



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SANTA CLARA VALLEY
HABITAT CONSERVATION PLAN

DATE: September 8, 2011

Approved

Date

9/10/11

COUNCIL DISTRICT: City-Wide
SNI AREA: All

RECOMMENDATION

- (a) Discuss refinements to the draft Habitat Conservation Plan and alignment to the June 2011 Budget Message;
- (b) Refer questions and concerns to staff for response; and
- (c) Continue the discussion to September 27, 2011 for action.

OUTCOME

The Council will be able to see how refinements to the draft Santa Clara Valley Habitat Conservation Plan (Plan) have been made to address concerns raised in the June 2011 Budget Message. This is also an opportunity for the Council to fully understand the implications of continued participation in the Habitat Conservation Plan and conversely the consequences of terminating such participation. A decision for the Council to proceed or terminate is being triggered with the completion of the draft Plan and environmental documents.

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 José 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 José, 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

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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 2011 Mayor's Budget message included direction that "The City Manager is directed to suspend support and funding for the Plan after the EIR is certified, and until such time as the costs and benefits are reassessed and an effort to develop a more regional Plan is achieved." Since that time, staff has worked with the other partners of the project to complete the EIR and address the issues raised in the budget message as well as those raised by the respective local agency boards. The local agency staff, consultants and wildlife agency staff have worked over the past six months on a nearly a weekly basis to refine sections of the plans, relook at assumptions of growth and costs, and add value to the plan.

Attached to this memo is the *Proposed Revisions to the Santa Clara Valley Habitat Plan: A Framework for Preparing A Final Plan* (the Framework). This document is a summary of the refinements made to the draft Habitat Conservation Plan prepared by the HCP consultants in response to local partner direction. The Framework is organized to address the six concerns listed below, and is a tool to help the public and elected officials work through these concerns, and to track the

significant progress made in the last six months to revise the plan. The following concerns, with the exception of #5, also reflect concerns of the San José City Council:

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

Concern 2: The Habitat Plan fees are too high and should be applied more equitably.

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

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

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

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

The attached Framework discusses each of these concerns and provides information on refinements to the Plan made to address the issues. These refinements as it relates to San José specifically included eliminating the Mid Coyote Valley and South Almaden Planned Residential Communities from the list of covered activities that the Plan would cover for impacts. Other refinements include a significant reduction in costs associated with the Plan from lower land acquisition targets, lower operational costs, and reasonable raised earning assumptions for the long term trust fund.

The refinements have assigned more of the Plan costs to those activities that generate direct impacts to habitat and species such as in wetland areas and on woodland habitats. This has lowered costs in other areas of the Plan by approximately 16% and the proposed Nitrogen Deposition fee which dropped by over half from \$7.29 per vehicle trip to \$3.29. Extensive work occurred to see if the Nitrogen Deposition fee could be dropped entirely and the costs covered elsewhere. While that was not legally possible, the Plan does now specifically allow that cost to be covered in other means such as through utility rates or other revenues where legally viable. Such a shift would require substantial staff work to create an alternative funding strategy and can be explored further if the Council chooses to pursue the Plan further.

The Wildlife Agencies have also pursued at the request of the Local Partners a permitting package with the Army Corps of Engineers. This permitting is important to the City for many of our capital improvement projects as well as developers who build bridges or conduct grading that may impact streams or wetlands.

Purpose of Council Discussions

The draft HCP /NCCP and associated EIR /EIS is ready to begin the approval process by the Wildlife Agencies. As a part of that process, each of the local agencies is required to approve the draft plan

and environmental documents for the next step of the process. If each of the six local partners approves of these documents, the Wildlife Agencies will prepare the required Final HCP /NCCP document, complete the CEQA and NEPA adoption steps, and write the required Biological Opinion and Incidental Take Permit approvals. That is estimated to take approximately 11 months. At that time, each Local Agency must determine whether to adopt the plan itself.

September 20th Meeting

On September 20, staff intends to walk the Council through the progress made to date including the refinements and updates made in response to the Council and public comments on the draft plans. Staff's goal is that the Council and public understand what is in the plans, and implications to move forward, or to stop work on the effort. Questions that the Council has would be responded to by staff at the subsequent Council meeting on September 27th.

September 27th Meeting

At the September 27th meeting, Staff will ask the Council to decide if it wishes to continue with the HCP effort. The decision to continue with the final Plan is a requirement of the MOU between the Local Partners to ensure that there is support to progress. Should the Council decide to continue with the Plan, the staff and consultants would work with the Wildlife Agencies to make the revisions to the draft Plan reflecting the Framework, complete the environmental process, and draft the actual wildlife permits. This next stage has budget consequences described later in this memo. The adopted budget and consultant contracts only cover the cost of getting the draft EIR and Plan prepared. In addition, the decision to pursue the Army Corps of Engineers permits would add to the City's costs by approximately \$45,000. Moving to the next stage does not require the City or any of the Local Partners to adopt the final Plan, but does raise expectations of such adoption.

POLICY ALTERNATIVES

There are two main options at this point of the process:

1. Continue with the plan preparation with another decision opportunity to proceed or terminate in approximately 11 months; or
2. Terminate the project at this point.

Continuing to proceed with the plan would continue the multi-year effort to complete the Plan. This would result in a 40 year plan that would accommodate future growth anticipated by the current and proposed general plan. The Plan also would allow the obtaining of wetland permits from the Army Corps of Engineers and potentially master approvals from the National marine Fisheries and ultimately the Regional Water Quality Control Board. This option would incur additional City costs to complete the Plan of approximately \$100,000 and would subject new development in the City to fees to cover direct and indirect impacts to endangered species and habitat. These fees in some cases will subject development to fees that are not required today; however the permitting could simplify the permitting for public projects and complex private development projects.

The option to terminate the project would end staff and financial obligations to complete the Plan. Some level of unspent contractual monies might be returned to the City. The City and developers

would continue to address the impacts to endangered species and habitat on a case by case basis. Mitigation would occur on a project-by-project basis resulting in a patchwork outcome. Major public works projects would be halted until they could obtain permits from the State and Federal regulatory agencies who have said that mitigation contained in the draft Plan would be allocated to individual projects. Permitting with the Army Corps would continue as it currently occurs, project-by-project, with a small possibility of receiving a master permit approval in future.

Termination by one or more of the Local Partners would trigger a reevaluation of the draft plan to ensure that attaining the conservation objectives and confirming the financial modeling would still be feasible. Termination has been cited by the Wildlife Agencies as causing them to reopen the Biologic Opinions granted by the Wildlife Agencies for major capitol projects in the Plan area including the Bailey Interchange project, the 101 widening and interchange projects, and numerous Recycled Water grants.

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)**

Members of the Management team and/or the consultant team have been in regular communication with the active participants in the Plan over the past six months as work progressed on refining the Plan. The Chamber of Commerce group tracking the Plan's progress has continued to participate and representatives of that group have attended the intervening Liaison Group meetings over the summer. The refinements of the HCP will be discussed at the Developers Roundtable on September 16th. The next Plan Stakeholder meeting is scheduled for September 20th at 4 pm, while the next Liaison Group meeting is October 20th at 4pm at which time the actions of each of the Local Partners on whether to proceed will be reported.

COORDINATION

The Santa Clara Valley Habitat Plan is being coordinated with the City's Departments of Environmental Services, Parks, Recreation and Neighborhood Services, Public Works, Airport, Transportation, and City Attorney, as well as the 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 and the Budget Office.

The review of the draft Plan by each of the Local Partners is scheduled in September and October prior to the October Liaison Group meeting scheduled for October 20th. The tentative schedule is as follows:

Tuesday, September 13	TBD	Santa Clara Valley Water District
Monday, September 19	6pm	Gilroy City Council
Tuesday, September 20	1:30pm	City of San José
Tuesday, September 20	4pm	Stakeholder Meeting, Location TBD
Tuesday, September 27	TBD	County of Santa Clara
Wednesday, September 28	7pm	Morgan Hill City Council
Thursday, October 20	4pm	Liaison Group at Santa Clara Valley Water District
TBD	TBD	Santa Clara Valley Transportation Authority

COST SUMMARY/IMPLICATIONS

The plan is budgeted for \$130,000 in the FY 2011-12 budget. The estimated cost to complete the plan is approximately \$465,000, of which approximately \$270,000 is unbudgeted by the Local Partners. San José's share of that amount would require an appropriation of \$53,749. An additional \$45,000 is the estimated City share that would be required if the City wished to also add the Army Corps of Engineer 404 Wetland permits to the plan completion. This would satisfy Council's Concern #4 listed above about streamlining the wetlands permitting process as part of the HCP endeavor

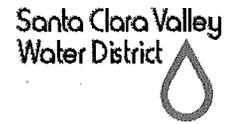
CEQA

Not a Project, File No. PP10-069.

/s/
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Joseph Horwedel at 408-535-7900.

Attachment



PROPOSED REVISIONS TO THE DRAFT
SANTA CLARA VALLEY
HABITAT PLAN:
A FRAMEWORK FOR PREPARING A FINAL PLAN

September 2011

Prepared by staff from the Cities of Gilroy, Morgan Hill and San José; the County of Santa Clara; the Santa Clara Valley Transportation Authority and the Santa Clara Valley Water District in consultation with the United States Fish and Wildlife Service and the California Department of Fish and Game

Introduction

ABOUT THE SANTA CLARA VALLEY HABITAT PLAN

Six local agencies known as the Local Partners (County of Santa Clara, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, and the Cities of Gilroy, Morgan Hill and San José) have been working cooperatively with the U.S. Fish and Wildlife Service (FWS) and the California Department of Fish and Game (CDFG) to prepare the Santa Clara Valley Habitat Plan (Habitat Plan). The Habitat Plan is a Habitat Conservation Plan/Natural Community Conservation Plan intended to provide an effective mechanism to protect, enhance and restore natural resources in specific areas of Santa Clara County while improving and streamlining the environmental permitting process for impacts on threatened and endangered species.

RESPONSE TO PUBLIC REVIEW OF THE DRAFT PLAN

The Draft Habitat Plan was released in December 2010 for public review. In response to comments received from stakeholders, the public and elected officials since that time, Local Partner staff have identified modifications and refinements to the Habitat Plan that would respond to as many of the comments as possible while achieving the program goals described in the Habitat Plan.

This review relied on:

- identifying the most critical public and private needs for coverage under state and federal endangered species laws;
- reducing Habitat Plan implementation costs wherever possible while retaining the resources to manage land consistent with resource conservation objectives;
- implementing the Habitat Plan in a cost-effective manner using resources from Local Partners and other agencies;
- reducing or restructuring fees to ensure equity;
- re-evaluating anticipated species impacts within the Permit Area based on the most current data;
- improving efficiency of the species conservation efforts; and
- ensuring that the Reserve System design will achieve the Habitat Plan's biological goals and objectives.

The work included financial, biological and other analyses, and follow-up with various stakeholders to ensure that their concerns and perspectives were understood. It also included extensive meetings with FWS and CDFG to ensure that modifications to the Draft Habitat Plan would still allow those agencies to issue the necessary permits and approvals.

This Framework describes the outcome of this effort and provides a foundation for the governing bodies of the Local Partners to determine whether or not to authorize preparation of the Final Habitat Plan, which would subsequently be subject to review and approval by each Local Partner.

Overall, the proposed Habitat Plan modifications described in this Framework maintain the key elements of the Draft Habitat Plan. The proposed revisions will enable Habitat Plan objectives to be attained in a more cost-effective and equitable manner.

Recommended Modifications to Habitat Plan

MAJOR THEMES IN COMMENTS ON THE DRAFT HABITAT PLAN

Comments about the December 2010 Draft Habitat Plan from interested parties and members of the Local Partners' governing bodies were reviewed and evaluated. Many of the comments touched on one or more of six main areas of concern, which became the focus of the efforts to refine the Draft Habitat Plan. These include:

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

Concern 2: The Habitat Plan fees are too high and should be applied more equitably.

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

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

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

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

RESPONSES TO KEY AREAS OF CONCERN

The Local Partners and Management Team sought to respond to each of the concerns identified above prior to returning to the Local Partner governing bodies for a decision on whether to prepare a Final Habitat Plan. Proposed modifications to the Habitat Plan responding to each of the key concerns are summarized below.

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

Proposed changes would:

- Reduce the overall Habitat Plan budget by 30% from \$941,878,882 to \$660,126,693 (2010 dollars).
- Reduce the anticipated staffing of the Implementing Entity from a maximum of 15 to 10.5 full-time equivalent staff positions, with positions to be phased in when needed based on land acquisitions and resource management requirements.
- Reduce the size of the Reserve System by 16% (from 58,747 acres to 49,453 acres) while maintaining benefits for covered species.
- Maintain land acquisition strategies with greater focus on key priority areas (see Figure 1).
- Reduce Habitat Plan implementation costs wherever possible while retaining the resources to manage land consistent with resource conservation objectives.

- Reduce the amount of development covered under the Habitat Plan by 30% or 8,339 acres by:
 - Eliminating urban development in the impact analysis for San José's Coyote Valley Urban Reserve and South Almaden Valley Urban Reserve and portions of Morgan Hill's Southeast Quadrant.
 - Reducing the assumed impact of rural residential development from three acres to two acres per project.
 - Reducing County of Santa Clara Parks and Recreation land cover impacts by 25%.
- Eliminate Habitat Plan coverage (except for nitrogen deposition impacts) for private development projects that are not likely to impact listed species, including:
 - Additions of less than 5,000 square feet of new impervious surface to existing developed sites.
 - Private development projects within specific mapped areas (see Figure 2).
 - Urban development projects on parcels less than two acres in size within mapped areas on the valley floor.
 - Rural development projects with a development footprint of less than two acres located in mapped hillside areas.
- Maintain coverage for all projects that affect wetland, riparian or serpentine land cover types, ponds, streams or western burrowing owl nesting habitat.
- Remove two covered species: golden eagle and Townsend's big-eared bat.
- Reduce the total per acre cost of the Reserve System—including land acquisition, all program and land management costs, and the endowment for managing the land after the end of the 50-year permit term—by about 17% from \$16,000 per acre to about \$13,300 per acre.

Concern 2: The Habitat Plan fees are too high and should be applied more equitably.

Proposed changes would:

- Reduce the three land cover fees (for Fee Zones A, B and C) by 16% to \$16,660 for Zone A, \$11,610 for Zone B and \$4,140 for Zone C.
- Reduce the Nitrogen Deposition fee from a one-time fee of \$7.29 for each new vehicle trip to \$3.29 for each new vehicle trip. The Nitrogen Deposition fee applies to all new development within the Plan Area, if it generates new vehicular trips. The Habitat Plan will include the flexibility to utilize alternative fee sources in lieu of the Nitrogen Deposition fee.
- Remove projects in certain areas of the County from coverage under the Habitat Plan unless the project impacts wetland, riparian or serpentine land cover types, ponds, streams or western burrowing owl nesting habitat. Allow applicants to opt in to the Habitat Plan if the environmental review process reveals impacts to listed species.
- Remove from coverage additions to existing developed sites of less than 5,000 square feet of new impervious surface unless a site impacts wetland, riparian or serpentine land cover types, ponds, streams or western burrowing owl nesting habitat.
- Adjust the application of development fees in urban areas so that fees are not charged for portions of developments that incorporate rural characteristics (for example, the Glen Loma and Hecker Pass

Specific Plans in the western portion of the City of Gilroy and agricultural and open space areas in the southeast quadrant of Morgan Hill). Except for land designated with a land use of Urban Development in the Habitat Plan (see Habitat Plan Figure 2-2), all development pays fees on the footprint of the development and not on the entire parcel.

- Adjust the application of fees so that contiguous portions of a site (irrespective of ownership) that are protected by a conservation easement that precludes development (10 acres and larger areas and, for serpentine land cover, three acres and larger areas) would not pay Habitat Plan fees.
- Adjust special fees for impacts to wetlands, riparian and serpentine land cover types, ponds, streams and western burrowing owl nesting habitat to ensure that the full cost of mitigating these impacts is included in these fees rather than in the land cover fees.
- Eliminate costs for recreation improvements within the Reserve System from the Plan's projected costs, while continuing to support public access.
- Establish a process for development projects that have already received approvals ("pipeline projects"). A development project, or portion thereof, will not be subject to Habitat Plan coverage and fees if all of the following apply:
 - it has received at least one of the following approved development entitlements with a specified expiration date (including allowed renewals/extensions) prior to Habitat Plan adoption: site and architectural permit/approval, planned development approval, conditional use approval, or tentative map; and
 - it is issued a grading or building permit within one year of issuance of the Habitat Plan's State and Federal incidental take permits; and
 - the project review process identified no impacts on any of the Habitat Plan's covered species.

This applies only to the portion of the project that is issued grading and/or building permit(s) within the one-year period.

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

An economic impact analysis has been prepared and is available on the Habitat Plan's website (www.scv-habitatplan.org) as well as from Local Partners. The five key findings of the report are:

- Significant growth is projected in the Plan Area over time.
- Endangered species protection regulations will add to development costs. This will be the case whether or not the Habitat Plan is adopted.
- The addition of the Habitat Plan fees is not likely to be the determining factor in financial feasibility for most development projects.
- The Habitat Plan's development fees are low enough that they are unlikely to cause a competitive disadvantage to real estate development in the Plan Area.
- The impacts on property tax revenues from the Habitat Plan (i.e., reduction in property tax revenue due to lands being incorporated into the Reserve System) will be minimal compared to overall public agency revenues.

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

Proposals in response:

- Staff from the FWS and the San Francisco District of the U.S. Army Corps of Engineers (Corps) have agreed that the Final Habitat Plan, with some revisions to the Draft Habitat Plan, could serve as the basis for a Corps Regional General Permit and an In-Lieu Fee Program within the Habitat Plan Permit Area.
- Preparation of the Corps Regional General Permit will start during preparation of the Final Habitat Plan with the objective that shortly after the adoption of the Habitat Plan, the Corps would issue the Regional General Permit. Approval and adoption of the Habitat Plan is not contingent on establishing a Regional General Permit.
- The Local Partners intend to work with the Regional Water Quality Control Boards to better integrate Clean Water Act Section 401 Water Quality Certification process into the Regional General Permit process for Covered Activity implementation.

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

Proposals in response:

- Change the Habitat Plan's assumption for the amount of ranchland in the Reserve System under conservation easements instead of fee title acquisition from 20% to 50%.
- Change Habitat Plan assumptions to reflect increased use of grazing as a tool for landscape management and recognize the historic, current and future conservation roles of grazing.
- Pursue with FWS and CDFG possible coverage for maintenance of agricultural stock ponds in a manner consistent with the conservation goals, objectives and conditions of the Habitat Plan.

Concern 6: The proposed Joint Powers Authority would be a new, unnecessary layer of government.

Proposals in response:

- Retain the proposed Joint Powers Authority (JPA) to maintain Local Partner cooperation and jurisdictional responsibilities while also protecting Local Partner General Fund resources.
- Revise Habitat Plan cost assumptions to assume that whenever it is most cost-effective, the Implementing Entity will contract with Partner agencies or other existing entities for services and staffing needed to implement the Habitat Plan.
- Reduce assumption about the full staffing of the Implementing Entity from 15 to 10.5 full-time equivalent positions.

Habitat Plan Costs, Funding and Development Fees

SIZE OF THE HABITAT PLAN RESERVE SYSTEM

The total size of the proposed Reserve System in the reduced scale Habitat Plan is 49,453 acres, 16% lower than the December 2010 Draft Habitat Plan. Reductions were made to both new land acquisition and the amount of existing open space. The Reserve System continues to address two key objectives: 1) mitigate impacts from public and private sector development authorized by permits issued for the Habitat Plan, and 2) contribute to the recovery of the covered species.

As with the Draft Habitat Plan Reserve System, the proposed Reserve System would have three integrated land elements:

- 1) new land that is acquired for mitigation of impacts of public and private sector development;
- 2) new land that is acquired for enhancement of habitat to support species recovery; and
- 3) existing open space that is managed to support recovery of covered species.

Areas of existing open space proposed for enrollment into the Reserve System have been re-evaluated to ensure that the areas offer opportunities to achieve notable benefits for covered species through improved land management.

Santa Clara Valley Habitat Plan Proposed Reserve System

	DECEMBER 2010 DRAFT PLAN	AUGUST 2011 PROPOSAL	% CHANGE
ACRES OF PERMANENT IMPACTS	25,864	18,075	-30%
RESERVE SYSTEM LAND ACQUISITION			
Mitigation	22,050	18,722	-15%
Enhancement	22,950	17,440	-24%
<i>Subtotal</i>	45,000	36,162	-20%
EXISTING OPEN SPACE MANAGED AS PART OF THE RESERVE SYSTEM			
County of Santa Clara Parks and Recreation Land	13,747	12,291	-11%
Santa Clara County Open Space Authority Land	0 (Plan text identifies up to 1,000 possible acres)	1,000	+100%
<i>Subtotal</i>	13,747	13,291	-3%
TOTAL PROPOSED RESERVE SYSTEM	58,747	49,453	-16%

COST OF IMPLEMENTING THE HABITAT PLAN

Implementation of the changes proposed in this Framework would reduce total Plan cost to \$660,126,639, a 30% reduction from the December 2010 Draft Habitat Plan. To achieve this reduction, the Habitat Plan's cost model assumptions were scrutinized to lower or eliminate costs. Two key changes are that the Implementing Entity staffing assumptions have been reduced from 15 full-time equivalent positions to 10.5 full-time equivalent positions and more emphasis on contracting out implementation tasks whenever cost effective.

In addition to proposals for overall cost reduction, certain costs have also been reallocated to ensure Habitat Plan fees are equitable. For example, a portion of environmental compliance, remedial measures and the contingency have been shifted to other cost categories. Public access to the Reserve System, other than private land acquired with conservation easements, is still assumed but the costs of facilities that only serve a recreational purpose are now proposed to be funded from non-fee resources.

Santa Clara Valley Habitat Plan Cost Model: Projected Costs During Permit Term

	DECEMBER 2010 DRAFT PLAN	AUGUST 2011 PROPOSED PLAN	% CHANGE
LAND ACQUISITION	\$384,133,929	\$286,498,281	-25%
NON-LAND ACQUISITION			
Reserve Management and Maintenance	\$129,133,889	\$98,431,091	-24%
Monitoring, Research and Scientific Review	\$40,356,228	\$30,740,604	-24%
Environmental Compliance	\$7,685,600	—	-100%
Remedial Measures	\$10,296,854	—	-100%
Contingency Fund	\$30,557,253	\$14,372,609	-53%
Program Administration	\$55,667,612	\$46,392,209	-17%
Plan Preparation Repayment	\$3,833,882	\$3,833,882	0%
<i>Subtotal of Non-Land Acquisition Costs</i>	<i>\$274,141,436</i>	<i>\$189,936,514</i>	<i>-31%</i>
WESTERN BURROWING OWL COSTS	\$5,858,829	\$5,928,137	+1%
RECREATION AND PUBLIC ACCESS	\$15,934,249	—	-100%
HABITAT RESTORATION/CREATION	\$79,934,249	\$85,063,726	+6%
TOTAL BUDGET	\$763,788,882	\$571,260,539	-25%
ENDOWMENT BALANCE AT END OF PERMIT PERIOD	\$178,090,000	\$88,866,154	-50%
TOTAL COST OF PLAN AND ENDOWMENT	\$941,878,882	\$660,126,693	-30%

The total cost includes the value of the Endowment Fund that will pay for land management after completion of the 50-year permit term. The assumed rate of return on the accumulated endowment fund balance is proposed to be changed from 1.91% to 3.25% consistent with guidance from the County Finance Department.

PROPOSED FEE REVISIONS

Based on the extensive reductions to the cost model assumptions, reallocation of costs to ensure equitable fees, and a higher rate of return assumption, the Development Fees were modified. The following table shows proposed fee revisions.

Proposed Revisions to Land Cover and Special Fees

DEVELOPMENT FEES	DECEMBER 2010 DRAFT PLAN	AUGUST 2011 PROPOSED PLAN	% CHANGE
LAND COVER FEES			
Zone A: Ranchlands and Natural Lands	\$19,720 per acre	\$16,660 per acre	-16%
Zone B: Mostly Cultivated Agricultural Lands	\$13,790 per acre	\$11,610 per acre	-16%
Zone C: Small Vacant Sites between 2 and 10 Acres Surrounded by Urban Development	\$4,930 per acre	\$4,140 per acre	-16%
SPECIAL FEES			
Nitrogen Deposition Fee	\$7.29 one-time payment per approved new vehicle trip	\$3.29 one-time payment per approved new vehicle trip	-54%
Western Burrowing Owl Nesting Habitat	Separate fee not yet determined	\$19,960 per acre	—
Serpentine Land	\$50,710 per acre	\$43,990 per acre	-13%
Wetland Fees			
Willow Riparian Forest and Mixed Riparian	\$103,630 per acre	\$129,330 per acre	+25%
Central California Sycamore Woodland	\$186,200 per acre	\$237,130 per acre	+27%
Freshwater Marsh	\$131,150 per acre	\$157,540 per acre	+20%
Seasonal Wetlands	\$290,430 per acre	\$343,710 per acre	+18%
Pond	\$115,530 per acre	\$141,470 per acre	+22%
Stream (per linear foot)	\$510 per linear foot	\$525 per linear foot	+3%

FUNDING THE HABITAT PLAN

Major sources of funding for implementation of the Habitat Plan include:

- fee-related revenues from public and private development; and
- local, state and federal non-fee funding.

Fee-related revenues are reduced due to the the proposed reduction in implementing costs and the proposed reduction of acres impacted by covered activity implementation. Serpentine, burrowing owl and wetland

SANTA CLARA VALLEY HABITAT PLAN FUNDING

FUNDING SOURCE	DECEMBER 2010 DRAFT PLAN	AUGUST 2011 PROPOSED PLAN	% CHANGE
FEE FUNDING			
Development Fees			
Private Development	\$279,700,000	\$173,500,000	-38%
Public Development*	\$16,520,000	\$13,290,000	-20%
Endowment	\$106,930,000	\$36,000,000	-66%
Serpentine Impact Fees	\$35,400,000	\$28,600,000	-19%
Western Burrowing Owl Impact Fees	\$5,849,000	\$5,572,448	-5%
Wetland Impact Fees	\$81,700,000	\$76,900,000	-6%
Temporary Impact Fees	\$17,200,000	\$15,200,000	-6%
Participating Special Entity Fees	\$5,000,000	\$10,000,000	+100%
Plan Preparation Fee	\$3,833,882	\$3,833,882	0%
Total Fee Funding	\$552,132,882	\$362,896,330	-34%
NON-FEE FUNDING			
Local Funds			
County of Santa Clara Parks and Recreation Land Acquisition*	\$69,600,000	\$47,100,000	-32%
South County Airport Clear Zone	\$5,700,000	\$0	-100%
Local Land Agencies, Nonprofits and Foundations	\$85,400,000	\$79,200,000	-7%
Interest Income	\$2,600,000	\$2,200,000	-15%
Endowment Interest	\$74,160,000	\$52,900,000	-26%
<i>Total Local Funds</i>	<i>\$237,460,000</i>	<i>\$181,400,000</i>	<i>-23%</i>
State and Federal Funds			
South County Airport	\$5,500,000	\$0	-100%
State and Federal Wildlife Land Grants	\$150,000,000	\$115,000,000	-23%
<i>Total State and Federal Funds</i>	<i>\$155,500,000</i>	<i>\$115,000,000</i>	<i>-26%</i>
Total Non-Fee Funding	\$389,960,000	\$296,400,000	-24%
Total Plan Cost	\$763,788,882	\$571,260,539	-25%
Endowment Balance at End of Permit Term	\$178,090,000	\$88,900,000	-50%
TOTAL PLAN COST	\$941,878,882	\$660,160,539	-30%
<i>Difference</i>	<i>\$214,000</i>	<i>-\$864,209</i>	

*Santa Clara County development fees are provided through in lieu value of land that will be part of Reserve System.

fees have been adjusted to ensure that the full cost of mitigating impacts to these resources is addressed by the associated fee. The endowment fee has declined because of revised assumptions for the rate of return on accumulated funds over the 50-year permit term. Most County of Santa Clara Parks and Recreation and Roads and Airports development impact fees are offset by a portion of the value of County lands enrolled in the Reserve System (identified under Non-Fee Funding in the table below). The in-lieu offset will not apply to any wetland fees because those fees fund mitigation activities that involve non-land acquisition. Projected state and federal wildlife-related land acquisition grants have been reduced consistent with the reduced size of the Reserve System.

MODIFICATION IN COVERAGE FOR PRIVATE DEVELOPMENT PROJECTS

Many comments received on the December 2010 Draft Habitat Plan focused on the equitability of fees paid by private development projects. Specifically, a concern was expressed about the requirement that all projects included within the Habitat Plan's permit area were required to pay Habitat Plan fees, regardless of the potential for a project to impact listed wildlife and plant species. In order to respond to these concerns, Local Partner staff, working with the Wildlife Agencies, re-evaluated how private development projects are covered under the Habitat Plan. Local Partner staff will continue to work with Wildlife Agency staff on final coverage and fee refinements.

Using a comprehensive set of available mapping data from the Habitat Plan, Wildlife Agencies, and other sources that show the distribution of important plant and wildlife habitat, areas have been identified that define which private development projects will be covered by the Habitat Plan. The intent is to specifically provide Habitat Plan coverage for private development projects that, based on size and location, are likely to impact the plant and wildlife species covered under the Habitat Plan. In all cases, projects that would not be covered can opt into the Habitat Plan if endangered species issues are encountered. Areas identified on the Proposed Private Development Coverage Areas Map (Figure 2) include:

- Areas where private development requiring a building and/or grading permit is covered by the Plan with required payment of fees.

For rural development:

- Areas where private development requiring a building and/or grading permit with a footprint of two or more acres and all developments that affect serpentine, riparian, and wetland land cover types, streams, ponds and/or burrowing owl nesting and nest-related foraging areas are covered by the Habitat Plan with required payment of fees.
- Areas where private development is not covered unless it affects serpentine, riparian, and wetland land cover types, streams, ponds and/or burrowing owl nesting and nest-related foraging areas.

For urban development:

- Areas where development on parcels smaller than two acres is not covered under the Habitat Plan unless it affects serpentine, riparian, and wetland land cover types, streams, ponds and/or burrowing owl nesting and nest-related foraging areas; applicants can opt into the Habitat Plan if needed.

The proposed changes in Habitat Plan coverage for private development projects do not exempt any projects from the Endangered Species Act. Instead, these changes are intended to provide clarity regarding Habitat

Plan coverage for projects that are more likely to have Endangered Species Act impacts. Projects not covered under the Plan will still be evaluated on a case by case basis using the same development review process that occurs today, including environmental review and project referrals to Wildlife Agencies. If during this process it is found that a project will have an impact on listed plant and/or wildlife species, there is the ability for the project applicant to “opt in” to the Habitat Plan to obtain endangered species permits.

The Proposed Private Development Coverage Areas Map (Figure 2) is intended to be a living map, and will be reviewed on a periodic basis by the Implementing Entity and Wildlife Agencies to determine, based on changes in the distribution of listed wildlife and plant species or other circumstances, if the identified zones need adjustment.

Budget and Schedule for Preparation of a Final Habitat Plan

The Local Partners must decide whether to authorize preparation of a Final Habitat Plan, Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and Final Implementing Agreement (IA). If preparation of a Final Habitat Plan is authorized, the Wildlife Agencies and Management Team recommend that work on the Final Plan move forward as expeditiously as possible; allowing a significant gap in time between authorization of the Final Plan preparation and starting work on the Final Plan will decrease efficiency and increase costs. The Wildlife Agencies have reviewed and provided advice on the schedule that follows. In addition, the potential for issuance of a Regional General Permit by the Corps based upon the Habitat Plan has budgetary impacts that are identified in the budget that follows.

All consultant contracts now expire on December 31, 2011. Contract amendments to provide additional budget and authorization to work on the Final Plan will be required for most consultant agreements. Three consultants will require no-cost time extensions.

Following are tasks, an associated schedule, and a budget for preparation and processing of a Final Habitat Plan. This proposal requires that by October 2011, all partners authorize the preparation of the Final Plan and other documents and commit to funding the remaining work so it can begin December 1, 2011.

FINAL PLAN PREPARATION AND PROCESSING TASKS AND SCHEDULE

The proposed timeline to complete the Final Habitat Plan process is compressed and requires the time of Local Partner staff as well as the Wildlife Agencies. Steps in the preparation and processing of a Final Habitat Plan appear in the schedule on the following page.

FINAL PLAN PREPARATION AND PROCESSING BUDGET

Available Funding

It is anticipated that by the end of October 2011, \$224,000 of the \$650,000 FY 2011-2012 Habitat Plan budget will remain available for work on the Final Habitat Plan. This includes \$196,000 of uncommitted funds and \$28,000 in existing contracts.

Final Plan Preparation and Processing Tasks and Schedule

TASK		DEC 11	JAN 12	FEB 12	MAR 12	APR 12	MAY 12	JUN 12	JUL 12	AUG 12	SEP 12	OCT 12	NOV 12	DEC 12	JAN 13	FEB 13
1	Preparation, printing & distribution of Final Plan, EIR/EIS & IA															
2	Approval of Final Habitat Plan content by Wildlife Agencies															
3	Public review & Local Partner actions															
4	Formation of JPA & JPA Final Habitat Plan approval															
5	Preparation of FG & FWS findings, Biological Opinion & issuance of incidental take permit															
6	Adoption of Implementing Ordinances by Local Partners															
7	Setup of the Implementing Entity															

Supplemental Budget Funding

Four work areas will need supplemental funding through contract amendments for preparation of a Final Habitat Plan.

- Project Management: \$100,600 for calendar year 2012 (funding for November and December 2011 included in previously approved 2011-2012 budget).
- Economic Analysis: \$49,125 (does not include \$3,000 carryover from current contract).
- Completion and Processing of Final Plan. Work would consist of the following two major categories.
 - Preparing the Final Habitat Plan and providing assistance with processing the Final Habitat Plan through permit issuance. This task is estimated to cost \$265,000.
 - Development of a Corps Regional General Permit and In-Lieu Fee Instrument. The cost of this task is not precisely known. Corps staff indicated that they do not have the staff resources to develop required Permit-related materials. It appears that consultation with the National Marine Fisheries Service (NMFS) would be required in connection with a NMFS Biological Opinion for the Regional General Permit. As of August 30, 2011, there is considerable uncertainty regarding the scope/level of detail of the NMFS involvement as well as the details of how much assistance the Corps would need for the Regional General Permit process. A cost range of \$175,000 to \$225,000 has been developed for preparing the Regional General Permit. At a minimum, this funding would be sufficient to cover expenses beyond June 2012.
- Printing and Distribution of the Final Plan and Related Documents: \$50,000.

COST SUMMARY AND LOCAL PARTNER SHARES

Of the 2011-2012 Habitat Plan budget approved in May 2011, \$196,000 has not been committed to any expense and thus will be available for work on Final Plan preparation and processing. The budget for preparation and processing the Final Habitat Plan and related documents appear below along with the breakdown of cost for each of the Local Partners. For preparing the Corps Regional General Permit, the \$225,000 cost estimate is used in the Additional Local Partner Shares table.

Budget to Complete Final Habitat Plan

TASK	COST
1. Project Management:	\$100,600
2. Economic Analysis:	\$49,125
3. Final Plan Preparation:	\$265,000
4. Final Plan Printing:	\$50,000
<i>Subtotal:</i>	<i>\$464,745</i>
Remaining 2011-2012 Funds:	\$196,000
TOTAL NEEDED FUNDING:	\$268,745

Additional Local Partner Shares*

LOCAL PARTNER	COST TO FINISH FINAL HABITAT PLAN	ESTIMATED COST FOR REGIONAL GENERAL PERMIT AND IN-LIEU FEE INSTRUMENT
City of Gilroy	\$26,875	\$22,500
City of Morgan Hill	\$26,875	\$22,500
City of San José	\$53,749	\$45,000
County of Santa Clara	\$53,749	\$45,000
Santa Clara Valley Water District	\$53,749	\$45,000
Santa Clara Valley Transportation Authority	\$53,749	\$45,000

**Any unspent funds will be returned to the Local Partners*

Next Steps

The next steps are:

- Each Local Partner decides whether or not to authorize preparation and processing of a Final Habitat Plan along with a Final EIR/EIS and IA. Authorization needs to include budget approval, or the intent to fund the additional Habitat Plan-related costs as part of mid-year budget actions in early 2012. If these steps are authorized and funding is provided as early as possible, each Local Partner will review the documents between May and July 2012 and decide whether or not to adopt the Habitat Plan.
- Each Local Partner decides whether or not a Regional General Permit for impacts to waters of the U.S., including wetlands, should be pursued with the Corps. Authorization needs to include budget approval, or the intent to fund the additional costs as part of mid-year budget actions in early 2012.

Definitions

CDFG: California Department of Fish and Game, the state agency responsible for issuing permits authorizing impacts to California listed species.

EIR/EIS: An Environmental Impact Report (EIR) is prepared to satisfy the California Environmental Quality Act. An Environmental Impact Statement (EIS) is prepared to satisfy the National Environmental Policy Act. An EIR/EIS is a joint document that satisfies both laws.

FWS: The U.S. Fish and Wildlife Service, the federal agency responsible for issuing permits authorizing impacts to federally listed species.

HCP: A Habitat Conservation Plan is prepared to satisfy the federal Endangered Species Act. An HCP enables the preparing agency/agencies to receive a permit from the U.S. Fish and Wildlife Service authorizing impacts to federally listed species.

Local Partners: The six Santa Clara County jurisdictions: the Cities of Gilroy, Morgan Hill and San José, the Santa Clara Valley Transportation Authority, the Santa Clara Valley Water District and the County of Santa Clara.

NCCP: A Natural Community Conservation Plan is prepared to satisfy the California Natural Community Conservation Planning Act. An NCCP enables the preparing agency/agencies to receive a permit from the CDFG authorizing impacts to state listed species.

Permit Area: Endangered species-related permits from CDFG and FWS would apply to the study area except for within Henry W. Coe State Park. This area is excluded because of a California Department of Parks and Recreation decision not to participate in the Plan. Permits in the expanded study area to the north in Santa Clara, San Mateo, and Alameda Counties would apply only to western burrowing owl conservation actions and not to development activities.

SCVHP: The Santa Clara Valley Habitat Plan is the HCP/NCCP prepared to cover the Cities of Gilroy, Morgan Hill and San José, the Santa Clara Valley Transportation Authority, the Santa Clara Valley Water District and the County of Santa Clara.

Study Area: The area within which covered activities and species were evaluated, and which was used to determine the proposed conservation strategy.

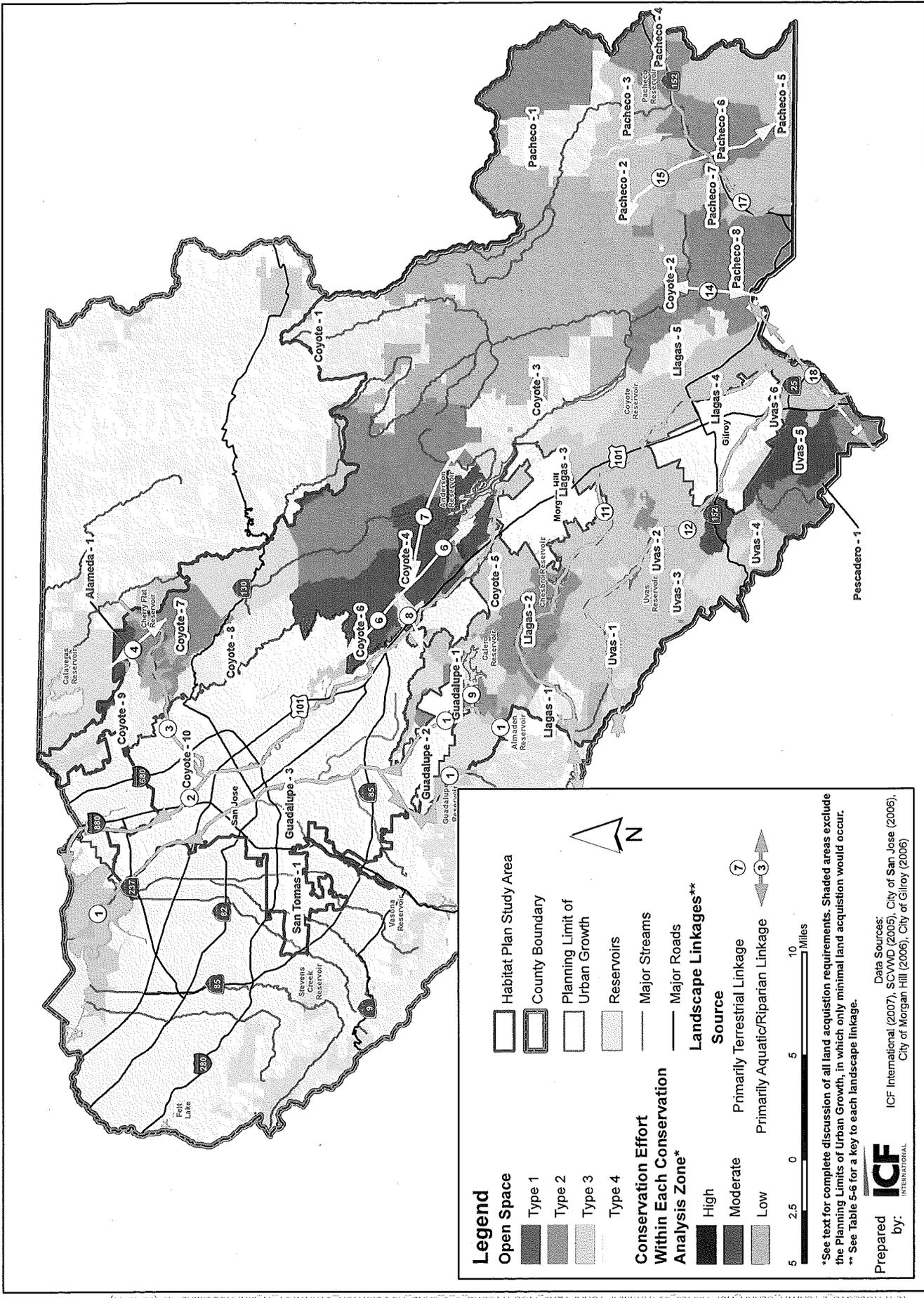


Figure 1
Land Acquisition Strategy with Applicable Landscape Linkages

*See text for complete discussion of all land acquisition requirements. Shaded areas exclude the Planning Limits of Urban Growth, in which only minimal land acquisition would occur.
** See Table 5-6 for a key to each landscape linkage.

Prepared by: **ICF INTERNATIONAL**
Data Sources: ICF International (2007), SCVWD (2005), City of San Jose (2006), City of Morgan Hill (2006), City of Gilroy (2006)

Santa Clara Valley Habitat Plan: Proposed Private Development Coverage Areas

Figure 2

