

STATE

OF

TENNESSEE

Created: 02-13-2012

January 1, 2015

SPECIAL PROVISION

REGARDING

NESTING SITES OF CLIFF SWALLOWS AND BARN SWALLOWS

SUBJECT:

This Special Provision addresses procedures for cliff swallows (*Hirundo pyrrhonota*) and barn swallows (*Hirundo rustica*) found on Tennessee Department of Transportation (TDOT) projects to ensure no adverse effects as per the Migratory Bird Treaty Act of 1918.

PURPOSE:

The Migratory Bird Treaty Act charges U. S. Department of Interior (and hence U. S. Fish and Wildlife Service, FWS) with the protection of all migratory birds, including parts of birds, nests, or eggs. States were given the right to implement their own regulations to protect these birds, as long as the regulations are not less stringent than the federal law. In this role, FWS provides comments to TDOT regarding potential effects of highway-related construction activities.

All new, temporary, or existing bridges may be nesting sites for cliff swallows and/or barn swallows. These birds and their habitats are protected under the Migratory Bird Treaty Act. Nest building and brood rearing can occur on or in bridges, and demolition or other construction activities might disrupt these nesting activities if birds are present.

There is nearly complete overlap between cliff swallows and barn swallows during the reproduction season. Both are common throughout the state by the beginning of April, at which time they start building nests, with egg laying commencing in mid-April. Egg laying and fledging can occur over a period of several weeks in the same colony. Once the birds are fledged, most will leave the nesting area, and generally all are gone by August 1, although most have left by July 15.

The following procedure will be automatically implemented by TDOT, unless FWS approves in writing deviations due to special circumstances, or for a specific variance.

Cliff swallow and barn swallow nests, eggs, or birds (young and adults) will not be disturbed between April 15 and July 31. From August 1 to April 14, nests can be removed or destroyed, and measures implemented to prevent future nest building at the site (i.e., closing off area using netting).

Exceptions:

- (1) If there are no eggs in the nests prior to April 15, TDOT will be allowed to destroy the nests and prevent further nest building at the site, by installing netting. Net openings shall be ½ inch or smaller after installation, and shall be installed securely

and in such a manner that it will not pose a safety hazard. Absence of eggs prior to net installation must be documented by using appropriate means for determination, such as, but not limited to, site visits and photographs.

- (2) If there are no birds (young or adult) left in any of the nests at a specific site prior to July 31, the nests can be removed or destroyed. Absence of birds must be documented by using appropriate means for determination, such as, but not limited to, site visits, photographs, and observations of no birds using the nests.

CONTRACTOR NEGLIGENCE:

The Contractor will be assessed the amount of any and all fines and penalties assessed against and cost incurred by TDOT which are the result of the Contractor's failure to comply with this Special Provision. TDOT will not be responsible for any delays or costs due to the Contractor's failure to comply with this Special Provision. The Contractor will not be granted additional compensation or contract time due to noncompliance.

All costs incurred in complying with this Special Provision will not be measured or paid for separately, but will be considered included in the contract unit prices bid for other items of the contract.