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January 8, 2024

Andrea Poole
Surface Transportation Board
Docket No. FD 36652
395 E Street SW
Washington, DC 20423

RE: Proposed Green Eagle Railroad, Construction and Operation Exemption-
Line of Railroad, Maverick County, Texas
Docket No. FD 36652

Dear Ms. Poole:

This letter is in response to your request for information and scoping comments for the proposed project referenced above. Puerta Verde Holdings (PVH) has submitted a Presidential Permit Application for the proposed project. The Surface Transportation Board's (STB) Office of Environmental Analysis (OEA) will prepare appropriate environmental documentation to evaluate the potential environmental impacts of the proposed project.

Project Description

Green Eagle Railroad, LLC (GER), owned by Puerta Verde Holdings, proposes to construct and operate a new double-tracked rail line in Maverick County, Texas. The proposed project corridor would include the rail line, a 1.3-mile roadway for commercial trucks, inspection facilities for the rail line and roadway, and a control tower that would service both the roadway and rail line. The roadway would include a perimeter fence and the rail corridor would be fully fenced, video monitored, and patrolled by security personnel.

The proposed inspection and operation facilities for the new rail line and new roadway would include radiation portal monitors, truck scales, non-intrusive inspection facilities, secondary inspection facilities, a truck queue area, primary booths, and hazardous material emergency drip pits.

Texas Parks and Wildlife Department (TPWD)-Ecological and Environmental Planning Program staff have reviewed the information provided and offers the following comments and recommendations.

Construction Recommendations and Beneficial Management Practices (BMP)

General Construction Recommendation

Recommendation: TPWD recommends the judicious use and placement of sediment control fence to exclude wildlife from discrete construction areas,

when applicable. In many cases, sediment control fence placement for the purposes of controlling erosion and protecting water quality can be modified minimally to also provide the benefit of excluding wildlife access to construction areas. The exclusion fence should be buried at least six inches and be at least 24 inches high. The exclusion fence should be maintained for the life of the project and only removed after the construction is completed and disturbed areas have been revegetated with site-specific native species. Construction personnel should be encouraged to examine the inside of exclusion areas daily to determine if any wildlife species have been trapped inside the areas of impact and provide safe egress opportunities prior to initiation of construction activities.

Recommendation: If trenching or other excavation is involved in construction, TPWD recommends that contractors keep trenching/excavation and backfilling crews close together to minimize the amount of trenches/excavation areas left open at any given time during construction. TPWD recommends that any open trenches or excavation areas created during construction be covered overnight and/or inspected every morning to ensure no wildlife species have been trapped. Trenches left open for more than two daylight hours should be inspected for the presence of trapped wildlife prior to backfilling. If trenches/excavation areas cannot be backfilled the day of initial excavation, then escape ramps should be installed at least every 300 feet. Escape ramps can be short lateral trenches or wooden planks sloping to the surface at an angle less than 45-degrees (1:1).

Recommendation: For soil stabilization and revegetation of disturbed areas, TPWD recommends erosion and seed and mulch stabilization materials that avoid entanglement hazards to snakes and other wildlife species. Because the mesh found in many erosion control blankets or mats pose an entanglement hazard to wildlife, TPWD recommends the use of no-till drilling, hydromulching, and hydroseeding due to a reduced risk to wildlife. If erosion control blankets or mats containing netting must be used, the netting should be loosely woven, natural fiber material where the mesh design allows the threads to move, therefore allowing expansion of the mesh openings. Plastic mesh matting and hydromulch containing microplastics should be avoided.

Recommendation: For encounters with rare species that will not readily leave the work area, TPWD recommends an authorized individual translocate the animal. Translocations of reptiles should be the minimum distance possible from the work area. Ideally, individuals to be relocated should be transported to the closest suitable habitat outside of the active construction area; preferably within 100 to 200 yards and not greater than one mile from the capture site. State listed species may only be handled by persons with appropriate

authorization from the TPWD Wildlife Permits Office. For more information regarding Wildlife Permits, please contact the Wildlife Permits Office at (512) 389-4647.

Recommendation: To aid in the scientific knowledge of a species' status and current range, TPWD encourages reporting encounters of protected and rare species to the TXNDD following the data submittal instructions found at the *TPWD Texas Natural Diversity Database: Submit Data* webpage. An additional method for reporting observations of species is through the iNaturalist community app where plant and animal observations are uploaded from a smartphone. The observer then selects to add the observation to specific TPWD Texas Nature Tracker Projects appropriate for the taxa observed, including Herps of Texas, Birds of Texas, Texas Eagle Nests, Texas Whooper Watch, Mammals of Texas, Rare Plants of Texas, Bees & Wasps of Texas, Terrestrial Mollusks of Texas, Texas Freshwater Mussels, Fishes of Texas, and All Texas Nature.

Presumably, lighting could be a significant component of the project for the purpose of safety and security. As a result of light pollution, "sky glow" can have negative impacts on wildlife and ecosystems by disrupting natural day and night cycles inherent in managing behaviors such as migration, reproduction, nourishment, sleep, and protection from predators.

Recommendation: As protection measures for wildlife, TPWD recommends utilizing the minimum amount of permanent night-time lighting fixtures needed for safety and security. TPWD recommends minimizing the project's contribution toward skyglow by focusing light downward, with full cutoff luminaries to avoid light emitting above the horizontal, and to use dark-sky friendly lighting that is on only when needed, down-shielded, as bright as needed, and minimizes blue light emissions. Appropriate lighting technologies, BMP, and other dark sky resources can be found at the International Dark-Sky Association and McDonald Observatory websites.

Impacts to Vegetation/Wildlife Habitat

Review of aerial photography and TPWD's Ecological Mapping System of Texas (EMST) indicates that portions of the proposed rail line would traverse riparian vegetation (e.g., Floodplain Evergreen Shrubland) associated with Seco Creek. Most of the proposed project is within areas defined as Urban, low or high intensity.

Recommendation: To the greatest extent practical, TPWD recommends aligning the proposed rail and road corridor and inspection facilities in

previously disturbed areas. TPWD recommends avoiding woodlands and shrublands when possible, reducing the amount of vegetation proposed for clearing, and minimizing clearing native vegetation, particularly mature, mast producing native trees and shrubs, and riparian or forested wetland areas (e.g., along Seco Creek parallel to the project corridor). After the proposed facility has been constructed, TPWD recommends restoring vegetation on the site and to focus on native plant species and communities that provide wildlife cover, food (e.g., fruit, mast, pollen), and breeding habitat. Colonization by invasive species, particularly invasive grasses and weeds, should be actively prevented. Vegetation management should include removing invasive species early on while allowing existing native plants to revegetate disturbed areas. TPWD recommends referring to the Lady Bird Johnson Wildflower Center Native Plant Database for regionally adapted native species that would be appropriate for landscaping and revegetation.

Landscaping for Monarch Butterflies and Pollinators

Significant declines in the population of migrating monarch butterflies (*Danaus plexippus*) have led to widespread concern about this species and the long-term persistence of the North American monarch migration. As part of an international conservation effort, TPWD has developed the *Texas Monarch and Native Pollinator Conservation Plan*. One of the broad categories of action in the plan is to augment larval feeding and adult nectaring opportunities.

Recommendation: TPWD recommends incorporating pollinator conservation and management into a revegetation and maintenance plan for the proposed project. TPWD recommends revegetation efforts include planting or seeding native milkweed (*Asclepias* spp.) and nectar plants as funding and seed availability allow. Information about monarch biology, migration, and butterfly gardening can be found on the Monarch Watch website. Information related to pollinator conservation in Texas, including planting recommendations, are available in the TPWD publication *Management Recommendations for Native Insect Pollinators in Texas* (available online).

Federal Regulations

Clean Water Act

Section 404 of the Clean Water Act (CWA) establishes a federal program to regulate the discharge of dredged and fill material into waters of the U.S., including wetlands. The U.S. Army Corps of Engineers (USACE) and the Environmental

Protection Agency (EPA) are responsible for making jurisdictional determinations and regulating wetlands and other waters under Section 404 of the CWA.

TPWD identified several aquatic resources in the project study area. These include:

- Rio Grande
- Seco Creek

as well as potential wetlands, and other features such as drainages, which may be natural or manmade.

Specific details were not provided regarding the construction of bridge pilings in the Rio Grande or the placement of other fill material that may be associated with the project. Such activities may be subject to the CWA.

Recommendation: TPWD recommends avoiding or minimizing fill impacts to wetlands or other waters of the U.S. TPWD recommends consulting with the regulatory branch of the USACE pursuant to the CWA, including jurisdictional determinations, delineations, and mitigation. The USACE-Fort Worth District Regulatory Division should be contacted for more information on impacts to wetlands, permitting, and mitigation requirements.

Recommendation: All waterways and associated floodplains, riparian corridors, and wetlands, regardless of their jurisdictional status, provide valuable wildlife habitat and protect waterways from sediment loads in runoff water and should be preserved to the maximum extent possible. Natural buffers contiguous to any wetland or aquatic system should remain undisturbed to preserve wildlife cover, food sources, and travel corridors. Bridge support structures should be located as far from waterbodies as possible to preserve riparian vegetation.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) prohibits taking, attempting to take, capturing, killing, selling, purchasing, possessing, transporting, and importing of migratory birds, their eggs, parts, or nests, except when specifically authorized by the Department of the Interior. This protection applies to most native bird species, including ground nesting species. The U.S. Fish and Wildlife Service (USFWS) Migratory Bird Office can be contacted at (505) 248-7882 for more information on potential impacts to migratory birds.

Biologically, the area of Texas in which the project is located is a highly productive area that provides a range of habitats including large tracts of undeveloped land, grasslands, pastures, brush, riparian corridors, freshwater habitats, and managed

lands. The diversity of habitats in the general area is suitable to support a diversity of wildlife species. In particular, the range of habitats provides areas of cover, feeding, nesting and loafing for many species of birds including grassland birds, Neo-tropical migrants, and raptors. The project area is also in the middle of the Central Migratory Flyway through which millions of birds pass during spring and fall migration.

Data from the eBird online application have documented more than 150 bird species, including state listed and species of greatest conservation need (SGCN), at eBird hotspots near the general project area.

Recommendation: TPWD recommends scheduling vegetation clearing to occur outside of the general bird nesting season (March 15 through September 15) to avoid adverse impacts to birds. If disturbance within the project area must be scheduled to occur during the nesting season, TPWD recommends any vegetation to be impacted (trees, shrubs, and grasses) or bare ground where occupied nests may be located should be surveyed for active nests by a qualified biologist prior to clearing. Nest surveys should be conducted no more than five days prior to scheduled clearing in order to maximize the detection of active nests, including recently constructed nests. If active nests are observed during surveys, TPWD recommends a 100-foot radius buffer of vegetation remain around nests until eggs have hatched and the young have fledged; however, the size of the buffer zone is dependent on various factors and can be coordinated with the local or regional USFWS office.

Raptor nesting occurs late winter through early spring; TPWD recommends construction activities be excluded from a minimum zone of approximately 325 feet surrounding any raptor nest during the period of February 1 through July 15.

Endangered Species Act

Federally listed animal species and their habitat are protected from take on any property by the Endangered Species Act (ESA). Take of a federally listed species can be allowed if it is incidental to an otherwise lawful activity and must be permitted in accordance with Section 7 or 10 of the ESA. Federally listed plants are not protected from take except on lands under federal jurisdiction or for which a federal nexus (i.e., permits or funding) exists. Any take of a federally listed species or its habitat without the required take permit (or allowance) from the USFWS is a violation of the ESA.

Suitable habitat for ocelots (*Leopardus pardalis*) consist of dense brush and thornscrub. Dense brush along natural drainage features (e.g., rivers, arroyos, creeks, ephemeral streams) and in managed lands functions as corridors providing cover for individuals to move across the landscape. Clearing vegetation or illuminating woodland patches or corridors may affect the suitability of the area to function as suitable habitat for ocelots. Although the most recently documented individuals/populations of ocelots are located the Lower Rio Grande Valley, their absence from the project study area cannot be presumed.

Recommendation: TPWD recommends, to the greatest extent practicable, routing the rail line and locating support structures, access roads, equipment storage and staging areas, etc. in areas that would avoid the clearing or fragmenting of dense patches of thornscrub or dense woody corridors in order to preserve ocelot habitat and habitat connectivity corridors.

Additionally, the recommendations in the *General Construction Recommendations* section above regarding lighting should be implemented. In particular, only the minimum amount of lighting fixtures should be installed, and lighting should be directed away from areas that may be used by wildlife as travel corridors.

State Regulations

Aquatic Resources

Texas Parks and Wildlife Code (PWC) Section 1.011 provides TPWD authority to regulate and conserve aquatic animal life in public waters. Title 31, Chapter 57, Subchapter B, Section 57.157 of the Texas Administrative Code (TAC) regulates relocation of native fish, shellfish, freshwater mussels and clams, and plants in state waters, and Section 12.301 of the PWC identifies liability for wildlife taken in violation of the PWC or a regulation adopted under the PWC.

Recommendation: During project planning and construction, TPWD recommends implementing measures to avoid impacts to aquatic organisms, including all native freshwater mussel species, regardless of state-listing status.

Under PWC section 12.015, 12.019, 66.015 and TAC 52.101-52.105, 52.202, and section 57.251-57.259, TPWD regulates the introduction and stocking of fish, shellfish, and aquatic plants into public waters of the state. The Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters allows for movement (i.e., introduction, stocking, transplant, relocation) of aquatic species in waters of the

state. Movement of aquatic species, even within the same river or creek, has potential natural resources risks (e.g., exotics, timing for survival success).

Recommendation: If dewatering creeks or ditches in the project area is anticipated in order to complete the project, TPWD recommends coordinating those activities with regional TPWD Kills and Spills Team (KAST) biologist, Alex Nuñez (alex.nunez@tpwd.texas.gov), for the appropriate authorization. Additional information regarding the KAST program is available online at the TPWD website.

The documents, *Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters (PWD-1019)* and *Guidelines for Aquatic Resource Relocation Plans* are available online at the TPWD website.

Parks and Wildlife Code – Chapter 64, Birds

PWC, section 64.002, regarding the protection of nongame birds, provides that no person may catch, kill, injure, pursue, or possess a bird that is not a game bird. PWC section 64.003, regarding destroying nests or eggs, provides that, no person may destroy or take the nests, eggs, or young and any wild game bird, wild bird, or wild fowl. PWC chapter 64 does not allow for incidental take.

Although not documented in the Texas Natural Diversity Database (TXNDD), many bird species which are not listed as threatened or endangered are protected by chapter 64 of the PWC and are known to be year-round or seasonal residents or seasonal migrants through the proposed project area.

Recommendation: Please review the *Federal Regulations: Migratory Bird Treaty Act* section above for recommendations as they are applicable for compliance with Chapter 64 of the Parks and Wildlife Code.

Parks and Wildlife Code, Section 68.015

PWC regulates state listed threatened and endangered animal species. The capture, trap, take, or killing of state listed threatened and endangered animal species is unlawful unless expressly authorized under a permit issued by the USFWS or TPWD. A copy of *TPWD Guidelines for Protection of State-Listed Species*, which includes a list of penalties for take of species, can be found on the TPWD Wildlife Habitat Assessment Program website. State listed species may only be handled by persons with appropriate authorization from the TPWD Wildlife Permits Office. For more information regarding Wildlife Permits, please contact the Wildlife Permits Office at (512) 389-4647.

The potential occurrence of state listed species in the project area is primarily dependent upon the availability of suitable habitat. Direct impacts to high quality or suitable habitat therefore are directly proportional to the magnitude and potential to directly impact state listed species. State listed reptiles that are typically slow moving or unable to move due to cool temperatures are especially susceptible to being directly impacted (i.e., crushing by heavy equipment) during site preparation activities. Small wildlife such as lizards, turtles, and snakes are susceptible to falling into open pits, excavations, trenches, etc. left open and/or uncovered in a project area.

Please be aware that determining the actual presence of a species in a given area depends on many variables including daily and seasonal activity cycles, environmental activity cues, preferred habitat, transiency and population density (both wildlife and human). The absence of a species can be demonstrated only with great difficulty and then only with repeated negative observations, taking into account all the variable factors contributing to the lack of detectable presence.

Recommendation: TPWD recommends reviewing the most current TPWD annotated county lists of rare species for Maverick County. The annotated county lists are available online at the TPWD Wildlife Diversity website. Environmental documents prepared for the project should include an inventory of existing natural resources within the project area. Specific evaluations should be designed to predict project impacts upon these natural resources including potential impacts to state listed species.

Recommendation: Regarding potential wildlife entrapment in trenches and installing an exclusion fence in discrete locations within the larger project area, please see recommendations under the *General Construction Recommendations* above.

Exclusion fences are particularly effective in preventing reptile species from entering a construction area.

Recommendation: For encounters with rare species that will not readily leave the work area, please see recommendations pertaining to translocating individuals under the *General Construction Recommendations* above.

To avoid or minimize potential negative impacts to state listed species with potential to occur in the area, TPWD recommends the following:

Amphibians

There is potential for the South Texas siren (large form; *Siren* sp. 1) to occur in the project area. The south Texas siren occurs in wet areas including ditches, canals, arroyos, resacas, or shallow depressions. They are capable of aestivating during prolonged dry periods.

Recommendation: Contractors should be made aware of the potential to encounter South Texas sirens in the project area and should be instructed to implement BMP to avoid negatively impacting them if present in the project area. Near water bodies, TPWD recommends limiting impacts to adjacent vegetation, installing erosion control BMP, and locating staging areas and fuels or other hazardous chemicals away from water bodies to avoid potential spills or leaks into adjacent aquatic areas.

Fish

Occurrences of the state listed headwater catfish (*Ictalurus lupus*), proserpine shiner (*Cyprinella proserpina*), Rio Grande shiner (*Notropis jemezianus*), speckled chub (*Macrhybopsis aestivalis*), and Tamaulipan shiner (*Notropis braytoni*) have been documented in the TXNDD in the general project study area.

These fish species generally occupy clear rivers and streams with slow to moderate current over riffles and runs but may occur in sandy, muddy, or hard bottom streams.

Recommendation: For work that occurs within the Rio Grande, turbidity curtains should be properly installed and maintained to minimize water quality impacts (i.e., turbidity, sedimentation) in the river that could negatively impact fish and other aquatic resources.

If dewatering is anticipated to be necessary to construct any structures in the Rio Grande, please be aware that take of wildlife as a result of activities such as dewatering are prohibited per chapter 12 of the PWC (§12.301-Liability for Value of Fish, Shellfish, Reptile, Amphibian, Bird or Animal).

Prior to construction activities that may impact aquatic resources, an Aquatic Relocation Plan should be developed. Please contact the local Kills and Spills Team (KAST) biologist, Alex Nuñez (alex.nunez@tpwd.texas.gov), to begin coordination on the development of the Aquatic Relocation Plan for this project if work in the Rio Grande that would involve dewatering is anticipated.

Mammals

Black bear (*Ursus americanus*)

Historically, black bears occurred in the mountainous Trans-Pecos region of west Texas. However, over the past 15 years, black bear populations have increased and expanded into the western portions of the Edwards Plateau and South Texas Plains where they occur in more open grassland areas. Black bears are typically shy and elusive. They use travel corridors to move between feeding areas and bedding areas. Research grade observations of the black bear within and near the project study area have been documented in the iNaturalist application. Occurrences of black bear in the Eagle Pass area have increased in recent years.

Recommendation: To avoid attracting black bears to work areas, garbage containers, particularly if they contain food waste, should have lids that can be secured. If a black bear is observed within the project area, TPWD requests that the observation be reported to TPWD. For more information, please see the black bear fact sheet available on the TPWD website.

Mollusks

Mexican fawnsfoot (*Truncilla cognata*) and Salina mucket (*Potamilus metneckyayi*)

There is potential for the Mexican fawnsfoot (*Truncilla cognata*) and Salina mucket (*Potamilus metneckyayi*) to occur within the study area. The Mexican fawnsfoot has been documented in the Rio Grande less than one-half mile south of the proposed project corridor. The Salina mucket has been observed in the Rio Grande upstream of the project area. These species occur in flowing, shallow waters with mud, gravel, and sand substrates.

Recommendation: TPWD recommends implementing water quality BMP to ensure construction activities do not contribute to sedimentation or erosion impacts on waterways. TPWD also recommends preserving riparian corridors, revegetating disturbed areas, and locating equipment, fuel and material staging areas away from aquatic areas in order to minimize potential water quality impacts.

Reptiles

Texas horned lizard (*Phrynosoma cornutum*)

The Texas horned lizard can be found in open, arid, and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees. If present in the general project area, the Texas horned lizard could be impacted by ground disturbing activities. A useful indication that the Texas horned lizard may occupy an area is the presence of Harvester ant (*Pogonomyrmex* sp.) nests as they are the primary food source of horned lizards. Research grade observations of the Texas horned lizard within and near the project study area have been documented in the iNaturalist TPWD-sponsored Herps of Texas project.

Texas horned lizards may hibernate on-site in loose soils a few inches below ground during the cooler months from September/October to March/April. Construction in these areas could harm hibernating lizards. Horned lizards are active above ground when temperatures exceed 75 degrees Fahrenheit. If horned lizards (nesting, gravid females, newborn young, lethargic from cool temperatures or hibernation) cannot move away from noise and approaching construction equipment, they could be negatively affected by construction activities.

Recommendation: TPWD recommends that a pre-construction survey be conducted to determine if horned lizards are present within the project area. As stated above, a useful indicator of potential occupancy is the presence of Harvester ant colonies. Surveys should be conducted during warmer months of the year when horned lizards are active.

TPWD recommends avoiding disturbance of the Texas horned lizard and colonies of the Harvester ant during clearing and construction. TPWD recommends a permitted biological monitor be present during construction to attempt to capture and relocate Texas horned lizards if found. If the presence of a biological monitor is not feasible, state listed species observed during construction should be allowed to safely leave the site on their own.

Texas tortoise

The Texas tortoise occur primarily in thornscrub and open woodlands and brush. It feeds primarily on fruits of prickly pear and succulent plants. Texas tortoises have low fecundity; individuals take over 10 years to reach maturity and females do not reproduce every year. Nesting occurs in spring and summer. The Texas tortoise (*Gopherus berlandieri*) has a home range of approximately five to ten acres.

Research grade observations of the Texas tortoise within and near the project study area have been documented in the iNaturalist TPWD-sponsored Herps of Texas project. Suitable habitat for the Texas tortoise appears to occur within portions of the project study area. Tortoises are often found near or at the base of prickly pear cactus and may seek shade by crawling under parked vehicles.

Recommendation: TPWD recommends reviewing the Texas tortoise BMP document available online at TPWD's Wildlife Habitat Assessment Program homepage. Contractors and other staff should be made aware that in south Texas, the Texas tortoise is generally inactive from December through January and is therefore likely to be undetectable in a project area during this time. TPWD recommends a biological monitor be on site during any vegetation clearing to inspect sites subject to disturbance that may provide cover for tortoises (e.g., bases of prickly pear cactus) or provide sites for tortoise pallets (shallow excavations typically at the base of vegetation that are opportunistically occupied by tortoises). As indicated above, tortoises may seek cover (shade) underneath parked vehicles; therefore, TPWD recommends that before driving vehicles that have been parked within the project area, contractors should check underneath the vehicles to ensure no tortoises are present.

If a tortoise is located at the project site, it should be relocated only if it is found in an area in which imminent danger is present. Individuals that must be relocated should be transported to the closest suitable habitat outside of the proposed disturbance area but preferably within its five to ten acre range. After tortoises are removed from the immediate project area, TPWD recommends constructing an exclusion fence as described above under *General Construction Recommendations*.

Reduced speed limits should also be established and enforced in areas in which state listed reptiles could occur.

When inactive, tortoises may occupy the shallow depressions or pallets that are scratched out at the base of vegetative cover; tortoises may also be found sheltering in burrows.

Recommendation: If possible, TPWD recommends completing major ground disturbing activities before late fall or winter when reptiles become inactive and could be utilizing burrows in areas subject to disturbance. If ground disturbing construction activities must occur after October (e.g., to avoid migratory bird nesting season) in areas of suitable tortoise habitat, TPWD recommends surveying those areas for tortoises or indications of tortoise presence, e.g., the

presence of burrows or pallets under prickly pear. If tortoises or indications of tortoise presence is observed, TPWD-Ecological and Environmental Planning Program staff should be contacted.

Species of Greatest Conservation Need

In addition to state and federally protected species, TPWD tracks species considered to be SGCN that, due to limited distributions and/or declining populations, face threat of extirpation or extinction but currently lack the legal protection given to threatened or endangered species. Special landscape features, natural communities, and SGCN are rare resources for which TPWD actively promotes conservation, and TPWD considers it important to evaluate and, if necessary, minimize impacts to such resources to reduce the likelihood of endangerment and preclude the need to list SGCN as threatened or endangered in the future. These species and communities are tracked in the TXNDD. The most current and accurate TXNDD data can be requested from the TXNDD website.

Please note that the absence of TXNDD information in an area does not imply that a species is absent from that area. Given the small proportion of public versus private land in Texas, the TXNDD does not include a representative inventory of rare resources in the state. Although it is based on the best data available to TPWD regarding rare species, the data from the TXNDD do not provide a definitive statement as to the presence, absence, or condition of special species, natural communities, or other significant features within your project area. These data are not inclusive and **cannot be used as presence/absence data**. This information cannot be substituted for on-the-ground surveys.

Recommendation: Please review the current TPWD county list for Maverick County as rare and protected species could be present, depending on habitat availability. If during construction, the project area is found to contain SGCN or protected species, natural plant communities, or special features, TPWD recommends that precautions be taken to avoid impacts to them.

Suitable habitat for the following SGCN species may occur in the project area. The following BMP are provided to assist in project planning to avoid/minimize potential impacts.

SGCN Mammals

Cave myotis bat (*Myotis velifer*) and Tricolored bat (*Perimyotis subflavus*)

The cave myotis bat is the largest *Myotis* bat in Texas. It is a year-round resident in Texas with a distribution across the western two-thirds of the state. This species usually roosts in caves; however, they may also roost in old buildings, carports, attics, under bridges, in rock fissures, and cliff or barn swallow nests.

The tricolored bat is proposed endangered wherever found. It is a small insectivorous bat that is distinguished by its unique tricolored fur and often appears yellowish to nearly orange. During the winter, tricolored bats are often found in caves and abandoned mines, although in the southern United States, where caves are sparse, tricolored bats are often found hibernating in road-associated culverts where they exhibit shorter torpor bouts and forage during warm nights. During the spring, summer, and fall, tricolored bats are found in forested habitats where they roost in trees, primarily among leaves of live or recently dead deciduous hardwood trees, but may also be found in Spanish moss, pine trees, and occasionally human structures. Tricolored bats face extinction due primarily to the range wide impacts of white-nose syndrome, a deadly disease affecting cave-dwelling bats across the continent.

Recommendation: If any suitable roosting structures occur in the study area that would be negatively impacted by the project, TPWD recommends they be surveyed for the presence of bats prior to disturbance. To prevent the introduction or spread of white-nose syndrome, cave surveys should adhere to the USFWS decontamination protocols. Additional information regarding white-nose syndrome are available on the TPWD-Wildlife Habitat Assessment Program website.

SGCN Reptiles

Mexican hog-nosed snake (*Heterodon kennerlyi*), Texas indigo snake (*Drymarchon melanurus erebennus*)

In South Texas, the Mexican hog-nosed snake occurs in thorn woodlands or grasslands near arroyos or other water bodies where they prey on small rodents.

The Texas indigo snake is the largest nonvenomous snake in North America and is typically associated with aquatic habitats including creeks, streams, ponds, and drainages. The riparian corridors along the Rio Grande and Seco Creek could provide suitable habitat for this species. Due to its high metabolism, the Texas indigo snake has a large home range in which it searches for prey and may be encountered away from aquatic habitats, its preferred habitat. Research grade observations of the Texas indigo snake near the project study area have been documented in the iNaturalist TPWD-sponsored Herps of Texas project.

Recommendation: Because all snakes are generally perceived as a threat and killed when encountered during vegetation clearing or site preparation, TPWD recommends project plans include comments to inform contractors of the potential for SGCN snakes to occur in the project area. The SGCN snakes described here are non-venomous; contractors should be advised to avoid impacts to these species and other snakes as long as the safety of the workers is not compromised. For the safety of workers and preservation of a natural resource, attempting to catch, relocate and/or kill non-venomous or venomous snakes is discouraged by TPWD. If encountered, snakes should be permitted to safely leave project areas on their own. TPWD encourages construction sites to have a “no kill” policy in regard to wildlife encounters.

Rio Grande river cooter (*Pseudemys gorzugi*)

The Rio Grande river cooter is a turtle species that inhabits rivers and their more permanent spring-fed tributaries. They may occupy slow moving bodies of water with a variety of substrates that may or may not contain aquatic vegetation. They consume a variety of plant and prey items and bask alongside other basking turtles.

Recommendation: TPWD recommends implementing the following BMP to avoid and/or minimize potential impacts to the Rio Grande river cooter that could occur as a result of the construction of the proposed project:

- Avoid impact to the shore, emergent rocks, logs, and vegetation mats as Rio Grande river cooters like to use these areas for basking.
- There is still much research needed on the precise nesting habits of this species; therefore, protection of the riparian areas along the Rio Grande should be emphasized as it is assumed that river cooter females bury their eggs in the soil near the water. TPWD recommends avoiding disturbance of these types of areas to avoid disturbing nesting turtles or their nests.
- TPWD recommends avoiding construction during the breeding and nesting season of this species (spring and summer).

Reticulate collared lizard (*Crotaphytus reticulatus*)

Occurrences of the reticulate collared lizard have been documented in the TXNDD within the general project area. Reticulate collared lizards are large lizards known to bask on elevated dirt mounds such as those along the edges of unimproved roads throughout south Texas. They generally occur in areas void of vegetation (i.e., bare rock, gravel) and in typical shrubland/chaparral habitat. Also, both reticulate collard lizards and Texas horned lizards are especially active during the spring

(April-May) mating season and are more likely to be negatively impacted by construction activities during this period.

Recommendation: When approached, reticulate collared lizards will typically flee to the base of a shrub and remain motionless. Contractors should be made aware of the potential to encounter reticulate collared lizards in the project area. If encountered, contractors should allow the lizards to escape; contractors should also be instructed to avoid negatively impacting any lizards encountered.

Tamaulipan spot-tailed earless lizard (*Holbrookia subcaudalis*)

The spot-tailed earless lizard (STEL) (*Holbrookia lacerata*) occurs in central and southern Texas. It has been determined that these are distinct and separate populations; therefore, the STEL had been split into two subspecies, the plateau STEL and the Tamaulipan STEL (*Holbrookia subcaudalis*). Habitat for this species includes moderately open prairie-brushlands, particularly flat areas free of vegetation or other obstructions. They also occur in old and new fields, graded roadways, disturbed areas and in areas of active agriculture including row crops. The proposed project is located in an area in which the distribution ranges for the two subspecies overlap. Occurrences of the Tamaulipan STEL have been documented in the TXNDD within the general project area.

Recommendation: TPWD recommends implementing the following BMP to avoid and/or minimize potential impacts to the Tamaulipan STEL. TPWD notes that implementing the following BMP could also help minimize impacts to a variety of native wildlife species that may inhabit the project area.

- A major threat to the Tamaulipan STEL is road traffic, as this species has exhibited behavior indicating that they prefer roads and tend to cross roads often, potentially for thermoregulation. TPWD recommends reducing the amount of roads, both temporary and permanent, planned to be constructed for the proposed project. TPWD also recommends reducing speed limits in the project area to at least 15 mph (or slower) to help prevent vehicle-induced mortality of this species.
- This species prefers a mixture of bare ground and sparse vegetation, including disturbed areas. TPWD recommends avoiding impacts to suitable habitat for this species. Areas disturbed by project-related construction activities within suitable habitat for the Tamaulipan STEL should be revegetated with site-specific native, patchy vegetation rather than sod-forming grasses.
- This species utilizes burrows for shelter. TPWD recommends identifying

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locations of burrows on the project site and avoiding impacts to burrows if feasible.

- TPWD recommends providing contractor training for the identification, behavior, and habitat requirements of the Tamaulipan STEL. It is important for construction personnel to be able to identify this species and to be on the lookout for them during construction and to avoid impacting them if encountered on-site.

I appreciate the opportunity to review and comment on this project. Please contact me at (361) 431-6003 or **russell.hooten@tpwd.texas.gov** if we may be of further assistance.

Sincerely,

Russell Hooten

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Ecological and Environmental Planning Program
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/rh 51827