



Hays County Regional Habitat Conservation Plan

Presentation to the Hays County Commissioners Court

July 9, 2013



Legal Context: The Endangered Species Act

- Signed into law in 1973 by President Nixon
- Goal: protect and recover imperiled species and the ecosystems on which they depend.



The Short Story

- Plan does:
 - help landowners comply with an EXISTING federal regulation
 - Allow landowners to interact with LOCAL county representatives rather than the federal government
- Plan does not:
 - create a new regulatory process for Hays County – it is a VOLUNTARY assistance program
 - require anyone to participate or give up land

Legal Context: ESA Section 9 Prohibitions

- ESA prohibits the “taking” of endangered animal species.
- **Take** means:
 - “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct”*
- Service regulations define “**harm**” as:
 - “...an act which actually kills or injures wildlife. Such act may include **significant habitat modification** or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering”*
- The Supreme Court upheld the Service’s definition of “harm” as a permissible interpretation of the ESA.

Legal Context: ESA Section 11 Enforcement

- Allows for civil fines and penalties:
 - a civil penalty of up to \$25,000 per violation
 - a criminal penalty of up to \$100,000 and up to one year of imprisonment per violation
- The requirement that a person “knowingly” violate section 9 applies to the act being committed and not to the violator’s understanding of the law.
- Provides for “***citizen suits***” that allow third parties to bring suit in federal district court to seek enforcement of the ESA through injunctive relief only.
- Non-enforcement consequences to ESA violations:
 - project delays
 - negative market reactions

Legal Context: ESA Section 10 Permits

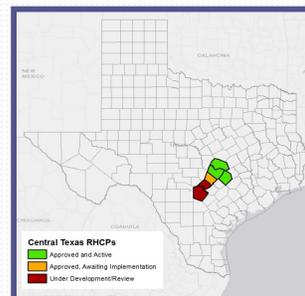
- Service can issue an ***incidental take permit*** authorizing take of listed species that is incidental to an otherwise lawful non-federal activity.
- Must submit a ***habitat conservation plan*** (“HCP”) in support of the permit.
- HCPs must demonstrate:
 - taking will be incidental
 - applicant will, to the ***maximum extent practicable***, minimize and mitigate the impacts of such taking
 - applicant will ensure adequate funding to implement the conservation program
 - taking will not appreciably reduce the likelihood of survival and recovery in the wild (jeopardy standard)
 - other Secretary’s measures will be met

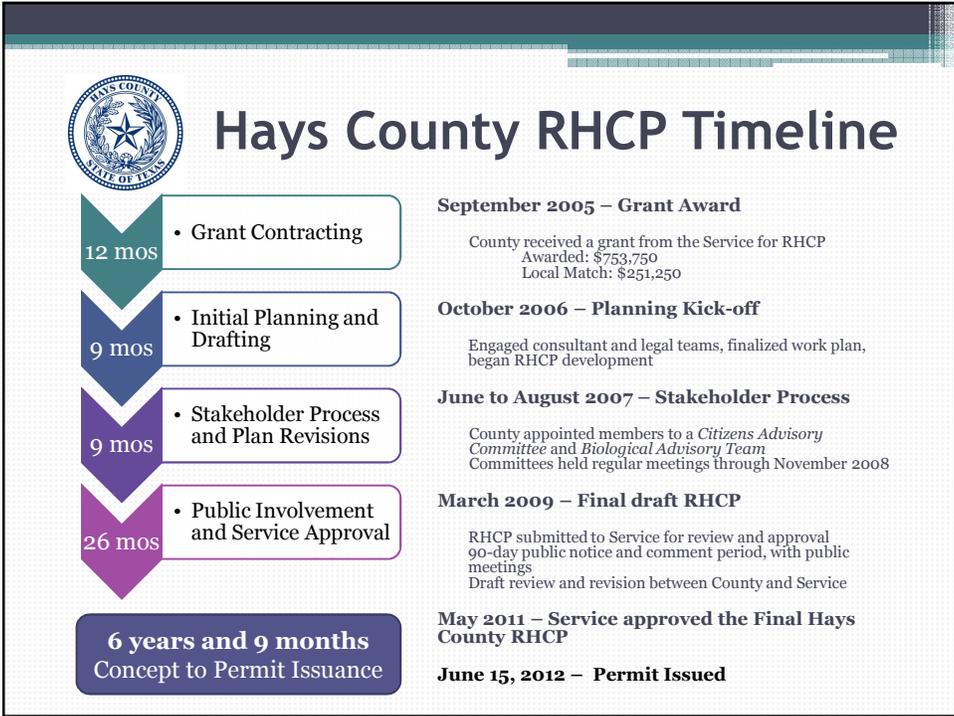
Legal Context: Regional HCPs

- RHCPs typically cover:
 - Multiple species
 - Multiple habitats
 - Multiple landowner activities
 - Large geographic areas
- Service encourages RHCPs because they have many benefits:
 - Flexibility
 - Local control
 - Quicker approvals
 - long-term planning assurances
 - Reduce the regulatory burden of ESA compliance for all affected participants, including the Service

Legal Context: Other RHCPs

- Balcones Canyonlands Conservation Plan
Travis County
- Williamson County RHCP
- Lost Pines HCP
Bastrop County
- Comal County RHCP
- Southern Edwards Plateau HCP
Greater San Antonio Area
- Edwards Aquifer RIP HCP
San Antonio Segment of the Edwards Aquifer





RHCP Stakeholder Involvement

Purpose: To provide *local input and review* of the RHCP approach, conservation strategies, and documents

- 3 Commissioners Court Work Sessions**
 - Judge, Commissioners, County Staff, and Consultant Team
- 9 Citizen Advisory Committee Meetings**
 - CAC members appointed by Commissioners Court
 - Members represented landowner, environmental, developer, and public agency interests
- 8 Biological Advisory Team Meetings**
 - BAT members appointed by Commissioners Court, landowner members of the Citizens Advisory Committee, and the Texas Parks and Wildlife Department
 - Charged with providing guidance to help ensure that species covered by the HCP are adequately protected.

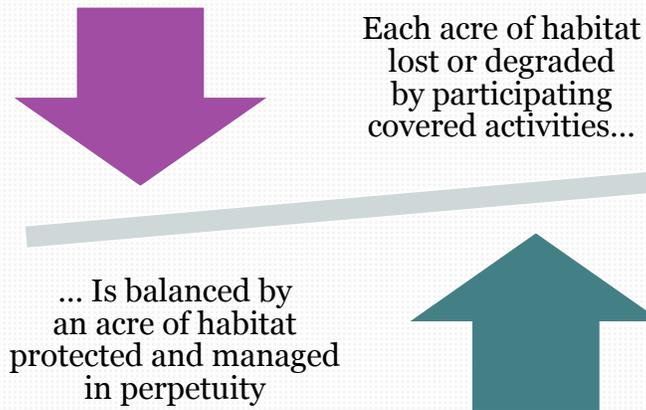


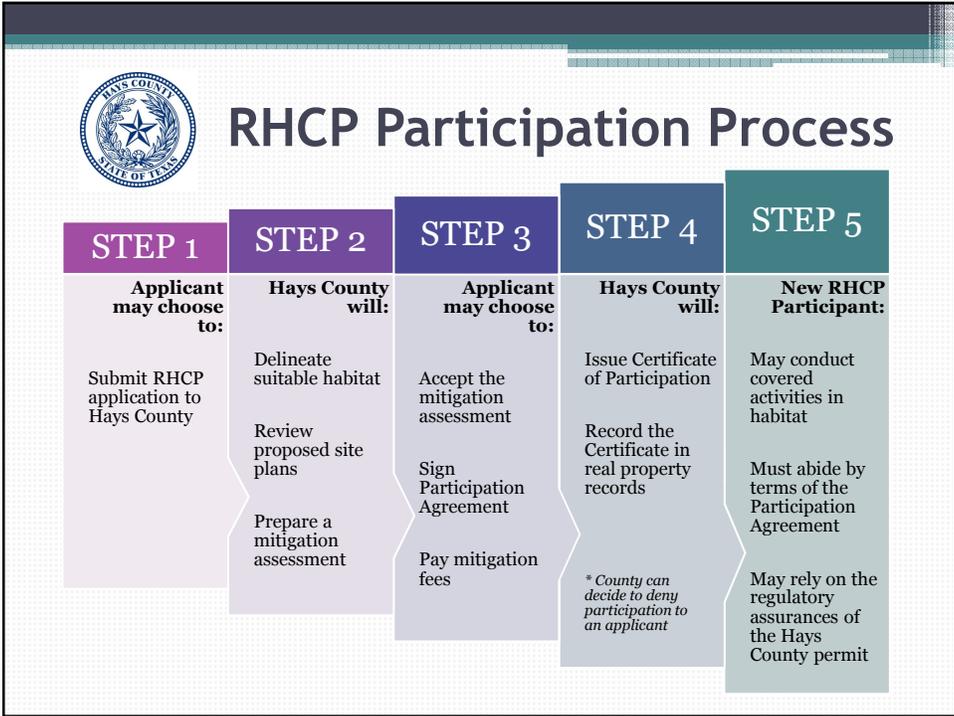
Key Terms of the RHCP

- **COMPLETELY VOLUNTARY**
- **Permit Term:** 30 years (2012-2042)
- **Plan Area:** Hays County, Texas
- **Covered Species:** Golden-cheeked Warbler and Black-capped Vireo
may also benefit 56 other potentially rare or sensitive species
- **Pay-As-You-Go Plan:**
 - Authorizes impacts on an acre-for-acre basis for:
 - up to 9,000 acres of warbler habitat
 - up to 1,500 acres vireo habitat
 - With implementation of conservation measures:
 - Minimum amount = 500 acres of preserve land
 - Maximum amount = 15,000 acres of preserve land



Basic Concept of the RHCP





RHCP Mitigation Assessments

- RHCP applies set ratios for impacts to bird habitat, based on project plans
some exceptions for existing impacts or exceptional quality habitat
- **Direct Impacts - 1 : 1 mitigation ratio**
 - all areas of direct physical habitat loss or alternation
- **Indirect Impacts – 0.5 : 1 mitigation ratio**
 - Applies to habitat within 300 ft of direct impacts
 - May extend outside boundaries of property
- Mitigation = acres of bird habitat protected and managed in perpetuity; also expressed as a “conservation credit”



RHCP Preserve System

- **County Acquires Preserves with Bird Habitat**

- Fee simple land purchases with conservation deed restrictions
- Conservation easement agreements with private landowners
- Management agreements with other public entities

- **Preserve Standards**

- Located within Hays County
- Minimum 500 acres, individually or as a block of adjacent protected lands
- May include a mosaic of habitat and non-habitat
- Occupied by one or both covered bird species



RHCP Conservation Bank

- Protected habitats generate “***conservation credits***”

- Credits are negotiated with Service

- Generally 1 acre of quality habitat preserved = 1 credit

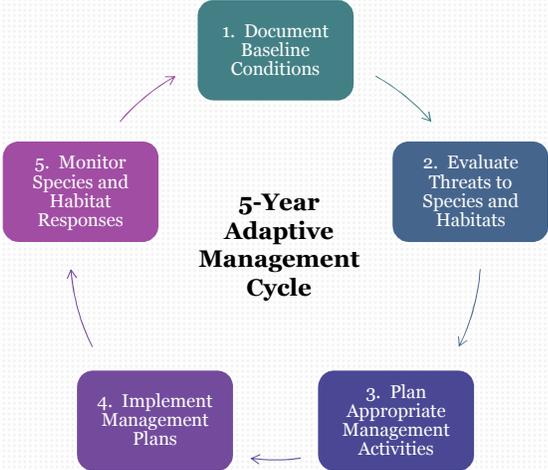
- RHCP Conservation Bank

- Credits are available for purchase by RHCP participants
- Each acre of habitat loss requires the purchase of a conservation credit
- Fees for credits set by Hays County - initially at \$7,500/credit

- ***Overall credit balance must remain positive!***



Preserve Responsibilities



- Management and monitoring of preserve lands **in perpetuity**
- Management plans require **Service approval**
- Allowable preserve uses may include **low-impact recreation**



Benefits of the RHCP

- **Streamlines compliance with an existing federal regulation**
- **Shortens approvals from years to weeks**
- **Mitigation ratios locked in at levels lower than what USFWS currently prefers**
- **Participation is voluntary – Plan is one of several options for ESA compliance**
- **Creates a market for conservation actions with willing landowners**
- **Keeps conservation actions local to benefit the community**

Where are we now?

- Permit issued June 12, 2012
- Met with Service in February 2013 to discuss next steps
- Submitted annual permit report with request for amended implementation timeline in March 2013
- Service accepted revised timeline via letter dated April 12, 2013

- **Next steps:**
 - Accept the permit
 - Complete implementation tasks
 - Acquire initial preserve to create conservation credits
 - Begin enrolling participants