



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** July 23, 2007

Approved

Date

8/2/07

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** All

**SUBJECT: APPROVAL OF ACTIONS RELATED TO THE DESIGNATION OF REGIONAL PRIORITY CONSERVATION AREAS**

## RECOMMENDATION

Acceptance of Planning staff's approach for City staff to coordinate with other agencies to identify candidate areas, after completion of the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan, for Council to consider for future application to Association of Bay Area Governments /Metropolitan Transportation Commission's Focusing Our Vision (FOCUS) Program to designate regional Priority Conservation Areas.

## OUTCOME

Acceptance of Planning staff's recommended approach by City Council will allow City staff to coordinate with other local, State, and Federal agencies, non-government organizations, property owners, tenants, and other interested stakeholders, to identify candidate areas that may be appropriate for the designation of PCA. After completion of the HCP/NCCP, which is expected to occur by Summer 2009, City staff may nominate sites for Council to consider for submittal to FOCUS as candidate PCAs. ABAG has indicated that the FOCUS Program will provide another opportunity to submit applications for PCAs in 2008. Staff intends to participate in the priority conservation area program and will submit applications after completion of HCP/NCCP.

## BACKGROUND

FOCUS, short for Focusing Our Vision, is a multi-agency, regional planning initiative spearheaded by the Association of Bay Area Governments and the Metropolitan Transportation Commission in coordination with the Bay Area Air Quality Management District and Bay Conservation and Development Commission. It builds upon regionally adopted smart growth policies and programs and is funded by the State's Regional Blueprint Planning Program. Regional agencies, working with local governments and partners, intend to create a specific and shared concept of where growth can be accommodated (priority development areas or PDAs) and what areas need protection in the region (priority conservation areas or PCAs).

July 23, 2007

**Subject: Application for Priority Conservation Areas**

Page 2

PCAs are areas of regional significance that have broad community support and an urgent need for protection. These areas contain important agricultural, natural resource, watershed, historical, scenic, cultural, recreational, or ecological values and ecosystem functions. Knowing the region's near-term conservation priorities for targeting protection efforts may promote inter-jurisdictional collaboration and investment in these areas that are critical to the region's quality of life and ecological diversity. ABAG recently indicated that PCAs may be eligible for State funding through recently approved bond measures.

### **Previous Submittal to FOCUS of Priority Development Areas (PDA) Application by City of San Jose**

In response to FOCUS's previous request for nominations of PDAs, on June 26, 2007, the City Council adopted a resolution to submit an application to FOCUS for a PDA designation for an area that comprises consolidated and connected planned areas in Central and North San José envisioned in the San José 2020 General Plan (General Plan) for housing and employment near transit. As described in the General Plan, the areas within the proposed PDA include the City's key Special Strategy Areas, Planned Community/Specific Plan areas (Specific Plan areas), Strong Neighborhoods Initiative (SNI) Redevelopment Project Areas, and existing and planned passenger rail lines. After City Council adopted the PDA resolution on June 26, 2007, City staff submitted an application to FOCUS for a PDA designation on June 29, 2007. This application is currently being reviewed by FOCUS.

### **Call for Applications for Priority Conservation Areas (PCA) Designation**

As a follow-up to the call for applications for PDAs in June 2007, FOCUS has now issued a call for applications for PCA designation under the FOCUS program. Eligible applicants include local governments (cities, counties, and towns), tribes, water/utility districts, resource conservation districts, park and open space districts, land trusts and other land/resource protection nonprofit organizations in the nine-county San Francisco Bay Area. Applicants are strongly encouraged to collaborate and partner with other entities on the nomination of areas. Submittals are due August 17, 2007. Planning staff recommends that the City not apply for PCAs at this time for the reasons that are explained in the analysis that follows.

## **ANALYSIS**

### **Purpose of PCA designation**

The purpose of designating PCAs through the FOCUS Program is to accelerate protection and restoration of key natural lands in the San Francisco Bay Area through purchases or easements. Conservation may be promoted through regional designation by:

1. Coordinating conservation efforts within a regional framework of near-term priorities;
2. Building upon prior and existing land protection efforts and investments; and
3. Providing opportunities for forging new partnerships.

Nominated areas must display a high level of regional significance, consensus, and urgency. These areas should not already be protected and should be areas that will benefit from targeted purchases and easements in the near-term. Areas should be identified within the regional context of the conservation values and functions provided without delineating specific parcels. Identifying an area may help ensure that on the ground conservation efforts are supported and not hindered through this designation process.

### **Criteria for Selection**

There are three main criteria for selection of candidate PCAs:

- **Level of Consensus.** The level of community support or political will for protection of the area will be considered by the FOCUS Program. Existing plans that identify the area, including a jurisdiction's General Plan, strategic plans, and local habitat conservation plan/native community conservation plans can be presented to document community support.
- **Regional Significance.** How a candidate PCA promotes regionally significant conservation values is a consideration. Some examples of regionally significant conservation values that an area may provide include landscape/habitat linkages between large areas of distinct habitat type (patches), unique landscapes/features, large important farmland areas, landscapes with significant water protection and enhancement opportunities, large patches of critical habitat, connections for people (e.g., trails) and wildlife (e.g., corridors) on a regional scale, buffers for waterways, or other natural areas, separation of urbanized areas through open space networks, additions to regional parks, or other large protected areas. The area may also provide a service that benefits public safety or the economic vitality of the region, such as agricultural land or tourism.
- **Urgency.** The existing or potential threats to the ecological integrity of this area or to the efforts to protect this area will be considered. Existing or potential opportunities for the protection or restoration of this area and how ready the process is to proceed are also considerations.

### **Status of the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) and Relevance to PCA Consideration**

The pending Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) is a collaborative endeavor among six Local Partners in Santa Clara County. The Local Partners include the City of San Jose, the County of Santa Clara, Santa Clara Valley Water District, Valley Transportation Authority, the City of Gilroy, and the City of Morgan Hill.

The HCP/NCCP is intended to identify areas for protection (see attached flier of Frequently Asked Questions about the HCP/NCCP). Consisting of a Habitat Plan for a 520,000-acre Study Area in Santa Clara Valley (see attached map), the planning process for the HCP/NCCP is at the stage where three alternative conservation strategies have been released for initial review by local agency staff, the HCP/NCCP Stakeholders Group, and Wildlife Agency staff (from the California Department of Fish and Game, the United States Fish and Wildlife Service, and National Marine Fisheries Service). By the end of 2007, the partner agencies expect to have a set of policy questions regarding the future conservation strategy sent for review and comment by local agency elected officials. The Draft Habitat Plan is expected to be prepared in the first half of 2008; the Plan, along with the

Environmental Impact Report and Environmental Impact Statement, are anticipated to be scheduled for review starting in late 2008, with adoption by the participating Local Partners in late Spring or early Summer 2009.

### **Timeline for PCA Applications**

The deadline for submitting nominations for PCAs to FOCUS this year is August 17, 2007. Based upon the schedule for completion of the HCP/NCCP as described above, Planning staff has concluded that the timeline for PCA applications to FOCUS this year is premature, and instead recommends deferral of submittal until after completion of the HCP/NCCP.

### **Reasons for Recommendation of Deferred Action**

Planning staff concurs with the Santa Clara Valley HCP/NCCP Habitat Plan Program Manager that a submittal of candidate PCAs to FOCUS at this time would be inconsistent with the pending status of the HCP/NCCP. If FOCUS does amend its priorities to reflect future local adoption of conservation and land acquisition goals and targets, as recommended by the Habitat Plan Program Manager, and if the HCP/NCCP is subsequently adopted by the City of San Jose, then coordination with other agencies to identify candidate areas for Council to consider for future submittal to FOCUS for the designation of PCA may support regional conservation efforts. For these reasons, Planning staff recommends that Council accept staff's recommendation to research and identify candidate PCAs in coordination with other agencies and request that FOCUS accept nominations for PCAs again after the Santa Clara Valley HCP/NCCP has been completed and considered for adoption by the Local Partners' decision makers.

There are no identified potential financial benefits to be gained by submitting an application to FOCUS for PCA designation at this time, and there may be unintended consequences to nominating PCAs for protection through purchase or easement. Although Planning staff supports FOCUS's intent of fostering regional conservation through interagency collaboration, staff has concluded that this goal may be more effectively achieved after completion of the Santa Clara Valley HCP/NCCP.

### **EVALUATION AND FOLLOW-UP**

If the City Council chooses to accept Planning staff's recommendation, City staff may bring forward proposals for PCAs after completion of the Santa Clara Valley HCP/NCCP, tentatively by Summer 2009. If the City Council chooses to nominate sites for PCA designation now, Planning staff would provide a status report on the FOCUS selection process to City Council in early Fall 2007. The ABAG Executive Board is scheduled to adopt PCAs at its November 2007 meeting.

### **POLICY ALTERNATIVES**

1. The City Council may decide not to pursue future applications for PCAs.

**Pros:** The City does not have to commit to supporting the FOCUS program goals for regional PCAs.

July 23, 2007

**Subject: Application for Priority Conservation Areas**

Page 5

**Cons:** The City may not be eligible to participate in future regional conservation opportunities provided by FOCUS. Other than missing opportunities for interagency collaboration for regional conservation efforts, there are no obvious disadvantages with this outcome.

**Reason for not recommending:** The City may lose the potential to coordinate regionally in accordance with FOCUS program goals.

2. The City Council may choose not to accept staff's recommendation, and may decide to pursue applications for PCAs at this time.

**Pros:** The City Council can nominate sites for PCA designation now.

**Cons:** At this time, City staff can not recommend specific parcels, and can only consider large areas outside of the Urban Growth Boundary for eligibility. Therefore, Council would be nominating sites for future purchase or easements based on incomplete information.

**Reason for not recommending:** The City may encounter unintended consequences. Given the current short application period, there is not adequate time to contact affected private property owners and coordinate with outside agencies.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be made public and will be posted on the City's website. Staff is available to respond to questions from the public. City Council initiation of a process for City staff to coordinate with other agencies to identify candidate areas for future submittal to FOCUS to designate as regional PCAs will enable staff to conduct public outreach, research, and analysis, and propose areas for PCA designation in accordance with City Council Policy 6-30: Public Outreach.

### **COORDINATION**

The FOCUS process has been coordinated with the Department of Parks, Recreation and Neighborhood Services, the Environmental Services Department, and the City Attorney.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan Major Strategies, goals, and policies.

HONORABLE MAYOR AND CITY COUNCIL

July 23, 2007

**Subject: Application for Priority Conservation Areas**

Page 6

**COST SUMMARY/IMPLICATIONS**

Not applicable.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

The proposed resolution is covered by Reuse of the San Jose 2020 General Plan Final Environmental Impact Report, certified by the City Council on August 16, 1994, Resolution No. 65459.

*for*   
JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Laurel Prevetti at 408-535-7901.

**Attachments:**

1. Santa Clara Valley HCP/NCCP Flier of Frequently Asked Questions
2. Santa Clara Valley HCP/NCCP Study Area Boundary

c: Ken Schrieber, Program Manager, Santa Clara Valley HCP/NCCP

Pbce002/GP\_Team/FOCUS/CC Memo FOCUS Resolution PCA Designation

## **Frequently Asked Questions about the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP)**

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### **What is the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP)?**

The Santa Clara Valley HCP/NCCP will identify and preserve land that provides important habitat for endangered and threatened species. The land preservation is both to mitigate for the environmental impacts of planned development and public infrastructure operations and maintenance activities and to enhance the long term viability of endangered species.

In many areas of California, development of land for roads, housing and other needs adversely affects wildlife and fish protected by the federal Endangered Species Act (ESA) and the State Endangered Species Act (CESA). An HCP/NCCP looks at habitat resources on a large area basis and identifies conservation and mitigation measures to protect listed species while allowing for orderly development and public agency activities.

A Habitat Conservation Plan (HCP) is a document consistent with the federal Endangered Species Act (ESA) that allows local agencies to approve projects in endangered species' habitats in exchange for identifying mitigation strategies based on a coordinated regional plan for conserving natural communities and endangered species.

A Natural Community Conservation Plan (NCCP) is the state counterpart to the federal HCP and provides a means of complying with the California Endangered Species Act. The NCCP goes farther than the HCP in that it has to address mitigation of development impacts and actions necessary to promote the long-term restoration of species. Thus the State requirements go above and beyond the federal mitigation requirements. The Santa Clara Valley Local Partners are preparing a joint HCP/NCCP since the requirements of both documents are similar and the Partners desire coverage of state-listed species as well.

Once the plan is approved, resource agencies responsible for permitting land disturbing activities (including the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service) will issue permits to local agencies to allow limited impacts to endangered species. Local agencies will then administer the endangered species permits for specific projects rather than having permits issued by a State and/or federal agency.

### **Who are the Local Partners and why are they doing the HCP/NCCP?**

An HCP/NCCP was required in the early 2000s as part of State and federal approval of several local transportation projects (U.S. 101 widening from San Jose to Morgan Hill, the U.S. 101/Bailey Avenue Interchange, Highway 85/U.S. 101 Interchange, and the Coyote Valley Research Park). Four local agencies (i.e., the Local Partners) joined together to develop the HCP/NCCP. The original Local Partners (City of San Jose, County of Santa Clara, Santa Clara Valley Water District and Valley Transportation Authority) were joined in 2005 by the Cities of Gilroy and Morgan Hill.

Habitat conservation plans are a relatively new tool for the protection of endangered species and represent an important integration of land-use planning and habitat conservation. The Santa Clara Valley HCP/NCCP is being prepared to offer a more efficient process for protecting the environment and processing applications for local projects that may affect endangered species. Under our current system, local governments must evaluate projects individually in consultation with a variety of federal and state regulators to mitigate for habitat loss — a lengthy process that can cost both parties considerable time and money. The current system also does less to

protect wildlife because project specific mitigation measures result in land being set aside on a piecemeal basis, resulting in fragmented habitats that are less ecologically viable and also more difficult to manage.

### **What is the process for permission to develop in sensitive habitat areas?**

Private landowners, corporations, state or local governments, or other non-federal entities who wish to conduct activities on land that might harm or "take" wildlife that are listed as endangered or threatened must first obtain a permit from one or more Wildlife Agencies (the California Department of Fish and Game, U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service). The Santa Clara Valley habitat plan will ensure there is adequate mitigation for the effects of authorized incidental take while providing State and federal endangered species permit applicants' long-term assurances of regulatory compliance with State and/or federal requirements. State and federal approval of the HCP/NCCP will result in transferring issuance of project specific permits for impacts on endangered and threatened species to the local agencies.

### **What is the Santa Clara Valley HCP/NCCP process and schedule?**

The Santa Clara Valley HCP/NCCP began in 2005 and is expected to be complete by 2009. The current timeline anticipates completion of the draft conservation strategies in 2007, completion of the draft HCP/NCCP by 2008 and the final HCP/NCCP by 2009.

### **What are the boundaries of the Santa Clara Valley HCP/NCCP?**

The SCV HCP/NCCP covers approximately 520,000 acres, primarily within south Santa Clara County. The HCP/NCCP study area covers land from the Santa Clara/Alameda County border south to Santa Clara County's boundary with San Benito County, and from the western edge of San Jose east to the County boundary.

### **How will the impacts of the plan be analyzed? What level of environmental review is required related to the development of a Habitat Conservation Plan/Natural Community Conservation Plan?**

The California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requires an evaluation of a habitat plan's impacts on the human environment. In the case of the Santa Clara Valley HCP/NCCP, an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) will be prepared identifying and evaluating the plan's affect on the environment as a whole (such as impacts on the local economy, impacts from the loss of open space, etc.) in addition to the impact on the species listed in the permit.

### **Will the Habitat Conservation Plan/Natural Community Conservation Plan authorize new development? What will be the benefit of the HCP/NCCP to landowners?**

The HCP/NCCP will not approve any development or other projects. The HCP/NCCP will establish environmental safeguards should a local government choose to approve a particular project. Local governments will retain authority to approve or disapprove proposed development projects. For landowners wishing to develop a parcel of land, the HCP/NCCP will streamline the permitting process by pre-identifying mitigation obligations. In this manner, the HCP/NCCP will allow landowners seeking permits to pursue their projects with increased certainty of project timelines and associated costs.

## **What land-disturbing activities will be covered by the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan?**

The Santa Clara Valley HCP/NCCP will specifically state what land-disturbing activities will be covered by the State and federal permits issued in conjunction with the Plan. These activities are expected to include urban and rural development activities consistent with current city and County land use plans; maintenance and development of public infrastructure (water, transportation, etc.), activities within streams and management and monitoring activities within preserve lands.

## **Will I be affected if a preserve is developed next door to my property?**

The HCP/NCCP will include a "neighboring landowner protection" provision whereby properties adjacent to preserves developed as a result of the HCP/NCCP will be allowed to continue their activities without being impacted by an adjacent preserve of habitat area. This has been done successfully in several HCP/NCCPs.

## **Once approved, how long will the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan be in effect? How will the success of the HCP/NCCP be monitored throughout plan implementation?**

The duration of the Plan is proposed by staff from the Local Partners to be 50 years. A final decision on the permit term will be made when the State and federal permit applications are filed in 2008.

Implementation of the Santa Clara Valley HCP/NCCP will be adaptively managed. Adaptive management is a type of natural resource management where the results of actions are monitored to provide ongoing information to determine whether a specific course of action should be altered or refined. Incorporating new scientific findings into the HCP/NCCP is one way the plan will be adaptively managed.

## **How will stakeholders and the interested public be afforded opportunities to participate in HCP/NCCP process?**

Throughout the HCP/NCCP process, the following will be provided to interested parties:

- Timely information about the HCP/NCCP process, schedule and opportunities for public input
- Opportunities for interested parties to provide input at key milestones in the development process
- Informational updates after key decisions are made

This exchange of information will be provided by the following outreach activities:

- Open meetings with key stakeholders throughout the plan-development process
- Public updates when draft documents are available for review and comment
- Public open houses, fact sheets and news releases
- Regular updates to the project Web site

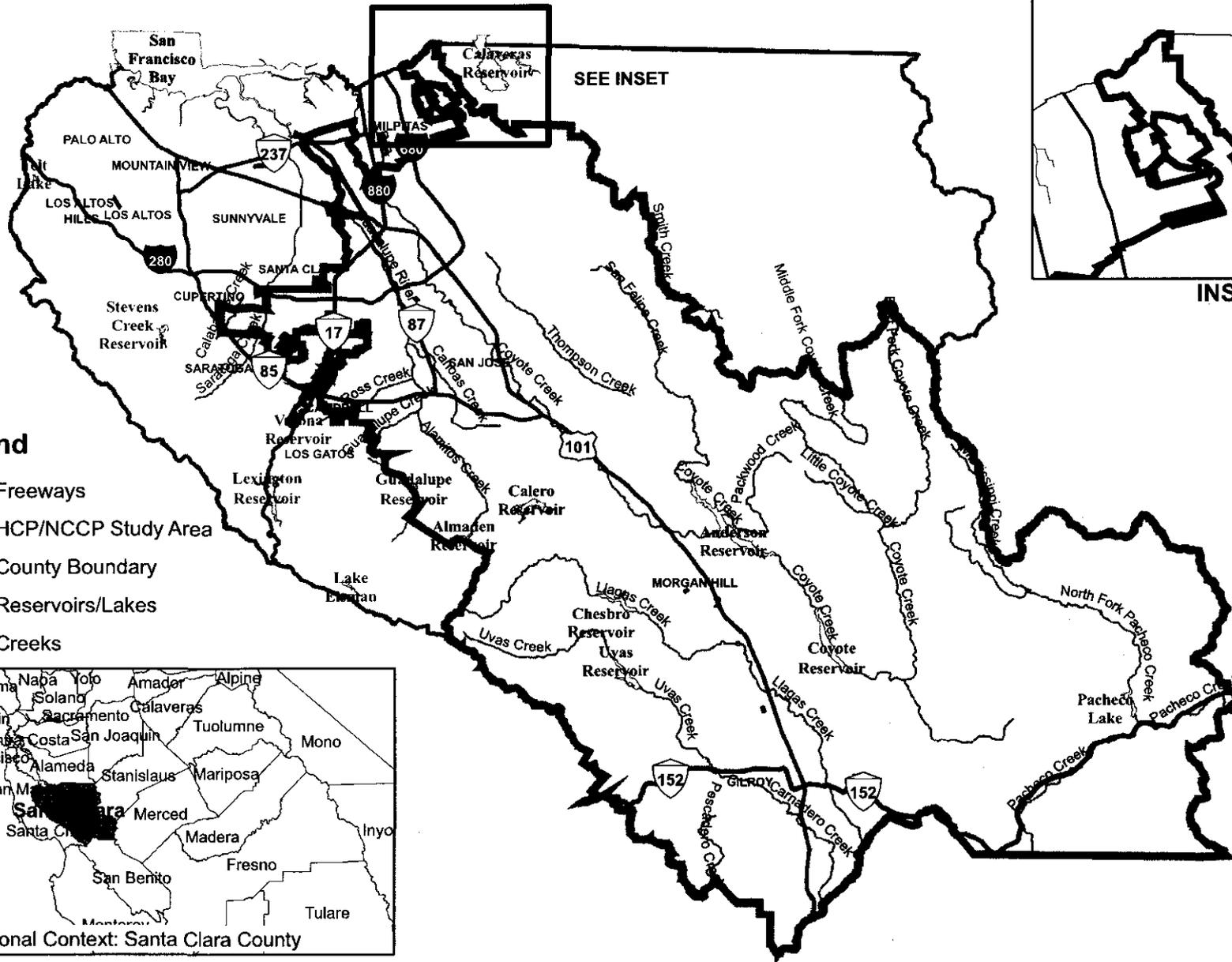
## **How can stakeholders contribute to and evaluate the Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) and planning process?**

In reviewing the adequacy of the HCP/NCCP and planning process, stakeholders should consider the following questions and provide written comment:

- What geographic area, species, habitat types and activities are covered by the plan?
- How long will the plan last?
- What are the scientific assumptions of the plan?
- What alternatives are considered and what impacts are analyzed?
- What will the plan do for listed and unlisted species?
- Does the plan comply with, or require changes to, other applicable laws?
- What provision is made for funding the plan?
- How will implementation of the plan be managed and monitored?

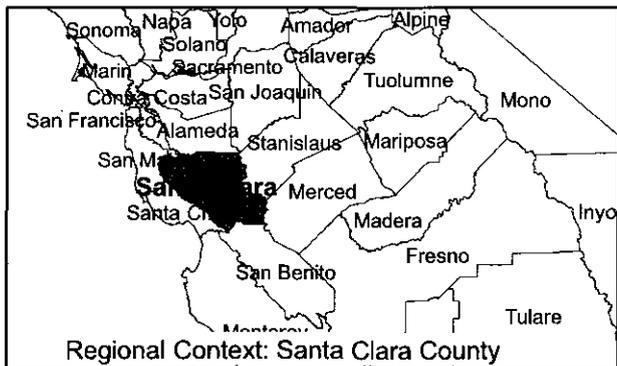
### ***How is development of the HCP/NCCP being funded and will public financing be required to implement the Santa Clara Valley HCP/NCCP?***

The costs for developing the HCP/NCCP are being funded by the Local Partners including the County of Santa Clara; the cities of San Jose, Gilroy and Morgan Hill; the Santa Clara Valley Water District, and the Santa Clara Valley Transportation Authority and by the federal Fish and Wildlife Service through habitat planning grants. Implementation of the HCP/NCCP will be partially funded by the Local Partners and private sector interests who need to obtain Endangered Species Act coverage for their projects. It is anticipated that both development-related fees and more broadly based revenue sources will be part of the funding plan. State and federal grants to implement parts of the HCP/NCCP are also anticipated.



**Legend**

- Freeways
- HCP/NCCP Study Area
- County Boundary
- Reservoirs/Lakes
- Creeks



**Santa Clara Valley HCP/NCCP Study Area Boundary**



While the GIS data used to create this map is deemed reliable, it should be only used for planning purposes and the Local Partners assume no liability

