

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4625 Morse Road, Suite 104
Columbus, Ohio 43230
(614) 416-8993 / FAX (614) 416-8994

September 14, 2011

Timothy M. Hill, Administrator
Office of Environmental Services
Ohio Department of Transportation
P.O. Box 899
Columbus, OH 43216-0899

TAILS: 31420-2011-F-1044 (PID 80467)

Attn: Michael Pettegrew, Megan Michael

RE: CLE-East Fork Bike Path – Section One (PID 80467)

Dear Mr. Hill:

This letter is in response to your July 11, 2011 request for site-specific review pursuant to section 7 of the Endangered Species Act of 1973, as amended, received in our office on July 14, 2011, regarding the CLE-East Fork Bike Path – Section One project (PID 80467) in Clermont County, Ohio. The project proposes to construct a 0.63-mile shared-use, paved path in East Fork State Park. Your letter and associated Level 2 Ecological Survey Report (ESR) addressed two alignment alternatives (Alternative 1 and Alternative 2). We understand that the project will result in a maximum of 250 linear feet (total) of impacts to two unnamed tributaries to Harsha Reservoir, but no wetlands will be impacted. In addition, a maximum of 71 suitable Indiana bat roost trees may be removed for the project, including 9 trees that exhibit maternity roost characteristics.

The U.S. Fish and Wildlife Service (Service) recommends the implementation of Alternative 2 for this project. Although an additional 30 feet of total linear impacts to the two streams in the project area may result from the implementation of Alternative 2 versus Alternative 1, the majority of these impacts will occur in unnamed tributary A (UT-A), classified as a lower quality headwater stream than unnamed tributary B (UT-B). In addition, fewer trees would be removed for Alternative 2, and the alignment would avoid impacting the population of state threatened potato dandelion (*Krigia dandelion*) that occurs at the project site.

FISH & WILDLIFE COORDINATION ACT COMMENTS:

As indicated in the ESR, UT-B was determined to be a Class III PHWH, with an HHEI score of 64, an HMFEI score of 25, and water temperature of 13.1°C. Therefore, an individual 401 permit may be required for this project. Best construction practices should be used to minimize sedimentation and erosion impacts to the stream. Appropriate sediment control mechanisms should be in place to protect the stream before, during, and after construction. The Service generally encourages the use of crossing structures that allow for continuity of substrate and the stream's natural flow regime. Therefore, we recommend that alternative crossing structures be considered, such as a bridge or bottomless culvert, at the UT-B crossing. As proposed, a 6' X 6' box culvert, between 95 and 112 feet in length, will be placed in that stream. This long box culvert will change the morphology of the stream channel and potentially

affect its flow. In addition, if the culvert is not sufficiently embedded into the stream substrate, the structure will potentially interfere with the passage of aquatic organisms through the channel. In addition to potential changes to the structure type and placement, we recommend limiting the use of rock channel protection (RCP) for erosion control. Instead, we recommend using native vegetation to control erosion, or, at a minimum, using native vegetation in combination with rock.

The Service supports and recommends mitigation activities that reduce the likelihood of invasive plant spread and encourage native plant colonization. Prevention of non-native, invasive plant establishment is critical in maintaining high quality habitats. All disturbed areas in the project vicinity should be mulched and revegetated with native plant species.

FEDERALLY LISTED SPECIES:

The project is located within the range of the **Indiana bat** (*Myotis sodalis*), **running buffalo clover** (*Trifolium stoloniferum*), **fanshell mussel** (*Cyprogenia stegaria*) and **pink mucket pearly mussel** (*Lampsilis abrupta*), all species federally listed as endangered; the **snuffbox** (*Epioblasma triquetra*), **sheepnose** (*Plethobasus cyphus*), and **rayed bean** (*Villosa fabalis*), all mussel species proposed for federal listing as endangered; and the **bald eagle** (*Haliaeetus leucocephalus*), a federal species of concern.

The drainage areas of the two streams to be impacted by this project are both less than 1 mi², and are too small to support unionid mussels. Therefore, ODOT has determined that this project will have *no effect* on any federally listed mussel species (the fanshell, pink mucket, snuffbox, sheepnose, or rayed bean).

Your letter states that John Baird (ODOT OES) conducted an extensive survey of the project area for running buffalo clover in May 2008. Although suitable habitat for the plant was found, no individuals of the species were identified in the project area. Therefore, ODOT has determined that this project may affect, but is not likely to adversely affect running buffalo clover. Based on the survey results provided, the Service concurs with this determination.

A bald eagle nest was discovered in Clermont County during the past year. Upon being notified of this new record, the Service added the eagle to our Clermont County list of species of concern in August 2011. As this change came into effect after your coordination materials for this project had been submitted for review, your letter and ESR did not address impacts to this species. However, the bald eagle nest is approximately 1.5 miles from the project site. Therefore, due to the size, location, and nature of the action, the Service does not anticipate that the species will be adversely affected by this project.

The remainder of this letter addresses impacts to the Indiana bat.

INDIANA BAT - TIER 2 BIOLOGICAL OPINION:

On January 26, 2007, the U.S. Fish and Wildlife Service (Service) issued a programmatic biological opinion (PBO) for the Ohio Department of Transportation's (ODOT) Statewide Transportation Program through January 2012. This PBO established a two-tiered consultation process for ODOT activities, with issuance of the programmatic opinion being Tier 1 and all subsequent site-specific project analyses constituting Tier 2 consultations. Under this tiered process, the Service will produce tiered biological opinions when it is determined that site-specific projects are likely to adversely affect federally listed species. When *may affect, not likely to adversely affect* determinations are made, the Service will review those projects and if justified, provide written concurrence and section 7(a)(2) consultation will be considered completed for those site-specific projects.

In issuing the PBO (Tier 1 biological opinion), we evaluated the effects of all ODOT actions outlined in your Biological Assessment on the federally listed Indiana bat. Your current request for Service review of the East Fork Bike Path (Section One) project is a Tier 2 consultation under the January 26, 2007,

PBO. We have reviewed the information contained in the letter and supporting materials submitted by your office describing the effects of the proposed project on federally listed species. We concur with your determination that the action is *likely to adversely affect* the Indiana bat. As such, this review focuses on determining whether: (1) this proposed site-specific project falls within the scope of the Tier 1 PBO, (2) the effects of this proposed action are consistent with those anticipated in the Tier 1 PBO, and (3) the appropriate conservation and mitigation measures identified in the biological assessment are adhered to.

That is, this letter serves as the Tier 2 biological opinion for the proposed East Fork Bike Path (Section One) project. As such, this letter also provides the level of incidental take that is anticipated and a cumulative tally of incidental take that has been authorized and exempted in the PBO.

Description of the Proposed Action

Pages 1-2 of your letter, along with the supporting materials you submitted, include the location and a thorough description of the proposed action. The action, as proposed, involves the construction of a 0.63-mile segment of the Williamsburg to Batavia Hike/Bike Trail. The Williamsburg to Batavia Trail will be a paved, multi-use trail made up of separate trail segments and shared roadways, which will ultimately connect the villages of Williamsburg and Batavia in Clermont County, Ohio. The action reviewed for the present consultation involves only the first segment, Section One, of the trail system. Approximately 2.58 acres of wooded habitat containing numerous trees that exhibit suitable summer roost habitat characteristics for the Indiana bat will be removed for the project, including several trees that may provide brood-rearing habitat for the species. ODOT will implement the following conservation measures to avoid, minimize, and/or mitigate adverse impacts to the Indiana bat: 1) any unavoidable tree removal will take place between September 30 and April 1 to avoid direct impacts (avoidance measure A-1), and 2) invasive species plant control (i.e., clearing understory of bush honeysuckle) will be implemented to create better quality habitat (mitigation measure M-5). The Service appreciates ODOT's use of the revised tree clearing dates of September 30 and April 1.

Status of the Species

Species description, distribution, life history, population dynamics, and status are fully described on pages 13-26 for the Indiana bat in the PBO and are hereby incorporated by reference. Since the issuance of the PBO in 2007, there has been no change in the status of the species.

Species descriptions, life histories, population dynamics, status and distributions are fully described on pages 23-30 for the Indiana bat in the PBO and are hereby incorporated by reference. The most recent population estimate indicates 387,835 Indiana bats occur rangewide (King 2010). The current revised Indiana Bat Recovery Plan: First Revision (2007) delineates recovery units based on population discreteness, differences in population trends, and broad level differences in land-use and macrohabitats. There are currently four recovery units for the Indiana bat: Ozark-Central, Midwest, Appalachian Mountains, and Northeast. All of Ohio falls within the Midwest Recovery Unit.

In 2007, white nose syndrome (WNS) was found to fatally affect several species of bats, including the Indiana bat, in eastern hibernacula. To date, WNS is known from New York, Massachusetts, Vermont, West Virginia, Pennsylvania, New Jersey, New Hampshire, Connecticut, Virginia, Tennessee, Oklahoma, Missouri, Maine, Maryland, North Carolina, Kentucky, and Indiana as well as the provinces of Ontario and Quebec in Canada. The extent of the impact this syndrome may have on the species rangewide is uncertain, but based on our current limited understanding of WNS, we expect mortality of bats at affected sites to be high (personal communication, L. Pruitt, 2008).

Environmental Baseline

The environmental baseline for the species listed above was fully described on pages 21-26 of the PBO and is hereby incorporated by reference. Since the issuance of the PBO in 2007, there has been no change in the environmental baseline.

Status of the species within the action area

Since the issuance of the PBO in 2007, there have been no new Indiana bat capture records within the vicinity of this project. Your letter and supporting materials state that suitable habitat exists within the action area, thus we are assuming presence.

Effects of the Action

Based on analysis of the information provided in your letter and supporting materials, we have determined that the effects of the proposed action are consistent with those contemplated and fully described on pages 31-35 of the PBO. Adverse effects to the Indiana bat from this project could occur due to the removal of potential maternity roost habitat. However, implementation of seasonal cutting restrictions (avoidance measure A-1) will avoid direct adverse effects to individual bats. Projects that require the removal of one or more potential primary maternity roost trees outside of the Indiana bats' maternity season can result in adverse effects to colony members upon their return to maternity areas following hibernation. When a primary roost tree becomes unsuitable, members of a colony may initially distribute themselves among several previously used alternate roost trees (USFWS 2002; Kurta et al. 2002). It is not known how long it takes for the colony to attain the same level of roosting cohesiveness that it experienced prior to the loss of an important primary roost tree. As explained in the PBO, colony cohesiveness is essential for successful birth and rearing of young. It is likely that due to the ephemeral nature of roost trees, the Indiana bat has evolved to be able to relocate replacement roosts, if available, when their previously-used roost trees become unsuitable. Until the bats from the colony locate another desirable primary roost tree and reunite, it is possible, however, that some individual members of a colony will be subject to increased stress resulting from: (1) having to search for a replacement primary roost tree, which increases energy expenditure and risk of predation; (2) having to roost in alternate trees that are less effective in meeting thermoregulatory needs; and (3) having to roost singly, rather than together, which decreases the likelihood in meeting thermoregulatory needs, thereby reducing the potential for reproductive success.

Adult male and non-reproductive female Indiana bats may also be indirectly exposed to loss of roosting habitat. In general, effects on these individual bats would be less severe than the effects associated with individuals of maternity colonies. Adult male and non-reproductive female Indiana bats are not subject to the physiological demands of pregnancy and rearing young. Males and non-reproductive females typically roost alone or occasionally in small groups. When these individuals are displaced from roosts they must utilize alternative roosts or seek out new roosts. Because these individuals are not functioning as members of maternity colonies, they do not face the challenge of reforming as a colony. Roost tree requirements for non-reproductive Indiana bats are less specific whereas maternity colonies generally require larger roost trees to accommodate multiple members of a colony. Therefore, it is anticipated that adverse indirect effects to non-reproductive bats will be less than the effects to reproductively active females. The Service anticipates that indirect effects to non-reproductive Indiana bats from the loss of roosting habitat will be insignificant.

The wooded portion of the Section One bike-path alignment follows an existing earthen trail within a heavily forested landscape. ODOT surveyed additional buffer area around the project construction limits to better understand the project's potential impact on the Indiana bat. The surveyed area was consistent with the wooded area to be impacted in both its composition and condition. Therefore, it is expected that alternative maternity colony roosting sites occur near the narrow line of trees to be removed along the existing trail. However, to further mitigate for impacts to the species, the project sponsor (the Clermont

County Park District) has committed to clear invasive honeysuckle and other invasive shrub species along a 7.5-mile section of the East Fork Little Miami River riparian corridor. This commitment not only involves the initial effort of clearing the species from the location, but includes perpetual maintenance to keep the area free of honeysuckle and other invasive shrubs.

We are not aware of any non-federal actions in the action area that are reasonably certain to occur. Thus, we do not anticipate any cumulative effects associated with this project.

Conclusion

We believe the proposed East Fork Bike Path (Section One) project is consistent with the PBO. After reviewing site specific information, including 1) the scope of the project, 2) the environmental baseline, 3) the status of the Indiana bat and its assumed presence within the project area, 4) the effects of the action, and 5) any cumulative effects, it is the Service’s biological opinion that this project is *not likely to jeopardize* the continued existence of the Indiana bat.

Incidental Take Statement

The Service anticipates that the proposed action will result in incidental take associated with projects in the South management unit. Incidental take for this project is approximately 2.58 acres, resulting in the cumulative incidental take of 123.45 for this management unit. This project, added to the cumulative total of incidental take for the implementation of ODOT’s Statewide Transportation Program, is well within the level of incidental take anticipated in the PBO through 2012 (see table below).

Management Unit	IT anticipated in PBO	IT for this project	Cumulative IT granted to date
West	1,565 acres	0 acres	142.98 acres
Central	2,280 acres	0 acres	53.95 acres
Northeast	4,679 acres	0 acres	207.29 acres
East	6,370 acres	0 acres	76.89 acres
South	7,224 acres	2.58 acres	123.45 acres
Statewide	22,118 acres	2.58 acres	604.56 acres

We determined that this level of anticipated and exempted take of Indiana bats from the proposed project, in conjunction with the other actions taken by ODOT pursuant to the PBO to date, is *not likely to result in jeopardy* to the species.

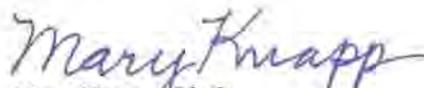
We understand that ODOT is implementing pertinent Indiana bat conservation measures, specifically A-1 and M-5 stipulated in the Biological Assessment on pages 29-31. In addition, ODOT is monitoring the extent of incidental take that occurs on a project-by-project basis. These measures will minimize the impact of the anticipated incidental take.

This fulfills your section 7(a)(2) requirements for this action. However, should the proposed project be modified or the level of take identified above be exceeded, ODOT should promptly reinstate consultation as outlined in 50 CFR §402.16. As provided in 50 CFR §402.16, reinstatement of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the continued implementation of ODOT’s Statewide Transportation Program and projects predicated upon it may affect listed species in a manner or to an extent not considered in this opinion; (3) the continued implementation of ODOT’s Statewide Transportation Program and projects predicated upon it are subsequently modified in a manner that cause an effect to federally listed species

not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease, pending reinitiation. Requests for reinitiation, or questions regarding reinitiation, should be directed to the U.S. Fish Wildlife Service's Columbus, Ohio Field Office.

We appreciate your continued efforts to ensure that this project is consistent with all provisions outlined in the Biological Assessment and PBO. If you have any questions regarding our response or if you need additional information, please contact Karen Hallberg at extension 23.

Sincerely,

A handwritten signature in blue ink that reads "Mary Knapp". The signature is written in a cursive, flowing style.

Mary Knapp/Ph.D.
Field Supervisor

cc: ODNR, DOW, SCEA Unit, Columbus, OH (*email only*)
Ohio Regulatory Transportation Office, Columbus, OH (*email only*)
OEPA, Columbus, OH (*email only*)