United States Department of the Interior
FISH AND WILDLIFE SERVICE
Division of Ecological Services
17629 El Camino Real #211
Houston, Texas 77058-3051
281-286-8282 FAX: 281-488-5882

September 18, 2009

Colonel David C. Weston
Galveston District, Corps of Engineers
Attn: Regulatory Branch, Sam Watson
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Dear Colonel Weston:

Reference is made to the public notice (PN) for Department of the Army Permit SWG-1997-02901, dated 18 August 2009. The applicant, Harris County Toll Road Authority, is proposing to construct Segment E of the Grand Parkway (State Highway 99). The proposed project will be an approximately 15 mile long, four-lane controlled access highway within a 400 feet right-of-way (ROW), located between Interstate Highway 10 and United States (U.S.) Highway 290 in Harris County, Texas.

Approximately 45.63 acres of waters of the U.S., including wetlands, were identified with the proposed ROW, detention/mitigation basins, and outfall easement areas. In addition, approximately 13.98 acres of isolated wetlands and 0.97 acres of isolated waters were identified within the ROW. The PN states that the proposed project would impact a total of 37.13 acres (2.10 acres temporary, 35.03 acres permanent) of waters of the U.S., including wetlands. Approximately 8.50 acres of waters of the U.S., including wetlands, would be avoided within the proposed ROW, detention/mitigation basins, and outfall easements.

The applicant proposes to compensate for the wetland impacts (45.63 acres) by purchasing credits from the Katy Cypress Wetland Mitigation Bank to mitigate for 23 acres of palustrine emergent wetland impacts and by purchasing credits from the Greens Bayou Wetland Mitigation Bank to mitigate for 0.92 acres of palustrine forested wetland impacts and 21.71 acres of palustrine emergent wetland impacts.

Revised Department of the Interior Manual Instructions (503 DM 1), dated August 3, 1973, assign responsibility for Department of the Interior coordination and review of Department of the Army permit applications to the U.S. Fish and Wildlife Service (Service). Our comments are provided in accordance with these instructions and with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661, et seq.).

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The Service participated in an interagency site visit on September 15, 2009 and reviewed the PN, plans, wetland delineation maps, and the Conceptual Mitigation Plan (CMP). The majority of the project area historically was cropland and is currently grazed by cattle. Upland forest, palustrine emergent wetlands, palustrine scrub-shrub wetlands, and palustrine forest wetlands also occur within the project area. Wildlife within the area include white fronted geese, snow geese, blue winged teal, green winged teal, white ibis, several species of herons and sparrows, a variety of hawks and other raptors, deer, raccoons, snakes, and amphibians.

Impacts to U.S. Waters, Including Wetlands:
The Service believes that the project's impacts to waters of the U.S., including wetlands, are greater than what is stated in the PN. The dredging, filling and excavating of part of a wetland alters the water regime of the whole wetland. In addition, the proposed highway may hinder wildlife species attempting to access the remaining adjacent wetlands and is some cases may result in mortality of these wildlife species. Therefore, we request that the project's impacts be re-calculated to include all of each wetland transected by the project instead of being limited to that portion of a wetland located within the project area.

Detention/Mitigation Basins
As the Service has repeatedly recommended during the planning and development of the Grand Parkway, riparian forest areas should be avoided. Riparian forests are efficient sediment filtering systems, help with flood control, help improve water quality, stabilize stream banks, controls water temperature within the stream by providing shade, and provide habitat, food, cover and transportation corridors for many species of birds and animals.

We request that the detention/mitigation basins be moved out of the riparian forests. If this is not practicable, then the applicant needs to fully mitigate for these impacts. Compensation for riparian forest impacts may include the acquisition of flood easements containing riparian forest within the watersheds of the Segment E project area.

Threatened and Endangered Species
The detention/mitigation basins and outfall easement areas included within this PN were not included in the project as described in the Final Environmental Impact Statement dated November 2007, and the April 2009 Biological Evaluation for Segment E of the Grand Parkway. Pursuant to Section 7 of the Endangered Species Act (Act), the project should be re-evaluated for effects on listed species that were not previously considered.

Mitigation Bank Use
The CMP will not adequately compensate for the impacts associated with the project. The Service does not consider the wetlands proposed to be impacted to be low quality as stated in the CMP. While the emergent wetland sites have been used for past agriculture activities, they continue to provide feeding areas for an abundance of resident and migratory avian species, to provide flood water storage and enhance water quality. In addition, these areas have the

potential to be restored to native prairie wetland ecosystems. The Service recommends that at a minimum a medium quality ratio (equal to 0.6 WET II score) be applied to credit purchase.

The use of the Greens Bayou Wetlands Mitigation Bank is not appropriate to use for a project of this large scale. Significant impacts are occurring within the Katy Prairie Cypress Creek watershed due to rapid suburban growth and development. In addition, portions of Cypress Creek, Bear Creek, South Mayde Creek, Langham Creek, and Mason Creek are all listed on the 2008 Texas Commission on Environmental Qulaity's 303(d) list as impaired waters. For these reasons, we recommend the applicant find in-kind wetland compensation within the immediate Cypress Creek watershed

The Service also recommends a mitigation ratio of 5:1 for all forested wetlands impacts. The Service does not consider impacts to forested wetlands to be temporary nor do we believe that all impacts to the forests adjacent to the ROW and the under bridge structures were avoided. Neither of the banks proposed for use by the applicant contain forested wetland habitat. Therefore, appropriate in-kind forested habitat within the immediate Cypress Creek watershed should be acquired and protected by a conservation easement.

Other Concerns and Issues

Currently, 12 species of freshwater mussels are under review by the Service for potential listing as threatened or endangered species under the Act. It is known that sedimentation smothers and suffocates mussels and is one of the main contributors to mussel die offs. Therefore, the Service recommends that precautions, such as the use of silt fences and filter fabric, be taken to reduce sedimentation within Bear Creek, Mayde Creek, Cypress Creek and the tributaries located within the project area.

The Service recommends this permit not be issued as proposed due to an inadequate mitigation plan. The Service would like work with the applicant and the other resource agencies to develop a mitigation plan which provides compensation within the immediate Cypress Creek Watershed for all impacts to isolated and jurisdictional wetlands and to riparian forest as a result of the project.

Thank you for the opportunity to comment on this application. If you need any additional information, please contact either me or staff biologists Ms. Charrish Stevens or Ms. Moni Belton at 281/286-8282.

Sincerely,

Edith Erfling

for Stephen D. Parris
Field Supervisor, Clear Lake ES Field Office