

DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE  
10711 BURNET ROAD, SUITE 200  
AUSTIN, TEXAS 78758

**FINDING OF NO SIGNIFICANT IMPACT**

ISSUANCE OF A SECTION 10(a)(1)(B) PERMIT FOR THE INCIDENTAL TAKE OF THE  
BLACK-CAPPED VIREO (*Vireo atricapilla*) TO HEART OF TEXAS WIND, LLC  
RESULTING FROM CONSTRUCTION, OPERATION, AND MAINTENANCE OF A NEW  
WIND FARM, AND ACTIVITIES NECESSARY TO MANAGE POTENTIAL HABITAT  
FOR THE COVERED SPECIES WITHIN THE PLAN AREA IN TEXAS

Heart of Texas Wind, LLC (Applicant) has voluntarily applied for a section 10(a)(1)(B) permit pursuant to the Endangered Species Act (Act). An environmental assessment (EA) and habitat conservation plan (HCP) have been prepared for the issuance of a section 10(a)(1)(B) permit for the incidental take of the federally listed black-capped vireo (*Vireo atricapilla*) resulting from including clearing for construction of 63 wind turbine pads, installation of 63 wind turbines, access roads adjacent to the 63 wind turbines, underground medium voltage collection cables (MV collection cables), a substation, overhead high voltage transmission line, and other necessary infrastructure; ongoing operations and maintenance of 63 wind turbines within the proposed Project; and activities necessary to manage potential habitat for the covered species within the 10,808 acre plan area in central McCulloch County, Texas. It is anticipated that up to 1,289.46 acres of black-capped vireo habitat may be taken as a result of actions proposed within the HCP over the anticipated 30 year life of the permit. This action will provide for the permanent preservation and management of 564.45 acres of occupied black-capped vireo habitat.

The Applicant moved forward with work on seven wind turbines prior to the public comment period for the HCP and EA. The Applicant cleared and excavated seven pad sites and improved the access roads to these wind turbine pad sites. The Service was made aware of this activity as a result of letters received during the public comment period. Figure 3 in the EA shows the seven wind turbine sites and associated improved access roads. These seven wind turbine sites have been removed from the incidental take permit.

Preferred Alternative

The proposed action includes the issuance of a permit under section 10(a)(1)(B) of the Act. The permit will authorize incidental take of the affected species caused by construction of 63 wind turbines, operation and maintenance of 70 wind turbines, and activities necessary to manage potential habitat for the covered species within the plan area. It is anticipated that up to 1,289.46 acres of black-capped vireo habitat may be taken as a result of actions proposed within the HCP over the anticipated 30 year life of the permit.

A conservation plan has been developed to address the incidental take of black-capped vireos. This plan will mitigate for the effects of the Applicant's actions to the maximum extent practicable and includes the following features:

- Micrositing the placement of each proposed turbine and other project-related infrastructure to minimize take of the BCVI (section 6.2.1 of the HCP).
- Observing seasonal clearing restrictions, except in emergency situations, in areas of suitable BCVI habitat so that habitat is only removed during the non-breeding season between September 1 and March 14 (section 6.2.2 and 6.2.4 of the HCP).
- Initiating all clearing between September 1 and March 1 to minimize potential harassment of BCVI that may return to nesting habitat within the project area early.
- Observing speed limits of 20 miles per hour (mph) in areas of suitable BCVI habitat during the BCVI breeding season between March 15 and August 31.
- Allowing approximately 91.86 acres of BCVI habitat removed during construction to regrow where further vegetation or ground disturbance during operation of the facility is not necessary (section 6.2.3 of the HCP).
- Treating Red Imported Fire Ant (RIFA) mounds within the BCVI habitat restoration areas on a quarterly basis for one year following construction.
- The Applicant will treat individual RIFA mounds with a selective fire ant bait insecticide that is labeled for use in agricultural sites (section 6.2.3 of the HCP).
- Using best practices for restoring disturbed vegetation and soils, including (section 6.2.3 of the HCP):
  - removing temporary structures and materials, such as site trailers, pad base, and underground cables;
  - ripping soils compacted by vehicles and equipment with a grader and tractor;
  - replacing stored top soils onto de-compacted areas;
  - broadcast seeding, hydromulching, or drill seeding (as appropriate based on soil type) grasses over restoration areas;
  - using follow up inspections to confirm compliance with restoration specifications, that typically include 70% seed growth after 2 weeks; and
  - utilizing a punch-list rework to address any areas that do not meet specification.
- Restricting non-emergency maintenance and repair activities that involve heavy equipment or large vehicles within 300 feet of BCVI habitat to the non-breeding season between September 1 and March 14 (section 6.2.4 of the HCP).
- Training project-related personnel prior to their start of work in the plan area to be aware of and properly implement HCP-required restrictions and other conservation measures (section 6.2.5 of the HCP).
- Providing approximately 564.45 acres of permanent BCVI conservation prior to the initiation of covered activities (section 6.3 of the HCP).
- Monitoring and Adaptive Management (section 6.4 of the HCP):
  - The Applicant will monitor the amount of BCVI habitat that is impacted during construction and include the amount in the annual report to the Service.
  - The Applicant will evaluate BCVI habitat conditions during the fifth year following implementation of the post-construction habitat restoration measures. The habitat evaluation will determine whether or not restored conditions meet the definition of suitable BCVI habitat described in

Campbell (2003). Results of the habitat evaluation will be included in the annual report to the Service.

- The mitigation site will be monitored and adaptively managed in accordance with the management plan for the site either by the Applicant or by a third party depending on the mitigation option chosen.
- Reporting (section 7.0 of the HCP):
  - The Applicant will submit an annual report on February 28 of each calendar year to the Austin Ecological Services Field Office (Austin ESFO). The annual report will document the implementation of covered activities, the outcome of monitoring activities, and any measures taken in response to changed circumstances during the preceding calendar year.
  - The Applicant will notify the Austin ESFO of the initiation of covered activities at least 10 business days prior to the start of work. The notification will include confirmation that:
    - final construction plans are consistent with the take assessment in Section 5 of the HCP;
    - the Applicant has implemented the required contractor training;
    - the Applicant has secured permanent conservation for the BCVI in the amount specified in Section 6.3 of the HCP; and
    - the Applicant remains committed to implement all other avoidance and minimization measures specified in the HCP.

### Other Alternatives Considered

No Action Alternative. The No Action Alternative would result in a decision by the USFWS not to issue an incidental take permit for take associated with the proposed project. The existing disturbance to seven wind turbine pad sites and associated roadways would remain. The result could be that the remaining 63 wind turbines of the Heart of Texas wind project would not be constructed, or the Applicant would modify the project design to avoid all activities that cause take of listed species. A modified project design would not meet the need of the Applicant.

### Background and Public Participation

A Notice of Availability of the draft EA, draft HCP, and permit application, was published in the *Federal Register* on March 27, 2017 (78 FR 23780). The public comment period closed April 26, 2017. The Notice of Availability was posted to the Service's Austin Ecological Services Office website (<http://www.fws.gov/southwest/es/AustinTexas/>).

We received two comment letters via electronic mail, both from private citizens. Both comment letters indicated that clearing had already begun for the proposed Project. One of the letters indicated they represented a group opposed to the project, Citizens Opposed to Wind Energy on Brady Mountains. As a result of the information presented in the letters, and subsequent information provided by the applicant, the Service has removed the seven wind turbines and the associated roadways from the covered activities under the permit. A summary of the comments we received and how we addressed them is included in Appendix A in the EA.

## Determination

Significantly, as used in NEPA, requires considerations of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. The HCP area (i.e., area subjected to effects resulting from the proposed action) is limited to the State of Texas, and covers less than 1 percent (16.887 square miles) of the State of Texas (268,597 square miles); therefore, the context of the impacts (both negative and beneficial) are considered negligible for the State and the remainder of the Nation.

Intensity refers to the severity of the impacts. We have considered the following regulatory factors in evaluating intensity.

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The EA has indicated that approximately 130 acres of adverse long-term impacts to vegetation; wildlife; listed, proposed, and candidate species; or wetlands are expected to result from the proposed action. However, long-term beneficial impacts to vegetation; wildlife; listed, proposed and candidate species; and wetlands within the mitigation site are anticipated. Based on the size of the HCP area these impacts are insignificant.

No adverse or beneficial impacts to cultural resources, socioeconomic environment, land use, or water resources are expected to result from the proposed action.

(2) The degree to which the proposed action affects public health or safety.  
No effects to public health or safety are expected to result from the proposed action.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

No adverse long-term impacts to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas are expected to result from the proposed action.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

We received two public comments during the public comment period. One of the letters indicated they represented a group opposed to the project, Citizens Opposed to Wind Energy on Brady Mountains. This group may consider the project and any effects to be controversial to the public.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The effects of removal of BCVI nesting habitat for construction of a new wind project are not highly uncertain. None of the effects in the EA involve unique or unknown risks. We reach this

conclusion because the Service has permitted many other activities that include removal of BCVI nesting habitat. Many of the effects and conservation measures in this EA are similar to, or the same as, the conservation measures in those other EAs.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

Future actions would be reviewed on their own merits. Thus, the proposed HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

As described in the HCP the proposed Heart of Texas project is not directly related to any other action.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

The EA has indicated that no adverse impacts to districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places; or, significant scientific, cultural, or historical resources are expected to result from the proposed action.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

The EA has indicated that approximately 725 acres of suitable BCVI habitat will be directly and indirectly adversely affected. Permanent conservation of approximately 565 acres of BCVI habitat will occur as a result of the proposed action.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The HCP and requested ITP would provide exceptions to the prohibitions of take of the BCVI that may result from specific otherwise lawful activities. The issuance of an ITP does not violate applicable Federal, State, or local law or requirements imposed for the protection of the environment.

Based on information in the EA and HCP and supporting data in Service files, we have determined that issuance of this ITP is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted. Therefore, the Service has made a finding of no significant impact as allowed by NEPA regulation and supported by Council on Environmental Quality guidance.

It is my decision to issue the section 10(a)(1)(B) permit for the construction, operation, and maintenance of the Heart of Texas wind project, and activities necessary to manage potential habitat for the covered species within the 10,808 acre plan area in central McCulloch County, Texas.



Ted Koch  
Assistant Regional Director  
Southwest Region

6/19/17  
Date