



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: October 26, 2006

AGENDA ITEM 7

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Permit Term for the HCP/NCCP

PREPARED BY: Kenneth Schreiber, HCP/NCCP Program Manager

Purpose of this Staff Report: Provide information regarding issues related to the length of the permit for incidental take of endangered species that will be sought as part of the HCP/NCCP to facilitate a Liaison Group discussion of permit term issues. Staff has agreed with the Stakeholders Group that a final decision on the length of the permit can be decided later in the HCP/NCCP preparation process when more information, especially on the scope and implementation of the HCP/NCCP will be available.

Next Steps After Liaison Group Review: Staff will return the permit term issue to the Stakeholders Group and Liaison Group when more applicable information is available.

Recommendation: No decision is recommended at this time. The Liaison Group is requested to provide the Management Team with factors to consider when developing and evaluating permit term options. Permit term options will return to the Liaison Group.

Discussion: An April 4, 2006 memo from Jones & Stokes regarding the permit term (Attachment I) includes background information including Fish and Wildlife Service and National Marine Fisheries Service guidance for selecting a permit term; time horizons of local planning documents; permit terms of other regional HCPs and NCCPs; and a recommendation for a 50 year permit term. Discussion at the April Stakeholder Group meeting raised numerous questions and issues of concern regarding the permit term. The four major reasons for the Management Team's recommendation are described in an August 11, 2006 memo to the Stakeholder Group (Attachment II). For major infrastructure activities such as water supply, flood protection and transportation, the planning and financial horizons are extremely long and may exceed 50 years. Therefore, the Management Team continues to recommend a 50 year permit term.

The permit term was discussed at the August 2006 Stakeholder Group meeting with the issue continued to the September meeting. About two hours of the September Stakeholder Group meeting were devoted to the permit term (see Attachment III, Stakeholder Group September 26, 2006 Meeting Notes). As noted in the Meeting Notes, a straw poll of the Stakeholder Group found a majority that favors a 30 year permit term and other members that support a longer permit term (e.g., 50 years). The Stakeholder Group's discussion raised issues associated with a variety of HCP/NCCP elements (e.g.,

funding, implementation, adaptive management, future assessments of the implementation program). A fundamental part of the Stakeholder Group discussion is the issue of what assurances can be established regarding successful implementation of the HCP/NCCP. The chief concern being that development will be permitted but the endangered species-related mitigations and habitat enhancements will not keep up with the level of development and/or suffer less than adequate implementation. Individual Stakeholder Group members identified a number of assurances that might lead them to support a longer permit term. Specific assurances identified include:

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

Staff's conclusion is that the issues raised by the Stakeholders Group are worthy of consideration and will be addressed as the HCP/NCCP preparation process continues. The Stakeholder Group meeting concluded with an understanding that the permit term issue would be considered further when information was available regarding a number of the issues in the list of potential assurances. The Management Team will identify what possible covered activities would be excluded with a 30-year term. The financial consultant will be directed to provide an assessment of the financial implications of 30-year and 50-year permit terms. Working with 30 year and 50 year alternative permit terms will not slow preparation of the Plan and can be accommodated in the current scope of work of the consultants.

Attachments: I. April 4, 2006 memo from Jones & Stokes
II. August 11, 2006 memo to the Stakeholder Group
III. Stakeholder Group September 26, 2006 Meeting Notes

Copies: Stakeholder Group



Memorandum

Date: April 4, 2006

To: Santa Clara Valley HCP/NCCP Management Team

cc:

From: David Zippin and Kathryn Gaffney

Subject: **Permit Term for the Santa Clara Valley HCP/NCCP**

Introduction

This memorandum summarizes the factors that should be considered in the selection of an appropriate permit term for the Santa Clara Valley HCP/NCCP. The permit term of an HCP/NCCP is the length of time for which the incidental take permits are valid and during which Permittees may undertake activities covered by the permit. The permit term is also the time period in which all land acquisition, habitat restoration, and other mitigation and conservation measures must be accomplished. Habitat management and monitoring, however, will continue beyond the permit term, although perhaps at a reduced level than during the permit term. Several factors are considered when selecting a permit term, including policy guidance from regulatory agencies, the time horizons of local planning documents, and the time necessary to implement the reserve system. Each of these factors is discussed below, along with a brief review of the permit terms of other California HCPs and NCCPs and the range of permit terms found in approved HCPs across the country. Finally, a recommendation is made for a permit term of 50 years for the Santa Clara Valley HCP/NCCP.

Agency Guidance

The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service have published an addendum to the *Handbook for Habitat Conservation Planning and Incidental Take Permitting Process*. This addendum, known as the five-point policy, provides guidance in developing and conducting an incidental take permit (65 FR 35242). This policy recommends that applicants consider the following factors when selecting an appropriate permit term for an HCP.

- Duration of the applicant's proposed activities.
- Nature and variation in the impact of the activities on covered activities.
- Expected positive and negative effects on covered species.
 - Extent to which the operating conservation program will increase the long-term survivability of the species or enhance its habitat.
 - Length of time necessary to achieve benefits of conservation program.
 - Length of time necessary for adaptive management.

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- Risk to species and habitats due to uncertainty of impacts, lack of data on species, responses, or other factors.
- Duration of time necessary to ensure long-term active commitments to the HCP.

The Natural Community Conservation Planning Act (NCCPA) suggests that that time needed to assemble the reserve system should also be considered.

No other guidance on permit terms is provided by the California Department of Fish and Game (CDFG) or in the NCCPA, but the level of assurances in the NCCP permit are tied to “[t]he appropriateness of the size and duration of the plan with respect to quality and amount of data” and “[t]he size and duration of the plan.” Thus, the permit term will influence the level of assurances provided by CDFG to the Permittees regarding changed circumstances, adaptive management, and other factors.

Time Horizon of Local Planning Documents

One of the primary factors influencing the permit term is the time needed to implement all covered activities. To determine the time needed for the covered activities of Local Partners, we provide a summary of major local planning documents and the time horizon associated with each document (Table 1). These planning documents have durations between 10 and 40 years, with the Coyote Valley Specific Plan potentially extending the farthest out into the future to 2047. In order for the HCP/NCCP to fully cover the anticipated development in Coyote Valley, the permit term must be at least 38 years, assuming that the HCP/NCCP is approved in 2009.

Permit Terms of Other Regional HCPs and NCCPs

Table 2 provides an overview of selected regional HCPs and NCCPs currently approved or under development in California that are similar to the Santa Clara Valley HCP/NCCP. The range of approved or proposed permit terms is 30 to 80 years. These permit terms were selected based on a variety of factors, including anticipated local growth, the necessary timeframe for assembling the reserve system, and the time needed to fully fund the plan.

Figure 1 shows the permit terms for all approved HCPs in the United States as of February 2006. As this histogram demonstrates, the most common permit terms are between five and nine years, and 30 years. Short permit terms are most common for small, project HCPs that only need a few years of take authorization in which to construct the project. The permit term for large-scale HCPs ranges from 30 to 100 years, with 30 or 50 years being the most common choices. Permit terms of 100 years were adopted for some of the earlier HCPs and are no longer being considered by USFWS because of the large uncertainty in allowing take for such a long period.

Recommended Permit Term

Selecting an appropriate permit term will help ensure the success of the Plan throughout its implementation. The selected permit term should encompass the implementation of all planning efforts

currently in place or anticipated to be in place within the next several years. It should also allow adequate time to fund and implement the conservation strategy of the HCP/NCCP. Based on agency guidance, time horizons of local planning documents, and the consideration of other factors discussed above, Jones & Stokes recommends that the Local Partners propose a permit term of 50 years for the Santa Clara Valley HCP/NCCP. We believe that this permit term will:

- encompass the duration of all anticipated covered activities, with an additional 12 years to cover contingencies;
- provide sufficient time to assemble the HCP/NCCP reserve system;
- provide sufficient time to secure all necessary funding for HCP/NCCP implementation during and after the permit term; and
- provide sufficient time to implement an effective adaptive management program, given the uncertainties in our knowledge about the covered species ecology and responses to resource management.

Please provide feedback on this recommended permit term and the rationale for it.

Tables and Figures

Table 1. Local Planning Documents and Time Horizons

Document	Date Produced	Projection/ Time Horizon	Plan Duration
City of Gilroy General Plan	2002	2020	18 years
City of Morgan Hill General Plan	July 2001, Updated August 2005	Growth to 2010; development management measures to 2020	19 years
City of San Jose General Plan	2005	2020	15 years
County of Santa Clara General Plan	1994; Updated 2001	2010	16 years
Coyote Valley Specific Plan (City of San Jose)	Anticipated to be considered by City Council in 2007	Up to 2047	40 years
Coyote Watershed Stream Stewardship Plan (SCVWD)	2002	At least until 2016	14 years
Fisheries and Aquatic Habitat Collaborative Effort (FAHCE) Settlement Agreement (SCVWD)	2008 (anticipated approval)	2038	30 years
Flood Protection and Stream Stewardship Program (SCVWD) (Capital Improvements are wrapped into this plan)	Adopted by the Board of Directors and approved by the voters in November 2000	2001-2016	15 years
South County Airport Master Plan Report (DRAFT) (Santa Clara County)	2005	2025	20 years
Strategic Plan for the Santa Clara County Parks and Recreation System	2003	2013	10 years
Valley Transportation Plan 2030 (VTA)	2005	2030	25 years

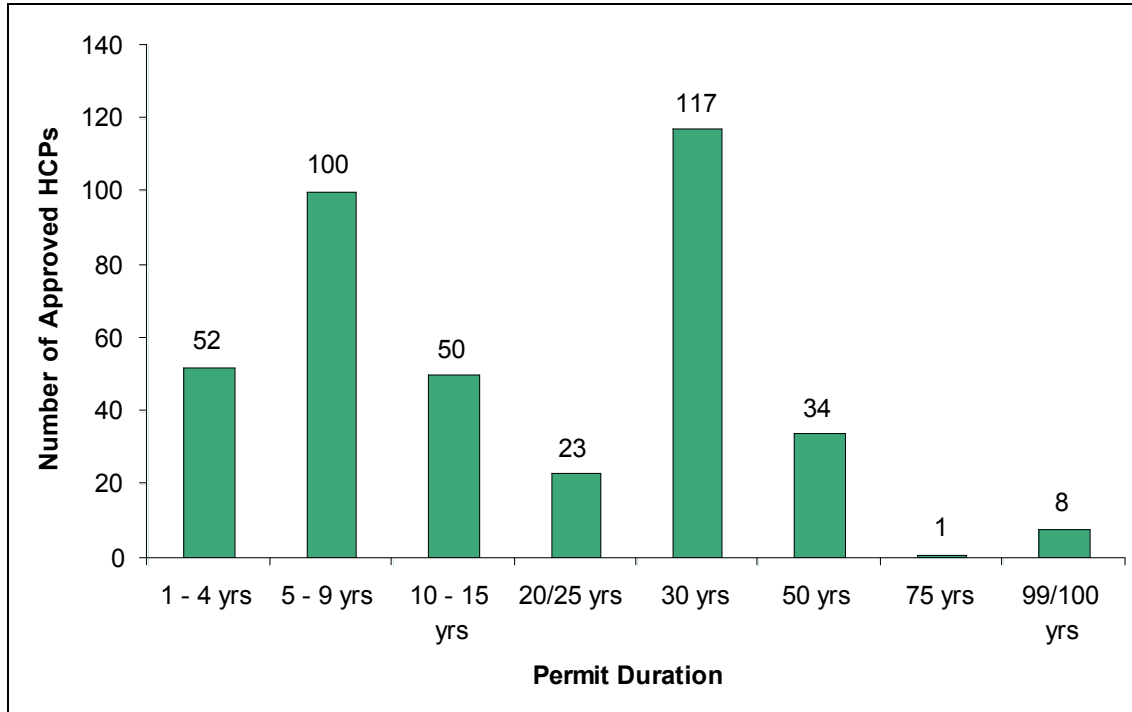
Sources: City of Gilroy 2002; City of Morgan Hill 2001; City of San Jose 2005; County of Santa Clara 1994, 2005, 2003; Santa Clara Valley Water District 2002, 2005; Valley Transportation Authority 2005.

Table 2. Permit Terms of Other Regional HCPs and NCCPs in California

Plan	Plan Status	Permit Term	General Rationale for Permit Term
Coachella Valley Multiple Species HCP/NCCP	Approval expected in 2006	75 years	Length of time needed to fully fund plan implementation
East Contra Costa County HCP/NCCP	Approval expected 07/06	30 years	(1) Reasonable timeframe in which to forecast local growth; (2) may take longer to realize growth than 15 years or less time frame of current general plans; (3) necessary timeframe for assembling reserve system
Mendocino Redwood Company HCP/NCCP	January 2007 public draft	80 years	Length of time for replanted trees to mature
Natomas Basin HCP	Approved in 2003	50 years	N/A
North (San Diego) County Multiple Habitat Conservation Program	Approved in 2004	50 years	N/A
Placer Legacy Open Space and Agricultural Conservation Program NCCP and HCP	In process	50 years	Time required for complete build-out of county and City of Lincoln (beyond current general plan time horizons)
San Joaquin County Multi-Species Habitat Conservation & Open Space Plan	Approved 11/14/00	50 years	Period of time used to forecast regional growth
Western Riverside County Multi-Species HCP	Approved 6/17/03	75 years	Time needed to assemble reserve system and implement regional transportation plan

Sources: City of Sacramento 2003, Coachella Valley Association of Governments 2006, Contra Costa County 2005, County of Placer 2006, County of Riverside 2004, Mendocino Redwood Company 2005, San Diego Association of Governments 2004, San Joaquin Council of Governments 2000.

Figure 1. Permit Durations of Approved HCPs Nationwide



Source: U.S. Fish and Wildlife Service 2005.

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- Contra Costa County. 2005. *DRAFT East Contra Costa County HCP/NCCP*. Martinez, CA. Available: <http://www.cocohcp.org/hcp_nccp_content/hcp_nccp.html>.
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Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

August 11, 2006

To: Stakeholder Group

From: Management Team

Subject: Permit Term

In April, the Stakeholder Group discussed the attached April 4, 2006 memo from Jones & Stokes regarding the length of the permit term. The issue was continued for further discussion. Staff concluded that further consideration of permit term-related issues would benefit from information on covered activities. Covered activities information is provided as part of a separate agenda item for the Group's August 22, 2006 meeting.

The Liaison Group is scheduled to review the issue of the permit term's length on October 26, 2006.

Notable additions/modifications to the April 4th memo include:

- Coyote Valley Specific Plan: implementation timeline is now 58 years, rather than the 40 years cited on page 2 and in Table 1;
- Morgan Hill has adopted an Urban Limit Line establishing an ultimate growth boundary; and
- The FAHCE HCP will have a 50-year term (30 year plan duration cited in Table 1).

The April Stakeholder Group consideration of the permit term triggered a series of Management Team discussions. The outcome of those discussions was a Management Team decision to recommend that the HCP/NCCP seek a 50-year permit term. The Management Team reached this conclusion for several reasons:

- Level of Certainty Regarding Future Urban Development: San Jose and Morgan Hill have ultimate urban limit lines in their General Plans. Thus to a considerable degree, many of the land consumption impacts of new urban growth are similar for a 50 year or shorter permit term. The longer permit term offers the potential for greater conservation efforts that can, in part, help reinforce the planned urban boundaries.
- Length of Some Covered Public Activities: A major benefit of the HCP/NCCP will be for public sector operations, maintenance and capital projects. Some of these projects have a long lead time; others are infrastructure work such as bridge repairs and maintenance of water pipelines and other utility facilities that occur with regularity over time. The Partner Agencies concluded that a longer permit term added considerable value for the public agencies undertaking the HCP/NCCP.

- Need for and Value of a Long Term Implementation Permit: The Santa Clara Valley HCP/NCCP will differ from most large Regional Conservation Plans in the relatively limited amount of land that is to be converted from undeveloped to urban. A considerable challenge will be finding an implementation and funding package that has an acceptable mix of public desires for open space preservation, private and public sector tolerance for new fees and charges and realistic assumptions regarding opportunities for outside funding. A shorter permit term will almost undoubtedly result in a more limited conservation effort primarily because of funding limitations. Being able to spread the implementation over a longer permit term will facilitate having a more robust set of conservation strategies.
- Achieving the Greatest Value for the Planning Effort: In addition to the cost of consultants, the Partner Agencies and the Wildlife Agencies are spending a considerable amount of staff time and other resources on the HCP/NCCP effort. Maximizing the return on this investment facilitates the conclusion that a 50-year permit term is appropriate.

In conclusion, the Management Team will recommend to the Liaison Group that preparation of the HCP/NCCP assume a 50-year permit term with that assumption incorporated into the eventual Implementing Agreement and Permit applications.

Attachment: April 4, 2006 Memorandum from Jones & Stokes

SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN

Stakeholder Group Meeting | September 26, 2006 | Morgan Hill Community Center

IN ATTENDANCE:

Stakeholder Group Members:

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

I. WELCOME AND UPDATES

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

II. DISCUSS LENGTH OF PERMIT TERM

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

Conservation Assurances

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

Conservation Uncertainty

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Financing the HCP/NCCP

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

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

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

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

Preventing failure

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

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

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

Permit length: Check-in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. OUTREACH AND COMMUNICATIONS

Upcoming public meeting for HCP/NCCP

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

Member outreach presentations to constituents

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

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

December HCP Workshop

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

Written comments on chapters to date

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

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

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

IV. PUBLIC COMMENT AND NEXT STEPS

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



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: October 26, 2006

AGENDA ITEM 8

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Information Items

PREPARED BY: Kenneth Schreiber, HCP/NCCP Program Manager

Purpose of this Staff Report: Provide the Liaison Group with information on the status of a variety of items.

Next Steps After Liaison Group Review: Activities regarding these items will proceed as described or consistent with direction provided by the Liaison Group.

Recommendation: It is recommended that the Liaison Group provide guidance to staff regarding the protocol for signing letters and concur with use of Santa Clara Valley Conservation Plan----A Conservation Legacy as the title for the HCP/NCCP program.

Discussion:

8.a. Protocol for Sending Letters re Liaison Group Requests: After the August Liaison Group meeting, the HCP/NCCP Program Manager drafted the letter to the Corps of Engineers inviting them to the October Liaison Group. Time and logistical issues resulted in the letter being signed by only the four Liaison Group members affiliated with the County or the City of San Jose. Subsequently, Water District staff recommended that there be a refinement of the Liaison Group protocols or ground rules. At the first Liaison Group meeting, members decided that no one member or partner would represent the whole unless the whole membership decided that it would be appropriate for that partner or member to do so. Therefore, the following refinement is proposed:

The Program Manager will sign letters written on behalf of the Liaison Group, unless the Liaison Group specifies differently.

8.b. Implementation Partners: At the August 2006 Liaison Group meeting, the concept of seeking the involvement of the Santa Clara County Open Space Authority and the State Department of Parks and Recreation was endorsed by the Group. Staff attended the August Open Space Authority Board meeting to provide an overview of the HCP/NCCP and discuss the Implementing Partner concept. The Board was receptive to the concept and asked that more information on the details of the roles and obligations of the Partners be provided. A first draft memorandum of understanding was prepared by HCP/NCCP staff and is under review by the Authority. State Parks regional staff decided that the involvement in the HCP/NCCP needed to be reviewed and a decision to participate made by

Headquarters staff in Sacramento. A meeting with Headquarters staff is targeted to occur within the next month.

8.c. Science Advisors Report: The lead scientist working on and responsible for compilation of the Report of the Science Advisors informed staff that the Report, which was targeted for release in early October, will be available by mid-December. A major reason for the delay is that the lead scientist was recently in an automobile accident.

8.d. Stakeholder Group Activities: The Stakeholder Group's September meeting notes are attached to agenda item 7, Permit Term. The Group's next meeting is Tuesday, October 24th. Major discussion items include further review of Covered Activities and Draft Chapter 3 and Appendix D (continued from the September meeting) and initial information on the conservation analysis process.

8.e. Section 6 Funding: The HCP/NCCP program has received three grants of Federal Section 6 funding totaling \$902,508 (\$240,384 in FY 2003 \$260,839 in FY 2004 and \$401,285 in FY 05). The County applied for a fourth Section 6 grant in May of 2006. Conversations with other HCP and NCCP managers and Wildlife Agency staff noted that receipt of a fourth grant would be unusual. In late September, the Fish and Wildlife Service in Washington, D.C. informed the State and the County that the current grant application would not be funded.

8.f. Outreach Efforts: The second open house/community meeting for this project occurred on Thursday, September 28, from 6:30pm-9pm at the Isaac Newton Senter Auditorium in the County Government Center. The meeting went well, though turnout was disappointing with only 17 members of the general public in attendance, 6 of whom were Stakeholders. We did receive great questions from the audience regarding the HCP/NCCP process, study area, neighboring property owners, covered activities, burrowing owls, etc. Prior to the next meeting we will work to increase our database and generate more media coverage of the event. Over 400 invites were mailed, Local Partners distributed several thousand invites via email, and a media advisory was distributed to more than 15 local media outlets, many of who ran the notice in their community calendar sections.

Other activities included several Speakers Bureau presentations (Pajaro Watershed Council, Burrowing Owl Consortium and the Open Space Authority), as well as production of our first official trading card and materials such as fact sheets, FAQ's and key terms used as meeting handouts and for the website.

8.g. Website: The project web site, www.scv-habtatplan.org, has been up and running for over a month and we have received several questions via the on-line comments feature. Materials for upcoming meetings, such as Liaison Group and the Stakeholder Committee are being posted routinely. All presentations for previous Speakers Bureau engagements are posted on the web as well.

8.h. Naming the Project: The Management Team (MT) and Public Information Officers (PIOs) discussed changing the project name from Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (SCV HCP/NCCP), to something shorter and more concise. Consideration was given to the project's geography, purpose, end result, longevity, legality, and public perception. The PIO's met twice to discuss this and recommended the following name and tagline:

Santa Clara Valley Habitat Plan
.... A Conservation Legacy

This option was reviewed and approved by a majority of the MT. We are now asking the Liaison Group to concur with using the name and tagline for the project. Once approved all public information materials will reflect this new name.

Attachments: None

Copies: None