

BCCP Funding Goes to County Voters

This Plan is For the Birds (Really)

by Daryl Slusber

The Balcones Canyonlands

Conservation Plan (BCCP) is a cooperative effort between local governments and federal authorities. It's also one of the biggest real estate deals in Austin history. With this combination of factors, it's no surprise that the BCCP is a contorted, complicated, suspicious-looking paper chase that few, if any, understand completely. So let's begin with an attempt to explain the premise of the BCCP.

Since the late 1980s, most development in western Travis County has been stalled by the federal Endangered Species Act (ESA). Western Travis County is home to several species of endangered birds and bugs, most notably golden-cheeked warblers and black-capped vireos. The BCCP is an attempt to free developers from constraints of the ESA while establishing a preserve for the species.

Large portions of western Travis County will be purchased and preserved in perpetuity with bonds backed by city and county taxes.

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Once the endangered species have a sufficiently secure habitat, as determined by the U.S. Fish and Wildlife Service (USFWS), the preserves will free the rest of western Travis County from the development constraints of the ESA.

In progress since 1987, the BCCP's next step is a \$48.9 million county bond election on November 2. The county, city and the Lower Colorado River Authority (LCRA) are partners in the plan, and

they are trying to persuade the Texas Parks and Wildlife Department to join. The county bonds would fund around 9,000 acres of land purchases from private landowners. The city of Austin has already purchased about 5,000 acres from the Resolution Trust Corporation (RTC) with bonds approved by voters last August. These purchases were supposed to include the Uplands and Sweetwater tracts, 4,300 acres in the Barton Creek Watershed, but those acquisitions are stalled by the problems of the Southwest Parkway road district and — like the entire BCCP — are engulfed in negotiations over the city's development agreement with Freeport-McMoRan (see accompanying story). These properties, combined with many existing city, county and LCRA parks that are listed as part of the BCCP, will make up the preserve area. (The parks are the LCRA's only contribution so far.) The preserves are divided into seven "macro-sites" intended to be large enough to insure the survival of Travis County's endangered species.

The total preserve area is meant to total 29,159 acres. The county bond issue is to fund 9,410 acres of that. The RTC purchases will total 9,633 acres if the Uplands and Sweetwater purchases go through. Land already owned by public entities totals 6,239 acres, and another 1,287 acres owned by local non-profit groups will be included as part of the plan but will stay under management of those groups such as the Travis Audubon Society, the Texas System of Natural Laboratories and the Texas Cave Management Association. Still another 2,590 acres will remain in private hands but be part of the preserve through varying arrangements with landowners.

The current goal is to receive a permit from USFWS by May 1994. A permit can be issued before all the lands are acquired, but development constraints will be removed only gradually as the lands are acquired through a system based on the date of filing. One acre will be released from ESA constraints for roughly every five acres of warbler habitat and every ten



PHOTO BY ALAN POOLE

Travis County Judge Bill Aleshire leads the county into a November 2 election on BCCP funding, county jails, and a soccer complex. For further coverage, see our endorsements on page 16, and articles on the BCCP on page 42 (the centerfold), and county jails on page 46.

acres of vireo habitat acquired for the preserves. Developers who receive releases and build on endangered species habitat will be required to pay a mitigation fee of \$6,000 per acre of habitat destroyed or \$1,900 per acre for the entire development. Once enough acreage is acquired to satisfy permit requirements, all developers will be freed from constraints of the ESA, but they will still be required to pay mitigation fees. The fees are voluntary in that developers can still seek individual permits. The majority of BCCP funding will come not from mitigation fees, but from local taxpayers through property taxes.

Once the land is acquired, the city and county plan to turn over the deeds for all of the newly acquired property to the Texas Parks

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and Wildlife Department (TPWD). TPWD would then be responsible for management and maintenance of the preserves under the guidance of the BCCP partners, and with the management funding to come from mitigation fees. The deeds would carry reverter clauses under which the land would revert back to the city and county if TPWD did not properly maintain the lands. TPWD would be responsible for any maintenance costs above their per year estimate. TPWD has not yet officially agreed to this arrangement, although it is an official part of the BCCP draft plan. BCCP planners however, feel the agency board will be more amenable to this plan than a previous one that had TPWD putting \$7.5 million toward the BCCP. That \$7.5 million is now included in the county bond issue.

Another Win-Win Situation for Austin Voters

The BCCP is advertised as truly a community effort, a genuine win-win situation. It has

open space and bird watching for environmentalists, while it frees developers and speculators from the chains of the ESA, while simultaneously increasing their property values. This would generate more tax revenues for local governments. Also, many developers and speculators would end up having their properties purchased by the county at a healthy price.

George Cofer of the Save Barton Creek Association summed up the case of environmentalists at a press conference last week saying, "The BCCP bonds are our last, best hope for preserving the Texas Hill Country and protecting our water quality."

At the same gathering, Greater Austin Chamber of Commerce (GACC) chairman Ron Kessler offered the booster case: "The BCCP will increase value of non-preserve lands and allow balanced growth in less environmentally sensitive areas."

Backers of the county bonds include the boards of directors of GACC, the Austin Real Estate Council, the Save Our Springs coalition, the Save Barton Creek Association and a host of other development and environmental groups. Congressman Jake Pickle is a longtime supporter. His aide Paul Hilgers has taken a leave of absence to run the pro-bond campaign.

BCCP critics, while not as large in numbers of groups or heavy hitters, are also coming from disparate directions, ranging from most members of Earth First to small landowners to fiscal conservatives. Earth First! members object to the linkage with the Freepport-McMoRan development agreement and also decry the fact that the BCCP will lead to destruction of more habitat than it will save. Financial critics point to the estimated cost, which has already risen by over 50%. (Al-

though as with many things in the plan, it's hard to pin down because backers started with estimates for a 20-year plan and are now using cost estimates for a 30-year plan. Critics also charge, quite accurately, that details of the plan are incomplete and continually shifting. For example, the financial burden on taxpayers has shifted from a promised 50-50 split between taxpayers and developers to 57%-43% now, with developers getting the smaller bill. If history is any guide, both the total cost and the burden on taxpayers are likely to rise even further. James Cooley, who has formed what amounts to a one-man PAC to fight the bonds, warns, "If they are treating you (voters) like this when they want money, just think how they'll treat you when they have the money and don't need you any more."

Another oft-levied charge is that the BCCP is the latest in a long line of special interest rip-offs designed to bail out developers and speculators at the expense of local taxpayers. For evidence, critics point to the executive committee - the original BCCP governing

b o a r d .

Freepport attorney David

Armbrust was a member, as

was development attorney

John Joseph -

who represents H. Ross

Benton on the

h a b i t a t -

plagued Four

Points tract.

Also on the committee: developer/Chamber board member/Barton Creek task force co-chair Pat Oles, Bohls Ranch developer Steve Gurasich, and a representative of the state highway department.

The supporters also give cause for suspicion. As previously mentioned, Ron Kessler, chairman of the GACC, is also chairman of the Texas Legacy Committee, the PAC backing the bonds. The treasurer of the group is former City Attorney Jerry Harris, who left

government

for private

p r a c t i c e

where he represents

development and

corporate interests. Among

Harris's many clients was

Charles Keating's AmCor

when it owned

the Uplands.

Our stealth

mayor Bruce

Todd has been

a key BCCP player for six years, beginning with his term on the Travis County Commissioners Court. Perhaps most suspicious of all, the *Austin American-Statesman* has been an avid BCCP booster, printing a long series of editorials about it. The *Statesman* has also consistently linked the BCCP to the development agreement.

The No Plan Option

Many BCCP bond supporters, especially among environmentalist backers, acknowledge that many BCCP critics are wrong, even agree with them. They still argue in favor, however, because they believe that without the BCCP, developers will win individual permits from the federal government and eventually manage to destroy virtually all of the habitat in Travis County, with little if any open space left for future generations

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— George Cofer

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— seemingly a pretty clear reading of American as well as Texas history.

It will happen, say BCCP supporters, because developers apply for and obtain individual permits from USFWS. USFWS officials say that the overwhelming majority of such permit applications — known as Section 7 or 10a permits — are granted. In exchange for these permits, developers will be required to set aside roughly five acres for each acre of habitat they “take” or destroy. The ratios will vary with each case. BCCP supporters say individual permits will lead to scattered habitat preserves that won’t adequately protect the species, while allowing most of the development that would take place with a plan.

Christi Stevens of Earth First! says this argument is based on the premise that the USFWS is not going to do its job. USFWS has the right to require habitat developers to buy property in designated macro-site areas in exchange for permits. So the federal agency could seek to put together the macro-sites envisioned in the BCCP through developer donations, rather than

with taxpayer-financed purchases.

This, however, is a power that USFWS officials are not confident they can bring to bear effectively. They concur with other BCCP backers that the better way to establish the macro-sites is through taxpayer land purchases. Local USFWS head Sam Hamilton says his agency would try to steer 10a land donations into macro-sites, but says this would be difficult. He worries that the species will be “fragmented to death.”

Hamilton also points out that if the preserves are built through developer-required donations, then the preserves will likely be closed to the public. But that could also end up being true of the public preserves. Almost all of the tracts that have already been purchased for the BCCP have no public access. City environmental department director Austan Librach says that purchasing property is the priority, and access will come later. This, however, leads to another set of questions concerning whether the public should have access when the goal is to protect birds and bugs. Will human access, or too much of it, hurt their habitat? And if the humans can’t get on the land, will they be willing to pay for it?

Bond backers also cite a potential deadline on the national stage. The ESA is pending for renewal or revision in Congress. Congress has renewed it already, in lieu of revising it, but could get around to revisions at just about any time. BCCP supporters say that if the bonds fail, it will be read as voter rejection of species preservation and play into the hands of the many Congressmen and Senators who would like to weaken or gut the ESA.

City officials say that if the county bonds fail, the city will proceed with a scaled down habitat plan, aimed primarily at freeing government projects from ESA constraints.

The Economics

In studying BCCP economics, let’s explore two basic questions: Who benefits? And who pays?

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open lands which will be preserved in perpetuity, unless developers figure some way to get a hold of them after the rest of the county is paved. The benefit to developers is that a BCCP permit would free up land for development, and thus allow property values to soar again. The increase in property values is supposed to benefit not just developers, but all taxpayers. Property values have fallen in much of western Travis County because much of the property is subject to the ESA. In some cases, developers would receive a triple bonanza, being

freeed from constraints of the ESA, seeing their property values increase as a result, and having other properties purchased at a fair – perhaps more than fair – price.

It is argued that the increase to the tax base will help everyone, but that's not necessarily the case. The *American Statesman* recently reported that between 1983 and 1993 – largely an era of rapid growth and development – the per capita property tax bill in Travis County rose by 125%, or 54% adjusted for inflation. This hardly seems like a benefit from development.

As for the costs, the burden has been shifting toward taxpayers picking up an ever-increasing share. In the beginning, the burden was to be evenly distributed between developers and taxpayers. A mere vote of the partners could shift the burden even further toward the taxpayers.

Fears of an ever shifting burden on taxpayers are hardly eased by city staff's latest budget material. It provides a fairly honest comparison between the November 1992 funding plan – the one devised after the city BCCP bond election – and the current financing plan. The estimated cost, by the way, increased another \$6 million during that time to \$179.8 million.

The primary factor in the increase was a more realistic (read higher) estimate of land acquisition costs. The estimate went from \$51.9 million to \$70.9 million. The interest to be paid from tax revenues correspondingly jumped \$17 million. The reader might note that this increase is \$36 million, while the overall cost estimate only increased by \$6 million. This is because BCCP planners cut their estimated management and operations cost by almost \$30 million. They attribute this to an estimate by the Texas Department of Parks and Wildlife, and point out that under the BCCP draft, TPWD will cover anything above the estimate. The TPWD board has not, however, approved this arrangement.

On the revenue side, the amount needed from taxpayers jumped from \$79.4 million to \$109.7 million, an increase of 38%, while projected revenue from the mitigation fees charged developers went up 8%, from \$72.8 million to \$78.9 million. The mitigation fee was raised from \$1,075 per acre to \$1,900, but the estimated area that will be subject to the fees decreased from 35,400 acres to 22,330 acres. The decreases, according to the draft

BCCP plan, came as a result of developers flinching for individual permits and from 4,300 acres "exempted by the proposed Barton Creek Properties agreement."

Included in revenue sources in 1992 but missing now are \$7 million from drainage fees (a charge that would fall heavily on developers), the aforementioned \$7.5 million from TPWD, and \$2 million in "public access user fees." The access fees may return, say BCCP planners, but the other two potential funding sources are likely gone.

To BCCP or Not to BCCP

So the BCCP limps to the polls on November 2, an imperfect plan that nonetheless could be the best chance to preserve the natural heritage of Travis County. On the other hand, if the election fails it could be like

every election item in recent history. It will keep appearing on the ballot until it passes.

There's always the possibility, however, that the environmental groups are getting suckered by the Chamber and developers, who are at this very moment slapping their legs and collapsing in laughter at how they've taken the suckers' love for open space and bird watching and turned it into still another developer bailout that will free them once and for all to milk every square inch of profit out of every square inch of land in Travis County. But maybe not. ■

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