



Santa Clara Valley
Habitat Conservation Plan/Natural Community Conservation Plan

**SANTA CLARA VALLEY HCP/NCCP LIAISON GROUP MEETING
THURSDAY, FEBRUARY 18, 2010
SANTA CLARA VALLEY WATER DISTRICT
5700 ALMADEN EXPRESSWAY, SAN JOSE
HEADQUARTERS BUILDING BOARD CHAMBER LOBBY
4:00 to 6:00 PM**

1. Welcome/introductions (5 minutes)---Supervisor Don Gage
2. Review of Actions on Incidental Take Permits for Fish Species (10 minutes)---
Ann Draper, Pat Showalter, David Zippin
Desired Outcome: Review status of fish species in the Valley Habitat Plan.
3. Valley Habitat Plan Schedule and Budget (15 minutes)---David Zippin, Ken Schreiber
Desired Outcome: Provide and discuss updated information on the Valley Habitat Plan process
4. Information Items (30 minutes)---Ken Schreiber
Desired Outcome: Provide and discuss the status of Habitat Plan-related issues and processes.
 - a. Western Burrowing Owl conservation strategy
 - b. Zone D Fee status
 - c. Implementing Entity
 - d. Habitat Plan Implementation start up process
 - e. State Parks and Recreation
 - f. Rangeland Field Trip
 - g. Stakeholder Group meetings
5. Liaison Group Meeting Schedule (5 minutes)---Ken Schreiber
Desired Outcome: Review the 2010 meeting schedule.
6. Discussion with Wildlife Agency staff (5 minutes)
Desired Outcome: Share information and, when appropriate, reach common understanding regarding issues of interest.
7. Public Comments (5 minutes)
Desired Outcome: Receive comments from members of the public

Next Liaison Group Meeting: Thursday, March 18 from 4 to 6 at the SCVWD Headquarters Building.



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: February 18, 2010

AGENDA ITEM 2

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Review of Actions on Incidental Take Permits for Fish Species

PREPARED BY: Pat Showalter

Purpose of this Staff Report:

Inform the Liaison Group of:

1. SCVWD Board of Directors actions on February 9th, 2010,
2. Management Team motion to exclude fish from the covered species list of the Valley Plan, and
3. The SCVWD's commitment to work with NMFS, DFG and FWS to complete the Three Creeks HCP.

Discussion:

Due to scheduling issues related to aquatic species and the complexity of integrating the terrestrially-focused Valley HP with the aquatic-focused Three Creeks HCP, the SCVWD Board of Directors followed the joint recommendation of the California Department of Fish & Game (DFG), National Marine Fisheries Service (NMFS) and the U. S. Fish & Wildlife Service (FWS) on February 9, 2010. The recommendations that were adopted are as follows:

- A. Provide direction to agree to remove fish as a covered species from the Valley HP.
- B. Retain District covered activities in the Valley HP that have terrestrial species impacts.
- C. Advocate that the land use measures which benefit the quality of riparian areas be retained within the Valley HP.
- D. Continue to finalize Three Creeks Habitat Conservation Plan.
- E. Return to the Board with a more detailed plan for regulatory coverage for fish in the south county.
- F. Review the current funding on the development of the Plan, and because of the District's reduced involvement, reduce cost proportionally.

Recommendations A-E were part of the staff's recommendation to the Board. Recommendation F was added based on the Board's discussion.

Following the Board's direction a motion was circulated to the Management Team to change the covered species list to remove the fish species, retain the conservation actions that benefit riparian areas (such as stream setbacks, conditions of approval and Best Management Practices), remove conservation actions and assurances that address flow of water, spawning habitat and other in-stream changes, as well as remove fish-related monitoring. The motion relates to A-C of the Board's recommendations. Staff should be able to report out the results of the Management Team's vote by email at the February 18th Elected Officials Liaison Group Meeting.

SCVWD staff will continue to work as quickly and effectively as possible to complete the Three Creeks HCP so that the FAHCE water rights complaint can be settled and the conservation program can be implemented. DFG, NMFS, and FWS officials have all pledged to assist the SCVWD in completing the Three Creeks HCP in a timely fashion.

District staff will be bringing Recommendation F on reducing cost for development of the Plan to the Management Team for discussion. Under our MOU for developing the Valley Plan, costs are to be shared in an equitable manner.



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: February 18, 2010

AGENDA ITEM 3

TO: Governing Body Liaison Group

FROM: Kenneth Schreiber, Program Manager

SUBJECT: Valley Habitat Plan Schedule and Budget

PREPARED BY: Kenneth Schreiber

The Valley Habitat Plan team is working on updating the Plan's budget and schedule consistent with the Santa Clara Valley Water District's February 9, 2010 action to concur with removal of fish species from the Plan. Updated information will be provided at the February 18th Liaison Group meeting.



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: February 18, 2010

AGENDA ITEM 4

TO: Governing Body Liaison Group

FROM: Kenneth Schreiber, Program Manager

SUBJECT: Information Items

PREPARED BY: Kenneth Schreiber

Purpose of this Staff Report: Provide information on seven items related to the Habitat Plan.

Next Steps After Liaison Group Review: Activities regarding these items will proceed as described.

Recommendation: No Liaison Group action is needed on items 5. a, b, c, and d. Item 5.e., Liaison Group meeting schedule, should be confirmed or modified by the Liaison Group.

Discussion:

A. Western Burrowing Owl conservation strategy

Local Partner staff and consultants continue to work on refining the Western Burrowing Owl (WBO) conservation strategy. The Department of Fish and Game has the lead role for the Wildlife Agencies. The attached January 26, 2010 Stakeholders Group meeting notes has an extensive discussion of WBO conservation issues. The essence of the emerging WBO strategy includes:

Four burrowing owl conservation regions with distinct WBO conservation goals for each area:

- North San Jose/Baylands including lands outside the VHP Study Area;
- South San Jose;
- Morgan Hill area; and
- South County/Gilroy area.

The expansion of the Study Area into South Bay area:

- allows the Habitat Plan to affect burrowing owl conservation at a scale that is biologically based;
- opens up additional conservation opportunities both inside and outside of the original area; and
- creates an environment where the Habitat Plan Implementing Entity can influence conservation decisions for the burrowing owl in the region, not just in the study area.

In summary, the emerging conservation strategy would accomplish the following:

- set population goals and land protection goals;
- outline reserve land selection criteria for the burrowing owl;
- require that if nesting habitat is protected and mitigation/conservation credit is earned, an acceptable amount of foraging habitat is available around that site to keep it viable as a nesting location; and
- describe how to measure burrowing owl habitat, both nesting and foraging.

B. Zone D Fee Status

Development Community Opposition to Zone D Fee

In a August 31, 2009 e-mail, Paul Campos, on behalf of the Homebuilders' Association of Northern California (HBANC), expressed significant concerns about the Habitat Plan, particularly with respect to development projections and financial assumptions, the Zone D fee and excessive implementation costs.

A meeting with HBANC and other development representatives was held on January 29, 2010 to better understand their concerns and identify alternatives that might garner their support of the Plan. The meeting included management representatives from the USFWS, CDFG, County, City, Jones & Stokes and the Plan Program Manager. The discussion centered around the implication of this Habitat Plan being the first to substantially address indirect air pollution impacts at a time when many other clean air efforts are underway, such as CEQA consideration of greenhouse gas emissions, BAAQMD thresholds and Climate Action Plans. The development community has more objections to the principle of imposing such a fee than the actual cost of the fee itself. Another major objection is the fairness of charging new development for the air pollution "sins" of the past.

Four options were identified at the meeting.

1. Keep the Zone D fee in the plan.
2. Drop the fee and use other cost savings.
3. Drop the fee and absorb costs into other fees (increasing Zones A, B & C by approx. 8%)
4. Drop the fee in lieu of another source.

The development community is on record with strong opposition to option 1 to the point of actively opposing adoption of the Habitat Plan if it is included. Some of the other Local Partners are opposed to options 2 and 3 because of funding equity concerns. This leaves option 4 for which several ideas have been identified for further consideration, such as differentiating between types of development (e.g. transit-supportive, transit-adjacent and non-transit) to better target higher trip generating uses. Another approach might be to collect a nominal fee for all development permits, similar to the General Plan update fee, which the City would use to subsidize the Zone D fee. A third option would be to establish a more direct link between greenhouse gas emissions and a fee. Lastly, a specific serpentine impact fee might be considered. The Management Team and consultants will continue to evaluate these various options and report back at a future date. A follow up meeting with representatives of the Home Builders and the other participants in the January 29th meeting is scheduled for March 18th.

Background information on the Fee Schedule and Zone D is Attachment A.

C. Implementing Entity

The next steps on reaching a decision on the form and functions of the Implementing Entity will be development of Draft wording for creation of a Joint Powers Authority. The Habitat Plan's Attorneys Group will be working on this in late February and March. It is anticipated that Draft JPA wording will be reviewed by the Liaison Group at the Group's April 15, 2010 meeting.

D. Habitat Plan Implementation Start Up Process

Resolution of the status of fish species in the Habitat Plan will impact planning for how the Implementing Entity starts functioning. This issue will be on the Liaison Group's April 15, 2010 agenda.

E. State Park and Recreation

The Habitat Plan has been proceeding on the assumption that a way can be found for the State Department of Parks and Recreation to include Coe Park in the Plan. Coe Park has numerous ponds (most of which are deteriorating former stock ponds) and other wetland areas that are in need of stabilization and restoration. Many of these facilities serve the California Tiger Salamander (CTS). CTS is a list Federal endangered species and is likely to be listed by the State in the near future. The State needs Federal permits for impacts on the CTS. The Habitat Plan staff and consultant team has worked with the State Parks Regional staff responsible for Coe Park and the Wildlife Agencies on a pond restoration strategy.

A stumbling block for inclusion of Coe Park in the Habitat Plan is State Parks and Recreation policy that rejects entering into permanent land preservation agreements deemed necessary by the Fish and Wildlife Service for receipt of Federal endangered species permits. As of February 12th, it appears almost certain that Coe Park will not be part of the Valley Habitat Plan.

F. Rangeland Field Trip

The Habitat Plan team is working with the cattle grazing community including members of the Santa Clara County Cattlemen's Association, California Rangeland Coalition and California Rangeland Trust to expand and refine the Habitat Plan's understanding and treatment of cattle grazing in Santa Clara County. An underlying Habitat Plan assumption is that land that currently is grazed if brought into the Reserve System will continue to be grazed. Justin Fields, the Cattlemen's Association representative on the Stakeholder Group, is now managing a 200 acre mitigation site. Members of the Association, Coalition and Trust have concurred that Spring, when the grass is green and flowers are in bloom, would be an especially good time for a half day (1:30 to 4:30) discussion of the roles of ranchlands in habitat conservation. The event would be open to elected officials, members of the Stakeholders Group and the general public. The overall format would be to have half the time at the Coyote Grange for presentations and discussions and then time touring Justin's ranch. A Friday afternoon appears to be the best time. It is recommended that the Liaison Group identify a date for this event.

G. Stakeholders Group

The Stakeholders Group did not meet in October, November and December because of Holiday conflicts and uncertainty over the status of fish species in the Habitat Plan. The Group's January 26, 2010 meeting notes are attached. It is anticipated that the Group will continue to meet monthly at least into the Summer as well as having an active role in reviewing and commenting on the Public Draft Habitat Plan and related documents.

Attachments: A. Background Information on Habitat Plan Fee Schedule
B. January 26, 2010 Stakeholder Group Meeting Notes

Copies: Stakeholder Group
Paul Campos

Attachment A

Background Information on Habitat Plan fee Schedule

An unresolved key issue is that the overall approach to funding the implementation of the Plan includes collection of an impact fee from urban infill projects that may not have direct sensitive species impacts, or otherwise require approval from one or more of the Wildlife Agencies for impacts to a sensitive species, a process known as ‘take authorization.’ The Draft Plan identifies different impact fee zones that vary based on their relative habitat value to the Plan’s covered plant and animal species.

Zone A: Natural Land. Land is strongly dominated by natural land cover types including grassland, oak woodland, and chaparral. Zone A occurs outside the Santa Clara Valley floor within the Diablo Range and the Santa Cruz Mountains and adjacent foothills. Development in this zone is expected to have, on average, notably greater effects on covered species and natural communities than in other zones. (current estimate \$18,500 per acre fee)

Zone B: Agricultural and Rural Residential Lands. Land is strongly dominated by currently or formerly cultivated agricultural land. Zone B includes much of the Valley floor, lower-elevation rural residential land, and small adjacent valleys such as the Almaden Valley. In general, covered activities that occur in this area have less effect on covered species and natural communities than do activities in Zone A. (current estimate \$12,900 per acre)

Zone C: Small Vacant Sites. Zone C comprises specific sites that meet all the following criteria.

- Undeveloped.
- 1.0–10.0 acres in size.
- Surrounded on four sides by one or more of the following land cover types: urban/suburban, landfill, or agriculture developed/covered agricultural.

Development of these areas will result in loss of open space and some habitat values, but impacts will be substantially less than those in Zone A and Zone B because these areas are already surrounded by development. (current estimate \$4,600 per acre)

Zone D: Urban Intensification/Infill.

Background:

The large majority of the Plan’s urban/suburban areas are in Zone D. While the Zone A, Zone B, and Zone C development fees are based on mitigation of new development’s direct impacts on specific habitat(s) (referred to as land-cover) at the site of the development project, the Zone D intensification fee is based on the indirect air pollution (nitrogen deposition) impacts of new development in urban intensification areas on sensitive land types elsewhere in the Plan area, such as Coyote Ridge east of Freeway 101. The Zone A, B and C fees include addressing nitrogen impacts but the fee calculations do not single out a distinct nitrogen deposition fee element.

Serpentine land-covers in the Plan area are particularly sensitive to deposition of airborne nitrogen compounds generated by vehicle emissions and other sources. These

nitrogen compounds enter ecosystems as nitrogen fertilizer. This increased soil fertility can favor non-native annual grasses over native plant species found in serpentine soils. One native serpentine plant species, the dwarf plantain (*Plantago erecta*) is the host plant for the Bay checkerspot butterfly, a key covered species in the Habitat Plan. Additional native plants found in serpentine soils are covered by the Habitat Plan (e.g., Metcalf Canyon jewelflower [*Streptanthus albidus* ssp. *albidus*], most beautiful jewelflower [*Streptanthus albidus* subsp. *peramoenus*], and fragrant fritillary [*Fritillaria liliacea*]). The fees would be used to acquire and actively manage serpentine-related habitat to mitigate the effects of increased nitrogen deposition from growth occurring within the Plan area.

Jones & Stokes completed air pollution simulation modeling to estimate the percentage of nitrogen deposition in the Plan habitat areas that results from air pollution emissions within the Plan area, as opposed to air pollution that is transported from other regions to the Plan area. Based on these figures, 50% of the Habitat Plan costs related to mitigating nitrogen deposition impacts are allocated to development in the Plan area through the Zone D intensification fee. Other funding sources will have to be found to deal with the air pollution that is transported from other regions to the Plan area.

The Zone D Intensification Fee of \$6.17 for each new average daily vehicle trip (ADT) has been included in the Plan. Zone D comprises expansion of existing public and private sector uses and all new development of undeveloped or vacant sites within urban/suburban areas that are less than 1.0 acre. Development on these sites is assumed to increase the number of vehicle trips, thereby increasing the amount of nitrogen-based pollution that affects natural habitat areas. The fee per vehicle trip was determined based on the Plan area's share of the total costs related to mitigating nitrogen deposition impacts and the projected growth in vehicle trips during the permit term. In the rare case that the Zone D fee, calculated on a per trip basis, would exceed the \$4,600 Zone C per acre fee, the impact fee will be capped at the Zone C level.

The fee, which is to be a one time payment, for this type of development is to be based on the increase in average daily vehicle trips from the site. This fee would be approximately \$62 for a new single family house and \$43 for a new multiple family unit. Non-residential uses (e.g., office, warehouses, public facilities, retail) would be less than \$0.10 per square foot for most uses and approximately \$0.40 per square foot for new retail uses.

Local jurisdictions would determine the number of vehicle trips, based on the average daily vehicle trip (ADT) rates used for traffic impact assessments, generated by each new development project and the resulting Zone D fee. Using average daily vehicle trips as the basis for calculating the fee is intended to insure that transit oriented development and other lower vehicle trip generating uses will pay correspondingly lower fees. Over the 50 year Plan term, as cities adopt and implement new General Plans and Climate Action Plans that result in changing travel mode splits with an increasing share of non-auto trips, reductions in vehicle miles traveled (VMT) and ADT, cities will have the ability to adjust ADT rates for land uses accordingly.

The Wildlife Agencies have communicated to the city of San Jose that the 2040 General Plan Update currently under development needs to address nitrogen deposition impacts on habitat. If the Habitat Plan does not cover those impacts, the Wildlife Agencies would expect new development to mitigate

for nitrogen deposition impacts on a per project basis, which would be impractical in most instances. City Staff believes it would be advantageous to have the issue dealt with as part of the Habitat Plan.

An additional reason for the collection of this fee is anticipation that State policies on climate change and sustainable development will include mitigation of impacts of new development on habitat and endangered species. Accordingly, the Zone D intensification fee could meet all or some of the mitigation requirements of future global warming policies and regulations. State policies and regulations have recently been adopted (e.g., California AB 32 and SB 375) or proposed (e.g., modifications of the California Environmental Quality Act) that encourage and in some cases require local jurisdictions to address land use development policies and project specific approvals in ways that minimize urban expansion and mitigate global warming-related impacts on the environment.

State officials have cited preparation of a Natural Community Conservation Plan (NCCP), which is part of the Habitat Plan, as a positive response to sustainable land use policies, as well as a source of mitigation for development impacts on species and natural habitats. Preparation of the Draft Habitat Plan will include and identify Plan elements that can be applied to broader State land use policies and regulations regarding climate change. Opportunities to use the Habitat Plan to address applicable Federal policies and regulations, in addition to the Endangered Species Act, will also be sought.

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

*Stakeholder Group Meeting | January 26, 2010 | Morgan Hill Community & Cultural
Center*

IN ATTENDANCE:

Jack Bohan (General Public)
Kevin Bryant (California Native Plant Society)
David Collier (Sierra Club)
Wayne Costa (YCS Investments)
Craig Edgerton (General Public)
Justin Fields (Santa Clara County Cattlemen's Association)
Meg Giberson (Guadalupe-Coyote Resource Conservation District)
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)
Virginia Holtz (League of Women Voters)
Michelle Korpos (Home Builders Association of Northern California)
Don Long (Castro Valley Ranch)
Bob Power (Santa Clara Valley Audubon Society)
Kenn Reiller (Pajaro Watershed Council)
Pat Showalter (Santa Clara Valley Water District)
Jerry Smith (Science Advisor)
Carolyn Tognetti (Save Open Space Gilroy)

Jack Sutcliffe and Susan Minetta are excused from today's meeting.

I. WELCOME AND INTRODUCTIONS

Joan Chaplick welcomed Stakeholders to the January 2010 meeting, invited a round of introductions, and announced a minor change to the afternoon's agenda. Following Ken's update on Plan schedule and budget, Troy Rahmig will review changes to the burrowing owl discussion, and Jack Barclay of Albion Environment will present on the population viability analysis that will be conducted for the owl. Second, Ken Schreiber and Pat Showalter will provide an update on the aquatic species conservation strategy and related impacts on the plan moving forward. Next, Troy and Dave Johnston from the Department of Fish and Game (DFG) will share recent findings related to hybridization of the California Tiger Salamander (CTS).

II. UPDATE ON PLAN SCHEDULE AND BUDGET

Ken Schreiber provided an update on Plan schedule and budget. Scheduling issues related to release of the public draft Plan and incorporation of the Three Creeks HCP (3CHCP) will be discussed later in the meeting.

III. DRAFT BURROWING OWL CONSERVATION STRATEGY

Overview of Changes to Strategy

Troy Rahmig provided an overview and update on activities related to the burrowing owl. The process to develop the burrowing owl strategy has been very iterative. The Fish and Wildlife Service (FWS), Department of Fish and Game (DFG), ICF (technical consultant, formerly Jones & Stokes), the City of San Jose, Santa Clara County, the Santa Clara Valley Water District (SCVWD), and Jack Barclay (Albion Environmental) have met at least four times to focus on burrowing owl habitat. Based on where study area boundaries are drawn and where the owls exist in the South Bay, the group felt the need to step back and take a higher-level look at burrowing owl habitat protection.

Troy explained that, with all species and communities, we are trying to protect a declining resource. The burrowing owl is an extreme example of this. In the South Bay, it is becoming difficult to establish a base line for the burrowing owl, which makes it difficult to set planning goals. The South Bay has some reasonably sized populations, but they are either just outside of the Plan study area, or they are inside our study area and are most likely to be affected by operations not covered by the Plan.

For these reasons, we have expanded our study area for the burrowing owl. Most existing populations are north of Highway 237 or in other areas such as Moffett Airfield, San Jose Airport, and Fremont's Warm Springs District. The real conservation opportunities exist to the north, so we have expanded the area to capitalize on opportunities just north of the study area boundary. This way, the Habitat Plan can play a larger influence in what happens in this area and can begin to influence what happens in other jurisdictions in the South Bay. Originally, we excluded this area because it overlapped with the South Bay Salt Pond Restoration Project and the VHP does not include Bay/salt waster species.

One stakeholder asked what kind of landscape the owl occupies in these areas. Troy replied that they could occupy levees, though levees are not generally managed in a way that supports habitat. Landfills, especially closed or capped landfills, are under consideration as part of this study.

Based on what we know about how they use land in our study area and the new, expanded area, conservation goals for these areas will be very different for the species. We have divided the burrowing owl conservation areas into four regions based on existing conditions. Troy explained that different conservation goals and the relative aggressiveness of the conservation approach for each area were determined based on regional population differences. This is a way to divide our resources and justify focusing on a different part of the focus area.

The four burrowing owl conservation regions are:

- North San Jose/Baylands;
- South San Jose;
- Morgan Hill; and
- Gilroy.

Troy explained that after establishing the new burrowing owl conservation regions, the group held discussions and established different goals for each of the regions.

The new regions:

- allow the Habitat Plan to affect burrowing owl conservation at a scale that is biologically based;
- open up additional conservation opportunities both inside and outside of the original area; and
- create an environment where the Habitat Plan Implementing Entity can influence conservation decisions for the burrowing owl in the region, not just in the study area.

In summary, the conservation strategy does the following:

- sets population goals and land protection goals;
- outlines reserve land selection criteria for the burrowing owl;
- requires that if nesting habitat is protected and mitigation/conservation credit is earned, an acceptable amount of foraging habitat is available around that site to keep it viable as a nesting location; and
- describes how to measure burrowing owl habitat, both nesting and foraging.

Justin Fields asked Troy how “population” is defined in the case of burrowing owls. Troy shared that for these purposes, a population is any group of individuals that can interact (i.e. where individuals can move from a nest site in one place to a winter foraging habitat in another), or where we have the reasonable expectation that they would interact. One of the goals the group has stated is to establish a “stepping stone” whereby growing populations move into different areas.

Another stakeholder asked, how will the property owners in the new area be affected? Troy responded that property owners will have to go through their standard California Environmental Quality Act (CEQA) process. Activities on properties outside the Plan study area boundary aren't covered activities under the Santa Clara Valley Plan. However, they may have mitigation opportunities on their property and mitigation opportunities linked to the Valley Habitat Plan. The primary benefit for the expanded area is to give us more opportunity for mitigation, specifically in landfills.

One stakeholder commented on the high cost of land in the new North San Jose/Baylands Region. We have to be very selective in how we expand the Reserve System into other areas. We can't sink the Plan because we are trying to purchase expensive land for foraging habitat. At the same time, there is a lot of land in that area that is sitting fallow but that may be used for foraging.

Ken shared that the County has formally requested that once a strategy is put into place, the Plan team will explore the option of some type of additional fee for burrowing owl habitat that is consumed. Ken doesn't know what this will be. It is true that this is very valuable land, and so simply passing the normal fee on this area is not a feasible way to address burrowing owl costs. From the standpoint of property owners that he has spoken with, they fear having to mitigate the owl on a project specific basis and want it covered in the Plan.

The chances of it becoming a listed endangered species in the next many years is very high, so having it covered in the Plan is high priority.

David Collier expressed the need to avoid situations where we are moving in a direction that is not at all feasible to implement.

Troy explained that in many ways, this approach to burrowing owl conservation is flexible and creative. With this species, we are considering purchasing land to manage as a preserve, but without placing an easement on the property. That way, if the land isn't paying out from a species standpoint, then down the line the Implementing Entity could sell the property, and use the funds to purchase land that is better habitat.

Ultimately, we will attempt this stepping stone approach, where we can then establish permanent reserves for permanent protection. At this point, this species demands that we break out of the boundary of the study area.

Troy explained that the most aggressive part of the strategy is focused in the north because that is where the owl is currently found. The strategy includes commitments such as an annual assessment of the breeding population in the County (and to continue this in perpetuity so we can have an ongoing account), coordinating survey protocols and methodologies, and developing an annual report regarding conservation efforts in all different areas, so we can see how decisions in one jurisdiction affect others.

Troy continued: In addition, we have discussed conducting a thorough assessment in this area of open space to determine viable habitat. Tiering off of that, there are many unrelated, patchwork conservation efforts, so we are assessing what these efforts are and the possibility of reinvigorating undermanaged mitigation sites. These are inexpensive opportunities that the Plan could fund to increase habitat value.

In Gilroy, the Plan will seek to ensure that owls have future habitat so their off-spring will come into the Plan study area. Currently the closest owls are a few owls nesting outside the Plan area in northern San Benito County. Management plans for Habitat Plan Reserve System lands in the Gilroy area should include explicit conservation strategies for burrowing owl habitat. Similar things would happen in the Morgan Hill region, but with a stronger focus on how to use agricultural lands to support a future burrowing owl population.

Troy noted that real successes are anticipated in the next 15 to 20 years in Morgan Hill; the next 30 years in Gilroy; 15 to 20 years in North San Jose. The conservation strategy is slim for the South San Jose region.

Population Viability Analysis (PVA)

Ken then introduced Jack Barclay with Albion Environmental. Jack is one of the leading burrowing owl experts in the western United States. He is part of the VHP team. Jack will be conducting a population viability analysis (PVA) to provide a greater understanding of the burrowing owl population in the South Bay and how we can more effectively establish goals for it, both here and elsewhere in the County. The analysis will provide a better

understanding of how many owls exist, the population needed for their survival, and where they should be located.

Jack began his presentation with one question: how many burrowing owls do we need to preserve so we have burrowing owls in the future? In order for owls to persist in the future, there must be enough so the probability that they don't go extinct is reasonably low.

David Collier added that he believes this question should be considered both for our study area and on a more global basis, so the owl does not become a listed species. Jack shared that he has addressed this on a regional level.

Jack explained that while it is possible to make a simple guess about how many owls are needed to ensure their survival, this would not represent a very rigorous methodology. Population viability analysis (PVA), on the other hand, is used to arrive at an analytically informed estimate. This is a tool that is widely used and has been applied to answer similar questions for a number of species, including spotted owls, grizzlies in Yellowstone Park, and wolves. Results are often used to inform management decisions. The Department of Fish and Game requested that the VHP include a PVA for the owl and that work will be undertaken shortly.

More specifically, PVA is the use of quantitative methods to predict the likely future status of a population or group of populations of conservation concern. There are three popular kinds of PVA:

- 1) Count-Based. This involves counting individuals for a number of years, looking at gross numbers over time and variations over time, and predicting into the future what the likely status of that population is based on a time series of counts and variations in those counts.
- 2) Demographic Stochastic. This approach relies on demographic rates (birth and death rates, incorporating immigration and migration). Stochastic means subject to fluctuations in the environment that are not always predictable. Bonanzas and catastrophes are often driven by environmental stochasticity. Take birth rates and death rates as the example here, with environmental factors contributing to their variation over time, and frequencies in fluctuation due to these different environmental influences.
- 3) Spatially Explicit. This is the most complicated approach. It focuses on subpopulations and requires demographic data for subpopulations, with which you quantify demographic changes between populations. Often, we do not have the kind of data to support this complex approach. A spatially explicit PVA should not be conducted if the data required is not available.

Fitting the right approach to the data available is very important. Most often, simple count data is available. Usually, the minimum count data required is ten years for a study area, but in this case we do not have count data. Nor do we do have the demographic data for the subpopulations in the South Valley required to conduct a spatially explicit PVA.

This leaves us with the demographic stochastic approach, which is the approach we will use to conduct this PVA for the burrowing owl. This approach quantitatively projects population change into the future using:

- population numbers;
- birth rates and their variation;
- death rates and their variation; and
- immigration and emigration.

This demographic stochastic PVA predicts the likelihood of persistence of a population or likelihood that a population will fall below an established quasi-extinction threshold. This is used to determine how often your population may fall below this threshold. The tool we will use to conduct the PVA is called Vortex.

Jack explained that demographic data is usually very hard to come by for species, but counts for burrowing owl birth rates and survival rates in the region are available. Annual adult and juvenile survival rates were recorded from 1996 to 2007 for owls at the San Jose Airport. Jack shared a graphic to demonstrate the contraction of populations over time (1997 and today). Burrowing owl populations are most abundant around San Jose and decline moving south.

The PVA will be used to project into the future the size of the population that is likely to persist, given demographics of populations at the San Jose Airport. The PVA does not provide a discrete answer, but it does enable a more informed decision about how many of a species to conserve. A population goal will be established based on this information.

If we are to maintain the population of owls, we need to track its numbers. Jack recommended an annual, count-based PVA over the life of the Plan to track the regional burrowing owl population. This is important to Plan implementation, and is especially useful for those tasked with making biological findings.

One recommendation is that certain management actions should begin once the population moves below the quasi-extinction threshold. However, we can't answer how much this will cost until we establish how much habitat the Plan will conserve.

Jack Bohan asked if tracking the population in this case would require counting or banding. Jack Barclay shared that this effort would include counting annually. There is a population that is banded at the San Jose Airport and will continue to be. However, banding is expensive and is worth the effort in only particular cases. The band recovery rate for burrowing owls is two percent, so you don't get much data based on encounters with banded birds.

In response to a stakeholder comment, Ken stated that while the variation of the species' populations is fundamental, trying to understand why it is so variable is a very expensive endeavor that's been done in other places. So many factors contribute to this variation. For Plan purposes, he does not think it is worth the effort to understand this interesting variation.

Bob Power expressed appreciation for the efforts of the working group to move away from the traditional approach to species conservation with respect to the burrowing owl. He noted that the Hopi referred to burrowing owls as spirit warriors.

Jack's work will begin in the next two to three weeks. Completing the PVA will take some time and will not provide a discrete answer. However, it will provide the information needed to make a more informed decision. There will come a time during the analysis when the technical team will have to determine which probability of persistence will be acceptable.

IV. UPDATE ON RESOLUTION OF AQUATIC SPECIES AND IMPACTS ON PLAN/SCHEDULE

Ken noted that the theme for the meeting is how to address creatures that are extremely difficult to deal with. The burrowing owl is right up there on the top of the list. Two subspecies of steelhead trout are also providing significant challenge over the course of this process. Within the study area, we are dealing with Central Coast and South Central Coast Steelhead. In the context of the plan, he explained that these two subpopulations have also been discussed in the context of North County and South County. He also noted that while Pacific Lamprey are not often talked about, they are in the mix of species to address here. However, the vast majority of discussion is related to steelhead.

North County includes the Coyote, Guadalupe and Stevens Creek watersheds. South County includes the Pajaro Watershed which is primarily Llagas, Uvas and Pacheco creeks. He shared that the steelhead situation on Llagas is very bad and that improving the situation there is not very feasible. Llagas stream edges and banks have been divided into many, many small parcels, which means that accomplishing gains requires working with many landowners and very expensive land.

Ken explained that when the second administrative draft of the Plan was released in June 2009, it included a placeholder for the Three Creeks Habitat Conservation Plan (3CHCP), which was intended to address North County aquatic species. For South County, a very good, expensive, and thorough conservation strategy was developed. This included the Pacheco Creek Feasibility Study, the Uvas Dam flow modifications, and many other measures to improve streams and reduce siltation. DFG and FWS did not accept the South County strategy and dropped Pacheco completely, but added steelhead passage over Uvas Dam.

The focus in North County has been to bring 3CHCP to a conclusion. The focus for South County is less clear, but the real effort has been to figure out the issue of steelhead passage at Uvas Dam, which is a major physical challenge. Solutions explored have included "trap and truck" and volitional passage, or building a passageway where fish can swim up and swim down. Constructing a passageway is a very expensive endeavor, especially given that Uvas requires a long flume. Pat Showalter estimated a cost of between \$30 and \$120 million. The basic design for fish passage at Uvas is a canal around the whole reservoir and a system that will funnel fish upstream of the canal and down the ladder at various reservoir levels.

Kenn Reiller noted that Uvas Dam was built in 1958 when no one lived downstream. Today, it leaks significantly and the area has grown in population. He questioned consideration of implementing expensive passages of abstract or experimental design when there are dam safety issues that need to be addressed.

Ken shared that the three Wildlife Agencies advised us in November and provided a December 1, 2009 letter in which they recommended removing all fish species from the Valley Habitat Plan, and processing both North and South County strategies as a plan amendment later on. According to Ken, David Zippin concurred that they should be removed. These recommendations are all based on timing. The Liaison Group met in December and had vigorous discussion. Supervisor Don Gage said he wanted to be part of a process that would resolve the issues, and would support removal of fish from the plan if issues could not be resolved. FWS said the issues would take six months to resolve. This all took place as we moved toward the time scheduled for release of the public draft. However, the fish issues need to be resolved before a public draft VHP can be produced. There has been much concern that if we get this close to completion and have to put release of the public draft on hold for six or more months, then staff resources would be shifted to other areas and momentum and staffing would be lost. As FWS has largely focused their resources on this plan, other counties are becoming anxious to receive support from FWS.

Pat Showalter provided further explanation of the issue. There has been a marathon of meetings related to this issue, and several more are planned. She then provided a bit of background on the issues related to Uvas Creek and some of the factors that have made completing the 3CHCP a challenge.

Pat explained that Uvas and Llagas are very different from a hydrologic standpoint, which is one of the reasons why Uvas is better for fish than Llagas. The Llagas watershed simply does not yield as much water- it has less rainfall. Uvas is not as permeable as Llagas so water stays in stream longer. These rainfall distribution and permeability differences are not due to human intervention.

Also, the health of fish species between the North County and the South County is very different. The sub-species of steelhead that lives in South County has declined significantly. It once occupied streams throughout the Pajaro and the Salinas Basins (inland group) as well as the coastal streams (coastal group) in the area. Currently there are sustainable populations in Uvas and a stream in the Salinas Basin. Our population in Uvas Creek is one of the healthiest remaining populations of the inland group. The sub-species that inhabits North County streams is generally in much better shape.

Steelhead were listed in 1996. It takes quite a while to develop a recovery plan, and NMFS is in the process of doing this for these fish. In the process of developing the recovery plan, the concepts about what actions would benefit the species most have changed. This is why the requirements for their protection have changed. This timing is unfortunate, because we have put a lot of effort into developing a strategy without the benefit of having access to the recovery plan. Now the plan has to be adjusted based on the recovery planning efforts.

In the North County, there are four outstanding issues:

- Reoperation of Upper Penitencia Creek. This creek has the best sustainable population in the Coyote Watershed. It has been the source of a great deal of discussion. The Water District uses Upper Penitencia as a recharge facility recharging with water from South Bay Aqueduct and other sources. This means we discharge water into creek, which means impacts to creek and the involvement of the regulatory agencies.
- Misunderstanding in Coyote Creek regarding Fisheries and Aquatic Habitat Collaborative Effort FAHCE issues with the National Marine Fisheries Service (NMFS).
- Monitoring.
- Flood control language related to Santa Clara Valley Water District (SVWD) projects in North and South County.

In South County the primary issue has been passage over Uvas. The Water District has been working to understand what the agencies' expectations are and what it needs to do accomplish this. The ultimate biological goal here is increasing the number of fish and creating population redundancy. The District's covered activities associated with Uvas and Chesbro dams include conducting routine and corrective dam maintenance. These include a number of big jobs that will require de-watering. Secondly, because there is the potential for earthquakes, seismic safety retrofits are also an important covered activity.

Pat distributed the draft schedule for processing the 3CHCP. A summary of 3CHCP was sent to the agencies on Jan 15th. After receiving agency comments, the District will be able to provide the summary to the Valley process for incorporation into the program. According to the draft schedule, the SCVWD will provide an administrative draft of the 3CHCP to the agencies on April 19, 2010, and agencies will provide final comments on June 7, 2010. Pat was hopeful that the District would be able to produce a final draft of the plan and the public review draft of the EIR/EIS by the end of the calendar year.

Kenn commented on the importance of understanding what fish passage really means, and the need to propose addressing passage via the capital projects that are required to improve safety. The outlet works does not work for fish passage, so modifying this does not solve the passage problem.

Pat explained that, on average, every dam has been de-watered every seven years. We believe that we can reasonably improve this and average de-watering each reservoir only once every 15 years. This is what we have proposed for coverage; we think we can do a better job than the historical average.

Pat then spoke to the implications for the District of pulling South County fish from the Valley Plan. If fish are excluded now due to schedule issues, the District will need to seek HCP or Section 10 coverage in another process. The District needs HCP coverage for operation of Uvas and Chesbro as well as routine and corrective Maintenance for Uvas and Chesbro. Fish coverage for North County streams will be included in the 3CHCP.

The second plan for the South County was estimated to cost approximately \$80 million. The value for the steelhead permit for some jurisdictions is quite small. Very few local communities need this permit from FWS. The standard operating procedure for local jurisdictions is to avoid the need for a permit.

The North County issue is that permits will be issued under the Three Creeks document and the Valley HCP for same things. The challenge is to make sure these two documents are in total agreement. The solution is to have 3CHCP has an appendix to the HCP, which is a major problem with respect to timing.

Pat explained that the agencies do realize that the passage over dams is expensive. But for Uvas they find it is very important and are discussing the possibility of taking cost away from other elements of the conservation strategy to put towards fish passage. For example, monitoring funds could be used towards funding part of “trap and truck”, which could also have a monitoring component.

One stakeholder asked, at this point, what is the probability that fish will fall out of the Plan? Pat responded that the fish falling out is very, very real. The SCVWD needs permits for fish for many covered activities. Even if fish are dropped from the Valley Plan, the District is committed to moving forward to get the needed incidental take coverage for fish through the 3CHCP and other efforts.

V. CALIFORNIA TIGER SALAMANDER HYBRIDIZATION AND CONSERVATION STRATEGY

Troy and Dave Johnston of DFG provided information related to the hybridization of California tiger salamander (CTS), which is native and covered in the Plan, and the barred salamander, a non-native species. The information provided is based on data that is new as of the past few years. This information is primarily from UC Davis.

The use of the barred salamander as fishing bait led to its inadvertent release. Most documented releases occurred in the Salinas Valley.

This has become an issue because, in a situation where you have predation, the barred salamander will likely win out. The barred salamander is bigger than the CTS. It also breeds earlier than the native species, in the first heavy rains. Since the barred salamander and hybrids breed earlier, they rely more on perennial waters. In contrast, the CTS uses primarily seasonal ponds and water sources. This all means that the barred salamander can out compete the CTS.

The hybrids have a greater vigor. They are showing a higher survival rate than both the barred salamander and the CTS. Over a period of time, the region could have more hybrids than native species. Researchers are uncertain of the timeframe within which further hybridization would occur.

From our point of view, the goal is to recover the CTS, but not there are hybrids and barred salamanders in the mix.

One stakeholder asked about the regulatory implications in this situation. Troy reported that the FWS policy is that, even at low levels of hybridization, the barred salamander will still be protected under the Endangered Species Act (ESA) as if they were native species. If it can be determined that hybrids have characteristics that may compromise recovery goals for native species, then FWS may do something. However, for now there is not enough information.

For the habitat plan, we are taking a fairly conservative approach. Continuing to fund research to understand this issue better is included in the Plan. If we can get to a point where we can correlate the presence of non-allele genes and behavior, then we may make some management-related decisions about how to treat these species and their hybrids.

Dave Johnston noted the need to set a threshold to distinguish unacceptable levels of non-native salamanders, and to do so collaboratively, in order to protect the CTS. He suggested that this is necessary to write a conservation plan, even if it is weak. Ken asked if there a basis for doing so. Dave stated that, no, there is not. FGD suggested setting a genetic threshold for salamanders that are clearly non-native and then using this threshold as a basis for extermination.

Two thresholds are important: 1) a threshold to determine what constitutes a CTS to the point it can be credited towards the conservation strategy; and 2) a threshold that establishes at which point we destroy them rather than nurture them. Troy noted that a reasonable approach would be to establish a threshold related to conservation of the CTS and adjust it later when the science catches up.

Ken expressed that with burrowing owl we are looking at a very defined and confined conservation area. However, the CTS occurs in many locations, and we would expect that this will be a much broader issue throughout the state.

Carolyn Tognetti returned to the issue of steelhead, noting that South County steelhead conservation measures in the plan are totaled at \$81 million. Ken confirmed that the \$81 million are the measures that would be taken out of the Plan if the species is dropped.

Dave Johnston shared that the DFG recommends removal of fish from the Plan because it affects the timeline of the HCP. In order to finish the Plan, the Water District needs to finish the 3CHCP. The Valley Plan was originally supposed to be in public draft stage in December, and now that has shifted to January. Now, the 3CHCP will not be done until April. Therefore, DFG's recommendation is not just a question of what the conservation strategies are. The agency disagrees with fish conservation strategies for South County, but this is just one issue.

Ken shared that there is a commitment from the wildlife agencies to continue to work on permits for steelhead. There are other ways of obtaining permits for stream-related work, but there is no way except via the HCP to obtain federal permits for Uvas and Chesbro Reservoir operations. Three Creeks was triggered by a 1993 lawsuit against the Water District for operation of dams on Coyote and Stevens Creek and Guadalupe River. That resulted in the illegal take of steelhead. Rather than go to court, the Water District and plaintiffs worked out a settlement agreement in the early 2000's. This is what led to what

became known as the Three Creeks HCP. Without the federal permit, it is not possible to implement the settlement agreement.

If fish move out of the HCP, it would still be possible to retain Water District covered activities and FWS coverage for non-fish. Whether these activities would be retained for FGD permits is unclear. This is doubtful.

VI. PUBLIC COMMENTS AND NEXT STEPS

The decision of whether or not to remove fish from the HCP will be made in approximately one month. A large amount of content for the next liaison group meeting will come out of a meeting to occur before the February 18th Liaison Group meeting, which will go a long way toward determining whether or not fish be kept in. Next month, there will be much more to report to Stakeholders in terms of where this process is going.

The Liaison Group meeting is scheduled for Thursday, February 18th at 4 pm at the Water District. The next Stakeholder meeting will be held on Tuesday, February 23rd from 4pm to 6:30pm at the Morgan Hill Community Center.



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: February 18, 2010

AGENDA ITEM 5

TO: Governing Body Liaison Group

FROM: Kenneth Schreiber, Program Manager

SUBJECT: Liaison Group Meeting Schedule

PREPARED BY: Kenneth Schreiber

Purpose of this Staff Report: Review the Liaison Group's 2010 meeting schedule.

Next Steps After Liaison Group Review: Liaison Group meetings will occur consistent with the approved meeting schedule.

Recommendation: Concur, or if desired, modify the meeting schedule.

Discussion: The Liaison Group approved the following 2010 meeting schedule subject to changes based on details on the preparation and public review of the Draft Habitat Plan:

Thursday, January 21 from 4 to 6---meeting cancelled in lieu of a meeting regarding fish issues
Thursday, February 18 from 4 to 6
Thursday, March 18 from 4 to 6
Thursday, April 15 from 4 to 6
Thursday, May 20 from 4 to 6
Thursday, June 17 from 4 to 6
Thursday, August 19 from 4 to 6
Thursday, September 16 from 4 to 6
Thursday, October 21 from 4 to 6
Thursday, November 18 from 4 to 6
Thursday, December 9 from 4 to 6

The SCVWD has agreed to host the meetings, most of which will be in the held in the lobby outside the Board meeting room.

Attachments: none

Copies: Stakeholders Group