



Via Electronic and Certified Mail

February 28, 2017

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RE: Notice of Violations of the Endangered Species Act and Its Implementing Regulations for Failure to Reinitiate Consultation on Impacts to Austin Blind Salamander and Barton Springs Salamander for Texas Department of Transportation's MoPac (State Loop 1) Intersections, Austin District Project

On behalf of the Center for Biological Diversity (the "Center") and Save Our Springs Alliance ("SOS") we hereby provide notice, pursuant to Section 11(g) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g), that the U.S. Fish and Wildlife Service ("Service") and Texas Department of Transportation ("TxDOT") are in violation of Sections 7 of the ESA, 16 U.S.C. § 1536, and the ESA's consultation regulations, 50 C.F.R. Part 402.¹ We also provide notice that TxDOT is in violation of Section 9 of the ESA, 16 U.S.C. § 1538.

¹ These violations of the ESA are also arbitrary and capricious, an abuse of discretion, and not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

These violations occurred in connection with the construction of the MoPac Intersections Project (“Intersections Project” or “the Project”), a federally funded highway project for which TxDOT is the lead agency. This highway project consists of grade separating two intersections and widening approximately two miles of MoPac Expressway (State Loop 1) in Travis County, Texas.

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.4 million members and online activists dedicated to the protection of endangered species and wild places. The Center and its members are concerned with the conservation of imperiled species and the effective implementation of the ESA.

Save Our Springs Alliance is an environmental nonprofit using education, advocacy, and litigation to protect the Edwards Aquifer, its springs and contributing streams, and the natural and cultural heritage of the Hill Country, with special emphasis on Barton Springs. Since 1992, SOS Alliance has combined science and economics with legal expertise to advocate for preserving Barton Springs and managing Austin’s urban development.

STATUTORY BACKGROUND

The reinitiation of formal consultation is required and must be requested by TxDOT or the Service if: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the action is modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. 50 C.F.R. § 402.16. This requirement applies equally to informal consultation. *See Conservation Congress v. Finley*, 774 F.3d 611, 618 (9th Cir. 2014) (holding that the consultation requirements of 50 C.F.R. § 402.16 apply to “both formal and informal consultation.”); *see also Ctr. for Native Ecosystems v. Cables*, 509 F.3d 1310, 1324-25 (10th Cir. 2007) (agreeing with principle that reinitiation of informal consultation is required if the factors under 50 C.F.R. § 402.16 are met).

Once consultation is reinitiated, TxDOT is prohibited from engaging in any activity with respect to the agency action that would constitute irreversible or irretrievable commitment of resources which may foreclose the formulation or implementation of any reasonable and prudent alternative measures. 16 U.S.C. § 1536(d).

Section 9 of the ESA prohibits any “person” from “taking” threatened and endangered species. 16 U.S.C. § 1538, 50 C.F.R. § 17.31. The definition of “take” in 16 U.S.C. § 1532(19), states, “[t]he term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Taking includes the concepts of “harm” and “harassment.” 16 U.S.C. § 1532(19). The term “harm” includes “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” 50 C.F.R. § 17.3. The term “harass” means “an intentional or negligent act or omission which creates the likelihood of

injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” 50 C.F.R. § 17.3.

Congress intended to define “take” in the “broadest possible manner to include every conceivable way” in which any person could harm or kill wildlife. S.Rep. No. 307, 93rd Cong., 1st Sess. 1, reprinted in 1973 U.S. Code Cong. & Admin. News 2989, 2995. Section 9 prohibits indirect as well as deliberate takes of endangered or threatened species. *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 700 (1995).

FACTUAL BACKGROUND

In a previous 60-day notice of intent to sue sent on May 18, 2016, we detailed several violations of the ESA, including: (1) the failure of TxDOT’s Biological Evaluation to support a “no effect” determination for the Austin blind salamander, Barton Springs salamander, and golden-cheeked warbler(2) the failure of TxDOT to timely initiate and complete consultation with the Service; and (3) its failure to insure that this project is not likely to jeopardize the continued existence of the aforementioned ESA-listed species. The following month TxDOT changed its prior “no effect” determinations for the Intersections Project—saying it “may affect” but is “not likely to adversely affect” the endangered salamanders and warbler—and initiated consultation and sought the Service’s concurrence with TxDOT’s determinations.

On June 23, 2017 the Service sent TxDOT a letter in which it concurred with TxDOT’s determination that the Intersections Project may affect, but is not likely to adversely affect the golden-cheeked warbler, Austin blind salamander, or the Barton Springs salamander, and that there will be no adverse modification of designated critical habitat for the Austin blind salamander. The letter includes a list of conservation measures that TxDOT planned to incorporate into the Intersections Project to minimize or avoid effects to these endangered species and their habitat.

The Service’s June 23, 2017 letter explains that its concurrence with TxDOT’s determination that the Intersections Project is not likely to adversely affect the three ESA-listed species and will not adversely modify critical habitat of the Austin blind salamander, is based on “TxDOT’s adherence to the conservation measures and [Best Management Practices (“BMPs”)] detailed in their multiple letter submittals and correspondence, including, but not limited to the [Water Pollution Abatement Plan (“WPAP”)], the BMP details, Void Mitigation details, and the revised EPIC and SW3P sheets.” FWS Concurrence Letter. The Service also explained that “[i]n the event the project changes or additional information on listed or proposed species becomes available, the project should be reanalyzed for effects not previously considered.”

The Intersections Project is located in one of the most environmentally sensitive and significant areas in the State of Texas: the recharge zone of the highly vulnerable underground waters of the Barton Springs segment of the Edwards Aquifer, upon which the endangered Barton Springs and Austin blind salamanders depend. The Edwards Aquifer is a karst aquifer characterized by open chambers, such as caves, fractures, and other cavities that were formed either directly or indirectly by the dissolution and fracturing of subsurface rock formations. The endangered salamanders use interstitial spaces (empty voids between rocks) within the spring or

streambed substrate, which provide foraging habitat and protection from predators and drought conditions.

Both salamander species rely on clean, well oxygenated water with substrates that are free of sediment. Changes in water quality and flow patterns can render aquatic habitat unsuitable for the salamanders. Contaminants can impact both the salamanders and their invertebrate prey base. Dye studies conducted by the City of Austin show there are channels of rapid subsurface flows from the Intersections Project area to Blowing Rock Cave and on to Barton Springs, providing an avenue for contaminants to reach these salamander habitats. Barton Springs salamanders are known to live in the aquifer within Blowing Rock Cave, approximately one mile east of the Intersections Project (specifically, at MoPac's intersection with Slaughter Lane).

In January 2019 Save Our Springs Alliance became aware that TxDOT had encountered a large cave at the MoPac and LaCrosse intersection during construction of the Intersections Project. On January 26, 2019, Mr. Bill Bunch, Executive Director of SOS, visited the site and took photos of the cave (attached as Appendix A), which reveal TxDOT's failure to adhere to conservation measures in its WPAP and Void Mitigation details. For example, TxDOT failed to cover the cave and failed to place erosion control logs 10 feet from the nearest edge. *See* Void Mitigation Details (attached as Appendix B). The conservation measures require voids to be covered to prevent contamination and changes in ambient conditions. *Id.* Based on the appearance of the closeness of the orange fencing to the cave in the photos at Appendix A, it also appears that TxDOT may not be complying with the void discovery protocol that there should be no activity within a 50-foot radius of the void.² *Id.*

An examination of Texas Commission on Environmental Quality's ("TCEQ") permit database reveals that TxDOT reported encounters with at least 21 karst features on the Intersections Project to TCEQ (attached as Appendix C). TxDOT also sent an email to a public listserv on February 8, 2019 describing encounters with karst features during construction of the Intersections Project, and including photos of a large cave (attached as Appendix D).

TxDOT acknowledged in its Environmental Assessment that the highest risk for negative groundwater impacts from the Intersections Project is the encounter of underground voids during roadway excavation. Final EA at 29. When these voids are encountered, the water quality can be degraded through introduction of silt, fuels, lubricants, and other pollutants to the subsurface, and groundwater flow may be disrupted. TxDOT acknowledges in the EA that habitat for a federally-listed species may be encountered within a discovered void and that if this happens there may be an effect on those species. *Id.* In its EA, TxDOT describes its plan to minimize and mitigate the impacts of void encounters "through project-wide awareness and education about

² Emails received by Save Our Springs Alliance on February 27, 2019, in response to a public records request to the Texas Commission on Environmental Quality ("TCEQ"), also reveal that TxDOT requested permission from TCEQ to reduce the buffer radius from 50-feet to 10-feet for at least some of the voids encountered, despite the 50-foot buffer being among the conservation measures planned by TxDOT and considered by the Service in the ESA consultation.

the need to report void discoveries and implement protection measures to protect voids by covering them to prevent sediment introduction and desiccation.” *Id.*

The Service also previously expressed concerns about the potential impact of void encounters to the Austin blind and Barton Springs salamanders on the Intersections Project because “once a void is uncovered it may be too late to prevent adverse effects from occurring.” September 7, 2016 email from the Service to TxDOT. The Service further explained that “[s]ince the project is located in the recharge zone, the potential is high that any new feature found could have a water quality connection to the aquifer adversely affecting the salamanders.” *Id.*

In addition to conservation measures mentioned above, one of TxDOT’s “Void Mitigation details” sheets includes the protocol to contact the Service if a void is encountered. Appendix B. To the best of our knowledge, TxDOT failed to notify the Service about any of the voids encountered to date on the Intersections Project. The Center submitted a FOIA request to the Service on February 7, 2019, requesting records regarding void encounters on the Intersections Project. The Service replied on February 23, 2019 that they did not find any records responsive to the request (attached as Appendix E).

VIOLATIONS OF THE ESA

Multiple events triggering the requirement to reinitiate consultation have occurred since the Service concurred with TxDOT’s “not likely to adversely affect” determination on impacts to the Austin Blind and Barton Springs salamanders from the Intersections Project. These include new information on the frequency of encounters of karst features or voids, and TxDOT’s failure to fully comply with the conservation measures³ and BMPs that led to TxDOT’s ESA determination and the Service’s concurrence.⁴ 50 C.F.R. § 402.16(b), (c). Yet TxDOT failed to timely reinitiate and complete reinitiated consultation regarding the continued implementation and impacts of the Intersections Project on the Austin blind and Barton Springs salamanders, in violation of the ESA. 16 U.S.C. §§ 1536(a)(2), 1536(b)(1)(A); 50 C.F.R. §§ 402.14, 402.16. Moreover, because the regulations mandate that the reinitiation of consultation “is required and shall be requested by the [action] agency or by the Service,” if the factors in 50 C.F.R. § 402.16 are met, the Service is also in violation of the ESA for failing to request reinitiation of consultation.

³ “Since conservation measures are part of the proposed action, their implementation is required under the terms of the consultation.” ESA Handbook at 4-19.

⁴ *See Forest Guardians v. Johanns*, 450 F.3d 455, 465-66 (9th Cir. 2006) (finding the Forest Service in violation of the ESA for failure to re-initiate informal consultation where the agency “regularly failed to meet the monitoring requirements on which the ‘not likely to adversely affect’ determination for those species was premised.”); *Sierra Club v. Marsh*, 816 F.2d 1376, 1388 (9th Cir. 1987) (The court found the agency’s failure to reinitiate consultation violated 50 C.F.R. § 402.16 because the agency failed to secure replacement habitat, a conservation measure deemed “necessary to minimize the project’s effects” in the initial consultation. The court found that the failure of the agency to secure the land constituted new information that affected the listed species “in a manner or to an extent not previously considered” in the initial consultation.

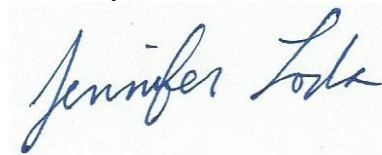
By allowing and authorizing the Intersections Project to proceed, prior to the reinitiation and completion of reinitiated consultation with the Service, TxDOT is failing to protect the Austin blind and Barton Springs salamanders from jeopardy, in violation of Section 7(a)(2) of the ESA. 16 U.S.C. § 1536(a)(2); see *Ctr. for Biological Diversity v. U.S. Bureau of Land Management*, 698 F.3d 1101 (9th Cir. 2012) (“[W]here an action agency does not reinitiate consultation with the Service despite the failure of promised conservation measures, the [concurrence] for the proposed action becomes invalid.”). For this same reason, TxDOT is also violating Section 7(d) of the ESA. 16 U.S.C. § 1536(d).

TxDOT is not authorized to “take” any ESA-listed species on the Intersections Project. New information regarding the frequency of karst feature encounters and TxDOT’s failure to adhere to its conservation measures make it likely that the Intersections Project will cause or result in an unauthorized take of one or more listed species. TxDOT is thus in ongoing violation of Section 9 of the ESA. 16 U.S.C. § 1538(a)(1); 16 U.S.C. § 1536(d); 50 C.F.R. § 17.31(a).

CONCLUSION

For the above stated reasons, TxDOT and the Service have violated and remain in ongoing violation of Section 7 of the ESA, and TxDOT has violated and remains in ongoing violation of Section 9 of the ESA. If TxDOT and the Service do not act within 60 days to correct their violations of the ESA, the Center for Biological Diversity and Save Our Springs Alliance will file suit for declaratory and injunctive relief, as well as attorney fees and costs. 16 U.S.C. § 1540(g). Alternatively, the Center and SOS may seek to amend their current lawsuit filed with the U.S. District Court, Western District of Texas, titled *Center for Biological Diversity v. Texas Department of Transportation*, and assigned Case No. 1:16-cv-00876-LY. If you have any questions, wish to meet to discuss this matter, or feel this notice is in error, please contact Jennifer Loda (jloda@biologicaldiversity.org, 510-844-7100 x336).

Sincerely,



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APPENDIX A

Photos taken by Bill Bunch of cave at MoPac Intersections median, just north of LaCrosse Avenue on January 26, 2019





Appendix B

VOID DEFINITIONS

- VOID GREATER THAN SIX INCHES ACROSS IN ANY DIRECTION
- VOID IS GREATER THAN ONE SQUARE FOOT ALONG ANY PLANE
- VOID BLOWS AIR
- VOID CONTINUALLY RECEIVES WATER DURING A RAIN EVENT
- VOID HAS WATER FLOWING THROUGH OR OUT OF IT

GENERAL NOTES:

1. DOWN TIME ASSOCIATED WITH VOID MITIGATION MEASURES WILL BE NON-COMPENSABLE. TIME WILL BE SUSPENDED IF ITEM OF WORK IS ON CRITICAL PATH PER THE LATEST SCHEDULE UPDATE.
2. CONCRETE USED FOR VOID MITIGATION SHALL BE IN ACCORDANCE WITH ITEM 420 CLASS A CONC (MISC); EXCEPT FOR VOIDS DISCOVERED DURING DRILL SHAFT CONSTRUCTION. QUANTITIES UNDER 4 CY MAY BE HAND MIXED ON SITE USING 5,000 PSI RATED BAG MIX CONCRETE.
3. 3' " X 5' " ROCK SHALL BE IN ACCORDANCE WITH ITEM 506.
4. FILTER FABRIC SHALL BE IN ACCORDANCE WITH ITEM 506.
5. STEEL CASING, USED FOR DRILL SHAFT CONSTRUCTION, SHALL BE IN ACCORDANCE WITH ITEM 416. CASING LEFT IN PLACE WILL BE PAID FOR BY FORCE ACCOUNT AND WILL INCLUDE MATERIALS, LABOR AND EQUIPMENT.

VOID MITIGATION AND PROTECTION MEASURE

REFER TO VOID MITIGATION DETAILS FOR ADDITIONAL INFORMATION. VOID MITIGATION DETAILS ARE TO BE APPROVED BY GEOSCIENTIST AND THE TCEQ PRIOR TO IMPLIMENTATION.

1. IN THE EVENT THAT SIGNIFICANT SUBSURFACE VOIDS ARE ENCOUNTERED, WORK AT THAT LOCATION WILL BE HALTED IMMEDIATELY AND THE FEATURE WILL BE INSPECTED PROMPTLY BY A QUALIFIED GEOSCIENTIST.
2. THE QUALIFIED GEOSCIENTIST WILL INSPECT ALL VOIDS TO DETERMINE THE APPROPRIATE VOID MITIGATION PLAN.
3. IN CASE OF SMALL (LESS THAN ONE CUBIC FOOT), DRY VOIDS WITH NO BIOLOGICAL ACTIVITY, THE VOID SHOULD BE COVERED BY EITHER (1) FILTER FABRIC WITH A THREE FOOT OVERLAP OR (2) PLYWOOD PLANKING WEIGHTED IN PLACE WITH ROCK OR BLOCK WEIGHING NO LESS THAN FIVE POUNDS IN ORDER TO PREVENT BACKFILL MATERIAL FROM ENTERING THE VOID.
4. LARGER VOIDS SHOULD BE HAND FILLED WITH ROCK (3" TO 5"), COVERED WITH FILTER FABRIC, COVERED WITH CLASS A (CONC.) (18" MINIMUM THICKNESS), THEN COVERED WITH BACKFILL.
5. IN CASES OF VOIDS WITH WATER FLOW, FLOW WOULD BE MAINTAINED TO THE GREATEST EXTENT PRACTICAL, THE WALLS WOULD BE STABILIZED IF NECESSARY WITH PLANKS OR SANDBAGS, CONCRETE WOULD BE POURED OVER THE PIPE.

VOID DISCOVERY PROTOCOL

IF A VOID IS DISCOVERED DURING GRADING, TRENCHING, TREE REMOVAL, DRILL SHAFT CONSTRUCTION, OR ANY OTHER CONSTRUCTION ACTIVITY, THE FOLLOWING PROTOCOL WILL BE FOLLOWED:

1. ALL ACTIVITY WITHIN A 50-FOOT RADIUS OF THE VOID WOULD IMMEDIATELY STOP.
2. COVER THE VOID TO PREVENT CONTAMINATION AND CHANGES IN AMBIENT CONDITIONS (TARPS AND PLYWOOD, OR SIMILAR MATERIALS ARE APPROPRIATE AS AVAILABLE). BIODEGRADABLE EROSION CONTROL LOG (BECL) SHOULD WRAP THE SURFACE PERIMETER OF THE VOID.
3. TxDOT SHALL IMMEDIATELY NOTIFY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) REGIONAL OFFICE AND BARTON SPRINGS EDWARDS AQUIFER CONSERVATION DISTRICT (BSEACD) PERSONNEL. BSEACD CONTACT: (512) 282-8441
4. TxDOT WILL PROVIDE FOR THE EVALUATION OF THE VOID BY A QUALIFIED GEOSCIENTIST LICENSED BY THE TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS OR BY A PROFESSIONAL ENGINEER WHO QUALIFIES TO PRACTICE GEOSCIENCE ACCORDING TO THE TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS.
5. WORK SHOULD CEASE IN THE AREA UNTIL ASSESSMENT OF THE VOID CAN BE COMPLETED.
6. TEMPORARY PROTECTIONS SHOULD REMAIN IN PLACE UNTIL FINAL MITIGATION AND PROTECTION MEASURES ARE APPROVED BY TCEQ AND IN PLACE. A BERM WILL BE MAINTAINED TO PREVENT ANY CONSTRUCTION RUNOFF FROM ENTERING ANY PART OF THE FEATURE WHICH MAY REMAIN.
7. ALSO, BLOCK TRAFFIC FROM DRIVING NEAR THE VOID AND PREVENT CONSTRUCTION EQUIPMENT FROM OPERATING IN THE VICINITY OF THE VOID (TYPICALLY NO ACTIVITY SHOULD OCCUR WITHIN 50 FEET OF THE VOID).

IF A VOID IS ENCOUNTERED CONTACT TCEQ AND U.S. FISH AND WILDLIFE SERVICE.

FOR TCEQ, VOIDS MAY BE REPORTED BY EMAIL TO: EAPPVOID@TCEQ.TEXAS.GOV THE E-MAIL MUST INCLUDE:

- THE NAME OF THE PROJECT
- THE EDWARDS AQUIFER PROTECTION PLAN ID NUMBER FOUND ON THE APPROVAL LETTER.
- THE COUNTY THE PROJECT IS LOCATED IN
- THE NUMBER OF FEATURES DISCOVERED
- THE DATE EACH FEATURE WAS DISCOVERED
- THE CONTACT INFORMATION FOR THE PERSON RESPONSIBLE FOR THE VOID MITIGATION PLAN

FOR U.S. FISH AND WILDLIFE, VOIDS MY BE REPORTED BY PHONE AT: 512-490-0057.



Adrian Martinez

12/27/2016

REV	DATE	DESCRIPTION



VOID MITIGATION DETAILS

STATE		COUNTY		FED. NO.	STATE
TEXAS		TRAVIS		6	14
CONT.	SECT.	JOB	HIGHWAY NO.		
3136	01	015	SL 1		

Attachment F

EPIC Sheet and Void Mitigation Details

<p>I. STORMWATER POLLUTION PREVENTION—CLEAN WATER ACT SECTION 402</p> <p>TDES TXR 150000: Stormwater Discharge Permit or Construction General Permit required for projects with 1 or more acres disturbed soil. Projects with any disturbed soil must protect for erosion and sedimentation in accordance with Item 1122.</p> <p>List MS4 Operator(s) that may receive discharges from this project. They may need to be notified prior to construction activities.</p> <ol style="list-style-type: none"> CITY OF AUSTIN <p>Action No. <input type="checkbox"/> No Action Required <input checked="" type="checkbox"/> Required Action</p> <ol style="list-style-type: none"> Prevent stormwater pollution by controlling erosion and sedimentation in accordance with TDES Permit TXR 150000 Comply with the SWP and revise when necessary to control pollution or required by the Engineer. Post Construction Site Notice (CSN) with SWP information on or near the site, accessible to the public and TCEQ, EPA or other inspectors. When Contractor project specific locations (PSL's) increase disturbed soil area to 5 acres or more, submit NOI to TCEQ and the Engineer. 	<p>III. CULTURAL RESOURCES</p> <p>Refer to TxDOT Standard Specifications in the event historical issues or archaeological artifacts are found during construction. Upon discovery of archeological artifacts (bones, burnt rock, flint, pottery, etc.) cease work in the immediate area and contact the Engineer immediately.</p> <p><input checked="" type="checkbox"/> No Action Required <input type="checkbox"/> Required Action</p> <p>Action No.</p> <p>IV. VEGETATION RESOURCES</p> <p>Preserve native vegetation to the extent practical. Contractor must adhere to Construction Specification Requirements Specs 162, 164, 192, 193, 506, 730, 751, 752 in order to comply with requirements for invasive species, beneficial landscaping, and tree/brush removal commitments.</p> <p><input type="checkbox"/> No Action Required <input checked="" type="checkbox"/> Required Action</p> <p>Action No.</p> <ol style="list-style-type: none"> AVOID AND MINIMIZE CONSTRUCTION-RELATED VEGETATION AND SOIL DISTURBANCE TO THE MAXIMUM EXTENT PRACTICABLE. ESPECIALLY IN AREAS WITHIN THE ROW, BUT OUTSIDE THE CONSTRUCTION LIMITS. REVEGETATE ALL AREAS DISTURBED DURING CONSTRUCTION ACCORDING TO TXDOT SPECIFICATIONS AS SOON AS IT BECOMES PRACTICABLE. CONSTRUCT PERMANENT EROSION CONTROLS AS SOON AS FEASIBLE DURING EARLY CONSTRUCTION THROUGH PROPER SODDING AND/OR SEEDING TECHNIQUES. RESTORE AND STABILIZE DISTURBED AREAS AS SOON AS THE CONSTRUCTION SCHEDULE PERMITS. CONSIDER PLANTING TREES WHERE LARGE AREAS OF DISTURBED AREAS ARE BARE FOR A CONSIDERABLE LENGTH OF TIME. <p>V. FEDERAL LISTED, PROPOSED THREATENED, ENDANGERED SPECIES, CRITICAL HABITAT, STATE LISTED SPECIES, CANDIDATE SPECIES AND MIGRATORY BIRDS.</p> <p><input checked="" type="checkbox"/> No Action Required <input type="checkbox"/> Required Action</p> <p>Action No.</p> <p>If any of the listed species are observed, cease work in the immediate area, do not disturb species or habitat and contact the Engineer immediately. The work may not remove active nests from bridges and other structures during nesting season of the birds associated with the nests. If coves or sinkholes are discovered, cease work in the immediate area, and contact the Engineer immediately.</p>	<p>VI. HAZARDOUS MATERIALS OR CONTAMINATION ISSUES</p> <p>General applies to all projects:</p> <ul style="list-style-type: none"> Complete the Hazard Communication Act (the Act) for personnel who will be working with hazardous materials. This means that workers performing construction activities are making workers aware of potential hazards in the workplace. Ensure that all workers are provided with personal protective equipment appropriate for any hazardous materials used. Obtain and keep on-site Material Safety Data Sheets (MSDS) for all hazardous products used. MSDS sheets should be kept in a safe location accessible to all workers. Paints, oils, solvents, asphalt products, chemical additives, fuels and concrete curing compounds or additives. Provide protected storage, off bare ground and covered, for products which may be hazardous. Maintain product labelling as required by the Act. Maintain an adequate supply of on-site spill response materials, as indicated in the MSDS. Spill response materials should be stored in a safe location accessible to all workers, in accordance with safe work practices, and contact the District Spill Coordinator immediately. The Contractor shall be responsible for the proper containment and cleanup of all product spills. Contact the Engineer if any of the following are detected: <ul style="list-style-type: none"> * Dead or distressed vegetation (not identified as normal) * Unusual odors, smells or tastes * Undesirable smells or odors * Evidence of leaching or seepage of substances <p>Does the project involve any bridge class structure rehabilitation or replacements (bridge class structures not including box culverts)?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "Yes", then no further action is required. If "Yes", then TXDOT is responsible for completing asbestos assessment/inspection. Are the results of the asbestos inspection positive (is asbestos present)?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "Yes", then TXDOT must retain a DSHS licensed asbestos consultant to assist with the notification, develop abatement/mitigation procedures, and perform management activities as necessary. The notification form to DSHS must be postmarked at least 10 working days prior to scheduled demolition.</p> <p>If "No", then TXDOT is still required to notify DSHS 10 working days prior to any scheduled demolition.</p> <p>In either case, the contractor is responsible for providing the date(s) for abatement activities and/or demolition with careful coordination between the Engineer and asbestos consultant in order to minimize construction delays and subsequent claims.</p> <p>Any other evidence indicating possible hazardous materials or contamination discovered on site. Hazardous Materials or Contamination Issues Specific to this Project:</p> <p><input checked="" type="checkbox"/> No Action Required <input type="checkbox"/> Required Action</p> <p>Action No.</p> <p>VII. OTHER ENVIRONMENTAL ISSUES</p> <p>(Includes regional issues such as Edwards Aquifer District, etc.)</p> <p><input type="checkbox"/> No Action Required <input checked="" type="checkbox"/> Required Action</p> <p>Action No.</p> <ol style="list-style-type: none"> WATER POLLUTION ABATEMENT PLAN (WPAP) TSS REMOVAL TO MEET TCEQ REGULATIONS. MEET 1990 CONCENT DECREE REQUIREMENTS. SOLE SOURCE AQUIFER (SSA) 																																																																											
<p>IX. BEST MANAGEMENT PRACTICES</p> <p>The elevation of the ordinary high water marks of any areas requiring work to be performed in the waters of the US requiring the use of a nationwide permit can be found on the Bridge Layouts.</p> <p>Best Management Practices:</p> <table border="0"> <tr> <th>Erosion</th> <th>Sedimentation</th> <th>Post-Construction TSS</th> </tr> <tr> <td><input checked="" type="checkbox"/> Temporary Vegetation</td> <td><input checked="" type="checkbox"/> Silt Fence</td> <td><input checked="" type="checkbox"/> Vegetative Filter Strips</td> </tr> <tr> <td><input checked="" type="checkbox"/> Blankets/Matting</td> <td><input checked="" type="checkbox"/> Rock Berm</td> <td><input type="checkbox"/> Retention/Irrigation Systems</td> </tr> <tr> <td><input type="checkbox"/> Mulch</td> <td><input type="checkbox"/> Triangular Filter Dike</td> <td><input type="checkbox"/> Extended Detention Basin</td> </tr> <tr> <td><input type="checkbox"/> Sodding</td> <td><input checked="" type="checkbox"/> Sand Bag Berm</td> <td><input type="checkbox"/> Constructed Wetlands</td> </tr> <tr> <td><input type="checkbox"/> Interceptor Swale</td> <td><input type="checkbox"/> Straw Bale Dike</td> <td><input type="checkbox"/> Wet Basin</td> </tr> <tr> <td><input type="checkbox"/> Diversion Dike</td> <td><input type="checkbox"/> Brush Berms</td> <td><input type="checkbox"/> Erosion Control Compost</td> </tr> <tr> <td><input type="checkbox"/> Erosion Control Compost</td> <td><input type="checkbox"/> Erosion Control Compost</td> <td><input type="checkbox"/> Mulch Filter Berm and Socks</td> </tr> <tr> <td><input type="checkbox"/> Mulch Filter Berm and Socks</td> <td><input type="checkbox"/> Mulch Filter Berm and Socks</td> <td><input type="checkbox"/> Compost Filter Berm and Socks</td> </tr> <tr> <td><input type="checkbox"/> Compost Filter Berm and Socks</td> <td><input type="checkbox"/> Compost Filter Berm and Socks</td> <td><input type="checkbox"/> Vegetation Lined Ditches</td> </tr> <tr> <td><input type="checkbox"/> Stone Outlet Sediment Traps</td> <td><input type="checkbox"/> Sand Filter Systems</td> <td><input type="checkbox"/> Sand Filter Systems</td> </tr> <tr> <td><input type="checkbox"/> Sediment Basins</td> <td><input checked="" type="checkbox"/> Batch Detention Systems</td> <td></td> </tr> </table>	Erosion	Sedimentation	Post-Construction TSS	<input checked="" type="checkbox"/> Temporary Vegetation	<input checked="" type="checkbox"/> Silt Fence	<input checked="" type="checkbox"/> Vegetative Filter Strips	<input checked="" type="checkbox"/> Blankets/Matting	<input checked="" type="checkbox"/> Rock Berm	<input type="checkbox"/> Retention/Irrigation Systems	<input type="checkbox"/> Mulch	<input type="checkbox"/> Triangular Filter Dike	<input type="checkbox"/> Extended Detention Basin	<input type="checkbox"/> Sodding	<input checked="" type="checkbox"/> Sand Bag Berm	<input type="checkbox"/> Constructed Wetlands	<input type="checkbox"/> Interceptor Swale	<input type="checkbox"/> Straw Bale Dike	<input type="checkbox"/> Wet Basin	<input type="checkbox"/> Diversion Dike	<input type="checkbox"/> Brush Berms	<input type="checkbox"/> Erosion Control Compost	<input type="checkbox"/> Erosion Control Compost	<input type="checkbox"/> Erosion Control Compost	<input type="checkbox"/> Mulch Filter Berm and Socks	<input type="checkbox"/> Mulch Filter Berm and Socks	<input type="checkbox"/> Mulch Filter Berm and Socks	<input type="checkbox"/> Compost Filter Berm and Socks	<input type="checkbox"/> Compost Filter Berm and Socks	<input type="checkbox"/> Compost Filter Berm and Socks	<input type="checkbox"/> Vegetation Lined Ditches	<input type="checkbox"/> Stone Outlet Sediment Traps	<input type="checkbox"/> Sand Filter Systems	<input type="checkbox"/> Sand Filter Systems	<input type="checkbox"/> Sediment Basins	<input checked="" type="checkbox"/> Batch Detention Systems		<p>X. 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Appendix I

Void Mitigation Guide (In DRAFT, ENV working with TCEQ to finalize)

1. Include the following plan sheets and pay items.
 1. Void Mitigation sheets in CSJ 3136-01-015, Letting Date ??/??
 2. 0506 6035 SANDBAGS FOR EROSION CONTROL
 3. 0506-6040 BIODEG EROSN CONT LOGS (INSTL) (8")
 4. 0506-6043 BIODEG EROSN CONT LOGS (REMOVE)
 5. 0420 6002 CL A CONC (MISC)
 6. 0481 6023 PIPE (PVC) (SCH 80) (6 IN)
2. Add following to General notes for Item 100, Item 7, and Item 416
 1. Item 100 Prep ROW

Clear all trees required per plans as early as possible. Once clearing begins, perform the work as a continuous operation until complete.

Strip and stockpile the topsoil in each phase in a continuous operation. Provide TxDOT a 120 hour notice prior to completion of the work for each phase. Delay the start of all excavation for 48 hours upon completion of topsoil removal. TxDOT will provide approval to proceed with excavation after inspection of the stripped area. This delay is non compensable.

2. Item 7 – Void Mitigation

Using explosives is not allowed.

The project area is a known karst area. Fractured material, boulders, underground voids, ground water, unstable material, and drastically varying strata can be expected. The Contractor shall work with TxDOT and TxDOT's partners to allow access and on site monitoring of excavation.

All voids that require action shall be temporarily covered with a plastic tarp (overlap edge of void minimum of 3 ft.) or plywood (overlap edge of void minimum of 1 ft.). Erosion control logs shall be placed around the feature at an offset of 10' from the nearest edge. Work within the logs shall be suspended. The logs will be paid using the appropriate bid item or silt fence. The tarp and plywood are subsidiary.

A dry void that is less than 1 CF in volume or less than 6 in. in all directions will not require action. TxDOT shall be notified immediately via email and phone when a void is found that requires action. TxDOT will determine within 24 hours if a standard response can be implemented. If a standard response does not apply, TxDOT will respond within 6 business days from time of email notification to provide guidance to the Contractor.

If a single void delay is greater than 5 charge days and impacts the critical path per the latest schedule, time will be suspended starting on the 6th charge day until the response has been provided. Overhead or barricades will not be paid during this delay. If a single void delay is greater than 20 charge days and impacts the critical path, barricades and overhead in accordance with Item 4.6.2 will be paid for the charge days beyond the initial 20 days. If the accumulation of all suspended days is greater than 40 charge days and impacted the critical path, barricades and overhead in accordance with Item 4.6.2 will be paid for the charge days beyond the 40 days.

All delays caused by a void and the duration for implementation of a response are non-compensable for labor, equipment, standby, mobilizations, and cost escalations.

Contractor shall supply a camera and ability to allow visual investigation of voids during all types of excavation and drill shaft installation.

Concrete will be paid using Class A Conc (Misc). Concrete will be unreinforced. Quantities under 4 CY may be hand mixed on site using 5000psi rated bag mix

concrete. Aggregate or other backfill will be paid by overrun of the existing embankment item. Filter fabric over the aggregate is subsidiary. Sandbags shall be paid using Sandbags for Erosion Control. The sandbags shall be polypropylene and filled with pea gravel. Connector pipe shall be paid using Pipe (PVC) (SCH 80) (6 IN).

3. Item 416 Drilled Shafts

Refer to Item 7 for void notes and mitigation process.

Submit installation plan for review no later than 2 months before construction.

Contractor shall supply a camera and ability to allow visual investigation of voids.

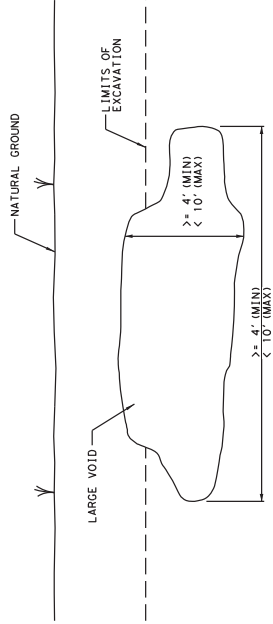
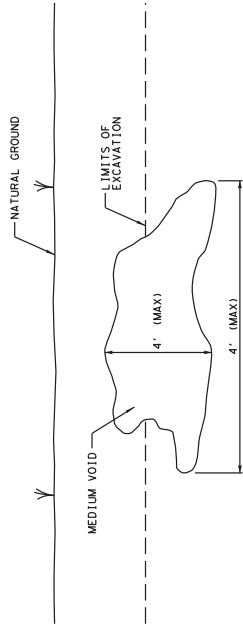
During non-work hours open holes shall be covered and surrounded by erosion control logs at an offset of 10' from the edge of the opening. This work is subsidiary.

Concrete used to fill the voids will be paid using Class A Conc (Misc) item but will use the Class of concrete as required by the specification. Concrete for payment will be measured as the additional concrete beyond the amount required to place a clean shaft plus 10 percent waste.

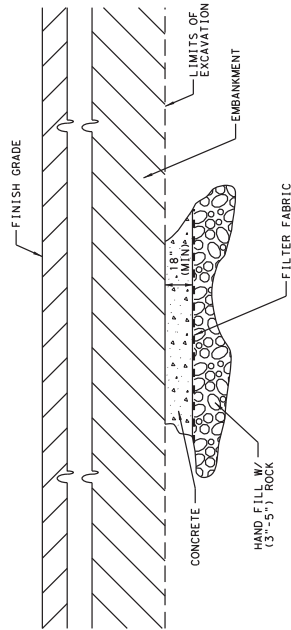
The use of drilling fluids, underwater placement, or slurry method will not be allowed if a void is exposed during drilling. The contractor shall use appropriate industry approved methods to provide a product in compliance with the specifications. Additional time or compensation will not be allowed for use of alternate methods or casing installation.

If a large void requires the permanent placement of casing, casing shall be in accordance with Item 416. Casing that remains will be paid by invoice from supplier with mark up in accordance with material for Item 9.7. Labor, equipment, additional time, etc. will not be compensable. If the casing installation impacts the critical path per the latest schedule, time will be suspended beginning when direction is given to leave the casing until the casing is installed. Delays will be compensated in accordance with Item 7.

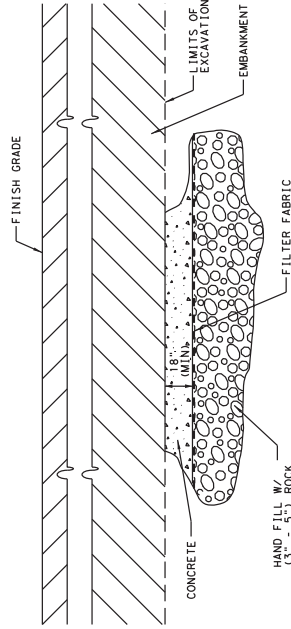
Core holes are required for all drill shafts.



NOTES:
1. REFER TO GENERAL NOTES FOR
ADDITIONAL INFORMATION.




MEDIUM (DRY VOID)
($< 4'$ IN ANY DIRECTION)
(1 CF < 64 CF)



LARGE (DRY VOID)
($> 4'$ IN ANY DIRECTION)
(64 CF < 1000 CF)

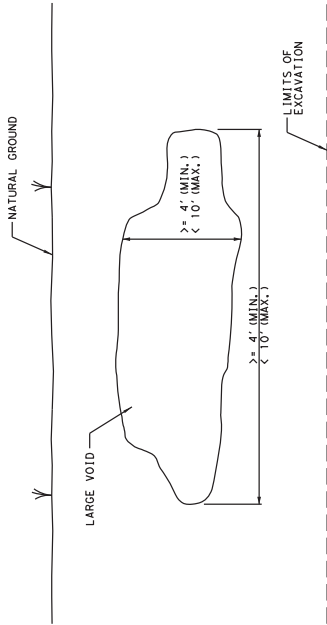
VOID MITIGATION
DETAILS
ROADWAY/SUP
GRADING OPERATIONS



Texas Department of Transportation

© 2016

DATE		REVISION		JOB	PROJECT	SHEET NO.	
3/13/16		01		015	01	01	
COUNTY				TRAVIS			
AUS				TRAVIS			



**VOID MITIGATION
DETAILS**
**ROADWAY/SUP
GRADING OPERATIONS**

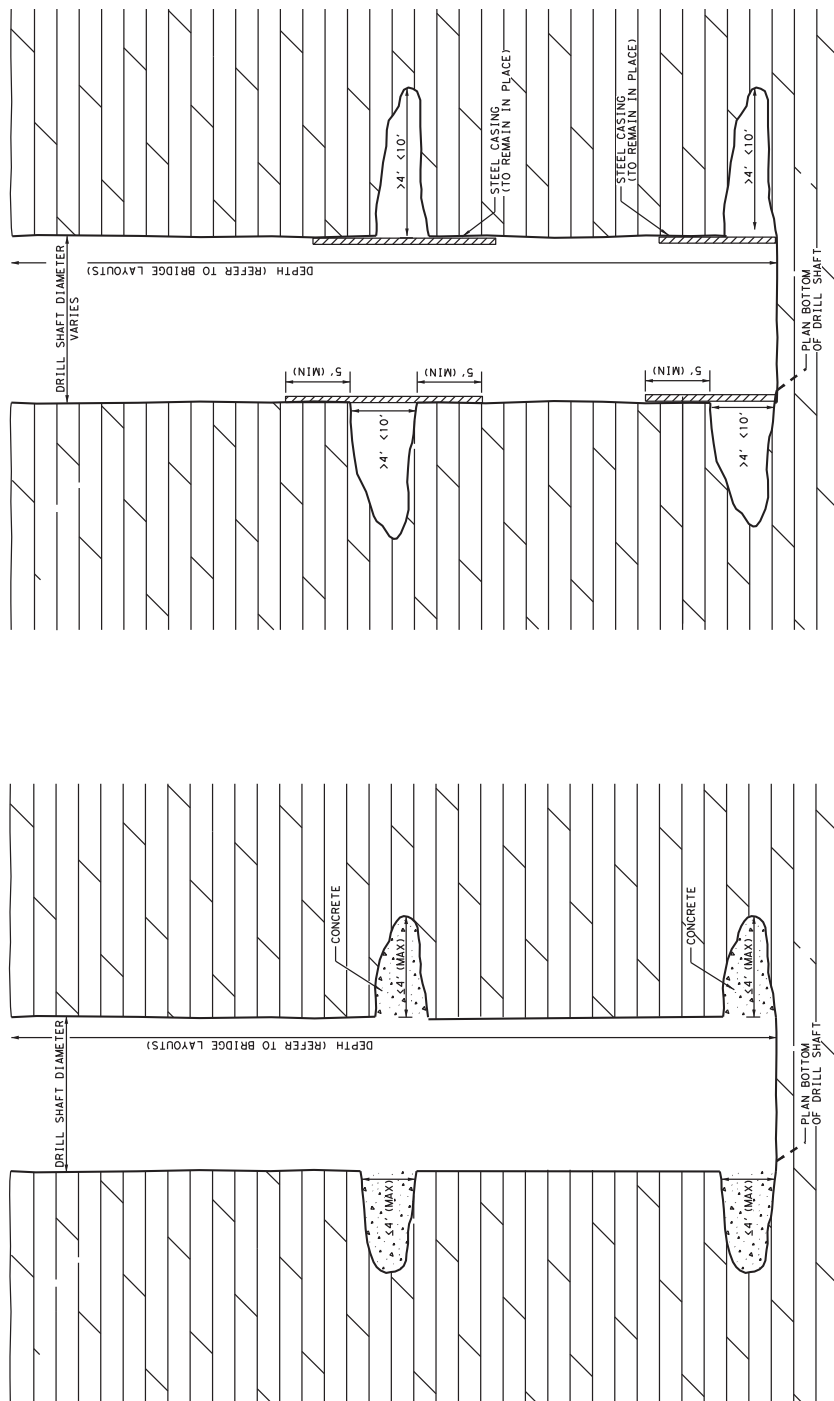
© 2016
Texas Department of Transportation

OWNER	SECTION	JOB	SECTION	ALTERNATE
3136	01	015	SL 1	
DIST.	COUNTY	COUNTY	SHEET NO.	
AUS	TRAVIS			

NOTES:
1. REFER TO GENERAL NOTES FOR
ADDITIONAL INFORMATION.

SMALL/MEDIUM (DRY VOID)
(≤4' IN ANY DIRECTION)

WHERE VOIDS ARE ENCOUNTERED, DRILL SHAFT LENGTHS MAY NEED TO BE INCREASED. APPROVAL FROM THE ENGINEER OF RECORD IS REQUIRED TO COMPLETE CONSTRUCTION OF THE DRILL SHAFT.

SMALL/MEDIUM (DRY VOID)
(≤4' IN ANY DIRECTION)

WHERE VOIDS ARE ENCOUNTERED, DRILL SHAFT LENGTHS MAY NEED TO BE INCREASED. APPROVAL FROM THE ENGINEER OF RECORD IS REQUIRED TO COMPLETE CONSTRUCTION OF THE DRILL SHAFT.

- NOTES:
1. STEEL CASING WILL BE USED FOR DRILL SHAFT INSTALLATION. THE EXISTING CASING SHALL BE REMOVED AND VOIDED TO ITS ORIGINAL MINIMUM AMOUNT OF CONCRETE TO BE VOIDED.
 2. STEEL CASING TO REMAIN IN PLACE SHALL BE IN ACCORDANCE WITH ITEM 416.
 3. STEEL CASING SHOULD EXTEND A MINIMUM OF FIVE FEET FROM THE EDGE OF THE VOID.
 4. AS PART OF THE DRILL SHAFT INSTALLATION AND METHODS FOR ANCHORING THE CASING, REFER TO GENERAL NOTES FOR ADDITIONAL INFORMATION.

Central Registry

The Customer Name displayed may be different than the Customer Name associated to the Additional IDs related to the customer. This name may be different due to ownership changes, legal name changes, or other administrative changes.

Detail of: **Edwards Aquifer Permit 11000467**

For: **MOPAC INTERSECTIONS (RN102759545)**

MOPAC FROM SLAUGHTER LN TO LA CROSSE AVE

Permit Status: **ACTIVE**

Held by: **Texas Department of Transportation (CN600803456)** View 'Issued To'

History

OWNER OPERATOR Since 02/15/1993 View Compliance History

Mailing Address: 9725 S IH 35 AUSTIN, TX 78744 -7930

Legal	Description	Start Date	End Date	Type	Status	Status Date
11000467	EDWARDS AQUIFER	12/01/2016		PERMIT	APPROVED	02/28/2017

Tracking No.	Type	Value	Start Date	End Date
23228104	Notice of Construction Date	01/12/2018	01/12/2018	
23969016	APPLICATION RECEIVED	PF-025 SC	01/25/2019	01/31/2019
23969344	APPLICATION RECEIVED	PF-028 SC	01/25/2019	01/31/2019
23918642	APPLICATION RECEIVED	PF-026 SC	01/15/2019	01/24/2019
23879604	APPLICATION RECEIVED	PF-030	12/13/2018	
23622517	APPLICATION RECEIVED	PF-019A SC	12/10/2018	12/14/2018
23585171	APPLICATION RECEIVED	CAVE PF-027 A&B	11/21/2018	11/29/2018
23600068	APPLICATION RECEIVED	PF-015 ZONE	11/12/2018	12/06/2018
23440418	APPLICATION RECEIVED	PF-023 SC	10/25/2018	11/01/2018
23367726	APPLICATION RECEIVED	SC PF-021	10/10/2018	10/17/2018
23312994	APPLICATION RECEIVED	PF-020	09/26/2018	09/27/2018
23312811	APPLICATION RECEIVED	PF-018	09/20/2018	09/27/2018
23262205	APPLICATION RECEIVED	PF-016 & 016A	09/05/2018	09/10/2018
23216396	APPLICATION RECEIVED	PF-014	08/15/2018	08/15/2018
23183716	APPLICATION RECEIVED	PF-012	07/27/2018	08/03/2018
23184371	APPLICATION RECEIVED	PF-013	07/27/2018	08/03/2018
23038512	APPLICATION RECEIVED	PF-011 SC	06/21/2018	06/25/2018
22990787	APPLICATION RECEIVED	PF-006 SC	06/08/2018	06/11/2018

22987731	APPLICATION RECEIVED	PF-007 SC	06/01/2018	06/07/2018
22958077	APPLICATION RECEIVED	PF-005 SC	05/17/2018	06/01/2018
22899763	APPLICATION RECEIVED	PF-001 ZONE	05/15/2018	05/22/2018
22720183	APPLICATION RECEIVED	PF-002 SC	04/10/2018	04/11/2018
21196765	APPLICATION RECEIVED	12/01/2016	12/01/2016	02/28/2017

Physical	Description	Start Date	Type	Status	Status Date
MOPAC INTERSECTIONS		12/01/2016	EDWARDS AQUIFER SITE	SEE LEGAL STATUS	12/01/2016

Tracking No.	Type	Value	Start Date	End Date
21196860	Project Area	110.89 ACRES	12/02/2016	
21196861	Watershed	SLAUGHTER CREEK	12/02/2016	
21267624	Watershed	WILLIAMSON CREEK	12/02/2016	
21407486	Permanent BMP Name	PFC	12/02/2016	
21407488	Permanent BMP Name	VFS	12/02/2016	
21407490	Permanent BMP Name	HMT	12/02/2016	
21407482	Feature Name	MP-001	12/02/2016	
23969049	Encountered Feature Name	PF-025 SC	01/25/2019	
23879614	Encountered Feature Name	PF-030 SC	12/01/2018	
23969426	Encountered Feature Name	PF-028 SC	11/13/2018	
23585224	Encountered Feature Name	PF-027 A&B	11/06/2018	
23918655	Encountered Feature Name	PF-026	11/06/2018	
23440426	Encountered Feature Name	PF-023 SC	10/12/2018	
23367750	Encountered Feature Name	PF-021	09/27/2018	
23313002	Encountered Feature Name	PF-020	09/26/2018	
23312824	Encountered Feature Name	PF-018	09/20/2018	
23622557	Encountered Feature Name	PF-019 SC	09/17/2018	
23262261	Encountered Feature Name	PF-016&A	08/23/2018	
23600075	Encountered Feature Name	PF-015	08/16/2018	
23216442	Encountered Feature Name	PF-014	08/02/2018	08/15/2018
23184465	Encountered Feature Name	PF-013	07/17/2018	08/03/2018
23184006	Encountered Feature Name	PF-012	07/13/2018	08/03/2018
23038692	Encountered Feature Name	PF-011	06/12/2018	06/25/2018
22958453	Encountered Feature Name	PF-005	05/09/2018	
22987901	Encountered Feature Name	PF-007	05/09/2018	
22994126	Encountered Feature Name	PF-006	05/09/2018	
22899958	Encountered Feature Name	PF-001 ZONE	03/29/2018	
22720192	Encountered Feature Name	PF-002	03/26/2018	

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Statewide Links: [Texas.gov](#) | [Texas Homeland Security](#) | [TRAIL Statewide Archive](#) | [Texas Veterans Portal](#)

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Appendix D

Jenny Loda

From: Kelly Davis <kelly@sosalliance.org>
Sent: Monday, February 11, 2019 2:07 PM
To: Jenny Loda
Subject: FW: Construction Update

I think there had been too many forwards in the last email chain. Try this one for photos.



Kelly Davis
Staff Attorney
kelly@sosalliance.org
(512) 477-2320 ext. 306
905 W. Oltorf St., Ste. A
Austin, Texas 78704
SOSAlliance.org

From: MoPac Intersections - Slaughter Lane & La Crosse Avenue [mailto:MoPacIntersections@txdot.gov]
Sent: Friday, February 08, 2019 5:08 PM
To: kelly@sosalliance.org
Subject: Construction Update



MoPac Intersections Slaughter Lane & La Crosse Avenue

INNOVATIVE INTERSECTION UPDATE

Exciting news! The project team continues to reach milestones on the MoPac Intersections project. The diverging diamond intersection (DDI) at Slaughter Lane opened in October and you've probably noticed traffic flow has greatly improved. Crews are also working on the Slaughter Lane ramps and overhead sign bridges at the DDI to install permanent signage.



Slaughter Lane DDI

Construction is moving south toward La Crosse Avenue. Sound walls are being built on the east and west side of MoPac between Slaughter Creek and La Crosse Avenue. Retaining walls are being erected in various locations, and excavation activities continue to prepare for bridge construction, which is anticipated to begin this spring. The project remains on time for a completion date of early 2021.

DID YOU KNOW?

Throughout the construction process crews have discovered some interesting features in the area, which are common in the Edwards Aquifer Recharge Zone. Examples of these karst features include underground caves, sink holes, fractures and voids. The end result can be intriguing and we wanted to share some photos with you.



While these voids can be fascinating and tempting to explore, we ask that the public steer clear for their own safety. Our geoscientists are currently mapping the features and determining the next course of action. TxDOT is also working with the Texas Commission on Environmental Quality, the City of Austin and the Barton Springs Edwards Aquifer Conservation District to evaluate and put mitigation plans together, so that we can continue building the MoPac mainlanes under La Crosse Avenue, while protecting the aquifer.

Regular updates are shared via email and Twitter. To sign up, please send an email to MoPacIntersections@txdot.gov with "updates" in the subject line, or follow us on Twitter @TxDOTAustin, search #MoPacIntersections.

Sincerely,

MoPac Intersections Project Team
(512) 693-7425
MoPacIntersections@txdot.gov

Share



Share



Tweet



Forward

Connect with TxDOT and the Project Team



Project Details

This improvement project includes extending the MoPac mainlanes underneath Slaughter Lane and La Crosse Avenue (two lanes in each direction), making intersection improvements at Slaughter Lane and La Crosse Avenue, and improving pedestrian and bicycle accommodations, including adding a 10-foot shared-use path on the west side of MoPac from Slaughter Lane to La Crosse Avenue.

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You are receiving this email because you have previously shown interest in this project.

Our mailing address is:

TxDOT
P.O. Drawer 15426
Austin, Tx 78761-5426

[Add us to your address book](#)

Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe from this list](#).





United States Department of the Interior

FISH AND WILDLIFE SERVICE

Post Office Box 1306
Albuquerque, New Mexico 87103



In Reply Refer To:
FWS/R2/ES/FOIA
FWS-2019-00396

Ms. Ann Brown
Center for Biological Diversity
P.O. Box 11374
Portland, Oregon 97211-0374

Dear Ms. Brown:

This responds to your Freedom of Information Act (FOIA) request dated February 7, 2019, in which you sought the following:

“From January 1, 2018 to the date FWS conducts this search, the records mentioning or including voids encountered on the Texas Department of Transportation’s MoPac Intersections Project (subject of Consultation #02ETAU00-2016-I-0445), prioritizing:

- a. Records of communications;
- b. Notifications of void encounters;
- c. Records including information about post-encounter surveys for endangered species and the mitigation measures used and monitoring of those measures;
- d. Photos of voids and mitigation measures; and
- e. Void mitigation plans.”

Your request was assigned tracking number FWS-2019-00396 and forwarded to the Austin Ecological Services Field Office for processing. Staff carefully searched files and found no records responsive to your request.

You may appeal the adequacy of our search to the FOIA Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday. Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning

your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the U.S. Fish and Wildlife Service's (Service) response is in error. You must also include with your appeal copies of all correspondence between you and the Service concerning your FOIA request, including your original FOIA request and the Service's response. Failure to include with your appeal all correspondence between you and the Service will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal. Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office
Department of the Interior, Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240
Telephone: 202-208-5339 / Fax: 202-208-6677
Email: FOIA.Appeals@sol.doi.gov

Also, please note the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation and does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov, Web: <https://ogis.archives.gov>
Telephone: 202-741-5770 / Fax: 202-741-5769 / Toll-free: 1-877-684-6448

You also may seek dispute resolution services from our FOIA Public Liaison, Carrie Hyde-Michaels at 703-358-2521 or via email at carrie_hyde-michaels@fws.gov.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

This completes the Southwest Region's response. The fees incurred in responding to your request have been waived in accordance with 43 C.F.R. §2.37. If you have any questions or

concerns regarding this request, please contact Government Information Specialist, David Tischer, at 505-248-6658 or by email at fw2foia@fws.gov.

Sincerely,

Melanie Ruiz
Region 2 FOIA Coordinator