



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

### FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

Hays County, Texas  
111 E. San Antonio Street  
San Marcos, Texas 78666  
Phone: 512/393-2211  
e-mail: Jeff.Hauff@co.hays.tx.us

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

3. NUMBER  
TE-220793-0

4. RENEWABLE  
[ **x** ] YES  
[ ] NO

5. MAY COPY  
[ **x** ] YES  
[ ] NO

6. EFFECTIVE  
June 15, 2012

7. EXPIRES  
June 30, 2042

8. NAME AND TITLE OF PRINCIPAL OFFICER: (if #1 is a business)  
Elizabeth (Liz) A. Sumter, County Judge.

Primary Contact: Jeff Hauff, Grants Administrator

9. TYPE OF PERMIT:  
Endangered Species – Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED: Hays 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: 	ACTING TITLE for Deputy Regional Director	DATE 6/11/12
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- E. Acceptance of the Permit serves as evidence that the Applicant understands and 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 Hays County 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. Permittee(s) are authorized to "Take" the following species: golden-cheeked warbler (GCWA), and black-capped vireo (BCVI) in Hays County, Texas; incidental to activities including, but not limited to, road construction, maintenance, and improvement projects; utility construction and maintenance; school development and construction; public or private construction and development; and land clearing.
- H. The permit does not authorize take, whether direct or indirect, of any listed species other than the covered GCWA and BCVI.
- I. If conditions exist (e.g., severe drought, springflows drop to critically low levels) where actions associated with the Hays County Regional Habitat Conservation Plan (RHCP) are shown to result in incidental take of listed species not fully covered by the permit, the permit may be suspended or revoked because the taking is not otherwise lawful. The Service will notify Hays County of any suspension or revocation proceedings in accordance with 50 CFR 13.27(b) or 50 CFR 13.28(b), if any unauthorized direct or indirect take occurs that is related to activities covered by the RHCP. All activities associated with the RHCP that are shown to cause take must cease until further notice.

#### Golden-cheeked Warbler

- J. Clearing and construction activities on participating parcels within 300 feet of GCWA habitat is not authorized between February 28 and July 31 (reproductive season), with the following exceptions: 1) protocol breeding season surveys indicate GCWAs are not present; 2) construction activities that began during the non-breeding season and are performed in a reasonably prompt and expeditious manner may continue, and; 3) construction activities that do not involve the removal of potential habitat may continue only if not adjacent (within 300 feet) to potential habitat. However, any disturbance activity caused by an RHCP participant and authorized by the County with potential for direct and 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.
- K. The incidental take associated with direct and indirect impacts to 9,000 acres of habitat are authorized over the life of the Permit. These impacts shall be mitigated by the County purchasing high quality habitat within Hays County for GCWA preserves that will be in the form of a phased conservation bank, from which credits may be used by the County or sold to participants to mitigate for their impacts. The preserve system is anticipated to include 10,000 to 15,000 acres of habitat for the golden-cheeked warbler and black-capped vireo, combined. Preserves for GCWAs will be managed and monitored in perpetuity to maintain the biological value for the benefit of the species. Mitigation ratios are as described in the RHCP and mitigation assessments are subject to Service approval.

Black-capped Vireo

- L. Clearing and construction activities on participating parcels within 300 feet of BCVI habitat is not authorized between March 15 and August 31 (reproductive season), with the following exceptions: 1) protocol breeding season surveys indicate that BCVIs are not present; 2) construction activities that began during the non-breeding season and are performed in a reasonably prompt and expeditious manner may continue, and; 3) construction activities that do not involve the removal of potential habitat may continue only if not adjacent (within 300 feet) to potential habitat. However, any disturbance activity caused by an RHCP participant and authorized by the County with potential for direct and 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 unauthorized take resulting from activities authorized under the RHCP (50 CFR 13.50), as well as for compliance monitoring, reporting, and corrective measures.
- M. For BCVIs, the take associated with direct and indirect impacts to 1,300 acres of habitat are authorized over the life of the Permit. Impacts will be mitigated primarily through habitat restoration, habitat management, enhancement of existing protected BCVI habitat, or an alternate, Service-approved mitigation program in accordance with the Fish and Wildlife Act of 1956 (16 U.S.C. 742(a)-754), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667(e)), the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1009), and the National Environmental Policy Act (42 U.S.C. 4321-4347).

Non-Species-Specific Terms & Conditions

- N. With regard to projects that may involve a Federal nexus, the Federal action agency may mitigate for effects to threatened or endangered species covered by the RHCP. However, this does not displace the requirement for Federal action agencies to consult with the Service pursuant to section 7 of the Endangered Species Act 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. Further, mitigation strategies in section 7 are not bound by those in the RHCP. For incidental take considerations under section 7, minimization of the level of take on the individuals affected is required.
- O. The Service reserves the right to review and approve all mitigation assessments by the County during a probationary period of five years from the date of issuance of the permit. Within three years after issuance, the Service will consult with the County and, if the Service is satisfied with the accuracy of the County's mitigation assessments, the Service's review of mitigation assessments may be reduced or eliminated.
- P. Each preserve acquisition will be subject to Service approval and the mitigation credits will be determined based on the number of acres of potential and/or 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.
- Q. The County will work collaboratively with the Service to ensure that mitigation assessments are performed in accordance with the methodology described 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 CFR 13.50) and meet 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, 50 CFR 13.28) and the loss of No Surprises Assurances.

- R. Conditions of this permit shall be binding on, and for the benefit of Hays County.
- S. If during the tenure of this Permit the project design and/or the extent of the habitat impact described in the RHCP is altered such that there may be an increase in the anticipated take of any covered species, Hays County is required to contact the Service and obtain authorization and/or amendment of the permit before issuing participation certificates or commencing any other activities which might result in take beyond that described in the RHCP.
- T. Hays County shall submit an Annual Report describing participation certificates issued; funds collected and spent; and conservation and management actions undertaken; on January 1 of each year the permit is in effect. The report will summarize the results of the biological monitoring and adaptive management process and findings. This required information includes the location of all surveys (including negative findings), a description of any deviations from required survey protocols, personnel used, and documentation of all survey results as required in the protocols for the particular endangered species. In addition, the annual report will review existing management and highlight areas where change in management approach may be needed and where prioritized research needs are reviewed. A copy of the annual report shall be submitted to the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office 10711 Burnet, Suite 200, Austin, Texas 78758; and to the U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103.
- U. The Service's current "No Surprises" policy provides that additional mitigation requirements for land, water, or financial obligations shall not be required of Hays 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.
- V. Clearing and construction activities covered by the RHCP and the Permit shall be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt.
- W. Upon locating a dead, injured, or sick GCWA or BCVI or any other endangered or threatened species, Hays County is required to contact the Service's Austin Ecological Services Field Office, in Austin, Texas, (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, Hays County and its contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

\*\*\*\*\* END OF PERMIT # TE-220793-0 \*\*\*\*\*