

SANTA CLARA VALLEY  
**HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN**  
*Stakeholder Group Meeting | August 22, 2006 | Morgan Hill Community Center*

**IN ATTENDANCE:**

*Stakeholder Group Members:*

Keith Anderson (South Valley Streams for Tomorrow)  
Nancy Bernardi (Guadalupe-Coyote Resource Conservation District)  
Jack Bohan (General Public)  
Kevin Bryant (California Native Plant Society)  
David Collier (Sierra Club)  
Larry Cope (Gilroy Economic Development Corporation)  
Craig Edgerton (Santa Clara County Open Space Authority)  
Jan Hintermeister (Santa Clara County Parks and Recreation Commission, Liaison to HCP)  
Bob Loveland (General Public)  
Peter Mirassou (Agriculture/Landowner)  
Bob Power (Santa Clara Valley Audubon Society)  
Kenn Reiller (Pajaro Watershed Council)  
Diane Ross-Leech (PG&E/Landowner)  
Brian Schmidt (Committee for Green Foothills)  
Tim Steele (Sobrato Development Company)  
Jack Sutcliffe (Santa Clara County Farm Bureau)  
Carolyn Tognetti (Save Open Space Gilroy)  
Kerry Williams (Coyote Housing Group)

Staff and consultants

Ranu Aggarwal, Santa Clara County Planning  
Darryl Boyd, City of San Jose  
Mark Frederick, Santa Clara County Parks and Recreation  
Ken Schreiber, HCP/NCCP Program Manager  
Kathryn Gaffney, Jones & Stokes  
David Zippin, Jones & Stokes  
Joan Chaplick, MIG  
Diana Sherman, MIG

**I. WELCOME AND INTRODUCTION**

Joan introduced the agenda, which was especially full. Ken Schreiber introduced Cori Mustin, a staff member with the Endangered Species program at the Fish and Wildlife Service who will be getting involved in the process. The group was asked to do self-introductions.

Joan also noted that she had followed up with all stakeholders who had missed multiple meetings to confirm their continued participation or if they would designate a proxy to ensure their group's representation in the process continued.

**II. DISCUSS STAKEHOLDER GROUP REPRESENTATIVE FOR LIAISON GROUP MEETINGS**

The group discussed the possibility of having a Stakeholder Group representative attend the Liaison Group meetings regularly on behalf of the group. These meetings are open to the public and some stakeholders already attend periodically. The position might be an annual or bi-annual appointment to work with people's schedules. Joan asked if this was necessary or desirable. Craig asked how the Liaison Group currently got

information from the Stakeholder Group. Ken Schreiber responded that currently, this happens through staff contact or through the minutes, but as the process proceeds, the Stakeholder Group will have more substantive comments to provide to the Liaison Group. Ken currently represents the group through an agenda item at the Liaison Group's meeting. Ken noted that the Management Team was somewhat concerned about having Stakeholder Group members be a voice for the group versus simply attending the Liaison Group meetings. Having a representative might give the group a formal voice beyond staff communication. Carolyn noted that the Stakeholder Group was an advisory group to the Liaison Group, and wondered whether minutes for their meetings were available. Ken replied that no minutes for the Liaison Group meetings are kept. Keith proposed that members of the Stakeholder Group attend when necessary--for instance, when there are two alternate perspectives in the group. David Collier observed that the Stakeholder Group minutes should be sufficient to reflect what happens at the meetings, and doesn't see a need for a representative until the group begins to debate more substantive issues. Jack agreed that it doesn't seem necessary, and pointed out that each member has a different stake in the process—it may be difficult to identify a single neutral person to report for the group.

Peter asked which groups the Liaison Group liaised between. Ken replied that the Liaison Group does not have a decision-making role, but instead refers significant decisions to the elected bodies. The Liaison Group serves to connect the various groups within the process.

Joan noted that the group seems to feel that there is not a distinct need for a representative right now. Bob Power observed that the group should nonetheless begin to think about who this might be—who would be willing, and who would be acceptable, should the need arise. Joan suggested that the group determine the characteristics of this person in the meetings to come.

### **III. DISCUSS COVERED ACTIVITIES**

Ken Schreiber introduced the topic. Staff and consultants are currently trying to identify the permit term and the covered activities, which are difficult to reconcile—for instance, it is extremely difficult to identify capital activities 40 or 50 years out. However, the specific projects that are known can serve as indicators for categories of projects that may arise in the coming decades. (For instance, we can't identify all future trail projects—but we know there will be trail projects, so we can plan accordingly.)

Ken noted that the staff report had identified criteria for each type of project and had begun to organize these projects on a preliminary basis to see what the effects might be. This is an early discussion to identify what has been forgotten, what needs to be changed, etc. Jones & Stokes needs this information to being a full assessment of impact and mitigation. This will come back to the agenda in future meetings, and will go to the Liaison Group in August and October, as well.

David Zippin reiterated the caveats on covered activities—what is now in the draft of chapter two is a “laundry list” that includes everything anyone wants covered. These need to be compared to the emerging conservation strategy, since some will be conflicting. There's more refinement to come.

There are four main options:

- Include activity “as is” (no change)
- Include activity with more detail
- Include activity with a process to better define the activity (e.g., siting, project design, etc.) to ensure consistency with the conservation strategy
- Drop activity (exclude)

There's also always the option later of formally amending the plan to include or exclude the activity, though this is a more complex option. (Should be reserved for activities that are so speculative at this point that they're difficult to define.)

Ken also underscored that having a covered activity does not approve it—the activity is still subject to all of the normal approval processes. What it does do is facilitate the endangered species related issues and address them.

Jack noted that it would be difficult to define the activities that might arise. Perhaps it's easier to work on the exclusion list, and cover everything else that arises. David Zippin pointed out that the areas outside urban development require much more explicit language than urban areas, since urban areas are assumed to be fully developed and there are greater potential threats with scattered rural activities.

David Collier asked about blanket coverage, but David Zippin confirmed that this was strictly under the urban areas section, not broad blanket coverage for non-urban land.

Brian Schmidt asked about the activities that are slated *not* to be covered. What about these—can they be reconsidered? Some activities are not covered because they have existing permits—they don't need coverage under this plan. Brian asked specifically about timber harvest operations and vineyard conversions and expansion. David Zippin noted that it was difficult to identify the impact of vineyards and they can have a notable impact on endangered species and habitat. With respect to timber harvest operations, no one could think of one that was occurring in the Study Area, it was unclear whether or not there was jurisdiction over this and the potential levels of impacts favored a project specific permit process.

Brian noted that this was not an easy issue—it might be worthwhile to cover this to ensure that they mitigate, rather than being able to get away with illegal take.

Joan asked about PG&E covered activities. Diane Ross-Leech, who represents PG&E, noted that the capital activities were not covered under their own HCP, so that's an area that might be covered by this plan.

Carolyn asked about FAHCE and why it was not covered. Both FAHCE and Coyote Valley Specific Plan are covered in part—just not for the federally-listed species. Coyote Valley Specific Plan is designated as an interim project, so it can go either way. Carolyn also asked for confirmation that the HCP/NCCP was covering the full Gilroy General Plan as well.

David Zippin noted that FAHCE is included in part because they're assuming that their current mitigation plan will meet the NCCP requirements—otherwise they would likely look more seriously at not covering this activity. One main benefit of covering them, though, is that the conservation measures can be integrated. Keith noted that there was a distinction—FAHCE is to mitigate adverse impacts, not to achieve recovery of the species. David responded that it remained to be seen whether they've met NCCP standards even though they didn't necessarily set out to do that. Keith is concerned about double-counting actions, however. This will be difficult to tease out.

Jan asked why County Parks had only listed specific known projects—why aren't others listed more broadly? County Parks relies on approved general plans, etc.—it's hard to predict acquisitions. They are attempting to look at a more categorical approach to catch those activities that may be hard to foresee.

Brian Schmidt asked whether Section 7 of the Endangered Species Act would cover all incidental take from the Coyote Valley Specific Plan project. He also wondered about the Cisco Coyote Valley Research Park project and how this would be covered. Cori Mustin responded that Section 7 would be triggered for the Coyote Valley Specific Plan regardless of how it was covered.

Kerry remembered that the local partners and agencies agreed that the Coyote Valley Specific Plan project would be processed by the Corps to cover all direct and indirect impacts—the Service was okay with this proceeding under Section 7. There may need to be some discussion to clarify this.

Darryl added that the Coyote Valley Research Park project is primarily looking to use existing permits that are already issued and are due to expire. Bob Power noted that there was renewed activity on this before the City Planning Department. Nonetheless, this will not be covered—these permits are already issued. They may opt to give up their old permits and be covered by the CVSP, in which case they will be subject to the Section 7 permitting.

Cori noted that the Corps may look at a species even if it's not a wetlands species—it depends on whether it may be impacted by their covered area.

Peter asked about any potential impacts from the Coyote Valley Specific Plan, and David Zippin responded that some habitat areas were on the fringes of the valley. The EIR is not out yet, so that should inform this.

Keith asked about the logic behind separating the agricultural activities into intense and non-intense. David Zippin noted that the intent was that new agricultural activities would be covered. Existing ongoing activities would not be covered. What about land that's already owned but not currently in use? Is this considered an ongoing activity? This may depend on whether permits are currently required—if not, there's no way to cover them. Unless there's a grading permit, there may not be any authorization required.

Mark noted that the distinction may be between currently zoned agricultural land and land that is otherwise zoned. Carolyn noted that it's a loophole—land that's fallow but zoned agricultural can be planted, eliminating any covered species, and then be rezoned for development.

David Collier asked about unlisted urban activities—how do we estimate impact, simply by footprint? David Zippin confirmed that this was the case.

David Zippin noted that the team would also meet with Mark to ensure that any projected activities were included—it may be that there are covered activities that need to be added. Craig agreed that there must be a process to include these somehow—it's too difficult to foresee these. (e.g., the Open Space Authority—it has no idea what its purchases will be in thirty years.) Cori suggested that perhaps these could be included as a changed circumstance, once there was a general idea of what might be purchased. The HCP can also be amended if necessary. However, the Open Space Authority is not a covered entity in this particular context.

Ken Schreiber reported that the Management Team may be recommending a new category of partner—implementation partner. They are talking to State Parks and the Open Space Authority. These agencies have expertise as well as funding to acquire land, and their mission is to acquire lands the HCP/NCCP will almost certainly want as part of the reserve system.

Ken also confirmed that no existing open space would be used to mitigate future development—but it is helpful to leverage existing assets to build the reserve system. (e.g., Coe Park—State Parks has no money to maintain stock ponds within the park, but maybe some of the space could be improved through HCP/NCCP funds to better the land and create new habitat, and that would count as mitigation.) HCP/NCCP can provide assistance in improved management, as well as in funding purchases.

Keith noted that the partner agencies would also bring their own lists of covered activities, so these would need to be folded in. Plan implementation activities will also need to be included in the chapter.

Joan asked David to identify a key question or concern for the remaining time. He asked members to identify covered activities they were concerned about or that were missing. Jack brought up rural development, and asked about the consistency between this section, which refers to potential future activities, and the reference later in the chapter to only those that exist now. This inconsistency will be corrected.

Cori asked about the Pipeline Maintenance Program and wondered why it was covered since she thought they were getting separate coverage. Jones & Stokes did not know and no representative from the Water District was in attendance, so they will check.

David Collier referenced the five criteria listed for selecting covered projects, and suggested that compatibility with the conservation strategy be added as a criterion.

#### **IV. DISCUSS PERMIT TERM AND AGENCY NEEDS**

Ken Schreiber noted that the agencies have some fairly specific needs, which is why the permit term is a very important part of agency involvement in the HCP/NCCP. Many questions have been raised about the length of the permit term. Jones & Stokes recommended 50 years, but many stakeholders were concerned about this and suggested a 30-year term instead. This discussion was tabled until covered activities were available. The conclusion of the Management Team was that a 50-year term is very important to the agencies—most if not all of them really want it, because many of their projects *are* very long-term, and may be planned decades out. The long-term coverage is a key reason for participating in a lengthy, expensive process.

The Management Team discussed the certainty of urban development. Whether we're looking at 30 or 50 years, we pretty much know the urban areas, since everyone but Gilroy has an urban limit line. The value of a long permit term is that there is a better funding base (whether it's development or non-development based). There's a much better chance of having a robust conservation strategy with a longer term. This will be discussed at the October 26<sup>th</sup> Liaison Group meeting to allow some time for the Stakeholder Group to digest the issue.

Craige asked whether having a longer period with more opportunities to raise funds would jeopardize some of the lands—with a shorter term, you focus on the most critical lands first. Can the habitat we need to preserve be protected in a shorter term?

David Zippin responded that components can be built into the conservation strategy to force critical lands to be purchased first, regardless of the term length. This has to be balanced with situations where you might have a willing seller in a lower priority area. Conservation strategy must have rough proportionality—must be assembled in proportion to the impacts. Regardless of the permit term, the take authorization could be used up in ten years. We'll build in a requirement to the conservation strategy that it move forward in keeping with development.

The permit term provides a little flexibility if development is slower than expected. A long-term plan can be completed sooner, but a short-term plan cannot be extended without amendment. Darryl Boyd wondered whether the economists can show these two scenarios in their analysis.

Jan noted that he was uncomfortable with the 50-year term—it seems like the focus of the HCP is to minimize risk to the partners. What kind of risk are we shifting onto the habitats and the species we're concerned about? Conditions change and we can't really predict this. Jan isn't sure he's even comfortable with a 30-year term. How do we protect against the unknown? David Zippin responded that this would be weighed against the long-term benefits to the species. Another stakeholder wondered whether adaptive management could take on some of this—but something as big as global warming?

David Zippin reminded the group that there's an escape clause in every permit—agencies have the authority to pull permits if a species is on the verge of extinction, regardless of the no surprises element. This can also be addressed through adaptive management or in the context of changed circumstances. The term limit also has to be long enough to make the plan worth the agencies' time and money.

Joan suggested that perhaps Jones & Stokes could prepare a presentation to help people track the changed circumstances issues.

Tim noted that from a developer’s perspective, a 50-year term is somewhat scary. David Zippin pointed out that there’s an every-five-year mandatory financial audit and an every-five-year mandatory scientific review built into the East Contra Costa County HCP to see how the plan is performing—perhaps these can resolve some of the concerns about long-term commitment to the plan. Permits for the plan can also be pulled by the agencies—they can threaten this if necessary. A mechanism for internal course correction can be built in without triggering an amendment.

David Collier observed that the assurance language seems to be primarily on the agency side—not on the conservation side. He doesn’t see the assurances in the process for a term longer than 30 years. Compare it to what would happen outside the HCP process—for the environmental community, the permits would be applied for individually, and the current conditions would be considered. You sacrifice this with a long-term plan.

David Zippin noted that a major assurance is that the plan will contribute to species recovery—you only get this with a regional approach. Individual projects are only subject to a mitigation standard. In addition, you get added state and federal funding. There is also a much higher management and monitoring standard and a larger commitment of funding.

Kenn Reiller echoed that risk management is a big issue, but there might be indicators down the road. We can look at how much land will need work (restoration) and how much is set up for preservation—this helps to determine the risk. The language in the easements will also influence how he feels about the permit term and the risks. Brian Schmidt suggested looking at models for adaptive management plans to see which have real teeth and what requirements are needed. He also likes the performance audit, especially if it differentiates between compliance and results. Maybe 20 or 25 years down the line, there’s a results-based audit, and if it fails, then the permit term ends 5 years later.

Darryl wanted to add an additional benefit—it gets away from a piecemeal approach. It’s a more coordinated, beneficial approach.

Keith asked, based on the East Contra Costa County plan, what the most compelling argument for a 30-year term versus a longer term was. David replied that in their case, they didn’t have any big capital projects forecast to extend beyond the 30-year term. Tim noted that, with the exception of the Coyote Valley Specific Plan project, none of the partner agencies have general plans longer than 20 years. He still doesn’t feel compelled to go beyond 30 years.

David Zippin clarified that the plan covers the existing general plans for the cities—they can expand their urban areas in future general plans, but they will have to amend the HCP/NCCP to have new areas covered. Changing the permit term will not have an adverse effect on the work Jones & Stokes is beginning with respect to the conservation strategy.

Ken Schreiber asked if the group would like this to come back to the Stakeholder Group or not. The group agreed that, yes, it should come back. The September agenda will have additional time for discussion; at that point, the group can make a recommendation, identify minority viewpoints, and determine whether or not to send a representative to the Liaison Group.

Kerry requested that, when the issue comes back, the team provide some information on pros and cons of a 50-year versus 30-year term. Specific examples would be helpful. Kenn Reiller noted that additional information may be forthcoming that will supplement what’s available now, and allow the group to make a more informed decision.

## **V. DISCUSS CHAPTER THREE AND APPENDIX D**

Additional time will be built into the September agenda to discuss Chapter Three and Appendix D in more detail.

Keith asked what the estimated timeframes were for more detailed ecological information on habitats. David Zippin noted that these would be available by the next Stakeholder Group meeting.

David Collier is concerned about the validity of the ground cover classifications. There is a lot of uncertainty here, even with ground truthing. Is there a danger in basing our conservation strategy on potentially faulty data?

Bob Power asked about Table 3.5 and the legend, which doesn't appear till the fourth page. All of the information on the burrowing owl is still potentially problematic, and needs more in-depth review. Bob will provide some specific comments on this.

Keith asked about the top of page 3-18—he wondered what the result of the ground truthing of the data was, and what revisions had been made, if any. David Zippin noted that Table 3.2 has not yet been provided to stakeholders, and will include more information—but broadly, where there were errors, they were corrected.

Kenn Reiller noted that there's a lot of variation across streams that isn't currently reflected in the document. He also asked about the reference to historical ecology as a data source—this needs to be included in the introduction.

Joan reminded the group that they could also use the comment form to provide additional comments by e-mail, and Kathryn Gaffney asked for suggestions on resources for supplementary information.

Keith asked whether or not partner agencies would review and comment on the draft—yes, they will. He also noted a lack of emphasis on South County resources and streams, and is concerned about this.

This conversation will continue at the September Stakeholder Group meeting.

## **VI. NEXT STEPS**

Karen unveiled the new website for the HCP/NCCP process: [www.scv-habitatplan.org](http://www.scv-habitatplan.org). Jones & Stokes is still building the site.

She invited group members to visit the site and offer feedback, since it is not yet live.

There will be holding an HCP/NCCP Community Meeting on Thursday, September 28<sup>th</sup>.

- 6:30 to 7 pm: Open House
- 7 to 8:45 pm: Presentation/Q&A
- 8:45 to 9 pm: Final Q&A/Open House

Karen will be emailing stakeholders for information about contacts to publicize this, and will get back to the group on which media will advertise this.

There will be several stations, as well: HCP overview; study area; covered species/habitat; covered activities; permit term and next steps.

The next stakeholder meeting will be held on Tuesday, September 26<sup>th</sup> from 4:00 pm to 6:30 pm.