

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN
Stakeholder Group Meeting | August 26, 2008 | Morgan Hill Community & Cultural Center

IN ATTENDANCE:

Keith Anderson (General Public)
Jack Bohan (General Public)
Chris Borello (Agriculture/Real Estate)
Kevin Bryant (California Native Plant Society)
David Collier (Sierra Club)
Craig Edgerton (Silicon Valley Land Conservancy)
Sequoia Hall (Santa Clara County Open Space Authority)
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)
Virginia Holtz (League of Women Voters)
Rick Hopkins (Home Builders Association of Northern California)
Jeff Martin (Landowner, Rural Property Development)
Susan Mineta (Shapell Homes)
Peter Mirassou (Agriculture/Landowner)
Kenn Reiller (Pajaro Watershed Council)
Brian Schmidt (Committee for Green Foothills)
Jack Sutcliffe (Santa Clara County Farm Bureau)
Carolyn Tognetti (Save Open Space Gilroy)
Lloyd Wagstaff (The Nature Conservancy)

I. WELCOME AND INTRODUCTIONS

Joan Chaplick welcomed the group and both Ken Schreiber and Joan applauded the efforts of the stakeholder group in their dedication to this process and review of all plan chapters. Ken noted that this process is now ahead of other counties who began their planning processes before the Santa Clara HCP process.

Joan requested that the group consider holding a second meeting in October to remain on schedule and accommodate holiday schedules.

Ken then introduced new members of the stakeholder group:

- Jeff Martin – South County landowner and residential developer in San Martin area.
- Chris Borello – 4th generation farmer in County and graduate from San Jose State.
- Susan Mineta – Vice-President/Forward Planning, Shapell Homes
- Ralph Santos – appointed and has expressed interest, but has not officially accepted.

Bob Power was excused from attending today's meeting.

II. UPDATE ON PLAN PROCESS AND OUTCOME OF COUNTY BOARD'S PARKS CHARTER FUND DISCUSSION

Ken provided an overview of the County Board's discussion of the use of county park charter funds for mitigation measures. Recently, the County voted 3-2 to continue in line with the way the administrative draft is structured, which does assume that the County will continue to take advantage of opportunities to use park charter funds to off-set County project mitigation fees. Brian reminded the group that as advisors, stakeholder group members can choose to oppose this position.

Craige expressed disappointment on the lack of follow-up regarding the agreement to send a memo with the stakeholder comments on this issue to the Board of Supervisors. While they did receive the information, it was not presented in a manner that distinguished it from the other materials Board members receive. One Board member commented to Craige that they are interested in the Stakeholder discussion and would have appreciated having these opinions brought to their attention. Craige noted that at least one Board member was swayed to vote against this issue based on the additional information they received.

III. REVIEW OF ADMINISTRATIVE DRAFT

Ken began the conversation by briefly reviewing the project schedule, and noted that the second administrative draft will be complete by the end of December. The final draft is scheduled to be done by November 2009

October 7th is the approximate deadline for stakeholder comments on the administrative draft, assuming the group schedules the additional October meeting for this date. Stakeholders can make comments on new chapters 10 and 11 as part of this round of administrative draft reviews.

Troy Rahmig reiterated that today marks a milestone. The first administrative draft is generally complete, with a few issues still needing to be addressed. Jones & Stokes received over 5,500 comments, a combination of comments received through countless meetings with different stakeholder groups, including development and local business interests and regulatory agencies, as well as from the plan stakeholder committee. Troy thanked the group for their participation and dedication.

Troy then walked through the first three chapters, discussed what has changed and noted major outstanding issues. The purpose of the presentation was to share with the group the parts of the plan that have changed so that stakeholders are aware of and familiar with these changes and can provide the necessary feedback. The plan includes a table at the beginning of Volume 1 which provides more detail related to major changes and outstanding issues for each chapter.

Troy introduced a slide illustrating the percentage and number of comments made on each chapter. Not surprisingly, the breakdown mirrors the size and complexity of the chapters. For the first four chapters, the most comments received were related to material in Chapter 4.

Major changes

In what will be the executive summary (to come in the second admin draft), Jones & Stokes has included Table ES-3, which provides a summary of net outcomes for each covered species. The table breaks down status, range, land acquisition projects, and impacts for each.

This draft also includes an updated impact analysis. The planning team is at a point where we have accumulated a lot of information. These updates reveal themselves in the impact analysis, and ultimately in the conservation strategy. Changed information has created a “ripple effect” whereby it became necessary to make changes in multiple chapters.

In the previous draft, all alternatives were laid out in Chapter 5. Now there is simply one strategy. Despite this, Chapter 5 remains the largest chapter.

Chapter 1

Not many major changes were made and few outstanding issues remain for Chapter 1.

Chapter 2

In Chapter 2, more detail was added related to covered activities in order to a) clarify questions about what activities entail; 2) address potential impacts of these activities; and 3) describe activities so the plan remains clear for users in years to come.

The Chapter now also includes discussion and description of activities not covered in the plan. A new figure provides a visual of where future project sites are located.

The group will need to determine the impacts of rural/agricultural uses and the level of discussion appropriate to include in the plan.

Chapter 3

Updated land cover data has also changed the impact analysis and species models. The plan now includes an integrated fish community map. However, the map has not been translated into impacts on fish communities.

Appendices D and F (related to Chapters 2 and 3)

Edits have been made to nearly all species accounts. Additional comments came from species experts during the second round of vetting plan information. Most notably, since the species accounts were drafted and reviewed by experts, Santa Clara Audubon published the SCV Breeding Bird Atlas. This may require further updates to the species accounts.

Keith Anderson expressed disappointment that species accounts for salmon and steelhead have not been completed. Specifically, the sections on modeling remain incomplete. The group was told that these accounts would inform the plan process, but obviously this is not the case. Troy said that J&S waited on the community map for a while, which is why this modeling is not complete.

According to Pat Showalter, the Three Creeks HCP was recently distributed internally to those not involved in its development. Since this HCP is mainly aquatic in nature, it will provide information to fill some current gaps.

Ken also noted that attention to aquatic species and habitat issues has escalated in the past few months, and the group has received a lot of good information as a result of this (i.e. related to Three Creeks and Pajaro). Active conversation between key agencies (FWS, FGD, etc.) has taken place and this information will be integrated into species accounts.

A) Chapter 1, Introduction

1.3.2: Other Federal and State Wildlife Laws and Regulations (Bald and Golden Eagle Protection Act, p. 1-23).

Carolyn Tognetti asked if the tracked change in this section was included to align with regulatory language. Troy responded that the bald eagle listing has changed, but protection continues under certain acts. The tracked change is language added to comply with the language of the new world of bald eagle protection following its delisting. FWS has expanded their definition of “disturbed” to provide people with additional guidance.

David Collier asked if the golden eagle is a no take species in our document. According to Troy, the State cannot permit take of the golden eagle. It is allowed to remain a covered species in the plan, but it's not possible to receive a permit for the take of individuals. David requested that the plan call the golden eagle out as a no take species.

The state and the federal governments define “take” differently - the State defines “take” as the loss of individuals, while the Feds define “take” as the loss of habitat. When the plan calls a species a no take species, this refers to the federal designation. This may be the underlying consideration for why the plan does not specifically call these species out as no take species. The golden eagle is not federally listed and provides an example of the impact of this federal/state dichotomy. Per David’s request, Troy will further review this issue with respect to both the golden eagle and the California condor.

Table 1-1: Local Planning Documents and Time Horizons Relevant to the Permit Term (p. 1-36).

Kenn Reiller requested that the Pajaro IRWMP be added to the list, which addresses critical habitat and is relevant to the plan.

B) Chapter 2, Land Use and Covered Activities

2.3.4: In-Stream Operations and Maintenance (p. 2-53)

Keith’s understanding is that the water agency wants to have the operation of Uvas and Chesbro reservoirs as a covered activity. Is the operation of these reservoirs covered as an activity by language in the second to last bullet on the page (“Water utility/water supply operations and maintenance”)?

Decisions about operations of reservoirs are still under discussion and perhaps this is why this draft doesn’t include detail. Pat suggested that the group add language to add specificity related to reservoir operations and maintenance, but is not sure if Chapter 2 is the most appropriate place. Keith and Pat agreed that the bulleted language noted above should not simply imply this covered activity – it’s simply too important.

They also asked why the last bullet on p. 2-53 was omitted. Pat suspected that this omission was an error. Troy will track history of this change and find out what the reasons were for deleting this.

San Martin and Future Incorporation of County Areas

Carolyn noted that the plan says very little about San Martin– is this intentional? Ken clarified that the Local Agency Formation Commission (LAFCO) decision whether to authorize an election on the question of whether or not San Martin should be an incorporated body should be made in early October. If it doesn’t authorize the election, then there is no issue. Pat requested that if the election does come to pass, that the stakeholder group remain mindful of needing to consider the impact of this on the plan. Based on the rural residential character of the area, there will be a relationship to the plan. Ken suggested an approach that will allow future changes to the plan so that San Martin can be easily incorporated, and briefly discussed the logistical difficulties with bringing a newly incorporated area into a newly adopted plan.

Jack Bohan addressed the issue of future incorporation of county areas – what would this entail with respect to the plan? Troy said that this would likely require amendment of the plan. If a newly incorporated area wished to be a plan partner, the amendment would be minor. If a newly incorporated area chose not to be part of the plan, this may require greater plan amendment.

Quarries

Carolyn asked if quarries are a covered activity. Ken answered that quarries are too speculative a use and the potential impacts are too great to list as a covered activity. The County and Habitat Plan consultants had decided that it did not have enough information to provide detail here.

2.3.3: In-Stream Capital Projects (p. 2-36)

Keith noted that the second to last bulleted activity proposed for coverage has been deleted: “Restoration projects outside of the Reserve System including implementation of SCVWD’s Enhancement Program

including development of trails, fish barrier removal, and creek realignment (to a more natural state).” Why has this been deleted, particularly when the water district’s enhancement program has been listed as a recovered activity in Appendix F?

Troy noted the discrepancy for review. Pat suggested that the bullet may have been deleted because the group was attempting to distinguish conservation measures from covered activities. The hope is that enhancement projects following plan implementation would count as conservation measures, but this would have to be addressed/negotiated by the implementing agency on a project by project basis.

Brian noted that the water district has taken an approach opposite to that of the county in choosing not to use enhancement funds towards mitigation activities. This is what he has been told. Pat affirmed that enhancement funds are separate from mitigation funds.

2.3: Covered Activities

Jack asked, would reuse of urban land be a covered activity? Within the urban growth limit, the assumption is that the habitat value of urban land is essentially lost. The fee issue comes into play only with vacant sites of one acre or larger within the urban growth areas, based on the assumption that these areas still have some habitat value.

2.3.1: Methods for Identifying Covered Activities (p. 2-31)

Referring to the third of the five listed criteria to be considered a covered activity under the plan, Jack asked where the line is between reasonable potential and less than reasonable potential to take a covered species. Troy noted that this will be an issue that the group will revisit, and that its relationship to a larger set of issues will require further attention.

Chris Borello asked how the plan defines and addresses undeveloped (i.e. orchard) land within urban areas. Ken answered that this land is covered under the lowest tier or category.

Rick asked, what happens when a developed site is being redeveloped but includes viable species habitat? He used the burrowing owl as a specific example of a species for which it has been verified that such land does provide habitat. Ken responded that the landowner would not pay a fee but would be subject to conditions under separate laws restricting impact on the owl.

C) Chapter 3, Physical and Biological Resources

3.3.5: Natural Communities and Land Cover Types (Open Water Land-Cover Types, p. 3-92)

Kenn believes that Chapter 3 does not provide enough detail related to reservoir and sediment management. He requested that the group consider operations and take permits related to operations, and noted that the plan should address sediment and multi-port outlet operations. This should tie back to how operations will minimize in-stream impacts.

Pat noted that the group needs to be careful of not including the solution as part of the plan, and built upon Kenn’s point that sediment impacts to species and habitat should be considered. One of goals in investigations is to improve sediment transport. The Three Creeks HCP does include thought about how to manage gravel, but does not include language related to how to manage fine sediment.

3.3.5: Natural Communities and Land Cover Types

Keith noted the need for minor corrections and question about riverine system. On the bottom of p. 3-67, he stated that carp, inaccurately identified as a native species, should be replaced with California roach. At the

bottom of the page, where the extent of cold steelhead is included, he noted that Llagas Creek needs to be included.

Also, on the top of page 3-66, language has been deleted despite the importance of how it addressed the function and integrity of ecosystems. Keith requested that Troy investigate why has this been deleted. Jerry noted that similar language has been added elsewhere in the plan.

D) Chapter 4, Impact Assessment and Level of Take

Prior to beginning its review, Troy provided an overview of the contents of Chapter 4, as well as significant updates and related outstanding issues.

Chapter 4 provides discussion of impact assessment - i.e. how well covered activities protect covered species. The chapter steps through how general covered activity categories will impact different land covers and how they will impact individual species. It ends with a section discussing cumulative effects.

The chapter has been updated to include detailed tables that walk through plan assumptions related to impacts on different land cover types. One section has been refined to discuss what is required under ESA – this now smaller section represents a more focused approach.

Jones & Stokes has also added an impervious surface analysis on p. 4-3 and discussion of Coyote Urban Reserve. These analyses have been absorbed into other analyses in the plan.

Impacts to the Bay Checkerspot Butterfly, California Red-Legged Frog and California Tiger Salamander have been added. Redesignation of critical habitat for these species is anticipated in the near future, which will change the plan's conservation strategy. Critical habitat for these species will cover a larger expanse. However, future changes to critical habitat designations within Santa Clara County remain unclear.

Impact analyses and conservation strategy coordination will take place in the coming months in an effort to resolve the list of big issues related to Chapter 4.

Brian noted that cumulative impacts are being narrowed and recommended that the plan's cumulative impacts analysis include a footnote that notes the role of future CEQA studies in determining impact.

He also noted that according to the timeframe noted for completing projections of future imperviousness projections were meant to be ready by July – given that these numbers are not yet available, what is the new deadline?

Troy responded that a fair amount of related information has made its way into this draft. Brian noted that imperviousness at build-out is not included, and suggested that the plan relies too heavily on NPDES standards.

Changes made to the bottom of the first paragraph on p. 4-4 (*4.3.1: Urban Development*) are not exactly correct. NPDES permits do not always require maintaining existing runoff conditions. The plan cannot simply refer to existing NPDES requirements and assume that existing hydrology is or will be maintained.

4.3.4: Rural Capital Projects (p. 4-16)

One stakeholder asked, will the Kirby Landfill be covered under the plan? Particularly since the note to the reader has been deleted from this plan draft? Ken noted that the landfill presents an unusual situation in that the applicant was claiming that they were not covered, while the regulating agency claimed that they were. One member of the public noted that the landfill is well covered in Chapter 2.

A request was made to add detail related to existing permits and new permits, including a graphic or map showing their locations.

4.3.2: In-Stream Capital Projects (Flood Protection Projects, p. 4-5)

Kenn referred to language at the very end of the page: “Whenever possible and economically feasible, environmentally sensitive design treatments...are used instead of channelized streams using concrete.” What is our definition of economic feasibility? Is this based on a benefit-cost ratio and, if so, how do we value habitat here? Ken requested that the plan group look to existing examples for guidance on how to value habitat.

Reservoir Draw-Downs

Keith requested that the group add a new plan section that assesses the impacts of reservoir de-watering on covered fish below dams. This could be part of the temporary impact section and should include mileage of impact.

In Chapter 2, reservoir draw-downs are defined as covered activity in the case of two categories of activity: seismic projects and in-stream operations and maintenance. Draw-downs have the potential to impact several miles downstream. Keith expressed particular concern about impacts to Uvas in the case of drawdown and the impacts to downstream fish species – particularly impacts on steelhead production, juvenile/smolt in-migration and out-migration of adult fish.

4.4 Impact Assessment Methods (p. 4-27)

Carolyn requested clarification about what “capped impacts” means. Troy reminded the group that FWS issues permits based on the estimated level of impact of activities. They would like to see a cap on estimated impacts so that a permit issued would no longer remain valid beyond that point. At that point, the permittee would have to amend the permit and commit to a new conservation strategy to address impact beyond the designated cap.

4.3.6: Rural Development (p. 4-22)

Jack noted the issue of impact in the case of rural development. In his opinion, it is difficult to imagine isolation of populations based on an instance of a couple of acres of development amid undeveloped landscape.

Troy answered that cumulative fragmentation over a larger scale would occur. Craige provided the example of impacts on the badger in such an instance. The badger is very sensitive to light and noise – its ability to move through land would be impeded despite the fact that adequate habitat remains.

In response to an inquiry related to riparian setbacks, Troy noted that analysis of this topic, and how it should be addressed in the plan, continues.

One stakeholder asked, have you received feedback from County planning staff in terms of this document being useful in providing guidelines for them? According to Ken, County planning staff have provided review comments on earlier draft text and are reviewing volume 2 (chapters 6, 7), and parks and recreation and roads and airports staff have made many comments on the plan.

4.3.4: Rural Capital Projects (Water Supply Projects, p. 4-16)

Kenn requested more direct and conclusive language related to the impacts that managing water supply in the system has on environmental flows. Specifically, he would like to see a water budget included in the plan that is related to fisheries and stream flow.

Kenn noted that stream flow in the county is altered by many sources including imported water, additional wells, and recharge ponds. As an example, the Pajaro River services some of our primary streams for conservation. However, the lower end of the management area is inconclusively addressed here. He noted that key assumptions in Table 4-5 do not reconcile the potential impacts that he referred to.

IV. DISCUSSION OF PROPOSED ADMINISTRATIVE DRAFT REVIEW SCHEDULE

A) September 23rd Meeting

The next meeting will consist of discussion similar to today's. However, the following chapters are more detailed. Troy requested that stakeholders please review the Commenter's Guide included in Volume 1 of the administrative draft before reviewing the remaining plan chapters. This guide also identifies major outstanding issues, which stakeholders can use to help inform their review and provide feedback.

B) Additional Meeting Needed?

Ken and Joan suggested that the group hold an additional meeting on Tuesday, October 7 to continue draft plan review. A brief poll was taken and the majority of attendees were willing to attend an additional meeting. It is likely the November and/or December meetings may be cancelled since the group will have accomplished significant review activities during the scheduled review period.

One stakeholder asked if they should assume that comments shared today do not need to be resubmitted. Troy noted that for longer, more detailed comments, resubmission wouldn't hurt. However, he has noted all comments and recommendations made during the meeting.

V. Public Comment and Next Steps

Joan again welcomed the new stakeholders and encouraged them to participate actively in future discussion. She also asked that new stakeholders provide Ken with their contact information. Carolyn requested that the document be projected on the wall during discussion as the team has done in previous meetings.

Joan noted she received an e-mail from Jerry Smith regarding a correction to the July minutes. On page 5, where Jerry had responded to Kenn Reiler's concern about ecological flow water costs, the carryover target is 3,000 AF rather than 300,000 AF. The change will be made and the file will be marked as revised and posted on the web.