

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN
Stakeholder Group Meeting | April 29, 2008 | Morgan Hill Community & Cultural Center

IN ATTENDANCE:

Stakeholder Group Members:

Jack Bohan (representing General Public)
Kevin Bryant (California Native Plant Society)
David Collier (Sierra Club)
Craig Edgerton (Silicon Valley Land Conservancy)
Justin Fields (Santa Clara County Cattlemen's Association)
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)
Virginia Holtz (League of Women Voters)
Michelle Korpos (Home Builders Association of Northern California)
Bob Power (Santa Clara Valley Audubon Society)
Brian Schmidt (Committee for Green Foothills)
Carolyn Tognetti (Save Open Space Gilroy)
Lloyd Wagstaff (The Nature Conservancy)

Excused: Keith Anderson, Kenn Reiller

I. WELCOME AND INTRODUCTIONS

Joan Chaplick welcomed the group to the meeting and noted that Troy Rahmig would be presenting from Jones & Stokes in place of David Zippin.

II. UPDATE ON RESULTS OF MEETINGS WITH LOCAL ELECTED OFFICIALS

Ken recently met with two elected bodies and six partners, including the Santa Clara County Open Space Authority and the San Martin Planning Advisory Committee, to receive input with respect to the plan. The following is a summary of the feedback Ken received.

Gilroy

The City provided no comment on the permit term and agreed with the excluded activities list. They commented that the plan should acknowledge that land acquired under the plan should be accessible to the general public. The City requested to cap administrative costs at 6%. There were no comments about the conservation strategy or the implementing entity. City Council asked if they are going to have to adopt fees, to which Ken applied in the affirmative.

Morgan Hill

The Planning Commission and City Council have both had opportunity to discuss the plan. Both expressed support for the permit term, covered categories, process, principals and general conditions. The City believes that the area that was to be covered by the Coyote Valley Specific Plan should be included in the plan. They also feel it is important to include as part of the plan a mechanism that will ensure that plan compliance will bring streamlining benefits. They recommended incorporating the Morgan Hill burrowing owl fee into the Habitat Impact Fee and refining the plan's definition of affordable housing from 90% affordable to 75% affordable. The City supports the use of a joint powers authority (JPA) to implement the plan.

San Jose

The City of San Jose has questions and concerns about the uncertainties of adding species over time, including the creation of new impact fees. They also requested information about how the plan treats agricultural activities. They recommended eliminating the zone intensification fee and recommended that the fee issue come back to City Council before the public draft is released.

Santa Clara Valley Transportation Authority

The VTA provided no direct comments related to any of the seven areas. They required clarification on the definition of “take” and requested that the plan provide clear discussion of the benefits that compliance will bring.

Santa Clara Valley Water District

There was some discussion regarding the timeframe of 40 years versus 45 years for land acquisition. There was also discussion about modifications related to the stream map. The District voiced concern regarding the inclusion of dairies and feedlots as covered activities.

Santa Clara County

The Seven Policy Areas have been reviewed by the County Planning Commission and Parks and Recreation Commission. Board of Supervisors review will occur on Tuesday, May 6th. The County Executive Office staff report will provide considerable detail on the projected high level of fees for rural single family houses.

The County provided strong direction for partners to maintain local control of the plan. The organizational structure of the Implementing Entity should provide direct accountability. In other words, members need to have a direct connection to the entity or government they represent. The staff report will recommend use of a JPA as the primary implementing entity.

Santa Clara County Open Space Authority

Virginia reported back on the feedback provided by the Open Space Authority. The Open Space Authority agreed to consider being a plan permittee/partner. Sequoia Hall will make a statement regarding this topic to the Liaison Group this Thursday evening.

III. DISCUSSION OF CHAPTER 8 (IMPLEMENTATION)

Before beginning discussion of the details of Chapter 8, Ken provided some overall comments about issues that may likely arise as part of future discussion. Since the HCP process focuses on terrestrial species and the land reserve system, Ken anticipates requests to add more detailed conservation actions for the whole stream system. Without an integrative approach, upstream improvements can lose value, which means that it may be necessary to refine proposed stream conservation activities to involve downstream parts of the system that are not part of the reserve system. The stream aspect of habitat conservation could require that the plan include a notable public education component that includes activities for volunteer involvement.

Joan opened discussion of Chapter 8 by introducing Troy Rahmig who framed the discussion for the group. Troy began by asking stakeholders to consider the following elements when providing input:

First, he requested guidance related to the structure of the Implementing Entity and noted the tendency of jurisdictions to be supportive of creating a JPA. How will other groups (wildlife agencies and technical groups) interact with this entity? How will entities interface with the Implementing Entity?

Second, how will easements look in the plan?

And finally, how will the data be tracked for this project over time? Should plan progress be measured by the number of acres conserved and the number of acres impacted? This is an important piece because setting performance measures is how we ensure that the plan remains in compliance.

Carolyn began the discussion of Chapter 8 by noting the concern over fees was a recurring theme. Who truly sets fees? Will plan partners set them?

According to Ken, wildlife agencies insist that the plan is tied to a budget that works. Local governments have flexibility in determining plan-related expenses and identifying revenue needs. NCCP guidelines request that enhancement be a part of the plan, which means that the plan budget must also address enhancement costs. There is a growing sense among jurisdictions that fees are an insurance policy intended to spread risk so that particular projects don't bear the brunt of funding plan requirements.

Jack requested clarification on the terms "permit" and "permittee" as used in the plan. Terminology used in the plan should differentiate between a take permit and a habitat conservation permit. Similar confusion arises when using "permittee" to refer both to applicants and partners.

Bob brought up the need to ensure that science advisors play a strong role in the plan. How do we plan so that the common disconnect between scientific recommendations and action does not play out in the case of HCP implementation?

Troy responded to Bob's concern, stating that while science advisors may not have a seat on the Governing Board, they will play an important advisory role. The "teeth" behind the science will continue to come from regulatory agencies. Wildlife agencies will be heavily involved in the process, particularly during the first couple of years of implementation. Ken added that the central role of the Implementing Entity in integrating scientific data into decision-making is discussed generally in section 8.3.2, and this would be the appropriate section to amend to address concerns. Currently, partners do not envision having a formal science advisory group that meets regularly since so much of the relevant expertise will link to species and site-specific issues and knowledge.

Brian then shifted the focus of discussion to the challenge of tracking actions that fulfill mitigation requirements and those activities that provide habitat enhancement. What portion of lands acquired or protected under the plan will count towards mitigation and what portion will be set aside for enhancement projects? He expressed strong concern that the plan as written will allow enhancement projects to be counted towards mitigation.

Accounting for enhancement will pose the primary challenge. Accounting for mitigation will take place according to the principal that x acres of impact translate into x acres of land purchased to mitigate that impact. Enhancement will only be tracked insofar as mitigation is tracked accurately.

The assumption is that whatever land is left over (whatever land beyond what is required for mitigation) will count as enhancement.

Ken affirmed that partners and stakeholders have voiced consistent concern over using land purchased for conservation and enhancement to mitigate private development impacts. Jan requested that this issue receive greater attention and that how the plan clarifies this is addressed. Brian stated that he does not want to see groups like the Nature Conservancy buying land that is also used to offset private development impacts. Similarly, approved funding from the County Parks Charter Fund should not be used for mitigation. This should include mitigation for the construction of County roads as well as mitigation for development. To avoid the problem of “mixing impact with enhancement,” Brian suggests that the willingness of the landowner determines whether or not land can be counted towards meeting mitigation requirements.

There were a number of questions and concerns raised with respect to the Stay-Ahead Provision (8.6.1, p. 8-22), particularly related to the role of interim conservation (8.6.2, p. 8-27) in meeting Stay-Ahead requirements. According to Jan, the plan should be amended to clarify whether lands purchased before passage of the plan and incorporated into the reserve system meet requirements under the Stay-Ahead Provision. He is concerned that being able to do so makes it easy to show progress when no new land has actually been acquired or conserved.

Brian asked a) how interim conservation credits will be made part of the Stay-Ahead Provision and; b) where acreage will come from to offset development impacts. Troy answered that the stay-ahead provision outlines what is required for the total permit term, and does not focus exclusively on meeting mitigation requirements. It is possible that partners may bring interim conservation lands into the reserve system and in doing so ensure appropriate management of land counted towards mitigation.

Troy also told the group that the Implementing Entity will be looking for mitigation opportunities from the start, which is why coordinating land acquisition before plan approval is important. FWS does a good job at funding acquisition from the beginning of HCP implementation. In this case, FWS recognizes that partners are beginning implementation with no fees in place.

Jack suggested that interim land acquisition be made a last resort and that plan language be strengthened to state that purchasing the land right away in the early stage of plan adoption be a requirement and not stated as a preference or recommendation.

Carolyn raised a question related to the Stay-Ahead Provision: what happens when we don't keep up with the requirement? What is the preferred approach and is the list of potential solutions (8-24) shown in order of priority or preference?

According to Troy, there is no special sequence to the list of solutions and they are not in priority order. There are several ways to address a situation in which the Stay-Ahead Provision is not met. Similarly, there is a need for some flexibility in how to respond. The approach taken would depend on the project, what its deficiencies are, and what the reasons are for those deficiencies.

Virginia recommended amending language describing interim conservation requirements (8-27) to state that these requirements do not apply to state and county parks.

David requested further clarification of the term “enhancement,” and asked whether enhancement refers to purchasing land or managing land. Troy agreed that enhancement is a term subject to interpretation, but made clear that here it refers to purchasing land, improving management and monitoring to demonstrate habitat enhancement.

Troy noted the importance of establishing goals against which to measure enhancement to determine whether projects and activities they are successful.

Jack requested that the group seriously consider the plan’s long-term functionality. Troy agreed, stating that the plan should be advised by lawyers. In many southern California plans this is handled as a separate agreement and referenced in the plan.

Carolyn referred to roles and responsibilities of the Implementing Entity (8-1, 8-2). Presuming that the Implementing Entity would take the form of a JPA, would the JPA then act as the Governing Board?

Ken responded to Carolyn’s question about the respective roles of the Implementing Entity and Governing Board by clarifying that the chapter does not make a statement about what the organizational format of the Implementing Entity will take. If it does take the form of a JPA, the JPA (an authorized organization) should be composed of members of elected bodies. Ken is not sure what other local ordinances or policies need to be in place before this can happen.

Because of the number of contracts under the plan and the need for particular expertise in contract management and plan implementation, the JPA would need some staff structure. This could take the form of dedicated staff or hired consultants with the necessary legal, biological, planning expertise. Where possible, Ken recommends that staff support be acquired via contracts with entities that already have this expertise.

Carolyn then requested clarification related to the public’s role (8-17), noting that plan language is confusing. She believes that there needs to be more opportunity for a public advisory committee to be involved in plan implementation and does not think that an annual meeting is sufficient. Ken referred her to Section 8.2.7 (8-6), which also discusses the role of the public. He suggested that language be added to state the Implementing Entity shall create a public advisory body.

Justin then requested that a paragraph be included in the discussion of easements on cultivated lands (8-34) to address the use of easements on grazing lands. At this point, the plan does not refer to easements on grazing lands.

Referring to section 8.6.5, “Willing Sellers” (8-37), Justin then asked if the first bulleted option for consideration in the case of a key landowner being unwilling to sell is applicable to partners as well. Ken replied that nothing in this plan would limit the existing power of agencies to exercise eminent domain. In theory, eminent domain could be applied for mitigation purposes, though this is unlikely to occur.

Jack requested that the plan include a glossary or section that defines terms as part of each chapter to improve clarity and usability.

In reference to Section 8.3, “Responsibilities of the Implementing Entity,” David suggested that the stakeholder group recommend that the Implementing Agency hire a minimal group of core staff. This is important so that the IE includes “knowledge carriers.” He noted that he can’t imagine having a set of consultants carry out the outlined series of tasks (8-7 – 8-9).

Ken affirmed that hiring staff will help meet the need for organizational memory and consistency. David agreed, noting how important it is to have “people whose primary purpose is the success of the plan.” Similarly, Troy stated that habitat conservation plans that have a core, dedicated group are among the more successful. Lloyd provided a local example of the importance of allegiance by comparing the BTA and Flood Prevention Authority.

Brian stated that the plan should include a new provision to ensure temporal accountability for mitigation. According to Troy, FWS requires an annual report that demonstrates that mitigation requirements are being met.

Jan expressed concern related to the in lieu provision of providing land instead of paying fees. What is described in the plan as last resort may often become first resort. He noted local agencies are at times proponents of development projects, and so there is potential for conflict when they are reviewing mitigation activity. For this reason, it may be necessary to have someone moderate the process of making “land in lieu” decisions with respect to fulfilling mitigation needs and related reporting. It may be necessary to receive input from an independent scientific consultant or advisor to make sure that any land provided in lieu of fees will fit with the plan’s conservation strategy and is consistent with the principles of the reserve’s design.

Jan expressed strong support for Section 8.7, “Roles and Responsibilities in Reviewing Applications for Take Authorization,” in that it is clear about the relative roles of different entities. He requested that other roles outlined in the plan be more clearly defined.

Jack stated that review by a citizen advisory group prior to final approval could provide the independent review that Jan would like to see. He offered the Open Space Authority Citizen Advisory Committee as a model. Troy reminded the group that establishing a public forum to advise on such decisions may not be appropriate in light of the need to ensure confidentiality to landowners.

Ken noted that to meet this need for independent review, an alternative model for the Implementing Entity could be used in which the Implementing Entity would include representatives from conservation trusts or non-governmental organizations. The CAC and OSA have used this model successfully in the past.

David recommended that spending money to manage land should be kept independent of expenses related to monitoring.

To ensure that a landowner is in compliance with an easement agreement, Brian recommended including a provision in the plan (see Easements on Private Land, 8-31) allowing entry onto private land. Troy referred Brian to language already included at the top of 8-33 and expressed that details such as this are generally written into the easement itself.

Following brief discussion, Lloyd stated that the informal relationship between landowner and the entity responsible for managing the easement is what makes an easement successful. For this reason, it may be important to include a clause in the plan requiring or allowing regular visitation of the site of the easement.

Jack and Virginia agreed that the most effective way to accomplish the objectives related to establishing a conservation easement is by ensuring that landowners are fully aware of easement conditions. For example, outreach to the real estate community to ensure that land title reports include easement conditions in a clear and obvious manner should be a part of the plan implementation process. Title reports should physically outline the affected area of property.

IV. PUBLIC COMMENT AND NEXT STEPS

Friday, May 9th is the deadline for comments on Chapter 8 and new thoughts on previous sections.

The public involvement group has scheduled the June community meeting for Wednesday, June 25th from 6:30 to 8:30. It was agreed that the June Stakeholder Group meeting will be on Wednesday, June 25th from 4:00 to 6:00. Both meetings will be held at the Morgan Hill Community Center. A second community meeting may take place at the Peninsula Conservation Center in Palo Alto. Key topics include a review of preferred alternatives and status update with regard to remaining policy decisions.