Appendix F

Agency Coordination and Consultation

(CO/KS/NE/UT)

United States Department of the Interior
FISH AND WILDLIFE SERVICE
UTAH FIELD OFFICE
LINCOLN PLAZA
145 EAST 1300 SOUTH, SUITE 404
SALT LAKE CITY, UTAH 84115

U.S. Department of the Interior 1849•1999

In Reply Refer To
(CO/KS/NE/UT)

September 17, 1999

Mr. William R. Gedris, Structural/Environmental Engineer
Federal Highway Administration
Utah Division
2520 West 4700 South, Suite 9A
Salt Lake City, Utah 84118

RE: Amendment to Biological Opinion for Project Number SP-0067, Legacy Parkway, Salt Lake and Davis Counties, Utah

Dear Mr. Gedris:

The peregrine falcon (Falco peregrinus) was included as part of the U.S Fish and Wildlife Service biological opinion for the Legacy Parkway, dated February 11, 1999. Recently, the peregrine falcon was removed from the federal list of endangered and threatened wildlife pursuant to the Endangered Species Act (64 FR 46542, August 25, 1999). Therefore, the Federal Highway Administration (FHWA) and Utah Department of Transportation (UDOT) can assume that the reasonable and prudent measures and terms and conditions of the biological opinion are no longer considered nondiscretionary under authority of the ESA with respect to the peregrine falcon.

However, the FHWA, UDOT, and contractors for Legacy Highway should be aware that the peregrine falcon is still provided protection under the Migratory Bird Treaty Act (MBTA). Under authority of the MBTA it is unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. Take is defined (50 CFR 10.12) as to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Reasonable and prudent measures (RPM) #2, 3, and 4 and terms and conditions (T&C) #2, 3, and 4 in the Legacy biological opinion of February 11, 1999 were developed to minimize impacts to the peregrine falcon. The Service recommends that FHWA and UDOT implement all strategies (RPMs and T&Cs) outlined in the biological opinion to ensure that no "take" of peregrine falcons, their nests, or eggs occurs which would constitute a violation of the MBTA. These measures are consistent with the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances*.

If we can be of further assistance, please contact Laura Romin, Wildlife Biologist, of this office at (801)524-5001 ext. 142.

Sincerely,

Reed E. Harris

Reed E. Harris
Utah Field Supervisor

United States Department of the Interior

FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
2369 WEST ORTON CIRCLE, SUITE 50
WEST VALLEY CITY, UTAH 84119

In Reply Refer To
FWS/R6
ES/UT
03-0616

May 2, 2003

RECEIVED
MAY - 6 2003
BY: NK

Greg Punske
Environmental Program Manager
Federal Highway Administration
2520 West 4700 South, Suite A
Salt Lake City, Utah 84118

Dear Mr. Punske

The U.S. Fish and Wildlife Service (Service) has reviewed the April 1, 2003, Federal Register Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Utah Department of Transportation's proposed construction of the Legacy Parkway project in Salt Lake and Davis Counties, Utah. The purpose of the project is to solve future traffic problems in Salt Lake and Davis Counties by implementing a three part "Shared Solutions" strategy that includes: 1) Constructing the Legacy Parkway; 2) improving and expanding Interstate 15; and 3) expanding the public transit system. This project will involve the construction of a roughly 14 mile highway from Interstate 215 in the south to U.S. 89 near Farmington, Utah in the north. A multiple use trail for pedestrians, bicyclists, and equestrians would parallel the highway. The SEIS is being prepared because the courts found certain aspects of the original EIS insufficient, including the wildlife impact analysis. The SEIS will build upon the EIS and specifically address the court-identified deficiencies.

The Service has agreed to be a cooperating agency for purposes of NEPA compliance for this project. We expect to assist the lead agencies in evaluating the potential impacts to fish and wildlife resources and developing measures to avoid, minimize, and compensate for unavoidable impacts. We are providing the following comments as general guidelines for wildlife issues we believe should be addressed. These comments are not meant to be exhaustive, however, because we expect to be closely involved with identification of wildlife issues, determining appropriate evaluation methodology, and interpreting results.

In Section 1 of this letter we convey our concerns that should be addressed in the SEIS. Section 2 of this letter addresses your responsibilities under section 7 of the Endangered Species Act (ESA) of 1973, 16 U.S.C. § 1536.

Section 1.

We recommend that the SEIS evaluate the following potential direct, indirect, and cumulative impacts on fish and wildlife resources:

Direct Effects

Mortality due to project implementation, construction, and maintenance.

Mortality due to ongoing activities associated with project (vehicle collisions with vehicles, contamination of soils/waters from road treatments, automotive fluids, truck spills, etc.).

Displacement of individuals/populations due to project implementation, construction, maintenance, and ongoing activities associated with the project. In particular, you should evaluate whether and to what extent organisms may be displaced to areas where fitness is reduced and/or mortality rates increased (population sinks).

Habitat loss/gain due to project implementation, construction, and maintenance.

Habitat loss/gain due to ongoing activities associated with project (contamination of soils/waters from road treatments, automotive fluids, truck spills, etc.).

Habitat fragmentation and its effects on mate search/selection, gene flow, predation rate, dispersal success, colonization events (as they pertain to metapopulation dynamics), and overall population size.

Effects on individual fitness (reduced nesting success, brood size, fledging success, number of matings, etc.) due to project implementation, construction, and maintenance.

Effects on individual fitness (nesting success, brood size, fledging success, number of matings, etc.) due to ongoing activities associated with project (vehicle collisions with vehicles, contamination of soils/waters from road treatments, automotive fluids, truck spills, etc.).

Effects to habitat and species diversity, both spatial and temporal, due to project implementation, construction, and maintenance.

Indirect Effects

Effects on hydrology, both temporal and spatial that relate directly with quantity, quality, and distribution of habitats.

Effects on hydrology, both spatial and temporal, that may convert one type of wetland to another, thus changing its habitat function.

Effects on water quality as it relates to habitats for wildlife and fish.

Effects on air quality due to project implementation, construction, and maintenance.

Effects on air quality due to the ongoing activities associated with the project (vehicle emissions, increased air temperatures, etc.)

Effects of ground disturbance and ongoing activities (vehicular, bike, and horse traffic, trail/berm/median maintenance) that may facilitate the introduction of invasive/exotic/noxious species.

Effects of noise on wildlife populations and individuals. Possibilities include effects on mate identification, nest location, prey location, predator location, and territory defense.

Effects of an increase of human access/activity to formerly isolated wildlife habitats on wildlife populations, mating success, mortality, foraging/hunting opportunities, etc.

Effects on development opportunities that may further reduce/impair/eliminate wildlife habitats in the project area.

Effects of increased lighting during nighttime hours on predator/prey interactions, foraging behavior, and dispersal behavior.

Cumulative Effects

Effects of continued degradation, fragmentation, and removal of wetlands in the Great Salt Lake ecosystem as it pertains to wildlife populations.

Effects of increased development and other economic opportunities as a result of improved access (induced or facilitated development) as it pertains to wildlife populations.

Effects of perpetuating single person/single vehicle transportation on future air quality, water quality, and habitat value inside and outside of the project area.

Section 2. Federal agencies have specific additional responsibilities under Section 7 of the ESA. To help you fulfill these responsibilities, we are providing an updated list of threatened (T) and endangered (E) species that may occur within the area of influence of your proposed action.

County	Species	Status
DAVIS		
Bald Eagle[1,3]	*Haliaeetus leucocephalus*	T
SALT LAKE		
Bald Eagle[1,3]	*Haliaeetus leucocephalus*	T

[1] Nests in this county of Utah.
[3] Wintering populations (only four known nesting pairs in Utah).

The proposed action should be reviewed and a determination made if the action will affect any listed species or their critical habitat. If it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is complete, and no further action is necessary.

Formal consultation (50 CFR 402.14) is required if the Federal agency determines that an action is "likely to adversely affect" a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). Federal agencies should also confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10). A written request for formal consultation or conference should be submitted to the Service with a completed biological assessment and any other relevant information (50 CFR 402.12). Candidate species have no legal protection under the Endangered Species Act (ESA). Candidate species are those species for which we have on file sufficient information to support issuance of a proposed rule to list under the ESA. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and, thereby, possibly remove the need to list species as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.

Only a Federal agency can enter into formal Endangered Species Act (ESA) section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

Your attention is also directed to section 7(d) of the ESA, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

Please note that the peregrine falcon which occurs in all counties of Utah was removed from the federal list of endangered and threatened species per Final Rule of August 25, 1999 (64 FR 46542). Protection is still provided for this species under authority of the Migratory Bird Treaty Act (16 U.S.C. § 703-712) which makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. When taking of migratory birds is determined by the applicant to be the only alternative, application for federal and state permits must be made through the appropriate authorities. For take of raptors, their nests, or eggs, Migratory Bird Permits must be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8171.

We recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* (Romin and Muck, January 2002) which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor surveys and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors, including the peregrine falcon.

If we can be of further assistance or if you have any questions, please feel free to contact Chris Witt, Ecologist, at the letterhead address or (801) 975-3330 extension 133.

Sincerely,

Henry R. Maddux
Utah Field Supervisor

cc: Nancy Kang, Chief, Utah Office, U.S. Army Corps of Engineers, 533 West 4700 South, Suite 9A, Salt Lake City, Utah 94010

UDWR – Salt Lake City, Ogden

Regional Office – Region 6 (Attn: NEPA Coordinator)

United States Department of the Interior

FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
2369 WEST ORTON CIRCLE, SUITE 50
WEST VALLEY CITY, UTAH 84119

In Reply Refer To
FWS/R6
ES/UT
04-0221

December 3, 2003

Mike Perkins
Biologist
Legacy Parkway Team
360 North 700 West, Suite F
North Salt Lake, UT 84054

Dear Mr. Perkins:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of November 18, 2003 requesting concurrence outlined in the February 11, 1999 Biological Opinion (BO) for the Legacy Parkway Final Environmental Impact Statement. The Service maintains that the BO is still in effect. However, your document lists the mountain plover (*Charadrius montanus*) as Proposed Threatened. At this time, the mountain plover is no longer proposed for listing and can be removed from the species list for your project area.

We appreciate the opportunity to provide these comments. If you need further assistance, please contact Chris Witt, Ecologist, at the letterhead address or (801) 975-3330 ext. 133.

Sincerely,

For Henry R. Maddux
Utah Field Supervisor

cc: UDWR - SLC
FHWA - Attn: Greg Punske
COE - Attn: Nancy Kang