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Highways/Endangered Species Act: Texas Department of Transportation Agrees to Consult U.S. Fish and Wildlife Service in Regards to Austin, Texas Project

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The Texas Department of Transportation ("TDOT") responded in a June 21st letter to a Center for Biological Diversity ("CBD") Notice of Intent to Sue under the Endangered Species Act ("ESA").

The CBD had sent a May 18th Notice of Intent to Sue to the TDOT and the Federal Highway Administration alleging violations of Section 7 of the ESA. [See previous blog post of related details here.](#)

The Notice of Intent to Sue alleged violations associated with what is referred to as the MoPac (State Loop 1) Intersections Project, Austin District Project in Austin, Texas.

The CBD alleged a:

1. Failure to timely initiate and complete consultation with the U.S. Fish and Wildlife Service regarding the impacts of the MoPac (State Loop 1) Intersections Project on the Barton Springs Salamander, the Austin Blind Salamander, and the Golden-cheeked Warbler
2. Failure to ensure that the project is not likely to jeopardize the continued existence of the previously referenced ESA-listed species.

The CBD further alleged that a Biological Evaluation that was undertaken was inadequate and failed to support a "no effect" determination and decision not to consult with the U.S. Fish and Wildlife Service.

TDOT's June 21st letter states that the agency has:

...modified its prior ("no effect") determinations and has now determined that the project is not likely to affect the BSS, ABS, and GCW. Pursuant to 50 C.F.R. §§ 402.13 and 402.14(b)(1), TxDOT has initiated consultation with USFWS and seeks USFWS's concurrence with TxDOT's determinations for the three species. As such, the arguments presented in the notice from CBD and SOS are rendered moot by TxDOT's ongoing efforts to consult with USFWS for the project.

[A copy of TDOT's June 21st letter can be downloaded here.](#)