

HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN

Stakeholder Group Meeting | Sept. 28, 2010 | San Jose Biblioteca Latioamericana Branch Library

IN ATTENDANCE:

Kevin Bryant (California Native Plant Society)
Jack Bohan (General Public)
Joanna Callenbach (YCS Investments)
David Collier (Sierra Club)
Craig Edgerton (Silicon Valley Land Conservancy)
Jan Hintermeister (Santa Clara County Parks and Recreation Commission)
Virginia Holtz (League of Women Voters)
Don Long (Castro Valley Ranch)
Bob Powers (Santa Clara Valley Audubon Society)
Brian Schmidt (Committee for Green Foothills)
Jennifer Williams (Santa Clara County Farm Bureau)
Gus Meyner (Blue Ribbon Coalition)

I. WELCOME AND INTRODUCTIONS

Ken Schreiber provided an overview of the day's agenda. The purpose of the meeting is to provide information about ongoing issues in anticipation of public draft release, which is targeted for mid-November. There is the expectation that there will be many changes to both the substance and organization of the document following public review. Of course, there will be some give and take in modifications.

Ken noted that Joan Chaplick was unable to participate in the meeting. Ken invited a round of introductions and then suggested a slight re-organization of the agenda.

Virginia Holtz announced that Pat Congdon, the Open Space Authority's (OSA) General Manager, has submitted his resignation. OSA has appointed OSA attorney Bill Parkin as interim acting General Manager. The Authority expects that the search for a new General Manager will last about six months. Virginia also shared that the OSA Board is at the beginning of the process of developing a Strategic Plan. They have hired Lester Olmstead Rose for the visioning portion of the Strategic Plan. Mr. Olmstead has significant experience, including working with PG&E and in the non-profit sector.

Virginia shared the encouraging news that the OSA will serve as a special entity to the plan, which means that it is willing to accept mitigation lands and is willing to offer some of its lands for mitigation purposes. She believes this is a win-win situation. OSA worked diligently with staff, the Wildlife Agencies, and participating entities at an all-day meeting at Mare Island, during which the group developed draft guiding principles for participation in the Plan. According to Bill Parkin, the guiding principals would be part of a formal agreement. The draft principles were part of the Open Space Board Authority packet distributed last Thursday.

Ken shared that the Team is in the early stages of the screen-check review of the document with the Wildlife Agencies (primarily) and the local partners. Six full-day meetings with the Wildlife Agencies are planned for October, in addition to another day to review the EIR. The screen-check process is to ensure that all of the tracked changes worked on over the course of the last fifteen months (since release of the second administrative draft released in June 2009) are appropriately and adequately represented in the document. This gets the Agencies to the point where they can say that the Plan is ready for notice in the Federal Register.

A notice will be issued possibly in November. The goal is to release print copies of the draft plan by the end of November. The review process – while technically starting in December – is focused on January, February and March. Speaking with the Agencies, it was agreed that there will be a 120-day review period if the draft comes out in November, to ensure adequate time for everyone to review the document.

This means that the public review process will be complete in late March, possibly the first part of April. The next major target will be to come out with a final draft, which will go through all Agencies for final review and approval in summer 2011. This date will remain general for the time being.

Ken announced that the Implementing Entity (IE) will be organized as a Joint Powers Authority (JPA). At the last meeting, the Liaison group drafted wording for a JPA agreement. The JPA will include the three cities and the County. The IE will also have an implementing board that will consist of cities, counties, the Water District, and the Santa Clara Valley Transportation Authority (VTA). The JPA itself is small because it needs to have the powers to set fees, and the VTA and the Water District do not have this authority as we consider it in this context. The IE will also have a citizen's advisory committee. Stakeholders are good candidates for this committee.

The entire plan implementation process will begin with the receipt of permits from the Wildlife Agencies, which is anticipated to occur in late 2011.

David Zippin noted that the IE has to be up and running in order to adopt the final plan. We anticipate that the IE would be formed in April or May 2011, but the idea is to have them in place prior to review of the final document. There has been no discussion about how to provide staffing and resources for the IE. However, this requires considerable discussion. Trying to have notable resources before beginning to generate revenue will be challenging, though it will be necessary to have some structure in place by mid-2011.

II. UPDATE ON SPECIFIC ISSUES

David Z. presented a sampling of the issues that will be addressed in the final review draft that were not included in the administrative draft. Many of these issues represent proposed changes to which the Wildlife Agencies have yet to respond. However, we anticipate that they will be approved.

A. Covered and No Take Species Update

David provided an update of the species proposed for coverage in the Plan. Since the second administrative draft, fish have been dropped from the plan, as has the rock sanicle. David shared that the Team has also proposed to the Wildlife Agencies to drop big scale balsamroot.

Kevin Bryant informed David that big scale balsamroot is found in four locations in the study area that are next to trails. They are mostly in Harvey Bear Park. To his knowledge, they are considered separate occurrences or should be given the distance between them.

David and Kevin verified that one occurrence is on Palasu Ridge, which is not covered in the plan. However, there is a portion of Harvey Bear that is covered. David thanked Kevin for the important information and recommended an off-line conversation.

David Collier asked if there other reasons for why this species was dropped.

David Z. confirmed that it has been dropped because of the lack of foreseen impacts to the species. While we proposed to cover it in the Reserve the Agencies had asked why there was the need to cover if no impacts were anticipated.

Also, if the species was found and impacts were anticipated, there is the question of how we can ensure conservation. The species is more common outside the study area. There are fewer opportunities for conservation in the study area.

David C. referenced minutes from prior meetings that discussed the slight change in approach of this plan to focusing more broadly on conservation of habitat types. He noted that if we are taking that approach, perhaps we should consider this for big scale balsamroot. David agreed that this is a good point, especially in light of the new occurrence records.

Kevin and David briefly discussed the California Natural Diversity Database (CNDDDB), noting one Silver Creek species occurrence. However, he is not sure if this is still existing or not.

David Z. continued: the other two species that we are really not sure about whether or not we can cover is the chaparral harebell and Hall's bush mallow. Impacts are low and there are few in the study area, so opportunities for conservation are also few for these species.

David reminded the group of the importance of maintaining a very high standard in order to adhere to the California NCCP Act. To do so, the plan needs to conserve a high proportion of occurrences for every occurrence lost. If no impacts are expected, the Agencies have legitimate question: is it really worth spending the conservation dollars if we are not getting anything out of this?

This is a dilemma that the plan has faced: while it is unfortunate to remove some of the species from the plan, it's also important to be practical by focusing on species that need protection the most. As has been discussed previously, there will be incidental protection to many of those species.

David Z also shared news of an added plan requirement for creating new populations where species numbers are too low. One good example is the San Francisco Collinsia. The only known occurrence of this species is on the eastern side of Highway 101 and happens to be on the margins of Anderson Reservoir. We know at some point the reservoir's water levels will inundate the plants. The goal is to keep in the plan the strategy to relocate the existing population and to create new populations.

In short, David expressed that we are going to great lengths for some species. The Water District wants the assurance of what to do, so we are keeping this plant in.

Ken shared that the basic conundrum is that, in the case of some species with very limited populations, you end up with greater conservation requirements even if you can't get a permit authorizing take of the species. Steelhead is a prime example of this: there are so few Pajaro Watershed steelhead left that the plan requirements became greater and greater. This resulted in an \$80 million conservation strategy with almost no covered activities, with the Department of Fish and Game (FGD) feeling that this still didn't accomplish enough. A similar situation exists with some of the plants for which there are very few occurrences in the study area. To get to the threshold of issuing a take permit, there are more procedures to follow.

Many of our plants are not federally-listed endangered species. If they are listed in the future the plan could be amended. The local partners and Wildlife Agencies are willing to wait until that point. David referred stakeholders to pages 2-3 of the handout (Section 6.3 Condition 1: Avoid Impacts on Legally Protected Plant and Wildlife Species). He noted that these requirements are still under debate.

David noted that the plan used to have several no-take plants. Slowly, these were removed and now the last, Contra Costa Goldfield, has been dropped. This is an issue of simplification of the plan. The problem with this no-take plant is that this requirement was an absolute. David reminded stakeholders that these were extremely rare plants not known to occur. If found, a take could cause jeopardy to the species. To avoid these situations, we had no-take species. This created a legal challenge to the legal take of property. We tried a work-around, but the attorneys were not comfortable with what was proposed.

Now applicants are responsible for ensuring that they are not taking a plant. In other words, the onus is on the applicant. It is not an ideal solution but it is the best that could be done.

Brian Schmidt stated that the issue with this change is that the ESA does not legally prohibit the taking of a species. David confirmed that this is true but noted that the biological opinion will require that a species be conserved. At this point, it becomes a local compliance issue.

Kevin voiced his frustration with this loophole and expressed that he would like to see the plan do something different here. Did the Wildlife Agencies express concern with this? How guaranteed is the avoidance if a local agency can't guarantee avoidance?

David stated that the special status plants not covered by the plan will continue to be covered by CEQA.

Brian asked if enhancements will be directed towards these non-covered species. This is important in the sense of solving an ecological problem. David hopes that when the IE assembles the reserve it will consider other plant and wildlife species that may not be covered. Protecting biological diversity in general is part of the plan conservation principles.

B. New Requirements for Selected Covered Wildlife Species

David moved on to the next item: new requirements for selected covered wildlife species. These are additional requirements to protect habitat for selected wildlife that take shape in the form of requirements to cover model habitat for covered species. Attachments specify how much habitat to protect – these numbers are not yet refined but they will be required based on habitat models as they stand at permit issuance. Refining these figures will not affect compliance with static permits once they are issued.

One stakeholder asked for clarification regarding habitat models. David explained that, for many covered species, there is a model for where species occur. The Golden Eagle is one example, where the habitat model shows the location of primary habitat and secondary habitat. Now there is a requirement to protect a certain number of acres of this habitat. Initially, the plan specified the need to acquire certain land cover types – in other words, land cover, such as Annual Grasslands, was the surrogate for species habitat. This is how many HCPs are designed (the benefit of this approach is that our plan is designed to conserve land that benefits multiple species). However, the Wildlife Agencies wanted more assurance that we would be conserving species habitat.

This is a plan compliance issue and a requirement for all plant and animal species which have models. A good majority of the covered species do have modeled habitat. When the habitat models are finalized and the plan approved, this is the tool the IE will use to determine that they are acquiring enough model habitat. David showed the Kit Fox model as an example.

In addition, the plan includes requirements to acquire occupied habitat for a short list of six species. The agencies needed more assurance that the plan would protect habitat in the right places. They admitted that they do not have enough knowledge of the area as biologists to feel assured that the previous requirements are sufficient.

Acquisition requirements are fairly specific requirements that are designed for Fish and Wildlife Service (FWS) and FGD findings. These are not minimum requirements for preserving occupied habitat. The IE will go to the extent it can to preserve occupied habitat, as this is the point of the plan. This requirement is simply for the Agencies to make findings.

Given this, David shared that the Team also wanted to make sure that this is a requirement that will be easily met. The goal was to find a happy medium providing enough for the Agencies to make their findings and an amount that can be reasonably met with our current reserve design. David thinks we have achieved this.

One stakeholder asked for a description of the methodology used to establish this requirement.

For example, 30 percent of ponds and wetlands in recovery methods need to be occupied by red-legged frog by 2035. Ponds and wetlands are considered occupied the first time a frog is found in it. We also know that ponds are dynamic, and the plan will accumulatively acquire ponds as frogs are found.

Again, this is not biologically rigorous and is not guiding management, but simply compliance.

In discussing this requirement, David C. expressed that year 45 of plan implementation is a bit late to make adjustments if there is a finding at year 30 that adequate progress is not being made.

David Z. assured him that there will be time to make corrections: we must submit annual reports and we will be meeting with the Agencies on a monthly basis. He then shared plan language that sets an interim checkpoint at year 30.

David C. expressed that it seems late in the game to correct by year 50 if it is found that by year 30 we are acquiring land that is not occupied. He recommended that the Team consider moving the requirement to year 20.

David Z. again noted annual reporting requirements. Also for these species, ponds that are created also count. Restoration can help meet this requirement. He noted David C's suggestion for consideration.

Jan Hintermeister suggested including a section in the plan that provides an overview of what's happening in terms of acquisition, enhancement, management and monitoring for each species. Perhaps this would take the form of a 2-3 page bullet list of all criteria for each species. David referred him to Chapter 5

Section 5.4.7. Did the section before have this section.

One stakeholder asked if this new requirement allows Wildlife Agencies to be more specific in their findings. David confirmed that, yes, this provides more detail for the decision documents they are preparing. If Wildlife Agencies are sued they will be sued regarding their permits, and these documents will be the basis of their legal defense. Details in our plan will mirror what is in their decision documents. Documentation of the value of the plan for the species and the ability of the plan to meet regulatory requirements benefits everyone.

C. Reserve Unit Management Plans and Timing of Land Management

David reminded the group that previously the plan included the development of system-wide reserve management plans for fire, wildland fire response, monitoring, recreation and exotic species control. These were meant to be plans that would apply to the entire reserve system to govern what would happen related to these topics. The plan was also to create individual management plans for self-contained units with relatively small geographic areas. The reserve plans would be based in part on the system-wide management plans.

To simplify the plan, it now includes six units where management plans are likely to apply. Management plans for each unit now incorporate all elements of the topic-specific reserve management plans. Management may occur earlier a result of this simplification.

David then addressed a second item or new section that acknowledges the reality of this plan. One of the challenges related to the plan is that most of the funding for land acquisition will be tied to sources other than development, including county parks, state and county grants. Most of these funding sources will be front-loaded, which means that acquisition will happen regardless of the pace of development. At the same time, the majority of the funding sources for management are development fees. There is a concern that there will be an imbalance between acquisition and management. We have seen this in East Contra Costa County:

roughly \$23 million has come in for land acquisition in the first few years, but there is very little money for land management. As a result, the County is assembling a reserve system quickly and is far ahead of their impacts. At the same time, fees to fund management are very few.

This new section is about anticipating this issue. If this occurs in Santa Clara County, it's alright to defer management of non-essential tasks to years when funding is not available. The deadline for this is 5 years (five years or when funding is available – whichever comes first). We've defined essential management tasks, including the need to ensure that the site doesn't degrade below existing conditions. However, we may not necessarily be able to enhance property if funding remains unavailable.

Kevin asked, what's the "fail safe" if there is still no money for management after five years? David noted that this is described in Chapter 9. This scenario may result in the need for Draconian measures, such as stopping take authorization or pursuing loans for the IE. The real issue is that we don't want to discourage the IE from acquiring land when it is opportune to do so.

Management of land using development fees can only apply to newly acquired lands. At the same time, the IE has some flexibility to spend money on what it needs to. Some money is earmarked, but development fees are not. This means that development fees may fund mitigation in County parks. However, developers won't get credit until mitigation of their own impacts take place.

Wildlife Agencies are most concerned with acquiring land. This is the irreplaceable resource required to make sure that species do not disappear. Essential management will be required to ensure lands don't deteriorate beyond their current conditions. For example, on some acquired land the IE will have to maintain grazing so species do not disappear, even if there is no management money to redesign the grazing plan or to implement additional actions.

As long as the IE can demonstrate a good-faith effort, there is enough flexibility in the current Stay-Ahead Provision. If they are not complying in this case and in many others, then this becomes a compliance issue.

Wildlife Agencies want these plans to succeed and will do as much as they can to support successful implementation.

Ken commented that the issue of the potential imbalance of funds for acquisition and land management may not have been on anyone's radar screen five years ago. Part of the problem is that there is no understanding of when the economy is going to recover. The designated five-year period is a reasonable time frame. Progress towards this and other requirements will be a very important part of the annual review and the major review every five years. Wildlife Agencies will raise red flags if there is not compliance at these points.

D. Implementing Entity Update

Ken announced that the IE will be a JPA composed of partner agencies. The IE will be composed of two decision-making bodies: a governing board and the implementation board. The new plan section provided (packet pages 15-16) describes these agencies and how they relate. The previous functions assigned the JPA will be given to the governing board. The Board would be elected by the partner agencies.

One stakeholder inquired about whether a reference to monthly meetings of the IE was a new provision. Ken clarified that regular IE meetings were always assumed. Wildlife agencies wanted us to specify monthly meetings. This is a good thing.

E. Funding Update

David referred stakeholders to new plan language related to local funding. The Santa Clara County Open Space Authority (OSA) is no longer a permittee under the plan. However, they could get take authorization under the special entity provisions. In the past, we assumed that because they would sign the agreement they would commit to a certain amount of land acquisition. We assumed roughly 10,000 acres. This number was a projection based on a historic retrospective assessment of acquisition. This has changed.

The OSA is not committing to a certain type or amount of acquisition. However, it is committing to supporting the plan, in part through acquisition. The draft agreement is carefully crafted language. The OSA has stated their intent to acquire a particular amount of land. This is a principle that the Board has adopted and expects to formalize with the IE once it is up and running.

The OSA intends to acquire 7,500 acres and enroll up to 1,000 existing acres into the reserve system. This gets us 85 percent of the way to what we intended. The OSA intends to do more in the future but can't commit to it legally.

There are also other acquisition sources. Non-profits like The Nature Conservancy, the Peninsula Open Space Trust, and foundations all have a history of acquiring land in our study area. One stakeholder asked if the plan has to involve commitments on the table. David confirmed that this is not a necessary plan requirement.

One stakeholder followed with a question related to the definition of assured funding. David explained that many plans in the past have had far fewer funding stream assurances. We have a large proportion of our funding fairly well guaranteed from fees, from commitments on the part of the County, and so forth. There is also a very strong track record of Section 6 funding. This is a finding commitment the Wildlife Agencies are very comfortable making, in part because we are now providing an endowment to fund management in perpetuity. Before, we promised that we would develop a solution. Now we have a solution, strengthening the assurances we can provide.

David C. commented that, to him, intentions do not mean the same thing as an assurance.

Ken commented that there are five major funding sources, and each comes with a level of notable risk. For example, the Federal government could decide to eliminate the Section 6 land acquisition program, or voters of California may decide not to approve future bonds for parks. This process has to make promises based on reasonable assurances, but also understanding that things may change over the years.

On the other hand, there may be sources that we do not anticipate having. The Moore Foundation in Contra Costa County is a significant funding source that the County did not anticipate.

Ken and David have met with staff with the Packard and Moore Foundations regarding funding for the HCP. In the experience of Contra Costa County, the Moore Foundation expressed that one of the great values of a Habitat Plan to foundations is that it provides a strategic approach to land acquisition in the context of protecting species and habitat. Foundations are often put in a position of questioning whether or not they should invest in specific projects or land. The Habitat Plan facilitates rational decision-making related to grants.

Virginia commented that she has a sense that the Moore Foundation is interested in moving further afield and expressed the need to keep them in the loop.

Ken agreed and noted that this group has a very good start in communicating with foundations, and that it will work more with them.

Kevin asked if, under the Stay-Ahead Provision, the lack of money for management would slow take authorization. Ken confirmed that this is a possible feedback mechanisms to slow take down if adequate plan funding is not available.

Ken asked Craige Edgerton to provide a bit of information about the Silicon Valley Land Conservancy. Craige explained that the conservancy is a small, local nonprofit with approximately 1600 acres of butterfly preserves and agricultural lands. The organization was hit hard by the market a couple of years ago, in the middle of a deal to preserve agricultural land. Today, it has a new Board and is back in business. At a conservancy meeting last month, Craige brought up the issue of whether or not there is a role for it to play in the plan. He believes that there is, though this remains undefined. The Silicon Valley Land Conservancy is a very local organization with 12 years of experience in acquisition, management and related issues.

Ken noted that the California Range Lands Trust is another organization we may wish to consider or factor in to this that we have not. We have been doing outreach with them and they may well be a player. There are many other potential players and will be many more in the future.

F. Fee Update

Ken provided a brief overview of the fee structure that has been designed for the plan, noting that a lot of work has been done on this. A Liaison Group member once asked if there is a way to recapture the local costs of putting the plan together. Now, the plan includes a plan preparation fee that will be spread over the 50-year permit term. This fee is very small.

The biggest fee that has been recently added is the endowment fee. The Team decided some months ago to investigate putting into the base fee an endowment amount. Right now, as a property owner you have to provide the endowment as part of getting an ESA permit. You provide acres of mitigation and a cash amount sufficient to generate revenue to maintain that land. The endowment fee turns out to be about 20 percent of the base fee.

One of the problems this addresses is the need to make up cash later on. The good news is that by various adjustments which the Agencies have encouraged, we have kept the total cost of the plan's fees about where they were in both the First and Second Administrative Drafts. In other words, the base fees haven't gone up from what we've told people in the last couple of years. This is the big change on fees.

Ken then discussed the riparian impact fee on urban development. This was based on having fish in the habitat plan and the need to improve routes in the urban areas for passage towards the hills. Now that we don't have fish, some of the attorneys began to question the nexus under state law. We continue to struggle with this issue. Ken thinks that the plan may not include this fee after all is said and done.

Trying to make an argument that urban riparian setbacks help red-legged frogs would be hard to defend.

In response to a question from one stakeholder, Ken stated that the buffer in these areas would not be dropped. Rather, the question is to what extent the IE can charge a fee for encroachment into the buffer. There has always been an exception process. You also had to pay a restoration fee for the encroachment.

David C. requested that a biologist weigh in on the option of removing the riparian impact fee from the plan. As you get close to the riparian environment, you are impacting other species. Fee could be reduced due to the removal of fish, but it does seem that development will have a biological impact. Scientific opinion is very important.

Ken confirmed that this is the discussion currently happening. There are major concerns with fees being defensible.

Fish biologists at ICF are the ones who are providing the guidance on this. Ken can also certainly give Jerry a call. David would like to see documented opinion to back up any change that appears in the document on this point.

Craige asked about the possible role of the Three Creeks HCP in this matter. Ken stated that this plan will only cover water district covered activities.

One stakeholder commented that removing plan coverage doesn't remove take; now it's about who gets caught. Correct, and if CEQA concludes that there is an impact then developers will need to make adjustments accordingly.

Brian noted that the cities can rely on any nexus sets within their jurisdiction. Why are the lawyers restricting themselves to the incidental take permit if the agencies being sued would be the local agencies with police powers?

Ken clarified that the Wildlife Agencies would be sued, not the local agencies.

Brian commented that if the cities apply the ordinance it seems they would be the ones getting sued. If you sue the cities they will have the nexus established

Craige asked, what is the long-term rate of return they are pursuing on the endowment fee? Ken referred to page 33, noting an annual return of 1.91 percent. Stakeholders briefly discussed the fee schedule.

In response to a stakeholder comment, Ken confirmed that wetlands and any number of species that are wetland-related are covered. The challenge with wetlands is that the plan doesn't obviate the need for a permit with the Army Corps of Engineers (Corps) and the regional water quality control board

In response to a question from David Collier regarding discussion during the previous stakeholder meeting, Ken confirmed that there is a new-found motivation among the Corps to participate in HCPs. The basic position in the past is that the Corps does not want to buy into anything but a project-specific review.

Joanna Callenbach raised the issue of the serpentine land cover fee, and referred to the fee table on page 36. She asked Ken how certain he is of this acquisition clause, noting that this is a lot of money.

Ken briefly discussed the history of serpentine land acquisition. Acquisition of serpentine land tends to be more expensive than other land. Land values fluctuate greatly and if agencies have a mitigation requirement land values soar. Management cost and monitoring cost for serpentine is notably higher than it is for other lands, in part because you have to begin management and monitoring on day one. Also, the "mitigation ratio" for serpentine land is notably higher than it is for other areas.

Part of the thinking behind the separate fee is that it was not fair to incur costs and spread them out over other people's impacts. Second, we want to discourage people from developing serpentine land. Those who do should carry their full burden on this.

Ken also noted that for nesting and nest-related foraging habitat, there will be a fee for the western burrowing owl.

Jan referred to page 29 of the stakeholder packet, which talks about covered activity occurring nearby a burrowing owl nest. He requested that it be made clear in this description that the more detailed study area is the area under discussion and that, when talking about fees, the plan is referring to the finer-grain locations. Ken confirmed that nests outside study area are not covered by this plan. However, the hope among Fish and

Game Department staff is that this plan becomes the template for covering impacts outside the plan study area.

In response to stakeholder questions, Ken confirmed that if you're developing a residential use on serpentine land, you would pay both the basic land impact fee and the Serpentine impact fee.

For urban areas, it is assumed that the entire parcel is effectively lost. The Team is still determining precisely how this will be dealt with.

III. PUBLIC COMMENT AND NEXT STEPS

One member of the public asked if the plan allows recreation on land purchased. Ken confirmed that any recreation planned will be passive and will be limited to trail areas. Ken confirmed that UTC property and Metcalfe Park are of the highest acquisition priority for the FGD and FWS. These areas are part of designated endangered species habitat.

The San Jose Water Quality Control Plant is outside of this plan and the study area, and is on its own course in receiving a permit for burrowing owl impacts. The quandary right now is that no one knows what FGD will require in terms of mitigation.

The participant commented that he has proposed a zero-emissions vehicle emissions park for the 2,600 acres of land surrounding the San Jose Treatment Plant. He has proposed that the park surround this industrial area and is working to entice County Parks to provide funding.

Ken also confirmed that the plan area does not have fairy shrimp. They occur in vernal pools.

Ken suggested the stakeholder group not have an October meeting. It will be so late in screen-check process that he is not sure it would be effective organizationally. Joan will poll the group regarding a date for a November meeting.

David C. asked if stakeholders will have a chance to look not just at the final draft, but at tracked edits made between that and the second administrative draft. Ken will pursue this with David Zippin.

Bob Powers confirmed that it's of greater value to him to hear what has been resolved, rather than hearing about issues the Plan team is in the middle of negotiating and resolving.