



Santa Clara Valley

Habitat Conservation Plan/Natural Community Conservation Plan

**SANTA CLARA VALLEY HCP/NCCP LIAISON GROUP MEETING
THURSDAY, MAY 27, 2010
SANTA CLARA VALLEY WATER DISTRICT
5700 ALMADEN EXPRESSWAY, SAN JOSE
HEADQUARTERS BUILDING BOARD CHAMBER LOBBY
1:30 TO 4:30 PM**

1. Welcome/introductions (5 minutes)---Supervisor Don Gage
2. Habitat Plan Implementation Entity---Discussion of aspects of a Joint Power Authority (120 minutes)---Local Partner Attorneys
Desired Outcome: Review and provide direction on elements of a Joint Powers Authority (JPA)
 - Brief overview of potential key Governing bodies, Committees and Staff/other Contributors (5 minutes)---Ken Schreiber and Lizanne Reynolds
 - Discussion of issues, including participation by John Kopchik, East Contra Costa HCP/NCCP, and Steve Mayo, San Joaquin County HCP (60 minutes)
 - Provide direction to staff for JPAS organizational structure and allocation of tasks (60 minutes)
3. Habitat Plan Benefits (15 minutes)---Ken Schreiber and Management Team
Desired Outcome: Provide and discuss information on the value of the Habitat Plan for public sector projects and the potential for Local Partner reimbursement of Habitat Plan preparation costs through future development fees
4. Valley Habitat Plan Budget (10 minutes)---Ken Schreiber, Lisa Killough
Desired Outcome: Provide and discuss updated information on the Valley Habitat Plan budget.
5. Valley Habitat Plan Schedule (5 minutes)---Ken Schreiber
Desired Outcome: Provide and discuss updated information on the Valley Habitat Plan schedule.
6. Valley Habitat Plan Liaison Group Meeting Schedule (5 minutes)---Ken Schreiber
Desire Outcome: Review the 2010 meeting schedule

7. Information Items (15 minutes)---Ken Schreiber
Desired Outcome: Provide and discuss the status of Habitat Plan-related issues and processes.
 - a. Santa Clara County Open Space Authority
 - b. Zone D Fee status
 - c. Western Burrowing Owl conservation strategy
 - d. Implementing Agreement
 - e. Environmental Impact Report/Environmental Impact Statement
 - f. Habitat Plan Implementation start up process
 - g. Stakeholder Group meetings

8. Public Comments (5 minutes)
Desired Outcome: Receive comments from members of the public

Next Liaison Group Meeting: Thursday, June 17, 2010 from 4:00 to 6:00



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: May 27, 2010

AGENDA ITEM 2

TO: Governing Body Liaison Group

FROM: Kenneth Schreiber

SUBJECT: Participation by John Kopchik and Steve Mayo in May 27th Liaison Group Meeting

At the April Liaison Group meeting, Cay Goude suggested that it would be beneficial for the Liaison Group to have time to talk to key staff working on implementing of Habitat Plans. Specifically she noted that John Kopchik and Steve Mayo would be valuable resources. John and Steve will participate in part of the May 27th Liaison Group meeting.

The East Contra Costa Habitat Plan (ECC HCP/NCCP) covers an area of about 175,000 acres that includes the Cities of Brentwood, Clayton, Oakley and Pittsburg and a portion of unincorporated Contra Costa County. The Plan's final approvals were in January 2008. John Kopchik was the Contra Costa County staff person responsible for managing preparation of the Plan and now is the Chief Executive of the Contra Costa County Habitat Conservancy, the agency responsible for implementing the Plan.

The San Joaquin County Multi Species Habitat Conservation and Open Space Plan was initially approved in the 1990s and underwent a major update resulting in adoption of the current Plan in 2000. Steve Mayo has lead staff responsibility for Plan implementation for the San Joaquin Council of Governments, the agency responsible for the Plan.

On May 27, there are timing constraints for John and Steve: Steve will be available from 1:30 until about 2:30 before needing to return to attend a meeting. John has had to schedule a Conservancy Board meeting at noon to address a land acquisition issue and should arrive at the Liaison Group by 2:15.

Some of the topics that the Liaison Group might wish to ask John and Steve about include:

- What lessons have they learned in the Plan implementation process?
- How have their Plans functioned during this period of very slow development activity?
- What land use agencies and special task agencies are part of their Plan and what are the challenges and opportunities of different agencies working together?
- What benefits do they see for the public agencies that have received coverage under their Plans?
- What tasks are best done by staff and what tasks are done by contractors?
- How do their organizations handle Plan implementation training of local agency staff?
- How much assistance do they need to provide to local agency staff and what are the work areas that need the most assistance?

- What are some observations on the land acquisition process?
- To what extent have they made use of land acquisition grants?

John and Steve's participation is in the context of Agenda Item 2: Habitat Plan Implementation Entity. The list of tasks identified in the staff report for Agenda item 2 will provide other topics that the Liaison Group might wish to pursue.



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: May 27, 2010

AGENDA ITEM 2

TO: Governing Body Liaison Group

FROM: Management Team and Attorney Team

SUBJECT: Implementing Entity (JPA) Structure and Duties

PREPARED BY: Lizanne Reynolds, Deputy County Counsel, County of Santa Clara and Attorney Team,

Purpose of this Staff Report: To provide additional information regarding the Implementing Entity (JPA) structure and the functions and responsibilities of the JPA and other parties during the implementation phase.

Next Steps After Liaison Group Review: : Based on direction from the Liaison Group, the Management Team and Attorney Team will develop a detailed JPA agreement for the Liaison Group's future review and consideration. The Management Team and Attorney Team will also be working on a "cooperative agreement" to address other issues pertaining to the roles, rights and duties of the respective local partners.

Recommendation: Provide direction to staff regarding the JPA structure and recommendations regarding specific aspects of the JPA are set forth on the attachment entitled "Overview of JPA Agreement."

Discussion: This report incorporates the feedback from the April 15, 2010 Liaison Group meeting and subsequent discussions among the Management Team and Attorney Team members. Staff also spent significant time further identifying and defining the various roles and responsibilities of the Implementing Entity and other parties, which are summarized on the attachment entitled "Santa Clara Valley Habitat Plan Implementation Structure Table."

Attachments: Overview of JPA Agreement
Santa Clara Valley Habitat Plan Implementation Structure Table

Copies: Stakeholder Group

Overview of JPA Agreement

JPA Membership

- 4 member agencies/parties: County and Cities of San Jose, Gilroy and Morgan Hill

Governance

Governing Board

- 8-member governing board, two from each party.
- Members are elected officials serving on and appointed by each agency's governing body.
- Each party may also appoint alternates for its two representatives. Alternates also must be elected officials serving on and appointed by each agency's governing body.
- Members serve at pleasure of their appointing body, but term automatically expires when they leave elected office.
- Each member has one vote.
- Duties: (1) adopting/modifying mitigation fees; (2) approving JPA's annual budget; and (3) appointing JPA's officers.
- Quorum for a meeting [choose from options below:]

Options:

- (a) Majority of all members (5/8)
- (b) At least one member from each party (4/8) ← recommendation

- Minimum vote to take action on all matters except fee adoption/modification [choose from options below:]

Options:

- (a) Majority of all members (5/8)
- (b) Majority of a members present (minimum 3/5)
- (c) At least one member from each party (4/8) ← recommendation

- May establish subcommittees.
- Must meet at least once a year.

Officers

- Officers include Chair, Secretary, Treasurer and Controller.
- Appointed by Governing Board.
- The County Controller-Treasurer will be designated as the JPA's Treasurer and Controller unless/until the Governing Board appoints another person/entity.

Implementation Board

- Comprised of 13 members: two from County, cities, SCVWD, and OSA; one from VTA [per VTA preference].
- Each member has one vote.
- Members are appointed by governing body of each Local Partner agency, and serve at the pleasure of their governing body. Terms of any elected official members automatically expire when their terms expire.
- Membership [choose one option from below:]

Options:

- (a) At least one member from each Local Partner must be an elected official; other member may be elected official or permanent staff. ← recommendation (with ability for each Local Partner to appoint an alternate elected official)
- (b) Each Local Partner has discretion to determine whether its members are elected or permanent staff.

- Provides decision making and oversight of all JPA activities except for adoption/ modification of mitigation fees and approval of annual budget, for which it will provide recommendations to the Governing Board.
- Duties include appointment/termination of Executive Director; hiring/procurement of other personnel, services or equipment; approval of land acquisitions (fee or easement); and approval of funding sources.
- Quorum for a meeting [choose from options below:]

Options:

- (a) Majority of all members (7/13)
- (b) At least one member from each Local Partner (7/13) ← recommendation
[Note: Option (b) requires VTA member or his/her alternate to attend every meeting.]

- Minimum vote needed to take action on all matters except appointment/termination of Executive Director [choose from options below:]

Options:

- (a) Majority of all members (7/13)
- (b) Majority of members present (minimum 4/7)
- (c) At least one member from each party (7/13) ← recommendation
[Note: Option (c) requires VTA member or his/her alternate to attend every meeting.]

- May establish subcommittees.
- Must meet at least quarterly, and will likely meet more frequently, especially in early years of Plan implementation.

Administration

Executive Director

- Appointed/terminated by $\frac{2}{3}$ vote of Implementation Board.
- Duties include: overseeing day-to-day operations; ensuring compliance with budget; preparing reports/recommendations for the Governing Board, Implementation Board and committees; applying for grants/funding; reviewing and approving “take” authorizations; and other duties as assigned by the Governing Board or Implementation Board.

Other Staff/Services

- Implementation Board decides whether to hire or contract for additional staff or other services based on recommendations from Executive Director.

Committees

Technical Advisory Committee

- Purpose is to serve as a coordinating body to provide advice on land management, monitoring, and other Habitat Plan activities in the Reserve System.
- Members include, but are not limited to, USFWS and CDFG representatives, Reserve management staff/consultants, and representatives of other agencies that manage Reserve lands.

Public Advisory Committee

- Purpose is to provide input to Governing Board and Implementation Board from stakeholders with interests in Plan implementation.
- Members are appointed by the Implementation Board based on their ability to represent interested or affected segments of the public.

Other Committees

- Governing Board and Implementation Board have discretion to establish any other committees they deem necessary or appropriate to fulfill their respective duties.

Impact Fees

- Any adoption or modification to impact fees must be done by the following vote: [choose one option from below:]

Options:

- (a) $\frac{2}{3}$ vote of all Governing Board members ($\frac{6}{8}$) and at least one vote from the County and each city ($\frac{4}{8}$). ← recommendation
- (b) $\frac{2}{3}$ vote of Governing Board members present at the meeting and at least one vote from the County and each city (minimum $\frac{4}{8}$).
- (c) Majority vote of all Governing Board members ($\frac{5}{8}$) and at least one vote from the County and each city ($\frac{4}{8}$).

- Implementation Board must review and make recommendation regarding any fee adoption or increase before Governing Board takes action.
- JPA Agreement will specify information that needs to be considered when establishing fees.

- County and Cities will collect the fees for private land use/development and transmit them to the JPA quarterly. For public projects undertaken by Local Partners, the Local Partners will pay their fees directly to the JPA within 90 days of taken final action to approve the project and before construction begins, whichever occurs first.

Liability/Indemnification

- JPA is solely liable for any liabilities related to the JPA or implementation of the HCP/NCCP undertaken by or under the JPA's direction.
- Agency must indemnify, defend and hold harmless the parties and other Local Partners from any liability or damages. [*Note: Per Gov. Code § 895 et seq.*, the parties are jointly and severally liable for any tort liability, but a JPA agreement may provide for contribution or indemnity by the JPA.]
- Agency must maintain adequate insurance to fulfill these obligations.

Termination/Amendment/Withdrawal from Agreement

- JPA Agreement may only be terminated by majority vote of all parties' governing bodies.
- Any party may withdraw from the JPA after 180 days written notice to all Local Partners and Wildlife Agencies and a majority vote of its governing body.
- Amendment of the JPA agreement requires a majority vote of each party's governing body.

SANTA CLARA VALLEY HABITAT PLAN IMPLEMENTATION STRUCTURE TABLE

Key Governance	Fee Admin	Finance Grants	General Admin	Real Estate/ Acquisitions	Planning, Mgt & Monitoring	Compliance	Scientific Oversight	Public Educ./ Outreach
Governing Board	•	•						
Implementation Board	•	•	•	•	•	•	•	•
Key Committees								
Technical Advisory Committee		•		•	•	•	•	•
Public Advisory Committee	•	•	•	•	•	•	•	•
Key Staff and Contributors								
Executive Officer/Central Admin	•	•	•	•	•	•	•	•
Wildlife Agencies		•	•	•	•	•	•	•
Consultants/Advisors	•	•	•	•	•	•	•	•

TABLE KEY – DEFINITION OF DUTIES

*Note: All duties noted below are proposed to be administered by the Implementation Board or Executive Director, **except** for specific duties noted under Fee Administration and Finance/Grants, which are proposed according to the responsible board. For example: (IB) means the Implementation Board is the lead board for the specific duty; and, (GB) means the Governing Board is the lead board for the specific duty.*

Fee Administration

- Adopt fees (GB).
- Recommend fees (IB).
- Prepare and publicize annual fees.
- Perform fee audits.

Finance/Grants

- Approve annual budget (GB).
- Review/recommend annual budget (IB).
- Prepare and track annual budgets and to support implementation objectives and requirements.
- Collect directly or administer collection of Plan fees for projects by private proponents and Permittees.
- Coordinate distribution and tracking of annual revenues and expenses.
- Prepare, maintain and communicate short and long range financial forecasts to assure sustained implementation of the Plan.

- Approve grants and other outside funding sources (IB).
- Research, obtain and track grants and other outside funding sources to address implementation needs.

General Administration

- Administer meetings and activities for all board, committees, staff and consultant work.
- Document and coordinate all Plan activities and required reporting with Wildlife Agencies and Permittees.
- Prepare Annual Report.
- Prepare Annual Work Plans.
- Create and maintain databases and models to track all implementation activities (e.g. real estate, planning, management, monitoring, etc).
- Provide dispute resolutions services on matters concerning Plan coverage applicability.
- Establish and monitor contracts with Permittees and other entities to perform Plan actions
- Develop and maintain all legal agreements and paper work to support Plan actions and permit requirements (e.g. contracts, fees, real estate, personnel, etc.)
- Coordinate among Permittees to ensure efficient compliance with all Plan actions and permitting requirements.

- Monitor and participate in State, Federal and local legislative and regulatory activities.
- Establish personnel policies, procedures, standards and employment terms/conditions for the Executive Director and central administration.
- Administer all personnel actions, including the hiring and termination of the Executive Director.
- Establish performance standards and protocol for Plan actions.
- Train and provide tools to Permittee staff to administer the land-use and fee requirements of the Plan.

Real Estate/Property Management

- Approve acquisitions (fee or easement) (IB).
- Research acquisition opportunities to meet Plan requirements.
- Negotiate acquisitions.
- Evaluate and administer in-lieu land opportunities.
- Forge partnerships with other entities for acquisition opportunities (e.g. land trusts, environmental non-profits).

- Coordinate related acquisition activity performed by other entities within the Study Area.
- Prepare and administer licenses and agreements associated with Plan implementation (e.g. grazing licenses, land management agreements).

Reserve Planning/Management/Monitoring

- Approve Reserve Plans (IB).
- Coordinate Technical Advisory Committee.
- Develop and maintain four reserve systemwide management plans to address Recreation, Fire Management, Invasive Plant Control, and Monitoring.
- Develop and maintain reserve unit management plans (distinct geographic units within Reserve System) to address Recreation, Vegetative Management, Infrastructure and other needs.
- Coordinate and integrate systemwide and unit management plans with related planning efforts by the Permittees (e.g. master planning by County Parks and Santa Clara County Open Space Authority).
- Develop site specific plans for the conservation management and monitoring work, in compliance with the Plan's multi-level approach.
- Obtain additional permits for projects within the Reserve System, as needed (e.g. wetland and water quality permitting).

- Manage and monitor conservation easements to ensure compliance with easement conditions and conservation objectives.
- Implement, monitor and comply with all conservation management actions described in the Plan's multi-level approach.
- Construct and maintain recreational facilities within the Reserve System that are compatible with the conservation objectives.
- Develop protocol and cooperative agreements with related agencies to institute a consistent enforcement program within the Reserve System, consistent with the Plan's conservation and recreation objectives.

Scientific Oversight

- Develop partnerships with academia and research institutions to address implementation needs.
- Institute agreements with independent science advisors to assure compliance with research requirements of the Plan.
- Establish communication protocol with Wildlife Agencies and science advisors to report and discuss implementation progress and issues.
- Evaluate management efforts and monitoring data to determine efficacy of implementation work and make recommendations on changes to Plan actions (e.g. adaptive management

proposals, changed circumstance situations, etc) as necessary.

- Seek agreement with Wildlife Agencies and science advisors on changes to Plan actions.

Public Education/Outreach

- Coordinate Public Advisory Committee.
- Provide public the opportunity to input on Plan activities and decisions.
- Conduct educational outreach to landowners and public consistent with the Plan's conservation strategy.
- Institute a volunteer program to provide the public an opportunity to contribute to Plan implementation.
- Administer Neighboring Landowner Assurances Program.

Compliance

- Approve annual report (IB).
- Prepare annual report.
- Track and adhere to multi-level milestones and deadlines for conservation of species, land covers, natural communities, sub-watersheds and watersheds, and notify the

Permittees and Wildlife Agencies when compliance is at risk.

- Track and adhere to Stay-Ahead provision and notify Permittees and Wildlife Agencies when compliance is at risk.



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: May 27, 2010

AGENDA ITEM 3

TO: Governing Body Liaison Group

FROM: Kenneth Schreiber

SUBJECT: Habitat Plan Benefits

Purpose of this Staff Report: Provide the Liaison Group with a partial response to questions raised at the April Liaison Group meeting regarding the value of the Habitat Plan and the potential for reimbursement of Plan preparation costs via future development impact fees. This report will be substantially supplemented at the May 27th Liaison Group meeting.

Next Steps After Liaison Group Review: Local Partner staff and Habitat Plan consultants will provide additional information if requested. Unless directed otherwise, a Habitat Plan Cost Recovery fee will be incorporated into the Draft Habitat Plan.

Recommendation: Receive and discuss the information in this report and as presented at the Liaison Group meeting.

Discussion: The issue of concern raised at the April Liaison Group meeting was the value of the Habitat Plan for future public sector projects and whether the Local Partner's costs for Plan preparation could be reimbursed via future impact fees. As elaborated on below, the per agency costs for the City of San Jose, Santa Clara Valley Water District, Valley Transportation Authority and the County of Santa Clara will be about \$960,000 and for each of the Cities of Gilroy and Morgan Hill about \$480,000.

Reimbursement of Plan Preparation Costs: Management Team members, members of the Plan's Attorneys Group and the Plan's Program Manager and economist discussed this issue. The conclusions reached include:

- As a matter of policy, there was unanimous agreement to have the impact fee include a cost recovery component;
- The cost recovery would need to address Habitat Conservation Plan (HCP) costs (i.e., impact mitigation) and not Natural Community Conservation Plan costs (i.e., habitat enhancement). ICF Jones and Stokes estimated that 80% of the Plan preparation costs could be allocated to the HCP.
- The time frame for recovering the costs would need to be the 50 year permit term. The idea of recovery within 10 years was discussed and raised issues regarding consistency with State development fee regulations. Staff will explore further to what extent, if any, the time frame can be reduced below 50 years.
- A Local Partner's costs would be adjusted for inflation.

- Reimbursement should be a cash payment from the Implementing Entity to each Partner rather than credit for future Partner-specific impact fees.
- The initial amount of costs eligible for reimbursement would be total Plan preparation costs (assume \$5,900,000) minus \$1,107,648 of Section 6 Grant funds (\$4,792,353) times 80% (\$3,833,882) times either 20% for the four original Partners or 10% for Gilroy and Morgan Hill divided by 50 years. The following table summarizes the numbers.

Partner	Total Applicable Plan Preparation Costs	Payment per year (2010 dollars) using 50 year repayment
City of San Jose	\$766,776	\$15,335
Santa Clara Valley Water District	\$766,776	\$15,335
Valley Transportation Authority	\$766,776	\$15,335
County of Santa Clara	\$766,776	\$15,335
City of Gilroy	\$383,388	\$7,668
City of Morgan Hill	\$383,388	\$7,668

Questions have been raised regarding recovery of the cost of Local Partner staff time spent working on Habitat Plan preparation. There is no available data base of these costs and the costs will vary greatly among the Partners. At this time, there isn't a basis for including these costs in the Plan Cost Recovery formula. However, the four jurisdictions with land use authority could explore recovering costs as part of the local development fee schedule.

Incorporation of this cost recovery formula will be incorporated into the Draft Habitat Plan unless the Liaison Group provides different direction.

The Public Sector Cost Benefits of Habitat Plan Participation: ICF Jones & Stokes staff are coordinating efforts by Local Partner staff to identify projects that are likely to need a future Endangered Species Permit without a Habitat Plan and costs that would be associated with obtaining those permits. The information is undergoing analysis and refinement. A report will be provided at the May 27th Liaison Group meeting.

Attachments: none

Copies: Stakeholder Group



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: May 27, 2010

AGENDA ITEM 4

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Valley Habitat Plan Budget

PREPARED BY: Lisa Killough, Management Team and Ken Schreiber

Purpose of this Staff Report: Provide the Liaison Group with an overview of the status of the Plan's budget

Next Steps After Liaison Group Review: Monitoring and reporting on the budget is undertaken monthly at Management Team meetings. The Management Team reviewed the attached information on May 7, 2010 and will review updated information in the next months. The Phase 6 (2010-2011) for ICF Jones & Stokes and the 2010-2011 contract for Land Use Planning Services will be on the County Board of Supervisors June 22, 2010 agenda.

Recommendation: Receive and discuss the budget information

Discussion: The County of Santa Clara has functioned, since the start of the Habitat Plan preparation process, as the Habitat Plan's administrative agency including entering into contracts for services on behalf of the Partners. Annual assessments paid by the Partners, along with Section 6 Federal Planning Grants, have provided the funding for the contract-related aspects of the planning effort. Nearing the end of the Plan preparation work and the current budget problems have necessitated greater 2010-2010 assessments in order to keep the County from having to pay for some 2010-2011 contract costs with 2011-2012 assessments. The increased assessments (see final page of the attachment, March 24, 2010 Cost Allocation Table) have been reviewed several times with each Partner. Assuming that each Partner's current budget process proceeds according to current recommendations, there will be enough 2010-2011 funds to carry the Plan preparation process forward into and through the public review phases.

Attachments: Contract Summary – FY 2005 to Present

Copies: Stakeholder Group

County of Santa Clara

Office of the County Executive

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-5105



May 7, 2010

TO: Santa Clara Valley Habitat Plan Management Team Members
FROM: Lisa Killough, Valley Habitat Plan Lead Representative for County of Santa Clara
SUBJECT: Contract Summary – FY 2005 to Present

A handwritten signature in black ink, appearing to be "Lisa Killough", is written over the "FROM:" line of the memo.

Acting on behalf of the Local Partners as the contract manager and as per the request of the Management Team at the March 26, 2010 meeting, I am submitting an accounting of all on-going and closed contract encumbrances and expenses for the Santa Clara Valley Habitat Plan (Plan) since the Plan commenced in FY 2005. Attached you will find the following information:

- Spreadsheet, dated 4/20/10, which tracks all of the encumbrances and expenses to date for all on-going and closed contracts. I will be providing the Management Team an update of this spreadsheet on a monthly basis so you can track the continuing expenditures for the Plan.
- Summary, dated 4/30/10, which provides additional contract information on all of the on-going and closed contracts. In addition, this document includes an analysis of costs and revenues to date for FY 2010. Please note that the projected imbalance between costs and revenues is not accurate because the expenditures have not all been captured yet. Nevertheless, this projection should give you an idea of the magnitude of imbalance for this fiscal year.
- Contract revenue and expense analysis for FY 2011 which provides an evaluation of the costs and revenues to date for FY 2011. The same caution applies regarding this analysis as noted above because all expenses are not yet captured. However, it is important to note that there will likely be more Plan expenses than have been captured in the Local Partners' March 2010 cost allocation plan for FY 2011. Before the partners finalize the next budget proposal (FY 2012), the County will present a more accurate estimate of this additional cost for the FY 2012 budget proposal.
- Spreadsheet, dated 3/24/10, which tracks the cost allocation plan for FY 2010 and FY 2011. This information has already been presented to the Management Team and Liaison Group, and is provided as background information for the Local Partners' and Section 6 Grant contributions to date.

The County recommends that team members share this information with your respective officials who are interested in the Plan's progress.

As always, I am available to discuss the detail of this report with Management Team members.

c: Ken Schreiber, Plan Program Manager

Contract Total	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009		FY 2010		Balance/ (Liquid)	Spent To Date
	Encumb	Expense	Encumb	Expense	Encumb	Expense	Encumb	Expense	Encumb	Expense	Encumb	Expense		
On-Going														
Albion	62,340				7,340	1,135	20,000	14,913	12,500	23,343	22,500	15,850	7,099	55,241
CH2M HILL	66,061												66,061	0
Jones & Stokes/Plan	2,678,343		843,089	566,413	963,238	624,785	250,000	509,295	692,996	581,108	396,500	287,718	109,024	2,569,319
Jones & Stokes/Public	84,412										84,412	14,207	70,205	14,207
Land Use Planning	644,625		150,000	149,924	123,000	123,014	123,000	123,000	123,525	122,745	125,100	94,075	31,025	612,758
MIG	287,510		287,510	30,798		50,529		77,638		40,956		23,473	64,116	223,394
Resources Law	251,000												80,687	170,313
Jerry Smith	40,000		9,000		6,000	12,400	20,000	10,330	5,000	9,375	51,172	11,472	4,545	35,455
Willdan Financial	51,172												39,700	11,472
Closed														
CH2M HILL	386,451						251,451	193,033		58,418	135,000	68,939	-66,061	320,390
Joan Florsheim	6,000				6,000	5,019							-981	5,019
Jones & Stokes	335,829		165,514	93,405		44,635	100,000	83,455	114,347	58,803			-55,531	280,298
Kenneth Rose	11,000		11,000			5,611							-5,389	5,611
Kenneth Schreiber	96,000		96,000	93,350									-2,650	93,350
Kleinschmidt	75,430		75,430	13,830		42,271							-19,329	56,101
Raymond White	9,000		6,000		3,000	5,000							-4,000	5,000
Sean Barry	9,000		9,000		15,000	5,111							-3,889	5,111
SFEI	15,000					14,000							-1,000	14,000
Steven Beissinger	9,000		9,000		9,000	5,167							-3,833	5,167
Susan Harrison	9,000					5,000							-4,000	5,000
Willdan Financial	185,900		185,900	4,000		19,500		109,552		52,236			-612	185,288
*Mac Tec (SCVWD)	50,000		50,000										0	50,000
*MOU Facilitator (CSJ)	10,000		10,000										0	10,000
Services & Supplies	3,624				3,624	3,624							0	3,624
TOTALS	5,376,697	156,000	175,1443	858370	1,136,202	966,801	940,451	1,152,527	948,368	1,014,497	889,684	590,573		4,736,118

* Includes 2003 & 2004 Expenses

Santa Clara Valley Habitat Plan Contract Summary

Updated 4/20/10

Contract Summary – 4/30/10

Land Use Planning Services (Ken Schreiber) – PO# 4300002851 (Need to extend term to 12/31/11)

- Service Agreement + 3 amendments
- 7/1/05 to 6/30/06 (Board contract)
- 7/1/05 to 3/31/09 (Amendment #1)
- 7/1/05 to 1/31/11 (Amendment #3 - Delegation of Authority until 1/31/11)
- **\$855,100 to date** (**\$130,000**, original contract (FY 2006) + **\$20,000**, Amendment #1 (FY 2006) + **\$420,750**, Amendment #2 (\$153,000 – FY 2007; \$153,000 - FY 2008; \$114,750 – FY 2009) + **\$284,350**, Amendment #3 (\$38,775 – FY 2009; \$155,100 - FY 2010; \$90,475 – FY 2011)),
- **FY 2010 Partner contribution total: \$644,625** = \$150,000 - FY 2006; \$123,000 – FY 2007 (\$120,000 + \$3,000 reimbursable expenses); \$123,000 – FY 2008 (\$120,000 + \$3,000 reimbursables); \$123,525 – FY 2009 (\$120,000 + \$3,525 reimbursables); \$125,100 – FY 2010 (\$120,000 + \$5,100 reimbursables)
- Program Manager services for all partners

Moore Iacofano Goltsman, Inc. (MIG) – PO# 4300002905

- Service Agreement
- 8/29/05 to 6/30/10 (Delegation of Authority until 6/30/10) (Note: Delegation of Authority extension to 12/31/11 pending 5/11/10 Board approval. Service Agreement Amendment extending term to 12/31/11 to be executed after Board action)
- **\$287,510**
- Facilitation and public outreach services

Jones & Stokes (ICF International) – BC# 4300003645 & BC# 4300002602

- Professional Services Agreement (PSA) – original term 7/1/05 to 6/30/10 (extended to 6/30/11 in 3rd Amendment); not to exceed \$1,757,000; Delegation of Authority until 6/30/11.
- **\$2,678,343 to date** (Note: 1st Amend to FY 2009/10 Annual Project Agreement for \$95,000 pending 5/11/10 Board approval)
 - *Phase 1 Annual Project Agreement (7/1/05 to 6/30/06) – not to exceed \$843,089*
 - *1st Amendment to the PSA – no change to term or delegation; added \$173,643 for a not to exceed of \$1,930,643*
 - *Phase 2 Annual Project Agreement (7/1/06 to 6/30/07) – not to exceed \$963,238 (including rollover of \$324,648 from Phase 1 and \$638,590 Phase 2 expenses)*
 - *Phase 3 Annual Project Agreement (7/1/07 to 6/30/08) – not to exceed \$620,419 (including rollover of \$286,600 from Phase 2 and \$333,819 Phase 3 expenses)*
 - *2nd Amendment to the PSA – no change to term or delegation; added \$124,868 for nitrogen deposition work for a not to exceed of \$2,055,511.*
 - *3rd Amendment to the PSA – extended term to 6/30/11 with no change to delegation; added \$195,200 for a not to exceed of \$2,250,711.*

- Phase 4 Annual Project Agreement (7/1/08 to 6/30/09) – not to exceed \$661,864 (including rollover of \$225,768 from Phase 3 and \$436,096 Phase 4 expenses)
- 4th Amendment to the PSA – no change to term or delegation; added \$427,632 for a not to exceed of \$2,678,343.
- 1st Amendment to Phase 4 Annual Project Agreement (7/1/08 to 6/30/09) – added \$31,132 for a not to exceed of \$692,996.
- Phase 5 Annual Project Agreement (7/1/09 to 6/30/10) - \$396,500.
- Plan preparation services

Jones and Stokes (ICF International) – PO# 4300006203

- Service Agreement
- 10/22/09 to 6/30/11
- **\$84,412 to date**
- Public outreach program services

CH2M Hill, Inc. – BC# 4300006454

- Professional Services Agreement
- 5/1/10 to 6/30/11 (Delegation of Authority until 6/30/11)
- **\$66,061 to date** (Note: Amount includes balance from closed contract # 4300004474)
- EIR/EIS services

Resources Law Group, LLP – PO# 4300004477

- Non-standard Service Agreement + First Amendment
- 9/14/07 to 12/31/09 (Non-standard Service Agreement)
- 9/14/07 to 12/31/11 (First Amendment)
- Delegation of Authority to County Counsel is on-going and restricted to \$200,000 per year cap
- **\$251,000 to date (\$176,000, original contract + \$75,000, First Amendment)**
- Legal services for plan and Implementing Agreement

Jerry Smith – PO# 4400002434

- Service agreement + 4 amendments to service agreement
- 7/1/06 to 3/30/09 (Service agreement)
- 7/1/06 to 1/31/11 (Amendment # 4)
- **\$40,000 to date (\$9,000, original contract + \$6,000, Amendment # 1 + \$10,000, Amendment #2 + \$10,000, Amendment #3, + \$5,000, Amendment #4)**
- Scientific advisor services for fish and aquatic

Albion Environmental, Inc. – PO# 4400002734

- Service Agreement + 4 amendments to Service Agreement
- 2/12/07 to 6/30/09 (Service Agreement)
- 2/12/07 to 12/31/11 (Amendment #2)

- **\$62,340** (**\$7,340**, original contract + **\$20,000**, Amendment #1 + **\$12,500**, Amendment #2 + **\$7,500**, Amendment #3 + **\$15,000**, Amendment #4)
- Western Burrowing Owl research services

Willdan Financial Services – PO# 4400004567 (Note: Service Agreement Amendment for \$8,000 pending internal approval)

- Service Agreement
- 11/18/09 to 6/30/11
- **\$51,172.50 to date** (**\$26,172.50** + **\$25,000 contingency**)
- Economic forecasting services

Contract Totals

- On-Going Contracts Encumbrances

Land Use Planning Services (Partner contributions)	\$ 644,625
MIG, Inc.	287,510
Jones & Stokes (Plan preparation)	2,678,343
Jones & Stokes (4300006203 - Public outreach)	84,412
CH2M HILL	66,061
Resources Law Group	251,000
Jerry Smith	40,000
Albion Environmental, Inc.	62,340
Willdan Financial Services	51,172
<hr/> SUBTOTAL ENCUMBRANCES	<hr/> \$ 4,165,463

- Closed Contracts Expenditures

Kenneth Schreiber (4400001417 - \$96,000)	\$ 93,350
Partner Program Manager Services	
CH2M HILL (4300004474 - \$386,451)	320,390
EIR/EIS Preparation	
Raymond White (4400002358 - \$9,000)	5,000
Scientific Advisor	
Sean Barry (4400002435 - \$9,000)	5,111
Scientific Advisor	
SFEI (4400002615 - \$15,000)	14,000
Scientific Advisor	
Willdan (4300003258 - \$185,900)	185,288
Economic modeling	
Kleinschmidt Associates (4400002088 - \$75,430)	56,101
Facilitation & Scientific/Logistical Support	
Kenny Rose (4400002458 - \$11,000)	5,611
Scientific Advisor	
Steve Beissinger (4400002433 - \$9,000)	5,167
Scientific Advisor	
Susan Harrison (4400002357- \$9,000)	5,000
Scientific Advisor	
Joan Florsheim (4400002489 - \$6,000)	5,019
Scientific Advisor	
*Jones & Stokes (4300003168; 4300004449 - \$335,129)	280,298
Public Outreach Services	
FY 2007 Science Workshops – Rooms & Mtg Supplies	3,624
Mac Tec Contract (SCVWD expense)	50,000
MOU Facilitator (City of San Jose expense)	10,000
<hr/> SUBTOTAL EXPENDITURES	<hr/> \$ 1,043,959

- FY 2010 Contracts Total to Date

On-going Contracts Encumbrances	\$ 4,165,463
Closed Contracts Expenditures	<u>1,043,959</u>
 TOTAL (<i>inaccurate because does not include expenditures for on-going contracts</i>)	 <u>\$ 5,209,422</u>

Partner and Grant Revenue

- Total Partner Revenue (including County contribution) \$ 3,612,486
- Total Grant Revenue (four Section 6 grants) 1,107,868
| TOTAL | \$ 4,720,134 |

Contract Balance

- Partner and Grant Revenue \$ 4,720,134
- FY 2010 Contracts Total to Date 5,209,422
| TOTAL (*inaccurate because does not include expenditures for on-going contracts*) | (\$ 489,288) |

Background Data on Closed Contracts

* Jones and Stokes (ICF International) – BC# 4300003168 & BC# 4300004449

- Professional Services Agreement (PSA) - original term 2/28/06 to 6/30/10; not to exceed \$335,829 (\$310,829 + \$25,000 contingency). Delegation of Authority until 6/30/10.
 - Phase 1 Annual Project Agreement (2/28/06 to 6/30/07) - \$165,514
 - Phase 2 Annual Project Agreement (7/1/07 to 6/30/08) - \$119,175 (including rollover Phase 1 costs of \$11,659 for contract and \$10,572 for contingency and \$96,044 Phase 2 expenses)
 - Phase 3 Annual Project Agreement (7/1/08 to 6/30/09) - \$114,347 (including rollover Phase 2 costs of \$30,204 for contract and \$10,572 for contingency and \$73,571 Phase 3 expenses)
 - Phase 1 expenditures (4300003168) - \$145,630
 - Phase 2 and Phase 3 expenditures (4300004449) - \$134,668
- **\$280,298 spent**
- Public outreach program services

Contract Revenue and Expense Analysis for FY 2011

FY 2011 Revenue to Date Projection

• Partner contributions to date from FY 2010	\$ 3,612,486
• Four Section 6 grant revenue	1,107,648
• Proposed partner contributions for FY 2011	<u>837,974</u>
TOTAL	\$ 5,558,108

FY 2011 Expenses to Date Projection

• On-going Contract Encumbrances from FY 2010	\$ 4,165,463
• Closed Contracts Expenditures	1,043,959
• Jones & Stokes Phase 5 Augment	95,000
• Jones & Stokes Phase 6 Augment	240,000
• Willdan Financial Services	8,000
• Land Use Planning Services	155,625
• County Printing Costs	<u>50,000</u>

TOTAL *(inaccurate because does not include expenditures for on-going contracts)* **\$ 5,758,047**

FY 2011 Contract Balance

FY 2011 Revenue to Date Projection \$ 5,558,108

FY 2011 Expenses to Date Projection **5,758,047**

TOTAL *(inaccurate because does not include expenditures for on-going contracts)* **(\$ 199,939)**

HCP/NCCP COST ALLOCATION FY 10 AND FY 11---MARCH 24, 2010	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	Previous through FY 10 Subtotal	FY 11 Adjusted 032410	FY 12 estimate*	TOTAL
GRANTS										
USFWS Section 6	240,384	281,579	401,285	184,400	-	-	-	-	-	1,107,648
LOCAL PARTNER FUNDING										
Santa Clara County										
Total County Funding	136,226	136,226	123,600	120,559	116,255	89,631	722,497	167,595	20,000	910,092
City of San Jose										
Total City Funding (includes MOU facilitator-\$10,000 in 2003)	133,726	133,726	123,600	116,809	115,005	89,631	722,497	167,595	20,000	910,092
Water District										
Total District Funding (includes MacTec Contract-\$50,000 in 2004)	123,726	123,726	123,600	101,809	110,005	89,631	722,497	167,595	20,000	910,092
VTA										
Total Authority Funding	136,226	136,226	123,600	120,559	116,255	89,631	722,497	167,595	20,000	910,092
City of Gilroy										
Total City Funding	55,000	55,000	61,800	79,949	64,685	44,815	361,249	83,797	10,000	455,046
City of Morgan Hill										
Total City Funding	55,000	55,000	61,800	79,949	64,685	44,815	361,249	83,797	10,000	455,046
HCP/NCCP LOCAL FUNDING										
Total Section 6 Funding	639,904	639,904	618,000	619,634	586,890	448,154	3,612,486	837,974	100,000	4,550,460
Total	240,384	281,579	401,285	184,400						1,107,648
* FY11/12 estimate includes \$50,000 for Plan wrap up costs and \$50,000 for contingency										5,658,108
NCP and NCCP/Cost Sharing/2010-2011/Cost Sharing Table with FY 11 and FY 12 Costs--March 24, 2010										



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: May 27, 2010

AGENDA ITEM 5

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Valley Habitat Plan Schedule

PREPARED BY: Kenneth Schreiber, Program Manager

Purpose of this Staff Report: Provide the Liaison Group with an update on the Habitat Plan's schedule.

Next Steps After Liaison Group Review: Schedule updates will be provided at each Liaison Group meeting.

Recommendation: Review and discuss schedule-related issues. No Liaison Group action is needed or recommended.

Discussion: The overall schedule for the Habitat Plan has not changed since the April Liaison Group meeting:

- Draft Plan and related documents (Environmental Review and Implementing Agreement) distributed in September;
- Local Partner public review of Draft documents completed by December;
- Final Plan and other documents prepared by end of March 2011;
- Local Partner's Final Plan adoption by June 2011; and
- receipt of Endangered Species (ESA) Take Permits in later 2011.

The Implementing Entity will need to be formed by the end of 2010 so that the Final Plan and other documents can be approved and the IE can receive necessary ESA permits. Active implementation work will need to be underway by January 2012.

The Local Partners and Wildlife Agencies continue an intense and time consuming meeting schedule to reach decisions on elements of the Draft Plan and other documents. The current meeting schedule is attached. At the May 20 meeting, it was agreed to add two more full day meetings on July 7 and 8 at the Fish and Wildlife Service in Sacramento.

Attachments: May – August 2010 Meeting Schedule
Bar Chart schedule

Copies: Stakeholder Group

SANTA CLARA VALLEY HABITAT PLAN
 LOCAL PARTNERS AND WILDLIFE AGENCIES MEETINGS
 MAY – AUGUST 2010

Updated

February 22 and 24

March 3 and 29

April 7 and 16

May 5, 11, 20

DATE	LOCATION AND TIME	AGENDA
Thursday, May 20	Pre-LG in San Jose 12 to 3:30 RELOCATED TO MARE ISLAND 9:00 TO 2:30	Chapter 2 Chapter 4 Interim Projects Indirect impacts to wetland
Monday, May 24	EIR/EIS conference call from 2:00 to 3:00	
Wednesday, May 26	Mare Island 9:00 to 2:30	Chapter 9 Chapter 4
Monday, June 7	EIR/EIS conference call from 2:00 to 3:00	
Wednesday, June 9	FWS Sac 10 to 4 Conference room B	Chapter 5---partial Indirect impacts to wetlands
Thursday, June 17	Pre-LG in San Jose-10 to 3:30	Implementing Agreement
Wednesday, July 7	FWS Sac 10 to 4:00	Agenda TBD
Thursday, July 8	FWS Sac 10 to 4:00	Agenda TBD
Monday, July 12	EIR/EIS conference call from 2:00 to 3:00	
Monday, August 9	EIR/EIS conference call from 2:00 to 3:00	
Tuesday, August 10	FWS Sac 10 to 4:00 Cafeteria Room C-100	Final comments on Screen Check Public draft and Implementing Agreement
Wednesday, August 11	FWS Sac 10 to 4:00 Conference Room B	Same as 8/10
Thursday, August 19	Pre-LG in San Jose 10 to 3:30	Same as 8/10
Wednesday, August 25	Mare Island 9 to 2:30	Same as 8/10

WORKING DRAFT PROJECT SCHEDULE																																															
SANTA CLARA VALLEY HABITAT PLAN																																															
Updated April 1, 2010																																															
2008												2009												2010												2011											
J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
HABITAT PLAN																																															
1. Refine Policies/Issues for Elected Bodies DONE																																															
2. Elected Body Reviews DONE																																															
3. Liaison Group Directions DONE																																															
4. FAHCE Covered Activity Defs and Impacts																																															
5. Prepare Admin Draft 1 Habitat Plan DONE																																															
6. Wildlife Agency 1st Draft Staff Review Period DONE																																															
7. Prepare Admin Draft 2 Habitat Plan DONE																																															
8. Local Partner Elected Body Key Issues Review																																															
9. Wildlife Agency and Local Staff Review Period																																															
10. Prepare Public Draft Habitat Plan																																															
11. Decision on Implementing Entity Form/Organization																																															
11. Publish Notice in Federal Register																																															
12. Public/Agencies Review Period (90 days)																																															
13. Prepare Final Habitat Plan																																															
14. See Approval process steps 1, 3 and 6																																															
EIR/EIS																																															
1. Scoping DONE																																															
1A. Prepare corrected NOI--NMFS																																															
1B. Publish corrected NOI in Federal Register--NMFS																																															
2. Prepare Working Draft DONE																																															
3. Wildlife Agency and Local Staff Review Period DONE																																															
4. Prepare Admin Draft																																															
5. Wildlife Agency and Local Staff Review Period																																															
6. Prepare Public Review EIR/EIS																																															
7. Publish Notice of Availability in Federal Register																																															
8. Public CEQA Notice of Availability--Local Partners and CDFG																																															
9. Public/Agencies Review Period (90 days)																																															
10. Prepare Final EIR/EIS																																															
11. Publish Notice of Final EIS, Habitat Plan and IA Availability in Federal Register																																															
12. Publish CEQA Notice of Determination--Local Partners																																															
12b. CEQA Notice of Determination--CDFG																																															
13. 30 day public review period																																															
14. See Approval Process steps 1, 3 and 6																																															
15. Federal Prep and Pub of Record of Decision (ROD)																																															
16. 30 day CEQA challenge period																																															
IMPLEMENTING AGREEMENT																																															
1. Prepare 1st Admin Draft IA DONE																																															
2. Prepare 2nd Admin Draft IA DONE																																															
3. Prepare public draft IA																																															
4. Federal Register Notice																																															
5. Public/Agencies Review period (90 days)																																															
6. Prepare Final IA																																															
7. See Approval Process steps 1, 3 and 7																																															
APPROVAL PROCESS																																															
1. Local Partners Approval of Final Plan, Final EIR/EIS and Final IA--County First re EIR Certification																																															
2. Establish Implementing Entity																																															
3. Implementing Entity approves Final Plan, EIR/EIS and Implementing Agreement																																															
4. See EIR/EIS steps 11, 12 and 13																																															
5. Implementing Entity adopts fees																																															
6. Local Agencies Adopt Imp Ordinances																																															
7. Wildlife Agencies Approval of Plan, EIR and EIS and IA																																															
8. FG NCCP Findings Preparation																																															
9. FWS Findings/Biological Opinion																																															
11. Permits Issued by FWS																																															
12. Permits issued by CDFG																																															

Yellow/orange color is preparation and publication of Federal Register Notices

Red is local agency review and action

Blue is Wildlife Agency review and action

See Approval steps 2, 3 etc

Clarify if another corrected NOI needs to be published

Local Partner decision re before or after Permits issued

Permit after EIR Step 16



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

Date: May 27, 2010

AGENDA ITEM 6

TO: Governing Body Liaison Group

FROM: Kenneth R. Schreiber, Program Manager

SUBJECT: Liaison Group Meeting Schedule

Purpose of this Staff Report: Review the Liaison Group's 2010 meeting schedule including consideration of the value of three hour meetings.

Next Steps After Liaison Group Review: Meetings will be scheduled consistent with the direction of the Liaison Group. The Liaison Group previously directed that 2010 meetings occur monthly except in July on the following dates:

- Thursday, June 17 from 4 to 6
- Thursday, August 19 from 4 to 6
- Thursday, September 16 from 4 to 6
- Thursday, October 21 from 4 to 6
- Thursday, November 18 from 4 to 6
- Thursday, December 9 from 4 to 6

Recommendation: Review the meeting schedule including identification of any meeting dates with conflicts and identify the likely need for three hour meetings.

Discussion:

The Liaison Group should provide direction to staff on any other meeting date conflicts and the possible value of/need for three hour meetings.

Projected Liaison Group Meeting Issues Needing Notable Discussion Time

Following is a list of projected Liaison Group agenda items that are anticipated to need notable discussion time and the meetings that they are likely to impact.

1. Joint Powers Authority Agreement
 - June: complete review of draft Agreement wording or, if issues need further review, schedule for final review in August
2. Implementing Agreement
 - June: review remaining issues of concern
 - August: review final draft Implementing Agreement
3. Zone D fee
 - June: review updated fee concept
 - August: conclude review of fee concept

4. Western Burrowing Owl
 - June: review of proposed conservation strategy
5. Local Partner Cooperative Agreement (issues not in Implementing Agreement)
 - June: review list of issues
 - August: complete review of issues (issue document will accompany JPA Agreement text)
6. Habitat Plan Start Up Process
 - June: review of draft policies and conceptual implementation approach
 - August: review detailed elements of the start up process
 - September: if needed, complete review of draft start up process
7. Fish and Wetland Project Permitting
 - June: review permitting issues including role of Habitat Plan for regulatory agency permits that will still be needed after Habitat Plan adoption

Other issues warranting extended Liaison Group discussion may emerge during the May to August final review of Habitat Plan text. At this time, the need for Liaison Group meetings in the Fall during public review of the Draft Habitat Plan is unclear.

Attachments: None

Copies: Stakeholder Group



Santa Clara Valley
Habitat Conservation Plan/Natural Community Conservation Plan

Date: May 27, 2010

AGENDA ITEM 7

TO: Governing Body Liaison Group

FROM: Management Team

SUBJECT: Information Items

PREPARED BY: Kenneth R. Schreiber, Program Manager

Purpose of this Staff Report: Provide information on nine items related to the Habitat Plan.

Next Steps After Liaison Group Review: Activities regarding these items will proceed as described.

Recommendation: No Liaison Group action is needed.

Discussion:

a. Santa Clara County Open Space Authority (OSA)

The Draft Habitat Plan continues to assume that the OSA receives permits for take of endangered species and has an important role in Plan implementation. Discussions continue with OSA staff and counsel on issues of interest and concern to the OSA. An OSA Board workshop is being scheduled.

b. Zone D Fee Status

The Draft Habitat Plan’s First and Second Administrative Drafts (August 2008 and June 2009) included four fee zones applicable to new public and private sector development. “Zone D” is identified as an “intensification fee” applicable to new vehicle trips associated with new development of existing developed sites. The objective of the fee is to address the nitrogen deposition impacts of increased vehicle trips on Serpentine land. The research on the negative impacts of vehicle exhaust converting to nitrogen and acting as a fertilizer on Serpentine land is well established. The Wildlife Agencies have identified this impact and strongly encouraged addressing the issue in the Habitat Plan. The Wildlife Agencies have also identified the issue in their comments on preparation of the EIR for the current update of the City of San Jose General Plan. The proposed Zone D fee would be a small fee with a one time payment of about \$6.70 per new vehicle trip. The impact of nitrogen deposition is incorporated into the other three fee zones as part of larger fees applied to the loss of habitat. Since the First Administrative Draft Habitat Plan, the State has adopted policies and regulations (AB 32, SB 375) that direct State, regional and local agencies to address climate change issues including reducing the growth of vehicle trips that have negative impacts that facilitate climate change.

The Second Administrative Draft Habitat Plan Zone D fee would generate approximately 8 percent (\$30,370,000 in current dollars) of the total new Habitat Plan-related development fees. Over 90 percent of the Zone D fee would come from development in the City of San Jose with smaller amounts from development in Gilroy (about 4 percent), Morgan Hill (about 3 percent) and the unincorporated area (less than 1 percent).

The Northern California Home Builders Association identified major concerns with the Zone D fee. Their concerns are based on a policy inconsistency between policies for some new development that encourage and require new development to reduce the number of new vehicle trips and a fee based on complying with those policies. A series of meetings have been held with City of San Jose staff, other Local Partner staff, Habitat Plan consultants and development/private sector representatives from the Home Builders Association of Northern California, California Chamber of Commerce, California Building Industry Association and California Business Properties Association. One of the meetings included staff from the California Department of Fish and Game and U. S. Fish and Wildlife Service. The discussions have moved toward a new/revised fee based on nitrogen deposition/air quality impacts. Possible elements being considered for the revised fee include:

- Exempt from the fee new development that is truly Transit Supportive Development in that via location near identified transit stations and attributes of the development (e.g., reduced vehicle parking/having a maximum parking cap, incorporation of mixed uses on one site that reduce use of vehicles, required participation in car share programs) has a significantly lower vehicle trip generation rate;
- Grant X% reduction in fee for development that exceeds minimum density;
- Grant X% reduction in fee for development that includes vertical mixed use of jobs and housing;
- Grant X% reduction for new development that via location near transit stations and attributes of the development notably reduces vehicle trip generation rates;
- Grant no reduction of fee on development that via location and attributes encourages or depends on use of vehicles and results in higher per area vehicle trip rates and trip distances; and
- Achieve revenue generation consistent with the current Zone D for both total revenue and distribution among the three cities and the County.

Recent discussions have explored the following issues (with more assessment needed):

- The fee should be an Air Quality Impact fee and not use “Nitrogen” but the concept would have the same basis;
- A distinct Air Quality Impact fee should be applied for all fee zones and not be embedded into the Zone A, B and C per acre fees;
- The fee should be based on the project-specific vehicle trip numbers used in the project’s environmental review; and
- Having a point source fee for nitrogen makes sense in general but linking to Bay Area Air Quality Management District permits may not be desirable given the very small generators that

can be subject to BAAQMD permits and that some BAAQMD permits link to vehicle trip impacts.

It is anticipated that continuing work on a revised Zone D fee concept will lead to review and discussion at the June 2010 Liaison Group agenda.

c. Western Burrowing Owl (WBO) Conservation Strategy

Local Partner staff and Habitat Plan consultants continue to work with the Wildlife Agencies (the Department of Fish and Game has the lead for the Wildlife Agencies) on development of a conservation strategy for the Western Burrowing Owl. The remaining locations of Burrowing Owl nests are in the San Jose International Airport and on the edge of the Baylands (especially at the San Jose Water Pollution and Control Plant). The value of private land in the vicinity of the Owls is high enough that strong consideration is underway to identify a conservation strategy that minimizes acquisition of private land. Local Partner staff, habitat Plan consultants and Wildlife Agency staffs continue to work toward a proposed WBO strategy. It is anticipated that the WBO conservation strategy will be on the Liaison Group agenda in May or June.

d. Implementing Agreement (IA)

The IA is a contract between the Wildlife Agencies and the Local Partners regarding implementation of the adopted Habitat Plan. The Local Partner attorneys have completing review of the most recent Draft IA. It is anticipated that the Draft IA will be on the Liaison Group agenda in May or June.

e. Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

The work schedule has release of a new Administrative Draft EIR/EIS on May 28, 2010 for review by Local Partner staff, Habitat Plan consultants and Wildlife Agency staffs. A pre-Public Draft document will be released in early July and the Draft EIR/EIS released with the Draft Habitat Plan and Draft IA in September 2010. It is not anticipated that the EIR/EIS will raise substantive issues regarding implementation of the Habitat Plan. Updates on the environmental review will be provided at future Liaison Group meetings. Issues of concern, if they arise, will be scheduled for discussion by the Liaison Group.

f. Habitat Plan Implementation Start Up Process

Local Partner staff and Habitat Plan consultants anticipate a detailed Liaison Group discussion of initial implementation issues at the June Liaison Group meeting.

g. Stakeholder Group

March, April and May Stakeholder Group meetings were cancelled pending further progress on a variety of issues. The June meeting will be on Tuesday, June 22, 2010.

Attachments: None

Copies: Stakeholder Group