



December 20, 2021

Edmund Sullivan, Executive Officer
Santa Clara Valley Habitat Agency
535 Alkire Avenue
Morgan Hill, CA 95037

Subject: Letter of Intent for Land-in-Lieu of Fee and Conservation Easement Agreement for the San José-Santa Clara Regional Wastewater Treatment Facility

Dear Mr. Sullivan,

The purpose of this letter is to confirm and update the City of San José's (City's) intent regarding the land-in-lieu of fee arrangement and conservation easement agreement initiated in 2016. The City, as the administering agency for the San José -Santa Clara Regional Wastewater Facility (RWF), intends to finalize the agreement with the Santa Clara Valley Habitat Agency (HA) to enroll land belonging to the RWF into the HA Reserve System. In 2016, 72 acres were identified for enrollment based on the Capital Improvement Program (CIP) projects known at that time. Since then, the program and projects have evolved from what was originally conceptualized. The City now intends to enroll the entire 201 acres dedicated for Western burrowing owl habitat. This agreement would bind the Cities of San José and Santa Clara as co-owners of the RWF and would require approval from the respective City Councils.

The following CIP projects known to date are estimated to impact 49.48 acres and would be subject to \$3,455,390 in HA fees without this land-in-lieu deal:

Project	Start Date	Estimated Fee Cost*
Fiber Optic Connection	June 2016	\$3,600
Iron Salt Feed Station	June 2016	\$211,600
Construction-Enabling Improvements	July 2016	\$705,300
Digested Sludge Dewatering	August 2021	\$218,187
New Headworks & Improvements	June 2020	\$2,316,703
Grand total		\$3,455,390

As consideration for not paying the HA fees, the City will enroll 201 acres of habitat in the HA Reserve System in lieu of fees, part of which will cover the new project impacts for the Digested Sludge Dewatering Project and the New Headworks and Headworks Improvements Project. Any remaining acreage will be set aside or "banked" for use against future projects at the RWF.

The HA has determined that a 178-acre enrollment is required to cover the estimated 49.48 acres of CIP project impacts. The appraised value of \$40,000/acre requires a multiplier of 1.8 to cover the fee

schedule. The formula becomes $49.48 \text{ acres} \times 1.8 = 89.06 \text{ acres}$. That acreage figure is then doubled to 178 to accommodate a “buffer and recovery” area.

A portion of the 201 acres is the Cisco mitigation area comprised of 21.4 acres. The HA has agreed to accept the 21.4 acres of the Cisco area as “buffer and recovery”. The remaining balance of the endowment funds tied to the Cisco mitigation area, approximately \$128,953, will also transfer to the HA for purposes of continued maintenance of the habitat. These Cisco endowment funds are separate from the RWF’s mitigation fees owed. The HA shall not use this money for any reason outside of this habitat.

It should also be noted that this easement has been specifically valued below market based on other potential uses because of the limitations on use set forth in Exhibit C and Exhibit D of the Conservation Easement & Land in Lieu Agreement being finalized. As such, any future value determination should be limited to the same considerations used in the original agreed upon appraised value.

In June 2021, the City amended the short-term management agreement with the HA through June 2026. This allows the HA to maintain responsibility for managing and protecting the 201-acre land for Western burrowing owl habitat. Under Exhibit B of the management agreement, the HA would be responsible for continuing to implement the Burrowing Owl Habitat Management Plan with their partners Santa Clara Valley Audubon Society and Talon Ecological Research Group.

The City intends to work with the HA to update the necessary portions of the land-in-lieu and conservation agreement to reflect the City’s new commitment to enroll the entire 201 acres into the reserve system.

Any questions or comments regarding this letter can be discussed with Jennifer Voccola-Brown, Sustainability & Compliance Manager, at (408) 975-2594 or jennifer.brown@sanjoseca.gov.

Sincerely,

Napp Fukuda /s/

Kerrie Romanow, Director
City of San José, Environmental Services Department