



UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. Fish and Wildlife Service
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April 25, 2017

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

TAILS: 03E15000-2016-F-1752 (PID 90200)

Attn: Matt Perlik, Megan Michael

RE: **DEL-71-7.91 (PID 90200)**

Dear Mr. Hill,

The U.S. Fish and Wildlife Service (Service) is responding to your request dated April 7, 2017 to verify that the proposed **DEL-71-7.91** project (the project), PID 90200, 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. ODOT has determined that the project is *likely to adversely affect* the Indiana bat and the NLEB. 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 bat and NLEB.

The DEL-71-7.91 project, as proposed, will add a new interchange on IR-71 just south of the existing SR 36/37 interchange in Delaware County and finalize construction of a new multi-lane roadway called Sunbury Parkway. This action will require the construction of a new northbound off-ramp from IR-71 to Sunbury Parkway and a new northbound collector-distributor road along northbound IR-71 from the new off-ramp to the existing off-ramp to SR 36/37. It will also involve construction of a new northbound on-ramp from Sunbury Parkway and new southbound on-ramps from Sunbury Parkway. The project also requires improvements to existing roadways, including the relocation of Africa Road near the existing intersection with SR 36/37, and the relocation of Three B's & K Road to create a new intersection with Sunbury Parkway. The purpose of the project is to reduce existing and future congestion and improve safety at the existing interchange, along with improving east-west connectivity consistent with land use and economic development plans.

Coordination on the project between ODOT and the Service began when ODOT requested formal consultation under the 2016 PBO in a letter dated September 30, 2016. The Service responded in a letter dated November 7, 2016, indicating that we would need additional information regarding anticipated indirect and cumulative effects before we could evaluate ODOT's determination that the project *may affect and is likely to adversely affect* the Indiana bat and NLEB and that the impacts are consistent with those described within the 2016 PBO. On March 3, 2017, ODOT's Indirect Effects and Cumulative

¹ 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.

Impacts (ICE) Analysis was made available to the Service by your office. Following our review of the ICE report, subsequent conversations with your office, and the information provided in your April 7 letter, we now have sufficient information to address the proposed project and its potential impacts on federally listed species.

From your April 7 letter we understand that the project will impact up to 5,235 linear feet of 14 small stream segments (most are Class 1 and Class 2 PHWH streams), 4.61 acres of nine Category 1 and 2 wetlands, and 6.41 acres of pond habitat. We understand that the stream and wetland impacts are subject to minor changes which may occur following the results of a U.S. Army Corps of Engineers' jurisdictional determination field review.

The project lies within the range of the Indiana bat (*Myotis sodalis*, E), northern long-eared bat (*Myotis septentrionalis*, T), bald eagle (*Haliaeetus leucocephalus*, SC), running buffalo clover (*Trifolium stoloniferum*, T), rabbitsfoot mussel (*Quadrula cylindrica*, T), rayed bean (*Villosa fabalis*, E), sheepnose (*Plethobasus cyphus*, E), and snuffbox (*Epioblasma triquetra*, E). ODOT has determined that the project will have no effect on the bald eagle, running buffalo clover, rabbitsfoot mussel, rayed bean, sheepnose, and snuffbox; therefore, consultation under section 7(a)(2) of the ESA is not required for these species.

Although bald eagles are no longer federally listed under the ESA, they are protected under the Migratory Bird Treaty Act (16 U.S.C. 703-712; MBTA) and are afforded additional legal protection under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, BGEPA). The BGEPA prohibits, among other things, the killing and disturbance of eagles. According to our records, the nearest bald eagle nest is approximately 2 miles from the project site. However, our database of nest locations may not be complete because new nests are built each year. Therefore, we recommend that the site and surrounding area be evaluated to determine if any eagle nests are present. In order to avoid take of bald eagles, we recommend that no tree clearing occur within 660 feet of a bald eagle nest or within any woodlot supporting a nest tree. Further we request that work within 660 feet of a nest or within the direct line-of-site of a nest be restricted from January 15 through July 31. This will prevent disturbance of the eagles from the egg-laying period until the young fledge, which encompasses their most vulnerable times. If these recommendations cannot be implemented and take of bald eagles is likely, a bald eagle take permit for this project may be necessary. Further information on eagle take permits can be found at: <http://www.fws.gov/midwest/MidwestBird/EaglePermits/index.html>.

Conclusion

The Service has reviewed your April 7, 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 impact avoidance, minimization, and compensation measures described below, which include those described for CC-3b 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 suitable wooded habitat (SWH) only between 1 October and 31 March; and
- Notifying the private developers who own parcels in the indirect impact areas that trees should be cut during the dates listed above to avoid potential impacts to federally threatened and endangered bats; and
- CM-1a, which will offset the acreage of SWH to be removed, as follows:
 - 4.22 acres of SWH will be removed during the **inactive** season within 100 feet from the edge of pavement, for which impacts are expected to be insignificant or discountable; this acreage will not be replaced; and
 - 27.82 acres of SWH in the direct impact areas, including one (1) tree identified at this time as a potential maternity roost tree (PMRT), will be removed beyond 100 feet from

the edge of pavement. In addition to the removal of a PMRT, these impacts exceed the acreage threshold for the Western Management Unit (WMU) defined within the PBO and listed on its associated flowchart; therefore, this acreage will be replaced at a ratio of 3.5:1.

- An additional 33 acres of SWH in the **indirect** impact areas, including two (2) trees identified at this time as PMRTs, may also be removed. We note that this acreage was not differentiated with regard to distance from the roadway, as it is not categorically covered under the 2016 PBO and it is uncertain whether the private developer will clear this habitat during the inactive or active season for the bats. The Service appreciates that ODOT has agreed to also offset the impact to this habitat at a replacement ratio of 3.5:1.
- Therefore, a total of 60.82 acres of SWH will be replaced at a ratio of 3.5:1 and 212.87 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 65.04 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 bats and/or NLEBs, 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 ODOT 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 65.04 acres of SWH for the Indiana bat and/or NLEB.

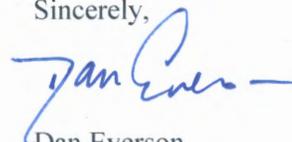
In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

As of this date, our records indicate that projects coordinated under the 2016 PBO have resulted in take of 134.48 acres of SWH:

Management Unit	IT for this project	Cumulative IT to date
West	65.04 acres	111.25 acres
East	0.00 acres	23.23 acres
Statewide	65.04 acres	134.48 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

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