



Santa Clara Valley
Habitat Conservation Plan/Natural Community Conservation Plan

**SANTA CLARA VALLEY HCP/NCCP LIAISON GROUP MEETING
THURSDAY, SEPTEMBER 24, 2009
SANTA CLARA VALLEY WATER DISTRICT
5700 ALMADEN EXPRESSWAY, SAN JOSE
HEADQUARTERS BUILDING, BOARD MEETING ROOM LOBBY**

4:00 PM

1. Welcome/introductions (5 minutes)---Supervisor Don Gage
2. Review Status of Second Administrative Draft Valley Habitat Plan and Administrative Draft 3 Creeks Habitat Conservation Plan (10 minutes)---David Zippin, Ann Draper, Pat Showalter and Ken Schreiber
Desired Outcome: Provide a status report and receive Liaison Group comments on the review of the Valley Habitat Plan Administrative Draft and the 3 Creeks Draft HCP.
3. Habitat Plan Implementation Entity: Process to Develop Liaison Group Recommendation (90 minutes)---Facilitated by Joan Chaplick
Desired Outcome: Through a Work Shop format, receive guidance on the Liaison Group's recommendation for the structure of the Implementation Entity.
4. Liaison Group Meeting Schedule (10 minutes)
Desired Outcome: Decide whether the current 2009 Liaison Group meeting schedule is sufficient for review of issues related to the Administrative Draft Plans, Implementing Entity, Plan preparation and Implementation budget issues and other work of the Liaison Group
5. Public Comments (5 minutes)
Desired Outcome: Receive comments from members of the public

Future Liaison Group 2009 meetings are scheduled for:

- Thursday, October 15 from 4 to 6
- Thursday, December 10 from 4 to 6

Agenda Item 2

SANTA CLARA VALLY HABITAT PLAN WILDLIFE AGENCIES MEETINGS

Updated July 31, August 5, August 12, August 13, August 31, September 15

~~June 3 (W): 3 Creeks Overview/briefing—Mare Island~~

~~June 10 (W): 3 Creeks—Mare Island~~

~~June 18: (T): Valley Habitat Plan Overview—pre-Liaison Group meeting—San Jose 10:00 to 3:30~~

~~July 1 (W): Covered Activities section of Chapter 2 + Chapter 4 (Impacts)—Mare Island~~

~~July 15 (W) Note that decision as to whether or not this meeting will occur will be made by July 9: 3 Creeks with—Location and time TBD~~

~~July 22 (W): Implementing Agreement review (10 to 2)—Mare Island~~

~~July 29-30 (Wednesday/Thursday)*: Chapter 5 (Conservation Strategy)—Sac FWS Conf Room A/B on 7/29 and Cafeteria 1003 on 7/30~~

~~August 5 (Wednesday): 3 Creeks Upper Pen and Water Flow issues—Mare Island reserved from 9:00 to 3:00;~~

~~August 6 (Thursday): VHP Conservation Strategy Conference Call 10:00 to 11:00 (completion of July 29/30 agenda—items 9 and 10)~~

~~August 11 (Tuesday): Pajaro Watershed aquatic conservation strategy—Mare Island, 9:00 to 3:00~~

~~Aug. 20 (Thursday): Chapter 7 (Monitoring, non fish species only)—Prior to LG Meeting in San Jose (10:00 to 3:30)~~

~~September 2 (Wednesday): Western Burrowing Owl meeting at ICF Jones and Stokes in Oakland (10:00 to 2:00)~~

~~September 9: Implementing Agreements + 3 Creeks—Upper Pen Creek—Sac FWS Conf Room A and B~~

~~September 10: VHP Conditions Chapter—Sac FWS Cafeteria 1001~~

~~Sept. 21 (Monday): VHP Monitoring (chapter 7), Funding (chapter 9) and Biological Goals and Objectives (chapter 5), Mare Island 9:00 to 3:00~~

~~September 23 (Wednesday): South County and North County/3 Creeks Aquatic Strategy (e.g., Stream Structure, Hydrograph Changes, Alum Rock Park)--Mare Island (9:00 to 3:00)~~

~~October 14 Wednesday): Mare Island 9:00 to 3:00---VHP Implementation (chapter 8)~~

October 15 (Thursday): SCVWD 10:00 to 3:30 (pre-Liaison Group meeting)---VHP Covered Activities (Chapter 2)---final review

November 4 (Wednesday): Sac FWS (Cafeteria Room C-1001) 9:00 to 3:00---VHP Impact Analysis (Chapter 4)---final review

November 5 (Thursday): Sac FWS (Cafeteria Room C-1003) 9:00 to 3:00---Impact Analysis

November 19 (Thursday): Mare Island 9:00 to 3:00---VHP Implementation final review

December 2 (Wednesday): Sac FWS (Delta Conference Room in Main Building) 9:00 to 3:00---VHP Cost and Funding final review

December 3 (Thursday): Sac FWS (Delta Conference Room in Main Building)---9:00 to 3:00

December 9 (Wednesday): Mare Island 9:00 to 3:00---VHP Chapter 5 final review

December 10: pre-Liaison Group meeting in San Jose 10:00 to 3:30

December 15 (Tuesday): if needed; Mare if possible

December 16 (Wednesday): if needed; Mare if possible

WORKING DRAFT PROJECT SCHEDULE																																															
SANTA CLARA VALLEY HABITAT PLAN																																															
Updated September 16, 2009																																															
2008												2009												2010												2011											
J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
HABITAT PLAN																																															
1. Refine Policies/Issues for Elected Bodies DONE																																															
2. Elected Body Reviews DONE																																															
3. Liaison Group Directions DONE																																															
4. FAHCE Covered Activity Defs and Impacts																																															
5. Prepare Admin Draft 1 Habitat Plan DONE																																															
6. Wildlife Agency 1st Draft Staff Review Period DONE																																															
7. Prepare Admin Draft 2 Habitat Plan DONE																																															
8. Local Partner Elected Body Key Issues Review																																															
9. Wildlife Agency and Local Staff Review Period																																															
10. Prepare Public Draft Habitat Plan																																															
11. Decision on Implementing Entity Form/Organization																																															
11. Publish Notice in Federal Register																																															
12. Public/Agencies Review Period (90 days)																																															
13. Prepare Final Habitat Plan																																															
14. See Approval process steps 1, 3 and 6																																															
EIR/EIS																																															
1. Scoping DONE																																															
1A. Prepare corrected NOI--NMFS																																															
1B. Publish corrected NOI in Federal Register--NMFS																																															
2. Prepare Working Draft DONE																																															
3. Wildlife Agency and Local Staff Review Period DONE																																															
4. Prepare Admin Draft																																															
5. Wildlife Agency and Local Staff Review Period																																															
6. Prepare Public Review EIR/EIS																																															
7. Publish Notice of Availability in Federal Register																																															
8. Public CEQA Notice of Availability--Local Partners and CDFG																																															
9. Public/Agencies Review Period (90 days)																																															
10. Prepare Final EIR/EIS																																															
11. Publish Notice of Final EIS, Habitat Plan and IA Availability in Federal Register																																															
12. Publish CEQA Notice of Determination--Local Partners																																															
12b. CEQA Notice of Determination--CDFG																																															
13. 30 day public review period																																															
14. See Approval Process steps 1, 3 and 6																																															
15. Federal Prep and Pub of Record of Decision (ROD)																																															
16. 30 day CEQA challenge period																																															
IMPLEMENTING AGREEMENT																																															
1. Prepare 1st Admin Draft IA DONE																																															
2. Prepare 2nd Admin Draft IA																																															
3. Prepare public draft IA																																															
4. Federal Register Notice																																															
5. Public/Agencies Review period (90 days)																																															
6. Prepare Final IA																																															
7. See Approval Process steps 1, 3 and 7																																															
APPROVAL PROCESS																																															
1. Local Partners Approval of Final Plan, Final EIR/EIS and Final IA--County First re EIR Certification																																															
2. Establish Implementing Entity																																															
3. Implementing Entity approves Final Plan, EIR/EIS and Implementing Agreement																																															
4. See EIR/EIS steps 11, 12 and 13																																															
5. Implementing Entity adopts fees																																															
6. Local Agencies Adopt Imp Ordinances																																															
Hold for TBD State Parks and Recreation action																																															
7. Wildlife Agencies Approval of Plan, EIR and EIS and IA																																															
8. FG NCCP Findings Preparation																																															
9. FWS Findings/Biological Opinion																																															
10. NMFS Findings/Biological Opinion																																															
11. Permits Issued by FWS and NMFS																																															
12. Permits issued by CDFG																																															
* 3 Creeks HCP folded into Valley HP																																															

Yellow/orange color is preparation and publication of Federal Register Notices

Red is local agency review and action

Blue is Wildlife Agency review and action

See Approval steps 2, 3 etc

OR

Local Partner decision re before or after Permits issued

Permit after EIR Step 16



Santa Clara Valley
Habitat Conservation Plan/Natural Community Conservation Plan

Date: September 24, 2009

AGENDA ITEM 3

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Habitat Plan Implementing Entity

PREPARED BY: Kenneth Schreiber, Program Manager, Management Team and Local Partner Attorneys Group

Purposes of this Staff Report:

- Summarize process re identifying preferable organization structure of the Implementing Entity;
- Provide more extensive information on the roles and duties of the Implementing Entity;
- Identify two Joint Power Authority (JPA) formats that would take the same staff and other resources; and
- Obtain further guidance from the Partners regarding preferred format including nature and extent of support and concerns/opposition to the two organizational approaches.

Next Steps After Liaison Group Review: The Liaison Group will next discuss the Implementing Entity organizational format at the scheduled October 15, 2009 Liaison Group meeting. The objective for the October 15th meeting is for Local Partner staff and Habitat Plan consultants to provide a detailed organizational format recommendation that, after review and action by the Liaison Group, would be forwarded to Local Partner elected bodies for review and comment. The target time for establishment of the Implementing Entity (IE) is mid-2010.

Recommendation:

It is recommended that the Liaison Group review the duties and responsibilities of the Permittees and Implementation Entity and provide direction on:

1. Which organizational option is most desirable; and
2. The nine Implementing Entity issues.

Discussion:

1) Options for Implementing Entity Structure

Consideration of organizational issues related to implementation of the Santa Clara Valley Habitat Plan began in late 2007 with review of two memos prepared by outside counsel Chris Beale. An October 11, 2007 memo identified nine criteria for use in evaluating organizational options.

Criteria for evaluating organizational options

1. Legal authority
2. Control and Accountability
3. Efficiency
4. Capacity/capability
5. Revenue generation and management
6. Stability/durability
7. Focus
8. Credibility
9. Timing

Subsequent June 2009 Liaison Group discussion added a 10th criterion, flexibility to respond to changing needs and circumstances.

Options for IE structure

An October 19, 2007 memo from Mr. Beale identified six potentially appropriate organizational structures. The memo noted that the right organizational structure for a particular area depended on local conditions---there is no one best organizational structure. There are a large range of tasks that any of the possible Implementing Entity structures will need to carry out or cause to be accomplished. Please see the discussion in section 3 of this report and an attachment that describes functions and tasks.

The six options include:

1. Conferring responsibility on One Local Partner
 - Potential strengths:
 - Simplify and centralize control
 - Stable and durable organizational structure
 - Potential weaknesses:
 - Lack of sufficient existing specialized capacity and capability with any one Partner
 - Potential over time for the public perception of the Habitat Plan to be tied to one Partner
 - Potential for decreased focus on the Plan in the face of the Partner's other organizational priorities
2. Use of a Special District (open space district or recreation and park district)
 - Potential strengths:
 - Stability and credibility
 - Specialized and focused organizational roles
 - Potential weaknesses:
 - Potential for independent board to be perceived as not accountable to local jurisdictions
 - Time consuming creation process
 - May lack flexibility to respond to changed circumstances
3. Create a Joint Powers Authority (JPA)
 - Potential strengths:
 - JPAs can be customized to meet local needs
 - JPAs are usually focused and accountable organizations
 - Easy of creation; State law allows widespread flexibility regarding organizational structure and powers
 - Potential weaknesses:
 - Powers limited to those held by each participating jurisdiction
 - Incorporation of JPA responsibility for development impact fee limits JPA to cities and County

4. Form a private Nonprofit Tax-exempt Public Benefit Corporation
Potential strengths:
 - Focus, creditability and efficiency
 Potential weaknesses:
 - Stability and legal authority
5. Create a State-chartered Conservancy
Potential strengths:
 - Credibility, fundraising, focus, capacity and legal authority
 Potential weaknesses:
 - Shifts implementation responsibility and decision making to State of California including State appointment of governing board
 - May lack flexibility to respond to changed circumstances without further Legislative actions
6. Use a mix of two or more of the five organizational options

Discussion at the June 18, 2009 and August 20, 2009 Liaison Group meetings evaluated the organizational options with focus on the use of a JPA. One of the tasks that an IE could be required to do is creation and imposition of development fees on private development. A critical element in the JPA discussion was the conclusion of Mr. Beale and Local Partner Attorneys that authority to adopt and implement a development impact fee on private development clearly applied, under State law, to the Habitat Plan's three cities and Santa Clara County, but there was less clarity regarding the fee authority of the other Local Partners. Therefore should the IE be tasked with establishing and updating impact fees on private development, then a governance structure needs to be created to allow for this task to be accomplished, separate from other IE tasks. The conclusion provided to the Liaison Group was that the safest approach to accomplish this singular task is to rest setting of private development fee with the IE but have this task undertaken solely by the three cities and the County carry out this sole function.

JPA organizational options

The June 18th discussion led to the attached August 13, 2009 memo from Mr. Beale that identified three JPA options.

1. Limited membership JPA with Advisory Committees
2. Limited membership JPA with powers delegated to a new Santa Clara Valley Conservation Board
3. Use of two JPAs—one for the sole function of setting private development fee and the second implementing all other Habitat Plan tasks and responsibilities.

At the August 20th meeting, staff representing VTA indicated their organization's desire to have a limited advisory role. The SCCOSA Board member indicated preference for an active advisory role consistent with the Habitat Plan's expectation that the SCCOSA will be a major source of non-mitigation Reserve land. SCVWD representatives indicated a preference for equal implementation status consistent with the cities and County for all functions except the sole function of private development fee setting. Option 1 raised the most concerns with SCVWD representatives. The essence of the discussion focused on the other options.

Regardless of the JPA organizational options, the roles and duties allocated to the Permittees and IE would be the same. These roles and duties are set forth below.

2. Permittee (i.e., Local Partners and State Parks) Duties and Responsibilities

Each of the Permittees (i.e., the three cities, Santa Clara County, SCVWD, VTA, Open Space Authority and State Parks) will have tasks to perform under the Habitat Plan. The nature and scope of those tasks will not vary with different IE organizational formats. It is assumed that some of the IE work in following tasks 4 and 5 will be carried out through contracts between the IE and individual Local Partners. Most of the Permittee's ongoing responsibilities will fall into two or more of the following work areas:

1. Participation in the technical and administrative work of the IE (all Permittees)
2. Review of private sector development with application of Habitat Plan conditions of approval and collection of fees (three cities and Santa Clara County)
3. Review of Permittee's public sector new capital projects and operations and maintenance activities with application of Habitat Plan conditions of approval and collection of fees (all Permittees)

Note that some of the work under tasks 4 and 5 will involve contracts between a Permittee and the IE.

4. In coordination with the IE, acquisition, planning and management of Reserve System land (current assumption is this will primarily be Santa Clara County, Open Space Authority and State Parks)
5. In coordination with the IE, implementation of land and aquatic conservation measures (current assumption is that this will primarily be SCVWD and State Parks with other Permittees involvement as opportunities permit such as Santa Clara County re aquatic restoration in County Parks)

3. Wildlife Agencies Duties and Responsibilities

The Wildlife Agencies will not be involved in approving private development projects and most public projects (exceptions are road projects that lengthen median barriers that may restrict wildlife movement and a number of SCVWD projects related primarily to Reservoirs, expanding the range of Steelhead trout and flood protection projects). The Wildlife Agencies will assess compliance with the Plan and permits including review and commenting on annual and species monitoring reports and specific Reserve management plans, making sure the acquisition of habitat "stays ahead" of any activities for which mitigation is required, working with the Implementing Entity on any adaptive management strategies and facilitating communication so that errors or differences of opinion can be addressed before they become serious problems.

4. Implementing Entity (IE) Duties and Responsibilities

Further review by Local Partner staff and Habitat Plan consultants following the August 20th Liaison Group meeting identified the value of providing the Liaison Group with expanded information on IE duties and responsibilities as part of refining and clarifying the Liaison Group's intention for organization of the IE.

What is the role of the IE in making public policy?

The Habitat Plan that is adopted by the elected bodies of each Local Partner establishes public policy. The IE will not have a policy making role. It will have an implementing role. Change to a public policy matter would require the adoption of that change by all of the elected bodies.

What is the role of the IE in reviewing and acting on Local Partner land use policy and specific development decisions?

The IE will not review or act on Local Partner land use policy for those Partners making those types of decisions and/or public and private development decisions. Only if requested by a Local Partner, the IE may assist Local Partners with understanding the content of the Habitat Plan and Plan-related implementation activities and responsibilities. After a Partner makes decisions on public and private sector activities, habitat-related information (e.g., extent of developed area, land cover(s) impacted by the public or private development, Habitat Plan mitigations, conditions and fees applied to the development) will need to be reported to the IE. An important function of the IE is to ensure that land acquisition and habitat restoration required by the Habitat Plan is carried out in a timely manner and those actions are linked to the private and public sector development actions carried out under the authority of each Partner.

Will the IE have staff and use contract resources?

The assumption is that most of the work necessary to carry out the IE's duties will be accomplished primarily through contracts with local agencies, non-profit organizations and private sector consultants. The IE will need to have some dedicated staff (a minimum of an Executive Director, Project Administrator and administer/clerical person is likely). Over time the balance of staff and contract resources may change in response to the amount and type of work.

What is the funding source for IE staff and other resources?

IE staff and consultant resources will be paid for from public and private sector development impact fees. It is not anticipated that Local Partners will be called upon for annual financial contributions as is the case for preparation of the Plan. On October 15th Management Team will provide the Liaison Group a summary of anticipated IE costs and revenues for the first five years of implementation.

What are the major tasks that the IE will be responsible for?

The overall role of the IE is responsibility for executing the requirements of the Habitat Plan, related permits and the Implementation Agreement. The Habitat Plan combines the real estate duties of a Parks or Open Space entity with major land and species monitoring, adaptive management responsibilities and reporting to the Wildlife Agencies and public. The IE will coordinate with a variety of sources, including the Local Partners, Wildlife Agencies, science advisors, outside consultants, other land management agencies and the public to ensure adequate and coordinated Plan implementation. Most of the IE's work will fall into one of the following five work areas:

1. Oversight of all conservation actions required in the Habitat Plan including the Habitat Plan Reserve System (acquisition, management and restoration of land, monitoring of habitat and species and required research of species-specific issues) and required land and stream restoration work;
2. Oversight and management of financial requirements and other financial issues;
3. Coordination with the Local Partners and Wildlife Agencies including review of conservation activities and preparation of required annual and other reports;
4. Public education and outreach, including a Public Advisory Committee and, every five years, a major public review/assessment of the status of the Plan; and
5. Coordination and provision of technical assistance.

Attached is a draft list of tasks that will need to be undertaken as part of the five major work areas.

How will the impact fee on private sector development be implemented and what actions will the Implementing Entity's Implementation Board need to take?

Under California law, the development impact fee will need a nexus study that will be prepared as part of developing the Draft Habitat Plan. The IE will need to review the Study and adopt an appropriate ordinance(s). It is anticipated that the fee will be amended, probably annually, consistent with changes in the Home Price Index (HPI) from the Office of Federal Housing Enterprise Oversight for the San Jose-Sunnyvale-Santa Clara area. If a separate entity is responsible for the impact fee, that entity would most likely meet no more than once or twice a year as part of broader Habitat Plan Governing Board meetings. Should the JPA set the private development fees, an unanswered question is whether the fee would be collected directly by the IE (similar to many school impact fees) or by the Local Partners with funds forwarded to the IE. If the fees are collected by the Local Partners, the impact on the IE staff would be minimized and part of the Habitat Plan staff functions. If the fees are directly collected by the IE, then sufficient staff would be needed to maintain conventional office hours. Amendment of the impact fee ordinance and allocation of funds would not need to have any separate or additional staffing. Administering the impact fee is a very important function with many accounting requirements established by State law and would require a certain level of staff or other resources.

What organizational formats are suitable for use of a JPA?

The first option (see attached Figure 1, One JPA diagram) is for the County and cities to establish a JPA with a Governing Board consisting of their elected officials. This Governing Board would have the sole responsibility for taking actions regarding the development impact fee ordinance. The Governing Board would delegate all other Habitat Plan duties to an Implementation Board. The Implementation Board would consist of the three cities, County and SCVWD at a minimum. If the Open Space Authority and/or Valley Transportation Authority (VTA) wished to be part of the Implementation Board, they could be members. If they desired to not be part of the Implementation Board, they could be part of an Advisory Committee. The joint powers agreement executed by the three cities and the County would describe in detail the composition and duties of the Governing Board and the Implementation Board.

The second option (see attached Figure 2, Two JPAs diagram) is to have two JPAs. One JPA ("Fee JPA") would be established by the County and cities for the sole purpose of adopting the private development impact fees. Its Governing Board would be comprised solely of elected officials from the County and cities. The Fee JPA would meet once or perhaps twice a year as part of an Implementation JPA meeting. The other JPA ("Implementation JPA") would have a Governing Board comprised of all Local Partners who wished to be included. The Implementation JPA would perform all other implementation duties other than adopting private development mitigation fees, but it would prepare a fee study and recommendation to the Fee JPA Governing Board. As with the first option, if the Open Space Authority and/or Valley Transportation Authority (VTA) wished to be part of the Implementation JPA, they would be members. If they desired to not be part of the JPA, they could be part of an Advisory Committee. A joint powers agreement would be adopted by each of the parties to each JPA.

What guidance is desired from the Liaison Group?

A key question for the Local Partners is the level of comfort with the two JPA options and which option is most desirable. Initial Liaison Group discussions included some focus on the prospect of creating unnecessary bureaucracy if two JPAs are created rather than one JPA. Further examination of what staff and other resources would be needed to support two JPAs, taking into consideration the IE's duties and responsibilities, has revealed that the resource needs of the IE will be the same with one or

two JPAs. Discussion among Management Team members and Local Attorneys has concluded that having two JPAs (a Fee JPA and an Implementing JPA) as described above is a simpler approach than one JPA with a Conservation Board. However, either approach could be used successfully to implement the Habitat Plan.

5. Implementing Entity Issues

On August 20th, the Liaison Group provided a short review of a number of IE organizational and logistical issues. The issues are identified below along with Management Team comments and recommendations. Specific discussion by the Liaison Group on each point is recommended so that appropriate wording can be prepared for the October 15th Liaison Group meeting.

1) Should the representatives on the IE be elected or non-elected?

Liaison Group Response: Governing Board members should be elected officials

Management Team comment: Agree that the Governing Board should be composed of elected officials. While the IE Governing Board will not have policy making power (policy is in the adopted Plan), Habitat Plan implementation will be an important public function that deserves both a high visibility Governing Body and the accountability that elected officials will bring to the process.

Based on subsequent consultation with the Local Partner attorneys, the Management Team has concluded that the JPA Governing Board should be comprised solely of elected officials from the JPA member agencies.

2) How many members should each Partner have?

Liaison Group Response: Each Partner should have no more than 2 elected officials.

Management Team comment: Agree that two is the best level of representation. Having a second member provides back up if one member is unavailable and should to the extent possible provide overlapping time periods. The IE's Governing or Implementation Board will be making numerous resources allocation, administrative and organization decisions. Developing and retaining group memory will be valuable.

3) Should the IE have staff?

Liaison Group Response: Yes, but it should be minimized.

Management Team comment: As identified in the summary of IE duties, implementation of the Habitat Plan, consistent with the requirements of the Wildlife Agencies, will be a complex undertaking requiring significant resources. The resources are to come from private and public sector development mitigation fees. It is not anticipated that the Local Partners will continue to make annual financial contributions to the Habitat Plan (other than applicable impact fees for public sector projects). It is anticipated that the IE will need some permanent staff and notable contract resources. Contract resources are likely to be provided by Local Partners under full cost recovery rules and from specialized experts (e.g., biologists). These resources will vary and likely increase over time as more land is added to the Reserve System and terrestrial and wetland restoration projects are implemented. Management Team is working on a refined five year implementation plan including a cash flow analysis. This work will be provided to the Liaison Group at the October 15, 2009 meeting.

4) Should the IE provide tools and services (e.g., checklists, GIS database, training) to jurisdictions implementing the Plan?

Liaison Group Response: Yes

Management Team comment: The work of the IE will be assisted by having the jurisdictions using the Plan have consistent information, tools and training. Provision of tools and services should be an ongoing responsibility of the IE. Other Habitat Plans have found that training of local agency staff should be frequently done both to maintain the importance of Plan implementation and ensure that new staff are aware of local agency responsibilities and potential problems if implementation is not correctly done.

5) Should the IE provide guidance and advice only if requested by the agency implementing the Plan?

Liaison Group Response: Yes

Management Team comment: The basic assumption is that review and action on a private or public sector request/application for coverage under the Habitat Plan is the responsibility of the agency providing the take coverage (i.e., cities, County, Open Space Authority, VTA, SCVWD and State Parks). The IE will have a review and approval duty in only three situations: 1) a request by a Special Participating Entity (e.g., a Community College District, PG&E) for coverage under the Habitat Plan; 2) provision of land or activities in lieu of payment of impact fees; and 3) provision of public or private sector habitat restoration work. While responding to requests for Plan clarification and technical information will be an important IE role, successful Plan implementation will require that agencies depending on the Plan's species take coverage and permitting maintain a commitment to understanding and applying the Plan. Information (e.g., biological surveys, land coverage) on approved projects will need to be submitted to the IE by agencies providing the approval before grading starts. The IE will need this information for Reserve acquisition decisions related to the requirements that land acquisition stays ahead of habitat impacts. If the post-project approval information submitted to the IE indicates deviation from Habitat Plan requirements, the IE will have a key role in resolving that problem. Left unresolved, failure to correctly apply the Plan will threaten each Partner's coverage under the Plan.

6) Should the IE review permit applications once submitted to them by Partners but the IE does not have approval authority?

Liaison Group Response: Yes, but the IE does not have to review applications. Local Partners would opt in to a review process. Application review would have staffing implications. This could be addressed two ways - a general referral or on an as needed basis.

Management Team comment: The standard process is that the Partner processing private sector applications and/or public sector work would report to the IE after the project was authorized. A Partner could request IE assistance in reviewing an application but this would be the exception and not a standard practice. An unresolved question is whether the IE would have a cost recovery fee for providing these reviews, since they would occur on an as requested basis.

7) Should the IE reviews permit applications prior to local jurisdiction adoption and is able to concur with local jurisdiction decision?

Liaison Group Response: This would require a lot of staff. Is there a role for a technical advisory committee doing this?

Management Team comment: See #5 and #6 above---except for the three situations cited in #5 and requests from Local Partners for technical information and Plan clarification, the IE would not have a role in review or approval of public or private sector applications for coverage under the Habitat Plan

8) Should the IE manage and provide an approved list of consultants to conduct biological and other surveys?

Liaison Group Response: Minimal discussion but appears to be yes.

Management Team comment: Project-related biological surveys and other land cover and habitat information will be a critical resource for the IE. To the extent that biological information needs participation by a consultant (the assumption is that most project applications will not need consultant assistance), having a list of consultants provided by the IE will help provide consistent and accurate information. Thus developing and maintaining a list of consultants is an important task for the IE. This issue came up during a September 10, 2009 meeting with Wildlife Agency staff. The Agencies anticipate that the IE will provide a list of biological consultants for use by project proponents and Local Partners.

9) Should the IE provide staff to conduct the biological and other planning surveys with cost paid through application fees?

Liaison Group response: Yes as needed

Management Team comment: Providing an opportunity for this assistance is a legitimate role for the IE so long as the service is provided through full cost recovery.

Attachments: Figure 1, One JPA Diagram
Figure 2, Two JPAs Diagram
Implementing Entity Duties and Responsibilities
Local Partners Scope of Duties
August 13, 2009 memo from Chris Beale re JPA organizational options
June 18 and August 20, 2009 Liaison Group Meeting Notes

Copies: Stakeholder Group

Figure 1

ONE JPA

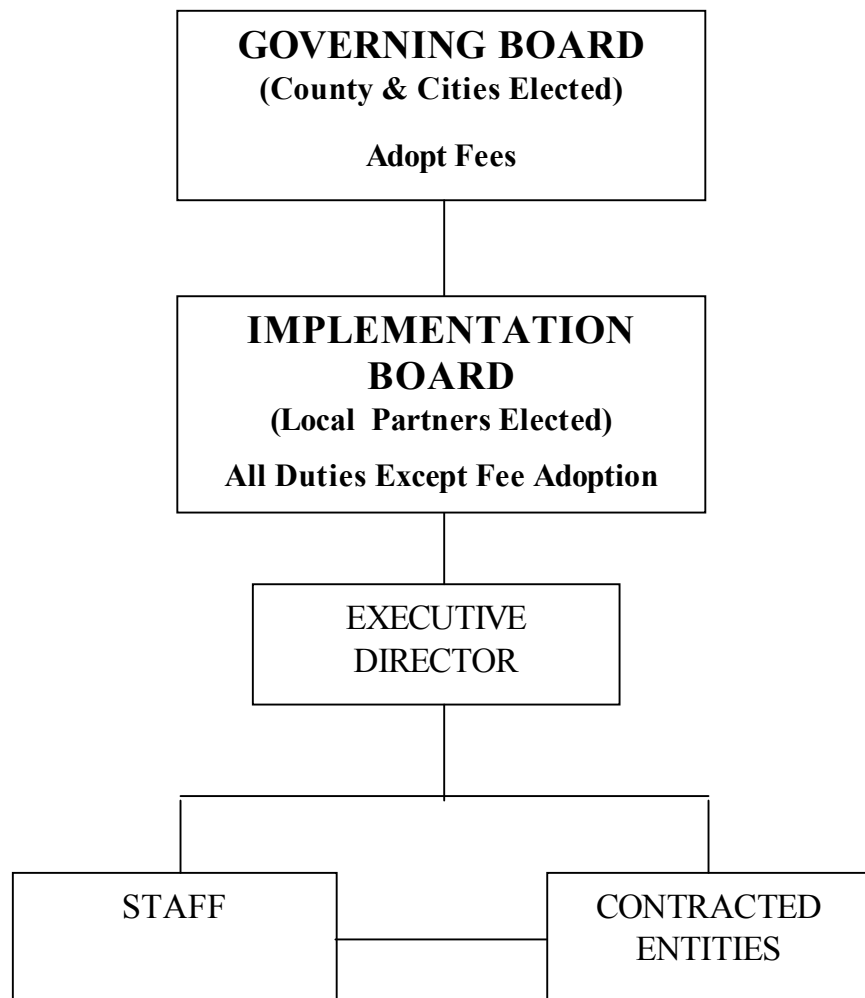
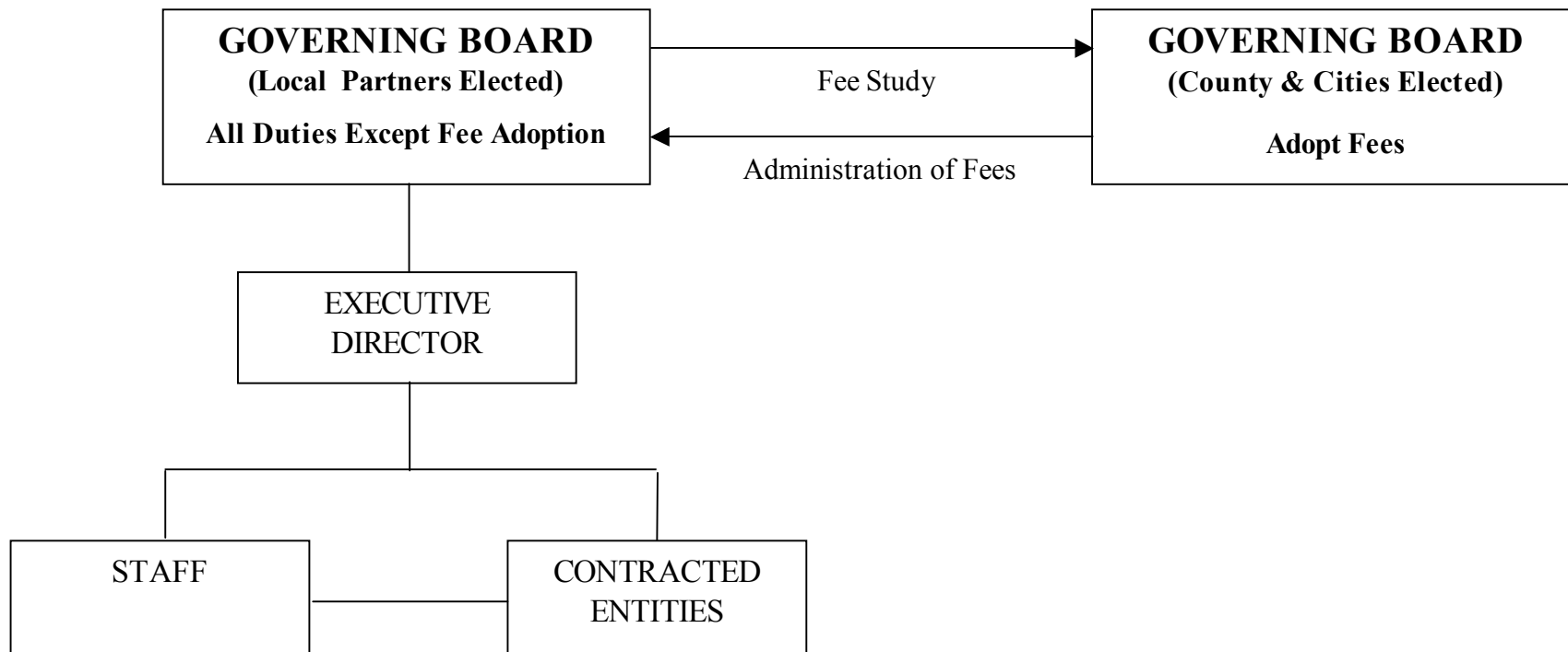


Figure 2

TWO JPAs

IMPLEMENTATION JPA

FEE JPA



SANTA CLARA VALLEY HABITAT PLAN IMPLEMENTATION DUTIES AND RESPONSIBILITIES

**Working Draft
September 2009**

1. Oversight of all conservation actions required in the Habitat Plan including the Habitat Plan Reserve System (acquisition, management and restoration of land, monitoring of habitat and species and required research of species-specific issues) and required land and stream restoration work.

1.-I Real Estate Coordination Activities

1. Coordinate and communicate with local land management agencies.
2. Ensure that conservation actions are being implemented roughly proportional in time and amount to the impacts on land-cover types authorized under the Plan (e.g., see Section 8.6.1), and forecasting land acquisition needs in order to comply with the Stay-Ahead provision.
3. Serve as the final arbiter of whether a project or activity is covered under the Plan.
4. Review offers of land in lieu of the development fee that may be made by project proponents (see Section 8.6.7) and making determinations on other implementation matters that require approval of the Implementing Entity, as specified in this Plan or the Implementing Agreement (see summary in Section 8.8).
5. Monitor and track land acquisition and other conservation actions within and adjacent to the study area performed by others to ensure coordination and compatibility with Plan actions.
6. Notify the Permittees of the requirement to make the land in lieu of fee provision compulsory when the Plan is out of compliance or in jeopardy of being out of compliance with the Stay-Ahead provision, as well as notifying them when this requirement may be lifted (see Section 8.6.1). Land acquired must always meet the requirements of the Plan.
7. Administer the Neighboring Landowner Assurances Program.

1.-II Real Estate Acquisition Activities

1. While ownership of most Reserve lands and easements is anticipated to be by other public entities (i.e., Santa Clara County, Open Space Authority, State of California) and non-profit organizations (e.g., The Nature Conservancy), the Entity is likely to hold title to some lands or easements it purchases. For parts of the Reserve System owned and/or managed by other land management entities, the Entity will oversee cooperative agreements that will address Habitat Plan Reserve System intentions and requirements.
2. Create and maintain databases and models to support the evaluation of land acquisition opportunities and other conservation actions to meet the requirements of the Plan.
3. Research land and water acquisition opportunities (fee title or conservation easement) to meet the requirements of the Plan.

4. Negotiate and secure land and water acquisition or conservation easements with private landowners.
5. Negotiate land and water acquisition or conservation easements in partnership with other organizations.

1-III Reserve Planning

1. Develop and maintain four Reserve System-wide implementation plans: Recreation Plan, Fire Management Plan, Invasive Plant Control Program, and a Monitoring Plan.
2. Develop site-specific management plans for individual reserves and reserve units (collections of reserve parcels that share common land-cover types and habitats).
3. Create and maintain databases and models to support the evaluation of land acquisition opportunities and other conservation actions to meet the requirements of the Plan.
4. Implementing all conservation actions described in Chapter 5 or coordinating with partners to implement conservation actions, and ensuring compliance with all Plan requirements.
5. Ensure that conservation actions are being implemented roughly proportional in time and amount to the impacts on land-cover types authorized under the Plan, and forecast land acquisition needs in order to comply with the Stay-Ahead provision.
6. Obtain additional permits for site-specific projects in the Reserve System (e.g., wetlands permits and cultural resources compliance for restoration projects), as needed.
7. Design a scientifically valid monitoring program and monitoring habitat and species on reserves, including site inventories, targeted studies, compliance monitoring, effectiveness monitoring, and status and trend monitoring.
8. Developing partnerships with local academic institutions to help direct research towards management and monitoring needs of the Plan.
9. Identifying land and water management activities that are part of the conservation strategy.

1-IV Reserve Management and Monitoring

1. Implementing all conservation actions described in Chapter 5 or coordinating with partners to implement conservation actions, and ensuring compliance with all Plan requirements.
2. Monitoring and enforcing, if necessary, landowner compliance with conservation easement terms.
3. Developing enforcement procedures for the Reserve System and individual reserves (e.g., public and pet access controls) that will be incorporated into the system-wide recreation plan and reserve management plans.
4. Implementing site-specific management plans for individual reserves and reserve units (collections of reserve parcels that share common land-cover types and habitats).

5. Designing and implementing habitat enhancement, restoration, and creation and managing the affected areas in an adaptive management framework (see additional detail below).
6. Obtaining additional permits for site-specific projects in the Reserve System (e.g., wetlands permits and cultural resources compliance for restoration projects), as needed.
7. Overseeing, or directly constructing and maintaining, recreational facilities on Reserves that are compatible with the conservation goals of the Plan.
8. Developing a volunteer program to provide an opportunity for the public to contribute to the successful implementation of the Plan.
9. Implementing a scientifically valid monitoring program and monitoring habitat and species on reserves (see additional detail below and in Chapter 7), including site inventories, targeted studies, compliance monitoring, effectiveness monitoring, and status and trend monitoring.
10. Implementing partnerships with local academic institutions to help direct research towards management and monitoring needs of the Plan.
11. implementing or directly conducting or overseeing land and water management activities that are part of the conservation strategy.

2. Oversight and management of financial requirement and other financial issues.

2-I Private Sector Development Impact Fee Administration

1. Initially enact and then update and manage a development impact fee ordinance and allocate funds for applicable activities.
2. Performing periodic fee audits as required by the Habitat Plan and State impact fee regulations.

2-II Grant application, coordination and administration

1. Actively monitor the availability of public, private and non-profit grant programs and opportunities applicable to implementation of the Habitat Plan.
2. Obtain grants and other outside funding sources.
3. Receive, manage, track, report, and expend grant funds to implement the Plan.

2-III Financial Management

1. Using a wide variety of funding sources, the Entity will provide funding to local land management agencies including land trusts for them to purchase land for the Reserve System; manage resources, including restoration; and monitoring activities consistent with the requirements of the Habitat Plan.
2. Maintain and updating the Cost Model.
3. Develop and maintain a long range work plan.
4. Develop and maintain annual budgets and work plans.
5. Directly collect or administer collection of Habitat Plan fees from Permittees or from private project proponents as directed by local jurisdictions and specified in their local implementing Ordinances and the rules of the Implementing Entity.
6. Establish fees consistent with private sector activities for public sector development, operations and maintenance activities and allocate those funds.
7. Receive, manage, track, report, and expend funds to implement the Plan.

3. Coordinate with the Local Partners and Wildlife Agencies including review of conservation activities and preparation of required annual and other reports

1. Maintaining ongoing coordination including meetings with the Local Partners and State and Federal Wildlife Agencies to ensure that the Plan is being implemented consistently and effectively.
2. Preparing the Habitat Plan's Annual Report.

4. Public Education and outreach including a Public Advisory Committee and, every five years, a major public review of the status of the Plan.

1. Prepare for and participate in the meetings and other activities of the Governing Board, Local Partner Advisory Group, Public Advisory Committee and Technical Advisory Committee.
2. Coordinate the process and resources involved with a major review/audit of the Habitat Plan to be conducted every five years.
3. Conduct outreach to landowners, local community groups and agencies, and the general public regarding the Plan and its goals.
4. Develop a volunteer program to provide an opportunity for the public to contribute to the successful implementation of the Plan.
5. Develop and conduct educational programs for landowners and the public consistent with the conservation strategy.
6. Ensure involvement of the public, science advisors, interested agencies, and others in Plan implementation.

5. Coordination and provision of technical assistance.

5-I. GIS/Database Management

1. Create and maintain databases to facilitate the use of the Habitat Plan by the public, Local Partner staff and Implementing Entity staff including easy identification of parcel specific elements of the Habitat Plan and fees and consistent accumulation of data by Local Partners consistent with the data needs of Plan participants and preparation of annual and other monitoring reports.
2. Create and maintain databases to track all impacts of covered activities and progress towards the biological goals and objectives.
3. Creating and maintaining databases and models to support the evaluation of land acquisition opportunities and other conservation actions to meet the requirements of the Plan.

5-II Assistance to Local Partners and other Plan Participants

1. If requested by any Local Partner, the Entity may provide advice on the content of the Habitat Plan and Plan-related implementation activities and responsibilities.
2. Train staff of local jurisdictions to review applications for take authorization under the Plan. Assisting local jurisdictions to ensure that project proponents comply with the conditions on covered activities described in Chapter 6.

3. Provide tools to the Permittees to support the application review process.
4. Periodic mapping of the study area to update the land cover map and calculations.

5-III Scientific oversight

1. Design, in close coordination with scientists and Wildlife Agency staffs, and implement a scientifically valid monitoring program and monitor habitat and species on reserves, including site inventories, targeted studies, compliance monitoring, effectiveness monitoring, and status and trend monitoring.
2. Oversee and participate in partnerships with local academic institutions to help direct research towards management and monitoring needs of the Plan.
3. Monitor changed circumstances identified in Chapter 10 that might arise and if they do, following the remedial measures and procedures outlined in Chapter 10.

Local Partners' Scope of Duties

Draft September 2009

Development Impact Administration (note that for cities and Santa Clara County, development impact administration involves extensive numbers of private sector development applications; for jurisdictions that do not have private land use control responsibilities, impact administration is limited to the public agency development, operations and maintenance activities)

- Educate landowners and project proponents, including public agency staff, on Plan procedures, fees and conditions requirements.
- Enforce, collect, distribute and track Plan fees in accordance with IE policies and procedures.
- Enforce Plan conditions and take authorization requirements and report to IE on enforcement activity.
- Coordinate with IE on development impact analyses and Reserve System progress to monitor whether conservation actions are implemented roughly proportional in time and amount to authorized covered activities affecting land use decisions.
- Coordinate with IE when Plan is out of compliance or in jeopardy of being out of compliance with the Stay Ahead provisions.
- Act as agent for the IE to enforce land in-lieu of fees when not in compliance with Stay Ahead provisions.
- Coordinate with IE on offers of land in-lieu of development fees.
- Coordinate with IE on questions regarding whether a proposed project or activity is covered under the Plan.
- Coordinate with IE on the implementation of landowner and public educational programs consistent with the Plan's conservation program objectives.

Reserve System Administration (note that these activities as associated primarily with Santa Clara County, Santa Clara Open Space Authority and State Parks and Recreation, the three Partners that will be providing land for a portion of the Reserve System)

Acquisition

- In coordination with the IE, research land and water acquisition or conservation easement opportunities.
- In consultation with IE and WA, secure land purchases or conservation easements for incorporation into the Reserve System and determine credit for such transactions.
- Conduct biological surveys to meet certain conservation targets noted in the Plan for Reserve System acquisition.

Planning

- Coordinate with IE, WA, and interested parties for the development of four Reserve System-wide implementation plans: Recreation, Fire Management, Invasive Species Control and Monitoring.
- Coordinate with IE, WA, and interested parties for development of site specific management plans for individual reserves and reserve units.

- Coordinate with IE to track land purchases and conservation actions that meet Plan requirements for the Reserve System.
- Coordinate with IE on progress in contributing land purchases and conservation actions which will help meet the Plan's Stay Ahead provisions and the land cover schedule for acquisition and restoration.
- Act as agent for IE to secure other permitting as may be required to implement conservation actions on the Reserve System (i.e. water based permitting associated with the Army Corps of Engineers and the Regional Water Quality Control Board).

Management

- Act as agent for the IE to implement certain conservation actions, including extensive monitoring, within the Partner's portion of the Reserve System.
- Coordinate with IE, on conservation actions and monitoring performed by IE, other Reserve System partners, and academic and research institutions within the Partner's portion of the Reserve System.
- Act as agent for the IE to enforce Reserve System management procedures, as defined in the four Reserve System-wide implementation plans and site specific management plans, on the Partner's portion of the Reserve System.
- Act as agent for the IE to develop recreational facilities, compatible with the Reserve System plans, on the Partner's portion of the Reserve System.
- Manage recreation facilities, compatible with the Reserve System plans, on the Partner's portion of the Reserve System.
- Coordinate with the IE on the development and operation of a volunteer program to allow the public to contribute to the successful implementation of the Plan within the Partner's portion of the Reserve System.

Fiscal

- In collaboration with IE and other partners (Wildlife Agencies, other Reserve System managers, land conservation entities), seek grants from public, private and non-profit grant programs to acquire land or perform conservation actions on the Partner's portion of the Reserve System.
- Coordinate with IE on the tracking and auditing of grant funds used for the Partner's portion of the Reserve System.
- Coordinate with the IE in the development, implementation and tracking of an annual budget and work plan for actions relating to the Partner's portion of the Reserve System.
- Coordinate with IE and WA to determine a finance program and implementation structure for the Reserve System's perpetuity responsibilities.

RESOURCES LAW GROUP, LLP

555 CAPITOL MALL, SUITE 650 SACRAMENTO, CALIFORNIA 95814
916.442.4880 916.442.4193 (FAX) www.resourceslawgroup.com

MEMORANDUM

TO: Ken Schreiber

**FROM: Chris Beale
Merswind Reyer**

DATE: August 13, 2009

RE: Santa Clara Valley Habitat Plan JPA Models

The County of Santa Clara, the Santa Clara Valley Water District, the City of Gilroy, the City of Morgan Hill, the City of San Jose, the Santa Clara Valley Open Space Authority, and the Santa Clara Valley Transportation Authority (the “Local Partners”) are working with the U.S. Fish and Wildlife Service (“USFWS”), the National Marine Fisheries Service (“NMFS”) and the California Department of Fish and Game (“DFG”) to prepare the Santa Clara Valley Habitat Plan (“SCVHP”). You asked us to describe alternative structures for one or more joint powers authorities (“JPAs”) that could be used for purposes of implementing the SCVHP. This memorandum provides three models for creating a joint powers authority or authorities for purposes of selecting an implementing entity for the SCVHP.

1. Limited Membership JPA with Advisory Committees

This structure consists of a JPA composed only of the county, the cities, and the SCVWD, who would form the JPA and would ultimately be responsible for all duties assigned to the SCVHP Implementing Entity. The Transportation Authority and Open Space Authority and other interested entities could be given the ability to weigh in on JPA decisions affecting their interests by becoming members of advisory committees with whom the JPA must consult prior to making decisions. Further, this structure permits implementation of discrete activities under a contract between the JPA and non-JPA-member parties.

a. JPA

- members: Cities and County
- establishes (and may also collect and manage) all fees
- has overall responsibility for implementation of the SCVHP, including staffing, providing expertise and consulting, oversight of compliance with permits, creation of a reserve system, management of reserve system lands, monitoring, mitigation-fee and non-mitigation-fee funding, and information management, all subject to approval of advisory committees where decisions pertain to areas within the committee’s interest

b. Advisory Committees

- members: Santa Clara Valley Water District, Santa Clara Valley Open Space District and Santa Clara Valley Transportation Authority, and may also include wildlife agencies and other interested parties
- review and possibly approve matters affecting specific subject areas, such as aquatic conservation strategy and land acquisition and management, as defined in the JPA Agreement

2. JPA Delegates Powers to Newly Created “Santa Clara Valley Conservation Board.”

Under this structure, a joint powers authority made up of those Local Partners able to assess mitigation fees would act as a governing board with ultimate decision making authority about all matters within the purview of the Mitigation Fee Act. All other authority and decision making relating to implementation of the SCVHP would be delegated to a board, the Santa Clara Valley Conservation Board, comprised of representatives from all Local Partners.

a. Governing Board (JPA comprised of Local Partners with authority to assess and manage mitigation fees)

- members: Cities and County
- retains authority over matters subject to the Mitigation Fee Act, including some or all of the following: establishing, collecting, managing, accounting, and disbursing fees assessed pursuant to Mitigation Fee Act
- delegates all other powers and duties to administer SCVHP to the Implementing Board

b. Implementing Board (Board with delegated powers)

- members: representatives of all Local Partners
- has overall responsibility for implementation of the SCVHP, including staffing, providing expertise and consulting, oversight of compliance with permits, creation of a reserve system, management of reserve system lands, monitoring, funding (other than fees assessed under the Mitigation Fee Act), and information management
- provides advice and recommendations to the Governing Board regarding use of mitigation fees

3. Two JPAs

Under this structure, the SCVHP would be implemented using two JPAs. One JPA, the “Mitigation Fee JPA,” would concern itself solely with SCVHP matters that pertain specifically to the Local Partners with land use regulatory authority (i.e., the Cities and the County) and their establishment, collection, and management of fees in accordance with the Mitigation Fee Act. The Mitigation Fee JPA (on behalf of the Cities and the County) would use revenues from the fees it establishes to contribute funding for implementation of the SCVHP through disbursements to a second JPA, the “Implementing Authority.” The Mitigation Fee JPA's disbursements would

be based on budgets provided by the Implementing Authority, and the Implementing Authority would otherwise have overall authority for implementing the SCVHP.

- a. Mitigation Fee JPA (JPA comprised of Local Partners with authority to assess and manage mitigation fees)**
 - members: Cities and County
 - has authority solely over matters subject to the Mitigation Fee Act, including some or all of the following: establishing, collecting, managing, accounting, and disbursing fees assessed pursuant to Mitigation Fee Act
 - makes periodic disbursements to Implementing Authority based on the Implementing Authority's annual budget or as otherwise agreed

- b. Implementing Authority (Implementing JPA)**
 - members: all Local Partners
 - provides advice and recommendations to Mitigation Fee JPA regarding amount and use of mitigation fees, requests periodic disbursements of mitigation fee revenues by providing the Mitigation Fee JPA a recommended annual budget for use of mitigation fees
 - otherwise has overall authority for implementation of the SCVHP, including staffing, providing expertise and consulting, oversight of compliance with permits, creation of a reserve system, management of reserve system lands, monitoring, funding (other than fees assessed under the Mitigation Fee Act), and information management



June 23, 2009

Memorandum

To: Ken Schreiber, Program Manager, SCV HCP/NCCP

From: Joan Chaplick, Stakeholder Group Facilitator, SCV HCP/NCCP

Subject: Summary of Liaison Group Discussion Regarding the Implementing Entity

Introduction

The purpose of the June 18, 2009 SCV HCP/NCCP Liaison Group meeting was to provide an overview of and answer questions regarding the status of the Plan and to receive Liaison Group guidance on the process for developing the recommended structure of the Implementing Entity.

Habitat Plan Implementing Entity

Daniel Iacofano of MIG facilitated discussion of the Habitat Plan Implementing Entity (IE). Daniel provided opening remarks, explaining the format and purpose of the workshop discussion. He explained the goal of the meeting is to agree on the framework for the IE. There is no expectation that we will come to agreement on a specific structure today.

The Liaison Group packet included a staff report prepared by Ken Schreiber and the Management Team that includes information about IE principles and attributes, as well as organizational options for plan governance. Attached to the staff report were items prepared by Chris Beale, Resources Law Group, the Habitat Plan's consulting attorney. Ken also noted a June 15th memo from Chris Beale that was provided at the meeting. The materials were reviewed and used to determine if there is agreement on the principles so we can use this to help select the IE organizational framework.

In short, the desired outcomes for this workshop session are to: 1) reach agreement on the principles and options; 2) narrow the list or identify some top priorities, and 3) agree on some next steps.

Ken mentioned that there are numerous groups and individuals, including partner attorneys, who can provide counsel and contribute to this discussion. These resource people are available to assist in the discussion.

Chris Beale gave a brief overview presentation of the IE, with related background information. He noted that there are many attributes of the IE that have been suggested by the partners but that are not necessarily required.

The group discussed some of the criteria it can use to evaluate the IE. An initial set of criteria include:

- 1) Legal authority
- 2) Control and accountability to the local partners
- 3 Efficiency
- 4) Capacity/capability
- 5) Revenue generation and management
- 6) Stability/durability
- 7) Focus
- 8) Credibility
- 9) Flexibility to respond to changing needs and circumstances
- 10) Timing

Daniel checked in to see if the group was in agreement with the set of criteria, opening up the session to discussion of related issues.

Ann Draper noted that what we have now is a confederation of partners. The current group doesn't have the legal authority to serve as the IE. Chris stated that collectively they have the authority to govern the plan, but in other processes a formal IE has been established to ensure that the plan is implemented. The structure of the IE should be designed to facilitate collective decision-making.

Ann noted that there is a reluctance to create a new entity, and so far the group has been working well together based on a Memorandum of Understanding (MOU) that was developed at the beginning of the process.

According to Chris, responsibility will be assigned to various entities. He asked if partners are comfortable delegating responsibility to one entity. Establishing one entity has been successful in San Diego County. There is some agreement that some decisions need to be made jointly. The Joint Powers Authority (JPA) would provide this function.

Council member Cat Tucker stated that the City of Gilroy would support a separate entity. Is there some sort of process that would be established to

facilitate communication between a separate entity and partner agencies, such as one that would involve an ombudsman?

Chris stated that the procedure has not been developed, but that it should include a way to resolve differences of opinion.

Supervisor Dave Cortese asked, which entities are best equipped to deal with land use autonomy? Which are best equipped to deal with competing land uses? Chris noted that there should be one entity that is equipped to carry out the projects and HCP- specific actions. The answer is what fits best in Santa Clara County. A JPA structure is very flexible, but it's not the only option.

David Cortese shared an example of a successful experience working with a joint policy commission composed of four Bay Area regional agencies, where the commission pulls technical support from each agency, with one paid staff person assigned to the commission. This approach is being used to implement SB 375. The joint policy commission pre-vets decisions that partner agencies make. This approach involves similar challenges to establishing a JPA, but it does establish the means to implement policy without creating a whole new layer of government. This approach was enshrined with state legislation.

Review of Options

Next, the group reviewed the following IE organizational options, as outlined in the June 18 Management Team staff report and summarized during the session:

Option 1: One Local Partner is responsible for most or all aspects of Habitat Plan Implementation. San Diego County provides an example of this arrangement, where the County is responsible for South County Multi-Habitat Conservation Plan. Their plan structure is different in that there is a county plan and each city has its own sub-plan. Here, the County only has to buy and manage land.

Option 2: Form a new special district focused on implementation of the Habitat Plan. There are 2 different kinds of districts that may be created: a Park and Open Space District or a Recreation and Park District. There are existing statutes that govern these districts. Alternatively, you can have a new law that creates the District form, functions and responsibilities that the Local partners desire. (Option 2 could be either.)

Option 3: Create a Joint Powers Authority. One Group member asked if the San Joaquin County COG, which administers their Habitat Plan, is a JPA. Yes, the local governmental agencies are member organizations.

Option 4: Form a private nonprofit tax-exempt public benefit corporation. The Natomas Basin HCP created the Natomas Basin Conservancy. The City of

Sacramento appoints all board members. The intent of taking this approach was that it was easy to set up, and the group was able to secure funding as a non-profit. Each permittee gets a certain pro-rated membership to the board.

Option 5: Create a state-chartered conservancy. The main advantage to creating a conservancy is that they bring opportunities for bond money. In recent years they have been well-funded. This approach has not been used often since they are State agencies located within the State Resources Agencies and thus control is in Sacramento. State government determines who sits on the board. An additional consideration is that there is no guarantee that the conservancy's focus will be on implementing the plan.

Option 6: Mix features from more than one of the five preceding options. There is no requirement stating that the Group must decide on using one of the five options.

Following a brief review of the organizational options, Liaison Group members asked questions for further clarification of the alternatives. Of these options, what is the minimum level of formal organization we need to function?

Chris shared that implementing the plan requires a long-term commitment to acquire, manage and monitor land, in perpetuity, since that's the timeframe on the Preserve. The act of creating one entity establishes a focus on the length of time and specialized function. Usually local partners do not want to bear the full obligation of managing the Reserve "forever."

The role of the IE is being responsible for completion of the Habitat Plan's commitments over the 50 years of Plan. Also, fees, and especially the development impact fee, are best established collectively through the IE. The County has impact fee authority in unincorporated areas but does not have County-wide impact fee authority. The Cities have impact fee authority within their jurisdictions. A basic issue with a JPA is that it has the powers that are held by all of the participating entities (rather than any power held by one member). Supervisor Don Gage noted the need to create an entity that has some mix of features, and that the entity may need some legislative traction (i.e. have a clause in the General Plans). He suggested that by looking at what we don't want and then seeing what's left, we can create the entity we need. We are considering stream set-backs, and somehow there needs to be some level of consistency across partners to help resolve this and similar issues. Some agencies may have a greater role. Here, the County is not making water or major land use decisions. The County allows its landowners a way to get a permit without going to the Wildlife Agencies. This is the original objective of the plan.

Pat Showalter asked, what does the IE need to do? The IE manages the Reserve and takes care of annual reporting requirements so we are up to date on our permits. Every 5 years, there are specialized reports that need to be done.

Don Gage used LAFCO as an example. It is independent and is made up of elected officials from these entities.

In response to a question from Rosemary Kamai, Chris confirmed that it is not necessary to have a JPA authorized by the legislature. She noted that a JPA may need to be the direction we need to go and asked about the potential advantages of going to the legislature. Chris responded, saying that if all the tasks are not common to all the partners, we have a problem and we would need the legislature to authorize this. There are practical considerations for deciding whether or not to go to the legislature.

One key principle for establishing the IE is that all partners are equal partners. Being equal partners does not mean they will pay equally, since the level of development varies between partners.

One Group noted that since SCVWD is the entity for 3 Creeks Plan and they are within the plan, this plan already utilizes a mixed approach.

Chris stated that our focus is on the Valley HCP. There will be two implementing structures and the important question to answer is, what entity do we want to be handed the responsibility for "heavy lifting?"

Ken asked, can you put a JPA together in a way that goes beyond some of the initial limitations?

Chris reviewed the basic elements of a JPA, noting that it is a public agency with defined boundaries, established by agreement under a joint exercise of powers act. All partners have common powers.

Ken noted an important challenge for consideration: the commonality of power and the ability to impose and collect fees and manage the money is the sticking point. If this authority is scattered with individual partners needing to repeatedly make fee schedule decisions, there will be significant coordination issues. Can we put a JPS together that manages this? A JPA entity can designate a separate entity to administer and execute the agreement. Would that authority allow us to maximize the relative authorities of the JPA? Can we ensure the all partners are equal participants?

Ann asked if JPAs exist as combinations of land use and non-land use agencies?

Chris noted by mixing land use and non-land use agencies, we must ask the question of whether we miss out on a power the JPA needs. Chris reviewed a matrix describing agency powers.

Don noted the need to establish our next steps related to the IE. In summary, we may be able to do what we need to do within the JPA. Chris will come back to the group with a more specific proposal.

Open Space Authority Board member Sequoia Hall asked, what powers do we need? What are core issues that need to be addressed?

The Group defined the following core issues or actions that the IE must be able to implement:

- Manage land in the reserve system
- Acquire land
- Implement conservation measures other than land specific actions
- Adopt, collect and implement fees
- Clarify rules and procedures and provide guidance
- Ensure compliance among the partners
- Restore habitat both within and outside the reserve
- Conduct public outreach and education
- Influence public recreation
- Perform annual reporting
- Ensure that certain, needed studies are conducted
- Administer the Plan

The underlying question is which structure is the best way to ensure these all get done- in a manner consistent with the principles?

Dave Cortese asked if there is some agency capacity for all these functions to occur currently. Is it one person, a small staff, or do we create a larger entity? Let's not mix up the issue of governance.

David Zippin noted that in some places process has fallen apart due to a loss of focus on implementing the plan. It may be important to credit Agencies for what they contribute to the plan.

Cay Goude, Fish and Wildlife Service, provided some examples of plans that have failed when they have lost focus. With the Natomas Plan staff wasn't paying attention to the HCP. They fell behind on collecting and raising fees. A similar thing happened in San Joaquin. Here, the JPA was responsible for additional issues beyond the HCP, and the HCP was treated as a lower priority. Now there is one person assigned to implement the plan for San Joaquin

County. Having one person in charge is also the approach being taken with the East Contra Costa HCP.

Ann Draper noted that the governance structure we adopt is how we get this done. We can contract out or contract in, meaning that an agency would be paid for doing the task or outside contractors can be hired. HCP guidelines only establish that there is a staff Executive Director and identifies the Executive Director's role. This might be the minimal structure we adopt.

One key issue with the Stakeholder Group is how IE addresses adaptive management. This should be called out.

At this point, Daniel provided a summation of the wall graphic notes taken during the session and key points. A copy is provided at the end of this document.

Dave Cortese expressed interest in pursuing any organizational structure in the "powers in common" theory and recommended that the group take off the table asking any partners to give up authority they have. It's important to start figuring out how to integrate the HCP and the IE into General Plans to avoid litigation related to nexus issues. Let's start the conversation with these local entities. San Jose is currently in the midst of updating its General Plan.

Next Steps

Chris will work with local partner attorneys group to clarify the powers of the different groups. He will also propose the JPA structure for discussion.

Don Gage noted that we have to have this wrapped up and define a clear direction by the end of the year. The Liaison Group agreed to hold a September meeting as well as the scheduled meetings in August and October. Ken will send out a meeting schedule..



August 20, 2009

Memorandum

To: Ken Schreiber, Program Manager, SCV HCP/NCCP

From: Joan Chaplick, Stakeholder Group Facilitator, SCV HCP/NCCP

Subject: Summary of Liaison Group Discussion Regarding the Implementing Entity

Introduction

The purpose of the August 20, 2009 SCV HCP/NCCP Liaison Group meeting was to continue discussions regarding the process for developing the recommended structure of the Implementing Entity. At that meeting, the Liaison Group directed the Project team to:

- Focus on the JPA option as the IE
- Determine which Local Partners have ability to enact, collect, manage and use development impact fees
- Provide a more specific JPA proposal at August 20th meeting

Daniel Iacofano, Principal, MIG, Inc. provided a presentation to the group that recapped the key discussion points from the June 18th Liaison Group meeting and presented a more focused range of options for the Liaison Group to consider. Chris Beale, Resources Law Group, responded to questions and provided additional detail on many of the topics. Chris's responses were also supplemented by legal counsel from several of the local partners.

Presentation of Three Options

OPTION 1 Limited Membership JPA with Advisory Committees

JPA

Members: Cities and County

Establishes all fees

Has overall responsibility for implementation of the SCVHP

Advisory Committees

Members: SCVWD, SCVOSD, SCVTA and may also include wildlife agencies and other interested parties

Reviews and possibly approves matters affecting specific subject areas, such as aquatic conservation strategy and land acquisition and management

Option 2 JPA Delegates Powers to Newly Created "Santa Clara Valley Conservation Board"

Governing Board (only those Local Partners who can assess and manage mitigation fees)

- Members: Cities and County
- Establishes all fees and retains related authorities
- Delegates all other powers to the Implementing Board

Implementing Board

- Members: all Local Partners
- Overall responsibility to implement SCVHP
- Provides advice to Governing Board on use of fees

Option 3 Two JPA's

Mitigation Fee JPA – JPA comprised of Local Partners who can assess and manage mitigation fees

- Members: Cities and County
- Establishes all fees and retains related authorities
- Delegates all other powers to the Implementing JPA

Implementing JPA

- Members: all Local Partners
- Provides advice and recommendations to Fee JPA
- Exercises overall authority for implementing the SCVHP

There was a question about delegation of authority in options 2 & 3 and the difference between the two. The response was that the structures are similar. The fundamental difference is that only the powers all have can be shared are included within the JPA and these structures respond to that.

Supervisor Gage asked- once we get some direction, who's going to do the work and develop the minutia of the IE? Supervisor Gage noted that at some point in time it has to go back to the decision makers so they can take it to their boards. Ken Schreiber responded that the proposal needs to be reasonably specific for the elected bodies to be able to consider it and make a decision. It will be fleshed out by the Management Team and have more detail before it comes back for their review. The goal is to establish the IE by mid-2010.

Supervisor Cortese inquired as to who has the power to create the JPA? All members have to vote to join. He also inquired as to who is going to make the recommendations on who and how many members, and if they are elected, non-elected.

Ken responded that the Liaison Group will help answer all these questions, but we first have to establish the preferred structure.

Ann Draper noted that the current MOU identifies key decisions the group makes and this would be one of them.

Supervisor Cortese noted that some issues, such as solving proportional representation may be more easily addressed in Option 1.

There were additional questions regarding the difference between Options 2 & 3. Chris explained that under Option 2, the JPA is the source of authority that delegates to a board. The Authority can delegate implementation powers. This means they can also withdraw powers, as well. In Option 3, they are two distinct JPAs. The Mitigation Fee JPA establishes development impact fees and provides them to the Implementing JPA for specific tasks. The Implementing JPA can also receive funds from other sources. The Implementing JPA is responsible for carrying out the Habitat Plan. Option 3 has the best quality of participation.

Ken Schreiber noted the message we heard from the Liaison Group was a request that the IE include equal partners. The challenge is-how do you have equal partners when all of the partners don't have the authority to adopt and collect fees? He noted that SC VTA and SCOSA don't have that authority. SCVWD has some powers to impose specialized fees, but they are not as broad as may be needed. There were concerns that having SCVWD involved in enacting development impact fees could be an issue that could trigger a lawsuit. Option 3 equalizes things.

All three options address legal issues satisfactorily and are defensible. The main question is how comfortable are the partners, especially those without fee authority?

Supervisor Gage commented that it was starting to get confusing. Isn't it correct that when you establish fees there's a formula set-up in advance? Originally, when the HCP process started, the SCVWD, County and City of San Jose were the original partners. The partners weren't equal since they all didn't have the money to participate financially. The current partnership is not equal. Is it fair the County should pay the same since they are doing less development?

Daniel inquired, given that concern, is there one option you prefer? Supervisor Gage noted that Option 1 would be preferable since the fees are established and we know what they are based on a formula.

Ann Draper commented that fees and partners contributions can be confusing. There are development impact fees, but we have also discussed that contributions can be land or actions, for example, i.e. water released from dams for the benefit of the fish. District fees can also be called water rates. We will all be paying for this in different ways.

Supervisor Gage commented that if a city wants to develop, there needs to be a formula for the fees. Supervisor Gage noted that fees may appear high, but the cost

is spread over fifty years. Consider a developer trying to get a project through. It might take ten years, versus with this plan, they might be able to get it through in two.

SCVOSA Board Member Sequoia Hall noted that the Open Space Authority is being counted on to contribute land. His board has concerns about land being double counted. Some purchases are underway to purchase HCP lands.

Supervisor Gage commented that the County is in a similar position since they are contributing county park land. How will that contribution fit in? Sequoia Hall commented that the SCVOSD is comfortable not being part of the JPA, but they do want to have a substantial say in how the property is managed. Supervisor Gage stated he thought that was good since we want the SCVOSA to be managing these lands.

Chris commented that while the JPA focused on rights, with that authority comes responsibility for implementing the plan. Be careful that both the rights and responsibilities are taken into consideration.

Ann Calnan noted that from a VTA staff perspective, Option #1 looked the best. VTA is seeking to pay the fees and fulfill their commitment and leave the implementation to this other entity.

Chris noted that VTA as a practical matter may pay fees, but should there be implementation problems in the future, VTA's permit could be at risk.

Ann Draper called out that SCVWD is providing 18% of the funding. Option #1 is not attractive to SCVWD since they would have no recourse if the JPA took actions that caused issues for the Water District.

Supervisor Cortese commented that he couldn't understand why an agency would delegate all its powers and participate in this option. Chris clarified that the agency is only delegating powers to implement the plan. Chris further explained that the IE decides for example, if we should we buy this piece of land, not if a specific project should be approved. The IE doesn't not review or approve development proposals. Similar to when school impact fees are paid, the applicant comes to city or county to learn how much the fee is, then they go to the school district, show their receipt and go. The process is the same here. It's only a check off. It has nothing to do with a partners' land use authority. The City or County still decides if the project gets approved. IE has no veto authority on the project and the IE has no regulatory role.

SCVWD Board Member Larry Wilson commented that a few things make him uneasy. The SCVWD does raise money. We maintain our dams and reservoirs as part of this. He believes that if Option #1 were chosen, the SCVWD could be compatible and be a member.

Supervisor Gage stated that in this process we are all dependant on each other. If cities want to develop- they need water. If VTA wants to put in more transit, they need people to fill their trains and buses. It has to work in unison and we want development to occur in the City.

Daniel summarized that based on Larry's suggestion, Option 1 could include the SCVWD as well as cities and counties. The Open Space Authority and VTA would be advisory committee members.

The Attorney's group concluded that while the SCVWD can assess fees, someone might take exception and submit a legal challenge. The cities and counties have a history of and strong legal basis for charging fees. The attorneys want to be abundantly cautious. Ken reinforced that an additional problem is that every time a fee is imposed on any project, the fee imposition creates an opportunity to challenge the fee. Given there have already been a number of fee challenges in the County, we are being very cautious.

Supervisor Gage explained that if there is a fee challenge, the fees don't go back to the developer, they are returned to the property owners. This could include hundreds of people.

Supervisor Cortese referenced the model of the Bay Area Toll Authority and the Metropolitan Transportation Commission. BATA was created by legislative authority.

Daniel reviewed the discussion of the three options as of this point and summarized that out of the five partners, two are comfortable having advisory status, and one partner wants greater involvement. Option 1 was identified as having too much risk, which leaves us with Options 2 or 3.

Pat Showalter commented that the IE focus should be on implementation. There are more issues than setting fees. The SCVWD wants to be involved in implementation.

Ken Schreiber clarified that for the Fee collection JPA, only 50% of the funds needed to implement the plan come from fees. The implementing JPA will need to make a lot of decisions about the remaining 50%.

The participation of a Water Districts has not come up in some of the other big plans that have been completed since they haven't been involved in other processes.

Ann Draper commented that the SCVWD doesn't just pay the fee, they are required to implement the measures noted in the plan and they have to pay whatever it costs. Since the SCVWD has a large role, they want to participate on equal footing. The WD has upwards of 150 potential projects. District staff need to retain decisions for flood

control and water provision. There could also be decisions on monitoring that put onerous requirements on the Water District.

Supervisor Cortese inquired- can we have a hybrid and combine Option1 with JPA members described such that cities and counties have equal voting power except as it relates to fees? Chris responded the JPA structure doesn't allow this do to requirement for shared powers.

With two JPA's, it can still operate efficiently. The membership can include the same people and the meetings would be held on the same day. The same people would participate, except for one agenda item. The Mitigation Fee JPA meets only when fee needs to be adjusted. They may meet once a year, every other year.

Supervisor Gage asked that the group take a straw poll and asked the group to comment. Participants commented but not all had their elected representative present at the meeting.

San Jose participants did not have an elected official present. Staff member Akoni Danielson suggested the City Council was supportive of the JPA concept but there were no specifics. The City would participate in any JPA.

Supervisor Cortese commented on liking Option 1, but wasn't sure we could account for the SCVWD in this option. Supervisor Gage agreed.

Daniel asked Supervisor Cortese to clarify his concerns. Supervisor Cortese shared that he didn't like the JPA model and it having a life of its own. He was more comfortable relying on state legislation. He was not clear on responsibilities. He could support Option #1 with the information he had as of today. He needed more information to consider Option #2.

Supervisor Gage expressed concern that when dealing with two JPA's, we need to understand the roles of those who are participating. There could be problems if we start to mix and match the discussion topics and participants.

Supervisor Cortese commented that we discarded the legislative option because we thought the JPA addressed all our needs. We have been avoiding legislation because it is slow, but we are now trying to work around the limitations of the JPA. If we go to state- would the board be appointed or elected? Or instead of going for specific legislation, the SCVWD charter could be amended so it can impose fees so it can be part of the HCP.

Sequoia Hall commented that the SCVOSA is fine not being part of JPA and likes not having the legal liability. The District is happy in an advisory role, but it has to be real. We're contributing almost 25% of the land. The Authority can also be involved in other ways. For example, the District could have a contract to purchase and

manage land. The group will have to discuss what happens to the land after the JPA goes away (50 years) since the reserve is in perpetuity.

Ken clarified that the draft HCP assumes that land acquired by the SCVOSA is owned by the SCVOSA. The same thing applies for County Parks. The IE should have authority to own land since that may be the best way to go about getting a grant but most land would not be owned by the IE.

Daniel reviewed that the model that seemed to work best has the three cities, County and SCVWD, with the SCVOSD and VTA in advisory role. If we could agree on the mechanics that support this, we could have a winner. The Project Team would do some additional work to determine how this could come about.

Daniel then reviewed a series of issues that needed to be addressed as part of the IE formation. These included the following questions:

- 1) Should the representatives be elected or non-elected? Supervisor Gage responded that to be able to make land use decisions, they need to be elected officials.
- 2) How many members should each partner have? There was general consensus that each partner should have no more than two members- to provide flexibility and avoid Brown Act related issues.
- 3) Should the IE have staff? Yes, but it should be minimized. Are they hired by IE or are they hired by a Partner? The IE could have a Director and use staff from partners. This also has a value that can be calculated for in-kind. IE should have the option of hiring.
- 4) Should IE be in a Local Partner's office or have a separate office? Ken described issues he has had regarding perception of his independence and representation of partners. Supervisor Gage suggested the IE could be located in a variety of places. He wasn't concerned that it be located in the County since he didn't want to have to pay for it. The IE could be in partner offices in a separate suite.
- 5) In what ways do the Local Partners envision providing staff or resources? Supervisor Gage suggested the example of mutual aid agreements with Fire Departments. We can use a cost recovery approach.

Ann Draper commented that there are some tasks an agency does without compensation, such as attending meetings. However, for other tasks, like preparing a monitoring plan, the agency might want to get paid. The Local Partners all have different capacities.

Supervisor Gage cited LAFCO as an example. If you are going to have a JPA, you will need paid staff. Cities and counties must make an annual contribution otherwise you have to argue over money. LAFCO needs \$600k per year to cover salaries, legal fees, and contingency. The budget is approved every year. The IE could have a similar structure with minimal staff including a director and administrative staff. The director would be able to contract for additional assistance.

Ken asked the meeting participants to discuss the following question:
How much of a role should IE (staff) play in helping to complete and process local permit applications?

- A. Provides tools for local jurisdictions to use in their permit process (e.g., checklists, fee calculator, etc.).
- B. Only provides guidance and advice if requested by the local agency.
- C. Reviews permit applications once submitted to them by local jurisdictions but does not have approval authority.
- D. Reviews permit applications prior to local jurisdiction adoption and is able to concur with local jurisdiction decision.
- E. Manages and provides an approved list of consultants to conduct planning surveys.
- F. Provides staff to conduct the planning surveys with cost paid through application fees.

There group quickly provided the following guidance:

- A. yes
- B. yes
- C. yes, but they don't have to review permits. This would have staffing implications. This could be addressed two ways - 1) a general referral or on an as needed basis. Local partners would opt in to this process.
- D. Reviews permit applications – this would require a lot of staff. Supervisor Gage - would we have a TAC (technical advisory committee) that could do this?
- E. yes
- F. as needed

The Management Team was directed to present a proposed structure with roles and responsibilities as the next meeting based on the guidance provided. Supervisor Gage set the next meeting on Thursday, September 24th, 4:00 – 6:00 pm at the Water District.