

B.6 ESR Agency Comments

- USFWS Formal Programmatic Biological Opinion Letter
 - ODNR Comments and ODOT Responses



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
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October 29, 2025

FWS Project Code: 2026-0009019 (PID 115755)

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

Attn: Matt Raymond

RE: BUT-North Hamilton Crossing (PID 115755)

Dear Mr. Hill:

The U.S. Fish and Wildlife Service (Service) has reviewed your request for verification that the proposed BUT-North Hamilton Crossing project (Project) may rely on the February 29, 2016 Framework Programmatic Biological Opinion¹ (PBO), as revised and amended², for Ohio Department of Transportation (ODOT) projects that may affect the federally endangered Indiana bat (*Myotis sodalis*) and/or northern long-eared bat (*Myotis septentrionalis*) (NLEB). We received your request on October 1, 2025, including your Ecological Survey Report and other supporting documents made available via ODOT's EnviroNet electronic Project File Management System.

This letter provides the Service's response pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). As stated in your consultation materials, ODOT has determined the Project is likely to adversely affect the aforementioned, federally listed bat species.

¹ https://www.dot.state.oh.us/environmental-services/manuals_guidance1/Ecological/RelevantAgreements/Indiana%20Bat%20and%20Northern%20Long-Eared%20Bat%20Programmatic%20Agreement%20January%202018.pdf

² The Service amended the PBO on July 10, 2023, to include an incidental take exemption for the northern long-eared bat due to its federal up listing to endangered status under the Endangered Species Act. The final rule, reclassifying NLEB, was published in the Federal Register on November 30, 2022, (87 FR 73488) and went into effect March 31, 2023.

This letter also responds to your request for Service concurrence with your determination that the Project may affect, but is not likely to adversely affect (NLAA) the following species:

- Rayed Bean (*Villosa fabalis* / *Paetulonius fabalis*)

In addition, this letter responds to your request for Service concurrence on your determination that the Project may affect the tricolored bat (*Perimyotis subflavus*), a species proposed for federal listing as endangered.

The Project, as proposed, will create a new east-west road alignment through Butler County to address transportation issues within the City of Hamilton, as well as Saint Clair and Fairfield Townships. The concept for the roadway portion of the project is a four-lane, boulevard-style road (two travel lanes in each direction) with bump outs, crosswalks and a turn lane or landscaped median in the middle. The project also includes a sidewalk and a shared-use path on opposing sides of the road. This alignment will require the construction of a new bridge over the Great Miami River as well as a new railroad overpass. We understand the Project will impact approximately 490 linear feet of the Great Miami River, and 0.503 ac of a Category I wetland. In addition, the Project will result in direct loss of 6.33 acres of suitable wooded habitat (SWH) for the Indiana bat and/or northern long-eared bat, as defined by the PBO.

A Phase I/Phase II Group 4 mussel survey was conducted at the proposed site resulting in four live individuals throughout the 200-meter study area. No threatened or endangered species were amongst the individuals found. Therefore, the Service concurs with your determination that the Project may affect but is not likely to adversely affect the rayed bean. This concurrence concludes your ESA Section 7 responsibilities relative to this species for this Project, subject to the Reinitiation Notice below.

Conclusion

The Service has reviewed the effects of the proposed Project, which includes ODOT's commitment to implement the avoidance, minimization, and compensation measures as described for tiered formal Consultation Category (CC) 3-a projects in the PBO. These measures include the implementation of:

- Conservation Measure CM-1a, which will offset the acreage of SWH to be removed in the Western Management Unit, as follows:
 - 1.70 acres of SWH will be removed during the bats' inactive winter 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
 - 3.12 acres of SWH will be removed during the bats' inactive winter season between 100 and 300 feet from the edge of pavement, and at least one of the thresholds defined within the PBO, and listed on its associated flowchart, will be exceeded; this acreage will be replaced at a ratio of 1.75:1 and
 - 1.51 acres of SWH will be removed during the bats' inactive winter season beyond 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 2.65:1.

Therefore, 9.46 acres of credits will be subtracted from the acreage credit available at the Roberts Bat Conservation Area.

We confirm 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 NLEB.

Incidental Take

Indiana Bat

The Service anticipates tree removal associated with the proposed Project will result in incidental take of Indiana bats. As described in the Framework Incidental Take Statement of the PBO, such taking will be difficult to detect. The Service determined it is appropriate to measure the amount or extent of incidental take resulting from PBO projects using the proposed acreage of SWH removal as a surrogate for the number of individuals taken.

The proposed Project will remove a total of 6.33 acres of SWH for the Indiana bat. All tree removal will occur during the bats' inactive winter season and all avoidance, minimization, and compensation measures will be implemented to comply with those required under CC3-a of the PBO. Based on the analysis described in the PBO, removal of 1.70 acres of habitat within 100 feet from the edge of pavement is not anticipated to result in any adverse effects, whereas the loss of 4.63 acres beyond 100 feet from the edge of pavement will result in adverse effects.

The appropriate ratios from Table 2 of the PBO were multiplied by the acreage to be cleared for the Project to calculate the compensatory mitigation required to offset these adverse effects to the Indiana bat. Based upon these calculations, a total of 9.46 acres of replacement habitat will be designated to offset impacts from the Project. The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the PBO as a surrogate measure for take of the Indiana bat.

This consultation will exempt ODOT from the prohibitions of section 9 of the ESA. Such exemption is effective so long as ODOT implements the reasonable and prudent measures and accompanying terms and conditions stipulated in the PBO.

Northern Long-eared Bat

The Service anticipates some NLEBs will be harmed or harassed during tree removal associated with the proposed Project. However, the Project is consistent with the PBO, and no mitigation is currently required for NLEB.

Tricolored Bat

Activities described for this project that may affect the Indiana bat and/or NLEB may have similar impacts on tricolored bats, if present in the project area. However, such activities are not

anticipated to affect the overall population of the species. Therefore, the Service concurs with your determination that the Project may affect but is not likely to jeopardize the continued existence of the tricolored bat. This concurrence concludes your ESA Section 7 responsibilities relative to this species for this Project, subject to the Reinitiation Notice below.

Reporting Dead or Injured Bats

All workers should be instructed not to handle any live, dead or injured bats discovered at the project site. This is to ensure that both the handler and the animal are protected from exposure to injury and/or disease. Any party finding a dead, injured, or sick specimen must promptly notify the Ohio Field Office at (614) 416-8993. Reporting the discovery of dead or injured bats is required in all cases to enable the Service to determine whether the level of incidental take exempted by this PBO has been exceeded and to ensure the terms and conditions are appropriate and effective. Biological material must be preserved in the best possible condition; therefore, project personnel are responsible for ensuring that any evidence essential for determining the cause of death or injury is not unnecessarily disturbed.

Reinitiation Notice

This letter concludes consultation for the proposed Project, which qualifies for inclusion in the PBO issued to ODOT on February 29, 2016, as revised and amended. To maintain this inclusion, reinitiation of this project-level consultation is required where ODOT's and/or Federal Highway Administration'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 the Project may affect listed species or critical habitat in a manner or to an extent not considered in the PBO or in the Project information that supported Service concurrence with NLAA determinations;
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 in the Project information that supported Service concurrence with NLAA determinations; 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 if the Project:

- Removes trees from more than 6.33 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 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 our database query.

We appreciate your continued efforts to ensure 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 lindsey_korfel@fws.gov/380-215-0992, or Karen Hallberg at karen_hallberg@fws.gov/380-215-0982.

Sincerely,

Karen Hallberg
Senior Transportation Biologist, *for*

Erin Knoll
Ohio Field Supervisor

cc (*all email only*):

M. Michael, ODOT, OES, Columbus, OH
C. Staron, ODOT, OES, Columbus, OH
B. Zimmerman, ODOT, OES, Columbus, OH
S. Vonderwell, ODOT, OES, Columbus, OH
P. Clingan, USACE, Ohio Regulatory Transportation Office, Columbus, OH
J.B. Glover, OEPA, Surface Water – 401/Wetlands Section, Columbus, OH
M. Stooksbury, ODNR, Division of Wildlife, Columbus, OH
K. Maunz, ODNR, Office of Real Estate, Columbus, OH

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Ohio Department of Natural Resources (ODNR)

Ecological Survey Report - Comments

The Ohio Department of Natural Resources (ODNR) has completed a review of the above referenced project. These comments were generated by an inter-disciplinary review within the Department. These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the National Environmental Policy Act, the Coastal Zone Management Act, Ohio Revised Code and other applicable laws and regulations. These comments are also based on ODNR's experience as the state natural resource management agency and do not supersede or replace the regulatory authority of any local, state, or federal agency nor relieve the applicant of the obligation to comply with any local, state, or federal laws or regulations.

Subject: Ohio Natural Heritage Database

Comment: Jeffrey Gordon 10/29/2025

The Natural Heritage Database has the following data within one mile of the project area:

Rock Sandwort (*Minuartia michauxii*), P

Conservation status abbreviations are as follows: E = state endangered; T = state threatened; P = state potentially threatened; SC = state species of concern; SI = state special interest; U = state status under review; X = presumed extirpated in Ohio; FE = federally endangered, and FT = federally threatened. The review was performed on the specified project area as well as an additional one-mile radius. Records searched date from 1980. Features searched include locations of rare and endangered plants and animals determined to be of value to the conservation of their species, high quality plant communities, animal breeding assemblages, and outstanding geological features.

The species and features listed above are not recorded within the boundaries of the specified project area. However, please note that Ohio has not been completely surveyed and we rely on receiving information from many sources. Therefore, a lack of records for an area is not a statement that rare species or unique features are absent from that area.

Response: Megan Michael 10/30/2025

If this plant is within 1/2 mile, ODOT will address potential impacts to its habitat.

Subject: The Division of Wildlife (DOW)

Comment: Jeffrey Gordon 10/29/2025

The project is within the vicinity of records for the little brown bat (*Myotis lucifugus*), a state endangered species. Because presence of state endangered bat species has been established in the area, summer tree clearing is not recommended, and additional summer surveys would not constitute presence/absence in the area. However, limited summer tree clearing inside this buffer may be acceptable after further consultation with DOW (contact Eileen Wyza at Eileen.Wyza@dnr.ohio.gov).

In addition, the entire state of Ohio is within the range of the Indiana bat (*Myotis sodalis*), a state endangered and federally endangered species, the northern long-eared bat (*Myotis septentrionalis*), a state endangered and federally endangered species, the little brown bat (*Myotis lucifugus*), a state endangered species, and the tricolored bat (*Perimyotis subflavus*), a state endangered species. During the spring and summer (April 1 through September 30), these bat species predominately roost in trees behind loose, exfoliating bark, in crevices and cavities, or in clusters of dead leaves on tree limbs. However, these species are also dependent on the forest structure surrounding roost trees. The DOW recommends tree and/or tree limb clearing only occur from October 1 through March 31, conserving

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trees with loose, shaggy bark and/or crevices, holes, or cavities, as well as trees with a Diameter Breast Height (DBH) greater than or equal to 20 inches if possible.

For every project, the DOW also recommends that a winter bat habitat assessment is conducted to determine if potential hibernacula are present within the project area. This is to limit possible disturbances that seasonal tree clearing and/or subsurface work (e.g., trenching, blasting, etc.) may cause to hibernating bats. Potential hibernacula include rocky outcroppings, caves, and underground mines. Direction on how to conduct winter habitat assessments can be found in the joint guidance OHIO DIVISION OF WILDLIFE AND U.S. FISH AND WILDLIFE SERVICE (OH-FIELD OFFICE) JOINT GUIDANCE FOR BAT SURVEYS. If a potential or known hibernaculum is found, the DOW recommends a 0.25-mile permanent tree clearing buffer around the hibernaculum entrance. Limited summer or winter tree clearing may be acceptable after consultation with the DOW. If a habitat assessment for projects involving subsurface disturbance finds that a potential hibernaculum is present within 5 miles of the project area, please consult with Eileen Wyza for project recommendations. If no tree clearing or subsurface impacts to a hibernaculum are proposed, this project is not likely to impact these species.

Response: Megan Michael 10/30/2025

Per the information included in the Little Brown Bat write up in the state listed species section of the ESR, tree clearing will only occur between October 1 and March 31. The hibernacula survey that was requested has already been done and the information was also included in the ESR in the Little Brown Bat write-up.

Comment: Jeffrey Gordon 10/29/2025

The project is within the range of the rayed bean (*Villosa fabalis*), a state endangered and federally endangered mussel. This project must not have an impact on native mussels. This applies to both listed and non-listed species. If in-water work will occur the DOW recommends the applicant provide information to indicate no mussel impacts will occur. If mussels cannot be avoided in the project area, the DOW recommends a professional malacologist collect and relocate the mussels to suitable and similar habitat upstream of the project site. Mussel surveys and any subsequent mussel relocation should be done in accordance with the Ohio Mussel Survey Protocol. If there is no in-water work proposed, impacts to mussels are not likely.

Response: Megan Michael 10/30/2025

As noted in the ESR, four mussels of two species were found in the Phase 1/Phase 2 survey area. We are awaiting a response to our request that a mussel relocation not be required based on the low number of mussels noted during the Phase 1/Phase 2 report.

Comment: Jeffrey Gordon 10/29/2025

The project is within the range of the Kirtland's snake (*Clonophis kirtlandii*), a state threatened species. This secretive species prefers wet fields and meadows. Due to the location, the type of habitat within the project area, and the type of work proposed, this project is not likely to impact this species.

The project is within the range of the cave salamander (*Eurycea lucifuga*), a state endangered species. Due to the location, the type of habitat within the project area, and the type of work proposed, this project is not likely to impact this species.

Response:
N/A

Subject: Other

Comment: Jeffrey Gordon 10/31/2025

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The Ohio Department of Natural Resources is providing this comment to acknowledge the following comments provided by ODOT OES.

Per the information provided in the ESR, we acknowledge that field surveys of the study area did not identify any portals, openings, cracks, or crevices in rock outcrops that may be an entrance to a cave or mine that would be considered suitable winter hibernacula for bat species. There are also no bridges with suitable bat habitat within the study area that are proposed to be impacted.

Additionally, NHDB results for this project included a species not located within 0.5-mile of the project area.