



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Councilmember Ash Kalra

**DATE:** October 16, 2012

**SUBJECT:** SANTA CLARA VALLEY HABITAT CONSERVATION PLAN (HCP)

Approved

Date 10/16/12

## RECOMMENDATION

Move forward to approve the latest version of the Santa Clara Valley Habitat Conservation Plan (HCP) and direct staff to begin working with local partners to implement the HCP.

## BACKGROUND

The HCP has been a joint effort by multiple agencies including the County of Santa Clara, the Santa Clara Valley Water District, the Santa Clara Valley Transportation Authority, the City of Gilroy and the City of Morgan Hill. In addition to the assistance of these local partners, the U.S. Fish and Wildlife Service, California Department of Fish and Game, and National Marine Fisheries Service have also lent their services to help formulate this plan over the past eight years.

## ANALYSIS

Through its revisions, the HCP has been streamlined into a plan that would effectively influence habitat conservation and planning efforts in the Santa Clara Valley for the next 40 years. Local partners, along with many business owners, residents and preservation groups have been waiting in limbo with the expectation that the City will begin implementation of the HCP since its early inception. Once adopted, the plan has the flexibility to be easily amended and customized to fit the ongoing needs of local partner agencies and other local agencies as they adopt the plan in the near future while holding everyone to the same basic standards.

### Costs of Not Implementing

A real life example of the stark costs of not implementing a multijurisdictional HCP such as what we have before us is found with the City of Desert Springs. During the final approval stages of the Coachella Valley Multi-Species HCP (CVMSHCP), the City of Desert Hot Springs pulled out of the plan. As a major stakeholder in the plan, the costs of not implementing were enormous:

- It cost the other partners \$1 million to redistribute the EIR.
- The partners and permit holders lost revenue from fees they could have been collecting during the extra time it took them to get the revised documents adopted.

By late early 2009, the City Desert Springs reversed its position and asked local partners to be brought back into the HCP. The increase costs associated with this included:

- A cost to the City of Desert Hot Springs of approximately \$350,000 for a supplemental EIR.
- Local partners shouldered the costs of staff time necessary to amend their plan in order to reintegrate Desert Hot Springs, at the cost of approximately \$500,000.
- Whereas Desert Hot Springs was previously in the final stages of HCP approval, it is now estimated that it will take nearly 2 years to amend and incorporate them into the plan.

Yet another example that is closer to home comes by the City of Antioch. Antioch left the East Contra Costa HCP early on in the development processes. Due to their early departure, their HCP partners were able to go on without much cost to them. However, Antioch is now weighing the costs of establishing their own HCP which would require:

- Reapplication of Section 6 grants from the Federal Government, as they no longer have the funds and local partnership support to implement a HCP.
- Utilization of the common implementing agency used in the Contra Costa County HCP in order to formulate an Antioch specific HCP.

Although Antioch chose to opt out early on, the Contra Costa HCP had the flexibility (much like the Santa Clara Valley HCP) to opt in on a project by project basis. However, this came at a greater expense than it would have been to have just originally adopted it. Antioch's choice to depart from the area HCP now requires them to pay the conservation fees, courtesy fees and permit fees.

In addition to the outright increase in structural costs and forfeiture of federal grants associated with delaying the implementation of the HCP as demonstrated by Desert Hot Springs and Antioch, local partners were severely burdened. The City of San José would face similar cost repercussions if this plan is delayed. By not becoming a permittee, San José could be at a competitive disadvantage to other participating agencies because of the streamlined permitting process. Furthermore, not taking the lead now would put San José at risk of being out of compliance with the Endangered Species Act and open to fines and possible environmental litigation.

#### Removal of Competitive Burdens for Business

During the drafting phases of the HCP, discussion with local partners, environmental groups, residents, and local businesses helped model what the plan now represents. Many changes were made at the behest of the business community. This included:

- Downsizing processing fees for permits, and reducing other associated administrative costs substantially.
- Removal of several protected species from the plan, allowing for a streamlined and categorized approach to development.
- Allowing for inclusion of and adaptation to new agencies and partnerships in the valley. Participating special entities such as PG&E, BART, Caltrans, and others can opt into the fee schedule, as their projects take place within the study area.

Other local agencies that chose to not participate in the HCP will force developers to shoulder the cost of their own environmental plans, whereas San José's and other HCP participants will already

have a streamlined approach; thereby eliminating hours upon hours of additional staff processing time, and additional costs to the developer.

### Advantages to San Jose

Accepting and implementing the HCP has a multitude of benefits to the City of San Jose:

1. Clear alignment with current Green Vision Goals and Legislative Guiding Principals including:
  - a. Environmental Stewardship – Establishing San José as a local, regional, and statewide model for responsible management of resources.
  - b. Promote Livability, Sustainable Development, and Environmental Protection – Protect the environment through conservation and, preservation of natural resources, habitat, and improving the health of local watersheds
  - c. Promote Livability, Sustainable Development, and Environmental Protection – Promotes research, development, production and procurement of environmentally preferable goods, services, and transportation.
  - d. Promote Livability, Sustainable Development, and Environmental Protection – Supports new legislative or regulatory initiatives to develop environmental regulations and standards that consider cross-media transfer of pollutants from one medium to another and cross media impacts (e.g. shifting impacts from water to soil or air)
2. Continues the City's dedication to its ongoing protection of burrowing owl habitats, in addition to the wildlife management efforts of other protected species.
3. The HCP will address past permits and streamline future development permits for the public and private sector in the study area.
4. The plan will solidify the amount of time and costs associated with development in areas that affect endangered species. This will improve the quality of service in the development process, while minimizing our financial responsibility by utilizing federal, state and private foundation dollars.
5. Adopting the HCP will open up the implementation dialogue amongst local partners. This provides us with the opportunity to:
  - a. Provide input and establish plan criteria to ensure that the HCP is fair and equitable for San José government and businesses.
  - b. Work collaboratively to make certain that the plan is attractive to future partners and local agencies, while achieving the conservation goals and development needs of the Santa Clara Valley.

## **CONCLUSION**

Adopting the HCP will solidify regulations that have been up in the air for years, and provide cost certainty to those looking to develop and build in the region. Because of the joint contributions brought forth by local partners and grant opportunities, the City has minimized its financial responsibility to adopt the plan.

It is my hope that after eight years of hard work, staff time invested, and the solid support from local agencies and environmental groups alike, we may finally demonstrate our commitment to the planning and preservation of the Santa Clara Valley by adopting the HCP. With minimal financial investment on behalf of the City, we will affirmatively influence the outlook of our Valley's natural resources and developing growth for generations to come.