

CITIZENS ADVISORY COMMITTEE OF THE SOUTHERN EDWARDS PLATEAU HABITAT CONSERVATION PLAN

MINUTES

DATE: February 18, 2010
LOCATION: San Antonio Water System – Room 154
2800 U.S. Hwy 281 North
San Antonio, TX 78298-2449

1. Call to Order – Andy Winter (Bexar County)

Andy Winter called the meeting to order at 6:00pm. Sonia Jimenez (Ximenes & Associates) suggested that the order of agenda items may be switched, with election of a chairperson (Item 6) to be taken up before the operational rules (Item 4).

2. Public Comments (3 minutes per speaker)

Sonia Jimenez asked for any public comments. None were received.

3. Presentation and discussion of Texas Open Meetings Act and Public Information Act requirements – Allison Elder (Braun & Associates)

Allison Elder introduced herself as part of the consultant team and gave a presentation regarding how the Texas Open Meetings Act and Open Records Act govern the operation of the CAC. Ms. Elder explained that the CAC is subject to the Texas Open Meetings Act and Open Records Act due to the provisions of Chapter 83 of the Texas Parks and Wildlife Code. She described and explained concepts under the acts, including quorum, communications, business, open to the public, advance notice, and executive sessions. Ms. Elder also described how the public does not have a defined right to speak during CAC meetings under the Open Meetings Act, but that these procedures are at the discretion of the committee.

Allison Elder explained that committee members and any voting alternates must receive training for the Texas Open Meetings Act and Open Records Act within 90 days of appointment, and that opportunities for training are available through the Texas Attorney General website or via watching a video prior to future meetings. Deirdre Hisler (CAC member) asked if prior training would suffice and asked Allison Elder to report back on the applicability of prior training.

Allison Elder described some pitfalls with respect to using email for communications among committee members and recommended that email be used only for the distribution of information. She further recommended that information be sent to Andy Winter and/or Loomis Partners for dissemination to the rest of the committee. She noted that use of the website to distribute information is a good idea. Clifton Ladd (Loomis Partners) added that information can also be sent to the committee chair.

Allison Elder stressed the importance of adopting procedural rules early to set clear ground rules for meetings.

Allison Elder explained the importance of proper posting of meeting agendas, adhering to agenda topics, and refraining from discussion of matters not on the agenda. Ms. Elder described that the Open Meetings Act does not permit the use of proxies for voting purposes and that all voting members (including any appointed alternates) must receive proper training. Ms. Elder also stated that no committee business, including briefings, could take place without a quorum.

CAC members discussed the role and operation of subcommittees under the Open Meetings Act, including whether a quorum for a subcommittee was needed. Allison Elder responded that the Open Meetings Act does not apply to subcommittees that lack decision making authority.

CAC members discussed whether less than a quorum of the CAC can discuss committee business if no action is taken. Allison Elder cautioned that a violation of the Act may occur when less than a quorum meets with an intent to circumvent the Act, as held in a recent court case that dealt with “walking quorums.” Ms. Elder agreed to suggest appropriate language regarding this issue at the next CAC meeting, for inclusion in the operating rules.

Annalisa Peace (CAC member) asked if email communications would be copied to CAC alternates and Amanda Aurora (Loomis Partners) responded that the consultant team would do so in the future.

4. Discussion and appropriate action on adopting operational procedures –facilitated by Sonia Jimenez (Ximenes & Associates)

Sonia Jimenez led discussions regarding operational procedures for the CAC, using a draft set of procedures as a starting point.

Regarding alternates and proxies for CAC members, Andy Winter explained that the Bexar County Commissioners’ Court appointed landowners and their alternates as individuals to the CAC, but that the Court appointed other stakeholders as “entities” so that the individual representing the entity (and their alternates) did not need to be appointed. Jonathan Letz noted that all voting CAC members need to have Open Meeting Act and Open Record Act training.

The CAC discussed using consensus procedures or Roberts Rules of Order for decision making. Several CAC members indicated a preference for following Roberts Rules of Order to help ensure that all committee members have ample opportunity to voice their opinion. CAC members also discussed using voice votes or role call votes, and agreed that voice votes would usually be sufficient and that a role call vote would be taken upon the request of a CAC member.

The CAC discussed the number of votes needed to carry a motion, including strict consensus, super-majorities, and simple majorities. Several CAC members voiced concerns and opinions regarding generating discussion, ensuring adequate representation in decisions, and schedule considerations. The CAC agreed that a 65% super majority of members would be needed to carry a motion. Andy Winter requested that the CAC inform both Bexar County and the City of San Antonio of votes.

CAC members discussed options for agendized public comment periods and public input during CAC discussions on agenda topics. Several CAC members noted the importance of allowing citizens to be heard during meetings and to participate in CAC discussions. Several CAC members were concerned about the possibility for meetings to get bogged down or to go off track with excessive public participation in during CAC discussions. Allison Elder cautioned that all citizens must be treated equitably during meetings. Several CAC members agreed that the CAC chair should have the discretion to recognize speakers and keep discussions moving. Jonathan Letz suggested that citizen comments to the CAC submitted via email be posted on the website.

Delmar Cain (CAC member) requested that Allison Elder suggest appropriate language for guiding CAC communications among members.

Jonathan Letz tabled action on adopting operational procedures until the next meeting.

5. Discussion and appropriate action on adopting a charge - facilitated by Sonia Jimenez (Ximenes & Associates)

Clifton Ladd and Amanda Aurora provided some background on the draft CAC charge, including guidance from Chapter 83 of the Texas Parks and Wildlife Code and other regional habitat conservation plans. CAC members reviewed and discussed draft language for a charge, including CAC approval of the final draft documents and the appropriate entity for submission of CAC recommendations.

Jonathan Letz tabled action on adopting a charge until the next meeting.

6. Discussion and appropriate action on election of a CAC chairperson – Andy Winter (Bexar County)

Andy Winter reported that he received three nominations for CAC chairperson: Kirby Brown (Texas Wildlife Association), Jonathan Letz (Kerr County Commissioner), and Deirdre Hisler (Texas Parks and Wildlife Department). Ms. Hisler declined the nomination. Mr. Brown and Commissioner Letz suggested co-chairing the CAC.

MOTION (Deirdre Hisler): Elect Kirby Brown and Jonathan Letz as co-chairs to the CAC.
SECOND (Gary Schott). VOTE: The motion carried unanimously with a voice vote.

Jonathan Letz explained that he saw the role of CAC chairperson as to keep the committee on track, encouraging members to speak up, and facilitate discussions. CAC members agreed that the CAC co-chairs would have the ability to vote on committee matters.

7. Presentation and discussion of Comal County's experience with regional habitat conservation planning – Tom Hornseth (Comal County Engineer and CAC member).

Tom Hornseth gave a presentation regarding Comal County's experience with developing a regional habitat conservation plan. He noted that many Comal County landowners were at first very skeptical about the project, but that Comal County helped alleviate concerns by involving the community in the process and stressing that the plan would be voluntary. He briefly described land development trends in Comal County and analyses regarding habitat estimates, take and impacts, participation rates, and mitigation requirements. Mr. Hornseth described how Comal County used federal grant funds to help purchase preserve land and noted that an infusion of County funds, in addition to participation fees, was anticipated in order to maintain positive cash flow for plan operation in the early years of the program. He described the current status of the Comal County plan and permit application and noted some delays in the process. Mr. Hornseth stated that Comal County hopes to have a permit issued by August 2010.

CAC members discussed the timeline for development of the Comal County plan, including the nature of schedule delays and cost over runs. CAC members discussed metrics for measuring whether the plan was working, preserve management responsibilities, and mechanisms for preserve protections.

Tom Hornseth noted that the landowners in Comal County ended up supporting the plan and that there has been a lot of interest in partnerships with the County.

8. Discussion and appropriate action on defining the SEP-HCP Plan Area - facilitated by Sonia Jimenez (Ximenes & Associates)

On behalf of Richard Heilbrun (BAT Chairperson), Allison Arnold (U.S. Fish and Wildlife Service; USFWS) presented the BAT's recommendation and rationale for the SEP-HCP Plan Area. Ms. Arnold also responded to comments regarding processing delays for the Comal County Regional Habitat Conservation Plan, and noted that USFWS guidance should be carefully considered during the process to ensure that the draft plan is suitable to support permit issuance. Jonathan Letz requested that the USFWS provide clear guidance on critical issues.

Allison Arnold explained that the BAT recommended that the SEP-HCP Plan Area include all of Bexar, Medina, Bandera, Kerr, Kendall, and Blanco counties, with the possible inclusion of Comal County pending further coordination with Comal County. Allison Arnold also explained that the BAT reserved the ability to reconsider the possible addition of Gillespie and Uvalde counties in the Plan Area. Ms. Arnold explained that the BAT's recommendation was based primarily on biology and considered six factors, including the proximity of mitigation to the take, ecoregional and vegetation similarity, habitat similarity for the golden-cheeked warbler and black-capped vireo, the current status of karst features (noting that there is only a finite amount of karst habitat available), and opportunities for golden-cheeked warbler mitigation. Ms. Arnold stated that aquatic resources were another consideration that the BAT was still working on.

Allison Arnold presented several maps of land cover, recovery regions, critical habitats, and other natural features. She noted that karst impacts were a big issue for the USFWS and the BAT since there is little opportunity to find mitigation outside of Bexar County.

Allison Arnold described specific issues that the BAT considered for each county, including using whole counties to define Plan Area boundaries to facilitate plan administration. She noted that the BAT considered Bexar, Kerr, and Kendall counties as good additions to the Plan Area due to the proximity to impacts and similarity of vegetation communities. She noted that the BAT felt that the western counties were too far from impacts in Bexar County and that there was little hydrological connectivity to Bexar County. She described that the BAT considered Medina County as appropriate to add to the Plan area, particularly related to the presence of habitats north of Hwy 90. Ms. Arnold described that the BAT included Blanco County due to development along the Hwy 281 corridor and the opportunity for conservation of salamanders.

Allison Arnold reported that the BAT felt that including Comal County in the Plan Area was warranted from a biological perspective but cautioned that the USFWS does not want the two plans to compete. She reported that the USFWS advised Comal County to incorporate the appropriate legal structure in their plan that would allow Comal County to cooperate with Bexar County (including expanding the Comal County plan area to include Bexar County), otherwise a major amendment would be needed to accommodate cooperation if such language was lacking prior to permit issuance. She also noted that the USFWS would not arbitrate the cooperation.

Jonathan Letz recommended addressing cooperation with Comal County at the next meeting.

Allison Arnold explained that the CAC must also consider other factors, such as economics, administration, implementation, and mitigation strategy when evaluating the BAT recommendation.

The CAC discussed possible reconsiderations of Gillespie and Uvalde counties in the Plan Area. Richard Heilbrun noted that the BAT recommendation currently is to exclude these counties because Uvalde County lacks much warbler habitat, is fairly distant from Bexar County, and the uncertain relationship of karst resources in Uvalde County to those in Bexar County. Regarding Gillespie County, Mr. Heilbrun noted that this county was currently excluded from the recommendation due to its distance from Bexar County and the relevance of accommodating growth of the Fredericksburg area.

MOTION (Annalisa Peace): SEP-HCP Plan Area defined to include all of Bexar, Medina, Bandera, Kerr, Kendall, and Blanco counties, with Comal County also included with possible future reconsideration. SECOND (Bebe Fenstermaker). VOTE: Voice vote carried unanimously.

9. Discussion and appropriate action on defining the list of SEP-HCP covered species - facilitated by Sonia Jimenez (Ximenes & Associates)

Jonathan Letz tabled this agenda item until the next meeting.

10. Next Meeting and Requested Agenda Items – CAC Chairperson

Jonathan Letz requested that CAC members email requests for agenda items to Kirby Brown and himself. Sonia Jimenez reviewed the list of requested agenda items, including meeting procedures, charge, species covered, and approaching Comal County for cooperation.

Jonathan Letz suggested the first Monday, third Monday, and fourth Wednesday as options for a regular meeting date. After some discussion, Mr. Letz tabled adoption of a regular meeting date until the next meeting. The CAC agreed to set the next meeting for March 1, with Open Meetings Act/Open Records Act training to begin at 4pm and the regular meeting to begin at 6pm.

11. Adjourn - CAC Chairperson

Jonathan Letz adjourned the meeting at 8:21pm.

Backup Materials:

- **Draft minutes from January 19, 2010 CAC meeting (distributed via email to CAC members)**
- **Draft operational procedures for the CAC**
- **Draft charge to the CAC**
- **Plan Area briefing paper including BAT recommendation**
- **Covered Species briefing paper and TPWD species list spreadsheet**
- **General resource exhibits**
- **Meeting schedule form**