habitat, bridges/culverts or other developed or disturbed areas that still provide resources to listed species.

Consultation Outcomes/Effect Determinations

- No effect - Zero effect, no exposure / no response
- May affect, not likely to adversely affect (NLAA) - Insignificant, discountable, or beneficial
- May affect, likely to adversely affect (LAA) - Adverse effects likely, take or prohibited acts may occur



- At the discretion of the applicant
- Does not require concurrence from USFWS
- Document rationale and keep in project record



Requires concurrence letter from USFWS



Requires formal consultation and development of a Biological Opinion

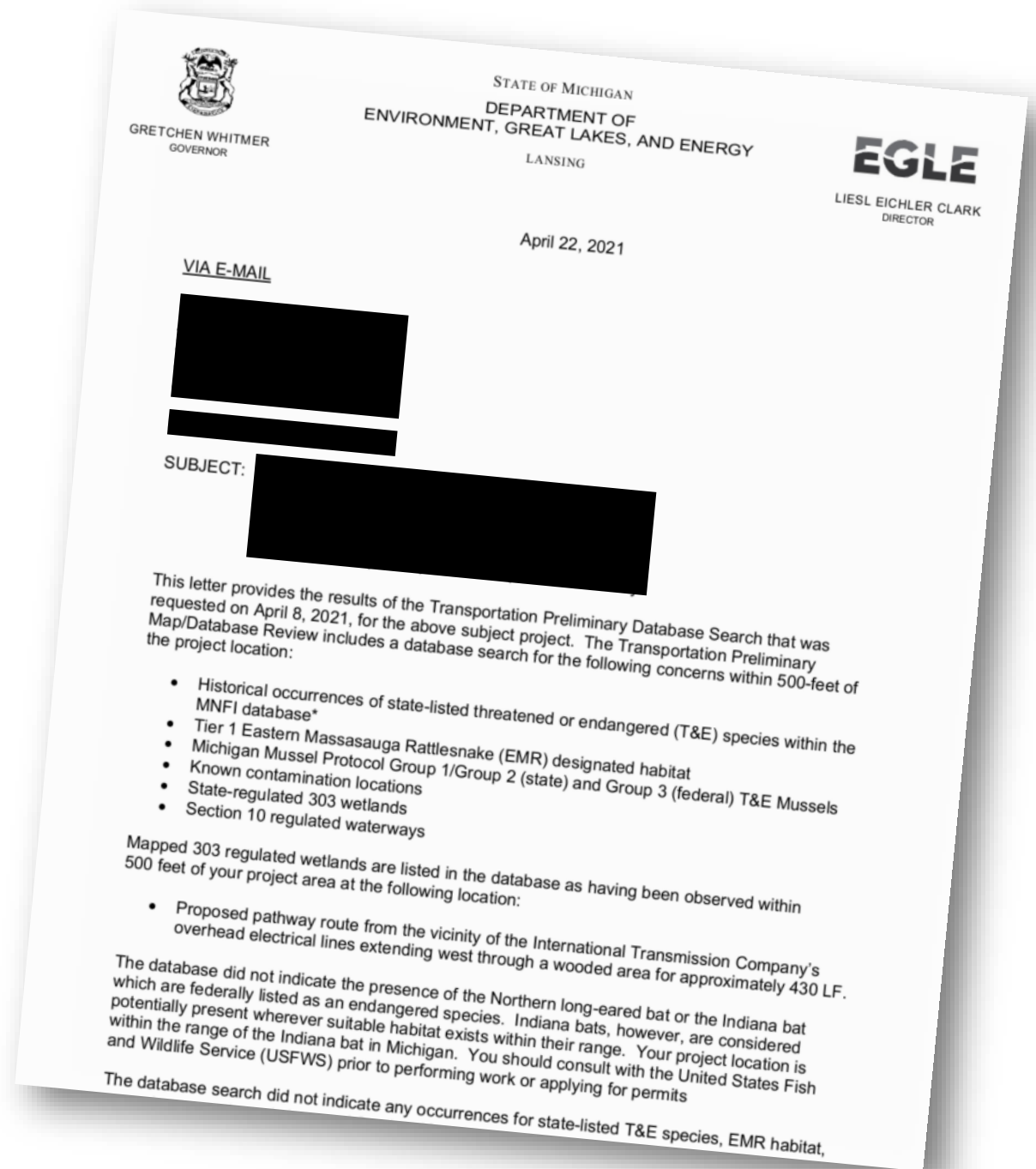


I've Completed Consultation - Now What?

- Submit consistency letter to LAP
- Submit all documentation to LAP including any email communication with USFWS/MDNR
 - Documentation should not be more than 3 years old (T&E reports, surveys of the area).
 - Bat surveys – no more than 2 years old
- Summarize everything in the 5323 form
 - Effect determinations for each species
 - List the specific BMPs or other mitigation measures you will be implementing, if any
- If you have a LAA finding, contact USFWS

State Species List

- Not needed for exempt projects
- Not needed for projects getting a permit from EGLE



Section 4f Parks & Recreation

- Three most common outcomes:
 - De Minimis
 - Temporary Use
 - Enhancement



De Minimis

- Project will have minimal impact to a 4(f) resource that is not considered to be adverse.
- Requires public involvement
 - Specifically call out the 4f property impacts in the public meeting notice and state you are seeking public comment
- Letter from the OWJ supporting project
- Written explanation why the impact is unavoidable
- Requires review by FHWA
 - FHWA will not sign off if, for example, they believe there is a detour route that could be used

Temporary Use

- Temporary occupancy isn't a 4(f) use if certain conditions are met
 - No change in ownership
 - Land used less than the time of construction
 - Scope of work is minor
 - Land is restored to previous condition or better
 - Documented agreement from the OWJ
- Examples
 - Detouring a trail
 - Leaving half of a 10-foot trail open with signage "Trail Narrows Ahead"





Enhancement

- The use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection
- Need something in writing from the OWJ stating they agree the project is an enhancement
- Example: adding a trail to a park



Wetland Mitigation

- Temporary impacts do not need to be mitigated
 - Wetland will re-establish on-site, essentially mitigating for those impacts on-site.
 - Meets federal Executive Order 11990 requirements for “no net loss of wetland”, because the temporary impacts do not result in loss of wetland.
- The only instance when EGLE would require mitigation for temporary impacts, is if it results in a conversion of the wetland from one type of wetland to another.
 - For example, if the existing wetland is a forested wetland, and they need to cut the trees to do the project, the wetland that would re-establish afterward would be an emergent wetland without trees. In that case, EGLE will request mitigation for the “wetland conversion” to a different type of wetland.

Wetland Mitigation

- EGLE does not require mitigation under Part 303, if the wetland impacts are < 0.10 acres
- FHWA requires mitigation for all wetland impacts, regardless of size, due to federal Executive Order (EO) 11990



Michigan Wetland Board for Local Transportation Agencies

989.390.2378 | www.miwb.org

Request for Mitigation Credits

Local transportation agency (LTA) requesting credits and date. Contact name and email.

DEQ permit number, if applicable. Location and name of wetlands impact project.

Does your mitigation requirement meet the EGLE Minor Project (MP) Category?

If not, your mitigation must be in the same service area as the impacts.

Acreage of wetlands impacted and type.

Acreage of credits requested and type.

Site name / county where requested mitigation site is located.

Council Advisors or MiWB Manager use only:

Advisor and recommendation:

Host CRC approval or MiWB Manager approval:



Digitally signed by Holly Vickers
DN: cn=Holly Vickers, o=Michigan Wetland Board, cn=Holly
Vickers, email=HollyVickers@miwb.org
Reason: I am the author of this document
Location: your signing location here
Date: 2023.01.13 11:58:25-0500
PDF.PDF Reader Version: 11.1.0

CHAIR: Steve Puuri

VICE CHAIR: Rob Laitinen

TREASURER: Brad Knight

Public Controversy

- If your project involves any of the following, public notice is required:
 - Roundabout
 - New signalization
 - Conversion from dirt to paved road
- Documentation such as a copy of the mailing, public comments received via email and the response from the agency, newspaper advertisement, etc





Public Controversy

- If your project involves any of the following, a public meeting is required:
 - Road diet
 - Change in traffic pattern
 - Taking of public land (park, rec, historic) and/or private property acquisition
 - New roads
 - ROW acquisition and displacement
- Documentation
 - Public notice at least 7 days prior to meeting
 - Local media, website, email list, MPO website
 - Meeting minutes showing the project was discussed, public comments/emails, sign in sheet, etc.

Connected Actions

- 40 CFR 1508.1 Effects or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.
- Effects include ecological, aesthetic, historic, cultural, economic, social, or health effects. Effects may also include those resulting from actions that may have both beneficial and detrimental effects...
- ...Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain...
- Idea of interrelated and interdependent actions from Endangered Species Act: Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration (see 50 CFR part 402.02).
 - If tree removal would not be occurring "but for" the proposed project then that needs to be included in the effects analysis of the project.



517-241-7575



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