

Appendix 1



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Division of Ecological Services
17629 El Camino Real, Suite 211
281/286-8282 / (FAX) 281/488-5882



In Reply Refer To:
FWS/R2/CLES/

June 9, 2011

Laura Cutbirth
Westar Trade Resources
2030 Main Street, Suite 410
Dallas, TX 75201

Dear Ms. Cutbirth,

Thank you for your letter, dated May 5, 2011, requesting comments and recommendations on the proposed biorefinery construction project in Alvin, Brazoria County, TX. Our comments are provided in accordance with the provisions of the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), and the Fish and Wildlife Coordination Act (16 U.S.C. 661-667(e)).

Section 7 of the Endangered Species Act

According to Section 7(a)(2) of the ESA and the implementing regulations, it is the responsibility of each Federal agency to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any federally listed species.

Please note that while a Federal agency may designate a non-Federal representative to conduct informal consultations or prepare a biological assessment, the Federal agency must notify the U.S. Fish and Wildlife Service (Service) in writing of such designation. The Federal agency shall also independently review and evaluate the scope and contents of a biological assessment prepared by their designated non-Federal representative before that document is submitted to the Service.

A county-by-county listing of federally listed threatened and endangered species that occur within this office's work area can be found at: <http://www.fws.gov/southwest/es/EndangeredSpecies/lists/default.cfm>. You should use the county-by-county listing and other current species information to determine whether suitable habitat for a listed species is present at your project site. If suitable habitat is present, a qualified individual should conduct surveys to determine whether a listed species is present.

After completing a habitat evaluation and/or any necessary surveys, you should evaluate the project for potential effects to listed species and make one of the following determinations:

No effect – the proposed action will not affect federally-listed species or critical habitat (i.e., suitable habitat for the species occurring in the project county is not present in or adjacent to the

action area). No coordination or contact with the Service is necessary. However, if the project changes or additional information on the distribution of listed or proposed species becomes available, the project should be reanalyzed for effects not previously considered.

Is not likely to adversely affect – the project may affect listed species and/or critical habitat; however, the effects are expected to be discountable, insignificant, or completely beneficial. Certain avoidance and minimization measures may need to be implemented in order to reach this level of effect. You should seek written concurrence from the Service that adverse effects have been eliminated. Be sure to include all of the information and documentation used to reach your decision with your request for concurrence. The Service must have this documentation before issuing a concurrence.

Is likely to adversely affect – adverse effects to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable, insignificant, or beneficial. If the overall effect of the proposed action is beneficial to the listed species but also is likely to cause some adverse effects to individuals of that species, then the proposed action “is likely to adversely affect” the listed species. An “is likely to adversely affect” determination requires the Federal action agency to initiate formal Section 7 consultation with this office.

Regardless of your determination, the Service recommends that you maintain a complete record of the evaluation, including steps leading to the determination of affect, the qualified personnel conducting the evaluation, habitat conditions, site photographs, and any other related articles.

The Service’s Consultation Handbook is available online to assist you with further information on definitions, process, and fulfilling ESA requirements for your projects at: http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf.

The following list highlights the Service’s concerns and recommendations regarding the proposed project. Please refer to the Section 7 consultation process above regarding the assessment of impacts to threatened and endangered species resulting from the proposed project.

Migratory Birds

Please be advised that the MBTA protects all native migratory birds and does not permit unintentional take. Unintentional take may occur when land clearing activities destroy active nests (eggs or young birds present).

To avoid unintentional take, the Service recommends that the project proponents implement the conservation actions for migratory birds outlined in the enclosed document (Suggested Priority for Migratory Bird Conservation Actions for Projects – March 9, 2010).

Section 404 of the Clean Water Act

Section 404 of the Clean Water Act (CWA) establishes a program administered by the U.S. Army Corps of Engineers (Corps) that regulates the discharge of fill material into waters of the United States (e.g., wetlands and streams). We recommend that project proponents consult with the Corps to ensure that all project activities comply with the CWA.

Thank you for the opportunity to provide comments at this early stage in the scoping process. If you need any additional information, please contact our project biologist A.J Vale at 281/286-8282 ext. 223.

Sincerely,

A handwritten signature in blue ink that reads "Edith Erling". The signature is written in a cursive, flowing style.

Edith Erling
Field Supervisor

Enclosures

cc: U.S. Army Corps of Engineers, Regulatory Branch, Galveston TX

**Suggested Priority of Migratory Bird Conservation Actions for Projects
U.S. Fish and Wildlife Service (USFWS), Migratory Bird Management**

March 9, 2010

1. Avoid any take of migratory birds and/or minimize the loss, destruction, or degradation of migratory bird habitat while completing the proposed project or action.
2. Determine if the proposed project or action will involve below- and/or above-ground construction activities since recommended practices and timing of surveys and clearances could differ accordingly.
3. If the proposed project or action includes a reasonable likelihood that take of migratory birds will occur, then complete actions that could take migratory birds outside of their nesting season. This includes clearing or cutting of vegetation, grubbing, etc. The primary nesting season for migratory birds varies greatly between species and geographic location, but generally extends from early April to mid-July. However, the maximum time period for the migratory bird nesting season can extend from early February through late August. Also, eagles may initiate nesting as early as late December or January depending on the geographic area. Due to this variability, project proponents should consult with the appropriate Regional Migratory Bird Program (USFWS) for specific nesting seasons. Strive to complete all disruptive activities outside the peak of migratory bird nesting season to the greatest extent possible. Always avoid any habitat alteration, removal, or destruction during the primary nesting season for migratory birds. Additionally, clearing of vegetation in the year prior to construction (but not within the nesting season) may discourage birds from attempting to nest in the proposed construction area, thereby decreasing chance of take during construction activities.
4. If a proposed project or action includes the potential for take of migratory birds and/or the loss or degradation of migratory bird habitat and work cannot occur outside the migratory bird nesting season (either the primary or maximum nesting season), project proponents will need to provide the USFWS with an explanation for why work has to occur during the migratory bird nesting season. Further, in these cases, project proponents also need to demonstrate that all efforts to complete work outside the migratory bird nesting season were attempted, and that the reasons work needs to be completed during the nesting season were beyond the proponent's control.

Also, where project work cannot occur outside the migratory bird nesting season, project proponents must survey those portions of the project area during the nesting season prior to construction occurring to determine if migratory birds are present and nesting in those areas. In addition to conducting surveys during the

nesting season/construction phase, companies may also benefit from conducting surveys during the prior nesting season. Such surveys will assist the company in any decisions about the likely presence of nesting migratory birds or sensitive species in the proposed project or work area. While individual migratory birds will not necessarily return to nest at the exact site as in previous years, a survey in the nesting season in the year before construction allows the company to become familiar with species and numbers present in the project area well before the nesting season in the year of construction. Bird surveys should be completed during the nesting season in the best biological timeframe for detecting the presence of nesting migratory birds, using accepted bird survey protocols. USFWS Offices can be contacted for recommendations on appropriate survey guidance. Project proponents should also be aware that results of migratory bird surveys are subject to spatial and temporal variability. Finally, project proponents will need to conduct migratory bird surveys during the actual year of construction, if they cannot avoid work during the primary nesting season (see above) and if construction will impact habitats suitable for supporting nesting birds.

5. If no migratory birds are found nesting in proposed project or action areas immediately prior to the time when construction and associated activities are to occur, then the project activity may proceed as planned.
6. If migratory birds are present and nesting in the proposed project or action area, contact your nearest USFWS Ecological Services Field Office and USFWS Region Migratory Birds Program for guidance as to appropriate next steps to take to minimize impacts to migratory birds associated with the proposed project or action.

* Note: these proposed conservation measures assume that there are no Endangered or Threatened migratory bird species present in the project/action area, or any other Endangered or Threatened animal or plant species present in this area. If Endangered or Threatened species are present, or they could potentially be present, and the project/action may affect these species, then consult with your nearest USFWS Ecological Services Office before proceeding with any project/action.

** The Migratory Bird Treaty Act prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted by regulations. While the Act has no provision for allowing unauthorized take, the USFWS realizes that some birds may be killed during construction and operation of energy infrastructure, even if all known reasonable and effective measures to protect birds are used. The USFWS Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds, and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve

individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent and effective measures to avoid that take. Companies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during construction or similar activities.

*** Also note that Bald and Golden Eagles receive additional protection under the Bald and Golden Eagle Protection Act (BGEPA). BGEPA prohibits the take, possession, sale, purchase, barter, offer to sell, purchase, or barter, transport, export or import, of any Bald or Golden Eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. Further, activities that would disturb Bald or Golden Eagles are prohibited under BGEPA. "Disturb" means to agitate or bother a Bald or Golden Eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an Eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. If a proposed project or action would occur in areas where nesting, feeding, or roosting eagles occur, then project proponents may need to take additional conservation measures to achieve compliance with BGEPA. New regulations (50 CFR § 22.26 and § 22.27) allow the take of bald and golden eagles and their nests, respectively, to protect interests in a particular locality. However, consultation with the Migratory Bird, Ecological Services, and Law Enforcement programs of the Service will be required before a permit may be issued.



Life's better outside.®

May 10, 2011

Mark Katterjohn
RPS
404 Camp Craft Road
Austin, Texas 78746

Commissioners

Peter M. Holt
Chairman
San Antonio

T. Dan Friedkin
Vice-Chairman
Houston

Mark E. Bivins
Amarillo

Ralph H. Duggins
Fort Worth

Antonio Falcon, M.D.
Rio Grande City

Karen J. Hixon
San Antonio

Dan Allen Hughes, Jr.
Beeville

Margaret Martin
Boerne

S. Reed Morian
Houston

Lee M. Bass
Chairman-Emeritus
Fort Worth

Carter P. Smith
Executive Director

RE: Proposed TerraFuels, Inc. facility in Galveston County, Texas.

Dear Mr. Katterjohn:

The Texas Parks and Wildlife Department (TPWD) has received your request for information regarding potential impacts to threatened and endangered species and for information on other issues of concern relating to the project referenced above. Under section 12.0011 of the Texas Parks and Wildlife Code, TPWD is charged with "providing recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects" and "providing information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources."

Please be aware that a written response to a TPWD recommendation or informational comment received by a state governmental agency on or after September 1, 2009 may be required by state law. For further guidance, see the Texas Parks and Wildlife Code, Section 12.0011 which can be found online at <http://www.statutes.legis.state.tx.us/Docs/PW/htm/PW.12.htm#12.0011>. For tracking purposes, please refer to TPWD project number 16098 in any return correspondence.

Project Description

TerraFuels, Inc. is proposing to construct a facility near Alvin, Texas to convert biomass materials to energy products on a commercial scale using solid waste as feedstock. The facility will be constructed on less than 10 acres of a combined 31.15 acres from 4 contiguous tracts of land located adjacent to the Coastal Plains Recycling and Disposal Facility Landfill.

Forested Habitat

The project document does not include a summary of woody vegetation to be impacted. However, after review of the aerial imagery, it appears that woody vegetation would potentially be impacted by the proposed project.

Recommendation: TPWD recommends that clearing of mature, native trees be avoided. Loss of vegetation should be minimized by using site planning and construction techniques designed to avoid and preserve existing trees, shrubs, grasses, and forbs. *For impacts that are unavoidable, TPWD recommends transplanting the existing trees or replacing them at a ratio of 3 saplings for every tree lost.* Whether transplanted or replaced, a survival of 85% should be achieved. TPWD recommends that native plant and forage species that are

Mr. Mark Katterjohn
May 10, 2011
Page 2 of 4

beneficial to wildlife endemic to the area be used in mitigation and landscaped areas.

Federal regulation

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) provides for a year round closed season for non-game birds and prohibits the taking of migratory bird nests and eggs, except as permitted by the U.S. Fish and Wildlife Service.

Recommendation: Construction activities such as, but not limited to, tree felling as well as vegetation clearing, trampling, or maintenance should occur outside the April 1- July 15 migratory bird nesting season of each year the project is authorized and lasting for the life of the project. To comply with the MTBA, the proposed site should be surveyed for migratory bird nest sites prior to construction or future maintenance activities. Since raptors nest in late winter and early spring, all construction activities as identified above should be excluded from a minimum zone of 100 meters around any raptor nest during the period of February 1- July 15.

Please contact the U.S. Fish and Wildlife Service Southwest Regional Office (Region 2) at (505) 248-6879 for further information.

Wetland Impacts

The Clean Water Act (CWA) sets the basic regulatory framework for regulating discharges of pollutants to U.S. waters. Section 404 of the 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 under Section 404 of the CWA. The COE also makes jurisdictional determinations under Section 10 of the Rivers and Harbors Act of 1899.

Based upon the project description it appears that wetlands would be impacted by the proposed project.

Recommendation: The wetland mitigation plan should be developed in consultation with TPWD. TPWD requests that the TerraFuels, Inc. address impacts to all wetland types in the wetland mitigation plan and mitigate for these impacts. Coordination of all impacts to the aquatic resources should be coordinated with Jamie Schubert with our Coastal Program; he can be reached at 281-534-0135.

Mr. Mark Katterjohn
May 10, 2011
Page 3 of 4

Parks and Wildlife Code

Texas has listed additional animal species not protected by the Endangered Species Act as "State-Threatened" (ST). Any take (incidental or otherwise) of ST animals is prohibited. However, state law only protects the species, and not its habitat. The ST species may only be handled/relocated by permitted individuals authorized by TPWD. There are penalties and restitution values associated with unauthorized take of state-listed species. *Protection of State-Listed Species - Texas Parks and Wildlife Department Guidelines* is attached.

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.

The Texas Natural Diversity Database (TXNDD) is intended to assist users in avoiding harm to rare species or significant ecological features. 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. Absence of information in the database does not imply that a species is absent from that area. 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 presences, 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**. They represent species that could potentially be in your project area. This information cannot be substituted for on-the-ground surveys. The TXNDD is updated continuously based on new, updated and undigitized records; for questions regarding a record, please contact txndd@tpwd.state.tx.us.

According to the Texas Natural Diversity Database (TXNDD) no known occurrences of threatened or endangered species have been recorded near (within 1.5 miles) of the proposed project.

TPWD County Lists

The TPWD county lists for rare species may be obtained from the following link: <http://gis.tpwd.state.tx.us/tpwEndangeredSpecies/DesktopDefault.aspx>. These lists provide information regarding rare species that have potential to occur within each county. Rare species could potentially be impacted if suitable habitat is present at or near the project site.

Recommendation: Using the county lists of rare species, the portions of the proposed project with potential to support rare species should be field surveyed to determine the extent and quality of the suspect habitat and potential impacts.

Mr. Mark Katterjohn
May 10, 2011
Page 4 of 4

Recommendation: If rare species or their habitat would be impacted by the proposed project, the applicant should coordinate with TPWD and the USFWS, as appropriate, to determine avoidance, minimization, and mitigation strategies.

Recommendation: Construction crews should be informed of the rare species that have potential to occur in the project county and should avoid disturbance to sensitive species if encountered during construction. Only personnel with a TPWD scientific collection permit are allowed to handle and move state listed species. For further information on the required permit please contact Chris Maldonado at (512) 389-4647.

Comment: Further consultation with TPWD would be warranted upon detection of a Texas listed rare, threatened, or endangered species within or near the proposed project at any time prior to or during construction.

Revegetation

Recommendation: TPWD recommends that TerraFuels, Inc. reseed disturbed soils with a mixture of grasses and forbs native Galveston County. To enhance native grasses available to wildlife in the project area, TPWD recommends that Bermuda grass be avoided to the extent possible in reseeded efforts, though TPWD understands that slopes may require certain grasses to control erosion. As an introduced species that can be extremely invasive, its use in federally funded projects may be inconsistent with Executive Order 13112 on Invasive Species.

For assistance in determining the best native seed mix for the project area, please contact our staff. Runoff control measures should be maintained until native plants have been reestablished on disturbed areas.

TPWD advises review and implementation of these recommendations. If you have any questions, please contact me at (361) 576-0022.

Sincerely,



Amy Turner
Wildlife Habitat Assessment Program
Wildlife Division

/ajt:16098

Protection of State-Listed Species
Texas Parks and Wildlife Department Guidelines

Protection of State-Listed Species

State law prohibits any take (incidental or otherwise) of state-listed species. State-listed species may only be handled by persons possessing a **Scientific Collecting Permit** or a **Letter of Authorization** issued to relocate a species.

- **Section 68.002 of the Texas Parks and Wildlife (TPW) Code** states that species of fish or wildlife indigenous to Texas are endangered if listed on the United States List of Endangered Native Fish and Wildlife or the list of fish or wildlife threatened with statewide extinction as filed by the director of Texas Park and Wildlife Department. Species listed as Endangered or Threatened by the Endangered Species Act are protected by both Federal and State Law. The State of Texas also lists and protects additional species considered to be threatened with extinction within Texas.
- **Animals** - Laws and regulations pertaining to state-listed endangered or threatened animal species are contained in **Chapters 67 and 68 of the Texas Parks and Wildlife (TPW) Code and Sections 65.171 - 65.176 of Title 31 of the Texas Administrative Code (TAC)**. State-listed animals may be found at **31 TAC §65.175 & 176**.
- **Plants** - Laws and regulations pertaining to endangered or threatened plant species are contained in **Chapter 88 of the TPW Code and Sections 69.01 - 69.9 of the TAC**. State-listed plants may be found at **31 TAC §69.8(a) & (b)**.

Prohibitions on Take of State Listed Species

Section 68.015 of the TPW Code states that no person may capture, trap, take, or kill, or attempt to capture, trap, take, or kill, endangered fish or wildlife.

Section 65.171 of the Texas Administrative Code states that except as otherwise provided in this subchapter or **Parks and Wildlife Code, Chapters 67 or 68**, no person may take, possess, propagate, transport, export, sell or offer for sale, or ship any species of fish or wildlife listed by the department as endangered or threatened.

"Take" is defined in **Section 1.101(5) of the Texas Parks and Wildlife Code** as:

"Take," except as otherwise provided by this code, means collect, hook, hunt, net, shoot, or snare, by any means or device, and includes an attempt to take or to pursue in order to take.

Penalties

The penalties for take of state-listed species (**TPW Code, Chapter 67 or 68**) are:

- 1ST Offense = Class C Misdemeanor:
\$25-\$500 fine
- One or more prior convictions = Class B Misdemeanor
\$200-\$2,000 fine and/or up to 180 days in jail.
- Two or more prior convictions = Class A Misdemeanor
\$500-\$4,000 fine and/or up to 1 year in jail.

Restitution values apply and vary by species. Specific values and a list of species may be obtained from the TPWD Wildlife Habitat Assessment Program.

TEXAS PARKS AND WILDLIFE

Main | 7/12/2011 10:54:34 AM

Rare, Threatened, and Endangered Species of Texas

Search by...

Type full or partial County Name and click "GO"



Leave blank and click "GO" for a complete list

OR

Type full or partial Common Name and click "GO"



Leave blank and click "GO" for a complete list

OR

Type full or partial Scientific Name and click "GO"



Leave blank and click "GO" for a complete list

View County List Key and Disclaimer

View Coordination and Review Form

Take our survey!



Texas Parks and Wildlife Department,
4200 Smith School Road, Austin, TX
78744
Toll Free: (800) 792-1112, Austin: (512)
389-4800
Content of this site © Texas Parks and
Wildlife Department unless otherwise
noted.

Contact Us | Help | Accessibility | Media
Site Policies | Complaints | Open Records
& Public Information | Intranet | State of
Texas | TRAILS Search | TexasOnline |
Compact with Texans

Species Search Results for 'Galveston'

Taxon	Common Name	Scientific Name	Federal Status	State Status	County Range	
Birds	Henslow's Sparrow	Ammodramus henslowii				View Map
Birds	Sprague's Pipit	Anthus spragueii	C			View Map
Birds	White-tailed Hawk	Buteo albicaudatus		T		View Map
Birds	Snowy Plover	Charadrius alexandrinus				View Map
Birds	Southeastern Snowy Plover	Charadrius alexandrinus tenuirostris				View Map
Birds	Piping Plover	Charadrius melodus	LT	T		View Map
Birds	Mountain Plover	Charadrius montanus				View Map
Birds	Reddish Egret	Egretta rufescens		T		View Map
Birds	Peregrine Falcon	Falco peregrinus	DL	T		View Map
Birds	American Peregrine Falcon	Falco peregrinus anatum	DL	T		View Map
Birds	Arctic Peregrine Falcon	Falco peregrinus tundrius	DL			View Map
Birds	Whooping Crane	Grus americana	LE	E		View Map
Birds	Bald Eagle	Haliaeetus leucocephalus	DL	T		View Map
Birds	Black Rail	Laterallus jamaicensis				View Map
Birds	Wood Stork	Mycteria americana		T		View Map
Birds	Eskimo Curlew	Numenius borealis	LE	E		View Map
Birds	Brown Pelican	Pelecanus occidentalis	DL	E		View Map
Birds	White-faced Ibis	Plegadis chihi		T		View Map
Birds	Attwater's Greater Prairie-Chicken	Tympanuchus cupido attwateri	LE	E		View Map
Fishes	American eel	Anguilla rostrata				View Map
Fishes	Smalltooth sawfish	Pristis pectinata	LE	E		View Map
Mammals	Red wolf	Canis rufus	LE	E		View Map
Mammals	Plains spotted skunk	Spilogale putorius interrupta				View Map
Mammals	West Indian manatee	Trichechus manatus	LE	E		View Map
Mammals	Louisiana black bear	Ursus americanus luteolus	LT	T		View Map
Plants	Texas windmill-grass	Chloris texensis				View Map
Plants	Coastal gay-feather	Liatris bracteata				View Map
Plants	Grand Prairie evening primrose	Oenothera pilosella ssp sessilis				View Map
Plants	Correll's false dragon-head	Physostegia correllii				View Map
Plants	Houston daisy	Rayjacksonia aurea				View Map
Plants	Threeflower broomweed	Thurovia triflora				View Map
Reptiles	Loggerhead sea turtle	Caretta caretta	LT	T		View Map
Reptiles	Green sea turtle	Chelonia mydas	LT	T		View Map
Reptiles	Timber/Canebrake rattlesnake	Crotalus horridus		T		View Map

county

[View Report](#)

1 of 2 100% Find | Next

Select a format Export  

[Texas Parks & Wildlife Dept.](#)

Page 1 of 1

[Annotated County Lists of Rare Species](#)

Last Revision: 5/25/2011 3:02:00

GALVESTON COUNTY

BIRDS

	Federal Status	State S
<p>American Peregrine Falcon <i>Falco peregrinus anatum</i></p> <p>year-round resident and local breeder in west Texas, nests in tall cliff eyries; also, migrant across state more northern breeding areas in US and Canada, winters along coast and farther south; occupies wide range of habitats during migration, including urban, concentrations along coast and barrier islands; low altitude migrant, stopovers at leading landscape edges such as lake shores, coastlines, and barrier islar</p>	DL	T
<p>Arctic Peregrine Falcon <i>Falco peregrinus tundrius</i></p> <p>migrant throughout state from subspecies' far northern breeding range, winters along coast and farther south; occupies wide range of habitats during migration, including urban, concentrations along coast and barrier islands; low-altitude migrant, stopovers at leading landscape edges such as lake shores, coastli and barrier islands.</p>	DL	
<p>Attwater's Greater Prairie-Chicken <i>Tympanuchus cupido attwateri</i></p> <p>this county within historic range; endemic; open prairies of mostly thick grass one to three feet tall; fr near sea level to 200 feet along coastal plain on upper two-thirds of Texas coast; males form commun display flocks during late winter-early spring; booming grounds important; breeding February-July</p>	LE	E
<p>Bald Eagle <i>Haliaeetus leucocephalus</i></p> <p>found primarily near rivers and large lakes; nests in tall trees or on cliffs near water; communally roo especially in winter; hunts live prey, scavenges, and pirates food from other birds</p>	DL	T
<p>Black Rail <i>Laterallus jamaicensis</i></p> <p>salt, brackish, and freshwater marshes, pond borders, wet meadows, and grassy swamps; nests in or al edge of marsh, sometimes on damp ground, but usually on mat of previous year's dead grasses; nest u hidden in marsh grass or at base of Salicornia</p>		
<p>Brown Pelican <i>Pelecanus occidentalis</i></p> <p>largely coastal and near shore areas, where it roosts and nests on islands and spoil banks</p>	DL	E
<p>Eskimo Curlew <i>Numenius borealis</i></p> <p>historic; nonbreeding: grasslands, pastures, plowed fields, and less frequently, marshes and mudflats</p>	LE	E
<p>Henslow's Sparrow <i>Ammodramus henslowii</i></p> <p>wintering individuals (not flocks) found in weedy fields or cut-over areas where lots of bunch grasses along with vines and brambles; a key component is bare ground for running/walking</p>		
<p>Mountain Plover <i>Charadrius montanus</i></p> <p>breeding: nests on high plains or shortgrass prairie, on ground in shallow depression; nonbreeding:</p>		



United States Department of Agriculture
Rural Development
Rural Business-Cooperative Service, Program Support Staff
1400 Independence Avenue, SW
Stop 0761, Room 6900
Washington, DC 20250

August 1, 2011

US Fish and Wildlife Service (USFWS)
Clear Lake ESFO
17629 El Camino Real, Ste. 211
Houston, TX 77058

Attention: Ms. Edith Erfling

Re: Section 7 Review of TerraFuels Biorefinery
U. S. Department of Agriculture, Rural Business-Cooperative Service
Alvin, Galveston County, TX
Letter of No Effect

Dear Ms. Erfling,

The U.S. Department of Agriculture Rural Business-Cooperative Service (RBS) requests a letter of concurrence from the USFWS with respect to our determination of **“no effect”** for federally listed threatened and endangered species that occur within the project area for the TerraFuels Biorefinery proposed in Galveston County, Texas. This request is made under the requirements of Section 7 of the Endangered Species Act.

Project Description

RBS is reviewing an application from TerraFuels LLC for federal funding of a commercial scale biorefinery which proposes to convert solid waste to green gasoline. The funding would allow TerraFuels to construct and operate the facility and related infrastructure, including a proposed approximate 5.5-mile long hydrogen gas pipe line, 935-foot long natural gas line, 270-foot long electrical connection, and 1,675-foot long proposed potable water line, to be located on a 31-acre parcel adjacent and south of the Coastal Plains Recycling and Disposal Facility east of Alvin, TX. The approximate center of the subject property is located at Latitude 29° 25'8" N and Longitude 95° 11'30 W (Attachment 1). An aerial photograph outlining each of the proposed utility corridors is located in Attachment 2. Attachment 3 and 4 provide additional detail for the hydrogen gas pipeline.

NEPA Process

RBS is in the process of preparing an Environmental Assessment (EA) on the project which includes an analysis of potential impacts to threatened and endangered species on the site and affected area.

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

On May 5, 2011, Westar Trade Resources submitted to your office results of a March 22, 2011 species survey completed by Freese and Nichols which concluded that no species, potential habitat, or designated critical habitat was observed within the 10 acres proposed for development for the property (Attachment 5). While the project proposes to construct within this same area, this letter of determination includes the entire 31-acre site as well as the required utility corridors which were not submitted previously. As shown in Attachment 5, the utility corridors which will traverse portions of the 31 acre site and other areas adjacent to the site are either previously disturbed due to existing utility rights-of-way or are located in areas that have not been associated with critical habitats.

Please review this finding of effect pursuant to 36 CFR Section 800.5(c) and provide RBS with your response within 30 days from receipt of this letter. Please feel free to contact me with any comments or questions at juliet.bochicchio@wdc.usda.gov or at 202.205.8242. Sincerely,



Juliet Bochicchio
Environmental Protection Specialist
Rural Business-Cooperative Service, Program Support Staff

- Attachments:
- 1) USGS Quadrangle Location Map of 31 acre site.
 - 2) Aerial Photograph of associated utility corridors.
 - 3) Hydrogen Gas 5.5 mile Utility proposed ROW.
 - 4) Written description of Hydrogen Gas Utility proposed ROW.
 - 5) Threatened and Endangered Species Survey Report.

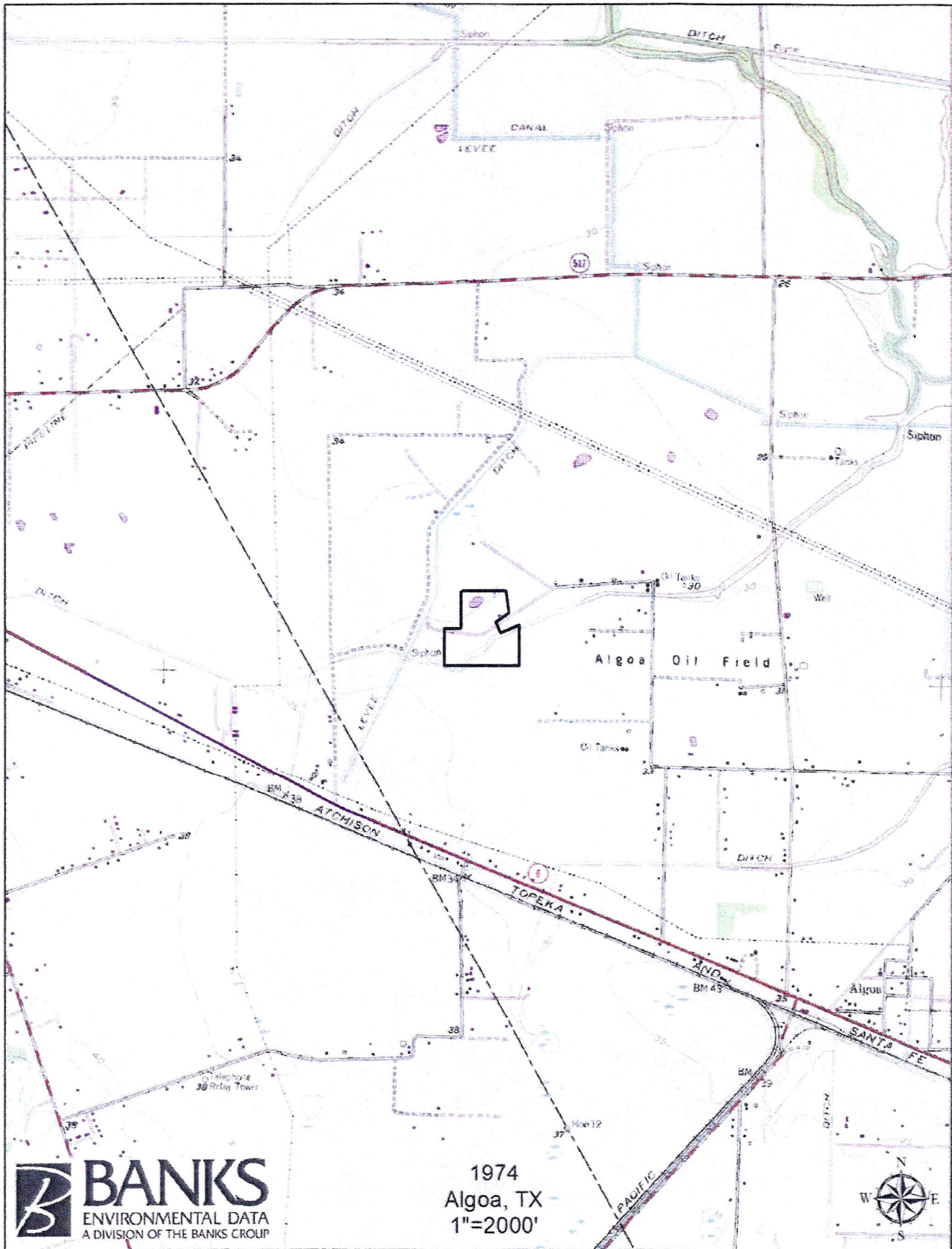


Figure 3. Topographic Site Location Map

Date: Sep 02, 2011 - 11:03am User: jmr File: N:\V\BASE\OFFSITE-UTILITIES_4.dwg



NO.	ISSUE	BY	DATE	FILE NAME
				OFFSITE-UTILITIES_4.dwg

TERRAFUELS, LLC
ALVIN BIOREFINERY
 CIVIL

OFFSITE UTILITIES PLAN-ALTERNATE 3

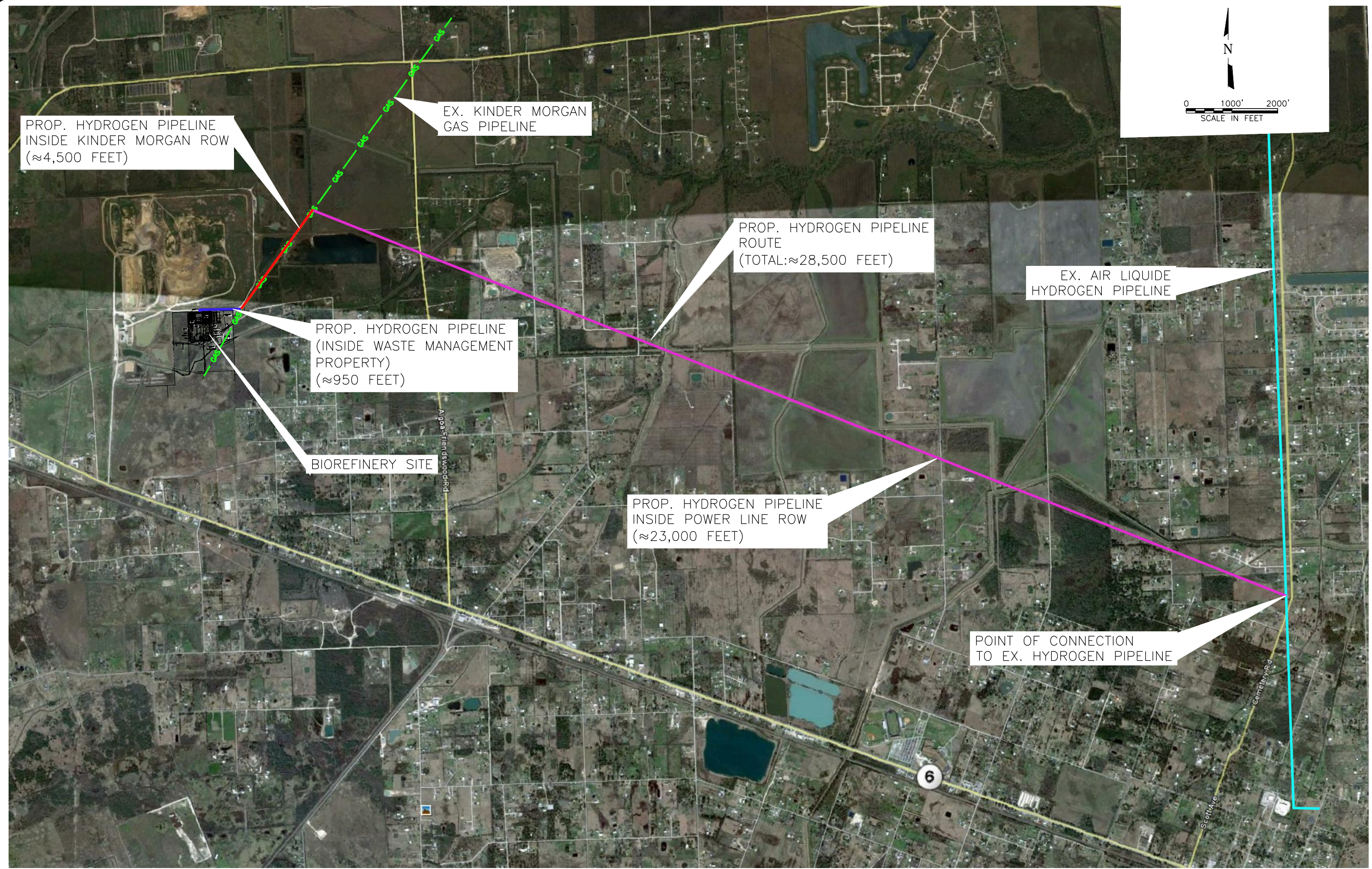
FRESE & NICHOLS

4040 Broadway Street, Suite 600
 San Antonio, Texas 78209-6350
 Phone - (210) 298-3800
 Fax - (210) 298-3801

Freese and Nichols, Inc.
 Texas Registered Engineering Firm F-2144

NOT FOR CONSTRUCTION
 THIS DOCUMENT IS RELEASED FOR THE
 PURPOSE OF INTERIM REVIEW UNDER THE
 AUTHORITY OF JOINT #1, NEW P.C.
 TEXAS NO. 26132 ON DATE: 11/24/2010
 IT IS NOT TO BE USED FOR CONSTRUCTION,
 BIDDING OR PERMIT PURPOSES.

ACAD: Rel 18.1s (LWS, Tech)
 User: jmr
 Date: 07/28/2011 8:09:05 AM
 File: N:\JF\BASE\BOUNDSURVEY\N:\JF\BASE\CP26.16ACTERRABON, N:\JF\BASE\CV-ALL-PL-TOPO and N:\STANDARD\34BORDER
 4 REFERENCE FILES: N:\JF\BASE\BOUNDSURVEY, N:\JF\BASE\CP26.16ACTERRABON, N:\JF\BASE\CV-ALL-PL-TOPO and N:\STANDARD\34BORDER



Freese and Nichols, Inc.
 Texas Registered Engineering Firm F-2144

NOT FOR CONSTRUCTION
 THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE PROVISIONS OF THE OPEN PUBLIC RECORDS ACT. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES.
 DATE OF INTERIM REVIEW: 11/24/2010
 DATE OF REVISION: 11/24/2010

FREES & NICHOLS
 4040 Broadway Street, Suite 600
 Houston, Texas 77020
 Phone - (210) 298-3800
 Fax - (210) 298-3801

TERRAFUELS, LLC
ALVIN BIOREFINERY
 CIVIL
HYDROGEN PIPELINE ROUTE

NO.	ISSUE	BY	DATE	DATE	TRB 10393
				APR 2011	
				DESIGNED	JMR
				DRAWN	JMR
				REVISD	
				CHECKED	
				FILE NAME	H2-PIPELINE.dwg
VERIFY SCALE: Bar is one inch on original drawing; if not one inch on this sheet, adjust scale.					



United States Department of Agriculture
Rural Development
Rural Business-Cooperative Service, Program Support Staff
1400 Independence Avenue, SW
Stop 0761, Room 6900
Washington, DC 20250

RECEIVED
AUG 01 2011
TEXAS HISTORICAL COMMISSION

August 1, 2011

Mr. Mark Wolfe
Texas Historic Commission
State Historic Preservation Office (SHPO)
404 Camp Craft Road
Austin, TX 78746

Subject: Tracking #: 201111966
Section 106 Review of TerraFuels Biorefinery
U. S. Department of Agriculture, Rural Business-Cooperative Service
Alvin, Galveston County, TX

Dear Mr. Wolfe,

The U.S. Department of Agriculture, Rural Business-Cooperative Service (RBS) is reviewing an application from TerraFuels LLC for federal funding of a commercial scale biorefinery which proposes to convert solid waste to green gasoline. The funding would allow TerraFuels to construct and operate the facility and related infrastructure, including a proposed approximate 5.5-mile long hydrogen gas pipe line, 935-foot long natural gas line, 270-foot long electrical connection, and 1,675-foot long proposed potable water line, to be located on a 31-acre parcel adjacent and south of the Coastal Plains Recycling and Disposal Facility east of Alvin, TX. The approximate center of the subject property is located at Latitude 29° 25'8" N and Longitude 95°11'30 W (Attachment 1). An aerial photograph outlining each of the proposed utility corridors is located in Attachment 2. Attachment 4 and 5 provide additional detail for the hydrogen gas pipeline.

Previously the Texas Historical Commission (THC) reviewed a project area associated with this proposal identified on a smaller 10-acre parcel within the 31-acre parcel, however, this letter of determination includes the entire 31-acre site as well as the required utility corridors which were not submitted previously. The THC made a "No Historic Properties Affected Project May Proceed" determination for the project identified on the 10-acre parcel dated May 16, 2011 (Attachment 3)

RBS has made a determination under Section 106 of the NHPA that this project, including the proposed utility corridors, poses no effect to historic properties (historic or cultural sites listed, or eligible for listing, on the National Register of Historic Places). RBS has made this determination based on prior consultation with the THC on the 10-acre parcel which indicated no properties within a 1-mile area and on review of the proposed utility corridors which were determined either to be within existing utility right-of-ways, which are presumed previously disturbed, or based on their

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

location adjacent to the 31-acre property where no historic properties are expected to be located.

36 CFR Section 800.4(a)(1) – Determine/Document area of potential effect

The location of the proposed undertaking and the area of potential effect (APE), as defined in Section 800.16(d), are shown on the enclosed attachments. The APE is defined as the 31-acre subject property as well as the proposed approximate 5.5-mile long hydrogen gas pipe line, 935-foot long natural gas line, 270-foot long electrical connection, and 1,675-foot long proposed potable water line.

Please review this finding of effect pursuant to 36 CFR Section 800.5(c) and provide RBS with your response within 30 days from receipt of this letter. Please feel free to contact me with any comments or questions at juliet.bochicchio@wdc.usda.gov or at 202.205.8242. Sincerely,



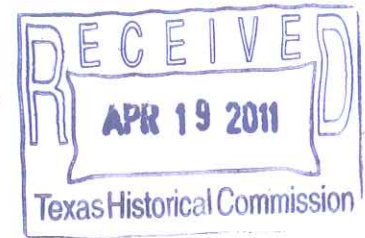
Juliet Bochicchio
Environmental Protection Specialist
Rural Business-Cooperative Service, Program Support Staff

- Attachments: 1) USGS Quadrangle Location Map of 31 acre site.
2) Aerial Photograph of associated utility corridors.
3) SHPO response dated May 16, 2011.
4) Hydrogen Gas 5.5 mile Utility proposed ROW.
5) Written description of Hydrogen Gas Utility proposed ROW.



RPS

404 Camp Craft Rd., Austin, Texas 78746, USA
T +1 512 347 7588 F +1 512 347 8243 W www.rpsgroup.com



April 1, 2011

DEBRA BEENE
Ms. Bratten Thomason *ARCHAEOLOGY DIVISION*
Director, History Programs Division
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711-2276

Re: Request for Historical Resources Review
US Department of Agriculture Grant Application
TerraFuels, Inc. – Alvin Facility
Galveston County, Texas



Dear Ms. Thomason:

TerraFuels, Inc. is proposing to construct a facility near Alvin, Texas to convert biomass materials to energy products on a commercial scale using solid waste (e.g., food wastes, scrap paper, and various other municipal solid waste materials) as feedstock. The facility will be constructed on approximately 10 acres of a combined 31.15 acres from 4 contiguous tracts of land located adjacent to the Coastal Plains Recycling and Disposal Facility Landfill east of Alvin, Texas. The approximate center of the subject property is located at Latitude 29° 25' 8" N and Longitude 95° 11' 30" W.

As part of an application for Loan Guarantee from the United States Department of Agriculture, TerraFuels must show compliance with Subpart F of 1 CFR 1901 for the approximate 10-acre portion of the site that is being developed. On behalf of TerraFuels, RPS is submitting this letter of coordination to request a review by the Texas Historical Commission (THC). We are also requesting THC identification of any known historic structures/sites, archeologically significant sites, and/or any sites having exceptional aesthetic quality within one mile of the facility location.

To facilitate your review of the site, I have provided several supporting attachments (e.g., location map, layout drawing, etc.) to this letter that describe the location of the facility and proposed operations. Specifically, the following is provided as supporting information:

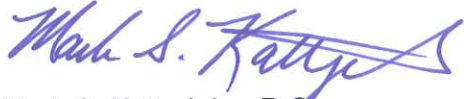
- The property is being purchased by TerraFuels, Inc.;
- The site was undeveloped through the mid to late 1950s and historically used for agricultural purposes;
- Oil and gas exploration and development occurred on the subject property starting in the 1960s;
- By the late 1980s, the properties had been developed for residential use with the buildings removed prior to 2004;
- No structures are present at the site;
- During reconnaissance of the property, no archeological or cultural resources were found; and
- Electrical, water, and wastewater utility lines will be installed as part of this project.

Ms. Bratten Thomason
April 1, 2011
Page 2

If I may provide additional supporting information and/or documentation to assist in your review,
please call me at (512) 347-7588.

Sincerely,

RPS



Mark S. Katterjohn, P.C.

Attachments

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 24, 2011

Ms. Annie Eberhart Goode
Environmental Protection Specialist
1400 Independence Ave. S.W.
Washington, DC 20250-0700

Re: TCEQ Grant and Texas Review and Comment System (TRACS) #2011-319, Galveston
County - Re: USDA Review of proposed Biorefinery – Terrafuels, LLC

Dear Ms. Eberhart Goode:

The Texas Commission on Environmental Quality (TCEQ) has reviewed the above-referenced project and offers following comments:

A review of the project for General Conformity impact in accordance with 40 CFR Part 93 and Title 30, Texas Administrative Code § 101.30 indicates that the proposed project is located in Galveston County, which is currently classified as a severe ozone nonattainment area. Therefore, General Conformity rules apply.

The two criteria pollutants of concern as precursors to ozone formation are volatile organic compounds (VOCs) and nitrogen oxides (NO_x). An increase of 25 tons per year for VOCs or NO_x, resulting from the proposed project, could trigger general conformity analysis. However, the emissions from the proposed project are expected to be well below the 25 tons per year significance level. Therefore, a general conformity analysis will not be required.

Although any demolition, construction, rehabilitation or repair project will produce dust and particulate emissions, these actions should pose no significant impact upon air quality standards. Any minimal dust and particulate emissions should be easily controlled by the construction contractors using standard dust mitigation techniques.

We do not anticipate significant long term environmental impacts from this project as long as construction and waste disposal activities associated with it are completed in accordance with applicable local, state, and federal environmental permits and regulations. We recommend that the applicant take necessary steps to insure that best management practices are utilized to control runoff from construction sites to prevent detrimental impact to surface and ground water.

Thank you for the opportunity to review this project. If you have any questions, please contact Ms. Janie Roman at (512) 239-0604 or janie.roman@tceq.texas.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Harrison".

Jim Harrison, Director
Intergovernmental Relations Division

From: Charles Maguire [Charles.Maguire@tceq.texas.gov]
Sent: Thursday, August 04, 2011 8:08 AM
To: Goode, Annie - Washinton, DC
Subject: Re: TerraFuels Biorefinery proposal

Annie

We do not have comments at this time.

Wastewater - Based on this information it appears that there will be no process wastewater generated and any recovered water will be reused in the process. Therefore it is not likely that an individual TPDES permit will be needed.

404/401 permit and certification - From the info provided a site survey determined that there are not likely to be jurisdictional wetlands present.

Storm Water - TerraFuels will likely need to obtain coverage under the Construction Storm Water GP and MSGP.

If you have questions about permit requirements once you have moved past the preliminary stage you are welcome to make contact with us.

Thanks
Charles

>>> On 8/2/2011 at 2:15 PM, in message
<E620532CB69DED4DB61BF1B0B688253D02812D@001FSN2MPN1-026.001f.mgd2.msft.net>, "Goode, Annie - Washinton, DC" <Annie.Goode@wdc.usda.gov>
wrote:

Dear Mr. Maguire:

USDA/Rural Development is considering a proposal for a loan guarantee on behalf of TerraFuels, LLC for a biorefinery project in Alvin, TX. We are conducting an environmental assessment of this proposal, pursuant to the National Environmental Policy Act (NEPA). Your agency is likely to receive permit applications in the future, and we appreciate any comments you may have at this time.

Please find attached a preliminary notice of USDA/Rural Development's review of this proposal, along with an executive summary of the proposal and several site maps (hard copy to follow by mail). Please provide any comments you may have on potential air quality impacts of this project within 30 days.

Do not hesitate to contact me or Juliet Bochicchio (202.205.8242) for any additional information that you may need.

Thanks very much,

Annie

Annie Eberhart Goode | Environmental Protection Specialist
Rural Development
U.S. Department of Agriculture
1400 Independence Ave., S.W. | Washington, D.C. 20250
Phone: 202.720.9653 | Fax: 202.690.4335
<http://www.rurdev.usda.gov/>

"Committed to the future of rural communities"

"Estamos dedicados al futuro de las comunidades rurales"