



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services

c/o TAMU-CC

6300 Ocean Drive Unit 5837

Corpus Christi, Texas 78412

October 10, 2008

TO: Allan Strand – Field Supervisor – USFWS Corpus Christi, Texas

FROM: Tammy Ash – NRDAR Specialist, TX Gulf Coast, USFWS, Corpus Christi, Texas

SUBJECT: Greens Bayou site - Hazardous Substance Release Compensatory Restoration - ESA Section 7, Informal Consultation

The United States Fish and Wildlife Service on behalf of the U.S. Department of the Interior (USFWS) and the National Oceanic and Atmospheric Administration (NOAA), along with the Texas Parks and Wildlife Department (TPWD) and the Texas Commission on Environmental Quality (TCEQ)(collectively, the 'Trustees'), found that resources or resource services were lost due to the release of hazardous substances in certain areas at or adjacent to the Greens Bayou site in Harris County, Texas (the 'Site').

In order to compensate the public for these lost natural resources or natural resource services, the Trustees are proposing, as the preferred alternatives for the Site, the construction of approximately 10.89 acres of vegetated intertidal wetlands as well as the preservation in perpetuity of 100.0 acres of forested wetlands in the upper Galveston Bay, Buffalo Bayou or San Jacinto River watersheds.

The Harris County threatened and endangered species list has three species listed on it that may occur in the project area, they include the Brown pelican, bald eagle and the Texas prairie dawn flower. The brown pelican utilizes the area for foraging, but at most the project would cause a temporary displacement for the birds feeding in the restoration area. Neither the bald eagle nor the Texas prairie dawn flower are present at the site and so will not be affected by the project. Below, we provide a summary of the proposed actions, our analysis of the potential effects, and our conclusion regarding the effects of the actions on threatened or endangered species. The potential effects of the actions on designated critical habitat will not be addressed, since the location of the proposed restoration projects is not critical habitat for any listed species. Consistent with Section 7 of the federal Endangered Species Act, the Trustees are writing to seek your concurrence with our determination that the preferred alternatives may affect but are not likely to adversely affect the Brown pelican.

Description of the Proposed Action

Marsh construction:

The proposed restoration action involves marsh creation through excavation of fill material overburden and filling of submerged areas to achieve intertidal elevations. Over-burden will be excavated to elevations similar to the adjacent marshes. Material will be excavated from the artificial upland areas using appropriate equipment. The material will be deposited in shallow, open water areas adjacent to the artificial uplands and will be placed to elevations similar to the excavated areas, as well as adjacent restored marshes. This action is expected to provide approximately 10.89 acres of substrate for the natural recruitment and re-colonization of native, desirable marsh vegetation.

The goals of the preferred project are (1) to increase tidal exchange, thereby increasing the benthic productivity of the project area, and (2) to create an additional 10.89 acres of sustainable, functionally

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equivalent brackish marsh. The project will be constructed by representatives of the PRPs, with close coordination and oversight by the Trustees.

Forested wetland preservation:

The proposed restoration action consists of fee simple acquisition of 100 acres of forested wetlands threatened by development for sand and gravel mining, timber harvesting, and residential housing construction. The property will be acquired from a willing seller with clear title, with title to be held by the government of Montgomery County. A conservation easement for the same property will be held by Legacy Land Trust, and conservation easement fees will be provided for baseline biological monitoring, annual monitoring, and legal enforcement of the easement provisions. Third party rights of enforcement will also be retained by the Trustees.

The goals of the preferred project are (1) to remove the potential for mining, timber, or residential development of the property currently threatening the ecological integrity of the site, and (2) to ensure the continued provision of ecological services from the preserved property comparable to those lost due to injury to natural resources associated with the planning and implementation of the Confined Disposal Facility and Borrow Area.

Based on review of the species present in the area and the techniques being used to implement the restoration, the Trustee representative from USFWS anticipates that creation of 10.89 acres of intertidal wetland and preservation of 100.0 acres of forested wetland are not likely to adversely affect threatened or endangered species utilizing habitat in the proposed project area.

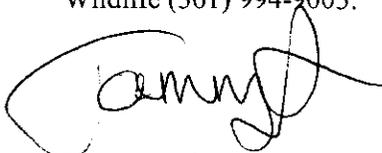
A copy of the *Draft Restoration Plan and Environmental Assessment for Greens Bayou, Harris County, Houston Texas* is available upon request.

Minimization and Avoidance Measures

As stated above we feel this project is not likely to adversely affect the Brown pelican, however, to minimize any potential impact we plan on educating contract workers on the identification and status of the Brown pelican as well as emphasizing they need to minimize all potential disturbance.

In compliance with Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, please review the proposed projects and provide comments to Tammy Ash, U.S. Fish and Wildlife Service, c/o TAMU-CC, 6300 Ocean Drive Unit 5837, Corpus Christi, Texas 78412.

If you have any questions or need further information, please contact Tammy Ash at U.S. Fish and Wildlife (361) 994-9005.



Tammy Ash
USFWS
TX Gulf Coast NRDAR Specialist