

Marys River Watershed Council
Community Conversation
Benton County Prairie Species Habitat Conservation Plan
- a discussion of concerns raised by local citizens -

Time: March 10, 2009 7-9pm

Location: Benton County Historical Museum - 1101 Main St, Philomath

SUMMARY OF COMMENTS AND SUGGESTIONS:

Implementation of the HCP -

- We need a recovery plan before we start issuing take permits.
- The whole County should pay for the cost of mitigation.
- Landowners are being imposed on to do conservation/mitigation – those who want it should step up and pay for it.
- If no impact because no habitat, there should be no fee.
- Every County citizen has a stake in this – don't put the burden on a few.
- Private landowners are better ones to manage habitat on their own land.
- Private landowners should be able to do own mitigation on their own land, with County monitoring – current HCP plan doesn't allow for this.
- Rather than permits & fees, pre-mitigate all take and proceed with conservation & restoration – offer rewards for recovery of habitat on private lands.
- Should exempt areas directly adjacent to existing structures.
- The condition of the road right of way near Lupine Meadows (with invasives) does not give confidence in the County's ability to manage the habitat.
- *(written comment submitted)* How will we know that the HCP is working and that listed species are doing better? If it's proven that the HCP is not working, will it be “undone” in favor of single-species ESA enforcement? Please cite five examples where HCP's have succeeded.

Conservation -

- The HCP discourages landowner cooperation in conservation.
- Voluntary conservation is what works; the HCP is regulation and won't work.
- Regulation is expensive; recovery can be accomplished in less expensive ways.
- Need more conservation incentives: tax deferrals & easements – ODA and ODFW working with private landowners.
- We need more than the ESA and HCP – a third opportunity – for ad hoc recovery effort without easement requirement – to encourage voluntary stewardship.
- *(written comment submitted)* Landowners like something in return for conserving critical habitat that benefits all of us (for example, partial property tax reduction)

Process –

- Not enough landowner input on the Draft HCP.
- There are still a lot of unanswered questions – process is not responsive – can't get questions answered.
- Need to hold a public meeting for all landowners with all landowners notified, with the County and USFWS available to answer questions from landowners, including timeline & legal ramifications.

Meeting notes – Scribe: Jennifer Beathe, MRWC Board Secretary

Meeting began at 7:04

Thom Whittier welcomed attendees and explained that one of the goals of the Marys River Watershed Council (MRWC) is to promote education in and about the watershed. The purpose of this meeting is to have a conversation. The MRWC is having this meeting because it's been asked to by some of the members. The MRWC will not take a position on the Benton County (BC) Habitat Conservation Plan (HCP)

Pam Silbernagle is going to be the facilitator for the conversation. She said that most of the talking is going to be done by the attendees. We will have flip charts for notes or questions.

Three rules of the meeting are: 1) be concise, use the cards to jot thoughts down. At the end of meeting we will collect the cards 2) be kind to whoever is talking, no side conversations 3) be respectful of what other people are saying. We are all friends and neighbors tonight.

Introductions-went around the room and everyone had the opportunity to introduce themselves and say if they owned land in the Fenders Blue Zone. Jeff Powers, Director of Benton County Parks, was introduced to give a brief overview of the HCP. He said that there have been three public meetings on the draft HCP. The purpose of the HCP is to minimize issues with endangered species. It is a draft, available online, with limited paper copies available due to cost. The draft is in the middle of a 90 day comment period that ends on April 2nd. Comments will be available, summarized and presented to the commissioners. Jeff said that the most helpful comments are those that address something specific in the plan and recommend changes. Those that are most useful to making changes should offer solutions.

Karen Fleck Harding noted that attendees should feel free to fill out the cards that she passed out in order to submit comments. The cards will be forwarded to the county.

Also in attendance are representatives from the Institute of Applied Ecology, Benton County and US Fish & Wildlife Service. The Institute for Applied Ecology has been contracted by Benton County to assist with development of the HCP.

Jeff Powers and Steve Smith, USFWS Private Lands Biologist were asked to explain why Benton County is pursuing the HCP.

Jeff said that the county is obligated to avoid, mitigate and minimize effects on listed species. If private landowners wish to come under the county HCP, they can, so that they don't have to deal with USFWS on their own. They could come under the umbrella of the County HCP.

There are plans to create a Prairie Conservation Strategy to link to the HCP. It is desirable to assure the long term viability of the species that are in the HCP. In natural area management, the county would be proactive. The current draft of the HCP extends the take permit to private landowners.

Could you address the role of the HCP in the county and how it works to comply with the rules that fall under the Department of Agriculture?

The County has been focusing on the Fender's blue butterfly, but there are other prairie species that fall under Dept of Ag. It addresses how the county is going to minimize impact on all state listed species.

Is an HCP necessary?

Attendee commented that the draft recovery plan could conflict with the HCP and it seems to that person that any HCP discourages landowner cooperation. Does USFWS conceive of any alternative?

Jeff said that the only way the County can deal with incidental take, with private landowners under their umbrella, is through the HCP.

Steve Smith said that the simple question is:

Is BC required to have HCP? **NO**.

Does an individual landowner need one? **NO**. The landowner must consult with USFWS through a specific section of the ESA.

Does USFWS go looking for violations? **NO**, the way they typically come up is through a third party.

The 9th Circuit Court has ruled that the public entity that is authorizing the activity is ultimately responsible for an activity that “takes” an ESA listed species.

Funding has been provided to BC by USFWS to survey and assess its liability.

The survey will help BC assess their liability for the actions that they permit.

With an HCP, BC would be able to authorize impacts on the listed species.

We know more about butterflies now by complimenting the county’s effort to learn more about the land.

Do you have to comply with the endangered species act? **Yes**

Are you talking about only butterfly and lupine or are other plants included too?

There are no take provisions (no protection) for plants on private lands.

If you cross BLM for a right of way to private land, how does that work?

The BLM must follow the ESA for plants and animals on BLM land. Counties are required to follow state law, not federal law.

Where will one be able to get the records to determine the assessment (or measurement) of the impact on the species?

What assurances do we have that the record of cumulative impact will be stored in a public place that would be available?

Records will likely be held in the Portland USFW office, but access may be limited to protect species locations and prevent abuse such as collecting rare species.

Voluntary conservation works. The HCP is regulation and there should be no surprise that the community is concerned that the HCP won’t work.

There has been lack of willingness to be open with the public about the plan.

We are working on getting the HCP before recovery plans are on-the-ground.

We need recovery before we have take permits.

Steve Smith commented that once the species is listed, the options for how to deal with it are limited.

It is good to have a willingness of private landowners who are stewards to the land.

Government regulation causes the situation to get too expensive. Recovery can be done in ways that are not that expensive.

If the HCP is not palatable what could be done instead?

Let society pay for the plan, not individual land owners.

The HCP provides a location to mitigate.

Frustration expressed at the process. There were many questions asked at the public meetings and attendee doesn't feel that the questions were answered. They don't like the way this meeting is operating. They say that we can't go through this agenda (handed out on the cards) because it's not responsive, a lot of what has happened is not responsive. People need to feel like there is some reason to be cooperative. "I can't get my questions answered. I barely have a clue and have been to several meetings. The purpose and process is admirable but it isn't answering anyone's questions."

Do we feel out of the loop because we don't have a computer? We are a property owner and we didn't get meeting notice about the landowner focus group meeting. Through the first three public meetings there were a lot of landowner questions.

County: We were trying to understand the scope of the questions that the landowners have. There were three people from that meeting that are here tonight. What were some of the issues? We came up with the same questions, went a little farther with solutions, but there are still a lot of questions. That was another opportunity for BC to reach out to the various stakeholders.

There should be a landowner meeting that is open to all landowners affected by the HCP and the landowners should be notified of such meeting. There should be a specific way for landowners to meet and see what the effect of the HCP will have on them.

The BC representatives stood to respond to above comments. They said that they released a draft of the HCP, announced three public meetings for the draft, advertised as widely as possible, using the newspaper, the internet and email. There was a request for private landowners interested in the HCP to create a landowner task force. BC did their best to reach that group. They wanted the landowner perspective, not all landowners, but to represent the opinions of private landowners.

The facilitator said that she senses a lack of understanding about the HCP, noting that it is a lot of information. She said that she would like to shift the conversation so that we can give each other what we need.

There wasn't landowner input on the DRAFT. Why weren't more people invited to the committees where the draft HCP was being developed?

In this county, we want to encourage the production of timber. We need to have people who are willing to manage for habitat on their land and should grant tax deferrals for that. If we had cooperation with the Department of Agriculture and landowners along with incentives (county offering deferrals for habitat), that would make sense.

Question for those at the property owner task force meeting: Was that mentioned?

It was one of the solutions.

Under the HCP I can't do mitigation on my own land, the county has to do it because BC runs the prairie conservation areas.

Steve Smith: you can do your own mitigation on your own property and you can get your own permit.

Attendee asked if you have a choice between going under the umbrella of the BC HCP or not doing it at all.

Steve said that he is available to provide a quick survey as to whether or not a landowner's property would be considered habitat for a listed species. If you have a need to mitigate and you don't want to do it on your own in consultation with USFWS, you could work with BC.

The endpoint is that the landowner has no control over whether or not the HCP is working on his land. Landowner might like to do mitigation on own property but it can't be done on own property within HCP because the mitigation land must be under a public agency or a non-profit. The incentive for landowners is missing.

There is an area of lupine where Douglas Fir and Hawthorne are invading and will crowd out the lupine. It is a visible area, near a well traveled road and it is not being managed. If this area can't be managed for the lupine by removing the competing plants and trees, it reduces the confidence that BC will do the job right.

Karlene from the Greenbelt Land Trust (GLT) responded to that comment. The GLT owns that specific land, but the area that was commented on is in the road right of way that BC maintains. She said, "It just isn't priority so far to remove the conifer in the right away. There are funding issues."

Conservation by private landowners does work. One person is managing over a mile along river through the Farm program. Riparian restoration works, why can't you have restoration and mitigation in the HCP by landowners that includes planting and taking care of what has been planted? The landowner is doing all the work and it can work.

The difference between the HCP and an endangered species plan: When you move toward recovery (to remove listed species from ESA), certain amount of habitat must be protected. Under the recovery portions of the ESA, you have to have the habitat in protected status for the long term. Because mitigation is to replace a permanent habitat loss, you have to document a permanently protected replacement.

A landowner received a letter from BC that they thought was authoritative, "clamping down", on what they couldn't do. Question: In the documentation it says 1% is considered remaining butterfly habitat. The HCP was a solid plan. Now it is a solid plan with no basis.

If this HCP is executed, I could go to BC to build a new shed. I pay BC for the permit, then they give me the permit? Yes.

If everyone shows up to use every square inch of their land does BC have the space to offer the mitigation needed for those permits? Would there be enough land set aside to mitigate all expected take?

Yes. BC has estimated how much land that would be, and they presume they will have enough to cover the expected take. You have as a private property owner the opportunity to participate in the HCP for mitigation, but there is a cost to mitigating.

Create the positive, go proactive, do all the mitigation required for the expected take, put the burden of acquiring the land and mitigating on all the taxpayers, don't put the burden on the landowners in the Fenders Blue Zone.

Begin a carrot program to make an incentive through lower property taxes. There must be a reward for participating in recovery.

Government people work in constraints; the problem with society is that we are “paying the price for the sins of the fathers”. In the early 1970’s we created the ESA to try to recover some of the losses. The problem is that government needs certainty. We wanted to prove the money is being spent effectively. There needs to be a reward for people who want to be stewards of the land. This needs to be an opportunity for people with good will to help with the solution. The requirement for an easement to participate is onerous. There needs to be another level which permits the stewardship that people want to do.

There has been work in process for a year where the set-asides are being acquired. The problem with easements is that to come up with a plan and assess all the places on the ground is a tremendous amount of work. Landowners want to do the right thing. It is in process right now and there are properties that are going into easements. I want to see the work that is being done, be successful. BC is working hard for you.

However, I got the letter that says I’m in the blue zone- I can’t do anything until I contact USFWS. I’m glad that you are doing what you are doing. They are setting aside areas, big areas.

As a landowner in the blue zone I feel put upon that I’m being told that I’m going to subsidize the decision of the citizens/county.

Can landowners who farm and graze our land continue or begin today?

BC does not regulate mowing or farming.

USFWS: Maybe. Mowing and grazing can be the right thing to do, if you are doing it at the right time. If it is done at the wrong time, it may not be good. USFWS does mow and graze and knows that it can be beneficial. It isn’t bad or good; it depends on the site.

The field survey for habitat areas is a way for the county to assess their liability.

FAQ’s on county website, newsletter in the back at this meeting.

Who responds to direct questions?

Use county website and use the county link email on the website. The question will be routed to the appropriate person to respond.

Steve Smith is part of the USFWS Private Lands Program and they are available to visit with private landowners.

When we first got a letter that I was in the blue zone, there was “request for a survey” that we filled out; what happened to it?

The Institute for Applied Ecology will be doing surveys on the land from April through June. They were surprised to get a response of 20% of the letters saying that the landowner wants a survey. Now they have to accommodate those requests.

If I am going to make a small modification for an existing footprint, what will I have to do?

Currently with free survey, you could proceed as planned if no impact on listed species. Under the HCP, you would pay a small fee and then the mitigation would be taken care of by BC. Alternatively you could contact USFWS and do it on your own.

There needs to be a landowner meeting that explains what the HCP is and answers the questions that people have. We need federal and county people there at the meeting. It needs to have a really good presentation that includes timeline and legal ramifications.

That was the intent of the first three meetings.

I went to the Corvallis meeting, there was not time to answer questions or the answers were not known. Need more information before we can give input.

Tom Kaye: Prairie conservation strategy will look at species in the plan but also other species, and how can implement conservation on public and private lands?