



MEMORANDUM

TO: Leslie Poole, BCCP Coordinating Committee Member
Gerald Daugherty, BCCP Coordinating Committee Member
Adam Zerrenner, BCCP Coordinating Committee Member (Ex Officio)

FROM: William A. Conrad, CPRM, Coordinating Committee Secretary

DATE: **May 27, 2015**

SUBJECT: BCCP Compliance and SH45

Member Poole has asked me to prepare a report for the Coordinating Committee describing how current plans to build State Highway 45 Southwest (SH45 SW) might affect BCCP Compliance. This is an issue of concern for the Coordinating Committee because SH45 SW is planned to be built in very close proximity to Flint Ridge cave. Flint Ridge cave is listed as a protected cave in permit TE 74441-02 issued to Travis County and the City of Austin under authority granted to U. S. Fish and Wildlife Service under the federal Endangered Species Act (the "Permit").

Background

Flint Ridge cave is required to be protected under the Permit due to the karst species of concern found in the cave. Specifically, the species found in Flint Ridge cave are *Rhadine austintica* and *Cicurina bandida*. While there are no endangered or threatened species found in Flint Ridge cave, its protection is necessary under the Permit to receive the "no surprises" guarantee for the two above listed species. The "no surprises" guarantee provides that in the event that an unlisted species addressed in the Permit is subsequently listed, no additional land restrictions or financial compensation beyond that required in the Permit will be required from Travis County or the City of Austin, except under extraordinary circumstances, as long as the Permit conditions for those species have been met.

BCCP Participation Certificates may be used for development in Travis County but only outside of the proposed preserves. The listed caves, including Flint Ridge, are within the proposed preserves to the limit of the surface and subsurface drainage basin. The Permit provides how the boundaries of the proposed preserve area for a listed cave will be presumed if detailed hydrogeologic delineation is not available.

On March 5, 2015 Texas Department of Transportation (TxDOT) released its record of decision regarding SH45 SW based upon its Final Environmental Impact Statement (FEIS) for the SH45 SW project. The FEIS provides detailed information about the planning, alignment, and expected

impacts from the proposed SH45 SW. The FEIS describes how the SH45 SW right of way and alignment will encroach into the “drainage basin” and over the footprint of Flint Ridge cave.

The FEIS asserts that the environmental integrity of Flint Ridge cave is likely to be maintained, citing a report prepared by SWCA Inc. and Cambrian Environmental, and the avoidance and mitigation measures proposed for SH45 SW.

Potential Effects to BCCP

The SWCA/Cambrian report and Executive Summary section (ES. 5) of the FEIS document that SH45 SW as planned and evaluated will indeed encroach into the surface and subsurface basin for Flint Ridge cave. Numerous reviewers of TxDOT’s draft Environmental Impact Statement and the FEIS have commented and maintained that the conclusions in the FEIS that the environmental integrity of Flint Ridge cave will be maintained are not supported by data and/or published research. Attachment A to this memo is a letter from the U.S. Fish and Wildlife Service dated August 12, 2014 reviewing the FEIS and expressing doubt about the data and conclusions regarding, among other things, Flint Ridge cave. It is, therefore a matter of great concern that construction of SH45 SW as planned and evaluated, with the avoidance and mitigation measures proposed in the FEIS, may well not meet the minimum standards established in the Permit. If this is the case, then Travis County and the City of Austin would not be able to protect Flint Ridge cave in the manner required by the Permit.

Conclusion

If SH45 SW is built as planned and evaluated, BCCP will likely be challenged to fully comply with the Permit within the Permit time frame. Though a determination of non-compliance may not happen before May 3, 2026—the date by which all Permit conditions must all be met—there are actions that may be needed well before that date. Attachment B to this memo is a letter from the U.S. Fish and Wildlife Service dated April 15, 2015 addressing the potential impact of SH45 SW to BCCP and suggesting potential courses of action Travis County and the City of Austin as co-permit holders may want to take. The letter suggests that a replacement cave might be substituted-- requiring a minor amendment to the Permit, or the species of concern within Flint Ridge might be removed-- requiring a major amendment to the Permit.

William A. Conrad