



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: September 12, 2012

Approved

Date

9/12/12

**SUBJECT: COUNCIL STUDY SESSION - DRAFT SANTA CLARA VALLEY
HABITAT PLAN SEPTEMBER 27, 2012**

RECOMMENDATION

Set a Council Study Session entitled Draft Santa Clara Valley Habitat Plan Review for September 27, 2012, from 1:30 p.m. to 3:00 p.m., in City Council Chambers.

OUTCOME

The goal of this Study Session is to review key concepts and issues associated with the Draft Santa Clara Valley Habitat Plan (Habitat Plan) and related documents to provide the Council an opportunity to evaluate and comment on the Plan's content in advance of final action next month. The Habitat Plan package involves four draft documents:

1. Draft Plan
2. Draft Environmental Impact Report/Environmental Impact Statement (EIR/ EIS)
3. Draft Implementing Agreement (including Memorandum of Understanding between agencies and Joint Powers Agreement)
4. Draft Implementing Ordinance

BACKGROUND

In 2001, the City committed to participate in the preparation of a draft habitat plan at the behest of the United States Fish and Wildlife Service and California Department of Fish and Game as part of their approval of a series of local development projects. Preparation of the Plan and related documents is the responsibility of the Local Partners, including the City of San José, County of Santa Clara (County), Santa Clara Valley Water District (SCVWD), Valley Transportation Authority (VTA), and the cities of Morgan Hill and Gilroy. Development of all three documents has been undertaken in close coordination with the staff and attorneys

representing the Local Partners, as well as the elected representatives of the Local Partners (known as the "Liaison Group").

The purpose of a habitat plan is to offer a more efficient process for protecting the environment and authorizing local development that may affect endangered species and natural habitat. Under the current system, the Local Partners and private developers must evaluate projects individually. Endangered species regulations can require consultation with a variety of Federal and State regulators to mitigate for environmental impacts. This can be a lengthy process for developers and Local Partners' capital improvements, involving considerable time and money. In addition, the current system does little to protect the environment because of its piecemeal approach, resulting in fragmented habitats that are less ecologically viable and more difficult to manage. As endangered species protections continue to expand in response to increasing development impacts, there is a mounting need to provide an assured and balanced structure for development and resource conservation that can be sustained over a long period.

ANALYSIS

The City Council previously reviewed the Habitat Plan in 2008 (First Administrative Draft), in 2009 (Second Administrative Draft), and at a previous Study Session in March of 2011. As part of this public outreach process, Habitat Plan stakeholders identified six "Concerns" which were formally presented to the San José City Council and the other Local Partners. As part of the 2011 Budget Hearings and at September and October 2011 Council meetings, the City Council discussed these Concerns and indicated that staff should address five of them prior to completion of the Final Habitat Plan. The Habitat Plan schedule was extended to allow adequate time to address these Concerns. Since October of 2011, based on this direction, San José City staff has been working with the other Local Partners, consultants and Wildlife Agency staff to negotiate and finalize the Draft Habitat Plan documents for City Council consideration in October of this year.

The Concerns reviewed by the City Council in 2011, were relatively general in character, addressing the issues of cost, equity and regulatory burden. Over the course of the past year, staff worked with the other Habitat Plan stakeholders to reduce the scope (and hence cost) of the Plan, to tie fees more directly to projects that would make use of the Habitat Plan as mitigation and to add flexibility for projects going through the Habitat Plan regulatory process.

The Study Session will provide an opportunity for the City Council to discuss the current Draft Habitat Plan in terms of how it addresses their prior Concerns with a specific focus on the issues most pertinent to San José, including proposed regulatory and mitigation measures for Western Burrowing Owls, nitrogen deposition and riparian setbacks. As part to the Study Session, the Council will also have an opportunity to discuss San José's future implementation of the Habitat Plan should it be adopted and alternatives to adoption for the Council to consider.

The Final Draft Habitat Plan and the Habitat Plan EIR/EIS were completed and made available to the public on August 28, 2012, and are posted on the Plan website (www.scv-habitatplan.org).

The City and Local Partners are also preparing the legal instruments necessary for each jurisdiction to implement the Habitat Plan. All of these documents will be presented to the City Council for consideration at public hearings later this year:

- The Draft Habitat Plan establishes environmental mitigation measures including regulatory policies and actions necessary to implement a habitat conservation plan.
- The Draft Environmental Impact Report/Environmental Impact Statement EIR/EIS offers an environmental analysis of the Plan's actions, in compliance with State and Federal law.
- The Draft Implementing Agreement (IA) is a contract between each Local Partner and the State and Federal Wildlife Agencies that would establish the basic obligations of all parties for Plan implementation.
- The Implementing Ordinance would add Chapter 18.40 to Title 18 of the City of San José Municipal Code, adopting the Habitat Plan by reference.

Review of the Final Habitat Plan has been scheduled for a series of public hearings as follows:

- August 27 Community and Economic Development Committee – Discussion of Habitat Plan and Western Burrowing Owls.
- September 10 Transportation and Environment Committee – Approval of schedule and general discussion of the Habitat Plan.
- September 12 – Planning Commission discussion of HCP and related EIR/EIS.
- September 26 Planning Commission – Action on EIR/EIS Certification and recommendation on HCP adoption through Implementing Ordinance.
- September 27 – City Council Study Session discussion of the HCP/NCCP.
- October 10 Planning Commission – Additional hearing if necessary.
- October 16 City Council – Follow up discussion of HCP/NCCP, if required.
- October 23 City Council – Final actions on the HCP/NCCP, and if required, Council action on any Habitat Plan EIR/EIS protest.

Each Local Partner is concurrently undertaking review of the Draft documents by their respective advisory committees, commissions and elected officials so that review by all jurisdictions is scheduled for completion in October 2012.

A draft agenda for the proposed Study Session is attached. The Study Session and subsequent City Council hearings will include participation by staff, consultants and community stakeholders depending upon their availability.

CONCLUSION

The study session is proposed to provide adequate time for the City Council to discuss key issues related to the Habitat Plan prior to formal consideration of the Habitat Plan and related comments in October of this year. A draft agenda is attached for your review.

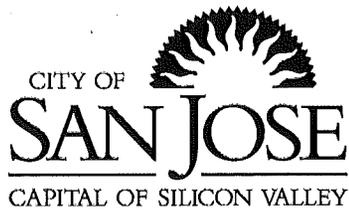
/s/

JOSEPH HORWEDEL, DIRECTOR

Planning, Building and Code Enforcement

For more information please contact Andrew Crabtree, Division Manager at (408) 535-7893.

Attachment: Agenda



DRAFT

**CITY COUNCIL
STUDY SESSION AGENDA**

DRAFT SANTA CLARA VALLEY HABITAT PLAN

SEPTEMBER 27, 2012

1:30 P.M. – 3:00 P.M.

CITY HALL COUNCIL CHAMBERS

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ASH KALRA
SAM LICCARDO
KANSEN CHU
XAVIER E. CAMPOS

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DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

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- Call to Order and Roll Call

CITY COUNCIL STUDY SESSION

1:30 p.m. City Hall Council Chambers

1. Summary Overview of the Habitat Plan
2. Key Issues for San José
 - a) Avoidance of Deferred Liability
 - b) Regulatory Streamlining
 - c) Nitrogen Deposition Fee
 - d) Western Burrowing Owl
 - e) Riparian Setbacks
 - f) Case Studies

- 3. Habitat Plan Implementation**
 - a) Implementing Entity**
 - b) Legislative Priorities**
 - c) Fine-tuning the Fee Structure**
- 4. Alternative to Habitat Plan Adoption**
- 5. Public Comment**
- 6. Adjourn**