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Memo

To:	Ed Northey FDOT District 5 Environmental Management Supervisor	From:	Mike Drauer
File:	SR 35 (US 301) Listed Species Update	Date:	July 30, 2024

Reference: SR 35 (US 301) Listed Species Update

The Florida Department of Transportation (FDOT) District 5 currently plans to widen US Highway 301 (US 301) / State Road (SR) 35 from north of CR 470 E to SR 44 in Sumter County, Florida. The proposed improvements consist of widening US 301 from two to four lanes and including pedestrian and bicycle accommodation. The proposed project also includes intersection improvements for traffic and safety and includes a new alignment portion of US 301 to bypass the City of Coleman.

The original PD&E Study conducted a listed species and habitat evaluation that was presented in the Natural Resources Evaluation Report. Most species (Florida scrub-jay, red cockaded woodpecker, snail kite) were given "**No Effect**" determinations with the exception of eastern indigo snake and wood stork, which were given "**May Affect, but not Likely to Adversely Affect"** (MANLAA) determinations based upon the use of the Programmatic Keys for each species. All state-listed species were given No Adverse Effect determinations.

FEDERAL SPECIES

A review of the project based upon the updated design analyzed the potential to impact listed species and habitat. No changes to the species and habitat previously analyzed were noted, though the project will now include a commitment to address the wood stork to meet the provisions of the Species Programmatic Effects Key. However, three additional species were considered for the project: the eastern black rail, tricolored bat, and monarch butterfly.

Eastern black rail (*Laterallus jamaicensis jamaicensis*) – Federally Threatened

The eastern black rail is a tiny, extremely secretive sparrow-sized bird that walks or runs through marsh habitats, and is rarely seen in flight. It is gray-black in color, with a short tail, red eyes, black bills, and dusty pink colored legs. In very dense cover, it may get around by using runways made by mice. The eastern black rail favors very shallow water, or damp soil with scattered puddles. It inhabits coastal marshes, the upper limits of highest tides, and mostly wet meadows when found inland. It favors dense stands of cordgrass and other grasses, glassworts, rushes, and sedges. Nests are usually constructed from May through August about two inches above the substrate and are made of live and dead emergent plant material, often with a dense clump of vegetation concealing it from above.

The project study area lacks suitable foraging and nesting habitat for this species as the marsh wetlands identified lack suitable vegetation for both cover and nesting. There is no coastal marsh habitat within the project study area, and no individuals were observed during the field review. USFWS data indicates

that this species is extremely rare in within inland central Florida marsh communities, and those marsh-like systems that occur within the project area lack the suitable dense ground cover and hydroperiod favored by this bird. Therefore, a determination of ***"No Effect"*** has been made for the eastern black rail.

Tricolored bat (*P. subflavus*) – Proposed Endangered

The tricolored bat (*Perimyotis subflavus*) is one of the smallest bats, native to North America and is a proposed species for federal listing. This species ranges across the eastern and central United States and portions of southern Canada, Mexico and Central America. This bat has been identified within 39 states including Florida. During the winter within the northern reaches of its range, tricolored bats are found in caves and mines, although in the southern United States, where caves are sparse, tricolored bats are often found roosting in road-associated culverts. During the spring, summer, and fall, commonly referred to as the non-hibernating seasons, tricolored bats primarily roost among live and dead leaf clusters of live or recently dead deciduous hardwood trees. In the southern portions of its range, tricolored bats also roost in Spanish moss and lichen. In addition, tricolored bats have been observed roosting during the summer among pine needles, eastern red cedar, and artificial roosts like barns, beneath porch roofs, bridges, concrete bunkers, and rarely within caves.

Based on the evaluation of the study area (location, vegetative community, and associated waterway) this species has the potential to occur as suitable foraging and roosting habitat appears to exist within the study area. A species-specific roost survey for the tricolored bat was conducted along the project corridor in June 2024. No evidence was observed to indicate roosting of bats in trees, culverts, or bridges. While the proposed project will require the removal of some hardwood trees and associated vegetation within the limits of construction (potential roosting habitat), the vast majority of suitable habitat will remain. Therefore, **no adverse impacts** are anticipated. FDOT will continue consultation with the USFWS regarding the tricolored bat listing status and potential impacts to this species during the design and permitting phase. If the listing decision of the tricolored bat is threatened or endangered and the proposed site is located within the consultation area, FDOT commits to re-initiating consultation with the USFWS to determine the appropriate survey methodology and to address USFWS regulations regarding the protection of the tricolored bat.

Monarch butterfly (Danaus plexippus) – Candidate Species

The monarch butterfly is a candidate species for federal listing under the ESA throughout the United States. Candidate species are plants and animals whose status is being currently reviewing to determine whether it warrants listing under the ESA. Candidate species receive no statutory protection under the ESA. USFWS encourages cooperative conservation efforts for these species because they are species that may warrant future protection under the ESA. Monarchs can be found throughout Florida (and the United States) with a preferred habitat includes wildflowers and specifically milkweeds. The project will not have any significant impact on the wildflower areas along the roadway. The project is "**not likely to jeopardize the monarch butterfly".**

STATE SPECIES

In addition to these federal species, several state-listed species included provisions for future surveys as the project advanced to design and permitting.

Gopher tortoise (*Gopherus polyphemus*) – State Threatened

During the site assessments, gopher tortoise burrows were identified within the project area. FDOT will conduct a 100% gopher tortoise survey of the project area 90 days prior to construction. A FWC Gopher Tortoise Conservation Permit will be obtained for gopher tortoises and burrows found within 25 feet of the limits of construction that cannot be avoided. Captured tortoises will be relocated to an off-site, long-term, protected recipient site in accordance with the FWC Gopher Tortoise Permitting Guidelines (revised April 2023) prior to construction. Any commensals incidentally captured, including short-tailed and pine snakes, occurring from authorized gopher tortoise relocation activities will be released on-site or allowed to escape unharmed according to the current FWC Policy on the Relocation of Priority Commensals. The project has added a commitment for conducting a gopher tortoise survey and carrying out any relocations should they be necessary.

Southeastern American kestrel – State Threatened

Per the commitments made in the 2018 PD&E study, FDOT conducted a species-specific survey in April-May 2024 for kestrels to determine if the project area provides foraging habitat or supports nesting kestrel pairs. Surveys were conducted in accordance with FWC survey and permitting guidelines (FWC 2020) and the survey methodology, including transect locations, were approved by FWC in April 2024 (Appendix B). During the 2024 species-specific survey, one nesting pair was observed utilizing a mounted kestrel box on a Duke Energy electrical transmission line pole along CR 523, south of Warm Springs Ave. Active kestrel nest box 1 (KB-1) is located approximately 129 ft from the proposed construction limits, within the 490 ft. FWC disturbance buffer. Any construction activity that causes a disturbance within 490 ft (150 m) of an active nest cavity during the breeding season is expected to result in take via harassment by lowering productivity and significantly disrupting breeding. Therefore, in accordance with the FWC species conservation measures and permitting guidelines, coordination with FWC will be required for authorization for the incidental take of the Southeastern American kestrel, whereas 'take' for the purpose of this project consists of non-lethal harassment and molestation by harassing a kestrel pair incidental to development activities, pursuant to Rules 68-1 and 68A-27, F.A.C., and in accordance with the Southeastern American Kestrel Species Conservation Measures and Permitting Guidelines. The commitment regarding this species has been updated to reflect the presence of the species and the need to coordinate with FWC prior to construction.

Florida burrowing owl – State Threatened

Burrowing owls traditionally inhabited native prairies but can now be found in a variety of cleared areas such as pastures, agricultural fields, golf courses, and airports. Based on the current permitting

guidelines, the project area falls within the species' range and contains potential suitable habitat. No Florida burrowing owls have been found during the site assessments. Due to the overlap in preferred habitat for the gopher tortoise and Florida burrowing owl, pre-construction surveys for the Florida burrowing owl will be conducted concurrently with the 100% gopher tortoise survey, prior to project construction. Additionally, FDOT will adhere to the components of the Florida's Imperiled Species Management Plan (FWC 2016) and permitting guidelines. If Florida burrowing owls are identified within the project area during the pre-construction surveys and will be impacted based on the current guidelines, FDOT will initiate technical assistance with FWC to discuss avoidance, minimization, and permitting options. The commitment related to this species has been updated to reflect conducting surveys coincidental with the gopher tortoise surveys prior to construction.

Florida sandhill crane – State Threatened

Per the commitments made in the 2018 PD&E study, FDOT conducted species-specific surveys during the 2024 nesting season. Sandhill cranes were observed on two of the three survey events within and adjacent to the project limits within shallow freshwater marsh systems. One sandhill crane nesting pair was seen foraging within Wetland 16 outside of the project limits. An active nest could not be verified due to the density of the vegetation within the system; however, the nesting pair was seen leaving the interior of the wetland system to forage within the adjacent pasture. Additionally, an active sandhill crane nest with birds on the nest was observed along US 301 approximately 368 feet north of the project limits. This freshwater marsh system is dominated by maidencane and is bordered by US 301 and new residential construction. This system will not be impacted by the proposed project limits. Based on the results of the 2024 species-specific survey, sandhill cranes appear to be actively using adjacent freshwater marsh systems for nesting and foraging. Since nesting locations can vary from year to year due to fluctuations in water levels in wetlands, a pre-construction survey within 30 days of the commencement of activities will be required to assure there is no take of active nests. Ongoing coordination with FWC and FDOT will continue during design to determine appropriate permitting efforts for this bird. All wetland impacts associated with the proposed project will be mitigated for to prevent a net loss of wetland functions. The commitment related to this species has been updated to reflect the survey results and the continued need for coordination.