



# 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

December 7, 2017

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

TAILS: 03E15000-2018-F-0297

Attn: Matt Raymond, Chris Staron , Megan Michael

**RE: WAS-River Trail Phase V (PID 95320)**

Dear Mr. Hill,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated October 13, 2017 to verify that the proposed **WAS-River Trail Phase V** (PID 95320), 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*)<sup>1</sup>. 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 proposed 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 aforementioned species.

The project, as proposed, will construct a multi-use trail (bike-pedestrian) (River Trail Phase V) in the City of Marietta, Washington County, Ohio. The proposed trail extends 0.84 mile from the existing Jefferson Street trail spur to Cogswell Lane. From the existing spur, the proposed trail continues southeastward along the Ohio River and under Interstate 77 before traversing northward upstream along Duck Creek, across Duck Creek and to Cogswell Lane along the periphery of a golf course. We understand from your correspondence that the current project will result in removal of approximately 2.31 acres of suitable wooded habitat (SWH) for the Indiana and northern long-eared bats, (1.73 of which are located beyond 100 feet from the existing edge of pavement).

### Conclusion

The Service has reviewed the October 13, 2017 letter and supporting materials submitted by your office, which describe the effects of the proposed Project and include ODOT's commitment to implement the

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<sup>1</sup> Note: The Programmatic Biological Opinion on Final 4( d) Rule for the Northern Long-Eared Bat and Activities Exempted from Take Prohibitions is included in the ODOT PBO by reference.

impact avoidance, minimization, and compensation measures as described for CC-3a projects in the 2016 PBO. These measures include the implementation of:

- Avoidance Measure A-1, which will avoid and/or minimize impacts to summer roosting bats by clearing SWH only between 1 October and 31 March.
- All phases/aspects of the project have been designed to avoid tree removal in excess of what is required to implement the project safely.
- The project footprint has been minimized to the extent practicable.
- Impacts to aquatic resources have been minimized.
- Impacts to forested areas and upland habitats have been minimized.

We understand that CM-1a, will offset the 1.73 acres of SWH to be removed beyond 100 feet from the edge of pavement by subtracting acreage credit from the SCCC2 Bat Conservation Area (BCA) at a replacement ratio of 3.5:1. Therefore, 6.055 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 take 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 2.31 acres of SWH 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 2.31 acres of SWH for the Indiana bat

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 153.53 acres of SWH:

<b>Management Unit</b>	<b>IT for this project</b>	<b>Cumulative IT to date</b>
West	0.00 acres	120.64 acres
East	2.31 acres	32.89 acres
<b>Statewide</b>	2.31 acres	<b>153.53 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,



Dan Everson  
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*)  
B. Beck, OEPA, Columbus, OH (*email only*)  
N. Reardon, ODNR, ODNR-DOW, Columbus, OH (*email only*)  
M. Pettegrew, ODNR, ODNR-DOW, Columbus, OH (*email only*)