



Record of Decisions

**Balcones Canyonlands Conservation Plan
Coordinating Committee
September 18, 2013 10:00 AM to 12:00 Noon
Travis County Commissioners Courtroom
700 Lavaca Street
Austin, Texas 78701**

1. **Citizen Communications:** Most speakers indicated that they wished to speak on item 3. Their comments are included with that item.

Mr. Alan Roddy addressed the committee about his ongoing efforts to dedicate BCP and the Colorado River Cliffs as a National Natural Heritage Landmark. He encouraged members to consider applying for this. He advised members of a 145 acre tract that is for sale. The tract is near the Pennybaker Bridge on Loop 360 with an iconic view of the bridge. He encouraged members to acquire this tract for BCP.

2. **Approve Record of Decisions for the May 15, 2013 regular meeting:** Approved on a motion from Member Daugherty, Second by Chair Leffingwell, Carried 2/0
3. **Report from Scientific Advisory Committee by David Steed** - Sherri Kuhl gave a report on behalf of Chair Steed who arrived later in the meeting. She noted that there was not a quorum and that no action was taken. The committee did discuss concerns raised by staff regarding several issues including the proposed LISD road, SH45, and listing of Jollyville Plateau Salamander. Since there was no quorum and the meeting was not called to order there was no action or recommendations from this committee.

Member Daugherty raised his concern that the advisory committees are not perceived as fair and objective. He is concerned that the committees include members who are only supporters of BCP and not necessarily reflecting other viewpoints. He asked what are the responsibilities of the committees and how members are selected. He said he wished to become more involved in the committee process because he considers the current deck stacked.

Secretary Conrad gave a brief verbal review of the guidelines for advisory committee membership. He advised members that nominations of consensus members of each committee are generally vetted through and advisory Committee Task Group chaired by the Secretary. Membership in the task group includes one representative from each managing partner and the chair or designee from each advisory committee. Recommendations from this group are submitted to the Coordinating Committee for their consideration and action.

The SAC membership represents seven consensus appointees made by the Coordinating Committee. Each member is appointed to represent specific areas of discipline to include golden cheeeked warbler biology, black capped warbler biology, karst biology, karst geology/hydrology, general ecology, general conservation biology, and research methods.

The CAC includes eleven Members. Three members are appointed by Travis County Commissioners Court. One member is appointed by LCRA's board. Three members are appointed to represent the City. They are appointed as delegates from the City's Environmental Board, Parks and Recreation Board, and Water and Wastewater Commission. The other four members are consensus appointees from the Coordinating Committee. They are selected to represent neighborhoods, recreation, environmental interests, and development interests.

Chair Leffingwell supported the interest to assure that the advisory committees are diverse and represents perspectives of all of the communities involved. He agreed this may require a special effort. He asked to include a discussion with possible action for this issue on the next regular Coordinating Committee Meeting.

- 4. Report from Citizens Advisory Committee by Peter Torgrimson:** Chair Peter Torgrimson gave a report to this committee. He advised members that his committee considered several items on their October 10, 2013 agenda. However, the item he wished to report on was the recommendation from the CAC regarding item 5 on this agenda; considering an appeal of the Secretary's denial of construction approval for a road that LISD wished to build within a BCP infrastructure corridor. He advised members that the CAC held a robust discussion with full participation from CAC members and the general public. The Citizens Advisory Committee recommends denial of the appeal and upholding the secretary's original decision. His committees believes it is unclear whether a full suite of options was considered; or whether this road is the only option considered and assumed to be the best option. There was no information provided that demonstrated the feasibility of the project including whether the cost was reasonable and feasible. The CAC Recommended denying the appeal.
- 5. Receive an appeal from Leander Independent School District (LISD) of the Coordinating Committee Secretary's denial of construction approval in building an access road from Vandegrift High School to Hwy 620 within an existing BCP primary electric corridor;**

Alan Glen spoke representing Leander Independent School District. He advised members that his client is appealing the decision from the BCCP Secretary, William Conrad, denying them construction approval to build an access road from McNeil Road through an existing BCCP Approved Infrastructure Corridor. He advised members that members of the school board, members of the Four Points Traffic Committee, students, and citizens would address the committee concerning this appeal. He also advised members that they would be receiving letters of support from Congressman McCall and Congressman Carter.

Pam Wagoner from the Leander Independent School District School Board (LISD) addressed the committee. She explained that the two schools were built in their current location to address unprecedented growth in this school district. The school is located in this area because of the student population that resides nearby and

because this was what the district concluded that the current site was the only available site at the time that met all of their needs for this educational development. She noted that the district was in this position because they had not been consulted before any of the development that grew their student population was permitted. She advised members that the request to build an access road through a BCCP Infrastructure Corridor was not a matter of convenience but a matter of safety. She asked members to base their decisions on facts, not emotions.

Alan Glen then addressed committee members representing LISD. He asked members to approve construction of the requested road in the Existing Bull Creek Primary B Infrastructure Corridor with the condition that staff work with proponents to do this in a manner that maintains BCCP integrity. He advised members that species impacts should only be modest and final plans would include specific measures, including no excavation, to minimize effects on habitat and species. He also expressed frustration that the Citizens Advisory Committee had spoken a great deal about alternatives but staff never discussed any alternatives.

Mr. Glen then introduced Amanda Aurora, a biologist and manager for SWCA consultants who is LISD's Endangered Species consultant for this project. She introduced herself and noted that she started her career as a biologist for the County's BCP program. Ms. Aurora advised members that within the preserve the project would include a fifty-foot wide road with ditches and shoulders, temporary construction work space, and storm water facilities. Her evaluations suggest that there would potentially be 8.2 acres of direct take and 51.1 acres of indirect take in golden-cheeked warbler habitat. She also noted that there are already considerable indirect effects on these areas from adjacent developments. She also views staff concerns about fragmentation of 88 acres on the Ribelin mitigation tract south of the infrastructure corridor as not supportable.

Ms. Aurora also advised members that there was no black-capped vireo habitat and therefore no take in the project area. William Conrad pointed out that there were several acres of black-capped vireo habitat enhanced in this corridor by LCRA and Austin Energy maintenance crews. This habitat supported at least two nesting pairs in 2013 and vireo presence was observed in 2012. This information was included in previous presentations to the coordinating committee. Information about habitat enhancement and vireo sightings was included in 2011 and 2012 BCCP annual reports.

Alan Glen then took the floor again. He observed that the intent for the infrastructure process was to facilitate mitigation and minimization from infrastructure impacts on the preserve, not about receiving yes or no for projects. He advised members that he believes the plan is flexible enough to allow this road in this corridor. He is concerned that since 1996 administration of the infrastructure management plan has morphed into a regulatory function that it was not intended to be.

Chair Leffingwell asked Mr. Glen what mitigation his clients were offering for this project. Mr. Glen responded that his clients were prepared to negotiate mitigation. The Chair asked whether they were proposing mutual agreement on mitigation and Mr. Glen responded yes.

The Chair asked whether there were other road conversions that had occurred in BCCP infrastructure corridors. Mr. Conrad responded no, this would be the first one. Mr. Conrad also described his interpretation of the Infrastructure Management plan and his basis for denying construction approval. He advised members that while

there are provisions for several types of corridors there are also several categories of definitions that restrict how they can be used. He noted that Roadway Corridors as defined in the document are the only use that can include other types of infrastructure and the only corridor that can be expanded beyond their current extent. He also advised members that Electric Corridors do not provide for other uses or expansion. He also pointed out that the corridor in question is actually defined primarily as preexisting facilities, facilities that existed prior to BCCP, that are not mitigated because habitat loss occurred for their construction prior to listing of species protected by BCCP.

Mr. Conrad, advised members that he had met with transportation staff from the City and County regarding this road and its ability to resolve concerns of the community. He asked Mr. Peter Marsh, Supervising Transportation Engineer with the City of Austin, to provide his advice to members. Mr. Marsh observed that concerns about safety and access seemed to center on transportation concerns. He advised members that he cannot address whether the proposed road would address the school district's safety concerns. He recommends that the district commission an objective and competent study that models all alternatives and factors related to their issue. It should consider both routine and special event access and traffic. It should also model current and future capacity. Member Daugherty asked how long would such a study take and how much would it cost. Mr. Marsh estimated it would take six months and cost \$100,000.

Member Daugherty asked how long it would take LISD to obtain a 10 a.1(a) permit and how much would that cost. Mr. Glen responded perhaps two years and \$1 million. Conrad noted this would also represent the effort to amend the BCCP permit. Mr. Glen explained that he hoped that this issue could be overcome by the Coordinating Committee interpreting the infrastructure guidelines as his clients have asked. Otherwise they would seek to resolve this issue in court.

Chair Leffingwell asked if the committee reversed the secretary's decision whether U.S. Fish and Wildlife Service (Service) would review this action. Member Adam Zerrenner, Field Supervisor for the Service said that the Service would review this action. He also noted that the Service has the utmost concern for the safety of school children and that is evidenced by the fact that members of their regional office staff had traveled to this meeting to help support consideration of this issue today. However, regional staff and local Ecological Services Field Office staffs have reviewed the denial documents from Mr. Conrad and they do not find issues with his decision. However, he has also sought an opinion from the Services solicitor in their regional office, but has not received that opinion yet.

Chair Leffingwell asked if there was a danger that BCCP could lose its permit if they allowed an action that was not supported by the plan. Mr. Zerrenner responded that if the Service felt that BCCP had exceeded their authorizations that the Service would have that concern. Mr. Glen offered that the district never recommended hurting the permit. If the Service did not support use of this corridor for this road his clients would either litigate or obtain their own permit from the Service. Mr. Zerrenner responded by observing that BCCP is the first regional multi species Habitat Conservation Plan in the Country. It is successful. It is held up as a model around the country. Even the Service's director hails BCCP as a success and a model. He advised members that to litigate over this decision is counter to the spirit of BCCP and the community effort that led to its authorization and success.

Chair Leffingwell then began calling members of the public who signed in to speak on this item:

Jean Wong – She addressed members stating that she loves children and holds a law degree. She advised members that she finds the BCCP process insulting because it makes children expendable. It seems to her that kids are not species worthy of protection. She advised members that proponents of this road have done their due diligence and believes that the Infrastructure Management Plan does allow this use in the proposed corridor. She believes that the Committee is not prepared for civil intellectual discussion of their concerns. As elected officials what will be your legacy? Will you protect these children?

Elisa Harrison – as someone who cares for kids and runs a business she observed that this is an example of unintended consequences from BCCP. BCCP is a quasi-governmental entity with blatant disregard for the community. The committee seems to protect the preserve from any development at all cost. She pointed out the the existing corridor in question allows for roadway and is mitigated at a five to one ratio. LISD built their school where it is because it was the only available suitable site and they understood that this road was allowed. The site is surrounded by BCP. The Coordinating Committee needs to represent its constituents.

Bryan Thompson – spoke stating that children’s safety is most important. He believes this road can be built in a manner that satisfies the BCCP infrastructure corridor conditions and that Appendix B allows a road in this corridor. The proposed road is the only solution to safety concerns at the schools’ site. Current actions do not address the intent of the Infrastructure Management Plan. He advised members that finger pointing about the school site will not address children’s safety.

Tiffany Speaks - addressed members. She asked members to keep a narrow focus on issues related to the proposed road. She believes BCCP allows for this road and; she and her peers say yes it should be built. The school is a legitimate user of this corridor. She is frustrated because she believes that her community is not represented in the bigger picture. Imagine Austin did not involve and does not seem to represent western Austin. Please remember that you represent Four Points and residents there expect you to do what’s right.

Michelle Beck – advised members that she is frustrated with the BCCP process. She accused staff and committees of being arrogant. This is a public project involving public entities. We were asked to find a solution, but the interpretation of the BCCP requirements is inaccurate. Our attorney assures us that this road can be built in this corridor. You should seek an opinion from the City Attorney.

Brian Pitman spoke to the committee thanking them and the Service for their work. He advised members that there was no other option for a place to build these schools. This is not new news. They have been working with TxDOT for three years trying to find another solution and they have not found one. He believes that the secretary’s interpretation of BCCP requirements is wrong. He has long experience in the title business and believes he is skilled at interpreting such documents.

Amanda Cavanaugh – is a Vandergrift Student. She advised members that she is terrified by the drive to school. Traffic is so congested that it poses a safety risk. She has been involved in two accidents when commuting to or from school. She asked members to give students a new safer road.

Bill Bunch – addressed the committee representing Save Our Springs Alliance. He advised members that he has been associated with BCCP from its very beginning. He served on the original Executive Committee. He supported Mr. Conrad's actions stating they were consistent with the plan. He advised members that based upon his experience with development of BCCP that U.S. Fish and Wildlife Service would never have approved the BCCP had it included plans for a road through this corridor. In the existing corridor the current impact from electric transmission lines is minimal compared to the potential impact from a road. Bull Creek Macrosite is the mother lode of prime habitat for BCP. To build a road through there is at conflict with those values. He noted that LISD said they studied traffic when they built their schools. He believes those studies were wrong and he agreed that another traffic study is needed.

Carol Torgrimson – addressed the committee as the chair for the CONA Transportation Committee. In that role she has been working with TxDOT in the area in question for eight years. She asserted that the safety issue is really a matter of traffic and congestion. She observed that this location has always been a problem and to place a school there was a flawed decision. There are too many unanswered questions about this proposal and those questions need to be answered before any action to approve this proposal is taken. Please remember that BCCP is already a compromise between conservation and economic development.

Chair Leffingwell then addressed the committee and the audience. He stated that the school should not be where it is, but since it is where it is something needs to be done to address safety concerns. He was not ready to make a decision at this meeting. He asked the County Attorney and the City Attorney to hash through the issues involving the appeal and advise the committee. He postponed any decision on this appeal until the next regular meeting on November 13, 2013. He asked the Secretary to obtain legal opinions from the City Attorney and County Attorney on the merits of the appeal, to obtain information documenting LISD's alternatives analysis for the members to review, and for all parties to interact to find a mutually acceptable solution.

Member Daugherty addressed the Committee and the audience. He said he had come prepared to make a motion today but will not now. At the next meeting he will move to find a way to have this road built. The safety of students and the public is a larger need than BCP and he will find a way to make this work. If the only way is to build a road through habitat he will make it work. "Heaven help us all if this requires a major amendment." Traffic in this area has been studied to death. The Committee is facing a lot of road issues related to BCP. He said he does not need to study these issues more.. The mayor needs to understand that he is on the roads' side. The service needs to understand that he will use every measure to do this right. He wont cut corners.

Chair Leffingwell commented that this matter would be over and done if it were not for the school. He will work to meet the needs of the school and keep BCP whole. He believes that the Endangered Species Act has become a hammer used for other purposes and this is leading to challenges to end the Act because of these abuses. He postponed further action on this item and adjourned the meeting at 11:58 AM without considering remaining items on the agenda.

- 6. Update from U.S. Fish and Wildlife Service regarding the listings of Austin Blind Salamander and Jollyville Plateau Salamanders, with discussion regarding implication for BCCP. Take action as needed – No action**
- 7. Receive reports from BCP partners on wildfire planning and actions; take action as appropriate – No action**
- 8. Receive reports from BCP staff regarding land management, BCP Participation, Infrastructure Management, and BCCP compliance – No action**