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Texas Department of Transportation

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April 18, 2008

NATURAL

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RESOURCES

Julie C. Wicker
Texas Parks and Wildlife Department
Wildlife Habitat Assessment Program
Habitat Division
4200 Smith School Road
Austin, Texas 78744-4800

RE: Proposed Widening of SH 349 from the Proposed Midland Reliever
Route to FM 829 (CSJ: 0380-06-009, 0380-07-018, 0380-08-012
Midland and Dawson Counties

Dear Ms. Wicker,

We are in receipt of your letter dated April 15, 2008 to Dr. Karen Clary regarding TPWD comments/recommendations concerning biological resources for the above referenced project. Thank you for your input. We have reviewed your recommendations very carefully and the following is our response:

Vegetation

TPWD Recommendation: TPWD recommends TxDOT provide compensatory mitigation for impacts to native vegetation on a one-to-one (acre-per-acre) basis. Because construction would be phased due to funding constraints, TPWD recommends TxDOT allow existing vegetation to remain until plans to construct the ultimate section are finalized. The minimum amount of vegetation necessary should be removed to allow construction of each phase of the project. Existing vegetation should be allowed to remain as long as possible to stabilize soils and help protect water quality, as well as provide habitat for wildlife. Site specific native trees and shrubs should be included in re-vegetation plans. Planting native vegetation which provides habitat for wildlife in the project area would help offset the loss of habitat which would occur as a result vegetation clearing.

TxDOT Response: Having to provide compensatory mitigation for the entire 398 acres of affected rangeland is neither reasonable nor feasible. We do agree that certain compensatory mitigation for is warranted and to that end we will provide compensatory mitigation for 10 acres of disturbance (3 acres total for playas and 7 acres for Harvester ant colonies which is habitat for

the Texas Horned Lizard, a state listed species). A visual inspection of approximately 15 miles along the corridor that had the highest concentration of ant colonies was conducted on April 14, 2008. The inspection revealed an average of 15 ant colonies per mile. However a more generous number of 50 ant colonies per mile throughout the project limits was used to calculate the number of total acres of habitat disturbance. Using 50 colonies per mile throughout the 35-mile project limits, calculates to be 0.36 acres of total disturbance to Texas Horned Lizard habitat. In order to demonstrate our commitment for environmental stewardship we believe 7 acres is more than fair and reasonable for compensatory mitigation for the disturbance to the Texas Horned Lizard habitat.

Water Resources

TPWD Recommendation: TPWD strongly recommends avoiding adverse impacts to the playa lakes on the project site to the extent feasible. TPWD suggests spanning playa lakes and wetland habitats whenever possible in order to minimize direct impacts to these ecosystems. Unavoidable impacts to these sensitive areas should be mitigated by compensating for the loss of wetland habitat.

TxDOT Response: Extreme care was exercised in the planning and engineering process to avoid adverse impacts to all the playas that exist along the project limits. And to the extent feasible, extreme care was exercised in the planning and engineering phase to minimize impacts to these five playas that could not be avoided. It is neither reasonable nor feasible to install bridges that would span the five affected playas. As stated earlier, compensatory mitigation for a total loss of 3 acres at five playa lakes is confirmed.

TPWD Recommendation: TPWD recommends TxDOT consider the cumulative impacts of roadway construction on these special habitat features, including their role in groundwater recharge, and mitigate accordingly. Failure to evaluate the cumulative impacts of roadway construction caused by the loss of an additional 2.9 acres of playa lakes could be considered segmenting of project impacts and may not be in compliance with §1508.27 (7) of the National Environmental Policy Act which states "Significance [of impacts] exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts."

TxDOT Response: Playa lakes play a major role in the ecology of the area. They provide habitat for wintering waterfowl, amphibians and water tolerant plants. Playa lakes have the capability to improve water quality by trapping, precipitating, transforming, recycling and/or exporting many of its chemical and waterborne constituents. Adverse Cumulative Impacts to the playa lakes on the project area could occur as the result of conversion of the playa lake into right of way or roadway. For those playa lakes that were previously disturbed by the original road building, it would likely lead to further ecological degradation and eventual loss of function of the remaining parts of these playa lakes. Any loss of playa lake habitat would likely affect migratory birds and the local species that rely on playa lakes for survival. As stated earlier, compensatory mitigation for a total loss of 3 acres at five playa lakes is confirmed.

Rare and Protected Species

TPWD Recommendation: TPWD recommends that the project site be monitored for the Texas horned lizard by a qualified biologist during construction. Please note that Texas horned lizards may only be handled by persons with a scientific collection permit issued by TPWD.

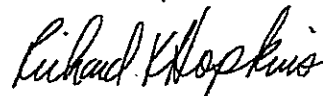
TxDOT Response: It is neither reasonable nor feasible to enlist the services of a qualified biologist to monitor construction throughout the 35-mile limits of this widening project. Appropriate measures and instructions will be provided in the construction contract documents to direct the contractor to use extreme care so as not to harm the Texas Horned Lizard if encountered. As stated earlier, compensatory mitigation for 7 acres of habitat disturbance is confirmed.

TPWD Recommendation: Measures should be taken to ensure that migratory bird species within and near the project area are not adversely impacted by construction activities. TPWD recommends contacting the USFWS Migratory Bird Office at (505) 248-7882 to address potential impacts of project activities on migratory bird populations.

TxDOT Response: Affects to migratory birds have been considered, discussed and avoidance measures identified in the environmental document prepared for this project. The avoidance measures in the document states "To eliminate potential impacts to migratory birds, TxDOT would complete all required vegetation clearance outside of the migratory bird nesting season (March 15th to July 15th)".

The time and effort taken by TPWD to review the project document for impacts to biological resources is appreciated and I look forward to working with you on future projects.

Sincerely,



Richard K. Hopkins
Environmental Coordinator
Odessa District

cc: Karen Clary, ENV
David Najvar, ENV