



SANTA CLARA VALLEY
HABITAT AGENCY

2022 ANNUAL REPORT

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

Santa Clara Valley Habitat Agency
535 Alkire Avenue
Morgan Hill, CA 95037
Contact: Gerry Haas
669-253-6127
March 2023

Contents

Section 1 Introduction	1-1
Section 2 Annual Summary	2-1
2.1 Summary of Reporting Year Activities	2-1
2.2 Summary of Issues	2-1
Section 3 Project Details	3-1
Section 4 Mitigation Summary	4-1
4.1 In-Lieu Fee Program Status.....	4-1
4.2 Permittee-Responsible Mitigation Projects.....	4-2
Appendix A Summary of RGP Covered Activity Impacts to Date	1

Section 1

Introduction

This is the seventh 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 second 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 projects were approved by the Corps or implemented under the Habitat Plan RGP in calendar year 2022.

- **Meritage Homeowner’s Association Grading Violation Abatement.** The purpose of this project is to remove an unpermitted earthen dam and restore the original contours of an unnamed tributary to Bodfish Creek west of the City of Gilroy.
- **Hoey North Residential Development.** This project is a 72-lot residential development (subdivision) in the City of Morgan Hill.
- **Coyote Creek Trail, Marbury to Empire.** This project consists of the construction of a clear-span pedestrian bridge as an extension of the Coyote Creek Trail over Coyote Creek in San Jose.

Two additional RGP18 applications were submitted in 2022 (both for restoration mitigation sites), and 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

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. On 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 work through all comments and reach consensus on the ILF Program implementation. Discussions about requested revisions to the Conservation Easement Template took place through the second half of 2021 and the first half of 2022.

On September 20, 2022, the Habitat Agency circulated the final draft ILF Instrument, including the final Conservation Easement Template agreed to by all IRT members to the members for attorney review. By late 2022, USFWS and NMFS and the Corps had completed review and provided few comments of note. As of the date of this report, the final ILF Instrument with all approved attachments has been submitted to the Corps and circulated to the IRT. An approval date is pending for early 2023.

Section 3 Project Details

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

1. Project Name: Meritage HOA Grading Violation Abatement Project

- **Corps Permit Number:** Authorized under SPN-2009-0450
- **Amount of Authorized Fill within Wetlands and Waters of the U.S.:** 0.6 acre
- **Location of Impact by Hydrologic Unit Code (HUC):** HUC 12-180600020402, Bodfish Creek
- **Summary of Action:** The purpose of the Project is to abate unpermitted grading that resulted in the construction of a dam and pond within an intermittent unnamed stream on the Meritage HOA's open space parcel. The HOA's actions also resulted in roadcuts within adjacent oak woodland and serpentine grassland habitat. The 5.5-acre site is located near 4600 Meritage Court and Hecker Pass Highway in Gilroy, California. The abatement included removal of the dam and fill of the approximately 0.6-acre manmade pond. The abatement also included restorative grading of the project site to pre-existing contours, stream alignment, and vegetation conditions, including the re-creation of 412 linear feet of Category 2 intermittent stream channel. Work required the placement of approximately 4,320 cubic yards of permanent fill in approximately 0.6 acres of waters of the U.S.
- **Location Coordinates:** 37.00815°, -121.6486°
- **Permittee:** Meritage Homeowner's Association
- **Waterway:** Bodfish Creek, Uvas/Llagas Watershed
- **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. Incidental take of red-legged frog and California tiger salamander, if they exist within the project area, is mitigated through the payment of land cover impact fees to the Habitat Agency and is authorized through the HCP/NCCP. The Corps conducted consultation with SHPO in compliance with Section 106 of the National Historic Preservation Act.
- **Status of Construction:** Construction was completed in late summer 2021.
- **Compensatory Mitigation Requirements:** No compensatory mitigation was required for this project as it was a restoration site.

2. Project Name: Hoey North Residential Development Project

- **Corps Permit Number:** Authorized under SPN-2004-29032S
- **Amount of Authorized Fill within Wetlands and Waters of the U.S.:** 0.09 acre
- **Location of Impact by Hydrologic Unit Code (HUC):** HUC 12-180600020402, Uvas Creek

- **Summary of Action:** The project involves subdivision of the site for the construction of 72 residential lots, the creation of seven open space parcels, and two private street parcels, in the Hecker Pass North Cluster area in conformance with the Hecker Pass Specific Plan approved by the City of Gilroy in 2005. The proposed project will preserve on-site drainage and improve conditions relative to riparian cover, flood flow conveyance and water quality, and will remedy a long-standing flooding problem at Hecker Pass Highway and adjacent properties downstream. It will also redirect seasonal flows into a larger capacity channel with opportunities for riparian habitat restoration and the establishment of a wildlife corridor through the Specific Plan area.
- **Location Coordinates:** 37.013595°N, -121.617352°W
- **Permittee:** Hecker Pass North, LLC
- **Waterway:** Unnamed drainage in the Uvas Creek Watershed
- **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. Incidental take of red-legged frog and California tiger salamander, if they exist within the project area, is mitigated through the payment of land cover impact fees to the Habitat Agency and is authorized through the HCP/NCCP. The Corps conducted consultation with SHPO in compliance with Section 106 of the National Historic Preservation Act.
- **Status of Construction:** Construction is scheduled to commence in April 2023.
- **Compensatory Mitigation Requirements:** Compensatory mitigation for this project was provided through the purchase of 0.1-acre of wetland creation credits from the Pajaro Mitigation Bank.

3. **Project Name:** Coyote Creek Trail, Marbury to Empire Project

- **Corps Permit Number:** Authorized under SPN-2021-00430
- **Amount of Authorized Fill within Wetlands and Waters of the U.S.:** 0.096 acre
- **Location of Impact by Hydrologic Unit Code (HUC):** HUC 12-180500030204, Coyote Creek Creek
- **Summary of Action:** The City of San Jose Public Works proposes to extend the existing Coyote Creek Trail (bicycle and pedestrian path) approximately 0.5-mile to connect Marbury Road to Watson Park in San Jose. The project will include construction of a 12-foot wide and 163-foot long clear span (arched) bridge, supported by retaining walls and rock slope protection. 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:** 37.3601° N, -121.8743° W
- **Permittee:** City of San Jose Public Works Department
- **Waterway:** Coyote Creek

- **NMFS and SHPO Consultation Requirements:** Caltrans completed consultation with NMFS, which resulted in a determination that the project was not likely to adversely affect Central California Coast Steelhead or designated critical habitat for this species. In compliance with Section 106 of the National Historic Preservation Act, the project will retain a qualified cultural tribal monitor to oversee construction.
- **Status of Construction:** Construction is scheduled to commence in late spring 2023.
- **Compensatory Mitigation Requirements:** Due to the small scale of impacts associated with this project, no compensatory mitigation was required.

Section 4

Mitigation Summary

Currently, the Habitat Plan ILF Program is under development. 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.

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. The final ILF Instrument was provided to the Corps and IRT on February 6, 2023, and final agency signatures and approval are pending as of March 2023.

4.1.1 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. Project is going to construction bid early 2023.
- **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 permitting 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 2023.
- **Monitoring Results:** The monitoring phase will begin upon completion of the project and submittal of the As-Built Notification Report.

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 Interim Mitigation Strategy (IMS) that was associated with the originally-issued RGP. 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 6 (2022) mitigation monitoring report can be accessed on the Habitat Agency website at the following link:

<https://scv-habitatagency.org/DocumentCenter/View/1709/2022-Calero-Year-6-Monitoring-Report>

The Habitat Agency constructed the Calero County Park Pond and Wetland Restoration Project in 2016. The project was constructed to restore and establish pond and wetland habitats at two locations (the pond mitigation site and wetland mitigation site) in Calero County Park, located in the eastern foothills of the Santa Cruz Mountains in the Alamos Creek watershed. This project also targeted restoration and/or enhancement of habitat for the California red-legged frog, California tiger salamander, northwestern pond turtle, and Mt. Hamilton thistle. Having missed important success criteria in Year 5 (2021), an additional year of monitoring was added. 2022 marked the Year 6 monitoring effort for this project.

Year 6 management activities included infrastructure maintenance to weirs and a spring box, invasive plant species control, primarily focused on non-native weed species, and implementation of a technique to increase Mt. Hamilton thistle seedling recruitment where weeds are cleared around the base of individuals and the soil is lightly scarified. Because 2021–2022 was a below-average rainfall year, performance standards for target hydrologic regime were not applicable, and the pond water depth did not exceed 2 feet on August 31,

2021. The pond and wetland mitigation sites continued to show minimal sedimentation from Year 1 and continue to prove geomorphically stable.

All applicable wildlife performance standards were achieved, except for the California red-legged frog standard, which calls for documented successful breeding in at least 1 monitoring year. The California tiger salamander performance standard, which requires continued successful breeding in each year, is now considered to have met the criterion. California tiger salamander breeding was not detected in Year 4, but this species has been detected breeding in every other year for a total of 5 years. California red-legged frog was not observed in Years 1–6, indicating that the site location is not yet within range of source populations. Therefore, for now, this mitigation is considered potential California red-legged frog habitat, rather than active habitat. The goal of diminished presence of aquatic predators was met in Year 6; not only were populations of bullfrogs and Louisiana red swamp crawfish less than baseline conditions, drying appears to have effectively controlled these species for the time being.

The Mount Hamilton thistle population has been persistent throughout the project period, and individuals are considered to be more robust in Year 6 than in Year 1; however, the spatial extent and cover of Mt. Hamilton thistle was not observed as increasing and the number of individuals have decreased in Year 6. This trend is likely due to drought conditions through 2022, and the population is considered to be persistent. This population will continue to be monitored and managed as this project transitions into the long-term management period.

Jurisdictional wetland creation and restoration criteria have been met for both the pond and the wetland mitigation site. The wetland site met the percent wetland vegetation, despite drought conditions. However, the pond did not meet the percent wetland vegetation cover performance standard—likely attributable to early season inundation followed by drought in the later portion of the year. However, overall, the habitat goals of the pond mitigation site, as described in the project mitigation plan, have been achieved. Specifically, the pond mitigation site has seen improvement of water quality, erosion protection, habitat for Mt. Hamilton thistle, provision of breeding, foraging, and dispersal habitat for the California red-legged frog, and provision of foraging habitat for seasonal wetland associated birds.

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 4 (2022) Mitigation Monitoring Annual Report can be accessed on the Habitat Agency website at the following link:

https://scv-habitatagency.org/DocumentCenter/View/1718/2022-SanFelipeCreek_Restoration_Yr4_AnnualReport

Monitoring results for Year 4 of the San Felipe Creek Restoration Project consist of the restoration, establishment, and enhancement of aquatic resources along San Felipe Creek and its tributaries between the Corral and Cañada de Pala trails in the Joseph D. Grant County Park. Monitoring began in October 2018 following the completion of construction activities and will extend for a 10-year period through October 2028. Qualitative monitoring was conducted annually since Year 1 (2019), and quantitative monitoring began in Year 2 (2020) and continued through this year, Year 4 (2022).

The success of the project site is determined through comparison of the monitoring data to the performance standards and success criteria described in the San Felipe Creek Restoration Project Mitigation and Monitoring Plan. These include wetland re-establishment success criteria, wetland rehabilitation and enhancement performance standards, and stream and riparian buffer performance standards.

In Year 4, the project met many of the performance standards, but it missed several standards due, most likely, to the fact that 2022 is the 5th consecutive year of drought conditions for the region and the fact that many of the container plants had to be replaced in 2020 and 2021 which has resulted in plants that are smaller than they would have been if they had survived since 2019. Planting densities are considered acceptable to high for the site conditions, so this missed cover is most likely a result of young and drought-affected plants that haven't had enough time or precipitation to develop. The missed standards for some criteria were also related to the fact that the standards (e.g., relative cover of native species) are undifferentiated between monitoring years, and 2022 is within the early period of vegetation development. The site met all performance standards related to hydrology and geomorphology, and the site hydrology is performing as intended.

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
2004-29032S	0.096	17			Purchased 0.1 credits from Pajaro Mitigation Bank
2009-0450	0.58			412	On-site restoration
Coyote 18050003					
2021-0430	0.091	140	103		No mitigation necessary due to small area of impact
<i>Habitat Agency Restoration Projects</i>					
None yet completed in the current RGP cycle					