



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

### FEDERAL FISH AND WILDLIFE PERMIT

3-201  
(1/97)

**1. PERMITTEE**

Bosque Canyon Ranch, L.P.  
BC Ranch II, L.P.  
8235 Douglas  
Suite 815  
Dallas, Texas 75225  
Phone: 214/445-6020  
e-mail: afriedman@trisept-inv.com

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

**3. NUMBER**  
TE-21506B-0

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

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

**6. EFFECTIVE**  
6/30/2014

**7. EXPIRES**  
6/30/2064

**8. NAME AND TITLE OF PRINCIPAL OFFICER:** (if #1 is a business)  
Alan D. Friedman – President of BC Ranch, Inc.

**9. TYPE OF PERMIT:**  
Endangered Species – Incidental Take

**10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED:** Bosque 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 FOREIGN, STATE, LOCAL OR FEDERAL LAW IN CARRYING OUT AUTHORIZED ACTIVITIES.
- C. VALID FOR USE BY PERMITTEES NAMED ABOVE.

**12. REPORTING REQUIREMENTS**

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

ISSUED BY:

TITLE

Deputy Regional Director

DATE

- D. Acceptance of the permit serves as evidence that the Permittee (BCR) agrees to abide by all conditions stated. Terms and conditions of the permit are inclusive. Any activity that could result in take of the covered species that is not specifically permitted, is prohibited. Please read through these conditions carefully as violations of permit terms and conditions could result in your permit being suspended or revoked. Violations of your permit terms and conditions that contribute to a violation of the Endangered Species Act (ESA) could also subject the Permittee to criminal or civil penalties.
- E. The authorization granted by the Permit will be subject to full and complete compliance with, and implementation of, the BCR HCP, and all specific conditions contained herein. The Permit terms and conditions shall supersede and take precedence over any inconsistent provisions in the Habitat Conservation Plan or other program documents.
- F. The permit only authorizes incidental take of the following species (covered species):

<u>Common Name</u>	<u>Scientific Name</u>	<u>ESA Status</u>
golden-cheeked warbler (GCWA)	<i>Setophaga [Dendroica] chrysoparia</i>	Endangered

- G. Incidental take authorized by this permit:
1. Loss of any individuals found within the 28.21 acres of GCWA breeding habitat affected by clearing and development of the homesteads between September 1 and March 15, as described in the BCR HCP.
  2. Harm or harassment of any individuals found within 293.63 acres of GCWA breeding habitat indirectly affected by clearing, construction, and occupation of homesites.
- H. The permit only authorizes incidental take of the GCWA within property owned by the BCR and BCR Partnerships and the Homesteads owned by the partners through the Certificate of Inclusion process allowed for in the HCP (Plan Area). Prior to issuance of any Certificates of Inclusion, the process must be developed by BCR and approved by the Service.
- I. Incidental Take Authorization for Covered Activities:
- Removal/Clearing of Trees and Vegetation
  - Ground Disturbing Activities
  - Construction
  - Maintenance and Repair
  - Homeowner Occupation and Activities
  - Periodic Hand Clearing of Dead Trees for Fire Prevention Purposes
- J. 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 Fort

Worth, Texas, 817/334-5202 and the Service's Ecological Services Field Office (ESFO) in Arlington, Texas, 817/277-1100 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 has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

- K. Conditions of the permit shall be binding on, and for the benefit of, the Permittees and any successors and/or assignees. If the permit requires an amendment because of change of ownership, the Service will process in accordance with regulations (50 CFR 13.23). The new Permittee(s) must meet issuance criteria per regulations at 50 CFR 13.25. The covered activities proposed or in progress under the original permit may not be interrupted provided the conditions of the permit are being followed.
- L. 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 Arlington 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 Arlington ESFO (817/277-1100) within 48 hours.
- M. If actions associated with implementation of the BCR HCP 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 Service's Law Enforcement Office in Fort Worth, Texas (817/334-5202) within 48 hours.
- N. BCR shall monitor the covered activities and ensure appropriate and relevant information (as specified below) on the covered activities is provided in a timely manner to the Service.

O. CHANGED CIRCUMSTANCES

The BCR HCP provides measures for the following changed circumstances (Section 6.1 of the HCP):

1. Catastrophic events leading to temporary loss of habitat (wildfire, prolonged drought, catastrophic weather): BCR shall notify the Service within 30 days of such catastrophic event and discuss possible management changes focused on regenerating suitable GCWA habitat.
2. Permanent loss of habitat or habitat degradation from global climate change: BCR will consult with the Service to determine whether any changes in management practices are appropriate to respond to the effects of climate change. However, any changes to the management program agreed to be appropriate for addressing the impacts of climate change will not require the acquisition or management of additional land.

3. Covered species become de-listed: If the GCWA becomes delisted due to recovery, BCR may discuss with the Service any potential changes or amendments to the HCP or Permit conditions that may be appropriate for activities on homesteads from the time of delisting. Conservation and management already in place will continue into perpetuity.

P. MONITORING REQUIREMENTS

1. The Permittee will monitor compliance with the HCP and provide an annual report as described below.
2. The Permittee will monitor the effectiveness monitoring program outlined in chapter 5.4 of the HCP to determine whether progress is being made toward meeting the long-term biological goals and objectives.

Q. Annual Reporting:

1. BCR will provide an annual report, due on December 1 of each year, to:

U.S. Fish and Wildlife Service  
Arlington Ecological Services Field Office  
2005 NE Green Oaks Blvd., Suite 140  
Arlington, Texas 76006

U.S. Fish and Wildlife Service, Region 2  
Branch of Environmental Review  
Habitat Conservation Plans  
P.O. Box 1306, Room 6034  
Albuquerque, New Mexico 87103

NOTE: A copy of the annual report may be submitted to the Regional Office in Albuquerque via electronic mail to: *FW2\_HCP\_Permits@fws.gov*.

2. The report will document the activities and BCR's permit compliance for the previous year, thus documenting progress toward the goals and objectives of the HCP and demonstrating compliance with the terms and conditions of the incidental take permit. The annual report will include (Sections 5.4 through 5.6 in the BCR HCP):
  - a. Brief summary or list of Covered Activities accomplished during the reporting year
  - b. Project impacts (e.g., number of acres graded, number of buildings constructed, etc.)
  - c. Monitoring results (compliance and effectiveness monitoring) and survey information (if applicable)

- i. GCWA surveys according to the schedule determined under the adaptive management chapter (5.5.1) of the HCP
    - ii. Cowbird trapping reports as determined and scheduled under section 5.5.2 of the HCP
    - iii. Vegetation and oak wilt monitoring every 5 years
    - iv. Annual deer/ungulate surveys
  - d. Description of circumstances that made adaptive management necessary and how it was implemented. Description of any changed or unforeseen circumstances that occurred and how they were dealt with
  - e. Description of any minor or major amendments
3. The report will document BCR HCP Management activities, including:
- a. Adaptive management activities undertaken during the year (if applicable)
  - b. Proposed GCWA monitoring and management activities for the next year
  - c. Report on the status of implementation of minimization and mitigation measures and their effectiveness
  - d. Any changes to the objectives for the monitoring program
  - e. Effects on the Covered Species or Permit Area
  - f. Any recommendations regarding actions to be taken.
  - g. Funding provided and used for management actions.
4. 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 BCR HCP and to ensure that management changes in response to new, appropriate data are implemented in a timely fashion.

## GENERAL CONSERVATION MEASURES (Related to: Construction, Operations, and Maintenance)

R. The following restrictive covenants and design rules and guidelines will be implemented as part of the HCP:

1. Right of ingress, egress, and access given to the Service for compliance monitoring, subject to reasonable prior notice (i.e., 3-day notice).
2. Other than the specific hunting described below, no hunting will be allowed in GCWA habitat areas during the GCWA breeding season (March 1 – September 30).
  - i. Turkey hunting in spring and fall seasons is authorized, but is limited to two individuals per party.
  - ii. Bow hunting is authorized, but is limited to two individuals per party.
3. Recreational activities within GCWA habitat limited to existing cleared ranch roads and established trails during the GCWA breeding season (March 1 – September 30) and in groups of no more than 10.
4. BCR will perform a GCWA presence/absence survey once every three years, beginning in the breeding season immediately following permit issuance and continuing in perpetuity. Areas to be surveyed include all GCWA habitat within the easements. When GCWA supporting habitat attains a maturity to be suitable for GCWA nesting, it should also be surveyed for GCWA occupation every three years. If after 19 years, survey data are reasonably consistent or shows an increase in GCWA population numbers, a GCWA presence/absence survey will be performed once every five years in perpetuity. See the adaptive management section (5.5) of the HCP for additional details.
5. BCR will monitor for signs of trespass and erect appropriate signage to discourage trespass if it is occurring. Existing cross fencing is effective in keeping cattle out of GCWA habitat during the GCWA nesting season and will be regularly maintained.
6. White-tailed deer, goat, sheep, and exotic ungulates will be managed to minimize grazing and browsing pressure. Goats and sheep are not permitted within GCWA habitat. The goal for exotic ungulate management is complete eradication from GCWA habitat, although if not possible exotic ungulate abundance should not exceed one animal per 100 acres of GCWA habitat. The HCP will detail deer and exotic ungulate survey techniques and the method proposed to monitor browsing pressure (at least once every five years). If browsing pressure from deer or other ungulates is determined to negatively affect GCWA habitat, additional hunting pressure will be implemented. Deer feeding will not occur from February 1 through September 31 within GCWA habitat.

7. Feral hogs will be controlled year-round using traps and hunting with the goal of minimizing destructive browsing.
8. Cowbird trapping will be conducted between March 1 and May 31 following Texas Parks and Wildlife Division guidelines during the first full year after permit issuance. BCR and the Service will review the results to determine whether cowbird trapping needs to be conducted in subsequent years. See the adaptive management section of the HCP for additional details.
9. Vegetation monitoring to determine species composition, canopy cover, and monitoring for the spread of oak wilt will be conducted once every five years.
10. In areas of mature juniper forests (as determined by the BCR Design Review Committee and the most recent GCWA habitat assessment), clearing of sites outside of the Conservation Easement for construction can only take place during the period beginning September 1 of each year and ending on March 15 of the following year.
11. Outdoor construction activities are required to be very limited by the existing BCR Design Rules and Guidelines, which are enforced by the BCR Design Review Committee and Home Owners Association (HOA) and were drafted with the intent to avoid and minimize GCWA impacts during the period of March 15 to April 30 of each year.
12. No trees with a caliper in excess of two inches (as described in the BCR Covenants, Conditions, and Restrictions – approximately equivalent to diameter at breast height [dbh]) on any Homestead shall be removed, trimmed, or modified without the prior written consent of the BCR Design Review Committee.
13. Outside of the building envelope, no trees or shrubs of any kind shall be cut, trimmed, or removed without the prior written consent of the BCR Design Review Committee.
14. Loud and disruptive sounds are not allowed from sunrise until four hours after sunrise (approximately 7 am to 11 am) from March 15 to May 15.
15. Exterior lighting is only permitted as subtle, concealed light sources within the landscape to the extent required for safety, but kept to a minimum. Lighting shall be low level, with the light source not visible. No exposed bulbs or vapor lights are permitted.
16. No more than one-fourth (1/4) of an acre of a Ranch Homestead may be irrigated. Specimen trees (a landscaping term of art loosely defined as large, desirable trees and designated by the BCR Design Review Committee) must be protected. No structures may be built closer than twenty (20) feet from the drip line of a specimen tree, or double the size of the drip line, whichever is greater, without prior written approval from the BCR Design Review Committee.

17. All topsoil disturbed by grading operations must be stock-piled within the Construction Area and reused as part of the site restoration/landscaping plans, or removed to an approved off-site location.

S. To fully implement the HCP, the following mitigation measures are required:

1. BCR will permanently conserve, manage, and monitor 770 acres of un-impacted GCWA breeding habitat on the property and conserve and monitor (as appropriate) another 227.6 acres of supporting habitat that is fully expected to develop into mature GCWA breeding habitat.
2. Funding for management activities under the BCR HCP will be provided annually in perpetuity. Funds to implement the HCP are generated from the dues required from each Partner under the covenants, conditions, and restrictions (CC&R, see Exhibit D in the HCP). Dues are collected and enforced by the HOA, and secured by lien rights against the Homesteads under the CCRs. Each year the HOA will include costs to implement the HCP for the ensuing year in its annual budget and lot assessments will be established based on that budget. To the extent the budgeted amounts are exceeded, the HOA shall be required to levy special assessments to cover such excess, provided, however, that in no event shall the HOA be required to expend or levy assessments for an amount greater than 20% in excess of the current year's budget or the prior year's actual expenditure for implementation of the HCP.

\*\*\*\*\* END OF PERMIT # TE-21506B-0 \*\*\*\*\*