

Etowah HCP Steering Committee meeting
April 28, 2006
Dawsonville, GA

Present:

Steering Committee Members, Voting: Mike Castagna, *City of Jasper*; Steve Holder, *City of Dawsonville*; Mark Hutcheson, *City of Woodstock*; Charles Laughinghouse, *Forsyth County*; Norman Pope, *Pickens County*; Mike Tuller, *Cobb County*; Lynn Tully *Dawson County*.

Steering Committee Members, Non-voting: Robin Dake, *UERA*; Mike Harris, *DNR*; Louise McPherson, *USDA*.

Advisory Committee and Interested Parties: Laurie Fowler, *UGA*; Emily Franzen, *UGA*; Mary Freeman, *UGA*; Beth Gavrilles, *UGA*; Curt Gervich, *HCP*; Celia Klardie, *Ross Consulting Engineers*; James Norman, *UGA*; Candace Stoughton, *TNC*; Sandy Turner, *FWS*; Robert Turner, *Technical Assistance (Pickens County Utilities Coordinating Committee)*; Seth Wenger, *UGA*.

Utility / Stream Crossings Report

Rob Turner described the Utility Crossings Technical Committee process. The Pickens and Cherokee Counties Utilities Coordinating Committees were heavily involved in developing the utility crossings policy. They are not governing bodies but they help develop regulations on utility location. The UCCs are living with regulations on most other routes, so they don't feel it's too burdensome to have to adapt to new stream crossing regulations. Most people involved would rather not take the chance of being in violation of other regulations by digging into streams anyway.

James Norman and Emily Franzen gave an overview of the main policy issues and the model ordinance.

Due to state law, this ordinance only applies when a utility is crossing a stream as part of a new development. It does cover public water lines in new developments but not large water mains or sewer lines. Sewer and utilities are not secondary Incidental Take Permit holders, so those lines are still handled by FWS through the consultation process.

The ordinance applies if the stream to be crossed drains at least 25 acres.

The ordinance sets directional boring as the preferred method unless the utility can show that it's infeasible, and explains how to show infeasibility. The evidence of infeasibility has to be documented, and can consist of: geological evidence; evidence that the streambed is unstable; evidence of site conditions that make directional boring impossible; evidence of extreme financial hardship. The utility has to document and keep this evidence available for on site for random inspections by local E&S inspectors.

If directional boring is infeasible, the next preferred method is isolation crossing. No dewatering of downstream reach is allowed. No wet construction is allowed unless the utility can show that it would cause less harm than isolation crossing.

The timing of crossing construction is restricted. During the spawning period(s) of the endangered species, all methods except directional boring are prohibited. This applies in Priority 1 and 2 areas. A timetable showing spawning dates will be created for reference. The spawning period is roughly from late April through early June.

Rob Turner asked what would happen in an emergency, for instance if a waterline that serves a community went bad during the spawning period, and it couldn't be replaced using directional boring. Emily said that a clause about emergencies would be added to the ordinance. Charles Laughinghouse pointed out that the clause should only apply to health and welfare emergencies, not financial emergencies. Mark Hutcheson suggested offering an alternate method for emergencies.

Rob Turner asked whether the ordinance covers maintenance as well as new construction. Emily said that the ordinance defines excavation to mean it would apply for maintenance as well as new construction, as per the state E&S ordinance.

The final section is a description of general BMPs for utility crossings, including:

- Minimize the number of crossings and amount of vegetative disturbance
- Keep equipment out of streams except when in active use – as far as possible but at least 25 feet away (per Robert Turner's suggestion – Louise McPherson pointed out that in some places there might not be 25 feet available.)
- Re-vegetate banks when done
- Restore geomorphic and hydrologic characteristics when done
- Follow all state and county BMP requirements
- Minimize time spent excavating
- Don't deposit waste downstream

The enforcement section of the ordinance is the standard enforcement section found in most HCP ordinances. It includes requiring written notice containing description of violation, how to remediate it to come into compliance, and the penalty to be assessed if the violation is not corrected. The local government can issue penalties if remediation doesn't occur. Penalty funds go to the local jurisdiction.

There was discussion about how long violators should have to correct violations. Violations that result in danger to public health or safety must be corrected within 24 hours. For other violations, the draft ordinance proposed allowing the violators 10 days to correct violations. There was a general consensus that 10 days was too long, and that 72 hours, or the period specified by local ordinance, whichever is more stringent, would be more reasonable.

There was further discussion with a question about why sewers are exempt. Curt explained that the Steering Committee had decided a year and a half ago not to include sewers because they are very different from other utilities. They are also exempt from the state E&S Act, but Sandy

pointed out that some are covered under the Army Corps of Engineers permitting process, which means US FWS consultation.

Seth Wenger asked if it would be possible to notify the jurisdictions when directional boring isn't used, so that they'd know to inspect. This will be important as part of adaptive management. Emily said that a form that utilities could fill out when they don't plan to use directional boring could be added to the land disturbing permit, so that the local E&S inspectors would be made aware.

Norman asked about the difficulty and costs associated with retrofitting existing culverts. There are some situations where as a county they don't have the funds to retrofit bridges and culverts, especially on county maintained roads. New construction they can handle. James explained that this ordinance is separate from road crossings, and the Road Crossings Technical Committee has discussed the issue of retrofitting. They've been talking about not requiring retrofits, and having the new standards apply just to new culverts. Existing culverts would be grandfathered. They will have a meeting next week to talk about state funding. Mary said that FWS has funded research looking at where the problem culverts are. In a couple of years they might have a GIS database showing where the really undersized culverts are. Then the cost/benefit of retrofitting those could be determined, and there may be some federal funds available to help. Norman said that with new developments, counties have to determine whether the existing roads are adequate to accommodate existing and new traffic from new development. Mary said that in cases where the roads have to be widened, there might be an opportunity to make the culvert bigger too. Curt said that the Road Crossings Technical Committee will meet again soon and report back to the Steering Committee then.

Robin asked whether utilities are exempt from buffer ordinances. Laurie replied that they are exempt according to state law.

The consensus of the voting Steering Committee members present was to adopt the utility crossings report (with the addition of the emergency clause.) They directed Curt to ask for the votes of those Steering Committee members with voting privileges not present.

Change to E&S Standard Operating Procedure

Curt explained that the E&S Standard Operating Procedure consists of 6 elements, each of which is a procedure in use in an Etowah jurisdiction. SOP 2 was from Bartow County, requiring bi-monthly self-reporting by land disturbance permit holders on their E&S controls. Originally, Bartow County required these reports to be submitted to the local government. In order to cut down on paperwork, Bartow County has changed this procedure. Permit holders still have to document their E&S controls, but are now required to keep the reports on site, rather than submit them to the local government. HCP staff recommended to the Steering Committee that SOP 2 be amended to reflect Bartow County's current practice.

Seth said that HCP monitoring would keep track of whether the jurisdictions are checking on this. Louise said that E&S inspectors would keep more accurate records than a self-report. Norman said it was a matter of storage – e.g., EPD has boxes and boxes of material that is required to be submitted, but they don't have enough funds to get it filed. It's the same thing

with local governments, they don't have the staff or storage space. The HCP inspector should coordinate with local E&S inspectors. The local E&S inspectors have jurisdiction to enter the property at any time. As to enforcement activity, if we're requiring reporting every 2 weeks, we have to be able to issue a stop work order if they're not doing it. A stop work order is the best way to get compliance.

There was general consensus by the Steering Committee to adopt this change. Curt will poll the Steering Committee members with voting privileges not present.

Additions to Stormwater Management Programs

Seth reported that three issues came up when working with local governments on identifying development nodes.

The first issue was mapping the development nodes themselves. These are the areas in Priority 1 and 2 Areas where a higher volume of runoff is allowed to accommodate planned commercial and industrial development. Because there will be more runoff and impacts from these high intensity uses, their size and number have to be limited to protect the endangered species. At first the Technical Committee staff thought that all the nodes would be mapped from the beginning, but in working with the local governments, it seems appropriate to identify those nodes that they definitely know they want now, and add others in the future. The problem is how to do that without incurring excessive take. The same model the Technical Committee staff are running now would have to be run, preferably by the HCP administrative authority. They would then be able to tell the jurisdiction that the proposed node either would or would not violate the ITP. The HCP administrative authority would need to run the model because what one jurisdiction does could potentially restrict what another jurisdiction could do later. Staff is recommending to the Steering Committee that both of these approaches be allowed: designate all nodes now, or designate some now and some in the future.

Candace said that it seemed to her that counties would want to designate all their nodes right away to make sure another county's nodes didn't limit their capacity. Seth said that if each jurisdiction stays within the limits and takes care of its sections of the priority streams, all jurisdictions should have enough capacity. Norman agreed and said that as local governments revise their Comprehensive Land Use Plans they will be able to shift the emphasis for commercial development away from Priority 1 and 2 areas. The local governments appreciate having flexibility in the nodes. There could be worthwhile developments that come along in 10 years, and they don't want to have used up all their node capacity. Seth pointed out that it's possible to put commercial development in Priority 1 and 2 areas without designating them as nodes, as long as it meets the runoff limits; the nodes make development a little cheaper and easier.

The next topic was mitigation fees. US FWS normally requires some mitigation for take, which hasn't been discussed much because the focus of the HCP has been on minimization of take. Nodes will inevitably result in some loss of habitat and some incidental take, however. So the staff proposes a mitigation fee for nodes in Priority 1 and 2 areas, to be used for restoration or conservation. The mitigation fee could be based on the volume of runoff, so that as infiltration

increases, the fee decreases, all the way to zero for total infiltration. Staff hasn't yet researched fee amounts.

These fees would only apply in development nodes. Development would still have to meet the infiltration requirements for nodes, as well as pay the fee. The runoff limit in the nodes is less strict than in the rest of the priority areas. To avoid the fee, they could infiltrate all of their stormwater.

Candace asked whether having developers pay a fee or reduce their runoff was preferable. Sandy Tucker said that it would depend on the site and situation. Seth said that every site is different, and costs vary widely. In some cases it would be relatively cheap to do the infiltration, in some places it would be very difficult.

Mike Harris asked what the Runoff Limits Stormwater Technical Committee thought of this. Curt said that the Committee really hasn't discussed it yet – the concept was just introduced at the last meeting.

Robin asked who would control the money generated by the fees, the HCP authority or local governments? Seth said most funds would go to local governments for acquisition of land, or interests in land in priority areas. Acquisition using mitigation funds would have to follow HCP prioritization.

Norman suggested specifying that fees be spent in the jurisdiction within which they're collected. Seth noted this suggestion.

Celia asked about how to account for cases when it can be proven that it's infeasible to do infiltration due to geology. Seth said that the staff would propose a variance procedure for situations where site conditions make it impossible to infiltrate on site. A developer who received such a variance would pay a higher fee because they would not be doing any infiltration at all. He noted that this variance procedure would apply in development nodes.

The Committee also needs to determine how to handle variances in Priority areas outside the nodes. They will have to look at what kind of BMPs can be used – some are restricted due to soil type or the water table. Class D soils have very low infiltration capability, but soil maps show them as quite rare in the Etowah basin, only about 2 or 3 %. There are also a few areas with shallow bedrock or a high water table. The parcels constrained this way will be few. A parcel with 80% or less of its area with these conditions probably wouldn't be eligible for a variance. Variances wouldn't be granted in cases where the hardship is created by the developer (e.g. by the way he subdivides the parcel.)

Louise suggested that since sites with high water tables are generally in the flood plain, we don't really want to build there anyway; and it's expensive to build on sites with shallow bedrock.

Seth said that any such variances would just cover those few impossible situations. The HCP authority would need to carefully track any variances, and would need to advise the local governments in a timely manner before they decide whether to grant a variance or not.

The Steering Committee expressed consensus to allow jurisdictions to choose whether to map all development nodes now, or some now and some in the future. While acknowledging that there are some concerns about it, they authorized staff to continue discussion of research on mitigation fees and development of a variance procedure.

Overview of where we are/ what's been adopted

Laurie gave a summary of progress so far:

- Avoidance/minimization of take:
 - Stream buffer ordinances - done
 - Stormwater ordinance - done
 - Better Site Design guidelines – done
 - E&S Control Standard Operating Procedure– done
 - Conservation subdivision ordinance - done
 - Priority Area Protection program – done except for mitigation fees
 - Mass grading ordinance – will come before next Steering Committee meeting
 - Utility crossings ordinance – done
 - Road crossings guidelines – will come before next Steering Committee meeting
 - Water supply siting – will come before next Steering Committee meeting
- Adaptive Management – Technical Committee working on this
- Implementation – Technical Committee working on this; Steering Committee will need to make decisions about structure and staffing of governing body – will come before next Steering Committee meeting

Laurie said the Advisory Committee will have the HCP ready for Steering Committee members to take back to their local governments and to take to FWS in August. She said she expects the process of receiving approval from US FWS and adoption by local governments to take some time. The Advisory Committee will have as much or little involvement with local government adoption as the Steering Committee member from that jurisdiction thinks best.

Laurie also said that Robin Goodloe of FWS is working to develop programmatic guidelines to cover activities not covered by the HCP, to make it easier for local governments to know how to comply.

Water Supply Technical Committee

Mary Freeman gave a presentation about the progress of the Water Supply Technical Committee. The Committee's objective is to specify a protocol for evaluating specific water supply reservoir options with respect to effects on federally protected fishes. (The Committee is not discussing water withdrawals – that will be addressed in the statewide water plan.)

The Committee reviewed and discussed the biological basis for assessing reservoirs. Long-term persistence of species requires having as many patches of habitat as possible, the highest quality habitat in patches, connections between patches, and diversity of patch types and locations across the species' range. All these must be considered when evaluating the effects of different reservoir scenarios on the long-term persistence of the species. We are continuing to study the

populations to learn how fast they grow, how population growth rates vary through time, and how far and often individuals move among patches. With this information we can estimate the probability of persistence of protected fishes over 50-100 years under different scenarios.

Mary walked the Steering Committee through a hypothetical example to show the steps in estimating reservoir effects on one of the protected species, Cherokee darters. First, patches with known Cherokee darter populations are delineated. Next, available habitat under existing conditions is estimated. Then habitat lost for each new reservoir is estimated. Populations are assumed to persist upstream if patch length is at least as long as the shortest known occupied stream reach; no downstream populations are assumed to exist. Next, it is determined whether any patches will become unavailable for habitat. Then the change in connectivity among patches is estimated. This can be evaluated using a range of fish movement rates and distance between patches. Mary showed a chart comparing the effects of different proposed reservoirs on the number of patches lost, the change in connectivity, and patch diversity.

Mary explained that the effects of different potential reservoirs could vary with respect to the species affected. She said that the evaluation protocol may be able to include unoccupied but available patches in the assessment; to weight patches by their value to the population (Seth is working on the modeling for this); and to examine reservoirs in the context of future landscape development.

Mike Tuller asked whether it was possible to create new habitat to replace any that might be lost. Mary explained that it is nearly impossible to do that because topography and flow prevent it from persisting. There are similar problems with restoration projects, because often runoff patterns have changed after streams were channelized. At any rate, there is little evidence of success.

The next step is for the Water Supply Siting Technical Committee staff to prepare a technical document defining the process for evaluating the effects of new reservoir placements on imperiled fishes; the Technical Committee will review and revise that document. Then the Scientific Advisory Committee will review it, and it will come to the Steering Committee for approval.

Next Meeting

Friday, June 9

Rock Creek Recreation Area, Dawson County

Topics: road crossings, grading, water supply, monitoring, implementation and adaptive management.