

## **Etowah Habitat Conservation Plan Steering Committee Meeting Notes**

May 7, 2004  
Marietta, GA

Present: Steven Blackburn, *US EPA*; Steve Bradley, *Bartow County*; Bill Bumback, *UGA*; Tim Carter, *UGA*; Robin Dake, *UERA*; Erin Dreelin, *UGA*; Kevin Flanagan, *Lumpkin County*; Laurie Fowler, *UGA*; Beth Gavrilles, *UGA*; Curt Gervich, *Etowah HCP*; Mark Hutcheson, *City of Woodstock*; Ron James, *Cherokee County*; Alice Miller Keyes, *TGC*; Liz Kramer, *UGA*; Charles Laughinghouse, *Forsyth County*; Holly Martin, *City of Kennesaw*; Louise McPherson, *USDA NRCS*; Heidi Millington, *UGA*; Eddie Mitchell, *City of Cartersville*; Nanette Nelson, *UGA*; Erik Petersen, *US ACOE*; Don Powell, *Paulding County*; Brian Shoun, *City of Holly Springs*; Pat Stevens, *ARC*; Candace Stoughton, *TNC*; Sandy Tucker, *US FWS*; Aaron Valenta, *US FWS*; Seth Wenger, *UGA*

### **I. Introduction**

Laurie Fowler welcomed participants and provided a brief overview of the framework of the HCP for those attending for the first time. HCP research has two basic components: **how** and **where** to develop in order to protect the threatened and endangered species while allowing for continued economic prosperity and quality of life. The Advisory Committee expects that the technical committees working on the “how to develop” component will be finished in June, and will bring their recommendations back to the Steering Committee in late June. In July, they would like to hold meetings with county and city elected officials to explain the recommendations and ask them to move forward with adopting ordinances to implement the recommendations.

Laurie also announced two upcoming events:

*Erosion and Sedimentation Control training for Magistrate Judges.* This is a follow-up to the State and Superior Court training on E&S last January. This will take place in June; Laurie asked Steering Committee members to encourage their local magistrate judges to attend; Curt Gervich distributed fliers about the session.

*Governor’s Land Preservation Partnership public meeting* Monday, May 10, in Canton. This is the first public meeting of the Partnership, the committee tasked with developing a strategic plan for protecting land throughout the state. The Partnership is aware of the HCP and may provide an avenue for protecting land in the Etowah watershed.

### **II. Reports from Technical Committees**

#### **A. Road Crossings (Heidi Millington)**

Heidi has done a survey of selected road crossings in the Etowah and will be putting together a small technical committee to come up with recommendations. She explained that engineers don’t currently consider fish passage in designing culverts. She studied effects of different road crossing types on passage of Cherokee darters. Their requirements for habitat include small, shallow streams; low velocity of flow; and no drop-offs. The types of road crossings that best meet these requirements are free-span bridges and bottomless culverts; embedded culverts are also good.

Of the different types of culverts studied, she found that 15 of 29 pipe culverts, 8 of 20 box culverts, and 1 of 19 freespan bridges or bottomless culverts were impassable to darters, at the most conservative estimate. Seth Wenger added that these findings are consistent with results to date of biological studies of fish movement through culverts being conducted by Bill Ensign at Kennesaw State University. Genetic analysis will be conducted as well.

Issues for the technical committee to consider will include recommendations about culvert maintenance and development of design criteria for freespan bridges, bottomless culverts, and embedded culverts. Economic research about the different types of crossings is being conducted and will be available by the time the technical committee has its first meeting.

Steering Committee members suggested that the technical committee consider time constraints of constructing different types of crossings; remedial measures instead of removal and replacement of pipe culverts; and researching whether bottomless culverts will stand up to hurricanes. They also pointed out that badly designed culverts cause problems to buffers, are expensive to repair, and cause problems both up and downstream.

Steering Committee members will recommend people, particularly with engineering expertise, to serve on the Technical Committee.

#### **B. Erosion and Sedimentation Control (Tim Carter)**

The first E&S Technical Committee met last week, with 18 participants including county staff, consultants and developers. The committee has three goals: (1) to determine the local governments' E&S needs (e.g. funding, education...); (2) to come up with lists of recommended and not recommended E&S BMPs; and (3) to review and possibly modify the new state E&S ordinance (note: it's not yet clear that it is legally possible for the ordinance to be modified).

Laurie explained that changing the state E&S ordinance would only be considered if it appears that it will be inadequate to protect the endangered species. She also pointed out that some of the counties are coming up with innovative ways to get the best possible protection out of the state's E&S ordinance, and that the Technical Committee will be exchanging that information as well.

The committee will meet again on May 25.

#### **C. Stormwater Management and Better Site Design (Erin Dreelin)**

Erin handed out copies of the draft final report from the Stormwater BSD Technical Committee and provided a brief overview of their work. This committee, made up of local government representatives, architects, and engineers, was tasked with coming up with site design guidelines to protect imperiled species. They focused on stormwater infiltration rather than conveyance (the current standard) and using

simple, not structural, techniques, taking a hard look at site plans. These techniques are more effective, and often less expensive, than conventional techniques.

The BSD Committee based their guidelines on those of the Low Impact Development Center, revised based on what would work in the Etowah. They are intended to allow flexibility.

They developed a site design checklist. Points would be awarded based on the checklist, and a certain number of points would be required for the issuance of a permit. Developers would therefore look at site design before engineering is done, and would know what to expect from the beginning of the process.

The committee also came up with a model ordinance, based on the Metro District model ordinance. Changes from the Metro District model include:

- the addition of information on bonds and fees;
- a “sensitive areas” section. (Infiltration of the first 1.5 inches of a storm’s rainfall would be required in designated sensitive areas, which would be determined later by the “where to develop” HCP analysis component.)

The BSD committee also recommended:

- the inclusion of specific numbers in the guidelines, so that all the information needed to build these systems is available;
- a sliding scale for point threshold based on sensitivity of area
- that the HCP provide technical assistance on these infiltration techniques

The committee did not cover:

- Density bonuses to encourage the use of these techniques
- Restrictive covenants for maintenance
- Funding stormwater management

The committee recommends working with all relevant agencies and providing public education on site design and stormwater ASAP.

The committee will meet next in June to discuss the ordinance. The UGA Land Use Law Clinic will help with code review. Seth reported that UGA will be working with a couple of large-scale developers in the Etowah to monitor different stormwater management techniques at some of their projects, to make sure the results are what we expect.

### **III. Update on *Community Viz* (Bill Bumback)**

Bill demonstrated some of the 3D capabilities of the software, showing alternative fly-overs of a property developed using a variety of stormwater management techniques. Results, including the amount and quality of the runoff as well as construction and maintenance costs for each scenario could be calculated using *Community Viz*. The Steering Committee recommended getting data from local developers to use in such calculations.

#### **IV. Update on Enforcement and Funding Research (Laurie Fowler)**

In order for the US FWS to approve the Etowah HCP and Incidental Take Permit, there must be an enforcement mechanism and funding in place. There are two main legal questions, which have been referred to the Attorney General. The first is what if a developer is not developing consistently with the HCP in a county that is part of the HCP? Who can sue to enforce the terms of the HCP, and who can be sued? Aaron Valenta said that the FWS would be the body sued if a county isn't enforcing the HCP terms. That's because FWS could suspend the ITP if the county isn't enforcing the HCP. If the county continues to issue building permits, they could be sued for taking endangered species. For example, in FL, several counties that regulate beach driving have been sued successfully for taking sea turtles. Laurie reminded the group that most litigation against HCPs is brought by environmental groups, and a big concern of theirs is that individual developers who violate the terms of the HCP should be liable. If we incorporate provisions of the HCP into local governments' stormwater permit requirements, then developers could be held liable. Tying HCP conditions to the stormwater permit would make following those provisions a contractual obligation.

The second legal question involves funding. Funding is needed for (1) monitoring to make sure the HCP is working to protect the endangered species; (2) resources to implement and enforce BMPs; and (3) protection of sensitive areas through fee simple acquisition or purchase of development rights. If we write HCP provisions into stormwater permit fees, could those be used to help fund the HCP? Can we levy a mitigation fee? Would that run afoul of the state's impact fee law?

When the AG offers his opinion on these issues, Laurie will arrange a meeting with the Etowah city and county attorneys to discuss it.

#### **V. Update on Outreach (Curt Gervich)**

Curt reported that placemats promoting the Etowah watershed have been distributed to diners and restaurants throughout the region. He provided more details about the magistrate training scheduled for June. He has been participating in the Technical committee meetings, and over the summer plans to meet with county commissions and city councils throughout the watershed to update them on the HCP.

#### **VI. Next steps (Laurie and Curt)**

The HCP Steering Committee will meet next to review and approve the final technical committee reports. (This should be another full-day meeting.) If approved by the Steering Committee, the Advisory Committee would, during July, hold meetings with county and city governments to explain and ask for adoption of technical committee recommendations, and find out what, if any, technical assistance is needed.

Next Steering Committee meeting will be held June 25 from 10 – 3 at the Dahlenega Community Center.