

**FINDINGS AND RECOMMENDATIONS FOR ISSUANCE OF AN ESA
SECTION 10(a)(1)(B) INCIDENTAL TAKE PERMIT (TE27275A-0) FOR THE
BENTON COUNTY, OREGON
PRAIRIE SPECIES HABITAT CONSERVATION PLAN**

I. DESCRIPTION OF THE PROPOSED ACTION

A. Introduction

The Fish and Wildlife Service (Service) proposes to issue an Incidental Take Permit (Permit) to Benton County, Oregon (County) under the authority of section 10(a)(1)(B) and section 10(a)(2) of the Endangered Species Act of 1973, as amended (ESA). Under the Permit, the County would receive a 50-year incidental take authorization for certain covered activities and covered species, as identified in their Prairie Species Habitat Conservation Plan (Plan) (Benton County 2010). The County has also submitted the Plan to the Oregon Department of Agriculture because state law requires all non-Federal public land owners to obtain a state permit when conducting activities that may harm threatened or endangered plants.

The County is seeking authorization to issue Certificates of Inclusion to: (1) persons requiring a County permit or agricultural-building authorization and (2) Cooperators, including select non-federal public agencies, two utility companies, and a conservation organization. Cooperators will also be required to enter into a Cooperative Agreement with the County; this agreement sets forth the responsibilities of the parties with respect to minimization and mitigation measures.

Documents used in the preparation of this statement of Findings and Recommendations include the Service's biological opinion on the permit application (Service 2010), and the above referenced Plan. Both of these documents are incorporated by reference as described in 40 § CFR1508.13. The Service has determined that activities conducted in compliance with the incidental take permit are not likely to jeopardize the continued existence of the covered species. This document presents the Service's analysis and findings regarding whether the Plan meets the incidental take permit issuance criteria described in section 10(a)(2)(B) of the ESA.

B. Covered Species and Covered Lands

The County is requesting a Permit for the incidental take of the following federally and state-listed, and candidate species: the Fender's blue butterfly (*Icaricia icarioides fenderi*), Taylor's checkerspot butterfly (*Euphydryas editha taylori*), Willamette daisy (*Erigeron decumbens* var. *decumbens*), peacock larkspur (*Delphinium pavonaceum*), Kincaid's lupine (*Lupinus sulphureus* ssp. *kincaidii*), Nelson's checkermallow (*Sidalcea nelsoniana*) and Bradshaw's lomatium (*Lomatium bradshawii*) (collectively, "Covered Species"). The seven species covered under the Plan exclusively occupy prairie habitats.

All Covered Species are covered on lands owned and/or managed by Benton County within the Plan Area (described in Chapter 3 of the Plan). The Fender's blue butterfly and the five plant species are also covered on land owned or managed by the City of Corvallis, Oregon State University, and the Oregon Department of Transportation. The Fender's blue butterfly is also covered on privately-owned lands. The Plan covers the Taylor's checkerspot butterfly, currently a candidate species, only on land owned by Benton County. Although Federal prohibitions against taking listed plants on private lands are more limited than take prohibitions for listed wildlife, the County's Plan provides for the minimization and mitigation of impacts to the five covered plant species caused by covered activities on non-Federal public lands, and therefore, they will receive "no surprises" assurances under the Service's regulations [50 CFR 7.22(b)(5)] for the covered plant species if the Service determines the Plan is adequate in that regard.

Specific lands to be included within the Plan (i.e., Covered Lands) are described in detail in Chapter 3 of the Plan. The Covered Lands are the areas for which Benton County is requesting authorization from the Service for activities and projects that may result in incidental take of the Covered Species. Not all lands within Benton County are included within the Covered Lands and Federal lands are not covered. The Plan includes the following two planning units:

(1) Planning Unit One includes roughly 4,734 hectares (ha) (11,700 acres (ac)) of lands and rights-of-way providing prairie habitat within Benton County. These lands are owned and/or managed by the following non-Federal public agencies and conservation organizations: Benton County, City of Corvallis, Oregon Department of Transportation, Oregon State University, and the Greenbelt Land Trust.

(2) Planning Unit Two is potential Fender's blue butterfly habitat under private ownership located outside city limits in Benton County. The "Fender's Blue Zone" is the term used to define the area that reflects the best assessment of where Fender's blue butterfly populations occur within Benton County. As of 2007, approximately 128,514 ha (317,566 ac) of land within Benton County were under private ownership. Of this amount, 127,978 ha (316,242 ac) are located outside the city limits of Corvallis, Philomath, Monroe, Adair Village, and North Albany. Based on the current best available information (including approximately 4,010 ha [9,910 ac] of habitat surveys) describing current Fender's blue butterfly locations, an estimated 2,917 ha (7,208 ac) of this land (excluding Greenbelt Land Trust property included in Planning Unit One) is potential habitat for the Fender's blue butterfly and is included in Planning Unit Two.

C. Types of Covered Activities

The activities proposed to be covered under the Permit are the otherwise lawful activities that are described in detail in Chapter 4 of the Plan. Covered Activities include:

1. Ground-disturbing activities necessary to allow home, farm and forest construction;
2. Management of public and conservation organization lands; and
3. Activities providing essential public services in the County (*e.g.*, transportation and water system management, and utilities construction and maintenance).

Table I-1 of the Service's biological opinion provides a list of Covered Activities and shows which of the Plan Cooperators are seeking coverage for each Covered Activity. Specific activities include: Home, Farm and Forest Construction on private lands, County construction Permits and Agricultural Building Authorizations, Public Service Facility Construction, Transportation Activities and Authorized Work in Rights-of-Way, Utility Construction and Maintenance (including natural gas and telephone), Water and Wastewater Management, Parks/Natural Areas/Open Space Management, Agriculture on City of Corvallis Land, Plan Implementation Activities, and Emergency Response Activities (collectively, "Covered Activities").

Several of the activities covered by the Plan are similar in nature. For purposes of analyzing impacts in the Service's biological opinion (Service 2010), the Covered Activities were combined into the following categories:

1. Building Construction Activities. These are activities under Home, Farm, and Forest Construction, Benton County Permits and Authorizations (construction aspects), and Public Service Facility Construction.
2. Linear Projects. These include activities under Transportation Activities and Authorized Work in Rights-of-Way, Benton County Permits and Authorizations (utility and road project aspects), Utility Construction and Maintenance and Water and Wastewater Management.
3. Habitat Restoration, Enhancement, and Management Activities. These include activities under Parks/Natural Areas/Open Space Management, and Plan Implementation Activities.

The County has designated roadside areas supporting Covered Species as Special Management Areas (SMAs). The County has further categorized each SMA as either a Type 1 or Type 2 SMA based upon size, connectivity potential, and quality of associated vegetation (see Section 5.2.3.0 of the Plan for details). Within Type 1 rights-of-way, no take of the Covered Species would be allowed, whereas within Type 2 rights-of-way, take would be allowed.

D. Proposed Impacts

For the Fender's blue butterfly, effects caused by Covered Activities are quantified based on impacts to two components of butterfly habitat: Kincaid's lupine and nectar plants; see the Plan for detailed descriptions of the methods used to determine the extent of suitable habitat and to predict effects to Fender's blue butterflies.

Effects to the Taylor's checkerspot butterfly were quantified on the basis of area of known occupied habitat (nectar plants and host plants) affected.

Effects to plants are quantified on the basis of square meters of foliar cover impacted for Kincaid's lupine, and on the basis of individual plants affected for all other covered plant species.

In the biological opinion (Service 2010) the Service analyzed the effects of Covered Activities to designated critical habitat for the Fender's blue butterfly, Willamette daisy, and Kincaid's lupine by evaluating the change in the primary constituent elements caused by the activities covered in the Plan.

Total permanent impacts, or take, requested for the 50-year permit term, for each of the Covered Species is as follows: two Bradshaw's lomatium plants, one Willamette daisy plant, 56 peacock larkspur plants, 222 Nelson's checkermallow plants, 57 m² of Taylor's checkerspot butterfly habitat, 8 m² of Kincaid's lupine (on non-Federal public land), loss of 2,818 Fender's blue butterflies, 8,570 m² of Fender's blue butterfly nectar habitat, and 402 m² of Fender's blue butterfly's host plant habitat (Kincaid's lupine on private land).

E. Conservation Strategy and Plan

The overall biological goal of the Plan is to achieve sustainable populations of the Covered Species on Covered Lands, while maintaining existing local populations and enhancing habitat and population connectivity. The County has developed a Prairie Conservation Strategy (see Appendix E in the Plan). The strategy outlines an approach for interested parties, both public and private, to work together to help conserve and restore rare habitat and recover at-risk prairie-dependent species in Benton County in a non-binding, non-regulatory framework. The continued existence of rare habitats and species in Benton County depends on the willingness of land managers and private landowners to undertake voluntary conservation actions. The Prairie Conservation Strategy provides an overview of voluntary actions that can be implemented in Benton County to increase rare habitat and recover at-risk species. Developed as part of the Plan, the strategy serves as a stand-alone document but is one component of the conservation measures identified in the Plan.

The purpose of the Plan is to avoid, minimize and mitigate adverse effects to the Covered Species in a manner that is consistent with the Prairie Conservation Strategy. The Plan provides for the following measures: (1) identification and implementation of incidental take avoidance, minimization, and mitigation measures to reduce adverse impacts to the Covered Species; (2) monitoring and reporting and notification requirements; and (3) responses to unforeseen circumstances.

Mitigation

Through the proposed conservation measures, the County and Cooperators will enhance selected existing Covered Species populations and habitats and increase the distribution

and connectivity of Covered Species populations in the County. Specifically, the Plan proposes managing selected habitat for the Covered Species, including reducing or managing current threats to the species on over 200 ha (500 ac) of lands owned or managed by the County or Cooperators. These areas will be designated as Prairie Conservation Areas (PCAs). Lands designated as PCAs will be areas where the Covered Species are present or where there is suitable habitat for introductions of the Covered Species. PCAs are lands under public ownership or conservation easement and set aside for active conservation, and where habitat restoration and enhancement will take place.

Mitigation will occur when adverse impacts caused by Covered Activities are unavoidable and will be completed at PCAs with appropriate habitat in Benton County. Mitigation may be achieved by habitat enhancement for butterflies, or species augmentations for covered plants. Mitigation will take place at sites already supporting the affected species, or at currently unoccupied sites containing suitable habitat. Mitigation will not take place at sites where there is not suitable habitat for the species. Habitat enhancement or species augmentations must establish the amount of plants or butterfly habitat required for mitigation regardless of the pre-existing population or habitat amounts at the site. The estimated quantity of mitigation required for impacts caused by Covered Activities described in the Plan is shown in Table I-2 of the Plan.

Avoidance, Minimization and Mitigation

Objectives 1-3 below outline actions the County will implement to avoid and minimize adverse impacts to Covered Species pursuant to the objectives of the overall Prairie Conservation Strategy.

Objective 1: Conserve Covered Species' populations and habitats.

- 1.1. Acquire land from willing sellers and manage properties (as Benton County Fender's Blue Butterfly Conservation Areas) with existing populations of the Fender's blue butterfly and prairie habitat.
- 1.2. Establish roadside SMAs for roadside populations of covered plants.
- 1.3. Implement best management practices for roadside populations of Covered Species.
- 1.4. Designate PCAs on lands within the County managed for prairie habitat and conservation of Covered Species. Some areas of some PCAs may be designated for use as mitigation sites.
- 1.5. Implement best management practices for Covered Species populations in Prairie Conservation Areas and on other Covered Lands owned by Benton County or Cooperators.

1.6. Implement the Taylor's checkerspot butterfly management plan as described in the Plan.

1.7. Conduct outreach to the public.

1.8. Work with County permit and agricultural building authorization applicants in the Fender's Blue Zone to avoid impacts to Fender's blue butterfly habitat from private development.

1.9. When Special Event Permits are issued by Benton County in areas where Covered Species occur, the County will mandate avoidance of impacts to Covered Species.

1.10. Permits issued for utility work, other work and road approach permits in County rights-of-way will mandate avoidance of all adverse impacts to Covered Species on Type 1 roadsides and mandate avoidance and minimization of adverse impacts, where possible, in Type 2 roadsides.

Objective 2: Enhance Covered Species' populations and habitats.

2.1. Implement best management practices during any habitat restoration, enhancement and management in the PCAs.

2.2. Augment populations of covered plant species using appropriate genetic sources, to mitigate impacts.

2.3. Enhance habitat for populations of Fender's blue butterfly and associated Kincaid's lupine in Fender's Blue Butterfly Conservation Areas.

2.4. Enhance habitat for populations of the Taylor's checkerspot butterfly.

2.5. Manage and maintain Type 1 roadside populations of the peacock larkspur, Kincaid's lupine, and Nelson's checker mallow.

2.6. Conduct restoration activities including burning, seeding with native plant species, and planting plugs of native plant species in PCAs.

Objective 3: Increase the distribution and connectivity of Covered Species populations.

3.1. Develop, update, and maintain a Prairie Conservation Strategy (see Appendix E in the Plan) to facilitate effective conservation actions that contribute to the recovery of Covered Species and other imperiled prairie species in Benton County.

Monitoring

Monitoring actions include but are not limited to:

- Covered Species presence/absence surveys;
- Covered Species abundance surveys; and
- Monitoring activities associated with habitat restoration, enhancement and management on Covered Lands.

Monitoring activities for covered plants or for butterfly habitat will be conducted in accordance with protocols described in the Plan. Monitoring activities for the Fender's blue butterfly that require any netting or other handling of the butterfly are not covered, because such take is not considered "incidental." Biologists conducting such work must possess an appropriate ESA section 10(a)(1)(A) permit obtained from the Service.

Changed and Unforeseen Circumstances

In Section 8.7 of the Plan, the County identifies possible changed circumstances, and their response to them. The County identifies ways to modify Covered Activities or amend the Plan, if necessary, for the following possible changes in circumstances on Covered Lands: additional species listings; delisting of one or more of the Covered Species; newly identified populations of listed species; detection of new invasive species; and natural catastrophes such as flooding, drought, wildfires, and windstorms.

II. ANALYSIS OF EFFECTS

The effects of the proposed action on the Covered Species are fully analyzed in the Plan and the Service's biological opinion, which are incorporated by reference, and a summary of the analysis is provided below. The primary form of take is harm resulting from the human disturbance associated with the Covered Activities. Harm is defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

The largest impact to the Fender's blue butterfly and its host plant, Kincaid's lupine, is likely to occur on private land as the result of Building Construction Activities, as described in Section IV of the Service's biological opinion. Building Construction Activities are activities under Home, Farm, and Forest Construction, Benton County Permits and Authorizations (construction aspects), and Public Service Facility Construction. The direct effects of building construction activities to the Fender's blue butterfly are likely to include the death of adults, eggs and larvae by crushing and trampling from land clearing, and increased road mortality from an increase in vehicle traffic as the human population increases within the Covered Area. Indirect effects are likely to include habitat loss (conversion of host and native nectar species habitat), habitat fragmentation, population fragmentation, killing of butterflies through starvation (through habitat conversion of butterfly's nectar habitat), a reduction of dispersal corridors, and mortality from secondary poisoning due to herbicide use on private properties. The

resulting estimated direct impact to Fender's blue butterfly from building construction projects is loss of 2,818 Fender's blue butterflies as shown in Table IV-1 of the Service's biological opinion.

Kincaid's lupine at the proposed Benton County Fender's Blue Butterfly Conservation Areas accounts for 27 percent of the known Kincaid's lupine within the Fender's blue butterfly estimated occupied area. To mitigate building construction impacts, Benton County will enhance Fender's blue butterfly habitat in the Fender's Blue Butterfly Conservation Areas by increasing Kincaid's lupine occupied habitat by 358 m² (3,853 ft²) and native nectar species occupied habitat by 5,586 m² (60,127 ft²), based on a 1:1 mitigation ratio, with resulting beneficial effects to the Fender's blue butterfly and Kincaid's lupine because the impacts will occur on small, isolated populations whereas the mitigation will build upon existing, larger populations that are positioned to provide connectivity to other populations.

Linear projects have the potential to affect Fender's blue butterfly nectar habitat, Kincaid's lupine, Nelson's checker-mallow, and the peacock larkspur. Effects to Covered Species from linear projects are likely to include direct killing of Fender's blue butterflies, destruction of larval host plants and nectar sources, increased fragmentation of already small populations and degradation of potential dispersal habitat for the Fender's blue butterfly. Covered plants could be affected by crushing or the removal and reduction in suitable habitat for pollinator species. The adverse effects of linear projects to Covered Species are likely to be offset by mitigation. Mitigation projects will likely have some short-term adverse effects to listed plants, but will have predominantly positive long-term benefits to the species through increased population sizes, improved habitat quality and greater habitat security. Mitigation ratios are specified in the Plan and will be determined by the affected site and mitigation site quality, mitigation site protection, and timing of mitigation. See Chapter 6 of the Plan for discussions of mitigation locations and estimated mitigation ratios; Table IV-4 of the Service's biological opinion, shows mitigation estimates for linear projects.

Habitat restoration, enhancement and management activities will occur on covered County and Cooperator lands. The goal of these activities is to enhance the growing conditions for covered species by: (1) reducing or eliminating invasive species and woody species, (2) reducing thatch, (3) preparing sites for seeding and planting, (4) increasing available light, nutrients, and water for native species, (5) raising soil pH, (6) enhancing native plant diversity and abundance, (7) increasing the number of covered plant species through augmentation of existing populations, and (8) increasing the amount of prairie habitat necessary for the support of Fender's blue butterflies and Taylor's checkerspot butterflies. These outcomes are beneficial, but there will be short-term adverse effects associated with these activities.

During the 50-year term of the Permit, take of Covered Species associated with the construction of an additional 195 new homes, 41 medical hardship dwellings, 513 accessory structures, 413 structure additions, 118 agricultural buildings, two rural schools and two rural fire stations will be authorized. Table VI-1 of the Service's biological

opinion shows the current estimated abundance of the Covered Species in Benton County, the amount of take to be authorized by the Permit, and the estimated percentage of the total population of each species that the take represents. Over the life of the Permit, activities covered by the Plan will result in relatively minor adverse affects to each of the Covered Species. The Plan-mandated habitat restoration, enhancement, and management activities will all have some short term negative effects on the Covered Species, but in the long term, the effects are likely to be beneficial, and each of the Covered Species are likely to be more protected and secure than they are at present.

III. Public Comment

A Notice of Availability for the draft proposed Plan, the application for an incidental take permit, and a draft Environmental Assessment (EA) was published in the Federal Register on October 1, 2010 (75 FR 60802). Public comments on the Plan, permit application, and the EA were requested by November 1, 2010. Thirty-one public comment letters were received. Substantive comments received were grouped together and a summary of the Service's responses to the comments are presented below:

Comment 1: The Plan increases restrictions on private landowners and is an invasion on the rights of property owners.

Response: The Plan has been developed to comply with existing Federal law and does not add regulation to private landowners. The ESA protects the Fender's blue butterfly from harm on all lands occupied by the butterfly. When impacts are incidental and unavoidable, they may occur with an Incidental Take Permit. To receive an Incidental Take Permit, a Habitat Conservation Plan must be completed.

Comment 2: The County and the Service have not provided sufficient funding to implement the Plan and/or the Prairie Conservation Strategy (Appendix E of the Plan) and they have underestimated the costs associated with Plan implementation.

Response: The County has committed to funding the implementation of the Plan by seeking additional revenue through a variety of sources. The Benton County Natural Areas and Parks Department has a successful history of managing the costs and duties for preservation and restoration activities (Fish and Wildlife Service 2003, 2008). If the County cannot implement the Plan due to financial shortcoming, then they will be required to surrender the Permit or have it revoked.

Comment 3: The Plan requires the County to acquire land for mitigation and the land will be given to the Federal government.

Response: The County is seeking grant funds to acquire conservation easements and land, from willing local landowners. This habitat will be enhanced over time to mitigate impacts to the butterfly occurring from County-permitted construction on private lands. As described in the Plan, mitigation will occur through butterfly habitat enhancement or

species augmentations for covered plants and not from land acquisition. The Federal government will not receive any land.

Comment 4: There was insufficient public involvement and scientific research in developing the Plan and inadequate public notification about the Notice of Availability of the Plan, Permit, and EA.

Response: Although the County is not required by Federal law to notify or involve the public in the preliminary planning process prior to submitting a permit application, they voluntarily provided 25 presentations to interest groups, held three workshops, and hosted seven public meetings (Appendix H of the Plan). All of the public meetings were advertised in the Corvallis Gazette-Times and/or by mailing a notice to up to 900 affected/interested individuals and/or organizations. The County also held a 90-day comment period and a 30-day comment period (January 2, 2009 - April 2, 2009, and September 8, 2009 - October 7, 2009, respectively).

In addition to the Federal Register Notice of Availability published on October 1, 2010 (75 FR 60802), the Service sent a press release to the following newspapers: Corvallis Gazette-Times, Eugene Register-Guard, Albany Democrat Herald, This Week (Linn and Benton Counties) and Oregon Public Broadcast (Rob Manning, and Cassandra Profita for the Ecotrope Blog). The Service also sent the news release to staff for both Oregon Senators and Congressmen DeFazio and Schrader. Benton County sent an email to everyone on their HCP mailing list (118 people) and stakeholders (over 60 people), and mailed a post card to everyone with property in the "Fender's Blue Zone" (over 800 people). Benton County placed an advertisement in the Gazette times on October 7 and 10, 2010, advertising their October 12th meeting and the availability of the draft HCP for review. Service staff, County staff and County Commissioners were available at the October 12, 2010, meeting to answer questions from the public.

The County voluntarily convened a 15-member Technical Advisory Committee (TAC) comprised of prairie habitat and species experts that advised the County on ways to maximize the conservation of prairie habitat and Covered Species. The TAC met on 13 occasions and all meetings were open to the public and advertised through an email notification to the County's interested parties mailing list.

Comment 5: The commenter requested to "withdraw" their land from the Benton County Prairie Species Habitat Conservation Plan.

Response: Participation in the Plan is voluntary and landowners retain the option of working directly with the Service to determine if an incidental take permit is necessary for their proposed project.

Comment 6: Two commenters requested a sixty day extension to the public comment period and four commenters requested the Service complete and Environmental Impact Statement.

Response: In a letter dated, November 9, 2010, the Service provided a detailed response to one of these commenters indicating they did not raise any significant issues warranting an additional 60 days for comment or an Environmental Impact Statement (EIS). The same is true for the other three commenters based on the following reasons:

- The draft HCP and associated documents have not changed significantly since the most recent County-held comment period (closing October 7, 2009).
- As identified in Appendix G & H of the draft HCP, and as summarized above in response 4, extensive public participation has occurred over the last four and a half years, including representation of a broad array of interest groups in the Stakeholder Advisory Committee and TAC (see response to comment 4 above and comment 9 below).
- Although there were a few changes in the reported population estimates for Covered Species between the September 2009 and September 2010 draft Plans, none of these affect or significantly change the reported impact or estimated take of Covered Species. The most apparent changes between the 2009 and 2010 draft plans include: 1) the current (2010) draft (Table 5.1) provides an estimated impact to adult butterflies (Fender's blue butterfly and Taylor's checkerspot butterflies) in addition to reporting habitat impacts, and 2) Table 3.2 was corrected in the 2010 Plan to accurately reflect the projected abundance of Kincaid's lupine inside the blue zone (on private land). This correction was made because in the 2009 draft Plan, data from the 2009 surveys was inadvertently omitted which resulted in erroneously reporting the projected coverage as 1532 m² in Table 3.2.
- The amount of take requested by the County is relatively small and we believe implementation of the Plan, as it compares to the No-Action alternative, will result in a conservation benefit to prairie habitat because the mitigation strategy is more effective than on-site, project by project mitigation. Additionally, we anticipate a conservation benefit to the Covered Species will occur as the result of implementing the Prairie Conservation Strategy (Appendix E of the Plan) in combination with the Good Neighbor principle (see page 11 of the Plan).
- The commenter did not identify any inaccuracies with our Environmental Assessment or provide us with information indicating the proposed action warrants an Environmental Impact Statement.

Comment 7: There were several requests to include other covered activities in the Plan such as, additional land use zones and mowing or grazing activities for the purpose of developing fire breaks.

Response: The Service can not require the County to cover additional activities and can not authorize them to cover activities for which they do not have any jurisdiction. There is a limit to the amount of construction activity the County can cover because of the associated mitigation requirements. Specifically, there is a limited amount of land upon

which the County can perform mitigation, as well as constraints on funding for habitat enhancement. Therefore, the County has decided to cover construction in zones allowing low density development.

The County does not issue permits for mowing, firebreak maintenance, or driveway maintenance and therefore, these activities are not covered in the Plan. The County has worked with the Service and included language in the Plan stating that maintaining existing landscaped area or driveways, or creating and maintaining a 30-foot firebreak around structures will not require an incidental take permit.

Comment 8: There was concern expressed that the proposed habitat management treatments are not appropriate for maintaining high quality prairie.

Response: The best management practices (BMPs) and conservation measures included in the plan are consistent with the guidelines identified in the Service's Recovery Plan for the Prairie Species of Western Oregon and Southwestern Washington (Fish and Wildlife Service 2010b). The Service anticipates a conservation benefit to the Covered Species resulting from implementation of the Plan's BMPs and conservation measures.

Comment 9: There was inadequate participation by the public in the Stakeholder Advisory Committee (SAC) and their scheduled meetings.

Response: The Stakeholder Advisory meetings were a County-sponsored activity and are not a Federal ESA requirement for development of an HCP. The County voluntarily convened a 34-member SAC in order to allow representation of a broad array of interest groups that could advise the County in the development of the HCP. The SAC met 12 times throughout the planning process, and all meetings were open to the public and advertised through an email notification to the County's interested parties mailing list.

Comment 10: The management plans for the Prairie Conservation Areas (PCA) are insufficient and mitigation will be inadequately and exclusively monitored by the County.

Response: Section 7.2.1.0 of the Plan, indicates that all PCAs will require monitoring plans and provides minimum requirement for the monitoring plan. These plans will require habitat management goals and objectives for each site and will be prepared by a qualified biologist/natural resource specialist.

Compliance Monitoring and Effectiveness Monitoring will be completed by Benton County and Cooperators (see Chapter 7 of the Plan). Benton County will submit Annual Compliance Reports to the Service and Oregon Department of Agriculture (ODA) by March 31st for each year the incidental take permit is in effect. The Service and ODA will review the reports to ensure mitigation is effective at achieving the conservation goals of the Plan. Chapter 7 of the Plan also demonstrates the County's commitment to implementing adaptive management if changes are required in the habitat management strategy for the Covered Species. This adaptive management is responsive to the

uncertainty surrounding habitat restoration and enhancement techniques, such as mowing or prescribed burning, or the optimum methods for applying such treatments

Comment 11: There is insufficient survey data and species distribution information for the Covered Species.

Response: The Service is required to rely on the “best available” information. To our knowledge, the County utilized all known species distribution information including data from the Service and the Oregon Natural Heritage Information Center. Additionally, the planning process included botanical surveys on over 4,010 ha (9,910 ac) during the appropriate habitat growing seasons of 2006, 2007, 2008 and 2009. Butterfly surveys were also conducted by two species experts between 2006 and 2009, and two other butterfly experts were contracted to evaluate butterfly nectar habitat in the planning area.

Comment 12: The Plan does not address climate change and other “undefined” risks.

Response: While we can acknowledge that climate change may pose a risk to the Covered Species, there is insufficient information available to forecast the specific affects to species over the next 50 years. Therefore, Section 8.7 of the Plan describes many possible changes and unforeseen circumstances, and the County’s proposed responses to each circumstance. Specifically, the County identifies ways to change their activity or amend the Plan, if necessary, for the following possible circumstance changes: additional species listings, delisting of Covered Species, newly identified populations of listed species, detection of new invasive species, and natural catastrophes such as, flooding, drought, wildfires, windstorms, and other unanticipated catastrophes.

Comment 13: The Plan and its associated EA do not clearly indicate that human disturbance or the loss of habitat connectivity and species distribution will occur in the next 50 years even though any increase in human disturbance will likely limit Covered Species persistence.

Response: The Plan and EA only address impacts associated with the specific activities covered in the Plan. However, the Service completed a biological opinion (Fish and Wildlife Service 2010a) to ensure that Permit issuance will not preclude species persistence. Section V of the biological opinion includes an analysis of cumulative effects from future State, tribal, local or private actions that are reasonably certain to occur in the action area. Future Federal actions that are unrelated to the proposed action are not considered because they require separate consultation pursuant to section 7 of the Act. The Service determined that the Benton County Plan addresses most of the likely development that will affect prairie habitats on private lands in the action area where the incidental take permit applies.

Comment 14: One commenter requested that additional Covered Species and rare habitats be included in the Plan and that the Plan provide additional conservation benefits to the Covered Species.

Response: The Service is evaluating the proposed action submitted by the County to determine if the project meets permit issuance criteria, and this request is beyond the scope of the proposed action. The purpose of the Plan is to minimize and mitigate affects of incidental take and it is not required to plan for species and/or habitat recovery.

Comment 15: Implementation of the Covered Activities will result in an increase in the introduction and spread of invasive species which is not addressed in the Plan or the EA.

Response: Section 7.2.1.3 of the Plan (Prairie Habitat Condition Monitoring for Effectiveness Monitoring) describes in detail the effectiveness monitoring that will be conducted and includes invasive species monitoring and actions that will be implemented. Chapter 8 of the Plan also provides provisions for newly identified invasive species. Further, the Service's biological opinion identifies the threat of invasive species to the Covered Species and analyses the affects of the Plan's proposed mitigation, including habitat restoration, enhancement and management activities on covered lands. As described in the biological opinion, the goal of these activities is to enhance the growing conditions for Covered Species by "reducing or eliminating invasive species and woody species".

Comment 16: The Plan and the EA do not provide a cost comparison between the two proposed action alternatives.

Response: A specific cost comparison is not required for either document.

Comment 17: The Implementing Agreement specifically removes third party intervention in application, modification, and monitoring, or evaluation of the success (or failure) of the proposed Plan.

While we are not entirely clear on the meaning of the comment, we can state that the Implementing Agreement does not create any right or interest in the public as a third party beneficiary, and that the duties, obligations, and responsibilities of the parties to the Agreement with respect to third parties will remain as imposed under existing law.

Comment 18: The commenter wants to know how the nectar information collected by Elizabeth Crone influenced the final Plan.

Response: This information was collected to assess Fender's blue butterfly nectar species utilization in the butterfly's habitat within Benton County, and refine the species list used to estimate nectar habitat abundance and impacts. As an example, *Lomatium triternatum* (nine-leaf lomatium) and *Vicia americana* (American vetch), were added to the nectar species list as a result of the study.

Comment 19: The estimated take for linear projects, including private lands, should be field tested because Cooperators do not have the botanical expertise to assess habitat and potential impacts.

Response: Many of the Covered Activities, including linear projects, do not require a botanical survey because Benton County and the Cooperators have assumed take will occur and have estimated take accordingly. As an avoidance and minimization measure, the Plan does require botanical surveys for a few covered activities such as wastewater management activities and right-of-way activities occurring in “type 2 Special Management Areas”. When surveys are required by Cooperators, Section 8.2.1 of the Plan indicates they must have the project area surveyed using the protocols established in the Plan’s Appendix K. The protocol requires a biologist or natural resource specialist with specific qualifications to conduct the surveys.

Comment 20: The commenter recommends minimization measures for linear projects such as rescuing seed and plants in the proposed project area.

Response: Page 2 of Appendix L, provides protocols for collecting all plant material and seed from Covered Species, and identifies when collections will occur. Section 1.2.1 of Appendix L, suggests that any Covered Species population that will be permanently impacted by Covered Activities will have 100% of the seed, plant or rhizome biomass collected. The County has clarified this commitment by adding a conservation measure to the Plan in Section 6.2.0 best management practices for roadside populations.

Comment 21: The EA does not define the acronym PCE, requiring the reader to obtain another document (USFWS 2006) to fully understand the analysis.

Response: We apologize for the omission, and have updated the EA on pg. 58. ‘PCE’ stands for Primary Constituent Element and is now defined in Section 4.1.5.

Comment 22: Has the Service addressed the issuance criteria under: 50 CFR 17.22(a)(2)ESA and 50 CFR 17.32(a)(2) T and E.

Response: The commenter likely wanted to refer to 17.22(b)(2) and 17.32(b)(2) as these are the sections that address incidental take permit issuance criteria for endangered and threatened species, respectively. Section IV below addresses this specific topic.

Comment 23: The commenter raised concern about the Plan’s mitigation requiring “over collection” of seed from Covered Species.

Response: To ensure plant introductions serve to ultimately benefit and not harm the species, such mitigation activities will follow specific guidelines (see Appendix L of the Plan). The established protocols are based on the Service’s Programmatic Formal Consultation on Western Oregon Prairie Restoration Activities, August 14, 2008, and have been reviewed by the Oregon Department of Agriculture. We have reviewed the protocols and believe the approach will result in a conservation benefit to the Covered Species. The plant materials collections, including seed, will be monitored and work will be performed under the supervision of a qualified specialist. We will review the reports and, if necessary, work with the County to identify alternative treatment options (see Appendix L of the Plan).

Comment 24: Mitigation might not provide a habitat benefit to the species because mitigation can occur on private land.

Response: As described in Section 1.4.0.3, mitigation must occur within a Prairie Conservation Area (PCA). PCAs are lands under public ownership or conservation easement and set aside for active conservation, and where habitat restoration and enhancement will take place.

IV. INCIDENTAL TAKE PERMIT CRITERIA – ANALYSIS AND FINDINGS

Section 10(a)(2)(A) of the ESA requires an applicant for an incidental take permit to submit a habitat conservation plan (HCP) that specifies the following: the impacts that will likely result from such taking; what steps the applicant will take to minimize and mitigate such impacts and the funding that will be available to implement such steps; what alternative actions to such taking the applicant considered and the reasons why such alternatives were not utilized; and such other measures as the Service may require as being necessary or appropriate for the purposes of the Plan. Section 10(a)(1)(B) of the ESA mandates that the Service issue a permit if the following 6 criteria are met: (1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicant will ensure that adequate funding for the HCP and procedures to deal with unforeseen circumstances will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (5) the applicant will ensure that other measures that the Service may require as being necessary or appropriate will be provided; and (6) the Service has received such other assurances as may be required that the HCP will be implemented.

With regard to this specific permit request, the Service makes the following findings:

1. The taking will be incidental.

The Service finds that the taking of Covered Species under the Plan will be incidental to otherwise lawful activities. The activities for which incidental take coverage are sought under the Permit are residential, farming, forestry, service building and utility construction, road development and roadway maintenance, water and wastewater Management, agricultural and emergency response activities on legal tax lots in Benton County, Oregon. Any take of Covered Species from human disturbance associated with these activities will be incidental to, and not the purpose of, these lawful activities.

2. The County will, to the maximum extent practicable, minimize and mitigate the impacts of taking of Covered Species that may occur within the Permit area. The County has developed a Plan, pursuant to the incidental take permit requirements codified at 50 CFR 17.22(b)(1), which requires implementation of measures that are likely to minimize and mitigate the adverse impacts of taking of the Covered Species caused by Covered

Activities. Under the provisions of the Plan, the impacts of take will be minimized, mitigated, and monitored through the following measures:

(a) Identification and implementation of incidental take avoidance and minimizations measures to reduce impacts to Covered Species for all Covered Activities (including mitigation activities), as summarized above in Section E and in the Service's biological opinion, and described in detail in Chapter 6 of the Plan. The following measures will substantially avoid and minimize impacts to Covered Species:

- Establish roadside SMAs for roadside populations of Covered Plants and implement best management practices in SMAs;
- County Permits for rights-of-way work will mandate avoidance of all impacts to Covered Species on Type 1 roadsides and mandate avoidance and minimization of impacts where possible in Type 2 roadsides;
- Implement best management practices for Covered Species populations in Prairie Conservation Areas and other Covered Lands owned by Benton County or the Cooperators;
- Manage and maintain Type 1 roadside populations of the peacock larkspur, Kincaid's lupine and Nelson's checker-mallow.
- Develop, update and maintain a Prairie Conservation Strategy (see Appendix E in the Plan) to facilitate effective conservation actions that contribute to the recovery of the Covered Species and other imperiled prairie species in Benton County.

(b) The expected unavoidable impacts associated with covered building construction activities will be offset by the County's mitigation program. Benton County will mitigate for impacts to Fender's blue butterfly habitat from building construction activities with the acquisition of 20-24 ha (50-60 acres) of conservation easements on high quality prairie habitat supporting the Fender's blue butterfly within the Fender's Blue Zone, to establish the Benton County Fender's Blue Butterfly Conservation Areas. This habitat contains approximately 733 m² (7,890 ft²) of Kincaid's lupine and 285 m² (3,068 ft²) of native nectar species. The property will be enhanced and maintained to protect, in perpetuity, habitat for the Fender's blue butterfly according to the conservation measures set forth in the Plan (See Chapter 6 of the Plan). Kincaid's lupine at the proposed Benton County Fender's Blue Butterfly Conservation Areas accounts for 27 percent of the known Kincaid's lupine within the Fender's Blue Zone. To mitigate building construction impacts, Benton County will enhance Fender's blue butterfly habitat at the Fender's Blue Butterfly Conservation Areas by increasing Kincaid's lupine occupied habitat by 358 m² (3,853 ft²) and native nectar species occupied habitat by 5,586 m² (60,127 ft²), based on a 1:1 mitigation ratio.

(c) The unavoidable impacts to Covered Species associated with linear projects will be offset by mitigation. Mitigation ratios are specified in the Plan and will be determined by the affected site and mitigation site quality, mitigation site protection, and timing of mitigation. See Chapter 6 of the Plan for discussions of mitigation locations and estimated mitigation ratios; Table IV-4 of the Service's biological opinion also shows mitigation estimates for linear projects.

- (d) Monitoring actions include but are not limited to:
- Covered Species presence/absence surveys;
 - Covered Species abundance surveys; and
 - Monitoring activities associated with habitat restoration, enhancement and management, including mitigation.

To make the finding that the conservation measures included in the Plan avoid, minimized and mitigate the impacts of take to the maximum extent practicable, the Service must first evaluate whether the conservation measures are rationally related to the level of take anticipated under the Plan. Take is defined under the ESA to include those actions that harass, harm or kill listed-fish or wildlife. In effect, the conservation measures need to address the biological needs of the Covered Species in a manner that is commensurate with the impacts to the species allowed under the Plan. The Service believes the level of avoidance, minimization, and/or mitigation provided for in the Plan compensates for the impacts of take of Covered Species that will or could potential occur under the Plan. This finding is based on the fact the extensive avoidance and minimizations measures have been identified in the Plan. All mitigation will take place in PCAs which will be enhanced and maintained to protect, in perpetuity, habitat for the Covered Species according to the conservation measures set forth in the Plan (see Chapter 6 of the Plan). PCAs represent the best remaining prairie habitat in Benton County, many of which have been actively managed for years to restore high quality prairie habitat (See Chapter 3 of the Plan). Without the Permit, mitigation for impacts to Covered Species would likely occur on-site, in a fragmented, piecemeal fashion. Protection of large parcels of higher quality habitat has a greater conservation benefit to the Covered Species than small scale mitigation sites. Mitigation projects will likely have some short-term adverse effects to listed plants, but will have predominantly positive long-term benefits to the Covered Species through increased population sizes, improved habitat quality and greater habitat security.

3. The County will ensure that adequate funding for the Plan and procedures to deal with unforeseen circumstances will be provided.

The Service finds that the County will ensure funding adequate to implement the Plan. Chapter 8 of the Plan provides an estimate of costs associated with implementing the Plan and potential sources of funds for implementation. Because of the uncertainty associated with the allocation of local, state, and federal funds, a variety of funding sources will be sought. Administrative costs to implement the management actions identified in the Plan as well as the mitigation costs associated with Fender's blue butterfly habitat restoration, enhancement, monitoring and outreach will be borne through one or more of the following funding mechanisms: Local County Funding; Departmental Level, Undesignated County Funds, General Obligation Bond, Local Property Tax Option Levy, and Potential Federal Grant Resources. The County has a proven capacity to successfully manage prairie habitat to support listed species and has been working proactively with the Service since 2003 (Fish and Wildlife Service 2003) to restore prairie habitat on County lands.

Section E above summarizes the changed and unforeseen circumstances the County has identified and Section 8.7 of the Plan describes these circumstances and the County's proposed responses to each potential change of circumstance.

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

The Service finds that the taking to be authorized under the proposed Permit will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. The ESA's legislative history establishes the intent of Congress that this issuance criterion be identical to a finding of "no jeopardy" pursuant to section 7(a)(2) of the ESA and the implementing regulation pertaining thereto (50 CFR 402.02). As a result, the Service has reviewed the Plan under section 7 of the ESA. In a biological opinion (Service 2010), which is incorporated herein by reference, the Service has concluded that the issuance of the proposed Permit is not likely to jeopardize the continued existence of the Covered Species. Our conclusion is based on the fact that over the life of the Permit, activities covered by the Plan will result in relatively minor adverse effects to each of the Covered Species. The mandated habitat restoration, enhancement, and management activities will all have some short term negative effects on the Covered Species, but in the long term, the effects would be beneficial, and each of the Covered Species will be more protected and secure than they are at present.

The Service anticipates that implementation of the Plan will result in a conservation benefit to prairie habitat and contribute towards the recovery of the Covered Species. Not only has the County identified ways to avoid and minimize adverse impacts to the Covered Species, but they are also proposing to off-set impacts to relatively small and scattered degraded prairie sites by enhancing some of the best remaining prairie habitat in Benton County. This approach to mitigation will contribute to the recovery goals outlined in the Recovery Plan for the Prairie Species of Western Oregon and Southwestern Washington (Service 2010b), and indirectly the Plan provides protection to an additional 55 acres of prairie habitat critical to the recovery of the endangered Fender's blue butterfly.

5. Other measures, as required by the Director of the Service, as necessary or appropriate for purposes of the Plan will be met.

The Service finds that no additional measures are required for the purposes of the Plan to be met.

6. The Service has received the necessary assurances that the Plan will be implemented.

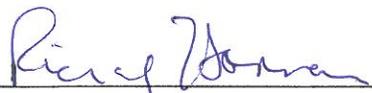
The Service finds that the Plan provides the necessary assurances that the County will carry out all actions described within the Plan.

V. GENERAL CRITERIA AND DISQUALIFYING FACTORS – FINDINGS

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

VI. RECOMMENDATION ON PERMIT ISSUANCE

Based on the foregoing findings with respect to the proposed action, I recommend the approval and issuance of permit TE27275A-0 to Benton County for the incidental take of the Fender's blue butterfly, Taylor's checkerspot butterfly, Kincaid's lupine, Willamette daisy, Bradshaw's lomatium, Nelson's checkermallow, and the peacock larkspur in accordance with the Plan.



Richard Hannan
Deputy Regional Director, Region 1
U.S. Fish and Wildlife Service

1/14/11
Date

VII. REFERENCES

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