

Santa Rosa Plain Conservation Strategy Implementation Committee

Minutes for Meeting of May 21, 2008, 9:00 a.m.

Item 1: Call to Order, Roll Call, and Approval of Minutes

Roll Call: Janet Orchard, John Guardino, Joan Vilms, Margaret Pennington, John Sawyer, Warin Parker, Bob Anderson, Jake Mckenzie,

Staff Members: Pete Parkinson, PRMD; Steve Shupe, Sonoma County Counsel; Cay Goude, Fish & Wildlife Service (FWS) and Scott Wilson, Department of Fish & Game (DFG)

Approval of March 19, 2008 Minutes: Consensus; approved as submitted

Item 2: Review and discussion of process and funding to complete the Implementation Plan (Continued from March 19 Meeting)

Chair Jake Mackenzie: Is there any thing for Staff to report from the County's perspective?

Pete Parkinson: Not at this time.

Jake: The City of Rohnert Park had agreed to give an amount of \$10,000 toward this matter and I believe that was the case with the City of Cotati.

Janet Orchard: It was a little more than that, more like \$12,000.

Copies were distributed of an *Agenda Item Transmittal Report and Summary* and Memorandum from the City of Santa Rosa. A report was requested from Vice Mayor John Sawyer and he has with him today, Dr. Dave Smith and Chuck Regalia.

John Sawyer: Thank you. On the 13th of May, the City Council had a discussion regarding the funding of an EIR to continue the work of this Committee. Staff gave its report on the expected expenses and Council gave the recommendation to, at this time, not fund the EIR for a number of reasons. There were issues around the assuery, for instance, after the work was completed whether or not it would even be accepted by the federal powers-that-be, and our budget constraints, and the unanswered issues being worked out in the Agricultural Subcommittee. For a number of reasons the Council was uneasy in going forward with a \$500,000 commitment at this time. If you would like more detail on what is in the staff report under the analysis, I have staff members here who would be willing to take questions.

Jake: I think it would be useful if you would have your representatives give us a fuller analysis of the situation.

Chuck Regalia: As Vice Mayor Sawyer said, the City of Santa Rosa has been a participant in this for some time and have over various times provided staffing to this effort and continues to do so. We're concerned that since we last talked about this the economic outlook for us as a City has gotten a lot worse. We've done significant budget cutting already and we have at least another \$8 mil in budget for our general fund that we have to cut. Our department has already cut the total budget by 10% and reduced our number of staff by 11%. Everybody knows we are in tough economic times. The idea of Santa Rosa fronting this money has always been just that. We have never planned on giving the money; it was always going to be fronting the money and then establishing a mechanism, a fee that would be paid over time by applicants to pay back this money. The economic downturn also concerns us in that we're not sure at all that we'll ever get paid back. That is unacceptable

We went to the Council, talked about options. Slow down, or stop work on the MOA until the City is in position to place funding of the MOA Environmental Process on hold, until certainties are established at the federal level, and until funding is available. I think by certainty at the federal level is we see a change in administration coming, we see change of direction possibly and I think the council was concerned about what if anything that change would have on this process and were unwilling to front the kind of money that we're talking about.

The action that the Council took was to place funding of the MOA and Environmental Process on hold until certainties are established at the federal level and until funding is available.

John Sawyer: Would like to add that Council during their consideration made several statements about their support of the endeavor but there are concerns as well as about the lack of "after the process is complete" whether or not we would be ultimately moving to an HCP and at least one Council member was suggesting that that would be the most reasonable way to go without any discussion, of course, as to the cost of that particular document or the time that it would take to create it. Given that we already have a great deal of the information in place, given the work that's been done in this Committee, that there is a commitment to the protection of the species (the several species that we've been dealing with) at the same time an understanding that the City of Santa Rosa needs to conduct it's business and we're very sensitive to the ability of the developers in the city and elsewhere to be able to have some expectation as to how they will move forward with building as well.

There were more unanswered questions than we had answered. The one question that we could answer at that time was whether or not we could move forward with the funding and the decision was “not at this time.”

Jake: Can your staff expand in your Analysis where it says, under number 2, “In addition, since the work to achieve the Safe Harbor agreement ... appears promising and may substitute for the MOA, particularly with regard to agricultural and utility issues” and we do have that as an agenda item but, it also stated here that the City should; however, continue to work to achieve the Safe Harbor Agreement. Was that discussed with Council and that analysis agreed with by the City of Santa Rosa?

John: It was, as an alternative. Mr. Regalia can elaborate.

Chuck Regalia: We made the same staff report to the Council and, I think, the Council is looking at the potential of the Safe Harbor Agreement, particularly with regard to the City utilities efforts as a positive step and I don't think there was any more reporting than that.

Jake: Any comments from Committee members?

Joan Vilms: This has been implied but I just want to hear it in black and white because there's always the balance of; there's the critter and then there is serving the developers. It sounds like, and I'm just seeking affirmation, that the City is committed to continuing with the Strategy and continuing the interim guidelines and mitigation requirements and anything that's in the pipeline will follow as it has?

John Sawyer: Correct. Several of the questions were, well what'll we do in the meantime while we're working through this process? Because of those requirements, there was a sense of ease in that there is something in place that seems to be working and that we would continue and, of course, work within those guidelines until other alternatives, like Safe Harbor Agreements, which would probably have many of the same restrictions on it. We're not looking at abandoning or trying to change the restrictions or framework that is currently in place.

John Guardino: There was a comment made regarding HCP and the cost involved in that, I'd like to have the Wildlife Service, if possible, talk about where our strategy is with regard to it being structured in that fashion and how much effort would be involved.

Cay Goude: It varies but since you have the foundation of the Conservation Strategy developed and a lot of the GIS information, that's some of the information that takes the longest and the NEPA and CEQA documents are sometimes the more expensive part of the process. It's probably that is what would cost the amount of money and then taking the information you have and putting it into the format of an HCP. The

difference too, is that under a Section 6 funding grants, that's the non-traditional grants you guys had applied for but was perceived that it couldn't be provided because this wasn't a HCP, and a number of other counties in the area have received funding sources over the years. Santa Clara has received funding, Solano, Yolo, South Sacramento, Sutter, Contra Costa, San Bruno, and Yuba County. They've all received money. It depends on how much and how far along they are, and they have to do a grant application and it's based on certain point system. You do have that ability if you're doing an HCP. It's a competition; you're looking at it nationally. They're allocating money on a national basis.

Jake: Can these monies be used for environmental assessment work?

Cay: Right, there is a certain amount of cost sharing that goes on for the documents so it can be on preparation of your documents and all those kinds of information that you go for. Generally, on the cost sharing, you can do in-kind services. 25% is the minimum match, and it can be based on your staff work and other activities.

Pete: A couple of additional things. When we applied for this grant a little over a year ago, under Section 6, we had to do everything that we could in that grant application to increase our competitiveness because we're actually dealing with a relatively small geographic area and we have only one federally listed species that we're dealing with. One of the key aspects of our application was the local match, which needed to be 50% in that case to be competitive at all. 25% is the minimum, but you get more points as they score the grant applications if you have a higher local match. The other thing – a few months ago when we were talking about the cost estimate to finish up the Section 7/MOU process that we had gotten from LSA, I also asked that consultant, just sort of ball park what it would cost additional to do an HCP (I don't have the figures right in front of me) my recollection was that it was on the order of an additional \$100,000. He said that when you're doing an HCP you need, in addition to the alternatives analysis that you normally do as part of the CEQA document, there are some more biologically focused alternatives that you have to do to get there. That was his sense of another \$100,000 over what he had already estimated.

Joan: Just to make sure the records straight-Pete said one species, I believe he meant four.

Pete: One terrestrial animal and the others are plants and they have different requirements under the Endangered Species Act. When you're looking at a Section 10, Incidental Take Authorization correct, it's the animal species that is the primary concern there. That was my understanding.

Cay: You get points for all listed species when you do grants.

Pete: That's not my understanding.

Jake: All of those discussions, the strategy has been developed and is in place, GIS work has been accomplished that would meet criteria that you would be concerned about? My thinking at the moment is, and the Supervisors are not here, the County is the other major player in this gig and we've heard from the City of Santa Rosa that they have officially declared themselves on hold until there's clarification on a couple of matters. One of which will become more clear as we proceed with our next agenda item. I think the next people we have to hear from are the County Board of Supervisors.

Pete: This item has not been to the Board but I can certainly tell you that the County's budget is in no better shape than those of the cities and from a staff perspective I would not see us recommending the County fund this effort.

Jake: Vice Mayor Sawyer, it seems that at this time, from this Committee, that we should be formally requesting that this matter be taken up with the Board of Supervisors to get clarification as to their desires on how we should proceed and then when they are able to be present the Committee will talk about what our next steps are.

Pete: It is certainly my intention to go to the Board.

Jake: I thought it was, but wanted to be sure that this Committee is in full agreement and would encourage Mr. Parkinson to so do. I think that should happen quickly and when we're scheduling our next meeting it should be after the Board of Supervisors considers this matter.

Warin Parker: I just had a question. Was the \$100,000, Pete, in addition to the \$500,000?

Pete: Yes

Jake: I think we all have to realize that, it was just told to us that the match of 50% would come back in front of us if we take a different course of action and move toward Section 6 funding for a habitat conservation plan after due analysis to be competitive we're being advised that there needs to be a 50% cash match.

Pete: No, it could be in-kind service.

John Sawyer: A quick question for Ms. Goude. In your opinion, or experience, does our status as far as how far we've come in this process

and the information that we've gathered – does it place us higher than many or have many people gone through this kind of analysis prior to looking for an HCP? No guarantees, of course, but are we in pretty good shape and competitive, given how much work has been done?

Cay: Contra Costa County did a very similar thing. They had a Biological (I can't remember what they called themselves), but basically something that worked on a stake holder process that dealt with a strategy and with GIS mapping and then it fell apart. Ultimately, they came back and did the HCP and used that information so that's part of what jump started that HCP. Eastern Alameda right now is doing a Conservation Strategy. They don't think that they have enough development to actually generate an HCP but they're leaving that open and using the Strategy to help guide what they would do and provide the information. I think that you have a lot of information that you could use. As I asked, can you ever use work and staffing that you've done on developing to date the Conservation Strategy as part of your cost share, I don't know if they've ever done that. I don't know the answer to this. The work that you've already done, in essence, can that count? That's one of the question I was asked from Scott and I don't have the answer.

Jake: I think I would gather from the Committee that we would very much appreciate your taking this question back to the Regional Office and seeing if there is an answer that you could bring back. I started meeting in this process when the Strategy was being brought together and being finalized and that goes back to December 2004. That's three and a half years. We have had a considerable investment of our personal time, we've had a very large investment of time from the County of Sonoma, we've had a large investment of time from the City of Santa Rosa, our staffs in their various ways have invested in this as well. I think we've come some ways. We still haven't come the whole way clearly, but if you could take that question back...

Cay: It seems to me that there is a certain amount, if we can make the nexus to what we've done to develop this Strategy and the information. It won't be everything that's probably going back, but a reasonable nexus I would bet that they would probably allow it. I think it would require some leg work with all of us on how to do the accounting.

Jake: That would be understood. I think that would also be helpful to Mr. Parkinson as he puts this matter in front of the Board of Supervisors and for your staff report, Pete, if there could be some communication between you and the Fish & Wildlife Service on this matter. We're clearly arriving at a critical juncture in our deliberations because if we don't have the County and the City of Santa Rosa willing to commit these monies to move forward at this time with the Section 7/MOA process, then we need to reconsider. My recollection in Contra Costa we had a presentation on that

HCP, did we not? Is that the one where agriculture was held harmless? I don't know if held harmless is the right word.

Pete: It was San Joaquin. I'm not sure what the ag provisions are for Contra Costa.

Steve Shupe: Question for Cay. One of the assumptions that Mr. Sawyer mentioned when he was talking about the action that Santa Rosa took was having the interim guidelines and being able to go forward under the interim guidelines. I just want to make sure that is a valid assumption. I know the interim guidelines were developed with the intention that the Conservation Strategy was going to be put in place at some point. My question is, if that doesn't happen is there a risk that the interim guidelines wouldn't be applied?

Cay: The Fish & Wildlife Service, the Corps of Engineers initiated consultation again on the programmatic Section 7 to deal with plants and CTS and we've been using those ratios. We modified the plant programmatic that was from 1998 to make it more compatible with CTS and we've been appending projects to it and we would continue. That was our intent.

Joan: Clarification. The question suggested that if the process didn't go forward, would you still follow the interim guidelines and just because we're detouring from the MOU doesn't mean that the process isn't going forward. From what I'm hearing it sounds like we're changing direction and it's taking longer.

Pete: I just don't think that decision has been made. Even if the process were to get retooled and go forward as an HCP, I think there are stakeholders that need to get heard from about that and even that effort is going to require some local funding to move forward and I think that really is in question at this point.

Joan: So, would you say that this action means pulling the plug. We're either pulling the plug or we're looking for other alternatives. What are we doing?

Jake: Or, we're going into a hiatus – or suspending. You could phrase it in all different sorts of ways. All I was saying, as your Chair, was that this matter needs to go in front of the Board of Supervisors, they need to make a determination, they need to come back here and then, as this Implementation Committee, we need to deliberate and choose a course of action.

Joan. The reason that I'm laboring this is that it is our choice to decide what we're going to do, but we need to understand that Critical Habitat

Designation is the alternative. Doing nothing means Critical Habitat Designation, which is certainly fine with me, but doing nothing and going on 'business as usual' is not really an option. As long as we're working in good faith, I think we've got time to work it out but if it comes that this is either not in good faith or not moving toward favorable solution for the species, then we move into a different arena, a more enforcement arena.

Jake: All of these things being understood, we can't as a Committee make any decisions at this time. You're laying these things out properly and these are all things we need to consider. We were brought together as an Implementation Committee by Resolution of the Board of Supervisors, if memory serves me right and they called...

Pete: It was a planning agreement that all of the jurisdictions entered into.

Jake: That's right. We'll go back to that original agreement that brought us together and make sure that we're proceeding properly and explore every option I hope at our next meeting. I don't think it serves any of us well not to have a full deliberation on our direction and we've started that debate this morning. If this is the end of any discussion that members want to have then I think we can go on to agenda item 3.

From the audience: Pete Chamberlain, Director of Building and Planning Services, Town of Windsor: Windsor is a minor player in this Strategy process and, in my opinion, would remain a minor player if we go to the HCP process. But I would offer a staff view, a caveat, on the reliability of the Fish & Game GIS. In the Town of Windsor, staff has spent considerable time looking at the GIS mapping. We have found significant flaws in the mapping. We reported that about six months ago to Fish & Game, Fish & Wildlife and we have received no response at all. Either: we got it, we didn't get it, this is what we're doing, or we're doing nothing. So, if this is going to be folded into an HCP, as a staff representative of the Town of Windsor I've asked that this Committee look at the accuracy of the actual mapping, the designations, and be certain that before we go into this process and we ask the Town to cooperate in this process, that the mapping is looked at and corrected. Thank you.

Jake: So noted. Out of courtesy to our technical advisors, any response to Mr. Chamberlain's comments in terms of the receipt of their mapping questions?

Scott Wilson, Department of Fish & Game: I have not directly received the information from the Town of Windsor. I would certainly appreciate doing so. I've been at these meetings representing the Department for well over a year so feel free to contact me and send that. It may have gone to my staff, I don't always hear about that. I do know that we've spent the past two or three months trying to schedule a meeting with representatives

from the Town and Windsor and we're having a meeting at 11:00 today. I assume that's part of the agenda. We'll go forward; our goal would be to have the GIS be as accurate as possible with whatever information people can supply to us.

Jake: I am glad that you're meeting and I hope that this will resolve the concerns of the Town of Windsor and I would appreciate hearing back at our next meeting as to the outcome of that meeting, Warin. We'll hear more about this topic.

Margaret Pennington: Before we move on, about the memo that John Sawyer distributed. I just wanted to make one little comment. Under Background, point 1., the last paragraph. It says: (paragraph was read). I just wanted to clarify that the City staff has not been meeting with the Agricultural Subcommittee; they've been meeting with some informal segment of people. As you recall, we've discussed this last time that the Agricultural Subcommittee has not been meeting for two or three months and the full Subcommittee has not been part of these discussions about the Safe Harbor.

Item 3: **Status of possible Safe Harbor Agreement for agricultural activities**

Bob Anderson: I have provided a one-page document that is on the Service's website. I don't represent myself as an expert on Safe Harbor Agreements. I can say the Safe Harbor Agreement (we're sitting here thinking about the next Administration), is actually a creation of prior Administrations. My exposure to it goes back to when I was in Sacramento with a group of agriculturalists to discuss Safe Harbor Agreements prior to the Strategy Team. Certainly prior to its conclusion. Early on in this process it was a concept we were aware of – in the end it was left on the shelf. Suggestions were presented in response to a query as to how it might be able to handle agriculture. We put forward a plan at that time and it was found that the clock had got too close to the end. It was left to be one of the first items dealt with when this Committee replaced the Strategy Team.

It's been operating from an agricultural standpoint in keeping with what the community has sought to do here, in my judgment. We have set a different course trying to work it out on a community wide basis, not an individual basis, not just where the resources are at, but looking at the entirety and what are the best things that can be done for the critter and the species. Recalling comments Wayne White has made, I'm sure you've all seen how the critter is better served by having a block of protected land rather than isolated little bits and pieces. That's been the driving force, in my judgment, behind this whole effort and it lead to the conservation areas and the circles and this whole debate we've been having.

Questions have been asked in terms of what happens when restoration occurs on one property, what happens to the neighboring property? It's been my understanding that Cay Goude has said that 'yes, if you have a breeding pond on the edge of the circle, it moves the line.' The 1.3 mile moves with that new location and that has caused concern in the agricultural community. Recently, six weeks or so ago, we made a second trek to Sacramento and had a meeting with Rick Kuyper who is the person in Sacramento who handles the Safe Harbor Agreements. Vincent attended that meeting and we had a discussion about its potential. I understood it provided an avenue to go down-other entities had worked with it. I'm aware of the elderberry beetle efforts, grape growers; it was one of the highlights of the president's cooperative conservation conference in St. Louis some years ago. California Cattlemen's have a Safe Harbor Agreement; in my recollection it's 200,000 acres that they're looking at.

Being a participant in these meetings it's my understanding that there are two types of agricultural entities that could get benefit from the Safe Harbor Agreement. One is if you want to do something good for the critter on your land, it's a way to say 'you're doing good and won't put you in a worse way down the road.' You can do some restoration efforts; I've had conversation within the week of somebody in the elderberry beetle land happy to plant riparian plants, happy to receive grant money to plant riparian plants to encourage the return of the elderberry beetle along the creek that's in the Central Valley. And, they understand that their interests in going forward are protected because of the Safe Harbor Agreement. If you're doing good things on your property, you qualify and enter into a Safe Harbor Agreement as well as if you're a neighbor to one who has done something good on their property you can enter into a neighboring agreement that protects you from the influence of what they've done on their property. You don't become beholden to some other new requirement because of good things done. The whole effort being to encourage restoration that would trigger getting good things done on the land.

We had a follow-up session yesterday, we invited Rick to take a look see at how the land looks here; we did a vineyard tour, we did a dairy tour, we had discussion about the city farms and in that context, Liam Davis was there from Fish & Game. It was interesting to me that the state itself can become a party to a Safe Harbor Agreement. Anybody who is a non-federal entity can request. An offer was made where the state owns property and has done restoration, they would pursue a Safe Harbor Agreement in order to protect and then allow the neighbor to come in under the neighboring agreement which was described yesterday as a simple paragraph, and that sounds good to an agriculturalist. That you get protection without a lot of paperwork. The process seems to be available and working.

It took a turn yesterday that was a bit of a surprise to those of us who had been in the six week ago Sacramento meeting. We went into this hoping and thinking that there would be a way to work out a community wide/basin wide, a bigger area approach so that good things can happen in a broader area, not individual property by individual property. We were told yesterday, well, it has to be on an individual property basis. I haven't had time to investigate what the rules are but we were told that 'them's the rules and that's the way it'll be done,' and at this juncture there's a path I see that we have a chance to go down and that's to work with the Service. They've indicated a willingness to do that, to work out a template that would encourage landowners who have done improvements on their property to seek a Safe Harbor Agreement, could be a two to three month long process, the Service indicated they had a preference in doing it that way because they can then look at that property and see if it qualifies, what activities being done there and we're prepared to go full steam ahead and seek individual Safe Harbor Agreements because that's what they want to do

Joan: I understand, from my reading, something about how Safe Harbor Agreements work; there's a baseline established and to the extent there are enhancements either on the property or neighboring property above that baseline that's what gets the Safe Harbor. A couple of questions about how that baseline is done but more significantly you represent vineyards for the most part and if someone comes in and wants to do a vineyard conversion, how does this benefit them?

Bob: We had that discussion; it's not clear in my head today as to how the question of vineyard conversions will be dealt with. We had an example conversationally of parcel – if somebody wanted to put in breeding ponds. One answer was, you can't plant because its habitat, you can't plant. The other answer is if you have existing vineyard and you did some improvements, you qualify at that point.

Joan: I can see where existing vineyards could do things, it's the new.

Cay: I have notes since I'm not a Safe Harbor expert but basically the overall concept is that you have to have, as Susan said last month, a net conservation benefit. And each landowner has to develop and show the baseline information of what's on the site so you can't reduce it to baseline, you'd need to know what habitat was there depending on what listed species and have that clearly articulated and then develop what you're doing that would be a net conservation benefit for that species and then you could go back after an Agreement, 10 or 20 years. The Agreement is that at the end of that period of time you can go back to the prior condition. For example, you have a site, you may have listed plants over here but you want to create a pond and it becomes breeding for CTS and

you've created this pond then the pond after a period of time can go back to baseline. But, there are a lot of other agreements that go into it – on how you notify and everything else. That's my general cursory information. It does allow you to go back to the prior condition of the property, but you have to determine the condition of the property.

Bob: That is the function of the Safe Harbor Agreement. You come into it, you establish a baseline and as long as you continue to operate it at a point above the baseline, everybody is happy, nobody cares. If you do improvements above that, it's a good thing. If you have done improvements above that and some of those go away, you are not held responsible until the point you drift below baseline and then you're responsible.

Cay: In essence, kind of like a contract so that for a period of 10 or 20 years, depending on what that agreement is, you're agreeing to keep that habitat, those beneficial affects. At the end of the contract or at the time that you sell or there's other things then you can basically bring it back down to baseline.

Jake: Who establishes baseline conditions?

Cay: It's basically you work with the landowner and the Fish & Wildlife Service and Fish & Game. You have to determine what species, what the habitat is, what you have out there.

Bob: My take on it is pretty much third party, qualified person who establishes it. There are options. The landowner wants Fish & Game to figure it out, invite them on let them figure it out. The landowner doesn't want Fish & Game, will invite a third party on and let them figure it out.

Jake: And then, what you were saying to us, Bob, earlier on was that it was your understanding that this would be done property owner by property owner in our area of interest?

Bob: That sole path given to us yesterday.

Jake: Question for US Fish & Wildlife Service and Department of Fish & Game. In terms of resources, in other words, if we move in this direction of individual property owners, establish a baseline, here's the improvements, entering into an Agreement – do you have the resources to actually participate in such a program?

Cay: I don't speak for the office, but I think that what I understand, for example, if you do it individually and it's a grazing operation, you can use the information for one Safe Harbor Agreement that you develop for one

individual and you can use it for other projects that are similar. Once you've done a few, it makes it easier in a geographic area.

Margaret: I'm still a little confused. The last time the Ag Subcommittee actually met, and again, it was great having information from Bob but he's not reporting from the Ag Subcommittee because we haven't met.

Jake: And that's going to be my next suggestion. So that you know, my suggestion is going to be that the Subcommittee meet and now that this information has been gathered, to proceed. That would be the direction from the Chair.

Margaret: When we last met, it seemed as though the difficulties the Ag Subcommittee was encountering had to do with – there were two things we were concerned about: ongoing agricultural activities and then conversions. Some members of the Subcommittee had thought that the situation was that under the MOU/MOA the ongoing activities would get take coverage and basically not have to do anything and it was thought that the conversion activities would have to engage in Best Management Practices. And, then what was discovered was that Fish & Wildlife Service had put it in writing in January 2007 that that was not the case that in order to have take coverage, the ongoing activities would have to demonstrate Best Management Practices and conversions would have to demonstrate Best Management Practices plus there would have to be some kind of mitigation. It seems to me that that is where the breakdown occurred. I'm really having difficulty understanding how this Safe Harbor Agreement addresses either of those, but particularly the conversion. It seems to me you're talking about doing something above and beyond and then if you change your mind 10 or 20 years later you can go back to baseline. I don't see anywhere where that means you can do a conversion. I'm really confused as to how going off in this direction, how this is addressing the items that seem to be of concern to some of the members of the Ag Subcommittee the last time it met. It seems like this is a totally different sort of thing to get into, doing things above and beyond. I can see the neighbor assurances with the Safe Harbor, particularly with the situation like Doug Beretta's, but I don't understand it as substituting for where we were at.

Jake: Any other thoughts on conversions? I'm interested in this as well, as to what would happen. As an individual I could see that the ongoing ag activities and the Safe Harbor Agreements could be consument, but I'd have to ask if there was going to be a conversion from pasture to vineyards, how would that be handled under a Safe Harbor Agreement? Seems to be it couldn't be, but I'd be happy to be proved wrong.

Bob: I have no expertise; have my own understanding of some of this. Difficult question and he has heard no good answers. Not able to give you guidance or suggestion. I do think that there are actions landowners could

take that would be better for the critter than just to say if you have 20 acres of grass, what quality of habitat do you have? Is this the place where the California Tiger Salamander would want to move in and take up residence? I think there are things on that property that could be done to improve that as habitat for the CTS and whether or not some addition can be made by a landowner for the benefit of the CTS in exchange for being able to develop on that property, I find it to be rather unenlightened in view of what we got yesterday. You got grass, you got grass -that's it, you're locked in and that's the end of the story. There is no way you can change. I don't think that that's to the benefit of the critter in all cases and if you make the case that you're benefiting the critter, I think that is the mission we're all on and the science and that is an interesting discussion. The politics of saying you can't grow more vines, that's a slightly different discussion.

Marc Kelley arrived.

Jake: As you may have gathered, Mr. Kelley, you've arrived right in the middle of the Safe Harbor Agreement discussion and we've received a report from Mr. Anderson and there's been some questions and some answers but my inclination is that at this time that this matter be discussed by a meeting of the Agricultural Subcommittee. The understanding from Mr. Anderson was that Safe Harbor Agreements in the Santa Rosa Plain area would be landowner by landowner and the question that we were just discussing (brought up by Ms. Pennington) was the question of ongoing agricultural activities and then what happens in a conversion situation and can it or can it not be covered in a Safe Harbor Agreement. I was expressing the view that it might be difficult, but I was prepared to be enlightened. That's where we're at – welcome.

Marc Kelley: Mr. Chairman, I apologize for being late. I don't know what's going on with the Safe Harbor Agreement process. I did not go to the meeting yesterday. Carolyn was there. I guess my reaction to that is you are probably correct; it should go back to the Ag Subcommittee. If it ends up being a landowner by landowner process, I think this community is in a world of hurt and so is the salamander. And, it'll be sad. I feel a little bit like Mr. Chairman, I'm going to be momentarily philosophical and then more specific again. I almost feel like I'm working for my forest products clients again. We can't get out of our own way to watch our own self-destruction. My hope would be that there is some way for this community and the Fish & Wildlife Service to find some common ground because if we don't, there is no development community left to pay the mitigation costs of what's going on here. Lets be very clear about this, there is nothing being built today, there'll be nothing built tomorrow, there's going to be nothing built next year. There are no connection fees, nothing is going to happen and as the banks get more aggressive in their foreclosure process, and that's happening because the land is now not

worth what is owed on it and so the feds have stepped in, as you know Mr. Chairman, if you watch Congress and have said we want these properties foreclosed on. It's all disappearing. There is no economic base left in this Community, period. The Safe Harbor process, I was hoping, was something that could both protect the salamander and in the long run, three or four years from now, give us an opportunity for this community to develop with some common sense economically. I hope that they can go back to the Ag Subcommittee and something can be worked out. But, right now, today I would say that the rock has rolled to the bottom of the hill and shows no momentum to go anywhere.

Jake: O.K., and you should also know that before you arrived here that we had a discussion from the City of Santa Rosa and they have put expenditures of monies to advance the MOA process on hold, pending, and the staff is going to be presenting to the Board of Supervisors shortly asking them what their view of these matters is in terms of moving forward on our current course. So, we're at a critical juncture in the work of this Committee. Our observations in Rohnert Park match yours that we do not anticipate construction activities around Rohnert Park in at least the next 18 months. You can look at it this other way that it gives the community an opportunity to work on these problems and see what the solutions are and my hope is that the Agricultural Subcommittee can meet and report back to us on the worthwhileness, if you will, of moving forward with Safe Harbor Agreements or some process to involve them and with a recommendation to come back to the full Committee.

Bob: I'm not prepared to go back and have the same discussion. What you have laid out here, the worthwhileness of Safe Harbor Agreements and how to make that functioning pathway, I'm prepared to do that. At the last meeting of the Subcommittee, we had Fish & Game on the phone and Scott suggested that there is a state document that guides you (at that time I didn't hear, but subsequently it sounded a lot like a Safe Harbor Agreement); I'd welcome that information.

Scott: I can provide some information to the Committee. There is what's called a voluntary local program, for those attorneys it's in Section 2086 of Fish & Game Code. It's somewhat analagous to a Safe Harbor Agreement on the state's side in that the properties are looked at in terms of their baseline and then there could be actions that could be taken on the properties to have a net conservation benefit and over time the properties could be changed to a baseline condition. The state has done 'zero' of these to date although we are currently involved with a number of landowners in the northern Sacramento valley working on that.

Jake: So this could be a reasonable time for us to proceed in this direction since you guys are already doing some work in the North Sacramento Valley. It would be appropriate for us to proceed.

Scott: Yes, it is a potential mechanism out there to authorize take when baseline is looked at and there is a conservation benefit.

Jake: I know how difficult it is to get people together, but on this issue I really would hope that we would have participation from our technical advisers when the Ag Subcommittee meets. There is no point in the Ag Subcommittee meeting unless there's that participation.

Scott: Fish & Game as well as Fish & Wildlife Service have provided numerous inputs to the Agricultural Subcommittee and we can discuss these other various mechanisms for take authorization but I think some of the questions raised by the Committee concerning conversion and mitigation requirements are still on the table and we haven't had any feedback on that.

Bob: He does not understand the direction from the Chair. This Chair will not convene a meeting with that understanding.

Margaret: Bob, can you explain that again? I didn't quite understand that.

Bob: Did you understand the colloquy that occurred between myself and the Chairman that this was not going back and rehashing old ground, I'm not going there. This is a discussion of Safe Harbor Agreements and their appropriateness and how they work, it can be a discussion of how we do a conversion, it is not a review of the January information that we've not responded to by Fish & Game.

Margaret: As somebody who has attended the Ag Subcommittee meetings, I think it would be worthwhile for the Ag Subcommittee to come together to just have a conversation about Safe Harbor and to have a conversation with those people who have some additional information because of some meetings they have attended and to try to understand why they see this as preferable to where we were at previously. I truly don't understand that yet. I know there was concern that ongoing activities, back with the MOU and the information from Fish & Wildlife Service, would have to agree to Best Management Practices, but what I'm hearing is that if you do a Safe Harbor Agreement you'd have to enter into an agreement with the Service, so you'd have to be doing something and it seemed to me that there was push back at the idea that ongoing activities would have to do anything, which previously was just asking them to voluntarily sign on to these Best Management Practices.

There are really some things I don't understand and I'm also wondering, because I'm getting a real kind of vibe here from Bob, that there's some emotion and anger around this. Maybe we need a facilitator or mediator to ask some of these questions in the context of the Ag Subcommittee

meeting to be able to sort of tease out what really is the blockage here or whatever. I truly don't completely understand it.

Jake: We don't have the ability to provide facilitation. I need for the Subcommittee to meet, I need for it to report back, I think I was clear in terms of does the Safe Harbor Agreement process offer anything to us in the place that we are at at the moment and then if it is not going to be feasible, then we need to get a recommendation back so that we no longer spend any time. I agree, Margaret, that other people who have participated in discussions in Sacramento at the staff level or whoever, it would be useful to have them present.

Cay: We have the notes from the first meeting that if you want, I can send them to the County to distribute to the full Implementation Committee. We have notes and emails that were on the draft agreement that had been provided previously and then the notes from the last meeting – so that they feel they can catch-up. I am not the expert on Safe Harbor so we would be sending somebody else.

Jake: That written information would be useful and if you could do that, it would be grand. Send all the stuff to Melinda.

Item 4: Stakeholder Participation in Plant Mitigation Requirements in the Biological Opinion

Marc Kelley: We do not agree that there has ever been any stakeholder agreement to pay for mitigation on plants that do not exist. If surveys have been done and the plants aren't present, the plants aren't present and we're not going to pay it. The price for mitigation on plants is outrageous, there are very few people who own the banks, the Burke's Goldfield is \$945,000 an acre. That is impossible. I don't care how precious the plants are, we've got to find a different way and so we're in a process right now of having a discussion that we don't believe the stakeholders ever agreed either under CECA or ESA to pay mitigation for plants that aren't present nor do we believe that they have any legal ability to require that at all. We're going to be moving forward with that discussion in the next few weeks and we'll see how it all comes out. But, there's just no financial capacity to do that in this community and there're no biological or legal authority to require it.

Mr. Chairman, we pay \$1.25 per child for library services in the Santa Rosa School District and yet we're going to charge \$945,000 an acre for a plant. We need to get our heads screwed on straight. And, that's not to say we shouldn't have plants, because I believe it with all my heart. But, we've got to find a different way and we can't ask people to mitigate for things that don't exist if they've done surveys and they're not present. If they're present, they're present and you pay for them.

Joan: This isn't really the purview on the Implementation Committee and it seems to me that stakeholder participation in a Biological Opinion is sort of an oxymoron that's mutually exclusive. It's a Biological Opinion, and they are talking about habitat and the facts that a plant may not be there for a year, five years or ten years doesn't mean that it's not suitable. Avoidance is always an option. Development doesn't have a greater imperative than following the protections for the species. So that's just the other side of the argument.

Marc: I agree and we'll see how it comes out.

Warin: This is an issue that I've raised on two previous occasions because looking at the Biological Opinion, it appears to be materially flawed. And, if that's the case, and this is the issue where the flaw is, I believe then it needs to be addressed.

Jake: And the question would be, is this something that needs to be addressed by the Implementation Committee? Staff, comments?

Steve Shupe: I think that to the extent that there is an intent to roll into the Implementation Plan the same plant mitigation requirements that are in the Biological Opinion then, and I'm not saying what I think about them one way or another, but I do think if we're going to be asked as local jurisdictions to ultimately impose those, then yes, I think it's something that is potentially relevant to the Implementation Plan.

Jake: The other Biological Opinion that we're all getting ready to deal with is the one on the threatened and endangered salmoids in the Russian River where my understanding is that reasonable and prudent alternatives must be put into effect over a finite period of time and not having seen this Biological Opinion is that the nature of this Biological Opinion that because these Biological Opinions have these requirements and they're binding as I understand them. Within our area of interest under our Strategy there are these plants and there is a Biological Opinion and on whom do the requirements rest?

Steve: Right now they rest on anybody who wants to get a permit from the Corps of Engineers to disturb a wetland. They have to then consult with Fish & Wildlife Service on effects of that action on these listed plants. And then the Biological Opinion, as I understand it, sets forth the mitigation requirements that are required of somebody who is going to be disturbing a wetland. And, my understanding of the controversy has to do with whether or not there should be the same mitigation requirements with respect to a wetland that actually contains plants as to a wetland that either does not contain plants now or hasn't contained plants for some period of time in the past.

Jake: Was that a reasonable statement? I guess I could understand this could end up being part of an Implementation Plan. But, I don't know that it's the business of this Committee to be making an interpretation of a Biological Opinion. I thought that's outside of our purview.

Steve: I don't think there is anything this Committee can do about this now and I'm not sure that Mr. Kelley intended for the Committee to do anything about it now, my impression, just as you said, was he's presenting it as an information item.

Margaret: I just had a question – this is from our last minutes, which were in March, and at the end, Warin brought this up, and he was asking if perhaps at our next meeting in April, we could have a review of the Biological Opinion and the issues that trouble Windsor. I assumed that this agenda item was that.

Cay: That's why we scheduled after that meeting an individual meeting with Windsor to go over those things. I went specifically to Windsor at that point and said that the question had to deal with Windsor to have a further explanation and spend additional time to go over the information, and then the meeting was cancelled. That's why we rescheduled it for this month. In fairness to the agencies, that was in fact what we were doing. We understand that people are questioning the Biological Opinion, but remember there was a Biological Opinion from 1998 that the Fish & Wildlife Service, the Corps of Engineers, and Fish & Game had been implementing in the Santa Rosa Plain. It had the definition of suitable in that Opinion it was always attached as an Appendix to the Conservation Strategy and the Conservation Strategy had Biological Goals and Objectives for both listed plants and CTS. So, I think it's wonderful that the Committee is concerned about CTS but they should be equally concerned and caring about the listed plants that are close to extinction in a couple of areas.

From the Audience: Charlie Carson, Home Builders Association: On the agenda item that was just here, many of those individuals who would be paying these fees or incurring these expenses are either members of our Association or affiliated with our Association. I wanted to offer a letter to this Committee, maybe just to have our comments on record and that is just making reference to the fact that the B.O., which is certainly not anything this Committee can influence, can discuss about changing, but on page 10 of the Biological Opinion, that Table 1, that shows the ratio of mitigation which basically translates to 1.5 to 1 mitigation for plants that are very likely not even on site is a concern to us. Actually, as Mr. Kelley mentioned because right now, particularly, the expense involved in this, in the reference on the Table to the suitable habitat and technically a persistent seed bank may be present and so because of that then any piece of property as we've gathered is obligated to incur this expense and if we're

looking at some of these banks that are \$400,000 an acre of the Burke's Goldfield, just like we were discussing last night in the city of Petaluma on a completely different issue, you've just priced the whole project out of the market. In which case, it seems to many of us that if it is an understood fact that the plants and salamanders are kind of in jeopardy, if there's no development going on in that area anyway, then there probably isn't going to be anything else happening and there probably is, at that rate, very little money if any money coming in to the mitigation expenses that would be used offsite. Because of that we were hoping that surely there could be some other element where we can discuss a more reasonable ratio even though it was in the previous spiel as well. But, when we're looking at this expense for land and it doesn't matter if it's an impact fee that has nothing to do with this, just in this current time and I say even five years from now, we're talking about some huge expenses that I don't think are actually going to be able to materialize. We'd just like to present our letter to go on record.

Jake: Please do that and as I've indicated we'll receive a report back on the outcome of the meetings between the Service and the Town of Windsor.

Marc: In my perspective, and I think I can speak for Carolyn here, we're obviously at sort of a raw point, in our opinion, in the Implementation process but, I want you to know, Mr. Chairman, that for the people Carolyn and I represent we are 100% committed to trying to get this finished because we have a sort of a delicate problem. We have a salamander whose primary habitat is inside our urban growth boundaries and that's pretty unusual. We're trying to mitigate for it on County land where when we buy the land up all the land goes off the tax rolls. And, so the County loses its tax revenue while the cities are mitigating for development inside their city limits. That's a tough deal for everybody. I hope over the next few months we can, with your leadership, Mr. Chairman, find a way to rebalance this ship because if we don't, it doesn't bode well for any of us going on the next couple of years, sir.

From the Audience: John Harrick, Milo Baker Chapter of the California Native Plant Society: I would just like to say that the original motivation for the Conservation Strategy was the endangerment of the plants and the California Tiger Salamander and one of the goals of the Conservation Strategy is the recovery of those species, which includes expanding the range. The importance of seed bank and habitat is an established scientific fact and it's important to remember that when discussing issues around the mitigation of plants. Thank you.

Steve Shupe: I just wanted to, on a personal matter, advise the Committee, I'm going to be taking a sabbatical starting now until the end of the year. You will be in the hands of Mr. Parkinson. I will be available

at a remote location to advise him if he has any questions. I just wanted you to know you won't be seeing me until January.

Jake: That's our loss.

Item 5: Public Comment on Issues Not on the Agenda
None.

Meeting Adjourned.