

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN
Stakeholder Group Meeting | December 12, 2005 | Morgan Hill Community Center

IN ATTENDANCE:

Stakeholder Group Members:

Keith Anderson (South Valley Streams for Tomorrow)
Jack Bohan (Representative of general public)
Kevin Bryant (California Native Plant Society)
Justin Fields (Santa Clara County Cattlemen's Association)
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)
Virginia Holtz (Representative of general public)
Lawrence Johmann (Guadalupe-Coyote Resource Conservation District)
Bob Loveland (Representative of general public)
Kenn Reiller (Pajaro River Watershed Council)
Brian Schmidt (Committee for Green Foothills)
Brenda Torres (Audubon Society)
Lloyd Wagstaff (The Nature Conservancy)
Bill Young (Sierra Club)

I. WELCOME

Meeting Objectives & Agenda

Goals for this meeting included introductions, a recap of the November 17 HCP workshop, the development of group operating protocols, the discussion of the covered species list, the introduction of the covered activities list, and the discussion of science advisors and expertise represented within the group.

There were several conflicts that prevented a number of members from attending and members had e-mailed the facilitator to let her know they would not be attending. The Tuesday meeting date in January will eliminate these conflicts from occurring.

The minutes were distributed to the group in advance of the meeting. Several people asked that their affiliations be corrected in the minutes and in other group materials:

- Craig Edgerton serves as a Stakeholder Group member as a representative of the Santa Clara County Open Space Authority, although he is also the Executive Director of the Silicon Valley Conservancy.
- Virginia Holtz speaks as a representative of the general public, although she is also affiliated with the League of Women Voters.
- Jack Bohan also speaks as a representative of the general public, although he is also affiliated with the Santa Clara County Planning Commission.

II. RECAP OF NOVEMBER 17 WORKSHOP

Kevin Bryant and other group members who had attended the November 17 workshop on the HCP process shared their experiences. They noted that the group had been very balanced, with representatives from a number of ongoing habitat conservation planning processes, including some that are nearing completion. Lessons learned from these groups included the importance of considering money early in the process and

the importance of finding ways for conservation plans to meet the needs of the agricultural community. Several members noted that the East Contra Costa HCP process could provide lessons for the Santa Clara County process, since there are some similarities. Joan Chaplick (MIG) distributed a CD containing the HCP/NCCP-related material in digital form, and encouraged group members to explore those resources.

III. DEVELOP AND DISCUSS GROUP OPERATING PROTOCOLS

Membership

Responding to a question from a group member, Joan Chaplick noted that there are still some open positions in the stakeholder group. Several members noted that the developer community seemed to be underrepresented. One of the three open spots is specifically intended for a representative from the business/industry/ development community. Any new members must complete an application and be formally appointed by the Management Team before they can participate as a member of the Stakeholder Group. Interested applicants are encouraged to attend meetings as members of the general public so they can stay up to speed on the group's progress. The next Management Team meeting will be in early January, so any group member who can help recruit new members should let Ken Schreiber know before then. The group is seeking representatives from the business/land development communities and individuals who will bring more gender and racial/ethnic balance to the group. Residential developers are most likely to be impacted by the HCP process, so they are likely to participate. Bev Bryant of the Home Builders Association will try to recruit some members of her group. Kenn Reiller also suggested the Silicon Valley Leadership Group (formerly the Santa Clara Manufacturers Council). Bev also has a contact there and will follow up.

Communication

Joan noted that the consultant team would be working with stakeholder group members to find out how best to communicate with their constituents. A constituency representation plan will be developed so that each member can effectively share the results of the process with their constituency. We will be looking to identify what tools work best and will work with the group's schedule. Virginia Holtz suggested that camera-ready copy for news articles could be helpful.

Kenn Reiller asked how much lead time would be necessary. Joan and Ken Schreiber asked group members to let them know about upcoming presentations as soon as possible. Ken Schreiber underscored the need for group members to stay in touch with their constituents, cautioning that it can become easy for such a group to become insular as expertise grows. The Management Team has regularly scheduled meetings with the Liaison Group, so they'll be seeing incremental changes.

Group process statements

Purpose

Jan Hintermeister observed that the current purpose statement doesn't seem to be working—it sounds too legalistic. He suggested that the purpose is really 1) allowing for development and 2) developing the plan. David Zippin (Jones & Stokes) noted that the HCP and NCCP processes are also very different: incidental take permits are a minor piece of the NCCP, which primarily looks at landscape-level conservation planning without actually focusing on threatened or endangered species. (“How do we protect broad swathes of landscape, and, incidentally, protect species?”) The HCP, in contrast, looks at the smallest level up by emphasizing the protected species themselves. (“How do we protect species?”) The two work together as a coherent process to resolve development conflicts.

The group suggested reorganizing the purpose statement and adding bullets. The statement would lead with the section emphasizing the long-term plan, followed by the two points bulleted out.

Existing:

The primary purposes of developing the HCP/NCCP are to facilitate obtaining incidental take permits from the US Fish and Wildlife Service, National Marine Fisheries Service and the CA Department of Fish and Game and to develop a long-term conservation plan to protect and contribute to the recovery of sensitive species and habitats in Santa Clara County while allowing for appropriate development and maintenance activities that are compatible with other local policies and regulations.

Proposed:

The primary purpose of developing the HCP/NCCP is

- to develop a long-term conservation plan to protect and contribute to the recovery of sensitive species and habitats in Santa Clara County while allowing for appropriate development and maintenance activities that are compatible with other local policies and regulations, and
- to facilitate obtaining incidental take permits from the US Fish and Wildlife Service, National Marine Fisheries Service and the CA Department of Fish and Game.

Mission

Several group members noted that it was difficult to frame the mission before identifying the goals. There was also a request to clarify the roles of the Mare Island group versus the Management Team versus other players. Joan will email the group a list of the full team working on the plan so they know who is part of the designated groups. She also affirmed that the mission (and other guiding process statements) would most likely be reordered and reformatted as the group progresses.

Expectations

There was some concern over the wording of the penultimate bullet of the expectations statement, which states that stakeholder group members will take responsibility for the outcome of the project. Members pointed out that elected officials make the final decisions, and may make changes that stakeholders don't agree with. The group decided to change the statement to read "...take responsibility for stakeholders' recommendations and advice to decision makers."

The group also discussed the members' responsibilities to represent their organizations in keeping with their missions. The distinction was made between those who are representing themselves (but in many cases may also be affiliated with an agency or organization) and those who are formally representing agencies and organizations. In the latter case, there may sometimes be a need for work products to go back to the organizations' boards for endorsement; it is the responsibility of the representative to ensure that the board is kept up-to-date so that the endorsement is simply a "rubber-stamping" mechanism.

Group members also suggested a number of other additions to the expectations list:

- Attendance should be spelled out.
- The Management Team will disclose information fully to group members. However, because the process is information-intensive, attempts will be made to avoid inundating people. The underlying intent is that no information will be hidden or kept from the group.
- The facilitation/management team will also provide shared information.
- The facilitator will respond to any inquiries.

Meeting ground rules

Proxies

Do we want to allow proxies? Many members felt that it would be bad to have a specific stakeholder's view missing. Others agreed that it seems like a good policy, provided that use of the proxy is judicious.

Does the proxy get to vote? Many members suggested that the proxy be treated as though they were participating in the stakeholder's place. The proxy also has the right to abstain. This doesn't mean the organization doesn't have an opinion on a topic. Rather, it allows the proxy to avoid being put in the position of commenting on a topic about which they are not fully informed or is beyond the comments they have been authorized to represent. Several members noted that as the group gets closer to final recommendations, it will be important to have stakeholders themselves present. If a stakeholder sends a proxy, the proxy should come fully prepared to represent the stakeholder and weigh in on the discussion. Joan will remind people of any critical discussions where stakeholder comments may result in a recommendation or action by the group.

The question of who the stakeholders at the table actually are was brought up. Is an individual a stakeholder, or is an organization a stakeholder (with a designated representative)? The answer to the question depends on how members were appointed. If they were appointed based on their position within or connection to an organization, they represent the organization. If they are participating as an unaffiliated member of the general public, they represent themselves. In the former case, it seems natural to allow a proxy, since the organization has been designated to be at the table.

Meeting protocols

Joan, David, and Ken will prepare the agenda for each meeting. Agendas will be planned three to four meetings out, and will include check-ins with respect to the plan's status. There will be no formal meeting minutes approval, as this takes a long time. However, when errors are discovered (e.g. a member's affiliation), they will be noted in the current minutes to ensure an accurate record.

The discussion of decision-making processes was tabled until the January meeting, when there will be more group members in attendance.

The draft Collaborative Process Plan (dated 11/30/05) will be updated to incorporate these changes. The document will continue to evolve over time.

Additional questions and concerns

Jack Bohan asked how many elected officials are involved in the plan. David responded that each of six local agencies has a position (usually two people)—their role is to keep other elected officials/bodies up to date.

Kenn Reiller suggested making the group more visible to water agencies and other organizations involved in planning. Urban water management agency plans are required, for instance, and there is money available—the HCP group should be on their radar. Can the group send a letter next month to promote its presence and look for collaboration/coordination possibilities? Is this the responsibility of the Management Team? David noted that some concurrent or existing plans are broader than the HCP/NCCP, so they'll benefit from this work; others are more specific, so the HCP process will benefit from their work. Joan suggested adding a meeting agenda item for discussions of other agencies and communities working on plans.

IV. DISCUSSION OF COVERED SPECIES LIST

David Zippin reviewed the fundamentals of the covered species list, noting the four criteria for selection: range (in study area); status (listed or likely to be listed); impact (will covered activities take species?); and data (do we know enough about the species?) He added that the list is still preliminary.

Group members wondered what the ramifications would be if the plan does not include a species that is subsequently listed. David responded that HCPs can be amended. He reminded the group, though, that there

is no authorized take if a species is not covered by the plan, so if it is then listed, the developers will still be required to go through a separate permit process.

The group also discussed the dilemma of habitat not currently occupied by the species. The federal definition of harm includes significant habitat modification. (This is not necessarily true for the state, though.) Consequently, even if habitat is removed that doesn't support the species, it can still be considered take. Often, developers can simply assume that it is take, mitigate for it upfront, and avoid potential problems down the road. In many cases, no take of a protected species is allowed at all.

CESA species

Under CESA-protected species, there is no allowable take of individuals. Prior to CESA, species were identified specifically, and harm or death of individual animals was prohibited. However, this did not extend to habitat. There are similar limitations under the Migratory Bird Treaty Act (MBTA), which protects migratory birds and their nests. In addition, some species are uncommon but not rare. While there may be incidental benefits for these species, they are not otherwise protected.

As far as CEQA coverage of species, there is a precedent for including species in the plan simply so that when they do get covered by CEQA, there will not be any additional steps to include them. (In San Joaquin, this was done because the original take list was denied, so the group dubbed other species "CEQA species.") At this point, the Management Team has no plans to ask the Stakeholder Group for a recommendation on this issue per se. The group concluded that this would be a better issue to discuss after the Management Team has started their discussions on it.

Occurrence data and changes to the list

Jones and Stokes will assemble occurrence data on species; they are happy to receive information directly from stakeholders. Eventually, they will provide a summary of the most relevant information for the HCP process.

At this point, the Management Team is looking for advice on the list. The group would like time to discuss the list in depth, however. This should also include time for Jones & Stokes to respond to specific species questions.

Keith Anderson noted that there are some errors in the current list; he'll get a list to David. Several members who could not attend the meeting contacted Joan individually with thoughts. Joan asked if, in general, the group would like to receive such comments prior to the meeting to be privy to the full discussion. The group will receive the full range of comments made. The comments may be consolidated to reduce the number of e-mails sent to the group.

Jones and Stokes will recommend covered species. For some of these, however, there may be little information available or broad habitats. Brian Schmidt added that it would be very helpful to have a detailed map of the county, especially for plants. Jones and Stokes will send out a PDF of the county map.

With respect to the maps, the primary question is range, not habitat. We don't want to waste resources covering or studying a species if the range is not included in the study area. When we develop habitat models, it will be easier to see where we assume habitat and where we don't. There may be uncertainty about whether a species occurs or about whether there's take authorization required. This just impacts the permit—you have a license to kill if there's a permit.

Additional questions and concerns

Q: What is assumption about suitable habitat? If no species known to be present, do we assume a population?

A: This depends: until we find populations, we don't know if it's really suitable.

Q: At what point will we have a defined study area? We need to know the final study area, since proposed changes could potentially add up to 60,000 acres.

A: The Liaison Group is taking this up at next meeting.

Q: It's surprising that Chinook salmon weren't included. If study area is expanded, will include the Guadalupe watershed. Millions of dollars have been spent for Chinook salmon protection in the watershed—such a high profile species should potentially be covered.

A: There have been similar comments from others. Jones and Stokes anticipates recommending that Chinook salmon be covered. (Larry Johmann added that the coho salmon would be in a similar situation.)

Q: What about birds that are of special concern? Can the plan include birds of conservation concern list at the federal level, too? Many species are included as “not expected to be listed”—but thirty years is a long time. How can we know what will be listed?

A: Relatively speaking, it is a simple process to amend the HCP later if we guess incorrectly.

Q: What is the definition of very rare species? The no-take species are really the ones that matter more with respect to conservation. Broader discussion would be good.

A: The conservation plan will focus on all of the covered species, not just the no take species.

V. INTRODUCTION OF COVERED ACTIVITIES LIST

David reviewed the activities covered by the plan and led a brief discussion on these. Some group members expressed concern about activities outside of the county's control (e.g. the University of California, which is outside the jurisdiction of the County). If there's no legal control over them, the activities don't get covered.

Keith asked whether the plan covered projects that were approved before the plan but had mitigation being implemented during the plan's term. David responded that these were probably not covered, but if they are county projects, there may be some flexibility.

Group members also asked whether the plan should cover ongoing agricultural activities, activities within streams, landscape projects, and other categories not currently included. This may be discussed in the future.

VI. DISCUSSION OF SCIENCE ADVISORS AND EXPERTISE REPRESENTED IN GROUP

Ken Schreiber and Dave Johnston introduced the list of science advisors, explaining that California requires an independent scientific component of NCCP. The report, which must be prepared by independent science advisors, will be completed by September to provide guidance throughout the remainder of the process.

Group members were provided with a draft list of areas of expertise. A mix of talents is necessary to meet the NCCP and HCP requirements. Dr. Wayne Spencer will have the lead role on the final plan, which will have a large-scale landscape-level view. Modeling will also be an important component given the lack of money and time.

Recommendations on additional science advisors are welcome and should be sent to Ken by Dec. 20th. (Keith Anderson suggested Jerry Smith at SJSU and Dr. Mark Jennings, who were both already on the list.)

Kenn Reiller added that adaptive management is a significant issue for modeling. He noted that many people are learning on the job, but underscored the need to find someone well-versed in adaptive management modeling.

VI. PUBLIC COMMENTS AND NEXT STEPS

- Group members should let Ken Schreiber know if they have recommendations for new stakeholder group members.

- Joan Chaplick will email the group a full team list to clarify confusion over the many groups working on the plan.
- The discussion of decision-making processes will be moved to the January meeting agenda.
- The HCP process training will be held on January 21st. Registration materials were passed out at the meeting; stakeholder group members have priority, so everyone should make an effort to attend, even if the registration deadline has passed. (The deadline will be advertised via email.)
- There will be additional agenda time for a covered species discussion at the January meeting.
- **Next meeting: Tuesday, January 24th, beginning promptly at 4 pm.**