

## **Etowah Habitat Conservation Plan**

Steering Committee Meeting

July 21, 2006

Canton City Hall, Canton, GA

Present:

*Steering Committee, Voting members:* Jim Martinez, *City of Holly Springs*; Geoff Morton, *Cherokee County*; Gary Mullinix, *City of Canton*; Norman Pope, *Pickens County*; Kim Shorter, *City of Roswell*; Mike Tuller, *Cobb County*; Lynn Tully, *Dawson County*.

*Steering Committee, Non-voting members:* Davied Kubala, *Cherokee County Water & Sewer Authority*; Louise McPherson, *USDA NRCS, UERA*.

*Advisory Committee members and Interested Parties:* Connie Alexander, *US EPA*; Stacy Bouma, *US EPA*; Dave Briglio, *MACTEC*; Tim Carter, *UGA*; Mauro Chiaverini, *Temple-Inland*; Duncan Cottrell, *UERA*; Laurie Fowler, *UGA*; Catherine Fox, *Fox Environmental*; Emily Franzen, *UGA*; Beth Gavrilles, *UGA*; Robin Goodloe, *USFWS*; Stan Hall, *Cherokee County*; Marjorie Hicks, *Landscape Architect*; Dorothy McDaniel, *TGC*; James Norman, *UGA*; Mike Ross, *Ross Consulting Engineers*; Steve Shelton, *Cobb County*; Mary Sorensen, *Environ*; Seth Wenger, *UGA*.

### **Road Crossings of Streams Technical Committee Report: policy and ordinance**

Emily explained that the policy covers:

- privately constructed road crossings of streams;
- road crossings by local governments when no state or federal money is involved (the Technical Committee is currently attempting to work out cost sharing issues with GDOT);
- new crossings in a larger plan of development;
- Replacement crossings when the original crossing was built after the adoption of this policy.

Exemptions:

- emergency repairs to any damaged crossings;
- repairs to those built prior to adoption of this policy.

To ensure that there is a record of all crossings, the policy includes a permit requirement, which is based on Cherokee County's policy. It only applies when there is not already a permit required (e.g. land disturbance permit for a development.)

The ordinance sets out the standards that must be followed:

- 20 miles<sup>2</sup> drainage: bridge required;
- More than 2 and less than 20 miles<sup>2</sup> drainage: bridge if possible, or bottomless culvert, or embedded box culvert, or embedded pipe culvert.

- Whichever culvert type is used, it must follow the stream simulation design (specific components of that will be spelled out in guidance document, see below.)
- Crossings must maximize infiltration of road runoff and must use native vegetation, etc.

A guidance document will lay out all the design and engineering specifications. It will be similar to those for other states on which these standards are modeled (Massachusetts and Washington, e.g.)

The ordinance contains a variance procedure. A variance may be granted if an alternative design can be shown to have no greater impact on threatened and endangered species than the designs specified in the guidance document. It requires public notice and hearing. The requester must provide:

- site map
- description of property
- detailed site plan
- stormwater management plan
- proposed mitigation
- engineering specifications for alternative design
- documentation of inability to do project without variance

The ordinance requires certain BMPs for crossings; many are similar to BMPs in the utility crossings ordinance:

- Avoid sensitive areas
- Avoid unstable or hazardous areas
- Avoid meanders
- Avoid construction during spawning periods
- During construction, use dams to prevent backwatering (standard greenbook practices)
- Use isolation crossing methods, etc
- Salvage aquatic organisms
- Don't introduce deleterious materials
- Restore impacts to riparian buffer, restore gradients, right of ways, hydrological and geomorphic conditions of stream

The ordinance requires a performance bond, similar to that required in the E&S Standard Operating Procedure. This offers a way to make corrections if a culvert is installed improperly. The bond is released upon final inspection. Partial release is possible at different stages.

Final inspection must occur before final plat approval or certificate of occupancy. The applicant is responsible for certifying that the plan is in accordance with the stormwater plan and is certified by an engineer. The applicant must also submit an as-built plan.

The penalties section is same as those in the utility crossings and stormwater ordinances – it allows local government to enforce the ordinance. It requires 30 days notice, and the violator may appeal.

Dave Kubala asked about construction during the spawning period, which roughly covers March through August. The draft ordinance says that construction “shall not” take place then.

Emily said it ought to say “should not” take place then, and will correct that.

Catherine Fox asked if a checklist for site inspection and plan will be created. Laurie said that the Technical Committee staff will be working on that and other things to make implementation easier.

Mike Tuller asked whether the variance would go through a board of appeals. Emily said that would be up to each jurisdiction.

Catherine asked about what happens if not everyone signs on to the HCP policies. Laurie explained that ideally, every jurisdiction would sign on to all components of the HCP. For one thing, it would be easier to administer. Local governments don’t have to sign on to the HCP at all, but they do have to comply with ESA.

Kim Shorter asked if it’s possible for each jurisdiction to adopt the ordinance with slight variations. For instance, if a local government doesn’t want to require performance bonds, can they adopt it without that requirement? Laurie said that would need to be specified now, so it can be written into the ordinance.

Laurie said that for something as major as the performance bond, which ensures local governments have the capacity to address a problem, the alternative solutions would need to be included now. Emily added that the performance bond is one of those things that is required to be in the HCP.

Robin Goodloe pointed out that the point of the performance bond is that it provides a funding mechanism to fix a crossing if it’s installed incorrectly.

Kim explained that they have found that holding up final plat approval is the most effective tool. Everyone agreed this would be effective.

Seth said that the Technical Committee staff will add that to the list of other methods that are acceptable.

The Steering Committee approved the policy with those changes. The revised report will be sent out to the Steering Committee with the changes highlighted.

### **Implementation Technical Committee Report**

Laurie reported that the Implementation Technical Committee includes several Steering Committee members and county attorneys. It has been meeting (and will continue to meet) to work on how to make the HCP viable and ensure the policies are implemented over a 25-year period (at least).

The Committee agrees that staffing will be necessary, and will be funded with a fee. The fee structure will be based on development acreage.

US FWS requires 2 types of monitoring: scientific monitoring to make sure the endangered species are responding well, and compliance monitoring to ensure the policies are being followed.

#### *Compliance monitoring and adaptive management*

Seth explained that one reason we need to monitor is that in case certain HCP provisions aren't working, we need to be able to catch and correct them. All HCPs must have adaptive management provisions. The Technical Committee staff has proposed a set of AM polices and actions, with triggers; policies to implement if need be; and the monitoring needed to determine if those triggers are met. He provided a chart showing these.

He said that they tried to identify, across all the technical committees, polices that could be implemented if needed. These are listed as actions that could be taken under different policy areas, depending on whether monitoring shows certain triggers have been met.

For example, if we find that Cherokee darters are declining and there's an increase in impervious surface in Priority 2 areas, we would know this by monitoring. Changes would then be considered, and Steering Committee (or HCP governing body) would need to be convened. If it's not on this list, it won't be able to be monitored as part of the HCP.

David Kubala objected to this being the only list of monitoring subjects. He felt there should be a revision process between USFWS and the Steering Committee. Laurie explained that this is the "no surprises" policy in the ESA which shields the local governments if they follow the HCP.

Seth said that the Technical Committee staff tried to include language to allow minor administrative changes. They want to make sure all the major categories are covered.

Kim Shorter suggested adding the word "possible" before "actions" on the chart, and everyone agreed that was a good change.

Seth said that there will have to be an annual review and monitoring report to the overseeing body of the HCP. Then the overseeing body decides if any changes need to be made.

#### *Biological monitoring.*

The biological monitoring plan is very broad at this point. The staff is proposing monitoring fish at a number of fixed sites every year, and also at several other sites that alternate every 5 years. This should allow us to see if there are declines in abundances, which might be a cause for alarm and trigger extra monitoring. Monitoring at the alternating sites will provide information to go into a database. This will allow us to improve our predictive model for fish persistence. The predictive model answers the question "what will things be like in terms of fish populations in 50 years?" We're trying to see evidence on the ground of fish persistence, but also to predict how

not-yet urbanized areas will react to HCP policies. This will also help us to find out the specific causes of fish declines.

Norman Pope asked where the money to fund this monitoring will come from. Seth said that it will be relatively inexpensive – about \$200,000 per year. Laurie added that it should cost about \$600,000 per year for all HCP activities across the entire basin. This would come from a fee on land disturbing permits. The Implementation Technical Committee will have the exact figures at the next meeting.

Seth added that possibly the monitoring could be done in conjunction with the Corps project.

Laurie said that FWS had to be assured that the funding was available for the monitoring, and that since we know that take is occurring due to development activities, it makes sense that development projects help mitigate those effects.

There was discussion about whether developers would be willing to pay the fees. Catherine said that if a local government opts out of the HCP, then each project would need to do an individual HCP and get its own ITP. Mike Tuller pointed out that this would slow down the permitting process and cost developers more.

Gary Mullinix asked if the local jurisdiction would handle the money from the fees. Laurie replied that the Implementation Committee discussed that and concluded that the local governments should collect the funds but send them straight to the HCP implementation staff.

Kim suggested it would be good to have a standard fee. Laurie said that the Implementation Committee is working on that right now. They are considering basing it on number of acres disturbed.

David suggested that the section on monitoring should mention looking at individual fish populations. That would be info that would start to improve how we consider take. The take limit now is based on occurrence probability. Will the take limit become a numeric (number of fish) rather than a probability? He said he doesn't want it to become based on numbers.

Seth explained that the ITP will be written in terms of abundance for Cherokee darters and presence/absence for the other species. However, if in the future the measure shifts from presence/absence to abundance, it will be easy to change in the ITP. This shouldn't affect the HCP provisions; it would essentially be an accounting change.

David said that we don't have the science to count the fish right now; so we're using a surrogate. If at some point we are able to actually count the individuals, would we have to renegotiate with FWS and change the program? Seth said he thought a modeling change like that would have to be approved by the HCP governing body. If the change didn't involve an alteration to the estimates of fish sensitivity, this would again be an accounting change and there shouldn't have to be changes to HCP measures.

David asked for confirmation that take is going to be based on the model that Mary Freeman presented.

Seth said it would for Etowah and amber darters – it would be based on presence/absence. The scientists are proposing changing Cherokee darters to be based on abundance. With historical collecting by other researchers, we can't be sure that they only got 2 darters because there were only 2 or because they stopped looking after that. We will have more control over that as we do the monitoring.

Seth added that we'll be looking for other funds to do some targeted local modeling to see that effects of BMPs – that won't be paid for with HCP funds.

There was a discussion about who should do the monitoring and about quality assurance; David pointed out that it is a very specialized field.

Seth also talked about compliance monitoring. It is needed to collect information for adaptive management, and to make sure that everyone is living up to their commitment. There are 3 elements:

1. Collection of summary information on a quarterly basis. This section is not thoroughly developed, so this is a list of possible actions. We want to make it an easy task – for instance, you would send a copy of data in whatever form you collect it now so it won't be onerous.
2. Variances (this is point brought up the most frequently.) There are concerns that some jurisdictions will be stricter than others in giving variances. The technical committees have tried to write the variance policy to be fairly strict, but to provide additional backing; what's proposed here is that when runoff limits, buffers, and road crossings variances come in, notification is given to HCP administrative body which will share it with FWS for comment. That comment must be within a certain time limit. They would let local governments know if that variance would be a violation of the HCP. This would be real-time feedback. If there was no FWS/HCP response within the time limit, then the variance would not be a problem.

Kim suggested setting a one year time limit and then making it case by case for those jurisdictions that have a problem. Otherwise she fears the HCP administrative staff will be overwhelmed. Seth emphasized that the Monitoring Committee wants to minimize the burden on local governments. They will work with the local governments on the logistics.

Kim also suggested that it was important to establish consistency for the HCP administrative body data collection.

Norman asked about an audit. Seth said that the HCP staff would make periodic visits to jurisdictions and look at a few projects from start to finish, to see where there may have been problems. The committee discussed whether to do it quarterly or less often. The consensus was at least annually, and not more than quarterly – 10% but never more than 3 projects.

Robin said that FWS will be pretty active the first few years in checking large developments in priority areas to provide local governments some backup. They will also look at DRIs.

David said that given experience with the Metro District, local governments need to know up front where there is and is not flexibility, especially since FWS is involved.

Laurie said that it's the intent of this auditor to help the local governments to prevent their ITPs being pulled. Seth added that the point is to catch egregious problems, not to dig up problems; to make sure that everyone is making a decent attempt at doing what they agreed to.

Lynn Tully said that the HCP staff person will have to have some field experience, and be able to understand on the ground conditions.

Laurie said the Monitoring Committee could add language about the purpose of the audits.

Robin said that the important thing is to be sure everything is documented.

Kim said that monitoring on a quarterly basis would be a lot of work, as there's a lot of data to pull together. She suggested that one of each four main sections is due one quarter, another the next. Or else the monitoring could start off quarterly or semi-annually, then go to annually. She said she thought the project audit would be the best way to keep on top of it.

Seth said that annual monitoring would be fine. The Committee said quarterly monitoring so that the audit could have most up to date information.

There was general consensus that quarterly staggered reports was best way to proceed.

Seth pointed out that there are notes at the end of the compliance monitoring draft explaining how monitoring data would be used. The Committee recommended that during the first 3 years there be no serious threat of ITP revocation (unless there was willful desire to stop doing the HCP.) That would be the time to work out any kinks, to find out why any violations did occur, and how to change that.

Lynn asked why conservation subdivision ordinances were being audited if they're not required as part of the HCP.

Laurie suggested removing it from the monitoring plan.

There was general consensus on that, and on monitoring.

Laurie said the staff would send out a redline and final version and bring a paper copy of the final version to the next meeting.

### **Take Limit on Cherokee darter**

Seth said the question had arisen whether to base the take limit on abundance or presence/absence. Cherokee darters aren't as sensitive as the other species. They only disappear at a very

high level of urbanization. The Runoff Limits Committee hasn't even considered them in determining where to put nodes. Now there is a way to predict abundances of Cherokee darters, and this can be used to estimate take. He asked whether this would be acceptable to the Steering Committee, as long as the Scientific Advisory Committee approves (their decision is expected in a couple of weeks.)

Mike asked whether Cherokee darters are referenced in adaptive management because they're hardier. Seth said it was because they are located in Priority 2 areas. There is no way to make Priority 1 Area runoff limits any stricter, but we can make Priority 2 Area limits stricter, and that's where the Cherokee darters are.

There was general consensus to use this method to determine Cherokee darter take limits.

### **“Housekeeping” matters**

Seth explained several changes that the Advisory and Technical Committees were requesting the Steering Committee to adopt.

#### *Conservation Subdivisions*

Originally, the Steering Committee voted to pass this as an essential component of the HCP. Since then, in conversations with Steering Committee and Technical Committees, it's become clear that it would be better to have this as a recommendation but not a requirement. The intent is to provide a tool to help meet the performance standards in runoff limits.

There was general consensus that the conservation subdivisions should be a recommendation only.

#### *Better Site Design*

This section was passed along with the stormwater ordinance. BSD includes allowing for narrower street widths, swales instead of curb and gutter, etc. Originally, this was passed with a requirement that each jurisdiction would go through their codes and make sure that BSD practices were allowed. But like conservation subdivisions, BSD is a tool to help developers meet the stormwater performance standards. So the Advisory Committee suggests that this should also be a recommendation, not a requirement. Developers will probably push for some better site design options anyway.

Lynn said it will be good for some jurisdictions to be able to see the developers asking for changes in policy to allow them to do these kinds of things.

There was general consensus that the BSD practices should be a recommendation only.

#### *Stormwater ordinance*

The Stormwater Technical Committee has agreed on some minor changes to the stormwater ordinance, things that came up in working with each jurisdiction. There was also some language that was different from Metro District ordinance; and they also wanted to add the runoff limits program into this document. The Committee wants to compile all these changes, and the addendum, and send it to everyone for the next meeting.

Staff will send a redline version and a clean copy for the next meeting.

There was general consensus that these changes should be made.

Norman suggested that dates be placed on cover pages of all HCP reports, and staff agreed.

### **Next Steps**

The Implementation Committee will meet in August to finalize details. They will bring their recommendations back to the Steering Committee at the end of August. They will send the entire HCP out to everyone. It will take FWS about a year to finalize approval of the HCP. FWS might request some changes. At that point the Steering Committee will need to meet again.

The Steering Committee members will ask their local governments to sign off on submitting the HCP between now and September. The Steering Committee will meet again to sign the application in September.

Norman asked what would happen if the Steering Committee signs off, FWS changes it, and then local governments sign it.

Laurie said that before it's submitted to FWS the local governments have to be comfortable with it. They don't have to adopt the HCP policies yet, but they need to agree that they want to go forward with the HCP.

Robin asked about meeting with local governments to discuss the HCP. One option would be a day-long HCP open house for officials from all over the basin. Another option would be to meet with each county commission and city council individually and/or help them with public meetings in their jurisdictions. Laurie said that the Advisory Committee will handle that however the Steering Committee members direct them to do so. Lynn and Mike both said that they would prefer the individual meetings. Kim said that the City of Roswell wouldn't need a meeting. It was decided that each local government would determine how they wanted to proceed and would notify Laurie or Tim.

Next meeting scheduled for August 25, 1-3 pm.

Meeting for signing the application scheduled for Sept. 29.

Stan Hall announced a UERA event on Tuesday, meet and greet from 7-8:30. Information at [www.etowahriver.org](http://www.etowahriver.org).

Lynn announced that CQG sent out an email about a workshop they're doing on the HCP on Aug. 8.

Laurie said that from the last conversation staff had with them, they conveyed that they feel that the HCP is flexible and they support it.