

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
August 10, 2023**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present were Katherine Noel, Chair; Corinne Finnerty; Sue Anne Gilroy; Rafael Sanchez; and John Krauss. Office of Inspector General (OIG) staff present included David Cook, Inspector General; Sean Gorman, State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Mike Lepper, Special Agent; and Sam Stearley, Special Agent.

Others present were Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Beth Green, General Counsel, Indiana Department of Workforce Development; Julie Heath, former employee of the Indiana Economic Development Corporation; Erin Elam, Ethics Officer, Indiana Department of Health; Robert Paglia, Chief Administrative Officer, Indiana Economic Development Corporation; Andrew Lang, Deputy General Counsel, Indiana Economic Development Corporation; Blaire Viehweg, Deputy Director of Legislative Affairs, Indiana Department of Health; Amy Kent, Deputy Health Commissioner, Indiana Department of Health; Timothy McFarlane, Chief Data Officer, Family and Social Services Administration; Matthew Gerber, Ethics Officer, Family and Social Services Administration; Jessica Keyes, General Counsel, Family and Social Services Administration; Amie Durfee, Deputy General Counsel, Department of Workforce Development; and Tammera Glickman, Deputy General Counsel, Indiana Department of Administration.

II. Adoption of Agenda and Approval of Minutes

Commissioner Krauss moved to adopt the agenda, Commissioner Gilroy seconded the motion, and the Commission passed the agenda (5-0).

Commissioner Gilroy moved to approve the Minutes of the May 11, 2023, Commission Meeting, and Commissioner Krauss seconded the motion, which passed (5-0).

III. Consideration of Waiver of Post-Employment Restrictions for Julie Heath

Robert Paglia, Chief Administrative Officer for the Indiana Economic Development Corporation, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion, which passed (5-0).

IV. Consideration of Waiver of Post-Employment Restrictions for Blaire Viehweg

Amy Kent, Deputy Health Commissioner and Chief Strategy Officer for Indiana Department of Health, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Gilroy seconded the motion, which passed (5-0).

V. Request for Formal Advisory Opinion

2023-FAO-006

Dr. Timothy McFarlane, Chief Data Officer

Matthew Gerber, Ethics Officer

Family and Socials Services Administration

Matthew Gerber is the Ethics Officer and Deputy General Counsel for the Indiana Family and Social Services Administration (FSSA). Mr. Gerber requested the Commission's FAO on behalf of Dr. Timothy D. McFarlane, FSSA's Chief Data Officer. Specifically, Mr. Gerber is requesting an opinion from the Commission regarding Dr. McFarlane's proposed post-state employment opportunity with Delineate, LLC (Delineate), a data and analytics consulting firm.

Mr. Gerber previously sought an informal advisory opinion on behalf of Dr. McFarlane from the Office of Inspector General (OIG) and has provided the OIG's confidential guidance as an attachment to this FAO request.

As Chief Data Officer at FSSA, Dr. McFarlane's responsibilities include supporting enterprise data warehouses for the Supplemental Nutrition Assistance Program (SNAP)/Temporary Assistance for Needy Families (TANF) and Medicaid data analytics; designing, developing and implementing data governance strategy to support data-driven culture; conducting research studies and program evaluation to measure and improve service delivery and policy implementation; overseeing components of state and federal reporting for the Office of Medicaid Policy and Planning; collaborating with state agencies to improve the use of health data in support of operation performance monitoring; and providing technical assistance to FSSA divisions for data initiatives.

Dr. McFarlane has an offer for a post-state employment position at Delineate. Delineate currently provides three employees to aFit Staffing, Inc. (aFit) for the purpose of temporary staffing at FSSA through Indiana's Managed Service Provider, CAI. The contract between aFit and CAI for the three Delineate staff workers is for the performance of specific data related projects at FSSA and is set to expire in six months; however, the contract may be extended or renewed based on FSSA's needs.

In Dr. McFarlane's role at FSSA, he was not involved in the selection or hiring of these contract workers and is not involved in the supervision of their day-to-day activities. Dr. McFarlane directly supervises FSSA's Deputy Chief Data Officer and Data Science Supervisor, who are responsible

for the supervision of the contract workers at FSSA who are ultimately employed by Delineate. Dr. McFarlane retains the authority to make decisions regarding the Delineate contract workers at FSSA but does not anticipate any need to exercise such authority.

Dr. McFarlane is not a signatory on any agency contracts and was not involved in the negotiation or administration of any active contracts for FSSA with one exception: Dr. McFarlane initiated and signed a change order to a contract with Resultant, LLC. Further, Dr. McFarlane does not have regulatory or licensing authority in his current position.

In Dr. McFarlane's prospective role at Delineate, he will guide the technical aspects of solutions developed by the company. Delineate was founded in 2022 by an individual who previously worked at FSSA, and Delineate does not maintain any current or historical contracts with FSSA. Further, Dr. McFarlane provides that he will not participate in executive branch lobbying in his position with Delineate.

Delineate does not and has not maintained a contract with the State of Indiana; its contract with respect to the three contract workers at FSSA is maintained between aFit and CAI.

Dr. McFarlane provides that he understands that he may not assist Delineate or any other person in his post-state employment activities with any particular matters on which he both personally and substantially participated in his role at FSSA. Dr. McFarlane is not aware of any potential future business that Delineate is considering or pursuing with FSSA.

On behalf of Dr. McFarlane, Mr. Gerber sought the Commission's FAO regarding the application of any of the rules in the Code to Dr. McFarlane's proposed post-employment with Delineate.

The analysis stated the following:

Mr. Gerber's request for a FAO invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Post-employment and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. McFarlane is analyzed below.

A. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. McFarlane from participating in any decision or vote, or matter relating to that decision or vote if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits Dr. McFarlane from participating in any decision or vote, or matter relating to that decision or vote, if the business organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the matter.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority in writing and either seek an advisory opinion from the Commission or file a written disclosure statement.

Dr. McFarlane's offer for employment from Delineate constitutes an arrangement concerning prospective employment. The Commission finds that Delineate has a financial interest in matters regarding the three Delineate employees who work at FSSA under the contract between aFit and CAI. The Commission further finds that a potential conflict of interests exists under this rule and that FSSA shall implement all necessary procedures to screen Dr. McFarlane from participating in any decisions or votes, or matters related to decisions or votes, in which Delineate would have a financial interest for the remainder of Dr. McFarlane's employment at FSSA.

B. Post-employment

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Dr. McFarlane from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Dr. McFarlane is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration. Based on the information provided, Dr. McFarlane would not be engaging in any lobbying activities in his position at Delineate. To the extent that Dr. McFarlane does not engage in executive branch lobbying for one year after leaving state employment, his post-employment opportunity at Delineate would not violate this provision of the post-employment rule.

Second, Dr. McFarlane is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. Based on the information provided, Dr. McFarlane has not negotiated or administered a contract with Delineate, as Delineate does not currently and has not previously maintained a contract with FSSA.

Third, Dr. McFarlane is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Mr. Gerber provides that Dr. McFarlane does not have regulatory or licensing authority in his position with FSSA.

Fourth, Dr. McFarlane is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that Delineate has extended an offer for his prospective new role in an attempt to influence Dr. McFarlane in his capacity as a state employee.

Accordingly, the Commission finds that the post-employment rule's cooling off period would not apply to Dr. McFarlane's employment opportunity with Delineate and he may begin such employment immediately after his separation from state employment.

Finally, Dr. McFarlane is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Dr. McFarlane would be prohibited from representing or assisting Delineate or any other person in a particular matter in which he personally and substantially participated as a state employee.

Dr. McFarlane has not identified any particular matter on which he personally and substantially participated in his FSSA role on which he may assist others in his post-state employment at Delineate.

The Commission finds that the series of contracts between Delineate and aFit and between aFit and CAI for the Delineate employees performing work at FSSA constitutes a business transaction for the purpose of this rule. As such, Dr. McFarlane would be prohibited from representing or assisting Delineate or any other person in this business transaction if he personally and substantially participated in this particular matter in his role at FSSA. The Commission advises Dr. McFarlane to work with FSSA to seek a waiver of the post-employment rule's particular matter restriction pursuant to IC 4-2-6-11(g) should Dr. McFarlane be in a position to participate in the identified business transaction involving the Delineate workers' work at FSSA in his post-state employment activities.

C. Confidential information

Dr. McFarlane is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Dr. McFarlane from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as Delineate. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent that Dr. McFarlane has acquired or maintains access to such confidential information obtained in his role at FSSA, he is prohibited not only from divulging that information but from ever using it to benefit any person, including Delineate or its clients, in any manner.

Commission Chair Noel moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion, which passed (5-0).

VI. Ethics Director's Report

Informal Advisory Opinions: Since the last Ethics Director's Report in April, 33 Informal Advisory Opinions had been issued regarding application of the gifts rule, post-employment issues, outside employment/professional activities issues, and related potential conflicts of interest. There was also an increase in the amount of nepotism rule issues as compared to previous months.

Rulemaking: Per HEA 1623 enacted this year, Indiana agency administrative rules must now be readopted every 5 years instead of 7 under the previous sunset provisions of the Administrative Rules and Procedures Act. As such, the Indiana Code of Ethics provisions under 42 IAC 1, which were last readopted in 2018, will expire January 1, 2025 and re-adoption of these rules must be initiated on or before January 1, 2024. The re-adoption process is fairly limited to either keeping or letting outdated rules expire, but we have had some limited internal discussions on potential amendments in a subsequent rulemaking. Most of the rule provisions reference the corresponding statute, but not all of the rules have a corresponding statute, such as the gifts rule which only exists in the administrative code. I plan to solicit suggestions from ethics officers as we consider whether additional rulemaking after re-adoption is something that we would like to pursue. I will keep the Commission informed of this process and invite commissioners to provide any feedback on existing rules.

Ethics Officer Roundtables: The next ethics officer roundtable discussion is scheduled for August 22. This is the 3rd of a series of meetings we have been conducting this year to engage ethics officers in discussions on shared challenges and best practices. Our last meeting was May 23 and had approximately 20 attendees, resulting in a robust discussion on a variety of topics. We discussed the OIG's recent report regarding recommendations on remote work and the challenges presented by investigations of complaints alleging ghost employment. Also discussed was the gifts rule and different scenarios that come up for agencies. We have one more meeting after the August 22 date during this calendar year, and I plan to continue hosting these opportunities for discussion.

OIG Outreach: The IG has been meeting with various agency heads to offer a refresher on the IG's processes and to let them know how we can work together. This effort has resulted in several agencies recently taking us up on the standing offer to present to staff on ethics issues. We have upcoming presentations for the Lieutenant Governor's office focused on political activity considerations, the Indiana Public Retirement System and the Treasurer's office for a general overview/refresher of ethics in state government, and the Commission for the social status of black males for special state appointees' ethics rules related to conflicts of interest.

VII. Adjournment

Commissioner Krauss moved to adjourn the public meeting of the State Ethics Commission. Commissioner Sanchez seconded the motion, which passed (5-0).

The public meeting adjourned at 11:02 a.m.



August 10, 2023

Land Use Consultant
Elizabeth Bentz Williams, AICP

To: Indiana Ethics Commission
From: Bart Herriman

*Also admitted in Montana
†Also admitted in Kentucky
**Registered Civil Mediator

Re: Report of Potential Disclosure of Potential Conflict of Interest Pursuant and Request for
Advisory Opinion Pursuant to 42 IAC 1-5-6

Dear Commission members:

I have been appointed by the Governor of Indiana to serve on the Natural Resources Commission (the "Commission"). As such, I am a special state appointee as defined in Ind. Code § 4-2-6-1(18).

For purposes of the Indiana Administrative Orders and Procedures Act, Ind. Code § 4-21.-5-3, the Commission is the ultimate authority for the Department of Natural Resources. See, Ind. Code § 14-10-2-3. Pursuant to Ind. Code § 4-21.5-3 and 312 IAC 3-1, an administrative law judge employed by the Commission's Division of Hearings conducts an evidentiary hearing and issues a non-final order. Thereafter, the parties have an opportunity to file objections to the non-final order issued by the administrative law judge. The objections are then scheduled for argument at a public meeting of the Commission's "AOPA Committee." The AOPA Committee is comprised of three members of the full Commission. See, 312 IAC 3-1-12. I serve on the AOPA Committee.

A meeting of the AOPA Committee was scheduled for August 9, 2023. The Commission's Division of Hearings forwarded the relevant information to the committee members on August 4, 2023. As I was reviewing the materials on August 8, 2023, I discovered on the second page of the documents I reviewed that an attorney employed by the law firm of Clark, Quinn, Moses, Scott & Grahn, LLP ("Clark Quinn"), of which I am a partner, had entered an appearance in the case. **I immediately stopped reviewing the documents and informed the Commission, members of the AOPA Committee, and Elizabeth Gamboa, the Commission's Ethics Officer, of the conflict and immediately recused myself from participating in the AOPA Committee meeting scheduled for August 9, 2023.**

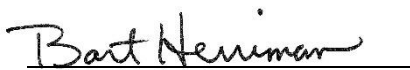
I have previously been advised of matters within our firm that could result in conflicts; however, I was not aware of the current conflict until August 8, 2023. The screening plan for the future is three-fold: 1) requiring all attorneys within the firm to report to me any potential conflicts that could arise; 2) emailing Hearings Division staff matters involving attorneys from Clark Quinn that could potentially come before the AOPA Committee; and (3) upon scheduling a hearing of

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the AOPA Committee, the Hearings Division staff will alert the AOPA Committee to potential conflicts. Obviously, I will not participate in consideration of matters before the AOPA committee involving cases for which there is a conflict.

This disclosure is being made because to the extent I may potentially benefit financially from an attorney at Clark Quinn, a conflict of interest pursuant to 42 IAC 1-5-6, may be implicated. I am seeking a formal advisory opinion to determine whether sufficient measures have been taken to cure any conflict that may arise.

Sincerely,



Bart Herriman
Member, Natural Resources Commission



Elizabeth Gamboa
Ethics Officer, Natural Resources Commission

Request for Formal Advisory Opinion

Employee Name: Ashley Taylor

Date Requested: August 21, 2023

Positions Held at the State:

- Indiana Department of Transportation (INDOT) Environmental Manager II
 - June 18, 2018 to March 5, 2021
- Indiana Department of Natural Resources (IDNR) North Region Environmental Biologist
 - March 8, 2021 to August 18, 2022

Current Employment:

- Lochmueller Group Inc.
 - January 3, 2023 to Present

Background: I previously requested an informal advisory opinion regarding my pending employment with Lochmueller Group Inc. in December 2022. The informal advisory opinion indicated that I would be able to begin work with Lochmueller Group Inc. immediately. During this initial request, I did not anticipate working on any projects where I was previously involved during my employment at the state. However, there are public works projects where I reviewed early coordination letters while at the IDNR in which Lochmueller Group is currently under contract or working to become under contract. Therefore, I would like to request a formal advisory opinion to determine whether the particular matter restriction prevents me from working on these projects or not.

Job Duties at IDNR: As part of my job duties while at the IDNR, I reviewed over 350 early coordination letters regarding various local and state projects, which all included providing similar environmental recommendations such as those shown in the attached environmental review (ER) letter. Specifically, I made recommendations regarding minimizing impacts to the environment based on the nature of the proposed project. For example, a bridge replacement would've received recommendations specific to the structure for allowing wildlife passage and minimizing impacts to the waterway. These recommendations were included as a part of the ER letter, which was returned to the same company/entity that sent the early coordination letter. I was never the letter's signatory. Rather, I provided information that others used in its final preparation and delivery. Moreover, the recommendations I contributed to the ER letter were categorically general and derived from a list of standard recommendations by project type. This should mitigate any perceived partiality in the particular matter restriction associated with my ethics ruling.

The ER letter is included as part of the National Environmental Policy Act (NEPA) environmental documentation and the recommendations become commitments on a project. While the IDNR ER letter is incorporated into the NEPA document, many (but not all) of the recommendations are covered by INDOT's standard specifications and have been identified by INDOT as commitments that shall not be included within the NEPA document. I've attached links to INDOT's *Environmental Commitments Guidance* and the *INDOT Categorical Exclusion Manual* for your reference. Typically, the NEPA document is prepared by the same company/entity that sent the early coordination letter.

Other job duties included the review of Construction in a Floodway (CIF) permit applications. I understand this involvement likely represents a substantial involvement with a public works project and am therefore not requesting to work on any project where I reviewed the CIF permit.

Project Specific Information: There is a project (INDOT Des. No. 1700025) involving U.S. 41 in Lake County, Indiana where I reviewed the ER letter (ER-23656). Lochmueller Group was not initially involved with this project but is working to become under contract for this project. I received the attached early coordination letter for this U.S. 41 project while at the DNR (which is public and located on DNR's Unity website - <https://dowunity.dnr.in.gov/>). I reviewed the ER letter and wrote the "Fish & Wildlife Comments" section of the attached ER letter. My recommendations were submitted to Christie Stanifer, another DNR employee, who was in charge of compiling the ER letters. The response letter was then emailed back to the requestor. I did not have any other involvement with the project after the ER letter.

The Particular Matter Restriction: The particular matter restriction under this rule prevents you from working on the twelve types of matters listed in IC 4-2-6-11(a) if you personally and substantially participated in the matter as a state

employee. These matters are (1) an application, (2) a business transaction, (3) a claim, (4) a contract, (5) a determination, (6) an enforcement proceeding, (7) an investigation, (8) a judicial proceeding, (9) a lawsuit, (10) a license, (11) an economic development project or (12) a public works project. The statute specifically excludes “the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application” from the definition of particular matter. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

I understand the projects I reviewed while at the DNR would fall under (12) public works projects. Additionally, I personally participated in the review of the early coordination letters and preparation of the ER letter recommendations. It is unclear whether this involvement constitutes both personal *and* substantial involvement with the public works project.

INDOT Reference Materials:


INDOT Categorical Exclusion Manual (<https://www.in.gov/indot/engineering/files/Categorical-Exclusion-Manual-February-2021.pdf>). Refer to Section 4.4.2 Environmental Commitments (page 82) regarding how commitments are classified as either firm or for consideration.

Environmental Commitments Guidelines (<https://www.in.gov/indot/engineering/files/Commitments-Guidance-Memo-9.17.19.pdf>). Refer to Table 2: IDNR Standard Correspondence Commitments (pages 4-7) regarding the typical commitments received from the IDNR during the early coordination response and whether they should be incorporated into the NEPA document. Specifically, there is a notation at the bottom of the table indicating “IDNR commitments are for further consideration in the NEPA document unless they are species specific. Species specific commitments are firm commitments. For further consideration commitments may be changed to “required” in the commitments database if they are a permit condition.”

Therefore, all of the recommendations I made while at the IDNR would’ve been for further consideration unless there were species specific recommendations, or a CIF permit was issued at a later date.

Additional Applications: Since I reviewed a large quantity of early coordination letters while at the IDNR, I would also like to request that this Formal Advisory Opinion apply to all of the public works projects where my only involvement was reviewing the early coordination letter and preparing recommendations (excluding any species specific recommendations) to be included in the ER letter. If I was involved with a project in any other way including, but not limited to reviewing a CIF permit application or NEPA document, then I would not participate in the matter without seeking an additional advisory opinion specific to that individual project.

Please let me know if there is any additional information I can provide that would aid in your determination.

 8/21/2023
Ashley Taylor
5318 Twilight Lane, Fort Wayne, IN 46835
(260) 715-1289

State of Indiana
DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife
Early Coordination/Environmental Assessment

DNR #: ER-23656

Request Received: April 20, 2021

Requestor: The Troyer Group Inc.
James Landry
3930 Edison Lakes Parkway
Mishawaka, IN 46545

Project: US 41 added turn lanes from US 231 to 3.25 miles south, and small structure extension over UNT West Creek; Des #1700025

County/Site info: Lake

The Indiana Department of Natural Resources has reviewed the above referenced project per your request. Our agency offers the following comments for your information and in accordance with the National Environmental Policy Act of 1969.

If our agency has regulatory jurisdiction over the project, the recommendations contained in this letter may become requirements of any permit issued. If we do not have permitting authority, all recommendations are voluntary.

Regulatory Assessment: This proposal will require the formal approval of our agency for construction in a floodway pursuant to the Flood Control Act (IC 14-28-1), unless it qualifies for a bridge exemption (see enclosure). Please include a copy of this letter with the permit application if the project does not meet the bridge exemption criteria.

Natural Heritage Database: The Natural Heritage Program's data have been checked. To date, no plant or animal species listed as state or federally threatened, endangered, or rare have been reported to occur in the project vicinity.

Fish & Wildlife Comments: Avoid and minimize impacts to fish, wildlife, and botanical resources to the greatest extent possible, and compensate for impacts. The following are recommendations that address potential impacts identified in the proposed project area:

1) Bank Stabilization:

Establishing vegetation along the banks is critical for stabilization and erosion control. In addition to vegetation, some other form of bank stabilization may be needed. While hard armoring alone (e.g. riprap or glacial stone) may be needed in certain instances, soft armoring and bioengineering techniques should be considered first. In many instances, one or more methods are necessary to increase the likelihood of vegetation establishment. Combining vegetation with most bank stabilization methods can provide additional bank protection and help reduce impacts upon fish and wildlife. Information about bioengineering techniques can be found at <http://www.in.gov/legislative/iac/20120404-IR-312120154NRA.xml.pdf>. Also, the following is a USDA/NRCS document that outlines many different bioengineering techniques for streambank stabilization: <http://directives.sc.egov.usda.gov/17553.wba>.

Riprap must not be placed in the active thalweg channel or placed in the streambed in a manner that precludes fish or aquatic organism passage (riprap must not be placed above the existing streambed elevation). Riprap may be used only at the toe of the sideslopes up to the ordinary high water mark (OHWM). The banks above the OHWM must be restored, stabilized, and revegetated using geotextiles and a mixture of grasses, sedges, wildflowers, shrubs, and trees native to Northern Indiana and specifically for stream bank/floodway stabilization purposes as soon as possible upon completion. The new, replacement, or rehabbed structure, and any bank stabilization under the structure, should not create conditions that are less favorable for wildlife

Attachments: A - Bridge Exemption Criteria

State of Indiana
DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife
Early Coordination/Environmental Assessment

passage under the structure compared to the current conditions.

2) Riparian Habitat:

We recommend a mitigation plan be developed (and submitted with the permit application, if required) for any unavoidable habitat impacts that will occur. The DNR's Habitat Mitigation Guidelines (and plant lists) can be found online at: <http://iac.iga.in.gov/iac/20200527-IR-312200284NRA.xml.pdf>.

Impacts to non-wetland forest of one (1) acre or more should be mitigated at a minimum 2:1 ratio. If less than one acre of non-wetland forest is removed in a rural setting, replacement should be at a 1:1 ratio based on area. Impacts to non-wetland forest under one (1) acre in an urban setting should be mitigated by planting five trees, at least 2 inches in diameter-at-breast height (dbh), for each tree which is removed that is 10" dbh or greater (5:1 mitigation based on the number of large trees) or by using the 1:1 replacement ratio based on area depending on the type of habitat impacted (individual canopy tree removal in an urban streetscape or park-like environment versus removal of habitat supporting a tree canopy, woody understory, and herbaceous layer). Impacts under 0.10 acre in an urban area may still involve the replacement of large diameter trees but typically do not require any additional mitigation or additional plantings beyond seeding and stabilizing disturbed areas. There are exceptions for high quality habitat sites however.

3) Wetland Habitat:

Due to the presence or potential presence of wetland habitat on site, we recommend contacting and coordinating with the Indiana Department of Environmental Management (IDEM) 401 program and also the US Army Corps of Engineers (USACE) 404 program. Impacts to wetland habitat should be mitigated at the appropriate ratio according to the 1991 INDOT/IDNR/USFWS Memorandum of Understanding.

The additional measures listed below should be implemented to avoid, minimize, or compensate for impacts to fish, wildlife, and botanical resources:

1. Revegetate all bare and disturbed areas with a mixture of grasses (excluding all varieties of tall fescue) and legumes native to Northern Indiana and specifically for stream bank/floodway stabilization purposes as soon as possible upon completion. Turf-type grasses (including low-endophyte, friendly endophyte, and endophyte free tall fescue but excluding all other varieties of tall fescue) may be used in currently mowed areas only.
2. Minimize and contain within the project limits inchannel disturbance and the clearing of trees and brush.
3. Do not work in the waterway from April 1 through June 30 without the prior written approval of the Division of Fish and Wildlife.
4. Do not cut any trees suitable for Indiana bat or Northern Long-eared bat roosting (greater than 5 inches dbh, living or dead, with loose hanging bark, or with cracks, crevices, or cavities) from April 1 through September 30.
5. Do not excavate in the low flow area except for the placement of piers, foundations, and riprap, or removal of the old structure.
6. Do not construct any temporary runarounds, access bridges, causeways, cofferdams, diversions, or pumparounds.
7. Use minimum average 6 inch graded riprap stone extended below the normal water level to provide habitat for aquatic organisms in the voids.
8. Do not use broken concrete as riprap.
9. Underlay the riprap with a bedding layer of well graded aggregate or a geotextile to prevent piping of soil underneath the riprap.
10. Minimize the movement of resuspended bottom sediment from the immediate project area.
11. Do not deposit or allow demolition/construction materials or debris to fall or

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DEPARTMENT OF NATURAL RESOURCES
Division of Fish and Wildlife
Early Coordination/Environmental Assessment

otherwise enter the waterway.

12. Appropriately designed measures for controlling erosion and sediment must be implemented to prevent sediment from entering the stream or leaving the construction site; maintain these measures until construction is complete and all disturbed areas are stabilized.

13. Seed and protect all disturbed streambanks and slopes not protected by other methods that are 3:1 or steeper with erosion control blankets that are heavy-duty, biodegradable, and net free or that use loose-woven / Leno-woven netting to minimize the entrapment and snaring of small-bodied wildlife such as snakes and turtles (follow manufacturer's recommendations for selection and installation); seed and apply mulch on all other disturbed areas.

14. Do not excavate or place fill in any riparian wetland.

Contact Staff:

Christie L. Stanifer, Environ. Coordinator, Fish & Wildlife

Our agency appreciates this opportunity to be of service. Please contact the above staff member at (317) 232-4080 if we can be of further assistance.

Christie L. Stanifer

Date: May 19, 2021

Christie L. Stanifer
Environ. Coordinator
Division of Fish and Wildlife



INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room N642
Indianapolis, Indiana 46204

Eric Holcomb, Governor
Joe McGuinness, Commissioner

April 20, 2021

Re: Early Coordination
Des. No. 1700025
US 41 Auxiliary Lanes (Two-Way Left Turn Lane), from US 231 to 3.25 miles south of US 231;
Lake County, Indiana

To Whom It May Concern:

The Indiana Department of Transportation (INDOT) and Federal Highway Administration (FHWA) intend to proceed with a project involving the aforementioned corridor in Lake County. This letter is part of the early coordination phase of the environmental review process. We are requesting comments from your area of expertise regarding any possible environmental effects associated with this project. **Please use the above designation number and description in your reply.** We will incorporate your comments into a study of the project's environmental impacts.

The project is located on US 41 from US 231 in the Town of St. John to 3.25 miles south of US 231, in the Town of Cedar Lake. This section of US 41 is an Other Principal Arterial throughout the project area. The existing roadway is a 4-lane highway with a lane width of 12 ft. and 4 ft. wide paved shoulders. The speed limit varies from 35 to 55 within the project area. Between 2013 and 2016 there were 80 crashes within the project limits, 32 of which involved injuries. The apparent existing right-of-way varies from approximately 45 ft. to 80 ft. either side of the current centerline throughout the project area, according to the original construction plans.

The current proposed project would establish a Two-Way Left-Turn Lane (TWLTL) throughout the project area. In order to establish this TWLTL, US 41 will be widened by 6 ft. in both directions through the length of the proposed construction area. Driveways along US 41 will be reconfigured to accommodate the new width, and culverts running under driveways will be replaced. A concrete box culvert carrying a tributary to West Creek under US 41 will also be extended. Additionally, in conjunction with planned improvements from the town of Cedar Lake, a right-turn lane will be added to 129th Ave for westbound traffic turning onto US 41.

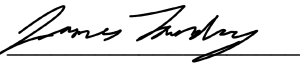
Both permanent and temporary right-of-way will need to be acquired to accommodate the proposed improvement. Additionally, right-of-way within the project area lacking clear title will be re-acquired. Including re-acquisition, the total right-of-way acquisition will likely exceed 30 acres. In some instances, right-of-way acquisition may necessitate total property takes and/or relocations. Additional temporary right-of-way will be necessary for certain grading activities and driveway reconstruction. All right-of-way will be acquired from within the "Environmental Review Area" illustrated in the attached exhibits. A maintenance of traffic plan has not yet been finalized; however, phased construction is expected to be implemented to allow continued traffic flow throughout construction.

Land use in the vicinity of the project area varies from commercial and residential around the boundaries of St. John and Cedar Lake to more agricultural between the two towns. There are forested areas along the project

corridor, and approximately 4.5 acres of trees will need to be cleared from the project area. A Regulated Waters Delineation was completed in October 2020, identifying four wetlands and one stream within the project area. This project qualifies for the application of the USFWS range-wide programmatic informal consultation for the Indiana bat and northern long-eared bat and project information will be submitted through USFWS's Information for Planning and Consultation (IPaC) separately. The project was determined to meet the criteria of the Section 106 Minor Projects Programmatic Agreement by INDOT Cultural Resources Office on August 6, 2020.

Should we not receive your response within thirty (30) calendar days from the date of this letter, it will be assumed that your agency feels that there will be no adverse effects incurred as a result of the proposed project. However, should you find that an extension to the response time is necessary, a reasonable amount may be granted upon request. If you have any questions regarding this matter, please feel free to contact James Landry at The Troyer Group by emailing jlandry@troyergroup.com or calling 256-633-0283, or INDOT project manager John Krueckeberg at jkrueckeberg@indot.IN.gov. Thank you in advance for your input.

Sincerely,

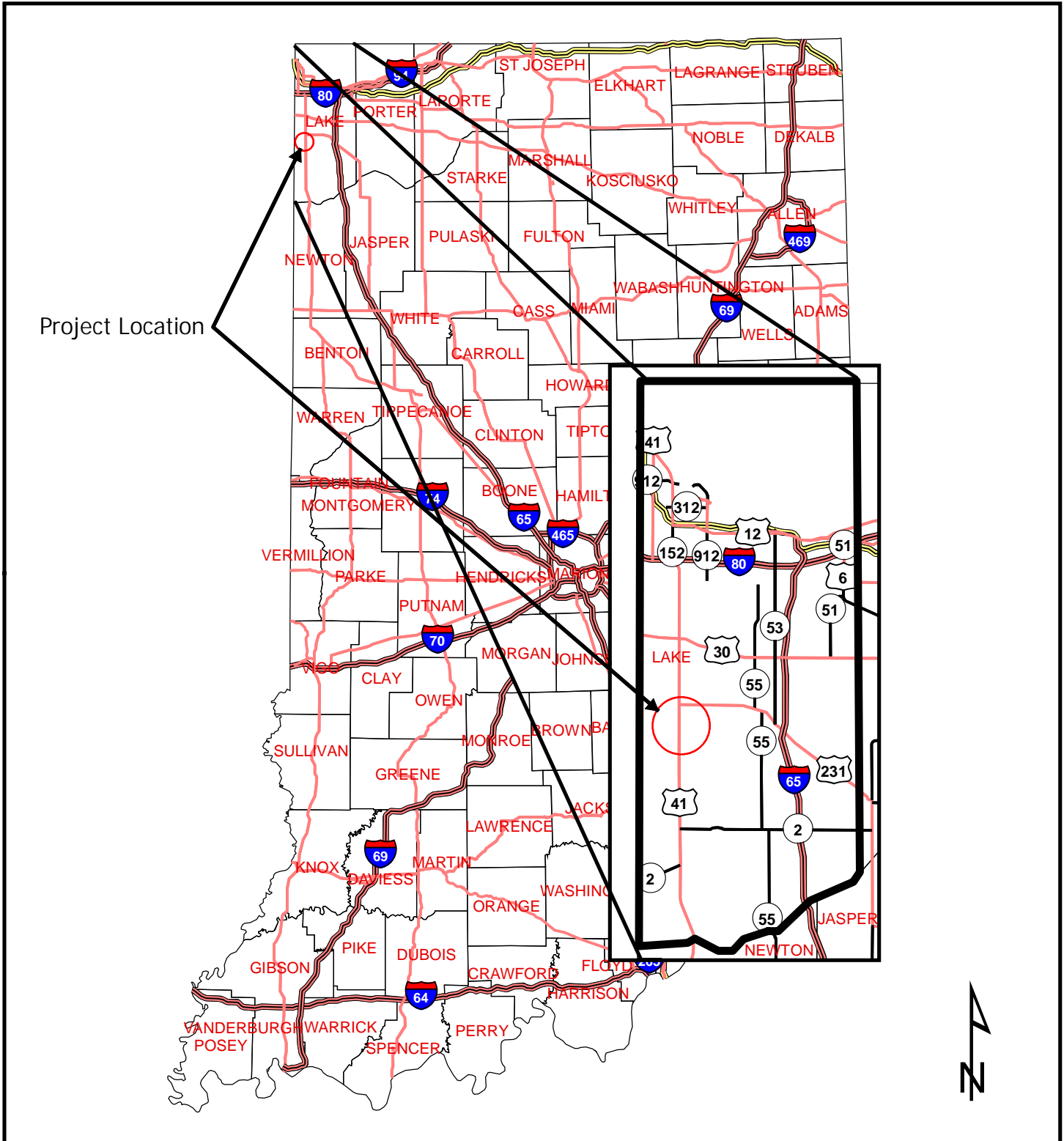


James Landry
Senior Environmental Analyst
The Troyer Group

Attachments: Exhibit 1 – Project Location Map
Exhibit 2a/2b – USGS Maps
Exhibit 3a – 3c – Project Area and Photo Orientation Maps
Project Area Photos

cc: Indiana Geological Survey, Environmental Geology Section
Indiana Department of Environmental Management
Federal Highway Administration
Indiana Department of Natural Resources, Division of Fish and Wildlife
Indiana Department of Natural Resources, Division of Nature Preserves
US Department of Housing & Urban Development, Chicago Regional Office
U.S. Fish and Wildlife Service, Northern Indiana Sub-Office
Department of the Army, Chicago District, Corps of Engineers
Northwestern Indiana Regional Planning Commission
INDOT, LaPorte District Office, Environmental Coordinator
INDOT Utilities & Railroads Office
US Department of Agriculture, National Resources Conservation Service
Bethel Community Bible Church
Lake County Board of Commissioners
Lake County Highway Department
Lake County Drainage Board
Town of St. John Town Council
Town of St. John Floodplain Manager
Town of Cedar Lake Town Council
Town of Cedar Lake Town Manager

Project Location



Project Location

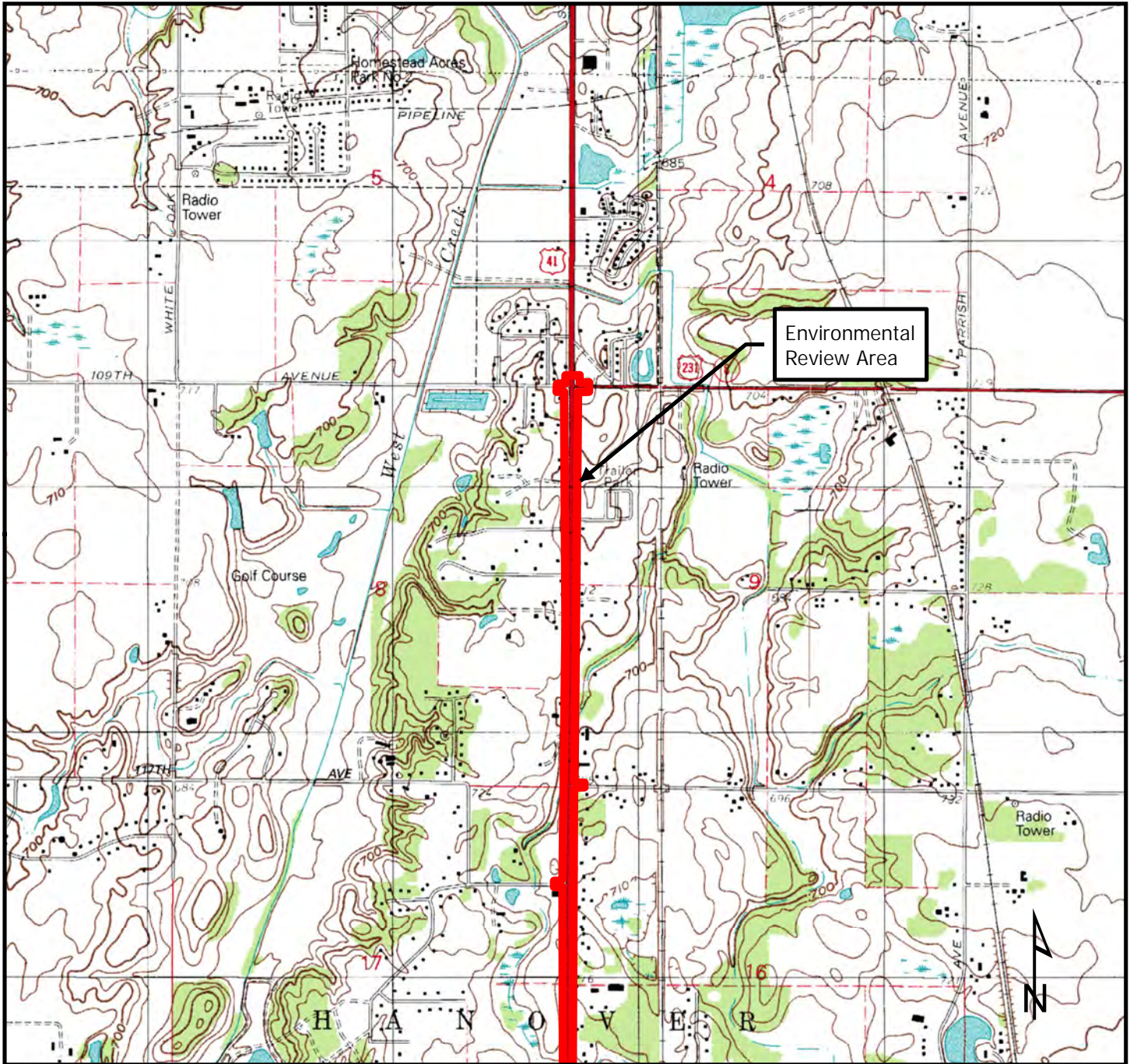


PROJECT
 US 41, 3.25 mi S of US 231 to US 231
 Roadway Improvement
 (Des. No. 1700025)
 Lake County, Indiana

SCALE
 NTS


SHEET
 Exhibit 1
 Project Location Map

USGS Project Location Map

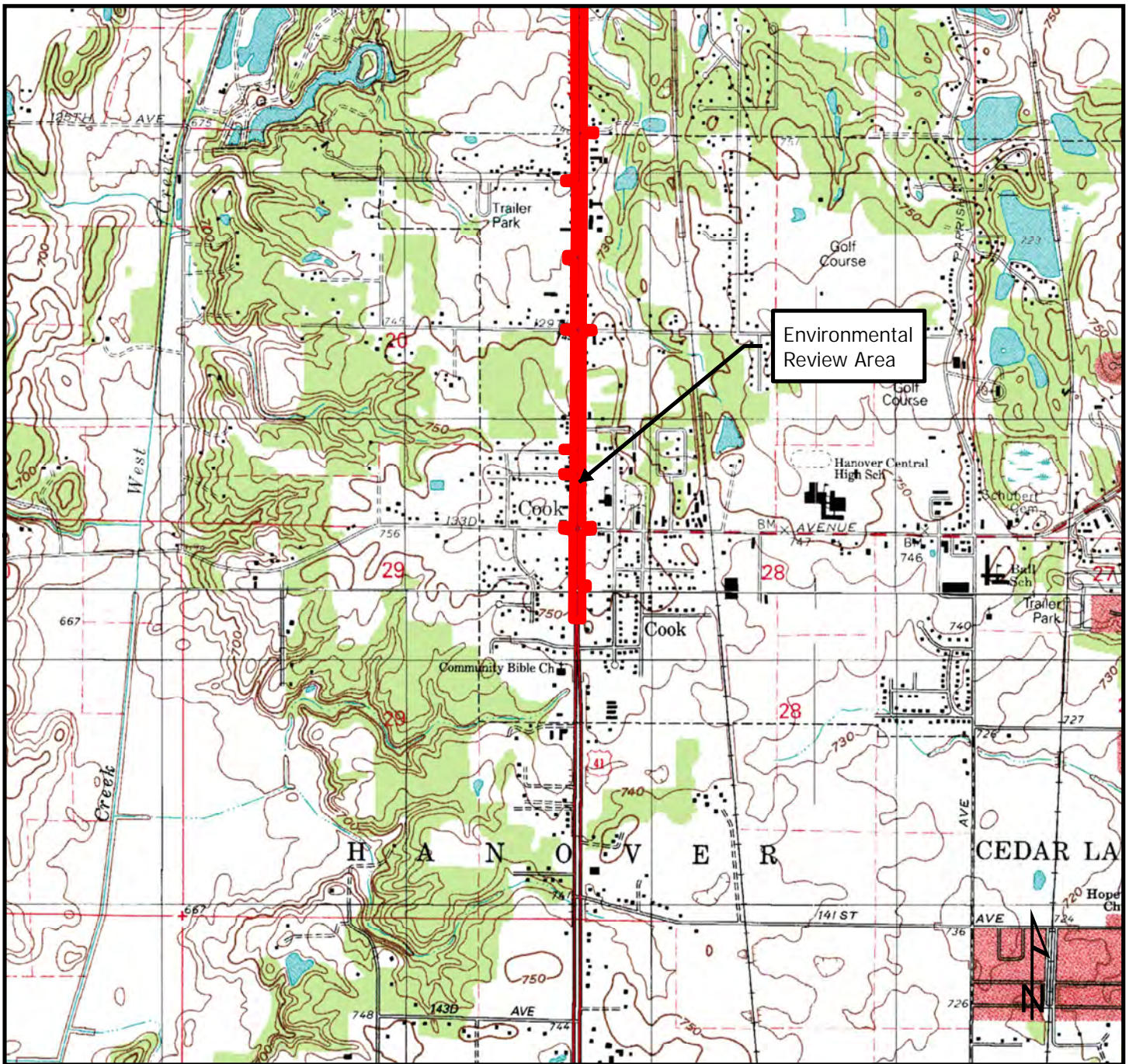


Portion of 7.5-Minute Series Map, Lake County, St. John/Lowell Quadrangle, Indiana
 Source: USGS National Map

█ Project Area


	PROJECT US 41, 3.25 mi S of US 231 to US 231 Roadway Improvement (Des. No. 1700025) Lake County, Indiana	SCALE 1:24,000
		SHEET Exhibit 2 USGS Map

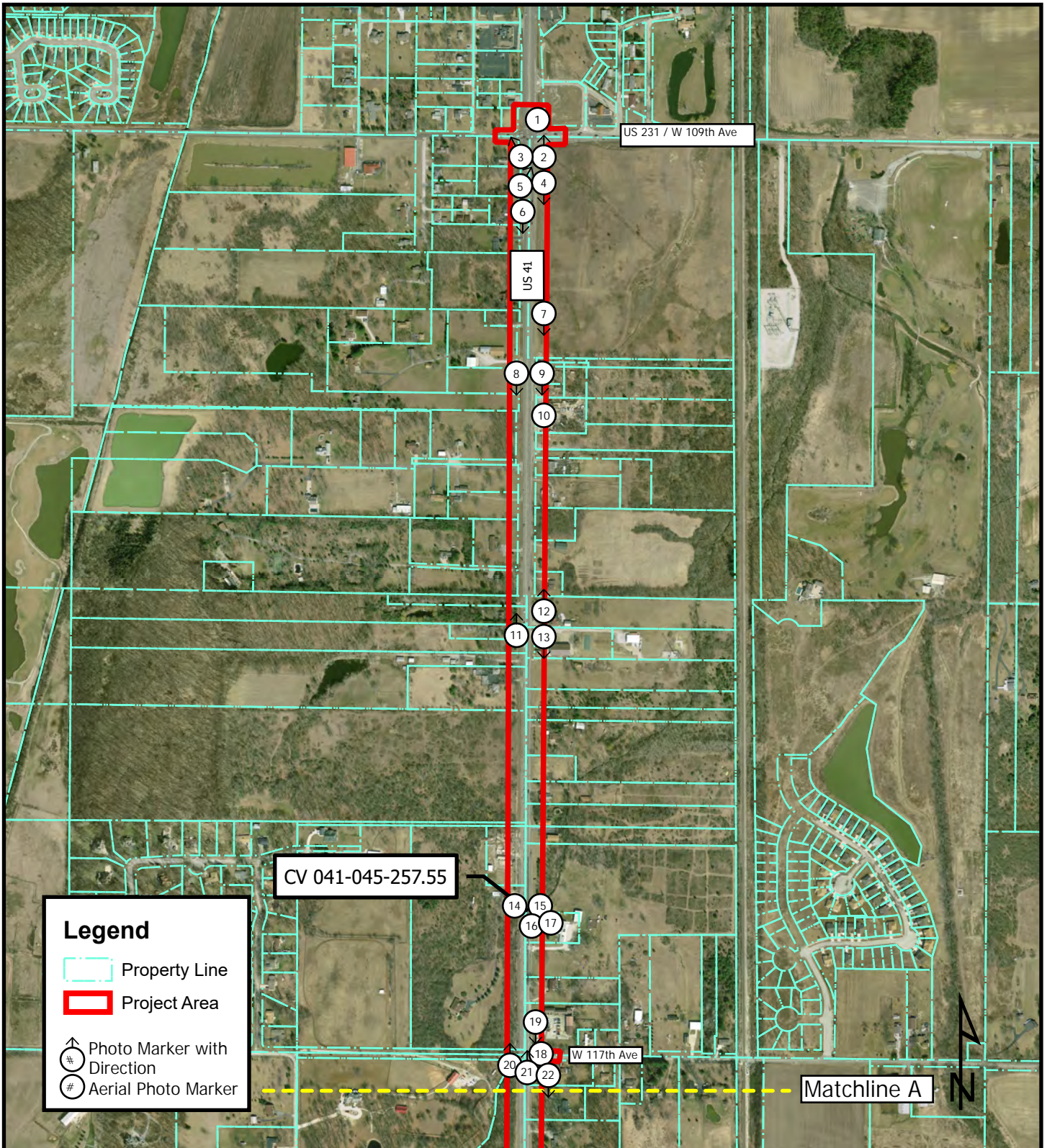
USGS Project Location Map




Portion of 7.5-Minute Series Map, Lake County, St. John/Lowell Quadrangle, Indiana
 Source: USGS National Map

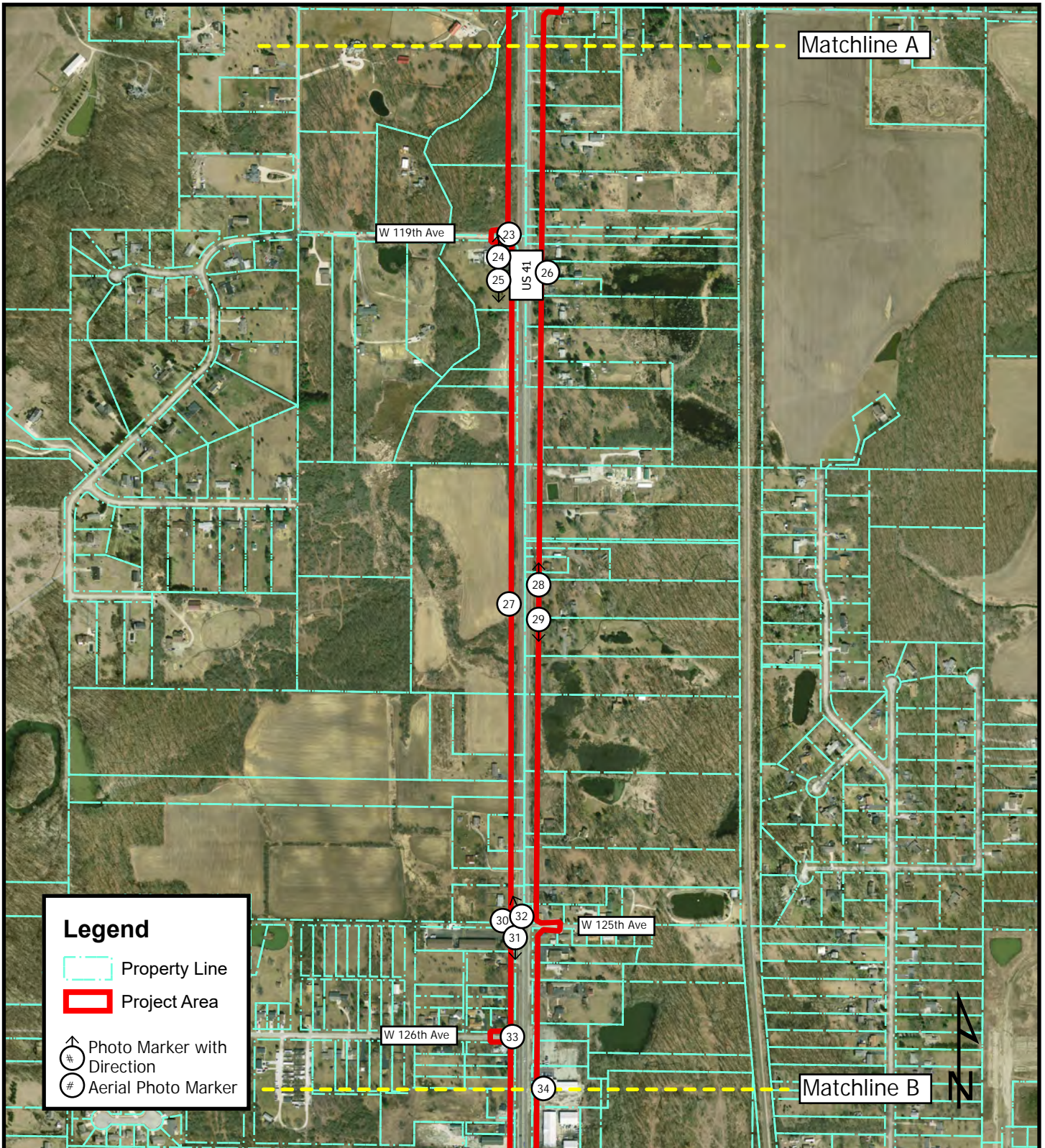
█ Project Area

	PROJECT US 41, 3.25 mi S of US 231 to US 231 Roadway Improvement (Des. No. 1700025) Lake County, Indiana	SCALE 1:24,000
		SHEET Exhibit 2 USGS Map



Aerial imagery and property data courtesy of IndianaMap (maps.indiana.edu)


	PROJECT US 41, 3.25 mi S of US 231 to US 231 Roadway Improvement (Des. No. 1700025) Lake County, Indiana	SCALE 1 in = 800 ft
		SHEET Exhibit 3a Project Area Aerial

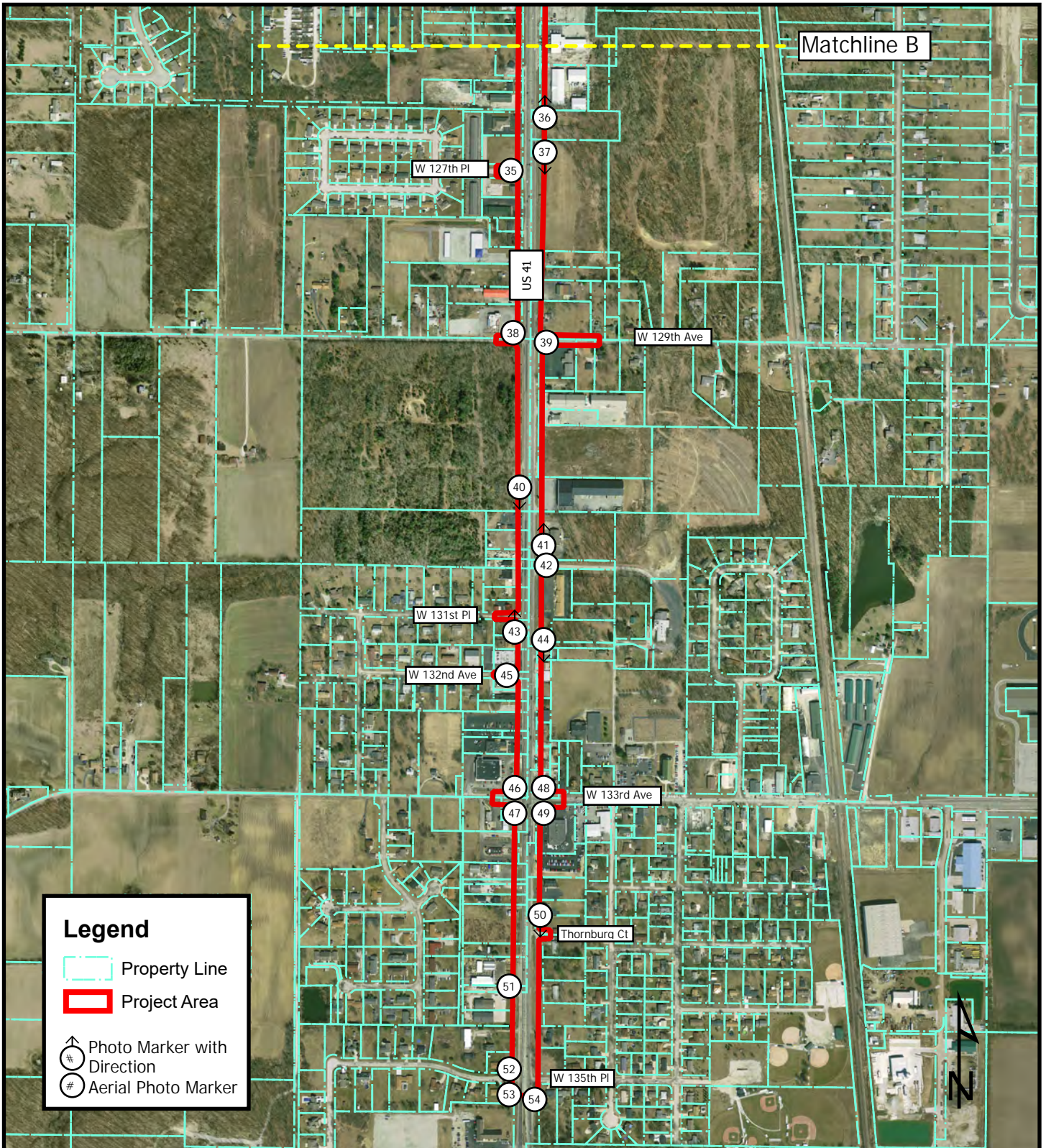


Legend


- Property Line
- Project Area
- ↑
⊙
Photo Marker with Direction
- ⊙
Aerial Photo Marker

Aerial imagery and property data courtesy of IndianaMap (maps.indiana.edu)

	<p>PROJECT US 41, 3.25 mi S of US 231 to US 231 Roadway Improvement (Des. No. 1700025)</p> <p>Lake County, Indiana</p>	<p>SCALE 1 in = 800 ft</p>
	<p>SHEET Exhibit 3b Project Area Aerial</p>	



Aerial imagery and property data courtesy of IndianaMap (maps.indiana.edu)

	PROJECT US 41, 3.25 mi S of US 231 to US 231 Roadway Improvement (Des. No. 1700025) Lake County, Indiana	SCALE 1 in = 800 ft
		SHEET Exhibit 3c Project Area Aerial

Project Area Photos



Figure 1 An aerial image of the US 41 and US 231 / W 109th Ave. The image is oriented north by northwest.



Figure 2 The eastern side of US 41 facing north towards the US 41 and US 231 / W 109th Ave. intersection.



Figure 3 The western side of US 41 facing northwest towards the western leg of the US 41 and US 231 / W 109th Ave.



Figure 4 The eastern shoulder of US 41 facing south.



Figure 5 The intersection of US 41 and US 231 / W 109th Ave, including the median south of the intersection, facing northeast.



Figure 6 The western shoulder of US 41 facing southeast.



Figure 7 The eastern shoulder of US 41 facing south.



Figure 8 The eastern shoulder of US 41 facing south.



Figure 9 The western shoulder of US 41 facing south.



Figure 10 An aerial image of a junkyard along the eastern side of US 41. The image is oriented north.



Figure 11 The western shoulder of US 41 facing north.



Figure 12 The eastern shoulder of US 41 facing north.



Figure 13 The eastern shoulder of US 41 facing south.



Figure 14 An aerial image of the western segment of the tributary to West Creek. The image is oriented south.

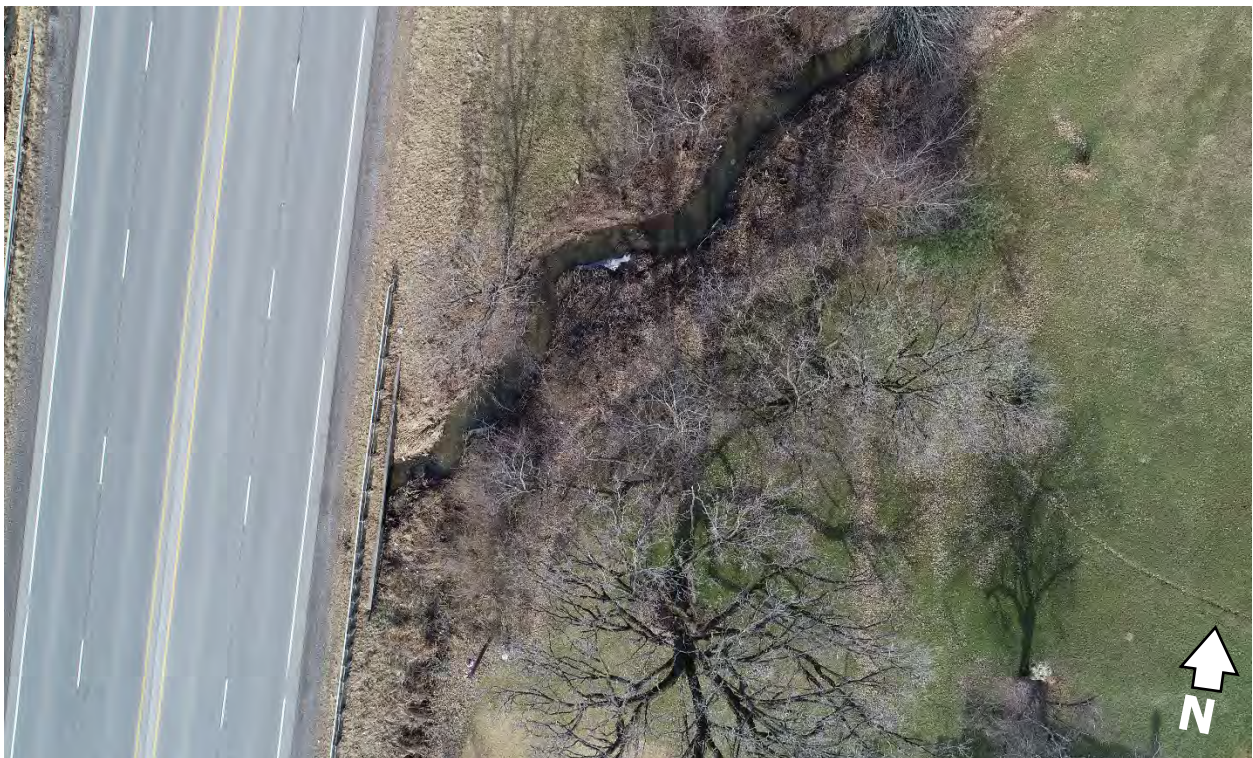


Figure 15 An aerial image of the eastern segment of the tributary to West Creek. The image is oriented north by northwest.



Figure 16 The eastern outlet of structure no. CV 041-045-257.55.



Figure 17 The eastern ditch line of US 41 facing south, as US 41 crosses the tributary of West Creek.



Figure 18 An aerial image of the intersection of US 41 and W 117th St. The image is oriented north by northwest.



Figure 19 The intersection of US 41 and W 117th St facing north.



Figure 20 The western shoulder of US 41 facing north.



Figure 21 The eastern shoulder of US 41 facing north.



Figure 22 The eastern shoulder of US 41 facing south.



Figure 23 An aerial image of the intersection of US 41 and W 119th Ave. The image is oriented south by southwest.



Figure 24 The western shoulder of US 41 facing north.



Figure 21 The western shoulder of US 41 facing south.



Figure 26 An aerial image of the eastern shoulder of US 41. The image is oriented north by northwest.



Figure 27 An aerial image of the western shoulder of US 41. The image is oriented south by southwest.



Figure 28 The eastern shoulder of US 41, facing north.



Figure 29 The eastern shoulder of US 41, facing south.



Figure 30 An aerial image of a newly constructed driveway off the western side of US 41. The image is oriented south by southwest.



Figure 31 The western shoulder of US 41 facing south.



Figure 32 The western shoulder of US 41, where a new subdivision driveway is being installed, facing north.



Figure 33 An aerial image of the intersection of US 41 and W 126th Ave. The image is oriented south by southwest.

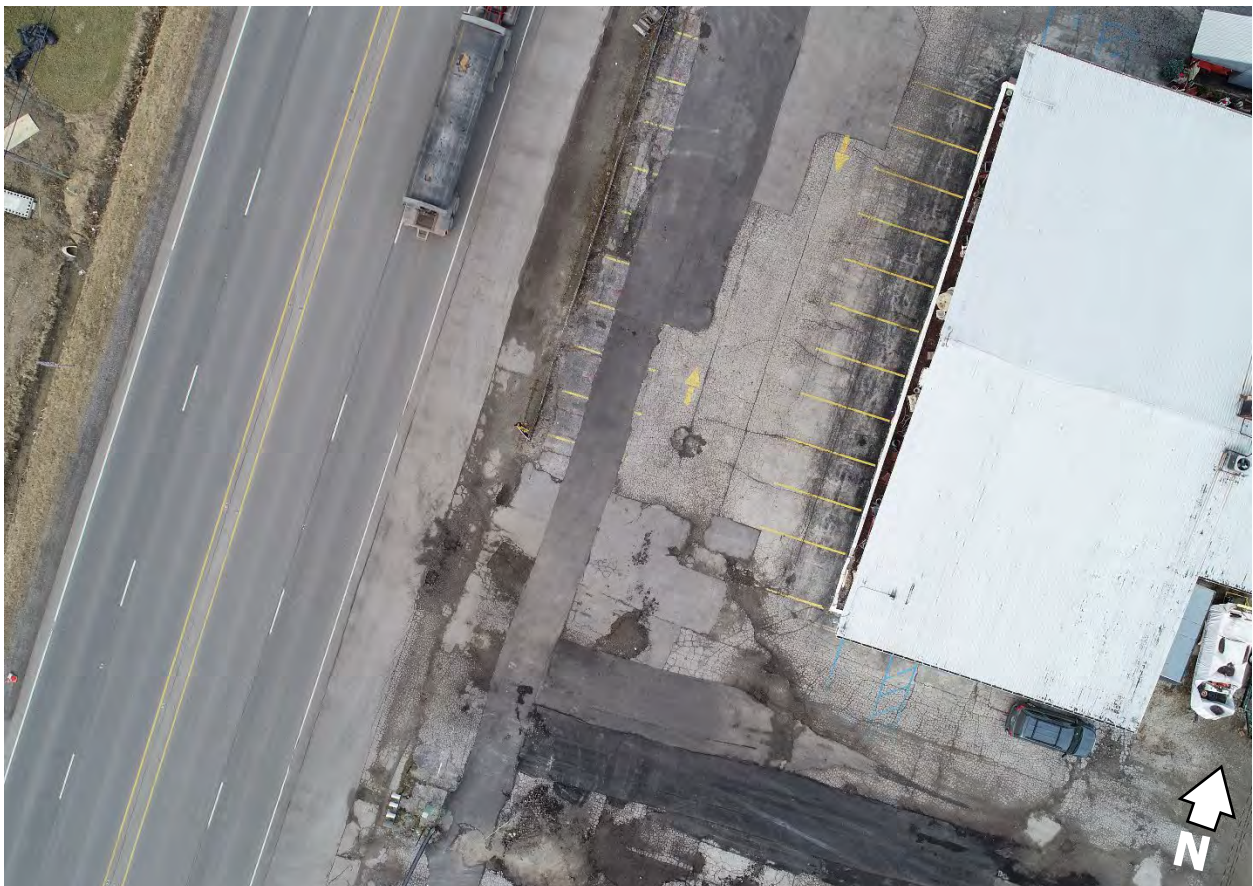


Figure 34 An aerial image of the eastern shoulder of US 41. The image is oriented north by northwest.



Figure 35 An aerial image of the intersection of US 41 and W 127th St. The image is oriented south by southwest.



Figure 36 The eastern shoulder of US 41 facing north.



Figure 37 The eastern shoulder of US 41 facing southwest.



Figure 38 An aerial image of the western approach of the intersection of US 41 and W 129th Ave. The image is oriented south by southwest.

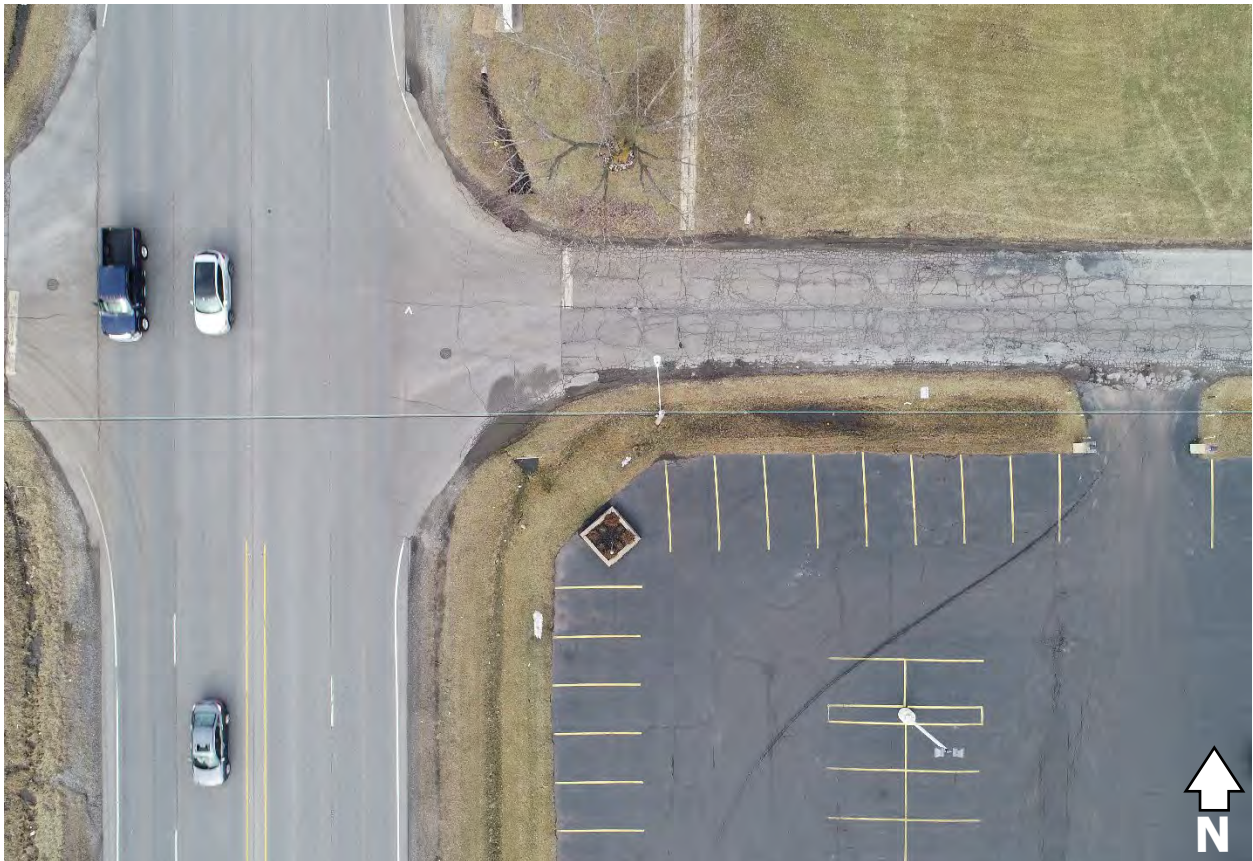


Figure 39 An aerial image of the eastern approach of the intersection of US 41 and W 129th Ave. The image is oriented north.



Figure 40 The western shoulder of US 41 facing north.



Figure 41 The eastern shoulder of US 41 facing north.



Figure 42 An aerial image of the eastern shoulder of US 41. The image is oriented north by northwest.



Figure 43 The western shoulder of US 41 facing north. The intersection of US 41 and W 131st PI is pictured in the distance.



Figure 44 The eastern shoulder of US 41 facing south.

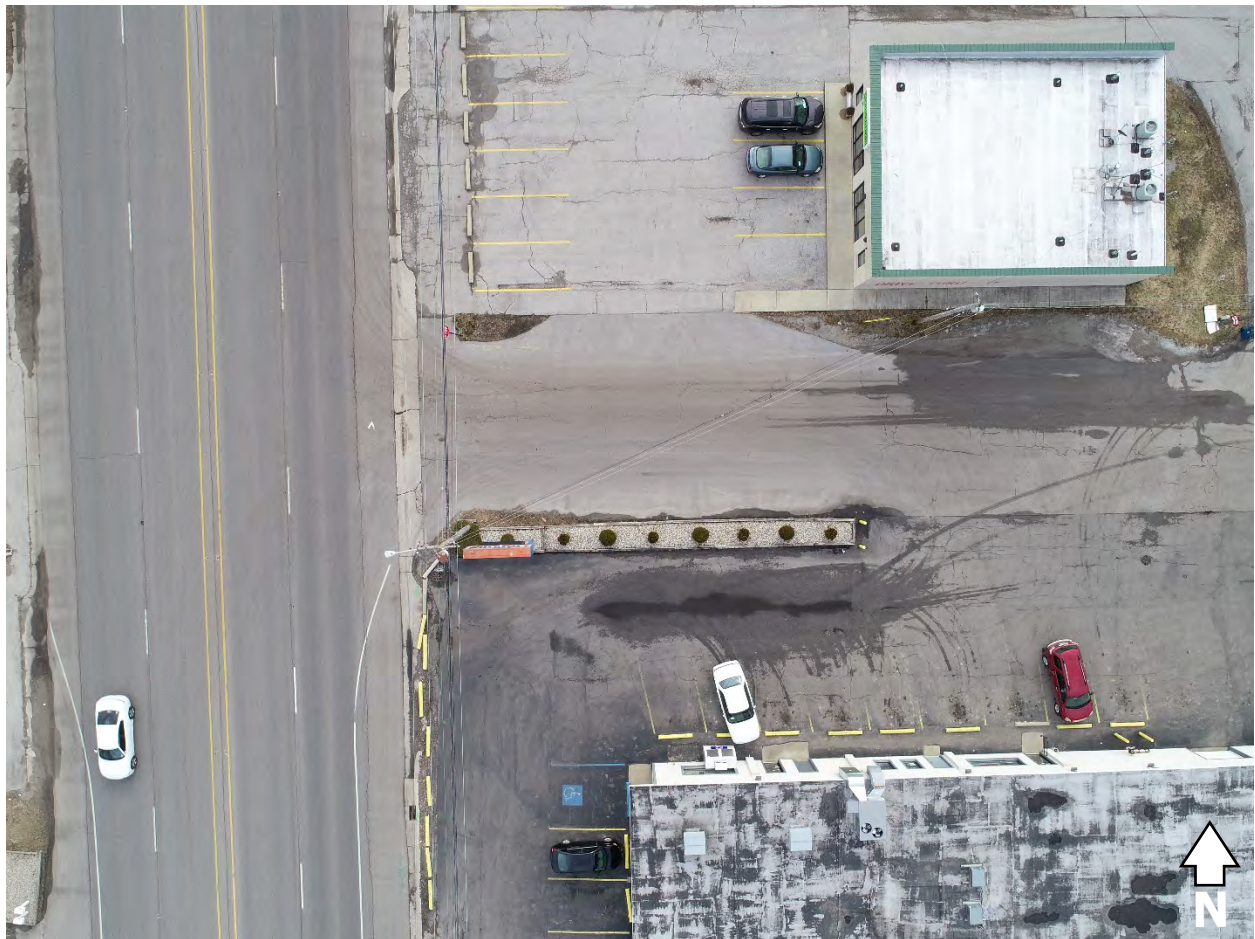


Figure 45 An aerial image of the intersection of US 41 and W 132nd Ave. The image is oriented north.



Figure 46 An aerial image of the northwest quadrant of the intersection of US 41 and W 133rd Ave. The image is oriented south.

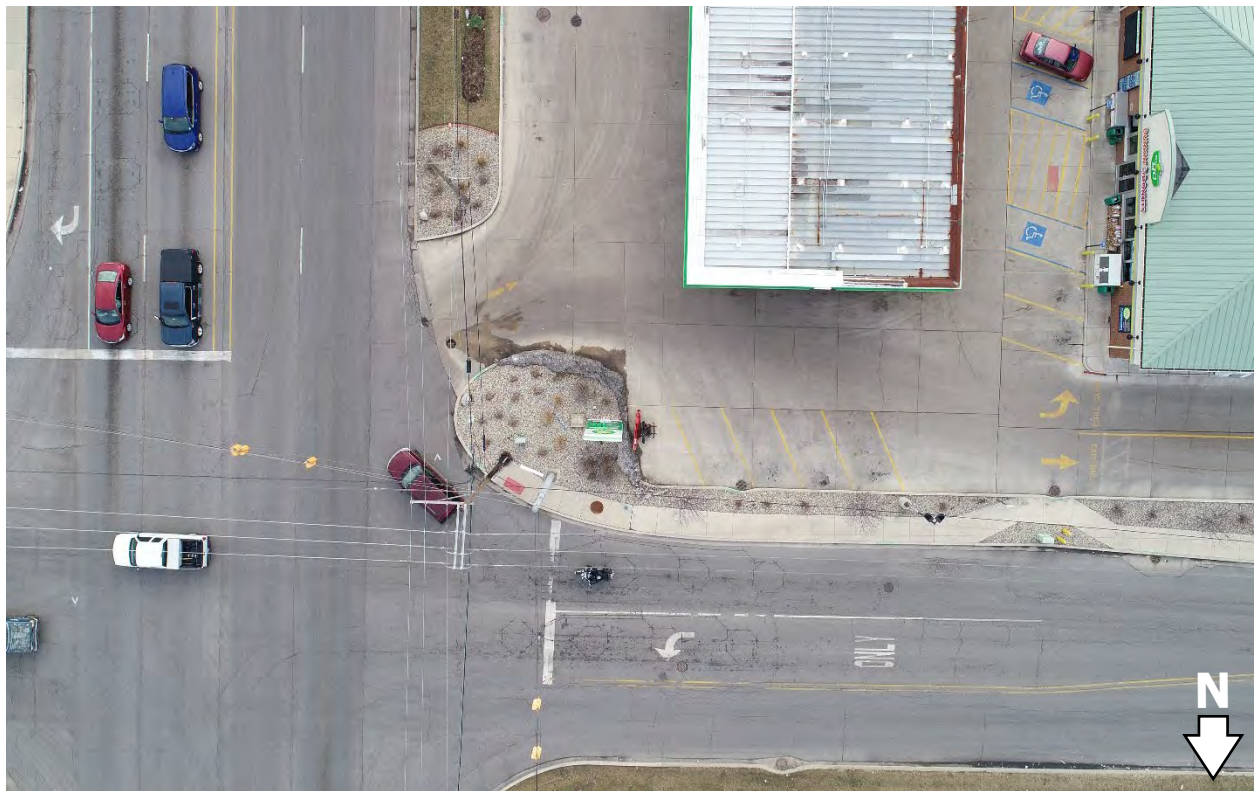


Figure 47 An aerial image of the southwest quadrant of the intersection of US 41 and W 133rd Ave. The image is oriented south.



Figure 48 An aerial image of the northeast quadrant of the intersection of US 41 and W 133rd Ave. The image is oriented north by northwest.



Figure 49 An aerial image of the southeast quadrant of the intersection of US 41 and W 133rd Ave. The image is oriented north by northwest.



Figure 50 The intersection of US 41 and Thornburg Ct., facing south.

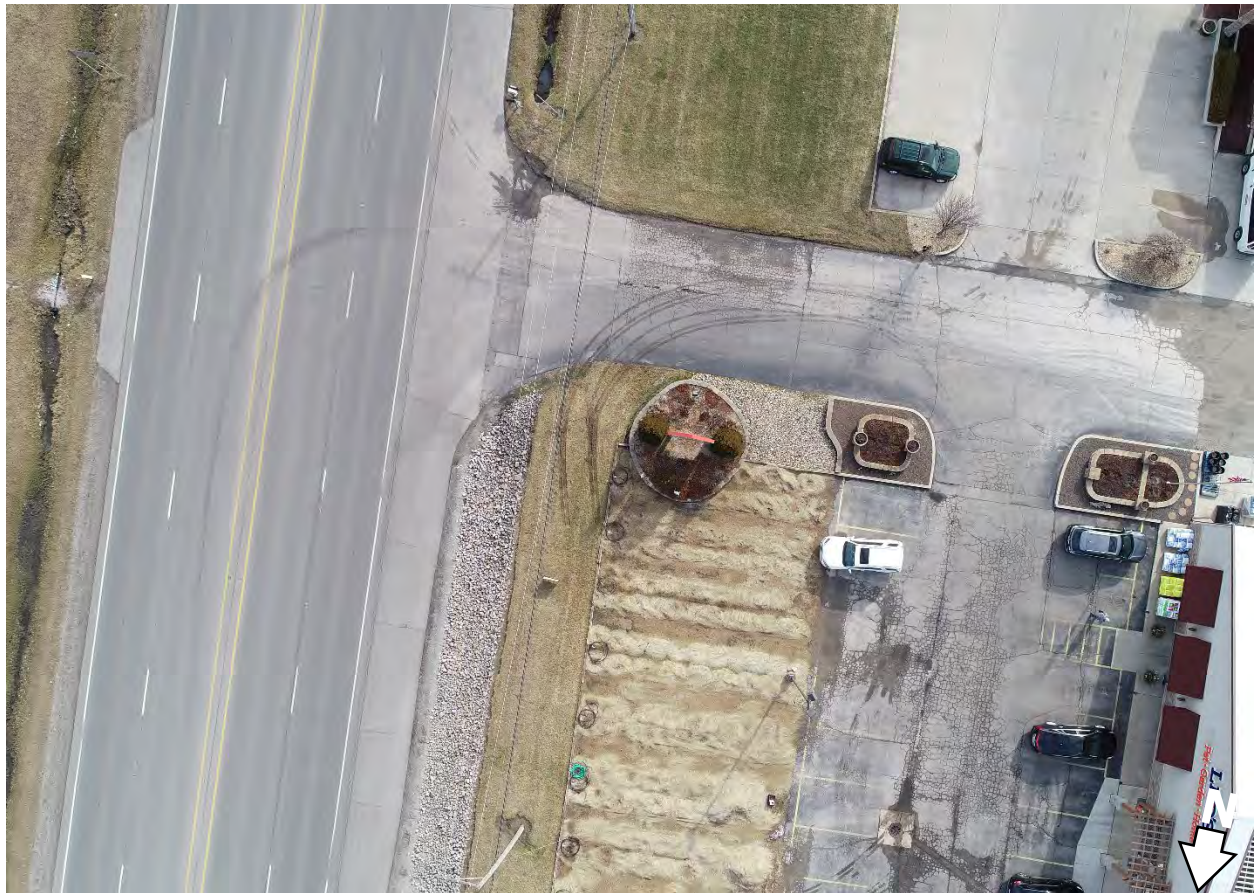


Figure 10 An aerial image of the west shoulder of US 41. The image is oriented south by southwest.



Figure 52 An aerial image of the western approach of the intersection of US 41 and W 135th PI. The image is oriented south.

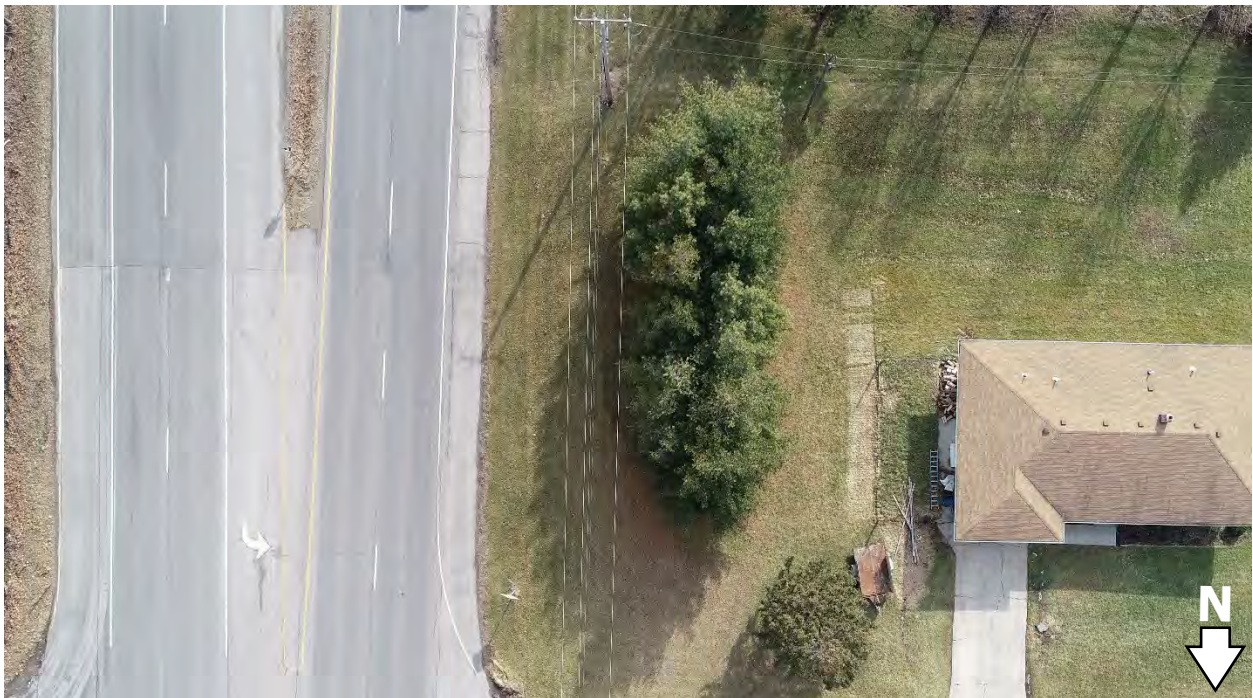


Figure 53 An aerial image of the western shoulder of US 41. The image is oriented south.



Figure 54 The eastern shoulder of US 41. The image is oriented north by northwest.



GRAY & PAPE
HERITAGE MANAGEMENT

8902 Otis Avenue, Suite 220A
Indianapolis, IN 46216
317.541.8200

Since 1987

September 3, 2023

Indiana Ethics Commission
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

RE: Formal Advisory Opinion from the Indiana Ethics Commission

Dear Inspector General Cook:

As a former Indiana Department of Natural Resources employee, I am now seeking a formal advisory opinion from the Indiana Ethics Commission at their September 14, 2023 meeting regarding an Indiana Department of Transportation public works project that my current employer, Gray & Paper Heritage Management will likely be bidding on. Please find the description of my previous state employment as well as my proposed role with this public works project.

Sincerely,

Amy Borland
Principal Investigator Architectural History
Gray & Pape

Amy Borland (formerly of DNR) for Indiana Ethics Commission Meeting, September 14, 2023

Previous Employment

Ms. Borland worked for the Division of Historic Preservation and Archaeology (DHPA) from January 2001-April 2023 starting as an intern, becoming a National Register reviewer, and ending as the survey coordinator. Since 2008, in her primary role as the survey coordinator, Ms. Borland was responsible for the planning, implementing, and execution of the Indiana Historic Sites and Structures Inventory (IHSSI/county survey). In this capacity she:

- worked with DNR-MIS to create a field application and wrote the instruction manual and style guides;
- worked with DNR-Purchasing to finalize the Managed Service Provider contract, first with Knowledge Services and then CAI, to hire field surveyors & subsequently interviewed, hired, trained, and managed those surveyors, as well as completed all Knowledge Services/CAI-related invoices and evaluations;
- completed all pre-survey planning including the research and identification of historic districts in consultation with other Survey & Register section staff;
- reviewed all survey records for accuracy and quality and uploaded those records into the State Architectural & Archaeological Research Database (SHAARD);
- researched and compiled county data into a summary report

While in this position, Ms. Borland started the planning for the Marion County survey that the DHPA intended to undertake c.2025. She spent approximately 3+ months doing preliminary mapping of current historic districts in Center Township and noting areas where further investigation would be necessary to identify new historic districts. She never progressed to the point of identifying new historic districts.

Current Employment

As of April 2023, Ms. Borland is working for Gray & Pape, Inc., a cultural resources management firm, as an architectural historian/principal investigator. Thus far she has been writing National Register of Historic Places nominations and completing various documents to fulfill the federal requirements of Section 106 of the National Historic Preservation Act for the Federal Highway Administration in cooperation with INDOT either directly with INDOT or via INDOT's contractors. This documentation requires:

- identification, evaluation, and research of historic resources within a project area, determining what impact the project will have on those historic resources, and compiling that data into a report;
- working with INDOT to share reports and findings with the public and seeking public input;
- working with INDOT and consulting parties to create solutions/mitigation when projects negatively impact historic resources

Current Request

Ms. Borland is requesting a Formal Advisory Opinion from the Indiana Ethics Commission regarding a proposed 2024-2026 public works project from INDOT that Gray & Pape is likely to bid on. This is a two-year contract with the option to renew two times for both time and money.

The Project

INDOT plans to hire a qualified consulting firm to complete the planning, survey, and recordation of historic resources in six townships of Marion County (Center, Warren, Wayne, Pike, Washington, and Lawrence). While INDOT is taking the lead, there will be considerable interaction with the DHPA. The winning consultant will provide one qualified professional at the DHPA for the duration of the project to plan, oversee, review, and approve records generated in the field. The firm/qualified professional will identify potential historic districts in the six townships for DHPA review and approval; coordinate weekly/bi-weekly meetings with INDOT and DHPA staff; research and write appropriate contexts

and reports for DHPA approval; and approve survey records for DHPA approval.

1) Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts.

Ms. Borland's responsibilities at DHPA did not involve substantial decision-making over authority, rules, or contracts. She had no authority over contracts beyond the occasional processing of invoices from vendors and the processing of paperwork for a contract extension. She did not select contractors or sign contracts.

With regard to decision-making, Ms. Borland was involved in making decisions about whether a property or historic district was eligible for the National Register of Historic Places. These decisions were made in cooperation with other members of the Survey & Registration section. They were never her sole decision.

Ms. Borland's primary decision-making duty was to finalize ratings for any survey record that she reviewed. A field surveyor would assess a resource and assign one of four ratings based on the architecture and historic materials/alterations. Ms. Borland reviewed each record for accuracy. She would sometimes adjust ratings to better reflect the significance of the resource.

2) Please describe the nature of the duties to be performed by the employee for the prospective employer.

In the case of the Marion County survey, the Request for Proposal will be released by INDOT in October. Gray & Pape will likely bid on this contract. Ms. Borland, as the sole architectural historian in the firm working in Marion County, would play a key role in the project. Preliminary plans include Ms. Borland's assistance with the planning, identification, and evaluation of historic resources.

3) Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.

Generally speaking, Ms. Borland's position at Gray & Pape does not involve substantial direct contact with the DHPA. However, with the Marion County survey, there could be considerable contact as INDOT specifies that the winning consultant will provide one qualified professional at the DHPA for the duration of the project to plan, oversee, review, and approve records generated in the field. The firm/qualified professional will identify potential historic districts in the six townships for DHPA review and approval; coordinate weekly/bi-weekly meetings with INDOT and DHPA staff; research and write appropriate contexts and reports for DHPA approval; and approve survey records for DHPA approval.

Planning & Identifying Potential Historic Districts

If Gray & Pape is awarded the project, Ms. Borland would gather data about the architectural significance of potential historic districts, she would confer with INDOT, and on behalf of INDOT she would submit recommendations to the DHPA to determine if the concentration of resources constitutes a historic district.

Survey Management

Ms. Borland would supervise the field surveyors, monitor the content and accuracy of their work, and submit

records for INDOT and DHPA approval. She would manage the progress of the project and update INDOT and DHPA at weekly/bi-weekly meetings.

Production

Ms. Borland would research and write appropriate contexts and reports for INDOT and DHPA approval.

All decisions and products made by field surveyors/Ms. Borland would be based on research and/or professional education/experience. No decisions and products would be final as INDOT and DHPA would review survey products and could amend any evaluations made by field surveyors/Ms. Borland should they deem it necessary.

If the Indiana Ethics Commission recommends a revision to Ms. Borland's role on the project, Gray & Pape would suffer significant disadvantage because she is the firm's only architectural historian in Marion County.

4) Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.

INDOT and DHPA are interested in documenting all historic structures in Marion County in order to expedite reviews and approvals for future projects in the county. Ms. Borland is an expert in the resources of the county. Her experience and expertise would be beneficial to the state and the public as she understands the requirements and process of the Indiana Historic Sites and Structures Inventory (IHSSI). She helped to create the field application in partnership with DNR-MIS and she wrote the survey manual and the architectural style guide.

Additionally, she was part of the DHPA team that was responsible for a Multiple Property Document Form (MPDF) on postwar residential architecture, which will be a major focus of this survey effort. At over 300 pages, this MPDF fully outlines the significance and physical requirements a potential historic district from the postwar period must possess to be eligible and Ms. Borland is adept at applying this knowledge in the field as she previously planned surveys for Morgan and Johnson counties through the postwar period. This experience would yield a high-quality product in a timely and fiscally-responsible manner for the state and the public.

Additionally, the results of such a survey, with guidance from Ms. Borland, would allow for more accurate, better-informed, and productive decision-making and reviews for INDOT's many transportation projects throughout the county. There is no person more qualified to complete this work than Ms. Borland.

5) Please explain the extent of economic hardship to the employee if the request for a waiver is denied.

The economic hardship to Gray & Pape would be considerable if denied. The project is valued at nearly \$2,000,000. This is a significant contract for a small firm and would represent two years of employment for Ms. Borland.