

FWS/AES-TE

Memorandum

To: Assistant Regional Director

Through: Ecological Services Program Manager, Endangered Species/Habitat Conservation

From: Regional HCP Coordinator

Subject: Set of Findings: Cobb to Brickyard Reconductoring Project, Michigan Electric Transmission Company, LLC, Ann Arbor, Michigan (TE 094217)

On December 14, 2004, the U.S. Fish and Wildlife Service (Service) received an application for an incidental take permit under the Endangered Species Act of 1973, as amended (Act) from the Michigan Electric Transmission Company, LLC, (METC). In accordance with the regulations, a Habitat Conservation Plan (HCP) accompanied the permit application. The Service prepared the Environmental Action Statement (EAS) for this incidental take permit (ITP) application request. A *Federal Register* Notice announcing receipt of the permit application, and soliciting comments on the application, was published on February 22, 2005. No comments were received during the comment period which ended on March 24, 2005. This memorandum constitutes a Set of Findings for processing the application and describes the Service's rationale for making its recommendation to issue an incidental take permit to the applicant.

I. DESCRIPTION OF PROPOSAL

METC applied to the Service for a permit to incidentally take Karner blue butterfly (*Lycaeides melissa samuelis*) under the authority of section 10(a)(1)(B) of the Act. The 5 year duration permit would allow incidental take in a four-mile long electric power transmission line corridor in northeast Muskegon and southwest Newaygo Counties, Michigan. The proposed work involves reconductoring a 4.07-mile segment of electric power transmission line within this ROW segment. Construction activities will be completed by the end of spring 2005 and will take place entirely within the existing 66-foot wide utility ROW. The reconductoring project will require METC's contractors to replace existing metal towers with new wooden utility poles (selected poles will require guy wires), and hang new 138 KV power lines on new insulators. There are 40 towers spaced approximately 300 to 400 feet apart along the 4.07-mile stretch of ROW that will be replaced with wooden poles. During construction activities METC expects to disturb an area approximately 200 feet long by 66 feet wide (13,200 square feet) surrounding

each tower; centered at the current location of the towers to be replaced. Approximately 300-400 feet of undisturbed ROW between towers will remain undisturbed.

The HCP identifies conservation measures METC will implement for the purposes of minimizing and mitigating incidental take that may occur in the future. The primary goal of the HCP is to minimize and mitigate the unavoidable adverse effects of ground disturbances to KBB habitat from the reconductoring and other necessary ROW maintenance activities

II. SECTION 10(a)(2)(A) HCP CRITERIA - ANALYSIS AND FINDINGS

1. The impact that will likely result from such taking

The applicant has prepared an HCP to address the potential effects of these impacts. The HCP and EAS adequately describe the proposed activities and the anticipated impacts to the Karner blue butterfly and the associated habitat within the project area. Given the Karner blue butterfly has been documented on the ROW, the Service determined incidental take of the species and its habitat would occur as a result of construction activities. It is estimated 5.75 acres of Karner blue butterfly habitat will be temporarily disturbed due to construction activities of removing existing steel towers and installing new wooden replacement power poles. The HCP provided sufficient information for the Service to evaluate the impacts of the proposed activities. The Service's analysis of the project impact is described in an April 7, 2005, Biological Opinion, Log 05-R3-ELFO-05.

2. The steps that will be taken to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances.

METC is responsible for ensuring implementation and compliance with the terms and conditions of the ITP and the conservation measures in HCP. The applicant's HCP provides measures to avoid or minimize harm to individuals, mitigation measures to compensate for potential losses, and a monitoring program to track the success of minimization and mitigation measures and avoid potential disturbances to Karner blue butterfly within the project area.

The following measures will be implemented to avoid, minimize, and mitigate adverse effects on Karner blue butterflies and habitat:

- Use the existing ROW access road, minimizing the disturbance to wild lupine and other vegetation between pole locations. All truck and heavy equipment (cranes and earthmovers) traffic will stay on the existing access road that runs along the ROW when not located at one of the active construction areas.
- In areas where wild lupine cover is prevalent locations will be marked where wild lupine cover is least dense. To the extent possible, contractors or subcontractors will perform construction work in areas where wild lupine is less prevalent (i.e. dropping towers and/or poles in a certain direction to minimize impact)
- The towers will be dismantled by attaching a cable from a crane to the top, cutting the legs of the metal towers by plasma cutting or welding torches, and then lowered to the ground by the crane and then lifted onto the ROW road for disassembly.

- Limit all truck and heavy-equipment traffic to existing disturbed areas such as the access road that runs within the ROW
- Employ a minimum of one Environmental Inspector (EI) for the duration of the construction activities that is familiar with the KBB and its habitat. This Inspector shall provide environmental training to the construction manager and foreman and will perform surprise field visits to monitor adherence to the environmental requirements of the project.
- Create additional KBB habitat equal to 25% of the area of lupine disturbed during the reconductoring project. The calculated acreage for creation of new KBB habitat during proposed mitigation is 5.75 acres x 0.25 or approximately 1.4 acres.
- Disturbed or reseeded areas that do not recover in accordance with the monitoring plan included as an appendix to the HCP will be reseeded or retreated as needed to establish suitable lupine cover.

Due to the short duration of the ITP and confined work elements, the applicant does not seek the Service's Habitat Conservation Plan Assurances ("No Surprises") Rule, dated February 23, 1998. As a result, there are no procedures outlined to deal with unforeseen circumstances.

3. Alternative actions to the taking the applicant considered and the reasons such alternatives are not proposed to be utilized

The applicant considered two other alternatives during the planning process.

Alternative 1 - Alternate Route. Choosing an alternate route would make no economic or environmental sense for this type of project. The existing ROW has been in place for decades and is an established feature of the local environment. The ROW bisects a forested area and effectively creates the savanna-like conditions that allow for KBB habitat to exist at the location in question. ROW management techniques such as occasional mowing and brush and sapling removal mimic the effects of fire and help sustain the oak savanna ecosystem. If an alternate ROW was available, moving the location of the ROW and abandoning the maintenance of the present ROW would imperil the existing KBB population. Moving to a new ROW would also cause additional unnecessary environmental impacts at the new location.

Alternative 2 - No Action Alternative. The no action alternative was considered impractical because the construction project is necessary to provide a stable supply of electricity to meet the growing demand of METC customers. Without this project, the growing demand will eventually result in line failure, overloads on the METC system and ultimately, power outages to the customers.

4. Other measures that the Director may require as being necessary or appropriate for the purposes of the plan

The applicant developed the HCP in consultation with the Service. No public comments were received. The HCP includes measures the Service determined to be necessary and practicable to minimize and mitigate take. Therefore no other measures are identified as being necessary or appropriate for purposes of the plan.

III. ENVIRONMENTAL ASSESSMENT AND PUBLIC COMMENT - ANALYSIS AND FINDINGS

The Service prepared the EAS for this ITP application. A Notice of Availability was published in the *Federal Register* on February 22, 2005, notifying the public of the availability of the permit application, EAS and HCP for public comment accepted through March 24, 2005. The Service received no comments during the comment period.

IV. SECTION 10(a)(2)(B) PERMIT ISSUANCE CRITERIA - ANALYSIS AND FINDINGS

1. The taking will be incidental.

The Service finds the take will be incidental to the otherwise lawful activities occurring as a result of the proposed construction by METC.

2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

The Service finds the applicant has developed an HCP pursuant to the requirements provided in the Act and its implementing regulations and has provided for mitigation and minimization of take to the full extent practicable. The “maximum extent practicable” concept consists of considering the economic objectives with the applicant (reflected by the scope of the project and its design), a measurement of the subsequent impact imposed on the protected species, and to what degree the extent of mitigation and minimization measures offered in the HCP compensate for impact to the species. Minimization efforts do not take precedence over mitigation efforts or vice-versa. Minimization and mitigation can take many forms and any combination to address direct, indirect, and cumulative adverse effects on listed species. In this particular case, the level of incidental take is expected to be low once measures of the HCP and permit are in place, and the applicant has provided mitigation and minimization to offset the expected impacts to the Karner blue butterfly. The Service’s Biological Opinion described the incidental take expected to occur as a result of issuing this ITP.

3. The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided.

The applicant ensures funding is available to meet their obligations under the Permit, and the HCP throughout the term of the HCP (HCP Appendix C). The Service’s HCP Assurances (“No Surprises”) rule is not discussed in the HCP so no measures to address changed and unforeseen circumstances have been identified. Due to the discrete and short term nature of the project, the applicant does not request “No Surprises” coverage. The Service has therefore determined this is sufficient to meet this criterion.

4. **The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.**

The Service has reviewed issuance of an ITP to the applicant in accord with section 7 of the Act to cover activities associated with the proposed activities and HCP/Permit maintenance. As concluded in the Biological Opinion, the ITP will not appreciably reduce the likelihood of survival and recovery of Karner blue butterfly.

5. **Additional measures as required by the Director of the Service will be implemented.**

The EAS and HCP have incorporated all elements necessary for issuance of a section 10(a)(1)(B) permit.

6. **The Director of the Service has received the necessary assurances that the plan will be implemented.**

The permit will be valid only if the minimization and mitigation measures have been carried out in accordance with the HCP and the terms and conditions of the permit. Failure to perform the obligation outlined by the conditions of the section 10(a)(1)(B) permit may be grounds for suspension or revocation of the permit.

V. GENERAL CRITERIA AND DISQUALIFYING FACTORS

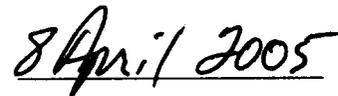
The Service has no evidence the permit application should be denied on the basis of criteria and conditions set forth in 50 CFR § 13.21(b) and (c). METC has met the criteria for the issuance of the permit and does not have any disqualifying factor that would prevent the permit from being issued under current regulations.

VI. RECOMMENDATIONS ON ISSUANCE OF PERMIT

Based on the findings of the Regional Office and the East Lansing, Michigan Field Office staff, and with respect to the ITP application, HCP, EA, and biological opinion, we concur the issuance of the section 10(a)(1)(B) ITP to METC proposing the *Habitat Conservation Plan for take of the Karner blue butterfly* is recommended.



Peter Fasbender
Regional HCP Coordinator



Date