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BCCP Funding Goes to County Voters

This Plan is For the Birds (Really)

by Daryl Slusher

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.

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.

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

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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—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

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Continued The Bergstrom Swap PUD Update

Here we go again. The almost year-long negotiations over a development agreement between Freeport-McMoran look like they're coming down to another last-minute vote where the council doesn't understand and hasn't read what they're voting on, but vote in favor of the deal anyway because they fear the alternative will be even more terrible. Perhaps even worse, we could be facing an extension of the development agreement negotiations which have been going on since January. (As we went to press on Wednesday night, Mayor Bruce Todd announced the cancellation of a public hearing on Freeport's Barton Creek PUD, scheduled for Thursday, October 21.)

In the latest development, city officials have proposed a swap of land and/or development rights near or at Bergstrom airport, in exchange for a down-sizing of Freeport's commercial plans at Barton Creek. City and Freeport officials say the details still have to be worked out, but the Bergstrom swap is now the basis for further negotiations leading up to the November 8 deadline for approval of most aspects of the development agreement, including the size of the development.

This new tack could offer a path to peace and a chance to end the three-year war with Freeport. But once again, the deal doesn't seem to be starting from a honest point, and the numbers to back it up are shaky at best. First of all, this adds a new level of complexity to an already seriously over-complex deal. Even the mayor says he isn't sure if the details can be worked out before the deadline. He points out that one of the biggest challenges is setting the values for the land in question. That will definitely be a challenge to accomplish in two weeks, especially when the exact land in question has yet to be chosen. Todd says he can't guarantee that the final deal will be ready in time for the public to inspect it.

Another problem is that the city is proposing to trade real value for what at this point is a Freeport fantasy. Under the new deal, Freeport would go from 4.2 million square feet of commercial development to 2.4 million square feet. Much of the reduction comes

from Freeport's plan for the Lantana tract, on which they own only an option to buy. (If the development agreement fails, Lantana will be subject to SOS. Under the agreement, Freeport gets a SOS exemption on Lantana and can build at almost double SOS impervious cover limits.) The rest of the commercial reductions would come from proposals to build on Freeport's current holdings. Their commercial plans, however, are now subject to SOS. The only way Freeport can build commercial development outside of SOS restrictions is if the development agreement is approved. So the city is swapping real value at the airport for an SOS exemption which it has not granted and which would go against the two-to-one electoral margin in last year's SOS election.

Also, the proposed swap totally ignores the residential development portion of Freeport's development proposal. The

company is still proposing 5,597 residential units - 2,202 houses and 3,395 apartments. That figure is 26% higher than the 4,438 residential units proposed in Freeport's rejected 1990 PUD.

City officials project that this level of development would mean a population of approximately 14,000 to 16,000 in the PUD. SOS director Mary Arnold notes that this would be more than the combined population of the Barton Hills, Travis Country and Lost Creek subdivisions, which she says is 11,000. Another way of looking at it: the PUD would have a population larger than West Lake Hills, Rollingwood, Lakeway, Pflugerville, and Del Valle combined. The population of those towns totals 13,718, according to the 1990 census.

It seems almost certain that all the details of the swap will be impossible to work out before November 8. Here's what is likely to happen. Todd will try to keep the focus on commercial, with the likely result that residential will stay where it is. The details of the airport swap will prove impossible to work out before November 8. So Todd will call for a partial approval, granting a PUD with

2.4 million square feet of commercial development and around 5,000 houses and apartments. He will call for negotiations to continue on the airport swap. That will prove unworkable and Freeport will return seeking more than the 2.4 million commercial. Another scenario is that Todd will call for continued negotiations and an extension of all deadlines. Then Freeport would continue to try and wear down their exhausted opponents.

Fiscal Impact

Meanwhile, the city has finally released its fiscal impact analysis (FIA) of the development agreement. The city also did an FIA on its Best Alternative to a Negotiated Agreement (BATNA). The BATNA calls for rejecting the development agreement, annexing all or part of Freeport's land (the FIA is based on annexing all of it), letting Lantana develop under SOS, and pursuing the purchase of Uplands and Sweetwater in ways that will not incur the wrath of the county. Annexation would make the land subject to all city regulations and eligible for all city services. That is, the city would have to provide sewer service, but Freeport would not be able to do any commercial or multi-family development unless it won zoning changes from the city council.

The FIA says that the development agreement would "benefit the city of Austin an

estimated \$75.5 million." That's largely the result of annexing Freeport's land as part of the development agreement and then the value increasing as a result of massive development. The cost of damage to Barton Creek and Barton Springs was not calculated; in fact, the city assumed that the development will not harm the creek or springs.

The biggest news in the FIA, however, probably concerns the BATNA. The FIA maintains that under the BATNA, the city could pay an extra \$11 million to settle the tax debt of the Uplands and Sweetwater, plus incur \$15.5 million in liabilities from annexing Freeport's Water District 19, and still come out with \$10 million "benefit." County Judge Bill Aleshire has said this scenario would remove his objections to the city acquiring the Uplands and Sweetwater, although he criticized its impact on taxpayers.

Under this scenario, Freeport would get no commercial or multi-family development. They could develop the 1,702 single family homes called for in their 1992 subdivision proposals and might return with more houses on the other land, although these would have to develop under SOS. The only way they could get commercial or multi-family development, though, would be to win zoning changes from the city council, and even then, the properties would be subject to SOS.

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The BCCP and the PUD: Can One Live Without the Other?

The BCCP is slouching toward the county bond election with an ugly albatross around its neck, the Barton Creek PUD/development agreement between the city and Freeport-McMoRan. County Judge Bill Aleshire, Mayor Bruce Todd and LCRA director Mark Rose – the top ranking officials of the three BCCP partners – have all to varying degrees linked the success of the BCCP to approval of the development agreement.

The link is the Southwest Parkway road district and its \$26 million debt, (\$270 million with interest – up \$160 million after county commissioners refinanced in 1990.) Located within the district are the Uplands and Sweetwater tracts, 4,300 acres in the Barton Creek Watershed currently owned by the federal Resolution Trust Corporation (RTC). City voters approved funds to purchase the two properties for the BCCP last August; BCCP planners say the plan could succeed biologically without the Uplands and Sweetwater, but it would be more difficult and more expensive to acquire replacement land from private interests.

Aleshire and the commissioners court, who also serve as the road district board, have blocked the purchases so far. The county's position is that they can not engage in any action that would hurt the road district financially. Buying the Uplands and Sweetwater for

the BCCP would result in those properties being removed from tax rolls, leading to a heavier burden on other property owners – read: Freeport-McMoRan, the district's largest private landowner – and possibly a bond default. Aleshire and other county bond officials fear the county could be liable in a default, if, as a BCCP partner, the county participated in damaging the district financially.

Aleshire has supported the development agreement as the only plan on the table for solving the road district's problems. Under the agreement, the road district is converted to a mysterious vehicle called an assessment district, in which a set portion of the debt is assigned to individual properties. This would free the Uplands and Sweetwater for purchase by the city for the BCCP.

It has been erroneously reported in the *Austin American-Statesman*, and inaccurately stated by Aleshire at the commissioners court, that Freeport will be paying the road district debt. Actually, the RTC has committed a set amount – which they won't disclose – to cover the assessment on the Uplands and Sweetwater. Freeport gets it a little more accurate in their PR, saying the development agreement will allow the city to purchase the two tracts. This seems to be a tacit acknowledgment that Freeport has been holding the tracts hostage.

Earlier this month, when it appeared that the development agreement was about dead, Aleshire put a special item on the Commissioners Court agenda calling for cancellation of the BCCP election. The judge explained that one of the main "premises" for calling the election, the development agreement, was in danger of "changing." Aleshire backed down on canceling the election – he probably had no choice since absentee voting had begun – but he persuaded the court to back a plan in which they "promise to the voters that we will not actually issue these bonds until it is certain that we can get the entire preserve system that is promised to them and is proposed as part of the BCCP." This means the court is promising not to issue bonds for any land acquisitions until the Uplands and Sweetwater are acquired, meaning the BCCP will still be held hostage to the development agreement if the bonds pass. Aleshire said at the meeting that the only plan he knows of to acquire them is the development agreement. He added, however, that if the city wanted to pick up the assessment on those properties, it would solve the county's liability problem.

The Big Hole in the Plan

In the lead BCCP story, I explain that a BCCP permit can be issued before all the land for the preserve is acquired. For that to happen, a preserve area just needs to be established, with funding identified to acquire it. BCCP organizers plan to submit a final application in November and hope for approval

by May 1994. Once a permit is issued, properties inside the proposed acquisition area would have to meet a much stricter federal test in order to develop. The acquisition area is about half again as large as what will actually be acquired, but once a permit is issued, all the properties within it fall under the strict federal guidelines until they are purchased or eliminated from purchase consideration.

Any developers who want to build within the proposed acquisition area must prove to United States Fish & Wildlife Service (USFWS) that their development will not harm the preserve. USFWS officials say the process requires many more hurdles than individual permits for developers outside the intended preserve area.

Keeping these points in mind, let's examine the map of the BCCP. Look at the Barton Creek macro-site: the Uplands and Sweetwater on its western edge, the private properties surrounding existing subdivisions to be acquired on the north, and the Gaines Ranch on the east – much of which has already been acquired by the city as part of the Barton Creek Wilderness Park.

Now, what is that big hole in the middle of all this? Most of it is the Barton Creek PUD, which according to city documents filed with FWS has one of the two largest singly-owned golden-cheeked warbler habitats in Travis County – 900 acres worth.

So the Barton Creek PUD has one of the largest warbler tracts in Travis County,

geographically dividing what has been designated as the Barton Creek macro-site. If the PUD were included in the acquisition area – and there seem ample biological grounds to do so – then once a permit is issued, Freeport would have to win development approval not only from the city, but from the federal government. Yet they were left out of the plan. Why?

It could have something to do with Freeport's attorney David Ambrust being on the BCCP executive committee. City officials, working on the BCCP since its inception, are not quick with answers. Environmental and Conservation Services Department (ECSD) head Austan Librach couldn't say. ECSD liaison to the BCCP Chuck Sexton said the PUD property was eliminated for "economic and biological" reasons.

Bill Bunch, a member of the executive committee, says biology had nothing to do with the decision to leave the Freeport property out and charges that such decisions were made in private by developer members of the committee.

Sexton and Librach referred us to consultant Kent Butler of the University of Texas at Austin and to Espey-Huston, development consultants who have been involved in an incredible array of Barton Creek development including sewer pipes and engineering for the already decaying Southwest Parkway. Butler did not return phone calls. Ladd of Espey-Huston said diddle-ey-quat.