



San Benito County Conservation Plan

Public Advisory Committee

Workshop #4

Meeting Notes

Wednesday, February 22, 2023, 3:00 pm PST

SBCCP PAC Committee Members in Attendance: San Benito County Planning Commissioners **Robert Scagliotti** and **Robert Gibson**, Amah Mutsun Tribe Representative **Valentin Lopez**, Business and Landowner Representative **Rachel Reed**, Small Business Representative **Kristina Chavez Wyatt**, Local Ranching Representative **David Cole**, Member of the Public Representatives **Sara Steiner**, **Jeff Micko**, and **Robb Rodriguez**

SBCCP Planning Team Members in Attendance: County Resource Management Agency Principal Planner **Arielle Goodspeed**, ICF SBCCP Project Manager **Bernadette Clueit**, ICF SBCCP Deputy Project Manager **Rose Kronberg**, ICF SBCCP Lead Facilitator **Jennifer Piggott**, ICF SBCCP Public Outreach Lead **Tiffany Mendoza**; USFWS Senior Fish and Wildlife Biologist **Mark Ogonowski**, CDFW Central Region Supervisor, Senior Environmental Scientist **Craig Bailey**, CDFW Central Region Senior Environmental Scientist **Renee Robison**, CDFW Central Region Senior Environmental Scientist, Natural Community Conservation Plan Program Coordinator **Sara Kern**

Other Attendees: Sara Keeler (CDFW), Betty Brambarran (CDFW), Chris Evans, Anthony Botelho, Carmel de Bertaut, Eryka Temores, Karminder Brown (San Benito Working Landscapes Group), Kanyon CoyoteWoman, Lynn Overtree (San Benito Ag Land Trust), Leslie Austin, Neal Sharma (Wildlife Conservation Network), Christy Hopper, Alice Kaufman (Green Foothills), one individual on a call-in number.

1. **Welcome** (Jennifer Piggott, ICF)

2. **Introductions of new members** (Jennifer Piggott, ICF)
3. **Review of purpose and goals of the SBCCP** (Arielle Goodspeed, County of San Benito)
 - a. Presented overview of the purpose and goals of the plan.
 - b. PAC Q&A
 - i. No questions received.
4. **Response to public comments on the Draft Planning Agreement** (CDFW staff)
 - a. Craig B: Transparency is important, and we want to address all comments and provide feedback. We consider all comments received at the last PAC meeting as well as the formally submitted comments as being related to the draft Planning Agreement.
 - i. *Oaks as covered species:*
 Craig: Typically covered species are ones that require take authorization. NCCPs look at natural communities and ecosystems as opposed to a species-specific focus as you would for an individual incidental take permit (ITP), which is why oaks are not specifically added as covered species. We anticipate them being addressed in the ecosystem approach. Regarding Caltrans and PG&E mitigation requirements, this plan will not supersede that. But as this plan proceeds and if people feel that oaks are not adequately protected we can revisit this.
 - David Cole: confirmed that he would like to add oak trees as covered species, realizing they are not rare, but are difficult to regrow.
 - Bernadette, ICF: clarified that it is early in the plan development process, and we will be specifically discussing the covered species list in the future. ICF can take under advisement that oaks are an important species. Decisions have not been made yet and we will be using best available scientific data for the county during the process of identifying covered species.
 - ii. *Section 5 comments:*
 Craig: Landscape level means that we look at the entire planning area, and how impacts and conservation measures affect the landscape, as opposed to an individual ITP process that is site specific. Focus is on larger conservation goals and healthy, thriving ecosystems. There is no regulatory definition of biologically sensitive areas, but examples would be important habitat for a species, or wildlife movement corridors. How we approach these different areas depends on how these different features fit into the landscape level planning with vegetation communities being conserved in the plan area. As Bernadette said, it is still early in the process. The Scientific Advisory Committee will inform this approach as well.
 - iii. *Who pays for Scientific Advisors, and what is the cost:*
 Craig: we don't know how much it will cost yet. The applicant bears some of the cost and there are grants that can pay some of the cost. Some advisors might need travel grants, and they will get some compensation for their time.
 - iv. *What is meant by tree dominated habitats:*
 Craig: The NCCP is based on an ecosystem approach, not a species approach, which means that we do not focus as much on individual species as we do on ensuring the whole ecosystem is healthy.
 - v. *Would tribal areas be excluded?*
 Craig: It depends and is largely based on the county's land use authority.
 - vi. *City participation:*

- Craig: The county did reach out to the cities, and they chose not to join the plan at that time. However, they can join later if they are interested and CDFW is supportive of their participation.
- vii. *Lands defined as being under cities' control:*
 Craig: This means lands where the cities have land use authority, where they can permit or authorize development.
- viii. *Why are certain properties excluded?*
 Craig: This refers to the permit area of the Plan. Areas that are currently excluded are areas where the County does not have land use authority.
 - Arielle: added that if the cities or other entities want to join later, we can include them at that point as co-permittees. As we develop the covered activities list, we are continuing outreach to other entities in the County and they are welcome to participate.
- ix. *Will the plan area include state and federal lands:*
 Craig: These lands are included in the plan area, but are not likely to be included in the permit area. If there is a conservation enhancement opportunity by taking action on state or federal lands, then those lands could possibly be included in the permit area.
 - Mark (USFWS): confirmed that federal lands could be included for conservation if there is what is called additivity, a conservation lift, and presented an example of this.
- x. Kristina Chavez Wyatt: are existing protected state and federal lands and lands protected by agricultural land trusts included in the inventory and analysis?
 – Craig: current land use, vegetation communities, land management, and level of protection are being evaluated. For conservation measures there might be more site-specific evaluations, but at this stage in the process this is a higher-level analysis.
- xi. Kristina: can a private landowner be considered for a conservation land trust?
 – Craig: Yes, they can absolutely be considered.
 – Mark: At a large scale, we will be evaluating where the best areas for conservation are across the whole county. This can help landowners who are interested in participating in the plan determine if their property may be a good fit.
- xii. *Would San Benito Agricultural land trust and conservation easements areas be automatically excluded from the Plan?*
 Craig: the location of covered activities will inform this decision together with the conservation strategy.
- xiii. *Tribal resources:*
 Craig: We aim to be transparent but cannot always be, and communicating with tribes is one instance where we may not always have transparency. Confidentiality is crucial. The next step in the NCCP process is tribal outreach and we have a tribal consultation policy available on our website. Regarding the issue of tribes not being able to access lands; CDFW cannot resolve that concern, the plan does not change land use authority.
- xiv. *Concerns about the process and integration of comments:*
 Craig: We do not want anyone walking away from this process. If and when we disagree, we want to keep communicating and explain why we are doing what

we are doing. We ask for you to give us feedback on this process, if for example we are not communicating well.

xv. *Concerns about accelerated development:*

Craig: the Plan will provide a streamlined process for the ITP for people that agree to conduct development in compliance with the Plan. The main point of an NCCP is to ensure thriving habitats and ecosystems. Participation in the NCCP is voluntary, and project proponents can use the plan or seek an individual ITP for their project. The same rules apply for everyone.

xvi. *Concern about overgrazing:*

Craig: There are a variety of issues affecting oak tree regeneration. We will be looking at all factors of how land use affects oak trees as the plan develops.

xvii. *Section 3: Planning goals:*

Craig: We received a comment to add “and conservation objectives”, and while CDFW felt like that is implicit in the NCCP Act, additional clarity is good, so we added that text to the Planning Agreement.

xviii. *What is meant by compensation requirements:*

Craig: this means mitigation.

b. PAC Q&A

- i. David Cole: Is there information from other areas with implemented plans related to how the plan has affected conservation and development? And are we happy with the results? Learning from others would be useful.
 - ICF has summarized some of this data from other plans and will present this later on.
 - Craig: confirmed that other HCP/NCCPs have had very successful conservation outcomes.
 - Arielle: ICF have worked on most of the habitat conservations plans in California, so our consultant has a lot of experience.
 - Bernadette: ICF also has teams that implement these plans, and so we have a good understanding of how these plans are implemented over time as well as a great deal of knowledge about plan development.
- ii. Sara Steiner: will San Juan Bautista and Hollister still be accountable under the Plan even if they are not a participants then they annex lands?
 - Craig: annexation would require CEQA review, which means that cities would need to disclose if they are affecting an HCP/NCCP. Not sure about the mitigation. The conservation standard with an NCCP requires more than the federal ITP mitigation.
 - Mark: if development in the city impacts a land area that is a part of our conservation plan (I am talking about the federal side), then impacts that such a project would incur are going to require the same mitigation and avoidance and minimization measures. At the local level there is no difference in impacts necessarily, however, the impacts might end up being mitigated for in an isolated area, and not in the reserve system. That would be the only difference.
 - Bernadette: clarified that for cities to be able to annex lands that are a part of the unincorporated lands of the county, they have to go through a planning process. The cities have areas of expansion and future annexation in their general plans. If those areas change, the new plans

would have to go through CEQA. For the SBCCP, we also take into consideration that those areas are already under consideration for expansion. Requirements for endangered species permitting remain no matter what, as Mark and Craig pointed out. The public would also have ample opportunity to comment on those plans through the CEQA process.

5. Review and respond to other questions received on the SBCCP (SPCCP Planning Team)

- a. Bernadette presented additional information related to questions received as they affect the plan development process.
 - i. *Native American tribes, regulatory consultation:* Tribes are sovereign governments, and are entitled to government-to-government consultation under both CEQA and NEPA/Section 106.
 - ii. *Non-regulatory engagement with tribes:* There are no set procedures but the County strongly believes that the involvement of Native American tribes is important for plan development, and they can have expert knowledge important for the plan. We want to integrate their perspective and knowledge into the plan. Some information is not appropriate to share with the public, and meetings will be on an individual basis within a framework of confidentiality. We are starting this process just now, and will reach out to all tribal groups and have an open door policy with concerns and perspectives they would like to share with us for consideration of incorporation into the plan.
 - iii. *Will the SBCCP increase the rate of development in San Benito?* The plan will not induce “new” development that is not considered in the general plan because the SBCCP has to be consistent with the GP. The plan will reduce regulatory timelines and costs by giving assurances to project proponents of the requirements if they need an ITP for their project. This streamlined process also includes a conservation strategy which means that project mitigation will be more meaningful, because it will be planned at a larger scale and will be more integrated than a project-by-project permitting and mitigation approach that can lead to habitat fragmentation. There is a cap on impacts, called a take limit, which is not allowed to be exceeded. Additionally, federal funding through Section 6 will become available for land acquisition, a very important piece. This plan is an HCP/NCCP, that means we need to meet the conservation standards for both, and an NCCP needs to contribute to the recovery of the covered species. In addition, the plan will have a “stay ahead provision” that means mitigation for impacts needs occur at the same rate or faster than impacts.
 - iv. *Examples from other plans:*
 - Santa Clara Valley HCP/NCCP: Political climate often impacts the rate of development more than if there is a plan or not. SCV are doing well on their conservation.
 - East Contra Costa HCP/NCCP: Conservation is well above levels of impacts to date, and they are tracking well for their reserve system targets.
 - Placer County HCP/NCCP: The most recently permitted plan, and we can see a jump in projects after the plan permits were issued, but that is largely a function of project proponents waiting for the plan to be in place to take advantage of the benefits of under the plan.

- David expressed concern about the spike in projects. Can we look at number of projects before and after plan implementation, what if it is a true spike?
 - Bernadette: the HCP/NCCP does not authorize development, so it does not allow new development in the plan area that is not contemplated in the GP. The spike tends to be preceded by a dip. Looking at the SCV plan, the total number of projects have been consistent over time. We are not aware of any plans analyzing projects prior to plan launch.
 - David: I appreciate this information, thank you. It would be interesting to see data before and after plan implementation.
- v. Kristina expressed concern about San Benito carrying the burden of the economic development and prosperity of Silicon Valley by providing the work force, housing and a lot of the infrastructure burden. About the SCV plan, a good data point would be if and how much of their conservation and mitigation has been purchased within our county to support their community and not ours. We have had conservation easements for development in their county that have been purchased in San Benito. How did that all work, and where and how much land was bought?
- Bernadette: the Santa Clara Valley plan area does not include San Benito, so their acreages of mitigation and conservation areas are within Santa Clara County.
 - Arielle: will follow up to try to find an answer to what conservation easements have been acquired by Santa Clara in San Benito.
 - Craig: agree with ICF, do not think the SCV plan has done any mitigation in San Benito. But it is possible that individual projects with ITPs could have purchased mitigation in San Benito.
 - Mark: agree also, confident the SCV plan did not include San Benito lands in their mitigation. But it is likely that it could be mitigation for an individual project.
 - Jeff Micko: I'm also on the PAC for SCV Plan I agree with Mark and Craig, there are no sites in San Benito from the SCV plan. I know there is interest along the common border to work with San Benito where some habitats might overlap both counties to be as effective as possible.
- vi. David: can PAC members join the meetings with Native American tribes? I understand the public can't join, but I hope that we can include the PAC members in those meetings.
- Bernadette: Until a tribe chooses to ask PAC members to join, those meetings would be closed between County and tribe. We have to allow the tribes to drive this engagement and it is up to them to tell us what they want to share. If the tribes want to bring an issue to the PAC or public meeting, yes, but not until then.
 - David: What is the regulation that excludes the PAC members?
 - Arielle: We can send a follow up with the regulations to the PAC, it is government-to-government consultation.
 - David: That would be helpful. So, to clarify, only government representatives would attend these meetings?
 - Arielle: That is correct.

vii. *Why are cities not participating in the SBCCP?*

Bernadette: As mentioned previously, the entire process is voluntary. When the cities were initially contacted, they elected not to participate at that time. However, the covered activities are often deciding factors for other entities to choose to participate or not, and because of the benefits under the plan and assurances it provides sometimes it makes sense for other entities to join, and they can become a co-permittee in the future if they would like. Valley Transit Authority has expressed interest in participating, and Santa Clara Valley Water as well.

- *Example from Placer County HCP/NCCP.* Not uncommon that cities choose not to participate in a Plan. The City of Lincoln is a co-permittee, but the other cities in the county are not. The water agency and transportation agency are co-permittees in this plan. Again, the covered activities are often a deciding factor.
- Kristina: Has anyone reached out to San Benito County Council of Governments and the two Caltrans authorities? We have big transportation projects. Please also include SCV Open Space Authority in your outreach.
- Bernadette: Those agencies will be on the list for outreach, once we have a covered activities list.

viii. *Can anyone opt out of the SBCCP?*

Bernadette: The short answer is yes. Project proponents are not required to use the plan once in place, but because of the assurances it provides it is often the most feasible action because of cost and timelines. I want to be clear that opting out does not alleviate the need to go through the process of getting an ITP for a project that may have impacts to listed species.

ix. *Why are Certain Lands Excluded from the Permit Area?*

Bernadette: We are in the very beginning of the plan development process, and the permit area is preliminary. No decisions have been made. We need to start from somewhere, and we chose to exclude protected lands from the California Protected Areas Database, which is the authoritative database in California for parks and open space protected in perpetuity where covered activities are unlikely. These areas would be included if a conservation lift is possible. However, there is a bigger lift to include these areas, and our highest priority right now is to preserve new lands to increase the amount of conserved land in the County as a part of the reserve system. But all lands will be considered in the development of our conservation strategy. The permit area will change and evolve during plan development.

- x. Jennifer: We hope that the content provided today addresses some questions from the last meeting.

b. PAC Q&A

- i. Valentin: There are concerns about the high-speed rail. How can that be considered or worked around? It will have a huge impact on the environment.
- Bernadette: High speed rail has its own mitigation requirements that are separate from this plan. We will have to consider what those impacts are and where that mitigation happens when developing the SBCCP, but the County does not have authority over that project.
 - Valentin: That is helpful, thank you.

- Mark: dealing with high-speed rail is somewhat analogous to dealing with the annexation of lands. That project’s impacts to endangered species will need to be mitigated, similar to the standards for project mitigation in the SBCCP. The difference might be where the mitigation will take place for that impact. The location of high-speed rail mitigation might not necessarily be where we would consider it optimal for our purposes.
- ii. Sara Steiner: Please elaborate on species vs. habitat protection. Assuming a listed species cannot be protected without protecting the greater habitat, is it possible to include habitats in the HCP?
 - Mark: Good question, and absolutely. Effectively that is how we protect those species, by protection, enhancement or even creation of habitat. The reason you hear species being used sometimes is because we are talking about the take of species. But we use habitat as a proxy for take. An NCCP is explicitly a habitat conservation approach. There is overlap and similarities between the HCP and NCCP. But effectively, we are protecting habitat.
 - Craig: Mark captured it well. When we issue an ITP for a species, mitigation includes habitat because that is how we protect species.

6. Public Comments

- a. Kanyon CoyoteWoman: Provided comment related to engagement with Native American tribes. Happy to hear the answer that was presented earlier – this is a government-to-government communication. Indigenous peoples often get pushed aside. I’ve seen disheartening behaviors when it comes to protecting sacred lands. For example, just because there are no written records of a site does not mean that there are no significant sensitive areas. Thank you for acknowledging government-to-government conversations and giving weight to this.
- b. David: Do we have a layout of where we need to be by May? How can we be most helpful, and what can we expect.
 - i. Bernadette: We have two foundational pieces for plan development, the first is land cover mapping. This will happen in the background, but it is a substantial amount of work. We will have lots to discuss with you when the maps are done. The other foundational piece is the covered activities list, which drives much of the plan. We will be discussing covered activities at our next meeting in May and will provide materials to review in advance.
 - ii. David: Even preliminary materials would be appreciated.
- c. Kristina: Is there a stakeholder engagement plan, and where can we find it? Maybe you should do broader outreach to the community and let them know they can participate.
 - i. Arielle: We work on continued outreach, and we are constantly updating our project email notification list and the project website. We want as many people as possible to be engaged and interested in the plan.

7. Next Steps

- a. Next PAC Meeting, May 31, 2023, 3:00 PM