



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Chesapeake Bay Ecological Services Field Office
177 Admiral Cochrane Drive
Annapolis, MD 21401-7307
Phone: (410) 573-4599 Fax: (410) 266-9127

In Reply Refer To:

March 28, 2023

Project code: 2023-0060075

Project Name: I-95 Express Toll Lanes (ETL) Northbound Extension Phase II

IPaC Record Locator: 988-124129340

Federal Nexus: yes

Federal Action Agency (if applicable): Federal Highway Administration

Subject: Technical assistance for 'I-95 Express Toll Lanes (ETL) Northbound Extension Phase II'

Dear Steven Swarr:

This letter records your determination using the Information for Planning and Consultation (IPaC) system provided to the U.S. Fish and Wildlife Service (Service) on March 28, 2023, for 'I-95 Express Toll Lanes (ETL) Northbound Extension Phase II' (here forward, Project). This project has been assigned Project Code 2023-0060075 and all future correspondence should clearly reference this number. **Please carefully review this letter. Your Endangered Species Act (Act) requirements are not complete.**

Ensuring Accurate Determinations When Using IPaC

The Service developed the IPaC system and associated species' determination keys in accordance with the Endangered Species Act of 1973 (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) and based on a standing analysis. All information submitted by the Project proponent into the IPaC must accurately represent the full scope and details of the Project. Failure to accurately represent or implement the Project as detailed in IPaC or the Northern Long-eared Bat Rangewide Determination Key (Dkey), invalidates this letter.

Determination for the Northern Long-Eared Bat

Based upon your IPaC submission and a standing analysis, your project is not reasonably certain to cause incidental take of the northern long-eared bat. Unless the Service advises you within 15 days of the date of this letter that your IPaC-assisted determination was incorrect, this letter verifies that the Action is not likely to result in unauthorized take of the northern long-eared bat.

Other Species and Critical Habitat that May be Present in the Action Area

The IPaC-assisted determination for the northern long-eared bat does not apply to the following ESA-protected species and/or critical habitat that also may occur in your Action area:

- Monarch Butterfly *Danaus plexippus* Candidate

You may coordinate with our Office to determine whether the Action may cause prohibited take of the animal species listed above. Note that if a new species is listed that may be affected by the identified action before it is complete, additional review is recommended to ensure compliance with the Endangered Species Act.

Next Steps

Consultation with the Service is necessary. The project has a federal nexus (e.g., funds, permit), but you are not the federal action agency or its designated (in writing) non-federal representative. Therefore, the ESA consultation status is incomplete and no project activities should occur until consultation between the Service and the Federal action agency (or designated non-federal representative), is completed. Section 7 consultation is not complete until the federal action agency submits a determination of effects, and the Service concurs with the federal action agency's determination. Please provide this technical assistance letter to the lead federal action agency or its designated non-federal representative with a request for its review.

As the federal agency deems appropriate, they should submit their determination of effects to the appropriate Ecological Services Field Office. The lead federal action agency or designated non-federal representative can log into IPaC system using their agency email account and click "Search by record locator" to find this Project using **988-124129340**.

If no changes occur with the Project or there are no updates on listed species, no further consultation/coordination for this project is required for the northern long-eared bat. However, the Service recommends that project proponents re-evaluate the Project in IPaC if: 1) the scope, timing, duration, or location of the Project changes (includes any project changes or amendments); 2) new information reveals the Project may impact (positively or negatively) federally listed species or designated critical habitat; or 3) a new species is listed, or critical habitat designated. If any of the above conditions occurs, additional coordination with the Service should take place before project implements any changes which are final or commits additional resources.

If you have any questions regarding this letter or need further assistance, please contact the Chesapeake Bay Ecological Services Field Office and reference Project Code 2023-0060075 associated with this Project.

Action Description

You provided to IPaC the following name and description for the subject Action.

1. Name

I-95 Express Toll Lanes (ETL) Northbound Extension Phase II

2. Description

The following description was provided for the project 'I-95 Express Toll Lanes (ETL) Northbound Extension Phase II':

The project consists of an extension of the ETLs from the Section 100 project limits to north of MD 24, reconstruction of the interchanges at MD 152 and MD 24, relocation of the existing MD 152 Park and Ride, construction of a new Park and Ride at MD 24/MD 924, installation of Intelligent Transportation System (ITS) technology, and construction of associated noise walls and stormwater management facilities. These improvements will be divided into multiple contracts and will be completed by approximately the end of 2027.

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@39.45789955,-76.30956886549322,14z>



DETERMINATION KEY RESULT

Based on the answers provided, the proposed Action is consistent with a determination of “may affect, but not likely to adversely affect” for the Endangered northern long-eared bat (*Myotis septentrionalis*).

QUALIFICATION INTERVIEW

1. Does the proposed project include, or is it reasonably certain to cause, intentional take of the northern long-eared bat or any other listed species?

Note: Intentional take is defined as take that is the intended result of a project. Intentional take could refer to research, direct species management, surveys, and/or studies that include intentional handling/encountering, harassment, collection, or capturing of any individual of a federally listed threatened, endangered or proposed species?

No

2. Do you have data that indicates that northern long-eared bats may be present in the action area?

No

3. Does any component of the action involve construction or operation of wind turbines?

Note: For federal actions, answer ‘yes’ if the construction or operation of wind power facilities is either (1) part of the federal action or (2) would not occur but for a federal agency action (federal permit, funding, etc.).

No

4. Is the proposed action authorized, permitted, licensed, funded, or being carried out by a Federal agency in whole or in part?

Yes

5. Is the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), or Federal Transit Administration (FTA) funding or authorizing the proposed action, in whole or in part?

Yes

6. FHWA, FRA, and FTA have completed a range-wide programmatic consultation for transportation- related actions within the range of the Indiana bat and northern long-eared bat.

Does your proposed action fall within the scope of this programmatic consultation?

Note: If you have **previously consulted** on your proposed action with the Service under the NLEB 4dRule, answer 'no' to this question and proceed with using this key. If you have **not yet consulted** with the Service on your proposed action and are unsure whether your proposed action falls within the scope of the FHWA, FRA, FTA range-wide programmatic consultation, please select "Yes" and use the FHWA, FRA, FTA Assisted Determination Key in IPaC to determine if the programmatic consultation is applicable to your action. Return to this key and answer 'no' to this question if it is not.

No

7. Are you an employee of the federal action agency or have you been officially designated in writing by the agency as its designated non-federal representative for the purposes of Endangered Species Act Section 7 informal consultation per 50 CFR § 402.08?

Note: This key may be used for federal actions and for non-federal actions to facilitate section 7 consultation and to help determine whether an incidental take permit may be needed, respectively. This question is for information purposes only.

Yes

8. Is the lead federal action agency the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC)? Is the Environmental Protection Agency (EPA) or Federal Communications Commission (FCC) funding or authorizing the proposed action, in whole or in part?

No

9. Have you determined that your proposed action will have no effect on the northern long-eared bat? Remember to consider the [effects of any activities](#) that would not occur but for the proposed action.

If you think that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, answer "No" below and continue through the key. If you have determined that the northern long-eared bat does not occur in your project's action area and/or that your project will have no effects whatsoever on the species despite the potential for it to occur in the action area, you may make a "no effect" determination for the northern long-eared bat.

Note: Federal agencies (or their designated non-federal representatives) must consult with USFWS on federal agency actions that may affect listed species [50 CFR 402.14(a)]. Consultation is not required for actions that will not affect listed species or critical habitat. Therefore, this determination key will not provide a consistency or verification letter for actions that will not affect listed species. If you believe that the northern long-eared bat may be affected by your project or if you would like assistance in deciding, please answer "No" and continue through the key. Remember that this key addresses only effects to the northern long-eared bat. Consultation with USFWS would be required if your action may affect another listed species or critical habitat. The definition of [Effects of the Action](#) can be found here: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

No

10. Does the action area contain any caves (or associated sinkholes, fissures, or other karst features), mines, rocky outcroppings, or tunnels that could provide habitat for hibernating northern long-eared bats?

No

11. Is suitable summer habitat for the northern long-eared bat present within 1000 feet of project activities?
(If unsure, answer "Yes.")

Note: If there are trees within the action area that are of a sufficient size to be potential roosts for bats (i.e., live trees and/or snags ≥ 3 inches (12.7 centimeter) dbh), answer "Yes". If unsure, additional information defining suitable summer habitat for the northern long-eared bat can be found at: <https://www.fws.gov/media/northern-long-eared-bat-assisted-determination-key-selected-definitions>

Yes

12. Will the action cause effects to a bridge?

Yes

13. Has a site-specific bridge assessment following [USFWS guidelines](#) been completed?

Note: For information on conducting a bridge/structure assessment, see Appendix D of the User's Guide for the Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat and the associated Bridge/Structure Bat Assessment Form. Additional resources can be found at: <https://www.fws.gov/media/bats-and-transportation-structures-references-and-additional-resources> and a training video is located at: <https://www.youtube.com/watch?v=iuFwkT7q8Ws>.

No

14. Will the proposed action result in the cutting or other means of knocking down, bringing down, or trimming of any trees suitable for northern long-eared bat roosting?

Note: Suitable northern long-eared bat roost trees are live trees and/or snags ≥ 3 inches dbh that have exfoliating bark, cracks, crevices, and/or cavities.

Yes

PROJECT QUESTIONNAIRE

Enter the extent of the action area (in acres) from which trees will be removed - round up to the nearest tenth of an acre. For this question, include the entire area where tree removal will take place, even if some live or dead trees will be left standing.

76.70

In what extent of the area (in acres) will trees be cut, knocked down, or trimmed during the inactive (hibernation) season for northern long-eared bat? **Note:** Inactive Season dates for spring staging/fall swarming areas can be found here: <https://www.fws.gov/media/inactive-season-dates-swarming-and-staging-areas>

50

In what extent of the area (in acres) will trees be cut, knocked down, or trimmed during the active (non-hibernation) season for northern long-eared bat? **Note:** Inactive Season dates for spring staging/fall swarming areas can be found here: <https://www.fws.gov/media/inactive-season-dates-swarming-and-staging-areas>

26.70

Will all potential northern long-eared bat (NLEB) roost trees (trees ≥ 3 inches diameter at breast height, dbh) be cut, knocked, or brought down from any portion of the action area greater than or equal to 0.1 acre? If all NLEB roost trees will be removed from multiple areas, select 'Yes' if the cumulative extent of those areas meets or exceeds 0.1 acre.

Yes

Enter the extent of the action area (in acres) from which all potential NLEB roost trees will be removed. If all NLEB roost trees will be removed from multiple areas, entire the total extent of those areas. Round up to the nearest tenth of an acre.

53.7

For the area from which all potential northern long-eared bat (NLEB) roost trees will be removed, on how many acres (round to the nearest tenth of an acre) will trees be allowed to regrow? Enter '0' if the entire area from which all potential NLEB roost trees are removed will be developed or otherwise converted to non-forest for the foreseeable future.

10

Will any snags (standing dead trees) ≥ 3 inches dbh be left standing in the area(s) in which all northern long-eared bat roost trees will be cut, knocked down, or otherwise brought down?

Yes

Will all project activities be completed by April 1, 2024?

No

IPAC USER CONTACT INFORMATION

Agency: JMT
Name: Steven Swarr
Address: 9201 Arboretum Parkway, Ste. 310
City: Richmond
State: VA
Zip: 23236
Email: sswarr@jmt.com
Phone: 8046554822

LEAD AGENCY CONTACT INFORMATION

Lead Agency: Federal Highway Administration
