

SANTA CLARA VALLEY HCP/NCCP STAKEHOLDER GROUP

Tuesday, January 24, 4:00 pm – 6:30 pm
Morgan Hill Community Center
17000 Monterey Road, Morgan Hill

Meeting Objectives:

- Provide updates of status on study area and stakeholder group appointments
- Determine which species will be investigated for inclusion on the list
- Agreement on basic decision-making processes
- Identify possible omissions from covered activities list

AGENDA

4:00

I. Welcome and Updates

- A. Review meeting objectives and agenda
- B. Review status of Stakeholder Group appointments
- C. Review status of Study Area

Joan Chaplick, Facilitator, (MIG) and David Zippin, Jones and Stokes

4:25

II. Continue discussion of covered species list to date

Action: Determine which species will be investigated in detail for the HCP/NCCP

David Zippin, Jones and Stokes

5:00

III. Develop and Discuss Group Decision Making Processes

Action: Agree on basic decision making process

Joan Chaplick, MIG

5:45

IV. Discuss Covered Activities List

Action: Identify any activities that may have been omitted or ones that should be specifically excluded from coverage

David Zippin, Jones and Stokes

6:00

V. Introduce HCP/NCCP Broader Goals- Approach and Development

Action: Provide feedback on proposed approach

Ken Schreiber, Program Manager

6:20

VI. Public Comment and Next Steps

Joan Chaplick, MIG

6:30

Close

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN
Stakeholder Group Meeting | January 24, 2006 | Morgan Hill Community Center

IN ATTENDANCE:

Stakeholder Group Members:

Keith Anderson (South Valley Streams for Tomorrow)
Jack Bohan (Representative of general public)
Kevin Bryant (California Native Plant Society)
Larry Cope (Gilroy Economic Development Corporation)
Craig Edgerton (Santa Clara County Open Space Authority)
Justin Fields (Santa Clara County Cattlemen's Association)
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)
Virginia Holtz (Representative of general public)
Lawrence Johmann (Guadalupe-Coyote Resource Conservation District)
Bob Loveland (Representative of general public)
Kenn Reiller (Pajaro River Watershed Council)
Bob Rohde (Natural Resources Conservation Service, San Benito and Santa Clara Counties)
Diane Ross-Leech (PG& E/Landowner)
Carolyn Tognetti (Save Open Space Gilroy)
Lloyd Wagstaff (The Nature Conservancy)
Kerry Williams (Coyote Housing Group)
Bill Young (Sierra Club)

I. WELCOME AND UPDATE

Meeting Objectives & Agenda

Goals for this meeting included introductions, continued discussion of the covered species list, discussion of the covered activities list, development of the group decision making processes, and introduction of the broader goals for the HCP/NCCP processes.

The minutes were distributed to the group in advance of the meeting; no changes were noted.

Status of Stakeholder Group Appointments

Ken Schreiber noted that five new appointments to the Stakeholder Group had been made the previous Friday. One new member attended the meeting; the group will be notified of the names of all new members in the near future. Keith Anderson asked if the group could receive copies of an updated membership list. Joan Chaplick (MIG) will send this out within the next few weeks.

Virginia Holtz asked if information on the HCP and NCCP processes could be placed in a table to make the distinctions—including different interests and different stakeholder groups—between the two processes clearer. She noted that a basic fact sheet would be useful to take back to the groups stakeholders are representing. Joan will work on this and distribute it when it is complete. David Zippin (Jones & Stoke) will also condense his Power Point on the two processes into a format that members can use with their own groups.

Review Status of Study Area

David reviewed the study area with the group, noting that the original study area was based largely on watersheds and other natural features. However, political lines and borders also matter, so Jones & Stokes plans to propose a moderate expansion (80,000 acres) of the study area to include county boundaries and parks or other features that straddle the study area limit. Recommended changes include:

- Extending the area to the north to reach Alameda County, which picks up a county park;
- Meeting the San Francisco Public Utilities Commission's holdings;
- Including the Alameda watershed;
- Including all of the city of San Jose; and
- Include all of two county parks that were only partially included initially.

The area will continue to avoid the city limits of Milpitas. However, it is important to include all of San Jose to avoid situations in which a landowner might have part of a property inside the study area and part outside the area. The change also gives the city complete coverage under the HCP. This does move the study area into other creeks and watersheds, but few, if any, endangered species issues are in that area. The plan will also explicitly exclude coverage of stream activity to avoid potential water issues.

Keith noted that the map of the study area seems to include part of Santa Cruz County at the southeast end. If so, this is unintentional; Jones & Stokes will check the lower reaches of the study area to confirm that all land is in Santa Clara County. One member noted that Santa Clara and Santa Cruz Counties traded land fifteen years ago to resolve inconsistencies along the border, so this may account for discrepancies in the maps.

David asked that members look over the map of the study area and identify any protected lands that are not already designated as such. He suggested that members label these lands clearly on the map so that he can follow up.

II. CONTINUE DISCUSSION OF COVERED SPECIES LIST TO DATE

Joan noted that members should raise any questions they might have on species included on the list or on species to propose for study of coverage. David added that the team would need to make a provisional decision on the species list so that development of species inventory can start, but the list can be revisited as the process moves forward. Two plant species have recently been dropped from the list, either because they are no take species or because there is no chance of take of the species. Two species have also been added: the central valley fall run Chinook salmon and the salt marsh common yellowthroat (San Francisco yellowthroat). Another 145 species were evaluated, but none resulted in recommendation for coverage.

Q: What does it mean if a species is taken off or not added?

A: Local jurisdictions can later amend the plan to add these. Species taken off will not be considered directly in the plan, but CEQA requires consideration of all special status species.

Q: Does the addition of the Chinook salmon pertain to the entire study area, or just to a specific area where it is known to occur?

A: The coverage will pertain to wherever the fish occurs (e.g., Pajaro River, where salmon were entering the study area).

Q: Why does the San Francisco Public Utilities Plan for land in Alameda County adjacent to our Study Area cover some species that this plan doesn't and vice versa?

A: The range of a sub-species may contribute to this. The boundaries are fuzzy, but the determination will be made based on Fish & Wildlife plans and where these designate a recovery zone to be.

One member asked about the current status of other HCP processes, and whether these plans and their approaches should be considered. David noted that the San Benito HCP process is on hold right now, but will be considered if it comes back onto the scene. Alameda County is currently writing their draft impact assessment, so they are further along.

Kevin Bryant asked about the five-tier system for species coverage, and why species on List IV were not covered when they seemed similar to other species that were covered. David noted that List IV means that more data are needed. Jones & Stokes didn't include these species unless there were additional indicators to point to the rarity of the species. He reminded the group that a species can be added later in the planning process or (most importantly) after the plan is approved.

Larry Johmann observed that Coho salmon were last seen in the county in 1953, and their recovery is listed as "unlikely since there are dams there." But he noted that some dams now have fish ladders so the species could come back; maybe this should be reconsidered. David noted that Alameda deals with this too. They made the decision not to cover the fish since there's no chance for take, but in the future, if the species returns, there might be. It is very difficult to plan for the conservation of a species that isn't here.

Diane Ross-Leech asked what David was looking for—consensus on species coverage, or approval of the list? David responded that it would be great to have agreement, but that Jones & Stokes will be moving forward regardless since there is a tight timetable.

Jan Hintermeister asked about the science advisors and whether they would look at the list. David replied that they would, and might have changes or additions. Jan then asked about the species of birds that are included but weren't in the county historically, and about species that aren't included but have historically been here. David noted that Least Bell's vireo is moving north and east, so its range is expanding, and it has been found in Santa Clara—there's suitable habitat here. Since it is already state and federally listed as endangered, erring on the side of covering it is wise. Anything from noise to nighttime lighting could be considered take, and the goal is to give local agencies the flexibility to issue these permits. He will check on the bank swallow and its presence in the county. Jan also observed that it would be good to have an ornithologist on board.

Keith Anderson asked about Least Bell's vireo since the Water District thinks it is essential that this species be included, and it is well-documented in Lower Yagas Creek. He added that the bank swallow was documented as well. Keith also asked if key CEQA species would be included. David replied that they would be, since this will greatly streamline all permit processes. It is not as easy to make this case for non-covered special status species. Some actions will cover these species anyway, but there will not be any analysis to show this. The group may recommend adding new components to the conservation strategy to address these. In addition, CEQA doesn't allow coverage to be extended for the length of a permit, so the plan can't offer full coverage for users, as opposed to NCCP and HCP, which guarantee coverage for the length of a permit.

David asked the group whether including CEQA species makes for a more complicated plan. Does the group want to add this, given that it opens a whole new category?

Q: Who does this benefit?

A: It doesn't help or hinder anyone; it just defines the problem. Including CEQA species will primarily streamline the CEQA process. The Management Team hasn't discussed this yet, but if anyone has comments on this issue, they can be aired now.

Kenn Reiller noted that the group has a long period of planning ahead, and wondered if the inclusion of CEQA species would affect the budget and schedule. David replied that it depends on how they're addressed. If the group commits to doing enough for all species to ensure impacts are less than significant, then yes,

could impact schedule and money. But if the plan just says “let’s look at this and see how things we’re doing for our covered species are helping other special status species,” it will not dramatically impact schedule or budget.

Q: Have others done this?

A: Yes, but only by default—San Joaquin County decided at end of their process to reduce their species list, and had already done all the work.

Q: Can we see if it’s beneficial to cities that have done it? It would be good to know how cities and towns feel about this.

Diane asked about feedback from regulatory agencies on covered species. David replied that there were many comments from Fish & Game on species like freshwater mussels, but not much additional data.

Keith suggested looking at the top species that EIRs always address and consider just including those, rather than all sensitive species. This could be an opportunity to gain a streamlined approach for CEQA. Bob Rohde added that it might be good to discuss this issue over a long period of time, since the group doesn’t know all of the impacts yet.

Keith asked for a quick update again on no-take species.

Q: Will the plan have conservation strategies for no-take species?

A: No. There will need to be surveys for projects to ensure that those species aren’t occurring on sites. The no-take list will be documented clearly in plan. One condition of take authorization would be 100% avoidance of those species.

III. DEVELOP AND DISCUSS GROUP DECISION-MAKING PROCESSES

Joan introduced the discussion on group decision-making processes, explaining that the group would be producing a living document that would begin to define group interactions. The group has already talked about expectations, meeting protocols, etc.

Decision-making process

There must be a process for decision making within the group. Joan recommended avoiding voting, since each member has a different perspective and represents a variety of interests. Also, the group is not a decision-making body, but group agreement on a recommendation should mean something. Nothing is final till the plan is final, but it would be good to make incremental recommendations. Joan described the goal as mutual agreement—how can the group reach this? This is not necessarily “consensus”—the group is simply agreeing to work towards the same goals.

Joan underscored that group conversations will be based on a foundation of fact. This is where Jones & Stokes and the science advisors come in. Group members will work to develop an understanding of each other’s positions. There are a lot of perspectives at the table, so it may be helpful to focus on where people agree or disagree. What is at the heart of a disagreement? Where can the group do some additional research, probing, etc.? At times it may be wise to set up a working group for a specific issue. The group needs to give useful, practical advice to officials and others involved.

Joan described a system of “levels of agreement”—unqualified agreement vs. “I can live with it” vs. “I really don’t agree and I want it noted.” What works with this structure? What doesn’t? Sometimes it comes down to simple terminology and language. Sometimes the gap is larger. What are the similarities between people who agree and disagree? Members generally agreed with this approach to making decisions as a group, and felt that Joan’s proposed system would work well. Ken Schreiber noted that if after significant discussion by the group, review of the facts and an effort to understand each others perspectives, there is still disagreement on

a topic, the report of the Stakeholder' Group's recommendation or advice would also include a discussion of the minority viewpoint so that the Management Team, Liaison Group and elected officials would have information about the different perspectives on the issue.

Attendance

The conversation then moved into expectations of participation in terms of attendance. Craige asked whether people's inability to come might indicate that they no longer feel like they have a stake in the process. Kevin suggested quantifying "nonattendance" so that it's not open-ended. Kenn noted that people can often only do about 80%, and suggested that if a member falls below that, there might need to be a response.

Tim Steele cautioned that it will become harder and harder to find replacement people as the process moves forward. He wondered if maybe the group shouldn't be as concerned about this, since each member is presumably here to express views.

Bev Bryant, representing the Home Builders Association, a member of the audience, pointed out that her organization will always send a substitute if the stakeholder can't be there. She then noted that, in fact, she was substituting for their representative at this meeting, at which point she was invited to join the stakeholders at the table as a proxy.

Several people suggested making telephone conferencing an option, especially for members whose work may take them back and forth across the Bay Area. Ken will check this out to see if the facility can accommodate this.

What does the group do if contact info for a member is no longer valid? When are people cut off? Members agreed that there should be a period of time for talking to member and trying to reinstate communication, though no decision was made on what the threshold that triggers this should be.

Joan noted that she has not gotten a response to calls or e-mails sent to member David Wei, who has changed employers and since has become difficult to reach. Since he was appointed in part because of his former affiliation with Robson Homes, Joan will continue efforts to contact David Wei and determine his interest in being in the group.

Joan will contact members who have unexpected absences or a lapse in attendance. The group agreed that the expectation is that members will make a good faith effort to attend, but there will be no set number of meetings required. In some cases, it may be helpful to ask members who cannot make regular meetings to attend technical working group meetings where their expertise might be extremely helpful to the group. For now, attendance will be monitored by Joan on a case-by-case basis. Follow-up calls will be made to lapsed members to determine their level of interest or if they should be replaced.

Communications with the media

Joan underscored the importance of being careful not to characterize individual views as views of the Stakeholder Group. In addition, she cautioned against using media to unduly influence the process.

The public information and outreach consultant is not yet under contract so media issues are not entirely resolved. Eventually, however, the consultant will be the primary contact, and members will receive clear guidance on how to interact with the media. As appropriate, members may speak to the media to ensure the public is aware that the group includes a variety of interests. For members who do speak with the media, they should be clear that they are speaking as a representative of their organization and their views do not represent the entire Stakeholder Group.

One member asked if the media outreach could include all area media. Joan replied that, yes, the public media consultant will take on this task eventually and will undoubtedly appreciate help.

Should response to misinformation be a group process or just the individual? And, should the group take action? Ken recommended clarifying first with the group—what did you say? The public outreach consultant can also provide advice on these situations.

Ken added that it would also be important to make sure that minority views within the group are heard by the public, since this may help elected officials or others. Virginia added Joan has expertise in drawing out responses, and can do this when necessary to ensure that all minority views are heard.

Larry asked what the response should be if people violate the process. Joan replied that members should discuss these issues and discuss what adjustments need to be made in the group.

IV. DISCUSS COVERED ACTIVITIES LIST

David introduced the covered activities list, adding that this list was at a much earlier stage than was the covered species list. The memo outlines what covered activities are and what potentially could be covered. With species, the list includes specific targeted species. However, with activities, the plan should provide as much take authorization as is needed in local jurisdictions. The plan should cover development planned under current general plans, as well. Right now, David is looking to create a list that is as broad as possible. The list will also specifically exclude certain activities—e.g., wind turbines, other projects that are very complex and need to be handled separately.

Some activities may not affect covered species, so they will just be dropped later in the process. All activities will be listed in Chapter 2 and described generally or fairly specifically.

Q: What is speculative take?

A: The plan does not want to include projects that have little or no potential for impacting covered species or constituting a take. There should be some history of similar projects having take with covered species.

Q: What about things like bridge replacements, that aren't planned in advance?

A: Well, we know where bridges are, so we'll just assume they may need to be replaced.

David asked the group to consider whether the list is complete—is it missing any projects that may have impact? What about things to exclude? Very large projects (e.g., highways, high-speed rail) should potentially be specifically excluded.

Q: What about projects that aren't under control of local groups?

A: Local partners have to have control over activities in some way if they are to be covered. If a group does not come to the city or county for permits, it is hard to include them. You can have a participating special entity component of the plan, however. This often addresses impacts of the plan. You can include these entities in impact analysis, etc. They can come in later, sign a contract with the entity implementing the plan, and get their authorization through the plan. This is sometimes done to accommodate utilities agencies or others outside of local control.

Diane noted that PG&E is doing their own HCP, but that it doesn't cover new development, so it would be good to have this covered by local HCPs.

Kenn asked about emergency activities, and how emergencies are defined (and by whom). How can this be handled? He requested a little more detail about emergency services and how to define these.

Keith observed that some proposed activities are very general—it would be impossible to come up with an estimate of take. What is the intent of process for these activities? Does the team go to organization (e.g., the

water agency) and get an estimate of their flood control development, and use that to estimate take? Yes, David confirmed—this is generally how take is estimated.

One member noted that it would help to know where these activities came from. Are these from agencies' wish lists, from personal communication, from an approved plan? Ken replied that, for the most part, the list does not go beyond urban service areas or urban growth boundaries. Projects well outside of current urban areas are hard to deal with—they may just be wishful thinking. On the other hand, it is much easier to look at an agency's ten-year capital plan and determine what might happen.

A member of the audience pointed out that some plans, like VTP 2030, are “wish lists,” but came out of a public process, so they do provide a place to start.

Q: What is the legal nexus between the HCP and agricultural activities? How can this process address agricultural activities, mitigation, etc.?

A: This will be a future agenda item, since it warrants its own discussion and is not simple. Some HCPs cover ongoing agricultural activities, while others don't.

Q: What about high speed rail? Is it okay to leave projects like these off?

A: Yes, the rationale is that there is not much benefit to putting them on. They are complex, and would go through a process on their own regardless.

Q: What about projects on planning maps that nothing's been done on? Do we have to include them?

A: There can be discussion on whether or not to cover these. The HCP will be general—it will cover urban development in an area, but not a specific plan.

Q: What about things like cattle grazing? Will this be covered?

A: Yes—it's important both in terms of impact on other species and maintenance of serpentine grasslands.

Keith noted that stakeholders need to be aware of FAHCE (Fisheries and Aquatic Habitat Collaborative Effort) and its efforts. The project is the result of settlement over the water district's water rights over reservoirs on streams that flow to San Francisco Bay and their work attempts to mitigate this.

VI. INTRODUCE HCP/NCCP BROADER GOALS (APPROACH AND DEVELOPMENT)

Ken introduced the goal process, noting that it is important to establish where the HCP process is going and how it ties into the environmental impact process, including EIRs and EISs.

The next step is to put some wording on bullet points. Ken advised people against doing much wordsmithing since the words will change anyway. He will come back at the next meeting with more fleshed-out goals.

Q: How are you currently defining “appropriate growth”—based on general plans?

A: Yes. Assume that land slated for development will be developed.

Changes suggested included:

- Under biological resources/conservation—add “and functionality” to “ecosystem integrity”
- With respect to “multipurpose...,” is the intent to talk about water quality or watershed overall? Also, what about the ecological health of watershed? It may be good to look at structuring by watershed.

VI. PUBLIC COMMENTS AND NEXT STEPS

- Joan Chaplick will email the group a full team list, including contacts for the Liaison Team.
- The Management Team will discuss the covered species list and continue evaluation of species to include or exclude.
- Group members should also get any additional information they might have on species to David as soon as possible so that he can investigate and the process can move forward.
- **Next meeting: Tuesday, February 28th, beginning promptly at 4 pm.**