



SANTA CLARA VALLEY
HABITAT AGENCY

2021 ANNUAL REPORT

**FOR THE
SANTA CLARA VALLEY HABITAT PLAN
REGIONAL GENERAL PERMIT (RGP-18)**

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Section 1

Introduction

This is the sixth annual report for the Santa Clara Valley Habitat Agency (Habitat Agency) Santa Clara Valley Habitat Plan (Habitat Plan) Regional General Permit (RGP). The Habitat Plan RGP (RGP 18), was originally issued on January 15, 2016 by the U.S. Army Corps of Engineers (Corps), and provides programmatic permit coverage for 17 categories of activities under Section 404 of the Clean Water Act. RGP 18 was reissued on January 28, 2021, and this is the first annual report associated with the reissued RGP.

The Habitat Plan RGP includes specific terms and conditions, all of which must be met for covered activities to be verified. General Condition 27, Reporting Responsibilities, requires the permittee to submit an annual report to the Corps by March 15 of each year in accordance with the procedures outlined in the RGP 18 Notification and Program Management Process (Attachment 2 of RGP 18). This report provides the required information to notify the Corps of the previous year's activity related to the RGP.

2.1 Summary of Reporting Year Activities

The following project was implemented under the Habitat Plan RGP in calendar year 2021.

- **Red Fox Creek Bridge Replacement.** The purpose of this project is to replace the existing New Avenue bridge over Red Fox Creek with a wider, higher bridge. The project results in impacts to approximately 0.001 acre of seasonal wetlands and 0.09 acre of non-wetland waters of the U.S.

Five additional RGP18 applications were submitted in 2020 and reviewed by the Habitat Agency in 2021. All five applications are currently under Corps review.

Appendix A provides a summary of all projects that have used the Habitat Plan RGP for permitting impacts to Waters of the U.S., including the watershed in which the project occurred and acres and/or linear feet of impact.

2.2 Summary of Issues

RGP 18 Expiration and Reissuance

The original RGP 18 was due to expire on January 15, 2021. On May 5, 2020, the Habitat Agency submitted a formal request to re-issue the permit for an additional five years. The Corps considered reissuance and modified the RGP to eliminate unnecessary elements and provide greater clarity and flexibility in the document to facilitate more streamlined permit review and approvals. The Interim Mitigation Strategy was removed because the developing In-Lieu-Fee Program is close to being approved by the IRT and the ILF will then provide all necessary mitigation tracking. On January 15, 2021, the Habitat Agency was informed that the Draft RGP Reissuance was complete and would be sent to the Agency for review. After review of and slight revision to the Draft, RGP 18 was reissued on January 28, 2021.

In Lieu Fee Program

The RGP contemplates the development of an In-Lieu Fee (ILF) program to provide a programmatic mitigation approach for future RGP applications. The Habitat Plan ILF Program prospectus was developed in late 2016, submitted to the Corps on February 17, 2017, and distributed to the Interagency Review Team on March 1, 2017. The public comment period for the prospectus was open from July 11, 2017, to August 11, 2017 and by November 16, 2017, the Habitat Agency provided responses to public comments. On January 11, 2018, the Corps provided direction to the Habitat Agency to begin preparation of the Draft Enabling Instrument to support the ILF Program.

On April 30, 2019, the Habitat Agency submitted the Draft Enabling Instrument to the Interagency Review Team (IRT). By July 24, 2019, the Corps provided responses to the Draft ILF Enabling Instrument review and the ILF was placed on the IRT agenda for October 15, 2019. At the IRT meeting, the team discussed a credit release schedule, crediting factors and mitigation project proposal review process. On May 4, 2020, the Habitat Agency provided the Corps with an updated

Draft Enabling Instrument and responses to comments from the IRT. Based on the extensive comments received by the IRT after a round of revisions to the Instrument, the Habitat Agency also provided a brown bag presentation to familiarize the IRT members with the Habitat Agency and its conservation strategy. By June 9, 2020, the Corps' informed the Habitat Agency that the ILF Draft Instrument is complete and shared it, with responses to comments with the IRT. For the remainder of 2020 and the first half of 2021, the Habitat Agency met periodically with the IRT members to flush out all comments and reach consensus on the ILF Program implementation.

Many of the concerns of the Corps and other IRT members have been addressed through the series of meetings in late 2020 and 2021. The remaining issue to be resolved is interagency consensus on the Conservation Easement template.

Section 3 Project Details

This section provides details of the project covered under the Habitat Plan RGP during the reporting year.

1. Project Name: Red Fox Creek Bridge Replacement Project

- **Corps Permit Number:** Authorized under SPN-2020-00468S
- **Amount of Authorized Fill within Wetlands and Waters of the U.S.:** 0.091 acre
- **Location of Impact by Hydrologic Unit Code (HUC):** HUC 12-180600020303, Lower Llagas Creek

Summary of Action: The project will replace the existing New Avenue bridge with a wider, higher bridge. Work will include replacement of the bridge, recontouring the stream channel up and downstream of the new bridge, and realigning and recontouring an agricultural ditch parallel to New Avenue. Construction will occur during the dry season (approximately April 15 to October 15); however, in the event that water is present in Red Fox Creek during the construction period, the channel will be dewatered with clean bagged gravel or similar. In total, up to 0.001 acre of seasonal wetlands in the agricultural ditch and approximately 0.09 acre of non-wetland waters of the U.S. will be impacted by the project.

- **Location Coordinates:** 37.047544° N, -121.545158° W
- **Permittee:** Santa Clara County Roads & Airports Department
- **Waterway:** Red Fox Creek
- **NMFS and SHPO Consultation Requirements:** The project does not include work performed in the vicinity of any habitats occupied by listed species protected under the jurisdiction of NMFS. Caltrans, as the federal lead agency for this project, provided compliance with Section 106 of the National Historic Preservation Act by fulfilling their responsibilities under the 2014 “First Amended Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Office, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California.”
- **Status of Construction:** Construction is scheduled to commence in April 2023.
- **Compensatory Mitigation Requirements:** No compensatory mitigation was required for this project.

Section 4

Mitigation Summary

Attachment 3 of the originally issued RGP is the Interim Mitigation Strategy (IMS). The IMS complies with the federal Mitigation Rule (33 Code of Federal Regulations Part 332; hereafter, “mitigation rule”) and indicates mitigation can be provided by: 1) participating in an ILF program; 2) purchasing credits from a Corps-approved mitigation bank; or 3) developing permittee-responsible mitigation.

Currently, the Habitat Plan ILF Program is under development. There is one Corps-approved mitigation bank located in San Benito County just south of the Santa Clara County border with a service area that extends into Santa Clara County (the Pajaro Mitigation Bank) that may provide opportunity for purchase of wetland mitigation credits. Finally, the Habitat Agency is pursuing permittee-responsible mitigation in one of two ways: 1) requiring applicants to pursue mitigation on their own, or 2) developing mitigation projects to cover future mitigation needs by requiring applicants to pay the Habitat Plan impact fees and fees to cover IMS requirements to offset the project impacts.

One mitigation project, the Calero County Park Pond and Wetland Restoration Project, was constructed in 2016 and is currently in the monitoring phase. A second mitigation project, the San Felipe Creek Restoration Project was completed in 2018 and is also in the monitoring phase. Two new mitigation projects are in planning and development with construction anticipated to occur in 2023.

The following sections provide a status update of the Habitat Plan ILF Program and summary of permittee-responsible mitigation activities.

4.1 In-Lieu Fee Program Status

As stated in Section 2.2, *Summary of Issues*, the Habitat Agency is pursuing the establishment of an ILF program to support the Habitat Plan mitigation program and other wetland mitigation needs. As of early 2022, the Habitat Agency was resolving final outstanding issues with the Corps and the other IRT agencies, primarily reaching interagency consensus on the Conservation Easement template, with a goal of establishing the ILF program by late spring 2022.

4.2 Permittee-Responsible Mitigation Projects

The Habitat Plan RGP requires the Habitat Agency to document and track the permittee-responsible mitigation carried out under the IMS. The credits generated by these initial IMS projects will be transferred into the Habitat Plan ILF Program once it is established. The projects will be incorporated via an ILF Program Amendment.

Table 1 provides a summary of the restoration projects constructed by the Habitat Agency, by year, which provide permittee-responsible compensatory mitigation. Table 2 provides a ledger of accrued mitigation credits and debits.

Table 1. Summary of Constructed Permittee-Responsible Mitigation Projects

Year Constructed	No. Projects Constructed	Project Name
2016	1	Calero County Park Pond and Wetland Restoration Project
2017	0	
2018	1	San Felipe Creek Restoration Project
2019	0	
2020	0	
2021	0	

Table 2. Ledger of Mitigation Credits and Debits

Project	Stream (lf) (404/401/1600/Habitat Plan)			Wetland (ac) (404/401/1600/Habitat Plan)			Pond (ac) (404/401 / 1600/ Habitat Plan)	Buffer (ac) (404/401/ 1600/ Habitat Plan)	Upland (ac) (Habitat Plan)
	Without Fish Estab	Without Fish Rehab	Without Fish Enhan	Seasonal Re- Estab/ Estab	Seasonal Rehab	Seasonal Enhan	Estab	Estab	Restor
Credit									
Calero County Park Pond and Wetland Restoration Project				0.18				0.12	
San Felipe Creek Restoration Project	860	7785	1000	0.38	2.18	1.31		1.24	0.40
<i>Total Credits</i>	<i>860</i>	<i>7785</i>	<i>1000</i>	<i>0.56</i>	<i>2.18</i>	<i>1.31</i>	<i>0.0</i>	<i>1.36</i>	<i>0.40</i>
Debit									
Coyote Ridge Lower Road Culvert Replacement Project			140			0.026			
<i>Total Debits</i>			<i>140</i>			<i>0.026</i>			

The following sections summarize the status of permittee-responsible mitigation constructed or in planning as of the end of the 2021 reporting year.

4.2.1 Constructed Projects

Mitigation Project Name: Calero County Park Pond and Wetland Restoration Project (2016)

- **Funds Paid for Mitigation:** The mitigation project cost \$571,941. Monitoring is expected to cost \$20,128 per year.
- **Amount of Mitigation Developed:** A total of 0.18-acre wetland and 0.12-acre buffer credits were established. These acreages will be further validated over time as the project achieves its success criteria.
- **Location of Mitigation Developed:** The mitigation project is located in Calero County Park, in the eastern foothills of the Santa Cruz Mountains in the Alamos Creek watershed (HUC Coyote 1805003; 37.187939° N, 121.810161° W).
- **Summary of Mitigation Status:** Construction was completed in 2016 and monitoring is underway.
- **Monitoring Results:** An As-Built Notification Report was submitted in February 2017 to document the installation of the pond and mitigation sites. The Habitat Agency plans to conduct 5 years of short-term post construction ecological monitoring at the pond and wetland mitigation sites, or until the success criteria are met.

The Year 5 (2021) mitigation monitoring report can be accessed on the Habitat Agency website at the following link:

<https://scv-habitatagency.org/340/Monitoring-Reports>

The Calero County Park Pond and Wetland Restoration Project is currently in the fifth year of the 5-year postconstruction monitoring and management period. Most of the applicable Year 5 performance standards were achieved, with a few exceptions including the California red-legged frog standard which calls for documented successful breeding in at least one monitoring year and the California tiger salamander performance standard which requires continued successful breeding in each year. California red-legged frogs have not been observed in Years 1-5 and it is unlikely that they have yet dispersed from nearby occurrences to the site. California tiger salamander breeding was observed in Years 1-3 and 5, but not in Year 4, perhaps as a result of the below average water year and very dry conditions, or because larval surveys were delayed due to Covid-19 restrictions. The project also fell short of the standard for wetland vegetation cover, with both pond and wetland mitigation sites exhibiting less than 70% vegetation cover in planting zones, likely due to very dry water conditions in Year 4.

Mitigation Project Name: San Felipe Creek Restoration Project (2018)

- **Funds Paid for Mitigation:** Construction and 5-year monitoring costs are estimated to be \$1,663,280; 10-year maintenance cost are estimated to be \$140,000; the endowment for long-term management and monitoring costs is to be \$618,857. Total cost is estimated to be \$2,322,137.

- **Amount of Mitigation Developed:** Mitigation credits associated with the project are calculated as: 9645 linear feet of stream credits, 3.87 acres of wetland credits, 1.24 acres of buffer credits, and 0.40 acre of upland (Habitat Plan only credits). An as-built survey is being conducted to confirm these numbers. These acreages will be validated over time as the project achieves its success criteria.
- **Location of Mitigation Developed:** The mitigation project is located in Joseph D. Grant County Park in Santa Clara County. The project is within the San Felipe Creek watershed (HUC Coyote 1805003; 37.320894° N, -121.696292° W).
- **Summary of Mitigation Status:** The project was built in late summer/early fall 2018.
- **Monitoring Results:** The As-Built Notification Report was completed in April 2019 to document the installation of the wetland rehabilitation and enhancement area and stream and riparian buffer area. Maintenance and monitoring will be performed for 10 years or until the performance standards have been met and will include regularly scheduled maintenance and monitoring visits. Qualitative monitoring was conducted quarterly during Year 1, and will be conducted annually during Years 2 through 10. Quantitative monitoring (transects and plots) will be conducted in the late spring/early summer during Years 2 through 10.

The Year 3 (2021) Mitigation Monitoring Annual Report can be accessed on the Habitat Agency website at the following link:

<https://scv-habitatagency.org/340/Monitoring-Reports>

In summary, the Year 3 MMP Annual Report concludes that the project has met some, but not all performance standards identified in the MMP. The site met the performance standards related to hydrology and geomorphology, except for the hydrology standard for Boyd's Creek Alluvial Fan. There were some deficiencies in performance related to the vegetation criteria, including container plant survival, absolute cover of wetland species and relative cover of native species. Site challenges that influenced site performance have been identified and include feral pig activity, irrigation system reliability and a below average water year. A Remedial Plan Memorandum (Appendix B of the Report) has been developed that summarizes adaptive management recommendations to correct performance deficiencies in the project, with the intent to bring the project back into conformance with all performance standards.

4.2.2 Projects in Planning

Mitigation Project Name: Pacheco Creek Reserve Restoration Project

- **Funds Paid for Mitigation:** Costs associated with mitigation and monitoring are currently under development.
- **Amount of Mitigation Developed:** Mitigation credits associated with the project are still under development.
- **Location of Mitigation Developed:** The mitigation project is located on the Habitat Agency's Pacheco Creek Reserve in the Pajaro River Watershed (Pajaro 18060002; 37.010484° N, -121.200182° W).

- **Summary of Mitigation Status:** The project is currently in the planning phase, with construction planned for summer of 2023.
- **Monitoring Results:** The monitoring phase will begin upon submittal of the As-Built Notification Report.

Mitigation Project Name: Pajaro River Agricultural Preserve Restoration Project

- **Funds Paid for Mitigation:** Costs associated with mitigation and monitoring are currently under development.
- **Amount of Mitigation Developed:** Mitigation credits associated with the project are still under development.
- **Location of Mitigation Developed:** The mitigation project is located at 2210 Bloomfield Avenue in Gilroy, on property owned by the Santa Clara Valley Open Space Authority in the Pajaro River Watershed (Pajaro 18060002; 36°57'50.31"N, 121°30'24.91"W).
- **Summary of Mitigation Status:** The project is currently in the planning phase, with construction planned for summer 2022 or spring 2023.
- **Monitoring Results:** The monitoring phase will begin upon completion of the project and submittal of the As-Built Notification Report.

Summary of RGP Covered Activity Impacts to Date

Table A-1 provides a summary of all projects that used the originally issued Habitat Plan RGP (years 2016-2020) for permitting impacts to Waters of the U.S., including watershed in which the project occurred and acres and/or linear feet (lf.) of impact. Table A-2 provides a summary of all projects that used the currently issued RGP (years 2021-2025) for permitting impacts to Waters of the U.S.

Table A-1. Summary of RGP Project Impacts 2016-2020

Corps Project No.	Perm. Impact (acres)	Perm. Impact (lf.)	Temp. Impact (acres)	Temp. Impact (lf.)	Mitigation Approach
<i>Non-Restoration Projects</i>					
Coyote 18050003					
2017-00081S	0.040	97			On site restoration
2018-00441S	0.121				Purchased 0.15 acre of wetland credits at the Pajaro River Mitigation Bank
2018-00310	0.1	40			On-site restoration
2020-00082S	0.031				No mitigation necessary due to small area of impact
Pajaro 18060002					
2017-00205S	0.030				Purchased 0.05 credits from Pajaro Mitigation Bank
2017-00273S	0.026	155	0.067	231	Used stored credit from State Route 87 Guadalupe River Wetland and Riparian Mitigation site
<i>Habitat Agency Restoration Projects</i>					
Coyote 18050003					
2016-00302S	0.002	6	0.110	109	Calero County Park Pond and Wetland Restoration Project
2017-00322S	0.393	2,331	0.012	40	San Felipe Creek Restoration Project

Table A-2. Summary of RGP Project Impacts 2021-2025

Corps Project No.	Perm. Impact (acres)	Perm. Impact (lf.)	Temp. Impact (acres)	Temp. Impact (lf.)	Mitigation Approach
<i>Non-Restoration Projects</i>					
Pajaro 18060002					
2020-00468S	0.091	295			No mitigation necessary due to small area of impact
<i>Habitat Agency Restoration Projects</i>					
None yet completed in the current RGP cycle					