



MEMORANDUM

TO: Santa Rosa Plain Conservation Strategy Implementation Committee

DATE: September 28, 2007

FROM: Pete Parkinson, Director, PRMD
Steve Shupe, Deputy County Counsel

RE: Draft of MOU and Implementation Plan

Attached for your review and discussion at the Committee's October 17 meeting is the current working draft Memorandum of Understanding and Implementation Plan for the Santa Rosa Plain Conservation Strategy.

We made every effort to keep this draft consistent with the intent and substance of the December 2005 *Santa Rosa Plain Conservation Strategy* and the direction given by the Implementation Committee. In some cases, there were gaps, inconsistencies, or ambiguities in the Strategy, which we have tried to fill or clarify. With a document and subject of this length and complexity, there are no doubt provisions that we rendered incorrectly, despite our best good-faith intentions. We consider this a working draft for discussion only, and encourage comments and suggestions for improvement.

We note that we did not have the opportunity to review this Draft with the USFWS and CDFG staff. As the Strategy (and the Draft) assigns them a key role in implementation, their input on the draft will be critical.

There are a number of issues that need to be discussed and resolved before the Draft can be finalized. Among them are the following:

1. The Strategy (and the Draft at Section 6.2.1) does not allow project proponents in "Primary Habitat Areas" (within 1.3 miles of a known CTS breeding site) to have the option to "survey out" of the 2:1 mitigation requirement. Issues relating to this and to the uniform 2:1 mitigation requirement were previously discussed with the Implementation Committee.

2. The Draft (Section 6.3.2) suggests a 5,000 square-foot threshold for requiring mitigation for "Minor Projects." The USFWS and CDFG technical advisors had suggested a threshold of 0.1 acre (4,356 square feet) to ensure that cumulative impacts are addressed, while local agency staff suggested a threshold closer to .25 acre or 10,000 square feet. The threshold needs to be discussed and decided upon.
3. There remains an issue regarding the designation of areas within the urban growth boundary of the City of Cotati as Conservation Areas. This issue must be resolved.
4. The "Minimization Measures for Minor Projects" are included as originally drafted by USFWS staff, but we believe they require further discussion and editing. As drafted, local jurisdiction staff feel that these measures will be difficult and impractical to enforce for small projects. (Section 6.3.3).
5. Language pertaining to the Santa Rosa Subregional wastewater system that appeared in the Agricultural Subcommittee draft was deleted from the "maintenance and repair" paragraph in Section 6.4.2 (Ongoing and Current Agricultural Operations). The maintenance and repair allowance still applies to any agricultural operations associated with the Subregional system, but the reference to "biosolids storage, sewage and recycled water conveyance, treatment and storage facilities" appears to go beyond agricultural operations, and did not seem appropriate. Non-agricultural activities related to the Subregional system would be covered in the same manner as other public projects. The City of Santa Rosa should review the Draft carefully to ensure it meets their needs pertaining to the Subregional system.
6. We revised language in Section 6.4.2. The original language allowed a fallow period longer than 3 years "for reasons of biology." We changed "for reasons of biology" to "for conservation purposes," which we believe is the intent of the original language.
7. The final report from the Agricultural Activities Subcommittee is not clear about whether Ongoing and Current Agricultural Operations (Section 6.4.2) must be in "the same" location and intensity or "substantially the same" in order to avoid being considered an Agricultural Conversion. The final report uses both terms, with "substantially the same" used specifically in relation to "replacement/replanting of crops and pasture management," while Ongoing and Current Agricultural Operations are more generally described as being in "the same" location and intensity. Staff believes that the intent was that Ongoing and Current Agricultural Operations be "substantially the same" to account for the normal variation in agricultural activities from year to year, so the language in the Draft Plan reflects that.

8. However, the use of the term “substantially the same,” along with the definition of Agricultural Conversions as “any substantial increase in the intensity of agricultural activity on a parcel . . . ,” (Section 6.4.3) raises an important implementation issue. We believe that the phrases “substantially the same” and “substantial increase” are highly subjective, and that the Committee should discuss development of a more objective definition.
9. The Committee may want to discuss whether Agricultural Conversions, which must implement BMPs but otherwise have no mitigation requirements, should be limited to permitted uses under applicable zoning (i.e., those that do not require a use permit). This would mean that uses requiring a use permit, such as new or expanded wineries and tasting rooms, commercial stables, retail nurseries, etc., would mitigate in the same manner as other discretionary uses.
10. The final report from the Agricultural Activities Subcommittee requires BMPs for Conversions within Conservation Areas and notes that the BMPs are encouraged but not required in the Potential Habitat Areas. Areas within 1.3 miles of CTS breeding but outside of Conservation Areas (known as Primary Habitat Areas in the Draft) are not mentioned in the Subcommittee’s report. Staff believes that the BMPs should apply in Primary Habitat Areas too so that Conversions there will be covered under the Plan.
11. The Committee asked staff to flag BMP-6 under Section 6.4.3 for additional discussion. The term “water contaminated with compounds potentially injurious to aquatic life” is ambiguous and potentially very broad, and some members of the Committee believe that other BMPs (e.g. #5, #7, #12) and state and federal water quality regulations adequately address this issue, so that BMP-6 is not needed.
12. The agricultural conversion acreage limits in the SW Cotati and SW Santa Rosa Conservation areas need to be added to the table in Section 6.4.3. It is possible that the acreage will be zero in SW Santa Rosa.
13. Private “linear” projects that do not require a permit from a local jurisdiction are not covered under the existing Draft. These include things like fences, paving existing driveways, installing sprinkler pipe, etc. The Committee should consider whether such projects should be covered by the Plan.
14. The mitigation requirements for certain linear projects in Section 6.5.3 require that the project create “no specific additional ongoing hazards to CTS.” This language (taken from the Strategy) is ambiguous and should be clarified.
15. Section 10.1.1, which relates to “incidental take” authorization, has not been reviewed with USFWS or CDFG staff, but represents our understanding of the Section 7/MOU process that has been discussed at numerous Committee

meetings. Also note that Local Jurisdictions will need to develop an acreage figure for minor projects to achieve take coverage for such projects.

16. Article 11 (Plan Monitoring and Adaptive Management) is taken from the Strategy. We recognize that the Adaptive Management Subcommittee's work may result in changes to Article 11.
17. Section 11.2.1 is taken directly from the Strategy and describes the duties of the AMT, including the last point: "monitor compliance with the BMPs for agricultural conversions." The Committee should discuss whether any enforcement authority for the BMPs is needed, and if so how that should be handled. The Committee should also discuss what should occur if BMPs are not being followed, including what the action threshold should be.
18. Section 11.3.1 indicates that "further consultation with the USFWS" is needed if agricultural conversions exceed some threshold. The exact threshold that would be used has never been finally determined. The Committee needs to hear from technical advisors on this issue and discuss what that threshold should be, and whether the required "consultation" would be an informal consultation under the Plan, or a formal consultation under Section 7 of the ESA.
19. The revenue mitigation provisions in Article 13 are intended entirely as a starting point for discussion, and do not represent a formal "County" position on the issue. We assume Article 13 will be negotiated among the local jurisdictions.

As noted above, additional issues may arise during and following review by the Implementation Committee, the other Local Jurisdictions, and USFWS and CDFG. We look forward to your comments and suggestions for improvement. To facilitate evaluation and consideration of any suggested changes, we would request that they be provided on the attached form. Completed forms should be e-mailed to Steve Shupe (sshupe@sonoma-county.org), preferably in electronic form. We are also available, of course, to meet with any party to discuss the Draft or proposed changes.

We look forward to working with the Implementation Committee to resolve outstanding issues and develop a final draft.