



DRAFT MINUTES

SANTA CLARA COUNTY OPEN SPACE AUTHORITY
Regular Meeting
Thursday, February 25, 2010
Meeting 10-04

ROLL CALL	Chairperson Sequoia Hall called the regular meeting of the Santa Clara County Open Space Authority (OSA) to order at 6:33 p.m. at the Santa Clara County Administrative Office, 6980 Santa Teresa Blvd. Suite 100, San Jose, California.
Members Present	Alex Kennett, Sequoia Hall, Virginia Holtz, Mike Potter, Calvin Gill, Jim Foran Garnetta Annable arrived at 6:39 p.m.
Members Excused Absent	None
Members Unexcused Absent	None
Staff Present	Patrick Congdon, General Manager Bill Parkin, Legal Counsel Lauren Crook, Clerk of the Board
Public Present	Dave Poeschel, CAC member John Fioretta, CAC member Roland LeBrun Rob Schneyer Collier Buffington
CONVENE TO CLOSED SESSION	At 6:33 p.m. Director Hall convened the meeting to Closed Session.
RETURN FROM CLOSED SESSION	The Board members returned from Closed Session at 7:01 p.m. Director Hall stated that closed session would reconvene at the end of the open session meeting.
ADOPTION OF AGENDA	Director Kennett moved to adopt the Agenda. Director Foran seconded the motion. The motion passed 7-0.
PUBLIC PRESENTATIONS	Director Hall asked if there were any public presentations. Roland LeBrun introduced himself. He asked if the Board had plans to adjust the district lines between districts one and five.

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Director Hall stated that the Authority would not be in a position to consider any adjustments until after the 2010 Census.

Rob Schneyer asked if he could meet with someone after the meeting regarding an acquisition opportunity.

Director Hall stated that he could speak to General Manager Patrick Congdon.

**WRITTEN
COMMUNICATIONS**

Director Hall asked if there were any written communications.

L. Crook stated that there were none.

**APPROVAL OF
MINUTES**

Director Hall noted that there were no minutes for approval.

**APPROVAL OF
CONSENT ITEMS**

Director Hall noted that there were no items on Consent.

BOARD BUSINESS

**Agenda Item #1: Authorization to Negotiate with Property Owner – APN:
562-19-002 & 562-26-002**

P. Congdon introduced the item and described the project. He noted that the Midpeninsula Regional Open Space District was currently negotiating for property owned by Mr. Horstmeyer within their jurisdiction. He noted that other portions of the property that lie within the Open Space Authority jurisdiction may be available for negotiation and he asked for authorization to negotiate for eligible properties if the opportunity presented itself.

Motion: Director Kennett moved to approve the Resolution 10-04, authorization to negotiate with property owner Horstmeyer. Director Foran seconded the motion. The motion passed 7-0.

**Agenda Item #2: Authorization to enter into a Purchase Agreement for the
acquisition of 33 Acres, APN#: 773-09-013 and 773-09-014**

P. Congdon stated the property was in Morgan Hill near El Toro Mountain. He recommended that the Board approve acquisition of the property for the negotiated price of \$500,000.

Motion: Director Kennett moved to approve Resolution 10-05, authorization to enter into a purchase agreement for the acquisition of 33 acres, APN#'s 773-09-013 and 773-09-014. Director Gill seconded the motion. The motion passed 7-0.

**Agenda Item #3: Authorization to enter into a Purchase Agreement for the
acquisition of 32.5 Acres, APN#: 742-17-016**

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P. Congdon stated the property was near Twin Fall and he recommended the Board approve the acquisition of the parcel.

Motion: Director Holtz moved to approve Resolution 10-06, authorization to enter into a purchase agreement for the acquisition of 32.5 acres, APN# 742-17-016. Director Foran seconded the motion. The motion passed 7-0.

Agenda Item #4: Authorization to enter into a Purchase Agreement for the acquisition of 348 Acres, APN#: 712-05-010 and 712-05-011

P. Congdon stated that he is recommending approval to acquire the property referred to 353 Palms, 348 acres in the Coyote Valley. He noted it would be the first acquisition of public lands in the Coyote Valley.

Motion: Director Annable moved to approve Resolution 10-06, authorization to enter into a purchase agreement for the acquisition of 348 acres, APN#'s 712-05-010 and 712-05-011. Director Holtz seconded the motion. The motion passed 7-0.

Agenda Item #5: Review and Re-Appointment of Board Members to OSA Standing Committees

Director Hall stated that at the last Board meeting Director Kennett expressed an interest in becoming a liaison for the Citizen's Advisory Committee. He asked Director Gill if he would be amenable to the change.

Director Gill stated he was agreeable with the change.

Motion: Director Foran moved to appoint Director Kennett as a liaison to the Citizen's Advisory Committee; replacing the position held by Director Gill. Director Potter seconded the motion. The motion passed 5-0

Agenda Item #6: Discussion and Direction to Staff Regarding the Santa Clara Valley Habitat Conservation Plan (HCP) Implementing Agreement

P. Congdon introduced the item stating he distributed a memo to each member of the Board regarding the evening's discussion points on the Habitat Conservation Plan. He stated that he and B. Parkin would be providing the Board with an update on the areas of concern mentioned in the memo. He said they would also be talking about areas identified in the SCVHP Draft Implementing Agreement that may require further internal action by the Authority. He said he would also be providing the Board with an estimate of costs to the Authority in the event the Authority remains active in the development of the SCVHP.

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Director Holtz stated she had been involved with the HCP since its inception and gave a summary of her understanding of the purpose and goals of the HCP.

Board discussion ensued.

P. Congdon stated that he and B. Parkin have reviewed the draft documents at length and there are issues within the documents that they would like to bring to the Board's attention and warrant considerable discussion. He recommended that the Authority take a position on the items for discussion which would then be forwarded to the Habitat Plan.

He continued stating that he and B. Parkin would be covering the bullet points on the first page of the memo:

- The Authority's obligation to fund development of the SCVHP and protecting the Authority from future litigation (including costs and attorney's fees) resulting from their involvement in the SVHP.
- Not using Authority funds to purchase, hold or manage lands
- The type of recreational activities permitted
- The SCVHP assumption that specified Authority lands already purchased and preserved, some with restricted grant funding that does not allow use of the property for mitigation, will be counted towards the total acreage that will be preserved.

B. Parkin stated that he has previously discussed the issue of insulating the Authority from future litigation costs associated with development of the plan and the Board has taken a position. He stated that he brought the issue up with the lawyer for the HCP, Chris Beale, and Ken Schreiber, who seemed to be in agreement that the Authority would be held harmless in the event of litigation. He noted that when he brought the issue up to the attorney's group, the discussion focused on developing a defense or contingency fund in the event of litigation instead of indemnification, which is not in the spirit of what the Board had previously decided. He recommended strongly that the agency push for indemnification in the event of litigation.

He stated that in terms of funding development of the plan, he didn't think there was an expectation that the Authority would be providing any funding. He noted that the Authority should not be funding the plan as the other partners receive much more of a benefit from the plan.

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He said that the estimate of costs as stated on the second page of the memo were not associated with funding development of the HCP but refer instead to costs associated with staff member and legal counsel time devoted to OSA involvement with the plan. He noted that the current estimate of cost is for \$250,000. He stated that in some cases, other agencies are compensated for their time and it was a Board decision if that is what they would like to do.

Director Holtz asked for what period of time does the \$250,000 cover?

B. Parkin stated that was the estimate of costs for the next one to two years.

P. Congdon stated that the timeline was likely to go on even longer and he would be spending an increasing amount of time on the plan as the process moves forward with meetings and rough drafts to review. He noted it was a significant undertaking for a small agency like the OSA.

Director Annable stated that she thought it was an important enough step the agency was taking as a community and considering our goals, she said that we would have to be reviewing it and participating in some capacity anyway.

She said that whether or not the agency was going to be a permittee, the agency would be spending some time working on this project anyway. She said that as an agency that's involved in preservation and open space, the Open Space Authority needs to be involved in the process. She said she thought that it was a cost that was appropriate to be incurred in order to be informed and be involved.

Director Foran stated that some of these species are already protected under the endangered species act. The plan should result in a net improvement. He said the City of San Jose is on record as saying that it would be a conflict for one of their planning commissioners to sit on the SCVHP board because they work at cross purposes. He said that it was the responsibility of the Board to look out for the Authority. He noted that some costs might have to be incurred but there was room for debate about having some of the costs reimbursed.

Director Hall stated he was in favor of looking at reimbursement to the Authority. He continued by saying he agreed with Director Annable that the Authority would be involved in some way because it effects the areas within the Authority's jurisdiction. He stated he appreciated the cost estimates and he thought it was important for the Board to be aware of where staff resources were being spent.

He said it was his opinion that the habitat plan has the potential of bringing a great benefit to the agency in terms of increasing the agency's role with

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interfacing with the other agencies. He noted that if the OSA becomes a key part of the implementation of the habitat plan, the other agencies are going to be much more aware of us. He stated that there would be additional positions inside the agency funded by the plan that will be helping to implement the plan. He said that Open Space Authority acreage would expand significantly as well.

Director Holtz stated that she believed the OSA's role in the plan would increase the agency's visibility. She noted that the cost associated with the OSA's involvement in the plan was an investment in the agency's future.

Director Annable stated she agreed with B. Parkin in having the Authority being held harmless and that the dollars that the Authority has are not available for the HCP to use.

B. Parkin stated that in regards to the OSA holding and managing lands, it is important to remember that the total cost of managing land and not just the cost to manage species or for restoration, but the actual administrative costs of owning and managing land can be much more, especially if it's in fee title. He said that once the Authority takes fee title of lands, administrative costs such as staff time, insurance and other costs that go in into holding land will be incurred along with other management costs. He noted that the Board must think about the additional administrative costs associated with taking possession of land in fee title that will be set aside anyway as part of the plan.

Director Hall stated that it was his understanding that it was already the practice of the Authority to seek endowments for managing mitigation on properties.

Director Annable stated that she understood from earlier discussions the Authority would have the right to select the lands it would accept in fee.

B. Parkin stated that it was the Board's choice what they would like to do and that he was only pointing out a policy question for the Board which is if the agency is accepting title to land that is already preserved, does the Board want to accept the cost and liabilities associated with that acceptance and whether they want to see compensation.

B. Parkin pointed out that when the Authority accepts an endowment, it is only to manage the species. Accepting a land in fee means taking on administrative costs as well.

Board discussion continued.

B. Parkin stated that that in regards to the first part of bullet item 2, not using

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Authority funds to purchase lands, he wanted to point out that in the current version of the HCP it states:

“The following local agencies are expected to provide funding to support the plan.” And then the Authority is listed.

It also says, “...for the purposes of the habitat plan the Open Space Authority is estimated to acquire 209 acres per year during the permit term or a total 10,450 acres. The value of these acquisitions is estimated to be \$99.8 million.”

He said his point in bringing this up is to ask whether the Board wants to use Authority funds to support the HCP.

Director Potter asked whether the document presumes that lands included in the estimate would have been purchase by the Authority anyway.

B. Parkin stated it did.

Director Hall said that his understanding was the assumption was that the Authority could contribute land that they’d taken an easement on. He said that the assumption was not that every parcel that that the Authority acquired would be added to the plan.

B. Parkin stated he was not suggesting that all of the Authority’s acreage would be counted toward the plan but that over the life of the plan the Authority would be contributing \$100 million towards the plan. He repeated that he was bringing up policy issues for the Board to consider. He pointed out that there was an implicit assumption in the draft plan that says of the total reserve system of 62,000, 10,000 acres would be an OSA contribution.

Director Foran stated that the Authority needs to spell out in very clear terms the agency’s position on how its monies will be spent.

Board discussion ensued.

Director Hall stated he was uncomfortable with saying “not using any Authority funds” but he was not in favor of having the Authority handing over all of its acquired lands toward the HCP that have no mitigation benefit. He said he’d like to see some nuancing in the bullet item 2.

P. Congdon stated that bullet item 2 has raised an issue that needs to be further reviewed. He suggested it be reviewed from a policy standpoint and could be reviewed by a smaller subcommittee.

Director Hall asked the other Board members to give their input.

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P. Congdon continued with bullet item 3. He said his concern on this issue is primarily on lands that the Authority would manage as part of the reserve system and manage for someone else. He said that originally in the chapter on what might be permitted on reserve lands, the recreational opportunities would include staging areas, restrooms, visitor's center and multi-use trails. He said that although he is not disagreeing with those uses, one has to be aware of the intent in creating a reserve which is to provide the highest level of protection for a plant or wildlife species. He said that now, there is no assurance that if a visitor impacts a species, the Open Space Authority would not incur a penalty such as financial or criminal penalties. He said that it could potentially restrict the Authority's ability to provide public access.

Board discussion ensued.

P. Congdon stated his main concern was that there were not enough assurances to protect the Open Space Authority in the event of an impact.

Director Hall stated it was important to get the wording in the plan.

Director Potter stated for the record that the Open Space Authority only purchases land from willing sellers.

Director Hall asked if members of the public wished to speak.

Dave Poeschel stated that the mission of the OSA is not limited to providing recreational activities. He stated that he didn't think that limiting public access would be a problem.

P. Congdon stated that the issue was whether the agency was required to open a property to public access and take on the management and costs associated with that.

Collier Buffington noted that there was a reason that Santa Barbara county voted down the HCP. He says that there are a number of things wrong with this HCP. He stated that there was very little outside public comment. Second, he said it is not a Santa Clara county habitat conservation plan but a south county conservation plan that largely benefits the City of San Jose at the expense of rural land owners in south county. He went on to say that his third point is that there already exists a method for mitigation offset among various parties. He said the plan is structured to force the rural land owners to subsidize the desires of the City of San Jose to develop. He said the fee structures for development are essentially a tax. He said there were also issues with the science behind the plan.

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He continued by saying that there was already a working system in place for mitigation lands that includes willing buyers and sellers.

Director Hall asked P. Congdon if he had any comments.

P. Congdon stated he would like to meet with the HCP Board liaisons and legal counsel in the following week.

Director Hall asked if there were any further comments.

Director Foran request that the Board receive notice of what the discussion points will be prior to the next meeting.

COMMITTEE MEETING SUMMARIES

**Citizen's Advisory
Committee**

J. Fioretta stated that the CAC discussed the issue of sending representatives to the Board subcommittees; He noted that they would discuss it again at the next meeting; He noted that there was general discussion of change in priority in opening Sierra Vista; He stated that Director Holtz gave an update of the Martial Cottle Park process.

**Acquisition
Committee**

Director Hall stated there was no report.

**Use & Management
Committee**

Director Holtz stated that the Committee discussed expanded public access at Rancho Canada del Oro. She noted the topic may come to the Board in May.

**Administration &
Budget Committee**

Director Hall stated that there was no report

**General Manager
Evaluation Ad Hoc
Committee**

Director Hall stated the committee did not meet and there was no report.

**General Manager's
Report**

P. Congdon stated that the Peninsula Open Space Trust would be providing the Board with a presentation at the second meeting in April.

Legal Counsel Report

W. Parkin stated he had no report.

**Board Member
Reports**

Director Gill stated he had no report.

Director Potter pointed out that the Open Space Authority authorized the purchase of a total of 413 acres of land on this night.

Director Holtz stated she had no report.

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Director Kennett stated that he provided staff with the dates for the Earth Day event in Morgan Hill.

Director Foran stated he has a few copies of the Green Foothills newsletter for anyone who would like one.

Director Annable stated she would not be attending either meeting in April.

Director Hall stated that he attended the HCP liaison meeting the previous week. He stated that under discussion was the removal of fish from the plan, which was one of the reasons the water district was no longer involved in the plan.

ADJOURNMENT

Director Hall adjourned the meeting at 9:05 pm

Respectfully submitted by
Lauren Crook
Clerk of the Board