

**SH 45 Southwest
Consent Decree
Summary**

Save Barton Creek Assoc., et al. (Plaintiffs) and Barton Springs-Edwards Aquifer Conservation District (BSEACD) (Intervener)

vs.

FHWA, et al. (includes TxDOT) (Defendants) and Mopac South Corporation (Intervener)

Project Limits: South Mopac to FM 1626, includes interchange at Bliss Spillar Road

1) The decree constitutes settlement of all current controversies between the BSEACD and TxDOT provided this provision does not prevent subsequent proceedings to enforce the terms of this Judgment.

Status: As long as TxDOT complies with the terms of the decree, the controversies under consideration at the time of the consent decree should not be challenged.

2) If federal funds are ever used on the project, then an FEIS will be prepared.

Status: No federal funds are being used on the project.

3) Any change relating to the handling of runoff or storm water on SH 45 Southwest plans developed in the future will be identified to BSEACD. BSEACD will have at least 20 days to review and comment on such modifications prior to implementation.

Status: TxDOT provided BSEACD with a copy of the design plans to review on December 13, 2007. BSEACD provided comments on the proposed TxDOT water quality design on May 1, 2008. TxDOT responded to BSEACD comments by letter dated May 13, 2008.

4) Prior to developing plans and specifications for SH 45 Southwest, TxDOT and BSEACD will perform an on the ground survey of the ROW of the currently proposed project limits to locate and identify significant recharge features.

Status: TxDOT and BSEACD have performed an on the ground karst survey of the ROW in October 1995. In addition, TxDOT will contact BSEACD to schedule an additional karst survey (per BSEACD request) in the near future.

Significant recharge features will be protected as described in the decree. Major caves will be avoided either by realigning the highway or providing a grade separation.

Status: *The major caves in the vicinity of the project were avoided. Additional alternatives proposed by the City of Austin were evaluated and ultimately determined (by the City) not to be preferable. Any significant recharge features within the ROW have been avoided and are proposed to be protected from run-off with best management practices.*

TxDOT will provide BSEACD with draft plans and specifications at no cost for review and comment prior to soliciting bids for construction.

Status: *See response to item 3, above.*

5) At each creek, waterway, or drainageway crossed by the project, TxDOT will construct devices to prevent hazardous materials spills or highway runoff from entering the Edwards Aquifer (as described in Item 5 on pp. 4-6 of the consent decree).

Status: *The most up-to-date technologies, which may include hazardous materials traps, grass lined channels, and filtration and sedimentation ponds, will be incorporated into the project design as per the Edwards Aquifer rules and the consent decree.*

6) At least annually, TxDOT will inspect and, as necessary, conduct maintenance operations to ensure that hazardous materials traps and highway runoff filters are able to function as intended, i.e., that haz mat traps are capable of trapping up to 8,000 gallons, and that filters are capable of trapping and filtering up to the first one-half inch of runoff from the highway.

Status: *TxDOT will inspect and maintain facilities as described above. Hazardous materials traps will be constructed to retain 10,000 gallons of fluid.*

7) Pertains solely to Mopac South.

8) SH 45 Southwest shall be constructed as a parkway, as shown in the FEIS and TxDOT shall maintain ownership of all control of access points and not allow additional access in the future.

Status: *Current plans are for a parkway between Loop 1 and Bliss Spillar Road, as per the EIS. The amount of impervious cover shown in the FEIS will be maintained in the proposed typical section. Control of access was purchased by Travis County when the properties were acquired. TxDOT will maintain ownership of control of access and not allow additional access in the future.*

9) TxDOT shall limit construction of access roads for SH 45 Southwest to those shown in the approved final EIS, Alternative B. TxDOT shall maintain ownership of all control of access points and not allow additional access in the future.

Status: *Alternative B in the EIS included access to four roadways between Loop 1 and FM 1626: Green Emerald Terrace, Wood River Drive, Bliss Spillar Road, and FM 1626.*

Access roads are currently proposed only at FM 1626 and Bliss Spillar Road. Due to the acquisition of Water Quality Protection Lands by the City of Austin in the path Green Emerald Terrace and Wood River Drive (Frate Barker extension), the City of Austin and Travis County are not planning to construct these formerly proposed arterial roadways in the foreseeable future and they have been removed from the CAMPO Plan. Therefore, access to SH 45, as proposed in the EIS, for Green Emerald Terrace and Wood River Drive (Frate Barker extension) are not included at this time.

Additionally, TxDOT shall notify BSEACD of any request to initiate construction of any road providing access to SH 45 Southwest.

Status: TxDOT will notify as required.

10) Pertains solely to Mopac South.

11) TxDOT shall implement all mitigation, environmental protection, and pollution prevention measures described in the EIS for SH 45 Southwest beyond the provisions of the decree.

Status: TxDOT will implement all mitigation measures proposed in the EIS and described in the consent decree. Additional measures are also incorporated based on the most recent technologies developed since the consent decree was signed.

12) TxDOT shall comply with the preconstruction procedures (karst feature survey) attached as Exhibit A.

Status: TxDOT has performed multiple karst surveys including radio cave mapping, dye tracing, infiltration, and runoff studies. These studies are incorporated into the draft SH 45 Southwest Biological Evaluation.

13) TxDOT shall comply with the construction procedures set forth as Exhibit B, describing clearing and excavation; erosion, sedimentation, and pollution controls; work around karst features, and blasting. Exhibit B also allows for BSEACD to observe and comment on construction activities.

Status: All procedures outlined in the consent decree will be incorporated into the general notes in the construction plans. Environmental awareness training will be conducted for construction contractor staff. BSEACD staff may observe construction and will maintain a point of contact within TxDOT by which comments and suggestions may be conveyed.

14) BSEACD may advise TxDOT with respect to Exhibits A and B, particularly regarding the location and evaluation of the significance of recharge features, in accordance with Exhibit C; determination of the adequacy of erosion control measures; and determination of the contractor's compliance with the preconstruction and construction procedures.

Status: BSEACD staff will maintain a point of contact within TxDOT by which comments and suggestions may be conveyed.

15) TxDOT shall commission an independent study (by the U.S. Geological Survey or the University of Texas Bureau of Economic Geology) to monitor the water quality effects of SH 45 Southwest construction and operations, as described in Exhibit D. BSEACD will consult on the nature, scope and progress of the study.

Status: TxDOT has completed the study as described in Exhibit D. The abstract is as follows:

“This report summarizes a four-year study on the impacts of highway construction and operation on water quality and quantity of storm water runoff. Monitoring of water quality in one of the creeks below a highway construction site indicates that even an extensive system of temporary controls is not sufficient to prevent large amounts of suspended solids from entering receiving waters. Parameters commonly used to characterize geotextile fabrics were found to have little relevance for estimating their sediment removal abilities or hydraulic characteristics under field conditions.

The quality of highway runoff was determined by monitoring the quality of storm water runoff from three sites along the MoPac expressway in Austin, Texas. The quality of storm water runoff was similar to that reported in other highway studies across the United States. The concentrations of pollutants appeared to be affected by changes in traffic volume, rainfall intensity, and other factors.

A computer model was developed that will predict the quality of runoff from operating highways in the Austin, Texas, area. The majority of the variation observed in highway storm water loading could be explained by causal variables measured during the storm event, the antecedent dry period, and the previous storm event.

Structural controls built on the new highway segments to protect the Edwards Aquifer from storm water runoff have not performed effectively. The hydraulic performance of the vertical sand filters has been uneven, resulting in little apparent improvement in runoff quality. A grassy swale was found to be effective reducing runoff volumes and pollutant concentrations.

16) Signs will be installed along the highway and all entry points to it informing drivers that they are driving over the environmentally sensitive Edwards Aquifer Recharge Zone.

Status: Such signs have been installed by TxDOT.

17) The consideration paid underlying the execution of the Judgment by TxDOT and BSEACD is set forth in the January 17, 1990, letter agreement executed by the parties' respective authorized representatives.

Status: This was a letter agreement regarding some final administrative actions.