

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN
Stakeholder Group Meeting | July 22, 2008 | Morgan Hill Community & Cultural Center

IN ATTENDANCE:

Stakeholder Group Members EDIT:

Keith Anderson (General Public)
Jack Bohan (representing General Public)
Kevin Bryant (California Native Plant Society)
David Collier (Sierra Club)
Craig Edgerton (Silicon Valley Land Conservancy)
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)
Michelle Korpos (Home Builders Association of Northern California)
Peter Mirassou (Agriculture/Landowner)
Bob Power (Santa Clara Valley Audubon Society)
Kenn Reiller (Pajaro Watershed Council)
Jack Sutcliffe (Santa Clara County Farm Bureau)
Lloyd Wagstaff (The Nature Conservancy)

I. WELCOME & INTRODUCTIONS

Joan Chaplick welcomed the group and provided an overview of the afternoon's agenda. The afternoon's meeting included discussion of the timing and distribution of administrative plan draft and review of draft chapters 9, 10 and 11. The meeting concluded with a discussion of the potential use of County parks tax revenue to mitigating impacts from road and airport improvement projects.

Virginia Holtz and Carolyn Tognetti were not able to attend.

II. UPDATE ON PLAN PROCESS & SCHEDULE

Ken shared the schedule for the release of the first administrative plan draft. The first draft will be posted to the project website on Friday, August 1, and a hard copy delivered to those who request one.

The project team will also make copies available on CD ROMs. The CD's will include a) a clean Word document of chapters 9 thru 11; and 2) pdfs of all of the chapters, showing tracked changes for chapters that have been distributed previously (chapters 1 thru 9). Tables and figures will be available as pdfs only - figures will be included as separate pdf documents and tables will be organized by chapter. Appendices will be re-released as part of this package. Included in this package will also be a summary of what is new and what has changed to help guide review of the document.

Attendees were requested to indicate on the sign-in sheet if they would like a CD ROM or a hardcopy or both. Hard copies and CD ROMS will be sent by mail.

The Stakeholder Group has two months to review the document and provide changes and updates. Please make any edits to the clean Word document provided. The tracked changes version is so stakeholders can verify that previous suggestions and concerns have been addressed.

This is a very important review period, but not the last review period. The second draft will be released to the group this coming fall. However, we would like to get as many issues resolved during this review period as we can. However, there will be further opportunity to provide substantive comment. Until this becomes a public draft, it remains an administrative draft document. The public review draft will go out about a year from now.

Three months before that time, notices will be made part of the public register. Comments from this evening will not be incorporated into this administrative draft.

III. DISCUSSION OF DRAFT FUNDING CHAPTER (CH. 9)

David Zippin opened the discussion of Chapter 9 and noted he was especially interested in hearing comments on the funding section, and also the cost section, given that the group has now had the opportunity to review both together.

David Collier began by asking how will the recent Supreme Court ruling affect the plan given its impact on park funding.

David Zippin gave some background information on the ruling to which David referred. The Open Space Authority has two property tax assessments – the second was challenged and defeated by a taxpayer association group in Supreme Court last week. It remains unclear what that means for the Open Space Authority and the current \$60M sitting in the bank which may need to be repaid. Based on this ruling, the revenue source no longer exists.

David Collier then began with chapter review comments, questioning the plan's assumption that the Open Space Authority would be making local contributions based on the historic rate of land acquisition and requested that the group go back and review these estimates.

David Zippin asserted that while their contribution may be less in the future than it has been in the past, land acquisition will not stop. We expect them to continue to play an important role in plan implementation. They are still interested in exploring the option of becoming a plan permittee. Either way, they remain interested in playing a role with respect to the plan and land management and acquisition. Ken reminded the group that we have been conservative in estimates of the Open Space Authority's contribution related to land acquisition.

Kenn Reiller raised a question related to local versus regional benefits and whether there is a distinction made between the private and public sector in collecting development fees.

David and Ken responded, affirming that there is no benefit taxation part of the HCP. These are not new taxes that we are proposing. They are development fees that are already charged, for a process that substitutes for money that developers and agencies already spend. We are simply redirecting money that these groups already spend.

Ken reviewed the structure of the fee zones: the basic rule is that we have identified four types of areas within the study area: high, moderate, lower and no or limited habitat value. The fees are based on the first three categories and are relative to the impact on habitat. There is no distinction made between public and private sector activities.

Bob Powers observed that the cost provided in the plan seem to be derived based on a very conservative approach in order to make sure that costs are not underestimated. Regarding the cost of easements, the group originally projected 75% of the cost of fee title purchase, but the plan lands on 50% of cost of easement. Why did the numbers change?

David responded, reminding the group that this happened in part because they had narrowed their assumption of the number of easements that would be purchased. Also, stakeholders had realized that most people would not purchase an easement at 75% of cost of fee title – at that price, they would purchase the land outright.

There was further discussion related to land speculation and the market value of land, particularly with respect to agricultural lands. In terms of using easements to conserve agricultural lands, this approach is more

applicable in more rural areas or land in the higher watershed and properties in the flood plain, and not properties in more urban areas that people have interest in developing.

Jack Bohan requested clarification about the function of easements– what is retained by the owner when an easement is purchased?

David Zippin replied that in the context of the plan, Chapter 8 determines what can be done on a land with an easement in terms of habitat management, enhancement and restoration. Negotiation with the landowner determines what will and can and cannot take place on the property. This negotiation takes place on a case-by-case basis.

Lloyd provided some follow-up explanation based on his experience with The Nature Conservancy. The bottom line is that you can't go over the value of the development rights that are being restricted. Other factors weigh in as well when assessing the value of a conservation easement. Valuing easements comes down to the rights you are buying.

Jack again raised the issue of easement acquisition costs – why have we changed this to 50% of the total value of the property? He is concerned because this plan language may unintentionally limit the ability of the Implementing Entity to negotiate for a better price.

David reminded the group that these are planning estimates. Lloyd suggested adding some follow-up language to stop some misperceptions in the future. Additionally, easement appraisals are not based on a percentage of the cost of the market value of outright ownership.

Turning the conversation back to development fees, Kevin Bryant asked, are the zone fee boundaries on the map set in stone or are they fluid?

David confirmed that they are just lines on a map - a fee ordinance will have to be property-specific.

In response to an inquiry from Lloyd related to fee zone D on the current map, Ken confirmed that while Zone D will be part of this administrative draft, it is on "life support" and will likely not be part of the final plan.

David Collier voiced concern with the plan's 15% total restoration cost estimate in light of the relatively low success rate of restoration projects generally. What happens when major reconstruction or restoration projects are not successful? Will 15% of the total plan costs be enough?

David Zippin believes that this cost estimate is sufficient. Riparian restoration and freshwater wetland restoration projects provide good examples of areas where restoration practices are well-established and generally successful. There is also a contingency fund to help account for discrepancies in planning costs and real costs but we do believe that 15% is sufficient.

To begin, success is very site-specific and is dependent on the soil conditions and restoration goals, design and implementation. David also suggested that the success rate met by restoration projects is dependent on one's definition of success. As part of this plan, we are not claiming to re-create every ecological function that is lost as a result of development. However, we will help offset these losses. Restoration and re-creation are not the only means to off-set impacts to wetlands – we have a number of regulatory protections and we invest in enhancing those systems that are protected. Restoration is just one part of off-setting impacts.

David Collier responded: What about long-term goals that are important to the sustainability of habitat and species over time? We are aiming for replacement of ecological value in perpetuity and are our standards then high enough for this restoration?

Kevin responded by stating that we will monitor vegetation and hydrology to measure success - things that are easily measured and achievable over a shorter amount of time. The monitoring program will be an important part of helping judge the benefits to native species over a longer time frame. Craig also noted the role that adaptive management will play in helping to eliminate the failure rate of mitigation and restoration projects.

David Zippin commented that academic studies of restoration projects judge results based on too short a time frame. We are not willing to tie our measure of success to these measures. In this plan, we are not relying on a 1 to 1 mitigation rate. We exceed traditional mitigation project parameters in terms of replacing and enhancing ecological functions. This is not a traditional mitigation program.

In response to a question from Peter about areas of focus identified in the plan, David said that Chapter 5 discusses the general areas where there is potential for acquisition of easements from interested sellers. Ken then provided a recap of group discussion earlier in the process to describe the group's strategy towards mapping the plan area.

Peter asked about the opportunities to create a win-win situation on some of these parcels. Ken provided examples of where the negotiation and creation of easements adds value for all parties.

Bob brought up the policy of allowing permittees to conduct restoration projects in lieu of restoration fees. He expressed concern with developers who do not follow through with agreed upon mitigation/restoration projects. What kind of oversight exists in these situations?

David Z. said that he hasn't seen this happen very often. Restoration requires a lot of expertise and generally developers are not equipped to conduct restoration projects themselves. Agencies like the Water District would be an exception. The Water District does have the capacity and interest and history of doing this successfully.

Following Bob's question, Craig asked if the Implementing Entity (IE) or regulatory agencies would have jurisdiction to oversee that kind of project, or both?

David clarified that regulatory agencies do not have direct authority over projects that fall under the plan – they are responsible for ensuring that the permits overall are held. The IE would be responsible for overseeing permittee-led restoration projects but they would not necessarily have expertise to do so.

Bob recommended that the plan include language to the following effect: if an entity has experience and expertise that is clearly demonstrable then this could be an option, otherwise, this approach won't be considered. David Zippin and David Collier agreed.

Kenn then recommended making a distinction between active and passive restoration. Many lands have historic conditions that can be restored via passive, natural processes following the removal of dikes, etc., to make up for human-induced changes to the environment.

One stakeholder noted that the plan does not establish that in perpetuity maintenance on the part of the landowner will be necessary or that it will be funded through an endowment that they provide. Landowners need to be aware of their responsibilities in such cases, and the chapter should acknowledge the long-term commitment required here. David Z. added language to chapter 9 based on this conversation.

David C. also questioned the relative investment in time, energy and resources that a developer or landowner would make towards a restoration project, compared to the investment that would be made were an outside entity doing the work. Along these lines, he requested that the plan include language to make clear to the developer that the creation of isolated ponds etc. to not qualify – mitigation sites need to be connected to a broader ecological system to add value.

David expresses concern about loopholes related to development fees. At what point are fees triggered when it comes to developing or improving agricultural land?

David Z. responded, saying that the conversion of natural land to agricultural land is not regulated by the County. However, if they do anything that requires a County permit, then there will be a development fee. The fee is not based on current land cover but rather the zone where the parcel is located.

One stakeholder asked, when investments are made in an endowment can endowments be tied directly to a piece of property or is the money pulled into a pool? Craig clarified that there is no case where an endowment is set aside or tied to a specific site unless a landowner sets aside an in lieu fee.

Kevin asked how will affordable housing be defined by the plan and how can we ensure that development of affordable housing will not constitute a loophole?

Ken responded, using two examples from Morgan Hill and San Jose. He believes that we need to define affordable housing based on the state's legal definition of low and moderate income housing. However, the decision to build affordable housing on natural lands or other lands important to the plan will be made based on public policy goals. While affordable housing is a covered use, in some cases it will be more important to encourage affordable housing rather than require a plan development fee. This topic warrants further conversation in the next round of review.

Kenn then voiced concerns related to valuing water using an urban water rate. He contended that the value of water is ten times too high and that water needs to be priced using the agricultural rate and based on two beneficial activities: ecological flow and groundwater recharge.

Jerry responded, stating that water that provides ecological flow can also be water lost. Additional water that runs past the percolation zone is lost, or on average there is carry-over water in the reservoir which is reducing potential storage. Plans to hold 300,000 AF by end of summer so you have some for fish – that costs some water because you have storage you can't use. The figure in the plan represents the best estimate on average of water lost, though this topic is still in discussion.

Kenn believes that the view of where water is lost and where it isn't should be based on State Water Resources research and opinion until a water budget is made for the area. Ken and Joan advised that to have more informed discussion on the topic, the conversation needs to involve representatives of the Water District, who were not in attendance.

David Collier then moved discussion in the direction of partnership deals. David requested that the plan specify that choosing land for purchase take place via a genuine partnership between the IE, landowners, experts and other partners. Land chosen by partners should have as much ecological value as land that would be chosen by the IE itself. Land developers should not be able to use their own selection criteria for land purchase.

David Zippin referred the group back to Section 6.8.2, in which the criteria is very clear. The majority of land acquisition that will occur under the plan will be made by the IE itself. Given the need to be cognizant of creating a plan that is manageable by size, it is not necessary to re-iterate this and other criteria throughout the plan.

Project owners have the right to give land in lieu of fees. Whatever comes out of that process must be directly related to goals of the plan and the reserve system. There is no reason to distinguish between public and private sector here. Accepting land in lieu of fees is more likely to be a public sector issue.

Michelle Korpos and David Collier requested that previous sections be referenced where it is important to do so.

In reference to Section 9.2.9, “Remedial Measures,” David Collier requested justification on how the 3% figure came about. Given what we know about climate change, this figure seems too low in his estimation. David Zippin disagreed, and Ken reminded the group the difficulty of predicting climate change impacts at the smaller scale, despite all we know related to the larger, global context.

IV. DISCUSSION OF DRAFT ASSURANCES CHAPTER (CH. 10)

Jan requested that the group consider how recent fire events in California over the past couple of weeks may impact our knowledge related to these processes, and how then this might impact the plan. David answered that these events have been occurring over the years and recent experience does not significantly change existing knowledge related to fire events.

In reference to Section 10.2.1 related to Vandalism of Reserves (p. 10-11), Kenn requested that the plan and planning costs take into account the high impact that homeless encampments, as well as cleaning up lands following removal of encampments, can have on the land.

Kenn also recommended changing the plan’s estimation of the frequency with which control facilities will need to be replaced. Studies and experience clearly demonstrate that flood control facilities begin to fall apart in approximately 50 years. Changing the plan’s estimate to reflect this knowledge would also be consistent with water agency design manual.

David Collier referred to the top of p. 10-6, requesting clarification of how the rate of future wildfire occurrence was determined, and noting an inconsistency in the language explaining the approach to determining this rate. While the plan states that it is “taking climate change into account” the following sentence suggests that figures are based on historical average.

Similarly, regarding basing future drought occurrences on historic records (top of p. 10.10), David Collier stated that it doesn’t seem that the plan’s number takes global climate change into account. David Collier suggested that this may be one of the most foreseeable things that can happen.

David Zippin disagreed and said that we do not have enough information related to the impacts on this area. While David Collier suggested that we need to consider the regional scale. Ken agreed with David Zippin on the principle that we need to keep things general based on limited knowledge of climate change impacts at the micro level, or even at the regional scale.

According to Kenn, the plan applies a human definition of drought as opposed to a species perspective. While the DWR suggests that droughts are defined by the water user, the plan should apply a definition based on a habitat perspective. Take the example of steelhead. Or perhaps more appropriately, rather include a hard and fast number as part of the plan, adaptive management should begin with a hypothesis related to impacts of drought on species.

David Zippin agreed that we are using a human perspective – these figures only trigger an assessment. While it may be better to have more flexible thresholds, regulatory agencies are pushing to have defined thresholds.

Kenn responded by stating that stream systems are so manipulated that we are going to induce drought conditions for species. Humans remediate by over-pumping streams and reservoirs and this has a negative impact on ecological conditions. This impact needs to be mitigated. It shouldn’t simply trigger a study.

Jerry added to the conversation of mitigating for drought in freshwater systems by stating that the idea of carry-over is one of the features that really improves conditions for Steelhead in the South County. We need to think in terms of at least two years in terms of how we use water. This is already built in to the plan’s assumptions.

In reference to 10.3.2, David Collier challenged the validity of the second bulleted (top of p. 10-23.) action. He feels that while minor changes to objectives may be necessary to reach biological goals, making minor changes to the plan's biological goals would be inappropriate. David Zippin agreed that clarification should be added.

V. DISCUSSION OF DRAFT ALTERNATIVES CHAPTER (CH. 11)

Before reviewing the chapter, David reminded the group that this chapter is very narrowly defined and is designed to meet regulatory requirements. Therefore, alternatives to take presented here only relate to covered species. This is a thought exercise in evaluating alternatives and we are still saying that we are going to adopt covered activities in the plan.

Kenn provided a site-specific recommendation – activity south of the 152 should not take place at all; this should be called out as an area of avoidance. Kenn will suggest plan language to help with comments he is making.

VI. DISCUSSION OF COUNTY POLICY ON USE OF PARKS CHARTER FUNDS

At the July meeting, Brian Schmidt shared a copy of an e-mail that shared his concerns with members of the Board of Supervisors regarding the use of parks charter funds towards road and airport impacts and how this relates to the plan. Brian was unable to attend the meeting and in his absence, Ken provided an overview of the issue of using parks charter funds towards road and airport impacts and how this relates to the plan.

This item is scheduled for discussion at the August 12 County Board meeting. Partners including Gilroy, San Jose, and Morgan Hill have the least amount of restoration work to offset impact fees. The Water District has a large stake, but the policy issue lies with Santa Clara County.

Jan requested clarification – is this simply a bookkeeping transaction? His understanding is that it is more than that. Is it correct that if mitigation comes out of park charter funds, then county roads and airport would not have to pay impact fees?

Joan read Brian's e-mail to the County Board of Supervisors and requested a general reaction from the group about this. How should the group proceed? This is a new territory for the group since the issue was brought to us by a fellow stakeholder. Joan recommended that the group discuss and determine if and how the group wants to weigh in. The text is of Brian's e-mail, written on behalf of the Committee for Green Foothills, is provided below:

“To clarify comments the Committee for Green Foothills submitted at yesterday's Board meeting, we oppose the Habitat Plan recommendation announced yesterday to use County parkland purchased through the Parks Charter funding in order to mitigate habitat loss caused by other Santa Clara County government agencies.

The County voters passed Measure C in 1972 as a tax increase they imposed on themselves to provide an environmental benefit: more and better-maintained County Parks. The voters did not provide the County with this tax increase, and reaffirm it multiple times with the broad support of the environmental community, in order to enable road and airport expansion.

Using the Parks funding in this manner would convert it from an environmental benefit to an environmental mitigation, which is more than a semantic change. Environmental benefits are intended by voters to make us better off than would otherwise be the case, while environmental mitigation only makes up for other environmental harm and provides no net benefit.

Because the voters expected a benefit, it would be highly inappropriate to change what the voters asked for.

I noted yesterday that County Counsel opined that using County Parkland for mitigation would be legal, and because we have had no opportunity to study the matter, we offer no opinion of our own at this point on its legality. As a matter of policy, however, it is clearly a bad one.

Similarly, County Parks Director indicated that she did not see this as harming County Parks, but that is not the appropriate test - the real issue is whether voters will get the environmental benefit that they voted for, and this proposal transforms a benefit into a mitigation without a net benefit.

The County Executive himself indicated that problems could result from mixing or apparent mixing of Parks funding and Roads funding, and we could not agree more. We request that this proposal be rejected.”

David Collier expressed concern that future partnerships with County parks might not be able to be implemented because of legal challenges. Will park support be a reliable source of support for the program? We need additional information.

Jan commented that it seems wrong – park funding and park charter are different. For the plan to be credible, there should be no hint that tax money for open space and environmental issues be used to encourage or allow development. If that distinction is not very clear, it will taint the HCP. Confusion will impact the credibility of the plan.

Craige commented that if the policy is changed, then it may set a precedent that may be dangerous. Craige believes that as a stakeholder group we should take a clear position on this issue. At the very least, we should agree to take no position.

Jack commented that this is a legal issue and we don't have the resources for this discussion here.

Ken shared that County Council's office said it is a policy issue rather than a legal issue.

Lloyd commented that procedurally, he doesn't think we have voted on something like this before. He believes it's prudent that these things come forward to be vetted by the group. He recommends being consistent, recording stakeholder reaction in the minutes.

Craige requested a separate memo addressed to the Board of Supervisors meeting.

The only other time an issues was singled out for separate communication with liaison group involved Pacheco Creek, since there was substantial comment on the issues within the group.

It was agreed that Joan will send a memo to the County, noting that issue has been the topic of conversation among the stakeholder group. While the stakeholder group as a whole did not take a position or vote on the issue, members thought it was important to share the comments made within the group to the County Board of Supervisors. Joan will vet this section of the minutes with the group prior to sending the minutes to the Board. The minutes will be accompanied by the memo that provides a context for the comments being submitted from the stakeholder group.

IV. PUBLIC COMMENT AND NEXT STEPS

Comments on these chapters will be due end of September. We will send an announcement about when the first administrative draft will be available online. For those who requested a plan hardcopy or CD ROM, they will be coming your way via mail soon.

Ken, Joan and David will create agendas for August and September meetings, dividing up review of the first eight chapters between these two meeting. The focus will be responding to comments made to date. While the order of comment review may not be absolutely sequential by chapter, the group can anticipate discussion about Chapters 1-4, and perhaps Chapter 5, at the next meeting.

We will continue to meet on the 4th Tuesday of each month at the same location. The next meeting is August 26, 2008 from 4:00 -6:30.