



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

Ecological Services
P.O. Box 1306, Room 6034
Albuquerque, New Mexico 87103



In Reply Refer To:
FWS/R2/ES-ER/061742

NOV 18 2015

The Honorable Sherman Krause
Comal County Judge
195 David Jonas Drive
New Braunfels, Texas 78132

Dear Judge Krause:

Enclosed is your Fish and Wildlife Service–Endangered Species Act–Incidental Take Permit amendment (TE223267-2) that ensures that permit terms and conditions conform to the language in the approved Comal County Regional Habitat Conservation Plan. We would like to extend our sincere appreciation for your participation in the Habitat Conservation Program. Conserving, and ultimately recovering, endangered species must be a cooperative endeavor, and we thank you for your stewardship efforts.

If you have any comments or questions, please contact Adam Zerrenner, Field Supervisor at the Austin Ecological Services Field Office of the U.S. Fish and Wildlife Service at 512-490-0057. Thank you again for your commitment to the conservation of endangered species.

Sincerely,

Assistant Regional Director
Ecological Services

Enclosures



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

3-201
(1/97)

1. PERMITTEE

Comal County, Texas
100 Main Plaza
New Braunfels, Texas 78130
Phone: 830/221-1105
e-mail: rabthh@co.comal.tx.us
Attn: Tom Hornseth

2. AUTHORITY-STATUTES
16 USC 1539(a)(1)(B)
REGULATIONS (Attached)
50 CFR §§ 13 & 17

3. NUMBER

TE223267-2

4. RENEWABLE

[☒] YES
[] NO

5. MAY COPY

[☒] YES
[] NO

6. EFFECTIVE
11/25/2015

7. EXPIRES
9/30/2043

8. NAME AND TITLE OF PRINCIPAL OFFICER: (if #1 is a business)

Sherman Krause, Comal County Judge.

9. TYPE OF PERMIT:

Endangered Species – Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED: Comal County, Texas.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2, ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORDANCE 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. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW. THIS PERMIT DOES NOT WAIVE THE OBLIGATION TO ABIDE BY OTHER APPLICABLE FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.
- D. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE UNDERSTANDS AND AGREES TO ABIDE BY THE "GENERAL CONDITIONS FOR NATIVE ENDANGERED AND THREATENED WILDLIFE SPECIES PERMITS" (copy enclosed).

12. REPORTING REQUIREMENTS

Annual report due each January 1 throughout the life of the permit.

ISSUED BY:

Michelle Shapke

TITLE

Assistant Regional Director
Ecological Services

DATE

11/18/15

- E. Acceptance of this permit serves as evidence that the Permittee (Comal County) agrees to abide by the terms of the permit and all applicable sections of Title 50 CFR Parts 13 and 17 pertinent to issued permits.
- F. The authorization granted by this permit is subject to full and complete compliance with, and implementation of, the Comal County Regional Habitat Conservation Plan (RHCP), including, but not limited to the avoidance, minimization, mitigation, survey, monitoring, and reporting measures described in the RHCP, which are incorporated herein by reference; and all specific conditions contained in this permit. These permit terms and conditions shall supersede and take precedence over any inconsistent provisions in the RHCP, Environmental Impact Statement, or other permit documents.
- G. This permit only authorizes incidental take of golden-cheeked warbler (*Setophaga [=Dendroica] chrysoparia*; GCWA) and black-capped vireo (*Vireo atricapilla*; BCVI) (covered species) within Comal County, Texas (covered area). Covered Activities include: 1) public or private construction and development; 2) utility installation and maintenance, including but not limited to power and cable stations, substations, and transmission lines; water, sewer, and natural gas pipelines; and other facilities; and 3) public infrastructure projects such as school development, road construction and maintenance, and development of parks.
- H. Upon locating a dead, injured, or sick individual of the covered species, or any other endangered or threatened species, the Permittee is required to contact the Service's Law Enforcement Office in Austin, Texas, 512/490-0948, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and any contractor/subcontractor has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- I. Conditions of this permit shall be binding on, and for the benefit of, the Permittee and any successors and assigns. If this permit requires an amendment because of change of ownership, the Service will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original permit. The new owner must meet issuance criteria per regulations at 50 CFR 13.25. The construction activities proposed or in progress under the original permit may not be interrupted provided the conditions of this permit are being followed.
- J. If, during the tenure of the permit, the project design and/or the extent of the habitat impacts is altered, such that there may be an increase in the anticipated take of the covered species, the Permittee is required to contact the Service's Austin Ecological Services Office (ESFO) and obtain an amendment to this permit before commencing any construction or other activities that might result in take beyond that authorized by the permit. If authorized take is exceeded, all activities that are shown to cause take must immediately cease and any take above that authorized shall be reported to the Austin ESFO (512/490-0057) within 48 hours.

- K. If actions associated with implementation of the Comal County RHCP are shown to result in incidental take of listed species not covered by the permit, those activities that are shown to cause take must immediately cease and any take that has occurred shall be reported to the Austin ESFO (512/490-0057) within 48 hours.
- L. Comal County and Participants will follow the Texas Forest Service's or professional arborists' guidelines for preventing the spread of oak wilt when clearing or trimming trees.
- M. The RHCP (Chapter 8) describes the procedures Comal County has agreed to undertake to address the following changed circumstances: 1) levels of funding to implement the RHCP become inadequate, 2) property values of preserve land needed to meet mitigation goals increases more than predicted, 3) the conservation bank runs out of credits, 4) sufficient suitable preserve sites are not available, 5) an evaluation species becomes listed, 6) public use of preserve lands is determined to impact species, and 7) global climate change significantly and negatively alters the status of the covered species.
- N. To qualify for No Surprises Assurances, the Permittee must implement all provisions included in the RHCP and this incidental take permit that addresses such circumstances. If a changed circumstance has not been addressed by the RHCP and/or incidental take permit, the Service will not require additional conservation or mitigation measures of the Permittee, provided that the terms of the RHCP and incidental take permit are being fully implemented.

To fully implement the RHCP, the following species-specific avoidance, minimization, and mitigation measures are required:

GOLDEN-CHEEKED WARBLER

- O. Comal County is authorized to impact no more than 5,238 acres of GCWA habitat within Comal County, during the permit term. GCWA habitat is defined by the Texas Parks and Wildlife Department's Endangered and Threatened Animals of Texas publication (Campbell 2003). The following conditions also apply:
 - 1. Clearing and construction activities on participating parcels within 300 feet of GCWA habitat will occur from August 1 to February 29, avoiding the breeding season, with the following exceptions:
 - a. breeding season surveys, conducted by a Service permitted biologist for GCWAs, according to the most current Service protocols, indicate GCWAs are not present within 300 feet of the activity, and
 - b. construction activities within 300 feet of GCWA habitat that began during the non-breeding season and are performed in a reasonably prompt and expeditious manner may continue.
 - 2. Direct impacts are those in areas where potential or occupied habitat is actually destroyed or significantly modified by Covered Activities and indirect impacts are those that occur in

GCWA habitat within 300 feet of direct impacts. Mitigation for direct and indirect impacts to habitat will be made at the following ratios:

- a. Covered Activities that will impact GCWA habitat that is protected for the benefit of the GCWA shall be mitigated at 3 acres of preserved habitat for every 1 acre impacted (3:1);
 - b. Covered Activities that will impact GCWA habitat meeting the criteria for "habitat types where warblers are expected to occur" as described by Campbell (2003) and that is either:
1) in close proximity (within 300 feet) to lands protected for the benefit of the GCWA or
2) part of a contiguous patch of GCWA habitat that is greater than 500 acres shall be mitigated at 3 acres of preserved habitat for every 1 acre impacted (3:1);
 - c. Covered Activities that will impact GCWA habitat meeting the criteria for "habitat types where warblers are expected to occur" as described by Campbell (2003) and that is part of a contiguous patch of GCWA habitat that is 250-500 acres shall be mitigated at 2 acres of preserved habitat for every 1 acre impacted (2:1);
 - d. Covered Activities that will impact GCWA habitat meeting the criteria for "habitat types where warblers are expected to occur" as described by Campbell (2003) and that is part of a contiguous patch of GCWA habitat that is less than 250 acres shall be mitigated at 1 acre of preserved habitat for every 1 acre impacted (1:1);and,
 - e. Covered Activities that will impact GCWA habitat meeting the criteria for "habitat types that may be used by warblers" as described by Campbell (2003), regardless of patch size or proximity to protected lands, shall be mitigated at 1 acre of preserved habitat for every 1 acre impacted (1:1).
 - f. Indirect impacts from covered activities will be mitigated at one-half acre of preserved land for every 1 acre impacted (0.5:1).
 - g. Mitigation will follow the Mitigation Strategies described below.
3. Any disturbance activity caused by an RHCP participant and authorized by the County with potential for direct and/or indirect effects to the GCWA, whether on or off of the project site, must be mitigated as appropriate. As the permit holder, the County is responsible for any unauthorized take resulting from activities authorized under the RHCP (50 CFR 13.50), as well as for compliance monitoring, reporting, and corrective measures. Additionally, if an RHCP participant is responsible for more direct or indirect take than is authorized, the County is responsible for seeking remedy, up to and including termination of participation.

BLACK-CAPPED VIREO

- P. Comal County is authorized to impact no more than 1,000 acres of BCVI habitat within Comal County, during the permit term. BCVI habitat is defined by the Texas Parks and Wildlife Department's Endangered and Threatened Animals of Texas publication (Campbell 2003). The following conditions also apply:

1. Clearing and construction activities on participating parcels within 300 feet of BCVI habitat will occur from September 1 to March 15, avoiding the breeding season, with the following exceptions:
 - a. breeding season surveys, conducted by a Service permitted biologist for BCVIs, according to the most current Service protocols, indicate BCVIs are not present within 300 feet of the activity, and
 - b. construction activities within 300 feet of BCVI habitat that began during the non-breeding season and are performed in a reasonably prompt and expeditious manner may continue.
2. Direct impacts are those in areas where potential or occupied habitat is actually destroyed or significantly modified by Covered Activities, and indirect impacts are those that occur in BCVI habitat within 300 feet of direct impacts. Mitigation for direct and indirect impacts to habitat will be made at the following ratios:
 - a. mitigation for direct impacts to BCVI habitat from Covered Activities will be made at a 1:1 ratio (1 acre of conservation for each acre of impact), but may be as high as 2:1 (2 acres of conservation for each acre of impact) in high quality habitat.
 - b. indirect impacts to BCVI habitat will be mitigated at a 1:1 ratio.
3. Any disturbance activity caused by an RHCP participant and authorized by the County with potential for direct and/or indirect effects to the BCVI, whether on or off of the project site, must be mitigated as appropriate. As the permit holder, the County is responsible for any take resulting from activities authorized under the RHCP (50 CFR 13.50), as well as for compliance monitoring, reporting, and corrective measures. Additionally, if an RHCP participant is responsible for more direct or indirect take than is authorized, the County is responsible for seeking remedy, up to and including termination of participation.

MITIGATION STRATEGIES

- Q. Comal County will mitigate for expected impacts to GCWA and BCVI habitat prior to Covered Activities that may result in take of Covered Species. To the maximum extent practicable (unless otherwise authorized by the Service), mitigation will meet a minimum standard of criteria, including blocks of high quality habitat with a low edge to area ratio, confirmation of Covered Species presence, a site that is sustainable into the future (such that it has low levels of adjacent urbanization and low oak wilt presence), and will be managed and monitored in perpetuity. Additionally, the mitigation should support the recovery and conservation strategy of the Covered Species by protecting habitat in a recovery unit that helps secure a viable population of the species. The mitigation strategies include:

1. Comal County establishes permanent preserves within the County. Each preserve established by the County for the purpose of generating credits must be approved by the Service and must be in place prior to the use of any credits.
 2. Comal County purchases credits from a Service-approved conservation bank. The service area of the bank must include Comal County. Purchase of credits must occur prior to impacts.
 3. Work with willing landowners or other entities in the creation of preserves. Preserves and the credits they generate must be approved by the Service and in place prior to the use of any credits.
- R. Once a preserve/conservation bank is established by the County, the County may sell credits from the bank to RHCP participants.
- S. Funding for preservation of habitat will include an amount to adequately cover the perpetual preservation, operations, and management of GCWA and/or BCVI habitat.
- T. With regard to projects that may involve a Federal nexus, the Federal action agency may mitigate for effects to GCWAs and/or BCVIs through the RHCP. However, Federal action agencies are still required to consult with the Service pursuant to section 7 of the ESA prior to arranging specific mitigation (i.e., no mitigation, in lieu fee, etc. shall be paid by the Federal action agency until conclusion of their section 7 consultation). Although voluntary mitigation through an appropriate HCP may expedite their consultation, it is no guarantee of such.
- U. Each preserve acquisition will be subject to Service approval and the mitigation credits will be determined based on the number of acres of occupied habitat for the Covered Species. The number of mitigation credits allowed for each preserve will be based on, and commensurate with, Service policy and guidelines regarding mitigation (such as, but not limited to, the *Guidance for the Establishment, Use, and Operation of Conservation Banks*) in order to ensure that the quality of the mitigation is equal to or greater than the quality of the habitat impacted.
- V. The County will work collaboratively with the Service to ensure that mitigation assessments are performed in accordance with the methodology described here and in the RHCP. The Service reserves the right to review all mitigation assessments. The County will provide the mitigation assessment for each individual participant to the Service. Once received by the Service, the Service will review the mitigation assessment within ten Federal working days and notify the County if it has any objections. If necessary, the Service may notify the County that it requires an additional ten Federal working days for its review. The Service does not anticipate that review of assessments will take additional time. As the permit holder, the County is responsible for ensuring that mitigation assessments are developed following the methodology described in the RHCP (50 CRF 13.50) and meets the obligations under the RHCP and permit to mitigate the effects of authorized incidental take. Failure to meet RHCP and permit requirements is cause for suspension or revocation of the permit (50 CFR 13.27 and 13.28) and the loss of No Surprises Assurances.

REPORTING REQUIREMENTS

- W. Comal County will provide an annual report, due on June 1 of each year, to:
1. U.S. Fish and Wildlife Service
Austin Ecological Services Field Office
10711 Burnet Road, Suite 200
Austin, Texas 78758
 2. U.S. Fish and Wildlife Service
Arlington Ecological Services Field Office
2005 NE Green Oaks Blvd, Suite 140
Arlington, Texas 76006
 3. U.S. Fish and Wildlife Service
Division of Environmental Review
P.O. Box 1306 Room 6034
Albuquerque, New Mexico 87103
- X. Annual reports will document the activities and Applicant's permit compliance for the previous year, thus documenting progress toward the goals and objectives of the RHCP and demonstrating compliance with the terms and conditions of the incidental take permit. The annual report will include:
1. The location, amount, and species specific incidental take authorized and number of acres and location of habitat preserved for each species to date;
 2. Summary of participation and funding status, including number of participants, annual revenue and expenses, and accounting of acreage preserved versus acreage authorized for incidental take;
 3. Timing, findings, and surveys of preserve boundary/perimeter surveys, territory mapping surveys, and habitat monitoring;
 4. General status of the species on RHCP preserves
 5. Assessment of management strategies and alternative management based on the assessment;
 6. Summary of any research authorized as part of the RHCP or on RHCP preserves;
 7. Prioritization of research needs;
 8. Any other data necessary for adaptive management purposes;
 9. An assessment of the degree to which the RHCP, as it is being implemented, is providing conservation benefits to the Covered and Evaluation Species and what additional measures, if

any, the County could implement through the RHCP to provide additional conservation benefits for the species; and,

10. Other information relevant to the implementation of the RHCP

- Y. Information provided in the annual report will be used to determine what, if any, adaptive management strategies should be implemented to most effectively implement the conservation program outlined in the RHCP and to ensure that management changes in response to new, appropriate data are implemented in a timely fashion.
- Z. The Service's current "No Surprises" policy provides that additional mitigation requirements for land, water, or financial obligations shall not be required of Comal County beyond the level of mitigation provided for in the permit and the habitat conservation plan, if fully and completely complied with and implemented. With respect to the Permit, the RHCP and supporting documents adequately addressed the federally listed covered species.
- AA. Upon locating a dead, injured, or sick GCWA or BCVI or any other endangered or threatened species, Comal County is required to contact the Service's Austin Ecological Services Field Office, 512/490-0057, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, Comal County and its contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

***** END OF PERMIT TE223267-2 *****