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October 2, 2008

## MEMORANDUM

**TO:** Council members

**FROM:** Patty O'Toole, Lynn Palensky, Sandra Hirotsu

**SUBJECT:** Update on hearings, comments, and draft program amendment schedule

At the October Council meeting, the staff will be prepared to discuss the items described below.

1. Summary of comments received to date

Staff will briefly summarize the comments received through the October Council meeting. The public comment period remains open through October 30.

2. Consultation discussion

The staff will report on the consultations held with entities through the October Council meeting and the key themes from those discussions and additional requests for consultation.

3. Consultation/Deliberation periods

The staff suggests the following schedule for the remaining work to amend the fish and wildlife program:

The "public comment" deadline for the draft Fish and Wildlife Program, as you know, is October 30. Staff suggests that the administrative record then stay open through November 14, and that this period be referred to as a period of *final consultation*. This period would be used to consult with entities if clarification or elaboration on their comments is needed. During this period, members may continue to discuss the program amendments with interested parties, *as long as* (1) a record is made of all comments, circulated to the other members and placed in the administrative record, and (2) all interested parties have fair and equal access to the members during this period. This second point is particularly important -- that interested participants must have equal knowledge of and opportunity for access.

Staff suggests that at 5 p.m. on November 14, the administrative record close for all public comment and that the Council enter a period of Council deliberation - internal only - with no additional input from outside the Council. All Council deliberation from this point forward, until

the final decision, would have to be based only on information contained in the administrative record. During this time, staff would prepare the final draft program for Council review, discussion and decision at the December Council meeting.

In the past, we have used the term "ex-parte period" to describe the period of Council deliberation. The legal division has reviewed this and determined that the use of the term "ex-parte period" is inappropriate and should no longer be used for what we do. The process described above does reflect the legal requirements of the final weeks of deliberation prior to a final Council decision on the amended Fish and Wildlife Program.

#### 4. Logistical update/reminders

Below are the anticipated tasks for the November and December meetings. As we get closer to those meetings, staff will review the schedule and work needed to stay on schedule and propose adjustments as necessary.

- November: Section-by-section review of draft program, discuss comments and make decisions about any changes to the sections.
- December: Final language revision, edits, and decision.