



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



August 14, 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-1856 (PID 108379)

Attn: Matt Raymond

RE: **MRG-555-24.60 (PID 108379)**

Dear Mr. Hill,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated July 27, 2018 to verify that the proposed **MRG-555-24.60** project (the Project), PID 108379, may rely on the February 29, 2016¹, Framework Programmatic Biological Opinion (PBO) for the Ohio Department of Transportation (ODOT) Federal-Aid Highway Program projects that may affect the federally listed endangered Indiana bat (*Myotis sodalis*) and/or federally listed threatened northern long-eared bat (NLEB) (*Myotis septentrionalis*)². ODOT has determined that the Project *may affect and is likely to adversely affect* the Indiana bat and/or the NLEB.

This letter provides the Service's response as to whether ODOT 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 the Project's effects to the Indiana bat and/or NLEB. ODOT has determined that this project will have no effect on any other federally listed species or designated critical habitat other than the Indiana bat and NLEB.

The Project, as proposed, will repair a landslide approximately 550 linear feet in length along State Route 555 at milepost 24.60 in York Township, Morgan County, Ohio. We understand that the project will result in impacts to 501 linear feet of Ogg Creek, as well as impacts 0.003 acres of 1 modified category II wetland. In addition, up to 0.395 acres of suitable wooded habitat (SWH) for the Indiana bat and/or NLEB, as defined by the 2016 PBO, will be removed for the project.

Conclusion

The Service has reviewed the July 27, 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

¹ As revised.

² Note: The Programmatic Biological Opinion on Final 4(d) Rule for the Northern Long-Eared Bat and Activities Excepted from Take Prohibitions is included in the ODOT PBO by reference.

avoidance, minimization, and compensation measures as described for CC2-*c* projects in the 2016 PBO. These measures include the implementation of:

- CM-1a, which will offset the acreage of SWH to be removed in the Eastern Management Unit as follows:
 - 0.395 acres of SWH will be removed during the **active** season within 100 feet from the edge of pavement, this acreage will be replaced at a ratio of 1.25:1; and
 - Therefore, 0.494 acres of credits will be subtracted from the acreage credit available at the SCCC2 Bat Conservation Area (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 bat and/or the NLEB.

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 0.395 acres of SWH for the Indiana bat, and the avoidance, minimization, and compensation measures to be implemented (see the Conclusion section above) comply with those in the CC2-*c* consultation category of the PBO. Based on the PBO, 0 acres of the removal are **not** anticipated to result in any adverse effects, and 0.395 acres *are* anticipated to result in adverse effects.

ODOT used the appropriate mitigation ratio from Table 2 of the PBO to calculate the compensatory mitigation required to offset these adverse impacts for a total of 0.494 acres³ of trees that are suitable for the Indiana bat. (See details in Conclusion section above.)

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 of Section 9 of the ESA. Such exemption is effective so long as ODOT implements the reasonable and prudent measures (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 ESA section 4(d) rule for this species (50 CFR §17.40(o)). Therefore, the incidental take of NLEBs resulting from the Project does not require exemption from the Service.

Reporting Dead or Injured Bats

Please note that removal of SWH during the bats' active season could result in felling trees in which individual bats or maternity colonies of female bats and their pups are roosting. In addition, pups may not be volant when the tree clearing activity is conducted. Therefore, if workers at the project site observe any bats flying from the trees being felled, all work should cease, and our office must be notified and consulted immediately for guidance on how best to proceed. Such inter-agency

³ XX acres * XX ratio

coordination can avoid or reduce the direct, mortal take of Indiana or northern long-eared bats as a result of the tree clearing activity.

ODOT, its Local cooperators, and any contractors must take care when handling dead or injured Indiana bats and/or NLEBs, or any other federally listed species that are found at the Project site 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 ODOT on February 26, 2016, as revised. To maintain this inclusion, a reinitiation of this Project-level consultation is required where ODOT’s and/or FHWA’s discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. the amount or extent of incidental take of Indiana bat is exceeded; *or bats are observed flying from trees during felling, as described in the first paragraph under “Reporting Dead or Injured Bats” above;*
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 0.395 acres of SWH for the Indiana bat *or bats are observed flying from trees during felling, as described in the first paragraph under “Reporting Dead or Injured Bats” above.*

In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease and reinitiation of this Project-level consultation must be requested immediately.

As of this date, our records indicate that projects coordinated under the 2016 PBO have resulted in take of 380.0 acres of SWH:

| Management Unit | IT for this project | Cumulative IT to date |
|-----------------|---------------------|-----------------------|
| Statewide | 0.395 acres | 380.00 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 Lindsey Korfel at extension 29 or Karen Hallberg at extension 23 in this office.

Sincerely,

Scott Pruitt
Acting Ohio Field Supervisor

cc (*all email only*):

M. Michael, ODOT, OES, Columbus, OH

C. Staron, ODOT, OES, Columbus, OH

S. Vonderwell, ODOT, OES, Columbus, OH

J. Kessler, ODNR, Office of Real Estate, Columbus, OH

P. Clingan, USACE, Ohio Regulatory Transportation Office, Columbus, OH

B. Beck, OEPA, Columbus, OH

N. Reardon, ODNR, Division of Wildlife, Columbus, OH

M. Pettegrew, ODNR, Office of Real Estate, Columbus, OH

K. Maunz, ODNR, Office of Real Estate, Columbus, OH