

**Draft**  
**LOW-EFFECT HABITAT CONSERVATION PLAN DETERMINATION**  
**SCREENING FORM AND**  
**ENVIRONMENTAL ACTION STATEMENT (EAS)**

**LOW-EFFECT HABITAT CONSERVATION PLAN DETERMINATION:**

**I. Project Information**

**A. Project Name:** Slack Chemical Company

**B. Affected Species:** Karner blue butterfly (*Lycaeides melissa samuelis*; KBB)

**C. Project Size:** The project will occur on a 38.33 acre industrial park site that is bifurcated by a power line right-of-way. The area of permanent KBB habitat impact on the project site is 0.10 acre. An additional 4.81 acres of temporary impacts to KBB habitat will be enhanced with periodic mowing, and an additional 0.10 acre that will be created through wild blue lupine (*Lupinus perennis*) seeding.

**D. Brief project description including minimization and mitigation plans:**

**The purpose (of the project):** The Slack Chemical Company (Company) proposes to construct an access road across a power line right-of-way, as well as a tractor trailer parking lot and building on an adjacent 8 acre parcel located at Grande Industrial Park, Saratoga Springs, Saratoga County, New York. Construction activities will consist of installation of silt fencing, brush hogging of vegetation to clear the site, stripping topsoil, installing conduit and piping for utilities, grading the site, installing stone material, replacing topsoil along the road apron, and seeding and mulching of the road apron, as well as periodic mowing of herbaceous and woody vegetation as part of the mitigation plan. Construction of the access road is anticipated to result in take of KBB. Take of KBB, in the form of kill, is expected to occur directly from crushing of eggs (primarily), pupae, larvae, and adults during construction and conservation activities within approximately 4.91 acres of KBB habitat. Therefore, the Company is requesting incidental take authorization under sec. 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The Company submitted an incidental take permit application which included a habitat conservation plan (HCP) that describes the project and the avoidance, minimization, mitigation, monitoring, and funding commitments that will be implemented.

**The need (of the project):** The Company has grown since 1944, and the current facilities no longer meet its needs. Its tractor trailer fleet has increased from 2 to more than 20 trucks, and the facility area has increased from 25,000 to 60,000 square feet to meet the consumer demand for its chemical products. Consequently, the Company now needs to expand its parking and building facilities in the industrial complex.

**The proposed project:** The Company owns two parcels of land with an electric transmission line right-of-way along one of them. The National Grid has an easement to manage the right-of-way. One parcel (8.38 acres) contains a parking lot and building facilities. The purpose of this

project is to construct an access road between the two parcels and construct additional parking and facilities on the second parcel (29.95 acres). The only option to access the second parcel is to cross the right-of-way. The Company is proposing to install a 40-foot-wide by 109.5-foot-long gravel access road. The construction will permanently remove wild blue lupine plants that are currently found in the right-of-way, as well as any eggs, larvae, pupae, and/or adults that may be on those plants. The area of clearing for the gravel access road accounts for the drive lane and mowing/snow storage aprons on both sides of the drive lane. The location of the access road was determined in coordination with the National Grid based on safety considerations associated with its utility pole locations and a wire sag survey (The LA Group, P.C. 2015; appendix D). An Assent Crossing Agreement has been secured between the National Grid and the Company (The LA Group, P.C. 2015; appendix A).

**The duration (requested for permit):** Incidental take of KBB will occur during construction of the access road and periodically during implementation of the HCP. The requested permit duration is 10 years to allow for construction of the access road and implementation of the HCP minimization and mitigation measures. Construction of the access road is proposed for summer 2016 and will take less than 1 month. The proposed mitigation will cause take of KBB during periodic mowing to reduce woody and herbaceous species that compete with wild blue lupine and maintain habitat quality over the long term.

A 10 year timeframe is appropriate because the proposed take of KBB will be fully mitigated at a 1:1 ratio by creating a 0.10 acre area of new permanent KBB habitat within the National Grid right-of-way. This new habitat is expected to become occupied by KBB quickly due to its proximity to currently occupied habitat. The Company's proposed project is within "Covered Lands B" of the National Grid HCP (Chazen 2012) and so it is appropriate to mitigate project impacts in this location. Covered Lands B is defined as a 200 meter buffer zone surrounding known wild blue lupine locations, and is confined to the National Grid rights-of-ways or National Grid lands. The New York State Department of Conservation (NYSDEC) has two properties that are within the National Grid covered lands. In addition to the 0.10 acre of new habitat, the Company will also provide maintenance of these DEC lands throughout the 10 year duration of its ITP. Afterward, National Grid has agreed to assume maintenance of the newly created habitat through the schedule outlined in its own HCP, and the NYSDEC will monitor for presence of KBB and resume maintenance responsibilities for their own lands. Therefore, the mitigation area and habitat will persist and be managed even after the ITP has expired.

**The lands covered under the HCP:** The Company's property consists of two parcels of land located in a heavily developed area within the City of Saratoga Springs. The southern portion of the property is separated from the northern portion by the National Grid overhead power lines easement. These parcels make up the covered lands of the HCP. The southern parcel is where the Company currently operates its business on an 8.38 acre parcel. The business consists of a main building and smaller storage buildings for its products. Tractor trailer parking is at the rear of the main building. Another National Grid easement is located along the west boundary line of the southern parcel, but is not a part of this HCP.

There are the two NYSDEC Management Areas for KBB within the southern parcel. These management areas were placed under easement by the NYSDEC based on the presence of

suitable wild blue lupine habitat identified during surveys in 1989-1990 and were not associated with any previous impacts, nor were they established as mitigation for any previous impacts. The NYSDEC has since periodically maintained the site over the years by mowing, as well as has conducted KBB population surveys to estimate occupancy of the two properties. However, NYSDEC has not always had the resources to manage these lands and habitat quality has been somewhat compromised. As an additional conservation measure, the Company has proposed to conduct regular maintenance activities on these parcels over the 10 years as described in its HCP. Any encroachment on these lands from Company activities (*i.e.*, plowing, road maintenance) will be avoided with the implementation of measures stated on page 6 of this document.

The northern parcel consists of 29.95 acres of woodland. Approximately 8 acres will be impacted by the proposed parking lot and building. A survey conducted by Tommell & Associates on September 3 and 4, 2014, indicated that no KBB habitat was present within this area. Wild blue lupine is not expected to be present because the area is heavily wooded. Tree clearing on the northern parcel was completed in winter 2014 to 2015 to avoid impacts to the federally-listed threatened northern long-eared bat (*Myotis septentrionalis*; NLEB). The proposed access road will be constructed to cross the 5.1 acre National Grid power line easement for construction of the proposed project. The easement contains patches of KBB habitat, and the proposed project will adversely impact approximately 0.10 acre of occupied habitat.

**Species occupation and baseline:** The KBB formerly occurred in a band extending across 12 states from Minnesota to Maine and in the province of Ontario, Canada, but now occurs only in the 7 states of Minnesota, Wisconsin, Indiana, Michigan, New York, New Hampshire, and Ohio (U.S. Fish and Wildlife Service 2003). Wisconsin and Michigan support the greatest number of KBBs and butterfly sites. The majority of the populations in the remaining states are small, and several are at risk of extinction from habitat degradation or loss. The U.S. Fish and Wildlife Service's Recovery Plan (Service 2003) established a Recovery Plan that helps chart a course for the conservation and recovery of the species. The goal of the Recovery Plan is to perpetuate viable metapopulations of the Karner blue butterfly in the major ecological regions throughout its geographic range. To meet this goal, thirteen recovery units are identified as areas where viable populations are necessary and recovery criteria for each recovery unit are established. One recovery unit, the Glacial Lake Albany Recovery Unit (GLARU), is in New York and includes areas within Albany, Saratoga, Schenectady, and Warren Counties between Glens Falls and the Albany Pine Bush. Within the GLARU, three viable KBB populations are needed for the conservation of the species.

There are 29 known KBB subpopulations in GLARU at this time with one to several management sites within each subpopulation (Service unpublished data). The vast majority of management sites in New York are less than 20 acres in size with most less than 10 acres (K. O'Brien, pers. comm. 2012). These small sites are threatened by unfavorable mowing practices, woody encroachment from adjacent woodlands, and development.

The subpopulations are spread among four potential recovery areas within GLARU: Albany Pine Bush, Saratoga West, Saratoga Sandplains, and Queensbury (Figure 1). Presence/absence surveys are conducted on an annual basis. The NYSDEC (K. O'Brien, pers. comm. 2015) states that numbers at many sites have dropped so low that KBBs are not being observed during regular

transect monitoring. Survey work was conducted in 2014, but the data has yet to be analyzed by the NYSDEC. The Albany Pine Bush is the only area currently meeting and exceeding recovery criteria in New York (Gifford 2016). In 2015, the Albany Pine Bush Preserve estimated the first brood size at 14,600 adults and the second brood was estimated at 18,700 adults during distance surveys.

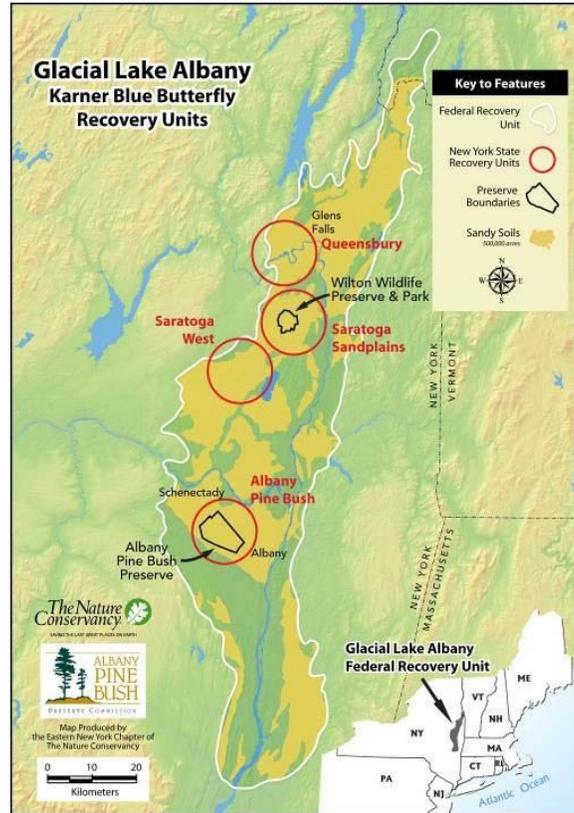


Figure 1. Map indicating the Glacial Lake Albany Karner blue butterfly recovery units (Queensbury, Saratoga Sandplains, Saratoga West and Albany Pine Bush) for New York.

The Company’s proposed project is located within the Saratoga Sandplains recovery area. KBB sites in the Saratoga Sandplains are small, and many are isolated. The Wilton Wildlife Preserve and Park contains the largest amount of suitable habitat at approximately 125 acres. As a result of habitat restoration, the Wilton Wildlife Preserve and Park supported more than 20,000 KBBs as of 2010 (Zimmerman 2010 pers. comm. in Service 2012), the most recent data available. The majority of the metapopulation area is heavily developed and/or is characterized as either forest or agriculture.

The ecology of the KBB is closely tied to its habitat that provides food resources and key sub-habitats for the butterfly. The larvae feed on only one plant, wild blue lupine. Adults require nectar sources to survive and provide energy to lay sufficient eggs for the next generation. Because these habitat components can be lost to succession, KBB persistence is dependent on disturbance and/or management to renew existing habitat or to create new habitats. KBBs are present year-round within their habitat whether as eggs, larvae, pupae, or adults. Therefore, any activities within occupied habitat will cause impacts to the species. Presently, the KBB occupies

remnant savanna/barrens habitat and other sites that historically supported these habitats, such as silvicultural tracts (*e.g.* young pine stands), rights-of-way, airports, military bases, and utility corridors.

Data collected by the National Grid in 2015 indicate that KBB are known throughout the right-of-way easement adjacent to where the Company proposes development. Although the NYSDEC elected to not require a State permit, the Service disagreed with their conclusion that take is unlikely. Because of the close proximity of known occupied habitat to all areas where the covered activities are to occur, the Service has determined that all suitable habitat in this area is occupied by KBB and that take of this species through direct mortality of adults, larvae, pupae or eggs are likely to occur.

Surveys were conducted for this proposed project to determine specifically where wild blue lupine is present within the parcel proposed for development. Suitable habitat was not observed within the northern parcel. However, suitable habitat containing wild blue lupine exists on both the National Grid easement and the southern parcel. Construction of the gravel access road is expected to affect a 0.10-acre portion of the easement. Within the National Grid easement, adjacent to the Company parcels, there are approximately 5.1 acres of habitat containing small amounts of wild blue lupine and various grasses and nectar plants. The specific area around the proposed access road currently supports a dense growth of relatively tall herbaceous and woody vegetation. Wild blue lupine was observed in the proposed access road location on June 5, 2015. Recent field studies indicate that KBBs were present in the National Grid easement west of the proposed gravel access road (O'Brien 2015 pers. comm.). Wild blue lupine plants have also been observed immediately adjacent to the proposed gravel access road, although no dates were provided for these observations (O'Brien 2015 per. comm.).

The KBB habitat, although somewhat degraded due to a lack of management, also exists on the southern parcel, specifically in the two NYSDEC management areas. Management Area 1 is 1.70 acres in the southern portion of the southern parcel on either side of the Company's main driveway off Grande Industrial Park. Management Area 2 is 1.44 acres along the western boundary of the southern parcel within another National Grid easement. Both management areas within the southern parcel have historically contained wild blue lupine plants, and were established by the NYSDEC to protect KBB habitat. No proposed construction work is to be done on this part of the project site; however, adverse impacts will occur in the occupied habitat in the management areas from periodic mowing as part of the Company's plan to enhance KBB habitat.

**Biological goals and objectives for covered species:** The biological goals and objectives can be found in section VI: Conservation Program, of the HCP. The overarching goal is to complement existing conservation efforts in NY for the KBB. Specific goals/objectives of the HCP include the Company's commitment to enhance suitable habitat for this species on the management areas (southern parcel) and a portion of the National Grid easement (northern parcel) (4.81 acres total) in the southern parcel. As stated earlier, the management areas are not mitigation lands for other projects, including this project. The Company has agreed to manage these lands for a duration of 10 years since there has been a lack of continual management in the past. These enhancements will provide a net benefit to KBB above the mitigation commitment (*e.g.*, the replacement of

0.10 acre of KBB habitat.). The Company will also create new habitat (0.10 acre) within the the National Grid right-of-way as mitigation for taking 0.10 acre area containing suitable KBB habitat.

**Land and benefitting management activities (including avoidance, minimization and mitigation measures):** The only aspects of the proposed project likely to adversely impact KBB and their habitat are construction of the access road and the periodic mowing of the management areas to enhance KBB habitat. The clearing and construction of the access road will result in the permanent loss of 0.10 acre of KBB habitat. In addition, construction and habitat enhancement mitigation activities may result in killing (*e.g.*, crushing) KBB eggs, larvae, pupae, and/or adults. As part of the conservation plan, the Company will implement several avoidance, minimization, and mitigation measures.

As stated in the draft HCP, to avoid take of KBB in the NYSDEC management areas, the Company will institute measures to prevent any future vehicle encroachment into the Management Areas on this parcel, especially around the existing parking areas. The Company will also restore the existing encroachment and prevent further encroachment into Management Area 2 from the access road west of the main warehouse building in the vicinity of the existing gas pumps. To achieve these ends, the Company will:

- Install signage on the approaches of the access road to prohibit parking off of the road to avoid future encroachments;
- Remove accumulated sand and stone from the edge of the existing driveway to 4 feet into the vegetated management areas;
- Place a barrier of either continuous guardrail or intermittent concrete jersey barriers along the western edge of the existing driveway where it encroaches into the management areas;
- Install management area signage immediately behind barriers; and
- Remediate the existing encroachment into Management Area 2 and prevent further encroachment near the trailer parking area in the northwest corner of the original lands by:
  - Pulling back the upper loose sand and stone down onto the cut bank;
  - Grading the existing exposed bank to a gentler slope and stabilize the slope;
  - Installing Management Area signage on metal posts at the toe of the regraded slope; and
  - Installing additional signage on the approaches to the permit area stating that driving and parking off the gravel drive is prohibited.

To minimize the likelihood of take of KBB associated with construction and operation of the new access road, the Company selected this specific site partly due to the sparse presence of wild blue lupine. The Company will install silt fence along the construction zone to minimize trampling of plants that may be in close proximity. In addition, the Company will enhance suitable habitat for this species on the southern parcel by mowing the two NYSDEC Management Areas (3.14 acres) and the 1.67-acre portion of the National Grid easement on the northern parcel that extends west from the eastern property line to a point where the right-of-way reaches the west boundary of the original lands. The time of year when mowing is expected to

occur is between September 1 and March 31, when take of KBB is likely to be lowest and wild blue lupine has senesced. Mowing will be performed after the permit is issued (year 1) and then additional mowings will occur in years 4, 7, and 10, after the Incidental Take Permit is issued. As part of the mitigation commitment, the Company will purchase the necessary mowing equipment for the purpose of maintaining KBB habitat in these areas. Mowing height will be at a minimum of 6 inches off the ground. In total, 4.81 acres of habitat will be enhanced through mowing four times over the course of the permit term.

To mitigate the impacts to KBB due to the loss of 0.10 acre of occupied KBB habitat, the Company will create and maintain 0.10 acre of new and permanent KBB habitat on the easement area to offset the area of permanent loss. The Company will scarify a 0.10 acre area down to mineral soil and seed the area with wild blue lupine and a blend of other native nectar plant seeds. An area approximately 110 feet by 40 feet located between the National Grid poles 725 and 726 was identified as a preferred area for seeding by NYSDEC in conjunction with discussions with the Service, the National Grid, and the Company. The habitat enhancement mowing (described above) will be expanded to include this newly created habitat area in years 4, 7, and 10. The year 1 habitat enhancement mowing will exclude the seeding area to avoid physical damage to the newly germinating plants.

**Monitoring (include timing):** The HCP includes vegetation monitoring of the National Grid easement mowing area and the seeded area. To monitor the success of the mowing regime, the Company will perform annual measurements of vegetation height at six locations within the portion of the National Grid easement on its property between the eastern property boundary and the western boundary of the southern parcel. In September of each year, prior to a killing frost, maximum plant height within each plot will be measured and recorded. Average plant height will be visually estimated and recorded. Plant height information collected in the first year shall be collected prior to the first mowing of the easement to document the baseline condition.

To monitor success of the seeded area, the 0.10 acre area to be planted with wild blue lupine and nectar plants will be monitored on an annual basis for plant growth. Four 2-foot by 2-foot plots will be established using stakes shorter than 6 inches above the ground surface at various distances from the northern easement tree line. Counts of wild blue lupine plants within the four plots will be taken in June of each year along with a visual estimate of percent coverage of wild blue lupine within each plot. Results of this lupine growth monitoring will be reported along with the plant height.

As part of a separate HCP, the National Grid is required to monitor the status of KBBs, including the easement through the Company lands. Monitoring of KBBs is performed by the National Grid every other year, and results of this monitoring are provided to the Service. Because the National Grid is conducting monitoring of KBB on their easement lands, the Company will not be conducting additional monitoring. Monitoring of KBB in the NYSDEC management areas will be conducted by the NYSDEC.

The Company will monitor the success of the mowing regime by measuring plant height within fixed plots, as stated above. In addition, in the 0.10 acre planted area of wild blue lupine, lupine plants will be counted and percent coverage of lupine will be estimated on an annual basis.

These data will help demonstrate whether the treatments are successful at recruiting additional KBB to these sites. Monitoring results will be compiled and submitted in an annual letter report to the Service by December 31 of each year.

## **II. Does the HCP fit the following low-effect criteria?**

- A. Are the effects of the HCP minor or negligible on federally listed and proposed species and candidate species and their habitats covered under the HCP?** Yes. The only federally-listed species covered by the proposed HCP is the KBB, and the effects of the HCP on this species and its habitat are minor. The KBB spans a range that currently includes a number of small populations across 7 states. The effects of the HCP include a small amount of take of KBB in the form of killing (*e.g.*, crushing) of eggs, larvae, pupae, and/or adults across a total of 0.10 acre of degraded habitat.

To mitigate the loss of the KBB in the 0.10 acre, The Company will plant 0.10 acres of high quality KBB habitat away from the access road in an area near existing occupied habitat, which is anticipated to fully offset the loss. In addition, the enhancement measures of mowing within the National Grid right-of-way and NYSDEC management areas are expected to result in a net benefit to KBB after the 10 year time period.

The requested permit duration is 10 years; however, the impacts to KBB will not be continuous during this time. The installation of the gravel access road will be permanent in nature and occur one time. This impact will result in 0.10 acre of habitat destruction and killing (*e.g.*, crushing) of eggs, larvae, pupae, and/or adults that occur on those plants. Given the small size of habitat that will be removed and the low traffic (*vs.* public roads), KBB are still expected to cross the driveway from patches of habitat on either side. The remainder of the permit term will involve implementation of habitat enhancement/restoration for KBBs. This will result in a net habitat benefit, but will require maintenance during years 1, 4, 7, and 10, which will result in some additional take of eggs, larvae, pupae, and/or adults.

Incidental take of KBB from this project will be attributable to clearing and construction of the access road and implementation of the habitat enhancement mitigation. Construction activities will remove habitat and in doing so may take eggs, larvae, pupae, and/or adults depending on when construction begins. For habitat management, take of KBB is likely to be in the form of killing (*e.g.*, crushing) of eggs. Take will generally be limited to this life stage because the primary vegetation management will be restricted to September through March when KBB are overwintering as eggs close to or near the ground. As previously explained, the associated construction of a parking area and building infrastructure are not anticipated to impact KBB or their habitat.

It is difficult to quantify the total amount of take of KBB that may result from these activities. Typically, it is not possible to accurately predict the loss of individual KBB resulting from such activities. For example, locations and the number of individuals, particularly in the egg and larval stages, are usually unknown. Therefore, for the purposes of this HCP, we use habitat as a surrogate for KBB and all KBBs present within that habitat is anticipated to be impacted.

For the construction, take will result from the installation of the gravel access road. As stated above, this activity may result in death (*i.e.*, crushing) of take eggs, larvae, pupae or adults within 0.10 acres of habitat depending on when construction begins and this habitat will be permanently lost to the local population.

For habitat management, take of KBB is likely to be in the form of death (*i.e.*, crushing) of the eggs within 4.91 acres of habitat.

In summary, the anticipated amount of take of KBB from this project is 0.10 acre of permanent loss of marginal quality but occupied habitat, and temporary, periodic impacts to 4.81 acres for habitat maintenance. As described above, this maintenance will occur during years 1, 4, 7 and 10. Afterward, the National Grid will assume maintenance according to their mowing schedule and as specified in their HCP and ITP. As stated previously, this habitat maintenance will result in higher quality habitat available to the KBB, providing an overall net benefit to the species.

- B. Are the effects of the HCP minor or negligible on other environmental values or resources (e.g., air quality, geology and soils, water quality and quantity, socioeconomic, cultural resources, recreation, visual resources) prior to implementation of the minimization and mitigation measures?** Yes. The effects of the proposed project are related to construction of the 0.10 acre access road, a parking area, and building infrastructure on one of the Company's parcels. The Company facility is situated in an industrial complex that has experienced periodic landscape disturbance. None of the construction that will occur will affect the underlying nature or function of the surrounding areas. There are no anticipated impacts to cultural resources, recreation, or visual resources based on the geographic location of the project, as well as the nature of the project itself. There are no wetlands or streams that will be directly affected by the project or indirectly affected as a result of stormwater runoff. It is anticipated that there will be low-level noise and emission impacts, but these are considered negligible given the nature of the construction and short-term duration of the project, and levels are not anticipated to exceed daily levels currently found on the industrial complex.
- C. Would the impacts of this HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects not result, over time, in cumulative effects to environmental values or**

**resources that would be considered significant?** Yes. The impacts of this HCP, along with other similarly situated projects, will not result in cumulative effects to the KBB or other resources. This project includes the installation of an access road across the National Grid right-of-way, resulting in minimal impacts. In the state of New York, only two HCPs have been completed prior to this one. The first was the NiSource HCP, which was a large, linear pipeline project crossing several states, a portion of which passed through New York, and which bears little similarity to this HCP. The other HCP was for National Grid, permitted in 2012, and involved activities within their rights-of-way. The proposed project covered by this “low-effect” HCP actually crosses the right-of-way covered by National Grid’s HCP. It is reasonable to anticipate that a small number of future projects may also need to cross National Grid’s rights-of-way in order to access private or commercial property. These or other future projects that are similar in scope and scale are expected to result in minor or negligible impacts to KBB or its habitat. These past, present, and reasonably foreseeable similarly situated projects are not expected to result in significant cumulative impacts to environmental values or resources.

**III. Do any of the exceptions to categorical exclusions apply to this HCP? (form 516 DM 2.3, Appendix 2)**

**Would implementation of the HCP:**

**A. Have significant adverse effects on public health or safety?** No. The installation of the access road, tractor trailer parking lot, and building will be constructed using established methods and will not pose a threat to public health or safety. A wire sag survey was conducted by National Grid to make sure that future traffic (*i.e.*, construction equipment, tractor trailer trucks) utilizing the proposed access road would not come into contact with any power lines. National Grid assisted the Company in choosing the most appropriate location for the access road to ensure public safety. The gravel access road is not intended for general public use; it will be for private use by the Company only.

**B. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation, or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department’s National Register of Natural Landmarks?** No. The proposed project is within an industrial complex. The impact area containing KBB habitat has been previously disturbed due to the installation of power lines and subsequent maintenance activities along the National Grid right-of-way. The 8 acre parcel that has been cleared to construct the tractor trailer parking lot was a dense upland woodlot that is bordered to the north by Rowland Hollow Creek, a NYSDEC classified C(T) stream (meaning it supports a trout population) surrounded by forested wetland, but this area will not be disturbed (directly or indirectly).

**C. Have highly controversial environmental effects?** No. The project site is within an industrial complex, and the proposed project consists of constructing a parking lot and building (future phase of the project). There are no construction methods or proposed activities planned by the project proponent that should cause any controversies.

**D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?** No. The Company has a long history of handling chemicals; however, this project expands the existing facility and parking. No new types of potential effects are anticipated. No uncertain or significant environmental effects are anticipated, based on the small area (0.10 acre) of KBB habitat that will be permanently affected, as well as the areas (4.81 acres) to be mowed to enhance/restore habitat for this species. In addition, standard construction methods are proposed and no experimental construction practices or building designs are planned.

**E. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?** No. The project, as described, will not result in significant environmental effects and therefore is not precedent setting for future actions with potentially significant environmental effects. The proposed gravel access road will cross a National Grid easement that is currently covered by a HCP for take of KBBs for National Grid activities along its rights-of-way. The Company is replanting wild blue lupine within the easement to ensure the National Grid HCP KBB baseline is maintained. Because National Grid cannot lawfully prevent the Company from accessing its own land, they granted the Company right of access across its right-of-way. However, under the terms of National Grid's ITP, they must maintain 34 acres of KBB habitat within their right-of-way. Since the covered activities of the Company's HCP are likely to result in a decrease of 0.10 acres of KBB habitat, the Company has agreed to the above-described minimization and mitigation measures to ensure that they mitigate for take of KBB resulting from their own activities and also do not compromise National Grid's ability to comply with their own ITP.

**F. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?** No. While the project is located within an industrial complex with patches of forest, there is no other planned project that the Service is aware of that would create cumulative significant environmental effects within the area.

**G. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?** No. The Service consulted with the New York State Office of Parks, Recreation and Historic Preservation and on June 3, 2016, received a determination that this project will not adversely impact properties listed or eligible for listing on the National Register of Historic.

**H. Have adverse effects on listed or proposed species, or have adverse effects on designated Critical Habitat for these species?** No. The only other federally-listed species that could occur within or adjacent to the project area is the northern long-eared bat (NLEB). NLEB may be present during the bat active season, which is between April and September, when they may be utilizing live, dead, or dying trees of various species that have sloughing or peeling bark, snags, and/or cavities (Carter and Feldhamer 2005; Lacki *et al.* 2009). During the winter months, NLEB are hibernating in caves, mines, or man-made structures. No impacts to NLEB are anticipated because trees were already felled during winter 2014/2015 when bats were in hibernation. There is no designated critical habitat for KBBs or NLEB.

**I. Have adverse effects on wetlands, floodplains, or be considered a water development project thus requiring compliance with either Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of wetlands, or the Fish and Wildlife Coordination Act)?** No. The project will not affect any wetlands or floodplains because there are no wetlands within or adjacent to the proposed project site. Rowland Hollow Creek which flows into Geysers Brook is to the north of the proposed project site. The Company is maintaining a forested buffer between 100-200 feet between the proposed project and the creek. Therefore, neither wetlands nor floodplain will be adversely affected by this project. This project consists of the development of 8 acres of inland habitat and is not a water development project.

**J. Threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment?** No. We are unaware of any potential violations of environmental laws.

#### **ENVIRONMENTAL ACTION STATEMENT:**

Based on the analysis above, the Slack Chemical Company qualifies for a low-effect HCP and is therefore eligible for a categorical exclusion under the National Environmental Policy Act.

The Department of the Interior regulations implementing NEPA reiterate the rules promulgated by CEQ with respect to categorical exclusions (73 Fed. Reg. 61292, 61305 (October 15, 2008)). Under the DOI regulations, “Categorical exclusion means a category or kind of action that has no significant or cumulative effect on the quality of the human environment” (43 CFR 46.205 (citing the CEQ regulations at 40 CFR 1508.4)). The DOI lists agency actions subject to categorical exclusions at 43 CFR 46.210. But the preamble to the regulations also note that individual bureaus of the Department (*e.g.*, the USFWS), maintain their own lists of categorically excluded activities (73 Fed. Reg. 61292, 61304-05 (October 15, 2008)). The regulations explain that where an action is covered by a categorical exclusion, the bureau is not required to prepare an environmental assessment or an environmental impact statement. It also states that

“[a]ny action that is normally excluded must be evaluated to determine whether it meets any of the extraordinary circumstances listed in Section 46.215; if it does, further analysis and environmental documents must be prepared for the action (43 CFR 46.205(c)(1).”

A categorical exclusion applies here. The DOI Manual includes a chapter regarding the USFWS' NEPA procedures. This includes a listing of USFWS-specific categorical exclusions (516 DM 8.5). Section 8.5(C)(1) of Chapter 516 designates the following as categorically excluded:

C. Permit and Regulatory Functions.

- (2) The issuance of ESA section 10(a)(1)(B) "low effect" incidental take permits that, individually or cumulatively, have minor or negligible effect on species covered in the habitat conservation plan.

As described above, the Service finds that this HCP will pose negligible effects to the human environment, including the species that is the subject of the plan. We also have not found any extraordinary circumstances that would require the preparation of an environmental assessment or environmental impact statement. Therefore, this action is categorically excluded from further National Environmental Policy Act documentation as provided by 516 DM 8.5(C)(5).

Concurrence:

---

Field Supervisor

---

Date

**Other supporting documents:**

Carter, T.C. and G.A. Feldhamer. 2005. Roost tree use by maternity colonies of Indiana bats and northern long-eared bats in southern Illinois. *Forest Ecology and Management*. 219: 259-268.

Chazen Engineering, Land Surveying and Landscape Architecture Co., P.C. [Chazen]. 2012. Habitat Conservation Plan for the Karner blue butterfly and frosted elfin in support of an FWS Incidental Take Permit for National Grid's New York-North Utility activities. Glens Falls, NY. March 8, 2012. 116 pp.

Gifford, N.A. 2016. Fish and wildlife permit report: report of 2015 activities. Submitted to the New York State Department of Environmental Conservation Division of Fish, Wildlife and Marine Resources Wildlife Diversity Unit and the U.S. Fish and Wildlife Service. May 5, 2016. U.S. Fish and Wildlife Service Permit No. TE-697823. 8 pp.

Lacki, M.J., D.R. Cox, and M.B. Dickinson. 2009. Meta-analysis of summer roosting characteristics of two species of *Myotis* bats. *American Midland Naturalist*. 162: 318-326.

The L.A. Group, P.C. 2015. Final draft low-effect Habitat Conservation Plan in support of a FWS Incidental Take Permit for Slack Chemical Company, Grande Industrial Park, Saratoga Springs, NY. August 28, 2015. 60 pp.

U.S. Fish and Wildlife Service [Service]. 2003. Karner blue butterfly recovery plan (*Lycaeides melissa samuelis*). Department of Interior, U.S. Fish and Wildlife Service, Great Lakes-Big Rivers Region (Region 3), Fort Snelling, MN. August 25, 2003. 293 pp.

U.S. Fish and Wildlife Service [Service]. 2012. Final Karner blue butterfly (*Lycaeides melissa samuelis*) 5-Year Review: summary and review. U.S. Fish and Wildlife Service, Ecological Services Field Office, New Franken, WI. September 17, 2012. 129 pp.