



Issuing Office:

Department of the Interior
U.S. Fish & Wildlife Service
Endangered Species Permit Office
500 Gold Avenue S.W.
P.O. Box 1306, Room 6034
Albuquerque, NM 87103-1306

DRD Signature:

DRD - Region 2

Date

6/28/2019

Permittee:

Ruth Ann McCrary, Trustee
Davis-McCrary Property Trust
4608 Ridge Oak Drive
Austin, TX
(512) 921-0032

Authority: Statutes and Regulations: 16 USC 1539(a); 50 CFR 17.22, 17.32, 50 CFR 13.

Location where authorized activity may be conducted: The Proposed Project is located approximately 1.5 miles west-northwest of the intersection of Galm Road and Farm-to-Market Road (FM) 1560 in northwestern Bexar County, Texas. The Proposed Project is bordered to the north and west by the undeveloped Government Canyon State Natural Area (GCSNA), while the southern boundary abuts the right-of-way for Galm Road and the eastern boundary is adjacent to proposed and existing low-density residential development.

Reporting requirements:

Annual REPORT DUE: January 15

See permit terms and conditions for specific reporting requirements.

Conditions and Authorizations:

- A. General conditions set out in subpart D of 50 CFR 13, and specific conditions contained in Federal regulations cited above in Authority, 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 filing all required information and reports.
- B. Valid for use by permittees named above. The validity of this permit is also conditioned upon strict observance of all applicable foreign, state, local, or other federal law.
- C. Acceptance of the permit serves as evidence that the Permittee understands and agrees to abide by the terms and conditions of this permit and all applicable sections of 50 CFR Parts 13, 17, and 21 pertinent to issued permits. Terms and conditions of the permit are inclusive. Any activity not specifically permitted is prohibited. Violations of permit terms and conditions could result in the permit being suspended or revoked. Violations of the permit terms and conditions that contribute to a violation of the Endangered Species Act (ESA) could also subject you to criminal or civil penalties.
- D. The person listed above must counter-sign the permit to acknowledge receipt and signify agreement to fully abide by and implement this permit. You must return an original signature copy to the Regional Office listed below in condition M.

Permittee Signature:

Ruth Ann McCrary

Date:

July 3, 2019



E. Compliance

The authorization granted by this permit will be subject to full and complete compliance with, and implementation of, the Davis Ranch HCP and all specific conditions contained in this permit. The permit terms and conditions shall supersede and take precedence over any inconsistent provisions in the Agreement or other program documents.

F. Definitions

The capitalized terms used in this Permit shall have the meaning ascribed to them in this section. To the extent that the definitions incorporate covenants and agreements, such covenants and agreements shall bind the Permittees. Terms used in this Permit and specifically defined in the ESA or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Permit expressly provides otherwise.

G. Covered Species

The following is a list of the species covered under this Permit:

<u>Common Name</u>	<u>Scientific Name</u>	<u>Federal Listing Status</u>
Golden-cheeked warbler	<i>Setophaga (=Dendroica) chrysoparia</i>	E

H. Incidental Take Authorized

This permit only authorizes incidental take of the golden-cheeked warbler (*Setophaga [=Dendroica] chrysoparia*, GCWA) within the 724 acre Davis Ranch Tract in northwestern Bexar County, Texas (Permit Area). Incidental take authorized by the permit is for a 30-year period. If actions associated with implementation of the HCP are shown to result in incidental take of listed species not covered by this permit, those activities that are shown to cause take must cease immediately and any take that has occurred must be reported to the Austin ESFO at 512/490-0057 within 48 hours.

I. Covered Activities

The Covered Activities include the selective clearing and/or modification of vegetation; the construction of homes and other buildings, roads, utilities, storm and water quality controls, and related infrastructure; and the ongoing use and maintenance of any infrastructure or other improvements for residential or other purposes (i.e., commercial), including ongoing vegetation maintenance as may be required.

J. Conservation Program

The following measures will be implemented during development, ongoing use, and maintenance to further minimize impacts to GCWAs:



1. Observe seasonal woody vegetation clearing restrictions during the GCWA breeding season (defined as between March 1 and July 31).
2. Avoid working within 300 feet of occupied GCWA habitat during the breeding season. Construction activities (as opposed to clearing) may continue within 300 feet of GCWA habitat during the breeding season (March 1 through July 31), as long as those activities promptly follow permitted clearing and/or were initiated before March 1, therefore being a continuous activity that began before initiation of the breeding season.
3. Implement Texas Forest Service or professional arborist's guidelines for the prevention of the spread of oak wilt, including avoiding, where possible, trimming, limbing, or pruning oaks from February through June and immediately painting wounds to prevent exposure (Texas A&M Forest Service 2015).

Prior to any clearing or construction, the Permittee will mitigate through permanent preservation of high quality GCWA habitat. Mitigation will be two acres preserved for every acre directly impacted and half an acre preserved for every acre indirectly impacted within 300 feet of direct impacts. Forms of mitigation can include purchase of conservation credits from a Service-approved conservation bank where the service area includes the Permit Area, or participation in the Southern Edwards Plateau HCP may be sought.

K. Agreements of Inclusion

1. The Permittee may sell or otherwise convey portions of the Plan Area to other individuals or entities (Participants) for development, use, and occupation of the Permit Area. The Permittee may enter into Agreements of Inclusion with Participants engaging in Covered Activities within the Permit Area. By entering into an Agreement of Inclusion, the Participant agrees to comply with the terms and conditions of the HCP and ITP. In exchange, the Participant receives the full benefits and assurances provided by the ITP, including receiving authorization for incidental take resulting from the Covered Activities.
2. The Permittee will provide the Service with an Agreement of Inclusion form for review and approval prior to entering into any Agreement of Inclusion with a Participant.
3. Agreements of Inclusion will identify the extent of direct and indirect habitat modification, the amount of mitigation required, and the party responsible for purchasing mitigation.
4. Agreement of Inclusion will legally bind Participants to following the minimization measures defined in the HCP and securing all mitigation prior to implementation of any Covered Activity.
5. As long as the Permit remains in effect and a Participant is complying with its Agreement of Inclusion, that Participant shall have, with respect to the area covered by the Agreement of Inclusion, the full benefits and authorities of the Permit.
6. In the event the Service seeks to suspend, terminate, or revoke the Permit for reasons not the fault of a Participant, the Service shall seek to craft a remedy that does not affect that Participant's rights, benefits, and responsibilities under the Permit prior to suspending, terminating, or revoking the Permit. If it is not practicable to craft such a remedy and the Service suspends, terminates, or revokes the Permit, the Service will process for issuance to any such Participant a Permit conferring the same rights, benefits, and responsibilities with respect to the Participant's property as provided under the Permit. Such subsequent Permit will not contain additional requirements or conditions beyond those applicable to the Participant under its Agreement of Inclusion.
7. The Service will not consider a breach by a Participant of its obligations under an Agreement of Inclusion to be a violation by the Permittee or any other Participant. In the event a Participant has materially breached its Agreement of Inclusion and, after reasonable notice and opportunity to cure,



such Participant fails to cure, remedy, rectify, or adequately mitigate the effects of such breach, then the Permittee may, and shall if so directed by the Service, terminate that Participant's Agreement of Inclusion.

L. Changed Circumstances

The HCP (Chapter 10) describes procedures the Permittee has agreed to undertake to address changed circumstances. To qualify for No Surprises Assurances, the Permittee must implement all provisions included in the HCP and the incidental take permit that addresses such changed circumstances. If a changed circumstance has not been addressed by the HCP, the Service will treat the change as unforeseen circumstance under the No Surprises (Condition N) below.

M. Reporting

An electronic copy of the annual report will be submitted by January 15th of each year this permit and the Davis Ranch HCP is in effect to the Austin Ecological Services Field Office, preferably to fw2_aues_consult@fws.gov or at the address below. The annual report will describe the previous calendar year's activities, including compliance with all conservation measures, issues with implementation of conservation measures, how issues were resolved, an accounting for the incidental take that occurred, mitigation that was put in place, and any other compliance issue in implementing this permit and the HCP. At the end of the ITP term, the permittee must submit a final annual report summarizing full compliance with the permit and HCP.

U.S. Fish and Wildlife Service
Austin Ecological Services Field Office
10711 Burnet Road, Suite 200
Austin, Texas 78758
Telephone 512/490-0057
Fax 512/490-0974

A copy of the cover letter must be submitted to the Service's Regional Office, preferably by e-mail to: FW2_HCP Permits@fws.gov, or to the following address:

U.S. Fish and Wildlife Service, Region 2
Branch of Environmental Review
P.O. Box 1306, Room 6034
Albuquerque, New Mexico 87103
Telephone 505/248/6920
FW2_HCP Permits@fws.gov



GENERAL TERMS AND CONDITIONS

N. No Surprises Assurances

The GCWA is considered adequately addressed under the Davis Ranch HCP, and is therefore, covered by "No Surprises" assurances. If the Service demonstrates that unforeseen circumstances exist during the life of the permit and additional measures are deemed necessary to respond to those circumstances, the Service may require additional measures of the permittees where the HCP is being properly implemented, but only through coordination with the permittees and only if such measures are limited to modifications to the HCPs operating conservation program for the covered species, and maintains the original terms of the HCP to the maximum extent practicable.

Notwithstanding the foregoing, the Service will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for covered species without the consent of the permittee(s).

O. Transferring

The terms and conditions of this permit shall be binding on and inure to the benefit of the permittee(s), including their successors and assigns, as provided in 50 CFR 13.24 and 13.25. If this permit needs to be transferred due to a change in ownership the transfer will be accomplished in accordance with 50 CFR 13.25. Any change in the names, addresses or other administrative correction or alteration of the permit will be in accordance with 50 CFR 13.23. The covered activities proposed or in progress under the original permit may not be interrupted provided the conditions of the permit are being followed.

P. Amendments

This permit may be amended in accordance with the provisions of 50 CFR 13.23. The permittee(s) must provide a written statement of the reasons for the proposed amendment and an analysis of its environmental effects, including its effects on covered species. The activities proposed or in progress under this permit may not be interrupted, provided the required conditions of this permit are being followed. The Service may amend the permit at any time for just cause, and upon written finding of necessity. If the covered activities and/or the extent of the impacts described in the agreement are altered during the life of the permit, such that there may be an increase in the anticipated take of covered species, permittee(s) are required to contact the Service and amend this permit before commencing any activities that might result in take beyond that described in the agreement.

Q. Suspension and Revocation

Suspension: The Service may suspend this permit if the permittee(s) is/are not in compliance with the conditions of this permit, the agreement, or any applicable Federal laws and regulations. The procedures applicable to any suspension shall be in accordance with the Federal regulations in effect at the time of the suspension; provided however, that, at a minimum, the permittee shall be afforded the procedural rights set forth in 50 CFR 13.27 in existence on the effective date. The suspension shall remain in effect until the Service determines that the permittee(s) have corrected the deficiencies or the permit is revoked.



Revocation: The Service shall not revoke this permit for any reason except those listed in 50 CFR 13.28(a)(1)(4), or unless the covered activities would be inconsistent with the criteria set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and this inconsistency has not been remedied. Notwithstanding the foregoing, this Permit will only be revoked if the Service, the Permittees, and other interested parties have not been successful in remedying any such inconsistency through other means.

R. Renewals

The Permittee(s) may apply for the renewal of the permit prior to its expiration date in accordance with the provisions of 50 CFR 13.22.

S. Disposition

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 San Antonio, Texas, 210/681-8417, 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 and any contractor/subcontractor has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

***** End of Permit Terms and Conditions for Permit # TE 33684D-0 *****