



Memorandum

TO: TRANSPORTATION &
ENVIRONMENT COMMITTEE

FROM: JOSEPH HORWEDEL

SUBJECT: SEE BELOW

DATE: March 26, 2008

Approved

Date

COUNCIL DISTRICT: City-Wide

SNI AREA: All

SUBJECT: SANTA CLARA VALLEY HABITAT PLAN - PROGRESS, STATUS & KEY ISSUES REVIEW

RECOMMENDATION

Review progress, status and key issues and provide comments for the continued preparation of the Draft Santa Clara Valley Habitat Plan. Staff recommends that the Santa Clara Valley Habitat Plan be agendized as a separate item for City Council discussion on the April 22, 2008 meeting agenda.

OUTCOME

The Transportation and Environment Committee's and the City Council's comments and direction on the seven key policy issues will allow staff and consultants to continue with the preparation of the Draft Santa Clara Valley Habitat Plan.

BACKGROUND

To promote the recovery of endangered species while accommodating planned development, infrastructure and maintenance activities, the Local Partners, consisting of the City, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, Santa Clara County and the cities of Gilroy and Morgan Hill, are preparing a joint Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The Santa Clara Valley Habitat Plan (Plan) is being developed in association with the U.S. Fish & Wildlife Service (USFWS), California Department of Fish & Game (CDFG), and the National Marine Fisheries Service (NMFS) and in consultation with stakeholder groups and the general public to protect and enhance ecological diversity and function within more than 500,000 acres of southern Santa Clara County. The final Plan will provide a framework for the Local Partners and landowners to complete projects while protecting at-risk species and their essential habitats, some of which only occur in Santa Clara County.

In 2001, the USFWS and CDFG, as part of their approval of a series of local development projects, including the Coyote Valley Research Park project and the associated Highway 101 interchange at Bailey, required the then four Local Partners (County, VTA, SCVWD & City) to commit to undertake the habitat planning effort. The Plan was required so that local agencies could address the cumulative and indirect effects of future private and public sector development and operations projects on federal and state listed endangered species.

Subsequent discussions among the four Local Partner agencies led to a Memorandum of Understanding approved in 2004. The MOU establishes the organizational structure of the Plan effort, including the Management Team and the Governing Body Liaison Group. By 2005, the cities of Gilroy and Morgan Hill had joined, and the NMFS agreed to participate regarding endangered fish species that are under their jurisdiction. A Planning Agreement between the Local Partners and the USFWS and CDFG was approved in October 2005, at which time it was agreed that the Habitat Plan would be both a Habitat Conservation Plan under federal endangered species law and a Natural Community Conservation Plan under state law.

Detailed work on what has become known as the Santa Clara Valley Habitat Plan began in 2004 with the development of a work program and initial hiring of consultant resources. Jones & Stokes is the lead consultant for biological work and preparing the Plan. A 24-member Stakeholder Group, which includes, among others, landowners and representatives from environment, business, and agriculture, has been meeting monthly since November 2005. Representative Local Partner elected officials participate as part of the Governing Body Liaison Group, which meets every two months to review and provide guidance on issues to be acted on by the respective elected bodies. The City is currently represented on the Liaison Group by Councilmember Chu and formerly by Councilmember Chirco. Councilmember Williams currently represents the VTA Board.

The work plan schedule calls for the release of a Draft Habitat Plan for public review in early 2009 and adoption of the Plan later in 2009. Prior to completing preparation of a Draft Plan, the Liaison Group decided it to be prudent that the Local Partner elected bodies review and provide direction focused on seven key policy areas. As such, each of the Local Partners is taking the attached Summary of Key Policy Issues information to their elected body. Local Partner review is scheduled to be completed by the end of April 2008. Consideration by the San Jose City Council is scheduled for April 22, 2008. The Liaison Group will meet on May 8, 2008 to review the Local Partner comments and provide guidance to the staff and consultant team. In addition to Local Partner consideration, discussion of numerous issues with the three Wildlife Agencies (USFWS, CDFG and NMFS) is occurring concurrently.

The Santa Clara Valley Habitat Plan website is www.scv-habitatplan.org.

ANALYSIS

The Habitat Plan evaluates the likely biological impacts on special status species and their habitat from future public and private sector development activities, including operation and maintenance of public facilities. The Plan will facilitate compliance with federal and state endangered species regulations as part of future development review processes. It is important to note that the Habitat

Plan does not eliminate the legal requirements for environmental review, approve any public or private development or projects, or impose any new land use regulations.

There are various linkages between the Plan and City of San Jose policies for land use planning and development, construction and operation of public infrastructure and parks, and other land use-related activities. The Plan's emerging Preferred Conservation Strategy is consistent with and supportive of the San Jose 2020 General Plan Greenline/Urban Growth Boundary and Natural Resources goals and policies. The implementation of a Habitat Reserve System will reinforce existing San Jose, Morgan Hill, and County policies to not allow the extension of urban/suburban development into hillside areas. City activities covered by the Plan include operation and maintenance work that has the potential for impacting endangered species (e.g., City road bridge repair and replacement work, roadside brush clearing, City Park trail work, etc.). These activities will not have to obtain individual project specific take permits from the Wildlife Agencies.

The potential biological impacts resulting from the covered activities of the Plan are defined more broadly than those typically identified for CEQA purposes and include habitat impacts. Habitat impacts are addressed in terms of acres of habitat negatively impacted. The Plan estimates the anticipated number of acres impacted by public and private development projects and operations over the 50-year life of the Plan. For all analyses, results were only considered to be impacts if the activity affected *natural* land covers (i.e., land covers not already developed), or agricultural and developed natural community land covers that may have some habitat value (i.e., golf courses/urban parks).

Urban development is one of the primary impact mechanisms considered in the Plan. The major impact of new urban development is conversion from natural to developed land covers. Urban development is assumed to result in permanent direct impacts because it is assumed that complete conversion of natural land covers would occur at project sites in urban areas. Urban development will also have indirect impacts on biological resources.

The impact analysis for urban development does not attempt to discern the impact of individual, separate activities, but rather assumes that all areas within the planning limits of urban growth (City's Urban Growth Boundary) for the three cities currently designated for urban development would be fully affected, with the exception of in-stream areas, over the 50 year permit term. The estimated combined total permanent impact from urban development activities for Gilroy, Morgan Hill and San Jose is approximately 15,000 acres. Of that total San Jose has approximately 1400 acres of urban development impacts.

The attached information provides a summary of the seven key policy issues. Specific questions are identified for each key policy topic, as well as the recommendation from the Management Team. Staff is seeking the Council's concurrence or other direction on each policy issue.

1. Permit Term: The permit term is the duration of the Plan as agreed to by the wildlife agencies in the Implementation Agreement. The recommendation is for 50 years, with all land acquisition completed by year 45.
2. Covered Activities: The covered activities will receive authorization for species take permits. Covered activities for the City are related to the implementation of the City's General Plan.

3. Preferred Land and Stream Conservation Strategy: The Habitat Plan includes analysis for three alternatives. The preferred conservation strategy attempts to provide an appropriate balance of enhancement or restoration of existing open space and streams with acquisition of new open space to assemble the habitat reserve system.
4. Habitat Plan-related Project Review Process and Conditions of Approval: Implementation of the Habitat Plan will require changes in the way the City currently processes public and private projects. The City will be required to apply habitat survey and evaluation requirements and conditions of approval identified in the adopted Plan. This may require the City to adopt appropriate policies and ordinances to implement the Habitat Plan.
5. Habitat Plan Costs: Estimating the full costs of the Habitat Plan is an essential step toward demonstrating adequate funding and is necessary to meet regulatory standards. The question is whether the correct cost principles been identified to guide the Plan.
6. Habitat Plan Funding: A key issue for the City and its customers is that the overall approach to funding the implementation of the Plan includes the imposition of impact fees to projects that may not have direct sensitive species impacts, or otherwise require take authorization. The fundamental issue is whether or not the identified funding strategy regarding the types and timing of fees is acceptable to the City.
7. Habitat Plan Implementation Entity: The Habitat Plan is required to have an organizational structure for implementation (i.e., special district, Joint Powers Authority, nonprofit). Although there will be continued discussion on this topic, staff needs to know if the Council has an initial preference for any particular organizational structure.

It is recommended that the Transportation and Environment Committee provide comments on the seven key policy issues identified in the attached material. The Committee's comments will be provided to the City Council for their review of the Habitat Plan issues on April 22, 2008.

EVALUATION AND FOLLOW-UP

In early 2009, the Draft Habitat Plan and Environmental Impact Report/Environmental Impact Statement (EIR/EIS) are expected to be released for public review and comment. Progress reports to the Council may be provided as necessary and prudent for the timely public release of the draft documents.

POLICY ALTERNATIVES

Not applicable.

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)**

Although this item does not meet any of the above criteria, the Habitat Plan's public outreach program has been thorough. In addition to monthly Stakeholder Group and bi-monthly Liaison Group meetings, several public meetings have been held since initiation of the Plan. Additional extensive outreach will be undertaken in conjunction with the public circulation of the Draft Habitat Plan and the accompanying EIR/EIS.

COORDINATION

This project was coordinated with the Departments of Environmental Services, PRNS, Public Works and 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 and CDFG.

FISCAL/POLICY ALIGNMENT

This project 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.

COST SUMMARY/IMPLICATIONS

Not applicable.

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CEQA

This "review" is not a project under CEQA. An Environmental Impact Report/Environmental Impact Statement is being prepared for the Habitat Plan and will be publicly circulated in early 2009 in conjunction with public review of the Draft Habitat Plan.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

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

cc: Ken Schreiber, Program Manager, SCVHP
David Zippin, Jones & Stokes

Attachments: Summary of Key Policy Issues
Brochure



Santa Clara Valley Habitat Plan

Summary of Seven Key Policy Areas

Draft

February 2008

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Policy Area 1

Permit Term

Issues

- A) What permit duration should the Local Partners seek from the Wildlife Agencies?
- B) What should be the evaluation cycles?
- C) When should land acquisition be completed?

Recommendation

The Management Team recommends the following.

- A) That the Local Partners request a 50-year permit term.
- B) That annual reporting be provided to the Wildlife Agencies and the public, with major status reviews every 5 years.
- C) That all land and easement acquisition be completed by year 45.

Discussion

Permit Term

- Six Local Partner governmental agencies—the Cities of Gilroy, Morgan Hill, and San Jose; Santa Clara Valley Transportation Authority; Santa Clara Valley Water District; and County of Santa Clara—are undertaking preparation of the Santa Clara Valley Habitat Plan, a coordinated planning program to address state federal endangered species regulations.
- The California Department of Fish and Game, U.S. Fish and Wildlife Service, and National Marine Fisheries Service will, based on the approved Habitat Plan, issue permits for future impacts on endangered species from covered activities in an approximately 520,000-acre Study Area (Figure 1).
- The preferred conservation strategy provides species and habitat mitigation for impacts on 30 covered species: 12 species currently listed by the state or federal government as threatened or endangered and 18 species likely to be listed in the next 50 years (Table 1).
- The permit term must balance the need for long-term assurances to the Local Partners for their covered activities and the uncertainty in scientific knowledge of the covered species and natural communities.
- Adopted habitat plans have permit terms from as short as 30 years to more than 75 years. Older plans have terms of up to 100 years.
- A 50-year permit term will encompass all the foreseeable development, capital projects, and operations and maintenance activities of the Local Partners required to support local approved growth plans.
- The Management Team's recommendation is based on the considerations listed below.

- The General Plan build-out policies for San Jose and Morgan Hill.
- Public sector capital facility operations, maintenance, and replacement schedules that are a notable part of the activities proposed to be covered by the Plan.
- The Water District's commitment to a 50-year permit term for the Three Creeks Habitat Conservation Plan that will be linked to the Habitat Plan.
- The value of a longer timeframe in which to secure adequate funds to implement the ambitious conservation strategy and to maintain the Plan in perpetuity.

Evaluation Cycles

- The Habitat Plan will incorporate a strong adaptive management process to continuously incorporate new information and input from outside experts, and make necessary course correction to achieve the biological goals and objectives of the Plan. This process will ensure that management and restoration techniques will be improved over time.
- The Habitat Plan's Implementation Entity will be subject to annual monitoring and reporting requirements as well as a major assessment of the Plan's status every 5 years. This major status review will include a thorough assessment by a panel of independent, outside experts and a public review process.
- If a covered species declines to the extent that it may become extinct due to factors outside the Local Partners' control, the Wildlife Agencies have the ability by law to suspend or revoke the Habitat Plan permit for that species. This provides a failsafe mechanism in the event that a species declines rapidly and unexpectedly.
- The Wildlife Agencies have the ability to force action or revoke incidental take permits if local agencies are not meeting the obligations identified in the Habitat Plan.

Land Acquisition

- Land to be acquired, in fee title or through a conservation easement, will address either mitigating the impacts of covered activities or the conservation enhancement objectives of the state's endangered species regulations.
- The pace of land acquisition for mitigation will always need to stay ahead of the pace of covered activity impacts.
- Acquisition of land for conservation enhancement will, through the use of grants and other sources, be emphasized in the first part of the permit term.
- The completion of land acquisition is linked to two factors.
 - It is expected that proposed activities will occur throughout the 50-year permit period; therefore, acquisition of lands should occur prior to that development but reasonably consistent with availability of funds.
 - The Wildlife Agencies want there to be a time period prior to the end of the permit term for some site-specific conservation planning, adaptive management, and monitoring of land conditions to occur. Accordingly, the Management Team recommends a 45-year period to complete land acquisitions.

Table 1. Special-Status Species Proposed for Coverage under the Santa Clara Valley Habitat Plan

Species	Scientific Name	Status ^a	
		State/CNPS	Federal
Invertebrates			
Bay checkerspot butterfly	<i>Euphydryas editha bayensis</i>	—	FT
Fish			
Pacific lamprey	<i>Lampetra tridentata</i>	—	—
South-Central California Coastal steelhead	<i>Oncorhynchus mykiss</i>	CSC	FT
Central California Coastal steelhead	<i>Oncorhynchus mykiss</i>	—	FT
Central Valley fall-run Chinook salmon	<i>Oncorhynchus tshawytscha</i>	CSC	SOC
Amphibians and Reptiles			
California tiger salamander	<i>Ambystoma californiense</i>	CSC	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	<i>Aquila chrysaetos</i>	FP	BGPA, MBTA
Western burrowing owl	<i>Athene cunicularia hypnoga</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 nutica</i>	ST	FE
Plants			
Big scale balsamroot	<i>Balsamorhiza macrolepis</i> var. <i>macrolepis</i>	1B	—
Chaparral harebell	<i>Campanula exigua</i>	1B	—
Tiburon Indian paintbrush	<i>Castilleja affinis</i> subsp. <i>neglecta</i>	ST/1B	FE
Coyote ceanothus	<i>Ceanothus ferrisiae</i>	1B	FE
Mount Hamilton thistle	<i>Cirsium fontinale</i> var. <i>campylon</i>	1B	—
San Francisco collinsia	<i>Collinsia multicolor</i>	1B	—
Santa Clara Valley dudleya	<i>Dudleya setchellii</i>	1B	FE
Fragrant fritillary	<i>Fritillaria liliacea</i>	1B	—
Loma Prieta hoita	<i>Hoita strobilina</i>	1B	—
Smooth lessingia	<i>Lessingia micradenia</i> var. <i>glabrata</i>	1B	—
Hall's bush mallow	<i>Malacothamnus hallii</i>	1B	—
Robust monardella	<i>Monardella villosa</i> subsp. <i>globosa</i>	1B	—
Rock sanicle	<i>Sanicula saxatilis</i>	SR/1B	—
Metcalf Canyon jewelflower	<i>Streptanthus albidus</i> subsp. <i>albidus</i>	1B	FE
Most beautiful jewelflower	<i>Streptanthus albidus</i> subsp. <i>peramoenus</i>	1B	—
^a Status		State	
Federal		SE	State Listed as Endangered
FE	Federally Endangered	ST	State Listed as Threatened
FT	Federally Threatened	SR	State Listed as Rare
BGPA	Bald and Golden Eagle Protection Act	CSC	California Special Concern Species
MBTA	Migratory Bird Treaty Act	FP	Fully Protected
SOC	Species of Concern (National Marine Fisheries Service only)	California Native Plant Society	
		1B	Rare, Threatened, or Endangered in California and Elsewhere

Working Draft (02-12-2008)

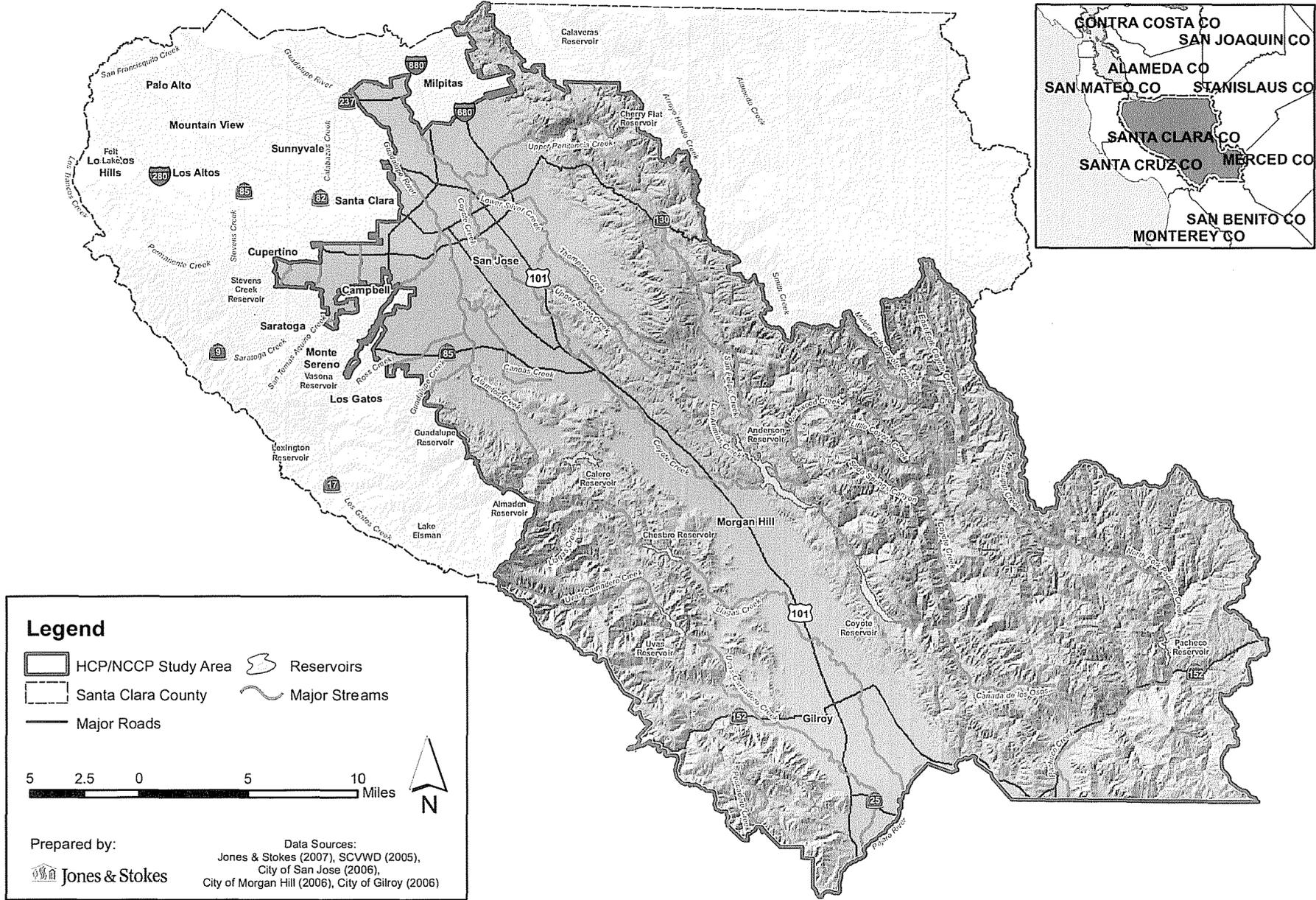


Figure 1
Santa Clara Valley Habitat Plan Study Area

Policy Area 2

Covered Activities

Issue

What public and private sector activities and projects will be included in the Draft Habitat Plan and receive coverage in the endangered species permits?

Recommendation

The Management Team recommends that the covered activities include the broad categories of covered activities listed below and exclude the activities also listed below.

Covered Activities

- The Plan will cover the following **broad categories** of activities.
 - Urban development in Gilroy, Morgan Hill, and San Jose based on approved general plans and growth boundaries.
 - Rural development consistent with adopted General Plans.
 - New public infrastructure projects including road widening, bridge replacement, flood protection, and park facilities.
 - Operations, maintenance, and capital public projects and facilities including work related to streams, water supply, reservoirs, canals, roads, and parks.
 - Acquisition, management, and monitoring of the Habitat Plan Reserve System.
- As identified in Draft Chapter 2, the Plan incorporates the following new development-related activities.
 - Current General Plan build-out assumptions in the City of Gilroy's General Plan (development projected to 2020), the City of Morgan Hill's Urban Limit Line and Sphere of Influence in the Southeast Quadrant area, and the City of San Jose's Green Line.
 - For Santa Clara County, continuation of General Plan policies and regulations limiting growth outside of the cities is assumed and projected.
 - For the Santa Clara Valley Transportation Authority (VTA), the Plan incorporates planned transportation projects.
 - For the Santa Clara Valley Water District (SCVWD), the Plan incorporates flood control and water supply projects and operations, construction, and maintenance of SCVWD facilities such as dams, levees, reservoirs, canals, pipelines, and percolation ponds. Components of the Fisheries and Aquatic Habitat Collaborative Effort

(FAHCE) Settlement such as reservoir operation, fish passage improvement, gravel augmentation, and stream restoration are included under the Plan. Pacheco Reservoir expansion as a solution to the Low-Point problem at San Luis Reservoir is currently being considered through a Bureau of Reclamation process.

- The Habitat Plan does not supercede the land use, project, and environmental review and decision-making authority for any of the Local Partners. Incorporation of an activity in the Habitat Plan and the incidental take permits does not result in or imply project approval.
- Work on the Plan has been based on the premise that the Plan will cover as many public and private sector activities and projects as possible that have impacts on endangered species and their habitat and that are consistent with the conservation strategy.

Excluded Activities

The following activities are proposed to be **excluded** from the Habitat Plan.

- Routine and ongoing agricultural activities (note: intensive agricultural activities such as cut flower nurseries, Christmas tree farms, ornamental plant nurseries, dairies, and feedlots, are not considered routine agricultural activities and are covered by the Habitat Plan).
- Expansion of cultivated agriculture into natural lands (unless associated with an approved rural development project that is covered by the Habitat Plan).
- Bay Area to Central Valley High-Speed Train.
- New highway between I-5 and U.S. 101.
- Timber harvest operations.
- Quarries and other mining.
- Mercury removal/remediation (except where specifically noted in the Habitat Plan and customarily carried out by SCVWD).
- PG&E operations and maintenance.
- City of San Jose's Draft Coyote Valley Specific Plan (note: CVSP will be covered by its own endangered species permits).
- SCVWD Stream Maintenance Program activities (note: SMP activities are covered by their own endangered species permits, which SCVWD anticipates renewing).

Policy Area 3

Preferred Land and Stream Conservation Strategy

Issue

The Habitat Plan has identified a preferred conservation strategy that addresses enhancement of existing open space, acquisition of new open space, and enhancement of streams to benefit steelhead and other covered aquatic species. Can the Habitat Plan team expand and refine the key concepts listed below to create the preferred conservation strategy for the Draft Habitat Plan?

Recommendation

The Management Team recommends that the Draft Habitat Plan's conservation strategy focus on the key concepts identified in this summary.

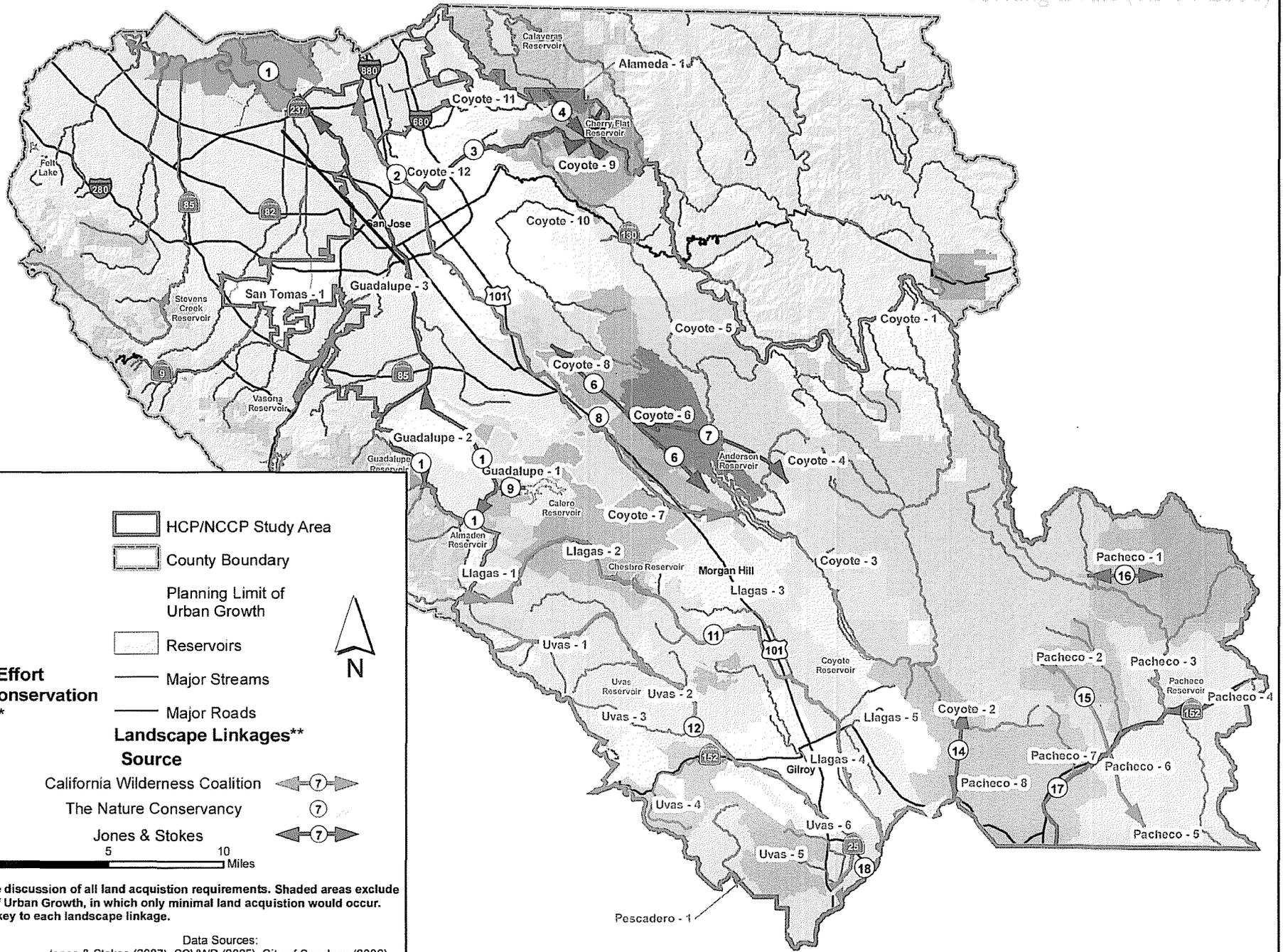
Background

- In June 2007 the Local Partners released working drafts of three alternative conservation strategies. These alternatives have been reviewed by the Liaison Group, Stakeholder Group, Wildlife Agencies, outside experts, and the public.
- The preferred conservation strategy was designed to meet the regulatory requirements of the federal Endangered Species Act and the California Natural Community Conservation Planning Act and to streamline compliance with other applicable environmental regulations such as the Clean Water Act, California Environmental Quality Act, and National Environmental Policy Act.
- The preferred conservation strategy provides species and habitat mitigation for impacts on 30 covered species: 12 species currently listed by the state or federal government as threatened or endangered and 18 species likely to be listed in the next 50 years (Table 1).
- To meet California permit standards, the preferred conservation strategy also contributes to species recovery to help delist the listed species and reduce the potential for the listing of other species through the protection, restoration, and enhancement of natural communities and species habitat.
- The FAHCE program includes a variety of stream conservation actions in the north County. The Habitat Plan will be relying on those actions for the majority of the stream conservation actions in the northern part of the Study Area.

Key Concepts

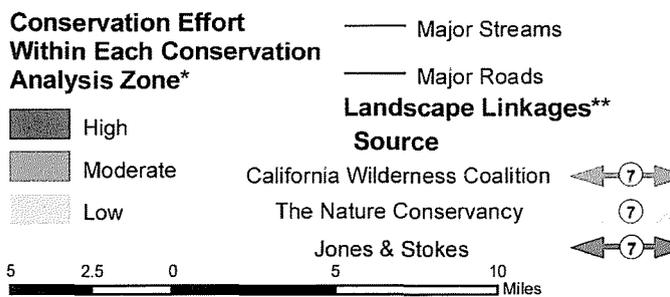
Key elements of the preferred conservation strategy include are listed below.

- Preserve and enhance in perpetuity approximately 45,000 acres of new land obtained from willing sellers through acquisition of fee title and conservation easements focused on the areas highlighted in Figure 2, which illustrates the focus for reserve locations and other terrestrial based strategies.
- In addition to new land acquisitions, enhance and monitor approximately 25,000 acres of high-value species habitat in County and State Parks and other publicly owned land.
- Sustain and enhance the movement of native species through the preservation or enhancement of 15 large-scale land linkages (depicted in Figure 2).
- Preserve major local and regional wildlife connections among existing protected areas.
- Restore approximately 500 acres of valley oak woodland, riparian woodland, wetlands, and ponds.
- Restore stream function in the areas highlighted in Figure 3 in proportion to impacts from covered activities (an estimated 45 miles of streams).
- Enhance native fish-bearing streams such as Coyote Creek, Guadalupe River, Uvas Creek, and Pacheco Creek and their key tributaries. Figure 3 illustrates the focus for restoration activities, including those listed below.
 - Removing or modifying barriers to fish movement.
 - Increasing winter, spring and/or summer base water flows and/or winter and spring pulse water flows from reservoirs during critical life stages of steelhead trout and Chinook salmon.
 - Improving in-stream habitat conditions.
- Establish a framework for effective, active, long-term management of the Reserve System and streams outside the Reserve System to maintain and enhance populations of covered and other native species.
- Establish a comprehensive, science-based monitoring program to ensure that management actions are effective at meeting the conservation objectives of the Habitat Plan.
- A commitment to own and management in perpetuity the lands and biological improvements acquired for the Habitat Plan Reserve System and in key streams throughout the Study Area.



Legend

- Open Space**
- Type 1
 - Type 2
 - Type 3
 - Type 4
- Conservation Effort Within Each Conservation Analysis Zone***
- High
 - Moderate
 - Low
- Landscape Linkages****
- Source**
- California Wilderness Coalition
 - The Nature Conservancy
 - Jones & Stokes



*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: Jones & Stokes
 Data Sources: Jones & Stokes (2007), SCVWD (2005), City of San Jose (2006), City of Morgan Hill (2006), City of Gilroy (2006)

Figure 2
Land Acquisition Strategy with Applicable Landscape Linkages

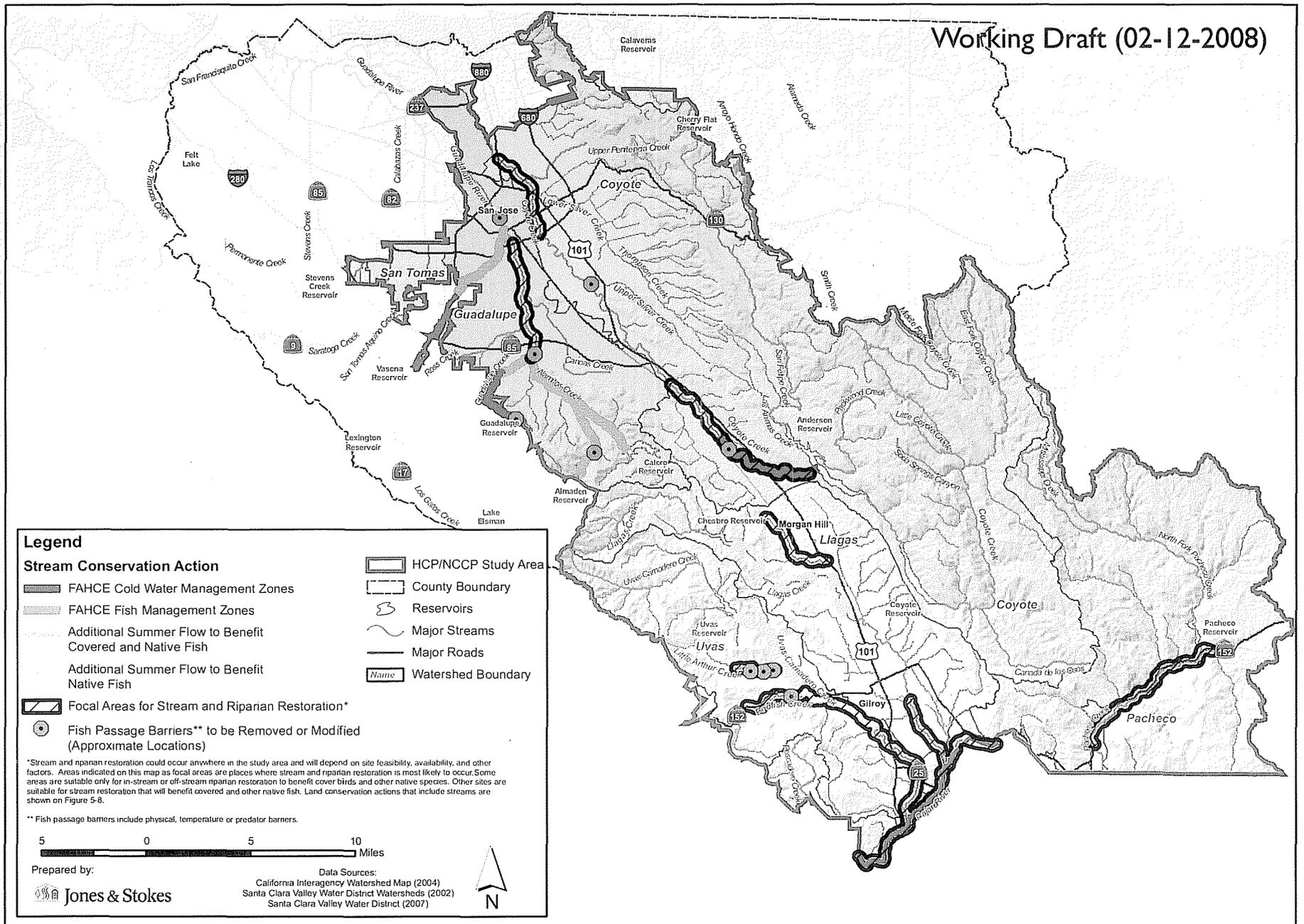


Figure 3
Major Stream Conservation Actions

Policy Area 4

Habitat Plan–Related Project Review Process and Conditions of Approval

Issue

Each Local Partner will be required to apply habitat evaluation requirements and conditions of approval from the adopted Habitat Plan to public and private sector development and operations/maintenance projects. What principles should guide this review process?

Recommendation

The Management Team recommends that the following principles be incorporated into the Habitat Plan, and that conditions of approval for covered activities such as those suggested below be required.

Background

- The federal and California Endangered Species Acts require that local and other levels of government, when approving specific projects that affect listed endangered species, include measures to avoid and minimize negative impacts on covered species. Project proponents are required to obtain applicable state and/or federal permits for projects having negative impacts on one or more species. The Habitat Plan addresses, on a large area basis, the requirements of the federal and California Endangered Species Acts.
- Land cover and biological information assembled during the Habitat Plan preparation process has expanded the understanding of potential impacts of public and private sector development and operations and maintenance activities on the covered species included in the Habitat Plan. The habitat evaluation requirements, conditions of approval, and fees will affect an increased number of private and public sector activities than has previously been the case.
- As part of implementing the Habitat Plan, each Local Partner will need to adopt an ordinance or other action to require, for both public and private sector project approvals, project review processes and conditions of approval identified in the Habitat Plan.

Review Process Principles

- Simplify the endangered species permitting process and anticipate future requirements for species and habitat compliance at the state and federal levels.
- Seek not to complicate project review processes.
- Whenever possible, use information required under the California Environmental Quality Act for Habitat Plan project applications.

- Limit biological survey requirements to essential information necessary to verify Habitat Plan biological and land cover assumptions and to allow avoidance and minimization of impacts on key biological resources.

Proposed Conditions

The Habitat Plan will propose about 20 conditions of approval that address the following key issues. The conditions would only apply to a project if applicable.

- Avoid direct impacts on no-take plants and wildlife species protected under California and/or federal law.
- Minimize and, where possible, avoid impacts on especially sensitive habitats including streams, riparian woodland, ponds, wetlands, wildlife corridors, and areas with serpentine soil or valley oak woodland habitat.
- For rural areas, encourage compact development and minimize impacts on areas with natural land covers.
- For new projects, minimize the impacts on wildlife movement corridors.
- For ongoing operations and maintenance activities in streams, apply the best management practices already in use by SCVWD.

Exemptions

Projects in the categories listed below will be exempt from conditions of approval unless the activity may adversely affect a mapped or unmapped stream, riparian woodland, or wetland.

- Any covered activity that occurs in areas mapped by the Habitat Plan at Plan adoption as urban/suburban or landfill.
- Private sector activities that do not require a development, grading, or building permit.
- Additions to existing structures that result in less than a 50% increase in floor area and/or less than 1,000 square feet of newly paved surface so long as no mapped or unmapped stream, riparian woodland, or wetland riparian habitat is affected.
- Public sector routine infrastructure maintenance in urban/suburban areas (e.g., pavement management, park renovations, graffiti removal, traffic operation systems).

Policy Area 5

Habitat Plan Costs

Issues

Is the cost information complete and understandable? Are the cost principles acceptable to guide the Habitat Plan?

Recommendation

The Management Team recommends that the Habitat Plan's costs, as refined during 2008, become part of the Draft Habitat Plan.

Cost Model Assumptions

- Estimating the full costs of the Habitat Plan is an essential step toward demonstrating adequate funding and is necessary to meet regulatory standards. A detailed custom cost model was constructed (Table 2).
- The goal of the cost model is to conservatively estimate implementation expenses over a 50-year permit term so that overall costs are not underestimated. The cost model was built so that it could be continually refined and updated during the planning and implementation process.
- The budget assumes that SCVWD's costs associated with activities in the Three Creeks HCP (formerly FAHCE HCP) are funded separately; consequently, these costs are not part of the Habitat Plan cost model.
- Cost assumptions were developed using comparable cost data from SCVWD, VTA, County Parks, the Open Space Authority, State Parks, The Nature Conservancy, and other land management organizations in the Bay Area.

Cost Inflation Assumptions

- All cost components expected to increase due to inflation during the planning process, other than land, are tied to the Consumer Price Index (CPI) for the San Francisco–Oakland–San Jose Metropolitan Service Area.
- A separate land valuation analysis based on local and comparable real estate transaction data was used to develop the critical land acquisition cost estimates. Land values are proposed to be increased annually during the planning and implementation process according to the federal Home Price Index for this metropolitan area. This index has been found to be a good predictor of land values.
- To monitor and maintain consistency between actual and assumed costs, all costs will be evaluated and adjusted as appropriate during each of the 5-year major Plan assessments.

Projected Costs in 2007 Dollars

- The annual cost of the preferred conservation strategy, in 2007 dollars, is being refined. Initial calculations are that the Habitat Plan’s annual cost, including land acquisition, will be in the range \$16–18 million per year, including \$4 million for annual operating costs.
- This range of annual costs is in line with the cost of other regional HCPs and NCCPs in California and with the budgets of similar land management agencies.
- Land costs are estimated, in 2007 dollars, at \$6,000–34,000 per acre depending on parcel location, size, and topography. Total land costs for the preferred conservation strategy are estimated, in 2007 dollars, at \$400–450 million over the permit term. The land cost estimates assume that conservation easements will be acquired for approximately 7,000 acres.
- The total cost of the Habitat Plan, in 2007 dollars, is estimated to be in the range of 800 to 900 million dollars. Major elements of the total 50-year costs are shown below.

Major Budget Element	% of Cost
Land and Easement Acquisition	45%
Habitat Restoration/Creation	22%
Monitoring, Directed Studies and Adaptive Management	4%
Reserve Management/Maintenance	12%
Environmental Compliance	1%
Water Supply and Fish Habitat Management	3%
Recreation and Public Access	2%
Administration	6%
Contingency	7%
Note: total exceeds 100% because of rounding	

Post-Permit Cost Responsibilities

- The Habitat Plan will require a source for funding operations and maintenance of reserve land after the end of the permit term (i.e., year 51 and beyond). The Plan will not commit to a source for this obligation now but will identify a suite of long-term funding options and will commit to securing one or more sources within the first 20 years of the permit period.

Program Administration

Reserve staff
Office furniture and equipment
GIS and database equipment
Tools
Vehicles and fuel
Office space and utilities
Insurance
Staff training and uniforms
Legal and financial analysis assistance
JPA meeting stipends
Law enforcement
In-lieu funding for law enforcement and fire protection (to offset loss of property tax revenue)
Public education/outreach

Land Acquisition

Fee title/ conservation easements
Due diligence
Pre-acquisition surveys
Site improvements: demolition, road removal, fences, gates, signs

Habitat Restoration / Creation

Reserve staff and contractors
Vehicles, equipment, and materials
Plans and specifications
Bid assistance
Environmental compliance
Pre-construction surveys
Construction
Construction oversight & monitoring
Post-construction oversight and monitoring
Remedial measures
Contingency

Environmental Compliance for restoration projects and land management activities

NEPA/CEQA, CWA 404/401, NHPA, CDFG 1602

Reserve Management and Maintenance

Reserve staff and contractors
Vehicles, equipment, and materials
Field facilities

Maintenance and utilities for facilities

Roads, bridges, ponds

Water pumping

Special equipment and materials

Invasive species control

Reserve Water Supply and Fish Habitat Management and Maintenance

Fish barrier modification and removal

Water flow management

Recreation and Public Access

Reserve staff (volunteer coordination)

Vehicles, equipment, and materials

Trailheads and associated facilities

Trails, construction and maintenance

Monitoring, Research, and Adaptive Management

Reserve staff and contractors

Vehicles, equipment, and materials

Biological monitoring by species and land cover

Directed research

Adaptive management - Conservation assessment team and Science Advisors panel

Remedial Measures

Contingency Fund

Policy Area 6

Habitat Plan Funding

Issues

Is the overall approach for funding the Habitat Plan through a combination of impact fees, some land acquisitions by existing open space agencies, and grants acceptable? Is the strategy regarding the types and timing of fees acceptable?

Recommendation

The Management Team recommends the funding approach described below.

- Funding implementation of the Habitat Plan focuses on the three sources listed below.
 - Public and private sector impact fees including broadly applied base fees linked to the habitat value of land being affected by development and additional habitat restoration fees for impacts on habitats that require restoration actions (represents approximately 60% of anticipated revenues).
 - Land acquisitions by existing open space agencies (anticipated to cover approximately 20% of projected costs of Plan).
 - State and federal grants (represents approximately 20–25% of anticipated revenues).
- Impact fees would start after the Habitat Plan and related implementation approvals are in place (estimated at July 2010). Fees would be due prior to issuance of the first grading or building permit or initiation of ground-disturbing activity, whichever comes first.
- The Management Team is considering whether a grace period will be applied after the local ordinances take effect to allow projects in the pipeline to avoid paying Habitat Plan fees.
- For any project proponent (public or private), fees would be offset by the value of land provided for the Reserve System or habitat restoration projects that the public agency or private party provides, as long as the land or project meets the biological goals of the Plan, as determined by the Implementing Entity.

Discussion

- The Habitat Plan incorporates both of the following:
 - mitigation of public and private sector impacts on endangered species, and
 - conservation enhancement of endangered species habitat.
- Mitigation-related land acquisition needs to be paid by the projects causing habitat-related impacts. Accordingly, the strategy for funding implementation of the Habitat Plan will involve private and public sector development impact fees.

- Sources for payment of conservation enhancement–related land acquisition require that these funds are not used to pay for land that mitigates development impacts.
- Over the course of 50 years, the activities covered by the Habitat Plan will negatively affect up to about 25,000 acres of land and 45 miles of streams.
- Land cover and biological information assembled during the Habitat Plan preparation process has expanded the understanding of potential impacts of public and private sector development and operations and maintenance activities on the covered species included in the Habitat Plan. The Habitat Plan’s project review process and fees will affect an increased number of private and public sector activities than has previously been the case.

Major Sources of Implementation Funding

Major sources of funding under consideration for implementation of the Habitat Plan comprise two types of impact fees, maintenance of ongoing open space acquisition efforts, state and federal land acquisition grants, and outreach to local nonprofit organizations.

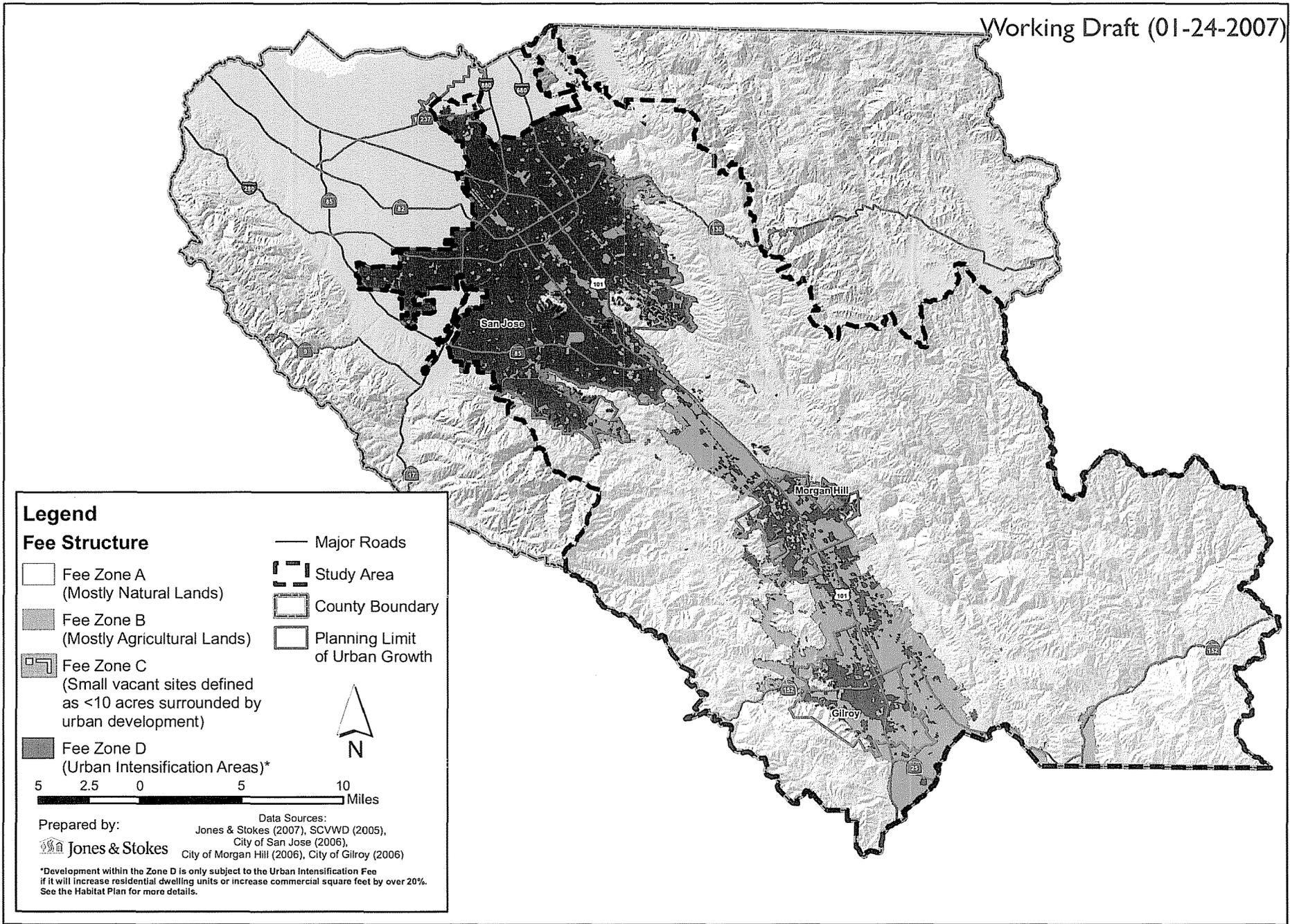
I. Impact Fees

General Principles

- One-time impact fees are based on the amount of land or length of stream that a particular activity affects or, for urban intensification, increased vehicle trips.
- Impact fees on land vary depending on the habitat value of the land affected by the activity.
- A small fee on urban intensification may be assessed on a per unit basis. This fee would account for the incremental impact of increased vehicle trips on nitrogen deposition and its effects on covered species.
- Exempt activities: The following activities are proposed to be exempt from the Habitat Plan fees unless they affect one or more of the special habitats requiring restoration identified below.
 - Urban/suburban covered activities on parcels less than 0.5 acre as long as no mapped or unmapped stream, riparian woodland, or wetland riparian habitat is affected.
 - Private sector activities that do not require a development, grading, or building permit.
 - Additions to existing structures that result in less than a 50% increase in floor area and/or less than 1,000 square feet of newly paved surface as long as no mapped or unmapped stream, riparian woodland, or wetland riparian habitat is affected.
 - Residential projects where 90% or more of the units are part of an affordable housing program.
 - Residential projects proposed to serve as farm labor housing.
- Public agencies that provide land for the Reserve System or stream or wetland improvements will have their fees offset by the value of the land or stream improvements.

Strategy

A base impact fee will be applied within four habitat-related zones (Figure 4).



Legend

Fee Structure

- Fee Zone A (Mostly Natural Lands)
 - Fee Zone B (Mostly Agricultural Lands)
 - Fee Zone C (Small vacant sites defined as <10 acres surrounded by urban development)
 - Fee Zone D (Urban Intensification Areas)*
 - Major Roads
 - Study Area
 - County Boundary
 - Planning Limit of Urban Growth
- 5 2.5 0 5 10 Miles

Prepared by: Jones & Stokes
Data Sources: Jones & Stokes (2007), SCVWD (2005), City of San Jose (2006), City of Morgan Hill (2006), City of Gilroy (2006)

*Development within the Zone D is only subject to the Urban Intensification Fee if it will increase residential dwelling units or increase commercial square feet by over 20%. See the Habitat Plan for more details.

Figure 4
Base Development Fee Zones

- **Zone A: Natural Land.** Land is strongly dominated by natural land cover types including grassland, oak woodland, and chaparral. Zone A occurs outside the Santa Clara Valley floor within the Diablo Range and the 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 in the range of \$15,000–20,000 per acre.
- **Zone B: Agricultural and Rural Residential Lands.** Land is strongly dominated by currently or recently 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 effect on covered species and natural communities than do activities in Zone A. The impact fee is projected to be 50% of the Zone A fee.
- **Zone C: Small Vacant Sites.** Zone C comprises specific sites that meet all the following criteria.
 - Undeveloped.
 - 1.0–10.0 acres in size.
 - Surrounded on four sides by one or more of the following land cover types: urban/suburban, landfill, or agriculture developed/covered agricultural.

Development of these areas will result in loss of open space and some habitat values, but impacts will be less than those in Zone B and substantially less than those in Zone A because these areas are already surrounded by development. The impact fee is projected to be 25% of the Zone A fee.

- **Zone D: Urban Intensification Sites.** Zone D comprises undeveloped sites within urban/suburban areas that are at least 0.5 acre and less than 1.0 acre and sites that undergo intensification of existing uses greater than minimal increases in square footage or vehicle trip levels. Development on these sites will increase the number of vehicle trips, thereby increasing the amount of nitrogen-based pollution that affects natural habitat areas. The fee for this type of development is to be based on the increase in vehicle trips from the site and is projected to be a one time payment of approximately \$10 per new vehicle trip and, for non-residential uses (e.g., retail, office, industrial), approximately 10–20 cents per new square foot of floor area.

The total estimated revenue, in 2007 dollars, of all the impact fees (Zones A, B, C, and D) is approximately \$305,000,000, or about 40% of total Habitat Plan implementation costs.

II. Restoration Fees for Impacts on Riparian-Related Habitat

In addition to the base fee, impacts on riparian-related habitats will require habitat restoration efforts and related fees as specified below.

Land Cover Type	Cost per Acre (2007 dollars)	Mitigation Ratio	Anticipated Maximum Impact (acres)	Restoration Fee per Acre (2007 dollars)
Willow and mixed riparian forest, scrub and woodland	\$70,000	1:1	525	\$70,000
Central California sycamore alluvial woodland	\$65,000	2:1	2	\$130,000
Coastal and Valley freshwater marsh	\$95,000	1:1	42	\$95,000
Seasonal wetland	\$105,000	2:1	15	\$210,000
Pond	\$80,000	1:1	80	\$80,000
Stream (per linear foot)	\$420	1:1	45 (miles)	\$420

The total estimated revenue, in 2007 dollars, of the habitat restoration fees is approximately \$155,000,000, or about 20% of total Habitat Plan implementation costs.

III. Maintenance of Ongoing Open Space Acquisition Efforts

Some of the land acquired by California State Parks (Henry W. Coe Park), the Santa Clara County Parks and Recreation Department, and the Santa Clara County Open Space Authority will be part of the Reserve System and used for conservation enhancement purposes. For each agency, assumptions were developed regarding the amount of future land acquisition that should be assumed to become part of the Habitat Plan Reserve System.

Agency	% of Historic Land Acquisition Projected to Apply to Reserve System	Estimated Average Annual Reserve System Acres	Total Acres over 50 years
State Parks	33%	45	2,250
County Parks	33%	162	8,100
Open Space Authority	25%	95	4,750

The role and extent of the Open Space Authority is under discussion. In addition to these agencies, there also is the possibility that about 330 acres of future San Martin Airport clear zone land acquisitions by means of Federal Aviation Administration funding can become part of the Reserve System.

The estimated revenue, in 2007 dollars, of this funding source is approximately \$200,000,000, or about 20% of total Habitat Plan implementation costs.

IV. State and Federal Grant Funding

- Some state and federal funding sources are available only to jurisdictions with an adopted Natural Community Conservation Plan (which the Habitat Plan will be). These funds can only be used for conservation purposes and cannot be used to acquire land that meets the mitigation needs of new development. Consequently, the conservation/enhancement aspect of the Habitat Plan as required by state regulations is critical in applying for these funds.
- Local staff is currently working with Wildlife Agency staff to determine the agencies' funding commitment for this Plan.

- It is possible that additional grant funding from non-Habitat Plan-related sources (e.g., Pajaro Watershed Flood Protection Authority) will also be available to assist implementation of the Habitat Plan.
- It is estimated that state and federal grants will fund approximately 20–25% of total implementation costs.

V. Other Potential Funding Sources

Staff is seeking additional sources of funding through discussions with nonprofit organizations, including land conservancy organizations and foundations that have a history of and interest in funding acquisition of open space land. Unless there is a firm commitment for such funding, the Plan cannot anticipate this source of funding.

Implementation of Fees

Approval of the Habitat Plan is currently scheduled to occur in late 2009. Issuance of state and federal permits will follow Plan approval. Each Local Partner will then need to adopt an ordinance approving a number of implementation elements including a fee schedule. Ordinance adoption is scheduled to occur in the first 4 months of 2010.

Implementation of fees is proposed to include the concepts listed below.

- Fees to be effective on a specific date following adoption of the Implementation Ordinance.
- Fee requirements should be timed so that projects that are close, procedurally and time wise, to receiving building, grading, or other initial construction permits would not be subject to new fees.
- For any project proponent (public or private), fees would be offset by the value of Reserve System land or habitat restoration that the agency or private entity provides that is acceptable to the Implementing Entity.

Policy Area 7

Habitat Plan Implementing Entity

Issue

The Habitat Plan will need to have an organizational structure for implementation. What organizational structure for the Implementing Entity should the six Local Partners select?

Recommendation

The Management Team is not prepared to make a recommendation at this time. A range of organizational principles, attributes, and options is presented for review and comment. The Liaison Group requested that comments made by the Local Partner elected officials be considered before a proposed Implementing Entity is developed.

Background

- The Local Partners are ultimately responsible for ensuring that all aspects of the Habitat Plan are properly implemented.
- An important issue is the extent to which the Local Partners want to collectively oversee implementation of the Habitat Plan. The more that the Partners intend to rely on the Implementing Entity, the greater the legal authority, capacity, and expertise the Implementing Entity should possess.
- There are many organizational options available to implement a Habitat Plan. The appropriate legal entity or organization for implementing the Plan will depend on what the entity is expected to do.

Principles and Attributes

The Management Team, based on review of other habitat plans and consultant input, identified the attributes listed below for assessment of Implementing Entity options.

- **Legal authority.** The extent to which the Implementing Entity has legal authority to perform the obligations necessary to implement the Habitat Plan.
- **Control and accountability.** The level of control or oversight that the Local Partners want to have over the Implementing Entity to ensure that the Plan is properly implemented.
- **Efficiency.** The extent to which the Implementing Entity can act efficiently in carrying out implementation of the Plan.
- **Capacity/capability.** The extent to which the Implementing Entity has or can easily obtain the expertise and resources (e.g., biological expertise, financial management resources, land acquisition) to fulfill its obligations.

- **Revenue generation and management.** The extent to which the Implementing Entity will be able to obtain outside or public funding for implementation of the Habitat Plan.
- **Stability/durability.** The extent to which the entity has long-term viability.
- **Focus.** The extent to which the Implementing Entity's focus may be divided among competing obligations or interests.
- **Credibility.** The extent to which the Implementing Entity's mission or reputation gives it credibility with the Wildlife Agencies, private sector implementation partners, and the public.
- **Flexibility to respond to changing needs and new circumstances.** The extent to which the Implementing Entity can adjust to changing biological, funding, and other implementation-related conditions.
- **Timing.** How much time is needed to establish the Implementing Entity, and the extent to which the process of establishing the Implementing Entity could affect the start of implementation work.

Organizational Options

The Management Team, based on review of other habitat plans and consultant input, identified six organizational options.

Option 1: One Local Partner is responsible for most or all aspects of Habitat Plan implementation. An example is San Diego County's responsibility for the South San Diego County Multi-Habitat Conservation Plan.

Option 2: Form a **special district** focused on implementation of the Habitat Plan. Options include a Park and Open Space District or a Recreation and Park District.

Option 3: Create a **Joint Powers Authority**. An example is the East Contra Costa County Habitat Conservation Plan Association.

Option 4: Form a **private nonprofit tax-exempt public benefit corporation**. An example is the Natomas Basin Conservancy---the organization created to be the "plan operator" for the Natomas Basin Habitat Conservation Plan (covers a portion of Sacramento County).

Option 5: Create a **state-chartered conservancy**. These organizations are board-governed entities within the California Resources Agency. There are nine state-chartered conservancies in California. An example is the Coachella Valley Mountains Conservancy, the organization that is likely to be involved with implementation of the Coachella Valley Habitat Plan.

Option 6: Mix features from more than one of the five preceding options (e.g., a public policy body with an active oversight role and a nonprofit organization with day-to-day implementation responsibilities, with both parts of the implementation structure making extensive use of contract resources).

Initial Management Team Considerations

- In all cases, SCVWD will be responsible for reservoir operations and SCVWD's other water supply and flood protection responsibilities.

- Carrying out Plan implementation work tasks can rely on the staff of the Implementing Entity and/or contracts with public and private sector organizations.
 - There should be a preference to using contract resources rather than relying on new staff. Contracting for resources can involve both contracts with one or more of the Local Partners for a specific service and contracts with consultants for specialized services.
 - There should be a highly visible Policy Body that can provide policy direction and be the first line of public accountability.
 - In Santa Clara County, nonprofit organizations such as trusts and foundations have been viewed as positive mechanisms to address issues.
 - Table 3 was prepared by a Habitat Plan consultant with long and extensive involvement with implementation of conservation plans. The chart identifies conclusions regarding the relative strength of each of the five organizational options for eight of the 10 evaluation criteria.

Table 3. Comparison of Implementation Organizational Structures

Evaluation Criteria	Organizational Structure				
	Local Partner	Special District	Joint Powers Authority	Nonprofit Public Corporation	State Chartered Conservancy
Legal Authority	*****	***	*****	*	****
Accountability	***	*	*****	***	*
Efficiency	***	*	***	*****	*
Capacity/Capability	**	***	***	***	****
Fundraising	***	***	***	***	*****
Stability	*****	****	****	**	****
Focus	*	***	*****	****	***
Credibility	*	****	***	****	*****

***** = highest capacity
 * = lowest capacity