



Santa Clara Valley  
Habitat Conservation Plan/Natural Community Conservation Plan

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**SANTA CLARA VALLEY HCP/NCCP LIAISON GROUP MEETING  
THURSDAY, FEBRUARY 16, 2012**

**SANTA CLARA VALLEY WATER DISTRICT  
5700 ALMADEN EXPRESSWAY, SAN JOSE  
HEADQUARTERS BUILDING BOARD CHAMBER**

**4:00 to 6:00 PM**

**AGENDA**

1. Welcome/introductions (2 minutes)---Water District Board Member Don Gage
2. Update on Status and Schedule for Revising the Draft Habitat Plan, Draft EIR/EIS, Draft Implementing Agreement and Related Documents (30 minutes)---Ken Schreiber and Management Team  
Desired Outcome: Receive and discuss information on the Final document preparation process and provide guidance to the Management Team as appropriate.
3. Update on Status and Schedule for Permitting for Wetland Impacts (Army Corps of Engineers and Regional Water Quality Control Boards) (45 minutes)---Debra Caldon and other Management Team members  
Desired Outcome: Receive and discuss information on the status of wetland permitting and provide guidance to the Management Team as appropriate.
4. Federal Section 6 Planning Grant Funding Status (10 minutes)---Ken Schreiber  
Desired Outcome: Receive and discuss information on the status of Section 6 Planning Grants.
5. Liaison Group Meetings (5 minutes)---Ken Schreiber and Management Team  
Desired Outcome: Confirm Liaison Group meeting dates for March and April, 2012.
6. Discussion with Wildlife Agency Staff (5 minutes)  
Desired Outcome: Share information and, when appropriate, reach common understanding regarding issues of interest.
7. Public Comments (5 minutes)  
Desired Outcome: Receive comments from members of the public.



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Date: February 16, 2012

AGENDA ITEM 2

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Update on Status of and Schedule for Revising the Draft Habitat Plan, Draft EIR/EIS, Draft Implementing Agreement and Related Documents

PREPARED BY: Kenneth Schreiber, Program Manager

Purpose of this Staff Report:

Provide the Liaison Group with an update on work underway to create a Final Habitat Plan and related documents.

Next Steps After Liaison Group Review:

Work by Local Partner staffs, consultants and the Wildlife Agencies will continue with the objective of releasing the Final Plan and related documents by the end of May 2012.

Recommendation:

Receive and discuss the information on the Final document preparation process and provide guidance to the Management Team as appropriate.

Discussion:

The process to prepare the Final Plan and related documents is intended to release, by the end of May, final documents for public review and consideration by each Local Partner during the Summer of 2012. The process and budget identified in the September 2011 Proposed Revisions to the Draft Santa Clara Valley Habitat Plan (the Framework) is intended to have the Local Partners take action on a Final Plan and related documents by the end of August 2012. The Wildlife Agencies will then take a series of actions leading to issuance of incidental take permits with a target date of late 2012.

Documents to be reviewed by the Local Partners include Management Team recommended:

- Final Environmental Impact Report/Environmental Impact Statement  
 Over 775 comments were received during the December 2010 to April 2011 public review period. Over 90 percent of the comments were on the Draft Plan and not directly on the Draft EIR/EIS. All comments will be responded to. Comments that appear multiple times have been grouped into Master Responses. Master Responses and individual comment responses are under development and will be reviewed by the Management Team and Wildlife Agencies.

- Final Habitat Plan  
The transition from the Draft Plan to a Final Plan focuses on adjusting the Draft Plan to incorporate the changes identified in the Framework, which primarily focus on the Conservation Strategy, Monitoring and Adaptive Management and Cost and Funding chapters. In addition, review and confirmation or adjustment of the Covered Activities, Conditions on project approval and Plan Implementation chapters is underway.
- Final Implementing Agreement  
A Draft Implementing Agreement (IA) was circulated for review in December 2010 in conjunction with the Draft Plan and Draft EIR/EIS. Adjustments to the IA will focus on two areas: 1) changes between the Draft and Final Plans that need to be reflected in the IA, and 2) the template conservation easement. The template Conservation Easement, which is a required part of the IA, was not included in the December 2010 Draft. The Management Team is initiating review with the Wildlife Agencies of modifications to a 2011 Draft Template Easement. The Management Team will follow up on a commitment to the Cattlemen's Association to provide time for them to review and then discuss the Template Easement with Local Partner staff.
- Joint Powers Authority (JPA) formation document  
In 2009 and 2010, the Liaison Group allocated substantial energy to reviewing options for the entity that is responsible for implementing the Habitat Plan. The Liaison Group concluded that a JPA was the most appropriate mechanism. The proposed JPA was reviewed by the Local Partners with the December 2010 Draft Plan and the September 2011 Framework. On March 15<sup>th</sup>, the Liaison Group agenda will include review of the JPA's structure and responsibilities.
- Memorandum of Understanding (MOU) for the Local Partners and Open Space Authority  
The primary purposes of the MOU are to further define the roles, rights, and responsibilities of the local Parties regarding Habitat Plan implementation; explain relationships between the local Parties; and establish processes for resolving disputes and addressing other potential issues. A draft MOU will be discussed by the Liaison Group on March 15<sup>th</sup>.
- Implementing Ordinances for the Local Partners  
The primary purpose of the Implementing Ordinance is to establish the authority to adopt (JPA) and collect impact fees (the three Cities and County of Santa Clara). A template Implementing Ordinance needs to be provided for review and approval by the Wildlife Agencies. Experience indicates that each local jurisdiction will need to translate the template into the format and content that satisfies the local entity. An update on the Implementing Ordinance is targeted for the April 19<sup>th</sup> Liaison Group meeting.

Attachments: None

Copies: Stakeholder Group



## Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

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Date: February 16, 2012

AGENDA ITEM 3

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Update on Status and Schedule for Permitting for Wetland Impacts

PREPARED BY: Debra Caldon, SCVWD, and Kenneth Schreiber, Program Manager

### Purpose of this Staff Report:

Provide the Liaison Group with an update on efforts to address U.S. Army Corps of Engineers (Corps) and Regional Water Quality Control Boards (Regional Boards) requirements through the Santa Clara Valley Habitat Plan (Habitat Plan).

### Next Steps After Liaison Group Review:

Staff and consultant work with the Corps and RWQCBs will continue and updates will be provided at future Liaison Group meetings.

Recommendation: Receive and discuss the information on the status of wetland permitting and provide guidance to the Management Team as appropriate.

### Discussion:

#### *Background:*

Local Partner decision-maker approved Proposed Revisions to the Draft Santa Clara Valley Habitat Plan (the Framework, September 2011) and budget which directed staff to develop a process to streamline the wetland permitting process through Valley Habitat Plan, if possible. The actions identified in the Framework include:

- “Staff from the U.S. Fish and Wildlife Service and the San Francisco District of the U.S. Army Corps of Engineers have agreed that the Final Habitat Plan, with some revisions to the Draft SCVHP, could serve as the basis for a Corps Regional General Permit and an In Lieu Fee Program within the Habitat Plan permit area.
- Preparation of the Corps’ Regional General Permit will start during preparation of the Final Habitat Plan with the objective that shortly after the adoption of the Habitat Plan, the Corps would issue the Regional General Permit. Approval and adoption of the Habitat Plan is not contingent on establishing a Regional General Permit.
- The Local Partners will work with the Regional Water Quality Control Boards to better integrate the Clean Water Act’s Section 401 certification process into the Regional General Permitting process for Covered Activity implementation.”

U.S. Army Corps of Engineers wetlands permits are required for projects that impact wetland areas associated with streams and tidal areas ('waters of the United States'). Before a permit issued by the federal Corps is valid for a project, the state authority, in this case the local Regional Board must 'certify', consistent with the §401 process, that approval of the activity by the Corps will not result in impacts to water quality.

As noted during the review of the Framework, linking Corps wetland permits to a Habitat Conservation Plan (HCP) is a relatively new approach; there is little precedent for linking Regional Board §401 certification to an HCP.

#### *Issues with Permitting Projects Impacting Wetlands:*

Numerous comments on the VHP focused on two key concerns regarding Local Partner and private sector projects that require Corps permits:

- Project reviews are lengthy – the simplest permitting, a project permit under a Corps nationwide permit, takes between 1 and 12 months. Corps approval of an individual permit takes between 12 and 24 months. Regional Board §401 certification can add another 12 months to the process.
- Conditions and mitigation arising from the permit process adds an undue burden to local agencies through the imposition of project-specific mitigation that requires protection in perpetuity (acquisition or conservation easement), management, and monitoring for five or more years by the project applicant. Where mitigation credits are not available, suitable local mitigation sites are scarcer and more and more expensive.

Thus, the effort to secure Corps and RWQCB waters-related permits linked to the Habitat Plan focuses on three elements:

1. Shorten the project review process through use of the Habitat Plan to screen impact areas;
2. Use compliance with the Habitat Plan's standardized mitigation and conditions to meet the mitigation requirement for the Corps and RWQCBs; and
3. Shift identification, implementation and monitoring of mitigation measures from project implementation staff to the Habitat Plan's Implementation Entity (i.e., the JPA).

#### *Alternatives to Project-Based Permitting:*

The Corps can address permit requirements by geographic area or by activity through a regional general permit (RGPs), or programmatic general permits (PGPs). These require that the applicant identify the activities covered, impacts that are anticipated and standard conditions and mitigation approaches that must be met. General permits are issued for 5 years, with allowance for extensions.

#### *Status of Corps RGP:*

An October 6, 2011 meeting of staff from the Local Partners, Corps, and U.S. Fish and Wildlife Service identified Corps openness to a RGP linked to Habitat Plan covered activities using the Habitat Plan's mitigation program and conditions on covered activities. The next step is for the Local Partners to submit a RGP application, including related mitigation program proposal consistent with the Habitat Plan conservation strategy. A Draft RGP application will be reviewed by the Local Partners on February 17<sup>th</sup>. Forwarding the RGP application and setting a follow up meeting with the Corps is targeted for the week of February 20<sup>th</sup>. Guidance from the Corps staff indicates that most projects in a RGP would not exceed 0.5 acre of wetland impact and 300 linear feet of stream impact. However, the Corps may be receptive to considering projects with somewhat greater impacts, as long as it can be demonstrated to comply with the two federal regulations cited above.

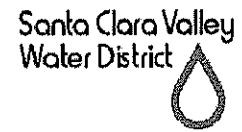
Local Partner staff are currently identifying activities to be implemented during the five year RGP permit term that could be included in the RGP. An important objective for the next meeting(s) with the Corps is identification, by March/early April, of modifications to the Draft Habitat Plan that will facilitate the approval of the RGP. Final review of an RGP includes environmental review (NEPA compliance, including public review) and notice in the Federal Register.

*Status of RWQCB Programmatic Section 401 Water Quality Certification:*

The area covered by the Habitat Plan includes land under the jurisdiction of two RWQCBs: the Central Coast RWQCB for land that drains to Monterey Bay and the San Francisco Bay RWQCB for land that drains to the San Francisco Bay. RWQCB staff are willing to discuss ways to integrate their permitting with the Habitat Plan and RGP. The specifics of that integration are complicated by the dual Federal and State regulatory role of the RWQCBs as well as their long established preference for project-specific over programmatic permitting.

The San Francisco RWQCB staff is taking the lead in generating updated and joint comments on the Draft Habitat Plan. The Draft RGP that goes to the Corps will also go to the Regional Boards. Working with the RWQCBs staffs is intended to achieve permit streamlining including use of a project mitigation checklist based on compliance with the Habitat Plan. A key objective is to facilitate further permit simplification by demonstrating that the Habitat Plan has value for the RWQCB permitting process and does not conflict with the mission of the Regional Board.

Copies: Stakeholder Group



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Date: February 16, 2012

AGENDA ITEM 4

TO: Governing Body Liaison Group

FROM: Kenneth Schreiber, Program Manager

SUBJECT: Federal Section 6 Planning Grant Funding Status

Purpose of this Staff Report:

Provide an update on the status of the Valley Habitat Plan's federal Section 6 Planning Grants.

Next Steps After Liaison Group Review:

Staff will continue to administer the federal Section 6 Planning Grants; no further Liaison Group review is anticipated.

Recommendation:

Receive and discuss information on the status of the federal Section 6 Planning Grants.

Discussion:

The discussion addresses two issues: 1) the status of previously received Section 6 Planning Grants, and 2) the unavailability of any future Section 6 Planning Grant funds.

*Previously Received Section 6 Planning Grant Funds:*

The Valley Habitat Plan has received four federal Section 6 Planning Grants:

Grant Year	Amount	Received	Status
FY 03 Grant	\$ 240,384	\$ 240,384	Closed
FY 04 Grant	281,579	281,579	Closed
FY 05 Grant	401,285	401,285	Closed
FY 07 Grant	184,400	152,901	Invoice for \$14,500 to be submitted; 90% anticipated to be paid
Total	\$1,107,648		Balance of FY 07 \$18,400 can not be claimed

The FY 07 Planning Grant was for activities extending through completion of the Final Habitat Plan, Final EIR/EIS and Final Implementing Agreement. A Grant Agreement originally terminated on June 30, 2010 and was subsequently extended to June 30, 2011 and then to December 31, 2011. A request for a further Grant extension was submitted in the Fall of 2011. Under federal Fish and Wildlife Service (headquarters) policies and procedures, no further extensions are possible. With any Section 6 Planning Grant, there is an automatic holdback of 10 percent of invoices pending receipt of the final work products. Payments of \$152,901 have been received and an invoice for \$14,400 will be submitted this month. Assuming the invoice is paid, the total hold back will be \$18,400 (10% of the Grant) and it

is very unlikely that these funds can be claimed. The overall VHP budget, including preparation of the Final Plan and related documents and \$225,000 for wetland permitting is \$6,701,853. If all funds are spent, the FY 07 unpaid balance of \$18,400 will have to be allocated to the Local Partners.

*Future Section 6 Planning Grant Funds:*

Last Summer, there appeared to be a possibility of receiving a new Section 6 Planning Grant. Investigation showed that any funds, if a Grant was approved, would not be available to cover Grant-related costs until signing of a Grant Agreement that could not occur until the Fall or later in 2012 (eligible grant reimbursement costs must be incurred after a Grant Agreement has been signed). Discussions with Wildlife Agency staffs concluded that if the current Habitat Plan schedule is maintained, there was a very low possibility of funding. A Grant application would have to assume a slower process than the target completion of the Valley Habitat Plan. Further, not enough unspent wetland permitting expenses would be reasonable to assume in late 2012. The conclusion was that there was not a feasible set of tasks to form a Section 6 Planning Grant application.

Attachments: None

Copies: Stakeholder Group





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Date: February 16, 2012

AGENDA ITEM 5

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Liaison Group Meetings

PREPARED BY: Kenneth Schreiber, Program Manager

Purpose of this Staff Report:

Identify future Liaison Group meeting dates.

Next Steps After Liaison Group Review:

Meetings will occur as schedule by the Liaison Group

Recommendation:

Liaison Group meetings are recommended for Thursday, March 15 and Thursday, April 19. It is also recommended that the third Thursday in May (17<sup>th</sup>) and June (21<sup>st</sup>) be held for meetings if needed.

Discussion:

Habitat Plan-related documents including the Final Plan, Final EIR/EIS and Final Implementing Agreement plus related documents (see Agenda item 2 staff report) are targeted for release by the end of May. By early May, the work should be narrowing in on final document wording including a screen check review. The public review process will start in June. Local Partner review and decisions are anticipated in July and August. The wetland permitting process will extend through the Summer.

Review of the Joint Powers Authority formation document and the Local Partners and Open Space Authority Memorandum of Understanding are calendared for the March 15<sup>th</sup> Liaison Group meeting. The Implementing Ordinance is anticipated for review at the April 19<sup>th</sup> Liaison Group meeting. It is likely that the preparation of the Final Plan and related documents will identify some issues that would benefit from Liaison Group attention. Those issues are most likely to be identified in February, March and early April. The wetland permitting process will also result in issues that should be reviewed by the Liaison Group.

Attachments: None

Copies: Stakeholder Group