

Special Award Conditions

Award Number: NT10BIX5570025

Amendment Number: 4

1) Revised Environmental Special Award Condition-Compliance with Environmental Protocols and Measur

This BTOP Grant Special Award Condition establishes requirements applicable to implementation of the Zayo Bandwidth, LLC (Zayo), Indiana Middle Fiber Project. The funding of the Grant is dependent on compliance with the provisions of this Special Award Condition.

Post-award environmental reviews of the Project included consultation with regulatory agencies related to the protection of biological and historic and cultural resources. These consultations identified specific protocols or environmental protection measures. These protocols or protective measures may be either required or recommended to be included in the implementation of the Project to minimize potential impacts to biological resources and effects on historic and cultural resources. The protocols and measures are listed below.

Note that this Special Award Condition does not distinguish requirements identified during the consultations from, recommendations that were also provided. Zayo shall implement the identified protocols and measures without regard to this distinction and advise the Federal Project Officer (FPO) immediately if any issues arise related to the ability to fully comply with any requirement or recommendation listed below.

For each protocol or measure listed, Zayo shall include the following information in its periodic report to the FPO administering the grant:

- a. Specifically where and when the protocol has been used or a measure has been implemented during the reporting period, and
- b. Whether full compliance with the protocol or measure was achieved.

The FPO may, if they determine necessary, require additional information to ensure compliance with the protocol or measure. If, at any time, Zayo has questions or requires clarification regarding any of these protocols or measures, they shall notify the FPO, who will coordinate with the appropriate regulatory authority to provide the necessary information.

Biological Resource Protection Protocols and Measures

Project-specific consultations were conducted with the U.S. Fish and Wildlife Service (USFWS) and the Indiana Department of Natural Resources (IDNR) Division of Nature Preservation.

Requirements and recommendations applicable to implementation of the Project and identified during these consultations include:

1. Zayo will avoid disturbance of riparian forest during installation of Project-related poles, boring pits, and staging areas at stream crossings. Zayo will also avoid impacts to wetlands during Project construction. Any unavoidable wetlands impacts will be compensated for in accordance with U.S. Corps of Engineers mitigation guidelines. USFWS, July 19, 2010 (Final EA, pages 110-112).

2. If soil is disturbed in riparian or other sensitive areas during Project implementation, Zayo will revegetate such areas with native species appropriate for site-specific conditions. USFWS, July 19, 2010 (Final EA, pages 110-112).
3. Zayo will avoid areas of concern to fish, wildlife, and botanical resources, to the greatest extent possible, during Project implementation. IDNR, September 13, 2010 (Final EA, pages 164 and 165). Avoidance measures will include:
 - a. Zayo will not conduct any excavation in riparian wetlands areas.
 - b. Zayo will revegetate all bare and disturbed areas with a mixture of grasses (excluding tall fescue), legumes, and native shrub and hardwood tree species as soon as possible after Project completion.
 - c. Zayo will not perform work in Indiana waterways between April 1 and June 30 without prior written approval from the IDNR Division of Fish and Wildlife.
 - d. Zayo will not cut any trees suitable for Indiana bat roosting between April 1 and September 30.
 - e. Zayo will completely remove or properly distribute all excavated material from the Project sites to prevent erosion and off-site sedimentation of such material.
 - f. Zayo will not allow debris associated with the project to enter Indiana waterways. Similarly, Zayo will not place fill in any riparian wetland.
 - g. Zayo will implement appropriately designed measures for controlling erosion and sediment to prevent materials from entering waterways or leaving the construction site. These measures will be maintained until construction is complete and all disturbed areas are stabilized.
 - h. Zayo will compensate for any Project-required tree removal in non-wetland, riparian areas in accordance with the requirements outlined in IDNR's Early Coordination and Environmental Assessment Report.

Historic and Cultural Resource Protection Protocols and Measures

Zayo has entered into a Programmatic Agreement (PA) with the National Telecommunications and Information Administration (NTIA) and the IDNR Division of Historic Preservation and Archaeology (DHPA). The PA establishes a systematic and phased approach for compliance with Section 106 of the National Historic Preservation Act and resolution of potential adverse effects. IDNR, August 16, 2010 (Final EA, pages 246-259).

Requirements and recommendations stipulated in the PA include:

1. All Zayo or contractor personnel directly responsible for supervising preservation of historic and cultural resources during Project implementation will meet the requirements for qualified personnel under applicable Indiana Historic Preservation and Archaeology laws. All such work will comply with relevant federal and state guidance including the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, the current DHPA Guidebook for Indiana Historic Sites and Structures Archaeology Sites, the DHPA Survey Manual for Architectural and Historic Resources, and the Indiana Cultural Resources Manual prepared by the Indiana Department of Transportation (INDOT).
2. Zayo will delineate the Project-specific Area of Potential Effect (APE). Zayo will provide the NTIA, DHPA, and INDOT with maps and a written description of the APE, along with the scope of work for a Phase I cultural resources survey to identify historic properties that may be present in the APE.

3. Zayo will ensure that the Phase I cultural resources survey is conducted by qualified individuals in accordance with the scope of work, including input from signatory and consulting parties. The effort will include surveying a 50-foot-wide corridor along both sides of each road segment; documenting all buildings over 40 years old within the APE; and assessing potential visual effects to any historic buildings, sites, or structures within the Project's viewshed. Upon completion of the Phase I cultural resources survey, Zayo will prepare a preliminary report of findings, along with applicable draft Indiana Historic Sites and Structures Inventory Archaeological Sites forms, Indiana Historic Sites and Structures Inventory forms, and other related records. The completed package will be submitted to NTIA, DHPA, and INDOT for review. Zayo will incorporate any comments received into a revised final report for the Project. Any subsequent changes to the planned construction will be immediately elevated to the attention of NTIA, DHPA, and INDOT for evaluation prior to implementation.
4. Zayo will adhere to all provisions of relevant state statutes regarding cemeteries. If any ground disturbing activities will occur within 100 feet of a cemetery, Zayo will prepare a cemetery development plan for submittal to NTIA, DHPA, and INDOT.
5. To the maximum extent practicable, Zayo will avoid Project-related impacts to historic properties through Project design changes or other recommended measures. If such impacts are deemed unavoidable, Zayo will work with PA signatories and consulting parties to explore methods of reducing the extent of adverse effects. For instances where avoidance or preservation in place is not feasible, Zayo will prepare a treatment plan to identify the nature of the effects and describe strategies to avoid, minimize, or mitigate those effects. The treatment plan will also include provisions for monitoring and responding to unanticipated discoveries. Zayo will provide the treatment plan to NTIA, DHPA, and INDOT for review and comment; a Memorandum of Agreement will be established among all signing and consulting parties prior to commencing any Project work involving the potentially affected historic properties.
6. Zayo will conduct historic and cultural resource monitoring activities as an integral part of Project implementation.
7. In the event that previously undocumented historic properties are discovered during Project construction, Zayo will immediately cease all ground disturbing activity within 100 feet of the discovery and will implement measures to protect the property. Zayo will immediately notify NTIA, DHPA, and INDOT of the discovery.
8. In the event that human remains and/or funerary objects are discovered on state or private land during Project construction, Zayo will immediately cease all ground disturbing activity within 100 feet of the discovery and will implement measures to protect the remains. Zayo will immediately notify IDNR, the Division of Law Enforcement, the County Coroner, and DHPA of the discovery.
9. As appropriate throughout Project implementation, Zayo will consult with any Native American tribes who responded to the TCNS notification and expressed National Historic Preservation Act Section 106 interest in the Project. The only tribe currently interested in consulting on this Project is the Lac Vieux Desert Band of Lake Superior Chippewa. Nevertheless, as requested through TCNS, Zayo will continue tribal consultation with additional Native American tribes if the Project scope changes, or if significant historic or cultural resources are uncovered during Project implementation.

Mitigation Measures identified in the Environmental Assessment as being required to avoid potential significant environmental impacts:

None