

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

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

**SUBJECT:** SEE BELOW

**DATE:** 07-22-10

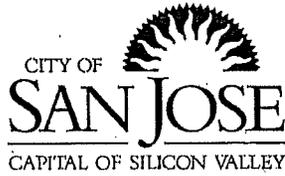
---

**SUBJECT: SANTA CLARA VALLEY HABITAT CONSERVATION PLAN –  
STATUS REPORT**

## RECOMMENDATION

As recommended by the Community and Economic Development Committee on June 28, 2010 and outlined in the attached report previously submitted to the Community and Economic Development Committee, accept the status report and the following staff recommendations regarding consideration of the draft Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Plan or HCP/NCCP):

- (a) Continue to work with Wildlife Agencies to ensure feasible and reasonable requirements are identified in the HCP/NCCP, including but not limited to financial obligations;
- (b) Continue to ensure that the costs incurred to meet the Plan requirements as adopted by the partner agencies are less than or equal to the benefits of the Plan;
- (c) Continue to ensure that the Draft Plan does not put the City's General Fund at risk for being responsible to fund Plan implementation in the absence of development fees or other assumed revenue sources; and
- (d) Continue to be diligent in the review and comment of non-local partner agencies' CEQA documents with regard to direct and indirect impacts on the Plan area from projects outside the Plan area, and encourage the Wildlife Agencies to do the same.



# Memorandum

**TO:** COMMUNITY & ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** JOSEPH HORWEDEL

**SUBJECT:** SEE BELOW

**DATE:** June 11, 2010

Approved

Date

6/15/10

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

**SUBJECT: SANTA CLARA VALLEY HABITAT CONSERVATION PLAN - STATUS  
REPORT**

## RECOMMENDATION

Staff recommends that the Committee:

1. Accept the status report and the following staff recommendations regarding consideration of the draft Santa Clara Valley Habitat Conservation Plan/ Natural Community Conservation Plan (Plan or HCP/NCCP).

- Continue to work with Wildlife Agencies to ensure feasible and reasonable requirements are identified in the HCP/NCCP, including but not limited to financial obligations;
- Continue to ensure that the costs incurred to meet the Plan requirements as adopted by the partner agencies are less than or equal to the benefits of the Plan;
- Continue to ensure that the Draft Plan does not put the City's General Fund at risk for being responsible to fund Plan implementation in the absence of development fees or other assumed revenue sources; and
- Continue to be diligent in the review and comment of non-local partner agencies' CEQA documents with regard to direct and indirect impacts on the Plan area from projects outside the Plan area, and encourage the Wildlife Agencies to do the same.

2. Cross reference the item for consideration by the City Council.

June 11, 2010

Subject: Santa Clara Valley Habitat Conservation Plan

Page 2

## OUTCOME

Comments and direction from the Community and Economic Development Committee and the City Council 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), 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 Santa Clara County. If adopted by all of the local partners, 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.

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

### City's Obligation

In 2001 the City committed to participate in the preparation of a draft habitat plan at the behest of the USFWS and CDFG. 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 preparation 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. The City's obligation is limited to Plan preparation. The City is under no obligation to ultimately adopt the Plan; however, to not adopt the Plan would have consequences for future activities that require federal or state permits.

## ANALYSIS

The purpose of this memorandum is to ask the CED Committee to consider several important issues in regard to the most recent version of the Draft Plan. These issues have also been identified by staff and legal counsel for most of the Local Partners. The CED Committee's, and ultimately the City Council's comments and direction on the policy issues, will allow staff and consultants to continue with the preparation of the Draft Plan. Staff is analyzing the following questions and will return with formal recommendations in August.

1. Does the balance between the proposed Plan structure and scope, and projected implementation cost, meet the needs of the City, particularly with the inclusion of NCCP species recovery requirements? Is there benefit for the City's public projects equal to Plan costs?
2. Is there the potential that the City's General Fund may need to contribute funding to implement the Plan over the short and long term of the Plan? Is any general fund participation acceptable?
3. Would the City support use of publicly owned land in the City for the Burrowing Owl conservation strategy?
4. What strategy should the City adopt relating to Burrowing Owl habitat on City owned/controlled lands?

### **1. Scope of the Draft Plan**

The Draft Santa Clara Valley Habitat Plan is essentially two permit related documents with different but complementary purposes integrated into one document. The first is a Habitat Conservation Plan (HCP) prepared to comply with the requirements of the Federal Endangered Species Act. The second is a Natural Community Conservation Plan (NCCP) prepared to comply with the California Natural Community Conservation Planning Act. Both approaches evaluate 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. Specifically with regard to the Santa Clara Valley Habitat Plan, the adoption of the Plan by all of the local partners and the approval of the Plan by the federal and state wildlife agencies would mean that all development within the Plan area that would otherwise require individual permits from these agencies, would be able to develop in accordance with the HCP/NCCP without having to obtain individual "take" permits for those species covered by the Plan.

For the purposes of this discussion, it is important to note that there is a key distinction between the requirements for the HCP under federal law and the NCCP under state law. The HCP approach is more akin to a typical CEQA/EIR document in that it identifies the potential impacts to federally listed species (commonly referred to as "take") and the mitigation measures to be taken by the applicant to mitigate impacts and funding for those measures. One of the major benefits of an HCP is the pre-determined programmatic mitigation approach, which should avoid the need to address mitigation on a project-by-project basis. The NCCP approach goes a step further than the HCP in that in addition to the consideration of impacts, mitigation measures, and funding, the program must contribute to the recovery of species at a regional level through the creation and preservation of habitat reserves. The recovery typically requires actions to offset existing conditions that have resulted in the species being listed as endangered.

This distinction is important with regard to funding the implementation of the Plan because of limitations on different types of funding sources depending on whether they are used for mitigation or recovery activities that exceed project specific impacts.

### **2. Cost and Benefit of Plan Implementation**

All of the Local Partners are undertaking analysis to assess whether the benefits of ultimately adopting the Plan will outweigh the implementation costs for each agency individually. The benefits of the Plan have been identified and discussed for some time, particularly with regard to private

development. It is now possible to perform more complete cost/benefit analysis of Plan implementation because more solid cost estimates have been developed. Key to this analysis is a better understanding of the potential benefits and costs to public projects with Plan implementation. Staff has begun a cost/benefit assessment and will bring forward results later this summer.

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 anticipated 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, such as nitrogen deposition from vehicular traffic and certain land uses. One issue for the City is that recently less than 1% of all public and private projects have resulted in impacts that would require a USFWS or CDFG endangered species take permit.

### **3. Would the General Fund be at Risk?**

The City is seeking clarification on whether or not the City's General Fund could potentially be at risk in the event that anticipated development fee revenue is insufficient to comply with the "stay ahead" provisions of the Plan. This is a potential scenario given the current economic climate and extremely slow pace of development activity. This issue is fundamentally a policy issue as to whether the use of any general fund monies for the implementation of the Plan over its 50 year term is acceptable to the City and what the potential financial risks of that obligation may be. The plan is being further reviewed in this light by the management team and the attorney team representing all the Local Partners. Staff will provide additional information on this issue in August. The direction of staff has been that the Local Partner General Funds cannot be put at risk with the Plan requirements.

### **4. Burrowing Owl Strategy**

The latest version of the Western Burrowing Owl (WBO) conservation strategy is based on the use of existing public lands. A conservation strategy that focuses on acquisition of new land at the land values in the WBO area is not considered economically feasible by the Local Partners to date because it would result in a \$150,000,000 to \$250,000,000 land acquisition budget over the 50 year life of the permit. The use of public lands approach assumes that the public lands are less valuable than private land. This is a key policy issue for the City as several of the identified sites are owned or controlled by the City. The currently identified City sites are the San José-Santa Clara Water Pollution Control Plant, San José Norman Mineta International Airport, particularly the "VOR" site, and areas of the Guadalupe Gardens just south of the Airport. The City will need to determine whether the land listed should be committed to WBO mitigation and recovery and, if so, whether the land acquisition costs in the Plan related to these San Jose properties are reasonable. Staff has a strategy to work through this issue internally with stakeholder departments and will return with analysis and a recommendation in August.

The remaining alternative to the WBO Conservation Strategy is to do project by project permitting with the key link being the results of the CEQA analysis and review as is done today. For foraging land, required mitigation is likely to be low to moderate, but for sites with recent nesting history, mitigation is assumed to be more extensive and costly. At this time, it is unknown how future

June 11, 2010

Subject: Santa Clara Valley Habitat Conservation Plan

Page 5

environmental impact analyses and processes will be required to address WBO including if CDFG will treat the reduction of foraging habitat within one-half mile of a nesting site that is deemed critical to the survival of the species. If that were to occur, requirements in excess of the WBO Conservation Strategy should be assumed.

### EVALUATION AND FOLLOW-UP

In early Fall 2010, 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 2010. Additional progress reports to the Council may will be provided as necessary and prudent for the timely public release of the draft documents. Staff will keep the Council informed about the status of on-going Zone D fee analysis and discussions prior to the circulation of a public draft of the Plan.

### POLICY ALTERNATIVES

Not applicable. The four questions are each policy alternatives that are being studied and returned to CED Committee and City Council with additional analysis and staff recommended actions.

### 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)**

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. Future opportunities for community involvement will be posted at [www.scv-habitatplan.org](http://www.scv-habitatplan.org).

June 11, 2010

Subject: Santa Clara Valley Habitat Conservation Plan

Page 6

### **COORDINATION**

The Valley Habitat Plan is being coordinated with the Departments of Environmental Services, Parks, Recreation and Neighborhood Services, Public Works, Airport, 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 proposed FY 2010-11 Budget includes \$167, 595 for the City's share of the projected consultant costs. PBCE currently devotes staff time to participate in the Plan preparation process, with an annual cost of \$67,230 and significant time from the City Attorney's Office to support the Plan.

### **CEQA**

This status report 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 conjunction with public review of the Draft Habitat Plan.

/s/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Darryl Boyd, Principal Planner, at 408-535-7898.