



Southern Edwards Plateau Habitat Conservation Plan Mitigation Determination



August 4, 2020

Project Name: TxDOT Alamo Ranch Parkway Overpass at Westwood Loop, Bexar County, Texas; CSJ: 0915-12-657

SEP-HCP Application No.: SEP 20-002

Texas Department of Transportation
Environmental Affairs Division
Ms. Cover Clamons
118 E. Riverside Drive
Austin, Texas 78704

Dear Ms. Clamons,

The Permittees have determined that the Applicant, property to be enrolled, and the planned activity are eligible to participate in the SEP-HCP.

- The Applicant is a non-federal entity conducting Covered Activities that are non-federal actions, however the project received federal funding, therefore requiring formal section 7 consultation with the USFWS which was approved on April 22, 2020; and
- The property to be enrolled is consistent with the geographic limitations of the Covered Activities.

The Permittees have determined that the biological information submitted with the application meets the established standards.

Date of On-site Habitat Determination: Not Applicable, Applicant is mitigating for karst impacts through their USFWS section 7 Consultation No. 02ETAU00-2020-F-0975 approved April 22, 2020

On-site Habitat Determination Conducted by: Multiple, see information included in Biological Assessment and Biological Opinion

USFWS Permit Number: Multiple, see information included in Biological Assessment and Biological Opinion

The Permittees have completed the participation assessment for the GCW and BCV and determined the level of mitigation needed to compensate for anticipated impacts to these species as follows:

	Acres	Mitigation Ratio (credits: acres)	Preservation Credits
GCW Habitat - Directly Impacted	0	2:1	0
GCW Habitat - Indirectly Impacted	0	0.5:1	0
BCV Habitat - Directly Impacted	0	2:1	0
BCV Habitat - Indirectly Impacted	0	0.5:1	0
Total			0.00¹

The Permittees have determined sufficient GCW Preservation Credits **are** currently available for purchase from the SEP-HCP to cover the mitigation needs for the property to be enrolled through a USFWS-approved

¹ The Applicant provided a copy of the USFWS Section 7 Consultation No. 02ETAU00-2020-F-0975, which determined that the proposed action was not likely to adversely affect the Golden-cheeked Warbler (GCWA) (*Setophaga chrysoparia*). Per the Biological Opinion, the Applicant will not be required to mitigate for the GCWA or submit any other documentation to the Permittees as part of the requirements for enrollment in the SEP-HCP.



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3rd party mitigation bank.¹

The Permittees have determined sufficient BCV Preservation Credits **are not** currently available for purchase from the SEP-HCP to cover the mitigation needs for the property to be enrolled through a USFWS-approved 3rd party mitigation bank.

The Permittees have completed the participation assessment for the Covered Karst Invertebrates and determined that the property occurs over the **Culebra Anticline Karst Faunal Region** and the level of mitigation needed to compensate for anticipated impacts to these species:

	Acres	Mitigation Ratio
Karst Zone 1	0.0	per acre
Karst Zone 2	15.1	per acre
Karst Zone 3	0.0	per acre
Karst Zone 4	0.0	per acre
Total	15.1	

	Occupied Features	Avoided	Access
<i>Cicurina madla</i> Occupied Cave Zone A	0	0	0
<i>Cicurina madla</i> Occupied Cave Zone B	0	0	0
<i>Cicurina vespera</i> Occupied Cave Zone A	0	0	0
<i>Cicurina vespera</i> Occupied Cave Zone B	0	0	0
<i>Cicurina venii</i> Occupied Cave Zone A	0	0	0
<i>Cicurina venii</i> Occupied Cave Zone B	0	0	0
<i>Batrises ventyivi</i> Occupied Cave Zone A	0	0	0
<i>Batrises ventyivi</i> Occupied Cave Zone B	0	0	0
<i>Tayshaneta microps</i> Occupied Cave Zone A	0	0	0
<i>Tayshaneta microps</i> Occupied Cave Zone B	0	0	0
<i>Rhadine infernalis</i> Occupied Cave Zone A	0	0	0
<i>Rhadine infernalis</i> Occupied Cave Zone B	0	0	0
<i>Rhadine exilis</i> Occupied Cave Zone A	0	0	0
<i>Rhadine exilis</i> Occupied Cave Zone B	0	0	0
Total	0	0	0

The Permittees have coordinated with the USFWS to determine whether or not the Conservation Baselines have been met for the Covered Karst Invertebrates associated with any Occupied Caves Zones within the property to be enrolled. The Permittees have determined that the Conservation Baselines **have not** been met for the Covered Karst Invertebrates associated with any Occupied Caves Zones within the property to be enrolled.

The property to be enrolled **does not** contain designated Critical Habitat for the Covered Karst Invertebrates. The Permittees have verified with the USFWS whether or not the USFWS will allow enrollment within a designated Critical Habitat unit. The Permittees have determined that the USFWS **will not** allow enrollment within a designated Critical Habitat Unit.

The Permittees have determined that the SEP-HCP **may** allow new enrollment within areas of Karst Zones 3 and 4 at this time. The Permittees have determined that the SEP-HCP **may** allow new enrollment within areas of Karst Zones 1 and 2, **upon the establishment of a USFWS-approved karst preserve.**



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The Permittees have determined to extend an invitation at this time to complete the enrollment process on **June 8, 2020**, by motion of the SEP-HCP Coordinating Committee.

Commented [JB1]:

The Permittees, at their discretion, offer Applicants the following ways of providing the mitigation for the proposed activity: (1) the purchase of GCW or BCV Preservation Credits from the SEP-HCP, (2) the payment of karst participation fees, or (3) the provision of suitable preserve land in lieu of Preservation Credit purchases or fees. A combination of these forms of mitigation may also be acceptable, depending on the Applicant's proposed activity.

In lieu of purchasing Preservation Credits from the SEP-HCP, Applicants may offer occupied preserve land for the GCW or BCV as full or partial mitigation for the impacts of their incidental taking. The Permittees will have the discretion to accept or reject all offers of preserve land in lieu of Preservation Credit purchases on a case-by-case basis. Any preserve land offered in lieu of Preservation Credit purchases must meet the minimum standards for GCW or BCV preserves and be approved by the USFWS. The level of mitigation provided by an offer of preserve land will be established in the same manner as for other SEP-HCP preserves and will be expressed in terms of the number of Preservation Credits created for each species.

If the Permittees accept an offer of preserve land from an Applicant and the offered preserve land creates more Preservation Credits than are needed to offset the impacts of the Applicant's activity, the excess Preservation Credits may be treated as follows:

- Option 1: The excess Preservation Credits may be added to a special account of the SEP-HCP and reserved for the future use of that Applicant/Participant or its assigns.
- Option 2: The Permittees may negotiate the acquisition of the excess Preservation Credits from the Applicant/Participant and make the excess Preservation Credits available for purchase by other Applicants.

In lieu of paying karst participation fees to the Permittees (fees associated with impacts to Occupied Cave Zones A or B), an Applicant may offer new karst preserves as mitigation for incidental take. The offered karst preserve in lieu must be occupied by one or more of the Covered Karst Invertebrates and can be from within the Enrolled Property or the Applicant can seek to find occupied karst preserves outside of the Enrolled Property. All karst preserves accepted in lieu of participation fees are subject to the same standards and approval process as other SEP-HCP karst preserves and must fulfill an unmet need towards achieving the Conservation Baseline for at least one of the Covered Karst Invertebrates. For each unmet Conservation Baseline need that is fulfilled by an accepted in-lieu karst preserve, an Applicant may apply the Preservation Value² as mitigation for one (1) occupied karst feature within the Enrolled Property, assuming the Conservation Baseline for that (those) species has been met in that KFR. For example, an Applicant may offer one karst preserve in an area that would protect two of the Covered Karst Species for which the Conservation Baselines have not yet been met and use the in-lieu preserve as mitigation for obtaining take authorization for two on-site features that contain species for which the regional Conservation Baselines have been met. Any excess Preservation Value from such transactions may not be carried over or applied to other Enrolled Properties³.

² For the purposes of the SEP-HCP, Preservation Value is the assessed level of mitigation required for obtaining take authorization for one (1) occupied karst feature within the Enrolled Property for which the regional Conservation Baselines have been met through the fulfillment of an unmet need towards achieving the Conservation Baseline for at least one of the Covered Karst Invertebrates in an in-lieu transaction. For each unmet Conservation Baseline need that is fulfilled by an accepted in-lieu karst preserve, an Applicant may apply the Preservation Value as mitigation for one (1) occupied karst feature within the Enrolled Property. Any excess Preservation Value from such transactions may not be carried over or applied to other Enrolled Properties.

³ For example, an Enrolled Property would generate excess Preservation Value during a karst transaction if the Applicants in-lieu preserve offers one (1) karst preserve in an area that would protect two (2) of the Covered Karst Species for which the Conservation Baselines have not yet been met and would be used by the Applicant as mitigation for obtaining take authorization for one (1) on-site feature that contain species for which the regional Conservation Baselines have been met. The in-lieu mitigation for the Enrolled Property would generate an excess Preservation Value of one (1) on-site feature containing species for which the regional Conservation Baselines have been met.



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The Permittees will have the discretion to accept or reject all offers of preserve land in lieu of karst participation fees for project impacts to occupied karst zones on a case-by-case basis. All offers of preserve land will also require the approval of the USFWS.

If the balance of the SEP-HCP GCW or BCV Preservation Credits is insufficient to meet the mitigation needs for the property to be enrolled, the Permittees encourage the Applicant to offer preserve land in lieu of the purchase of Preservation Credits. If that option is unavailable or is not mutually accepted by the Permittees and the Applicant, the Permittees will suspend the invitation to complete enrollment until sufficient Preservation Credits have been established.

Similarly, if the SEP-HCP is temporarily unable to provide incidental take authorization within Occupied Cave Zones that may occur within the property to be enrolled, the Permittees encourage the Applicant to offer karst preserves that would then achieve Conservation Baselines for the affected species. Such conservation actions could also provide mitigation in lieu of participation fees. **If incidental take authorization is not available for an Occupied Cave Zone or designated Critical Habitat area on the property to be enrolled, then the Applicant is not authorized under the SEP-HCP to disturb these areas.**

The Permittees have determined the participation fees that would be needed to provide mitigation for impacts for the property to be enrolled for incidental take authorization as follows:

	Acres / Features	Mitigation Ratio (credits per acre)	Mitigation Form (Preservation Credits / Acres / Feature)	Mitigation Fee (per Credit / Acre / Feature*)	Total Fee
GCW Habitat - Directly Impacted ⁴	0	2:1	0	\$4,000/credit \$8,000/acre	\$0.00
GCW Habitat - Indirectly Impacted	0	0.5:1	0	\$4,000/credit \$2,000/acre	\$0.00
BCV Habitat - Directly Impacted	0	2:1	0	\$4,000/credit \$8,000/acre	\$0.00
BCV Habitat - Indirectly Impacted	0	0.5:1	0	\$4,000/credit \$2,000/acre	\$0.00
Karst Zones 1 & 2	15.1	per acre	15.1	\$1,000/acre	\$15,100.00
Karst Zones 3 & 4	0	per acre	0	\$1,000/acre	\$0.00
Number of occupied karst features with Occupied Cave Zone A access	0	per feature	0	\$400,000/feature	\$0.00
Number of occupied karst features with Occupied Cave Zone B access	0	per feature	0	\$40,000/feature	\$0.00
Enrollment Subtotal	-	-	-	-	\$15,100.00
GCW Preserve In Lieu	-	per acre	-	\$2,500/acre	-
BCV Preserve In Lieu	-	per acre	-	\$2,500/acre	-
Karst Preserve In Lieu	-	per feature	-	\$2,500/acre	-
In Lieu Subtotal	-	-	-	-	-
Enrollment & In Lieu Subtotal	-	-	-	-	\$15,100.00
Plan Administration Fee	-	-	-	10% total fee (enrollment + in lieu)	\$1,510.00
TOTAL	-	-	-	-	\$16,610.00

*(approved fees through September 30, 2020)

⁴ The Applicant provided a copy of the USFWS Section 7 Consultation No. 02ET A U00-2014-F-0244-R, which determined that the proposed action was not likely to adversely affect the Golden-cheeked Warbler (GCWA) (*Setophaga chrysoparia*). The Service concurred that the proposed project is not likely to adversely affect the GCWA due to negative GCWA survey results, avoidance and minimization measures included in the biological assessment, and the restricted linear nature of the proposed activity (please see sections 2.4.3, 4.1.1 and Appendix D in the Biological Assessment). Portions of the project area were surveyed in 2011, 2012, 2013, and 2015 with the result that the entirety of the project area was surveyed at least once for GCWA and GCWAs were not detected during any of these surveys. Per the Biological Opinion, the Applicant will not be required to mitigate for the GCWA or submit any other documentation to the Permittees as part of the requirements for enrollment in the SEP-HCP.



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This Mitigation Determination will be valid for a period of no more than one year from the date of issuance by the Permittees. After one year, the findings of this Mitigation Determination will be deemed to have expired and a new application (complete with new or updated biological information) would be necessary to continue with the enrollment process.

Applicant understands that by entering into a Participation Agreement with the Permittees, the Applicant will also be required to comply with all of the special conditions and other applicable laws pertaining to activities conducted on their Enrolled Property that could result in the taking of Covered Species. Furthermore, as a third-party to the Participation Agreement, the USFWS retains the right to enforce the terms of the Participation Agreement and any related applicable laws.

A copy of this Mitigation Determination and a copy of the associated application package will be submitted to the U.S. Fish & Wildlife Service at the time the Mitigation Determination is sent to the Applicant.

If you have any questions pertaining to this Mitigation Determination, please contact:

Southern Edwards Plateau Habitat Conservation Plan
DSD-Policy Administration
1901 South Alamo Street
San Antonio, TX 78204
Phone: (210) 207-1111
Email: DSDSEPHCP@sanantonio.gov

Sincerely,

SEP-HCP SECRETARY

ACCEPTED BY APPLICANT:

By: _____

Date