

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN
Stakeholder Group Meeting | January 27, 2009 | Morgan Hill Community & Cultural Center

IN ATTENDANCE:

Stakeholder Group Members:

Kevin Bryant (California Native Plant Society)
Joanna Callenbach (YCS Investments)
David Collier (Sierra Club)
Craig Edgerton (Silicon Valley Land Conservancy)
Justin Fields (Santa Clara County Cattlemen's Association)
Sequoia Hall (Santa Clara County Open Space Authority)
Virginia Holtz (League of Women Voters)
Susan Mineta (Shapell Homes)
Kenn Reiller (Pajaro Watershed Council)
Brian Schmidt (Committee for Green Foothills)
Jack Sutcliffe (Santa Clara County Farm Bureau)
Carolyn Tognetti (Save Open Space Gilroy)

Keith Anderson and Jan Hintermeister were excused from today's meeting.

I. WELCOME AND INTRODUCTIONS

Joan welcomed the group and noted that a new stakeholder has joined the process. Joanna Callenbach represents YCS Investments and has joined this process because of the company's interest in working to help preserve Bay checkerspot butterfly habitat found on their property located in the plan area. After a round of introductions, Joan provided a brief overview of the meeting agenda. She noted that Kathryn Gaffney would be presenting on behalf of the ICF Jones & Stokes team to summarize recent changes made to the plan in response to Agency comments and concerns.

II. UPDATE ON PLAN PROCESS

Ken Schreiber provided stakeholders a table outlining the significant issues brought forth by the Wildlife Agencies. The table provided a status report on the issues and when the topic had been discussed. The table identified the issues that had been resolved and the issues that would require additional discussion. Many of these issues were minor and could be resolved with editorial or formatting changes to the document. Ken estimated there were about five or so issues that were substantive in nature and relate to specific plan policies. Ken noted that the Santa Clara Valley HCP is in many ways considered a model plan, which helps explain the level of review it is under.

Ken's goal is to resolve all outstanding, substantive issues before release of the second administrative draft. He has been and will continue to meet with Wildlife Agencies and local partners to discuss these issues. The schedule for the remaining meetings is as follows:

- Wednesday, February 11---Mare Island

- Thursday, February 19---Liaison Group meeting at SCVWD
- Friday, February 27---meeting at FWS
- Tuesday, March 17---meeting at FWS

The most recent project schedule, distributed on October 16, indicated the second administrative draft would be released in January or February, and the official public draft in April or May 2009. This schedule may be delayed to resolve outstanding issues. However, it is still anticipated that a final plan will be complete by the end of 2010.

III. DISCUSS PROGRESS MADE ON WILDLIFE AGENCY FEEDBACK

Ken opened discussion with an overview of progress made regarding the first 5 items listed in the significant issues table:

1. Aquatic Conservation Strategy
 - 1a. Riparian Setback
2. Pacheco Reservoir Expansion
3. Re-operation of Pacheco Reservoir
4. Evaluation of Steelhead Uvas Dam Passage

Agency concerns related to these issues remain unresolved. Aside from the riparian setbacks question, which will have implications for rivers and streams throughout the plan area, these items relate specifically to South County. Ken did not provide detail with respect to the nature of ongoing conversation, but noted the importance of resolving these issues before releasing the second administrative draft.

Kenn Reiller asked if other environmental considerations were being factored into plans related to establishing riparian setbacks, noting the role that setback regulations play in water quality and stormwater management. Ken said yes, and noted that while the San Francisco Bay RWQCB is out in front in terms of stormwater management, Central Coast RWQCB is certainly catching up. As a result, local partners are thinking much more about water quality, stormwater management, and related benefits of riparian setbacks and other policies that also benefit wildlife.

Pat Showalter as the SCVWD representative was asked to share some information with the group about issues related to the Pacheco Reservoir expansion and re-operation. The District is working with its legal counsel and engineering staff to resolve outstanding issues, and negotiation with the Pacheco Pass Water District continues. Internal progress is being made, however, there are no additional details to report at this time.

Conservation Strategy Assurances

Language has been added to the plan to address Agency issues related to Conservation Strategy Assurances. Most notably, Jones & Stokes has added language related to the potential impacts of rural development on habitat. Ken noted that this change stipulates that rural development plans may need to be redesigned depending on their impact. This may be quite a finding for rural landowners and developers.

Participation of State Parks

Ken updated the group on discussions taking place with Fish and Game and State Parks. The

Wildlife Agencies have requested that State Parks confirm that they will protect State Park lands in perpetuity if they are intended to contribute to the Reserve System. This policy is a challenge since State Park policy requires that the Department not enter into agreements that might limit future recreation opportunities, for example for active recreation. This creates difficulty for State Parks to participate in the reserve system. Given that with the wilderness nature of Henry Coe State Park, it is unlikely State Parks would use these lands for active recreation, the policy seems unnecessarily restrictive and limits State Parks ability to benefit from being part of the reserve. For example, restoration projects and trail improvements could be funded through the HCP process. These projects are consistent with the State Parks mission and the Department continues to be strapped for funds to pay for these types of projects.

Ken is attempting to work with both Fish and Game and the Parks Service to change policies that have so far prevented this from happening.

Description of Covered Activities

Wildlife Agencies provided comment on a number of related items which have since been resolved. First, Agencies noted that while description of covered activities is discussed in Chapter 2, but is not adequately covered in Chapter 4. Agency comments were in specific response to discussion of mitigation and monitoring projects or restoration projects conducted by local partners. Jones & Stokes is currently in the process of determining whether these projects actually exist. If Jones & Stokes can confirm that these types of projects are reasonably expected to occur, needed language will be added to the plan.

Other Agency comments relate to the need to better define certain proposed covered activities so they may analyze their impacts. One of these activities is implementation of County and City of San Jose parks plans. Several city and county parks have master plans. Wildlife Agencies noted that the HCP does not adequately address impacts associated with master plan implementation. Jones & Stokes is working with the County parks system to resolve this matter.

Agencies also recommended that Appendix F be deleted. This appendix included numerous examples of activities that could potentially be covered by the plan. Because some viewed this as an appendix intended to provide an exhaustive list of covered activities, and not a limited list of examples, Appendix F created far more problems than it solved. Therefore, it has been deleted.

In response to a question posed by one stakeholder, Kathryn Gaffney of ICF-Jones & Stokes explained that not all required activities will be covered under CEQA. Rather, local permitting agencies will be responsible for project evaluation based on plan requirements. Chapter 6 describes survey requirements, and local land use planners will be trained to review projects according to the terms of the HCP.

Ken then provided an overview of three important issues that have not yet been resolved, but that he felt may be of particular interest to the stakeholder group, and thus important to cover in conversation.

- Definition of Unforeseen Circumstances
- The Western Burrowing Owl
- Calfire Involvement in the HCP

Definition of Unforeseen Circumstances

Both Agency staff and others involved in the discussion have struggled with the line between foreseen and unforeseen circumstances. There is no answer related to this yet. Craige Edgerton noted the role of adaptive management in addressing unforeseen circumstances. Stakeholders briefly discussed the appropriate definition for “unforeseen.” Brian Schmidt cautioned stakeholders against defining unforeseen as necessarily “catastrophic,” and noted that perhaps “if, then” statements have a place in the plan. David Collier reiterated a point he made previously on a related topic, which is that future, extreme weather patterns cannot be anticipated based on historical events of drought and flooding.

Kenn Reiller asked, how do the Wildlife Agencies view unforeseen circumstances? According to Ken, they are looking for the stakeholder group to propose something.

Western Burrowing Owl

Ken shared that the Habitat Plan process hired a biologist regarded as one of the state’s burrowing owl specialists to conduct breeding pair (nesting) surveys in the plan area. The survey found notably fewer nests than had been located previously. The nesting survey located owls on three sites in the plan area: the San Jose Water Quality Control Plant, the San Jose Airport, and the VTA Cerone Bus Yard. There are many locations where the literature says there is habitat for the owls and they should be present but none have been found there.

The challenge here is how to create a strategy that mitigates for the potential loss of owls and that also enhances the population. While there has not been a great deal of success in relocating burrowing owls, the Plan will be exploring relocation and other strategies and sharing information with the state.

While the population of the Western burrowing owl tends to be dropping in most areas, the burrowing owl is not listed because there are higher numbers in other parts of the State. The likelihood of the burrowing owl becoming a listed species within the next few years is quite high. Given its status in the Habitat Plan, we must treat it as endangered or threatened and make an effort to get ahead of the curve in terms of species and habitat protection.

According to Brian, the Audubon Society tried to get them state listed a few years ago. Ken noted that they are still fairly common east of Paso Robles and in Imperial Valley, which is why there has been resistance to listing.

CAL FIRE Involvement

There has been recent discussion with Fish and Game and State Parks about Coe Park, and some critical observations have been made. While there is a written agreement between Fish and Game and Coe Park, written agreements can come to mean little in the event of an emergency. The working knowledge that is shared between biologists and CAL FIRE staff, and the direct involvement of biologists in fire-fighting decision-making and strategy is more important. Positive working relationships can work very well in a fire emergency. The problem is that firefighters and commanders at times are from a different part of the state and have no local relationship. Secondly, state financial restraints may lead to a lack of consideration for habitat when fighting fires.

Written plans are not always effective in responding to an emergency, and the ability of people to work together to resolve issues in the immediate term is perhaps of greater relevance. Thus, deciding how to incorporate this knowledge and reality into the habitat plan is a challenge that remains

unresolved.

Following discussion of CAL FIRE, Joan invited stakeholders to open the discussion of issues from the significant issue table that were of particular interest.

Adaptive Management

Differences in point of view related to this topic remain. Agencies have noted a number of concerns. These include their desire for the plan to better comply with the 5-Point Policy and to address “the range of possible operating conservation program adjustments due to significant new information, risk, or uncertainty.” (Significant Issues, Aug. 1 2008 – Installment 2).

A number of changes have been made to the plan to address these and other comments. These changes include, but are not limited to, adding text that references the location of the cost model for adaptive management in the plan, language justifying why the proposed budget is sufficient to cover adaptive management costs.

Ken noted that the Wildlife Agencies would like a more consensus-based approach to monitoring and adaptive management, rather than all final decisions resting in the hands of the Implementing Agency. The challenge is how to involve the Wildlife Agencies in decision-making and still ensure that management issues reach resolution. There appears a need to put in place some structure to create decision points to ensure that processes come to an end, or are deemed complete without the need for someone in Sacramento to sign off. At the Agency level, there is often a lack of staff time, and it would be wise to ensure that this reality does not impede important management decisions and implementation.

Clarifications Re: In-Stream Mitigations and On-Stream Ponds

This was a very simple issue to resolve which related to “in-kind” impacts. If you are impacting a certain species in a particular environment, then you are mitigating impacts to that species in a similar environment. Jones & Stokes re-worded language in the document to resolve the misunderstanding related to on-stream ponds.

Impact Assessment

Jones & Stokes is still waiting for clarification from Fish and Wildlife related to their comments on Impact Assessment, and will address the comment once they better understand the intent of the Agencies’ request.

Environmental Baseline Evaluation

Language was added here in response to concerns by the Agencies that the plan did not adequately address impacts to plant species populations. It wasn’t clear if “population” referred to a small number of plants or a large number, nor was it clear the size of the impact. In response to a question from David Collier, Ken affirmed that 90% of the discussion was related to plants. To resolve this issue, new language has essentially been added to place a cap on plant take. This is also related to the sliding plant impact analysis issue (table p. 5).

Seed Banks

Kathryn showed the stakeholders text that has been added to Chapter 5 to address seed banks in the context of coyote ceanothos preservation, but that will be applied to all serpentine plants: “A permanent conservation seed bank will be established in the National Collection of Endangered Plants operated by the Center for Plant Conservation...” Kevin Bryant questioned the Agency’s

particular concern with serpentine grasses, given that these plants are generally better suited to endure harsher conditions. Jones & Stokes will seek clarification on whether this language should apply only to serpentine plant species.

Neighboring Landowners Assurances Policy

The Wildlife Agencies are recommending that the neighboring landowner assurances policy be removed from the plan. The recommendation stems from the fact that these assurances are rarely, if ever, used and they haven't been able to find a plan where these assurances are actually being applied. Ken reminded the group that the reason for including this policy was in anticipation that neighboring landowners would want such an assurance.

Jack Sutcliffe argued that just because this provision has not been used to date does not mean that it doesn't have value, or that it will not be used in the future. Justin Fields and, subsequently, other stakeholders agreed that this provision has value and should be left in the plan.

Stakeholders requested a clarification in the language of the provision to make clear that assurances end with the permit term.

Kevin asked how this policy differs from "no surprises" assurances. Ken noted that no surprises applies to activities covered by the permit, while this policy is related to activity outside of the permit.

Carolyn Tognetti asked, if this were to be dropped from the plan, are there other locations in the plan that specify the need for continuing outreach and education in neighboring communities? Ken affirmed that education is also addressed elsewhere in the plan.

Brian requested that language be added stating that a biologist hired or approved by the Implementing Entity must determine whether or not a species occurs on a neighboring property.

Joanna Callenbach asked why this provision has not been used. Ken responded that property owners do not want to document species occurrence on their property because they do not know how this information may be used in the future. Another stakeholder noted that property owners do not take advantage of this provision because they do not believe they will ever be fined for negatively impacting species found on their property as a result of an expanding or colonizing population on adjacent reserve land. This is not something that is currently enforced, and they do not expect that it will be in the future.

The discussion concluded with stakeholders confirming with Ken that they recommended the assurances continue to be included in the plan.

IV. PUBLIC COMMENTS AND NEXT STEPS

Joan opened the meeting to public comment – no comments were made. The next meeting will take place Tuesday, February 24, 2009.