



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: December 4, 2012

Approved

Date

12/4/12

SUPPLEMENTAL

SUBJECT: PUBLIC HEARING ON THE APPEAL OF THE PLANNING COMMISSION'S CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT FOR THE SANTA CLARA VALLEY HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN.

REASON FOR SUPPLEMENTAL

Subsequent to distribution of the prior staff report on this subject, staff was asked to address the issue of potential environmental impacts resulting from an increase in development costs for projects within San José subject to the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan.

ANALYSIS

Because adoption of Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan) would require payment of a Habitat Plan fee for particular land use development projects, a speculation has arisen that this fee requirement could divert development activity from San José into other jurisdictions within Santa Clara County or the State, resulting in a potential environmental impact that was not duly analyzed as part of the Habitat Plan Environmental Impact Report (EIR).

As previously presented to the City Council, analysis conducted in connection with the Habitat Plan, including the Comments and Responses included within the Final EIR, addresses this issue and indicates that adoption of the Habitat Plan is not expected to result in such a diversion of land use development activity, but rather to facilitate development for areas covered by the Habitat Plan as follows:

December 4, 2012

Subject: Santa Clara Valley Habitat Plan EIR Certification

Page 2

1. Fees collected under the Habitat Plan will generally be paid by development projects which would have direct impact upon covered species, which would otherwise be subject to the processes, agreements and/or mitigation requirements imposed by the Wildlife Agencies (U.S. Fish and Wildlife Service, California Fish and Wildlife Department, National Marine Fisheries Service and potentially the Army Corps of Engineers and the Regional Water Quality Control Board) and those processes, agreements or mitigation measures would be equally or potentially more expensive than payment of the proposed Habitat Plan fees. If not for Habitat Plan fees, such projects would be required to provide mitigation on a project-by-project basis requiring additional time to obtain permits and potentially additional financial and other resources as well.
2. Experience in other jurisdictions which have adopted a habitat Plan indicates that adoption of a habitat plan promotes land use development activity in areas covered by the plan by providing a streamlined review process and fixed, readily identified mitigation measures for projects which have environmental impacts.
3. The Habitat Plan contains one fee (Nitrogen Deposition impact fee) which could be broadly applied to land use development projects that might not otherwise be subject to review by the Wildlife Agencies, but the Habitat Plan does not preclude the City and its Local Partners from identifying alternative sources of funding for this fee. Even if the fee is funded entirely by new development projects, the fee amount would be extremely small compared to other development costs, and a fiscal analysis prepared as part of the Habitat Plan process indicates that this fee, along with the other proposed Habitat Plan fees, would not create an impediment to land use development within the Habitat Plan area.
4. Adoption of the Habitat Plan will also act as an incentive for development projects by implementing standard mitigation measures for 50 years after adoption and also may reduce the risk of litigation time delays and costs.

For these reasons, the adoption of the Habitat Plan would therefore not reasonably be expected to divert land use development activity to other jurisdictions outside of the Habitat Plan area and further environmental analysis under CEQA is not warranted.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Andrew Crabtree, Division Manager, at 408-535-7893.