



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

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August 18, 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-1898 (PID 91710)

Attn: Matt Raymond

RE: **SUM-8-1.75 (PID 91710)**

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 **SUM-8-1.75** project (the Project), PID 91710, may rely on the February 29, 2016<sup>1</sup>, 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*)<sup>2</sup>. 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 replace an existing 1,500 foot long steel bridge over the Little Cuyahoga River Valley with two new 4-lane bridges. The project will also include minor re-aligning of State Route 8 in Akron, Summit County, Ohio. We understand that the project will result in impacts to approximately 1 river (Little Cuyahoga), 2 streams (unnamed) and 6 isolated and/or jurisdictional wetlands, totaling 100 lf of river impacts, 226 lf of stream impacts and 0.85 acres of wetland impacts. In addition, up to 21.74 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

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<sup>1</sup> As revised.

<sup>2</sup> 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.

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 avoidance, minimization, and compensation measures as described for CC3-b 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; and
- CM-1a, which will offset the acreage of SWH to be removed in the Eastern Management Unit, as follows:
  - 12.65 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
  - 9.09 acres of SWH will be removed during the **inactive** season between 100 and 300 feet from the edge of pavement, and at least one of the thresholds defined within the 2016 PBO and listed on its associated flowchart will be exceeded; this acreage will be replaced at a ratio of 1.5:1; and
  - Therefore, **13.635** acres of credits will be subtracted from the acreage credit available at the SCCC2 Bat Conservation Area (BCA).

We understand that because the project is not able to adhere to Avoidance Measure A-4 (which would avoid and/or minimize impacts to summer roosting bats by conducting bridge work only between 1 October and 31 March) a bridge inspection will be conducted prior to demolition of the bridge. In addition, we understand that work on the bridges will be continuous following the inspection.

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 21.74 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 CC3-b consultation category of the PBO. Based on the PBO, 12.65 acres of the removal are **not** anticipated to result in any adverse effects, and 9.09 acres *are* anticipated to result in adverse effects.

ODOT used the appropriate mitigation ratios from Table 2 of the PBO to calculate the compensatory mitigation required to offset these adverse impacts for a total of 13.635 acres<sup>3</sup> of trees that are suitable for the Indiana bat. (See details in Conclusion section above.)

In addition, the Project may take up to 5 Indiana bats that were not detected during bridge bat assessments conducted prior to implementing the proposed work on the existing Bridge. In these instances, potential

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<sup>3</sup> XX acres \* XX ratio

incidental take of Indiana bats may be exempted provided that the take is reported to the Service (refer to User Guide Appendix E - Post Assessment Discovery of Bats at Bridge/Structure Form). Although such take is reasonably certain to occur at up to 10 bridge projects per year as included in the scope of the PBO, it is a remote possibility for any individual project that is implemented consistent with the conservation measures of the 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 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

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;
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:

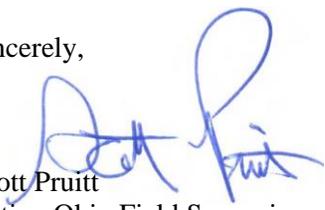
- the Project removes trees from more than 21.74 acres of SWH for the Indiana bat
- the Project takes more than 5 Indiana bats resulting from work on the subject bridge.

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, we are currently unable to run a report reflecting up-to-date impacts, but we will include the cumulative information as soon as we regain access to the database query.

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*):

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