



## **COUNCIL COMMITTEE REPORT**

### **OPEN SPACE, ENVIRONMENT AND SUSTAINABILITY COMMITTEE**

**Date:** June 24, 2015

**Agenda Item #:** 8

**Agenda Item:** Discussion regarding the proposed construction of State Highway 45 Southwest.

**Vote** No vote was taken at the discretion of the Chair.

**Sponsors/Department:** Watershed Protection Department, Austin Water Utility, and the Law Department

#### **Summary of Discussion**

Chuck Lesniak, the City's Environmental Officer, provided a presentation discussing the history of the proposal of SH45 SW and the current contention surrounding the final environmental impact statement (EIS) and Record of Decision. The tolled, four-lane parkway would be built and operated by the Central Texas Mobility Authority (CTRMA) with funding from the CTRMA, Hays County, and Travis County.

- *Environmental Setting*

The road is almost entirely over the Edwards Aquifer Recharge Zone and is adjacent to twelve tracts of Austin Water Quality Protection Lands. Any contaminants that would hit the ground in this area would flow into the recharge zone very quickly. The area hosts rare karst species in several of the area caves, especially Flint Ridge Cave, and a Golden-cheeked Warbler habitat near the right-of-way. The Flint Ridge Cave is protected by the Balcones Canyonlands Conservation Program (BCCP) permit and is the largest recharge feature of the BCCP's protected caves. The BCCP permit prohibits disturbance within the surface and subsurface drainage basin, which is currently undergoing a dye study by the City to better define the subsurface basin.

- *EIS and Record of Decision*

The project has been reviewed by TxDOT under state regulations, along with a multi-agency technical working group consisting of the City of Austin, Travis County, TX Parks & Wildlife, U.S. Fish & Wildlife, and the Barton Springs/Edwards Aquifer Conservation District. TxDOT published the draft EIS in June of 2014 and the City provided comments in August of 2014. Similarly, TxDOT published the EIS supplement online in November of 2014 and the City provided comments in December of 2014. The final EIS was issued in January of 2015 and

included responses to most of the public comments but did not include responses to comments made on the EIS supplement. Additionally, the Record of Decision, which is the final environmental approval for the road, was issued by TxDOT March of 2015 with a finding of no significant impact. Upon review of the EIS, the concerns of City staff included a lack of the critical scientific analyses available in the draft EIS or for public comment; the need for water quality treatment to meet community standards; unsupported conclusions on potential environmental impacts; inconsistent warbler analysis with U.S. Fish & Wildlife protocols; failure to incorporate Flint Ridge Cave dye study information; and a lack of consideration if the potential impact to the BCCP permit, even though TxDOT and CTRMA are not subject to the requirements of the BCCP permit. In April of 2015, the U.S. Fish & Wildlife submitted a letter to Mayor Adler and Council Member Pool regarding the concerns about the warblers, blind salamanders, and cave invertebrates, while also expressing concerns about the potential impacts to the BCCP permit with suggestions to find a substitute cave or amend the permit.

- *BCCP Permit*

CM Zimmerman asked for clarification on the entities subject to the BCCP requirements. As Zimmerman understood it, per the U.S. government, everyone is subject to the requirements. Mitzi Cotton, the City's Senior Attorney, explained that CTRMA and TxDOT are subject to the Endangered Species Act, whereas for the BCCP, it is the permit holders that are subject to it along with anyone participating in the permit is subject to, but they're not subject to the requirements other than the Endangered Species Act that are not limited to that permit.

CM Pool commented that the unfortunate result of that is if CTRMA and TxDOT proceed with construction then any negative effects would fall to the permit holders, such as the City and the County, which would mean that the permit holders would be in violation of the federal permit. Furthermore, the permit holders would be the ones penalized for any action that the City is trying to prevent because of the fact that it will put the City in violation of the permit. Cotton replied and stated that it would not necessarily put the permit holders in violation but instead it would put them in jeopardy of violation, and there will be a factual determination made by the service.

- *Flint Ridge Cave*

Mary Gay Maxwell, Chair to the Environmental Board, asked for clarification on the jeopardy of violation of the BCCP permit as it relates to Flint Ridge Cave. Willy Conrad, the City's BCCP Coordinating Secretary, explained that the challenge faced with the construction of SH45 SW is specifically with Flint Ridge Cave. The cave is one of the sixty-two caves listed in the permit that the City is required to protect in order to comply; per the language in the permit the City is required to protect the environmental integrity of the cave including the surface and subsurface drainage basins. The permit does define how we presume the subsurface drainage basin's area should we not have a firm hydrological delineation but the dye tracing is meant to refine that presumed basin because it is not necessarily reasonable at this point. Therefore, what is understood from the EIS and Record of Decision is that the highway will impact a small portion of the surface basin, but the reports did not speak to the subsurface basin. The highway is planned to encroach the entire length of the presumed basin and it would be very likely that the City will not be able to protect Flint Ridge Cave to the level committed in the federal permit.

## **Public Comments**

None

**Direction**

**Recommendation**