

SANTA CLARA VALLEY  
**HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN**

*Stakeholder Group Meeting | September 26, 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 (Representative of general public)  
Kevin Bryant (California Native Plant Society)  
David Collier (Sierra Club)  
Craig Edgerton (Santa Clara County Open Space Authority)  
Justin Fields (Santa Clara County Cattlemen's Association)  
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)  
Virginia Holtz (League of Women Voters)  
Lawrence Johmann (Guadalupe-Coyote Resource Conservation District)  
Bob Loveland (Representative of general public)  
Dennis Martin Home Builders Association of Northern California)  
Bob Power (Santa Clara Valley Audubon Society)  
Kenn Reiller (Pajaro River Watershed Council)  
Bob Rohde (Natural Resources Conservation Service, San Benito and Santa Clara Counties)  
Diane Ross-Leech (Pacific Gas & Electric)  
Brian Schmidt (Committee for Green Foothills)  
Tim Steele (Sobrato Development Company)  
Jack Sutcliffe (Santa Clara County Farm Bureau)  
Carolyn Tognetti (Save Open Space Gilroy)  
Lloyd Wagstaff (The Nature Conservancy)

**I. WELCOME AND UPDATES**

Joan Chaplick (MIG) introduced the meeting agenda and gave the group an overview of its content.

**II. DISCUSS LENGTH OF PERMIT TERM**

David Zippin (Jones & Stokes) introduced the discussion of the permit term and how the group can address some of the biological or conservation uncertainties in the plan. He explained that the presentation was meant to be a preview of some of the elements the plan will tackle. (For a detailed overview of the PowerPoint presentation, please visit the HCP/NCCP Plan website under Stakeholder Group materials at: [www.scv-habitatplan.org](http://www.scv-habitatplan.org).)

**Conservation Assurances**

Craig Edgerton asked whether or not existing agencies would assume responsibility for any protected lands (ownership or management) once the HCP protected them. David replied that this varies plan to plan; some HCPs create new agencies to do this, while others use existing agencies. This can be determined in the future, however. David noted that the concept of the protected lands system was what he was referring to as the "reserve system"— this will be formalized later.

**Conservation Uncertainty**

Craig asked whether there was a history of the communities challenging conservative estimates of species habitat. David replied that any challenges were likely to surface when it comes time to finance the purchase of

habitat, in the event that this falls heavily on a single party. If developers and others feel that they are paying a fair share of this, however, they are less likely to challenge this.

Keith Anderson noted that he had run into problems with the term “conservative assumption” and the public’s understanding of this—members of the public tend to assume that “conservative” means the smallest amount possible. David Zippin noted that he means that they assume that all suitable habitat is occupied.

Lloyd Wagstaff asked whether the conservation strategy would be developed based on this conservative map. He asked for clarification on what “allowable take” means in the context of the map. David Zippin replied that “allowable take” will be described in terms of acres of land cover types.

David Collier asked whether agency permits are given out on the basis of individual species. David Zippin replied that they sometimes can be—but typically aren’t for large-scale projects.

Lloyd asked whether any surveys conducted would then inform which habitat areas were most critical. David Zippin responded that perhaps they could be used this way—or they could be used to better assess impact from specific covered activities.

David Zippin also noted that in some cases, protocols can be established that will be used only in the event that a species or its habitat is found in the area in the future.

Lloyd asked who the decision makers were in adaptive management. David Zippin responded that this depended on which decision makers you meant—in general, it would be the implementing entity (i.e., the entity responsible for implementing the plan), but other management agencies would be involved, as would the public and others. It is also possible to write in consultation arrangements with specific agencies.

David Collier asked who the implementing entity was likely to be for this HCP. David Zippin responded that he didn’t know—the entities creating the plan could form a joint powers authority, or could designate or create an alternate implementing agency. This will be determined in the future.

David Collier asked whether the “escape valve” discussed in the PowerPoint presentation would be implemented by the wildlife agencies or the implementers of the plan. David Zippin clarified if the “escape valve” were used, the agencies would step in and suspend permits. Alternatively, the implementing agency could reduce or suspend a permit temporarily while working through concerns with the wildlife agencies.

Bob Rohde wondered if the biggest uncertainty might be how much money the HCP agency would have and where it would come from. David Zippin replied that the Management Team hopes to resolve much of this as the plan is developed—the economic consultant is already on board, for instance.

Craige asked about political uncertainties, and how the plan might deal with those. David Zippin suggested that the solution to the political uncertainty might be to have strong champions at the local level. Craige underscored that action from the state could throw the plan off-track nonetheless. He wondered specifically about Proposition 90, which says that any new regulation—and especially eminent domain—would have to compensate for loss of value, which might make it impossible financially to implement the plan.

David Zippin noted that in some ways, this was what the HCP was all about—it will generate money to purchase this land at fair market value. However, it will be difficult to tell what effect Proposition 90 will have until it’s passed. Kevin Bryant agreed with Craige that Proposition 90 would greatly affect the plan.

Craige asked if the proportional relationship of conservation and covered activities was true in general for HCPs or for this one in particular. David replied that it is true for HCPs in general, given a number of the assumptions in place.

David Collier noted that he could see the covered activities coming together in the next fifteen years easily, but wasn't sure how the funding would come together to expand the reserve system that quickly. He wondered what controls would be in the HCP to ensure that this is met.

David Zippin noted that rough proportionality is a requirement, and must be met at the end of every year—so in some cases, local agencies may simply stop using their permits until conservation catches up, or they may require developers to buy land to try to work around problems of no willing sellers to the implementing entity. In addition, most of the state and federal money is available in the first ten to fifteen years. The bigger challenge may be whether or not the money can be spent fast enough.

### ***Financing the HCP/NCCP***

Kenn Reiller noted that his confidence would be bolstered by a very strong start—for instance, if the implementing agency could get a huge portion of the total money needed in the first ten years. He suggested looking to urban water management plans and water costs to generate this funding, with strong financial links created early on.

David Zippin noted that Fish & Wildlife gives significant grants each year for land acquisition for HCPs, and this year, Contra Costa's HCP was awarded \$6.3 million.

Ken Schreiber observed that there might be a need for more than one local source of funds, so the economic consultant will be exploring other fee options in addition to developer fees—for instance, water or waste management.

Lloyd voiced concerns about linking the economist's work to reality, to be sure that everything is realistic. He feels that fifty years is a lengthy period—there will need to be some checks and cautionary notes on a permit term that long. HCPs are such an evolving concept that we need to be cautious about this.

### ***Preventing failure***

Brian Schmidt wondered whether we're talking about temporary mitigation for permanent impacts. At the end of the permit period, for instance, management of the reserve system may be reduced. A core principle should be permanent mitigation in exchange for permanent impact. This needs to include an endowment for permanent management of reserve lands. He suggested three levels of failure: 1) failure to meet HCP standards for recovery, 2) failure to offer net benefit to the species, and 3) sending a species to jeopardy. Will the HCP set up a legal framework to deal with all levels of failure, or only the last?

Brian asked specifically about some of the slides on the PowerPoint, including the option to reduce or suspend permit coverage. Finally, he suggested looking at an index model to allocate money and introducing an element with teeth—something that can actively deal with failure.

Tim Steele noted that, as a developer, he thought a fourth level of failure ought to be added: adjustments that change the assumptions and benefits so much that cities and developers are no longer looking at the same permits/packages/requirements. The plan has failed a developer when he is no longer willing to endorse the plan with his checkbook. The more that is open to change, the more the assurances are at risk.

### ***Permit length: Check-in***

Joan asked the group what solid components were necessary in order for the group to support a 50-year term, and if the group doesn't support a 50-year term, what are the reasons? This topic (length of the permit term) will go to the Liaison Group on October 26<sup>th</sup> and Ken Schreiber will need to prepare a staff report. While it appears the group does not have enough information yet to develop a recommendation from the group regarding the length of the term, it would be helpful if he could report the group's key concerns and requested assurances to help inform the Liaison Group.

Craige noted that it all comes down to the money—if money can be raised in 25 years then there doesn't seem to be a compelling reason to go beyond this. A lot depends on the economic analysis—the group needs this information to make a decision.

Bob Rohde observed that he understands why 50 years is important, but it's premature to make this decision until there's a better understanding of what the species need.

Bob Power wondered whether adaptive management could react in a time period that's fast enough to be effective. How can this effectively respond to issues as quickly as is feasible? He would like to see as many failsafe measures as are feasible.

David Collier wondered about worst-case scenarios on the conservation side—he won't feel good about the plan if many critical species fall in the grey area where they're damaged but not damaged enough to trigger intervention from the agencies. (David Zippin noted that this hasn't happened yet, to his knowledge.) David Collier would like more assurances and safeguards with respect to species security.

Pat Showalter of the Management Team noted that even when the HCP permit term expires, there will need to be permits issued—so there may be a new HCP once this one expires. Lloyd replied that this might be a reason to shorten the permit term—it can be redone with better data in 20 or 30 years. Why is the permit term out of sync with local planning processes, which are typically on 20- or 30-year horizons?

Ken Schreiber noted that one element has to do with operations maintenance—from a roads and airports perspective, there will be major projects over the course of a 50-year period, and they would like to see these activities covered. Pat added that the lifetime of public works is typically 50 years.

Ken Schreiber also noted that one assumption is that the general funds of local entities cannot be tapped for this type of mitigation or protection—there must be a separate special source of funds for this. Funding this only through developers' fees would make those fees exorbitant.

Kenn Reiller noted that the analogy with public works was a good one—there's a factor of safety involved.

Joan summarized that the partner agencies supported a 50-year term, and some of the stakeholders might support this term if a number of assurances and safeguards for ecological and development interests are put in. However, others strongly favor a shorter permit term. She asked for a quick, non-binding vote from the group to determine how people align on this question. Participants were asked if they would be “willing to go along with” a suggested permit term if certain specific assurances could be provided. The assurances would have “teeth” or specific consequences if they were not met. Participants were asked their opinion regarding a 30, 40 and 50 year term. Participants could vote more than once. The assurances would address several of the concerns that had been raised so far in the discussion.

- Nine group members would go along with a 50-year term with specific assurances with teeth based on some examples from today
- Nine group members would go along with a 40-year term with specific assurances with teeth based on some examples from today
- Sixteen group members would go along with a 30-year term with specific assurances with teeth based on some examples from today

Pat noted that the message she's getting is that the assurances are the most important element—not the timeframe. Tim added that everyone's requisite assurances might be different, so it's difficult to assess this.

Ken Schreiber asked what effect moving the decision about permit term back for a month or two would have on the timeline of the process. David Zippin responded that they need a ballpark number upon which to base the economic assumptions. Pat Showalter suggested that the economic consultant be directed to develop

assumptions for both a 30 and 50-year term. This would allow the analysis to proceed while giving the stakeholders, management team and liaison group additional time to determine term length.

Ken proposed going to the Liaison Group with a discussion of the concerns regarding a permit term and encouraging them to discuss these options. David Zippin also added that one of the challenges in developing HCP/NCCP plans is to come up with several alternatives to present in the EIR/EIS—so potentially, varying the permit term can be an alternative.

Virginia asked for a list that would document the various assurances that the group would like to see. David Collier asked for a poll on the support for 30 versus 50 years. Fourteen members supported a 30-year term; five supported a 50-year term in this straw poll.

Specific assurances people would like to see that might influence people's views of the permit term length include:

- Permanent adequate endowment for long-term management
- Predictable permit conditions
- 50 percent more mitigation required for any impact beyond 30 years
- Procedures for dealing with damage to species as far as consequences and suspension
- Some mechanism for periodic review of permits (e.g., after 5 years and then ongoing)
- Verify that the reserves are protecting the species, not just the habitat
- Verify that adaptive management can keep pace with covered activities and conservation efforts
- Cash flow model that puts 80 percent of funding upfront
- Contingency fund for acts of God
- Ensure preserves are supporting the species

Kevin Bryant asked if David Zippin's PowerPoint presentation can be put online so that Stakeholder Group members can present this information to their constituents. Karen Molinari of Jones & Stokes agreed that this could go up on the website soon.

### **III. OUTREACH AND COMMUNICATIONS**

#### ***Upcoming public meeting for HCP/NCCP***

The second public meeting for this project is this Thursday, September 28<sup>th</sup> beginning at 6:30 pm. Karen Molinari has more postcards for people to pass out.

#### ***Member outreach presentations to constituents***

Jan Hintermeister reported back on a conversation he'd had with the Burrowing Owl Consortium, an organization that meets twice each year. He went over some slides David Zippin had provided, and found that the group was very interested and engaged in the HCP process and will continue to follow it.

Kenn Reiller reported back on his discussions with the Pajaro Watershed Council, and Pat complimented him on his presentation there. Pat, Karen, and others encouraged other members of the Stakeholder Group to conduct similar presentations with their member organizations or constituent groups.

#### ***December HCP Workshop***

Ken Schreiber noted that this year's regional HCP workshop will be held on Saturday, December 6<sup>th</sup> in Vacaville. Information will go out to the group about this soon.

#### ***Written comments on chapters to date***

Ranu passed out a summary of the written comments received to date. David Collier noted that he had a complaint about the way the comments are being handled—he feels as if questions and comments are dropping down a hole, and would like responses to them.

Ken Schreiber noted that comments would be responded to, but not to each individual making the comments. David Zippin added that there would be responses at three levels—first, the meetings provide a space for discussion of serious concerns; second, any administrative or editorial changes will be incorporated as they make sense; and third, for everything in between, the way to see if they’re being heard will be to see if they’re incorporated in the next draft. David is also happy to receive emails from stakeholders through Joan. Joan can also add a specific agenda item to a meeting to help address concerns and questions.

Ken proposed creating some agenda time to discuss this at future meetings to ensure issues and comments are covered.

#### **IV. PUBLIC COMMENT AND NEXT STEPS**

Several agenda items were tabled until future meetings in order to allow the group to complete its discussion of the permit term. The meeting minutes will provide the Management Team with information about stakeholder concerns that will be incorporated into the staff report to the Liaison Group meeting. Each of the tabled discussion items will be integrated into future meeting agendas.