

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN
Stakeholder Group Meeting | September 23, 2008 | Morgan Hill Community & Cultural Center

IN ATTENDANCE:

Keith Anderson (General Public)
Chris Borello (South County Realty)
Kevin Bryant (California Native Plant Society)
David Collier (Sierra Club)
Craige Edgerton (Silicon Valley Land Conservancy)
Justin Fields (Santa Clara County Cattlemen's Association)
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)
Bob Loveland (General Public)
Jeff Martin (South County Landowner)
Susan Mineta (Shapell Homes)
Peter Mirassou (Agriculture/Landowner)
Bob Power (Santa Clara Audubon Society)
Lloyd Wagstaff (The Nature Conservancy)

Carolyn Tognetti was excused from attending today's meeting.

I. WELCOME AND INTRODUCTIONS

Joan Chaplick welcomed the group and noted that the next two stakeholder meetings will take place at the Morgan Hill Community Center in the El Toro Room. In addition to the items noted on the agenda, Pat Showalter will provide an update on the Pacheco Reservoir.

II. UPDATE ON PLAN PROCESS AND ADDITIONAL OCTOBER 7 MEETING

Following introductions, Ken provided a brief update on the planning process. The second administrative draft will be released in January 2009. This new release date represents a change of approximately one month in the schedule. The draft plan will be finalized late summer/early fall 2009. We are about two years away from adoption of the final plan. The draft plan for public review will be available mid-2009, at which point the EIR/EIS process will begin.

Joan reminded the group of the additional meeting scheduled for Thursday, October 7, as well as the regularly scheduled monthly meeting on Tuesday, October 28.

Information from the 3 Creeks HCP needs to be integrated into the Santa Clara Valley HCP. According to Pat, the administrative draft (Ch. 1-7) was sent to partner agencies on September 5, and the SCVWD is awaiting their comments. The District expects to produce a draft EIR/EIS by roughly March 2009.

Pacheco Reservoir

Pat shared copies of the memo from the SCVWD Board meeting held earlier in the morning, and gave an update on plans to pursue expansion of Pacheco Reservoir. Expansion of Pacheco Reservoir is included as a covered activity in the HCP. There are many unknowns related to the feasibility of this activity, and the anticipated timeline for expanding the reservoir is approximately 15 to 30 years into the future. The Pacheco Pass, San Benito County and Santa Clara Valley Water Districts have prepared principles that will provide a

basis for investigating the feasibility of either modified use of the existing reservoir or creating a new expanded reservoir and an option for SCVWD to buy the existing facility. This feasibility study will take approximately 2 to 3 years to complete. The Principles of Agreement are included in the last two pages of the memo. As part of the Santa Clara Valley Water District Board meeting, members reviewed and approved these principles with one change. They changed the proposed time period of the feasibility study from three years to two years with a one-year extension. The SCVWD is unsure how long it will take to finalize the agreement but will keep the stakeholder group apprised of the situation.

Lloyd Wagstaff asked how the stakeholder group should look at the Pacheco Dam in light of the HCP. Pat reminded the group that expansion of the reservoir is a covered activity in the plan, and that the study to determine whether it's feasible to build a new reservoir is considered a plan conservation strategy.

At the same time, the Pacheco Dam is owned by the Pacheco Pass Water District, and not by HCP partners, which means that this group can provide no guarantees to wildlife agencies with respect to site activities. The only thing we can commit to at this time is a feasibility study. This is one step that will allow us access to the site. There are many unknowns and this process will help to answer some of the questions we have.

III. REVIEW OF ADMINISTRATIVE DRAFT

David opened the discussion with an overview of the review session. October 7 is the deadline for final comments on the First Administrative Draft. Please provide tracked changes to the Word file itself. You can also use the comment feature in Word but tracked changes are easier to respond to.

A) Chapter 5, Conservation Strategy

As noted in Jones & Stokes' PowerPoint presentation, major updates to Chapter 5 include:

- Preferred land acquisition strategy, including new land cover targets
- Updated species and land cover data
- Climate change
- Updated stream conservation strategy
- Fire management
- Public education and outreach

Detail from The 3 Creeks HCP is also now available, though much of it has yet to be incorporated into the plan.

Remaining gaps include:

- Burrowing owl strategy
- Spig Lake operation (located in Santa Cruz Mountains south of Gilroy)
- South County reservoir re-operation
- Pacheco Reservoir (existing)
- Seed banking
- State park lands

Chapter 5 is designed to meet regulatory requirements and to address land acquisition and enhancement. The total target for land acquisition is 45,000 acres. The target for enhancement is 60,000 acres, including 15,000

acres of existing open space as well as the additional 45,000 acres. This chapter includes a thorough discussion of land management.

David also pointed out significant changes to the conservation analysis zones (depicted in Figure 5-5). Major changes are based on open space lands acquired since the start of the planning process. He also reviewed the figures related to the plan's land acquisition strategy with applicable landscape linkages (Figure 5-9). This is different from Figure 5-6 in that Figure 5-9 elucidates the linkages that the plan's acquisition strategy supports. In contrast, Figure 5-6 provides an overview of the universe of potential wildlife movement linkages throughout the plan area.

Mitigation ratios now included in the plan are based on estimate of impact. These ratios exist for preservation and restoration.

Stream and wetland acquisition and enhancement estimates include:

- Preserve and enhance 275 miles of stream
- Preserve and enhance up to 250 acres of ponds and wetlands
- Preserve and enhance up to 600 acres riparian woodland

Stream and wetland restoration goals include:

- Restore up to 40 miles (min. 5) of stream
- Restore up to 140 acres (min. 40) ponds and wetlands
- Restore up to 300 acres (min. 50) riparian woodland

David reviewed stream conservation actions that are part of the plan to date. Landowner outreach is one conservation action that has been recently added based on the common understanding of the impacts of riparian landowner activities on in-stream resources. Stream setback requirements remain a major gap in the plan; they will be added to Chapter 6 once finalized.

Riverine and Stream Conservation Strategies

Keith Anderson posed a series of questions related to riverine and stream aspects of the conservation strategy. The estimated impact of 88.2 miles of stream as shown in table 5-12 (land acquisition and enhancement requirements for selected land cover types) doesn't reconcile with the permanent impact figure cited in Chapter 4 or with other figures used throughout Chapter 5. David acknowledged that the 88.2 figure is an error and needs to be changed.

In addition, Keith pointed out that the acquisition goal of 250 miles of stream is not consistent with mitigation requirements. David recognized the need to be consistent in the way we discuss these estimates, and noted that restoration of streams needs to be considered separately.

Keith asked, do we have an estimate of restoration on private lands? David answered that since we cannot guarantee restoration on private lands, we do not have an estimate. The focus needs to be on lands within the Reserve System.

Also, where in Chapter 5 does the plan address mitigation of temporary impacts to streams? David responded that the plan does not identify separate mitigation for temporary impacts because these can be extremely variable. The plan's mitigation ratios are relatively high in order to account for both temporary and permanent impacts.

Keith also opened discussion related to mitigation activities to account for reservoir de-watering. De-watering is covered in the plan under two circumstances: routine dam maintenance and seismic retrofit. While the impacts resulting from these activities are considered temporary, de-watering can have tremendous impacts to downstream fish (i.e. steelhead in Uvas Creek) that will take generations of fish to recover. Where is the mitigation for this?

Mitigation for reservoir de-watering is not included in the plan yet because it is part of the Three Creeks HCP, but these activities will be covered as part of the plan. Supplemental systems will be built to provide water from other sources. The Water District hasn't designed systems for Chesbro or Uvas, so they will need to do that.

According to records, reservoirs in the system are de-watered on average once every seven years. According to Pat, the Water District has designed concept supplemental water system plans for the three dams in North County that do not have supplemental water systems.

David Collier asked if the plan speaks to conditions on de-watering in Chapter 6. While Chapter 6 doesn't yet include this discussion, it will in the future, based on the Three Creeks HCP. The Water District has worked extensively with agencies to address this issue. See p. 6-44 for new text providing additional requirements for the seismic retrofit of dams.

Conservation Activity Outside of the Reserve System

Jan Hintermeister posed a question related to conservation activity outside of the Reserve System. He noted that the plan discusses the potential for activity outside of the Reserve System in a couple of instances, and used plan data and plan species counts related to the tricolored blackbird as one example. How are actions that the plan would like to take outside of the Reserve System with respect to different species determined?

The intent is to limit all conservation actions to the Reserve System except for those activities related to streams. The Habitat Plan will only have control over Reserve System lands, which is why there has been hesitance to discuss conservation outside of the system in the plan. For certain species, it makes sense to include some type of conservation activities that go beyond the Reserve System, given the habitat requirements and the occurrence of many of these species on private lands. At the same time, discussion of conservation actions outside of the system is intended to be an exception.

Jan also noted the possible need for some scientific advising specific to the tricolored blackbird and least Bell's vireo. Mono County has conducted research related to the positive effects of grazing to create or improve habitat for these species. It will be important to determine if there are any conflicts between riparian area management and wetland/marsh habitat management where grazing is implemented for this reason.

Open Space Category Definitions

David Collier returned to a question related to the plan's definition of Open Space Type 3 lands and the level of protection these lands provide. If we determined that these lands would not provide habitat benefits that lands managed primarily for habitat would provide, and thus chose to re-define this land category, would this change have an impact on our land acquisition strategy?

According to David Zippin, these definitions do not impact the land acquisition strategy or the Reserve System. Type 3 areas are open space sites that include notable active recreation uses/activities that provide limited habitat value. Type 3 includes some sizeable areas of land, including Joseph Grant County Park. Part of the issue is that we are drawing sharp lines between land categories. In reality, these categories are somewhat artificial. The plan's designations do not distinguish between the relative habitat value provided by

different sections of open space areas; rather, they define entire areas based on the “least common denominator.”

Secondly, for land to become part of the Reserve System, land agencies are required to place permanent easement-based use restrictions on the land. In the end, the current definition of these lands with respect to the plan’s open space categorization matters little because these lands will enter the Type 1 classification of fully protected habitat land once they are made part of the Reserve System.

Coyote Valley

Sequoia Hall and Susan Mineta raised the issue of the Coyote Valley. The Coyote Valley Specific Plan “went away” and the Habitat Plan now refers to the area as San Jose’s Coyote Valley Urban Reserve. Jones & Stokes has added future urban development in the valley, consistent with the San Jose General Plan, to the plan’s covered activities and impact analysis. This change does not affect the conservation strategy – pre-existing land use designations were simply added to covered activities. Even when the Specific Plan was active, the plan did not view land conservation in the valley floor as a desirable part of the strategy.

Jones & Stokes has added a wildlife connectivity feasibility study to fund study of wildlife movement in three locations one of which includes Coyote Valley. These studies will help determine/identify appropriate engineering design strategies to improve linkages in areas impacted by road and highway networks, and also help to examine conservation strategies.

Ken noted that there are three habitat issues in Coyote Valley: covered species use of the land on the Valley floor, which is generally limited and not a high priority for land preservation; wildlife corridor issues that will be studied; and the use and functioning of Coyote Creek both as a riparian environment and wildlife connection.

Land Protection and Enhancement Estimates

One stakeholder noted what he recognized as a reduction in the acres of land identified for protection or enhancement. Did the drop-offs in covered activities allow a reduction of the earlier identified amount? David clarified that the note to protect or enhance “up to 100,000 acres” was only included as part of one alternative, and that this figure was never part of a proposal. Until now, we did not identify a preferred alternative. The change to this number was based on the knowledge that we had to adjust the amount of land in the Reserve System because of the infeasibility of permanently protecting many existing County or other agency open space lands.

Wildlife Linkages

David Collier noted that the major cross-valley corridor (Tulare Hill) looks like the only corridor still noted in the plan, and that this corridor cuts through the Motorcycle County Park. David Zippin responded that while this is not an ideal location, it’s what we have to work with. Only one third to one quarter of this park is actually used for off-road motorized vehicle use. As a side note, the County would like to move this park based on the recognition that the park includes sensitive areas. He also reminded the group that the process of reviewing lands for their habitat suitability was very meticulous, based on biological value of these lands and existing uses and land use restrictions.

One stakeholder noted a philosophical/language problem in terms of the plan’s gap analysis. We can’t assume that streams are being protected by the sheer nature of the fact that they traverse designated open space. Protection of these systems is based in large part on the management of upstream reservoirs.

Plant Populations

Kevin Bryant then noted that the numbers related to the creation of new plant populations have changed and inquired as to why this has happened. David replied that, in some cases, populations went up because pre-existing populations are known to exist on lands identified for acquisition. In only one case was it determined that a new population would be established.

Why does the plan say that Tiburon paintbrush will not be impacted? Is this because Kirby Canyon is not covered? David affirmed that there will be impacts, and that conservation measures for the species have been identified.

Out-of-Kind Habitat Creation

Susan noted that out-of-kind creation of habitat is prohibited by language in this chapter, and voiced concern with this policy. David noted that this prohibition stemmed from concern shared among the wildlife agencies over providing too much flexibility that would possibly allow the restoration of native systems to be satisfied by establishing out-of-kind habitat types. However, he agreed that blanket prohibitions in general unduly limit flexibility of implementing agencies and that this restriction should be re-considered.

Keith brought to the group's attention the following plan language on p. 5-152, and identified it as a clear red flag for the plan: "There is some risk that the conservation strategy could adversely affect the existing Chinook population, creating less than desirable conditions and potentially resulting in local extirpation." David made note of the need to review this.

David C. asked why Valley Oak restoration was removed from the conservation strategy. David answered that the plan team realized it was fairly expensive to restore Valley Oak on the scale the plan was originally considering. Secondly, we realized that it would not benefit covered species. Third, there are good opportunities to acquire existing Valley Oak habitat which is more efficient than restoration. Given the second factor, Valley Oak restoration is not technically a regulatory requirement, which is why restoration was removed from the plan and why preservation of existing communities was strengthened as a strategy.

B) Chapter 6, Conditions on Covered Activities

Following discussion of Chapter 5, Kathryn Gaffney provided an overview of Chapter 6. Major updates to the chapter include:

- Reorganization of the first four sections
- Substantial updates to Conditions
- New figure for identifying area of impact assessment for rural development projects

Remaining gaps include:

- Condition 9. Stream and Riparian Setbacks
- Incorporation of avoidance and minimization measures from the 3 Creeks HCP

Ken provided a brief history related to the political nature of determining stream setbacks in the context of the Santa Clara Valley. Past riparian setback efforts and initial work on the Habitat Plan resulted in setbacks that would substantially impact many properties with the loss of 50 or more percent of the site's usable land. As a result, this has been – and continues to be – a highly sensitive and potentially contentious environmental regulatory issue. The process to identify setbacks for streams and rivers in the study area continues, and it is hoped that a final recommendation will be developed by the end of October. County staff is planning on

taking this issue to the County Planning Commission and Board of Supervisors in early 2009 to facilitate public review.

6.8.2. Covered Plant Species (p. 6-92)

In reference to Condition 21, Kevin asked why the sentence characterizing plant salvage as a last resort was removed. According to David, this language was deleted because avoiding impacts to covered plant species is not entirely feasible, and thus the plan team recognized that calling plant salvage a last resort option was not entirely accurate. The intent of the change was to define plant salvage as a bonus, or rather as an activity that should occur where feasible.

6.7 Conditions to Minimize Impacts on Natural Communities (p. 6-75)

Susan asked why there is a discrepancy between Army Corps requirements for wetlands protection and the plan's requirements for protecting wetland habitat for species. In response, David stated that this is simply a reality of the plan. While we try to align wetland mitigation requirements with those of the Corps and Regional Board, we are not in line with their on-site avoidance policy. At the same time, the plan's wetlands restoration mitigation ratios are as good or better than those of other entities.

The Corps is still very focused on on-site avoidance at all costs, but we could not integrate their regulatory requirements into this plan. The wildlife agencies have accepted the strategy of regional avoidance and focusing restoration to more biologically significant sites. At this time we are not pursuing regional wetlands permits. If Contra Costa 1 succeeds in acquiring regional wetlands permits, then we may consider doing the same.

Conditions 3: Maintain Hydrologic Conditions and Protect Water Quality

Ken provided background on regional and state water board policies related to Condition 3. The study area is divided between two water resources boards (Central Coast and San Francisco), and these two boards have very different rules. Initially, the plan attempted to integrate the San Francisco Board rules but met with great resistance from south county communities. We are now seeing a convergence of board rules at the state level, which are undergoing dramatic change to more rigorous and uniform water quality and hydrologic standards.

In response to a comment from David Collier, Kathryn clarified that draft state Water Resources Control Board policy creates a standard requiring that development not alter the existing hydrograph (i.e. contribute no new run-off to the system) or further deteriorate water quality. This draft policy has emerged at some point over the past six months.

IV. PUBLIC COMMENT AND NEXT STEPS

There was no public comment related to Chapters 5 and 6 or the meeting's proceedings. The next stakeholder meeting is scheduled to take place on Thursday, October 7 in the El Toro Room of the Morgan Hill Community Center from 4 to 6:30 p.m.