



MEMORANDUM

TO: Balcones Canyonlands Coordinating Committee Members
Marc Ott, City Manager

FROM: William A. Conrad
Balcones Canyonlands Coordinating Committee Secretary

DATE: March 13, 2015

SUBJECT: Response to Letter from Leander Independent School District

Counsel for the Leander Independent School District (LISD) recently sent a letter to me, copying the Balcones Canyonlands Coordinating Committee members, City Council Member Don Zimmerman, as well as several State and U.S. elected officials. The letter responds to comments provided to LISD and the Coordinating Committee members regarding LISD's draft habitat conservation plan. As you know, LISD's draft plan addresses a roadway LISD wishes to build over Balcones Canyonlands Preserve (BCP) land to serve Vandegrift High School.

The letter accompanying the comments to LISD and the Coordinating Committee was signed by me in my role as Coordinating Committee Secretary; the attached comments were jointly compiled by me, City Watershed Protection Department staff, and Travis County BCP staff. As Coordinating Committee Secretary, my primary concern must be the integrity of the BCCP, but as stated in the cover letter, the comments were provided in the hope that a way to achieve LISD safety goals without harming the BCCP could be found.

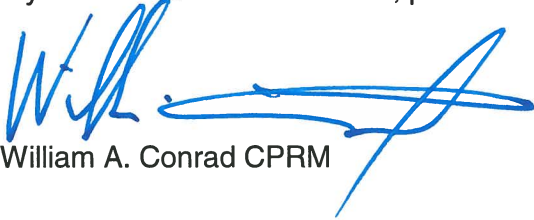
Attached please find copies of my cover letter as well as a letter from the Service regarding the LISD application.

The comments provided were highly technical, but fall into three main categories: (1) concern for the impact of the proposed road on the BCCP—both the species protected and the integrity of the permit; (2) concerns regarding the accuracy of biological and storm water information; and (3) concern regarding the processes to be followed if LISD chooses to pursue a habitat conservation plan. Clearly, there is a difference of opinion on these issues.

There is no reason to pit the Vandegrift High School students and faculty against preservation of federally protected species and maintenance of a federal permit. The

City, Travis County, and the Coordinating Committee continue to stand ready to work with LISD and the Service to find a solution that can provide a higher level of safety for travelers to and from the high school while ensuring that the BCCP remains intact and can continue to serve both to protect the endangered species listed in the BCCP permit and to provide a mechanism for economic development in western Travis County.

If you need further information, please do not hesitate to call on me.

A handwritten signature in blue ink, appearing to read 'Will Conrad', with a long horizontal flourish extending to the right.

William A. Conrad CPRM

CC: Jon White, Travis CO BCP
Melinda Malia, Travis County BCP
Robert Goode, Assistant City Manager
Daryl Slusher, Assistant Director, Austin Water Utility
Sherri Kuhl, City of Austin BCP
Chris Herrington, City of Austin Watershed Protection
Mitzi Cotton, Senior Attorney, City of Austin



WILLIAM CONRAD, SECRETARY
BCCP COORDINATING COMMITTEE
625 EAST 10TH STREET
Austin, Texas 78701
(512) 972-1661

January 29, 2015

Mr. Alan Glen
Sedgwick Law
919 Congress Ave., Ste. 1250
Austin, TX 78701

Mr. Jimmy Dissler, Executive Director of Capital Improvements
Leander Independent School District
P.O. Box 218
Leander, Texas 78646-0218

RE: Leander Independent School District Draft Habitat Conservation Plan Application
and Draft Environmental Impact Statement

Dear MSSRs Glen and Dissler:

I am writing this letter to provide comments regarding the recently filed Leander Independent School District draft Habitat Conservation Plans Application. Because the draft application has the potential to affect the Balcones Canyonlands Conservation Plan (BCCP) and the Balcones Canyonlands Preserve (BCP) I requested the draft application from the U.S. Fish and Wildlife Service under the Freedom of Information Act. The attached document includes not only my comments, but also those of staff with the City of Austin Watershed Protection Department and Travis County BCP. The comments are provided with the intent of assisting LISD with its effort to address access and safety concerns for its campuses while avoiding damage to BCCP.

An overriding concern is that the draft application appears to request a separate federal permit wherein LISD participates in BCCP by paying minimal participation certificate fees for incidental take within the designated preserve.

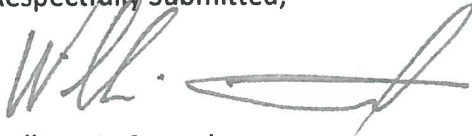
LISD is not an infrastructure service provider as defined by Appendix B of BCCP, thus cannot use the corridors or participate in BCCP as a provider. If LISD wishes to pursue participation in BCCP, becoming a BCCP managing partner would be an appropriate route and something LISD should consider. To become a managing partner, LISD would: (1) acquire land in the permit area for their project, (2) withdraw that land from BCCP, and (3) acquire, dedicate, and manage other land in the macrosite as provided for in a managing partner agreement.

BCCP participation fees provide for use of BCCP mitigation to mitigate activities *outside* the preserve. Uses of BCCP Participation fees are not authorized for mitigation of take *inside* the preserve.

The draft application, if implemented as proposed, would result in increased levels of take above that authorized by the BCCP federal permit and consequently, reduced levels of mitigation provided by BCCP. Approval and implementation of this plan would require BCCP to amend its federal permit and HCP. The amendment process is timely and expensive, and the prospect of amendment for the LISD permit has not been discussed and certainly not approved by the BCCP partners.

My greatest concern is this application in its current draft form could cause irreparable harm to the Balcones Canyonlands Conservation Plan. I feel certain that is not the intent of LISD and I am hopeful that a way to achieve the LISD safety goals without harming the BCCP can be found.

Respectfully Submitted,



William A. Conrad
BCCP Coordinating Committee Secretary

Attachment: Conrad, William A, Draft Document Review Comments: Habitat Conservation Plan and Environmental Assessment For an Access Road to the Leander Independent School District Vandegrift and Four Point Campus, January 16, 2015

CC: Mayor Steve Adler
Precinct 3 Commissioner Gerald Daugherty, Member, BCCP Coordinating Committee
Adam Zerrenner, Member (Ex Officio), BCCP Coordinating Committee
Jon White, Travis County BCP
Robert Goode, Assistant City manager
Daryl Slusher, Assistant Director, Austin Water Utility
Sherri Kuhl, City of Austin BCP
Chris Herrington, Managing Engineer, Watershed Protection
Mitzi Cotton, Attorney Senior



United States Department of the Interior

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JAN 07 2015

Jimmy Disler
Executive Director of Capital Improvements
Leander Independent School District
P.O. Box 218
Leander, TX, 78646-0218

Dear Mr. Disler:

The U.S. Fish and Wildlife Service (Service) received your October 16, 2014, transmittal of a draft Habitat Conservation Plan (HCP) *For an Access Road to the Leander Independent School District Vandergrift and Four Points Campus* and a draft Environmental Assessment. The Leander Independent School District (LISD) requests the Service's "consideration of these documents in support of its request for an incidental take permit under Section 10(a)(1)(B) of the Endangered Species Act" (Act). Furthermore, you request that we initiate the process for issuance of an incidental take permit in accordance with Section 10(a)(1)(B) of the Act. We have conducted a preliminary review of the draft HCP and we are providing our general comments below in response to your request. Please know that we are willing to work with you, Travis County, and other landowners to seek a solution if the following challenges can be addressed.

Legal Control of the Project Area

The proposed road is located on land owned by Travis County and other private landowners. In accordance with Section 10(a)(2)(B)(v) of the Act and 50 CFR 17.22(b)(2)(F) and 17.32(b)(2)(F), the Service must be assured that the HCP will be fully implemented and the permittee will fully comply with all ITP conditions. We have been informed that LISD does not own or have legal access to the property on which the proposed road would be built, therefore, your application and HCP do not meet issuance criteria at this time. Any future discussions regarding the LISD proposed road and your request for an ITP from the Service should include the affected landowners.

Existing Mitigation Lands in the Proposed Project Area

Portions of the Plan Area are managed as part of the Balcones Canyonlands Preserve (BCP), which is mitigation to offset the impacts of incidental take of eight federally listed species in Travis County in accordance with the Balcones Canyonlands Conservation Plan (BCCP) and incidental take permit (PRT-788841). The Service issued the ITP jointly to the City of Austin and Travis County in 1996 after years of discussion and public involvement. The BCCP has preserved and manages over 30,000 acres of important habitat for endangered species in Travis County to offset negative impacts on federally listed endangered species including the golden-cheeked warbler, black-capped vireo, and six karst invertebrates. The mitigation preserves, including the tracts that would be affected by the proposed road, are a critical component of the

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BCCP and a requirement under the ITP. They are also important for the conservation and recovery of other local endangered species.

In addition to the BCCP, the Four Points HCP (PRT-808694), Ribelin HCP (TE-040090), and 3M Corporation Section 7 consultation (2-12-90-F-288), each provided dedicated mitigation land for golden-cheeked warblers or listed karst invertebrates likely to be affected by the incidental take resulting from these respective projects. The mitigation tracts for each of these permits are within the alignment of the proposed roadway, and may be affected. The draft HCP does not analyze the effects to the listed species of the proposed project's impacts to these mitigation lands as required by Section 10(a)(2)(A)(i) of the Act and 50 CFR 17.22(b)(1)(iii)(A).

The LISD must describe the effects of its project on the conservation associated with these previously issued ITPs. The protection of these mitigation properties in perpetuity is required under the respective ITPs and section 7 incidental take authorizations. The LISD must fully mitigate the effects of the take of any listed species that are likely to result from the proposed project. The mitigation for the impacts of LISD's actions should meet, to the maximum extent practicable, the criteria for mitigation lands under the Service's most current mitigation guidance and guidelines and the requirements described in each of the affected individual ITPs or incidental take authorizations.

Minimization and Mitigation by the Payment of Funds to the BCCP

Section 10(a)(2)(A) of the Act requires the applicant to provide a conservation plan that specifies the impact that will likely result from the taking, and the steps the applicant will take to minimize and mitigate such impacts. In the draft HCP, LISD proposes to mitigate for the black-capped vireo (BCVI) and the golden-cheeked warbler (GCWA) through payments made to the BCCP. In the case of the BCVI, those payments would be made only if a survey conducted during the breeding season prior to construction finds that individuals are present.

We have several concerns with the mitigation proposal to provide funding to the BCCP as described in your HCP. First, please clarify how funds mitigate for the impacts of the requested covered activities. Your proposal should include how LISD calculated the sum it proposes to pay to the BCCP for each covered species, specifically how the funds are to be used, and indicate that the BCCP is willing to accept the funds and use them for specific activities. Second, the HCP should describe the services the BCCP agrees to provide for the mitigation funds you provide. Finally, if LISD is seeking to include the BCVI as a covered species, then mitigation must be included in the conservation plan.

Minimization and Mitigation of Jollyville Plateau Salamander

The proposed project is in the headwaters of a watershed occupied by the threatened Jollyville Plateau salamander (JPS). The JPS is entirely aquatic and completes all life stages in the water. Water pollution is one of the biggest obstacles to recovering the JPS. The proposed project includes a bridge just upstream of a known JPS location. The bridge construction will require drilling and fill material that extends 50-feet below the surface through the karst limestone substrate. In addition, despite best management practices outlined in the draft HCP and supporting documents, the proposed project will have temporary water quality impacts during construction and long-term impacts to the watershed after construction that may degrade JPS habitat as a result of increased impervious cover and associated contaminant loading in stormwater runoff. The LISD proposes to use standard road runoff containment methods that would, when working optimally, remove up to 87% of total suspended solids (a measure of the

concentration of a subset of pollutants) from road runoff, but not all contaminants in roadway runoff are associated with total suspended solids. By design, at least 13% of total sediment-based pollutants will exceed the capacity of the proposed water pollution abatement measures and discharge into the Brushy Creek tributary. Furthermore, large storm events are likely to overwhelm the capacity of detention ponds, allowing them to discharge into the Brushy Creek tributary. Collectively, the increased water pollution in the tributary to Brushy Creek will increase JPS exposure to water pollution and may result in take that must be mitigated to the maximum extent practicable.

The LISD proposes to mitigate for the take of JPS through a payment of funds to the BCCP to help fund the management and monitoring of the species within the BCCP preserve system. The BCCP and its ITP do not provide incidental take coverage for the JPS, even when JPS occurs on BCP lands. As stated above, the LISD should indicate how it calculated its proposed mitigation sum, specifically how the funds are to be used, how these activities will minimize and mitigate for the taking of JPS, and that the BCCP has agreed to receive and use the funds in a manner to be prescribed in the HCP.

Minimization and Mitigation of Endangered Karst Invertebrates

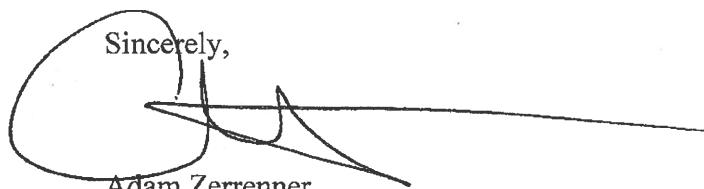
The LISD is not proposing to cover the incidental take of endangered karst invertebrates. The proposed road is located in karst zone 1, which means that the area is known to contain federally listed karst invertebrate species. It is likely that endangered karst invertebrates are present and would be impacted by the proposed road. Due to the difficulty of finding endangered karst invertebrates prior to disturbance, we encourage LISD to consider covering *Neoleptoneta myopica*, *Tartarocreagris texana*, *Texella reyesi*, *Rhadine persephone*, *Cicurina wartoni*, and *Texamaurops reddelli*, and provide minimization and mitigation for the likely taking of these listed karst invertebrates. We make this recommendation for construction projects that occur in karst zones 1 or 2 because incidental take is likely to occur, and due to the financial cost associated with work delays caused by unexpected, unauthorized take on partly constructed projects.

National Environmental Policy Act Compliance (NEPA)

The NEPA requires that federal agencies evaluate the impacts of their actions on the human environment. It is premature to proceed with the NEPA process until you have identified how legal access to the proposed project area will be obtained and meets issuance criteria.

We recognize the sensitivity of this project and look forward to working with you and the property owners to seek a solution. If you have any questions about our comments please contact Tanya Sommer or me at 512-490-0057.

Sincerely,



Adam Zerrenner
Field Supervisor

cc: Amanda Aurora, SWCA
William Conrad, BCCP, Secretary, Coordinating Committee
Jon White, Travis County, Transportation and Natural Resources Department