



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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February 12, 2018

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-0625 (PID 99981)

Attn: Matt Raymond, Megan Michael, Chris Staron

RE: **MOT-Stillwater Bikeway Bridge (PID 99981)**

Dear Mr. Hill,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated January 23, 2018 to verify that the proposed MOT-Stillwater Bikeway Bridge (PID 99081), 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*),¹ as amended. 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 small segment of bikeway with a bridge over the Stillwater River to connect two existing bikeways in the Englewood Reservation in Montgomery County, Ohio. We understand from your correspondence that the current project, as proposed, will result in a total of 2.39 acres of SWH impacts with 0.1 acre within less than 100 feet from the edge of pavement (EOP), 0.19 acre between 100-300 feet of EOP, and 2.1 acres further than 300 feet of EOP. In addition, up to 10 PMRTs will also be impacted by this project.

Conclusion

The Service has reviewed the January 23, 2018 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-3 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.

¹ 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.

- 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 acres of SWH to be removed beyond 100 feet from EOP by subtracting acreage credit from the SCCC2 Bat Conservation Area (BCA). The replacement ratios for this acreage are: 1.75:1 for impacts between 100-300 feet of EOP, and 2.65:1 for those beyond 300 feet of EOP as specified for the Western Management unit under the 2016 PBO, as amended. Therefore, 5.9 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 2.39 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, as amended. 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 for this project is exceeded when:

- the project removes trees from more than 2.39 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 of this tiered consultation.

As of this date, our records indicate that projects coordinated under the 2016 PBO have resulted in take of 176.11 acres of SWH:

Management Unit	IT for this project	Cumulative IT to date
West	2.39 acres	157.11 acres
East	0.00 acres	59.09 acres
Statewide	2.39 acres	216.20 acres

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

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