

**Texas Parks and Wildlife Department 12/23/11 letter**

Comment	Recommendation	Response
<p>1. It is clear that LCRA TSC could start construction on those segments of the Priority Projects that are not known occupied or potentially occupied habitat for the Covered Species. However, if construction were to commence without an ITP, it is unclear to TPWD whether this would be potentially in violation of the ITP process under the ESA.</p>	<p>TPWD recommends this be clarified in the document.</p>	<p>From a procedural perspective, the Service and any applicant for a Federal permit are bound by Section 7(d) of the ESA, which operates to prohibit activities which are subject of a pending consultation and which would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures to a potential finding that the Federal action under consultation would be likely to jeopardize the continued existence of a listed species 16 U.S.C. § 1536(d).</p> <p>While the proposed permit would authorize LCRA TSC for incidental take of GCWAs and BCVIs associated with the construction, operation, and maintenance of two CREZ transmission lines, to the extent LCRA TSC commences construction in areas not containing listed species or listed species habitat, it is unlikely that such activities will limit consideration of reasonable and prudent alternative measures.</p>
<p>2. It is unclear why the temporary storage areas and set up sites are not included in Covered Activities. These areas could be located in habitat for the Covered Species as well as State-listed species. Depending on size of these areas, they can present as much damage at site specific locations as the ROW.</p>	<p>TPWD recommends the plans for location of temporary storage areas and set up sites be clarified in the final document.</p>	<p>According to LCRA TSC, the establishment of temporary storage areas and set-up sites were not included as Covered Activities because previously disturbed areas such as vacant lots or existing substations are typically used for those purposes. Evaluation of the suitability of any sites by LCRA TSC as temporary storage areas or set-up sites includes an assessment of the potential for occurrence of federally and state-listed species. Sites with potential to be regularly occupied by listed species are rarely encountered in the search for these types of facilities because LCRA TSC purposely looks for locations that are previously disturbed, do not require site preparation (i.e., clearing or grading), and that have ready access to public roads.</p>

<p>3. TPWD notes there is a difference of 119.30 acres between the total acres of GCWA habitat impacted versus the number of conservation credits. The normal ratio of compensatory mitigation is 1:1 (1 credit is equal to 1 acre of habitat); TPWD assumes this is due to the mitigation ratio of .05:1 ratio for indirect impacts as stated in Table E.3 and E.4 in the dHCP.</p>	<p>TPWD recommends this reduced ratio be clarified in the EA or dHCP, rather just in the tables.</p>	<p>See Section 4.7.3.1 and 4.7.3.2 of the EA for an explanation of direct and indirect effects and their associated ratios</p>
<p>4. Throughout the EA and dHCP, it is expressed that take of individual birds is not anticipated, except perhaps in changed circumstances under emergency conditions. It is still unclear to TPWD if actual individual birds are taken (under changed circumstances or emergency situations), whether these individuals will be covered under the permit, or will an amendment be necessary.</p>	<p>TPWD recommends whether take of individuals is covered under the ITP be clarified in the final documents.</p>	<p>While the Service has utilized habitat as a proxy for take, the incidental take permit to be issued to LCRA TSC authorizes impacts to actual members of the listed species. However, only under rare occurrences, emergency situations where human health or safety are threatened, is there an expectation that any individual of the species will actually be killed by the Covered Activities. See clarifications made in section 2.2.1.3 of EA.</p>

<p>5. TPWD is concerned that the amount of Covered Species habitat lost from proposed authorized ITP take, combined with the real risks of wildfire and oak wilt, could significantly impact recovery of the GCWA and the BCVI in the southern parts of their ranges. It could be particularly significant if these events were to happen simultaneously or even in relatively short sequence.</p> <p>TPWD is also concerned with the cumulative effects, if these events were to occur during the breeding season, along with Covered Activities, as authorized in the ITP as a result of “changed circumstances.” This would be allowed in the ITP when “Covered Species Habitat must be cleared during the breeding season because of the tight project schedules and delays caused by extended periods of wet weather, problems with contractors or equipment, etc.”</p>	<p>TPWD recommends consideration of the cumulative effects of the combined actions be addressed in the final EA and dHCP.</p>	<p>Neither oak wilt nor wildfire are mentioned in the cumulative effects analysis for the Covered Species because while oak wilt and wildfire may be considered likely to occur over time in the Permit Area, we do not believe it can be reasonably foreseen that any such oak wilt or wildfire will specifically cause loss of Covered Species habitat. This does not mean that the potential for oak wilt or wildfire to cause loss of Covered Species habitat is zero, but it is also impossible to quantify any losses that may occur and be attributable to these sources.</p>
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<p>6. It is TPWD's understanding the issuance of an ITP requires compliance with other state and federal rules and regulations. This was not apparent in the EA with respect to state regulations. The EA assumes there will be no take of these species by the Covered Activities; this may not be correct for some of the state-listed species such as the Texas Tortoise and the Texas Horned Lizard.</p>	<p>TPWD recommends the EA reconsider the impacts of the Covered Activities on state-listed species that are covered under TPWD code. TPWD recommends the EA emphasize that take of state-listed species is prohibited by state law and is not covered by the ITP.</p> <p>As part of avoidance and minimization measures, TPWD recommends a biological monitor be present during clearing and construction activities to relocate state-listed species. If take of state-listed species occurs, this office should be contacted to discuss options.</p> <p>State-listed species may only be handled by persons with a scientific collection permit obtained through TPWD. For more information on this permit, please contact the Wildlife Permits Office at (512) 389-4647.</p>	<p>The contemplated incidental take permit would not provide state-level authorization to take state-listed species. The EA describes the impacts to state-listed species expected to occur as a result of the performance of the Covered Activities (Section 4.7.4). However, LCRA TSC has incorporated measures to minimize the potential for any state-listed species to be adversely affected by its activities. Regardless, it is LCRA TSC's responsibility to comply with all other state and Federal laws.</p> <p>According to LCRA TSC, it is not expected that individuals of state-listed species will be encountered during the clearing and construction phases of the Priority Projects, except, perhaps, for Texas horned lizard. No state-listed species will be handled by LCRA TSC or its contractors unless they possess appropriate TPWD scientific collection permits. LCRA TSC contractors are prohibited from handling state-listed species and are provided guidance on how to address the presence of state-listed species if they are encountered in the field.</p>
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<p>7. It is possible to further lower the risk of igniting the types of project induced wildfires such as those described in the EA. For example, practices that prevent catalytic converters from igniting underlying grasses could be developed. Fire prevention measures specific to GCWA and BCVI habitat can be developed. Areas of high fire risk in and adjacent to GCWA and BCVI habitat could be delineated prior to work being performed. For example, firefighting equipment could be readily accessible at all times. Weather could be monitored to determine times of higher and lesser fire risk for scheduled activities. Activities more prone to igniting wildfires could be scheduled during wetter months or after rainfall events.</p>	<p>TPWD recommends that LCRA TSC address fire prevention in habitat in the Action Area (the area that could be affected by the action, not just the limits of the project) for the Covered Species. TPWD recommends that LCRA provide a fire prevention plan for the project in the final EA.</p> <p>In the event wildfires do occur as a result of the Covered Activities and destroy additional Covered Species habitat within or adjacent to the ROW, TPWD recommends that LCRA TSC develop a contingency plan to provide compensatory mitigation for the loss of these habitats in the same manner set forth in the ITP.</p>	<p>According to LCRA TSC, the primary contractor used by LCRA TSC for construction of its transmission lines is Irby Construction, Inc. (Irby). Irby has its own emergency action plan that addresses fire prevention. Measures incorporated in the plan include, but are not limited to, use of fire watch personnel, mandatory presence of fire extinguishing equipment at all active job sites, prohibiting employees from smoking at job sites, and removal of flammable materials (including dry vegetation) from the immediate vicinity of welding sites and from beneath any vehicles that must remain operational.</p> <p>For reasons discussed in Section 4.13.1 of the EA, the potential for the Priority Projects to spark wildfires, while not zero, is extremely low.</p>
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<p>8. TPWD questions whether the loss of GCWA or BCVI habitat from oak wilt would constitute “take” under the ESA, as loss of habitat to oak wilt could include significant habitat modification or degradation.</p>	<p>TPWD recommends the EA further address oak wilt impacts to Covered Species habitat. TPWD is concerned the LCRA TSC Corporate Oak Wilt Prevention Policy may not be sufficient to prevent the spread of oak wilt from construction and maintenance activities.</p> <p>TPWD recommends LCRA TSC consider plans to stop the spread of oak wilt in infested areas if they occur in the ROW, including proactive oak wilt abatement in ROWs with existing infestation using Texas Forest Service guidelines. Where oak wilt spreads to adjacent properties, willing landowners should be assisted with funding to pay for oak wilt treatment to stop the spread of oak wilt in Covered Species habitat.</p> <p>In the event that oak wilt does infest and destroy Covered Species habitat in the ROW and adjacent properties as a result of Covered Activities, TPWD recommends LCRA TSC provide compensatory mitigation.</p>	<p>According to LCRA TSC, the LCRA Corporate Oak Wilt Policy meets industry standards that apply to oak wilt prevention programs. LCRA TSC acknowledges that the policy will only be effective if properly implemented and enforced. LCRA TSC requires its staff and contractors to be trained on the risks of oak wilt, as well as requiring they implement and enforce the measures outlined in the policy. LCRA TSC also acknowledges that implementation and enforcement does not provide 100 percent assurance of preventing oak wilt from spreading, particularly if already in the environment; however, this also applies equally to landowners, who should also recognize that oak wilt is already on the landscape. LCRA TSC does collect data on locations of suspected and known oak wilt centers and uses these data to instruct staff and contractors about the potential presence of oak wilt where proposed projects may occur, and to take extra precautions in these areas. With the anticipated level of field supervision and environmental staff involvement, LCRA TSC believes that execution of oak wilt prevention practices will be effectively implemented and enforced.</p> <p>While oak wilt could cause the destruction of GCWA or BCVI habitat, the disease itself cannot cause "take" as defined by the ESA.</p> <p>It is recognized that the potential for oak wilt to spread can never be avoided with absolute certainty whenever activities are performed that include damage to oak trees. However, as discussed in Section 4.7.1.1 of the EA, LCRA TSC will follow strict guidelines when clearing oak trees.</p>
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<p>9. TPWD assumes that allowing areas to “revegetate naturally” means that the existing on-site seed bank would be the source of the new plant growth in the ROW. The seed bank could be expected to contain both native and invasive species in it. Allowing areas to “revegetate naturally,” with no management, encourages the establishment of invasive or exotic species.</p> <p>The EA specifies that LCRA TSC would revegetate areas within 300 feet of perennial streams, areas where topography was particularly steep and risk of erosion was high, areas where natural revegetation would not provide adequate ground cover in a reasonable length of time, and areas where invasive species are a perceived threat.</p> <p>TPWD review of the document did not reveal any plans to control invasive plant species in disturbed areas, although it is possible this plan was overlooked during the review.</p>	<p>TPWD recommends active vegetation management to remove invasive or exotic species that germinate from the seed bank in areas where “natural revegetation” will occur. This practice would help prevent further spread of invasives, allow the native seed bank to recolonize areas with native plants and provide an overall benefit to wildlife.</p> <p>TPWD recommends that site specific native species be used in any revegetation efforts.</p> <p>If there is no plan to control invasives, TPWD recommends an invasive species control plan be included for areas disturbed by construction and maintenance activities</p>	<p>LCRA TSC acquires easements from property owners and never gains outright ownership of land within its ROW. Consequently, LCRA TSC has limited ability to control what occurs on the ground within its easements, and has no control over how landowners manage land adjacent to its easements. Controlling invasive species within a comparatively narrow ROW when the same control measures cannot be applied on directly adjacent lands would be difficult at best because uncontrolled adjacent lands would allow for invasive species to continually re-establish themselves in the ROW.</p> <p>LCRA TSC prefers to use native seed mixes for all its re-vegetation efforts, but cannot necessarily always do so. For example, a landowner may request that a Bermuda grass pasture disturbed by construction be re-seeded with Bermuda grass. The Final Orders of the PUC require LCRA TSC to meet reasonable requests from affected landowners regarding construction-related impacts to vegetation on their properties.</p> <p>See section 4.7.6.1.2 of the EA for measures that LCRA TSC will implement to minimize the potential for the Covered Activities to cause the spread of invasive species.</p>
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<p>10. Tobusch fishhook cactus comments:</p>	<p>1. Clearing of woodland, producing more open ground, has not been shown to increase populations of TFC. There is no data or evidence indicating that TFC populations have colonized previously unsuitable habitat that was altered into what is considered to be suitable TFC habitat. The hypothesis that clearing taller vegetation will create habitat for TFC is based on observational characterization of TFC habitat. Most of the apparently suitable habitat for TFC on the Edwards Plateau is unoccupied which leads TPWD to believe that there is no precise model of what TFC suitable habitat actually is. Clearing land will not necessarily create suitable habitat, and should not be considered as an “improvement in local habitat conditions.”</p>	<p>See Section 4.7.4.6.1.2 for revisions</p>
	<p>2. Cacti, like all plants, need sunlight to photosynthesize. While covering a plant for a few (3 or less) days may do no harm, such coverings are often forgotten, killing the plants beneath. Also, from examples of construction matting on the Internet, these mats appear to be heavy and if walked or driven over, the plants would likely be crushed. A sturdier covering is recommended. TPWD recommends using a wooden covering, slightly elevated over the plants, which could be walked or driven over.</p>	<p>According to LCRA TSC, the covering of cactus would be a last resort measure employed only in cases where the plants absolutely could not be avoided. Cacti would preferentially be protected behind construction fencing or marked with survey pin flags so that equipment operators could see and avoid them. No protective coverings would be used unless the covering was expected to prevent the crushing of cactus by construction traffic.</p>

	<p>3. TPWD recommends that LCRA TSC provide the TPWD Texas Natural Diversity Database (TXNDD) with the locations of any TFC plants found on federally or state owned lands such as public highway ROW.</p>	<p>According to LCRA TSC, they will be pleased to report to TPWD the locations of any Tobusch fishhook cactus it discovers on federally or state-owned lands.</p>
	<p>4. If Tobusch fishhook cacti in the highway ROW are to be impacted, a TPWD collection permit may be required. This procedure was required for removal of endangered Lloyd's mariposa cactus (<i>Sclerocactus mariposensis</i>) on the Brewster County, FM 170 road widening project which was federally funded in part.</p>	<p>LCRA TSC has no plans to "collect" any cacti. See section 4.7.4.6.1.3 of the EA for avoidance measures on state of Federal lands.</p>
	<p>4. TPWD recommends that LCRA TSC provide compensatory mitigation for loss of TFC individuals on private and public ROW property. Compensatory mitigation could be in the form of fee in lieu contribution to further research on species recovery, for the replacement of lost occupied habitat acreage or for other conservation actions agreed upon by the Service. TPWD also recommends that if individual TFC are relocated from the ROW, compensatory mitigation be provided to effect the successful relocation, monitoring and survival of the transplants.</p>	<p>The ESA does not prohibit take of listed plants occurring pursuant to non-federal activities occurring on privately-owned lands. LCRA TSC has not requested incidental take coverage for potential take of Tobusch fishhook cactus that may occur in connection with construction of its CREZ transmission lines. No mitigation has been offered under the LCRA TSC's HCP and the Service has no mechanism to require such mitigation. In any event, the Service has, as part of its intra-Service ESA section 7 consultation analyzed whether issuance of an incidental take permit to LCRA TSC will jeopardize the continued existence of that species.</p>
<p>11. The EA states big red sage occurs on steep slopes, which are likely to be spanned without being cleared.</p>	<p>Big red sage occurs on steep slopes and on other topography as well. Several populations grow on relatively level stream terraces or level shelves along drainages. These habitats will probably be spanned. However, if ROW clearing takes place in these areas, the species, if present, could be adversely impacted.</p>	<p>Table 4.13 in Section 4.7.5.13.1 of the EA identifies the Covered Activities as having potential to directly impact big red sage if present in the ROW. No populations of big red sage are known to occur in the ROW for the Big Hill-Kendall transmission line based on LCRA TSC's review of the TPWD Natural Diversity Database. The alignment for the Twin Buttes-Big Hill transmission line lies outside the known range of this species.</p>

<p>12. The EA states that canyon mock-orange occurs on steep exposures of limestone, which are not likely to be disturbed.</p>	<p>Texas mock-orange occurs on steep exposures but it also occurs on canyon bottoms and the relatively level tops of canyons. Tower structures would not likely be placed either in canyon bottoms or close enough to the edges to affect this species. However, if ROW clearing takes place in these areas, the species, if present, could be adversely impacted.</p>	<p>Table 4.13 in Section 4.7.5.13.1 of the EA identifies the Covered Activities as having potential to directly impact Texas mock-orange if present in the ROW. No populations of Texas mock-orange are known to occur in the ROW for the Big Hill-Kendall transmission line based on LCRA TSC's review of the TPWD Natural Diversity Database. The alignment for the Twin Buttes-Big Hill transmission line lies outside the known range of this species.</p>
<p>13. The EA states that Warnock's coral root is rare, so the chance of occurring in a given ROW is very low. It occurs in woodlands on upper canyon slopes, so if present, plants or their habitat could be directly impacted by ROW clearing. Clearing of ROW could indirectly alter microclimatic conditions in adjacent woodlands.</p>	<p>Although Warnock's coral root is rare, unknown populations of the species may occur in the ROW, and they could be impacted by Covered Activities.</p>	<p>Table 4.13 in Section 4.7.5.13.1 of the EA identifies the Covered Activities as having potential to directly impact Warnock's coral root and to indirectly impact its habitat, and to directly impact canyon rattlesnake-root, if present within the ROW. Within the Permit Area, Warnock's coral root is only known from Gillespie County in the Llano Uplift region (Poole et al. 2007), which is not crossed by the Big Hill-Kendall alignment. Canyon rattlesnake-root is known from Gillespie and Kerr counties (Poole et al. 2007).</p>
<p>14. There is an underlying assumption throughout the EA that "because the transmission line ROW would continue to support wildlife habitat, the Priority Projects are also expected to have a negligible effect on wildlife productivity..." Yet, the Covered Activities include maintenance of the ROW, which in Section 2.2.6, page 2-15, states the "primary ROW maintenance activity is the removal of trees or other woody vegetation that pose a potential danger to conductor wires or structures or prohibit access." It is TPWD's experience that the majority of transmission ROWs are kept cleared of woody vegetation. If vegetation is allowed to persist, it is usually low growing shrubs and/or grasses.</p>	<p>TPWD recommends this be clarified throughout both the EA and dHCP.</p>	<p>Section 5.2.6.1 of EA describes the expectation that the clearing of vegetation for the ROW may cause localized and negligible changes in wildlife species composition where woodlands are converted to grasslands. In all cases, it is expected that vegetated portions of the transmission line ROW will provide habitat for some species of wildlife.</p>

<p>15. The dHCP states that it is expected that the Permit would be issued to LCRA TSC under the condition that covered activities would not be authorized until mitigation is provided to compensate for the expected impacts to endangered species.</p>	<p>TPWD recommends when the species specific committees are established that TPWD is given the opportunity to have a representative on each committee.</p> <p>At a minimum, TPWD would like to be involved in the review of the use of mitigation funds. There may be an opportunity to pursue acquisition of lands adjacent to existing TPWD lands or conservation easements that would potentially reduce the management and maintenance costs. Expanding an existing facility could potentially reduce the overall management and maintenance and provide conservation benefit versus increased cost of operating and maintaining a new site.</p>	<p>The Service acknowledges this comment.</p>
<p>16. It is not specified in either the EA or the dHCP exactly how the LCRA TSC will provide payment, just states the funding is identified and/or funds are allocated.</p>	<p>TPWD recommends the guarantee of such payment be identified in the final documents.</p>	<p>See section 2.2.1.2 of EA</p>

<p>17. TPWD reviewed the Priority Projects during the CREZ process and provided comments and recommendations to the PUC. The first third (west to east) of the Big Hill to Kendall route approved by the PUC will cross some of the largest tracts of unfragmented wildlife habitat in the Edwards Plateau. The overall undisturbed quality of this area is evident by the lack of development, and low population density. There are few major state or federal highways, and most roads are one- to two-lane Farm-to-Market, Ranch-to-Market, Ranch or County roads that connect outlying landowners to towns and cities.</p>	<p>Due to the magnitude of overall impact from the Priority Projects, TPWD would not support a Finding of No Significant Impact and recommends preparation of an EIS be considered.</p>	<p>Addressed in section 1.1 of EA</p>
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**Texas General Land Office 11/7/11 letter**

<p>The GLO probably has no comments, but there may be easements required.</p>	<p>It does not appear that the GLO will have any land impacted by this project. However, there may be several state-owned streambeds the proposed transmission line could impact and require an easement from our agency.</p>	<p>According to LCRA TSC, both Priority Projects cross state-owned stream beds, and; therefore, will require the acquisition of easements from the Texas General Land Office.</p>
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**Save Our Scenic Hill Country Environment, Inc. (SOSHCE) and Clear View Alliance (CVA) 12/23/11 Comment Letters**

Comment 1: The Projects will significantly affect the quality of the human environment; USFWS should prepare an EIS instead of an EA.

<p><b>Comment Numbers (correspond to numbers/order of comments in letter submitted)</b></p>	<p><b>Comments</b></p>	<p><b>Responses</b></p>
<p>SOSHCE A.1.</p>	<p>The Projects will still have a major impact even though they are better defined and more limited in scope than when an EIS was planned for during the scoping process.</p>	<p>Addressed in section 1.1 of EA</p>
<p>CVA I.1</p>	<p>The Projects will have a major impact and an EIS should be developed as was planned for during the scoping process.</p>	<p>Addressed in section 1.1 of EA</p>

<p>SOSHCE A.2. CVA I.2.</p>	<p>It is stated in the dEA that the Projects (two now involve 178 miles versus 450 miles (four projects) at the time of the scoping; however, the May 15, 2009 Public Utility Commission (PUC) final Order on Rehearing (Docket 35665-1340) indicates that the estimated mileage (123 miles) of the two eliminated lines was well less than one-half of the total (291 miles) for the four lines.</p>	<p>According to LCRA TSC, no routes for any of the four Priority Projects had been selected at the time of scoping, although possible routes for each of the Projects had been identified as examined in the PBS&amp;J environmental assessments. The sum of the longest routes identified for each of the Projects was approximately 450 miles, meaning that potential existed at the time of scoping for the four Priority Projects to result in the construction of 450 miles of transmission line.</p>
<p>SOSHCE A.3. CVA I.3.</p>	<p>The Study Area includes six counties (Tom Green, Schleicher, Kimble, Kerr, Gillespie and Kendall) traversed by the two lines plus two counties with limited potential (Mason and Menard) plus Sutton County for a total of 10,194 square miles.</p>	<p>According to LCRA TSC, at the time of the scoping the final route was not known. When proposed to the PUC, the project included proposed routes through Menard and Mason counties. However, the final route from the McCamey D Substation to the Kendall Substation does not affect either Menard or Mason counties.</p>
<p>SOSHCE A. 4. CVA I.4.</p>	<p>The “action area” includes the designated right-of-ways (ROW’s), and access roads, as well as an area 300 feet of each side; it is stated in the dEA that “It is possible some of the resources (e.g., socioeconomic resources) may experience indirect effects at greater distances from the ROW’s”.</p>	<p>According to LCRA TSC, the quote is in reference to the Service determining the action area to assess impacts, not to assess whether or not an EIS is warranted. See Section 1.8 of EA.</p>
<p>SOSHCE A. 5. CVA I.5</p>	<p>The dEA and dHCP include the potential mitigation of up to 1,026.7 acres of Golden Cheeked Warbler (GCW) habitat and of up to 2,584.3 acres of Black Capped Vireo (BCV) habitat.</p>	<p>This is correct. See Sections 5.4.2 and 5.4.3 of the dHCP for how this was calculated.</p>
<p>SOSHCE A. 6 CVA I.6</p>	<p>The transmission lines will cover 178 miles through six counties.</p>	<p>This is correct. See Section 3.2 of the dHCP.</p>
<p>SOSHCE A. 7 CVA I.7</p>	<p>The related ROW’s will require 2,715 acres at a 160 feet width or 2,375 acres at a 140 feet width.</p>	<p>This is correct, but only includes the calculations for the Big Hill to Kendall line. The Twin Buttes to Big Hill line is expected to require 663 acres. See Section 3.2 of the dHCP.</p>

SOSHCE A. 8 CVA I.8	The transmission line structures will be predominately lattice towers with a height of 120 to 180 feet.	This is correct. See Section 3.2 of the dHCP.
CVA I.8	...will cause irreparable damage to mitigate without more widespread use of the monopole style structures. Much of the controversy as indicated in the Open Houses and Scoping Meetings centered on the intrusion of the absolute stark industrial lattice structures upon the treasured natural resources and open vistas for which the Texas Hill Country is known.	NEPA requires that Federal agencies analyze the impacts of their actions upon the human environment. The Service's proposed action is issuance to LCRA TSC an incidental take permit which would authorize take of certain listed species in connection with LCRA TSC's "otherwise lawful" activities – here, construction, operation, and maintenance of two CREZ transmission lines. Application for an incidental take permit is entirely voluntary. As indicated in Sections 4.2 and 4.10 of the EA, significant economic and aesthetic impacts are not anticipated in connection with the Service's issuance of an incidental take permit to LCRA TSC or are mitigated by measures proposed by LCRA TSC as part of the project.
SOSHCE A. 9 CVA I. 9	There will be four to six structures per mile which equates to a total number of between 712 and 1068.	This is correct. See Section 3.2 of the dHCP.
SOSHCE A. 10	The transmission lines and structures will be highly visible as they pass through the City of Kerrville and to the large number of travelers on Interstate 10 from the Comfort area to west of Junction.	Addressed in Section 4.2.1.2 of EA
CVA I. 10	The transmission lines and structures will be highly visible throughout a large segment of the Hill Country region as indicated by Viewshed Analysis Maps entered in the Evidentiary Hearings by Clear View Alliance at PUCT in October 2010.	Addressed in Section 4.2.1.2 of EA

<p>SOSHCE A. 11 CVA I.11</p>	<p>In their Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctive Relief before the Travis County District Court, the City of Kerrville, the Kerrville Public Utility Board and City of Junction testified that the CREZ transmission line through Kerrville will have significant negative economic and aesthetics impacts.</p>	<p>According to LCRA TSC, there was no “testimony” in the appellants’ petition, simply assertions and allegation in petitions to appeal the agency's actions. In addition, the City of Junction withdrew from the appeal prior to the court hearing. Finally, the Travis County District Judge affirmed the PUC's decisions and no appeal of this decision has been taken to the Court of Appeals, thereby refuting the appellants’ claims.</p>
<p>SOSHCE A. 12 CVA I.12</p>	<p>In addition to the new Big Hill (McCamey D) substation, there will be two approximately 50 acre American Electric Power-Electric Transmission of Texas series compensation stations that are expected to be built east and west of Junction; these two stations are not included in the dEA and dHCP; it is stated in the dHCP that the extent of impacts is not known.</p>	<p>Because the locations of the two 50-acre series compensation stations were not known at the time the dEA was written and are still not known to LCRA TSC, the impacts of construction of those stations could not be assessed. The stations will be constructed by American Electric Power-Electric Transmission of Texas, and that entity will be responsible for ensuring their construction conforms to all applicable laws and regulations.</p>

<p>CVA I. 13</p>	<p>Missing from both the dEA and dHCP are any efforts whatsoever concerning preservation of the exceptional natural resource quality of the Night Sky. In context of the construction of the three associated sub-stations, potential impacts from light trespass could be severe without special attention paid to full cut-off shielding, glare, and other factors when installing permanent outdoor lighting.</p>	<p>The dEA and dHCP did not address possible deleterious changes in the ability to view the night sky, since this issue was not raised during the scoping process, nor was it identified as a potentially serious issue during preparation of the dEA or earlier routing studies. The transmission line structures will not be illuminated unless required by FAA regulations, and any such lights used in that regard would be red and would not be expected to impact the ability to view the night sky.</p> <p>The Priority Projects require the construction of one new substation (the Big Hill Substation), not three as suggested in this comment. The other two substations to which the Priority Projects would connect, the Twin Buttes and Kendall substations, are extant and the extent to which these two substations are illuminated at night will not change from current conditions as a result of completion of the Priority Projects.</p> <p>According to LCRA TSC, the Big Hill Substation is expected to be illuminated at night for safety and security reasons using six to seven high pressure sodium bulbs rated at 100W/120V that are equivalent in brightness to common streetlights. The Big Hill Substation is located in a very sparsely populated area, with only four homes present within two miles. The nearest of those homes is approximately 0.52 mile distant.</p>
<p>SOSHCE A. 13 CVA I.14</p>	<p>It is stated in the dEA that the long term adverse impacts to the visual and aesthetics characteristics on the landscape would be minor to major depending on several factors.</p>	<p>This is correct.</p>

<p>SOSHCE A. 14 CVA I.15</p>	<p>It is stated in the dEA that “It is likely that the value of many, probably most, properties along the transmission line routes would not be affected; however, it is reasonable to conclude that the value of some properties along the ROW could be reduced; the nature and magnitude are impossible to predict.”</p>	<p>This is correct.</p>
<p>SOSHCE A. 15</p>	<p>It can be argued that the studies that LCRA TSC used to address property value impacts in the dHCP do not apply to an area like the Texas Hill Country where rural properties values are generally not based on agricultural use. Instead, in the Texas Hill Country, land values are based much more on aesthetic and natural resource values</p>	<p>The data presented in the dEA were intended to provide a consistent and measurable methodology that, when applied to all properties, result in an evaluation that is not biased for or against any specific property. Furthermore, LCRA TSC and PUC both acknowledge aesthetic value and LCRA TSC included this criterion in their routing studies submitted prior to route selection. Additional information regarding property values may be found in PUC Docket No. 38354.</p>

CVA I. 16	<p>The studies that LCRA TSC used to address property value impacts in the dHCP do not apply to an area like the Texas Hill Country. Here, rural properties values are generally not based on agricultural use. Instead, in the Texas Hill Country, land values are based much more on aesthetic values and environmental qualities. This fact was the paramount theme in the Clear View Alliance intervention at PUCT. The overwhelming evidence entered on the record is considered to have weighed heavily on both the Administrative Law Judges and Commissioners alike in reaching the I-10 routing decisions in the Final Order. It could be argued in this case, that open space lands not fragmented by the transmission line ROW were more valuable to preserve than lands already impacted by the existing I-10 ROW.</p>	Same as SOSHCE A. 15
SOSHCE A. 16 CVA I.17	<p>An EIS is being prepared in conjunction with the Oncor transmission and distribution dHCP which is referenced in the LCRA TSC dHCP.</p>	<p>See Section 1.1 of EA. Additionally, the Service notes that the Oncor dHCP proposes to cover incidental take of 11 species occurring throughout 100 counties. The Oncor dHCP proposes to cover 2,131 miles of existing transmission lines and 300 miles of future transmission. By contrast, the LCRA TSC CREZ transmission lines will traverse nine counties and cover 178 miles.</p>
SOSHCE A. 17 CVA I.18	<p>EIS's are being utilized for the dHCP's being prepared for Comal and Hays counties that are referenced in the dEA and dHCP; the proposed mitigation acreage for the Black Capped Vireo (BCV) in the LCRA TSC dEA/dHCP exceeds that for the two counties.</p>	<p>See Section 1.1 of EA. Additionally, the Service acknowledges that EIS's are being prepared in connection with the Hays County and Comal County Regional HCPs. The Service's determination regarding whether preparation of an EIS is appropriate is made on a case-by-case basis. In these RHCP examples, the uncertainty of the location of impacts plays a role in this decision. Additionally, residential and commercial construction have different, more significant impacts, on warblers and vireos than do linear projects.</p>

SOSHCE A. 18 CVA I.19	An EA was prepared for the 2007 TXU Electric HCP; however, this transmission line was only 16 miles long and the permit duration was only 5 years.	See Section 1.1 of EA
SOSHCE A. 19 CVA I. 20	This CREZ line process has been very controversial. As such, it is imperative that a full EIS be completed in order to adequately give the public full notice and opportunity to be involved in the Endangered Species Act (ESA)/HCP and National Environmental Protection Act (NEPA) processes and provide a complete opportunity to contribute regarding affects to the human and natural environments.	See Section 1.1 of EA

Comment 2: The PUC target completion date of the fall of 2013 should not impact the provisions of the dEA and dHCP.

<b>Comment Num.</b>	<b>Comments</b>	<b>Responses</b>
SOSHCE B.1 CVA II.1	It is stated in the dEA that “The PUC is requiring LCRA TSC to have these projects operational by the fall of 2013.”	This is correct. The PUC is requiring LCRA TSC to have the two Priority Projects built and operational by the winter of 2013 (Section 3.2.2 of dHCP).
SOSHCE B.2 CVA II.2	There are several references in the dEA and dHCP to “tight project schedules” and other factors possibly requiring clearing during the GCW breeding season.	This is correct. The PUC is requiring LCRA TSC to have the two Priority Projects built and operational by the winter of 2013 (Section 3.2.2 of dHCP).
SOSHCE B.3 CVA II.3	The January 24, 2011 PUC Final Order (Docket 38354-3625) did not include a required completion date; however, it did state “LCRA TSC shall use a habitat conservation plan development process and Endangered Species Act Section 10(a) permitting process that is ongoing with the USFWS.”	According to LCRA TSC, the PUC has clearly stated that all CREZ facilities, particularly “Priority” projects had to be energized by December 2013, see the two controlling CREZ dockets, Docket Nos. 35665 and 37928.

<p>SOSHCE B.4 CVA II.4</p>	<p>The May 15, 2009 PUC Order on Rehearing in the Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy From Competitive Renewable-Energy Zones (Docket 35665-1340) did reference the Commission's anticipated general schedule for completion of CTP projects by year-end 2013, that the Commission anticipates that the projects will be completed by year-end 2013, that the CCN application timing should ensure that the year-end 2013 target for the completion of construction can be met, that the Commission anticipates that the CTP projects will be completed by year-end 2013, and that the sequencing of CCN's and project must facilitate the timely completion of all CREZ projects by the target completion date of year-end 2013.</p>	<p>This is correct.</p>
<p>SOSHCE B.5 CVA II.5</p>	<p>In any case, the PUC does not have the authority to override the requirements of the ESA and the NEPA, and LCRA TSC must comply fully with all applicable federal laws and regulations. The ESA and NEPA are controlling and must be adhered to as a matter of law.</p>	<p>The Service is required to issue to LCRA TSC an incidental take permit, irrespective of the final CREZ transmission line routes, so long as the LCRA TSC meets all ESA section 10 issuance criteria.</p>

<p>SOSHCE B.6 CVA II.6</p>	<p>In addition, the PUC extended the LCRA TSC Certificate of Convenience and Necessity (CCN) submission date for the McCamey D (Big Hill) to Kendall line by approximately nine months to allow for consideration of additional alternative routes.</p>	<p>According to LCRA TSC, the PUC extended the deadline to file the CCN case by approximately nine months at the request of LCRA TSC and PUC staff. The delay was requested to give LCRA TSC time to study additional routes suggested by the public and elected officials. However, the slot provided to LCRA TSC had a deadline to file its McCamey D to Kendall project of July 2010, but still with the requirement to be energized by December 2013. In other words, the delay granted by the PUC for filing the CCN project did not mean that LCRA TSC had additional time beyond December 2013 to energize the project.</p>
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Comment 3: The 30 year term of the dHCP and ITP should not be extendable without development of a new dEIS and dHCP.

Comment Num.	Comments	Responses
<p>SOSHCE C.1-2 CVA III.1-2</p>	<p>(1) It is stated in the dHCP that the permit may be renewed or extended, and amended if necessary, beyond its initial 30 year term with the approval of the Service and that no additional mitigation will be provided if the permit is renewed or extended. (2) The dHCP for Oncor does not include similar provisions for extension.</p>	<p>(1) This is correct. (2) Section 1.6 and 12 of Oncor's Final HCP addresses renewal, extensions, and amendments to their HCP.</p>

Comment 4: Cumulative impacts should acknowledge and include the fact that the CREZ transmission system is designed to accommodate 18,456 megawatts of wind generation

Comment Num.	Comments	Responses
<p>SOSHCE D.1-5 CVA IV.1-5</p>	<p>(1) CREZ lines are directly tied to the CREZ wind energy production through enabling legislation in 2005 and PUC proceedings.</p> <p>(2) Wind generators in two CREZ zones were required to provide financial commitments to the PUC that they would use the CREZ lines; the other three CREZ zones were assumed to have sufficient existing capacity, under development capacity and capacity represented by signed interconnection agreements.</p> <p>(3) It is acknowledged that the amount of future wind generation is dependent on several factors including extension of federal subsidies and competition from relatively low priced natural gas.</p> <p>(4) It is inappropriate to only mention the U.S. EIA projection of an additional 700 megawatts of wind generation by 2035.</p> <p>(5) ERCOT is tracking potential wind energy transmission interconnection requests that significantly exceed the CREZ design capacity; based on signed interconnection agreements, ERCOT is projecting that an additional 1,755 megawatts of wind energy capacity will be installed through 2014.</p>	<p>(1-4) Wind generation facilities are addressed in the cumulative effects section of the EA (5.2). However, the Service's issuance of an ITP to LCRA TSC covering clearing of listed species habitat in proximity to portions of the CREZ transmission lines is not likely to cause the development of wind generation facilities. Rather, development of wind generation facilities is driven by numerous factors, including primarily funding for the projects, wind resources in a given area, landowner issues, and availability of programs such as the federal production tax credit.</p> <p>(5) According to LCRA TSC, the McCamey and Central CREZ areas are two of the CREZ where there is already sufficient capacity – so much so that projects connecting to these general areas do not require financial commitments from generators.</p>

SOSHCE D.6 CVA IV.6	It is stated in the dEA that wind generation impacts include creating collision hazards for birds and bats, can result in local displacement of certain wildlife species, decreasing aesthetic qualities of local viewsheds and creating a small number of jobs.	This is correct.
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Comment 5: Mitigation measures should be implemented prior to any authorized take and be located in the associated recovery regions.

Comment Num.	Comments	Responses
SOSHCE E.1 CVA V.1	For the Golden Cheeked Warbler (GCW), it is stated that LCRA TSC has solicited mitigation price quotations from conservation banks in Burnet and Bandera counties; at least the two in Burnet County are not in the two recovery regions (6, 7) impacted by the projects.	Regarding the two banks in Burnet County, one has not been approved and the other has not been approved to provide mitigation for CREZ projects. If these banks are not approved for CREZ projects and/or are not approved by the time LCRA TSC would need mitigation, then LCRA TSC would need to look within the action area for mitigation parcels.
SOSHCE E.2 CVA V.2	For the BCV, it is stated that mitigation funding is assured prior to the occurrence of any authorized take; actual utilization of those funds should be required.	Section 5.6.3 of the HCP and Section 2.2.1.2 of the EA identify that compensatory mitigation for the Covered Species, or a guarantee of such payment (i.e., stand-by letter of credit), will be provided in full before any clearing of woody vegetation occurs within 300 feet of areas identified as known or potential habitat for these species. In addition, such funds, if donated to a conservation entity, would be required to be used by that entity for acquisition of habitat prior to the occurrence of any take authorized under the Permit.

Comment 6: Is it correct that the Priority Projects will likely go forward whether or not they have a permit and that the ITP is voluntary?

Comment Num.	Comments	Responses
SOSHCE F.1 CVA VI.1	It is stated in several places in the dEA and dHCP that it is unlikely that GCW and BCV habitat can be avoided.	The ESA does not require a person or entity to apply for an incidental take permit. Rather, the ESA prohibits unauthorized take of listed species. A given person or entity is entitled, pursuant to the law, to determine whether a particular activity may result in take and, if a determination is made that take will not occur, that person or entity is entitled to bear any risk of noncompliance and undertake that activity without seeking a permit or other ESA authorization. Here, LCRA TSC has voluntarily applied for an incidental take permit and, pursuant to the requirements of section 10 of the ESA, the Service is taking action on the requested permit.

<p>SOSHCE F.2 CVA VI.2</p>	<p>The dEA states that “In the absence of a permit, and the conservation planning entailed by the permit review process, take would violate the ESA.”</p>	<p>This is correct.</p>
<p>SOSHCE F.3 CVA VI.3</p>	<p>As indicated previously, the PUC Final Order states that LCRA TSC shall use a habitat conservation plan development process and Endangered Species Act Section 10(a) permitting process that is ongoing with the USFWS.</p>	<p>This is correct.</p>
<p>SOSHCE F.4 CVA VI.4</p>	<p>Again, the PUC does not have the authority to override the requirements of the ESA and NEPA, and LCRA TSC must comply fully with all applicable federal laws and regulations.</p>	<p>Same response as SOSHCE B.5 above</p>
<p>SOSHCE F.5 CVA VI. 5</p>	<p>In addition, would internal LCRA TSC policies allow it to proceed without compliance?</p>	<p>According to LCRA TSC, their internal policies would not allow the Priority Projects to proceed without compliance with applicable laws.</p>

Carol Akers	11/29/2011 Transcribed at public meeting	The Florida Power & Light route was not considered as an alternative	The alternative of using the existing Florida Power & Light route is not considered. I did speak to one of the LCRA people who said that that would not hold the proper amount of line. I would like to see more information about how that is true or not true, that there is no possible way that the already existing line could be used. If they did this, it would not require construction of an alternate route, and it would not require expanding construction in habitat that violates the intent of the ESA	According to LCRA TSC, whether the Florida Power & Light (NextERA) transmission line could be substituted for the Big Hill to Kendall CREZ project was studied, discussed, and resolved by ERCOT and the PUC (Docket No. 38354). The NextERA line was found to be too small to transport the amount of renewable energy envisioned in the ERCOT and PUC analyses, in the wrong place geographically to be useful, and insufficient in scope in that it would require the construction of additional projects to be comparable in transport capability. In addition the NextERA line is a “private” transmission line constructed to transport the wind output from the NextERA wind farm in Taylor County, and as such has not been committed to public use and is not considered a “public utility” line.
		The EIS is inadequate	The EIS appears to be inadequate, because it does not address or consider proper alternative routes. Simply saying that the PUC has issued permits for this route does not preclude LCRA from asking the PUC to change its mind. LCRA, therefore, should be obligated to consider alternative routes and go back to the PUC if those routes are environmentally superior. Failing to consider these routes violates the intent of the ESA.	Pursuant to NEPA and relevant regulations, only alternatives that are feasible and would satisfy the purpose and need of the action should be considered.  According to LCRA TSC, they conducted a robust routing alternatives analysis pursuant to the PUC process, but the PUC was solely responsible for selecting the final routes. Thus, LCRA TSC considered alternative routes, but was required pursuant to state law to “reject” those routes when the PUC made its final routing decision. In other words, LCRA TSC is required as a matter of state law to construct its CREZ transmission lines as directed by the PUC. Thus, the Service’s only available alternative regarding routing is to accept the PUC mandated route and either issuance an incidental take permit for that route or not issue the permit.

		LCRA didn't consider a no-take alternative.	LCRA does not appear to have considered using a no-take alternative of encouraging conservation by using incentives or other among its customers as an alternative to expanding capacity. And this is routinely done by utilities elsewhere, and there is no explanation of that.	<p>When determining whether to issue an incidental take permit, the Service analyzes whether a particular applicant meets the standards set forth pursuant to section 10 of the ESA and relevant implementing regulations. Among those requirements are describing alternatives to the proposed taking as well as the measures the applicant will take to minimize and mitigate the proposed taking to the maximum extent practicable.</p> <p>According to LCRA TSC, they have a number of programs designed to encourage conservation. With respect to the alternatives described by LCRA TSC in its HCP, however, because LCRA TSC was required by the PUC to build the CREZ transmission lines, LCRA TSC could not present those or encourage conservation programs as an alternative to building the CREZ transmission lines.</p>
		LCRA is ignoring the impact on endangered species	LCRA appears to me to attempt to ignore the impact on endangered species, using state authority to subsidize construction of the wind turbines which have been shown to be environmentally damaging. It needs to address those impacts as well. Just building the line, it should also consider the environmental issue of what those lines are attaching to. And if LCRA focuses on conservation, it would not be subsidizing the environmentally damaging turbines or the wind farms.	See response to commenters (SOSHCE D.1-5/CVA IV.1-5) above.

Alan Smith	12/19/2011 letter	The draft EA and draft HCP are lacking in scientific basis and overkill for rational of requiring a HCP.	The dEA contains a section on Climate Change for which there is no scientific data presented to support such a claim. It is appropriate to provide a description of the climate of the project region but your conclusions that the global mean temperatures will continue to rise is without scientific support; either within your draft EA or in the current scientific literature. To claim otherwise is intellectually and scientifically dishonest.	Pursuant to Commission on Environmental Quality and other relevant guidance, during the NEPA process, the Service must examine the potential effects of climate change with respect to its proposed action.
			FWS provides wide range of estimates of acreages of GCW and BCV habitat but there are no data on the number of birds in the area. How can impacts be assessed if there are no field data to support your assessments? Estimates are pure speculation.	As noted in both the EA and HCP, during final design and construction, LCRA TSC will prepare and submit a final preconstruction impact assessment to the Service for its concurrence.
			Regarding the HCP. Habitats for the GCW and BCV are estimated using satellite photography with no ground truthing. Based on data presented (Table 2) in the HCP there are 4,148,138 acres of potential GCW habitat in TX and 862,404 ac in the project counties. Estimated ac impacted would be 1,146 ac or 0.027% of the total potential ac in TX or 0.13% of potential ac in the project counties.	This is correct.
			The potential BCV ac in TX (Table 4) is estimated to be 1,450,438 ac and the estimated potential habitat in the project counties is 284,485 ac. The estimated ac to be impacted is 2,447 which represents 0.168% of the total ac in TX and 0.86% of the total ac in the project counties.	This is correct.

			<p>The HCP calls for monitoring bird activity along the project area during nesting season at the time of construction. It would seem more prudent to have conducted population surveys prior to preparing the HCP. The estimated impacted areas are miniscule compared to the total estimated potential habitat in the project area and the state of Texas. Spending time and money on the development of this HCP is a waste of taxpayer and rate payer resources. There are other means of providing compensatory mitigation besides committing large tracts of land for infinity and requiring costly monitoring programs.</p>	<p>While some surveys during the breeding season for both birds were conducted along some portions of the ROW, access to all areas were not available during that season. As such, habitat assessments were conducted instead.</p> <p>Additionally, LCRA TSC's internal policies would not allow them to proceed with the Priority Projects in violation of the ESA. Therefore, LCRA TSC must have authorization to impact habitat for the GCWA and BCVI to not be in violation of the ESA.</p>
			<p>FWS has something in the neighborhood of 18 million acres tied up in HCPs under the guise of protecting endangered species. Based on the quality of information used to prepare this HCP one can only assume the majority of the HCPs were prepared with the same lack of sound scientific data. It can be concluded the use of HCPs under the Endangered Species Act is to support a political agenda rather than true protection of plant and/or animal species.</p>	<p>The Service acknowledges this comment.</p>