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Coming Up In The Daily Record

Traditional growth enemies sowing seeds of cooperation

By BRAD ROLLINS - Staff Reporter

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Construction and environmental interests, natural foes in Central Texas' storied development wars, say they're finding reasons to be optimistic about plans to streamline endangered species protection rules by merging parts of the state and federal permitting processes.

The plan would allow developers to voluntarily submit to tougher water quality standards in exchange for exemption from the rigorous U.S. Fish and Wildlife process of proving their construction won't kill or otherwise disturb any federally protected aquatic animals such as the San Marcos salamander and the fountain darter.

Instead, the federal agency will authorize the Texas Commission on Environmental Quality to administer endangered species regulations, shaving weeks, months, possibly years, off the approval process and eliminating redundancies. Currently, builders are required to seek approval if federally protected species are known to occupy undeveloped land.

In addition, data collected under the new rules will be compiled in a digital development data clearinghouse with which researchers can monitor environmental indicators such as runoff purity over multiple years and across county lines.

"Partnerships are the best way government entities can be more efficient and effective," Robert T. Pine, U.S. Fish and Wildlife's Austin Ecological Services administrator, said in outlining the plan in San Marcos on Thursday. "We've been working with TCEQ for months on these guidelines and anticipate if planners follow these new, optional water quality measures, it would not result in 'take' of some of the species found in the Edwards Aquifer region."

The tougher standards, which emphasize environmental planning at a project's onset, include:

€ Stronger "best management practices" requirements that would require 80 percent of solids removal from rainwater runoff instead of 80 percent of the increase caused by new construction. Removes exemptions for development with less than 20 percent impervious cover, a measure that mainly affects residential construction.

€ Monitoring and restrictions on post-construction runoff rates to prevent stream and river channel erosion.

€ New no-build buffer areas around streams and rivers in proportion to the size of their drainage area.

€ Prohibition on sealing caves and other "geological features" in the aquifer recharge zone.

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The new process does not apply to projects outside the Edwards Aquifer Authority jurisdiction, those in close proximity to natural springs or development that affects non-aquatic protected species such as the golden-cheeked warbler. Where local regulations are stronger - such as San Marcos' river ordinance - the stricter rules will stand.

"We don't want to do anything to prevent cities from embracing stricter rules and nothing here would short-circuit or circumvent that," said Dr. Michael Barrett, the associate director of the University of Texas' Research in Water Resources center who helped draft the rules. "But instead of permits and applications in multiple agencies, the developer can comply with these optional standards and keep things simpler."

The concept sounded good to Lower Colorado River Authority Executive Director Joe Beal, who offered a few suggestions such as bringing county government into the process. In general, though, he said the new process is a step toward more collaborative approval processes.

"This squares with the model I see shaping up where we determine the solutions and the agency does the enforcement," Beal said, referring to features of the new requirements that push builders toward planning around environmentally sensitive features such as caves.

San Marcos River Foundation Executive Director Dianne Wassenich also said she thought the consolidated process makes sense and praised certain elements of the guidelines as particularly progressive.

For instance, she singled out best management practices performance guidelines that require less runoff after construction than before as a step toward correcting the impact of poor development planning in the past. She also reserved some skepticism about TCEQ's capacity to enforce the guidelines once developers accept them.

"I'm not at all sure about the prospect for enforcing these voluntary measures, but it's all a good place to start," Wassenich said.

Despite the initial polite reception here, whether developers subject themselves to the standards will largely depend on whether developers trade less building and site flexibility for a degree of regulatory predictability.

Harry Savio, the Greater Austin Home Builder Association's executive director, said he would reserve judgment on the specifics of some of the tougher rules. Overall, though, the industry leader said the streamlined process is a needed step toward curbing beaurocratic yellow tape.

"Just the fact that the agencies are working together to eliminate duplication and simplifying the regulatory maze for the average citizen is a tremendous step forward," Savio said. "It also puts pressure on us to ensure that the new rules are backed by science."

He does, however, take exception with terming with the new rules as "optional."

"I think option is going to quickly become a misnomer. It's simply not going to be practical to do anything other than comply with the 'voluntary' rules," he said. "That's not to say it's a bad thing to go along with these minimum requirements."

Pine put it another way: Theoretically, developers won't have to hire as many lawyers and consultants to get project approval.

"Instead of all these hoops you have to jump through - some that you may not know about until you're well into the project - we'll have a defined path for developers to follow," Pine said.

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