



Agency of Natural Resources

1 National Life Dr, Davis 2, Montpelier, VT 05620-3702 • 802-828-1294

Threatened & Endangered Species Takings Permit

Statutory Authority: 10 VSA § 5408

1. Permittee

Tim Follensbee

Transco/Vermont Electric Power Company

366 Pinnacle Ridge Road, Rutland, VT 05701

2. Permit Period

Effective Date: 5/18/2020

Expiration Date: 12/31/2024

Authorization #: EH-2020-10

Amendment # 0

3. Principal Officer: Tim Dunn.

4. Subpermittee(s): Art Gilman and the staff of Gilman & Briggs Environmental, Velco staff and contractors.

5. Authorized Species: Houghton's Flatsedge (*Cyperus houghtonii*).

6. Authorized Activity: Transplantation Houghton's Flatsedge in advance of construction and subsequent management.

7. Location of Authorized Activity: Milton.

8. Findings

- A. The Permittee applied for a Threatened & Endangered Species Takings Permit under 10 V.S.A. § 5408 to authorize the incidental take of *C. houghtonii*.
- B. The Houghton's flatsedge is a short-lived plant which typically persists up to five years. It can spread via rhizomes to form new individuals under favorable conditions.
- C. The plant requires exposed mineral soil for seed germination and recruitment. Under favorable conditions it can also spread vegetatively (i.e. minimal competition and open soil to colonize).
- D. The Permittee wishes to make improvements to its Sandbar Substation located on Bear Trap Road, Milton, which will take 9 to 12 individuals of the State Threatened Houghton's flatsedge (*Cyperus houghtonii*) of a known population of 25 individuals (36%-48% of the local population).
- E. This constitutes a take of nearly 50% of the population which is well beyond the limits that we typically allow which is in the order of 10%.
- F. Said activity has been determined to be non-de minimis in nature and will have the following benefits: improved function of a VELCO substation.
- G. The Permittee has retained the services of a qualified botanist with expertise identification and management of species listed in section 5.
- H. The advice of the Endangered Species Committee has been considered and incorporated into this permit.

9. Statutory Determination

- A. 10 V.S.A. § 5408(b) provides that "after obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as necessary to carry out the purposes of this chapter, the incidental taking of a threatened or endangered species or the destruction of or adverse impact on critical habitat if: (1) the taking is necessary to conduct an otherwise lawful activity; (2) the taking is attendant or secondary to, and not the purpose of, the lawful activity; (3) the impact of the permitted incidental take is minimized; and, (4) the incidental taking will not impair the conservation or recovery of any endangered species or threatened species."
- B. The Permittee requests an Endangered & Threatened Species Takings Permit for incidental take.
- C. The state of Vermont recognizes the value which plants, fish and wildlife in their natural environment have for public enjoyment, ecological balance, and scientific study. See 1981, No. 188 (Adj. Sess.), § 1(a).
- D. The state of Vermont recognizes the need for protection and preservation of these plants, fish and wildlife in their natural environment. *Id.*

- E. The General Assembly of Vermont intends that the species of wildlife and wild plants normally occurring within this state which may be found to be threatened or endangered within the state should be accorded protection as necessary to maintain and enhance their numbers. *Id.* at § 1(b).
- F. The General Assembly of Vermont intends that the state should assist in the protection of species of wildlife and wild plants which are determined to be threatened or endangered elsewhere pursuant to the federal Endangered Species Act. *Id.*
- G. 10 V.S.A. § 5408(i)(2) allows the Secretary to require mitigation strategies and mitigation funds, in addition to the permit fees, to mitigate the impacts of a taking or the destruction of or adverse impact on critical habitat. Mitigation may include compensation, including payment into the Threatened and Endangered Species Fund, provided that any payment is commensurate with the taking or adverse impact proposed.
- H. The Secretary has the authority to impose mitigation to offset the takings, in accordance with 10 V.S.A. § 5408 (i)(2). Here, the Permittee is providing a \$3,000 permit application fee and will perform habitat management to enhance the propagation of Houghton's Flatsedge.
- I. Pursuant to 10 V.S.A. § 5408(b), the ANR Secretary hereby determines, based upon the findings detailed above and after receiving advice from the Endangered Species Committee, that the proposed activity is consistent with the purposes of the 10 V.S.A. ch. 123. An Endangered and Threatened Species Takings Permit is authorized, as conditioned below.

10. General Conditions & Authorizations

- A. This permit is issued in accordance with 10 V.S.A. ch. 123. All activities authorized herein must be carried out in accord with and for the purposes described in the application submitted. Continued validity or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.
- B. This permit is expressly conditioned upon compliance with all applicable federal and state laws, regulations and permits.
- C. This permit does not confer upon the Permittee the authority to conduct research without the acquiring necessary landowner permission including, but not limited to, state lands.
- D. By acceptance of this permit, the Permittee and its heirs, successors and assigns agree to provide the Agency of Natural Resources with unrestricted access, at reasonable times to the animal or plant specimens and/or animal or plant parts collected and possessed under this permit, collection and monitoring records, and access to the premises as necessary to ensure compliance with this permit.
- E. The Agency maintains continuing jurisdiction over this activity, and may, at any time, order the Permittee to undertake remedial measures if necessary, to ensure the protection and conservation of listed species.
- F. This permit is not valid for endangered and threatened species that are not listed in section 5.
- G. The permit is valid for use by the named Permittee and subpermittees(s) only and may be revoked by the Secretary at any time for cause, or violations of any terms or conditions of this permit or state law.
- H. The Permittee and subpermittees shall carry copies of this permit whenever performing authorized activities and shall make the permit available upon request.
- I. Pursuant 10 V.S.A. § 5410, the locations of listed species shall be kept confidential and the sharing of such information is a violation of this permit and the law.

11. Specific Conditions & Authorizations

- A. Qualified personnel:** A qualified and experienced botanist and/or plant restoration specialist approved by the VFWD Botanist shall conduct all translocations, invasive plant management and follow-up monitoring.
- B. Consultation:** The Permittee and the Permittee's consulting botanist/restoration specialist shall consult with the VFWD botanist in advance and throughout the project as needed on project methods and protocols including the selection of transplantation site.
- C. Flagging:** Prior to commencing work (e.g., site preparation, transplanting, construction) in the project area, the Permittee shall mark all individuals of Houghton's flat-sedge and other rare, Threatened or Endangered plants within the 100 feet of disturbance areas and record the GPS locations of each.
- D. Site Preparation:** The Permittee shall prepare the receiving site (Transplant Area) as described in the permit application and expand the Habitat Restoration Area to connect to the receiving site (as shown in Figure 2.1 of the amended application package) while taking care to not damage rare, threatened and/or endangered plants already in or adjacent to the receiving site; No soil from outside the Transplant or Habitat Restoration Areas shall be transported into these areas.
- E. Transplants:** The Permittee shall transplant target plants within the periods May 18-June 15, 2020 or September 15-October 15, 2020, and according to the following conditions:
- Excavate individual plants for transplanting with as much substrate as possible and immediately place in burlap or other container, promptly transport to the transplant receiving site, and immediately water upon planting.
 - Attempt to introduce the new plants away from those already present by clustering the transplants into their own area of the receiving site rather than intermingling them with existing Houghton's Flatsedge. In all cases transplants shall be placed at least 5-feet away from any existing Houghton's Flatsedge plants.
 - Mark and record the location of each new transplant and provide a map and description with required reports.
 - Water the transplants weekly throughout the first growing season unless more than 1.0 inches of natural precipitation fell during the previous week.
- F. West Pole Habitat Restoration Area**
- The Permittee shall clear a portion of the site to the west of the access road in order to remove old poles. Following removal of said poles and trees, and after all substation construction work has been completed, the Permittee shall perform site preparation as specified in paragraph 11.D. above for the Transplant area. The West Pole Habitat Restoration Area is depicted in Figure 1.
 - If fewer than 25 Houghton's flat sedge plants are observed during the first year of post construction monitoring within the West Pole Habitat Restoration Area by VELCO's consulting botanist, the Permittee shall notify the Fish & Wildlife Department (FWD). Upon reasonable notice and coordination by FWD (to ensure that safety protocols relating to electric transmission are followed), the Permittee shall grant FWD access to the site to perform the following actions:
 - The FWD botanist will visit the undisturbed portion of the former West Habitat Restoration Area (created via Endangered Species Permit issued Sept 2003) to assess site conditions and consult with VELCO and its consulting botanist.
 - If the FWD botanist deems it scientifically appropriate, FWD personnel will use a shovel, rake and wheel barrow, or similar tools, to remove topsoil from the undisturbed area and place it on the part of the western conservation area that VELCO cleared and prepared as part of the Project to enhance the propagation of Houghton's Flatsedge.
- G. Monitoring/Management:** For the duration of the permit following transplantation the Permittee's consulting botanist and/or plant restoration specialist shall:
- Monitor the Transplantation Site, the Habitat Restoration Areas and the West Pole Habitat Restoration Area to document reproduction of the transplants, recruitment of new plants and threats to the transplants and the site.

- ii. Control invasive exotic plants found on Vermont's Designated Noxious Weeds list and the following Watch List species: Spotted knapweed (*Centaurea maculosa*), Russian & Autumn olive (*Elaeagnus* spp), Black locust (*Robinia pseudoacacia*), and Multiflora rose (*Rosa multiflora*) found within 25-feet of the transplants and the habitat restoration areas. The VFWD Botanist's approval is required prior to herbicide application.
 - iii. Rake, brush-hog, harrow and/or scarify the soil to promote Houghton's Flatsedge germination in 2024 (in year five of the permit) while avoiding to the extent possible impacts to existing Houghton's Flatsedge and other rare, threatened and endangered species (these actions can be performed in conjunction with the Permittee's standard vegetation management practices for areas under powerlines).
- H. **Construction:** After the Permittee's consulting botanist and/or plant restoration has flagged and transplanted all plants, the Permittee is authorized to take no more than 12 individual *C. houghtonii* within the construction footprint during the construction phase of the project.

12. Reporting Requirements

- A. A **transplant report** documenting the transplants shall be submitted to the Permits Specialist (digital format preferred) within 30-days of translocation and shall include a map with location (description, geographic coordinates and coordinate system) for each transplant.
- B. An **annual report**, due by January 30th following each year of permit term shall be submitted to the Permit Specialist and ANR Botanist (digital format preferred). At a minimum, the report shall describe results of the *C. houghtonii* monitoring, status of transplants, management performed in the transplant receiving areas and any invasive plant management.
- C. The Permittee shall accommodate requests by Agency staff for additional information from collection activities (e.g., copies of original field sheets, computerized data in usable format).



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Issued by: _____ Date: 5/28/2020

Louis Porter, Commissioner
Fish & Wildlife Department

Right to Appeal to Vermont Public Utility Commission

If this decision relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. §248, any appeal of this decision must be filed with the Vermont Public Utility Commission pursuant to 10 V.S.A. §8506. This section does not apply to a facility that is subject to 10 V.S.A. §1004 (dams before the Federal Energy Regulatory Commission), 10 V.S.A. §1006 (certification of hydroelectric projects) or 10 V.S.A. Chapter 43 (dams). Any appeal under this section must be filed with the Clerk of the Public Utility Commission within 30 days of the date of this decision; the appellant must file with the Clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in accordance with 10 V.S.A. 8504(c)(2) and shall also serve a copy of the Notice of Appeal on the Vermont Department of Public Service. For further information, see the Rules and General Orders of the Public Utility Commission, available online at <http://puc.vermont.gov/>. The address for the Public Utility Commission is 112 State Street, Montpelier, Vermont, 05620-2701 (Tel. # 802-828-2358).