

# CITIZENS ADVISORY COMMITTEE OF THE SOUTHERN EDWARDS PLATEAU HABITAT CONSERVATION PLAN

## MINUTES

**DATE:** January 19, 2010  
**LOCATION:** San Antonio Water System – Room 154  
2800 U.S. Hwy 281 North  
San Antonio, TX 78298-2449

1. 6:30PM - Call to Order (Andy Winter - Bexar County)

Andy Winter called the meeting to order at 6:30pm. A quorum of 20 Citizens Advisory Committee (CAC) members or authorized alternates was present.

2. 6:30PM - Welcome and Introductions (Andy Winter)

Andy Winter introduced Clif Ladd (Loomis Partners) as the project manager for the environmental consultant team. Clif Ladd introduced several environmental consultant team members present at the meeting including Amanda Aurora (Loomis), Kathleen O'Connor (Zara Environmental), Leonard Voellinger (Jacobs), Wendell Davis (Wendell Davis & Associates), and Sonia Jimenez (Ximenes & Associates). Andy Winter introduced Gerald McFarlen (Cibolo Nature Center) as the permanent replacement for appointed CAC member Carolyn Chipman-Evans (Cibolo Nature Center). Andy Winter stated that CAC members may appoint a proxy for voting purposes at meetings by sending him written notification prior to the meeting, unless the member's alternate has already been identified.

3. 6:40PM - Public Comments and Announcements (Andy Winter)

Andy Winter recommended limiting individual public comments to 3 minutes. No comments or statements from the public were received. Andy Winter stated that background materials for each meeting will be distributed by posting on the SEP-HCP website, and that hard copies will only be provided upon request.

4. 6:45PM - Discussion and appropriate action on election of CAC Chairperson (Andy Winter)

Andy Winter stated that the process for electing a CAC chairperson is at the discretion of the committee. CAC members Bob Fitzgerald and Kirby Brown suggested that the CAC wait to elect a chairperson until the next meeting. Andy Winter stated that he will collect nominations for CAC chairperson and distribute the list of nominees to the CAC prior to the next meeting. Chairperson nominees from the meeting included: Kirby Brown (nominated by Deirdre Hisler) and Jonathan Letz (nominated by Kirby Brown).

5. 7:00PM - Rules of Order and Expectations (Andy Winter or New Chair - if decided)

- a. Discussion and appropriate action on developing and accepting a charge.

Andy Winter stated that Texas Parks and Wildlife Code and the consultant team provided some guidance as to a recommended CAC charge. Andy Winter suggested the following language for a draft charge:

*Bexar County proposes to charge the CAC with the following tasks:*

- *The landowner members of the CAC will appoint one member of the Biological Advisory Team.*
- *Provide recommendations for the overall vision, goals, and objectives of the SEP-HCP.*
- *Recommend a preferred alternative for each of the SEP-HCP major framing issues, including:*
  - *Boundaries of the Plan Area*
  - *Species to be Covered for Incidental Take*
  - *Activities to be Covered for Incidental Take*
  - *Conservation Strategy, and*
  - *Funding Strategy.*
- *Provide recommendations for the form and level of mitigation required of plan participants, and the methods for determining such requirements.*

Andy Winter stated that he would present language for a draft charge to the CAC via email and accept comments on the draft language for discussion at the next meeting. Andy Winter requested all email responses be copied to the entire CAC group. CAC members Kirby Brown and Annalisa Peace suggested that the draft charge and any email correspondence be copied to the entire Stakeholders Group.

- b. Presentation and discussion of Open Meetings Act and Open Records Act requirements. (Richard Heilbrun - TPWD)

Richard Heilbrun (Texas Parks and Wildlife Department, TPWD) recommended that all CAC members become familiar with the Texas Open Government website and review the Open Meetings Act / Open Records Act training videos available from the Texas Attorney General's Office. Richard Heilbrun advised that the CAC cannot discuss business in a non-public forum if there is a quorum present. Richard Heilbrun encouraged the CAC to "reply all" with responses to emails on CAC matters to make sure that discussions are open. Richard Heilbrun stated that all meeting minutes from the CAC and the BAT will be posted. Richard Heilbrun stated that he and Andy Winter are available to answer questions about the Open Meetings Act process and that the Agency Oversight Group will hear concerns regarding open participation in the SEP-HCP process.

CAC member Annalisa Peace requested that links to CAC resources be provided in an email to the committee.

CAC members Jonathan Letz, Krystal Smith (alternate for Sandy Jenkins), Tom Hornseth, and Delmar Cain voiced concerns about the ability to use email for sharing feedback or discussions under the Open Meetings Act. Delmar Cain requested that an attorney give a presentation on meeting procedures under the Open Meetings Act. Clif Ladd suggested that the CAC refrain from conducting business by email until the committee gets legal guidance on the appropriate use of email; however the stakeholders email list could be used to distribute information to the CAC since there is no "reply all" feature to the list. Andy Winter stated that he will send out information regarding chairperson nominees and draft language for a charge via email, but would like CAC members to bring their comments to the next meeting for further discussion.

Kirby Brown requested examples of how other committees operate. Annalisa Peace volunteered to send Andy Winter a copy of the Edwards Aquifer Recovery Implementation Plan process for structured decision making.

- c. Discussion and appropriate action on adopting rules of order, procedures for keeping meeting records, quorums, and voting.

Andy Winter suggested three options for documenting CAC meetings: 1) hire a court reporter to prepare a written transcript of the meeting (he reported receiving a quote for approximately \$100 per meeting); 2) use a County employee to take notes during the meeting (he offered that the CAC could use his secretary, which would require overtime pay); or 3) direct the consultant team to keep meeting notes and prepare minutes. Delmar Cain suggested that the CAC could also use audio recording equipment to document meetings. Jonathan Letz offered to send information on recording equipment to Andy Winter.

Andy Winter suggested that quality recordings may be difficult to obtain and all speakers would need to identify themselves prior to speaking. Andy Winter also stated that he intends to record all meetings. Andy Winter stated that there may not be sufficient budget to hire a reporter for every meeting. In response to a question from CAC member Randy Johnson, Andy Winter stated that the consultants are already paid to attend and document meetings.

Deirdre Hisler voiced concerns about possible note-taker bias and subjectivity, and stated that she would prefer to use a court reporter to take complete and unbiased notes. Annalisa Peace stated her preference for meeting minutes, not just a complete meeting transcript. Gerald McFarlen questioned the quote of \$100 per meeting for a court reporter transcript and Andy Winter volunteered to do more research on costs. Allison Arnold (U.S. Fish and Wildlife Service, USFWS) stated that there are likely to be arguments and discussions at meetings and it will be important to have complete notes on what was said. Allison Arnold stated that she has seen problems in the past with meeting notes and would like the CAC to have a firm basis for making decisions.

MOTION (by Deirdre Hisler): Document CAC meetings with both meeting minutes or notes and a recorded backup. SECOND (uncertain). VOTE: Voice vote carried unanimously.

Andy Winter stated that voting CAC alternates will need a written proxy from the appointed CAC member. Andy Winter stated that if a CAC member can't continue service on the committee, then he/she should notify him and Bexar County will appoint a replacement. Andy Winter reminded the CAC members and their alternates to sign in for each meeting to keep track of who is eligible to vote.

Andy Winter offered to send out a complete list of the CAC members to the committee and that we will try to make sure that all meeting materials are posted to the website two weeks prior to a meeting.

- d. Discussion and appropriate action on setting regular meeting times and locations.

Andy Winter suggested that the CAC set a regular meeting time and place.

The CAC discussed possible meeting locations, including the San Antonio Water System, Government Canyon State Natural Area, the Volero campus, San Antonio public libraries, 4-H facilities, and the Greater San Antonio Home Builders Association facilities. Andy Winter stated that there may not be sufficient budget to pay for meeting space. CAC member Bebe Fenstermaker suggested that the CAC choose a meeting location in northwestern Bexar County,

which was seconded by several other CAC members. Annalisa Peace suggested that the consultant team develop a list of possible meeting locations for the CAC to consider.

The CAC discussed a possible earlier meeting time and other dates, but no consensus was reached.

Kirby Brown suggested that CAC members identify meeting time preferences via a form to be provided by the consultant team and tentatively set the next CAC meeting for the 3<sup>rd</sup> Tuesday of the month. Andy Winter stated that unless otherwise notified the next CAC meeting would be scheduled for 6pm Tuesday February 16 at the San Antonio Water System. Deirdre Hisler offered to secure the meeting room.

6. 7:20PM - Presentations and discussion on the background of the SEP-HCP (Clifton Ladd & Amanda Aurora -Loomis Partners)
  - a. Endangered Species Act, National Environmental Policy Act, Texas Parks and Wildlife Code – Chapter 83
  - b. Habitat Conservation Plans
  - c. Environmental Impact Statements

Clif Ladd gave a presentation regarding the Endangered Species Act (ESA) and Habitat Conservation Plans (HCPs), the National Environmental Policy Act (NEPA) and Environmental Impact Statements (EIS), and Chapter 83 of the Texas Parks and Wildlife Code.

Deirdre Hisler asked how the consultant team will coordinate with the USFWS during the process, particularly with regard to maintaining the project schedule. She also asked for more information about the environmental consultant team. Clif Ladd stated that the team will remain in close communication with the USFWS and that the CAC will be provided opportunities to guide the course of the project. Clif Ladd identified each of the environmental consultant team members and their role in the project.

Bob Fitzgerald asked for more information on the public NEPA process, particularly how the public is notified. Clif Ladd and Amanda Aurora (Loomis) responded that the public will be notified through announcements posted on the website, announcements distributed via the stakeholders group email list, by posting meeting notices at the Bexar County courthouse, by notices published in the Federal Register and local newspapers (for formal NEPA public meetings or hearings), occasional press releases, and via links through other websites.

Jonathan Letz requested links to other regional habitat conservation plans in Texas and asked why this process was happening now. Andy Winter responded that the protection of the training mission at Camp Bullis was a primary motivator for the SEP-HCP, as was the need to balance conservation and development in the region.

7. 7:40PM - Presentations and discussion on SEP-HCP participants, roles, and responsibilities (Richard Heilbrun & Andy Winter)
  - a. Primary Partners
  - b. Stakeholders Group
  - c. Citizens Advisory Committee (CAC)
  - d. Biological Advisory Team (BAT)

- e. Agency Oversight Group (AOG)
- f. Environmental Consultants
- g. Legal Consultants

Allison Arnold gave a presentation regarding the ESA and HCPs. She announced the opening of a USFWS sub-office in San Antonio at Government Canyon State Natural Area. Allison Arnold also stated that the USFWS will be attending all meetings of the CAC, Biological Advisory Team (BAT), and Agency Oversight Group (AOG), and that Bexar County and the City of San Antonio would be permit applicants for the incidental take permit. Allison Arnold also responded to a question from Bob Fitzgerald regarding whether the USFWS has “veto power” over the plan, and stated that the SEP-HCP is the applicant’s document and that the USFWS only makes a decision whether the plan is supportable under law for permit issuance.

Richard Heilbrun spoke about the roles of the various groups assembled to develop the SEP-HCP. He stated that Bexar County and the City of San Antonio are the sponsors of this effort and are equal, legally defined, plan participants, with Bexar County as the lead. Richard Heilbrun explained that the Stakeholders Group is composed of all individuals with an interest and stake in the SEP-HCP. Richard Heilbrun stated that the CAC is the decision-making body for the SEP-HCP and that the plan participants and biologists are not decision makers for this project. He stated that the BAT will help the CAC make decisions and all biological questions can get referred to the BAT for input and recommendations (which will be provided in concert with the USFWS and the consultant team). Richard Heilbrun stated that the first order of business for the BAT will be to provide the CAC recommendations for the plan area and the species to be covered by the plan, but that the CAC does not have to accept BAT recommendations. Richard Heilbrun emphasized that he would like to have very good communication between the CAC and BAT. Richard Heilbrun explained that the AOG is composed of representatives from Bexar County, the City of San Antonio, USFWS, and TPWD and that the purpose of the AOG is to facilitate the process, monitor the project schedule, approve payments to consultants, and steer the consultant team as needed. He stated that the schedule for the project is limited to three years, with no extensions for the grant.

Andy Winter stated that Clif Ladd had already addressed the role of the consultants and proceeded to describe the process for obtaining independent legal counsel for the plan. Andy Winter explained that the Bexar County District Attorney is currently looking for an appropriate legal consultant and will either contract directly with an appropriate firm or will send out a request for proposals. Andy Winter stated that he hopes to have the legal consultant in place by the end of February 2010, and the choice of legal consultant will be made by the District Attorney. Clif Ladd added that the environmental consultant team includes a legal component (Braun and Associates) to assist with legal questions early in the process, as needed.

Andy Winter and Richard Heilbrun answered questions from multiple CAC members regarding participation of other jurisdictions in the SEP-HCP, representation of other jurisdictions on the CAC, and the size of the plan area. Andy Winter stated that the SEP-HCP is bigger than just Bexar County and he wanted the entire region represented in the process. He stated that he reached out to representatives in other counties. Richard Heilbrun used a regional map with county boundaries to illustrate possible counties that could be included in the plan area and stated that the BAT would provide recommendations to narrow the list of covered counties. Richard Heilbrun also described that the County asked for nominations for CAC members from other counties and that for now, the SEP-HCP will just be “rolled out” to the other counties in the plan area and that representation on the CAC is not necessary for the plan to cover a particular area. He also explained that participation in the SEP-HCP will be voluntary for other jurisdictions (in an official capacity) and for individuals.

8. 7:50PM - Presentations and discussion on the SEP-HCP Work Plan (Clifton Ladd & Amanda Aurora)

Amanda Aurora gave a presentation regarding the SEP-HCP work plan developed by the environmental consultant team and the anticipated schedule for major milestones. Amanda Aurora described four project phases: Phase 1 – Project Foundations, Phase 2 – Conceptual Design and Alternatives, Phase 3 – Permit Application Package, and Phase 4 – Permit Issuance. She explained that the project is currently in Phase 1, with substantive work on compiling and assessing baseline information and preliminary impacts about to be underway. Amanda Aurora described that most of the committee work would occur during Phase 2 to evaluate alternatives for various plan components and identify a preferred framework for the plan. She stated that Phase 3 involves preparing the draft HCP and draft EIS, based on the preferred alternatives identified in Phase 2, and providing the committees an opportunity to review and comment on the draft documents before final drafts are submitted to the USFWS at Phase 4 of the project. Amanda Aurora indicated Phase 1 is expected to be completed by May 2010, Phase 2 is expected to be completed by September 2010, and Phase 3 is expected to be completed by September 2011. She stated that permit issuance is anticipated by September 2012 when the grant expires.

9. 8:00PM - Discussion and appropriate action on direction for major SEP-HCP framing issues (Clifton Ladd & Amanda Aurora)

Amanda Aurora gave a presentation on the major framing issues for the SEP-HCP. She explained that these issues provide the initial direction for plan development. Amanda Aurora identified four major framing issues that the CAC and BAT need to provide guidance on as soon as possible, including: Overall Goals and Objectives, Plan Area, Species Covered, and Activities Covered. She explained that determining an overall community vision for the SEP-HCP was one of the most important tasks for the CAC to consider early and recommended that the CAC use the meeting facilitator on the environmental consultant team to assist with expressing and refining that vision. She stated that it was important that the goals and objectives balance species needs, community needs, legal considerations, and practical limitations for plan implementation. Amanda Aurora stated that the configuration of the plan area was the most critical path decision needed by the environmental consultant team to begin work on the baseline assessments, and that the BAT would be discussing this matter at their first meeting next week. Amanda Aurora described that the “covered species” were those for which incidental take authorization would be sought and is the factor that will most affect the complexity of the plan. She explained that coverage was only needed for federally endangered or threatened species, but that HCPs can cover unlisted species if there are treated as if they were listed. She also explained that to be able to cover a species, sufficient information must exist to prepare a take assessment and impacts analysis, effective conservation measures must be practicable to implement, and that the requested take must not jeopardize the survival and recovery of the species. Amanda Aurora also explained that the SEP-HCP can cover all types of activities that cause take or the plan could be designed to only cover take from certain types of activities.

Annalisa Peace asked if there was budget available for additional biological studies. Amanda Aurora replied that some contingency funds are available if such studies are absolutely necessary.

10. 8:10PM - Landowner members discussion and appropriate action on appointing a BAT member (Richard Heilbrun)

Richard Heilbrun explained that the CAC must appoint one member of the BAT, but that there were few stated requirements for the appointment. He also stated that all BAT meetings are open to the public and that there are currently seven members on the committee. Richard Heilbrun and Allison Arnold added that the BAT meetings occur during the day and that the BAT

will likely meet one or two times per month for the early phases of the project and quarterly later in the process.

Kirby Brown and Jonathan Letz questioned how a sub-group of the CAC can meet and deliberate on a choice under the Open Meetings Act.

Bebe Fenstermaker reported that the landowner members of the CAC had already identified a possible candidate for the BAT: Justin Dreibelbis, Conservation Program Coordinator with the Texas Wildlife Association.

MOTION (by Delmar Cain): Appoint Justin Dreibelbis as CAC landowner representative to the BAT. SECOND (by Bebe Fenstermaker). VOTE: Voice vote of CAC landowner members carried unanimously.

11. 8:15PM - Next meeting and CAC assignments (Andy Winter or New Chair)

- a. Prepare short bio paragraph on background and interests as they relate to the SEP-HCP.
- b. Review materials about ESA and TPW Code Chapter 83; habitat conservation plans; and species information for the golden-cheeked warbler, black-capped vireo, and karst invertebrates
- c. Prepare short discussion of your overall vision for the SEP-HCP, including the purpose, goals, and objectives for the plan.

This item was skipped by Andy Winter.

12. 8:25PM - Other Business (Andy Winter &/or New Chair)

Andy Winter requested ideas for agenda items for the next CAC meeting.

Tom Hornseth offered to give a presentation on Comal County's experience with preparing a regional habitat conservation plan.

Bob Fitzgerald asked if there was a manual for HCPs. Andy Winter responded that the USFWS has a HCP Handbook, which is obsolete but available on the web.

Kirby Brown requested a presentation from USFWS on the HCP process.

Andy Winter commented on the CAC chairperson decision and stated that he thought that TPWD would be a good choice for chairperson, but that there are many strong leaders on the CAC. He would like to see the chairperson be independent and does not want any member to feel left out of the process. Andy Winter also estimated that the CAC chairperson would need to dedicate approximately 4 hours per week to the project for 2 years. Andy Winter asked for chairperson nominations to be sent to him by email by the end of next week.

Andy Winter requested that CAC members complete three assignments prior to the next meeting: 1) prepare a short biography of their background and interests as they relate to the SEP-HCP and send them to him by next week; 2) review materials posted on the SEP-HCP website; and 3) prepare a short statement on their vision for the SEP-HCP for discussion at the next meeting.

Andy Winter indicated that the CAC will continue discussion of the committee's charge at the next meeting.

Clif Ladd stated that the environmental consultant team will set up a wireless network for laptop computers during future meetings (a "MIFI" network) to digitally share files and materials during the meeting.

Clif Ladd suggested a field trip in April (probably on a Saturday) for interested CAC members to see some of the species and habitats that will be addressed by the plan.

Kirby Brown and Krystal Smith agreed with a comment from the floor that short presentations on the rare species in the plan area would be helpful for the next meeting.

13. 8:30PM – Adjourn

Andy Winter adjourned the meeting at 8:46pm.