

October 20, 2008

Clif Ladd
Loomis Austin
Austin, Texas

Via E-mail

Re: Comments on the September 4, 2008, Second Draft of the Hays Country Regional Habitat Conservation Plan

Dear Mr. Ladd:

Please accept the following comments as the comments of the Save Our Springs Alliance on the second draft of the proposed Hays County Regional Habitat Conservation Plan (HCRHCP). Please forward these comments to the appropriate persons.

Our main points remain:

1. The permit for ESA compliance should primarily be for the county's own operations, secondarily as mitigation bank for partnering with private sector and possibly other public sector players (e.g. City of San Marcos).
2. To extent the permit provides mitigation bank, the county should retain discretion on who it partners with and what it "charges" in mitigation credits. In this way the county can push for the best partners, rather than simply whoever steps up first to buy the limited number of mitigation credits the county has, which very likely could be the worst projects.
3. The county should have a broader view of its "plan" as a vision of what it wants for the western part of the county, preserving its rural heritage, scenic Hill Country vistas, historic ranches, critical recharge areas, riparian habitats, and overall biodiversity. This vision is opposed to a plan driven by the much narrower task of permitting for take of GCW. The broader vision is one of mostly undeveloped land with a few spots of development, rather than the reverse such as the BCCP consisting of a few islands of habitat surrounded by development. In this view, ESA compliance is just one, and probably a relative small, component of a larger Hill Country heritage preservation plan.

The following comments are secondary to the above three main points, which are discussed more fully in our previous comments, dated July 18, 2008, in response to the first draft of the HCRHCP.

Insufficient Protection Provided for the GCW:

The second draft of the HCRHCP continues to provide insufficient protection for the Golden-cheeked Warbler (GCW). The continued use of a 300-foot standard for assessing indirect impacts to the GCW is countered by peer-reviewed literature. For example, the GCW Recovery Team (Golden-cheeked Warbler (*Dendroica chrysoparia*) Recovery Team, 1998) on page 8 lists

four citations, which indicate that indirect effects extend 200-500 meters (657-1643 feet) from an urban edge. Similarly, the HCRHCP's 500-acre standard for minimum patch size is less than indicated by Lindsay et al. (2008), Diamond (2007), and Diamond and True (1998), who found that core GCW breeding habitat consists of large habitat blocks greater than 250 hectares (618 acres) near (< 1 kilometer) similarly sized habitat blocks, preferably with intervening areas restorable to GCW habitat. Another indication of the lack of commitment to protection of covered species is the oft-repeated HCRHCP statement that recovery of covered species is not required. Though not required, such voluntary RHCP projects may include recovery of covered species as a goal for sustainable conservation. For example, the recently approved Williamson County RHCP includes recovery.

More generally, priorities and evaluation procedures for preserve acquisitions have been removed from the second draft, and should be reinstated and detailed in the HCRHCP. Without this information, the efficacy of both the minimum preserve design criteria and the mitigation credit generation process cannot be verified, relative to assuring no harm during incidental take of covered species. For example, as specified in the current HCRHCP draft, mitigation credits are proposed to only be generated quantitatively (i.e., one acre of habitat destruction mitigated by one acre of mitigation). Without the use of a mitigation formula that, in addition to size, includes an in-field comparison of habitat quality between habitat destroyed and habitat preserved, harm to covered species cannot be adequately determined during incidental take.

Lack of Commitment to Plan Completion:

The HCRHCP does not include a commitment to plan completion. Despite the county commissioners apparently being ready to implement upfront land acquisition, the consultants continue to exclude such a commitment in the second draft of the HCRHCP. During their October 9, 2008 meeting, the HCRHCP Citizens' Advisory Committee was told by plan consultants that the lack of a core commitment of upfront preserve acquisition was meant to avoid state law assuring plan implementation.

The lack of a clear business plan to establish a permanent stewardship endowment is additional cause for concern. A specific plan should be provided for the establishment of a stewardship endowment which will assure the ability of Hays County or another Grantee to monitor, manage, and protect HCRHCP preserves over time. The HCRHCP should be obligated to both perform specific stewardship tasks, and assure adequate long-term funding to accomplish these tasks, through the generation of a permanent endowment. Each mitigation credit and preserve acquisition should include a legally binding guarantee of habitat management and protection.

The HCRHCP should not be approved without a clear commitment towards upfront preserve acquisition, and perpetual management and monitoring based on specific stewardship obligations. Concurrent with the creation of mitigation credits over the life of the incidental take permit, the simultaneous stepwise establishment of a permanent endowment fund should be required, in order to guarantee preserve stewardship, including beyond the 30-year life of the HCRHCP. For example, the Williamson County RHCP's business plan includes the establishment of a \$30,000,000 stewardship endowment by the time the 30-year incidental take

permit expires. Assuming the endowment is invested to increase funding and keep up with inflation, at a minimum the HCRHCP endowment should equal the average annual cost of stewardship plus emergency contingency divided by the capitalization rate.

Analysis of impact to potential habitat should not be artificially limited to new construction, but should also include land clearing associated with agriculture and pre-development activities related to anticipated subdivisions and similar ranch conversions (Sec. 5.2.1). The analysis of direct and indirect impact in the future should also include residential/commercial/mixed use construction not yet built within currently platted subdivisions and within properties currently undergoing a subdivision approval process which is subsequently approved. A determination of how new federal guarantees of bank activities and mortgages may dictate wider application of ESA to development activities should also be added to the HCRHCP.

The proposed public education and outreach program under the HCRHCP (Sec. 6.2.4) should include annual monitoring of extent and quality of habitat for covered species across the entire county, not just HCRHCP preserves, in order to properly assess and improve program effectiveness through adaptive management.

The mitigation measures section (Sec. 6.3) should be rewritten to commit to specific conservation goals, which in turn define the preserve acreage to be acquired, and hence funding needs. Otherwise, funding models are not anchored to definite assumptions or goals. Conservation goals should delineate not only the preservation of contiguous habitat blocks and associated buffer areas, but also the restoration of new habitat to further these design goals, and compensate for both direct habitat loss and indirect loss of habitat values due to fragmentation and associated edge effects. The proposed 1:1 mitigation ratio means that the HCRHCP may result in the net loss of 50% of impacted habitat, unless significant restoration leading to creation of new habitat is specified in the HCRHCP.

Additional Comments:

As previously discussed, on-site habitat determinations (Sec. 7.2.2) should include delineation of areas of different habitat quality.

During site plan review (Sec. 7.2.3), areas of indirect impact should be extended up to 500 meters, not 300 feet, in order for conservation to be more sustainable, as previously stated. Also, how is “project area” defined in this section? Indirect impacts should be assessed on adjacent ownerships falling within 500 meters of direct impacts.

How is “potential warbler or vireo habitat” defined during mitigation assessments leading to determination letters (Sec. 7.2.4)? Potential habitat should include restorable habitat. For example, a parcel with only a few scattered large oaks can often be rapidly restored (10-20 years) as GCW habitat.

As proposed in the current draft of the HCRHCP, the evaluation species research program is grossly underfunded. Forty karst species, both terrestrial and aquatic species, are

currently included as evaluation species. Very little if any information is available for most of these species, relative to life histories, habitat requirements and extent, taxonomy, and other basic aspects of their ecology. Research funding for these species should be increased three- to four-fold, in order to support a more effective research program equivalent to that supporting four to five local graduate students.

Compatible economic uses for preserved land should be included in the HCRHCP, in order to help defray the cost of preserve operations and maintenance (O&M). Chief among these are deer hunting, because it would improve oak regeneration, and one month of activity in the winter may largely cover the other eleven months of O&M costs. Deer hunting season falls outside warbler and vireo breeding season, so likely is a compatible activity. Fencing around preserve units should also be required in order to improve management by controlling human and some animal access.

The HCRHCP should also include local subdivision regulations which can indirectly bolster the function of the preserve system. Subdivision rules for development ideally would limit impervious cover and set back from steep slopes, critical environmental features, and riparian zones. The resulting open spaces within subdivisions can form natural corridors which connect to the larger unfragmented preserve units.

Conclusion:

To conclude, I repeat our main points. First, the permit for ESA compliance should primarily be for the county's own operations, and only secondarily as mitigation bank for partnering with selected private sector and public sector players. Second, to extent the permit provides mitigation bank, the county should retain discretion on selecting partners and mitigation requirements. And finally, the county should view the HCRHCP as a component within a much broader Hill Country heritage preservation plan.

Thank you for your consideration of these comments.

Sincerely,

Bill Bunch
Executive Director
Save Our Springs Alliance

References:

Diamond, D.D. 2007. Project Final Report: Range-wide modeling of golden-cheeked warbler habitat. 12/15/07 report to TPWD, unpublished document.

Diamond D.D., and C.D. True. 1998. Golden-cheeked warbler habitat area, habitat distribution, and change and brief analysis of land cover within the Edwards Aquifer recharge zone.

Final Report, Submitted to the Office of Endangered Species, U. S. Fish and Wildlife Service, Albuquerque, New Mexico.

Golden-cheeked Warbler (*Dendroica chrysoparia*) Recovery Team. 1998. April 2-3, 1998, meeting minutes: responses to USFWS's questions, unpublished document.

Lindsay, D.L. 2008. Habitat fragmentation and genetic diversity of an endangered, migratory songbird, the golden-cheeked warbler (*Dendroica chrysoparia*). Molecular Ecology 17:2122-2133.