

SCREENING FORM FOR LOW-EFFECT HCP DETERMINATIONS

I. Project Information

A. Project Name: Bosque Canyon Ranch

B. Affected Species: Golden-cheeked warbler (*Setophaga [=Dendroica] chrysoparia*)

C. Project Size: 3,745 acres

D. Brief project description including minimization and mitigation plans:

Purpose: Bosque Canyon Ranch, L.P. and BC Ranch II, L.P. (collectively “BCR”) are seeking an incidental take permit (“Permit” or “ITP”) pursuant to Section 10(a)(1)(B) of the U.S. Endangered Species Act (“ESA”) in connection with the low-density, conservation development of the Bosque Canyon Ranch (“Ranch”). BCR is seeking a 50-year Permit to authorize the incidental take of the federally endangered golden-cheeked warbler (“GCWA”) associated with the construction and occasional occupation of 35 5-acre home sites (“Homesteads”), which are owned by individual BCR partners (“Partners”) on a small portion of the 3,745-acre Ranch. Within each 5-acre Homestead, the Partner is restricted to placing structures within a 2-acre designated building envelope. Due to significant existing and proposed restrictions, potential impacts will not be greater than one acre within the building envelope, and likely substantially less. Of the 48 Homesteads on the Ranch only 35 may have an impact on GCWAs including: 26 Homesteads are entirely located within GCWA habitat, 3 Homesteads are partially located within GCWA habitat, and 6 Homesteads are in the vicinity of GCWA habitat (see Exhibit C of the HCP). Therefore, it is expected that less than 28.21 acres of GCWA habitat will be cleared in 29 scattered locations.

Need: The presence of GCWAs has been established during presence/absence surveys conducted over the past three years (i.e., 2010, 2011, and 2012) by Peloton Land Solutions (“Peloton”). The surveys were conducted in accordance with the requirements of the U.S. Fish and Wildlife Service (“Service”) presence/absence protocol. These surveys enabled Peloton to determine that GCWAs were in fact residing on portions of the Ranch during the breeding and nesting season. Given that some GCWA habitat will be cleared and homes will be constructed within GCWA habitat on the Ranch, BCR determined, in coordination with the Service, that it would be prudent to prepare a Habitat Conservation Plan (HCP) in support of an ITP to authorize incidental take of the GCWA potentially resulting from clearing, construction, operation, maintenance, occupation, and repair of the proposed structures and roads.

Proposed Project: BCR has proved itself to be an exemplary steward of the Ranch’s natural resources by making conservation a priority. BCR established the Ranch to include 48 “Homesteads” and permanent dedication via two conservation easements totaling 3,500 acres (93 percent of the Ranch) to the North

American Land Trust (“Conservation Easements”). The Conservation Easements include approximately 924.35 acres of GCWA habitat. Construction of the Homesteads and associated infrastructure (i.e., roads and utilities) may cause the loss or degradation of GCWA habitat, although BCR has voluntarily implemented significant development restrictions on the Ranch that specifically address the needs of the GCWA. 26 Homesteads have potentially affected areas located within GCWA habitat, 3 Homesteads have potentially affected areas that are partially located within GCWA habitat, and 6 Homesteads have potentially affected areas that are located in the vicinity of GCWA habitat (see Exhibit C of the HCP).

Through coordination with the Service and Texas Parks and Wildlife (“TPWD”), BCR has decided to apply for the Permit to authorize incidental take of the GCWA that may result from clearing, construction, operation, maintenance, occupation, and repair of the proposed improvements on the Ranch. Take associated with the proposed activities and improvements are expected to be in the form of harm and harassment resulting from direct loss of habitat and potential indirect effects of the improvements on their use and occupation. The covered activities for which BCR seeks incidental take authorization are of such a nature that it may qualify as a Low Effect HCP.

Minimization: Several years ago, BCR sought the advice of a qualified expert biologist to assist in establishing the terms of development on the Ranch, which include measures that minimize impacts to the GCWA through the Bosque Canyon Ranch Design Rules and Guidelines (“DRG”) (see Exhibit D of the HCP). The DRG are “intended for use by all persons involved in any new buildings or landscapes, as well as any subsequent additional or alterations to any property at [the Ranch]” and are administered and enforced by the BCR Design Review Committee (“DRC”) pursuant to the covenants, conditions, and restrictions (“CC&R”) on each Homestead.¹ Minimization efforts range from the initial reduction in number of units being constructed to the limitation of allowable activities placed on Partners during the breeding and nesting season of the GCWA. DRG measures to minimize impacts to the GCWA include:

- 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 Easements for construction can only occur during the period beginning September 1 of each year and ending on March 15 of the following year.
- Outdoor construction activities are required to be very limited during the period of March 15 to April 30 of each year.
- During the period of April 30 to September 1 of each year, limited construction activities (but not clearing of the Ranch Homestead) are permitted.

Other DRG measures include: restricting construction of structures within 20 feet of the drip line of specimen trees (a landscaping term of art loosely defined as large, desirable trees), or double the size of the

¹ Bosque Canyon Ranch Declaration of Covenants, Conditions and Restrictions (April 3, 2006), Doc. No. 2006-00004466, BK-OPR, VL-638, PG-868, Recorded Sept. 12, 2006 at the Bosque County Clerk Office, Meridian, TX; Supplementary Declaration to Bosque Canyon Ranch Declaration of Covenants, Conditions and Restrictions (Oct. 15, 2007), Doc. No. 2007-00004399, Recorded Oct. 19, 2007 at the Bosque County Clerk Office, Meridian, TX.

drip line, whichever is greater; restricting parking and placement of construction equipment and materials to the construction area; and protection of specimen trees. Furthermore, other BCR development restrictions require that 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. The CC&R also require that no trees with a caliper in excess of two inches on any Homestead shall be removed, trimmed, or modified without the prior written consent of the DRC. 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 DRC.

Conservation Measures: BCR has permanently set aside 924.35 acres of GCWA habitat, of which approximately 770 acres are neither directly nor indirectly impacted by the proposed project, on the Ranch as part of two Conservation Easements totaling 3,500 acres. Approximately 227.6 additional acres of GCWA supporting habitat (young oak-juniper forest/shrubland) is under conservation easement and will be managed in a manner allowing it to develop into GCWA nesting habitat. The conservation easements have not been previously been used as mitigation.

Mitigation: As additional mitigation under its HCP, BCR proposes to place additional restrictive covenants on portions of the Ranch covered by the Conservation Easements (hereinafter "HCP Restrictive Covenants") to include terms for GCWA conservation and management in a manner consistent with other recent Service-approved HCPs for the GCWA. The HCP Restrictive Covenants will be enforced by the Ranch's homeowners association, the Bosque Canyon Ranch Association, Inc., a Texas Nonprofit Corporation, and will include the following terms:

- Right of ingress, egress, and access given to the Service for compliance monitoring, subject to reasonable prior notice (i.e., 3-day notice).
- No hunting in GCWA habitat areas during the GCWA breeding season (March 1 – September 30).
- 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.
- 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 20 years, survey data is reasonably consistent or shows an increase in GCWA population numbers, a GCWA presence/absence survey will be performed once every five years in perpetuity.
- 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.
- 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.

- Feral hogs will be controlled year-round using traps and hunting with the goal of minimizing destructive browsing.
- Cowbird trapping will be conducted between March 1 and May 31 following TPWD 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.
- Vegetation monitoring to determine species composition, canopy cover, and monitoring for the spread of oak wilt will be conducted once every five years.

BCR also proposes to amend the DRGs to include the following requirement on all Homesteads:

- BCR will encourage Partners to aggressively control fire ants within their Homestead at least annually.

II. Does the HCP fit the low-effect criteria in the HCP Handbook? *The answer must be “yes” to all three questions below for a positive determination. Each response should include an explanation.*

A. Are the effects of the HCP minor or negligible on federally listed, proposed, or candidate species and their habitats covered under the HCP prior to implementation of the mitigation plan?

Yes. The HCP is not expected to affect federally listed, proposed, or candidate species other than the GCWA. The effects of the HCP would be considered minor or negligible to the GCWA prior to implementation of the mitigation plan. At full development, no more than 28.21 acres of GCWA habitat will be directly impacted by habitat removal in small, scattered locations. Using the Service standard of a 300 foot buffer from cleared habitat, approximately 293.63 acres of indirect take (primarily by harassment and degradation of habitat by fragmentation) is expected to occur in areas between and around the Homesteads. Degradation of surrounding habitat is expected to result in decreased use of the area for breeding, feeding and sheltering and may reduce reproductive output, although complete abandonment may not occur. Although lethal take by cat depredation and window strikes could occur, we believe it is adequately covered by the calculated indirect loss of habitat in surrounding areas (293.63 acres). In addition, since BCR Homesteads are predominately used for vacation homes, most of the homes will be occupied only for a fraction of any given year. Unlike regular developments, the Partners have the option of building at their leisure (within the confines of the DRG), which would likely result in few homes being constructed in any given year, if in fact they exercise their right to build at all. Despite the potential loss of habitat on no more than 28.21 acres and the estimated decrease in habitat function on an additional 293.63 acres of habitat surrounding the homesteads, the remaining acreage on the property (approximately 770 acres) is adequate to support their GCWA population even prior to management implementation. Overall, the direct and indirect habitat impact estimates and their effects are likely conservative given the extremely low level of development on the Ranch. Typically an HCP for GCWA would require mitigation at a 2:1 ratio for direct impacts and 0.5:1 for indirect impacts. On the BCR these ratios would indicate adequate

mitigation would be achieved by conserving 203.2 acres of GCWA habitat. In fact, the BCR HCP has approximately 770 acres of GCWA habitat under conservation easement that is not directly or indirectly affected by the proposed project and an additional 227.6 acres of young oak-juniper forest/shrubland that will be managed to promote eventual development into GCWA breeding habitat. Assuming eventual maturation of the young oak-juniper forest to mature GCWA breeding habitat, this is nearly five times more mitigation than would typically be recommended in an HCP.

B. Are the effects of the HCP minor or negligible on other environmental values or resources (e.g. air quality, geology and soils, water quality and quantity, socio-economic, cultural resources, recreation, visual resources, etc.) prior to implementation of the mitigation plan?

Yes. The effects of the HCP would be considered minor or negligible on other environmental values and or resources prior to the implementation of the mitigation plan. Construction of individual homes would have negligible impacts on air quality, geology and soils, water quality and quantity, and cultural resources. These construction activities would be confined to relatively small sites and spread out over a large area. Furthermore, the activities would take place over an extended period of time, which would have minimal cumulative effects on air quality, primarily related to emissions from earthmoving equipment during construction of each home's foundation, which would typically take place over a very short period (e.g., a few days). Impacts to geology and soils would be considered negligible in that they would be confined to impacts at the surface of the earth, typical of home construction. Soil disturbance would be limited to a relatively small area for each home site per the restrictions associated with the development. Impacts to water quality and quantity would also be considered negligible because the construction sites are not located near streams, tributaries or impoundments. No impacts to cultural resources are anticipated from the proposed project. Effects to the socioeconomics of the area would be negligible, but likely positive, resulting from the awarding of construction projects to homebuilders. Impacts to visual resources would be considered negligible because the home sites would be located within the natural topography and screened by trees, the majority of which would be preserved on each home site per the restrictions associated with the development. The HCP would have no effects on the recreation of the region, beyond the negligible opportunities afforded members of the ranch.

C. Would the impacts of this HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects not result, over time, in cumulative effects to environmental values or resources which would be considered significant?

Yes. Impacts of this HCP, when considered cumulatively with the impacts of other past, present, and reasonably foreseeable/similarly situated projects **would not** result over time in cumulative effects to environmental values or resources that would be considered significant. Development of the Homesteads will occur on a small percentage of the Ranch and the remaining 3,500 acres (93 percent) of the Ranch will not be developed because it is subject to the Conservation Easements and preserved in perpetuity. With the exception of impacts to GCWA, the effects of the HCP on the environment are expected to be negligible and it is not anticipated that reasonably foreseeable, similarly situated projects would cumulatively result in significant impacts. The remainder of the project property is under a conservation easement and will not be developed, eliminating the potential for future development in GCWA habitat in the immediate project area. There are no known plans for development on properties adjacent to the project site. The BCR HCP will provide benefits to GCWA on the property that may also extend beyond the property boundary. For example, cowbird control, invasive plant management, oak wilt monitoring, invasive species management,

and ungulate population control on the property may benefit nesting GCWAs on adjacent properties by reducing their threats. Additionally, the Conservation Easements include approximately 227.6 acres of young oak-juniper woodland that acts as supporting habitat and will be managed in a manner allowing it to become GCWA nesting habitat. It is expected that these areas would be suitable for GCWA nesting within the permit duration and will be protected by the easement in perpetuity.

III. Do any of the exceptions to categorical exclusions apply to this HCP? (form 516 DM 2.3, Appendix 2) *If the answer is “yes” to any of the questions below, the project cannot be categorically excluded from NEPA. Each “no” response should include an explanation.*

Would implementation of the HCP:

A. Have significant adverse effects on public health or safety?

No. Implementation of the HCP would not have an adverse effect on public health or safety because of the relatively minor impacts associated with the proposed development (i.e., clearing of select tree species within the building envelope, driveway, or access road). The Service does not believe that BCR or its contractors will not abide by all public health and safety laws as governed by State and local jurisdictions.

B. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department’s National Register of Natural Landmarks?

No. The proposed development area does not contain the unique geographic characteristics described, such as wild or scenic rivers, drinking aquifers, or prime farmland. The nearest park, recreation, or refuge lands would be associated with Lake Whitney, approximately three (3) miles to the east of the HCP area. Any wetlands in the vicinity of the project would be confined to the stream corridors (as with floodplains), which are isolated from the areas where homes would be built. There are no known historic or cultural resources that would be impacted as a result of the implementation of the HCP. Nor are there any National Register of Natural Landmark sites in the vicinity of the HCP area. The nearest registered site is Dinosaur Valley in Somervell County.

C. Have highly controversial environmental effects?

No. The implementation of the HCP would not have highly controversial environmental effects because BCR has scaled back development plans (i.e., minimized potential impacts), implemented guidelines and rules that will protect the remainder of the habitat and the wildlife, and BCR has already set aside approximately 93 percent of the Ranch via two Conservation Easements so the vast majority of the Ranch will be permanently preserved for conservation purposes.

D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?

No. The implementation of the HCP would not have highly uncertain and potentially significant environmental effects that involve unique or unknown risks.

E. Establish a precedent for future action or represent a decision in principle about future actions with

potentially significant environmental effects?

No. The implementation of the HCP would not establish a precedent for future action nor represent a decision about future actions with potentially significant environmental effects. The premise behind this project is to work with like-minded owners that value preservation. Furthermore, issuance of an incidental take permit by the Service is made on a case-by-case basis pursuant to agency regulations. Each HCP is evaluated on its own merit prior to a Service decision regarding whether to issue or deny an incidental take permit. Therefore, the issuance of the Permit does not represent a decision in principle about future actions the Service may take.

F. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?

No. The proposed activities related to this development are considered a single action not related to any others.

G. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?

No. There are no preexisting structures located on any of the proposed parcels and a search of the NRHP database yielded no listed properties on or near the Ranch.

H. Have adverse effects on listed or proposed species, or have adverse effects on designated Critical Habitat for these species?

No. The Service has not designated critical habitat for the GCWA, and the project is not situated within proposed or designated critical habitat for any other federally listed species. Of the 48 Homestead parcels, 26 have potentially affected areas located within GCWA habitat, three have potentially affected areas located partially within GCWA habitat, and six of the Homesteads have potentially affected areas that are located in the vicinity of GCWA habitat (see Exhibit C of the HCP). Furthermore, at full development, no more than 28.21 acres of GCWA habitat will be directly impacted by habitat removal in small, scattered locations. Using the Service standard of a 300 foot buffer from cleared habitat, approximately 293.63 acres of indirect take (primarily by harassment and degradation of habitat by fragmentation) is expected to occur in areas between and around homesteads. Degradation of surrounding habitat is expected to result in decreased use of the area for breeding, feeding and sheltering and may reduce reproductive output, although complete abandonment may not occur. Although lethal take by cat depredation and window strikes could occur, we believe it is adequately covered by the calculated indirect loss of habitat in surrounding areas (293.63 acres). The homerange of individual indoor/outdoor cats in a suburban area surrounded by woodlands is well within the area covered by the 300-ft buffer used to calculate indirect impacts to GCWAs.

In addition, since BCR Homesteads are predominately used for vacation homes, most of the homes will be occupied only for a fraction of any given year. Unlike regular developments, the Partners have the option of building at their leisure (within the confines of the DRG), which would likely result in few homes being constructed in any given year, if in fact they exercise their right to build at all. Despite the potential complete loss of habitat on no more than 28.21 acres and the estimated decrease in habitat function on an additional 293.63 acres of habitat surrounding the Homesteads, the remaining acreage on the property (approximately 770 acres) is adequate to support their GCWA population even prior to management

implementation (current Service guidance is 500 acres of contiguous habitat). The BCR HCP will provide benefits to GCWA on the property that may also extend beyond the property boundary. For example, cowbird control, invasive plant management, oak wilt monitoring, invasive species management, and ungulate population control on the property may benefit nesting GCWAs on adjacent properties by reducing their threats. Additionally, the Conservation Easements include approximately 227.6 acres of young oak-juniper woodland that acts as supporting habitat and will be managed in a manner allowing it to become GCWA nesting habitat. It is expected that these areas would be suitable for GCWA nesting within the permit duration and will be protected by the easement in perpetuity.

I. Have adverse effects on wetlands, floodplains or be considered a water development project thus requiring compliance with either Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?

No. The proposed development area is located entirely in an upland setting comprised of terrestrial upland habitat. There are no wetlands or designated floodplains on site and the project would not be considered a water development project.

J. Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment?

No. The HCP supports the issuance of the Permit, which would only authorize take of the GCWA incidental to otherwise lawful activities.