



## **Balcones Canyonlands Conservation Plan Public Participation Program Overview**

The Balcones Canyonlands Conservation Plan (BCCP) provides a voluntary, streamlined alternative for infrastructure and public works' providers, developers, and landowners seeking to comply with the Endangered Species Act in western Travis County for certain species. Mitigation process services are shared between the Permit Holders: the City of Austin operates the Capital Improvement/Infrastructure Development Mitigation Process and Travis County administers the BCCP Public Participation Process for residential, commercial and agricultural uses under the terms of the Permit. Those participating through the BCCP may proceed with development under the terms of Participation Agreements. Those choosing not to participate may comply with the Endangered Species Act by obtaining an alternative determination, Section 7 consultation (for projects with a federal nexus), or an individual 10(a) permit from the U. S. Fish and Wildlife Service (USFWS).

Descriptions of Participation categories are defined in the Interlocal Cooperation Agreement between Travis County and the City of Austin Implementing the BCCP Shared Vision (City of Austin and Travis County 1995). As required by the terms of the regional Permit, copies of each Participation Certificate Mitigation Fee Determination and map are provided to the BCCP Coordinating Committee Secretary and USFWS Austin Ecological Services office. Additionally, applications processed, certificates issued and fees received are reported in the BCCP Annual Report.

The sale of Participation Certificates (PCs) was anticipated to fund completion and maintenance of the Balcones Canyonlands Preserve, mitigation lands required to offset covered species and habitat loss in western Travis County. The Shared Vision financing plan (July 18, 1995) was based on a balance of Participation Certificate funds and Travis County Tax Benefit Financing Plan revenues. To frame the fee structure, the Permit Area was mapped into habitat zones for Golden-cheeked Warbler (GCWA), Black-capped Vireo (BCVI) and Karst. The Shared Vision document established an initial fee of \$5,500/acre for occupied GCWA or BCVI habitat ("Zone 1"), and \$2,750/acre for habitat that had not been verified as occupied ("Zone 2"). Karst Zones One (areas known to contain endangered cave species) and Two (areas that probably contain endangered cave species) had an initial fee of \$55/acre. Additionally, the Shared Vision provides Special Provisions to reduce the financial burden for landowners developing a Single Family home on a single parcel and Agricultural Use.

Early participation certificate sales lagged behind original *pro forma* projections. Two public workshops were held to receive public comments and recommendations. Workshop participants suggested that a reduction of participation fees would increase participation and thus increase needed revenues. After receiving recommendation from the BCCP Citizen’s Advisory Committee, the Coordinating Committee adopted a temporary one-year reduced fee for direct participation in the BCCP effective July 1998 and extended it through June 2006.

The BCCP Citizens Advisory Committee has reviewed public participation and the Participation Certificate fee structure each year, although they do not make a recommendation for change every year. The BCCP Coordinating Committee, Austin City Council, Travis County Commissioners Court and USFWS have reviewed and adopted the Citizen Advisory Committee fee recommendations (Table 1). The current mitigation fee rates are effective through September 30th, 2014.

**Table 1. BCCP Fee Summary, Costs by Habitat Zone and Year**

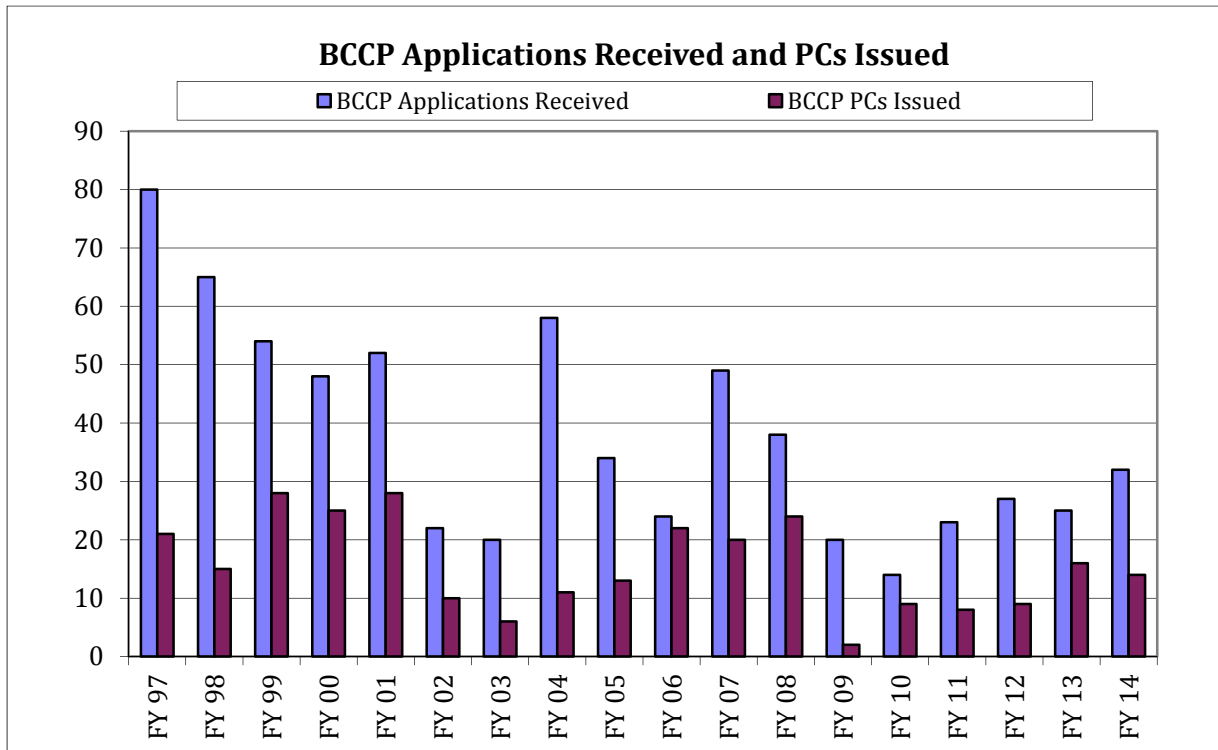
| <b>Year -</b>                             | <b>1996 – 1998 (original)</b> | <b>1998 - 2006</b> | <b>2006 - 2007</b> | <b>2007 - 2008</b> | <b>2008 - 2012</b> | <b>2013- Present</b> |
|---|-------------------------------|--------------------|--------------------|--------------------|--------------------|----------------------|
| <b><u>Habitat Zone</u><br/><u>Fee</u></b> |                               |                    |                    |                    |                    |                      |
| <b>Zone 1-GCWA</b>                        | \$5,500.00                    | \$3,000.00         | \$3,500.00         | \$4,000.00         | \$5,500.00         | \$5,500.00           |
| <b>Zone 2-GCWA</b>                        | \$2,750.00                    | \$1,500.00         | \$1,750.00         | \$2,000.00         | \$2,750.00         | \$2,750.00           |
| <b>Zone 1-BCVI</b>                        | \$5,500.00                    | \$3,000.00         | \$3,500.00         | \$4,000.00         | \$5,500.00         | \$5,500.00           |
| <b>Zones 1 &amp; 2 - Karst</b>            | \$55.00                       | \$55.00            | \$750.00           | \$750.00           | \$1,000.00         | \$1,000.00           |
| <b>Single Family Lot Provision</b>        | \$1,500.00                    | \$1,500.00         | \$1,500.00         | \$2,000.00         | \$2,000.00         | \$2,000.00           |
| <b>Agriculture Provision</b>              | \$1,500.00                    | \$1,500.00         | \$1,500.00         | \$1,500.00         | \$1,500.00         | \$1,500.00           |
| <b>USFWS Alternate Determination</b>      | \$5,500.00                    | \$4,000.00         | \$4,000.00         | \$5,000.00         | \$6,500.00         | <b>\$10,000.00</b>   |

In 2006, the Citizen’s Advisory Committee recommended increasing participation rates due to increasing land costs in western Travis County and a robust development market. The 2006 revised habitat fees did not impact applicants’ willingness to participate in the BCCP in 2006, 2007 and 2008.

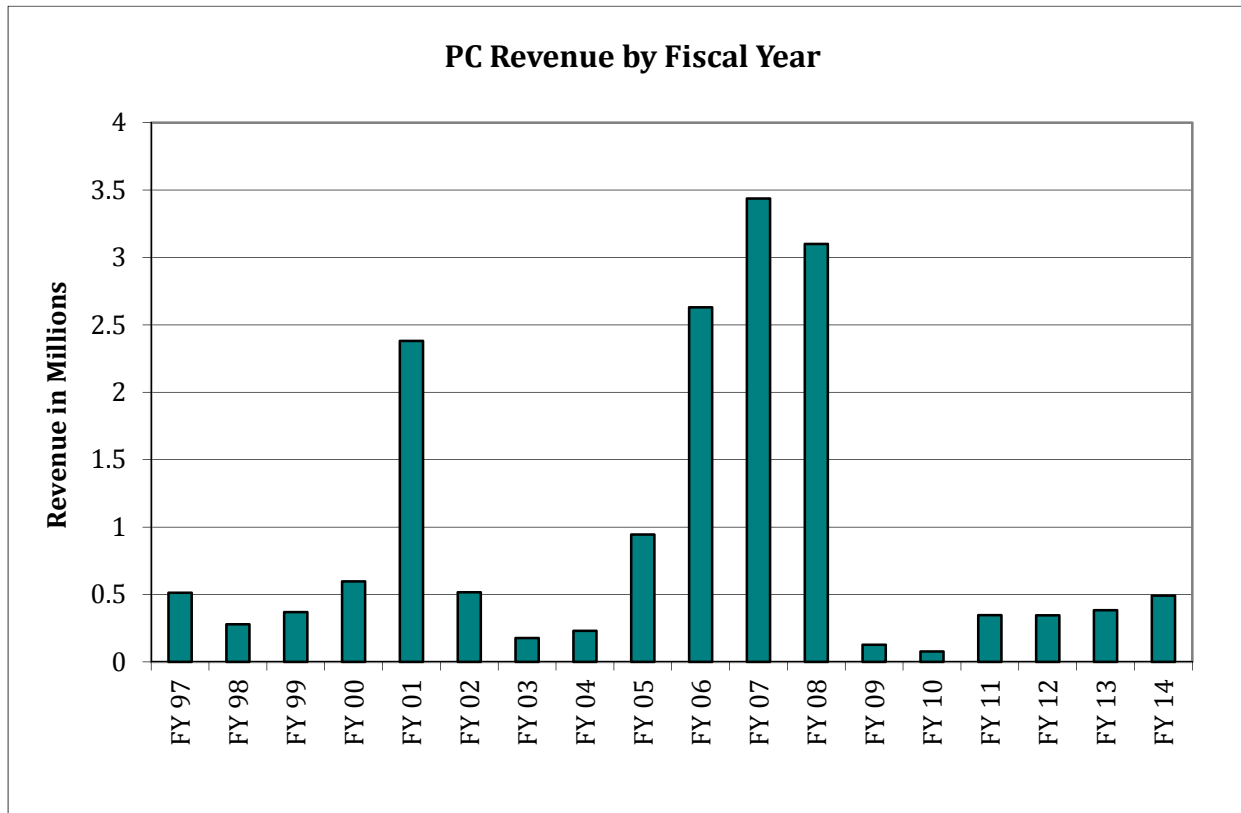
Participation seems to be more closely related to the health and vigor of the local economy and the real estate market as evident in Figures 1 through 3. Submission of applications and participation in the program naturally increases when the local economy is doing well. From 1996 to 2001 applications, PCs issued and revenue increase annually. The “High Tech” market bust (2001) and the terrorist attacks on September 11, 2001, reflect a significant drop in all three indicators (applications, PCs and revenue). The following years reflect an increasing trend as the local and national economy rebounded. More revenue was collected in FY06 through FY08 in BCCP public participation than any year since the permit’s issuance along with increases in applications received and PCs issued despite increases in mitigation fees. The economic downturn from 2008 through 2011 triggered a significant drop in application submittals and PCs issued as development also significantly slowed. Figure 3 shows the percentage of applications that completed the process and were issued PCs. Process completion averaged 41% from 1996-2013, and 41% from 2009-2013; therefore, there was no change in the completion rate corresponding to fee changes.

As the fee structure was established in the 1996 Interlocal Agreement between the City and the County, any Coordinating Committee action to change the fees must be approved by Austin City Council and the Travis County Commissioner’s Court. If Austin City Council and the Travis County Commissioner’s Court do not accept the recommendations approved by the BCCP Coordinating Committee before October 1st, the past year’s mitigation fees would expire on September 30th and revert to the mitigation rates originally set in 1996.

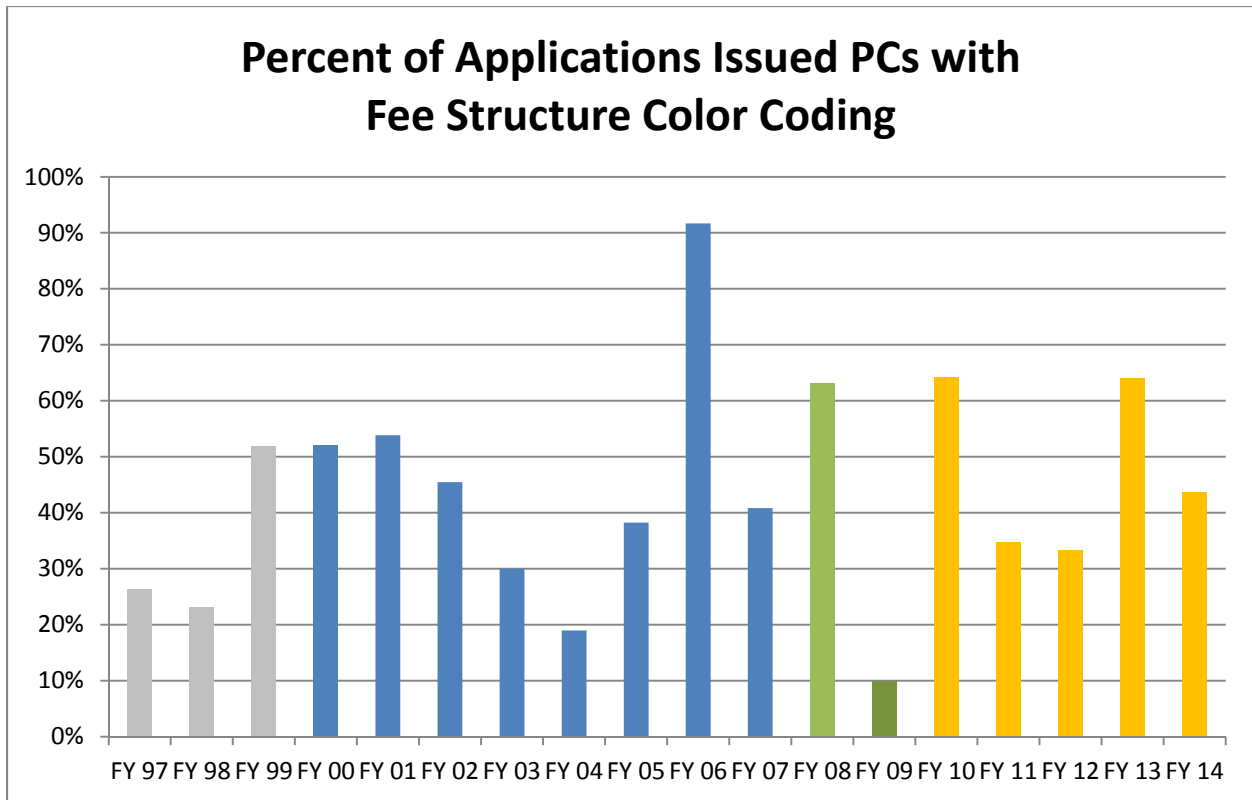
**Figure 1. BCCP Applications Received and PCs Issued by Fiscal Year**



**Figure 2. BCCP Participation Certificate (PC) Revenue by Fiscal Year**



**Figure 3. BCCP Participation Applications Completing Process by Fiscal Year**



**Fees (per acre) 1996 through 7/14/1998: \$5,500 Z1 GCWA, \$2,750 Z2 GCWA, \$55 Karst**

**Fees (per acre) 7/15/98 through 7/14/2006: \$3,000 Z1 GCWA, \$1,500 Z2 GCWA, \$55 Karst**

**Fees (per acre) 7/15/2006 through 7/14/2007: \$3,500 Z1 GCWA, \$1,750 Z2 GCWA, \$750 Karst**

**Fees (per acre) 7/15/2007 through 7/14/2008: \$4,000 Z1 GCWA, \$2,000 Z2 GCWA, \$750 Karst**

**Fees (per acre) 7/15/2008 through present: \$5,500 Z1 GCWA, \$2,750 Z2 GCWA, \$1000 Karst**

### **BCCP Alternative Determination Option**

Currently, the BCCP alternative determination fee is being used for other purposes that are impacting the BCCP.

### USFWS Alternative Determination

Individuals within the BCCP permit area have the option to participate under the BCCP 10(a) permit using the standard Public Participation process or by using the alternative

determination option for mitigation. Under the alternative determination option, the USFWS makes the mitigation determination and the mitigation fees are processed through the BCCP. This is generally requested by landowners that do not agree with the BCCP standard habitat delineations on the 1996 habitat fee zone map or who prefer a more customized mitigation option. USFWS can work with the landowner to define the current endangered species habitat and determine the mitigation accordingly. The fee per acre alternative determination mitigation was set higher than the BCCP participation fees to encourage participation under the standard option. Since 1996, only 25 PCs have been issued using this alternative determination option.

When a tract within the BCP Acquisition Area gets an Individual 10(a) permit from USFWS, USFWS often requires the landowners to either mitigate with land or pay a per-acre mitigation fee to offset the loss of endangered species or their habitats (“take”). To date, USFWS has been tying their GCWA habitat mitigation rate to this BCCP alternative determination rate, although that may change if the Recovery Plan is updated. As implemented now, this can be problematic as a mechanism for land acquisition. For example:

An applicant needs to provide 21 acres of mitigation by one of the following methods, a) transfer 21 acres of land to the BCCP or b) pay for 21 acres x \$10,000/ac. (the alternative determination rate) to one of the BCCP Permit Holders for the express purpose to fund Preserve acquisition. The applicant may choose “Option b” as a cost saving measure.

The issue is that preserve acquisition cannot be accomplished acre-for-acre with this amount of money. BCCP Permit Holders have expressed this concern to USFWS and have been assured that USFWS does not expect acquisition to be 1:1 for these particular transactions. Regardless, these transactions increase habitat/acreage loss within the BCP Acquisition Area and the Permit Holders must find alternative leveraged funding to buy the required mitigation land with the funds received.

### Appraisals

Appraisers have been known to use the alternative determination rate to assess land value per acre within the BCP Acquisition Area. The BCP Acquisition Area is not within the BCCP Permit Area; therefore, landowners cannot mitigate under the BCCP permit. In these instances, a landowner must coordinate with USFWS to meet mitigation needs and this may include an individual ESA Section 10(a)(1)(B) permit, a process that takes 2 to 5 years and may require complex mitigation measures (e.g. cash payment, land in-lieu-of-fee, management or stewardship commitments). Therefore, if an appraiser has uncertainty about what a landowner would need to do to be able to develop that tract; the appraiser may use the BCCP fee structure (\$10,000/acre) to help determine what the landowner would need to pay for mitigation. Use of this value in this way impacts the final price per acre as valued in the appraisal and, if the landowner offers to sell the tract to BCP, the appraised value of the land turns out to be very low (based on this above assumption) and the landowner often becomes unwilling to sell the tract for such a low cost.