

AGENDA ITEM 19

Consider approving an interlocal agreement with Capital Metro regarding construction of a portion of Lakeline Blvd. from the proposed intersection of Lakeline Boulevard and Lyndhurst Boulevard to the railroad crossing.

No action was taken on this agenda item, which was tabled until the January 29, 2002 meeting.

AGENDA ITEM 20

Consider approving amendment of the Environment Protocol for Multi-Corridor Transportation Plan.

Moved: **Commissioner Hays**

Seconded: **Commissioner Limmer**

Motion: To approve amendment of Section 4 of the Environment Protocol for the Multi-Corridor Transportation Plan to add wording as follows:

"The rules of practice and procedure for the Antiquities Code provide that public entities must notify the THC before ground breaking, and in advance of proposed public development projects that could take, alter, destroy, salvage, or excavate archeological sites, designated historic district, or other cultural resources and/or landmarks. The THC then reviews the submitted documentation and notifies the public entity of the possible need for survey level investigations to locate cultural resources situated in the proposed development tract.

The following steps should be followed to help ensure compliance with Texas Antiquities Code regulations:

(a) As early as possible in project planning a determination should be made as to whether the project will affect an area larger than 5 acres, disturb a cumulative area of more than 5,000 cubic yards, occur inside a designated historic district, or affect a recorded archeological site. ACi and SREG are available to assist in making this determination.

(b) If a project satisfies any one of the preceding criteria, ACi should be contacted to conduct an archival/reconnaissance survey investigation of the site to collect historic and/or archeological resource information.

(c) Once an archival/reconnaissance survey investigation has been completed, ACi will notify the THC of the construction plans for the project and propose any more detailed surveys or investigations required to determine the project's potential adverse impact to historical or archeological properties.

(d) If the THC determines that an intensive survey investigation is needed ACi, with qualified personnel, will perform the investigations under an Antiquities Permit in consultation with the THC.

(e) The discovery of archeological sites or historic structures at a project location subsequent to ground breaking should be reported immediately to ACi, SREG, and the Road Bond Manager." with the notation that this does not affect existing roads.

Vote: 3 - 0

< Attachment >

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January 16, 2002

VIA FACSIMILE

Eugene Taylor, Esq.
Williamson County Attorney
405 Martin Luther King
Georgetown, Texas 78626

Re: Amendment of Environmental Protocol

*approved 1-22-02
John C. Doerfler*

Dear Gene:

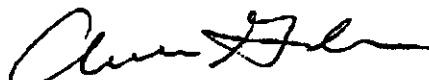
As you are aware, in April 2001, the Commissioner's Court adopted the Williamson County Multi-Corridor Transportation Plan, Project Level Environmental Review and Compliance Protocol (the "Protocol") to assist Road Program Project Engineers in identifying potential environmental constraints, collecting appropriate data, and developing and implementing a plan for assuring compliance with applicable environmental laws and regulations.

Through discussions with Mike Weaver and Steve Paulson, we have recently determined that it may be appropriate to expand the discussion in the Protocol regarding State notification requirements and construction plan reviews under the Texas Antiquities Code. This information will be added to Section 4 of the Protocol. Amending the Protocol to include this information should enable Project Engineers and ACi to ensure timely and efficient compliance with laws and regulations affecting historic and archeological properties.

We have reviewed the Protocol amendments with Mike Weaver and Steve Paulson, and with their concurrence, are recommending the amendment of the Protocol to reflect the above-referenced information (an amended copy is attached for your review). If you concur with the suggested amendments, we respectfully request that the Protocol amendments be placed on the Commissioner's Court agenda for adoption.

Please do not hesitate to call if you have any questions.

Best regards,


Alan M. Glen

Enclosures

cc: Hon. John C. Doerfler (w/ encl)
Mike Weaver (w/encl)
Steve Paulson (w/encl)
Thornton O. Wood, Esq. (Firm w/o encl)

DRAFT

**Williamson County Multi-Corridor Transportation Plan
Project Level Environmental Review and Compliance Protocol
January 2002**

1. Introduction

This Project Level Environmental Review and Compliance Protocol (the "Protocol") is provided to assist each Project Engineer in identifying potential environmental constraints, collecting appropriate data, and developing and implementing a plan for assuring compliance with applicable environmental laws and regulations. Williamson County, Texas is implementing a multi-corridor transportation plan involving numerous separate projects across the County. Prime Strategies, Inc. (the "Road Bond Manager") has been retained by the County to administer the program. In addition, Smith, Robertson, Elliott & Glen, L.L.P. ("SREG") and Athabasca Consulting, Inc. ("ACi") have been retained by the County to establish program-wide environmental compliance strategies. In addition, SREG and ACi will seek to establish a coordinated, regional approach to environmental compliance with key agencies, including particularly the U.S. Fish and Wildlife Service. While each project will raise its own set of environmental compliance issues, they will also be interrelated and can affect larger efforts. This Protocol, therefore, seeks to establish a close, cooperative process among each Project Engineer, the Road Bond Manager, SREG, and ACi. Full and prompt communication will be vital to program success, and the Project Engineers are instructed to follow this Protocol whenever possible and observe the lines of communication it creates. In that connection, it is stressed that because the County will be seeking multiple approvals from various agencies as well as regional solutions, contact with agencies and retention of environmental subconsultants must be coordinated with SREG and ACi.

2. Contacts

Following are the key points of contact under this Protocol:

Road Bond Manager:	Prime Strategies, Inc. Michael J. Weaver 1508 S. Lamar Blvd. Austin, Texas 78704-2923 Tel: (512) 445-7074 Ext. 206 Fax: (512) 445-7064 E-mail: mjweaver@austin.rr.com
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ACi:

Athabasca Consulting, Inc.
Steven D. Paulson
1001 MoPac Circle, Suite 100
Austin, Texas 78746
Tel: (512) 347-9000
Fax: (512) 306-0974
E-mail: steve@athabascaconsulting.com

SREG:

Smith, Robertson, Elliott & Glen, L.L.P.
Alan M. Glen
1717 West 6th Street, Suite 300
Austin, TX 78701
Tel: (512) 225-5801
Fax: (512) 225-5821
E-mail: aglen@sreglaw.com

Secondary Contact: Thornton Wood
Tel: (512) 225-5811
Fax: (512) 225-5831
E-mail: twood@sreglaw.com

3. Protocol Steps

Table 1 describes the Protocol Steps to be undertaken by each Project Engineer in identifying resource constraints, collecting data, and establishing and implementing an environmental compliance plan. Following is a brief narrative summary of each of these steps.

1. Identify Large Scale Resource Constraints. The Project Engineer will identify potential resource constraints through evaluating the project location in comparison to publicly available resource information. As part of its engagement by Williamson County, ACi is preparing an environmental opportunities and constraints analysis for the entire program. Accordingly, ACi should be consulted at this stage and should be able to provide useful information.

2. Identify Potentially Applicable Regulatory Programs. After Step 1, the Project Engineer should consult with SREG and ACi to identify potentially applicable regulatory programs. Part IV of this Protocol contains a brief summary of some of the more significant programs.

3. Design Site-Specific Data Collection. The Project Engineer should consult with ACi to design and develop appropriate scopes for any needed environmental data collection.

4. Conduct Site-Specific Data Collection. Environmental data collection will be conducted by ACi or other qualified subconsultants approved by ACi or SREG.

5. Evaluate Regulatory Program Requirements. The Project Engineer will consult with ACi and SREG to evaluate applicable regulatory program requirements.

6. Design and Evaluate Project Modifications to Minimize Environmental Impacts. The Project Engineer will consult with ACi and SREG to identify potential project alternatives or modifications to minimize environmental impacts and regulatory requirements.

7. Design Regulatory Approval Strategy. The Project Engineer shall consult with ACi and SREG to design a regulatory approval strategy for the project. The strategy will specify actions and responsibilities of relevant parties.

8. Implement Approval Strategy. The Project Engineer, ACi, SREG, and other appropriate County representatives and consultants shall implement the regulatory approval strategy as provided therein.

4. Summary of Potentially Applicable Programs

Following is a brief summary of some of the more significant environmental regulatory programs that may be applicable to projects:

Endangered Species Act

The Federal Endangered Species Act (ESA) prohibits the "take" of listed threatened or endangered species. By U.S. Fish and Wildlife Service (USFWS) regulation, this "take" prohibition has been extended to cover habitat modification that actually results in death or injury to listed wildlife, such as by interference with essential behavioral patterns such as breeding, feeding, or sheltering. The ESA also requires that federal agencies not fund, carry out, or permit actions that are likely to jeopardize a species or destroy or adversely modify its critical habitat. In order to comply with this requirement, federal agencies are required to consult with USFWS whenever a proposed action "may affect" listed species or designated critical habitat. This consultation requirement, for example, may be triggered by a project's need for a Corps of Engineers permit under Section 404 of the Clean Water Act. If a Williamson County project is located in the vicinity of known or potential endangered species habitat, the "take" prohibition and/or the consultation requirement may be implicated and ACi and SREG should be consulted for further direction and analysis. The primary listed species present in Williamson County include the golden-cheeked warbler, the black-capped vireo, and several karst or cave invertebrates. In addition, there are a number of non-listed "species of concern" such as the Jollyville and Georgetown salamanders.

Clean Water Act Section 404

Section 404 of the Federal Clean Water Act ("CWA") prohibits the "discharge of dredged or fill material" into the "waters of the United States" without a permit. As a result, most construction activities that take place in water bodies or wetlands must be authorized by the U.S. Army Corps of Engineers ("Corps"), which administers the 404 permitting program. The term "waters of the United States" (or as they are commonly called, "jurisdictional waters") encompasses a wide range of water bodies, including lakes, rivers, creeks, streams and their tributaries, as well as wetlands. Intermittent streams and some dry washes may also be classified as jurisdictional waters. Because the term "discharge" has been defined by Corps regulations to cover activities that result in the addition as well as removal of dredged or fill material, most excavation activities in jurisdictional waters will also require a 404 permit. If a Williamson County project must cross or otherwise affect jurisdictional water, or if any construction activities will occur in jurisdictional waters, ACi and SREG should be consulted regarding whether or not a 404 permit may be required. For some projects that impact less than 2 acre of jurisdictional waters, authorization may be available through the Corps' Nationwide Permit program ("NWP"), which is generally a quicker alternative to the individual 404 permit process, and which does not trigger individual NEPA review. A summary of NWP authorizations for road crossing projects is attached to this Protocol.

EPA Stormwater Permitting

The CWA also requires permits for the discharge of "pollutants" into the nation's waterways through stormwater runoff from construction projects. Coverage for construction-related stormwater discharges is usually obtained through the U.S. EPA's NPDES Construction General Permit ("CGP"), which provides coverage on an expedited basis. Only those parties that qualify as "operators" will be required to obtain CGP coverage. Generally speaking, "operators" are those that have overall or day-to-day control over the project. Subcontractors usually do not qualify as "operators" and consequently do not need CGP coverage.

The two key eligibility criteria for the CGP are: (1) development and implementation of a Stormwater Pollution Prevention Plan ("SWPPP") according to EPA standards, and (2) satisfying the requirements for compliance with the ESA, which are provided in Addendum A to the CGP. If the project may impact listed endangered or threatened species, ACi and SREG should be contacted since consultation with USFWS may be required. Once the applicant has developed a SWPPP and determined that it satisfies the ESA-related criteria, it can then submit a Notice of Intent ("NOI") form, which requires the applicant to certify that it is eligible for authorization under the CGP, and that it will abide by all of the permits terms and conditions. For most projects, the authorization process involves little or no contact with EPA. CGP coverage becomes effective 48 hours after the NOI is submitted to EPA. A copy of the CGP is attached to this Protocol. Project Engineers should review the CGP carefully and will be responsible for ensuring full compliance. The current CGP is scheduled to expire in July 2003, at which point this program will be taken over by the TNRCC.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires pre-decision environmental impact review for any action a federal agency carries out, funds, or authorizes. Although NEPA itself imposes no substantive requirements on any such project, its procedural burdens can influence the cost and timing of projects and can influence project revisions based on the impact analysis it generates. Pursuant to general regulations promulgated by the Council on Environmental Quality, and which each federal agency has adapted to its particular programs, the level of environmental review varies. The most intensive review applies to actions that will have a significant effect on the quality of the human environment. These actions require a full environmental impact statement (EIS) prior to final decision on the action. An EIS is an expensive and time-consuming undertaking that explores numerous action alternatives and their full direct and indirect environmental and socio-economic impacts. Most actions do not trigger this EIS requirement, but rather fall into the class of actions that qualify for a finding of no significant impact (FONSI). The decision whether to reach a FONSI or to require an EIS is conducted through an environmental assessment (EA), which is a much shorter version of the analysis included in the EIS. Finally, some actions qualify for "categorical exemption" because they are not generally significant in terms of environmental impact.

Application of NEPA thus involves three basic questions: (1) does NEPA apply—*i.e.*, is the action carried out, funded, or authorized by a federal agency; (2) is an EIS required or is a FONSI or categorical exemption justified; and (3) if an EIS is required, is the EIS adequate in terms of scope and analysis. For state and local road projects, each of these issues is often presented. For example, depending on the project "segment" involved, its interconnection with federally funded roadways, and the flow of federal highway funding to ongoing road projects in the jurisdiction, the project might or might not trigger NEPA. Other federal permitting, such as an individual (as opposed to a nationwide) permit from the Corps of Engineers, may also implicate NEPA. And while many road projects subject to NEPA require an EIS, not all do, particularly if the project is not significant in terms of context and intensity or involves substantial mitigation of effects as part of the project itself. If an EIS is required, however, questions of scope and depth of analysis necessarily arise in many contexts. Clearly, then, it is to determine early whether and to what extent NEPA will apply.

TNRCC Edwards Rules

Roadway construction within the recharge and/or contributing zones of the Edwards Aquifer must be conducted in compliance with the state's Edwards Aquifer Rules ("Edwards Rules"), which are administered by the Texas Natural Resource Conservation Commission ("TNRCC"). For projects located in the contributing zone, the Edwards Rules require many of the same water quality control measures that are called for by the EPA's CGP. However, unlike the CGP self-certification process, projects in the contributing zone cannot proceed until the required "contributing zone plan" is reviewed and approved by TNRCC staff. Projects in the recharge zone are subject to a more stringent set of standards, which include requirements for the implementation of permanent "best management practices" to control the discharge of pollutants after construction is completed. Construction in the recharge zone cannot proceed until TNRCC has approved a "water pollution abatement plan" for the project, a process that requires the applicant to submit detailed technical reports and a geologic

assessment of the project site. ACi and SREG should be consulted on questions regarding the location of projects in the recharge and contributing zones as well as compliance with the Edwards Rules. Project Engineers will be responsible for processing and implementing approvals under the Edwards Rules.

National Historic Preservation Act/Texas Antiquities Code

The federal National Historic Preservation Act ("NHPA") establishes a national historic preservation program for the identification and protection of historic properties and resources. Section 106 of the NHPA requires federal agencies to take into account the effects of their actions on historic properties that are listed, or eligible for listing, in the National Register of Historic Places ("National Register"). For purposes of Section 106, any property listed in, or eligible for the National register is historic. The National Register is an inventory of historic resources and is maintained by the Secretary of the Interior. The list includes buildings, structures, objects, sites, districts, and archeological resources. Additionally, the NHPA requires federal agencies to consult with the State Historic Preservation Officer and the federal Advisory Council on Historic Preservation whenever a proposed undertaking may adversely affect a historical site. NHPA may be triggered by a project's need for a federal permit, such as a Corps of Engineers Section 404 permit.

In addition to federal historic preservation laws, the State of Texas also regulates historic resources. The Antiquities Code of Texas requires that the Texas Historical Commission ("THC") review any action that has the potential to disturb historic and archeological sites on public land. Actions that need review under the Antiquities Code include any construction program that takes place on land owned or controlled by a state agency or a state political subdivision, such as a city or a county. Projects that require review include: construction of recreational parks or the expansion of existing facilities by city governments; construction by a city or county government that exceeds 5 acres or 5,000 cubic yards. If the activity occurs inside a designated historic district or affects a recorded archeological site, it needs to be reviewed, regardless of project size. The rules of practice and procedure for the Antiquities Code provide that public entities must notify the THC before ground breaking, and in advance of proposed public development projects that could take, alter, destroy, salvage, or excavate archeological sites, designated historic district, or other cultural resources and/or landmarks. The THC then reviews the submitted documentation and notifies the public entity of the possible need for survey level investigations to locate cultural resources situated in the proposed development tract.

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recorded archeological site. ACi and SREG are available to assist in making this determination.

- (b) If a project satisfies any one of the preceding criteria, ACi should be contacted to conduct an archival/reconnaissance survey investigation of the site to collect historic and/or archeological resource information.
- (c) Once an archival/reconnaissance survey investigation has been completed, ACi will notify the THC of the construction plans for the project and propose any more detailed surveys or investigations required to determine the project's potential adverse impact to historical or archeological properties.
- (d) If the THC determines that an intensive survey investigation is needed, ACi, with qualified personnel, will perform the investigations under an Antiquities Permit in consultation with the THC.
- (e) The discovery of archeological sites or historic structures at a project location subsequent to ground breaking should be reported immediately to ACi, SREG, and the Road Bond Manager.

5. Reporting

Attachment 1 is a form to be used by Project Engineers in order to report at least monthly on the status of activities under this Protocol. The status report should be submitted by the Project Engineer to ACi, SREG, and the Road Bond Manager by the 5th day of each month. Significant problems or concerns should be reported immediately.

*approved 1-22-02
John C. Daefler*

AGENDA ITEM 21

Discuss and take appropriate action on road bond program.

No action was taken on this agenda item, which will be added to the January 29, 2002 agenda.

AGENDA ITEM 22

Consider approving Addendum No. 7 to existing contract with PBS&J for additional survey work on the Cedar Breaks Project.

County Engineer Joe England explained that right-of-way needs to be cleared in environmentally sensitive zones from Cedar Breaks to D.B. Wood Road prior to March 1, 2002 to avoid disturbing nesting Warblers which would halt construction until August, 2002.

Moved: **Commissioner Hays**

Seconded: **Judge Doerfler**

Motion: To approve Addendum No. 7 to the existing contract with PBS&J for additional survey work on the Cedar Breaks Project.

Vote: **3 - 0**

< Attachment >