

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN
Stakeholder Group Meeting | February 28, 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)
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 (League of Women Voters)
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)
Tim Steele (Sobrato Development Company)
Carolyn Tognetti (Save Open Space Gilroy)
Lloyd Wagstaff (The Nature Conservancy)
Kerry Williams (Coyote Housing Group)
Jeff Olberding (proxy for Home Builders Association)

I. WELCOME AND UPDATES

New and existing members briefly introduced themselves. Three changes were suggested for the January meeting minutes: "southeast" corner of the study area was changed to "southwest," "Alameda watershed" was changed to "Guadalupe River watershed," and the spelling of the Llagas River was corrected.

Joan informed the group that Bill Young, the representative for the Sierra Club, had resigned due to changes in his organization's priorities for staff resources directed to the project. The Management Team will provide direction on how the replacement for his appointment would be filled. She then asked permission to make replacements for two members, Dolores Herrera and David Wei. Dolores has not yet attended a meeting and David attended only the first meeting. Neither has been in contact with Joan despite her attempts to reach them via phone and e-mail. Joan recommended vacating the spots as of this meeting. Kenn suggested providing one last final notice. Jack agreed with Kenn that one last attempt would be best. Joan suggested sending a letter to Dolores and David letting them know they would need to respond within a specific time period if they wanted to continue. The letter will be sent with a response time that is within the next 2-3 weeks and before the next meeting.

Justin asked about Jenny Derry's participation, since there were agricultural issues on the agenda. Jenny represents the Farm Bureau and hasn't attended a meeting. Joan noted that she had been in touch with Jenny who explained she has been unable to attend because of a heavy workload and meeting conflicts. Jenny may resign if the group can find another representative of the agricultural community. Ken asked if anyone knows Peter Marisou, a representative from the agricultural community who may be interested in participating. Ken has been unsuccessful at reaching Peter with the contact information he has. No one in the group has contact information for him, so Ken will continue to look for contact information for Peter.

II. CONTINUE DISCUSSION OF COVERED ACTIVITIES WITH A FOCUS ON IRRIGATED AGRICULTURE

Joan and David noted that the goal of the group discussion on agricultural activities was to come to an agreement on whether or not to cover these activities in the HCP/NCCP.

Covering agricultural activities

David Zippin provided an overview and answered numerous questions throughout his presentation. He explained that currently, it's always unlawful to take federally listed species—there is no exemption for agriculture except for some threatened species. (In those cases, a 4d rule can be published—e.g., California Tiger Salamander, where the 4d allows for exemptions for routine ranching activities.) The 4d offers a blanket exemption for moderate levels of grazing and other routine practices that are part of normal operation. There are no blanket exemptions for all species, however—there must be a separate 4d rule written for each species. These rules are supposed to be published at the time the species is listed.

Q: Does the 4d rule apply to the owner or to the grazer, if the land is leased?

A: The rule applies to either.

It is also unlawful to take a state listed species, but this take does not include habitat modification unless it results in death. However, there can be exemptions for routine and ongoing agricultural activities under an approved voluntary local management program. Exemptions are also available for accidental take on farms or ranches in the course of lawful routine and ongoing agricultural activities. This exemption does not apply to fish, and expires in 2009.

Q: What if a routine activity includes getting gravel from a stream for a ranch road, but this is steelhead habitat?

A: This would not be covered by the exemption—but steelhead aren't a listed species anyway.

David provided an overview of Santa Clara County agriculture. The main agricultural products include: peppers, lettuce, and mushrooms; cut flowers; Christmas trees; nurseries; and dairies, among others. His power point provided specific details about crop acreages based on data from 2004..

Virginia noted that data for 2005 will be released at the end of April. One note is that there will be a reduction in cut flower production. She suggested that the group use the most recent data and acknowledge that agriculture in the county is changing.

Tim asked the group to remember that many farmers are rotating crops through, and that this should be included in evaluating the land—lands may not yield just a single crop.

Q: What about orchards and vineyards in the county?

A: Yes, both are present, but there are not very many. Cherries are making a small comeback, however.

Q: How much of the county's agricultural land is irrigated?

A: Virginia supplied the following 2004 numbers: Total irrigated acreage: 20,903 (Incorporated: 13% Unincorporated: 67%) Ann Draper offered to have the Water District find updated numbers if there was sufficient interest.

David hypothesized that roughly 95% of county agriculture is in the study area, since areas outside the study area are largely urbanized or mountainous.

Kenn added that vineyards have an impact on streams, too. As vineyards expand, they destroy habitat. Ann noted that there are 1,800 acres of vineyard in the county. The increase has been about 20 acres per year over last five years. From a regulatory perspective, permits are needed only if there's grading. Otherwise, nothing is required.

Categories of agricultural activity for the HCP/NCCP

Categories of agricultural activity include routine agricultural operations (widespread; ranchland v. cultivated agriculture); agricultural conversions (conversion from one type to another (i.e. cropland to vineyard—going from alfalfa to vineyard changes habitat); and agricultural expansion into natural communities, which may not be likely to occur, except for vineyards.

Q: What's the legal nexus between the plan and agricultural activities?

A: Some agricultural activities aren't subject to the permit process to begin with. They don't need to come in for a permit, so we would need to find other ways for them to be covered by the plan.

Q: Are we covering agriculture in incorporated or unincorporated areas?

A: Both—cities aren't at full build-out yet. (For instance, San José has an urban limit line, but the city limit goes far beyond this.)

Q: What's the practical effect on the farmer for being covered by the plan?

A: It's up to the group to decide what the process would be if agriculture is covered. Craige suggested that one reason to cover agriculture is cattle grazing, which is a dominant activity in some areas. David added that the net effect of cattle grazing is beneficial (i.e., keeping land open) but that there's probably some take involved (e.g., cattle stepping on protected plants or insects) that the HCP could cover.

Neighboring landowner program

The neighboring landowner program was first introduced in San Joaquin; it will also be included in the East Contra Costa plan. The program is designed to address the spillover of protected species onto adjoining land. It provides take authorization for areas near the preserves when the amount of take is above an established pre-HCP/NCCP baseline. (The distance can be defined later.) It must be an opt-in (not an opt-out) program. The group can establish the baseline (or condition before the plan) through limited surveys. Species in the plan that are capable of wandering onto adjacent lands include the San Joaquin kit fox, the California tiger salamander, the California red-legged frog, the Western pond turtle, the Bay checkerspot butterfly, the Western burrowing owl, the tri-colored blackbird, and Least Bell's vireo.

Potential covered activities in the HCP/NCCP

Potential covered activities include ranching activities, irrigated agriculture/field crops, intensive agriculture (e.g. nurseries, dairies, tree farms), and potentially routine agricultural activities and agricultural expansion into natural areas.

Remaining questions

Outstanding questions for the group to decide include:

- What is the definition of routine agricultural activities?
- What is the distance of coverage?
- What is the opt-in procedure?
- Is coverage for routine agricultural activities needed beyond the neighboring landowner program?

Q: How does Safe Harbor agreement tie into this?

A: It results in a permit under Section 10, but is designed only for things that result in a net benefit for the species (e.g., grazing on serpentine grasslands).

Q: What about nesting birds? They're a unit—they can just pick up and leave.

A: There is very little permitting required for birds right now—so covering them doesn't necessarily do much. But this could change, and the HCP is a long-term plan.

Joan asked Carolyn and Justin to give their personal perspective as members of the agricultural community. Both said that farmers don't really need permits at this point. Many practices are also grandfathered in. Carolyn told a story of a developer with grasslands that had an endangered species present. The developer planted corn which no longer provided habitat for the species so that by the time it was possible to start home construction, the species was no longer present.

Justin noted that sometimes the landowner tries to implement actions that will protect an endangered species, but one environmental group or consultant concludes one thing and another says the opposite—i.e. planting non-native grasses to protect butterflies. The landowner is willing to do what they should but they receive inconsistent advice. Consistency is important!

The nexus with permitting for the HCP and for agriculture may be stream permitting—but there are very few affected streams in Santa Clara County. Bob noted that the Regional Water Quality Control Board is requiring a waiver process. This is a growing issue that's likely to move into grazing lands. Also, the irrigated agricultural community would like to address flooding on streams and creeks. Jeff added that if you start looking at types of permits, they often reflect land conversions. In the South County area, vineyards often go in with large houses on rural lots. Residential well permits are also often granted relatively easily.

This is a complex question—is the HCP giving people blanket coverage for endangered species? If so, how does this interface with well permits, etc.? Should the HCP cover this as well? This is also a CEQA issue. (Santa Cruz County, for instance, has a CEQA limit for their wells.)

David noted that this is also related to what happens on 20-40 acre lots and may be covered more effectively when the group discusses rural residential. (Is the entire lot considered “gone,” or only the buildable portion? Are set-asides required?) A member clarified that there were no discounted permit rates on homes with agricultural uses on the land.

David observed that he was hearing from the group that the neighboring landowners program was probably a good idea. There seemed to be no strong opinion on covering other agricultural activities outside of this. Joan added that there will be more information on the neighboring landowner program in an upcoming agenda.

Vineyards

What about vineyards? It is conceivable that during the permit term, there will again be extensive vineyard development in Santa Clara County, especially with Williamson Act pressure.

A member noted that vineyards are the one exception to agricultural practices that are usually beneficial—they can really destroy habitat. Maybe the HCP needs an exception or exclusion for this. The plan can exclude vineyards, to help discourage vineyard conversion—then vineyard developers have to go through the take permitting process themselves.

Kerry pointed out that in general the HCP should promote agriculture, and that the group should make sure the plan doesn't create additional burdens. Ken added that “vineyards” in the current discussion only includes commercial vineyards, not hobby vineyards. No decision was reached on how to handle vineyards.

III. PROVIDE INFORMATION ABOUT THE COYOTE VALLEY SPECIFIC PLAN PROCESS

Darryl Boyd from the City of San José presented information on the ongoing Coyote Valley Specific Plan process. He provided an overview of the process, noting that the timeline has slipped about a year. There are still many opportunities for outreach and participation.

Overview of the Coyote Valley Specific Plan

The plan calls for a new city of 80,000 residents, with 25,000 residential units to be built to support schools and jobs. The Coyote Valley greenbelt will remain a greenbelt. Natural features include the Coyote Creek corridor and the Coyote Creek greenbelt.

The plan includes both “blue infrastructure”—components that consider hydrology as a factor in urban design—and “green infrastructure”—a secondary level of design elements that consider open space and other natural features. The Fisher Creek corridor will be restored, and the Coyote Creek edge will be preserved. The plan will also encourage transit and non-motorized transportation—bike/ped access, transit nodes, and CalTrain.

Relationship to the HCP/NCCP

The Coyote Valley plan will strive to avoid environmental impacts. A Draft Environmental Impact Report is being prepared to disclose significant direct and indirect impacts and identify mitigation measures. The CVSP will require regulatory permits for wetlands, Fisher Creek restoration, bridges, interchanges, etc. A FESA Section 7 consultation will also be required.

Because the CVSP is expected to be finished ahead of the HCP/NCCP, the project was identified in the Planning Agreement as an interim project, and will not be subject to the HCP/NCCP. Approval of the wetlands delineation is imminent and the team has submitted a 404 permit application to the Army Corps of Engineers. A Federal Environmental Impact Statement will be also required.

Why CVSP matters for HCP

The CVSP suggests a number of design measures for the urban development/wildlife edge interface. There are also wildlife corridors through and around the CVSP area. The site may also contribute to regional conservation planning by providing lands for serpentine habitat. Off-site mitigation may also be required for the CVSP, and hopefully this can work in conjunction with the HCP/NCCP mitigations to create a successful system. Jones & Stokes is also working on the Coyote Valley parks plan for the county, so there may be other potential connections between the processes.

Darryl noted that the VTA is looking at establishing a fund that would contribute to preserves, etc., for projects that will not be covered by HCP/NCCP mitigation requirements. If off-site mitigation is required for Coyote Valley, this could also be an option for that project.

Additional questions

Q: How will the HCP stakeholder group be following this development—through a representative? Through people involved in both processes?

A: We'll just watch it and pay attention, since it's one of the biggest covered activities. Right now it looks likely that the specific plan will go through the Section 7 process (i.e., a separate project specific permit) rather than through Section 10 thus it may be mitigated separately from the HCP processes. But hopefully the wildlife agencies, who know that the HCP process is going on, will design the mitigation to be in keeping with the HCP/NCCP.

Q: Is take authorization for the project pursuant to Section 7? Will the mitigation be separate from anything mandated by for HCP projects? Will it be tracked separately?

A: Yes, but it would be beneficial to have mitigation efforts dovetail down the line. Darryl noted that he doesn't know enough about potential impacts right now to know exactly what that might look like.

Q: If Coyote Valley isn't subject to the HCP, do its developers care about the HCP beyond coordinating mitigation?

A: Possibly. For instance, under Section 7, you can't get take authorization for nonlisted species. If a species covered by the HCP becomes listed before implementation of the CVSP finishes, the developers could come to the HCP to get take authorization rather than reopening the consultation with the Corps.

Q: Are the wildlife agencies saying that Section 7 will suffice to cover all impacts from the Coyote Valley development?

A: The agencies don't have the option of telling the Coyote Valley developers that they can't apply for permits under Section 7, since this right was reserved in the HCP/NCCP agreement that dubbed the Coyote Valley plan an interim project.

Q: But can the developers get all of their permits through Section 7? For instance, does it cover serpentine habitat?

A: Yes, it covers serpentine habitat, according to Kerry. David also noted that the quality of the wetlands near the development area is very low—there is little if any natural vegetation or habitat.

IV. REVIEW AND DEVELOP BROAD GOALS FOR THE HCP/NCCP

Ann Draper of the Management Team gave a brief overview of the project's draft goals as they were articulated in a staff report dated 2-23-06. As they currently stand, they are designed to be broad and distinct from the plan's conservation goals. The current goals are intended to explain what is to be achieved with the HCP/NCCP at the broadest level. The staff report lists the goals in a series of categories but they are not in any particular order. Joan noted that from a process standpoint, the Management Team had been instructed not to wordsmith since the Stakeholder Group would discuss and suggest revisions for the statements. Ann introduced each statement to describe the Management Team's thinking behind the proposed statement. Joan facilitated the discussion.

Keith noted that the document defined a goal as providing a purpose or need for the regional plan, and suggested that each goal should address one or the other of these. Some goals do not come into this realm. He suggested that these goals may be more like guiding principles or strategies, and asked if they could be separated.

Under “Biological Resources and Conservation,” the group defined goals 1 and 3 as true goals, and decided that goals 2 and 4 were actually strategies. One member noted that the notion of “conserving/recovering species” is a little confusing, since he wondered whether the HCP was really going to recover species. The group suggested replacing this language with wording that suggests rehabilitating species rather than restoring them. The group also noted that there were multipurpose benefits for the plan.

In the water goals, several group members questioned the reference to flood control protection. One member wondered whether the plan was trying to protect development (i.e., protect against flooding) or protect flooding itself (e.g., Pajaro—flooding in that watershed is good because it prevents flooding downstream, so you want to protect against development). Several members noted that the plan shouldn’t prevent natural flooding. Kenn also suggested using “beneficial uses of water” in place of “water supply” to be broader in meaning.

Virginia suggested that the document have a glossary to define what each term means. Kenn passed out an example of a glossary from the Water District.

One member noted that an additional benefit of the HCP should be recreational access to lands. Craige noted that he was a huge advocate of public access, but that interface between urban and natural areas is important. He pointed out that the plan shouldn’t prevent people from accessing lands, but should encourage safe use. Controls are needed to determine when access is appropriate and when it is not. The group commented on two groups of statements and agreed to pick up where they left off at the next meeting.

V. REVIEW AND DISCUSS STAKEHOLDER INVOLVEMENT MATRIX

This agenda item was abbreviated and discussed briefly before the group began the goals discussion. Joan distributed the matrix of involvement strategies and asked group members to complete the matrix as soon as possible to give the Management Team a better sense of what types of outreach and involvement would be best for the group.

VII. PUBLIC COMMENT AND NEXT STEPS

In upcoming meetings, David will provide additional info on vineyards and ways to address them. Joan will do additional outreach to make sure representatives of the agricultural community are at the next meeting. She noted that the group should be prepared to make a recommendation by May on how to handle agriculture in the plan. Darryl will check with the wildlife agencies to get specific info regarding Section 7 and the Coyote Valley Specific Plan.

The goals discussion will continue at the March meeting. Notes will be taken on suggested changes to the goals, but to avoid confusion with multiple versions of the document, no text changes will be made before the group finishes moving through all of the goals. Keith requested that a large block of time be set aside in the March meeting to finish going through the goals. Joan and Ken also reminded the group that the goals will be revisited several times over the coming months.