

Special Award Conditions

Award Number: NT10BIX5570114

Amendment Number: 1

1) Revised EA SAC (Continuing Compliance-Additional Protocols and Measures)

Special Award Condition

Compliance with Environmental Protocols and Measures

Merit Network, Inc.

REACH Michigan Middle Mile Collaborative Project

This BTOP Grant Special Award Condition establishes requirements applicable to the Merit Network, Inc. (Merit) implementation of the Rural, Education, Anchor, Community, and Healthcare (REACH) Michigan Middle Mile Collaborative Project. The funding of the Grant is dependent on compliance with the provisions of this Special Award Condition.

Post-award environmental reviews of the Project included consultation with regulatory agencies related to the protection of biological and historic and cultural resources. These consultations identified specific protocols or environmental protection measures. These protocols or protective measures may be either required or recommended to be included in the implementation of the Project to minimize potential impacts to biological resources and effects on historic and cultural resources. The protocols and measures are listed below.

Note that this Special Award Condition does not distinguish requirements identified during the consultations from recommendations that were also provided. Merit shall implement the identified protocols and measures without regard to this distinction and advise the Federal Project Officer (FPO) immediately if any issues arise related to the ability to fully comply with any requirement or recommendation listed below.

For each protocol or measure listed, Merit shall include the following information in its periodic report to the FPO administering the grant:

1. Specifically where and when the protocol has been used or a measure has been implemented during the reporting period, and
2. Whether full compliance with the protocol or measure was achieved.

The FPO may, if they determine necessary, require additional information to ensure compliance with the protocol or measure. If, at any time, Merit has questions or requires clarification regarding any of these protocols or measures, they shall notify the FPO, who will coordinate with the appropriate regulatory authority to provide the necessary information.

Biological Resource Protection Protocols and Measures

Merit consulted with the U.S. Fish and Wildlife Service (USFWS) East Lansing Field Office, which stipulated the following conditions on species-specific determinations in a letter dated June 23, 2011:

1. Merit will implement the Project in a manner that will not fragment habitat for species of concern;
2. Merit will implement appropriate spatial and season restrictions (e.g., limiting equipment to the road shoulder during growing seasons, accessing poles by foot where poles are not reachable from the road shoulder, conducting off-road aerial fiber installation during winter months when the ground is frozen and snow cover is present) to protect associated species of concern;
3. Merit will not conduct work or gain access to the Project area within Hine's emerald dragonfly habitat;
4. Merit will develop and implement a frac-out contingency plan for directional drilling components of the Project; and
5. Where the Karner blue butterfly may be present, Merit will install underground fiber in mown portions of the right-of-way (ROW) that do not contain wild lupine and will restrict construction to the period between September 1 and May 1 (to avoid the butterfly's flight period).

In an email dated April 7, 2011, the USFWS Twin Cities Field Office concurred with Merit's conclusion that Project activity in Minnesota will have no effect on the Piping plover, Gray wolf, and Canada lynx. No additional stipulations were identified by this office of the USFWS.

Merit received clearance for the Project from Michigan Department of Natural Resources and Environment (MDNRE) on May 3, 2011; Michigan Department of Transportation (MDOT) on June 27, 2011; Wisconsin Department of Natural Resources (WDNR) on April 18, 2011 and June 20, 2011; and Minnesota Department of Natural Resources (MDNR) on April 7, 2011. However, the state agencies also provided the following stipulations:

1. Merit will cross the Thunder Bay River in Montmorency County via directional drilling to avoid impacts on Pugnose shiners (*Notropis anogenus*) known to occur in the waterway. MDNRE; May 3, 2011
2. Merit will continue to consult with the USFWS regarding protection measures for Kirtland's warbler and Hine's emerald dragonfly. MDNRE; May 3, 2011
3. Merit will avoid adverse impacts on the Peregrine falcon (*Falco peregrinus*) and Common tern (*Sterna hirundo*) by restricting construction activities in affected areas to the birds' non-nesting season. MDNR; April 7, 2011

Historic and Cultural Resource Protection Protocols and Measures

In a letter dated May 9, 2011, the Michigan State Historic Preservation Office (SHPO) concluded that the Project will have no adverse effect on historic properties within the area of potential effect (APE), provided that the following stipulations are met:

1. Merit will ensure that a professional archaeologist monitor fiber installation beginning at the Chambers Street-Business Route 75 intersection, continuing northward through St. Ignace and Evergreen Shores, to the north section line of Section 36 of Moran Township (T41N-R4W).
2. If archaeological deposits are encountered during cable installation, Merit will stop work to give the monitoring archaeologist ample opportunity to evaluate the deposits, contact the State Archaeologist and other parties as appropriate, and determine steps to be taken to minimize the effect of the Project on those deposits.

In a letter dated April 7, 2011, the Wisconsin SHPO informed Merit that the Project route had to be redesigned to avoid impacts on the Oconto National Historic Landmark (archaeological site 47-OC-0045/BOC-0046), as well as catalogued

and uncatalogued burial sites. Merit complied with this request, and the Wisconsin SHPO issued a letter on June 23, 2011 stating that the proposed Project had been adequately redesigned to avoid the Oconto site and all catalogued and uncatalogued burial sites will be avoided by at least 100 feet. However, the Wisconsin SHPO provided the following stipulation:

1. If human bone is discovered during subsurface investigations, Merit will stop work immediately and notify the Burial Sites Preservation Officer to ensure protection of human burial sites.

On October 1, 2010, NTIA notified 48 Native American tribes of the Project through the Tower Construction Notification System (TCNS). The Shawnee Tribe, Miami Tribe of Oklahoma, and Wyandotte Nation requested additional information about the Project through TCNS. Additional information was provided to the tribes on December 7, 2010. Most tribes indicated no concerns with the Project, or have not responded to the original or follow-up notifications. The Lac du Flambeau Band requested copies of archaeological reports for the Project and recommended monitoring of activities where uncatalogued sites exist. This requirement was incorporated into Project plans, and the Lac du Flambeau Band expressed no further concerns about the Project on April 21, 2011. However, the following stipulation applies to the entire project:

1. If any human skeletal remains or protected Native objects are uncovered during construction, construction will stop immediately, and appropriate authorities, including law enforcement agencies, the SHPO, and interested Tribes, are informed.

Following up on the original TCNS notification, Merit contacted the Bad River Band because the Project route is planned to cross the Bad River Indian Reservation in Ashland County, Wisconsin. Merit and NTIA staff consulted with the Bad River Band to identify a project route that minimizes adverse impacts to historic and cultural resources within the Reservation. Avoidance will be accomplished through the use of existing utility poles for aerial fiber construction and crossing of the Bad River by directional drilling. On May 27, 2011, the Bad River Band Tribal Historic Preservation Officer (THPO) issued a letter stating that the Project will have no adverse effects to historic properties present in the APE provided the following requirements are met:

1. Merit will provide for tribal monitoring in sensitive areas along the route, as identified and described by the THPO, during project excavations;
2. Merit will develop and implement a post-installment maintenance agreement with the Bad River Tribal Natural Resources Department;
3. Merit will avoid impacts to White Cedar trees and roots within or adjacent to intended areas of excavation;
4. Merit will install fiber aerially from the intersection of U.S. Highway 2 and Dock Road to the intersection of U.S. Highway 2 and Caville Road;
5. Any required replacement utility poles will be erected in the same location as the current pole being replaced;
6. Merit will clean all equipment used in the excavation and installation process prior to transport onto the Bad River Reservation;
7. Merit will use silt fencing in Reservation areas adjacent to waterways;
8. Any borrow pits used for backfill soil will be inspected by qualified Bad River Natural Resource staff to ensure that

they are not subject to invasive plant species;

9. Merit will provide for periodic water quality inspections by qualified Bad River Natural Resource Department staff during the fiber installation period;

10. Merit will ensure that an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitors ground disturbance in the vicinity of known archaeological sites and suspected or known burials;

11. If earth-disturbing activities uncover cultural materials (i.e., structural remains, historic artifacts, or prehistoric artifacts), Merit will cease all work and immediately notify interested Tribes, the SHPOs, and NTIA; and

12. If earth-disturbing activities uncover human remains, Merit will cease all work immediately in accordance with applicable regulations and statutes. The area around the discovery will be secured and the relevant law enforcement personnel (e.g., local police or County Coroner) and NTIA will be notified immediately.

Other Resource Protection Protocols and Measures

1. Merit will complete all applicable Special Use Permitting actions with the USDA-Forest Service prior to beginning construction on National Forest lands.

Mitigation Measures identified in the Environmental Assessment as being required to avoid potential significant environmental impacts:

None.