



June 2014

Natural Heritage Data

Supplemental Information for

OKI Environmental Consultations in Regional Transportation Planning



Prepared with funding provided by:



As part of the Second Strategic Highway
Research Program (SHRP2)





Natural Heritage Data
Supplemental Information for
**OKI Environmental Consultations in
Regional Transportation Planning**

June 2014

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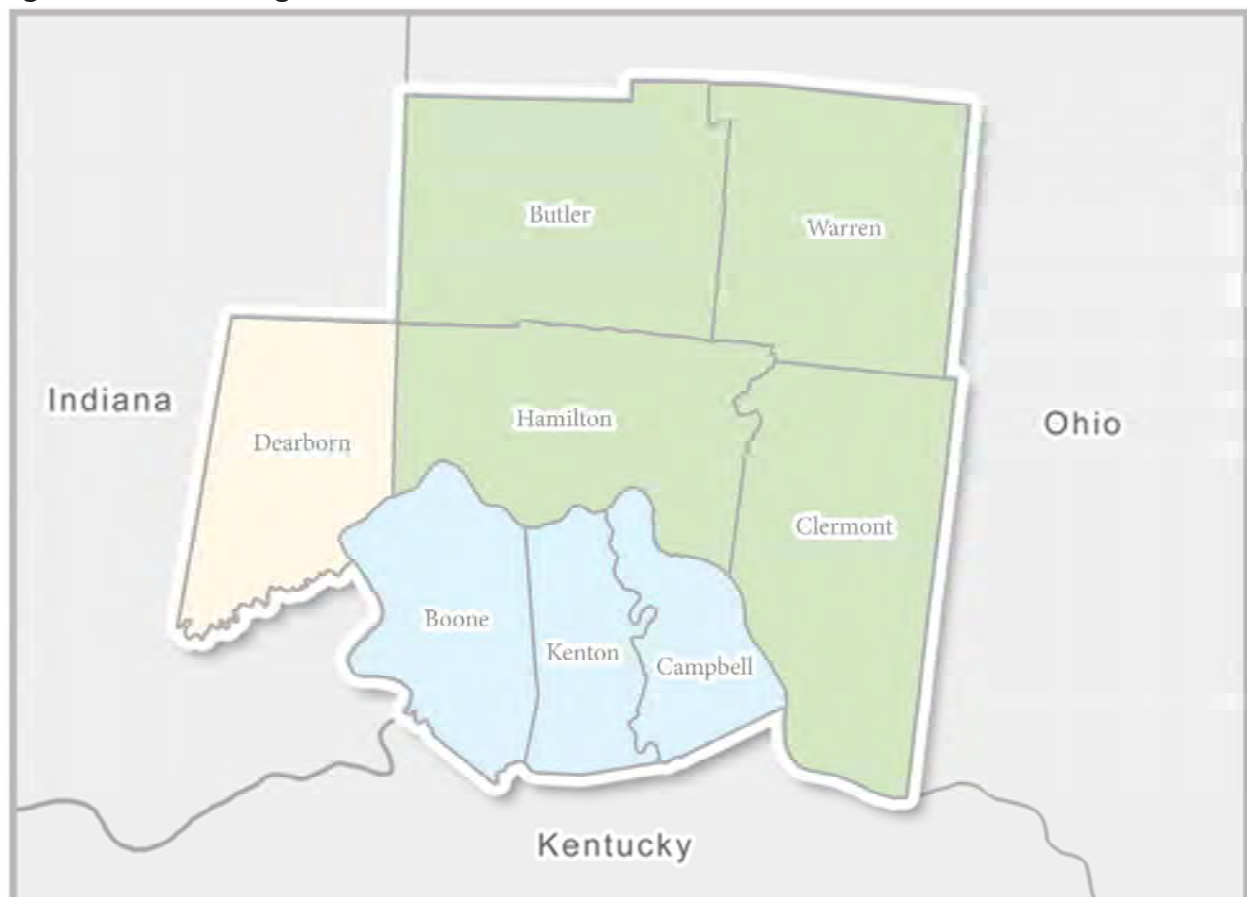
Appendix A State Agency Meeting Agendas/Summaries

Appendix B State Agency Agreements: Natural Heritage Database User Agreements

1. Introduction

The Ohio-Kentucky-Indiana Regional Council of Governments (OKI) is the federally designated regional transportation planning organization for Butler, Clermont, Hamilton and Warren counties in Ohio; Boone, Campbell and Kenton counties in Kentucky; and Dearborn County in Indiana. Figure 1 presents the eight-county, tri-state OKI Region.

Figure 1. The OKI Region



In 2013, the Federal Highway Administration (FHWA) selected OKI as a User Incentive recipient of funding assistance provided by its Second Strategic Highway Research Program (SHRP2). Through this funding assistance, OKI developed agreements with the Ohio, Kentucky, and Indiana authorities that manage the Natural Heritage Data (NHD) Information Systems for OKI's planning area. The agreements are multi-year arrangements for OKI to receive information on NHD locations for use in mapping and for better integrating environmental considerations into transportation planning. NHD locations are areas with documented occurrences of:

- federally endangered, threatened, proposed or candidate species;
- state endangered, threatened, and special concern species;
- significant natural communities; or
- animal aggregations.

The primary goal for integrating Natural Heritage data into transportation planning is to avoid or significantly reduce environmental impacts in order to conserve significant resources and to reduce transportation project costs and implementation time (projects with impacts involve greater costs and extended time for planning, design, implementation, and/or mitigation). This goal is consistent with SHRP2's intent to provide new planning tools that will decrease costs by resulting in more efficient transportation planning and faster project delivery.

The following sections of this report provide:

- documentation of the development of OKI's Data User Agreements with the state NHD authorities;
- documentation of the mapping approach developed for displaying NHD locations,
- a series of county maps of NHD Areas; and
- a description of how NHD locations will be used for transportation and other planning efforts.

This document is intended to be useful for other regions desiring to use Natural Heritage data locations to better inform their long-range transportation planning processes. For OKI, this document supplements information and facilitates the comparisons involved in OKI environmental consultations on the metropolitan transportation plan (see Section 5).

2. Development of Data User Agreements

The sensitive nature of endangered species data complicates the ability to collect and map Natural Heritage Data (NHD) locations for use in transportation planning. OKI has developed county lists of NHD species and related information indicative of the importance of habitat conservation, but information on NHD locations would have required a separate request to each state that would have presumably resulted in a variety of data formats and mapping limitations.

Using the SHRP2 User Incentive funding assistance, OKI was able to coordinate with state NHD authorities (Indiana Natural Heritage Data Center, Kentucky State Nature Preserves Commission, Ohio Natural Heritage Program) to negotiate formal long-term agreements that ensured:

- compatible data from each state with similar content and detail for use in mapping the locations of NHD records throughout the OKI Region; and
- automatic annual data updates that would avoid the need to develop new agreements (thus saving time and cost).

OKI initiated the implementation funding assistance application after receiving notice of the SHRP2 funding's potential use for improving access to NHD information from the Kentucky State Nature Preserve's Director. From the beginning, the three state NHD authorities were supportive and helpful to OKI. Their staffs had previously participated in OKI's environmental consultations (see Section 5) and provided information on local NHD species, and they were quick to provide Letters of Support for the SHRP2 implementation funding assistance application.

Upon the approval of funding, OKI coordinated individual meetings with each state NHD authority to obtain suggestions and discuss provisions for a data-sharing agreement. Agendas for each of the meetings (see Appendix A) included discussion of:

- data requested for transmittal from the Natural Heritage Database to OKI to include locations and dates of most recent occurrence of federal and state listed species and locations of ecological communities and other natural features;
- process for transmitting the data;
- timing of the data transmittal; and
- schedule for future data transmittals to account for data updates.

Meetings occurred in October 2013 and were conducted by conference call in each instance.

Based on discussion at the October meetings, OKI drafted the data sharing agreements in November 2013 and sent them to the respective state contacts for review and edit. Wherever feasible, OKI incorporated edits suggested by each state into all three agreements in order to achieve as much consistency between the agreements as possible. Final terms were arrived upon by February 2014 for all three agreements. The final agreements are provided for reference in Appendix B.

Agreements provide for the annual transfer of NHD data to OKI until June 30, 2016, from the Ohio and Kentucky NHD authorities (ensures availability for the next transportation plan update) or until the agreement is terminated (Indiana NHD authority). For this year's project, Natural Heritage Data was delivered electronically to OKI by each agency between March and April 2014. Provisions for data content and mapping use are described in the following section.

3. Development of a Mapping Approach

The mapping approach to display Natural Heritage Data (NHD) locations evolved in an iterative process that accounted for:

- the development of initial map versions of NHD locations;
- consideration of provisions in the Data User Agreements;
- input from state DOT district staff that conduct environmental reviews; and
- finalization of a mapping approach through additional correspondence with NHD staff.

Initial Map Versions

The three states developed similar data user agreements, but there were differences in the data provided, as shown in Table 1. Major differences in the initial data were in the time periods for which records were available (began in 1819, 1912, and 1970) and in the types of data categories (two of the three states identified records per species).

Table 1. Comparison of State NHD for OKI Region

	Ohio	Kentucky	Indiana
# of records	557	201	77
# of records in OKI Region*	495	178	47
Last Observed Year	1970 - 2013	Pre-1900 (and no date) - 2013	1912 - 2012
NHD Categories (# of records per category)	Animal Assemblage (7) Beech-oak-red maple forest (4) Beech-sugar maple forest (5) Breeding Amphibian Site (1) Cave or cavern (3) Cliffs (1) Erratic (2) Floodplain forest (3) Fossil deposit (4) Great Blue Heron Rookery (1) Mixed emergent marsh (1) Mixed mesophytic forest (4) Mussel Bed (28) Oak-maple forest (10) Other (Ecological) (1) Plant Community (4) Plant or Animal Species (426) Sinkhole (1) Stream gorge (3)	Invertebrate Animal (88) Terrestrial Community - Other Classification (6) Vascular Plant (26) Vertebrate Animal (81)	Invertebrate Animal (8) Terrestrial Community - Other Classification (9) Vascular Plant (35) Vertebrate Animal (25)
NHD Type	na	na	Amphibian Bird Fish High Quality Natural Community Insect Coleoptera Mammal Mollusk Reptile Vascular Plant
Species Name	na	<ul style="list-style-type: none"> ▪ Species Name (latin) ▪ Species Common Name 	<ul style="list-style-type: none"> ▪ Species Name ▪ Species Common Name
GRANK	NA	provided	provided
SRANK	NA	provided	provided
Federal status (Ohio) or USESA (Ky. & Indiana)	FE, FSC, FC	LE, LT, SOMC, Delisted	LE
State status (Ohio) or SPROT (KY & IN)	E, T, SC, P, X, F	E, H, N, S, T, X	SE, SG, SR, SSC, WL
EORANK	NA	provided	provided

* Includes records inside and within ½ mile of the OKI 8-county region.

In addition to differences in data content, each state's data displayed differently in OKI's initial map of NHD records, resulting in a map with points, spheres of various sizes, rectangles (representing quarter U.S.G.S. quadrangles), stream segments, and other shapes. States subsequently provided explanations that:

- circle sizes indicate differences in locational uncertainty (larger circles reflect more uncertainty as to true location, smaller circles reflect more precise locations); polygons reflect a more defined area than a point location (usually natural communities that have been mapped, or fish and mussel locations following rivers/streams) and
- "Element Occurrence representations" include large buffers that indicate uncertainty of the exact location (in the case of a large round buffer), or a linear segment (indicating presence in a stretch of stream).

OKI subsequently drafted overlays of 1) parks and preserves and 2) Regionally Significant Streams (high quality streams or stream segments identified for conservation or protection by the states). The intent was to determine the extent to which NHD sites overlapped with these resource areas and the feasibility of the map's identifying these areas to indicate some NHD locations. This approach couldn't accommodate all NHD sites nor protect site identities to the extent specified in the user agreement, but the map indicated considerable overlap and warrants future consideration.

Consideration of Data User Agreements

The Data User Agreements affected mapping options by their provisions for how data was to be transferred to OKI and how data was to be displayed. The following provisions warranted additional consideration.

- ***Size of the buffer area outside the OKI Region for which NHD records should be displayed***
The data user agreements called for providing OKI with records within a 5-mile buffer around the OKI Region. After data was received, it appeared that most records within the buffer area were upstream of the OKI region, which reduced the buffer's relevancy as a means of protecting NHD locations, especially for aquatic species.
- ***Time period for which records should be mapped***
As noted previously, the earliest dates of NHD records varied. Starting points were 1912 and 1970 (later 1961) for two states. Kentucky's records included 33 records prior to 1900 or without dates, of which all but one were for aquatic species in the Ohio River (the other Kentucky records started with 1904). The relevancy of early Ohio River records are further compromised by the effect of dams constructed in the 1960s.
- ***Relevancy of species status and rankings for mapping***
Federal and state status and rankings per species indicate differences in the urgency of conservation needs, but state transportation agencies account for these indicators differently, especially in regard to state agency listings.

- ***Masking of records to protect NHD resources and locations***

To insure that information on NHD locations provided to help protect sites does not also help increase public access to sites (to the detriment of NHD species and habitat), the Data User Agreements mask their data and require OKI maps to use 1) an identifier more general than the species' scientific genus or common name and 2) a description precise to no more than the section (IDNR and ODNR) / quarter quadrangle (KYSPNC), which is roughly 15 square miles.

Consideration of DOT District Review Processes

OKI arranged a meeting with Department of Transportation (DOT) staff from the Ohio and Kentucky district offices responsible for environmental reviews in order to provide OKI with:

- a better understanding of the NEPA process and the use of NHD data in environmental reviews of transportation projects and
- input on mapping options that would optimize the data's value for transportation planning.

A significant level of insight was gained through discussion with DOT district staff. The discussion clarified the use of NHD sites in ODOT and KYTC review processes. As indicated below, KYTC & ODOT do not typically request NHD locations (they may use NHD county lists of species and may consult with NHD staff after determining the potential for environmental impact), although they noted that a map of NHD locations could be helpful (see Section 5).

- DOT project reviews typically begin by identifying listed species within the county in which the project is located (lists are available from the NHD agency and the state and U.S. Fish and Wildlife Service/FWS) and subsequently assessing the project area for potential habitat for those species. KYTC considers only federally listed species; ODOT considers federal and state-listed species.
- The potential for habitat within a transportation project area is determined by use of a Habitat Assessment Manual that identifies habitat criteria per species. If assessment indicates habitat potential (e.g., certain soils for running buffalo clover), then a biological assessment is conducted that involves the U.S. FWS. Each state uses a federally-approved process for project steps depending on the outcomes of environmental and biological assessments.
- Maximum distance for project review area in our region is ODOT's maximum of 2000' feet for major new roadway alignments (size of review area depends on project size). KYTC commonly uses 100-200' on each side of a roadway and maximum of 500' for roadway widening. ODOT uses 200' for bridge replacement, KYTC uses a smaller area.

Identify Consistent Mapping Methods

Following the compilation of the NHD information was completed for the OKI region, staff began the process of determining consistent methods for mapping the information in a manner most conducive for integrating with the planning activities it will be used to inform. The major decision points are summarized below:

- Remove or reduce the buffer around OKI region. The original buffer area requested was 5 miles. After analyzing the information, it was realized that sites beyond a ½ mile distance have little to no relevancy for decisions in the OKI region since the records are upstream of the region.
- Tighten site locations as much as possible. Since transportation planning activities are most often focused along corridors, having the information available in the most specific geographic location is more important, during initial planning stages, than having specific details about the actual species in that location. By eliminating the species information from the records for mapping purposes enables the maps to be prepared at a much finer grain of detail.
- Limit sites to those with current or the most recent NHD species occurrences. For example, records for the Ohio River prior to dam construction is irrelevant since habitat conditions were significantly changed as a result of pool elevations.
- Account for all listed species. State DOTs differ in whether their reviews identify potential habitat for just federally listed species or they account for both state and federally listed species. Although neither DOT consulted with consider NHD insects, the OKI maps have include these records because of the map's use by other organizations.
- Classify NHD records as aquatic or terrestrial. OKI organized the information in this manner as a means to provide some detail on species type while avoiding identification of specific species. DOT staff indicated that this distinction could be helpful. Sites distinguished as aquatic would be relevant for bridge or culvert projects. Projects without stream impacts could omit consideration of sites distinguished as aquatic. From OKI's perspective, this approach would enhance the map's value for conservation planning by identifying areas with high-value habitat but without regard to individual species.
- Differentiation of the number of records per mapping unit (square mile section). Although all records are important to consider during planning activities, identifying the number of records within a section provides the relative level of intensity of records and indicates the amount of species potentially impacted.

In addition to features above, OKI may further consider including "Regionally Significant Streams" in the future (KYTC reviews projects in proximity to the Licking River for potential impacts on mussels. ODOT researches Category 2 streams for mussels habitat). Another map options that may warrant further consideration includes the use of overlays of HUC-14 watershed boundaries.

Finalization of the Mapping Approach

Following OKI's analysis of the compiled NHD recommendations for consistent mapping was provided to the state NHD authorities for comment, along with modifications to NHD records provided to OKI to indicate which records were to be deleted for being outside of the suggested buffer area or time period, and also to classify records as aquatic or terrestrial. With final input by the NHD authorities the approach used for OKI NHD mapping is:

- Account for NHD sites within a half mile outside of OKI county borders
A "half mile" was selected as close to but exceeding the maximum project area size of 2000' identified in discussion with the state DOTs.
- Account for observances since 1965/within the past fifty years
- Use U.S.G.S. Sections as the means to display the location of any NHD sites within that geographic area.
- Differentiate species as "aquatic" or "terrestrial (includes wetlands)". OKI provided Kentucky and Indiana with its classification of their records and received information that resulted in OKI's revising classification for three species. Ohio provided OKI with species data and aquatic-terrestrial classifications and also extended the period of records back to 1961.

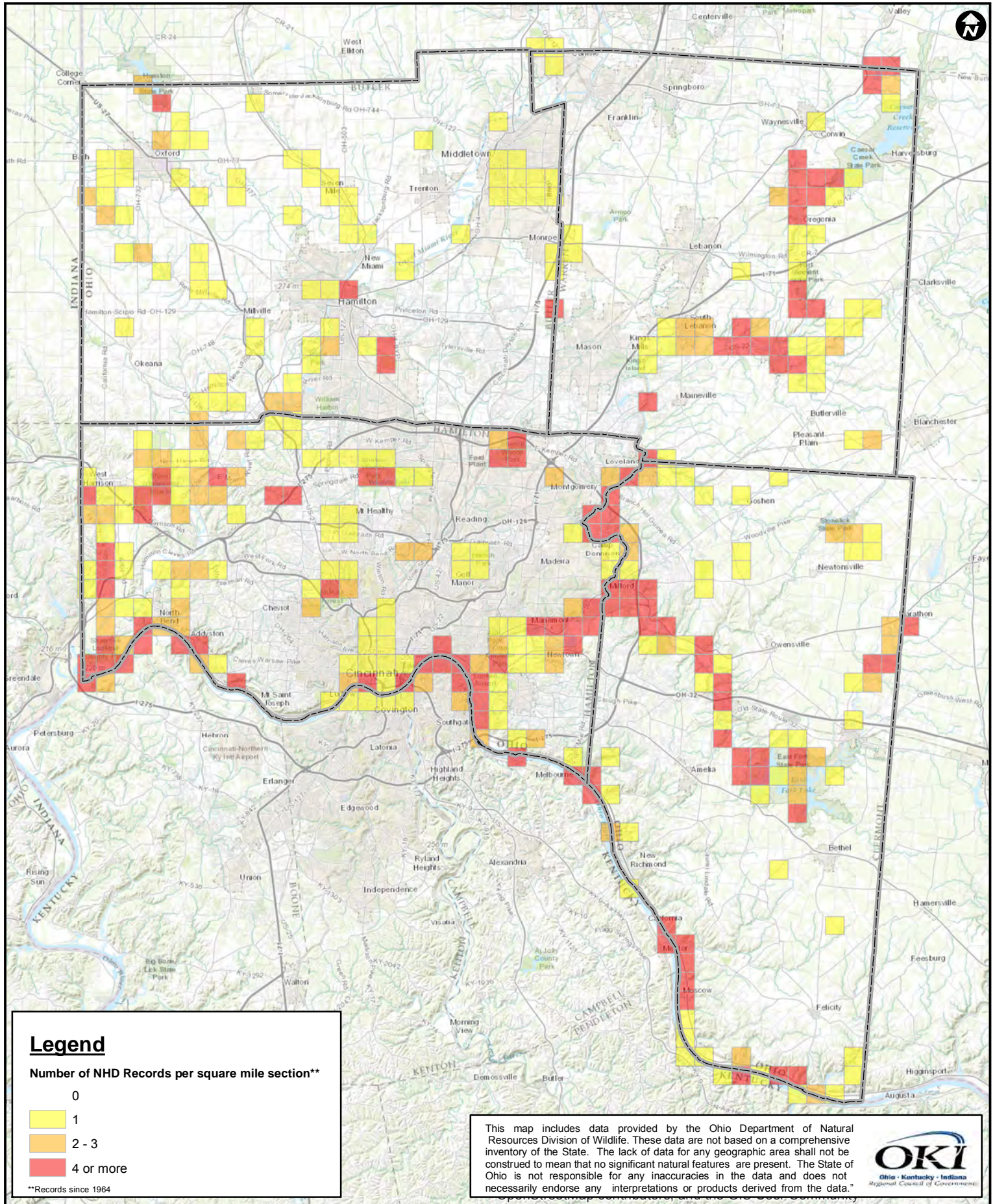
4. State Map Series of Natural Heritage Data

The following pages include the maps prepared by OKI using the NHD information as authorized by the data user agreements and as approved by each NHD authority. A series of three maps with NHD locations was prepared for each state in the region. For each state, the series includes:

- 1) 'Area with Natural Heritage Data Base Sites' – a map of sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations depicted by the number of such occurrences within a square mile section. The map indicates where occurrences area 1; 2-3; or 4 or more,
- 2) 'Area with Aquatic Sites in the Natural Heritage Database'; and
- 3) 'Area with Terrestrial Sites in the Natural Heritage Database'.

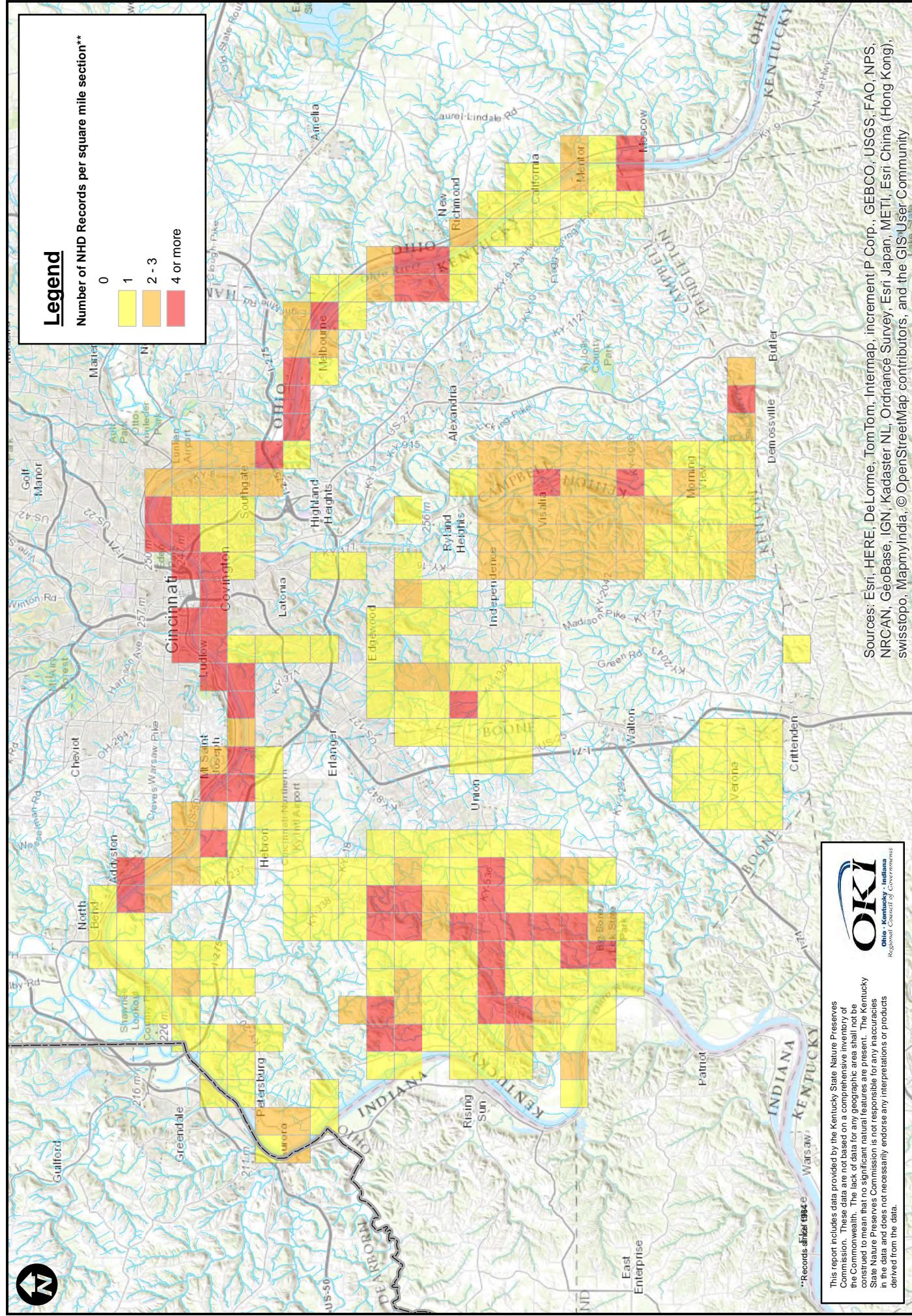
Area with Natural Heritage Data Base Sites* in Butler, Clermont, Hamilton & Warren Counties, OH

*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



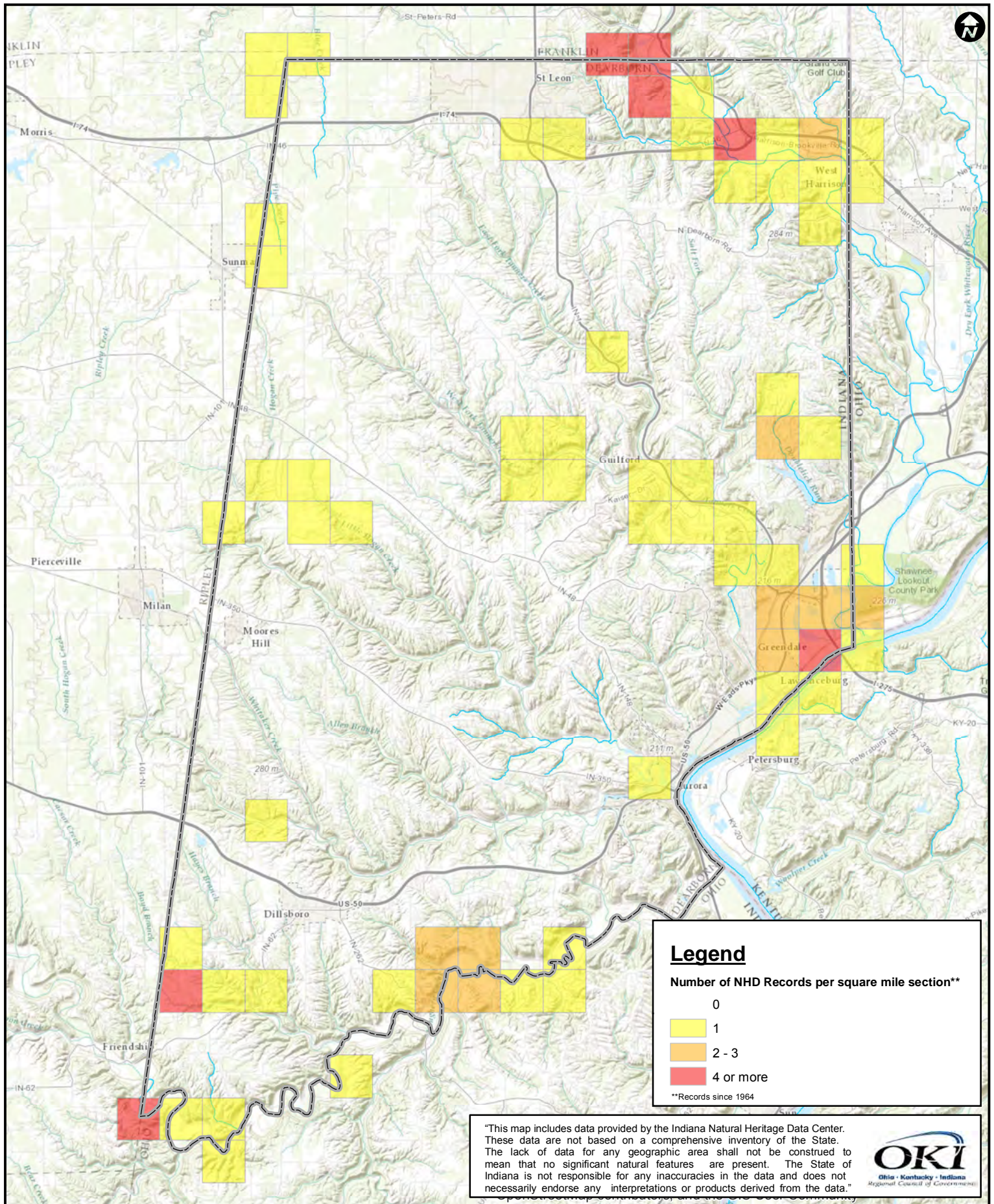
Area with Natural Heritage Data Base Sites* in Boone, Campbell & Kenton Counties, KY

*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



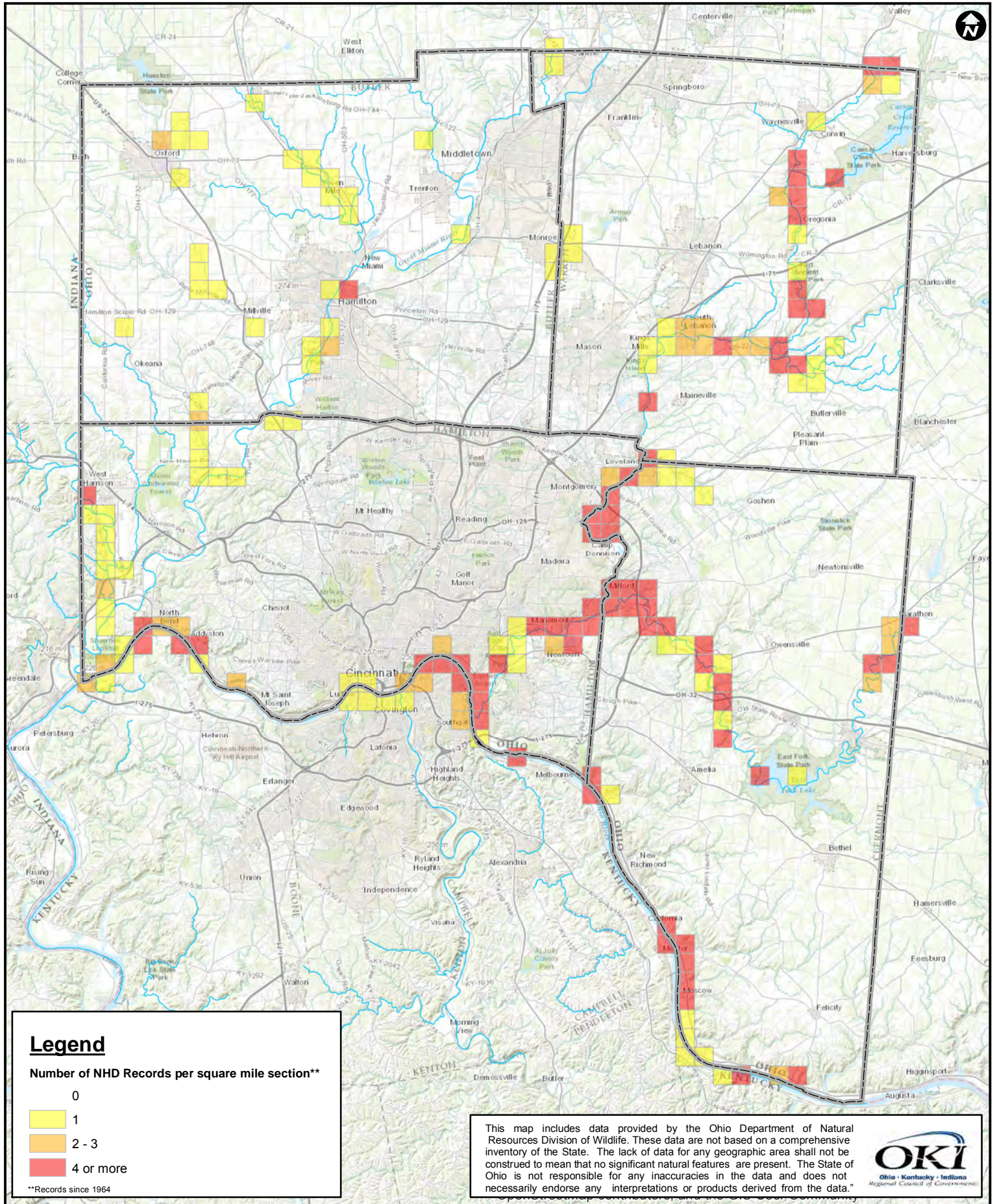
Area with Natural Heritage Data Base Sites* in Dearborn County, IN

*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



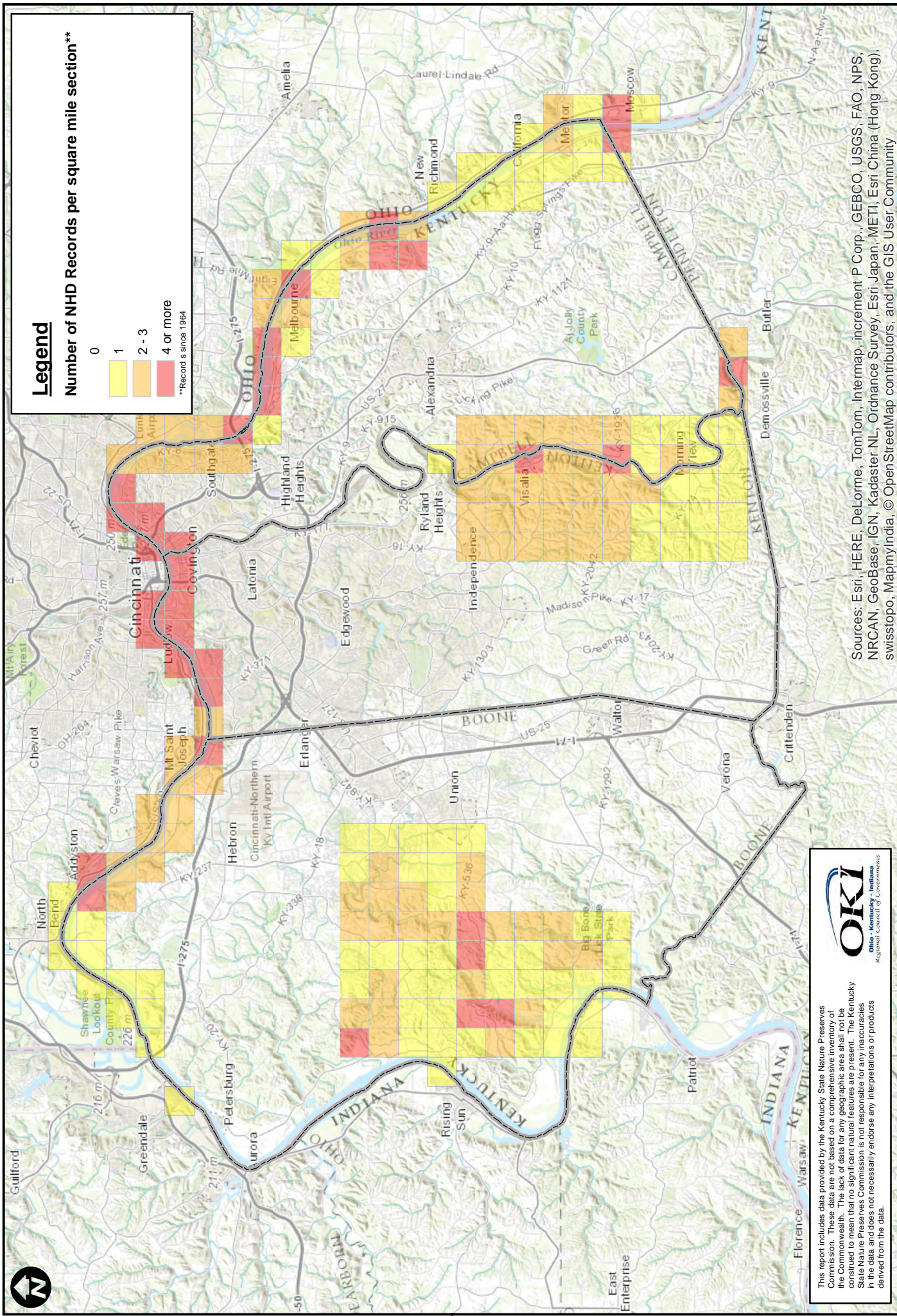
Area with Aquatic Sites in the Natural Heritage Database* in Butler, Clermont, Hamilton & Warren Counties, OH

*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



Area with Aquatic Sites in the Natural Heritage Data Base* in Boone, Campbell & Kenton Counties, KY

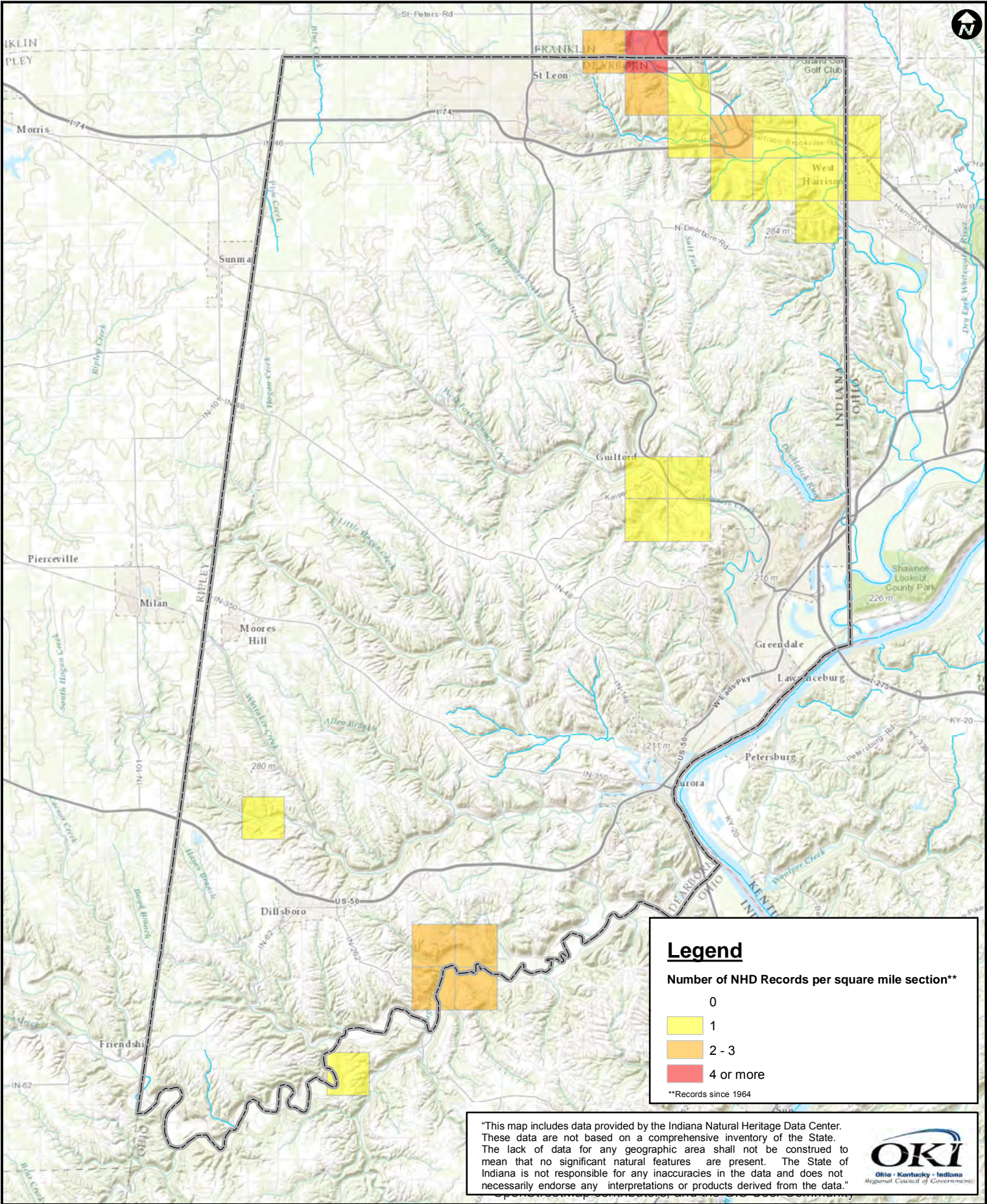
*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



Sources: Esri, HERE, DeLorme, TomTom, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

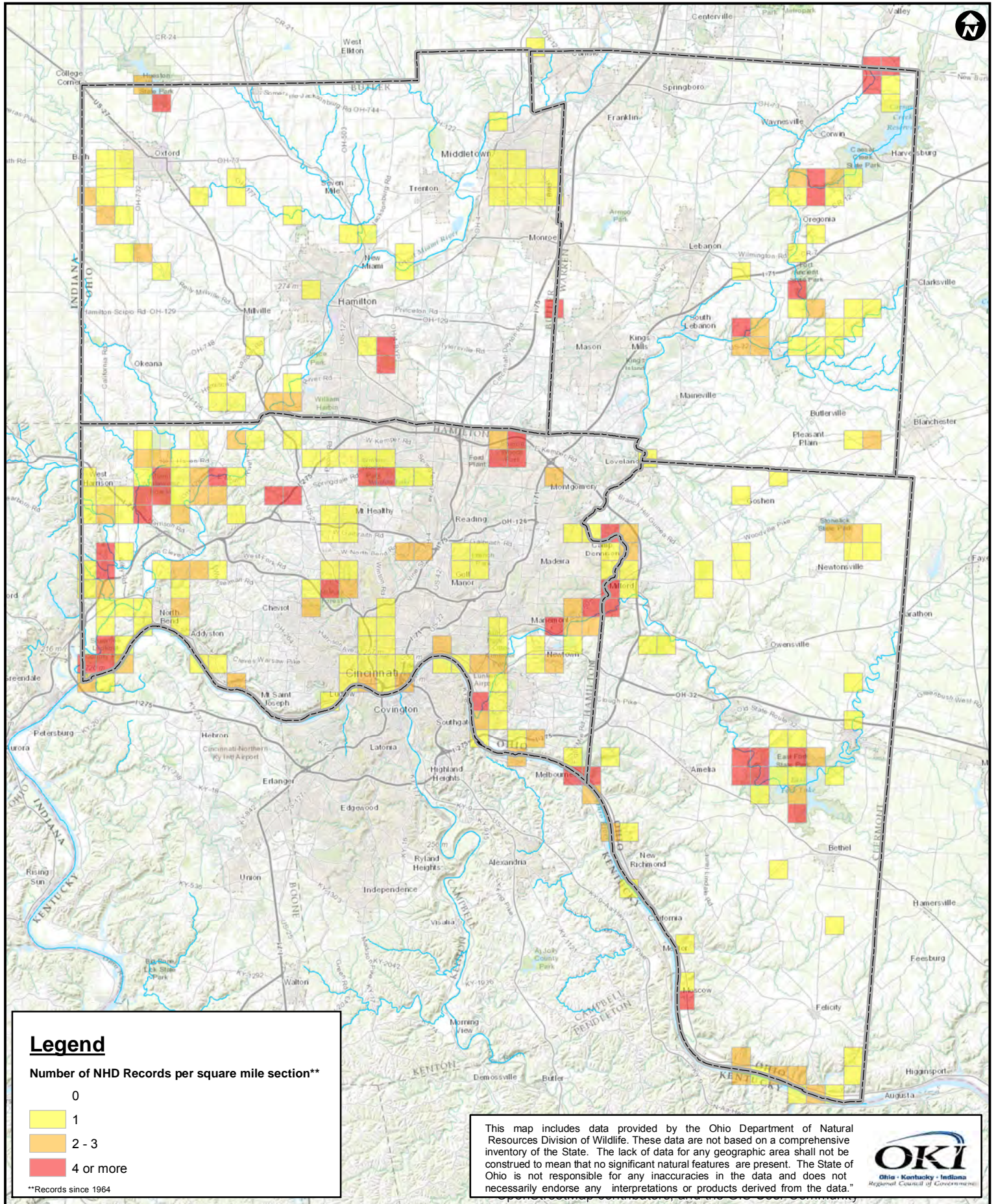
Area with Aquatic Sites in the Natural Heritage Database* in Dearborn County, IN

*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



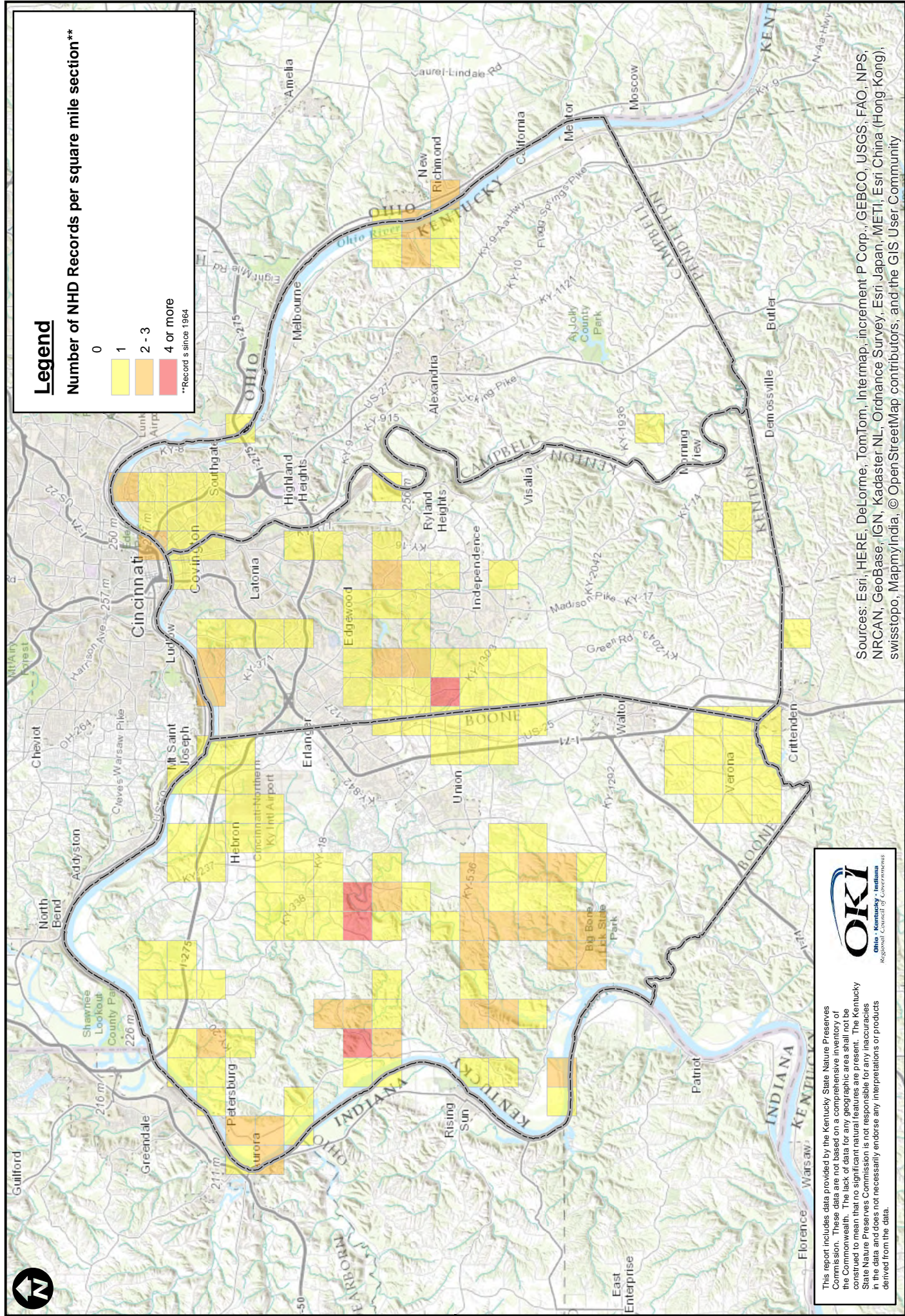
Area with Terrestrial Sites in the Natural Heritage Database* in Butler, Clermont, Hamilton & Warren Counties, OH

*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



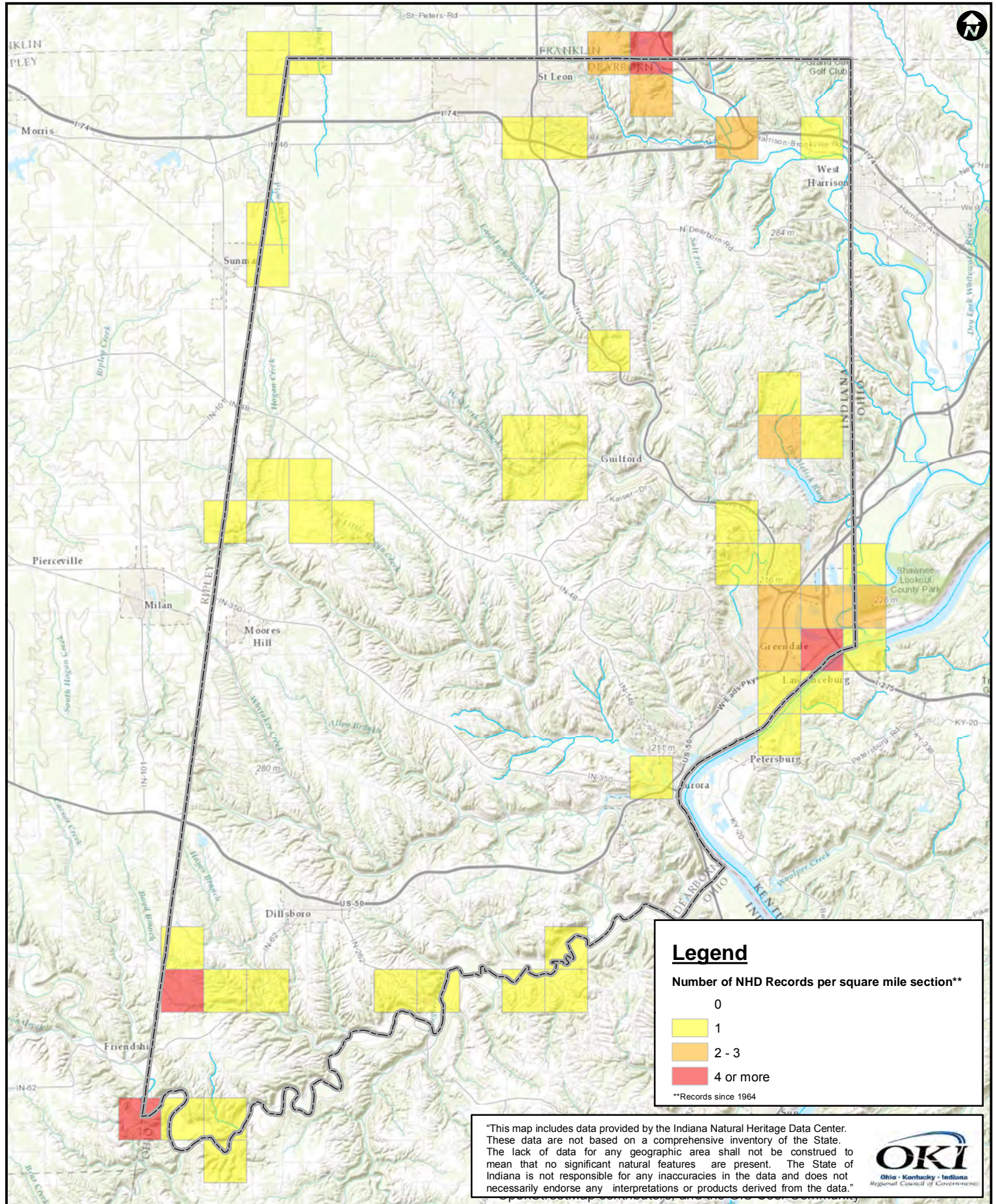
Area with Terrestrial Sites in the Natural Heritage Data Base* in Boone, Campbell & Kenton Counties, KY

*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



Area with Terrestrial Sites in the Natural Heritage Database* in Dearborn County, IN

*Sites with occurrences of federal or state endangered, threatened or rare species, or locations of significant natural communities or animal aggregations



5. Natural Heritage Data for Planning Purposes

The maps of Natural Heritage Data (NHD) locations will be useful for transportation planning and can also be used to inform the development of local comprehensive plans and conservation plans, policies and strategies. For transportation, the maps provide new tools for OKI's transportation and regional planning program and for state environmental assessments that can help protect significant environmental resources, reduce transportation project costs, and decrease the need for costly mitigation. For local government planning, the maps can be used to inform the development of plans, policies, and practices that better protect natural resources. The map can also be used for both public and private efforts to develop strategic conservation strategies and plans. Some specific applications of NHD maps are outlined below.

DOT Environmental Reviews

As indicated in Section 3, state transportation districts follow specific processes for reviewing proposed projects and determining the potential for adverse impacts on NHD species or features. Departments of Transportation (DOTs) don't typically request NHD locations, but DOT staff confirmed that a map of NHD locations "would be a helpful resource" in general and would help specifically for identifying initial "red flags" (sites of potential environmental issues that could impact costs and schedules). OKI's NHD map can be used as an initial indicator of the presence or absence of NHD locations, for which site-specific information could be requested if warranted.

OKI Environmental Consultations

Federal requirements call for metropolitan planning organizations like OKI to conduct environmental consultations as part of the update process for metropolitan transportation plans. These consultations involve state and local agencies responsible for conservation or environmental protection in considering the proposed transportation plan's potential effects on "Regionally Significant Environmental Resources" (resources identified by the states for conservation or protection and defined by OKI based on state conservation plans, maps, policies or inventories).

One of the five categories of Regionally Significant Environmental Resources defined by OKI is "Endangered, Threatened and Rare Species." OKI has identified 165 species by county that are listed by federal or state agencies as endangered, threatened, or rare (and their global rankings) based on online county lists of state Natural Heritage data (2010-11). This tabular data indicates the need to protect NHD habitat but doesn't identify habitat locations.

For the next round of environmental consultations, locations relevant for protecting endangered, threatened and rare species can be considered by using the NHD maps prepared through this SHRP2 project. The value of this new graphic data is enhanced by considering it in

combination with the other Regionally Significant Environmental Resources for which map data is available: Regionally Significant Streams (high quality streams or stream segments identified for conservation or protection by the states), State Conserved Areas, and Prime and Important Farmlands. Separately or in combination, the NHD map expands perspective for considering the transportation plan's potential effect on areas with environmental resources that warrant conservation.

OKI Prioritization Process for Metropolitan Transportation Planning

NHD locations will be incorporated into the prioritization process used to help determine which projects are to be recommended in metropolitan transportation plan updates. The prioritization process provides a systematic approach for ranking multiple project proposals for more detailed evaluation in order to develop a financially constrained plan. The scoring process provides information for decision-making and the development of a list of recommended projects that is then finalized based on public input and OKI leadership.

One of the seven criteria in the OKI project scoring process is Environmental Impact. This criteria is an indicator of a project's potential impacts on environmentally sensitive areas. Point values are currently awarded as follows:

- Project avoids environmentally sensitive area(s) 5 points
- Any impact(s) will be mitigated 3 points
- Impact(s) will not be mitigated 0 points

Although five points is only a fraction of the potential maximum score of 105 points in this process, it can be a determining factor in project selection, where small differences between project scores determine whether or not projects are included in the plan as "recommended." For project scoring, OKI staff would supplement the NHD maps with more specific data on NHD locations.

Advancement of OKI Strategic Regional Policy Plan

OKI's Strategic Regional Policy Plan (SRPP) presents a 20-year vision for improving the region's vitality, sustainability and competitiveness, primarily through changes to the land use-transportation connection. One of the SRPP's six strategic subject areas with objectives and policies for achieving the regional vision is the Natural Systems element. The SRPP acknowledges that the region's long-term viability depends on the health and quality of its natural resources and open spaces and includes the goal: "Protect and improve the diversity and sustainability of the region's natural systems."

The map of NHD locations is an upgrade of resources available for planning to protect natural systems. It will be especially useful for these efforts:

- to increase local planners' awareness of NHD locations and their development of local plans, policies, and practices that better conserve those areas (for addressing SRPP issue

of “little coordination among natural systems planning, land use planning, transportation planning, public facilities planning and other types of planning); and

- to help OKI’s work to better inform and help indicate “the economic and environmental value of natural systems [that] should be used in planning processes at all government levels” (addresses the issue of “the value and preservation of diverse natural systems, which include air, water, wildlife, plantlife, and land are not always examined in local, state, regional, and federal planning processes”).

Additional Applications

The map of NHD locations is an important new resource for OKI planning activities, especially as part of a larger set of environmental data that OKI is developing. The NHD locations will be added as a layer to an interactive online map of environmental resources expected to be operational on OKI’s website by the end of the year. This new tool will provide public agencies and private organizations with greater access to and an expanded scope of data suited for developing conservation plans and strategies.

In transportation planning, environmental considerations are increasingly important as the need for understanding transportation impacts on the natural environment has become more relevant, as best practices for avoiding and mitigating impacts have continued to improve, and as pressure to reduce costs has continued to grow. At the federal level, FHWA advocates an Eco-logical approach that promotes planning and delivering infrastructure projects using an ecosystem-scale advanced planning framework. The map of NHD locations contributes to OKI efforts to build a planning database for better avoiding impacts and conserving significant resources and also for moving toward a more sustainable natural environment, consistent with an Eco-logical approach.



Natural Heritage Database – Data Sharing Agreement

Strategic Highway Research Program Implementation

Indiana Department of Natural Resources October 23, 2013 3:00PM	Ohio Department of Natural Resources October 28, 2013 1:00PM	Kentucky State Nature Preserves Commission October 29, 2013 2:00PM
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Agenda

Draft Data Sharing Agreement / License Agreement

- Discuss necessary refinements
- Additional provisions?
- Delivery of data to OKI - logistics

Payment/PO to NHD partner for portion of time

- Invoice from partner

Next steps

- Finalizing agreement for execution

LICENSE FOR USE OF OHIO HERITAGE DATA BASE

This License Agreement (this "Agreement") is entered into by and between the Ohio Department of Natural Resources Division of Wildlife Natural Heritage Database (the "State") and OKI Regional Council of Governments (the "Licensee"), and is executed pursuant to the terms and conditions set forth herein.

WHEREAS:

The State maintains a Natural Heritage Information System, which includes information on Ohio's rare or otherwise significant natural features, including plant and animal species, natural communities, and animal aggregations. This information has been compiled from numerous sources, including museums, herbaria, publications, and the results of field work by many individuals.

The State and Licensee share a goal of preserving biological diversity and Licensee uses information maintained in the Natural Heritage Information System in pursuit of this goal.

The State and Licensee both encourage the use of current and accurate data for conservation planning and decision-making.

The State and Licensee recognize that certain information found within the Natural Heritage Information System may be sensitive and should be used in ways that will not endanger the natural resources the data describes.

NOW, THEREFORE, the parties agree as follows:

1. **Data Covered.** The State will deliver to Licensee and Licensee is authorized to use a subset of the data contained in the Natural Heritage Information System. This subset will include the State status; Federal status; Date of last observance; and, whether the element occurrence is a plant species, an animal species or one of the other types of natural features tracked by the State for all element occurrence information in the Data Base on federally endangered, threatened, proposed or candidate species; state endangered, threatened, and special concern species; significant natural communities; and animal aggregations documented inside and within a five mile distance of Butler, Clermont, Hamilton and Warren County, Ohio. The State shall have no obligation to obtain any data or complete any records under this data use agreement. Annually the State will only deliver information existing in its data bases at the time of delivery specified under this Agreement. The above-described data sets are hereinafter referred to as the "Heritage Data Base."
2. **Restriction on Use.** Licensee shall use the Heritage Data Base to inform ongoing planning activities of the Licensee including the the OKI Long Range Transportation Plan and the OKI Strategic Regional Policy Plan. This includes either hardcopy or digital production of summaries, reports, maps, proposals, plans, analyses, and compilations (hereinafter referred to as "Products"). No other use shall be made of the Heritage Data Base except with prior written consent of the State. Licensee shall not edit the Heritage Data Base without prior written consent of the State. Licensee shall have no obligation to find errors, collect data, or

correct or modify the Heritage Data Base. However, if Licensee should find an error, update information, or collect new data, Licensee shall promptly provide the State with such information, and the State shall have the right to incorporate all such information into the Data Base.

3. **Consideration.** Licensee shall pay a one time lump sum amount of \$2,300 on invoice, billable in 2014. This amount is in consideration of State's consultation and services related to the National Heritage Data project.
4. **Term.** This Agreement is effective on the date of execution. The term of this Agreement shall be from the execution date through June 30, 2016.
5. **Assignment.** The Licensee shall not assign or subcontract the whole or any part of this Agreement without the State's prior written consent. Except for Products authorized herein, Licensee may not transfer, or allow access to the Heritage Data Base, in whole or in part, to any other party without prior written consent of the State. If the State consents to such assignment or transfer, Licensee shall insure that this Agreement shall be binding upon Licensee's respective assignees and transferees.
6. **Authority to Bind Licensee.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Licensee represents that he/she has been duly authorized to execute this Agreement on behalf of the Licensee and has obtained all necessary or applicable approvals from the Licensee to make this Agreement fully binding upon the Licensee when his/her signature is affixed.
7. **Compliance with Laws.** The Licensee agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the State and the Licensee to determine whether the provisions of this Agreement require formal modification.
8. **Confidentiality of Data, Property Rights in Products, and Copyright Prohibition.** Licensee agrees to reproduce and include the State's notice on any external product on which the Heritage Data Base, in whole or in material part, is reproduced or shown. The notice shall state, "Ohio Department of Natural Resources Division of Wildlife Natural Heritage Database" or a substantially similar notice. If the Heritage Data Base is used in any authorized Product that may constitute a derivative or compilation work, the work must be protected by an appropriate copyright notice to protect the State's and Licensee's respective interests as they may appear. Licensee is responsible for enforcing, at its own expense, the interest of the State against any infringement of said copyright for products produced by Licensee under this Agreement. Any Products created by Licensee from the Heritage Data Base shall, before public distribution, include an acknowledgement of the Ohio Department of Natural Resources Division of Wildlife as the source of information. On these Products, Licensee shall print the following statement:

"This report includes data provided by the Ohio Department of Natural Resources Division of Wildlife. These data are not based on a comprehensive inventory of the

State. The lack of data for any geographic area shall not be construed to mean that no significant natural features are present. The Ohio Department of Natural Resources Division of Wildlife is not responsible for any inaccuracies in the data and does not necessarily endorse any interpretations or products derived from the data.”

- 9. Confidentiality of State Information.** The Licensee understands and agrees that data, materials, and information disclosed to Licensee may contain confidential and protected data. Therefore, the Licensee promises and assures that data, material, and information gathered, based upon or disclosed to the Licensee pursuant to this Contract will not be disclosed to others or discussed with other parties without the prior written consent of the State. To protect rare features from exploitation or destruction, Licensee shall mask the identity and specific location of rare features in any products for external distribution or use. Masking of identity shall be done by using an identifier more general than the species’ scientific genus or common name. For example, use of the term “endangered plant” would be preferable. Masking of specific location shall be done by using a description precise to no more than the section.

Both parties acknowledge that the information in the database licensed hereunder is deemed to be proprietary and confidential and constitutes a trade secret.

The Licensee and Commission agree to notify the other party immediately upon receipt of any Freedom of Information Act request or other open records ask request, involving information in the Data Base. Due to the proprietary and confidential nature of the information in the Data Base, both parties agree to jointly defend against the release of the Data Base information without a court order or as otherwise agreed between the parties to this License Agreement.

- 10. Debarment and Suspension.** Licensee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, agency or political subdivision of the State of Ohio. The term “principal”, for purposes of this Agreement, means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Licensee.
- 11. Default by State.** If the State, sixty (60) days after written notice, fails to correct or cure any breach of this Agreement, then Licensee may cancel and terminate this Agreement.
- 12. Disputes.** Should any disputes arise with respect to this Agreement, Licensee and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. The Licensee agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should the Licensee fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Licensee as a result of such failure to proceed shall be borne by the Licensee, and the Licensee shall make no claim against the State for such costs.

- 13. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 14. Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Ohio and suit, if any, must be brought in the State of Ohio.
- 15. Indemnification.** Licensee agrees to indemnify, defend, and hold harmless the State and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Licensee. The State shall not provide such indemnification to the Licensee.
- 16. Independent Contractor.** Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, or employees of the other party.
- 17. Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Licensee shall not discriminate against any employee or applicant for employment in the performance of this Agreement. The Licensee shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Licensee's execution of this Agreement also signifies Licensee's compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
- The Licensee understands that the State is a recipient of federal funds. Pursuant to that understanding, the Licensee agrees that if the Licensee employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Licensee will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Licensee shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.
- 18. Notices.** Whenever any notice, statement or other communication is to be sent to the State or to the Licensee, it shall be sent to the following addresses unless otherwise specifically advised:

Notices to the State shall be sent to:
Greg Schneider, Program Administrator
Ohio Natural Heritage Program
Division of Wildlife
Ohio Department of Natural Resources
2045 Morse Road, Bldg. G-3
Columbus, Ohio 43229-6693

Notices to the Licensee shall be sent to:
720 East Pete Rose Way, Suite 420
Cincinnati, OH 45202

- 19. Order of Precedence.** Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) this Agreement; (2) attachments prepared by the State; and (3) attachments prepared by the Licensee.
- 20. Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provision of this Agreement.
- 21. Substantial Performance.** This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- 22. Successors and Assignees.** The Licensee binds its successors, executors, administrators, and assignees to all covenants of this Agreement. Except as above set forth, the Licensee shall not assign, convey or transfer any interest in this Agreement without the prior written consent of the State.
- 23. Termination for Convenience.** This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of Services shall be effected by delivery to the Licensee of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective.
- 24. Waiver of Rights.** No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.
- 25. Non-Collusion and Acceptance.** The undersigned attests, subject to the penalties for perjury, that he/she is the Licensee, or that he/she is the representative, agent, member or officer of the Licensee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Licensee, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other

consideration for the execution of this Agreement other than that which appears upon the face of the Agreement.

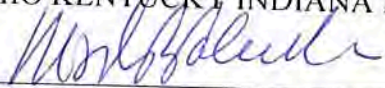
- 26. Use of Logos.** This Agreement does not authorize Licensee to use any logos, trademarks and other State identification marks or symbols without the prior written permission of the State.
- 27. Disclaimer.** The Heritage Data Base is made available to Licensee on an “as is” basis, without express or implied warranty of any sort including, specifically, any implied warranties of fitness for a particular purpose, warranties of merchantability, or warranties relating to the accuracy or completeness of the Heritage Data Base.
- 28. Materials Produced.** Licensee will report to the State at least annually on maps or other Products created which make significant use of all or a significant part of the Heritage Data Base. Licensee shall provide the State, at the request of the State, with three (3) copies of all such Products free of charge as a part of the consideration for this Agreement.
- 29.** The Licensee affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.
- 30.** The Licensee by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Cooperator understands that failure to comply with Ohio’s ethics and conflict of interest laws is, in itself, grounds for termination of this agreement and may result in the loss of other contracts or grants with the State of Ohio.

The rest of this page is left blank intentionally.

In Witness Whereof, Licensee and the State of Ohio have, through duly authorized representatives, entered into this Agreement. The parties, having read and understand the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

Licensee:

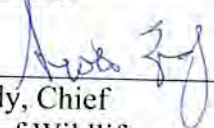
OHIO KENTUCKY INDIANA REGIONAL COUNCIL OF GOVERNMENTS:


 Mark R. Policinski, Executive Director

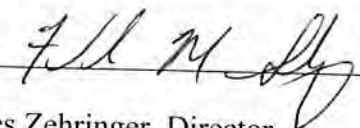
Date: 1-16-14

Ohio Department of Natural Resources Division of Wildlife:

DEPARTMENT OF NATURAL
 RESOURCES:


 Scott Zody, Chief
 Division of Wildlife

Date: 2/28/14


 James Zehringer, Director

Date: 4.30.14

LICENSE FOR USE OF KENTUCKY HERITAGE DATA BASE

This License Agreement (this "Agreement") is entered into by and between the Kentucky State Nature Preserves Commission (the "Commission") and OKI Regional Council of Governments (the "Licensee"), and is executed pursuant to the terms and conditions set forth herein.

WHEREAS:

The Commission maintains a Natural Heritage Information System, which includes information on Kentucky's rare or otherwise significant natural features, including plant and animal species, natural communities, and animal aggregations. This information has been compiled from numerous sources, including museums, herbaria, publications, and the results of field work by many individuals.

The Commission and Licensee share a goal of preserving biological diversity and Licensee uses information maintained in the Natural Heritage Information System in pursuit of this goal.

The Commission and Licensee both encourage the use of current and accurate data for conservation planning and decision-making.

The Commission and Licensee recognize that certain information found within the Natural Heritage Information System may be sensitive and should be used in ways that will not endanger the natural resources the data describes.

NOW, THEREFORE, the parties agree as follows:

1. **Data Covered.** The Commission will deliver to Licensee and Licensee is authorized to use a subset of the data contained in the Natural Heritage Information System. This subset will include all element occurrence information in the Data Base on federally endangered, threatened, proposed or candidate species; state endangered, threatened, and special concern species; significant natural communities; and animal aggregations documented inside, and within a five mile distance of, Boone, Campbell and Kenton County, Kentucky including records for the Ohio River as it adjoins the listed counties. The Commission shall have no obligation to obtain any data or complete any records under this data use agreement. Annually the Commission will only deliver information existing in its data bases at the time of delivery specified under this Agreement. The above-described data sets are hereinafter referred to as the "Heritage Data Base."
2. **Restriction on Use.** Licensee shall use the Heritage Data Base only for informing ongoing planning activities of the OKI Long Range Transportation Plan and the OKI Strategic Regional Policy Plan, for which the Heritage Data Base data was requested. This includes either hardcopy or digital production of summaries, reports, maps, proposals, plans, analyses, and compilations (hereinafter referred to as "Products"). No other use shall be made of the Heritage Data Base except with prior written consent of the Commission. Licensee shall not edit the Heritage Data Base without prior written consent of the Commission. Licensee shall have no obligation to find errors, collect data, or correct or modify the Heritage Data Base.

However, if Licensee should find an error, update information, or collect new data, Licensee shall promptly provide the Commission with such information, and the Commission shall have the right to incorporate all such information into the Data Base.

3. **Consideration.** Licensee shall pay a one time lump sum amount of \$1,925 on invoice, billable in 2013. This amount is in consideration of Commission's consultation and services related to the National Heritage Data project.
4. **Term.** This Agreement is effective on July 3, 2014. The term of this Agreement shall be from the date written above through June 30, 2016.
5. **Assignment.** The Licensee shall not assign or subcontract the whole or any part of this Agreement. Except for Products authorized herein, Licensee may not transfer, or allow access to the Heritage Data Base, in whole or in part, to any other party without prior written consent of the Commission.
6. **Authority to Bind Licensee.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Licensee represents that he/she has been duly authorized to execute this Agreement on behalf of the Licensee and has obtained all necessary or applicable approvals from the Licensee to make this Agreement fully binding upon the Licensee when his/her signature is affixed.
7. **Compliance with Laws.** The Licensee agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the Commission and the Licensee to determine whether the provisions of this Agreement require formal modification.
8. **Confidentiality of Data, Property Rights in Products, and Copyright Prohibition.** Licensee agrees to reproduce and include the Commission's notice on any external product on which the Heritage Data Base, in whole or in material part, is reproduced or shown. The notice shall state, "Kentucky State Nature Preserves Commission Natural Heritage Database". If the Heritage Data Base is used in any authorized Product that may constitute a derivative or compilation work, the work must be protected by an appropriate copyright notice to protect the Commission's and Licensee's respective interests as they may appear. Licensee is responsible for enforcing, at its own expense, the interest of the Commission against any infringement of said copyright for products produced by Licensee under this Agreement. Any Products created by Licensee from the Heritage Data Base shall, before public distribution, include an acknowledgement of the Kentucky State Nature Preserves Commission as the source of information. On these Products, Licensee shall print the following statement:

"This report includes data provided by the Kentucky State Nature Preserves Commission. These data are not based on a comprehensive inventory of the Commonwealth. The lack of data for any geographic area shall not be construed to mean that no significant natural features are present. The Kentucky State Nature Preserves Commission is not

responsible for any inaccuracies in the data and does not necessarily endorse any interpretations or products derived from the data.”

- 9. Confidentiality of State Information.** The Licensee understands and agrees that data, materials, and information disclosed to Licensee may contain confidential and protected data. Therefore, the Licensee promises and assures that data, material, and information gathered, based upon or disclosed to the Licensee pursuant to this Contract will not be disclosed to others or discussed with other parties without the prior written consent of the Commission. To protect rare features from exploitation or destruction, Licensee shall mask the identity and specific location of rare features in any products for external distribution or use. Masking of identity shall be done by using an identifier more general than the species’ scientific genus or common name. For example, use of the term “endangered plant” would be preferable. Masking of specific location shall be done by using a description precise to no more than the quarter quadrangle

Both parties acknowledge that the information in the database licensed hereunder is deemed to be proprietary and confidential.

The Licensee and Commission agree to notify the other party immediately upon receipt of any Freedom of Information Act request involving information in the Data Base. Any request received by Licensee for KSNPC's data pursuant to the Kentucky Open Records Act shall be referred to KSNPC as the official custodian of the data. Due to the proprietary and confidential nature of the information in the Data Base, both parties agree to jointly defend against the release of the Data Base information without a court order or as otherwise agreed between the parties to this License Agreement.

- 10. Debarment and Suspension.** Licensee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, agency or political subdivision of the State of Kentucky. The term “principal”, for purposes of this Agreement, means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Licensee.
- 11. Default by Commission.** If the Commission, thirty (30) days after written notice, fails to correct or cure any breach of this Agreement, then Licensee may cancel and terminate this Agreement.
- 12. Disputes.** Should any disputes arise with respect to this Agreement, Licensee and the Commission agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. The Licensee agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should the Licensee fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the Commission or the Licensee as a result of such failure to proceed shall be borne by the Licensee, and the Licensee shall make no claim against the Commission for such costs.

- 13. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 14. Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Kentucky and suit, if any, must be brought in the Franklin County courts or the state courts of Kentucky or the U.S. District Circuit Court for the Western District of Kentucky, Louisville Division.
- 15. Indemnification.** Licensee agrees to indemnify, defend, and hold harmless the Commission and its agents, officials, and employees from all claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Licensee. The Commission shall not provide such indemnification to the Licensee.
- 16. Independent Contractor.** Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, or employees of the other party.
- 19. Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Licensee shall not discriminate against any employee or applicant for employment in the performance of this Agreement. The Licensee shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Licensee’s execution of this Agreement also signifies Licensee’s compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Licensee understands that the Commission is a recipient of federal funds. Pursuant to that understanding, the Licensee agrees that if the Licensee employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the Commission and is not exempt, the Licensee will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Licensee shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

- 20. Notices.** Whenever any notice, statement or other communication is to be sent to the Commission or to the Licensee, it shall be sent to the following addresses unless otherwise specifically advised:

Notices to the Commission shall be sent to:
Donald Dott, Jr., Director
Kentucky State Nature Preserves Commission
801 Schenkel Lane
Frankfort, KY 40601

Notices to the Licensee shall be sent to:
720 East Pete Rose Way, Suite 420
Cincinnati, OH 45202

Payments to the Commission shall be sent to:
Donald Dott, Jr., Director
Kentucky State Nature Preserves Commission
801 Schenkel Lane
Frankfort, KY 40601

- 21. Order of Precedence.** Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) this Agreement; (2) attachments prepared by the Commission; and (3) attachments prepared by the Licensee.
- 22. Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provision of this Agreement.
- 23. Substantial Performance.** This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- 24. Successors and Assignees.** The Licensee binds its successors, executors, administrators, and assignees to all covenants of this Agreement. Except as above set forth, the Licensee shall not assign, convey or transfer any interest in this Agreement without the prior written consent of the Commission.
- 25. Termination for Convenience.** This Agreement may be terminated, in whole or in part, by the Commission whenever, for any reason, the Commission determines that such termination is in the best interest of the Commission. The Commission may cancel this agreement upon thirty days written notice, or for cause at any time.
- 26. Waiver of Rights.** No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.
- 27. Non-Collusion and Acceptance.** The undersigned attests, subject to the penalties for perjury, that he/she is the Licensee, or that he/she is the representative, agent, member or

officer of the Licensee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Licensee, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the Agreement.

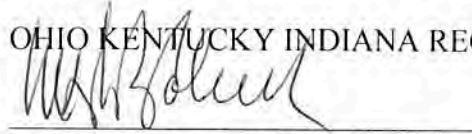
- 30. Use of Logos.** This Agreement does not authorize Licensee to use any logos, trademarks and other Commission identification marks or symbols without the prior written permission of the Commission.
- 31. Disclaimer.** The Heritage Data Base is made available to Licensee on an “as is” basis, without express or implied warranty of any sort including, specifically, any implied warranties of fitness for a particular purpose, warranties of merchantability, or warranties relating to the accuracy or completeness of the Heritage Data Base.
- 32. Materials Produced.** Licensee will report to the Commission at least annually on maps or other Products created which make significant use of all or a significant part of the Heritage Data Base. Licensee shall provide the Commission, at the request of the Commission, with three (3) copies of all such Products free of charge as a part of the consideration for this Agreement.

The rest of this page is left blank intentionally.

In Witness Whereof, Licensee and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The parties, having read and understand the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

Licensee:

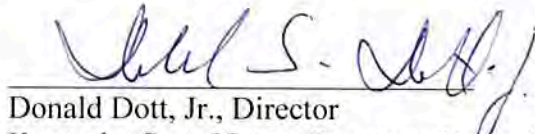
OHIO KENTUCKY INDIANA REGIONAL COUNCIL OF GOVERNMENTS:



Mark R. Policinski, Executive Director

Date: 12-30-13

Kentucky State Nature Preserves Commission:



Donald Dott, Jr., Director
Kentucky State Nature Preserves Commission

Date: Jan. 3, 2014

LICENSE FOR USE OF INDIANA HERITAGE DATA BASE

This License Agreement (this "Agreement") is entered into by and between the Indiana Department of Natural Resources (the "State") and OKI Regional Council of Governments (the "Licensee"), and is executed pursuant to the terms and conditions set forth herein.

WHEREAS:

The Indiana Natural Heritage Data Center, a unit of the Indiana Department of Natural Resources Division of Nature Preserves, maintains a Natural Heritage Information System, which includes information on Indiana's rare or otherwise significant natural features, including plant and animal species, natural communities, and animal aggregations. This information has been compiled from numerous sources, including museums, herbaria, publications, and the results of field work by many individuals.

The State and Licensee share a goal of preserving biological diversity and Licensee uses information maintained in the Natural Heritage Information System in pursuit of this goal.

The State and Licensee both encourage the use of current and accurate data for conservation planning and decision-making.

The State and Licensee recognize that certain information found within the Natural Heritage Information System may be sensitive and should be used in ways that will not endanger the natural resources the data describes.

NOW, THEREFORE, the parties agree as follows:

1. **Data Covered.** The State will deliver to Licensee and Licensee is authorized to use a subset of the data contained in the Natural Heritage Information System. This subset will include all element occurrence information in the Data Base on federally endangered, threatened, proposed or candidate species; state endangered, threatened, and special concern species; significant natural communities; and animal aggregations documented inside and within a five mile radius Dearborn County, Indiana. The State shall have no obligation to obtain any data or complete any records under this data use agreement. Annually the State will only deliver information existing in its data bases at the time of delivery specified under this Agreement. The above-described data sets are hereinafter referred to as the "Heritage Data Base."
2. **Restriction on Use.** Licensee shall use the Heritage Data Base only for informing ongoing planning activities of the OKI Long Range Transportation Plan and the OKI Strategic Regional Policy Plan, for which the Heritage Data Base data was requested. This includes either hardcopy or digital production of summaries, reports, maps, proposals, plans, analyses, and compilations (hereinafter referred to as "Products"). No other use shall be made of the Heritage Data Base except with prior written consent of the State. Licensee shall not edit the Heritage Data Base without prior written consent of the State. Licensee shall have no obligation to find errors, collect data, or correct or modify the Heritage Data Base. However, if Licensee should find an error, update information, or collect new data, Licensee shall

promptly provide the State with such information, and the State shall have the right to incorporate all such information into the Data Base.

3. **Consideration.** Licensee shall pay a one-time lump sum amount of \$1,175 on invoice, billable in 2013. This amount is in consideration of IDNR's consultation and services related to the National Heritage Data project.
4. **Term.** This Agreement is effective on 1/2, 2014. The term of this Agreement shall be from the date written above through the end of the Licensee's fiscal year, June 30, 2014, and shall automatically be extended on an annual basis until the Agreement is terminated.
5. **Assignment.** The Licensee shall not assign or subcontract the whole or any part of this Agreement without the State's prior written consent. Except for Products authorized herein, Licensee may not transfer, or allow access to the Heritage Data Base, in whole or in part, to any other party without prior written consent of the State. If the State consents to such assignment or transfer, Licensee shall insure that this Agreement shall be binding upon Licensee's respective assignees and transferees.
6. **Authority to Bind Licensee.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Licensee represents that he/she has been duly authorized to execute this Agreement on behalf of the Licensee and has obtained all necessary or applicable approvals from the Licensee to make this Agreement fully binding upon the Licensee when his/her signature is affixed.
7. **Compliance with Laws.** The Licensee agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the State and the Licensee to determine whether the provisions of this Agreement require formal modification.
8. **Confidentiality of Data, Property Rights in Products, and Copyright Prohibition.** Licensee agrees to reproduce and include the State's notice on any external product on which the Heritage Data Base, in whole or in material part, is reproduced or shown. The notice shall state, "Indiana Natural Heritage Data Center, 2013, State of Indiana, Department of Natural Resources, Division of Nature Preserves" or a substantially similar notice. It is understood that the year of the notice will change with updated versions of the database. If the Heritage Data Base is used in any authorized Product that may constitute a derivative or compilation work, the work must be protected by an appropriate copyright notice to protect the State's and Licensee's respective interests as they may appear. Licensee is responsible for enforcing, at its own expense, the interest of the State against any infringement of said copyright for products produced by Licensee under this Agreement. Any Products created by Licensee from the Heritage Data Base shall, before public distribution, include an acknowledgement of Indiana Natural Heritage Data Center as the source of information. On these Products, Licensee shall print the following statement:

“This report includes data provided by the Indiana Natural Heritage Data Center. These data are not based on a comprehensive inventory of the State. The lack of data for any geographic area shall not be construed to mean that no significant natural features are present. The State of Indiana is not responsible for any inaccuracies in the data and does not necessarily endorse any interpretations or products derived from the data.”

- 9. Confidentiality of State Information.** The Licensee understands and agrees that data, materials, and information disclosed to Licensee may contain confidential and protected data. Therefore, the Licensee promises and assures that data, material, and information gathered, based upon or disclosed to the Licensee pursuant to this Contract will not be disclosed to others or discussed with other parties without the prior written consent of the State. To protect rare features from exploitation or destruction, Licensee shall mask the identity and specific location of rare features in any products for external distribution or use. Masking of identity shall be done by using an identifier more general than the species’ scientific genus or common name. For example, use of the term “endangered plant” would be preferable. Masking of specific location shall be done by using a description precise to no more than the section.

Both parties acknowledge that the information in the database licensed hereunder is deemed to be proprietary and confidential and constitutes a trade secret.

The Licensee and Commission agree to notify the other party immediately upon receipt of any Freedom of Information Act request or other open records ask request, involving information in the Data Base. Due to the proprietary and confidential nature of the information in the Data Base, both parties agree to jointly defend against the release of the Data Base information without a court order or as otherwise agreed between the parties to this License Agreement.

10. Conflict of Interest.

- A. As used in this section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party,” means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of Licensee, if Licensee is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.

“Commission” means the State Ethics Commission.

- B. The Department may cancel this Contract without recourse by Licensee if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B, above, if the Licensee gives the Department an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees.

The Department may take action, including cancellation of this Agreement, consistent with an opinion of the Commission obtained under this section.

- D. Licensee has an affirmative obligation under this Agreement to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Licensee knows or reasonably could know.

- 11. Debarment and Suspension.** Licensee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, agency or political subdivision of the State of Indiana. The term “principal”, for purposes of this Agreement, means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Licensee.
- 12. Default by State.** If the State, sixty (60) days after written notice, fails to correct or cure any breach of this Agreement, then Licensee may cancel and terminate this Agreement.
- 13. Disputes.** Should any disputes arise with respect to this Agreement, Licensee and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

The Licensee agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should the Licensee fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Licensee as a result of such failure to proceed shall be borne by the Licensee, and the Licensee shall make no claim against the State for such costs. If the State and the Licensee cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Licensee and the State within ten (10) working days after presentation of such dispute for action. The Commissioner’s decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner’s decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

- 14. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of

governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

- 15. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- 16. Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
- 17. Indemnification.** Licensee agrees to indemnify, defend, and hold harmless the State and its agents, officials, and employees from all claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Licensee. The State shall not provide such indemnification to the Licensee.
- 18. Independent Contractor.** Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, or employees of the other party.
- 19. Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Licensee shall not discriminate against any employee or applicant for employment in the performance of this Agreement. The Licensee shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Licensee’s execution of this Agreement also signifies Licensee’s compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Licensee understands that the State is a recipient of federal funds. Pursuant to that understanding, the Licensee agrees that if the Licensee employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Licensee will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Licensee shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

- 20. Notices.** Whenever any notice, statement or other communication is to be sent to the State or to the Licensee, it shall be sent to the following addresses unless otherwise specifically advised:

Notices to the State shall be sent to:

Division of Nature Preserves

402 W. Washington St., Rm W267

Indianapolis, IN 46204

Notices to the Licensee shall be sent to:

720 East Pete Rose Way, Suite 420

Cincinnati, OH 45202

Payments to the State shall be sent to:

Division of Nature Preserves

402 W. Washington St., Rm W267

Indianapolis, IN 46204

Attn: Ronald P. Hellmich

- 21. Order of Precedence.** Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) this Agreement; (2) attachments prepared by the State; and (3) attachments prepared by the Licensee.
- 22. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 *et seq.*, IC 34-54-8-5, and IC 34-13-1-6.
- 23. Qualification to do Business in Indiana.** If Licensee is other than an individual, Licensee certifies that it is duly registered with the Secretary of State to transact business in Indiana.
- 24. Renewal Option.** This Agreement may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed Agreement may not be longer than the term of the original Agreement.
- 25. Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provision of this Agreement.
- 26. Substantial Performance.** This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
- 27. Successors and Assignees.** The Licensee binds its successors, executors, administrators, and assignees to all covenants of this Agreement. Except as above set forth, the Licensee shall not assign, convey or transfer any interest in this Agreement without the prior written consent of the State of Indiana.

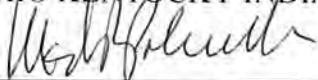
- 28. Termination for Convenience.** This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of Services shall be effected by delivery to the Licensee of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective.
- 29. Waiver of Rights.** No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.
- 30. Ethics.** The Licensee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code 4-2-6 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Licensee is not familiar with these ethical requirements, the Licensee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Licensee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the licensee. In addition, the Licensee may be subject to penalties under Indiana Code § 4-2-6-12.
- 31. Non-Collusion and Acceptance.** The undersigned attests, subject to the penalties for perjury, that he/she is the Licensee, or that he/she is the representative, agent, member or officer of the Licensee, that he/she has not, nor has any other member, employee, representative, agent or officer of the Licensee, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the Agreement.
- 32. Use of Logos.** This Agreement does not authorize Licensee to use any logos, trademarks and other State or Department of Natural Resources identification marks or symbols without the prior written permission of the State.
- 33. Disclaimer.** The Heritage Data Base is made available to Licensee on an “as is” basis, without express or implied warranty of any sort including, specifically, any implied warranties of fitness for a particular purpose, warranties of merchantability, or warranties relating to the accuracy or completeness of the Heritage Data Base.
- 34. Materials Produced.** Licensee will report to the State at least annually on maps or other Products created which make significant use of all or a significant part of the Heritage Data Base. Licensee shall provide the State with three (3) copies of all such Products free of charge as a part of the consideration for this Agreement.

The rest of this page is left blank intentionally.

In Witness Whereof, Licensee and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The parties, having read and understand the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

Licensee:


OHIO KENTUCKY INDIANA REGIONAL COUNCIL OF GOVERNMENTS:



Mark R. Policinski, Executive Director

Date: 12-30-13

**State of Indiana
Department of Natural Resources:**



John A. Bacone, Director, IDNR Division of Nature Preserves

Date: 1/2/14