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December 30, 2010

Southern Edwards Plateau Habitat Conservation Plan (SEP-HCP)
Biological Assessment Team (BAT)

RE: Comments, Questions and Concerns regarding the BAT Recommendations

Bexar County, as the applicant, requests the BAT address the following questions and concerns regarding the committee's recommendations presented to the Citizens Advisory Committee on the SEP-HCP conservation measures.

- A. The County requests that the BAT more fully explain the biological rationale for the recommended Golden Cheek Warbler (GCW) mitigation ratios and the requirement for a substantial portion of the GCW mitigation to be located in Bexar County, particularly in light of the following considerations:**
1. **Mitigation ratios.** The 2009 Camp Bullis Biological Opinion prepared by the U.S. Fish and Wildlife Service (USFWS) describes the Department of Army's voluntary 3:1 to 0.5:1 graded mitigation ratios as "extraordinary efforts on the part of Camp Bullis to not only off-set the anticipated adverse effects, but to add to the recovery potential for the (GCW) due to their proposed voluntary mitigation strategy." This rationale would suggest that the 3:1 and 2:1 mitigation ratios proposed by the BAT also include an "extraordinary" contribution to recovery, beyond what might be needed to adequately compensate for the adverse impacts of the authorized take.
 2. **Bexar County mitigation.** The BAT recommended a substantial portion of the mitigation for covered habitat loss in Bexar County to be located within or within five miles of the Bexar County boundary. The BAT has stated that the rationale for this provision is to ensure that the mitigation is close to the take, as required by the USFWS. However, the standards for a HCP and an incidental take permit included in the Endangered Species Act do not include such a requirement (the only regulatory standard is that the mitigation must be to the maximum extent practicable). The USFWS 1996 HCP Handbook, which represents the USFWS' official published policy for the development of HCPs, states (page 3-21):

Generally, the location of replacement habitats should be as close as possible to the area of impact; it must also include similar

habitat types and support the same species affected by the HCP. However, there may be good reason to accept mitigation lands that are distant from the impact area – e.g., if a large habitat block as opposed to fragmented blocks can be protected or if the mitigation lands are obtained through a mitigation fund. Ultimately, the location of mitigation habitat must be based on individual circumstances and good judgment.

The policy described in the HCP Handbook indicates that it may be acceptable to have mitigation located distant from the habitat loss, if the conservation value of that mitigation is greater (such as being able to protect a larger block of habitat).

3. Currently protected lands in Bexar County. As part of the justification for requiring a large amount of mitigation to be located in Bexar County, the BAT has indicated that the GCW populations on currently protected lands (such as Government Canyon and other San Antonio parks and preserves) are at risk of extirpation if additional lands are not protected to expand and/or connect these currently protected properties. However, the recent TAMU study by Morrison et al. (2010), suggests that patches of habitat that are at least 500 acres have a probability of occupancy that approaches 100%. Bexar County currently has at least 3 clusters of adjacent parks or preserves that include more than 500 acres of GCW habitat, not including Camp Bullis. The Government Canyon complex of protected lands includes approximately 11,500 acres. The cluster of existing parks and natural areas that includes Friedrich Park, Crownridge Canyon, and Rancho Diana includes approximately 2,200 acres. The private GCW conservation lands for Indian Springs and Cibolo Canyon also include approximately 2,000 acres. All the current GCW habitat models indicate that nearly all of these acres may be suitable GCW habitat. Given the size of these clusters of protected lands and the presence of approximately 2,000 acres of additional protected lands containing GCW habitat within the county, it seems unlikely that Bexar County would lose its GCW population, even if these large clusters of protected lands were to be completely surrounded by development.

B. The County would like the BAT to explain why the BAT finds that their recommended level and distribution of mitigation is biologically necessary to adequately balance the amount of harm to the species from the corresponding amount of incidental take requested and meet the issuance criteria for an incidental take permit. The County also asks the BAT to recommend an appropriate level of mitigation that would meet the permit issuance criteria, without making a substantial contribution to recovery of the species.

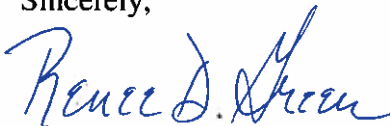
1. Potential severity of threat. The BAT has discussed that higher mitigation ratios for Bexar County take are warranted due to the potential greater risk and severity of threats to the species in this area, compared to other parts of the plan area. Mitigation ratios that are based on potential severity of threats to the species could require plan participants to mitigate at a level that is intended to compensate for impacts caused before the plan was in place or for future impacts caused by non-plan participants, not just the impacts of the take covered by the plan. The Endangered Species Act requires that “the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.”

C. The County would like the BAT to explain what types of impacts these mitigation ratios are intended to address. If the BAT recommends mitigation at a level that includes a substantial contribution to recovery, would this mitigation be understood to cover both the direct and indirect impacts of authorized take, and simplify the assessment of impacts (direct, indirect, and cumulative) in the participation process?

1. Recent population estimates. Texas A&M University (TAMU) recently reported estimates of the GCW population size, based on patch-specific GCW densities and occupancy rates derived from field data collected across the range of the species (Morrison et al. 2010). The TAMU estimates suggest that a range-wide population of approximately 370,000 adult GCWs occur over approximately 4.1 million acres of potential habitat. GCW population estimates at the time of listing ranged from approximately 9,600 to 32,000 individuals (Groce et al. 2010). Therefore, the current GCW population may be at least an order of magnitude larger than previously thought. The USFWS status review for the BCV also found that the overall breeding population of the vireo is substantially larger than was known at the time of listing (by a similar order of magnitude) and concluded that the magnitude of the threats to the species were sufficiently reduced to justify a recommendation for downlisting to threatened. Similar biological arguments could be made for the GCW that the magnitude of the threats to the species may not be as severe as previously thought.

The County looks forward to your answers. In addition attached are specific questions submitted by a member of the CAC. Thank you for your time and attention to this matter.

Sincerely,



Renee D. Green, P.E.
County Engineer

Morrison, M. L., R. N. Wilkins, B. A. Collier, J. E. Groce, H. A. Mathewson, T. M. McFarland, A. G. Snelgrove, R. T. Snelgrove, and K. L. Skow. 2010. Golden-cheeked warbler population distribution and abundance. Texas A&M Institute of Renewable Natural Resources, College Station, Texas, USA.

Groce, J. E., H. A. Mathewson, M. L. Morrison, and N. Wilkins. 2010. Scientific evaluation for the 5-year status review of the Golden-cheeked Warbler. Prepared for the U.S. Fish and Wildlife Service. Texas A&M Institute of Renewable Natural Resources, College Station, Texas, USA.

Attached are additional questions from a member of the CAC:

I have numerous questions regarding some of the proposed requirements of this plan, and I have listed below several of those for further consideration.

1. Are the currently proposed mitigation ratios for GCW and BCV based primarily on population projections originally produced by Wendell Davis? If they are based on other issues, what are some of the other considerations?
2. If the population projections change, will the proposed ratios change accordingly?
3. Bexar County had a growth rate of 18.6% from 2000 to 2009. During that same period, Hays County grew at 59%, Williamson County grew at 64%, and Comal County grew at 47%. None of their associated HCPs have REQUIRED mitigation at a ratio of 3:1. What different biology in Bexar County indicates that the SEPHCP should be treated differently?
4. Guidance on Mitigation from HCP Handbook stated clearly that contribution to recovery is often part of an HCP but not a statutory requirement. If the HCP is written with the proposed mitigation ratios, then it will become a statutory requirement making recovery mandatory for anyone that participates. Why would this be allowed to occur, if it is not otherwise required?
5. Guidance on Mitigation from HCP Handbook indicates that there might be valid reasons to accept mitigation lands that are distant from the impact area. Since this is considered an acceptable practice, why is it being excluded from the SEPHCP?
6. GCW HCPs appear to have per acre costs to the user of \$6,500 or less, with less than 10% participation. If the SEPHCP is going to cost the user \$9,000+ per acre, as indicated in earlier cost projections, wouldn't that likely indicate much lower usage rates? If usage rates are lower, doesn't that diminish the probability that the HCP will be successful?
7. The Camp Bullis plan allows for mitigation anywhere in Recovery Unit 5. What is the biological reason that the SEPHCP will be required to have at least 60% of its mitigation in Bexar County?
8. The Camp Bullis Plan calls for mitigation of occupied habitat at a 3:1 ratio, buffer at a ratio of 2:1, and unoccupied habitat at a ratio of 1:1. What is the biological justification for the difference in those requirements versus those proposed in the SEPHCP?
9. The Camp Bullis plan allows for effective on-site mitigation ratios of 1:1 for tracts of 500+ contiguous acres. What is the biological reason that these same ratios are not allowed in the SEPHCP?
10. The City of San Antonio adopted its Steep Slope Ordinance prohibiting development on land with slopes greater than 20%, an area of approximately 26,866 acres. In addition, approximately 15,244 acres of additional land having slopes greater than 25% exists in Bexar County, bringing the total number of acres that will most likely not be developable to over 42,000 acres. Neither the BAT nor the USFWS have recognized this or shown any indication that this land could be considered as areas for undisturbed habitat. What is the biological reason for this?
11. Imbedded in the cost calculations is a 25% increase in mitigation tract size to account for "non-habitat" occurring within the acquired reserves. This is assumed for ALL acquired reserves. Upon what fact is that assumption based? Does that mean that even the best available acquired habitat will have at least 25% non-habitat? Will marginal acquired habitat have no more than 25% non-habitat? Is there no way to judge that for each piece of habitat to be acquired?

In general, it appears that the proposed rules for the SEPHCP are being written as unnecessarily stringent, without much thought to flexibility or how this plan compares to other plans in Texas. As a representative of the members of the real estate industry, it is my duty to comment on their behalf as to whether or not I think this plan will be beneficial to them. Thank you for asking for the additional input and for being open to additional discussion on these matters.

Michael D. Moore