

SUBJECT: Designating public land for Balcones Canyonlands Conservation Plan

COMMITTEE: State Cultural and Recreational Resources — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Geren, Bailey, B. Cook, Kuempel, Phillips
1 nay — Dukes

WITNESSES: For — Thomas Kam; Robert (Bob) Turner, Texas Sheep and Goat Raisers Association

Against — Junie Plummer, City of Austin; Amy Johnson, Concerned Citizens for Medway Preserve; Robin Stallings, Texas Bicycle Industry and Texas Bicycle Coalition

BACKGROUND: The Balcones Canyonlands Conservation Plan (BCCP), approved in 1996, was created to help landowners and developers in Travis County comply with requirements of the federal Endangered Species Act (ESA). The BCCP's goal is to extend land under protection to more than 30,400 acres of prime habitat in western Travis County for eight endangered species: six karst invertebrates and two rare songbirds, the golden-cheeked warbler and black-capped vireo.

The City of Austin and Travis County, the BCCP's managing partners, operate under a federal 10(a) permit from the U.S. Fish and Wildlife Service (FWS). Organizations that own and manage lands dedicated to the BCCP also include the Lower Colorado River Authority, Travis Audubon Society, Nature Conservancy of Texas, and many private landowners. The federal permit establishes geographic areas called macrosites in which habitat should be purchased to protect the endangered species. The City of Austin holds more than 13,000 acres in the BCCP, and Travis County holds more than 2,000 acres. Under the federal permit, the county must secure more than 4,000 acres within the next 13 years to complete land acquisition for the preserve.

In 1998, Austin voters approved \$65 million in bonds to buy land and conservation easements to protect water quality in the Barton Springs watershed. Some of that land, locally called "Prop 2 land," is near the

Balcones Canyonlands preserve. Prop 2 lands are not located within the BCCP macrosites and are managed for water-quality protection.

DIGEST:

CSHB 1837 would apply to a conservation agreement between a political subdivision and the U.S. Department of Interior, a habitat conservation plan, or a regional habitat conservation plan that:

- received a federal permit before September 1, 1999;
- had planned the acquisition of more than 1,000 acres of land under the permit; and
- had not completed the planned acquisitions by September 1, 2003.

By December 1, 2003, a permit holder would have to prepare an amendment to such a plan or agreement that would include all land and conservation easements acquired before December 1, 2003, with public money for any environmentally related purpose and after submission of the original plan to the federal government. The federal agency to which the permit holder would submit the amendment would have to determine which portions of the land acquired would count toward the total area of land planned for acquisition under the original habitat preservation plan or agreement.

If the federal agency approved the use of all or part of the land included for partial completion of the planned acquisitions under the original plan or agreement, the permit holder would have to reduce appropriately the number of acres that needed to be acquired to complete land acquisitions under the original plan or agreement.

The permit holder would have to prepare and file an additional amendment, within 60 days after the date of the last acquisition, for every 1,000 acres of land or conservation easements acquired on or after December 1, 2003.

The bill would take effect September 1, 2003, and its provisions would expire September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 1837 would provide a fiscally responsible way to help complete land acquisitions for the BCCP. The City of Austin and Travis County have bought land for environmental purposes that could be suitable for bird habitat but that is not being counted toward the BCCP's 10(a) federal permit. This may be

causing an unnecessary delay in completing conservation plans, which limits potential land use and diminishes the value of nearby privately owned land. CSHB 1837 would require the city and county to submit for federal review an amendment to the conservation plan to include all land and conservation easements that have been purchased with public funds.

The appropriate federal agency would decide if any of these public lands could be counted toward the BCCP conservation plan, ensuring that all local efforts and expenditures for environmental acquisitions were recognized. The bill would make no predeterminations but would require the unbiased, expert opinion of federal biologists to decide if acreage owned by the city and county should qualify as habitat conservation for birds.

The city and county now own 50,000 acres of available land, whereas the permit for the BCCP requires about 30,400 acres. The city and county have more than 20,000 acres in inventory but are keeping this land partitioned through bookkeeping maneuvers, which is not efficient either for government or for private landowners. CSHB 1837 would encourage a scientific study on all 50,000 acres.

This process would be nowhere near as costly as having the county buy 4,000 more acres for the BCCP. CSHB 1837 would not prohibit the city from acquiring more land, nor would it impede the city's original plan with regard to the Barton Springs watershed. The city still could expand acreage for water-quality conservation.

If any of the city's lands — not all of which are Prop 2 land — qualified for the BCCP, they also would qualify for water-quality conservation. The process of developing the habitat for birds automatically would result in water purification. As to the argument of needing to grow cedars to ensure the population of these endangered songbirds, new-growth cedars are not desirable habitat for the two birds; only second-growth and older cedars are reliable for this purpose.

CSHB 1837 would represent a responsible approach to a long-standing issue that has encumbered the city, the county, and landowners for more than eight years. For the most part, it would affect the same pool of taxpayers and would offer a practical, objective solution.

**OPPONENTS
SAY:**

CSHB 1837, though it does not refer specifically to the City of Austin or to Travis County, would apply only to lands that lie within Travis County and are owned by the city and the county. It would require the city and county to submit to the FWS an amendment to their federal permit under the ESA. The purpose of the amendment would be to seek to include in the BCCP some of the city's water-quality Prop 2 lands, approved by voters in a 1998 bond election. Any acreage of Prop 2 lands that FWS approved for the BCCP would reduce the number of acres needed to complete acquisitions under the original plan.

The City of Austin has met its obligation for the BCPP, but Travis County has not. The county must come up with an additional 4,000 acres within 13 years. In effect, CSHB 1837 would attempt to have the federal government approve City of Austin land for Travis County's obligation. A number of practical and legal problems are inherent in this tactic:

- Taking of land without compensation: The Prop 2 lands are an asset of the City of Austin, bought with city money. CSHB 1837 would require that Prop 2 lands become part of the BCCP without paying the city for the land.
- Violating established bond law: Austin voters in the Proposition 2 election overwhelmingly supported bonds to buy lands to preserve the Barton Springs segment of the Edwards Aquifer. The proceeds from these bonds must be used for the purposes for which they were voted. Case law establishes that the city cannot abandon the purpose for which the lands were acquired. CSHB 1837 could require an unlawful act of diversion.
- Reducing the amount of green space: By merging some of the Prop 2 lands into the BCCP acreage, CSHB 1837 could shrink the overall amount of green space owned by the city and county. Austin voters have demonstrated much public support for open spaces. A possible reduction would conflict with the voters' desire and could create more legal problems.
- Unnecessary red tape: CSHB 1837 would force the city and county to seek a federal amendment to a habitat conservation plan negotiated over seven years under the ESA. Federal law determines whether such an amendment could be accepted. This would not simply be a matter of governmental officials meeting but would require vast amounts of

unnecessary legal and scientific research and preparation, mostly at local taxpayers' expense.

Among the practical problems of requiring that local water-quality protection lands be considered as federal habitat for endangered species would be:

- Mandating that differing habitats be used for the same purpose: Water-quality protection lands and federal habitat conservation for birds are managed completely differently. Prop 2 lands are managed by cutting cedar to recharge water zones. Habitats for golden-cheeked warblers and black-capped vireos are developed by growing cedar and managing the cowbird population. With such different management requirements, these lands could not serve a common purpose.
- Limiting public access: If the FWS approved any portion of the Prop 2 land as part of the BCCP, those lands would have different standards of public access. Currently, bicyclists, hikers, and horseback riders can have public access to the Prop 2 lands, but public access is strictly limited on BCCP lands. Merging Prop 2 lands into the BCCP would reduce the city's hike-and-bike trails.

CSHB 1837 would make the Legislature an arbiter of science by concluding that Prop 2 lands should be used to protect birds. It would require the city and county to ask FWS to consider what portion of Prop 2 lands contained bird habitat and would make that land part of the BCCP, even if those lands were more valuable for the protection of water quality. None of the Prop 2 lands lie within the BCCP macrosites and thus are not the most valuable bird habitat. The Prop 2 lands, however, were selected as the best to protect water quality. CSHB 1837 would ignore scientific information.

Some of the city's 15,000 acres preserved in the Barton Springs watershed might be suitable habitat for the songbirds. Estimates range from 200 to 1,000 acres. If federal biologists confirmed any of these acres as suitable BCCP habitat, it would create an extra cost to the city, because additional requirements would be imposed, such as fencing. The city then would incur expenses for the county's land acquisition obligation.

The city and county should determine whether they can buy all the land verified as macrosites for the BCCP and should work with the BCCP's

Scientific Advisory Committee to decide what lands should be included. Once the appropriate scientific decision has been made, the two governments could ask FWS to consider approving the land. The Legislature should not intervene and complicate the process by adding a layer of federal review.

NOTES:

The committee substitute differs from HB 1837 as filed by setting a deadline of December 1, 2003, for the permit holder to file an amendment to the plan or agreement with the federal government. It also added the provision requiring the permit holder to prepare and file an additional amendment for every 1,000 acres of land or conservation easements acquired on or after December 1, 2003.