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13.79-CHK#DECLARATION OF AGREEMENTS AND RESTRICTIONS

The undersigned, being the owner of certain property in Travis County, Texas, more particularly described as Jester Point 2, Section 5-B, a subdivision in Travis County, Texas, recorded in Volume 88, Pages 202-203, Plat Records, Travis County, Texas (the "Property"), does hereby make, publish and give notice of certain agreements and restrictions relating to the Property and does hereby record those agreements in the Real Estate Records of Travis County, Texas, to give the public notice thereof.

WHEREAS, the U.S. Department of Army, Corps of Engineers ("Corps"), and United States Department of Interior, Fish and Wildlife Service ("Service"), have made certain reviews and issued certain approvals in connection with the Property; and

WHEREAS, the Corps and the Service have made and set certain requirements and restrictions in connection with those reviews and approvals.

NOW, THEREFORE, the undersigned owner of the Property does hereby:

1. Record and publish the approvals and restrictions issued by the Corps and the Service and attaches the same hereto as Exhibits A and B, which exhibits are incorporated herein as if written herein at length.

2. Give notice of all requirements, conditions and restrictions set out in Exhibits A and B to the public and all present and future owners of the Property.

EXECUTED AND PUBLISHED this 15th day of November, 1990.

JESTER LAND MANAGEMENT COMPANY

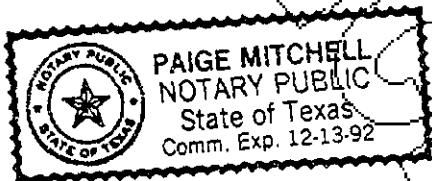
By

Name MAUDY J. HOODTitle PRESIDENT

STATE OF TEXAS
COUNTY OF TRAVIS

§
§
§

This instrument was acknowledged before me on November 1, 1990, by Maurice J. Hood, President of Jester Land Management Company, a Texas corporation, on behalf of said corporation.



Paige Mitchell
Notary Public, State of Texas

PAIGE MITCHELL
(Stamped or Printed Name of Notary)

My Commission Expires: 12-13-92

declaration;
jester;burriss;br

Please Return To:

Jester Land Management
98 San Jacinto Blvd., Suite 350
Austin, Texas 78701

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

DUPLICATE ORIGINAL DOCUMENT



DEPARTMENT OF THE ARMY
 FORT WORTH DISTRICT, CORPS OF ENGINEERS
 P. O. BOX 17300
 FORT WORTH, TEXAS 76102-0300

REPLY TO
 ATTENTION OF:

September 28, 1990

Operations Division
 Office Operations Office

SUBJECT: Project Number 199000181

Mr. Howard L. Burris, Jr.
 President
 Jester Land Management Company
 98 San Jacinto Boulevard, Suite 350
 Austin, Texas 78701

Dear Mr. Burris:

Reference is made to a letter dated May 9, 1990, from Fred C. Lockwood, P.E., of Lockwood Engineers, Inc. concerning your request for authorization under Section 404 of the Clean Water Act to construct a wastewater pipeline in a tributary to Bull Creek. This wastewater pipeline is to service parts of the Jester Estates Development in Austin, Travis County, Texas.

As a result of an on-site meeting conducted on May 21, 1990, this office concluded that the proposed pipeline may affect the golden-cheeked warbler (Dendroica chrysoparia) which is listed as endangered under the Endangered Species Act (ESA). On June 1, 1990, this office initiated formal consultation with the United States Fish and Wildlife Service (USFWS) in accordance with Section 7(a)2 of the ESA. On July 26, 1990, the USFWS informed this office of the presence of a cave occupied by one of the federally-listed cave invertebrates, the Bee Creek Cave harvestman (Texella reddelli). As a result, the consultation was expanded to include the harvestman. The USFWS also requested a 60-day extension to the consultation process in their July 26, 1990 letter. This office approved the extension on August 31, 1990.

On September 13, 1990, you notified this office and the USFWS that you proposed to only develop the 43 lots in Jester Point 2 Section 5-B and that the remaining acreage will be left in an undeveloped state until biological information is obtained to reinstate consultation on the remaining land or until a regional habitat conservation plan is in place. On September 26, 1990, the USFWS rendered their Biological Opinion (copy enclosed), concluding that the issuance of a nationwide permit for the wastewater pipeline crossing in Jester Estates, north-central Travis County, Texas, is not likely to jeopardize the continued

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REAL PROPERTY RECORDS
 TRAVIS COUNTY, TEXAS

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existence of the golden-cheeked warbler or the Bee Creek Cave harvestman. The USFWS also required reasonable and prudent measures be taken to minimize incidental take.

This letter authorizes the construction of the wastewater pipeline crossing a tributary to Bull Creek for the 43 lots of Jester Point 2 Section 5-B under nationwide permit 33 CFR Part 330.5(a)(12) for the discharge of material for backfill or bedding for utility lines within a water of the United States. The only requirements in the use of the above nationwide permit is that the person responsible for the project must ensure that the work is in compliance with the enclosed Biological Opinion, Enclosure 1, and the below listed special conditions. Failure to satisfy these conditions invalidates this authorization and may subject you to legal action for violation of the Clean Water Act and/or the Endangered Species Act.

Special Conditions:

- a. That golden-cheeked warbler surveys shall be conducted during the nesting season (April 1 to June 1) for 3 consecutive years on and adjacent (a minimum of 500 feet) to Jester Point 2 Section 5-B to monitor warbler activity. The first survey shall start the spring of 1991. Also, the survey procedure shall be submitted to this office and to the USFWS office in Arlington, Texas, for review and approval 45 days prior to initiation of the survey.
- b. That new construction shall not be initiated between April 1 and August 1 within 500 feet of an active golden cheek warbler nest.
- c. That this office shall be contacted immediately, if during the term of this action any quantifiable incidental take occurs. This office will then reinitiate consultation with the USFWS to avoid violation of Section 9 of the ESA.
- d. That the incidental take statement provided in the Biological Opinion does not constitute an authorization for take of migratory birds under the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act or any other Federal statute.
- e. That upon locating a dead, injured, or sick individual of an endangered or threatened species, initial notification must be made to the USFWS's Law Enforcement Office at San Antonio, Texas, (telephone 512-229-5412). Care should be taken in handling sick

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or injured individuals to insure effective treatment and care and 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 individuals or preservation of biological materials from a dead animal, the finder has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

f. That biological studies on use by federally-listed species, in areas designated to be left in an undeveloped state, shall be completed and furnished to this office for reinitiation of consultation, if necessary, before any alteration occurs; or that no further work be undertaken in these designated undeveloped areas until the completion of the Balcones Canyonlands Regional Habitat Conservation Plan and until you have received the necessary 404 permits from this office, if required. In either one of the above options, you are to contact this office in writing before initiating any disturbance in the designated undeveloped areas. This will enable us to ensure that the permit we are issuing to you remains in compliance with the ESA.

g. That this permit letter and enclosures shall be recorded with the County Clerk, Travis County, Texas, prior to the sale of the 43 lots in Jester Point 2 Section 5-B. A recorded copy of this action shall be returned to this office within 60 days of the date of this letter.

h. That the wastewater pipeline corridor is recommended to be replanted with native oak, Ash juniper and other species deemed beneficial by golden-cheeked warbler experts. Consideration should be given to allowing a width of no more than 15 feet to remain unplanted to allow future access by maintenance vehicles.

The verification for the construction of an activity under this nationwide permit will be valid until the nationwide permit is modified, reissued, or revoked. All of the nationwide permits are scheduled to be modified, reissued, or revoked prior to January 13, 1992. It is incumbent upon you to remain informed of changes to the nationwide permits. The U.S. Army Corps of Engineers will issue a public notice announcing the changes when they occur. Furthermore, if you commence, or are under contract to commence, this activity before the date that this nationwide

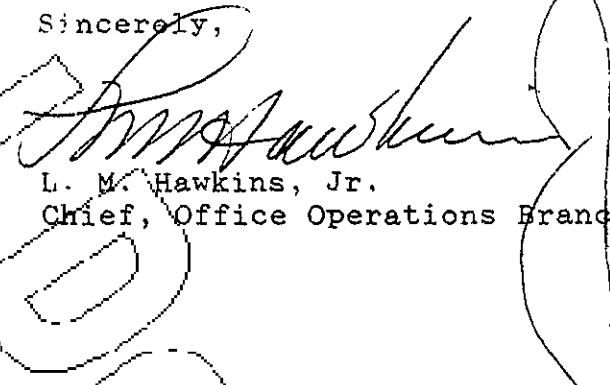
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permit is modified or revoked, you will have twelve months from the date of the modification or revocation to complete the activity under the present terms and conditions of the nationwide permit.

This permit should not be considered as an approval of the design features of any activity authorized or an implication that such construction is considered adequate for the purpose intended. It does not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations.

If you should have further questions regarding this matter, please contact Mr. Jim Townsend at the address above or telephone 817-334-4625.

Sincerely,


L. M. Hawkins, Jr.
Chief, Office Operations Branch

Enclosures

Copy furnished w/encl:

Fred C. Lockwood, P.E.
Lockwood Engineers, Inc.
1250 Capital of Texas Highway
Building III, Suite 120
Austin, Texas 78746

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

11307 1126

w/o encl:

Mr. Rollin MacRae
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78444

Mr. Robert M. Short
U.S. Fish and Wildlife Service
Ecological Services
Stadium Centre Building
711 Stadium Drive, East, Suite 252
Arlington, Texas 76011

Mr. Jerry Saunders
U.S. Environmental Protection Agency
Region VI, 1445 Ross Avenue
Dallas, Texas 75202

2-12-90-F-205

UNITED STATES
DEPARTMENT OF THE INTERIOR

FISH AND WILDLIFE SERVICE
Ecological Services

Stadium Centre Building
711 Stadium Drive East, Suite 252
Arlington, Texas 76011

September 26, 1990

Colonel William D. Brown
District Engineer
U.S. Army, Corps of Engineers
P.O. Box 17300
Fort Worth, TX 76102

Dear Colonel Brown:

This responds to your letter of June 1, 1990, requesting formal Section 7 consultation as provided by the Endangered Species Act of 1973, as amended (Act), and constitutes the Fish and Wildlife Service's (Service) biological opinion on the subject activity as provided by the Act. The Federal action under consultation is a nationwide permit from the U. S. Department of the Army, Corps of Engineers (Corps) for the discharge of backfill into a water of the United States in association with the construction of a wastewater pipeline. The project is located on an unnamed tributary to Bull Creek in north-central Travis County, Texas (Figure 1). The proposed action "may affect" the federally-listed endangered golden-cheeked warbler (Dendroica chrysoparia) and the Bee Creek Cave harvestman (Texella reddelli). This formal consultation was initiated on June 5, 1990, the date your request was received by this office.

By letter dated June 13, 1990, we acknowledged receipt of your letter and indicated that additional information was needed for our review. However, this information was not received in a timely manner, and by letter dated July 26, 1990, we requested and you subsequently agreed to a 60-day extension of the consultation process. Given this, the time period available for completion of this consultation ends on November 2, 1990.

This biological opinion is based upon information from the Corps; Lockwood Engineers, Inc.; Horizon Environmental Services, Inc.; data in Service files; and discussions with biologists familiar with the species.

Information obtained from the above sources indicated that residential construction associated with the wastewater line would not result in direct alteration of suitable habitat for the golden-cheeked warbler (warbler) or the Bee Creek Cave harvestman (harvestman). Indirect impact to the warbler may occur, however, as the project lies within the large block of warbler habitat in the Bull Creek drainage basin. Additionally, surveys conducted by Horizon Environmental Services, Inc., found warblers and the harvestman at sites within the project area to be left in an undeveloped state.

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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Biological Opinion

Based on the following evaluation, it is my biological opinion that your action of issuing this nationwide permit for the wastewater pipeline crossing in Jester Estates, north-central Travis County, Texas, is not likely to jeopardize the continued existence of the golden-cheeked warbler or the Bee Creek Cave harvestman.

Background Information

The action under consultation involves the initial construction of about 3,000 feet of wastewater pipeline and the single-family homes that would connect with that line. Jester Point 2 subdivision totals about 425 acres. Formal consultation is being conducted on about 117 acres, the area identified by the Corps as the service area formed by direct connection to the proposed wastewater pipeline (Figure 2). This portion of Jester Point 2 includes Sections 5-B, 8, 9, 10, 12 and 13 (Figure 3). The majority of Section 5-B, platted for 43 single family lots, has been cleared and roads and waterlines have been installed. As stated in a letter of September 13, 1990, to our respective offices from Mr. Howard L. Burris, Jr., the project was altered to limit the area of development to the 43 single-family lots in Section 5-B. The remaining sections, previously subjected to varying degrees of clearing, are to be left in an undeveloped state for purposes of this biological opinion. These areas are not to be developed prior to the collection of additional biological information and reinitiation of consultation, or a regional habitat conservation plan is in place.

The project lies within the breeding range of the warbler. In central Texas, male warblers arrive at their breeding areas in early to mid-March, and females typically follow a week or two later. Warblers generally return to the same nesting territory year after year. They may remain in the area until mid- to late July. An estimated 4,822 to 16,016 pairs occur within the breeding range in Texas (Wahl et al, 1990).

Warbler habitat in Texas is a mixed evergreen-deciduous forest or woodland of Ashe juniper (Juniperus ashei), Texas oak (Quercus buckleyi) and other oaks generally over 30 years old. Warblers forage for insects in broad-leaved trees and shrubs. The warbler will nest in a variety of trees, but nesting depends on the presence of old Ashe junipers. The bark from this tree is necessary for nest construction. Thus, prime warbler habitat has a fairly closed canopy of mixed hardwood trees along with mature Ashe juniper; it often occurs in the steep canyons of the Texas Hill Country (Edwards Plateau). The warbler occupies and defends a territory from 3 acres in high quality habitat to 25 acres in marginal habitat. The species appears to require relatively large blocks of undivided habitat for long-term survival. A single clutch of three to four eggs is laid in late March or early April. The eggs hatch in about 12 days, and the young fledge in another 8 to 9 days. Both adults care for the young.

Habitat loss and habitat fragmentation are the main threats to this species. Wahl et al. (1990) estimated that the annual rate of warbler habitat loss in western Travis County was 4 percent over the last 10 years. This rate is slightly less than the 7.4 percent annual rate that Clark

(1985) estimated for the Austin area. In addition to the direct loss of habitat, development has fragmented the remaining habitat so that only 46 percent of the vegetation suitable for warbler use in Travis County occurs in blocks large enough for warbler use. If this rate of decline is continued, Wahl et al. (1990) estimate the maximum carrying capacity for the warbler will be reduced by 53 percent by the year 2000. Cowbird nest parasitism is also a threat to the species, with Pulich (1976) reporting a parasitism rate of 56 percent. The added impact of habitat fragmentation on this rate is not known.

Any direct impact of your action on the warbler would likely be limited because no warblers have been sighted on the 43 lots and all clearing was accomplished prior to the emergency listing. Indirect impacts would include increased noise and disturbance adjacent to the single-family houses and new roads. Although such impacts currently exist in the general area, the areal extent of these impacts would be expanded due to the construction of new houses. This could further reduce the potential habitat (area with suitable vegetation characteristics for which warbler use has not been documented) that is available for use by the warbler.

In addition to the warbler, the federally-listed Bee Creek Cave harvestman (Texella reddelli) was found in Jester Estates Cave located in Section 9. No other karst features were located within the sections under consideration in this consultation.

The harvestman has a body about 2 to 3 millimeters long and relatively long legs. Its' body color is light yellowish-brown. It is eyeless and preys on small insects. It occurs in karst features of the Edwards Limestone that constitute the Jollyville Plateau and has been identified from 24 caves occurring in an area that covers about 60,000 acres of the plateau in Travis and Williamson Counties. Karst features include caves, small openings in the rock, and sinkholes. The harvestman generally occupies those features with high humidity, stable temperatures, and a food source (Elliott et al, 1989). Alteration of any of these requirements/factors by altering surface or subsurface moisture patterns or contaminant loads could result in the elimination of Jester Estates Cave as a viable habitat for the species.

Studies to determine the surface and subsurface areas that contribute to the cave's environment have not been completed at this time. Additional studies in reference to the total range of the harvestman within Section 9 have also not been completed. Development activities in Section 5-B are not likely to impact the harvestman populations in Section 9.

Section 7 Interagency Cooperation Regulations (50 CFR 402-19926-19963) require the Service to consider cumulative impacts to listed species as well as analyzing impacts due solely to the Federal action currently under formal consultation. The largest blocks of prime nesting habitat for the warbler are located in the Travis County area. Additionally, the harvestman is known to occur only in Travis and Williamson Counties. The immediate project area is subject to heavy commercial and residential development pressure with such proposed developments as IM Corporation, Four Points Development, Long Canyon and Canyon Creek subdivisions, and Ranch Road 620. Western Travis County, where much of the best warbler

habitat is located, is primarily where urban growth is occurring in the Austin area; construction continues on existing developments such as Crystal Mountain and Rob Roy on the Lake subdivisions. Additionally, new developments, such as Caprock, Barton Creek Planned Unit Development, Bohls Ranch, and Wolf Ranch subdivisions are being planned. To support these developments, support services such as water and sewer systems and roads, such as Comanche Trail and Lohman's Crossing, are proposed for upgrading.

The City of Austin Environmental and Conservation Department estimates that about 30 percent of lands in the western Austin Planning Area are potential warbler habitat and 40 percent of these lands are suitable for development. This estimate does not account for potential habitat that could be lost due to development related habitat fragmentation. Potential habitat for the harvestman covers a larger area than potential warbler habitat within the general area of the project. Therefore, development impacts could be greater depending upon actual distribution of suitable habitat. All developments and/or construction activities that impact federally-listed species must comply with the Act; the Service would provide assistance, consultation, review, or other action as appropriate.

In considering cumulative impacts, an environmental baseline for the species is determined by considering past and present impacts of all projects and human activities in the area, regardless of whether they are Federal, State, or private in nature. After establishing this baseline, a determination is made concerning the "cushion" of remaining natural resources that may be used for completion of development projects associated with endangered species before the point of jeopardy is reached. After that point, further Federal actions would be precluded under Section 7.

Land development actions throughout the warbler's range are affecting its habitat. Such activities include road projects, water and utility line activities, and residential and commercial developments. Wahl et al (1990) estimates there are from 80,000 to 260,000 acres of potential warbler breeding habitat in all or part of 39 counties in Texas. This excludes habitat blocks smaller than about 125 acres. A viable population is projected to be about 1,000 pairs, and more than one of these is required over the total range of the species (Pease and Gingerich, 1989). A total of about 12,000 uninterrupted acres of habitat would be required to support this population.

The harvestman has been found in 24 caves that occur in an area of about 60,000 acres. Total population of the harvestman or area required for a viable population is not known. However, this project as proposed is not likely to impact known populations of the harvestman. Based upon the absence of known populations of the harvestman and suitable warbler habitat in the proposed development area, we believe the impacts due to the proposed development, along with total cumulative effects, would not reach a jeopardy threshold for the warbler or the harvestman.

Incidental Take

Section 9 of the Act prohibits any taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct) of listed species without a special exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Under terms of Sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking; provided that such taking is in compliance with this incidental take statement. In that regard, the reasonable and prudent measures described below are nondiscretionary, and must be undertaken by the agency or made a binding condition of any grant or permit issued to the applicant, as appropriate.

The Service anticipates no direct loss of warblers or warbler habitat with project development. However, habitat may be indirectly affected and an unquantifiable level of incidental take occur as a result of residential development associated with this wastewater pipeline. Therefore, any quantifiable take will be regarded as exceeding the anticipated incidental take level. The level of take is unquantifiable for the following reasons:

1. The minimum distance from a residential development that warblers may nest is not known;
2. The distance from developed areas that typical urban animals (such as blue jays) will range and adversely impact nesting of the warbler is not known;
3. The minimum patch size that warblers will occupy is not accurately known.

The indirect impact of construction on adjacent habitat through increased human activity, and disturbance or predation by pets and other animals associated with residential areas, could result in nest abandonment and, thus, "take". Therefore, the Service believes the following reasonable and prudent measures are necessary and appropriate to minimize "take".

1. Conduct golden-cheeked warbler surveys (The survey procedure shall be provided to the Service for review 45 days prior to initiation of the survey) during the nesting season for 3 years on and adjacent to Jester Point 2 Section 5-B to monitor warbler activity; and
2. New construction not be initiated between April 1 and August 1 within 500 feet of an active golden-cheeked warbler nest.

In order to be exempt from the prohibitions of Section 9 of the Act, the Corps is responsible for compliance with the following terms and conditions, which implement the reasonable and prudent measures described above.

1. If during the term of this action any quantifiable incidental take occurs, the Corps must reinitiate consultation with the Service immediately to avoid violation of Section 9. Operations must be stopped in the interim period between the initiation and completion of the new consultation if it is determined that the

impact of the additional taking will cause an irreversible and adverse impact on the species, as per Section 402.14(i) of the Act. The Corps should provide an explanation of the causes of the taking.

2. The incidental take statement provided in this opinion satisfies the requirements of the Act. This statement does not constitute an authorization for take of migratory birds under the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act or any other Federal statute.

3. Upon locating a dead, injured, or sick individual of an endangered or threatened species, initial notification must be made to the Fish and Wildlife Service Law Enforcement Office at San Antonio, Texas (telephone 512-229-5412). Care should be taken in handling sick or injured individuals to insure effective treatment and care and 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 individuals or preservation of biological materials from a dead animal, the finder has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

Conservation Recommendations

Section 7(a)(1) of the Endangered Species Act directs Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. The term "conservation recommendations" has been defined as suggestions of the Service regarding discretionary measures the Corps should take to minimize or avoid adverse effects of a proposed action on listed species and/or critical habitat, or regarding the development of information.

We provide the following "conservation recommendations" to minimize adverse impacts and promote the conservation of the golden-cheeked warbler:

1. Revegetate the wastewater line right-of-way that services the 43 lots in Section 5-B with native oak and Ashe juniper.
2. The Corps condition the issued permit as follows: 1) the applicant, prior to any alteration of the designated undeveloped areas, will complete biological studies on use by federally-listed species and request the Corps to reinstitute consultation with the Service; or 2) the designated undeveloped areas will not be developed until completion of the Balcones Canyonlands Regional Habitat Conservation Plan.

This concludes formal consultation on this action. Reinitiation of formal consultation is required if: 1) the amount or extent of incidental take is exceeded (i.e. any quantifiable take occurs); 2) new information reveals effects of the action that may impact listed species or critical habitat in a manner or to an extent not considered in this opinion; 3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or, 4)

a new species is listed or critical habitat designated that may be affected by the action. To reiterate, any determination of take attributable to this activity represents new information requiring the need for reconsultation. Therefore the reinitiation level is one (1) for either the golden-cheeked warbler or the Bee Creek Cave harvestman.

We appreciate the opportunity to provide input to you to promote conservation of endangered species. Please provide us the documentation on how the reasonable and prudent measures will be implemented. If the conservation recommendations are adopted and must be modified due to unforeseen problems, please coordinate changes with this office. If we may be of further assistance, please contact Joe Johnston or myself of this office at (817) 885-7830.

Sincerely,

Robert M. Short

Robert M. Short
Field Supervisor

cc: Regional Director, FWS, Albuquerque, NM (FWE/HC)
Executive Director, TPWD, Austin, TX
Congressman J.J. Pickle, Austin, TX
Senator Lloyd Bentsen, Austin, TX
David Braun, Texas Nature Conservancy, San Antonio, TX
Kent Butler, Kent Butler Associates, Austin, TX
Clif Ladd, Espey, Huston and Associates, Inc., Austin, TX
Chuck Sexton, City of Austin, Austin, TX
Maury Hood, Jester Land Management Corporation, Austin, TX
Director, FWS, Washington, D.C. (AFWE and BFA)

Literature Cited

Clark, B.V. 1985. Land Use Change Rates in Selected Areas of Texas. Report to Texas Parks and Wildlife Department. Contract No. 374-772 IAC (84-85) 1219. 48 pp.

Elliott, W. R. and J. R. Reddell. 1989. The Status and Range of Five Endangered Arthropods from Caves in the Austin, Texas, Region. Report to Texas Parks and Wildlife Department and the Texas Nature Conservancy. 75 pp.

Pease, C. M. and L. G. Gingerich. 1989. The habitat requirements of the black-capped vireo and golden-cheeked warbler populations near Austin, Texas. Dept. of Biology, Univ. of Texas, Austin, TX. 55 pp.

Pulich, W.M. 1976. The Golden-cheeked Warbler, a Bioecological Study. Texas Parks and Wildlife Department, Austin, Texas. 172 pp.

Wahl, R., D. D. Diamond, and D. Shaw. 1990. The Golden-cheeked Warbler: A Status Review. Report prepared for the U.S. Fish and Wildlife Service January, 1990.

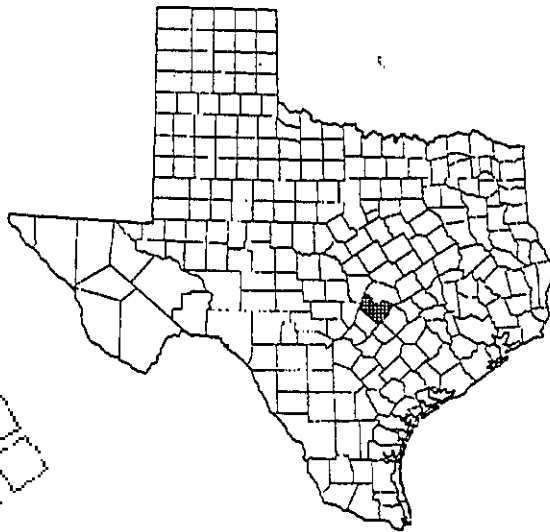
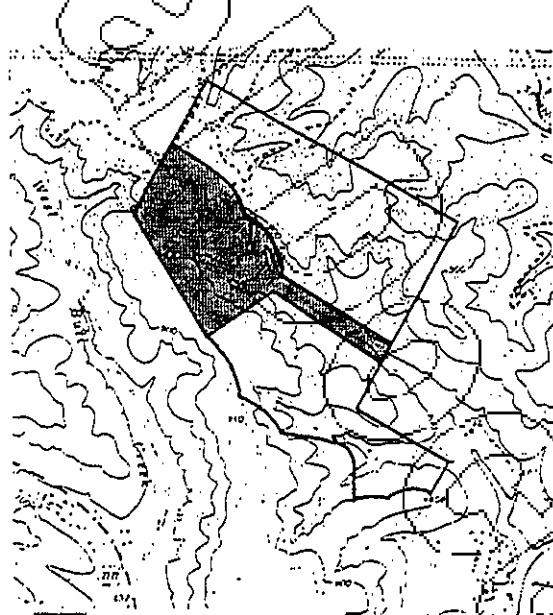


Figure 1. Location of Travis County, Texas.



Area of Section 7 Consultation

Figure 2. Jester Point 2 subdivision boundaries in the Bull Creek drainage basin, Travis County, Texas.

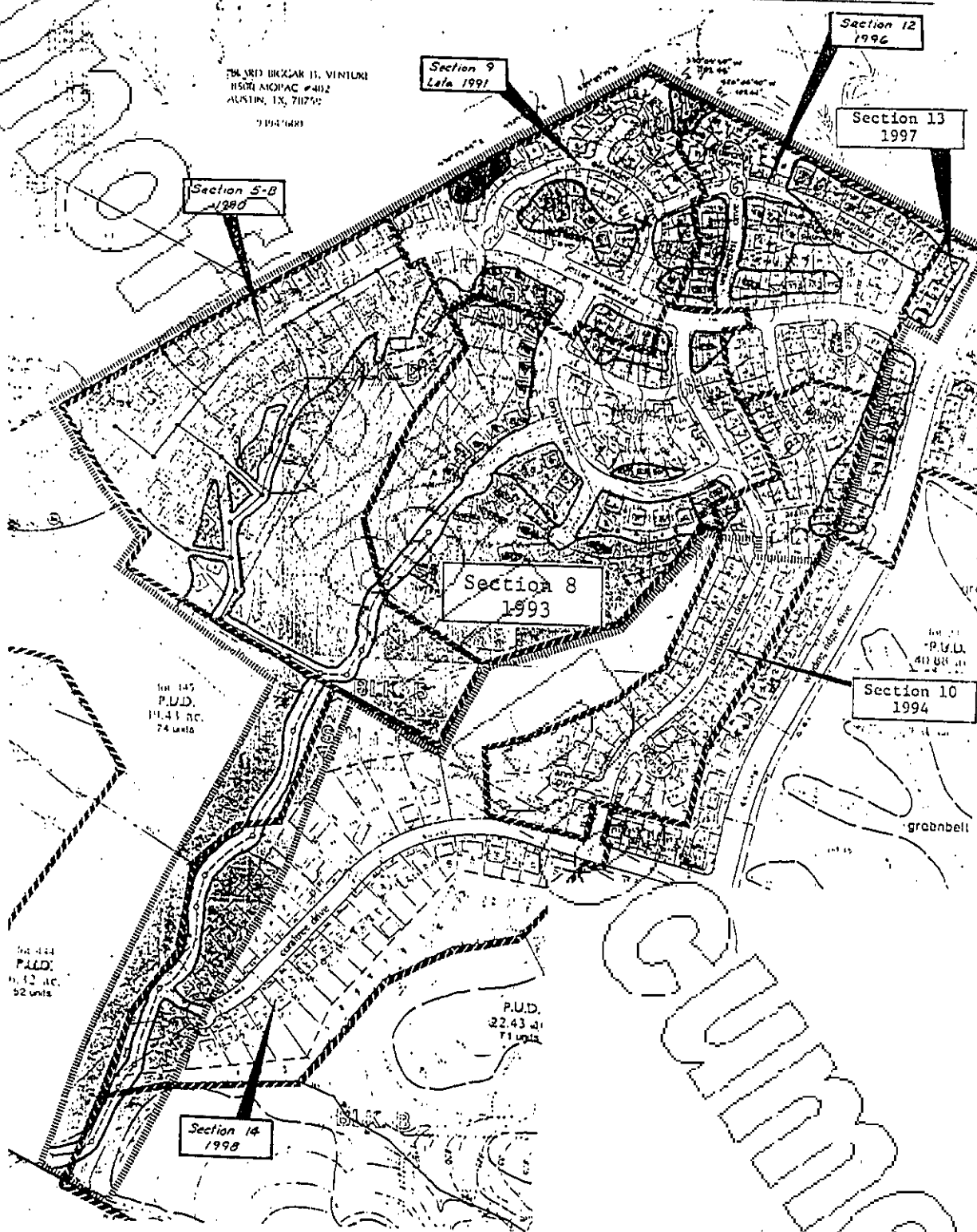


Figure 3. Location of Sections 5-B, 8, 9, 10, 12, and 13 being considered under this consultation.

AUSTIN, TX, 78759

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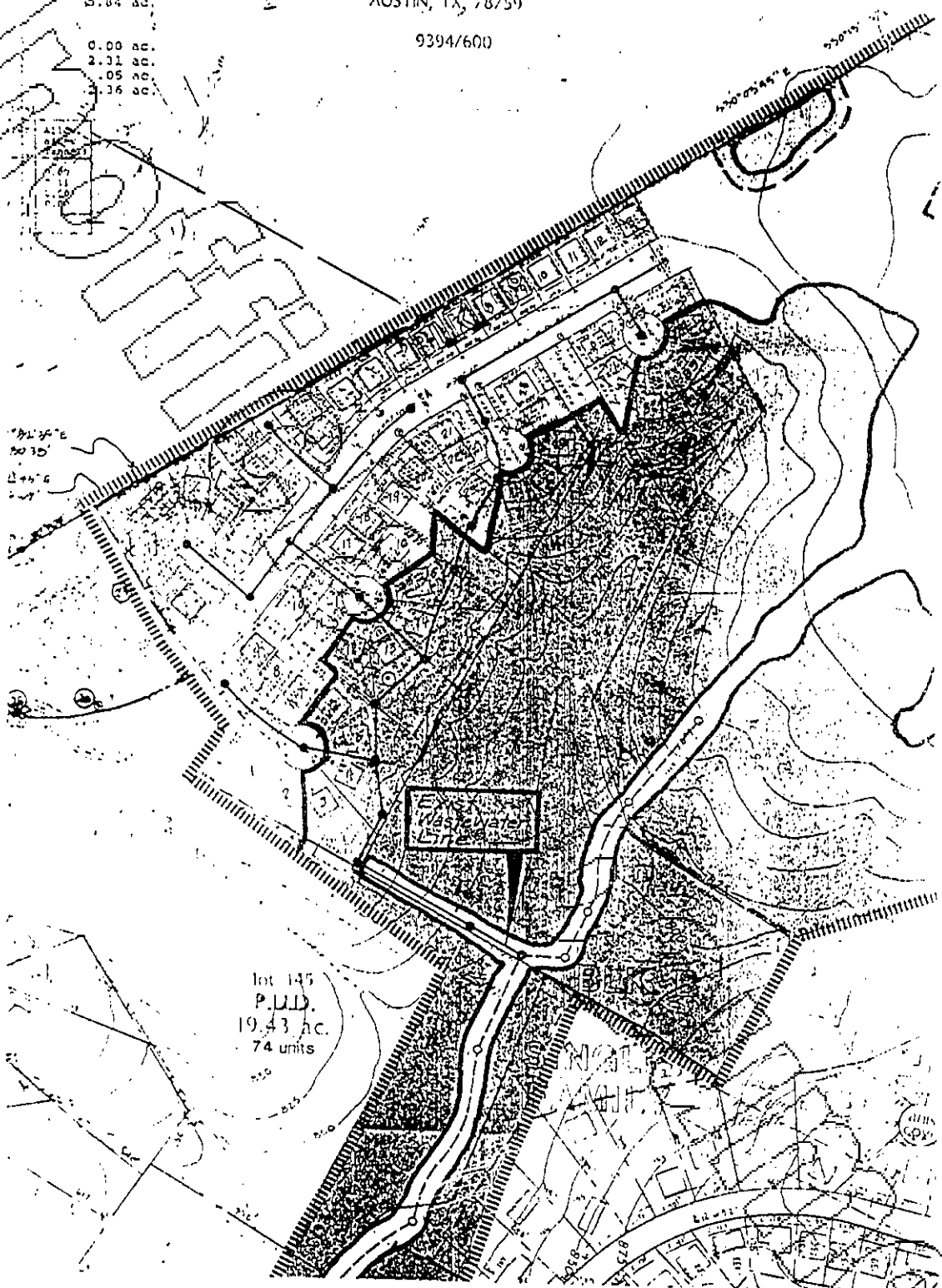


Figure 4. Lots (shaded area) in Section 5-B proposed to be left undeveloped by the applicant.

NATIONWIDE PERMIT CONDITIONS FOR CERTAIN ACTIVITIES REQUIRING
DEPARTMENT OF THE ARMY AUTHORIZATION

The following special conditions must be followed in order for the nationwide permit(s) to be valid:

- (1) That any discharge of dredged or fill material will not occur in the proximity of a public water supply intake.
- (2) That any discharge of dredged or fill material will not occur in areas of concentrated shellfish production unless the discharge is directly related to a shellfish harvesting activity.
- (3) That the activity will not jeopardize a threatened or endangered species as identified under the Endangered Species Act (ESA), or destroy or adversely modify the critical habitat of such species. In the case of Federal agencies, it is the agencies' responsibility to comply with the requirements of the ESA. If the activity may adversely affect any listed species or critical habitat, the District Engineer must initiate Section 7 consultation in accordance with the ESA. In such cases, the District Engineer may: (i) initiate Section 7 consultation and then, upon completion, authorize the activity under the nationwide permit by adding, if appropriate, activity specific conditions, or (ii) prior to or concurrent with Section 7 consultation he may recommend discretionary authority or use modification, suspension, or revocation procedures.
- (4) That the activity shall not significantly disrupt the movement of those species of aquatic life indigenous to the waterbody (unless the primary purpose of the fill is to impound water).
- (5) That any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants (see Section 307 of the Clean Water Act) in toxic amounts.
- (6) That any structure or fill authorized shall be properly maintained.
- (7) That the activity will not occur in a component of the National Wild and Scenic River System; nor in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status.
- (8) That the activity shall not cause an unacceptable interference with navigation.
- (9) That, if the activity may adversely affect historic properties which the National Park Service has listed on, or determined eligible for listing on, the National Register of Historic Places, the permittee will notify the District Engineer. If the District Engineer determines that such historic properties may be adversely affected, he will provide the Advisory Council on Historic Preservation an opportunity to comment on the effects on such historic properties or he will consider modification, suspension, or revocation. Furthermore, that, if the permittee before or during prosecution of the work authorized, encounters a historic property that has not been listed or determined eligible for listing on the National Register, but which may be eligible for listing in the National Register, he shall immediately notify the District Engineer.
- (10) That the construction or operation of the activity will not impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- (11) That in certain states, an individual state water quality certification must be obtained or waived.

(12) That in certain states, an individual state coastal zone management consistency concurrence must be obtained or waived.

(13) That the activity will comply with regional conditions which may have been added by the Division Engineer.

(14) That the management practices listed below shall be followed to the maximum extent practicable.

MANAGEMENT PRACTICES

In addition to the conditions specified in the nationwide permit, the following management practices shall be followed, to the maximum extent practicable, in order to minimize the adverse effects of these discharges on the aquatic environment. Failure to comply with these practices may be cause for the District Engineer to recommend, or the Division Engineer to take, discretionary authority to regulate the activity on an individual basis or regional basis.

(1) Discharge or dredged or fill material into waters of the United States shall be avoided or minimized through the use of other practical alternatives.

(2) Discharges in spawning areas during spawning seasons shall be avoided.

(3) Discharges shall not restrict or impede the movement of aquatic species indigenous to the waters of the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

(4) If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized.

(5) Discharge in wetlands areas shall be avoided.

(6) Heavy equipment working in wetlands shall be placed on mats.

(7) Discharges into breeding areas for migratory waterfowl shall be avoided.

(8) All temporary fills shall be removed in their entirety.

FURTHER INFORMATION

(1) District Engineers are authorized to determine if an activity complies with the terms and conditions of a nationwide permit unless that decision must be made by the Division Engineer.

(2) Nationwide permits do not obviate the need to obtain other Federal, state or local authorizations required by law.

(3) Nationwide permits do not grant any property rights or exclusive privileges.

(4) Nationwide permits do not authorize any injury to the property or rights of others.

(5) Nationwide permits do not authorize interference with any existing or proposed Federal project.

11307 1141

FILED

Nov 2 3 20 PM '90

DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS

COUNTY OF TRAVIS

I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me; and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on

NOV 2 1990



Dana Debeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECORDER'S MEMORANDUM

At the time of recordation this instrument was found to be
inadequate for the best photographic reproduction because
of illegibility, carbon or photo copy, discolored paper,
etc. All blackouts, additions and changes were present
at the time the instrument was filed and recorded.

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REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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