



**Gulf Coast Ecosystem Restoration Council
Categorical Exclusion Determination Form**

This form is to be completed before the Gulf Coast Ecosystem Restoration Council (Council) uses one or more Categorical Exclusions (CEs) to comply with the National Environmental Policy Act (NEPA) for a specific action or group of actions, as appropriate. More information on the Council's NEPA compliance and use of CEs can be found in the Council's [NEPA Procedures](#).

Proposed Action Title:

Proposed Action Location: *(State, County/Parish)*

Proposed Action Description:

Categorical Exclusion(s) Applied:

Council Use of Member Categorical Exclusion(s)

If the Categorical Exclusion(s) was established by a Federal agency Council member, complete the following. If not, leave this section blank and proceed to the segmentation section.

Member with Categorical Exclusion(s)

Has the member with CE(s) advised the Council in writing that use of the CE(s) would be appropriate for the specific action under consideration by the Council, including consideration of segmentation and extraordinary circumstances (as described below)?

Yes No

Segmentation

Has the proposed action been segmented to meet the definition of a Categorical Exclusion? (In making this determination, the Council should consider whether the action has independent utility.)

Yes No

Extraordinary Circumstances

In considering whether to use a Categorical Exclusion for a given action, agencies must review whether there may be extraordinary circumstances in which a normally excluded action may have a significant environmental effect and, therefore, warrant further review pursuant to NEPA. Guidance on the review of potential extraordinary circumstances can be found in Section 4(e) of the Council's NEPA Procedures. The potential extraordinary circumstances listed below are set forth in the Council's NEPA Procedures.

The Council, in cooperation with the sponsor of the activity, has considered the following potential extraordinary circumstances, where applicable, and has made the following determinations. (By checking the "No" box, the Council is indicating that the activity under review would not result in the corresponding potential extraordinary circumstance.)

- | | | |
|-----|----|---|
| Yes | No | 1. Is there a reasonable likelihood of substantial scientific controversy regarding the potential environmental impacts of the proposed action? |
| Yes | No | 2. Are there Tribal concerns with actions that impact Tribal lands or resources that are sufficient to constitute an extraordinary circumstance? |
| Yes | No | 3. Is there a reasonable likelihood of adversely affecting environmentally sensitive resources? Environmentally sensitive resources include but are not limited to: |

- a. Species that are federally listed or proposed for listing as threatened or endangered, or their proposed or designated critical habitats; and
- b. Properties listed or eligible for listing on the National Register of Historic Places.

| | | |
|-----|----|--|
| Yes | No | 4. Is there a reasonable likelihood of impacts that are highly uncertain or involve unknown risks or is there a substantial scientific controversy over the effects? |
| Yes | No | 5. Is there a reasonable likelihood of air pollution at levels of concern or otherwise requiring a formal conformity determination under the Clean Air Act? |
| Yes | No | 6. Is there a reasonable likelihood of a disproportionately high and adverse effect on low income or minority populations (see Executive Order 12898)? |
| Yes | No | 7. Is there a reasonable likelihood of contributing to the introduction or spread of noxious weeds or non-native invasive species or actions that may promote the introduction, or spread of such species (see Federal Noxious Weed Control Act and Executive Order 13112)? |
| Yes | No | 8. Is there a reasonable likelihood of a release of petroleum, oils, or lubricants (except from a properly functioning engine or vehicle) or reportable releases of hazardous or toxic substances as specified in 40 CFR part 302 (Designation, Reportable Quantities, and Notification); or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan in accordance with the Oil Pollution Prevention regulation? |

Supplemental Information

Where appropriate, the following table should be used to provide additional information regarding the review of potential extraordinary circumstances and compliance with other applicable laws. The purpose of this table is to ensure that there is adequate information for specific findings regarding potential extraordinary circumstances.

Supplemental information and documentation is not needed for each individual finding regarding the potential extraordinary circumstances listed above. Specifically, the nature of an activity under review may be such that a reasonable person could conclude that there is a very low potential for a particular type of extraordinary circumstance to exist. For example, it would be reasonable to conclude that the simple act of acquiring land for conservation purposes (where

there are no other associated actions) does not present a reasonable likelihood of a release of petroleum, oils, lubricants, or hazardous or toxic substances.

For some types of activities, no supplemental information may be needed to support a finding that there are no extraordinary circumstances. For example, where the activity under review is solely planning (with no associated implementation activity), it may be reasonable to conclude that none of the extraordinary circumstances listed above would apply. In such cases, the table below would be left blank.

In other cases, it may be appropriate to include supplemental information to ensure that there is an adequate basis for a finding regarding a particular extraordinary circumstance. For example, it might be appropriate in some cases to document coordination and/or consultation with the appropriate agency regarding compliance with a potentially applicable law (such as the Endangered Species Act). In those cases, the table below should be used to provide the supplemental information.

| Agency or Authority Consulted | Agency or Authority Representative: Name, Office & Phone | Date of Consultation | Notes: Topic discussed, relevant details, and conclusions. (This can include reference to other information on file and/or attached for the given action.) |
|-------------------------------|--|----------------------|--|
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| | | | |

Additional supplemental information may be attached, as appropriate. Indicate below whether additional supplemental information is attached.

Additional Information Attached: Yes No

If “Yes”, indicate the subject:

Determination by Responsible Official

Based on my review of the proposed action, I have determined that the proposed action fits within the specified Categorical Exclusion(s), the other regulatory requirements set forth above are met, and the proposed action is hereby Categorically Excluded from further NEPA review.

Responsible Official (Name)

Justin R. Ehrenwerth

Responsible Official (Signature)

Justin R. Ehrenwerth

Date

Dec 10, 2015

Documentation supporting the use of USDA Categorical Exclusion for Clear Creek Riparian Corridor Land Acquisition proposed in the Bayou Greenway Project

Responsible Council Member: State of Texas

Partnering Council Member: US Department of the Interior

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Regulatory framework

Federal agencies are required to develop procedures for implementing the National Environmental Policy Act (NEPA) to supplement those established by the CEQ at 40 CFR 1500-1508. The Gulf Coast Ecosystem Restoration Council (Council) finalized NEPA procedures on May 5, 2015 (80 FR 86, p, 25680-25691). These procedures are applicable to all Council Actions, including approving and funding projects that were proposed by and otherwise will be implemented by non-federal parties (40 CFR 1508.18).

The Council determined that certain categories of activities that have not undergone NEPA review may be categorically excluded from detailed documentation in and EA or EIS (Sec. 4(c,d)), subject to a review of extraordinary circumstances that could indicate potentially significant effects on the environment (Sec. 4(e)). The documentation below for the "Clear Creek Riparian Corridor" project follows requirements described in Sec. 4(f) for categorical exclusions (CEs), by incorporating supporting information from the United States Department of Agriculture (USDA) Forest Service (USFS).

Description of the proposed activities

The Bayou Greenways project is a land acquisition and preservation project located in Harris County, Texas. The initial stage of the project includes creation of strip map surveys to determine ownership and property size, strip appraisals to provide property value of all parcels

to be acquired, and environmental reviews to determine if any environmental issues exist. The first phase of the project is listed as a Category 1 project on the Restore Council's Funded Priority List.

The second phase of the project is the acquisition of 80 – 100 acres of land along the Clear Creek Riparian Corridor. This phase is listed as a Category 2 project on the Restore Council's Funded Priority List. The objective of this land acquisition will be to restore and conserve habitat, restore water quality, replenish and protect living coastal and marine resources, enhance community resilience, and revitalize the Gulf economy.

A third phase of the project, not included in this proposal, will be the construction of a connected trail system. The trail system will be a single line of shared use path providing a recreational benefit to the conservation priority. In November 2012 Houston voters approved a bond referendum to cover the costs of the trail construction that could include this project area and planned trails along other watercourses in the City of Houston. This project proposal covers only the land acquisition portion. All other portions will be covered by funds from other sources.

Existing Condition

The land proposed for acquisition is currently under the ownership of private landowners. The parcels to be purchased are currently listed for sale on the open market and could be used for future development. The land is currently undeveloped but lies along a major motorized thoroughfare and could be prime real estate for future development.

Desired Condition

If purchased the land would be preserved in perpetuity and managed by the Houston Parks Board. The land to be acquired is positioned between two current parks and would serve as a junction between them. The preservation and restoration of the bayou corridors is a long standing conservation priority within the Galveston Bay Estuary Program's strategic plan. While green spaces do currently exist along the bayou corridors they are largely disconnected and disrupted by commercial and industrial developments making access by the public difficult, if not impossible. Restoration of the riparian buffer areas and freshwater wetlands would be funded through additional outside funds and will include control of invasive species and native plantings.

Public Involvement

CEQ NEPA regulations state that "There shall be an early and open process for determining the scope of the issues to be addressed and for identifying the significant issues related to a proposed action" (40 CFR 1501.7). Scoping should include interested or affected parties, potentially including "Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons."

The RESTORE ACT was signed into law October 5, 2010 as Executive Order 13554 and published in the Federal Register. In accordance with the law, The RESTORE ACT Council manages a public involvement process in order to generate input from local stakeholders, communities, public officials, and other members of the public throughout the gulf region. Widespread efforts have been made to ensure that these members of the public have had

ample opportunity to share their views. The Council has hosted many public meetings and also established an internet presence to accept public comments.

The Draft Priority Funding List for Council-selected restoration projects was made available for public review on August 13, 2015 and comments were accepted until September 28, 2015. In compliance with federal laws and agency policies, the USDA consulted with the U.S. Fish and Wildlife Service regarding potential effects to federally listed species.

Because the Bayou Greenways program was initially funded through a bond election, separate entities took on the task of exciting all Houstonians. After the election, the Houston Parks Board went back into the community, traveling to nearly 50 different community events to explain the project, how it was funded and next steps. These activities included more interactive opportunities like bike rides and walks. As the Bayou Greenways project continues, the City of Houston will expand on the outreach and education activities. Through these efforts, Houstonians will become increasingly aware of the benefits associated with preserving and restoring our bayous' riparian corridors for greenspaces, flood reduction, water quality, wildlife habitat restoration/conservation and recreation.

Applicable Categorical Exclusion

The authority for purchase of the land is the USDA Organic Act of August 3, 1956 (70 Stat. 1032; 7 U.S.C. 428a, Sec. 11; P.L. 84-979); the Revived Economy of the Gulf Coast Act of 2011 (or the "RESTORE the Gulf Coast Act"), 33 U.S.C. 1321; and an accompanying appropriations act when funding is received.

The acquisition as described meets the conditions for categorical exclusion as set forth in 36 CFR 220.6(d) (6).

(6) Acquisition of land or interest in land. Examples include but are not limited to:

- (i) Accepting the donation of lands or interests in land to the NFS, and
- (ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

Review of Extraordinary Circumstances

The review considered all extraordinary circumstances described in 36 CFR 220.6 listed below:

- (1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
- (2) Flood plains, wetlands, or municipal watersheds;
- (3) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;
- (4) Inventoried roadless areas or potential wilderness areas;
- (5) Research natural areas;
- (6) American Indians and Alaska Native religious or cultural sites, and

(7) Archaeological sites, or historic properties or areas.

The USDI Fish and Wildlife Service has determined the project area does not contain potential habitat for listed species, and as such the land acquisition would have no adverse effect on federally listed, threatened, or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat.

The project is intended in part to preserve the watershed and improve local water quality and the acquisition would not adversely affect flood plains, wetlands, or municipal watersheds.

A search of the Texas Historical Commission's online Atlas Map did not indicate the presence of American Indian religious or cultural sites, archeological sites, historic properties, or areas.

The land acquisition does not encompass congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas, inventoried roadless areas or potential wilderness areas, or research natural areas.

Determination

Based upon the information provided above, I have concluded the proposed Clear Creek Riparian Corridor land acquisition is fully consistent and applicable to the category described in 36 CFR 220.6(d)(6); "Acquisition of land or interest in land".

I have determined there are no extraordinary circumstances associated with this project.



Tony Tooke
Regional Forester
USDA Forest Service
Southern Region

Appendix A, References

Draft Initial Funded Priorities List:

<https://www.restorethegulf.gov/our-work/draft-initial-funded-priorities-list-draft-fpl>

Gulf Restoration Ecosystem Restoration Council NEPA implementing procedures:

<https://www.restorethegulf.gov/sites/default/files/documents/images/Gulf%20Coast%20Ecosystem%20Restoration%20Council%20NEPA%20Procedures.pdf>

Galveston Bay Estuary Restoration Plan

<http://www.gbep.state.tx.us/strategic-action-plan/>

Galveston Bay Estuary Program, Texas Commission on Environmental Quality. 2015.

Charting the Course to 2015 Galveston Bay Strategic Action Plan, 27p. GI-385 4/09

http://www.tceq.texas.gov/publications/qi/qi-385.html#at_download/file

Appendix B, Section 7 Consultation



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Gulf Restoration Program Office
17629 El Camino Real, Suite 211

Houston, Texas 77058

281/286-8282 / (FAX) 281/488-5882



In Reply Refer To:
FWS/R2/ES/GR

September 25, 2015

Mr. John Ettinger
Gulf Coast Ecosystem Restoration Council
500 Poydras Street, Suite 1117
New Orleans, Louisiana 70130

Dear Mr. Ettinger,

The Fish and Wildlife Service (Service) has reviewed the Restore Act funding proposal titled "Bayou Greenways 2020 – Clear Creek Riparian Corridor Acquisition." We submit this letter under the authority of the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

This project will be used to acquire lands along the Clear Creek corridor with the intent of conserving habitat, restoring water quality, replenishing and protecting living coastal and marine resources, enhancing community resilience and revitalizing the Gulf economy.

In the Biological Assessment for the Clear Creek Corridor Acquisition the Service believes that the implantation of the project will have either No Effect (NE) on terrestrial and/or aquatic/aquatic dependent species as listed below. No critical habitat is listed in the project area.

The following species listed as endangered, threatened, or candidate are noted to be present in the USFWS Information for Planning and Conservation application: Least tern, Piping plover, Red knot, Sprague's pipit, Whooping crane, Green sea turtle, Hawksbill sea turtle, Kemp's ridley sea turtle, Leatherback sea turtle, Loggerhead sea turtle, and West Indian manatee. This proposal is strictly for land acquisition and does not include any alterations to existing habitat. Based on this, a "No Effect" determination was made for Least tern, Piping plover, Red knot, Sprague's pipit, Whooping crane, Green sea turtle, Hawksbill sea turtle, Kemp's ridley sea turtle, Leatherback sea turtle, Loggerhead sea turtle, and West Indian manatee as a result of the Clear Creek Corridor Acquisition project. The Service does not provide concurrence for "no effect" determinations, but by making a determination we believe the agency complied with Section 7(a)(2) of the Endangered Species Act.

The above comments are provided in accordance with the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). This fulfills the requirement of Section 7 of the Act and no further action is required. If modifications are made to the project, if additional information involving potential effects to the listed species becomes

available, if a new species is listed, or if designated critical habitat may be adversely affected by the project, re-initiation of consultation may be necessary.

Thank you for the opportunity to review this project. If you have any questions please contact Harmon Brown at (281) 286-8282 extension 245.

Sincerely,

A handwritten signature in black ink, appearing to read "John Huffman", with a long horizontal flourish extending to the right.

John Huffman
Program Supervisor