JH
1-19-2017
Item No. 29

AN ORDINANCE 2017-01-19-0032

AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND BEXAR COUNTY FOR IMPLEMENTATION OF THE SOUTHERN EDWARDS PLATEAU-HABITAT CONSERVATION PLAN (SEP-HCP); APPOINTING MEMBERS TO ITS COORDINATING COMMITTEE; AND APPROPRIATING $175,000 FROM THE DEVELOPMENT SERVICES FUND.

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WHEREAS, the Southern Edwards Plateau-Habitat Conservation Plan (SEP-HCP) is an initiative that began in 2009 in response to the U.S. Army's desire to promote compatible development near Camp Bullis; and

WHEREAS, the City Council passed Ordinance 2009-12-03-0987 authorizing an interlocal agreement with Bexar County to begin the process of establishing the SEP-HCP; and

WHEREAS, Bexar County began with the creation of a Citizens Advisory Committee and a Biological Advisory Team comprised of land owners, developers, government agencies, conservationists and biologists to ensure that the SEP-HCP met the needs of the local community and regulatory requirements of the Endangered Species Act (ESA), National Environmental Policy Act and Chapter 83 of the Texas Parks and Wildlife Code; and

WHEREAS, the SEP-HCP will provide for local administration of the ESA and help to streamline the process for achieving compliance for landowners, developers, the City of San Antonio, Bexar County and anyone conducting non-federal activities within the jurisdiction of the plan area; and

WHEREAS, in December of 2015, the U.S. Fish and Wildlife Service approved the final SEP-HCP, and on January 18, 2016, a Joint 30-year Incidental Take Permit (Permit) was issued to the City of San Antonio and Bexar County; and

WHEREAS, the execution of the interlocal agreement by the City and County will establish an organizational structure and allocation of shared responsibilities for the coordination, administration, implementation, and funding of the SEP-HCP and joint management of the Permit; and

WHEREAS, prior to the inclusion in the SEP-HCP of any City owned real property, including property that is included in the Edwards Aquifer Protection Program (EAPP) and commonly referred to as Proposition Lands, a request for such inclusion shall be brought before the Conservation Advisory Board and the City Council for consideration; and

WHEREAS, a portion of the net proceeds generated as a result of the inclusion of Proposition Lands in the SEP-HCP shall be allocated to the EAPP to carry out its program objectives; and

WHEREAS, funding in the amount of $175,000.00 will be allocated for the initial SEP-HCP activities which include a Government Canyon survey, plan management, and contract consultant extension, and all approved SEP-HCP funding will be reimbursed to the Development Services Fund when money becomes available; and

WHEREAS, creation of a SEP-HCP Coordinating Committee through the interlocal agreement, consisting of three City appointees and three County appointees, will carry out the purposes and goals of the SEP-HCP by making budget recommendations, permit management, providing policy oversight, and developing and administering guidelines for the purchase and management of all the lands in the preserve system; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, or her designee, is authorized to negotiate and execute an interlocal agreement with Bexar County for the implementation of the Southern Edwards Plateau-Habitat Conservation Plan. A copy of the proposed "Interlocal Agreement for the Implementation of the Southern Edwards Plateau-Habitat Conservation Plan" is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. The City appointees to the SEP-HCP Coordinating Committee created through the interlocal agreement are ex officio representatives from the Departments of Development Services, Parks and Recreation, and Planning. The Assistant Director for Land Development of the Development Services Department, the Assistant Director of the Planning Department, and the Director of the Parks and Recreation Department are the designated appointed members of the Coordinating Committee on behalf of the City. Terms of office are to be staggered, two years, beginning January 1 and ending on December 31 of the next year. Initially, the members shall serve the remainder of an unexpired two-year term of office, to expire December 31, 2018, or the remainder of an unexpired one-year term of office, to expire December 31, 2017, in accordance with the terms and provisions of the interlocal agreement. Each successive term shall be for a period of two years, respectively.

SECTION 3. Prior to the inclusion in the SEP-HCP of any City owned real property, including a tract or parcel that is a part of the Edwards Aquifer Protection Program (EAPP) and commonly referred to as Proposition Land, the Conservation Advisory Board (CAB) shall review a request for such inclusion. Any recommendation by the CAB shall then be brought before the City Council for a vote on final consideration. In the event the City Council votes to include a tract of land designated as Proposition Land in the SEP-HCP, then no less than one-half of the net proceeds generated by the inclusion of said tract in the SEP-HCP shall be allocated to the EAPP to carry out its program objectives.

SECTION 4. The amount of $175,000.00 is appropriated in Fund 29097000, DT OP TRFS, SAP Internal Order 390000002113, SAP GL account 6102100 - Interfund Transfer out entitled From DT OP TRFS to Budget and Research. The amount of $175,000.00 is authorized to be transferred to SAP Fund 29105001.

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SECTION 5. The budget in SAP Fund 29105001, Budget and Research, SAP Internal Order 311000002113, SAP GL Account 6101100 - Interfund Transfer In, shall be increased by the amount $175,000.00.

SECTION 6. Funding will be allocated for Government Canyon Survey, Plan Management, and contract consultant extension. All approved SEP-HCP funding will be reimbursed to the Development Services Fund 29105001 when money is available.

SECTION 7. Funds are authorized to be received from Bexar County to Development Services SAP Fund 29105001, and into an Intergovernmental General Ledger account.

SECTION 8. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP fund numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 9. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 19th day of January 2017.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

For **City Attorney**

Agenda Item:	**29**
Date:	01/19/2017
Time:	03:07:57 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an Interlocal Agreement between the City of San Antonio and Bexar County for the implementation of the Southern Edwards Plateau-Habitat Conservation Plan (SEP-HCP); appointing members to its Coordinating Committee; and appropriating $175,000 from the Development Services Fund. [Erik Walsh, Deputy City Manager; Roderick J. Sanchez, Director, Development Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8				x		
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

Implementation Plan Summary

Exhibit A

Bexar County ("County") and the City of San Antonio ("City") are co-permittees holding Incidental Take Permit No. TE48571B-0 issued by the U.S. Fish and Wildlife Service ("USFWS"). The specific roles and responsibilities of each co-permittee are detailed in an Interlocal Agreement ("ILA") between the County and the City. The Southern Edwards Plateau-Habitat Conservation Plan ("SEP-HCP") requires a number of reporting and coordination tasks to demonstrate that the SEP-HCP is being properly implemented. Annual reports on SEP-HCP enrollment, the preserve system, implementation of other conservation measures, financial status, and compliance issues are required to be submitted to the USFWS. Regular coordination with the USFWS regarding the enrollment of new participants, new preserve acquisitions, adaptive preserve management, and secondary uses of preserve lands is also expected. The Implementation Plan will be developed by the SEP-HCP Coordinating Committee and serve as the guiding document for how the SEP-HCP will be administered, identify the tasks in which are needed to successfully implement the SEP-HCP guidelines, and the processes by which to do so. Tasks include, but are not limited to enrollment, participation fee structure, acquisition and management of the preserve system, committee formation and roles, and reporting and coordination with the USFWS.

SEP-HCP Implementation Plan Goals

The SEP-HCP Coordinating Committee will develop an Implementation Plan based on the following implementation goals and objectives as established by the City and the County in the ILA.

1. **Plan Funding**

   The SEP-HCP is a voluntary plan that is set up on a "pay-as-you-use" basis. The City and County will equally participate in the funding of the Plan, as stated in the ILA. The Implementation Plan will establish the Participation Fee rates, application fees, and other surcharges that Plan Applicants will be required to pay for Participation in the Plan to offset the costs and thereby create a self-sustaining plan. The goal is to reimburse the City's and County's initial contributions to get the SEP-HCP implemented and promote regional conservation. Initial Participation Fee structures are as follows:

   - ***Application Fee Schedule***

     The fees for each Application submitted for Enrollment in the Plan are non-refundable, set at the discretion of the City and the County, and may change overtime as may be more particularly set out in the Implementation Plan. Initially, the Application fees will be as follows:

     - **Application Fee: $2,500**

- **Plan Administration Fee: 10% of total mitigation fees**

- ***Golden-cheeked Warbler ("GCW") and Black-capped Vireo ("BCV") Preservation Credits***

The purchase fees for each GCW and BCV Preservation Credit are set at the discretion of the City and the County and may change over time, as may be more particularly set out in the Implementation Plan. Initially, the fees will be as follows:

- **$4,000 per Preservation Credit.**
- **$8,000 per acre of directly impacted GCW or BCV habitat**
- **$2,000 per acre of indirectly impacted GCW or BCV habitat.**

- ***Karst Participation Fees***

The purchase fees for each Karst Credit are set at the discretion of the City and the County and may change over time, as may be more particularly set out in the Implementation Plan. Initially, the fees will be as follows:

- **$1,000 per acre for all karst habitats (Zone 1 through Zone 4) within the Property to be enrolled.**

Applicants can also provide mitigation for impacts to the Covered Karst Invertebrates in the form of participation fees that will be assessed on the basis of obtaining access to Occupied Cave Zones. If the current Conservation Baseline allows for Covered Activities to occur within an Occupied Cave Zone, then an Applicant may pay participation fees to obtain SEP-HCP incidental take authorization within one or both of Occupied Cave Zones A and B.

Karst participation fees to Occupied Cave Zones will be set at the discretion of the City and the County, and may change over time, as may be more particularly set out in the Implementation Plan. Initially, the karst participation fees will be set at the following levels:

- **Occupied Cave Zone A = $400,000 per individual zone**
- **Occupied Cave Zone B = $40,000 per individual zone**

- ***GCW or BCV Preserves In Lieu of Preservation Credit Purchases***

In lieu of purchasing Preservation Credits from the SEP-HCP, Applicants may offer occupied preserve land for the GCW or BCV as full or partial mitigation for the impacts of their incidental taking. The City and the County will have the discretion to accept or reject all offers of preserve land in lieu of Preservation Credit purchases on a case-by-case basis. The level of mitigation provided by an offer of preserve land will be established in the same manner as for other SEP-HCP preserves and will be expressed in terms of the number of Preservation Credits created for each species. In-lieu participants will be responsible for payment of the perpetual management and monitoring costs associated with any in-lieu donation, with fees to be determined on a case-by-case basis contingent upon specific conditions of the donation, and estimated to be at least:

  - **$2,500.00 per acre or greater**

- ***Karst Preserves in lieu of Participation Fees***

In lieu of paying karst participation fees to the City and the County, an Applicant may offer new karst preserves as mitigation for incidental take. The offered karst preserve in lieu must be occupied by one or more of the Covered Karst Invertebrates and can be from within the Enrolled Property or the Applicant can seek to find occupied karst preserves outside of the Enrolled Property. All karst preserves accepted in lieu of participation fees are subject to the same standards and approval process as other SEP-HCP karst preserves and must fulfill an unmet need towards achieving the Conservation Baseline for at least one of the Covered Karst Invertebrates.

The City and the County will have the discretion to accept or reject all offers of preserve land in lieu of karst participation fees on a case-by-case basis. All offers of preserve land will also require the approval of the USFWS. In-lieu participants will be responsible for payment of the perpetual management and monitoring costs associated with any in-lieu donation, with fees to be determined on a case-by-case basis contingent upon specific conditions of the donation, and estimated to be at least:

  - **$2,500.00 per acre or greater**

2. **Preserves**

Establishment of SEP-HCP preserves are voluntary. Proposition 1, 2 and 3 land, other public property, open space, and private property are eligible to participate in the SEP-HCP as preserve land. Any City- or County- owned land to be used by the SEP-HCP will be brought before the respective governing body for approval.

- Prior to the inclusion in the SEP-HCP of any city owned real property including Prop Land, the Conservation Advisory Boards (CAB) shall review the request. Any recommendation by the CAB shall then be brought before the City Council for final consideration. In the event the City Council votes to include Prop Land in the SEP-HCP, then no less than one-half of the net proceeds generated by the inclusion in the SEP-HCP shall be allocated to the Edwards Aquifer Protection Program to carry out its program objectives.

3. **Preservation Credits Established from Permittee-owned Property**
   Properties owned by the City or County which meet the SEP-HCP preserve requirements and receive approval from USFWS, are eligible to support both public and private project mitigation needs. The City or County staff will take such properties to their respective governing bodies for consideration for participation in the Plan, and staff will ask for direction on how those Preservation Credits should be used.

4. **Public and Private Project Participation**
   Both public and private projects will be allowed to participate in the SEP-HCP contingent upon the availability of Preservation Credits and/or established karst preserves to meet the required amount of Incidental Take Coverage needed.

5. **Projects over the Recharge and Contributing Zones**
   Projects over the Edwards Aquifer Recharge and Contributing Zones are allowed to participate in the SEP-HCP. These projects will occur regardless of the SEP-HCP and participation in the SEP-HCP will encourage compliance with the Endangered Species Act. It is also important to note that USFWS will permit project developers to create their own habitat conservation plan as long as they comply with the aquifer protection regulations, in the event that the project developers do not want to participate in the SEP-HCP.

6. **GCW Preservation Goals**
   Upon request of the United States military and in support of military bases in San Antonio, the City and the County aspire to reach of a goal of a minimum of 30 percent of the GCW habitat preserved to be located within Bexar County, or 5 miles from its boundary. This will be a long term goal; however, it will not be a mandatory requirement of the SEP-HCP.