

APPENDIX "C"
COMMENTS ON DRAFT EIS/HCP

BALCONES CANYONLANDS CONSERVATION PLAN:
DRAFT ENVIRONMENTAL IMPACT STATEMENT COMMENTS

The following individuals offered comments on the draft EIS or general support or opposition to the Plan:

Mr. Roger Baker
Mr. Frank Belanger
Mr. Steve Beers, Sierra Club: Austin Regional Group
Ms. Ramona Blodgett
Ms. Nan Bracken
Mr. Robert Brandes
Mr. William Bunch, SOS Legal Defense Fund
Mr. Robert Carnes, Capitol Area Builders Association
Mr. Thomas Combs
Ms. Dorothy Combs
Mr. Alan Glen, the Real Estate Council of Austin
Mr. Tod Grubbs
Ms. Cynthia Hestand
Mr. Russ Hyer, National Wildlife Federation
Mr. Burgess Jackson
Ms. Sharon Jenkins
Mr. Tim Jones
Mr. Mel Jordan
Mr. Thomas Kam
Mr. John Kelly, Travis Audubon Society
Ms. Susan Lefler
Ms. Floy Lilley
Ms. Melody Lytle
Mr. Ray Mathews, Texas Organization for Endangered Species
Ms. Amy McElhenney, the Real Estate Council of Austin
Ms. Beth Morian
Mr. Bill Pohl
Ms. Margaret Rector
Mr. Eric Samson
Mr. Phil Savoy
Mr. Robert Singleton
Mr. Craig Smith, Save Barton Creek Association
Ms. Karen Strot
Mr. Bryan Sybert
Ms. Pam Thompson
Mr. Charles Tischler
UT Society for Conservation Biology
Mr. George Veni
Ms. Joanne Yancey, Southwestern Bell Telephone

COMMENTS RELATING TO FUNDING AND COST

COMMENT:

Trying to finance the Plan to a large extent on development fees will result in financial failure and thus failure to complete the preserves. That failure will result in favoritism to early certificate users (i.e., certain developers) and a bad situation for almost everyone else. Certain developers will get their certificates quickly and clear their land. When the Plan unravels, it will be too late to stop them but their competitors will be thwarted by the lack of a viable incidental take permit.

RESPONSE:

The USFWS does not agree that depending on development funds for the acquisition of the last approximately 9,500 acres will result in failure. If developers participate in the BCCP, funds will become available for acquisition of additional lands and as long as this process continues, the goal of the BCCP will be attained.

The BCCP is not expected to fail; however, if the BCCP fails, there would be no favoritism to a developer who may have already met all the requirements of the issued permit. This is because there are no criteria or ranking factors for the purchase of Participation Certificates nor will there be a limited number of certificates issued at any one period. Any person may purchase a certificate and be included in the BCCP.

Additionally, if the BCCP permit were to fail, a developer could obtain an incidental take permit on their own. However, as you indicated, the BCCP would be .."a viable incidental take permit" and when it is in force all parties can participate under its umbrella.

COMMENT:

The Shared Vision of the BCCP indicated that mitigation fees were for acquisition only. It now appears that certificate fees are going to operation and maintenance of the preserves. This is a shift in the economic burden to the private sector.

RESPONSE:

The pro forma in Exhibit A of Appendix A shows a contingency of \$100 of the \$5,500 fee is set aside for possible shortfalls in the small landowner and agricultural categories. Operation and maintenance is an integral component of preserve acquisition. The taxes redirected into the Plan by Travis County will also be used for operation and maintenance.

COMMENT:

The cheap land has already been obtained. The remaining lands will be more expensive.

RESPONSE:

That is correct. However, the \$5,500 per acre fee is not based on the cost of the cheap land.

COMMENT:

Please show the backup material for justifying the cost of the Mitigation or Participation Certificates along with the annual proposed cost to acquire the Certificates over the Plan's projected acquisition period.

RESPONSE:

That information is provided in Exhibit A of Appendix A of the draft and final EIS/HCP.

COMMENT:

The BCCP should not be put into place without first successfully addressing its fatal flaw - financing. The USFWS should undertake an independent financial analysis of the cost of acquiring the remaining lands. This should be done with qualified, independent appraisers.

RESPONSE:

A critical component of incidental take permits is financing. However, all the funds do not have to be present at the time of permit issuance. The HCP can identify methods for collecting funds as a part of its permit. The USFWS is satisfied with the funding projections prepared by the applicants.

One important criterium for issuance of an incidental take permit is that the mitigation occurs prior to "take" of the species. The Plan currently has acquired approximately 21,000 acres and has established a process for acquisition of the remaining approximately 9,000 acres. Incidental take permits that cover large areas, such as the BCCP, and even some smaller permits have HCP's that propose phased mitigation for situations when all mitigation funds are not available at initiation. In these permits, funds are collected from development activities that proceed under the permit. This is the case for the BCCP. The USFWS believes there is adequate mitigation and funding at this time to allow the permit to proceed.

COMMENT:

The financial integrity - acquisition costs, operations and maintenance costs, etc. - of the BCCP has been questioned throughout its formative years. On 10 April, 1995, the full membership of the last of the three committees, that worked on and drafted the BCCP signed a letter that stated, "In spite of our recommendation, we share a concern about the financial viability of the plan." In view of the widespread concerns from these and many other interested parties over the financial viability of the BCCP, what is the justification for USFWS to approve this Plan? If the BCCP falters what is USFWS's position? Proposed solution?

RESPONSE:

The BCCP meets the issuance criteria of an incidental take permit. The fact that all the money is not available prior to permit issuance is not the primary determining factor for issuance.

One significant criteria for issuance of an incidental take permit is that the mitigation is guaranteed prior to "take" of the species. The Plan currently has a significant amount of land acquired for mitigation of incidental take. Large area permits, such as the BCCP, and even some smaller permits have phased mitigation for situations when all mitigation funds are not available up front. In these permits, funds are collected from development activities that proceed under the permit. This is the case for the BCCP and the USFWS believes that there is adequate mitigation at this time to allow the permit to proceed.

If unforeseen events occur, the USFWS and the permittees would review the cause and recommend ways to get the process back on track. The goal would be to accomplish this without suspending or revoking the permit. Developers that purchased Participation Certificates that completely covered their development would be allowed to complete, without any additional requirements, their project under the issued permit.

COMMENT:

There is much skepticism regarding the validity of the estimated acquisition price of the remaining 9,940 acres. Please provide the backup data used to verify the costs of acquiring the remaining preserve acreage. Was the accuracy of this data verified? If so, how?

RESPONSE:

The backup data regarding land acquisition costs and projected costs is included in Exhibit A of Appendix A of the draft and final EIS/HCP. Additionally, prices paid by the City for preserve lands within the South Lake Austin preserve average \$3,897 per acre excluding the RTC purchases. In the Bull Creek preserve, a 292 acre tract was purchased for \$5,400 per acre and one 236 acre tract was purchased for \$12,712 per acre. The price difference is based upon highest and

best use development potential and utilities available to the latter tract. All tracts within the proposed preserves do not have the same development potential and utilities. Therefore, the actual sale price will vary.

The \$5,500 per acre fee for Participation Certificates is reasonable and based on actual comparable sales for property at the time of the calculation. Comparable sales will change with the ever changing real estate market. As the market changes, the land acquisition costs will change and the per acre fee for the Participation Certificates may change accordingly.

The acquisition of land by the City of Austin and Travis County will continue to be based on the current fair market appraised, as determined by an independent fee appraiser, value taking into consideration comparable sales, utilities, access, location, and other factors at the time of the acquisition. The estimated projection of \$5,500 per acre is based on these factors, current economic conditions, comparison of documentation from other property values and is the current cost of Participation Certificates in the BCCP.

COMMENT:

The acquisition timeline is theoretically projected out for possibly twenty years. Please provide the backup data and verification showing the per acre and total acquisition cost projections for this or any other timelines used.

RESPONSE:

These projections can be found in Exhibit A of Appendix A.

COMMENT:

Please provide data showing the acquisition price if all of the remaining acreage could be acquired today. What is today's acquisition price of the yet unacquired preserves? Please provide the backup data used.

RESPONSE:

These projections can be found in Exhibit A of Appendix A.

COMMENT:

How does the 4,023 acre Sweetwater and Uplands tracts figure into the acquisition calculations? Also, is it used in the preserve \$5,500/acre acquisition calculations?

RESPONSE:

The Uplands and Sweetwater tracts reduce the amount of remaining acreage to be acquired for the completion of the preserves. The cost of these tracts was not used in the calculation of the cost of the Participation Certificates.

Fairness and concern for all property owners in Travis County has been a concern of this Plan since the formation of the first committee in 1988. However, the attempts of various groups over the past 7 years has not resulted in a revenue source that would allow the acquisition of the subject lands in a shorter period of time. The Permit applicants and the USFWS are concerned about this issue and intend to continue to investigate additional funding sources.

COMMENT:

The Plan is financially flawed and preserve acquisition is impossible.

RESPONSE:

We believe the Plan and the proposed funding is sound. The funding is not available at the rate all parties prefer. Almost 21,000 acres of the preserve lands are already acquired and we believe that it is possible for the permit holders to acquire the remaining approximately 9,000 acres to complete the preserve system.

COMMENT:

As the BCCP Plan is written, the cost of implementation will fall on a group of individual landowners with results intended to benefit the public at large. This concept has been rejected in a vote on the BCCP by the Travis County voters. The vote against the BCCP also made clear that the residents of this county do not believe they should be made to pay for the cost of such a plan.

RESPONSE:

The cost of implementation of the BCCP will fall on all residents of Travis County. City of Austin voters passed two bond items that were used to acquire significant acres that count towards the approximately 30,500 acres required for the BCCP permit. Additionally, the City and Travis County have indicated that the majority of the operation and maintenance costs will be obtained from other sources. Travis County will be redirecting a portion of taxes from development that occurred as a result of the Plan back into the Plan.

The voters of Travis County voted on a bond package to purchase lands for the BCCP. They did not vote on the concept or goals of the BCCP. The majority of the voters within Travis County reside in Austin and had already passed bond items that totaled approximately \$42 million for purchase of lands. Discussions with voters after the bond election indicated that some individuals voted against the package because they did not want TPWD to manage the preserves, Barton Creek Properties to be able to build, and/or additional taxes. It is far too simple to state the bond election failed because the citizens did not support the BCCP.

The developers assist in paying for the preserves by purchasing Participation Certificates and they will benefit because the BCCP streamlines the process for and reduces the cost of complying with the requirements of the Endangered

Species Act. The citizens of Travis County will benefit from the BCCP by the presence of large areas of open space, reduced air and water pollution, and possible recreation opportunities.

COMMENT:

The funding for the operation and management of the preserve lands is not adequately described in the draft EIS.

RESPONSE:

The funding for operation and maintenance will come from the entity that owns the property or the City of Austin and Travis County. This has been clarified in the final EIS/HCP.

COMMENT:

The current fee for the participation certificates is \$5,500 per acre, several times that amount will likely be needed and the acquisition cost will likely increase over time as a result of inflation and rising land values.

RESPONSE:

Participation Certificates are for compliance with the BCCP permit for activities outside of the preserve boundaries. The current fee for participation certificates was based on the cost of tracts of land purchased by the City of Austin in the preserve areas. The Plan includes discussion that the cost of the participation certificates will be indexed periodically to reflect the cost of preserve acquisition.

COMMENT:

The cost for the small developer will be such that they cannot afford the \$5,500 per acre participation certificate and the cost for the large developer will surely be less if they participate on their own. This will likely result in the Plan not collecting adequate funds to complete the preserves.

RESPONSE:

Participation in the Plan is voluntary and the cost per development cannot be determined until it is specifically evaluated. The benefits of the Plan to all participants is that it shortens the time necessary to comply with the Endangered Species Act; thus, participation reduces the delay between the time a development is proposed and the start of construction. This reduces the cost of lawyers, realtors, interest charges, and consultants, all of which are not required for the participation in the Plan. Additionally, miscellaneous real estate, and operation and maintenance costs are not required for participation in the Plan, whereas they would be part of the cost for the developer to obtain authorization under the Act on their own. Overall, Participation Certificates for the Plan will be less for the developer than obtaining individual authorization under the Act on their own. A

small landowner provision is included in the Plan to reduce the cost for low impact activities.

COMMENT:

The projected cost of the proposed preserve lands is not based on reality, fact or appraisals. A survey of landowners within the proposed preserve resulted in an asking price of \$28,646 per acre as opposed to the \$5,500 per acre proposed by this plan.

RESPONSE:

The City of Austin, as part of the Barton Creek Wilderness Park, acquired several tracts that were less than 100 acres in size and in excess of \$60,000 per acre. However, the average price for this 955.32 acre project was \$18,335 per acre.

The prices paid by the City for preserve lands within the South Lake Austin preserve average \$3,897 per acre, excluding the RTC purchases. In the Bull Creek preserve a 292 acre tract was purchased for \$5,400 per acre and one 236 acre tract was purchased for \$12,712 per acre. The price difference is based upon development rights and utilities available to the later tract.

Any tract that the City of Austin has or will acquire is appraised on its own individual merits, using comparable sales for the subject tract. An appraisal provides the specific details of a property and reflects the maximum that can be legally developed on the subject tract and absorbed into the market.

The acquisition of land by the City is based on the current fair market appraised value, taking into consideration comparable sales, utilities, access, location, and other factors at the time of the acquisition. What the land owner desired for the property, as was indicated in your survey, was not considered. The estimated projection of \$5,500 per acre is based on these factors, in addition to current economic conditions, and comparison of documentation from other property values. Thus it is the current cost of Participation Certificates in the BCCP. This cost estimate is not, nor has it ever represented, the projected per acre cost in twenty years.

MISCELLANEOUS COMMENTS

COMMENT:

How high/low does FWS rate the BCCP's chances of success?

RESPONSE:

The USFWS believes that the BCCP will be a successful incidental take permit with total preserve acquisition resulting within the life of the permit.

COMMENT:

The conditions imposed by the Plan will render my land worthless and unmarketable.

RESPONSE:

This process was developed to assist small and large landowner/developers. The Plan reduces the number of steps to be negotiated and the time involved. The Plan provides a known commodity to a developer, who has consistently requested a known cost or process so they could proceed. Based upon discussions with developers on projects throughout Travis County, this Plan will assist the development process on property outside of the proposed preserves.

COMMENT:

The privatized alternative did not receive a detailed evaluation and a more detailed evaluation would be constructive.

RESPONSE:

The privatized alternative did not receive more detailed discussion because the proponents of that alternative did not provide any more details. The use of conservation easements and other means to lower preserve acquisition and management costs are part of the preferred BCCP alternative.

COMMENT:

The HCP/DEIS contradicts itself in the summary chart and text with reference to surface and groundwater supplies. The chart indicates that significant adverse impacts are likely outside of the preserve areas and subsequent reference to a letter indicates that water quality will be protected by local ordinances. Additionally, the document does not address the impacts of a change in local ordinances and impact of activities outside the authority of local ordinances. Therefore, the NEPA requirements of analyzing environmental impacts is not met.

RESPONSE:

The analysis in the document adequately addresses the environmental impacts of the Plan. The document presented an analysis of the water quality impacts based on local, regional and state requirements. This analysis considered the recent legal actions regarding the SOS ordinance.

The contradictions identified in the draft EIS/HCP have been corrected to identify the impacts that are expected.

COMMENT:

The HCP/DEIS presents more of a conceptual framework for developing an actual HCP and an environmental impact analysis and does not provide sufficient specificity for actually determining what is allowed and what is prohibited.

RESPONSE:

The HCP/DEIS identified the alternatives that were reviewed, the species that would be taken, the preserves that would be established and the funding sources to complete the Plan. That is what is required for an HCP. NEPA requires the evaluation of the impacts of the action, issuance of an incidental take permit, on the areas that would not be allowed to proceed without the proposed action. The final HCP/DEIS has been modified to improve the clarity of the specific actions called for as part of Alternative 2 and 3.

COMMENT:

Does the permit authorize complete disregard for endangered species by persons who live and work in the development that is authorized?

RESPONSE:

The permit covers incidental take associated with grading, clearing, or earth moving activities necessary for residential, commercial, or industrial construction and infrastructure projects as well as the indirect impacts, such as noise, predation, and harassment, that result from the occupancy of these structures. This permit does not authorize individuals to kill or collect the federally-listed species for the purpose of sale or possession. Participants may not clear during the nesting season unless a current season survey indicates no nesting within 300 feet of the proposed clearing.

COMMENT:

Will the Plan be dependent on the Balcones Canyonlands National Wildlife Refuge? What will happen to the Plan if the refuge is not completed.

RESPONSE:

The BCCP and the refuge are separate actions needed to protect federally-listed species in Travis County. They are dependent upon each other to accomplish this

task. If the refuge does not complete the proposed land acquisition, the BCCP permit and Travis County will not be impacted; but, the USFWS will have to initiate some program to aid in the protection of the resources in the Post Oak Ridge area.

COMMENT:

Because most landowners were not involved in the preparation of this plan, they will likely be unwilling to sell their land. The preserves will likely face serious fragmentation due to in-holdings and bisection by roadways and corridors.

RESPONSE:

Whether or not each landowner sat on one or all of the various committees does not mean their concerns were not taken into consideration. The BCCP process has included the landowners or their elected representatives since it began in 1988. Additionally, the process has always been open for comments and recommendations from all residents.

Statements have been made that elected representatives did not actually represent the individual that owned small parcels. The USFWS recognizes those concerns but cannot agree that landowners were left out of the development of the BCCP.

Current information indicates that a number of the landowners want to keep their land as it is and others want to sell. The fact that a landowner does not want to sell does not mean the preserve is or will be fragmented with respect to vegetation structure. Multiple ownership within a preserve block may make management operations more difficult but it does not negate the goal of limited fragmentation.

COMMENT:

Landowners are suspicious of the motivations of Plan proponents. Frequently heard is that USFWS is desperate for a success story to aid re-authorization of the ESA.

RESPONSE:

There may be some landowners suspicious of the motivations of the Plan proponents. However, many landowners have expressed their support for the Plan through a City of Austin bond election, through support expressed at public meetings, and through informal conversations.

Success of the BCCP will not likely have an impact on the re-authorization of the Endangered Species Act. The Act will be re-authorized based on a much broader picture than a single permit in Texas.

The drive for the success of the BCCP comes from the applicants' desire to protect the natural resources of Travis County and the USFWS's mission to conserve the fish and wildlife and their habitats for the continuing benefit of the American people. The BCCP will fully comply with our mission.

COMMENT:

While the BCCP effort is laudable in its goal of providing suitable habitat and relief to the property owner, it has fallen short.

RESPONSE:

The BCCP provides an excellent example of the cooperation between developing entities and concerned citizens to protect the natural resources of the area while allowing development to continue.

COMMENT:

"It is our opinion that the cost of program implementation is a vital element of the BCCP Plan and EIS. Under Section 4(b)(2), Fish & Wildlife is charged with making economic impact assessments:

- (2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat...

To restate the point, under the proposed BCCP, the cost of compliance is in many instances greater than or equal to the cost of the land. It poses a burden that, under the U.S. Constitution, would be considered to be a take, and as such should be excluded by the Secretary under Section 4(b)(2)."

RESPONSE:

There is no relationship between the designation of critical habitat, as discussed in section 4(b)(2) of the ESA, and the preserves that are identified in the BCCP. However, the proposed preserves of the BCCP are the best habitat in Travis County and in the range of the golden-cheeked warbler.

Your statement that the cost of the mitigation exceeds the cost of the land and therefore "would be considered a take," has not been the case in the section 10(a)(1)(B) permits previously issued in Travis County, Texas. The Service has worked with a number of applicants and come to agreement as to mitigation

required for issuance of a permit. The BCCP is a process that will eliminate several costs associated with obtaining an individual section 10(a)(1)(B) permit.

COMMENT:

The plan appears to only benefit the developers, the City of Austin, and Travis County.

RESPONSE:

The BCCP benefits all the citizens of Travis County and the country by finding common ground to allow development to proceed while considering and protecting the natural resources of the area.

COMMENT:

Federal money is being used now to destroy habitat.

RESPONSE:

Federal money is being used to protect the federally-listed species in accordance with the requirements of the Endangered Species Act and the species' recovery plans.

COMMENT:

The Plan is based on politics and development, not biology.

RESPONSE:

The Plan was initially based on biology and then adjusted by the permit holders as a result of economics, politics and development needs.

COMMENT:

If a new species is found within the permit area, the plan appears to say it is covered with respect to the Endangered Species Act.

RESPONSE:

The Plan does not cover newly discovered species. However, it does cover the species identified in the list in Chapter 2, section C. 3. of the final EIS/HCP.

COMMENT:

Does this Plan give the City of Austin any control on lands outside of their ETJ?

RESPONSE:

This Plan does not alter the land use controls that the City of Austin is authorized by the State of Texas.

COMMENT:

There is no support in this community to spend the kind of money to acquire the land, there is no support from Washington, and the State of Texas is not offering any money.

RESPONSE:

The community, through the City of Austin, and the Federal government are putting a significant amount of money into this Plan. The City of Austin voters approved two bond items that have authorized the expenditure of approximately \$42 million dollars for lands that contribute to this Plan. The Federal government has acquired approximately 13,000 of 46,000 acres that will benefit this Plan. To date, the State of Texas has not dedicated funds for acquisition or management of the proposed preserves in this Plan.

COMMENT:

The ESA will almost certainly be changed by legislation and/or pending Supreme Court decisions. Is it necessary to go forward now, when such changes might severely alter any such plan? After seven years or more, why not wait a little longer?

RESPONSE:

Re-authorization of the Endangered Species Act was due in 1992 and has not taken place at this time. Additionally, there is no guarantee when re-authorization will occur or whether the Act will be changed when it does occur. Landowners in Travis County have asked for a means in which they could proceed with development while still protecting the resources of the area. At this time, the applicants want to proceed and the USFWS concurs.

COMMENT:

Do I have to go to the USFWS or get a permit from the BCCP to run my ranch?

RESPONSE:

Continuation of current ranching practices does not require authorization from the BCCP or the USFWS.

COMMENT:

The USFWS should stipulate that mitigation requirements for non-federal parties under section 7 consultations will not exceed the requirements of this Plan.

RESPONSE:

The USFWS has indicated that if activities within Travis County that must obtain section 7 authorization under the Act comply with the provisions of the issued BCCP permit, there would be no additional obligations in reference to compliance with the Act.

COMMENT:

The comment period of 30 days should be extended because of the complexity of the activity and the document.

RESPONSE:

The draft EIS comment period was for 60 days. We believe that was an adequate period for this activity and is more than what is required for NEPA reviews. Additionally, this activity has undergone continuous public review since 1990 when the initial Biological Advisory Team report was released and the scoping process began.

COMMENT:

The proposed and preferred actions fail to meet the minimum requirements of the Endangered Species Act. It will not prevent significant reduction in the likelihood of survival and recovery of the endangered species or of the proposed - endangered Barton Springs salamander. It would constitute an illegal jeopardy of the survival of the golden-cheeked warbler.

RESPONSE:

The preferred option, the option required for permit issuance, meets the issuance requirements of section 10(a)(1)(B) of the Endangered Species Act. The recovery plan for the warbler identifies the need to protect enough habitat within recovery unit that includes Travis County to support "sufficient breeding habitat to ensure the continued existence of at least one viable, self-sustaining population." The habitat that is identified for protection under the BCCP in conjunction with the lands proposed for acquisition by the USFWS would protect adequate lands to accomplish this goal necessary for recovery of the warbler.

Take of the Barton Springs salamander is not covered by this permit.

COMMENT:

Alternatives to improve this Plan and result in lower costs include: (1) identifying which infrastructure projects should be scrapped as "jeopardy causing" and identifying the cost savings; (2) identifying the lowered land costs that result when assumed public subsidies are withdrawn; (3) identifying lower costs associated with buying conservation easements rather than limiting preserve acquisition to purchase fee simple interests; and (4) evaluating the option of the City and County amassing as much preserve lands as are currently proposed while still requiring all non-city/county activities to secure their own mitigation lands.

RESPONSE:

The USFWS has not identified any infrastructure projects that would result in jeopardy to any of the federally-listed species. Therefore, there are no possible savings from this option.

The option of withdrawing public subsidies is not viable nor in the purview of this NEPA review.

The Plan currently has the option of acquiring conservation easements rather than fee simple acquisitions. However, conservation easements that call for the establishment of a mature forested community and no livestock generally cost as much as fee simple purchases.

The acquisition of the preserves without providing the citizens of Travis County a method to comply with the Endangered Species Act was rejected by the permittees.

COMMENT:

The more that is known about the site specific edge effects, the more they might be avoided. Research should address how this might be prevented.

RESPONSE:

We concur and research within the BCCP boundaries and other portions of the range of the GCW will be pursued, as funding becomes available, to address the issue.

COMMENT:

If the goal of the Plan is to prevent the future listing of the bracketed twistflower, this Plan does not accomplish that.

RESPONSE:

We concur; the Plan may have to provide additional mitigation for the bracketed twistflower if it is listed in the future.

COMMENT:

What is Fish & Wildlife Service's permitting policy in the targeted acquisition areas? Will FWS issue any permits - 10(a) or otherwise - in the targeted acquisition areas? What types of land usage or development, if any, will be allowed? What development densities will be allowed, if any?

RESPONSE:

The Service's permitting policy within the proposed preserves is the same as that for the areas of Travis County prior to issuance of any incidental take permit. Those policies are stated under section 10(a)(1)(B) of the Endangered Species Act and Title 50 Code of Federal Regulations Part 13.21 Issuance of permits.

The determination as to whether or not permits will be issued at what density and for what land use will be determined when a development activity is proposed. Currently, all permit applications are reviewed with respect to their impact on

previously issued permits and lands proposed for mitigation. This will be the same for applications for development of lands proposed as preserves under the BCCP.

Will the Service issue permits within the boundaries of the proposed preserves? That is not possible to answer at this time. It will depend on the activity, location, density, size and other factors that may be present at the time of the analysis.

COMMENT:

Are all the Species of Concern listed on pages 3-19 to 3-25 covered by the BCCP permit? If not, which are and which aren't?

RESPONSE:

The species of concern identified in Chapter 2, section C.3. of the final EIS/HCP are covered by this permit. The species identified in Table 6 are those that were considered for inclusion. The applicants determined that no aquatic species would be covered by this plan and that the majority of the other species rarely occur in this area or are so common they are not likely to be listed over the life of this permit.

COMMENT:

Is the LCRA mitigating for "take" caused by its wholesale customers' service area that occurs outside of the Travis County BCCP permit area? Are they mitigating through the BCCP permit for areas outside of Travis county?

RESPONSE:

LCRA is mitigating through the BCCP for their wholesale customers for activities that fall within Travis County only.

COMMENTS RELATING TO MITIGATION

COMMENT:

Is the BCCP a 30 year or permanent preserve system?

RESPONSE:

The BCCP incidental take permit allows for the incidental take of the subject federally listed species for a period of 30 years. The permit is renewable by the applicants and this term can be extended. The mitigation for that incidental take is permanent because the take of the species is permanent.

The acquisition and management of the proposed preserves as indicated in the Plan will result in Travis County protecting the adequately covered species with regard to compliance with the Act.

COMMENT:

The issue of "certainty" is of paramount importance to the entire Travis County community. The 11 August 1994 "No Surprises" U.S. Fish and Wildlife Service's letter stated that "It is also recognized that circumstances and information may change over time and that the original plan might need to be revised" and "Moreover, the Services shall not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances." In view of the forgoing just how do the participants in the plan have any "certainty." What are and who defines "extraordinary circumstances?"

RESPONSE:

The "No Surprises" policy of the U. S. Fish and Wildlife Service indicates that: In negotiating "unforeseen circumstances" provisions for HCP's, the Fish and Wildlife Service and National Marine Fisheries Service (Services) shall not require the commitment of additional land or financial compensation beyond the level of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, the Services shall not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances.

Under the "No Surprises" policy, extraordinary circumstances is determined as follows:

The USFWS shall have the burden of demonstrating that such extraordinary circumstances exist, using the best scientific and commercial data available. USFWS findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species.

In deciding whether any extraordinary circumstances exist which might warrant requiring additional mitigation from an HCP permittee, the USFWS shall consider, but not be limited to the following factors:

- the size of the current range of the affected species
- the percentage of range adversely affected by the HCP
- the percentage of range covered by the HCP
- the ecological significance of that portion of the range affected by an HCP
- the level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP

- whether the HCP was originally designed to provide an overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the HCP
- whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

The USFWS has stated that the species listed under the preferred alternative would be adequately covered by this HCP and that no additional mitigation would be required if all of the proposed preserve sites and karst features are acquired and managed.

COMMENT:

According to a City of Austin working document, landowners in Travis County have already lost the development use of 66,000 acres of "undevelopable land" or approximately 100 square miles of land through existing ordinances, regulations, etc. A large portion of these lands is suitable habitat such as draws, canyons, water setbacks, steep slopes, etc. Why are affected landowners not given mitigation credit for this acreage, much of which will or does support endangered species?

RESPONSE:

The majority of these lands do not provide a benefit to the species of concern. Some of these lands could provide benefits to plant species, the black-capped vireo (if the area were managed for that species) and may provide benefits to some karst species. However, because the warbler is adversely impacted by development that surrounds a relatively small or narrow patch of habitat, these areas would not provide any benefit to the golden-cheeked warbler. Additionally, there is no assurance that the ordinances that currently restrict development in these areas would remain in place. Therefore, because of the lack of assurance and the limited value of these areas, they were not included in the mitigation credit calculation.

COMMENT:

The Plan needs to be more quantitative in its definition of "take" and "mitigation". This will help in estimating the effects of the management practices on populations of the neotropical migrants.

RESPONSE:

The Plan adequately identifies "take" in acres of habitat and mitigation in acres by macrosite.

COMMENT:

The importance of protecting larger and less fragmented areas of warbler habitat within Travis County is recognized by the Service in rejecting the out-of-county mitigation alternative, yet it is ignored in establishing permit requirements.

RESPONSE:

The rejection of habitat protection outside of Travis County was not based on protecting of larger and less fragmented areas. It was based on the fact that the elimination of the Travis County population of the vireo and warbler would result in range and genetic constriction of the distribution of federally endangered species and that could not be supported by the USFWS.

COMMENT:

The Biological Advisory Team recommended far more than the 36,000 acres identified on page 2-30 and so much of the BAT's recommendations have been ignored that it is inaccurate to say the BAT's report is the "basic guide" for the Plan, page 1-10.

RESPONSE:

The BAT made 4 recommendations with reference to the golden-cheeked warbler:

1. The viable population size of the warbler is at least 500 to 1,000 breeding pairs;
2. each preserve should be contiguous and unfragmented;
3. less than five percent of the area of any preserve should be within 100 meters of the preserve boundary; and,
4. at least two viable warbler populations should be protected.

The BAT indicated that they had identified adequate habitat for supporting a viable warbler population around the Bull Creek watershed and the south Post Oak Ridge area. The preserves proposed by the Plan include approximately 5,600 acres in the Bull Creek watershed and approximately 8,100 acres in the Cypress Creek watershed. The USFWS is acquiring approximately 25,000 acres in the south Post Oak Ridge area. These units are relatively unfragmented and form large blocks. Using on average, between 15 and 30 pairs per 250 acres identified by the BAT, density of 22 warbler per 250 acres the Bull Creek and the Cypress Creek preserves would support approximately 1,200 breeding pairs of warblers. The area being purchased by the USFWS would support approximately 2,000 breeding pairs. Either of these areas would individually provide enough habitat for one viable population of warblers. Additionally, the Plan proposes to establish a 4,000 acre preserve at Barton Creek, 4,500 acre preserve in the South Lake Austin macrosite and a 5,000 acre preserve in the North Lake Austin macrosite. These preserves could support a maximum of approximately 1,100 breeding pairs of warblers.

The recommendation by the BAT that less than five percent of the area of the preserve be within 100 meters of the edge of the habitat was based on the requirements of the eastern wood warblers. This information was a general planning guideline and does not appear to be supported by the information gathered by DLS Associates in the Bull Creek watershed. Their work around the 3M Austin Center and the City of Austin wastewater treatment plant 4 site, indicates that warblers effectively use the edges of mature forested tracts along undeveloped and developed areas provided the mature forest tract is large.

We believe that the guidelines developed by the BAT are incorporated in the current Plan.

COMMENT:

The BAT recommended against fragmentation of preserves and that is allowed under the proposed and preferred alternatives.

RESPONSE:

The goal of the Plan is to establish a preserve system that has the least amount of fragmentation to benefit the federally-listed species as well as the ecosystem in the area. The preserve boundaries were established to minimize fragmentation. The base that existed in the area did not allow the establishment of a preserve system that was in complete agreement with the recommendations of the BAT. However, since the BAT indicated that the Plan should protect habitat that would support two viable populations and we believe the proposed preserves will accomplish that, the Plan is in compliance with the recommendations of the BAT.

COMMENT:

Another fairness issue remains in the perpetual responsibility for maintenance. Mitigation expense becomes a perpetual expense of affected landowners. Even nonprofit corporations only have thirty year windows.

RESPONSE:

The destruction of warbler habitat is permanent and the mitigation must also be permanent. This is true for all section 10(a)(1)(B) incidental take permits. The current maintenance contracts are for 30-year periods but the mitigation must be in perpetuity. After the 30-year period, additional arrangements must be made to manage the properties.

COMMENT:

After the permit expires will the County be freed of ESA requirements?

RESPONSE:

After the permit requirements are met, Travis County will not be required to do anything additional to have fully complied with the requirements of the Act.

However, the Plan does not cover aquatic species and additional requirements may be necessary to cover those species. Additionally, the permit is issued to cover incidental take that occurs only while the permit is in force. Therefore, the permit would have to be extended if all of the habitat proposed to be taken over 30 years has not occurred. This extension would not require additional mitigation or public review; only a letter from the permittees requesting the permit be extended.

COMMENT:

The Plan should set forth a point at which mitigation requirements permanently cease for all covered species.

RESPONSE:

The Plan specifically identifies the total amount of mitigation required for the species, identified in Chapter 2 section C.3. of the final EIS/HCP, to be completely covered for all development in Travis County. However, it does not set a specific point in time when that would be accomplished because: (1) preserve acquisition is based on collection of participation funds from future development which cannot be accurately projected and (2) management of the preserve land must be in perpetuity.

The USFWS guarantees that they will not request additional mitigation for the species, identified in Chapter 2 section C.3. of the final EIS/HCP, covered in the BCCP should the listing status of any of those species change in the future and the actions proposed by the BCCP are completed.

COMMENT:

Why did the BCCP disregard the option of purchasing habitat in other, more rural areas where property values are a fraction of those in and around Austin. It should be noted that such habitat is as good or better than Austin area properties and the rural development opportunities are limited. Furthermore, the question of who denied the alternative to acquire habitat outside of Travis County and on what authority has not been established.

RESPONSE:

The lands within Travis County have been and are currently considered the best blocks of warbler habitat in its entire range. The Regional Director from the Albuquerque Regional Office of the USFWS indicated that the destruction of all the warbler habitat within Travis County would not be in compliance with the provisions of the Endangered Species Act. Therefore, the alternative to acquire preserve lands outside of Travis County was eliminated.

COMMENT:

How will this promote protection of endangered species?

RESPONSE:

This Plan will establish dedicated preserves for the federally-listed species covered. These preserves meet the requirements identified in the species' recovery plans and therefore, meet the goal of species protection and movement towards recovery.

COMMENT:

As much land as possible should be set aside with consideration to development.

RESPONSE:

This Plan is setting aside as much land as possible while taking into consideration the biological requirements of the species, total cost and current development.

COMMENT:

The Plan gives up too much habitat, it will not save the species; scientists must say what is necessary to save the species.

RESPONSE:

The USFWS and scientists in TPWD and private industry reviewed and approved the recovery plans for the listed species included in this Plan. The recovery plans identify what the scientists believe is necessary for the federally-listed species to be removed from the endangered species list. This Plan fully complies with those recovery plans.

COMMENT:

The Plan should call for no net loss of habitat and vigorously enforce the Endangered Species Act.

RESPONSE:

The Endangered Species Act does not call for "no net loss" of habitat and allows, under section 7 and section 10(a)(1)(B) the incidental take of federally-listed species if that take does not jeopardize the continued existence of the species. We believe this Plan fully complies with the requirements and intent of the Act.

COMMENT:

The Plan does not offer adequate protection for all 30 species of concern.

RESPONSE:

We believe the Plan provides adequate protection for the species of concern if all the actions identified in the issued permit are accomplished.

COMMENTS RELATING TO PRESERVES

COMMENT:

Because of the "Public Access" provisions of the plan, what is the justification for allowing lands purchased with private funds, i.e. Participation Certificates, for Endangered Species preserves to be used for public recreation facilities?

RESPONSE:

The primary purpose of the acquisition of the preserve lands for the BCCP is the conservation of the natural resources of Travis County. This goal was supported by the citizens of Austin with their passage of bond items that totaled \$42 million to be used to acquire tracts of undeveloped land in Travis County. In addition, Travis County will be redirecting a portion of taxes from BCCP development back into the Plan.

The proposed preserves for the BCCP are not currently proposed for general public use. However, if adequate funds become available, these lands could be open to limited public use.

The BCCP is a voluntary program developed to assist the residents of Travis County in their conservation of natural resources and continued economic development. If a developer does not support the goals and ideals of this program, they are not required to participate.

COMMENT:

How does FWS know that public access at any time to endangered species preserves does not threaten the survival of the species?

RESPONSE:

The impact of human activities on various species has been studied throughout the United States. These studies and observations by biologists, with respect to the species of concern, give a general idea about the direct impact of human activity on a species.

Additionally, recreation impact to soil and vegetation has been studied in State and National Parks and various wildlife management areas. These provide information on the indirect impacts of human activities on a species.

If there are no specific studies on a species of concern, the above information is analyzed to recommend activities that are compatible and not compatible in a species preserve. The recreation activities that directly impact a species would be prohibited when that species is in the area and may be allowed when that

species has migrated to another location. Generally, activities that indirectly cause adverse impacts to a species would not be allowed at any time because it could prevent a species from using the area when it returns.

COMMENT:

There are lands to be managed in accordance with preserve system requirements owned by certain entities (LCRA, The Nature Conservancy, some private landowners, etc.) that will also be designated as part of the preserve system. Will these lands be managed in perpetuity as preserves or will they revert unencumbered or otherwise to their fee owners at the end of the permit period or at some other time? Are they part of a permanent preserve system or not?

RESPONSE:

All the preserve lands that are established as a result of an incidental take permit must be managed in perpetuity. Some of the current land management agreements are for a period of 30 years, but the land must be set aside as a preserve and managed in perpetuity.

COMMENT:

If some of the preserve lands revert unencumbered back to the fee owners at some point in time, why is there no mechanism in the plan for the Participation Certificate entities to also receive either the lands they acquired on behalf of the BCCP or recovery of their Participation Certificate fees?

RESPONSE:

Preserve lands do not revert unencumbered to fee owners at some point in time.

COMMENT:

The Bull Creek macrosite is too small and fragmented to accomplish its principal task of providing a viable preserve for the warbler.

RESPONSE:

The Bull Creek macrosite in and of itself does not have to provide a viable population of 500 to 1,000 breeding pairs of warblers. The Bull Creek site in conjunction with the other macrosites must provide enough habitat to support a viable population of warblers. The proposed preserves will accomplish that.

COMMENT:

The "edge" of a preserve is the area around its boundary where the population density of the target species is zero. This area extends to the point where "edge" effects can no longer be measured. The first 320 meters or so is a "dead zone" for the Bull Creek macrosite, where no breeding is expected to occur. Nearly half of the Bull Creek macrosite will not support any warblers at all, and another quarter will be chronically stressed.

RESPONSE:

There are several subdivisions around Travis County that have warblers within 320 meters of the development. Jester Estates is an example within the Bull Creek macrosite. This subdivision is more than 10 years old and the warblers are nesting and foraging up to the back yards of the houses.

If the warbler cannot tolerate an urbanized edge, it would be reasonable to assume that the warbler would discontinue the use of the area immediately or by the next generation of warblers after the fragmentation occurred. The warbler has a life span of less than 10 years and warblers are still using this area.

Other examples of the warbler using up to the edge of urban fragmentation include the Westlake Hills area, Long Canyon, Lost Creek Estates, and Glen Lake Estates.

Another type of fragmentation in the Bull Creek macrosite relates to the conversion of the mature oak/juniper forest to an oak savannah. The City of Austin purchased land in the area of the intersection of RR 620 and RR 2222 for the construction of Water Treatment Plant 4. This land was cleared more than 10 years ago and a natural vegetation community edge was created in warbler habitat. The edge of this property supports nesting warblers and their territories range into this vegetation community.

With respect to fragmentation by natural vegetation communities, there are reports of the warbler using blocks of mature forested communities as small as 20 acres and canyons less than 300 meters wide.

Based on these examples, the edge effects that have been reported and the edge assumptions used in the creation of models are not identifying the controlling factors to the use of an area by the warbler. The above examples indicate that warblers do use the edge of a mature forested community. However, examples in Travis County also indicate the warblers do not use small blocks of mature forested areas totally surrounded by urbanization, such as Westlake Hills and the eastern portion of Jester Estates. The big question that has not been answered in this case is: how small of a block of habitat will the warbler occupy in an urban area?

Fragmentation does impact the warbler, to what extent and for what reason is not understood. The warbler sighting information in Travis County, seems to indicate that urban fragmentation has a negative impact while fragmentation as a result of a native vegetation community does not. The BCCP is proposing to protect the highest quality and largest blocks of warbler habitat with the least urban fragmentation possible in Travis County.

COMMENT:

We support the management guideline that the overriding influence in all decisions regarding management of the preserve lands will be the welfare of the target species. However, there should be some flexibility in what constitutes a target species.

RESPONSE:

The target species will not change unless there is a thorough review by the Service, applicants, and the citizens of Travis County.

COMMENT:

There is no clear definition of preserve acquisition schedule or areas, nor how the acquisition is to function.

RESPONSE:

The USFWS has prioritized the importance of the identified macrosites. As acquisition funds become available, the lands within the high priority macrosites would be reviewed for the tract that has the highest degree of need for acquisition. This would be determined by habitat quality, willing seller, threats to the site and other factors at the time of the purchase.

COMMENT:

The Plan provides for preserve management but the Plan is vague on coordination and development of the plans.

RESPONSE:

The original management guidelines for the proposed preserves was drafted by the Texas Parks and Wildlife Department, and finalized by the applicants, to provide a basis for all management plans for the various preserve tracts. These plans will be reviewed by the Service, Coordinating Committee. A specific element of the review by the Service will be compliance with the terms of the incidental take permit and the recovery of the species. The management plans will be approved by the Coordinating Committee Secretary.

COMMENT:

The proposed preserve along Barton Creek is so finely dissected that it is unlikely to protect or preserve any actual or potential GCW habitat.

RESPONSE:

We concur and that acreage is not considered part of the 30,500 acres of preserve lands.

COMMENT:

The corridor along RR 620 should be a priority because it will create an amount of unsuitable habitat within the bounds of the proposed preserve units that are considered the most important for the GCW. Additionally, protecting this area will protect a large portion of the BCV habitat.

RESPONSE:

Development already exists along the RR 620 corridor between the Bull Creek and Cypress Creek macrosites. The acquisition of the undeveloped tracts in this corridor would be expensive and not significantly reduce the impacts of urbanization in the proposed preserve units. The BCV habitat adjacent to this area is currently proposed for acquisition.

COMMENT:

The areas to be included in the Preserve have changed since the date when the original maps were prepared by the City staff and used by the infrastructure planning group. As a result, the original maps of the infrastructure corridors no longer accurately reflect the preserve lands. The preparation of accurate maps of the preserve lands showing the infrastructure corridors is essential to all the utilities who will be required to determine when operations will be on preserve lands. Copies of the preserve/corridor maps should be made available to the utilities to insure that they will have a clear picture of the extent of the preserve lands.

RESPONSE:

The areas to be included in the preserve have not changed. Existing detailed maps of the "BCCP Existing Facilities" and "BCCP Planned Corridors and Special Use Tracts" (revised: September 1, 1993) should be used by utility providers as the basis for project planning and review purposes. These maps will be available through the Coordinating Committee Secretary.

COMMENT:

A scientific panel should be established with the authority to make such decisions as to which land is habitat and which properties are most important to pursue for the preserve system.

RESPONSE:

The USFWS has identified an acquisition priority for the macrosites within the proposed preserves. As acquisition funds become available the lands within the high priority preserves would be reviewed for the tract that has the highest degree of need for acquisition. This would be determined by habitat quality, willing seller, threats to the site, and other factors occurring at the time of the purchase.

COMMENT:

There is insufficient discussion regarding the proposed management actions for the preserves.

RESPONSE:

The management guidelines must be followed in establishing the site specific management plans. These guideline were reviewed in 1993 when first released by TPWD and again in the draft EIS. We believe the discussion and review was adequate.

COMMENT:

The Service should consider the cost and efficacy of constructing a 10-foot high deer-proof fence around subdivisions to restrict human access to designated points. Additionally, annual blue jay extirpation campaigns should be undertaken prior to warbler breeding seasons.

RESPONSE:

The management guidelines identify the need to undertake deer control programs. However, with the cost of deer-proof fencing and limited availability of funds, the requirement to construct such fencing is not recommended. If specific sites are identified to have significant deer browse problems, deer-proof fencing would be a potential tool to use.

There are no current plans to incorporate blue jay control programs. If future information indicates this is a necessary management action, the program could be implemented.

COMMENT:

In order to clarify the rules that will apply when utilities are working in areas that are not yet purchased but are planned to be purchased as part of the Preserve, we also recommend that Appendix B state that the Infrastructure Planning Appendix will be controlled both for presently owned preserve land and for land that is planned to become part of the preserve in the future.

RESPONSE:

Any infrastructure activity on land within the proposed preserve boundaries should rely on the detailed maps for identification of existing and planned corridors.

COMMENT:

The HCP/DEIS states that it does "not allow for significant inholdings" and that must be addressed in the Plan.

RESPONSE:

We do not find the identified phrase in the draft EIS. The draft EIS indicates that inholdings must be minimized to the maximum extent practicable. Some subdivisions exist adjacent to and projecting into some of the proposed preserve lands and that fact can not be altered. Those developments can not be eliminated and the area restored to pre-existing conditions.

COMMENT:

The DEIS should include a detailed analysis of the impact of this plan on the preserve owners.

RESPONSE:

Additional restrictions are not placed on the proposed preserve lands as a result of this action. Those property owners may proceed with obtaining authorization under the Endangered Species Act individually, keep their land in family ownership, or sell their land to the BCCP or other buyer at fair market prices. The action of issuing this permit does not alter those options which are the same as those in place, prior to the issuance of such a permit.

COMMENT:

Landowners within the proposed preserves feel they would be better off without the Plan. Without the Plan they believe that they may be able to realize some use or value for their land. Once the Plan is started, these landowners are trapped in the process because the integrity of the preserve must be maintained or the issued permit is jeopardized.

RESPONSE:

The landowners in the proposed preserves are not being asked to wait for up to 20 years for their property to be purchased. The Plan does not provide any restrictions that prohibits those landowners from selling their property at any time. The Plan indicates that at the projected rate of revenue collection, it would take approximately 20 years for the Plan to have enough money to purchase all the preserve lands at a fair market price. Not all of the landowners currently want to sell or develop their land, therefore this action does not currently impact those landowners nor do their plans impact the BCCP.

COMMENT:

The land acquired for preserves should be preserves. If the lands are to be public parks, then the public should acquire them rather than private citizens acquiring them.

RESPONSE:

The lands acquired for the preserves, whether by the use of public or private funds, will be preserves. However, some public use of preserves may be

compatible with the primary purpose of species conservation. There will be no differentiation on the proposed preserve land as to the source for the acquisition funds.

The Plan will not encourage recreational use of the preserve sites. However, the Plan has identified possible passive/low intensity recreational activities that would be consistent with the goals of the permit, if adequate funding is available. Land management plans will discuss public use of the preserves.

COMMENT:

There has not been sufficient analysis of the economic and social impacts on the people who are within the designated preserve system.

RESPONSE:

Additional restrictions are not placed on the proposed preserve lands as a result of this action. Those property owners may proceed with obtaining authorization under the Endangered Species Act individually, keep their land in family ownership, or sell their land to the BCCP or other buyer at fair market prices. The action of issuing this permit does not alter those options which are the same as those in place, prior to the issuance of such a permit.

COMMENT:

The permit acquisition time-line is too long. What will mitigate impacts to landowners within the proposed preserves over the 20 year acquisition period? All efforts should be made to reduce this time to a 5 - to 10 - year period.

What is the justification for asking landowners in the proposed preserve acquisition areas to possibly wait for up to twenty years for their property to be purchased? Was fairness a consideration?

RESPONSE:

The permit applicants and the USFWS agree. Should development and associated funding occur at a rate that is faster than that assumed for the Plan, preserve acquisition will occur over a shorter period of time. Acquisition priorities will take into consideration opportunity and availability and will try to accommodate landowner needs.

The landowners in the proposed preserves are not being asked to wait for up to 20 years for their property to be purchased. The Plan does not provide any restrictions that prohibit those landowners from selling their property at any time. The Plan indicates that at the projected rate of revenue collection, it would take approximately 20 years for the Plan to have enough money to purchase all the preserve lands at a fair market price.

The private property owners within the proposed preserves are not prohibited from selling their land, keeping their land, or applying for their own incidental take permit.

COMMENTS RELATING TO AQUATIC SPECIES

COMMENT:

The draft EIS is vague as to how the aquatic species are to be addressed. What impact will listing the Barton Springs salamander have on the Plan?

The permit should not be finalized until the issue of inclusion or exclusion of aquatic species is resolved. If aquatic species are initially excluded from the Plan, assurance should be given that they will not be included without public review of the proposal.

The Barton Springs salamander should be included in the Plan.

RESPONSE:

The permit applicants have determined that the Barton Springs salamander and other aquatic species would not be included in the permit at this time. There is no requirement under the Act that every listed or proposed species in an area be included in an incidental take permit. A discussion is included in the final EIS/HCP in case there is a decision to include them in the future. If these species are to be included, this would require public discussion and approval by the Permit applicants.

Because the aquatic species are not included and the Barton Springs salamander is a proposed species, the USFWS must consider effects to proposed species from their activities (issuance of an incidental take permit). Therefore, the final EIS/HCP states that properties within the Barton Springs drainage area of Travis County should obtain guidance with respect to avoiding the impacts of their activity on water quality as it relates to the Barton Springs salamander.

COMMENTS RELATING TO WARBLERS, VIREOS, AND KARST

COMMENT:

The Plan allows 55 percent of the known BCV population in Travis County to be taken. This is unacceptably high.

RESPONSE:

The location and number of the vireos in Travis County changes from year-to-year. The calculation of take under this Plan was based on acreage surrounding known vireo sightings. These take areas currently contain one or two pairs existing in small habitat units and are not the clusters of vireos that are considered more important by the Plan. The known cluster of nesting vireos, containing approximately 75 percent of the vireos known outside of the National Wildlife Refuge, is currently proposed for protection under the Plan.

COMMENT:

Are the proposed preserve lands for the karst invertebrates large enough to include the surface and sub-surface drainage basins of the caves known to contain the species?

RESPONSE:

The preserves for the karst invertebrates will be determined by a hydrogeologic survey of the surface and sub-surface drainage area of the cave in which they are found. If there has not been a hydrogeologic delineation, Participation Certificates cannot be issued for the area within 0.25 miles of the cave opening. The final EIS/HCP has been modified to clarify these conditions.

COMMENT:

Will areas outside the preserve lands still require evaluations of their caves, fauna, and the potential impacts on them? New species of concern are still being discovered outside the preserve lands, will the USFWS's ability to protect those areas be hampered by lack of research due to this Plan?

RESPONSE:

Areas outside of the proposed preserve lands will not be required to have surveys for karst invertebrates. However, if surveys are done and new caves, with significant biological diversity, are found, they may be exchanged for less biologically diverse caves on the acquisition list.

COMMENT:

We recommend using spatially explicit population models to examine effects of various land-use alternatives on the GCW and BCV. A useful basic reference on modeling forest-interior bird populations is Temple and Cary (1988).

RESPONSE:

The Service has used Vortex and is currently using Ramas Meta Population software to obtain additional guidance on the size of preserves for a viable population of these birds. The work of Dr. Craig Pease for the BAT used primarily information on forest-interior birds. However, we do not believe that the GCW is a forest-interior species and the use of such species as a guideline could result in incorrect projections with reference to block size and configuration.

COMMENT:

The development within karst areas may cause degradation of water quality to the point that incidental take will occur.

RESPONSE:

The area recommended for protection for each karst feature includes the surface and subsurface hydrogeologic feed area for the subject feature. If such protection is accomplished, that will include all the area that will provide groundwater to the karst feature.

COMMENT:

What constitutes viable populations of the BCV and GCW? Is quantity, quality and spatial structure of habitat tracts in the Plan adequate to maintain such viable populations?

RESPONSE:

A viable population is a population that maintains its vigor and its potential for evolutionary adaptation and that is self-sustaining with minimal demographic or genetic intervention over the long term. It is generally considered that 500-1,000 effectively breeding pairs is a viable population.

Under the Endangered Species Act, the applicant for an incidental take permit is responsible for mitigating the impacts of their development. If there is not a viable population present in the project area, they are not required to mitigate with a viable population. A viable population of the BCV does not exist in Travis County. Therefore, the Plan must only mitigate to off set the impacts of the Plan.

A viable population of GCW does exist in Travis County; to comply with the recovery plan, there must be a viable population in Travis County after

implementation of the Plan. Establishment of preserves totaling approximately 30,500 acres by the BCCP and approximately 46,000 acres for the Balcones Canyonlands National Wildlife Refuge will protect enough acreage and in a configuration that will support at least two viable populations of the GCW.

COMMENT:

The edge effects assumed by the Plan are much smaller than the edge effects as identified by the BAT.

RESPONSE:

We believe the edge effects for large blocks of habitat are not as severe as those projected by the BAT. This is because warblers continue to use the urban edge of large blocks within the proposed preserve units in Travis County. There is no reliable information on the edge effects on the warbler, therefore, this calculation was not done. The information currently available includes significant assumptions and therefore is being used as a general planning tool rather than specific preserve design.

COMMENT:

What will cause the GCW to move into the BCCP preserves when their habitat in the rest of Travis County is destroyed?

RESPONSE:

Generally, species expand to fill the habitat that is available to them. This is evident when a forest area is converted to a grassland and meadowlarks move in or when a grassland becomes a shrubland and white-tailed deer move in. We believe that as the areas of the proposed preserves become mature forested areas, the golden-cheeked warbler will expand into those areas. We do not expect all of the existing individuals to move to the preserves.

COMMENT:

Has anyone seen a recovery plan for the warbler or the karst invertebrates?

RESPONSE:

A recovery plan for the warbler was completed in September 1992, the vireo in September 1991 and for the karst invertebrates in August 1994. All of these recovery plans went through a public review process and were used in evaluation of the final Plan as proposed in the final EIS/HCP. Copies of the recovery plans are available for review from the USFWS.

COMMENT:

The principle recommendations of the Biological Advisory Team were not taken into consideration in the design of the BCCP preserves. Karst zones of high endemism should be preserved, rather than single cave entrances.

All existing vireo localities should be protected until decisions are made on the size and configuration of the preserve system.

RESPONSE:

The principle recommendations of the BAT were taken into consideration in the design of the preserves for this Plan.

The Plan is proposing to preserve karst zones of high endemism rather than single caves. However, there are caves with high species diversity that are not near other karst features. In those cases, the hydrogeologic surface and sub-surface feed areas are to be protected.

The BAT recommends that all known vireo populations should be protected until the size and configuration of the preserve system has been partially met. The size and configuration of the proposed preserves has been identified. The goal of the protection of all vireo locations until the vireos are established in the proposed preserves is not feasible at this time. However, less than 25 percent of all the vireos in Travis County currently exist outside of the proposed preserve boundaries.

COMMENT:

Given the transient nature of black-capped vireo habitat and the need to create more vireo habitat, extensive cooperation with private land owners may be necessary for the recovery of this species.

RESPONSE:

The Service concurs that the private land owner is a vital component in the conservation and recovery of the natural resources of this country. Overall recovery of the vireo is beyond the scope of this permit action. It is the responsibility of the BCCP to mitigate for the impacts of its activities. The USFWS will continue to work with other parties to meet overall recovery objectives.

COMMENT:

The calculation of the area of warbler habitat outside of the BCCP preserves that will be protected by local ordinances is flawed and untenable. Overlap of WPZs and golden-cheeked warbler habitat requires correction.

RESPONSE:

The calculations and discussion on page 4-23 of the DEIS were to identify possible areas that warblers may continue to use following development of areas located outside of the proposed preserves. These were based on the current levels of protection afforded those lands by local ordinances. We agree with your comments that there is a lack of guarantee that these ordinances will remain in

place. As such, WPZ acreage outside of preserve boundaries was not used in calculating the acres required for the BCCP because no blocks of WPZs acres were identified that would benefit the warbler after full development. The text has been revised to reflect this.

COMMENT:

The doctoral dissertation by Mr. Tom Engels indicates the adverse effects of "edge" on warbler presence and reproduction in an area. The accurate estimate of "edge" impacts on preserve lands would show that only small areas at the core of some preserve areas will likely provide actual nesting and feeding areas for the warblers.

RESPONSE:

Dr. Engels' dissertation provides new information on the interaction of the golden-cheeked warbler, a native species, and the blue jay, a species expanding its range into the area. The major goal of the dissertation was to investigate the effects of urban fragmentation on the warbler. He did not identify specific effects of urban fragmentation but he did find that there is a highly significant negative correlation between the presence of the warbler and jay. This dissertation did not provide any information on the adverse effects of "edge", per se, on warbler presence or reproduction nor did it identify the difference in warbler densities within a certain distance of urban development.

Dr. Engels noted that there is habitat fragmentation due to power-line cuts, rivers, ranch roads, and natural breaks in habitat but that no experimental data exists which quantifies their individual effects on the warbler. However, he did note that certain types of urbanization negatively affect the presence of the warbler in otherwise suitable habitat.

While he did not identify a distance from the edge of habitat within which no warblers would be found nor a distance from the edge of habitat that a blue jay could eliminate warbler activity, he identified (a) the number of homes within 500 meters, and (b) the percent of urbanization within 1,000 meters as two of the best predictors of blue jay/warbler presence/absence. However, within these parameters it is most difficult to accurately predict warbler and jay presence for situations with 11-50 homes within 500 meters and 11-30 percent urbanization within 1,000 meters.

Dr. Engels does provide insight into predicting the presence/absence of the blue jay and warbler and that the jay has a negative impact on the warbler. However, his work does not provide information needed for activities such as the BCCP. The BCCP requires information on the size of the buffer zone around a proposed preserve and the types of urban development that would be most compatible with

such a preserve. This information would give us a better opportunity to design a preserve system that has a higher guarantee of success.

COMMENT:

How many pairs of golden-cheeked warblers are allowed to be taken under this permit and how many pairs must be protected to comply with the permit?

RESPONSE:

Site specific information on the number of warblers is not available and instead habitat is used as a measure of the take that is likely to occur. Based on the satellite imagery work done by Denise Shaw, the loss of approximately 26,700 acres of warbler habitat would result in the take of approximately 1,500 to 3,000 pairs of warblers. Using this same information, the proposed preserve lands contain approximately 11,000 acres of warbler habitat that could support approximately 660 to 1,320 pairs of warbler. If the proposed 28,500 acres of preserve to be managed for the warbler is considered, the warblers that could be supported by a completed preserve system would range from approximately 1,700 to 3,400 pairs of warblers.

These calculations cannot be considered in isolation from the quality of the habitat that the Plan protects compared to the quality of the habitat that is being authorized for alteration under this Plan. The habitat that is being protected is considered the highest quality habitat for the warbler throughout its range. Additionally, the BAT identified these areas as the most diverse and valuable within Travis County. The areas that are excluded from protection are the areas fragmented by development and of low value to the species of concern.

The range of pairs of warblers indicated above is based on general information of warbler occupancy densities. Portions of Travis County identified by the satellite imagery as meeting the vegetation signature of warbler habitat do not support warblers. Additionally, the fragmented blocks of habitat in the urban areas of Travis County have warbler densities of from 1 to 2 pairs per 200 acres rather than the 15 to 30 pairs per 250 acres used in the calculations above. Additionally, the densities of warblers within the Bull Creek macrosite has a density of up to 30 birds per 250 acres.

COMMENT:

The only way to understand what the Plan is and to measure whether the Plan is being successfully implemented is to set fixed goals for numbers of nesting pairs protected and specifically identify how compliance will be determined and enforced.

RESPONSE:

We believe analysis of the acres that support the vegetation community required for feeding, breeding, and sheltering the warbler, is a viable alternative for measuring the amount of take likely to occur and the value of the preserves for protecting these species. This information is currently available. Accurately counting all nesting pairs in Travis County would be very labor and cost intensive and would not result in increased protection for the species.

COMMENT:

The DLS maps are not scientifically prepared. Again citing one of our members' major projects, the landowners have paid for and conducted numerous ground surveys over an eight year period for endangered birds. The surveys done by this landowner's consultants have shown limited areas of actual habitat with birds heard or sighted only in areas not planned for development. According to habitat maps in the BCCP plan which were prepared on the basis of aerial photography and infrared analysis, potential habitat was estimated with no regard to whether there are actually birds in place that could be potentially harmed. The result is that a substantial portion of a landowner's property is considered habitat under the BCCP which is based upon a map not substantiated by field studies or true independent verification by the USFWS.

RESPONSE:

Since the specific property was not identified, we cannot respond to the specifics of the comment. All of the maps prepared for the BCCP were based on the best scientific information at the time of preparation.

The only bird species that involved the use of aerial photography for delineation of habitat was the golden-cheeked warbler. The maps prepared by DLS Associates were based on golden-cheeked warbler sightings from 1989 through 1991. Limited information from 1992 and prior to 1989 was used where it was available. Additionally, the delineation of habitat on the aerial photographs identified the areas within Travis County that had a forested cover comparable to areas where the birds had been observed.

The warbler maps were also based on the need for the warblers to use more than just the small area where they were sighted during the presence/absence surveys. Field observations of DLS Associates indicated that the birds would use an area that may range out as much as 2,000 feet from where they were sighted during a presence/absence survey.

Your example considers the 8 year period from 1988 through 1995. Since the DLS Associates maps used data from 1989 through 1991, only the data collected on your property during that time period would be included in the maps. These maps are being used to aid the simplified approach process developed for the

BCCP. They are not being used to determine the "take" of the golden-cheeked warbler.

COMMENT:

TxCABA rejects the so called science and peer review used to list the birds and identify habitat. The implementation of the BCCP in Travis County is clearly a method of controlling urban growth and not an attempt to preserve habitat. Otherwise, why is Travis County the only county out of a 33 county range for the Golden Cheeked Warbler that is being regulated by Fish and Wildlife?

RESPONSE:

The listing of the warbler was based on a status survey conducted by Texas Parks and Wildlife Department and reviewed by scientists around the country. During the listing process, no information was provided that indicated the warbler did not warrant listing.

There have been comments by various parties that data existed that would indicate the warbler did not warrant listing. The USFWS has requested that information from those parties. However, no information has been provided that would support those claims.

The BCCP is an effort by groups and citizens in Travis County to take the natural resources into consideration during the growth process. The BCCP is the method they are using to accomplish that task. It is not a process that is being used to control growth.

All the warbler's habitat, throughout its range, is protected under the Endangered Species Act and alteration of that habitat may require authorization under the Act. The USFWS focuses its attention on the areas where such alteration is occurring; currently that is in the Travis County area. Activities within all counties throughout the range of the warbler are being reviewed by the USFWS as they become known. The major land use in the majority of the 33 counties is farming and ranching which do not usually alter the mature forested areas on their property. Therefore, authorization under the Act would not be required. The major areas that the USFWS is currently spending time in reference to the warbler are Williamson, Travis, Hays, Comal and Bexar counties.

COMMENT:

The original estimates of the acreage need for the warbler was 70,000 to 100,000 acres and now it is whittled down to 30,000 acres. How did this happen?

RESPONSE:

The acreage that will be set aside for the Travis County area will be approximately 56,000 acres within Travis County and another approximately

20,000 acres in adjoining Williamson and Burnet counties. The original acre recommendations included the acreage in Williamson and Burnet counties which are not a part of this permit action.

COMMENT:

It is not communicated very well as to what is and what is not habitat.

RESPONSE:

The draft EIS describes, in Chapter 3, section A.3. of the final EIS/HCP, the habitat components required by each species. That information can be used to determine if such habitat exists on an individual piece of property. Additional information on habitat for the listed species can be found in the species recovery plans which are available from the USFWS and are referenced in the final EIS/HCP.

COMMENT:

If we are not in habitat now, can it change in the future that we are in habitat?

RESPONSE:

The vegetation structure on a piece of property generally changes over time. Depending on land management practices and some other factors, a piece of land that is not currently endangered species habitat may become endangered species habitat and vice versa.

COMMENT:

The report identifies that 2,000 acres is needed for the vireo but only 988 acres are being considered by this Plan. Why are we acquiring only half of the acres needed for this bird?

RESPONSE:

The Plan indicates that there are approximately 2,000 acres of occupied vireo habitat in Travis County. The Plan will manage approximately 2,000 acres for the vireo. Approximately 1,000 of these acres are currently occupied by the vireo and the remaining 1,000 acres will be newly created vireo habitat.

COMMENT:

I do not understand how a plan having no net increase in habitat can be considered as benefiting the species.

RESPONSE:

The Plan establishes specific preserves that will be managed for the species. The protection and management of the large block preserves and the reduction of fragmentation removes threats that contributed to the listing of the species. This provides a benefit to the listed species with respect to requirements of the

Endangered Species Act. This action does not result in protection of all the habitat for all of the individuals throughout the range of the warbler or vireo.

COMMENTS RELATING TO PLAN OPERATION

COMMENT:

What will stop the County or City of Austin from lowering the cost of the participation certificates or changing the rules to make it easier for the developers to build?

RESPONSE:

The cost of the Participation Certificates is a function of the cost of acquiring the remaining preserve lands. The Plan anticipates periodic indexing related to those costs whether they are higher or lower. Additionally, the USFWS will monitor the progress of preserve acquisition and the issuance of certificates. If the issuance of the certificates is not raising adequate funds to keep preserve acquisition ahead of habitat destruction, the incidental take permit could be suspended or revoked.

COMMENT:

Will the rules for the BCCP change in the future?

RESPONSE:

The requirements to comply with the BCCP may change but only if the changes are in compliance with the conditions of the issued permit and approved by the Coordinating Committee and the USFWS.

COMMENT:

The land classification of the DLS golden-cheeked warbler maps is incorrect for portions of Davenport Ranch. Why are land owners not notified of changes in the status of their land?

RESPONSE:

Landowners are notified of the status of their land, with respect to endangered species, when they make a request for such information. The DLS Associates' maps were based on data gathered prior to 1992 and dealt with the biological requirements of the warbler. That information was correct at the time and was available to citizens and consultants to inspect to determine warbler locations and potential locations within Travis County. The maps are currently being updated for use by the BCCP.

COMMENT:

The periodic updates of the DLS and Veni maps could affect the social, environmental, and economic impacts of the Plan. There should be greater certainty regarding the updates and how they will be performed and implemented with regard to impact on private sector costs and Plan financing.

RESPONSE:

The updates of the DLS maps will be conducted when sufficient new biological information is available to justify such an update. The determination as to when such updates are accomplished will be determined by the BCCP Coordinating Committee.

The Veni maps are based on geologic information and updates are not expected to alter the overall boundaries of zones 1 and 2 for which the same fee is charged. Therefore, any update would not result in social, environmental, or financial impacts to the Plan.

The periodic updating of the DLS maps may result in redesignation of warbler zones 1 and 2, the areas that currently support or could support warblers. These updates may not result in new areas being added to the total of these zones but a realignment of the acres within these zones. Therefore, we do not believe this would result in an impact to the social or environmental impacts of the Plan. If a large number of the acres is removed from zones 1 and/or 2 and placed in zone 3, the economics of the Plan could be impacted. However, the Plan has requirements for periodic audits and reviews. These would identify funding issues that would have to be addressed. At this time we do not anticipate the updates of the DLS maps to cause a financial impact to the Plan.

COMMENT:

The "cookbook" approach to fee assessment may have an undesirable side effect. Since the developer must pay fees on the entire tract, not just on land utilized, they are encouraged to develop as densely as possible in order to spread the fees over a broader base. This higher density can have a detrimental effect on traffic, neighborhoods, and water quality.

RESPONSE:

If a developer chooses to purchase a Participation Certificate that is a possible scenario. However, high density development would not likely be the normal situation because of current ordinances and public demand.

COMMENT:

The BCCP should state that all income derived from use of BCCP preserves should go back to the BCCP rather than the owning jurisdiction. If income is

retained by the individual jurisdiction, it would amount to a general tax on the developer participants.

RESPONSE:

All funds collected from the use of the BCCP preserves will only be used to benefit the BCCP.

COMMENT:

Why does the simplified approach to "take" calculation count habitat on a parcel even if that habitat is being left alone? Would this not result in considerably over estimating the "take"?

RESPONSE:

The calculation for the fee to obtain a Participation Certificate is not related to the "take" of a federally-listed species. The data on which the fee is based is the area of habitat within the project boundary. The current form of calculating the fee necessary for participation in the BCCP will most likely result in an under estimate of the amount of direct and indirect "take" that actually occurs in most cases.

COMMENT:

The BCCP Workgroup recommended that condemnation not be used for acquisition of the preserves. However, the DEIS indicates the Plan contemplates its use. This is inappropriate.

RESPONSE:

The use of condemnation is discouraged by the Plan. However, the permit applicants indicated that some landowners have indicated that they would prefer to have their land condemned for purchase. We do not believe it is inappropriate to include condemnation as a land acquisition option of last resort where the entire permit may be in jeopardy.

COMMENT:

Page 2-58(h)(2) of the DEIS requires that proof of Plan participation be posted at the site of vegetation clearing. This statement should be clarified to the effect that the requirement is only for those who have voluntarily elected to participate in the Plan.

RESPONSE:

We do not believe that clarification is necessary since non-participants would not have a Participation Certificate.

COMMENT:

The proposed seasonal restrictions (pages 3-1 to 9-1) on the clearing within warbler or vireo habitat should be avoidable if the owner demonstrates by a current breeding season survey that the area in question is more than 300 feet distant from an occupied territory.

RESPONSE:

We concur and the final EIS/HCP has been modified to reflect this.

COMMENT:

The HCP/DEIS fails to provide a complete description of the activity sought to be authorized: does the permit authorize year-around construction and other noise in and adjacent to preserve areas?

RESPONSE:

Alternative 2 described in Chapter 2 identifies the activities for which the permit is sought. Those are the grading, clearing, or other earth moving activities necessary for residential, commercial, or industrial construction and infrastructure projects. The permit does allow year around construction but does not allow the clearing of vegetation during the breeding season unless current breeding season surveys indicate that the warbler or vireo are not nesting within 300 feet of the proposed clearing activity. The final EIS/HCP has been modified to reflect this.

COMMENT:

Does the permit authorize highway and other infrastructure development at any location?

RESPONSE:

The permit would allow highway and infrastructure construction but does not specify a specific location. The permit does not allow such construction to occur within the boundaries of the proposed preserves except as approved within the existing or planned corridors. Specific utility corridors are designated.

COMMENT:

Are the "management guidelines" for the preserves actual requirements or simply guidelines? The lack of management plans before a permit is issued invites abuse by land managers faced with pressures to allow other land uses.

RESPONSE:

The management guidelines must be followed and the site specific management plans developed in accordance with those guidelines. Management plans must ensure protection for the species addressed in the BCCP. If they do not, it could result in suspension or revocation of the Permit. All management plans must be

approved by the Coordinating Committee and the USFWS and the final EIS/HCP has been revised to reflect that.

COMMENT:

Implementation of the Participation Certificates is not explained and problems exhibited in other regional HCPs in collecting fees have not been considered in formulating this Plan.

RESPONSE:

The final EIS/HCP has been modified to provide more information on the Participation Certificates. The BCCP is not similar to other regional type incidental take permits and the funding mechanisms they employed. The BCCP is a voluntary program rather than mandatory as was the case for the California activity that had funding difficulties.

The Plan has built in audit requirements to monitor the status of habitat clearing, fund collection, and preserve acquisition.

COMMENT:

Recommend that paragraph 5 on page 2-31 be modified as follows:

No activity will be allowed which results in a "take" of an endangered species, or which degrades or in any way harms the environment of the endangered species or other species of concern, or which degrades or in any way harms the preserve, except as may occur in the approved infrastructure corridors identified in the Infrastructure Planning Appendix of the BCCP.

RESPONSE:

In the final EIS/HCP, special condition number 13 in Chapter 2, Section 3 will provide for incidental take within the preserves from activities covered by infrastructure construction projects within existing or planned corridors and approved by the Coordinating Committee Secretary.

COMMENT:

The use of the term "near" in the third full paragraph of page 2-52 needs to be clarified because activities outside the preserves do not require approval of the Coordinating Committee.

RESPONSE:

The term "near" was changed to "within".

COMMENT:

Recommended Changes to Page 2-52 of the EIS.

The second sentence of the third full paragraph and following on page 2-52 of the EIS should read as follows:

The infrastructure guidelines will typically take precedence over the individual land management plans or general land management guidelines. Unless the Plan is modified to identify new infrastructure corridors, the utility will be limited to the existing corridors and the planned corridors currently identified in the Plan. For activities in existing corridors, the utility will comply with the guidelines and requirements contained in the Infrastructure Planning Appendix of the Plan (see Appendix B). For activities in existing corridors where the activity will result in the widening of the corridor, and for activities in Planned Corridors where the activity is the first use of the corridor or involves an expansion of the area then being used in the corridor, the following provisions shall apply:

(1) If the utility provider is one of the seven utilities associated with the Permit Holders/Managing Partners (Lower Colorado River Authority, City of Austin Electric Utility, Pedernales Electric Cooperative, City of Austin Water and Wastewater Utility, Travis County Transportation and Natural Resources Department, City of Austin Public Works and Transportation Department, or the City of Austin Stormwater Management), then that utility may conduct such activities within an existing corridor or a BCCP Planned Corridor provided it complies with the guidelines and requirements for preapproval in the Infrastructure Planning Appendix.

(2) If the utility provider is not one of the seven entities listed in (1), then that utility may conduct such activities within an existing corridor or a BCCP Planned Corridor if it (a) complies with the guidelines and requirements for pre-approval in the Infrastructure Planning Appendix and (b) reaches an agreement with the Coordinating Committee as to whether any amount shall be paid by that utility to the City of Austin based on the acres within the corridor that will be first disturbed by the activities of that utility, and which amount shall not exceed the amount that would be required to purchase Participation Certificates for that same number of acres.

RESPONSE:

The original language in the draft EIS is appropriate. Long-term operational issues for utilities, such as possible plan modifications in the future for new infrastructure corridors, may be addressed by the Coordinating Committee within the limits of the Permit.

COMMENT:

In the last paragraph on page 1 of Appendix B the reference to "the PMA" should be changed to the "the Coordinating Committee Secretary" to be consistent with the change from the original that was made throughout the document.

On page 2 of Table 1 (BCCP Planned Corridors), the description next to item 43 should be changed by inserting the words "Lake Travis" before the word "substation," and the words "Lake Travis" should be removed from the column entitled "Primary User."

RESPONSE:

Suggested changes have been made to Appendix B of the final EIS/HCP.

COMMENT:

To clarify the distinction between the utilities associated with the Permit Holders/Managing Partners and all of the others, the fourth paragraph on page 2 of the Appendix could be rewritten to be more specific. Beginning with the second sentence, we suggest the following change:

These include those utilities which are associated with the Permit Holders/Managing Partners and those utilities which are not. The former group includes (here list the seven named entities that are associated with the permit holders). Of the other utilities which are not associated with the Permit Holders/Managing Partners, the following participated in negotiations among utility providers but are not currently included in the regional Plan: (the remainder as currently written).

RESPONSE:

Distinction between the two groups of utilities has been made in this definition in Appendix B of the final EIS/HCP.

COMMENT:

Paragraph 3. Planned: page 3 of the Appendix, the following language from the original version of the document is no longer appropriate and should be replaced with the following:

Habitat currently existing in the BCCP Planned Corridors will be impacted if these corridors are eventually used to locate infrastructure facilities. Because additional preserve acreage has been included in the BCCP to mitigate in advance for this potential future use, the acquisition of additional preserve acreage will not be required if facilities are located in these corridors. However, if a utility which is not associated with the Permit Holder/Managing Partner wishes to locate a facility in the Planned Corridor and such activity will result in a loss of habitat, then the Coordinating committee may, as part of its approval of that utility's construction plans, determine whether that utility shall pay an amount to the City of Austin based on the number of acres of habitat that will be lost, provided that the amount shall not be greater than the amount that would be required to purchase Participation Certificates for that same number of acres.

RESPONSE:

Appendix B of the final EIS/HCP has been changed to require compensation for new utility project impacts in existing and planned corridors.

COMMENT:

The language on the bottom of page 2 and the top of page 3 of the Appendix, referring to the widening of existing corridors should be revised to eliminate the references in the original version to acquiring replacement acreage. In its place, language could be added to say that activities by the utilities associated with the Permit Holders/Managing Partners that result in a widening of these existing corridors would not require any mitigation, and that activities by the other utilities that resulted in the widening of these corridors would be treated the same as in the case of activities in the planned corridors, that is, those utilities might be required by the Coordinating Committee to pay a fee to the City (in an amount not greater than the amount that would be required to purchase Participation Certificates for the number of acres taken).

RESPONSE:

Appendix B of the final EIS/HCP has been changed to require compensation for new utility project impacts in existing and planned corridors.

COMMENT:

We recommend that language be added in Appendix B to provide guidance regarding how the utilities can submit their required notices to the Coordinating Committee Secretary, including a name and address.

RESPONSE:

During the first two years after Permit issuance, the Coordinating Committee Secretary duties will be handled by the City of Austin. Subsequently, the duties will be rotated between Travis County and the City of Austin.

COMMENT:

Some analysis is necessary regarding the City of Austin's proposal for private management of the preserves.

RESPONSE:

The management guidelines for management of the preserves has been reviewed and the site specific management plans will be reviewed. The fact that the management is carried out by the City of Austin or a private contractor does not change this requirement nor require analysis other than what has been accomplished for the Plan. The USFWS and the public will have an opportunity to review any contract signed for the private management of part of or all of the preserves.

COMMENT:

How will we know if the macrosites are working during the five years before the first review?

RESPONSE:

The Plan will be continuously reviewed through participation on the Coordinating Committee. Additionally, there will be quarterly and annual reports of action taken by Permit holders. We are also concerned about habitat fragmentation, but believe this Plan will prevent such fragmentation in the preserve lands.

COMMENT:

Concern over the lack of a formalized management structure and that the management is left in the hands of the preserve owners.

RESPONSE:

The USFWS would prefer a single management entity, as proposed in earlier plans, because it would be easier to coordinate management and research activities, and there would be one contact point for resolution of issues. However, the current proposal that all management plans must follow established management guidelines is an acceptable alternative. Additionally, the USFWS reviews all management plans and will not approve any such plan that does not meet the goal of the issued permit.

COMMENT:

Consider allowing USFWS to demand changes in administration of the Plan if after a time the proposed administration is not adequate.

RESPONSE:

The USFWS has the authority to recommend alteration of permit conditions if the goals of the permit are not being met. If a problem in permit operation or management is identified, the USFWS will work with the permittees to correct the problem.

COMMENT:

The Plan proposes that mitigation only be required on occupied GCW habitat.

RESPONSE:

The Plan uses the maps prepared by DLS Associates for the calculation of the acres that require Participation Certificates. The DLS maps include known warbler areas, possible warbler habitat, and areas that are not warbler habitat. The Plan currently proposes to charge a fee of \$5,500 per acre for the known warbler areas and \$2,750 per acre for possible warbler habitat.

COMMENT:

Will scientific qualifications be required of the Coordinating Committee Secretary or other committee members?

RESPONSE:

There are no scientific qualifications established for Coordinating Committee members; however, there is a staff of biologists in Travis County and the City of Austin who will provide guidance to the Coordinating Committee. Additionally, the Service will be a party to any decisions made regarding preserve management as part of our responsibility to oversee implementation of the incidental take permit.

COMMENT:

The draft EIS does not provide details on how landowners determine whether their property is inside or outside a preserve, why areas which are clearly not habitat would be assessed impact mitigation fees, or how a plan participant actually realizes the benefits of this plan.

RESPONSE:

The applicants have detailed maps of the proposed preserve boundaries. Property owners may contact Travis County Transportation and Natural Resources Department to determine whether their property is inside or outside of a proposed preserve.

The tracts that contain no habitat would not be assessed a participation fee.

The Plan participant realizes the benefits of the Plan by reduced costs, reduced time in obtaining permits, more open space for clients, and preservation of natural resources. Additionally, areas adjacent to the preserves may have a higher value because of the open space.

COMMENT:

The draft EIS indicates that development in vireo habitat cannot occur until at least 50 percent of the preserves for the vireo is purchased and it also states that this provision is being waived. This needs to be clarified.

RESPONSE:

That provision to protect the vireo habitat until at least 50 percent of the preserves for the vireo was purchased was part of a previous version of the BCCP. The permit applicants requested that provision be changed. The USFWS concurred since the majority of current vireo habitat in Travis County is within the proposed Balcones Canyonlands National Wildlife Refuge or within the bounds of the proposed preserves of the BCCP.

COMMENT:

The BCCP process is supposed to be voluntary, however, parts of the DEIS indicate that this may change given the opinion of the management committee.

RESPONSE:

The voluntary aspects of the BCCP will not change.

COMMENT:

It is clear that the City of Austin will have the legal opportunity to pass additional rules when the plan is approved. These rules must be identified before the plan is approved.

RESPONSE:

Neither the City of Austin nor Travis County will have the authority to pass any rules or regulations as a result of receiving this permit. This permit does not convey any such authority to the permittees.

COMMENT:

The plan "exempts incidental 'take' resulting from any existing, routine ranching and farming practices, as defined by USFWS, which occur in Travis County (but not inside the designated preserve area)." What are the "existing, routine ranching and farming practices, as defined by USFWS?" Will this definition change?

RESPONSE:

The USFWS has not developed a specific definition for "routine ranching and farming practices" but has stated that ongoing farm and ranch activities do not require authorization under the Endangered Species Act. The USFWS does not propose to alter that position with respect to any of the species covered under the BCCP.

COMMENTS RELATING TO POST ISSUANCE

COMMENT:

What will occur if the Plan's financial projections are not realized? Is there a demonstrated future market for mitigation at \$5,500+ per acre? Can higher basis property afford mitigation under the BCCP? Have pro forma financial constraints been analyzed from the perspective of the developer applicant?

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RESPONSE:

If the Plan's financial projections are not realized then the following are options that may result:

1. The shortfalls in revenue collection would be identified as a problem; options would be investigated to correct the shortfall or the permit would be suspended. The permit would not be re-activated until the problem was corrected.
2. The Permit holders identify the shortfall in revenue collection and identify means of correction by increasing the cost of the Participation Certificates or other means.

A pro forma with respect to the developer has not been performed. We cannot answer your question regarding affordability to the developer. However, developer representatives participated in the development of the BCCP and they supported this current version.

COMMENT:

The BCCP will now become the minimum level or standard for future projects. Those landowners wishing to pursue a 10A are not likely to receive a receptive ear from the Fish & Wildlife Field Office who are likely to force compliance with the BCCP as a minimum level of compliance.

RESPONSE:

The USFWS will review future projects within the range of the warbler the same as similar projects were reviewed in the past. Whether an incidental take permit has been issued does not alter the process for or the calculation of take and recommendation for how to minimize or mitigate that take to the maximum extent practicable for issuance of a permit.

The USFWS currently reviews new permit applications with respect to the impacts on the federally-listed species and any previously issued permit. If the new project affects dedicated mitigation lands, the new project must offset the impacts to the dedicated mitigation lands first, and then provide mitigation for the impacts of the new project. This is because the new project is destroying the value of mitigation established by a previous project. Therefore, after the issuance of the BCCP permit, the calculation of "take" by a new project will not be evaluated any differently than has been done in the past.

COMMENT:

If the BCCP permit must be reviewed in two years for compliance and BCCP falls short, does the plan in effect become a two year plan? In other words, what

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happens next? The very fact that we are discussing an unknown increases the risk to a builder or landowner - a result we find objectionable.

RESPONSE:

The suspension and revocation procedures followed by the USFWS are identified in Title 50 of the Code of Federal Regulations Part 13.27 and 13.28. A permit is suspended if: there is non-compliance with permit conditions or laws/regulations governing the activity. The suspension may be for all or part of the privileges and it is suspended until deficiencies are corrected.

A permit is revoked if the permittee: willfully violates laws or regulations; fails to correct suspension deficiencies within 60 days; or meets a criteria that would prevent issuance of permit. Additionally, a permit is revoked if the statute or regulation that authorized issuance of permit is changed or if biological information indicates species jeopardy if take continues.

The USFWS must notify the permittee in writing by certified/registered mail of violation and indicate:

- (a) the permit number;
- (b) reason's for suspension/revocation;
- (c) action's necessary to correct deficiencies;
- (d) permittee's right to object.

The permittee has 45 days to respond to the notice before any final action is taken with respect to suspension or revocation. After a decision to suspend or revoke, the permittee has a right to appeal the decision to the Regional Director for a final decision.

The important part of this process is discussion between the USFWS and the permittee to resolve any problems before a permit is suspended or revoked. If a permit is suspended or revoked, it does not affect the take that had occurred prior to that action. All take that complied with the issued permit would be in compliance with provisions of the Act. However, no additional take would be allowed to occur after the suspension or revocation.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE



FEDERAL FISH AND WILDLIFE PERMIT

3-201
(10/86)

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(A)

REGULATIONS (attached)

50 CFR § 13 & 17

3. NUMBER

PRT-788841

1. PERMITTEE

CITY OF AUSTIN
P.O. BOX 1088
AUSTIN, TEXAS 78767

TRAVIS COUNTY
P.O. BOX 1748
AUSTIN, TEXAS 78767

4. RENEWABLE

XXXX YES
____ NO

5. MAY COPY

XXXX YES
____ NO

6. EFFECTIVE

MAY 2, 1996

7. EXPIRES

MAY 2, 2026

8. NAME AND TITLE OF PRINCIPAL OFFICER
(if # 1 is a business)

BRUCE TODD, MAYOR, CITY OF AUSTIN
BILL ALESHIRE, COUNTY JUDGE, TRAVIS
COUNTY

9. TYPE OF PERMIT

ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

TRAVIS COUNTY, TEXAS OUTSIDE OF THE PRESERVES IDENTIFIED IN THE HABITAT CONSERVATION PLAN
AND FINAL ENVIRONMENTAL IMPACT STATEMENT DATED MARCH 1996

11. CONDITIONS AND AUTHORIZATIONS:

SEE SPECIAL CONDITIONS A THROUGH P ON ATTACHED PAGES 2 THROUGH 11.

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN
CONDITION G OF THIS PERMIT. REPORTING FORMAT AND CONTENT IS OUTLINED IN CONDITION G OF
THIS PERMIT.

ISSUED BY:

TITLE

DATE

Nancy M. Kaufman
REGIONAL DIRECTOR, REGION 2

MAY 2, 1996

ORIGINAL

CITY OF AUSTIN & TRAVIS COUNTY PERMIT PRT-788841

- A. If during the tenure of this permit, the amount of incidental take is exceeded, issuance of Participation Certificates must be stopped and the permittees must re-initiate consultation with the USFWS to avoid violation of section 9, Endangered Species Act.
- B. Acceptance of this permit serves as evidence that the permittees understand and agree to abide by the terms of this permit and all sections of Title 50 Code of Federal Regulations Parts 13, 17, and 21 (attached) pertinent to issued permits.
- C. The authorization granted by this permit is subject to compliance with, and implementation of, the terms and conditions of the Environmental Impact Statement/Habitat Conservation Plan, Biological opinion, and all specific conditions contained in this permit. If there are any discrepancies between the requirements in these documents, the requirements identified in the special conditions of this issued permit take precedence.
- D. Upon locating any dead, injured, or sick individuals from the list of animal species covered by this permit, or any other endangered or threatened animal species, permittees are required to contact the U.S. Fish and Wildlife Service's Law Enforcement Office, Austin, Texas (512) 490-0948, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the permittees and their contractor(s) or subcontractor(s) have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.
- E. The validity of this permit is also conditioned upon observance of all relevant international, state, local, or other Federal law.
- F. The permittees are authorized to "take" (kill, harm, or harass) the following federally-listed endangered species:

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<i>Vireo atricapillus</i>	Black-capped vireo
<i>Dendroica chrysoparia</i>	Golden-cheeked warbler
<i>Tartarocreagris texana</i>	Tooth Cave pseudoscorpion
<i>Neoleptoneta myopica</i>	Tooth Cave spider
<i>Texella reddelli</i>	Bee Creek Cave harvestman
<i>Texella reyesi</i>	Bone Cave harvestman
<i>Rhadine persephone</i>	Tooth Cave ground beetle
<i>Texamaurops reddelli</i>	Kretschmarr Cave mold beetle

Additionally, the permittees would be covered for incidental take of the following species of concern if these species become listed during the life of the permit and the mitigation measures identified in this permit are being performed.

<i>Philadelphus ernestii</i>	Canyon Mock-orange
<i>Croton alabamensis</i>	Texabama croton
<i>Sphalloplana mohri</i>	Flatworm
<i>Candona</i> sp. nr. <i>stagnalis</i>	Ostracod
<i>Caecidotea reddelli</i>	Isopod
Trichoniscinae N. S.	Isopod
<i>Miktoniscus</i> N. S.	Isopod
<i>Cicurina wartoni</i>	Spider
<i>C. ellioti</i>	Spider
<i>C. bandida</i>	Spider
<i>C. reddelli</i>	Spider
<i>C. reyesi</i>	Spider
<i>C. cueva</i>	Spider
<i>C. travisae</i>	Spider
<i>Neoleptoneta cocinna</i>	Spider
<i>Neoleptoneta devia</i>	Spider
<i>Eidmannella reclusa</i>	Spider
<i>Aphrastochthonius</i> N. S.	Pseudoscorpion
<i>Tartarocreagris reddelli</i>	Pseudoscorpion
<i>T. intermedia</i>	Pseudoscorpion
<i>T. N. S. 3</i>	Pseudoscorpion
<i>Texella spinoperca</i>	Harvestman
<i>T. comanche</i>	New Comanche Trail Cave harvestman
<i>Speodesmus</i> N. S.	Millepede
<i>Rhadine s. subterranea</i>	Ground beetle
<i>R. s. mitchelli</i>	Ground beetle
<i>R. austinica</i>	Ground beetle

- G. An annual report, due June 1 of each year beginning in 1997, is to be provided to the Austin Ecological Services Field Office. This report is to include:

1. a list of all development activities west of the MOPAC Railroad that were permitted by the Permit Holders in the previous 12 months,
2. a list of all tracts for which Participation Certificates were purchased,
3. amount of funds collected for land acquisition,
4. amount of funds expended for land acquisition,
5. amount of funds expended for operations and maintenance.
6. an updated map of the lands dedicated to preserve management,
7. a list of public use and habitat management activities that have been undertaken or completed within the bounds of the preserve units, including the status of land management plans undertaken by the permit holders and managing partners, and
8. a copy of all research or investigation reports that have been prepared within the previous 12 months.

In addition to the above annual requirements, the Permit Holders must provide quarterly updates for the tracts for which Participation Certificates were purchased that include the following information:

1. a general map of each tract location and
2. a tract boundary map that identifies the areas for which the Participation Certificate applies. If a location and/or tract map is not provided to the Permit Holder during the normal permitting process, a street address will meet this requirement.

H. A copy of a recorded Participation Certificate provided by the Permit Holders must be posted at the property site from the time vegetation clearing begins until the construction is completed. For residential development, completed construction is when all roads and utilities are completed to the extent that they meet the applicable acceptance criteria of the City of Austin or Travis County. For commercial, industrial and multi-family developments completed construction is when buildings are suitable for occupancy.

- I. The funds collected and expended for this Permit and compliance with the financial requirements of the Permit shall be evaluated by financial audits conducted after the sale of Participation Certificates covering 3,000 fee-paid acres or every five years, whichever comes sooner, until permit expiration. Such audits will be coordinated between the USFWS and the Coordinating Committee. This audit may be part of the permittees audit processes as required by State law and shall not be more frequent than every two years.
- J. The funds collected under this Permit will be expended for land or easement acquisition and other preserve system needs in accordance with the following criteria:
1. tracts considered for acquisition will be within or contiguous to the boundaries of the preserve units identified in the issued Permit;
 2. expenditure priority should be in the following decreasing order: Bull Creek, Cypress Creek, South Lake Austin, and North Lake Austin; and
 3. dispensing of funds from the BCCP Fund account should be accomplished as soon as there are adequate funds to complete a transaction or implement a strategy for acquisition, taking into account opportunity, preserve priority and development threat.
- K. The Permit Holders will administer the issuance of the Participation Certificates.
- L. Incidental take that may result from the implementation of land management activities within the boundaries of a preserve and contained in a management plan approved by the Coordinating Committee, are covered and authorized under this Permit.
- M. Incidental take that may result from the implementation of utility and infrastructure corridor projects approved by the Secretary of the Coordinating Committee and within one of the BCCP-Shared vision approved utility and infrastructure corridors, as provided in the final EIS/HCP, Appendix B, is covered and authorized under this Permit.
- N. Incidental take of the Barton Springs salamander is not covered by this Permit. Entities who purchase Participation Certificates for activities within the Travis County portion of the Barton Springs watershed should obtain guidance with respect to avoiding the impacts of their activities on water quality as they relate to the Barton Springs salamander.

- O. The incidental take authorization of this permit does not apply to the "take" of any endangered or threatened species outside of the boundary of the permit as identified in the EIS/HCP dated March 1996 or any modifications/amendments to that boundary.
- P. The "No Surprises" policy of the U. S. Fish and Wildlife Service provides that additional mitigation, lands or financial compensation shall not be required of the permittees or their successors beyond the level of mitigation provided for in the EIS/HCP. With respect to this permit, the EIS/HCP and supporting documents adequately addressed the species listed in special condition 6 above. To be fully covered by the "No Surprises" policy for a specific species, all of the requirements identified for that species must be met.

GOLDEN-CHEEKED WARBLER:

1. Ensure at least 28,428 acres within the seven identified macrosites will be acquired and managed for the golden-cheeked warbler during the permit duration. Acquisition and management activities through this Permit, other issued incidental take permits, and section 7 consultations where the mitigation activities are within or contiguous to the proposed preserve boundaries, count toward this goal.
2. In conjunction with the managing partners, control human activities to eliminate or mitigate any adverse impacts of human activities to the warbler on these 28,428 acres, for the acreage acquired.
3. No vegetation clearing activities will be accomplished within golden-cheeked warbler habitat, Zones 1 and 2, from March 1 through August 31 to prevent the disturbance of nesting activities unless current breeding season surveys, conducted in accordance with Fish and Wildlife Service protocol, indicate that the warbler is not nesting within 300 feet of the proposed clearing.
4. Develop and implement an approved land management plan, in accordance with the land management guidelines set forth by the Coordinating Committee, for each tract within 12 months after permit issuance or within 12 months of land acquisition whichever is later.

BLACK-CAPPED VIREO

1. Ensure at least 2,000 acres within the seven identified macrosites will be acquired and managed for the black-capped vireo during the permit duration. Acquisition and management activities through this Permit, other issued incidental take permits, and section 7 consultations where the mitigation activities are within or contiguous to the proposed preserve boundaries, count toward this goal.
2. In conjunction with the managing partners, control human activities to eliminate or mitigate any adverse impacts of human activities to the vireo on these 2,000 acres, for the acreage acquired.
3. No vegetation clearing activities will be accomplished within black-capped vireo habitat between March 1 and August 31 to prevent the destruction of an active nest unless current breeding season surveys, conducted in accordance with Fish and Wildlife Service protocol, indicate that the vireo is not nesting within 300 feet of the proposed clearing.
4. Develop and implement an approved land management plan, in accordance with the land management guidelines set forth by the Coordinating Committee, for each tract within 12 months after permit issuance or within 12 months of land acquisition whichever is later.

LISTED KARST INVERTEBRATES

1. Acquire and manage, or implement formal management agreements, as provided in subsection (4) below, adequate to preserve the environmental integrity of the following 35 caves that support federally-listed karst invertebrates:

Amber Cave	Kretschmarr Double Pit
Bandit Cave	Kretschmarr Cave
Beard Ranch Cave	Lamm Cave
Bee Creek Cave	Little Bee Creek Cave
Broken Arrow Cave	M.W.A. Cave
Cave Y	McDonald Cave
Cold Cave	McNeil Bat Cave
Cotterell Cave	New Comanche Trail Cave
Disbelievers Cave	No Rent Cave
Eluvial Cave	North Root Cave
Fossil Cave	Rolling Rock Cave
Fossil Garden Cave	Root Cave
Gallifer Cave	Spider Cave
Hole-In-The-Road	Stovepipe Cave

Japygid Cave	Tardus Hole
Jest John Cave	Tooth Cave
Jester Estates Cave	Weldon Cave
Jollyville Plateau Cave	

2. If during investigations for development of a tract, karst features are discovered with a significant diversity of troglobitic fauna, those karst features may be submitted to the USFWS for consideration for exchange with karst features identified for protection by the BCCP. The determination of "significant diversity" will be made by the permit applicants and the USFWS, in association with karst experts. The inclusion of such a karst feature would not increase the number of caves to be protected by the BCCP, but would result in the new feature replacing a previously identified cave or caves.
3. Where the surface and subsurface hydrogeologic area around a cave identified for protection is not known, the area delineated by the contour level at the bottom of the cave will be managed for cave protection. In the absence of such site specific information, no Participation Certificates are to be awarded within 0.25 miles of the cave entrance until the hydrogeologic areas are properly delineated.
4. Enter into formal management agreement(s) for all caves that are recommended for protection but have yet to be acquired. The management agreement(s) will detail the area to be managed for cave protection, what such management will entail, and who is responsible for the management.

KARST SPECIES OF CONCERN

1. Acquire and manage, or implement formal management agreements, as provided in subsection (4) below, adequate to preserve the environmental integrity of the following 27 caves, in addition to the caves protected for the federally-listed species, that support the karst species of concern:

Adobe Springs Cave	Jack's Joint
Airman's Cave	Lost Oasis Cave
Armadillo Ranch Sink	Lost Gold Cave
Arrow Cave	Maple Run Cave
Blowing Sink	Midnight Cave
Buda Boulder Spring	Moss Pit
Cave X	Pennie Cave
Ceiling Slot Cave	Pickle Pit
District Park Cave	Pipeline Cave

Flint Ridge Cave	Slaughter Creek Cave
Get Down Cave	Spanish Wells Cave
Goat Cave	Stark's North Mine
Ireland's Cave	Talus Spring
Whirlpool Cave	

The caves in which the karst species of concern occur are listed below. To receive the "no surprises" guarantee for the identified species, the caves identified must be protected, as per "1" above.

<u>SPECIES</u>	<u>CAVE</u>
<i>Sphalloplana mohri</i>	Spanish Wells Cave
<i>Candona</i> sp. nr. <i>stagnalis</i>	Cave X
<i>Caecidotea reddelli</i>	Buda Boulder Cave, Cave X, Jack's Joint
<i>Trichoniscinae</i> N. S.	Bandit Cave
<i>Miktoniscus</i> N. S.	Cave X
<i>Cicurina wartoni</i>	Pickle Pit
<i>C. ellioti</i>	Cotterell Cave, Fossil Garden Cave, Gallifer Cave, No Rent Cave, Weldon Cave
<i>C. bandida</i>	Bandit Cave, Ireland's Cave
<i>C. reddelli</i>	Cotterell Cave
<i>C. reyesi</i>	Airman's Cave
<i>C. cueva</i>	Cave X, Flint Ridge Cave
<i>C. travisae</i>	Amber Cave, Broken Arrow Cave, Kretschmarr Cave, McDonald Cave, Root Cave, Spider Cave, Stovepipe Cave, Tooth Cave
<i>Neoleptoneta cocinna</i>	Lost Gold & Stark's North Cave
<i>N. devia</i>	McDonald Cave
<i>Eidmannella reclusa</i>	Tooth Cave, Gallifer Cave, Kretschmarr Cave, Stovepipe Cave
<i>Aphrastochthonius</i> N. S.	Stovepipe Cave
<i>Tartarocreagris reddelli</i>	McDonald Cave
<i>T. intermedia</i>	Airman's Cave
<i>T. N. S. 3</i>	BCNWR
<i>Texella spinoperca</i>	Airman's Cave
<i>T. comanche</i>	New Comanche Trail Cave
<i>Speodesmus</i> N. S.	Bandit Cave, Cave X, Get Down Cave, Goat Cave, Pennie Cave, Pipeline Cave, Slaughter Creek Cave, Whirlpool Cave
<i>Rhadine s. subterranea</i>	Cotterell, Fossil, Fossil Garden, No Rent, McNeil Bat, & Weldon Cave
<i>R. s. mitchelli</i>	Amber, Kretschmarr, & Tooth Cave

R. austinica

Airman's, Arrow, Bandit, Bee Creek, Blowing Sink, Cave Y, Cave X, District Park, Flint Ridge, Get Down, Ireland's, Lost Gold, Lost Oasis, Maple Run, Midnight, Pennie, & Whirlpool

2. If during investigations for development of a tract, karst features are discovered with a significant diversity of troglobitic fauna, those karst features may be submitted to the USFWS for consideration for exchange with karst features identified for protection by the BCCP. The determination of "significant diversity" will be made by the permit applicants and the USFWS, in association with karst experts. The inclusion of such a karst feature would not increase the number of caves to be protected by the BCCP, but would result in the new feature replacing a previously identified cave or caves.
3. Where the surface and subsurface hydrogeologic area around a cave identified for protection is not known, the area delineated by the contour level at the bottom of the cave will be managed for cave protection. In the absence of such site specific information, no Participation Certificates are to be awarded within 0.25 miles of the cave entrance until the hydrogeologic areas are properly delineated.
4. Enter into formal management agreement(s) for all caves that are recommended for protection but have yet to be acquired. The management agreement(s) will detail the area to be managed for cave protection, what such management will entail, and who is responsible for the management.

CANYON MOCK-ORANGE

Protect and manage the portions of the known populations found within the preserve boundaries, for the acreage acquired.

TEXABAMA CROTON

Protect and manage the populations at Pace Bend Park.