

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
10711 BURNET ROAD, SUITE 200
AUSTIN, TEXAS 78758

FINDING OF NO SIGNIFICANT IMPACT

ISSUANCE OF A SECTION 10(a)(1)(B) PERMIT FOR INCIDENTAL TAKE OF THE GOLDEN-CHEEKED WARBLER (*Setophaga [=Dendroica] chrysoparia*) TO CEMEX CONSTRUCTION MATERIALS SOUTH, LLC. FOR CLEARING AND MINING ON THE BALCONES QUARRY NORTHEAST, COMAL COUNTY, TEXAS

An Environmental Assessment (EA) and Habitat Conservation Plan (HCP) have been prepared for the issuance of a section 10(a)(1)(B) permit for incidental take of the federally listed endangered golden-cheeked warbler (GCWA) for the clearing of 145 acres of GCWA habitat on the Balcones Quarry, Comal County, Texas. This action will also provide for the preservation and management of 147 acres of high quality GCWA habitat.

Preferred Alternative:

The proposed action includes the issuance of an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act (Act) to authorize incidental take of the affected species during the removal or modification of vegetation in preparation for limestone mining on the 246 acre Balcones Quarry.

A conservation plan has been developed as mitigation for the incidental take of GCWAs. This plan includes the following features:

- All clearing of vegetation in the permit area will occur outside of the breeding season (March 1 through August 31).
- CEMEX and its contractors and subcontractors, will follow the Texas Forest Service's or professional arborist's guidelines for the prevention or spread of oak wilt.
- CEMEX will mitigate for expected impacts to GCWA by purchasing 147 GCWA conservation credits from a U.S. Fish and Wildlife Service (Service)-approved habitat conservation bank with a service area that includes Comal County, purchase credits from the Comal County Regional HCP, or preserve a minimum of 147 acres of GCWA habitat and provide for management in perpetuity.
- The mitigation will occur prior to Covered Activities being implemented. The Service will be notified in writing of the finalization of mitigation prior to commencement of construction.

Other Alternatives Considered:

The Service analyzed a No Action alternative in addition to the proposed alternative. Under a No Action alternative, the Service would not issue the requested ITP for the expansion of mining operations at the Balcones Quarry. Therefore, the Applicant would not implement the minimization measures described in the HCP and would not protect approximately 147 acres of GCWA's habitat in perpetuity.

Public Participation

Notice of Availability of the draft EA, draft HCP, and permit application was published in the *Federal Register* on May 13, 2015 (80 FR 27346). Public comments were accepted through July 13, 2015. The Service received nine comments.

The comments we received were from individuals living in close proximity to the CEMEX Balcones Quarry who have objections to clearing of woodlands, noise, traffic, and dust associated with mining operations at the Balcones Quarry. The nearby residents are being impacted by the quarry operation and do not want it to expand, especially into areas of the CEMEX property that are closer to their residences. In addition to the effects of the quarrying on the people in the area, some commenters indicated that the loss of any GCWA habitat will be detrimental to the species and they prefer that the habitat on the CEMEX Balcones Quarry Northeast Area not be cleared.

Determination:

Based upon information contained in the EA and HCP and supporting data in Service files, we have determined that issuance of this ITP is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted. Therefore, the Service has made a finding of no significant impact as allowed by NEPA regulation and supported by Council on Environmental Quality guidance.

It is my decision to issue the section 10(a)(1)(B) permit for the Balcones Quarry Northeast Area tract, Comal County, Texas.

Assistant Regional Director – Ecological Services
Southwest Region

11/16/2015
Date