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ANCHOR QEA

Memorandum

July 18, 2023

Re: SWG-2007-01509, Summary of Conceptual Mitigation Plan, Axys Capital Credit Fund, LLC, The Place at Park 22, Corpus Christi, Nueces County, Texas

Introduction

On behalf of Axys Capital Credit Fund, LLC (Applicant), Anchor QEA, LLC, submitted an Individual Permit Application request for The Place at Park 22 on July 18, 2023. The project results in unavoidable impacts to approximately 8.8 acres of low-quality, previously excavated, cat-tail-dominated palustrine wetlands. An August 12, 2022, approved jurisdictional determination (AJD) issued by the U.S. Army Corps of Engineers (USACE) documents that wetland features are considered jurisdictional waters of the United States based on their adjacency to the Gulf of Mexico and Laguna Madre. However, based on a review of the May 25, 2023, the Supreme Court of the U.S. (SCOTUS), *Sackett v. EPA*, it is the Applicant's belief that the wetland proposed to be filled would no longer be considered jurisdictional waters of the United States. Should the on-site wetland be considered isolated following a re-evaluation of the existing AJD, the Applicant will formally withdraw the permit application, as no jurisdictional impacts will occur, and no compensatory mitigation will be proposed. Should the on-site wetland remain jurisdictional, the Applicant will provide a 12-Step Compensatory Mitigation Plan. The purpose of this memorandum is to summarize the conceptual mitigation plan developed prior to the SCOTUS decision.

Background

To assist with the development of feasible mitigation options, the Anchor QEA reviewed the administrative record for the southern adjacent development, the Island Market IGA (SWG-2015-00270). Documentation was obtained through a Freedom of Information Act (FOIA) request made to USACE. The southern adjacent development resulted in impacts to the same wetland feature located on the Applicant's property and was authorized by an Individual Permit including an off-site mitigation component. Review of FOIA documentation indicates the agencies, namely the U.S. Environmental Protection Agency, Texas Parks and Wildlife, and U.S. Fish and Wildlife Service, preferred a mitigation approach that maximized wetland restoration and enhancement, rather than one that primarily converted relatively undisturbed coastal prairie uplands. Ultimately, the agencies and the Island Market IGA team were unable to identify suitable restoration or enhancement opportunities. To proactively address this anticipated agency input, the Applicant and Anchor QEA work diligently to identify such opportunities.

In identifying and assessing feasible mitigation opportunities, Anchor QEA recognized a previously developed mitigation plan that was ultimately abandoned due to enactment of the Navigable Waters Protection Rule in 2020. The abandoned mitigation plan was associated with the CL Thomas Holdings, LLC, project (SWG-2018-00127) and was required to offset palustrine emergent wetland impacts proposed approximately 1 mile northeast of The Place at Park 22 project. The abandoned mitigation plan included wetland creation, restoration, and enhancement at a Kleberg County property located on North Padre Island that is owned by Nueces County. The abandoned plan had been developed in collaboration with Nueces County and included input from various agencies. Permit issuance, including approval of the mitigation plan, was imminent but formally withdrawn due to impacted wetlands no longer being considered jurisdictional waters of the United States.

Relying on concepts of the abandoned plan, Anchor QEA reinitiated coordination with Nueces County, conducted supplemental site investigation at the mitigation site, and participated in a preapplication meeting with USACE personnel to discuss the mitigation approach. The abandoned plan was updated and scaled to adequately address impacts associated with The Place at Park 22 project. The revised mitigation plan will occur at Nueces County-owned land in Kleberg County property located approximately 6.5 miles south of the impact site. The mitigation project has been developed with Nueces County and USACE input and will be protected in perpetuity via an existing deed restriction established by the Texas General Land Office. Following permit issuance, a formal land use agreement will be executed between Nueces County and Applicant, and Nueces County has agreed to maintain the property in perpetuity after all success criteria have been reached and the site has been released from long-term monitoring.

The mitigation property includes a historical access road and disturbed area, and historically excavated drainage features that act to drain natural wetland habitat. Mitigation components total approximately 21.4 acres and include wetland creation, enhancement, and restoration. As proposed, the mitigation project would result in a not-net-loss of aquatic habitat value and function and will provide enhanced value to the watershed and to numerous avian and mammalian species at a 2.4:1 mitigation-to-impact ratio. Each compensation method is detailed in the next section and shown in Appendix B of the *Individual Permit Application*.

Method of Compensation

Wetland Creation

Anchor QEA identified 1.2 acres of slightly higher elevation pockets within an otherwise wetland area. These areas consist of little bluestem (*Schizachyrium scoparium*) and had an average elevation of +4.4 feet North American Vertical Datum of 1988 (NAVD88). Elevated areas will be excavated down to depths suitable for promoting regular open water and to support a large hemi-marsh habitat. Based on reference open-water features, these areas will be excavated to a depth of

approximately -3.0 feet NAVD88, and side slopes will be planted with desirable species such as salt-meadow cord grass (*Spartina patens*) and gulf cord grass (*Spartina spartinea*). Past agency coordination documented the desire for a permanent freshwater source to support wildlife usage. Surveys at the mitigation site document that salinities within existing open water are suitable for wildlife, and introduction of additional similar features will provide a high-value resource that is lacking in the region.

Wetland Enhancement

The revised mitigation plan includes approximately 19.5 acres of wetland enhancement. Site surveys and review of historical resources indicate a network of historical drainage features was excavated within the mitigation site. These features act to drain historical wetland areas toward Park Road 22. This artificial drainage results in a reduction of prolonged inundation and saturation. As recommended by agencies during past coordination, a primary goal of the mitigation project is to restore natural hydrology throughout the site and to promote resilient and persistent palustrine wetland habitat. This enhancement will be achieved by filling undesirable drainage features with native earthen material excavated from the site during wetland creation. Use of native earthen material will reduce the potential for introducing invasive or noxious species.

Wetland Restoration

Approximately 0.5 acre of wetland restoration will occur as part of the revised mitigation plan. As previously mentioned, the mitigation site contains a historical road and disturbed area. This past road feature acts to bifurcate a historical wetland area and has removed the hydrologic connectivity of the habitat. In addition to the existing road, Nueces County personnel have indicated this area is regularly utilized unlawfully for hunting, recreational firearm usage, and off-roading activities. These undesirable activities have resulted in the further degradation of wetland habitat. To restore the value and function of the wetland habitat, the Applicant proposes several activities. First, the Applicant will remove past fill material (i.e., caliche, gravel) placed in wetland habitat. This material will be disposed of appropriately. Areas from which fill material is removed will be graded to match reference wetland habitat and are expected to be revegetated via natural recruitment. If revegetation is not achieved via natural recruitment, planting of native and desirable species will occur. Further restoration activities proposed include the repair of significant rutting (also using native earthen material) and overall site cleanup to remove domestic debris. The Applicant will also install additional site features (i.e., a secure gate entrance) that will further deter future trespassing activities.

Additional Enhancement/Restoration

As discussed above, the Applicant propose to fill a network of historical drainage features to restore and enhance wetland hydrology within the hemi-marsh habitat. In total, approximately 0.2 acre of historically excavated drainage features will be repaired using native earthen material. This activity is

not intended to create new wetland areas but, rather, to restore and enhance high-value coastal prairie habitat. It is anticipated that revegetation of repaired drainage features will be achieved via natural recruitment. However, if natural recruitment is not successful, the Applicant will plant the areas with desirable native coastal prairie species.

Additional Considerations

In addition to the primary mitigation components of the plan, the Applicant is working collaboratively with Nueces County as part of land-use agreement negotiations. The Applicant and Nueces County are working together to develop and implement additional site improvement to promote habitat conservation and public use of wildlife observation. Public-use components under consideration include the repair of the existing road facility located in historical upland habitat, trespassing deterrents (gate, bollard, and cable system), Texas Department of Transportation-compliant driveway improvements, and a pile-supported bird observation kiosk. While these components are still under development and may not ultimately be implemented, each will be designed in a manner that achieved the goals of Nueces County, adhere to deed restrictions, and do not result in impacts to wetland habitat.

Conclusion

Should a re-evaluation of the existing impact site AJD following the recent SCOTUS decision confirm prior determinations, the Applicant will provide a 12-Step Compensatory Mitigation Plan. This summary is intended to provide initial information concerning the conceptual mitigation plan and how its implementation will result in a no-net-loss of aquatic habitat value in function. As detailed above, the Applicant intends on mitigating 8.8 acres of unavoidable impacts to low-quality, previously excavated, palustrine wetland by creating, enhancing, and restoring 21.4 acres of palustrine habitat. Table 1 further summarizes the proposed conceptual mitigation plan.

Table 1
Summary of Conceptual Mitigation Plan

Habitat	Impacted Area	Mitigation Component	Mitigation Area	Mitigation-to-Impact Ratio
Palustrine emergent wetland	8.8	Wetland Creation	1.2	2.4:1
		Wetland Enhancement	19.5	
		Wetland Restoration	0.5	
		Additional Enhancement/Restoration	0.2	

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Project and Proposed Mitigation Sites

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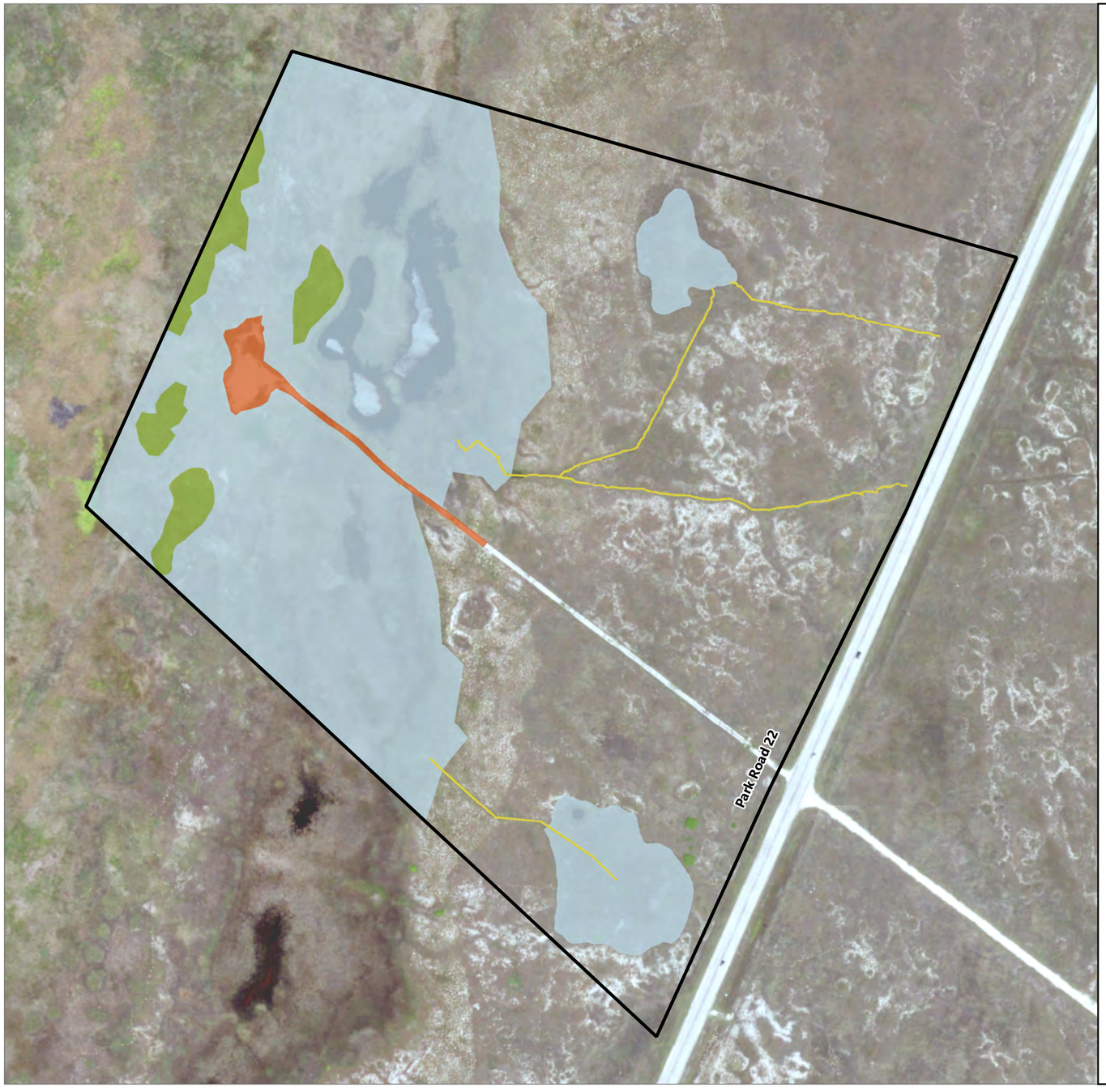
Attachment A: Draft Mitigation Plan
Sheet 5 of 6



Mitigation Plan Notes:

1. The applicant proposes to enhance and restore an approximate 48.1-acre site to offset approximately 8.8-acres of unavoidable impacts to cattail dominated palustrine emergent wetlands located at the project site.

2. The mitigation plan includes filling of approximately 0.2 acres of herbaceous upland drainage features that were constructed prior to 1967. In their current state, these drainage features act to drain depressional areas towards Park Road 22. This artificial drainage has resulted in the conversion of several historic wetland areas to upland habitat. Material proposed for fill of these features includes native material recovered from the site or other clean earthen fill suitable for coastal prairie and pothole wetland habitat.

3. Filling of historical artificial drainage features will serve to restore natural hydrology and enhance an approximate 14.7-acre high value upland/wetland mosaic habitat.

4. The applicant will remove approximately 0.5 acres of previously fill material that was placed within wetlands in association with historic oil and gas exploration projects at the site. Specifically, fill associated with the oil and gas road and pad area will be removed. Other debris material is proposed for removal. This other debris material proposed for removal is associated with persistent trespassing activities that include offroad recreational vehicle usage, illegal firearm usage, unpermitted waterfowl hunting, etc. This material will be removed from the site and the areas will be graded to suitable elevations for wetland habitat. Removal of this fill will reestablish the connectivity of a larger high value wetland feature that was bifurcated by these past anthropogenic effects.

5. The applicant will scrape down small, isolated upland areas that total approximately 1.0 acre to create a single, larger, contiguous wetland feature. These areas will be graded to promote more regular inundation that will benefit wildlife usage, including species protected by the Endangered Species Act and the Migratory Bird Treaty Act. Material removed from these areas will be used to fill artificial drainage features. Preliminary investigations indicate that surface water within this feature has a salinity of approximately 6 ppm, which is suitable to support wildlife usage.

6. Other activities proposed within the mitigation site boundary include the removal of domestic debris and management of undesirable species (i.e., cattail, rattlebush, etc.).

7. All mitigation site activities will be developed in coordination with the county to be consistent with existing deed restrictions.

8. Following construction, the mitigation site will be protected in perpetuity via existing deed restrictions established by the Texas General Land Office. Ownership of the site will be maintained by Nueces County, but through land use agreements, the county will grant the permittee and applicable regulatory agencies right of entry authorizations necessary to successfully implement, monitor, and manage the mitigation effort.

LEGEND:

- Mitigation Site Boundary (48.1 Acres)
- Artifical Drainage Repair (0.2 Acre)
- Wetland Restoration (0.5 Acre)
- Wetland Creation (1.2 Acre)
- Wetland Enhancement (19.5 Acre)

Notes:

1. Basemap: 2020 National Agriculure Imagery Program 60 Centimeter Imagery, Nueces County, Texas. Obtained from Texas Natural Resources Information System.
2. Horizontal Datum: North American Datum of 1983, State Plane Texas South (4205)
3. For planning and permitting purposes only. Not for construction.
4. Property owned by Nueces County.

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