



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: **ACTION:** Trust Fund Concept for
Endangered Species Conservation

Date: FEB 10 1993

From: Director, Office of Environment
and Planning

Reply to
Attn. of: HEP-42

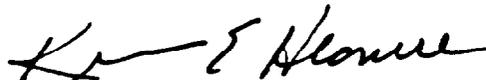
To: Mr. Lionel H. Wood
Director, Office of Planning and Program Development (HPP-05)
Homewood, Illinois

This office has reviewed the proposal by the Michigan Department of Transportation (MDOT) for a trust fund to finance the long-term management of replacement habitat for the endangered Mitchell's Satyr butterfly. We also received comments from the Environmental and Right-of-Way Law Branch (HCC-31) and the Federal-aid Program Branch (HNG-12). Based on these reviews, we advise against establishing such a funding arrangement. The FHWA has consistently held to the position of reimbursing only those costs necessary to complete a project, including any expenses to establish successful mitigation and enhancement measures. Under Title 23, FHWA participates in costs necessary to complete a project and cannot pay for maintenance. Establishing a trust fund to pay for the continual management (maintenance) of a mitigation site beyond completion of the work described in the project documents, is contrary to this mandate. Furthermore, the Intermodal Surface Transportation Efficiency Act does not revise this basic premise of Federal-aid payment. It simply expands the different kinds of eligible activities.

We recognize the necessity of habitat modification to address the immediate impacts of the project as well as the long-term conservation of the butterfly population. Therefore, we suggest that the State consider an alternative method to fund the necessary mitigation measures. To ensure the future success of the project mitigation measures under existing Federal-aid reimbursement procedures, we recommend the establishment of a comprehensive mitigation plan that specifies an extended, yet fixed, period of time to establish suitable habitat. As expenses for the mitigation activities occur over the period, they would be eligible as reimbursable project costs. Once the time period expires and suitable habitat has been established, the project would be considered complete and no additional reimbursement with Federal-aid funds would occur. We emphasize that the time period should be only that which is necessary to establish suitable habitat for the butterfly. If the proposed management activity is simply annual burning to control the woody vegetation, this would be considered a State maintenance responsibility not eligible for Federal-aid participation.

A mitigation plan should be a high priority of the MDOT on this project. It should be developed through early and continued consultation with the Fish and Wildlife Service and appropriate State resource agencies. Hopefully, the habitat can be established and stabilized to benefit the butterfly within the time period established by the agencies in the plan.

Thank you for bringing this issue to our attention. The flexibility of existing Federal-aid funding procedures should allow continued response to the habitat needs of the Mitchell's Satyr butterfly. If you require additional assistance on this project, I offer the services of my staff to your office and the MDOT.



Kevin E. Heanue

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cc: HPD-1, HEP-1, HCC-31, HNG-12,
HEP-40, HEP-41, HEP-42/Files(2)
HEP-30, HEP-31, HEP-32