



UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. Fish and Wildlife Service
Ecological Services Office
4625 Morse Road, Suite 104
Columbus, Ohio 43230
(614) 416-8993 / Fax (614) 416-8994



July 28, 2014

Ms. Laura S. Leffler
Division Administrator
Federal Highway Administration
Ohio Division
200 North High Street, Room 328
Columbus, Ohio 43215

TAILS: 03E15000-2014-FC-1261 (PID 19415)
FHWA RE: HDA-OH

**RE: SCI-823-0.00 Portsmouth Bypass (PID 19415)
Initiation of Formal Conference**

Dear Ms. Leffler:

This letter acknowledges the U.S. Fish and Wildlife Service's (Service) July 1, 2014 receipt of your June 30, 2014 letter requesting initiation of formal section 7 conference under the Endangered Species Act. The conference concerns the possible effects of your proposed **SCI-823-0.00/Portsmouth Bypass** project (PID 19415) on the **northern long-eared bat** (*Myotis septentrionalis*), a species currently proposed for federal listing.

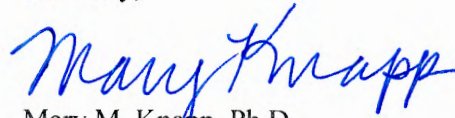
All information required of you to initiate formal conference was either included with your letter or is otherwise accessible for our consideration and reference. We have assigned log number 03E15000-2014-FC-1261 to this conference. Please refer to that number in future correspondence on this conference.

Section 7 allows the Service up to 90 calendar days to conclude formal conference with your agency and an additional 45 calendar days to prepare our conference opinion (unless we mutually agree to an extension). Therefore, we expect to provide you with our conference opinion no later than November 12, 2014. We note that your June 30, 2014 letter requesting initiation of formal conference included a request to expedite issuance of the Service's conference opinion, moving the issuance date to October 1, 2014. However, during subsequent coordination between your office, the Ohio Department of Transportation (ODOT), and the Service, the concern that originally prompted the request to expedite was resolved. Specifically, in a letter dated July 11, 2014, the Service indicated that we have no objection to commencement of tree clearing on October 1, 2014 within the Phase 1 footprint of the project. A copy of that letter is attached for your reference. Therefore, the conference opinion will be issued within the standard timeframe, no later than November 12, 2014.

As a reminder, the Endangered Species Act requires that after initiation of formal conference, the Federal action agency may not make any irreversible or irretrievable commitment of resources that limits future options. This practice insures agency actions do not preclude the formulation or implementation of reasonable and prudent alternatives that avoid jeopardizing the continued existence of endangered or threatened species or destroying or modifying their critical habitats.

If you have any questions or concerns about this formal conference or the conference process in general, please feel free to contact me or Karen Hallberg of this office at (614) 416-8993 extensions 12 and 23, respectively.

Sincerely,



Mary M. Knapp, Ph.D.
Field Supervisor

cc: T. Hill, Office of Environmental Services, ODOT, Columbus, OH (*email only*)
N. Mehlo, Planning & Environmental, FHWA, Columbus, OH (*email only*)
P. Clingan, USACE, Ohio Regulatory Transportation Office, Columbus, OH (*email only*)
J. Lung, OEPA, Columbus, OH (*email only*)
B. Mitch, ODNR, Office of Real Estate, Columbus, OH (*email only*)



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
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July 11, 2014

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

TAILS: 03E15000-2013-I-1615 (PID 19415)

Attn: Michael Pettegrew, Matt Raymond

RE: **SCI-823-0.00 (PID 19415) – Portsmouth Bypass
Tree clearing within Phase 1 construction limits**

Dear Mr. Hill:

This is in response to an email we received from your office on July 9, 2011, requesting U.S. Fish & Wildlife Service (Service) comments and concurrence on ODOT's proposal to begin tree clearing within the construction limits of the **Phase 1** portion of the Portsmouth Bypass project on October 1, 2014. Based on information ODOT provided to the Service during previous coordination on this project, we understand that Phase 1 is approximately 3.32 miles long and is located between the TR-234 (Shumway Hollow Road) interchange near the Scioto County Airport and the interchange at CR-28 (Lucasville-Minford Road) – see attached map of Phase 1 study area from ODOT's August 12, 2011 Level 2 Ecological Survey Report. This portion of the Bypass will contain four bridges and two interchanges.

For the purpose of clarification, we note that the status of recent past and present consultation between ODOT and the Service on this project, under section 7(a)(2) of the Endangered Species Act (ESA), is as follows:

- ODOT consulted with the Service on Phases 1, 2, and 3 of the Bypass in late 2011/early 2012. For this consultation, ODOT conducted surveys for federally listed species for which earlier survey data may no longer have been valid. This consultation concluded, with the Service concurring with ODOT's effect determinations, on March 3, 2012.
- In mid-2013, ODOT decided that the contract for the Bypass project would be sold as design-build-finance-operate-maintain (DBFOM). With the design and construction flexibility allowed with a DBFOM contract, ODOT again consulted with the Service, as the potential wooded acreage to be impacted increased from 316 acres to 685 acres. This increase reflected changes in the project footprint within the Phase 2 and Phase 3 portions of the Bypass. **The Phase 1 footprint did not change, and the required authorizations for Phase 1 impacts to aquatic resources were issued to ODOT in 2012** (Ohio Environmental Protection Agency Section 401 Water Quality Certification (Ohio EPA ID No. 113859) on May 18, 2012; and U.S. Army Corps of Engineers Permit No. 2011-00646-OHR on November 20, 2012).
- On June 30, 2014, the Federal Highway Administration (FHWA) submitted a request to initiate a formal conference with the Service on potential impacts to the northern long-eared bat (*Myotis*

septentrionalis), currently proposed for federal listing as endangered. Approximately 40 northern long-eared bats were captured during mist-net surveys conducted over the past several years along the project corridor. Although the formal conference with the Service is not yet concluded, the tree clearing currently proposed will not result in jeopardy to this species. In the previous consultations already concluded, ODOT committed to clearing trees only between September 30 and April 1, when the bat would not be present in its summer roosting habitat.

The Service appreciates ODOT's coordination with us on this activity. We have no objection to the proposed tree clearing within the Phase 1 limits of the project corridor, as authorized in our previous consultations. The Service recommends that the extent of forest habitat cleared be limited to the minimum necessary to successfully accomplish the construction objectives.

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 Endangered Species Act, of 1973, as amended, and are consistent with the intent of the National Environmental Policy Act of 1969, and the U.S. Fish and Wildlife Service's Mitigation Policy. Should, during the term of this action, additional information on listed or proposed species or their critical habitat become available, or if new information reveals effects of the action that were not previously considered, consultation with the Service should be reinitiated to assess whether the determinations are still valid.

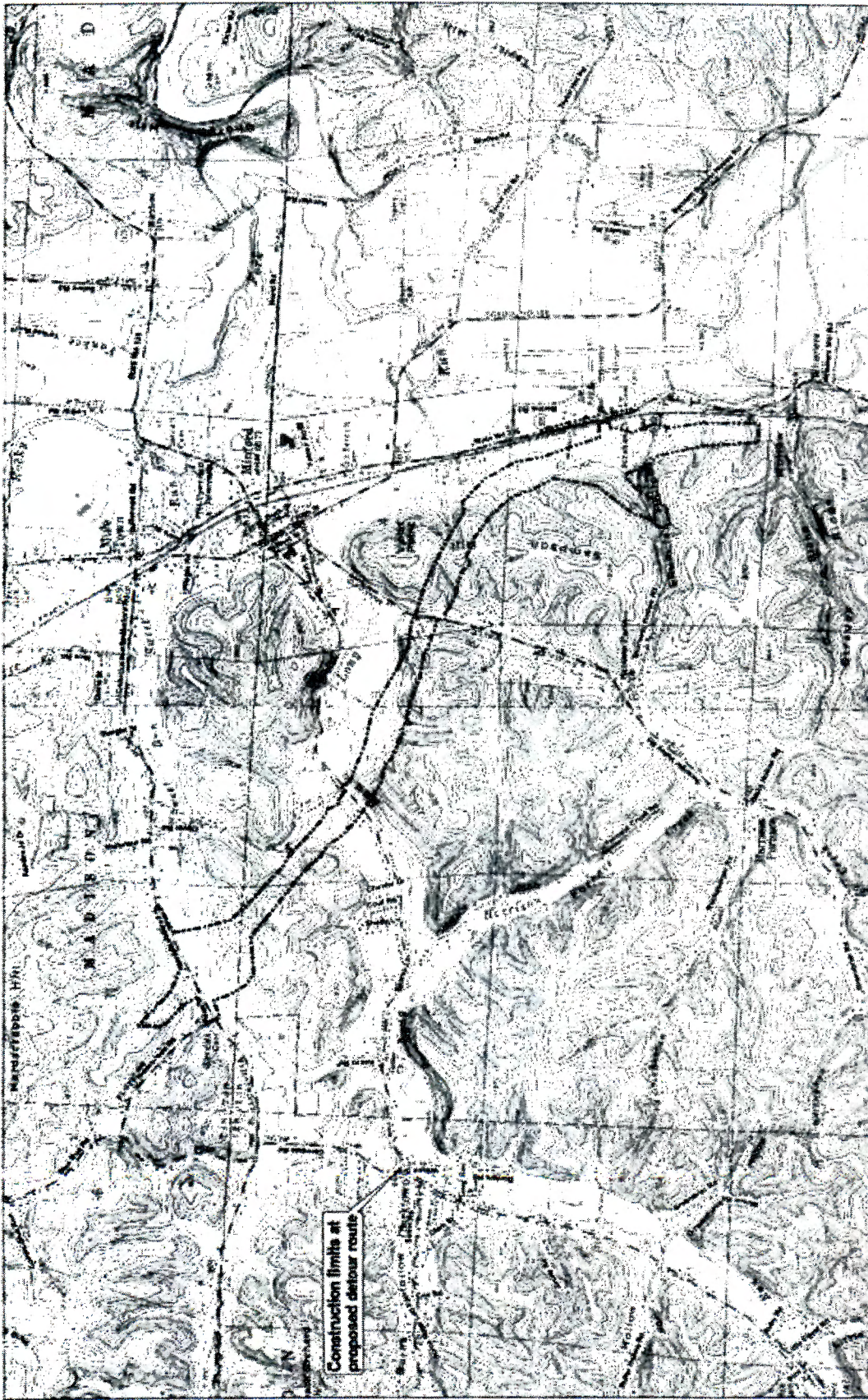
If you have questions, or if we may be of further assistance in this matter, please contact Karen Hallberg at extension 23 in this office.

Sincerely,



Mary Knapp, Ph.D.
Field Supervisor

cc: N. Mehlo, FHWA, Columbus, OH (*email only*)
J. Kessler, ODNR, Office of Real Estate, Columbus, OH (*email only*)
P. Clingan, USACE, Ohio Regulatory Transportation Office, Columbus, OH (*email only*)
J. Lung, OEPA, Columbus, OH (*email only*)
B. Mitch, ODNR, Office of Real Estate, Columbus, OH (*email only*)



Construction limits at proposed detour route



Base 1988 edition with 1993 New Revision, Ohio
USGS 7.5 series quadrangle

PHI Study area

