Santa Clara Valley Habitat Plan
Final Environmental Impact Report/ Environmental Impact Statement

Volume II – Comments and Responses

Santa Clara County, California

CEQA Lead Agencies
County of Santa Clara
City of San José
City of Morgan Hill
City of Gilroy
Santa Clara Valley Water District
Santa Clara Valley Transit Authority

CEQA Responsible Agency
California Department of Fish and Game

NEPA Lead Agency
U.S. Fish and Wildlife Service

August 2012

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Introduction and Master Responses

Introduction

This document contains the comments received on the Public Draft Santa Clara Valley Habitat Plan and EIS/EIR. Each letter has been assigned a unique number. Each comment within the letter also has been assigned a unique number, noted in the right margin. For example, the code "1-5" indicates the fifth distinct comment (indicated by the "5") in letter number 1. The chapter is organized by presentation of each comment letter immediately followed by the responses to that letter. **Table 1** summarizes the commenting party, comment letter signatory, and date of the comment letter.

TABLE 1
List of Comment Letters

Number	Agency/Organization/Individual	Comment Letter Signatory, Date
1	Native American Heritage Commission	Rob Wood, Associate Government Program Analyst—December 29, 2010
2	City of Newark	Terrence Grindall, Community Development Director—January 27, 2011
3	Public Meeting #1	Community Meeting Summary—February 9, 2011
4	Jan Webb	Jan Webb—February 9, 2011
5	Central Coast Regional Water Quality Control Board	Roger W. Briggs, Executive Officer—February 14, 2011
6	Public Meeting #2	Community Meeting Summary—February 15, 2011
7	Noel Eberhardt	Noel Eberhardt, South Bay Soaring Society—February 15, 2011
8	Toni Gregorio-Bunch	Toni Gregorio-Bunch—February 15, 2011
9	Neela Srinivasan	Neela Srinivasan—February 15, 2011
10	Angus Teter	Angus Teter—February 15, 2011
11	Sara Greer	Sarah Greer—No date
12	Unknown	February 16, 2011
13	Chuck Hammerstad	Chuck Hammerstad, Conservation Committee Chair, Flycasters Inc. of San José—February 17, 2011
14	Tori Ballif	Tori Ballif—February 18, 2011
15	Glen-Loma Group	Tim Filice, Glen Loma Ranch—February 25, 2011
16	Hecker Pass Property Owners Group	Jim Hoey, Representative—March 2, 2011
17	Gordon Jacoby	Gordon Jacoby—March 7, 2011
18	John Telfer	John Telfer—March 8, 2011
19	Grey Hayes, PhD	Grey Hayes, PhD, Ecologist—April 18, 2011
20	U.S. Environmental Protection Agency	Kathleen M. Goforth, Manager, Environmental Review Office—March 16, 2011
21	Gordon Jacoby	Gordon Jacoby—March 16, 2011
22	Dean Stanford	Dean Stanford—March 23, 2011

TABLE 1
List of Comment Letters

Number	Agency/Organization/Individual	Comment Letter Signatory, Date
23	Santa Clara County Farm Bureau	Jennifer Williams—March 28, 2011
24	Santa Clara County Cattlemen's Association and Santa Clara County Farm Bureau	Kyle Wolfe, President, and Tim Chiala, President—April 5, 2011
25	Sheila Barry	Bay Area Natural Resources/Livestock Advisor, University of California Co-op Extension—April 8, 2011
26	Ken and Lana Bone	Ken and Lana Bone—April 14, 2011
27	Friends of Edgewood	Mary Wilson, President—April 14, 2011
28	Santa Clara County Open Space Authority	Sequoia Hall, Chair, Board of Directors—April 14, 2011
29	City of Morgan Hill	James B. Rowe, Planning Manager—April 15, 2011
30	Jae Pasari	Jae Pasari, PhD Candidate, University of California, Santa Cruz—April 15, 2011
31	Santa Clara County Vector Control District	Noor Tietze, PhD—April 15, 2011
32	Kyle Wolfe	Kyle Wolfe, President, Santa Clara County Cattlemen's Association—April 15, 2011
33	Anita Marlin	Anita Marlin—May 5, 2011
34	Kathleen Swindle	Kathleen Swindle—April 17, 2011
35	Building Industry Association of the Bay Area	Paul Campos, Senior Vice President and General Counsel, Crisand Giles, Executive Director, South Bay—No date
36	California Native Plant Society	Kevin M. Bryant, Past President, Santa Clara Valley Chapter—April 18, 2011
37	Cisco Systems	Margo N. Bradish, Cox, Castle & Nicholson, LLP—April 18, 2011
38	Citizen's Committee to Complete the Refuge	Eileen P. McLaughlin, Shoreline Watch for San José—April 18, 2011
39	Committee for Green Foothills	Brian A. Schmidt, Legislative Advocate, Santa Clara County—April 18, 2011
40	Coyote Valley Research Park	Randall C. Single, Greenberg Traurig—April 18, 2011
41	De Anza Wildlife Corridor Technician Program	Julie Phillips, WCT Program Leader—April 18, 2011
42	Guadalupe-Coyote Resource Conservation District	Meg Giberson, Vice President—April 18, 2011
43	Jan Hintermeister	Jan Hintermeister—No date
44	Libby Lucas	Libby Lucas—April 18, 2011
45	Joshua McCluskey	Joshua McCluskey —April 18, 2011
46	David Rubcic	David Rubcic—April 18, 2011
47	Kristin Jensen Sullivan	Kristin Sullivan, De Anza College—April 18, 2011

TABLE 1
List of Comment Letters

Number	Agency/Organization/Individual	Comment Letter Signatory, Date
48	Santa Clara County Audubon Society	Shani Kleinhaus, Environmental Advocate—April 18, 2011
49	Santa Clara County Farm Bureau	Tim Chiala, President—April 18, 2011
50	YCS Investments	Joanna Callenbach—April 18, 2011
51	South County Catholic High School	George Chiala, SCCHS Committee Chair—No date
52	City of San José	Joseph Horwedel, Director—April 21, 2011
53	Amah Mutsun Tribal Band	Valentine Lopez, Chairman—March 9, 2011
54	Santa Clara Valley Water District	Marc Klemencic, Chief Operating Officer—April 18, 2011
55	Stuart Weiss	Stuart Weiss, PhD, Chief Scientist, Creekside Center for Earth Observation—No date

NEPA and CEQA regulations direct the lead agencies to make a "good faith, reasoned analysis" in response to "significant environmental issues raised" in comments on a Draft EIS/EIR (see State CEQA Guidelines Section 15088(c); 40 CFR 1503.4). Most of the comments addressed the issuance of an Incidental Take Permit and various elements of the Habitat Plan itself (i.e., the Proposed Action in the EIR/EIS). Only 38 comments focused on the environmental impact analysis – those comments are listed in Table 2. All other comments were considered to be related to the Habitat Plan. Nevertheless, to streamline documentation and avoid confusion, all public comments received during the comment periods are responded to in this Final EIS/EIR. Per CEQA and NEPA guidance, where there has been voluminous response, similar comments have been summarized and consolidated; however, all substantive issues raised in comments received on the Draft EIR/EIS are addressed. This section contains Master Responses that address common comments received and responses to other comments that do not fall within the scope of the master responses.

TABLE 2
EIR/EIS Comments

Number	Agency/Organization/Individual	Comment(s)
1	Native American Heritage Commission	1-1 through 1-3
2	City of Newark	2-1
5	Central Coast Regional Water Quality Control Board	5-1 through 5-4
20	U.S. Environmental Protection Agency	20-1
25	Sheila Barry	25-124 through 25-128
26	Ken and Lana Bone	26-1
28	Santa Clara County Open Space Authority	28-1
33	Anita Marlin	33-2
38	Citizen's Committee to Complete the Refuge	38-3 and 38-4

TABLE 2
EIR/EIS Comments

Number	Agency/Organization/Individual	Comment(s)
42	Guadalupe-Coyote Resource Conservation District	42-15
50	YCS Investments	50-33 through 50-49
53	Amah Mutsun Tribal Band	53-5

Master Responses

The Local Partners and Wildlife Agencies reviewed and responded to each of the795 public and agency comments on the Draft Habitat Plan and EIS/EIR. In the review of all public comments received on the Draft Habitat Plan and EIS/EIR, the Local Partners and Wildlife Agencies identified 13 recurring themes, which are expressed in this introductory section. Instead of repeating responses to these themes throughout the individual responses, the Local Partners and Wildlife Agencies are responding to them in this introductory section. When individual comments can be addressed (or partially addressed) by a Master Response, the individual response directs the reader to this introductory section.

Master Response 1: The scale and cost of the Draft Habitat Plan is too large; the Habitat Plan should focus on critical needs and be implemented in the most cost-effective manner.

Response to Comment

The Draft Habitat Plan was reviewed to identify items that could be scaled back but still achieve the stated goals of the Habitat Plan (Habitat Plan Chapter 1). Through this review, the scale and cost of the Draft Habitat Plan were reduced to focus on critical needs and provide a framework for implementing the Plan in the most cost-effective manner. Changes focused on two key areas: reduction of allowable impacts and reduction of cost to implement (including a reduction in the amount of land targeted for acquisition).

For most of the Local Partners, the reduction in allowable impacts was achieved not by removing covered activities but by scaling back the degree of covered activity implementation. The amount of development covered under the Habitat Plan was reduced by approximately 30 percent. This was done by revising the impact analysis to reflect changes in the level of impacts from covered activities expected to be implemented in the permit term. Urban development was removed from the impact analysis for San José's Coyote Valley Urban Reserve and South Almaden Valley Urban Reserve and portions of Morgan Hill's Southeast Quadrant. The assumed rural residential development impact was reduced from 3 to 2 acres per project. Impacts from covered activities in county parks were reduced by 25 percent. In addition, Habitat Plan coverage was eliminated for private development projects that are less likely to affect listed species, including (1) additions of less than 5,000 square feet of new impervious surface to existing developed sites, (2) rural development projects within specific mapped areas of the valley floor (see Habitat Plan **Figure 2-5** *Private Development Coverage Areas*[1]), (3) urban development projects on parcels less than 2 acres in size within mapped areas of the urban service area, and (4) rural development projects with a development footprint of less than 2 acres located in mapped foothill areas. Although these private projects are no longer subject to the Habitat Plan, individual project proponents would still need to comply with applicable state and federal endangered species laws

[1] This map will be updated throughout the Permit Term to reflect the best available scientific data.

independently. As an exception to these covered activity adjustments, coverage was maintained for all projects that affect wetlands, riparian or serpentine land cover types, ponds, streams, or western burrowing owl nesting habitat.

Other minor cost savings were achieved by excluding golden eagle and Townsend's big-eared bat from Plan coverage. Together, these changes increased the Habitat Plan's focus on the most critical public and private needs for coverage under state and federal endangered species regulations.

Implementation costs were reduced while retaining the resources necessary to manage reserve lands consistent with the goals and objectives of the Habitat Plan. The reduction in impacts required a reduction in the minimum new protection, restoration, and creation requirements of the Plan (see Habitat Plan **Table 5-13**) of approximately 22 percent while maintaining conservation benefits for covered species. Land acquisition strategies were adjusted to have a greater focus on key priority areas while maintaining the overall structure of the conservation strategy (see Habitat Plan **Figure 5-7**). In addition, costs for recreation improvements within the Reserve System were removed from the Plan's projected costs and will be funded instead with non-Habitat Plan funds (e.g., grants). These and other adjustments allow for the total per acre cost of the Reserve System—including land acquisition, all program and land management costs, and the endowment for managing the land after the end of the 50-year permit term—to be reduced by about 17 percent.

To reduce costs further, staffing assumptions for the Implementing Entity were carefully reviewed and then reduced from 15 to 10.5 full-time equivalent staff positions, with positions to be phased in when needed based on land acquisitions and resource management requirements. All in all, the review of these items allowed the scale and cost of the Habitat Plan to be reduced by approximately 30 percent. Finally, Habitat Plan Chapter 9 *Costs and Funding* was re-organized to describe and illustrate Habitat Plan costs and fees better. These reductions resulted in less coverage for local impacts and less conservation than was originally planned.

Master Response 2: The Habitat Plan fees should be applied more equitably.

Response to Comment

Based on adjustments of the scale and scope of the Draft Habitat Plan**,** reallocation of costs to ensure equitable fees, and a higher rate of return assumption for the Habitat Plan's endowment fund, the estimated development fees were modified (see Habitat Plan **Table 14-2**). This included adjustment of land cover fees and special fees, removal of projects from coverage in certain areas of the County unless specific resources are present, and establishing a process for "pipeline projects."

Implementation of the Habitat Plan relies on two types of fees to pay for mitigation: 1) Land Cover Fees that apply to land being affected by a project and 2) Special Fees that apply, in addition to the Land Cover Fees, to impacts that require more expensive mitigation. Special Fees apply to impacts on wetlands, serpentine land covers, western burrowing owl nesting areas, and nitrogen deposition. The projected Land Cover Fees (for Fee Zones A, B and C) were reduced by approximately 16 percent (see **Table 3**, below).

TABLE **3**
Comparison of Development Fee Schedules between Draft and Final Plan

Development Fees	Fee in December 2010 Draft Plan	Fee in Final Plan	% Change
Zone A Land Cover Fee—Ranchlands and Natural Lands	$19,720/acre	$15,416/acre	-22

Zone B Land Cover Fee—Mostly Cultivated Agricultural Lands	$13,790/acre	$10,688/acre	-22
Zone C Land Cover Fee—Small vacant sites between 2 and 10 acres surrounded by urban development	$4,930/acre	$3,905/acre	-21
Nitrogen Deposition Fee	$7.29 one-time payment per approved new vehicle trip	$3.60 one-time payment per approved new vehicle trip	-51
Burrowing Owl Fee	No separate fee	$50,438/acre	—
Serpentine Fee	$64,810	$50,166/acre	-23
Wetland Fees			
Willow Riparian Forest and Mixed Riparian	$103,630/acre	$139,708/acre	+35
Central California Sycamore Woodland	$186,200/acre	$255,182/acre	+37
Freshwater Marsh	$131,150/acre	$171,322/acre	+31
Seasonal Wetlands	$290,430/acre	$374,842/acre	+29
Pond	$115,530/acre	$153,321/acre	+33
Stream (per linear foot)	$510/linear foot	$588/linear foot	+15

The nitrogen deposition fee applies to all new development within the permit area if it generates new vehicular trips. The decision was made to retain the nitrogen deposition fee to mitigate for the cumulative indirect effects associated with increased vehicle trips on covered species. Based on revised cost estimates, this projected fee was reduced from a one-time fee of $7.29 for each new vehicle trip to $3.29 for each new vehicle trip. The Habitat Plan will include the flexibility to utilize alternative fee sources to fund mitigation for nitrogen deposition in lieu of the nitrogen deposition fee. Special Fees for impacts on wetlands, riparian and serpentine land cover types, ponds, streams and western burrowing owl nesting habitat were adjusted to ensure that the full cost of mitigating these impacts is included in these fees rather than in the land cover or special impact fees.

The application of development fees was also adjusted to encourage the preservation of open space and rural characteristics in site design and apply fees more equitably, consistent with impacts. The following changes were made:

- (Habitat Plan Section 6.8.3 *Item 3: Land Cover Types on Site*) "All fees are paid on the development area (see Habitat Plan **Figure 6-1**) except for land inside the urban service area designated with a land use of Urban Development or Rural Residential (see Habitat Plan Figure 2-2) that is less than 10 acres, where fees are assessed on the parcel. In addition, all public corridor projects (e.g., stream and utility) pay fees based on the project footprint, regardless of parcel size."
- (Habitat Plan Section 9.4.1 *Habitat Plan Development Fees* subheading *Inside the Urban Service Area*) "Another exception is that contiguous areas (irrespective of parcel boundaries or ownership) that are 10 acres and larger (for serpentine land cover, 3 acres and larger) and protected by an easement that precludes development are not required to pay Habitat Plan fees. These lands would not necessarily be incorporated into the Reserve System."

- Projects in certain areas of the County were removed from coverage under the Habitat Plan unless the project affects wetland, riparian or serpentine land cover types, ponds, streams, or western burrowing owl nesting habitat. In these areas, private entities can opt into the Habitat Plan, as described in Habitat Plan Section 6.7.2, if the development review process reveals potential impacts on listed species. Coverage of additions to existing developed sites of less than 5,000 square feet of new impervious surface were also removed unless a site affects wetland, riparian or serpentine land cover types, or western burrowing owl nesting habitat.

A process for development projects that are in the process of receiving approvals ("pipeline projects") was established. A development project, or portion thereof, will not be subject to Habitat Plan coverage and fees if all of the following apply: (1) it has received at least one of the following approved development entitlements with a specified expiration date (including allowed renewals/extensions) prior to Habitat Plan adoption: site and architectural permit/approval, planned development approval, conditional use approval, or a tentative map; and (2) it is issued a grading or building permit within 1 year of issuance of the Habitat Plan's State and federal incidental take permits; and (3) the project review process identified no impacts on any of the Habitat Plan's covered species. This applies only to the portion of the project that is issued grading and/or building permit(s) within the 1-year period.

Master Response 3: An economic analysis should evaluate the Habitat Plan's impact on total fee/exaction burdens, competitiveness, property tax revenues, and other economic factors.

Response to Comment

An economic impact analysis titled *Economic Impact Analysis of the Draft Santa Clara Valley Habitat Plan* (Willdan Financial Services 2011) was prepared and is available on the Habitat Plan's website (www.scv-habitatplan.org) as well as from Local Partners. There were five key findings in the report, summarized below.

Significant growth is projected in the permit area over time. The Association of Bay Area Governments (ABAG) projects that nearly half a million additional residents will be added in the permit area through 2035, along with more than 350,000 new jobs. Residential and employment growth is projected to occur primarily in the cities. Growth in the cities will occur in all fee zones but will be most prevalent in Zone B (agricultural land covers) and areas with intensified urban growth (nitrogen deposition fee).

Endangered species protection regulations will add to development costs. This will be the case whether or not the Habitat Plan is adopted. If the Habitat Plan is adopted, habitat protection requirements will be met through payment of a predetermined fee that varies based upon the land cover of the development area. If the Plan is not adopted, consultation with state and federal wildlife agencies would be required on a project-by-project basis, and mitigation measures would be required for some projects. Because of the cost of providing mitigation, permitting delays, and increased uncertainty, the project-by-project approach would be more costly than the proposed Habitat Plan fees for some development projects. Other projects would find that compliance with endangered species regulations would be more costly under the Habitat Plan than under the non-Plan scenario.

The addition of the Habitat Plan fees is not likely to be the determining factor in financial feasibility for most development projects. The magnitude of the proposed Habitat Plan fees is small compared with both market values and the total burden of all impact fees. The majority of new real estate development activity in the permit area is likely to occur in Fee Zones B and areas subject only to the nitrogen deposition fee. The economic impact analysis found that the Habitat Plan fees for development in Zone B are less than 1 percent of the finished real estate value for the range of development types that are likely to be developed in the permit area. The Habitat Plan's nitrogen deposition fee fees would be less

than 0.1 percent of market value. For comparison, the total non-Habitat Plan development impact fee burden for these real estate products ranges from 4 to 18 percent of market value. Other non-fee economic factors are likely to be far more important in determining project feasibility. For example, real estate prices have dropped significantly in the permit area during the real estate recession that began in 2007. Prices are likely to recover somewhat before significant development activity resumes. As a result, the current level of fees as a percentage of market value is likely to be a "worst-case" snapshot. As prices recover in the future, Habitat Plan fees may comprise a smaller portion of real estate prices.

The Habitat Plan's development fees are low enough that they are unlikely to cause a competitive disadvantage to real estate development in the permit area. The development impact fees proposed for the Habitat Plan can be absorbed through small market adjustments to land prices rather than passed forward in the form of higher sales prices for finished real estate products. In particular, the nitrogen deposition fee will be at a level at which it is negligible compared with other factors influencing real estate decisions. Overall, Habitat Plan fees are not likely to shift development outside of the Habitat Plan area.

The economic impact analysis found that impacts on property tax revenues from the Habitat Plan (i.e., reduction in property tax revenue due to lands being incorporated into the Reserve System) will be minimal compared with overall public agency revenues. As private land is acquired over time to form a Habitat Reserve, parcels will be removed from the property tax rolls, reducing property tax revenue. By the time the complete Habitat Reserve is assembled, it is estimated that the Habitat Reserve would result in a $1.1 million (2011 $) annual reduction in property tax revenue, spread across all agencies receiving a share of property tax revenue. The impact on the County General Fund is estimated to be approximately $200,000 per year, or 0.01 percent of total General Fund revenue. Some of the land that will be acquired for the Reserve System would be acquired by public agencies such as the County of Santa Clara Parks and Recreation Department (County Parks) and the Santa Clara Valley Open Space Authority (Open Space Authority), even in the absence of the Habitat Plan. The analysis did not adjust the estimated property tax loss to account for land acquisition that would occur by public agencies in the absence of the Habitat Plan. Thus, the estimates shown in the economic impact analysis may somewhat overestimate the Plan's true impacts on property tax revenue.

Master Response 4: The Habitat Plan would have greater benefit it if streamlined the wetland permitting process, reducing uncertainty about mitigation requirements across regulating agencies.

Response to Comment

The Local Partners and Wildlife Agencies are supportive of designing and implementing a process to streamline permitting of impacts on waters of the United States. To this end, staff from the Wildlife Agencies and the San Francisco District office of the U.S. Army Corps of Engineers (Corps) held a meeting and agreed that the Final Habitat Plan could serve as the basis for a Corps Regional General Permit (RGP) within the Habitat Plan permit area. A follow-up meeting was held with the U.S. Fish and Wildlife Service (USFWS), the San Francisco Corps, and the Local Partners to begin discussing the process for developing an RGP and accompanying mitigation package consistent with the Final Habitat Plan.

Per the recommendation of the Corps, the Local Partners developed an application package that will be reviewed with the Corps concurrent with the finalization of the Habitat Plan. It is the objective of the Local Partners that as quickly as possible after the adoption of the Habitat Plan, the Corps would issue an RGP that could be used as the permitting vehicle for activities covered by the Habitat Plan that have minimal impacts (generally 0.5 acre or less) on waters of the United States and that the RGP would also provide a mechanism through which the Corps will accept use of Habitat Plan fees paid to the Implementing Entity (either directly or through the Local Partner with jurisdiction over the activity) as

adequate mitigation for impacts on waters of the United States. Approval and adoption of the Habitat Plan is not contingent on establishing an RGP.

The Wildlife Agencies also met with the San Francisco Bay and Central Coast Regional Water Quality Control Boards to discuss a process for integrating compliance with Section 401 of the Clean Water Act (water quality certification) with the RGP. The Regional Boards agreed to work on a process that may include a programmatic permit for activities that are categorically exempt from review under CEQA. State law greatly restricts the ability of the regional boards to issue programmatic permits, unless all potential impacts and necessary mitigation measures can be properly evaluated in conformance with CEQA, prior to issuing a programmatic permit. Therefore, programmatic permits issued by the Regional Boards in conjunction with the Habitat Plan are likely to be limited to maintenance projects, which are usually categorically exempt from CEQA review.

The details of this permitting strategy will be worked out as much as possible prior to approval of the Habitat Plan by the Local Partners. It is expected that a new appendix to the Habitat Plan will be developed specific to the issue of water permit streamlining. The intent is to provide private- and public-sector project proponents with a streamlined permitting process and certainty regarding mitigation requirements.

Master Response 5: The Conservation Strategy does not adequately recognize the importance of grazing for resource management and the desire of many ranch owners to continue ranching with conservation easements rather than selling the land.

Response to Comment

The Local Partners and Wildlife Agencies held several meetings with key rangeland stakeholders to discuss these issues and develop a revised approach in the Final Habitat Plan with respect to grazing. Some of the key outcomes of these meetings included updates to the Habitat Plan to:

- Change the assumption for the amount of ranchland in the remote hills that will be incorporated into the Reserve System using conservation easements instead of fee title acquisition from 20 to 50 percent.
- Change the assumptions for the types of landscape management tools used and level of use of each tool to reflect an elevated use of grazing.
- Add coverage for maintenance of agricultural stock ponds outside the Reserve System so long as the management actions are consistent with the conservation goals, objectives, and conditions of the Habitat Plan.

In addition, a Certified Rangeland Manager with a background in conservation biology was hired to address the comments received and update the Final Habitat Plan to ensure accuracy in the document and implement targeted revisions that recognize the historic, current, and future roles of cattle ranching in landscape and species management.

Master Response 6: The proposed Joint Powers Authority would create a new, unnecessary layer of government.

Response to Comment

Implementation of the Habitat Plan would occur through a consortium of existing government agencies under a Joint Powers Authority. The Local Partners considered a variety of other mechanisms through which to manage implementation of the Habitat Plan and decided to retain the proposed Joint Powers Authority, maintaining Local Partner cooperation and jurisdictional responsibilities while also protecting Local Partner General Fund resources. However, the Local Partners did implement considerable

revisions to the Draft Habitat Plan cost assumptions (described in Chapter 9) to reflect increased use of existing Local Partner or other public entity resources and staffing whenever it was cost effective to do so.

Master Response 7: Habitat Plan approval should be subject to a public vote.

Response to Comment

Development of the Draft Habitat Plan included numerous opportunities for the public to participate and voice their issues and concerns. Elected bodies and often advisory bodies for each of the six Local Partners (i.e., the cities of Gilroy, Morgan Hill, and San José; County of Santa Clara; Santa Clara Valley Transportation Authority; Santa Clara Valley Water District) have publicly reviewed the First Administrative Draft Habitat Plan (2008), Second Administrative Draft Habitat Plan (2009), and Draft Habitat Plan (2011). More than 50 Stakeholder Group meetings have been held, starting in 2005 and extending into 2012. Community information meetings were held in 2005, 2006, 2007, 2008, and 2009. Two community meetings were held in 2011 as part of the Draft Habitat Plan review. Presentations have been made to numerous community organizations. The Final Habitat Plan, Final EIR/EIS, and Final Implementing Agreement will be reviewed by each of the six Local Partners' elected bodies, and all of the Local Partners will need to approve the Final Habitat Plan. There is no requirement for a public vote. Making a decision on whether or not to approve the Plan and related documents is part of the obligation of each of the elected bodies, and when making those decisions, they will have had the benefits of extensive public participation.

Master Response 8: The value of Coyote Valley as species habitat and a habitat corridor is undervalued in the Habitat Plan, both in the conservation strategy and fee schedule.

Response to Comment

Coyote Valley includes the City of San José's North Coyote Campus Industrial Area and Coyote Valley Urban Reserve as well as the Coyote Valley Greenbelt, which extends south from the southern edge of the Urban Reserve (at Palm Avenue) to the City of Morgan Hill. Coyote Creek is on the eastern edge of Coyote Valley; the western edge of Coyote Valley is marked by the foothills of the Santa Cruz Mountains. In the recent update of the City of San José's general plan, the Urban Reserve was designated by San José as having the potential in the very long term (i.e., after 2040) for urban development, but the intent is for it to remain rural at least for the next 30 years. As such, the assumption for urban development in this area was removed from the Habitat Plan, and urban development in the Urban Reserve is no longer an activity covered by the Habitat Plan. Rural development in Coyote Valley, as part of unincorporated Santa Clara County, remains a covered activity in the Habitat Plan. The rural development will be primarily low-density land uses, such as residential development on preexisting 2- to 5-acre parcels.

As the comments note, Coyote Valley is utilized by some covered species and other native species for cross-valley movement. It also supports suitable habitat for species covered under the Habitat Plan. However, preservation of the Coyote Valley Urban Reserve is not prioritized in the land acquisition strategy given the long-range urban designation of the area and alternative conservation opportunities to fulfill multiple goals and objectives of the Habitat Plan. As stated on page 5-9 of the Draft Habitat Plan, the Reserve System was designed to adhere to the reserve design principles, with the goal that the total acreage acquired would achieve the conservation targets in the most efficient and economical fashion. This important principle ensures that the land with the highest value biologically is acquired for the lowest cost. Land values in Coyote Valley are disproportionately high compared with most other open areas in the permit area that lie outside of the urban or urbanizing areas. With their relatively high cost, they were not selected as a high priority for acquisition in the conservation strategy given the

other acquisition opportunities in the permit area. This approach is consistent with statements made during numerous public hearings on the Draft Habitat Plan at which elected officials of the Local Partners directed that the overall cost of the Plan be reduced.

To accommodate species movement between the Santa Cruz Mountains and the Diablo Range, the Implementing Entity will conduct a feasibility study, evaluating wildlife movement in the following three focal areas: Tulare Hill to Anderson Reservoir (across Coyote Valley), Pacheco Creek (across SR 152), and the Pajaro River (across the valley floor along the study area border). As stated in Habitat Plan Objective 2.4, the conservation strategy will facilitate the permeability for species movement across the Santa Clara Valley via Coyote Valley, Tulare Hill, or Fisher Creek at locations determined by the feasibility study.

The Habitat Plan describes conditions that will greatly minimize the effects of covered activities on species that utilize Coyote Valley prior to and after the feasibility study is conducted. For example, Habitat Plan Chapter 6 contains conditions on rural projects and rural operation and maintenance. It also describes conditions to minimize impacts on natural communities and covered species.

The Habitat Plan recognizes the value of preserving, restoring, and enhancing connectivity across Coyote Valley. Because of a number of factors, even the implementation of a plan as broad in scope as the Habitat Plan cannot be relied upon to provide the amount of study, land acquisition, and enhancement necessary to protect, restore, and enhance connectivity across Coyote Valley. Accordingly, the Plan has opted to provide funding and support to contribute to evaluating the Coyote Valley area but does not make commitments for protection. This approach will provide for analyses to determine which areas are best for acquisition, the placement of easements, or permit conditions to provide for connectivity between the Diablo Range and Santa Cruz Mountains in this area.

Master Response 9: The Habitat Plan does not consider wide-ranging species and focuses more on ESA/HCP requirements than CEQA/NCCP requirements.

Response to Comment

Although the plan does not directly address the full range of wildlife and plant communities found in the permit area, the approach used in the plan will provide significant commensurate benefits for non-covered species. The plan focuses on acquisition (or placement of permanent easements) on a significant amount of currently unprotected land. Acquisition decisions will take into account not just the specific habitat values on each parcel considered but the location as well. This provides an emphasis on connectivity, which ensures that the overall benefits from the Reserve System exceed the sum of the values of the individual acquisitions. Because this approach focuses on landscape ecology and connectivity, it will provide significant benefit to non-covered species as well, particularly wide-ranging megafauna such as mountain lions.

This Plan is both a habitat conservation plan (HCP), intended to fulfill the requirements of the federal Endangered Species Act (ESA), and a natural community conservation plan (NCCP) to fulfill the requirements of the California Natural Community Conservation Planning Act (NCCP Act). As an NCCP, this Plan addresses not only impact mitigation but also contributes to the recovery and delisting of listed species and helps preclude the need to list additional species in the future. The Local Partners are voluntarily preparing this Plan as an NCCP to provide a higher level of conservation for the benefit of natural resources in Santa Clara County than is strictly required for ESA compliance. An NCCP also provides greater regulatory benefits and greater opportunities for state and federal funding than do other permitting options under state law. Habitat Plan **Table 1-3** provides a checklist of the NCCP Act requirements and the sections in the Habitat Plan where those requirements are met.

The EIR/EIS environmental review evaluates the effects of the Habitat Plan on sensitive species that are not covered in the Plan but that do qualify as "CEQA species" (see Chapter 5 of the EIR/EIS document).

Habitat Plan benefits to covered species and natural communities also provide benefits to non-covered species, including wide-ranging species. These benefits are framed in terms of the benefits to covered species and the natural communities that support them in order to provide the Wildlife Agencies with the information necessary to reach their permit issuance decisions; however, non-covered plants and wildlife that use the natural communities targeted for protection, restoration, or enhancement will benefit from Plan implementation as well. The plants and wildlife associated with natural communities in the permit area are identified in the biological setting (Chapter 3).

Master Response 10: The proposed Habitat Plan would not provide streamlined environmental compliance or regulatory permitting when compared with the current process.

Response to Comment

The process for obtaining an incidental take permit under the Habitat Plan would be streamlined compared with the current permitting process under Section 7 and Section 10 of the ESA for those species covered by the Habitat Plan. For those projects with a federal nexus, the formal consultation process would be greatly expedited. The Habitat Plan would serve as the biological assessment required for the Section 7 consultation with USFWS, so little additional documentation would be required. A Section 7 consultation that might take 8 to 12 months[2] under the current process is expected to take 1 to 2 months or less to complete under the Habitat Plan. For those projects without a federal nexus, the project applicant would work directly with the local jurisdiction that has land use authority over the project and would not be required to undertake their own habitat conservation plan. Unlike Section 7, there are no statutory time requirements for Section 10 consultations. Therefore, even projects with relatively minimal effects requiring individual Section 10 consultations have taken up to 5 years to process. Similar projects under the Habitat Plan are expected to take 1 to 2 months or less to complete. This pattern has held true for multiple regional HCPs and NCCPs once they are in place, including for the nearby East Contra Costa County HCP/NCCP.

During Habitat Plan development, 147 species that are listed or have the potential to be listed within the permit term of the Habitat Plan were evaluated for inclusion as covered species. The Draft Habitat Plan proposed coverage for 21 species; however, coverage for three non-listed species, golden eagle, Townsend's big-eared bat, and San Francisco collinisa will be dropped for the Final Habitat Plan. The final list of 18 covered species includes currently listed species as well as those species for which it is believed to be highly likely that listing would occur within the permit term. Coverage of key non-listed species provides assurances for project proponents over the 50-year permit term that no further actions will be required beyond those described in the Habitat Plan.

Completion of the CEQA process does not provide for endangered species permits. The Habitat Plan would fulfill ESA and California Endangered Species Act (CESA) requirements.

Many routine activities undertaken by the private sector do not require a permit from the local jurisdiction. Any activity that does not require a permit from the local jurisdiction would not be covered by, or otherwise subject to, the Habitat Plan unless the project proponent is granted coverage by the

[2] Although there are statutory timeframes requiring the conclusion of formal Section 7 consultation and issuance of a biological opinion to be concluded within 135 days, the process often takes many months. The most common reason for delay is that USFWS does not receive all of the necessary information to complete consultation. Formal consultation is not technically "initiated" until all of the relevant data is received by USFWS. Also, USFWS may request a 45 day extension when circumstances warrant.

Implementing Entity through the Participating Special Entities process described in Habitat Plan Section 8.4 or the opt-in process described in Habitat Plan Chapter 6.

The Habitat Plan actually reduces the survey burden on applicants by removing the typical and costly requirement for species survey for Bay checkerspot butterfly, California red-legged frog, and California tiger salamander. Under the current process, protocols typically require multiple years of surveys. These surveys are often expensive and result in project delays. Furthermore, these surveys are used to verify presence, not absence. Therefore, under the current process, the Wildlife Agencies may still conclude that compensation is necessary even following negative survey results (i.e., species may not have been detected because of drought conditions during survey years).

The Plan requires field verification of land cover types on a project site for all projects seeking a permit from a local jurisdiction. However, for many projects this analysis would require only 1) a review of Habitat Plan **Figure 2-5** *Private Development Coverage Areas* to determine whether or not the project is covered and 2) a desktop review of Habitat Plan **Figure 3-10** *Santa Clara Valley Habitat Plan Land Cover* to confirm that the project does not affect sensitive habitat, including serpentine, wetlands, streams, riparian, ponds, and burrowing owl nesting habitat. This type of analysis is currently required as part of CEQA compliance and would be conducted by the local jurisdiction as part of the project review process. If a project is determined to be covered under the Habitat Plan but the project proponent does not want to utilize this process, the Habitat Plan would allow exemption from coverage if the project proponent provides written confirmation to the Implementing Entity that the Wildlife Agencies have determined that the activity is not subject to ESA or CESA (see Habitat Plan Section 6.2 for details).

Although the NCCP Act does have a higher standard for conservation than either the federal or state ESA, this would not translate to a more complex or onerous permitting process than if the Habitat Plan were an HCP only. As described above, the species survey requirements would be less stringent under the Habitat Plan than they would be on an individual permitting basis. Because an HCP-only process was not pursued, it is not possible to say how the species survey requirements may have been reduced under an HCP-only plan. From a cost perspective, in 2009 the Local Partners considered dropping the NCCP component of the Plan. This topic was researched and discussed at several public meetings, including Liaison Group meetings and city council and County Board meetings. It was concluded by the Local Partners that fees under an HCP/NCCP were less than they would be under an HCP-only process. As an NCCP, the Implementing Entity will be eligible for substantial state, federal, and private grants to pay for land acquisition and habitat restoration. In addition, as an NCCP, the Plan is able to count toward the conservation requirements land acquisition by local open space agencies such as the Open Space Authority and County Parks. These funding sources and land acquisition partnerships would not be available as an HCP-only plan.

Master Response 11: Public access should not be allowed in the Reserve System, and development fees should not be used to fund public access.

Response to Comment

Public access to the Reserve System is a covered activity under the Habitat Plan but is not required for permit compliance. Development fee expenditures are limited to Habitat Plan actions required for permit compliance; accordingly, costs for recreational improvements were removed from Habitat Plan costs estimates and fee calculations (see Master Response 1).

For land held via conservation easements, the Habitat Plan assumes that there would not be public access unless the property owner agrees. Such activities, if authorized by the property owner, would be described in the conservation easement. It is expected that recreation will be permitted on those lands included in the Reserve System through a conservation easement that are owned by public agencies

(e.g., County Parks, Open Space Authority). As with land held in fee title, all recreation in the Reserve System must be consistent with the requirements of the Habitat Plan related to recreation.

Public access that is compatible with the biological goals and objectives of the Habitat Plan and consistent with the conditions on covered activities described in Habitat Plan Chapter 6, Condition 9 *Prepare and Implement a Recreation Plan for each Reserve Unit* is appropriate for land acquired by the Implementing Entity in fee title. The location, timing, and other specifics of access will be developed in Reserve Unit recreation plans, which will ensure that recreation activities are consistent with the Habit Plan conservation strategy. The costs for public access will come from non-Habitat Plan funds such as grants.

Public access that is compatible with the biological goals and objectives of the Habitat Plan is also consistent with USFWS's *Connecting People with Nature* initiative, which promotes future conservation by engaging and educating the public about "the natural world." The benefits of allowing the public to experience the natural resources protected in the permit area will far outweigh the potential adverse effects associated with recreation with the proper implementation of Condition 6.

Master Response 12: The Habitat Plan does not adequately evaluate the presence of willing sellers of Reserve System lands and should emphasize the conservation easements over fee title acquisitions.

Response to Comment

Land acquisition is a requirement of the NCCP Act and necessary to meet Habitat Plan biological goals and objectives (Habitat Plan **Table 5-2a**). A key principle of the Habitat Plan is that land will be acquired by the Implementing Entity only from willing sellers. Within the permit area, there is a historic willingness of individuals to sell or protect land for open space. This is evident in the continued growth of the Santa Clara County parks system and on-going acquisition by the Open Space Authority. The Wildlife Agencies and Permittees are confident that over the 50 years of Plan implementation there will continue to be willing sellers in the permit area.

The Habitat Plan does not give preference to either use of conservation easements or fee title acquisitions. This allows flexibility in Habitat Plan implementation. For example, willing sellers can choose between a sale in fee title or placing a conservation easement over their property. Both forms of land acquisition meet permit requirements. Revisions to the Draft Habitat Plan cost model assume that 50 percent of the hills that are ranchland will be acquired using conservation easements.

Master Response 13: The Habitat Plan should include an alternative that allows for a mitigation bank market-based solution.

Response to Comment

The Habitat Plan does consider and allows the use of mitigation banks to meet land acquisition permit requirements (see Habitat Plan Section 8.6.2 *Land Acquired by Other Organizations or through Partnerships, Private Mitigation Banks*). Credits, either species habitat or wetland credits, sold by private mitigation banks within the permit area can count toward impacts accrued under the Habitat Plan if the bank meets all of the relevant standards of habitat enhancement, adaptive management, and monitoring outlined in Habitat Plan Chapters 5 and 7 and if the mitigation bank is located in the permit area. All impacts and mitigation for impacts covered under the Habitat Plan must occur within the permit area analyzed in the USFWS's biological opinion for the Habitat Plan. Similarly, CDFG policy requires all impacts and mitigation to occur within the permit area.

Mitigation banks located outside of the permit area may not be used. However, the Habitat Plan does allow for some flexibility for parcels that straddle the permit area boundary. Land management and

monitoring activities may occur outside the mapped permit area where a conservation parcel straddles the permit area boundary as long as more than half of the parcel is located in the permit area. These unmapped areas will not exceed a total of 250 acres (Habitat Plan Section 1.2.1).

Mitigation bankers wishing to establish a bank whose credits can count toward Habitat Plan requirements must notify the Wildlife Agencies to allow consideration of such provisions during bank development and agency approval. Bankers must also coordinate closely with the Implementing Entity to help ensure the bank's consistency with the Habitat Plan and use by Habitat Plan Permittees.

There are currently no approved conservation or mitigation banks in the permit area. A bank near Gilroy on Lucky-Day Ranch is currently being proposed to USFWS and CDFG.

Individual Comments and Responses

Native American Heritage Commission

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-4082
Fax (916) 657-5390

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December 29, 2010

RECEIVED
JAN 07 2011
STATE CLEARING HOUSE

Ken Schreiber
County of Santa Clara
70 W. Hedding Street, 11th Floor
San Jose, CA 95110

RE: SCH# 2010122059 - Draft Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan EIR/EIS

Dear Mr. Schreiber:

The Native American Heritage Commission (NAHC) has reviewed the Draft EIR/EIS named above. To adequately assess and mitigate project-related impacts on archaeological resources, the Commission recommends that lead agencies contact the NAHC for a list of appropriate Native American Contacts for consultation concerning the project site and to assist in the mitigation measures. The Draft EIR states that a contact list was obtained from the NAHC and letters sent to those on the list in September 2010 (p. 13-6). There is no indication of what responses, if any, were received, or of any additional follow up was done, which should be a standard practice under accepted Native American consultation procedures. 1

The EIR/EIS will result in development activities, such as grading, excavating for pond, stream restoration and road construction. All of which have the potential to adversely impact Native American cultural resources. It was stated that because of the 200,000-acre area "it was infeasible to perform record searches and archaeological surveys for the EIR/EIS." (p. 13-6) The NAHC assumes that this work will be done during the development of project specific plans. Assessments should include a request for Sacred Lands File check and a current Native American Contacts List, for consultation purposes, from the NAHC. 2

Proposed mitigation in the EIR/EIS consists of creating a "Cultural Resources Management Plan" in consultation with the Office of Historic Preservation, which will include a " standard mitigation measures agreement." The mitigation measures agreement will include procedures for recordation, data recovery, and curation (pp. 13-8 – 13-9). There is no mention of Native American consultation in the creation of this plan and agreement. Native Americans culturally affiliated with is region should be given the opportunity to consult on plans and agreements that will impact the culturally sensitive treatment and disposition of Native American human remains, burials, and cultural items, both those associated with Native American human remains, addressed under Public Resources Code Section 5097.98, and those that are not associated with burials that may be impacted by project activities. 3

Thank you for the opportunity to comment on the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan EIR/EIS. If you have any questions, I can be contacted at (916) 651-1490 or by email at rw_nahc@pacbell.net.

Sincerely,

Rob Wood
Associate Government Program Analyst

CC: State Clearinghouse

Comment Letter 1—Native American Heritage Commission, Rob Wood, Associate Government Program Analyst, December 29, 2010

Response to Comment 1-1

A contact list was obtained from the Native American Heritage Commission on June 29, 2007; the list contained nine contact names. Letters were sent to the nine contacts on September 7, 2010. No response letters were received, but a follow-up meeting was held on March 2, 2011 between representatives of the Amah Mutsun Tribal Band and Ken Schreiber, Habitat Plan Program Manager. Tribal representatives expressed interest in participating in Habitat Plan implementation. Records of tribal outreach and a summary of the March 2, 2011 meeting are on file. Also, the Amah Mutsun Tribal Band submitted a comment letter on the Draft EIR/EIS (see Comment Letter 53).

No changes to the EIR/EIS are required.

Response to Comment 1-2

An appropriate level of cultural resources investigations would be conducted on a site-specific basis as described in Mitigation Measure 13-1. In response to this comment, additional text has been added to Mitigation Measure 13-1 to ensure that the Cultural Resources Management Plan includes requirements to request a Sacred Lands file check and current Native American contacts list from the Native American Heritage Commission.

New text added to EIR/EIS Mitigation Measure 13-1.

Response to Comment 1-3

An appropriate level of cultural resources investigations would be conducted on a site-specific basis as described in Mitigation Measure 13-1. In response to this comment (and to Response to Comment 53-5), additional text has been added to Mitigation Measure 13-1 to ensure that the Cultural Resources Management Plan includes requirements for Native American consultation during plan preparation.

New text added to EIR/EIS Mitigation Measure 13-1.

City of Newark

2

Schreiber, Ken

From: TERRENCE GRINDALL [TERRENCE.GRINDALL@newark.org]
Sent: Thursday, January 27, 2011 5:20 PM
To: Schreiber, Ken
Subject: Santa Clara Valley Habitat Plan for the Western Burrowing Owl

Mr. Schreiber,

Thank you for sending the Draft Habitat Conservation Plan to the City of Newark for Review. This concept is laudable and we hope that the plan will be successful in helping the Burrowing Owl.

I note that much of Newark is included in the "Expanded Study Area", while I understand that land or easements would be acquired from willing sellers only, I don't see any reference to compatibility with a communities General Plan and Zoning Ordinances. I would hope that in assembling land for this important project, consistency with the land use vision of a given jurisdiction would be required.

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With such a restriction we could be assured that this project would have the ability to help us to improve the quality of our communities **and** help to support this important species. Without such a restriction, the possibility exists that a purchase of land or easement by this program could interfere with a communities vision. For example by purchasing land within a planned Priority Development Area or other important civic project and thus hindering the development of such a project. This issue is particularly acute for areas in your "Expanded Study Area" because we are not a part of the governance of this project.

I hope you will include a provision that land or easements acquired must be compatible with the General Plan of a community- at least in the "Expanded Study Area"

Thank you for your consideration.

Terrence Grindall
Community Development Director
City of Newark
Office: 510-578-4208
Cell: 510-673-5837

Comment Letter 2—City of Newark, Terrence Grindall, Community Development Director, January 27, 2011

Response to Comment 2-1

The commenter is correct in that most of the urbanized City of Newark is within the *expanded study area for burrowing owl conservation*. The burrowing owl conservation strategy is described in detail in Habitat Plan Chapter 5 and Appendix M. Although there are no explicit requirements for a burrowing owl reserve within the *expanded study area*, the Reserve Land Selection Criteria (see Habitat Plan Appendix M, Section M.4.3) emphasizes the acquisition of reserve lands (from willing sellers) that meet biological goals and objectives for burrowing owl breeding and overwintering habitat. Especially note the preference for reserve acquisition within the core study area. Also see the analysis of land use impacts, including conflicts with local plans and policies, in EIR/EIS Section 6.4. No significant impacts are identified, and therefore no mitigation is necessary.

Portions of this comment are addressed in Master Response #12.

Revisions to the Habitat Plan will be consistent with Master Response #12.

No changes to the EIR/EIS are required.

Public Meeting #1—February 9, 2011

3

Santa Clara Valley Habitat Plan

Community Meeting Summary ◆ February 9, 2011

Prepared by:

800 Hearst Avenue
Berkeley, CA 94710
www.migcom.com

Introduction and Overview of Presentation

On February 9, 2011, a community meeting regarding the Santa Clara Valley Habitat Plan was held at the Morgan Hill Community Center in Morgan Hill, California, from 6:30pm to 8:30pm. Approximately 45 participants plus local partner staff, representatives from the Fish and Wildlife Agency (FWS) and California Department of Fish and Game (DFG), and consultants attended the event. Joan Chaplick, MIG, Inc. served as the facilitator and moderator for the meeting.

This meeting served as one of two federally noticed hearings for the Public Draft Plan, Draft Environmental Impact Report/Environmental Impact Statement and draft Implementing Agreement. The meeting included a series of presentations, after which questions and comments were received verbally and in writing.

The evening began with an open house, held from 6:30 to 7:00pm, during which participants were able to visit different "stations" for a closer look at display boards featuring maps and key components of the plan. Stations included Plan Overview, Land Acquisition Strategy, Plan Cost and Funding, and the EIR/EIS.

Following the open house, Santa Clara County Supervisor Mike Wasserman (District 1) provided opening remarks. Joan briefly introduced staff from the state and federal wildlife agencies who have been involved with the plan development since its beginning. She then introduced Cay Goude, Assistant Field Supervisor for the US Fish and Wildlife Service (FWS), who provided opening remarks. Cay described Habitat Conservation Planning as an important mechanism for habitat species protection and as a partnership with the community. She stressed the importance of providing comments and noted the comment period deadline of April 18, 2011. She also noted that the project team and local partner's approach to working collaboratively with the wildlife agencies is being used as an example within the FWS of a model habitat conservation plan.

The opening remarks were followed by a presentation on the following topics:

- Habitat Plan Overview
  (Ken Schreiber, Land Use Planning Services, Habitat Plan Program Manager)

- Conservation Strategy
  (David Zippin, ICF Jones & Stokes, Habitat Plan Project Manager)

- Cost and Funding
  (David Zippin)

- Project Examples and Implementation
  (Ken Schreiber)

- EIR/EIS Overview
  (Cori Mustin, Senior Fish and Wildlife Biologist, FWS; Matt Franck, CH2M Hill)

- Next Steps
  (Ken Schreiber)

A copy of the PowerPoint presentation is included as an attachment and provides a detailed summary of presentation topics. After the formal presentation meeting participants had opportunity to ask the Habitat Management Team questions.

Public Comment

The following section presents the questions and comments shared by members of the public during the meeting, and the responses provided by Mr. Schreiber and consultants David Zippin. Responses to questions have been provided. Statements that were in the form of a comment are identified below as C. No response was provided to these statements. All questions and comments will be responded to in the Final EIR/EIS.

Q: Is the vehicle emission fee a one time or annual fee and how was this number determined?

A. The vehicle emission fee is a one time fee. We cannot answer technical details about how we came up with this, because the appropriate consultants are not present; however, how we arrived at this is documented in the Plan.

C. You cannot just go around grabbing 13,000 acres and 7 million in charter funds to mitigate non-county impacts. This is known as misappropriation.

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Q. 1) On a 2,000 sq foot building permit requirement, the Regional Water Quality Control Board (RWCQB) has set a 10,000 sq foot limit. Why did you change this? 2) Regarding streams: We own property where adjacent properties on the east, west and south side are fully developed with houses, with less than a 100 foot setback. Will we be required to set back 100 feet from that and who will compensate us for this loss of land? 3) Given the magnitude of the money in questions, shouldn't we consider this for a vote for all County residents? It seems that all the people who will be benefiting from it should vote on it.

A: The setback distances we are talking about were developed with Local Partner staff and are felt to be consistent with current planning policies. In other words, you will face this when you want to develop, with or without the plan. There have been various regulations, and over time this has changed. If it is not a fish-bearing stream (i.e. intermittent) then the setback is 35 feet. You will need to determine which stream category you are in to determine which setback requirement applies. Taking this to a County popular vote is something the

County will need to take a look at. Yes, the Plan is expensive. For County parks, this is 25 percent of the land they would acquire during the entire period based on a review of their funding and acquisition history.

We have struggled with the fact that habitat impacts occur, and if you exempt properties, you still have impacts. And if you exempt properties, then who pays for the impacts? To the extent that fairness plays a role, it was determined that this is the best approach.

Q: Regarding benefits that property owners are supposed to get out of this. Will this plan entirely eliminate the need to do species surveys?

A: No, it does not eliminate the need for surveys, but we feel it simplifies the requirement. You'll need to do fewer surveys, all else being equal. In certain sites and in certain circumstances, such as the San Joaquin kit fox, specific procedures are necessary to prevent killing one. There are similar instances in which certain sites will require certain surveys. However, it will be more predictable now. Survey requirements have been reduced over the years in two ways: 1) the list of species that require a survey has been reduced significantly; and 2) because species tend to be found in smaller or more distinct areas, these areas will be mapped and we will only require studies in these areas.

C. Fundamentally, this says to me that we are creating another layer of bureaucracy and permitting of an existing complex process that will require studies anyway. It does not eliminate the need for a 404 permit, or a stream bed modification permit, or a 401 section permit from the RWQCB. If you have raptors, wetland or plant species, you have to go through the process anyway, and pay fees. I am not against doing the work to preserve these species; however, shouldn't this be subject to the vote of the people? We're dealing with economic externalities. We are doing the reverse of fencing the commons; we are fundamentally taking people's property away from them. Part of this plan deals with externalities of traffic, pollution and more. Service benefits and public benefits should have a tax component and a fee component. That's the real problem with the structure of the finance of this thing, and I don't think it's going to work anyway.

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Q: From a farming standpoint, if you were to develop some land, then the developer already has to pay an agriculture mitigation fee. Does this take the place of this fee? Is it one or the other, or do we now pay both?

A. Right now the county has a fee for mitigating the loss of agricultural land. This will continue to be a separate requirement. This plan does not absorb that. There may be ways of linking together the provision of agricultural land under the County system (if within an area consistent with the reserve system) – an area that can serve as credit rather than paying for habitat fees. There may be some

logic in having the property owner provide land in lieu of a fee. This approach may be a possibility we can consider.

Q. Many of the creeks in our area do not flow year-round. The County requires a 150-foot setback from the highest point of the bank. You're talking about 35-foot setback. Which would take priority?

A. If there is another governmental requirement, then it remains a requirement. In this plan, we've taken regulations that are current and put them into the habitat plan. Five years from now, if the Board requirements are greater, then they will prevail. This plan does not approve any developments. It addresses the endangered species issue, but there are many other issues that local jurisdictions will need to address in the development review process, as it is now and in the future.

Q. You keep referring to endangered species. Does this refer to threatened species under the Endangered Species Act (ESA)?

A. It includes those listed as threatened and endangered, and some that are not listed. Of the 21 covered species, about half are not listed but we expect them to be during our 50-year permit term. Our plan has the same requirements for these species. This is part of our assurance requirement.

Q. I feel that this is an incomplete plan, with very important pieces missing. For example, NMFS has not signed on to this. They are very important. We partnered with them and Department of Fish and Game (DFG) to do rescue and restoration of the steelhead trout, a protected species under ESA. Their field research determined there were only 500 steelhead in the 1,300 square miles of the Pajaro watershed. Rescue and restoration in the years to come should be based on best practices. They are on the road to recovery and we have brought our fisheries back to what they were in the last 30-40 years. I have questions about stream setbacks, specifically the 35-foot setback and what you consider a no fish stream. Because of our successes, we have fish spawning in drainage ditches and streams that are off the map and off the radar. Who determines whether it is a stream with fish or no fish, especially if the fish is an endangered species?

A. We had been working with NMFS for a number of years to try to cover steelhead trout and Chinook salmon in the plan. A year ago, there was a decision made to remove fish, because we could not reach agreement about adequate restoration and mitigation related to fish impacts NMFS sent a letter asking us to remove fish from the habitat plan. This is why fish were removed and NMFS is not participating. There are other processes underway, including the Water District's preparation of its own plan for Coyote Creek, Stevens Creek and the Guadalupe River County that will cover fish. With regards to determining which

streams are fish-bearing, there is a map in the plan that shows what we consider fish-bearing streams.

When you deal with fish, you're dealing with the operational flow regimes of the water district. This is a very different topic, and different local agencies have different interests. Municipalities in the County are interested in private and economic development. The fish issue is very complicated and is focused on water district operations. Your example of rescuing more and more fish shows that changes in our flow regimes in the Uvas and Chesbro reservoirs are having a positive influence on these runs. We are focused on dealing with water rights in the north county for these species. We are working with FGD and NMFS to deal with issues on Uvas and Llagas. Those flow regimes that started in 2006 have worked very well.

Q. What is the incidental take of fish? If you have 12 fish now, then the plan has a very small impact.

A. The plan does not cover the incidental take of fish.

Q. How many attendees agree the public should vote on this plan?

A. A number of hands were raised. The person asking the question identified that half the participants raised their hands.

Q. What conservation category of lands do County parks fall into? How in the plan do you categorize County park lands? Are County parklands covered in the plan?

A. County parks have a medium level of protection, because they are managed to create conservation value. But they are not managed to preserve them for conservation in perpetuity. County parks were purchased by the public for public access and recreation.

Q. How much has this study cost us?

A. The cost for preparing the plan was $5.8 million, which does not include local staff time. Roughly $1.1 million is from federal planning grants. These costs are consistent with or lower than comparable planning programs in California.

Q. Of the $5.8 million, has any of this come from the Parks Charter Fund?

A. None

C. Under current economic conditions, I am a little skeptical about a consultant telling us that you're going to save us money. Can the developers and landowners support this under these economic

conditions? Can we afford to put more fees on top of houses we have already? I am skeptical about how much money you are going to save us. This should go to a public vote. I think this study has to come to a halt, sooner or later. This is costing us a lot of money. With regards to optimistic comments on funding sources, let's assume the county can do at least as well as Contra Costa County did. Will that excess money be used to reduce the impact fees?

A. The flow of funds would not put us ahead of grant funds. Impact fees are mitigation fees. Grant funds are for conservation, not mitigation. It's about a 50/50 split between conservation and mitigation. There are funding sources for non-mitigation conservation activities; an increase in these funds would not reduce impact fees.

Q. My concern is that if this goes through, then we have this plan and an EIR. What happens with the high speed rail? Would it simply wipe out all of this work? I believe in protecting all of the critters and the endangered species. Will the high speed rail impact this?

A. This is a very good question. We do talk about high speed rail, but it is not a covered activity. It is not anticipated to fall under the ESA protections of the habitat plan (i.e. not part of the habitat plan). The purpose of a cumulative impacts analysis is to discuss other impacts of this project. For example, contributions to the continued impact on farm land are addressed, especially with respect to connectivity. This has been considered and we do try to anticipate what the symbiotic effects would be with the habitat plan.

We also talk about potential benefits such as positively impacting air quality. We believe high speed rail is described in a balanced way in the EIR/EIS.
A very important question that California Environmental Quality Act (CEQA) asks is what effect the project will have on an approved HCP/NCCP. Every project will have to ask this question under CEQA in order to ensure that they won't negatively impact our plan. There is a lot of attention being paid to high speed rail to make sure that that project is not adversely impacting the habitat and species described in the plan.

Q. Does the plan include a Natural Communities Conservation Plan (NCCP), as well?

A. Yes.

C. An observation for the EIR/EIS is that under the alternate sections, there is no provision or consideration for market-based solutions for mitigation, (i.e. cap and trade mitigation that would facilitate a market rather than conversion of private property).

6

Summary and Next Steps

Ken Schreiber described the many opportunities to become involved in the process to finalize the Habitat Plan. Public input opportunities include stakeholder meetings and Liaison Group meetings. All local partners will hold meetings in the next months to review the Draft documents. Local partner review will include local partner council and commission meetings, all of which are open to the public.

To submit input directly, share comments and recommendations via the website (www.scv-habitatplan.org) or send them directly to Mr. Ken Schreiber, Project Manager, at ken.schreiber@pln.sccgov.org. Mr. Schreiber can also be contacted by phone at 408-299-5789. The comment period ends on April 18, 2011.

Attachment: PowerPoint Presentation

Comment Letter 3—Public Meeting #1, Community Meeting Summary, February 9, 2011

Response to Comment 3-1

County Park Charter funds would not be used to mitigate non-County impacts. The County would consider committing parkland to the Reserve System that the County either has already acquired or will acquire in the future for its own park purposes. The County would convey a conservation easement to the Implementing Entity but would retain fee title to the land. The easement would allow passive recreational use of the property and provide for conservation and maintenance consistent with a management plan developed specifically for the property. Any parkland that would be committed to the Reserve System would continue to be used for County park purposes and continue to conform to the parks and recreation element of the County General Plan, thus fulfilling the intent of the County Park Charter provision.

No changes to the Habitat Plan are required.

Response to Comment 3-2

Comment is addressed in Master Responses #4 and #6.

Revisions to the Habitat Plan will be consistent with Master Responses #4 and #6.

Response to Comment 3-3

Comment is addressed in Master Response #7.

Revisions to the Habitat Plan will be consistent with Master Response #7.

Response to Comment 3-4

Comment is addressed in Master Response #3.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 3-5

Comment is addressed in Master Responses #1, #3, and #8.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #3, and #8.

Response to Comment 3-6

Comment is addressed in Master Response #13.

Revisions to Habitat Plan will be consistent with Master Response #13.

Jan Webb

Comment Form — **Santa Clara Valley Habitat Plan EIR/EIS**
Santa Clara County, CA

Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the Santa Clara Valley Habitat Plan Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority) and the U.S. Fish and Wildlife Service have prepared an EIR/EIS on the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (the "Habitat Plan"). Written comments from interested parties regarding the EIR/EIS are invited to help the agencies make informed decisions using the best available information. All comments received, including names and addresses, will become part of the official administrative record and will be made available to the public. Written comments on the EIR/EIS should be received on or before April 18, 2011.

Written comments should be directed to the contacts below:

Ken Schreiber, Habitat Plan Program Manager
County of Santa Clara
70 West Hedding Street, East Wing, 11th Floor
San José, CA 95110
(408) 299-5789
ken.schreiber@ceo.sccgov.org

Cori Mustin, Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6600
R8SCVHPcomments@fws.gov

For additional information regarding the Santa Clara Valley Habitat Plan, please visit the Santa Clara Valley Habitat Plan website: www.scv-habitatplan.org

Your Name Jan Webb Today's Date 2/9/11

Please indicate your affiliation by checking **one** of the following boxes:

- ☒ Individual (no affiliation)
- ☐ Federal, State, or Local Government
- ☐ Elected Representative
- ☐ Private Organization
- ☐ Citizen's Group
- ☐ Regulatory Agency

Name of organization, government, group, or agency (if applicable) _____

Mailing Address P.O. Box 27

City/State/Zip San Martin CA 95046

Telephone (optional) _____ E-mail Address (optional) JW321@SBCGlobal.net

Please write your comments here (please print legibly). Attach additional pages if necessary.

To what extent is the HCP a choice for the community? Is this plan being forced upon us? What advantages are there to us? California has a very well deserved reputation for being hostile to business. Environmental regulation has been a very large part of the problems business encounters here. We have see the water supply nearly eliminated to Central Valley Farmers, CARB, Half Moon Bay's creation? 1

of a wetland on private property followed by lawsuits & bankruptcy for the City.
The advantage we're being told of, a streamlining of environmental restriction is something imposed by the government. My conclusion in listening to the examples presented is that in both cases the expenses are excessive and the process insane. When development costs are 200,000 for a house, that effectively reduces the value of the house by $200,000. I don't find this plan positive. This looks like legalized theft.

Taking 13,000 Acres from parks is unacceptable. A huge portion of land is already devoted to parks and open space Adding another 45,000 acres with questionable, unclear public access is unreasonable.

This is a plan which will make development even more difficult in this area.

What we need is less restriction - not more.

It is not reasonable to try to turn this area into an ecological preserve.

Regarding "Climate Change" Wake up it's getting colder, not warmer. Anybody ever hear of the Sun?

I Strongly agree that a public vote must be required for this plan.

Comment Letter 4—Jan Webb, February 9, 2011

Response to Comment 4-1

Regarding climate change comments, Habitat Plan Appendix F summarizes the best scientific data available to date, upon which the Plan was developed. The conservation strategy described in Habitat Plan Chapter 5 and changed and unforeseen circumstances described in Chapter 10 were developed within the context of anticipated changes resulting from climate change.

Comment is further addressed in Master Responses #1, #2, #3, #6, #7, #10, and #11. Also see Responses to Comments 50-166 and 50-200.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #2, #3, #6, #7, #10, and #11.

Central Coast Regional
Water Quality Control Board

California Regional Water Quality Control Board
Central Coast Region

Linda S. Adams
Acting Secretary for Environmental Protection

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
(805) 549-3147 • Fax (805) 543-0397
http://www.waterboards.ca.gov/centralcoast

Edmund G. Brown Jr.
Governor

February 14, 2011

Ken Schreiber
ken.schreiber@ceo.sccgov.org
County of Santa Clara
70 West Hedding Street, 11th Floor
San Jose, CA 95110

BY ELECTRONIC AND REGULAR MAIL

Dear Mr. Schreiber:

DRAFT JOINT ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL IMPACT STATEMENT, SANTA CLARA VALLEY HABITAT PLAN, SANTA CLARA COUNTY, FILE NO. 430111CQ1

Thank you for the opportunity to comment on the Draft Joint Environmental Impact Report and Environmental Impact Statement (DEIR/EIS) for the above-referenced project. Central Coast Regional Water Board (Water Board) staff understands that the purpose of the Santa Clara Valley Habitat Plan (Plan) is to address the conservation needs of 21 species with respect to regulatory and permit requirements administered by the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG). The objective of the Plan is to obtain 50-year permits from USFWS and CDFG for incidental take associated with seven categories of activities within the Plan permit area: urban development, in-stream capital projects, in-stream operations and maintenance activities, rural capital projects, rural project operations and maintenance, rural development, and conservation strategy implementation. Water Board staff also understands that activities covered by the Santa Clara Valley Water District Stream Maintenance Program are not covered by the Plan.

As you know, the Water Board is a responsible agency charged with the protection of the Waters of the State of California in the Central Coast Region. Waters of the State include surface waters, groundwater, and wetlands. The Water Board is responsible for administering regulations established by the Federal Clean Water Act (CWA) and the California Water Code (Porter-Cologne Water Quality Control Act). The Water Board also administers regulations, plans, and policies established by the Central Coast Region Water Quality Control Plan and the State Water Resources Control Board to protect watersheds, their resources, and their beneficial uses. These regulations cover discharges to surface water and groundwater, as well as discharges to land that may affect groundwater quality, and may apply to the Plan and its implementation.

The purpose of the Plan is to protect and enhance ecological diversity and function in the greater portion of Santa Clara County, while allowing appropriate and compatible growth and development in accordance with applicable laws. Water Board staff affirms this purpose. However, the Plan does not address all issues of concern to the Water Board. To facilitate

future permitting of projects under Water Board jurisdiction, we offer the following comments for your review.

1. A primary goal of the Plan is to obtain authorization from USFWS and CDFG for incidental take of covered species under the ESA and the NCCP Act for specific activities. Therefore the impact avoidance, minimization, and mitigation measures of the Plan focus on these covered species. However, the Water Board is charged with the protection of water quality and beneficial uses of Waters of the State. This charge extends beyond protections for a relatively small number of species. Therefore, neither the Plan nor the DEIR/EIS address all issues of concern to the Water Board, nor are they intended to do so. Water Board staff intends to apply the Water Board's regulatory processes to projects or activities covered by the Plan, as necessary to protect the beneficial uses of Waters of the State. 1

2. The Plan emphasizes mitigation in reserve areas set aside for this purpose, rather than in the waterbodies and riparian areas directly impacted by the covered activities. However, the Water Board is charged with the protection of all Waters of the State, including urban watersheds. To this end the Water Board has formulated a vision of healthy watersheds, supported by three measurable goals: by 2025, 80% of aquatic habitat within the region will be healthy, 80% of groundwater will be clean, and 80% of lands within any watershed will be managed to maintain proper watershed functions; and the remaining 20% in each category will be improving in key parameters. The Plan does not appear to provide adequate protection of water quality and beneficial uses for all waterbodies. 2

3. The County of Santa Clara, the City of Morgan Hill, and the City of Gilroy are permittees under the State of California National Pollutant Discharge Elimination System (NPDES) General State General Permit No. CAS000004 for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (General Permit). As such, these entities have permit obligations to protect and preserve waterbodies and riparian areas within their jurisdictions. The Plan does not supersede, replace, or modify these permit obligations. 3

4. The Water Board is responsible for administering CWA Section 401 Water Quality Certification for projects involving dredge or fill within Waters of the United States. The Water Board will continue to apply relevant conditions of approval to all projects regulated by CWA Section 401 in all waterbodies within the Central Coast Region, including those projects or activities covered by the Plan. 4

Thank you again for the opportunity to contribute to the Plan's environmental review process. If you have any comments or questions about these comments, please contact **Jon Rohrbough** at (805) 549-3458 or at jrohrbough@waterboards.ca.gov, or Phil Hammer at (805) 549-3882.

Sincerely,

for Roger W. Briggs
Executive Officer

S:\Shared\CEQA\Comment Letters\Santa Clara County\Santa Clara Valley Habitat Plan DEIR-EIS_430111CQ1_final.doc

cc: (by electronic mail)

Clara Spaulding
Santa Clara County
Clara.spaulding@pln.sccgov.org

Anthony Eulo
City of Morgan Hill
Anthony.Eulo@morganhill.ca.gov

Rick Smelser
City of Gilroy
Rick.smelser@ci.gilroy.ca.us

Brett Calhoun
Santa Clara Valley Water District
JCalhoun@valleywater.org

Comment Letter 5—Central Coast Regional Water Quality Control Board, Roger W. Briggs, Executive Officer, February 14, 2011

Response to Comment 5-1

The Habitat Plan and EIR/EIS recognize the primacy of entities such as the Central Coast Regional Water Quality Control Board (RWQCB) for federal Clean Water Act compliance, and the Habitat Plan is not intended to replace the existing regional and local regulatory mechanisms. These existing mechanisms (including the various roles of both the San Francisco Bay and Central Coast RWQCBs) are described in EIR/EIS Section 10.1.1, and would continue to apply. Various elements of the Habitat Plan, however, may enhance existing regulations by providing additional minimization measures that do not currently apply to development activities. For example, see Condition 7, Rural Development Design and Construction Requirements). For these reasons, the EIR/EIS states that the Proposed Action would have beneficial water quality effects compared to No Action.[1] Also see Master Response #4 for a discussion of a possible Regional General Permit and ongoing discussions with the San Francisco Bay and Central Coast RWQCBs.

No changes to the EIR/EIS are required.

Response to Comment 5-2 through 5-4

See Response to Comment 5-1.

[1] The Lead Agencies acknowledge that this benefit is compared to the existing regulatory setting – if the regulatory baseline changes such that the Habitat Plan becomes less restrictive, then the more restrictive regulations would apply and there would be no difference between the Proposed Action and the No Action Alternative.

Public Meeting #2—February 15, 2011

Santa Clara Valley Habitat Plan

Community Meeting Summary ◆ February 15, 2011

Prepared by:

MIG

800 Hearst Avenue
Berkeley, CA 94710
www.migcom.com

Introduction and Overview

On February 15, 2011, a community meeting regarding the Santa Clara Valley Habitat Plan was held at the Peninsula Conservation Center in Palo Alto, California, from 6:30pm to 8:30pm. Approximately 40 people plus local partner staff, representatives from the Fish and Wildlife Agency (FWS) and California Department of Fish and Game (DFG), and consultants attended the event. Joan Chaplick, MIG, Inc. served as the facilitator and moderator for the meeting.

This meeting served as one of two federally noticed meetings for the Public Draft Plan, Draft Environmental Impact Report/Environmental Impact Statement and Draft Implementing Agreement. The meeting included a series of presentations, after which questions and comments were received verbally and in writing.

The evening began with an open house, held from 6:30 to 7:00pm, during which time participants were able to visit different "stations" for a closer look at maps and key components of the plan. Stations included Plan Overview, Land Acquisition Strategy, Plan Cost and Funding, and the EIR/EIS.

Following the open house, welcoming remarks were made by California Native Plant Society member and stakeholder group member Kevin Bryant. Mr. Bryant helped to host the meeting at the Peninsula Conservation Center. Following these remarks, Joan briefly introduced staff from the state and federal wildlife agencies who have been involved with the plan development since its beginning. Cay Goude, Assistant Supervisor for the US Fish and Wildlife Service (FWS), provided opening remarks. Cay described Habitat Conservation Planning as an important mechanism for habitat species protection and as a partnership with the community. She stressed the importance of providing comments and noted the comment period deadline of April 18, 2011. She also noted that the project team and local partner's approach to working collaboratively with the wildlife agencies is being used as an example within the FWS of a model habitat conservation plan. She reminded participants that comments on the Federal environmental review portion of the document, the Environmental Impact Statement, should be provided in writing.

Opening remarks were followed by a presentation on the following topics:

- Habitat Plan Overview
  (Ken Schreiber, Land Use Planning Services, Habitat Plan Program Manager)

- Conservation Strategy
  (David Zippin, ICF, Habitat Plan Project Manager)

- Cost and Funding
  (David Zippin)

- Project Examples and Implementation
  (Ken Schreiber)

- EIR/EIS Overview
  (Cori Mustin, Senior Fish and Wildlife Biologist, FWS; Matt Franck, CH2M Hill)

- Next Steps
  (Ken Schreiber)

A copy of the PowerPoint presentation is included as an attachment and provides a detailed summary of presentation topics. After the formal presentation meeting participants had opportunity to ask the Habitat Management Team questions.

Public Comment

The following section presents the questions and comments shared by members of the public during the meeting, and the responses provided by Ken Schreiber, David Zippin, and Matthew Franck. Responses to questions have been provided. Statements that were in the form of a comment are identified below as C. No response was provided to these statements. All questions and comments will be responded to in the Final EIR/EIS.

Q. If this is a plan for the whole Valley, then we ought to make recommendations for the areas that are not included. For example, Serpentine is not included, nor are the creeks going into the valley floor (Saratoga and Los Gatos, for example). Dave Johnston says the best habitat for burrowing owls is located along Saratoga. This is the only trail we have going to the sea. How do we manage County vector control activities in the context of this plan? How do we control the County when they spray pesticides that affect habitat? They kill bats and other species when they spray for mosquitoes.

A. (See below)

C. I would like to extend congratulations to the team working on this for the last five years. It is incredibly complicated and you have come up with one of the best possible plans we've seen. Trying to do the land management in the absence of this plan has been a challenge. It will be much better for species once the plan is in place, in terms of access to land and being able to use various management approaches 1

Q. I am very concerned about the plan's impact on recreation, particularly off-road vehicles. Metcalf Motorcycle Park does an excellent job of sharing land. I would like to see alternative forms of recreation allowed, such as mountain biking and off road vehicles. Recreation users can share the land with habitat.

Q. Regarding the burrowing owl information, the dark highlighted area in purple is further north where some development is being talked of and there are several families of owls there. Also, you have indicated their wintering grounds in the low priority colors. If you are identifying nesting habitat, why aren't you identifying the wintering grounds as well. Also, I have concerns about the Implementing Entity and others making decisions related to the plan. Along with City staff and planners, there should be biologists involved with environmental training and sound ideas to balance City development interests.

A. The plan preserves a lot of burrowing owl wintering habitat which is land that primarily serves other species addressed in the Draft Plan. The critical needs are preservation of breeding sites and areas around breeding sites, and these are located in northern areas. The implementation of the plan is based on science. The plan calls for a very active technical committee, with both FWS and FGD participating actively in the implementation. With regards to the owls, many of you have been familiar with the standard of 6.5 acre of mitigation per loss of nest. This plan's owl strategy focuses instead on the preservation of foraging habitat within .5 mile of nests and includes the preservation of approximately 150 acres. We've worked closely with FGD and FWS on the owl strategy.

C. I am concerned about the riparian corridor setbacks. In San Jose, we have had a 150 foot setback for years. I am afraid that we are going backwards. In jurisdictions that have stricter setback policies, this stays in place. When they are less than existing standards, then this establishes a consistent minimum setback. 2

C. With regards to radio controlled sail planes, I was pleased to hear the plan sought to accommodate recreation activities that have no impact. I want to make people aware of the opportunities presented by radio controlled sail planes. They are also educational – we work with schools, science, physics and education. 3

Q. I am disappointed to see that the area behind Mount Hamilton is not included in the protective area. Can you please explain the reason for this? I fear that over the next fifty years this area will be very developed.

A. We excluded this area, because there is very low development potential due to its inaccessibility, sparse services, rugged terrain, and land use designations and zoning that are very restrictive. There is very little potential for impacts, and so there is no need to expand take coverage in this area. Also, there are more conservation opportunities elsewhere – we don't see as diverse an amount of endangered species in this area as in ours.

Q. Over 120 miles of ridge trail is planned to be built in Santa Clara County. A large portion directly overlaps with some of the areas that are indicated as target areas for reserve. There is a lot of opportunity to partner in this regard. I strongly favor low intensity trails. It is interesting that the plan calls out the preservation of agricultural lands. When the economic climate changes, how it is proposed to preserve agricultural lands. What happens when that land is no longer economically viable?

A. This plan is not an agricultural preservation plan. It is designed to protect endangered species and enhance the habitats of the species. That said, some active agricultural lands are important for maintaining linkages for some of our species. The primary area to acquire agricultural lands or easements is along the Pajaro River. In terms of the overall proportion of acres, our focus is on natural lands. The trend is that agricultural land is being consumed more by development than by conservation. The plan proposes the creation of new wetlands. In the eyes of Vector Control, this creates opportunity for new vectors. The plan is cognizant of this, and there is a section in plan that states that those implementing the plan need to work with Vector Control to meet both County health and safety goals.

There are ways to manage habitat that will minimize risk and the plan has a large toolbox in this regard. The County as a permit holder will need to resolve these issues. We made a conscious decision to exclude the western portion of the County for a number of reasons: 1) those jurisdictions are largely built out; 2) notable amounts of natural and are already owned by public agencies; and 3) we didn't want to make this plan overly complicated. The more jurisdictions you add to the plan, the more complicated and difficult it can be to implement. The highest species presence and development impact potential is in the southern part of the County. There is a County policy to eventually have a Habitat Plan for the entire County.

Q. Will you be purchasing land in the burrowing owl area? Will these areas be managed for recreation on these sites?

A. It's not clear where land will be purchased, because this is based on willing sellers. We are providing management for burrowing owl, so areas in the extended study area may not be acquired. However, the plan will seek to have management agreements to improve habitat for the owl. In some sites, recreation may be compatible with owl habitat, in others, it may not.

Q. If the state lifts the Williamson Act, how does this affect what happens in the plan?

A. The Williamson Act is the California Land Conservation Act. The purpose is to provide property tax incentives for owners who voluntarily enter into a contract to establish a protected farmland area on their property for a 10-year period. It is a

farmland protection incentive. Funding for the Williamson Act may be threatened in current State budget discussions. However, this plan is not focused on the preservation of farmland as a preservation strategy. The EIR/EIS talks about the consequences of the plan on farmland, including lands enrolled in the Williamson Act. There is an expected loss of farmland expected from future development. The consequence of the habitat plan is that in some areas there will be some agricultural land permanently protected. However, for the environmental review, the potential loss of agricultural land is still considered a significant impact.

Q. Is there language in the plan that bans any forms of recreation?

A. Yes, there are reserved areas for newly acquired lands in which certain kinds of recreation are allowed and others, that have more negative impacts on the species, will not be. The latter are considered incompatible with the plan's preservation goals (discussed in chapter 6) and prohibited. The EIR/EIS will include a more complete and formal response to questions and concerns about recreational impacts.

Q. Why were "no surprises" assurances included and how does this work with the adaptive management strategy?

A. The "no surprises" assurances were included to prevent agencies from coming back to request more than what is provided for. The caveat is that changes are allowed if there is a threat of jeopardy or extinction of a species, then FWS/FGD can suspend or revoke the permit. The plan includes adaptive management measures that will facilitate a learning-by-doing process (Chapter 5). The plan includes a very detailed process to learn from management actions. This is also a requirement for permitting. It seeks to improve conservation and improve efficient use of resources over time.

Q. Waterways that run through the plan area include those used by the endangered steelhead trout. Why weren't they included as one of the targeted species in this plan?

A. We originally intended to cover fish in this plan but they were removed at the request of the two federal agencies (FWS, NMFS). It became too complicated to cover them, and we realized we couldn't meet the goal of covering fish and completing the plan in a reasonable amount of time. It was agreed they would be covered by a different process in the future. The Santa Clara Valley Water District is doing a plan related to steelhead for Coyote Creek and Guadalupe River in the Habitat Plan area, as well as Stevens Creek, and the SCVWD plan will connect to this plan. The major issue related to dropping fish from this plan is related to the Pajaro Watershed, where a watershed-wide plan would be a new undertaking.

Q. I am glad that this plan addresses the wildlife corridor issue. I would like to see more of a focus on Coyote Valley as a wildlife corridor. Does this plan cover species such as pumas or coyotes? There was a comment made about how a seven acres parcel required for California Tiger Salamander (CTS) species mitigation would likely not help the species. Why bother doing this if the resulting management responsibility will have minimal benefit?

A. It was explained that isolated, postage stamp-sized mitigation areas tend not to function nearly as well as large mitigation areas over time. The plan replaces the existing process that results in project-by-project approval and small mitigation areas. For CTS, the reserve will be more important for their survival. The major linkage issue for the Coyote Valley is the Pajaro River. Regarding the species covered in the plan, we began with 147 species and reduced the list down to those now included, which include listed species and species with a good chance of being listed in the coming decades. The plan will benefit a large number of species not listed by preserving foraging, breeding and nesting environments. However, the key species for the plan are those listed and those with a reasonably good chance of being listed as endangered. The plan addresses keystone species – defined in ecological terms as a species that has a disproportionate value or influence on a community - much more than its biomass suggests.

Q. The species list is weak. Why aren't mammals such as badgers better represented in your list? It seems like badgers and mountain lions should be on here. With regards to the Coyote Valley, I am troubled by the focus on Pajaro and there should be more focus on the mid-Coyote Valley since it is a key connectivity point along the valley floor to the Santa Clara Valley. I am disappointed that the DeAnza College 2008 Annual Report info about these resources is not included in this draft.

A. The initial species list was established in 2006 and then reviewed and refined through 2010. Appendix C and Chapter 1 describe this process in more detail. The criteria are simple: range, impact, data, and status. If this species has little or no chance of being listed, then it is not included in the plan. We have limited resources to focus this plan. The plan does have huge benefits to other special status species, even if not designed specifically for them.

Summary and Next Steps

Ken Schreiber described the many opportunities to become involved in the process to finalize the Habitat Plan. Public input opportunities include monthly stakeholder meetings and Liaison Group meetings. All local partners will hold meetings in the next months to review the Public Draft Plan, Draft EIR/EIS and Draft Implementation Agreement. Local partner review will include review by

elected official bodies and commission/advisory meetings, all of which are open to the public.

To submit input directly, share comments and recommendations via the website (www.scv-habitatplan.org) or send them directly to Mr. Ken Schreiber, Project Manager, at ken.schreiber@pln.sccgov.org. Mr. Schreiber can also be contacted by phone at 408-299-5789. The comment period ends on April 18, 2011.

Attachment: PowerPoint Presentation.

Comment Letter 6—Public Meeting #2, Community Meeting Summary, February 15, 2011

Response to Comment 6-1

The Wildlife Agencies and Local Partners acknowledge the expression of support.

No changes to the Habitat Plan are required.

Response to Comment 6-2

The stream setbacks drew from extensive research (see Habitat Plan **Table 6-6**) and were designed to provide appropriate avoidance and minimization of covered species. See Habitat Plan Chapter 6, Condition 11 *Stream and Riparian Setbacks* for full context and background on how the setbacks were established and how they will be applied.

No changes to the Habitat Plan are required.

Response to Comment 6-3

Recreation and public access that is consistent with the Habitat Plan biological goals and objectives would be allowed within the Reserve System – see Condition 9, *Prepare and Implement a Recreation Plan for Each Reserve Unit*.

No changes to the Habitat Plan are required.

Noel Eberhardt

Comment Form — Santa Clara Valley Habitat Plan EIR/EIS — Santa Clara County, CA

Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the Santa Clara Valley Habitat Plan Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority) and the U.S. Fish and Wildlife Service have prepared an EIR/EIS on the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (the "Habitat Plan"). Written comments from interested parties regarding the EIR/EIS are invited to help the agencies make informed decisions using the best available information. All comments received, including names and addresses, will become part of the official administrative record and will be made available to the public. Written comments on the EIR/EIS should be received on or before April 18, 2011.

Written comments should be directed to the contacts below:

Ken Schreiber, Habitat Plan Program Manager
County of Santa Clara
70 West Hedding Street, East Wing, 11th Floor
San José, CA 95110
(408) 299-5789
ken.schreiber@ceo.sccgov.org

Cori Mustin, Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6600
R8SCVHPcomments@fws.gov

For additional information regarding the Santa Clara Valley Habitat Plan, please visit the Santa Clara Valley Habitat Plan website: www.scv-habitatplan.org

Your Name Noel Eberhardt Today's Date 2/15/2011

Please indicate your affiliation by checking **one** of the following boxes:

- ☐ Individual (no affiliation)
- ☐ Federal, State, or Local Government
- ☐ Elected Representative
- ☑ Private Organization
- ☐ Citizen's Group
- ☐ Regulatory Agency

Name of organization, government, group, or agency (if applicable) South Bay Soaring Society, a non-profit org.

Mailing Address 24407 Krajich Pl.

City/State/Zip Cupertino, CA 95014

Telephone (optional) (408) 446-4487 E-mail Address (optional) neberhardt@sbcglobal.net

Please write your comments here (please print legibly). Attach additional pages if necessary.

1. How can I find out more about the "additional public recreation opportunities" (on Environmental & Open Space Benefits slide)?
2. Our organization seeks open space for educational purposes and has virtually zero effect / stress on flora & fauna. No land preparation / grading is needed & activity is overhead air pollution-free.
3. The concept of leaving concentrated space open having an open access on the condition there is minimal stress on the land.

1

Comment Letter 7—Noel Eberhardt, South Bay Soaring Society, February 15, 2011

Response to Comment 7-1

See Response to Comment 6-3.

Toni Gregorio-Bunch

8

Comment Form — **Santa Clara Valley Habitat Plan EIR/EIS, Santa Clara County, CA**

Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the Santa Clara Valley Habitat Plan Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority) and the U.S. Fish and Wildlife Service have prepared an EIR/EIS on the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (the "Habitat Plan"). Written comments from interested parties regarding the EIR/EIS are invited to help the agencies make informed decisions using the best available information. All comments received, including names and addresses, will become part of the official administrative record and will be made available to the public. Written comments on the EIR/EIS should be received on or before April 18, 2011.

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For additional information regarding the Santa Clara Valley Habitat Plan, please visit the Santa Clara Valley Habitat Plan website: www.scv-habitatplan.org

Your Name Toni Gregorio-Bunch Today's Date 2/15/11

Please indicate your affiliation by checking **one** of the following boxes:

- ☒ Individual (no affiliation)
- ☐ Federal, State, or Local Government
- ☐ Elected Representative
- ☐ Private Organization
- ☐ Citizen's Group
- ☐ Regulatory Agency

Name of organization, government, group, or agency (if applicable) _____

Mailing Address 1050 Lucky Ave.

City/State/Zip Menlo Park, CA 94025

Telephone (optional) 408-373-4497 E-mail Address (optional) tonig@flash.net

Please write your comments here (please print legibly). Attach additional pages if necessary.

Disappointed that area behind Mnt. Hamilton not included in plan. Ranch land in this area, even though remote, can be developed to the detrimate of native plants & animals. I would like to see this area protected as well. (Although we live in Menlo Park, we also own land in Santa Clara County).

1

Comment Letter 8—Toni Gregorio-Bunch, February 15, 2011

Response to Comment 8-1

The study area was defined as the area in which all covered activities would occur, impacts would be evaluated, and conservation activities would be implemented (Habitat Plan Section 1.2.2 *Geographic Scope, Study Area*). The Wildlife Agencies and Local Partners acknowledge that land behind Mt. Hamilton can be developed and respect the commenter's opinion that it is worthy of protection. The implementation of the Habitat Plan does not preclude development or conservation in the area behind Mt. Hamilton.

No changes to the Habitat Plan are required.

Neela Srinivasan

Comment Form — **Santa Clara Valley Habitat Plan EIR/EIS**
Santa Clara County, CA

Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the Santa Clara Valley Habitat Plan Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority) and the U.S. Fish and Wildlife Service have prepared an EIR/EIS on the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (the "Habitat Plan"). Written comments from interested parties regarding the EIR/EIS are invited to help the agencies make informed decisions using the best available information. All comments received, including names and addresses, will become part of the official administrative record and will be made available to the public. Written comments on the EIR/EIS should be received on or before April 18, 2011.

Written comments should be directed to the contacts below:

Ken Schreiber, Habitat Plan Program Manager
County of Santa Clara
70 West Hedding Street, East Wing, 11th Floor
San José, CA 95110
(408) 299-5789
ken.schreiber@ceo.sccgov.org

Cori Mustin, Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6600
R8SCVHPcomments@fws.gov

For additional information regarding the Santa Clara Valley Habitat Plan, please visit the Santa Clara Valley Habitat Plan website: www.scv-habitatplan.org

Your Name Neela Srinivasan Today's Date 2/15/2011

Please indicate your affiliation by checking **one** of the following boxes:

- ☒ Individual (no affiliation)
- ☐ Federal, State, or Local Government
- ☐ Elected Representative
- ☐ Private Organization
- ☐ Citizen's Group
- ☐ Regulatory Agency

Name of organization, government, group, or agency (if applicable) _____

Mailing Address 1438 Petal Way

City/State/Zip San Jose, CA 95129

Telephone (optional) _____ E-mail Address (optional) neela_nandu@yahoo.com

Please write your comments here (please print legibly). Attach additional pages if necessary.

(1) Which map correctly delineates the "Planning Limits of Urban Growth" — "Draft" Plan Conservation Strategy" or "Habitat Plan fees"? Could you please rectify your on-line documentation, before 4/18? Thanks! 1

(2) Coyote valley is home to many of the listed species: Why isn't it included in either ① linkage areas or ② a high fee area? 2

(3) If the plan is also an NCCP, more mammals with a wide range, specialists, such as pumas & badgers must be included. Why are they not? Why does the plan focus more on ESA/HCP than on CEQA/NCCP? 3

Comment Letter 9—Neela Srinivasan, February 15, 2011

Response to Comment 9-1

The Habitat Plan does not contain maps titled "Draft Plan Conservation Strategy" or "Habitat Plan Fee," but in reviewing the figures, the Wildlife Agencies and Local Partners recognized that Habitat Plan **Figure 9-1** *Land Cover Fee Zones* does not correctly depict the "Planning Limits of Urban Growth." Several figures in the Habitat Plan correctly identify the "Planning Limits of Urban Growth." These include Habitat Plan **Figures 2-2, 5-7, and 5-8**.

Revisions to the Habitat Plan include the following:

Figure 9-1 was updated to include the correct planning limits of urban growth.

Response to Comment 9-2

Comment is addressed in Master Response #8.

Revisions to Habitat Plan will be consistent with Master Response #8.

Response to Comment 9-3

Comment is addressed in Master Response #9.

Revisions to Habitat Plan will be consistent with Master Response #9.

Angus Teter

10

Comment Form — **Santa Clara Valley Habitat Plan EIR/EIS**
Santa Clara County, CA

Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the Santa Clara Valley Habitat Plan Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority) and the U.S. Fish and Wildlife Service have prepared an EIR/EIS on the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (the "Habitat Plan"). Written comments from interested parties regarding the EIR/EIS are invited to help the agencies make informed decisions using the best available information. All comments received, including names and addresses, will become part of the official administrative record and will be made available to the public. Written comments on the EIR/EIS should be received on or before April 18, 2011.

Written comments should be directed to the contacts below:

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County of Santa Clara
70 West Hedding Street, East Wing, 11th Floor
San José, CA 95110
(408) 299-5789
ken.schreiber@ceo.sccgov.org

Cori Mustin, Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6600
R8SCVHPcomments@fws.gov

For additional information regarding the Santa Clara Valley Habitat Plan, please visit the Santa Clara Valley Habitat Plan website: www.scv-habitatplan.org

Your Name Angus Teter Today's Date 2/15/11

Please indicate your affiliation by checking **one** of the following boxes:

- ☒ Individual (no affiliation)
- ☐ Federal, State, or Local Government
- ☐ Elected Representative
- ☐ Private Organization
- ☐ Citizen's Group
- ☐ Regulatory Agency

Name of organization, government, group, or agency (if applicable) _____

Mailing Address 1158 Windsor Way, [redacted]

City/State/Zip Menlo Park, CA, 94025

Telephone (optional) _____ E-mail Address (optional) angusteter@gmail.com

Please write your comments here (please print legibly). Attach additional pages if necessary.

I'm having a very hard time understanding the inclusion of "No Surprises Assurances" in a plan that is supposed to implement adaptive management, especially given the 50 year scope of the HCP. These two concepts seem essentially opposed, if not outright contradictory. I am greatly concerned that "No Surprises Assurances" will severely limit the managing agency's ability to "adjust future conservation action 1

according to what is learned." Given how rapidly human knowledge in the field of conservation is advancing, and also considering the inherently dynamic nature of the environment itself, I think it's a very bad idea to "tie the hands" of Wildlife Agencies in regards to land, water, money, & natural resources for the next 50 years. I understand that the issue of how the HCP effects property rights is a highly political one, but if the plan does not meet a certain minimum threshold of scientific rigor, then the plan will not work — and it makes no sense to invest time, effort, & money in a plan that will not conserve habitat like it is supposed to. The "No Surprises Assurance" clause, in my assessment, threatens to do exactly that — to compromise the power of science in the plan for political reasons, which would render the HCP moot in terms of it's value & ability as a conservation tool. Some of my other concerns include the current size of riparian setbacks being inadequate to provide habitat connectivity, the disproportionate levels of research applied to certain covered species as opposed to others, and the lack of discussion of Coyote Valley as the primary wildlife corridor between the Santa Cruz & Diablo Mountains. The plan's focus on covered species seems to be very reactive and does little to prevent more prevalent species, like cougars, from becoming threatened, or to ensure the overall health of Santa Clara's wilderness.

2

3

4

5

Comment Letter 10—Angus Teter, February 15, 2011

Response to Comment 10-1

The Wildlife Agencies and Local Partners appreciate the commenter's concern regarding "No Surprises Assurances." The comment reflects a common misunderstanding between the relationship between "No Surprises Assurances" and adaptive management. As explained in the 1998 No Surprises Assurances Final Rule (63 FR 8859) and the 2000 Five Point Policy (65 FR 35253), No Surprises Assurances and adaptive management are compatible. As stated in Section 10.2.2 of the Plan, "The federal *No Surprises Regulation* was established by the Secretary of the Interior on March 25, 1998. It provides assurances to Section 10 permit holders that no additional money, commitments, or restrictions of land or water will be required should unforeseen circumstances requiring additional mitigation arise once the permit is in place. The No Surprises Regulation states that if a Permittee is properly implementing an HCP that has been approved by USFWS and/or NMFS, no additional commitment of resources, beyond that already specified in the Plan, will be required." USFWS is required to provide No Surprises assurances under current regulations.

As stated above, the provision of No Surprises assurances is "contingent on the proper implementation of the permits, Implementation Agreement, and Habitat Plan." "Proper implementation" includes implementation of Adaptive Management as described in Habitat Plan Section 7.1.2 *Adaptive Management* of the Habitat Plan. The Habitat Plan acknowledges that "Adaptive management is necessary because of the degree of uncertainty and natural variability associated with ecosystems and their responses to management" (Section 7.1.2 *Adaptive Management*). In addition, "Any of the conservation actions proposed in Habitat Plan **Tables 5-1a–d** can be modified in response to new information following the principles of adaptive management."

Habitat Plan implementation, including adaptive management, will incorporate a level of scientific rigor with the involvement of science advisors. The Implementing Entity will consult science advisors who will provide advice on Plan implementation. The role of the science advisors is to provide the Implementing Entity with science-based expert opinion and recommendations, focused "white papers," peer review, and feedback regarding key scientific aspects of Plan implementation such as reserve assembly, reserve management, and monitoring protocols. Science advisors will be contacted by the Implementing Entity as needed. They may also be convened as a group when needed to address specific topics (Habitat Plan Section 7.2.3 *Program Implementation,* subheading *Program Infrastructure*).

Consistent with the *No Surprises Regulation*, Habitat Plan Chapter 10 identifies both changed and unforeseen circumstances. Changed circumstances are future changes that are planned for in the Plan and unforeseen circumstances are changes that were not anticipated, which would result in a substantial and adverse change in a species' status. The Plan clearly defines changed circumstances for which the Permittees will carry out and fund remedial measures. If additional conservation mitigation measures are deemed necessary to respond to unforeseen circumstances, USFWS may require additional measures of the Permittees where the conservation Plan is being properly implemented, only if such measures are limited to modifications within the conserved habitat areas, if any, or to the Plan's operating conservation program for the affected species, while maintaining the original terms of the Plan to the maximum extent practicable.

No changes to the Habitat Plan are required.

Response to Comment 10-2

The purpose of the stream and riparian setback is primarily to avoid and minimize impacts on covered species that rely on streams and associated riparian corridors. The stream and riparian setbacks draw

from extensive research (see **Table 6-6**), including research on buffers needed to support wildlife. Conservation actions that protect habitat connectivity will be mostly, but not entirely, focused in the Reserve System. Stream and riparian buffers in the Reserve System will not be limited to the distances identified in Habitat Plan Chapter 6, Condition 11 *Stream and Riparian Setbacks*.

No changes to the Habitat Plan are required.

Response to Comment 10-3

Some covered species are understood better than others. For example, the Bay checkerspot butterfly has been, and continues to be, the focus of many scientific studies. Other covered species, including many of the non-listed covered plant species, have not been studied to the same extent. The impacts analysis and conservation strategy described in the Plan are based on the best available scientific data to date. As described in Habitat Plan Chapter 7, adaptive management will play a critical role in the success of the conservation strategy, as it will be the mechanism in which critical data gaps are filled. Numerous studies (Habitat Plan Table 5-2 b) will be conducted by this Plan to address these data gaps. Furthermore, the Implementing Entity will coordinate closely with other land managers and the scientific community throughout implementation to ensure that the Reserve System is managed in a way that maximizes benefits to all covered species.

No changes to the Habitat Plan are required.

Response to Comment 10-4

Comment is addressed in Master Response #8.

Revisions to Habitat Plan will be consistent with Master Response #8.

Response to Comment 10-5

Comment is addressed in Master Response #9.

Revisions to Habitat Plan will be consistent with Master Response #9.

Sarah Greer

To:

Cori Mustin, Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
R8SCVHPcomments@fws.gov

Submitted by:

Sarah Greer
(Individual, No Affiliation)
554 Salvatierra Walk, #223A
Stanford, CA 94305
Sarah.greer@stanford.edu

Comment:

SANTA CLARA VALLEY HABITAT CONSERVATION PLAN AND
NATURAL COMMUNITY CONSERVATION PLAN
FWS–R8–ES–2010–N225

Concerns with Adaptive Management Decisionmaking

The Santa Clara Valley Habitat Conservation Plan ("Plan") represents in many ways a large step forward in conservation planning in the Bay area. My key concern with the Plan is that, with its intended life span of 50 years, it fails to adequately account for or have the proper tools to adjust for the likely considerable changes to the Santa Clara area which will result from climate change. The Plan, in Chapter 7, goes into depth regarding the necessity of a Monitoring and Adaptive Management Program, but largely fails to flesh out how this program will in practice function and how decision-making will be made.

The language in Chapter 7 indicates that the "Implementing Entity" will be influenced by five key groups in determining how to proceed with adaptive management decision-making, which is highly likely to be necessary given the considerable unknowns of how various plant and animal species would respond to higher temperatures, longer winters or summers, or any of the number of climate change impacts which are likely to be associated with the IPCC's predicted temperature increases in the next 50 years. *Climate Change 2007: The Physical Science Basis. Summary for Policymakers*, Intergovernmental Panel on Climate Change, Fourth Assessment Report. These five enumerated groups are Wildlife Agencies, other Land Management Agencies, Science Advisors, an Independent Conservation Assessment Team, and the Public. Plan, Chapter 7, pg. 20. My concern is that the Plan does not indicate how the input of each of these entities is to be assessed when they conflict, and how priorities are to be designated given the likely situation of conservation strategies associated with one species coming into conflict with those of another. 1

Even more nebulous is the Plan's description of who "science advisors" are and how their influence is to be weighted against professionals within the Wildlife or Land Management

Agencies, especially given that both of these agencies may have a role in selecting the Science Advisors. Adding what seems to be an additional unnecessary layer of complexity is the notion of an Independent Conservation Assessment Team, which is in reality not independent at all because the Wildlife Agencies are consulted regarding the team's composition. Adding a veneer of independence to this entity seems to do little with respect to substantive legitimacy, and its role in the adaptive management process in relation to the other four entities is not clear from the Plan as written.

It would be unreasonable (and impossible) to expect the Plan to outline in specificity at this stage what adaptive management decisions to be made 40 years down the road. However, given the very high likelihood of difficult adaptive decision-making due to climate change the Plan should clearly articulate the regulatory structure for such decisionmaking, so when the time comes there can be clarity in terms of roles and accountability.

Comment Letter 11—Sarah Greer, No date

Response to Comment 11-1

The Local Partners and the Wildlife Agencies acknowledge that additional detail is required to implement the proposed Monitoring and Adaptive Management proposed in Habitat Plan Chapter 7 fully. Management plans will be developed for each reserve unit once the reserve units are acquired. The Local Partners and the Wildlife Agencies feel this is appropriate given that the Reserve System has not yet been acquired and the restoration sites have not yet been selected. The monitoring chapter was designed to provide sufficient structure and guidance to allow for site-specific monitoring once parcels are acquired within the Reserve System. Most of the targeted studies will occur within the first 5-10 years of Plan implementation; these studies are designed to inform monitoring and resolve critical uncertainties and are independent of land acquisition. An inventory phase is scheduled to commence immediately after acquisition for each acquired parcel. The initial inventory phase will occur following perm it approval and will continue as parcels are added to the Reserve System or new conservation actions are initiated outside the Reserve System, primarily on streams. This phase includes the documentation of baseline conditions and the initiation of management planning. Management planning includes developing specific management plans, refining the proposed monitoring schedule for site-specific species, identifying biotic and abiotic indictors, selecting monitoring protocols and identifying sampling design for status and trends and effects monitoring, and developing criteria for measuring success of enhancement, restoration, and creation efforts. By necessity, protocols, criteria, indicators, and schedules are linked to specific reserve units or parcels to address conditions and management on the ground. The Plan is structured to provide adequate guidance to develop monitoring once parcels are acquired while requiring that the majority of monitoring be developed within 5 years of land acquisition.

Regarding the relationships between the five enumerated groups the Permittees will ultimately be responsible for compliance with all the terms and conditions of the Plan's permits and for the performance of the Implementing Entity (Habitat Plan Section 8.2.1). Other land management agencies and science advisors (Habitat Plan Section 8.2.4), the Independent Conservation Assessment Team (Habitat Plan Section 8.2.6), and the Public (Habitat Plan Section 8.2.7) will serve an advisory role to the Implementing Entity. The Implementing Entity will make decisions after taking into consideration the advice provided by these groups. Although the Wildlife Agencies will not be involved in the day to day implementation of the Plan, they will share in the responsibility to monitor Plan compliance and will notify the Implementing Entity if the Plan is not being implemented to their satisfaction. As stated in Section 8.2.5 of the Plan, the Implementing Entity and the Wildlife Agencies will strive at all times to work in good faith with each other to reach mutual agreement on key implementation tasks such as adaptive management, monitoring, and conservation actions. If disagreements arise that cannot be resolved easily, the Implementing Entity will follow the "meet and confer" dispute resolution process outlined in Section 6.6.1 of the Implementing Agreement, and if necessary, the "elevation of dispute" process outlined in Section 6.6.3 of the Implementing Agreement (Appendix B).

No changes to the Habitat Plan are required.

Response to Comment 11-2

Regarding the Independent Conservation Assessment Team, although the Wildlife Agencies will be consulted regarding team members, the participants will have no relationship to the Plan and will therefore be able to provide objective outside review. This type of review is often solicited during HCP/NCCP development and is seen as a valuable component of Plan effectiveness.

No changes to the Habitat Plan are required.

Unknown Source

From: Schreiber, Ken
To: Franck, Matthew/SAC; Cori_Mustin@fws.gov
Cc: "Horwedel, Joseph"; Boyd, Darryl
Subject: FW: HCP comment; e-mailed again
Date: Thursday, February 17, 2011 9:17:24 AM

For the record.

Ken

From: Yasukawa, Kristen [mailto:Kristen.Yasukawa@sanjoseca.gov]
Sent: Thursday, February 17, 2011 8:59 AM
To: Schreiber, Ken
Subject: FW: HCP comment; e-mailed again

Hi Ken:

A comment about the HCP was sent to me (see below). I will forward any others that I receive.

Thanks,
Kristen

KRISTEN YASUKAWA
City of San José, Environmental Services - Marketing & Public Outreach
kristen.yasukawa@sanjoseca.gov o : 408-975-2606

From: mjt bs cps/cap [mailto:myrna02@earthlink.net]
Sent: Wednesday, February 16, 2011 9:49 PM
To: Yasukawa, Kristen
Subject: HCP comment; e-mailed again

"Your document is long and thorough and has educated preparers. The wildlife that is threatened is my only comment—watch out for the human hunters or else we're returning to a stuffed reptile/animal or pictures on a board.
In summary, I'd like to see all things balanced: walking trails without refuse, wildlife residences (where they want to live and where humans can "see" them without killing them, and a functioning water plant/district for all existing cities known today in this Santa Clara County. No new cities please! Build with boundaries & earthquakes in mind.
The possible marketing of hotels and their services or a fast-food building are really low on my priority list for this new water plant. Check out Saratoga, CA and see the new vacancies from expensive lease agreements. Okay, so your new water plant will have no leased buildings. And yes, it is true I won't be around to see those buildings vacant and house low-income humans or wildlife, and the graffiti which reminds me of "cave people."
I'd just stick to the improved water district and I understand if buyers want to have a sign declaring who they are and how much they donated then affix a bill-board (similar to those on a walking/exercise trail (see Campbell, CA near Hwy 17 or 880). Of course this new water plant will be added to on-line encyclopedias and be a good reference to those humans traveling through this county or residing here to see wildlife with their family.
Future generations are going to become travelers compared to Baby Boomers.
This land you have reminds me of building a future county park: how do you care for it and who wants to use it. Better yet, consider the large land use in Vancouver, Canada during the 1986 Expo."
http://choo.fis.utoronto.ca/FIS/Courses/LIS2149/escalationCase.html
http://en.wikipedia.org/wiki/Expo_86 (scroll to LEGACY)

1

Comment Letter 12—Unknown, February 16, 2011

Response to Comment 12-1

With regard the commenter's concerns about earthquakes, the Habitat Plan accounts for earthquakes and remedial measures in Habitat Plan Section 10.2.1, *Changed and Unforeseen Circumstances.*

Also see Responses to Comments 6-3 and 50-9.

No changes to the Habitat Plan are required.

Chuck Hammerstad

Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the Santa Clara Valley Habitat Plan Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority) and the U.S. Fish and Wildlife Service have prepared an EIR/EIS on the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (the "Habitat Plan"). Written comments from interested parties regarding the EIR/EIS are invited to help the agencies make informed decisions using the best available information. All comments received, including names and addresses, will become part of the official administrative record and will be made available to the public. Written comments on the EIR/EIS should be received on or before April 18, 2011.

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County of Santa Clara
70 West Hedding Street, East Wing, 11th Floor
San José, CA 95110
(408) 299-5789
ken.schreiber@ceo.sccgov.org

Cori Mustin, Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6600
R8SCVHPcomments@fws.gov

For additional information regarding the Santa Clara Valley Habitat Plan, please visit the Santa Clara Valley Habitat Plan website: www.scv-habitatplan.org

Your Name Chuck Hammerstad Today's Date 2/17/2011

Please indicate your affiliation by checking **one** of the following boxes:

- ☐ Individual (no affiliation)
- ☐ Federal, State, or Local Government
- ☐ Elected Representative
- ☐ Private Organization
- ☐ Citizen's Group
- ☐ Regulatory Agency

Conservation Committee Chair.

Name of organization, government, group, or agency (if applicable) Flycasters, Inc. of San Jose

Mailing Address 780 Portswood Dr.

City/State/Zip San Jose, CA 95120

Telephone (optional) _____ E-mail Address (optional) chamerstad@aol.com

Please write your comments here (please print legibly). Attach additional pages if necessary.

OVER

Comments of SCV Habitat Plan

Thank you for the opportunity to comment on the SCV Habitat Plan. First, I would like to commend your group in taking on this difficult yet comprehensive plan to restore our native species to enhance and protect our remaining fragile wild environment. It will take a lot of work to see this plan through to the end and I am encouraged to know there are people and organizations working to preserve our environment in difficult times.

I have read some portions of the Habitat Plan document, those that are of particular interest to me and of those I represent in the fisheries community. I was somewhat disappointed to find that Steelhead trout were not among the species of concern to protect under this plan. I do now understand why Steelhead were on the list of species considering the complex nature of restoring once great Steelhead runs in the watersheds of the southern end of the bay in Morgan Hill and Gilroy as well as parts of San Jose. With all of the urban development and the associated problems of rivers and creeks running through the urban areas, there are many stressors to work on, making for many difficult issues to resolve. I do know there are government organizations as well as NGO's working on the restoration and protection of the Threatened Steelhead in the Habitat Plan area. There is progress being made with more work planned for the future. 1

However, there are some issues which possibly could be incorporated in the Habitat plan which may not be addressed. Having not read the whole document, I may have missed learning about some of the issues I would like to mention. First, in the process of approving new development, as well as allowing for a riparian corridor along a stream, there should be some measure of control regarding water rights. Water diversions from the watershed should not be allowed, because of the need to keep as much water as possible in the streams. 2 I think new wells should not be allowed along creeks because wells lower the water table and reduces the amount of water flowing in the stream rather than perculating into the ground. 3 Any new agricultural development such as vineyards should be assessed for impact on stream siltation, fertilizer and pesticide run off into the watershed. 4

I had read the sections regarding dam operation to support fish downstream and was encouraged to see this as part of the Habitat Plan. If you have not already done so, Jon Ambrose, lead biologist for NOAA, working on the Steelhead recovery on the Pajaro River/Uvas Creek watershed, should be consulted on the fisheries conservation measures outlined in the Plan document. As I had previously read something about Sprig Lake, on a tributary to Bodfish Creek, Jon Ambrose should be consulted on the operation of this reservoir. Jon Ambrose contact information: jonathan.ambrose@NOAA.gov, 707-575-6091. 5

Thank you for your attention.

Comment Letter 13—Chuck Hammerstad, Conservation Committee Chair, Flycasters, Inc. of San José, February 17, 2011

Response to Comment 13-1

Initially, steelhead was included as a covered species. It became evident during the planning process that it would be difficult to reach a recovery standard for steelhead in the southern watersheds in a timely manner. At the joint recommendation of USFWS, CDFG, and NMFS, the decision was made to drop fish in 2010. Although steelhead are not a covered species, they will directly and indirectly benefit from several of the Plan's conservation measures. The Santa Clara Valley Water District is also independently developing the Three Creeks Habitat Conservation Plan, which will benefit steelhead in the northern watersheds of the County.

No changes to the Habitat Plan are required.

Response to Comment 13-2

The Plan does not propose new water diversions (i.e., removal of more water from streams than allowed by existing water rights) from the San Francisco Bay watershed streams or from the Monterey Bay watershed streams within the permit area. The Plan does address flow requirements in streams for the purposed of maintaining covered species habitat.

No changes to the Habitat Plan are required.

Response to Comment 13-3

As cited from Habitat Plan Chapter 2, Section 2.4 *Projects and Activities Not Covered by This Plan*, "The Local Partners do not have a clear regulatory authority over the location of groundwater wells, nor water rights associated with wells. In addition, it is very difficult to assess the impacts associated with groundwater well operation. Therefore, except as described above for open space and streamflow management, installation and/or use of groundwater wells will not be a covered activity of this Plan."

The two exceptions alluded to in Section 2.4 are wells developed in association with 1) County Parks projects and 2) the Reserve System. When associated with County Parks projects, spring boxes will be preferentially developed over wells. Up to 40 wells or spring boxes may be constructed for use in County Parks. However, wells and spring boxes will be sited so that they do not degrade surrounding habitat (Habitat Plan Section 2.3.5). In addition, up to 49 wells may be installed and placed in close proximity to the ponds that they will serve in the Reserve System. Wells will be installed only as necessary for natural resource management purposes and when no alternative surface water supplies are available. Similar to County Parks projects, wells in the Reserve System will be sited so that they do not affect seeps or springs and will not degrade surrounding habitat (Habitat Plan Section 2.3.8).

No changes to the Habitat Plan are required.

Response to Comment 13-4

As cited from Habitat Plan Chapter 2, Section 2.4 *Projects and Activities Not Covered by this Plan*, "The creation of new vineyards or expansion of existing vineyards that does not go through a County permitting process (e.g., a grading and/or building permit) would not be subject to local approval and therefore cannot be covered by the Plan." Project proponents of vineyard development that do seek coverage under this Plan will be required to implement the conditions on covered activities for vineyard development described in Habitat Plan Chapter 6, Condition 7 *Rural Development Design and Construction Requirements*.

No changes to the Habitat Plan are required.

Response to Comment 13-5

Jon Ambrose (National Marine Fisheries Service) participated in Plan preparation for the first 3 years of the process. Descriptions of dam operation in the Plan are guided by SCVWD to ensure consistency with the development of the Three Creeks HCP and the Wildlife Agencies to ensure appropriate measures are taken to protect covered species.

No changes to the Habitat Plan are required.

Tori Ballif

From: Schreiber, Ken
To: Franck, Matthew/SAC; Cori_Mustin@fws.gov
Subject: FW: Public Comment Re: Santa Clara Valley Habitat Plan
Date: Tuesday, February 22, 2011 9:57:36 AM

For the list of comments.

Ken

From: Tori Ballif [mailto:tori.ballif@gmail.com]
Sent: Friday, February 18, 2011 1:04 AM
To: Schreiber, Ken
Subject: Public Comment Re: Santa Clara Valley Habitat Plan

Dear Mr. Schreiber,

Public Comment for Fed. Reg. FWS-R8-ES-2010-N225; 112-0000-81420-F2 (Santa Clara Valley Habitat Conservation Plan and Natural Community Conservation Plan)
I am concerned that the proposed Plan could be potentially detrimental to the three federally threatened and six unlisted species within the scope of the plan.

Incidental Take Could Accelerate Endangerment of Currently Non-Listed Species

Under this plan, the incidental take provisions don't apply to the three federally-threatened and six unlisted species in Santa Clara Valley. The take provisions only kick in once a species is listed as endangered. This means developers don't face the same level of liability when harming non-listed species. It also means less impetus to limit impacts on non-listed species. While I recognize that the proposed permit would include all five federally listed species (both threatened and endangered), arguably, it is not until a species reaches the level of "endangered" that it is entitled to the most stringent monitoring.
This plan could potentially streamline the permit process and accelerate development at the expense of currently non-listed species. Developers will not have to undergo many of the same procedural delays that they would face in the absence of the plan; indeed, a more efficient process is a key attractions for commercial interests involved. Such an increase in development could result in significant habitat disruption, with a projected loss of 25,864 acres. Id.
Though alternative habitat has been proposed and studies have been conducted, there is a significant risk that this type of habitat destruction will negatively impact one of the currently non-listed species to the point where listing might be warranted. Even if the development itself is conducted at feasible levels, the stress it would add to these species may make them unable to handle other population challenges (i.e. disease, climate change, fragmentation, natural disaster, etc.). Since only one of the following are necessary to be considered for federal listing under section 4(a)(1) of the ESA, it is entirely foreseeable that this Plan would make one or more of these factors more likely with respect to currently un-listed species:

1. There is the present or threatened destruction, modification, or curtailment

1

of its habitat or range.
2. An over utilization for commercial, recreational, scientific, or educational purposes.
3. The species is declining due to disease or predation.
4. There is an inadequacy of existing regulatory mechanisms.
5. There are other natural or manmade factors affecting its continued existence.

16 U.S.C. § 1533(a)(1)(A)-(E).

Petitions for ESA listing are heavily backlogged. It could be years between a species' initial petition for listing and the agency's decision to grant them endangered species status and protections. The permits under the Plan last 50 years, so this development will be ongoing during a potential ESA listing petition. As it stands now, the Plan is potentially situated to first cause the population decline of an unlisted species and then continue to harm that species without significant monitoring or repercussions because the listing process is so slow that it cannot respond to the pace of development and its impacts.

Tori Ballif
Individual (no affiliation)
670 Sharon Park Dr
Menlo Park, CA 94025

Comment Letter 14—Tori Ballif, February 18, 2011

Response to Comment 14-1

Both threatened and endangered species are considered "listed" under both federal and state statute. All covered species, listed and non-listed, are equally evaluated in the Plan. That is, the Plan's analysis evaluates each non-listed covered species as if it were listed. As indicated in Habitat Plan Section 10.2.1, the federal permit will be effective for all listed covered species immediately after the adoption of all local implementing ordinances (Habitat Plan Section 8.5). Should USFWS list a non-listed covered species during the permit term, take coverage will become effective for that species once the Conference Opinion for that species is converted to a Biological Opinion. Under Section 2835 of the California Fish and Game Code, CDFG may issue take authorization for covered species (plants or wildlife) regardless of their listing status. As stated in the NCCP Act, "At the time of plan approval, the [California] department [of Fish and Game] may authorize by permit the taking of any covered species whose conservation and management is provided for in a natural community conservation plan approved by the department."

As stated on page 3 of the Habitat Plan Executive Summary, "The Plan includes conservation measures to protect all 18 species selected for coverage under the Plan, whether or not they are currently listed. Accordingly, should any non-listed, covered species become listed during the permit term, additional conservation measures will not be required." The avoidance, minimization, and mitigation as well as the monitoring and reporting on those activities that are written into the Habitat Plan applies to all covered species, not just those that are currently listed. Further, the land protection that will occur as the result of the Plan is obligated to offset effects to all of the covered species, not just those that are currently listed.

No changes to the Habitat Plan are required.

Glen-Loma Group

15

COPY

GLEN-LOMA GROUP
a diversified real estate
investment company

February 25, 2011

Hon. Al Pinheiro, Mayor
City of Gilroy
7351 Rosanna Street
Gilroy, Ca 95020

Re: Habitat Conservation Plan

Dear Mr. Mayor,

Thank you for your request for input on the HCP. We are still digesting the several thousands of pages that comprise the plan, and though I regretfully will be unable to attend the Council Study Session on March 2, I herewith offer some preliminary comments.

We are in general support of the HCP concept, which is to provide a streamlined "blanket" permitting and mitigation program for new projects. However, Glen Loma Ranch has already spent millions of dollars on an entitlement process that began in 1999 and concluded in 2006, resulting in an approved Specific Plan and a certified EIR with appropriate mitigations. Further, we have installed significant infrastructure to provide access to future neighborhoods and the two schools now operating within the project. Participation in the HCP offers us no benefits in the form of blanket permitting or mitigation and would only result in new fees that would at least duplicate our costs to date. Given all of these facts, we respectfully submit that we believe we are already far down the pipeline and should be exempted. 1

Other observations about the HCP include the fact that there is no acknowledgement of open space areas or other natural features within projects that are intended to be preserved as permanent open space. To the contrary, as currently construed, the fees are charged against the open space as well as the developed area. Finally, the fee structure seems to be a disincentive to the pursuit of project elements that are formulated in response to local community goals. 2

We have geared up our team in an effort to provide timely input to you and to your staff in evaluating these issues.

Thank you,

Glen Loma Ranch

By: Tim Filice
Tim Filice

Cc: Stan Ketchum, Ken Schreiber

7888 WREN AVENUE
SUITE D 143
GILROY, CALIFORNIA 95020
(408) 847-4224
FAX: (408) 847-3380

Comment Letter 15—Glen-Loma Group, Tim Filice, Glen Loma Ranch, February 25, 2011

Response to Comment 15-1

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 15-2

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Hecker Pass Property Owners Group

16

HECKER PASS PROPERTY OWNERS GROUP

2480 Hecker Pass Hwy.
Gilroy, CA 95020
408.483.0468

March 2, 2011

VIA EMAIL TO STAN KETCHUM, SENIOR PLANNER
Gilroy City Council
7351 Rosanna St.
Gilroy, CA 95020

Re: Draft Santa Clara Valley Habitat Plan

Honorable Mayor and Council Members:

As vested stakeholders in the Santa Clara Valley Habitat Plan (SCVHP) the Hecker Pass Property Owners Group wishes to provide input and assistance in completing the draft Habitat Conservation Plan (HCP). In addition to this letter, we will provide detailed comment during the public comment period for the HCP Draft EIR.

The Hecker Pass Special Use District, Specific Plan, Planned Unit Development, and Development Agreement collectively implement the Gilroy General Plan goals for preserving the "rural character of the jewel of Gilroy."

The Hecker Pass Specific Plan (HPSP) has always been envisioned as a rural community even though it is within the Gilroy's Urban Service Area (USA). The HPSP has set aside nearly 2/3 of its land for natural open space, agriculture and parks. This land set-aside is a tremendous community as well as regional benefit. The HPSP may be the only project within the sphere of the SCVHP urban areas that has set aside this large of a percentage of non-developable areas, most of which would have had developable potential.

The HCP assumes all land within any USA will be developed as a complete urban project. However, the HPSP has been intentionally designed with a rural character in mind, and will not build out at urban densities. Even though the HPSP is a planned rural community, based on the draft HCP document, it would be assessed fees as if it was a fully developed urban project. The assessment would result in HPSP being required to pay Zone Fees on its entire acreage, including all the lands that HPSP has agreed to set-aside. In essence the HPSP would be impacted twice, first for not being able to develop significant portions of its property, and second for having to pay fees on this non-developed property. 1

Additionally, the HPSP has the majority of its approvals, and is significantly along in the processing "pipeline". Currently there are no allowances in the draft HCP for existing entitled projects unless they have already obtained their resource agency permits. We feel that the HCP should allow some consideration of its financial impacts to projects that were designed and processed prior to having the knowledge of these impacts. 2

HECKER PASS PROPERTY OWNERS GROUP

2480 Hecker Pass Hwy.
Gilroy, CA 95020
408.483.0468

For the reasons stated above, we recommend that the HCP document be modified to treat projects, such as the HPSP, which unquestionably have rural character but are inside the USA, the same as rural projects outside the USA. This modification would result in all rural type projects' Zone Fees assessed only on their developable acreage.

Since the City of Gilroy is a Local Partner of the proposed Santa Clara Valley Habitat Plan (SCVHP), the Hecker Pass Property Owners Group respectfully request the City of Gilroy support our recommendation to modify the draft HCP document.

Sincerely,

Jim Hoey, Representative

Cc: Hecker Pass Property Owners Group

Comment Letter 16—Hecker Pass Property Owners Group, Jim Hoey, Representative, March 2, 2011

Response to Comment 16-1

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 16-2

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Gordon Jacoby — March 7, 2011

17

From: Gdjacoby@aol.com [mailto:Gdjacoby@aol.com]
Sent: Monday, March 07, 2011 10:42 PM
To: Leslie.Little@morganhill.ca.gov; john@scountyrealty.com
Subject: Re: SEQ meeting yesterday

Leslie -

I apologize for being so slow to respond on the HCP question. Despite it claims of transparency and having various stakeholders/community participation, this Plan has had very little attention, particularly as part of the SEQ. Who has been representing the City of Morgan Hill on this effort? I also wonder how the SEQ EIR has integrated with this proposed HCP.

It is massive in scope and has overwhelming consequences. I understand that it is on the CEQA time clock. The Farm Bureau is having a meeting on Wednesday to discuss. After that, I will be slightly more prepared to provide you with a more thoughtful response. At minimum, I believe that it takes more time to understand. I am having a hard time understanding the clear legal links between lands to be conserved and the locations that must pay for this huge conservation program. Despite claims that it will be helpful in the regulatory process, this looks like a massive bureaucratic maze with unclear links between new development parcels in Morgan Hill and their possible habitat mitigation impacts. This appears that it will negatively impact agriculture conservation. 1

The project director, Ken Schreiber, was the former Community Development Director for Palo Alto, and was a multi-purpose planning administrator/consultant to Morgan Hill in the early 2000s. I know Ken. This has the feel of urbanized Santa Clara making South County pay for its previous development impacts. It should be helpful that Morgan Hill is one of its "local participants'.

The City does need to fully understand all implications.

Gordon Jacoby

Comment Letter 17—Gordon Jacoby, March 7, 2011

Response to Comment 17-1

The City of Morgan Hill was represented in Plan development by Steve Tate, the mayor of Morgan Hill, as a member of the Habitat Plan Liaison Group. The anticipated level of development in Morgan Hill's Southeast Quadrant, specifically the assumption that this area would not be developed to urban densities, was incorporated into the Final Habitat Plan.

The basic approach of the Habitat Plan is to group mitigation for impacts on covered species into a cohesive conservation strategy that is implemented away from areas of the most impact and in areas that support habitat for covered species.

The Habitat Plan is not expected to have a negative impact on agriculture conservation.

Portions of this comment are addressed in Master Responses #1, #2, #3, #6, and #10

Revisions to the Habitat Plan will be consistent with Master Responses #1, #2, #3, #6, and #10.

John Telfer

18

From: John Telfer [mailto:john@scountyrealty.com]
Sent: Tuesday, March 08, 2011 2:19 PM
To: Leslie Little
Cc: Gdjacoby@aol.com
Subject: RE: SEQ meeting yesterday

Hi Leslie, I agree with much of what Gordon has to say here. I am just beginning to get up to speed on the HCP issue and after listening to a presentation to the Planning Commission a few weeks ago I was left with the following thoughts.

1. Very expensive fees, especially when taken into consideration that many of these projects have no habitat issues and are simply paying for those that do. For instance the Borello project we have been working on for the last 6 years and is now getting close to starting will experience an additional fee impact of approx $1.7 million (124 acres of zone B) . That really has a huge impact and I am sure there will be more than a few project that are made totally uneconomical by this new fee. 1
2. Because it appears that other cities in the county such as Saratoga, Los Gatos, Milpitas, etc..are not part of this plan and hence would not need to pay these fees there becomes an imbalanced playing field competition wise. In other words Morgan Hill projects would incur a per unit price handicap in order to absorb this additional cost. It also seems to me that if these other communities were part of this, the price tag for us would be adjusted downward due to increased participation in the program? 2
3. The fee for "natural lands" zone A property would be $19,320 per acre. While this probably would not apply to most Morgan Hill city limits properties which I think would be zone B and C, it would drastically effect the ability to farm the adjoin county lands. As I understand it the pulling of a grading permit (ie to grade some terraces for a vineyard) would trigger this fee. By the way this fee exceeds the value per acre of some ag land in parts of south county. 3
4. They say that the upside is that it will stream line the process compared with the past. Again I just don't see that happening as I believe none of this exempts a project from environmental review and for those project that simple can proceed with a mitigated neg dec they still have to pay the large fee. 4
5. Is there an economic impact report being prepared in regards to this? 5

Overall this seems like a very bad time to impose any new fees especially the amounts I am hearing..anti stimulus for building starts for sure.

Thanks again for the meeting last week we appreciate the time you gave us to share with you the background of everyone's efforts in the SEQ to date. Regards, John

John Telfer
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Comment Letter 18—John Telfer, March 8, 2011

Response to Comment 18-1

Comment is addressed in Master Responses #1 and #2.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #2.

Response to Comment 18-2

Comment is addressed in Master Responses #2 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Response to Comment 18-3

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 18-4

Comment is addressed in Master Response #10.

Revisions to the Habitat Plan will be consistent with Master Response #10.

Response to Comment 18-5

Comment is addressed in Master Response #3.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Grey Hayes, PhD

coastalprairie @aol.com

04/18/2011 04:26 PM

To: R8SCVHPcomments@fws.gov
cc:
Subject: Santa Clara HCP comments

Hello,

I have been urged by colleagues to review a portion of the Santa Clara County HCP and respectfully submit the attached comments in MSWord, using the 'comment' function.

I focus on the grassland section because of my expertise in grassland restoration. I have published scientific papers on California grassland restoration and management and frequently consult to a wide range of agencies and individuals on this subject.

In sum, I would like to advise the Service that the grassland chapter is extremely poorly researched, presenting numerous and serious flaws that I suspect are not limited to this section (which is all I could afford to review at this time). The flaws in logic, omission, and conclusion are compounded by very poor writing and organization, which I would equate to a first draft of an undergraduate report. This poor writing erodes the credibility of the document in addition to making it difficult to understand.

The scientific literature on California's grasslands is extensive. The number of living, internationally recognized experts on this system are many, and these experts routinely donate their time to assist with documents like the HCP. The grasslands and grassland organisms within the HCP area itself have recieved particularly intense study with very site specific conclusions. And yet, almost none of this wealth is reflected in this chapter.

Specifically, there are extensive ecosystem functions left out of that portion of the grassland section. The basis for integrity of the grassland system is also not well described. Most of the sensitive species found in grasslands are omited. The basic ecology of the grasslands are misinterpreted and contrived. The 'natural disturbance' section omits most natural disturbances that control grassland composition and diversity while over-emphasizing (and poorly describing) others. Well known threats to grasslands are likewise omited in the section so titled, while the author again mistinterprets or avoids the literature on that subject.

I urge you to reject at least this section of the HCP and urge those working on the document to ground their work in well researched science, not speculation. And, please advise them to spend more time editing the document with professional writers.

Many thanks,

Grey Hayes, PhD
Ecologist
P.O. Box 216
Davenport, CA 95017
(831) 728-8050

PS, I note that this section mentions chaparral as coverd by the HCP. I do hope that there has been ample attention to the potential existance of rare maritime chaparral in the area covered by the HCP.

Santa Clara Valley Grassland.doc

Santa Clara Valley Grassland Ecosystem Functions

Function and Integrity

The grassland types within the study area function as a dominant natural community, linking small and large patches of all other natural communities in the landscape such as oak woodland, riparian and aquatic communities, northern mixed chaparral/chamise chaparral, and northern coastal scrub/Diablan sage scrub. Rock outcrops, barrens, and seeps are contained within the larger matrix of grasslands, and in some cases, the functions and threats to the integrity of these land cover types differs from the larger grassland matrix. This section primarily addresses the grassland types. Differences, where relevant, are noted for the small-scale land cover types contained within grasslands.

Grasslands provide critical upland habitat for a variety of amphibians dependent on adjacent aquatic habitats such as ponds and seasonal wetlands. These amphibians move through grasslands during the rainy season to disperse to other aquatic sites, and may aestivate within grasslands during the dry season. Grasslands are important for burrowing rodents such as ground squirrels and gophers. Rodent burrows, in turn, provide habitat for a variety of other species, including burrowing owls. The diverse and abundant rodent community supports an assemblage of raptors that feed on them, including golden eagle (*Aquila chrysaetos*), northern harrier, and white-tailed kite. Serpentine grasslands are important habitat for all life stages of the federally threatened Bay checkerspot butterfly.

Grasslands also help maintain water quality through soil retention and by filtering out sediment and nutrients from run-off. They provide surface runoff areas, wildlife habitat, and fodder for grazing livestock. The key characteristics of grassland habitat that contribute to these functions are a high cover of herbaceous vegetation and a low to absent cover of woody vegetation.
Serpentine grasslands provide a lower level of water quality maintenance and lower quality grazing land due to the lower level of plant cover typical on serpentine soils.

The replacement of native grasses and herbs by fast-growing nonnative annual grasses and herbs has had a profound effect upon ecosystem function in grasslands. Unlike perennial grasses, annual grasses generally do not develop extensive, long-lived root networks. These long-lived root networks are important to the function of the grassland ecosystem for a number of reasons including protection of the topsoil from erosion and provision of habitat for a wide variety of soil microorganisms that create the base of the grassland food web. The production of plant biomass within grasslands has also shifted seasonally. In the past, native perennial grasses continued to grow actively into early summer and emerge from a period of dormancy early in fall. In contrast, nonnative annual grasses tend to dry out in late spring or early summer and germinate anew in fall. This shift has dramatic effects on the seasonal availability of forage for native herbivores such as insects and rabbits (and to a lesser extent, mule deer [*Odocoileus hemionus*]), as well as the type of seeds and cover available for smaller mammals.

Serpentine rock outcrop/barrens, and sometimes serpentine seeps, may contain a relatively higher proportion of native species due to the challenge of survival on serpentine-derived substrates and the lack of nutrients available on rocky and barren sites.

Natural Disturbance

The key natural disturbances that have shaped and continue to influence grassland composition and extent are fire and grazing. Nitrogen deposition in serpentine grasslands and the resultant invasion by nonnative species is a relatively recent anthropogenic disturbance that is discussed further under *Threats* below.

Comment [WU1]: Numerous grassland functions are not listed, such as provision for watershed 1

Comment [WU2]: This term is wrong. All existing data have proven that amphibians to not aestivate in grasslands, rather they use grasslands as habitat much more actively foraging in burrows throughout the non-breeding season. 2

Comment [WU3]: And a host of other rare species. 3

Comment [WU4]: These are erroneous assumptions that are not supported by peer-reviewed science for Californian grasslands. In fact, preliminary research suggests little difference between native and nonnative grasses for some of these functions. 4

Comment [WU5]: Again, these are unsubstantiated comments with no basis in the scientific literature. 5

Comment [WU6]: This sentence is awkwardly written and difficult to understand. It is not clear that the author understands the well researched hypotheses on how native plants survive on serpentine substrates. 6

Comment [WU7]: This section is a mess of poorly constructed paragraphs, poor grammar, and badly presented ideas with little scientific merit. 7

Comment [WU8]: These two disturbances may only account for a small amount of the variation in composition, according to science. More important disturbances are derived from climate variables, such as drought, frost, and seasonal inundation. Pathogens, invasion, wind, and soil disturbances are also 'key.' 8

Periodic fire is an important influence on the grassland community. Historically, fires from both lightning strikes and human ignition, as well as soil conditions, kept woody vegetation from invading grassland and converting it into chaparral or oak woodland in higher elevation sites. At lower elevations, grassland was likely always the dominant vegetation community, kept open by native grazers such as tule elk and pronghorn, drought, and fire. Prescribed burning has become an important management tool in grasslands and other natural communities.

However, this technique is becoming increasingly difficult to implement due to cost, safety concerns from expanding urban and rural development, and difficulty obtaining permits because of air quality concerns. Grassland is considered a fire-tolerant community. The direct effect of fire on grassland is to remove essentially all of the aboveground biomass. Fires in grassland are therefore described as *stand-replacing fires*. The immediate effect of this biomass removal on annual grasses is negligible, as they have typically completed their growth cycle before fires occur (Howard 1998). Perennial bunchgrasses suffer a temporary loss of foliage, but regenerate immediately through tillering and regrowth of green foliage that typically remains in the center of grass tussocks (Steinberg 2002).

The immediate effect of a fire in grasslands is typically an increase in annual forb germination and flowering and an increase in overall productivity in response to the light and nutrients made available by the removal of the thatch layer (Harrison et al. 2003). In the two to three years following a fire, the elimination of the thatch layer may shift the species composition of grasslands towards annual forbs and small-seeded species such as purple needlegrass and little quaking grass (*Briza minor*) (Howard 1998; Steinberg 2002). In the absence of heavy grazing, however, a heavy thatch layer will re-establish in approximately three years, and this effect will disappear. Burning appears to have little longterm effect on annual grassland (Heady 1988; Paysen et al. 2000; Kyser and Di Tomaso 2002). In grasslands that are already dominated by nonnative annual grasses, nonnatives may increase their dominance following fire by outcompeting natives for the newly available space and light. Native grasses may increase their dominance in serpentine grasslands following fire through the same mechanism (Harrison et al. 2003). Livestock grazing within grasslands is an important disturbance that mimics some of the functions of fires and of native herbivores that are no longer present (e.g., Tule elk, pronghorn). Livestock grazing is also an important management tool to combat relatively new threats such as invasive nonnative plants and nitrogen deposition (Weiss 1999). Specificially, livestock grazing can increase the cover of native bunchgrasses such purple needlegrass and reduce that of nonnative annuals (Bartolome and Gimmell 1981; Edwards 1992). One study noted a decrease in purple needlegrass cover from 65% to 10% after only several years of grazing exclusion, indicating the important of grazing to maintaining this community. Large increases in cover have been reported for winter and spring grazing on sites studied in southern California. Grazing in spring may be more detrimental to mature individuals. However, because nonnative annuals are better adapted to development under their canopies than purple needlegrass, spring grazing generally increases purple needlegrass seedling establishment (Bartolome 1981; Langstroth 1991).

Managed grazing at the appropriate time of year can help reduce the cover of nonnative annuals and promote purple needlegrass growth. A cessation of grazing can lead to a steep reduction in purple needlegrass in some cases (Steinberg 2002).

Grazing may have little effect on species diversity in serpentine grasslands (Harrison 1999) or it may alter the species composition, favoring species that are more tolerant of grazing (McCarten 1987). Because invasive nonnatives generally are not tolerant of serpentine soils (with the important exception of goatgrass [*Aegilops cylindrical*] and medusa-head), these species are less invasive in serpentine bunchgrass grasslands that in non-serpentine grasslands (Harrison 1999). Studies in Bay checkerspot butterfly habitat have found that properly managed grazing is often necessary to prevent nonnative

Comment [WU9]: This is awkwardly written. At first, logic would suggest that soil conditions related to fire origination (misplaced modifier), and then the reader is left with thinking any 'soil condition' might keep woody vegetation from 'invading' grassland. Needs some serious editing. 9

Comment [WU10]: This needs scientific documentation- I know of none. 10

Comment [WU11]: Again, this needs some scientific support- the supposition of Tule elk and pronghorn only grazing at 'lower elevations' is not supported by science. 11

Comment [WU12]: What technique? 12

Comment [WU13]: This section over simplifies the science on livestock grazing. Even with the species of mention, purple needlegrass, the species has increased and decreased with and without livestock grazing. Besides, saying 'grazing' doesn't tell the reader anything about the level of grazing, whether it is seasonal, how intense it is, how frequent, what kind of livestock, etc. etc. Also, there may not be purple needlegrass in all HCP areas; in fact, there are a number of other more important target species, which are not mentioned here. 13

species from becoming dominant and changing the character of these grasslands (Harrison 1999; Weiss 1999; Weiss and Wright 2005, 2006).

Grazing is expected to have a negative effect on serpentine seeps, serpentine outcrops, and serpentine barrens that are contained within the larger grassland matrix. These smaller land cover types are relatively fragile and sensitive to the disturbance of cattle hoofprints and grazing. Most seep soils are moist or saturated for most or all of the year, while rock outcrop/barrens usually have low plant cover and minimal soil accumulation. Therefore even a small amount of cattle trampling in either of these land cover types can remove vegetation and disturb soil and seed banks. Depending on intensity and frequency of grazing, this can be a permanent effect that is very difficult to restore or reverse.

Threats

Reduction in burning has lead to a decline in purple needlegrass grassland. Grasslands were frequently burned by native Americans, as mentioned above. In the 1840s, a combination of heavy grazing and periodic drought reduced fuel availability. Grazing by tule elk, pronghorn, and mule deer had occurred prior to this time. However, grazing intensity was much lower than that which occurred during Spanish settlement. Native bunchgrasses can tolerate and even thrive with light grazing with some frequency of fire. However, intense grazing under drought conditions can have an adverse impact on these grasses. In certain grassland habitats, the exclusion of all disturbance can result in the invasion and eventual exclusion of grasses by shrubs (Steinberg 2002).

All grassland types, including seeps and outcrop/barrens, are threatened by exotic plant invasion. Other threats are overgrazing, feral pigs, power lines, off-road vehicle activity, improper burning regimes, and road and trail construction (Evens and San 2004). Native serpentine grasslands are threatened by air pollution and resultant nitrogen deposition. Nitrogen enrichment fosters the invasion of nonnative species, which replace native ones (Weiss 1999).

Livestock grazing that is carefully monitored may help to remove nitrogen from grassland systems. A lack of grazing threatens Bay checkerspot butterfly populations. In Santa Teresa County Park and other locations, several populations of Bay checkerspot butterfly declined substantially after grazing was halted. Once grazing ceased, Italian ryegrass and other exotic plants invaded and pushed out the butterfly's host plant.

Studies have demonstrated that well-managed livestock grazing within grasslands is critical to maintain populations of Bay checkerspot butterfly (Harrison et al.
2003; Weiss and Wright 2005, 2006; Santa Clara Valley Transportation Authority 2006). However, as noted above, grazing can be detrimental to serpentine seeps and most rock outcrop/barrens.
Serpentine seeps are a type of wetland and many of the threats discussed in the wetland section below are applicable to seeps within grasslands. In particular, alteration of hydrologic regimes by adjacent land uses and development can change and in some case remove the water source for these seeps. This can result in partial or complete loss of seep wetlands.

Comment [WU14]: This section has severe contradictions, noting in one case that invasive nonnatives are not tolerant of serpentine soils and then that 'properly managed grazing' (note, no mention of what kind of grazing, see above) is necessary on those soils… 14

Comment [WU15]: Wrong word 15

Comment [WU16]: Scientific citations are necessary here; again, a lack of mention of season of use, intensity of grazing, etc is a problem. 16

Comment [WU17]: Requires scientific citation; I am not aware of a seep inventory, but my knowledge of seeps suggest that they are very variable in duration. Technically speaking, a seep need only run 18 days to be so classified. 17

Comment [WU18]: This is the case no matter the substrate; clarification is necessary. 18

Comment [WU19]: Intensity and frequency are only two of the several variables one controls for to better plan for livestock grazing. 19

Comment [WU20]: Very poorly written. A 'permanent effect' is by nature un-restorable. If it is permanent, it is beyond 'very difficult' "to restore or reverse. " 20

Comment [WU21]: This section does not do a good job of clarifying known threats to grasslands, which are widely accepted as (in order of significance): climate change; human development (destruction, fragmentation, isolation); invasive species (pathogen, plant, animal); altered disturbance regimes; and pollution (air, water). It is appalling that this section overlooks some of the most important threats and focuses inadequately on others. 21

Comment [WU22]: Unsubstantiated claim that runs contrary to the literature. 22

Comment [WU23]: Not mentioned above in this section. 23

Comment [WU24]: Citation necessary. 24

Comment [WU25]: Unsubstantiated claim. 25

Comment [WU26]: Unclear what 'light' is. 26

Comment [WU27]: Unclear what 'some frequency' means; could mean once every 1000 years. 27

Comment [WU28]: Meaningless verbiage; this would have adverse impact on any living thing- th… 28

Comment [WU29]: Monitoring does nothing to change the management, so monitoring alone … 29

Comment [WU30]: Incorrect. 30

Comment [WU31]: See prior comments on the term 'grazing' 31

Comment [WU32]: See prior comment on the number of other species in this habitat type. 32

Comment [WU33]: Cite, please. 33

Comment Letter 19a—Grey Hayes, PhD, Cover Letter, April 18, 2011

Response to Comment 19a-1

Habitat Plan Chapter 3, Section 3.3.5 *Natural Communities and Land Cover Types,* subheading *Grassland,* was reviewed and revised by an independent Certified Rangeland Manager/ Certified Senior Ecologist.

Revisions to the Habitat Plan included extensive updates to the sections addressed by this comment.

Comment Letter 19b—Grey Hayes, PhD, Attachment 1, April 18, 2011

Response to Comment 19b-1 through 19b-33

See Response to Comment 19a-1.

United States Environmental Protection Agency

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MAR 16 2011

Ms. Cori Mustin
Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
Sacramento Field Office
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

Subject: Draft Environmental Impact Report and Environmental Impact Statement for the Santa Clara Valley Habitat Plan, Santa Clara County, California (CEQ# 20100462)

Dear Ms. Mustin:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (DEIS) for the Santa Clara Valley Habitat Plan (Habitat Plan or HCP) pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The EPA appreciates the efforts of the U.S. Fish and Wildlife Service (FWS or the Service) and its Local Partners (county of Santa Clara; cities of San Jose, Morgan Hill, and Gilroy; Santa Clara Valley Water district; Santa Clara Valley Transportation Authority) to develop a Habitat Plan to avoid, minimize, and mitigate take of 23 species (Covered Species) and their habitats within 519,506 acres of Santa Clara County, California (Covered Area). We recognize the importance of a coordinated approach to protecting and preserving the Covered Species and their habitats from Habitat Plan activities (Covered Activities) over the 50-year permit term.

Based on our review of the DEIS, we have rated the proposed project and the document LO-1, Lack of Objections – Adequate (see enclosed EPA Rating Definitions). EPA commends the FWS for the comprehensive climate change analyses included in the HCP. EPA has long recommended in our comment letters to FWS regarding NEPA documents (including those for San Diego County Water Authority and Stanford University, the most recent HCP DEISs submitted for public review) that the Service include a section devoted to examining how climate change may affect the Covered Species and their habitats. The Santa Clara Valley HCP DEIS is the first to address climate change in its "changed circumstances" section. This section, along with Appendix F in the HCP ("Climate Change and the Santa Clara Valley Habitat Plan"),

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represents one of the most detailed assessments of potential climate change effects our office has reviewed.

We recommend that the Final Environmental Impact Statement (FEIS) provide additional information on the potential interface between the HCP and Section 404 of the Clean Water Act (CWA). Page 1-29 of the HCP states that although "the Plan will not provide permits under Section 404 of the Clean Water Act for impacts on wetlands or other waters from covered activities, 404 permitting is expected to be streamlined substantially as a result of the Plan." The FEIS should describe this streamlined process, including how jurisdictional wetlands will be identified over the permit term, and how FWS and the Local Partners will coordinate with the U.S. Army Corps of Engineers to ensure that any development covered by the HCP complies with the permit requirements of Section 404 of the CWA. 2

We appreciate the opportunity to review this DEIS, and are available to discuss our comments. When the FEIS is released for public review, please send one hard copy and one CD-ROM to the address above (Mail Code: CED-2). If you have any questions, please contact me at 415-972-3521, or contact Jason Gerdes, the lead reviewer for this project. Jason can be reached at 415-947-4221 or gerdes.jason@epa.gov.

Sincerely,

Kathleen M. Goforth, Manager
Environmental Review Office

Enclosure: Summary of EPA Rating System

cc: John Robles, Fish and Wildlife Biologist, U.S. Fish & Wildlife Service
Ken Schreiber, Program Manager, County of Santa Clara
Cameron Johnson, U.S. Army Corps of Engineers, San Francisco District

Comment Letter 20—U.S. Environmental Protection Agency, Kathleen M. Goforth, Manager, Environmental Review Office, March 16, 2011

Response to Comment 20-1

The Wildlife Agencies and Local Partners acknowledge the expression of support.

No changes to the EIR/EIS are required.

Response to Comment 20-2

Comment is addressed in Master Response #4.

Revisions to the Habitat Plan will be consistent with Master Response #4.

Gordon Jacoby — March 16, 2011

From: Gdjacoby@aol.com [mailto:Gdjacoby@aol.com]
Sent: Wednesday, March 16, 2011 5:19 PM
To: Leslie Little
Subject: Re: Habitat Conservation Plan Information

Leslie -

Here are my comments regarding the HCP. I am sorry if this comes to late for the City Council meeting tonight. I am assuming that they will not be acting on the HCP - and rather that this is an information meeting.

Gordon Jacoby

The Santa Clara Valley Habitat Plan is one of the most complex proposals to be presented to the Morgan Hill City Council and its residents. Its intent is to protect and preserve endangered species.

I must assume that when the City Council became a "Local HCP Partner", it was for general "good government and environmental preservation purposes". It was not an endorsement of any specific HCP approach. Now that the Draft Plan has been completed, the City needs to consider the impact and the effectiveness of the HCP and seek revisions.

Among the key elements that warrant particular attention are:

1) Based both of past experience and the HCP studies, what are the incidences of the 10 plant and 11 wildlife species in Morgan Hill and would the HCP's protection and enhancement remedies be more biologically and financially effective. The HCP studies and diagrams indicate that most of the 21 species are found outside the regulatory boundaries of the City of Morgan Hill. Is the HCP approach a significant improvement over what the City is doing to protect endangered species 1

2) The HCP uses complex biological and financial projections to determine both environment impacts to the various species and to propose mitigation and preservation strategies. These projections use thousands of assumptions. Some of the assumptions are based on are well known; tested; and generally accepted relationships. Others are more speculative and based on best professional judgements. Some of the assumptions are based on changing circumstances, including today's economy. What is the chance that the forecasts will be wrong, because either conditions change or errors are made? Some of the assumptions have been defined as worst case. How is the HCP modified, over time, if the impacts are over-projected and the amount of the required mitigations/costs that are no longer warranted? 2

3) The HCP anticipates that 4,338 acres of additional land will be developed in Morgan Hill. Such "development" could occur in three new zones created in the HCP. The word "developed" has a different meaning than normally used by the City of Morgan Hill. Under the HCP, development includes the traditional – new homes, industries, retail stores, public buildings and parks – as well as other activities that are not considered development such as the planting of orchards. The City has been encouraging preservation and expansion of agriculture as part of a greenbelt. Are these acreage assumptions correct and what is the implication for the City General Plan policies and current development regulations? 3

4) The HCP anticipates a total of $74.5 million in HCP fees that will be paid by the City of Morgan Hill and private "developments" under its jurisdiction. $71.7 will come from private development. Such fees would be paid in over a 50-year period. That represents about 13% of all HCP fees. What is the implication of such fees, particularly at a time when development has stopped due to the national economy? 4

4) The administration of the HCP permit reviews and fee programs is to be done by the City of Morgan Hill. Yet, the legal foundation for the HCP is significantly different from other Morgan Hill review procedures. As best I understand, all "development" projects are considered to cause endangered species impacts, regardless of whether there is the presence of one of the 21 species on or near the property. There seem to be some exceptions to that condition but they are hard to understand. Therefore, under the HCP, there would be a new and different impact standard to those now used by the City. Does this standard meet the same legal tests as others in the City? 5

5) The HCP is being promoted as a better regulatory approach that the current federal or state enforcement. To justify that claim, the HCP presentations highlight horror stores concerning past wildlife agency reviews. The implication of the message is clear - if you want to void costly delays, you better support the HCP. The inference flies in the face of a) constitutional "due process" and "equal treatment" protections, and b) efforts by cities to provide regulatory oversight and timetables. Is it better to improve the current administration of the endangered species regulatory program, including greater local oversight and accountability, rather than create such a complex and costly HCP program. 6

6) The HCP Conservation Strategy calls for the purchase of 45,000 acres of ranch land and the expenditure of $938 million including an annual budget of $18.75 million. That is a huge government program at a time when other important government services and costs are being radically reduced. The HCP needed to offer other less expensive alternatives. The EIR should study the habitat and other consequences of other such alternatives. For example, provide an alternative that: a) purchases less-costly habitat conservation easements; b) includes conservation and habitat enhancement features as a condition of the easement; and 3) have third-party oversight via hopefully expensive land trusts. 7

Suggestions:

The HCP has been a costly; time consuming; and potentially valuable effort for preserving or enhancing endangered species in the Santa Clara Valley. It should provide methods for regulatory reform. The solutions offered must be better understood. The HCP needs to present other cost and management options. 8

The Morgan Hill City Council should consider:

1) Give the HCP a comprehensive review to determined and be satisfied that the HCP offers an improvement, over the City's current procedures for protection/enhancement. The City might want to follow the same approach they do in evaluating their own permit impact fees under AB 1600 by establishing a review committee that reports their findings to the City Council. 9

2) Request one or more alternative Conservation Strategies be included that require less money and less land purchases.

3) Determine whether there is a need to toll the CEQA clock while the various jurisdictions are given more time to consider the HCP.

Thank you for considering these thoughts.

Gordon Jacoby

Comment Letter 21—Gordon Jacoby, March 16, 2011

Response to Comment 21-1

The species accounts in Habitat Plan **Appendix D** contain information for each covered species on occurrence data in the study area, including occurrences in Morgan Hill. The Habitat Plan's protection and enhancement actions (i.e., the conservation strategy described in Habitat Plan Chapter 5) are expected to be more biologically effective than the current permit-by-permit based approach to mitigation. Specifically, the NCCP Act requirements go beyond standard mitigation required by ESA or CESA.

Portions of this comment are addressed in Master Responses #3 and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #3 and #10.

Response to Comment 21-2

The Wildlife Agencies and Local Partners recognize the commenter's concern regarding the "complex biological and financial projections to determine both environmental impacts to various species and to propose mitigation and preservation strategies." The impacts identified in the Habitat Plan represent the upper limit of impacts allowed under the Habitat Plan (Habitat Plan Section 4.4 *Impact Assessment Methods*.) The Habitat Plan acknowledges that the actual impacts on natural communities/land cover "will likely be less than the estimated impacts" (Habitat Plan Section 4.5 *Effects on Natural Communities/Land Cover*). This is also true for effects on covered species: "These estimates are likely to be inflated for two reasons: habitat models may overestimate the actual extent of suitable habitat (see species profiles in Habitat Plan **Appendix D** for details on each model); and suitable habitat may not be occupied by the subject species" (Habitat Plan Section 4.6 *Effects on Covered Species).* The Habitat Plan does not require the upper limit of impacts to be achieved during the permit term, only that it is not exceeded. Impact limits, sometimes based on worst case scenarios when project-level details were not available, were necessary to enable the Wildlife Agencies to analyze the potential effects of the Plan and make their statutory findings to issue permits.

The conservation strategy described in Habitat Plan Chapter 5 will be implemented regardless of the level of take that occurs during implementation, up to the limits specified in Habitat Plan Chapter 4. Mitigation is only specifically tied to project-level impacts in two instances: 1) aquatic impacts (Habitat Plan Table 5-12) and 2) plant impacts (Habitat Plan Table 5-16). As indicated in Section 13.2 of the Implementing Agreement, if it appears that the allowed authorized take will not be used during the term of the Permits, substantially reducing Plan fee revenues, the Permittees may apply for an extension of the permits to allow the full use of authorized take and full implementation of the Plan or the Permittees may apply for a permit modification or amendment. The major amendment process is described in Habitat Plan Section 10.3.3.

No changes to the Habitat Plan are required.

Response to Comment 21-3

The acreage assumption represents the amount of land in the Habitat Plan planning limit of urban growth, both in and outside the Morgan Hill city limits, which may be developed during the 50-year permit term based on existing land uses. This planning limit is concurrent with the "Urban Limit Line" adopted by the Morgan Hill City Council in 2006. The City of Morgan Hill General Plan policies encourages the preservation of agricultural uses where permitted in the City. The adoption of the Habitat Plan would not limit and would be consistent with Morgan Hill's general plan policies since the Habitat Plan and the required fees only apply when a permit is required from the City.

Portions of this comment are addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 21-4

Comment is addressed in Master Responses #2 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Response to Comment 21-5

Both the Habitat Plan and the regulations of the City of Morgan Hill must be consistent with and implement federal and state laws requiring the protection of endangered species, the protection of habitat, and the mitigation of environmental impacts. Therefore, the "legal foundations" of the Habitat Plan and Morgan Hill regulations are not different. Additionally, the "impact standards" under the Habitat Plan and the Morgan Hill regulations would be consistent since Habitat Plan fees on development within the Morgan Hill would not be imposed except where a City permit is required.

No changes to the Habitat Plan are required.

Response to Comment 21-6

The only available mechanism through which to improve local oversight and accountability on listed species (federal threatened and endangered) permitting is through ESA Section 10 (i.e., development of a habitat conservation plan).

Portions of this comment are addressed in Master Response #10.

Revisions to the Habitat Plan will be consistent with Master Response #10.

Response to Comment 21-7

Early drafts of the Habitat Plan did consider alternative conservation strategies that were less costly (see Habitat Plan Section 5.2.6). The less costly alternatives were not selected because they did not address the conservation needs of some the covered species. The Public Draft conservation strategy was further reduced to be more cost efficient, while still meeting the conservation needs of all the covered species. The size of the proposed Reserve System was reduced between the Draft and Final Habitat Plans.

Comment is addressed in Master Responses #1, #3, and #5.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #3, and #5.

Response to Comment 21-8

Comment is addressed in Master Responses #1, #2, #4, 6, #10 and #13.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #2, #4, 6, #10 and #13.

Response to Comment 21-9

The City of Morgan Hill and the other local partners will not individually be setting fees. Fees will be established by the Implementing Entity, and that process will follow the procedural requirements of the Mitigation Fee Act (Government Code Section 66000 et seq.) (see Habitat Plan Chapter 9).

Early drafts of the Habitat Plan did consider alternative conservation strategies that were less costly (see Habitat Plan Section 5.2.6). The less costly alternatives were not selected because they did not address the conservation needs of some the covered species. The Public Draft conservation strategy was further

reduced to be more cost efficient, while still meeting the conservation needs of all the covered species. The size of the proposed Reserve System was reduced between the Draft and Final Habitat Plans.

Certification of the Final EIR/EIS is a requirement of Final Habitat Plan adoption.

Portions of the comment are addressed in Master Responses #1 and #12.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #12.

Dean Stanford

Schreiber, Ken

Subject: FW: Comments regarding Metcalf park & banning motorized recreation in the SCC Habitat Conservation Plan
Attachments: Proposed Zero Emissions Park in San Jose 4-0.pdf

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From: Dean Stanford [mailto:deanstanford@comcast.net]
Sent: Wednesday, March 23, 2011 11:17 PM
To: Schreiber, Ken
Cc: nicolel@migcom.com; Blomquist, Steven; dgreene@parks.ca.gov; Nicholas Haris; 'rosa.santiago@sanjoseca.gov'; mikeflaugher@yahoo.com; O'Connor, Jim; djohnston@dfg.ca.gov; Krupp, Matt
Subject: Comments regarding Metcalf park & banning motorized recreation in the SCC Habitat Conservation Plan

To:
Ken Schreiber, Habitat Plan Program Manager
County of Santa Clara
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San José, CA 95110
(408) 299 - 5789
ken.schreiber@ceo.sccgov.org

Cc:
Nicole Lewis
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nicolel@migcom.com

Dave Johnston
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831-464-6870

Daphne Greene
Deputy Director, Off-Highway Motor Vehicle Recreation Division
California State Parks
916-324-5801

James J. O'Connor
Deputy director of parks Operations
County of Santa Clara
408-355-2226

Mike Flaugher

Commissioner, Parks, Recreation & Neighborhood Services
City of San Jose, CA
408-259-3453

Steven Blomquist
Policy Aid to Santa Clara County Supervisor Dave Cortese
408-299-5030

Rosa Santiago
Assistant to San Jose Council member Kansen Chu
408-535-4904

Matt Krupp
Plant Master Planner, Environmental Services, City of San Jose
408-945-5182

Nicholas Haris
Western States Representative, American Motorcyclist Association
530-626-4250

Dear Mr Schreiber,

Thank you for the opportunity to speak during public comment at your Santa Clara County Habitat Conservation Plan (HCP) stakeholder meeting and prior community meeting.

I would like to reiterate and expand on the comments I made during the stakeholder meeting regarding the banning of motorized recreation on land controlled by the proposed HCP plan

I would like to put these comments in context by reminding you of the question posed by one member while the group was discussing a proposal to create a wildlife corridor under highway 101. During the discussion about highway 101 and in regard to wildlife corridors the member asked if recreation could be restricted at the Santa Clara County Metcalf Motorcycle Park even though the park was not mentioned previously. The response from the group was that "Wildlife has lots of options over there, the problem is getting past 101 and the rail tracks". 1

My comments follow:

I do not know why you specifically ban motorized recreation, do you think all us dirt-bikers are evil and like to tear-up the environment? Maybe you should ban other sports; horses need a dirt trail, mountain bikes need a dirt trail, we need a small dirt trail, I think a paved multi-use trail is more of an assault on the environment. 2

Like I said at the last meeting I think that Metcalf Motorcycle Park does an excellent jo

of sharing the land with the environment and I would like to read you this excerpt from the State Parks 2011 OHV Division program report; *"In 2007, Metcalf was visited by the California Biodiversity Council . The two-day conference highlighted resource management issues at OHV recreation facilities. The Council gained a new understanding of the role of well managed OHV recreation areas in maintaining open space and supporting biological diversity, and was very complimentary to the Metcalf Motorcycle park and staff regarding their commitment to resource protection."*
(Page 135-136 at: http://www.ohv.parks.ca.gov/pages/1140/files/ohmvr%202011%20report%20-%20final-web.pdf)

The State has grant funds for running these parks and the stewardship of the environment and they have recently released their 2011 report that includes data on their monitoring and stewardship of hundreds of species.

If its smog you are worried about, there are now electric bikes available that have no emissions and are very quiet. 3

Another reason I am concerned is that I have recently proposed an all-electric, zero emission OHV park for inclusion in the proposed development of "bufferlands" surrounding the San Jose Waste Water Treatment Plant in Alviso and your plan has included the land in the burrowing owl habitat zone. The park would be funded by the State grant program and be designed to blend in with the environment. I believe that burrowing owls and recreation can share land. I was a member of a RC hobby group in Fremont that had seven pairs of owls on five acres of land. There was an owl burrow in one of the RC car track jumps and they did not seem to mind the smelly, noisy cars being raced mere feet from them. There are owls living near the runway at San Jose International Airport, alongside walking and biking trails and I know of a park designed with mountain biking incorporated into owl habitat with hills and trails. I think that the owls have no problem sharing open land with people, it is people that have a problem sharing with the owls. 4

Park funding can be an excellent way to preserve land and provide the funding for habitat monitoring and species stewardship of land that would otherwise be developed. For example, in the final recommended treatment plant land use plan, the San Jose planners have removed 50 ares of industrial buildings (when compared to the densest development proposed) and designated it as a flexible recreation zone. These fifty prime habitat acres may now be restored and support wildlife and may not have been otherwise. I am attaching a copy of the park proposal submitted to San Jose and which includes the RC group overview and their experience with burrowing owls.

The State Parks OHV division Strategic Plan expresses their interest in opening urban parks to reduce travel distances and supporting zero emission vehicles to reduce emissions system-wide. The Strategic Plan can be viewed at: 5
http://www.ohv.parks.ca.gov/pages/25010/files/ohmvr%20strategic%20plan.pdf

The 2011 Off-Highway Motor Vehicle Recreation Commission program report can be viewed at:

http://www.ohv.parks.ca.gov/pages/1140/files/ohmvr%202011%20report%20-%20final-web.pdf

I think outright banning of only motorized recreation is a form of discrimination based on certain biases and is not fair. I would like to see that line stricken from the proposed HCP plan outright. Managed trails and parks with no off-trail riding permitted (as a ticketed offense as it is now), self policing and fencing/other barriers that can keep even the most "enthusiastic" park guests in check ensures that parks are compatible with the natural environment. 6

Thank You,

Dean Stanford,
Resident of Fremont, CA
Design Engineer, Tesla Motors
510-676-3339

Zero-Emission Recreational Vehicle Park Proposal

For San Jose Waste Water Treatment plant buffer lands

Attention:

Matt Krupp, Plant Master Plan Project Planner
Environmental Services, Technical Services, City of San Jose CA

LEGAL NOTICE:
This document is suitable and authorized for public release
Dean Stanford, CEO
Zero Emissions Recreational Organization, Inc.

Revision 5.0

Proposed Zero Emissions Recreational facility

This proposal developed by Zero Emissions Recreational Organization, Inc.

A unique and environmentally friendly recreational opportunity now exists that blends very well with the San Jose Waste Water Treatment Plant Master Plan.

San Jose would be the first city in the U.S. with an all-electric, zero emission motor sport park. The motor sport park would include Motocross track riding and recreational trail riding using electric or other zero emission recreation vehicles.

This would be an excellent use of recreational land in the capital of Silicon Valley and fits in very well with San Jose's Green Vision Goals and high tech reputation.

This proposal calls for a government agency to administer a trail system integrated into restored natural landscape. The trails would weave throughout the property and include electric motocross tracks for beginners and experienced riders. There will be youth-friendly trails and play tracks. There will be training available for beginners. There should be picnic areas, a playground and other family oriented amenities. If a sufficient amount of land is designated as parkland camping sites could be included.

Small electric vehicles are quiet and create no emissions. They can be enjoyed in a much denser development setting then gas powered motor sports. This is a unique and enjoyable area for an environmentally friendly recreational facility that can be integrated into the natural environment. Trails would be placed onto the sides of levees and around water features. They will be separated from adjacent walking trails by natural vegetation and rail fencing systems. Dust will be controlled using automated reclaimed water irrigation systems.

The electric vehicles would be powered by renewable energy such as wind, solar or the electricity generated using methane from the adjacent treatment plant or landfills.

Native trees, grasses, wildflowers and other indigenous species would be planted to restore buffer lands and land reclaimed from plant operation. A park could be planned that creates several types of environments including owl habitat, marsh, riparian and small lakes. The park should include educational kiosks and other resources to connect users to the natural habitat. Each habitat would have a viewing and educational area that park patrons could enjoy. There should be park access to any nature museums included in the Master Plant Plan.

The blank slate nature of the land allows planning of off-road trails and traditional multi-use trails that co-exist to create a true multi-use park. There could be scheduled times or days that the park trails and tracks are open to off-road bicycles such as mountain bikes and BMX.

There is currently an old access road surrounding the pond. If permitted, there could be guided environmental education tours using a trail around the pond area. Speed could be limited to a speed matching bicycles and be lead by a ranger or docent. Additionally, a park trail and a separate multi-use bay trail could co-exist around the pond. A one-way dirt or gravel path need not be more than two to three feet wide. The main walking tail would serve maintenance vehicles.

Such tours or open park use of a pond levee trail would let users experience the bay environment that would not normally walk or bicycle on the bay trail. Small four wheel electric vehicles could be provided for visitors that are disabled.

Allowing park use of a pond trail is a reasonable use considering that there are other pond trails open in the Bay Trail system and this park trail would be a tiny fraction of the Bay Trail system. Measures such as boardwalks, bridges, monitoring, and temporary or seasonal closure of a bay trail would protect any wildlife.

Motor sports can be a fun and safe way to stay fit and is enjoyed by thousands of enthusiasts including families. The sales of off-road vehicles have seen major increases as legal places to enjoy them have decreased dramatically over the years, causing patrons to be turned away due to overcrowding. Therefore there is a high demand for these types of recreational facilities. The nearest locations for some of these sports facilities are many miles away and some are over a three hour drive. This limits opportunities for all users. A new park would also reduce illegal activities elsewhere.

This all electric vehicle park would entice people to purchase electric vehicles rather than purchasing gas powered vehicles. This would spur electric vehicle sales thus helping the environment. Rental vehicles would be made available at the park until such time as the general population owns enough zero emission vehicles to negate the need.

Small companies such as Zero Motorcycles of Scotts Valley and Quantya are currently developing and selling electric motor cycles for on and off-road use. Such companies may wish to provide sponsorship of the park and lease facilities. Companies in the area such as Solyndra in Fremont or any other renewable energy companies could be interested in sponsorship.

I recently met with Ruth Coleman, Director of the State of California's Park and recreation Department and Daphne Greene, Deputy Director of the State's Off-Highway Motor vehicle Recreation Division (OHMVR) at an event at the State Capitol.

During the event Ruth spoke of the sustainability of the sport and the emerging technology of electric vehicles and their viability. I gave Ruth and Daphne the prior version of this park proposal and discussed it with them. They are both very interested in the project and the location. The OHMVR Division has grant programs and monies available to plan, construct, environmentally restore and maintain parks dedicated to off-highway vehicle (OHV) recreation. OHMVR grant funds can be used to purchase or lease land from municipalities. More grant funding information can be found at: http://ohv.parks.ca.gov/?page_id=1164 An on-line grant application system is provided in the menu.

The 2009/2010 grant process regulations can be viewed at:
http://ohv.parks.ca.gov/pages/1140/files/2009%20Regulations%20Master.pdf

The OHMVR Division Strategic Plan is a blueprint of this proposal and includes the statements;

Mission Statement
The mission of the Off-Highway Motor Vehicle Recreation (OHMVR) Division is to provide leadership statewide in the area of off-highway vehicle (OHV) …and to otherwise provide for a statewide system of managed OHV recreational opportunities through funding to other public agencies

… development of urban or regional opportunities to reduce system-wide transit time and consumption of resources to reach recreation destinations.

Support, and where possible, facilitate technological advancements to reduce the environmental impacts of OHVs.

… provide opportunities for quality outdoor recreation and promote the maintenance or improvement of quality species habitat.

Plan, acquire, develop, conserve, and restore lands…

The OHMVR Division Strategic Plan has data and information supporting this proposal and can be viewed at: http://ohv.parks.ca.gov/pages/25010/files/ohmvr%20strategic%20plan.pdf

At recent Santa Clara County Park land acquisition meetings there was a large turnout of OHV enthusiasts. A local motorcycle forum had helped to publicize the meetings. I was surprised at the amount of OHV supporters that were there, it underscored the need for more and better OHV recreation opportunities.

San Jose or Santa Clara City or County parks departments could operate the park and apply for the grants. The state OHV division may be interested in running the park directly if the cities wish.

The park will be open only during daylight and off-trail riding will not be permitted. This form of recreation can co-exist with nature and the state has the knowledge and resources to ensure no undue impact to wildlife. Burrowing owls are in the most un-likely locations in the Bay Area, the runways at San Jose Airport, adjacent to biking trails and owls living in dirt jumps used for remote control gas cars and a RC airplane runway. I believe that owls do not have a problem sharing recreational open space with humans. I would like to think that funds from the state could help save open land and offer an alternative to industrial buildings.

A coalition of government parks departments, commercial business and volunteers will be required to open, run and maintain a high quality park. I suggest a meeting of all interested parties to explore the feasibility of a partnership regarding this proposed park and inclusion of this city or state or park in the Master Plant Plan.

We propose collaborating with the city or state parks and/or other departments in the planning of the parkland. The development, habitat restoration and environmental stewardship of the parkland or other park facilities would be the responsibility of the City, State or other department involved. We will provide any support to the park possible.

Our main goal is to establish a park in the far backlands in the solid waste drying pond area and as close to the bay and the creek as possible. The park should include narrow trails throughout as much of the property as possible and should circle the entire area as the proposed walking trails do. If the far northern area has trail access then the landfill could be used for park use when it is closed.

This park plan is scale-able to accommodate differing levels of industrial development but we would like to have as much open land as possible restored, preserved and maintained while being open for public recreation.

There are walking, jogging and biking trails all throughout San Jose and soon The Bay Trail will circle the entire bay. This other popular and growing form of recreation also deserves easy access.

History of motor sports in the South Bay and Alviso

The southern Bay Area and Alviso have enjoyed a long history of motor sports. According to the San Jose News, Aug 27, 1934, Alviso was the official site of "San Jose's newest sporting enterprise- flat track cycle racing".

Until 1989, the Santa Clara Police Activities League operated a popular motocross track on the west side of Alviso. Nearby Baylands Raceway operated motocross and flat tracks at its bay side location.

There was an Alviso Speedway until 1963. The clay track was built in 1954 and was under the Western Auto Racing format. NASCAR's San Jose Speedway was its biggest rival.

The mud flats and levees throughout the South Bay, East Bay and Peninsula were used for recreational motorcycle riding and racing in years long past. A legal and environmentally conscious motor sport recreation venue in this location would be a proper land use for the future.

Park phase-in plan

We realize that the pond area will not be available for many years and it is discouraging to know that no development is planned to happen until 2013 or beyond.

To maintain the interest of the state parks departments in this location we would therefore like to propose a phase-in plan for the park starting as soon as possible. The bufferlands are currently designated as available for recreational uses; from: http://www.rebuildtheplant.org/go/doc/1823/253339/ "*In accordance with the "City Council Policy on Use of San José/Santa Clara Water Pollution Control Plant Lands," bufferlands may be considered to provide "dual use" benefits. "Dual use" benefits means the land may provide a buffer as well as protect the environment and/or support recreational uses.*"

We propose that grants from the state or private funds can be used to plan and open a small park in bufferlands that are currently empty fields. This small park can be opened with minimal temporary or no structures and can expand or be relocated when major development commences. A small trail system and motocross tracks can easily be relocated to areas that become open during the modernization.

Storage facilities will be needed for electric vehicle rentals. Perhaps traditional vehicles could be temporarily allowed until the rental fleet is established. Limits on noise levels and the stricter level of emissions limits (Green Sticker) rules used at existing parks would be enforced.

To maintain the buffer zone until the plant is updated, the park can be kept at a minimum distance from the plant and the number of users can be limited to meet the recreation recommendation of the plant land opportunities and constraints assessment.

The initial park would need little to no staff. One park, San Luis Reservoir State Recreation Area, has a post in the ground for accepting fees and a ranger is assigned to patrol at intervals. In this case a locked gate and key code or other access system may be more appropriate.

We understand that remote control hobbyists are in great need of recreational land also. Having personally been a member of the Fremont club that lost it's site to BART I would embrace sharing any land made available for recreation under the Master Plant Plan or dual use benefit policy. The former horse ranch area and access gate, along Highway 237 or surrounding the power station would be excellent areas for these recreational purposes. See the attached map and proposal from the RC club that outlines the compatibility of RC recreation and burrowing owls.

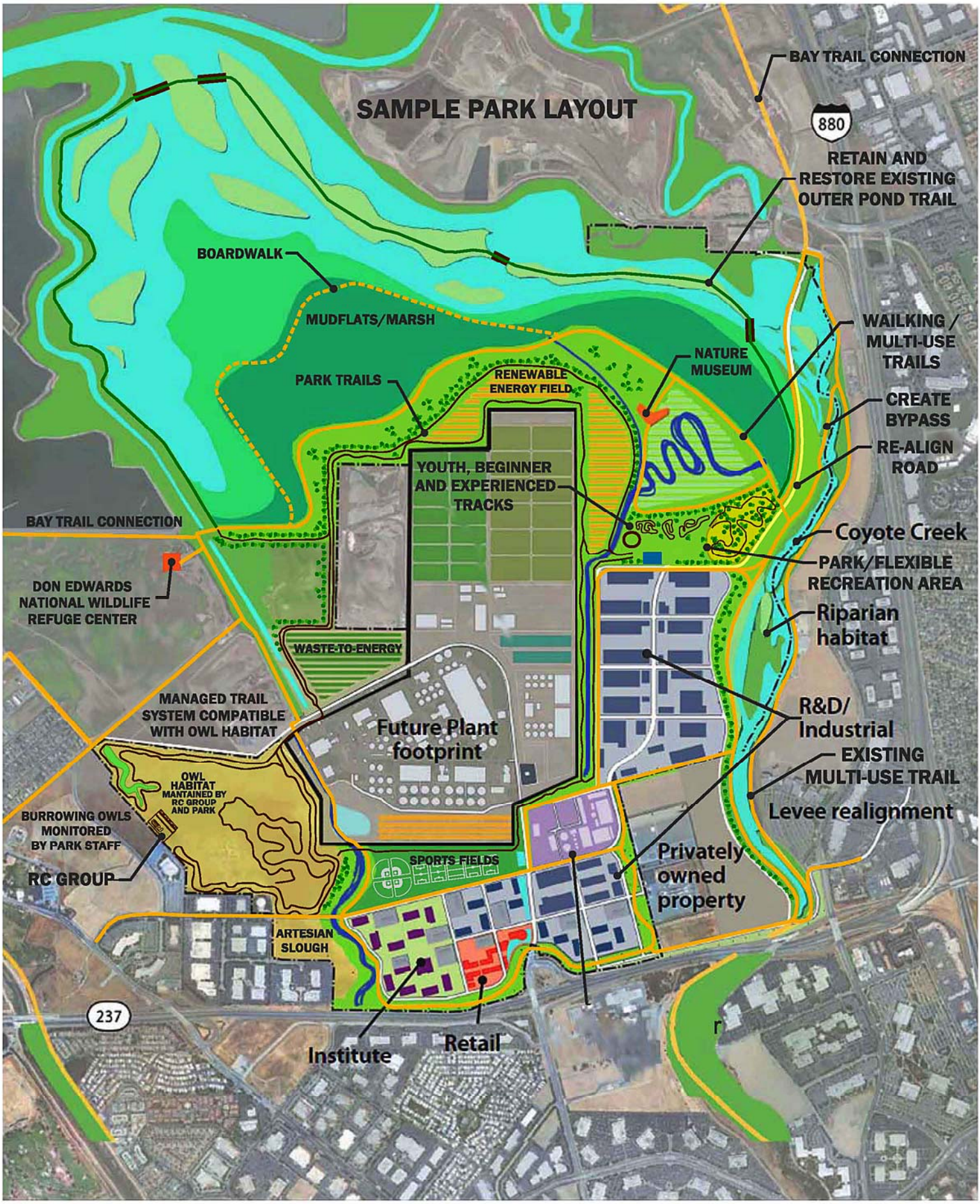
This could be the last opportunity for this innovative bay side park in the entire San Francisco Bay metro area. Development is consuming all bayside open space that is not federally managed wetland or official parkland. A park would preserve the land for future generations to enjoy.

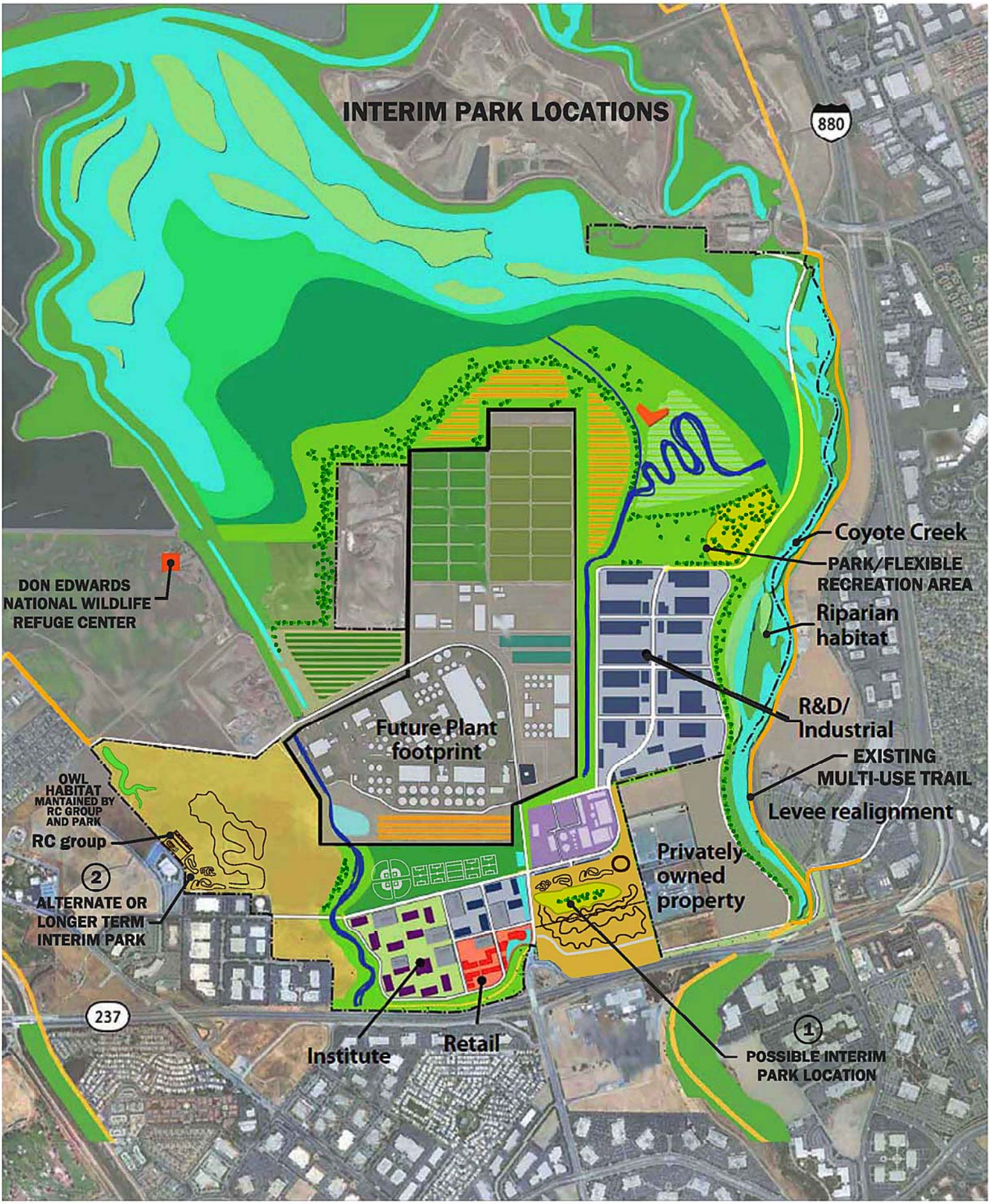
This is a conceptual plan only. Park facility details, land use requirements, site plan maps and all other details of this proposal are being compiled and will be made available upon request.

See the illustration of a sample park layout on the following page. See attached letters of support from Zero Motorcycles and the American Motorcyclist Association for this project. Attached is a letter of support and interest in the industrial development from Windation Energy Systems.

Supervisor Dave Cortese and Steve Blomquist, Policy Aid to Supervisor Cortese had expressed an interest in this proposed electric motor-sport recreation park. Attached is a letter supporting the park from Supervisor Cortese. Please see the separate park concessionaire proposal complimentary to this park proposal.

We sincerely thank you for considering this proposal.


SAMPLE PARK LAYOUT
BAY TRAIL CONNECTION
880
RETAIN AND RESTORE EXISTING OUTER POND TRAIL
BOARDWALK
MUDFLATS/MARSH
PARK TRAILS
RENEWABLE ENERGY FIELD
NATURE MUSEUM
WAILKING / MULTI-USE TRAILS
CREATE BYPASS
RE-ALIGN ROAD
YOUTH, BEGINNER AND EXPERIENCED TRACKS
BAY TRAIL CONNECTION
Coyote Creek
PARK/FLEXIBLE RECREATION AREA
DON EDWARDS NATIONAL WILDLIFE REFUGE CENTER
Riparian habitat
WASTE-TO-ENERGY
MANAGED TRAIL SYSTEM COMPATIBLE WITH OWL HABITAT
Future Plant footprint
R&D/ Industrial
EXISTING MULTI-USE TRAIL
OWL HABITAT MANTAINED BY RC GROUP AND PARK
Levee realignment
BURROWING OWLS MONITORED BY PARK STAFF
SPORTS FIELDS
Privately owned property
RC GROUP
ARTESIAN SLOUGH
237
Institute
Retail


INTERIM PARK LOCATIONS
880
Coyote Creek
PARK/FLEXIBLE RECREATION AREA
Riparian habitat
R&D/ Industrial
EXISTING MULTI-USE TRAIL
Levee realignment
DON EDWARDS NATIONAL WILDLIFE REFUGE CENTER
Future Plant footprint
OWL HABITAT MANTAINED BY RC GROUP AND PARK
RC group
2
ALTERNATE OR LONGER TERM INTERIM PARK
Privately owned property
237
Institute
Retail
1
POSSIBLE INTERIM PARK LOCATION

DAVE CORTESE
COUNTY OF SANTA CLARA SUPERVISOR, DISTRICT THREE

COUNTY GOVERNMENT CENTER, EAST WING
70 WEST HEDDING STREET 10TH FLOOR
SAN JOSE, CALIFORNIA 95110
TEL: (408) 299-5030 • FAX: (408) 298-6637
dave.cortese@bos.sccgov.org • www.supervisorcortese.org

June 29, 2010

Matt Krupp
Plant Master Planner
Environmental Services
City of San Jose
200 E. Santa Clara St., 10th Floor
San Jose, CA 95113

Dear Mr. Krupp,

Thank you for all your hard work and time in developing the Plant Master Plan to guide the future of the San Jose/Santa Clara Water Pollution Control Plant. I appreciate the lengths you have gone to engage the public and receive their input for this significant project.

In my position as an elected official, I am constantly approached by residents and enthusiasts that are looking for additional recreation areas. As Santa Clara County has become increasingly developed, the opportunities for recreation and parks are diminishing by the hour. It is with this in mind, that I encourage you to include as much area as possible for recreation purposes. These recreational activities, such as the proposal by Zero Emissions Recreational Organization, Inc. for an all electric recreational vehicle park, would provide a valuable resource for San Jose and Silicon Valley while bringing in much needed funding and revenue for the Plant and its other uses.

If you are interested in learning more about these opportunities for increased recreational activities, I will be more than happy to assist in connecting you with the various groups that have approached us. I look forward to seeing the finished Plant Master Plan and once again would like to thank you for the efforts that you have put into it.

Sincerely,

Dave Cortese
County Supervisor – Third District

To: Matt Krupp
Plant Master Plan Project Planner
Environmental Services
Technical Services
City of San Jose CA
And to whomever it may concern.

Re: The plans for the future use of the buffer zone land surrounding your plant.

Zero Motorcycles supports the option to have an all-electric motorsports recreation area included in your plan.

This environmentally friendly recreation area will project the image of technology leadership and environmental stewardship that San Jose strives for. This use of the unoccupied land will also fit in well with the renewable resource theme of your project.

Zero Motorcycles supports opening a portion of this area to all varieties of clean electric vehicles that wish to set up indoor or outdoor recreational tracks in an environmentally responsible manner.

By working with the city, county park department and others, electric motorcycle trails could be made to blend into the scenery within close proximity to nearby walking or biking trails. The inherently quiet and zero emissions design of fully electric vehicles allows riders to have fun without disturbing other people in the area or nature.

Zero Motorcycles supports the construction of an environmentally responsible small motocross track. With community support, the track could be designed to suite the recreational needs of both the novice and experienced riders.

This proposed recreation area could draw users to the development area, boost local retail sales and help strengthen the South Bay area's position as a leader in clean technology.

Governor Schwarzenegger recently recognized Zero Motorcycles as a leader in the electric motorcycle industry. Zero Motorcycles is committed to promoting a sustainable and fun future.

Thank you for your time and consideration,

Zero Motorcycles

AMERICAN MOTORCYCLIST ASSOCIATION

6981 Kona Drive, Placerville, CA 95667
T: (530) 626-4250 F: (530) 626-4707

AmericanMotorcyclist.com

Matt Krupp
Plant Master Plan Project Planner
Environmental Services
City of San Jose CA

Re: Support for proposed electric vehicle facility in buffer land surrounding facility.

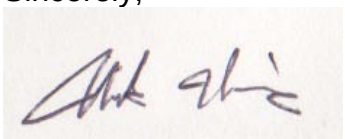
Mr. Krupp, founded in 1924, the AMA is the premier advocate of the motorcycling community. We represent the interests of millions of on and off-highway motorcyclists. Our mission is to promote the motorcycling lifestyle and protect the future of motorcycling. The AMA represents tens of thousands of riders throughout California alone.

After initial review we wish to lend our support to this cutting edge proposal that would become a showcase for both recreation and environmental stewardship. This use of the unoccupied land will also fit in well with the renewable resource theme of your project.

The city would also have a ready partner in the OHV division of state parks. Monies for developing and maintaining these types of public motorized recreation facilities have been part of the long-standing mission of the OHV division. As demand increases new smaller urban facilities are being increasingly considered. I would encourage you and your staff to speak with the division, in particular deputy director Daphne Greene as well as the chair of the OHV commission, Gary Willard, who is currently involved in the development and marketing of a electric motorcycle, the Quantya.

We believe this unique proposed recreation area would help draw users to the development and foster increased retail sales. In addition it would clearly help support this emerging market. Electric motorcycles are without a doubt expected to command an increasing percentage of the market in the coming years, and were in fact the cover story in our magazine recently.

Sincerely,



Nick Haris
Western States Representative

Dean Stanford

CEO

4563 Balmoral Park Ct.

Fremont, CA 94538

Re: zero emission recreational organization Inc.

Dear Dean:

This is to let you know that the Board of Directors of Windation Energy systems Inc. a Menlo Park, California Corporation is ready to support your efforts in the Zero Emission Recreation and Business Park project . This is based on the fact that Alviso as a location has an excellent wind resource and locating our companies project at your recreational park not only benefits the environment but will also bring many jobs to the development.

Windation As supplier of wind power to your park

1. Windation Manufactures a 5 KW wind generator which is bird and human safe . The units come with a power inverter and are ready to be plugged into the building grid for reducing the power demand from the grid. The 220V single phase output can charge your electric vehicles at the proposed park. It must be said that the units are permit ready and can simply be installed on the roof of commercial buildings to reduce the power intake of buildings in cities with more than 10 mph average annual wind speeds. Such units may be placed on a 9' x 9' concrete pad 30 feet apart, where they form an urban wind farm for maximum power generation. For example 20 units make a 100 KW wind farm. There is no upper limit to the wind farm. The units are currently made in two contract manufacturing facilities in the States of MN and NE USA.

Windation California Factory

2. Windation, via a partner JV company, has applied for a $5m manufacturing loan guarantee from the state based on the stimulus bill. The original plan was to open a facility in Los Banos; however given the attractive location and windy spot that this project offers we will reconsider the location of the plant in favor of this park. Given that this park is built as presented we can open a manufacturing facility here in Alviso California and produce the needed units from this location for local consumption. We estimate to employ over 400 people at this factory.

5/29/2010

1007 Florence Ln unit 1, Menlo Park, CA 94025
650-585-4451
contact@windation.com

Please keep us posted as to your progress .

Looking forward to hearing about your project start date.

Sincerely yours

Reza M. Sheikhrezai

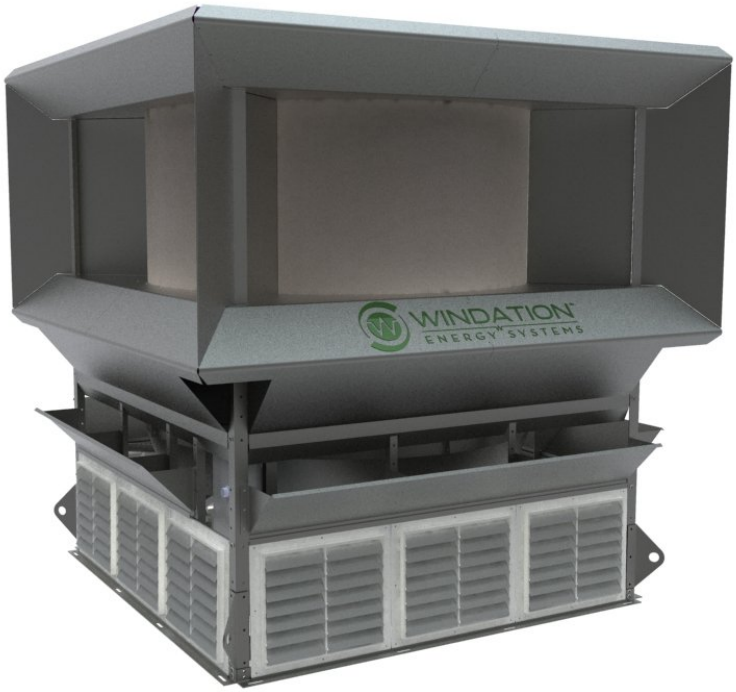
Founder CEO

Windation Energy Systems Inc.

650-585-4451

contact@windation.com

www.windation.com



Turbo Wind Mill 5000 made by Windation Energy Systems Inc.

5/29/2010

1007 Florence Ln unit 1, Menlo Park, CA 94025
650-585-4451
contact@windation.com

LAND USE PROPOSAL BY THE BAYSIDE R/C CLUB INC.

I would liked to propose that the Bayside R/C Club would be a good choice to include it in the acreage available by the San Jose Water Treatment Plant. We could be a haven for burrowing owls. My club has been fortunate to utilize the land owned by BART in Fremont right next to the NUMI plant for the last 20 years. We first moved into the property in 1989. We constructed a runway, added some small buildings and began to mow small areas to make it smoother for the airplanes that did not quite make it back to the runway. Gradually we began to mow larger and larger areas. This all took place before General Motors and Toyota united to create NUMI. By the time the agreement was made we had now attracted ground squirrels and they began to dig burrows all over in the mowed areas. They like to dig a burrow with the opening clear of surrounding weeds and grass. This allows them to see all around them for predatory animals on land or in the air.

Construction began on the General Motors property and suddenly we had owls inhabiting burrows dug by the ground squirrels. The G.M property must have had owls. They were displaced and they found us. They like the same situation. They like to be able to see all around them for predators. We began to mow larger and larger areas as we grew in numbers and opportunities to enjoy more radio control operations. Owls born there stayed there to occupy more burrows. Before long we had 5 pairs of owls with some single owls. Our mowed areas were perfect for them. This was bad news for BART. When they originally purchased the property, they were told by the DF&G that when they began construction, they would be required to move the owls to an area that would never be improved. The owls were going to be a big expense for BART. Somehow, BART learned of the mowed area concept. They told us we could no longer mow the grass or get rid of unwanted weeds and grass. Before long, the weeds and grass grew and one by one , the owls left and did not come back. BART had saved hundreds of thousands of dollars by this simple move.

What I am proposing here is that allowing us to build a flying field on the available land would be a two fold opportunity. We would be a haven for the burrowing owls that already live there and would eventually attract more to come as we did on the BART property. Our five pairs of owls were responsible for producing at least 10 new young owls over the years for the valley that is losing owl population and habitat.

At least 1/3 of our membership has come from San Jose with another 1/3 coming from Fremont. Of course we are based in Fremont. Hopefully more San Jose citizens would become aware of us and increase our membership. The rest of the membership comes from other cities of Santa Clara County and the greater bay area. San Jose does not have and R/C field. At one time we had 385 men, women and children

enjoying the hobby of driving r/c cars and flying helicopters and airplanes. At that time we were ranked 9th in the nation in membership. This includes Alaska and Hawaii.

To demonstrate that our airplanes do not disturb the owls, we had one pair that nested under the taxi way in a culvert that was designed to drain water from one side to the other. We could taxi our airplanes along the 5 foot wide taxiway with the owl one foot from the edge of the asphalt. The tolerance for us would be over ten feet. The flight station for the pilot was just about that distance and the owl did not move with someone occupying the flight station. Year after year, I mowed the grassy areas where they were nesting. As I approached their burrow, at least one of them would come to the opening and watch me as I rode by on a riding mower. As I approached, about 10 to 12 feet from the burrow, they would stay there but if I got closer and mowed over the burrow, they would fly away, close to the ground squawking as if to say, come and get me and leave my babies alone. As soon as I got the required distance away they would fly back and watch me till I left. This would happen week after week, year after year when the winter grass remained green. As is true of them, they would migrate away after the young fledged and come back again and again to the same burrow.

We would like to place a bid for one of the three areas on either side of Zanker road or the place where the horse ranch was once located. Seemingly, according to your charts of allocations of property, you wish to have a burrowing owl habitat in that same horse ranch area. This would best fit my description of what we could be.

As an assurance, no one is allowed to join the Bayside R/C Club Inc. with out insurance issued by the Academy of Model Aeronautics. We carry $2,500,000.00 liability insurance for each member and property owners including fire, theft, vandalism and medical insurance.

I would like to also mention that we would be self sustainable. We would obviously appreciate any monetary help from the city of San Jose but it is not necessary. We would also appreciate any help in finding contractors who do asphalt paving work to help us with lower construction costs for establishing a runway. We feel that we will be able to fund what is absolutely necessary to begin our field and we want to emphasize that we would not need any monetary assistance from any one once we are established. We have done this at our BART location for the past 20 years. Unfortunately we must leave the site in September because BART wishes to now construct a station there.

Will Sievert
Treasurer
Bayside R/C Club Inc.
AMA1411
408-379-2520

Comment Letter 22—Dean Stanford, March 23, 2011

Response to Comment 22-1

As described in Habitat Plan Condition 9, recreation using motorized vehicles would not be allowed within reserves. The Wildlife Agencies have determined that motorized recreation would not be compatible with the Habitat Plan biological goals and objectives, which are designed for covered species. All-terrain vehicle use has been linked to severely eroded roads, user-created unplanned roads, and disrupted wetland ecosystem, as well as general habitat destruction and degraded water quality.

Compatible recreation uses are listed in Condition 9, and additional uses may be allowed on a case-by-case basis as long as they are determined to be compatible with the biological goals and objectives.

No changes to the Habitat Plan are required.

Response to Comment 22-2 through 22-6

See Response to Comment 22-1.

Santa Clara County Farm Bureau

23

From: Schreiber, Ken
To: Cori_Mustin@fws.gov; Franck, Matthew/SAC
Cc: Zippin, David; Killough, Lisa; Rob Eastwood
Subject: FW: notes from HCP meeting
Date: Thursday, March 31, 2011 11:19:07 AM

Please include with the public comments on the Plan.

Ken

From: Schreiber, Ken
Sent: Thursday, March 31, 2011 11:15 AM
To: 'Jennifer Williams'; Mike Miller; kickham@aol.com; Janet Burback; Justin Fields; tim.chiala@gcfarmsinc.com; Pete Aiello; Rick Neuenschwander
Cc: Barry, Sheila
Subject: RE: notes from HCP meeting

Thanks---I will incorporate this into the comments on the Draft Plan and Draft EIr/EIS.

Ken

From: Jennifer Williams [mailto:sccfb@sccfarmbureau.org]
Sent: Monday, March 28, 2011 5:18 PM
To: Mike Miller; kickham@aol.com; Janet Burback; Justin Fields; tim.chiala@gcfarmsinc.com; Pete Aiello; Rick Neuenschwander
Cc: Barry, Sheila; Schreiber, Ken
Subject: notes from HCP meeting

Below are notes from the HCP meeting hosted by the Cattlemen and the Farm Bureau earlier this month. I did very little to clean up the notes as recorded that evening, lest I change the intent of the questions and comments. Answers that were recorded are noted in italics.
Jennifer

Notes from March 9 Joint HCP meeting with Cattlemen's Association

- How many rural projects need endangered species permits each year? *8% of projects under the county's jurisdiction (rough average of 40 projects per year amounts to 3 projects requiring permits)*
- Rural roads, buildings, etc. may not have the negative impact described in the Habitat Plan and may in fact be a benefit 1
- Ag Exempt buildings do not require a permit and would not be covered under the plan 2
- If a landowner decides to build a road he or she would have to get a 404 permit from the Army Corps, a Section 7 permit from US Fish & Wildlife Service, and a California Department of Fish and Game Streambed Alteration permit while also working with the Regional Water Quality Control Board, paying for and completing surveys, and mitigating for loss of wetlands. What benefit does the Habitat Plan provide in this instance? *If USFWS reviews the project it may reduce the need for the 404 permit. Otherwise, there is no change to this circumstance under the Plan. The project proponents would have to pay fees under the Plan and still seek other permits.*
-

What is the impact to neighbors? 3

- Request for additional time to review the Plan. 4
- The Plan is too complex and lengthy to understand. 5
- Concern that the management budget is too small for success. 6
- Concern that elected officials who will be voting on the Plan do not understand the Plan. 7
- How were the studies done? What assumptions were used to project land use over the next 50 years? 8
- Why is guilt (presence of species and/or habitat) assumed rather than reviewing each project individually? 9
- What does the environmental community think of the Plan? 10
- How is the threat of eminent domain prevented? 11
- What entity is responsible for Reserve System management? 12
- Incorporate California Rangeland Conservation Coalition Resolution into the Plan. 13
- How was the budget developed for the Plan? How do the land conversion ratios work? *Land conversion assumptions are based on General Plan growth.*
- The county and other local governments already lack sufficient resources to manage the lands under their control. 14
- Expressions of lack of trust for the government to manage recreation and other uses. 15
- The public should not have access to properties under conservation easements. 16
- Who can hold easements? *The Implementing Entity.*
- Who requires the Implementing Entity to hold the easement? 17
- Can a 501(c)(3) hold the easement? 18
- Will easements be on the whole parcel? 19
- Can the public purchase lands in fee title then resell the property to people in agriculture with conservation easements? 20
- How will the Plan interface with credits for carbon sequestration? 21
- Will HCP fees apply to agricultural buildings? 22
- Is self-mitigation an available tool for wetlands and other lands? 23
- Encourage the HCP management team to consider a cap/trade system to sell outside the Plan including the use of mitigation banks. 24
- Has the management team surveyed landowners for interest in selling property? 25
- Is the East Contra Costa HCP/NCCP successful? Have they maintained an appropriate balance for fee income and expenses? 26
- Disagreement that the public can manage these lands better than the existing private landowners, weed management for example. 27
- Specific property assessment rather than broad assumptions will benefit rural landowners 28
- Is the 2009 financial feasibility study still a good predictor for the Plan's success? 29
- What is the average acquisition cost? $8,500
- What will the requirements be to build near a creek? 30

Jennifer Williams
Santa Clara County Farm Bureau
(408) 776-1684 office
(530) 520-7895 cell

(408) 776-7804 fax
www.sccfarmbureau.org

Farming looks mighty easy when your plow is a pencil, and you're a thousand miles from the corn field.
-Dwight D. Eisenhower

Comment Letter 23—Santa Clara County Farm Bureau, Jennifer Williams, March 28, 2011

Response to Comment 23-1

The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Response to Comment 23-2

The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Response to Comment 23-3

This Habitat Plan calls for the acquisition of land and coordinated management of a Reserve System for the benefit of covered species. As a result of the conservation strategy (Habitat Plan Chapter 5), some populations of listed species are expected to increase in the reserves and elsewhere. Landowners adjacent to or near reserves may be concerned that populations of state- or federally listed species in the reserves may expand and colonize or use their lands, potentially restricting their land use activities. The Neighboring Landowner assurances described in Habitat Plan Chapter 10, Section 10.2.7, subheading *Neighboring Landowner Assurances,* are designed to address these concerns.

No changes to the Habitat Plan are required.

Response to Comment 23-4

Administrative draft chapters were made available to the stakeholder group throughout the development of the public draft. The required public review period for an HCP with an associated EIS is 90 days (see 5 Point Policy). Acknowledging the complexity of the Plan, the Local Partners opted for an extended formal public review period of 120 days, which concluded on April 18, 2011. However, the Local Partners continued to hold public meetings, including Stakeholder and Liaison Group meetings, throughout much of 2011 where public comments were heard by the Local Partners.

No changes to the Habitat Plan are required.

Response to Comment 23-5

The Local Partners and Wildlife Agencies acknowledge that the Plan is complex and lengthy. However, the Plan was our best attempt at balancing the development needs of the Local Partners while providing the level of specify necessary for the Wildlife Agencies to make their necessary findings to issue incidental take permits. To facilitate implementation, staff at the local jurisdictions will routinely receive training on the Plan. The Wildlife Agencies will also remain involved in the implementation of the Plan from a compliance aspect.

Portions of the comment are addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 23-6

Comment is addressed in Master Responses #1 and #6.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #6.

Response to Comment 23-7

Several Liaison Group meetings with elected officials from the Local Partners were held throughout 2011 and will continue to be held through completion of the Final Habitat Plan. The purpose of these meetings is to ensure that questions or issues raised by Local Partner elected officials are heard and discussed. In preparation for these meetings, Local Partner staff routinely brief their respective elected officials in advance of these meetings. In addition to Liaison Group meetings, Local Partners hold periodic meetings of their respective governing bodies (e.g., the County Board of Supervisors). Elected officials are also briefed for these meetings and elected officials who do not attend the Liaison Group meeting have an opportunity to ask questions. Some governing bodies have also held workshops to discuss specific topics. For example, the County Board of Supervisors held two such workshops in late 2011 and early 2012.

No changes to the Habitat Plan are required.

Response to Comment 23-8

Habitat Plan **Table 1-1** *Local Planning Documents and Time Horizons Relevant to the Permit Term* documents the resources used to identify a timeframe for implementation of covered activities as related to local land use patterns.

No changes to the Habitat Plan are required.

Response to Comment 23-9

Assumption of presence was key to the regulatory streamlining goals prioritized by the Local Partners. Under the current regulatory framework, if presence is not assumed by a project proponent, species-level protocol surveys are often required. These surveys are often costly and time consuming (some require multiple years of surveys). Furthermore, these protocol surveys are not designed to prove absence but to detect presence. In some cases, the Wildlife Agencies may reject negative survey results (i.e., surveys may have been conducted during atypical drought conditions or because species are likely to occur due to presence of populations within close proximity to the project site). The programmatic approach to species permitting taken in the Habitat Plan, the scope and duration of the Plan, and the mobility of covered species , required that in most cases, impacts be evaluated based on habitat proxies. The Plan does include species-level surveys for select covered species, as described in Chapter 6.

No changes to the Habitat Plan are required.

Response to Comment 23-10

The Local Partners and Wildlife Agencies acknowledge the comment. Commenter is referred to members of the environmental community, including those who are members of the Habitat Plan Stakeholder Group.

No changes to the Habitat Plan are required.

Response to Comment 23-11

Reserve System lands will be acquired only from willing sellers (Habitat Plan Section 8.6.5 *Willing Sellers*).

No changes to the Habitat Plan are required.

Response to Comment 23-12

The Implementing Entity is responsible for Reserve System management. The Implementing Entity may undertake this activity with its own staff or contract with a landowner, contractor, or other agency or

organization to conduct management activities within the Reserve System on the Implementing Entity's behalf (Habitat Plan Section 8.3.8 *Reserve Management and Monitoring*).

No changes to the Habitat Plan are required.

Response to Comment 23-13

The appropriate vehicle for adoption of the California Rangeland Coalition Resolution is through the respective governing bodies of each Local Partner as opposed to through the Habitat Plan.

No changes to the Habitat Plan are required.

Response to Comment 23-14

The Wildlife Agencies and Local Partners acknowledge the commenter's concern.

Comment is addressed in Master Response #3.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 23-15

The Wildlife Agencies and Local Partners acknowledge the commenter's concern.

No changes to the Habitat Plan are required.

Response to Comment 23-16

Comment is addressed in Master Response #11.

Revisions to the Habitat Plan will be consistent with Master Response #11.

Response to Comment 23-17

The Plan does not require the Implementing Entity to hold the conservation easement; however, it is expected that most conservation easements will be dedicated to the Implementing Entity. The Plan was updated to clarify the type of organization that may hold easements.

Revisions to the Habitat Plan include the following:

Habitat Plan Chapter 8 *Implementation*, Section 8.6.3 *Conservation Easements* was updated to clarify the types of agencies that can hold Reserve System easements.

Response to Comment 23-18

California Civil Code Chapter 4 Section 815.3 regulates the entities or organizations that may acquire and hold conservation easements. This regulation does allow 501(c)(3) organizations (not-for-profits) to hold conservation easements.

It is expected that most of the conservation easements will be held by the Implementing Entity. However, the Implementing Agreement between the Wildlife Agencies and the Local Partners provides that in certain circumstances, conservation easements may be held by another conservation organization approved by the Wildlife Agencies.

No changes to the Habitat Plan are required.

Response to Comment 23-19

The easement is not required to be on the entire parcel, although it may be developed such that it is on the entire parcel.

No changes to the Habitat Plan are required.

Response to Comment 23-20

The Habitat Plan does not comment on (i.e., either allow or prohibit) the ability of the Implementing Entity to purchase land, place a conservation easement on the land, and then resell the land.

No changes to the Habitat Plan are required.

Response to Comment 23-21

The Habitat Plan does not address carbon credit trading.

No changes to the Habitat Plan are required.

Response to Comment 23-22

Habitat Plan fees are not charged on existing structures because these sites are already developed. Fees may be applied to agricultural buildings, depending on whether the activity is covered by the Plan or not. See Habitat Plan Chapter 2 *Land Use and Covered Activities* for more information on what activities are covered.

No changes to the Habitat Plan are required.

Response to Comment 23-23

Project proponents may offer land in lieu of land cover fees, and they may restore or create, manage, and monitor their own wetland, stream, riparian, or pond mitigation projects in lieu of paying all or part of the wetland fee. However, the Implementing Entity must approve requests to contribute land in lieu of fees or to perform aquatic restoration or creation in lieu of paying the wetland mitigation fee (see Habitat Plan Chapter 8 *Plan Implementation* and Chapter 9 *Costs and Funding*).

No changes to the Habitat Plan are required.

Response to Comment 23-24

Comment is addressed in Master Response #13.

Revisions to the Habitat Plan will be consistent with Master Response #13.

Response to Comment 23-25

Comment is addressed in Master Response #12.

Revisions to the Habitat Plan will be consistent with Master Response #12.

Response to Comment 23-26

The East Contra Costa County HCP/NCCP can be considered successful. The East Contra Costa County HCP/NCCP has maintained permit compliance since permit issuance. An appropriate balance between income and expenses has been maintained; however, much of their expenses are currently being funded through grants because of slow development and covered activity implementation in their Inventory Area.

No changes to the Habitat Plan are required.

Response to Comment 23-27

Although the Implementing Entity is ultimately responsible for management of Reserve System lands, it will have considerable flexibility in how it achieves management goals, including partnerships with private landowners and use of grazing leases.

No changes to the Habitat Plan are required.

Response to Comment 23-28

The reason the Habitat Plan is taking a broader approach is so that it can apply to a wide array of projects. This process benefits the landowner because it streamlines the process by providing assurance of cost and time to acquire permits in a manner that cannot be achieved in project-by-project permitting. The Habitat Plan facilitates predictability in the development process.

No changes to the Habitat Plan are required.

Response to Comment 23-29

Comment is addressed in Master Response #3.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 23-30

The requirements for building near a creek vary depending on location in the study area (inside or outside the urban service area), actual distance from the stream and/or adjacent riparian corridor, and slope. These criteria are fully described in Habitat Plan Chapter 6, Condition 11 *Stream and Riparian Setbacks*.

No changes to the Habitat Plan are required.

Santa Clara County Cattlemen's Association

SANTA CLARA
COUNTY
FARM BUREAU

Santa Clara County Cattlemen's Assoc.

P.O. Box 1721 • Gilroy, California 95021-1721

Santa Clara County Board of Supervisors
70 West Hedding, 10th Floor
San Jose, CA

Tuesday, April 5, 2011

RE: Santa Clara County Habitat Conservation Plan Public Review Draft

Dear President Cortese,

The Santa Clara County Farm Bureau and the Santa Clara County Cattlemen's Association represent farmers and ranchers in Santa Clara County. These farmers and ranchers are the reason habitat remains in the county and they are the landowners who account for much of the lands listed as potential acquisitions for the Santa Clara Valley Habitat Conservation Plan. Without support from the farming and ranching community, the Habitat Plan will be very difficult to implement. If the Plan is adopted in it's current form, it will threaten the agriculture industry in this county and the species it supports. It is in everyone's best interest to improve the Plan to benefit agriculture and species. Together our organizations have identified a number of concerns in the Public Review draft and we would like to work with you and your staff to address these issues.

LAND USE

Although the Habitat Plan insists that it is not a land use planning document, it certainly would have a significant effect on land use over the next 50 years if adopted. Even with 58,000 acres of room to roam, endangered species will not recover in Santa Clara County without an economically and environmentally viable agriculture industry. It is important to the Plan's success to ensure that the lands used to produce our food can remain economically viable. Without a critical mass, ag infrastructure, and markets to support food production, the agriculture industry will fade away and species and habitat will suffer. For this reason, we strongly encourage the use of conservation easements, so that farming and ranching in Santa Clara County can continue even on lands in the Reserve System. There are only 200,000 acres of rangeland in the county and 45,000 acres will be acquired to meet the needs of the Reserve System, most of which will be rangeland. If currently grazed lands become part of the Reserve System and do not continue as working landscapes, the ranching industry will be reduced significantly and may no longer be a viable industry in this area. A conservation easement template for use during acquisitions should be available

1

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so landowners have an understanding of what commitments might be required under the Plan. It is unacceptable that a template is not yet available at this late point in the process.

Agriculture infrastructure such as roads, packing sheds, coolers, food processing facilities, barns, shops, equipment storage, fruit stands, and livestock markets are vitally important to the sustainability of the agriculture industry. Because these facilities are so important to keeping the industry alive and because the industry provides so many benefits to endangered species and their habitat, any development necessary to support commercial agriculture operations should not be assessed development fees. 2

Neighboring landowner provisions in the Plan are weak and should be strengthened. The neighboring landowner assurances are limited to just three covered species: Western pond turtle, California tiger salamander, and California red-legged frog. Neighboring landowner coverage should extend to every covered species. The program already requires the establishment of a baseline at the landowner's expense and the neighboring landowner assurance should be extended to any species for which a landowner is willing to complete costly baseline surveying. 3

Public access to the Reserve System should be restricted. Recreation does not have a role in a Habitat Conservation Plan and it should not be allocated $15 million over the life of the Plan. Under no circumstances should development fees be used to fund recreation. 4

If adopted, the Habitat Plan would dramatically change land values in Santa Clara County. It is difficult to say exactly which properties would experience value increases and which properties would decrease in value, but we can be certain the Plan will skew land values. Even now, the dark gray portions of the Land Acquisition Strategy Figure 5-7 encumber properties as potential buyers see that they are desired for inclusion in the Plan. Rather than acquiring 45,000 acres for the Reserve System and creating a monopsony with only one buyer of mitigation land, private mitigation banks should be encouraged in the Plan. This would allow for landowners to work with the many existing conservation organizations in the area to provide habitat, which the county would oversee. 5

HABITAT

Farmers and ranchers have managed lands in the Santa Clara Valley, Coyote, Valley, Diablo Range, Santa Cruz Mountains, Pajaro Valley, and in other parts of Santa Clara County for generations. Most wildlife corridors, habitat linkages, breeding habitat, and other forms of habitat that remain in the county can be directly attributed to the positive benefits of agriculture. However, these contributions are not recognized in the Plan.

The Plan is not based on peer-reviewed science and in many instances lacks even the most basic common sense understanding of agriculture's contributions. For example, the primary vegetation management tool named in the Habitat Plan is prescribed burns. While prescribed burning may be useful in a few instances, cattle grazing is actually a much more effective tool and it has the potential to decrease the costs of the Plan. 6

There is an enormous amount of scientific data pointing to the importance of cattle ranching in providing appropriate habitat for some of the species covered by the Plan. For example, California tiger salamander and California red-legged frog actually have a mutually beneficial symbiotic relationship with managed grazing such that grazing improves habitat for those species. The U.S. Fish & Wildlife Service and the California Department of Fish & Game recognize that privately owned rangelands support important ecosystems. The wildlife agencies support the California Rangeland Resolution, which

explicitly states "these rangelands, and the species that rely on these habitats, largely persist today due to the positive and experienced grazing and other land stewardship practices of the ranchers that have owned and managed the lands and are committed to a healthy future for their working landscapes." Elsewhere in the Resolution, the wildlife agencies commit to working to recover imperiled species and enhancing habitat on rangelands while seeking to minimize regulations on private lands and streamline processes. Unfortunately, none of these values are expressed in the Plan and the Plan does not value the current stewardship and conservation efforts of farmers and ranchers. If the goal of the Habitat Plan is to promote habitat, the activities of farmers and ranchers that promote habitat should be covered by the Plan, regardless of the entity performing the work and regardless of presence within the Reserve Area. To promote rather than discourage beneficial activities, cleaning stock ponds, development of field and working facilities for livestock, livestock management, water delivery systems for stock and wildlife, spring development, channel clearing to reduce sedimentation in streams, and other conservation activities should be covered not only on public lands in the Reserve System but also on private lands outside the Reserve System. 7

Even though the most habitat basic contributions of working landscapes are not recognized in the Plan, considerations for non-covered species are abundant throughout the Plan. Control methods for ground squirrels are restricted, habitat linkages for mountain lions are protected, and fish-bearing streams are given larger setbacks. None of these species are covered by the Plan and attempts to protect their habitat have no place in the Plan. 8

COSTS

The costs associated with the Santa Clara Valley Habitat Plan Public Review Draft are astronomical. The costs are so excessive that your colleagues at the City of Gilroy recently voted to remove the city from the Plan. Focusing acquisition efforts on conservation easements, rather than fee title acquisitions would dramatically lower the costs of the plan. Easements not only reduce acquisition costs up front, but also reduce management costs over the term of the Plan as the working landscapes are cared for by farmers and ranchers on the land. Working with landowners or ranchers who are leasing fee title acquisitions to perform habitat conservation and restoration activities will further reduce the costs of the plan while also mutually benefitting the implementing and the farmer or rancher. 9

The development fees of the Habitat Plan are very high and have almost no connection to current land values or actual habitat value. Acquisition costs are underestimated with average acquisition costs estimated at $8,500 per acre. Santa Clara County land values do not support the acquisition cost assumptions. Even with an emphasis on lower value rangelands and natural lands, $8,500 is a low estimate and as an average it is completely unfounded. At the same time, Zone A fees are currently set at $19,720 per acre. This means that according to the assumptions of the Habitat Plan, any Zone A development is expected to pay over two times the value of land just for the right to erect a barn or single family home. Zone B fees are based on Zone A fees and development in Zone B is estimated to have 70% of the impact of development in Zone B. Zone B impacts are grossly overvalued, with Zone B fees of $13,790 for agriculture lands despite the Plan's observation that "this land cover type has relatively low value for native plants and wildlife". In addition to our assertion that agricultural development should not be assessed development fees, we urge the county to review the current development fees and to bring them in line with reality. 10

BUREAUCRACY

Vineyards and orchards are permanent plantings that lock a farmer into a commodity for decades, row crop equipment is costly and highly specialized, and the livestock industries experience multi-year lag times between decisions and results. As business owners, farmers and ranchers are accustomed to forecasting, making decisions, and accepting the risk that goes along with it. However, we have serious concerns about our local elected officials locking us into a 50-year plan. It is impossible to predict the needs of Santa Clara County even over the next decade, let alone 50 years from now. Consider the enormous changes this county has seen since 1961. As members of multi-generation Santa Clara Valley farm families, we know that no one saw this coming. A 50-year plan is so broad and vast that it actually creates less certainty, rather than providing for more certainty. 11

Members of our organizations have spent countless hours reviewing the Public Review Draft with assistance from attorneys, rangeland managers, land use agencies, and others. During our reviews, we identified countless inconsistencies, inadequate science, false assumptions, disorganization, and a lack of clarity throughout the document. All of the flaws with the Public Review Draft cause us to question the strength of the document and doubt the performance of the implementing entity before it is even formed. Implementation of a plan as flawed as the current draft, will not serve the public interest nor will it benefit endangered species. There is no reason to expect the implementing entity will act with any fiscal responsibility or to assume the entity will have any long-term viability. Local government agencies are already short on funding necessary to properly manage existing properties and moving more land off the tax rolls and into the responsibility of the public will only exacerbate the problem. 12

Thank you for your time and consideration of our suggestions. As you can see, we have given the Habitat Plan a thorough review and have identified areas for improvement. As you do the same, we would like to be part of the conversation to improve the Plan for agriculture, for species, and for residents of Santa Clara County. Feel free to contact either of our organizations for further input by calling the Farm Bureau office at (408) 776-1684 or Kyle Wolfe at (408) 804-1699.

Sincerely,

Kyle Wolfe
President, Santa Clara County Cattlemen's Association

Tim Chiala
President, Santa Clara County Farm Bureau

Comment Letter 24—Santa Clara County Cattlemen's Association and Santa Clara County Farm Bureau, Kyle Wolfe, President, and Tim Chiala, President, April 5, 2011

Response to Comment 24-1

A template conservation easement was also shared with key stakeholders in the agricultural community prior to the public review of the Final Habitat Plan. The template conservation easement is provided in Appendix H of the Habitat Plan.

Portions of this comment are addressed in Master Responses #1 and #5.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #5.

Response to Comment 24-2

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 24-3

The Wildlife Agencies and Local Partners acknowledge the commenter's concern regarding neighboring land owner assurances. During the Habitat Plan development, the application of this assurance was considered and evaluated for all covered species; however, it was ultimately limited using the following rationale stated in the Habitat Plan (Section 4.3.7 *Conservation Strategy Implementation,* subheading *Neighboring Landowner Assurances*):

> "The impacts associated with the dispersal of covered species onto neighboring lands are anticipated to be very limited and restricted to species that meet the criteria listed below.
> - Species that are expected to increase in numbers on the reserves.
> - Species that are likely to spread onto neighboring lands as populations increase.
> - Species for which there is a reasonable likelihood of take from routine, ongoing agricultural activities."

Using these criteria, the Neighboring Landowner Assurances program will extend coverage only for western pond turtle, California red-legged frog, and California tiger salamander. Other covered species do not meet the listed criteria.

No changes to the Habitat Plan are required.

Response to Comment 24-4

Comment is addressed in Master Response #11.

Revisions to the Habitat Plan will be consistent with Master Response #11.

Response to Comment 24-5

Comment is addressed in Master Response #13.

Revisions to the Habitat Plan will be consistent with Master Response #13.

Response to Comment 24-6

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 24-7

Activities that do not go through a County or city permitting process (e.g., a grading and/or building permit) would not be subject to local approval and therefore cannot be covered by the Plan.

Portions of this comment are addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 24-8

The contributions of working landscapes (e.g., agricultural and developed land cover types) are considered under the Habitat Plan. These contributions are discussed in Habitat Plan Chapter 3 *Physical and Biological Resources*, Section 3.3.5 *Ecosystems, Natural Communities, and Land Cover* under several of the natural community subheadings, including *Grasslands Land Cover Types* (subheading *Natural Disturbance* includes a reference to grazing), *Irrigated Agriculture,* and *Developed.* Habitat Plan **Table 3-5** and Habitat Plan **Table 3-6** identify agricultural and developed land cover types that provide habitat for the covered species.

The Habitat Plan is an HCP and NCCP. Under the NCCP Act, CDFG must make a series of findings (Habitat Plan **Table 1-3**). Pursuant to these findings, the Habitat Plan must "protect habitat, natural communities, and species diversity on a landscape level" and "conserve ecological integrity of larger habitat blocks, ecosystem function, and biodiversity" (Habitat Plan Section 1.3.1 *Federal and State Endangered Species Laws,* subheading *Natural Community Conservation Planning Act*). For this reason, habitats of non-covered species are considered and protected under the Habitat Plan.

No changes to the Habitat Plan are required.

Response to Comment 24-9

Comment is addressed in Master Responses #1 and #5.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #5.

Response to Comment 24-10

Comment is addressed in Master Responses #1, #2 and #5.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #2, and #5.

Response to Comment 24-11

The Wildlife Agencies and Local Partners acknowledge the commenter's concern regarding the permit term. Habitat Plan Section 1.2.3, *Permit Term*, and Habitat Plan **Table 1-1** describe the rationale for the permit term.

Portions of this comment are addressed comment is addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 24-12

Comment is addressed in Master Responses #1, #2, and #6.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #2, and #6.

Sheila Barry

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April 8, 2011

Ken Schreiber, Program Manager
County of Santa Clara
County Government Center, East Wing- 11th Floor
70 W. Hedding Street
San Jose, California 95110

Dear Mr. Ken Schreiber,

I appreciate the opportunity to provide comments on the Draft- Santa Clara Valley Habitat Plan- December 2011. Although I spent a substantial amount of time reviewing the Draft HCP and the accompanying EIR/EIS I want to be clear that I did not review the entire document. In fact, my detailed comments (24 pages attached) primarily cover Chapters 2, 3, 4, and 5 with a focus on issues related to rangeland science and management. In recording my comments, I found myself becoming redundant so I provided an overview (pgs 1-2) which groups some of the comments into common themes. It is my hope that my comments will lead to additional review and revision.

In particular as noted in my overall comments, I think review and revision by rangeland scientists would be extremely helpful. Most of the natural resources covered by this plan occur on the county's rangelands, which include grasslands, oak woodlands, wetlands, riparian forest, and chaparral. The inclusion of rangeland science and management not only seems paramount to the plan's success but also could result in a more efficient and effective plan with potential cost-savings from reduced implementation and long-term management costs. Rangeland science is an integrating science which provides direction for management through an understanding of the physical, biological and social processes that affect grasslands, oak woodlands, riparian, wetlands, and chaparral as individual communities and as a landscape. Rangeland science can guide effective rangeland management towards promoting the protection and recovery of natural resources in rangeland covered by the study area.

I appreciate your consideration and inclusion of my comments. I am confident that they will result in a plan that is more effective at conserving and enhancing the natural resources of the county while realizing cost-efficiencies. Please let me know if I can be of any assistance in the completion of this planning effort.

Sincerely,

Sheila Barry
Bay Area Natural Resources/ Livestock Advisor
California licensed Certified Rangeland Manager #63

Overall Comments

- The Santa Clara Valley HCP draft plan should be reviewed and revised through an independent scientific peer review process, which includes at least two rangeland scientists. The State of California licenses rangeland scientists as Certified Rangeland Managers. Around 80% of the study area could be classified as rangeland which includes grassland, woodland, riparian and chaparral. Rangeland science is an interdisciplinary approach focusing on the sustainable conservation and management of natural ecosystems for the benefit of society. Despite the extent of rangeland covered by this plan and the availability of licensed, competent rangeland scientists, neither the consulting group nor the science advisory committee seem to have included a rangeland scientist. 1

- Any plan to conserve the land, habitat and associated species in the study area should work to support the continuation of rancher stewardship and grazing of cattle. The current draft does not adequately acknowledge current rangeland science, use and stewardship. This oversight puts at risk the economic, social, and ultimately the environmental sustainability of the study area, as well as the long-term objectives of the plan itself. The role of rancher stewards and livestock grazing in the study area has been acknowledged by the US Fish and Wildlife Service, California Department of Fish and Game, The Nature Conservancy, California Cattlemen's Association, California Farm Bureau, University of California and others as signators to the California Rangeland Conservation Resolution. 2

  "Whereas….These rangelands and the species that rely on these habitats largely persist today due to the positive and experienced grazing and other land stewardship practices of the ranchers that have owned and managed these lands and are committed to a healthy future for their working landscapes.....will only continue to provide this important working landscape for California's plants, fish, and wildlife if private rangelands remain in ranching."

  There are opportunities for the plan to effectively support the continuation of rancher stewardship and grazing. For example, see comments #69 as well as comments 1,4, 16, 50, 59, 60, 61, 70, and 71.

- The plan should provide accurate, relevant descriptions of ecosystem structure and functions and justification for protecting them. It should also provide clear, measureable objectives that guide management towards conserving the ecosystem structure and functions that provide quality habitat for covered species. Currently, the plan fails to adequately describe relevant ecosystem structure and functions especially in regards to grasslands, the dominant vegetation type covered by the plan. The role of fire, native grasses, non-native annual grasses, and thatch is misrepresented relative to covered species and associated threats. For example see comments 20, 21, 22, 82 and 92. 3

- The plan is not clear with regard to which conservation activities will be covered activities under the plan. Information presented is inconsistent especially with regards to some proposed conservation activities like pond creation, road demolition, and road development. It is also not clear which conservation activities will be covered activities outside the reserve in the study area. For example, see comments 13,15,16,45,46,47,50. 4

- Although the plan provides for willing landowners to sell easements, it is not clear if these landowners will be able to select an easement holder and participate in the development of reserve management plans. It is also not clear if they will have the opportunity to implement and be compensated for completing conservation activities prescribed for their properties. The plan seems to largely provide for 3rd party consultants to do this work. For example, see comment 78 and Chapter 8: Reserve Management and Monitoring. 5

- There is not adequate consideration for rangeland management infrastructure. The budget for fencing significantly dwarfs the budget for road removal. There appears to be no budget or allowance for corrals, hay barns, or watering distribution and storage systems. It should be noted that there is an allowance for tool sheds , wells and water pumping. For example, see plan budget and comments, 4 and 84. 6

- Allocating $23.4 million for road removal and potentially $3.6 million for fence removal to benefit kit fox is misguided. The only covered species stated to benefit from conservation action, LM-1, is the San Joaquin kit fox (objective 14.4). However, there is no evidence that un-need roads or fences are barriers for kit fox. Kit fox movement across the landscape may in fact be enhanced by roads (with little to no use). 7

- Invasive species management efforts are misdirected with no real attention to prevention. For example, conservation actions involve the use of field equipment i.e. mowers, tractors, dump truck, fire trucks, ATVs yet there is no discussion, provision or budget for cleaning equipment to prevent the transfer of weed seed, plant pathogens or other pests from one reserve to another. Table G-6. 8

- Species Accounts (specifically threats to covered species and management considerations i.e. grazing) should be updated with current USFWS information. Biological goals and objectives, and conservation actions should be indentified based on this information. For example, the following relevant information does not appear in the current draft: (1) USFWS (2009) specifically lists lack of grazing or undergrazing as a threat to Bay checkerspot; (2) USFWS (2004) concludes that managed livestock grazing at low to moderate levels has a neutral or beneficial effect of frog habitat; (3) USFWS (2004) states that managed 9

livestock grazing by cattle, horse and sheep is thought to be compatible with successful use of rangelands; (4) USFWS (2010) stated that additional threats to kit fox habitat had been identified including changes to vegetation structure and altered grazing regimes.

Detailed comments through Chapter 5, pg 112.
Although addressing many of these comments below may necessitate changes to later chapters, these comments do not specifically cover text beyond the middle of Chapter 5. **The detailed comments below should demonstrate the need for further review for consistency and scientific review by a rangeland scientist.**

VOLUME 1

1) Pg 1-3: Add objective under purpose:
Provide support for working rangelands within the study area so they have the opportunity to remain viable and can continue to effectively manage and provide habitat for covered species. 10

Such an objective would be of value to the success of the plan and also be consistent with the Multi-Purposes pg 1-2, and policies of the City of Morgan Hill pg 2-6.

2) Pg 1-7: Provide consistent language regarding Covered Activity- Conservation Strategy Implementation. The language on pg 1-7 is not consistent with the language on pg 2-36 and pg 2-98. Pg 2-36 states these activities are only covered in the reserve but this is not consistent with the 1st paragraph under 2.3.8. Pg 1-7 states that these activities are covered on lands managed, enhanced, restored and monitored. Strike *"enhanced, restored and monitored*". Conservation strategy implementation should be covered for resources covered by this plan throughout the study area whether or not they were enhanced, restored and monitored. 11

3) Pg 1-24: Add a description of State Regulation, California Code of Regulations, Title 14, sections 1600-1651. This code governs the certification of individuals working in rangelands. (Although not specifically required by USFWS or DFG, it is required by the State of California for any work done by a non-landowner on non-federal "forested" rangelands. The State of California's definition of "forested" rangelands applies to land types which have been selected to become part of the reserve. 12

4) Pg 1-36: Add appendix regarding operational needs including infrastructure needs for effective rangeland management. Rangeland management including grazing management is key to the successful conservation of several covered species in this plan including BCB, Golden Eagle, CTS, CRLF, SJ Kit fox, and burrowing owl. The value of such a discussion is apparent because some of the infrastructure needs are not clearly listed 13

under covered activities and key budget items are missing that are essential for successful rangeland management. For example, see comments 13 and 84.

5) Chapter 2 Agricultural terms. Terms should be accurately and consistently used.

-Pg 2-2 "*Once known as the "Valley of Heart's Delight," orchards and agriculture dominated this area in the early to mid-20th century*." Revise agriculture includes orchards.

-Pg 2-9 Unincorporated Areas of Santa Clara County. This section mixes land-use designations with actual land use i.e irrigated agriculture, grain hay. Since it is describing actual land use and refers to the crop report which doesn't use planning designations the correct land use terms should be used. Restrict the use of planning use designations to discussions on land use planning like in Section 2.2.2.

The following statements should be corrected:
"*Most of the County's agricultural land is located along the floor of the South Valley, outside of the urbanized areas."* Change "*agricultural*" to "cultivated agricultural".

"In addition to cropland, significant parts of the study area have historically been grazed by cattle and managed by ranchers." Based on the sentence that precedes this one, change *"cropland*" to "irrigated land."

"Cattle ranching continues over much of the privately owned lands in the study area." Delete "privately owned." Add: Cattle ranching also continues on some lands in public ownership.

-Pg 2-10 "*Grain hay constitutes the largest land use of agricultural crop*." By far the largest agricultural land use is range not grain hay. Change "*Grain hay*" to "range". See the Annual Agricultural Crop Report for Santa Clara County. 14

"A significant portion of the County's land area is unincorporated ranchland and woodland managed by ranchers for cattle grazing (approximately 49% of the entire County and of the study area)." It doesn't make sense to use a planning designation in this section. The rest of the section is not referring to planning designations but actual use i.e. grain hay. As such replace "*unincorporated ranchland and woodland*" with "rangeland." Note: cattle graze rangeland in Santa Clara County; however not all rangeland is grazed. The term "range" in the Annual Crop report refers to rangeland that is grazed.
Last sentence: "*Ranchland*" …replace with "Rangeland".

6) Pg 2-13: ***"Strategy #4.3.1:*** *Natural habitat areas in the County Parks should be enhanced through active stewardship programs and using best management practices (BMPs) based on the most current, reliable scientific information*" The plan should work to implement this strategy by providing current, reliable scientific information. 15

7) Pg 2-25: Pacheco State Park. The purpose and extent of grazing in Pacheco State Park should be stated. It is clearly relevant to this section because the lack of livestock grazing is noted for Henry Coe State Park. Why note lack of grazing if grazing use in parks is not being reported? 16

8) Pg 2-25: California Department of Fish and Game. In addition to noting that this ranch was purchased with assistance of The Nature Conservancy. It should be noted that The Nature Conservancy also funded the development of a grazing management plan, which was written by a California licensed Certified Rangeland Manager. Although, to date, the plan has not been implemented. 17

9) Pg 2-27: Natural Resources Management- last sentence. "*Recent*" should be replaced with "on-going"? The livestock grazing program is not a recent program in Grant Park. Changes to this language should also be reflected in Chapter 9 of the EIR/EIS. 18

10) Pg 2-27: Major County Parks: An accurate statement of the use and extent of the grazing program should be included for the appropriate parks because grazing is clearly the most economical and plausible management tool for conservation of habitat of several of the listed species. State Park's Feral Pig control program is cited as being a model (Chapter 5). Grazing programs used to manage resources for County Parks, Open Space Authority, Pacheco State Park, TNC lands in the study area should also be called out as models. Changes to these descriptions should also be reflected in Chapter 9 of the EIR/EIS.

-Pg 2-28: Harvey Bear Ranch. Include a statement about the purpose and extent of grazing in this park. 19

-Pg2-29: Ed Levin. Replace "*support cattle grazing*" with an appropriate statement regarding the purpose and extent of grazing in this park.

-Pg2-29: Grant Park. Replace "*cattle grazing is allowed*" with an appropriate statement regarding the purpose and extent of grazing in this park.

-Pg2-10: Include a statement regarding the current development of a grazing plan, which is being written by a California licensed Certified Rangeland Manager for Santa Theresa County Park.

11) Pg 2-30 – 2-31. Open Space Authority. The extent and use of grazing for resource management on Authority Preserves should be stated. The development and use of grazing management and monitoring plans should also be included. Note: the Open Space Authority has used the services of California licensed Certified Rangeland Managers for development of grazing as well as monitoring plans. 20

12) Pg 2-32. The extent and use of grazing by The Nature Conservancy should be stated especially as it relates to conservation of covered species. TNC's use of grazing is noted in Chapter 7 of the EIR/EIS. 21

13) Pg 2-99: Additional activities should be listed as covered in order to facilitate the use and/or reintroduction of livestock grazing for conservation of covered species including:
-Development of working facilities i.e. corrals for livestock management.
-Development of field facilities for livestock feed/supplement storage.
-Construction of fencing, gates and associate hardware to manage livestock.
-Water delivery for livestock use.
-Construction of livestock watering sources including spring development.

-In addition roads serve multi-purposes including access for wildlife, land managers and biologist; as well as serving as a fire breaks. Maintenance of existing roads should be a covered activity:
-Add: Grading and maintenance of roads including the relocation of roads to protect resources.

-The "*demolition or removal of ….roads and man-made livestock ponds to increase public safety or to restore habitat*" requires greater consideration. The impact of these activities should be included in the discussion of impact assessment in Chapter 4. 22

14) Pg 2-100: Recreation: change "*newly acquired lands*" to "newly acquired fee title lands or where provided by the easement." 23

15) Pg 2-101: Habitat, Enhancement, Restoration and Creation. Why is pond construction not listed as a covered activity? Pg 5-28 describes it is as the only type of habitat creation. This would seem like a significant oversight. Permit coverage of pond creation outside the reserve should also be considered as a covered activity. 24

16) Pg 2-105: Routine Agricultural Activities: "*Livestock management*" should be removed from this list. It's vague and undermines the important role of grazing and rancher stewardship for the success of this plan. 25

17) Table 2.2: This table needs some corrections/updates. Check with The Nature Conservancy regarding ownership of Silacci Ranch and San Felipe Ranch. 26

18) Pg 3-5: Soils: More detailed information regarding soils should be referenced. Ecological Site Descriptions have been developed for several soils types in the study area. These can be found at http://californiarangeland.ucdavis.edu/California%20Vegetation/Ecological%20Sites/ESD%20Web/esd.soil.conversion.htm
These descriptions will be valuable for the development of management and monitoring plans because they describe the potential impact of management decisions on vegetation. 27

19) Pg 3-33: Grasslands: Historical Extent. "*Grazing by livestock and wildlife continues today…. in almost all of the grasslands…*" Add "and other natural communities linked to grasslands including woodlands, riparian and chaparral." 28

20) Pg 3-41-3-43. Ecosystem Function. The description in this section is inconsistent and includes few relevant points. The citations are not consistent, often out of context, and sometimes inadequately interpreted. Several statements in this section are also not consistent with statements and research results reported in Chapter 5, pg 5-100- 5-104.

More importantly, there is relevant ecosystem structure and function information that is missing including the need to maintain habitat structure with some semblance of pre-conversion structure for covered species, and the need to control non-native annual grasses in both annual and native grasslands to enhance opportunities for native flora. The use of fire as a management tool is misrepresented and its current use largely for invasive species control is not mentioned. Given the relative importance of grasslands to the study area and the covered species, it important that this section provide relevant, current information or at least directs readers to appropriate references. At the very least the following statements should be reviewed and revised:

-3-41, paragraph1. The description of the connections between natural communities should also be discussed relative to their management. As noted previously, much of the grassland in the study area is grazed by livestock, however, they are generally not fenced separately from oak woodlands, chaparral, scrub, riparian or other aquatic communities so livestock grazing may have impacts (positive and negative) on all of these communities.

-3-41, paragraph2. Statements regarding species seem inconsistent. Golden eagles, Bay checkerspot butterfly, and burrowing owl are specifically named while other covered species are lumped as amphibians or not even mentioned i.e. SJ kit fox.

-3-41, paragraph3. "Pathogens" should be added to the list of filtered items. 29

"*Fodder*" should be changed to "forage".

"Serpentine grasslands provide a lower level of water quality maintenance and lower quality grazing land due to the lower level of plant cover typical on serpentine soils." Revise, cite or delete. This statement isn't accurate and is misleading. Good water quality and high quality feed can both come from sites with a low level of plant cover.

-3-41, paragraph 4. "*The replacement of native grasses and herbs by fast-growing nonnative annual grasses and herbs has had a profound effect upon ecosystem function in grasslands*." Revise, cite or delete all sentences in this paragraph after this sentence. The text doesn't accurately describe the "*profound effects*" of conversion, and the functions attributed to perennial grasses relative to annuals on California's grasslands are not accurate.

21) -3-42, Natural Disturbance, paragraph 1. The second sentence is poorly worded. The invasion was not a result of nitrogen disposition. In addition, the invasion of nonnative species across nonserpentine grasslands should also be discussed.

-3-43, paragraph 2. Mixing a discussion of periodic fire and prescribed burns is confusing. The influence of periodic fire in keeping grasslands open is different than the current typical use of prescribed burns. Prescribed burns, when possible, are typically used to control specific invasive species (Reiner 2007). This is not clear from this description and is not consistent with the description of prescribed burns in Chapter 5. The use of prescribed burns as a management tool is also overstated especially relative to the use of grazing as a management tool. In Santa Clara County, The Nature Conservancy, Open Space Authority, County Parks, San Francisco PUC, the City of San Jose all use grazing as a management tool. In addition, the USFWS and CA Department of Fish and Game use grazing as a management tool in neighboring Alameda County to manage grassland habitat for covered species including burrowing owl, CTS, CRLF, and SJ Kit Fox. The ecological basis for the use of grazing to manage grassland habitat for these species management is missing from this discussion.

-3-42, paragraph 3. "*The direct effect of fire on grassland is to remove essentially all of the aboveground biomass*." What type of fire is this referring to?

"*The immediate effect of this biomass removal on annual grasses is negligible, as they have typically completed their growth cycle before fires occur (Howard 1998*)." Let's hope this isn't true if the fire was a result of a prescribed burn. Mixing discussions of fire and prescribed burns is confusing. 30

-3-42, paragraph 4. This paragraph is a hodge-podge of information on fire effects. It doesn't provide a clear assessment of what is known about the effects of fire on grasslands and is not consistent with the information presented in Chapter 5.

"*In the absence of heavy grazing, however, a heavy thatch layer will re-establish in approximately three years, and this effect will disappear*". Revise, cite or delete. The absence of grazing will lead to a thatch layer on some sites.

"In grasslands that are already dominated by nonnative annual grasses, nonnatives may increase their dominance following fire by outcompeting natives for the newly available space and light." Revise, cite or delete. Misleading. In this region, nearly all grasslands are already "dominated" by non-native annuals, and the populations of native perennials remains about the same, with some fluctuation depending on weather especially drought cycles.

-3-42, paragraph 5. "*Livestock grazing within grasslands is an important disturbance that mimics some of the functions of fires and of native herbivores…. Livestock grazing is also an important management tool to combat relatively new threats such as invasive*

nonnative plants…..” Livestock grazing to control invasive non-native plants is an important role but it’s not limited to serpentine grasslands, but all grasslands. It is also not a new threat to other grasslands. The role of livestock grazing for controlling non-native plants across all grasslands need to be explained.

-3-42, paragraph 6. This is oversimplified. The research results are complicated and mixed. An accurate report of results would explain what has an effect and what may not.

Livestock grazing impacts to grassland structure should be discussed since this is relevant to covered species and rather unique to impacts of herbivory and livestock.

Why is the discussion on grazing effects limited to purple needlegrass? Grazing effects on native and non-native forbs would be relevant especially relative to covered species.

-3-43, paragraph 7. “*Grazing may have little effect on species diversity in serpentine grasslands…….Because invasive….. in non-serpentine grasslands(Harrison 1999*)” Delete. This paragraph should be updated. It doesn’t reflect the current research findings reported by the same scientist; see Harrison 2007 in California Grasslands. “*Some studies indicate that grazing by livestock may have beneficial role in the management of serpentine grasslands. In particular cattle grazing tended to increase the diversity of native annual forbs in serpentine grasslands.”*

-3-43, paragraph 8. “*Grazing is expected to have a negative effect on serpentine seeps, serpentine outcrops, and serpentine barrens that are contained within the larger grassland matrix*.” Cite or delete.

“*Therefore even a small amount of cattle trampling in either of these land cover types can remove vegetation and disturb soil and seed banks. Depending on intensity and frequency of grazing, this can be a permanent effect that is very difficult to restore or reverse*.” Cite or delete. Why is season of use not included as a factor?

22) -3-43, Threats, paragraph 1. The threats to grasslands in Santa Clara County have not been adequately identified, yet this seems crucial to identifying appropriate conservation objectives and actions towards success of the plan. Threats which should be listed included:
1) Land use change (Reiner 2003) or conversion for intensive agriculture or development including ranchettes.
2) Elevated fuel loads from accumulated biomass (Marty et. al 2005, Scott and Burgan 2005) and/or type conversion (Russell & McBride 2002) leading to catastrophic wildfire;
3) Uncontrolled invasive annual species (Reiner 2003);
4) Changes to grassland structure (Chapter 5, USFWS 2010 and Germano et. al 2001)
5) Encroachment of woody plants including native species (Ford and Hayes, 2007)
6) Nitrogen deposition (Chapter 5 and Weiss 1999)
7) Decline or cessation of grazing (Germano et. al 2001, Hayes 1999).

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Threats 2 through 7 are largely related but may be specific to a site. A discussion of these threats would clearly outline relevant conservation objectives and actions.

At the very least the following statements should be revised, cited or deleted because they are poorly worded and misleading:

"*Reduction in burning has lead to a decline in purple needlegrass grassland."* Delete. This statement is misleading and its implications are not supported by current research findings. In fact, high intensity fires could be considered a threat to purple needlegrass grasslands due to mortality of mature plants (Marty et al. 2005).

"Native bunchgrasses can tolerate and even thrive with light grazing with some frequency of fire." Cite or Delete. This statement is not well supported by current research findings which have not found consistent results of *N. pulchra* response to fire (Reiner 2007 in California Grasslands).

-3-44, paragraph 2. *"All grassland types, including seeps and outcrop/barrens, are threatened by exotic plant invasion*." All grassland types are already invaded by exotic plants. This statement doesn't appropriately describe the threat. An understanding of the threat is not only crucial to the conservation of the covered species in grasslands but also to formulating effective conservation objective and actions.

23) -pg3-49, Function and Integrity, 1st paragraph. Add after 1st sentence. Oak woodlands also provide forage for livestock. Grazed oak woodlands in the study area are typically managed in conjunction with adjacent vegetation types including riparian, grassland, and chaparral. 32

24) pg3-54, 2nd paragraph. Add to list of past manipulations "harvesting and poisoning of oaks" 33

25) -pg3-60. "*Regeneration is typically low and seedlings are rare*." This is too simplistic. It is common in stands to find adequate numbers of mature trees and seedlings but a shortage of saplings and intermediate trees (McCreary 2009) 34

26) -pg3-69, Function and Integrity. Add- Riparian areas are integrated into working rangelands in the study area. They are typically managed in conjunction with adjacent grasslands, chaparral, and oak woodlands. They are often used by livestock for forage, shade and drinking water. 35

27) -pg3-81, Function and Integrity. A discussion on the impact of vegetation on a pond's hydro period should be included because this has significant implications for pond creation and management. 36

28) –pg 3-82, Threats. Add. Changes to hydrologic regimes can threaten wetlands. The major features of seasonal inundation are defined by climate, but cattle grazing can change wetland hydrologic regimes by altering soil properties (Daniel et al. 2002) and modifying the rate of evapo-transpiration from plants (Bremer et al. 2001). Pyke & Marty 2005 found that grazing may play a critical role in maintain hydrologic suitability for aquatic plants and amphibians in ephemeral wetlands . 37

29) Pg3-83, Historical Extent and Composition. 2nd paragraph, last sentence. Add after "*With this growth came ranchers who built hundreds of stock ponds*"- largely with technical and financial assistance from the USDA Soil Conservation Service. 38

30) –pg3-84, Where is the Townsend bat accessing drinking water? 39

31) -pg3-84, paragraph 3. *"Ponds that contain either submerged or emergent vegetation are of particular importance to native amphibians as breeding habitat.*" Add: Although in ponds with little or no vegetation, California tiger salamander females may attach eggs to objects, such as rocks and boards on the bottom (Jennings and Hayes 1994). 40

32) –pg 3-84, paragraph 4. - "*Ponds with wetland fringe habitat (i.e., emergent vegetation) provide potential habitat for western pond turtle, California red-legged frog, and California tiger salamander."* This sentence doesn't seem consistent with information on pg 3-86. "*Many stock ponds are devoid of vegetation which can improve habitat for covered species…."* 41

33) –pg3-86, paragraph 1-*"Stock ponds are often surrounded by "pasture." Change to "grazing land or range or grazed rangeland."* This use of *"pasture"* is not consistent the use of "pasture" in Chapter 2. 42

34) –pg3-86, paragraph 1 – "*soil may be exposed due to the continued presence of livestock."* This statement is misleading because soil may also be exposed for other reasons like wildlife activity i.e. feral pigs or because of inundation periods and draw down. 43

35) –pg3-86,paragraph 1- "*Stock ponds, removed from grazing pressures, may be surrounded by wetland vegetation including willows…."* This statement is misleading because wetland vegetation especially woody vegetation may not be supported by water availability around some ponds with or without grazing. 44

36) –pg3-86, paragraph 1- It should be stated that feral pigs may use stockponds and impact banks and vegetation. 45

37) –pg3-87. Reservoirs, paragraph 1. It should be stated that livestock are excluded from all reservoirs, but feral pigs have access and may impact the shoreline. 46

38) –pg3-88. Natural disturbance. Include:
Natural soil erosion, sometimes increased by pond breaching, berm failure, livestock and wildlife impact including feral pigs, and inadequate management practices can result in increased sedimentation of the pond (Hamilton and Jepson 1940,Prunuske 1987), thereby reducing their quality for amphibian habitat. Alternatively, ponds with insufficient turbidity provide inadequate cover for California tiger salamander larvae (USFWS 2006). 47

39) –pg3-88 Threats. Add feral pigs. 48

40) –pg-3-89, 2nd paragraph. *"Heavy livestock use can degrade ponds quickly, leading to loss of emergent vegetation……"* This sentence is misleading and not very useful. Ponds may be void of emergent vegetation due to pond structure and ponds without emergent vegetation may provide good habitat. Livestock impacts can be controlled with additional off-site water and/or limited exclusion. Consider the guidelines developed by Scott and Rathbun 2002.
http://www.elkhornsloughctp.org/uploads/1237561708CombinedMgt26Feb09.pdf 49

41) –pg 3-89, Irrigated Agriculture. *"Irrigated agriculture encompasses all areas where the native vegetation has been cleared for irrigated agricultural use. This natural community does not include rangeland, which is often characterized as an agricultural land use."* What is "*natural community*" referring to in the second sentence? 50

42) -pg3-89 "*Grain, row-crop, hay and pasture, disked/short-term fallowed*." This land cover type is generally not irrigated which should be noted or the title of the community should be changed. 51

43) –pg3-92, next to last paragraph, last sentence. *"Croplands are abundant throughout the Santa Clara Valley south of San José, and are most dense just north of the southern county border."* What is "*cropland*" referring to in this sentence? It's not consistent with the other cover type terms used in this paragraph or section. 52

44) –pg3-93 Hay and pasture. How was "*pasture*" distinguished from "*grassland*" in lowland areas? Both could have livestock and fencing present. Can they be differentiated in an aerial photo? Was any pasture identified in non low-land areas i.e. hillsides, slopes? 53

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45) -pg4-42 Activities within the Reserve System. There is no mention of impact assessment relative to man-made pond demolition (pg 2-99). There is also no mention of impact assessment for pond creation which is also not included as a covered activity (Chapter 2) but is listed in the conservation strategy (Chapter 5). Shouldn't the potential impacts of creation and demolition be discussed? 54

46) –pg 4-42 Activities within the Reserve. There is no mention of impact assessment for culvert replacement pg 5-27. Since this activity typically requires a stream bed alteration permit shouldn't its potential impacts be noted? 55

47) Pg 4-42 Activities within the Reserve. Impact assessment relative to conservation activities that would normally require a streambed alteration permit i.e. dredging, culvert replacement, pond repair seem to be generally overlooked. An impact assessment of these activities might help pave the way for permitting and implementation of these conservation actions across the study area on similar activities outside the reserve. Private landowners currently often have difficulty obtaining such permits. 56

48) –pg4-42 and 4-43, last paragraphs. Potential impact assessment for both the construction of trail and fuel breaks is mentioned but not roads. This seems like an oversight because the potential impact from roads would likely be more substantial than the impact from trails or fuel breaks. 57

49) –pg 4-43, last paragraph. Recreational use (i.e heavily used trails and their locations) especially as it relates to Golden Eagle habitat should be mentioned. 58

50) –pg 4-44, Activities out the Reserve System. Language is not consistent with Pg 1-7, Pg 2-36, Pg 2-98. Are covered activities outside of the reserve meant to be limited to stream and riparian restoration? What about pond creation, pond maintenance, culvert replacement? Shouldn't all conservation activities that work towards the goals of the HCP in the study area within or outside of the reserve be covered? 59

51) Pg 4-49. Impact Assessment Methods. Impact assessment methods should be described with respect to pond creation, pond demolition, road development and road removal. 60

52) Pg 4-59. Effects on burrowing owl habitat. Impact assessment might have included an assessment of the long-term ability to manage a site's vegetation for successful burrowing owl habitat. For example, mowing programs around the taxi ways at the San Jose International Airport are conducive to burrowing owl habitat. This vegetation program is likely to continue in conjunction with the operation of the airport. A property with a compatible use that requires management will more likely be managed and provide long-term habitat than a property without a compatible use. 61

53) Pg4-74. 3rd Paragraph, 2nd sentence. "*The existing grazing regimes provides far more extensive disturbance extensive on an ongoing basis than do the existing or proposed management and recreational uses…..*" What is the purpose of this sentence? Although grazing is a type of disturbance its disturbance to the landscape is different than that of recreation which typically involves staging areas, parking lots, local vehicle traffic and people on trails. This statement also doesn't reflect the primary conservation role of grazing serpentine landscapes which includes removal of annual biomass and excess nutrients i.e. nitrogen. 62

54) Pg4-78. Direct Effects. It's not clear if the demolition of ponds and removal of roads as listed in Chapter 2 was covered in this assessment. 63

55) Pg4-82. Indirect Effects. Were changes in land use that result in uncontrolled vegetation considered and assessed as indirect impacts to CTS and RLF? The following statement and its relation to conserving quality habitat for CTS should be considered - "*The rate of natural movement of salamanders among breeding sites depends on the distance between the ponds or complexes of ponds and on the quality of intervening habitat (e.g., salamanders may move more quickly through sparsely covered and open grassland than they can through densely vegetated lands) (Trenham 1998a).*" 64

56) Pg 4-87. Golden Eagle. Indirect Effects. Was the impact of recreation assessed for Golden Eagle habitat? 65

57) Pg 4-97. SJ kit fox. Indirect effects. USFWS (2010) acknowledged two additional threats to kit fox which included change in vegetation structure and changes to grazing regimes. Shouldn't the potential for land use to impact vegetation and/or grazing should be addressed in this section? In addition the Species Account for SJ kit fox should be undated to include current USFWS information. 66

58) Pg 4-97. Serpentine plants. Shouldn't the potential for the uncontrolled growth and thatch of non-native annual species to impact covered plants be considered, especially if plan actions result in changes to land use i.e. changes in grazing distribution, intensity, timing, or frequency? Both climate change and nitrogen deposition are likely to make the issues with non-native annuals species more pronounced. 67

59) Pg4-111,CTS. Pg 4-110 discusses the importance of grazing for habitat of Bay Checkerspot Butterfly. CTS critical habitat should include a similar discussion. Shouldn't the following statements from USFWS be considered? *"Managed livestock grazing by cattle, horse and sheep is thought to be compatible with the successful use of rangelands by the California tiger salamander. It has been recognized that grazing can maintain a low vegetation structure which makes areas more suitable for California ground squirrels whose burrows are essential to California tiger salamanders. The Service (2004) has recognized that the long-term effect of ranching is either neutral or beneficial, as long as burrowing rodents are not completely eradicated. It is likely that CTS would have been extirpated from many areas if stock ponds had not been built and maintained for livestock production. Less vegetation may also facilitate the movement of California tiger salamanders from upland areas to breeding ponds (USFWS 2003). In addition, sustainable grazing around natural ephemeral pools may also benefit the California tiger salamander by extending the inundation period so amphibian larvae can complete their life cycle (USFWS 2004)."* 68

U.S. Fish and Wildlife Service. 2003. Endangered and threatened wildlife and plants; Listing of the central California distinct population segment of the California tiger salamander; proposed rule. Federal Register 68:28648

United States Fish and Wildlife Service. 2004.Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the California Tiger Salamander; and Special Rule Exemption for Existing Routine Ranching Activities; Final Rule. April 4, 2004. 69 FR 47212 47248

The fact that grazing for CTS is compatible if not beneficial has important implications for management and land use. The importance of keeping ranching viable as a tool for landscape conservation in the area is widely recognized by conservation organizations , USFWS, Department of Fish and Game and others who are signators to the California Rangeland Conservation Resolution. The success of SCVHCP reserve is in large part depends on a viable ranching community i.e. no funds have been allocated in the plan to pay for grazing. Clearly stating that grazing will be a key management tool used within the reserves for CTS seems essential give the extent of CTS critical habitat and the need to keep ranching viable for the success of this plan.

60) Pg 4-113. CRLF. As noted on pg 4-110 grazing as management tool for Red-Legged Frog should also be discussed. Consider the following statements from USFWS: *"Although overgrazing was recognized as a threat to the CA Red-legged Frog; findings since the listing have concluded that managed livestock grazing at low to moderate levels has a neutral or beneficial effect on frog habitat. Managed livestock grazing around ponds can maintain a mix of open water habitat and emergent vegetation. In some cases, without managed grazing, stock ponds would quickly fill with emergent vegetation resulting in habitat loss. In some locations fencing which had excluded livestock from ponds is being removed to improve habitat for red-legged frogs (USFWS 2006)."*

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United States Fish and Wildlife Service. 2006. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Red-Legged Frog, and Special Rule Exemption Associated With Final Listing for Existing Routine Ranching Activities; Final Rule. April 13, 2006. 71 FR 19244 19346.

61) Pg4-116. On-going and Routine Agriculture. Information presented here does not seem to be consistent with current USFWS regulations which include a 4d rule exemption for both CTS and CRLF habitat. Ranching activities that work towards conservation targets in this plan should be covered, including routine ranch activities as defined by the USFWS in the 4(d) rule. Wouldn't a better description of permitting issues (CA Department of Fish and Game and USFWS) in regards to routine ranch activities help work towards the goals of this plan? For example, are there conservation actions on private ranches in the study area that have been put off because of concerns/ issues regarding permitting (issues around stream-bed alteration permits)? Would addressing

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these issues work effectively towards the conservation targets in this plan? Sustaining ranching is crucial to the success of this plan, because the plan has not allocated sufficient funds to manage vegetation without grazing or to pay for grazing as a vegetation management tool throughout the reserves.

62) Pg 4-116. Last sentence. Delete reference to "ranchlands." Ranchlands is a planning designation which doesn't seem appropriate in this context.

Include: Hydrology of an area may also be impacted by a loss/ change to agricultural practices, specifically grazing practices (Pyke and Marty 2005). 71

63) Table 4-5h. Based on chapter 2 and other sections of the plan, shouldn't covered activities in this table be amended to include creation of ponds, demolition of ponds, demolition of roads, water distribution system and livestock water source, removal of fence? 72

64) Pg5-2. Add to list of goals….Support opportunities to sustain working rangelands and their stewards that work towards the conservation and enhancement of covered species.

Please note this goal should not be interpreted as a goal to sustain the livestock industry but a goal that would go hand-in-hand with the goal of establishing a framework for long-term management. 73

65) Pg5-6. Landscape-Level goal- Add goal 1c…. Maintain or improve opportunities to sustain working rangelands and their stewards. 74

66) Pg5-6. Natural Community. These communities are listed as if they occur in isolation. Either the landscape level goal needs to be clearer or their needs to a community goal to integrate the individual natural communities. 75

67) Pg5-6. Natural Community. Structure relative to natural community seems to be missing from these goals. Consider the current findings of USFWS with regards to listed species which often refer to species being impacted or threatened by changes to " *vegetation structure"*. 76

68) Pg5-7. Pond. Note pond creation is currently not listed as a covered activity and the impact of pond creation does not appear to have been assessed by this plan. 77

69) Pg5-8. In concert with the goals of the California Rangeland Conservation Coalition and its efforts to conserve working rangelands and the habitat they provide including the habitat of most of the species covered by this plan, an additional set of goals should be added to this plan. These goals should address the sustainability of working rangelands. Inclusion of these stewardship goals has important implications to the success of the plan 78

including a more cost effective approach to successful implementation and long-term management. Consider the following goals:

Stewardship-level goals

-Insure a predictable regulatory environment for working rangelands with respect to implementation of the plan, i.e. conservation actions working towards plan objectives should be covered inside and outside of the reserve

-Prescribe conservation measures based on specific, identifiable biological needs. These measures should be cost effective and operationally feasible.

-To the maximum extent possible, allow rancher stewards discretion to manage lands and implement conservation measures as long as this management does not undermine or diminish work towards covered species enhancement and conservation.

-To the maximum extent possible, provide opportunities for rancher stewards to implement and be compensated for completion of prescribed conservation actions working towards the enhancement and conservation of covered species.

-Identify and/ or establish alternative forage sources for ranchers to utilize to maintain herd numbers during low forage production years or loss of forage due to fire or competing objectives.

70) Pg5-24. Field Verification. Verification should include condition of rangeland management infrastructure. Adequate infrastructure is key to successful management. The cost of establishing infrastructure i.e. fencing and water should not be underestimated. Hasn't the San Bruno HCP reported a decline in habitat and covered species because of an inability to effectively manage as a result of lack of rangeland management infrastructure? 79

71) Pg5-24. Field verification should also include an evaluation of the site's current management capacity and record. A current range steward who has a proven record based on sites' current condition could be invaluable. 80

72) Pg5-24. Field verification. Based on this list a site's current condition and habitat seems to be understated compared to its potential. Is this intentional? Does the plan give priority to sites that need restoration and enhancement over sites which already provide high quality habitat? 81

73) Pg 5-26. Habitat enhancement, last paragraph. Enhancement should include vegetative structure.

"*Enhancement*" should be changed or differentiated from management. To imply that current rangeland management practices including grazing which in some cases have been conducted over at least the past 150 years with successful conservation outcomes, are "enhancement" is at the least misleading. This sort of language and the belief that current rangeland management including grazing practices on all grasslands need to be 82

improved (pg 5-27) or enhanced (pg 5-100) indicates a lack of understanding and appreciation for the foundation of the California Rangeland Conservation Coalition of which USFWS and CA Department of Fish and Game are signators.

There seems to be no acknowledgement that the best management of acquired lands (easement or fee title) for the conservation of covered species may be no different (in many cases) than the current and past management.

74) Pg 5-27. 1st paragraph, 3rd bullet. Add "*lack of grazing*". USFWS in recent species reviews has repeatedly recognized that a decline in grazing and cessation of grazing is a growing threat to listed species on annual rangelands. 83

75) Pg5-27. 1st paragraph, last bullet. Resizing culverts currently does not appear on the list of covered activities Chapter 2 and its potential impacts have not been assessed Chapter 4. 84

76) Pg 5-29. Land Management on Reserves. The stated planning process fails to recognize a process to identify and assess the current and historic management occurring on site. 85

77) Pg 5-31. Land Management on Reserves. It should be recognized and stated that the California Natural Resources Code (see comment #3) requires that management plans and their implementation which are not written or implemented by the landowners (on non-federal "forested rangeland") be written and conducted by a CA state licensed Certified Rangeland Manager. Please note this is not a requirement of CA Department of Fish Game or USFWS but a requirement from the California State Code. 86

78) Pg5-31. Land Management on Reserves. Paragraph 2. This reads as if all lands in the reserve will be acquired by fee title. There is no mention of the land owner or easement holder participating in the reserve unit management plan development. 87

79) Pg5-31. Land Management on Reserves. Paragraph 3. "*Reserve lands will be managed in accordance with……..management methods currently being used in the study area*" This sentence should be revised. Management should not be based on methods used elsewhere but on methods that address site specific biological objectives. Add. Any changes to current management should be based on specific biological objectives. 88

80) Pg 5-31. Land Management on Reserves. Paragraph 4, 1st sentence. Delete "*Until a reserve unit management plan is prepared*" This statement should remain true even after a reserve unit management plan is prepared. Current and historic use and management and associated outcomes should guide future management. Deleting this first phrase will be more consistent with the language on 5-28, paragraph 1, sentence 2. 89

81) Pg 5-31. Delete "*For example, if a parcel was previous overgrazed, the stocking rate could be reduced to the point……"* Does the plan seek to acquire habitat that has been 90

degraded by previous management? This is a poor example which indicates a lack of understanding of rangeland management. If "overgrazing" is an issue on a site, reducing the stocking rate may or may not be the solution.

82) Pg 5-32. Vegetation management goals. Important vegetation management goals as they pertain to covered species and their goals are missing. These goals relate to managing non-native annual grasslands. An accurate description of the ecosystem function and structure of grasslands in the study area (Chapter 3) as well as updated Species Accounts (appendix) would help develop these goals. These goals are in general with regards to managing vegetation structure and biomass. Does "*reducing abundance and distribution of invasive plants*" adequately address the threats to kit fox of changes to vegetation structure or threats from thatch and biomass relative to fragrant fritillary? 91

83) Pg 5-34. Fire management. Paragraph 3. It should be clearly stated that the decision system to determine if a wildfire should be allowed to burn naturally will consider potential impacts to neighboring properties including loss of forage and livestock. 92

84) Pg5-35. Maintenance of Infrastructure. Rangeland management infrastructure is overlooked. This infrastructure includes livestock watering sources including its collection, storage and distribution, corrals and other working facilities. How will livestock grazing be used as a management tool without adequate facilities? 93

85) Pg5-82. Mimic Natural Processes. What's the conservation objective of mimicking natural processes? How does "mimicking a natural process" or maintaining natural processes in general address the current threats to natural communities addressed in this study area? These threats are largely not caused by a lack of "natural processes"(see comment 22) and are not likely to be fixed by natural processes. 94

86) Pg 5-83. Paragraph 2. Connectivity and Permeability. Considering the amount of funding in the budget dedicated to road removal this discussion doesn't seem to be adequate. Erosion issues should be addressed but the benefit versus hazard of roads in the reserve relative to wildlife and their movement should be assessed. 95

87) Pg 5-91. Control Invasive plants. Given the high cost of control, why is the discussion on prevention so limited? For example what about policies for equipment to be cleaned between sites. This would include equipment of the implementing entity and other contractors. Prevention relative to the spread of non native species should also be covered in Chapter 8. 96

88) Pg5-95. Preventing the spread of *Phytopthora ramorum* should be discussed. This should also be discussed in Chapter 8. 97

89) Pg5-98. Grassland biological goals and objectives. Managing vegetation structure is critical for several covered species and needs to be included. 98

90) Pg 5-100. See comment 73. "*Enhancement*" should be changed to "management" or at least differentiated from management. 99

91) Pg 5-100. Grassland Enhancement. 2nd paragraph. It should be stated that ecological site descriptions should be utilized in identifying proper management regimes. 100

92) Pg 5-100. Grassland Enhancement. 3rd paragraph. It should be noted that the reserve manager on "forested rangelands" who is not the landowners will need to work under the direction of a CA licensed Certified Rangeland Manager. 101

93) Pg 5-101. "*Techniques to reduce thatch will be applied only where the treatment is expected to benefit native grassland species*." Does benefit mean short-term benefit, long-term benefit, direct benefit, in-direct benefit? What is the purpose of this statement? It seems to indicate a lack of understanding regarding the structure and function of annual grasslands relative to covered species in this plan. Thatch may impact rangeland health including carbon sequestration and water quality. Reasons to reduce thatch should not be limited to benefits of native grassland species. On the other hand, selection of techniques to reduce thatch should consider their impact to native grassland species. 102

94) Pg 5-101. Harrison et.al. 2003. This research is not accurately reported. It did not report that grazing increased or decreased native plant diversity. The research did not measure change but evaluated differences between sites (grazing effects). In addition, citing results from one study without further discussion is not an adequate representation of what is known and not known about grazing effects on native species diversity. For example, the same study also reported that grazing may reduce the risk of wildfires that are not properly timed to benefit native species, and which may therefore increase the abundance of exotic relative to native species, especially on non-serpentine soils (Harrison et al. 2003). 103

95) Pg5-101. "*ranch land*". A more appropriate term is "rangeland." 104

96) Pg5-102. "*Initially, vegetation management that is implemented will reduce the height of all vegetation to less than 12 inches."* What season? For all types of vegetation in grasslands? Will this be adequate to address changes to vegetation structure that threaten or degrade habitat of SJ kit fox, BCB, CTS, Golden Eagle and some covered plants? 105

97) Pg 5-102. "Tule elk may not be ideal native grazers on a large scale." This statement is misleading. "Ideal" is hardly the major issue. Consider conservation objectives relative to covered species? Consider current and potential elk numbers? 106

98) Pg 5-102. " Cattle are moved from pastures that no longer supply enough grass to maintain cattle weight" This is misleading and generally incorrect. There are numerous reasons why cattle are moved from one pasture to another. 107

99) Pg 5-103. "..consideration of historical patterns of currently grazed lands will direct decisions about grazing in the Reserve System." This is an appropriate statement but it is not consistent with previous statements see previous comments. 108

100) Pg 5-103 Prescribed Burning. 1st paragraph. These statements are accurate but completely inconsistent with information presented in Chapter 2. 109

101) Pg 5-104 "Mowing…in areas that cattle cannot access (such as steep or rocky slopes)." Really? A cow cannot get there but a mower can. 110

102) Pg 5-107-111. Grazing relative to chaparral should be discussed. 111

103) Pg5-111. Why would you mix a discussion of oaks with conifers? Significant portions of the oak woodlands in the study area are managed in conjunction with grasslands. 112

Chapter 5. Table 5-1

104) LM-1. "*Removing fences and roads where they are no longer needed…..*"

This should be removed as conservation action. There is no evidence that this action will be an effective action for covered species. 113

105) LM-9. "*mimic natural effects of fire….to subsequently improve habitat for native vegetation.*"

This conservation action should be rewritten with a clear action and objective. As written it not only misrepresents the role of "the natural effects of fire" but also the use of other management tools for vegetation and habitat management. Each tool has a potential role for habitat improvement but their value is not necessarily in mimicking another tool. 114

106) LM-11. "*Graze, mow, hand-pull, to reduce non-native invasive plant species, both terrestrial and aquatic, to a level where native plants can reestablish and remain dominant with the Reserve System.*"

Can you provide any evidence that this goal "*native plants can reestablish and remain dominant*" is achievable especially on the landscape level? This conservation action seems to reflect a lack of understanding regarding California rangeland ecology, especially as it relates to annual grasslands which dominant the study area. 115

107) Objective 3.3. "*Eradicate or reduce the cover, biomass and distribution….*"

This objective should not lump several conservation objectives and an additional objective should be included for managing vegetation structure for the benefit of covered species. Appropriate actions for eradication are different than appropriate actions for managing biomass and yet again different than appropriate actions for managing structure. 116

108) Studies-2. "*Experimentally manage oak woodlands to reduce seedling mortality……*"

The University of California Integrated Hardwood Rangeland Management Program has been promoting, conducting and reporting on research regarding oak woodlands management for 25 years. The research of the IHRMP and others should inform adaptive management of oak woodlands to reduce seedling mortality without the need for "experimentation." 117

109) Grass-1. "*Continue or introduce livestock and native herbivore grazing…..*"

What is the intention of this statement with regards to native herbivore grazing? Where is the research to support the conclusion that native herbivores could be used to successfully manage California rangelands to support covered species in this plan? For example, because grazing by native herbivores cannot be successfully managed their continuation or introduction would not address current threats to Bay checkerspot butterfly i.e. lack of grazing or current threats to kit fox i.e. change in vegetation structure or grazing regime. 118

110) Grass-3. "*Conduct mowing in selected areas to mimic grazing…*"

While mowing can be an effective grassland management tool, the objective of its use should not be to "mimic grazing," Unlike a mower, a grazing animal is selective and defecates. 119

111) Grass-2. "*Conduct prescribed burns. Use targeted studies to inform methods, timing, location, and frequency.*"

Prescribed burns should be used for specific conservation objectives, i.e. controlling yellow star thistle or goat grass. What's the meaning of a "targeted study?" 120

112) *Grass-4. "Conduct selected seeding of native forbs and grasses in the Reserve System."* 121

This action is stated to benefit CTS, western burrowing owl, San Joaquin kit fox, and covered plant species. Where is there evidence that this action will benefit covered species?

113) *Goal 4. "Maintain and enhance grassland communities that benefit covered species and promote native biodiversity."*

Objectives are missing in order to achieve this goal. For example, consider the current threats to San Joaquin kit fox as stated by the USFWS 2010. These threats are not covered by the current listed objectives. In addition consider current threats to grasslands such as conversion to brush. This threat is also not addressed by the current listed objectives. 122

114) Chapter 9, Table 9-13. USDA Natural Resource Conservation Service programs including EQIP and WHIP should be reviewed. These programs may provide technical assistance including the development of conservation plans and funding for implementation of conservation actions. 123

115) EIR/EIS, pg 7-4. *"Rangelands are not identified as a natural community in the Habitat Plan, but grazing occurs on several natural community types including grasslands (18.2 percent of the Study Area), chaparral and northern coastal scrub (9.7 percent of the Study Area), and oak woodland (37.7 percent of the Study Area)."* What exactly is your definition of rangeland? It does not seem to be defined anywhere in the document. 124

116) EIR/EIS, pg 7-6. *"Loss of land cover types that could be used as rangeland…."* Rangeland is not defined as a land use. Consider the definitions of rangelands provided by the State of California's Public Resource Code, Rangeland Management textbooks, or the Society for Range Management. These definitions are consistent with the description of rangelands provided by Wikipedia: **Rangelands** are vast natural landscapes in the form of grasslands, shrublands, woodlands, wetlands, and deserts. Types of rangelands include tallgrass and shortgrass prairies, desert grasslands and shrublands, woodlands, savannas, chaparrals, steppes, and tundras. It is perhaps easier to define rangelands by clearly describing what they are not. Rangelands are not: barren desert, farmland, closed canopy forests, or land covered by solid rock, concrete and/or glaciers…. Grazing is an important use of rangelands but the term *rangeland* is *not* synonymous with *grazinglands*. There are areas of rangeland that are not grazed and there are grazed areas that are not rangelands. Livestock grazing can be used to manage rangelands by harvesting forage to produce livestock, changing plant composition or reducing fuel loads…..Fire is also an important regulator of range vegetation whether set by humans or resulting from lightning. Fires tend to reduce the abundance of woody plants and promote herbaceous plants including grasses, forbs, and grass-like plants. The suppression or reduction of periodic wildfires from desert shrublands, savannas, or woodlands frequently invites the dominance of trees and shrubs to the near exclusion of grasses and forb. 125

117) EIR/EIS, pg 7-6. *"Loss of land cover types that could be used as rangeland (approximately 8,700 acres total) would not be significant given the extent of areas that would remain for grazing."* If this statement represents intended results of the HCP then adequate provisions (permit coverage and budget) should be included to support essential grazing infrastructure i.e. water developments, working facilities, fencing. Note that pg 2-105 states that "livestock management" is not a covered activity of the plan. 126

118) EIR/EIS, pg 7-7. *"Although the management plan could include limitations on some grazing activities, it is expected that grazing would continue to be allowed on the natural lands acquired for the Reserve System because grazing is typically consistent with habitat management. No adverse impacts to grazing are expected, and grazing opportunities may be increased under the Proposed Action because of the benefits of grazing to the Reserve System (e.g., weed control)."* Grazing and livestock impacts can be used for weed control but this use of grazing is not clearly identified or described in the final draft of the HCP as reflected by the conservation actions which note the use of grazing. 127

LM-11. "*Graze, mow, hand-pull, to reduce non-native invasive plant species, both terrestrial and aquatic, to a level where native plants can reestablish and remain dominant with the Reserve System.*" This action fails to recognize the value and potential realistic outcome of using grazing, mowing or hand-pulling to reduce non-native plant species.

GRASS-6. "*reduce vegetation and biomass."* The use of grazing to reduce vegetation and biomass is not synonymous with grazing for weed control.

119) EIR/EIS, pg 7-9. "*New preserves in the Diablo Range (especially those managed by The Nature Conservancy) continue to include grazing as part of land management."* TNC's use of grazing for land management should also be included in the discussion in Chapter 2. 128

A comprehensive review of this plan is essential. If comments above are addressed they will likely require amendments to other sections of the document including the executive summary, conservation objectives and actions, monitoring and adaptive management and the budget. A comprehensive review could insure that an effective and efficient plan has been developed.

Comment Letter 25—Sheila Barry, Bay Area Natural Resources/Livestock Advisor, University of California Coop Extension, April 8, 2011

Response to Comment 25-1

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 25-2

Comment is addressed in Master Response #5.

In addition, see Responses to Comments 25-10, 25-13, 25-25, 25-59, 25-68, 25-69, 25-70, 25-78, 25-79, and 25-80.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 25-3

See Responses to Comments 25-29, 25-30, 25-31, 25-91, and 25-101.

Revisions to the Habitat Plan include the following:

Updates to Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types,* subheading *Grassland,* to improve the accuracy of the description of ecosystem structure and functions. The conservation objectives were reviewed to ensure they were clear and measurable.

Response to Comment 25-4

All conservation activities implemented by a Permittee or through an agreement with the Implementing Entity are covered by the Plan inside or out of the Reserve System.

In addition, see Responses to Comments 25-22, 25-24, 25-25, 25-54, 25-55, 25-56, and 25-59.

No additional changes to the Habitat Plan are required.

Response to Comment 25-5

See Response to Comment 23-17.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 8, subheading *Management Conducted by Third Parties*) "The Implementing Entity may contract with a third party landowner, contractor, or other agency or organization to conduct management activities within the Reserve System on the Implementing Entity's behalf."

Response to Comment 25-6

As indicated by the commenter, the Draft Habitat Plan cost model did identify costs for wells and pumping. The purpose of the wells is to provide a water source to some of the ponds that will be created under the Plan. Although the ponds are created to provide habitat to covered species, they may also provide a water source for livestock. The Implementing Entity will implement the most cost effective management techniques to meet the Plan's goals and objectives. Costs associated with road removal were reduced in the Final Habitat Plan (see Appendix G).

In addition, see Responses to Comments 25-1325-22, and 25-93.

No additional changes to the Habitat Plan are required.

Response to Comment 25-7

Costs associated with road removal were reduced in the Final Habitat Plan (see **Appendix G**). In regards to the benefits of this activity to the San Joaquin kit fox, see Habitat Plan Section 5.3.2 *Landscape Conservation and Management*, subheading *Connectivity and Permeability.*

No additional changes to the Habitat Plan are required.

Response to Comment 25-8

The Plan includes extensive avoidance and minimization measures, which are described Habitat Plan Chapter 6 *Conditions on Covered Activities and Application Process*.

No changes to the Habitat Plan are required.

Response to Comment 25-9

The Habitat Plan recognizes grazing as a management tool to enhancement habitat quality for Bay checkerspot butterfly (Habitat Plan Section 5.4.1 *Bay Checkerspot Butterfly,* subheading *Management Techniques and Tools*), San Joaquin kit fox (Habitat Plan Section 5.4.9 *San Joaquin Kit Fox,* subheading *Biological Goals and Objectives*) (subheading refers to grassland conservation and management as beneficial to species), and California red-legged frog (Habitat Plan Section 5.4.3 *California Red-Legged Frog,* subheading *Biological Goals and Objectives*) (subheading refers to grassland conservation and management as beneficial to species).

Revisions to the Habitat Plan include the following:

In Habitat Plan **Appendix D**, the Bay checkerspot butterfly species account was updated to include information from the species' 5-year review:

"**Vegetation management.** Both overgrazing and undergrazing have been identified as threats to this species (U.S. Fish and Wildlife Service 2009). Grazing is used to reduce standing biomass of nonnative vegetation and increase the prevalence of native forbs, including Bay checkerspot butterfly's larval hose plant. As such, grazing regimes should be monitored to ensure that species habitat is not degraded.

Gopher control. It has been observed that Bay checkerspot butterfly's larval host plants stay green and edible longer when located on or near soils recently tilled by gophers. This increases the availability of larval host plants into the dry season and may allow more larvae to reach diapause. Gopher control could decrease the availability of these tilled soiled and result in the reduction of larval host plant availability (U.S. Fish and Wildlife Service 2009)."

In Habitat Plan **Appendix D**, the San Joaquin kit fox species account was updated to include information from the species' 5-year review:

"Habitat alteration also represents a threat to this species. This is known to result from oil extraction and mining activities, changes in wildlife prevalence, and changes in vegetation structure due to nonnative species and altered grazing regimes (U.S. Fish and Wildlife Service 2010)."

Regarding the California red-legged frog resources, more recent sources were used (U.S. Fish and Wildlife Service 2010), and the Habitat Plan already includes grazing as a management tool for this species.

Response to Comment 25-10

The Habitat Plan was developed as both a Habitat Conservation Plan to obtain a federal Section 10(a)(1)(B) permit from USFWS and a Natural Community Conservation Plan to obtain a state NCCPA permit from CDFG. The term *objective* has a very specific meaning under both federal and state statues.

In the context of the Habitat Plan, objectives are biological in nature. The successful implementation of the Habitat Plan will require partnerships with many stakeholders (including the agricultural community on working rangelands in the study area), although doing so is not a stated objective of the Habitat Plan. Biological objectives in the Habitat Plan do not preclude or support any particular land use.

No changes to the Habitat Plan are required.

Response to Comment 25-11

The Plan was updated to clarify inconsistencies describing where conservation actions may take place. Covered activities associated with implementation generally take place in the Reserve System, but some actions may be undertaken outside the Reserve System (e.g., stream restoration, monitoring for select species,). Habitat restoration will count toward the conservation strategy only if it meets the criteria identified in Habitat Plan Chapter 5, Section 5.2.5 *Habitat Restoration*. In general, conservation actions and monitoring will take place within the Reserve System (i.e., lands acquired, managed, and monitored by the Implementing Entity to benefit covered species under this Plan). However, monitoring for burrowing owl and tricolored blackbirds will extend beyond the Reserve System boundaries as described in Habitat Plan Section 7.3.3, *Species-Level Actions*. Monitoring outside of the Reserve System will still occur within the Plan's permit area (Habitat Plan Section 7.1, *Introduction).*

The Plan also states (Habitat Plan Chapter 2, Section 2.3 *Covered Activities*) "Activities or projects that do not fall clearly within the descriptions provided in this chapter will be evaluated on a case-by-case basis. If the Implementing Entity determines that a specific type of project or activity is not included within the descriptions in this chapter, then it will not receive coverage under this Plan. Any uncertainties regarding whether a type of project or activity can receive coverage under this Plan will be resolved by the Implementing Entity."

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.3.1. *Methods for Identifying Covered Activities*) "Conservation Strategy Implementation (activities within the lands managed, enhanced, restored, and monitored to conserve the natural resources targeted by this Plan)."

Response to Comment 25-12

(California Code of Regulations, Title 14, Sections 1600–1651) Discussing the registration of professional foresters is not a key regulation for covered species. The Implementing Entity will consider all applicable state regulations when implementing the Plan.

No changes to the Habitat Plan are required.

Response to Comment 25-13

The Local Partners and Wildlife Agencies acknowledge the commenter's request to add a new appendix to the Plan on infrastructure needs for effective rangeland management. A new appendix was not necessary because infrastructure needs for effective rangeland management are generally described in the implementation cost assumptions (Habitat Plan Appendix G) and specific infrastructure needs will be addressed during implementation in the reserve unit management plans. Also see Responses to Comments 25-22 and 25-93.

No changes to the Habitat Plan are required.

Response to Comment 25-14

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.2.1 *Existing Conditions*) "Once known as the 'Valley of Heart's Delight,' orchards and other agriculture dominated this area in the early to mid-20th century."

Habitat Plan Chapter 2, Section 2.2.1 *Existing Conditions,* subheading *Unincorporated Areas of Santa Clara County* updated consistent with the edits requested.

Response to Comment 25-15

The Habitat Plan works to implement this strategy by providing current, reliable scientific information.

No changes to the Habitat Plan are required.

Response to Comment 25-16

The lack of livestock grazing is included for Henry Coe State Park to explain why stock ponds are not maintained: "An important unmet need in park management is maintenance of existing but unused stock ponds that provide important habitat for California red-legged frog and California tiger salamander (A. Palkovic pers. comm.). There is no livestock grazing in the park." (Habitat Plan Section 2.2.4 *Existing Open Space and Parkland*, subheading *Henry W. Coe State Park*).

The land use component of Habitat Plan Chapter 2 provides an overview of the major land use and open space management agencies operating within the study area and provides a brief description of each agency's mission and jurisdiction. In providing this overview, the status of grazing vs. no grazing is not consistently addressed. This information is provided to the extent that the information was readily available during development of this section.

No changes to the Habitat Plan are required.

Response to Comment 25-17

See Response to Comment 25-16 in relation to the discussion, or lack thereof, regarding grazing on open space and parklands.

No changes to the Habitat Plan are required.

Response to Comment 25-18

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.2.4 *Existing Open Space and Parkland,* subheading *California Department of Fish and Game*) "A grazing management plan has been developed for this site, although the plan has not been implemented." Similar edits were made in Chapter 9 of the EIR/EIS.

Response to Comment 25-19

The Local Partners and Wildlife Agencies acknowledge the comment. The use of "recent" is not incorrect.

No changes to the Habitat Plan are required.

Response to Comment 25-20

See Response to Comment 25-16 in relation to the discussion, or lack thereof, regarding grazing on open space and parklands.

No changes to the Habitat Plan are required.

Response to Comment 25-21

See Response to Comment 25-16 in relation to the discussion, or lack thereof, regarding grazing on open space and parklands.

No changes to the Habitat Plan are required.

Response to Comment 25-22

The Habitat Plan includes covered activities to support livestock grazing in the Reserve System.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.3.8 *Conservation Strategy Implementation*)

- "Construction, rehabilitation, and maintenance of facilities (e.g., corrals, fencing, gates, feed storage, water delivery) to support livestock grazing as a covered species management tool.
- Maintenance of existing roads and of new roads constructed for the Reserve System, including grading and relocation of roads to protect sensitive resources."

(Habitat Plan Chapter 4, Section 4.3.7 *Conservation Strategy Implementation*)

"Man-made livestock pond removal will only be only undertaken if removal improves the functional values of the site or if the pond is a safety hazard. If such actions are taken, the Implementing Entity will replace the pond lost with a new pond in another location in the Reserve System consistent with the requirements of the conservation strategy. Naturally formed ponds will not be removed.

Another example of habitat enhancement actions that may temporarily and adversely affect wildlife habitat is road removal. Road removal will only be undertaken if the benefits are determined to outweigh the adverse effects. For example, it may be appropriate to remove a road that is poorly sited such that it is contributing to localized erosion. It may not be appropriate to remove a road that is not causing other adverse impacts. In such cases, instead of removal, a road may simply be closed off from access."

Response to Comment 25-23

The Local Partners and Wildlife Agencies acknowledge the comment. The use of "newly acquired" is correct in the context of the section.

No changes to the Habitat Plan are required.

Response to Comment 25-24

The Habitat Plan states "All habitat enhancement, restoration, and creation activities conducted within Plan reserves that are consistent with the requirements of this Plan are covered by the permits." However, the Plan was updated to underscore that this includes pond creation.

The Plan also covers pond creation for the purpose of livestock management and wildlife outside the Reserve System for County Parks. Coverage for the Open Space Authority for this activity was added for clarity and consistency.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.3.8 *Conservation Strategy Implementation*)

- "Pond creation."

(Habitat Plan Chapter 2, Section 2.3.6 *Rural Operations and Maintenance*)

- "Creation of new ponds to support livestock grazing or wildlife."

Response to Comment 25-25

The recommendation to remove "livestock management" from the list of routine and ongoing agricultural activities not covered by the Plan was not implemented. The reason for this was further clarified in the text.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.4 *Projects and Activities Not Covered by this Plan*) "Routine and ongoing agricultural activities that do not go through a County or city permitting process (e.g., a grading and/or building permit) would not be subject to local approval and therefore cannot be covered by the Plan."

Response to Comment 25-26

Revisions to the Habitat Plan include the following:

Habitat Plan **Table 2-2** was updated for the Final Habitat Plan.

Response to Comment 25-27

More detailed analysis of soils may be conducted when the reserve unit management plans are developed.

No changes to the Habitat Plan are required.

Response to Comment 25-28

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 3, Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Historical Extent and Composition*) "Grazing by livestock and wildlife continues today in almost all of the grasslands and other natural communities linked to grasslands (woodlands, riparian woodlands, and shrublands) of the County, although less intensively than in the past."

Response to Comment 25-29

Comment is partially addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Additional revisions to the Habitat Plan include the following:

Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types*, subheading *Ecosystem Functions*, subheading *Function and Integrity* was extensively revised in response to this and other comments.

Response to Comment 25-30

Comment is partially addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Additional revisions to the Habitat Plan include the following:

Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types*, subheading *Ecosystem Functions*, subheading *Natural Disturbances* was extensively revised in response to this and other comments.

Response to Comment 25-31

Comment is partially addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Additional revisions to the Habitat Plan include the following:

Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types*, subheading *Ecosystem Functions*, subheading *Threats* was extensively revised in response to this and other comments.

Response to Comment 25-32

Specified oak woodland edit is not relevant to the chaparral and northern coastal scrub natural community discussion.

No changes to the Habitat Plan are required.

Response to Comment 25-33

Specified oak woodland edit is not relevant to the chaparral and northern coastal scrub natural community discussion.

No changes to the Habitat Plan are required.

Response to Comment 25-34

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Oak Woodland*) "A lack of oak regeneration, which may be related to development pressures, is also a serious threat for some species. Shortages of apparent regeneration are reported for stands of valley oak, blue oak, and coast live oak. Where regeneration is a problem, mature trees and seedlings are usually adequately abundant, but intermediate-sized trees and saplings are rare or uncommon, suggesting the mature trees will not be replaced (McCreary 2009). Research on the causes of this decline has yet to identify a single causal mechanism. However, potential interacting mechanisms include livestock herbivory and trampling, fire suppression, noxious weed invasion, herbivory by small mammals, and the dominance of annual grasses (over native perennial grasses) that compete with the oak seedlings for soil moisture during the critical early spring period. McCreary (2009) provides a decision-key for determining whether a stand of oaks has a regeneration problem."

Response to Comment 25-35

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Riparian Forest and Scrub*) "Riparian areas are integrated into the working rangelands of the study area. They are typically managed in conjunction with adjacent grasslands, shrublands, and oak woodlands. They are often used by livestock for forage, shade and drinking water."

Response to Comment 25-36

Specified pond edit is not relevant to wetlands natural community discussion.

No changes to the Habitat Plan are required.

Response to Comment 25-37

Changes to hydrologic regimes are already identified as a threat to wetland natural community.

No changes to the Habitat Plan are required.

Response to Comment 25-38

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Open Water*) "With this growth came ranchers who built hundreds of stock ponds in the study area to water grazing livestock, largely with technical and financial assistance from the United States Department of Agriculture (USDA) Soil Conservation Service."

Response to Comment 25-39

Species-specific discussion of Townsend's big-eared bat was removed from the Habitat Plan because it is no longer a covered species.

No changes to the Habitat Plan are required.

Response to Comment 25-40

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Open Water*) "Ponds that contain either submerged or emergent vegetation are of particular importance to native amphibians as breeding habitat, although in ponds with little or no vegetation, California tiger salamander females may attach eggs to objects, such as rocks and boards on the bottom (Jennings and Hayes 1994)."

Response to Comment 25-41

See Response to Comment 25-43.

Response to Comment 25-42

See Response to Comment 25-43.

Response to Comment 25-43

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Open Water*) "Pond vegetation is influenced by surrounding land use, livestock and wildlife activity, and site soil and hydrology. Plants often associated with ponds include floating plants such as duckweed (*Lemna* spp.) or rooted plants such as cattails, bulrushes, sedges, rushes, water cress, and water-primrose. Stock ponds are often surrounded by grazing land with grazing livestock. Immediately adjacent to the stock pond, soil may be exposed due to the continued presence of livestock or wildlife (e.g., feral pigs). As a result, many stock ponds are devoid of vegetation. Covered species, such as California tiger salamander may still use this habitat for breeding. Females may attach eggs to objects, such as rocks and boards on the bottom (Jennings and Hayes 1994). Stock ponds, removed from grazing pressures or excessive wildlife activity, may be surrounded by wetland vegetation including willows, cattails, reeds, bulrushes, sedges, and tules (*Schoenoplectus* [*Scirpus*] *californicus*) if the appropriate soil and hydrology is also present. Land uses surrounding percolation ponds may vary depending on the location of the pond. Percolation

ponds are often found in more urbanized areas; therefore, the vegetated buffer may be narrower than it would be in a natural setting or managed for weed abatement."

Response to Comment 25-44

See Response to Comment 25-43.

Response to Comment 25-45

See Response to Comment 25-43.

Response to Comment 25-46

Requested edit is not relevant to the rest of the discussion in the paragraph.

No changes to the Habitat Plan are required.

Response to Comment 25-47

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Open Water*) "Pond breaching, berm failure, livestock and wildlife impacts, including feral pigs, and inadequate management practices can increase soil erosion and result in increased sedimentation of the pond (Hamilton and Jepson 1940; Prunuske 1987). This reduces habitat quality for amphibian habitat. Alternatively, ponds with insufficient turbidity provide inadequate cover for California tiger salamander larvae (U.S. Fish and Wildlife Service 2006)."

Note that this edit was made in the *Threats* subheading rather than *Natural Disturbance.*

Response to Comment 25-48

See Response to Comment 25-47.

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Open Water*) "Heavy livestock and excessive wildlife use (i.e., feral pigs) use can degrade ponds quickly, leading to loss of emergent vegetation and eutrophication from increased nitrogen due to cattle urine."

Response to Comment 25-49

Management recommendations are addressed in Chapter 5, not Chapter 3.

Also see Response to Comment 25-48.

No changes to the Habitat Plan are required.

Response to Comment 25-50

This natural community refers to irrigated agriculture.

No changes to the Habitat Plan are required.

Response to Comment 25-51

Revisions to the Habitat Plan include the following footnote addition:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Irrigated Agriculture*) "[20] This land cover type may or may not be irrigated."

Response to Comment 25-52

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types* subheading *Irrigated Agriculture*) "These lands are abundant throughout the Santa Clara Valley south of San José, and are most dense just north of the southern county border."

Response to Comment 25-53

Pasture and grassland can be distinguished from aerial photographs. Habitat Plan **Figure 3-10** depicts natural community locations. Land cover type is generally limited to the valley floor.

No changes to the Habitat Plan are required.

Response to Comment 25-54

Habitat Plan Chapter 4, Section 4.3.7 *Conservation Strategy Implementation* addresses impacts associated with restoration activities that are intended to also extend to creation activities, including pond creation. Text discussion of the impact analysis was updated to clarify the assumption of net benefit.

Also see Response to Comment 25-22.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 4, Section 4.3.7 *Conservation Strategy Implementation*) "Implementation of the Plan conservation strategy could also affect covered plants through habitat enhancement or restoration and creation, which could result in removal of or degradation to species habitat."

(Habitat Plan Chapter 4, Section 4.4.1 *Direct Effects*) "No permanent or temporary impacts are identified for conservation actions either because these activities are assumed to have a net benefit on all covered species (see Chapter 5 *Conservation Strategy*) or because these activities result in impacts that are too small to quantify. Grasslands converted to other land cover types as a result of restoration or creation actions will not be counted as an impact. In addition, the grassland removed will not be counted toward the overall preservation goals for grasslands."

Response to Comment 25-55

Other activities, including activities involving bridges that have impacts on waters, were addressed in the impact analysis for the Draft Plan (Habitat Plan **Table 4-5g** and Habitat Plan **Table 4-5h**), although it is assumed that any new permanent stream impacts would be offset by the removal of other existing in-stream structures.

In addition, see Response to Comment 25-54.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.3.8 *Conservation Strategy Implementation* subheading *Management Activities*) "This category includes construction, maintenance, and use of facilities needed to manage the Reserves, including but not limited to Reserve field offices, maintenance sheds, carports, roads, bridges, culverts, fences, gates, wells, stock tanks, and stock ponds."

(Habitat Plan Chapter 4, Section 4.3.7 *Conservation Strategy Implementation*) "In addition to the conservation actions described above, it will also be necessary for the Implementing Entity to install or replace infrastructure in the Reserve System including signage, fences and gates, field facilities, dirt roads, paved roads, vehicle bridges, and culverts in order to conduct required management and

monitoring activities. These activities would have permanent impacts similar to other covered activities. Temporary construction impacts are likely as well. All facilities within the Reserve System will be sited on already disturbed areas to the extent possible and in areas that minimize effects on covered species. All activities will comply with the conditions on covered activities in Chapter 6."

Habitat Plan **Table 4-5g** and Habitat Plan **Table 4-5h** were updated to include permanent impacts and temporary construction impacts for culvert installation and replacement, respectively.

Response to Comment 25-56

Conservation actions include pond maintenance within the Reserve System. Habitat Plan Chapter 1 was updated to clarify that covered activities that require a streambed alteration agreement are expected to fully meet the standards of the streambed alteration agreement through compliance with this Plan for species covered by the Plan.

In addition, see Responses to Comments 25-54 and 25-55.

No changes to the Habitat Plan are required.

Response to Comment 25-57

See Response to Comment 25-55.

Response to Comment 25-58

Golden eagle was removed from the Final Habitat Plan as a covered species. This comment is no longer relevant.

No changes to the Habitat Plan are required.

Response to Comment 25-59

See Response to Comment 25-11.

Response to Comment 25-60

When undertaken by the Implementing Entity, pond creation and road removal are considered conservation actions with a net benefit to covered species. In addition, see Responses to Comments 25-22 and 25-54.

No changes to the Habitat Plan are required.

Response to Comment 25-61

Project proponents other than the Implementing Entity are not required to implement conservation actions other than avoidance and minimization of impacts on covered species.

No changes to the Habitat Plan are required.

Response to Comment 25-62

This sentence is evaluating the effect of current grazing regimes combined with the effect of existing or proposed management and recreational use. Although this sentence does not reflect the "conservation role of grazing serpentine landscapes," the sentence prior states "the diversity of serpentine grassland depends on disturbance from many sources, including gophers, cattle, surface erosion, and landslide." Furthermore, in paragraphs preceding this statement, the role of cattle grazing on conservation of species in serpentine habitat is acknowledged, as is the role of grazing in removal of annual biomass and excess nitrogen.

No changes to the Habitat Plan are required.

Response to Comment 25-63

See Response to Comment 25-60.

Response to Comment 25-64

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 4.6.2 *California Tiger Salamander, California Red-Legged Frog, Western Pond Turtle* subheading *Indirect Effects*) "The rate of natural movement of salamanders among breeding sites depends on the distance between the ponds or complexes of ponds and of the quality of intervening habitat (e.g., salamanders may move more quickly through sparsely covered and open grassland than they can through densely vegetation lands) (Trenham 1998)."

Response to Comment 25-65

Golden eagle was removed from the Habitat Plan as a covered species. Comment is no longer relevant.

No changes to the Habitat Plan are required.

Response to Comment 25-66

Habitat Plan Chapter 4 *Impact Assessment and Level of Take* evaluates the effects of the covered activities described in Habitat Plan Chapter 2 *Land Use and Covered Activities* on covered species and natural communities. The potential for land use to affect vegetation or grazing is not addressed in this section because land use itself is not a covered activity. Rather, covered activities are discrete projects or activities, as described in Habitat Plan Chapter 2.

The species account acknowledges that "Livestock grazing is not thought to be necessarily detrimental to the kit fox (Morrell 1975; Orloff et al. 1986), but it may affect the number of prey species available, depending on the intensity of grazing (U.S. Fish and Wildlife Service 1998). Moderate grazing is thought to benefit the species because it can potentially enhance the prey base and reduce vegetation to allow kit fox to more easily detect and avoid predators." Although it does not cite the specific reference provided in the comment, the intent is the same.

No changes to the Habitat Plan are required.

Response to Comment 25-67

Habitat Plan Chapter 4 *Impact Assessment and Level of Take* evaluates the effects of the covered activities described in Habitat Plan Chapter 2 *Land Use and Covered Activities* on covered species and natural communities. The uncontrolled growth and thatch of nonnative annual species is not a covered activity. The Habitat Plan acknowledges and evaluates the effects of climate change (as a change circumstance in Habitat Plan Chapter 8) and nitrogen deposition (as a result of covered activities) and includes both remedial measures (Habitat Plan Chapter 8) and conservation measures (Habitat Plan Chapter 5) to address these issues.

No changes to the Habitat Plan are required.

Response to Comment 25-68

The importance of grazing is acknowledged and included as a management tool in Chapter 5 for California tiger salamander (Habitat Plan Section 5.4.2 *California Tiger Salamander*, subheading *Management Techniques and Tools*). It is not necessary to repeat the discussion in Chapter 4.

No changes to the Habitat Plan are required.

Response to Comment 25-69

The importance of grazing is acknowledged and included as a management tool in Habitat Plan Chapter 5 for California red-legged frog (Habitat Plan Section 5.4.3 *California Red-Legged Frog*, subheading *Management Techniques and Tools*). It is not necessary to repeat the discussion in Habitat Plan Chapter 4.

No changes to the Habitat Plan are required.

Response to Comment 25-70

See Response to Comment 25-25.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 4, Section 4.8.2 *Ongoing and Routine Agriculture*) "Under Section 4(d) of the ESA, routine ranching activities located on private or Tribal lands are exempt from the take prohibitions of Section 9 of the ESA (50 CFR 17.43). This exemption applies to both California red-legged frog and California tiger salamander. However, this exemption does not apply to cultivated agriculture."

Response to Comment 25-71

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 4, Section 4.8.2 *Ongoing and Routine Agriculture*) "Covered species could be trampled by cattle, and hydrology of an area may also be impacted by a loss of or change to agricultural practices, specifically grazing practices (Pyke and Marty 2005)."

Response to Comment 25-72

See Responses to Comments 25-54, 25-55, and 25-60.

Response to Comment 25-73

The goals of the conservation strategy, including the biological goals and objectives, are focused entirely on the conservation of covered species and natural communities. Although maintenance of working lands and the support of their stewards may occur as a result of utilizing grazing as a management tool, this is not a goal of the Plan.

No changes to the Habitat Plan are required.

Response to Comment 25-74

See Response to Comment 25-73.

Response to Comment 25-75

Landscape goals were designed to be encompassing of the natural communities at the landscape level. They were developed to encompass ecological processes, environmental gradients, biological diversity, and regional wildlife linkages. Goal 2 specifically identified "natural communities" and Goal 3 calls out "natural landscapes."

No changes to the Habitat Plan are required.

Response to Comment 25-76

Vegetation structure is not specifically identified in the natural community-level biological goals and objectives; however, many of the conservation actions were designed to enhance the natural communities, including the vegetation structure. The current biological goals and objectives and

conservation actions are inclusive of enhancing vegetation structure to benefit covered species and natural communities.

No changes to the Habitat Plan are required.

Response to Comment 25-77

See Response to Comment 25-24 and Response to Comment 25-78.

The biological goals and objectives of the Habitat Plan are focused entirely on the conservation of covered species. Although supporting the sustainability of working lands may occur as a result of utilizing grazing as a management tool, this is not an objective of the Plan. The Plan does acknowledge that good stewardship of the land may result in benefits to covered species, and this is why the conservation strategy includes private landowner education (see Habitat Plan Section 5.3.7 *Wetland and Pond Conservation and Management*).

No changes to the Habitat Plan are required.

Response to Comment 25-79

Habitat Plan Chapter 5, Section 5.2.3 *Reserve System,* subheading *Field Verification Prior to Acquisition,* already calls out evaluation of "infrastructure that would benefit or conflict with the Plan's biological goals and objectives." This could include an evaluation of grazing infrastructure if that is determined to be critical for the acquired site.

No changes to the Habitat Plan are required.

Response to Comment 25-80

Evaluation of a site's current grazing management capacity and record of such management is a detailed undertaking that will be conducted, if needed, as part of the site-specific reserve unit management plan.

No changes to the Habitat Plan are required.

Response to Comment 25-81

Each potential land acquisition is evaluated against the conservation strategy biological goals and objectives and land acquisition requirements. In the criteria referenced in the comment, both existing and potential biological values are assessed as part of field verification prior to acquisition. An emphasis on one or another is not intentional. The Habitat Plan gives priority over sites that meet unmet biological goals and objectives and land acquisition requirements.

No changes to the Habitat Plan are required.

Response to Comment 25-82

Habitat enhancement is inclusive of habitat management. Current rangeland management practices or those practices that may be introduced or altered as part of Habitat Plan implementation are considered habitat enhancement in the broad sense—i.e., management will be undertaken with the purpose of enhancing habitat for covered species. Management needs of Reserve System lands will be assessed as the lands are acquired. If current management practices are sufficient to achieve the Habitat Plan biological goals and objectives, no additional management may be required.

No changes to the Habitat Plan are required.

Response to Comment 25-83

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 5.2.5 *Land Management*, subheading, *Habitat Enhancement*) "Permanently protecting Reserve System lands to remove threats of development, overcollecting, overgrazing, lack of grazing, and others."

Response to Comment 25-84

See Response to Comment 25-55.

Response to Comment 25-85

Although not explicitly stated, an assessment of current and historic management occurring on a site that is considered for inclusion in the Reserve System is considered part of the due diligence process (Habitat Plan Section 8.6 *Land Acquisition*).

No changes to the Habitat Plan are required.

Response to Comment 25-86

See Response to Comment 25-12.

Response to Comment 25-87

The referenced section includes a reference to parcels with a conservation easement: "Reserve unit management plans will be prepared as soon as reasonably possible but not longer than 5 years following acquisition of the first parcel in a reserve unit or of placing a conservation easement on the parcel" (Habitat Plan Section 5.2.5 *Land Management*, subheading *Reserve Unit Management Plans*).

Reserve management plans will be developed by the Implementing Entity "in partnership with adjacent land management agencies, resource agencies, and current grazing lessees, if any. Input from interested citizens will be included in reserve unit management plan development through public outreach and education" (Habitat Plan Section 5.2.5 *Land Management*, subheading *Reserve Unit Management Plans*).

Also see Response to Comment 23-17.

No changes to the Habitat Plan are required.

Response to Comment 25-88

The Wildlife Agencies and Local Partners find the language included in the Habitat Plan to be sufficient: "Until the first reserve unit management plan is developed and formally approved by the Wildlife Agencies, reserve lands will be managed in the interim to maintain and improve covered species habitats in accordance with the guidance in the Plan, best available information, and management methods currently being used in the study area" (Habitat Plan Section 5.2.5 *Land Management*, subheading *Reserve Unit Management Plans*).

No changes to the Habitat Plan are required.

Response to Comment 25-89

The commenter's concern regarding management and associated outcomes is addressed later in the same section: "Reserve unit management plans will be working documents; accordingly, they will not preclude the modification of management measures prior to plan updates in cases where adaptive management or new research identifies more effective techniques. The Implementing Entity will review and, where biologically appropriate, systematically revise reserve unit management plans at least every 5 years. This review will be based on an evaluation of the success of management methods (i.e.,

knowledge gained through the monitoring and adaptive management program) in achieving objectives of the reserve, as well as on results of other outside research."

Also see Response to Comment 25-88.

No changes to the Habitat Plan are required.

Response to Comment 25-90

The Implementing Entity may acquire lands that are degraded if those lands are determined to meet the requirements of the Habitat Plan. Degraded lands may present opportunities for restoration.

No changes to the Habitat Plan are required.

Response to Comment 25-91

In addition to the specific vegetative management goals, the reserve unit management plans align with the Conservation Strategy biological goals and objectives, including those established for covered species: "Each reserve unit management plan will clearly identify the biological objectives for the reserve unit. Biological objectives for each reserve unit will be a subset of the biological goals and objectives of the Habitat Plan (**Table 5-1**). Each reserve unit management plan will also identify the conservation actions applicable to the reserve (**Table 5-2**)" (Habitat Plan Section 5.2.5 *Land Management,* subheading *Objectives of the Conservation Area*). Natural community-level and species-level biological goals and objectives include conservation actions that require management of nonnative annual grasslands.

The Habitat Plan includes biological goals, objectives, and conservation measures. "Goals are broad, guiding principles based on the conservation needs of the resources. Biological objectives are expressed as conservation targets or desired conditions. Objectives are measurable and quantitative when possible; they clearly state a desired result and will collectively achieve the biological goals" (Habitat Plan Section 5.2.1 *Biological Goals and Objectives*). Conservation actions were developed to achieve the biological goals and objectives. Conservation actions include GRASS-6, "Introduce livestock grazing where it is not currently used, and where conflicts with covered activities are minimized, to reduce vegetative cover and biomass that currently excludes ground squirrel and encourage ground squirrel colonization of new areas within the Reserve System." This conservation action is intended to address the threats identified in the comment and support biological goals and objectives for the named species.

No changes to the Habitat Plan are required.

Response to Comment 25-92

Revisions to the Habitat Plan included the following:

(Habitat Plan Section 5.2.5 *Land Management*, subheading *Fire Management*) "The fire management component of each reserve unit management plan must include a clear decision system to determine when a wildfire will be left to burn and when it must be partially or wholly contained to prevent damage to structures, prevent injuries, prevent impacts to neighboring properties (including loss of forage and livestock), or cause excessive disturbance to natural communities."

Response to Comment 25-93

Revisions to the Habitat Plan included the following:

(Habitat Plan Section 5.2.5 *Land Management*, subheading *Maintenance of Infrastructure*) "Each reserve unit management plan will include a map showing the location of infrastructure, such as livestock

grazing infrastructure, roads, firebreaks, fences, gates, pumps, wells, water control structures, ditches, canals, drains, power lines, and buildings."

Response to Comment 25-94

Mimicking natural processes is a management technique for enhancement and restoration conservation actions, not a conservation objective. This is a management technique that recognizes that natural processes (e.g., hydrologic regimes, wildfire) are the fundamental forces that shape natural systems and create and maintain habitat for covered species. Therefore, management actions will focus on defining, maintaining or restoring, and, as indicated by pre-acquisition assessments and targeted studies and informed by the monitoring and adaptive management program, enhancing these natural processes. Mimicking natural processes can be used to address current threats to natural communities in the study area. For example, fire promotes regeneration and succession in the chaparral and northern coastal scrub (and therefore addresses threat of lack of regeneration or succession). Prescribed burns in this natural community would mimic the natural process of wildfires for this natural community.

No changes to the Habitat Plan are required.

Response to Comment 25-95

Road construction and maintenance may be required for conservation strategy implementation. Roads in the Reserve System have an associated maintenance costs. Those that are found unnecessary for conservation strategy implementation may be removed to improve habitat quality (see Habitat Plan Section 5.2.3 *Reserve System*, subheading *Reserve Design and Assembly Principles*).

No changes to the Habitat Plan are required.

Response to Comment 25-96

See Response to Comment 25-8.

Response to Comment 25-97

Climate change threats and uncertainties are discussed generally in Habitat Plan Chapter 5. The spread of *Phytopthora ramorum* is addressed as a changed circumstance in Habitat Plan Section 10.2.1 *Changed Circumstances*, subheading *Nonnative Species or Disease:* "Infestations of a new disease that affects covered or predominant species in the study area (e.g., Sudden Oak Death) could have dramatic effects on the Reserve System." Sudden Oak Death (*Phytopthora ramorum*) is specifically addressed as a changed circumstance and remedial measures are identified in the same subheading.

No changes to the Habitat Plan are required.

Response to Comment 25-98

Conservation actions for managing vegetation structure were developed to support Biological Goal 4, Objective 4.3a (Habitat Plan **Table 5-1b**).

No changes to the Habitat Plan are required.

Response to Comment 25-99

The heading of this section is consistent with that for other natural communities. The use of the term "enhancement" is the preferred term when referring to conservation strategy components aimed at improving habitat quality. As defined in Habitat Plan **Appendix A** *Glossary*, habitat enhancement is: "The improvement of an existing degraded natural community. Habitat enhancement involves improving one or more ecological factors, such as species richness, species diversity, overall vegetative cover, or wildlife value. Enhancement activities typically occur on substrates that are largely intact."

No changes to the Habitat Plan are required.

Response to Comment 25-100

The first sentences of the referenced paragraph states the following: “Enhancement techniques and frequencies and intensities of application will be informed by pre-acquisition assessments, baseline surveys, and targeted studies (see Chapter 7)” (Habitat Plan Section 5.3.3 *Grassland Conservation and Management,* subheading *Grassland Enhancement*). This statement is inclusive of the use of ecological site descriptions developed during pre-acquisition assessments, baseline surveys, and targeted studies. “Management regimes” are part of “enhancement techniques and frequencies.”

No changes to the Habitat Plan are required.

Response to Comment 25-101

See Response to Comment 25-12.

Response to Comment 25-102

Yes, management actions may benefit native grassland species in the short- and long-term, and in direct or indirect ways. Specific management actions and their desired results will be determined during the development of the applicable reserve unit management plan.

Portions of this comment are addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 25-103

Revisions to the Habitat Plan included the following:

“One study found that grazing increased the diversity of native plant species on serpentine grasslands but decreased native diversity on non-serpentine grasslands (Harrison et al. 2003 was deleted

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 25-104

Revisions to the Habitat Plan include the following:

“Ranch land” changed to “rangeland” in Habitat Plan Section 5.3.3 *Grassland Conservation Management*, subheading *Livestock Grazing*.

Response to Comment 25-105

The conservation strategy is designed to be flexible in its implementation. Seasonality of vegetation management is not specified. It will be determined during reserve unit management plan development and informed by adaptive management. GRASS-8 applies the grassland natural community, not specific types of vegetation in grasslands. The effects of grassland management on covered species are not fully understood. The effectiveness of conservation actions will be monitored and adjusted through the adaptive management process.

No changes to the Habitat Plan are required.

Response to Comment 25-106

This paragraph provides a description of livestock grazing as a management technique and tool as part of conservation action GRASS-1, not objectives. A summary of management conservation actions and

target species is found in Habitat Plan **Table 5-2b**. Current and potential elk numbers could be considered during the development of reserve unit management plans.

No changes to the Habitat Plan are required.

Response to Comment 25-107

Revisions to the Habitat Plan included the following:

The sentence "Cattle are moved from pastures that no longer supply enough grass to maintain cattle weight" was deleted.

Response to Comment 25-108

The Wildlife Agencies and Local Partners acknowledge the commenter's support of this statement.

Also see Response to Comment 25-80.

No changes to the Habitat Plan are required.

Response to Comment 25-109

The Wildlife Agencies and Local Partners acknowledge the commenter's support of these statements but are unclear why or how these statements are inconsistent with Habitat Plan Chapter 2, which lists prescribed burning as a vegetation management tool.

No changes to the Habitat Plan are required.

Response to Comment 25-110

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 5, Section 5.3.3 *Grassland Conservation Management*, subheading *Mowing*) "Mowing may be particularly useful and effective as a small-scale treatment in areas that cattle cannot or should not access or for other site-specific logistical reasons (for example, when removal of vegetation is required at a time other than when livestock are available)."

Response to Comment 25-111

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 25-112

This was an organizational decision made early in Habitat Plan development.

No changes to the Habitat Plan are required.

Response to Comment 25-113

Fences and roads affect habitat permeability. Permeability refers to the relative potential for a species to move across a landscape (Singleton et al. 2002). For example, removal of a fence or other barriers to species movement would increase landscape permeability. Although these measures are targeted toward wildlife movement, it is assumed that they will also enhance opportunities for plant dispersal and occurrence expansion. Their removal is intended to increase habitat connectivity and reduce anthropogenic impacts associated with infrastructure. Also see Response to Comment 25-7.

No changes to the Habitat Plan are required.

Response to Comment 25-114

Biological goals and objectives are stated separately from the conservation actions. The conservation action identifies examples of tools, but the list is not meant to be inclusive. As stated in the objective to which the conservation action is meant to support, management actions will be implemented that mimic those natural disturbances through development of a fire management component for each reserve unit management plan. These actions will be determined on a case-by-case basis.

No changes to the Habitat Plan are required.

Response to Comment 25-115

This is a landscape-level conservation action, not a goal. The associated goal is: "Goal 3. Enhance or restore representative natural and semi-natural landscapes to maintain or increase native biological diversity."

No changes to the Habitat Plan are required.

Response to Comment 25-116

The Wildlife Agencies and Local Partners acknowledge the commenter's concern.

Also see Response to Comment 25-98.

No changes to the Habitat Plan are required.

Response to Comment 25-117

Management of oak woodlands will incorporate, as applicable, best available science, including information regarding oak regeneration compiled by the University of California Integrated Hardwood Rangeland Management Program. Further studies and management will be prescribed according to site-specific assessments, which are required to determine the factors that are most limiting to oak stands in reserves. Experimentally managing oak stands in the reserves will not only allow site-specific treatments to be studied but will also further expand knowledge regarding general oak woodland regeneration and management.

No changes to the Habitat Plan are required.

Response to Comment 25-118

The conservation action includes native herbivores as a species that grazes in the permit area. The Plan does not intend to successfully manage California rangelands; rather, the grassland ecosystem within the Reserve System will be managed to support covered species.

No changes to the Habitat Plan are required.

Response to Comment 25-119

The Wildlife Agencies and Local Partners acknowledge the comment. As stated in the Plan, mowing may be particularly useful and effective as a small-scale treatment in areas that cattle cannot access or for other site-specific logistical reasons (e.g., when removal of vegetation is required at a time other than the grazing timing currently in use). Mowing in these cases is intended to be selective (e.g., to reduce nonnative vegetation).

This comment is partially addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 25-120

Targeted studies are discussed in Habitat Plan Section 7.2.1 *Types of Monitoring*, subheading *Targeted Studies*.

No changes to the Habitat Plan are required.

Response to Comment 25-121

The Plan assumes that covered species needs are better served by restoring, enhancing, and creating land cover types consistent with the landscape before significant human intervention. One example of this is the conservation action GRASS-4 which required the seeding of native forbs and grasses in the Reserve System. As such, this action is considered to benefit covered species. If this assumption turns out to be false, the conservation actions may be adjusted through the monitoring and adaptive management program described in Habitat Plan Chapter 7.

No changes to the Habitat Plan are required.

Response to Comment 25-122

Goal 4 includes six objectives to achieve the stated goal. Goal 4 is a natural-community level goal for grasslands. It is not intended to specifically address the threats of any given covered species. Species-specific goals, which build upon natural-community level goals and landscape-level goals, are described in Habitat Plan Tables 5-1c and d. Text was added to Habitat Plan Section 5.3.3 *Grassland Conservation and Management* to clarify that grassland management includes prevention of type conversion.

Response to Comment 25-123

Revisions to the Habitat Plan included the following:

Environmental Quality Incentives Program (EQIP) and Wildlife Habitat Incentive Program (WHIP) added to Habitat Plan **Table 9-13**.

Response to Comment 25-124

The Habitat Plan has been updated to include an improved definition of "rangeland" – see Master Response 5 and Responses to Comments 25-3, 25-29, 25-30, and 25-31. Natural communities are defined in the EIR/EIS consistent with the Habitat Plan. The text on p. 7-4 of the Draft EIS/EIR is intended to acknowledge that "agriculture," as general term, includes lands used for grazing as well as irrigated cropland. For clarity, the text in EIR/EIS Chapter 7, *Agriculture*, has been modified so that, for the purposes of analyzing impacts to agriculture, the term "rangeland" has been replaced with "grazing land." This paragraph on p. 7-4 is a prerequisite to the analysis of agricultural impacts that follows (see Responses to Comments 25-125 through 25-128 below). As a result of these changes, the term "rangeland" is no longer used in the analysis of agricultural impacts and therefore does not require a definition.

"Rangeland" has been replaced with "grazing land" throughout EIR/EIS Chapter 7, Agriculture.

Response to Comment 25-125

See Response to Comment 25-124.

"Rangeland" has been replaced with "grazing land" throughout EIR/EIS Chapter 7, Agriculture.

Response to Comment 25-126

See Responses to Comments 25-13, 25-22, and 25-25.

No changes to the EIR/EIS are required.

Response to Comment 25-127

The comment is addressed in Master Response #5. Also see Responses to Comments 25-62 and 25-91. Revisions to the Habitat Plan will be consistent with Master Response #5.

No changes to the EIR/EIS are required.

Response to Comment 25-128

Use of The Nature Conservancy lands for grazing is described in EIR/EIS Chapter 4, *Projects with Cumulative Effects* (see Section 4.2.6, Mount Hamilton Project). It is not appropriate to discuss a *cumulative project* in EIR/EIS Chapter 2, which focuses on the Proposed Action and alternatives.

No changes to the EIR/EIS are required.

Ken and Lana Bone

Schreiber, Ken

From: Ken Bone [fishbone1@earthlink.net]
Sent: Thursday, April 14, 2011 10:40 AM
To: kmolinari@icfi.com
Cc: ken.schreiber@pln.sccgov.org
Subject: Habitat Conservation Draft Plan Support

Ken Schreiber,

Habitat Conservation Draft Plan Support,

It saddens us that the City Council of Gilroy has bent to the pressures of the local ranchers and farmers in south county to pull out of the joint process for this drastically needed plan.

The Habitat Conservation Plan should have been adopted 10 year ago when it was first introduced. It is crucial that this plan be immediately adopted, funded, and enacted over the next 50 years to save our local endangered species and provide wildlife safe havens and wildlife corridors hopefully along the creek's preserved and re-established riparian forest throughout all of south county. 1

We are in full support of this plan. Keep up your great efforts, the plan must be adopted.

Ken and Lana Bone
3290 Godfrey Ave.
Gilroy, CA 95020

Comment Letter 26—Ken and Lana Bone, April 14, 2011

Response to Comment 26-1

The Wildlife Agencies and Local Partners acknowledge the expression of support. The City of Gilroy rejoined the Habitat Plan development process shortly after it pulled out.

No changes to the EIR/EIS are required.

Friends of Edgewood

April 14, 2011

Ken Schreiber
Program Manager, Santa Clara Valley Habitat Plan
Santa Clara County Executive's Office
70 West Hedding, East Wing, 11th Floor
San Jose, CA 95110
ken.schreiber@ceo.sccgov.org

Re: Support for Santa Clara Valley Habitat Plan

Dear Mr. Schreiber:

The Friends of Edgewood would like to express their support for the Santa Clara Valley Habitat Plan. Our group's mission is to protect and celebrate Edgewood Natural Preserve in Redwood City as a unique treasure by promoting exemplary stewardship, and by reaching out with informative public programs. One of the hallmark species we are trying to preserve is the federally threatened Bay checkerspot butterfly, the subject of an ongoing reintroduction effort at Edgewood.

Bay checkerspot butterflies from Coyote Ridge in San Jose have been the source for this U.S. Fish and Wildlife Service-approved project. We believe the best way to ensure the long-term survival of Bay checkerspot butterflies is implementation of the Santa Clara Valley Habitat Plan, which establishes a reserve system, monitoring, and management of the core Bay checkerspot butterfly habitat on Coyote Ridge in San Jose. Protection of that core population further improves our likelihood of success in reestablishing the Bay checkerspot butterfly at Edgewood.

1

Thank you for your consideration.

Sincerely,

Mary Wilson
President, Friends of Edgewood

cc: Cori Mustin, U.S. Fish and Wildlife Service
R8SCVHPcomments@fws.gov

Comment Letter 27—Friends of Edgewood, Mary Wilson, President, April 14, 2011

Response to Comment 27-1

The Wildlife Agencies and Local Partners acknowledge the expression of support.

No changes to the Habitat Plan are required.

Santa Clara Open Space Authority

Santa Clara County
Open Space Authority

Board Members:

Alex Kennett
Director, District 1

Jim Foran
Director, District 2

Chairperson
Sequoia Hall
Director, District 3

Garnetta J. Annable
Director, District 4

Vice-Chairperson
Virginia Holtz
Director, District 5

Clark Williams
Director, District 6

Dr. Kalvin Gill
Director, District 7

General Manager
Andrea Mackenzie

Date: April 14, 2011

To: Ken Schreiber, Program Manager
Draft Santa Clara Valley Habitat Conservation Plan EIR/EIS
70 W. Hedding Street, East Wing, 11th Floor
San Jose CA 95110

Project: Draft Santa Clara Valley Habitat Conservation Plan EIR/EIS

Dear Mr. Schreiber:

The Santa Clara County Open Space Authority (Authority) appreciates the opportunity to comment on the Draft Santa Clara Valley Habitat Conservation Plan, EIR/EIS (Habitat Plan). We have the following comments:

The Authority recognizes the importance of the Habitat Plan as a vital conservation planning tool to ensure that habitat for endangered and threatened species is identified, preserved and managed at a regional scale. While project by project mitigation can continue to protect individual sites that harbor endangered species, this approach will not address the ongoing fragmentation of habitat and displacement of species. The HCP offers the best opportunity to sustain the region's endangered species and habitats over the long-term by implementing a conservation lands network comprised of large contiguous, interconnected areas while also allowing for ongoing economic development.

The Authority is uniquely positioned to work with its agency and non-profit partners to help implement the goals of the Habitat Plan and is committed to advising, strategizing, and cooperating with the Implementing Entity to achieve effective and efficient protection and management of habitat and critical wildlife corridors within the study area. The Authority's mandate in its enabling act is to acquire and protect a regional system of open space and greenbelts. The Authority is also committed to preserving connected habitat to ensure viability of endangered species and to conserving our working lands to sustain our local agricultural economy. We believe these are not mutually exclusive goals. We thus support the use of diverse conservation tools including fee acquisition, conservation easements and long-term stewardship to achieve the goals of the Habitat Plan.

1

6980 Santa Teresa Blvd, Suite 100 * San Jose, California 95119 * 408-224-7476 * Fax 408-224-7476
Website – www.openspaceauthority.org

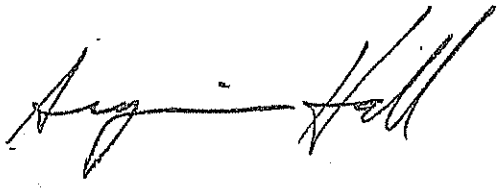
As you know, the Authority Board of Directors recently adopted its own *Principles of Participation* for the Habitat Plan, that affirm the Authority's willingness to work with the Implementing Entity and outlines a coordinated and cooperative approach that can achieve the mutual goals of the Authority and the Habitat Plan.

The Authority supports the Habitat Plan's "Potential Reserve System Areas" in the Conservation Analysis Zones. In particular, the Authority is supportive of Coyote-5 and Coyote-6, which are critical to maintaining essential linkages for vital wildlife passage between the Santa Cruz Mountains and the Diablo Mountain Range. Habitat protection in these Zones would further the Authority's own conservation objectives for the Coyote Valley Greenbelt.

The Habitat Plan has another important benefit. Once in place, it will bring critical funding to Santa Clara County that can be effectively leveraged by many partners to efficiently conserve other regionally-significant working lands, greenbelts, watersheds and recreational lands.

In closing, the Authority is committed to working cooperatively with the Implementing Entity to implement the Habitat Plan goals and meet its local land acquisition commitment.

Thank you for the opportunity to comment on the Habitat Plan.



Sequoia Hall, Chair
Board of Directors
Santa Clara County Open Space Authority

6980 Santa Teresa Blvd, Suite 100 * San Jose, California 95119 * 408-224-7476 * Fax 408-224-7476
Website – www.openspaceauthority.org

Comment Letter 28—Santa Clara County Open Space Authority, Sequoia Hall, Chair, Board of Directors, April 14, 2011

Response to Comment 28-1

The Wildlife Agencies and Local Partners acknowledge the expression of support.

No changes to the EIR/EIS are required.

City of Morgan Hill

CITY OF MORGAN HILL

DEVELOPMENT SERVICES CENTER

17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

April 15, 2011

Mr. Kenneth R. Schreiber
Project Manager, Santa Clara Valley Habitat Conservation Plan
County Government Center
70 West Hedding Street, East Wing, 11th Floor
San Jose, CA 95110

Subject: Santa Clara County Draft HCP/NCCP and Draft EIR/EIS

Dear Mr. Schreiber:

Thank you for the opportunity to provide comment on the Draft Santa Clara Valley Habitat Conservation Plan and Natural Communities Conservation Plan (SCVHCP/NCCP) and Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS). The Draft Plan and Environmental Document were reviewed by the Morgan Hill Planning Commission at their February 22, 2011 meeting. The City Council reviewed the Plan and EIR/EIS at their March 16, 2011 meeting. The City has no specific comments on the EIR/EIS. The following major issues were identified in the Draft HCP/NCCP and will need to be addressed in the revised Draft Plan.

- The Wetland/Riparian Impact Fee - When is the fee paid and should projects that have already received environmental clearance be required to pay the fee. 1
- The Vehicle Emission Fee - The City questions the methodology for applying the fee and we believe that projects that have already received entitlements should be exempt from the fee (pipeline issue). 2
- The Commission noted that cities in North County, Palo Alto and Saratoga were given as examples, are not subject to the fees. The Commission felt that this placed a larger burden on South County and was unfair from a regional standpoint. The City Council agreed and felt that the high fee zones disproportionally in Morgan Hill vis-à-vis other fee developments – creates a de-facto moratorium on open space (Zone B) development (e.g.) our South East Quadrant area 3
- The Commission and Council were concerned about the creation of a new agency/bureaucracy to implement the Plan and the cost to maintain the newly created entity. 4
- The Commission questioned why the nitrogen impact in Morgan Hill was twice that of Gilroy given that Gilroy has 10,000 more residents (see Ch 4, pg 68 of the Draft Plan). 5
- The City Council expressed concerns regarding the economic impacts/high cost of the zone fees. While not part of the EIR/EIS evaluation, an analysis of the economic impacts of the Plan on future development will need to be prepared to address these issues. 6
- Staff and the Council also have concerns that the Plan has not been coordinated with the City's Southeast Quadrant Planning and environmental review effort. 7

- The Plan does not acknowledge local efforts to preserve open space, especially in our hillsides, and agricultural lands within our South East Quadrant Planning Area. 8

Again, thank you for the opportunity to comment on the Draft Santa Clara Valley HCP/NCCP and EIR/EIS documents.

Sincerely,

James B. Rowe
Planning Manager

Cc: Mayor and City Council
J Edward Tewes, City Manager
Leslie Little, Assistant City Manager for Community Development
Danny Wan, City Attorney
Scott Wilson, Cal Dept of Fish and Game
Cay Goude, US Fish and Wildlife Service

R:\PLANNING\KATHY\HABITAT CONSERVATION PLAN\Draft Plan City Comment Letter 4-15-11.docx

Comment Letter 29—City of Morgan Hill, James B. Rowe, Planning Manager, April 15, 2011

Response to Comment 29-1
For private projects, mitigation fees are required to be paid before or at the time the grading permit for the project is issued. If a grading permit is not required, fees must be paid before or at the time the first construction permit is issued. For public projects, mitigation fees must be paid to the Implementing Entity prior to implementing the covered activity. This is discussed in Habitat Plan Chapter 9 under *Timing of Mitigation Fee Payment*.

Projects that have already received environmental clearance, including permits, from the local jurisdiction are not covered activities and therefore are not required to pay fees. These projects may still be subject to the ESA.

Habitat Plan Section 6.2, *Exemptions from Conditions*, indicates that a project proponent of a covered activity in the Plan will not be required to pay any Habitat Plan fees if the proponent of the activity provides written confirmation to the Implementing Entity that the CDFG and USFWS have determined that the activity is not subject to CESA and ESA; or has already received the necessary take authorizations under CESA and ESA; or has otherwise complied with CESA and ESA. Under these circumstances, an activity will be deemed to be in compliance with CESA and ESA by the Implementing Entity and thus not require coverage under the Habitat Plan if the proponent provides the following:

1. Letters from both USFWS and CDFG that specifically refers to the activity and states that the activity is not likely to result in take of any federally or state listed species and will not preclude successful implementation of the conservation strategy for all covered species, or
2. A copy of an incidental take permit issued by CDFG for the activity, and copies of incidental take statements or incidental take permits issued by USFWS that authorize the incidental take associated with the proposed activity.

Comment is partially addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 29-2
Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 29-3
Comment is addressed in Master Responses #2 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Response to Comment 29-4
Comment is addressed in Master Response #6.

Revisions to the Habitat Plan will be consistent with Master Response #6.

Response to Comment 29-5
The Plan notes that "Impacts of nitrogen deposition from Morgan Hill and Gilroy were not explicitly identified in our modeling, but are part of the contribution referred to as the remainder of Santa Clara County" (Habitat Plan Chapter 4, Section 4.4.2 *Indirect Effects*). The 2% attributed to Gilroy and the 3% attributed to Morgan Hill are rounded estimates for the Gilroy area and the Morgan Hill area; the

specific numbers are based on the structure of the CMAQ model used and do not reflect exact contributions.

No changes to the Habitat Plan are required.

Response to Comment 29-6
Comment is addressed in Master Responses #2 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Response to Comment 29-7
Comment is addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 29-8
Conservation actions of the Habitat Plan are focused on Reserve System lands that will be managed for the benefit of covered species. Because the Plan does not anticipate incorporating much, if any, land within the participating cities, conservation within cities is not a focus of the Plan. As described in Master Response #1, the Plan was updated to assume rural development in the Southeast Quadrant instead of urban development. Comment is addressed in Master Responses #1 and #2.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #2.

Jae Pasari, PhD Candidate

Environmental Studies Department
University of California, Santa Cruz

To Cori Mustin and Kenneth Schreiber

April 15, 2011

Thank you for the opportunity to comment on the Santa Clara Valley draft HCP. Several scientists in our research group (led by Jae Pasari) have been investigating the effects of nitrogen deposition and grazing in Bay Area serpentine grasslands, with a focus on Coyote Ridge[1]. Results from two of these studies have important implications for the HCP.

The first study was conducted in collaboration with serpentine grassland ecologists Stuart Weiss and Richard Hobbs. Using a combination of their long-term serpentine monitoring data and data we collected in the field, we used advanced multivariate statistical models to confirm that nitrogen deposition is having a negative effect on native plant species diversity across the Bay Area's ungrazed serpentine grasslands (Figure 1).

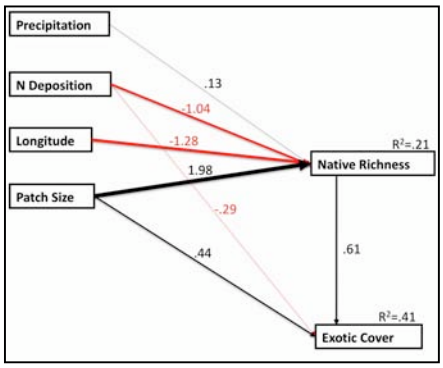


Figure 1: Path model of most important biophysical factors affecting ungrazed serpentine grassland species composition. Note strong negative effect of N deposition on native diversity. p<.05 for all paths.

We complemented this work with an experiment that assesses the ability of grazing to mitigate the effects of future nitrogen accumulation. The results suggest that current levels of grazing may not be effective at maintaining native biological diversity (figure 2) or reducing invasive grass impacts (figure 3) under on-going nitrogen accumulation in serpentine grasslands. This finding contradicts the draft HCP's assumption that grazing will continue to be an effective management tool: "The long-term effects of N-deposition are unknown, but the working hypothesis is that existing grazing regimes will be able to maintain native biological diversity." (5-106, E-82)

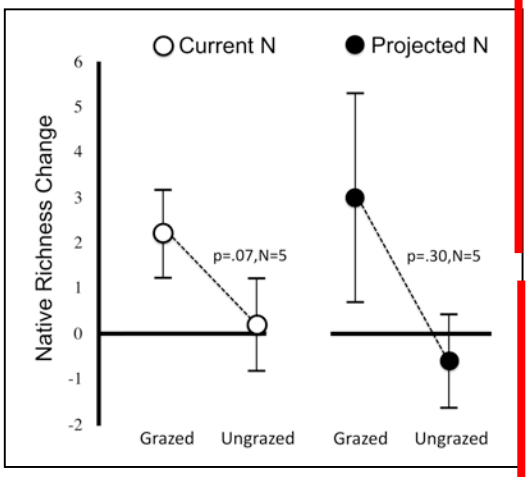


Figure 2: Change in native plant diversity from 2008 to 2010 in grazed vs ungrazed serpentine grasslands at Coyote Ridge under both current and anticipated nitrogen loads. Under current loads, grazing maintains higher native diversity. Under anticipated loads, the effect of grazing so variable that there is no significant difference in native diversity between grazed and ungrazed grasslands (p=.30, paired t-test). Grazing may not be effective at maintaining native richness as nitrogen continues to accumulate.

Given these results, we recommend that the text of the HCP be changed to reflect our uncertainty about on-going nitrogen deposition. Furthermore, we recommend that text be added requiring adaptive management in reserve management plans to include nitrogen addition and grazing experiments so that managers can begin trying new grazing management strategies *before* nitrogen deposition further reduces native biological diversity. However, even with these suggested improvements to adaptive management strategies, it is possible that no grazing regime will be able to adequately mitigate high, accumulated levels of nitrogen brought upon by chronic high annual nitrogen deposition. Therefore, we recommend that the HCP include text requiring an assessment of nitrogen deposition critical loads in grazed serpentine grasslands. While on-going work cited in the draft HCP suggests a critical load of 5 kg N/ha/yr for

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2
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ungrazed serpentine grasslands at Edgewood Park in San Mateo, it is unclear how on-going accumulation of higher nitrogen deposition levels will affect the mostly grazed serpentine grasslands in the purview of the Santa Clara HCP (e.g. Coyote Ridge, Tulare Hill, etc.). Given the long-term nitrogen accumulation that has occurred in these grasslands, it is possible that lower annual nitrogen levels will be necessary to prevent further biodiversity loss, even under adaptive grazing management. Given this and considering the long-term scope of the HCP, we must determine acceptable levels of ongoing nitrogen deposition given our best grazing management strategies so that we have a basis upon which to recommend nitrogen pollution reduction targets that will better protect species and reduce the possibility of take challenges under the ESA[2].

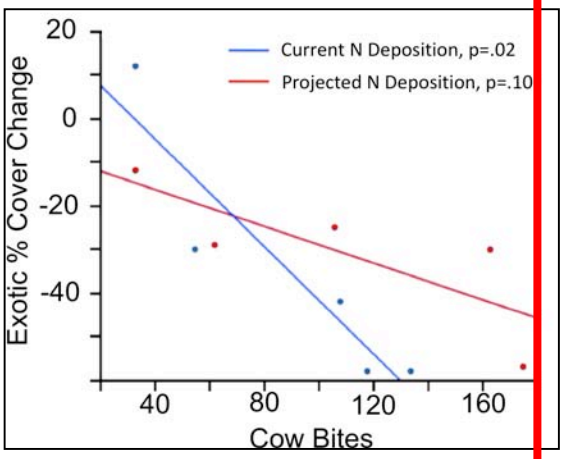

Figure 3: Change in the amount of invasive grass cover from 2008 to 2010 as a function of the amount of grazing (cow bites) under both current and projected nitrogen loads. Grazing is less effective at reducing exotic cover under projected nitrogen loads as evidenced by the significantly flatter slope of the red line (projected nitrogen loads) compared to the blue line (current nitrogen loads).

Sincerely,

Jae Pasari*, Ph.D. Candidate, UC Santa Cruz.
Erika Zavaleta Ph.D., Assistant Professor, UC Santa Cruz.
Dan Hernandez Ph.D., Assistant Professor, Carleton College.

*address correspondence to jpasari@gmail.com, 831-428-2942

1 Pasari, J. Invasions and global change in San Francisco Bay Area serpentine grasslands. PhD dissertation. University of California, Santa Cruz. In Press.

2 Tzankova, Z., Vallano D.M., Zavaleta E.S. Can the Endangered Species Act address the threats of atmospheric nitrogen deposition? Insights from the case of the Bay checkerspot butterfly. *Harvard Environmental Law Review* 35 (2). In Press.

Comment Letter 30—Jae Pasari, PhD Candidate, UC Santa Cruz, April 15, 2011

Response to Comment 30-1

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 5.3.3 *Grassland Conservation and Management*, subheading *Threats and Uncertainties*) "The long-term effects of N-deposition are unknown, but the working hypothesis is that existing grazing regimes will be able to maintain native biological diversity."

Revisions to the Habitat Plan include the following:

(Habitat Plan **Appendix E**, subheading *Effects on Serpentine Grassland*) "The long-term effects of N-deposition are unknown, but the working hypothesis is that existing grazing regimes will be able to maintain diversity. However, recent research suggests that current levels of grazing may not be effective at maintaining native biological diversity or reducing invasive grass impacts under on-going nitrogen accumulation in serpentine grasslands (J. Pasari, pers. comm.)."

Response to Comment 30-2

The monitoring and adaptive management program includes monitoring and adaptive management measures to adjust grassland management if it is not effective at achieving the Habitat Plan's biological goals and objectives.

No changes to the Habitat Plan are required.

Response to Comment 30-3

The monitoring and adaptive management program includes monitoring and adaptive management measures to adjust grassland management if it is not effective at achieving the Habitat Plan's biological goals and objectives. As stated in Habitat Plan Section 7.3.3, *Species-Level Actions*, subheading *Bay Checkerspot Butterfly (Group 1), "*Continued monitoring of nitrogen deposition on serpentine soils and the benefits of managed grazing and controlled burns in areas such as Silver Creek Hills, Tulare Hill, and Santa Teresa County Park (Habitat Plan **Appendix E** *Draft Estimation of Contributions to Deposition of Nitrogen in Santa Clara County for the Santa Clara Valley Habitat Plan*) as well as more precisely quantifying how an increase in passenger and commercial vehicle trips and other new industrial and nonindustrial sources will degrade these habitat types will continue to be a focus under this Plan. The monitoring report prepared each year will document at least one dry season and one wet season nitrogen deposition rate from monitoring conducted by the Habitat Plan or other sources."

No changes to the Habitat Plan are required.

Santa Clara County Vector Control District

Schreiber, Ken

From: Tietze, Noor
Sent: Friday, April 15, 2011 4:22 PM
To: Schreiber, Ken
Cc: Parman, Russell
Subject: Draft_HCP_Comment_Form rev 1 Noor.xlsx
Attachments: Draft_HCP_Comment_Form rev 1 Noor.xlsx

Please find the attached comments to the proposed HCP draft document.

Noor

Noor Tietze, Ph.D.
Santa Clara County Vector Control District
1580 Berger Drive, San Jose, CA 95112
(408) 918-3482

	A	B	C	D	E	F	G	H
1			*Comment Location:*					
2	**Commenter (Your Name)**	**Comment #**	**Chapter**	**Section #**	**Page #**	**Paragraph**	**Paragraph (from top)**	**Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)**
3	Noor S. Tietze		5		29	4	4	Individual mosquito control plans for each reserve unit should be streamlined to create a less confusing, system-wide mosquito control strategy. Will there also be reporting requirements for pesticide use on these reserve areas where each unit requires its own report? Vector control already reports pesticide use to the Dept. Agriculture. 1
4	Noor S. Tietze		5		142		4	Encouraging mosquito predators such as bats, swallows, dragonflies, etc. . . have never been proven to yield reliable mosquito control results. In nature, a maximum of about 60% reduction of immature mosquitoes by aquatic predators may be achieved. Bats and swallows prefer larger, energy rich food sources (beetles, moths, dragonflies, etc), given the required energy expenditure of flight. 2
5	Noor S. Tietze		7					Table 7.2 indicates an exception for mosquitofish: the Vector District policy is not to stock natural habitats (creeks, lakes, larger ponds) with mosquitofish. Those piscine predators are primarily used in backyard ornamental ponds, abandoned swimming pools and the like. 3
6	Noor S. Tietze		7					Table 7-2. Examples of success criteria: emergent vegetation. Depending on proximity to humanity, percent emergent vegetation can be a significant mosquito control concern that limits, access, sampling and control efforts. Any wetland creation project should consult with Vector Control during the planning and design phases. 4
7								
8								
9								
10								
11	Commenting on: (Clean version, track changes version) _____							

Comment Letter 31—Santa Clara County Vector Control District, Noor Tietze, PhD, April 15, 2011

Response to Comment 31-1

Habitat Plan Section 5.2.5 was revised to include standard requirements of the Santa Clara County Vector Control District.

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 5.2.5 *Land Management* subheading *Mosquito Abatement*) "Any mosquito control activities to be performed on Reserve System land will be addressed in the reserve unit management plan in consultation with the Santa Clara County Vector Control District. The Implementing Entity will work with the Santa Clara County Vector Control District to create a unified mosquito control strategy that will apply to the entire Reserve System. All reporting requirements will be consistent with those required by the Santa Clara County Vector Control District and the U.S. Department of Agriculture. The reserve unit management plan will include specific detail related to that unit. It will also explain specific measures implemented to avoid and minimize impacts to covered species consistent with the Habitat Plan."

Response to Comment 31-2

The Local Partners and the Wildlife Agencies acknowledge the comment. The Habitat Plan strives to reduce chemical control of pests on Reserve System lands and is attempting to value the ecosystem services offered by natural predators.

No changes to the Habitat Plan are required.

Response to Comment 31-3

This exception was included because "maintain zero mosquitofish" is a difficult metric to meet in areas where they have traditionally been used as a control measure. The Implementing Entity does not plan to use mosquitofish as a vector control measure, but it does plan to keep other predatory fish out of ponds that are maintained as covered species habitat.

No changes to the Habitat Plan are required.

Response to Comment 31-4

Percent vegetative cover is an important indicator of aquatic habitat quality for covered species, especially California red-legged frog.

No changes to the Habitat Plan are required.

Kyle Wolfe

32

April 15, 2011

Ken Schreiber
Program Manager, SCCHCP
70 West Hedding Street
East Wing, 11th Floor
San Jose, CA 95110

Dear Mr. Schreiber,

As president of the Santa Clara County Cattlemen's Association, I represent about 200 cattlemen who participate in beef production in the county. Our members own and manage nearly 200,000 acres of working ranches in Santa Clara County, which provide habitat for endangered species and other wildlife while contributing to the county's tax base and rural economy.

My family's ranch, Kickham Ranch which has been in agricultural production since the 1860's is east of Gilroy sandwiched between Henry Coe State Park and Canada de los Osos Ecological Reserve is not unlike other beef cattle ranches in the county. We are struggling to remain viable in a landscape which is increasingly owned by government entities. This not only reduces opportunities for expanding my business, but also makes it more expensive to manage the land resources. For example, there is limited funding and interest in controlling weeds on Henry Coe State Park. These weeds become an expense to my agricultural production and impact the habitat of wildlife including many endangered species covered by the HCP.

Our ranching operation like most in the county is compatible with the goals of the Santa Clara Valley HCP for conservation of endangered species and their habitat. The important role of rancher stewards and livestock grazing in the HCP study area has been acknowledged by the US Fish and Wildlife Service, California Department of Fish and Game, The Nature Conservancy, University of California, Defenders of Wildlife and others as signators to the California Rangeland Conservation Resolution. Working ranches can provide and be held accountable to conserve the endangered species and provide the habitat required by the wildlife agencies through the Habitat Conservation Plan.

1

There are opportunities to improve the Habitat Conservation elements of the final Draft HCP. Improvements like encouraging easements over fee-title acquisition, providing opportunities for rancher implementation of conservation and reducing the scope of the JPA, could reduce the cost of the plan while maintaining the county's tax base. Thank you for your time and consideration.

Sincerely,

Kyle Wolfe
Santa Clara County Cattlemen's President
kickham@aol.com (408)804-1699

Comment Letter 32—Kyle Wolfe, President, Santa Clara County Cattlemen's Association, April 15, 2011

Response to Comment 32-1

Comment is addressed in Master Responses #5, #6, and #12.

Revisions to the Habitat Plan will be consistent with Master Responses #5, #6, and #12.

Anita Marlin

From: Molinari, Karen
To: Franck, Matthew/SAC
Cc: Schreiber, Ken
Subject: Comment # 1 via web: FW: Santa Clara Valley Habitat Plan -- comment period ends April 18th
Date: Thursday, May 05, 2011 1:43:34 PM

Hi Ken & Matt- Below is the first comment I received. I had drafted a reply message, but noted her subject title and thought it should be added to the comments received.

Karen

From: Anita Marlin [mailto:anitamarlin@gmail.com]
Sent: Sunday, April 17, 2011 2:21 PM
To: Molinari, Karen
Subject: Santa Clara Valley Habitat Plan -- comment period ends April 18th

Dear Karen, I learned of the plan only recently, on Wednesday April 13th. I had a chance to review the Executive Summary only. It looks to be well thought out.

Questions

a) How long is the term for the land that is set aside for the endangered species and habitat? Will it be set aside in perpetuity, or is it only for 50 years at which time it will be up for grabs for development by real estate developers, lobbyists, etc.? If it is only for 50 years that the restored areas are safe from development, then I am against this plan. 1

b) My company recently relocated to the area just east of the San Jose Airport (across 101 off Trimble, at the corners of Orchard Parkway and Component). This area is mentioned in the plan, i.e, "core populations of breeding and overwintering populations of **western burrowing owls** continue to be at the San Jose International Airport." Is this area slated for development or will it be protected as part of the plan? (There are dozens of enormous office buildings that are vacant throughout this area, so I think this area should not be developed and should be enhanced.) 2

c) Throughout the Plan, will there be any requirement for the developers to reduce incidental take of the 21 species? For example, if they know of a colony living in the area slated for development, will they be allowed to poison, shoot, etc. the endangered species, or will they have to make an effort to capture and relocate if that is feasible? 3

Thank you for your consideration.

Sincerely,
Anita Marlin

Comment Letter 33—Anita Marlin, May 5, 2011

Response to Comment 33-1

The term of the incidental take permits associated with the Habitat Plan is 50 years. The rationale for the 50 years is discussed in Habitat Plan Section 1.2.3, *Permit Term*. The Permit Term is the term in which incidental take associated with covered activities will be authorized; however, lands acquired for the Reserve System will be managed in perpetuity. The Reserve System will be acquired in fee title or through conservation easements.

No changes to the Habitat Plan are required.

Response to Comment 33-2

The area described by the commenter (near Orchard Parkway and Component Drive) is designated for industrial development by the City of San José, and is not expected to be preserved as part of the Reserve System (e.g., 600 acre requirement for burrowing owl protection). The area is located within 5 miles of the burrowing owl core population located at San José International Airport (roughly 0.75 miles from a key site at the airport), and is therefore potentially eligible for some protection (e.g., long-term management agreement) according to the burrowing owl conservation strategy. However, given the habitat criteria for an effective burrowing owl preserve (see Habitat Plan Appendix M) and the need to acquire sites from willing sellers, it is unlikely that a permanent burrowing owl preserve would be created in this area.

No changes to the EIR/EIS are required.

Response to Comment 33-3

The Habitat Plan includes requirements to avoid and minimize the potential for incidental take during covered activities. Avoidance and minimization measures are described throughout Habitat Plan Chapters 5 and 6. Take authorized by the Wildlife Agencies must be incidental to otherwise lawful activities; as such, intentional poisoning and hunting of covered species are not authorized by the Plan.

No changes to the Habitat Plan are required.

Kathleen Swindle

Comment Form — **Santa Clara Valley Habitat Plan EIR/EIS**
Santa Clara County, CA

Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the Santa Clara Valley Habitat Plan Local Partners (Cities of Gilroy, Morgan Hill and San José, County of Santa Clara, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority) and the U.S. Fish and Wildlife Service have prepared an EIR/EIS on the Santa Clara Valley Habitat Conservation Plan/Natural Communities Conservation Plan (the "Habitat Plan"). Written comments from interested parties regarding the EIR/EIS are invited to help the agencies make informed decisions using the best available information. All comments received, including names and addresses, will become part of the official administrative record and will be made available to the public. Written comments on the EIR/EIS should be received on or before April 18, 2011.

Written comments should be directed to the contacts below:

Ken Schreiber, Habitat Plan Program Manager
County of Santa Clara
70 West Hedding Street, East Wing, 11th Floor
San José, CA 95110
(408) 299-5789
ken.schreiber@ceo.sccgov.org

Cori Mustin, Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6600
R8SCVHPcomments@fws.gov

For additional information regarding the Santa Clara Valley Habitat Plan, please visit the Santa Clara Valley Habitat Plan website: www.scv-habitatplan.org

Your Name Kathleen Swindle Today's Date 4/17/11

Please indicate your affiliation by checking **one** of the following boxes:

- ☐ Individual (~~no affiliation~~) TAXPAYER
- ☐ Federal, State, or Local Government
- ☐ Elected Representative
- ☐ Private Organization
- ☐ Citizen's Group
- ☐ Regulatory Agency

Name of organization, government, group, or agency (if applicable) _____

Mailing Address 2145 Dunlap Ave

City/State/Zip Gilroy Ca 95020

Telephone (optional) _____ E-mail Address (optional) _____

Please write your comments here (please print legibly). Attach additional pages if necessary.

5 million for a study?? the taxpayers are tired of all this spending -- for a study -- enough!! Save our State - cut spending. Bad enough we have to contend with the millions spent on the Bullet train study-

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Comment Letter 34—Kathleen Swindle, April 17, 2011

Response to Comment 34-1

The Implementing Entity commits $500,000 (Habitat Plan Section 5.3.1) to fund the feasibility study referenced in the comment, not $5 million as suggested by the commenter. In response to public concerns about Plan costs, the Final Plan removes the Implementing Entity's previous commitment to spend $1.5 million to implement the highest priority recommendations made in the feasibility study.

Revisions to the Habitat Plan include the following:

Deletions made in Habitat Plan Section 5.3.1, subheading *Feasibility Study*.

Building Industry Association of the Bay Area

BIA BAY AREA
BUILDING INDUSTRY ASSOCIATION

Cori Mustin
U.S. Fish and Wildlife Service
Sacramento Field Office
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
R8SCVHPcomments@fws.gov

RE: Comment Letter for the Santa Clara Valley Habitat Conservation Plan

Dear Ms. Mustin;

The Building Industry Association of the Bay Area (BIA) appreciates the opportunity to comment on the Santa Clara Valley Habitat Conservation Plan (SCVHP). In the past, BIA has been a strong proponent of regional HCPs, having been an active participant in the successful development and adoption of the east Contra Costa County Habitat Conservation Plan, as well as having testified in favor of regional Habitat Conservation Plans before the U.S. Congress. With respect to the SCVHCP, BIA has the following comments, suggestions, and concerns:

I. Additional Time for Study, Analysis, & Comment.

While BIA recognizes that the SCVHP has been in development for many years, and is the product of long hours and much work, BIA nonetheless believes that more time and information is needed to enable decision makers and the public to understand and analyze the plan. BIA's position is based on several considerations, including: 1

A. Gilroy Non-Participation.

The City of Gilroy's recent decision to withdraw from participation in the SCVHP is a significant new development that warrants additional time for review and comment. It is unclear how Gilroy's decision will affect the plan's key elements such as the conservation strategy, financial plan, and governance. As a recent Santa Clara County staff report observed, "The [City's] decision leaves uncertainty regarding the viability of the Plan and partnership going forward." 2

B. County Financial Analysis.

Santa Clara County has commissioned a financial analysis of the SCVHP that addresses important questions regarding long-term plan management, governance, and costs. That report will not be finished until after the current comment period expires. It seems likely the County's report will generate important information that should be considered before the formal public comment period ends. 3

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C. Fee Burden/Financial Feasibility.

BIA has several times requested a comprehensive analysis addressing the overall development fee/exaction burden that will be imposed on new housing in each participating jurisdictions if the plan is adopted and implemented, as well as an analysis of the extent to which the new housing projected by the plan in those jurisdictions will be able to absorb the combined fees and exactions. A key metric that is missing from the plan information developed thus far is the projected ratio of combined fees/exactions to house sales price for the residential development forecasted by the plan. It is generally accepted that at a certain point, the ratio of fees/exactions to sales price becomes high enough to make new housing development financially infeasible. Without a solid analysis of this type prepared by the plan participants, it is not possible to make a supportable determination that the plan is financially feasible over the long term given that 58% of the overall plan funding is projected to come from development fees. 4

II. Zone D Nitrogen Deposition Fee.

As it has from the outset, BIA remains fundamentally opposed to any HCP/NCCP fee imposed on urban infill/smart growth projects. BIA's position is based both on science/legality and public policy. BIA does not believe that the science justifies the Nitrogen Fee or that it the fee is sufficiently connected to the impact of the new development on which it would be imposed. BIA also opposes the fee because it runs directly counter to land use and transportation planning efforts being undertaken by federal, state, regional, and local governments that are based on the premise that higher density development reduces overall VMT and resulting GHG emissions. Using San Jose's Envision 2040 as an example, the analysis of the alternatives being considered (and those rejected) proceeds from the fundamental premise that densification in urban areas represents housing that would have been built in outlying areas in less compact patterns. As compared to the "base case" development pattern, therefore, densification improves the VMT/GHG situation even though there will be some level of VMT associated with even the most dense and transit-friendly development projects. For all these reasons, the Zone D fee should be eliminated from the plan. 5

III. Local No Surprises.

The local agency permit applicants have recognized the necessity of obtaining robust assurances from the wildlife agencies regarding certainty and limitations on future mitigation requirements. Equally necessary for the private sector is that the plan provides the same robust assurances from the local agencies to the private sector that they will look to the plan as the exclusive means for analyzing and imposing mitigation requirements for the habitat and species resources covered by the plan's conservation strategy. The proposed "Local No Surprises" language is inadequate in this respect, leaving far too much discretion for the local agencies to impose the same sort of ad hoc requirements via other land use processes that they deem unacceptable if retained by the wildlife agencies. 6

To address this issue, BIA suggests the following changes to the draft Implementation Agreement (p.20, paragraph 4). The underlined language comes from p. 40 of the draft IA and recognizes that the plan does not interfere with the ability of the local agencies to impose mitigation requirements for impacts of development projects other than on the resources covered by the plan:

> The Permittees ~~County and the Cities~~ will not require ~~Private Project Participants~~ Third Party Participants to provide any additional mitigation, compensation, or other

requirements to address impacts to Covered Species beyond what is required in the SCVHP, this agreement or the Permits. ~~for purposes of extending Authorized Take Provided, however, that the County and Cities may impose additional requirements for purposes of other state or federal environmental permits, e.g. permits under the Federal Clean Water Act~~. *Nothing in this agreement will preclude the Permittees from imposing on Third Party Participants any mitigation, compensation, or other requirements in excess of those required by this agreement, the SCVHP and the Permits for impacts other than impacts of Covered Activities on Covered Species. Such other impacts may include, but are not limited to, impacts on parks, recreational facilities, and agriculture.*

On p. 40, we suggest the following edits to the third paragraph;

> ~~Nothing in this agreement will preclude~~ The Permittees ~~from imposing~~ *shall not impose* on Third Party Participants any mitigation, compensation, or other requirements in excess of those required by this agreement, the SCVHP and the Permits for impacts other than impacts of Covered Activities on Covered Species. Such other impacts may include, but are not limited to, impacts on parks, recreational facilities, and agriculture.

Similarly, on p. 58, Section 18.21 No Limitation on the Police Power of the Cities or the County, the language is too broad and should be amended to the following:

> Nothing in this Agreement, the SCVHP or the Permits ~~limits the exercise of or~~ in any way surrenders the police power of the Cities or the County.

IV. Federal/State No Surprises.

Modified language is necessary to make the state regulatory assurances consistent throughout the plan documents. Specifically, on p. 29 of the draft IA, Section 12.2 NCCPA Regulatory Assurances, the following language should be added to be consistent with Section 12.5 Assurances for Third Party Participants:

> As long as the Permittees are properly implementing this Agreement, the SCVHP, and the State Permit, CDFG will not seek to impose on the Permittees *or Third Party Participants,* for purposes of compliance with the NCCPA or CESA, any avoidance, minimization, mitigation, or conservation measures or requirements regarding the impacts of Covered Activities on Covered Species within the Permit Area beyond those required by this Agreement, the SCVHP, and the State Permit.

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V. Critical Habitat.

BIA is extremely concerned over what appears to be a fundamental policy shift by the U.S Fish and Wildlife Service regarding the relationship between critical habitat and regional HCPs. From the outset of the Service's push toward adoption of regional HCPs as the preferred mechanism for conserving species on a landscape level, the Service has clearly and repeatedly advanced the position that it would not "overlay" critical habitat designations on areas covered by a regional HCP. In fact, the Service has memorialized commitments in many HCP governing documents to refrain from doing so and

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even to remove existing critical habitat designations where a subsequent HCP is approved (the latter commitment being subject to availability of resources). The Service has also made the case in the strongest terms that failure of the Service to take this approach with respect to critical habitat would greatly undermine the interest of the regulated community in supporting and participating in regional HCPs. BIA is aware of instances in which the Service has acted directly contrary to this longstanding policy and specific commitments made to HCP participants, in recent critical habitat designations. BIA is also aware of the asserted justification(s) proffered by various Service officials (often conflicting) in Washington D.C. and in Field Offices, and finds them unsatisfactory.

It is possible, if not likely, that the Western burrowing owl and other currently unlisted species may become listed under the federal ESA during the term of the plan. Such a listing would bring with it intense pressure (and litigation) by certain interest groups to force designation of critical habitat. Without the strongest legally permissible commitment by the Service not to designate critical habitat, and to defend that decision if challenged in court, the Service's oft-stated position that the success of regional HCPs depends on obviating the threat of critical habitat "overlays" will be a front and center consideration of the regulated community.

VI. Dispute Resolution.

On pp. 16-17 of the draft IA, BIA suggests the following Section be added to describe Disputes Regarding Specific Projects, so that Third Party Participants are afforded basic due process protections:

> *6.6.2 - Disputes Regarding Specific Projects*
> *If the dispute among the Parties pertains to a specific project, the proponent of the project shall be allowed to provide input into the dispute resolution process by reviewing the initial notice of objection and submitting its own response and, if applicable, by participating in the meeting referenced in Section 6.2.3 Elevation of Dispute among the Permittee(s), the Implementing Entity and the Wildlife Agency. For purposes of this provision, a dispute pertains to a specific project if the Wildlife Agency objects to an action or inaction by a Permittee with regard to a specific project, such as the Permittee's determination of appropriate mitigation requirements for the project, or a Permittee objects to an action or inaction by the Wildlife Agency with regard to a specific project.*

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VII. Fees.

The draft IA (p. 26, Section 8.22 Payment and Collection of Fees second paragraph, last sentence) provides: "…The Implementing Entity will comply with all applicable provisions of the Mitigation Fee Act as to the deposit, accounting, expenditure and reporting of such fee revenues." It is important for the plan and Plan Participants to identify what (in their collective view) is the fundamental nature of each fee that will be imposed on Third Party Applicants, including the land cover fees, species-specific fees, administrative fees, etc. BIA seeks clarification, with respect to each fee, whether the fee is subject to all, some, or none of the Mitigation Fee Act provisions (including the reasonable relationship test, accounting provisions, and pay-under-protest provisions); and whether the fee is subject to the California Constitution's reasonable relationship requirement described in the *Patterson* decision.

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VIII. Land Conveyance & Mitigation.

BIA requests that the draft IA (p. 32, Section 9.5 Additional Criteria for Lands Conveyed in Lieu of SCVHP Fees) be amended to provide a defined timeline and process to describe clearly the circumstances in which land conveyance land in place of fees will be allowed. 11

With respect to acquisition of serpentine soils, BIA believes that since highly productive and available land may be found in areas adjacent to the Permit Area, the plan should not contain a blanket prohibition against acquisition as part of the conservation area. BIA suggests the following amendment to the draft IA (p. 33, Section 9.6.1 Lands in Private Mitigation Banks):

> Lands in private mitigation banks within the Permit Area *and future identified Serpentine Soils adjacent to the Permit Area* can be counted toward the Reserve System Requirements of the SCVHP as described in Chapter 8.5.2. A Permittee or Third Party Participant may purchase credits at a private mitigation bank to fulfill the requirements of the SCVHP only if the bank occurs within the Permit Area *or is approved by Wildlife Agency* and meets all relevant requirements pertaining to the Reserve System, habitat enhancement, adaptive management, and monitoring described in Chapter 5 and Chapter. 12

IX. Cost of Recreational Impacts on the Reserve.

It is fundamentally unfair to impose on new development the cost of providing additional police services that may be incurred by recreational and educational activities in the Reserve (draft IA, p. 34, Section 10.3 Recreational Uses—Police Services). The decision to allow recreational and educational uses is at the discretion of the wildlife agencies and the Permittees. Therefore, to the extent there are additional police and related costs incurred, they should be funded by user fees. 13

X. Inadequate Funding.

BIA requests the following language modification (draft IA, p.42, 13.2) to insure that if the Permit is suspended due to inadequate funding it will not give rise to the presumption of a development moratorium, and that ESA issues will be addressed on a project-by-project basis:

> In the event there is inadequate funding to implement the SCVHP, the Wildlife Agencies will assess the impact of the funding deficiency on the scope and validity of the Permits. Unless the Permittees exercise the authority to withdraw, as provided in Section 17, or the Wildlife Agencies revoke the Permits, in whole or in part, as provided in Section 16, the Parties agree that they will meet and confer to develop a strategy to address the funding shortfall and to undertake all practicable efforts to maintain both the level of conservation provided under the SCVHP and the level of Authorized Take coverage afforded by the Permits until the funding deficiency can be remedied. The strategy to address a funding shortfall may include, but is not necessarily limited to, the actions described in Chapter 9.4.4. *If the Permits are suspended due to inadequate funding it will not constitute the presumption of a building moratorium in Permitted jurisdictions.* However, the Permittees do not intend to, nor are they required to use, funds from their respective general funds to implement the SCVHP in the event of funding shortfalls, either in the short term or the long term. If overall 14

SCVHP fee revenues for the term of the Permits falls short of SCVHP projections because fewer Covered Activities are proposed or implemented, the resulting shortfall in SCVHP funding could prevent or constrain the Permittees' ability to implement the SCVHP fully. If it appears that the allowed Authorized Take will not be used during the term of the Permits, substantially reducing SCVHP fee revenues, the Parties anticipate that the Permittees will apply for an extension of the Permits in accordance with Section 17.4 to allow the full use of Authorized Take and full implementation of the SVHP, or will apply for a Permit modification or amendment in accordance with Section 15.5.

XI. Response Times.

BIA requests that the draft IA be amended to provide a specific time requirement (45 days) for agency review of covered activities (p. 51, 18.2 Response Times). 15

XII. Costs and Funding.

The plan envisions staffing levels and costs based on creating a stand-alone agency with independent staffing and accounting responsibilities specific to the SCVHP and its administration. BIA requests that the Wildlife Agencies consider undertaking an overall consolidation of these tasks to create a statewide Habitat Conservation Plan Accounting and Administration Department with the responsibilities identified in the cost model for implementing the administrative and accounting services that are conducive to centralized operation and associated efficiencies. There may be substantial personnel and administrative savings opportunities for all regional Habitat Conservation Plans in California associated with such a strategy. 16

On a related issue, the plan outlines a salary multiplier identified as 35% to include staff-specific costs (health insurance, payroll, taxes, retirement plan, worker's compensation disability and life insurance). The multiplier referenced by the United States Department of Labor Bureau of Labor Statistics in its report Employer Costs for Employee Compensation December 2010 and released March 9, 2011 references the average cost multiplier for benefits to be 29.2% and not 35% as referenced in the plan. We request that this cost item be updated to reflect the federal average 29% and that table 9-2b be updated to reflect that change. 17

On Page 9-31, second paragraph (Nitrogen Deposition Fee as continued from page 9-30), the first sentence of paragraph 2 states that the serpentine lands in the Reserve System will have higher average per-acre costs for management and monitoring than the average costs for non-serpentine land covers. No support is offered for this assertion and since the predominant management practice is the same—cattle grazing—BIA requests the management fee be reduced unless supported by solid evidence. 18

On Page 9-47, Section 9.4.2 Local Funding, the first and second paragraphs describe substantial funds for the Plan implementation that come from local sources other than Habitat Plan Fees. BIA requests additional detail on the "original" source of these funds. BIA is also particularly interested in whether any of these local funding sources actually originate as a fee, tax, or other exaction or requirement imposed on development. 19

On Page 9-55, Mitigation and Conservation Components, the second paragraph of this Section describes preservation ratios estimated for all terrestrial land cover types based on previously accepted mitigation ratios. Based on these ratios the overall mitigation component of the Plan is estimated at 49% of the land acquisition, and yet the development fee is based on 58.4%. BIA requests an explanation and justification as to why the mitigation fees are paying for more than 49%. In our view, the footnote does not provide enough justification for the increase. 20

XIII. Certainty and Reasonable Expectations.

The plan does not address the practical and equitable issues relating to projects that are far enough advanced in the planning process that including them within the plan would be unfair and potentially financially devastating. BIA requests that the plan participants and stakeholders work together to address this issue and craft a fair and reasonable project "grandfather" provision. 21

XIV. Wetlands/Waters Permit Integration.

The benefit to the regulated community of regional Habitat Conservation Plans, including this one, would be significantly enhanced if wetlands and related permit requirements were integrated to the maximum extent feasible with the SCVHP. BIA notes that the U.S. Army Corps of Engineers has proposed a Regional General Permit and related In-lieu Fee Program in connection with the already approved east Contra Costa County HCP. BIA requests that the plan and implementing documents contain the strongest possible commitment on the part of the participants to pursue and secure this or similar permit integration with the Corps and the State/Regional Water Quality Control Boards for covered activities in the plan area. 22

We thank you for the opportunity to comment and thank you for your time and attention.

Sincerely,

Paul Campos
Sr. Vice President & General Counsel

Crisand Giles
Executive Director, South Bay

Comment Letter 35—Building Industry Association of the Bay Area, Paul Campos, Sr. Vice President and General Counsel, Crisand Giles, Executive Director, South Bay, No Date

Response to Comment 35-1

The Wildlife Agencies and Local Partners acknowledge the commenter's request that "more time and information is needed to enable decision makers and the public to understand and analyze the plan." Additional time will be limited to responding to public comments and the Final Habitat Plan review and approval process.

Also see Response to Comment 23-4.

No changes to the Habitat Plan are required.

Response to Comment 35-2

The City of Gilroy rejoined the Habitat Plan development process shortly after it pulled out. This comment is no longer relevant.

No changes to the Habitat Plan are required.

Response to Comment 35-3

Comment is addressed in Master Response #3.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 35-4

Comment is addressed in Master Responses #2 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Response to Comment 35-5

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 35-6

The purpose of the Plan is to address compliance with federal and state endangered species laws. The "local no surprises" language recognizes that the local jurisdiction Permittees are responsible for enforcing a wide variety of federal, state, and local land use and environmental laws and regulations and that these requirements evolve. For example, NPDES permit requirements imposed on local agencies by the Regional Boards have placed increased responsibility on local agencies to regulate private development. Laws and regulations related to reducing greenhouse gas emissions are also in flux. There is no assurance that compliance with the Plan requirements will ensure compliance with all other laws and regulations that may apply to a particular development project, and the local jurisdiction Permittees do not have the legal authority to exempt developers from other applicable laws and regulations.

No changes to the Habitat Plan are required.

Response to Comment 35-7

Revisions to the Habitat Plan include the following:

The Implementing Agreement was updated to include that state regulatory assurances are also extended to Third Party Participants.

Response to Comment 35-8

The designation of critical habitat and the issuance of an incidental take permits are independent processes under ESA. Under the ESA, 16 U.S.C. § 1531 et seq., the Secretary of Interior, when listing a species as threatened or endangered, must also "designate any habitat of such species which is then considered to be critical habitat." Id § 1533(a)(3)(A). Notwithstanding the fact that critical habitat is defined as habitat that is, or has features that are, "essential to the conservation of the species," id § 1532(5)(A), section 4(b)(2) of the ESA grants the Secretary authority to exclude from a designation "any area" where, in his judgment, "the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat."

When designating critical habitat, the USFWS gives specific consideration to possible exclusion of lands within approved HCP boundaries from critical habitat designation. USFWS recognizes and values of partnerships involved in the development and implementation of HCPs. However, in some cases, it may determine that the partnership benefits of excluding lands covered by the HCP may not outweigh the regulatory and educational benefits of designating critical habitat. As such, the Secretary of the Interior may choose to not exclude critical habitat within a HCP permit area. The rationale for USFWS's designation of critical habitat is outlined in every final rule.

Factors beyond the control of the Permittees (i.e., climate change and impacts in other portions of a species' range, etc.) during Plan implementation may significantly affect the status and baseline conditions of covered species within the permit area. As such, it is possible that species covered under properly implemented regional HCPs may still need additional protection via the designation of critical habitat. Therefore, it would be inappropriate for USFWS to make commitments to refrain from designating or re-designating critical habitat within permitted HCP boundaries.

Similar rationale was used in the USFWS's recommendation to uplist the Bay checkerspot butterfly from a threatened to endangered status in 2009 (http://ecos.fws.gov/docs/five_year_review/doc2517.pdf). Despite all of the anticipated benefits of the developing Habitat Plan, USFWS recommended uplisting the Bay checkerspot butterfly because of factors outside of the Local Partners' control (i.e., loss of all populations in Alameda, Contra Costa, and San Mateo Counties) made it clear that existing efforts were not adequately recovering the species.

No changes to the Habitat Plan are required.

Response to Comment 35-9

The Local Partners and the Wildlife Agencies acknowledge the recommended insertion, but decline to make the recommended edit.

No changes to the Habitat Plan are required.

Response to Comment 35-10

Habitat Plan Section 9.4.1 provides a detailed description of the fundamental nature of each category of Plan fee. A Nexus Study is being prepared for review by the public and the Implementing Entity prior to adoption of Plan fees and will provide more comprehensive information about the Plan fees in relation to Mitigation Fee Act requirements.

No changes to the Habitat Plan are required.

Response to Comment 35-11

The process and general timeline for Implementing Entity consideration of a request to accept land conveyance in lieu of fees will be developed by the Implementing Entity in the early stages of Plan

implementation. The Plan and Implementing Agreement (see Section 9.1 of the Implementing Agreement) describe criteria the Implementing Entity will use in evaluating the addition of land to the Reserve System and submitting approved requests to the Wildlife Agencies for their approval.

No changes to the Habitat Plan are required.

Response to Comment 35-12

All mitigation is required to occur within the permit area.

Comment is addressed in Master Response #13.

Revisions to the Habitat Plan will be consistent with Master Response #13.

Response to Comment 35-13

Comment is addressed in Master Response #11.

Revisions to the Habitat Plan will be consistent with Master Response #11.

Response to Comment 35-14

See Response to Comment 29-1.

Response to Comment 35-15

The response times provided in the draft Implementing Agreement are the durations to which the Wildlife Agencies are willing to commit.

No changes to the Habitat Plan are required.

Response to Comment 35-16

The Wildlife Agencies are interested in keeping costs down, however, HCPs and NCCPs are developed and ultimately implemented by their respective Permittees. Furthermore, as indicated in the USFWS's 5-Point Policy [65 FR 35254], both USFWS and the Permittee(s) are responsible for monitoring the implementation of the HCP. USFWS's primary monitoring responsibility however, is to ensure compliance with the permit's terms and conditions, including proper implementation of the HCP by the Permittee(s). Permittee assistance with compliance monitoring includes monitoring the implementation of the plans and reporting their results. As such, it is beyond the scope of the Wildlife Agencies' duties to undertake consolidation efforts to create a statewide Habitat Conservation Plan Accounting and Administration Department.

CDFG currently maintains key information reported on NCCPs through its Habitat Tracking and Reporting (HabiTrak) System (http://nrm.dfg.ca.gov/habitrak/). HabiTrak was developed cooperatively between the Wildlife Agencies and proponents of permitted southern California NCCPs. HabiTrak is designed to track habitat lost and conserved over time due to public and private development projects and is available for NCCP permittees. However, it is not designed to accommodate the scale of accounting suggested by the commenter because its use is not required by the Wildlife Agencies. Most permitted HCPs and NCCPs do not currently submit data to HabiTrak because Permittees often choose to develop internal accounting systems that work best for their individual plans.

Response to Comment 35-17

The salary multiplier was informed by the salary multipliers of the Local Partners. However, Local Partners multipliers were found to be relatively high (e.g., the County has an average salary multiplier of 51%); therefore, the multiplier selected for the cost model was set lower, at 35%.

No changes to the Habitat Plan are required.

Response to Comment 35-18

A number of costs contribute to the higher per-acre costs for serpentine land cover compared with non-serpentine land cover types. These include the following:

- Grazing management is more intensive and requires greater adjustment and monitoring than non-serpentine land cover.
- All management actions occur on a smaller scale, so the per-acre costs are higher (i.e., less economy of scale).
- More aggressive invasive species management is required (e.g., barbed goat grass).
- Prescribed burning is required.
- Monitoring costs are higher because of the number of covered species and their sensitivity.
- N-deposition monitoring is required to inform and adjust management.
- Additional management may be required in response to increased N-deposition levels.

No changes to the Habitat Plan are required.

Response to Comment 35-19

The local funding sources described in Habitat Plan Chapter 9, Section 9.4.2, are summarized in Habitat Plan **Table 9-5**. These funding sources and assumptions about the amount of funding likely to be available were defined by the Local Partners' experience and the experience of other regional HCP/NCCPs. The state and federal numbers were based on CDFG and USFWS contributions to other plans in recent years. Foundations have been a growing source of funding for local projects.

Changes to this table in the Final Habitat Plan were made to reflect the reduction in the scale of the Plan and further vetting of likely funding sources (see Master Response #1). The South County Airport is no longer included as a funding source.

Revisions to the Habitat Plan will be consistent with Master Response #1, including updates to **Table 9-5**.

Response to Comment 35-20

Revisions to the Habitat Plan include the following:

The development fee nexus analysis in the Final Plan corrected the discrepancy between the roughly proportional share of reserve land acquisition associated with mitigation and the share of funding coming from development fees. In the Final Plan the share of acquired reserve lands associated with mitigation is approximately 56% and the share of funding provided by development fees, 55% as shown in Habitat Plan **Table 9-5**.

Response to Comment 35-21

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 35-22

Comment is addressed in Master Response #4.

Revisions to the Habitat Plan will be consistent with Master Response #4.

California Native Plant Society

California Native Plant Society

Santa Clara Valley Chapter
3921 East Bayshore Road, Palo Alto, CA 94303

Commentor:
Kevin Bryant

4/18/11

Ken Schreiber, Program Manager
County of Santa Clara Executive's Office
HCP/NCCP Program Manager
County Government Center, East Wing- 11th Floor
70 W. Hedding Street
San Jose, California 95110

Dear Mr. Schreiber,

The Santa Clara Valley Chapter of the California Native Plant Society has been a member of the Stakeholder Group for the Santa Clara Valley HCP/NCCP since its inception in 2005, and we greatly appreciate the opportunity to participate in this process of creating a large-scale multispecies conservation plan for our area. We feel it has been a fair and open process, and wish to thank you, the wildlife agencies staff, and the many consultants who have worked very hard to bring the Plan to its current draft form. We support the draft SCVHP in general and have commented on a few of the many outstanding conservation opportunities we recognize in the Plan, but also feel that there are some improvements that can be made that will allow this plan to provide more certainty for the protection of species and the improvement of the remaining native habitats in the study area.

Our focus throughout this process has been on plant protection, and so our comments will also focus solely on matters involving plants. We have a few general comments to make regarding plant protection in the Plan, comments to make regarding the covered species list, as well as several page-specific corrections and clarifications to offer.

CNPS Draft Santa Clara Valley Habitat Plan - General Comments

Landscape Level Protections

The landscape level protections included in the draft SCVHP are extremely important to the survival of the covered plant species as well as many species not covered by the Plan. This is particularly important when considering the effects of climate change in the Santa Clara Valley,

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and the establishment of a Reserve System will provide plants with the opportunity to adapt over the variety of elevation and aspect changes present in the study area. We feel it is vital to maintain the Natural Communities Conservation Plan portion of the SCVHP as a means to achieve landscape level protections for all plants and animals in the study area, and to contribute to the recovery of the covered species.

Nitrogen Deposition Fee

Mitigation for nitrogen deposition is an important component of the Plan, and we feel strongly that the nitrogen deposition fee should be retained for all Fee Zones in the final SCVHP. If circumstances change within the permit term and less nitrogen is being deposited, the fees associated with this mitigation can be reduced or eliminated per established audit procedures, but until then, they are vital to the management of non-native annual grasses in serpentine land cover types that support our covered plant species. 2

Monitoring and Control of Invasive Plant Species

The draft Plan contains several references and guidelines for the monitoring and control of non-native invasive plant species, and we regard this as a crucial element to the success of the species protection and recovery. We are pleased to see that properly managed cattle grazing has been acknowledged as one of the several methods of controlling non-native grasses and has been incorporated into the Conservation Strategy. We view cooperation with the ranching community of Santa Clara County as a key element in the assembly and management of the Reserve System. 3

Seeding Native Forbs and Grasses

The Conservation Strategy (5-105) references a 2001 CNPS Policy regarding genetic integrity and use of local seed banks when seeding an area for restoration is appropriate, and we are pleased to see that such practices will be adopted by the Implementing Entity. Seeding should only be incorporated in circumstances where natural revegetation is unlikely to occur, as noted in the CNPS Policy Guidelines below: 4

> When landscaping for ecological purposes (habitat restoration, mitigation, revegetation, etc.) first encourage natural revegetation of local ecotypes of native taxa by actively managing against weeds and exotics.
>
> If natural revegetation from surrounding areas or the native soil seedbank is inadequate, actively assist revegetation by planting seeds or plants grown from seeds,

cuttings or divisions collected locally. What follows is a hierarchical list of recommended collection sites with the most desirable listed first:

1. From the project site.
2. From adjacent or nearby sites, such as from the same watershed at the same approximate elevation and slope aspect as the project site.

Occurrence Creation

The draft Plan allows occurrence creation to count toward mitigation for two covered species, Coyote ceanothus and San Francisco collinsia (Section 5.4.13 and 5.4.15), and while we understand the rationale used to justify the need for this action, we question whether this will be an effective means of conservation for these species. The draft Plan is thorough in discussing the conditions that would lead to the need for attempted occurrence creation, but falls short of providing the biological assurances needed to count this as mitigation, especially in the case of Coyote ceanothus. Priority should be given to finding additional populations of both of these species as soon as is practical, and if after two years of exhaustive searching no additional populations are found (this is the most likely scenario for Coyote ceanothus), plans for occurrence creation should be initiated and first attempts should begin before year 10.

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For Coyote ceanothus, the draft Plan states (5-190) that "[o]ccurrence creation is expected to occur later in the permit term (but no later than by Year 40) because of the need to: (1) exhaust opportunities to discover new occurrences (which are first priority), (2) assemble enough of the Reserve System to provide suitable habitat for occurrence creation, and (3) allow sufficient time to study optimum habitat conditions...". Given the need to retrofit Anderson Dam in the near future, it is unacceptable to wait until as late as year 40 to begin occurrence creation for this Federally Endangered species. The section on occurrence creation for San Francisco collinsia (5-197 and 5-198) states that "...successful creation means that the occurrence is stable or growing in size as measured over at least 10 years", but we find no such time sensitive criteria or definition of success offered for Coyote ceanothus. Success of created occurrences for both of these species should be demonstrated prior to impacts if created occurrences are to be used as mitigation for take of these species.

Impacts to Serpentine Land Cover Types

Table 4-2 indicates that there is a 317 acre gap between maximum allowed impacts to serpentine grassland (550 acres) and total anticipated impacts (867 acres). We feel that impacts on serpentine land cover types should be minimized as outlined in Chapter 6, as take of these

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land cover types cannot be properly mitigated. We understand that some impacts will occur due to infrastructure maintenance and retrofit, but urge that minimal impacts be allowed in order to comply with the 550 acre take limit. We encourage innovative techniques that allow impacted serpentine land cover types to still provide habitat value for plant species occurring on these land cover types. One example would be to require that landscape designs within the disturbance envelope on serpentine land cover types use only site specific native plant species.

CNPS Draft Santa Clara Valley Habitat Plan – Comments on Covered Species

We feel that there are several plant species that qualify to be covered species under the Plan criteria yet have not been included as covered species. Several of these have been considered and rejected (big scale balsam-root, Santa Cruz Mountains manzanita, Hall's bush mallow, Santa Cruz Mountains beardtongue), while one other has not yet been considered (woodland woollythreads). We feel that these species have the potential to be listed as threatened or endangered species within the 50 year permit term and that omission of these plants from the Plan may contribute to their decline due to a lessened emphasis in our area and the sparse protections that exist outside of the Plan. All plants on the current covered species list are associated with serpentine soils in our area, and we feel it would be extremely valuable for species protection to include taxa such as Santa Cruz Mountains manzanita and Santa Cruz Mountains beardtongue that do not have serpentine soil associations. Below is our review of each of these species in relation to the draft Plan Table C-2.

big scale balsam-root (Balsamorhiza macrolepis var. macrolepis)

Included in the Plan until 2010, this taxon has its southernmost occurrences in our study area, and these are at the lower elevation limits for this plant. These populations may be important to the recovery of this plant over the course of the permit term. There are at least three extant occurrences in the area around Coyote Lake, including two populations within 25 feet of existing trails. We consider the likelihood of locating other populations within the study area to be high, as this low growing plant can easily be overlooked or mistaken for other species (e.g. Wyethia sp.). The species has been rejected due to lack of impact, but at least one occurrence (21) has already been extirpated in our study area, and any newly discovered populations are likely to occur at low elevations in the Diablo Range, an area suitable and desirable for covered activities such as housing or commercial development. The extant occurrences near roads and trails may be impacted by maintenance or expansion of these travel corridors. In general, we feel it is important to preserve peripheral populations in order to ensure the continued viability

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of a taxon, and inclusion in the SCVHP as a covered species would contribute to the recovery of this rare plant.

Santa Cruz Mountains manzanita (Arctostaphylos andersonii)

This rare shrub occurs in the study area in the vicinity of Mt. Madonna on sandstone substrates in redwood and mixed evergreen forest openings. This isolated population (which extends into adjacent areas of Santa Cruz County) represents the easternmost occurrence of the species, and may contain genetic differences due to separation from the main population in the western Santa Cruz Mountains (see Morgan et al 2005: An Annotated Checklist of the Vascular Plants of Santa Cruz County). This taxon was rejected based on status, with Notes stating "...species often dominates chaparral where it occurs, so unlikely to be listed during permit term." Nowhere in its limited range does this species dominate chaparral, and in fact, it sometimes occurs with other Arctostaphylos species in a rare plant community, maritime chaparral. It also occurs infrequently in forest openings in redwood and mixed evergreen forests. The plants in the study area are distinct in appearance and isolated by approximately 25 miles from the main population, and with changing fire regimes, it would be valuable to conserve separated populations of an obligate seeder that may decline rapidly with shortened fire return intervals. Inclusion in the SCVHP would contribute to this species recovery and sustainability.

Hall's bush mallow (Malacothamnus halli)

This taxon was included in the Plan as a covered species until 2010. It has been rejected due to reported lack of data, with Notes stating "status of species taxonomy is in question." The plants that occur in our area are fairly easily keyed to M. hallii using the Jepson Manual 2nd. Ed., and they fit the description given therein (available on-line, expected to be in print form later in 2011 or early 2012). There are many occurrences in our area, and in fact, our study area represents the core of this plants distribution. This plant depends on fire for reproduction, and inclusion in the SCVHP would ensure its survival and recovery through proper management techniques.

Santa Cruz Mountains beardtongue (Penstemon rattanii var. kleei)

This taxon occurs in our area in the vicinity of Mt. Madonna in similar habitat to Santa Cruz Mountains Manzanita. It occurs in Mt. Madonna County Park in an area occasionally cleared of shrub and tree cover for a powerline right of way. It is a very rare taxon, having perhaps as few as 6 extant occurrences in the world, possibly due to a recent history of fire suppression in the

Santa Cruz Mountains. It was rejected based on lack of impact, but any expansion of facilities or change in maintenance regime at the county park may adversely impact this plant, and there may be additional populations in the vicinity that may be subject to development. Inclusion in the SCVHP would provide improved management techniques and contribute in a substantial way to the persistence and recovery of this rare taxon.

woodland woollythreads (Monolopia gracilens)

This species was added to list 1B in April 2010. It has several occurrences in our area, most often occurring on serpentine soils, but also occurring off serpentine on sites with thinner soils on steep slopes. It is expected to be impacted by covered activities, and qualifies to be included in our covered species list per the criteria in Chapter 1 (1-16) and Table C-2.

CNPS Draft Santa Clara Valley Habitat Plan – Page-Specific Comments

Chapter 4: Impact Assessment and Level of Take

Section 4.6.10 Serpentine Plants, page 4-97 under Direct Effects, seventh line

"Almost all of the covered species discussed in this section are annuals (all but Coyote Ceanothus)." 8

This statement is not true. Only the two jewelflowers and smooth lessingia are annuals in the referenced section, the others are all perennials or shrubs.

Chapter 5: Conservation Strategy

Section 5.4.15 San Francisco Collinsia, page 5-198 under Occurrence Creation, fourth paragraph

refers to the "*Anderson Dam Seismic Retrofit Meet and Confer Provision* section in Chapter 10" but we were unable to find the referenced section in Chapter 10. 9

Chapter 6: Conditions on Covered Activities and Application Process

Section 6.2 Exemptions from Conditions, page 6-4, the two bullets in the first paragraph

Both bullets refer to serpentine grassland and serpentine chaparral, and should also include serpentine rock outcrops and serpentine seeps, but they do not. The mapped acreage of serpentine rock outcrops and serpentine seeps is very small in the study area, and the loss of 10

even a small amount on a property less than 0.5 acres or an addition of less than 2,000 sqft could still cause significant take of these land cover types. Suggest the wording be changed to "serpentine land cover types".

Appendix C: Evaluation of Special-Status Species for Coverage in the SCV HCP/NCCP

One additional plant should be added to the chart, woodland woollythreads (*Monolopia gracilens*). This taxon was added to CNPS List 1B on April 19 2010. It occurs at Coyote Ridge and elsewhere in the study area (see CNDDB). It is as likely to be impacted as our other covered species occurring on serpentine. 11

Please see our comments regarding species considered but not covered under "General Comments" section.

Addition to Table C-2, last page, definition for CNPS List 4 is missing. 12

Appendix D: Species Accounts

Coyote Ceanothus

page 1, under Distribution, first sentence should read "...is known from three occurrences in the Mt. Hamilton Range and one in the Santa Cruz Mountains." 13

page 4, first paragraph, Llagas Ave. population was re-visited in 2006 per page 4-100, 3rd paragraph of Plan. 14

Mount Hamilton Thistle

page 1, Distribution, second sentence should mention Santa Cruz Mountains populations, not "other hills adjacent to northern Santa Clara Valley" as it currently reads. 15

San Francisco Collinsia

Taxonomic change, family is now Plantaginaceae 16

page 2 top of the page mentions the most inland location occurring in the Santa Cruz Mountains, but below under Extant, the Anderson Lake population is mentioned, which is in Diablo Range. 17

p.4 Threats should include population within Anderson Lake which would be inundated if reservoir is at capacity. 18

California Native Plant Society
Santa Clara Valley Chapter
3921 East Bayshore Road, Palo Alto, CA 94303

Santa Clara Valley Dudleya

Taxonomic change to Dudleya abramsii subsp. setchelli per new key for Jepson Manual 2nd Ed. (McCabe) 19

Table 2, add July to flowering in chart, as some plants will still be in flower in cooler years. 20

Loma Prieta Hoita

In Habitat Requirements, it should be mentioned that this taxon primarily occurs on or very near serpentine soils, and is a strong indicator species for serpentine (per Stafford et al, 2005). 21

Appendix F: Climate Change

p. F-10, under Plants, second sentence, strike first "plant" from "given plant sensitive plant species" 22

Same paragraph, all of our currently covered plant species have some degree of affinity for serpentine in our area, and may be adversely affected by climate change. 23

Closing Remarks

The California Native Plant Society recognizes that the Santa Clara Valley Habitat Plan, once enacted, would be a significant step toward conserving rare plant species and undeveloped habitat in our area. It is difficult to forecast what will occur in our area in the next 50 years, but we feel this Plan will allow our children's children to experience open space in our County, to see Bay Checkerspot butterflies and experience the spring bloom atop Coyote Ridge. The comments made above reflect our vision for improving the plan and providing the plants in our area an even better chance to survive and thrive. While we hope you will consider and incorporate all of our comments in the final SCVHP, we support the concepts behind the draft Plan, and look forward to the approval and implementation of the Final Santa Clara Valley Habitat Plan.

Sincerely,

Kevin M. Bryant, Past President

California Native Plant Society – Santa Clara Valley Chapter

Comment Letter 36—California Native Plant Society, Kevin M. Bryant, Past President, Santa Clara Valley Chapter, April 18, 2011

Response to Comment 36-1

The Wildlife Agencies and Local Partners acknowledge the commenter's support for the establishment of a Reserve System under the Plan and the commenter's support for maintaining the NCCP portion of the Santa Clara Valley Habitat Plan.

No changes to the Habitat Plan are required.

Response to Comment 36-2

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 36-3

The Wildlife Agencies and Local Partners concur with the commenter's support for "properly managed cattle grazing" as a method for controlling nonnative grasses.

No changes to the Habitat Plan are required.

Response to Comment 36-4

The Wildlife Agencies and Local Partners concur with the commenter's note that seeding of native forb and grass species should follow the CNPS Guidelines outlined in the 2001 CNPS Policy cited in the Plan.

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 5.3.3 *Grassland Conservation and Management*, subheading *Management Techniques and Tools*, subheading *Seeding Native Forbs and Grasses*) "In order to protect genetic integrity of the local landscape and ecosystems it is recommended that natural revegetation of local ecotypes should be encouraged first by controlling weeds and non-native species and seeding of native species should only occur in areas where natural revegetation is unlikely to occur (California Native Plant Society 2001). Highly degraded grasslands; however, may need additional input of native seed to restore their functionality. Seeding of native forbs and grasses is a conservation action in support of grassland enhancement (GRASS-4). Seeding may include covered plant species. Where possible, seed sources of covered plants will come from the project site itself and, if unavailable from the project site, from adjacent or nearby sites within the same watershed (California Native Plant Society 2001)."

Response to Comment 36-5

San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

The Wildlife Agencies and Local Partners acknowledge the commenter's concern regarding Plan allowance for occurrence creation to count toward mitigation for Coyote ceanothus. The Wildlife Agencies and Local Partners concur with the commenter's note that priority should be given to finding additional populations of this species. As stated in the Plan, the Implementing Entity will attempt to locate and protect new occurrences first. If new occurrences cannot be found or acquired, occurrences would be created.

The commenter also notes that "occurrence creation should be initiated and attempts begun before Year 10." The *Occurrence Acquisition* subheading for Coyote ceanothus was revised to include a discussion of steps being undertaken before Plan adoption and before impact to initiate tasks associated

with occurrence creation. These revisions include information on the timing of certain actions that help to define the timeline for creation-related activities.

The Wildlife Agencies and Local Partners acknowledge the commenter's note that no definition of success for occurrence creation is offered for Coyote ceanothus and that success of created occurrences should be demonstrated prior to impacts if created occurrences are to be used as mitigation for take of these species. Providing detailed success criteria for Coyote ceanothus is difficult because, as stated in the *Uncertainties and Threats* subheading for Coyote ceanothus, very little precise information about the ecology of this species exists. Accordingly, directed studies are needed to establish and maintain new occurrences in perpetuity successfully (STUDIES-5). This section also states that adaptive management decisions will be developed on the basis of monitoring results (STUDIES-11). Additionally, in the *Occurrence Acquisition* subheading for Coyote ceanothus, the Plan states that the Implementing Entity and the Wildlife Agencies will determine a process to monitor created populations of Coyote ceanothus. If the impacts on Coyote ceanothus are greater than what was evaluated in the Plan, additional mitigation may be required to offset the additional impacts. This may also require a Plan amendment as described in Habitat Plan Chapter 10, Section 10.3 *Modifications to the Plan*.

No additional changes to the Habitat Plan are required.

Response to Comment 36-6

The Wildlife Agencies and Local Partners acknowledge the commenter's note that there is a 317-acre gap between total anticipated impacts, which sum to 867 acres, and the maximum of allowed impacts on serpentine grasslands (550 acres) in Habitat Plan **Table 4-2**: *Total Allowable Permanent Impacts on Land Cover Types and Natural Communities.* Footnote 1 in the table states "*A maximum allowed impact is set for this land cover type that is lower than the total estimated impacts to ensure regulatory standards are met. Estimated impacts do not sum to the total allowable impact."*

The Wildlife Agencies and Local Partners also acknowledge the commenter's desire to minimize impacts on serpentine land cover types and restrict impacts on serpentine grasslands to the 550-acre take limit. As stated in Section 4.5 *Effects on Natural Communities/Land Cover,* in most cases the estimated impacts in Habitat Plan **Table 4-2** are based on the reasonable worst-case assumptions of future project impacts, and impacts will most likely be less than the estimated impacts. Additionally, as stated, estimated impacts on sensitive land cover types, such as serpentine grassland, do not account for project-by-project avoidance that will be applied. These avoidance measures and techniques will be applied to comply with the conditions detailed in Habitat Plan Chapter 6, including the serpentine avoidance and minimization conditions, and/or to comply with other regulations such as CEQA.

The Wildlife Agencies and Local Partners also acknowledge the commenter's suggestion to utilize innovative techniques, such as using only site-specific native plant species for revegetation in disturbance areas within serpentine land cover types, to allow these land cover types to continue to provide habitat value for plant species occurring within them.

No changes to the Habitat Plan are required.

Response to Comment 36-7

The Wildlife Agencies and Local Partners acknowledge the commenter's suggestion to include several additional plant species under the Plan. All of these species, with the exception of woodland woollythreads, were considered and rejected for inclusion in the Plan because they did not meet all four of the criteria listed in Habitat Plan Section 1.2.4 *Covered Species* subheading *Covered Species Criteria* and Habitat Plan **Appendix C**, **Table C-2.**

Similar to other plant species evaluated but not covered, the woodland woollythread is not likely to be listed and is not added as a covered species to this Plan. As stated in Habitat Plan Chapter 10 *Changed and Unforeseen Circumstances Addressed by this Plan,* subheading *Non-Covered Species Listed,* if any plant species is listed as threatened or endangered within the 50-year permit term, remedial actions will be taken to assess and fully avoid impacts on newly listed species.

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix C, Table C-2** was updated to include this species.

Response to Comment 36-8

The Wildlife Agencies and Local Partners concur with the commenter's note that Habitat Plan Section 4.6.10 *Serpentine Plants* (now Section 4.6.8), subheading *Direct Effects,* erroneously states "Almost all covered species discussed in this section are annuals (all but Coyote ceanothus)."

Revisions to the Habitat Plan include the following:

Text in Habitat Plan Section 4.6.8 *Serpentine* Plants, subheading *Direct Effects,* has been updated as follows to reflect that almost all covered species in that section are herbaceous annuals or perennials:

"Almost all of the covered species discussed in this section are herbaceous annuals or perennials (all but Coyote ceanothus, which is a woody perennial). Both annual and perennial herbaceous plants experience yearly fluctuations in population numbers due to factors related to climate, disturbance, and chance."

Response to Comment 36-9

The reference to the *Anderson Dam Seismic Retrofit Meet and Confer Provision* (previously in Habitat Plan Chapter 10) referenced in Chapter 5 of the Draft Habitat Plan was a residual cross-reference to a deleted section. The section was deleted from the Plan because, as with all other covered activities, a Plan amendment/modification would be required if the Implementing Entity is unable to meet the conservation obligations outlined in that subheading. This requirement is outlined in Habitat Plan Chapter 10, Section 10.3 *Modifications to the Plan,* and Habitat Plan Chapter 8, Section 8.6.1 *Stay-Ahead Provision*.

Revisions to the Habitat Plan include the following:

The reference to the *Anderson Dam Seismic Retrofit Meet and Confer Provision* (previously in Habitat Plan Chapter 10) has been removed from Habitat Plan Chapter 5.

Response to Comment 36-10

The Wildlife Agencies and Local Partners concur with the commenter's note that serpentine rock outcrops and serpentine seeps should be included along with serpentine grassland and serpentine chaparral in Habitat Plan Section 6.2 *Exemptions from Conditions.* Commenter suggested that the term "serpentine land cover types" should be used instead of specifying serpentine grassland and serpentine chaparral.

Revisions to the Habitat Plan include the following:

The references to "serpentine grassland" and "serpentine chaparral" in Habitat Plan Section 6.2 *Exemptions from Conditions* have been changed to "serpentine land cover types" and "serpentine" as follows:

- "Additions to existing structures or new structures that are within 50 feet of an existing structure (e.g., a new garage) that result in less than less than 5,000 square feet of impervious surface so long

as no stream, riparian , wetlands, ponds, or serpentine land cover type are affected. Additions are cumulative and must be calculated based on the footprint of the structure at time of Plan implementation to determine whether this threshold has been crossed.

- A covered activity on a parcel of less than 0.5 acre or less as long as no serpentine, stream, riparian , pond, or wetland land cover type is within the parcel."

Response to Comment 36-11

See Response to Comment 36-7.

Response to Comment 36-12

The Wildlife Agencies and Local Partners concur with the commenter's note that the definition for CNPS List 4 is missing from **Table C-2** in Habitat Plan **Appendix C**.

Revisions to the Habitat Plan include the following:

The definition for CNPS List 4 was added to **Table C-2** in Habitat Plan **Appendix C.**

Response to Comment 36-13

The Wildlife Agencies and Local Partners concur with the commenter's note that the *Distribution* section in Habitat Plan **Appendix D** *Species Accounts* for Coyote ceanothus should be updated. The CNDDB databases lists four occurrences from the Mt. Hamilton range (two of which are combined as one occurrence for purposes of this Plan) and one (potential erroneous) historical occurrence from Croy Canyon in the Santa Cruz Mountains. The text under the subheading *Historical* in the section *Occurrences within the Study Area* further clarifies that this historic record may be erroneous.

Revisions to the Habitat Plan include the following:

Text in Habitat Plan **Appendix D** *Species Accounts* for Coyote ceanothus was updated under *Distribution,* subheading *General*.

Additionally, the first sentence under *Occurrences within the Study Area*, subheading *Historical* was deleted.

Response to Comment 36-14

The Wildlife Agencies and Local Partners concur with the commenter's note that the text in Habitat Plan **Appendix D** *Species Accounts* for Coyote ceanothus should be changed to update the last observation of the Llagas Avenue (Morgan Hill) occurrence of this species. Specifically the commenter notes the "Llagas Ave. population was revisited in 2006 per page 4-100, 3rd paragraph of Plan."

Revisions to the Habitat Plan include the following:

The text in subheading *Population Status and Trends* in Habitat Plan **Appendix D** *Species Accounts* for Coyote ceanothus was updated to reflect the information in the 5-year status review for Coyote ceanothus (U.S. Fish and Wildlife Service 2011) and text in Habitat Plan Chapter 4, Section 4.6.8 *Serpentine Plants*, subheading *Coyote Ceanothus,* of the Plan. Additional text added is as follows:

"Approximately 500 individuals, all of the same age class, were observed in the third population at Llagas Avenue north of Morgan Hill in 1997 (California Department of Fish and Game 1997 in U.S. Fish and Wildlife Service 1998). During surveys in the fall of 2010 around 600 to 650 plants were observed in this same location (U.S. Fish and Wildlife Service 2011)."

Response to Comment 36-15

The Wildlife Agencies and Local Partners concur with the commenter's note that the distribution of Mt. Hamilton thistle should be changed from "other hills adjacent to northern Santa Clara Valley" to "Santa Cruz Mountains."

Revisions to the Habitat Plan include the following:

Text in Habitat Plan **Appendix D** *Species Accounts* for Mt. Hamilton thistle was updated.

Response to Comment 36-16

San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

No additional changes to the Habitat Plan are required.

Response to Comment 36-17

San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

No additional changes to the Habitat Plan are required.

Response to Comment 36-18

San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

No additional changes to the Habitat Plan are required.

Response to Comment 36-19

The Wildlife Agencies and Local Partners concur with the commenter's note that the Santa Clara Valley dudleya has undergone taxonomic change.

Revisions to the Habitat Plan include the following:

In accordance with the second edition of the Jepson Manual, the species name in Habitat Plan **Appendix D** *Species Accounts* for Santa Clara Valley dudleya has been changed from *Dudleya setchellii* to *Dudleya abramsii* ssp. s*etchellii*. The reference for the second edition of the Jepson Manual has also been added to the reference section of this species account.

The species name was also changed in Habitat Plan **Appendix C**, **Table C-1**.

Response to Comment 36-20

The Wildlife Agencies and Local Partners concur with the commenter's note that the following period of Santa Clara Valley dudleya should include July.

Revisions to the Habitat Plan include the following:

In Habitat Plan **Appendix D** *Species Accounts*, in the Santa Clara Valley Dudleya species account, **Table 2** (Key Seasonal Periods for Santa Clara Valley Dudleya) has been updated.

Response to Comment 36-21

The Wildlife Agencies and Local Partners concur with the commenter's note that Loma Prieta hoita "primarily occurs on or very near serpentine soils, and is a strong indicator species for serpentine (per Safford et al. 2005)."

Revisions to the Habitat Plan include the following:

The text in the *Habitat Requirements* section of Habitat Plan **Appendix D** *Species Accounts* for Loma Prieta hoita has been updated as follows:

"Although the California Natural Diversity Database reports that the species sometimes occurs in chaparral or on serpentine (California Natural Diversity Database 2006), other sources note that this species primarily occurs on and is a strong indicator species for serpentine soils (Safford et al. 2005, California Native Plant Society 2012). Within the study area it seems to occur primarily on serpentine and secondarily on non-serpentine (J. Hillman pers. comm.)."

Additionally, the citations for Safford et al. 2005 and California Native Plant Society 2012 have been added to the *Reference* section of Habitat Plan **Appendix D** *Species Accounts* for this species.

Response to Comment 36-22

The Wildlife Agencies and Local Partners concur with the commenter's note that the word "plant" is used erroneously in the second sentence of the *Plants* section in Habitat Plan **Appendix F** *Climate Change.*

Revisions to the Habitat Plan include the following:

The additional instance of the word "plant" has been deleted.

Response to Comment 36-23

The Wildlife Agencies and Local Partners concur with the commenter's note that all of the currently covered plant species in the Plan have some degree of affinity for serpentine soils in the study area and may be adversely affected by climate change.

Revisions to the Habitat Plan include the following:

The text in Habitat Plan **Appendix F** *Covered Species* subheading *Plants* has been updated as follows:

"All of the covered species in the study area have some degree of affinity for serpentine soils and most are dependent on serpentine soils for their habitat requirements (**Table F-3**)."

Additionally, Habitat Plan **Table F-3** *Potential Climate Change Effects on Selected Covered Species* has been updated to include the additional covered plant species that are dependent on serpentine soils and that would be potentially affected by climate change.

Cisco Systems, Inc.

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File No. 53759

April 18, 2011

BY E-MAIL AND OVERNIGHT DELIVERY

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Re: Cisco Systems, Inc.'s Comments on Draft Santa Clara Valley Habitat Plan

Dear Ms. Mustin and Mr. Schreiber:

On behalf of Cisco Systems, Inc. (together with its affiliates, "Cisco"), we submit the following comments on the "Draft Santa Clara Valley Habitat Plan" dated December 2010 (the "Draft Plan"). Also on behalf of Cisco, we previously provided comments on the "2nd Administrative Draft Santa Clara Valley Habitat Plan" dated June 1, 2009 ("Admin Draft Comments"). A copy of the Admin Draft Comments is attached as **Exhibit A**. As we noted in the Admin Draft Comments, that draft appropriately appeared to include the approved Coyote Valley Research Park Project as an "exempt project" under the Santa Clara Valley Habitat Plan (in final form, the "Habitat Plan"), and we requested a few refinements to that draft to clarify this intent. We provide the following comments on the current Draft Plan to reiterate that request that the Draft Plan be refined to clarify that the Coyote Valley Research Park Project is an "exempt project."

Background

In the Admin Draft Comments, we provided a background discussion regarding the project, its entitlements related to biological resources, and the project's commitment to mitigation pursuant to those entitlements. For your ease of reference, we restate that discussion here.

In 2000, the City of San Jose (the "City") issued to Coyote Valley Research Park, LLC ("CVRP") land use entitlements authorizing the construction of 6.7 million square feet of "Campus Industrial" uses and associated infrastructure (the "CVRP Project") on a 688-acre site (the "CVRP Property") in the North Coyote Valley Campus Industrial Area ("NCVCIA"). The land use entitlements for the CVRP Project include, among other things, an environmental impact report, a general plan amendment, an amendment to the NCVCIA Master Plan, a planned development rezoning, a vesting tentative map, planned development permits, and a development agreement (the "City Entitlements"). The City Entitlements also authorize a variety of infrastructure projects required to serve the CVRP Project, including roadways, a flood-detention basin and bypass channel, an off-site water tank, and five private driveway bridges over Fisher Creek. Cisco subsequently purchased an approximately 100-acre portion of the CVRP Property located north of Bailey Avenue, west of Santa Teresa Boulevard, and east of the bypass channel (the "Cisco Property").

In addition to the City Entitlements, the CVRP Project required entitlements from a variety of resource agencies (the "Resource Agency Entitlements"), primarily related to the construction of the flood detention facilities, which include construction of a new bypass channel and detention basins, and bridges over an existing stream called Fisher Creek. The Resource Agency Entitlements include an Individual Permit from the U.S. Army Corps of Engineers (the "Corps") pursuant to Section 404 of the Clean Water Act; a Nationwide Permit from the Corps pursuant to Section 404 of the Clean Water Act; a water quality certification from the California Regional Water Quality Control Board pursuant to Section 401 of the Clean Water Act; a permit from the California Department of Resources, Division of Safety of Dams for the construction of Fisher Creek Dam; an encroachment permit from the Santa Clara Valley Water District; a Streambed Alteration Agreement from the California Department of Fish and Game ("CDFG") pursuant to Section 1603 of the California Fish and Game Code; a Biological Opinion from the U.S. Fish and Wildlife Service ("USFWS") pursuant to Section 7 of the federal Endangered Species Act; and a biological opinion from the National Marine Fisheries Service ("NMFS") pursuant to Section 7 of the federal Endangered Species Act. The City Entitlements and the Resource Agency Entitlements demonstrate compliance by the CVRP Project with applicable local, state, and federal laws pertaining to species and habitat protection.

1

The City Entitlements and the Resource Agency Entitlements require extensive measures to avoid, mitigate, and/or compensate for the potential impacts of the CVRP Project on biological resources. CVRP already has implemented many of these measures. For example, as required by the Resource Agency Entitlements, CVRP has acquired or will acquire 336 acres of serpentine soils habitat within Santa Clara County as a conservation measure for the bay checkerspot butterfly and several protected plant species. CVRP also will set aside an approximately 269-acre flood control basin/open space area that will be managed in a manner compatible with management of the red-legged frog and tiger salamander, as approved by the USFWS. In addition, the CVRP Project will enhance the Fisher Creek riparian corridor and flood bypass channel and basin with native riparian vegetation, pursuant to a plan approved by the USFWS. The Resource Agency Entitlements contain further measures for the protection of steelhead specifically, and water quality generally.

The Mitigation Monitoring and Reporting Program and the Biological Mitigation and Monitoring Program associated with the CVRP Project also require extensive biological resource mitigation measures, including mitigation measures for impacts to trees (implementation of landscaping plans); nesting raptors (surveys and buffers); riparian habitat (setbacks and habitat replacement at a ratio between 1:1 and 3:1, depending on habitat quality); wetlands (mitigation at a 2:1 ratio); burrowing owls if present (surveys, buffers, replacement of burrows at a 3:1 ratio on approximately 25 acres of on-site upland area); nesting and roosting bats (surveys, buffers, evictions); aquatic habitat (storm water runoff planning); and California Tiger Salamanders (salvage and preservation of an off-site population at a 1:1 ratio). These extensive measures will fully avoid, mitigate, and/or compensate for the impacts of the CVRP Project on biological resources.

Comments

1. <u>Applicability of the Urban Exemption</u>

The Draft Plan (pages 6-3 to 6-4) contains a list of exempt activities and projects that will receive incidental take coverage under the Habitat Plan, but are not subject to fees, conditions, or survey requirements contained in the Habitat Plan and implementing ordinances. The Draft Plan appropriately appears intended to classify urban development within the NCVCIA, including the CVRP Project, as an exempt activity pursuant to the "Urban Exemption" (described below). Such an exemption is consistent with the existing City Entitlements and the Resource Agency Entitlements for the CVRP Project. 2

The Draft Plan includes an exemption for "[a]ny covered activity described in Chapter 2 that occurs in urban-suburban, landfill, reservoir, or agriculture developed land cover

types as verified in the field, unless the activity may affect a mapped or unmapped stream, riparian woodland, serpentine, pond, or wetland land cover types, or the activity is located in a stream setback . . . ." (the "Urban Exemption") (p. 6-3 (footnotes omitted)). As discussed below, the CVRP Project and other urban development within the NCVCIA satisfies each element of the Urban Exemption:

- *Covered Activity.* The Draft Plan specifically identifies residential, commercial, industrial, and other types of urban development within the NCVCIA with land use designated for urban development, rural development, and agriculture as a "covered activity" within the urban development category, as required for the Urban Exemption. (See Draft Plan p. 2-37 and Fig. 2-2.)

- *Land Cover Type.* Figure 3-10 of the Draft Plan depicts the majority of the NCVCIA as "Urban-Suburban" land cover type, as required for the Urban Exemption. However, portions of the NCVCIA entitled for public roadway improvements for the CVRP Project are designated "Grain, Row-Crop, Hay & Pasture, Fallowed," and portions of the NCVCIA entitled for flood control improvements are designated as "Mixed Riparian Forest and Woodland." In order to clarify the applicability of the Urban Exemption to the areas entitled for CVRP Project infrastructure, we hereby request that the land cover type for the entire NCVCIA area be re-designated as "Urban-Suburban" on Figure 3-10.[1]

- *Effect on Stream, Riparian Woodland, Serpentine, Pond, or Wetland.* The City Entitlements and Resource Agency Entitlements for the CVRP Project authorize and provide mitigation for certain impacts to streams, riparian woodlands, and wetlands. We therefore request that the Draft Plan be revised to clarify that these authorized impacts do not affect the applicability of the Urban Exemption.

- *Located in a Stream Setback.* The CVRP Project will be set back from riparian corridors. To the extent infrastructure related to the CVRP Project will be located within setback areas, any impacts from that infrastructure will be mitigated as required by the City Entitlements and/or the Resource Agency Entitlements.

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[1] In the event the entire NCVCIA area is not re-designated as "Urban-Suburban," at the very least the water feature shown in the NCVCIA area on Figure 3-10 as a "Vernal Pool" should be re-designated as a "Pond." Recent wetland delineations indicate that there are no vernal pools in the NCVCIA area.

2. Documentation Required for Urban Exemption

The Draft Plan requires that the project proponent for an exempt project must provide to the Implementing Entity (1) a letter from USFWS referring to the activity and stating that the activity is not likely to result in take of any federally listed species either individually or cumulatively; and the results for full protocol surveys approved by CDFG for state listed species with the potential to occur on the site showing that no such species or species habitat occurs on the site; or (2) a copy of an incidental take permit issued by CDFG for the activity, and copies of incidental take statements or incidental take permits issued by the USFWS that authorize the proposed covered activity; or (3) a combination of letters and/or incidental take authorizations from both USFWS and CDFG.

As discussed above, the CVRP Project has undergone a great deal of environmental scrutiny, culminating in the issuance of the City Entitlements, the Resource Agency Entitlements, and other such approvals and authorizations. Many of these entitlements, such as those certain Biological Opinions issued by the USFWS and NMFS in 2001, address the take of listed species and the potential for listed species to occur on the CVRP Project site. Accordingly, we request that the Draft Plan be revised to clarify that the Resource Agency Entitlements for the CVRP Project satisfy the requirements for documenting the applicability of the Urban Exemption to the CVRP Project, and that no further documentation is required. Proposed revisions are provided in **Exhibit B**. To the extent necessary, please conform the Environmental Impact Statement/Environmental Impact Report for the Habitat Plan to reflect these revisions. 3

* * *

Thank you for the opportunity to review and comment on the Draft Plan. Should you have questions regarding any of the above, please do not hesitate to contact me.

Sincerely,

Margo N. Bradish /SBB

Margo N. Bradish

cc: Mr. Joseph Horwedel, City of San Jose
Ms. Suzanne Cooper, Cisco Systems, Inc.

Exhibit A

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, California 94104-1513
P 415.392.4200 F 415.392.4250

Margo N. Bradish
415.262.5100
mbradish@coxcastle.com

August 25, 2009

File No. 53759

BY OVERNIGHT DELIVERY

Mr. David Zippin
ICF Jones & Stokes
268 Grand Avenue
Oakland, California 94610

Re: Cisco Systems, Inc.'s Comments on 2nd Administrative Draft Santa Clara Valley Habitat Plan

Dear Mr. Zippin:

On behalf of Cisco Systems, Inc. ("Cisco"), we submit the following comments on the "2nd Administrative Draft Santa Clara Valley Habitat Plan" dated June 1, 2009 (the "Draft Plan"). The Draft Plan appropriately appears to include the approved Coyote Valley Research Park Project as an "exempt project" under the Habitat Plan, and these comments simply request a few refinements to clarify that intent.

Background

In 2000, the City of San Jose (the "City") issued to Coyote Valley Research Park, LLC ("CVRP") land use entitlements authorizing the construction of 6.7 million square feet of "Campus Industrial" uses and associated infrastructure (the "CVRP Project") on a 688-acre site (the "CVRP Property") in the North Coyote Valley Campus Industrial Area ("NCVCIA"). The land use entitlements for the CVRP Project include, among other things, an Environmental Impact Report, a general plan amendment, an amendment to the NCVCIA Master Plan, a Planned Development rezoning, a vesting tentative map, Planned Development Permits, and a Development Agreement (the "City Entitlements"). The City Entitlements also authorize a variety of infrastructure projects required to serve the CVRP Project, including roadways, a flood detention basin and bypass channel, an off-site water tank, and five private driveway bridges over Fisher Creek. Cisco subsequently purchased an approximately 100-acre portion of the CVRP Property located north of Bailey Avenue, west of Santa Teresa Boulevard, and east of the bypass channel (the "Cisco Property").

In addition to the City Entitlements, the CVRP Project required entitlements from a variety of resource agencies (the "Resource Agency Entitlements"), primarily related to the construction of the flood detention facilities, which include construction of a new bypass channel and detention basins, and bridges over existing Fisher Creek. The Resource Agency Entitlements include an Individual Permit from the U.S. Army Corps of Engineers (the "Corps") pursuant to Section 404 of the Clean Water Act; a Nationwide Permit from the Corps pursuant to Section 404

of the Clean Water Act; a water quality certification from the California Regional Water Quality Control Board pursuant to Section 401 of the Clean Water Act; a permit from the California Department of Resources, Division of Safety of Dams for the construction of Fisher Creek Dam; an encroachment permit from the Santa Clara Valley Water District; a Streambed Alteration Agreement from the California Department of Fish and Game ("CDFG") pursuant to Section 1603 of the California Fish and Game Code; a Biological Opinion from the U.S. Fish and Wildlife Service ("USFWS") pursuant to Section 7 of the federal Endangered Species Act; and a biological opinion from the National Marine Fisheries Service ("NMFS") pursuant to Section 7 of the federal Endangered Species Act. The City Entitlements and the Resource Agency Entitlements demonstrate compliance by the CVRP Project with applicable local, state, and federal laws pertaining to species and habitat protection.

The City Entitlements and the Resource Agency Entitlements require extensive measures to avoid, mitigate, and/or compensate for the potential impacts of the CVRP Project on biological resources. CVRP already has implemented many of these measures. For example, as required by the Resource Agency Entitlements, CVRP has acquired or will acquire 336 acres of serpentine soils habitat within Santa Clara County as a conservation measure for the bay checkerspot butterfly and several protected plant species. CVRP also will set aside an approximately 269-acre flood control basin/open space area that will be managed in a manner compatible with management of the red-legged frog and tiger salamander, as approved by the USFWS. In addition, the CVRP Project will enhance the Fisher Creek riparian corridor and flood bypass channel and basin with native riparian vegetation, pursuant to a plan approved by the USFWS. The Resource Agency Entitlements contain further measures for the protection of steelhead specifically, and water quality generally. The Mitigation Monitoring and Reporting Program and the Biological Mitigation and Monitoring Program for the CVRP Project also require extensive biological resource mitigation measures, including mitigation measures for impacts to trees (implementation of landscaping plans); nesting raptors (surveys and buffers); riparian habitat (setbacks and habitat replacement at a ratio between 1:1 and 3:1, depending on habitat quality); wetlands (mitigation at a 2:1 ratio); burrowing owls if present (surveys, buffers, replacement of burrows at a 3:1 ratio on approximately 25 acres of on-site upland area); nesting and roosting bats (surveys, buffers, evictions); aquatic habitat (storm water runoff planning); and California Tiger Salamanders (salvage and preservation of an off-site population at a 1:1 ratio). These extensive measures will fully avoid, mitigate, and/or compensate for the impacts of the CVRP Project on biological resources.

Comments

1. Applicability of the Urban Exemption

The Draft Plan (pages 6-3 to 6-4) contains a list of exempt activities and projects that will receive incidental take coverage under the Habitat Plan, but are not subject to fees, conditions, or survey requirements contained in the Habitat Plan and implementing ordinances. The Draft Plan appropriately appears intended to classify urban development within the NCVCIA, including the CVRP Project, as an exempt activity pursuant to the "Urban Exemption" (described below). Such an exemption is consistent with the existing City Entitlements and the Resource Agency Entitlements for the CVRP Project.

The Draft Plan includes an exemption for "[a]ny covered activity described in Chapter 2 that occurs in urban-suburban, landfill, or agriculture developed land cover types as verified in the field, unless the activity may directly affect a mapped or unmapped stream, riparian woodland, or wetland" (the "Urban Exemption").

- *Covered Activity.* The Draft Plan specifically identifies residential, commercial, industrial, and other types of urban development within the NCVCIA with land use designated for urban development, rural development, and agriculture as a "covered activity" within the urban development category, as required for the Urban Exemption.

- *Land Cover Type.* Figure 3-10 of the Draft Plan depicts the majority of the NCVCIA as Urban-Suburban land cover type, as required for the Urban Exemption. However, portions of the NCVCIA entitled for public roadway improvements for the CVRP Project are designated Grain, Row-Crop, Hay Pasture, Disked/Short Term Fallowed, and portions of the NCVCIA entitled for flood control improvements are designated as Mixed Riparian Forest and Woodland. In order to clarify the applicability of the Urban Exemption to the areas entitled for CVRP Project infrastructure, we hereby request that the land cover type for these areas be re-designated as Urban-Suburban or Agriculture Developed on Figure 3-10.

- *Effect on Stream, Riparian Woodland, or Wetland.* The City Entitlements and Resource Agency Entitlements for the CVRP Project authorize and provide mitigation for certain impacts to streams, riparian woodlands, and wetlands. We therefore request that the Draft Plan be revised to clarify that these authorized impacts do not affect the applicability of the Urban Exemption. Proposed revisions are provided in Exhibit A.

2. **Documentation Required for Urban Exemption**

The Draft Plan requires that the project proponent for an exempt project must provide to the Implementing Agency (1) letters from CDFG, the USFWS, and NMFS that specifically reference the activity and state that the activity is not likely to adversely affect any listed species or result in take of any listed species; or (2) a copy of an incidental take permit issued by CDFG for the activity, and copies of incidental take statements or incidental take permits issued by the USFWS and NMFS that authorize the proposed covered activity; or (3) a combination thereof. As discussed above, the CVRP Project has undergone a great deal of environmental scrutiny, culminating in the issuance of the City Entitlements, the Resource Agency Entitlements, and other such approvals and authorizations. Many of these entitlements, such as the Biological Opinions issued by the USFWS and NMFS, address the take of listed species. Accordingly, we request that the Draft Plan be revised to clarify that the Resource Agency Entitlements for the CVRP Project satisfy the requirements for documenting the applicability of the Urban Exemption to the CVRP Project, and that no further documentation is required. Proposed revisions are provided in Exhibit A.

* * *

Thank you for the opportunity to review and comment on the Draft Plan. Should you have questions regarding any of the above, please do not hesitate to contact me.

Sincerely yours,

Margo N. Bradish

53759\148897v5

cc: Mr. Joseph Horwedel, City of San Jose
Mr. Akoni Danielson, City of San Jose
Ms. Suzanne Cooper, Cisco Systems, Inc.

EXHIBIT A

Proposed Revisions to "Urban Exemption" Text from Page 6-3 of 2nd Administrative Draft Santa Clara Valley Habitat Plan

Any covered activity described in Chapter 2 that occurs in urban-suburban, landfill, or agriculture developed[1] land cover types as verified in the field, unless the activity may directly affect a mapped or unmapped stream, riparian woodland, or wetland. This exemption applies to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area.

Proposed Revisions to Documentation Requirement Text from Page 6-4 of 2nd Administrative Draft Santa Clara Valley Habitat Plan

A project proponent of a covered activity in the Plan will not be required to comply with the conditions in this chapter or pay any Habitat Plan fees if the proponent of the activity provides written confirmation to the Implementing Entity from CDFG, the USFWS, and NMFS (i.e., all three agencies) that the activity is not subject to CESA and ESA, or has already received the necessary take authorizations under CESA and ESA, or has otherwise complied with CESA and ESA. An activity will be deemed to have complied with CESA and ESA by the Implementing Entity if the proponent provides the following:

1. letters from CDFG, USFWS, and NMFS that specifically refer the activity and state that the activity is not likely to adversely affect any listed species or result in take of any listed species; or

2. a copy of an incidental take permit issued by CDFG for the activity, and copies of incidental take statements or incidental take permits issued by the USFWS and NMFS that authorize the proposed covered activity; or

3. a combination of the letters as described in (1) above and/or incidental take authorizations described in (2) from all three Wildlife Agencies.

The July 31, 2001 Biological Opinion from the USFWS, the September 12, 2001 Biological Opinion from NMFS, and the September 10, 2001 Streambed Alteration Agreement from CDFG relative to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area satisfy these requirements for documenting the project's exempt status under the Plan.

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[1] The land-cover type "agriculture developed" (also known as agriculture developed/covered ag) is defined in Chapter 3 as intensive agricultural operations such as nurseries and greenhouses.

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)
Cox, Castle & Nicholson, LLP	1	3					In Figure 3-10, re-designate land cover type for portions of the North Coyote Valley Campus Industrial Area entitled for public roadway improvements and flood control improvements for the Coyote Valley Research Park project as Urban-Suburban or Agriculture Developed.
Cox, Castle & Nicholson, LLP	2	6	6.2	6-3	8	7	Insert the following after the paragraph that begins "Any covered activity described in Chapter 2 . . . ": "This exemption applies to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area."
Cox, Castle & Nicholson, LLP	3	6	6.2	6-4	12	3	Insert the following after the list of documents demonstrating compliance with CESA and ESA: "The July 31, 2001 Biological Opinion from the USFWS, the September 12, 2001 Biological Opinion from NMFS, and the September 10, 2001 Streambed Alteration Agreement from CDFG related to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area satisfy these requirements for documenting the project's exempt status under the Plan."

Commenting on: (Clean version, track changes version) _____ Clean version

Exhibit B

Proposed Revisions to "Urban Exemption" Text from Page 6-3 of Draft Santa Clara Valley Habitat Plan (footnotes in original omitted)

Any covered activity described in Chapter 2 that occurs in urban-suburban, landfill, reservoir, or agriculture developed land cover types as verified in the field, unless the activity may directly affect a mapped or unmapped stream, riparian woodland, serpentine, pond, or wetland land cover types, or the activity is located in a stream setback. This exemption applies to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area.

Proposed Revisions to Documentation Requirement Text from Page 6-4 of Draft Santa Clara Valley Habitat Plan

A project proponent of a covered activity in the Plan will not be required to comply with the conditions in this chapter or pay any Habitat Plan fees if the proponent of the activity provides written confirmation to the Implementing Entity that the CDFG and USFWS have determined that the activity is not subject to CESA and ESA; or has already received the necessary take authorizations under CESA and ESA; or has otherwise complied with CESA and ESA. An activity will be deemed to be in compliance with CESA and ESA by the Implementing Entity and thus be exempt from the conditions in this chapter and otherwise comply with the Habitat Plan if the proponent provides the following:

1. a letter from USFWS that specifically refers to the activity and states that the activity is not likely to result in take of any federally listed species individually or cumulatively; and the results for full protocol surveys, approved by CDFG, for state listed species with the potential to occur on the site showing that no such species or species habitat occurs on the site; or

2. a copy of an incidental take permit issued by CDFG for the activity, and copies of incidental take statements or incidental take permits issued by USFWS that authorize the proposed covered activity; or

3. a combination of the letters as described in (1) above and/or incidental take authorizations described in (2) from both Wildlife Agencies.

The July 31, 2001 Biological Opinion from the USFWS, the September 12, 2001 Biological Opinion from NMFS, and the September 10, 2001 Streambed Alteration Agreement from CDFG relative to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area and as amended or extended satisfy these requirements for documenting the project's exempt status under the Plan.

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)
Cox, Castle & Nicholson	1	3					In Figure 3-10, re-designate land cover type for the entire North Coyote Valley Campus Industrial Area as "Urban-Suburban."
Cox, Castle & Nicholson	2	3					If the entire North Coyote Valley Campus Industrial Area is not re-designated "Urban-Suburban" in Figure 3-10, re-designate the area shown in Figure 3-10 as a "Vernal Pool" to a "Pond."
Cox, Castle & Nicholson	3	6	6.2	6-3	8	7	Insert the following after the paragraph that begins "Any covered activity described in Chapter 2 . . .": "This exemption applies to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area."
Cox, Castle & Nicholson	4	6	6.2	6-4	17	7	Insert the following after the list of documents demonstrating compliance with CESA and ESA: "The July 31, 2001 Biological Opinion from the USFWS, the September 12, 2001 Biological Opinion from NMFS, and the September 10, 2001 Streambed Alteration Agreement from CDFG relative to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area and as amended or extended satisfy these requirements for documenting the project's exempt status under the Plan."

Commenting on: (Clean version, track changes version) _____

Comment Letter 37—Cisco Systems, Margo N. Bradish, Cox, Castle & Nicholson, LLP, April 18, 2011

Response to Comment 37-1

The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Response to Comment 37-2

The Habitat Plan land cover map (Habitat Plan **Figure 3-10**) is intended to capture existing conditions of the land cover at the time of Plan development and does not account for development permits already authorized but not yet implemented.

Other comments are acknowledged by the Local Partners and Wildlife Agencies.

No changes to the Habitat Plan are required.

Response to Comment 37-3

The California tiger salamander was listed by the State of California in May 2010 and take authorization has not been issued to the Coyote Valley Research Park by the State. Given the local distribution of California tiger salamander, it is likely that buildout of the Coyote Valley Research Park will result in take of California tiger salamander. As such, this project does not meet the requirements of a pipeline project. Also see Response to Comment 29-1.

Portions of this comment are addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Citizen's Committee to Complete the Refuge

CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto, CA 94306 Tel 650 493-5540 Fax 650 494-7640 www.cccrRefuge.org

April 18, 2011

Ken Schreiber
Program Manager,
Santa Clara Valley Habitat Conservation Plan
County of Santa Clara
County Government Center, East Wing, - 11th Floor
70 W. Hedding Street
San Jose, CA 95110

RE: Comments, Draft Environmental Impact Report and Environmental Impact Statement for the Santa Clara Valley Habitat Plan

Dear Mr. Schreiber:

The Citizens Committee to Complete the Refuge (CCCR) appreciates the opportunity to comment on the Draft Environmental Impact Report/Environmental Impact Statement (EIR/S) for the Santa Clara Valley Habitat Conservation Plan and its related plan documents (Habitat Plan). Our organization's focus on the environmental health of the South Bay's shoreline requires critical awareness of the environmental health of the surrounding watersheds and of the habitat values and impacts those lands provide to wildlife broadly. We believe the Habitat Plan can make a substantial contribution to creating, restoring and protecting habitat in the decades ahead.

It is hoped that comments in this letter can be helpful in assuring that the final Habitat Plan will be a most effective planning tool for agencies, local partners and private landowners.

Study/Permit Area (EIR/S 1.2, pp. 1-2,3): The Habitat Plan Study/Permit Area specifically excludes former agricultural lands in the Alviso area just north of Highway 237 and lying between Coyote Creek and the Guadalupe River. The lands were excluded on the basis that the lands are current or historic, tidally-influenced. Elsewhere in the Habitat Plan these same lands are included in the Proposed Action as part of its Burrowing Owl Conservation Strategy such that lands could be acquired but not be eligible for management benefits afforded lands that are within the Study Area.

1

On a portion of these Alviso lands, 50-100 individual Congdon's Tarplant were observed in July 2006 i.e. on property owned by the San Jose/Santa Clara Water Pollution Control Plant (WPCP) during a survey by H.T. Harvey & Associates (Plant Opportunity and Constraints Report, January 30, 2007). Congdon's Tarplant is identified in the Habitat Plan as a special-status species with high potential to occur in the Study Area although it is not a covered species.

Notably these lands provide a band of open space that is an isolated corridor between Coyote Creek and the Guadalupe River.

While the history of these lands includes tidal influence, San Jose's plan is to continue to keep them behind levees and non-tidal. Additionally in the WPCP Master Plan (final approval expected on April 19, 2011), 100 or more acres of the former agriculture lands have been identified for development in multiple projects. In a recent letter regarding this plan, the US Fish and Wildlife Service (C. Goude to M. Krupp, 3/23/11) stipulates that the Habitat Plan should be utilized "re mitigation and conservation approaches..." As these lands are outside the Study/Permit Area, neither the WPCP managers nor its developers will get any of the application-processing guidance and advantages available for covered landowners. As the WPCP Master Plan allocates a 180-acre BUOW reserve, the Habitat Plan suggests potential acquisition but no associated expert management. Plant managers additionally propose conversion of ~400 acres of existing sludge ponds/drying beds for light industry, renewable (alternative) energy fields and restoration (fresh water wetlands, native landscaping) along a riparian area of lower Coyote Creek. These redevelopment actions can introduce dramatic changes to the habitat values of the area as either opportunities or threats.

All of these agricultural lands are within the City of San Jose, a local partner. Although non-local partner Santa Clara is a part-owner (~15%) of the WPCP lands, by agreement San Jose manages the lands and plant. San Jose or the Plant Managers could ask for Santa Clara support for WPCP land inclusion in the final Habitat Plan.

Action Requested: Re-evaluate the status of the formerly agricultural Alviso lands to add them to the Study/Permit Area. Certainly the location has unique needs. Throughout the Habitat Plan, defined locations must, also uniquely, meet localized requirements. In Alviso, as referenced in the mentioned C. Goude letter, Habitat Plan requirements for Alviso would need to include the Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California due to adjacency. This Study/Permit Area change is an opportunity for existing and restored lands to afford greater protection to the BUOW, Congdon's tarplant and other special-status species that may emerge under a comprehensive habitat conservation plan.

Condition 14 (Habitat Plan, Ch. 6, p. 67, ¶ 9): Under Project Construction requirements for Valley Oak and Blue Oak Woodland Avoidance and Minimization, the Habitat Plan specifies that extensive pruning, if necessary, will be conducted under the supervision of certified arborist. It is a significant concern that this supervision is inadequate to ensuring that pruning decisions will include comprehensive consideration of other species that may be affected. An arborist may be the best advisor for pruning decisions that protect a particular tree's health but that expertise needs the complementary expertise of a qualified woodland biologist. 2

Action Requested: Improve Condition 14 to add a qualified woodland-biologist consultation to pruning decisions.

Maps (EIR/S, multiple maps): Many of the maps included in the EIR/S identify highways with erroneous route numbers. All of the maps should be reviewed to ensure that they accurately define locations. 3

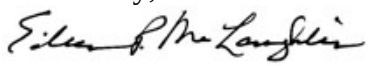
Action Requested: Review all maps to ensure that major highways are correctly identified.

Overall, CCCR strongly supports the Proposed Action alternative of this EIR/S and appreciates the cooperative relationships thus created for the Habitat Plan's participating agencies and local partners. We are concerned that the City of Gilroy has withdrawn as a partner and that certain agricultural parties object to the Habitat Plan, each on apparently inaccurate information. 4

CCCR is a 501(c)(3) nonprofit organization that tracks its formation to the citizen-leadership that established the Don Edwards San Francisco Bay National Wildlife Refuge. In the decades since, while perpetually seeking to expand that Refuge, CCCR has acted persistently to protect the very special wildlife and habitats both of and impacting the Southern San Francisco Bay.

If there are questions about these comments, please contact me at 408-257-7599 or at wildlifestewards@aol.com.

Yours truly,



Eileen P. McLaughlin
Shoreline Watch for San Jose
Citizens Committee to Complete the Refuge

CC: Cori Mustin, Senior Biologist, U.S. Fish and Wildlife Service
Cay Goude, Asst. Field Supervisor, U.S. Fish and Wildlife Service
Scott Wilson, California Department of Fish and Game
Mendel Stewart, Manager, San Francisco Bay National Wildlife Refuge Complex
Eric Mruz, Manager, Don Edwards San Francisco Bay National Wildlife Refuge
Kirsten Struve, Manager, San Jose/Santa Clara WPCP Master Plan
Matt Krupp, Planner, San Jose/Santa Clara WPCP Master Plan

	A	B	C	D	E	F	G	H
1			***Comment Location:***					
2	**Commenter (Your Name)**	**Comment #**	**Chapter**	**Section #**	**Page #**	**Paragraph**	**Paragraph (from top)**	**Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)**
3	Eileen McLaughlin, Citizens Committee to Complete the Refuge	1	1 - EIR/S	1.2	1-3	1		The Habitat Plan Study/Permit Area specifically excludes former agricultural lands in the Alviso area just north of Highway 237 and lying between Coyote Creek and the Guadalupe River. The lands were excluded on the basis that the lands are current or historic, tidally-influenced. Elsewhere in the Habitat Plan these same lands are included in the Proposed Action as part of its Burrowing Owl Conservation Strategy such that lands could be acquired but not be eligible for management benefits afforded lands that are within the Study Area.
4								
5								On a portion of these Alviso lands, 50-100 individual Congdon's Tarplant were observed in July 2006 i.e. on property owned by the San Jose/Santa Clara Water Pollution Control Plant (WPCP) during a survey by H.T. Harvey & Associates (Plant Opportunity and Constraints Report, January 30, 2007). Congdon's Tarplant is identified in the Habitat Plan as a special-status species with high potential to occur in the Study Area although it is not a covered species.
6								
7								Notably these lands provide a band of open space that is an isolated corridor between Coyote Creek and the Guadalupe River.
8								
9								While the history of these lands includes tidal influence, San Jose's plan is to continue to keep them behind levees and non-tidal. Additionally in the WPCP Master Plan (final approval expected on April 19, 2011), 100 or more acres of the former agriculture lands have been identified for development in multiple projects. In a recent letter regarding this plan, the US Fish and Wildlife Service (C. Goude to M. Krupp, 3/23/11) stipulates that the Habitat Plan should be utilized "re mitigation and conservation approaches..." As these lands are outside the Study/Permit Area, neither the WPCP managers nor its developers will get any of the application-processing guidance and advantages available for covered landowners. As the WPCP Master Plan allocates a 180-acre BUOW reserve, the Habitat Plan suggests potential acquisition but no associated expert management. Plant managers additionally propose conversion of ~400 acres of existing sludge ponds/drying beds for light industry, renewable (alternative) energy fields and restoration (fresh water wetlands, native landscaping) along a riparian area of lower Coyote Creek. These redevelopment actions can
10								
11								All of these agricultural lands are within the City of San Jose, a local partner. Although non-local partner Santa Clara is a part-owner (~15%) of the WPCP lands, by agreement San Jose manages the lands and plant. San Jose or the Plant Managers could ask for Santa Clara support for WPCP land inclusion in the final Habitat Plan.
12								
13								Action Requested: Re-evaluate the status of the formerly agricultural Alviso lands to add them to the Study/Permit Area. Certainly the location has unique needs. Throughout the Habitat Plan, defined locations must, also uniquely, meet localized requirements. In Alviso, as referenced in the mentioned C. Goude letter, Habitat Plan requirements for Alviso would need to include the Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California due to adjacency. This Study/Permit Area change is an opportunity for existing and restored lands to afford greater protection to the BUOW, Congdon's tarplant and other special-status species that may emerge under a comprehensive habitat conservation plan.
14								

	A	B	C	D	E	F	G	H
15	Eileen McLaughlin, Citizens Committee to Complete the Refuge	2	6-HP		67	9		Habitat Plan, Conditions: Under Project Construction requirements for Valley Oak and Blue Oak Woodland Avoidance and Minimization, the Habitat Plan specifies that extensive pruning, if necessary, will be conducted under the supervision of certified arborist. It is a significant concern that this supervision is inadequate to ensuring that pruning decisions will include comprehensive consideration of other species that may be affected. An arborist may be the best advisor for pruning decisions that protect a particular tree's health but that expertise needs the complementary expertise of a qualified woodland biologist.
16								
17								Action Requested: Improve Condition 14 to add a qualified woodland-biologist consultation to pruning decisions.
18								
19	Eileen McLaughlin, Citizens Committee to Complete the Refuge	3	Multi-EIR/S		Multi-Figures			**Maps (EIR/S, multiple maps):** Many of the maps included in the EIR/S identify highways with erroneous route numbers. All of the maps should be reviewed to ensure that they accurately define locations.
20								
21								Action Requested: Review all maps to ensure that major highways are correctly identified.
22								
23								
24								
25	Commenting on: (Clean version, track changes version) _____							PDF versions of the Draft EIR/S and Draft Habitat Plan of December 2010

Comment Letter 38—Citizen's Committee to Complete the Refuge, Eileen P. McLaughlin, Shoreline Watch for San José, April 18, 2011

Response to Comment 38-1

The San José/Santa Clara Water Pollution Control Plan is partially inside of the Habitat Plan study area (only the buffer lands are included). Development that might result from implementation of the Plant Master Plan may be covered under that Habitat Plan provided that the activities are consistent with the Habitat Plan. Alternatively, the Habitat Plan may simply provide guidance on the types and level of mitigation that could be included as part of the project by the City of San José and the tributary communities, but the Habitat Plan cannot direct how those activities are employed on plant lands.

No changes to the Habitat Plan are required.

Response to Comment 38-2

The Wildlife Agencies and Local Partners acknowledge the commenter's concern; however, the condition was determined to be adequate as written. Chapter 6 of the Plan includes additional conditions for select covered species that are intended to further minimize effects.

No changes to the Habitat Plan are required.

Response to Comment 38-3

The mislabeled highways (an error in final map production) have been corrected in the Final EIR/EIS.

Updated EIR/EIS Figures 1-1, 1-2, 4-1, 5-4, 5-5, 7-2, 11-1, and 14-1.

Response to Comment 38-4

The Wildlife Agencies and Local Partners acknowledge the expression of support. The City of Gilroy rejoined the Habitat Plan development process shortly after it pulled out. Portions of the comment are addressed in Master Response #5.

No changes to the EIR/EIS are required.

Committee for Green Foothills

COMMITTEE FOR
GREEN FOOTHILLS

April 18, 2011

Cori Mustin, Senior Fish and Wildlife Biologist
USFWS

Ken Schreiber, HCP/NCCP Program Manager
County of Santa Clara Executive's Office

Re: Comments on the Draft Santa Clara Valley Habitat Plan

Dear Cori and Ken:

The Committee for Green Foothills submits the following comments on the Santa Clara Valley Habitat Plan:

Implementing Agreement:

7.4.3 Neighboring landowners: we understand the reference and description of farmlands to exclude horse stabling except for purposes of horse breeding, and also to exclude recreational equestrian uses. The reference to "associated activities such as … vehicle or horse use" is assumed to mean using vehicles or horses for the purposes of facilitating the previously described agricultural practices. The above assumptions conform to the normal description of agricultural practice in Santa Clara County that excludes horse boarding stables and recreational equestrian uses. If these assumptions are incorrect, then the language should be changed to specifically exclude horse boarding stables and equestrian recreation. 1

8.2.1. Exemptions: the reference to "Table 6-10" should be "Table 6-1". 2

9.2.1. Conservation Easements: if conservation organizations other than Implementing Entity hold the easements, the easements must also identify the Wildlife Agencies as third party beneficiaries. This should be expressly stated in section 9.2.1. 3

9.4 Stay-Ahead or Rough Proportionality Requirement: the language on page 30 stating "the Implementing Entity will fulfill the requirements of this Section and Chapter 8.6.1 so long as it ensures the pace…does not fall behind the pace at which Covered Activities impact habitat by more than ten percent…." presents a potential conflict with language in Chapter 8.6.1 (at 8-26) stating Habitat Plan requirements in Tables 5-11 and 5-13 still apply and must be met by Year 45 or Year 40. To eliminate confusion, the IA language should be changed to read ""the Implementing Entity will fulfill the requirements of this Section and Chapter 8.6.1 so long as,*subject to restrictions in Chapter 8.6.1,* it ensures the pace…." (italicized language added). 4

In addition, the "Stay-Ahead" terminology is inaccurate because the Habitat Plan does not require the mitigation pace to stay ahead but instead allows it to fall as much as 10% behind. The only term that should be used is "Rough Proportionality". 5

COMMITTEE FOR
GREEN FOOTHILLS

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Palo Alto, CA 94303 650.968.8431 FAX www.GreenFoothills.org

9.4.1 State and Federal Funding: it is unclear when in the course of the permit term that the Plan will ensure that state and federal lands purchases "will not be credited towards SCVHP mitigation requirements" because this section states these purchases will be credited towards the rough proportionality requirement. To take an extreme example, it appears under this provision that for an initial period of indefinite length, no land could be purchased for mitigation purposes, and 18,000 acres described in Chapter 9.4.3 could be purchased by state and federal funds, yet the rough proportionality requirement would still be satisfied.

If the intent regarding rough proportionality is to credit state and federal purchases toward a *recovery pace requirement only*, then that would solve the above problem but should be expressly stated. If not, then there should be some other periodic check-in to ensure that mitigation is keeping pace with impacts and is not being obscured by the early application of enhancement land purchases. 6

If the Plan relies on purchases dedicated only to recovery to demonstrate rough proportionality, then it risks failing to actually achieve rough proportionality at a later point, because the Plan will have failed to increase mitigation requirements when it could have at an earlier point, and there will be no opportunity to return to prior-approved projects, particularly private projects, and request additional mitigation.

Draft Habitat Plan

Chapter 5:

General Comment: for the reasons stated in the letter of April 18, 2011 from the De Anza College Wildlife Corridor Technician Program commenting on the Habitat Plan, the Plan should do much more for both 1. permanent protection of lands in Mid-Coyote (and we include North Coyote Valley area as well), and 2. interim protection of lands in the same area pending future development. The De Anza Program letter focuses on permanent protection and on Mid-Coyote, but their arguments can also be applied to North Coyote and to interim protection.

We support permanent protection for all the reasons stated in the De Anza letter. In addition, permanent protection is at least partially compatible with urban development in Coyote Valley, because the proposals for urban development would not occupy 100% of the land. Plans such as the now-defunct Coyote Valley Specific Plan acknowledged a role for natural open space. It is conceivable that even with urban development, significant amounts of natural open space would be available in Mid and North Coyote flatland in the vicinity of Fisher Creek, along the southern boundary of Mid Coyote, areas adjoining the recently-purchased Open Space Authority land at the terminus of Palm Drive, and along the northern border of North Coyote/southern edge of Tulare Hill. Fee title and easement purchases would be appropriate in all those areas. Small areas of permanent valley-floor protection could also be useful linkages for insects and native plants between Santa Teresa Hills and the Mount Hamilton range, and useful for research purposes. 7

Interim habitat protection and enhancement could also serve recovery goals. The Habitat Plan acknowledges the negative temporal impacts if an interim period occurred between an impact and its mitigation, so the positive temporal impacts of an interim protection that might not be permanent should also be included. Equally important, there is no binding commitment by the City of San Jose to allow permanent development of the majority of Coyote Valley, so that development might not happen. This means the Habitat Plan's interim protection has the possibility of becoming permanent protection, and is all the more valuable. Finally, the Plan anticipates a recovery trajectory for habitats and species in the Study

Area, so interim protection can provide bridging benefits until new land can be purchased, rehabilitated, and enhanced.

Specific comments on Chapter 5:

Table 5-1a Objective 2.4 Species movement via Coyote Valley: the Plan should purchase permanent or interim fee title/lease or easements in Coyote Valley, especially near Fisher Creek and other water bodies, near Palm Drive, near the north edge of North Coyote Valley, and near important crossing points for Highway 101 and Monterey Highway, and manage the properties to facilitate wildlife movement. 8

Table 5-2b Page 9 Directed Studies: a new directed study should purchase land or easements in Mid and North Coyote and manage it as grassland to determine its value as annual grassland, its native plant value, its usefulness in linking insect and native plant communities across the Valley floor, and as nesting and overwintering burrowing owl habitat. 9

Table 5-9 Ref #10: native species likely use this linkage also include coyote, ground squirrel, and mountain lion. 10

Table 5-21: a footnote 5 is in the table, but no footnote 5 appears afterward. 11

Figure 5-9b: it appears unlikely that there are only two culverts on Highway 152. 12

Chapter 6:

Table 6-1, page 3: we understand the exemption for areas mapped as "landfill" does not include areas that are not yet landfill but are planned to be incorporated into a landfill, such as adjoining habitat near Kirby Landfill. The exemption should not encompass these neighboring areas. 13

Chapter 8:

8.6.1 at 8-26 Measurement of Stay Ahead: the language here regarding a 10% deviation conflicts with language in Implementing Agreement 9.4, and the IA 9.4 language is preferable. Here, the requirement for no more than a 10% deviation implies that achieving over 110% of the conservation pace expected at the particular time is non-compliant, which should not be the case. Instead, the IA 9.4 language that requirement means the pace "does not fall behind by more than ten percent" is better, and it allows for large land purchases that may bring the total to over 110% of the expected pace. Similarly, the concave (upper) curves on Figures 8.4a and 8.4b should be deleted. 14

8.6.2 at 8-32 Interim Conservation: this section refers to Figure 5-12, but no Figure 5-12 is included in Chapter 5. It may actually be a reference to Figure 5-4. 15

Chapter 9:

9.4.1 at 9-30 Nitrogen Deposition Fee: it is crucial that this relatively modest fee be retained in the Habitat Plan funding in order to accurately reflect actual costs caused by development, and to incentivize development that produces fewer vehicle trips. Modifications that reflect the increase costs of longer 16

vehicle trips could be appropriate, but elimination of this fee would impose improper burdens on others who are not creating the impacts described.

9.4.1 at 9-37 Temporary Impact Fee: the description of temporary impacts on page 9-37 as those that "alter cover for less than one year and that allow the disturbed area to recover to pre-project" conditions appears to conflict with the formula on page 9-38 that allows the impact to occur for multiple years. If this is for frequent, returning impacts, the language should be clarified. 17

Temporary impacts to grassland should be allowed in-lieu mitigation through interim grassland conservation actions in Mid and North Coyote Valley, such as temporarily enhancing the existing baseline conditions to facilitate grassland and wildlife linkage uses. This comment also applies to Page 9-45, Implementing Conservation Actions in Lieu of Development Fees. 18

9.4.2 at 9-49 Land Acquisition by Other Local Land Agencies, Non-Profits, and Foundations: this section should note that much if not nearly all of these acquisitions are likely to be limited to promoting recovery and not used as mitigation. 19

9.4.3 at 9-53 Measuring State and Federal Contributions: see comment regarding Implementing Agreement 9.4.1 (If the intent regarding rough proportionality is to credit state and federal purchases toward an *enhancement pace requirement only*, then that would solve the above problem but should be expressly stated. If not, then there should be some other periodic check-in to ensure that mitigation is keeping pace with impacts and is not being obscured by the early application of enhancement land purchases.) 20

Table 9-1 Remedial Measures: the word "construction" after "Remedial Measures" should be deleted, because remedial measures deal with a wide variety of changed circumstances beyond just that of construction. 21

Please contact us if you have any questions.

Sincerely,

Brian A. Schmidt
Legislative Advocate, Santa Clara County

Comment Letter 39—Committee for Green Foothills, Brian A. Schmidt, Legislative Advocate, Santa Clara County, April 18, 2011

Response to Comment 39-1

The commenter's assumptions are correct. The assumptions conform to the normal description of agricultural practices.

No changes to the Habitat Plan are required.

Response to Comment 39-2

Revisions to the Habitat Plan include the following:

(Habitat Plan **Appendix B**) The reference to the Covered Activities table was corrected.

Response to Comment 39-3

Section 9.2 of the Implementing Agreement provides that all conservation easements must not only meet the requirements set forth in the Implementing Agreement, but also those in Section 8.6.3 of the Plan which specifically states that "USFWS and CDFG will be named as a third party beneficiary on all conservation easements." Therefore no change to the Implementing Agreement is necessary.

No changes to the Habitat Plan are required.

Response to Comment 39-4

Habitat Plan Section 9.4 specifically references to Chapter 8.6.1 of the Plan for further description of the Stay-Ahead provision. Additional cross-references are not required.

No changes to the Habitat Plan are required.

Response to Comment 39-5

The term "Stay-Ahead" will be maintained. The terminology is consistent with that of other HCPs and NCCPs.

No changes to the Habitat Plan are required.

Response to Comment 39-6

The Habitat Plan does recognize the need to evaluate the status of the Reserve System against impacts and conservation strategy requirements, including the Stay-Ahead provision. A summary-level analysis is required every year as part of the annual report. In addition, to ensure that the Implementing Entity makes steady progress towards the final land acquisition targets, in year 20 of implementation, the Implementing Entity will work with the Wildlife Agencies to conduct a formal and complete review of progress toward building the Reserve System consistent with the Stay-Ahead provision.

No changes to the Habitat Plan are required.

Response to Comment 39-7

With the exception of the burrowing owl conservation strategy and existing Open Space Authority land incorporated into the Reserve System, the Habitat Plan can receive credit for the protection of lands only if the lands are permanently protected by a conservation easement. As such, "interim" protection that temporarily protects lands that will be developed in the future is not a viable approach for the Plan.

Portions of this comment are addressed in Master Response #8.

Revisions to the Habitat Plan will be consistent with Master Response #8.

Response to Comment 39-8

Comment is addressed in Master Response #8.

Revisions to the Habitat Plan will be consistent with Master Response #8.

Response to Comment 39-9

Comment is addressed in Master Response #8.

Revisions to the Habitat Plan will be consistent with Master Response #8.

Response to Comment 39-10

Revisions to Habitat Plan include the following:

Mountain lion was added to Habitat Plan **Table 5-9** as a native species that is likely to use this linkage. Coyote and ground squirrel were not added. These species are found throughout the permit area and were not called out as users of any of the linkages.

Response to Comment 39-11

The Wildlife Agencies and Local Partners acknowledge this editorial error. However, because of reductions in the scale of the Plan (described in Master Response #1), the Final Habitat Plan no longer includes an acquisition target of 1,000 acres of agricultural lands.

No changes to the Habitat Plan are required.

Response to Comment 39-12

The Wildlife Agencies and Local Partners recognize that the number of culverts depicted in Habitat Plan **Figure 5-9b** is not comprehensive. The figure depicts notable crossing points and barriers.

No changes to the Habitat Plan are required.

Response to Comment 39-13

The commenter is incorrect. The exemption from conditions on covered activities described in Habitat Plan Chapter 6 applies to land cover types as verified at the project level through the application process (described in Habitat Plan Section 6.8 *Habitat Plan Application Package*). Activities on habitat adjoining Kirby Canyon Landfill must comply with the conditions in Habitat Plan Chapter 6, as applicable, if the activity is covered by the Habitat Plan. See Habitat Plan Chapter 2 for a description of covered activities at Kirby Canyon Landfill.

No changes to the Habitat Plan are required.

Response to Comment 39-14

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 8.6.1 *Stay-Ahead Provision*, subheading, *Measurement of Stay-Ahead Provision*)

“As long as the pace of conservation measure implementation (i.e., preservation, restoration, or creation) does not fall behind the pace of covered activity impacts by more than 10% , the Stay-Ahead provision will have been satisfied.

If the Plan is found to be out of compliance with the Stay-Ahead provision, the Wildlife Agencies will determine if the Plan has maintained rough proportionality. If any of the Wildlife Agencies issue a notification to the Implementing Entity that rough proportionality has not been met, then the Wildlife Agencies and the Implementing Entity will meet to develop a plan to remedy the situation.”

Response to Comment 39-15

The Wildlife Agencies and Local Partners acknowledge this editorial error.

Revisions to the Habitat Plan include the following:

In Habitat Plan Section 8.6.2, subheading *Land Acquisition during Plan Development* (*Interim Conservation*), the **Figure 5-12** reference was corrected to refer to **Figure 5-4**.

Response to Comment 39-16

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 39-17

The impact may occur in the same place in multiple years, not over multiple years, and be considered a temporary impact if it meets the temporary impact definition: "direct impacts that alter land cover for less than one year and that allow the disturbed area to recover to pre-project or ecologically improved conditions within one year (e.g., prescribed burning, construction staging areas) of completing construction."

No changes to the Habitat Plan are required.

Response to Comment 39-18

In-lieu mitigation for payment of Development Fees is permitted if the land offered in lieu of fees is approved for inclusion in the Reserve System by the Implementing Entity and the Wildlife Agencies. This applies to fees associated with both permanent and temporary impacts. This is described in Chapter 9.

No changes to the Habitat Plan are required.

Response to Comment 39-19

The Wildlife Agencies and Local Partners are not in agreement with the comment and editorial recommendation. Specific Reserve System land acquisitions are not dedicated to promoting recovery vs. mitigation; rather, all land acquisitions contribute to meeting the permit requirements, inclusive of requirements to support species recovery and provide mitigation.

No changes to the Habitat Plan are required.

Response to Comment 39-20

See Response to Comment 39-6.

Response to Comment 39-21

The Wildlife Agencies and Local Partners acknowledge that remedial measures deal with a wide variety of changed circumstances beyond just that of construction; however, remedial measure capital cost are limited to those costs associated with construction.

No changes to the Habitat Plan are required.

Coyote Valley Research Park, LLC

GT GreenbergTraurig

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Fax 650.462.7870
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April 18, 2011

VIA E-MAIL AND OVERNIGHT DELIVERY

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Mr. Kenneth Schreiber
County of Santa Clara Executive's Office, HCP/NCCP Program Manager
County Government Center, East Wing, 11th FloorApril 18, 2011

ken.schreiber@ceo.sccgov.org

Re: Cisco Systems, Inc.'s Comments on Draft Santa Clara Valley Habitat Plan

Dear Ms. Mustin and Mr. Schreiber:

On behalf of Coyote Valley Research Park, LLC (together with its affiliates, "CVRP"), we submit the following comments on the "Draft Santa Clara Valley Habitat Plan" dated December 2010 (the "Draft Plan"). Also on behalf of CVRP, we previously provided comments on the "2nd Administrative Draft Santa Clara Valley Habitat Plan" dated June 1, 2009 ("Admin Draft Comments"), which are incorporated herein by reference to the extent not addressed in the Draft Plan. As we noted in the Admin Draft Comments, that draft appropriately appeared to include the approved Coyote Valley Research Park Project as an "exempt project" under the Santa Clara Valley Habitat Plan (in final form, the "Habitat Plan"), and we requested a few refinements to that draft to clarify this intent. We provide the following comments on the current Draft Plan to reiterate that request that the Draft Plan be refined to clarify that the Coyote Valley Research Park Project is an "exempt project."

Background

In the Admin Draft Comments, we provided a background discussion regarding the project, its entitlements related to biological resources, and the project's commitment to mitigation pursuant to those entitlements. For your ease of reference, we restate that discussion here.

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BERLIN**
BOSTON
BRUSSELS**
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MIAMI
MILAN**
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PALM BEACH COUNTY
PHILADELPHIA
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ROME**
SACRAMENTO
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TYSONS CORNER
WASHINGTON, D.C.
WHITE PLAINS
ZURICH**
*OPERATES AS GREENBERG TRAURIG MAHER LLP
**STRATEGIC ALLIANCE

In 2000, the City of San Jose (the "City") issued to Coyote Valley Research Park, LLC ("CVRP") land use entitlements authorizing the construction of 6.7 million square feet of "Campus Industrial" uses and associated infrastructure (the "CVRP Project") on a 688-acre site (the "CVRP Property") in the North Coyote Valley Campus Industrial Area ("NCVCIA"). The land use entitlements for the CVRP Project include, among other things, an environmental impact report, a general plan amendment, an amendment to the NCVCIA Master Plan, a planned development rezoning, a vesting tentative map, planned development permits, and a development agreement (the "City Entitlements"). The City Entitlements also authorize a variety of infrastructure projects required to serve the CVRP Project, including roadways, a flood-detention basin and bypass channel, an off-site water tank, and five private driveway bridges over Fisher Creek. Cisco subsequently purchased an approximately 100-acre portion of the CVRP Property located north of Bailey Avenue, west of Santa Teresa Boulevard, and east of the bypass channel (the "Cisco Property").

In addition to the City Entitlements, the CVRP Project required entitlements from a variety of resource agencies (the "Resource Agency Entitlements"), primarily related to the construction of the flood detention facilities, which include construction of a new bypass channel and detention basins, and bridges over an existing stream called Fisher Creek. The Resource Agency Entitlements include an Individual Permit from the U.S. Army Corps of Engineers (the "Corps") pursuant to Section 404 of the Clean Water Act; a Nationwide Permit from the Corps pursuant to Section 404 of the Clean Water Act; a water quality certification from the California Regional Water Quality Control Board pursuant to Section 401 of the Clean Water Act; a permit from the California Department of Resources, Division of Safety of Dams for the construction of Fisher Creek Dam; an encroachment permit from the Santa Clara Valley Water District; a Streambed Alteration Agreement from the California Department of Fish and Game ("CDFG") pursuant to Section 1603 of the California Fish and Game Code; a Biological Opinion from the U.S. Fish and Wildlife Service ("USFWS") pursuant to Section 7 of the federal Endangered Species Act; and a biological opinion from the National Marine Fisheries Service ("NMFS") pursuant to Section 7 of the federal Endangered Species Act. The City Entitlements and the Resource Agency Entitlements demonstrate compliance by the CVRP Project with applicable local, state, and federal laws pertaining to species and habitat protection. 1

The City Entitlements and the Resource Agency Entitlements require extensive measures to avoid, mitigate, and/or compensate for the potential impacts of the CVRP Project on biological resources. CVRP already has implemented many of these measures. For example, as required by the Resource Agency Entitlements, CVRP has acquired or will acquire 336 acres of serpentine soils habitat within Santa Clara County as a conservation measure for the bay checkerspot butterfly and several protected plant species. CVRP also will set aside an approximately 269-acre flood control basin/open space area that will be managed in a manner compatible with management of the red-legged frog and tiger salamander, as approved by the USFWS. In addition, the CVRP Project will enhance the Fisher Creek riparian corridor and flood bypass channel and basin with native riparian vegetation, pursuant to a plan approved by the USFWS. The Resource Agency

Entitlements contain further measures for the protection of steelhead specifically, and water quality generally.

The Mitigation Monitoring and Reporting Program and the Biological Mitigation and Monitoring Program associated with the CVRP Project also require extensive biological resource mitigation measures, including mitigation measures for impacts to trees (implementation of landscaping plans); nesting raptors (surveys and buffers); riparian habitat (setbacks and habitat replacement at a ratio between 1:1 and 3:1, depending on habitat quality); wetlands (mitigation at a 2:1 ratio); burrowing owls if present (surveys, buffers, replacement of burrows at a 3:1 ratio on approximately 25 acres of on-site upland area); nesting and roosting bats (surveys, buffers, evictions); aquatic habitat (storm water runoff planning); and California Tiger Salamanders (salvage and preservation of an off-site population at a 1:1 ratio). These extensive measures will fully avoid, mitigate, and/or compensate for the impacts of the CVRP Project on biological resources.

Comments

1. Applicability of the Urban Exemption

The Draft Plan (pages 6-3 to 6-4) contains a list of exempt activities and projects that will receive incidental take coverage under the Habitat Plan, but are not subject to fees, conditions, or survey requirements contained in the Habitat Plan and implementing ordinances. The Draft Plan appropriately appears intended to classify urban development within the NCVCIA, including the CVRP Project, as an exempt activity pursuant to the "Urban Exemption" (described below). Such an exemption is consistent with the existing City Entitlements and the Resource Agency Entitlements for the CVRP Project.

The Draft Plan includes an exemption for "[a]ny covered activity described in Chapter 2 that occurs in urban-suburban, landfill, reservoir, or agriculture developed land cover types as verified in the field, unless the activity may affect a mapped or unmapped stream, riparian woodland, serpentine, pond, or wetland land cover types, or the activity is located in a stream setback . . . ." (the "Urban Exemption") (p. 6-3 (footnotes omitted)). As discussed below, the CVRP Project and other urban development within the NCVCIA satisfies each element of the Urban Exemption: 2

- *Covered Activity*. The Draft Plan specifically identifies residential, commercial, industrial, and other types of urban development within the NCVCIA with land use designated for urban development, rural development, and agriculture as a "covered activity" within the urban development category, as required for the Urban Exemption. (See Draft Plan p. 2-37 and Fig. 2-2.)

- *Land Cover Type*. Figure 3-10 of the Draft Plan depicts the majority of the NCVCIA as "Urban-Suburban" land cover type, as required for the Urban Exemption. However, portions of the NCVCIA entitled for public roadway improvements for the CVRP Project are designated "Grain, Row-Crop, Hay &

Pasture, Fallowed," and portions of the NCVCIA entitled for flood control improvements are designated as "Mixed Riparian Forest and Woodland." In order to clarify the applicability of the Urban Exemption to the areas entitled for CVRP Project infrastructure, we hereby request that the land cover type for the entire NCVCIA area be re-designated as "Urban-Suburban" on Figure 3-10.[1]

- *Effect on Stream, Riparian Woodland, Serpentine, Pond, or Wetland.* The City Entitlements and Resource Agency Entitlements for the CVRP Project authorize and provide mitigation for certain impacts to streams, riparian woodlands, and wetlands. We therefore request that the Draft Plan be revised to clarify that these authorized impacts do not affect the applicability of the Urban Exemption.

- *Located in a Stream Setback.* The CVRP Project will be set back from riparian corridors. To the extent infrastructure related to the CVRP Project will be located within setback areas, any impacts from that infrastructure will be mitigated as required by the City Entitlements and/or the Resource Agency Entitlements.

2. <u>Documentation Required for Urban Exemption</u>

The Draft Plan requires that the project proponent for an exempt project must provide to the Implementing Entity (1) a letter from USFWS referring to the activity and stating that the activity is not likely to result in take of any federally listed species either individually or cumulatively; and the results for full protocol surveys approved by CDFG for state listed species with the potential to occur on the site showing that no such species or species habitat occurs on the site; or (2) a copy of an incidental take permit issued by CDFG for the activity, and copies of incidental take statements or incidental take permits issued by the USFWS that authorize the proposed covered activity; or (3) a combination of letters and/or incidental take authorizations from both USFWS and CDFG.

As discussed above, the CVRP Project has undergone a great deal of environmental scrutiny, culminating in the issuance of the City Entitlements, the Resource Agency Entitlements, and other such approvals and authorizations. Many of these entitlements, such as those certain Biological Opinions issued by the USFWS and NMFS in 2001, address the take of listed species and the potential for listed species to occur on the CVRP Project site. Accordingly, we request that the Draft Plan be revised to clarify that the Resource Agency Entitlements for the CVRP Project satisfy the requirements for documenting the applicability of the Urban Exemption to the CVRP Project, and that no further documentation is required. Proposed revisions are provided in **<u>Exhibit A</u>**. To the extent necessary, please conform the Environmental Impact Statement/Environmental Impact Report for the Habitat Plan to reflect these revisions. 3

[1] In the event the entire NCVCIA area is not re-designated as "Urban-Suburban," at the very least the water feature shown in the NCVCIA area on Figure 3-10 as a "Vernal Pool" should be re-designated as a "Pond." Recent wetland delineations indicate that there are no vernal pools in the NCVCIA area.

* * *

Thank you for the opportunity to review and comment on the Draft Plan. Should you have questions regarding any of the above, please do not hesitate to contact me.

Very truly yours,

Randall C. Single

cc: Mr. Joseph Horwedel, City of San Jose
Ms. Suzanne Cooper, Cisco Systems, Inc.

Exhibit A

Proposed Revisions to "Urban Exemption" Text from Page 6-3 of Draft Santa Clara Valley Habitat Plan (footnotes in original omitted)

Any covered activity described in Chapter 2 that occurs in urban-suburban, landfill, reservoir, or agriculture developed land cover types as verified in the field, unless the activity may directly affect a mapped or unmapped stream, riparian woodland, serpentine, pond, or wetland land cover types, or the activity is located in a stream setback. This exemption applies to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area.

Proposed Revisions to Documentation Requirement Text from Page 6-4 of Draft Santa Clara Valley Habitat Plan

A project proponent of a covered activity in the Plan will not be required to comply with the conditions in this chapter or pay any Habitat Plan fees if the proponent of the activity provides written confirmation to the Implementing Entity that the CDFG and USFWS have determined that the activity is not subject to CESA and ESA; or has already received the necessary take authorizations under CESA and ESA; or has otherwise complied with CESA and ESA. An activity will be deemed to be in compliance with CESA and ESA by the Implementing Entity and thus be exempt from the conditions in this chapter and otherwise comply with the Habitat Plan if the proponent provides the following:

1. a letter from USFWS that specifically refers to the activity and states that the activity is not likely to result in take of any federally listed species individually or cumulatively; and the results for full protocol surveys, approved by CDFG, for state listed species with the potential to occur on the site showing that no such species or species habitat occurs on the site; or

2. a copy of an incidental take permit issued by CDFG for the activity, and copies of incidental take statements or incidental take permits issued by USFWS that authorize the proposed covered activity; or

3. a combination of the letters as described in (1) above and/or incidental take authorizations described in (2) from both Wildlife Agencies.

The July 31, 2001 Biological Opinion from the USFWS, the September 12, 2001 Biological Opinion from NMFS, and the September 10, 2001 Streambed Alteration Agreement from CDFG relative to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area and as amended or extended satisfy these requirements for documenting the project's exempt status under the Plan.

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)
Cox, Castle & Nicholson	1	3					In Figure 3-10, re-designate land cover type for the entire North Coyote Valley Campus Industrial Area as "Urban-Suburban."
Cox, Castle & Nicholson	2	3					If the entire North Coyote Valley Campus Industrial Area is not re-designated "Urban-Suburban" in Figure 3-10, re-designate the area shown in Figure 3-10 as a "Vernal Pool" to a "Pond."
Cox, Castle & Nicholson	3	6	6.2	6-3	8	7	Insert the following after the paragraph that begins "Any covered activity described in Chapter 2 . . .": "This exemption applies to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area."
Cox, Castle & Nicholson	4	6	6.2	6-4	17	7	Insert the following after the list of documents demonstrating compliance with CESA and ESA: "The July 31, 2001 Biological Opinion from the USFWS, the September 12, 2001 Biological Opinion from NMFS, and the September 10, 2001 Streambed Alteration Agreement from CDFG relative to the Coyote Valley Research Park project located in the North Coyote Valley Campus Industrial Area and as amended or extended satisfy these requirements for documenting the project's exempt status under the Plan."

Commenting on: (Clean version, track changes version) _____

Comment Letter 40—Coyote Valley Research Park, Randall C. Single, Greenberg Traurig, April 18, 2011

Response to Comment 40-1

See Response to Comment 37-1.

Response to Comment 40-2

See Response to Comment 37-2.

Response to Comment 40-3

See Response to Comment 37-3.

De Anza Wildlife Corridor Technician Program

41

April 18, 2011

Cori Mustin
Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

Re: Draft Santa Clara Valley Habitat Conservation Plan, Natural Communities Conservation Plan and associated Environmental Impact Statement and Environmental Impact Report (collectively, "the Plan")

Dear Ms. Cori Mustin:

The De Anza College Wildlife Corridor Technician (WCT) Program submits these comments on the Draft HCP. We congratulate the efforts of the Santa Clara Valley Habitat Conservation Plan/Natural Community Plan (HCP/NCCP) team for developing and administering an inclusive process. We acknowledge that this endeavor has required the skillful negotiation of a complex regulatory and political landscape. The Plan is a positive step in the right direction.

The WCT Program also appreciates the value of the Plan to preserve species and the habitats on which they depend on a regional scale. Generally, some advantages of HCP/NCCPs are to: (1) shift the conservation focus from single-species management to multi-species and habitat management; (2) engage private landowners and local governments in conservation planning; (3) protect unlisted species, thereby reducing the likelihood that listing will be needed; and (4) promote long-term conservation of species and habitats through protection and management.

However, the WCT Program also recognizes that even though adequate conservation tools are a requirement for successful implementation of HCP/NCCPs, large amounts of prime habitat have been lost for many species under these conservation programs. Of particular concern for the WCT Program is Mid-Coyote Valley, the majority of which is located in the area designated in the Plan as the Coyote Valley Urban Reserve (or "Urban Reserve"). This area was excluded from the acquisition program for the Reserve System despite its value as wildlife habitat and linkage.

WCT Program studies have demonstrated that the connectivity and habitat value of Mid-Coyote Valley are exceptional. There are no other areas within the boundaries of the Plan that afford a greater connectivity value between the Santa Cruz Mountains and the Diablo Range and there are few areas within the Plan boundaries that provide for the extent of high quality contiguous habitat. While the WCT Program understands that the land in Mid-Coyote Valley is designated as "Urban Reserve", *this is not a valid rationale to summarily exclude this exceptional habitat as part of the Reserve System.*

Activities of De Anza College WCT Program

Since 2007, De Anza College faculty and students have been actively studying the biological significance of Mid-Coyote Valley. Mid-Coyote Valley is the area bounded by Highway 101 to the east, Bailey Avenue to the north, Palm Avenue to the south, and Calero County Park and Santa Teresa Hills to the west. The WCT Program prepared a report titled *2008 Annual Report*, which was previously submitted to key personnel at ICF International, preparers of the Plan. This report contains detailed records of species found in the study area during 2007 – 2008 using camera trapping and track/scat surveys along several transects in Mid-Coyote Valley. This document is included as Attachment 1.

Further, WCT Program's ongoing surveys in the area, from 2009 to present show continued use of Mid-Coyote Valley by numerous species of mammals and birds, including state and federal species of concern. A summary of the WCT Program's research findings for 2009/2010 is presented in Attachment 2. Figures 1 through 5 clearly show that wildlife extensively use the crossing structures across Highway 101 in Coyote Valley. More detailed publications are anticipated in the near future.

The Mid-Coyote Valley corridor currently allows multiple species to traverse between the Santa Cruz Mountains and the Diablo Range since it provides a wide variety of habitats including riparian, riparian forest, grasslands (currently under non-industrial agriculture), seasonal wetlands, and permanent wetlands (Laguna Seca). Further, Mid-Coyote Valley is the only remaining direct linkage between the Diablo Range and Santa Cruz Mountains where a width of 2 kilometers is achievable. This width has been deemed by scientific studies to be the minimum width for a viable wildlife corridor. (South Coast Missing Linkages Project, page 14; June 2006) It is also significant that several Plan Covered Species have been observed within the "Urban Reserve": these species include Golden Eagle, Tricolored Blackbird, Burrowing Owl, California Red Legged Frog, California Tiger Salamander and the Mount Hamilton Thistle.

The WCT Program's methods have been deemed sound by leading internationally recognized conservation biologists Reed Noss and Paul Beier. In a letter dated December 20, 2008, Drs. Noss and Beier stated, "The primary corridor across Coyote Valley identified by the Environmental Studies faculty and students is, in our opinion, the optimal corridor." Additionally, in another letter to Julie Phillips regarding the WCT Program dated June 1, 2010, Dr. Noss stated, "I can say without hesitation that the work of your group is technically sound and employs the best available science, field techniques, geographic information system (GIS) technology, and other methods to address the very urgent problem of habitat fragmentation in the Coyote Valley and its surroundings." These letters are included as Attachment 3.

For these reasons, and for the reasons stated below, the WCT Program requests the acquisition of portions of Mid-Coyote Valley lands for the Reserve System in order to minimize and mitigate the impacts of takings that will occur as a result of Plan implementation.

Recognition of Linkage Between the Santa Cruz Mountains and the Diablo Range

We applaud the recognition expressed in the Plan of the importance of maintaining a connective link between the Santa Cruz Mountains and the Diablo Range. At page 5-21 the Plan states, "An

important conservation objective of this Plan is to preserve and enhance the linkage between the two ranges." We concur with this assessment as it is consistent with our observations, data, and scientific understanding of the Mid-Coyote Valley corridor between the Santa Cruz Mountains and the Diablo Range.

Scientific sources recognize the importance of identifying and protecting wildlife corridors within the NCCP/HCP process. In the book *Corridor Ecology*, the authors state:

> *Identifying and protecting wildlife corridors are often an integral part of the NCCP and MSCP [Multiple Species Conservation Plan] processes. For example, in southwestern San Diego, an MSCP preserve was designed to maintain connections between core habitat areas, including linkages between coastal lagoons and more inland habitats and between different watersheds (Conservation Biology Institute 2002).*
>
> Corridor Ecology: The Science and Practice of Linking Landscapes for Biodiversity Conservation, Jodi Hilty et al, Island Press, 2006.

Acknowledgement of the Diablo Range/Santa Cruz Mountain linkage is further developed as a biological goal in the Plan at Table 5-1a, Objective 2.4 which states,

> *Increase the permeability for species movement across Santa Clara Valley between the Diablo Range and the Santa Cruz Mountains and between Coyote Ridge and the Diable* (sic) *Range to the Santa Cruz Mountains via Coyote Valley, Tulare Hill, or Fisher Creek at locations determined by the feasibility study and with structures that have the potential to most benefit movement of a variety of covered and other native species by year 20.*

Other documents identify the value of Coyote Valley as a valuable and direct landscape linkage between the Diablo Range and Santa Cruz Mountains. For example, the Draft San Jose General Plan states:

> *Movement of animals between the vast expanses of natural lands in the Santa Cruz Mountains and Diablo Range is constrained by development that has occurred on the Santa Clara Valley floor. Consequently, it is important that wildlife be able to move between these two mountain ranges in the few areas where such movement still occurs… Coyote Valley still provides a landscape linkage between these two ranges.*
>
> Envision San Jose 2040 (Draft San Jose General Plan, Page 3-30)

Furthermore, in response to the WCT Program's research findings that Mid-Coyote Valley is the most direct and primary landscape linkage between the two ranges, the Envision 2040 Task Force modified the language in Draft #5:

> *To facilitate the movement of wildlife across ~~South~~ Coyote Valley, work with the appropriate transportation agencies to replace ~~at least~~ portions of the median barrier on Monterey Road with a barrier that maintains human safety while being more permeable to wildlife movement and implement other improvements, as feasible, to benefit wildlife movement.*
>
> Envision San Jose 2040 (Draft San Jose General Plan, ER 8.4)

> *Support the on-going identification and protection of critical linkages for wildlife movement in the Mid-Coyote Valley.*
>
> Envision San Jose 2040 (Draft San Jose General Plan, ER 8.5)

Despite this recognition of the importance of maintaining connectivity between the two ranges, despite the resolution to support protection of critical wildlife movement linkages in Mid-Coyote Valley, and despite WCT Program's conclusion with confirmation by Drs. Noss and Beier that Mid-Coyote Valley represents the most direct link between the two ranges, this critical area has been omitted from consideration for land acquisition under the Plan's Reserve System. The WCT Program understands that this omission is the result of the designation of this land as an "Urban Reserve." However, *this is not a valid rationale to summarily exclude this exceptional habitat as part of the Reserve System.*

Designation as "Urban Reserve" Does Not Preclude Mid-Coyote Valley From Consideration as Part of the HCP Reserve System

This recognition of the importance of Coyote Valley as a wildlife corridor is significant to the Plan because of the stated requirements of HCPs to minimize and mitigate take of covered species to the maximum extent practicable. (See 16 U.S.C. section 1539(a)(2)(B)(ii): "the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.") With regard to feasibility or practicality, the U.S. Fish and Wildlife Service (USFWS) has stated:

> *"Impracticality or infeasibility are dependent on two factors: adequacy of the minimization and mitigation program, and whether it is the maximum that can be practically implemented by the applicant. To the extent maximum that the minimization and mitigation program can be demonstrated to provide substantial benefits to the species, less emphasis can be placed on the second factor. However, particularly where the adequacy of the mitigation is a close call, the record must contain some basis to conclude that the proposed program is the maximum that can be reasonably required by that applicant. This may require weighing the costs of implementing additional mitigation, benefits and costs of implementing additional mitigation, the amount of mitigation provided by other applicants in similar situations, and the abilities of that particular applicant.*
>
> U.S. Fish and Wildlife Service/ Endangered Species Permits/Tools for Preparing Habitat Conservation Plans/HCP Issuance Criteria;
> www.fws.gov/midwest/endangered/permits/documents/ITPermitsCriteria.pdf

Here, there is no attempt to minimize or mitigate takes within the "Urban Reserve." In fact, the Plan assumes that full development will occur with the "Urban Reserve." For example, the Plan states on page 4-49, "This does not include the Coyote Valley Urban Reserve where current agricultural land use are assumed to be fully developed over the permit term." This is a flawed assumption since *any* development within the "Urban Reserve" is unlikely during the permit term given the high water table, the lack of infrastructure, the City of San Jose's requirements for economic triggers and specific plan approval, and due to the exclusion of Coyote Valley development in the Draft San Jose General Plan 2040.

Nevertheless, the Plan excluded the "Urban Reserve" from all minimization or mitigation programs. Given this exclusion, the second USFWS factor must be emphasized, i.e. *the maximum that can be practically implemented by the applicant.* Unfortunately, the "Urban Reserve" was completely omitted from the land acquisition strategy for the Reserve System, presumably on the basis of its designation as an "Urban Reserve." This omission is inexplicable considering that the quality of the habitat and the value of the linkage are widely recognized, and in view of significant impediments to development in Mid-Coyote Valley during the 50-year permit term of the Plan.

Realistically, the preservation of a portion of Mid-Coyote Valley *is* a practical and feasible mitigation measure notwithstanding its "Urban Reserve" land use designation. As a result, there is no basis to conclude that the proposed Reserve System program is the maximum that can be reasonably achieved. This hands-off policy for the "Urban Reserve" was never considered in a formal review process and the decision to exclude the "Urban Reserve" from the Reserve System was never scientifically considered or justified. Therefore, the rationale for excluding "Urban Reserve" from the Reserve System is a self-imposed limitation that violates U.S. Fish and Wildlife requirements. On this basis, the WCT Program requests that portions of Mid-Coyote Valley be included as an integral part land acquisition strategy and of the Reserve System.

Suggested Biological Goals, Objectives, and Land Acquisition Solutions

The WCT Program maintains that the conservation strategy in the area defined as Conservation Analysis Zone 6 must include acquisition of portions of land in Mid-Coyote Valley for the Reserve System. Despite high parcelization, land acquisition in Coyote 6, which is currently zoned for rural and agricultural development, will enhance the goals of the Plan, either through acquisition or agricultural easements. It is well documented that agriculture fields are permeable to wildlife and allow movement of multiple species when proper land management practices are adopted. Further, the WCT Program requests that the primary purposes of the land acquisition strategy in conservation analysis zone Coyote 6 also include:

- Preservation of a 2-kilometer wide corridor through Mid-Coyote Valley for multi-species use in order to connect large tracts of already protected habitat on the east and west boundaries of Coyote Valley (Santa Clara County Parks, Midpeninsula Regional Open Space District, Santa Clara County Open Space Authority, and The Nature Conservancy);
- Implement land management actions to enhance the health of the surrounding open spaces that are already invested in by providing a critical buffer zone;
- Implement habitat provisions for many native species including some HCP focal species such as the Golden Eagle;
- Protect critical habitat for raptors and other avian species that utilize this area during migration or year-round;
- Enhance the ability of plants and animals to promote gene flow between populations in Santa Cruz Mountains and Diablo Range, either through physically moving from area to area or over the course of generations for plants and smaller ranging animals;
- Provide a pathway for the dispersal of juveniles and for seasonal movement of wildlife; and
- **Provide and maintain a protected wildlife corridor on the last remaining significant, undeveloped tract of valley floor in Santa Clara County.**

Conclusion

The WCT Program would like to acknowledge the efforts of Program Manager Ken Schreiber, ICF International personnel, and the entire Plan Team for accomplishments in developing this Plan. In particular, Ken Schreiber has met with the WCT Program on several occasions and has tirelessly given his time to clarify many background issues and to enlighten WCT Program students about numerous details contained within the Plan. This has been an invaluable learning experience, and for that the WCT Program is grateful.

In conclusion, we provide a quotation from the Dr. Reed Noss/Dr. Paul Beier letter included as Attachment 3:

> *[W]e recommend that the Santa Clara Valley HCP/NCCP planning process take full advantage of the data collected by the Environmental Studies Department at De Anza College. Furthermore, we suggest that the HCP/NCCP consultants enlist the Environmental Studies Department to help conduct further research on the wildlife of this area and delineate wildlife corridors. The HCP/NCCP could be the key to protecting and restoring the Coyote Valley and other important areas for biodiversity within the planning area.*

We offer our services and we look forward to working with the Plan implementation team in the future. Thank you for your consideration of these comments.

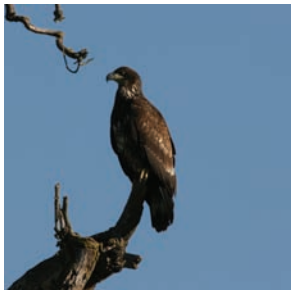
Sincerely,

Julie Phillips
WCT Program Leader
Morgan Family Chair of Environmental Studies
Kirsch Center for Environmental Studies
Environmental Studies Department
BHES Division
De Anza College

Appendices:
Attachment 1: 2008 Annual Report
Attachment 2: WCT Program Mid-Coyote Valley Survey Data Summary: 2007 to Present
Attachment 3: Letters from Dr. Reed Noss and Dr. Paul Beier

Coyote Valley Wildlife Corridor
Monitoring Program
2008 Annual Report

De Anza College Wildlife Corridor Stewardship Team



Coyote Valley Wildlife Corridor Monitoring Program 2008 Annual Report

Ryan Phillips, Tanya Diamond, Julie Phillips, Pat Cornely, Vicki Jennings, and Lisa Morton

Contributors

The authors wish to thank all student interns, De Anza College instructors and staff, volunteers and public who all contributed to this ongoing project and for their hard work in the field. They include: Rick Malupo, Josh Goodwin, David Tharp, Deborah Aso, Jana Clark, Caitlin Williams, Philip Higgins, Jessica Gonzalez, Melissa DeKoven, Stephen Navarra, Veronica Davis, Matthew Daily, Jana Marguardt, Vilma Estacio, Lance Freihofer, Lori Parsons, Rosita Fakhrevaezi, CJ Gleaves, Chris Choi, Daniel Gray, Michelle Mai, Samara Phillips, Javier Perez, Lynn Thorensen, Tommy Biondic, Peter Woolhouse, Dennis Gorsuch, Diana Martinez, Mary Poffenroth, Gary Patton, Kristin Jensen Sullivan, Mark Sullivan, Chris Lepe, Dr. Stephanie Sherman and Brian Murphy.

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Partnerships

We wish to thank the following academic collaborators and governmental, nongovernmental and non-profit partners for their involvement and assistance in this program: Santa Clara County Parks, Santa Clara Valley Audubon Society, Peninsula Open Space Trust, California Department of Fish and Game, Santa Clara Valley Water District, Valley Transportation Authority, Caltrans, Committee for Green Foothills, Santa Clara HCP/NCCP, Cyber Trackers, Silicon Valley Land Conservancy, San Francisco Bay Estuary Institute, UC Davis Environmental Science and Policy Department, UC Davis Road Ecology Center, Save Coyote Valley Group, Santa Clara Open Space Authority, Big Sur Land Trust, and Midpeninsula Regional Open Space District.

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Abstract

To explore connectivity along the 37th parallel (specifically the wildlife corridor between the Santa Cruz Mountains and the Diablo Range) in California, De Anza College's Environmental Studies Department (Environmental Stewardship Program) launched a long term wildlife corridor study in 2005. In January of 2007, the Coyote Valley Wildlife Corridor Program began to conduct biological surveys to assess diversity of mammals, birds and plants in Coyote Valley. The main goal of Phase 1 was to collect data in the region connecting the Diablo Range to the Santa Cruz Mountains and identify movement and presence of wildlife species within the habitat linkage.

The data presented in this report was collected from February 2007-December 2008, on both mammals and birds and includes three months of plant surveys. One of the goals of this report is to help inform regional land use planning and provide connectivity maps for resource agencies, non-profits and other policy makers. Another goal is to further exemplify that the Coyote Valley landscape is a vital link between the Santa Cruz Mountains and the Diablo Range.

Specific objectives of this long-term program include:

- Establish east to west, west to east, north to south and south to north movement of vertebrate species between the Diablo Range and Santa Cruz Mountains
- Develop species lists and assess community composition and habitat structure
- Establish baseline data on status, distribution and seasonality of all species recorded

- Determine the relative abundance of focal species, including sensitive species within the study site
- Determine permeability of Highway 101
- Develop habitat suitability and connectivity models through GIS
- Utilize Rapid Assessment Methodology (RAM) for field teams to use as a baseline for rapid identification of critical wildlife corridors in the Central Coast Region
- Reconnect thousands of students and the public to the Coyote Valley landscape and educate them about the various environmental science disciplines
- Continue to build partnerships to help protect critical wildlife corridors throughout California

Summary

Plant and animal surveys were conducted through line-transects, point counts, camera trapping, quadrant plots, and Rapid Vegetation Assessment methods. For the avian surveys six 500 m line transects were monitored to survey for all species of birds in multiple habitats; seventeen variable radius point counts were monitored to survey all raptor species with a maximum radius of 500 m; Breeding Bird Atlas (BBA) (Bousman 2007) protocols were used to assess the breeding status of all species; and quadrant methods were used to survey for raptor nests. Mammals were surveyed through camera-trapping, live sightings, and line transects identifying tracks, scat or other signs.

Between December 2007 through December 2008, 166 bird species were observed in Coyote Valley, which represents approximately 57% of the species that are known to occur in Santa Clara County (Bousman 2005). Seventy-one species were confirmed or suspected of breeding within Coyote Valley based on the BBA guidelines (Table 1, 3). Of the 166 species observed 13 are special status species in California: the American White Pelican (*Pelecanus erythrorhynchos*), Northern Harrier (*Circus cyaneus*), White-tailed Kite (*Elanus leucurus*), Swainson's Hawk (*Buteo swaisoni*), Golden Eagle (*Aquila chrysaetos*), Bald Eagle (*Haliaeetus leucocephalus*), Peregrine Falcon (*Falco peregrinus*) (Fig. 1), Vaux's Swift (*Chaetura vauxi*), Short-eared Owl (*Asio flammeus*), Burrowing Owl (*Athene cunicularia*), Loggerhead Shrike (*Lanius ludovicianus*), Yellow-breasted Chat (*Icteria virens*) and Tricolored Blackbird (*Agelaius tricolor*) (Shuford and Gardali 2008). On the rarity scale of 1-6 (6 being the rarest) in Santa Clara County, twelve 4's, four 5's and one 6 were observed in Coyote Valley with the 6 being the second county record of Crested Caracara (*Caracara cheriway*) (Bousman and Smith 2009) (Table 2).

Figure 1. Juvenile Peregrine Falcon at the Ogier Ponds. Photo taken by Ryan Phillips

Twenty-four mammal species have been identified in Coyote Valley (Table 4). A total of 1,787 mammal detections (including both tracking transects and field camera traps) were recorded throughout the study site from February 2007- December 2008. Eight hundred and eighty eight animal detections were recorded along the tracking transects throughout the study period, and 910 animal detections at the camera stations. Two sensitive species

recorded repeatedly at different locations within the study site were the North American badger (*Taxidea taxus*) and the dusky-footed woodrat (*Neotoma fuscipes*).

One hundred twenty-four species of the Coyote Valley flora were identified within the study area during 2008 including *Cirsium fontanale* var. *campylon* (Mt. Hamilton Thistle), a candidate species for listing on the federal endangered species list (Figure 10).

Introduction

As part of a regional landscape connectivity analysis along the 37th parallel, the De Anza College Environmental Studies Department (Stewardship Program) has been collecting data within the Coyote Valley landscape encompassing the Diablo Range and the Santa Cruz Mountains. The Santa Cruz Mountains are becoming increasingly isolated from the rest of California due to development to the south and east, the Pacific Ocean to the west and San Francisco Bay to the north. Coyote Valley is a key connectivity point in the landscape and one of the last east–west wildlife connections in California's Central Coast (Thorne et al. 2002) (Figure 2). The Santa Clara Habitat Conservation Plan has also identified three wildlife linkages in Santa Clara County, two of which are within the Coyote Valley landscape (Santa Clara HCP Administrative Draft 2008). Previous to this study there was limited research conducted on Coyote Valley's wildlife and species movement through the valley floor and connected landscape.

Figure 2. Santa Cruz Mountain linkages.

In February 2007, the initial mammal surveys investigated Highway 101 corridor to assess east and west wildlife movement between the Diablo Range and Santa Cruz

Mountains through Coyote Valley, using the Rapid Assessment Methodology (RAM) developed by the Environmental Studies faculty. Remote sensor cameras were placed along Highway 101 culverts. After it was established that there was multi-species movement through culverts under Highway 101, a more rigorous monitoring protocol was established through the use of line transects throughout Coyote Valley to locate areas and habitat through which mammals were traveling. In addition, line transects were conducted along major roads throughout the valley floor.

In January of 2008 avian research was started to determine the status of the avifauna in Coyote Valley. Then in April of 2008, a three month vegetation survey was conducted to determine what plants were present in Coyote Valley.

The data obtained from this long-term study will inform the process to protect the Coyote Valley landscape, including the critical and threatened linkages that provide connectivity for wildlife. It will also help inform long term management planning efforts, including the Santa Clara Habitat Conservation Plan and City of San Jose Envision 2040.

Study Area and Methods

Study Area

Figure 3. Orthophoto of Coyote Valley. Data source: www.geocomm.com.

The Coyote Valley landscape is a mosaic of farmlands, orchards, wetlands, riparian corridors and residential housing located in Santa Clara County between Morgan Hill and southern San Jose. The total land area of Coyote Valley is approximately 7,000 acres (28 km²) and is one of the largest remaining contiguous tracts of undeveloped valley floor, which connects the Santa Cruz Mountains with the Diablo Range (Figure 3).

The southern portion of the valley is the "green belt" zone, which consists of residential development and commercial factories, and the northern part consists of agricultural fields. The northern and southern sections are not considered feasible for inclusion in the corridor planning.

The Coyote Creek watershed encompasses Coyote Valley, two riparian corridors, Coyote and Fisher Creeks, the Laguna Seca wetlands in the north valley and Ogier Ponds, the man-made pond system in the southeast portion of Coyote Creek County Park.

The total study area for both the mammal and bird surveys encompassed most of Coyote Valley, including Coyote Creek County Park and Tulare Hill Ecological Reserve. Other observations were made in Calero County Park and Rancho Del Oro Open Space in the Santa Cruz Mountains to the west of Coyote Valley, although that information is not included in this report. The vegetation surveys were conducted in the "green belt" zone, Coyote Creek County Park, and Tulare Hill Ecological Reserve due to restricted access.

Avian Surveys

Survey techniques included strip line-transects, variable radius point counts, Breeding Bird Atlas surveys (Bousman 2007) and raptor nest surveys. Six 500 m line-transects, monitored monthly, were established throughout Coyote Valley and were chosen randomly depending on accessibility of certain lands (Figure 5). Transects were set up in all habitat types within Coyote Valley for comparison of species composition of bird species. Transects were conducted monthly along a 500 m long line for 45 minutes (with two 30 m bands). All birds were recorded within or outside 30 m from the transect or as a flyover, so abundance of species that were hard to detect past 30 m, such as sparrows, could be quantified without survey error. Flyovers were not included in the abundance calculations, but were used for presence or absence. The time of day that the surveys were started was dependent on the season. During the breeding season (March-August) transects were started within 30 minutes of sunrise. During the non-breeding season (September-February) the time in which a transect was started was dependent on the predicted daily high temperature. If the daily high temperature was below 80º F then the transect was conducted before 1400, but if the high reached 80º F or above then the transect was conducted prior to 1100. Transects were not conducted if rain or winds above a 3 according to the Beaufort Scale were occurring.

Figure 4. Rock Wren on Tulare Hill. Photo by Ryan Phillips

Sixteen variable radius point count stations were established to survey raptors in Coyote Valley. Point counts were set up evenly distributed a minimum of 500 m apart throughout

Coyote Valley with all habitats being monitored. Each point count station was conducted monthly throughout the year to determine seasonality, species composition, relative abundance and density, and habitat utilization. Each count lasted 10 minutes and all individual raptors were recorded within a 500 m radius. Individuals recorded in point count stations along riparian corridors were recorded within a 200 m radius due to visibility problems and difficulty detecting individuals outside that distance. For each individual observed the estimated distance to that individual, direction to the bird, habitat first observed in, if it was flying over or flying but using the habitat, whether it was first detected by sight or ear, was it adult, immature or juvenile and what sex if that could be determined was recorded.

Breeding bird data was compiled using criteria of the "Breeding Bird Atlas of Santa Clara County, California" (Table 1) (Bousman, 2007). A Breeding Bird Atlas (BBA) survey categorizes each species breeding within a geographic region by using various behavioral observations. A list of the breeding status of bird species in Coyote Valley was compiled. Point count surveys for raptors and nest surveys were also conducted to determine nesting density, intraspecific and interspecific competition, habitat usage, and nesting success and productivity. In 2008, priority was given to locating as many nests as possible to determine density. In 2009-2010 the research will focus on habitat utilization, nesting success and productivity.

Prior to the raptor nesting season, which begins in late February for most species, trees were surveyed throughout the study site for possible raptors nests while the deciduous trees were without leaves. All possible nests were georeferenced and then checked during the breeding season for activity. If an active nest was located, data were collected and

disturbance to the nest limited with observations conducted from a minimum distance of 100 m depending on anxiousness of the birds. The status of each nest was monitored two times per month to determine the length of the different stages, incubating, branching, and fledging, of the breeding cycle.

Figure 5. Study area for the avian surveys, including transect and point count locations.

TABLE 1. Criteria for classification of breeding bird status (Bousman 2007).

Observed (OB)

X – Species was observed as present in this grid.

Possible (PO)

√ Individual (male or female) seen in suitable nesting habitat in breeding season.
X – Singing male in suitable habitat in breeding season.

Probable (PR)

P – Pair in suitable habitat in breeding season.
S – Territory presumed through song at same location on at least two occasions 7 or more days apart.
T – Territorial defense (chasing birds of the same species).
C – Courtship behavior or copulation observed.
N – Visiting probable nest site.
A – Agitated behavior, scolding of observer as if near a nest.
B – Nest building by wrens; Hole excavation by woodpeckers.

Confirmed (C)

CN – Carrying nest material (use this code with care).
NB – Nest building (except by wrens and woodpeckers).
PE – Physiological evidence obtained from bird in the hand (brood patch, egg in oviduct, etc.).
DD – Distraction displays.
UN – Used nest of eggshells found (careful documentation required).
PY- Precocial young incapable of flight and restricted to natal area
FL – Recently fledged altricial young or downy precocial young incapable of sustained travel.
ON – Occupied nest.
CF – Adult carrying food for young.
FY – Adult feeding recently fledged young.
FS – Adult carrying fecal sac.
NE – Nest with eggs.
NY – Nest with young seen or heard

Abundance Codes

1: 1 pair estimated
2: 2-10 pairs estimated
3: 11-100 pairs estimated
4: 101-1,000 pairs estimated
5: 1,001-10,000 pairs estimated

Mammal Surveys

Introduction

In the published literature by leading corridor experts, the minimum width of a viable corridor for multiple species is 2 km wide (Penrod et al 2006). The current width of the corridor within Coyote Valley is 1.95 km. Losing any habitat within Coyote Valley will decrease the effectiveness of this linkage for multiple species.

Surveys were conducted along Highway 101 culverts and underpasses. Figure 6 shows the study area for the mammal surveys including the culverts running under Highway 101.

Figure 6. Study area for the mammal surveys, including culvert locations.

To determine mammal presence and absence, species composition, movement patterns, and high usage areas noninvasive field techniques were used involving formal tracking (scats, tracks, and live sightings), digital field cameras, line-transects, and observational

data from different agencies (Long et al. 2008, Spencer 2005, Conservation Biology Institute 2003). Field data were collected weekly along transects encompassing the northern and southern sections of Coyote Valley, on public lands within the study site. For each data point, the field team recorded GPS coordinates for each location, time of day, date, classified the habitat type, sample age, proximity to human activity, and other relevant information. Each data point was measured, photographed, and recorded into a datasheet (Figure 7). All data points were downloaded weekly and then mapped onto an orthophoto (1 m resolution 2005 USGS). Digital habitat layers consisting of vegetation, riparian corridors, wetlands, soil type, slope, roads, and urban layers were also added into the map using GIS (Penrod et al. 2006, ArcMap ERSI 9.1).

To document wildlife movement through certain locations, such as the Highway 101 culverts, Cuddeback infrared field cameras were used, which take a 1 minute video clip along with a photograph. Using these remote cameras allowed us to document animal movement detections throughout the Highway 101 culvert system.

Track station transects were established throughout the valley floor and were approximately 1 mile long, generally following roads and trails (human and wildlife game trails) at each study site (Long et al. 2008). Five track stations were placed at 250 m intervals along each transect. Tracks for each species were recorded using a Garmin Etrex handheld GPS unit in UTM NAD 83, measured in inches, photographed, and direction of travel was also recorded.

ON TRAIL WORKSHEET
Coyote Valley Corridor Coalition Project 2007

Date: 3/10 **Recorder:** Jessica G **Group#:** **Site #:** 2 **Page Number:** 1

Weather: sunny 18/0024 **Start Location UTM Easting/Northing:** (30) 0606 0844 N 4119578

Observations (animals seen, etc): **Sampling:** 1 meter on either side of bike path.

Person entering data into Excel: **Key:** R=Rabbit, C= Coyote, Ra= Raccoon, D=Deer, P= Pig,

D_= Dead animal, MTL=Mountain Lion Track, MTS=Mountain Lion Scat, PTMS=Potential Mtn Lion Scat, F=Fox.

Animal	Track or Scat (T/S)	Photo #	Distance from Trail (meter)	New/ Old (scat) (N/O)	Size (Length,Width) (meter) inches	Notes:
201 coyote	scat	6 (37)	on trail	OLD	4 1/2 in long 1 1/2 in wide	on the trail
202 coyote	scat	7 (36)	on trail	OLD	2 1/2 in L 1/2 in W	right off trail
203 coyote	scat	8 (34)	4 ft from 4in	OLDER	4 1/2 in long 1/2 in W	smaller coyote
204 rabbit	scat	9 (38)	off trail	OLD	pumkin long quarter in W	found pellets off trail
skunk paw 205						
206 coyote print	track	10 (40)	on trail		3 1/2 in L 3 in W	on path animal path
207 coyote scat	scat	11 (41)	on trail	OLD	1 in L 1/2 in W	animal path
208 coyote scats	scat	12 (42)	on trail	OLD	2 1/2 in L 1/2 in W	coyote marking territory
209 deer (track)	track	13 (43)	on trail		2 1/2 in L 2 in W	Deer print
210 coyote (scat)	scat	14 (44)	on trail		2 in L 1/2 in W	bones in scat
211 coyote (scat)	scat	15 (45)	on trail	OLD	2 1/2 in L 1/2 in W	
		(46)	on trail			animal path
212 coyote scats	scats	16 (47)	on trail	OLD	2 in L 1 in W	on animal path
213 coyote scat	scat	17 (48)	on trail	OLD	2 in L 1/2 in W	on animal path
214 raccoon (scat)	scat	18 (50)	on trail		2 in L 1/2 in W	
215 coyote (scats)	scat	19 (51)	on trail	OLD	4 1/2 in L 1 1/2 in W	animal path coyote marking territory
216 coyote (scat)	S	20/54	on trail	O	3 1/2" L 1" W	on animal path
217 coyote (scat)	S	21/55	on trail	O	2 1/2" L 1/2" W	on animal path
218 rabbit (scat)	S	22/56	on trail	N	1/4" L round 1/4" W	on animal path
219 jackrabbit burrow		23/57		O	8" W	abandoned
220 bird kill site		24/58	on trail	N	2" L 1" W	photo of backbone section
221 rodent kill site		25/59	on trail	N	1" L 1/2" W	photo of skull

Figure 7. Example of the line-transect data sheet.

Tracks without positive identification were omitted from data collection. For each track station, relative abundance is expressed as the total number of visits recorded for a species, divided by the total sampling effort (Linhart and Knowlton 1975). The track station transect index is calculated as (adapted from Crooks and Jones 1999) Ti =vi/(sini) (Multiple Species Conservation Program 2003). In some locations, additional track stations were set up on either side of a road crossing structure, for example at the Highway 101 culverts (Multiple Species Conservation Program 2003, Maintaining Ecological Connectivity Across the "Missing Middle of the Puente-chino Hills Wildlife Corridor 2005).

1) Camera Monitor Stations:

- Cameras used: 10 field cameras: 3 Cuddeback Infrared, 3 StealthCam digital cameras, 4 StealthCam 35mm
- Cameras placed at high use trails, highway culverts, water stations, or baited locations of interest
- Each camera station consisted of a 30 day monitoring period
- Cameras checked every 7 days (Figure 8)

Figure 8: Example of culvert camera results, Bobcat heading east at Culvert 10. Photo courtesy of Tanya Diamond.

2) Wildlife Tracking Survey:

For every wildlife sign; live sighting, camera image, track, scat:

- GPS coordinate recorded in datum NAD 83 and coordinate system UTM Zone 10
- Photo, including date, picture number, and GPS point for reference
- Measurement of the track, scat or sign is recorded in a data sheet (Figure 9)

Figure 9: Example of track data collection. Coyote track on Bailey Road on 2 February 2008.

3) Casting of Wildlife Tracks:

- Tracks of special interest/focal species and/or an indications of significant movement were recorded by making casts of track
- Tracks, measured by length then width, were recorded on a data sheet and a photo of the track was taken (with ruler for scale and note card with data information)
- Data information cards include the species name, date, photo number and direction of travel
- For each track casting, the species common and scientific names, the measurement of the track length and width (inches), the date, the site location including GPS waypoint and the direction of animal travel is recorded

4) Mapping of all data recorded including Camera Stations using GIS ArcView 9.1:

Data were mapped using GIS software on HP Computer Tablets

- Data were downloaded into an Excel Worksheet 4.0 file
- Data were then imported into an Microsoft Access Database
- The Microsoft Access Database file was then added into ArcMap, and a shapefile was created with the information included in the Microsoft Access Database
- Each species location was mapped out

Corridor Width Analyses

Corridor width was determined utilizing two methods, one derived from Penrod et al. (2006) and Quinn and Diamond, in press. The first width analysis (Penrod et al. 2006) was designed to consider multiple species including mammals, birds, reptiles, and plants. The authors of the South Coast Missing Linkages Project report state that, "While the size and distance among habitats (addressed by patch size and configuration analyses) must be adequate to support species movement, the shape of those habitats also plays a key role. In particular, constriction point-areas where habitats have been narrowed by surrounding development can prevent organisms moving through the Least-cost path corridor design. To ensure that functional processes are protected, we imposed a minimum width of 2 km (1.2 mi) for all portions of the final Linkage Design."

The second corridor width analysis (Quinn and Diamond in press) developed for North American badgers can be used for any other animal species. The analysis involves averaging all the known home ranges of the species of interest and dividing by two: x (mean) of home range /1/2 = corridor width, (Paul Beier & Wayne Spencer pers. comm.).

Plant Surveys

A checklist of the Coyote Valley flora observed during the 2008 study period was prepared (Table 6). Special attention was given to the identification of species with special status. such as *Cirsium fontinale*, the Mount Hamilton Thistle (Figure 10).

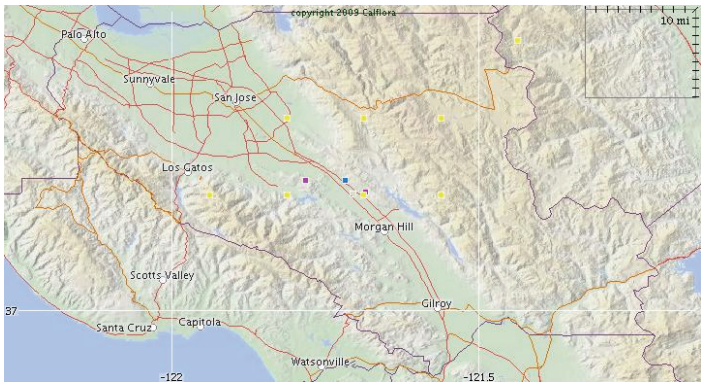

Figure 10. Mount Hamilton Thistle in the Coyote Valley region. Map courtesy of calflora.org

Results

Bird Results

Species Composition

In the study area 166 bird species were recorded through transects, point counts, Breeding Bird Atlas, and incidental observations (Table 2). This represents 43% of the total number of species recorded in Santa Clara County including vagrant species (accidental occurrence) as of 20 April 2005 (Bousman 2005). If vagrants are excluded this represents 57% of the species recorded in Santa Clara County. Of the 166 species recorded, 21 were raptors including a California rarity Crested Caracara (second county record, but the first documented with photographs) and a Harlan's Red-tailed Hawk. A tagged Bald Eagle, which was released on Santa Cruz Island in 2004 as part of restoration efforts, resided in Coyote Valley from September through December 2008.

Highest species diversity and abundance was most prominent in the Coyote Creek riparian corridor from March-October and in the agricultural fields in the northern portion of Coyote Valley surrounding Laguna and Richmond Avenues from November-February. Tulare Hill Ecological Reserve lacked species diversity, but held many serpentine and grassland specialists, including Rock Wren, Horned Lark, American Pipit, Burrowing Owl, Rufous-crowned Sparrow, and Say's Phoebe. The southern portion of Coyote Valley, which consisted mainly of the "green" belt zone was lacking species richness and diversity with the most common species being Rock Dove, House Sparrow, House Finch, European Starling, and Mourning Dove.

Table 2. Coyote Valley bird list from 26 December- 31 December 2008.

Western Grebe	American Avocet	Bewick's Wren
Eared Grebe	Greater Yellowlegs	Marsh Wren
Pied-billed Grebe	Common Snipe	House Wren
Brown Pelican SE/FE	Mew Gull	**Rock Wren 4**
American White Pelican BSSC	Ring-billed Gull	Wrentit
Double-crested Cormorant	California Gull	Ruby-crowned Kinglet
Great Blue Heron	Thayer's Gull	Western Bluebird
Great Egret	Herring Gull	American Robin
Snowy Egret	Western Gull	Hermit Thrush
Green Heron	Glaucous-winged Gull	Swainson's Thrush
Black-crowned Night-Heron	GlaucousxHerring Gull	Northern Mockingbird
American Bittern 4	Forster's Tern	California Thrasher
Canada Goose	Caspian Tern	European Starling
Cackling Goose	Mourning Dove	American Pipit
Greater White-fronted Goose	Rock Dove	Cedar Waxwing
Ross's Goose 4	Band-tailed Pigeon	Yellow-rumped Warbler
Snow Goose 4	White-throated Swift	Townsend's Warbler
Wood Duck	**Vaux's Swift 4 BSSC**	Orange-crowned Warbler
Mallard	Barn Owl	Yellow Warbler
Gadwall	**Short-eared Owl 4 BSSC**	Common Yellowthroat
Northern Pintail	Great-horned Owl	Wilson's Warbler
American Wigeon	Burrowing Owl BSSC/CS	**Yellow-breasted Chat 5 BSSC**
Northern Shoveler	Anna's Hummingbird	Western Tanager
Cinnamon Teal	Allen's Hummingbird	**Blue Grosbeak 4**
Canvasback	**Rufous Hummingbird 4**	Black-headed Grosbeak
Ring-necked Duck	Belted Kingfisher	Lazuli Bunting
Lesser Scaup	Acorn Woodpecker	Spotted Towhee
Greater Scaup	Downy Woodpecker	California Towhee
Common Goldeneye	Hairy Woodpecker	Rufous-crowned Sparrow
Bufflehead	Nuttall's Woodpecker	Savannah Sparrow
Hooded Merganser	Red-breasted Sapsucker	Golden-crowned Sparrow
Common Merganser	Northern Flicker	White-crowned Sparrow
Ruddy Duck	Pileated Woodpecker	**White-throated Sparrow 4**
Turkey Vulture	Pacific-slope Flycatcher	Fox Sparrow
Northern Harrier BSSC	Willow Flycatcher	Song Sparrow
White-tailed Kite FP	Western Wood-Pewee	Lincoln's Sparrow
Sharp-shinned Hawk	Black Phoebe	Lark Sparrow
Cooper's Hawk	Say's Phoebe	Dark-eyed Junco
Red-shouldered Hawk	**Cassin's Kingbird 5**	Western Meadowlark
Red-tailed Hawk	Western Kingbird	Brown-headed Cowbird
Harlan's Red-tailed Hawk	Ash-throated Flycatcher	Tricolored Blackbird BSSC
Swainson's Hawk 5 ST	Hutton's Vireo	Red-winged Blackbird
Ferruginous Hawk 4	Loggerhead Shrike BSSC	Brewer's Blackbird
Golden Eagle CS/FP	Warbling Vireo	**Great-tailed Grackle 5**
Bald Eagle 4 SE	Steller's Jay	Bullock's Oriole
Osprey 4	Western Scrub-Jay	Hooded Oriole
Crested Caracara 6	Yellow-billed Magpie	Purple Finch
Merlin	Common Raven	House Finch
American Kestrel	American Crow	Lesser Goldfinch
Prairie Falcon	Horned Lark	American Goldfinch
Peregrine Falcon SE	Northern Rough-winged Swallow	House Sparrow
California Quail	Tree Swallow	
Ring-necked Pheasant	Violet-green Swallow	
Wild Turkey	Cliff Swallow	bold with number = rarity(1-6)
American Coot	Barn Swallow	in red= special status species
Common Moorhen	Oak Titmouse	BSSC= Bird Species Special Concern
Sora	Chestnut-backed Chickadee	SE= State Endangered
Virginia Rail	Bushtit	ST= State Threatened
Killdeer	White-breasted Nuthatch	CS= Covered Species by HCP
Spotted Sandpiper	Brown Creeper	FP= Fed. Fully Protected

Special Status Species

Thirteen species of birds with special status in California (species of special concern, HCP covered species, state endangered, state threatened or federally fully protected) were recorded. These species included American White Pelican, Northern Harrier, White-tailed Kite, Swainson's Hawk, Golden Eagle, Bald Eagle, Peregrine Falcon, Vaux's Swift, Short-eared Owl, Burrowing Owl, Loggerhead Shrike, Yellow-breasted Chat, and Tricolored Blackbird. Only 2 species, White-tailed Kite and Loggerhead Shrike, were confirmed to breed within Coyote Valley. Seven White-tailed Kite nests and one Loggerhead Shrike nest were recorded, but evidence was observed of at least four pairs of Loggerhead Shrike breeding within the valley.

Figure 11: Juvenile Golden Eagle on Laguna Avenue. Photo taken by Ryan Phillips.

Other possible special status species breeding in Coyote Valley were Yellow-breasted Chat and Golden Eagle. In recent past years, a Golden Eagle nest was found to be active in the transmission towers to the west, approximately one mile from Coyote Valley. A pair of Golden Eagles actively foraging in Coyote Valley year round was observed, which could be the same pair or a second pair nesting in the Cinnabar Hills. At least one and possibly two Yellow-breasted Chats were actively singing in suitable breeding habitat for over four weeks from 28 April to 2 June. After 2 June no individuals or evidence of breeding were observed. They most likely vacated the area. All other special status species observed were either winter residents or transients passing through during migration.

Riparian Obligate Species

According to California Partners in Flight there are fourteen riparian obligate bird species of conservation concern found in California. These include: Swainson's Hawk, Yellow-billed Cuckoo, Willow Flycatcher, Bank Swallow, Swainson's Thrush, Bell's Vireo, Warbling Vireo, Yellow Warbler, Wilson's Warbler, Common Yellowthroat, Yellow-breasted Chat, Blue Grosbeak, Song Sparrow and Black-headed Grosbeak. Eleven of the fourteen obligate species have been observed on either Coyote or Fisher Creek. The three species that have not been observed in the riparian corridors within Coyote Valley are Yellow-billed Cuckoo, Bank Swallow and Bell's Vireo.

A single adult intermediate morph Swainson's Hawk was observed soaring over Coyote Creek at Coyote Ranch Road on 1 May, where it was first observed soaring north then circled and moved south out of view. This individual was most likely a transient, but breeding could occur within Santa Clara County as three nestlings were found in the county in June and July (Bousman 2007). Suitable breeding habitat exists along Coyote Creek in Coyote Valley with an abundance of mature California Sycamores (*Platanus racemosa*) and Fremont Cottonwoods (*Populus fremontii*) surrounded by agricultural fields.

Warbling Vireos have been recorded from April through September and breeding has been confirmed along Coyote Creek. The primary location within our study area where breeding Warbling Vireos occur is in the Coyote Ranch area. This species can be found throughout the riparian corridor, but only during migration. It is estimated that less than ten pairs breed along Coyote Creek.

In early September, during fall migration, two Willow Flycatchers were observed in the along Coyote Creek. This species is only found as a transient in the area and does not breed along Coyote Creek.

Yellow Warblers were recorded along the entire stretch of Coyote Creek from mid to late April through September. During both spring and fall migration abundance increased and numbers dropped post spring migration in late May and early June. No nests were located, but singing males holding territories were observed throughout the breeding season making them probable breeders along Coyote Creek.

Both Common Yellowthroat and Song Sparrow were the most common breeders along Coyote Creek with an estimated 200 breeding pairs of yellowthroats and 400 breeding pairs of Song Sparrows within our study area. Both are residents in Coyote Valley.

At least one (possibly two) Yellow-breasted Chats were observed singing on Coyote Creek adjacent to Coyote Ranch from 28 April to 2 June. This gave them a probable breeding status according to the BBA criteria, but no evidence of nesting was observed.

Wilson's Warblers were common during both spring and fall migration and only a few individuals were detected in June with none in July. This suggests that June individuals could have been breeders, but most likely were very late migrants. No evidence of nesting was observed.

Black-headed Grosbeaks were fairly common throughout the breeding season and breeding was confirmed along Coyote Creek in multiple locations. It was estimated that less then 50 pairs breed along Coyote Creek.

A single adult male Blue Grosbeak was observed calling along Fisher Creek on 7 July, which suggests that breeding occurs. However, no evidence of nesting was observed. If

breeding does occur in Coyote Valley this would be one of only a few locations in Santa Clara County (Bousman 2007). The only other known occurrence of this species in our study site was made by Stephen Rottenborn in 1994 who observed a singing male along Coyote Creek north of the Riverside Golf Course (Bousman 2007).

Breeding Status

The breeding status of species was identified following the Santa Clara County Breeding Bird Atlas protocol. One hundred-eight species were recorded with breeding status in Coyote Valley and confirmed breeding of 35 species with 44 probable, 19 possible and 10 observed (Table 3). Of the 35 confirmed breeders, two have special status, the Loggerhead Shrike and White-tailed Kite. For comparison, from 1987 to 1993, the Santa Clara County Breeding Bird Atlas surveys recorded 75 species with breeding status and confirmed breeding of 49 species in the Coyote Valley block, but that also included areas outside of our study area (Bousman 2007). However, 40 field hours were dedicated to this block in those seven years of surveys compared to our over 300 field hours in one year.

Active raptor nests were located within the study area, as well as habitat preference and relative nesting density. Forty active raptor nests of seven species were reported including, 12 Red-shouldered Hawk, 12 Red-tailed Hawk, 8 White-tailed Kite, 5 American Kestrel, 1 Cooper's Hawk, 1 Great Horned Owl, and 1 Turkey Vulture (Fig. 13). This resulted in a nesting density of one nesting pair per 1.2 km^2 (40 nesting pairs per 33 km^2) , which is comparable on a much smaller scale to the Snake River Bird of Prey National Conservation Area that holds the highest density of nesting raptors in the world (800 nesting pair per 1,964 km^2 = 1 nesting pair per .41 km^2).

Santa Clara County Rarities

In Santa Clara County a rarity system has been developed on a scale of 1 to 6 with a one being the most common and six being the rarest (Bousman and Smith 2009). The 6's are species that have only been one or a few records in the county. Twelve 4's, four 5's and one 6 were recorded. The 4's were American Bittern, Ross's Goose, Snow Goose, Ferruginous Hawk, Bald Eagle, Osprey, Vaux's Swift, Short-eared Owl, Rufous Hummingbird, Rock Wren, Blue Grosbeak, and White-throated Sparrow. The four 5's were Swainson's Hawk, Cassin's Kingbird, Yellow-breasted Chat, and Great-tailed Grackle, and the only 6 being a second county record of Crested Caracara.

Table 3. Breeding birds observed throughout Coyote Valley in 2008.

Observed	Possible	Probable	Confirmed
Ruddy Duck Double-crested Cormorant Snowy Egret Black-crowned Night-Heron Black-necked Stilt Caspian Tern Forster's Tern Ruby-crowned Kinglet	Ring-necked Pheasant Wild Turkey American Bittern Great Blue Heron Great Egret Common Moorhen Spotted Sandpiper Belted Kingfisher Acorn Woodpecker Western Wood-Pewee Hutton's Vireo Swainson's Thrush Orange-crowned Warbler Wilson's Warbler Lark Sparrow Dark-eyed Junco Blue Grosbeak Tricolored Blackbird Purple Finch	Gadwall Cinnamon Teal Common Merganser Pied-billed Grebe Green Heron Osprey Northern Harrier Golden Eagle American Coot Killdeer Rock Pigeon Mourning Dove Barn Owl White-throated Swift Nuttall's Woodpecker Downy Woodpecker Northern Flicker Pacific-slope Flycatcher Ash-throated Flycatcher Steller's Jay Yellow-billed Magpie Horned Lark Tree Swallow Violet-green Swallow Barn Swallow Chestnut-backed Chickadee Oak Titmouse Rock Wren Bewick's Wren House Wren Western Bluebird American Robin Wrentit California Thrasher Yellow Warbler Common Yellowthroat Yellow-breasted Chat Spotted Towhee California Towhee Black-headed Grosbeak Western Meadowlark Brown-headed Cowbird Lesser Goldfinch American Goldfinch	Canada Goose Wood Duck Mallard California Quail Turkey Vulture White-tailed Kite Cooper's Hawk Red-shouldered Hawk Red-tailed Hawk American Kestrel Great Horned Owl Anna's Hummingbird Black Phoebe Western Kingbird Loggerhead Shrike Warbling Vireo Western Scrub-jay American Crow Common Raven N. Rough-winged Swallow Cliff Swallow Bushtit White-breasted Nuthatch Marsh Wren Northern Mockingbird European Starling Rufous-crowned Sparrow Song Sparrow Red-winged Blackbird Brewer's Blackbird Great-tailed Grackle Hooded Oriole Bullock's Oriole House Finch House Sparrow

Mammal Results

Twenty-four mammal species have been identified within the study area (Table 4). A total of 1,787 animal detections have been recorded throughout the study site. A total of 877 animal detections have been recorded along the tracking transect throughout the study period, along with 910 animal detections recorded at the camera-trap stations.

Table 4. Total Number of Mammals Identified by Track Transects in Coyote Valley in 2008

Common Name	Scientific Name	Sensitive Species
1) Pallid bat	(*Antrozous pallidus*)	CA Species of Special concern
2) Red fox	(*Vulpes vulpes*)	
3) Gray fox	(*Urocyon cinereoargenteus*)	
4) Coyote	(*Canis latrans*)	
5) Bobcat	(*Lynx rufus*)	
6) Mountain lion	(*Puma concolor*)	
7) Domestic house cat	(*Felis catus*)	
8) Raccoon	(*Procyon lotor*)	
9) North American Badger	*(Taxidea taxus)*	CA Species of Special Concern
10) California ground squirrel	*(Spermophilus beecheyi)*	
11) Eastern fox squirrel	(*Sciurus niger*)	
12) Western harvest mouse	(*Reithrodontomys megalotis*)	
13) Deer mouse	*(Peromyscus maniculatus)*	
14) Dusky-footed woodrat	(*Neotoma fuscipes*)	CA Species of Special Concern
15) Norway rat	*(Rattus norvegicus)*	
16) Black rat	*(Rattus rattus)*	
17) Muskrat	(*Ondatra zibethicus*)	
18) Virginia opossum	(*Didelphis virginiana*)	
19) Audubon's cottontail	(*Sylvilagus audubonii*)	
20) Black-tailed jackrabbit	(*Lepus californicus*)	
21) Black-tailed deer	(*Odocoileus hemionus columbianus*)	
22) Tule elk	(*Cervus elapus nannodes*)	
23) Wild boar	(*Sus scrofa*)	
24) Striped skunk	*(Mephitis mephitis*)	

Table 5. Total numbers of mammal tracks recorded by species

Coyote Valley Mammal Data Numbers	
SPECIES RECORDED IN CV:	**# of Animals in 2007/2008**
Badger	1
Bat	1
Black rat	5
Black-tailed deer	82
Black-tailed jackrabbit	4
Bobcat	2
Brush rabbit	109
California ground squirrel	56
Coyote	332
Deer mouse	5
Eastern gray squirrel	2
Unknown subspecies of Fox	15
Gopher	1
Gray fox	5
Harvest mouse	2
Mountain lion	26
Mouse	6
Opossum	3
Pocket gopher	6
Rabbit	16
Raccoon	94
Unknown Rat subspecies	1
Red fox	1
Skunk	1
Squirrel	3
Tree squirrel	1
Ungulate	7
Vole	1
Western harvest mouse	1
Wild pig	21
Dusky-footed woodrat	25
TOTAL	**877**

Multiple species tracks, scats or live sightings were identified in the Coyote Creek County Park and the valley floor. More than 60% of the tracks, were heading in the east and west directions throughout the study site. Coyote Valley contains a high diversity of wildlife (Figure 12). Multiple species such as bobcat, coyote, and deer have been tracked from Coyote Creek habitat along Bailey Road to the Fisher Creek culvert and IBM.

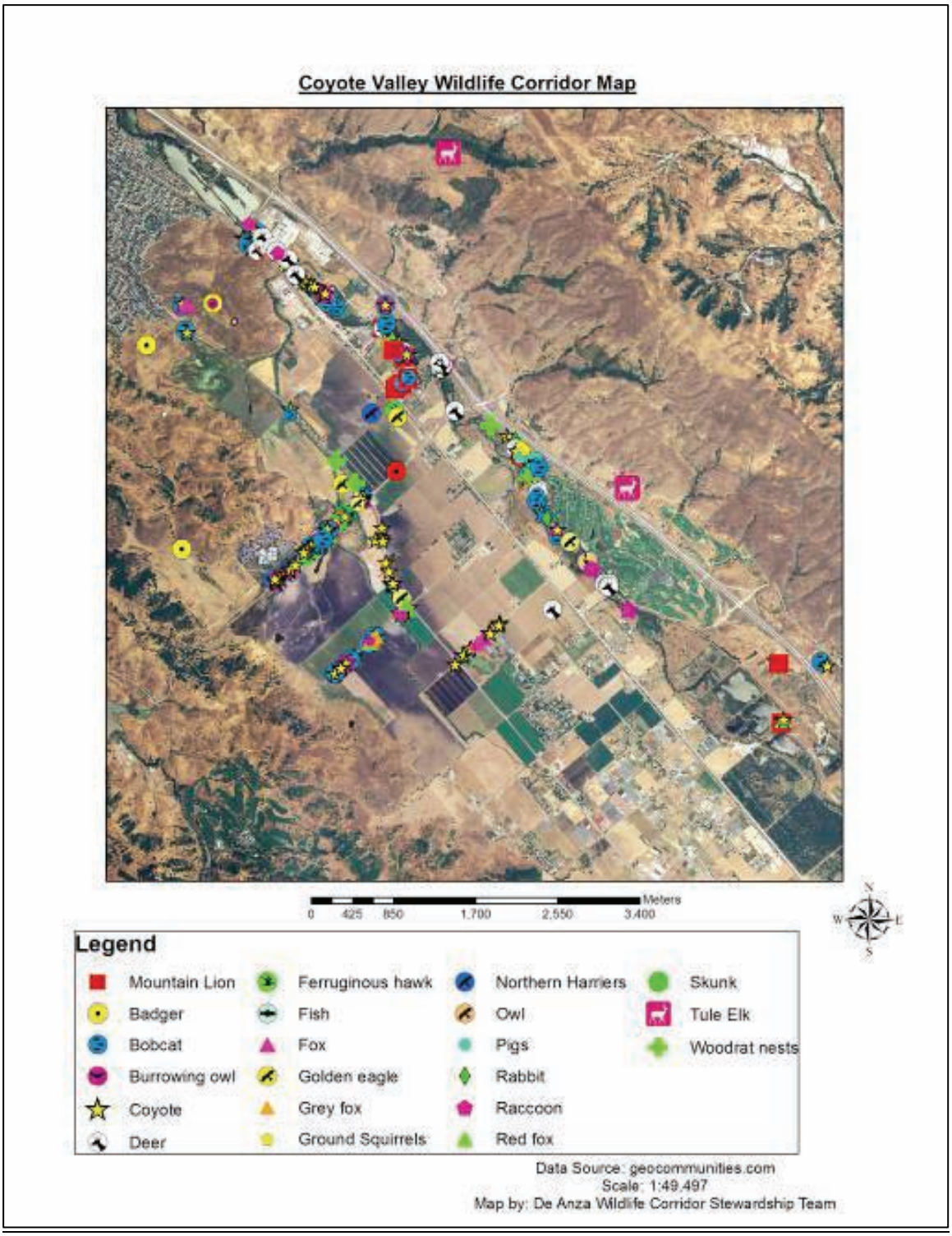

Figure 12. Wildlife Survey Data mapped out in ArcView 9.1

Wildlife has been recorded crossing Bailey Road and Santa Teresa Boulevard into adjacent agricultural fields. Multiple species were identified traveling along both Laguna Road and Richmond Road in all directions, including in and out of agricultural fields (Figure 13).

Figure 13. Laguna Avenue: multiple species tracks including bobcat, coyote and raccoon

Colored flags were used to indicate different species recorded traveling along Laguna Road (Figure 14). The orange flags represent bobcat tracks, the yellow flags represent coyote tracks and the blue flags identify raccoon tracks along Laguna Avenue (Figure 15) and Bailey Avenue (Figure 16).

Figure 14. Flags representing multiple species use of valley floor along Laguna Avenue

Figure 15. Flags representing multiple species use of valley floor along Laguna Avenue

Figure 16. Flags representing multiple species use of valley floor along Bailey Avenue

Over a nine month period over 400 data points (photo images) of animals were collected using remote field cameras along the Highway 101 culverts (Figure 17). These Highway 101 corridor culverts were identified and labeled by the California Department of Fish and Game. Seven of the culverts were monitored for wildlife use while 19 have not yet been monitored. Further culvert surveys will be conducted to identify species use, along with temporal and spatial analysis.

These data points from these 7 culverts were used to develop an initial connectivity map for the Highway 101 corridor (see Figure 12). This analysis demonstrates that wildlife species are using at least these seven monitored Highway 101 culverts to move from east to west and west to east.

The initial study indicates that the Highway 101 culvert corridor is permeable for wildlife, facilitating species movement from the east hills (such as Coyote Ridge and

including the Mt. Hamilton region of the Diablo Range) under Highway 101 to access Coyote Creek in Coyote Valley and surrounding hills.

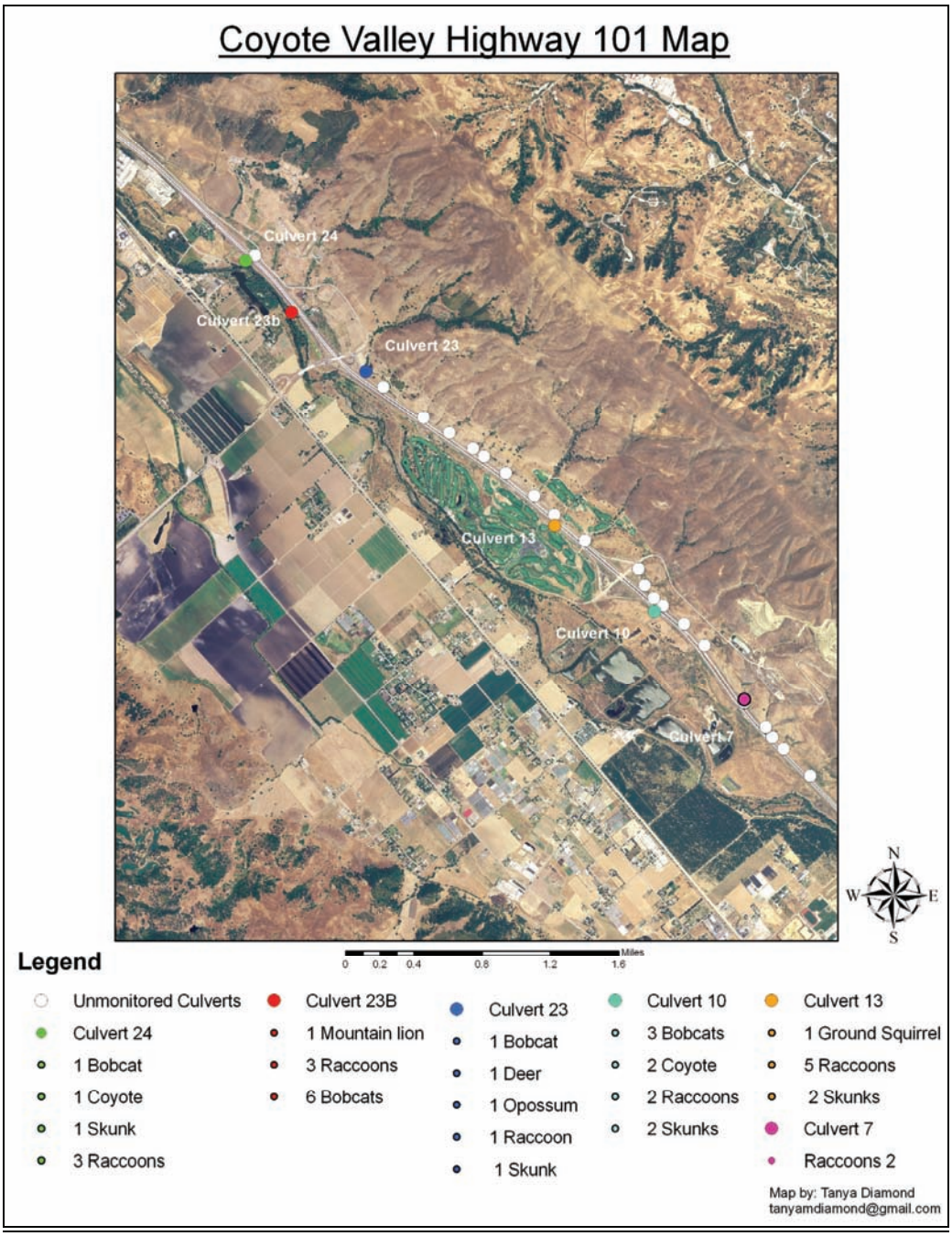

Figure 17. Coyote Valley Highway 101 Culvert Map

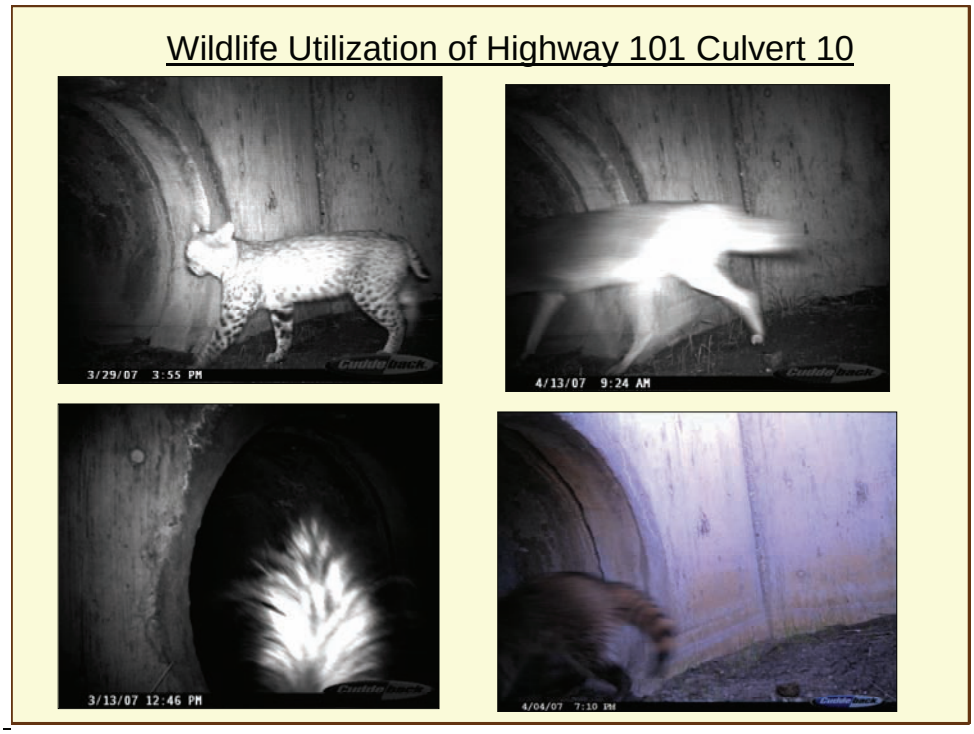

Figure 18. Multiple species use of Highway 101 Culvert 10

Figure 18 shows one culvert used by multiple species use within a one month surveillance period. During March 2007, one bobcat, coyote, raccoon, and skunk used this culvert. Next steps will include a spatial and temporal analyses of the data collected of these animals using the culvert. Currently other culverts along 101 are being monitored as well.

Fifty-four active ground squirrel burrows were recorded along a transect on Bailey Avenue (Figure 19). Each burrow was measured, recorded, and photographed (Long et al. 2008). The initial survey indicates that Coyote Valley provides critical habitat for California ground squirrels, which benefits the resident North American badgers and raptors such as the Golden Eagle.

Figure 19. Flags marking ground squirrel burrows along Bailey Avenue

The dusky -footed Woodrat, mule deer, coyote, and bobcat have been found traveling in and out of the Sobrato fields through the Fisher Creek culvert located under Bailey Avenue in the midsection of Coyote Valley (Figure 20).

Figure 20. Fisher Creek culvert at Bailey road

Two male mule deer were recorded using the Fisher Creek culvert (Figure 21) heading both east and west within a two week period. Fisher Creek is a box culvert and it is rare for deer to travel through box culverts of this dimensions (Beier, pers comm., Ruediger and DiGiorgio 2007). Five bobcats were also recorded using the same culvert (Figure 22). Fisher Creek and this culvert are critical in facilitating the safe passage of wildlife throughout the valley as it is the only riparian creek running through the midsection of Coyote Valley.

Figure 21. Fisher Creek culvert deer #1 on 6-1-08 Fisher Creek culvert deer #2 5-14-08 2:21

Figure 22. Fisher Creek culvert bobcat #2: 7-24-08 Fisher Creek culvert bobcat #5: 9-24-08

Individual Species Maps

Mountain Lion (*Felis concolor*)

Figure 23 shows the seven mountain lion observations collected in Coyote Valley. In March 2008, a mountain lion data point was confirmed by Santa Clara Animal Control as juvenile male, hit southbound on Highway 101. There are two culverts, culvert 23b and 24, large enough for mountain lions to move through on the south and north location of this road kill site. It is recommended that wildlife proof fencing be used to guide animals to these culvert locations. Santa Clara County Park Rangers also confirmed that a female mountain lion with a juvenile were observed July 2007 in the south end of Coyote Creek County Park near the Model Aircraft Park.

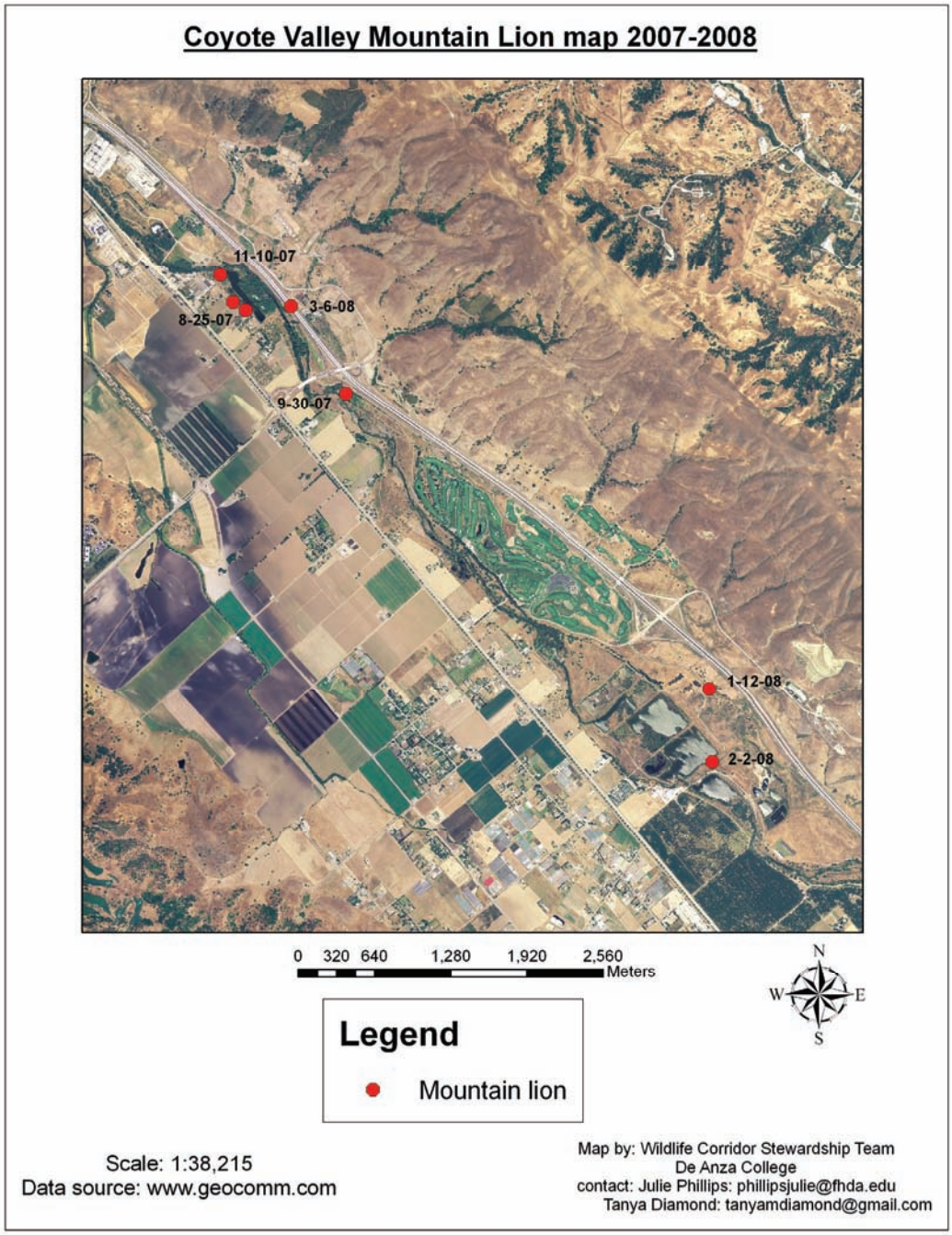

Figure 23. Mountain lion observations in Coyote Valley

Bobcat (*Felis rufus*)

Figure 24 shows twenty five bobcat locations recorded throughout Coyote Valley. The direction of each bobcat track was recorded, along with a photo. Many of the tracks recorded were coming in and out of agricultural fields, as well as traveling along the roads.

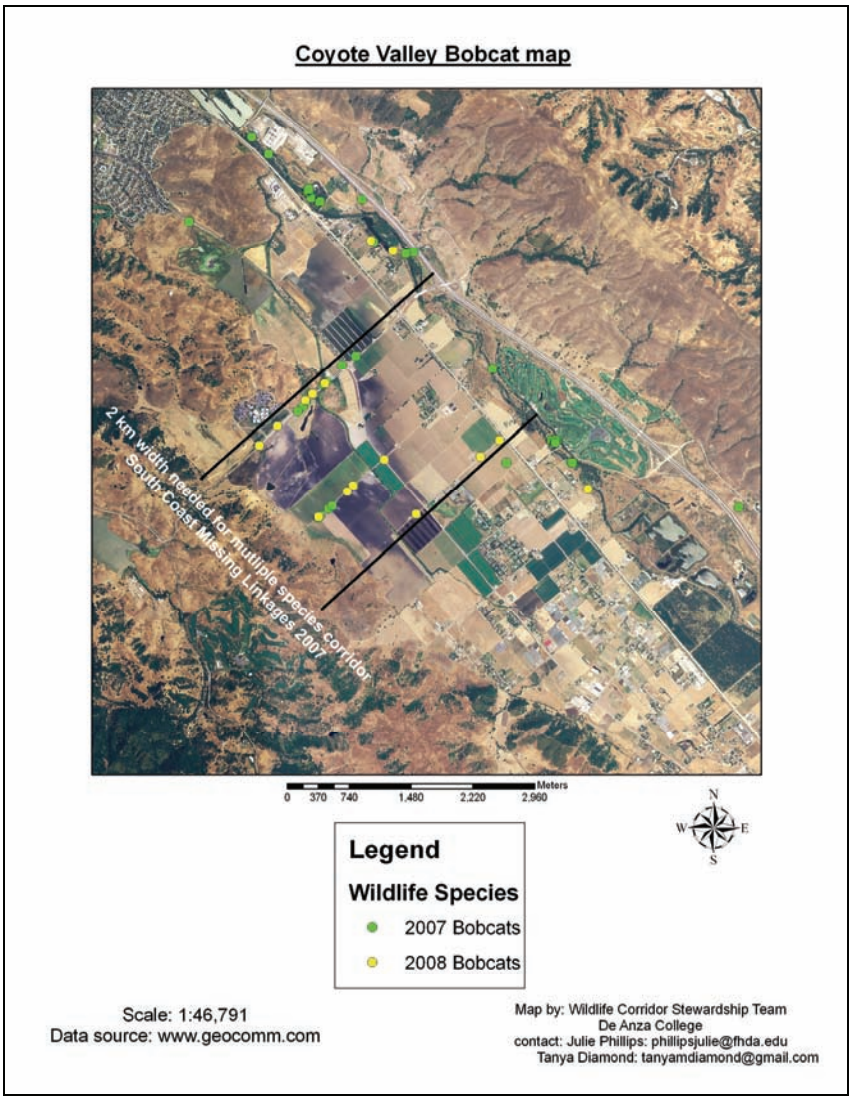

Figure 24. Bobcat observations in Coyote Valley

Dusky-footed Woodrat (*Neotoma fuscipes*)

Seven Dusky-footed woodrat nests were located along Bailey Avenue and Santa Teresa Boulevard. The woodrat nests were located approximately 6 to 10 feet above the ground in oak trees (Figure 25). Dusky-footed woodrats typically have stick nests at the base of trees. However, they will nest in areas that are floodplains and periodically flood (Matson, J pers comm. 2008).

Figure 25. Coyote Valley Dusky-footed woodrat locations

Corridor Width

Figure 24 represents the corridor identified as critical linkage, based on the high use and frequency of wildlife movement throughout the area. The corridor width, 2 km, was determined in the South Coast Missing Linkages 2007 report, which states a multi-species wildlife corridor needs to be at minimum 2 km wide (Penrod et al. 2006). The report also states, "For a variety of species, including those we did not formally model, a wide linkage helps ensure availability of appropriate habitat, host plants (e.g., for butterflies), pollinators, and areas with low predation risk. In addition, fires and floods are part of the natural disturbance regime and a wide linkage allows for a semblance of these natural disturbances to operate with minimal constraints from adjacent urban areas. A wide linkage should also enhance the ability of the biota to respond to climate change and buffer against edge effects" (Penrod et al. 2006). The current width of Coyote Valley is 1.9 km. Losing any additional habitat within the valley would result in decreased functionality of the corridor for multiple species.

Female mountain lions can have a home range of up to 20 km^2. Immature individuals must disperse from their natal home range to establish their own home range (Beier 1993). This requires large amounts of habitat to facilitate dispersal of immature mountain lions, especially to avoid moving through another male's territory (Beier 1993).

North American badger (*Taxidea taxus taxus*)

Between 2006 and 2008, there were ten badger observations in the Coyote Valley study area (Figure 26). These observations documented different habitat use by this subspecies than previously observed in this region in the literature.

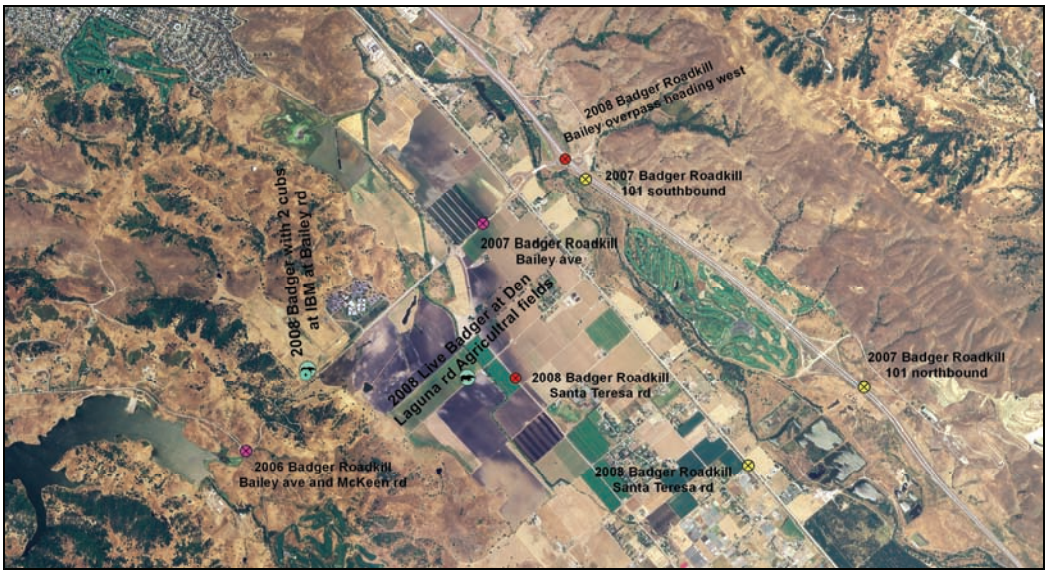

Figure 26. North American badger observations: 2006-2008

From 2006 to 2008, badgers have been documented breeding and raising cubs 500 m away from the study site on the IBM property (Figure 27).

Figure 27. Two North American badgers on IBM habitat 11 May 2008. Photo by Rick Mandel

On 29 June 2007, a road-killed badger was found on Bailey Avenue, between Monterey Highway and Santa Teresa Boulevard (Figure 28). The badger was located at the north side of Bailey Avenue, adjacent to agricultural fields by Tulare Hill Ecological Reserve. This badger was a juvenile, most likely dispersing out of a parental home range. Last year, a badger natal den was identified at Tulare Hill Ecological Preserve and on the IBM property. Other research has also documented that badgers will travel through agricultural fields (DFG Resource Assessment Program, Project Report draft 2009).

There have been three reported badger road kills along this Monterey Highway due to badgers becoming trapped along the divider (Santa Clara Vector Control, pers comm 2007).

Figure 28. North American badger on Bailey Road 6/19/07.

On 23 June 2008, a road-killed badger was found on the Bailey/Highway 101 Overpass (Figure 29).

Figure 29. North American badger road kill on Bailey/Highway 101 Overpass, 6/23/089. Photo courtesy of Angela Boyle.

On 25 August 2008, a badger was documented along Laguna Road in the agricultural fields (Figure 30). This badger was then observed retreating into a burrow in a colony of ground squirrels.

Figure 30. North American badger along Laguna Road

On 6 September 2008, a badger was found dead along Santa Teresa Road between agricultural fields (Figure 31a and 31b) and was within 500 m of the individual observed on Laguna Avenue a week prior. It was identified as a different individual than the Laguna Avenue individual based on facial markings.

Figures 31a, b. 9-6- 2008: Road killed badger along Santa Teresa Blvd. between Laguna Road and Richmond Road. Photos taken by the De Anza Wildlife Corridor Stewardship Team.

North American badgers, *Taxidea taxus taxus*, are listed as a Species of Special Concern in California. Badgers have also been listed as an indictor species for connectivity within Santa Clara County by the Santa Clara Habitat Conservation Plan.

Badgers exist in small populations but have large home ranges of up to 20km² (Quinn 2008). Badgers must be able to access other badger home ranges to find mates. It has been shown that corridors can facilitate the movement of this species through habitat patches by providing connectivity (Hilty *et al* 2006). Connectivity between habitat patches is critical to maintain genetic viability and maintain viable populations of wildlife (Noss 1987, Buza et al 2000). Wildlife corridors facilitate the movement for wildlife species to find mates, resources, and for juveniles to disperse out of their parental home range (Beier 1993).

Badgers are very sensitive to human development and require large grassland habitats to maintain viable populations (Crooks 2002). The habitat at IBM and Tulare Hill Ecological Preserve has been found to be a critical stepping stone for badger movement from the east to west hills as well as critical habitat for them (corridor analyses conducted by Tanya Diamond, Masters Thesis work in progress).

Badgers are also present at Santa Teresa County Park and Calero County Park. Badger corridors need to be at least 1.8 km wide, the average badger home range size from studies within the US (Sargeant & Warner 1972; Lampe & Sovada 1981; Messick & Hornocker 1981; Goodrich & Buskirk 1998, Minta 1993; Quinn current thesis work).

A habitat suitability map was created for the counties of Santa Clara, San Mateo, Santa Cruz, and Monterey (Figure 32) (Diamond, Masters Thesis work in progress). Of the four counties, Santa Clara County has the largest amount of highly suitable badger habitat

and the least amount of habitat fragmentation. Each badger observed in the Santa Clara County study was recorded in highly suitable habitat for badgers (Diamond, Masters Thesis work in progress).

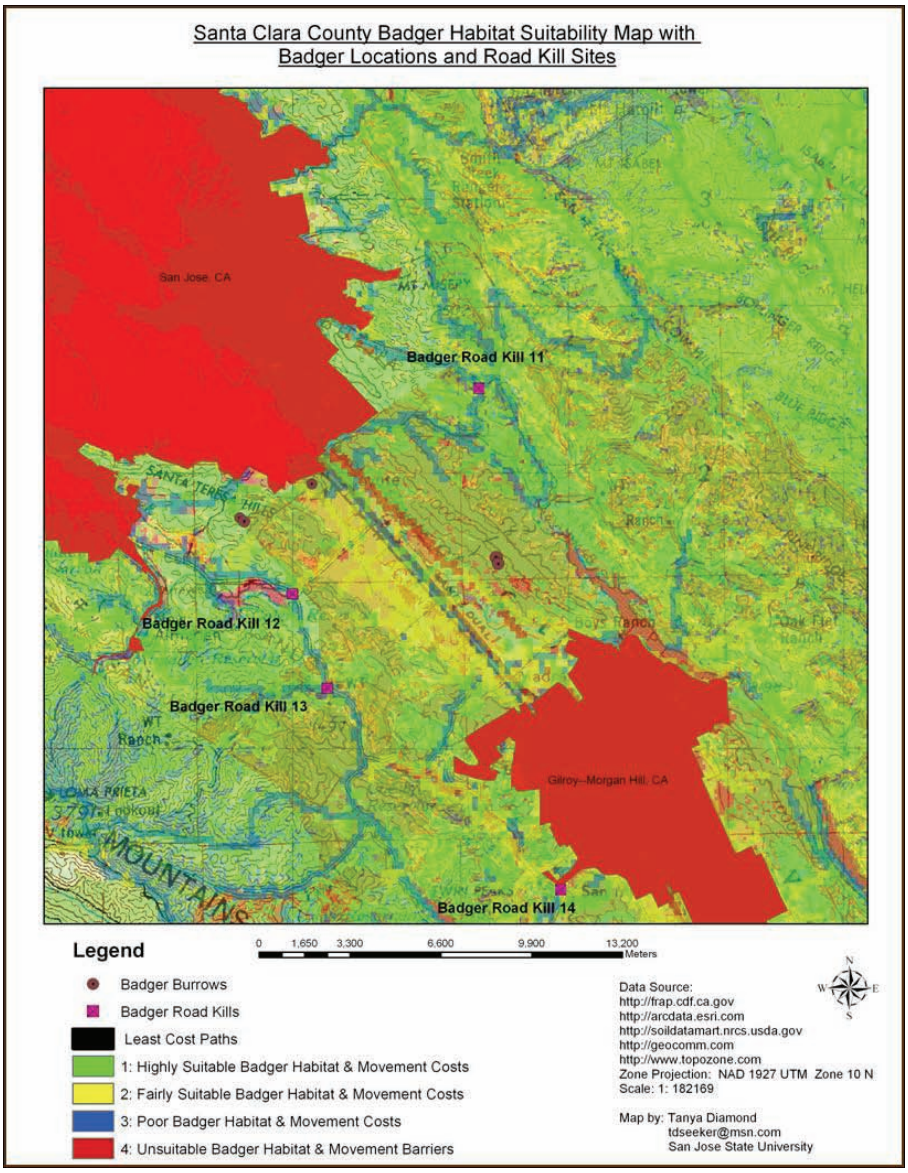

Figure 32. Santa Clara County North American badger habitat suitability map

Badgers are susceptible to road mortality from cars because they have poor vision, are nocturnal, and tend to travel by olfactory cues (Minta 1993). Several studies have shown that road mortality is a severe threat for badgers (Minta 1993, Messick and Hornocker 1981). In an Idaho badger study, 59% of 157 mortalities were due to road kill (Messick and Hornocker 1981). A British Columbia badger study stated that road mortality was highly significant; 5 out of 7 mortalities were due to road kills (Hoodicoff 1998).

High use roads and highways often bisect badger home range because roads are located in valley floors with surrounding sloping hills which funnels badgers through the valley floors (Diamond, Masters Thesis work in progress). In addition, high volume roads often have median dividers, which are hazardous because badgers tend to get trapped at medians because they are too high for badgers to cross. Any increase in traffic along the Monterey Highway will result in higher badger mortality.

Road mortality increases during the summer breeding months because of increased movement by males to locate females, tripling their home range size (Minta 1993). Juvenile badgers also leave their natal home ranges to establish their own territory.

In fragmented landscapes, badgers must often travel across high use roads. For example at Tulare Hill Ecological Preserve, Santa Clara County, there was a natal den in the summer of 2006. Tulare Hill Ecological Reserve is large enough to support the home range of one resident badger. The hill is surrounded by high use roads. Since 2006, there have been five reported badger road kills within the immediate location of the hill (Santa Clara Animal Control, Santa Clara County Parks pers com). Monterey Highway, adjacent to Tulare Hill, has a high median, over 5 ft, which a badger could not cross over.

Plant Results

Of the 124 plant species identified, 42 were introduced species and one was a special status species, *Cirsium fontinale* var. *campylon*, the Mount Hamilton Thistle, a candidate species for listing on the federal endangered species list typically found in seeps and drainages in Coyote Creek County Park and the adjacent base of Coyote Ridge.

Table 6. Floral Checklist of Coyote Valley
(Nomenclature according to Jepson, 1993 and www.Calflora.org)

FERNS and FERN ALLIES	**Common Name**
DENNSTAEDTIACEAE	
Pteridium aquilinum var. *pubescens??*	Bracken Fern
FLOWERING PLANTS – DICOTS	**Common Name**
ADOXACEAE	
Sambucus mexicana (Caprifoliaceae)	Blue Elderberry
ANACARDIACEAE	
Schinus molle^	Peruvian Pepper Tree
Toxicodendron diversilobum	Poison Oak
APIACEAE	
Conium maculatum[A]*	Poison-Hemlock
Foeniculum vulgare[A]*	Fennel
Scandix pectin-veneris[A]	Shepherd's Needle
Torilis arvensis[A]	Hedge-Parsley

ASCLEPIADACEAE	
Asclepias fascicularis	Narrowleaf Milkweed
ASTERACEAE	
Achillea millefolium	Yarrow
Artemisia californica	California Sagebrush
Artemisia douglasiana	California, Douglas Mugwort
Baccharis pilularis	Coyote Brush
Baccharis salicifolia	Mule Fat, Seep Willow
Carduus pycnocephalus[A]*	Italian Thistle
Centaurea melitensis[A]*	Tocolate
Centaurea solstitialis[A]*	Yellow Star Thistle
Chicorium intybus[A]	Chicory
Cirsium vulgare[A]*	Bull Thistle
Cirsium fontanale ssp. fontanale[R]	Mt. Hamilton Thistle
Cyanara scolymus^	Artichoke
Hypochaeris glabra[A]*	Cat's Ear
Lactuca serriola^*	Prickly Lettuce
Microseris douglasiana	Douglas' Microseris
Picris echioides^*	Ox-tongue
Silybum marianum[A]*	Milk Thistle
Tragopogon dubius	Yellow Salsify
BORAGINACEAE	
Amsinckia sp	Rancher's Fireweed
Cryptantha sp.	Cryptantha
BRASSICACEAE	
Barbarea verna[A]	Early Winter Cress
Brassica nigra[A]*	Black Mustard
Capsella bursa- pastoris[A]	Shepherd's Purse
Raphanus sativus[A]*	Wild Radish
Rorippa sp.	Cress
CARYOPHYLLACEAE	
Stellaria media[A]	Common Chickweed
CAPRIFOLIACEAE	
Symphoricarpos mollis	Creeping Snowberry
CONVOLVULACEAE	
Calystegia purpurata ssp. *purpurata*	Morning Glory
Convolvulus arvensis[A]*	Field Bindweed
CRASSULACEAE	
Crassula aquatica	Pygmy Weed
Dudleya sp	Canyon Liveforever
CUCURBITACEAE	
Marah sp.	Wild Cucumber
DIPSACACEAE	
Dipsacus sp.[A]*	Teasel
EUPHORBIACEAE	

Eremocarpus setigerus	Doveweed
FABACEAE	
Lupinus microcarpus (purple)	Annual, Miniature Lupine
Medicago polymorpha[A]*	Burclover
Melilotus indica	Sour Clover
Thermopsis macrophylla var.?	Yellow False Lupine
Trifolium hirta	Rose Clover
Vicia sativa ssp. *sativa*[A]	Vetch
Vicia villosa ssp. villosa[A]*	Hairy Vetch
FAGACEAE	
Quercus agrifolia	Coast Live Oak
Quercus douglasii	Blue Oak
Quercus lobata	Valley Oak
GERANIACEAE	
Erodium botrys[A]*	Long-Beaked Filaree
Erodium brachycarpum[A]*	Short-Beaked Filaree
Erodium cicutarium[A]*	Red-Stemmed Filaree
Geranium dissectum[A]*	Cut-Leaved Geranium
GROSSULARACEAE	
Ribes sp.	Gooseberry
HIPPOCASTANACEAE	
Aesculus californica	California Buckeye
JUGLANDACEAE	
Juglans californica	Northern California Black Walnut
LAMIACEAE	
Lamium amplexicaule^	Henbit
Marrubiam vulgare^	Horehound
Stachys sp.	Hedge Nettle
LAURACEAE	
U*mbellularia californica*	California Bay Laurel
MYRTACEAE	
Eucalytus sp.	Eucalyptus
ONAGRACEAE	
Epilobium ciliatum	Common Willowherb
OROBANCHACEAE	
Castilleja exserta ssp. *exserta*	Purple Owl's Clover
Orobanche fasciculata	Broomrape
PAPAVERACEAE	
Eschscholtzia californica	California Poppy
Platystemon californicus	Cream Cups

PHRYMACEAE	
Mimulus aurantiacus	Sticky Monkeyflower
Mimulus guttatus	Common Monkeyflower
PLANTAGINACEAE	
Plantago erecta	Dwarf Plantain
Plantago lanceolata[A]	English Plantain
PLATANACEAE	
Platanus racemosa	California Sycamore
POLEMONIACEAE	
Gilia tricolor	Bird's-Eye Gilia
POLYGONACEAE	
Eriogonum sp.	Buckwheat
Rumex acetosella[A]*	Dock
Rumex conglomerata[A]	Dock
Rumex crispus[A]*	Dock
PRIMULACEAE	
Anagallis arvensis[A]	Scarlet Pimpernel
RHAMNACEAE	
Rhamnus californica	California Coffeeberry
ROSACEAE	
Prunus sp.	Domestic Fruit Tree
Rosa californica	California Rose
Rubus discolor	Himalayan Blackberry
Rubus ursinus	California Blackberry
RUBIACEAE	
Galium porrigens	Climbing Bedstraw
SALICACEAE	
Populus fremontii	Alamo or Fremont Cottonwood
Salix exigua	Narrow-Leaved Willow
Salix laevigata	Red Willow
SCROPHULARIACEAE	
Verbascum sp.	Mullein
SOLANACEAE	
Nicotiana glauca^	Tree Tobacco
Solanum sp.	Blue Nightshade
URTICACEAE	
Urtica dioica^	Stinging Nettle
VISCACEAE	
Phoradendron villosum	Oak Mistletoe
FLOWERING PLANTS – MONOCOTS	**Common Name**

CYPERACEAE	
Eleocharis macrostachya	Spikerush
JUNCACEAE	
Juncus patens	Common Rush
LEMNACEAE	
Lemna sp	Duckweed
LILIACEAE	
Allium sp.	Onion
Calochortus venustus	White Mariposa Lily
Chlorogalum pomeridianum	Common Soap Plant, Amole
Dichelostemma sp.	Blue Dicks
Triteleia laxa	Ithuriel's Spear
POACEAE	
Aira caryophyllea[A]*	European Hairgrass
Arundo donax	Giant Reed
Avena barbata[A]*	Slender Wild Oat
Bromus diandrus[A]*	Ripgut Grass
Bromus hordeaceus[A]*	Soft Chess
Bromus madritensis ssp. rubens[A]	Foxtail Chess
Bromus tectorum[A]*	Cheat Grass, Downy Brome
Elymus glaucus	Blue Wild Rye
Gastridium ventricosum[A]	Nit Grass
Hordeum brachyantherum	Meadow Barley
Hordeum marinum spp. gussoneanum[A]	Mediterranean Barley
Koeleria macrantha	June Grass
Lamarckia aurea[A]	Golden Top
Leymus triticoides	Creeping Wild Rye
Lolium multiflorum[A]*	Italian Ryegrass
Nasella pulchra	Purple Needlegrass
Phalaris aquatica[A]*	Harding Grass
Piptatherum miliaceum	Smilo Grass
Poa annua[A]	Annual Blue Grass
TYPHACEAE	
Typha sp.	Cattail

KEY
A Introduced species.
* Noxious weed (based on CAL-IPC)
R Rare

Conclusion

The results in this report represent a set of baseline data for the flora and fauna throughout Coyote Valley. Coyote Valley is one of two connectivity points between the Diablo Range and the Santa Cruz Mountains, the other being through the Pajaro River Basin, and is the only linkage with a direct connection between the two. This is the first full scale study conducted in Coyote Valley with an emphasis on connectivity and the effects of Highway 101 and other roads on wildlife movement. If Coyote Valley is developed, the linkage will be lost and species in the Santa Cruz Mountains with large home ranges such as the mountain lion (*Puma concolor*) and the North American badger (*Taxidea taxus taxus*) will be genetically isolated and local extinction may occur (P. Beier pers. comm.2009, Diamond in press).

Our research demonstrates that Highway 101 through Coyote Valley is permeable to wildlife movement with two overpasses (Bailey Avenue and Metcalf Road), three underpasses (Coyote Creek, Golf Course Drive and Coyote Creek Golf Course cart path) and twenty-seven culverts.

Recommendations include the addition of directional fencing, the removal of already present fencing, restoration and enhancement of vegetation and riparian corridors, and additional crossing structures, would result in increased permeability across the landscape for wildlife across the valley floor. In addition, this would result in a reduction in the frequency and number of wildlife/human vehicle collisions.

Recommendations include culvert modifications such as removal of fencing which can be a barrier to wildlife movement. This would include more vegetation along the culverts to enhance habitat for species movement.

Recommendations include multiple new crossing structures for wildlife over Highway 101, Monterey Highway, Bailey Avenue, and Santa Teresa Boulevard. An additional crossing structure is recommended just south of Golf Course Drive and north of the Ogier Ponds, connecting Coyote Creek County Park and Coyote Ridge Ecological Reserve. This location is ideal for a crossing structure as both lands are protected and are high-use areas by wildlife.

Recommendations include modifications to the center divider on Monterey Highway at Metcalf Road and Live Oak Road to enhance wildlife movement and reduce wildlife/human vehicle collisions. The roads and highways within Coyote Valley must continue to be assessed for permeability for wildlife movement.

This annual report, including our recommendations, is a part of a long-term monitoring program at De Anza College. This research has been cited in the second administrative draft of Santa Clara County's Habitat Conservation Plan.

The De Anza College monitoring program will continue this research, including the mammal and avian surveys, through remote-sensor camera trapping, strip-line transects, variable plot point-counts, raptor nest mapping and Breeding Bird Atlas. We will conduct additional vegetation and amphibian surveys throughout Coyote Valley.

This long-term research effort will guarantee a better understanding of the Coyote Valley Landscape, including area requirements, relative density, population fluctuations, seasonality for wildlife and linkage dynamics.

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Attachment 2

WCT Program Mid-Coyote Valley Survey Data Summary: 2007 to Present

Figure 1: Coyote Valley Wildlife Events

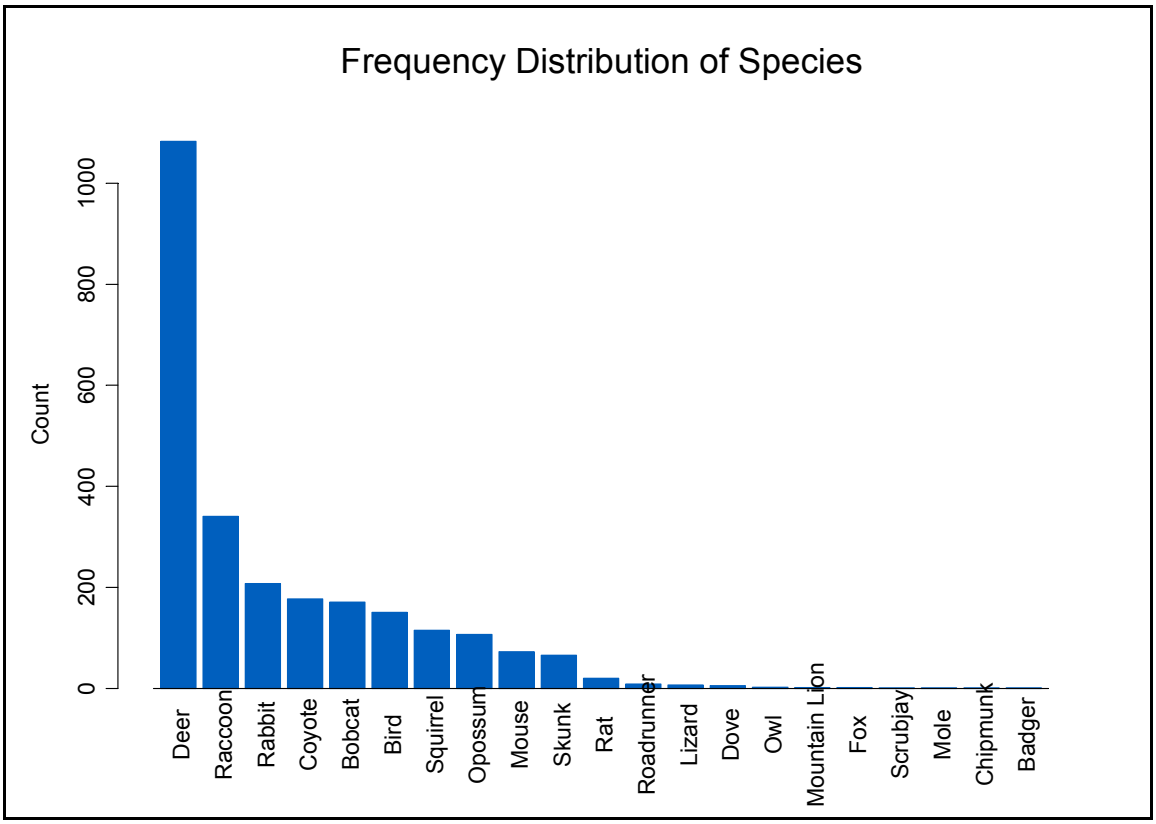
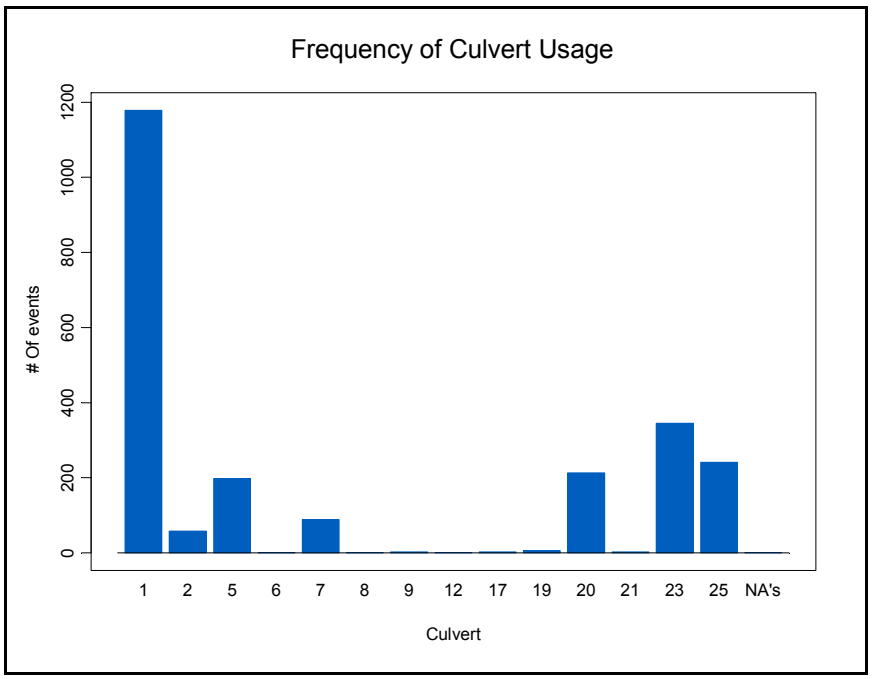


Figure 2: Frequency of Culvert Usage in Coyote Valley



*Note: Culvert 8, 9, 12, 17, and 19 have no data due to restricted access to location.

Figure 3: Culvert Use by Wildlife in Coyote Valley [2009 – 2011]

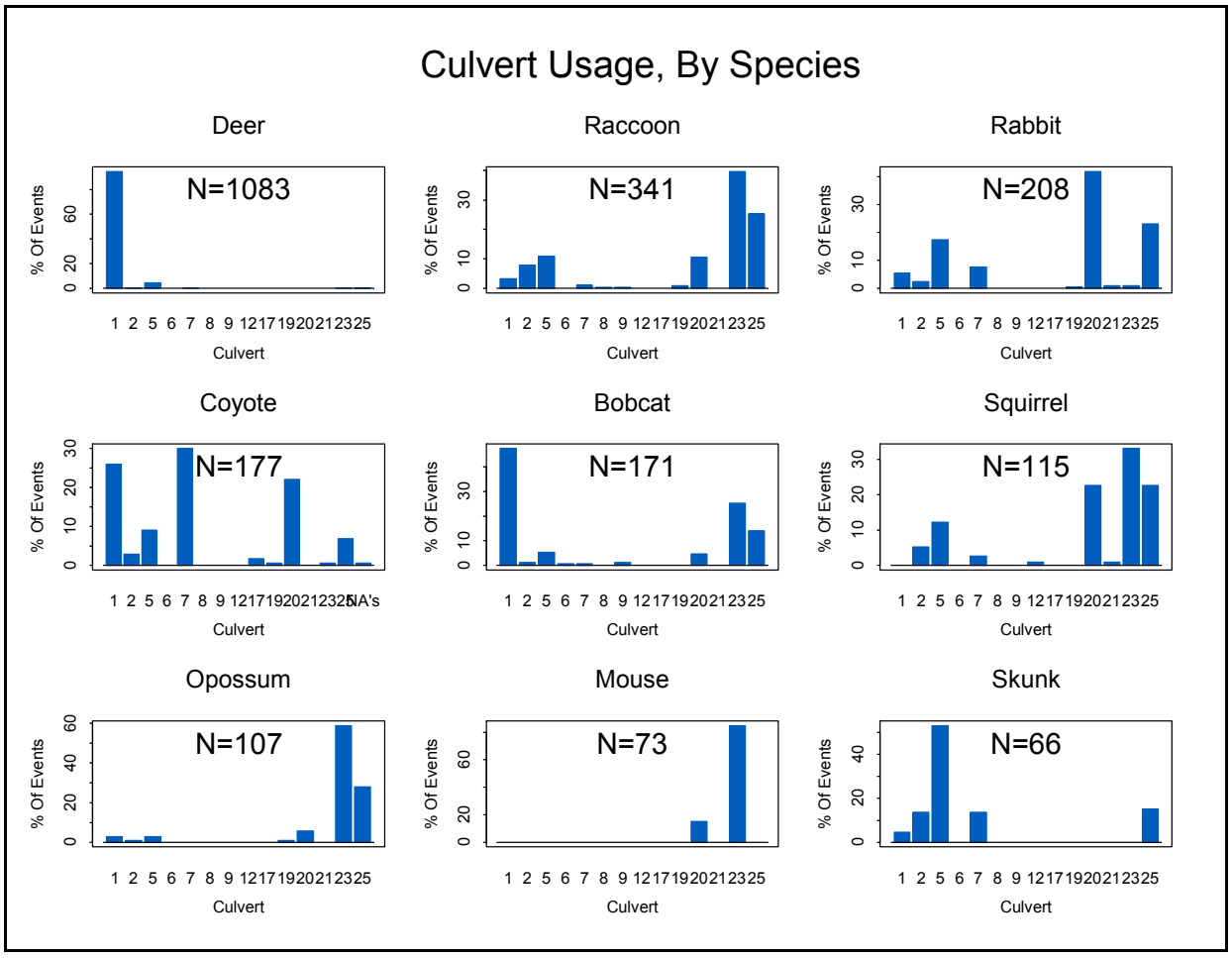


Figure 4: Frequency of Events in Coyote Valley, by Month

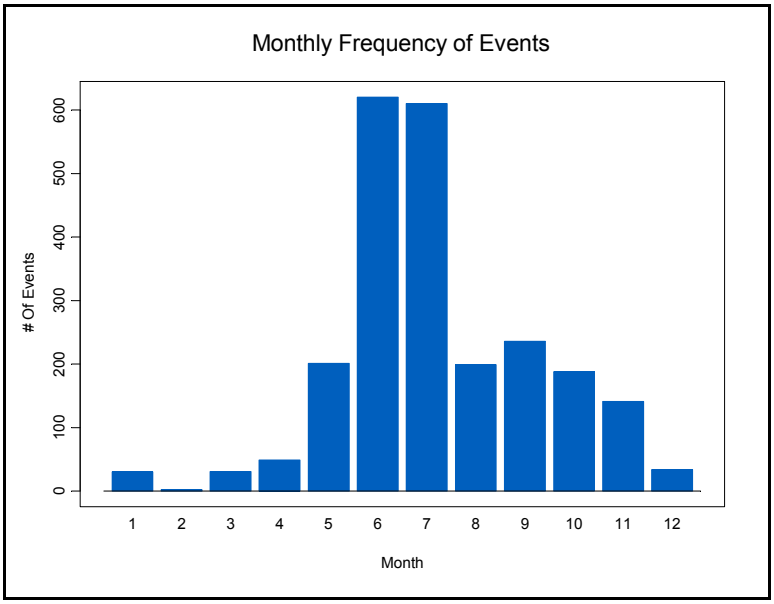
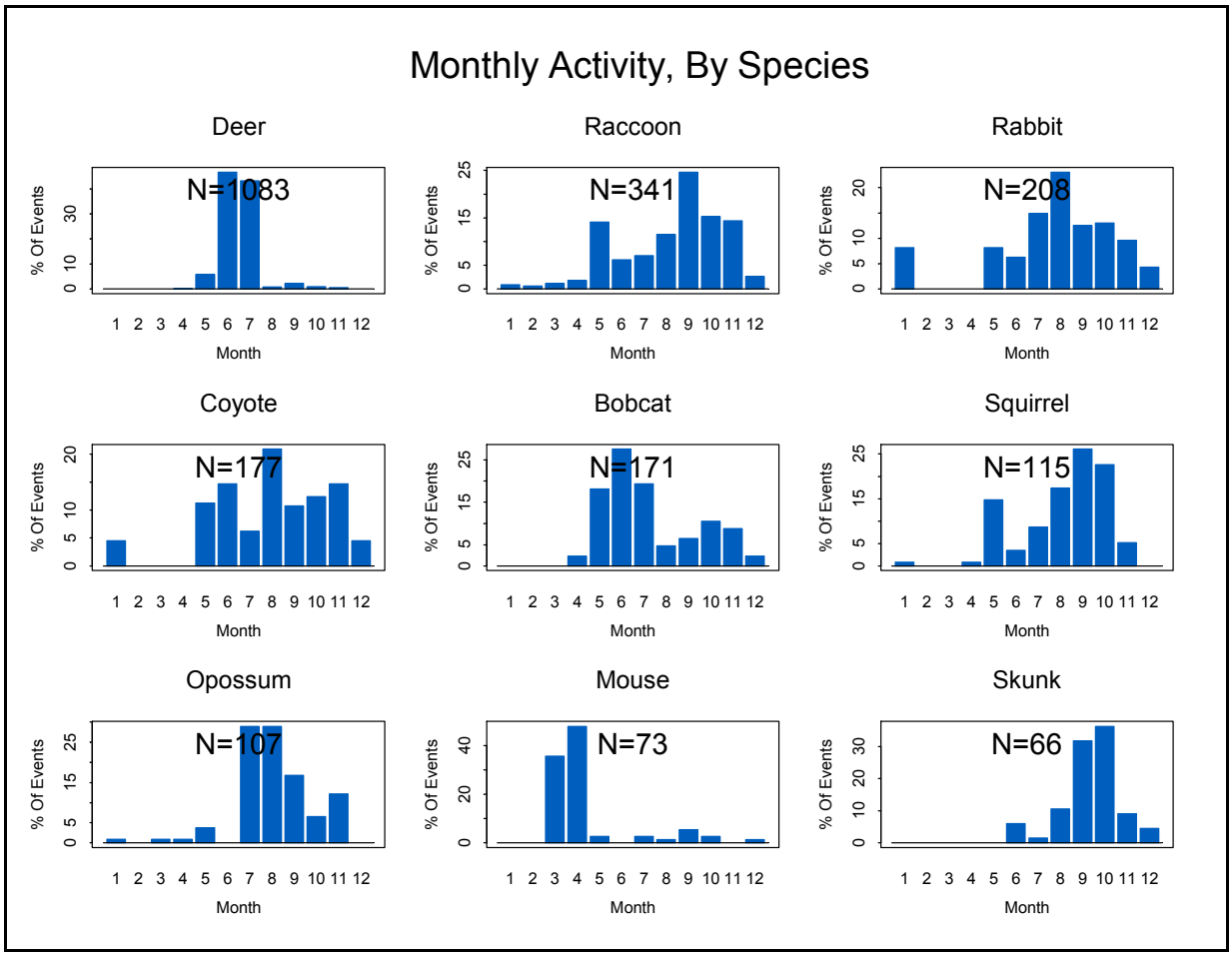


Figure 5: Monthly Activity in Coyote Valley, by Species



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June 1, 2010

Julie Phillips
Environmental Studies Program
De Anza College
21250 Stevens Creek Blvd.
Cupertino, CA 95014

Dear Julie:

Thank you for the opportunity to visit De Anza College on May 12-15, 2010, and present the Kirsch Lecture on my work to reconcile species-based and ecosystem based approaches to conservation. I especially appreciated the opportunity to meet with faculty, students, and staff of the Environmental Studies Department, to participate in classes (bird surveys and wildlife crossings), and to observe and participate in the cutting-edge field research that your group is conducting in the Coyote Valley and in the adjacent Santa Cruz Mountains, Coyote Ridge, and Diablo Range.

I want to call attention to the importance of the work that your faculty, staff, and students are conducting and its relevance to real-world conservation planning in California and beyond. As you know, I have many years of research experience and have published extensively in the areas of corridor ecology, habitat fragmentation, road ecology (e.g., wildlife crossings research), and landscape ecology and conservation biology generally. I can say without hesitation that the work of your group is technically sound and employs the best available science, field techniques, geographic information system (GIS) technology, and other methods to address the very urgent problem of habitat fragmentation in the Coyote Valley and its surroundings. The work you are doing has real-world impact that extends far beyond your local area. As a case in point, the recently released California Essential Habitat Connectivity Project (http://www.dfg.ca.gov/habcon/connectivity/) features the linkage across the Coyote Valley precisely as it was delineated by your group of faculty, students, and staff. Without your work, this critical linkage for wildlife population connectivity might have been missed.

In December 2008, Dr. Paul Beier and I visited De Anza College and reviewed your program. At that time we were very impressed with your work and, in our subsequent letter, agreed that "the primary corridor across Coyote Valley identified by the Environmental Studies faculty and students is, in our opinion, the optimal corridor." During my visit in May 2010, this impression was confirmed. In fact, your group has

confirmed it through your detailed and rigorous research to document the importance of this linkage for wildlife.

Beyond your research on wildlife corridors and road ecology, I must say that your Environmental Studies program is the most impressive of any I am aware of worldwide. You are conducting more practical and relevant work than the vast majority of conservation biology programs in major universities. I applaud your efforts and look forward to learning of your continued progress.

Sincerely,

Reed F. Noss

December 20, 2008

To whom it may concern:

We, Paul Beier and Reed Noss, are writing to endorse the efforts of the faculty and students in the Environmental Studies Department of De Anza College to delineate and protect a viable wildlife corridor across Coyote Valley in Santa Clara County, California. We were asked by the Environmental Studies faculty to provide an independent review of their wildlife research in Coyote Valley and to evaluate their proposal for a linkage (or linkages) across the valley to connect the Diablo Range with the Santa Cruz Mountains. We were invited to provide our advice because we are known internationally as experts in wildlife corridors and conservation planning, we have conducted wildlife research in California, and we have been involved as independent science advisors for numerous HCPs/NCCPs and other conservation efforts in this state.

In our opinion, protecting and restoring functional wildlife movement corridors between the Diablo Range and Santa Cruz Mountains is a high priority locally, regionally, and statewide. The Coyote Valley provides the best opportunity to connect these two high-biodiversity ranges and also has inherent value as wildlife habitat, especially for raptors. The Santa Cruz and Diablo ranges are important core areas for wide-ranging wildlife in the Central Coast region of California, including black-tailed deer, tule elk, mountain lion, bobcat, coyote, badger, and (in the case of the Diablo Range), pronghorn, and other species (such as reptiles and amphibians) yet to be studied here. Importantly, if connectivity for wildlife is lost due to development, roads, and other habitat fragmentation in Coyote Valley, the Santa Cruz Mountains will become functionally isolated from other wildland core areas. Species with large area requirements, especially the mountain lion, will not be able to maintain viable populations within the Santa Cruz Mountains, if they are isolated. Sooner or later, the mountain lion population is highly likely to go extinct unless rescued by connectivity to other large wildlands. The potential to conserve or restore a connection between the Santa Cruz Mountains and the Gabilan Range does not remove the urgent need to conserve this connection between the Diablo Range and the Santa Cruz Mountains.

The primary corridor across Coyote Valley identified by the Environmental Studies faculty and students is, in our opinion, the optimal corridor. Please see the attached map. We recommend that this corridor be at least 2 km wide, on average, and that choke points (especially culverts under highways) need to be replaced by wide structures (underpasses and/or land bridges) that are designed specifically for the focal species studied here. An early draft of the HCP/NCCP, under the assumption that Coyote Valley would be converted to urban use, identified Metcalf Canyon as the best feasible corridor. However, Metcalf Canyon suffers from being inherently narrow and having night lighting and noise, which restrict wildlife movement. In our opinion, the proposed Metcalf Canyon corridor is unlikely to serve the movement needs of animals, but the proposed Coyote Valley corridor is likely to do so.

We are impressed that, compared to other linkages that we have evaluated within urbanizing landscapes in California and elsewhere, the Coyote Valley corridor is highly feasible. Although buying land, securing conservation easements, restoring a portion of agricultural land to native vegetation, and constructing proper wildlife crossings under or above roads will be expensive, it will not be exorbitant compared to many other conservation projects. By protecting this crucial linkage, the public is protecting its investments in conservation areas in the Santa Cruz and Diablo ranges, because without connectivity, the wildlife in these ranges will decline and some species will very likely be lost.

In conclusion, we recommend that the Santa Clara Valley HCP/NCCP planning process take full advantage of the data collected by the Environmental Studies Department at De Anza College. Furthermore, we suggest that the HCP/NCCP consultants enlist the Environmental Studies Department to help conduct further research on the wildlife of this area and delineate wildlife corridors. The HCP/NCCP could be the key to protecting and restoring the Coyote Valley and other important areas for biodiversity within the planning area.

Please do not hesitate to contact us if you have any questions about our evaluation of this area.

Sincerely,

Reed F. Noss, Ph.D.
Davis-Shine Professor of Conservation Biology
University of Central Florida

Paul Beier, Ph.D.
Professor of Conservation Biology and Wildlife Ecology
Northern Arizona University

Comment Letter 41—De Anza Wildlife Corridor Technician Program, Julie Phillips, WCT Program Leader, April 18, 2011

Response to Comment 41-1

Comment is addressed in Master Response #8.

Revisions to the Habitat Plan will be consistent with Master Response #8.

Guadalupe-Coyote Resource Conservation District

GUADALUPE - COYOTE
RESOURCE CONSERVATION DISTRICT
888 NORTH FIRST STREET RM. 204, SAN JOSE, CA 95112
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April 18, 2011

Ken Schreiber
ken.schreiber@ceo.sccgov.org
Program Manager, Santa Clara Valley HCP/NCCP
70 West Hedding Street
East Wing, 11th Floor
San Jose, CA 95110

RE: Santa Clara Valley HCP/NCCP comments

Dear Mr. Schreiber:

The Guadalupe-Coyote Resource Conservation District (GCRCD) Directors appreciate the opportunity to comment on the Santa Clara County Habitat Conservation Plan/Natural Communities Conservation Plan (HCP or Plan) and support the concept of preserving and restoring land for preservation and enhancement of species. The RCD submits these comments with great appreciation for the years and the work that the Plan represents, by many interests --private, government and public.

Despite public review opportunities, however, concerns about inadequate guarantees of goal achievement remain. Independent scientific review should be an essential step in the implementation of the HCP/NCCP process--particularly at the Implementing Entity level. These comments reflect the belief that such review, carried out by scientists with no economic or other vested interests in the process, will improve the process, benefitting the environment and all residents of Santa Clara County.

Protected habitat can become an important reservoir of species in need of protection, but it must be viable habitat. There is no assurance that the varied "modeled" habitats discussed in the Plan represent habitat that will actually be viable for given species. There is even insufficient knowledge of the status of existing species in the proposed Reserve System. 1

The recognized tension between the conservative goals of HCP/NCCPs in general and species' needs should lead to the practice of erring on the side of acquiring more of the lands that are most critical, generally considered to be water-related (streams, riparian habitat, wetlands, etc.).

LAND ACQUISITION LOCATION

The importance of streams and related habitat in the preservation of species cannot be overemphasized. "Scientists have long recognized the unique value riparian habitat holds

for fish and wildlife species. Unfortunately, this valuable habitat has been removed, degraded, and disturbed at an alarming rate ….."[1]

"Riparian ecosystems are more structurally diverse and more productive in plant and animal biomass than adjacent upland areas. They also supply food, cover, and water for a large diversity of animals, and serve as migration routes and connectors between habitats for a variety of wildlife. "Even though riparian habitat comprises less than one percent of the total land area in the western United States, these areas support a tremendous number and diversity of terrestrial wildlife."[2]

This critical riparian habitat should therefore be a top priority in conservation and preservation in the Plan, yet the areas of stream and riparian restoration seem unreasonably small in relation to the size of the study area (and the county).

Only one mile of stream restoration is required under the Plan, despite an identified 2,109 stream miles of modeled habitat (identified under Foothill yellow-legged frog statistics). That single mile represents only 0.047% guaranteed restoration of identified stream mileage. More should be required. (Although up to 12.6 miles *could* be restored, the number is dependent on a number of factors.)

Similarly, only 50 acres of riparian restoration will be required out of the total study acreage of 519,506. Required riparian habitat restoration thus represents only 0.009%± out of the total study acreage.

2

Wetlands do not fare any better under the Plan, which will protect/restore a minimum of 10 acres of perennial wetlands. This mandated protection represents only 0.0019% of identified wetlands under the SCVHCP. Freshwater marsh, with only 20 acres required is similarly treated.

While grasslands --and even ponds--may be able to be "created", streams (including creeks and rivers), whether intermittent or perennial, represent a unique niche in the ecosystem. (In fact, ponds are the only water resource the Plan proposes to create.) Therefore, protection and restoration should be focused on stream resources.[3] Yet stream restoration does not seem to represent a primary focus here.

The EIR/EIS enunciates a policy of stream acquisition:

> "LAND-R5: *Perennial* streams located above Uvas, Calero, Chesbro, and Anderson reservoirs, or in Uvas Creek below Uvas Dam, Upper Pentencia Creek, Alamitos Creek, or Guadalupe Creek that meet certain flow and substrate conditions." [Italics added]

However, intermittent streams also offer critical habitat, specifically for the California tiger salamander. As CDFG notes:

---

[1] http://www.wcb.ca.gov/Riparian/

[2] http://www.nrcs.usda.gov/technical/NRI/pubs/wp13text.html#nature]

[3] For example, the Conservation Lands Network (CLN) targets streams as top priority. "Indeed the research produced by Koehler, U.S. EPA ecologist Rob Leidy, and other scientists underlines a major emphasis of the UHG process: Streams--all streams--are a top conservation priority for the region." Bay Nature, April-June 2011 (http://www.bayarealands.org/upload/page.php?pageid=14)

> "The California tiger salamander typically inhabits grassland and oak woodland habitats below 1,500 feet which have scattered ponds, *intermittent streams*, or vernal pools. [Italics added] [4]

Intermittent streams, which clearly provide habitat for CTS--and other species--should therefore also be considered for acquisition. The EIR/EIS is insufficient for not adequately recognizing, describing and discussing this habitat and for failing to make provision for potentially acquiring more of it for mitigation.

The Plan's focus "primarily in areas where large stands of riparian woodland are present" [5-25][5] for land acquisition under "Aquatic Habitat Protection and Enhancement" seems to ignore the non- woodland habitat needs described for covered animal species. A number of the 11 animal species do not favor woodlands habitat, yet woodland riparian protection is favored throughout the discussion in § 5.2.4.

A number of the covered plant species grow preferentially in grasslands, serpentine dry slopes and chaparral, etc. Yet, the Plan appears to focus on acquiring woodland riparian habitat.

This focus ignores the large swath of what seem to be available grasslands, interspersed with and bordered by woodlands, identified on Figure 3-9, Natural Communities, along the eastern side of Highway 101, north of Morgan Hill. For aquatic habitat protection and enhancement, the Plan focuses instead on the south County areas around the Pacheco River and along Uvas, San Felipe and Llagas Creeks, not habitat to the north, according to § 5.2.4.

The timing of the stream restoration mandate also suffers from the Plan's projected lag in land/habitat acquisition. Since all riparian restoration activities are required to be completed by Year 40, but all lands are not required to be acquired until year 45, it is not reasonable to assume that riparian restoration will be able to provide maximum benefits where and when needed.

LAND ACQUISITION TIMING

Land acquisition must occur before restoration can be instituted, yet all land acquisition is not required until after all restoration projects must begin. (The Plan notes that, "[m]ost restoration activities cannot be initiated until land is acquired for the reserve system" and that Permittees must initiate all restoration projects by Year 40 (although Permittees must also meet minimum targets of land acquisition at 10-year intervals). [ES-5] Permittees have also not committed to acquire all land until Year 45. [1-12].) The "reserve assembly", it appears, cannot stay ahead of impacts. What consequences are there if minimum targets cannot be met?

3

[4] *March 1995*, Bay Delta and Special Water Projects Division, CA Dept. of Fish and Game; http://www.dfg.ca.gov/delta/reports/stanriver/sr421.asp

[5] Footnote references throughout these comments that are not to a particular cite are either to the Plan page, as [5-25], or to Plan section, as § 5.2.4.

The Plan assumes that it may take many years for lands to be acquired. Thus, if restoration can't begin until land is acquired, restoration may lag development and projects by decades. This cannot assure recovery, much less mitigation for loss of habitat and declining species.

The Guadalupe River flood control and restoration projects offer an unhappy and cautionary example of what results when building projects get ahead of total project design and also ahead of mitigation and restoration design efforts. There, in response to project proponents' pleas regarding funding and scheduling, construction was allowed to proceed before finalization of design and mitigation for fishery and habitat. Subsequently, flawed design was responsible for an inadequate fish migration channel and led to a loss of habitat. Inadequate allowance for fishery habitat and restoration has left a decimated population of salmon and other species to fend without benefits of formerly-adequate habitat. Clearly, the environment is better served where adequate mitigation and monitoring are determined before projects begin.

UNCERTAINTY

The "uncertainty inherent in this conservation strategy" has meant that species occurrence data and species habitat distribution models were developed for this Plan at a regional scale, and particular occurrences represent estimates. [5-24] As a result, the Implementing Entity (IE) is to conduct *pre-acquisition assessments* "if feasible", based on which the IE will identify, and prioritize acquisition of, reserve lands. More well-defined performance and compliance standards and the active participation of an independent science panel (with no economic or other vested interest in the process outcome), along with biological-monitoring programs emphasizing quantitative information, would contribute to a more scientifically-defensible Reserve System, which would also be more responsive to the stated goals.

Restoration is allowed on private or public lands outside the Reserve System (RS) if no feasible sites are determined to exist within the Reserve System. The Plan acknowledges repeatedly that in essence the "location of reserves and condition of resources within these reserves will not be known until suitable sites are identified, surveyed, and acquired." [5-29]. The IE will prepare a reserve unit management plan, which may be different from the list of "likely" reserve units. Given the "deemed approved" provision --if the Wildlife Agencies do not comment within sixty days of receipt on the IE-proposed reserve unit management plan(s)-- the requirement of approval from a separate and independent scientific group could improve Plan implementation function by potentially eliminating the possibility of "deemed approved" reserves. Public confidence in the process could only be improved thereby. 4

Also, uncertainty leads to poor outcomes.

Mitigation and monitoring should be science-based and determined timely. Changes in knowledge should be provided for. Goals and means of assuring same need to be very clearly spelled out, with provision for both mitigation and monitoring that have enforcement components. With the IE operating by consent and consisting of Permittees' officials, it is not likely that any member of the IE will seriously interfere in the internal decisions of another's agency. Consensus-driven adaptive management is difficult to change or ameliorate. Interpretation of questioned data should be by an independent

science panel, not by project proponents or their agents. Guidelines for monitoring and adaptive management should contain required consequences.

THREE CREEKS HCP (3CHCP)

"Take" associated with a number of the covered activities (such as "[s]tream maintenance for habitat purposes" [2-100]) is covered under the Valley HCP. Overlap with the as-yet-incomplete Three Creeks HCP is therefore clear. Given the incomplete status of the 3CHCP, it is therefore difficult to assess the two plans' interface without further information. It is clear that FAHCE belongs in the 3CHCP and that the 3CHCP needs to be completed before adequate public comment can address either Plan on related issues.

It should be understood that inclusion of 3CHCP-covered issues in this Plan does not represent the final decision as to those issues' disposition. Unambiguous statements need to clarify that where 3CHCP and Valley HCP conditions or requirements or jurisdiction overlap, the more environmentally-protective and stringent of those conditions will prevail.

5

FUNDING

Funding is another critical component in the Plan, lack of which may compromise the ability to protect lands and species. Funding is projected to be $15 million per year. Yet the projected costs seem low, since the cost of acquiring land alone could equal that amount. If some fees are to be "paid" by land donations, what will become of that land and how will it be valued? Will the HCP management then have lands it will need to sell to raise cash to fund the Plan? Provision should be made so that permitted projects do not significantly outpace land acquisition and mitigation.

Some funding sources may not be available for 30+ years, [1-12] indicating that projects creating significant losses of animals, plants or habitats will occur before funding is available for remediation and mitigation. (Land for mitigation, restoration also may not be available for years, or decades.) Performance bonds, or similar funding sources, should be required before habitat or species loss occurs to address this disconnect.

6

IMPLEMENTING ENTITY

The Implementing Entity will consist of "designated officials from each of the Permittees." [ES-7] USFWS and CDFG and others are designated "advisors" of the Implementing Entity. However, it does not appear (from the Executive Summary) that there will be any required changes in response to advisors' comments, or that independent science advisors will be monitoring the implementation. Further, it does not appear that any independent science advisors will be able to make comments that require modification of the Implementing Entity's decisions, although that should be required.

7

MODELING

The "allowable amount of take from permanent and temporary direct impacts is quantified by estimating impacts" and the Implementing Entity tracks the impacts to assure a cap on such takes [4-46]. The "amount of take is also described by estimating permanent and

temporary direct impacts on modeled habitat for covered species (**Table 4-4**) and on plant occurrences (**Table 4-6**). If species "habitat is not modeled, then land cover proxies are developed." Indirect take impacts are "discussed qualitatively." [4-46] "Quantifying" by estimating is not an acceptable way of dealing with impacts. Similarly, basing the amount of take on estimates of impacts on modeled habitat for both plant and animal species piles estimate on estimate. The Plan delays more accurate quantification until CEQA evaluation, during the development permit application process. Yet the development permit process regularly yields decisions overly influenced by local political decisions and/or consultants hired by project proponents, which will further be colored in this case by the imprimatur of the "quantifications" already in place in the SCVHCP. The Plan acknowledges that the goal is "conservative" impact assumptions. These parameters assure that the assumptions are too conservative, and insufficiently conservation-minded.

8

ALL SIGNIFICANT ASPECTS SHOULD BE ANALYZED

> "While the impacts from covered activities have both permanent and temporary aspects …, in most cases the associated impacts are largely either temporary or permanent. To facilitate the analysis and because parsing temporary and permanent impacts within categories would have a minimal effect on the results due to the programmatic nature of the analysis, only the dominant impact type is considered in each category." [4-47]

Under this policy, permanent impacts from covered activities would not be considered if their "aspects" were not judged to be the "dominant" type, and some temporary impact aspects predominated. This policy impermissibly ignores impacts that might be significant; this policy should be eliminated from the Plan. Permanent impacts (or aspects thereof) should be analyzed. Also, even non-"dominant" temporary aspects of impacts should be considered if they might have long-lasting effects, but were not judged "permanent" by the Implementing Entity. The Plan should consider all significant impacts.

9

BASELINE

Parcels "anticipated to be permitted by the time of Plan implementation were excluded from the impact analysis and therefore [were] considered part of the baseline conditions." [4-48 to -49] The baseline however, should contain a comprehensive assessment of current conditions. What were the bases for the determination that such parcels would be permitted by implementation? The public should know which parcels were potentially includable, but were being removed from consideration, since in other instances parcels that a Permittee "anticipates" may have gained approval may actually have remained unpermitted.

10

TRANSLOCATION

The Bay checkerspot butterfly has been extirpated throughout its former Bay Area range, except in south-central Santa Clara County. Covered activities will apparently "affect" 334 acres of critical Bay checkerspot butterfly habitat. Table ES-2. Previous efforts to reintroduce the species in San Mateo County "had very limited success". *Id*. Species is apparently abundant in multiple populations along the eastern foothills of the study area,

11

but the species is also "reported to be declining in the study area." It is not clear from Table ES-2 how much of the "modeled primary habitat" proposed as mitigation is critical habitat. Given the reported San Mateo translocation failure perhaps the 334 acres of critical habitat should be avoided. The Plan states that "all critical habitat units" will be partially or completely protected with the successful implementation of the Plan. *Id*. However, it appears that could take decades. The current habitat range (in acres) is not described, and it is not clear that the proposed "critical habitat units" are co-extensive with the lost current critical habitat. Efforts to move species from a current site to a new may well demonstrate a lack of success, as was reported in the Plan. Waiting until full Plan implementation, as is proposed, may well be too late for the species.

MONITORING

The Southern California example of delayed monitoring, mentioned in the Plan [1-11], is not adequate to demonstrate the wisdom of delaying an adequate mitigation and monitoring program for the Plan. What is clear is that there is a need for better provision for timely adaptive management goals and oversight, not the 10+ year delay seen in S. California. 12

PROCESS/LANGUAGE

Language and process should both support the goal of stream restoration and protection. For clarity, language should be appropriately mandatory in imposing conditions and requirements affecting these habitats. As a single example (there are too many throughout the Plan to cite here), Table 6-3's condition requiring that "timing of work in streams that support a significant number of amphibians will be delayed until metamorphosis" should use more directive language. Use of the mandatory "shall" to replace the descriptive "will" would make the condition more clear to both the implementing authority and to on-site workers. Where exceptions to general conditions are appropriate, those exceptions should be enumerated beforehand and should be reviewed by independent science personnel and the Wildlife Agencies, so that exceptions are not inappropriately granted in the field, on an ad-hoc basis. 13

TECHNICAL

Certain technical processes would make public review of the SCVHCP more accessible. Additional review time might help resolve some of these issues.

-Given the length of the document, hyperlinks are needed to link to referenced chapters, tables, etc., to facilitate public review and make it meaningful. This is particularly true where references are incorrect (see below). 14

- Various references seem inaccurate. For instance, the EIS/EIR ("EIS") references Table 6-4 as including "35 avoidance and minimization measures that would be applied to instream projects." [2-36] Yet, Table 6-4 features: "Conditions on Covered Transportation Projects", not minimization measures applicable to instream projects. This makes public review and comment more difficult. [Actually, Table 6-3 contains a list of avoidance and minimization measures.] 15

-The map re land cover mapping, referenced on page 5-41 as Table 3-4, was not at that location, frustrating efforts to review that map. [It exists at Table 3-10] 16

SUMMARY

In summary, the GCRCD believes that science should inform the Plan implementation, from reserve unit selection (Reserve System selection), to monitoring and mitigation in perpetuity. The Directors would like to see measurable, recovery-based goals (populations and habitat quantity and quality) and full mitigation for habitat loss and adverse impacts on species.

Thank you for your consideration of the above comments. Please do not hesitate to contact us with questions at (408) 288-5888.

Sincerely,

Meg Giberson (on behalf of the GCRCD Board)
GCRCD Vice-President

Comment Letter 42—Guadalupe-Coyote Resource Conservation District, Meg Giberson, Vice President, April 18, 2011

Response to Comment 42-1

Chapter 8 describes a process for an independent conservation assessment team to be convened to help determine best practices on reserve lands. The Implementing Entity will also engage with scientists as needed during implementation for advice on land acquisition and management decisions. The Wildlife Agencies and Local Partners acknowledge the commenter's concern that acquisitions based on modeled habitat may not actually be viable for covered species. Plan requirements for field verification prior to acquisition (Section 5.2.3), species occupancy in the Reserve System (Section 5.3.1), and monitoring and adaptive management (Chapter 7) address these concerns. Furthermore, modeled habitat will also be updated throughout the permit term, based on the best available scientific information. Although the acquisition of streams and other aquatic resources is important, many of the covered species rely on non-aquatic habitats for some or all of their life history. The Implementing Entity has a responsibility to provide conservation for all covered species, not just those that utilize aquatic habitats.

No changes to the Habitat Plan are required.

Response to Comment 42-2

The design of the land acquisition strategy was based on the level of impact on each of the natural communities. Little stream restoration is planned, and not many permanent impacts are expected in streams. In general, the conservation principles that were used when determining the size of the Reserve System focuses on completing the acquisition in the most economical way possible. The Implementing Entity will need to protect enough habitat to offset the impacts expected but in as few parcels as possible to keep Plan costs under control. Thus, in general, the focus is on larger parcels, which offer longer stretches of stream and better stream enhancement opportunities.

No changes to the Habitat Plan are required.

Response to Comment 42-3

The Habitat Plan will be implemented in accordance with the Stay-Ahead provision described in Section 8.6.1. The Stay-Ahead provision will ensure that the conservation strategy will be implemented in rough step with the impacts on covered species and their associated habitats. If the Stay-Ahead provision is not met or minimum Plan targets are not t, met, the ESA and NCCP permits could be suspended until the compliance is achieved. In addition, there are conservation action deadlines beyond the Stay-ahead requirements (see Section 8.6.1, subheading *Conservation Action Deadlines Beyond Stay-Ahead Requirement.* To ensure that the Implementing Entity makes steady progress towards the final land acquisition targets, in year 20 of implementation, the Implementing Entity will work with the Wildlife Agencies to conduct a formal and complete review of progress toward building the Reserve System. The requirement to complete all restoration projects by Year 40 is intended to ensure that those projects are functioning properly by the end of the permit term (Year 50). This means that all lands where restoration will occur will need to be acquired by Year 40. Lands acquired between Year 40 and Year 45 will meet the preservation and enhancement requirements.

No changes to the Habitat Plan are required.

Response to Comment 42-4

Chapter 8 outlines processes for dispute resolution and the involvement of technical advisors and independent scientists. In order for USFWS and CDFG to allow a parcel to be used for the Reserve System, the Implementing Entity will need to demonstrate that covered species are present on the

parcel or are likely to occupy the parcel with enhancement, restoration, creation efforts (i.e., parcels adjacent to the proposed Reserve parcel have documented occurrences of covered species). Although species habitat models could be used to focus the search for adequate parcels, they would not be used to define when a parcel is or is not species habitat. Independent scientists strictly play an advisory role during implementation; the Implementing Entity is ultimately responsible for complying with the permits. It would be inappropriate for these advisors to have approval authority over acquisitions in the event that the Wildlife Agencies do not comment within the deadlines described in the Plan.

No changes to the Habitat Plan are required.

Response to Comment 42-5

The proposed Three Creeks HCP is focused on water supply operations activities and their effects on listed fish, which are under the jurisdiction of NMFS and CDFG. The Habitat Plan does include activities that are also expected to be included in the Three Creeks HCP, but these activities are included in the Habitat Plan to address impacts on listed species under the jurisdiction of USFWS and CDFG.

The Local Partners and the Wildlife Agencies agree with the commenter that inclusion of activities also covered by the Three Creeks HCP represents neither an entitlement for the activity nor a final determination of the issues related to a given activity.

Revisions to the Habitat Plan include the following:

(Section 2.3, *Covered Activities*)

"Project-specific identification as a covered activity, either in this chapter or through a future determination by the Implementing Entity, does not imply or grant entitlement for implementation. Project applicants are required to gain other project approvals from local jurisdictions and other regulatory agencies as necessary."

Response to Comment 42-6

An assessment of open space land sales used in the Draft Habitat Plan is included in a memorandum in Appendix G. This memorandum supports the land acquisition costs used in the Habitat Plan. As noted by the commenter, landowners or Permittees that convey land to the Implementing Entity may receive credit for the dollar value of these acquisitions against select development fees. The value of the conveyance of land to the Implementing Entity and any credit against development fees will be determined by the Implementing Entity on a case-by-case basis. Any land provided in lieu of development fees must contribute toward the implementation objectives and requirements of the Habitat Plan. Section 9.4.1, subheading *Criteria for Developing Fee Credit for Land Provided in Lieu of Development Fees*, describes criteria the Implementing Entity will consider when quantifying credit for these lands.

As described in Section 8.6.6, *Gifts of Land*, the Implementing Entity may accept land as a gift or charitable donation. The Implementing Entity will evaluate the conservation benefit of the lands donated relative to the goals, objectives, and requirements of the Habitat Plan. Donated land that does not meet these goals, objectives, and requirements may be sold or exchanged to enable acquisition of land that does meet these goals, objectives, and requirements.

Also see Response to Comment 42-3 .

No changes to the Habitat Plan are required.

Response to Comment 42-7

It is the Implementing Entity's responsibility to adequately implement the Plan. Independent scientists and others discussed in Chapter 8 are advisors to the process to ensure that the Implementing Entity is

performing its duty to the best of its ability. USFWS and CDFG have the ability to suspend and even revoke permits if the Implementing Entity defaults in its duties.,,.

No changes to the Habitat Plan are required.

Response to Comment 42-8

Impacts are estimated for the purposes of the Plan's impact analysis and setting a cap on the total amount of take that is allowed under the Plan. Impact limits had to be estimated in order to allow the Wildlife Agencies to make their statutory findings before issuing their respective permits. A project-specific impact evaluation will be developed through the application process described in Chapter 6. Whenever possible, the impact analysis utilized GIS-based footprints of projects to estimate impacts on land cover, species habitat, and critical habitat. However, the footprint of all covered activities is not known (e.g., locations of rural development occurring 30 years from now) and, as such, the analysis utilized assumptions regarding location and the nature of impacts.

The Implementing Entity and the Local Partners are responsible for overseeing implementation of the Plan, including ensuring that accurate project descriptions are used and that projects apply all applicable of conditions on covered activities.

No changes to the Habitat Plan are required.

Response to Comment 42-9

Chapter 4 describes an impact analysis that is used to define the caps on the total amount of take that is allowed under the Plan. Chapter 4 describes a method, not a policy. Project-specific impacts will be evaluated through the application process described in Chapter 6.

No changes to the Habitat Plan are required.

Response to Comment 42-10

In determining the baseline land cover on which to conduct the impact analysis, parcels currently permitted for development or anticipated to be permitted by the time of Plan implementation were excluded from the impact analysis. These parcels were assumed to be affected (i.e., no longer support fee-paying land cover types) by the time of Plan implementation because these parcels have already or would soon have a local land use permit such as a building permit or grading permit and as such could not be covered by the Plan because they would have obtained their local approvals before the Plan was completed. The County and the cities provided this information based on recently issued permits or permit applications nearing completion.

Comment is partially addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 42-11

Table 5-21 provides estimates of critical habitat to be protected in the Reserve System. Minimum requirements of critical habitat acquisition by unit could not be provided because the Reserve System will be assembled based on the availability of willing sellers. The areas that will be affected are considered habitat for this species but they are lower value habitat than those that will be protected as part of the Reserve System. As indicated in Section 5.4.1, translocation events will be carried out on an experimental basis and must be approved by the Wildlife Agencies.

No changes to the Habitat Plan are required.

Response to Comment 42-12

It is not the intention of the Plan to delay meaningful monitoring. Rather, the monitoring chapter was designed to provide sufficient structure and guidance to allow for site-specific monitoring once parcels are acquired within the Reserve System. Targeted Studies will be initiated within the first 5 years of Plan implementation. These studies are designed to inform monitoring and resolve critical uncertainties and are independent of land acquisition. An inventory phase is scheduled to commence immediately after acquisition for each acquired parcel. In general, activities in the inventory phase will occur during the first 5 years of Plan implementation and thereafter as parcels are added to the Reserve System. This phase includes the documentation of baseline conditions and the initiation of management planning. Management planning includes the development of specific management plans, refining the proposed monitoring schedule for site-specific species, identifying biotic and abiotic indictors, selecting monitoring protocols and identifying a sampling design for status and trends and effects monitoring, and developing criteria for measuring the success of enhancement, restoration, and creation efforts. By necessity, protocols, criteria, indicators, and schedules are linked to specific reserve units or parcels to address conditions and management on the ground. The Plan is structured to provide adequate guidance and develop monitoring once parcels are acquired while requiring that the majority of monitoring be developed within 5years of land acquisition.

No changes to the Habitat Plan are required.

Response to Comment 42-13

The project proponents are required to identify the conditions on covered activities that apply to their respective projects as part of the Habitat Plan application package. This is described in Chapter 6, Section 6.7.2, subheading *Granting Take Authorization for Private Projects,* and Section 6.8.6 *Avoidance and Minimization Documentation*. As such, exceptions will not be inappropriately granted in the field on an ad hoc basis.

No changes to the Habitat Plan are required.

Response to Comment 42-14

The Local Partners and Wildlife Agencies acknowledge the commenter's request for hyperlinks in the document.

No changes to the Habitat Plan are required.

Response to Comment 42-15

The commenter correctly points out an incorrect reference in EIR/EIS Section 2.4.3.4, Conditions on Covered Activities. This and other incorrect references to the Habitat Plan in EIR/EIS Section 2.4.3.4 have been corrected.

Updated Habitat Plan table references in EIR/EIS Section 2.4.3.4.

Response to Comment 42-16

The reference in Section 5.3.1, subheading *Acquisition and Restoration Requirements for Aquatic Land Cover Types,* refers to **Table 3-4**, summarizing "the uncertainty in some of the land cover mapping." This reference to a table, rather than a map, is intentional.

No changes to the Habitat Plan are required.

Jan Hintermeister

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)	
Jan Hintermeister		6		6-72	ding Season		This comment is to address the "avoidance and minimization" section on breeding season burrowing owls. The conditions on construction activity within the 250-foot buffer should be strengthened. The current plan requires a monitoring plan to be reviewed by the Implementing Entity, CDFG and FWS. Prior to the monitoring plan the project proponent should describe the planned work within the 250-foot buffer and the IE, CDFG and FWS should be required to make a determination that the planned construction activities have no chance of impacting burrowing owl nesting activities. The project proponent must make a prima facie case the the planned activities will have no impact. The monitoring plan should follow, but a "no impact" determination should be made first. If the planned activities cause a nest to be abandoned on the first day of construction activity; monitoring serves no purpose.	1
Jan Hintermeister		6		6-73	eeding Seasor		Same comment as for Breeding Season, page 6-72. The IE, CDFG and FWS should determine that, based on their experience, the work will have no impact and then through the monitoring plan, verify that there is no impact.	2
Jan Hintermeister		6		6-73	eeding Seasor		The Non-breeding Season section should have some of the same language as in the Breeding Season section for construction activities within the buffer, including statements that "the burrow is not disturbed" and "the project proponent develops a monitoring plan for review by the Implementing Entity, CDFG, and USFWS". As in the previous comment, the IE, CDFG and USFWS should also determine prior to work beginning, that the planned activities will have no impact.	3
Jan Hintermeister		6		6-71	truction Surve		The first sentence of this section describes a biologist looking for "burrowing owl burrows". The phrase could be taken to mean burrows occupied by owls. The intent of the survey is look for owls in suitable habitat. The surveys should occur when the species surveys show the possibility of owl presence, e.g. ground squirrel (or other burrowing animal) activity or existing animal burrows). The preconstruction survey then determines presence or absence of owls.	4
Jan Hintermeister		Appendix M		M-12	ull paragraph		Appendix M mentions "burrowing owl habitat viability fees". I was unable to find a description of these fees in Chapter 9: Costs and Funding.	5
Jan Hintermeister		Appendix M		M-14	2d		The phrase "cessation of inappropriate rodent control" is unclear. Presumably, the phrase referes to cessation of rodenticide, hunting and trapping. A reference to the appropriate section (p. 5-105) would help.	6
Jan Hintermeister		5		5-105	welling	graph	This section refers to conditions under which rodenticides could be used to product recreational structures. Use of rodenticides to avoid adverse impacts on recreational facilities appears to place higher priority on recreation than on conservation. If recreation facilities are to be added to the reserve system, then they should be placed so as to avoid the need for rodenticides or other rodent control measures. If land with recreational facilities is to be added to the reserve system and rodenticides are needed to maintain the recreational facilities, then the IE should reconsider whether that land is appropriate for the reserve system.	7

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)	
Jan Hintermeister		Appendix M		M-14	?: Number 1		There are probably many parcels that lie between 1a (nesting in the last three years) and 1b (no history of occupancy). Burrowing owls have disappeared in many areas; some of that is because of development but others may be due to lack of management. I am not certain of status of owls at Sunnyvale Baylands but I suspect there has been no nesting over the last three years; yet this was once a very active location for nesting owls. For the tier 2 activities, I think we should consider more than just 3 years of burrowing owl history when prioritizing parcels.	8
Jan Hintermeister		Appendix M		M-15	Tier3: 1		The first paragraph in the Tier 3 section mentions "pilot studies described in Tier 2". Tier 2 identified some surveys but no pilot studies. I was unclear as to whether the Tier 3 section meant to refer to the surveys described in Tier 2, or whether there were some yet-to-be described experimental pilot studies, or analysis of studies on burrowing owl conservation from outside the study area. Later in the Tier 3 discussion, pilot studies are mentioned, but those are not Tier 2 studies. Please clarify.	9
Jan Hintermeister		7		7-57	st Surveys		The first paragraph in the nest surveys section describes yearly coordination with burrowing owl survey efforts at the San Jose Airport, Moffett and Shoreline. Has the Habitat Plan received assurances that other agencies will be continuing these surveys throughout the lifetime of the plan? If the existing entity discontinues the surveys, will the IE be required to continue them?	10
Jan Hintermeister		4	Figures 4-3 and 4-6				Figures 4-3 and 4-6 as mentioned in the text (pages 4-57 and 4-88) do not match with the actual figures 4-3 and 4-6. In the text (page 4-57), figures 4-3 through 4-5 are to show critical habitat. The actual figures are 4-4 through 4-6. On page 4-90, figure 4-6 is called out as a burrowing owl take figure. The content is on the actual figure 4-3.	11
Jan Hintermeister		Appen	M.3 Bi	M-10			This section states that for burrowing owls, the goal of high potential for recovery is met by "achieving a positive growth rate by Year 15 of the Plan….." I think using this criteria alone has a serious problem. Using the growth rate at Year 15 as the primary criterion implicitly gives the possibility that the growth rate for Years 0 through 14 could be negative. This means that the absolute number of burrowing owls could continue to decline for some time before management actions result in a positive growth rate at Year 15. Even with a positive growth rate, if the absolute number of owls is very small, the probability of near-term extirpation will still be high. To reduce the probability of extirpation, you need a positive growth rate, but also some reasonable number of owls. The study described in Appendix N emphasized the growth rate, but did not discuss the combinations of growth rate and absolute number of owls that are needed to drive the probability of extirpation to 0. The goal should include both a positive growth rate AND a target number of owls. A reasonable target number could probably be derived using the methodology of the study in Appendix N.	12

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)	
Jan Hintermeister		Appen	M.3 Bi	M-9			The Plan makes statements similar to the following throughout: "Growth rate is a more correct predictor of persistence than an ultimate population size". As a follow-on to my previous comment, I want to emphasize that although growth rate is critical, probability of persistence (and extirpation) also depends on the population size. This is not an eithor-or condition, for low probability of extirpation you need both a reasonable size and a positive growth rate. To emphasize this point, I quote the final sentence of the study in Appendix N: "Finally, success criteria for burrowing owl conservation in the Plan should be evaluated in terms of annual adults and annual monitoring of the growth rate (μ)." This use of both absolute numbers and growth rate becomes very important in section 4 which defines the take of burrowing owls.	13
Jan Hintermeister		Appen	M.3 Bi	M-10			This section briefly touches on adding other data sets, beyond San Jose Airport, Moffett and Shoreline, to the burrowing owl data set for PVA. There is a warning about the potential for adding new colonies to artificially skew the result. I think this point needs more emphasis. Since the current goals are oriented towards measuring population growth rate, addition of new (or existing) colonies could make it appear that the population rate was increasing. I think data from new colonies (or old colonies) should only be incorporated if the dataset is documented for a long-enough time period to be consistent with the data for the existing three colonies, or if for a new colony, the presence of the colony can be attributed to a management action of the plan.	14
Jan Hintermeister		4	Impact	4-90			This section describes provisions for take of burrowing owls and states that "annual allowable take will include any number of owls in excess of the three adults that must be added to the population yearly to ensure the target growth rate". The reader is referred to Section 5 for details on the "three adults" number and says the concept is shown in Figure 4-6 (actually 4-3). I do not see any rationale for the "three adults" number in section 5. In section 5, the only reference I see to "three adults" is on page 5-171 and there it is just stated as a fact with a reference back to figure 4-3. I do not see any rationale for the take defined in Figure 4-3.	15

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)
Jan Hintermeister		4	Impact	4-90			This section states: "The amount of take will be the maximum amount of owls that could be removed from the population without unacceptably increasing the risk of extirpating the population from the study area." The entire idea behind the HCP is to ensure the long-term viability of the species. Much of the underlying analysis as shown in Appendix N has used modeling (with parameters based on population measurements) to define to risk of local extirpation. The goal should be to drive the risk of extirpation to 0. The document seems to state that if the risk of extirpation is 25% at the end of the permit term, then it would be ok to allow take if the risk was increase by some small about, say to 27%. That is the wrong way to look at it. If the extirpation risk is high, then no take should be allowed. The conservation measure should bring the extirpation risk close to 0. If the risk is close to 0, then it makes sense to think about take, if the extirpation risk can be shown to still be close to 0 after take.

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Commenting on: (Clean version, track changes version) _____

Comment Letter 43—Jan Hintermeister, No date

Response to Comment 43-1

Project applicants are required to avoid and minimize their impacts during project implementation. A requirement was added to the Habitat Plan that project applicants operating in burrowing owl habitat present their avoidance and minimization plan to the Implementing Entity, USFWS, and CDFG along with the monitoring plan to ensure impacts on burrowing owls are limited. The intent of this condition is not to allow a common reduction of the 250-foot buffer, but to allow for unusual circumstances where a conflict arises after initial planning or for other rare events.

Revisions to the Habitat Plan include the following:

Condition 15 in Chapter 6 of the Habitat Plan was updated.

Response to Comment 43-2

Approval of an avoidance, minimization, and monitoring plan is not required during the non-breeding period. Project proponents are required to avoid active winter burrows and to have a qualified biologist monitor any burrowing owls that are present to ensure their behavior is not affected by project activities.

No changes to the Habitat Plan are required.

Response to Comment 43-3

See Response to Comment 43-2.

Response to Comment 43-4

Text was modified to focus surveys in all modeled occupied nesting habitat rather than just in areas with "burrowing owl burrows." This would include areas with burrows where burrowing owls have not been sighted but where presence is possible.

Revisions to the Habitat Plan include the following:

Condition 15 in Chapter 6 of the Habitat Plan was updated.

Response to Comment 43-5

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.3.1 *Setting Conservation Priorities* of the Habitat Plan was modified to reflect that the "burrowing owl habitat viability fee" was changed to "burrowing owl fee" as defined in Chapter 9.

Response to Comment 43-6

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.3.2 *Burrowing Owl Conservation Priorities* of the Habitat Plan was modified to clarify what constitutes inappropriate rodent control (e.g., application of rodenticides, hunting, trapping).

Response to Comment 43-7

Comment noted. The intent is exactly this, but the Implementing Entity needs to preserve the ability to control burrowing mammals should their burrows compromise public safety. Use of pesticides will be a last resort.

No changes to the Habitat Plan are required.

Response to Comment 43-8

There has to be some point in time that is referenced to determine whether a site is burrowing owl breeding habitat or not. Burrowing owl experts that developed the burrowing owl conservation strategy determined that 3 years was an appropriate length of time to distinguish between parcels that are or are not burrowing owl habitat. This is particularly important when considering whether to charge a fee for burrowing owl breeding habitat or not.

No changes to the Habitat Plan are required.

Response to Comment 43-9

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.3.2 *Burrowing Owl Conservation Priorities* of the Habitat Plan was modified to reflect that the reference is to "surveys" in Tier 2.

Response to Comment 43-10

Assurances have not been received from other entities that surveys will continue. The Implementing Entity will work to gain those assurances early on during Plan implementation. Should those entities decide to discontinue surveys, the Implementing Entity will not be required to complete them. However, the flexibility of the burrowing owl conservation strategy depends on an increase in the burrowing owl population at the regional level. If data cannot be obtained from the three core sites to continue to inform the PVA analysis, the Implementing Entity will meet with the Wildlife Agencies to develop an alternative approach.

No changes to the Habitat Plan are required.

Response to Comment 43-11

The Local Partners and the Wildlife Agencies acknowledge the comment.

Revisions to the Habitat Plan include the following:

Figure citations in Chapter 4 were corrected.

Response to Comment 43-12

The growth curve is likely to remain in a negative condition for some number of years. The timeline of 15 years was chosen as the first check in time to allow time to collect additional data and, more importantly, to allow time for the conservation measures to work. Analysis of the data assembled for the initial PVA demonstrated that the absolute number of owls was irrelevant to the end goal of a conserved population. This finding is consistent with the general ecological principle that a naturally stable population must have appropriate lands, in appropriate locations, to support dispersal and growth through natural processes. The following determinations are at the core of the Habitat Plan for this species: try and maintain the existing colonies to the extent practicable; protect and manage lands within reasonable dispersal distance of the extant colonies to allow for natural dispersal and expansion; and, if the first two steps are unsuccessful, implement more aggressive approaches, including population augmentation. Introduction of a significant number of outside burrowing owls into the South Bay under the current conditions is unlikely to be successful until there is a secure network of utilizable, self-supporting sites.

No changes to the Habitat Plan are required.

Response to Comment 43-13

In this case, according to the data evaluated to develop the PVA, numbers of owls separate from local population growth does not have significant value for the end goal. The comment is correct that numbers of owls are ultimately important, but only as a result of local population growth, not as a result of artificial augmentation.

No changes to the Habitat Plan are required.

Response to Comment 43-14

Comment noted. New colonies will be incorporated into the PVA only after they have been surveyed for 10 years.

No changes to the Habitat Plan are required.

Response to Comment 43-15

Reference should be to Habitat Plan **Appendix N** rather than Chapter 5.

Revisions to the Habitat Plan include the following:

Revisions to the Habitat Plan include a modification to the text in Chapter 4 to correct the reference.

Response to Comment 43-16

Take of burrowing owls will be allowed only if it can be demonstrated that at least three burrowing owls are being recruited into the breeding population each year, thus maintaining a growing breeding population. A PVA will always indicate results in a risk of extirpation; it cannot achieve a value of zero.

No changes to the Habitat Plan are required.

Libby Lucas

From: Steve_Barre@fws.gov
To: Franck, Matthew/SAC
Subject: [R8SCVHPcomments@fws.gov] Fwd: 2011 Santa Clara Valley Habitat Plan Vols. 1-4, EIR/EIS, Implementing Ag...
Date: Monday, April 18, 2011 4:53:44 PM

JLucas1099@aol.com
04/18/2011 04:50 PM

To: R8SCVHPcomments@fws.gov
cc:
Subject: Fwd: 2011 Santa Clara Valley Habitat Plan Vols. 1-4, EIR/EIS, Implementing Ag...

Received: from magic-d22.mail.aol.com (magic-d22.mail.aol.com [172.19.155.138]) by cia-mc03.mx.aol.com (v129.10) with ESMTP id MAILCIAMC031-b0154daccd99a8; Mon, 18 Apr 2011 19:47:37 -0400
From: JLucas1099@aol.com
Message-ID: <61e62.29e815c3.3ade2799@aol.com>
Date: Mon, 18 Apr 2011 19:47:37 EDT
Subject: 2011 Santa Clara Valley Habitat Plan Vols. 1-4, EIR/EIS, Implementing Agreement
To: RSSCVHPcomments@fws.gov
Content-Type: multipart/alternative; boundary="part1_61e62.29e815c3.3ade2799_boundary"
Return-Path: <JLucas1099@aol.com>
Return-path: <JLucas1099@aol.com>
Full-name: JLucas1099
MIME-Version: 1.0
X-Mailer: 9.0 SE for Windows sub 5047
X-AOL-IP: 75.37.25.183

Cori Mustin, Sacramento Office,
Fish & Wildlife Service, US Department of the Interior,
2800 Cottage Way, Room W-2605
Sacramento, California
95825-1846
April 18, 2011

RE: Santa Clara Valley Habitat Plan, Vols. 1-4, EIR/EIS, and Implementing Agreement

Dear Cori Mustin,

In regards the Santa Clara Valley Habitat Plan I concur with Kevin Bryant's comments submitted on behalf of the Santa Clara Valley Chapter of the California Native Plant Society. As a stakeholder in this HCP/NCCP process since its inception in 2005 he fully understands the full scope of this multispecies conservation plan.

There are a few observations I would like to make in general on this Habitat Conservation Plan, however, based on past environmental review of projects in the Coyote Creek watershed and in adjacent streams of Santa Clara County. Due to limited time for review of this document I will touch on random points of concern.

~ 7.9 The relationship of SCVHP to Three Creeks Habitat Conservation Plan is hard to evaluate as the Three Creeks HCP is not available for review. There are cumulative concerns that I have with the HCP interface with all the creeks of Santa Clara County and the present seemingly contradictory approach to flood control of the Army Corps of Engineers and the Santa Clara Valley Water District. In the proposed Pajaro River COE study it appears that the upper vegetated bank of the river is to be removed which supports valuable habitat and tree canopy. (This needs to be addressed in Volume 2 p. 5-85.) It might be recommended that an addendum be undertaken to exclusively address flood control best management practices for this HCP/NCCP separate from the Three Creeks Habitat Conservation Plan. In San Francisco Basin Plan there is presently a permitted impact by dischargers to discharge into receiving waters at an elevation in water temperature of 5 degrees Fahrenheit. This is not compatible with a cold water fishery and could contradict much of what is proposed in this HCP for summertime reservoir releases (Volume 1, pp 2-77-79). Pulse flows need to be coordinated with incoming and outgoing seasonal needs of anadromous coldwater fishery and preferably in the cool of evening as that is when the fish seem to prefer to travel. Salmonids adjust the migratory schedule to when rains start in ernest and to whether it will be a dry or wet year. Wet years have larger returning runs. Tree canopy is essential to retain cool water temperature and SRA and benthic organisms are indicative of healthy streams
(Cooler water temperatures also make instream contaminants less lethal). 1

~ 9.1 - 9.4.2 Reserve System Lands are described as preferred to be acquired outside of urban areas in order to provide contiguous high quality habitat. I might play devils advocate and suggest that recent politics seems to put higher emphasis for funding on possible habitat in pocket parks within an urban core. In the hills of eastern Coyote Valley the ravines that reach down to Coyote Creek are important wildlife corridors and provide wetlands refugia for red-legged frogs, tiger salamenders, and western pond turtles. It would take little effort by developers to preserve a viable amount of buffered habitat in these ravines and to place roads and bridges high enough to retain the integrity of the watershed, and yet this is not being mandated. By the same token, all Caltrans projects that cut across foothills, as in upgraded #101 corridor, need undercrossing culverts. The list of highway projects in Volume 1, Table 2-6, has enormous capability for habitat impacts and it would have been reassuring to have included wildlife friendly criteria for overpass and culvert designs. 2

~ Though did not find fences discussed as a management tool I would like to suggest that hedgerows be encouraged instead of fencing at every opportunity, along property lines, roads and creeks where human incursion is to be restricted. Some thirty native plant species could be used in hedgerows to provide cross-valley wildlife corridors such as along Fisher Creek or Bailey Avenue in Coyote Valley as an example.
Fencing along stream corridors as found in Coyote Creek Streamside County Park would be nice to replace. Wildlife of the eastern foothills has until recently been able to pass down ravines to Coyote Creek and under the #85/#101 interchange and across the valley floor by Fisher Creek to the Santa Cruz Range. This route needs to be reintroduced. An equally vital cross valley corridor could perhaps be enhanced adjacent to #152. 3

~ In regards to concerns expressed by the Santa Clara County Cattleman's Association as to the high fees that will be incurred with implementation of this HCP, might it be feasible to expand on Natural Resource Conservation, UC Extension and possibly Cal Poly agriculture education interface with agriculture interests to provide inkind services of field experience to reduce financial obligations? With the loss of Williamson Act support to agriculture in Santa Clara County it is important for this plan to introduce protective alternatives.

4

I apologize for not doing a better job of reviewing this plan in time for comment but will continue to study it. In closing I might mention a rough list of common names of feasible hedgerow species: California sagebrush, manzanita, ceanothus, western redbud, mountain mahogany, creek dogwood, Califonria hazelnut, coast silktassel, toyon, sage, twinberry, Arcuate bush mallow, California wax myrtle, ninebark, hollyleaf cherry, coast live oak, blue oak, black oak, valley oak, coffeeberry, redberry, golden currant, hillside gooseberry, chaparral currant, California wild rose, wood rose, arroyo willow, blue elderberry, black sage and California huckleberry.

Thank you for consideration of these comments.

Sincerely,

Libby Lucas
174 Yerba Santa Ave.,
Los Altos, Ca 94022

Comment Letter 44—Libby Lucas, April 18, 2011

Response to Comment 44-1

Regarding implementation of covered activities that may involve a partnership between a Local Partner and the Corps or other non-Local Partner agency, projects and activities may be implemented only if they are consistent with the requirements of the Plan, including the application of all conditions on covered activities described in Habitat Plan Chapter 6. Habitat Plan Chapter 6 contains a number of avoidance measures (also called best management practices) for flood protection projects, including review by the Wildlife Agencies.

All covered activities must comply with all applicable regulatory requirements, including ESA requirements related to listed fish, CWA requirements associated with Section 401water quality certification, and Porter-Cologne Water Quality Control Act requirements related to waste discharge requirements.

Also see Response to Comment 42-5.

No changes to the Habitat Plan are required.

Response to Comment 44-2

As indicated by covered species occurrence data described in Habitat Plan **Appendix D** *Species Accounts*, pocket parks in the urban core do not provide suitable habitat for most, if any, of the covered species. The Local Partners and Wildlife Agencies agree that the eastern hills rising up from the Coyote Valley provide important habitat corridors as well as suitable habitat for covered species. That is why this area is identified as high priority for acquisition in Habitat Plan **Figure 5-7**. Project proponents in rural areas are required to avoid impacts within stream and riparian setbacks except under certain circumstances, as described in Habitat Plan Chapter 6, Condition 11 *Stream and Riparian Setbacks*.

See Habitat Plan Chapter 6, Condition 6 *Design and Construction Requirements for Covered Transportation Projects* for information on highway project design requirements.

No changes to the Habitat Plan are required.

Response to Comment 44-3

Comment noted. All available tools will be considered by land managers as long as such tools provide the proper level of security from trespass or integrity to retain grazing animals.

No changes to the Habitat Plan are required.

Response to Comment 44-4

Comment is addressed in Master Responses #2 and #5.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #5.

Joshua McCluskey

From: Molinari, Karen
To: Franck, Matthew/SAC
Cc: Schreiber, Ken
Subject: Comment #2 via web FW: HCP comments
Date: Thursday, May 05, 2011 1:44:13 PM

Matt- Comment #2 via the SCV HCP web site. Karen

From: Josh M [mailto:mid70s@yahoo.com]
Sent: Monday, April 18, 2011 10:22 AM
To: Molinari, Karen
Subject: HCP comments

The plan to use Metcalf canyon and overpass as a connection for Coyote Ridge and Tulare Hill for the bay checkerspot butterfly is flawed. According to Susan Harrison (1989), in the Ecological Society of America, dispersal of the bay checkerspot over distances of 50 meters appears to be random. And based on Harrison (1989) data significant modification and habitat islands will be needed to facilitate a net habitat gain. The fact that the bay checkerspot is currently extirpated from Tulare Hill and the surrounding western foothills already clearly point to the lack of connectivity. I suggest that if any modifications to the connection are to be made, that it would be better to focus on multiple species. It would also be better to move the proposed connection farther south, to say Baily ave, since it is more likely that the target species of the report are to be found there. This would also create a much higher cost benefit ratio for the constituents of Santa Clara County. 1

Joshua McCluskey

Comment Letter 45—Joshua McCluskey, April 18, 2011

Response to Comment 45-1

The Wildlife Agencies and Local Partners do not share the commenter's concern regarding areas targeted for conservation to benefit the Bay checkerspot butterfly. The Habitat Plan reviews the same Susan Harrison (1989) paper and cites these same movement distance parameters in the Bay checkerspot butterfly species account (Habitat Plan **Appendix C**). The species is not considered expatriated from Tulare Hill and surrounding western foothills (see Habitat Plan **Appendix C**, subheading *Bay Checkerspot Butterfly,* **Figure 2**). Acquisition Action LAND-L4 targets land acquisition across Linkage 10 (Calero County Park to Coyote Lake-Harvey Bear Ranch County Park, across Coyote Valley or Tulare Hill/Santa Teresa Hills) and will benefit covered serpentine plant species in addition to Bay checkerspot butterfly (Habitat Plan **Table 5-2a**).

No changes to the Habitat Plan are required.

David Rubcic

April 18, 2011

Attn: Ken Schreiber

Re: Comments on SVHCP

While we are very supportive of protecting habitat for threatened species we feel the proposed SVHCP unfairly distributes cost and preserved land.

Prior to purchasing our land in unincorporated Santa Clara County in 2001 we had a biologist review the site for potential habitat and endangered/threatened/potentially threatened species. Finding none we purchased the ten plus acres at a price higher than land requiring habitat preservation or take permits from the wildlife agencies yet still within our construction budget.

In particular we have the following comments:

1. Fees should not be charged to land that has no threatened or endangered species habitat value 1
2. Charging fees to all development unfairly penalizes property with no habitat and unfairly gifts that money to those with land requiring habitat preservation/mitigation 2
3. Any project that has begun (not completed, only begun) the approval process, such as Building Site Approval, should be exempt from the fee* 3
4. Projects providing habitat, particularly on the valley floor, should be exempt or pay a greatly reduced fee 4
5. Notification, by mail, to all property owners, in plain language, should be provided to all landowners and interested parties as many non-farming property owners are not aware of this proposal 5
6. Over 2,000 pages of document is excessive and prohibits full reading my most (including us) 6

**Projects in the approval process have already completed budgets without a SVHCP fee. The fee could add upwards of $150,000 per single family home in the unincorporated area due to the disturbed developed area including leach fields. (The unincorporated estimate provided by Mr. Schrieber did not include leach field area.)*

In essence it appears the SVHCP is designed to have those with land requiring no preservation lower the development costs for those who have purchased lower value land (or have owned lower value land for generations) and also allow habitat land in the valley floor be fully developed providing an even more unnatural balance in a fragile ecosystem.

Thank you for considering these comments,

David Rubcic
1475 Terri Lynn Court
Gilroy, CA 95020

Cc: Supervisor Wasserman

Comment Letter 46—David Rubcic, April 18, 2011

Response to Comment 46-1

Comment is addressed in Master Responses #2 and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #10.

Response to Comment 46-2

As described in Habitat Plan Chapter 6 and Chapter 9, development that occurs on urban-suburban, landfill, developed agriculture, or reservoir land cover types (i.e., land cover types that are already fully developed) are not charged fees unless the activity may affect a mapped or unmapped stream, riparian , serpentine, pond, or wetland land cover types, or the activity is located in a stream setback or if the activity triggers the nitrogen deposition fee. Many activities are also exempt from requirements to implement conditions on covered activities.

Portions of this comment are addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 46-3

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 46-4

Habitat Plan Chapter 9 describes the process whereby projects that contribute lands to the Reserve System may pay reduced impact fees.

Portions of this comment are addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 46-5

Extensive outreach to all communities within the study area has been undertaken for this project in compliance with CEQA, NEPA, and the NCCP Act. Habitat Plan Chapter 1, Section 1.4.8 *Public Outreach and Involvement* describes these efforts.

No changes to the Habitat Plan are required.

Response to Comment 46-6

The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Kristen Jensen Sullivan

April 18, 2011

Ken Schreiber
Program Manager
Santa Clara Valley HCP/NCCP
70 West Hedding Street
East Wing, 11th Floor
San Jose, CA 95110

Re: Draft Santa Clara Valley Habitat Conservation Plan, Natural Communities Conservation Plan and associated Environmental Impact Statement and Environmental Impact Report (collectively, "the Plan")

Dear Mr. Schreiber:

I appreciate recognition of the importance of the Coyote Creek watershed in the Plan. However, the east-west wildlife corridor connection in Coyote Valley and the surrounding mountain ranges (Diablo and Santa Cruz Coast Ranges) are critical to the overall health of this bioregion for numerous reasons, two of which are stated below.

First, the preservation of Coyote Creek is but one component of a comprehensive watershed management, bioregional plan. The seasonal inland wetlands, the east-west documented wildlife movement, upland habitats, Fisher Creek, Ogier Ponds, Laguna Seca, and valley oak savanna are all crucial to the overall health of the Coyote Creek watershed system. Continuous connected living systems transcend the boundaries of just Coyote Creek. Though riparian habitat is vital to wildlife species, numerous of which are in decline, many animals need to move considerable distances during their life cycles. Therefore, the east-west wildlife corridor linkage is essential. 1

Second, scientists have determined that global climate change will result in shifting habitats so the emphasis on restoring and protecting this crucial east-west Coyote Valley wildlife corridor becomes substantially more important as it provides us with a unique opportunity to preserve and restore this naturally functioning mosaic. For example, restoration and preservation of the natural hydrogeomorphology of Laguna Seca, Fisher Creek drainage and the wetland habitat can provide significant off-site flood peak attenuation as well as necessary natural habitat—a concomitant benefit to predicted climate change.

Thank you for this opportunity to comment on the Plan.

Sincerely,

Kristin Jensen Sullivan

Kristin Jensen Sullivan
Kirsch Center for Environmental Studies
Environmental Studies Department
BHES Division
De Anza College

Comment Letter 47—Kristin Sullivan, De Anza College, April 18, 2011

Response to Comment 47-1

Comment is addressed in Master Response #8.

Revisions to the Habitat Plan will be consistent with Master Response #8.

Santa Clara Valley Audubon Society

Santa Clara Valley Audubon Society
Founded 1926

Via Email

Kenneth Schreiber
Program Manager, Santa Clara Valley HCP/NCCP
Santa Clara County Government Center
70 West Hedding Street
East Wing, 11th Floor
San Jose, CA 95110
ken.schreiber@ceo.sccgov.org

April 18th, 2011

COMMENTS ON THE WESTERN BURROWING OWL CONSERVATION STRATEGY, SANTA CLARA VALLEY HABITAT PLAN

Santa Clara Valley Audubon Society is pleased to comment on the proposed Western Burrowing Owl Conservation Strategy of the Santa Clara Valley Habitat Plan (VHP). We believe that the VHP provides an important opportunity to preserve the declining population of burrowing owls in our county, and to allow this population to recover.

We concur with the conclusion of the Population Viability Analysis (PVA, Appendix N) that: "*Current PVA population data indicates an unacceptably high risk of extirpation of the local burrowing owl population*." (Page M-16, first paragraph). We agree that this situation mandates urgency, and that the goals of the VHP - stabilization and recovery of the population - will not be achievable unless aggressive action is taken (Pages 5-170, M-1). However, our opinion differs from that of the VHP, in the timing and nature of the actions required, in that we believe more aggressive action needs to be taken immediately. We differ in our perception of what constitutes aggressive actions, and ask that proactive actions occur during the initial phases of implementation, and are not deferred.

Our comments focus on Appendix M, Burrowing Owl Conservation Strategy. We also comment on sections of Chapters 6, 7, and 8.

CHAPTER 5 AND APPENDIX M: BURROWING OWLS CONSERVATION STRATEGY

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I. Background

The Population Viability Analysis accurately points out the immediate risk of extirpation for the burrowing owl in Santa Clara County. It states that in order for burrowing owl to have an increased probability of persisting locally during the 50-year term of the VHP, the population will need to steadily grow instead of continuing to decline, as it has over the past decades. The VHP does not explain, however, the mechanism by which the proposed conservation strategy would reverse this negative trend. Instead, as assumption is made that securing and managing land would suffice to reverse the declining trend.

At present burrowing owl colonies survive in the expanded study area only where active intervention has occurred. At these sites biologists have been hired to implement conservation plans, monitor the colonies, manage and enhance owl habitat, and supervise and educate staff and the public. This is in contrast to sites were no active management has occurred, where colonies have disappeared. Even at the managed sites (Moffett, San Jose Airport, Shoreline), burrowing owl populations have continued to decline over the last decade. While we support the focus on securing and managing land, we believe that direct, active intervention is also needed in order to preserve and expand the owl population.

1

We argue that active components such as captive breeding, population augmentation and re-introduction and active relocation of displaced or evicted owls must take place as an integral component of the VHP. Importantly - rather than a deferring reintroduction efforts to a later phase of the VHP as "last resort" (Page M-2, first paragraph)**, these actions should be implemented as early as feasibly possible.**

On Page 5-170 and M-2 the VHP proposes that *"Initial techniques will include utilizing data gathering and analysis to inform management decisions, testing proposed management techniques."* This is, essentially, a partial description of Adaptive Resource Management. The VHP would benefit from providing a definition and description of how Adaptive Management processes should be incorporated into the VHP over the permit period. We propose that for the purpose of the VHP, adaptive management would implement a dynamic and iterative process as proposed by the Conservation Measurement Partnership (CMP). (Open Standards for the Practice of Conservation are available at http://www.conservationmeasures.org/initiatives/standards-for-project-management).

II. Burrowing Owl Conservation Regions

In section **M2.1 (and page 5-170)** The VHP proposes: "*Generally, long-term management agreements will be put in place in the northern part of the study area and in the expanded study area*" (Page M-2, last paragraph). Long-term management agreements are a good start, but are often inadequate to protect owls or to induce population increase, as shown repeatedly in parks along the San Francisco Bay (Palo Alto, Mountain View, Sunnyvale). To date, **burrowing owl colonies survive in the expanded study area only on sites where biologists are employed to implement conservation plans, monitor colonies, enhance habitat, and supervise and educate staff and the public** (for example: Mountain View, San Jose airport, Mofett). The VHP

2

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should require that management Agreements include 1) habitat enhancement (mowing/grazing, artificial burrows, habitat for prey), 2) the development of site-specific education plans for staff and for the public, and 3) install a site-specific project approval process that includes review by a burrowing owl biologist for all work on sites where owl colonies exist.

At least one full time owl biologist should be hired by the implementation authority IMMEDIATELY, to execute, implement and monitor management agreements. Hiring of a burrowing owl biologist upon approval of the VHP would constitute one "aggressive" action by the VHP.

The VHP proposes:
"*If conservation actions in the North San José/Baylands region prove successful, and the number of breeding burrowing owls increases substantially, it is reasonable to assume the nesting burrowing owl population will expand into suitable habitat in the South San José, Morgan Hill, and Gilroy regions*." (Page M-3. First paragraph, Page 5-170)
We are open to the idea that expansion and colonization of the Gilroy / Morgan Hill area by owls from North San Jose would occur if the northern populations start to expand instead of continuing to contract, but would like to understand the scientific basis behind this assumption. This assumption should be evaluated, as a part of an Adaptive Resource Management process. Furthermore**,** an expectation that the owls would recover in North San Jose/Baylands Region in numbers large enough to migrate and colonize the south of the County is not an "aggressive" conservation action. **We believe that burrowing owls should be re-introduced to the Gilroy/Morgan Hill areas early in VHP implementation and in parallel to other conservation efforts.** 3

A. <u>North San Jose/Baylands Region</u>
In Appendix M., The VHP proposes a three-fold strategy.

1. *First Component: Stabilize **existing colonies** to the largest extent practical… by attempting to secure long-term management agreements to maintain nesting and foraging areas.* (Page M-3 last paragraph, page M-4). The VHP does not assess threats to existing populations/colonies in Moffett Field, Mission College, and North San Jose which have also been declining in recent years.

   An aggressive conservation action should acknowledge that the remnant burrowing owls colonies and nesting sites in the study area are currently at risk. It should also recognize that planned development will likely hamper efforts to protect or stabilize these populations and maintain nesting pairs currently living at these sites. Mitigation practices (Condition 16, page 6-70 to 6-74), essentially allow the harassment of owls to the point of eviction from nesting sites without providing an alternative burrow close by. This is too close to comfort to the practice that, over the last 20 years, caused the decimation of the BUOW population of Santa Clara County. **Aggressive measures would establish an active relocation plan for colonies where development is expected to occur (even in cases where mitigation has taken place in the past, but development is imminent), and a methodology for the re-** 4

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establishment of these colonies on protected lands.

As identified in the VHP, active land management is needed if burrowing owls are to survive. Management should include vegetation and predator management ("Experience shows us that short grass during the nesting season is **critical** for the owls reproductive success", *personal communication,* Phil Higgins, Shoreline at Mountain View). Moreover, to protect nests from pets and unintended harm by staff, education plans for staff and for the public are needed (Dr. Lynne Trulio, Shoreline Burrowing Owl Preservation Plan, 2011). Thus, as detailed above, a dedicated owl biologist is needed to supervise and monitor implementation of management and education programs, as well as habitat management and enhancement.

Please add Tesla and Warm Springs in Fremont to the list of important populations and potential expansion areas on page M-3, second to last paragraph.

2. *Second Component*: *Attempt to increase the burrowing owl population and number of colonies within the existing occupied area* (Page M-4)

   SCVWD levees (e.g., Pond A4) and closed landfills within San José and other cities (with the exception of Shoreline) currently have no burrowing owl populations. Landfills (Page M-5) should be in Strategy III. Burrowing owls should not be encouraged to occupy functioning SCVWD levees (Page M-4). If there exists a current population occupying the levees, we would support active management of that population.

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3. **Third Component:** *Long term, attempt to extend the burrowing owl range beyond the existing localized area… outside of currently occupied nesting habitat…" (P. M-5, paragraph 3).* The following proposed sites are currently occupied by burrowing owls, and thus belong in Component II: Moffett Field, Don Edwards NWR, Shoreline, various bay front lands in Fremont.

   Assuming stabilization of the existing localized population followed by expansion of that population, we strongly believe that an active re-introduction into the South County regions (Gilroy, Morgan Hill) should be incorporated into this component.

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B. <u>Gilroy Region</u>

The VHP characterizes the Gilroy region as having a Moderate-High potential for nesting burrowing owls (P. M-6). The VHP proposes the acquisition of agricultural lands and their restoration into grassland.

Grasslands in the Gilroy region exist, and (to our knowledge) are devoid of burrowing owls. Thus, habitat acquisition alone is unlikely to fulfill the goals of the conservation plan for burrowing owls. In addition to acquisition, habitat enhancements specifically designed to attract burrowing owls are needed to achieve this goal. Habitat enhancements can include 1) the introduction of additional nesting enhancements (artificial burrows), 2) the re-introduction of California ground squirrels, and 3) the re-introduction of displaced burrowing owls from elsewhere in California by means of active relocation. "Aggressive" Burrowing

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Owl conservation actions would include immediate implementation of all three components above.

The VHP notes that there may be additional potential opportunities, potential sites, and possible cost-effective ideas. The burrowing owl conservation strategy should be developed to determine whether or not these are viable components of the VHP.

We propose that the VHP include efforts to work with organic farmers in the Gilroy area to examine the possibility that farms incorporate bands of burrowing owl habitat at the edges of their agricultural fields. The process for such agreements should be similar to the creation of long-term management agreements in the North San Jose/Baylands Region.

III. Population Performance: M 2.2

To provide a methodology for the analysis of historical population trends, and to measure future trends as the VHP is implemented, a Population Viability Analysis (PVA) was performed. The analysis was performed on population data of adult burrowing owls using an 11-year period, 1999–2009, from Moffett Airfield, San José International Airport, and Shoreline at Mountain View.

A. 1. We do not agree with the assumption that "*changes in population performance at these three colonies are representative of changes in the South Bay burrowing owl nesting population as a whole*". We believe that the three sites used for the historical analysis are not representative of the VHP Study Area in general. All three sites included in the analysis were actively managed by dedicated biologists to sustain burrowing owl populations. In contrast, over most of their range in Santa Clara County, burrowing owls have been evicted as their habitat was destroyed and developed for human use. New construction, discing, tall vegetation, and ground squirrel "management", all degrade large areas of potential burrowing owl habitat. These activities in the majority of the VHP Study Area were not offset by provisions to maintain the burrowing owl populations such as installing alternative artificial burrows or maintaining adequate nesting and foraging habitat. Due to these discrepancies in habitat management the performance of populations at these three sites is a best-case scenario and does not represent typical changes in burrowing owl population for the rest of the county. The data used in the analysis grossly underestimate the risks to remaining colonies that are not protected from development or habitat degradation. Moreover, even at these actively managed sites burrowing owl populations declined despite attempts to preserve and improve their habitat.

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The efforts invested in owl preservation at these three sites are not unlike those recommended by the VHP to protect and enhance land for burrowing owls. Yet the population decline continues. These facts should raise a red flag and call into question the priorities of the conservation actions proposed by the VHP. In our opinion, the VHP should integrate land management with aggressive actions that would proactively increase the number of burrowing owls in these and other colonies.

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B. Ten years of data were analyzed by the PVA for the three sites. The trend as stated, shows "*an unacceptably high risk of extirpation of the local burrowing owl population*." As we have described above, this is true for sites where land was managed to sustain burrowing owl populations. If we are to accept the assumption that "*the population performance at these three sites can be used as an index for population performance for burrowing owls in the Habitat Plan study area*", the conclusion should not be that an additional 10 years of data gathering are needed before Adaptive Management plans can be developed (as proposed on Page M-10: *"Setting the goal of achieving a positive growth rate by Year 15 allows for the inclusion of sites that are under the authority of the Habitat Plan to be incorporated into a PVA analysis, and apply an adaptive management approach if it is discovered that positive results are not being reached at Year 10"*). **Three important conclusions can be made from the above stated facts: First, the population may already be too small to recover even with land management by a biologist. Second, based on the data analyzed by the PVA the threat of extirpation is imminent. Third, aggressive measures, which have not been included in previous local species management plans, must be implemented immediately to increase population size to achieve a stable population.** 9

C. We agree that growth rate is a more accurate predictor of population persistence than an ultimate population size (Page M-9, first paragraph). However, we question the inference that the VHP conservation strategy should focus on a 10-year monitoring effort (that is proposed to validate the PVA model outcome which proposes a growth of 3owls/year). While a steady increase in growth rate is indeed advantageous, we argue that the immediate goal should be to increase the numbers of burrowing owls and the number of colonies in order to achieve greater resilience. We argue that to achieve this goal it will be necessary to augment existing populations and to reintroduce owls into additional habitats. **We recommend starting with a study of captive breeding/nestling augmentation and re-introduction/active re-location techniques. Long-term Adaptive Management can then be utilized to monitor and advance the ultimate goal of population recovery and expansion.** 10

IV. Biological Goals and Objectives (page M-9) **- M.3**

A. The VHP would benefit from stating the goals plainly and clearly and detailing timing and methodology of their implementation. We believe the goals should be:

- Goal #1: Prevention of extirpation of burrowing owls from Santa Clara County
- Goal #2: Population recovery and expansion
- Goal #3: Establishment of a resilient population in Santa Clara County 11

Goal #1 should be addressed immediately. Efforts to increase the number of burrowing owls should include methods such as captive breeding, nestling augmentation, active relocation, and reintroduction.

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Goal #2 should focus, as proposed by the VHP, on the population growth with the objective of changing the growth rate from negative to positive. Methodologies should include securing, enhancing and managing habitat and importantly educating all people who have access to lands where burrowing owls currently exist or the VHP proposes to expand their presence.

Goal #3 should be to create multiple sustainable colonies in different regions of the Study Area.

B. Section M.3 (pages M-9 to M-10) is confusing. It needs to clarify the relationship between the referenced habitat types/vegetation communities that are proposed for acquisition, enhancement, and restoration and the sites that are to be acquired and/or managed for burrowing owls. Please rewrite this section to a concise and informative form. 12

C. Management and education programs and activities are of paramount importance for the recovery of burrowing owls. We ask that these should be listed in a clear and organized format. 13

D. Page M-10, second paragraph: The basic principles and guidelines for an effective Adaptive Management plan should be presented. The guidelines should include components that:

1. *Identify and clearly state the assumptions that the conservation strategy is based on to allow objective assessment of their validity*.

   For example:

   i. The assumption that population trends for burrowing owls at Shoreline, Moffett, and San Jose Airport adequately represent trends for the population in the entire VHP permit area;

   ii. The assumption that an increase in owl population in North San Jose would allow for dispersal and recruitment into the Southern regions; and

   iii. The assumption that the current burrowing population can recover without active intervention (feeding, augmentation, active relocation etc.).

   Additional assumptions are embedded in the Conservation Strategy. All need to be specified. The underlying assumptions on which the PVA is based are an integral part of the assessment of its viability, Since the PVA is used to drive and prioritize conservation actions, as well as to calculate acreage goals for conservation, it is critical to understand the basis on which all conclusions are reached. 14

2. *Identify timeline and methodology for evaluating the assumptions.* We strongly disagree with the VHP's proposition that ten additional years of monitoring owls at 15

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Shoreline, Moffett and San Jose Airport are needed prior to an evaluation and possible adjustment of the Conservation Strategy. Instead, all actions (Tiers 1 to 3) should be implemented from the start.

3. *Monitor the effectiveness of conservation actions in the county*. The implementing agency should hire a burrowing owl biologist to implement and monitor conservation efforts in the expanded study area. 16

4. *Dynamically adjust conservation strategies and actions to reflect adaptive management learning as well as changing conditions*. 17

E. Page M-10, third paragraph: It is convenient to continue monitoring burrowing owl populations in the three study areas described in the PVA. However, such monitoring cannot be the only measurement of success for the three goals listed above. Moreover, it is not possible to evaluate the effectiveness of the VHP by relying solely on observation of sites outside its jurisdiction:

1. Year 15 survival of three populations can measure the success of Goal #1 (Prevention of extirpation of burrowing owls from Santa Clara County).
2. Goal #2 (Population recovery and expansion) can be measured by analysis of new colonies established in areas protected and enhanced by the VHP in all three regions.
3. Goal #3 (Resilient population) is measured by numbers AND distribution, as well as other ecological parameters such as survival and recruitment.
4. Banding of adults and fledglings may be required to measure success of Goals #2 and #3.

If the VHP expects to achieve the Year 15 positive growth rate through an increase in the number of adult burrowing owls at San Jose International Airport, Moffett, and Shoreline each year during that time period, the VHP should: 18

1. Detail the actions that will take place at each of these locations and are proposed to stabilize the existing population and reverse the currently observed declines. If no significant change in habitat management is expected in these locations, then the VHP should identify other sites within the dispersal range that are available for implementation of conservation activities immediately.
2. Success Criteria should be developed for years 1 – 15, and the VHP should address setbacks. The VHP should evaluate site-specific risks for the three locations and provide contingency actions if success criteria are not met, if the populations continue to decline, or if local extinction occurs.
3. Provide an initial "document of interest" for Shoreline at Mountain View, Moffett Field, and San Jose International Airport, to test the viability of this strategy before it is finalized as "the" strategy.

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We believe that it is unnecessary to limit monitoring to the three populations of Shoreline, San Jose airport, and Moffett. The current estimate for the entire burrowing owl population of Santa Clara County is 35 nesting pairs. This small sample size makes it necessary to document all nesting pairs in the Habitat Plan to accurately record of the viability of the population. Until population recovery is well under way, the entire population should be monitored.

- We recommend that the VHP incorporate a volunteer program to monitor nesting burrowing owls in the study area.

F. Page M-10, fourth paragraph: "*Setting the goal of achieving a positive growth rate by Year 15 allows for the inclusion of sites that are under the authority of the Habitat Plan to be incorporated into a PVA analysis, and apply an adaptive management approach if it is discovered that positive results are not being reached at Year 10.*"

We maintain that the immediate goal must be to prevent extirpation of burrowing owls from Santa Clara County. The VHP must prepare for stochastic fluctuations in population size and risk of extinction. An Adaptive Management Plan should be implemented from the start, not ten years into the plan, or risk further unrecoverable declines in population size during the proposed ten-year study period. We recommend that the VHP implement, from the start, a study of nestling augmentation, importation/active translocation techniques and other active intervention actions. 19

G. Page M-11 lists 7 "generalized conservation Actions" – We recommend using the Open Standards for the Practice of Conservation (http://www.conservationmeasures.org/initiatives/standards-for-project-management) to examine these actions. This would allow more clarity regarding the assumptions, the risks, the criteria, the expectations, and the dynamic evaluation of each of the proposed actions, and help focus the discussion and following implementation process). 20

H. Page M-11 #7., Page M-12 Tier 3: We argue that Tier 3 actions should take effect in parallel with Tier 1 and 2. To achieve this aim we ask that the Wildlife Agencies initiate the approval of research and active methods as an integral part of the burrowing owl conservation strategy immediately, to be ready for implementation with VHP's approval. 21

I. Page M-12: *"…in the short-term, funds collected from burrowing owl conservation and habitat viability fees will be used for two purposes, protection and management of occupied burrowing owl habitat (Tier 1), and data collection and experimentation, particularly to investigate implementation of more active Tier 3 activities, such as population augmentation*". Again, we believe that the available ten years of data suffice to establish that "*Current PVA population data indicates an unacceptably high risk of extirpation of the local burrowing owl population*." (Page M-16, first paragraph) and indicate an urgent need to embark on Tier 3 activities. 22

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J. Page M-12, last paragraph: *"Tier 2 conservation activities will occur throughout the study area, in all four burrowing owl conservation regions because potential burrowing owl nesting habitat occurs in all four regions."* We believe that this effort needs to be prioritized as described in the Tier 2 summary (Page M-11 to M-12). An initial effort to implement Tier 2 actions is a waste of resources UNLESS reintroduction is considered as a viable, simultaneous conservation strategy. Re-introduction of burrowing owls into the Morgan Hill and Gilroy areas may become necessary to allow for population resilience in the county (see Goal #3 above). Thus, there is no need for the pre-requirement that "*nesting burrowing owls establish there on their own*" before action may be taken. 23

V. Setting Conservation Priorities - M.3.1

We maintain that the burrowing owl conservation strategy presented in the VHP is too narrow in focus and may endanger the persistence of burrowing owls in Santa Clara County. The strategy concentrates on three sites that are already managed to sustain burrowing owls. A broader perspective is needed to maintain and eventually expand the countywide population.
The results of the PVA alerted us to the need for immediate aggressive action. The PVA indicates that recruitment of addition owls to Santa Clara Valley is critical if the population is to survive. We believe that the total number of owls is also of paramount importance, and that the PVA underestimates the importance of this variable due to the broad assumptions that the model is based on. Based on the results of the PVA, the VHP postpones proactive intervention that would help increase the population. We argue that this delay may undermine the success of the VHP for burrowing owls. We ask that the VHP recognize that the population of burrowing owls in the Bay Area continues to shrink on a yearly basis and has almost disappeared. Few owls still breed in Santa Clara Valley. **This population is now at the brink of extinction, and immediate action must be initiated in order to actively and purposefully increase the number of owls before the population is extirpated.** 24

The burrowing owl is a "weedy" species, with high fecundity and high mortality. As a result, burrowing owl populations tend to fluctuate. The species can be very resilient and recover, but is also vulnerable to stochastic extinction. New data show that inbreeding occurs at Mission College (2010). Inbreeding is considered by ecologists to be a significant contributing factor to stochastic extinction risks of small populations. **We believe that the VHP should focus on increasing the resilience of the meta-population, by increasing both the numbers of owls and the numbers of local populations, in addition to the attempts to stabilize three existing populations. These additional actions will aid and support the preservation of the three currently managed populations, and may be integral in allowing their projected expansion.**

We argue that the small number of breeding adults, and the limited area where the owls persist, indicates a critical need to:

1. Increase the number of owls
2. Increase the number of nesting pairs
3. Increase the number of colonies throughout the county to create a viable meta-population

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We argue that a successful strategy for the preservation of the burrowing owl must put a high priority on resilience. It should strive to achieve species resilience using import and augmentation of burrowing owls (nestlings and/or displaced adults), and establishing (by relocation) new nesting sites in newly protected areas. Increasing the number of colonies throughout the county will have positively impact the resiliency the owl population in the county.

Definitions: In ecology, resilience is one possible ecosystem response to a perturbation or disturbance. A resilient meta-population recovers quickly from disturbances to local populations, and can better sustain loss of a local population. Meta-population is defined as a constellation of spatially separated populations of the same species, which interact at some level.

VI. Burrowing Owl Conservation Priorities - M.3.2

Tier 1 and 2 activities are based on the assumption that the primary limiting factor impacting burrowing owls populations in Santa Clara County is availability of habitat for nesting and foraging. We propose that the currently small population is an additional, equally important limiting factor. Thus, we request that **Tier 3 activities be prioritized to take place early in the implementation of the VHP, in parallel with Tier 1 and 2.**

25

A. Tier 1 and Tier 2 Conservation Actions (Page M-13 to M-14)

Section M.2 Background proposes: *"The Plan proposes to undertake an aggressive suite of measures aimed at reversing the declining trend of the burrowing owl population in Santa Clara County."* Please explain the criteria by which the proposed actions listed for Tier 1 and 2 are considered "aggressive". These actions have been implemented at the three sites described in the PVA and have been demonstrated to be inadequate to maintain the population existing at the time of their implementation. In our opinion Tiers 1 and 2 fall far short of meeting the criteria for aggressive action. The actions proposed in Tier 3 met the criteria of "aggressive" actions.

26

1. *Tier 1*: We maintain that Tier 1 should focus, and assign high priority, to the maintenance of large patches of very short grass, especially during the nesting season. Shoreline Park, for example, has ample prime habitat with many ground squirrel burrows. The primary limiting factor at Shoreline seems to be limited areas of very short vegetation (all three burrowing owl pairs nest on the golf course, which is mowed weekly), and the secondary limiting factor is limited prey base (*personal communication*, Phil Higgins, Owl Biologist, Shoreline at Mountain View).

   At Shoreline, mowing twice per year (as proposed by the VHP) has proven inadequate, especially in years of average or greater rainfall. When time lagged between mowings, resulting in increased height of vegetation, owls abandoned their nests. In rainy years, grass grows to 2-3 feet within 2-3 weeks of mowing.

27

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We suggest that the VHP provides criteria for vegetation management. As proposed, an initial mowing should occur at the start of the nesting season, but for ongoing maintenance, criteria should be applied on a property-by-property case, and allow for the adjustment of maintenance programs on a seasonal basis. Vegetation management plans can take into consideration method of implementation (mowing or grazing), soil type, plant species, annual or perennial grasses, invasive weeds, and most importantly - ability to respond quickly to vegetation growth and re-growth (which usually is a function of precipitation levels and varies widely from year to year).

Vegetation management should also incorporate habitat for prey species. Thus, it should maintain heterogeneity of vegetation types and height on all eligible properties. This is especially important for areas where grazing is used as a method of control, since some livestock exclusions may need to be implemented.

2. *Education* It is critical that an educational component should be required for all of the employees and contractors of Moffett, San José International Airport, and Shoreline who have access to burrowing owl habitat. It is equally important to educate employees and visitors of other properties under a management contract. 28

3. *Tier 1.1: Stay- Ahead Provisions:* Since the burrowing owl conservation is so different than the strategy for other species, it may be useful to define different parameters of *stay-ahead provision* for the owls, so that the impact is focused on number of owls and not only on land cover type. 29

4. *Tier 2:* Tier 2.1. Provides criteria for assessing the potential of a parcel to function as a burrowing owl reserve. We believe that for sites in the Expanded Study Area, two important criteria are

    i. Possibility of partnership/agreement for owl protection and

    ii. The capacity to implement habitat management and enhancement activities including, but not limited to, maintenance of diverse habitat and short grass, installment of artificial burrows, education of workers and the public, etc. 30

    In addition, in the Expanded Study Area, the word “preserve” may be a hindrance; protection should be valued even if not in a preserve. This would allow partnerships with landfills and golf courses, and for the creation and maintenance of temporary habitat.

5. Tier 2.3. (Last paragraph on the Page M-14): Please explain how data from annual burrowing owl surveys from Moffett, San José International Airport, and Shoreline would be used to determine where burrowing owl conservation fee funds will be spent. It seems to us that the focus on these three sites may divert funding from opportunities to implement conservation actions in other locations in the county. 31

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B. Tier 3 Conservation Actions (Page M-15)

1. We argue that Tier 3 actions are the most urgent of the three proposed tiers. As we pointed out, Tier 3 actions should be taken by the implementing agency as soon as possible. Thus, negotiations with the Wildlife agencies can start at the latest immediately after the approval of the VHP, or proactively prior to this approval. 32

2. Please add Shoreline at Mountain View to the possible sites for a pilot reintroduction program. The City of Mountain View is currently in the process of approving a Burrowing Owl Preservation Plan for Shoreline; is actively creating foraging habitat for the owls that nest in the park; and is embarking on an employee education program; all in an orchestrated effort to increase the survival and nesting success of burrowing owls in the Park and to attract more owls to use the park. Thus, Shoreline is a good candidate site for this purpose. 33

3. Please add active relocation of owls displaced from construction sites to create new colonies in areas protected and managed for burrowing owls. There is no justification for loss of ANY owls burrowing in Santa Clara County. To preserve the burrowing owls of Santa Clara County every effort must be taken to provide displaced owls with alternative burrows and as needed, to implement relocation actions that would promote their adoption of the alternative burrows in protected areas. 34

VII. M.4 Habitat Acquisition, and Enhancement (Page M-16)

Assumptions for Calculating Amount of Conservation Needed

We argue that the goal should be resilience rather than stability. An immediate increase in the number of owls is needed to save the existing population from extinction. We believe that steady recruitment of owls into the population, as offered by the PVA, is a worthy goal, but is unlikely to occur unless truly aggressive conservation actions, as offered by Tier 3, are taken immediately. We believe that only after an initial increase in numbers, the goal of reversing the trend from decline to increase would be feasible. In addition, to creating ecological resilience, the VHP should attempt to create a sustainable meta-population by relocating evicted owls to locations outside of the three populations of Shoreline, Moffett, and the San Jose airport. 35

VIII. M.4 Habitat Acquisition, and Enhancement

M.4.1 **Nesting Habitat**; Assumptions for Calculating Amount of Conservation Needed (Page M-16 – M-17)

We ask that the VHP include specifications for the requirements for NESTING habitat. We recognize that there is an overlap between foraging and nesting habitat, but wish to ensure that habitat that cannot be used for nesting is not considered eligible by the plan's land calculation criteria. 36

M.4.2 Overwintering Habitat

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This section is confusing – please rewrite so that the proposed actions and the logic behind them are clear. Please distinguish actions related to the purchase and management of land for foraging and overwintering land and that of land for nesting and breeding habitat.

We concur that "Land acquisition will be focused on protecting breeding habitat". Thus we request that the logic behind the targeting of habitat within 2-miles of Reid Hill View Airport be justified. We support the intent to pursue acquisition of all or part of the City of San José WPCP buffer lands for protection as a western burrowing owl reserve.

We ask that a contingency plan be considered to include reintroduction, relocation and augmentation of burrowing owl colonies onto protected wintering/foraging habitat, especially in low elevation valleys within the Reserve System that are located on the valley floor or in the Diablo Range and are expected to be managed to benefit nesting and wintering burrowing owls (Page M-18.second paragraph). 37

Please explain how the expectation that "*Conservation easements will be obtained on 300 acres of occupied or suitable burrowing owl breeding sites* (LAND-G6, LAND-G7)" (Page M-18, second paragraph) integrates with the strategy for land purchase and the strategy for land-management agreements. Please explain the reasoning for the specific requirement for exactly 300 acres.

IX. M.4.3 Reserve Land Selection Criteria; Selection Criteria (Page M-19)

We think that the requirement that "*2. If impacts occur in occupied burrowing owl nesting habitat then conservation parcels must be within 7.5-mile of a documented nest location*" is impractical. We prefer alternatives that include active relocation and the establishment of new colonies in the study plan.

A. Parcel Criteria (Page M-19 – M-20)

We wish to reiterate that parcels considered for partnership, easement or acquisition must demonstrate capacity to implement and perform management tasks, including habitat maintenance and enhancement, including, but not limited to, maintenance of diverse habitat and short grass, installment of artificial burrows, education of workers and, where appropriate, the public. 38

We believe that it is necessary to maintain habitat for prey base for the owls, as this will determine the carrying capacity of a proposed parcel. Thus, some structural heterogeneity and diversity of habitat should exist, or potentially be created, on parcels under consideration.

X. M.5 Management Techniques and Tools (Page M-20)

Please add an education and outreach component to this section. 39

Please add active relocation of displaced/evicted owls and their habituation to new environment 40

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XI. M.6 Threats and Uncertainties (Page M-21)

Please add threats of planned development and approved development in North San Jose, The Water Pollution Control Plant, its buffer lands, and Moffett field. 42

Please add the risk that the focus of the VHP on the Expanded Study Area may actually impair the ability of the VHP to save the burrowing owls of Santa Clara County, and prepare contingency plans that focus on re-introduction to mitigate this risk. 43

Please add lack of awareness/education/understanding by landowners, employees who have access to occupied burrows/habitat, and the public. 44

Please invest more in identifying and analyzing risks associated with the proposed conservation strategy, in the spirit of the Open Standards for the Practice of Conservation. 46

CHAPTER 7, MONITORING AND ADAPTIVE MANAGEMENT PROGRAM

I. <u>7.2.4 Guidelines for Monitoring; Protocols (Page 7-28); Sampling Design (Page 7-29)</u>

The VHP proposes that for burrowing owls and species that are sufficiently detectable to obtain estimates of population size, monitoring a randomly selected subset of the population in order to make statistical inference to the whole population can be achieved through adherence to a list of principles listed on page 7-28.

We ask that initially, <u>the entire population of burrowing owls in the county be monitored</u>. With only 35 pairs observed in 2010, the population size in inadequate to justify a randomized monitoring design. Additionally, randomized monitoring design for population estimates over a large area with a small population does not allow for habitat enhancement and augmentation and re-introduction and relocation efforts to be directed to sites where they are likely to be the most successful. Monitoring of the entire population will allow resources, both monetary and biological, to be invested where they are most likely to be successful. 47

II. <u>7.3.3 Species-Level Actions; Western Burrowing Owl (Group 1)</u>

Evaluate Species Response to Habitat Protection and Enhancement (Page 7-58) The VHP proposes, "*in many cases the density and distribution of California ground squirrels in the Reserve System will be used as a proxy for assessing the quality and quantity of burrowing owl habitat within the Reserve System*." For habitat to support breeding burrowing owls, the presence of ground squirrels must coincide with short grass. Thus, habitat assessment should address both ground squirrel abundance and grass height. 48

CHAPTER 8. PLAN IMPLEMENTATION

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Rough Proportionality and Stay-Ahead for the Burrowing Owl Conservation Strategy (Page 8-29)

The *stay-ahead* provision for burrowing owls (Page 8-31) states, "*acreage will count towards Stay-Ahead if it is under a management agreement*" Please clarify: would managed lands outside of the VHP's boundary, but within the extended Study Area for Western Burrowing Owls, qualify as acreage that counts towards the stay-ahead provision? 49

Assumption #7 on Page M-17 states, "*As noted above that 8,120 acres would be reduced to give credit for additional conservation actions (15%) and to account for overlapping foraging habitat between breeding pairs (20%). This would result in total land management commitment of 5,278 acres [8,120 acres – 1,624acres (20%) –1,218 (15%) = 5,278].*" We are concerned with the significant reduction in land requirement for meeting *stay-ahead* provision for western burrowing owl. The reduction in acreage requirements is based on assumptions that should be vetted through an Adaptive Management process 50

CHAPTER 6; CONDITION 16 (Page 6-70)

Condition 16 relies heavily on the use of monitoring as a mitigation measure that would allow construction within the buffer zone and next to occupied burrows, all year around, including during the nesting season.

The purpose for the buffer zone is as such, a buffer zone to prevent accidental impacts to owls. There should be no construction inside the buffer zone, unless an extreme emergency occurs. Then and only then, a burrowing owl specialist should be present at all times, to monitor the situation. How would the monitor determine that construction has encroached too close to the nest prior to the owl abandoning it? Thus, allowing development to disturb nesting owls can easily reach the point in which the owls abandon the burrow or nest, while biologists carefully monitor this destruction. 51

We ask that to avoid or minimize direct impacts of covered activities on western burrowing owl, any owls found on land that is to be developed should be actively relocated to safe environs, and be allowed to acclimate to these locations. Shoreline at Mountain View is a potential site for relocated owls, since the land is protected from development, a preservation plan is currently under development, and habitat enhancements are occurring with the goal of increasing the population of breeding owls in the park. We believe that active relocation of owls, and possibly nesting "families" with eggs or young, into enclosures that allow habituation would provide an aggressive approach to burrowing owl preservation.

Surveys (page 6-70 – 6-72) CA Fish And Game survey protocols for burrowing owls are currently being revised, as are mitigation guidelines and a State Conservation Policy. Please include adequate future reviews of the burrowing owl conservation policy to allow for updates of survey protocols and changing mitigation requirements. 52

Conclusion

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Santa Clara Valley Audubon Society is thankful for the opportunity to comment on the proposed Western Burrowing Owl Conservation Strategy of the Santa Clara Valley Habitat Plan. We hope that our comments can help preserve the declining population of burrowing owls in our county, and to allow this population to recover.

Sincerely,

Shani Kleinhaus
Environmental Advocate
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Comment Letter 48—Santa Clara County Audubon Society, Shani Kleinhaus, Environmental Advocate, April 18, 2011

Response to Comment 48-1

From the beginning, CDFG made it clear that techniques such as translocation, captive breeding, or other forms of population augmentation would be allowed only after such techniques have been tested to ensure a low risk to the individual owls involved. The studies described in the burrowing owl conservation strategy will serve that purpose and are an important component of an adaptive management strategy that will be utilized to boost burrowing owl populations in the study area. The Habitat Plan envisions the types of measures recommended in this comment, but as part of a broader strategy to encourage natural population growth and expansion through implementation of the three tiers of measures. The more aggressive actions, as supported by Santa Clara Valley Audubon Society, are in Tier 3 and will be implemented immediately once pilot studies have been completed to determine the most effective methodologies in the Plan permit area.

No changes to the Habitat Plan are required.

Response to Comment 48-2

Long-term management agreements would include all of the items noted in the comment. The Implementing Entity has the ability (outlined in Chapter 8) to contract with species experts to help with the implementation of specific aspects of the conservation strategy. A burrowing owl biologist could be hired in this capacity.

No changes to the Habitat Plan are required.

Response to Comment 48-3

The concept that burrowing owls from north San José could colonize areas farther south in the valley is based on observed movement distance between breeding years of local owls. It is also likely that burrowing owls could move into the southern part of Santa Clara County from San Benito County. The burrowing owl conservation strategy was structured this way to ensure that, during short-term conservation, resources for burrowing owl would be focused in areas where owls still persist rather than utilizing those resources to purchase land in areas where they do not.

No changes to the Habitat Plan are required.

Response to Comment 48-4

Because avoidance, minimization, and monitoring plans need to be approved by the Implementing Entity, CDFG, and USFWS prior to development taking place on a site with a burrowing owl, it is assumed that the burrowing owl nest site will be protected. In addition, having a biologist on site to monitor the behavior of the owls while the work is being performed will also ensure that no nesting burrowing owls will be harmed. In addition, the conservation strategy is set so that no take of burrowing owls, including harm and harassment, will be allowed during the first 10 years of plan implementation.

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.2.1 *Burrowing Owl Conservation Regions*, was revised in response to this comment to include Tesla and Warm Springs as sites of importance for nesting burrowing owls.

Response to Comment 48-5

In San José, closed landfills have the benefit of being some of the only remaining areas of open grassland habitat, and many of them are owned by the City of San José. It is important to retain these landfills as

conservation opportunities during the permit term. Levees would be included only if they were in areas that would not compromise public safety or the standard management principles of the levee owner.

No changes to the Habitat Plan are required.

Response to Comment 48-6

Component 3 is made up of areas that are outside of the Habitat Plan study area but inside the expanded burrowing owl conservation area. The intent of burrowing owl conservation under the Habitat Plan is to focus on occupied areas in the Habitat Plan study area and not outside the study area. However, it is realized that in order to meet the regional population goals for burrowing owl, progress will have to be made on those other sites outside of the Habitat Plan study area.

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.2.1 *Burrowing Owl Conservation Regions*, was revised in response to this comment.

Response to Comment 48-7

See Response to Comment 48-1.

Response to Comment 48-8

These three sites were used because they are the three largest remaining populations in the South Bay and because sufficient data have been collected over the past 10 years to perform the PVA. In fact, the decision was based mostly on the latter reason. Without the data, these sites could not have been utilized. The wording in this section was modified to state that the population changes at these sites could be indicators of population performance in the South Bay population if they had been under more managed conditions, as they will be once the Habitat Plan in implemented.

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.2.2 *Population Performance*, was revised in response to this comment.

Response to Comment 48-9

Ten years of data are needed at other occupied sites before they can be included in the PVA. During that first 10 years, annual surveys of breeding adults will occur. If at least three owls are detected each year going forward, all of the money generated from the burrowing owl fee will go toward land protection and management. If less than three burrowing owls are detected from one year to the next, 50% of those funds must be spent on Tier 3 (Recovery Actions). This process starts during Year 1 of implementation, not at Year 10. New sites cannot be added to the PVA until Year 10 to prevent the artificial inflation of the number of burrowing owls being recruited into the local population and thus influencing how burrowing owl conservation fees are allocated.

No changes to the Habitat Plan are required.

Response to Comment 48-10

See Response to Comment 48-1.

Response to Comment 48-11

The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Response to Comment 48-12

Grassland and barren areas are described as land cover types in Habitat Plan Chapter 3. They are shown in Habitat Plan **Figure 3-10**.

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.3 *Biological Goals and Objectives*, was revised in response to this comment to note a clarification of the land cover types referenced.

Response to Comment 48-13

Management is discussed under Habitat Plan Section M.5. Educational programs are typically not included as part of conservation strategies for HCP/NCCPs. The Implementing Entity would look to partner with local organization such as SCVAS to implement education programs on preserve lands for burrowing owls. Management plans would be required for each parcel. Education of maintenance staff and others with access to the site would be outlined in each management plan.

No changes to the Habitat Plan are required.

Response to Comment 48-14

Assumptions for both the PVA and the subsequent management decisions are stated in both Habitat Plan **Appendix M** and Habitat Plan **Appendix N.**

No changes to the Habitat Plan are required.

Response to Comment 48-15

See Response to Comment 48-9.

Response to Comment 48-16

See Response to Comment 48-2.

Response to Comment 48-17

Adaptive management will be implemented based on the current understanding of management issues facing burrowing owls at the time. Changes that result from adaptive management will most likely be enacted at the Reserve Unit level and, in the case of burrowing owls, possibly the parcel level. The burrowing owl conservation strategy offers the most flexibility with regard to adaptive management because it even ties population performance to the allocation of funds toward more or less aggressive management actions to reduce the risk of local extinction.

No changes to the Habitat Plan are required.

Response to Comment 48-18

The intention was not to use the population levels at the three surrogate sites to determine success at Year 15. The PVA was used with data at those three sites to determine how many burrowing owls will need to be recruited into the local breeding population to prevent local extinction. That number is three. Annual surveys will be conducted at all breeding sites in the study area, and the metric of three additional owls will be applied to whatever baseline number is established in Year 1 of implementation. Year 15 was chosen as a point in time when success could be measured because there would be more than 10 years of monitoring data at the other occupied sites (not the three surrogate sites used for the PVA). Although monitoring will be coordinated with those three surrogate sites, there are no implications for the Habitat Plan if those populations do not recruit at least three additional owls each year.

No changes to the Habitat Plan are required.

Response to Comment 48-19

See Response to Comment 48-9.

Response to Comment 48-20

The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Response to Comment 48-21

See Response to Comment 48-9.

Response to Comment 48-22

See Response to Comment 48-9.

Response to Comment 48-23

See Response to Comment 48-1.

Response to Comment 48-24

See Response to Comment 48-1.

Response to Comment 48-25

As structured, Tier 3 activities would be triggered when the annual breeding adult surveys determine that less than three adult owls were being recruited into the local population. This threshold was determined from the results of the PVA conducted for the Habitat Plan (**Appendix N**). Under that scenario, and based on population performance in the last several years, Tier 3 activities would occur from the outset of the permit term. It remains the position of CDFG that these types of recovery activities must be a last resort, and thus the Implementing Entity will need to use the results of the PVA and the annual survey to demonstrate that they are at a point of last resort.

No changes to the Habitat Plan are required.

Response to Comment 48-26

Revisions to the Habitat Plan include the following:

(Habitat Plan **Appendix M**, Section M.2 *Background*)

The word “aggressive” was removed from the first sentence of the second paragraph.

Response to Comment 48-27

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.5 *Management Techniques and Tools* was revised in response to this comment to add a sentence to require additional assessment between required mowing treatments to ensure that additional mowing treatments will be added if needed to retain the maximum effective height of 5 inches.

Response to Comment 48-28

See Response to Comment 48-13.

Response to Comment 48-29

The requirement to keep conservation land acreage in rough step with burrowing owl occupied habitat impacts is required by the Plan. Additional language was added to both Habitat Plan Chapter 5 and Habitat Plan **Appendix M** regarding what percentage of that acreage can be in long-term management agreements versus perpetual protection.

Revisions to the Habitat Plan include the following:

Habitat Plan Section 5.4.6, Section 8.6.1, and Habitat Plan **Appendix M** were revised in response to this comment.

Response to Comment 48-30

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.3.2 *Burrowing Owl Conservation Priorities* was revised to consider the willingness of the current landowners and current land practices when selecting areas for burrowing owl management in the permit area.

Response to Comment 48-31

See Response to Comment 48-8. In addition, three sites were used to set the metric regarding the number of adult owls that will need to be recruited into the local population each year in order to realize a positive growth curve. The three sites will not be used to dictate where money is moved year to year. That decision will be based on whether at least three owls are being added to the local population and will rely on the annual survey of breeding adults.

No additional changes to the Habitat Plan are required.

Response to Comment 48-32

See Response to Comment 48-1.

Response to Comment 48-33

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.3.2 *Burrowing Owl Conservation Priorities* was revised to add Shoreline Park to the list.

Response to Comment 48-34

The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Response to Comment 48-35

See Responses to Comments 48-1, 48-9 and 48-10.

Response to Comment 48-36

See the species account in Habitat Plan **Appendix D** for more information on habitat requirements for nesting owls. Burrowing owl land selection criteria are described in Habitat Plan Section M.4.3.

No changes to the Habitat Plan are required.

Response to Comment 48-37

Reid-Hillview airport has been dropped from consideration as a burrowing owl conservation site. The estimate of 300 acres was not a biological estimate but an estimate that was made for the cost assumptions described in Habitat Plan **Appendix G.** This assumption has been changed in the Final Habitat Plan,

No changes to the Habitat Plan are required.

Response to Comment 48-38

The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Response to Comment 48-39

See Response to Comment 48-13.

Response to Comment 48-40

See Response to Comment 48-34.

Response to Comment 48-41

No comment for 48-41 identified. Numbering skipped from 48-40 to 48-42.

Response to Comment 48-42

Additional threats and uncertainties were added.

Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix M**, Section M.6 *Threats and Uncertainties* revised in response to this comment.

Response to Comment 48-43

The focus on the Expanded Study Area is intended to meet regional goals, which are in line with and supersede the Habitat Plan goals. Thus, the focus on that area is not seen as a threat to the goals set forth in the Habitat Plan.

No changes to the Habitat Plan are required.

Response to Comment 48-44

Although this is a general threat to all species and communities, it is assumed that the conservation strategy will be applied by individuals who understand these concepts and will write requirements into management plans that account for these uncertainties. Thus, it is not included in this section.

No changes to the Habitat Plan are required.

Response to Comment 48-45

No comment for 48-45 identified. Numbering skipped from 48-44 to 48-46.

Response to Comment 48-46

The uncertainties associated with the conservation strategy as written are described in the first paragraph of this section.

No changes to the Habitat Plan are required.

Response to Comment 48-47

This is the intent of the Habitat Plan. The Habitat Plan Implementing Entity would take responsibility for organizing the annual survey by bringing together participants before and organizing the data after. The Habitat Plan would not be responsible for surveying the entire county but instead would coordinate with existing survey programs (i.e., Moffett, San José Airport). The Implementing Entity would fill in the gaps, especially as it completes the baseline assessment of burrowing owl habitat availability and parcel ranking.

No changes to the Habitat Plan are required.

Response to Comment 48-48

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 7.3.3 *Species-Level Actions* subheading *Western Burrowing Owl (Group 1)*) "In many cases the density and distribution of California ground squirrels and grassland height will be used as a proxy for assessing the quality and quantity of burrowing owl habitat within the burrowing owl management areas."

Response to Comment 48-49

Acreage that is under a management agreement would count toward the Stay-Ahead provision.

No changes to the Habitat Plan are required.

Response to Comment 48-50

The assumptions were based on professional judgment by qualified burrowing owl biologists.

No changes to the Habitat Plan are required.

Response to Comment 48-51

See Response to Comment 48-34.

Response to Comment 48-52

All burrowing owl sections were updated with information from the CDFG Guidelines released March 2012.

Revisions to the Habitat Plan include the following:

Several sections of the Habitat Plan were revised to reflect new guidance.

Santa Clara Valley Farm Bureau

SANTA CLARA
COUNTY
FARM BUREAU

Cori Mustin
Senior Fish and Wildlife Biologist
U.S. Fish and Wildlife Services
Sacramento Fish and Wildlife Office
2800 Cottage Way, W-2605
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April 18, 2011

RE: Santa Clara Valley Habitat Conservation Plan Public Review Draft

Dear Ms. Mustin,

The Farm Bureau of Santa Clara County works on behalf of farmers and ranchers of all shapes and sizes throughout Santa Clara County. We represent the county's diversity of commodities and growing regions including cherries in Sunnyvale, nurseries in Milpitas, hay production in Coyote Valley, cattle ranching in San Antonio Valley, and peppers in Gilroy. Our members manage the lands that have provided endangered species habitat for generations and they own much of the land identified as potential acquisitions for the Reserve System. Without the support of the farming and ranching communities, Plan implementation will be difficult if not impossible.

The Santa Clara County Farm Bureau has yet to be sufficiently convinced that a Habitat Conservation Plan is in the best interest of Santa Clara County. This plan is inherently inequitable and is disproportionately burdensome for project proponents in rural areas. We believe the net effect of the Habitat Plan will be to be severely limit the ability of agricultural operators and private landowners to maintain the industry's economic viability in the remaining rural portions of Santa Clara County. The Covered Activities and Conditions enumerated in the Plan threaten the agriculture community's ability to adapt operations in response to unforeseeable changing conditions over the proposed 50-year of the Plan.

Please consider our many comments below. These comments reflect our concerns that the costs of the Plan are greater than the benefits, that habitat is not adequately provided for in the Plan, and that the agriculture industry will be weakened by the Plan. We have tried to be as specific as possible in order to facilitate revisions to the Plan and to provide language directly from the Plan when appropriate. Nothing in this public comment letter should be construed as an endorsement of the Public Review Draft or an endorsement of the Plan if certain conditions are met.

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COSTS and FEES

The Habitat Plan places a disproportionate share of the burden funding the Plan on activities in the rural and predominantly agricultural portions of the County—in Conservation Zones A and B—despite the fact that most of the major covered activities and most of the benefits of the plan accrue to the predominantly urban, northern portion of the County. The Santa Clara County Farm Bureau is concerned that this may unduly constrain on-going and future agricultural, agriculturally-related, and other necessary rural development projects in the southern portion of the County of the proposed 50-year term of the Plan. 1

In discussing the rationale in support of the various fees and their weighted application to activities in rural areas of the County, the Plan cites reduced permitting costs and regulatory streamlining as one of the principal benefits accruing to project proponents in the County, arguing that these fees are justified in part on this basis. Our review of the Draft Plan suggests the various fees and numerous new regulatory requirements and restrictions imposed by the proposed would, in fact, greatly increase the difficulty of conducting many routine on-going and foreseeable future projects and activities in rural areas of the County. 2

The other rationale articulated in support of the various fees is linked to presumed impacts of the various classes of project and activities, in particular including activities occurring in the rural southern portion of the County. While the general conceptual basis for straight impact-and-mitigation-based fees is more defensible than the supposed streamlining benefit previously mentioned, we are nonetheless concerned that many of these fees are generally disproportionate to the types of impacts involved and that these fees and other associated planning and environmental constraints imposed under the Plan will unfairly damage private property rights and uses of the private lands and unduly stifle legitimate economic activities in the rural portions of the County. 3

We are also not convinced that many of the types and classes of activities that would require mitigation and payment of fees under the Plan would currently require payment of fees or mitigation under the Federal Endangered Species Act (FESA) or California Endangered Species Act (CESA). Thus, once again, there is no evidence of any benefit to the rural and agricultural portions of the County proportionate to the many burdens the Habitat Plan would impose. On the contrary, we see little more in the Plan than almost unlimited potential for additional bureaucracy, delay, expense, and harm to the County's remaining agricultural economy. 4

Viable agriculture is the primary supporter of endangered species and their habitats in the Study Area. Agricultural lands used for livestock grazing, orchards, vineyards, field crops, and row crops all provide important benefits for natural communities. The Santa Clara Valley Habitat Plan recognizes some of these benefits and further notes on 4-116 "that the effects of ongoing agricultural activities on covered species will be relatively low." Not only do agriculture activities have a low probability of take, without a viable agriculture industry there will not be enough land available for endangered species to support their recovery, let alone continued existence, despite the best efforts of the Implementing Entity. 5

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Given the importance of the continuation of agriculture's working landscapes for species protection, habitat preservation, and the success of the Plan, necessary agriculture infrastructure should not be assessed development fees under the Plan. Agriculture and ancillary uses; uses necessary to directly support local agriculture; and other uses compatible with agriculture which clearly enhance the long term viability of local agriculture and agricultural lands should be covered for incidental take and exempt from all fees associated with the Plan. This should include but not be limited to agriculture infrastructure such as packing sheds, coolers, food processing facilities, barns, shops, equipment storage, fruit stands, and livestock markets. Allowing for the agriculture industry to thrive will protect species and habitat by slowing the conversion of agricultural lands to residential development, which "causes habitat loss and fragmentation" as noted on page 4-40.

An exempt land cover designation called *developed agriculture* or *agriculture developed* is used throughout the Plan but is not defined within the Plan. Agriculture developed should include all structures and impermeable or compact surfaces used in agriculture operations as well as a surrounding buffer. These areas include but are not limited to corporation yards, equipment yards, parking areas, turnaround areas, loading areas, storage areas, livestock pens, and riding arenas, all of which may be asphalt, concrete, gravel, dirt, or any other common material and structures such as barns, shops, packing facilities, food processing facilities, coolers, and storage buildings. These land uses do not provide habitat value and their conversion should not be assessed a fee.

Some level of synergy should be developed between the requirements of the Habitat Plan and local agriculture mitigation requirements to prevent costly duplication. Project proponents, for instance a farmer seeking to build additional equipment storage near his fields, should not be assessed both a development fee under the Habitat Plan for mitigation and also have to comply with LAFCO's 1:1 ag mitigation policy. There is no need for both forms of mitigation. 6

Development fees should not be assessed for small rural roads and private driveways. This infrastructure is necessary to support agriculture and rural living. Imposing burdensome, expensive, new fees for critical infrastructure is unfair and disproportionately impacts rural project proponents. County standards generally require wider and more costly roads than project proponents would propose and development fees for these roads and driveways in addition to the cost of developing the roadways would add insult to injury. Insufficient science has been presented to support the notion that rural roads present a hazard to wildlife. Private roads have been shown to actually serve as corridors for wildlife movement, rather than disrupting wildlife movement as claimed in the Plan. At a minimum, development fees should not be assessed on 50-foot buffers for roads and driveways, since this type of infrastructure is unlikely to encroach into natural lands. 7

Land acquisition costs are underestimated in the Plan and implementation of the Plan would likely cause land cover fees to increase dramatically to fund acquisitions. According to the Plan, the average land acquisition cost factors for each category combination ranged from $6,000 per acre to $34,000 per acre. Land values in Santa Clara County are 8

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significantly higher than what is reflected in the Plan. Lands with high habitat value and limited availability like serpentine lands will surely cost more than $34,000 per acre and $6,000 is a low estimate for even remote ranchlands. The average cost per acre assumed in the Plan is $8,500 per acre. That may work in other counties, but Santa Clara County land values do not support this assumption. The cost of conservation easements is underestimated as well. Easements are assumed to be 50% of the cost of fee title though easements routinely sell for 80% of the value of fee title.

The process for reviewing fees is based on the Housing Price Index (HPI) for San Jose-Sunnyvale-Santa Clara. This HPI does not serve as a good indicator of housing prices in the Study Area, particularly for Morgan Hill, San Martin, and other unincorporated areas. More importantly, a housing price index is not a good indication of pricing for lands with habitat value. Over the course of the plan as fewer high priority lands are available, these lands will increase in value at a rate that does not strongly correlate to an urban HPI. 9

The Plan provides a process for reviewing development fees, but we did not encounter a process for revising Figure 9-1 *Land Cover Fee Zones*. As development continues over the 50-year term of the Plan, land uses will change throughout the Study Area and should be reflected on the fee zone map. Our review of the Habitat Plan indicates that a clear process for appealing land cover and species and habitat maps is lacking in the Plan. Project proponents must have a clear process for appealing any of the maps at any time, either prior to map adoption or during the term of the Plan. 10

The Western Burrowing Owl fee should not be assessed on the entire parcel and Western Burrowing Owl maps should be subject to change over the next 50 years as the population shifts and the needs of the species change. Western Burrowing Owl fees are difficult to review thoroughly since Chapter 9 *Funding* references a Figure 5-14, which is not part of the Habitat Plan. 11

An independent economic analysis of the Plan should be completed prior to issuance of a final draft. At a minimum, the economic analysis should consider impacts to the agriculture industry, rising costs of living due to increased costs for development, and the fiscal impact of reduced property tax revenues that corresponds to the transfer of lands from private to public ownership. 12

LAND ACQUISTION AND MANAGEMENT

The value of past and current managed livestock grazing in the Study Area is explicitly stated a few times throughout the Plan, though insufficient consideration is given to the past and future contributions of livestock grazing. Page 2-9 of the Habitat Plan notes that "significant parts of the study area have historically been grazed by cattle and managed by ranchers. Cattle ranching continues over much of the privately owned lands in the study area." However, these activities are not explicitly tied to the presence of current endangered species and their habitats. There is an enormous amount of scientific data pointing to the importance of cattle ranching in providing appropriate habitat for several of the listed species covered by the Plan. For example, California tiger salamander and California red-legged frog actually have a mutually beneficial symbiotic relationship with 13

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managed grazing such that grazing improves habitat for those species. The U.S. Fish & Wildlife Service and the California Department of Fish & Game recognize that privately owned rangelands support important ecosystems. The wildlife agencies support the California Rangeland Resolution, which explicitly states "these rangelands, and the species that rely on these habitats, largely persist today due to the positive and experienced grazing and other land stewardship practices of the ranchers that have owned and managed the lands and are committed to a healthy future for their working landscapes." Elsewhere in the Resolution, the wildlife agencies commit to working to recover imperiled species and enhancing habitat on rangelands while seeking to minimize regulations on private lands and streamline processes. Unfortunately, none of these values are expressed in the Plan and the Plan does not value the current stewardship and conservation efforts of farmers and ranchers.

According to the Habitat Plan, rural parks and open space accounts for 121,071 acres within the roughly 510,000-acre study area. The addition of 45,000 acres of new land acquisitions for inclusion in the Reserve System could result in over 165,000 acres—or almost a third of the study area—owned and managed for open space and habitat benefits. While open space and habitat are laudable goals, those lands are better left in private ownership so that landowners have an economic incentive to properly manage the lands. As more and more lands are transferred from private to public ownership, the critical mass necessary to maintain viable farming and ranching communities is threatened. The 45,000 acres of new acquisitions would result in a significant and undeniable reduction in property tax revenues. Rather than acquiring lands that are already protected as open space, lands acquired for inclusion in the Reserve System should result in new contributions to habitat and species protection so that development fees are used to benefit species and their habitat. Purchasing lands that are already protected is not a worthy use of fees. 14

Without willing sellers, the Habitat Plan cannot be implemented. Input from our members shows strong support for conservation easements that mutually benefit farmers and ranchers and the Implementing Entity by meeting the conservation goals of the Plan while allowing managed grazing and selected farming activities. Use of conservation easements decreases the upfront costs of land acquisition and reduces the long-term management costs by keeping the farmer or rancher on the land to continue to manage the land. We strongly urge the Plan's preparers to place an emphasis on conservation easements rather than fee title acquisitions. 15

In order to inform potential willing sellers of the opportunity for conservation easements, easement templates should be available for review. The easement terms have the potential to make the Plan a success or cause its demise. Easement templates should be available for the variety of land cover types so landowners are aware of the conservation actions and restrictions required for inclusion in the Reserve System. Landowners who are interested in remaining on the land will not enter into an overly prescriptive easement or a contractual agreement that lacks specifics. Sample Reserve Unit Management Plans should also be available for review and public scrutiny. Willing sellers will insist on knowing what they're getting into and delaying the availability of management plans will only make 16

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landowners less likely to participate in the Plan. Easements should be dedicated to whichever conservation organization the landowner requests, provided that the organization is credible and has demonstrated the capacity to manage conservation easements. The Nature Conservancy, California Rangeland Trust, and American Farmland Trust are examples of credible conservation organizations with good reputations with whom landowners might feel comfortable entering into a long-term agreement.

Conservation easements should be drafted with all required and applicable conservation actions included in the terms of the agreement so there are no surprises down the road. Reserve Unit Management Plans should be completed prior to conservation easement acquisitions so willing sellers know what to expect in terms of land management guidelines, monitoring requirements, and any habitat enhancement or restoration activities that may take place on the property. Conservation easement contracts should include disclosure that "federal No Surprises Regulation also does not prevent USFWS from asking the Permittees to voluntarily undertake additional mitigation on behalf of the affected species."

According to the Plan, acquisition of cropland will focus on Riverine and Riparian Forest and Scrub land covers. The gray portions of Figure 5-7 *Land Acquisition Strategy* contradict this assertion, making it difficult to establish a clear understanding of the impacts to farmland. Clarity must be provided in this area, especially since page 5-144 notes, "economically viable agriculture may or may not be possible on sites where habitat restoration occurs." Allowable agricultural operations on Reserve System lands are unclear. One incompatible use listed on page 8-36 is "planting, introduction, or dispersal of nonnative plant or animal species." If interpreted strictly, this would prohibit raising bell peppers, cherries, garlic, cattle, alfalfa, or any of the county's flagship crops, none of which are native to this area. The last bullet on page 8-37 notes "conservation easements on cultivated agricultural land will ensure...that land uses do not preclude the sight from meeting additional biological goals and objectives later in the permit term through habitat restoration." Cultivated agriculture and habitat restoration are generally mutually exclusive and any potential future requirements for habitat restoration must be explicitly named in an easement contract. 17

Neighboring Landowner provisions in the Plan are severely limited in their usefulness. Neighboring landowner assurances are currently limited to just 3 of the 21 covered species without any explanation for the narrow application. The neighboring landowner program should include all of the covered species so that landowners can apply for protection for any species by establishing an environmental baseline. 18

The habitat benefits of the Habitat Plan are speculative, relying heavily on a number of variables out of the control of the Implementing Entity or participating agencies. The principles of the Conservation Strategy are dependent on acquiring the right lands, including minimizing edge, preserving connectivity, preserving the highest-quality communities, preserving irreplaceable and threatened resources, maximizing size efficiently, fully representing environmental gradients, considering watersheds, and considering full ecological diversity within communities, to name a few. 19

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The assumptions of the Habitat Plan are largely based on General Plan documents for the participating cities and Santa Clara County. General Plans have a shorter timeframe than 50 years and are known to be very poor predictors of future development and species protection. 20

The Santa Clara County Park Charter Fund has consistently been approved by voters to acquire, develop, and maintain lands to be owned, operated, and managed by Santa Clara County without interference from other organizations. These lands are intended to serve multiple use activities rather than serving as land contributions and managed for endangered species to mitigate the County's development impacts. The inclusion of lands purchased using Park Charter Funds exposes the Plan to the very real possibility of litigation. 21

HABITAT MANAGEMENT

If the goal of the Habitat Plan is to promote habitat, the activities of farmers and ranchers that promote habitat should be covered by the Plan, regardless of the entity performing the work and regardless of presence within the Reserve Area. To promote rather than discourage beneficial activities, cleaning stock ponds, development of field and working facilities for livestock, livestock management, water delivery systems for stock and wildlife, spring development, channel clearing to reduce sedimentation in streams, and other conservation activities should be covered not only on public lands in the Reserve System but also on private lands outside the Reserve System. It is unclear in the Plan whether conservation activities undertaken by private property owners outside the Reserve System will be covered under the Plan. Page 9-23 states, "implementation of conservation actions described in Chapter 5 (or otherwise consistent with the Plan's conservation strategy) in or outside the Reserve System are not charged development fees and are not tracked as impacts by the Implementing Entity." *Conservation action* is defined in chapter 5 as tools, strategies, comprehensive programs, and actions to conserve natural communities, habitats, and landscape-level processes to conserve and help recover covered species in the study area. These activities, which support the biological goals in the Plan, should be exempt under the Plan so they received incidental take coverage and are not assessed development fees. Development fees on conservation activities outside the Reserve System would create a disincentive for farmers, ranchers, and other land managers to enhance and restore habitat and is therefore at odds with the Plan. 22

The adaptive management component of the Plan is necessary given consideration for the difficulty and impracticality of predicting habitat needs 50 years into the future. However, adaptive management should not create uncertainty for landowners, land managers, and lessees. We are concerned that the adaptive management component of the Plan will be used to create onerous new requirements rather than working collaboratively with land managers, including ranchers, to achieve conservation goals. The unpredictability of adaptive management is likely to make landowners wary of entering into conservation easements with the Implementing Entity. Flexibility is desirable for both parties, but under the existing draft language the Wildlife Agencies will require significant upfront commitments from land managers and lessees without providing adequate assurances in 23

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return. Some degree of certainty and limitations on management changes must be included in the conservation easement contract or leasing agreement.

Non-covered species are frequently given consideration throughout the Habitat Plan without any explanation for their inclusion in the Plan. The most obvious example of this is provisions to protect fish and fish-bearing streams. When fish species were dropped and the National Marine Fisheries Service withdrew from the Plan, all references to activities affecting aquatic resources and protections for fish species and their habitats should have been removed from the Plan. Nonetheless, in-stream capital projects are covered by the Plan, a staggering 100 miles of streams are proposed for protection, and stream setbacks range from 35 to 200 feet based on the presence or absence of fish species. Santa Clara Valley Water District will most likely pursue an HCP at some point and it will without a doubt cover riparian areas and stream setbacks, creating duplicative regulations if these conditions remain in the SCVHP. 24

Terrestrial non-covered species are often given consideration in the Plan as well. Page 3-95 talks about bird species often found in urban landscapes, page 4-40 references American badger, Tule elk, black-tailed deer, and other non-listed mammals, and page 5-20 lends consideration to Coast Range newt, bobcat, and mountain lion. Though unrelated to the covered species, these references serve as the foundation for many of the principles in the Plan.

Conditions on covered activities should not exist for non-listed species. Species surveys, habitat surveys, preconstruction surveys, construction monitoring, and even avoidance and minimization require significant additional time and expense, which is not reasonable for non-listed species. Special conditions for non-listed species can be amended into the Plan if additional species become state or federally listed, and it is premature to include them now.

Of the 21 covered species, less than half of the species are listed under the Federal Endangered Species Act, the California Endangered Species Act, or both. It is not an unreasonable assumption that the covered species currently considered California Special Concern Species may become listed under the California Endangered Species Act at some point over the 50-year term of the Plan. However, the Plan demonstrates an astounding lack of rigor by including of 6 plant species with no designation other than that of a non-profit organization. The credibility of the organization is not in question, but the Habitat Plan is a tool for managing endangered species, not species that find favor with the Plan's preparers. 25

Scientific rigor is lacking in the Plan where species identification is concerned. Relying on information received from hikers, hunters, hobby birdwatchers, and recreational plant enthusiasts is not sufficient and should not be considered as part of the adaptive management or used to require avoidance and mitigation measures. The sightings must be verified in some manner if they are to be used to develop conservation activities. Peer-reviewed scientific research is the preferred basis for habitat assumptions. 26

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Maintaining healthy water supplies is crucial for each of the covered species in the Plan. However, ensuring the quality of water in the Study Area is not the responsibility of the Implementing Entity. Water quality, sediment runoff, pesticide runoff, runoff into adjacent nearby streams, and other water quality or water use efficiency issues are the jurisdiction of the Regional Water Boards and are not in the purview of the HCP. 27

Stream setbacks are one of the most worrisome components of the Santa Clara Valley Habitat Plan. As page 5-17 of the Habitat Plan points out, "approximately 1,517 miles of mapped blue line streams within the Study Area are protected as Type 1, 2, or 3 open space." With extensive existing protection for streams in the region and less than 12 miles of streams expected to be affected by covered activities over the 50-year term of the Plan, it is difficult to justify 200-foot setbacks, a minimum 100 miles of stream protection, and proposed restoration of over 12 linear miles of streams. In addition, Conditions 3 and 4 of the Habitat Plan would impose various conditions on covered activities along or within streams and creek corridors and could create additional barriers for routine agriculture activities including erosion control, bank stabilization, flood protection, weed and vegetation management, water diversions, and weir and dam maintenance and upgrades to name a few. It is difficult to foresee what cumulative effect these restrictions will have on the industry, leading to uncertainty and causing concern. 28

GOVERNANCE

77% of the study area and all of the lands identified for acquisition are in the unincorporated county yet there are only two County representatives on the Implementing Entity Governing Board. At least one Certified Rangeland Manager, at least one cattle rancher who actively grazes within the Study Area, and at least one grower who actively farms within the Study Area should be included on the Technical Advisory Committee of the Implementing Entity and at least one Certified Rangeland Manager should participate on the Independent Conservation Assessment Team. 29

Recreational use has no place in a Habitat Conservation Plan. The stated intent of the Plan is to promote the protection and recovery of natural resources and endangered species while streamlining the permitting process for planned development activities. Any deviation from these principles is a misuse of funds and abuse of public trust. Lands in the Reserve System should be closed to the public to prevent disturbance and destruction of species and habitat. Allowing public access on Reserve System lands would also have implications for neighboring landowners who would be subject to increased trespass, nuisance, trash, crime, tort liability, and other concerns. 30

A serious and reasonable concern of ours is the creation of an additional government agency. Farmers and ranchers are already subject to numerous local, state, and federal government regulators with overlapping, duplicative, and competing jurisdictions. One of our members recently counted the number of government entities with jurisdiction over his farming operation and got to 16 entities before giving up in frustration. What makes this scenario even more absurd is that he is a mushroom farmer, operating in a closed environment. The addition of another government entity with land use authority will create conflict with existing government bodies. As page 6-2 notes, "The 31

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conditions...described in this chapter do not supersede requirements by other agencies and are not intended to provide a basis for non-compliance with other applicable design guidelines by other federal, state, and local agencies." There are several organizations and government agencies within the Study Area that already perform functions similar to what is proposed for the Implementing Entity. Just to name a few, the Santa Clara County Open Space Authority, Peninsula Open Space Trust, Santa Clara County Parks, and The Nature Conservancy are all active in the Study Area and could serve as the management body for the Reserve System. The Implementing Entity should contract with one of these entities for management of the Reserve System, rather than funding up to 15 employees and acquiring facilities, equipment, and vehicles to manage the Reserve.

While the Habitat Plan is likely to have some benefits for projects that would require endangered species permits under existing conditions, it creates an additional step in the permitting process for projects that do not have an impact to endangered species or their critical habitats. Though the Plan has been sold as a way of streamlining the permit review process, a quick glance at Figures 6-5 and 6-6 demonstrates just how onerous this additional step will be. The only things project proponents can be certain of is higher fees and less certainty over the 50-year term of the Plan. 32

PROCESS

The Farm Bureau and other agriculture interests have provided significant public comment throughout the preparation of the Plan, much of which has been ignored. Many of the concerns that we expressed in a 2009 letter have yet to be addressed. Our organization did not receive a full copy of the Plan, though we have participated as a stakeholder throughout the process. The Santa Clara Valley Habitat Conservation Plan would pertain to 62% of the land in Santa Clara County, yet individual notice to landowners and residents has not been provided. Adequate public involvement has been lacking throughout the process and is lacking even now as the Plan moves toward completion. 33

During our reviews of the Plan, we identified countless inconsistencies, inadequate science, false assumptions, disorganization, and a lack of clarity throughout the document. Though not every example of these deficiencies can be enumerated, we have provided a few instances for your consideration. Page 9-6 mentions staffing assumptions for law enforcement for the Reserve System but the number of officers is not specified anywhere. Similarly, Table 9-2 *Implementing Entity Staffing Plan* does not provide for law enforcement officers. Figure 3-11 is no longer relevant to the Plan since fish species have been removed. 34

NECESSITY/PURPOSE

The need for a habitat plan in Santa Clara County has not been sufficiently demonstrated. In fact, the Plan itself undermines the perceived necessity for the Plan on page 5-8, "covered activities that result in permanent impacts are anticipated to occur primarily in areas with low-quality habitat." The Santa Clara Valley Habitat Conservation Plan is a region-wide approach to endangered species compliance. This approach uses a broad brush to apply laws that were designed to be site-specific and in doing so creates greater uncertainty, increased costs, and more hoops to jump through. Rather than separately permitting and mitigating individual projects, the Plan evaluates natural resource impacts and mitigation 35

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impacts comprehensively in a way that is more onerous and burdensome for landowners, lends itself to government bureaucracy and potential abuses, and is no more efficient or effective in protecting at-risk species and their essential habitats. Due to the Plan's blind application of development fees regardless of on-the-ground impacts to endangered species, the Plan will result in greater loss of existing endangered species and their habitat by creating a disincentive for project proponents to avoid endangered species and their habitat.

The current perilous status of the various covered species is due to past activities, yet under the Habitat Plan future development will bear the burden of paying for past negative impacts resulting from the urbanization of northern Santa Clara County. Even more unjust is the subsidization—both with time and money—of projects that actually do impact endangered species by projects that will have no noticeable impact on endangered species or their habitat and do not fall under the jurisdiction of the FESA and CESA. Laws and regulations at every level of government including local land use policies and zoning restrictions, the California Endangered Species Act, and the federal Endangered Species Act prohibit widespread conversion of endangered species habitat and do not allow for a decrease in the long-term viability of the species and their habitats. As the plan itself points out on 4-40, "Existing land use restrictions and requirements also substantially limit the footprint and extent of rural development. For example, almost all of the areas intended to be incorporated into the Reserve System are large land holdings designated as Hillside or Ranchland land uses under the County General Plan...Under County policies, most subdivision proposals for Hillside parcels are required to cluster development and preserve a minimum of 90% of the site as open space...These land use restrictions help to minimize the effects of rural development on covered species and natural communities." These laws should continue to be applied as they have been for decades to effectively and equitably address true impacts to endangered species.

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The species component of the plan is largely in response to the needs of rural residential land use, which only accounts for 3% of the study area. Furthermore, the County has noted that only 8% of projects under the County's jurisdiction must pursue endangered species permits through the Wildlife Agencies. This means that 92% of projects will face huge additional expenses and an additional permitting step just so 8% of projects can more easily comply with FESA and CESA. Even then, the Plan has limited usefulness since other permits may be needed from US Army Corps of Engineers and the Regional Water Boards for Clean Water Act Sections 404 and 401 and a streambed alteration agreement with CDFG may be necessary under California Fish and Game Code sections 1600 et seq. The Plan does not comprehensively address wetland permitting and project-by-project wetland permitting—arguably the most difficult, costly, and time-consuming permitting process—is still required under the Plan.

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ALTERNATIVES

The catalyst for undertaking preparation of a Habitat Conservation Plan in this county was the Bay checkerspot butterfly. As a result, the Bay checkerspot and serpentine soils are given an inordinate amount of attention in the Plan. If these habitats and species are the

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primary focus of the Plan, perhaps the Plan can be scaled down to only address impacts to serpentine lands and the species they support.

If protection of endangered species and their critical habitats is the main concern, the conservation goals of the Plan can be implemented without acquiring lands. Greatly reduced development fees could still be applied to appropriate activities in the Study Area and those funds can be used to contract with landowners to implement conservation actions on their lands. While incidental take coverage could not be provided under this scenario, it would have enormous benefits to habitat, species, and natural communities, without the creation of a costly bureaucracy and while keeping lands in private ownership. 41

We do not support the framework of Habitat Conservation Plans because they assume the presence of species and habitat impacts for every project rather than only requiring mitigation for projects that truly have an impact on endangered species. Identifying priority areas for acquisition and protection when projects have mitigation requirements under FESA and CESA provides a good region-wide approach to comprehensive endangered species management. 42

Private mitigation banks should be preferred for land management under the Plan. Encouraging participation by multiple entities gives willing sellers several buyers rather than the monopsony that would be created if the current draft Plan were implemented. By having several mitigation banks competing in a free-market system, both buyers and sellers of land will have choices in the marketplace and land management costs, acquisition costs, and subsequently land cover fees will be minimized. The Wildlife Agencies should devote time and resources to approving mitigation banks in the Study Area to meet the needs of the Plan. 43

Thank you for you consideration of our comments. We look forward to your responses and we commit to staying involved throughout this process. Please contact Jennifer Williams on our staff at (408) 776-1684 or jwilliams@sccfarmbureau.org with comment responses and any questions.

Sincerely,

Tim Chiala,
President

Cc: Local Partners
Wildlife Agencies
Interested parties

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Comment Letter 49—Santa Clara County Farm Bureau, Tim Chiala, President, April 18, 2011

Response to Comment 49-1

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 49-2

Comment is addressed in Master Responses #2, #3, #4, and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #2, #3, #4, and #10.

Response to Comment 49-3

Comment is addressed in Master Responses #2 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Response to Comment 49-4

Comment is addressed in Master Responses #2, #6, and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #2, #6, and #10.

Response to Comment 49-5

The term "agriculture developed" is described in Chapter 3.

The Local Partners and Wildlife Agencies agree that the agricultural landscape, when managed in a way consistent with the needs of species, are valuable for providing foraging and dispersal habitat for a multitude of species. Suitably managed livestock ranch land is generally thought to be compatible in many cases with the successful use of listed species such as the California tiger salamander. However, conversion of habitat (including rangeland) to intensive agriculture (e.g., vineyards, orchards, etc.) have often been identified as a threat contributing to the need to protect species under the state and federal ESA (California tiger salamander final rule [69FR47212]). Furthermore, some operation and management activities related to agriculture are also incompatible with covered species management. For example, rodent control often conducted on and around commercial agricultural operations, including rangelands and various croplands, including vineyards, may directly affect covered species (e.g., potential toxic effects of anticoagulants commonly used in rodenticides) and indirect effects (e.g., reduction in upland refugia as a result of decreased burrowing rodent populations).

Also see Responses to Comments 21-3, 25-25, and 49-22 .

Comment is partially addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 49-6

The Local Partners acknowledge that development on some properties within the permit area will trigger obligations to satisfy both agricultural mitigation requirements imposed by LAFCO or other agencies, and Habitat Plan requirements. The Habitat Plan has removed the target of 1,000 acres of agricultural lands as part of the Reserve System. As such, mitigation for loss of agricultural land and mitigation for impacts to endangered species and their habitats are not duplicative, as the fees collected are used in different ways to address different impacts. Habitat Plan fees will not be used to address or mitigate the loss of agricultural land to development.

No changes to the Habitat Plan are required.

Response to Comment 49-7

The Final Habitat Plan was updated to distribute the fees more equitably, as described in Master Response #2. For activities that continue to be covered, either because of the location or the scope of the project, the impact area assessment will be based on the development area.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 49-8

An assessment of the open space land sales used in the Draft Habitat Plan is included in a memorandum in **Appendix G**. This memorandum supports the land acquisition costs used in the Habitat Plan.

No changes to the Habitat Plan are required.

Response to Comment 49-9

Although the Housing Price Index may be an imperfect indicator of changes in the price of potential reserve lands, it is a better indicator than the Consumer Price Index. There is currently no better alternative. Published trends in agricultural land values (e.g., *2010 Trends in Agricultural Land and Lease Values* [California Chapter of the American Society of Farm Managers and Rural Appraisers 2011]) do not cover Santa Clara County and are expressed as large ranges that cannot be reliably translated to an index. Furthermore, the Housing Price Index is proposed to be used only for limited interim automatic annual adjustments. The plan proposes that the Implementing Entity will conduct a cost analysis every 2 years to evaluate whether or not the automatic fee adjustment adequately tracks actual costs. If not, alternative adjustment factors would be proposed. In addition, every 5 years, a full-blown fee assessment would be conducted to evaluate land sales and other costs to produce well-documented fee adjustments. This fee review process is described in Chapter 9.

No changes to the Habitat Plan are required.

Response to Comment 49-10

The Habitat Plan is implemented, in part, through the local jurisdiction's land use process, and as such, project proponents can follow the appeal process for the local jurisdiction.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 9, Section 9.4 *Funding Sources and Assurances*, subheading *Land Cover Fee Zones*)

"The Implementing Entity may periodically update the Fee Zones (**Figure 9-1**) as necessary (e.g., when fee adjustments may occur)."

Response to Comment 49-11

The western burrowing owl fee will be assessed based on the same process for applying other fees unless a conservation easement is placed over the undeveloped portion of the site. The burrowing owl maps are subject to change over the permit term and fees will be applied based on the most recent map.

Revisions to the Habitat Plan include the following:

Figure reference corrected for **Figure 5-11**.

Response to Comment 49-12

Comment is addressed in Master Response #3.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 49-13

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 49-14

Comment is addressed in Master Responses #3 and #5.

Revisions to the Habitat Plan will be consistent with Master Responses #3 and #5.

Response to Comment 49-15

Comment is addressed in Master Responses #5 and #12.

Revisions to the Habitat Plan will be consistent with Master Responses #5 and #12.

Response to Comment 49-16

An easement template was developed by the Local Partners and circulated within the ranching community prior to release of the Final Habitat Plan. The conservation easement template together with the Habitat Plan will provide a strong overview of the restrictions on use and management needs of the site. Developing the reserve unit management plans prior to acquisition would not be an efficient use of resources as the plan would need to be amended repeatedly after the site is purchased to incorporate new parcels in the plan as they are subsequently acquired and because the full resources of the site will not be known until the site is acquired and a complete inventory is completed.

No changes to the Habitat Plan are required.

Response to Comment 49-17

The Final Habitat Plan was revised such that agricultural lands are no longer targeted for acquisition. This comment is no longer relevant.

No changes to the Habitat Plan are required.

Response to Comment 49-18

See Response to Comment 24-3.

Response to Comment 49-19

One of the reasons why the Plan has a 50-year permit term is to ensure that the conservation actions will be implemented. The Local Partners and the Wildlife Agencies believe that the conservation strategy is implementable.

No changes to the Habitat Plan are required.

Response to Comment 49-20

The Local Partners and the Wildlife Agencies acknowledge the commenter's concerns, however the documents listed in Habitat Plan Table 1-1 represent the best available information on which to project future impacts. Projected impacts were one of several factors considered in the 50 year permit term. Other factors considered in the permit term included the time to implement and adaptively manage the Reserve System and the time necessary to fund the Plan (Habitat Plan Section 1.2.3, *Permit Term*).

No changes to the Habitat Plan are required.

Response to Comment 49-21

See Response to Comment 3-1.

Response to Comment 49-22

Activities that do not go through a County or city permitting process (e.g., a grading and/or building permit) would not be subject to local approval and therefore cannot be covered by the Plan. Many ranching and farming activities do not require permit approvals and thus cannot be covered by this Plan. The Draft Habitat Plan was updated to include stock pond maintenance as a covered activity so long as the maintenance actions are consistent with the requirements described in Habitat Plan Chapter 2 and the conditions on covered activities in Habitat Plan Chapter 6. However, in order to receive coverage, the project proponent would be required to seek a permit from the local jurisdiction.

Also see Response to Comment 25-25.

Portions of this comment are addressed in Master Responses #2 and #5.

Revisions to the Habitat Plan include the following:

Revisions to the Habitat Plan consistent with Master Responses #2 and #5.

Inclusion of a new covered activity for pond maintenance (see Habitat Plan Chapter 2, Section 2.3.6 *Rural Operations and Maintenance*).

Response to Comment 49-23

Habitat Plan Section 8.6.3 *Conservation Easements*, describes that it is the responsibility of participating landowners to abide by the terms of conservation easements established for Reserve System lands. The terms and prices of conservation easements will be negotiated on a case-by-case basis between the landowner and the Implementing Entity depending on site conditions, landowner preferences, and operational, species, and habitat needs. The land owner will be able to identify "certainty and limitations on management changes" during the negotiation of the conservation easement terms.

No changes to the Habitat Plan are required.

Response to Comment 49-24

The Habitat Plan is an HCP and NCCP. Under the NCCP Act, CDFG must make a series of findings (Habitat Plan **Table 1-3**). Pursuant to these findings, the Habitat Plan must "protect habitat, natural communities, and species diversity on a landscape level" and "conserve ecological integrity of larger habitat blocks, ecosystem function, and biodiversity" (Habitat Plan Section 1.3.1 *Federal and State Endangered Species Laws,* subheading *Natural Community Conservation Planning Act*). For this reason, habitats of non-covered species are considered and protected under the Habitat Plan.

The Wildlife Agencies and Local Partners are aware of SCVWD's preparation of an HCP. The relationship between the Habitat Plan and SCVWD's own HCP is described in Habitat Plan Section 1.2.5 *Relationship to the Three Creeks Habitat Conservation Plan.* It is the intent of the Wildlife Agencies and SCVWD, as a Local Partner, to ensure that the requirements of the Habitat Plan and Three Creeks Habitat Conservation Plan are not duplicative.

No changes to the Habitat Plan are required.

Response to Comment 49-25

Consistent with the requirements of the NCCP Act, the Habitat Plan treats all covered species equally in its goal to contribute to the recovery of these species. As such, avoidance and minimization measures

are identified for all covered species as appropriate. The Plan also evaluates non-listed covered species as if they were listed, so that incidental take coverage may be seamlessly provided in the event that they are listed during the permit term.

No changes to the Habitat Plan are required.

Response to Comment 49-26

During implementation of the Habitat Plan, information will be considered and incorporated from all sources. Citizen scientists are a valuable resource for any conservation effort, and their contributions will be received, assessed by the appropriate professionals, and used to inform Plan implementation as appropriate.

No changes to the Habitat Plan are required.

Response to Comment 49-27

Maintaining healthy habitat, including streams, wetlands, and ponds, is, as the commenter states, "crucial for each of the covered species in the Plan." As such, it is imperative to avoid and minimize impacts on habitat of species that require aquatic habitat to the extent feasible.

In addition, a key issue that came out of the public review process was the need to integrate other permitting requirements, including compliance with CWA Sections 404 and 401 (see Master Response #4). Inclusion of avoidance and minimization measures that protect water quality will be critical as the Local Partners work with the Regional Boards on CWA Section 401 permit streamlining.

No changes to the Habitat Plan are required.

Response to Comment 49-28

See Response to Comment 25-25.

Portions of this comment are addressed in Master Response #10.

Revisions to the Habitat Plan will be consistent with Master Response #10.

Response to Comment 49-29

The Local Partners acknowledge the request to sit on the Technical Advisory Committee (described in Habitat Plan Chapter 8, Section 8.2.4 *Technical Advisory Committee*).

No changes to the Habitat Plan are required.

Response to Comment 49-30

Comment is addressed in Master Response #11.

Revisions to the Habitat Plan will be consistent with Master Response #11.

Response to Comment 49-31

The Implementing Entity is not a land use authority. Land use authority will remain with the local jurisdictions.

Portions of this comment are addressed in Master Responses #1 and #6.

Revisions to the Habitat Plan will be consistent with Master Responses # 1 and #6.

Response to Comment 49-32

Comment is addressed in Master Responses #1 and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #10.

Response to Comment 49-33

The Local Partners have undertaken extensive efforts to conduct public outreach and education in the study area. These efforts are summarized in Habitat Plan Chapter 1 Section 1.4.8 *Public Outreach and Involvement*.

No changes to the Habitat Plan are required.

Response to Comment 49-34

The Wildlife Agencies and Local Partners acknowledge the commenter's concern. Habitat Plan **Table 9-2** *Implementing Entity Staffing Plan* does not provide for law enforcement because it is assumed that law enforcement costs will be either provided by the land owner or through a contract with the County Sheriff, not as an Implementing Entity staff member. As stated in Habitat Plan Section 9.3 *Cost Estimate Methodology,* the cost model in Habitat Plan **Appendix G** includes all assumptions used to develop the Habitat Plan cost estimate. In Habitat Plan **Appendix G**, **Table G-0**, the costs assumptions associated with enforcement are provided for costs per reserve acre/year, with the costs provided in Habitat Plan **Table G-1p**: *Law Enforcement Costs*.

The NCCP Act requires that natural communities within the Plan area that could be affected by Plan implementation be identified in an NCCP (Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types*). Native and nonnative fish assemblages and in-stream aquatic habitat types throughout the major stream systems in the study area are shown in Habitat Plan **Figure 3-11**. The figure illustrates the distribution of the native fish assemblages and riverine habitat types. This figure is relevant for describing the riverine (stream) natural community (Habitat Plan Section 3.3.5 *Natural Communities and Land Cover Types*, subheading *Riverine* [*Streams*]).

No changes to the Habitat Plan are required.

Response to Comment 49-35

Comment is addressed in Master Responses #2, #6, and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #2, #6, and #10.

Response to Comment 49-36

Comment is addressed in Master Responses #2 and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #10.

Response to Comment 49-37

Comment is addressed in Master Response #10.

Revisions to the Habitat Plan will be consistent with Master Response #10.

Response to Comment 49-38

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 49-39

See Response to Comment 25-56.

This comment is partially addressed in Master Response #4.

Revisions to the Habitat Plan will be consistent with Master Response #4.

Response to Comment 49-40

The Habitat Plan utilizes the best available science to develop a conservation approach for all of the covered species. Considerable research has been conducted on the Bay checkerspot butterfly, and as such, considerable information is included in the Plan. This should not detract from the importance of conserving all of the other covered species in the Plan.

No changes to the Habitat Plan are required.

Response to Comment 49-41

The Wildlife Agencies and Local Partners acknowledge the comment; however, a scenario under which "incidental take coverage could not be provided" is not consistent with the purpose of the Habitat Plan. The main concern is not "protection of endangered species and their critical habitats" as the commenter states; rather, the purpose of the Habitat Plan "is to protect and enhance ecological diversity and function in the greater portion of Santa Clara County, while allowing appropriate and compatible growth and development in accordance with applicable laws" (Habitat Plan Section 1.1.2 *Purpose*). In accordance with applicable laws, the Local Partners are asking the Wildlife Agencies to issue permits that authorize incidental take of covered species. The Plan includes a conservation strategy to compensate for impacts on these covered species. The conservation strategy provides for the conservation and management of covered species and their habitats.

The Plan does allow for acquisition of lands for the Reserve System through conservation easements instead of fee title (Habitat Plan Section 8.6.3 *Conservation Easements*). The use of conservation easements will allow land to be kept in private ownership; however, those lands must be managed and monitored in accordance with the terms of the Habitat Plan (e.g., Conservation Strategy and Monitoring and Adaptive Management Program implementation) in order to maintain permit compliance.

No changes to the Habitat Plan are required.

Response to Comment 49-42

See Response to Comment 23-9.

Response to Comment 49-43

Comment is addressed in Master Response #13.

Revisions to the Habitat Plan will be consistent with Master Response #13.

YCS Investments

YCS Investments Property Development & Management

April 18, 2011

Via Email

Ken Schreiber
County of Santa Clara Executive's Office
70 West Hedding Street, 11th Floor
San Jose, California 95110

Re: Draft Santa Clara Valley Habitat Plan, December 2010
Draft Environmental Impact Report and Environmental Impact Reports, December 2010
Draft Implementing Agreement, December 2010

Dear Mr. Schreiber:

As you know, YCS Investments owns substantial land holdings within the City of San Jose and Santa Clara County called Young Ranch. We support the overall goals of the Habitat Plan and applaud the local agencies' efforts to create a sound and reasonable approach to long term regional natural resource and land use planning. For this reason, YCS has actively participated in the development of the Draft Plan by becoming a member of the Stakeholder Group, providing detailed comments on the Administrative Draft and Second Administrative Draft Habitat Plan, and conducting comprehensive studies of the resources found on Young Ranch.

The publication of the Draft Plan represents a key milestone towards the adoption of the Habitat Plan. After thoroughly reviewing the Draft Plan for three months, YCS regrettably cannot support its adoption for numerous reasons. To communicate our extensive concerns, we provide:

- An overview of the need for substantial revisions to the Draft Plan
- Comments on the DEIR/DEIS
- Detailed Draft Plan comments in the suggested Excel spreadsheet format

We look forward to participating in the formation of a revised "user-friendly" document that guides species protection within the 500,000 acre study area. Our team is available to meet with you in person to expedite the comment review process. Please do not hesitate to call me.

Sincerely,

Joanna Callenbach

Cc: David Zippin, Wayne Costa, Ella Foley Gannon

170 Maiden Lane, Suite 800, San Francisco, California 94108 • (415) 781-1211 • Fax (415) 781-1220

COMMENTS ON THE DRAFT SANTA CLARA VALLEY HABITAT PLAN

Prepared for: YCS Investments

Prepared by: Ella Foley Gannon, Bingham McCutchen LLP
with the assistance of: Tom Fraser and Geoff Smick, WRA Environmental Consulting & Julie Jones, Perkins Coie LLP

April 18, 2011

I. INTRODUCTION

The Santa Clara Valley Habitat Plan ("Habitat Plan") is designed to provide streamlined permitting for planned development within the 500,000 acre planning area located in Santa Clara County while ensuring protection for special status species in perpetuity. As explained in the Draft Habitat Plan released for public review and comment in December of 2010, once approved, the Habitat Plan is intended to: (1) protect, enhance, and restore natural resources in specific areas of Santa Clara County and contribute to the recovery of endangered species; (2) provide a more efficient and effective method for evaluating impacts and mitigation requirements for "at-risk species"; (3) establish a streamlined permitting process for receiving authorization to take listed species; (4) provide assurances that no further commitments of funds, land or water will be required to address impacts on covered species beyond those described in the Habitat Plan; (5) strengthen local control over land use and species protection; and (6) create a more efficient process for protecting natural resources.

YCS Investments, the owner of substantial land holdings within the City of San Jose and Santa Clara County called Young Ranch, supports the overall goals of the Habitat Plan and applauds the local agencies' efforts to create a sound and reasonable approach to long term regional natural resource and land use planning. For this reason, YCS has actively participated in the development of the Draft Plan by becoming a member of the Stakeholder Group, providing detailed comments on the Administrative Draft and Second Administrative Draft Habitat Plan, and conducting comprehensive studies of the resources found on Young Ranch. After completing a thorough review of the Draft Habitat Plan, however, YCS cannot support its adoption. The Draft Habitat Plan fails to meet many of the Permittees' articulated goals, includes fundamental flaws which call into question its analysis and conclusions, and lacks essential details for evaluating the ultimate impact of the Habitat Plan on covered species and future land use decisions. Further, we believe that the Habitat Plan fails to meet what is an implied, but unspecified, goal of creating a conservation strategy that represents the most cost efficient way of meeting the identified biological goals. Failure to meet this last goal would constitute a breach of the Permittees' fiduciary duties to their constituents. We urge the Permittees to thoroughly evaluate the implications of adopting the Draft Plan, including the commitment of approximately $1 billion dollars and the creation of significant limitations on both public and private future development, and to instruct the Habitat Plan staff to revise the Plan so that it can meet the identified laudable planning goals, as well as the regulatory requirements, in a fiscally responsible and viable fashion.

YCS appreciates the opportunity to comment on the Draft Habitat Plan. In the following sections, we provide an overview of our specific comments and suggest ways in which the identified deficiencies may be addressed in a revised Habitat Plan. We start by evaluating whether the Draft Habitat Plan meets the Permittees' identified goals. We then discuss critical flaws in the Draft Habitat Plan which must be corrected prior to adoption. We next discuss the implications of the City of Gilroy's recent decision to opt out of the Draft Plan. We have also prepared comments on the Draft Environmental Impact Report/Environmental Impact Statement prepared by California Department of Fish and Game and U.S. Fish and Wildlife Service to evaluate the potential environmental impacts associated with adoption of the Draft Plan and those comments are provided as Attachment A. Finally, as requested on the Habitat Plan website, we are also providing detailed, page by page comments on the Draft Plan which appear in the attached excel spreadsheet and explanatory exhibits (Attachment B).

II. SATISFACTION OF THE PERMITTEES' PURPOSE AND GOALS OF DEVELOPING A HABITAT PLAN

The Habitat Plan had its genesis in a biological opinion issued by the U.S. Fish and Wildlife Service ("Service") in 2001 for certain development and transportation projects located in Santa Clara County. During the Section 7 consultation for these projects, the Santa Clara Valley Transportation Authority, Santa Clara County, the City of San Jose and the Santa Clara Valley Water District agreed to develop a multi-species Habitat Conservation Plan "in order to assist the Service and the California Department of Fish and Game with the conservation of federally and State listed species in the City and portions of the County." Biological Opinion 1-1-01-F-186 at 13. Neither the scope nor extent of the contemplated HCP/NCCP was described in the biological opinion for these projects. The Service did not make implementation of an HCP/NCCP a necessary terms and conditions of the biological opinion nor does it appear that its effects analysis for the covered species depended on the implementation of this future planning effort. The Service, however, did contemplate that completion of an HCP/NCCP would "likely alleviate many of the Service's concerns for impacts to federally listed species and their habitats" related to growth facilitated by the projects addressed in the Biological Opinion. *Id.* at 38. 1

The Draft Habitat Plan goes far beyond the HCP/NCCP contemplated in the 2001 Biological Opinion. For example, the number of species covered by the Habitat Plan has been greatly increased. The Biological Opinion considered impacts to five wildlife species[1] and four federally listed plants.[2] The Draft Habitat Plan, by contrast, addresses impacts to eleven wildlife species,[3] including six which are not state or federally listed, and ten plant species, six of which are not federally or state listed. The scope of the Habitat Plan has also increased. Rather than addressing impacts in the City of San Jose and portions of the County related to growth 2

[1] The biological opinion considered impacts to the federally listed Bay checkerspot butterfly, the California red-legged frog, the salt marsh harvest mouse, and the California clapper rail. It also provided technical assistance regarding the California tiger salamander, a species which was a candidate for listing in 2001 which has subsequently been listed as threatened.

[2] The four plants included in the biological opinion were the Santa Clara Valley dudleya, Metcalf Canyon jewelflower, Coyote ceanothus, and Tiburon paintbrush.

[3] The Draft Habitat Plan does not address two of the species covered in the 2001 Biological Opinion, the salt marsh harvest mouse and the California clapper rail. Apparently, neither of these species was even considered for inclusion in the Habitat Plan. *See* Draft Habitat Plan, Appendix C.

facilitated by the projects addressed in the Biological Opinion, the Draft Habitat Plan now addresses all future development on over 500,000 acres equal to 62% of the entire Santa Clara County.

With the significant expansion of the number of species addressed, the types of projects covered and the size of the permit area, the complexity and cost of the Habitat Plan has greatly increased. We believe that this expansion has rendered it difficult, if not impossible, for the Permittees to meet the identified goals of the Habitat Plan in a viable, financially feasible manner.

The Habitat Plan has two fundamental, overarching goals, which we understand to be equally important to the Permittees. These goals are to develop a conservation strategy that meets the requirements of the federal Endangered Species Act ("ESA") and the Natural Communities Conservation Plan Act ("NCCP Act") and to allow efficient permitting for future public and private projects. Because the conservation strategy and take limits identified go well beyond what is required by the ESA and the NCCP Act, the Draft Habitat Plan unnecessarily restricts the activities and projects that can be permitted over the next 50 years and requires the expenditure of significant additional amounts of federal, state and local funds. The Permittees need to fully and carefully evaluate whether the Draft Habitat Plan meets their essential needs and whether adoption would serve the best interests of their respective communities. Following is a detailed discussion of the Draft Habitat Plan's relationship to several of the identified goals.

A. Protection and Enhancement of Natural Resources

One of the goals of developing the Habitat Plan is to ensure protection of the permit areas' natural resources. While this is an important goal, it must be noted that it is not the primary goal. As stated in the Draft Implementing Agreement, Section 2.3, "[t]he primary goal of the Plan is to fulfill the requirements of the federal Endangered Species Act and the California Natural Community Conservation Planning Act in order to obtain authorization for the incidental take of certain covered species that may result from these activities." Therefore, the goal of protecting natural resources must be connected to this primary goal: the target resources should be related to the covered species and the level of protection required must take into account the Permittees future development needs. Under the Draft Habitat Plan, the Permittees will be required to establish a 58,000 acre preserve and to take extensive management actions on these lands in perpetuity. While the Draft Habitat Plan clearly will protect and enhance natural resources, it is less clear whether the amount of habitat protection and enhancement can be economically accomplished. Under the NCCP Stay-Ahead-Provisions, the Permittees will be obligated to carry out many conservation measures, including preservation and enhancement of large portions of the permit area, whether or not any impacts to covered species occur. *See, e.g.,* Draft Plan at 8-24 to 8-31. The wisdom of making such a commitment of limited public resources given current economic condition is highly questionable. The Permittees need to specifically evaluate whether such a commitment is in the interest of its constituents. 3

The Draft Plan recognizes that one of the benefits of creating a large preserve is that it will provide public access and recreational opportunities to the public. *See, e.g.* Draft Plan at 1-2. Under the Draft Plan, however, significant portions of the publically owned preserves will not be accessible. Recreational uses on the preserve will be fundamentally limited by two things. 4

First, the Draft Plan requires that no new recreational uses can be allowed on preserve lands until a reserve management plan is developed and approved by the Wildlife Agencies. Because it is contemplated that these plans may take five years to develop, no new substantial recreational uses will be allowed in the short term and it is highly uncertain what level of recreation will be allowed in the long term. Second, the publicly owned open space must be protected by a conservation easement. As described in the Draft Plan, it is anticipated that the conservation easement will prohibit the installation of any new facilities. How then can the very few contemplated new trails, picnic areas, and other facilities be allowed? Third, the miniscule number of planned recreational improvements compared to the large size of the preserves reveals how little regard the Draft Plan has for public access and recreation in the preserves. The Permittees need to thoroughly evaluate whether the Draft Plan will allow for sufficient recreational uses.

Further, as discussed in Section III below, the Draft Habitat Plan includes significant mischaracterizations of existing resources in the permit area. Therefore, under the conservation strategy identified in the Draft Habitat Plan, it is possible that a portion of the required preservation, restoration and enhancement efforts will be misdirected to lands which do not actually include the target resources. Such a result would not be consistent with the goals of the Habitat Plan. 5

B. Creating an Efficient and Effective Method for Evaluating Impacts and Mitigation for Special Status Species

One of the greatest challenges of regional planning is to balance the need for completing an evaluation of impacts and necessary mitigation *efficiently* while doing so *effectively*. The Draft Habitat Plan strikes this balance by relying on large scale land cover modeling as the basic building blocks for the impact analysis and the conservation strategy. The acknowledged deficiencies in the large scale modeling hinder the efficacy of the analysis and engendered a number of conservative assumptions. The Draft Habitat Plan states that these conservative assumptions overestimate the amount of covered species habitat found within the permit area and that, as a consequence, the level of anticipated impact to covered species will be less than contemplated. The Draft Plan does not address the excessive impact on resources and funding that will be caused by implementation based on mitigation and conservation actions and the limitations on level of impacts permitted that likely will greatly exceed what would be required if impact and mitigation requirements were established based on project specific information in absence of the Habitat Plan. 6

Given this approach, the Permittees need to carefully evaluate whether the mitigation requirements and limitations on development can be justified. The consequences of voluntarily creating mitigation requirements that are not roughly proportional to the level of impacts are great. In addition to requiring the unnecessary expenditure of limited public and private funds to mitigate permitted projects, it could well result in the regulatory taking of private property. Such a consequence would be inconsistent with the Plan's goal of relying exclusively on willing sellers to carry out the conservation strategy and would further tax the Permittees' financial resources.

The efficiency of the large-scale evaluation of impacts and mitigation is also highly questionable. It is true that large-scale mapping units allowed for the development of the Draft Habitat Plan, which might not have been possible if the plan attempted to use finer scale modeling. The lack of specific information on the areas resources, however, requires that significant additional information be gathered during Plan implementation for both proposed impact and conservation areas. Because project specific evaluations will be needed for both covered activities and reserves at a level which is akin to or more than the level that would be required without the Habitat Plan, the efficiency of spending a significant amount of time and resources to complete the broad brush evaluation included in the Draft Habitat Plan is not obvious.

C. Establishing Streamlined Permitting Process

The establishment of a streamlined endangered species permitting process has repeatedly been cited as the primary justification for the significant expense associated with development and implementation of the Habitat Plan as well as its severe development limitations. Unfortunately, the implementation process included in the Draft Habitat Plan is far from streamlined and will require, for many projects, significant on the ground study of resources and extensive review to determine if it is authorized under the Draft Habitat Plan. Because many of the requirements are related to providing coverage for non-listed species and meeting the additional regulatory standards of the NCCP Act which includes provisions beyond that required under the federal and state ESAs, the permitting process for many projects will be much more complex, onerous and costly than it would be without the Habitat Plan.

For example, although Permittee sponsored projects are considered "pre-authorized", the Permittees still must undertake a number of steps to document consistency of the project with the Habitat Plan prior to project implementation. First, the Permitees will need to verify the actual landcover types found on the project site, and for many Permittee projects, this will require the hiring of a qualified biologist. After completing the field work, the biologist will need to map the land cover types to the 0.1 acre accuracy (equal to 50 x 90 foot data cell). The Permittee must then determine the amount of impacts that will occur to each of the identified land cover types and to areas identified as habitat for covered species in the Habitat Plan's habitat models. Depending on the type of land cover impacted, the Permittee may need to conduct field surveys for certain species. The Permittee must then determine whether there is sufficient take available to cover the identified impacts in terms of take of land cover type, modeled habitat and critical habitat. Next, a determination as to which of the Habitat Plan's 22 conditions apply will be made and the Permittee will need to ensure compliance with the detailed requirements of the applicable conditions (possibly requiring redesign of the project). The Permittes will also need to consider whether the project is consistent with the Plan's biological goals and objectives; which will involve consideration of the relationship of the project to the 21 biological goals, 94 biological objectives, and 135 conservation actions. If an inconsistency is found, the project will need to be modified or dropped. Finally, the Permittees will need to calculate and pay the substantial fees required for coverage. Depending on the type of project and the habitat impacted, the Permittee may also need to consult with the Implementing Entity and the Wildlife Agencies when completing these steps; for some activities, Wildlife Agency approval is also required. It is hard to conceive how the Permittees could conclude that this process is "streamlined." 7

D. Providing Assurances that No Additional Mitigation Will Be Required

The Habitat Plan is designed to provide certainty and predictability regarding the amount of mitigation that will be required to offset impacts to natural resources. Unfortunately, the Draft Plan does not provide this certainty for impacts to listed species and even less so for other natural resources. The Draft Plan's conditions are designed to ensure that projects comply with the Plan's requirements. It recognizes, however, that Permittees "may need to adopt or impose additional conditions" to ensure consistency with the Habitat Plan and compliance with the NCCP Act. Because it is impossible to understand how this consistency determination will be made, there is no certainty regarding whether additional conditions will be imposed on a project.

Further, the Draft Plan recognizes that its mapping and analysis are not sufficient to support analysis of an individual project under CEQA; therefore, the Draft Plan does not purport to predict the amount of mitigation that may be necessary to offset potentially significant impacts to covered species and other resources. Even if no additional mitigation is required under the Draft Plan, a project may be required to provide additional mitigation under CEQA. This could well occur for projects whose impacts the Plan maps incorrectly. 8

Although the Draft Plan requires mitigation for impacts to aquatic resource, riparian areas, and water quality, it only provides permits under the ESA and the NCCP Act. Therefore, projects will still need to obtain permits from the Corps, the Regional Board, and CDFG for impacts to aquatic resources. Because the efforts to coordinate permitting with these agencies are incomplete, there is no assurance that mitigation required under the Habitat Plan will meet the requirements of these other agencies.

As is discussed below, there is a real possibility if not probability that funding for the Habitat Plan will fall short. A significant shortfall in funding would require an amendment to the Plan. There are of course no assurances that an amendment to the Plan may not require additional mitigation.

Given the uncertainty of the amount of mitigation that a project will be required to provide under the Habitat Plan, CEQA and other regulatory programs, the Draft Plan fails to meet this important goal.

E. Strengthen Local Control Over Land Use Decisions and Species Protection

Through the establishment of strict caps on impacts to land cover types and modeled species habitat, the Habitat Plan would significantly limit the amount of development that can occur in the Plan Area over the next 50 years. These limits apply to areas where development would currently be allowed under the Permittees' General Plans and zoning ordinances. It is hard to understand how allowing the Wildlife Agencies to make determinations on when and how development can occur in the Plan area strengthens local control over land use decisions. 9

In addition to dictating when and where development can occur, the Plan also controls where preservation will occur and what it will entail. It requires that the Wildlife Agencies review and approve all preservation land acquisitions as well as what recreational activities can occur on the preserved lands. Again, it is difficult to conceive how allowing the Wildlife Agencies to determine how a majority of the Permittees' open space funding should be spent

over the next 50 years, as well as what recreational uses are allowed on park lands, can be characterized as strengthening local control over land use decisions.

Finally, under the Habitat Plan, the Wildlife Agencies would be involved in decisions as to how impacts to a number of non-listed species should be mitigated and what level of impacts to these species can be allowed. Absent the Plan, the Wildlife Agencies do not have any say in such decisions. Therefore, the Draft Plan will in many significant aspects strengthen the Wildlife Agencies', not the Permittees', control over land use decisions and species protection beyond what is required.

F. Create a More Efficient Process for Natural Resource Protection

The Plan establishes extremely high land acquisition targets for many areas, including acquiring 46% of approximately 10,000 acres of identified serpentine bunchgrass grassland found in the permit area. It is not at all clear how the Draft Plan can assist in the acquisition of these lands efficiently. Because the Draft Plan includes great specificity about the precise lands that must be acquired for success, it is possible that the prices for these lands could be artificially inflated, thereby reducing the efficiency of natural resource protection in the area. 10

An even larger concern is that the Draft Plan's strict limitations will result in a de facto moratorium on development of certain lands on which some level of development has been contemplated by the General Plans and zoning ordinances of Permittees. The Habitat Plan will therefore strip properties of economically viable use and will interfere with – indeed destroy – the investment backed expectations of landowners affected within the Study Area. Therefore, there is a strong possibility that the Habitat Plan could result in a taking of private property.[4] The taking of private land to effectuate natural resource protection cannot be described as an efficient process. 11

G. Permittees Should Evaluate What Is the Minimum Amount of Species Protection Necessary to Meet Regulatory Requirements

The Habitat Plan is expected to cost $1 billion dollars over the next 50 years. The Permittees have an obligation to their citizenry to determine if there is a more cost effective way of meeting endangered species regulatory requirements. This should include an evaluation of whether the Habitat Plan can allow for more development, consistent with existing General Plans, more flexibility, and less conservation.

Specifically, the Permittees should consider whether it is in the best interest of their constituents to voluntarily adopt a NCCP or whether the Permittees' goals could be better met by seeking to have a more limited Plan that satisfies Section 10 of the ESA. Under such a Plan, the Permittees and private developers would only be required to meet the much less onerous standards of the state and federal ESAs. Further, the Permittees should evaluate whether the 12

[4] The failure of the Habitat Plan to provide just compensation to landowners within the Study Area would render the Plan unconstitutional. *Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 124 (1978).

benefits of covering unlisted species is worth the cost.[5] Permittees should instruct staff to generate an alternative Plan that is designed to meet the minimum regulatory requirements. This will allow the Permittees to meaningfully evaluate whether there are better ways to meet their identified goals and objectives.

III. THE DRAFT HABITAT PLAN INCLUDES FUNDAMENTAL FLAWS WHICH PRECLUDE ITS ADOPTION

A. The Habitat Plan Does Not Accurately Identify the Base Line Conditions

The Draft Habitat Plan classifies the entire study area as supporting one of seven identified natural communities, each of which is divided into subset of land cover types. The land cover types are then used as a basis for developing habitat models for covered species, assessing impacts to covered species, establishing take limits and developing a conservation strategy. Because the identification of the land cover types is the basic building block of the entire Habitat Plan's analysis and conservation strategy, it is essential that they be accurate. *See, e.g.* Draft Habitat Plan at 6-92 ("This land cover map was essential in estimating impacts of the covered activities and developing the conservation strategy"). Given the regional nature of the planning process, however, the Draft Plan relies on mapping which lacks fine enough detail to accurately characterize many land cover types. *See, e.g.,* 3-25. While the use of large scale mapping for regional planning is understandable, the failure of the HCP to identify ways to address these informational deficiencies is troubling.

The Draft Plan recognizes that mapping should be based on field verification whenever possible and purports to rely on site specific information when available. Our experience, however, demonstrates that this was not actually done. YCS actively participated in the development of the Draft Habitat Plan, including being a member of the Stakeholders Group and providing detailed comments on the Second Administrative Draft Habitat Plan. On July 20, 2009, representatives of YCS met with the Program Manager and Program Director of the Santa Clara Valley HCP/NCCP ("HCP Staff") to discuss concerns about the Second Administrative Draft Conservation Plan. As discussed in that meeting, one of YCS' major concerns was that the Administrative Draft Plan mischaracterized land cover found on the Young Ranch site. Specifically, we brought to the HCP staff's attention that detailed surveys and site investigations showed that the Young Ranch site supported 674 acres of serpentine grassland while the Administrative Draft Plan identified 915 acres of this land cover type. The Administrative Draft Plan's mapping was both under inclusive in that it failed to map some areas where serpentine soils or bedrock intersected with grasslands and over inclusive in that it mapped many areas that do not includes these features. The methodology used by WRA, YCS' biological consultant, to field verify the extent of serpentine grassland was reviewed and the HCP staff concurred with the validity of the methodology. Staff agreed to incorporate this information in to the Draft Habitat Plan. The basis for the correction and the supporting site specific information was provided to HCP staff in comment letters submitted on August 3 and August 31, 2010. 13

[5] The avoidance and mitigation requirements are very onerous for several of the non-listed species. For example, under the Draft Plan impacts to 18,777 acres that are modeled as San Francisco collinsia habitat will not be permitted. San Francisco collinsia is not a state or federally listed species, therefore no take permit is required.

Despite the detailed information submitted and HCP staff's concurrence with the validity of this information, the Draft Plan fails to accurately reflect the amount of serpentine grassland found on the Young Ranch. Although the Draft Plan states that it relied on the Young Ranch data in identifying land cover types, the Draft Plan does not accurately use the data. Instead, the Draft Plan's map was amended only to include the additional serpentine grasslands identified by WRA; it fails to exclude the areas determined by WRA to not support the necessary features. There is no explanation or justification for the selective use of this information. Given that the detailed field studies of the Young Ranch represent the best available scientific information regarding the land cover located on the site, it must be included in the Habitat Plan. Further, the failure of the HCP drafters to accurately incorporate the information provided to them raises concern about the reliability of the other data used to develop the Draft Plan.

B. The Habitat Plan's Habitat Models Must Be Based on the Best Scientific Data Available

The Draft Habitat Plan relies on habitat distribution models developed for 20 of the covered species to assess impacts, establish take limits for specific habitat features essential to those species, and to ensure that the conservation strategy meets the regulatory requirements. For all but the BCB and the Steelhead Trout, the Draft Plan notes that these models are intended to be predictive of habitat distribution rather than true models of species presence. The models are limited by a number of factors including the large mapping units, the inability to identify certain features given the large mapping scale, and the degree of resolution for some features. Draft Plan at 2-25. Given the essential role that these models play in the Plan, it is critical that they be based on the best scientific data available, including information to address these limitations wherever possible. *See* Draft Plan at 2-23 ("Local survey data were used whenever possible to define model parameters"). Several of the models included in the Draft Plan, however, include unsupported conclusions regarding the distribution of habitat for covered species in the Permit Area and these models need to be revised to reflect the best scientific data available. Following revision to the models, the HCP staff should evaluate whether the Draft Plan's analysis and assumptions remain valid. 14

1. Failure to Include the Best Scientific Information Available Into the Habitat Models Calls Into Question the Validity of the Habitat Plan's Analysis

The Draft Plan does not utilize the best scientific information available to develop the habitat models. For example, during development of the Draft Plan, detailed information derived from multi-year surveys completed on the Young Ranch site was presented to HCP staff. This information allows for the precise delineation of the extent of occupied and potential BCB habitat on the site as well as an assessment of the quality of that habitat. Multi-year surveys have also tracked the density and frequency of BCB use of the site over the last several years. Based on this site specific information, WRA determined that Young Ranch site supports 660 acres of BCB habitat. By contrast, the Draft Plan model overstates the amount of habitat by including an additional 331 acres which do not contain the features necessary to support BCB lifecycles. 15

During the July 2010 meeting described above, YCS informed HCP staff of the results of the detailed site specific BCB studies for Young Ranch. Like the land cover mapping described

above, the site specific surveys showed that the Second Administrative Draft BCB habitat model was both over- and under-inclusive. The methodology utilized during the studies was reviewed and HCP staff agreed with the survey results. Following that meeting, YCS submitted the surveys and reports to the HCP staff in comment letters submitted on August 3 and 31, 2009. YCS also submitted these surveys to Dr. Stewart Weiss, a recognized BCB expert, for peer review and Dr. Weiss verbally confirmed his agreement with them. Following submittal of this information, HCP staff revised the BCB habitat model to include some of the additional BCB habitat areas identified by WRA, but did not remove any of the areas which in fact do not support the necessary habitat features. This selective use of the submitted surveys was done without explanation and is completely unjustified.

The Habitat Plan needs to be revised to reflect the true amount of BCB habitat on the site. The consequences of the failure to do this are particularly significant given the extremely limited amount of take of BCB habitat that is authorized under the Draft Plan. The erroneously identified areas included in the Habitat Model for Young Ranch, over 300 acres, is more than the entire amount of take that can be authorized in the Permit Area. Inaccuracies of this magnitude raise questions about the scientific foundation of the entire Habitat Plan, especially given that the errors have been brought to the attention of the HCP staff and have been ignored.

2. Several Habitat Models Include Assumptions which Are Not Supported by the Best Scientific Evidence Available and Need to Be Revised

California Tiger Salamander

The HCP's modeled habitat for the California tiger salamander includes: (1) breeding habitat defined as all ponds, coastal and valley freshwater marshes, natural lakes, and seasonal wetlands within riparian, grassland, oak woodland, and conifer woodland land cover types; and (2) all upland habitat within 1.3 miles of identified breeding habitat that is located within grassland, chaparral and coastal scrub, oak woodland, riparian forest/scrub, riparian forest/woodland wetlands, conifer woodlands and agricultural areas.

We agree with the habitat model's overall description of the CTS lifecycle and habitat components. However, we believe that the following corrections should be made:

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Breeding Habitat: It is well documented that in order to support viable breeding habitat for the CTS, an aquatic area must pond water for a minimum of ten weeks in all but the driest years (Appendix D6, p. 3). Due to the large mapping units and other limitations on regional habitat modeling, the CTS model included in the Draft Plan does not distinguish between aquatic areas which would meet this ponding requirement and those that would not. Therefore, the Draft Plan likely includes numerous sites that cannot support viable populations of CTS.[6] The Draft Plan recognizes that the habitat models should be utilized for regional planning only and that field verification should be done in connection with project planning. The habitat model should

[6] Similarly, the Draft Plan may not include all potential breeding sites as it is likely that some ponds were not identified on the large scale aerial photographs used to designate land cover types.

note the fact that breeding habitat must become inundated and hold water long enough for CTS to complete the aquatic portion of its lifecycle.[7]

Upland/Refugia Habitat: As is described in the U.S. Fish and Wildlife Service's designation of critical habitat for the Central Valley population of the CTS, the best scientific peer-reviewed data demonstrates that the vast majority of adult and juvenile CTS are found within a half mile radius of a breeding pond (70 FR 49391). One study determined that conserving upland habitats within 2,200 feet of a breeding pond would protect 95% of CTS at the study's location. As further noted in the critical habitat designation, the Service predicts that protecting 0.70 mile radius around breeding habitats will capture 99 percent of all interpond movements between breeding adults (*Id.*). It is also well documented that habitat complexes that include upland refugia in close proximity to breeding sites are considered more suitable because predation risk and physiological stress in CTS probably increases with migration distance. Finally, the existence of barriers, such as roadways, can limit the amount of viable upland refugia habitat surrounding any breeding site. Based on such existing studies and peer-reviewed data, the Service used 0.7 miles as the dispersal distance in proposing critical habitat for the CTS.

Despite this information, the Draft Plan utilizes a significant larger radius (nearly double that utilized in the critical habitat designation) to model CTS upland habitat. This designation appears to be premised on a single study conducted in Santa Barbara in which one CTS was observed 1.3 miles away from a breeding pond. We do not believe that this study, involving a distinct population of CTS located in a geographically distinct area, provides a sufficient justification for the model.

The consequences of overestimating the amount of upland refugia are significant. First, it will result in the preservation of areas that may not actually support CTS and that therefore would not benefit the species. Dedicating resources to acquire and managed such lands would not be justified, and would likely lead to a waste of scarce monetary resources. Additionally, such areas could be utilized to offset impacts to areas supporting CTS, allowing impacts to occur which are not adequately offset.

Consistent with the best scientific data available, the CTS model should be modified to provide that the upland habitat within 0.7 miles of primary habitat is assumed to provide the necessary subterranean refugia for CTS. The viable upland habitat must not be separated from the breeding site by a barrier to movement.

Foothill Yellow-legged Frog

The Draft Plan modeled Foothill Yellow-legged Frog includes all streams or rivers in riparian forest/scrub, grassland, oak woodland and conifer woodland land cover types with a moderate slope (primary habitat) or a low slope (secondary habitat).

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As is described in the Draft Plan species account for the Foothill Yellow-legged Frog, this species requires perennial streams for its entire lifecycle. The model assumptions, however,

[7] Because a delineation is required for any project that will impact aquatic features, information regarding the saturation periods for ponds can be gathered during the permitting process. Similar information regarding potential conservation areas should be obtained during pre-acquisition assessments.

do not require that designated streams or rivers be perennial. The model should be corrected to provide that only perennial streams will be considered FYLF habitat under the Plan.

Based on the large scale mapping units, the Draft Plan habitat model does not include sufficient information to distinguish perennial from intermittent and ephemeral streams. The FYLF species account should acknowledge this shortcoming. Further, during plan implementation, project sponsors should have the opportunity to present information regarding the classification of streams found on a site. If a stream is shown to not be perennial, it should not be considered FYLF habitat under the Plan and should be removed from the habitat model. Further, information should be gathered on potential preserve areas to ensure that FYLF habitat is preserved.

Hall's Bush Mallow

The Draft Plan is internally inconsistent with respect to the primary and secondary habitat for this species. As the Plan's Species Account correctly notes, hall's bush mallow generally occurs in mixed northern chaparral and chamise chaparral (Appendix D26 p.3). It can also occur in Diablan sage scrub and serpentine bunchgrass grassland, but there are significantly fewer known occurrences associated with this habitat. In contrast, the habitat model identifies primary suitable habitat for the hall's bush mallow as consisting of serpentine bunchgrass grassland and secondary habitat as including northern coastal scrub/Diablan sage scrub land and mixed chaparral/chamise chaparral land cover. It appears that in creating the habitat model, the primary and secondary habitat features were reversed. This model needs to be corrected to accurately reflect the needs of this species. Additionally, the modeled habitat acreages and figures should be updated to reflect these corrections. 18

Other Serpentine Plants

There are ten covered plant species that are found primarily or exclusively on serpentine soils. As is discussed above, the Draft Plan's current mapping of serpentine soils includes inaccuracies due to the large scale mapping units used. Habitat models have been or are being developed for six covered plants whose primary habitat is found on serpentine soils.[8] For each, the model will need to be revised to reflect additional data regarding the amount and location of serpentine soils found within the study area. These models also need to be updated as additional information is gathered regarding the location and extent of serpentine soils during Plan implementation. 19

3. The Habitat Plan Needs to Allow For Corrections to Modeling Errors During Plan Implementation

As discussed above, the distribution models developed for a majority of the covered species suffer from significant limitations due to the underlying data used to develop them as well as the errors noted. Although the Draft Plan recognizes that these models will need to be updated during the 50 year permit term to reflect improved understanding of the species habitat needs as well as the field verification of the actual habitat found in the Permit Area, it states that 20

[8] The six plants are: Big scale balsamroot, fragrant fritillary, smooth lessingia, Mt. Hamilton thistle, Metcalf canyon jewelflower, and most beautiful jewelflower.

compliance with take limitations and tracking of conservation efforts will continue to be based on the habitat models in place at the time of permit issuance. *See, e.g.* Draft Plan at 8-55, fn 15. While we understand that significant changes in the habitat models could call into question the soundness of the Plans analysis and conservation strategy, we fail to grasp how relying on demonstratedly false data can be justified or legally supportable. If it emerges that the BCB mapping errors found on the Young Ranch are reflective of the BCB habitat mapping in the entire Permit Area, for example, it seems entirely possible that the basic underpinnings of the analysis necessary to support approval of the Habitat Plan are called into question. Further, for some species that rely on habitat that is not possible to map using the programmatic data available, such as serpentine rock outcrops, field verified mapping would provide critical information. Failure to include a means to incorporate such data is unsupportable.

The Habitat Plan should be revised to allow for updating of the Habitat Models based on the best scientific data available during the 50 year permit term. If updating reveals that the models are so flawed that the soundness of the Plan's approach is questionable, appropriate amendments to the Habitat Plan may be required.

C. The Assessment of Indirect Impacts to BCB Habitat Based on Increased Vehicular Traffic Associated with Covered Activities Is Not Based on Sound Science

The Draft Plan states that the "most significant threat to the Bay checkerspot butterfly continues to be nitrogen deposition and lack of management to minimize the effects of nitrogen deposition." Draft Plan at 4-73. To support the Draft Habitat Plan's conclusion that covered activities will result in increased nitrogen deposition and significant impacts to BCB habitat, the Draft Habitat Plan relies on a study, "Estimation of Contributions to Deposition of Nitrogen in Santa Clara Valley for the Santa Clara Valley Habitat Plan," December 2010, prepared by ICF International (Appendix E). This study assumes projected increases in emissions of nitrogen oxides (NOx) within the study area throughout the study period and concludes that these increases, due primarily to increased motor vehicle traffic, will result in increased nitrogen deposition and, as a consequence, adverse impacts to natural habitats. According to the study, its purpose is "to quantify the expected increases in nitrogen deposition in Santa Clara County as a result of the urban and rural growth covered by the Habitat Plan" (E-4) and to "provide[] technical justification for the approval of new local fees on public and private development to help fund the Habitat Plan." E-5. As is detailed in the attachment C, the study's methodology is fundamentally flawed and therefore, cannot be relied upon to analyze the impacts of the Plan or support the imposition of nitrogen deposition fee. 21

D. The Habitat Plan Must Clearly Describe The Methodology for Identifying Covered Activities and for Determining Take Allowances.

It is essential, both legally and practically, that the Habitat Plan clearly describe the amount and type of take that is authorized under the Plan as well as the way in which the authorized impact will be calculated and tracked. Unfortunately, the Draft Habitat Plan includes many inconsistencies and/or uncertainties that render it impossible to decipher how Permittees intend to carry out the Plan. This lack of clarity denies the public the ability to understand the Plan and to provide meaningful comments. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1119-20 (9th Cir. 2002), citing *Florida Power & Light Co. v. United States*, 846 F.2d 765, 771 22

(D.C. Cir. 1988) ("not only must an agency give adequate time for comments, but it also 'must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully'"). Further, it will deny the wildlife agencies the ability to make the requisite legal determinations regarding the adequacy of the Draft Habitat Plan.

1. Difficulties Associated with Identifying Covered Activities

One of the primary stated goals of the Habitat Plan is to provide incidental take coverage of covered species under the ESA and NCCP Act for certain specified activities, called "covered activities." Draft Plan at 1-6. The determination of what constitutes a covered activity is so complex and nuanced that it is impossible to predict whether a specific project or activity will be eligible for coverage. For example, an activity is only a covered activity if, *inter alia*, it "does not preclude achieving the biological goals and objectives of the Plan." Draft Plan at 2-35. As was previously noted, there is very little guidance as to how this consistency determination will be made. How did the Draft Plan make this determination prior to doing the analysis of the Plan's effects? This lack of clarity renders it impossible for the public to meaningfully comment on the Draft Plan. It also prevents the Permittees from understanding which of their projects will be authorized and what process they will need to engage in to approve private development projects. Finally, it prohibits the Wildlife Agencies from evaluating whether the Draft Plan meets the necessary regulatory requirements. 23

2. Difficulties Associated with Identifying the Amount of Take Actually Allowed Under the Draft Habitat Plan.

The amount and type of take authorized is the linchpin of the Habitat Plan in that it will define the type of activities and projects that can occur within the permit area over the next 50 years as well as the level of species protection that will be required. Therefore, it is essential that the take limits are clearly defined. The Draft Plan establishes take limits for impacts to land cover types, modeled habitat and occurrences of covered plants. *See, e.g.* 2-35; 4-46; 4-56; Tables 4-2 to 4-4.

Exactly what caps apply and how impacts will be tracked is not clearly defined. This is partially due to the magnitude of various tables, charts, figures and narratives included in the Draft Plan that speak to the level of authorized take.[9] For example, for burrowing owl the allowable impacts are described as constituting 198 acres of occupied nesting habitat in the analysis of effects but are described as being 300 acres for determining the amount of burrowing owl fees that will be required. Understanding the amount of allowable impacts to burrowing owl habitat is further hampered by the fact that the description of the impacts assumed does not translate into either of these acre calculations. Further clarification is required to understand the requirements of the Draft Plan. 24

Additionally, it is not clear how impacts to areas occupied by covered species outside of modeled habitat will be tracked. The Draft Plan states that impacts to covered species habitat will be based on the habitat models in existence at the time of Plan adoption. For at least one

[9] A global problem with the Plan is that it is extremely complex. To answer any one question, it is often necessary to review hundreds of pages of analyses, and multiple Tables and Figures. Even after completing this process, there often is not a definitive answer.

species, the BCB, the Draft Plan requires that impacts to un-modeled habitat that is found to be occupied by BCB be counted as impacts to modeled habitat. The disparate treatment of the updating of modeled and un-modeled habitat is not explained or justified. It is also unclear whether the same treatment would be applied to other species.

Finally, certain projects which are currently permitted or are anticipated to be permitted by the time the Plan is implemented were considered as part of the baseline conditions rather than as potential impacts. The Draft Plan provides that these Project may obtain take coverage under the Plan by following the applicable procedures in Chapter 6. Because the Draft Plan's analysis assumed that these impacts had already occurred, we assume that any take associated with these projects would not be tracked as Plan take. Clarification of this issue is necessary. 25

3. The Unprecedented and Unnecessary Take Limit on Designated Critical Habitat Should Be Removed

Unlike every other regional Habitat Conservation Plan of which we are aware, the Draft Plan includes a separate cap on impacts to designated critical habitat in the planning area, including critical habitat for the BCB, the California red legged frog and the California tiger salamander. Draft Plan at 4-57. When designating critical habitat, the Service generally excludes areas that are subject to a regional HCP, based on its recognition that regional HCPs impose an area specific program designed to conserve listed species and their habitat; therefore, an additional layer of regulatory review is not necessary. Similarly, HCPs adopted after a critical habitat designation are usually found to not result in adverse modification of critical habitat within their planning area based on the adequacy of the conservation strategy. For example, the East Contra Costa HCP includes areas designated as critical habitat for the [need to confirm list], but it does not include a critical habitat impact limitation. Rather, it focuses on the impacts to the species itself and the habitat found within the permit area. 26

The Draft HCP does not provide any explanation as to why the regulatory classification of the land, rather than the habitat found on the site, should be used as a basis for establishing take limits. We can see no justification for this. As is described repeatedly in the document, the impact analysis, take limits and conservation strategy set forth in the plan are based on specific information development by the HCP staff regarding the species' use of the area and the permit area's habitat. Using this information, the Draft Plan takes an extremely conservative approach to ensure adequate conservation of the covered species and imposes stringent limitations on the amount of take that can occur. The Draft Plan assumes that the mapping calculations are falsely high and the take limits are established conservatively low. Adding another layer of protection will unjustifiably limit potential development and other activities.

E. Funding Is Not Adequately Assured

In order for the Wildlife Agencies to approve the Habitat Plan, they must determine that there are assurances that it will be adequately funded. The funding described in the Draft Plan does not meet this requirement because it underestimates the cost of Plan implementation, relies on a level of development that may not occur, and it assumes the availability of significant state and federal funding sources which are likely to be significantly reduced due to budgetary 27

constraints. Further, given the lack of nexus for the extremely high development fee, it is not clear that this fee is implementable.

1. The Draft Plan Underestimates the Cost of Acquiring Preserve Lands

The Draft Plan relies on a land value analysis performed by Hausrath Economics Group ("HEG") to determine land acquisition costs. HEG analyzed land transaction data concerning open space lands in Santa Clara County from 1999 through mid-2007. It appears that the land values may be underestimated because:

- The land transaction dataset include 34 records (32 fee title transactions and 2 easement transactions) and sought to cut the transactions into 15 categories (requiring numerous assumptions where data are insufficient). The validity of the analysis is questionable given the limited sample size used to derive the land value estimates, the lack of supportprovided by the data and in some cases, the land value assumptions applied in the absence of data;

- According to HEG, "sales determined to be speculative, i.e., large parcels with agricultural zoning but that could have longer-term subdivision potential, were specifically excluded". The definition and determination of speculative transactions has a critical outcome on the land value conclusions and HEG does not present the data excluded from the analysis. Further, we question whether it is appropriate to exclude lands with "speculative" value given the reality that most lands in Santa Clara County hold some speculative value associated with potential future use or development;

- HEG assumed that conservation easements will represent 50 % of the fee title land costs but does not provide supporting data. This assumption is not consistent with assumptions included in other HCPs which assume that conservation easements will cost between 60-80% of fee title transactions.

Further support is needed for the land acquisition cost included in the Draft Plan.

28

2. The Permittees Need to Evaluate the Likely Availability of Development Fees As Well As the Nexus Between the Development Fee and the Impacts

The Draft Plan anticipates that 58.4% of its funding will come from development fees, in the form of land cover fees, endowment fees, plan preparation cost recovery fees, nitrogen deposition fees, serpentine fees, burrowing owl fees, wetland fees, and temporary impact fees. Draft Plan at 9-21. Because these fees will significantly increase the cost burden on new development, they will likely discourage development in the permit area. Reduction in the amount of development and other economic activities in the Permit Area would not only have dire financial consequences on the Permittees individually and as a whole, but also would reduce the ability of the Permittees to fund their obligation through development fees.

29

The Draft Plan requires that long term management of all conserved lands be funded through development fees even though it recognizes that such funding is not necessary to mitigate project impacts. It justifies this fee by the purported benefits that project applicants will receive under the plan of being able to utilize a streamlined permitting process and having certainty regarding mitigation requirements. As was discussed in Section II, the permitting process created under the Draft Plan will neither be streamlined nor certain. Therefore, there is no justification for requiring development to fund a portion of the conservation elements of the Plan.

Finally, the Draft Plan includes two unprecedented fees on indirect impacts, one for indirect impacts to wetlands and one for indirect impacts associated with nitrogen deposition. The Draft Plan requires that a developer pay a wetland mitigation fee which can amount to hundreds of thousands of dollars not just for direct impacts to wetlands but also for wetlands that are indirectly adversely affected by a proposed activity. The Draft Plan does not provide a way for measuring these adverse impacts or establish a minimum effect that must be found before the fee can be charged. Therefore, there is no basis for this fee. As was previously discussed, there is no scientific basis for the conclusion that the Plan will result in an increase in nitrogen deposition and therefore, the nitrogen deposition fee is unsupportable.

3. The Draft Plan Relies On Funding Sources That Are Unlikely to Materialize

The Draft Plan anticipates earning 41.6% of its funding from non-fee sources, including local, state and federal funding. Draft Plan at Table 9-5. It states that the non-fee "funding sources . . . have been estimated conservatively." *Id.* at 9-56. We question this conclusion, because many of the local, state, and federal funding relied upon in the Draft Plan may not materialize over time. Indeed, the Draft Plan does not provide sufficient justification for its estimates of expected income from such funding sources.

a. The Draft Plan Overestimates the Availability of Federal and State Funding Sources

The Draft Plan estimates that $234,460,000 (25% of total funding) will come from local funding, while $155,500,000 (16.6% of total funding) will come from state and federal funding. Draft Plan at Table 9-5. This funding is expected to stem from a variety of sources, the availability of which is outlined in Table 9-13. It is unlikely that such funding will materialize at the anticipated level, because funding availability for certain key programs may be considerably lower than cited by the Draft Plan. Of particular concern is reliance on new Wildlife Agency Funds, with anticipated income of $150 million. Draft Plan at Table 9-5. Such grant funds would be uncertain in normal times, but are particularly uncertain now given current state and federal budget challenges. We note the following specific budget uncertainties: 30

- **CVP Improvement Act Habitat Restoration Program**: Table 9-13 claims that between $1 million and $4 million is available annually for CVP Improvement

Act Habitat Restoration Program projects. However, this program awarded only $878,016 in grants in fiscal year 2010.[10]

- **Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006**: Table 9-13 cites available funding as $450 million for the Forest and Wildlife Conservation fund, but only approximately $7 million remains in this fund.[11] In addition, Table 9-13 states that the Act provides $60 million to support development and implementation of local plans to meet climate change mitigation targets, but in fiscal years 2010 and 2011, only $40 million and $20 million were allocated, respectively.[12]

- **Landscape Conservation Cooperatives**: Table 9-13 states that $18 million is available for funding the program *in California* for 2011-12. This is unrealistic considering that the U.S. Fish and Wildlife Service, which administers the landscape conservation cooperatives program, has requested only $20 million in funding *nationwide* for this program in fiscal year 2012.[13]

- **Recreational Trail Fund**: Table 9-13 claims over $6 million in annual funding, but funding in 2010 totaled approximately $2 million.[14]

- **Endangered Species Act Section 6 Grants**: The Draft Plan suggests that an average of $20,900,000 is available for Section 6 grants in California. However, if the U.S. House of Representatives Republicans pass their version of the federal budget, Section 6 grant funding would be reduced from approximately $140 million to approximately $2.5 million nationwide.[15]

- **Land and Water Conservation Fund, Farm and Ranch Land Protection Program, North American Wetlands Conservation Act Grant Program**, and **Sustainable Communities Planning Grant Program**: Table 9-13 cites several million dollars in available funds from these programs. All this funding may be subject to dramatic cuts under the House Republicans' budget.[16]

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[10] *See* United States Bureau of Reclamation, "HCP ((b)(1) "other") fiscal year 2010 Projects, *available at* http://www.usbr.gov/mp/cvpcp/program_hrp/docs/2010_hrp_summary_table.pdf.

[11] California Resources Agency, "Proposition 84 Allocation Balance Report" at Chapter 6, *available at* http://bondaccountability.resources.ca.gov/Attachments/b1a801cb-36af-44c7-854e-3b9047a4525f/29/Prop84AllocationBalanceReport.pdf.

[12] *Id.* at page 169.

[13] U.S. Fish and Wildlife Service, Fiscal Year 2012 Budget Justification at BG-3, *available at* http://www.fws.gov/budget/2012/PDF%20Files%20FY2012%20Greenbook/04.%20Budget%20at%20a%20Glance%202012.pdf.

[14] U.S. Department of Transportation, Recreational Trail Fund Appointments and Obligations for FY 2010, *available at* http://www.fhwa.dot.gov/environment/rectrails/recfunds_2010.htm.

[15] House of Representatives Bill 1 at § 1708, *available at:* http://www.rules.house.gov/Media/file/PDF_112_1/legislativetext/2011crapprops/AppropCRFinal_xml.pdf

[16] *Id.* at §§ 1235, 1709, 1720, 2232, 2236.

Due to such uncertainty in government budgets, we question the ability of the Funding Plan to meet its conservation goals, and especially the non-mitigation components. A significant shortfall in funding would result in the need to amend the Habitat Plan and likely reduce the amount of allowable take. The Amendment process would require the expenditure of significant additional public funds to develop. Because such a shortfall appears likely, the Permittees need to carefully evaluate whether to proceed with the Draft Plan.

b. The Proposed Acquisition of Parks Lands May Be Inconsistent With the County Parks and Recreation Department's Acquisition Plan

Nearly $70 million (7.4% of total funding) is anticipated from land acquisition by the Santa Clara County Parks and Recreation Department. Draft Plan at Table 9-5. The Plan fails to consider, however, whether and to what extent the use of these funds to acquire preserve lands is consistent with County Park's acquisition criteria. The most recent draft of the County of Santa Clara Parkland Acquisition Plan 2011 Update discusses natural resource conservation as a goal, but establishes that the outdoor recreation needs of County residents are of paramount importance in property acquisition.[17] The County's parkland acquisition criteria focus heavily on outdoor recreation. Acquisition Plan at 51-52. Even the "resource conservation" acquisition criterion places similar constraints on the type of land the Parks Department may seek to acquire. This criterion requires County Parks to determine if : "[t]he property has a direct relationship to attaining the resource conservation priorities of the County including the protection of scenic resources and areas with rich biological habitat *that provide opportunities for appropriate resource-based recreation experiences* of regional significance." *Id.* at 52-53 (emphasis added). To satisfy the resource conservation criterion, therefore, a property with "rich biological habitat" also must provide recreational opportunities. Given the likely significant restrictions on recreational activities within the preserve areas, it is not clear that County Parks will be able to make the necessary determinations. 31

IV. THE DRAFT HABITAT PLAN CANNOT BE ADOPTED WITHOUT THE CITY OF GILROY'S PARTICIPATION

The Draft Habit Plan is intended to be a comprehensive regional planning document developed through the close cooperation of six local partners. When finalized, it is intended to satisfy all the legal requirements of Section 10 of the ESA and the NCCP Act and provide the local partners with incidental take coverage for 21 special status species. It is a complex and comprehensive document that if approved will largely dictate development on over 500,000 acres of land in Santa Clara County. Since 2005, the local partners have worked with the U.S. Fish and Wildlife Service and the California Department of Fish and Game to develop a Draft Plan. 32

Recently, officials from some of the local partners as well as their constituents have raised questions about the viability and wisdom of adopting the Draft Plan, given the potential significant impacts that the Draft Plan could have on their future direction and the significant

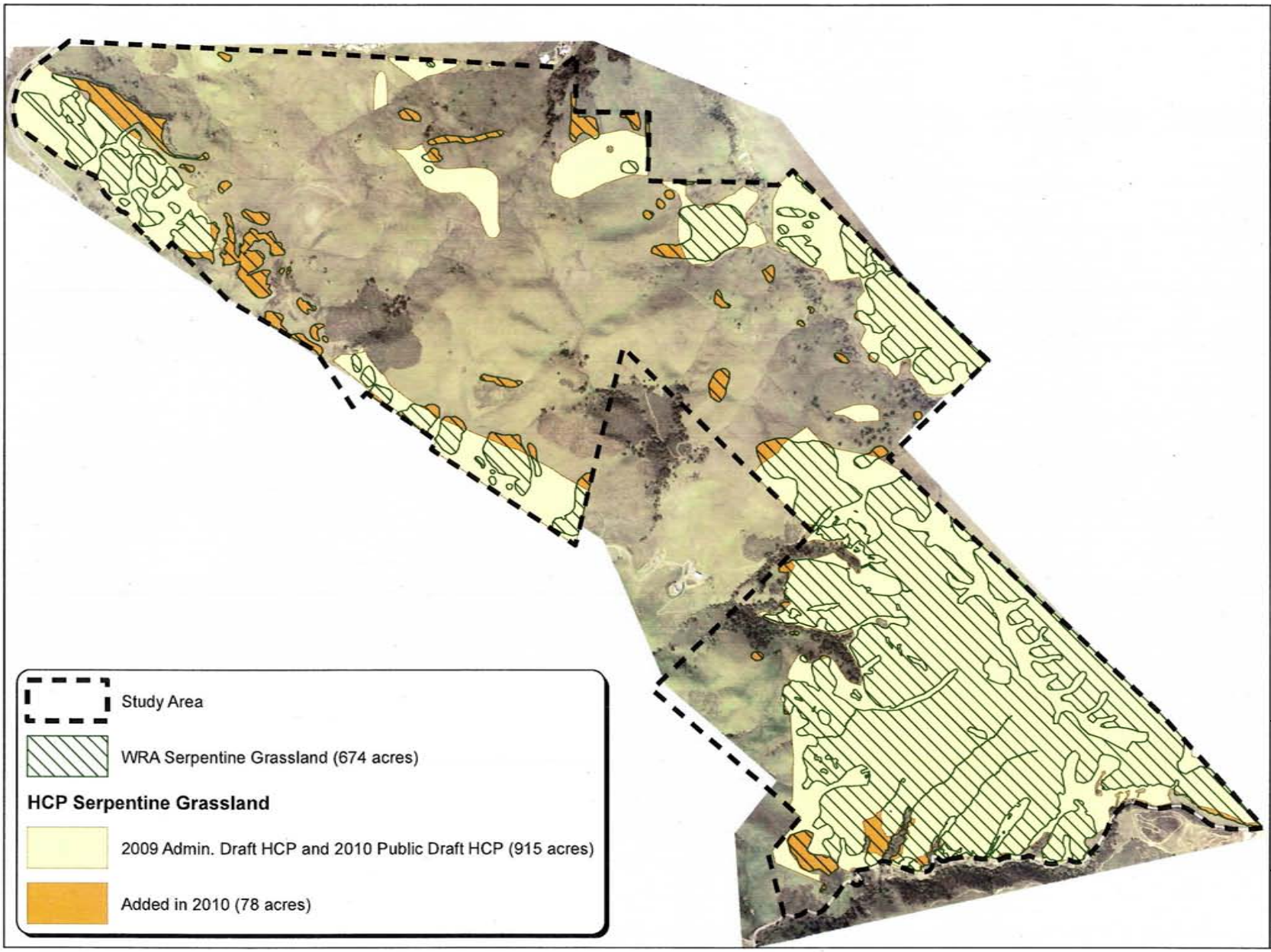
[17] Acquisition Plan, March 1, 2011, Draft for Board of Supervisors Review, *available at* http://www.sccvote.org/SCC/docs/Parks%20and%20Recreation,%20Department%20of%20(DEP)/attachments/ACQUISTION_PLAN_DRAFT_FOR_BOS_032111.pdf

concomitant fiscal impacts. Most recently, the City of Gilroy, determined that continuing to participate in these planning efforts was not in their interest and withdrew.

To meet the applicable legal requirements and to provide for regional planning, the Draft Plan considered the whole permit area, including areas under the jurisdiction of each of the local partners, as an integral unit. Accordingly, the inclusion of each participating jurisdiction in the study area is critical to all of the Plan's evaluations and findings, including its identification of covered species, evaluation of baseline conditions, assessment of impacts, determination of allowable impacts, identification of a conservation strategy and necessary avoidance and minimization measures, and assessment of costs and funding sources. The Plan's analysis and conclusions are only supportable if the entire permit area remains intact. Therefore, the City's of Gilroy's recent decision to no longer participate in the Draft Habitat Plan precludes the remaining participating agencies from proceeding with the Draft Habitat Plan and the wildlife agencies from approving it.

Case law establishes that it is arbitrary and capricious for the Service to approve a regional habitat conservation plan in the absence of adequate assurance that all participating local jurisdictions would become permittees under the plan. In *National Wildlife Federation v. Babbitt*, the U.S. District Court for the Eastern District of California struck down a regional HCP for the Natomas Basin on these grounds. 128 F. Supp. 2d 1274 (E.D. Cal. 2000). This case involved a challenge to the Service's decision to issue an incidental take permit to one participant, the City of Sacramento, in a regional HCP where there was no guarantee that all participating local jurisdictions would seek incidental take coverage. The district court determined that the Service failed to consider the "tension between the regional Plan and the local Permit," a deficiency that undermined the findings the Service made as required by § 10 of the ESA. *Id.* at 1291, 1294-96. For one of these § 10 findings, the Service found that the taking proposed in the HCP would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. *See* 16 U.S.C. § 1539(a)(2)(B)(iv). The court held that this finding was arbitrary because the Service failed to adequately consider whether it could make the finding if the City of Sacramento alone received take authorization using the HCP. *National Wildlife Federation*, 128 F. Supp. 2d at 1295-96.

The *National Wildlife Federation* decision makes plain that the Service cannot approve the Draft Plan as currently written given Gilroy's decision to no longer participate. As in *National Wildlife Federation*, the Habitat Plan does not contemplate or evaluate the effects of issuing take authorization to a subset of the participating jurisdictions, but rather assumes that all of the local partners, including Gilroy, will approve the Plan and fully participate in its implementation. To enable the Service, therefore, to make the findings required under § 10 of the ESA and CDFG to make the findings required by the NCCP Act, the Habitat Plan's drafters will need to revise the Plan's analysis. A revised version of the Habitat Plan excluding Gilroy will need to be made available for full public review and comment to satisfy statutory mandates.



wra
ENVIRONMENTAL CONSULTANTS

Young Ranch
Santa Clara County,
California

Figure 1

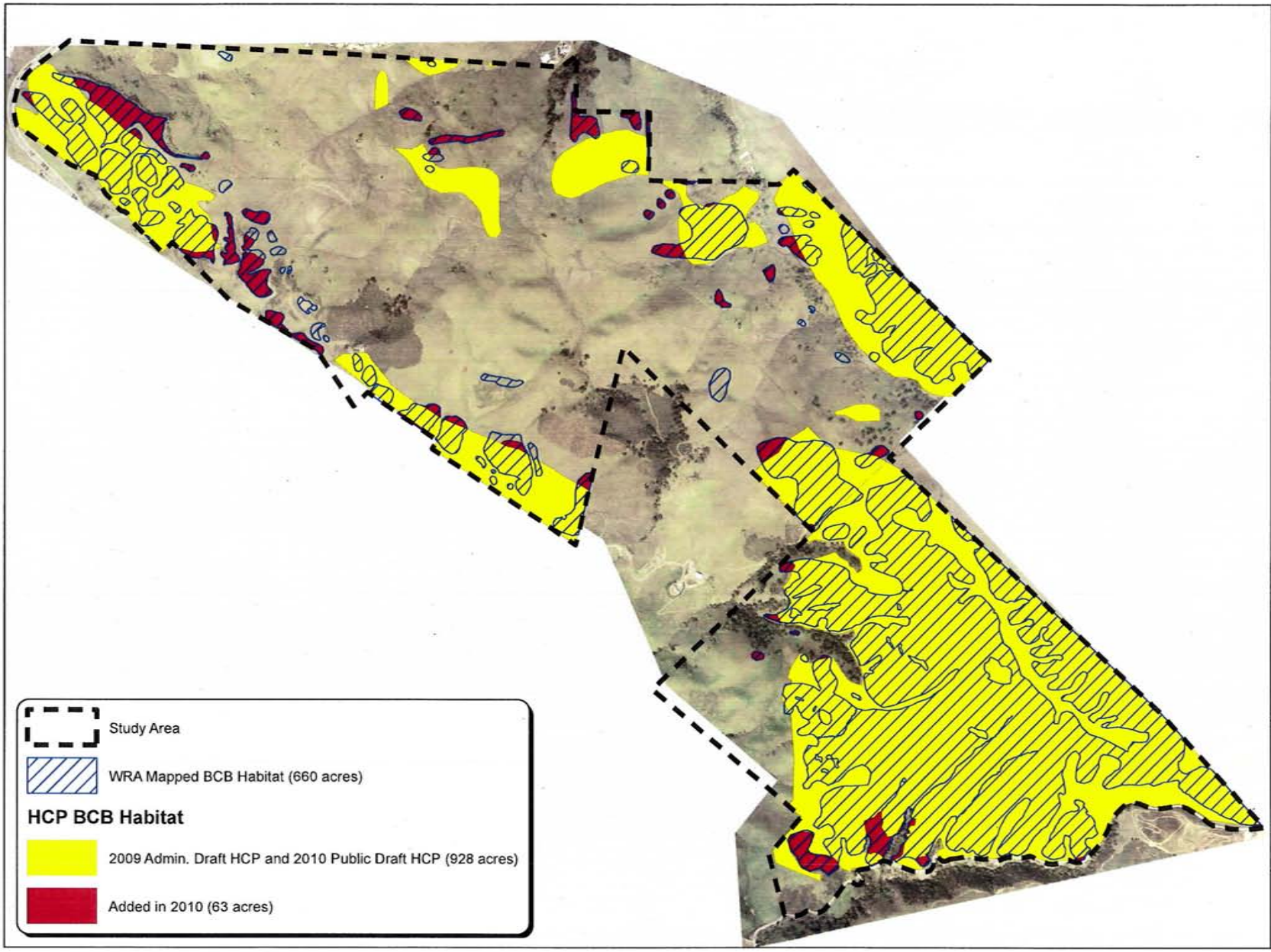
Serpentine Grassland
Comparison -
WRA vs. HCP Data

N
W E
S

0 500 1,000 2,000
Feet

Date: January 2011
Map by: Michael Rochelle

Path: L:\Acad 2000 Files\17000\17082\gis\ArcMap\2011\HCP\HCP Comparisons\Serpentine.mxd



wra
ENVIRONMENTAL CONSULTANTS

Young Ranch
Santa Clara County,
California

Figure 2

BCB Habitat
Comparison -
WRA vs. HCP Data

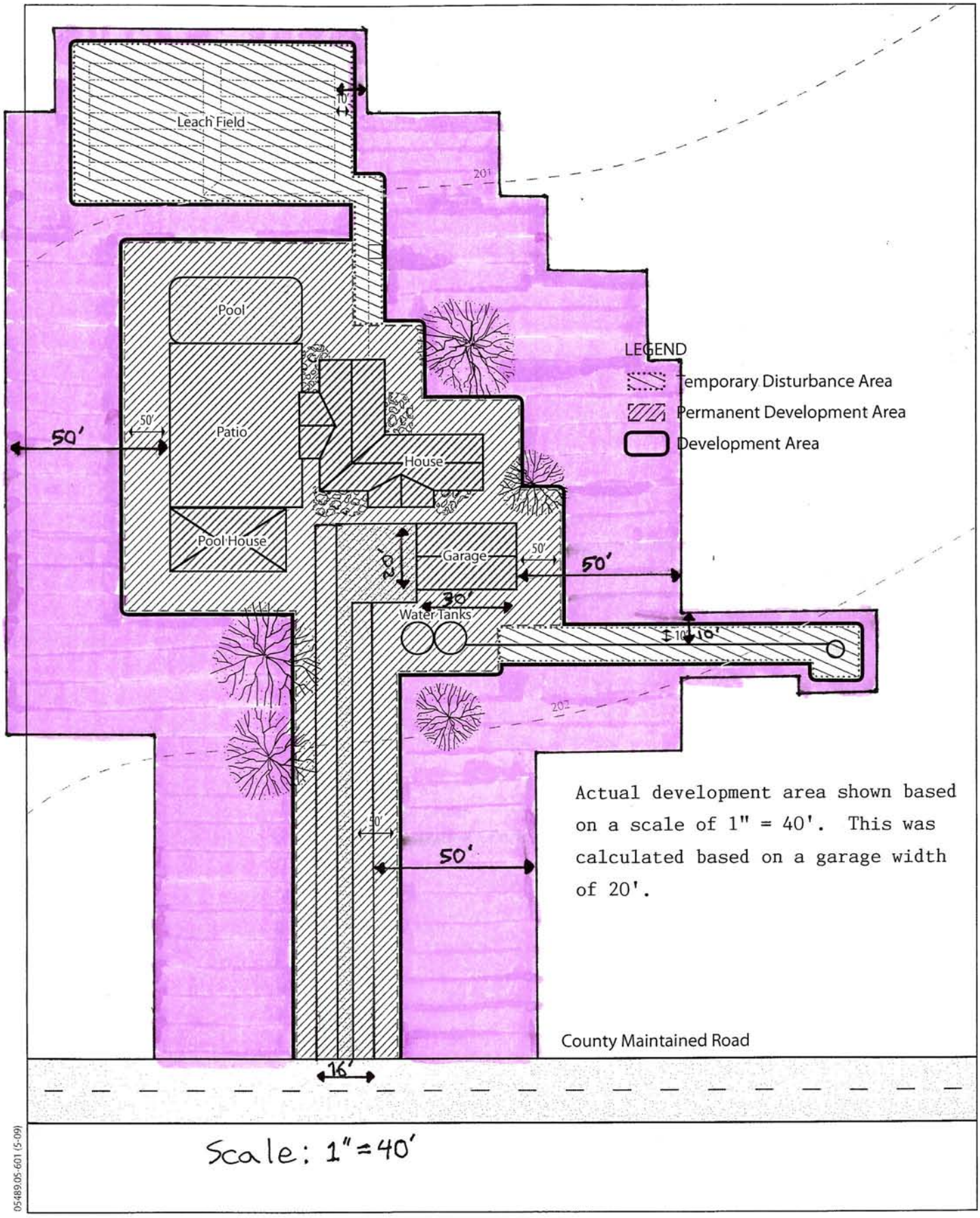
N
W E
S

0 500 1,000 2,000
Feet

Date: January 2011
Map by: Michael Rochelle

Path: L:\Acad 2000 Files\17000\17082\gis\ArcMap\2011\HCP\HCP Comparisons\BCB Comparison.mxd

FIGURE 3



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ICF INTERNATIONAL

Figure 6-1
Schematic for Calculating Impact Area for Rural Development Projects

ATTACHMENT A

COMMENTS ON THE SANTA CLARA VALLEY HABITAT PLAN
DRAFT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

YCS INVESTMENTS

APRIL 18, 2011

The U.S. Fish and Wildlife Service and the California Department of Fish and Game have prepared a Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/EIS) to inform their review of the Draft Santa Clara Valley Habitat Plan. As discussed in our attached comments, the Draft Habitat Plan includes a number of flaws that need to be corrected prior to adoption. These flaws resulted in the apparent masking of several potentially significant environmental impacts which need to be analyzed under CEQA and NEPA, but this analysis is not included in the DEIR/EIS. Further, the failure of the agencies to consider a reasonable range of alternatives and other errors require that the DEIR/EIS be revised and recirculated for public review. YCS Investments appreciates the opportunity to provide comments on this document.

I. THE DEIR/EIS PROJECT DESCRIPTION IS INACCURATE AND INCOMPLETE

Environmental documents prepared under CEQA and NEPA must fully and accurately describe the action proposed for approval. "An accurate project description is necessary for an intelligent evaluation of the potential environmental impacts of a proposed activity." *Burbank-Glendale-Pasadena Airport Authority v. Hensler,* 233 Cal.App.3d 577 592 (1991). On the other hand:

> *A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance. An accurate, stable and finite project description is the* sine qua non *of an informative and legally sufficient EIR.* County of Inyo v. City of Los Angeles, *71 Cal.App.3d 185, 198 (1977).*

Here, the decision of the City of Gilroy not to participate in the Habitat Plan has rendered the project description unstable and requires revision and recirculation of both the Habitat Plan and the DEIR/EIS. Other changes in the DEIR/EIS's project description will, however, be equally important. 33

The Habitat Plan will significantly change the planning status quo in Santa Clara County. The Habitat Plan imposes strict caps on development of certain habitat areas (notwithstanding the inaccuracies in the maps of these areas) and critical habitat areas (which are still less 34

rigorously mapped), as well as setting very high targets for acquisition of certain types of habitats. These caps and acquisition targets are expressly intended to restrict currently permitted land uses in vast areas of Santa Clara County. Indeed, the DEIR/EIS's Executive Summary identifies the development caps in the first "key element" of the Habitat Plan's conservation strategy. DEIR/EIS page ES-2. Thus a fundamental question – if not the fundamental question - posed for the public and decision-makers by the proposed Habitat Plan is whether, and if so to what extent, existing permitted land uses in the Permit Area should be overridden so as to maximize habitat quantity and quality for both unlisted and listed species.

The DEIR/EIS's project description (Chapter 2.4, Proposed Action), however, never mentions the development caps. The project description simply writes this "key element" out of the Habitat Plan. The result of this curtailed project description is that the DEIR/EIS never addresses the effect of the development caps on land use in the Permit Area. Although the Biological Resources chapter mentions the caps, the implications of the caps are ignored throughout the rest of the document; the DEIR/EIS simply states that, except for creation of the Reserve System, the impacts of the Proposed Action are identical to those of the No Project Alternative. If that were true, much of the lengthy Habitat Plan would be surplus. The effects of banning currently permitted land uses in some areas, shifting those uses to other areas, and enshrining those shifts for the next 50 years - far beyond the lives of the participating jurisdictions' current planning documents - are never discussed. Thus the public and the decision-makers are deprived of the information they need to "balance the proposal's benefits against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal … and weigh other alternatives in the balance."

Besides ignoring any implication of the Habitat Plan's development caps, the DEIR/EIS project description asserts that two crucial Habitat Plan elements are irrelevant to the plan's environmental consequences: 1) the application processes for applying the Incidental Take Permits issued pursuant to the Habitat Plan to individual Covered Activities; and 2) the Habitat Plan's implementation costs and funding mechanisms. DEIR/EIS page 2-25. These provisions are integral to the Plan as a whole and their defects are likely to cause significant impacts. Like the development caps, the Habitat Plan's lengthy, incomprehensible, and unfunded application processes, their possible applicability to ministerial projects that do not currently require governmental review, and the high fees required to fund the Plan's implementation, are likely to chill development in Santa Clara County and result in displaced development elsewhere. Because the DEIR/EIS acknowledges none of these Habitat Plan elements, it does not analyze the land use and displacement impacts they will cause. *See City of Redlands v. County of San Bernardino*, 96 Cal.App.4th 398 (2002) (upholding city's CEQA challenge to county general plan amendment shifting county policy regarding unincorporated lands in cities' spheres of influence); *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n*, 41 Cal.4th 372 (2007) (recognizing that growth-displacement effects resulting from adoption of restrictive land use regulations can be an appropriate subject of review under CEQA). 35

The project description does not recognize these elements of the Habitat Plan, and therefore, the impact analysis chapters do not address the physical effects of the resulting land use changes. Because the impacts are never analyzed, the DEIR/EIS evinces no search for a reasonable range of project alternatives that could reduce those impacts; the result is the 36

DEIR/EIS's astonishing assertion that a reasonable range of project alternatives comprises *one* alternative.

B. The DEIR/EIS Analyzes Impacts by Comparing the Proposed Action to the No Action Alternative In Violation of CEQA.

The DEIR/EIS analyzes, and expressly states that it is analyzing, all impacts of the Proposed Action by using the No Project Alternative as its baseline for environmental review. *See* DEIR/EIS Table ES-1, fn. a; page 3-3. This is a fundamental CEQA error. CEQA requires that existing physical conditions, not the no project alternative, be used as the baseline for environmental analysis of the proposed project's effects. CEQA sections 21100(d), 21151(b); CEQA Guidelines sections 15125(a), 15126.2. The California Supreme Court reiterated this rule in *Communities for a Better Environment v. South Coast Air Quality Management Dist.,* 48 Cal.4th 310, 326-327 (2010), citing a long line of court of appeal decisions holding, "in similar terms, that the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework." *Id.* at 321, fn. 6. An EIR's analysis of alternatives compares the no project alternative to the proposed project, but that is not a substitute for the CEQA-required analysis of the proposed project compared to existing physical conditions. The failure of the Habitat Plan DEIR/EIS to provide this CEQA-mandated analysis renders the document fundamentally inadequate and requires that the analyses be redone and included in a recirculated draft EIR. 37

C. The DEIR/EIS Fails to Adequately Analyze Impacts to Biological Resources

The errors in the Habitat Plan's maps of habitat areas render the DEIR/EIS's analysis of biological resources impacts inadequate. The Biological Resources chapter of the DEIR/EIS assumes that impacts to biological resources will be beneficial because the purpose of the Habitat Plan is to set land aside to benefit the 21 Covered Species. But because some of the habitat has been inaccurately mapped, the evidence shows that at least some purported habitat areas do not contain the species or habitats that the Plan says they contain. It is equally possible that habitat has been missed, allowing Covered Species to be unwittingly destroyed. The DEIR/EIS, as well as the Habitat Plan itself, must be revised and recirculated to correct these deficiencies. 38

D. The DEIR/EIS Fails to Adequately Analyze Land Use Impacts

The Habitat Plan's development caps, cumbersome and incomprehensible implementation procedures, and high fees will make many specific Covered Activities otherwise authorized by existing planning documents infeasible and will depress important development in the Permit Area as a whole. The DEIR/EIS provides no analysis of the inconsistencies of the caps with the applicable general plans and zoning ordinances of local jurisdictions; the results of the caps and development disincentives in terms of displaced development, or effects on the local jurisdictions' ability to meet regional housing needs. All of these issues must be analyzed in a revised and recirculated Draft EIR/EIS. 39

E. The DEIR/EIS Fails to Adequately Analyze Impacts to Agriculture

A document prepared under CEQA or NEPA is required to explain the bases for its conclusions. Here the DEIR/EIS states, but does not explain, the conclusion that although up to 1,000 acres of farmland (in addition to rangeland) would be acquired for Reserve Areas, only 25-50 acres would be taken out of agricultural production. If this unexplained and undocumented conclusion is incorrect, the impact to agricultural resources and the mitigation required to mitigate that impact will be greater than the DEIR/EIS acknowledges. 40

F. The DEIR/EIS Fails to Adequately Analyze Impacts to Public Services

The DEIR/EIS concludes that increased needs for public services – particularly fire services – resulting from the creation of new public access to Reserve Areas and implementation of controlled burns (not to mention "let burn" fire policies, which are mentioned in Chapter 18 of the DEIR/EIS) will not result in the need for new or expanded public safety or fire facilities. DEIR/EIS pages 8-3 – 8-4. The DEIR/EIS cites no evidence to support this conclusion. The revised and recirculated DEIR/EIS should either cite evidentiary support for this conclusion or address the possibility that new or expanded facilities will be required. 41

G. The DEIR/EIS Fails to Adequately Analyze and Mitigate Hazardous Materials Impacts

The DEIR/EIS acknowledges that the Study Area, including but not limited to the Potential Reserve Areas, encompasses many known sites contaminated by hazardous materials. DEIR/EIS pages 11-3 – 11-7, Fig. 11-1. The DEIR/EIS also acknowledges that many other known sites in these areas could be contaminated, and that still other, currently undiscovered, contaminated sites may be present. *Id.*

The DEIR/EIS further states that the Proposed Action could cause a significant hazard to construction workers, the public or the environment through disturbance of contaminated sites, and that such disturbance could occur both on Reserve System lands and on other lands, primarily those to be disturbed for riverine and riparian habitat restoration activities. DEIR/EIS page 11-7.

Although the DEIR/EIS identifies significant hazardous materials impacts from implementation of the Proposed Action both inside and outside the Reserve System, it identifies mitigation only for impacts within the Reserve System. DEIR/EIS page 11-18, Mitigation Measures 11-1, 11-2. The DEIR/EIS does not explain why Phase I Environmental Site Assessments have not been provided for the riverine and riparian habitat restoration areas, whose locations are known. Such sites merit particular concern because of the heightened potential for contaminants exposed by the Proposed Action to be carried downstream. Nevertheless, the DEIR/EIS identifies no mitigation whatsoever for the potentially significant impacts of hazardous materials disturbance in these identified riverine and riparian areas outside the Reserve System; the mitigation addresses the Reserve System only. The missing analysis of and mitigation for the Proposed Action's impacts in riverine and riparian areas outside the Reserve System must be provided in a revised and recirculated Draft EIR/EIS. 42

H. The DEIR/EIS Fails to Adequately Analyze Socioeconomic Impacts

Because the DEIR/EIS fails to acknowledge that one of the express purposes and effects of the Habitat Plan is to prohibit development in substantial areas of the Santa Clara County where development is now permitted, and does not account for the heavy burden that the Habitat Plan will impose on all development within the Permit Area, the DEIR/EIS fails to provide any analysis of the socioeconomic effects of these changes. The Habitat Plan's rearrangement of existing permitted land uses in Santa Clara County, its high development fees and its Byzantine implementation procedures ensure that development within the Permit Area will be diminished. This diminished level of activity will have severe impacts on the employment and property tax levels that Chapter 12 of the DEIR/EIS purports to analyze. Because the DEIR/EIS omits any mention of the development caps, fees and implementation measures of the Habitat Plan, the Proposed Action's socioeconomic effects are not examined. The DEIR/EIS must be revised to set forth an accurate and complete project description, and to provide an analysis of the socioeconomic effects of the entirety of the Proposed Action. 43

I. The DEIR/EIS Fails to Adequately Analyze Impacts to Cultural Resources

The creation of new trails is contemplated in the Habitat Plan. The DEIR/EIS analysis of impacts to cultural resources addresses only construction-phase impacts. The DEIR/EIS does not address the potential for damage, destruction or looting of cultural resources resulting from increased public access. This issue should be addressed in the revised and recirculated DEIR/EIS. 44

J. The DEIR/EIS Fails to Adequately Analyze Noise Impacts

Chapter 15 of the DEIR/EIS acknowledges that the Habitat Plan will result in substantial noise generated by construction activities, most of which will occur in remote habitat areas. But neither the Noise nor the Biological Resources chapter of the DEIR/EIS addresses the impacts of such noise on the covered species the Habitat Plan is intended to protect. Many species are disturbed by loud noise, but the DEIR/EIS provides no analysis of the noise impacts of construction in their habitats or of means to mitigate such impacts. 45

With respect to the impacts of construction noise on potential human receptors, the DEIR/EIS does not explain its conclusion that the identified mitigation measures will be sufficient to reduce construction noise impacts to a level of less than significant. Most jurisdictions' significance thresholds do not assume that construction noise impacts are less than significant simply because they are temporary. The DEIR/EIS provides no quantification of the effectiveness of the mitigation measures it identifies in reducing noise to levels that would represent an insubstantial increase in ambient noise. 46

K. The DEIR/EIS Fails to Adequately Analyze Air Quality Impacts

The Habitat Plan includes controlled burns and let-burn policies. The DEIR/EIS air quality analysis does not address the let-burn policy and discusses the controlled burn plan only to state that controlled burns would not be expected to exceed regulatory limits on emissions of criteria pollutants. The DEIR/EIS does not address whether these burns could expose sensitive receptors to substantial pollutant concentrations or create objectionable odors affecting a 47

substantial number of people. These issues should be addressed in the revised and recirculated DEIR/EIS.

L. The DEIR/EIS Fails to Adequately Analyze Wildfire Impacts

The DEIR/EIS acknowledges that Habitat Plan construction activities in Reserve and other areas may occur near homes and that wildfires are often started accidentally by vehicle exhaust systems. Nevertheless, the DEIR/EIS's analysis omits any mention of the potential for Habitat Plan construction activities to spark wildfires. This omission should be corrected in the revised and recirculated DEIR/EIS. 48

M. The DEIR/EIS Fails to Identify and Analyze a Reasonable Range of Alternatives

As indicated above, the failure of the DEIR/EIS to address the significant impacts of the Habitat Plan has resulted in the DEIR/EIS's failure to seek a reasonable range of alternatives to minimize those impacts. Two alternatives that should be analyzed in a revised and recirculated DEIR/EIS are: 1) an HCP-Only Alternative; and 2) a Listed-Species-Only Alternative. Either of these alternatives (as well as a combination of the two) would meet the recommendation for an HCP set forth in the 2001 USFWS Section 7 Biological Opinion; as noted in the Habitat Plan, it was this Biological Opinion that recommended a regional HCP for Santa Clara County and led to the preparation of the current draft Habitat Plan. (*See* Habitat Plan page 1-5.) The HCP-Only Alternative, the Listed-Species-Only Alternative, or a combined alternative would greatly reduce the land use changes, costs and other disincentives to development, displacement, and socioeconomic effects associated with the 50-year Habitat Plan and the 30-year Alternative A. 49

Attachment B

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)	
YCS Investments	1	ES		2		2	*The Draft Plan states that "[i]n addition to strengthening local control over land use and species protection, the Plan will provide a more efficient process for protecting natural resources by creating new habitat reserves that will be larger in scale, more ecologically valuable, and easier to manage than individual mitigation sites created under the current approach."* A detailed review of the Draft Plan belies this statement. First, the Draft Plan will weaken Permittees' control over land use decisions, which would be subject to a myriad of new restrictions not contained in the Permittees' current land planning regime, including review and in some cases approval by the third party Implementing Entity and the Wildlife Agencies. Second, it is questionable whether the Draft Plan will result in a more efficient process for preserving natural resources. It will subject the Permittees and approved private applicants to significant mitigation requirements, many of which exceed current requirements. While the management of large areas is efficient, the inclusion of significantly more land than would otherwise be required is not.	50
YCS Investments	2	ES		2		3	The geographic scope of the Draft Plan includes the City of Gilroy. Given Gilroy's decision to withdrawal from Plan participation, the geographic scope needs to be redefined and the entire analysis needs to be redone.	51
YCS Investments	3	ES		8		7	*The Draft Plan states that "[w]ithout the Plan, public and private entities whose activities would affect declining species and their habitats would be required to obtain permits and approvals from USFWS and CDFG."* This is not entirely accurate. Public and private entities would only be required to obtain permits if their projects would result in a take of a listed species. Impacts to unoccupied habitat do not require take authorization. Take authorization for impacts to federally listed plant species is also not required. Further, for the 12 non-listed species, no permit would be required. The Draft Plan needs to clearly articulate the existing regulatory regime so that the Permittees can meaningfully evaluate the cost and benefits of adopting a Plan that exceeds requirements.	52
YCS Investments	4	ES		8		7	*The Draft Plan states that proponents of projects will benefit from the Plan's approach because: "they will be assured of take coverage; they will avoid the time and expense of securing their own regulatory approvals; and they will have certainty and predictability with respect to their permit obligations."* The Draft Plan will not provide these benefits to many private and public projects. Given the Plan's opaque permitting process, it is far from certain what activities will be able to obtain take coverage. This process is also likely to involve such considerable expense that no reduced costs for individual take authorization materialize. Finally, the Plan does not provide certainty and predictability of permit requirements -- quite the opposite. For example, while the Draft Plan does include some specific conditions with which individual projects must comply, others are only vaguely defined. Further, the Plan anticipates that additional conditions may be necessary to address unanticipated effects.	53
YCS Investments	5	ES		ES-2			Table ES-2 states that "[s]urveys will be conducted to evaluate habitat quality and allow for development to occur as far as possible from high-quality habitat." There is no condition in the Draft Plan that requires or allows for surveys in modeled habitat to determine habitat quality. If this is the intent of the Draft Plan, the Plan needs to be revised to explain and justify the survey requirements. The revised Plan needs to be made available for public review and comment.	54

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)	
YCS Investments	6	2	2.2.4	31-32		5	The Draft Plan notes that the 740 acre Alum Rock Park in San Jose provides habitat for numerous species and that some other city parks may also have "important habitat value" including Penitencia Creek Park in San Jose, and Eagle Ridge open space, Uvas Creek Park Preserve, and Christmas Hill Park in Gilroy. It appears that these open space areas were designated as Type 4 open space and that, therefore, no attempt was made to determine whether they could be included in the Reserve Area. Because it is anticipated to be much more economical to incorporate existing open space than to acquire new lands, this analysis needs to be done.	55
	7	2	2.2.5	33-34		6	The Draft Plan recognizes that the current management of preserved open space is subject to the availability of funding. The Permittees should thoroughly explore whether the provision of additional funding for management of all these preserved areas could satisfy some of the Plan's mitigation and conservation obligations. Such actions could provide significant species protection much more economically than the acquisition of additional lands. This analysis should be included in the Draft Plan.	56
YCS Investments	8	2	2.3	35		3	The Draft Plan states that a described activity or project is covered if it: (1) does not preclude achieving the biological goals and objectives of the Plan; (2) is an activity under jurisdiction of one of the Permittees; (3) the activity or project is a type of impact evaluated; and (4) "adequate take coverage under the permits remains available for other covered activities." It is extremely difficult to anticipate how three of these criteria will be applied. With regard to the first criteria, what level of analysis will be required? Isn't one of the fundamental purposes of the Draft Plan to provide assurances that certain activities are pre-approved? Is anything more required than a determination that the project will comply with the Plan's conditions anticipated? With regard to the third criteria, what specificity with regard to the effects analysis is required? Must the Permittee determine if the type of activity was considered at the proposed location? For example, for burrowing owl impacts, the Draft Plan assumes that impacts to potential breeding habitat would occur on the valley floor. If a project would impact potential owl breeding habitat in other locations, is this the type of impact that has been analyzed? If not, is there in fact a moratorium on impacts to potential owl breeding habitat other than on the valley floor? With regard to the fourth criteria, what does it mean that "adequate take coverage under the permits remains available for other covered activities"? Does this mean that the Permittee must determine that the proposed project will not result in meeting any of the impact caps? What other activities must be considered? How much take must remain? Because the identification of what constitutes a covered activity defines what will be allowed in the permit area over the next 50 years, it is critical that covered activities be clearly explained. The Draft Plan needs to be revised to include such a description. Without an understanding of what are covered activities, the public cannot meaningfully comment on the document and the Permittees can not approve it.	57
YCS Investments	9	2	2.3.3	42-43		4	Under the Draft Plan, flood protection projects can only proceed after individual review and approval by the Wildlife Agencies. How does requiring this additional level of approval help to streamline the permitting process for these projects?	58

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YCS Investments	10	2	2.3.8	100		10	*The Draft Plan states that "[l]imited recreational use of Plan reserves is permitted under the guidelines of this Plan." It contemplates that covered activities will include "construction and maintenance of recreational facilities such as trails, creek crossings for trails, parking areas, gates, fencing, signage, restrooms, wildlife observation platforms, and educational kiosks."* The County Park areas included in the reserve system will be subject to a conservation easement which, per Section 8.6.3, will prohibit construction of any improvement that does not directly support agricultural operations or management activities. The easement prohibits grading (altering the surface topography) except as needed to support restoration or enhancement projects. How then can recreational facilities be constructed on County Park reserve lands?	59
YCS Investments	11	2	2.3.8	101		2	The Draft Plan severely limits public recreation in and access to the 58,000 acre reserves: it allows up to eight staging areas and eight small day-use picnic grounds - or one for every 7,200 acres; three small backpack areas, equal to one per 19,000 acres (page 2-101) and up to 150 miles of new trails, equal to one mile for every 400 acres (page 2-100). Yet County contributions to the Plan include a total of 21,000 acres, including 8,000 that must be purchased, and $70 million in renewable County Park Charter funds. Although the County has other covered activities that may require permits under the Draft Plan, the limited recreational facilities show that the current Draft Plan provides little direct public benefit to County residents. Given the relative cost/lack of benefit, it is essential that both the Permittees and the public can thoroughly review the proposed level of recreational uses on public open spaces through a thorough public process, not one subsumed in the greater HCP review.	60
YCS Investments	12	3	3.2.4	6		3	Serpentine soils are not consistently described in the Draft Plan. Here "serpentine soils are assumed to occur where serpentine soils and serpentine bedrock are mapped. Each map layer alone is insufficient to fully represent field conditions." In other places, the Plan states that the presence of either alone is sufficient. The Plan needs one stable definition.	61
YCS Investments	13	3	3.3.2	17		4	The Draft Plan cites "Land cover and habitat mapping for Young Ranch on Coyote Ridge (WRA Environmental Consultants 2009)" as a land cover data source. (See also 3-19). WRA provided field verified scientific information to Plan staff due to mapping errors in the Second Administrative Draft Habitat Plan, which included both over- and under-accounting of serpentine grassland habitat in different areas. These errors resulted in 915 acres of serpentine grassland on Young Ranch; WRA's field verification showed that there were only 674 acres. (See Figure 1). The Habitat Plan staff said that the Draft Plan would incorporate all of the new data; it does not. The Draft Plan map shows only the additional serpentine grassland areas and retains the erroneous non-serpentine grassland areas. Thus, the magnitude of the error increased by 78 acres. (See Figure 1 attached). Here can be no reasoned justification for the selective use of the Young Ranch field data. The land cover map must be revised to incorporate the accurate data. Also, the Permittees should ensure that similar mapping errors have not occurred in other areas with site-specific information.	62

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YCS Investments	14	3	3.3.2	20		4	The Draft Plan relies upon land cover mapping as the basic building block of its entire analysis. How accurate is it? The Plan acknowledges that a formal accuracy assessment of the mapping yielded a 73% - 89% accuracy rate for mapping in the Valley floor; overall field verification was limited to a visual inspection of lands from abutting public roads (page 3-20); and background mapping for serpentine soils and geology is not uniformly available (Table 3-4). Nonetheless, the Draft Plan assumes a high confidence rate in mapping for land cover types such as serpentine grassland and annual grassland. (See Tables 3-3a and 3-4). We question this level of confidence in the serpentine grassland mapping given the mapping methods and errors on the Young Ranch site.	63
YCS Investments	15	3	3.3.3	23		9	The Draft Plan states that it relied on local survey data "whenever possible" to define the parameters for covered species habitat models. During Plan development, we provided Plan staff with the results of multi-year BCB surveys conducted by WRA Associates on the Young Ranch site, as well as their serpentine grassland data (see comments on page 3-17). Despite agreement by Plan staff to add all data, WRA's data was only selectively incorporated into the BCB habitat model. Therefore, whether the models really reflect the best scientific information available is debatable; clearly, the BCB model does not. (See Figure 2).	64
YCS Investments	16	3	3.3.3	25		5	The Draft Plan's habitat models do not allow for the distinctions of habitat quality to be made. Because the determination of the efficacy of habitat preservation as well as the impact of take is dependent on the quality of the habitat, how does the Draft Plan make the necessary assessments about where preservation should be directed and take should be allowed. It does not seem appropriate to rely exclusively on habitat models, which may contain large mapping error, and do not account for habitat quality to dictate where given activities should occur. Corrections to these models should be allowed during Plan implementation.	65
YCS Investments	17	3	3.3.3	25		4	The Draft Plan recognizes that limits inherent in the habitat models restrict the ability to provide project-specific analysis of impacts; consequently, the Plan anticipates that these models will not be sufficient for project-specific CEQA review. This fact significantly reduces the efficiency of the Plan's evaluation of impacts to species. Rather than reducing the amount of study that must be conducted, development of the Draft Plan resulted in the creation of habitat models at great cost that would not have otherwise been necessary for normal project review and approval.	66
YCS Investments	18	3	3.3.3	25		5	Since the mapping admittedly overstates the amount of habitat, it will also overstate the potential impacts of the covered activities. Impact caps will be reached for the models long before they are reached on the ground. The Plan must allow for updates to the models for all species in all locations to ensure that it does not prematurely cut off covered activities. Also, the habitat models should provide for distinguishing levels of habitat quality. The determination of the efficacy of habitat preservation as well as the impact of take is dependent on the quality of the habitat. Without it, how does the Draft Plan make the necessary assessments about where preservation should be directed and take should be allowed? Relying solely on large scale habitat models, which may contain mapping errors and do not account for habitat quality, to dictate where given activities should occur could result in worse conditions for the covered species. Corrections to these models should be allowed during Plan implementation.	67
YCS Investments	19	3	3.3.3	26		1	The Draft Plan states that the habitat models are used primarily to denote suitable habitat. During Plan implementation, however, these habitat models will primarily be used to track allowable impacts and required mitigation/conservation actions. Given the recognized limitations inherent in these models, the Draft Plan must allow for corrections to the models based on appropriate scientific data.	68

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YCS Investments	20	4	4.4	46		5	The Draft Plan provides that "[a]s covered activities are implemented, specific impacts will be more accurately quantified." We assume that this means that the land cover impacts will be based on the verified mapping described in Chapter 6. However, given that the Draft Plan specifically states that impacts to species will be tracked by Habitat Models in existence at the time of permit issuance and not updated models that incorporate new scientific information, confirmation of our understanding is necessary. Given the inconsistent way in which impacts limits and tracking are described throughout the document, it is difficult to understand how the Plan will be implemented. The Draft Plan should be revised to provide clear explanations and re-circulated for public review.	69
YCS Investments	21	4	4.4.1	46		4	The Draft Plan sets caps for impact to habitat for certain covered species that are in addition to the caps on land cover types. These impacts will be based on impacts to the areas modeled at the time of Plan issuance. What is the justification for basing the impact requirements on models that are in existence at the time of Plan issuance rather than on models that are updated during Plan implementation to incorporate new information that constitutes the best scientific information available? This could result in restrictions being placed on lands that do not support the necessary features to support the identified species. What purpose would be served by this, when the land cover maps already provide for the level of protection deemed necessary at a regional level? We are particularly concerned about the proposed approach because we are aware of some errors incorporated into the habitat models. As is discussed below, YCS hired qualified biologists to conduct multi-year, intensive field investigations and surveys on the Young Ranch site. Included in these efforts were multi-year BCB habitat assessments and surveys. This field work showed that a significant portion of the areas designated on the site as being occupied BCB habitat in the Second Administrative Draft HCP did not in fact contain the features necessary to support the BCB lifecycle and were not occupied. These studies were presented to Habitat Plan staff and in a meeting, the Habitat Staff agreed with the methodology used to identify BCB habitat and agreed to incorporate information into the Draft Plan. As requested by Habitat Plan staff, these studies were also provided to Stu Weiss, one of the leading BCB experts, and Dr. Weiss concurred in the methodology and result of the field investigation. Despite this, the Habitat Staff only selectively incorporated the information in the Draft Plan. The Habitat Model was revised to include new areas of identified BCB habitat in the field investigation, but did not exclude the areas determined in the field to not constitute BCB habitat. See Figure 2. No justification for this arbitrary, selective use of the information is provided. Given the magnitude of the errors on the Young Ranch site, we are concerned about the accuracy region wide. Without an ability to correct these models, land uses may be unnecessarily and unjustifiable restricted in certain areas and mitigation efforts may be misdirected.	70
YCS Investments	22	4	4.4.1	48-49		5	The Draft Plan explains that permitted projects or projects anticipated to be permitted at the time of issuance were considered part of the baseline. These projects, however, can apply for take coverage by complying with the provisions of Chapter 6. Because they were considered part of the baseline, these impacts should have been incorporated into the analysis and, therefore, should not count towards the caps. Clarification is needed.	71

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YCS Investments	23	4	4.4.1	54		2	The Draft Plan states that the specific effect of rural development on landscape linkages and wildlife connectivity could not be assessed at the programmatic level. The Draft Plan anticipates that "[s]ome larger rural development projects may degrade landscape linkages or impede wildlife movement." It provides that these impacts will be addressed through acquisition of key linkage areas before development occurs and in compliance with Condition 7 (which also requires compliance with other conditions). Not explained, however, is how a Permittee will make the determination regarding a rural project's potential to impact linkages. Condition 7 does not provide any specifics. Additional information is needed to understand how the Plan will be implemented. The public will then need the opportunity to comment on the additional information.	72
YCS Investments	24	4	4.4.1	57		3	The Draft Plan includes a cap on impacts to designated critical habitat that are in addition to caps on modeled habitat and landcover types. As is discussed below, critical habitat maps are done at a much coarser level than the large scale mapping completed for the habitat models. Further, the critical habitat designations were also not created at a level designed to establish fine scale impacts on the designated landscape. Rather, the critical designations were designed to ensure an additional level of protection for the targeted species through the requirements that when an activity is carried out or approved by a federal agency in such areas, the federal agency must consult with the Service to ensure that the activity would not appreciably diminish the chances of survival and recovery of the targeted species. Transforming critical habitat designations is completely unjustified. The cap limits, required mitigation measures and the Plan's conservation actions will contribute to the recovery of these species. The targeted species "chances of survival and recovery are more than met by the cap limits on modeled habitat and land cover necessary to meet the NCCP Act's conservation standard. This cap should be removed.	73
YCS Investments	25	4	4.4.1	62-63		5	The Draft Plan recognizes that additional occurrences of covered plant species are likely to be found during Plan implementation and that such discoveries may warrant the increase in extremely low impact caps established for the covered plants. For three species, Coyote ceanothus, Tiburon Indian paintbrush and Metcalf Canyon jewelflower, no increase is allowed. Although the Draft Plan explains the criteria used to evaluate whether additional take should be allowed, it fails to describe how these criteria prohibited the inclusion of additional take of these species. Given the extremely low take authorized (no take for Coyote ceanothus and Tiburon Indian paintbrush), an explanation needs to be provided to justify this significant restriction.	74
YCS Investments	26	4	4.4.1	63		3	The Draft Plan allows for partial or temporary impacts to covered plant occurrences so long as the impact does not threaten the long-term viability of the occurrence. The Draft Plan needs to incorporate information as to how and when this determination will be made. Because permanent impacts can only occur after significant preservation of other occurrences, it is critical that the Plan state that the preservation requirements will not apply to an activity that the Permittee determines only will have a partial impact.	75
YCS Investments	27	4	4.4.2	66		4	The Draft Plan includes a study designed to assess the "degree to which nitrogen deposition will increase as a result of Plan implementation." This study's methodology, however, is fundamentally flawed and therefore, cannot be relied on to assess the indirect impact of the Plan on nitrogen deposition or as a technical basis for the proposed nitrogen deposition fee. A detailed analysis of the study's methodology is provided in Attachment C.	76

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YCS Investments	28	4	4.5	68		6	The Draft Plan explains that the amount of impacts that will occur to covered species and identified land cover types is likely overestimated. This is because the Draft Plan's analysis includes a number of worst-case scenario assumptions in addition to the fact that the analysis is based on large-scale mapping units that are also assumed to overstate the amount of habitat found in the project area. The net result of all of these overestimates and conservative assumptions is a Habitat Plan that will severely limit the amount and type of development that can occur within the permit area over the next 50 years. The Permittees need to consider whether all of these severe restrictions are in fact necessary. The Draft Plan should be revised to include quantification of the likely net overestimation of impacts so that the Permittees can make this determination. See also comments on page 3-25, 4-69.	77
YCS Investments	29	4	4.6	69		3	The Plan acknowledges that the models are likely to be over-inflated due to mapping and lack of occupancy of all habitat. This substantiates the critical need to update the models in the future to protect the covered species (by directing impacts towards the habitat of least value) and to ensure that impacts are tracked accurately (to avoid a premature moratorium on covered activities).	78
YCS Investments	30	4	4.6	69-70		4	The Draft Plan notes that there will be overlap in impact accounting because of the overlap between land cover types and modeled habitat. As an example, the Plan notes that impacts to BCB habitat would be counted to both serpentine bunchgrass grassland and BCB habitat. What if field verification shows that the land does not in fact support serpentine bunchgrass grassland? Because corrections are allowed to land cover types but not to modeled habitat, would any impact count only towards the BCB habitat? If so, how can this disparate treatment be justified? The Plan should be revised to allow updating of the habitat models during Plan implementation for purposes of tracking actual impacts. Further, the contradictory descriptions of how impacts should be tracked mandates clarification.	79
YCS Investments	31	4	4.6.1	71		2	The Draft Plan establishes a 550 acre cap on impacts to serpentine bunchgrass grassland and a 300 acre cap to modeled habitat. The text explains that this 300 acre cap does not apply to BCB modeled habitat that is not targeted for preservation. Table 4-4, however, does not note this exception and it needs to be changed to include it.	80
YCS Investments	32	4	4.6.1	71		7	The Draft Plan limits impacts to BCB habitat to 300 acres overall, not to exceed 3% in any one habitat unit. However, it exempts nearly 110 acres of impact from these limits in the Kirby/East Hills core habitat and the Pound Site core habitat units. The Plan allows two public projects, a landfill and a firing range, to impact 11-13% of modeled habitat specifically because these projects will impact lower quality habitat. We concur that the Plan should incorporate flexibility to allow for case-by-case determinations that a proposed activity should be allowed, despite the habitat unit caps, based on a detailed investigation of the quality of the habitat impacted and the project's overall effect on BCB. We do not understand why this flexibility should only apply to these two projects. The Draft Plan should be revised to either explain why a case-by-case evaluation for other projects is not consistent with the conservation strategy or to allow for such flexibility.	81

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YCS Investments	33	4	4.6.1	72		2	The Draft Plan provides that impacts to BCB habitat outside of the identified habitat units will be counted towards the 300 acre limit if surveys show that the area is occupied by the BCB (per Table 5-7, these "non-target areas" total nearly 1,500 acres). Elsewhere the Plan provides that the 300 acre cap applies only to areas targeted for preservation (page 4-71). What is the justification for applying the cap to these areas here? How is it equitable to include areas not anticipated to support BCB but that do in fact include such habitat in the cap limit, while refusing to exclude areas that lack the actual features necessary to support the BCB from the cap limit? This approach is similar to what HCP staff did with the Young Ranch information, i.e., expanding the protected areas based on field information but not retracting limitations where field information shows that the limitation is not justified. In both cases, property specific and regional, the process is arbitrary.	82
YCS Investments	34	4	4.6.1	72		4	The Draft Plan states that development "on the ridge top [in core habitat units] would be incompatible with the conservation strategy." Does this mean that the Permittee could not allow any such development because it could not make the necessary finding that the activity is consistent with the Plan's conservation strategy. If so, how would the Permittees make this determination? What constitutes development on a ridge top? Is it limited to activities on the crest of the hills or does it also include some buffer? Further explanation is required to allow for meaningful public comments on the Draft Plan. Such information must also be developed to allow the Permittees to implement the Plan.	83
YCS Investments	35	4	4.6.1	72		5	The Draft Plan assumes that impacts in core or satellite habitat units are expected to be small (less than 10-20 acres each). Despite this assumption, the Draft Plan allows for impacts to up to 3% of any habitat unit. Please confirm that this discussion of the assumptions about where the impacts will occur does not create an additional limitation on covered activities.	84
YCS Investments	36	4	4.6.1	74		5	The Draft Plan states that "[c]overed activities that facilitate increased vehicular use . . . in the study area will contribute to increased rate of nitrogen deposition on Bay checkerspot habitat." As was discussed above, this conclusion is not scientifically supported. See Attachment C.	85
YCS Investments	37	4	4.6.5	88-89		4	It is extremely difficult to assess the amount of impacts that are allowed to Burrowing Owl habitat given the apparently contradictory numbers and descriptions included in various sections of the Draft Plan. Here, the Plan states that impacts to occupied burrowing owl habitat will be limited to 198 acres. This number was based on known nesting locations and includes estimated impacts to a 0.5 mile buffer around any nest. It is anticipated that all impacts to nesting burrowing owl habitat will occur within the City of San Jose. Because impacts within this area are determined on a parcel basis (not the development area), it seems that the impact number should be much larger than 198 acres. Further, explanation of how this number was derived and how these impacts will be tracked is needed to allow for meaningful comment. This is particularly significant given the large number of acres of potential nesting habitat assumed by the Plan to be in the permit area.	86

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YCS Investments	38	4	4.6.5	89		2	The Draft Plan allows for impacts to 4,000 acres of potential nesting habitat, which is broadly drawn in the permit area over vast areas that have never been shown to support nesting owls. If the areas identified as potential nesting habitat are found to support burrowing owls, would any impacts there be subject to the 198 acre cap? Has there been any analysis done to show the likely limitations that would result if the burrowing owl population expands as intended? Do burrowing owl impact fees apply to potential nesting habitat? It is important to note that the areas designated as potential breeding habitat have not been modeled based on the presence of features that could support burrowing owl nesting. Rather, these areas were designated by simply drawing a 7.5 mile circle around documented breeding sites. Therefore, this restriction could well limit activities that would not in fact impact any feature that could support burrowing owl nesting. How is this justified?	87
YCS Investments	39	4	4.6.5	90		4	The Draft Plan allows for an annual adjustment in the amount of allowable burrowing owl take, either increase or decrease, based on the biological goals and objectives of the Plan on an annual basis. We support the use of information developed during Plan Implementation to be used to ensure that the take limitations remain proportional to the actual impacts. We suggest that similar provisions should be included for other covered species.	88
YCS Investments	40	4	4.7	109-111		6	The Draft Plan establishes a cap on impacts to designated critical habitat for BCB, CTS and CRLF. The Plan admits that critical habitat mapping is at a much coarser level than the Plan's habitat models. Further, for BCB, the Plan determines that the limits on impacts to core habitat "will also ensure that units of critical habitat continue to function." Despite this analysis, the Draft Plan includes a cap on impacts to designated BCB critical habitat (see Table 4-9). There is no justification for this limitation, since BCB habitat will be protected and designated critical habitat units will continue to function as habitat. To our knowledge, no other HCP to date includes an additional cap on designated critical habitat. Why is the critical habitat found in this permit area so unique it requires additional protection? The Plan should be revised to exclude this extraneous limitation.	89
YCS Investments	41	5	5.1	2		1	The Draft Plan states that "the conservation strategy is born out of the biological goals and objectives developed for the Plan" and that these goals and objectives will be achieved by an identified "series of conservation actions." Tables 5-1a-d enumerate these actions: 21 biological goals, 94 biological objectives and 135 conservation actions. The Draft Plan requires that covered projects be consistent with the identified goals and objectives of the Plan. Does this mean that a Permittee must determine the consistency of every proposed project with each goal and objective? If so, how is it anticipated that this will be completed? Additionally information needs to be incorporated into the Draft Plan regarding how consistency with this conservation strategy will be determined. Without this information, it is impossible to meaningfully comment on the Plan.	90

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YCS Investments	42	5	5.2	3		3	The Draft Plan provides that the conservation actions include enough specificity that they can allow implementation but that they are flexible. Does this mean that there is also flexibility in how consistency with these actions will be determined? We agree that implementation of a 50 year conservation strategy requires a significant amount of flexibility, but we are concerned about how the conservation goals, objectives and actions will be translated into enforceable restrictions on land use decisions. Additional information is required regarding how a specific project's consistency with the conservation strategy will be made. Such information is necessary for the Permittees, the public and the Wildlife Agencies to make informed decisions about the desirability and legality of the Plan. The Draft Plan explains that its regional scale precluded the development of biological goals and objectives that meet the level of specificity called for in the Service's 5-Point Policy. The drafters intend for this deficiency to be addressed in implementation plans to be developed after Draft Plan approval.	91
YCS Investments	43	5	5.2.1	3-4		n.2	These future plans will be subject to approval of the Wildlife Agencies. Given this admitted deficiency, how can the Wildlife Agencies approve the Draft Plan? While it is noted that the Wildlife Agencies will review and approve these future Plans, there is no indication that these future plans will also be made available to the public for review and comment. Because it is anticipated that these future plans will include the specific information which will define how the conservation strategy will be carried out and define terms with which all covered activities will need to be consistent, meaningful public participation in development of the Habitat Plan can only be provided if the public is given the opportunity to review and comment on these plans. They should be in place prior to adoption of the Habitat Plan.	92
YCS Investments	44	5	5.2.1	4		1	The Draft Plan states that it is anticipated that "many of the details of the conservation actions will be modified during Plan implementation through monitoring and adaptive management program, while goals and objectives will remain relatively static." What will these anticipated changes to the conservation actions mean for consistency determination?	93
YCS Investments	45	5	5.2.1	4		4	Under the Draft Plan, "[i]f the agreed upon conservation actions cannot be implemented and there are no alternatives that provide similar benefit and will achieve the biological goals, as agreed to by the Wildlife Agencies and the Implementing Entity, then coverage of the target species may need to be modified, reduced, or eliminated." This provision seems contrary to the Permittees' goal to develop a Habitat Plan that provides assurances regarding the level of take that will be authorized in the permit area over the next 50 years. Without such assurances, can the Permittees justify the expenditures of finishing the Habitat Plan and funding its implementation?	94

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YCS Investments	46	5	5.2.1	6		4	The Draft Plan states that the "biological goals apply only to the Reserve System unless stated otherwise" but similar goals "will be encouraged" on private land. Moreover, since a Permittee must determine if proposed activities are consistent with this strategy, these goals do indirectly apply to the entire permit area. For example, goal 2 is to "[m]aintain or improve opportunities for movement and genetic exchange of native organisms within and between natural communities inside and connecting to areas outside the study area." Objective 2.2 is to "[p]rotect and enhance important habitat linkages for covered species and other native species within the Reserve System and protect connectivity to habitat outside the study area." (Table 5-1a) Thus the conservation actions require, *inter alia,* acquisition of "3,400 acres of serpentine grassland along Coyote Ridge to link exiting protected areas and to create a large core reserve for serpentine grassland species to move within." (Land-L5). Prior to a Permittee proposing or approving a Coyote Ridge project, what analysis is required? Determine the remaining acreage and ensure that there are 3,400 acres held by willing sellers? Further clarification regarding how these decisions will be made must be provided to allow for meaningful comment.	95
YCS Investments	47	5	5.2.2	8		7	The Draft Plan states that it is assumed that most impacts will occur primarily in areas with low-quality habitat. Because the land cover mapping and habitat models do not describe the quality of habitat, where is this assumption explained in the analysis? Does this mean that when a Permittee is evaluating a proposed project for consistency with the Plan, it needs to evaluate the quality of the habitat that will be impacted or just determine if there is sufficient take left to cover the proposed impacts? Do impacts to high quality habitat constitute an unanticipated effect that requires the imposition of additional conditions (discussed in Section 6.1)? Further clarification is needed to allow the Permittees, the public and the Wildlife Agencies to understand the intent of the Plan.	96
YCS Investments	48	5	5.2.3	9-10		2	The Draft Plan states that the Reserve System was developed in a step-wise fashion which identified target areas and then overlaid covered activities. Where there was a conflict, alternative conservation areas were sought. If no alternatives were identified that would meet the Plan's goals, the covered activity was scaled back or dropped. Based on this description, it appears that the Plan drafters have already determined that some specific lands cannot be developed. The Draft Plan states that urban development will be limited along streams. The Plan also restricts development on ridge tops as incompatible with the conservation strategy (page 4-72). Are there additional pre-determined bans on development of specific sites or land cover types? The Draft Plan needs to explain areas where the Plan will, on adoption, create a moratorium on development.	97
YCS Investments	49	5	5.2.3	10		3	The Draft Plan states that the reserve design process was based on the best available biological data and references the species accounts provided in Appendix D as summarizing this data for the covered species. As was noted, some of these species accounts incorporate significant flaws and/or ignore critical scientific data. After these species accounts and models are corrected, the Draft Plan's reserve design needs to be reevaluated to ensure that it is consistent with "accepted tenets of conservation biology in concert with the best available biological data."	98

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YCS Investments	50	5	5.2.3	13-14		7	The Draft Plan states that the design of the reserve was largely driven by consideration of the needs of the BCB. Therefore, it is critical that the information regarding this species habitat range is accurate. As is discussed above, the Draft Plan's BCB habitat model includes inaccurate characterization of Young Ranch. This information was provided to the Habitat Plan drafters but was only selectively used. This selective use of sound scientific information calls into question the scientific basis for the habitat model and thus the preserve design on which it is based. The habitat model needs to be corrected and the preserve design should be reevaluated.	99
YCS Investments	51	5	5.2.3	14		3	The Draft Plan states that Reserve System was designed to take advantage of the substantial amount of open space (over 177,000 acres) currently preserved in the permit area. Despite this claim, only 13,000 acres of current open space were determined to be eligible for inclusion. The Draft Plan describes the criteria it used to make the eligibility determination but does not explain how application of the criteria led to the exclusion of over 90% of the open space areas. Because it is assumed that incorporating preserved lands would be significantly less expensive than acquiring new lands and would also not result in the replacement of currently allowed development, we urge the Permittees to require that the Draft Plan included a detailed discussion of how these criteria were applied to the existing open space areas. The public should have an opportunity to review and comment on this analysis.	100
YCS Investments	52	5	5.2.3	15		7	The Draft Plan reports that State Park lands were considered for inclusion in the preserve but were excluded because California Department of Parks and Recreation declined to participate in this Plan. What was the reason for State Parks to decline to participate? State Parks has significant land holdings in the permit area, including over 57,000 acres in Henry W. Coe State Park and over 700 acres in Pacheco State Park. Inclusion of these lands could significantly reduce the cost of Plan implementation. The Permittees should further explore whether there are ways to induce State Parks to participate in the Plan.	101
YCS Investments	53	5	5.2.3	16		4	To determine the level of protection necessary for covered species, the Draft Plan incorporates a conservation gap analysis of the amount of habitat currently protected as Type 1, 2 or 3 open space areas. Type 4 open space lands also include habitat for covered species. Why were these excluded from this analysis? While we recognize that some Type 4 open space areas may not contribute to the preservation of covered species, some may. Do any of the open space areas owned by the Cities have the potential to contribute to recovery of the species? Further, don't some lands under agricultural easements provide valuable habitat for some covered species? The analysis should be redone to take these areas in to account or an explanation should be included as to why this has not been done.	102
YCS Investments	54	5	5.2.3	16		9	The Draft Plan includes a conservation gap analysis for the BCB "because of the importance of protecting substantial portions of occupied and suitable habitat for the Bay Checkerspot butterfly." This again underlines the importance of having the BCB habitat model be accurate. For the reasons discussed in, the accuracy of this model is questionable.	103
YCS Investments	55	5	5.2.3	18		3	The Draft Plan states defines landscape linkages as "areas that allow for the movement of species from one area of suitable habitat to another." It recognizes that "a landscape linkage" can vary from a narrow strip of habitat that functions as a conduit for movement (i.e. a corridor) or a large area of intact habitat that is used for movement, dispersal, and other life functions such as foraging and breeding. Because projects will need to comply with the Plan's requirement to avoid certain linkages, it is critical that these be defined.	104

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YCS Investments	56	5	5.2.3	18		6	The Draft Plan explains that linkage requirements vary greatly by species. Yet the Plan does not define the needs of any species. The plan must provide some guidance for linkages on a species by species basis. For example, flying species have more flexibility than terrestrial or aquatic ones. For some, such as butterflies, the scientific literature suggests that useful corridors or links may be less than 100 feet wide (see Attachment D). This is much smaller than the "regional level...broad swaths" envisioned here. The Plan acknowledges that there are many ways to achieve the linkage design. But without specific species-appropriate dimensional guidelines, the overall concept is very large scale and hard to define (page 5-19). For example, linkage 4 "must be widened to at least one mile (page 5-49)." Further information is needed to ensure that the Plan will be implemented as intended and to allow for meaningful public review and comment.	105
YCS Investments	57	5	5.2.3	21		3	The Draft Plan recognizes that the use of a map-based plan wherein specific areas that must be conserved are designated requires the agreement of all effected landowners. Although the Draft Plan describes its conservation plan as being a hybrid approach which allows flexibility, this flexibility is severely limited by some of the conservation requirements. For example, the Draft Plan requires the preservation of specific occurrences of covered plant species. Have the owners of the land that include these occurrence agreed with the designation of their land as conservation areas? If not, how can the Permittees, the Wildlife Agencies, and the public evaluate whether the Draft Plan is actually feasible? Further clarification is required.	106
YCS Investments	58	5	5.2.3	22		2	The Draft Plan states that the use of conservation analysis zones allows for the identification of areas where conservation actions must be taken without requiring the identification of individual parcels that must be conserved, an essential element because the Plan conservation areas can only be acquired from willing sellers. While it is technically accurate to describe the maps as not identifying specific parcels, the conservation requirements do identify specific resources in known locations that must be preserved to meet the objectives of the conservation strategy. Therefore, the Plan does require the acquisition of specific parcels of property. Have negotiations with the effected landowners occurred? If not, how can the Permittees, the Wildlife Agencies, and the public determine whether the requirements of the conservation strategy can actually be met. Without this information it is impossible to evaluate whether the take coverage provided in the Draft Plan will actually be available to the Permittees.	107
YCS Investments	59	5	5.2.3	23		12	The Draft Plan recognizes that the Implementing Entity must have flexibility in deciding where to acquire conservation lands because the Plan relies exclusively on willing sellers. As discussed above, this flexibility is not actually provided in many respects. The Implementing Entity is *required* to acquire certain specific plant populations. Further, the Implementing Entity is *required* to acquire almost half of Coyote Ridge. Is it reasonable to assume that sufficient willing sellers will emerge to allow the acquisition requirements to be met? The Permittees, the public and the Wildlife Agencies need additional information to understand the feasibility of the conservation strategy.	108

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YCS Investments	60	5	5.2.5	26		2	The Draft Plan acknowledges that its habitat restoration "requirements exceed those typically required for individual mitigation." It states that the "greater restoration requirements are also proportional to the stronger regulatory assurances provided by CDFG to the Permittees and private developers within the participating jurisdictions." Given the high uncertainty regarding the ability to meet the Draft Plan's conservation requirements due to possible lack of funding and willing sellers, we question whether this higher mitigation requirement is justified. If the Permittees cannot meet the conservation strategy requirements, they will lose the assurances provided by the Plan. The Permittees need to thoroughly evaluate the costs and benefits of imposing additional mitigation requirements on their projects and the private development projects under their jurisdictions.	109
YCS Investments	61	5	5.2.5	28		1	The Draft Plan provides that required restoration actions may occur on lands outside the Reserve System if certain conditions are met. These conditions include the requirement that the areas be permanently protected, managed according to the terms of the Plan, and monitored by the Implementing Entity. Why would an area that meets these conditions not be included in the Reserve System and counted towards all conservation requirements?	110
YCS Investments	62	5	5.2.5	30-31		2	The Draft Plan requires that all reserve management plans must be approved by the Wildlife Agencies. How does giving the Wildlife Agencies veto authority over a substantial proportion of the study area's public open space, including allowable recreational uses, increase the Permittees' control over land use decisions? Are there any assurances that the Permittees public recreational needs identified in General Plans and other policies will be met? The Permittees and the public need additional information to assess the Plan requirements.	111
YCS Investments	63	5	5.2.5	35-36		5	The Draft Plan recognizes that public access must be permitted within the Reserve System. This use, however, is restricted to uses that are "compatible with the preservation and enhancement of natural communities, covered species, and biological diversity on the reserve." How will this determination be made? Without additional information, it is impossible to assess the level of actual recreational uses that will be allowed over the next 50 years on significant amounts of public open space.	112
YCS Investments	64	5	5.2.5	36		2	The Draft Plan recognizes that agricultural lands can contribute to the goals and objectives of the Plan. Why have lands that are currently subject to agricultural easements, classified as Type 4 open space, been excluded for the Gap Analysis? This inconsistency needs to be explained or corrected.	113
YCS Investments	65	5	5.2.6	38		1	The Draft Plan states that the Permittees considered three alternatives that meet all applicable regulatory requirements. Two of these strategies included substantially less land in the required Reserve System and one involved the inclusion of substantially more existing open space. If these alternatives meet the necessary regulatory requirements, why were they not selected? What is the justification for requiring restrictions on land development and the imposition of higher fees than is required under the applicable regulations? The Permittees need to provide a clear justification for this critical decision.	114
YCS Investments	66	5	5.2.6	38		8	The Draft Plan states that the Permittees recognized that the conservation strategy must be affordable. How was the determination that the preferred alternative conservation strategy is affordable made?	115
YCS Investments	67	5	5.2.7	39		1	One of the primary sources of information relied on in developing the conservation strategy was the species accounts and models developed for the Plan and summarized in Appendix D. As discussed, there are fundamental flaws in some of these models and species accounts. The conservation strategy needs to be reevaluated following corrections to these models and accounts.	116

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YCS Investments	68	5	5.3.1	41		2	The Draft Plan provides that all land acquisition requirements be met by year 45. This requirement is not tied to the rate of impacts to covered species and concomitant mitigation requirements. If impacts do not occur at the rate anticipated, the Permittees would be required to fund acquisition of preserve areas well in excess of that which is required to mitigate for approved projects. What is the justification for this?	117
YCS Investments	69	5	5.3.1	41		3	The Draft Plan purports that the acquisition requirements are based on the amount of land needed to mitigate impacts and meet the conservation requirements of the NCCP Act. The amount of land acquisition needed to meet the requirements of the Draft Plan is estimated to be 45,000 acres. (Table 5-12) How is this justified given that the Alternative 1 to the conservation strategy which involved the acquisition of 30,000 acres of land was determined to be consistent with the requirements of the ESA and the NCCP Act? This inconsistency needs to be resolved.	118
YCS Investments	70	5	5.3.1	41		4	For impacts to aquatic resources, the Draft Plan provides that the level of mitigation required should be tied to the actual amount of impacts that occur during Plan implementation. Why is this same proven approach not used for all other impacts? Given the scale of mapping for land cover types and the inherent uncertainties created by the scale of mapping, what is the justification for establishing fine scale mitigation requirements based on coarse scale mapping?	119
YCS Investments	71	5	5.3.1	42-43		3	The Draft Plan requires that the Implementing Entity restore or create 50 acres of riparian woodland, 20 acres of freshwater marsh, 20 acres of ponds, and 1 mile of stream regardless of whether any impacts to these resource types occur. Further, the Draft Plan establishes interim deadlines for this creation for Years 15, 30 and 40, and requires that all of these activities occur by Year 40. Take coverage is dependent on the Implementing Entity meeting these milestones. If funding falls short, take coverage may be suspended or reduced. Have the Permittees evaluated whether the benefits of the Plan justify the expenditures associated with the commitment to carry out these programs in the absence of actual take? This analysis needs to be done.	120
YCS Investments	72	5	5.3.1	43		2	The Draft Plan requires that assessments be completed on wetlands and streams in the Reserve Areas that classify vegetation to the association or alliance level. Alliance and association level mapping requires extremely refined mapping, including mapping of the percentage cover of each species associated with the wetland or stream. This is above and beyond what any agency currently requires and is very time consuming. What is the justification for requiring more than mapping of the dominant species or habitat associated with the wetlands? It is not explained, and without such an explanation, the high cost associated with these efforts is not justifiable.	121
YCS Investments	73	5	5.3.1	43		3	The limits to allowable impacts to aquatic areas is based on the large scale mapping provided in Table 4-2. It is noted that this coarse mapping is not sufficiently reliable to allow it to be used to determine the amount of mitigation required for actual impacts. What is the justification for using this unreliable method to establish take limits?	122
YCS Investments	74	5	5.3.1	43		7	The Draft Plan notes that projects that impact aquatic resources may also need permits from the Corps, the Regional Board and CDFG and that the mitigation provided under the Plan may not be sufficient to meet the regulatory requirements of other agencies. Since one of the main goals of the Plan is to provide assurances that no additional mitigation beyond that required under the Plan will be required, the Permittees need to work with these other agencies to ensure consistency of the Plan's mitigation requirements with that of these other agencies. Without such assurances, the Plan cannot meet one of its fundamental goals.	123

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	75	5	5.3.1	44		2	The Draft Plan provides that preserved covered plant occurrences must be protected by a 500 foot buffer. The size of the buffer may be increased or decreased based on site specific conditions, as decided by the Implementing Entity in consultation with the Wildlife Agencies. In the absence of the Habitat Plan, the Wildlife Agencies would not be involved in establishing the size of required buffers. Why is this additional level of review necessary? Is it consistent with the Permittees' goal of increased local control over land use and species protection decisions? Additionally, the Draft Plan provides that a buffer will be expanded if the plant occurrence expands. How will this be accomplished after a covered project is completed?	124
YCS Investments	76	5	5.3.1	45		2	The Draft Plan provides that "for compliance purposes, impacts on all covered plants will be limited by known occurrences . . . and modeled habitat for the 8 covered plants for which habitat models were developed." (Italics omitted) We assume that this means that the impact number is limited by the number of known occurrences, not that impacts can only occur to known occurrences. Please clarify.	125
YCS Investments	77	5	5.3.1	45		2	The Draft Plan states here that "[f]or all but one covered species, a plant occurrence is defined as a group of individuals that are separated by at least 0.25 mile from other groups of individuals of the same species or subspecies." This statement is inconsistent with other statements in the Draft Plan. For example, footnote 2 on table 4-6 notes that "[f]or purposes of this Plan and the analyses, occurrences are equivalent to populations for all species except Mt. Hamilton thistle, Santa Clara Valley dudleya, and smooth lessingia." The statement on page 5-45 should be changed to reflect that the standard definition for plant occurrences does not apply to three species.	126
YCS Investments	78	5	5.3.1	45		5	The Draft Plan states that almost all known occurrences are located away from the footprint of covered activities. The Draft Plan notes that it was not possible to determine the location of some activities such as rural development allowed under the Plan. Because the known occurrences are co-located with potential rural development, how was the determination made that the known occurrences are outside of the footprint of covered activities? Please clarify so that the Permittees can determine if a proposed rural development project or other activities occurring outside of the Urban Planning Limits that impacts covered plants has been analyzed and qualifies for take coverage.	127
YCS Investments	79	5	5.3.1	45-46		6	The Draft Plan only allows impacts to covered plant occurrences when an occurrence of at least the same size and of the same or better condition than the impacted occurrence is preserved. How will the Permittees make the determination regarding the comparative condition of the proposed impact and mitigation? Do the Permittees have sufficient staff who are qualified botanists to carry out this task? If not, how will the cost of making these determinations be covered and has this cost been calculated?	128
YCS Investments	80	5	5.3.1	50		3	It appears that linkage 9 is really a subset of 10 – see Figure 5-6, Table 5-9 for descriptions of each. This apparent error or layering of requirements demonstrates the level of unnecessary complication incorporated in to the Draft Plan. This level of complication will render implementation of the Plan both practically and fiscally unfeasible.	129
YCS Investments	81	5	5.3.1	53		2	The Draft Plan provides that one of the main goals for the Coyote 6 unit is the acquisition of a landscape linkage over Coyote Ridge. Table 5-9 indicates that this linkage is provided to benefit BCB and certain plant species. In order to evaluate what is required to meet this target, the size and scope of the landscape targeted linkage should be provided. What size is necessary to allow the necessary linkage? Are there specific requirements as to where it needs to be located? Without this information, this requirement could serve as a practical moratorium on development on Coyote Ridge.	130

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YCS Investments	82	5	5.3.1	53		13	The Draft Plan states that land acquisition in Coyote 5 and 6 "will protect and provide the opportunity to enhance 81% of the remaining suitable and occupied habitat for Bay Checkerspot butterfly in the study area." What is the source of this 81% calculation? How much land does it assume will be acquired in this area? It appears that this is much higher than the 3,400 acre target included in Land L5 and the other identified conservation actions. Does this statement indicate that no impacts are assumed to occur on Coyote Ridge? If so, what is the justification for this assumption?	131
YCS Investments	83	5	5.3.1	53		13	The Draft Plan states that land acquisition in Coyote 5 and 6 is "essential to meeting the conservation objectives" of the Plan. How will the Permittees determine whether a covered activity can occur in this area given this and similar statements? Would impacts be allowed so long as there are sufficient remaining areas within these units that may be acquired? If there are not a sufficient number of willing sellers, the Plan will need to be amended.	132
YCS Investments	84	5	5.3.1	55		1	The Draft Plan requires that the three unprotected occurrences of Coyote ceanothus within Coyote-5 be acquired and protected. How is this consistent with the Plan's stated goal of designing a flexible conservation strategy? If the owners of the land that supports these populations of species are not willing sellers, the Plan will need to be amended. The Permittees need to thoroughly evaluate the desirability of adopting a Plan that took 10 years and nearly $6 million in public funds to develop if it is likely to become infeasible to implement.	133
YCS Investments	85	5	5.3.1	59		4	Some of the linkages required for acquisition in the Draft Plan are in fact geographically inflexible, against the local partners' desires. Linkage 18 along the Pajaro River is by necessity geographically defined as along the river bed and the "land acquisition requirements" for Llagas-4 include acquiring 1,000 acres along stream channels and protecting "at least 4 miles of the Pajaro River." Locating enough willing sellers for this ambitious agenda may be difficult. Could an activity that impacts any part of this river corridor be determined to be consistent with the Plan and therefore allowable? How will the Permittees make this determination?	134
YCS Investments	86	5	5.3.1	68-69		5	*The Draft Plan provides that "[s]pecies habitat models will be updated during plan implementation but that the requirements for acquisition of modeled habitat will be based on the original model at the time of permit issuance."* What is the basis for establishing mitigation requirements based on models that do not incorporate the best scientific data available? Field verified information on Young Ranch demonstrates that the habitat model for BCB, the habitat model in which the Plan express the greatest confidence, includes significant errors. Under the terms of the Draft Plan, the areas on Young Ranch which do not support BCB would be counted towards the requirement to preserve BCB habitat. This would not be in the interest of preserving and managing habitat for this species. The Plan needs to be revised to provide for reliance on updated models to determine where conservation actions should be targeted.	135

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YCS Investments	87	5	5.3.1	70		1	The Draft Plan requires that the presence of BCB be demonstrated in preserved areas. The occupancy requirement is met by demonstrating the presence of both larvae and adults. Adult survey presence will not be sufficient because of the possibility that some individuals could just be flying through a site but not reproducing. Larval surveys are extremely costly and laborious, costing three times as much as adult surveys; this cost is not justified. First, if BCB populations are low, as is common in many satellite areas, then larvae will not be perceptible and larval surveys will show negative results even if the site is in fact occupied. Second, the Service allows adult surveys to demonstrate presence for all other butterflies in the region (e.g. Behren's silverspot, Myrtle's silverspot, Callippe silverspot, Mission blue, and Lotis blue). What is the justification for treating BCB differently? Finally, the Plan can address the concern that a few observed individuals are migratory rather than residents on a site by requiring that more than a few butterflies be observed to document presence.	136
YCS Investments	88	5	5.3.1	71		1	The Draft Plan's requirement that a minimum number of all freshwater wetlands and ponds be occupied by CRLF and CTS needs to be refined. Many freshwater wetlands do not have sufficient hydrology to support CTS or CRLF. This criteria should be revised to show that it only applies to suitable freshwater wetlands and ponds.	137
YCS Investments	89	5	5.3.1	73		3	The Draft Plan provides that "species occupancy target for California red-legged frog (30%) was set for the study area as a rounded number greater than the results of the two applicable studies." What is the scientific basis for making the required occupancy higher than the only available studies that document occupancy rates? The Draft Plan does not include a reasoned justification. A target number of 25% occupancy would be consistent with the available studies and more achievable.	138
YCS Investments	90	5	5.3.1	76		2	The Draft Plan establishes land acquisition targets that must be met in years 15, 30 and 45 regardless of the level of impacts that have occurred. The Permittees need to thoroughly evaluate whether the expense associated with carrying out these land acquisitions in the absence of impacts occurring would be justified.	139
YCS Investments	91	5	5.3.2	80		1	The Draft Plan states here that a minimum of 41,695 lands will be acquired to create the Reserve System. However, in Table 5-11, the minimum number of acres that are required to compensate for allowable impacts and to contribute to recovery is 42,340 acres; in Table 5-21, a minimum of 42,785 acres must be preserved and if all allowable impacts occur, this number would be increased to 43,266. These inconsistencies need to be reconciled and the actual requirements of the Plan need to be clearly stated.	140
YCS Investments	92	5	5.3.3	99		5	The Draft Plan states here and in numerous other places that "acquisition of serpentine grassland will occur primarily on Coyote Ridge from Silver Creek south to Anderson Reservoir." Conservation Action Land-L6 specifically requires the acquisition of 3,400 acres of serpentine grassland along Coyote Ridge. Given the high acquisition requirements for Coyote Ridge, it appears critical that the Permittees evaluate whether there are sufficient willing sellers to meet this target. If not, the viability of the Plan is called into question. Further, the Draft Plan needs to be amended to clarify how consistency with the conservation strategy will be determined.	141
YCS Investments	93	5	5.4.1	146		4	The amount of serpentine grassland and BCB modeled habitat that is required to be preserved under the Draft Plan is inconsistently described and the actual level of protection required is difficult to determine. For example, here it is stated that "the Plan will acquire 8,961 acres of modeled habitat for the Reserve System and add 754 acres of modeled habitat from existing open space to the Reserve System." These inconsistencies need to be addressed.	142

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YCS Investments	94	5	5.4.1	147		5	*The Draft Plan provides that "[p]rotection of the linkage between the Silver Creek and Metcalf populations and the linkage between Coyote Ridge and Tulare Hill is critical for the species and will be necessary to meet the biological goals and objectives for this species."* How will the Permittees evaluate whether an activity proposed on Coyote Ridge is consistent with this requirement? What type of linkage must be preserved? What size must the required linkage be? Where must it be located? Because the Draft Plan includes numerous statements like this that could be interpreted as precluding any activity from occurring on a substantial part of Coyote Ridge, it is imperative that further clarification be provided as to how consistency determinations will be made as well as what preservation of adequate linkage means. Without this clarity, it is impossible to meaningfully comment on the Plan.	143
YCS Investments	95	5	5.4.1	148		3	As in Chapter 4, impacts to BCB habitat and how these impacts will be tracked is impossible to decipher. Here, the 300 acre impact cap applies to areas mapped as "occupied", "potential "or "unknown," but not to those mapped as "historic" habitat. Yet Section 4.6.1 states that the 300 acre cap only applies to habitat targeted for preservation. Are impacts in the four habitat units classified as "potential," or "unknown" that are not targeted for preservation per Table 5-7 subject to the 300 acre cap? Further, the Plan states that impacts to serpentine grassland areas that are not modeled as BCB habitat-- but which are demonstrated through surveys to be occupied-- will count against the 300 acre cap. If BCB are not found in such areas, "then the impact counts against the cap on serpentine bunchgrass grassland, not against the cap on Bay Checkerspot butterfly habitat. Impacts are only counted toward the habitat cap or the land cover type, not both" (see also p. 4-72). Yet elsewhere an impact to BCB habitat would count towards both the serpentine bunchgrass grassland cap and the BCB cap (see pp. 4-70, 4-71, n.11). The Draft Plan must consistently state the amount of authorized impacts that can occur to the BCB and other species' habitat and the revised Plan must be made available for meaningful public review and comment.	144
YCS Investments	96	5	5.4.1	148-149		3	The Draft Plan states here that the caps on BCB habitat do not apply to "habitat in Type 1 open space because loss of habitat units will be extremely limited in permanently protected open space (i.e., limited to trail construction and management activities)." It is unclear which caps are referenced here. Does this mean that the 300 acre cap doesn't apply or just the cap on the level of impacts that can occur in a specific geographic location? Given the extremely low cap that is applied to BCB habitat, it is critical that the level of impacts allowed are clearly and consistently explained.	145
YCS Investments	97	5	5.4.1	152		2	The Draft Plan provides that the Implementing Entity will protect and enhance 15 acres of wetlands with potential to support breeding CTS. Does this mean that 15 of the up to 80 acres of wetlands that must be protected will specifically be targeted because they have a sufficient hydrologic regime to support breeding CTS? How is this consistent with the requirement that the Implementing Entity document that 25% of all wetlands and ponds are occupied by CTS? Further clarification is required to understand how the intent and requirements of the Plan and this information is needed to allow for meaningful review of the Plan.	146
YCS Investments	98	5	5.4.13	188		3	The Draft Plan provides that the three known occurrence of Coyote ceanothus found in the permit area must be incorporated into the Reserve System. Because two of these occurrences are on private land, how is this requirement consistent with the notion that land will only be acquired from willing sellers? It is further inconsistent with the Permittees' desire to allow flexibility in designing the Reserve System. Given that the only impact to this species contemplated and allowed under the Plan is to a small portion of one occurrence, is it necessary or desirable to include this requirement?	147

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YCS Investments	99	5	5.4.14	192		3	Under the Draft Plan, impacts to six Mt Hamilton thistle can occur and this number may be increased to 8 if additional occurrences are found. The need to restrict development on the 279 acres of modeled Mt Hamilton thistle is unclear. Currently 49% of this unlisted plant species habitat is protected and the Plan requires that 175 acres of this habitat be acquired. What is the scientific justification for this level of protection?	148
YCS Investments	100	5	5.4.14	192		4	The Draft Plan requires that 22 of the known occurrences of Mt. Hamilton thistle be acquired. What is the justification for requiring acquisition of the known occurrences? If other occurrences are found during Plan implementation, as it is anticipated, the previously unknown occurrences should be able to satisfy the mitigation requirements. Making conservation determinations based upon when a species occurrence becomes known is arbitrary and unsupportable. The Plan should be revised accordingly for Mt. Hamilton thistle, and similar requirements for other plants should be removed.	149
YCS Investments	101	5	5.4.14	192-195		5	The Draft Plan requires that each preserved Mt. Hamilton thistle occurrence maintains a minimum size of 2,000 individuals. However, the size estimates for known 36 of the known populations range from 1 to 4,500. For the targeted populations, only twelve have estimates and these twelve have a total population of 7,810, well under the 2,000 individual target per occurrence. Is it reasonable to assume that it will be possible to meet the occurrence size requirement?	150
YCS Investments	102		5.4.15	196		4	The Draft Plan states that there are 20,199 acres of prime modeled habitat for the San Francisco collinsia located within the study area, but there is only one known occurrence. How can the habitat model be justified based on the paucity of known occurrences?	151
YCS Investments	103	5	5.4.15	197-198		4	The one known occurrence of San Francisco collinsia located in the study area will be impacted by necessary seismic upgrades to Anderson Dam. Under the Draft Plan, this seismic retrofit cannot be done until two occurrences must be protected (and a third must be protected to contribute to recovery). If no new occurrences are found, the mitigation will be met via translocation or creation. The created or translocated areas must be monitored for at least 10 years and found to be successful prior to the impact to the one population occurring. How can the potential 10 year delay of a needed public safety project possibly be justified by the need to protect a single population of plant species that is not state or federally listed? We note that the Plan recognizes that the impact may need to occur sooner. However, rather than addressing this situation, it simply provides that in such an event, an amendment to the Plan would be required. There is no justification for requiring the Permittees to spend the time and money to amend the Plan; the Draft Plan should be revised now to address this eventuality.	152

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YCS Investments	104	5	5.4.16	202		2	The Draft Plan sets a target of 2,000 individual per occurrence for the Santa Clara dudleya. Although it states that this is consistent with the Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area, it is not. The Recovery Plan states on page II-77: "Rock outcrops in a Dudleya setchelii site usually number from 1 to 100 with 30 to 60 plants on each (McCarten 1993)." The 2,000 estimate is actually for a population, not for an occurrence. The Recovery Plan provides on page II-82: If 20 populations of Dudleya setchelii within and representing its entire range are (1) fully protected and managed with the primary intention of preserving the populations in perpetuity and (2) shown to be stable or increasing over a minimum of 20 years that include the normal precipitation cycle (or longer if suggested by the results of demographic monitoring), the species should be evaluated for downlisting. Until research shows otherwise, recovery should target securing populations containing a minimum of 2,000 plants each (but preferably more). The probability of population persistence over the long-term is expected to be higher for larger populations because large size decreases the likelihood of reduced viability or population extirpations due to random demographic or genetic events (Barrett and Kohn 1991, Ellstrand and Elam 1993). Protected populations should be distributed throughout the range of the species." The Draft Plan needs to corrected.	153
YCS Investments	105	6	6.1	2		3	The Draft Plan states that the conditions included in Chapter 6 are designed to ensure consistency with objectives and requirements of the Plan. It notes, however, that the Permittees may need to impose additional conditions for "unanticipated projects or effects" in order to ensure the necessary consistency. What exactly constitutes an unanticipated project or effect? Chapter 2 sets out the wide range of possible anticipated projects. For example, a rural development project whose impacts did not exceed any cap limit would seem to constitute an anticipated project with anticipated effects. What other analysis would be required to determine if a project is unanticipated?	154
YCS Investments	106	6	6.2	5		2	The Draft Plan provides that a project is exempt from the conditions in Chapter 6 and the fee requirements if the project proponent provides proof to the Implementing Entity that the Service and CDFG have determined that it is consistent with the ESA and CESA. This proof can be in the form of written confirmation from the Service that the project is not likely to result in take of a federally listed species and CDFG approved surveys that show that no covered species or covered species habitat occurs on the Project site. How is it anticipated that a project proponent could receive such confirmation from the Service given that there is no regulatory or established process for obtaining such a letter from the Service outside of a Section 7 consultation? Also, what is the basis for requiring proof that no habitat for a state listed species occurs on a project site? CESA prevents the take of listed species, not impacts to potential habitat.	155
YCS Investments	107	6	6.4.1	12-13		2	The Draft Plan notes that the Plan Area is under the jurisdiction of two Regional Water Quality Control Boards, which administer the applicable NPDES permitting programs and required storm water management plans for regulated new development and redevelopment. Noting that the two NPDES permits are inconsistent, the Plan's Condition 3 resolves matters by incorporating those measures from the existing management plans and complementary manuals that it deems are "most effective in protecting covered aquatic species and aquatic species habitat." The Draft Plan does not explain why it should override the determinations of the agencies that, under state and federal law, have the responsibility of regulating water quality. Per the CWA, the Regional Boards have determined that the existing storm water controls protect water quality to the maximum extent practicable. If the measures included in the Draft Plan exceed the current controls, the Plan will go beyond the maximum protection that can reasonably be implemented. If so, how is this feasible? The Draft Plan needs to provide a justification for this condition.	156

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YCS Investments	108	6	6.4.4	29-31		4	The Draft Plan requires that the Wildlife Agencies and the Implementing Entity be consulted during the early design stage of Highway Projects, Roadway Project, Interchange Upgrades, and Mass Transit Projects. This coordination is to ensure compliance of the project design incorporates the extremely specific design requirements provided in Condition 6. Why is this additional consultation needed given the level of specificity incorporated into the Condition? Rather than creating a streamlined permitting process, it appears that this condition creates a more complex, onerous and time consuming process. How does adding this additional layer of review assist the Permittees in meeting their goals of increasing local control over land use decision and species protection? It should be noted that this condition applies to all identified projects outside of the urban areas regardless of whether covered species are present.	157
YCS Investments	109	6	6.4.4	35		2	The Draft Plan states that "Subdivision of sites designated Hillside or Ranchland seldom occurs and this pattern is not expected to change during the permit term due to the physical challenges of development in most of the study area." However, rural development is an anticipated covered activity under the Plan and the effects of rural development have been evaluated. (See section 4.3.6, pp. 4-40 through 4-41). Please clarify that subdivision of some areas designated Hillside or Ranchland is expected and has been analyzed and that coverage of such a project can be approved without further consultations with the Wildlife Agencies.	158
YCS Investments	110	6	6.4.4	36		4	The Draft Plan provides that Permittees must review all rural projects for consistency with the Plan's conservation strategy and projects found to be inconsistent with the conservation strategy will be denied (if can't be redesigned to be consistent). The description of what constitutes the conservation strategy requires 217 pages of text to describe and includes 20 specific goals, 73 objectives and identified conservation actions. As is discussed in comments, determining whether an activity is consistent with the narrative and specified goals, objectives and conservation actions will require a huge number of judgment calls. To allow for meaningful comment, further information needs to be provided to the public regarding how this evaluation will be made. Specifically, the checklist for evaluating an application package described in section 6.7.2 (p. 6-88) needs to be made available for public review prior to adoption of the Habitat Plan. Without this, it is impossible to evaluate the Plan's restrictions on land use or ultimate affect on covered species.	159
YCS Investments	111	6	6.4.4	36		4	The Draft Plan should also discuss the level of expertise that the Permittee staff will need to demonstrate to make the required consistency determination. This is essential for two reasons. First, the consistency determination will require the Permittees to make critical decisions that will require a thorough understanding of biology, conservation science, hydrology and other scientific disciplines. Second, the cost of making the consistency determination and carrying out the other administrative duties associated with review of habitat plan application packages will likely be quite significant and it is important for the Permittees to explain how these activities will be funded. Do the Permittees have staff that are qualified to make these determinations? If not, how will the hiring of qualified staff be funded? It should be noted that the cost of Plan implementation does not include "administrative costs incurred by the Permittees other than the Implementing Entity to implement the Plan." Section 9.3.1, p. 9-3.	160
YCS Investments	112	6	6.4.4	37		4	Condition 7 in the Draft Plan requires that rural development include only the "minimum number of stream crossings" necessary to access the property. How will the determination of the minimum requirement be made? For example, if an alternative access route that doesn't involve a stream crossing requires the completion of significant amount of grading not required for a route that has a stream crossing, would the crossing be allowed if it is shown that the alternative route is not economically feasible or that it would result in other environmental impacts?	161

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YCS Investments	113	6	6.4.4	37		6	Condition 7 in the Draft Plan requires that for rural development projects, the "use of impermeable surfaces surrounding structures must be minimized to the greatest extent possible." How will "the greatest extent possible" be determined?	162
YCS Investments	114	6	6.4.4	37		8	Condition 7 in the Draft Plan calls for avoidance of "altering natural drainages and contours on the project site. If the site is graded, blend grading into the existing landform as much as possible." These two sentences are contradictory. The latter is slightly more realistic in recognizing that grading may occur. To construct even a small country lane would require some grading. The Plan should reflect this reality.	163
YCS Investments	115	6	6.4.4	38-39		4	Condition 7 in the Draft Plan includes highly specific design requirements for certain features in rural development projects. For example, this condition provides that for rural private roads constructed during wet weather, the "road bed will be surfaced with 6-18 inches of base rock or other appropriate surface material to prevent erosion of exposed roadbed." Why is this level of specificity required? Will changes to these highly specific criteria require a minor plan amendment? Is the cost associated with having to do such amendments over the 50 year permit term justified? How does including this seemingly unnecessary level of detail further the Permittees goal of having more control over land use decisions and species protection? Finally, such a requirement could easily conflict with the road standards of the Regional Boards or approving local partner. For example, clean fine-free gravel is used to prevent runoff in wet weather, not base rock which contains fines that will leach out into runoff.	164
YCS Investments	116	6	6.4.6	43		3	The Draft Plan states that "[p]ublic access, consistent with the Habitat Plan conservation strategy, will be provided on all reserves owned in fee title by a public agency." Does this apply to lands owned by the Implementing Entity? The Draft Plan and the Implementing Agreement include strict limits on the ability to do any ground disturbing activity within the preserve. (See section 8.6.3)	165
YCS Investments	117	6	6.4.6	43-44		4	Under the Draft Plan, the Implementing Entity must develop recreational plans for each reserve unit that describes the types and amount of recreational uses that will be allowed within a particular management unit. These recreational plan components must be approved by the Wildlife Agencies and no recreational uses will be allowed on acquired preserves lands until such plans are developed and approved. For existing open space incorporated into the reserve, existing uses may continue until the recreational plan is developed and approved. Given the uncertainty regarding the amount and type of recreational uses that will be allowed on the preserve, how did the Permittees intend to ensure that their General Plan policies regarding the provision of public recreational opportunities will be met? How does County Parks intend to ensure that acquired lands will meet the paramount purpose identified in its acquisition policy of providing open space for recreational uses?	166
YCS Investments	118	6	6.4.6	43		7	Under the Draft Plan, the recreational plans must identify "where recreational use is consistent with the goals and objectives of this Plan." How will this consistency determination be made? As previously noted, Chapter 5 includes 20 specific biological goals, 73 objectives and over 100 conservation actions. Will the Implementing Entity need to evaluate each potential recreational use for consistency with all of these? Given the complexity and lack of clarity inherent in many of these specified goals and objectives, it is impossible to anticipate if the few planned recreational uses will be built under the Plan. As the provision of usable public open space is one of the fundamental goals of the Plan, it is critical that additional clarity be provided as to how this consistency determination will be made and that the public is allowed to comment on the proposed method for making this determination.	167

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YCS Investments	119	6	6.4.6	45		2	There are inconsistencies in the description of what recreational activities can be allowed in the preserve areas. For example, in the first bullet point on page 6-45, there is a list of allowable recreational uses which is followed by a statement that "[o]ther uses may be allowed by the Implementing Entity so long as they are compatible with the biological goals and objectives of the Plan and users obtain appropriate permissions for conducting the activity if needed." In the third bullet point, however, it states that "off trail activities and any other active recreation not listed above . . . are prohibited." Which provision is controlling? How will the Implementing Entity and the Wildlife Agencies resolve these inconsistencies? It is important that this inconsistency be resolved so that the public, the Permittees, and the Wildlife Agencies can meaningfully assess the Plan's impact on recreational uses and covered species.	168
YCS Investments	120	6	6.4.6	45		5	The Draft Plan provides that new staging areas can be developed in the reserves only previously disturbed areas that are not suitable for habitat restoration and that do not contribute to the conservation strategy's biological objectives. Because it is anticipated that the conservation easement that must be recorded over all areas included in the preserve will prevent any ground disturbing activities or the construction of new facilities, how will the construction of a staging area be allowed? Further, is it realistic to anticipate that the acquired preserve areas will incorporate adequate areas that are previously disturbed and are not "suitable" for habitat restoration? If not, will the creation of necessary staging areas require the acquisition of additional lands? How will this acquisition be funded? Further information is required to determine whether it is realistic to assume that the preserve areas will in fact allow for recreational uses.	169
YCS Investments	121	6	6.4.6	46-47		4	Condition 9 in the Draft Plan provides specific requirements governing the installation of recreational facilities in the preserve area including picnic areas, backpack camps, new trails, and attendant features. Given the anticipated restrictions in the conservation easement that will be recorded over all the preserve areas, how will construction of these facilities be allowed?	170
YCS Investments	122	6	6.4.6	47		5	Condition 9 prohibits the installation of any paved trails within the preserves. How will the Permittees and County Parks ensure compliance with the ADA?	171
YCS Investments	123	6	6.4.6	48		2	Condition 9 prohibits the installation of any trail within 300 feet of active burrowing owl nests. If a trail is installed within 0.5 miles of an active burrowing owl nest, will its impacts be counted towards the cap on impacts to occupied or potential nesting habitat described in Section 4.6.5 and if so, how will the area of impact be calculated? Will the installation of the trail require the payment of the burrowing owl fee?	172
YCS Investments	124	6	6.5	53		6	Condition 11 specifies required setbacks from stream and the amount of setback required is dependent upon whether the stream is designated as a Category 1 or 2 stream. Figure 6-2 shows the Category 1 streams and the required setbacks. Will project proponents have the opportunity to present information demonstrating the characterization of a specific stream is inaccurate? For example, on Young Ranch, extensive field work by qualified biologists shows that only Upper Silver Creek meets the requirements for a Category 1 Stream but Figure 6-2 shows some of its tributaries as Category 1. While Section 6.8.4 requires an applicant to provide a map of all streams that may be affected by a proposed project or activity in its application, the Plan does not specify whether this process would also allow for corrections to the stream mapping. This should be allowed under a process inserted into the Draft Plan. Without this ability to correct, unnecessary restrictions on land uses will occur.	173

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YCS Investments	125	6	6.5	62		4	Condition 12 provides that an applicant will need to obtain permits from the Corps, the Regional Board and CDFG for impacts to aquatic resources and will need to comply with any additional avoidance, and minimization measures included in such authorizations. To meet the Permittees goals of providing a streamlined permitting process and predictability/certainty as to mitigation requirements, efforts should be made to coordinate with the Corps and the Regional Board to ensure consistency in the required minimization and avoidance measures. Further, because CDFG will approve the Habitat Plan, it should provide assurances that the Habitat Plan's conditions are sufficient to meet the requirements of the 1602 program. This coordination should take place prior to adoption of the Plan.	174
YCS Investments	126	6	6.5	62-63		10	*Condition 12 provides that "[i]f, during the environmental review process it is shown that a project has indirect adverse impacts to [a] wetland's function . . . , the project will be required to avoid these indirect effects, as determined on a case by case approach by the local jurisdiction, in consultation with the Implementing Entity."* impacted (counting towards the wetland impact cap) and the wetland fee is required. To our knowledge, this is a completely unprecedented requirement and the Draft Plan does not provide any justification why it needs to be included here when it has never been required under any other HCP or NCCP of which we are aware. How will the adverse indirect impact effects be assessed? What level of impact or effect will be considered adverse? Does this apply to temporary adverse indirect impacts? We note that Condition 12 does include an exemption for "highly degraded" wetlands. However, this exemption only applies if the Wildlife Agencies concur. What is the justification for requiring future Wildlife Agency review of specific projects that indirectly impact highly degraded wetlands, something that would not be required under any existing regulatory regime? Further clarity, as well as an explanation of the necessity of this condition, is needed to allow the public to meaningfully understand and comment on this condition.	175
YCS Investments	127	6	6.5	63		4	Condition 12 requires that fencing be installed between the project area and a wetland or pond during construction. The type of fence required is dependent upon the activity or impact type. For example, an activity that could result in the presence of more pets on site would need to install a fence to exclude pets from the wetland or pond. If the impact is permanent, then the fence must be permanent. Does this mean the construction of residential property always requires the installation of permanent fences around avoided wetlands or ponds because there is always a possibility that such projects "may bring more household pets to a site"?	176
YCS Investments	128	6	6.5	64		7	As with many of the other conditions, Condition 12 includes a high level of specificity that seems unnecessary. For example, it requires that boots that come into contact with a wetland are "scrubbed with either a 75% ethanol solution, a bleach solution (0.5 to 1.0 cup per 1.0 gallon of water), Quat-128 (1:60), or a 6% sodium hypochlorite 3 solution." The conditions should all be reviewed to ensure that they do not contain minutia that will create an unnecessarily complex permit review process.	177

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YCS Investments	129	6	6.5	65		3	Condition 13 states that impacts to serpentine bunchrass grassland outside of the 22 Bay checkerspot butterfly habitat units and therefore outside the modeled habitat will count towards the 300 acre BCB modeled habitat cap if site surveys document BCB presence. Conversely, the Habitat Plan does not allow for corrections to the habitat model to exclude areas that do not in fact contain the features necessary to support BCB or allow surveys in modeled habitat to determine whether an area identified as unoccupied is occupied. Impacts to the modeled habitat will count to the 300 acre cap even if they don't constitute actual habitat (and therefore actual impact) or support BCB. What is the scientific justification for this disparate treatment? It also seems contrary to the provision that the 300 acre cap does not apply to modeled habitat units that are not targeted for preservation (See Table 5-7). Why should new occurrences be treated differently? Given the extremely limited amount of take of modeled habitat, this provision could have severe consequences on the viability of the habitat which doesn't seem justified given that the Plan's analysis only relied on the habitat model to ensure that the mitigation and conservation standards were met.	178
YCS Investments	130	6	6.5	65		5	Condition 13 requires that where a development area includes serpentine areas, the project must be designed "to preserve larger patches . . . and limit impacts to the smallest patches feasible and to the edges of patches regardless of their size." What constitutes a larger patch? Is the determination made based on the relative size of patches on a particular site, patches in a particular habitat unit or in the whole permit area? How will the Permittees make this determination? If an activity is within the cap limits and meets all other conditions, is it precluded if it impacts a larger patch? In this context, how will the feasibility of further avoidance be determined?	179
YCS Investments	131	6	6.5	66		4	Condition 13 requires that reconnaissance level BCB surveys be conducted on serpentine areas outside of modeled habitat that support larval host plants. The Habitat Plan should also allow for BCB surveys to be conducted on sites located in the modeled habitat areas and provisions to incorporate this information into the BCB habitat models. Multi-year, detailed surveys completed on one site, the Young Ranch, demonstrate that the habitat models significantly overstate the amount of occupied areas. Allowing for field verification would help ensure that the areas restricted from development are justified and that preserved areas contribute to conservation of the BCB.	180
YCS Investments	132	6	6.6	68		2	The Draft Plan provides that survey requirements will be based on the most current habitat models (updated as a result of additional information developed during Plan implementation) but that impacts will be tracked based on the habitat models in existence at the time of permit issuance. What is the scientific justification for tracking impacts based on models that do not incorporate the best scientific data available at the time the impacts occur? For example, how does limiting impacts to areas that are incorrectly modeled as covered species habitat benefit the covered species? How can such limits be justified? The Draft Plan should be revised to require that impacts be based on current habitat models. To ensure that species get the level of protection determined necessary in the Final Habitat Plan, the Plan should include provisions for amending the Habitat Plan if field verification shows that the habitat models upon which the analysis was based include significantly over or under estimate the actual amount of habitat in the Permit Area.	181

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)	
YCS Investments	133	6	6.6.1	73		8	Condition 16 prohibits passive or active relocation of burrowing owls "until the owl population in the study area increase to an acceptable level and shows a trend of population growth." How will this evaluation of when the population level is acceptable be made? Who will make the determination? This condition means that, at least at the outset of Plan implementation, there will be a moratorium on activities occurring on portion of a site where a burrowing owl nests or overwinters. The Plan prohibits any take for 10 years. The Plan at a minimum should allow for a case by case evaluation if this avoidance is feasible.	182
YCS Investments	134	6	6.7.1	87		2	The Draft Plan states that a standardized template for Permittees to track compliance of their projects with the Habitat Plan requirements and amount of take authorized will be developed during the first six months of Plan implementation. Because the Draft Plan's requirements are complex, opaque and sometimes contradictory, it is impossible to understand the specific steps that will be involved in making this consistency determination. Different findings in these various steps could result in vastly different conclusions as to whether an activity is allowed, the amount of take associated with the activity and the mitigation required. Therefore, without having an opportunity to review this template, it is not possible for the public to meaningfully comment on the overall Plan. Further, the Wildlife Agencies cannot assess the Plan's consistency with the applicable regulatory requirements without this information. The Draft Plan should be revised to include this template and the revised Draft Plan should be made available for public review and comment.	183
YCS Investments	135	6	6.7.1	87		4	The Draft Plan states that a Permittee's project is "pre-approved" for take authorization if the effects of the activity is adequately analyzed, it complies with the Plan's conditions and any applicable fee is paid. As is discussed in comments, the determination of the specific effects analyzed in the Plan is extremely complex and additional clarification is needed to allow the Permittees, the public and the Wildlife Agencies to determine which Permittee activities are pre-approved. Similarly, what will be required to ensure compliance with the Plan's conditions is uncertain and further information needs to be provided.	184
YCS Investments	136	6	6.7.2	88		2	The Draft Plan requires the Implementing Entity to develop a checklist for Permittees to evaluate private applicants' requests for coverage under the Plan prior to the first ordinance implementing the Plan taking effect. To understand how the Plan will be implemented, it is critical that this checklist be made available for public review and comment. The public will also need an opportunity to comment on the full Draft Plan after the checklist is made available for review and comment.	185
YCS Investments	137	6	6.7.2	88		3	The Draft Plan appropriately acknowledges that the Permittees will be required to make the determination regarding whether a private application project qualifies for coverage under the Plan in conformance with the timelines provided in the Permitting Streamlining Act. Please provide an estimate as to how long the determination regarding coverage is anticipated to take. If a project is deemed approved under the Permit Streamlining Act, will the Project have ESA and CESA take coverage?	186
YCS Investments	138	6	6.7.2	89		1	The Draft Plan states that "CEQA review for the covered activity may commence" after a Habitat Plan application package for the covered activity is deemed complete. Does this mean that CEQA review cannot commence before the application package is deemed complete? If so, what is the justification for this requirement?	187
YCS Investments	139	6	6.7.2	89		7	The Draft Plan states that the Implementing Entity will develop a template that the Permittees will use to document that a private project's granted take authority is consistent with the Plan. This template needs to be made available for public review and comment.	188

Commenter (Your Name)	Comment #	Comment Location: Chapter	Section #	Page #	Paragraph	Paragraph (from top)	Substantive Reviewer Comment (e.g., organization, content; grammatical comments should be entered in the Word file)	
YCS Investments	140	6	6.8	91		4	The Draft Plan states that the Permittees may charge a fee to cover the costs of reviewing and processing Habitat Plan application packages. Has there been any calculation as to how much this fee will be? Because the review and processing process may include a number of complex steps and judgment calls requiring a significant level of expertise, this cost will likely be substantial. The Permittees and the public need to understand the magnitude of this cost prior to adoption of the Plan.	189
YCS Investments	141	6	6.8.3	93		2	The Draft Plan requires that local planning staff verify land cover mapping provided by private applicants. Do the Permittees currently have staff qualified to make these determinations? If not, have the Permittees evaluated the cost of and made provisions for the hiring of such staff? Under the Draft Plan, land cover mapping for Permittee projects needs to be verified by Implementing Entity staff. How is adding third party review of Permittees mapping consistent with the goal of streamlining approval of Permittees projects? Because the Permittees will need to have staff that are qualified to verify private applicants land cover mapping, is the cost and time associated with this additional level of review justified?	190
YCS Investments	142	6	6.8.3	93		9	Under the Draft Plan, the Permittees will be required to hire qualified biologists to complete land cover mapping of certain areas. Has the associated cost been incorporated into the Permittees' budgets?	191
YCS Investments	143	6	6.8.3	94		4	The Draft Plan states that if "annual grassland identified by the Implementing Entity as likely nesting habitat for western burrowing owl is present", a qualified biologist must verify whether the site could provide support nesting. This contradicts other Plan sections. Page 5-17 provides that burrowing owl surveys are not required in areas identified only as overwintering habitat; Figure 5-11 shows overwintering habitat and "potential burrowing owl nesting/overwintering habitat depending on site conditions." This is particularly critical because if the surveys are not necessary and the site supports only annual grassland, a biologist does not need to field verify the land cover type. The Plan must clearly indicate where and when costly surveys will be required.	192
YCS Investments	144	6	6.8.5	96		3	The Draft Plan provides that "if the results of the preconstruction survey documents a large or important population of a covered species that was not anticipated by the Plan, the local agency reviewing or proposing the project must consult with the Implementing Entity for advice on species avoidance and minimization." The Implementing Entity is also required to consult with the Wildlife Agencies for technical advice. What will constitute a "large or important population"? Because pre-construction surveys are only required on certain lands for certain species (see 6-99), we assume that this requirement would only apply to populations found during the required pre-construction surveys and that other unanticipated finds would not require this additional evaluation. Please confirm our understanding.	193

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YCS Investments	145	6	Figure 6-1				6.1. Schematic for Calculating Impact Area for Rural Development Projects depicts a small impact footprint and downplays the size of the buffer zones: 1) the drawing is not to scale, which should be noted per mapping conventions; 2) the required 50 foot impact buffer zone is too small compared to other features (see pages 4-53, 9-28). For example, the garage width to accommodate two cars is typically about 20 feet and a rural road might be about 20 feet wide. On this plan, the garage and the County road are both 20 feet wide (on a map scale of 1 inch equals 40 feet), yet the 50 foot buffer is the exact same width. It should be more than 2 times larger. Overall the total impact footprint with the 50 foot buffer is much large than shown in Figure 6-1 and is more accurately depicted in Figure 3. This larger area is consistent with the rural development footprint of 3.3 acres/home establisedh by the Draft Plan (see page 4-53). The 3.3 acres is the correct basis for calculating the HCP/NCCP fee (see Table 9-6a), not the shrunken footprint graphically shown here. See also comments on page 4-53.	194
YCS Investments	146	7	7.2.3	21		6	The Wildlife agencies "will be involved in all aspects of the adaptive manangemnt program," including detailed activities. How does this increase local control?	195
YCS Investments	147	7	7.2.3	22		1	"The Implementing Entity will strive at all times to work in good faith with the Wildlife Agencies to reach mututal agreement on key implementation tasks..." but the Wildlife Agencies are not required to do the same. The same language appears on page 8-7. How is this equitable to the Implementing Entity?	196
YCS Investments	148	8	8.2.5	6		2	Under the Draft Plan, the Wildlife Agencies will play an active role in Plan implementation. This includes monitoring compliance, providing technical assistance, approving reserve management plans, and approving all land acquisition proposals. The Wildlife Agencies will also be required to review and approve some individual projects, including flood control projects and projects (see 2-24 to 2-47) and new major point sources of nitrogen deposition (see 8-48). Given this level of involvement, it is difficult to conclude that the approval process under the Plan is streamlined or that there is certainty regarding the types of activities that are covered under the Plan. The Permittees should explore whether there are ways that the Plan can be revised to reduce this level of involvement while still meeting regulatory requirements.	197
YCS Investments	149	8	8.6.1	30		3	Because the Draft Plan is an NCCP, the Permittees will be required to preserve mitigation lands prior to impacts occurring. Additionally, the Permittees are required to meet certain conservation milestones regardless of the level of impacts. The rough proportionality that is required between impacts and mitigation is only evaluated to ensure that enough mitigation is provided. It does not allow for a reduction in the preservation amounts because the mitigation is not roughly proportional to the impacts. The Permittees need to carefully evaluate whether the benefits of voluntarily adopting a Plan that qualifies for coverage under the NCCP Act is worth the tremendous costs. The Permittees should instruct staff to specifically evaluate an HCP only option and to make that analysis available for public review.	198
YCS Investments	150	8	8.6.3	34		7	The Draft Plan states that a template conservation easement is provided in Appendix B. However, no template was included in the Draft Plan. The public needs an opportunity to review and comment on this template. Because the terms of the easement will largely dictate what recreational opportunities could potentially be allowed on a significant portion of public open space, review of this document is necessary for meaningful comment on the entire Draft Plan.	199

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YCS Investments	151	8	8.6.3	39-40		3	Throughout the Draft Plan, it is stated that recreational uses will be allowed on public open space, to the extent consistent with the goals of the Plan. The conservation easement that is to be recorded over these lands, however, is said to restrict development of any facility. How then will recreational opportunities be allowed on these lands? Have the Permittees considered the consequence of limiting use on a significant amount of public open space will have on their constituents and on their ability to meet their open space goals? This analysis needs to be completed.	200
YCS Investments	152	8	8.6.5	41		10	One of the stated key principles of the Draft Plan is that reserve lands will only be acquired from willing sellers. The reserve design, however, has extremely specific acquisition requirements, which appear to target specific land holdings. Have discussions with the owners of the targeted lands been contacted to see if they would be willing sellers, and if not, how can the Permittees, the public and the Wildlife Agencies determine that the Plan can be carried out as intended?	201
YCS Investments	153	8	8.6.5	41		10	Given the severe restrictions that the Plan will place on specific land holdings as well as a possible de facto moratorium on developing certain lands, it appears that there is a strong possibility that implementation of the Draft Plan could result in the regulatory taking or inverse condemnation of certain properties. How would this result be consistent with the key principle of only relying on willing sellers to execute the Plan? The Permittees need to carefully evaluate the risk of the Plan resulting in a regulatory taking. We note that the possibility of regulatory taking or inverse condemnation appears to have been considered in developing the required stream setbacks. Condition 11 provides that a decision on exemptions will include a consideration of whether meeting the stream setback would "result in a demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant. (see 6-60) The Permittees should consider whether similar provisions should be made in other conditions.	202
YCS Investments	154	8	8.3	10		2	The statement that "the Wildlife Agencies have review and approval authority" over certain compnents of implementation, including "major changes in . . . adaptive management" contradicts the prior statement that the Wildlife Agencies will be involved in "all aspects" of adaptive management (see page 7-21). This discrepancy must be addressed.	203
YCS Investments	155	9	9.3.1	3		6	Under the Draft Plan, the Permittees costs of administering the Plan during project review are not included. Therefore, the Permittees will be responsible for funding these tasks or require applicants to pay the fees. Because of the complex permitting process created in the Draft Plan, we anticipate that this cost may be significant. How do the Permittees intend to fund the necessary tasks? The public needs to understand this in order to provide meaningful comments on the Draft Plan.	204

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YCS Investments	156	9	9.3.2	8		1	The Draft Plan's determination of costs associated with land acquisition (45% of the Habitat Plan's total costs, excluding endowment balance at end of permit period) are not fully substantiated and may represent under-estimates. Concerns include: (1) the limited sample size used to derive the land value estimates and the lack of support provided by the referenced data, and in some cases, the application of land value assumptions without data; (2) the land sale comparables specifically exclude lands with "speculative" value, despite the reality that most land in Santa Clara County will hold some level of speculative value associated with potential future use or development; and (3) the assumption that a conservation easement will represent 50% of the fee title costs, which is not based on any data and inconsistent with assumptions included in other recent HCPS (e.g., East Contra Costa County assumed a 60% easement to fee title ratio value; Interim Yolo County Swainson's Hawk mitigation fee assumes a 70% easement to fee title value; and San Joaquin County HCP assumes an 80% easement to fee title value ratio). Because acquisition costs represent nearly half the cost of Plan implementation it is essential that these fees be accurately calculated.	205
YCS Investments	157	9	9.4	19-20		5	The Draft Plan states that proponents of public and private projects will be required to provide some of the funding for the conservation actions required by the NCCP Act that exceed that required to mitigate impacts. This additional fee is purportedly justified by the benefits that the plan will provide to these applicants. Because it is highly uncertain whether these benefits will actually accrue to many project proponents, the Permittees need to further evaluate the proportionality between the fee charged and the impacts.	206
YCS Investments	158	9	9.4.1	24		6	The Draft Plan states that the land cover "[f]ees are consistent with the general level of biological impact," yet the sizable fees are directly related to costs of land. Per Step 2 on page 9-27, fees were "[b]ased on the estimated reserve acreage needed to mitigate development impacts . . ." Land acquisition of 58,000 acres is 40% of the Plan cost. Thus, the land acquisition policy dictates the fee costs. This provides further support for the request to re-consider use of existing open space for reserves.	207
YCS Investments	159	9	9.4.1	27-28		7	Inside the Urban Service Area, the Draft Plan's development fees are calculated based on the entire parcel and not the disturbance footprint. This fee may well render economically infeasible the requirement that projects within these areas set aside lands for public open spaces or other non-revenue generating uses. Have the Permittees evaluated the impact of this requirement on the ability to meet their identified open space requirements?	208
YCS Investments	160	9	9.4.1	29		2	The Draft Plan provides that the cost of managing the entire preserve area is covered through development fees. The purported justification for requiring development to fund the long term management of the conservation (as opposed to the mitigation) lands is the assurances and benefits derived from obtaining coverage for listed species coverage under the Plan. The proportionality between this benefit is tenuous. For projects that do not involve impacts to listed species, the coverage process is relatively simple and predictable. However, such projects would not need ESA or CESA coverage absent the plan so the level of benefit provided is questionable. For projects that do involve impacts to covered species and sensitive habitat, the permitting process is complicated and the outcome of the process is uncertain. The fee is equal to 29% of the land cover fee. Therefore, it is difficult to support the conclusion that placing this burden on development projects is justified.	209
YCS Investments	161	9	9.4.1	30-32		6	The Draft Plan claims that the justification for the nitrogen deposition fee is the relationship between Plan activities and an increase in nitrogen deposition in the area. However, as previously explained, the basis for this conclusion is not scientifically supportable. The proposed development fee bears no nexus to actual impacts upon the environment and cannot withstand scrutiny. See Attachment C.	210

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YCS Investments	162	9	9.4.1	32		3	The Draft Plan requires an additional fee be paid for impacts to serpentine land cover types. The Draft Plan needs to specify that this fee will be based on the number of acres of impacts to *field verified* serpentine land cover areas, not based on the large scale mapping. This is essential given the low mapping confidence for many serpentine features as well as the demonstrated inaccuracies included in the existing land cover mapping.	211
YCS Investments	163	9	9.4.1	33		3	The Draft Plan requires that projects that impact occupied burrowing owl nests or foraging habitat within 0.5 miles of an occupied nest pay a burrowing owl fee. Because habitat is not modeled for this species determining where the fee will apply is difficult. Does it apply to only the known occupied nesting habitat or does it also apply to potential nesting habitat found to support the nesting owls? How were the number of impacts calculated? Section 4.6.5 estimates that a maximum of 198 acres of occupied burrowing nesting habitat could be impacted. As previously discussed, it is unclear how this number was derived.	212
YCS Investments	164	9	9.4.1	33		2	In calculating the fee, the Draft Plan assumes that there will be 300 acres of impacts, but fails to explain its origins and how it relates to the maximum impacts of 198 acres. Additionally, the Draft Plan provides that the fee will not be imposed in "new areas if burrowing owls expand their range in the study area so as not to provide a disincentive to attract owls to new areas." Does this mean that the fee will not be charged to occupied nesting habitat that is identified as potential breeding habitat on Figure 5-11? The Draft Plan also provides that fees will continue to be charged in areas mapped in Figure 5-11 "even if nesting owls disappear from those sites." Does this apply to only the known occupied habitat? Given the tremendous uncertainty given how this fee will be implemented, it is impossible to comment on its reasonableness. Further information is required to allow for meaningful comments.	213
YCS Investments	165	9	9.4.1	33		2	The Draft Plan states that the fee will be paid for impacts in occupied burrowing owl habitat or foraging habitat within 0.5 miles of known nests, which appear in Figure 5-11 with green circles around them. It would be useful to state that this fee applies to these nests in urban areas only (see Figure 4-1). Figure 5-11 also shows Potential Burrowing Owl Nesting/Overwintering Habitat. In paragraph 4, the Plan states that the burrowing owl fee will not apply in "new areas." We believe that this applies to *all* habitat areas shown on Figure 5-11 because the Draft Plan states next that the fee will be applied on the known nest areas even if the owls disappear. This important distinction -- that the fee will be based only on the existing known nest locations, not new ones -- should be exlained above in paragraph 2.	214
YCS Investments	166	9	9.4.1	33		3	This indicates an impact of 300 acres over 50 years and a cost of $5,848,857. The cost/acre is thus $18,000. Clarify exactly how the areas in Figure 5-14 (shown as 5-11, Burrowing Owl. Habitat Types) relate to the $5.8 million WBO fee. See Table 9-5 comments.	215
YCS Investments	167	9	9.4.1	34		3	Rural footprint example of 1.5 acres plus is too small. 1. The Draft Plan cites a sample rural project of 1.5 acres, yet elsewhere concludes that based on its evidence, the median rural footprint is 3.3 acres. 2. In setting the impact area, the Draft Plan notes that the "development areas will be *slightly larger* than the 1.5 acre project footprint because of the buffer...(emphasis added)." The buffer is 50 feet wide and will add substantially to the footprint. For example, the footprint of a typical 2-car garage 20 feet wide x 25 feet long is 500 square feet. Add a 50 foot buffer and the footprint leaps to 15,000 square feet, roughly 1/3 acre. See comments at Figure 6-1 and the attached Figure 3.	216

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YCS Investments	168	9	9.4.1	34		4	The Draft Plan requires the payment of additional fees for impacts to wetlands. In this section, the Draft Plan states that the fee is required for direct impacts to wetlands. Under Condition 12, an applicant can also be required to pay fees for indirect impacts that adversely affect a wetlands functions. Were any fees assumed for indirect impacts to wetlands? Because the wetland fees are very significant, it is important that the fee structure be clearly and consistently described. This section needs to address when a fee will be required for indirect effects.	217
YCS Investments	169	9	9.4.1	34		4	As noted, the Draft Plan includes the requirement that applicants pay fees for two types of indirect impacts, adverse indirect impacts to wetlands and nitrogen deposition. These fees will add considerably to the cost of development. It is our understanding that no other HCP requires payment of fees which are based on a calculated indirect impact. What makes the permit area different from these areas such that the additional fee is justified?	218
YCS Investments	170	9	9.4.1	42		2	The Draft Plan includes provisions to adjust the development fee to ensure that the fees are adequate. While we understand the need to adjust fees over time, it is important for the Permittees to consider the magnitude of all the development fees. The Habitat Plan will significantly increase the overall cost burden on a number of development projects at a time when many jurisdictions are looking to ease the cost burden on new development and economic activities. As shown in the *Presentation Comparing Permitting Process Before and After HCP/NCCP* by Robert Eastwood (Santa Clara County Planning Department) overall fees are anticipated to be increased for a substantial number of projects as compared to permitting without the HCP/NCCP.	219
YCS Investments	171	9	9.4.1	42		2	The increase in total development fees under the Habitat Plan could create a strong disincentive to development in the Plan Area and could shift development and economic activity outside the Plan Area. Currently, the development fee schedules from the cities of San Jose, Gilroy and Morgan Hill indicate that new development in these cities currently faces a higher development cost burden ratio (development fee relative to development value) than many other cities in Silicon Valley. Increasing this disparity could harm the area's competitiveness. The Permitttees need to carefully evaluate the impact of imposing what appears to be unnecessarily high fees on new development. To ensure that an informed decision is made, the Permittees should instruct Habitat Plan staff to develop a minimum protection Habitat Plan that focuses on only essential activities necessary to protect listed species. A meaningful evaluation of the desirability of adoption the Habitat Plan can then be made.	220
YCS Investments	172	9	9.4.1	47		5	The Draft Plan relies on significant expenditures by County Parks to fund mitigation requirements for County projects and to contribute to the conservation goals. The total expenditure is estimated to be $69.6 million over the permit term. The source for this funding is the Park Charter Fund. There are two concerns with reliance on this level of funding. First, as is acknowledged in the Draft Plan, the Park Charter Fund must be reauthorized by County voters every 12 years. Therefore, this viability of the Fund will be subject to a decision by the general electorate four times during the permit term. Although we agree that the past support for this Fund is encouraging, the Permittees must recognize that it is not ensured funding. The recent, extended economic downturn has led to severe budget cuts and voter reduction in assessments at a previously unanticipated rate. The second concern with the reliance on the Park Charter Fund is whether County Parks will ultimately determine that acquisition of preserve lands is consistent with its Strategic Plan.	221

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YCS Investments	173	9	9.4.2	47		5	The most recent draft of the County of Santa Clara Parkland Acquisition Plan 2011 Update discusses natural resource conservation as a goal, but establishes that the outdoor recreation needs of County residents are of paramount importance in property acquisition. The County's parkland acquisition criteria focus heavily on outdoor recreation. See, e.g., Acquisition Plan (March 1, 2011, Draft for Board of Supervisors Review), at 51-52. Even the "resource conservation" acquisition criterion places similar constraints on the type of land the Parks Department may seek to acquire. This criterion provides: "The property has a direct relationship to attaining the resource conservation priorities of the County including the protection of scenic resources and areas with rich biological habitat that provide opportunities for appropriate resource-based recreation experiences of regional significance." Id. at 52-53 (emphasis added). The Permittees need to evaluate whether the acquisition of preserve lands subject to the Plan's requirements can meet these parkland acquisition criteria.	222
YCS Investments	174	9	9.4.3	52		4	The Draft Plan relies on state and federal funding sources to provide for a significant portion of its $1 billion dollar budget. This reliance is highly questionable given the current budgetary constraints, which were not in place when the referenced HCP/NCCP described in the Draft Plan were funded. See comment letter, pp. 15-16, which shows the anticipated funding stream for the identified state and federal programs under the currently proposed state and federal budgets. As can be seen by this chart, it is highly likely that a shortfall in funding will occur in the near term.	223
YCS Investments	175	9	9.4.4	58		2	The Draft Plan recognizes that development fees may well fall short of expectations in the short term given the current pace of development and ongoing economic conditions. If fees fall far short of the level expected, it is recognized that the Permittees may be required to request a reduction in the amount of take authorized and reduce the permit obligations. Because the value of the Plan will be significantly reduced if the Permittees are required to amend the Plan, it is critical that Permittees thoroughly evaluate the likelihood that funding will fall short. Permittees should consider scaling back the Draft Plan now to ensure that the need to amend the Plan is truly unlikely.	224
YCS Investments	176	9	9.4.4	59		4	The Draft Plan recognizes that non-development fees may fall short of expectations. In the event that it occurs, and the Permittees cannot address the shortfall, the permits will likely need to be amended. An amended permit would reduce not only the conservation actions funded by the non-fee generating funds but also the amount of take authorized. Again, given the high likelihood that a funding shortfall could happen in the near term, the Permittees should thoroughly evaluate whether there are ways to reduce obligations now and ensure that the Plan will not need to be amended.	225
YCS Investments	177	9		Table 9-5			The Draft Plan states that the western burrowing owl fee will equal $5,849,000. How was this number derived? It is not based on either the take estimate in Chapter 4 (19% acres of known nesting habitat).	226
YCS Investments	178	9		Table 9-6a			This table should clearly show ALL fees/acre by type at the top of the chart, not the middle, including WBO. Other items: 1) Second row shows Endowment Fee at start of permit terms; yet footnote 9 states that endowment fee is excluded from the total; 2) Footnote 5 states that the high fee range of $59,150 for Zone A is based on a 3.0 acre footprint, yet the text states that the actual footprint in rural areas is 3.3 acres (see page 4-53) -- the fee should be $65,000; 3) the table should note that these are in addition to other municipal fees; 4) burrowing owl fee is excluded with no indication where it may be found.	227

ATTACHMENT C

COMMENTS ON THE NITROGEN DEPOSITION CONTRIBUTION ESTIMATES IN SANTA CLARA COUNTY FOR THE SANTA CLARA COUNTY VALLEY HABITAT PLAN

YCS INVESTMENTS

APRIL 18, 2011

To support the HCP's conclusion that increased intensification of uses will result in increased nitrogen deposition and impacts to natural habitats, the Plan relies on a study, "Estimation of Contributions to Deposition of Nitrogen in Santa Clara Valley for the Santa Clara Valley Habitat Plan," December 2010, prepared by ICF International (Appendix E). This study assumes projected increases in emissions of nitrogen oxides (NOx) within the study area throughout the study period and concludes that these increases, which are due primarily to increased motor vehicle traffic, will result in increased nitrogen deposition and, as a consequence, adverse impacts to natural habitats. According to the study, its purpose is "to quantify the expected increases in nitrogen deposition in Santa Clara County as a result of the urban and rural grown covered by the Habitat Plan" (E-4) and to "provide[] technical justification for the approval of new local fees on public and private development to help fund the Habitat Plan." E-5.

The study's methodology is fundamentally flawed, however, because it relies on projected increases in NOx emissions that have no basis in reality and are, in fact, contradicted by the projected future emissions appearing in the most recent Clean Air Plan (CAP) published by the Bay Area Air Quality Management District (BAAQMD). The CAP projects a continuing decline in NOx emissions in future years in accordance with the federal Clean Air Act's (CAA's) mandate that the Bay Area must achieve the National Ambient Air Quality Standards (NAAQS) for both ozone and fine particulate matter (*i.e.*, less than 2.5 microns in diameter (PM2.5)), for which the Bay Area is currently designated nonattainment. The study, on the contrary, presumes that NOx emissions will continue to increase throughout the Bay Area based upon the apparent assumption that increases in vehicle miles travelled (VMT) due to increases in population and driving patterns will lead to increases in NOx emissions. This is plainly false and cannot provide the basis for the study's conclusions that projected population growth will result in increased nitrogen deposition within the study area. 228

For the base year, the study's Community Multiscale Air Quality (CMAQ) simulations are based on an inventory of emissions within the Bay Area and the rest of the modeling domain that amounts to 2,561.1 tons per day (tpd) average daily emissions during the studied episode period, comprised of 590 tpd of NOx emissions from within the nine Bay Area counties and 1,971.1 tpd of NOx from the rest of the domain. *See* Appendix E, E-64, Table E-21. Although the study does not clearly explain the basis for doing so, it then derives future-year emissions inventories for the Bay Area in the years 2035 and 2060 based on population growth estimates provided by the Association for Bay Area Governments (ABAG). *See* E-69. According to the study, these "[p]rojections were applied to the area and mobile sources with each county." *Id.* The study notes that it does not apply any similar projections to the inventory of emissions from outside the Bay Area, *i.e.*, elsewhere in the study domain. *See* E-70. Thus, emissions from outside of the Bay Area are assumed to remain the same throughout the study period (1,971 tpd NOx). 229

Compare Table E-21 (at E-64) with Tables E-25 and E-26 (at E-71). The study also admits that, "the mobile source and area source projections do not take into account improvements in emissions control technologies or regulation actions". *Id.* As a consequence, "the contributions estimated in this analysis may overestimate the role of local area and local mobile sources in the future." *Id.* 230

For the future year CMAQ simulations, the study assumes significant increases in NOx emission from the Bay Area counties: In 2035, the emissions of NOx from the Bay Area counties are predicted to be 760.9 tpd (*see* E-71, Table E-25), which would represent a nearly 29% increase in average NOx emissions per day during the studied episode period above the base year emissions of 590 tpd NOx. In 2060, the emissions of NOx from the Bay Area counties are predicted to rise to 883.7 tpd (*see* E-71, Table E-26), representing an increase of nearly 50% above the base year.

As we previously conveyed in our comments on Second Administrative Draft of the HCP, these projected increases in emissions are unfounded and have no basis in reality. We refer to BAAQMD's Bay Area 2010 Clean Air Plan (CAP), which makes clear that "emissions of [reactive organic compounds (ROG)] and NOx [both ozone precursors] in the Bay Area *are projected to continue to decline in future years*." Bay Area 2010 Clean Air Plan, Final Clean Air Plan – Volume 1 (Sep. 15, 2010)[1], at 2-20 (emphasis added). The CAP indicates that, in 2000, average daily NOx emissions were well above 600 tpd during the summer (*i.e.*, the ozone season). *See id.*, 2-21, Figure 2-8. By 2005, it shows emissions had declined to somewhere above 500 tpd NOx. *See id.* By 2025 – which is the last year included in the projections – average daily NOx emissions during the summer months are projected to decline to approximately 350 tpd. *Id.* 231

We also refer to BAAQMD's 2008 inventory report, which reports average daily emissions of NOx in 2005 of approximately 521 tpd. *See* Base Year 2005 Emissions Inventory, Summary Report, BAAQMD (Dec. 2008)[2], at 8, Table 3. BAAQMD's inventory report also projects significant continuing reductions in NOx emissions through 2025. *See id.*, at 12, Figure 2. The inventory report provides the following summary of trends in regional NOx emissions:

> *NO_x emissions from on-road motor vehicles will continue to decline due to fleet turnover*. Implementation of BAAQMD NO_x rules will also continue to reduce emissions. *Total NO_x emissions are expected to decline by an average of about 2.0% per year until 2022*. After 2022, NO_x emissions are projected to increase. The increases are mainly due to projected increase in shipping activities in the Bay Area. However, with the introduction of additional reductions currently being considered by CARB, further reductions will occur…

Id., at 5 (emphasis added).

Notably, the small increase that will occur in 2022 is relative to the prior year, not the base year; that is, emissions will continue to remain significantly below the 2005 base year NOx emissions

[1] *Available at*: http://www.baaqmd.gov/Divisions/Planning-and-Research/Plans/Clean-Air-Plans.aspx.
[2] *Available at*: http://www.baaqmd.gov/Divisions/Planning-and-Research/Emission-Inventory-and-Air-Quality-Related/Emission-Inventory.aspx.

despite the possible increase attributable to increased shipping activities. As we previously conveyed in our comments on the Second Adminstrative Draft, the overall projected reductions in NOx emissions are due primarily to fleet turnover, as older motor vehicles are replaced by cleaner, more efficient vehicles.

It is also important to note that BAAQMD has projected these significant reductions in NOx emissions, notwithstanding that it also assumes the same projected increases in population, vehicles and VMT as were assumed by the study. *See id.*, 7, Table 1. Thus, despite a projected increase in VMT of more than 26% between 2005 and 2025, BAAQMD nevertheless projects a substantial reduction in Bay Area NOx emissions.

The study acknowledges the likelihood of reductions in future vehicle emissions, saying "[e]missions per vehicle can be expected to decrease over time as technology and emissions standards improve." E-78. It nevertheless disregards these reductions, concluding that, "the amount of this reduction is difficult to estimate because technological improvements are uncertain and may have unexpected effects." *Id.* One thing is certain, however: vehicular NOx emissions *will* continue to decline due to fleet turnover, improvements in technology and increasingly stringent federal and state standards on emissions of both criteria pollutants and greenhouse gases. Because the study has disregarded these reductions and instead projected large increases in NOx emissions contradicted by BAAQMD's own CAP, the study's projections of increases in deposition rates in 2035 and 2060 are lacking any credible foundation. 232

For the Gaussian model simulations performed using CAL3QHCR and AERMOD, the study is even less clear on the basis of the emissions inventories relied upon to project future increases in deposition rates. The study says that, for the major highway segments (US 101 and SR 85), it relied upon EMFAC2007 simulations to derive an average emissions rate of 0.915 g/vehicle of NOx emissions. *See* E-21. The study does not describe or explain how it calculated an average emissions rate for the 2030 and 2060 simulations, concluding simply that, "[w]hen the emissions are projected to 2030 reflecting projected increases in traffic volume, estimated deposition increases at all receptors." E-32. Similarly, "[u]sing the extrapolation of emissions to 2060 shows even greater increases in the deposition estimates." E-36. While the study acknowledges that "[b]ecause these emissions were extrapolated, the rate of increase between 2005 and 2030 might not be maintained until 2060" (*id.*), it does identify, let alone provide a foundation for, for the 2030 and 2060 emissions estimates used in the Gaussian models. One can only presume that, for purposes of the Gaussian modeling simulations, average emissions per VMT were assumed to remain constant between 2005 and 2060. Such an assumption is unfounded and contradicted by BAAQMD's own projections that vehicular NOx emissions will continue to decrease through 2025, despite assumed increases in population and VMT. 233

By failing to account for reductions in vehicular emissions that will occur due to increasingly stringent emissions requirements and vehicle turnover, the study suggests a correlation between increased VMT and increased depositional nitrogen where none exists. Because of this erroneous assumption, the study's modeled deposition rates – whether predicted by Gaussian or Eulerian grid models – have no basis in reality and cannot support the conclusion that increased development will impact critical habitat. For this reason, the proposed development fee bears no nexus to actual impacts upon the environment and cannot withstand scrutiny. 234

Exhibit D. Butterfly Dispersal Literature Review Summary, WRA, March 2011

Introduction: The SCCHCP (pg. 5-19) states that, "wider linkages tend to be more effective than narrower linkages" and references Hilty et al. (2006). This is a general statement presumably for a wide variety of species. Species-specific linkage corridor requirements are not readily proved in the HCP.

WRA reviewed Hilty and other primary literature addressing butterfly dispersal and corridors in an attempt to determine appropriate corridor widths for butterflies. Our findings are summarized below.

Hilty et al. 2006. *Corridor Ecology*.

- Hilty states that species adapted to habitat mosaics can more easily maintain metapopulation structure as they are already adapted to dispersal in fragmented habitat (pg. 193).
- Stepping stone connectivity (discontinuous patches of relatively intact natural habitat) might be better than continuous corridors for some species such as volant butterflies.

Öckinger and Smith 2008. *Do Corridors Promote Dispersal in Grassland Butterflies and Other Insects?* *A mark-recapture experimental study addressing dispersal plus a literature review.*

- Experimental study was conducted with corridor widths from 1 to 10 meters, and an average width between 2 and 3 meters. Pg. 28.
- Their hypothesis that corridors promote dispersal between habitat patches was not supported in all cases; however recipient habitat quality and size was significant. Pg. 32
- They concluded that corridors may act as conduits for butterflies involved in short-distance movement rather than in the relatively long-distance dispersal events between pastures. Pg. 34.
- The Ockinger and Smith study showed no positive effect of corridors on long-range dispersal between pastures for any of the three studied butterfly species. Pg. 34.
- Results of literature review indicate that only two out of six studies showed positive effects of corridors for grassland butterfly species. Pg. 34.

Haddad 2000. *Corridor Length and Patch Colonization by a Butterfly, Junonia coenia.* *A mark recapture study addressing corridor usage by a short-distance dispersing butterfly.*

- Experimental corridor size of 32-m (100 feet) wide in a forested matrix. Pg. 740
- Study found that neither corridors nor distance significantly affected patch colonization, but the presence or absence of corridors significantly influenced distance travelled. Pg. 738
- Higher population densities occurred in patches with corridors (Haddad & Baum 1999). Pg. 740
- Corridors should be most effective for habitat-restricted species, especially when the surrounding habitat contrasts strongly with patches and corridors. Pg. 743
- Fewer studies have shown that corridors have a positive effect on population persistence (e.g., Gonzalez et al 1999). Pg. 743
- For butterflies, a random movement model determines the distance at which either stepping-stones or corridors are most effective. If the distance between patches is short relative to an animal's movement ability, then stepping stones may be most effective. At longer distances, corridors appear a promising option to reduce isolation in fragmented landscapes.

Comment Letter 50—YCS Investments, Joanna Callenbach, April 18, 2011

Response to Comment 50-1
The project description evaluated by USFWS in the referenced Biological Opinion included VTA's commitment to "Provide funding and staff support for and develop and implement a countywide, multi-species habitat conservation plan that will assure on-going conservation of the ecosystem on which the species depends" (p. 7). As such, USFWS's jeopardy analysis was in part, based upon the commitment to implement a regional HCP in Santa Clara County. The commenter is incorrect in stating that USFWS's effects analysis did not depend on the implementation of the HCP, as evidenced through excerpts of the Biological Opinion below:

Growth Facilitation: "It is likely improvements to U.S. 101 will facilitate development in undeveloped portions of County and outlying areas. Such development is discussed in the City of San Jose's 2020 General Plan, as is the NCVCIA as cited in the DEIR (City 2000), which will facilitate additional campus industrial facilities within north Coyote Valley. Additional interchanges and infrastructure will likely be required to accommodate the City and County's planned development in the region. The agreement on behalf of the City and County to complete an HCP/NCCP will likely alleviate many of USFWS's concerns for impacts to federally listed species and their habitats" (p. 35).

Cumulative effects for California red-legged frogs: "Implementation of the proposed HCP/NCCP conservation measures will likely minimize and compensate for adverse affects to the conservation of red-legged frogs" (p. 39).

Cumulative effects for Bay checkerspot butterfly: "Once implemented, the proposed HCP/NCCP conservation measures should minimize and compensate for the effects of development under City and County jurisdiction. The proposed conservation measures cannot fully overcome negative range wide cumulative effects, but they should make the cumulative effects less likely to cause extinction of the Bay checkerspot." (p. 40).

Cumulative effects for Santa Clara Valley dudleya, Coyote Ceanothus, and Tiburon Indian Paintbrush: "The Service anticipates that the trend of urban expansion will continue to threaten remaining serpentine grasslands containing listed plant habitat in Santa Clara County. With implementation of the proposed HCP/NCCP conservation measures should minimize and compensate for the effects of development on the conservation of listed serpentine endemics under City and County jurisdiction" (p. 41).

Cumulative effects for salt marsh harvest mouse and California clapper rail: "The proposed HCP/NCCP conservation measures will likely minimize and compensate for the effects of development under City and County jurisdiction" (p. 41).

No changes to the Habitat Plan are required.

Response to Comment 50-2
See Response to Comment 50-1.

Portions of this comment are addressed in Master Responses #1, #3, and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #3, and #10.

Response to Comment 50-3
The components of the Habitat Plan that commit to certain levels of preservation and restoration or creation regardless of impacts are included to meet the requirements of the NCCP Act. Because these commitments go beyond standard mitigation requirements, other sources of public and private funding are available to fund these requirements (e.g., Section 6 grants from USFWS).

No changes to the Habitat Plan are required.

Response to Comment 50-4
Although the Implementing Entity has up to 5 years to develop a reserve unit management plan, which may include a recreation component, this plan could be developed sooner. Furthermore, existing recreational uses will continue until a new recreation plan is in place.

The Plan is clear that some new recreational facilities are permitted in the Reserve System. This is fully described in Habitat Plan Chapter 6, Condition 9.

No changes to the Habitat Plan are required.

Response to Comment 50-5
See Responses to Comments 42-1 and 50-13.

Response to Comment 50-6
Comment is addressed in Master Responses #1, #3, and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #3, and #10.

Response to Comment 50-7
Comment is addressed in Master Responses #1 and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #10.

Response to Comment 50-8
The text quoted in this comment is taken out of context. The full paragraph reads,

The NCCP Act requires that the Permittees get concurrence from the Wildlife Agencies before adopting, amending, or approving any plan or project that is inconsistent with the objectives and requirements of this Plan. The conditions described in this chapter are designed to ensure this consistency and provide standard and predictable requirements for project applicants. However, Permittees may need to adopt or impose additional conditions beyond those described in this chapter for unanticipated projects or effects in order to ensure consistency with the Habitat Plan and compliance with the NCCP Act. (See Habitat Plan Chapter 6, Section 6.1 *Introduction.*)

Thus, Permittees may need to adopt or impose additional conditions when requesting Habitat Plan coverage for unanticipated projects or effects.

Contrary to the comment, the Draft Habitat Plan does establish mitigation to offset impacts on covered species. This is described in some detail in Habitat Plan Chapter 5 *Conservation Strategy*. Although possible, it is unlikely that a project would be required to provide additional species or habitat mitigation under CEQA. The Plan does not map impacts for any projects.

The Local Partners have made extensive efforts, with review and input by the Wildlife Agencies and other agencies that may contribute land to the Reserve System, to ensure that fees are equitable and that other funding sources are appropriately identified.

Portions of this comment are addressed in Master Responses #4 and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #4 and #10.

Response to Comment 50-9
The Habitat Plan is a permitting document that outlines a process by which take of covered species will be authorized. The Plan is consistent with current land use regulations established by each local jurisdiction. As such, the Plan does not regulate land use decisions, including limits on the amount of development that may occur or decisions regarding where Local Partners or other local agencies may decide to purchase open space lands.

No changes to the Habitat Plan are required.

Response to Comment 50-10
The Plan does not specify all lands that it intends to acquire; indeed, the Plan allows lands to be acquired only from willing sellers (fee title or conservation easements). As such, it was developed to maintain flexibility with respect to the lands acquired.

Portions of this comment are addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 50-11
See Responses to Comments 49-31 and 50-9.

Portions of this comment are addressed in Master Response #3.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 50-12
The Local Partners did carefully consider the benefits of developing the Habitat Plan as both an HCP and an NCCP. An analysis of the costs and benefits of the Habitat Plan was presented to the Housing, Land Use, Environment, & Transportation Committee (HLUET) of the County Board of Supervisors on October 21, 2009. The following year, an analysis of an HCP-only plan was conducted and results presented to the Liaison Group on August 19, 2010.

Portions of this comment are addressed in Master Responses #1, #3, and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #3, and #10.

Response to Comment 50-13
Revisions to the Habitat Plan include the following:

The land cover layer for the Final Habitat Plan has been updated, with field-verified locations of serpentine bunchgrass and other land cover types as provided by YCS Investments in GIS format.

Response to Comment 50-14
The Local Partners and Wildlife Agencies acknowledge the comment. Habitat models will be updated during Plan implementation based on the best available scientific information throughout the permit term.

Also see Responses to Comments 50-15 through 50-20.

Response to Comment 50-15
See Response to Comment 50-13.

Revisions to the Habitat Plan include the following:

The Bay checkerspot butterfly species model for the Final Habitat Plan has been updated with the data provided by YCS Investments.

Response to Comment 50-16
The statement "breeding habitat must become inundated and hold water long enough for California tiger salamander to complete the aquatic portion of its lifecycle" was not incorporated in the habitat model description because of mapping resolution limitations, as noted by the commenter. This information is included in the description of habitat requirements in Habitat Plan **Appendix D.**

Regarding the species' dispersal distance, all habitat models were reviewed by Wildlife Agencies. They are in agreement with the use of the conservative dispersal distance (i.e., 1.3 miles).

No changes to the Habitat Plan are required.

Response to Comment 50-17
Species habitat models and habitat will be updated during Habitat Plan implementation, based on the best available scientific information. The information presented in this comment regarding the presence of perennial streams would be considered during such an update to ensure appropriate species habitat is preserved.

No changes to the Habitat Plan are required.

Response to Comment 50-18
Hall's Bush Mallow was removed as a covered species under the Habitat Plan. The comment is no longer relevant.

No changes to the Habitat Plan are required.

Response to Comment 50-19
The Local Partners and Wildlife Agencies are in agreement with this comment, habitat models will be updated based on the best available scientific information during implementation.

No changes to the Habitat Plan are required.

Response to Comment 50-20
During Plan development, USFWS required that the impacts analysis and land acquisition commitments be analyzed in terms of species habitat, not just natural communities. USFWS's Biological Opinion and Section 10 findings are based upon an analysis of impacts on each covered species, not natural communities. Due to data constraints, this analysis often relies on habitat proxies. Habitat for any given covered species is a subset of many land cover types described in the Plan. For example, not all grasslands and oak woodlands are suitable habitat for San Joaquin kit fox in the permit area. The species is most likely to occur in these natural communities found in the southern portion of the permit area, based on our understanding of the species' current and historic range and distribution. The Plan allows for habitat models to be updated during Plan implementation. If it is determined during implementation that habitat models are flawed to the extent that require changes in the Wildlife Agencies' decision documents, a major amendment will be required. Specific actions that require Habitat Plan amendments are included in Habitat Plan Chapter 10.

Revisions to the Habitat Plan include the following:

Modeled habitat conservation targets, as well as impacts to modeled habitat, will be calculated against the most recently developed species models.

Response to Comment 50-21
The purpose of the nitrogen deposition study described in Habitat Plan **Appendix E** was updated to be consistent with Habitat Plan Section 9.4.1 *Habitat Plan Development Fees*, subheading *Nitrogen Deposition Fee,* which states "Air pollution simulation modeling was conducted to estimate the percentage of nitrogen deposition in the habitat areas that results from air pollution emissions within the Habitat Plan study area, as opposed to air pollution that is transported from other regions to the study area" (see summary in Habitat Plan Chapter 4 and the technical report in Habitat Plan **Appendix E**).

Also see Responses to Comments 50-228 through 50-234.

Revisions to the Habitat Plan include the following:

(Habitat Plan **Appendix E** *Estimation of Contributions to Deposition of Nitrogen in Santa Clara County for the Santa Clara Valley Habitat Plan*)

"The primary purpose of this report is to quantify the expected increases in nitrogen deposition in Santa Clara County as a result of the urban and rural growth covered by the Habitat Plan to:

1. extrapolate changes in deposition rates over time; and
2. estimate the percentage of nitrogen deposition in the study area that results from air pollution emissions within the Habitat Plan study area, as opposed to air pollution that is transported from other regions to the study area."

Response to Comment 50-22
EIR/EIS Section 2.4.1 describes the "covered activities" and methodology for identifying them. This subject is also discussed at length in Habitat Plan Section 2.3. Impacts and "take" levels associated with the covered activities on each species are discussed at length in EIR/EIS Section 5.4 and in Habitat Plan Chapter 4.

With respect to the public's opportunity to review and comment on the Plan, see Responses to Comments 23-4, 35-1, and 49-33.

No changes to the Habitat Plan are required.

Response to Comment 50-23
Habitat Plan Chapter 2 provides an extensive list of specific projects proposed by the Local Partners and the types of private projects that will be covered by the Plan. As the preparers of the Plan, the Permittees do not have an issue with the description.

Revisions to the Habitat Plan include the following:

Habitat Plan Chapter 2, Section 2.3 *Covered Activities*:

- "the activity or project does not preclude achieving the biological goals and objectives of the Plan (see Chapter 5 *Conservation Strategy*) as determined by the Implementing Entity at the time the covered activity is proposed. For projects where there is some question whether or not the biological goals and objectives of the Plan may be precluded, the determination will be made by the Implementing Entity in coordination with the Wildlife Agencies;"

Response to Comment 50-24
See Responses to Comments 50-9 and 50-20.

Revisions to the Habitat Plan include the following:

Clarifications and corrections of inconsistencies related to the western burrowing owl conservation strategy and level of impacts allowed are included in the Final Habitat Plan.

Tracking and accounting requirements for impacts on occupied non-modeled Bay checkerspot butterfly habitat were deleted from the Plan.

Response to Comment 50-25
The commenter's assumption is incorrect.

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 4.4.1 *Direct Effects* subheading *Baseline Land Cover*) "Assumptions used to define the impact analysis baseline land cover are made only for the purpose of estimating an accurate level of take proposed for coverage under the Plan; these assumptions have no bearing on whether an activity may be covered or not. Project proponents for parcels assumed to already have permits may seek coverage under this Plan if the activity is covered, take coverage is available, and if the proponent follows the application requirements described in Chapter 6 (such coverage would be tracked and counted against allowable impacts)."

Response to Comment 50-26
USFWS evaluates each HCP independently. This Habitat Plan should not be compared with previously permitted HCPs because each plan is unique and thus requires different analysis and different conservation measures to ensure that USFWS is able to make its statutory findings.

In the context of the ESA, the Habitat Plan was developed for dual purposes. First, it was necessary for the Local Partners to obtain a Section 10(a)(1)(B) permit. As described in Habitat Plan Section 1.3.1, the Habitat Plan was also developed to be used by USFWS, in lieu of a Biological Assessment, to conduct its intra-USFWS Section 7 consultation. As such, the Habitat Plan analyzes effects on designated critical habitat.

Section 10(a)(2)(B) of the ESA describes issuance criteria that must be met before USFWS issues a Section 10(1)(B) permit. The criteria include any measures USFWS may require as being necessary or appropriate for the purposes of the plan. The Habitat Plan's geographic scope and the scope of covered activities (i.e., rural development) created enough uncertainty that USFWS found it necessary to require explicit impact limits on critical habitat to ensure critical habitat for the Bay checkerspot butterfly, California tiger salamander, and California red-legged frog would not be destroyed or adversely modified. Prior to the circulation of the Draft Habitat Plan, the Habitat Plan estimated impacts on critical habitat but did not explicitly define limits on those impacts. USFWS's concerns were compounded by the fact that the Habitat Plan did not explicitly identify minimum acquisition of critical habitat but provided only estimates for acquisition. The Permittees were unable to make this level of commitment because the Reserve System assembled would be based on willing sellers, and the exact Reserve System configuration would be unknown at the time of permit issuance. Because of the programmatic nature of the Habitat Plan, USFWS concluded that it would not be able to support a no adverse modification opinion in the intra-USFWS Section 7 consultation unless impact limits were established for critical habitat. This change, along with the Habitat Plan's previously proposed impact limits on modeled habitat and conservation measures to protect modeled habitat and demonstrate species occupancy on the Reserve System, sufficiently ameliorated USFWS's concerns. The Habitat Plan still allows for sufficient

flexibility during implementation because critical habitat impact limits are not specified by unit, and the conservation strategy still provides for estimates of critical habitat conservation as opposed to requirements.

Also see Response to Comment 35-8.

No changes to the Habitat Plan are required.

Response to Comment 50-27
Comment is addressed in Master Responses #1 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #3.

Response to Comment 50-28
Comment is addressed in Master Response #3 and Response to Comment 49-8.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 50-29
The Plan states "If during the environmental review process it is shown that a project has adverse indirect impacts to the wetland's function (change in hydrological functions, etc.), the project will be required to avoid these indirect effects, as determined on a case by case approach by the local jurisdiction, in consultation with the Implementing Entity…. Projects that do not completely avoid indirect effects to wetlands will be considered permanently impacted and will count towards the impact caps described in Habitat Plan **Table 4-2** and will be assessed fees as described in Chapter 9." In these instances, the wetland impact fee would be assessed to acknowledge that indirect effects to wetlands can be just as detrimental as direct fill (i.e., surrounding a wetland with development such that the hydrology of the wetland can no longer be supported).

Portions of this comment are addressed in Master Responses #2, #3, and #10.

Revisions to the Habitat Plan will be consistent with Master Response #2, #3 and #10.

Response to Comment 50-30
The Local Partners conducted significant coordination with the Wildlife Agencies to develop reasonable assumptions about future State and Federal contributions based on grant history and anticipated changes in Wildlife Agency funds. Changes in the Plan's scope (see Master Response #1) resulted in a reduction of the Plan's assumption of Wildlife Agency contributions by 18%. However, the Plan cannot rely on Wildlife Agency funds. As noted in Habitat Plan Section 9.4.3, if after the exercise of all available authority and utilization of all available resources, the Wildlife Agencies are unable to contribute 14,900 acres to the Habitat Plan Reserve System, the Implementing Entity, the Permittees, the Wildlife Agencies will reevaluate the Plan and work together to develop a mutually acceptable solution.

Portions of this comment are addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 50-31
The Final Habitat Plan estimates that the value of the County's contribution to new land acquisition for the Reserve System would be approximately $46 million, which could be used to offset approximately $26.7 million in fees that the County would owe to the Habitat Plan for projects undertaken by the County and the remainder could be used to contribute to the recovery of the Covered Species. This land value would be approximately 7.0% of total funding for the Habitat Plan implementation. The 2011

County of Santa Clara Parkland Acquisition Plan evaluates a set of 23 acquisition criteria for property acquisition, where outdoor recreation opportunities are a subset of the "regional demand/appeal" and "recreation usability" criteria. For example, "outdoor recreation opportunities" may or may not be relatively high for a given property but would not be the sole criterion used to decide whether or not to move forward with acquisition. Similarly the "resource conservation" criterion is not the sole criterion determining property acquisition.

In accordance with the 2003 Strategic Plan for the Santa Clara County Parks and Recreation System, areas classified as "natural areas" in County Parks would include "lands generally managed for conditions that best protect the environment and habitat area" and "lands developed with only minimal amenities needed to provide public access for low-intensity and dispersed recreation." As such, the proposed acquisition of new lands for the Reserve would be compatible with the County's Acquisition Plan criteria and Strategic Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-32
See Response to Comment 35-2.

Response to Comment 50-33
The City of Gilroy rejoined the Habitat Plan development process shortly after it pulled out. This comment is no longer relevant.

No changes to the EIR/EIS are required.

Response to Comment 50-34
The proposed Habitat Plan would not override local land use authority – there are no "development caps." Incidental take coverage would be applied to land development activities undertaken pursuant to the Habitat Plan, and in some cases incidental take coverage would not be applied to all areas designated for urban development by the local authorities – these areas have "impact caps" related to incidental take coverage.

Three land cover types (serpentine bunchgrass grassland, coastal and valley freshwater marsh, and seasonal wetland) have impact caps that were informed by the impact analysis, but that were set lower than what was estimated by the impact analysis. The reduction in impacts is intended to account for avoidance and minimization that is expected to be realized due to conditions on covered activities and because the Plan's fee structure provides financial incentive to avoid these land cover types. Setting impact caps on these land cover types ensures that impact are not over-estimated and that the conservation strategy is developed consistent with the impacts actually expected to occur.

The clearest example is the land cover type "serpentine bunchgrass grassland," which provides habitat for the Bay checkerspot butterfly. As described in the Final EIR/EIS (see EIR/EIS Table 5-5 and Habitat Plan Table 4-2), approximately 650 acres of serpentine grassland would be converted by urban development.[1] However, of that total amount, incidental take coverage would be limited to 550 acres (see EIR/EIS Section 5.4.1). The remaining acreage would still be designated for urban development (primarily in the City of San José General Plan), but would still need to comply with FESA take prohibitions. For this reason, it is incorrect to refer to limitations on incidental take coverage as

[1] Note that Table 5-5 in the Draft EIR/EIS states that 884 acres of serpentine bunchgrass grassland would be developed under the No Action Alternative. Based on new information provided for the updated Habitat Plan (see Response to Comment 50-13), the amount of serpentine bunchgrass grassland expected to be developed has been reduced to 650 acres.

"development caps." Consistency with local plans and policies is discussed in EIR/EIS Chapter 6, Land Use – no inconsistencies have been identified.

Also see Responses to Comments 50-9, 50-20, 50-13, 50-26, and 50-99. With regard to the social and economic effects of Covered Activity limitations, see Response to Comment 50-36 below.

No changes to the EIR/EIS are required.

Response to Comment 50-35
The complete project description is the Habitat Plan itself, along with its Implementing Agreement. EIR/EIS Section 2.4 is, as described at the beginning of the section, a summary of key elements. In order to provide a clear, focused description for the reader (consistent with CEQA and NEPA requirements), not every detail of the Habitat Plan is described. The application process and the Plan's costs and funding mechanisms are critical to the Habitat Plan and are important components of the Wildlife Agencies' findings prior to making their respective permit decisions. However, these Plan details are not relevant to evaluating the potential environmental consequences of the alternatives evaluated in the EIR/EIS.

Also see Responses to Comments 23-5, 50-9, 50-90, 50-160, and 50-191. Portions of this comment are also addressed in Master Responses #1, #2, #3, and #10.

No changes to the EIR/EIS are required.

Response to Comment 50-36
Alternatives were screened using the purpose and need and goals and objectives described in EIR/EIS Section 1.5. The land use planning documents listed in this section provide the underlying context of the purpose and need and goals and objectives developed for the EIR/EIS. The Habitat Plan does not regulate land use decisions and assumes development permissible under the land use documents listed in EIR/EIS Section 1.5 will occur over the permit term. As such, the proposed Action is a reasonable alternative that meets the stated purpose and need and goals and objectives. All other alternatives were screened out. See Section 2.6 of the EIR/EIS for a discussion of seven other alternatives considered but not carried forward for detailed evaluation.

Displacement of urban development to other regions (with secondary physical consequences to those regions) is not a likely outcome of the Proposed Action. This was specifically considered in the *Economic Impact Analysis of the Santa Clara Valley Habitat Conservation Plan* (Willdan Financial Services, 2011). The Economic Impact Analysis concluded that the Habitat Plan's development impact fees are unlikely to cause a competitive disadvantage to real estate development in the Plan Area. This is because the fees likely would be absorbed through small market adjustments to land prices rather than passed forward in the form of higher sales prices for finished real estate products. The discussion of population displacement in EIR/EIS Section 3.3.3 has been updated to be consistent with this finding. The EIR/EIS also addressed land use and population impacts in Chapter 6 (Land Use) and Chapter 12 (Socioeconomics and Environmental Justice).

Also see Response to Comment 50-9.

EIR/EIS Section 3.3.3, *Population Displacement*, has been updated to include findings from the Economic Impact Analysis.

Response to Comment 50-37
Although the CEQA "baseline" is normally the existing environment when the Notice of Preparation is issued (14 CCR § 15126.2), there is no uniform, inflexible rule regarding establishment of this "baseline,"

and a lead agency has discretion to decide how the existing physical conditions without the project can most realistically be measured (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 328). *Communities for a Better Environment v. South Coast Air Quality Management District* allows an agency the discretion to use a baseline aside from that of the time of the Notice of Preparation where environmental conditions will change; the EIR/EIS provides evidential support for those changing conditions in its description of activities that would occur under the No Project Alternative (see "typical activities" described in EIR/EIS Section 2.3.1). Further, *Pfeiffer v. City of Sunnyvale* (CV148279, 11-22-11) and *Neighbors for Smart Rail v. Exposition Metro Line Construction* (April 17, 2012, B232655, Cal.App.4th) interpret *Communities for a Better Environment v. South Coast Air Quality Management District* to allow future conditions to be used as a baseline where those conditions are relevant and existing descriptions are described in the EIR. Those existing and future conditions are described throughout the impact analysis of the No Action Alternative (for example, see land cover changes in EIR/EIS Tables 5-5 through 5-22 and Table 6-2).

The proposed action is the issuance of an incidental take permit and implementation of a Habitat Plan to mitigate impacts of private infrastructure and public development projects on covered species and to conserve natural communities. This differs from the typical project evaluated under CEQA, which involves approving or implementing a development project that would itself cause physical changes to the environment. Based on the nature of the proposed project, the relevant baseline for evaluating the project's environmental impacts is what would occur if the Habitat Plan was not adopted.

No changes to the EIR/EIS are required.

Response to Comment 50-38
The land covers in the Final EIR/EIS have been updated consistent with the Final Habitat Plan. The updated information is a minor technical change in land cover acreages, and not a substantial change that would warrant recirculation of the EIR/EIS. All impacts described in the Draft EIR/EIS will be reduced as a result of the overall reduction in the Habitat Plan's scale (see Master Response #1 and #2).

Also see Responses to Comments 50-13 and 50-99.

Various tables throughout the EIR/EIS have been updated to reflect updated numbers in the Habitat Plan.

Response to Comment 50-39
See Responses to Comments 50-34 and 50-36. As stated in the Economic Impact Analysis, the Habitat Plan's development impact fees are unlikely to cause a competitive disadvantage to real estate development in the Plan Area.

No changes to the EIR/EIS are required.

Response to Comment 50-40
The analysis of impacts to agricultural resources (EIR/EIS Chapter 7) has been updated based on changes to the Habitat Plan.

Also see Response to Comment 49-17.

No changes to the EIR/EIS are required.

Response to Comment 50-41
The potential for increased demand for police and fire services to result in secondary environmental consequences (e.g., from construction of new facilities) is evaluated in EIR/EIS Section 8.4.1. Throughout

the 6 year process of developing the Habitat Plan, the Local Partners (including the municipalities that also provide police and fire services) have never suggested that satellite police or fire stations would need to be provided on Reserve System land. In discussing Program Administration costs, the Habitat Plan (Section 9.3.5) states that the aerial extent of the Reserve System would require the funding of one peace officer or equivalent, with annual funding described in Appendix G. Supporting one peace officer or equivalent would not require construction of a new police station.

As described in Chapter 6 of the Habitat Plan, Condition 10, *Fuel Buffer*, describes requirements for fuel buffers in the Reserve System. Furthermore, Section 5.3.2, subheading *Fire Management*, requires that there be a fire management component in each reserve unit management plan, developed in coordination with Cal Fire and other local fire-fighting agencies. The reserve unit management plans will include a range of fire response, from full suppression when wildfires compromise public safety and personal property, to less than full suppression in predetermined areas of the reserve unit where public safety and personal property is not compromised, and fire-dependent natural communities are present. Together, these measures reduce the need for additional fire services resulting from the Habitat Plan.

No changes to the EIR/EIS are required.

Response to Comment 50-42
The analysis of hazardous materials impacts in EIR/EIS Section 7.4 correctly states that some activities (primarily some riverine and riparian habitat restoration activities) would occur outside of the Reserve System. However, the commenter correctly points out that Mitigation Measures 11-1 and 11-2 appear to be limited to just the Reserve System. Mitigation Measures 11-1 and 11-2 should apply to riverine and riparian habitat restoration activities that occur outside of the Reserve System, and therefore the text has been modified. Extending the scope of these two measures to off-reserve restoration areas is not a substantial change that warrants recirculating the EIR/EIS.

New text added to Mitigation Measures 11-1 and 11-2.

Response to Comment 50-43
See Responses to Comments 50-34 and 50-36. Portions of this comment are also addressed in Master Response #3.

No changes to the EIR/EIS are required.

Response to Comment 50-44
The analysis of potential impacts to cultural resources focuses on key impact mechanisms, stating that impacts “would primarily occur during habitat restoration or pond creation activities” (i.e., related to ground disturbance). The commenter is correct that other types of impacts could occur, including impacts during ongoing Reserve System operations (e.g., vandalism associated with increased public access). Mitigation Measure 13-1 encompasses the long-term use of lands acquired for the Reserve System “to ensure that cultural resources potentially occurring in these areas are properly evaluated and protected.” It is not limited to just the construction phase. The Cultural Resources Management Plan would ensure that cultural resources would be properly evaluated and protected from adverse consequences associated with increased public access, operations and maintenance activities, and other potential impacts associated with ongoing activities.

No changes to the EIR/EIS are required.

Response to Comment 50-45
The analysis of biological resources impacts in EIR/EIS Chapter 5 (as well as in the Habitat Plan) encompasses indirect as well as direct impacts. Although not explicitly stated in Chapter 5, various avoidance and minimization measures would benefit wildlife due to reduced noise levels. For example, the Proposed Action includes buffer zones around active nests and dens during critical periods (Conditions 15 through 18), restrictions on public access and recreation (Condition 9), and permanent fencing at development sites (Condition 2). These measures, which are described throughout the EIR/EIS, would help minimize noise impacts to wildlife. For this reason, no additional analysis is necessary.

No changes to the EIR/EIS are required.

Response to Comment 50-46
The analysis of noise impacts to human receptors adequately explains why impacts would be reduced to a less-than-significant level. Calculations are provided demonstrating that impacts would only occur to residences located within 1,600 feet of heavy construction activities (e.g., stream restoration). Various mitigation techniques are proposed where necessary, including timing restrictions (e.g., avoiding noise-sensitive periods), notification, and the use of best available noise control techniques. For this reason, effectiveness is properly explained. Also, the conclusion does not rely on local Noise Ordinance exemptions for construction projects.

No changes to the EIR/EIS are required.

Response to Comment 50-47
As described in Habitat Plan Section 5.2.5, subheading *Fire Management*, each reserve unit management plan will include a section on fire management. The fire management component of each reserve unit management plan will include a clear decision system to determine when a wildfire will be left to burn and when it must be partially or wholly contained. These plans would be coordinated with land management entities to assure adequate availability of burn permits from the Bay Area Air Quality Management District.

The analysis of air quality impacts during Reserve System operation (see EIR/EIS Section 16.4.1.2) is not limited to criteria pollutants. The analysis encompasses criteria pollutants, pollution concentration, and odors, as well as greenhouse gases. Existing regulations applicable to Reserve System management (e.g., Bay Area AQMD Regulation 5) also are not limited to criteria pollutants. For this reason, additional analysis is not necessary.

EIR/EIS Section 16.4.1.2 has been revised to incorporate additional Habitat Plan information.

Response to Comment 50-48
Fire suppression criteria, procedures, resources, and responsibilities are described on EIR/EIS p. 18-4 as part of the five required components of reserve management plans. Minimizing fire risks from construction activities (e.g., restoration, pond creation) would be part of these fire suppression criteria and procedures. Fire suppression criteria and procedures would be developed with input from Cal Fire, Santa Clara County fire protection staff, and municipal fire departments. In addition, the Habitat Plan emphasizes hiring staff with expertise in fire management. For this reason, additional discussion of fire suppression techniques is not required.

No changes to the EIR/EIS are required.

Response to Comment 50-49
An HCP-Only Alternative would not be consistent with the Local Partner goals and objectives. As described in EIR/EIS Section 1.5, Local Partner goals and objectives include developing a "comprehensive means to coordinate and standardize the mitigation and compensation requirements of FESA, CESA, CEQA, NEPA, the NCCP Act, and other applicable laws and regulations…." An HCP would not meet NCCP standards. Furthermore, a Listed-Species-Only alternative would not meet the Local Partner goals and objectives to streamline the permitting process. The Habitat Plan was developed to address impacts to and conservation needs of both listed and unlisted covered species. A Listed-Species-Only alternative, suggested by the commenter, would greatly limit the permit streamlining benefits because currently unlisted species covered under the proposed Habitat Plan (e.g., burrowing owl) would require project-level analysis and incidental take permits in the event that the species becomes federally and/or state listed.

Portions of this comment are addressed in Master Responses #1 and #10.

Also see Responses to Comments 50-12, 50-36, and 50-198.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #10.

No changes to the EIR/EIS are required.

Response to Comment 50-50
See Response to Comment 50-9.

Portions of this comment are addressed in Master Responses #3 and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #3 and #10.

Response to Comment 50-51
See Response to Comment 35-2.

Response to Comment 50-52
Revisions to the Habitat Plan include the following:

(Habitat Plan *Executive Summary* section *Cost and Funding*) "Without the Plan, public and private entities whose activities would affect listed species and their habitats would be required to obtain permits and approvals from USFWS and CDFG before undertaking those activities to mitigate the impacts of their activities on the listed species. Project proponents may also have to implement mitigation required by local jurisdictions based on an environmental analysis conducted for CEQA compliance."

Response to Comment 50-53
See Responses to Comments 50-8 and 50-23.

Portions of this comment are addressed in Master Responses #1 and #10.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #10.

Response to Comment 50-54
The Plan has requirements for field verification prior to acquisition (Habitat Plan Section 5.2.3) in order for lands to be included as part of the Reserve System, the Implementing Entity needs to confirm the lands meet the goals of the Habitat Plan. The statement in the Habitat Plan Executive Summary is referring to that effort. The Final Plan will be made available for public review prior to permit decisions being made by the Wildlife Agencies.

No changes to the Habitat Plan are required.

Response to Comment 50-55
USFWS and CDFG limited the total acreage of existing open space and parkland that can be utilized as part of the conservation strategy for the Habitat Plan. These limits were negotiated based on the specific needs of the covered species in this Plan and were necessary because the level of threat for covered species on lands with existing protection (i.e., Open Space Type 2 and 3 lands) was less than the threat on those species inhabiting lands with no protection status. The Wildlife Agencies determined that the majority of the Reserve System should be composed of currently unprotected lands to ensure that recovery standards were met. Therefore, it was important to prioritize which areas under existing protection would be included.

No changes to the Habitat Plan are required.

Response to Comment 50-56
See Response to Comment 50-55.

Response to Comment 50-57
A criterion for coverage under the Plan includes whether "the activity project is a type of impact evaluated." The impact analysis is contained in Habitat Plan Chapter 4. This is where project proponents should look to identify if the type of impact has been evaluated or not.

Also see Responses to Comments 50-9 and 50-23.

No changes to the Habitat Plan are required.

Response to Comment 50-58
Flood protection projects are large and complex projects that may affect miles of stream channel and have the potential for significant impacts on covered species. Additional review for these projects is required because project descriptions are not well defined at this time, and without additional review based on a more defined project description, Wildlife Agencies cannot be sure these projects will be consistent with the biological goals and objectives or conditions to avoid and minimize impacts.

No changes to the Habitat Plan are required.

Response to Comment 50-59
Revisions to the Habitat Plan include the following:

Habitat Plan Section 8.6.3 *Conservation Easements* was updated to address this comment.

Response to Comment 50-60
Public education and outreach will be an integral component of reserve management. County Parks currently avoids intensive development in portions of parks with sensitive resources. As such, development of future County Parks facilities will be approached similarly under the Habitat Plan.

Portions of this comment are addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 50-61
For the purposes of the soils discussion in Habitat Plan Chapter 3, this is true. However, a different assumption needs to be made when considering how those soils might influence vegetation communities and thus the presence or absence of covered species.

No changes to the Habitat Plan are required.

Response to Comment 50-62
See Responses to Comments 50-13 and 50-15.

No additional changes to the Habitat Plan are required.

Response to Comment 50-63
The methods for development of the Plan's land cover layer are described in Habitat Plan Chapter 3. Similar methods have been used in several other HCPs in California. The land cover map was, and still is, the most detailed data layer available for Santa Clara County and represents the best available science for regional planning at this scale. The Plan acknowledges uncertainties in the mapping and discusses how these uncertainties vary by land cover type (see Habitat Plan **Table 3-4**). In addition, the conservation strategy and the impact analysis try to account for these uncertainties. In implementation, the Plan requires site-specific mapping for land cover where it determines fees, survey requirements, avoidance measures, and conservation requirements.

No changes to the Habitat Plan are required.

Response to Comment 50-64
See Responses to Comments 50-13 and 50-15.

No additional changes to the Habitat Plan are required.

Response to Comment 50-65
Habitat Plan Section 3.3.3 acknowledges the limitations of the habitat models. However, because of the scale of the Habitat Plan and its programmatic nature, the use of habitat models was deemed appropriate by the Permittees and the Wildlife Agencies. Limitations of the habitat model approach were addressed in both the impacts analysis and the conservation strategy. In neither case were habitat models relied on exclusively. Impacts will be assessed on a project-level basis and will be reported to the local jurisdictions (or Implementing Entity for projects conducted by the Permittees) during the application process described in Habitat Plan Section 6.8. Habitat models will be used to focus Plan conditions described in Chapter 6, particularly survey requirements. As indicated in Habitat Plan Section 8.10.2, implementation of conditions described in Habitat Plan Chapter 6 and the conservation strategy will be directed by the most current land cover maps and the habitat models updated and maintained by the Implementing Entity throughout the permit term.

Habitat models were used as the first-course filter in developing the conservation strategy; they were not exclusively relied upon. Habitat Plan Section 8.6 describes criteria that must be met for land to be incorporated into the Reserve System and count toward the land acquisition requirements of the Habitat Plan.

Also see Response to Comment 50-20.

No changes to the Habitat Plan are required.

Response to Comment 50-66
The commenter is correct that project-level CEQA review will still be necessary with the adoption of the Habitat Plan. However, the creation of the habitat models, in part, will enable the Wildlife Agencies to make findings on a programmatic level to issue incidental take permits pursuant to the ESA and the NCCP Act. Incidental take authorization from both Wildlife Agencies will result in significant savings both

in terms of money and time. Project proponents will realize these efficiencies through the elimination of or reductions in project-level surveys and mitigation (i.e., acquisition, management, and monitoring).

Portions of this comment are addressed in Master Response #10.

Revisions to the Habitat Plan will be consistent with Master Response #10.

Response to Comment 50-67
The Plan describes that species models will be updated periodically during implementation and will utilize best available information.

Revisions to the Habitat Plan include the following:

(Habitat Plan Section 5.3.1 *Land Acquisition and Restoration Actions* subheading *Acquisition of Modeled Habitat for Covered Species*) "Species models will be updated during implementation based on new information. Modeled habitat requirements will be tracked based on the most recent model update. The Implementing Entity will be conducting field inventories of new reserve lands to locate, quantify, and assess the quality of suitable habitat for all covered species. The results of this inventory are important for habitat and land acquisition requirement tracking and long-term management and monitoring (see Chapter 7)."

Response to Comment 50-68
See Response to Comment 50-65.

Response to Comment 50-69
The Final Plan will be available for public review prior to permit decisions made by the Wildlife Agencies.

See Responses to Comments 50-20 and 50-67.

Response to Comment 50-70
See Responses to Comments 50-13, 50-15, 50-20 and 50-67.

Response to Comment 50-71
See Response to Comment 50-25.

Response to Comment 50-72
The Implementing Entity is expected to evaluate each rural development project's compliance with Condition 7 on a case-by-case basis. No specific criteria are proposed for this evaluation because the criteria will be up to the discretion of the local jurisdiction, in consultation with the Implementing Entity. Rural development projects that are more likely to affect landscape linkages adversely are those that are large (e.g., greater than 500 acres), have a dense development footprint (i.e., that present more of a barrier to wildlife movement), and occur in a currently undeveloped area. Through careful project design and siting using the guidance in the Plan, it is expected that almost all projects can be made compatible with landscape linkages.

No changes to the Habitat Plan are required.

Response to Comment 50-73
See Response to Comment 50-26.

Response to Comment 50-74
San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

The Wildlife Agencies and Local Partners acknowledge the commenter's note concerning the need for clarification regarding the restriction and prohibition on additional impacts for select covered plant species.

As stated in Habitat Plan Section 4.4.1 *Direct Effects*, subheading *Effects on Plant Occurrences*, impact limits for covered plant species were determined based on a number of factors, including (but not limited to) the overall species range and distribution, number of known occurrences, recent frequency with which new populations have been discovered, and rarity status. Additionally, as stated in this section, the species selected for additional limits and the limits set were based on two criteria:

- Future survey efforts in the permit area are likely to reveal that there are more occurrences of the species than are currently known.
- There are more occurrences known in the study area at the time of permit issuance than the Recovery Plan delisting criteria or, for non-listed species, more than the long-term conservation criteria (U.S. Fish and Wildlife Service 1998)[2]. For species without delisting or long-term conservation criteria, there must be more than 20 occurrences throughout the species' range.

Prior to permit issuance, CDFG must make a finding that each covered species is conserved within the permit area. Similarly, USFWS must also evaluate the impact of the taking of each covered species relative to the permit area. Coyote ceanothus, Tiburon Indian paintbrush, and Metcalf Canyon jewelflower are extremely rare within the permit area (see Habitat Plan **Table 5-16**). The ability for the Permittees to adequately mitigate additional impacts and demonstrate a contribution to recovery would be difficult given the rarity of these species and the low likelihood of finding more during the permit term. Limiting impacts according to Habitat Plan **Table 5-16** enabled the Wildlife Agencies to make their respective findings for these three plants. The amendment process described in Habitat Plan Section 10.3.3 is available in the unlikely event that additional impacts on these three species warrant authorization in the future.

No additional changes to the Habitat Plan are required.

Response to Comment 50-75

The Wildlife Agencies and Local Partners acknowledge the commenter's note that the Plan needs to incorporate clarification regarding how and when an impact is considered a threat to the long-term viability of a plant occurrence and clarification regarding preservation requirements, which will not apply to any activity that the Permittee determines will have only a partial impact.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 4, Section 4.4.1 *Direct Effects* subheading *Effects on Plant Occurrences*)

"It is important to make a distinction between impacts that reduce the long-term viability of an occurrence and impacts that do not reduce the long-term viability of an occurrence. This analysis assumed that in most cases, occurrences that overlapped with the footprint of covered activities would result in complete loss of the occurrence. However, there will be some temporary or partial impacts to occurrences where the occurrence may recover in subsequent years and long-term viability is not affected. This possibility is discussed in Chapter 4, Section 4.4.1, subheading *Partial Permanent Impacts to Plant Occurrences* below and Condition 20 (Chapter 6). The "potential impacts" and "impact limits"

[2] The Santa Clara Valley dudleya delisting criterion is 30 populations. Species with long-term conservation criteria are Mt. Hamilton thistle (23 populations), smooth lessingia (10 populations), and most beautiful jewelflower (22 populations).

defined and discussed in this section refer in all cases to the reduction of long-term viability of a covered plant occurrence.

For the purposes of this Plan, an occurrence of an annual plant species will be assumed to retain long-term viability and will not require replacement in the Reserve System if the decline in population size and percent cover from pre-project conditions is less than 25% over a monitoring period of at least 5 years (i.e., cumulative change over 5 years), unless site-specific conditions otherwise suggest substantial declines in population viability. The population size of annual covered plants may fluctuate more than 25% annually due to environmental variation such as rainfall. If extreme or unusual climate conditions affect the species, then monitoring will be extended 1 or 2 years, as appropriate to assess impacts and success (see Condition 20, Chapter 6)."

Response to Comment 50-76
See Responses to Comments 50-228 through 50-234.

Response to Comment 50-77
See Response to Comment 50-9.

Portions of this comment are addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 50-78
See Responses to Comments 50-20 and 50-67.

Response to Comment 50-79
See Responses to Comments 50-20 and 50-65.

Response to Comment 50-80
The Habitat Plan was revised to clarify that the impact cap on Bay checkerspot butterfly modeled habitat applies to modeled habitat identified as "occupied" and "potential occupied" regardless of whether the unit is targeted for acquisition (Habitat Plan **Table 5-7**).

Revisions to the Final Habitat Plan include the following:

Habitat Plan **Table 4-4** was updated to include a footnote that the 300 acre impact cap on Bay checkerspot butterfly modeled habitat only applies to "occupied" and "potential occupied" habitat units.

Response to Comment 50-81
During Habitat Plan development, Permittee and public input were used to revise covered activity descriptions and impacts. For all covered activities with known footprints, the Habitat Plan uses the project footprint to estimate impacts. The two projects identified in the comment are no exception. All projects requesting take coverage under the Habitat Plan will be evaluated on a case-by-case basis through the application process (Habitat Plan Sections 6.7 *Receiving Take Authorization under the Plan* and 6.8 *Habitat Plan Application Package*).

The Habitat Plan allows for flexibility for projects that are not consistent with conservation strategy. For these projects to receive take coverage, the Habitat Plan would require a minor or major amendment, as described in Habitat Plan Sections 10.3.2 *Minor Modification* and Habitat Plan 10.3.3 *Amendments*.

No changes to the Habitat Plan are required.

Response to Comment 50-82
See Response to Comment 50-80.

Revisions to the Final Habitat Plan include the following:

Bay checkerspot butterfly species surveys are not required on serpentine bunchgrass grassland outside of Bay checkerspot butterfly habitat units.

Response to Comment 50-83
Revisions to the Habitat Plan include the following:

The text referred to in the comment was deleted.

Response to Comment 50-84
The caps referred to in the comment do create additional impact limitations.

No changes to the Habitat Plan are required.

Response to Comment 50-85
See Responses to Comments 50-228 through 50-234.

Response to Comment 50-86
Inconsistencies in impact numbers were rectified. The calculation of impacts on occupied and potential burrowing owl habitat came from parcels inside of those habitat types that currently have some level of entitlement, with the assumption that they will be developed in the coming years. Impacts on potential nesting habitat and overwintering-only habitat that fell outside of the City of San José were based on the same analysis that was completed for other covered wildlife species.

Revisions to the Habitat Plan include the following:

Changes were made to the various sections of the Habitat Plan that discuss acres of impacts on burrowing owls (Habitat Plan Chapter 4 and Habitat Plan **Appendix M**).

Response to Comment 50-87
Burrowing owl fees are charged for impacts on occupied nesting habitat as mapped by the Habitat Plan. Burrowing owl occupied nesting habitat maps will be updated based on annual surveys of active nests. Fees will not be paid on impacts to non-modeled nesting habitat (conditions on covered activities will, nonetheless, prohibit the disturbance of an active nest).

The assessment of fees for impacts in potential burrowing owl habitat would be analogous to land cover fees. Potential burrowing owl habitat was determined by distance from existing nesting pairs, elevation, slope, and land cover type. The factors that were not considered at this level were current grassland condition and the presence of burrows. Those two factors would be determined during a survey, as described in Habitat Plan **Appendix M**, during implementation.

The Local Partners and Wildlife Agencies are not clear on what the commenter means by, “likely limitations,” however, the adaptive management process of the Plan will include analysis and recommendations for revisions to the Plan as needed. Habitat Plan Chapter 10 describes the process for Plan revisions.

No changes to the Habitat Plan are required.

Response to Comment 50-88
Burrowing owls are treated in a unique fashion in this Plan because they are at high risk of local extinction, and the breeding population can be surveyed thoroughly on an annual basis. No other covered species are this easy to survey, and annual adjustments in take limits are not feasible.

No changes to the Habitat Plan are required.

Response to Comment 50-89
See Response to Comment 50-26.

Response to Comment 50-90
Habitat Plan Section 6.7 *Receiving Take Authorization under the Plan* and Habitat Plan Section 6.8 *Habitat Plan Application Package* provide the evaluation and application process for receiving take authorization under the Plan. These sections provide additional clarification for the commenter's questions: "Does this mean that a Permittee must determine the consistency of every proposed project with each goal and objective?" and "If so, how is it anticipated to be completed?" Information in Habitat Plan Section 6.7 *Receiving Take Authorization under the Plan* and Section 6.8 *Habitat Plan Application Package* provide information on how consistency will be determined.

No changes to the Habitat Plan are required.

Response to Comment 50-91
The process for tracking consistency with the conservation actions will be completed through compliance tracking, as described in Habitat Plan Section 8.10.2 *Compliance Tracking* and Habitat Plan Section 8.11 *Reporting.*

Also see Response to Comment 50-90.

No changes to the Habitat Plan are required.

Response to Comment 50-92
The Wildlife Agencies and Local Partners acknowledge the commenter's concern; however, the commenter's question is misguided. The Wildlife Agencies will not be approving the Draft Plan. Their decision is whether or not to issue a permit based on the Final Habitat Plan and EIR/EIS. During implementation, the Wildlife Agencies will be ensuring that projects requiring future review and approval result in impacts consistent with those analyzed prior to permit issuance. If the Wildlife Agencies determine that for these projects, the impact of the taking is inconsistent with that evaluated prior to permit issuance, a Plan amendment may be required or the project may need to receive incidental take coverage through other available means.

No changes to the Habitat Plan are required.

Response to Comment 50-93
See Response to Comments 50-90 and 50-91.

No changes to the Habitat Plan are required.

Response to Comment 50-94
As explained in Habitat Plan Section 10.2.2, No Surprises Assurances are provided for properly implemented Plans. The Plan will not be considered "properly implemented" if conservation actions cannot be implemented. The quoted statement is consistent with the reasons stated in Habitat Plan Section 10.3 *Modifications to the Plan,* which state that a modification to the Habitat Plan would be

required. The Local Partners are comfortable with the assurances requested under the Habitat Plan (Habitat Plan Section 10.2 *Assurances Requested by the Permittees*) and find these assurances provide justification for the expenditures of finishing the Habitat Plan and funding its implementation.

No changes to the Habitat Plan are required.

Response to Comment 50-95
See Response to Comment 50-90.

Response to Comment 50-96
The statement "most impacts will occur primarily in areas with low-quality habitat" is made because the Reserve System will be assembled based on biological tenants emphasizing higher quality habitat (See Habitat Plan Section 5.2.3, subheading *Reserve Design and Assembly Principles*) and because Plan conditions on covered activities, described in Chapter 6, will minimize impacts in higher-quality habitat (e.g., due to implementation of species surveys).

Also see Response to Comment 50-90.

No changes to the Habitat Plan are required.

Response to Comment 50-97
There are no "additional pre-determined bans on development of specific sites or land cover types"; rather, a project proponent must comply with the conditions on covered activities as described in Habitat Plan Chapter 6. The applicable conditions will be determined through the evaluation and application process described in Habitat Plan Section 6.7 *Receiving Take Authorization under the Plan* and Habitat Plan Section 6.8 *Habitat Plan Application Package.*

If an activity is not covered under the Habitat Plan and the environmental review process reveals potential impacts on listed species, the project proponent may seek ESA compliance through the Section 10 process if there is no federal nexus or the Section 7 process if there is a federal nexus. CESA compliance can be sought through Section 1081.

Also see Responses to Comments 50-9 and 50-83.

No changes to the Habitat Plan are required.

Response to Comment 50-98
Baseline data used to develop the permit area, open space, land cover, and species models were reviewed and updated for the Final Habitat Plan.

Revisions to the Habitat Plan will include the following:

Updated numbers, figures, and text based on the new data.

Response to Comment 50-99
All species models were updated prior to the release of the Final Habitat Plan.

Also see Response to Comment 50-15.

Portions of this comment are addressed in Master Response #10.

Revisions to the Habitat Plan will be consistent with Master Response #10.

Response to Comment 50-100
The summary discussion stating that the criteria were applied to the existing open space areas is sufficient for the purposes of the Habitat Plan. Habitat Plan Section 5.2.6 describes alternative conservation strategies considered prior to the draft and final Plan. One of the alternatives considered, but not carried out, was the inclusion of more existing open space into the Reserve System. The alternative conservation strategies were considered by the Wildlife Agencies and the Stakeholder Group in a series of meetings between July 2007 and June 2008 and through written comments. The public was also given the opportunity to review the alternative conservation strategy at a public meeting on September 26, 2007.

Also see Response to Comment 50-55.

No changes to the Habitat Plan are required.

Response to Comment 50-101
The Wildlife Agencies and Local Partners prefer not to respond on the behalf of California Department of Parks and Recreation. It is recommended that the commenter contact California Department of Parks and Recreation directly to obtain the reason why they declined to participate in the Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-102
The gap analysis was limited to Type 1, 2, and 3 open space. Type 4 open space is defined in Habitat Plan Section 2.2.5 *Protection and Resource Management Status of Open Space Lands*, subheading *Open Space Classification,* as follows: "If the land is managed as open space, but offers little or no long-term or measurable ecological value, then it is assigned to Type 4 open space." For this reason, it was excluded from the conservation gap analysis.

It is possible that open space areas owned by the cities have the potential to contribute to recovery of the species, and lands under agricultural easement provide value habitat for some covered species. Type 1, 2, or 3 open space open space areas owned by the cities or under agricultural easement were included in the analysis.

No changes to the Habitat Plan are required.

Response to Comment 50-103
See Response to Comment 50-99.

Response to Comment 50-104
Landscape linkages are summarized and depicted in Habitat Plan **Table 5-9** and Habitat Plan **Figure 5-6**. All conditions on covered activities are defined in Chapter 6. These include avoidance and minimization measures at the landscape, natural community, and species level. Avoidance of wildlife linkages are integrated into Condition 7 *Rural Development Design and Construction Requirements*, Condition *14 Valley Oak and Blue Oak Woodland*, and Condition 11 *Stream and Riparian Setbacks*. The Permittees and Implementing Entity will work with project proponents when seeking take authorization under the Habitat Plan to ensure that their proposed projects are covered under and in compliance with the Habitat Plan.

Also see Response to Comment 50-90.

No changes to the Habitat Plan are required.

Response to Comment 50-105
It is not the intent of this section to walk the reader through the species-by-species needs regarding landscape connectivity and landscape linkages in the permit area; rather, the section and subsequent subheadings provide an overview of landscape linkages, how they were used to design the Reserve System, and the importance of the linkages for species in a broad sense (Habitat Plan Section 5.2.3 *Reserve System*, subheading *Landscape Linkages,* subheading *Regional Connectivity,* subheading *Connectivity within the Study Area, Linking the Santa Cruz Mountains and the Diablo Range*). The section sites a number of sources the reader can refer to for more information on landscape linkages and how they were established. For species-specific information, the reader is referred to the species accounts in Habitat Plan **Appendix D**. Species accounts provide detailed information on a species-by-species basis, including movement, range maps, modeled habitat. This information can be and was used to evaluate linkage needs on a species-by-species basis.

No changes to the Habitat Plan are required.

Response to Comment 50-106
The Plan does not dictate which specific known plant occurrences must be protected, thus it was not necessary to seek landowner agreement to incorporate parcels into the Reserve prior to Plan approval. Occurrences of covered plants not known at the time of Plan adoption are likely to be found during Plan implementation. Habitat Plan **Table 5-16** describes the number of plant occurrences that must be protected under the Plan. As is true for the Reserve System in general, plant preservation will be based on the availability of willing sellers. In some cases, the Plan may specify the general location of necessary preservation (i.e., the Santa Cruz Mountains, or the southern extent of the species' range).

Portions of this comment are addressed in Master Response #12.

Revisions to the Habitat Plan will be consistent with Master Response #12.

Response to Comment 50-107
Comment is addressed in Master Response #12.

Revisions to the Habitat Plan will be consistent with Master Response #12.

Response to Comment 50-108
Comment is addressed in Master Response #12.

Also see Response to Comment 50-106.

Revisions to the Habitat Plan will be consistent with Master Response #12.

Response to Comment 50-109
This concern was one of the reasons why revisions the Draft Habitat Plan was made (see Master Response #1). Although the overall Reserve System size may seem large, the Plan addresses a broad range and significant amount of covered activities over a 50-year period. The structure of the Plan allows for significant economies of scale (e.g., the amount of species "credit" that can be obtained from each acre preserved and efficiencies and cost-savings in land acquisition, operation and maintenance, and monitoring) compared with small-scale HCPs or Section 7 permits that are prepared and implemented for individual projects.

It is also important to recognize that the Plan is intended to serve two purposes: (1) mitigation of impacts of development on the covered species and their habitats (HCP) and (2) conservation of covered species and their habitats (natural communities/ecosystems) (NCCP). The Plan employs a variety of funding sources to achieve these goals (e.g., grants, contributions of land from public agencies,

development impact fees), many of which may be used only for conservation purposes. When viewed as a whole, development fees are not expected to be greater than, and could in fact be less than, the cost of mitigating species impacts on a project-by-project basis (this analysis was presented at the August 19, 2010 Liaison Group meeting).

No changes to the Habitat Plan are required.

Response to Comment 50-110
The Plan was clarified regarding a definition of the Reserve System, who can implement restoration or creation outside of the Reserve System, and requirements for providing restoration or creation in lieu of fees. See Habitat Plan sections 5.2.3 *Reserve System*, 5.2.5 *Land Management* subheading *Habitat Restoration*, and 9.4.1 *Habitat Plan Development Fees* subheading *Aquatic Restoration or Creation Provided in Lieu of Wetland Fee* for details.

No additional changes to the Habitat Plan are required.

Response to Comment 50-111
The Wildlife Agencies and Local Partners acknowledge that reserve management plans require Wildlife Agency approval. The Permittees, as members of the Implementing Entity, will be participating in the decision-making process to include lands in the Reserve System and developing the reserve management plans; the Wildlife Agencies' role in reserve management plan approval will serve to ensure that Reserve System lands are being managed in accordance with the Habitat Plan. This Wildlife Agency role does not influence the Permittees' control over land use decisions. The decision to dedicate the land to the Reserve System will have already been made by the time the reserve management plans are submitted to the Wildlife Agencies for approval.

Recreational use is a covered activity under the Habitat Plan; however, the purpose of the Habitat Plan is not to provide assurances that the Permittees' recreational needs identified in General Plans and other policies are implemented. Covered activity implementation is not required under the Habitat Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-112
Comment is addressed in Master Response #11.

Revisions to the Habitat Plan will be consistent with Master Response #11.

Response to Comment 50-113
See Response to Comment 50-102.

Response to Comment 50-114
Elements of all three alternatives were incorporated into the preferred alternatives based on feedback from the Wildlife Agencies, Stakeholder Group, and the public, as stated in Habitat Plan Section 5.2.5 *Land Management*, subheading *Alternative Conservation Strategies.*

The Wildlife Agencies and Local Partners shared the commenter's concern regarding the preferred conservation strategy and fee structure presented in the Draft Plan. The conservation strategy was updated to be more cost effective, and the fees were adjusted after the public draft was released, as described in Master Response 1 and Master Response 2.

No changes to the Habitat Plan are required.

Response to Comment 50-115
Prior to making their respective permit decisions, the Wildlife Agencies need to make findings that the Plan is adequately funded (i.e., "affordable" in the terms of the commenter). Habitat Plan Chapter 9 was provided, in part, to provide the Wildlife Agencies with relevant information to make their findings. Habitat Plan Section 9.3 describes Plan costs and Habitat Plan Section 9.4 describes Plan funding sources. As summarized in Habitat Plan Table 9-5, the Plan's projected cost will be adequately offset by both fee and non-fee funding sources.

This comment is partially addressed in Master Responses #1, #2, and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #2, and #3.

Response to Comment 50-116
See Responses to Comments 50-14 through 50-20.

Response to Comment 50-117
As an HCP and NCCP, the Habitat Plan commits to a minimum level of land acquisition. Land acquisition requirements include the minimum level of land acquisition, plus acquisition proportional to impacts at any point in time (i.e., acquisition consistent with the Stay-Ahead provision). Furthermore, although management must be carried out in perpetuity, reporting to the Wildlife Agencies ceases upon the expiration of the Permits. As such, the commitment was made to acquire all land by year 45 to ensure the Wildlife Agencies that there would be a minimum of 5 years during the permit term where they would have regulatory oversight (as described in Habitat Plan Chapter 8) over the implementation of the Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-118
Elements of all three alternatives were incorporated into the preferred alternative based on feedback from the Wildlife Agencies, Stakeholder Group, and the public as stated in Habitat Plan Section 5.2.5 *Land Management*, subheading *Alternative Conservation Strategies.* In addition, the preferred alternative was further refined, as summarized in Master Response #1.

Also see Response to Comment 50-55.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 50-119
As an HCP and NCCP, the Habitat Plan commits to a minimum level of land acquisition for all land cover types. This requirement is consistent for both terrestrial and aquatic land cover types. It was determined that the primary approach to conservation of terrestrial land cover types through preservation and enhancement of lands based on regional estimates of impacts and the conservation needs of the covered species and natural communities was sufficient to meet both HCP and NCCP permit issuance criteria.

The use of mitigation ratios were appropriate for aquatic features for a number of reasons. Aquatic features are much smaller, dynamic, and harder to map on the landscape than the other natural communities. Although the minimum mapping unit for these features had a higher resolution than the other land cover types, it was necessary to develop ratios in the strategy to 1) ensure impacts were analyzed correctly and 2) ensure adequate conservation. In addition, implementation of avoidance and minimization measures will prevent impacts to aquatic features. As such, the use of mitigation ratios for aquatic features ensures impacts are appropriately mitigated.

No changes to the Habitat Plan are required.

Response to Comment 50-120
During the decision-making process and ultimate commitment to prepare the Habitat Plan as an HCP and NCCP, the Permittees evaluated whether the benefits of the Habitat Plan justify the expenditures associated with the commitment to carry out these programs in the absence of actual take. This commitment is consistent with the contribution to recovery required for an NCCP.

No changes to the Habitat Plan are required.

Response to Comment 50-121
During the Inventory Phase, baseline conditions within the Reserve System will be documented to enable management planning and serve as a comparison point for all future monitoring (Habitat Plan Section 7.2.2 *Program Phases,* subheading *Inventory Phase*). Accordingly, resources of interest that occur on a site need to be documented, mapped, and, if required to measure compliance with biological goals and objectives, censused. Natural vegetation associations and alliances will be classified and mapped in more detail than the regional land cover classification used in this Plan to provide more accurate mapping and finer units to monitor over time.

No changes to the Habitat Plan are required.

Response to Comment 50-122
Implementation of covered activities will result in some incidental take of covered species. To meet regulatory requirements, to properly mitigate effects, and to distribute fees equitably, the amount of take must be discussed and, if possible, quantified. The allowable amount of take from permanent and temporary direct impacts is quantified by estimating impacts on land cover (Habitat Plan **Table 4-2** and Habitat Plan **Table 4-3**, respectively). The land cover impacts in these tables are the allowable impacts under the permits and the primary way in which impacts will be tracked during implementation to ensure permit compliance.

Because of the broad geographic and temporal scope of the Plan, the impact assessment was conducted at a programmatic level. The impact numbers presented in this Plan are intended to reflect approximate losses and impacts rather than a precise quantification of impacts on land cover types. Total allowable impacts as described and quantified in the Plan (see Habitat Plan **Tables 4-2, 4-3,** and **4-6**) represent the limit, or cap, on total impacts allowable under the Plan. Once these impact levels are reached, no further take is permitted pursuant to the Plan. The goal of the impact analysis is to identify practical, appropriate yet conservative impact assumptions to ensure the Local Partners full coverage for implementing covered activities throughout the permit term and to adequately fund the conservation strategy.

No changes to the Habitat Plan are required.

Response to Comment 50-123
Comment is addressed in Master Response #4.

Revisions to the Habitat Plan will be consistent with Master Response #4.

Response to Comment 50-124
Standard buffers around covered plant species help ensure that the goals and mission statement of the Plan, including protection and conservation of biological resources, facilitation of regulatory compliance, and effective and efficient implementation, are met (see Habitat Plan Chapter 1). Standard buffers streamline the permitting process and help provide a means for the local agencies receiving permits to

extend the incidental take authorization to private entities subject to their jurisdiction, bringing endangered species permitting under local control. Additionally, standardizing avoidance, minimization, mitigation, and compensation requirements help ensure that public and private actions will be governed equally and consistently, thus reducing delays, expenses, and regulatory duplication. Once a project receives coverage under the Plan, the buffer would not be increased. Expansion of buffers due to expansion of plant occurrences would apply only to new projects seeking coverage under the Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-125
Revisions to the Habitat Plan include the following:

Text clarified in Habitat Plan Section 5.3.1, subheading *Incorporating Covered Plant Species:*

"Despite model limitations, for compliance purposes, impacts on all covered plants will be limited by known *occurrences* (**Table 4-6**) and modeled habitat for the 6 covered plants for which habitat models were developed (**Table 4-4**) if additional occurrences are not discovered during the permit term. Similarly, mitigation and conservation will be based on known occurrences (**Tables 5-16**) and modeled habitat (**Table 5-17**). Additional known occurrences and new occurrences not yet discovered at the time of permit issuance can be impacted up to the limits described in **Table 5-16** and in accordance with the criteria described below."

Response to Comment 50-126
The Wildlife Agencies and Local Partners acknowledge the commenter's note, stating that the Plan is inconsistent in Habitat Plan Section 5.3.1 subheading *Incorporating Covered Plant Species* and Habitat Plan **Table 4-6** (footnote 2) regarding definitions of plant occurrences. The text in the Plan, however, is not inconsistent. The text in Habitat Plan Section 5.3.1 refers to plant *occurrences* and the footnote in Habitat Plan **Table 4-6** refers to plant *populations.* As discussed in Habitat Plan Section 5.3.1 subheading *Incorporating Covered Plant Species,* a plant *occurrence* (for all but one covered species, Santa Clara Valley dudleya) is defined as a group of individuals that are separated by at least 0.25 mile from other groups of individuals of the same species or subspecies. Text in this subheading also states "In some cases, an occurrence may be equivalent to a population; in other cases, multiple occurrences may form a single population." The footnote in Habitat Plan **Table 4-6** clarifies that *occurrences are equivalent to populations* for all but three of the covered species.

No changes to the Habitat Plan are required.

Response to Comment 50-127
The determination of whether known occurrences of covered plant species were located inside or outside of the footprint of covered activities was based on existing information. As stated in Habitat Plan Chapter 4, subheading *Effects on Plant Occurrences*, a GIS overlay of the location of covered activities (i.e., the planning limit of urban growth and covered capital projects) with the plant occurrence data for all covered plant species was created. Next, this data and CNDDB occurrence data were used to determine which occurrences of each species would be affected by each activity. Thus, text in the Plan stating that "almost all known occurrences of covered plant species are located away from the footprint of covered activities" is referring to the occurrences in the *known* footprint of covered activities. As stated in Habitat Plan Section 4.3.6 *Rural Development*, existing land use restrictions and requirements in the study area limit the footprint and extent of rural development. Existing land use restrictions minimize the effect and/or likelihood that covered plant occurrences will be affected by rural development.

Total allowable impacts as described and quantified in the Plan (see Habitat Plan **Tables 4-2, 4-3**, and **4-6**) represent the limit, or cap, on total impacts on covered plant species allowable under the Plan. Once these impact levels are reached, no further take is permitted pursuant to the Plan. Covered activities described in Habitat Plan Chapter 2 do not have project-specific impact limits, although activities must be implemented consistent with the conditions described in Habitat Plan Chapter 6.

No changes to the Habitat Plan are required.

Response to Comment 50-128

The determination of whether the size and condition of a preserved occurrence of a covered plant species is comparable to an occurrence being affected will be made by the qualified biologist conducting the plant survey and verified by the Implementing Entity as part of the application package review process. This determination will be in coordination with science advisors, outside consultants, and other land management agencies as necessary. The Implementing Entity will include, as part of staff or contract resources, a network of scientists, administrators, and other specialists who oversee and carry out planning and design, habitat restoration, monitoring, and adaptive management programs. Staff for these positions may be hired by the Implementing Entity or their functions contracted out to existing local agencies, nonprofit organizations, or private consultants. The Implementing Entity will also coordinate with Wildlife Agencies on a regular basis.

Planning-level estimates of costs needed to implement the Plan have been calculated (see Habitat Plan Chapter 9). This includes estimates for land acquisition (for protection of covered species occurrences), habitat and covered plant occurrence restoration/creation, remedial measures, and contingencies, which include the costs of making these types of determinations.

No changes to the Habitat Plan are required.

Response to Comment 50-129

The identification of Linkage 9 and Linkage 10 is intentional and does not represent a layering of requirements. Land acquisition to support the protection of Linkage 9 aims to increase connectivity outside and within the study area between existing open space. Acquisitions to protect this linkage would create a large block of protected lands south of Calero Reservoir, with Almaden Quicksilver County Park and extensive protected lands outside the study area to the west in the Santa Cruz Mountains. These acquisitions would occur in conservation acquisition zones Guadalupe-1 and -3. Land acquisition to support the protection of Linkage 10 targets aims to link the Santa Cruz Mountains to the Diablo Range. Acquisitions to protect this linkage would enhance the landscape linkage from Coyote Ridge to Coyote Creek, facilitating connections across the Santa Clara Valley and protecting upland habitat connections to Coyote Creek below Anderson Dam within conservation acquisition zones Coyote-5 and -6.

No changes to the Habitat Plan are required.

Response to Comment 50-130

Land acquisition targets were combined for conservation analysis zones Coyote-5 and -6. This includes implementation of Conservation Action LAND-L5 in Table 5-1c.

In order to implement this action, 2,900 acres of serpentine grassland along Coyote Ridge would be acquired for the Reserve System. This would require a minimum of 900 acres of serpentine grassland to be preserved within Coyote-6 (Habitat Plan **Table 5-19**).

The Habitat Plan refrains from being too prescriptive regarding the specific configuration or location of the linkage in order to preserve some flexibility in what activities are allowed on Coyote Ridge.

Also see Response to Comment 50-9.

No changes to the Habitat Plan are required.

Response to Comment 50-131
Habitat Plan **Table 5-7** identifies Bay checkerspot butterfly habitat targeted for acquisition and those areas that are not targeted for acquisition. The calculated percentage is derived from this table. It assumes that all land not currently protected as Type 1 open space within Bay checkerspot butterfly habitat units UTC, Kirby/East Hills, Pigeon Point, Silver Creek Hills Central, Metcalf North Ridge, and Metcalf on Coyote Ridge will be targeted for acquisition under the Habitat Plan. Silver Creek Hills North #1 and Silver Creek Hills North #2, located on Coyote Ridge, would not be targeted for acquisition under the Habitat Plan. The majority of the Pound Site is not suitable habitat and is not targeted for conservation; however, portions of this site that support suitable habitat may be targeted for conservation to support connectivity to the Tulare Hill habitat unit. The Habitat Plan assumes Bay checkerspot butterfly habitat acquisition will occur consistent with the targets identified in Habitat Plan **Table 5-7**.

Revisions to the Habitat Plan include the following:

The percentage will be updated to be consistent with the Bay checkerspot butterfly modeled habitat updates occurring during Final Habitat Plan development.

Response to Comment 50-132
See Response to Comment 50-90.

Response to Comment 50-133
Protection of the three unprotected occurrences of Coyote ceanothus within Coyote-5 is required by the Wildlife Agencies to meet the permit issuance criteria. There are only three known occurrences of Coyote ceanothus; all are located in the permit area and all anticipated effects to the species are a result of activities covered under this Plan. Unlike other covered plant species, Coyote ceanothus is a large perennial shrub which is readily distinguishable through aerial photography interpretation. As such, the Local Partners and Wildlife Agencies are fairly confident that the known occurrences are the only occurrences within the County. The conservation strategy for the Coyote ceanothus is consistent with the recovery recommendations made in the *Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area* (USFWS 1998). There is flexibility in how those occurrences can be protected (i.e., through fee title or conservation easement).

No changes to the Habitat Plan are required.

Response to Comment 50-134
Acquisition of the cross-valley corridor along the Pajaro River (the middle portion of Linkage 18) is no longer a target of the conservation strategy.

No changes to the Habitat Plan are required.

Response to Comment 50-135
See Responses to Comments 50-13, 50-15, 50-20 and 50-67.

Response to Comment 50-136
As noted by the commenter, adult surveys alone were considered inadequate because of the potential for a site to be used solely for dispersal and not reproduction. Reproduction is necessary to sustain viable populations. Protocols for larval surveys are fairly well established and have been consistently

utilized on Coyote Ridge. Fairly robust data can be provided through these simple surveys. Occupancy requirements for the four core habitat units must only be demonstrated four out of every 10 consecutive years of the permit term. Occupancy on three of the six satellite habitat units must only be demonstrated once by Year 45. These are not onerous requirements, given that the Bay checkerspot butterfly is only found in the permit area and has been recently recommended for uplisting to an endangered status by USFWS.

No changes to the Habitat Plan are required.

Response to Comment 50-137
Reserve acquisition will be targeted so that occupied habitat is acquired and the occupancy requirement can be met. This approach creates efficiencies in the conservation strategy, ensuring that protected wetlands and ponds actually provide habitat for the covered species.

No changes to the Habitat Plan are required.

Response to Comment 50-138
In order to meet the requirement of the NCCP Act to contribute to the recovery of these species, it was determined that a requirement that went beyond what had been observed in the other two studies was warranted. In addition, the Final Habitat Plan has been updated to allow translocation of California red-legged frog if approved by the Wildlife Agencies.

No additional changes to the Habitat Plan are required.

Response to Comment 50-139
These land acquisition milestones referred to by the commenter were removed from the Final Habitat Plan. However, a requirement for a full evaluation of the progress toward implementing the conservation strategy was added to the Plan and will occur at year 20.

No additional changes to the Habitat Plan are required.

Response to Comment 50-140
All numbers in the Final Habitat Plan will be updated based on changes made to land cover, species models, impacts, reserve design, and implementation costs. The minimum acreage of lands acquired to create the Reserve System will be included in this update.

No additional changes to the Habitat Plan are required.

Response to Comment 50-141
Comment is addressed in Master Response #12.

Revisions to the Habitat Plan will be consistent with Master Response #12.

Response to Comment 50-142
All numbers in the Final Habitat Plan will be updated based on changes made to land cover, species models, impacts, reserve design, and implementation costs. The amount of serpentine grassland and Bay checkerspot butterfly modeled habitat required to be preserved under the Habitat Plan will be included in this update.

No additional changes to the Habitat Plan are required.

Response to Comment 50-143
See Responses to Comments 5-90 and 50-130.

Response to Comment 50-144
The intent of this section is to describe habitat acquisition and enhancement. Because of the importance of the habitat in the permit area for this species, the discussion does include impacts on species habitat in order for the Wildlife Agencies to make their findings, not for the purposes of a project proponent when determining how impacts will be tracked. As described in Habitat Plan Chapter 8, the Implementing Entity will be responsible for tracking permit compliance, including impacts on species habitat.

Regarding the question, "Are impacts in the four habitat units classified as 'potential' or 'unknown' that are not targeted for preservation in **Table 5-7** subject to the impact cap?" impacts on Bay checkerspot butterfly habitat units with "no" indicated in the column "Conservation Target for Habitat Plan" are not subject to the impact cap.

Also see Responses to Comments 50-80, 50-82, 50-90, 50-142.

Response to Comment 50-145
The 300-acre impact cap on Bay checkerspot butterfly habitat does not apply.

No changes to the Habitat Plan are required.

Response to Comment 50-146
Yes, 15 of the up to 80 acres of wetlands protected in the Reserve will be enhanced to support breeding California tiger salamander. These 15 acres are potential habitat for California tiger salamander and may not necessarily be occupied. The Implementing Entity must demonstrate that in total, 30% of the number of freshwater wetlands and ponds in the Reserve System are occupied by California tiger salamander by Year 45. Note that this percentage was increased from 25% in the Public Draft Plan to 30% in the Final Plan as a result of the decrease in total Reserve System size.
No changes to the Habitat Plan are required.

Response to Comment 50-147
The question "Because two of these occurrences are on private land, how is this requirement consistent with the notion that land will only be acquired from willing sellers?" is addressed in Master Response #12. The preservation requirement for this species is consistent with what the Wildlife Agencies need to make their findings for permit issuance.

Also see Response to Comment 50-133.

No changes to the Habitat Plan are required.

Response to Comment 50-148
Biological goals for covered species are required by the Wildlife Agencies. Biological goals for covered species in the Plan were based on extensive review of existing information and input from key technical staff (see Habitat Plan Section 5.2.1, subheading *Process of Developing Biological Goals and Objectives*). Quantitative biological objectives were established on the basis of relevant species-specific data. Biological goals of the Plan include maintaining viability and protecting and increasing the size and number of populations of covered serpentine plant species, including Mt. Hamilton thistle. Acquisition of 175 acres of serpentine habitat for placement into the Reserve System will help to ensure that these biological goals are met. Additionally, acquisition of serpentine habitat into the Reserve System contributes to conservation objectives and goals for several covered plant species, not just for Mt. Hamilton thistle. CDFG must make a finding that every covered species is being recovered within the plan area.

No changes to the Habitat Plan are required.

Response to Comment 50-149
Acquisition of 22 of the known occurrences of Mt. Hamilton thistle is necessary for the conservation and recovery of this species. Although it is anticipated that additional occurrences of Mt. Hamilton thistle will be found during Plan implementation, it is not guaranteed. Conservation determinations and goals, by necessity, are based on the known status of a covered species, including known occurrences and population estimates. The jeopardy analysis conducted by USFWS accounts for both the status of the species range-wide and the baseline conditions of the species in the action area (i.e., the permit area). As such, USFWS's jeopardy analysis contained in the biological opinion as well as its Section 10(a)(1)(B) findings will be, in part, based upon impacts and preservation of known occurrences. The Plan does make allowances for discovery of additional occurrences of Mt. Hamilton thistle. As stated in Habitat Plan Section 5.4.12, subheading *Occurrence Acquisition*, if new occurrences of Mt. Hamilton thistle are discovered during the permit term impacts to occurrences of this species could increase from six to eight occurrences. Preservation of new occurrences may or may not adequately mitigate the effects to occurrences known at the time of permit issuance. As described in Habitat Plan Section 5.3.1, subheading *Incorporating Covered Plant Species*, preserved occurrences must be of equal or greater size and same or better condition than the impacted occurrence. The location of affected plant occurrences and the location of the preserved occurrences will also be taken into consideration by a qualified botanist.

No changes to the Habitat Plan are required.

Response to Comment 50-150
The biological goal and objective of maintaining a minimum size of 2,000 individuals of Mt. Hamilton thistle in protected occurrences is based on USFWS recommendations outlined in the *Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area* (USFWS 1998). If monitoring or new information for Mt. Hamilton thistle shows that this goal is unattainable or unnecessary to the species' recovery, adaptive management decisions can be developed on the basis of monitoring results in coordination with the Wildlife Agencies. Habitat Plan Chapter 7 describes the Monitoring and Adaptive Management Program to be implemented by the Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-151
San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-152
San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-153
The Wildlife Agencies and Local Partners acknowledge this editorial error.

Revisions to the Habitat Plan include the following:

Text in Habitat Plan Section 5.4.13 *Santa Clara Valley Dudleya* subheading*, Management Techniques and Tools,* has been modified as follows:

"It is possible that multiple occurrences compromise a single population. A preliminary goal of 2,000 individuals per population will be implemented as recommended in the *Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area* (U.S. Fish and Wildlife Service 1998c); if approved by the wildlife agencies, this number will be adjusted as necessary pending research carried out during Plan implementation to assure viable occurrences of this species."

Response to Comment 50-154
See Response to Comment 50-8.

Response to Comment 50-155
See Response to Comment 29-1.

Response to Comment 50-156
The Habitat Plan does not override the requirements of the Regional Boards. The Plan notes that project proponents must comply with all other applicable laws and regulations. Implementation of covered activities must comply with both the Plan and any applicable Regional Board requirements.

No changes to the Habitat Plan are required.

Response to Comment 50-157
Transportation projects are large and complex and have the potential for significant indirect impacts on covered species (i.e., fragmentation). Additional review for these projects is required because project descriptions are not well defined at this time and without additional review based on a more defined project description, Wildlife Agencies cannot be sure these projects will be consistent with the biological goals and objectives, or with the conditions to avoid and minimize impacts. As indicated in Habitat Plan Section 8.7.2, the scope of the early design coordination with the Wildlife Agencies will be limited to ensuring the relevant conditions of the Plan are incorporated into project design.

The Local Partners disagree that this requirement creates a more complex and time-consuming process. On the contrary, the Local Partners (including VTA and County Roads and Airports) believe that the Habitat Plan will significantly streamline the biological permitting process for major new road projects and other transportation projects because the mitigation requirements of these projects are defined clearly in the Plan.

In addition, portions of this comment are addressed in Master Response #10.

Revisions to the Habitat Plan will be consistent with Master Response #10.

Response to Comment 50-158
As the commenter notes, the text says that "subdivision of sites designated Hillside or Ranchland *seldom occurs*" (italics added), not "never occurs." Although anticipated under the Plan, subdivision is a land use exercise, and in and of itself would not result in take of covered species and therefore is not identified as a covered activity in the Plan. Rural development consistent with the land use designations and policies of each local jurisdiction is covered by the Plan, and such impacts are analyzed.

No changes to the Habitat Plan are required.

Response to Comment 50-159
As described in Habitat Plan Chapter 8, the Permittees will develop a template Habitat Plan application package for use by private applicants and Permittees that includes all items described in this section prior to permit issuance. As noted by the commenter, the checklist for evaluating an application package described in Habitat Plan Section 6.7.2 will be developed by the Implementing Entity prior to the first ordinance implementing the Plan taking effect. As noted in Habitat Plan Section 8.5, take authorization will become effective upon adoption of all ordinances and all Permittees signing the Implementing Agreement. It will be incumbent upon the local jurisdictions to determine if a project is consistent with the Plan.

Also see Responses to Comments 50-23, 50-90, 50-188.

No changes to the Habitat Plan are required.

Response to Comment 50-160
Qualified biologists who are pre-approved by the Wildlife Agencies (see Habitat Plan Section 6.8.5 for further details) and funded by project proponents will report project-specific conditions in the application process. Staff of each local jurisdiction will take technical data reported in the application and evaluate it relative to the Plan's consistency checklist and make a determination of consistency. As indicated in Habitat Plan Section 8.3, the Implementing Entity will be responsible for training staff during Plan implementation. The level of expertise that the Permittee staff will need to demonstrate to make the required consistency determination for the Habitat Plan is akin to the level of expertise that planning staff have in implementing all local jurisdiction ordinances.

Also see Response to Comment 50-189.

No changes to the Habitat Plan are required.

Response to Comment 50-161
Habitat Plan Section 6.3 *Conditions on All Covered Activities* states "The Local Partners will determine best adherence to conditions where discretion exists. If a project applicant proposes to use a less preferable design option (e.g., a culvert instead of a free-span bridge), the project applicant must demonstrate why a preferred option is infeasible."

No additional changes to the Habitat Plan are required.

Response to Comment 50-162
See Response to Comment 50-161.

Response to Comment 50-163
Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 6, *Condition 7. Rural Development Design and Construction Requirements* subheading *Design and Construction Requirements*) "Avoid and minimize impacts associated with altering natural drainages and contours on the project site. If the site is graded, blend grading into the existing landform as much as possible."

Response to Comment 50-164
Habitat Plan Chapter 6, Section 6.3 *Conditions on All Covered Activities* states "Conditions on covered activities, including avoidance and minimization measures identified for certain covered activities and species-specific measures, may be revised over the course of the permit term based on results of implementation through the adaptive management process. Proposed revisions will be reviewed by the

Wildlife Agencies upon submission of each annual report to ensure the successful implementation of the conservation strategy." Revisions to the avoidance and minimization measures consistent with the adaptive management process does not require a Plan amendment.

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 6, *Condition 7. Rural Development Design and Construction Requirements*) "If construction extends into wet weather, the road bed will be surfaced with appropriate surfacing material to prevent erosion of the exposed roadbed (Pacific Watershed Associates 1994)."

Response to Comment 50-165
Yes, public access consistent with the Plan will be available on lands owned in fee title by the Implementing Entity. However, planning and implementation of recreational uses on lands owned in fee title by the Implementing Entity will not be funded by fees. These clarifications have been made in several locations in the Plan.

No additional changes to the Habitat Plan are required.

Response to Comment 50-166
The requirements surrounding recreation planning were updated in the Final Plan and reviewed by all Permittees, including the County.

No additional changes to the Habitat Plan are required.

Response to Comment 50-167
See Response to Comment 50-23 and Habitat Plan Chapter 6, Condition 9.

No additional changes to the Habitat Plan are required.

Response to Comment 50-168
Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 6, *Condition 9. Prepare and Implement a Recreation Plan*) "Any off trail activities and other active recreation not listed above (e.g., outdoor sports, geocaching) unless otherwise authorized by the Implementing Entity are prohibited."

Response to Comment 50-169
The commenter's assumption that conservation easements on Reserve System lands will prevent any ground-disturbing activities or the construction of new facilities is not correct. See template conservation easement in Appendix H.

Also see Response to Comment 55-17.

No changes to the Habitat Plan are required.

Response to Comment 50-170
See Response to Comment 50-169.

Response to Comment 50-171
Revisions to the Habitat Plan include the following:

(Chapter 6, *Condition 9. Prepare and Implement a Recreation Plan*)

- "Trails will not be paved, except as required by law, and will be sited and designed so that they do not contribute to erosion and bank failure. To provide trail access for a range of user

capabilities and needs (including persons with physical limitations) in a manner consistent with state and federal regulations, the landowner would site and design new, paved trails in areas within reserves that are already disturbed and do not have the potential to affect sensitive habitat. As common practice, these types of whole-access trails would be sited near staging areas.

Response to Comment 50-172
Trails built in burrowing owl-occupied nesting habitat would be considered an impact that would be counted toward the cap on occupied habitat. The impact would be calculated as the footprint of the trail that intersects the modeled habitat. Because trails are very narrow, such an impact is expected to be small. See Chapter 9 for a discussion on fee exemptions.

No changes to the Habitat Plan are required.

Response to Comment 50-173
The Final Habitat Plan has been clarified in a number of locations regarding the use of maps. In all cases, the Plan has been revised to utilize updated habitat models based on best available science. The figure depicting Category 1 and Category 2 streams does not contain covered species modeled habitat. Condition 11 describes a process for allowing exceptions to the condition.

Also see Responses to Comments 49-10, 50-20, and 50-67.

Revisions to the Habitat Plan include the following:

Condition 11 was clarified to note that Habitat Plan **Figure 6-2** may be periodically updated by the Implementing Entity in consultation with the Wildlife Agencies as new data becomes available.

Response to Comment 50-174
Comment is addressed in Master Response #4.

Revisions to the Habitat Plan will be consistent with Master Response #4.

Response to Comment 50-175
One of the findings that USFWS must make prior to issuing a Section 10 incidental take permit is that the impact of the taking is mitigated to the maximum extent practicable. The term “take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill trap, capture, or collect or attempt to engage in any such conduct. “Harm” has been further defined to include significant habitat modification or degradation that results in the death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. To this end, USFWS analyzes both direct and indirect impacts on covered species when developing the biological opinion and findings documents. USFWS evaluates non-listed species proposed for coverage under an HCP as if they were listed. All direct and indirect effects are considered in USFWS Section 7 consultations, so the commenter’s statement that the condition is “something that would not be required under any existing regulatory regime” is inaccurate.

Also see Response to Comments 50-29, 50-90, 50-160.

No changes to the Habitat Plan are required.

Response to Comment 50-176
Yes, the commenter’s understanding is correct.

No changes to the Habitat Plan are required.

Response to Comment 50-177
See Response to Comment 50-164.

Response to Comment 50-178
See Responses to Comments 50-20, 50-80, and 50-82.

Response to Comment 50-179
The referenced paragraph states "In cases where serpentine areas are part of a project site in a developed area, the project will be designed to preserve larger patches of serpentine within the development area and limit impacts to the smallest patches feasible and to the edges of serpentine patches regardless of their size." The patch size is relative to those patches found on a project site. For example, if the project site contains a 2-acre patch and a 1-acre patch, the project proponent will attempt to avoid the larger 2-acre patch. If the impacts on serpentine areas cannot be avoided, the minimization measures identified in Condition 13 will be implemented. These include "conduct surveys of the serpentine vegetation to inventory for covered species and evaluate habitat quality for covered species." During this inventory, patch size will be determined, and the project proponent will adjust its project layout to affect the smaller serpentine patches on site, if feasible. If an activity is within the cap limits and meets all other conditions, it is not precluded if it affects the larger serpentine patch. Feasibility of further avoidance will be determined through the application process described in Habitat Plan Section 6.7 *Receiving Take Authorization under the Plan* and Section 6.8 *Habitat Plan Application Package.*

Also see Response to Comment 50-90.

No changes to the Habitat Plan are required.

Response to Comment 50-180
All land cover mapping and species models are being updated for the Final Habitat Plan. All changes in covered species' habitat models and occurrences will be incorporated into the Final Habitat Plan.

Also see Responses to Comments 50-80 and 50-82.

No changes to the Habitat Plan are required.

Response to Comment 50-181
See Responses to Comments 50-20 and 50-67.

Response to Comment 50-182
The evaluation of when passive relocation will be allowed is described in Habitat Plan Chapter 6 and graphically depicted in Habitat Plan **Figure 6-4**. In summary this activity will be allowed when the burrowing owl population is shown, through revisions to the PVA, to be increasing by three birds per year. The Implementing Entity and Wildlife Agencies will make the determination. Habitat Plan Chapter 6, Condition 15 has been revised to include an exception process.

No additional changes to the Habitat Plan are required.

Response to Comment 50-183
See Response to Comment 50-159.

Response to Comment 50-184
The Local Partners and Wildlife Agencies acknowledge the comment.

Also see Response to Comment 50-90.

No changes to the Habitat Plan are required.

Response to Comment 50-185
See Responses to Comments 50-159 and 50-188.

Response to Comment 50-186
Determining coverage under the Habitat Plan will be part of the processing of a development application. A determination of coverage can be evaluated in the same manner as an application completeness determination that currently occurs during the land use permitting process, as outlined under the Permit Streamlining Act. A private applicant will be required to submit information within the development application that will determine coverage and the conditions and fees required. If the information submitted is "incomplete" and the coverage, fees, and conditions cannot be determined by agency staff, then the request for this information will be requested in an "incomplete" letter that is required to be sent within 30 days per the Permit Streamlining Act. If the information submitted is complete, the land use agency can determine coverage, fees, and conditions and this information will be provided as part of a "complete" letter to an applicant. It should be noted that the land cover and other site information provided is similar to what is currently required for project environmental reviews. To the extent that projects will not have to provide site specific biological studies and will not have to be reviewed by the Wildlife Agencies as currently is required, the application processing time may be shortened. The ESA and CESA are not subject to the Permit Streamlining Act and take coverage could not be provided via the Permit Streamlining Act.

No changes to the Habitat Plan are required.

Response to Comment 50-187
Habitat Plan Chapter 6, Section 6.7.2 Application Process for Private Projects, subheading *Application Review and CEQA for Private Projects*, was revised in the Final Habitat Plan.

No additional changes to the Habitat Plan are required.

Response to Comment 50-188
The template to be used by the Implementing Entity and land use agency for documenting a private project's take permit coverage will be developed after adoption of the Plan, in preparation for implementation of the Plan. Like other forms used in land use development applications, the template is public information and would be available via websites and at an agency's public information counter. Completed forms will be part of project files and available to the public.

No changes to the Habitat Plan are required.

Response to Comment 50-189
The Local Partners have not yet calculated processing time and related fees. To the extent that additional staff time is necessary to review Habitat Plan application packages, fees may be required by each land use agency to provide cost recovery for these staff costs. It should be noted that for most projects, the Habitat Plan has been structured to maximize use of information that already is provided as part of project reviews. To the extent that site specific biological studies and related analysis are not required, costs for some applicants are likely to decrease.

Also see Response to Comment 50-159.

No changes to the Habitat Plan are required.

Response to Comment 50-190
Verification of existing conditions on a property, including the existing land cover, is already currently evaluated as part of current Local Partner development application processing. This includes a requirement to show existing conditions on submitted plans, and a review of aerials and a site visit by Planning Department staff. Under the Habitat Plan, this same process can be used to verify that the onsite land cover is consistent with the Habitat Plan for most "typical" land cover, such as agriculture or grasslands. For sites with more complicated land covers (e.g., wetlands, forests), land cover mapping by a qualified professional (e.g., biologist, arborist) is currently required and will continue to be done in the same manner by the applicant. For the Permittees, since ESA take authorization is being provided to themselves, the Implementing Entity needs to review land cover mapping. This is anticipated to be a routine activity that will not interject delay into the project development process. Land cover mapping is not required for the Permittees for most operations and maintenance activities.

Also see Response to Comment 50-160.

No changes to the Habitat Plan are required.

Response to Comment 50-191
As stated in Habitat Plan Section 6.8.3, "All land cover determinations provided by private applicants will be verified by local planning staff. All land cover determinations provided by a Permittee will be verified by Implementing Entity staff. A private applicant or Permittee may retain Implementing Entity staff (at cost) to conduct this land cover mapping. Local jurisdiction staff may also be available to provide this service to private applicants as part of the application review process."

Permittees are not required to use a qualified biologist for land cover mapping for many types of covered activities, such as operations and maintenance activities. Project applicants, including Permittees are also not required to use a qualified biologist for land cover mapping on development additions up to 10,000 square feet of development area on any land cover type, other than stream, riparian, serpentine, pond, or wetland land cover types. Development on several of the most typical land cover types found within the study area (California annual grasslands, reservoirs, all agricultural, and all development land cover types) also does not require mapping by a biologist. Activities that will require use of a qualified biologist entails development on more sensitive land covers for which review by a biologist is usually required under current processes. Preparation of project planning and environmental review material for these types of projects will identify and incorporate the need for a biologist.

Land cover mapping required for implementation of the conservation strategy is incorporated into the budget (see Habitat Plan Chapter 9 and Habitat Plan Appendix G).

Also see Response to Comment 50-160

No changes to the Habitat Plan are required.

Response to Comment 50-192
Habitat Plan Chapter 6 survey requirements for burrowing owl were updated so that surveys will be required only in occupied burrowing owl nesting habitat. Surveys will not be required in potential nesting or overwintering-only habitat.

No additional changes to the Habitat Plan are required.

Response to Comment 50-193
The commenter's assumption is correct that a "large or important population of a covered species that was not anticipated by the Plan" pertains to populations of covered species that were identified through the required surveys. This applies only to previously undocumented occurrences.

No changes to the Habitat Plan are required.

Response to Comment 50-194
Revisions to the Habitat Plan include the following:

Addition of "not to scale" to Habitat Plan **Figure 6-1.**

Response to Comment 50-195
Revisions to the Habitat Plan include the following:

(Habitat Plan Section 7.2.3 *Program Implementation*) "However, the Wildlife Agencies will assist the Implementing Entity with the adaptive management program."

Response to Comment 50-196
Revisions to the Habitat Plan include the following:

(Habitat Plan Section 7.2.3 *Program Implementation*) "The Implementing Entity and the Wildlife Agencies will strive at all times to work in good faith with each other to reach mutual agreement on key implementation tasks such as adaptive management, monitoring, and conservation actions."

Response to Comment 50-197
The Wildlife Agencies and Local Partners acknowledge the commenter's concern.

Portions of this comment are addressed in Master Response #10

Revisions to the Habitat Plan will be consistent with Master Response #10.

Response to Comment 50-198
The Local Partners evaluated an HCP-only alternative. A summary can be found on the Plan website (http://www.sccgov.org/keyboard/attachments/Committee%20Agenda/2011/May%2025,%202011/203474181/TMPKeyboard203510325.pdf).

No changes to the Habitat Plan are required.

Response to Comment 50-199
See Response to Comment 55-17.

Response to Comment 50-200
Recreational use is a covered activity under the Habitat Plan. Conservation easements will be recorded only over lands to be incorporated into the Reserve System. To ensure that these sites will be managed in perpetuity to benefit the covered species, the Plan proposes permanent conservation easements that allow recreational uses compatible with the conservation strategy of the Plan on more than 12,000 acres of the County Parks identified and described in Habitat Plan **Table 5-5** and illustrated in Habitat Plan **Figure 5-4**. The Permittees considered the consequences of limiting use on a public space. Habitat Plan Section 8.6.3 *Conservation Easements* describes how conservations may be tailored to allow for recreational use: "It is the responsibility of participating landowners to abide by the terms of these conservation easements. The terms and prices of conservation easements will be negotiated on a case-by-case basis between the landowner and the Implementing Entity. The specific terms of the

conservation easement will be developed on a case-by-case basis depending on site conditions, landowner preferences and operations, and species and habitat needs. Some landowners may wish to reserve a portion of their property for uses that are incompatible with the Habitat Plan such as a home site or a recreational facility with high intensity use. In these cases, the conservation easement may either exclude the incompatible site or apply to the entire property but define the portion of the site in which the incompatible uses are allowed. The Habitat Plan will only receive credit for the portion of the property that is compatible with Plan goals and objectives."

No changes to the Habitat Plan are required.

Response to Comment 50-201
Comment is addressed in Master Response #12

Revisions to the Habitat Plan will be consistent with Master Response #12.

Response to Comment 50-202
The Local Partners have spent a significant amount of time evaluating and refining the various impact fee structures and amounts (see Master Response #2) and believe that the proposed fees will withstand any applicable regulatory takings/inverse condemnation challenges. As noted by the commenter, the Plan includes provisions to address regulatory taking/inverse condemnation concerns. In addition to the riparian setback exemptions, the Plan includes a generally applicable process (described in Habitat Plan Chapter 9, Section 9.4.1, subheading *Projects or Activities Not Covered by the Plan*) that would allow property owners to elect to pursue species coverage permits or authorizations on their own.

Response to Comment 50-203
See Response to Comment 50-195.

Response to Comment 50-204
See Response to Comment 50-189.

Response to Comment 50-205
The sample size for lands considered in acquisition costs was increased for the Final Habitat Plan. New sites added were acquired by the Open Space Authority over the last few years. The cost assumption for lands acquired by conservation easement was increased from 50% to 80%.

No additional changes to the Habitat Plan are required.

Response to Comment 50-206
A very important feature of the Habitat Plan is that it functions as an interrelated whole. The conservation actions required by the State NCCP Act are taken into consideration by the Federal Fish and Wildlife Service in making their Biological Findings on whether the Plan adequately mitigates impacts on species under the Federal Endangered Species Act. A 2010 analysis (August 19, 2010 Liaison Group Staff Report) found that elimination of the NCCP's conservation measures would increase the Plan's mitigation ratios for impacts to species and habitat and increase development impact fees.

In the Final Plan the share of NCCP conservation actions funded by development fees is negligible based on comparing total mitigation costs versus development fee revenue as a share of total Plan costs. The share of total Plan costs associated with mitigation actions is approximately 57%. This is calculated based on total mitigation costs for land cover, serpentine, nitrogen deposition, burrowing owl, and wetland impacts ($324 mil. from Tables 2.1, 5.1, and 6.2 of the Development Fee Nexus Study), as a percent of total Plan costs ($564 mil. from Table 9-5 of the Final Plan), during the permit term. The share

of total Plan costs including post-permit costs funded by development fees (including the endowment component of the fees and approximately $28 mil. of land acquisition in lieu of fee payments by County Parks and the Santa Clara County Open Space Authority) is also projected to be approximately 57%.

Based on this analysis it is reasonable to estimate that any marginal amount of total Plan costs greater than mitigation costs and funded by development fees will be less than estimated additional cost that public and private projects would pay if the NCCP conservation measures were eliminated. It is also reasonable to estimate that any marginal amount of total Plan costs greater than mitigation costs and funded by development fees will be less than the estimated additional benefit that public and private projects would receive from NCCP conservation measures.

This analysis excludes the plan preparation fee because that fee recovers a fair share of costs already incurred. This analysis also excludes participating special entity fees because these fees will vary based on specific circumstances and cannot be allocated between mitigation and NCCP (recovery) cost components until those fees are calculated and paid.

Portions of this comment are addressed in Master Responses #1, #4, and #10

Revisions to the Habitat Plan will be consistent with Master Responses #1, #4, and #10.

Response to Comment 50-207
The Local Partners and Wildlife Agencies acknowledge the comment.

Also see Responses to Comments 50-55 and 50-100.

Portions of this comment are addressed in Master Response #1

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 50-208
If the last sentence refers to developers inside the urban service areas meeting either Local Partner open space requirements or the desire of the developer to protect on-site open space, then the issue is addressed in the modifications to the application of fees cited in Master Response #2. If the sentence refers to providing land in lieu of Habitat Plan fees, there is no future Reserve System land identified inside the urban service areas.

Portions of this comment are addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 50-209
Habitat Plan land cover fees are proportional to the impacts being mitigated in the Habitat Plan. As explained in the response to Comment 50-206, even when the endowment component of the development fees is included in the calculation, development fees and related in lieu land acquisition still account for approximately the same share of total costs as the mitigation share of total costs. The Final Plan endowment component is a lower share of the total fee compared to the Draft Plan, about 11%, because of revised endowment model assumptions explained in the Final Plan.

The development fees must fund the endowment because a notable amount of the Reserve System will be acquired using funding sources (e.g., state grants, federal grants, foundation funds) that are limited to land acquisition. Because these non-fee funding sources are largely limited to land acquisition, development fee revenue will need to be used to fund other Plan costs on Reserve System land whether acquired with fee revenue, contributed by local agencies, or with state and federal grants.

No changes to the Habitat Plan are required.

Response to Comment 50-210
Portions of this comment are addressed in Responses to Comments 50-228 through 50-234.

Revisions to the Habitat Plan include the following:

Text in Habitat Plan Section 9.4.1 *Habitat Plan Development Fees,* subheading *Nitrogen Deposition Fee* was revised to clarify that serpentine plants will continue to be affected by on-going nitrogen deposition as opposed to increased nitrogen deposition.

Response to Comment 50-211
Revisions to the Habitat Plan include the following:

(Habitat Plan Section 9.4.1 *Habitat Plan Development Fees*, subheading *Serpentine Fee*) "The serpentine fee will be imposed based on the acreage of impacts to serpentine land cover types as mapped in the field (see Section 6.8.3 *Item 3: Land Cover Types on Site*)"

Response to Comment 50-212
The burrowing owl fee will be paid for impacts on occupied burrowing owl habitat as described in Chapter 9 and shown in Habitat Plan **Figure 5-11.**

No changes to the Habitat Plan are required.

Response to Comment 50-213
The burrowing owl fee applies to areas designated as occupied nesting habitat, as described in Habitat Plan Chapter 9 and shown in Habitat Plan **Figure 5-11**. In areas of potential nesting or overwintering-only habitat, the land cover fee applies as otherwise described in the Plan, but there is no additional burrowing owl fee. Inconsistencies regarding the allowable impacts were clarified in the final Habitat Plan.

Also see Responses to Comments 48-37 and 50-87.

No changes to the Habitat Plan are required.

Response to Comment 50-214
See Response to Comment 50-213.

Response to Comment 50-215
The total acreage and type of required protection needed for the burrowing owl conservation strategy was updated for the Final Habitat Plan, including the discussion of the burrowing owl fee and the justification behind the fee.

No additional changes to the Habitat Plan are required.

Response to Comment 50-216
The impact assumption was reduced in the Final Habitat Plan per County guidance to 2 acres per permit. As such, 1.5 acres remains a good example.

No changes to the Habitat Plan are required.

Response to Comment 50-217
No, the Habitat Plan does not assume any income from fees paid on indirect impacts on wetlands.

No changes to the Habitat Plan are required.

Response to Comment 50-218
See Response to Comment 50-175.

Portions of this comment are addressed in Master Responses #2 and #3

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Response to Comment 50-219
Comment is addressed in Master Response #3

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 50-220
Comment is addressed in Master Responses #1, #2, and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #1, #2, and #3.

Response to Comment 50-221
The County recognizes that the voters must reauthorize the renewal of the Park Charter at certain intervals. The voters have historically shown strong support for the Park Charter In the last two elections, the voters overwhelmingly voted to reauthorize the Charter renewal (71.10% in June 2006; 80.2% in March 1996). The recent economic downturn is not expected to adversely affect the County's ability to dedicate parklands to the Reserve System. Of the County parklands that are assumed to be included in the Reserve System, 12,291 acres are already owned, 1,100 acres were acquired during Plan development where the majority of those new lands are proposed for inclusion in the Reserve System, and 5,950 acres of new lands would be acquired during Plan implementation. Based on historical acquisition rates, it is expected that the 5,950 acres to be acquired in the future would constitute only 25% of the total amount of new County parklands acquired over the 50-year Plan. The County Board of Supervisors will need to determine whether and when to dedicate County parklands to the Reserve System; however, the 19,341 acres identified for inclusion in the Reserve System would constitute a small percentage of all County parklands at the end of the 50-year Plan permit term.

See also Response to Comment 50-31 for consistency of new land acquisition for the Reserve with the Strategic Plan.

No changes to the Habitat Plan are required.

Response to Comment 50-222
See Response to Comment 50-31.

No changes to the Habitat Plan are required.

Response to Comment 50-223
See Response to Comment 50-30.

Response to Comment 50-224
Comment is addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 50-225
Comment is addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 50-226
See Response to Comment 50-215.

Response to Comment 50-227
Revisions to the Habitat Plan include the following:

New Habitat Plan **Table 9-6** shows fees by acre for each fee type.

Response to Comment 50-228
Revisions to the Habitat Plan include the following:

Habitat Plan **Appendix E** was revised to clarify that that the emissions reported are extrapolated based on a specific set of assumptions, and are not necessarily estimates of actual future emissions. Revisions also acknowledge and discuss the Bay Area Air Quality Management District's (BAAQMD) emissions inventory that provides projections through year 2025. This new data shows that over the time period for which emissions projections are now available (as of 2011), NOx emissions are expected to decrease in the Bay Area. The revised appendix also acknowledges that looking beyond the available projections to the years 2030 and 2060, emissions in the Bay Area would not be expected to continue to increase. As such, extrapolated emissions estimates may overestimate impacts.

Habitat Plan Chapter 4, Section 4.5.2 *Indirect Effects* subheading *Changes in Nitrogen Deposition during the Permit Term* was revised to provide an analysis and discussion of the changes in Habitat Plan **Appendix E**, as well as other new science and emissions reports related to nitrogen deposition.

"As described above, the modeling shows that increases in NO_X emissions result in increased nitrogen deposition. As such, it may be fair to assume a similar correlation between a reduction in NO_X emissions and a reduction in nitrogen deposition. In 2011 the BAAQMD released future year projections through 2025. These projections show a decrease in NO_X emissions from approximately 449 tons/day in 2008 to 360 tons/day in 2025 (a reduction of 89 tons/day). There appears to be a slight increase in NO_X emissions between years 2022 and 2025. These new projections indicate that the future year nitrogen deposition rates extrapolated in this analysis are over-estimated and suggest that there may be a decrease in current rates of nitrogen deposition. However, NO_X emissions, and therefore nitrogen deposition, are not expected to cease entirely. In addition, emissions containing other nitrogen compounds (e.g., NH_3 [ammonia]) may also contribute to nitrogen deposition. As cited in Fenn et al. (2010), a recent study shows that 25% of the nitrogen emissions from light duty vehicles in three California cities are in the form of NH3, and in newer cars the proportion is greater (Bishop et al. 2010 as cited in Fenn et al. 2010). The BAAQMD (2010) reports 52 tons/day of ammonia emissions in the Bay Area as of 2008. Leading sources of ammonia emissions include landfills, wastewater treatment, and refineries (19.8%); light-duty motor vehicles (17.4%); livestock (15.5%); commercial refrigeration (wineries, breweries, and cold storage warehouses; 15.4%); human respiration and perspiration (13.8%); and domestic animal waste (9.0%).

Fenn et al. (2010) report a critical load (the load at which undesirable effects are observed) for California serpentine grasslands of 6 kg-N/ha/y. This load is equal to the current estimates for nitrogen deposition rates in the study area (see *Baseline Deposition* above). While this rate may be expected to drop based on the BAAQMD report of reduced NO_X emissions, it is uncertain how the reduction will be offset by increases in other nitrogen sources, or what level of reduction would be required to reverse the current adverse effects of nitrogen deposition. Additionally, studies from grasslands in other regions of North

America have shown that significant impacts to biodiversity in grassland communities can occur from the accumulation of even low levels of nitrogen deposition (Fenn et al. 2010)."

Response to Comment 50-229
The Local Partners and Wildlife Agencies acknowledge the comment.

No changes to the Habitat Plan are required.

Response to Comment 50-230
The Local Partners and Wildlife Agencies acknowledge the comment.

Also see Response to Comment 50-228.

No additional changes to the Habitat Plan are required.

Response to Comment 50-231
See Response to Comment 50-228.

Response to Comment 50-232
See Response to Comment 50-228.

Response to Comment 50-233
The same growth projections were used for the Gaussian modeling as for the CMAQ modeling.

Also see Response to Comment 50-228.

No additional changes to the Habitat Plan are required.

Response to Comment 50-234
The purpose of the nitrogen deposition model is two-fold (see below for Habitat Plan **Appendix E** clarification). The part that relates to the nitrogen deposition fees is the analysis on the extent to which different geographic locations contribute to current and projected nitrogen deposition. This analysis looked at: 1) the study area (including State Parks lands); 2) the remainder of Santa Clara County; and 3) the remainder of the Bay Area counties. As described in Habitat Plan Chapter 9, the modeling estimates that 46% of nitrogen deposition on defined "habitat areas" comes from existing development and vehicle traffic generated locally within the study area. The study area share of nitrogen deposition on habitat areas is estimated to increase to 49% in 2035 and 51% by the end of the permit term in 2060. Based on this analysis, 50% of the Habitat Plan costs related to mitigating nitrogen deposition impacts are allocated to development in the study area through the nitrogen deposition fee. Acknowledging both the potential that emissions projections are overestimated as related to NO_X and the potential that emissions are underestimated due to NH_3 (ammonia) emissions, 50% remains and appropriate distribution of the conservation strategy costs related to off-setting the impacts of nitrogen deposition.

Also see Response to Comment 50-228.

Revisions to the Habitat Plan include the following:

"The primary purpose of this report is to quantify the expected increases in nitrogen deposition in Santa Clara County as a result of the urban and rural growth covered by the Habitat Plan to:

1. extrapolate changes in deposition rates over time; and

2. estimate the percentage of nitrogen deposition in the study area that results from air pollution emissions within the Habitat Plan study area, as opposed to air pollution that is transported from other regions to the study area."

South County Catholic High School

South County
CATHOLIC HIGH SCHOOL

Cori Mustin,
Senior Fish and Wildlife Biologist,
U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office,
2800 Cottage Way, W-2605
Sacramento, California 95825

Mr. Mustin,

On behalf of the South County Catholic high school committee I am writing to express the following thoughts on the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan project (SCV HCP/NCCP).

1) The SCV HCP/NCCP plan is far reaching and inequitable. Unlike other Habitat Conservation Plans which distinguish between (a) property proposed for development which would require a state or federal permit to "take" a protected species from (b) property where no such permit would be required to develop the subject property, the SCV HCP/NCCP lumps all similarly located properties into the same category. The effect of this is property owners who desire to develop property with no impact on protected species will end up subsidizing property which would otherwise be required to fully mitigate the "take" of a protected species. Generally, Habitat Conservation Plans make a distinction between such properties and require little to no mitigation by property owners who would not need a state or federal "take" permit. This distinction properly allocates the burden of the Habitat Conservation Plan to the party truly benefitting from the Plan- the party that would need to obtain a "take" permit but is exempt as a result of the Habitat Conservation Plan.

   Fees should be assessed based on actual impact and loss of habitat.

2) As presently proposed, the fees suggested will have an enormous impact on development in San Jose and Morgan Hill, the only two cities in Santa Clara County that are parties to the SCV HCP/NCCP. Residents of cities in areas outside of the SCV HCP/NCCP that have and will continue to have an impact on the species covered by the SCV HCP/NCCP will not be contributing towards acquisition of the mitigation land identified in the SCV HCP/NCCP. Rather only the residents of San Jose and Morgan Hill will contribute towards the cost of mitigation land, which costs are expected to increase significantly as the result of the City of Gilroy withdrawing from the SCV HCP/NCCP. The requirement that residents of Morgan Hill and San Jose participate in the SCV HCP/NCCP will have a chilling effect on new development in these two cities. This is especially true for developers choosing between (a) land within the SCV HCP/NCCP plan area which would not require a state or federal "take" permit but is subject to the mitigation fee, and (b) land outside of the SCV HCP/NCCP plan area which also requires no state or federal "take" permit. Why would any developer chose to pay a fee to the SCV HCP/NCCP when they can get the same land elsewhere in Santa Clara County? The fee structure needs to take into consideration mitigation that will be required in cities and by entities not participating in the SCV HCP/NCCP, thereby reducing the burden on participating entities.

3) The SCV HCP/NCCP does not take into consideration agricultural mitigation and agriculture easements on or near proposed developed that serves the same purpose of the mitigation identified in the SCV HCP/NCCP. At a minimum, consideration should be given to allowing for combined mitigation which serves the purposes of both endangered species mitigation and agricultural mitigation.

   The mitigation formula should be revised to incorporate combined mitigation required for the loss of agricultural land.

Finally, property being developed for public service buildings, schools and by non-profit organizations should be classified separately from private development and be required to pay no or only reduced fees.

We are all concerned for our environment and the impact of growth on endangered species. We also believe that policies when drafted in partnership with communities and businesses can incorporate good stewardship of our environment, including protected species, while being balanced with the needs and goals of society. We look forward to working with you toward an equitable solution.

Respectfully,

George Chiala
SCCHS Committee Chair

Comment Letter 51—South County Catholic High School, George Chiala, SCCHS Committee Chair, No Date

Response to Comment 51-1

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 51-2

Comment is addressed in Master Responses #2 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Response to Comment 51-3

The Wildlife Agencies and Local Partners confirm that the Habitat Plan does not take into account agricultural mitigation and agricultural easements on or near proposed development. There is no minimum amount of agricultural land cover preservation under the Habitat Plan. Therefore, it is unlikely that agricultural mitigation would serve the same purpose as mitigation required under the Habitat Plan. All lands incorporated into the Reserve will meet the Plan's definition of Type 1 Open Space (with the exception of existing OSA lands on which a conservation easement is precluded), where the primary management goal is related to ecological protection.

The mitigation requirements evaluated under the Habitat Plan are limited to mitigation required under Section 10 of the ESA and the NCCP Act. Mitigation required for the loss of agricultural land fulfills other regulatory requirements. Streamlining this sort of mitigation is beyond the scope of the Habitat Plan.

Also see Response to Comment 49-6. No changes to the Habitat Plan are required.

Response to Comment 51-4

Public entities, such as school districts, that are not under the jurisdiction of the Permittees are not subject to the Plan. However, these public agencies, may request coverage under the Plan should they find a need to obtain incidental take coverage from the Wildlife Agencies through the Plan's Participating Special Entities program described in Habitat Plan Section 8.4. Similar opt-in provisions are described in Habitat Plan Section 6.7.2 for private entities not subject to the Habitat Plan. Under both circumstances, coverage of these public and private projects must be approved by the Implementing Entity and the project proponents must implement all applicable conditions and pay all applicable fees. In the case of Special Participating Entities, the Implementing Entity may require an additional fee, over and above those specified in Habitat Plan Chapter 9, to cover indirect costs of extending permit coverage under the Habitat Plan.

Portions of this comment are addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

City of San Jose

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

April 21, 2011

Mr. Kenneth Schreiber
Santa Clara County Executive's Office, HCP/NCCP Program manager
County Government Center, East Wing
San José, CA

Dear Mr. Schreiber,

The City of San Jose offers these comments and thoughts on the draft Santa Clara County Valley Habitat Plan dated December 2010 (Plan) for consideration though the review and adoption process. The City believes that solving the environmental issues is important and that there are many benefits from reaching a comprehensive strategy on the issues. We are concerned that the Plan as drafted has some major challenges that make it difficult to consider adoption later this year.

Scale of the Plan

The scale of the draft Plan is extremely large. That is due in large part to our desire to accommodate all potential development impacts form public and private projects in the plan area and to look for a 50 year term. As we have seen the magnitude of that Plan, we have to ask if we can afford the Plan. We recognize that the NNCP requirements for a conservation strategy by statue brings greater obligation to the Plan; however, we want to ensure that the draft Plan meets the minimum statutory requirement and is not "gold plated" for want of a better term, that adds unnecessary costs to the Plan participants. 1

We are also concerned that the Plan may not achieve adequate scalability of the requirements that the Local Partners will incur if the level of impacts is substantially less than was analyzed in the Plan. As one possible solution, we believe we should consider a term of 30 years to allow reassessment of the scale of the conservation strategy of the draft Plan. A shorter term would reduce uncertainty levels for both the resource agencies and the local partners. 2

Financial Feasibility

As the economy soured over the past 5 years during the creating of the Plan, we have had to reassess our anticipated level of development in the City and that same reassessment is going on across the state and nation. Our concern is that even if the recovery strategy is indeed set at achieving the statutory minimum level, the amount of development that is creating impacts is projected to be less which potentially creates an unbalanced financial model for the Plan. 3

With the recent decision of the City of Gilroy to terminate their participation and discussions with other partners about how the Plan and fees affect their respective jurisdictions, it is clear that a reassessment of the financial model is needed to rebalance the costs. Additionally, one of 4

the City's goals of the Plan was to discourage or put consequences to "bad" land use decisions, which if we were successful in achieving, one outcome would be inherently less development of habitat lands and thus less impact requiring coverage and again less revenues for the Plan.

Coordination with Other Agencies

We strongly believe that the Plan should be used to include the permitting of the Army Corps of Engineers (ACoE) and the Regional Water Quality Control Board to eliminate duplication and improve certainty. The great work that the Sacramento office of the ACoE should be studied for a similar arrangement with the Plan. We understand the this is being looked at and recognize it is not on the same schedule as the Draft Plan. However, we would like to explore any assurances we might be able to obtain from the San Francisco office of the ACoE and RWQCB that could be offered to bring more value to the development community form adoption of the Plan. These permits are as important to the City and our customers as the No Surprises feature of the Plan. 5

Fee Allocation

The City Council and development community are very concerned with the Nitrogen Fee for air quality impacts from infill development. The concern is around the issue of fairness and competiveness in the valley. The fee has progressed substantially to better comply with nexus requirements by discounting nitrogen emissions from outside the Plan area for the fee calculations. We want to make sure that the fees reflect the costs of the impacts and put consequence to inappropriate development patterns, but are not a disincentive to the type of growth that environmental groups demand of cities. 6

Competiveness in Region

Lastly, we are concerned that fees such as the nitrogen fee without the resource agencies taking a firm stance on all other cities up wind of the habitat is still noncompetitive and would look for ALL opportunities that USFWS and CADFG have to provide comment about the impacts and mitigation strategies provided in the draft Plan with environmental documents in adjoining agencies including Caltrans. 7

Thank you for the opportunity to review and comment on the draft Plan.

Sincerely,

Joseph Horwedel, Director
Planning, Building and Code Enforcement

c: Ms. Cori Mustin

Comment Letter 52—City of San José, Joseph Horwedel, Director, April 21, 2011

Response to Comment 52-1

Comment is addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 52-2

Comment is addressed in Master Response #1.

Also see Response to Comment 24-11.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 52-3

Comment is addressed in Master Response #3.

Revisions to the Habitat Plan will be consistent with Master Response #3.

Response to Comment 52-4

The City of Gilroy rejoined the Habitat Plan development process shortly after it pulled out. Therefore, the portion of the request to reassess the financial model to rebalance the cost of their decision to terminate their participation in the Plan is no longer relevant.

Portions of the comment are addressed in Master Responses #1 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #1 and #3.

Response to Comment 52-5

Comment is addressed in Master Response #4.

Revisions to the Habitat Plan will be consistent with Master Response #4.

Response to Comment 52-6

Comment is addressed in Master Response #2.

Revisions to the Habitat Plan will be consistent with Master Response #2.

Response to Comment 52-7

Comment is addressed in Master Responses #2 and #3.

Revisions to the Habitat Plan will be consistent with Master Responses #2 and #3.

Amah Mutsun Tribal Band

AMAH MUTSUN TRIBAL BAND
3015 EASTERN AVENUE #40
SACRAMENTO, CA. 95821

March 9, 2011

Re: Follow-up to our meeting of March 2, 2011

Dear Mr. Schreiber,

On behalf of the Amah Mutsun Tribal Band, I thank you for taking the time to meet with Chuck Striplen, Jim Keller, Greg O'Connor, and myself to discuss the Santa Clara Valley HCP/NCCP. We felt it was a very productive meeting and walked away with a greater understanding of the plan, its approach and scope. More importantly though, we sensed your openness and understanding with regard to the concerns shared by our Tribe and our desire and intent to be deeply and actively engaged in all matters of cultural and natural resource protection and management within our territory. On this we thank you for your thoughtful suggestions on how and where to become involved as this HCP/NCCP process unfolds (more on this below).

As promised, please find the following documents pertaining to California Senate Bill 18 (SB18), which was signed into law in September 2004. Attached:

- ✓ *sb_18_bill_20040930_chaptered.pdf* –The full text of the bill.
- ✓ *Final_Guidelines_for_Web_04-15-05.pdf* –Tribal Consultation Guidelines from the Governor's office.
- ✓ *SB_18_Overview.ppt* –Overview of SB 18 and its mandates.
- ✓ *CEQA&HistoricalResources.pdf* –SB 18 compliance under CEQA
- ✓ *SB_18_Productive_Consultation.ppt* –Brief guide to Tribal Consultation process

1

With regard to Tribal involvement moving forward:

The Tribe has lived through many changes to our lands and resources in the 241 years since colonization. We have always been keenly aware of the shifting trends in land use, resource utilization, and population expansion in our territory, so we view the development of this HCP/NCCP as a significant move toward a more holistic approach to land use planning and conservation – one that more closely mirrors our own concepts of cultural and ecological landscapes. Given the looming pressures of growing human populations and a changing climate, the development and refinement of such creative planning tools will be essential to our common goal of leaving our children and grandchildren a healthy and functioning environment. Further, we are indeed grateful to be included in the Plan as it most affects our traditional tribal lands (Popeloutchom) and associated natural environment. We are the indigenous people of the Pajaro River watershed. Our ancestors – the Unijaima – were the people of Uvas and Llagas Creeks, while our ancestors – the Ausaima – were the people of upper San Benito Valley and Pacheco Creek. We welcome efforts to protect the endangered species listed and we do understand the limitations of such plans in their ability to afford broad protections to all species. Through our ongoing involvement with the implementation of the HCP, be sure that the Tribe will endeavor to find ways to broaden the functional reach of the Plan to also benefit the elk, badger, lizards, turtles, eagles, falcons, condors, eel, trout, salmonids, sturgeon, and the innumerable other species that hold cultural significance to us and struggle to persist in our highly modified landscapes. There are also many plant species that are now rare, or have been extirpated from our territory, or struggle to persist given the onslaught of exotics and suppression of fire. Our long term goals involve restoring balance and bolstering the resilience of the natural

2

AMAH MUTSUN TRIBAL BAND
3015 EASTERN AVENUE #40
SACRAMENTO, CA. 95821

systems, the species and ultimately, the people – all of us that call this place home – that rely on them and the clean waters from which they flow.

In addition, we formally request that the Amah Mutsun Tribal Band be added to the Santa Clara Valley HCP/NCCP Stakeholder group and that we be included in all future correspondence, meetings and the like as such pertain to the SCV HCP/NCCP and inclusive of the Stakeholder Group. This will enable our participation and contributions to this effort to be both thorough and well informed. Provided this is acceptable to you, we would like to name Jim Keller [831-212-5912 • WAY_institute@sbcglobal.net] as our Tribal Liaison to this group. Please add him to your list of contacts for Stakeholder correspondence. 3

We would also like to reiterate our strong desire to have direct representation on the Technical Advisory Committee to the Implementing Agency as it forms and is convened. As was discussed in our meeting, our connection and devotion to these lands, the beliefs of our people and the way in which we relate to Mother Earth blurs the conventional line between cultural and natural resources. If this plan is sincere with regard to Cultural Resource considerations, then our people's perspective must be included, and it is only appropriate for us to have a high level voice throughout the implementation of this HCP/NCCP. Furthermore, with specific regard to the Cultural Resource mitigations called for in the *Draft* EIR/EIS to the HCP/NCCP – namely that a Cultural Resource Management plan shall be prepared prior to the development of the Reserve System and prior to any stream restoration activity – it would be inappropriate to develop such a plan without the direct technical involvement of the Tribe. While contracting archaeologists and anthropologists certainly have a role in adhering to pertinent State and Federal laws with regard to cultural resources, the Tribe is far better equipped and knowledgeable about our own history and resources to provide meaningful input into this process. For instance, characterizations of our ancestors as "pre-historic" (we have history), or utilizing narrative tones that imply we are extinct, or without modern rights and concerns – demonstrate the need for meaningful Native representation and the input of culturally and historically accurate information – which we alone can expertly provide. 4 5

Finally, we firmly believe that our cultural and natural heritage can be best protected with the establishment of a green-belt stretching across the lower Santa Clara Valley from Frazier Lake (Poitoqui) to Isleta/Sargent Ranches (Juristac). We believe this will best provide habitat for the listed species and migrating bird and fish populations as well as locations for our cultural events and ceremonies which have been interrupted (due to destruction of and restricted access to sacred sites) for over 100 years. We look forward to continuing dialog and providing guidance as this process continues, reserve configurations are conceived, and other mitigations are considered and implemented. 6

Respectfully,

Valentin Lopez, Chairman
Amah Mutsun Tribal Band
(916) 743-5833

Comment Letter 53—Amah Mutsun Tribal Band, Valentine Lopez, Chairman, March 9, 2011

Response to Comment 53-1

The Wildlife Agencies and Local Partners acknowledge receipt of the documents pertaining to California State Bill 18 (SB 18).

No changes to the Habitat Plan are required.

Response to Comment 53-2

Comment is addressed in Master Response #9.

Revisions to the Habitat Plan will be consistent with Master Response #9.

Response to Comment 53-3

The Local Partners have added the Amah Mutsun Tribal Band to the Stakeholder Group.

No changes to the Habitat Plan are required.

Response to Comment 53-4

See Response to Comment 49-29.

Response to Comment 53-5

See Response to Comment 1-3.

New text added to EIR/EIS Mitigation Measure 13-1.

Response to Comment 53-6

The Wildlife Agencies and Local Partners appreciate the commenter's recommendation for lands to be considered for inclusion in the Reserve System. All lands that support the biological goals and objectives of the Habitat Plan and fulfill Habitat Plan requirements will be considered for inclusion in the Reserve System.

Portions of this comment are addressed in Master Response #9.

Revisions to the Habitat Plan will be consistent with Master Response #9.

Santa Clara Valley Water District

Santa Clara Valley Water District

5750 ALMADEN EXPWY
SAN JOSE, CA 95118-3686
TELEPHONE (408) 265-2600
FACSIMILE (408) 266-0271
www.valleywater.org
AN EQUAL OPPORTUNITY EMPLOYER

April 18, 2011

Ken Schreiber
Program Manager
County of Santa Clara
County Government Center, East Wing – 11th Floor
70 W. Hedding Street
San Jose, California 95110

SUBJ: Santa Clara Valley Water District Comments on the Public Draft of the Santa Clara Valley Habitat Plan (December 2010)

Dear Mr. Schreiber,

On behalf of the Board of Directors of the Santa Clara Valley Water District (District), I am submitting comments on the public draft of the Santa Clara Valley Habitat Plan (Plan). As one of the Local Partners developing the Plan, our goal is to ensure that the final version incorporates community interests. These comments reflect public discussion at a regularly scheduled Board meeting held on April 18, 2011, as well as comments arising from staff review of the draft Plan.

The District supports the Plan framework and recognizes that implementation provides a cost efficient process for permitting flood management and water supply infrastructure improvements. District facilities are largely located in sensitive habitat areas, reconstruction and maintenance of which often requires costly mitigation measures to meet state and federal environmental requirements. Although the fee structure in the Plan may appear high, our analysis show that these fees will result in lower costs for District projects saving the public money while providing improved protection and increased conservation for threatened and endangered species.

While the long term benefits are clear, the District shares our Local Partners' concerns about the Plan costs. Although the $938 M cost is spread over the fifty-year planning horizon, it will be challenging, given the economic climate, to obtain support for additional fees or rate increases to cover this level of effort. The District supports evaluating the draft Plan using an approach that involves: 1

- Greater stakeholder involvement – identify interested groups and encourage their participation in finalizing the Plan.
- Expansion of the Plan area to include other cities in the County to expand the fee base.
- Additional local land trust organization's open space lands to achieve the needed preserve areas.

The District fully supports completion of the Valley Habitat Plan and will continue to work closely with our Local Partners and the Wildlife Agencies to ensure that this comprehensive strategy for conserving the species and natural communities is in place. We strongly believe the Plan is critical to public infrastructure improvement needed to provide vital services to the residents and businesses in Santa Clara County.

Attached are specific comments from the District to be considered for finalizing the Plan. Please contact Debra Caldon at (408) 265-2607 extension 3057 or Don Arnold at extension 3007 if you have any questions.

Sincerely,

Marc Klemencic
Chief Operating Officer
Watershed Operations
Santa Clara Valley Water District

Attachment: District specific comments on the Santa Clara Valley Habitat Plan

cc: Joseph Horwedel, City of San Jose, Department of Planning Building and Code Enforcement;
Lisa Killough, Santa Clara County, Office of the County Executive;
Jim Rowe, City of Morgan Hill
Tom Fitzwater, Valley Transportation Authority
Cay Goude, United States Fish and Wildlife Service
Scott Wilson, California Department of Fish and Game

dc:mk

Ken Schreiber, Program Manager
County of Santa Clara
April 18, 2011

Comments on the Public Draft of the Santa Clara Valley Habitat Plan (December 2010)

Attachment -- Technical comments on the public draft of the Santa Clara Valley Habitat Plan

CHAPTER 2

The following comments update the discussion on District Covered Activities.

1 DMP project description: add inclusion of kill traps as well as shooting rodents with guns (air and or silencers on guns, non-lead bullets, no secondary poison effects, little or no chance of incidental casualties). 2

2. The discussion on the Water Resource Protection Ordinance (page 2-19) should include the following:
   - The District issues permits only where it has a either a fee title or easement property right;
   - Other agencies do not comply with ordinance 06-1; to fulfill stream protection land use agencies can adopt the District guidelines or determine that existing zoning code and/or policies fulfill them. San Jose and the County approved resolutions that their existing codes comply with the guidelines; Morgan Hill adopted the Guidelines; and Gilroy added a new Water Resources Protection chapter to their zoning code. 3

3. In the list of facilities covered by the Pipeline Maintenance Program (page 2-91) add the Coyote Pump Plant and Pacheco Pump Plant. 4

CHAPTER 5

1 The Plan's conservation strategy has several aspects that support and/or parallel District goals and objectives. Below is some suggested language to include.

The focus of the conservation strategy of the Valley Plan is to amass a reserve system of 48,000 acres of open space for the protection of sensitive species and to provide wildlife corridors. Protecting open space supports the District's water resources stewardship goal 4.3 of "Improved quality of life in Santa Clara County through trails, open space and water resources management." Most of this open space will be in the mountainous areas surrounding the valley floor. These areas are the headwaters of the major creeks that have flooding potential when they flow through the urbanized area of the valley floor. By protecting these areas from development, they retain their natural ability to attenuate floods. If these reserve areas were developed with the 15 to 25% impervious surface that is typical of suburban development, runoff into the streams would increase in both quantity and velocity. So in addition to meeting stewardship goals of the District, the reserve system also supports the District's natural flood protection goals. 5

2. Natural Flood Protection (page 5-88) is now Ends Policy E-3; the formal policy no longer includes all the criteria listed. 6

Comments on the Public Draft of the Santa Clara Valley Habitat Plan (December 2010)

5.4.13 Coyote Ceanothus

Occurrence Acquisition

Page 5-189

In addition, the small scrub area near the dam (north dam abutment) owned by SCVWD and managed by County Parks will be burned to facilitate the species' regrowth. ***[ADD:* Burning will occur after the seismic retrofit project is complete.]** This site supports mature Coyote ceanothus but is overgrown and has little regeneration. A prescribed burn will promote regeneration and improve stand health. A qualified biologist will oversee the prescribed burn. 7

2. Page 5-190

The District does not agree that it would be feasible to focus new occurrence creation on the west side of the valley, per the language below. All the existing populations are within a 5 mile radius of each other on the east side. Perhaps it would be more useful to state that the focus of the effort should be on creating new populations within a 15 radius of existing populations.

Suitable habitat for created occurrences will be identified based on the habitat of known occurrences and any other available data at the time of acquisition (STUDIES-5). *Because two of the three known extant occurrences of Coyote ceanothus are on the east side of the Coyote Valley, the focus will be to increase the range of the species by creating the new occurrences on the west side of the valley unless the Implementing Entity demonstrates to the Wildlife Agencies that such occurrence creation is biologically infeasible.* This effort will involve identifying a suitable location in the Reserve System and determining biologically appropriate and viable propagation or planting techniques for this species (STUDIES-13, STUDIES-14). It will also entail studies to determine the biologically appropriate seed sampling techniques and harvest numbers for acquisition of seed from existing occurrences (STUDIES-14). In addition, field experiments will be conducted (if the number of propagules allows) to test alternative techniques for occurrence establishment (STUDIES-15). 8

The timing of the seismic retrofit of Anderson Dam is currently uncertain, but is expected to occur within the next five to 15 years. Project implementation may need to occur sooner than anticipated due to public safety concerns. If the project timeline does not allow for the conservation actions as described above, SCVWD and the Wildlife Agencies will meet to discuss alternatives [Suggest that this reference the meet and confer provision in Chapter 10 as outlined in the SF Collinsia section, see comment below] that will still meet the regulatory standards of the Plan to mitigate the impacts and contribute to species recovery. These alternatives will be based on the best available data at the time. If the impacts of the accelerated project on Coyote ceanothus are greater than what was evaluated in the Plan, additional mitigation may be required to offset the additional impacts. This may also require a Plan amendment as described in Chapter 10, Section 10.3 *Modifications to the Plan*.

3. Regarding the following paragraph on Page 5-196, please clarify the discussion regarding the protection of 3 occurrences accomplished by creation of 2 occurrences

The Implementing Entity will protect, maintain the viability of, and increase the number and size of populations of San Francisco Collinsia by protecting and enhancing three occurrences in the permit area, (**Table 5-16**). *Protection of the three occurrences will be accomplished through two possible methods, in order of priority: (1) acquire land for the Reserve System that supports new or rediscovered historical occurrences prior to impacts at Anderson Reservoir or by Year 45, whichever comes first, or (2) create* 9

new occurrences within the Reserve System prior to impacts at Anderson Reservoir or by Year 40, whichever comes first.

4. It may be clearer to reference Occurrence Acquisition section below from page 5-190.

The total number of Coyote Ceanothus occurrences protected by this Plan deviates from the number suggested in the species' Recovery Plan. The Recovery Plan (U.S. Fish and Wildlife Service 1998c) requires the protection of eight populations to meet delisting requirements. There have only been three populations of this species ever discovered… 10

5. Regarding the language on Page 5-200, it may useful to mention that the only known occurrence in the county is located on serpentine soils and grows with coyote Ceanothus.

San Francisco Collinsia may occur in a variety of habitats in the study area, including coast live oak woodlands, closed cone forest, and possibly northern coastal scrub; it is not known which of these will be best for establishment of new occurrences. Targeted studies can investigate the factors affecting establishment and survival in these habitats to identify the habitat most likely to support successful creation of new occurrences (STUDIES-5). 11

CHAPTER 6

1 The Plan's conservation strategy has several aspects that support and/or parallel District goals and objectives. Below is some suggested language to include.

Riparian setbacks are included in the Valley Plan as Condition 11. This requirement for new development and for re-development will preserve or construct vegetated buffers on both sides of the stream channel for 100ft in urban areas and 150 ft in non-urban areas. These setbacks were included to benefit the many species that live along stream banks, particularly the ones on the covered species list. In addition to performing an important ecological function, these setbacks will also be valuable for flood protection purposes. Being adjacent to stream channels, these setback zones are part of the floodplains. Keeping the setback areas clear of development helps keep buildings out of harm's way in a flood. The planted buffer areas also stabilize the stream channel, reduce erosion and attenuate flows helping to provide the natural flood protection that is District policy. Thus Condition 11 supports Flood Protection Objective 3.1.1: Balance environmental quality and protection from flooding in a cost effective manner. 12

2. In Chapter 6, at the bottom of page 6-25, the following statement needs to be clarified:

"*Dam Maintenance Program*
The above requirements will apply to implementation of activities associated with the Dam Maintenance Program (see Chapter 2)." 13

3. Chapter 6, 2nd paragraph states: "Once burrows are initially filled, SCVWD will monitor the dam faces regularly and expeditiously fill any new burrows that appear."

The District would prefer to discontinue pre-burrow elimination monitoring procedure (use of burrow camera, hand tools, etc in advance of burrow elimination). Change to project description to include additional methods including track walking (driving heavy cat over burrows to crush them). 14

Comments on the Public Draft of the Santa Clara Valley Habitat Plan (December 2010)
4. Reservoir Dewatering: The maximum values in chart may not reflect actual discharges from larger dewatering processes the District will provide more accurate values for the final version of the Plan. 15

CHAPTER 8

Please clarify how ongoing public agency maintenance activities would be covered under the plan and the information needed to obtain coverage such as for dam maintenance, and pipeline maintenance. Would these activities submit an annual plan? 16

CHAPTER 10

1. The section below in Chapter 10 on the Meet and Confer option is **missing** from the current public draft, but is very important for the District. The current language in Chapters 4 and 5 under the individual species (Coyote Ceanothus and SF Collinsia) is vague and does not provide enough direction to the District. Please reinstate the below language, with edits provided, in an appropriate section of the Plan.

10.1.1 Anderson Dam Seismic Retrofit Meet and Confer Provision
The Anderson Dam Seismic Retrofit Meet and Confer Provision was created to outline the circumstances under which the Wildlife Agencies and the Santa Clara Valley Water District would meet to discuss alternative conservation strategies for San Francisco Collinsia (*Collinsia multicolor*) and coyote ceanothus (*Ceanothus ferrisiae*). If the Plan conservation obligations, as written in Chapter 5, are unable to be met due to the timing of the seismic retrofit of Anderson Dam, alternative strategies will be considered by the Wildlife Agencies and the Santa Clara Valley Water District. 17

The timing of the seismic retrofit of Anderson Dam is currently uncertain, but is expected to occur within the next five to 15 years ~~(J. Hillman pers. comm.)~~. If project implementation were to occur within the next ten years, the Santa Clara Valley Water District would likely have difficulty meeting the conservation obligations for San Francisco Collinsia and coyote Ceanothus. In addition, changed circumstances such as progressed degradation of the dam, increased public safety concerns, or a damaging earthquake may require the dam retrofit project to be implemented even more quickly than first anticipated.

The Anderson Dam Seismic Retrofit project will also partially impact one occurrence of coyote ceanothus (3,650 individuals or 5%, whichever is less, of the Anderson Dam occurrence), due to the potential expansion of Anderson Dam face as well as inundation along the shoreline of Anderson Reservoir. Currently, the conservation strategy for coyote ceanothus calls for the acquisition and management of ~~all three~~ one known occurrences or the creation of one new population, ~~including the occurrence to be impacted~~, prior to partial impacts to the one occurrence. If this strategy, as it is stated in Chapter 5 section *Coyote Ceanothus*, is not able to be implemented due to an expedited timeline for the dam retrofit project, the Water District and the Wildlife Agencies will meet to discuss alternatives based on present-day knowledge and circumstances.

Comment Letter 54—Santa Clara Valley Water District, Marc Klemencic, Chief Operating Officer, April 18, 2011

Response to Comment 54-1

The Local Partners and Wildlife Agencies acknowledge the comment.

Portions of this comment are addressed in Master Response #1.

Revisions to the Habitat Plan will be consistent with Master Response #1.

Response to Comment 54-2

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.1.1 *In-Stream Operations and Maintenance,* subheading *Burrowing Rodent Control*) "Burrowing animals will be managed to prevent the construction of burrows. Management may involve efforts to reduce the populations of burrowing animals such as ground squirrels through use of pesticides[1], kill traps, shooting rodents with air guns, or non-lead bullets and silencers and/or excavation and re-compaction of burrows that are found on the dam face and abutments."

Response to Comment 54-3

Revisions to the Habitat Plan include the following:

Habitat Plan Chapter 2, Section 2.2.1 *Existing Conditions*, subheading *Water Resources Protection Ordinance*) was revised to include the recommended changes.

Response to Comment 54-4

Revisions to the Habitat Plan include the following:

(Habitat Plan Chapter 2, Section 2.3.6 *Rural Operations and Maintenance*, subheading *Pipeline Maintenance Program*)

The list of facilities covered by the Pipeline Maintenance Program was updated to include the Coyote Pumping Plant and the Pacheco Pumping Plant.

Response to Comment 54-5

The Wildlife Agencies and Local Partners recognize that the Habitat Plan's conservation strategy has several aspects that support and/or parallel SCVWD goals and objectives. This is intentional because SCVWD is a Local Partner and its goals and objectives were reviewed and considered during Habitat Plan development.

No changes to the Habitat Plan are required.

Response to Comment 54-6

This comment states "Natural Flood Protection (page 5-88) is now Ends Policy E-3; the formal policy no longer includes all the criteria listed." As such, it is no longer relevant to maintain this section in the Conservation Strategy.

Revisions to the Habitat Plan include the following:

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[1] The use of pesticides or herbicides is not a covered activity for the USFWS permit.

Habitat Plan Section 5.3.2 *Landscape Conservation and Management,* subheading *Natural Flood Protection,* was deleted from the Habitat Plan.

Response to Comment 54-7

Habitat Plan Section 5.4.11 *Coyote Ceanothus* was revised to remove information on where the burn would occur and to change the timing to be within 5 years of the impact on the occurrence at Anderson Dam. .

No additional changes to the Habitat Plan are required.

Response to Comment 54-8

As stated in the Draft Habitat Plan Section 5.4.11 *Coyote Ceanothus*, subheading *Occurrence Creation,* the focus of occurrence creation for Coyote ceanothus is to "increase the range of the species by creating new occurrences on the west side of the valley." The Plan, however, also states that this will be the focus "unless the Implementing Entity demonstrates to the Wildlife Agencies that such occurrence creation is biologically infeasible." If the Implementing Entity deems creation of new Coyote ceanothus occurrences to be biologically infeasible on the west side of the valley, alternative locations for occurrence creation will be explored.

The Wildlife Agencies and Local Partners also acknowledge the commenter's suggestion to add a reference to the *Anderson Dam Seismic Retrofit Meet and Confer Provision* section in Habitat Plan Chapter 10. This section, however, has been deleted from Chapter 10.

No changes to the Habitat Plan are required.

Response to Comment 54-9

San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

No changes to the Habitat Plan are required.

Response to Comment 54-10

The Wildlife Agencies and Local Partners acknowledge the commenter's suggestion to clarify the *Occurrence Creation* subheading in Habitat Plan Section 5.4.11 *Coyote Ceanothus.* The conservation for Coyote ceanothus was revised based on new information provided by SCVWD.

No additional changes to the Habitat Plan are required.

Response to Comment 54-11

San Francisco collinsia was dropped from the Final Habitat Plan. As such, comments related to that species are no longer relevant to the Plan.

No changes to the Habitat Plan are required.

Response to Comment 54-12

The Local Partners and the Wildlife Agencies recognize the benefits of flood protection; however, this is not one of the goals of Condition 11 *Stream and Riparian Setbacks*.

No changes to the Habitat Plan are required.

Response to Comment 54-13

Revisions to the Habitat Plan include the following:

Habitat Plan Chapter 6, Condition 5 *Avoidance and Minimization Measures for In-Stream Operations and Maintenance,* has been updated to provide clarity regarding which requirements in the condition are applicable to dam maintenance activities.

Response to Comment 54-14

Revisions to the Habitat Plan include the following:

(Chapter 2) Cited text revised.

(Chapter 6) Quoted text deleted.

Response to Comment 54-15

Revisions to the Habitat Plan include the following:

Provide updates to dewatering flow in Habitat Plan Chapter 2 and Habitat Plan Chapter 6 as applicable and as directed by SCVWD in collaboration with the Wildlife Agencies.

Response to Comment 54-16

See Habitat Plan Chapters 6 and 8 for a discussion of reporting during implementation.

No changes to the Habitat Plan are required.

Response to Comment 54-17

See Response to Comment 36-9.

Stuart Weiss, PhD

Stuart B. Weiss, Ph.D.
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Comments on Santa Clara Valley Habitat Plan

Thank you of the opportunity to comment on the public draft of the Santa Clara Valley Habitat Plan.

I first want to congratulate the project team, partners, and stakeholders for getting this far in the process. The documents make a convincing case that a Habitat Plan can indeed conserve the covered species, while streamlining permits and mitigation for development. My main constructive criticisms are in the structure of the implementation, especially issues with the balance between acquisition and easements, the potentially great role of rancher stewardship within and beyond the Reserve Lands, and how to make the monitoring and land management efficient and effective for documenting the success of the Plan in conserving the rich biodiversity of Santa Clara County.

I have 30+years of experience with the conservation of the Bay checkerspot butterfly and serpentine grassland, a centerpiece of the Habitat Plan. The following observations and comments on practical conservation are based on a long scientific engagement with the butterfly and its habitat, and the development and execution of five successful mitigation projects where land was acquired and appropriately managed through grazing and weed management. Perhaps more importantly, I was witness to a few "environmental train wrecks" where grazing was removed, the habitat degraded, and butterfly populations went extinct. I also have worked on the Bay Area Upland Habitat Goals Project (and assorted offshoots) and have expertise on landscape-level conservation for vegetation and wildlife species.

I have read large parts of the Draft Plan, but detailed lin-by-line comments are not feasible. I have the following general and specific comments:

1) Santa Clara County is the most innovative place on Earth, we are obligated to have a Habitat Plan, and if we can't do it effectively here then there is little hope elsewhere. 1
2) The scientific basis for the plan, including, is solid. The nitrogen deposition analysis demonstrates that the partners have obligations under the Endangered Species Act to mitigate for cumulative impacts of air pollution on listed species. A Habitat Plan is not optional, it is central to this obligation. 2
3) Because of the ongoing and cumulative impacts of atmospheric nitrogen deposition, the serpentine ecosystem has a short response time to removal of grazing, on the order of 2-4 years. The institutional response and reintroduction of grazing can take a decade or more, leaving behind degraded habitats and extinct Bay checkerspot populations. Interim measures to avoid and reverse these situations are needed even before inclusion in the Reserve system. 3
4) The current situation of project by project mitigation has had mixed success at best, and while better than nothing, is not tenable in the long term. Notable train wrecks include the Silver Creek Hills and Tulare Hill. Institutional dysfunctions led to standoffs, some lawsuits, removal of grazing, and habitat degradation. While agreements and mitigation were eventually agreed upon, the butterfly and its habitat suffered the consequences. 4

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5) Notable mitigation successes include the Kirby Canyon Butterfly Trust, Metcalf Energy Center, Los Esteros Critical Energy Facility, Silicon Valley Power, and VTA. In these cases, habitat has been maintained and enhanced because ongoing monitoring and management has been effective, the continuity of cattle grazing was maintained, and a lean institutional structure allows for rapid management responses and weed control. These projects are a tried and true model for the Habitat Plan, and are mentioned as such. 5
6) Inconsistent mitigation requirements, spotty implementation, lack of coordination, and other institutional dysfunctions are an ongoing threat, despite the best efforts of the US Fish and Wildlife Service, local land managers, and scientists. 6
7) Even if the land is protected from conversion and grazing is maintained, the habitat is increasingly threatened by barbed goatgrass (*Aegilops triuncialis*). Large infestations over hundreds of acres will take a concerted coordinated effort to contain and control over a long time period. Access to lands for treatment has been problematical, and greatly reduces the effectiveness of weed management. 7
8) I agree with many of Sheila Barry's and other critiques of the (non-serpentine) grassland and range science cited by the Plan, and urge that these issues be resolved by incorporating the best current science and better writing in these sections. Inaccurate statements in these original plans can have unanticipated consequences down the line and make adaptive management more difficult. 8
9) Many of the same issues apply in the grassland and oak woodland ecosystems. 9
10) Large parts of the document suffer from poor organization and awkward writing. 10

The Conservation Strategy of land protection from conversion and subsequent management is solid conceptually. How it gets implemented is critical.

Implementation

The implementation strategy and costs are based on a Parks and Preserves Model, and although easements are mentioned several times, the emphasis seems on acquisition as public land. While some parts of the Reserve System, such as Coyote Ridge, are excellent candidates for acquisition as public lands (because of current corporate ownership), much of the "backcountry" is currently private ranchland, often occupied by multigenerational ranching families. These ranchlands can serve as conservation land with easements, instead of fee acquisition, and there are many economies and advantages to this strategy. Indeed, from an ecological viewpoint the ranchers are the keystone species – a species whose removal leads to drastic alterations in ecosystems. It is clear that the current existence of Bay checkerspot butterflies, red-legged frogs, tiger salamanders, and other species has been utterly dependent on "rancher stewardship" on working lands. *The Plan will not work without the ranchers on board.*

1) *If it ain't broke don't fix it.* Much of the existing rancher stewardship has been effective in conserving many of the species and changes should be well justified. 11

Response to Comment 55-19

The Wildlife Agencies and Local Partners acknowledge the commenter's concern The Wildlife Agencies and Local Partners agree that on-the-ground management is rather straight forward. Habitat Plan Chapter 7 is meant to provide a framework and guidance on how monitoring and adaptive management should occur, while Habitat Plan Chapter 8 is meant to provide an implementation structure. The framework, guidance, and structure provided in these chapters is consistent with other approved NCCPs.

No changes to the Habitat Plan are required.

Response to Comment 55-20

Local land managers will be invited to help guide Plan implementation as advisors to the Implementing Entity and the Implementation Board, and these organizations will coordinate closely with the Implementing Entity. The Implementing Entity may contract with a third-party landowner, contractor, or other agency or organization to conduct management activities within the Reserve System on the Implementing Entity's behalf.

A pool of scientists will provide external input regarding implementation of the monitoring and adaptive management program. Input will be provided regularly or as needed to help guide monitoring protocols and experimental design, to interpret results and generate hypotheses, and to comment on the overall success of the monitoring and adaptive management program in achieving the biological goals of the Plan.

The Implementing Entity will conduct outreach to local private and public landowners and residents that will include education on the management goals and objectives as well as implementation techniques. The focus of public education and outreach activities will be to raise landowner and public awareness of reserve management goals, actions, and methods and the ways in which the public can support them. To that end, the Implementing Entity will ensure development and management of a public website for the Habitat Plan. Where appropriate, the Implementing Entity will develop and publish guidelines for local landowners and provide educational programs to assist in the implementation of these guidelines. Public education and outreach will be coordinated with other local agencies providing similar services in the study area (e.g., County Parks, SCVWD, and the Open Space Authority).

Before the end of the permit term, the Implementing Entity will also determine the administrative structure necessary to continue management on the Reserve System in perpetuity. For example, management responsibility may be delegated to one of the Permittees to continue to oversee in perpetuity. Alternatively, the Joint Powers Authority may extend its term to continue to oversee implementation of the Habitat Plan.

Comment Letter 55—Stuart Weiss, PhD, Chief Scientist, Creekside Center for Earth Observation, No Date

Response to Comment 55-1

The Wildlife Agencies and Local Partners acknowledge the expression of support.

No changes to the Habitat Plan are required.

Response to Comment 55-2

The Wildlife Agencies and Local Partners acknowledge the expression of support.

No changes to the Habitat Plan are required.

Response to Comment 55-3

The Wildlife Agencies and Local Partners recognize the ongoing and cumulative impacts of atmospheric nitrogen deposition on the serpentine ecosystem; however, Habitat Plan implementation to benefit all serpentine covered species is limited to conservation strategy implementation within the Reserve System, as identified in Habitat Plan Chapter 5, and avoidance and minimization measures identified in Habitat Plan Chapter 6.

No changes to the Habitat Plan are required.

Response to Comment 55-4

The Wildlife Agencies and Local Partners acknowledge the commenter's concern.

No changes to the Habitat Plan are required.

Response to Comment 55-5

The Implementing Entity will utilize all best available science, including case studies of other successful management actions, when developing reserve unit management plans.

No changes to the Habitat Plan are required.

Response to Comment 55-6

The Wildlife Agencies and Local Partners acknowledge the commenter's concern.

No changes to the Habitat Plan are required.

Response to Comment 55-7

The Implementing Entity will utilize all appropriate management tools to ensure lands are enhanced for the benefit for covered species. Once land is incorporated into the Reserve System, access for management purposes will be facilitated.

No changes to the Habitat Plan are required.

Response to Comment 55-8

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 55-9

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 55-10

The Wildlife Agencies and Local Partners acknowledge the commenter's concern.

No changes to the Habitat Plan are required.

Response to Comment 55-11

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 55-12

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 55-13

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 55-14

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 55-15

The Wildlife Agencies and Local Partners acknowledge the commenter's concern.

No changes to the Habitat Plan are required.

Response to Comment 55-16

Comment is addressed in Master Response #5.

Revisions to the Habitat Plan will be consistent with Master Response #5.

Response to Comment 55-17

A draft conservation easement template was developed by the Local Partners and reviewed by stakeholders, including many from the ranching community, prior to release of the Final Habitat Plan.

No changes to the Habitat Plan are required.

Response to Comment 55-18

The Local Partners and Wildlife Agencies agree that the accountability for conservation needs to be straightforward. In order to ensure that the covered species and habitats are being conserved, an annual report is required that includes a summary of all impacts by land cover type, modeled species habitat, critical habitat, and covered plant occurrence. The annual report will also include a description of the conservation actions; a cumulative summary of land cover/modeled habitat acquired, restored or enhanced; and numerous other elements intended to demonstrate that species and natural communities are protected (Habitat Plan Section 8.11).

No changes to the Habitat Plan are required.

Response to Comment 55-19

The Wildlife Agencies and Local Partners acknowledge the commenter's concern. The Wildlife Agencies and Local Partners agree that on-the-ground management is rather straight forward. Habitat Plan Chapter 7 is meant to provide a framework and guidance on how monitoring and adaptive management should occur, while Habitat Plan Chapter 8 is meant to provide an implementation structure. The framework, guidance, and structure provided in these chapters are consistent with other approved NCCPs.

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The Implementing Entity will conduct outreach to local private and public landowners and residents that will include education on the management goals and objectives as well as implementation techniques. The focus of public education and outreach activities will be to raise landowner and public awareness of reserve management goals, actions, and methods and the ways in which the public can support them. To that end, the Implementing Entity will ensure development and management of a public website for the Habitat Plan. Where appropriate, the Implementing Entity will develop and publish guidelines for local landowners and provide educational programs to assist in the implementation of these guidelines. Public education and outreach will be coordinated with other local agencies providing similar services in the study area (e.g., County Parks, SCVWD, and the Open Space Authority).

Before the end of the permit term, the Implementing Entity will also determine the administrative structure necessary to continue management on the Reserve System in perpetuity. For example, management responsibility may be delegated to one of the Permittees to continue to oversee in perpetuity. Alternatively, the Joint Powers Authority may extend its term to continue to oversee implementation of the Habitat Plan.