



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic And Atmospheric Administration
Office of Acquisition and Grants

July 11, 2012

Mr. Mark Dorn
Authorized Organizational Representative
University of Wisconsin- Extension
432 N. Lake St., Room 104
Madison, WI 53706

Re: Broadband Technology Opportunities Program (BTOP)
Building Community Capacity through Broadband
Grant Award # NT10BIX5570115

Dear Mr. Dorn,

On May 23, 2011, the National Telecommunications and Information Administration (NTIA) issued a Finding of No Significant Impact (FONSI) for the University of Wisconsin - Extension (UWEX) Building Community Capacity through Broadband project (BTOP Grant Award # NT10BIX5570115). Following consultation with the United States Fish & Wildlife Service (USFWS) during the Environmental Assessment (EA) process, the FONSI and its supporting documentation described specific requirements and protocols prescribed by USFWS for identifying and protecting the endangered Karner blue butterfly (*Lycaeides melissa samuelis*) and its host plant (wild lupine, *Lipinus perennis*). These stipulations included activities to be performed both pre-construction and during project implementation and were included in order to account for the requirements of Section 7 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) Specifically, the FONSI required that UWEX would (1) hire a qualified biologist, in cooperation with USFWS, to conduct surveys for wild lupine, prior to construction activities, following the methodology proscribed by the Wisconsin Department of Natural Resources' (WDNR) Karner Blue Butterfly Habitat Conservation Plan (HCP); (2) if lupine was found in the project area, then hire qualified biologist to conduct surveys to identify the presence of the Karner blue butterfly; (3) if surveys indicate the presence of the Karner blue butterfly, continue consultation with USFWS and follow protocols outlined in the HCP for fiber installation; and (4) restore any areas of significant ground disturbance to its pre-construction condition. The letter from USFWS stipulated that only if surveys indicate that no Karner blue butterflies are present, no further consultation with USFWS was required. Based on a review of the analysis of the EA, NTIA determined the UWEX project, implemented in accordance with the environmental protection measures identified in the EA, including those described above, would not result in any significant environmental impacts.

On February 28, 2012, the National Oceanic and Atmospheric Administration (NOAA) Grants Office suspended the UWEX project due to UWEX failure to comply with the requirements of

its FONSI and Programmatic Agreement (PA). On March 20, 2012, UWEX responded with a Corrective Action Plan (CAP); this plan included a detailed matrix documenting how the project would implement each condition of the FONSI and PA going forward, to ensure appropriate protection of environmental and cultural resources. The matrix¹ attached to UWEX' submission called out the Karner blue butterfly as a resource of concern in Eau Claire and Clark Counties, and specifically noted UWEX responsibilities to protect the species during project implementation. In addition, each week since the CAP was accepted, UWEX has provided a written update to NTIA regarding its activities to maintain compliance with the FONSI and PA. At no point has UWEX advised NTIA about any adverse effect to the habitat of the Karner blue butterfly as a result of project implementation activities.

However, on June 29, 2012, the USFWS informed NTIA that it believed that the project had violated the conditions of it's FONSI by failing to implement the recommendations, described above, to identify and protect the Karner blue butterfly and wild lupine. Further, the USFWS indicated that it believed that UWEX project activities had resulted in a lethal effect on both species, resulting in a violation of the ESA. USFWS did indicate that the effect likely occurred in late 2011, prior to the corrective actions that UWEX implemented in response to the NTIA CAP of February 28, 2012.

As a result of these concerns, NTIA contacted the UWEX Authorized Organization Representative (AOR) on June 29, 2012 and informed him that NTIA would recommend to the NOAA Grants Office to issue a temporary stop-work order on the UWEX award for failure to comply with the conditions of the FONSI. NTIA thanks UWEX for its cooperation in stopping work prior to the receipt of this letter.

In order to address the concerns outlined above, and demonstrate compliance with the terms and conditions of the grant including the Finding of No Significant Impact (FONSI), UWEX must provide sufficient documentation to address the Corrective Action Plan (CAP) items listed below:

1.) Description of events and actions to implement FONSI requirements regarding the Karner blue butterfly and wild lupine.

- a. UWEX should provide a detailed explanation of what action it has taken, from the time the FONSI was issued to the current date, to implement the stipulations in the FONSI regarding the Karner blue butterfly and wild lupine. This explanation must include:
 - i. Copies of surveys and reports on habitats
 - ii. Evidence of any consultations with USFWS, WDNR, or other entity with respect to these species
 - iii. Evidence demonstrating UWEX adherence to the HCP. This would include any documentation of compliance as well as briefings/training for

¹ The matrix was submitted by Maria Alvarez-Stroud (UWEX) to Chris Holt (NTIA Program Officer) on March 21, 2012 in Microsoft Excel (see *Copy of BCCB Environmental Compliance Matrix_revised (3).xlsx*). Item #9, under Biological Resources, refers to the Karner blue butterfly.

- field personnel (including employees, subrecipients, and vendors) and any field-reports from those personnel
- iv. Documentation regarding UWEX strategy to restore areas of significant ground disturbance to their pre-construction state. Also, evidence that UWEX has performed these actions when needed
 - v. Organization chart of parties involved in compliance activities, including project personnel, subrecipients, and vendors. If there have been changes in personnel during the project's lifetime, this should be clearly explained (including relevant dates)
 - vi. A timeline of events, including:
 - The dates when surveys were conducted
 - Data when construction occurred at areas within known habitation areas of the Karner blue butterfly and wild lupine, since the FONSI was issued
 - The date any violation was identified, whether or not it was originally reported to NTIA, USFWS, WDNR, or any other entity

2.) *Explain its failure to report these actions to NTIA.*

- a. USFWS contacted NTIA on June 28, 2012, to discuss the impacts of UWEX project activities on the Karner blue butterfly and its habitat. That contact was in response to a letter sent to USFWS by Stantec Consulting Services, Inc, on behalf of the UWEX project, on June 26, 2012, and a follow-up conference call on June 28, 2012. Prior to that contact, UWEX had not notified NTIA of any issues or violations with respect to mitigating the impact of the project on the Karner blue butterfly and wild lupine. NTIA was not informed of a compliance failure, or UWEX communication with USFWS until June 29, 2012. If UWEX brought a specific violation to the attention of USFWS in its letter or subsequent conference call, UWEX should explain why this matter was not brought to the attention of NTIA directly and immediately.

3.) *Develop a detailed plan for compliance with FONSI requirements regarding the Karner Blue Butterfly and wild lupine.*

UWEX must develop a specific monitoring plan describing its processes for future monitoring of the Karner blue butterfly and wild lupine and communicating all requirements of the FONSI to staff, subrecipients, and vendors/contractors. The plan should include specific details about how UWEX will ensure field personnel will comply with all the requirements of the FONSI, consult with USFWS, and adhere to the HCP. The plan should also describe UWEX's approach to assessing the impact that project implementation activities had on the butterfly's habitat, prior to the monitoring that was implemented as part of the February 28, 2012 CAP.

4.) Document plans to protect other rare plants and animal species of concern.

Based on information provided by WDNR, the FONSI stipulates that: (a) Prior to construction, UW-Extension will have a qualified person review mapped [National Heritage Inventory] data to identify potential locations of threatened and endangered species² near the Project fiber route and WiMax tower sites and equipment hut locations; (b) UW-Extension will also request a confidential Endangered Resources Review from the WDNR and identify locations within the Project area where rare species or their habitat may exist; (c) Field verification along portions of the route may be necessary to verify the present or absence of rare species or their habitat; (d) UW-Extension will provide the results of this study and avoidance recommendations to WDNR for their review; (e) UW-Extension will work with the WDNR to develop avoidance and minimization measures and meet the requirements of the Wisconsin Endangered Species Law and all other applicable laws and regulations; and (f) In some areas, it may be necessary to have a monitor on-site during construction.

- a. UWEX should provide a detailed explanation of what action it has taken, from the time the FONSI was issued to the current date, to implement the stipulations in the FONSI regarding other rare plants and animal species of concern. This explanation must include:
 - i. Copies of maps and reports on habitats
 - ii. Evidence of any consultations with WDNR, as required
 - iii. Documentation regarding specific avoidance and minimization measures adopted by the project, as well as reports on the implementation of those measures
 - iv. Organization chart of parties involved in compliance activities, including project personnel, subrecipients, and vendors. If there have been changes in personnel during the project's lifetime, this should be clearly explained (including relevant dates)
 - v. A timeline of events, including:
 - The dates when surveys were conducted
 - Data when construction occurred at areas found to host these species
 - The date any violation was identified, whether or not it was originally reported to NTIA, USFWS, WDNR, or any other entity
 - A detailed description of the violation

5.) Evidence sufficient engagement of qualified environmental personnel to ensure compliance.

UWEX must demonstrate that it has personnel with adequate knowledge to understand and implement the environmental and cultural resource requirements of the grant.

² The matrix submitted on March 21, 2012, as part of UWEX CAP response, indicates that NHITE (National Heritage Inventory Threatened and Endangered) species may be found in all project areas (see *Copy of BCCB Environmental Compliance Matrix_revised (3).xlsx*, item #10, "NHITE Species")

Further, UWEX must demonstrate that the findings and recommendations of these personnel are being implemented in the field. As needed, this would include: monitoring of construction activities in suspected butterfly habitat; training field personnel to identify endangered species and take the actions outlined in the HCP; and reporting any issues or findings to the USFWS, WDNR, and NTIA in a timely manner.

Please provide all necessary information to address these CAP items no later than Friday, July 27, 2012. This temporary stop work order is effective immediately. UWEX must suspend all construction activities on this BTOP project, including in areas unaffected by the violations described above. The only allowable costs that the project may incur during the suspension are: (1) costs directly associated with the security of grant-funded property to protect it against loss, damage, or theft; (2) costs directly associated with the response to this CAP; and (3) costs directly related to management and administration of the grant. The stop work order will remain in place until NOAA and NTIA receive and accept UWEX's completed CAP response. Failure to comply or respond to this CAP in a timely or comprehensive manner may result in additional corrective action.

If you have any questions, please contact your Federal Program Officer, Christopher Holt at 202.482.4884 or cholt@ntia.doc.gov. Thank you for your cooperation and assistance.

Sincerely,



Alan Conway, Branch Chief
NOAA Grants Management Division

cc. Arlene Simpson-Porter, NOAA
Anthony G. Wilhelm, NTIA
Larry Jenkins, NOAA
Doug Kinkoph, NTIA
Christopher Holt, NTIA
Aimee Meacham, NTIA
Andrew Spurgeon, NTIA
Andrew Nobleman, NOAA
Jill S. Utrup, USFWS
Ms. Maria Alvarez-Stroud, UWEX