

**COUNCIL AGENDA:** 08-04-09  
**ITEM:** 4.5

## *Memorandum*

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Lee Price, MMC  
City Clerk

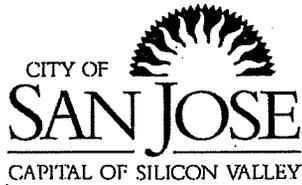
**SUBJECT:** SANTA CLARA VALLEY  
HABITAT CONSERVATION  
PLAN

**DATE:** 07-23-09

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### **RECOMMENDATION**

As referred by Community and Economic Development Committee on June 22, 2009 and outlined in the attached memo previously submitted to the Community and Economic Development Committee, review and discuss issues for the continued preparation of the Draft Santa Clara Valley Habitat Plan.



# Memorandum

**TO:** COMMUNITY & ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** June 5, 2009

Approved

Date

6/9/09

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** All

**SUBJECT: SANTA CLARA VALLEY HABITAT CONSERVATION PLAN - PROGRESS,  
STATUS & KEY ISSUES REVIEW**

## RECOMMENDATION

Staff recommends that the Committee review progress, provide comments on key issues, and recommend that the City Council review and discuss these same issues for the continued preparation of the Draft Santa Clara Valley Habitat Plan.

## OUTCOME

The Community and Economic Development Committee's and the City Council's comments and direction on the outstanding policy issues will allow staff and consultants to continue with the preparation of the Draft Santa Clara Valley Habitat Plan.

## BACKGROUND

To promote the recovery of endangered species while accommodating planned development, infrastructure and maintenance activities, the Local Partners, consisting of the City, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, Santa Clara County and the cities of Gilroy and Morgan Hill, are preparing a joint Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The Santa Clara Valley Habitat Plan (Plan) is being developed in association with the U.S. Fish & Wildlife Service (USFWS), California Department of Fish & Game (CDFG), and the National Marine Fisheries Service (NMFS) and in consultation with stakeholder groups and the general public to protect and enhance ecological diversity and function within more than 500,000 acres of southern Santa Clara County (see attached map). The final Plan will provide a framework for the Local Partners and landowners to complete projects while protecting at-risk species and their essential habitats, some of which only occur in Santa Clara County.

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In 2001, the USFWS and CDFG, as part of their approval of a series of local development projects, including the Coyote Valley Research Park project and the associated Highway 101 interchange at Bailey, required the then four Local Partners (County, VTA, SCVWD and City) to commit to undertake the habitat planning effort. The Plan was required so that local agencies could address the cumulative and indirect effects of future private and public sector development and operations projects on federal and state listed endangered species.

Subsequent discussions among the four Local Partner agencies led to a Memorandum of Understanding approved in 2004. The MOU establishes the organizational structure of the Plan effort, including the Management Team and the Governing Body Liaison Group. By 2005, the cities of Gilroy and Morgan Hill had joined, and the NMFS agreed to participate regarding endangered fish species that are under their jurisdiction. A Planning Agreement between the Local Partners and the USFWS and CDFG was approved in October 2005, at which time it was agreed that the Habitat Plan would be both a Habitat Conservation Plan under federal endangered species law and a Natural Community Conservation Plan under state law.

Detailed work on what has become known as the Santa Clara Valley Habitat Plan began in 2004 with the development of a work program and initial hiring of consultants. Jones & Stokes is the lead consultant for biological work and preparing the Plan. A 24-member Stakeholder Group, which includes, among others, landowners and representatives from environment, business, and agriculture, has been meeting monthly since November 2005. Representative Local Partner elected officials participate as part of the Governing Body Liaison Group, which meets every two months to review and provide guidance on issues to be acted on by the respective elected bodies. The Santa Clara County Open Space Authority joined the Local Partner team in 2009 and is represented on the Liaison Group and Management Team. The City has two positions on the Liaison Group, with one of those positions currently filled by Councilmember Chu, while the other is vacant. Councilmember Kalra represents the VTA Board. In addition, staff and legal counsel of the Local Partners participate in a Management Team, Advising Attorneys Group, and a combined Attorneys and Management Team.

The Santa Clara Valley Habitat Plan website is [www.scv-habitatplan.org](http://www.scv-habitatplan.org).

### **How does the Habitat Plan fit in San Jose's policy and development context?**

The Habitat Plan evaluates the likely biological impacts on special status species and their habitat from future public and private sector development activities, including operation and maintenance of public facilities. The Plan will facilitate compliance with federal and state endangered species regulations as part of future development review processes. It is important to note that the Habitat Plan does not eliminate the legal requirements for environmental review, approve any public or private development or projects, or impose any new land use regulations. Rather, in addition to identifying species that will be subject to protection under the Plan, the Plan would also provide adequate and suitable land within the County to mitigate the effects on the protected species from new development, maintain such lands, and charge fees to new development for habitat conservation.

There are various linkages between the Plan and City of San Jose policies for land use planning and development, construction and operation of public infrastructure and parks, and other land use-related activities. The Plan's emerging Preferred Conservation Strategy is consistent with and supportive of

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the San Jose 2020 General Plan Greenline/Urban Growth Boundary and Natural Resources goals and policies. The implementation of a Habitat Reserve System will reinforce existing San Jose, Morgan Hill, and County policies to not allow the extension of urban/suburban development into hillside areas. City activities covered by the Plan include operation and maintenance work that has the potential for impacting endangered species (e.g., City road bridge repair and replacement work, roadside brush clearing, City Park trail work, etc.). These activities will not have to obtain individual project specific take permits from the Wildlife Agencies if the Plan is approved by all of the local partners and the Wildlife Agencies.

The potential biological impacts resulting from the covered activities of the Plan are defined more broadly than those typically identified for CEQA purposes and include habitat impacts. Habitat impacts are addressed in terms of acres of habitat negatively impacted. The Plan estimates the anticipated number of acres impacted by public and private development projects and operations over the 50-year life of the Plan. For all analyses, results were only considered to be impacts if the activity affected *natural* land covers (i.e., land covers not already developed), or agricultural and developed natural community land covers that may have some habitat value (i.e., golf courses/urban parks).

Urban development is one of the primary impact mechanisms considered in the Plan. The major impact of new urban development is conversion from natural to developed land covers. Urban development is assumed to result in permanent direct impacts because it is assumed that complete conversion of natural land covers would occur at project sites in urban areas. Urban development will also have indirect impacts on biological resources.

The impact analysis for urban development does not attempt to discern the impact of individual, separate activities, but rather assumes that all areas within the planning limits of urban growth (City's Urban Growth Boundary) for the three cities currently designated for urban development would be fully affected, with the exception of in-stream areas, over the 50 year permit term. The estimated combined total permanent impact from urban development activities for Gilroy, Morgan Hill and San Jose is approximately 15,000 acres. Of that total, San Jose has approximately 1,400 acres of urban development impacts.

## ANALYSIS

The purpose of this item is to provide a status update regarding Plan issues of particular importance to San Jose:

1. Plan preparation schedule,
2. Implementing Entity structure options,
3. Initial Plan implementation funding,
4. Nitrogen deposition intensification impact fees, and
5. Burrowing Owl conservation strategy.

The CED Committee's and the City Council's comments and direction on the outstanding policy issues will allow staff and consultants to continue with the preparation of the Draft Plan.

## 1. Schedule

The Liaison Group was advised in April 2009 that the timeline for Plan adoption has lengthened by several months to Fall 2010 primarily to allow time for completion of information on the preferred conservation strategy and the approach to funding Plan implementation. Please refer to the latest schedule, updated March 31, 2009 (attached), which indicates the Plan is expected to be in effect by summer 2011. Local Partner staff and consultants have been actively working with Wildlife Agency staff to address and resolve significant issues identified during review of the Habitat Plan First Administrative Draft. A number of lengthy and productive working meetings have occurred and more are scheduled over the course of the summer. The Second Administrative Draft Habitat Plan, released June 2, 2009, incorporates resolution of many of the technical issues raised by the Wildlife Agencies. The Second Administrative Draft Habitat Plan is available at <http://www.scv-habitatplan.org/www/default.aspx>. The Local Partners' Management Team anticipates completion by June 11 of a Summary of the 2<sup>nd</sup> Administrative Draft Habitat Plan, which will be forwarded to the CED Committee and City Council under separate cover.

## 2. Implementing Entity Structure

The Liaison Group has scheduled a June 18<sup>th</sup> workshop on the structure of the Habitat Plan's Implementing Entity. Habitat Conservation Plans and Natural Community Conservation Plans have been implemented using a wide variety of implementing structures. The best structure is the one that is most effective in the context of local conditions, implementation strategies and organizational relationships. There is currently no recommendation from the Management Team regarding the organizational structure of the Implementing Entity. Of the five Implementing Entity organizational options, the Local Partner Attorneys and Management Team members have a preference for a Joint Powers Authority (Option 2 below) or a combination of a Joint Powers Authority and some other management authority (Option 6) that provides for a format that is acceptable to all of the local partners and is able to address all or most of the needs of the local partners on this subject. The Implementing Entity will need to approve the Habitat Plan and related documents in the last quarter of 2010. Thus the Implementing Entity should be formed and functioning by mid-2010. At this point, it is recommended that organizational decisions by all of the Local Partners be made by the end of 2009. Feedback from the June 18<sup>th</sup> Liaison Group workshop will be reported verbally at the June 22, 2009 CED Committee and forwarded to the City Council under separate cover.

The options for an Implementing Entity, which are not in any priority or other ranking, include:

- **Option 1: One Local Partner** is responsible for most or all aspects of Habitat Plan implementation. The major strengths of having a Local Partner be responsible are likely to be legal authority and stability. Potential weaknesses are possibly (1) the capacity of the organization, (2) over time the potential for the credibility of the Habitat Plan to be linked to one Local Partner rather than all the Partners, (3) inconsistent or inadequate fees that are adopted individually by the various partners, and (4) potential for decreased focus on Habitat Plan issues in the face of other organizational priorities.
- **Option 2: Form a special district** focused on implementation of the Habitat Plan. Options include a Park and Open Space District or a Recreation and Park District. The major strengths of forming a Special District to be the Implementing Entity are stability and

credibility. The primary weakness, over time, is the potential for a Special District's independent board to be perceived as not accountable to the other Local Partners. Creating a special district would be more time consuming than delegation to one Local Partner or creation of a JPA. Additionally, some special District's require state legislation to authorize formation, and would thus be subject to the uncertainties of the state legislative process.

- **Option 3: Create a Joint Powers Authority (JPA).** JPAs are usually focused, accountable and stable organizations. However, a concern has been raised that a JPA only has the powers that are shared by all the members. Research is underway regarding a JPA's legal authority given the commonality of powers found among the Local Partners. The Attorneys Group suggests that it may be advisable for the Implementing Entity to adopt the Development Impact Fee provisions to insure an adequate and uniform funding source for the entire 50 year term of the Plan that is required to be maintained in order for the Plan to be approved by the Wildlife Agencies. Otherwise, the three cities and the County would have to attempt to adopt the same fee ordinance and then attempt to make consistent updates on a regular and basis. Research is being done on the shared power issue and will be reported to the Attorney's Group, the Management Team, and the Liaison Group in the very near future.
- **Option 4: Form a private nonprofit tax-exempt public benefit corporation.** The major strengths of non-profit corporation are likely to be focus, credibility and efficiency. A weakness can be inadequate legal authority to perform all of the acts required by the Plan, including establishment of adequate fees.
- **Option 5: Create a state-chartered conservancy.** These organizations are board-governed entities within the California Resources Agency. Strengths are credibility, fundraising, focus, capacity and legal authority. Weaknesses are accountability to the Local Partners, appointments to the Board would be a state function, and the inherent efficiency issues of being a State organization. Establishment would require State legislation.
- **Option 6: Combine two or more of the five preceding options** (e.g., a public policy body such as a JPA with an active oversight role and a nonprofit organization with day-to-day implementation responsibilities, with both parts of the implementation structure making extensive use of contract resources).

### 3. Initial Funding for Valley Habitat Plan Implementation

Although costs and revenues balance over the life of the Plan, cash flow will be more tenuous in the early years of implementation before capital and operating reserves have been established. Program costs in "year zero" are estimated to be \$5.3 million, including \$3.8 million in land acquisition to be funded through grants. Fee revenues will not be available at this time. Additional funding shortfalls of \$3 to \$5 million annually are estimated for 2011-2015, depending on the specifics of the fee exemption granted for 'pipeline' and other projects. The potential also exists for funding shortfalls for several years after 2015, although an improving real estate market makes that scenario somewhat unlikely.

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The funding shortfalls forecast for the early years of Plan implementation result primarily from lower estimated private impact fee revenue during those years than the average over the life of the Plan. The following options may be employed in some combination to remedy to revenue shortages:

- a. **Deferral of land acquisition** could eliminate the funding shortfalls in even the worst of the forecast scenarios. It would not be necessarily to defer all land acquisition in any one year to achieve a balanced cash flow but some cuts may be necessary.
- b. **Monetary contributions from the Plan Partners**, similar to what is currently provided for preparation of the Plan could close some or all of the funding gap.
- c. **Prepayment of public agency impact fees** could be used to fill some of the gap. Pre-paid fees could be repaid in the form of fee credits in the future.
- d. **Reduced operating costs** in the early years would reduce the funding shortfall.

#### 4. Nitrogen Deposition Intensification Impact Fee

A key issue for the City and its customers is that the overall approach to funding the implementation of the Plan includes collection of an impact fee from urban infill projects that may not have direct sensitive species impacts, or otherwise require approval from one or more of the Wildlife Agencies for impacts to a sensitive species, a process known as 'take authorization.' The Draft Plan identifies different impact fee zones that vary based on their relative habitat value to the Plan's covered plant and animal species.

**Zone A: Natural Land.** Land is strongly dominated by natural land cover types including grassland, oak woodland, and chaparral. Zone A occurs outside the Santa Clara Valley floor within the Diablo Range and the Santa Cruz Mountains and adjacent foothills. Development in this zone is expected to have, on average, notably greater effects on covered species and natural communities than in other zones. (current estimate \$18,500 per acre fee)

**Zone B: Agricultural and Rural Residential Lands.** Land is strongly dominated by currently or formerly cultivated agricultural land. Zone B includes much of the Valley floor, lower-elevation rural residential land, and small adjacent valleys such as the Almaden Valley. In general, covered activities that occur in this area have less effect on covered species and natural communities than do activities in Zone A. (current estimate \$12,900 per acre)

**Zone C: Small Vacant Sites.** Zone C comprises specific sites that meet all the following criteria.

- Undeveloped.
- 1.0–10.0 acres in size.
- Surrounded on four sides by one or more of the following land cover types: urban/suburban, landfill, or agriculture developed/covered agricultural.

Development of these areas will result in loss of open space and some habitat values, but impacts will be substantially less than those in Zone A and Zone B because these areas are already surrounded by development. (current estimate \$4,600 per acre)

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**Zone D: Urban Infill.** The large majority of the City of San Jose is in Zone D. While the Zone A, Zone B, and Zone C development fees are based on mitigation of new development's direct impacts on specific habitat(s) (referred to as land-cover) at the site of the development project, the Zone D intensification fee is based on the indirect air pollution impacts of new development in urban intensification areas on sensitive land types elsewhere in the Plan area.

Serpentine land-covers in the Plan area are particularly sensitive to deposition of airborne nitrogen compounds generated by vehicle emissions and other sources. These nitrogen compounds enter ecosystems as nitrogen fertilizer. This increased soil fertility can favor non-native annual grasses over native plant species found in serpentine soils. One native serpentine plant species, the dwarf plantain (*Plantago erecta*) is the host plant for the Bay checkerspot butterfly, a key covered species in the Habitat Plan. Additional native plants found in serpentine soils are covered by the Habitat Plan (e.g., Metcalf Canyon jewelflower [*Streptanthus albidus* ssp. *albidus*], most beautiful jewelflower [*Streptanthus albidus* subsp. *peramoenus*], and fragrant fritillary [*Fritillaria liliacea*]). The fees would be used to acquire and actively manage serpentine-related habitat to mitigate the effects of increased nitrogen deposition from growth occurring within the Plan area.

Jones & Stokes completed air pollution simulation modeling to estimate the percentage of nitrogen deposition in the Plan habitat areas that results from air pollution emissions within the Plan area, as opposed to air pollution that is transported from other regions to the Plan area. The modeling estimated that 46% of nitrogen deposition on habitat areas comes from existing development and vehicle traffic generated locally. The Plan area share of nitrogen deposition on habitat areas is estimated to increase to 49% in 2035 and 51% by the end of the permit term in 2060.<sup>1</sup> Based on these figures, 50% of the Habitat Plan costs related to mitigating nitrogen deposition impacts are allocated to development in the Plan area through the Zone D intensification fee. Other funding sources will be used to deal with the air pollution that is transported from other regions to the Plan area.

The Zone D Intensification Fee of \$6.17 for each new average daily vehicle trip (ADT) has been included in the Plan. Zone D comprises expansion of existing public and private sector uses and all new development of undeveloped or vacant sites within urban/suburban areas that are less than 1.0 acre. Development on these sites is assumed to increase the number of vehicle trips, thereby increasing the amount of nitrogen-based pollution that affects natural habitat areas. The fee per vehicle trip was determined based on the Plan area's share of the total costs related to mitigating nitrogen deposition impacts and the projected growth in vehicle trips during the permit term. In the rare case that the Zone D fee, calculated on a per trip basis, would exceed the \$4,600 Zone C per acre fee, it will be capped at the Zone C level.

The fee, which is to be a one time payment, for this type of development is to be based on the increase in average daily vehicle trips from the site. This fee would be approximately \$62 for a new single family house and \$43 for a new multiple family unit. Non-residential uses (e.g., office, warehouses, public facilities, retail) would be less than \$0.10 per square foot for most uses and approximately \$0.40 per square foot for new retail uses.

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<sup>1</sup> Jones & Stokes. 2008. Estimation of Contributions to Deposition of Nitrogen in Santa Clara County for the Santa Clara Valley Habitat Plan. Draft. December. (ICF J&S 05489.05.) Sacramento, CA.

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Local jurisdictions would determine the number of vehicle trips, based on the average daily vehicle trip (ADT) rates used for traffic impact assessments, generated by each new development project and the resulting Zone D fee. Using average daily vehicle trips as the basis for calculating the fee will insure that transit oriented development and other lower vehicle trip generating uses will pay correspondingly lower fees. Over the 50 year Plan term, as cities adopt and implement new General Plans and Climate Action Plans that result in changing travel mode splits with an increasing share of non-auto trips, reductions in vehicle miles traveled (VMT) and ADT, cities will have the ability to adjust ADT rates for land uses accordingly.

Staff has conveyed to the Management and Liaison Group the City Council's previously stated concerns regarding such a proposed "intensification fee." Planning staff and the City Attorney's Office have reviewed and provided comments on the modeling that forms the basis for the proposed intensification fee and believes that in the current model there is a legal nexus to development in the City and throughout the County to support collection of the Zone D fee to fund the Plan's conservation activities related to serpentine land-cover habitat. In the absence of such a fee, it is unlikely the Plan could fund the conservation activities necessary to cover the serpentine-related plant and animal species. If the Plan does not cover those endangered species, the Wildlife Agencies would expect new development to mitigate for nitrogen deposition impacts on a per project basis, which would be impractical in most instances. If not addressed in the Habitat Plan, the City can expect to face this issue as part of the Envision San Jose 2040 General Plan Update process. Staff believes it would be advantageous to have it dealt with as part of the Habitat Plan.

An additional reason for the collection of this fee is anticipation that State policies on climate change and sustainable development will include mitigation of impacts of new development on habitat and endangered species. Accordingly, the Zone D intensification fee could meet all or some of the mitigation requirements of future global warming policies and regulations. State policies and regulations have recently been adopted (e.g., California AB 32 and SB 375) or proposed (e.g., modifications of the California Environmental Quality Act) that encourage and in some cases require local jurisdictions to address land use development policies and project specific approvals in ways that minimize urban expansion and mitigate global warming-related impacts on the environment.

State officials have cited preparation of a Natural Community Conservation Plan (NCCP), which is part of the Habitat Plan, as a positive response to sustainable land use policies, as well as a source of mitigation for development impacts on species and natural habitats. Preparation of the Draft Habitat Plan will include and identify Plan elements that can be applied to broader State land use policies and regulations regarding climate change. Opportunities to use the Habitat Plan to address applicable Federal policies and regulations, in addition to the Endangered Species Act, will also be sought.

## **5. Burrowing Owl Conservation Strategy**

The last major issue for the City is the significant challenges around developing an acceptable and viable conservation strategy for the Burrowing owl (owl). The owl population in the South Bay has declined rapidly in the last several decades, and the species is anticipated to become listed under the California Endangered Species act in the foreseeable future. Including mitigation and coverage for the owl has been a goal of the City and the Wildlife Agencies, particularly CA Fish and Game, from the beginning of this planning effort. Unfortunately, because target conservation areas are relatively few in number and high in cost, their availability in the short term is questionable and present a high

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hurdle for provisions of the Plan which require that mitigation and conservation measures occur ahead of covered activities' impacts to ensure owl populations don't decline further. Discussions with Wildlife Agency staff have focused on the potential for conservation of owl habitat outside of, but adjacent to, the Plan area, recognizing that limited habitat remains within the largely urbanized northern portion of the Plan area where the owls are concentrated.

The owl issue is significant to the City because the Mineta International Airport and the Water Pollution Control Plant (WPCP) buffer lands are the two remaining significant owl habitats present in San Jose. The development of a more viable and certain owl conservation strategy potentially utilizing the WPCP buffer lands is constrained by the master planning process that is in its relatively early stages. The situation is further complicated by the various competing visions for the long term use of the buffer lands. City staff and the Habitat Plan staff and consultants have had numerous coordination meetings on this issue and will continue to do so. Neither the Airport Master Plan expansion project, nor the WPCP Master Plan expansion project are covered activities under the Habitat Plan. The achievement of a feasible owl conservation strategy will be a high priority the remainder of 2009 as the Habitat Plan process continues.

#### EVALUATION AND FOLLOW-UP

In Fall 2009, the Draft Habitat Plan and Environmental Impact Report/Environmental Impact Statement (EIR/EIS) are expected to be released for public review and comment. Discussion of this status report before full City Council is anticipated in early August 2009. Additional progress reports to the Council may be provided as necessary and prudent for the timely public release of the draft documents.

#### POLICY ALTERNATIVES

Not applicable.

#### PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

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Although this item does not meet any of the above criteria, the Habitat Plan's public outreach program has been thorough. In addition to monthly Stakeholder Group and bi-monthly Liaison Group meetings, several public meetings have been held since initiation of the Plan. Additional extensive outreach will be undertaken in conjunction with the public circulation of the Draft Habitat Plan and the accompanying EIR/EIS in Fall 2009. Future opportunities for community involvement will be posted at [www.scv-habitatplan.org](http://www.scv-habitatplan.org).

### **COORDINATION**

The Valley Habitat Plan is being coordinated with the Departments of Environmental Services, Parks, Recreation and Neighborhood Services, Public Works, Aviation, and Transportation, City Attorney, County of Santa Clara, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, the cities of Morgan Hill and Gilroy, USFWS, NMFS, and CDFG. This memorandum was coordinated with the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

The Valley Habitat Plan is consistent with applicable San Jose 2020 General Plan policies, particularly the Greenline/Urban Growth Boundary Major Strategy and the Natural Resources goals and policies.

### **COST SUMMARY/IMPLICATIONS**

Per the Local Partner MOU, the City is responsible for a 20% cost share to prepare the Plan. The City's share of the projected consultant costs for the remaining process to complete the Plan is \$147,701, specifically \$89,631 in FY09/10 and \$58,070 in FY10/11, assuming Plan adoption by the end of 2010. Additionally, PBCE devotes staff time equivalent to a 0.5 FTE Planner I/II position to participate in Plan preparation process, with an annual cost of \$67,230.

The funding shortfalls forecast for the early years of Plan implementation result primarily from lower estimated private impact fee revenue during those years than the average over the life of the Plan. To address the early funding shortfall, the Local Partners may need to loan the Implementing Entity 'start-up' money, and/or consider prepayment of fees to cover public sector activities covered by the Plan.

COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE

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CEQA

This "review" is not a project under CEQA. An Environmental Impact Report/Environmental Impact Statement is being prepared for the Habitat Plan and will be publicly circulated in late 2009 in conjunction with public review of the Draft Habitat Plan.

  
JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Akoni Danielsen, Principal Planner, at 408-535-7823.

Attachment

c: Ken Schreiber, Program Manager, SCVHP  
David Zippin, Jones & Stokes



WORKING DRAFT PROJECT SCHEDULE		SANTA CLARA VALLEY HABITAT PLAN																																			
		UPDATE TO MARCH 31, 2009												2010												2011											
		2008						2009						2010						2011																	
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
<b>HABITAT PLAN</b>																																					
1. Refine Policies/Issues for Elected Bodies	DONE																																				
2. Elected Body Reviews	DONE																																				
3. Liaison Group Directions	DONE																																				
4. FAHCE Covered Activity Defs and Impacts																																					
5. Prepare Admin Draft 1 Habitat Plan	DONE																																				
6. Wildlife Agency Staff Review Period																																					
7. Prepare Admin Draft 2 Habitat Plan																																					
8. Local Partner Elected Body Funding, Fees & Other Issues Review																																					
9. Wildlife Agency and Local Staff Review Period																																					
10. Prepare Public Draft Habitat Plan																																					
11. Publish Notice in Federal Register																																					
12. Public/Agencies Review Period (90 days)																																					
13. Prepare Final Habitat Plan																																					
14. See Approval process steps 1, 3 and 6																																					
<b>EIR/EIS</b>																																					
1. Scoping	DONE																																				
2. Prepare Working Draft																																					
3. Wildlife Agency and Local Staff Review Period																																					
4. Prepare Admin Draft																																					
5. Wildlife Agency and Local Staff Review Period																																					
6. Prepare Public Review EIR/EIS																																					
7. Publish Notice of Availability in Federal Register																																					
8. Public CEQA Notice of Availability--Local Partners and CDFG																																					
9. Public/Agencies Review Period (90 days)																																					
10. Prepare Final EIR/EIS																																					
11. Publish Notice of Final EIS, Habitat Plan and IA Availability in Federal Register																																					
12. Publish CEQA Notice of Determination--Local Partners and CDFG																																					
13. 30 day public review period																																					
14. See Approval Process steps 1, 3 and 6																																					
15. Federal Prep and Pub of Record of Decision (ROD)																																					
16. 30 day CEQA challenge period																																					
<b>IMPLEMENTING AGREEMENT</b>																																					
1. Prepare 1st Admin Draft IA																																					
2. Prepare 2nd Admin Draft IA																																					
3. Prepare public draft IA																																					
4. Federal Register Notice																																					
5. Public/Agencies Review period (90 days)																																					
6. Prepare Final IA																																					
7. See Approval Process steps 1, 3 and 7																																					
<b>APPROVAL PROCESS</b>																																					
1. Local Partners Approval of Final Plan, Final EIR/EIS and Final IA--County First re EIR Certification																																					
2. Establish Implementing Entity																																					
3. Implementing Entity approves Final Plan, EIR/EIS and Implementing Agreement																																					
4. See EIR/EIS steps 11, 12 and 13																																					
5. Implementing Entity adopts fees																																					
6. Local Agencies Adopt Imp Ordinances																																					
Hold for TBD State Parks and Recreation action																																					
7. Wildlife Agencies Approval of Plan, EIR and EIS and IA																																					
8. FG Findings Preparation																																					
9. FWS Biological Opinion Preparation																																					
10. NMFS Findings/Opinion																																					
11. Permits Issued by FWS and NMFS																																					
12. Permits issued by CDFG																																					
* 3 Creeks HCP folded into Vallev HP																																					

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

Blue is Wildlife Agency review and action

COMPLETION BY JULY UNLESS ELECTED BODY VACATION IN JULY  
ISSUES RESOLVED BY END OF JULY, TEXT RESOLUTION BY AUGUST

Matt: Simpler process than first Fed Reg notice so 2 months should be OK

Do Was need local Plan approvals in place before ROD published?

OR Local partner decision re before or after Permits received

CAN PERMITS BE ISSUED BEFORE CEQA CHALLENGE PERMIT IS OVER?  
Permit Issued after CEQA Challenge Period Is Over--Step EIR 16

## SUPPLEMENTAL

PSFSS Committee 06-18-09 Item 3.2  
City Council June 30, 2009

June 16, 2009

Sharon W. Erickson  
City Auditor  
City of San Jose  
200 E. Santa Clara Street, W353  
San Jose, CA 95113

Dear Ms. Erickson

The Office of the City Auditor has recently completed an audit of the San Jose Conservation Corps & Charter School. The audit describes findings and recommendations to improve the City's controls (accounting) and the Corps' accounting practices. The audit also recommends that the City pursue reimbursement of certain funds, which the Corps disputes.

During our meeting on June 4<sup>th</sup> with your office and the Deputy City Manager we identified an alternative path to modify and restate our financial statements which will result in a different outcome. In response to the Audit recommendations, the Board of Directors of the San Jose Conservation Corps & Charter School presents the following action plan in order to continue the long history of partnership between the City of San Jose and the Corps in the education and job skills training of at-risk youth.

- We will revise and amend the California Department of Conservation (DOC) fourth quarter reports for four years with documentation of DOC's acceptance of the amended reports for the four years ended June 30, 2005, 2006, 2007 and 2008.
- We will work with the City Auditor's and City Manager's offices to adjust and restate the San Jose Conservation Corps' internal financial statements for those areas and cost centers affected for the four years ended June 30, 2005, 2006, 2007 and 2008 within 60 days. The adjusted internal financial statements will be supported with alternative and/or supplemental documentation.
- We will work with the City Manager's office in developing a Master Agreement and/or Individual Department Agreements that address existing concessions, sole source servicing, allowable and unallowable direct and indirect cost, an indirect cost rate, and an hourly rate.
- We will work with the City Manager's office in the completion of an organization assessment; using the QLBS model of performance.
- All priority 3 items as recommended by the Audit Report will be addressed and/or implemented within 60 days.
- We will arrange for a six-month review with the City Manager's office on the implementation of control and accounting practices in compliance with Audit recommendations.

The Board of Directors of the San Jose Conservation Corps respectfully requests the acceptance of the Corps' action plan.

Respectfully Submitted,

Rich De La Rosa  
Board President

Mark Lazzarini  
Board Member

Scott Yoo  
Board Vice President

Robert J. Hennessy  
Executive Director