



# City of San Antonio

## Agenda Memorandum

**File Number:**19-2578

---

**Agenda Item Number:** 15.

**Agenda Date:** 4/11/2019

**In Control:** City Council A Session

---

**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Michael Shannon, PE, CBO

**COUNCIL DISTRICTS IMPACTED:** Citywide

**SUBJECT:**

Briefing and Consideration of Amendments to the Habitat Compliance Form (Section 35-B133 of the Unified Development Code)

**SUMMARY:**

In 2009, the City Council passed an ordinance that requires a Habitat Compliance Forms (HCF) be submitted for any Master Development Plan, Planned Unit Development, Subdivision Plat, or Tree Permit for properties greater than two acres in size. The HCF is intended to be a communication tool which provides notification of development activity within the jurisdiction of the City of San Antonio to the U.S Fish and Wildlife Service (USFW) and Texas Parks and Wildlife (TPWD). The City is pre-empted by state law from enforcing the Endangered Species Act, as such, the HCF is not meant to imply the City's concurrence with biological studies or surveys, or that a project is in compliance with the Endangered Species Act; rather, the form is intended to provide information to USFW so that they can enforce the Endangered Species Act according to their policies and procedures. It is important to note that since the HCF was created in 2009, the form has not been updated. Since November 2018, a Task Force composed of representatives from USFW, TPWD, the Military, the development community, environmental consultants, and neighborhood representatives have met to discuss changes to increase the efficacy and clarity of the HCF.

**BACKGROUND INFORMATION:**

The City of San Antonio and the extraterritorial jurisdiction is in an area where the habitat of both the Golden-cheeked Warbler and Karst Invertebrate Species are known to exist. Additionally, Camp Bullis is known to contain habitat for these species. When the initial 16,000 acre Camp Bullis training site was established in 1916 it was in a remote part of Bexar County, a considerable distance from any urbanized development. In fact, San Antonio urbanization was largely contained within Loop 410 through the 1950s. The remote location of Camp Bullis was conducive to the military's training activities which included explosives, helicopter activity and, later, night vision operations. Additional land acquisitions through the 1940s eventually enlarged the installation to approximately 28,000 acres. Hastened by interstate highways, utility service extensions and population growth, urban development has moved northward, surrounding Camp Bullis.

As a result of urban encroachment concerns, the Military has commented to the City of San Antonio in various

public forums that continued development will impede their operations. In 2008, City Council adopted several initiatives to implement in order to support the Military Missions. Light pollution, endangered species habitat, and noise are three factors that impact the military operations.

The Development Services Department responded to this situation with a host of measures to promote compatible development near the installation and improve community and Military relations. Since 2008, the City has developed several initiatives to protect the military mission:

- December 2008 - Military Notification Areas for all Joint Base Installations
  - Updated in December 2017
- December 2008 - Military Lighting Overlay District in Camp Bullis
- August 2009 - Habitat Compliance Form Ordinance
- October 2009 - Environmentally Sensitive Area (ESA) Ordinance
- May 2010 - Updated and Strengthened the Tree Ordinance
- June 2010 - Military Sound Attenuation Overlay District
- February 2017 - Creation of the Southern Edward Plateau Habitat Conservation Plan in partnership with Bexar County
- June 2018 - Expanded Military Lighting Overlay District to include Lackland Air Force Base and Medina Annex

When the HCF was developed in 2009, Development Services staff coordinated efforts between various city departments, Bexar County, the Military, TPWD, USFW, and a development stakeholder task force. Staff also met with the development stakeholders, Bexar County, the Military, USFW and TPWD on technical issues related to endangered species habitat.

Ordinance 2009-08-20-0652 creating the HCF communication tool passed in 2009, and the HCF has been required since for all Master Development Plans, Planned Unit Developments, Subdivision Plats, and Tree Permits on properties greater than two acres in size in the city limits and the ETJ.

#### **ISSUE:**

The HCF is submitted by developers for applicable development applications and the form is forwarded by City Staff to USFW for consideration. The HCF is intended to be a communication tool which provides notification of development activity within the jurisdiction of the City of San Antonio to the USFW. The City is pre-empted by state law from enforcing the Endangered Species Act, as such, the HCF is not meant to imply the City's concurrence with biological studies or surveys, or that a project is in compliance with the Endangered Species Act; rather, the form is intended to provide information to USFW so that they can enforce the Endangered Species Act according to their policies and procedures. It is important to note that since the HCF was created in 2009, the form has not been updated.

It has been nearly nine years since the HCF was created. Recently, city staff has identified and been made aware by USFW, registered biologists, neighborhoods, and the development community that the form lacks clarity, is difficult to understand, and can result in confusion. Because of these issues, and the length of time since the adoption of the HCF, City Staff convened a task force in order to solicit feedback from the development community, registered biologists, neighborhoods, USFW, TPWD, the Military, and other applicable stakeholders, in order to propose improvements to the form and process so that the intended communication efforts are effective.

The Task Force met several times to discuss possible changes to the HCF, as well as the associated Information Bulletin which provides guidance and clarity. While the taskforce did not change the intent of the document as a communication tool, it did add several clarifying statements, added requirements for additional

documentation (such as permit numbers and biologist information) to assist USFW with their reviews, and clarified the affidavit section of the form.

Planning Commission made a recommendation of approval on March 13, 2019.

#### Summary of the Changes

- Labeled each Part of form for clarity
- In Part 5, required additional information, such as individual permit or consultation numbers or a copy of the habitat conservation plan participation certificate, when the applicant indicates that they have utilized this option
- In Part 6
  - clarified presumptive habitat areas for Golden-cheeked warblers
  - requires biologist name and permit number, date of survey or assessment, and whether the biologist has been notified that their survey or assessment was utilized, when applicant indicates that a survey or assessment has been sent to USFW
  - clarifies that although the HCF may not be required, coverage may still be required for areas outside karst zones 1 or 2
  - requires applicants to provide a map indicating that the project area is outside of karst zone 1 or 2 if that option is selected
- In Part 7, added a title and date block for the certification
- In Part 8
  - clarifies in the affidavit that the applicant either did not conduct an assessment or survey or chose not to provide the assessment or survey
  - requires applicants to explain why no survey or assessment was done or why it was not provided to USFW
  - added a clarifying statement that the owner is responsible of the property's compliance with the Endangered Species Act

#### **ALTERNATIVES:**

As an alternative, the Council could choose to not make the changes recommended by the Task Force and Planning Commission and Technical Advisory Committee, and leave the HCF as it is today.

#### **FISCAL IMPACT:**

Ordinance amending Chapter 35, Unified Development Code, of the City Code of San Antonio, Texas, by amending Section 35-B133 - Habitat Compliance Form. There is no fiscal impact with this ordinance.

#### **RECOMMENDATION:**

Staff recommends approval.