



NATIVE ENDANGERED & THREATENED SP.  
HABITAT CONSERVATION PLAN

**Permit Number:** TE-102437

**Version Number:** 2

**Effective:** 2024-07-05 **Expires:** 2036-02-28

**Issuing Office:**

**Department of the Interior**

**U.S. FISH AND WILDLIFE SERVICE**

ES Albuquerque Permit Office  
500 Gold Avenue S.W., P.O. Box 1306  
Albuquerque, New Mexico 87103-1306

**Digitally signed by**

JEFFREY M  
FLEMING

Digitally signed by  
JEFFREY M FLEMING  
Date: 2024.08.12  
16:32:13 -06'00'

*Deputy Regional Director*

**Permittee:**

John Brian, East Region President  
TF Cibolo Canyons, LP  
8433 Enterprise Circle, Suite 100  
Lakewood Ranch, FL 34202  
941-388-0707  
jbrian@starwoodland.com

Authority: Statutes and Regulations: 16 U.S.C. 1539 (a), 50 CFR 17.22, 50 CFR 13

**Location where authorized activity may be conducted:**

The 1,614-acre property known as Cibolo Canyon Master Phase II that is bordered to the south by Evans Road and to the west by Bulverde Road in the City of San Antonio, Bexar County, Texas.

**Reporting requirements:**

Annual REPORT DUE: Annual report is due each October 1 throughout the life of the permit. See permit terms and conditions for specific reporting requirements.



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## Authorizations and Conditions:

- A.** General conditions set out in subpart D of 50 CFR 13, and specific conditions contained in Federal regulations cited above in Authority, are hereby made a part of this permit. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted. Continued validity, or renewal, of this permit is subject to complete and timely compliance with all applicable conditions, including filing all required information and reports.
- B.** Valid for use by Permittee named above. The validity of this permit is also conditioned upon strict observance of all applicable foreign, State, local, or other Federal law.
- C.** Acceptance of the permit serves as evidence that the Permittee understands and agrees to abide by the terms and conditions of this permit and all applicable sections of 50 CFR Parts 13, and 17 pertinent to issued permits. Terms and conditions of the permit are inclusive. Any activity not specifically permitted is prohibited. Violations of permit terms and conditions could result in the permit being suspended or revoked. Violations of the permit terms and conditions that contribute to a violation of the Endangered Species Act (ESA) could also subject you to criminal or civil penalties.
- D.** The person listed above must counter-sign the permit to acknowledge receipt and signify agreement to fully abide by and implement this permit. You must return an original signature copy to the Regional Office listed below in Condition M.

**Permittee Signature:** John Brian

Digitally signed by John Brian  
Date: 2024.08.14 08:39:23 -04'00'

## E. Compliance

The authorization granted by this permit will be subject to full and complete compliance with, and implementation of, the HCP and all specific conditions contained in this permit. The permit terms and conditions shall supersede and take precedence over any inconsistent provisions in the HCP or other program documents.

## F. Definitions

Terms used in this permit and specifically defined in the ESA or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations unless this permit expressly provides otherwise.

## G. Covered Species

The following is a list of the species covered under this permit:

<u>Common Name</u>	<u>Scientific Name</u>	<u>Federal Listing Status</u>
Golden-cheeked warbler	<i>Setophaga chrysoparia</i>	Endangered



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## H. Incidental Take Authorized

Incidental take, as described below, is authorized for the Covered Species, for Covered Activities as described in Section 6.1 (Project Description and Covered Activities) and Section 6.5 (Mitigation Program) of the HCP.

Incidental take of the Covered Species is reasonably certain to occur as a result of the proposed action. Injury and mortality to individual golden-cheeked warblers (GCWA) on the 1,614-acre Property known as Cibolo Canyon Master Phase II (Property), incidental to activities necessary for the construction, operation, and maintenance of a mixed-use development as described in the Permittee's application. The precise number of GCWA is difficult to quantify due to the varied nature of occupancy over time within the planning area. Over time an area that has been observed to support GCWAs may or may not be rendered unsuitable for the GCWAs. Take therefore, is not characterized by a precise bird count, but by the loss or preservation of areas, the relative quality of which is in part determined by the levels of prior observed GCWA utilization as well as the assessment of vegetated assemblages and other factors that may or may not affect GCWA. The proposed action is expected to result in development of 732 acres of the overall 1,614 acres. Upon completion of Master Phase II, the viability of GCWA habitat within developed areas of the Property is uncertain for the reasons previously stated. Therefore, this modified GCWA habitat, which has been documented to support, or partially support as many as 8 GCWA territories will be lost. We authorize the following incidental take as a result of the proposed action over the term of the permit:

- Up to eight (8) GCWA territories directly taken via injury and mortality

## I. Covered Activities

Covered Activities, as described in detail in Section 6.1 and 6.5 of the HCP, include:

Covered activities are intended to provide mixed and balanced uses that may include a range of lower to middle to higher-priced housing alternatives in the form of home sites, apartment and other rental properties, and possible different housing types in the contemplated Golf Village area. Most of the community building activities will take place in areas that were ranched and cleared by others for ranching purposes in recent history. Additionally, the covered activities include the establishment of a preserve of high-quality habitat for GCWA.

## J. Conservation Program

The Permittee agrees to implement all the measures as described in Section 6.4 and 6.5 of the HCP to avoid or minimize and mitigate impacts from Covered Activities. These include:

1. In the Development Area, TF Cibolo Canyons, LP (Cibolo Canyons) will minimize clearing for construction of impervious cover to the maximum extent practicable. Areas that are disturbed during construction but are not occupied by impervious surfaces or landscaped areas will be replanted with native oaks or other native vegetation. Additionally, vegetation clearing by Cibolo Canyons, or its assigns will be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt.
2. Clearing activities within, or within 300 feet (91.4 meters) of GCWA habitat will be conducted only during the time of year when the GCWA is not present (August 1 through March 1), unless a breeding season survey performed by a U.S. Fish and Wildlife Service (Service)-permitted biologist indicates that no GCWAs are present within 300 feet of the desired activity. Construction activities within, or



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within 300 feet of GCWA habitat, may be conducted during the time of year when GCWAs are present as long as such construction follows permitted clearing, as referenced above, in a reasonably prompt and expeditious manner indicating a continuous activity.

3. Construction period management will meet, at minimum, City of San Antonio and Texas Commission on Environmental Quality code requirements and protocols for erosion and silt control; for storage, use, and spill containment; and countermeasures for construction-related chemical and petroleum products. Construction of all wastewater pipelines will be at least as protective as current Texas Commission on Environmental Quality aquifer protection rules.
4. If any caves or subterranean voids are encountered during construction, Cibolo Canyons will have qualified, Service-permitted persons respond immediately to evaluate the void with respect to its potential for endangered karst invertebrates. If endangered karst invertebrate species and/or habitat are not present, construction activity may resume immediately upon closing or filling of the void in accordance with standard practices accepted by the Texas Commission on Environmental Quality. If the feature is determined to contain endangered karst invertebrates and/or habitat, the Permittee will immediately cease further clearing and construction activities within the area and contact the Service for further coordination.
5. Prior to any alteration of occupied habitat or direct or indirect take, at least 882 acres (specifically, 114 acres in addition to the 768 acres originally placed under conservation easement per the 2006 HCP) shall be set aside, preserved in perpetuity through conservation easement, and maintained as an on-site GCWA preserve (Conservation Area), as described in the HCP and its 2024 amendment. This area shall be maintained and managed in perpetuity by a conservation entity or other wildlife management entity approved by the Service. As the development plans are perfected, slight modifications to the preserve/development line may be required. Additionally, efforts will be made to straighten this line thereby reducing the amount of edge. Modifications to the preserve/development line will be coordinated with the Service, and in no event will result in less than a total of 882 acres. Appropriate fencing will be constructed to limit and deter unauthorized access to this Conservation Area, or if fencing is already in place, existing fences will be either replaced or improved as necessary. Cibolo Canyons will ensure the preserve/development line is surveyed and staked prior to the transfer to the conservation entity, and that funds will be available to complete this. The funds necessary to complete the survey are independent of those described in Sections 6.7 and 6.8 of the January 9, 2006, HCP.
6. The Permittee shall not, without the prior written consent of the Service, which shall not be unreasonably withheld or delayed, voluntarily sell, convey, grant an easement upon, or otherwise encumber the Conservation Area in a manner that would materially impact the protected nature of the Conservation Area, or the ability to perform or cause to be performed the operation and maintenance of the Conservation Area, for the benefit of the GCWA. In the event that any portion of the Conservation Area is condemned by a third party for a public purpose and such third party undertakes an action within such condemned area that has the effect of materially impacting the quality of GCWA habitat, the Service recognizes that such material impact is not a result of any action of Permittee, and the condemning party would be primarily responsible for any finding of harm or take as a result of the condemnation. The condemnation award shall be provided to the Service and may be used by the Service, or its designee, to contribute to replacement of the habitat lost as a portion of the Conservation Area, while the condemning authority would be responsible under the then applicable



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law for compensating for its impacts to the habitat.

7. Prior to development of Master Phase II, Cibolo Canyons will eliminate in perpetuity all livestock grazing within the Conservation Area of the Property. The absence of cattle grazing in these areas would enhance the establishment and proliferation of native forbs and seedlings as well as the existing vegetation.
8. Within the GCWA Conservation Area, monitoring for the presence of brown-headed cowbirds and trapping, when appropriate, is effective in reducing GCWA nest parasitism. Brown-headed cowbird trapping efforts will continue to be conducted according to Texas Parks and Wildlife Department (TPWD) guidelines and in perpetuity unless otherwise approved by the Service. At a minimum two mega-traps on the Wolverton/Evans Road conservation area and one mega-trap on the North Triangle tract will be in service at least one month prior to the golden-cheeked warbler breeding season (March 1) and will continue until June 1 of each year. The frequency of baiting and servicing the traps will be according to the TPWD guidelines, as a minimum, and will be adjusted, if necessary, to a higher frequency during the season. This trapping program will be implemented by qualified professionals.
9. Deer and feral hogs often occur in greater density adjacent to suburban areas than in undeveloped areas due to greater availability of food. High densities of deer and feral hogs are known to have a long-term adverse effect on the abundance and distribution of trees, seedlings, and saplings by increasing browsing pressure (deer) and uprooting vegetation (hogs). The subsequent decrease in deciduous tree component of the wooded areas could lead to shifts in both plant and animal communities. The Conservation Area and other open space areas within the Property will be monitored biannually for excessive browsing pressure, lack of oak seedling recruitment, and vegetation damage. If these disturbances are observed, Cibolo Canyons will ensure the management entity immediately implements appropriate techniques to remedy these damages. Such actions may include hunting, trapping, or other deer and hog population reduction programs. Deer and/or hog populations will be controlled as allowed by state game regulations and local ordinances. The Conservation Area will also be inspected bi-annually for the establishment of exotic plants and imported fire ants. If deemed necessary, exotic plants, imported fire ants, and other exotic species affecting the GCWA will be treated for control as necessary. These programs will be continued in perpetuity by qualified professionals and both the need for remedial action and the actions taken or not taken will be documented in the annual report described in Condition M below.
10. Access to the Conservation Area will be limited to authorized representatives of Cibolo Canyons, the management entity, the easement holder, the Service, and other authorized management personnel, except as otherwise authorized by Cibolo Canyons and the Service. Gated access points will be provided for the authorized entry.
11. Cibolo Canyons or its successor management entity will control unauthorized use and trespass. Any boundary shared by the Conservation Area and on-site or off-site developed land shall be fenced with a minimum 4-foot (1.2-meter) tall, 5-strand barbed wire fence. This fencing will be installed prior to commencement of clearing or development activities within 300 feet of a preserve/development boundary and will be located at the boundary of the preserve and the development activity. Signage will be placed on the fence at 300-foot intervals to identify the area as a Conservation Area and prohibit unauthorized entry. Such fencing will not include gates where it bounds residential areas,



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must be sufficient to deter unauthorized entry to the Conservation Area in perpetuity, and shall be upgraded as necessary. Cibolo Canyons or its successor management entity shall be responsible for constructing and maintaining all fences and signage in appropriate phases as described herein above. Since much of this fence will likely be decorative, and possibly in the back of residential lots, the funds necessary for the construction of this fence are independent of those described in the Sections 6.7 and 6.8 of the January 9, 2006, HCP.

12. Following the completion of boundary fence installation, the use of construction equipment in the Conservation Area during the period when the GCWA is in the area will be limited to that authorized by the Service. However, equipment and vehicles necessary to operate, repair, and maintain existing water wells, fences, existing ranch and site access roads, cowbird traps, City Public Service power line and pole installations, monitoring stations, etc., inasmuch as this activity is presently occurring on the site, is excluded from such requirement for Service authorization.
13. Mountain bikes, horseback riding, livestock, cats, dogs, dumping of material (including pool water), pesticides, herbicides, fertilizers, clearing of vegetation, or anything else that is not consistent with management for the GCWA will be prohibited within the Conservation Area.
14. All prospective adjacent homeowners/landowners and all construction crews will be notified of the Conservation Area entry and access restrictions identified above through placement of appropriate signage.
15. At least three times per year, the management entity will inspect Conservation Area boundary fences for evidence of unauthorized access or vandalism. The management entity will immediately repair any damage or upgrade the fence as necessary to control access.
16. Presence/absence surveys for the GCWA will be conducted in the Conservation Area every other year for the first 10 years, then every third year for another 10 years or until 10 years after complete build-out, whichever is later. The first survey will be performed the first spring after permit issuance, with subsequent surveys to be performed as described above. At the end of 20 years, or later if build out is not completed by 2026, it is understood that Cibolo Canyons or its successor management entity can petition the Service, provided no substantial reduction of numbers of GCWA have occurred over these 20 years, to decrease the frequency of, or completely eliminate the need for additional surveys. At that time, the Service will reevaluate the need for continuing these surveys and will attempt to respond to the petition within thirty days of receipt. At a minimum, these surveys will follow Service presence/absence survey protocols in effect as of the spring of 2005.
17. Cibolo Canyons will develop and provide residents of the development with educational materials that will encourage them to become stewards of the Conservation Area and take pride in the presence of the GCWA. This brochure shall provide information on the natural history of the GCWA and the importance of this area to the species. The brochure will also discuss the importance of karst features for aquifer recharge and encourage the use of native plants for landscaping. It will also and provide rationale for not using deer and bird seed feeder and not allowing public access to the Conservation Area.
18. The use of construction equipment will be limited to the 732 acre Development Area except as provided in Condition J, Item 12 above. Contractors will avoid the 882 acre Conservation Area. If



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any vegetation is unintentionally disturbed within the Conservation Area, Cibolo Canyons or its assigns will ensure that the disturbed area is immediately replanted with similar native vegetation. Since it is not known if disturbances will occur, or to what extent, it has not been included in the Conservation Area operation and management budget. In the event this occurs, Cibolo Canyons or its successors will provide all necessary funds to ensure the area is fully restored. These funds would be independent of those described in Section 6.7 and 6.8 of the January 9, 2006, HCP.

19. Operation and management of the Conservation Area will be fully funded prior to any clearing or construction. Funding assurances are further described in Section 6.8 of the January 9, 2006, HCP. All operations and management will be done in perpetuity and will be documented in the annual report described herein. Management, as described in 6.8.1, will be funded until the property association, or other entity approved by the Service, assumes responsibility in perpetuity, which will be described and made a requirement in the recorded deed restriction to which the land will be subject.
20. Restrictive covenants making the applicable provisions of the HCP perpetual restrictions that run with the land shall be recorded in the real property records of Bexar County, Texas. For restrictive covenants applicable to the HCP, the Service shall be listed as a third-party beneficiary and shall have enforcement rights.
21. The Conservation Area will be managed in accordance with the land management plan developed for the Conservation Area by the selected land management entity. Any changes to this plan must be reviewed and approved by the Service in advance of the implementation to these changes.
22. Conditions of the Permit shall be binding on, and for the benefit of, the Permittee and its respective successors and assigns. If the permit requires an amendment because of a change of ownership, the Service will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original permit. A "Certificate of Inclusion" procedure to address the relative rights and responsibilities of a succession of multiple owners within this master-planned project will be used in connection with the permit requested for Cibolo Canyon Property (See Section 6.12). The construction activities proposed or in progress under an original permit may not be interrupted, provided the required special conditions of an issued permit are being followed.
23. If during the tenure of the Permit the project design and/or the extent of the impact to habitat described in the HCP is altered, such that there may be an increase in the anticipated take of the GCWA, the Permittee is required to contact the Service and obtain authorization and/or amendment of the Permit before commencing any construction or other activities that might result in take beyond that described in the EA/HCP or the subsequent amendment. It is acknowledged, however, that all suitable GCWA habitat within the Evans Tract and the Wolverton Tract not designated as GCWA Conservation Area is considered impacted by the authorized action, such that land plan modifications within the development areas of Master Phase II should not result in increased take of the GCWA.
24. Upon prior written notification to the Permittee, the Service will be allowed access to the Property, accompanied by representatives of the Permittee or its successors or assigns, to inspect the condition of the GCWA habitat and to ensure that the HCP is being implemented according to its terms for the benefit of the listed species. In the event that the Service finds that the HCP is not being



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implemented according to its terms, the Service has the option, as a last resort, of terminating and revoking the permit. Prior to revocation, the Service will exercise all possible measures to remedy the situation.

25. The boundaries of the Conservation Area and development area will be altered to incorporate the 144-acre Hilltops area into the GCWA Conservation Area in exchange for a 30-acre parcel adjacent to the existing golf course (see revised Figure 3 in the HCP Amendment). This boundary modification will result in an overall reduction of the development area to 732 acres and an increase in the Conservation Area total to 882 acres. The 144 acres must be incorporated into the Conservation Area and a conservation easement placed on it prior to any clearing or construction on the 30-acre parcel. The transfer documentation and revised conservation easement will be submitted to the U.S. Fish and Wildlife Service at [FW2\\_AUES\\_Consult@fws.gov](mailto:FW2_AUES_Consult@fws.gov) within 30 days of execution.

#### **K. Changed Circumstances**

If the Permittee becomes aware of a changed circumstance in the Permit Area, they will promptly notify the Service in writing as provided in Section 6.7 of the HCP. At that time, the Permittee will modify implementation of the plan in the manner described in the HCP, to the extent necessary to address the effects of the changed circumstance on the plan's conservation program.

Possible changed circumstances are fully described in Section 6.7 of the HCP and include: 1) change in Covered Species migration dates; 2) additional species listings, status changes, take prohibitions, or critical habitat designations; 3) new technology and information; and 4) natural disasters affecting mitigation lands.

#### **L. Monitoring**

The Permittee will conduct compliance monitoring at the Project to ensure compliance with the Permit and to support management for the Covered Species. Mitigation effectiveness monitoring will also be conducted to evaluate the mitigation program's performance relative to the criteria established in the Project's Habitat Conservation Plan and to recommend project-specific adjustments as needed.

#### **M. Reporting**

Each year, an annual report will be submitted by October 1 of each year to the Austin ESFO at [FW2\\_AUES\\_Consult@fws.gov](mailto:FW2_AUES_Consult@fws.gov) and will describe the previous calendar year's activities and compliance with this permit and the HCP (as described in Section 6.4 of the HCP). Elements covered in the reports will include the following: 1) the results of compliance monitoring, including compliance with all terms and conditions of this permit; 2) take estimates of the Covered Species; 3) review of the adaptive management triggers; 4) results of mitigation effectiveness monitoring; and 5) a description of any adaptive management implemented.

A copy of the annual report must also be submitted to the Service's Regional Office at the following address:

U.S. Fish and Wildlife Service, Region 2  
Branch of Environmental Review  
P.O. Box 1306, Room 6034  
Albuquerque, New Mexico 87103  
[FW2\\_HCP\\_Permits@fws.gov](mailto:FW2_HCP_Permits@fws.gov)



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**Version Number:** 2

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## GENERAL TERMS AND CONDITIONS

### N. No Surprises Assurances

The Covered Species listed above are considered adequately addressed under the Cibolo Canyon Master Phase II HCP and are, therefore, covered by “No Surprises” assurances. If the Service demonstrates that unforeseen circumstances exist during the life of the permit and additional measures are deemed necessary to respond to those circumstances, the Service may require additional measures of the Permittee where the HCP is being properly implemented, but only through coordination with the Permittee and only if such measures are limited to modifications to the HCP’s operating conservation program for the Covered Species and maintain the original terms of the HCP to the maximum extent practicable. Notwithstanding the foregoing, the Service will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for Covered Species without the consent of the Permittee.

### O. Transferring

The terms and conditions of this permit shall be binding on and inure to the benefit of the Permittee, including their successors and assigns, as provided in 50 CFR 13.24 and 13.25. If this permit needs to be transferred due to a change in ownership the transfer will be accomplished in accordance with 50 CFR

13.25. Any change in the names, addresses or other administrative correction or alteration of the permit will be in accordance with 50 CFR 13.23. The Covered Activities proposed or in progress under the original permit may not be interrupted provided the conditions of the permit are being followed.

### P. Amendments

This permit may be amended in accordance with the provisions of 50 CFR 13.23. The Permittee must provide a written statement of the reasons for the proposed amendment and an analysis of its environmental effects, including its effects on Covered Species. The activities proposed or in progress under this permit may not be interrupted, provided the required conditions of this permit are being followed. The Service may amend the permit at any time for just cause, and upon written finding of necessity.

If the Covered Activities and/or the extent of the impacts described in the HCP are altered during the life of the permit, such that there may be an increase in the anticipated take of Covered Species, the Permittee is required to contact the Service and amend this permit before commencing any activities that might result in take beyond that described in the HCP.

### Q. Suspension and Revocation

**Suspension:** The Service may suspend this permit if the Permittee is not in compliance with the conditions of this permit, the HCP, or any applicable Federal laws and regulations. The procedures applicable to any suspension shall be in accordance with the Federal regulations in effect at the time of the suspension; provided however, that, at a minimum, the Permittee shall be afforded the procedural rights set forth in 50 CFR 13.27 in existence on the effective date. The suspension shall remain in effect until the Service determines that the Permittee has corrected the deficiencies, or the permit is revoked.

**Revocation:** The Service shall not revoke this permit for any reason except those listed in 50 CFR 13.28(a)(1)-(4), or unless the Covered Activities would be inconsistent with the criteria set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and this inconsistency has not been remedied. Notwithstanding the foregoing, this Permit will only be revoked if the Service, the Permittee, and other interested parties have not been



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successful in remedying any such inconsistency through other means.

#### **R. Renewals**

The Permittee may apply for the renewal of the permit prior to its expiration date in accordance with the provisions of 50 CFR § 13.22. Renewal determinations are new Federal decisions and require consideration of issuance criteria and include required associated determinations.

#### **S. Disposition**

Upon locating a dead, injured, or sick individual of the Covered Species, or any other endangered or threatened species, the Permittee is required to contact the Service's Law Enforcement Office (5563 De Zavala Road, Suite 290-A, San Antonio, Texas, 78249-1734, 210 681-8419) for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and any contractor/subcontractor has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

**\*\*\* End of Permit Terms and Conditions for Permit # TE-102437-2**