



Memorandum

TO: MAYOR & CITY COUNCIL

FROM: Vice-Mayor Nguyen
Councilmember Campos
Councilmember Liccardo
Councilmember Rocha

SUBJECT: Draft Santa Clara Valley
Habitat Conservation Plan

DATE: October 12, 2012

Approved *[Signature]* *Madison Nguyen* *Don Rocha* Date
v.v. *San Liccardo* *p.c.* 10/12/12

RECOMMENDATION:

Accept Staff's Report, and hear public comments. After Council deliberation, defer the October 23rd Council hearing date to December 4, 2012. On that date, return to Council for action on the Plan, having addressed the following concerns, including those raised in Mayor Reed's memorandum and from the development community, as follows:

1) Single Permit

(a) Return with a written statement—via letter, MOU, or other formal communication—from the leading staff of the Army Corps of Engineers that expresses that agency's unequivocal intent to incorporate its permit requirements within the Valley Habitat Plan ("Plan") regional permit upon the adoption of the Plan, so as to provide developers and public agencies with a single, seamless approach to permitting.

(b) Inform the Council of:

(1) the impacts of the October 28, 2012 issuance of the California Water Quality Control Board's new draft regulations on permitting requirements by the two regional Water Quality Control Boards on wetland development.

(2) whether regional water quality boards will ever agree to grant a regional (as distinguished from a "project-specific") permit.

2) Agreements and Entitlements

Inform the Council of the (a) the number, scope, and nature of existing Agreements in which the City has participated that could be affected by the Plan ; (b) the legal risks and costs to the City in imposing additional fees after the signing of such Agreements.

Offer a staff recommendation as to whether land subject to Wildlife Agreements and/ or Development Agreements should be exempted from the Plan by virtue of an expanded definition of "pipeline" projects.

3) Defining the Pipeline

Offer alternatives for the definition of the "pipeline" for fully-entitled development projects, and provide council with concrete examples of projects that would lie on each side of the proposed dividing line (i.e, within the pipeline, and outside of it).

Inform the Council of the cost of (a) additional outreach with development and environmental communities to refine the definition of "pipeline projects," and (b) additional consultant and agency work to recirculate the EIR and secure partner approvals if the Plan is amended to incorporate an alternative definition.

4) Countywide Fees

Return with an executable plan for the imposition of fees for habitat and nitrogen deposition countywide in future years. Such a Plan might include, for example, a VTA commitment to condition future receipt of discretionary ABAG transportation funding (in funding cycles after 2013) on the implementation of a fee schedule commensurate with the Plan.

The Plan should include an estimate of the costs and schedule for the expansion of a nexus study to incorporate other cities in the County.

5) Airport

Exempt the San Jose Norman Y. Mineta International Airport from the requirements of the Plan.

Evaluate and report on the feasibility of adjusting fee and mitigation calculations to credit the City of San José for burrowing owl habitat already provided near the Airport, in the Guadalupe River Park, and at the Water Pollution Control Plan buffer lands.

6) Governance

Evaluate the expansion of the Governing Board of the JPA to ensure more proportional representation of San José. Specifically consider, whether allowing two elected officials sitting on the Board of the Valley Transportation Authority (where those elected officials emanate from jurisdictions that participate in the Plan) will suffice to address this concern.

7) The Cost of Doing Nothing

Attempt to quantify the cost, within a reasonable range—including the fee burdens, delay, and litigation relating to compliance with the Endangered Species Act, the Natural Community Conservation Planning Act, and California Environmental Quality Act -- for a developer of a future typical residential or office project if the City *fails to adopt* the consolidated-permit approach of the Plan.

Include any description of the likelihood of obtaining necessary federal and state permits to move forward on major public projects—such as the planned renovation and expansion of the Water Pollution Control Plant--absent an adopted Plan.

8) Additional Funding

Inform the Council of the additional cost to the City of San José for the additional work contemplated above, if it causes (a) recirculation of the EIR, and/or (b) a need for re-adoption of the Plan by partner agencies.

DISCUSSION:

The concerns raised by the Mayor and by many in the development community about the consequences of San José's adoption of the Valley Habitat Plan deserve serious study. Nonetheless, the Council also needs to fully understand the costs of doing nothing—for the business community, for the taxpayers, and for the environment.

By seeking additional information for a full vetting on December 4th, we do not pretend to be able to resolve all of the concerns raised, but merely to squarely address them. Indeed, many of the concerns cannot be resolved for many years (given the duration required to conduct a nexus study for a nitrogen deposition fee in the North County, for instance), or at all, in the case of intractable regional water control boards.

We seek to find a path for moving forward, but without imposing the kinds of requirements that would result in many years of delay. Let's fully understand what changes we can and cannot affect in the political, economic, and legal landscape, and make a more fully-informed decision on December 4th. In the meantime, we appreciate the hard work of HCP staff, the Planning Department, and the astute insights of advocates on all sides of this issue.