



United States Department of the Interior
Fish and Wildlife Service



Bloomington Field Office (ES)
620 South Walker Street
Bloomington, IN 47403-2121
Phone: (812) 334-4261 Fax: (812) 334-4273

November 16, 2010

Mr. Robert Wimbish
Baker and Miller PLLC
2401 West Pennsylvania Avenue NW, Suite 300
Washington, D.C. 20037

Dear Mr. Wimbish:

This responds to your letter of October 4, 2010 requesting U.S. Fish and Wildlife Service (FWS) review of a proposed railroad abandonment by Indiana Southwest Railroad in Posey and Vanderburgh Counties, Indiana (AB-1065X). Please note that your letter was addressed to our regional office in Minneapolis, MN and did not reach this office until October 28. Reviews of railroad abandonments are conducted by field offices unless FWS property or easements are involved.

These comments are consistent with the intent of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the U. S. Fish and Wildlife Service's Mitigation Policy.

The FWS recommends the following measures to avoid or minimize impacts on wildlife and habitats. Based on your letter and subsequent information you provided, it appears that Indiana Southwest will implement these measures and will not remove any bridges or trees.

1. Minimize tree clearing and avoid wetland disturbance for access to work areas.
1. Avoid discharge of demolition debris, waste material, or other pollutants into streams or wetlands.
2. If earthmoving is required, contain disturbed soils to prevent runoff to waterways or wetlands.
4. If bridge removal is proposed, minimize disturbance of the stream channel and banks, and avoid work in stream channels during the primary fish spawning season (April 1 - June 15).

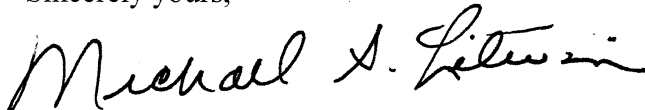
Endangered Species

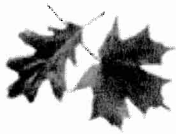
The proposed project is within the range of the federally endangered Indiana bat (*Myotis sodalis*) and fat pocketbook mussel (*Potamilus capax*). We concur that the proposed project is not likely to adversely affect this listed species.

This precludes the need for further consultation on this project as required under Section 7 of the Endangered Species Act of 1973, as amended. However, should new information arise pertaining to project plans or a revised species list be published, it will be necessary for the Federal agency to reinitiate consultation.

For further discussion, please contact Mike Litwin at (812) 334-4261 ext. 205.

Sincerely yours,


for Scott E. Pruitt
Field Supervisor



Robert Wimbish/bakermiller
11/09/2010 11:49 AM

To Crystal Zorbaugh/bakermiller@bakermiller
cc William Mullins/bakermiller@bakermiller
bcc
Subject Fw: Indiana Southwest RR abandonment AB-1065X, Posey
and Vanderburgh Counties

- Rob

Robert A. ("Rob") Wimbish
Attorney at Law
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave., NW
Washington, D.C. 20037

202.663.7824 (direct) / 202.663.7849 (fax)

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----- Forwarded by Robert Wimbish/bakermiller on 11/09/2010 11:49 AM -----



Michael_Litwin@fws.gov
11/09/2010 08:46 AM

To RWimbish@bakerandmiller.com
cc
Subject Re: Indiana Southwest RR abandonment AB-1065X, Posey
and Vanderburgh Counties

Based on the additional information you provided we will not have any site-specific comments and will send a letter to that effect.

For future projects you can send mail directly to our field office and there is no need to send a copy to the regional office unless there is a procedural reason to do so. All normal project reviews take place in the field office, and the regional office only participates for projects involving USFWS property or easements, or public property funded with USFWS grants. In my experience that has not happened with a railroad abandonment, but I suppose it's always a possibility. Occasionally an abandonment might be of such broad scope that it would require an EIS, in which case the environmental review is coordinated by the Department of Interior, who would distribute copies to the appropriate regional office and field offices.

Michael Litwin
US Fish and Wildlife Service
620 South Walker Street
Bloomington, IN 47403
(812) 334-4261 ext. 205

RWimbish@bakerandmiller.com

To

11/08/2010 05:06 PM

Michael_Litwin@fws.gov

cc wnullins@bakerandmiller.com, czorbaugh@bakerandmiller.com

Subject Re: Indiana Southwest RR abandonment AB-1065X, Posey and Vanderburgh Counties

Mr. Litwin -

Thank you for your email acknowledging the draft Environmental and Historic Report (E&HR) for the proposed abandonment of certain rail lines owned by the Indiana Southwestern Railroad (ISW). I would like briefly to respond to some of the issues raised in your email.

1. It is our intention to expedite the E&HR process by ensuring that copies of the E&HR get into the hands of the actual consulting agency reviewers as expeditiously as possible. I believe that it has been our practice to send environmental documentation related to proposed rail line abandonments to the appropriate USFWS regional office. In the future, however we will endeavor to identify the appropriate USFWS field office(s). For future reference, if we send a copy of the E&HR to the appropriate field office(s), should we dispense with sending a copy to the regional office, or should we continue to send a copy to the regional offices as well as a precaution?
2. ISW does not intend as part of the proposed abandonment to salvage any bridges or culverts along the rail lines in question. I believe that we indicated this in the E&HR, but I want to make clear that ISW has no current plans to salvage such structures along the lines slated for abandonment. Also, I want to clarify that ISW intends to undertake track salvage (removal of rails, spikes, and similar such steel track components, and possibly the removal of reusable crossties) within the confines of ISW's existing right-of-way. Also, ISW does not plan on creating any new access routes to the subject rail lines, but instead plans to access the rail lines via public and/or private grade crossings. In that regard, ISW has no plans, and no need, to undertake any tree removal or other such demolition or clearing as part of the abandonment process -- the existing, cleared portions of the right-of-way are suitable for such purposes, and, as stated, existing access points to the rail lines are sufficient to effect track salvage. As a result, your concerns should be resolved and there should be no need for any specific mitigation measures directed at activities that will not occur. Nonetheless, if you need further information or have further concerns, please let me know.

3. Your observation regarding the extraneous agency consultation cover letters is valid, and, in the future, we will consider abridging the draft E&HR as you have suggested to reduce paper use and postage expenses, and to "streamline" the E&HR document for purposes of agency review. Thank you for the suggestion.

Thank you for your timely initial reply to the draft E&HR.

- Rob

Robert A. ("Rob") Wimbish
Attorney at Law
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave., NW
Washington, D.C. 20037
202.663.7824 (direct) / 202.663.7849 (fax)

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-----Michael_Litwin@fws.gov wrote: -----

To: rwimbish@bakerandmiller.com
From: Michael_Litwin@fws.gov
Date: 11/01/2010 12:50PM
Subject: Indiana Southwest RR abandonment AB-1065X, Posey and Vanderburgh Counties

I'm sending this mainly to notify you that we are reviewing your letter dated October 4, 2010. It was mailed to our regional office in Minneapolis, however all projects like this are reviewed in field offices, and by the time it passed through the regional office and was forwarded to our field office, we did not receive it until October 28. We will send a response as soon as possible but it likely will not be within the 30 day turnaround time we normally shoot for or within your 3 week time window.

Our major concerns are stream impacts from removal of bridges and culverts, potential wetland impacts from access roads for demolition of the existing tracks, and potential impacts on the federally endangered Indiana bat from tree removal for demolition or access. The environmental report does not provide enough information to make those determinations so we will provide recommended mitigation measures. If additional information is available please let me know by responding to this email.

Also, in the interest of conserving paper, I would like to request that future mailings to us not include copies of all the environmental review letters sent to all entities, which constituted about 2/3 of your environmental review package and is of no informational value to agencies such as ours.

Michael Litwin
US Fish and Wildlife Service
620 South Walker Street

Bloomington, IN 47403
(812) 334-4261 ext. 205