

Minutes

South Sacramento Habitat Conservation Plan Steering Committee - December 6, 2007

10:00-12:00 - 700 H Street, 5th Floor Training Room

<http://www.saccounty.net/planning/habitat-conservation/overview.html>

Attendee	Affiliation
Alta Tura	Sacramento Audubon
Aimee Rutledge	Sacramento Valley Conservancy
Bill Shehadeh	Shehadeh Family Trust
Charlotte Mitchell	Sacramento County Farm Bureau
Chris Beale	Resources Law Group/City of Elk Grove
Dan Gifford	CDFG
Dave Ghirardelli	Sacramento County Waste Management and Recycling
Diane Kirkham	Kirkham Family
Ginger Fodge	Gibson & Skordal LLC
Humera Arshad	SRCS D
Jeff Bordelon	Attorney
Joyce Hunting	City of Rancho Cordova
Kate Wheatley	Taylor & Wiley
Leighann Moffitt	Sacramento County Planning
Mara Bresnick	Foxglove Environmental for Centex Homes
Paul Sherman	Wildlands, Inc.
Rich Radmacher	Sacramento County Planning
Sarena Deeble	SRCS D Policy & Planning
Sean Wirth	SOS Cranes
Stan Van Vleck	Cattlemen
Steve Pavich	ENTRIX
Taro Echiburu	City of Elk Grove
Vincent King	Sacramento County Planning

1. Call to Order and Introductions

The meeting was called to order by Rich Radmacher and introductions were made. Rich began by saying that John Hodgson would not be able to attend this meeting as he had an unexpected business issue to deal with. John wished to have a couple of thoughts expressed to the group including an emphasis that economics needs to be focused on in future discussions. Rich spoke to this point for a moment. He explained that the economic discussion had been paused while issues regarding the implementation structure and the adaptive management strategy were being worked out. Now that this information was further developed they could again begin to solidify the economic aspects of the plan.

2. Review Implementation Topics

Rich introduced the implementation topics. He realized from comments he had received from the first review of this Chapter that a significant amount of work was yet to be done and the crafting of this Chapter is going to take longer than first anticipated. He felt it may be better to review significant topics that have broader implications prior to distributing another copy of the Chapter, similar to the Conservation Strategy review process.

Organizational Structure: Rich began by explaining that the organizational structure presented to the Committee is a work in progress and that this structure would be flushed out over the next several months. The organizational structure that was proposed to the Committee is composed of four bodies, a Governing Authority (GA), Conservancy, Technical Advisory Committee (TAC) and Scientific Review Panel (SRP). The GA is composed of elected officials that would ultimately be responsible for implementation of the SSHCP (Plan). Under the GA, a Conservancy would carry out the day to day operations of Plan implementation. The TAC would provide guidance to the GA. The TAC is envisioned to be composed of representative members of the Steering Committee (e.g. 4 Development, 4 Agricultural, 4 Environmental, and one each from the Regulatory Agencies). Finally, a SRP composed of independent scientist not associated with the plan would convene approximately once every five years to audit the implementation of the plan relative to the plan goals. Their findings could be circulated for public comment and outside opinion.

Sean Wirth expressed concern with elected officials acting as the GA. He prefers to see a system whereby the permittees (local jurisdictions and agencies) appoint members to a board to oversee the conservancy. Charlotte Mitchell agreed with Sean and further would like to see that agricultural science is represented on the SRP. Rich planned to write the plan such that the SRP would be chosen by the TAC and at least one of the five SRP members would be from the agricultural sciences. Stan Van Vleck agreed and noted that there have been instances where the conventional wildlife science has benefited from input from agricultural science.

Aimee Rutledge expressed that in her experience, mission based conservation organizations tend to achieve better results than politically based ones. She is concerned that placing elected official in charge of the conservation organization may prove troublesome. She suggests that perhaps an appointee is a better system. She emphasized that the day to day operations of the conservation organization is not a political process.

Dan Gifford expressed that from his experiences in San Joaquin County the elected officials did not get heavily involved in guiding conservation, but took the recommendations as they were brought to them from the conservancy. Aimee still sees a potential problem considering how our political election system works. Dan followed noting that putting elected officials in charge can help to give the plan authenticity. Also, he stated that it can become interesting if one of the jurisdictions isn't abiding by the permit. Who would the regulatory agencies notice?

Chris Beale noted that the conservancy in this instance is still mission based. Essentially the GA could determine if a narrower group (i.e. appointees from each jurisdiction) will be responsible for guiding the conservancy or the individual Cities and County could act in this role. Without the GA, you still have the elected Boards and Councils making separate decisions. He sees two separate issues: 1) how do permittees make decisions about the permits? And 2) who manages the day-to-day operations?

Jeff Bordelon acknowledged that there is some merit in getting elected official invested in the process. He cited issues San Antonio had with officials who don't buy into the process. He suggested a tiered system with an appointed board between the conservancy and the elected officials.

Alta Tura supported the Natomas Basin organizational model. She hasn't heard any criticism for that structure.

Chris Beale mentioned that the ad hoc decision making ability in Natomas may not work well for the SSHCP considering that the Natomas system relies on two jurisdictions with no overlapping regulatory authority. The SSHCP must accommodate six plan participants with jurisdictions that overlay one another.

Aimee Rutledge said that the Natomas Basin Conservancy (NBC) brings forth needs and issues for the board to act on and wasn't clear if the same would occur under this structure. Rich clarified that he always envisioned the conservancy would bring forth amendments and issues with the plan but the plan participants must ultimately approve any modification to the Plan that are not already provided for within the context of the SSHCP.

Jeff Bordelon questioned if the GA would be the direct recipients of lobbying interest and suggested that the structure should allow for stakeholder input below the elected officials.

The objective viewpoint of the SRP was questioned. Rich explained that he anticipated that the SRP would convene once every five years to provide an audit of the effectiveness of the Plan. The SRP allows for independent scientist to review the Plan and make recommendation concerning operation and management protocols.

Mara Bresnick mentioned that the permittees are another layer to the structure that will always be present. She felt that the structure would be very much dependant on the various roles and responsibilities. Rich agreed and felt that there was more to be flushed out in that regard. He also noted that his inclination was to keep the conservancy a far away from the political processes as possible.

Jeff Bordelon asked if the conservancy would be a non-profit. Rich replied that it would. Dan Gifford offered that in the San Joaquin HCP the Council of Governments in charge of implementing the HCP already had established duties and neglected those of the HCP. Chris Beale said that a JPA can act like a COG in that it can facilitate collective decision making by the permittees.

Jeff reiterated Mara's point that the structure would be driven by role and that a process and role flow chart may help.

Sean concluded the conversation on this topic underlining that the ultimate structure and process needed to have appropriate checks and balances.

Checks and Balances: Rich described that besides the TAC and SRP, he does not know what else to provide for checks and balances. He was looking for suggestions.

Sean asked what the process for reviewing complaints might be. He felt that an arbiter position that had connection with DFG and the USFWS and other agencies might be useful in the process.

Dan Gifford outlined that the job of implementation is doing what the plan says. In this process the regulatory agencies have veto authority in most plans. There will also be an annual review of their progress relative to what the plan spells out. Rich concurred that he always believed that the regulatory agencies had the ultimate authority to enforce the Plan as they alone can revoke or suspend the Incidental Take Permit.

Jeff Bordelon offered two observations from his experiences working with public entities. He feels transparency in the process is critical for public support and involvement. Also, he notes that institutions

rarely seem to review their own procedures to determine what may need to be changed. Rich spoke to this point noting that the SSHCP will have a rigorous Adaptive Management chapter that will evaluate progress and suggest changes as the plan is implemented.

Stan Van Vleck supported the concept of allowing an appeal process. Jeff said that an appeal process can include an ombudsman function; perhaps in the TAC. Sean Wirth viewed this as a way to oversee the permittees. Rich noted that he would try to bring something back to the group on this for the next meeting.

Concern arose regarding the power and influence that the agencies will have throughout implementation. Rich replied that because the agencies control the Incidental Take Permits they have the ability to shape the Plan consistent with the Implementation Agreement and the SSHCP itself. Dan said that the agencies, for now, really support these plans and want them to work. Strong oversight in plan implementation degrades the intent of the plans and generally is not seen.

Jeff Bordelon cautioned against being too precise in developing the plan and that flexibility is important. He noted that the basis of the conservation strategy is in itself a very flexible approach and the actual land configuration will meld and change over time. Stan strongly agreed that flexibility will be important.

Aimee Rutledge suggested an additional topic to be added to the implementation topics list. She thought it would be important to fully discuss the implications this plan will have on and how the plan intends to deal with existing conservation organizations and mitigation operators.

Timing of Fee Payment: Rich posed the questions of how far in advance the local jurisdictions would accept payment of fees. He provided as an example, how on the eve of a fee increase project proponents may elect to pay a fee far before their project is defined/approved to avoid a higher fee. This could result in insufficient funding for land or easement acquisitions or not enough money to properly administer the Plan. Sean felt that the 1,000 acre stay-ahead component helps to avoid this problem, because they would be securing land already purchased. Dan felt that their may still be a problem. Sean explained that he thought acres in reserve could never fall below 1,000 acres. So, what you'd be purchasing is land above the 1,000 acres. He suggested that the plan should state that 1,000 acres must be secured to provide credits. This way they're only selling land that has already been purchased. Paul Sherman suggested that if there isn't the 1,000 acre surplus that the plan shift to a land delivery system. Rich explained for reference that the reason he was comfortable moving to a fee system was in part because of the 1,000 acre stay-ahead component.

Taro explained that the City of Elk Grove does not accept payment of mitigation fees until the jurisdiction has approved a project. They do not want acceptance of mitigation fees to be construed as any sort of pre-approval of the project. Sean felt that early mitigators should be encouraged to do so, but at their own risk. Taro agreed, but cautioned that it would absolutely have to be clear that it was the individuals' risk. Joyce still felt that this could be a sticky subject as the local jurisdictions are collecting the mitigation fee. Aimee suggested that perhaps land delivery is a better way to do early mitigation than providing money. Again, Taro felt this was fine so long as it did not presume anything about the jurisdictions project review process. Leighann suggested that this process would only entail approval of the mitigation land. Jeff suggested that perhaps some sort of contractual agreement could be executed similar to a development agreement.

Sean said that land or fees should be identical because the land is already purchased. Dan followed to address the original question of timing. He pointed out that if a project proponent pays a smaller fee just before a fee increase, then the GA and Conservancy will still have less money to go out and buy more land at a higher price.

Chris Beale pointed out that the critical point will be determining when fees can be paid and assurances for the project can be given.

Stan would like to see a very flexible pricing structure and suggested looking at commodity markets.

Jeff Bordelon said that there would have to be a non-fee based catalyst to start the program. Mara Bresnick also addressed the need for parity between habitats taken and the habitats preserved.

Aimee Rutledge pointed out that in fluctuating markets people may not want to participate if the GA or Conservancy buys high and the land prices drop. Stan voiced a concern that speculation could affect the price that the GA may be forced to use. Even if the speculative price is much higher than the habitat values they are purchasing. He offered current agriculture as an example. For their purposes, agricultural land may be worth 4,000 to 5,000 per acre, but the market is asking for 10,000 to 12,000 acres due to speculative value. Therefore, they are not able to find willing sellers at a price that matches their value. The same situation could arise for habitat value. Rich noted that these are points that will need to be filtered to the economic sub-committee. Stan also noted that if a government entity takes on the risk of a fluctuating market, they are not able to pass that cost the same way a developer might. This is a case where government should not absorb risk.

3. Recap Assigned Tasks

Rich requested that any additional topics for Chapter 12 be sent to Vince. The next Steering Committee meeting was not scheduled, but would be on a Thursday around mid-January.