



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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April 15, 2014

Timothy M. Hill
Ohio Department of Transportation
Office of Environmental Services
1980 West Broad Street, 3rd Floor
Mail Stop #4170
Columbus, Ohio 43223

TAILS: 03E15000-2014-F-0985 (PID 93501)

Attn: Michael Pettegrew, Matt Raymond

RE: **SUM-76-0.00 (PID 93501)**

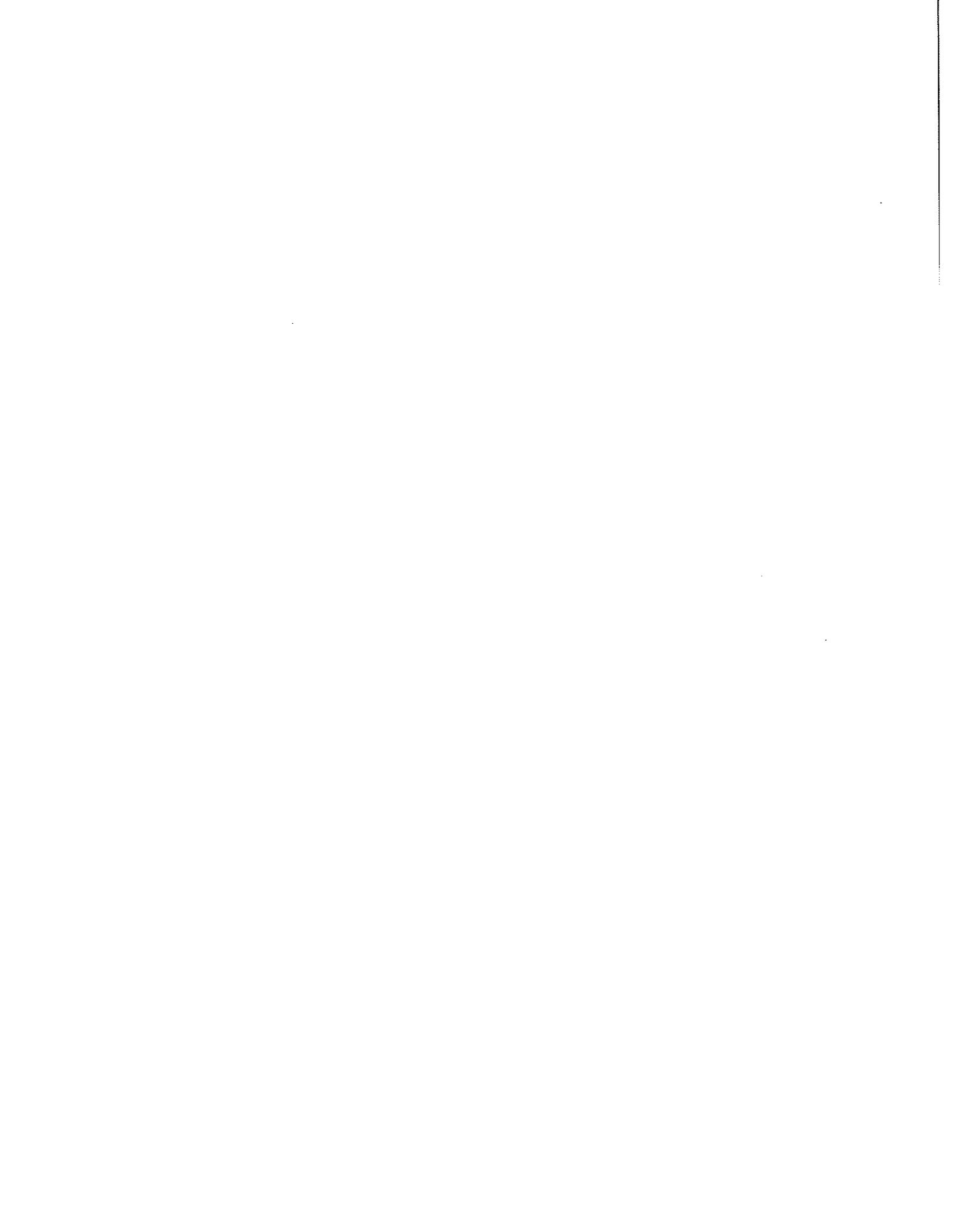
Dear Mr. Hill:

This letter is in response to your March 31, 2014 request for site-specific review of the **SUM-76-0.00** culvert, road and bridge maintenance project (PID 93501), pursuant to section 7 of the Endangered Species Act of 1973, as amended. Your request was received in our office on March 31, 2014. The project, as proposed, involves roadway improvements and bridge/culvert maintenance activities to approximately 29,000 feet (ft.) (5.5 miles) of Interstate 76 (IR-76) in cities of Norton and Barberton, Summit County, Ohio to improve roadway capacity, congestion, and better serve the needs of the traveling public. The project extends from South Medina Line Road to West State Street and involves the addition of one (1) eastbound/westbound lane to the inside, extension of on/off ramps at interchanges, bridge/culvert reconstruction and replacements, closed median drainage, culvert extensions, channel cleanout, and full depth pavement replacement on the mainline and ramps.

We understand that the project will result in impacts to 17 streams totaling 8,428 linear feet of stream impacts. The project as proposed also includes impacts to 23 wetlands totaling 1.1 acres of a Category I, II and III wetland impacts. The streams and wetlands within the project area have been previously disturbed by routine roadway maintenance activities including: mowing, herbicide application etc. In addition, 69 suitable Indiana bat roost trees may be removed for the project with total tree clearing totaling 19.6 acres.

FISH & WILDLIFE COORDINATION ACT COMMENTS:

The Service recommends that impacts to streams and wetlands be avoided, and buffers surrounding these systems be preserved. Streams and wetlands provide valuable habitat for fish and wildlife resources, and the filtering capacity of wetlands helps to improve water quality. Naturally vegetated buffers surrounding these systems are also important in preserving their wildlife-habitat and water quality-enhancement properties. We support and recommend 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*), a federally listed endangered species; **northern monkshood** (*Aconitum noveboracense*), a federally listed threatened species; **northern long-eared bat** (*Myotis septentrionalis*), a species that is currently proposed for listing as federally endangered; and the **bald eagle** (*Haliaeetus leucocephalus*), a species protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) and the Migratory Bird Treaty Act (16 U.S.C. 703-712).

We appreciate ODOT's commitment to only clear trees between September 30 and April 1 on this project. Clearing trees during winter months is likely to avoid direct impacts to the northern long-eared bat. Therefore, we concur with your determination that this project *may affect but is not likely to adversely affect* the northern long-eared bat.

ODOT has determined that this project will have *no effect* on the northern monkshood or the bald eagle; therefore consultation on these two species is not required. 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. 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 **SUM-76-0.00** culvert, road and bridge maintenance project (PID 93501) 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 **SUM-76-0.00** culvert, road and bridge maintenance project (PID 93501). 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 1-4 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 roadway improvements and bridge/culvert maintenance activities to approximately 29,000 feet (ft.) (5.5 miles) of Interstate 76 (IR-76) extending from South Medina Line Road to West State Street and involves the addition of one (1) eastbound/westbound lane to the inside, extension of on/off ramps at interchanges, bridge/culvert

reconstruction and replacements, closed median drainage, culvert extensions, channel cleanout, and full depth pavement replacement on the mainline and ramps within the cities of Norton and Barberton, Summit County, Ohio. The purpose of this project is to improve roadway capacity, congestion, and better serve the needs of the traveling public. Sixty-nine trees that exhibit suitable summer roost habitat characteristics for the Indiana bat will be removed for the project.

We understand that 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).
- 2) 19.6 acres of impacted forest will be added to the SCCC2 Debit List to mitigate adverse impacts to the bat (towards mitigation measure M-1). *See attached document: ODOT Interim Debit List.* The final type and amount of acreage to be deducted from the SCCC2 Conservation Area to offset impacts from this project will be calculated in accordance with the habitat replacement strategy and ratio to be included in the final agreement between ODOT and the Service regarding the use of the SCCC2 site to offset take of Indiana bat habitat.

On bridge replacement projects, we recommend that, prior to any bridge removal, the underside of the bridge be carefully examined for the presence of bats, especially from April 1 to September 30. If any bats are found roosting on the underside of the bridge, please immediately contact this office to provide this information.

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 424,708 Indiana bats occur range wide (King 2011). 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 the states Alabama, Connecticut, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin, as well as the provinces of New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec in Canada. The overall impact this syndrome will have on the species rangewide is uncertain, but surveys in eastern states with 2+ years of mortality from the disease have detected a decline in Indiana bat populations greater than a 70% (Turner et al. 2011).

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 19.6 acres of wooded habitat, including 69 potential roost trees. As no trees exhibiting characteristics of maternity roost habitat will be removed for the project, the Service anticipates that any effects on an extant maternity colony will be insignificant. In addition, implementation of seasonal cutting restrictions will avoid direct adverse effects to individual bats.

Adult male and non-reproductive female Indiana bats may 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.

In addition, ODOT's placement of conservation-oriented restrictions on the SCCC2 site has the potential to provide suitable habitat for the Indiana bat on and near that property into perpetuity. The SCCC2 property was purchased by ODOT in December 2012 for the purpose of mitigating ODOT project impacts on waters of the U.S. and federally listed species. Prior to ODOT's purchase of the property, the SCCC2 site was available for development, which likely would have further reduced available habitat for the Indiana bat in eastern Ohio.

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 SUM-76-0.00 (PID 93501) 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 Northeast management unit. Incidental take for this project, based on the potential removal of approximately 19.6 acres, results in the cumulative incidental take of 371.40 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 2007 PBO (see table below).

Management Unit	IT anticipated in PBO	IT for this project	Cumulative IT granted to date
West	1,565 acres	0 acres	222.47 acres
Central	2,280 acres	0 acres	136.80 acres
Northeast	4,679 acres	19.6 acres	371.40 acres
East	6,370 acres	0 acres	222.61 acres
South	7,224 acres	0 acres	938.64 acres
Statewide	22,118 acres	19.6 acres	1891.92 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 all pertinent Indiana bat conservation measures, specifically A-1 and M-1 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 reinstatement. Requests for reinstatement, or questions regarding reinstatement, should be directed to the U.S. Fish Wildlife Service's Columbus, Ohio Field Office.

In addition to the criteria, described immediately above, under which formal consultation must be reinstated for the Indiana bat, the following reinstatement guidance also applies. Should, during the term of this action, additional information on listed or proposed species, or their critical habitat become available, if a proposed species becomes officially listed, or if new information reveals effects of the action that were not previously considered, consultation with the Service should be reinstated to assess whether the determinations are still valid.

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 Marci Lininger at extension 27 or Karen Hallberg at extension 23.

Sincerely,

A handwritten signature in cursive script that reads "Mary Knapp".

Mary Knapp, Ph.D.
Field Supervisor

cc: J. Kessler, ODNR, Office of Real Estate, Columbus, OH (*email only*)
P. Clingan, USACE, Ohio Regulatory Transportation Office, Columbus, OH (*email only*)
J. Lung, OEPA, Columbus, OH (*email only*)
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