

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: JOSEPH HORWEDEL

SUBJECT: SEE BELOW

DATE: February 22, 2011

Approved

Date

2-23-11

COUNCIL DISTRICT: City-Wide
SNI AREA: All

SUBJECT: SANTA CLARA VALLEY HABITAT CONSERVATION PLAN - STATUS REPORT

OUTCOME

The purpose of the review of the Draft Santa Clara Valley Habitat Plan (Plan) and related documents is to provide an opportunity to evaluate and comment on the Plan's content in advance of final action. This review period will present a forum for parties to understand the multitude of perspectives regarding the Plan's proposals, as well as an opportunity for the Plan's preparers to analyze and synthesize the comments received for final consideration.

BACKGROUND

The Plan is a Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP), which was required in July 2001 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 Plan). Four local agencies (Valley Transportation Authority [VTA], County of Santa Clara [County], City of San Jose, and Santa Clara Valley Water District [SCVWD]) were subject to the requirement and jointly committed to the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS), also known as the Wildlife Agencies, to develop the HCP/NCCP. Initial work included development of a work plan and approval in 2004 of a Memorandum of Understanding among the four original Local Partners. The four original Partners were joined in 2005 by the cities of Gilroy and Morgan Hill. The six Local Partners signed a Planning Agreement with the CDFG and USFWS in October 2005. Intense technical work on the Santa Clara Valley HCP/NCCP, now known as the Santa Clara Valley Habitat Plan (Plan), started in 2005.

The Plan is intended to meet Federal and State endangered species requirements. The Plan's HCP component is consistent with the Federal Endangered Species Act that allows local agencies to

approve projects in endangered species' habitats in exchange for identifying mitigation strategies based on a coordinated large area plan for conserving endangered species and related natural habitat. The Plan's NCCP component is the State counterpart to the Federal HCP in conformance with the California Endangered Species Act. The NCCP goes farther than the HCP in that it has to address not only mitigation of development impacts but also actions necessary to promote the long-term restoration and enhancement of species and their related habitat areas, known as natural communities. Thus, the State requirements go above and beyond the Federal mitigation requirements.

The purpose of an HCP/NCCP is to offer a more efficient process for protecting the environment and authorizing local development that may affect endangered species and natural habitat. Under the current system, the Local Partners and private developers must evaluate projects individually. Endangered species regulations can require consultation with a variety of Federal and State regulators to mitigate for environmental impacts. This can be a lengthy process for proponents, involving considerable time and money. In addition, the current system does less to protect the environment because of its piecemeal approach, resulting in fragmented habitats that are less ecologically viable and more difficult to manage. As endangered species protections continue to expand in response to increasing development impacts, there is a mounting need to provide an assured and balanced structure for development and resource conservation that can be sustained over a long period.

ANALYSIS

The entire Plan involves evaluating the three Draft documents, the Draft Plan, Draft EIR/EIS and the Draft Implementing Agreement (IA). The Draft Plan provides a blueprint for all research and actions necessary to implement a habitat conservation plan. The Draft EIR/EIS offers an environmental analysis of the Plan's actions, in compliance with State and Federal law. The Draft IA is a contract between each Local Partner and the State and Federal Wildlife Agencies that establishes the basic obligations of all parties for Plan implementation. Development of all three documents has been undertaken in close coordination with the staff and attorneys representing the Local Partners, as well as the elected representatives of the Local Partners (known as the "Liaison Group"). A copy of the Plan summary brochure is attached. The most complete and concise summary of the Plan is provided in Chapter 2 of the Draft EIR/EIS.

Review Process

Preparation of the Plan and related documents is the responsibility of the Local Partners. The Local Partners, including the County, SCVWD, VTA, and the cities of San Jose, Morgan Hill and Gilroy, previously reviewed Administrative Draft Plan text in 2008 (First Administrative Draft) and in 2009 (Second Administrative Draft). The Plan concepts and products have been reviewed by the Council a number of times during Plan preparation.

Should the Local Partners approve the Final documents later this year, the State and Federal Wildlife Agencies would prepare the required Biological Findings and issue, by late 2011/early 2012, the Endangered Species Permits. Following the issuance of Permits, the Local Partners would have 120 days to approve ordinances to enact the Permits. If the aforementioned schedule is attained, active day-to-day implementation of the Plan is targeted to begin on July 1, 2012.

Plan Framework

This section provides a more detailed explanation of the Plan's framework, and the reasons why the Plan may be a more desired approach for managing development impacts.

Study and Permit Area: The Study Area, most of which will receive Endangered Species Permits under the Plan, covers approximately 520,000 acres within the county (see attached Study Area Map - Figure 1-2). This is the area in which impacts on species have been evaluated, development to be covered under the Plan (known as "covered activities") will occur, and most conservation actions will be implemented. The Study Area is bounded on the east by the Diablo Range, on the west by the Santa Cruz Mountains, on the south by San Benito County and on the north the City of San Jose limit line, outside of the baylands. With one exception, the Study Area excludes tidally influenced portions of the baylands because other programs are addressing marsh restoration and endangered species issues. However, regarding the protection of the western burrowing owl, the Plan includes conservation activities within the baylands portion of Santa Clara County and southern Alameda County, in an area referred to as the Expanded Study Area.

Permits issued by the USFWS and CDFG are proposed to apply to the Study Area, except for the area including Henry W. Coe and Pacheco State Parks. Both parks are excluded from the Permit Area based on a decision by the California Department of Parks and Recreation to decline participation in the Plan.

Permit Term: The Local Partners will receive a 50-year permit from the Wildlife Agencies after Plan adoption. The permits will apply to identified covered activities and establish a maximum amount of impact authorized by the Plan and the related conservation requirements. The 50-year term is longer than typically allowed by the Wildlife Agencies and is proposed in recognition of the Plan's comprehensive conservation strategy, which will address development impacts and promote long-term environmental benefits.

Covered Species: Through the endangered species permit process administered by the Local Partners, "incidental take" impacts to 21 listed and non-listed species will be authorized (see attached Covered Species list - Table 1-2). Ten of the 21 species (known as "covered species") are currently listed as threatened or endangered in State and/or Federal regulations. The 21 covered species were distilled from an initial list of 147 species based on: 1) potential to be affected by covered activities; 2) occurrence in the Study Area; 3) adequacy of species data; and, 4) the species' current or foreseeable State and/or Federal listing status. In exchange for the development impacts to the covered species, the Local Partners propose to administer a comprehensive conservation strategy to mitigate those impacts. In addition, the conservation strategy includes restoration and enhancement actions to promote the covered species and natural habitat (see below).

Covered Activities: The Local Partners identified covered activities through an assessment of public agency general plans, infrastructure plans, and their experience in facility operations and maintenance. The Plan will cover the following broad categories of covered activities including new urban and rural development, new public infrastructure and capital improvements, public operations and maintenance, SCVWD activities (e.g., repair and maintenance of dams, levees, pipelines and percolation ponds), and Plan implementation activities (e.g., improvements in the Reserve System).

An extensive list of activities not covered is identified in the Plan. Some of the notable activities not covered include:

- Activities where potential impacts cannot be clearly identified at present (e.g., high speed rail, new highway between I-5 and U.S. 101, etc.);
- Private sector activities that do not obtain a development, grading, building, or other permit authorizing construction;
- Routine and ongoing agricultural activities outside the planning limits of urban growth (Note: intensive agricultural activities such as Christmas tree farms, ornamental plant nurseries, dairies, and feedlots are not considered routine agricultural activities and are covered activities);
- Expansion of cultivated agriculture into natural lands (unless associated with an approved rural development project that is covered by the Plan);
- Vineyard development that is not assessed through a County permit process;
- Dam removal or the construction of new dams;
- Water importation from outside the SCVWD service area; and
- SCVWD stream maintenance program activities.

Conservation Strategy: The conservation strategy was designed to mitigate impacts on covered species and to contribute to the recovery and enhancement of these species. The conservation strategy is based on a set of biological goals and objectives developed specifically for the Plan. Conservation actions were then identified to achieve these goals and objectives. The conservation strategy consists of the following major components:

- Acquisition of land and the creation of a Reserve System, including regional connections between protected areas;
- Long-term management, enhancement, and in some cases, restoration of species and natural communities within the Reserve System;
- Development of a comprehensive aquatic conservation strategy to address the needs of covered amphibians and aquatic reptiles;
- Implementation of long-term, adaptive management and monitoring programs; and
- Implementation of avoidance and minimization measures on covered activities (known as “conditions” on covered activities).

At the heart of the conservation strategy is the creation of a Reserve System which will protect an estimated 58,000 acres, as detailed below, for the benefit of covered species, natural communities, biological diversity, and ecosystem function (see attached Land Acquisition Strategy map – Figure 5-8). Land acquisition and protection will create a network of reserves that accomplishes the following:

- Acquire and permanently protect up to 45,000 acres of land for the benefit of covered species, natural communities, biological diversity, and ecosystem function;
- Permanently protect 13,000 acres of existing parkland and enhance the long-term management and monitoring on those lands within the Reserve System;
- Protect, restore and enhance 100 miles of streams;
- Provide management and monitoring on protected lands to promote covered species;
- Preserve major local and regional connections between key habitat areas and existing protected areas; and

- Maintain quality public access and recreation for low intensity activities within the Reserve System that are complementary to the conservation strategy such as trail uses (hiking, biking and equestrian), interpretation/education, nature appreciation, backpacking, leashed dog access and informal picnicking.

The Santa Clara County Parks and Recreation Department will play a major role in the implementation of the Reserve System. As proposed in the Draft Plan, County Parks would contribute 13,000 acres of prime natural habitat from existing parkland at seven County Parks including Joseph D. Grant, Almaden Quicksilver, Santa Teresa, Calero, Uvas Canyon, Mt. Madonna, and Coyote Lake-Harvey Bear Ranch. Moreover, the Draft Plan proposes that the County would acquire an additional 8,100 acres for inclusion in the Reserve System through a future \$70 million contribution from the Park Charter fund over a 45-year period.

The Santa Clara County Open Space Authority (OSA) will also have an important role in implementing the Plan's conservation strategy. On a case-by-case basis, the OSA proposes to pursue joint acquisition of up to 7,500 acres for inclusion within the Reserve System. In addition, up to 1,000 acres of existing OSA land may be eligible for inclusion in the Reserve System at the onset of Plan implementation.

Development Conditions: A primary component of protecting endangered species and their habitat is the consistent use of comprehensive avoidance and minimization measures to be applied on covered activities. Conditions on covered activities are included in the Plan to:

- Minimize impacts during project construction;
- Ensure compliance with State and Federal plant and wildlife laws;
- Establish comprehensive stream and riparian setback requirements; and
- Protect water quality in wetlands and waterways.

Implementing Organization

The Liaison Group has had extensive discussions regarding various governance mechanisms and concluded that the best approach to implement the Plan will be through a Joint Exercise of Powers Agreement (JPA). A JPA is limited to the governmental powers held in common among the members. A primary duty of the JPA will be adoption of the development impact and other fees. For the Local Partners, adoption of development fees can be done by the cities and the County, but not by VTA or SCVWD. This distinction among partners has led to the proposal of a two-tiered JPA structure with 1) a Governing Board composed of elected representatives of the County and the three cities, and 2) an Implementation Board composed of elected representatives from VTA, SCVWD, County, and the three cities.

The Governing Board's role would be focused on budget and impact fee approvals after receiving recommendations from the Implementation Board. All other JPA functions, including appointment of an Executive Director, would be the responsibility of the Implementation Board. The Liaison Group also strongly advocates minimizing JPA administration staffing, to the extent possible, while maximizing use of contract resources, including contracts with Local Partners, for various implementation services and expertise. The Draft JPA is under development and will be available for public review in spring 2011.

Major Issues

The Plan's complexity and long-term responsibilities have elicited a number of concerns from the Local Partners and other parties. A few of the major issues that have been evaluated are described below. Any other major issues identified during the upcoming public outreach will be orally presented to the Committee at their meeting.

Is it necessary to do the NCCP, which adds considerable non-development related costs to the Plan?

The Plan's HCP element addresses mitigation of endangered species-related impacts from development. The Plan's NCCP element goes one step further to include actions that promote the long-term restoration and enhancement of species and natural habitat. Last year, the Local Partners researched the possibility of scaling back the Plan to be an HCP-only document. The assumption was that there might be some cost savings and efficiency from reducing the Plan scope to an HCP-only approach. A recent report to the Liaison Group (see attached 8/19/10 staff report) summarizes that investigation and includes the following conclusions:

- An HCP-only approach would require higher development impact fees;
- An HCP-only approach would have a shorter permit term and fewer covered activities which would contribute to further increases in development impact fees;
- An HCP-only approach would mean that a major State "no surprises" assurance would be unavailable;
- Shifting the current process to remove the NCCP would be time consuming, complex and expensive; and
- The current HCP/NCCP structure provides the most cost effective and efficient mechanism for Plan implementation.

After reviewing the staff report, the Liaison Group concurred with the recommendation to retain the current HCP and NCCP structure of the Plan.

Is the projected fee revenue sufficient for reserve management, especially in the first 5 years of permit term?

A key Plan policy is that implementation funding will not involve use of Local Partner General Fund resources, but will be funded primarily from development fees and other public sources. However with the continuing sluggish economy, development fees are difficult to estimate. The unpredictable nature of income from this source is a critical concern. While not assured, the major sources of public funds for non-mitigation purposes, including local (e.g., County Park Charter Fund, Open Space Authority funds), State (e.g., Park Bond funding) and Federal (e.g., USFWS acquisition grants), are relatively stable in the short-term and more likely to be realized, according to projections, than development fees. Moreover, because the Plan acknowledges credit for the County's contribution of 13,000 acres to the Reserve System and the potential for an additional 1,000 acres of existing OSA land, the Local Partners should make substantial progress in meeting the short-term acquisition targets at the onset of implementation.

Therefore, the most significant financial need in the short-term will be to fund Reserve System management and monitoring responsibilities. In acknowledgment of these concerns, the Wildlife

Agencies agreed to allow flexibility in how and when management tasks will be accomplished within the first five years of Plan implementation. In any event, prior to Plan consideration the Local Partners will have an ongoing responsibility to evaluate fee revenue in relation to implementation duties to determine what can be achieved annually.

Is it acceptable to have projects that might not otherwise require endangered species permitting become subject to "mitigation" with the SCVHP?

Objectives of the Plan include providing certainty and time savings for projects that might require endangered species permitting. At present, there is notable uncertainty as to whether and how a specific project will have to meet endangered species requirements. For projects that need permits, the cost of biological work, the length of time to obtain permits, and the cost of mitigation are highly uncertain and expensive. Furthermore, the Federal and State endangered species regulations continue to expand, affecting greater numbers of projects. A recent example of this trend is the State listing of the California tiger salamander during the Plan preparation, which has resulted in CDFG review of many more development projects.

The Plan will bring certainty, time efficiency and cost saving to the CDFG and USFWS permitting processes because the Local Partners agree to a long-term and comprehensive solution. In addition, covered activities will not be subject to additional Federal mitigation requirements should unforeseen circumstances arise during the permit term (50 years). While there will be many permitting benefits associated with Plan implementation, it is worth noting that some project proponents may pay more costly fees than currently is the case.

Can the Plan provide benefits for other State and Federal permitting?

Development is sometimes subject to other State and Federal permitting, such as through the U.S. Army Corps of Engineers (Corps) and the State Regional Water Quality Control Boards for water impacts. Although the Plan will not provide permits for water impacts, Corps permitting (under Section 404 of the Federal Clean Water Act) should be streamlined substantially as a result of the Plan. Issuance of a Section 404 permit typically requires the Corps to consult with USFWS in compliance with the Endangered Species Act. This consultation would address the federally listed species covered by the Plan. The Draft Implementing Agreement (Section 12.4) includes a condition that USFWS will not impose measures on a covered activity in excess of those required by the Plan, unless otherwise required by law. Using the Plan and its Biological Opinion will significantly shorten and simplify the work of USFWS in processing Corps permits.

In FY 2006, the Local Partners decided not to pursue securing a regional Section 404 permit through the Plan, in large part because of a lack of Corps interest and resources to participate in the Plan preparation. However, since that time the Corps and State Water Quality Control Board have indicated that they are willing to consider regional permits for covered activities implemented under an HCP/NCCP. Several other habitat plans, both adopted and under preparation, are pursuing these regional permits. By the time the Santa Clara Valley Habitat Plan is adopted, it appears likely that there will be established precedence for using the Plan to obtain regional permits for water impacts within the Study Area. Should this effort be successful, the development permitting process would be further streamlined and the Plan's conservation strategy would be more fully integrated.

EVALUATION AND FOLLOW-UP

Assuming that issues identified during review of the Draft documents will be addressed by the end of May, preparation of the Final Plan, Final EIR/EIS and Final IA will be undertaken in summer 2011. Review, public hearings and decision making by each Local Partner of the Final documents are targeted for August to early October 2011.

POLICY ALTERNATIVES

Not applicable at this time. Policy alternatives will be provided in conjunction with consideration of the Final Plan documents.

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 review of the Draft Plan is different from previous reviews in that it is an official public review of the Draft Plan along with a Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and Draft Implementing Agreement (IA). Public review notices have been published in the Federal Register, State Clearinghouse, and San Jose Mercury News. Several interested parties have been notified of the Draft Plan review process, as noted in Chapter 22 of the Draft EIR/EIS. In addition, the Plan's website (www.scv-habitatplan.org) offers electronic files of the three documents and lists the various public meetings for the Draft Plan review.

As part of the review process, community meetings were held on February 9, 2011 at the Morgan Hill Community Center and February 15, 2011 at the Peninsula Conservation Center in Palo Alto. The Chamber is hosting a meeting with the broader development community scheduled for February 17, 2011. A joint study session of the Planning Commission and Parks and Recreation Commission is scheduled for February 23 at 5:00 p.m. A City Council study session is proposed for March 3 at 1:30 pm. In addition, review of the Draft documents by the advisory committees and commissions, and elected officials of each Local Partner is scheduled for January to early April 2011. Formal consideration of the Final Plan documents is expected in fall 2011.

COORDINATION

The Valley Habitat Plan is being coordinated with the Departments of Environmental Services, Parks, Recreation and Neighborhood Services, Public Works, Airport, Transportation, City Attorney, County of Santa Clara, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, the cities of Morgan Hill and Gilroy, USFWS, NMFS, and CDFG. This memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The Santa Clara Valley Habitat Plan is consistent with applicable San Jose 2020 General Plan policies, particularly the Greenline/Urban Growth Boundary Major Strategy and the Natural Resources goals and policies. The draft Envision 2040 General Plan includes goals and policies that are consistent with the Draft Habitat Plan. The on-going preparation of each draft document is being monitored to ensure final document alignment.

COST SUMMARY/IMPLICATIONS

There are two different cost implications, the short term plan preparation costs to the City and the long term Plan implementation costs.

Plan Preparation Costs

Per the Local Partner MOU, the City is responsible for a 20% cost share to prepare the Plan. The FY2010-11 Budget includes \$167, 595 for the City's share of the projected consultant costs. PBCE currently devotes staff time to participate in the Plan preparation process, with an annual cost of \$67,230 and significant time from the City Attorney's Office to support the Plan.

Plan Implementation Costs

Implementation Costs: The total cost of implementing the Plan, in current dollars, is approximately \$938 million and is further detailed below. Plan costs were estimated from a detailed model of all major tasks based on actual cost of tasks. These estimates were derived from the data and experience of park and open space agencies in Santa Clara County as well as the larger Bay Area. Of note is the creation of an endowment during the permit term to fund all the post-permit responsibilities. An endowment of \$178 million in current dollars is needed to generate average annual returns of \$3.4 million to fund post-permit management and monitoring of the Reserve System. The endowment is a State and Federal requirement for any endangered species permit. By requiring funding for the endowment throughout the permit term, the Plan will spread the endowment costs among all who benefit from coverage.

Specific Plan implementation costs over the 50-year permit term (in current dollars) are projected to be:

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| COST CATEGORY | 50 YR COSTS | PERCENT |
|--|---------------|---------|
| Land Acquisition | \$384,131,000 | 41.0 |
| Program Administration | 55,667,000 | 5.9 |
| Habitat Restoration/Creation | 79,888,000 | 8.5 |
| Environmental Compliance | 7,687,000 | 0.8 |
| Reserve Management and Maintenance | 133,799,000 | 14.3 |
| Recreation and Public Access | 15,935,000 | 1.7 |
| Monitoring, Research and Scientific Review | 41,620,000 | 4.4 |
| Remedial Measures | 10,498,000 | 1.1 |
| Endowment | 178,090,000 | 19.0 |
| Contingency | 30,730,000 | 3.3 |
| Total | \$938,045,000 | |

Implementation Funding: Plan implementation will be funded from 1) impact fees on land development (about 58% of total funding), and 2) non-fee funding from local, State and Federal sources as well as interest on the endowment funds (about 42% of total funding). Specific sources of revenue, in current dollars, are:

| REVENUE CATEGORY | 50 YR REVENUE | PERCENT |
|--|---------------|---------|
| Development Impact Fees | | |
| Land Cover Zones | \$278,120,000 | 29.6 |
| Nitrogen Deposition | \$18,100,000 | 1.9 |
| Other Fees (serpentine, burrowing owl, temporary impacts, etc) | 63,449,000 | 6.8 |
| Endowment | 106,930,000 | 11.4 |
| Wetland Impacts | 81,700,000 | 8.7 |
| Total Development Impact Fee Revenue | \$548,299,000 | 58.4 |
| Non-fee Revenue | | |
| Local Land Acquisition | \$163,300,000 | 17.4 |
| State and Federal Funds | 155,500,000 | 16.6 |
| Endowment Fund Interest | 71,160,000 | 7.6 |
| Total Non-Fee Revenue | \$389,960,000 | 41.6 |
| Total Revenue | \$938,259,000 | |

Development Impact Fees: Various fees associated with development impacts are proposed in the Plan and further detailed below. Most fee categories include an endowment component for perpetuity costs after the permit term has expired, and a cost recovery component for the Plan preparation.

Land Cover Zone Fees: Public and private sector development fees are one-time fees based on the type and amount of land that a particular activity affects. Impact fees vary depending on the habitat value of the land affected. There are three fee zones and one non-fee zone:

- **Zone A: Natural Land.** Sites are strongly dominated by natural habitat including grassland, oak woodland, and chaparral. Zone A occurs outside the Santa Clara Valley floor within the Diablo Range, Santa Cruz Mountains, and adjacent foothills. Development in this zone is expected to have, on average, notably greater effects on covered species and natural communities than in other zones. The impact fee, based on land lost to effective habitat use, is projected to be \$19,720 per acre.

- Zone B: Agricultural and Valley Floor Rural Residential Lands. Sites are strongly dominated by currently or formerly cultivated agricultural land. Zone B includes much of the valley floor, lower-elevation rural residential land, and small adjacent valleys such as the Almaden Valley. In general, covered activities that occur in this area have less environmental effect than do activities in Zone A. The impact fee is projected to be 70% of the Zone A fee (\$13,790 per acre).
- Zone C: Small Vacant Sites. Zone C includes sites that meet all the following criteria:
 - Undeveloped;
 - 0.5 to 10.0 acres;
 - Surrounded on four sides by one or more of the following land cover types: urban/suburban, landfill, or intensive agriculture (e.g. plant nurseries, Christmas tree farms, dairies); and
 - No occurrence of wetland, riparian or serpentine land cover type.Development of Zone C sites will result in loss of open space and some habitat, but impacts will be substantially less than those in Zones A and B because these sites are mostly surrounded by development. The impact fee is projected to be 25% of the Zone A fee (\$4,930 per acre).
- Zone D: Urban Areas (non-fee zone). Zone D includes sites within the urban service area of the three cities that are outside of Zones A, B or C. Since the ecological value of such sites is already depleted, no general land use fee is proposed for Zone D. However, other development fees (noted below) may apply in this zone.

Nitrogen Deposition Fee: Development in all zones (Zones A, B, C and D) will be subject to a one-time fee of \$7.29 for each new vehicle trip to mitigate for the indirect impacts of vehicle emissions on natural habitat, and particularly for impacts to serpentine land which is negatively affected by nitrogen deposition associated with vehicle emissions.

Wetland Impact Fees: For covered activities that directly impact wetland areas, including streams, ponds, seasonal wetlands, and riparian/riverine vegetative habitat, a wetland mitigation fee is proposed. Developers impacting these sensitive areas will pay a wetland mitigation fee, in addition to other applicable development fees. The wetland mitigation fee is intended to pay the full cost of restoration and/or creation of these land cover types including design, implementation, monitoring and remediation. These fees will be separately tracked to ensure that there is a direct correlation between the impacts assessed and the cost to remedy those impacts.

Other Fees: Development on serpentine land and land occupied or supporting western burrowing owl (BUOW) nest locations will have an additional fee (\$61,810 per acre of serpentine land and \$25,120 per acre of BUOW nesting habitat and/or foraging habitat within 0.5 mile of a nest). These additional fees are based on the notably higher cost of mitigating impacts to serpentine land or BUOW habitat. In addition, a temporary impact fee is proposed for short-term construction impacts that can be completely mitigated within a period not-to-

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exceed five years from the end of construction. And the Plan includes the possibility of partnering with other non-permitted entities (known as "Participating Special Entities") for projects which may be covered and assessed fees under the Plan, with agreement from the Local Partners.

Non-Fee Revenue /Non-Mitigation Funding Sources: The Plan includes substantial obligations, required under State NCCP regulations, to provide conservation beyond development impact mitigations. Proposed sources of funding for these obligations include:

- Acquisition of land by the County's Park Charter Fund (\$69,600,000), the Santa Clara County Open Space Authority, and foundations and other non-profit sources (\$85,400,000);
- New State and Federal open space acquisition grant funding (\$155,000,000);
- Investment income on the endowment fund (\$71,160,000); and
- Interest income (\$2,600,000).

CEQA

This status report is not a project under CEQA. An Environmental Impact Report/Environmental Impact Statement has been prepared for the Plan and currently is in public circulation for review and comment until April 18, 2011 in conjunction with public review of the Draft Santa Clara Valley Habitat Plan and related documents.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Darryl Boyd, Principal Planner, at 408-535-7898.

Attachments: Figure 1-2: Study Area and Permit Area
Table 1-2: Covered Species List
Figure 5-8: Land Acquisition Strategy
8/19/10 Report to the Liaison Group

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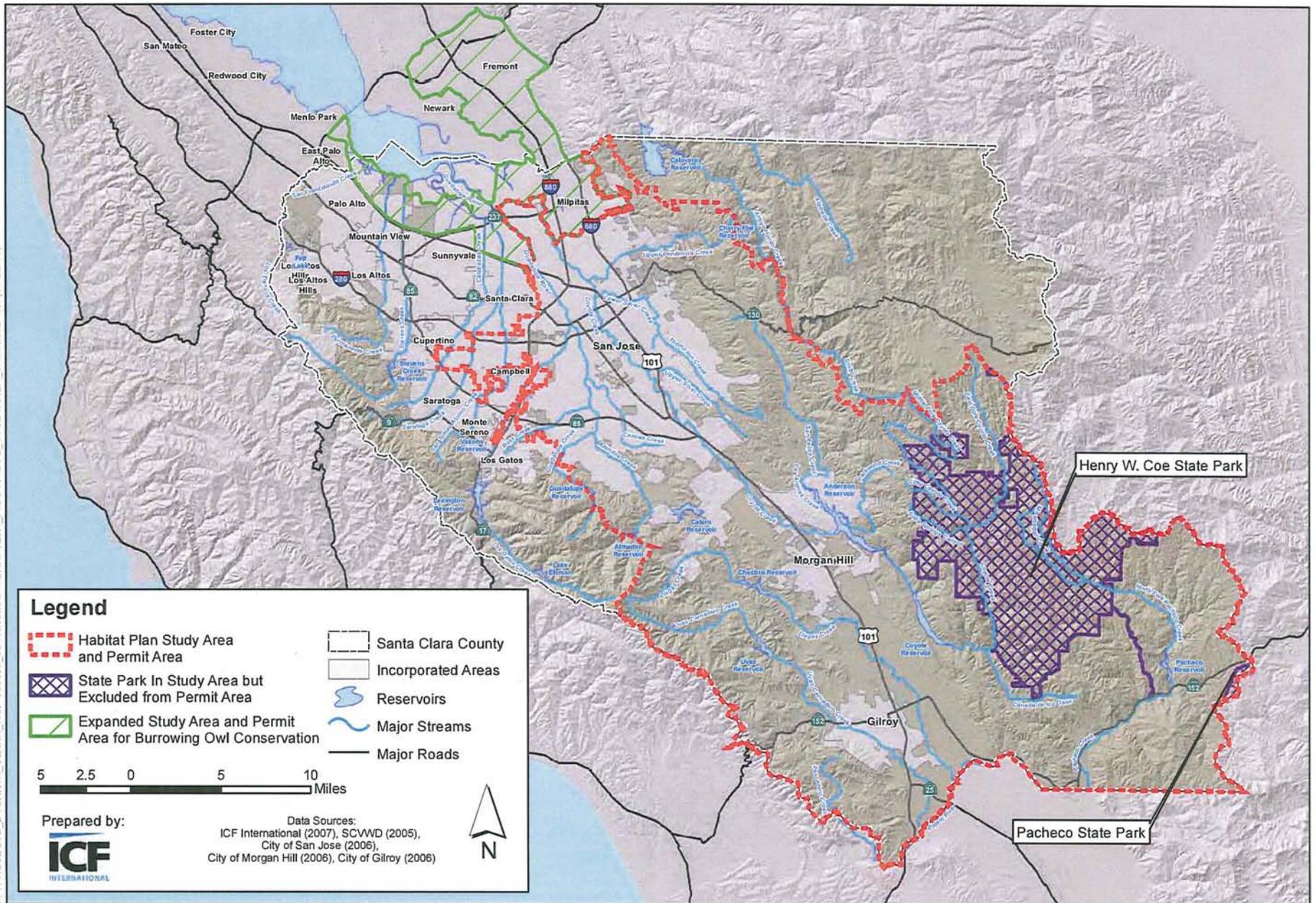


Figure 1-2
Santa Clara Valley Habitat Plan Study Area and Permit Area

Table 1-2. Species Proposed for Coverage in the Santa Clara Valley Habitat Plan

| Species | Scientific Name | Status ¹ | |
|---|--|---------------------|------------|
| | | State/CNPS | Federal |
| Invertebrates | | | |
| Bay checkerspot butterfly | <i>Euphydryas editha bayensis</i> | – | FT |
| Amphibians and Reptiles | | | |
| California tiger salamander | <i>Ambystoma californiense</i> | ST | FT |
| California red-legged frog | <i>Rana aurora draytoni</i> | CSC | FT |
| Foothill yellow-legged frog | <i>Rana boylei</i> | CSC | – |
| Western pond turtle | <i>Clemmys marmorata</i> | CSC | – |
| Birds | | | |
| Golden eagle ² | <i>Aquila chrysaetos</i> | FP | BGPA, MBTA |
| Western burrowing owl | <i>Athene cunicularia hypugea</i> | CSC | MBTA |
| Least Bell's vireo | <i>Vireo bellii pusillus</i> | SE | FE, MBTA |
| Tricolored blackbird | <i>Agelaius tricolor</i> | CSC | MBTA |
| Mammals | | | |
| Pacific Townsend's (=western) big-eared bat | <i>Corynorhinus townsendii townsendii</i> | CSC | – |
| San Joaquin kit fox | <i>Vulpes macrotis mutica</i> | ST | FE |
| Plants | | | |
| Tiburon Indian paintbrush | <i>Castilleja affinis</i> ssp. <i>neglecta</i> | ST/IB | FE |
| Coyote ceanothus | <i>Ceanothus ferrisiae</i> | IB | FE |
| Mount Hamilton thistle | <i>Cirsium fontinale</i> var. <i>campylon</i> | IB | – |
| San Francisco collinsia | <i>Collinsia multicolor</i> | IB | – |
| Santa Clara Valley dudleya | <i>Dudleya setchellii</i> | IB | FE |
| Fragrant fritillary | <i>Fritillaria liliacea</i> | IB | – |
| Loma Prieta hoita | <i>Hoita strobilina</i> | IB | – |
| Smooth lessingia | <i>Lessingia micradenia</i> var. <i>glabrata</i> | IB | – |
| Metcalf Canyon jewelflower | <i>Streptanthus albidus</i> ssp. <i>albidus</i> | IB | FE |
| Most beautiful jewelflower | <i>Streptanthus albidus</i> ssp. <i>peramoenus</i> | IB | – |

Notes:

¹ Status

Federal

FE Federally Endangered.

FT Federally Threatened.

BGPA Bald and Golden Eagle Protection Act.

MBTA Migratory Bird Treaty Act.

SOC Species of Concern (National Marine Fisheries Service only).

State

SE State Listed as Endangered.

ST State Listed as Threatened.

SR State Listed as Rare.

SC Candidate.

CSC California Special Concern Species.

FP Fully Protected.

California Native Plant Society (CNPS)

IB Rare, Threatened, or Endangered in California and Elsewhere.

² Take of individuals of state fully protected species is prohibited. Golden eagle is included as a covered species for take of habitat only.

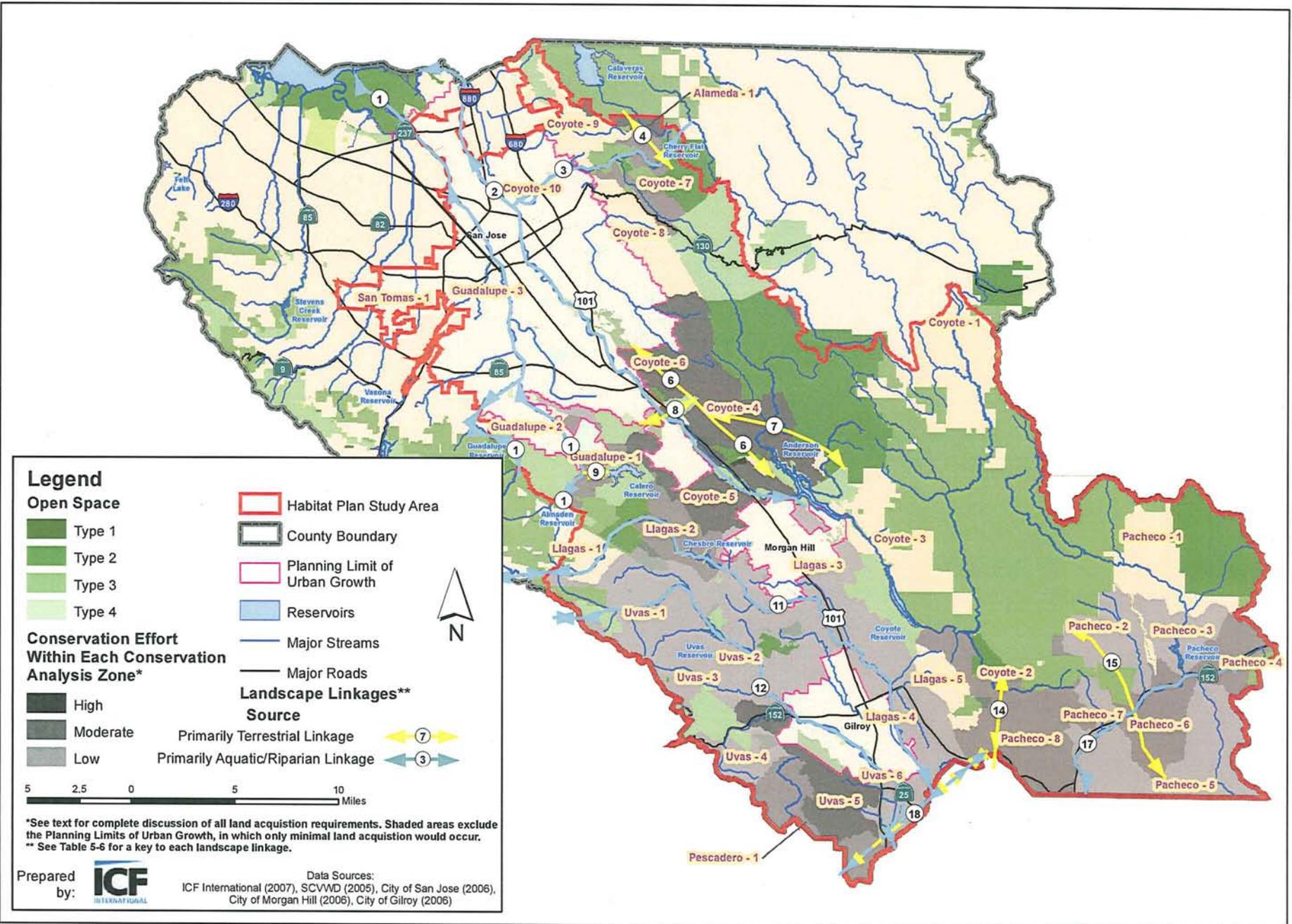
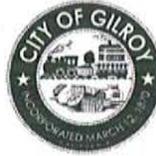


Figure 5-8
Land Acquisition Strategy with Applicable Landscape Linkages



Santa Clara Valley
 Habitat Conservation Plan/Natural Community Conservation Plan

Date: August 19, 2010

AGENDA ITEM 3

TO: Governing Body Liaison Group

FROM: Management Team and Attorney's Group

SUBJECT: Report on Management Team and Attorney's Group review of alternatives to the HCP/NCCP structure of the Valley Habitat Plan

PREPARED BY: Kenneth Schreiber, Program Manager

Purpose of this Staff Report: Provide an update to the Liaison Group on recent the recent investigation of alternatives to the HCP and NCCP structure of the Valley Habitat Plan (VHP).

Next Steps After Liaison Group Review: Consistent with the conclusions of the Management Team and Attorney's Group, work will proceed with preparation of the Public Review Draft Valley Habitat Plan.

Recommendation: It is recommended that the current structure of the Valley Habitat Plan be retained.

Discussion: In April and May, 2010, various members of the Management Team and Attorney's Group raised questions and concerns about continuing with the overall structure of the VHP. Specific concerns focused on the extent of the VHP's conservation strategies, the impact of proposed VHP development impact fees and the relationship of two major funding sources: development impact fees and funds that have to be used to acquire land (primarily County Parks, Open Space Authority, and State and Federal grants).

A notable part of the Liaison Group's June 17, 2010 meeting was devoted to review and discussion of background information (6/17/10 Power Point attached). Staff investigation focused on in-depth assessment of three options: 1) continue with the current HCP/NCCP approach; 2) shift to a HCP-only approach with the current list of covered species; and 3) shift to an HCP-only approach with a reduced list of species. After initial investigation, attention focused on the 1st and 2nd alternatives. On July 8, 2010, the Management Team and Attorney's had in-depth discussion of the issues.

Highlights of the July 9, 2010 Management Team and Attorneys discussion of alternatives to the current HCP and NCCP planning approach. The analysis focused on 1. a cost assessment of separating out HCP elements of the current Draft VHP, 2. the specifics of creating an HCP-only Plan and 3. the structure of the Draft VHP. Major conclusions include:

1. Cost assessment of separating out HCP elements of the current Draft VHP

- The HCP components of the current Draft VHP are about 55% of the total Plan budget without including the estimated value of the existing County Parks land proposed to be incorporated into the Reserve System.
- A very important feature of the current the Draft VHP is that it functions as an interrelated whole. For the 45,000 acres of new land to be provided in the Reserve System, the HCP portion (estimated at 22, 050 acres) is almost equal to the NCCP portion (22,950 acres).
- An HCP only approach would require specific species mitigation ratios that would increase the amount of HCP-related land beyond the current 22,950 acres.
- Estimates were made for increasing the amount of HCP only costs above the current 55% (at 5% intervals from 60% to 80%). The results were that an increase of total Plan effort to 60% of the current VHP meant a negative cash flow of \$24,100,000; at a 65% level of effort, which is considered quite possible and perhaps low for an HCP-only approach, the negative cash flow was \$67,162,000. The only way to provide the additional funding would be through increased development impact fees.

2. Plan Development Assessment of an HCP-only Approach

- Shifting the current process to do an HCP and not an NCCP would be a time consuming process and a complex and expensive task.
 - i. The Local Partners would need to prepare and agree to a new planning agreement.
 - ii. An HCP only plan would very likely have a 25 to 30 year permit term rather than the 50 year term of the Draft VHP.
 - iii. Some of the existing Plan research and text could be reused with small to moderate work required but major sections of the Plan would need to be redone.
 - iv. Fish and Wildlife Service has noted that if the VHP HCP/NCCP doesn't move forward, their staff resources would shift to other Habitat Plans that have been waiting for increased FWS staff attention (Solono, Yolo, Placer and Sutter/Butte are currently active).
 - v. An HCP only plan is estimated to take three to four years to reach the public draft stage and to cost between \$1,500,000 and \$2,500,000. The additional costs do not include Local Partner staff resources.
 - vi. An HCP only plan would be implemented primarily through development impact fees since local, state and federal acquisition sources (e.g. County Park Charter, OSA, Section 6 grants) would not be available with the removal of the NCCP.
 - vii. An HCP only plan would result in the forfeiture of about \$100,000 of currently available federal Section 6 planning grant funds.
- Covered activities would be about half of what is currently anticipated because of the shorter term of 25 to 30 years. The combination of a shorter permit term, fewer covered activities, a proportionately larger reserve system (in relation to mitigation impacts), and the lack of any non-mitigation funding source would result in a substantial increase to development impact fees.
- The State could not provide a "no surprises" assurance because of the removal of the NCCP.

- Only 4 species would be covered by the State in an HCP only plan, as opposed to the current 24 species. Some notable species that would not received State coverage include the western burrowing owl and the California red-legged frog.
3. The structure of the Draft Valley Habitat Plan (HCP and NCCP)
- There are two types of funding for the Draft VHP: 1) funds that have to be used to acquire land (e.g., County Parks, Open Space Authority, State and federal Grants); and, 2) funds that can be used for a variety of purposes (e.g., development impact mitigation fees).
 - The challenge is that these acquisition funds cannot be used for land management expenses (e.g., operations, monitoring and program administration). The primary source of funds for land management expenses is development impact fees.
 - The way that this imbalance is addressed in the Plan and other HCP/NCCPs is to track the total costs for mitigation (HCP) and recovery (NCCP) costs by dollars and not by acres in the Reserve System. The mitigation share of the overall budget is about 55% of the budget ---the same proportion as the impacts being mitigated -- and the recovery share is about 45%.

Attached are three items that were part of the alternative assessment: 1) a July 6, 2010 Outline of Possible HCP-only Approach prepared by David Zippin; 2) a pro and con table for an HCP-only approach with the current species list; and 3) a pro and con table for continuing with the current HCP and NCCP structure of the VHP. The option of an HCP-only approach with a reduced species list was dropped from the review because the negative factors far exceeded the HCP-only approach with the current species list.

Attachments: Outline of Possible HCP-only Approach, July 6, 2010
 Process Alternative---HCP Only with Current Species List
 Process Alternative---Continue Current Plan
 June 17, 2010 Power Point

Copies: Stakeholders Group

Santa Clara Valley Habitat Plan
 July 6, 2010----David Zippin, ICF

Outline of Possible HCP-only Approach

If the Santa Clara Valley Habitat Plan was converted from an HCP/NCCP to an HCP/2081 permit, this “HCP-only” plan would be different in many ways from the current Habitat Plan. The table below compares the differences between the HCP/NCCP and a possible HCP-only approach. Extensive new analysis and negotiation would be needed to develop the conservation strategy for the new plan. This list represents a rough estimate of possible outcomes and should not be considered definitive. The implications of an HCP-only approach on the planning process, planning schedule, and planning costs are not listed here.

| Component | Habitat Plan (HCP/NCCP) | HCP/2081 Plan |
|---------------------------|--|---|
| Permits | <ul style="list-style-type: none"> Federal ESA 10(a)(1)(B) permit with “No Surprises” assurances State NCCP 2835 permit with “No Surprises” assurances | <ul style="list-style-type: none"> Federal ESA 10(a)(1)(B) permit with “No Surprises” assurances State 2081(b) permit. “No Surprises” assurances not available |
| Permit Term | <ul style="list-style-type: none"> 50 years | <ul style="list-style-type: none"> 25-30 years |
| Covered Species | <ul style="list-style-type: none"> 24 species covered in federal permit 24 species covered in state permit | <ul style="list-style-type: none"> 24 species covered under federal permit 4 species covered under state permit (only those state listed¹) |
| Covered Activities | <ul style="list-style-type: none"> Comprehensive coverage for urban and rural development, public infrastructure, and operations and maintenance activities for 50 years 25,864 acres of permanent impacts² 2,463 acres of temporary impacts² | <ul style="list-style-type: none"> Fewer covered activities due to 20-25 year shorter permit term <ul style="list-style-type: none"> 40-50% less O&M coverage > 50% less coverage for long-term capital projects³ 40-50% Less urban and rural development Impacts covered would be reduced a total of 40%-60% or more <ul style="list-style-type: none"> 10,000 – 15,500 acres of permanent impacts 1,200 – 1,500 acres of temporary impacts |
| Conservation Strategy | <ul style="list-style-type: none"> 45,000 acres of new land acquired for Reserve System 13,000 acres of existing County Parks protected and managed in Reserve System Restore and create up to 566 acres of riparian woodland, wetlands, and ponds Restore up to 12.2 miles of streams Wildlife corridor feasibility study and improvements | <ul style="list-style-type: none"> 20,000 – 30,000 acres of new land acquired for Reserve System⁴ Restore and create riparian woodland, wetlands, ponds, and streams in proportion to the new impacts (similar ratios to Habitat Plan) |
| Management and Monitoring | <ul style="list-style-type: none"> Substantially improved management on all Reserve lands Targeted investigations to address important management questions Extensive monitoring for management effectiveness and species status and trends | <ul style="list-style-type: none"> Improved management on all Reserve lands Limited monitoring to ensure management effectiveness |
| Cost | <ul style="list-style-type: none"> \$751.2 million over 50 years | <ul style="list-style-type: none"> Cost estimated at \$325 - \$450 |

| Component | Habitat Plan (HCP/NCCP) | HCP/2081 Plan |
|-----------|--|--|
| | <ul style="list-style-type: none"> Approximately 55% of the cost associated with mitigation needs; 45% of cost associated with NCCP need for contribution to species recovery | <p>million over 25-30 years</p> |
| Funding | <ul style="list-style-type: none"> \$773.8 million in total funding \$324.9 million from Private development fees <ul style="list-style-type: none"> Development fees range from \$4,200/acre to \$16,800/acre \$39.6 million from public development fees \$78.5 million from wetland fees \$70.1 million from Park Charter Fund \$96.8 million from Open Space Authority \$150.0 million from new USFWS and state funds (Section 6, park bonds) | <ul style="list-style-type: none"> Funding limited to private and public development fees Development fees expected to increase 2-3 times because of 50-60% smaller pool of paying impacts and higher costs per acre of Reserve System |

Notes:

- ¹ California tiger salamander, least Bell's vireo, San Joaquin kit fox, and Tiburon Indian paintbrush (source: Habitat Plan Table 1-2).
- ² Sources: Habitat Plan tables 4-1 (permanent impacts) and 4-2 (temporary impacts).
- ³ Many large capital projects such as dam and bridge replacement and flood protection projects are expected to take more than 10-20 years to plan and implement, so the majority of these projects may fall outside of the reduced permit term.
- ⁴ The amount of land needed for the Reserve System under an HCP-only model is difficult to predict at this time because of the uncertainty in the location and type of reduced impacts and the extent the new HCP would be based on species-specific mitigation ratios. A smaller Reserve System will also be less efficient so would likely require more land acquired per unit of impact than with the current plan. The low end of the range assumes the low end of the impact range.