



Life's better outside.™

March 7, 2008

The Honorable Joe Luna
County of Zavala
200 E. Uvalde Street
Crystal City, Texas 78839

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Carter P. Smith
Executive Director

Dear Judge Luna:

Our review of the proposed Zavala County Local River Access Plan (LRAP) as received on 06 February 2008 has been completed. Because of the findings described below we cannot approve the plan as submitted.

Senate Bill 155 (Chapter 90, TPW Code) prohibited, with limited exemptions, motor vehicle use in protected freshwater areas. Incorporated into this legislation is the ability for local governmental entities to adopt LRAPs to allow for limited vehicular use of the streambed to allow for access, when necessary, to a navigable stream or a particular location on a navigable stream. These plans must be adopted by the local governmental body, and then sent to TPWD for review and approval or disapproval. We reviewed the proposed Zavala County LRAP according to the established guidelines, which encompass resource protection measures, public safety, enforcement criteria, coordination with adjacent and overlapping jurisdictions, adequate publicity of public access locations, adequate public services, and protection of private property rights.

The review and field assessment of the proposed LRAP revealed significant problems. First, the plan proposes to link four existing public river access sites together in a driving trail that spans 13 river miles. This is contrary to SB155, which specifies that LRAPs can allow for limited motor vehicle use in a navigable streambed. Thirteen miles does not constitute limited motor vehicular use of a navigable streambed, and will instead create a motor vehicle trail. Additionally, the need to drive in the streambed is not demonstrated since there are already four public access locations within the 13 miles of river, two of which are county properties that can be improved to create public access "parks" without the need to drive in the streambed. The advantage of multiple, reasonably spaced public river access sites such as in Zavala County is that paddling, hiking, tubing, wade fishing, and other lawful activities are possible within a reasonable distance from access points, which allows the public to enjoy the river without the need to use motor vehicles within the riverbed.

Secondly, because the gradient boundary (ownership line between private property and the state's streambed) is often very close to the water's edge on the Nueces River, vehicles would be forced to drive in the water or on private property, which is again contrary to the purpose of SB155. Additionally, the proposed methods of delineating property boundaries in the plan are not legal. For example, this plan proposes to delineate property boundaries "in the future". This is not sufficiently protective of private property rights, a requirement of SB155. By law, property boundaries can only be located by licensed surveyors, and in the case of gradient boundaries, which move at

To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.

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the whims of nature, these boundaries would have to be reassessed after any substantial rise on the river. The proposed method of using filed deeds to locate the boundaries is also impractical because the deeds will likely show the limit of private property as "to the bank of the river", which will place the property line along the gradient boundary. And again, only licensed surveyors are qualified to determine the gradient boundary.

The proposed method of using fences as the boundary location is not feasible, because the fences will likely be above the ordinary flood flows, not the gradient boundary (where they would regularly wash out). The final proposed method of using Ron Kaiser's GIS-based method is impractical, because it is not proven, and may include elevated areas with gravel deposits above the gradient boundary. Although substantial improvements have been made in handheld GPS equipment, there is still the possibility of errors of as much as a hundred feet even under the best conditions. Bare areas may be outside the state-owned river bed.

In short, the gradient boundary has not been established and there is not a sufficient plan or funding to do so. Again, we reiterate, depending on which side of this line you choose to drive on, you are either driving on private property or in the bed of the river, regardless of the presence or absence of water.

Besides these major issues there are other issues of concern which we feel were not adequately addressed in the plan. They include: no provision for funding public services such as trash collection, enforcement, portable restrooms, etc.; no cap on the number of vehicles using the designated sites; and lack of evidence of coordination with adjacent and overlapping jurisdictions, coordination with adjacent landowners, or other public comment opportunities.

Should you have other questions or desire clarification regarding this letter, please contact me or Melissa Parker (512/754-6844,x35; melissa.parker@tpwd.state.tx.us).

In closing, I appreciate your efforts to provide recreational opportunities for citizens in Zavala County. The Department has numerous grant programs to assist local communities in funding recreational facilities for its citizens. The contact for these grants is Mr. Tim Hogsett, Recreational Grants Manager (512) 389-8712. Please contact Mr. Hogsett if you are interested in what is available.

Sincerely,



Carter Smith
Executive Director

CS:MMP:dh