



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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December 18, 2007

Timothy M. Hill
Office of Environmental Services
Ohio Department of Transportation
P.O. Box 899
Columbus, OH 43216-0899

TAILS: 31420-2008-F-0220

Attn: Chris Staron

RE: **BEL-148-19.85**
PID 78898

FILE COPY

Dear Mr. Hill:

This letter is in response to your letter, included with the November 29, 2007 MOA package and received by this office on November 30, 2007, regarding your request for site-specific review pursuant to section 7 of the Endangered Species Act of 1973, as amended for the proposed BEL-148-19.85 project. The proposed project involves the improvement of 0.47 miles of State Route 148 by realigning the roadway to the north between the existing 148 and the Norfolk Southern Railroad line. The project will eliminate existing landslide and rockfall hazards along this stretch of roadway. The project is located in York Township, Belmont County, Ohio. As stated in your letter, 29 potential Indiana bat roost trees located within a 10-acre woodlot will need to be removed. None of these are potential maternity roost trees.

On January 26, 2007, the U.S. Fish and Wildlife Service (Service) issued a programmatic biological opinion (PBO) to the Federal Highway Administration (FHWA) for the implementation of the Ohio Department of Transportation's (ODOT) Statewide Transportation Program through January 2012. 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 the Indiana bat. 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 (*Myotis sodalis*). Your current request for Service review of the BEL-148-19.85 project is a Tier 2 consultation under the January 26, 2007, PBO. We have reviewed the information contained in the information 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 BEL-148-19.85 project. 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

Your letter and accompanying maps and documentation provide the location and a thorough description of the proposed action. The action as proposed involves the improvement of 0.47 miles of State Route 148 by realigning the roadway to the north between the existing 148 and the Norfolk Southern Railroad line. The project will eliminate existing landslide and rockfall hazards along this stretch of roadway. Twenty-nine potential Indiana bat roost trees within a 10-acre woodlot will need to be removed.

This proposed action falls under the activities of a PC3 project. A typical PC3 project is one which may remove a large number of potential roost trees (more than 10 or 20 depending upon the Unit), remove one or more potential maternity roost trees, impact a known or potential hibernacula, impact Indiana bat fall swarming or spring staging areas, and/or will reduce a 100+ acre forested area by more than 10 % in the West Unit. 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 15 and April 15 to avoid direct impacts (A-1); and 2) protection of land/habitat through conservation easements or deed restrictions to offset loss of suitable habitat (M-1). To satisfy conservation measure M-1, ODOT proposes to place a conservation easement on 1.45 acres of forested riparian land adjacent to Conotton Creek in southwestern Carroll County, Ohio. The 1.45 acres is part of a larger parcel totaling 13.27 acres that will be protected by the easement. ODOT proposes to use the remaining 11.82 acres as a conservation measure on future projects in this Indiana bat management unit.

Status of the Species

Species description, distribution, life history, population dynamics, and status and are fully described for the Indiana bat on pages 13-26 of 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.

Environmental Baseline

Status of the species within the action area

The status of Indiana bat in the East Unit was fully described on page 25 of the PBO and is hereby incorporated by reference. Since the issuance of the PBO in 2007, there has been one Indiana bat capture record within Belmont County; a pregnant Indiana bat was captured in Somerset Township, indicating the likely presence of a maternity colony of Indiana bats within the county, however this capture is not within 5 miles of the project area. Your letter states that suitable non-maternity roosting habitat for the Indiana bat exists within the action area. Thus, as explained in the PBO, it is reasonable to assume presence of male and non-reproductive female Indiana bats in the action area.

Effects of the Action

Based on analysis of the information provided in your letter for the BEL-148-19.85 project and our review of available habitat surrounding the project area, we have determined that the effects of the proposed action are consistent with those contemplated and fully described on pages 30-35 of the PBO. Adverse effects to the Indiana bat from this project could occur due to the removal of a large number of potential roost trees. However, implementation of seasonal cutting restrictions will avoid direct adverse effects to individual bats. Projects that require the removal of one or more roost trees outside of the Indiana bat's active season can result in adverse effects to the bat(s) upon returning to summer habitat areas following hibernation. When a primary roost tree becomes unsuitable or is felled the Indiana bat(s)

may initially roost in one of several previously used alternate roost trees (USFWS 2002; Kurta et al. 2002). It is likely that due to the ephemeral nature of roost trees, the Indiana bat has evolved to be able to locate replacement roosts, if available, when their previously-used roost trees become unsuitable. Until the bat(s) locate another desirable primary roost tree, it is possible that the bat(s) will be subject to increased stress resulting from: (1) having to search for a replacement primary roost tree, which increases energy expenditure and risk of predation; and (2) having to roost in alternate trees that are less effective in meeting thermoregulatory needs.

For this particular project, however, we anticipate that any exposed Indiana bats will only experience limited increased stress because the essential character of the habitat will be maintained. Hence, any Indiana bats within the project area will likely be able to stay within their traditional home ranges. For this reason, we anticipate that any exposed bats will need to expend only a negligible level of energy to find suitable primary roost trees, such that any adverse effects will be insignificant or discountable.

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 BEL-148-19.85 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) cumulative effects, we do not expect any perceivable impacts to male and non-reproductive female Indiana bats, and hence to the overall Ohio Indiana bat population from the proposed action. As such, we also do not anticipate any reductions in the reproduction, numbers, or distribution of the species rangewide. It is, therefore, the Service's biological opinion that this project is not likely to jeopardize the continued existence of the Indiana bat.

For this project, we agree that the proposed Conservation Measure M-1 is appropriate, and that preservation of 1.45 acres is sufficient to offset the loss of suitable habitat within the 10-acre woodlot that will be cleared. However, we would like to discuss with ODOT in the near future a standardized method for determining the amount of habitat to be protected under conservation measure M-1 on various types of projects. As we developed the PBO, we anticipated that issues such as this would arise as the PBO was implemented, and fully anticipated working together to address questions such as this.

Incidental Take Statement

The Service does not anticipate the proposed action will incidentally take any Indiana bats. Although adverse affects to the Indiana bat may occur due to the loss of potential roost trees as described above, these impacts are not expected to rise to the level of injury, harm, or death. Hence, incidental take is not reasonably certain to occur. As such, no incidental take statement will be provided for this project. The following table is a summary of impacted acres to date for PC1, PC2, and PC3 projects completed under the PBO. The thresholds set in the PBO have not been exceeded.

Management Unit	Acres of impact anticipated in PBO	Acres of impact for this project	Cumulative acres of impact to date
West	1,565 acres	0	7.70
Central	2,280 acres	0	1.65
South	4,679 acres	0	23.80
Northeast	6,370 acres	0	12.47
East	7,224 acres	10	22.77
Statewide	22,118 acres	10	68.39

This fulfills your section 7(a)(2) requirements for this action; however, should the proposed project be modified or the level of habitat impacted above be exceeded, ODOT/FHWA should promptly reinitiate consultation as outlined in 50 CFR 402.16. As provided in 50 CFR §402.16, reinitiation 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 reinitiation. Requests for reinitiation, or questions regarding reinitiation, should be directed to the U.S. Fish Wildlife Service's Reynoldsburg, Ohio Field Office.

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 Megan Seymour at extension 16.

Sincerely,

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

Mary Knapp, Ph.D.
Field Supervisor

cc: ODNR, DOW, SCEA Unit, Columbus, OH
USACE Ohio Transportation Office, Columbus, OH