



UNITED STATES DEPARTMENT OF THE INTERIOR  
U.S. Fish and Wildlife Service  
Ecological Services Office  
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October 10, 2016

Timothy M. Hill, Administrator  
Ohio Department of Transportation  
Office of Environmental Services  
1980 West Broad Street, Mail Stop 4170  
Columbus, OH 43223

TAILS: 03E15000-2016-F-1672

Attn: Mike Pettegrew, Megan Michael

RE: **CLE-SR32-2.25 (PIDs 82370 82552 82257)**

Dear Mr. Hill,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated September 7, 2016 to verify that the proposed **subject** project (the Project), **PIDs 82370 82552 82257**, may rely on the February 29, 2016, Framework Programmatic Biological Opinion (PBO) for the Ohio Department of Transportation (ODOT) Federal-Aid Highway Program projects that may affect the Indiana bat (*Myotis sodalis*) and/or northern long-eared bat (NLEB) (*Myotis septentrionalis*). ODOT has determined that the Project is *likely to adversely affect* the Indiana and northern long-eared bats. This letter provides the Service's response as to whether the Project may rely on the PBO to comply with Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) for its effects to the Indiana and northern long-eared bats.

This letter also responds to your request for Service concurrence that the Project *may affect, but is not likely to adversely affect* (NLAA) the following species:

- running buffalo clover (*Trifolium stoloniferum*), a species federally listed as endangered.

The Project, as proposed, will add an interchange and eliminate at grade intersections in the Eastgate Area. CLECR171 (Old SR 74 Phase 1) project will improve 1.06 miles of CR 171 by adding travel lanes. The CLETR252 Clepper Lane Extension will reconstruct a portion of the existing Clepper Lane, realign a segment, and extend the roadway further east to tie in with Bach Buxton Road. We understand that the project will result in impacts to approximately 2,959 linear feet of 11 small stream segments (most are Class 1 and Class 2 PHWH streams), and 0.163 acre of Category 1 wetlands, and 0.034 acre of potentially jurisdictional ditches. In addition, up to 4.6 acres of suitable wooded habitat (SWH) for the Indiana and northern long-eared bats, 3.95 of which are located beyond 100 feet from the existing edge of pavement, but not within 50 feet of a perennial stream will be removed for the project.

We understand from the provided documentation that suitable habitat for running buffalo clover was noted within the project areas but no individuals were observed during the ecological survey conducted July 2016. Therefore, the Service concurs with your determination that the Project *may affect but is not*

*likely to adversely affect* the aforementioned species. This concurrence concludes your ESA Section 7 responsibilities relative to running buffalo clover for this Project, subject to the Reinitiation Notice below.

### Conclusion

The Service has reviewed the September 7, 2016 letter and supporting materials submitted by your office, which describe the effects of the proposed Project and include ODOT's commitment to implement the impact avoidance, minimization, and compensation measures as described for CC-3a projects in the 2016 PBO. These measures include the implementation of CM-1a, which will offset the **3.95** acres of suitable wooded habitat to be removed beyond 100 feet from the edge of pavement by subtracting acreage credit from the Sunday Creek Coal Company 2 (SCCC2) Bat Conservation Area (BCA) at a replacement ratio of **3.5:1**. Therefore, **13.825** acres of credits will be taken from the SCCC2 BCA.

We confirm that the proposed Project's effects are consistent with those analyzed in the PBO. The Service has determined that projects consistent with the conservation measures and scope of the program analyzed in the PBO are not likely to jeopardize the continued existence of the Indiana and northern long-eared bats.

### Incidental Take

#### *Indiana Bat*

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of Indiana bats. As described in the Framework Incidental Take Statement (ITS) of the PBO, such taking will be difficult to detect. The Service determined that it is appropriate to measure the amount or extent of incidental taking resulting from PBO projects using the proposed acreage of tree removal from Indiana bat suitable habitat as a surrogate for the numbers of individuals taken.

The proposed Project will remove 4.6 acres of suitable wooded habitat for the Indiana bat, as defined by the 2016 PBO.

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the PBO as a surrogate measure of Indiana bat take and exempted from the prohibitions against incidental taking. Such exemption is effective so long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the PBO's ITS.

#### *Northern Long-eared Bat*

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of NLEBs. However, the Project is consistent with the PBO, and such projects will not cause take of NLEB that is prohibited under the final 4(d) rule for this species (50 CFR §17.40(o)). Therefore, this taking does not require exemption from the Service.

### Reporting Dead or Injured Bats

ODOT, its Local cooperators, and any contractors must take care when handling dead or injured Indiana and northern long-eared bats, or any other federally listed species that are found at the Project site in order to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of

incidental take exempted by this PBO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Reinitiation Notice

This letter concludes consultation for the proposed Project, which qualifies for inclusion in the PBO issued to Ohio on February 26, 2016. To maintain this inclusion, a reinitiation of this Project-level consultation is required if:

1. the amount or extent of incidental take of Indiana bat is exceeded;
2. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the PBO;
3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the PBO; or
4. a new species is listed or critical habitat is designated that the Project may affect.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the Project removes trees from more than 3.95 acres of suitable wooded habitat for Indiana and northern long-eared bats.

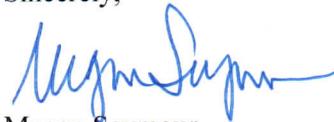
In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

As of this date, our records indicate that projects coordinated under the 2016 PBO have resulted in take of **36.65** acres of suitable wooded habitat:

Management Unit	IT for this project	Cumulative IT to date
West	4.6 acres	24.16 acres
East	0.00 acres	12.49 acres
<b>Statewide</b>	4.6 acres	<b>36.65 acres</b>

We appreciate your continued efforts to ensure that this Project is fully consistent with all applicable provisions of the 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 in this office.

Sincerely,



Megan Seymour  
Acting Field Supervisor

- cc: J. Kessler, ODNR, Office of Real Estate, Columbus, OH (*email only*)  
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