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## Definitions and Abbreviations

- Habitat Conservation Plan (HCP) – a conservation plan that meets specific requirements of Section 10(a)(2)(A) of the Endangered Species Act (ESA)<sup>1</sup>. An HCP is required to obtain an Incidental Take Permit<sup>1</sup>.
- Incidental Take Permit (ITP) – a permit to provide an exemption for incidental take of ESA listed species<sup>1</sup>. The ITP provides assurances and coverage for anticipated incidental take associated with Covered Activities implemented under a CI.<sup>2</sup>
- Take – Take is defined in Section 3 of the ESA as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct”
- Certificate of Inclusion (CI) – a certificate that provides the option and benefits of complying with the terms of an ITP.
- HCP Administrator / ITP holder – LPC Conservation LLC (LPC-C) administers the HCP and holds the ITP
- CI Applicant – an entity that is applying for inclusion under the LEPC HCP ITP
- CI holder – an entity that has been granted inclusion under the LEPC HCP ITP
- Lesser Prairie-chicken (LEPC) – a prairie grouse of the southern Great Plains. The species occurs in short-grass prairie regions with scattered shrubs. Divided into two populations across its historical range, the northern population is listed as threatened while the southern population is listed as endangered under the ESA.
- United States Fish and Wildlife (FWS) – The federal agency administering the ESA.

## Frequently Asked Questions

### 1. What happens if the LEPC is delisted?

If the LEPC is delisted, there would no longer be a regulatory requirement under Section 9 of the ESA prohibiting “Take” of the LEPC. Therefore, coverage under an ITP would not be necessary. However voluntary enrollment to support the LEPC can be accomplished by following the HCP.

If you are a current CI-holder and the LEPC is delisted, CI-holders will continue to implement the measures described in the HCP for currently enrolled projects until the ITP expires.

### 2. Why should I consider enrolling in the LEPC HCP ITP?

By enrolling in the HCP, Project proponents participate in LEPC conservation and meet the statutory and regulatory requirements of the Endangered Species Act.

The LEPC HCP is structured to reliably deliver conservation benefits, maintain an open enrollment schedule, has approved (ready-to-go) mitigation properties, and is approved by the FWS. Additionally, the HCP provides project proponents the opportunity to compensate for project impacts using a FWS-approved mechanism.

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<sup>1</sup> 2016. U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. Habitat Conservation Planning and Incidental Take Permit Processing Handbook.

<sup>2</sup> 2022. LPC Conservation LLC. Oil and Gas Habitat Conservation Plan For the Lesser Prairie-chicken, Colorado, Kansas, New Mexico, Oklahoma, and Texas. August 4, 2021. Revised May 11, 2022.

The HCP was developed according to the FWS 2014 *Guidelines for the Establishment, Management, and Operation of Permanent Lesser Prairie-Chicken Mitigation Lands* and the FWS 2021 *Framework for the Review of Lesser Prairie-Chicken Voluntary Conservation Programs*. In addition, the HCP was developed in accordance with the ESA (Section 10(a)(2)(A)), Federal Regulation (50 Code of Federal Regulations [CFR]17.22(b), 17.32(b)) and the Habitat Conservation Planning and Incidental Take Permit Processing Handbook (HCP Handbook; USFWS and National Marine Fisheries Service [NMFS] 2016) to meet FWS permit issuance criteria.

Reference / Link:

- 2021. US Fish and Wildlife Service. [Framework for the Review of Lesser Prairie-Chicken Voluntary Conservation Programs](#). July 27, 2021. 15 pp. + appendices.
- 2014. US Fish and Wildlife Service. *Guidelines for the Establishment, Management, and Operation of Permanent Lesser Prairie-Chicken Mitigation Lands*. December 2014. 12 pp. + appendices.

3. What is the process to enroll in the HCP ITP?

In short:

- a. Arrange a meeting with LPC Conservation LLC (Common Ground Capital) ([Click here for contact information](#)).
- b. Evaluate other compliance requirements as they pertain to HCP enrollment requirements, e.g., the National Historical Preservation Act.
- c. Prepare and submit a Certificate of Inclusion Application with the application fee.
- d. Review of the CI application by the HCP Administrator
- e. Submission of the application to USFWS for review and decision.
- f. Submit Enrollment fee, Administration fee, and proof of funding assurances to the HCP Administrator.
- g. Coordinate with a mitigation entity and sign the CI. The applicant must begin construction within 2 years of application.

4. What are the ongoing requirements when enrolled in the HCP?

The following are some, but not all, requirements of CI-Holders:

- a. Provide the HCP administrator with: 1) documentation to the final on-the-ground impacts to suitable LEPC habitat that occurred during Covered Activities; 2) a written statement that the CI-holder will enforce all minimization measures during the upcoming LEPC breeding season; and 3) documentation that confirms the type, amount, location, and acquisition date for mitigation secured to compensate for the final project-specific impacts
- b. Grant the HCP administrator and/or USFWS access to the land or property to which the CI applies to verify site-specific details, with reasonable notice and as available.
- c. Submit annual compliance monitoring reports

5. How long does this process take? How early should I start before a project commences?

Administratively, once the CI is submitted, processing the application will take about 60 days. Other processes prior to application submission will require additional scheduling.

When a project has certainty of going forward, an applicant should plan about 3 - 5 months before conducting project activities for the complete CI application process.

Processing time estimate by step:

- a. 1 – 2 weeks: Preliminary coordination and consultation with LPC Conservation, LLC. Additionally, discussions with the FWS should be scheduled for general discussions related to the impact analysis and compliance with the National Historic Preservation Act.
- b. 4 – 6 weeks: Preparation of the CI is estimated to take about 4 - 6 weeks depending on availability and completeness of project information, technical expertise using various analysis tools such as GIS or the Sothern Great Plains Crucial Habitat Assessment Tool (SGP CHAT), and availability of staff to prepare the application (internal staff or consultants). The time estimate includes time for obtaining all necessary project information, habitat analysis (1 week), GIS analysis (1 week), field assessment (0.5 week), writing, and internal reviews. Any revisions to the CI application could extend the application period. If applicable, additional time may be required to find a third-party consultant for preparation of the CI application.
- c. 2 - 4 weeks: Review of the CI application by the HCP Administrator and time for updates as needed before submission to the USFWS.
- d. 4 - 6 weeks: USFWS review.
- e. Other items to consider: time processing estimates can be influenced by other factors such as the number of applications being reviewed at the time of submission and applicant, third-party, or other agency constraints.

6. What are the costs associated with the HCP?

Estimated costs are listed below. Some fees are subject to modification.

- a. \$500 one-time Application Fee, paid with the CI Application submission.
- b. \$13,000 one-time Enrollment Fee. Paid prior to CI enrollment and issuance.
- c. The Administration fee is dependent on the level of enrollment in the HCP. Generally this cost may range from low 5 figures to low 6 figures depending on the project's scale. It can be paid annually or, preferably, by a one-time payment at the beginning of the CI. Administration fees are subject to annual adjustments. Paid prior to CI issuance.
- d. Mitigation credit costs are dependent on the amount of LEPC acres impacted and enrolled in the program. As a general estimate, the cost is about \$2,500 per acre impacted by the project, however, this estimate can vary up or down, based on several factors. Mitigation fees are paid as a one-time payment to the appropriate mitigation entity. Mitigation fees are due prior to issuance of the CI and also prior to the commencement of covered activities. Mitigation must be implemented prior to CI issuance.
- e. Other costs may be incurred through the process, which are not directly associated with enrolling in the HCP, e.g., hiring third parties to conduct impact assessments for the CI application, conducting surveys for compliance with the NHPA, or conducting other management actions.

7. What activities are covered under the HCP/ITP CI? What types of restrictions are there?

The covered activities include upstream production, midstream development and grassland improvement and management during construction, operations, and decommissioning. For a full description of activities covered by participation in the HCP ITP, see HCP Section 2 *Covered Activities*.

Seasonal, time of day, and/or proximity to active LEPC presence (e.g., an active lek) influence when activities can occur. For more details see HCP Section 5.3 *Measures to Avoid, or Minimize and Mitigate the Impacts of the Taking*, Sub-Section 5.3.2.2 *Conservation Measures during LEPC Breeding Season*.

8. How are project areas assessed for project-specific impacts to LEPC?

The HCP provides a six-step process created to standardize and analyze project-specific impacts to LEPC. This process includes: 1) deconstruction of the proposed project action, 2) initial desktop analysis of effects of the proposed action(s), 3) field assessment and verification, 4) desktop re-analysis (if necessary), 5) quantification of project impacts on LEPC, and 6) preparation and submission of the impact assessment and supporting documentation to the USFWS. The analysis results in a quantification of how many mitigation acres would be necessary for enrollment under the HCP ITP and then supports the CI application.

#### Technical or Specific Questions

9. After a CI application is approved, would subsequent work, e.g., on a well (after drilling), that requires additional surface disturbance, be covered under the existing CI or would another application be needed?

If the additional surface disturbance occurs within the impact buffer of a preexisting landscape feature, additional CI coverage should not be required. If the additional surface disturbance occurs on previously un-impacted habitat, then CI coverage is needed and can be sought through a CI amendment, which would be faster than seeking a new CI.

10. Is there a limit on projects within an area? Is there a cap?

Not for an individual developer already holding a CI. Collectively within the HCP Plan Area, buildout cannot affect greater than 40% of land within potentially suitable habitat. If that happens, an increase in the mitigation ratio for new CIs would apply in order to reduce the ratio of buildout to suitable habitat. Any increase in a mitigation ratio would only apply to new CIs.

11. If a project will be constructed and operated on federal land, can the project enroll in the HCP? What type of land ownership qualifies for enrolling in the HCP ITP?

Projects constructed and operated on private land and some state owned lands (e.g., state trust lands) can enroll in the HCP ITP. Projects constructed and operated on federal lands, certain other state lands, and various lands under conservation ownership or easements (e.g., The Nature Conservancy lands) cannot enroll in the HCP ITP.

12. If a project is a re-build of an existing project, within the same project area, e.g., upgrading a transmission line, is coverage under the ITP necessary?

Existing structures have impacts that began when the original structure was installed and which continued during operation. The distance the impacts extend are defined for various infrastructure by the FWS (i.e., impact distance). For example, a transmission line has an impact distance of 700 meters. The area within the impact distance of existing structures is not considered suitable LEPC habitat.

If a rebuild follows a structure for structure replacement on the original centerline and thus occurs within the existing impact buffer, and has no new ground-disturbing impacts to suitable LEPC habitat, the project would not be anticipated to cause "take" of LEPC and thus would not need HCP/ITP coverage.

However, if any portion of the re-build is offset from the original centerline, extending the impact distance beyond the original impact distance, the project should be evaluated to see if incidental take is reasonably certain to occur and, if so, then take coverage under the HCP ITP is warranted. Additionally, if there are new activities occurring outside the original impact distance that disturb suitable LEPC habitat (i.e., incidental take), the activities should be evaluated to see if incident take is reasonably certain to occur (e.g., loss of suitable LEPC habitat), mitigated and the project proponent should participate in the HCP ITP.

*This document subject to periodic review and updates.*