

STAFF REPORT

SUBJECT: Amendment by Clerical Change for the Timing of Fee Collection

RECOMMENDED ACTION: Motion to Recommend Approval to SJCOG, Inc. for Clerical Change under the SJMSCP

DISCUSSION:

SJCOG, Inc. staff will be pursuing alterations to the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) through changes, revisions and amendments with the permitting agencies per *Section 8.8 Amendments and Revisions*. The changes will range from a Clerical Change to Major Amendments based on the triggers explained in Sections 8.8.2; 8.8.3; 8.8.4 and 8.8.5 in the plan.

The majority of actions being requested are Clerical Changes and Minor Revisions (Table 1) to be recommended to SJCOG, Inc’s Board with concurrence of the permitting agency representatives on the Habitat Technical Advisory Committee (HTAC) as required. The Clerical Changes and Minor Revisions will be brought to HTAC as they are clarified by the subcommittee. Staff will pursue amendments to the plan at a later time for response by the permitting agencies following the process stated in the plan.

Table 1 - Clerical Changes and Minor Revisions Process

Approval Process	Amendment Requirement	Triggers for Amendment Requirement
Clerical Change	<p>Clerical changes made by the JPA in response to a written request submitted by a permittee which includes documentation supporting the proposed clerical change. Annual reports (Section 5.9.1) shall include a summary of clerical changes made to the SJMSCP.</p>	Section 8.8.2 Clerical Changes contains 3 identified items but is not limited to only those.
Minor Revision	<p>Minor revisions include changes deriving from the SJMSCP Adaptive Management Plan (Section 5.9.4) and all other changes listed in this subsection. Minor revision do not require any amendments to the SJMSCP, the Section 10(a) or Section 2081(b), or to the SJMSCP's Implementation Agreement, but do require documentation.</p> <p>Minor revisions shall be approved by the JPA following approval by TAC. If TAC representatives from the Service or Department objects to or disagrees with a proposed minor revision, the JPA shall not approve the</p>	Section 8.8.3 Minor Revision subsections contains 45 identified items but is not limited to only those.

	<p>minor revisions and it shall be treated instead as a minor amendment pursuant to Sections 8.8.4 or 8.8.5. The JPA shall maintain documentation of each minor revision and list these, as required, in the annual report.</p>	
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SJCOG, Inc. staff has met with the Administrative Subcommittee (Table 2) for an alteration to the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) relating to timing of fee collection. In the listed change (Attachment 1), staff has identified the plan alteration with the action staff is pursuing, the amendment topic with appropriate section under the plan and the requested amendment language to be incorporated into the plan. The plan alteration item identified can be kept in the staff recommended form or revised by HTAC to be forwarded to the SJCOG, Inc. Board for approval individually.

Table 2 – Administrative Subcommittee

<p>Chairman, Mike Niblock, Deputy Director of Planning Division, City of Stockton</p>
<p>Kerry Sullivan, Community Development Director, San Joaquin County</p>
<p>John Beckman, Director of Governmental Affairs , BIA of the Delta</p>
<p>Steve Mayo/Kevin Torell, San Joaquin Council of Governments</p>

Staff believes this is a Clerical Change due to the language further clarifying the timing of fees. The process for the Clerical Changes will not require any amendments to the SJMSCP, the Section 10(a) or Section 2081(b), or comprehensive change to the SJMSCP's Implementation Agreement, but do require documentation reported in the annual reporting. If HTAC or the representatives of the permitting agencies believe it is a Minor Revision to add the language, staff will pursue the language as instructed in the SJMSCP.

If recommendation by HTAC occurs as either a Clerical Change or Minor Revision, the language will be presented to the SJCOG, Inc. Board for approval as recommended by HTAC. If the action by SJCOG, Inc. Board is approval of the language, the newly adopted language will take effect immediately.

*Prepared by: Steve Mayo, Senior Regional Planner
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Attachment 1 – Requested Amendment: Clerical Change

<p>Clerical Change A better definition of fee collection to Sections 5.3.2.3 / 8.6</p>	<p>Timing of Fee Collections (Sections 5.3.2.3 / 8.6) For projects less than or equal to 350 acres in size (equal to in size or smaller than the jump-start), collection of fees or purchase of banking credits will occur prior to or at the time of issuance of building permits so long as site disturbance without compensation does not exceed 500 acres total at any time during the term of term of the SJMSCP for SJMSCP permitted activities undertaken by project proponents opting for coverage pursuant to the SJMSCP.</p> <p>Under the normal permitting process implemented by local government jurisdictions in SJ County, ground disturbance (including grading) may occur prior to jurisdiction’s issuance of building permit. Included in disturbance are conditions that project proponents must fulfill (e.g. constructing new roads or installing water/sewer lines) before gaining final subdivision map approval to sell lots. Current plan language allows for these disturbances to take place prior to any SJMSCP project mitigation fulfillment and the SJMSCP project mitigation fulfillment can be delayed for months or years on projects depending on full build out (all building permits released).</p> <p>Development projects can better calculate costs on projects by paying in full the total acreage being disturbed when it is disturbed and satisfy the mitigation requirements as disturbance occurs (fee or land in lieu). Under the current process, development projects can experience an annual increase of the SJMSCP fee over a calendar year due building permits being pulled at various phases.</p>	<p>1. Fees to be collected not earlier than 30 days prior of triggering mechanism under the SJMSCP on all projects.</p> <ul style="list-style-type: none"> – Provides stability in financial tracking of projects under the plan – Minimizes paying lower fees ahead of annual escalation or other adjustments
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5.3.2.3 Timing of Fee Payments, In-Lieu Dedications or Mitigation Banking

Under the normal permitting process implemented by local government jurisdictions in San Joaquin County, ground disturbance (including grading) may occur prior to the local government jurisdiction's issuance of a Building Permit. For example, once a *tentative* subdivision map to create new residential lots is approved by a local government agency (e.g., the City of Tracy's City Council or the San Joaquin County Board of Supervisors) with conditions, the Project Proponent must fulfill many of the project conditions (e.g., constructing new roads or installing water or sewer lines) before gaining approval of a *final* subdivision map. Once the final subdivision map is completed, new residential lots may be sold to

the general public. Once a newly created subdivision lot is purchased, the new owner of the lot normally applies for a Building Permit to construct a new home on the newly created subdivision lot.

However, different development projects may undergo variations in this permitting process (e.g., Project Proponents may receive only Building Permits for small projects which address both building and grading activities, but Project Proponents are not required to secure Grading Permits due to the relatively small amounts of dirt being moved by the project). The majority of development projects in San Joaquin County require Building Permits during at least one phase of the development process. Many of San Joaquin County's largest projects also require Grading Permits. Therefore, given this variation in the types of permits which may be issued at varying times during the development process, the following provisions shall be implemented 1) to address the variations in the types of permits required, and timing of the acquisition of those permits, for the various development projects in San Joaquin County, 2) to provide a uniform approach amongst the local government agencies for timing the collection of fees or requiring purchases of mitigation banking credits, 3) to provide maximum flexibility for developers to finance their projects without creating adverse impacts to SJMSCP Covered Species, and 4) to ensure that compensation will occur pursuant to the SJMSCP by using familiar permitting procedures already used by local government agencies:

For so long as the 350-acre jump-start (Section 8.6) remains in place, the timing of compensation pursuant to the SJMSCP shall be as follows:

- A. Collection of Fees/Purchase of Mitigation Banking Credits for Projects Less Than or Equal to 350 Acres in Size (projects equivalent in size or smaller than the jump-start): collection of fees or purchase of banking credits will occur **not greater than 30 days** prior to or at the time of issuance of Building Permits so long as Site Disturbance without compensation (i.e., grading or vegetation removal has occurred with or without permits, but Building Permits have not yet been issued) does not exceed 500 acres total at any time during the term of the SJMSCP for SJMSCP Permitted Activities undertaken by project proponents opting for coverage pursuant to the SJMSCP. When Site Disturbances without compensation pursuant to this provision reaches 500 acres total, then the JPA and Permittees shall require the fee collections or purchase of banking credits for projects less than or equal to 350 acres in size to occur pursuant to the same schedule as required for projects exceeding 350 acres as described in paragraph B.
- B. Collection of Fees/Purchase of Mitigation Banking Credits for Projects Exceeding 350 Acres: collection of fees for land acquisition or purchase of banking credits will occur either:
 1. **Not greater than 30 days** Prior to issuance of a Grading Permit (or prior to Ground Disturbance if no Grading Permit is required); or,
 2. The Project Proponent may bond for payment of the applicable SJMSCP fees **not greater than 30 days** prior to the issuance of a Grading Permit (or prior to the commencement of Ground Disturbance if no Grading Permit is required). Bonds posted pursuant to this provision shall be released, to the extent possible, after full project buildout and after all appropriate fees have been paid with respect to each building permit associated with the project. Provisions for releasing

portions of the bond as buildout progresses may be established on a case-by-case basis upon request of the Project Proponent. Only bonds issued by a bond surety admitted in California by the California Department of Insurance will be accepted unless otherwise approved by the JPA with the concurrence of the Permitting Agencies.

- C. Collection of Fees/Purchase of Mitigation Banking Credits for Conversion of Vernal Pool Grasslands to Orchards and Vineyards shall occur prior to ground disturbance.
- D. Land Dedications in Lieu of Fee Payments or in Lieu of Mitigation Banking Regardless of Project Size: Shall occur prior to ground disturbing activities (i.e., prior to the issuance of a Grading or Building Permit, whichever occurs first) unless an extension is requested, in writing to the JPA, by the Project Proponent and granted to a date certain by the TAC, with the concurrence of the Permitting Agencies' TAC representative, based upon the following findings:
 - 1) The time extension will not jeopardize the proper functioning of SJMSCP, and
 - 2) The time extension will not adversely affect any SJMSCP Covered Species.

The TAC, with the concurrence of the Permitting Agencies' TAC representative, may impose conditions on the time extension as necessary to provide assurances to the JPA that the Project Proponent shall provide compensation pursuant to the SJMSCP consistent with the requirements of the SJMSCP.

If the 350-acre jump-start ceases to exist, then the provisions of paragraph B shall apply for all SJMSCP Permitted Activities, regardless of size and regardless of the compensation method selected (i.e., fees, land dedications in-lieu of fee payments, or purchase of mitigation banking credits).

8.6 ACQUISITION OF JUMP START LANDS/1,000-ACRE DEFERRAL /JUMP STARTS FOR VERNAL POOLS AND VELB

To assist in balancing the impacts of new development with Preserve acquisition efforts, within six months of issuance of the SJMSCP permits, the SJMSCP Joint Powers Authority (JPA) shall acquire Preserve lands totaling approximately 350 acres. As long as these initial Preserve acres are in place, the acquisition of additional Preserve lands required to offset Incidental Take need not precisely balance Incidental Take until approximately 1,000 acres of development involving SJMSCP Permitted Activities have occurred from the date of issuance of the SJMSCP Permits. This deferral will allow funds to accumulate sufficiently to purchase significant blocks of Preserve lands. If 350 acres of jump-start

Preserve lands are not in place within six months, the Permitting Agencies may pursue appropriate remedies as established in Section 16 of the Implementation Agreement (revocation/suspension/termination).

After the first 1,000 acres of development involving SJMSCP Permitted Activities, and so long as the 350 acre jump-start remains in place, acquisition of Preserve lands must conform to the compensation ratios set forth in Section 4.1 of the SJMSCP; provided, however, that if the JPA possesses funds sufficient to acquire Preserve lands in accordance with the compensation ratio, acquisition may occur up to 24 months from the land Conversion or development requiring compensation. The JPA shall possess sufficient funds for the purposes of this provision if it has allocated sufficient existing funds to purchase Preserve lands at the per acre cost identified in Table 7-1 of the SJMSCP (and adjusted annually for inflation pursuant to SJMSCP Section 7.5.2.2) to compensate for all such land Conversion or development that has occurred pursuant to the SJMSCP. If there is insufficient funding, the funding shortfall provisions of Section 7.5.2.4 shall apply. To defer Preserve land acquisitions, the JPA must possess sufficient funds, whether or not fees have been collected for the Conversion or development requiring compensation.

This will allow the accumulation of funds sufficient to acquire larger tracts of significant Preserve lands than could occur if acquisition funds had to be immediately expended.

Timing of fee collections, in-lieu land dedications or purchase of mitigation banking credits shall conform with the provisions of Section 5.3.2.3 and are subject to the maintenance of the 350-acre jump-start. For projects less than or equal to 350 acres in size (equal to in size or smaller than the jump-start), collection of fees or purchase of banking credits will occur **not greater than 30 days** prior to or at the time of issuance of Building Permits subject to the limits established and except as otherwise provided in Section 5.3.2.3. For projects exceeding 350 acres, collection of fees for land acquisition or purchase of banking credits will occur as described in Section 5.3.2.3. Dedications of land occurring in-lieu of fee payments or in-lieu of purchase of banking credits shall occur prior to Ground Disturbance except as provided in Section 5.3.2.3.

Vernal Pools. Limits on the amount of Conversion acres of vernal pool grasslands is limited within this 24-month deferral period pursuant to Sections 5.5.2.5 and 5.5.7 and requires a jump-start acquisition of up to six wetted acres of vernal pools within twelve months of issuance of the SJMSCP Permits.

VELB. Pursuant to SJMSCP Section 5.5.4, a 25-acre jump-start acquisition also is required to offset impacts to the Valley elderberry longhorn beetle. The first 10 acres of the jump-start shall be acquired within twelve months of issuance of the SJMSCP Permits and the remainder shall be acquired within three years of the issuance of SJMSCP Permits.