

HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN

Stakeholder Group Meeting | October 7, 2008 | Morgan Hill Community & Cultural Center

IN ATTENDANCE:

Jack Bohan (General Public)
Kevin Bryant (California Native Plant Society)
Craig Edgerton (Silicon Valley Land Conservancy)
Justin Fields (Santa Clara County Cattlemen's Association)
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)
Rick Hopkins (Home Builders Association of Northern California)
Jeff Martin (South County Landowner)
Susan Mineta (Shapell Homes)
Peter Mirassou (Agriculture/Landowner)
Bob Power (Santa Clara Audubon Society)
Brian Schmidt (Committee for Green Foothills)
Jack Sutcliffe (Santa Clara County Farm Bureau)
Carolyn Tognetti (Save Open Space Gilroy)
Lloyd Wagstaff (The Nature Conservancy)

Virginia Holtz, Keith Anderson, David Collier and Susan Mineta were excused from attending today's meeting.

I. WELCOME AND INTRODUCTIONS

Joan Chaplick welcomed stakeholders and members of the general public, and group members briefly introduced themselves.

II. UPDATE ON PLAN PROCESS

Joan shared information about an upcoming community forum on the plan. The CA Native Plant Society, Committee for Green Foothills, Audubon Society and Sierra Club will be co-hosting a Community Forum on the SCV HP and the preferred conservation strategy in Palo Alto at the Cubberley Community Center on Wed., October 29 from 6:30 to 8pm. This is an effort to reach people in the north county, and members of the co-hosting organizations will be helping to publicize the meeting. Everyone is invited to attend and stakeholders are encouraged to help get the word out via flier distribution, web site postings and emails to their databases. More specific details will follow.

Please email Joan comments related to the draft plan, and be sure to check in with her if you do not receive a confirmation email or if you have not received a confirmation email for previously submitted comments.

III. REVIEW OF ADMINISTRATIVE DRAFT

David Zippin opened the discussion with an overview of key Chapter 7 figures that summarize the adaptive management process. Figure 7-2 provides an illustration of the adaptive management process - the plan's adaptive management process is not unlike typical processes. Figure 7-3 illustrates the plan's continuum of experimental management. The plan specifies monitoring at all levels of treatment, from post-monitoring only without controls or replication to pre- and post-monitoring efforts that are part of a targeted, statistical or scientific study.

All of the monitoring is funded in the plan. The important message with respect to adaptive management in the plan area is that this monitoring approach represents a much better continuum of monitoring than what is taking place in the project area today.

The benefit of monitoring is that it will help determine whether our indicators or success criteria are appropriate. Figure 7-5 is taken from a recent wildlife agency publication and is very useful in demonstrating the adaptive management feedback loop.

David also introduced Figure 7-8, which provides an example of a conceptual model for managing a grassland system. The plan also includes conceptual models for species. Conceptual models are useful for prioritizing and organizing strategies at all management levels, including landscape, natural community and species levels.

A) Chapter 7, Monitoring and Adaptive Management Program

Bob Power began discussion with a question related to the data management required of the plan's adaptive management strategy: What kind of data-base management is required of the implementing entity? What is the Achilles' heel of a management approach that attempts to collect such a vast amount of data? What do other plans do? And is this easier than it looks on paper?

David related to the group that this is not as easy as it looks, and collecting this amount of data is a lot of work. Because of this, plan Chapter 8 has identified the need for a GIS and database manager position. How you set up a database or data management system in the beginning – i.e. how well thought out the system is – is a very important element in determining the success of the effort. You do need an expert to set up these databases – someone who understands how to set up a database and who also understands the information.

There is no current state-of-the-art in terms of off the shelf databases to help manage these plans. The County has been working with a consultant to design a system. We hope to have a database up and running before this plan even starts. Ranu Aggarwal confirmed that the County is working with their Information Systems Department to create a database in anticipation of plan adoption.

Map-Based v. Process-Based Plan

Kenn Reiller commented that he sees a lot of process in this management approach. How in this process are we going to change the map and the tables that we made firm commitments to in terms of the scope and scale of enhancement? David confirmed that these maps and tables will not change, and that making changes to them will require amendments to the plan. At the same time, the plan does allow for a certain flexibility, which will be informed by the adaptive management process.

Jack Bohan noted that he felt that the plan is primarily map-based, rather than a hybrid of a map- and process-based approach such as the approach that the group had decided upon. He asked David if, in his opinion, this plan is map-based or process-based. David asserted that he did believe that the Santa Clara Valley HCP is a hybrid of a map-based and a process-based plan. Map-based plans draw sharp boundaries around where conservation would occur - our plan doesn't do that. The only maps we have are figures 5-8 and 5-9. David reminded the group that the plan has many guidelines in terms of the properties the plan should target, and that we are not targeting protection of all zones within map boundaries.

Land Acquisition for Stream Habitat

Kenn noted a discontinuity in the stream habitat identified in Figure 5-10. (Kenn was referencing a previous chapter regarding consistency of approach.) David responded that land acquisition planned for stream protection is flexible. In reality, we do not want to acquire all the riparian land needed to protect these stream networks - setbacks will achieve what acquisition could do with limited cost. Our hope is to partner with landowners to improve management and implement conservation actions.

7.2.2 Program Phases: Long-term Monitoring and Adaptive Management Phase (p. 7-17).

Brian Schmidt referred to language added to the last bulleted item in this subsection indicating that the plan success criteria and conservation actions “will be adjusted if they have been determined to be inappropriate indicators of success (too high or too low, based on biological information)...” Is this bullet stating that changing these indicators of success would require amendment to habitat plan?

David replied that the answer depends on the scale of change. Change to a habitat type would require amendment because this is a major change to our goals. However, if we adjust the amount of land cover type we are acquiring by a relatively small number of acreage then amendment to the plan would not be required.

For clarification, Brian asked if the distinction being drawn is in reference to the difference between a major or minor amendment. David stated that the plan provides for amendments on three levels: major, minor, and administrative. Chapter 10 includes criteria for each level. Brian requested that this distinction should be footnoted as part of this bullet. David acknowledged that this is a point worth clarifying and made note to do so.

7.2.2 Program Phases: Document Baseline Conditions (p. 7-13)

Jan Hintermeister noted that the document baseline has to do with establishing species presence. In some areas there are historical records of species occurrence that have been vetted by experts and would be valuable in providing baseline data. He suggested adding language to this section noting the general availability and usefulness of these sources in establishing baseline conditions.

7.2.4. Monitoring at Different Scales: Impacts of Recreation (p. 7-31)

One stakeholder asked why mountain biking was deleted from the second paragraph in this section. David was not sure why it was deleted. The stakeholder noted that it will be a permitted use, which is why it will be appropriate for monitoring.

Role of Citizen Science and Volunteers

Bob Power referred to a short paragraph at end of chapter noting the potential use of volunteers for citizen science projects. He noted that Santa Clara Audubon will have ongoing information regarding burrowing owls and trained volunteers ready to continue the work that has been done. There may be other groups doing similar work and their studies would be useful to list or reference as a resource for management.

David said that while he fully expected the implementing agency to take advantage of volunteers, the role of citizen scientists in plan implementation was intentionally de-emphasized. From the perspective of the wildlife agencies, we can't predict the level of support that volunteers or citizen scientists will provide in the future and the plan budget make sure these activities are fully funded. Secondly, we have to incur the costs if we don't have their consistent support.

Kenn requested that the plan include reference to historical ecology reports – Coyote Valley and Pajaro River – as resources to help distinguish between habitat restoration and creation.

7.2.4 Monitoring at Different Scales: Hydrologic Function (p. 7-30)

Kenn noted that the plan's discussion of hydrologic function in this section includes rainfall and runoff but not imported water, and requested that the beneficial use of imported water be added to the discussion. David asked, how would the mix of imported versus local water impact management? Kenn responded that knowledge of the amount of imported water would distinguish how to address droughts, which impact species.

7.2.4 Monitoring at Different Scales: Species-Specific Monitoring Tools (p. 7-41)

Kevin asked why the paragraph discussing survey protocols was struck from this section, and asked where in the plan information related survey protocols could be found.

David noted that he didn't see this information anywhere as part of the plan, and explained that one thing the plan team tried to do was streamline Chapter 7, in part because wildlife agencies said it was way too long. Paola, the author of this section, did her best to remove sections that she thought were not essential. Kevin requested that this information remain as part of the plan.

7.3.3 Species-Level Actions: Coyote Ceanothos (Group 1) (p. 7-80)

Kevin also asked why discussion of increasing water levels at Anderson Reservoir and the effect on coyote ceanothos was completely struck. David will check on this.

Brian noted that Chapter 7 included little mention of plan budget for management and monitoring. David referred him to Chapter 9 for discussion of cost and budgetary response to contingencies. Brian expressed concern and asserted that funding for adaptive management is a bit different because anywhere else you should be able to plan what you're going to do and how you're going to fund, and here you can't do that.

David reminded the group that plan cost models demonstrate the need for an excess of \$2M a year for adaptive management. In Jones & Stokes estimation, the program funding scope for adaptive management is adequate and fairly generous and represents an effort to do the best we can here. He also clarified that the plan contingency fund could be spent on anything, including adaptive management. There is a higher contingency for restoration (15%) due to uncertainty related to restoration.

7.1.4 Program Scope: Geography

One stakeholder noted that the plan's geographic scope should be based on species-level ranges beyond the study area so that adaptive monitoring and management could be triggered if catastrophe struck beyond the plan area. David agreed that the plan would trigger or include some monitoring outside of the Reserve System and made note to review this section. Since it appears that the focus of this section is to discuss the scope of this program, there is a need to clarify or update if needed. One of the program components is status and trends monitoring, which is only possible to get a handle on when we have a broader picture of what's going on.

Brian expressed concern related to spending in light of unforeseen circumstances and No Surprises. David stated that this plan will have limits set on it in terms of spending because of No Surprises. When a species is moving towards jeopardy a wildlife agency can suspend or revoke permits for those species. Brian noted that to his knowledge, an HCP never been suspended – David confirmed that this is true. David also noted that many pots of money are available beyond this plan to protect those species.

7.3.1 Landscape-Level Actions: Monitor Hydrologic Function within the Study Area

Kenn requested that monitoring of groundwater pumping be added to discussion of monitoring hydrologic function in the study area, and noted that CEQA provides useful documentation. David said that he will look into this.

7.3.3 Species-Level Actions: Western Burrowing Owl (Group 2)

Bob referred to language on working draft p. 7-84 (under “Evaluate Species Response to Habitat Protection and Enhancement”), in which the plan discusses using the density and distribution of California ground squirrels as a proxy for assessing burrowing owl habitat in the Reserve System. Bob stated that the only proxy for burrowing owl habitat is where owl colonies are today, and that the plan’s emphasis has to be on preserving existing colonies and preserving appropriate habitat adjacent to existing colonies.

Bob also noted that this issue circles back to Chapter 5, and asked if negotiations with San Jose Water Pollution Control Plant have been completed. David asserted that we can’t count on Water Pollution Control Plant for a conservation strategy here. They are not far enough along and we are starting to see more development proposals for those sites. Jones & Stokes will come back to the group with a formal proposal on this strategy in a month or two. The plan will not be giving coverage for expansion of the plant. According to Brian, the City just gave them approval to move forward with an MOU.

B) Chapter 8, Plan Implementation

David gave a brief overview of Chapter 8, using Figure 8-1 to discuss the organizational management structure for the plan. This figure helps to illustrate the functions of the Implementing Entity. While we do not yet know the exact form it will take, the Implementing Entity will be comprised of a governing board and administrative staff that will interact with many different groups at the local jurisdiction level. Wildlife agencies will provide oversight at all times. The Implementing Entity will hold monthly meetings with the wildlife agencies, especially during early years of implementation.

Independent science will also play a role, in the form of science advisors and an independent conservation assessment team. The science advisors will be retained to provide ongoing input and the assessment team will convene approximately every 5 years. The public will be involved in the form of a public advisory committee. The committee will meet at least quarterly to provide advice and oversight. There will also be annual public meetings. All of this will be at a minimum.

Finally, land and water management and monitoring agencies will perform many functions, and their involvement will take the form of participation in a technical advisory committee. This includes participation of TNC and other groups.

Figure 8-2 illustrates the various functions and roles of the Implementing Entity. In addition to plan administration, the Implementing Entity will be responsible for securing outside legal and financial services and retaining other consultant and staff support to acquire lands, write and administer grants, manage the GIS database, perform budget analysis, and conduct scientific oversight for reserve management, monitoring, and maintenance.

Figure 8-3 is a flow chart that describes the land acquisition process. Chapter 8 includes a fairly extensive land acquisition section.

Figure 8-4 provides graphic illustration of the Stay-Ahead Provision and how it may work on the ground. Graphs A and B are not to scale. The plan will have to be ahead of impacts and will need to track impacts proportionately, relative to plan conservation goals. As graph B illustrates, we have a much steeper commitment to conservation if impacts occur faster in the short term. The benefit of that scenario is that we would be collecting more revenue to acquire that land at the same time.

The plan conservation easements section is worth reading carefully. Section 8.6.3 describes allowances and restrictions that have to be established on all land with respect to existing open space and land planned for acquisition. This section is very well vetted by experts who know how these things work.

8.2.2 *Implementing Entity*

Carolyn Tognetti asked a question with respect to the Implementing Entity. Will the governing board will be assembled and then hire their staff? That is not known at this point. The Implementing Entity may be the body who hires the executive director, who would then hire the rest of staff contingent upon approval from the governing board. There are a variety of ways that this could work.

8.2.4 *Technical Advisory Committee (p. 8-5)*

Carolyn referred to plan language in this section and noted that it sounds as if the Technical Advisory Committee is a parallel decision-making group, and that the plan reads as if it has more authority than a liaison or advisory committee to the Implementing Entity. David will review to ensure roles and responsibilities are clear.

8.11 *Schedule (p. 8-52)*

Kenn noted the potential usefulness of arranging information provided in Table 8.1 using a different format. We should consider representing information so that the way it is organized gives the Implementing Entity traction “right out of the gate.”

Figure 8-4: Illustration of the Stay-Ahead Provision

Brian pointed out that wildlife agencies want the conservation goal to be achieved before the end of the permit term, and requested a change in the theoretical figures provided here to reflect that. David will make the change.

Conversation ensued with respect to the 10% deviation from the conservation goal, illustrated in graphs A and B., and whether the graphical illustration should be changed to reflect a deviation that changes over the course of the permit term. David suggested leaving the figure as is and said that he would think about how to clarify the graphs. Their intent is to show the relative difference between these lines rather than reflect actual requirements.

8.6.2 *Land Acquired by Other Organizations or Through Partnerships: Private Mitigation Banks (p. 8-29)*

Bob asked for clarification about whether or not mitigation bank services are available or will be available in the County. Since the plan identifies mitigation banks as a tool used in conservation plans, there is the expectation that mitigation banks will be available for the plan. Currently, there is a bank that services the County but is located in Alameda County (Ohlone), and there is a mitigation bank proposed within the County.

8.6.7 *Land Dedication in Lieu of Development Fee (p. 8-41)*

Jan raised the topic of the role of permittees in plan administration and implementation (the governing body) and the potentially conflicting interests that may arise for them. Permittees are project proponents and they are also responsible for reviewing and approving projects. He voiced concern that economic forces could lead to unwise decisions here, particularly regarding land provided to the Reserve System in lieu of development fees. He is concerned that land provided in lieu of fees may in this case drive assembly of the Reserve System and does not believe that this is a sound strategy for doing so.

David noted this concern and pointed to plan criteria for providing “in lieu of” land. These criteria have been designed to counter the worst-case scenario. Of course, at the same time there will remain the need and ample opportunities for oversight on the part of the public and wildlife agencies to watch “in lieu of” approval. David also stated that it is in the permittees’ interest to follow criteria very carefully because if they don’t then their permits are in jeopardy, which will have negative consequences for them in the longer term. In addition, it is the responsibility of each permittee to adhere to these criteria because a false move on their part puts every permittee’s permits at stake.

Jan also voiced concern over the lack of independence of the Implementing Entity from permittees and the potential negative consequences of this with respect to mitigation. David responded that permittees are the local agencies so the control over those permits must rest in their hands. More independence of the Implementing Entity from permittees is simply not achievable.

According to David, more often than not this provision will come out in favor of the Reserve System. The most common application of this would be in the case of a development project on a parcel where the landowner dedicated the rest of parcel to the Reserve System. In this case, the land would have more value than the fees they would pay.

The plans' fee structure is inadequate to keep pace with the rising cost of land. The only case where we would do this is if we do not have enough willing sellers. While reaching this point is conceivable, the plan also creates an entirely new market for landowners that did not exist before. David is optimistic about the plan in this regard.

Lloyd Wagstaff agreed that the issue of dedication of land in lieu of fees will be great 95% of the time. He suggested that the plan should include language that ensures that, as time goes on, there is certainty that all criteria for providing land in lieu of fees (p. 8-42) are met. According to David, the conservation strategy and assembly principles create this certainty. Lloyd requested that the plan cross-reference criteria with reserve design principles in Chapter 5 – David will do this.

One stakeholder asked, what happens if the plan fails to meet conservation goals by year 40? David stated that hopefully we would know well before then if we were not achieving conservation goals. If we don't see it coming and we try and fail, permits could be suspended or revoked and no more take authorization would be granted. This would also color relationships between local agencies and wildlife agencies, which is not in the best interest of local agencies. Most agencies fully plan to extend the permit term, which is much harder to do if their plan is not successful.

Brian then noted that the structure of the implementing agency is important. David told the group that work on this is starting now. If the Implementing Entity is a JPA, then a joint agreement will be signed that includes details not defined here. The JPA would have one member from each agency, irrespective of community size. Smaller cities want an equal voice in the JPA.

8.6.3 Conservation Easements (p. 8-31)

Justin Fields raised a question about conservation easements. If someone decides to put an easement on their property do they get to decide who holds the easement? If so, is this stated in plan? David responded that, as the plan is worded now, there is not flexibility in terms of who would hold the easement. It is his recollection that wildlife agencies would not concede on this point. Justin recommended that adding flexibility here – i.e. providing landowners the opportunity to choose who holds the easement on their property - would help the success of the plan's easement strategy considerably.

Lloyd noted that this discussion about conservation easements must be going on for each HCP, and suggested that perhaps the plan include a section with criteria to follow for whoever the holding agency or organization is.

According to David, the requirement that the wildlife agencies are named as a third party beneficiary to all conservation easements is an insurance policy that ensures their involvement in how these easements are monitored and maintained. He acknowledged the benefit of wildlife agencies playing the role of third party beneficiary, and noted that plan does say that Implementing Entity will be the easement holder.

Discussion then ensued about the difference between third party beneficiary and easement holder. Jack Bohan clarified that a third party beneficiary is an entity that can enforce regulations or standards that are part an agreement between two parties but is not a party to the transaction.

8.6.3 Conservation Easements (p. 8-33)

Carolyn raised a question regarding activities prohibited by conservation easements under the plan and asked why the bullet prohibiting recreational activities (with conditions) was deleted. Did this language allow for private use or public use?

David noted that the plan team tried to clarify this with language found a few pages down (p. 8-34: “In addition, all recorded conservation easements...”). Condition 9 and the conservation goals govern allowable uses in terms of public access and recreation. The intent of the plan is to honor easement restrictions and make them even more restrictive on private parcels when the landowner doesn’t want recreational uses. This runs parallel with plan conservation goals, which are always the paramount factor.

Jack asked, is it easier for a developer to acquire land than the Implementing Entity? If, later in the permit term, there are not enough parcels to assemble the Reserve System, would this result in a cap on development? David Zippin replied that in his experience, it is easier for a developer to acquire land than a public agency because private entities have more flexibility what they pay for the land, and they tend to have a wider network of willing sellers. This would not result in a cap on development because applicants would still be able to get take authorization under the plan if they provide land suitable for the plan.

One stakeholder asked if the plan includes any language that prohibits the Implementing Entity from buying land, flipping it, and buying land with greater habitat value. David replied that this is not allowed. In response to another question about what would happen if species disappeared from land targeted for protection, David replied that the plan focuses on habitat suitability, so we don’t depend on species being present all the time. As long as habitat is suitable and enhanced we’ve met our goals.

IV. PUBLIC COMMENT AND NEXT STEPS

There was no public comment related to Chapters 7 and 8 or the meeting’s proceedings. The next stakeholder meeting is scheduled to take place on Tuesday, October 28 at the Morgan Hill Community Center from 4 to 6:30 p.m.

Joan also noted the upcoming conservation planning workshop on November 19 and reminded stakeholders that if they are interested in attending the HCP will pay their registration fees. Simply submit your registration and mark it paid by Ken Schreiber.

As of now, we are looking to hold the next meeting on Tuesday, November 25. It is very likely that we will not hold a stakeholder meeting in December.