Attachment 3 - NCDOT January 7, 2005 letter to USFWS

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

January 7, 2005

Mr. Brian Cole
US Fish and Wildlife Service
160 Zillicoa Street
Asheville, NC 28801

ATTN: Ms. Marella Buncick
NCDOT Coordinator

SUBJECT: Section 7 Biological Conclusions and Concurrence Request for the Murphy Bypass, R-0977, Cherokee County

REF: Biological Assessment for the Murphy Bypass (R-977A), dated September 20, 2004

Dear Mr. Cole:

This letter is in reference to NCDOT's proposed improvements for US Highway 64: relocating a segment of the road south of the existing alignment between US 19-74-129 in Murphy and SR 1547 east of NC 141 in Peachtree, Cherokee County, North Carolina, TIP number R-0977A. The purpose of this letter is to request concurrence from the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*)(ESA).

NCDOT had already requested Section 7 concurrence for this project (referenced above), but since that request was written, new information has come to light regarding the project. Construction of R-0977A will require the relocation of a high voltage transmission line on portions of the highway project, which lie outside of the original scope of the project. TVA plans to relocate the existing high voltage line in three different areas, as shown on the attached map. Area 1, north of the river on the western end of the highway project, will have an increase in right-of-way (ROW) of 25 feet (12.5 feet on each side of the existing transmission ROW) for a length of 2450 feet. Area 2 is also on the western end of the project, but on the south side of the river. The transmission line here will go on new location that is 162.5 feet wide for a length of approximately 2000 feet. Area 3 is approximately a quarter mile west of the intersection of the proposed bypass and Harshaw Road (SR 1561). Here the transmission line will be

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
PROJECT DEVELOPMENT AND ENVIRONMENTAL ANALYSIS
1548 MAIL SERVICE CENTER
RALEIGH NC 27699-1548

TELEPHONE: 919-733-3141
FAX: 919-733-9794
WEBSITE: WWW.DOH.DOT.STATE.NC.US

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH NC

relocated to the north of the new bypass for approximately 2700 feet, with a 100-foot wide ROW.

An onsite investigation was conducted on December 15, 2004, by Mark Davis, Division 14 Environmental Officer, and Owen Anderson, Division 14 Environmental Specialist, to assess habitat in Area 1 of the transmission line relocation, north of the Hiwassee River. The habitat adjacent to the proposed relocation is dominated by white pine and Virginia pine with DBH's ranging from 4 to 16 inches. The understory consists of a mixture of sapling hardwoods such as white oak, black oak, red maple, black cherry, yellow poplar and a few scattered beech trees with DBH's ranging from 4 to 10 inches. The hardwoods appear to be stunted by the pine overstory. A few dead Virginia pine snags were observed; however, most of the bark had already scaled off the trunk. The proposed transmission line will traverse dry, upland habitat until it crosses the Hiwassee River. Habitat along the Hiwassee consists of old fields with a narrow riparian area dominated by scattered sycamores.

Small whorled pogonia (*Isotria medeoloides*)
Since small whorled pogonia may occur in young as well as maturing forests, there is potential habitat in the transmission line relocation areas that will have to be surveyed. Areas where the transmission line will run through old fields in the vicinity of the river do not contain suitable habitat. Previous surveys for R-0977 in 2000 and 2004 were conducted in areas of potentially suitable habitat, but no plants were found. The nearest known occurrence of small whorled pogonia, according to the Natural Heritage Program database, is in Cherokee County 16 miles away. To minimize potential effects of the transmission line relocation on small whorled pogonia, NCDOT is proposing the following:

1. NCDOT will survey all three transmission line relocation areas where suitable habitat exists for small whorled pogonia in early May of 2005.
2. If no small whorled pogonia is found in Area 2, then tree clearing may commence immediately.
3. If no small whorled pogonia is found in Areas 1 or 3, then tree clearing may commence as soon as Indiana bat issues are resolved (see below).
4. If small whorled pogonia is found in Area 1, 2 or 3, then no tree clearing or any sort of disturbance shall occur in that Area for transmission line work until impacts to pogonia habitat are avoided, the habitat is protected, and consultation with USFWS is completed. If highway work is likely to effect the pogonia, either directly or indirectly, then work shall stop on that section until it is determined how negative impacts can be avoided and consultation with USFWS is completed.

Conditioned on the above, NCDOT has determined that a Biological Conclusion of MAY AFFECT, NOT LIKELY TO ADVERSELY AFFECT is appropriate for small whorled pogonia.

Indiana bat (*Myotis sodalis*)
Mist-net surveys for the project were conducted by BHE Environmental in 2004 and 2002. Approximately the same two mist-net locations were used both years (see attached map for closest mist-net location). No bats of any species were captured in 2002 or 2004. In a letter dated August 8, 2002, Michael Dammarell of BHE wrote, "most of the right-of-way did not contain suitable habitat for Indiana bats. Much of the right-of-way had be cut

within the past few years..." Two sites were found that contained marginal Indiana bat habitat; these were selected for the mist-netting locations. The 2004 survey report from BHE (dated September 23) stated, "much of the habitat immediately surrounding the survey area appeared to be marginal quality habitat for roosting and foraging Indiana bats."

The previous mist-netting has covered the transmission line relocation in Area 2; however Areas 1 and 3 will require more survey work. To minimize potential effects of the transmission line relocation on Indiana bats, NCDOT is proposing the following:

1. Areas 1 and 3 will be assessed by BHE no earlier than June 25, 2005. If suitable corridors for mist-netting are available, they will conduct mist-netting according to the Indiana Bat Recovery Plan.
2. If BHE is unable to effectively mist-net, then they will conduct a thorough habitat assessment in all areas likely to be affected by the transmission line work.
3. If, as a result of the survey work, Indiana bats are unlikely to be affected by the transmission line work, then tree clearing may commence as soon as the bat survey work is completed, probably in early July 2005.
4. If Indiana bats are likely to be adversely affected by the transmission line work, then no tree clearing will occur in the transmission line relocation areas between October 15 and April 15 of any given year.

Conditioned on the above, NCDOT has determined that a Biological Conclusion of MAY AFFECT, NOT LIKELY TO ADVERSELY AFFECT is appropriate for the Indiana Bat.

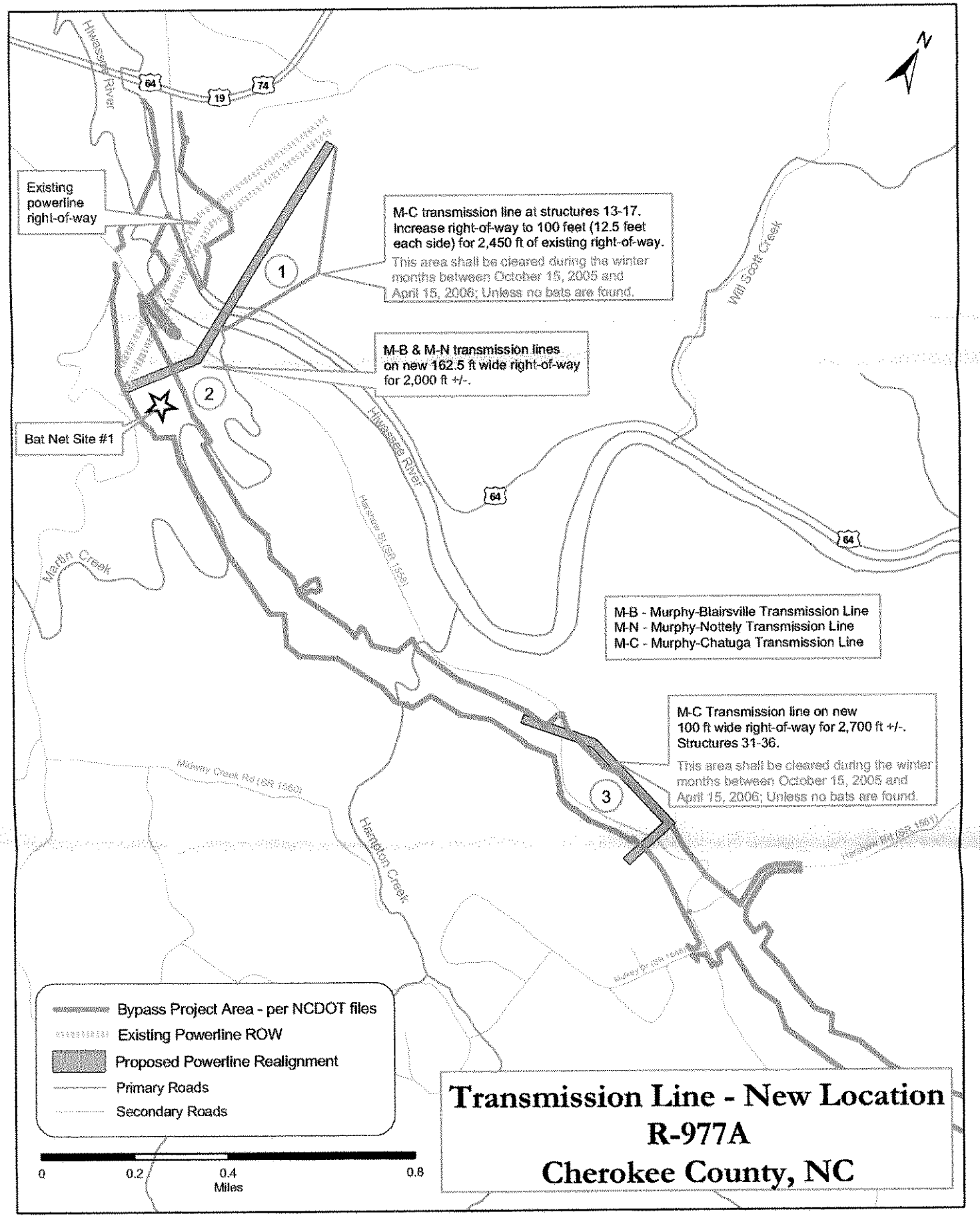
Little-wing pearlymussel (*Pegias fabula*), and Cumberland bean (*Villosa trabalis*)
A biological conclusion for these species was included in the biological assessment dated September 20, 2004. NCDOT has determined that this biological conclusion, MAY AFFECT, NOT LIKELY TO ADVERSELY AFFECT, is still effective. You should have already received a copy of the biological assessment as well as the mussel relocation and survey update, which was dated December 7, 2004.

We believe that conditioned on the steps detailed above, the requirements of Section 7(a)(2) of the ESA will be satisfied and hereby request your conditional concurrence. If you need any more information regarding this issue, please contact Mary Frazer at 919-715-1419.

Sincerely,

Phil S. Harris, III, P.E., Manager
PDEA – Office of Natural Environment

cc: Steve Lund, USACE
Theresa Ellerby, Project Development Consultant Engineer, PDEA
Harold Draper, TVA
Greg Stevens, Project Services Unit
Mark Davis, Division 14 Environmental Officer
O'Hara Parker, Utilities, ROW Branch
File R-0977A



Transmission Line - New Location
R-977A
Cherokee County, NC