



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Christopher Burton

**SUBJECT:** See below

**DATE:** December 15, 2025

Approved

Date:

12/16/25

**COUNCIL DISTRICT:** Citywide

**SUBJECT: Approval for the Santa Clara Valley Habitat Agency to Proceed with a Habitat Plan Amendment**

## **RECOMMENDATION**

As a Local Partner to the Santa Clara Valley Habitat Plan, the City of San José, through its City Council, approves the decision of the Santa Clara Valley Habitat Agency to amend the Santa Clara Valley Habitat Plan and directs City staff to bring the proposed amendment back to the City Council for review and adoption.

## **SUMMARY AND OUTCOME**

The Santa Clara Valley Habitat Plan (Habitat Plan) provides a long-term coordinated program for habitat conservation, while improving and streamlining the environmental permitting process for projects and activities impacting threatened and endangered species in Santa Clara County. The City of San José is one of six co-permittee agencies to the Habitat Plan.

After 10 years of successful implementation, the Santa Clara Valley Habitat Agency (Habitat Agency) and its co-permittee agencies are preparing an amendment to the Habitat Plan. Pursuant to the Memorandum of Understanding with the co-permittee agencies, the Habitat Agency is requesting approval from the City of San José to proceed with the proposed amendment.

## **BACKGROUND**

Since 2013, the Habitat Agency has been managing and implementing the Habitat Plan with support from the following co-permittees: County of Santa Clara, City of San José, cities of Gilroy and Morgan Hill, Valley Water, and the Valley Transportation Authority.

Through careful oversight of covered projects, efficient use of fees and grants to advance the Conservation Strategy, and detailed annual reporting, the Habitat Agency has been successful in meeting the early goals and objectives of the Habitat Plan. However, continued success of the Habitat Plan means that some components must be adjusted or revised periodically to align assumptions with the reality of development and need for coverage in Santa Clara Valley. For example, land cover impact limits in the Habitat Plan are approaching their take limits for one covered species (burrowing owl) and a few habitat types. These limits can only be adjusted through a formal amendment to the Habitat Plan.

The first 10 years of the Habitat Plan implementation have required modifications, clarifications, and interpretations to clear the administrative record and strengthen policy. A rewrite of some of the Habitat Plan sections would ease understanding for new staff members of the co-permittee agencies who help administer the Habitat Plan. Furthermore, the early success of the Habitat Plan has led to discussions about whether more of the land within Santa Clara County should be covered for impacts and/or considered for enrollment in the growing Reserve System of land. County Parks, County Roads and Airports, Valley Transportation Authority and Valley Water have all requested this extended coverage, which they see as beneficial in carrying out new development as well as continued operations and maintenance of existing facilities.

On January 20, 2022, the Implementation Board authorized the Executive Officer to enter into a consultant service agreement with ICF to prepare a major amendment to the Santa Clara Valley Habitat Plan (Plan Amendment). A final administrative draft of the Plan Amendment was completed in September 2025 and is available on the Habitat Agency website.

## **ANALYSIS**

A memorandum prepared by the Habitat Agency is provided as Attachment A – Santa Clara Valley Habitat Amendment Memorandum. This staff report details the history and early implementation of the Habitat Plan, as well as the rationale for the proposed Plan Amendment. It also includes a direct link to the full administrative draft chapters of the Plan Amendment and an explanation of all changes, shown as edited versions of the text. Some of the key amendments that are of particular interest to the City of San José are related to:

- Add seven new special status wildlife species to the Habitat Plan for coverage, protection and conservation.
- Expand the Plan area boundary to the northwest for public and select project coverage and to the northeast for conservation only.

- Include Valley Water's Stream Maintenance Program and the California Vegetation Treatment Program as covered activities, including some provisions for acknowledging the beneficial actions of each of these programs.
- Adjust cumulative impact assumptions and take limits for certain land cover types, habitats or specific species.

Attachment B is a copy of the Memorandum of Understanding that was executed between the Habitat Agency and the co-permittees in 2013. Consistent with Section 8(d) of the Memorandum of Understanding, any decision to amend the Habitat Plan must be approved by the governing bodies of each co-permittee agency. The Valley Transportation Authority Board of Directors, the Valley Water Board of Directors, City of Gilroy City Council, and the Morgan Hill City Council have all approved the Habitat Agency proceeding with the proposed amendment. The Habitat Agency is therefore requesting that the City of San José also authorize the Habitat Agency to proceed with the proposed amendment.

The amendment is anticipated to go through the environmental review process in early 2026 and be complete by the end of 2026. Coordination between the Habitat Agency, the City of San José, and the co-permittees will be ongoing during this time. Once the environmental review is complete, the Habitat Agency and the City of San José will adopt the proposed amendment.

## **EVALUATION AND FOLLOW-UP**

The Habitat Agency requests that the City of San José City Council approve pursuit of the Plan Amendment as presented. Once approved by the City of San José Planning Commission and City Council, the Habitat Agency Implementation and Governing Boards may approve a Final Plan Amendment upon completion of the Plan Amendment's environmental review. Upon completion of the Final Plan Amendment and its environmental review, the City of San José City Council will also vote to approve the Final Plan Amendment.

## **COST SUMMARY/IMPLICATIONS**

No direct fiscal impact is anticipated. Funding for the plan amendment has been fully secured by the Habitat Agency through /U.S. Fish and Wildlife Service, California Department of Fish and Wildlife grants and funds provided by Santa Clara Valley Water District to pay for benefits they specifically receive through the amendment that does not benefit the other co-permittees.

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### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the January 13, 2026 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

### **CEQA**

Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body.

### **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

Chris Burton

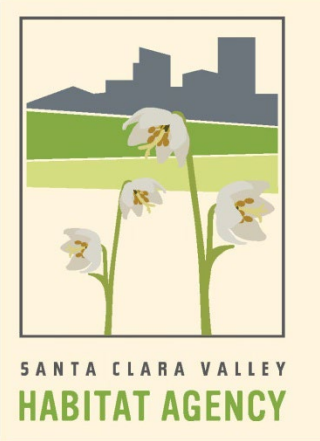
Director, Planning, Building, and Code  
Enforcement Department

For questions, please contact David Keyon, Principal Planner, Planning, Building, and Code Enforcement Department at [david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov).

### **ATTACHMENTS**

Attachment A – Santa Clara Valley Habitat Amendment Memorandum

Attachment B – Memorandum of Understanding



**TO:** San Jose City Council

**FROM:** Gerry Haas, Principal Planner

**SUBJECT:** Santa Clara Valley Habitat Plan Amendment – Administrative Draft Review

**RECOMMENDED ACTION:** Approve the Habitat Agency proceeding with a proposed amendment to the Santa Clara Valley Habitat Plan.

**INTRODUCTION:**

For the past ten years, the Santa Clara Valley Habitat Agency (Habitat Agency) has led an ambitious conservation effort, quietly protecting valuable natural habitat throughout the County to benefit special status plant and wildlife species, several of which exist only in this valley. The permanent protection of over 16,000 acres of conservation land to date is a local success story implemented by the Habitat Agency, but impossible without the support and partnership of the six co-permittee agencies including the County of Santa Clara, the Cities of San Jose, Morgan Hill and Gilroy, Valley Water and the Santa Clara Valley Transportation Authority. The conservation success is at a landscape-scale, focused on purchasing large ranches from willing sellers .

These ranchlands are managed to enhance natural communities and the 18 Habitat Plan covered species. Wetlands and other aquatic resources, which have been negatively impacted by past human activities, are restored to improve water quality, water storage and habitat benefits for species which are dependent on them. To date, the Habitat Agency has restored nearly four miles of streams, 10 acres of sycamore alluvial woodland, six acres of riparian habitat, and 8.9 acres of perennial and seasonal wetlands and ponds. Moreover, the Habitat Agency is contributing to a better understanding of our natural environment through research and monitoring. Staff uses this knowledge to better manage the landscapes in the hope what they learn will benefits future generations.

The purpose of this report is to explain how and why this conservation is taking place; to define the Habitat Agency in the context of its formation, function, and future; to acknowledge the achievements of its goals and objectives; and finally, to present the purpose and need for an update to its governing document, the Santa Clara Valley Habitat Plan.

**BACKGROUND:**

A Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) may be required when a project will result in direct take of a listed threatened or endangered species. The intent of the HCP/NCCP is to provide mitigation for the take when it occurs. "Take" is defined separately by state and federal wildlife agencies but generally refers to a negative effect on a species of plant or wildlife

that is listed on the Federal Endangered Species Act (FESA) or the California Endangered Species Act (CESA). An HCP/NCCP was required in July 2001 as part of State and Federal approval of several local transportation projects (U.S. 101 widening from San Jose to Morgan Hill, the U.S. 101/Bailey Avenue Interchange, Highway 85/U.S. 101 Interchange, and the Coyote Valley Research Park Plan). Since several projects were being required to complete an HCP/NCCP at the same time, and since there were many more projects in the foreseeable future which would face the same requirement, it was decided that the best approach would be to prepare a single large-scale plan to accommodate broad development in Santa Clara County.

Four local agencies (Valley Transportation Authority [VTA], County of Santa Clara, City of San Jose, and Valley Water) were subject to the initial requirement and jointly committed to the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) to develop the HCP/NCCP. Initial work included development of a work plan and approval in 2004 of a Memorandum of Understanding among the four original co-permittee agencies (Co-Permittees). The four original co-permittees were joined in 2005 by the cities of Gilroy and Morgan Hill. The six co-permittees then signed a Planning Agreement with CDFW 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.

In 2013, the Plan was approved, along with the formation of the Santa Clara Valley Habitat Agency (Habitat Agency) as a Joint Powers Authority (JPA) to oversee and implement the Plan. The JPA is managed by a Governing Board, consisting of eight members: two representatives of each of the four participating jurisdictions (the cities and the County). The Governing Board has two primary roles: adoption of Plan fees and approval of the annual budget. The Habitat Agency has a second board, the Implementation Board, which is responsible for making financial recommendations to the Governing Board, contracting approvals, land acquisition and grant funding review, approval of annual reports and additional tasks prior to submittal to the USFWS and CDFW (together, the wildlife agencies). The Implementation Board is composed of 11 members, consisting of two representatives from each of the participating jurisdictions, two representatives for Valley Water, and a single representative for VTA.

The Plan's HCP component is consistent with the FESA, which allows local agencies to approve projects in endangered species' habitats in exchange for identifying mitigation strategies based on a coordinated landscape scale plan for conserving endangered species and related natural habitat.

The Plan's NCCP component is the State counterpart to the Federal HCP and provides a means of complying with the CESA. The NCCP goes farther than the HCP in that it addresses not only mitigation of development impacts but also includes actions necessary to promote the long-term restoration and enhancement of species habitat areas, known as natural communities.

The purpose of an HCP/NCCP is to offer a more efficient process for protecting the environment and processing state and federal applications for local projects that may affect endangered species and natural habitat. Prior to the Plan, public entities and private developers evaluated projects individually. Endangered species regulations may require consultation with a variety of federal and state regulators to mitigate impacts to species and habitat loss. This can be a lengthy process for project proponents, involving considerable time and money and with uncertain outcomes.

Furthermore, mitigation in the absence of an HCP/NCCP 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, movement of non-native invasive species and climate change, there is a mounting need to provide an assured and balanced structure for development and resource conservation at a regional scale that can be sustained indefinitely. An HCP/NCCP meets this need by providing clear project costs, avoiding project delays due to consultation or permitting for impacts to protected plants or wildlife and creates a local mitigation solution that results in a comprehensive landscape scale conservation program which benefits all the co-permittees.

Since 2013, the Plan has provided instant and automatic take authorization for all covered projects within the Plan area with the completion and submittal of a Private Development Application Form or a Public Reporting form, and the payment of land cover and specialty impact fees.

#### **PLAN IMPLEMENTATION:**

The Habitat Plan programmatic take permits are shared by all co-permittees and are issued with the understanding that generally marginal habitat is being impacted, while better habitat is being protected, away from the threat of development. The Plan's Conservation Strategy makes this expectation clear as it strives for recovery of protected species locally and the presence of protected species within the Reserve System of land (all land protected by the Habitat Agency). The loss of some species in areas that are more impacted is offset by protecting, then improving the quality of habitat in the Reserve System. In this sense, the Plan is managed like a bank account. For every acre of land impacted by permanent development, one or more acres must be permanently protected from future development through the purchase of land or a conservation easement by the Habitat Agency. The ratio of acres protected to acres impacted varies by land cover type. Additional acreage is required to be protected and restored when especially sensitive resources are impacted. In each fiscal year (July 1 through June 30), the Habitat Agency documents total covered project impacts which have accrued within the Plan area (debits) and acres of land acquired or protected for conservation as well as restoration or enhancement actions completed (credits). Demonstrating compliance with the Plan through an annual report ensures that the Habitat Agency is keeping up with the Plan's conservation strategy and that the take authorization can continue throughout the permit term (50 years from inception). All annual reports are accessible on the Habitat Agency website: <https://scv-habitatagency.org/328/Annual-Reports>.

#### **Impacts and Take Authorization**

Since Plan adoption, the Habitat Agency and Co-Permittees have developed workflows and processes to improve efficiency of reporting impacts and documenting compliance with the Plan's requirements. Primarily documented in annual reports, the impacts accrued are compared with the conservation and restoration achieved with the funding provided through the assessment of land cover fees for those same impacts. Since 2013, a total of 470 individual projects have received automatic take coverage under the Habitat Plan. Cumulative permanent land cover impacts for all projects covered by the Plan in the first ten years of implementation total 2,230 acres. In that same period, 3,027 linear feet of streams (0.57-mile) were permanently impacted. The Plan assumes total land cover impacts for the entire 50-year permit term to be 17,975 acres. As the Plan is ten years old, the assumption is that 3,595

acres of land would have been permanently impacted by this time. The actual impact figure is 883 acres fewer than assumed, and this may represent changes in development patterns such as avoidance of open space in favor of infill development or it may be reflective of other trends such as cost of living and the resulting outmigration. In any case, the amount of impact is well below anticipated levels.

Of the 470 projects covered by the Plan as of the date of this report, 262 were private development activities, 184 were public projects, and 24 were projects conducted by Participating Special Entities (PSE's) – outside agencies who voluntarily sought coverage under the Plan to streamline their projects. All of these projects and activities received automatic take coverage for impacts to Plan covered species, meaning there was no delay for project review or permitting by USFWS or CDFW. The Plan also ensured certainty for these projects in terms of cost and conditioning. Development and construction plans could be drafted and completed with the knowledge that abiding by the Plan was all that was necessary to avoid consultation with the wildlife agencies.

### Conservation

The Habitat Plan's Conservation Strategy describes how covered activity impacts are mitigated primarily through the conservation (protection) of land. Land which is acquired through the purchase of fee title or through a recorded conservation easement becomes part of the Reserve System of Land (Reserve System). The Reserve System includes land protected in four of the five major watersheds in the Plan area. The Habitat Agency's early focus on acquiring land of high conservation value has resulted in a mosaic of protected land occupied by one or more of the Plan's covered species. This conservation land exists in various locations across the Plan area extending from San Jose in the north, down to the Pajaro River south of Gilroy and in both mountain ranges that flank the valley. The Habitat Agency is active in managing these newly protected lands. General land management actions are necessary, such as installation and maintenance of fences, roads, culverts, and irrigation infrastructure; vegetation management; removal of debris, aging infrastructure and other nuisances; and property access management. Beyond those responsibilities applicable to all land management entities, the Habitat Agency has additional requirements to enhance the habitat within the Reserve System to make it more suitable for covered species. Enhancement includes installing and supporting native plant species, removal and control of invasive and exotic species and activities focused on improving ecosystem health.

In a demonstration of the Habitat Agency's commitment to the Conservation Strategy, land has been protected at an impressive rate, averaging over 1,400 acres per year for the first ten years of implementation. Many acres of the highest value conservation lands in the most critical locations have already been secured. Continuing at this rate will give all protected plant and wildlife species the greatest chance at recovery. A current map of the Reserve System is available on the Habitat Agency website at this link: <https://scv-habitatagency.org/213/Reserve-System>

With the Reserve System now standing at 16,160 acres of land conserved, the Plan is a full 40% ahead of its conservation target. By this time in Plan implementation, it was anticipated that only 9,000 acres would have been protected. This land acquisition success is due the Habitat Agency successfully secured local, state and federal grants, which allows Plan mitigation fees to fund the Habitat Agency operations and land management. But as mentioned above, with a reduction in total acres of land



being impacted than was anticipated, there is a corresponding reduction in fees being collected. This challenge, and a recommended solution to it, is discussed in the Plan Amendment Funding and Future Costs section below.

#### Restoration and Enhancement

The habitat restoration requirements of the Plan are intended to offset impacts to aquatic resources resulting from development in the Plan area, and to aid in the recovery of the species which rely on those resources. Since 2013, the Habitat Agency has completed seven habitat restoration projects in ponds, wetlands and stream corridors. These restoration sites are located on the east side of Santa Clara Valley (Diablo Range – Coyote watershed), on the west side of the Valley, (Santa Cruz Mountain foothills – Alamosa watershed), and also on valley floor lands in the Pacheco Creek and Pajaro watersheds. Cumulatively, restoration projects have restored 9 acres of riparian woodlands, 9 acres of sycamore alluvial woodlands, 8.9 acres of perennial and seasonal wetlands and ponds, and 3.4 miles of streams. Restoration projects have improved habitat for 8 of 18 covered species— western burrowing owl, California red-legged frog, California tiger salamander, western pond turtle, least Bell’s vireo, tri-colored blackbird, Mount Hamilton thistle, and Coyote ceanothus. One project improved a regional wildlife connection between the Diablo Range and Santa Cruz Mountains, and another one enhanced wildlife movement under SR-152 In addition to providing benefits to covered plant and wildlife species, the habitat improvements realized through effective restoration benefits all plant and wildlife species occurring in the vicinity of these projects.

In addition to restoration projects, general habitat conditions have been improved throughout the Reserve System of land through focused and careful land management practices. Managing grasslands to benefit our covered plant species and Bay checkerspot butterfly is an ongoing task occurring on thousands of acres of protected land. Clearing trash and debris from the landscape, as well as targeting invasive plant and wildlife species for removal ensures the best chances of all covered species to survive and thrive in the Reserve System.

#### Monitoring and Research

In addition to funding significant land conservation, restoration and enhancement, the Habitat Agency has used available funding to conduct research on covered species, wildlife connectivity and monitoring of resources. Several studies, ranging from species surveys and occurrence tracking for covered plants (smooth lessingia, jewelflowers and Tiburon paintbrush) and herptofauna (California red-legged frog and California tiger salamander) to wildlife movement (mountain lion, tule elk) to adaptive management based on tracking impacts following wildfire (Coyote Ridge) are playing an important role in the Habitat Agency’s understanding of the current and changing conditions of the landscape within the Plan area. Links to early research and monitoring projects can be found on the Habitat Agency’s website, which is updated regularly.

#### Plan Implementation Success

As described in the Annual Reports, the Habitat Agency is meeting most of its early success criteria. It exceeds the Plan’s proportional requirements for land protection and habitat restoration, which are the key and foundational metrics for gauging such success. Land acquisition and restoration are, in fact, the primary means of determining that mitigation has truly been provided for impacts which have

occurred in the past ten years. Not only has the Habitat Agency protected 40% more acreage than required at this point in implementation, but it has also protected more than 100% of the minimum required acres of all specified natural communities on which our covered species rely. By nearly every measure, the Habitat Agency is outperforming its expectations to the collective benefit of the co-permittees.

**HABITAT PLAN AMENDMENT**: On January 20, 2022, the Implementation Board authorized the Executive Officer to enter into a consultant service agreement with ICF to prepare a major amendment to the Santa Clara Valley Habitat Plan (Plan). The proposed changes to the Plan were described in the January 2022 staff report to the Implementation Board and are summarized below in the section titled: Primary Changes Proposed in the Amendment. Two approved US Fish and Wildlife Service (USFWS) Section 6 planning assistance grants, administered through the California Department of Fish and Wildlife (CDFW) are funding this effort, which is needed to capitalize on early Plan successes by expanding the coverage and benefits of the Plan, both to special status species and to the co-permittees, and to address issues that have arisen since the Plan was adopted in 2013. A consultant service agreement with ICF was finalized in April 2022, and work on the Plan amendment began immediately.

For the past three years, the Habitat Agency and ICF have worked closely with each of the co-permittee agencies, the wildlife agencies, land management entities, local professional biologists and other stakeholders to review and discuss changes proposed in the Plan through the amendment process. The second half of 2022 and the first few months of 2023 were spent determining the full scope of changes to be considered. The result of this effort was a technical report, which was shared with the Habitat Agency's Public Advisory Committee (PAC) and its Implementation and Governing Boards in early 2023. The report became an informal roadmap for drafting the revised language in each of the chapters. The remainder of 2023 was spent negotiating sections of new language and revisions to existing language within each of the chapters of the Plan with the partners.

In 2024, the first versions of the administrative draft chapters of the Plan were shared with the Habitat Agency's Technical Advisory Committee (TAC) for input and discussion. The TAC consists of representation from each of the co-permittee agencies, the Habitat Agency and both wildlife agencies. Chapter 1 (Introduction) required very little discussion, and consensus was reached in a short time. But most other chapters required extensive discourse to ensure the final draft language was acceptable for all parties. Although there had been general agreement on the scope of the proposed additions to the Plan, the exact language to incorporate those additions was challenging to fully develop. For example, there is general agreement that adding monarch butterfly to our covered species list was necessary now that they are candidate for federal listing on the Endangered Species Act. Yet, agreeing on their primary and secondary habitat types within the Plan area, overwintering use, and an effective conservation approach took time. This played out for all seven species and even for a few other species that were evaluated but dropped from consideration. Other initial proposals were also dropped after lengthy analysis and discussions, such as the removal of the Private Development Areas Map, the addition of other agencies as co-permittees and removal of coverage for two species that have not been documented in the Plan area. Most Plan amendment work in 2024 was focused on writing and rewriting text to ensure all parties could agree with the final approach.

Progress improved in early 2025 and by early summer, the consensus administrative draft version of the first three chapters was completed. By summer's end, the final administrative draft version of the entire Plan was completed. The administrative draft version is summarized below and can be accessed at the following link (due to volume) for review and discussion with this staff report, following a brief explanation of the Habitat Plan structure and an overview of the changes within each chapter.

Administrative Draft Amended Habitat Plan overview and chapters:

<https://scv-habitatagency.org/354/Habitat-Plan-Amendment>

### **STRUCTURE OF THE HABITAT PLAN:**

The structure of the Habitat Plan is somewhat linear, wherein early chapters define the setting and scope for ensuing chapter analyses. The Plan and state and federal permits are introduced, as are the existing physical conditions, regulatory framework and biological resources. Then, covered activities are described and potential build-out of the various general plans, master plans and other organizational documents are accounted for in an effects analysis. The effects analysis is layered over the biological setting to provide a sense of the potential scale of impacts expected over the life of the permit term (50 years). Most importantly, the effects analysis drives a conservation strategy to appropriately mitigate for all potential impacts, and the final chapters discuss how the conservation strategy is to be implemented, including a funding chapter to ensure the Plan can pay for itself. Below is a brief outline of the chapters, including a description of their general content and how they relate to other chapters.

#### **Chapter 1 – Introduction**

This chapter describes the Habitat Plan as both a Natural Communities Conservation Plan (NCCP) under the California Department of Fish and Wildlife, and a Habitat Conservation Plan (HCP) under US Fish and Wildlife Service. It describes the Plan boundary, the structure and jurisdiction of the co-permittee agencies and list of species covered by the Habitat Plan.

#### **Chapter 2 – Land Use and Covered Activities**

This chapter defines the activities and projects to be covered by the Habitat Plan, broken down by covered activity type and including co-permittee programs, master plans and proposed build out. It summarizes the areas where take (in the form of development or ongoing maintenance) is likely to occur.

#### **Chapter 3 – Physical and Biological Resources**

This chapter describes the existing baseline condition of physical and biological resources throughout the Plan area at the time of Plan adoption. It describes the natural communities, the land cover types (which are a subset of those communities), aquatic resources and topographical features in the Plan area. It also includes habitat modeling for each of the existing 18 covered species of plants and wildlife.

#### **Chapter 4 – Impact Assessment and Level of Take**

This chapter describes the scale of covered activities and establishes the impact caps on the various land cover types and modeled habitats. By quantifying the presumed rate of development within the

Plan area and layering the covered activities onto the baseline maps of the biological setting, an assumption of total take of acres (and miles of stream length) is specified for the entire 50-year permit term.

#### Chapter 5 – Conservation Strategy

Based on the impact assumptions, a conservation strategy is developed, which will sufficiently mitigate for all the identified impacts throughout the permit term. The conservation strategy is a combination of land protection, land management, restoration, enhancement actions, research, monitoring and reporting.

#### Chapter 6 – Conditions on Covered Activities

These are conditions of coverage and are required, as applicable, for all covered activities. They identify avoidance and minimization measures, survey requirements for select species and certain standard practices for development

#### Chapter 7 – Monitoring and Adaptive Management

This chapter outlines the expected land management actions and monitoring of species and habitat health within the Reserve System of land. It also provides allowances and expectations for adaptive management as new data is generated, and research is developed.

#### Chapter 8 – Plan Implementation

This chapter describes how the Plan is to be implemented. Though much of this chapter is focused on documenting, tracking and reporting out on covered activities, there also is significant discussion about Habitat Agency structure, roles of the co-permittees and wildlife agencies.

#### Chapter 9 – Cost and Funding

Funding for the Habitat Plan comes from land cover impact fees (approximately 55% of revenue) and grants/donations (45% of revenue). This chapter describes the collection of revenues and how they are to be spent proportionally on various cost centers, including: land acquisitions, land management, restoration, enhancement, monitoring, research, staffing, and administration. It describes the endowment, as well as the anticipated change in the fee schedule from year to year and over time, including adjustments made pursuant to the requisite five-year fee reviews.

#### Chapter 10 – Assurances

These are assurances requested by the co-permittees to ensure that the state and federal take permits issued to the Habitat Plan will not be modified and that the agreements and commitments within the Plan will not change as a result of new regulation or policies, except as agreed to by all parties. It includes references to the federal No Surprises Regulation stipulating that no additional money, commitments or restrictions will be required by the co-permittees due to unforeseen circumstances.

#### Chapter 11 – Alternatives to Take

This chapter is limited to a disclosure that alternatives to take for the covered species were considered, and if take is included, an explanation why it could not be avoided. Some of the Plan covered species are still no-take, meaning no direct loss of individuals is covered, but impacts to their habitat can occur.

**PRIMARY CHANGES PROPOSED IN THE PLAN AMENDMENT:**

The schedule of regular TAC meetings, sharing Plan amendment updates with Habitat Agency boards and committees, as well as separate meetings and consultations with individual co-permittees as needed, has helped to refine the approach to the amendment and has distilled four primary changes deemed most important to address at this time. These changes are considered by the TAC to be the most pressing in terms of ensuring continued success of the Habitat Plan, increased benefits of including more species for coverage and extending the existing coverage benefits to a larger geographic area. Many other secondary and administrative changes can be seen in draft versions of each amended chapter. Because most of them have no material effect on coverage, cost, or conservation, they are not described here. The four primary changes that have the potential to affect coverage, cost or conservation are as follows:

- 1) Add seven new special status wildlife species to the Habitat Plan for coverage, protection and conservation.
- 2) Expand the Plan area boundary to the northwest for public and select project coverage and to the northeast for conservation only.
- 3) Include Valley Water's Stream Maintenance Program and the California Vegetation Treatment Program as covered activities, including some provisions for acknowledging the beneficial actions of each of these programs.
- 4) Adjust cumulative impact assumptions and take limits for certain land cover types, habitats or specific species.

**ADMINISTRATIVE DRAFT AMENDED CHAPTERS:**

There are four universal changes to Plan text where replacement language has been selected to update and provide clarity to existing text within the document. These changes include the following:

- Name change from Santa Clara Valley Water District to Valley Water
- Name change from California Department of Fish and Game (CDFG) to California Department of Fish and Wildlife (CDFW)
- Removal of references to the Three Creeks HCP, which is no longer in development
- Change 'Study area' (existing Plan boundary) to 'Permit area' (existing Plan boundary, plus expanded coverage areas described below)

The following is a description of the primary additions, omissions and revisions to each chapter of the Habitat Plan. These revisions can all be found within the linked revised chapters in a track-change format for ease of discovery.

**The primary changes to Chapter 1 include:**

- Update to reflect the first amendment to the Habitat Plan and presumed date of approval
- Updated Table 1-2 to include the seven new species proposed to be added for coverage
- Definition of the expanded Plan boundary
- Updated Mission Statement approved by the PAC and Governing Board in 2024
- Notations that certain supporting or background documents were updated within the Habitat Plan, but only if their updates necessitated analysis for impact assumptions.

Amending the Plan to address early challenges in implementation offers the opportunity to reevaluate the covered species list and propose new species for coverage. Periodic re-evaluation is important and necessary when considering the many environmental threats facing an expanding list of local plants and wildlife. In the past ten years, several new species have been proposed for listing under CESA and ESA. If any of these species become listed, but are not covered by the Plan, then projects and activities affecting these species may require additional consultation and mitigation from project proponents. If that should occur, it would undermine the assurances baked into the Plan for expeditious project review, covered projects could experience costly delays, and the certainty created by the Plan through the transparency of both the avoidance measures and impact fees, would be eroded.

Species considered in the evaluation process for the Plan amendment consisted of special-status species:

- That were not previously evaluated in the original Plan;
- With a change (or proposed change) in regulatory listing status;
- With range expansion into the study area;
- With the potential to be impacted by covered activities; and/or
- That were of interest for take coverage by the Habitat Agency or members of the TAC.

Special-status species which were evaluated and excluded in the original plan because they did not meet any of the five criteria above were not reevaluated. Once selected for evaluation, each new species was assessed based on a set of criteria described in the Plan (Section 1.2.4, Covered Species, subheading Covered Species Criteria). These criteria are as follows:

1. Range – the species is known to occur in the Plan area based on credible evidence, or is expected to occur in the Plan area sometime during the permit term (e.g., range expansion or reintroduction)
2. Status – the species is: listed or proposed for listing under the ESA; listed or candidate for listing under the CESA; listed as rare under the Native Plant Protection Act; or is expected to be listed under one of these acts within the permit term.
3. Impact – the species or its habitat would adversely be affected by covered activities
4. Data – sufficient data on the species' life history, habitat requirements and occurrence in the Plan area are available to adequately evaluate the impacts on the species and develop conservation measures to mitigate those impacts.

For species that met all the above criteria, a final screening criterion was whether coverage for the species is deemed necessary by the Habitat Agency and its co-permittees. For example, if there is interest in adding a species with a low potential to meet some of the above criteria but the species generally fit within the existing conservation strategy, will benefit from inclusion in the Plan, and will not significantly increase the cost to implement the Plan, then it could be included as a covered species. Based on the above criteria, the following list of seven species is currently being proposed for coverage under the Plan amendment.

- Monarch butterfly (*Danaus Plexippus*)
- Large marble butterfly (*Euchloe ausonides ausonides*)
- Crotch's bumblebee (*Bombus crotchii*)

- Swainson's hawk (*Buteo swainsoni*)
- Loggerhead shrike (*Lanius ludovicianus*)
- American badger (*Taxidea taxus*)
- California mountain lion (*Felis concolor*) (Central Coast Distinct Population Segment)

The proposed expansion of the Plan boundary includes two separate components, but each one has a similar geographic purpose and extent. The current Plan boundary does not include the northwest or northeast portions of Santa Clara County between the existing Plan boundary and the county line. In the northwest, mostly covered by cities which are not co-permittees to the Plan, coverage was deemed unnecessary because private development secures approval authority through those cities and there is no nexus to the Plan. In the northwest, very little development or management of the land occurs, which would require coverage, so it was left out.

Through the Plan amendment process, the County of Santa Clara, Valley Water, and Valley Transportation Authority all requested coverage in the northwest portion of the County for ongoing operations and maintenance as well as future capital projects. The Plan can be extended to this area, even though it is within other city jurisdictions, because the requested coverage will be limited to land owned or controlled by one of the co-permittee agencies. Examples of the select projects would be maintenance of streams, dams, canals, roadways, bridges and other infrastructure, as well as capital projects to repair or create new infrastructure. Private development would not be covered in this expanded area.

In the northeast, the Habitat Agency is proposing expansion of the existing Plan boundary out to the northeast County line to allow for potential expansion of the Reserve System by acquiring suitable habitat in that area. It is uncertain if land will eventually be enrolled for protection in this area, but having the potential for acquisition provides land protection options if the Habitat Agency encounters difficulty in securing the minimum acreages of specific land cover types within the existing Plan boundary. For both current and new proposed species, suitable and possibly occupied habitat may be available to address future conservation needs.

Certain development plans, policies and other documents that informed the existing Habitat Plan were updated between initial adoption and this amendment process. They were evaluated to determine whether the updates would have a significant effect on the impact assumptions. For example, Gilroy's General Plan update in November 2020 slightly constricted the urban growth boundary, which will reduce overall urban growth. However, it would not reduce all potential development of agricultural land and certain land cover impacts are still likely to occur. Additionally, this restriction builds on an existing growth boundary that has been in place for decades and the anticipated decrease in impact assumptions for the Gilroy is very small in the context of the entire Plan area. Therefore, this update is referenced, but because it did not result in a significant change in development patterns and the decrease in development potential was so small, no reduction in the overall impact assumption resulted from the update. By acknowledging the Gilroy Plan update, the Habitat Agency wanted to be transparent that potentially significant policy changes in the past twelve years had been given consideration. Many other updates or new plans, which were determined to not have an effect on the

impact assumptions, were not addressed in the amendment as their inclusion would have slowed down review and approval of the Plan amendment.

The primary changes to Chapter 2 include:

- Inclusion of Valley Water's Stream Maintenance Program (SMP) and other VW activities
- Inclusion of the California Vegetation Treatment Program (CalVTP)
- Update of references to local plans, policies and ordinances where they relate to future growth restrictions
- Updated population figures and economic statistics for the local jurisdictions
- Description of beneficial actions to be considered as covered, but exempt from fee payment when consistent with the Conservation Strategy
- Acknowledging tribal access to Reserve System land if their uses are described in the Reserve Unit Master Plan for each property
- The series of bullets at the end of Section 2.4 (Projects and Activities not Covered by this Plan) are not new, but were approved as an errata to the original Habitat Plan upon its adoption in 2014, and are now simply incorporated into the text

This chapter was revised to expand coverage for certain activities, both within the existing Plan boundary and the new proposed expanded areas of coverage. Although Valley Water's Stream Maintenance Program was specifically excluded from the Habitat Plan, the list of activities included in that program are covered for all other co-permittees currently. The reason it was exempted from the Plan had to do with timing of the original SMP and the fact that the program had mitigation needs for the US Army Corps of Engineers and the Regional Water Quality Control Board, that could not be addressed by the Habitat Plan conservation strategy. However, since the Habitat Agency received approval of the In-Lieu Fee program for shared mitigation, and the newest reissuance of the SMP is under review at the time, it made sense for Valley Water to request inclusion through the Plan amendment. Within the expanded Plan area, Valley Water's Dam Maintenance and Pipeline Maintenance Programs will also be covered.

Another Chapter 2 update was focused on ensuring coverage for increasing land management activities to control vegetation and preventing wildfires. Activities outlined in the CalVTP, which was approved in 2019, are largely viewed as beneficial across the landscape because they control the spread of invasive weeds and reduce fire fuel loads. In the absence of fire or other vegetation management, landscapes become overgrown and wildfires in these areas are known as catastrophic. Managing fuel loads with a focus on ecosystem health ensures that future fires burn more slowly and destroy fewer native shrubs and trees. Although these vegetation management activities are already covered by the Plan, the co-permittees requested that CalVTP be specifically identified and covered for future reference. It is important to note that components of CalVTP, Valley Water's SMP, tribal management of landscapes, and ongoing public agency and private property owner vegetation management may be considered beneficial actions if they adhere to the same list of best management practices and specific avoidance and minimization measures for vegetation management outlined specifically in the revised Chapter 2 language.



The primary changes to Chapter 3 include:

- New land cover and natural community assessment within the expanded Plan area
- Identifies existing and new habitats for the seven newly proposed covered species
- Updated topography, slope and watershed mapping for the expanded Plan area
- Updated existing species occurrence data within the expanded Plan area and noted occurrences of the seven proposed covered species in both the current and proposed expanded Plan area

The revisions in Chapter 3 are focused on updating descriptions of the biological setting of the Plan area to include habitat assessments for all 7 of the new covered species, as well as a new assessment of the biological setting in the expanded Plan area for all 25 species (18 existing and 7 new). Appendix B – Species Accounts, was also updated to provide new account records for all the new proposed species. This included consultation with the wildlife agencies, biologist consultants and Habitat Agency biological staff to ensure the proper habitat designations were applied to the new species.

The primary changes to Chapter 4 include:

- Adjust the impact assessment to account for expanded Plan boundary
- Adjust impact assessment to account for impacts to the seven new species proposed for coverage
- Change methodology of tracking land cover impacts at the natural community level
- Increase temporary take levels
- Increase impact assumptions for burrowing owl occupied habitat
- Expand occupied habitat buffer from 0.5-mile to one mile in the vicinity of the Burrowing Owl Conservation Easement at the San Jose/Santa Clara Regional Wastewater Treatment Facility
- Reduce permanent impact assumptions for certain pond and wetland land covers

With the updates and expansion of covered activities described in Chapter 2, and a new biological setting established in Chapter 3, the Habitat Agency updated the impact assessment. As documented in the Habitat Agency's annual report (May 2025), by the end of Fiscal Year 2025 the Habitat Agency had provided take coverage for permanent impacts to 2,030 acres of land in its first 11 years of operation. This amount is 1,930 acres short of land conversion expectations that drive the Habitat Plan's minimum conservation and restoration requirements. Because the Plan has over-assumed permanent impacts to land cover, the amended Chapter 4 concludes that all future land cover impacts, including new covered activities and impacts within the expanded Plan area, remain below the maximum level set in the original Plan. Thus, there is no increase in any permanent impact assumption for any land cover type resulting from the proposed amendment. There are some increases to the temporary impact assumptions, but temporary impacts do not require conservation action and do not result in any additional costs.

As shown in Table 1 below, Chapter 4, impact assumptions to ponds, freshwater marsh, and mixed riparian habitats are proposed to be lowered. This is because impacts to those specific aquatic land cover types have been far below anticipated impact assumptions, but more importantly, impacts to aquatic resources require expensive restoration efforts regardless of the level of impact. By reducing the take assumptions, the Habitat Agency can reduce the minimum restoration commitment and overall cost of the Plan.

**Table 1.** Summary of Mitigation and Contribution to Recovery for Aquatic Land Cover Types

Land Cover Type	Maximum Allowable Permanent Impacts <sup>1</sup> (acres)	Preservation and Enhancement Requirements		NCCP Contribution to Recovery		Restoration/ Creation Requirements		Maximum Protection and Restoration/ Creation	
		Required Preservation Ratio	Preservation Requirement to Offset Impacts <sup>1</sup> (acres)	Minimum Requirement		Required Mitigation Ratio (in addition to preservation)		Estimated Total Protection (acres)	Estimated Total Restoration or Creation (acres)
				Preservation <sup>1,5</sup>	Restoration/ Creation	Restoration	Creation		
<b>Riparian forest and scrub</b>									
Willow riparian forest and scrub or mixed riparian forest and woodland <sup>3</sup>	<a href="#">289235</a>	2:1	<a href="#">57824702</a>	250	<a href="#">5035</a>	1:1	–	<a href="#">578470</a>	<a href="#">324270</a>
Central California sycamore alluvial woodland	7	2:1	14	40	--	2:1	–	40	14
<b>Wetland</b>									
Coastal and valley freshwater marsh (perennial wetland)	<a href="#">2520</a>	2:1	<a href="#">5040</a>	10	<a href="#">2016</a>	1:1	–	<a href="#">5040</a>	<a href="#">4536</a>
Seasonal wetland <sup>3</sup>	15	2:1	30 <sup>3</sup>	5	--	2:1	–	30	30
<b>Open Water</b>									
Pond <sup>4</sup>	<a href="#">5230</a>	2:1	<a href="#">10460</a>	50	<a href="#">2011</a>	–	1:1	<a href="#">10460</a>	<a href="#">7241</a>
Total Aquatic Land Cover Types (acres)	<a href="#">388307</a>		<a href="#">776614</a>	355	<a href="#">9062</a>			<a href="#">802640</a>	<a href="#">446391</a>
Stream (miles)	9.4	3:1	28.2	100	1	1:1	–	100	10.4

The Plan does not allow for direct take of burrowing owls but authorizes conversion of up to 198 acres of occupied BUOW habitat. Occupied nesting habitat impacts may be approved for development within 0.5-mile of a nest. Mitigation fees for these impacts fund the burrowing owl conservation strategy, including the captive rearing, captive breeding, and reintroduction programs. As of the date of this staff report, the Habitat Agency has authorized take of 162 acres of occupied BUOW habitat, and only 36 acres of take remain. The species is now a candidate for listing on the California ESA, so continued coverage of the owl by the Plan is critical.

Following consultation with the wildlife agencies, the burrowing owl conservation strategy has been amended to allow for 20 more acres of permanent take coverage immediately. An additional 40 acres of take may be authorized by the wildlife agencies if the Habitat Agency can come into compliance with the stay-ahead provision for protection of occupied burrowing owl habitat that keeps pace with, or exceeds the requirement based on accrued impacts. A third installment of take (another 40 acres) could be approved following demonstration of continued compliance with the stay-ahead provision and a sustained, positive growth trend for the species.

Since all of the current occupied nesting habitat occurs around the San Jose/Santa Clara Regional Wastewater Facility (RWF), take coverage for impacts to occupied nesting habitat is most critical for projects within the City of San Jose. This allowance for up to 100 additional acres of take authorization would ensure that the City of San Jose continues to benefit from the streamlined permitting for take afforded by the Habitat Plan for future public and private projects in the vicinity of the RWF.

*The primary changes to Chapter 5 include:*

- Adding conservation actions for new covered species
- Update adaptive management approaches to conservation requirements
- Increase take limit for burrowing owl occupied habitat (from 198 acres to 298 acres)

- Develop a strategy for the incremental release of take acreage for burrowing owl occupied habitat contingent upon new success criteria
- Reducing minimum restoration commitments commensurate with the proposed reduction in maximum allowable take of aquatic resources
- Added public education and outreach goals for bird-safe actions, noise reduction, light shielding and pollinator-friendly practices to be implemented by the Habitat Agency

This chapter was revised to include a conservation strategy for each of the new covered species. As shown in draft Chapter 5, many of the existing conservation approaches for the currently covered species will also benefit the new suite of species. For example, protection of 13,300 acres of annual grassland as currently required by the Plan to mitigate for impacts to kit fox, burrowing owl and other covered species would also provide protection benefits to mountain lion, loggerhead shrike, monarch butterfly and other new proposed species. Similarly, management of oak woodlands, as currently required, can provide the same benefit to other species not currently covered.

Where the existing conservation strategy was not considered adequate for the new species, and in consultation with the wildlife agencies and other species experts, additional measures, known as Biological Goals and Objectives (BGO's), are identified in the draft chapter. Therefore, the text of this chapter has been updated, but also Tables 5-1 and 5-2, which list the BGO's.

Consistent with the proposed increase to the burrowing owl take limits, Chapter 5 and Appendix M (Burrowing Owl Conservation Strategy) were both updated with new conservation commitments, primarily focused on close coordination and continued consultation with the wildlife agencies to ensure additional take is commensurate with success criteria in the new draft language.

*The primary changes to Chapter 6 include:*

- Add new survey requirements and avoidance measures for Swainson's hawk (new Condition 21) and loggerhead shrike (new Condition 22)
- Add new voluntary Condition 23 to avoid payment of temporary impacts fees associated with mowing and other vegetation management when conducted to minimize impacts to covered pollinator species
- Added new language to streamline reporting requirements for temporary land management actions, such as mowing and vegetation management
- Revised language in Condition 11 to clarify that the Habitat Agency itself does not have the authority to stop any development – such authority only exists with the local jurisdiction
- Revised Table 6-2 to eliminate aquatic resource avoidance and minimization references associated with Regional Water Quality Control Board or US Army Corps of Engineers and National Pollutant Discharge Elimination System (NPDES) permitting compliance in favor of incorporating such measures by reference

This chapter was revised to add two new required conditions for coverage of loggerhead shrike and Swainson's hawk. A third new condition, which is voluntary, will allow co-permittees to avoid temporary or permanent impact fees for impacts to pollinator species if they abide by avoidance and minimization measures included in the condition. This condition is meant to address impacts to the new pollinator species.

A minor adjustment to Condition 11 now clarifies that the Habitat Agency cannot prohibit a reduction in stream setbacks for a project but can only provide a recommendation to the authorizing jurisdiction. Also related to aquatic resources, the amended Chapter 6 includes an update to consolidate Table 6-2 (Aquatic Avoidance and Minimization Measures) because state law now permits incorporation by reference, so there is not a need to list every possible measure by every regulatory agency. The list is consolidated, renumbered and now only includes those measures which could impact or directly benefit covered species.

*The primary changes to Chapter 7 include:*

- Removal of the Independent Conservation Assessment Team
- Adjustments to existing covered species monitoring requirements based on feedback and lessons learned during the first 10 years of implementation.
- Adding a monitoring framework for all seven new covered species
- None of the original tables or figures required edited

This chapter was revised to add monitoring and management requirements for the new species, as well as provide some additional flexibility in surveying and monitoring requirements for existing species by allowing for more time between survey efforts, when they can be determined to not have an effect on the performance of the monitoring program.

Removal of the independent conservation assessment team is proposed due to the fact that local species experts work regularly with the Habitat Agency in a number of capacities and have the best understanding of the local species population needs. Additionally, the Habitat Agency is now staffed with four biologists who are becoming local authorities on our covered species. The periodic convening of an independent team to assess performance of the Plan is considered to be an unnecessary expense and use of staff time because our successful compliance with the Biological Goals and Objectives of the Plan is transparent in publicly shared annual reports.

*The primary changes to Chapter 8 include:*

- Expanded definition of a conservation easement to allow for other land protection instruments consistent with California Civil Code Section 815 (providing flexibility and reducing costs to the Habitat Agency in acquiring and protecting land)
- Minor updates

The Plan requirement for reserve properties to be protected with a conservation easement has proven costly and time consuming, and in some cases, unachievable. Smaller properties (less than 100 acres, for example), which are important acquisitions by the Habitat Agency due to their natural resources or geographic locations important for wildlife connectivity, are rarely of interest to open space agencies and an unwelcome burden for private property owners. Additionally, California Civil Code Section 815 defines a conservation easement as any one of a number of protective instruments which can be recorded on a property. The Habitat Agency asserts that, provided land is owned by the Agency, alternative perpetual protection documents may be relied on in the future to secure enrollment of new properties without the lengthy and costly conservation easement template included in the Plan.

The primary changes to Chapter 9 include:

- Adjust the cost analysis to account for increase in conservation actions to mitigate impacts for the new covered species
- Reduce costs associated with the minimum restoration commitments for willow riparian, freshwater marsh and pond impacts as a result of reduced impact assumptions in Chapter 4
- Account for additional take limit for burrowing owl occupied habitat impacts, both for increased fee revenue and commensurate increase in conservation commitments for this species
- Prepare a new Appendix P to provide analysis and summary of all cost model changes associated with the Plan amendment

The final revised Chapter 9 is updated to reflect new costs and cost savings that would result from the amended Plan. It is important to note that these cost assumptions are not reflected as a direct change in the cost model of the existing Plan. This is because the original cost model (from 2012) and associated fee schedule have been updated with a comprehensive analysis resulting from the Plan's requisite Five-Year Fee Review. The most recent Five-Year Fee Review was completed in 2019, so the new cost analysis for the Plan amendment is based on the resulting adjusted cost model of that review.

In addition to the relatively minor Chapter 9 text changes, a new Appendix P was prepared and proposed for approval. Appendix P provides an in-depth explanation of the analysis of the cost model changes that would result if the Plan amendment were approved. The chart below, excerpted from the new Appendix P, provides an overview and explanation of any potential cost adjustments that could result from the Plan amendment.

Plan Amendment Change	Effect on Costs	Effect on Fees & Revenues
Add seven new covered species.	Small increase in land management and monitoring costs.	Small changes in land cover, serpentine, and nitrogen deposition fee levels and revenues.
Expand Plan boundary.	No increase in reserve acquisition costs	No effect.
Expand covered activities.	No effect because no change in required conservation activities.	Negligible effect on development fee revenue from expanded coverage for specified public projects.
Adjust cumulative impacts and take limits: reduce allowable wetland impacts and conservation actions.	16% decrease in wetland restoration/creation costs.	Small increase in wetland fee levels and 11% decrease in fee revenue. <sup>1</sup>
Adjust cumulative impacts and take limits: increase western burrowing owl impacts and conservation actions.	Small increase in burrowing owl conservation strategy costs. (See Chapter 2.)	17% decrease in burrowing owl fee level and small increase in fee revenue. <sup>2</sup> (See Chapter 3.)
<b>Overall effect on funding strategy.</b>	<b>Small decrease in total Plan costs.</b>	<b>Small decrease in total Plan funding and small increase in ending fund balance.<sup>1</sup></b>

<sup>1</sup> This Appendix P analysis does not incorporate a small potential reduction in non-fee funding associated with reduced wetland restoration/creation for contribution to recovery (versus mitigation, see Table 2.1). See Chapter 4 for further discussion.

<sup>2</sup> Burrowing owl fee decreases because allowable impacts increase more in proportion to mitigation costs. See Chapter 3 for more explanation.

Also excepted from Appendix P is a table (below) itemizing the cost adjustments in terms of dollars and percentages of change from the existing cost model. When all is considered, the Plan amendment would result in a 3.2% reduction in total plan costs over the permit term. This amounts to a potential \$23 Million savings to the Habitat Agency in future implementation, while achieving conservation for an expanded number of species.

	<b>2019 Five-Year Review</b>	<b>2026 Plan Amendment</b>	<b>Amendment vs. Five-Year Review</b>	
			<b>Amount</b>	<b>Percent</b>
Wetland Restoration/ Creation	\$132,410,000	\$110,670,000	(\$21,740,000)	(16.4%)
Reserve Management and Maintenance	\$156,640,000	\$156,590,000	(\$50,000)	(0.0%)
Monitoring, Research, and Scientific Review	\$40,420,000	\$40,550,000	\$130,000	0.3%
Western Burrowing Owl Conservation Strategy	\$11,790,000	\$11,930,000	\$140,000	1.2%
Land Acquisition & Enrollment	\$243,400,000	\$243,400,000	\$0	0.0%
Program Administration	\$30,440,000	\$30,440,000	\$0	0.0%
Technical and Permitting Support	\$22,700,000	\$22,700,000	\$0	0.0%
Contingency Fund	<u>\$16,700,000</u>	<u>\$16,340,000</u>	<u>(\$360,000)</u>	<u>(2.2%)</u>
Subtotal	\$654,500,000	\$632,620,000	(\$21,880,000)	(3.3%)
Endowment Fund Contribution	\$71,520,000	\$70,150,000	(\$1,370,000)	(1.9%)
Plan Preparation Cost Recovery	\$5,040,000	\$5,040,000	\$0	0.0%
<b>Total</b>	<b>\$731,060,000</b>	<b>\$707,810,000</b>	<b>(\$23,250,000)</b>	<b>(3.2%)</b>

Note: All dollar amounts in FY 2017-18 dollars.

Sources: Urban Economics, *Five-Year Review of the Santa Clara Valley Habitat Plan Costs, Funding & Development Fees*, June 2020, Table 2.1, p. 10; Appendix P2, Table 9-1.

**The primary changes to Chapter 10 include:**

- Updates to climate change and temperature data
- No other significant revisions

**The primary changes to Chapter 11 include:**

- Updates to include alternatives to take for new covered species
- No other significant revisions

**HABITAT PLAN AMENDMENT COMPLETION SCHEDULE:**

As mentioned above, the Plan amendment is funded by two USFWS Section 6 grants, administered by CDFW. The final grant deliverable for this Plan amendment is a completed draft of the Amended Habitat Plan, including environmental clearances and approval by the Habitat Agency Implementation Board. The grant deadline for funding is January 27, 2026. This means the full Amended Habitat Plan must be approved by the Implementation Board at the January 2026 meeting.

The schedule below shows the remaining milestones to finalize the Plan amendment process. Once approved by the Implementation Board, the final draft Amended Habitat Plan must be sent to the wildlife agencies for their review of all changes. Their legal counsel must review and accept the document, and findings for the new species and changes to Plan scope must be made. This period of their review may take many months to complete and may require subsequent changes.

Following approval of the Plan amendment in January, the grant funding will expire, and minor administrative processing of the revised Plan being approved by the wildlife agencies and returning to the Joint Board for final adoption would be borne by the Habitat Agency. This cost is not expected to exceed \$40,000 and would consist primarily of staff time to process.

**ACTION:**

The Habitat Agency requests that the San Jose City Council approve the Agency's pursuit of the Plan amendment as presented.

## SANTA CLARA VALLEY HABITAT PLAN

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into by and among the Santa Clara Valley Habitat Agency ("Agency"), the County of Santa Clara (the "County"), the City of San Jose ("San Jose"), the Santa Clara Valley Water District ("SCVWD"), the Santa Clara Valley Transportation Authority ("VTA"), the City of Gilroy ("Gilroy"), the City of Morgan Hill ("Morgan Hill"), and the Santa Clara County Open Space Authority ("OSA"). The parties may be referred to collectively as the "Parties" and individually as a "Party" in this MOU. The County, San Jose, SCVWD, VTA, Gilroy and Morgan Hill are collectively referred to as "Local Partners."

#### RECITALS

- A. The Local Partners have been engaged in a lengthy process to develop a joint habitat conservation plan and natural communities conservation plan entitled the "Santa Clara Valley Habitat Plan" ("Habitat Plan").
- B. The purposes of the Habitat Plan include the long-term protection of ecosystems and biodiversity within the geographic area covered by the Habitat Plan, and the provision of incidental take authorization pursuant to the Federal Endangered Species Act and the California Natural Community Conservation Planning Act for local land use and public agency infrastructure activities.
- C. The Habitat Plan and the Santa Clara Valley Habitat Plan Implementing Agreement ("Implementing Agreement") identify certain duties and obligations that must be fulfilled, in whole or in part, by an "Implementing Entity."
- D. The Local Partners determined that it was appropriate to establish a joint powers agency to serve as the Implementing Entity for the Habitat Plan. The Joint Powers Act, Gov. Code § 6500 et seq., requires that all parties to a joint powers agreement have common powers. One of the primary functions of the joint powers agency is to adopt mitigation fees for development projects pursuant to the Mitigation Fee Act, Government Code § 66000 et seq., to help finance Habitat Plan implementation activities. Because only certain of the Local Partners (the County, San Jose, Morgan Hill and Gilroy) have clear authority to adopt mitigation fees, the Local Partners determined that the parties to the joint exercise of powers agreement ("Agency Agreement") creating the Santa Clara Valley Habitat Agency would be limited to the County, San Jose, Morgan Hill and Gilroy. Nonetheless, because the Implementing Agreement and the Permits associated with the Habitat Plan provide that all Local Partners are responsible for ensuring that the Habitat Plan is fully implemented, all of the Local Partners will play a role in the Santa Clara Valley Habitat Agency.
- E. The OSA will also play a critical role in Habitat Plan implementation, including potential contributions of land to the Habitat Plan Reserve System and/or potentially undertake management and monitoring, and/or provide other services related to implementation of the Habitat Plan.



**NOW, THEREFORE**, the Parties, for and in consideration of the mutual promises and agreements herein contained, agree as follows:

## **1. PURPOSES**

The purposes of this MOU are to:

- Further define the roles, rights and responsibilities of the Parties with respect to Habitat Plan implementation activities;
- Explain the relationships between the Parties;
- Establish processes for resolving disputes and addressing other issues that may arise with respect to the Habitat Plan;

## **2. EFFECTIVE DATE**

The following conditions must occur before this MOU will go into effect: 1) the Implementing Agreement must be fully executed; and 2) all parties must execute this MOU. The effective date of this MOU will occur at the date when both of the above mentioned conditions have been fulfilled.

## **3. DEFINITIONS**

Unless the context otherwise requires, the terms used in this MOU shall have the same definitions as provided in the Implementing Agreement.

## **4. LOCAL PARTNER AND AGENCY ROLES**

- (a) All of the Local Partners are Permittees and parties to the Implementing Agreement. Therefore, all of the Local Partners must ensure that they comply with the Habitat Plan and Permits. However, although each Local Partner must ensure that its own actions comply with the Plan and Permits, the primary responsibilities for implementing the Habitat Plan rests with the Agency. Among other things, the Agency is responsible for ensuring that there is sufficient funding to perform all implementation activities, including activities during the permit term and in perpetuity. Except for paying SCVHP Fees associated with their own projects and, where applicable, collecting SCVHP Fees from private project applicants and transmitting SCVHP Fees to the Agency, the Local Partners are not required to fund implementation activities. These roles and responsibilities are more fully described in Chapter 8 of the Habitat Plan.
- (b) Although VTA and SCVWD are not parties to the Agency Agreement, all of the Local Partners will play an active role in the Agency through, among other things, their representatives on the Implementation Board of the Agency. The fact that VTA and SCVWD are not parties to the Agency Agreement should not be viewed in any way as diminishing their rights and responsibilities established in the Habitat Plan or Permits.

## **5. OSA ROLE**

- (a) Although OSA is not a Permittee, the Parties anticipate that OSA may contribute land and potentially other resources that will assist with fulfilling Habitat Plan implementation responsibilities. Exhibit \_\_, which is attached hereto and incorporated by reference herein, are the "Principles of Participation in the Santa Clara Valley Habitat Plan" that were adopted by the OSA Board on September 9, 2010.
- (b) While the OSA is not a Permittee under the Habitat Plan, the OSA has the option to apply for take authorization under the Plan as a Participating Special Entity. To receive this take authorization, the OSA would follow the procedures outlined in the Habitat Plan, including approval by the Implementing Entity and the Wildlife Agencies. To anticipate this, the estimated impacts of OSA activities on the covered species will be included in the Plan. Any Habitat Plan fees due would be offset by an equivalent value of OSA land being concurrently incorporated into the Habitat Plan Reserve System.

## **6. COMPENSATION FOR LOCAL PARTNER CONTRIBUTIONS TO IMPLEMENTATION REQUIREMENTS**

The Local Partners may contribute land, provide services, or undertake other activities (e.g., habitat creation, restoration, monitoring) that fulfill Habitat Plan implementation requirements. The process by which the Agency will evaluate the value of these contributions and give credit to the Local Partners for these "in lieu" activities is set forth in Section 9.4.1 of the Habitat Plan.

## **7. IMPLEMENTATION FUNDING SHORTFALLS**

- (a) Although the Local Partners believe that the cost and funding assumptions in the Habitat Plan are sound, there is always the possibility that there will be funding shortfalls and/or that the costs of implementing the Habitat Plan exceed expectations. As set forth in the Habitat Plan and Implementing Agreement, the Agency is responsible for implementation and any funding shortfalls, and for ensuring that SCVHP fees keep pace with Habitat Plan implementation costs. Except for SCVHP fees associated with their own Covered Activities, the Local Partners are not required to contribute any of their funds toward Habitat Plan implementation.
- (b) If there is a funding shortfall, the Agency will take all feasible steps to address the funding shortfall, including but not limited to seeking loans from all possible sources.
- (c) If, despite all reasonable efforts, the Agency is unable to address a funding shortfall, the Local Partners will meet and confer regarding how to proceed. Options that may be considered include, but are not limited to, loans from one or more Local Partners to the Agency, grants from Local Partners, government agencies or non-governmental entities, relinquishing the permits, and/or amending the Habitat Plan and Permits.
- (d) No Local Partner shall be required to provide funding to the Agency. If a Local Partner, in the sole discretion of its governing body, agrees to provide funding to the Agency, it may do so on the condition that the Agency either provide the Local Partner with credit toward future SCVHP Fees or repay the loan at a future date.

## **8. HABITAT PLAN/PERMIT AMENDMENTS**

- (a) There are a variety of reasons why the Local Partners may want or need to amend the Habitat Plan and Permits over the 50-year term, including but not limited to the following:
- to add or remove Covered Species;
  - to expand or retract the Permit Area boundaries;
  - to add a Permittee;
  - to address a significant funding shortfall that cannot be addressed through any feasible means;
  - to reflect significant changes in Habitat Plan assumptions (e.g., the amount or timing of "Take"); or
  - to provide for additional Covered Activities.
- (b) If the Agency or one or more of the Local Partners desires to amend the Habitat Plan and/or Permits, then that Local Partner shall notify the Agency and all of the other Local Partners of this desire and provide an explanation of the proposed amendment and reasons for the amendment.
- (c) Upon being notified by the Agency or a Local Partner of a request to amend the Habitat Plan and Permits, the Agency and all Local Partners will meet and confer regarding whether to proceed with the proposed amendment.
- (d) The costs associated with any amendment to the Habitat Plan and Permits (including but not limited to preparation, analysis and approval of the amendment documents and implementation responsibilities resulting from the amendment) shall be borne by the Local Partners in a manner that reflects the relative benefit of the amendment to each Local Partner. A cost allocation shall be mutually agreed upon by the Local Partners before any costs are incurred in relation to the amendment. Any Local Partner that commences work on an amendment prior to this proceeds at its own risk.
- (e) Any decision to seek an amendment to the Habitat Plan and Permits, and the cost allocation associated with the amendment, shall be approved by the governing bodies of all of the Local Partners before any work is begun or any costs are incurred in relation to the amendment. Any Local Partner that commences work on an amendment prior to this proceeds at its own risk.

## **9. WITHDRAWAL**

- (a) If a Local Partner decides to withdraw from the Implementing Agreement and relinquish its Permits, it shall first provide 180 days written notice to the Agency, the other Local Partners and the OSA. Notwithstanding such withdrawal, the withdrawing Local Partner shall remain obligated, to the same extent, if any, that the remaining Parties are obligated, to contribute amounts necessary to pay any debts, liabilities and obligations of the Agency arising from or related to actions taken by the Agency while the withdrawing Party was a party to the Implementing Agreement. Upon withdrawal, the withdrawing Party shall no longer be a Party to this MOU or a Local Partner, and the term "Parties" and "Local Partners" as used in this MOU shall thereafter mean the remaining Parties and Local Partners to this MOU.

- (b) The OSA may withdraw from the MOU upon ninety (90) days written notice to the Agency and the Local Partners. Upon withdrawal, the OSA shall no longer be a Party to this MOU, and the term "Parties" as used in this MOU shall thereafter mean the remaining Parties and Local Partners to this MOU.
- (c) Within 30 days after receiving a notice of withdrawal, the Parties who will remain will meet to discuss whether any amendments to the Habitat Plan, Permits or Implementing Agreement are necessary or appropriate in light of the withdrawal, and to prepare any appropriate amendments for consideration by the governing bodies of the remaining Parties. The requirements of this provision are intended to be in addition to any notice or other requirements set forth in the Implementing Agreement or Permits pertaining to withdrawal from or termination of the Habitat Plan or Permits.

#### **10. TERMINATION BY ALL LOCAL PARTNERS**

If the governing bodies of all or some of the Local Partners agree to relinquish the Permits and terminate the Implementing Agreement, then the Agency and Local Partners will undertake a process to discuss and resolve the following issues:

- Calculating and funding the amounts necessary to pay any debts, liabilities and obligations of the Agency arising from or related to actions taken by the Agency while the Permits and Implementing Agreement were in effect, including but not limited to funding any endowment necessary for ongoing obligations related to Reserve System lands; and
- Identifying one or more successor(s) to fulfill the continuing obligations of the Agency.

The dispute resolution process in Section 15 of this MOU may be used for this purpose.

#### **11. REMEDIES FOR HABITAT PLAN/PERMIT/IMPLEMENTATION AGREEMENT VIOLATIONS**

- (a) Although the Wildlife Agencies will issue separate permits to the Agency and Local Partners, the obligations imposed by the Habitat Plan, Implementation Agreement and Permits operate collectively. Therefore, if the Agency or a Local Partner violates the Habitat Plan, Implementation Agreement or Permits in a way that puts the overall Habitat Plan or Permits at risk or subjects the Agency and/or Local Partners to an enforcement action, then the other Parties may take any and all commensurate and reasonable action against the violating Party to remedy the noncompliance, including but not limited to filing a lawsuit seeking injunctive relief or specific performance.
- (b) The Parties shall engage in the dispute resolution process set forth in Section 15 of this MOU prior to filing a lawsuit for an alleged violation. The dispute resolution process is not required, however, if there is a threat of imminent harm to any Party or if the Wildlife Agencies have notified the Parties of their intent to suspend the Permits or undertake other enforcement action.

#### **12. INDEMNIFICATION AND INSURANCE**

- (a) Except as provided in Section 14(c) of this MOU, the Agency shall indemnify, defend and hold harmless all of the Local Partners and the OSA and their officers,

agents, and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, the adoption, execution, performance or implementation of the Habitat Plan, the EIR/EIS, the Permits, the Implementing Agreement, the Agency Agreement or this MOU provided, however, that this obligation by the Agency shall not apply to; (1) reckless, intentional, or willful conduct leading to personal injury, or (2) any claims, demands, damages, costs, expenses or suits by one party to this MOU against one or more other parties relating to an alleged breach of either agreement. The Agency shall reimburse the Local Partner(s) and the OSA for all reasonable costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation or action in which the Agency is obligated to indemnify, defend and hold harmless the Local Partner(s) and the OSA under this MOU. Any indemnified party may elect to provide its own defense at that party's own expense.

- (b) It is the intent of the Parties that the provisions of this Section 12 provide the broadest possible coverage for the Local Partners. The Agency shall obtain and maintain insurance to provide sufficient coverage to fulfill its obligations under this Section.
- (c) Each Local Partner shall require that any consultant hired to implement this MOU obtain and maintain insurance policies to provide sufficient coverage to fulfill its obligations under this Section.
- (d) If any claim, liability, loss, injury or damage for which the Agency is obligated to indemnify, defend and hold harmless the Local Partner(s) and the OSA pursuant to this Section 12 is filed or incurred before the Agency is formed, has sufficient revenues or obtains sufficient insurance to fulfill its obligations under this Section 12, then the Local Partner(s) may bear their own their reasonable costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation or action in which the Agency is obligated to indemnify, defend and hold harmless the Local Partner(s) and the OSA under this Section 12 and recover them from the Agency at a future date, and the Agency shall not raise any defenses related to the timeliness of such a claim for recovery (e.g., statute of limitations, laches) against the Local Partner(s) or the OSA.

### **13. AGENCY FAILURE/INABILITY TO PERFORM**

- (a) If, for any reason, the Agency is unable or unwilling to perform its implementation duties, then the Local Partners will meet and confer regarding how to proceed. Options that may be considered include, but are not limited to, recommending that the parties to the Implementing Agreement dissolve the Agency and that the Local Partners establish a new implementing entity or reallocate Habitat Plan implementation obligations.
- (b) If a particular Local Partner or its representatives to the Governing Board or Implementation Board are preventing the Agency from fulfilling its duties, then the other Local Partners shall notify the governing body of the Local Partner that is preventing the Agency from fulfilling its duties and request that the governing body promptly address the situation. If the situation is not resolved within 60 days, the other Local Partners may seek judicial relief, including but not limited to requesting that the court reform the Implementing Agreement without the consent of the Local Partner that is preventing the Agency from fulfilling its duties.



#### 14. COMPENSATION FOR SERVICES/ACTIVITIES PROVIDED TO AGENCY

- (a) Due to the necessity and desire to keep Habitat Plan implementation costs as low as possible, the Agency may contract for many goods and services. In procuring goods and services, the Agency will utilize a selection process that is fair, objective and impartial, and is intended to result in the selection of a provider that provides the best value and meets the needs of the Agency. The Parties acknowledge that they are not entitled to any rights or preferences in the Agency's selection process. If a Party believes that it has been treated unfairly during any Agency selection process, it may invoke the dispute resolution process set forth in Section 15 of this MOU.
- (b) If a Party provides services to the Agency, it may negotiate with the Agency to be compensated with cash or credits toward SCVHP Fees. The form of compensation may be a factor that the Agency considers during its selection process.
- (c) If a Party contracts with the Agency to provide land, services or perform other activities on behalf of the Agency, then any indemnity and defense responsibilities related to that arrangement shall be addressed in the agreement for the particular goods and services, and the indemnification and defense provisions in Section 12 of this MOU shall not apply.

#### 15. DISPUTE RESOLUTION PROCESS

In addition to the other provisions of this MOU that require the Parties to engage in the dispute resolution process in this Section, any Party may request that the Parties voluntarily engage in the dispute resolution process set forth in this Section at any time and for any reason related to the Habitat Plan, Permits, Implementing Agreement or any matters related thereto. The intent of this provision is to provide an informal dispute resolution measure which is alternative to a court action.

- (a) Informal Negotiations Before Mediation. Any negotiations the Parties may undertake to resolve disputes before Mediation is initiated are for settlement purposes only and are not binding. Any Party may notify any other Party of a disagreement or dispute regarding provisions of the Habitat Plan, Permits, Implementing Agreement or any matters related thereto. That notifying Party shall first request discussion among all the Parties. The dispute may be informally resolved by consensus of the Parties. Only after proceeding through such an informal dispute resolution process described in this Section may a Party seek mediation as described in Section 15 (b).
- (b) Mediation.
  - (i) Non-Binding Nature of Mediation. If any dispute or issue related is not resolved through informal negotiations, the Parties agree to attempt to resolve the matter through mediation. Any mediation is voluntary, non-binding, and intended to provide an opportunity for the Parties to arrive at a mutually agreeable solution.
  - (ii) Initiation of Mediation. Any Party may initiate mediation for any dispute or issue related to this MOU by submitting a written request for mediation to the other Parties involved in the dispute. The request for mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and telephone numbers of those who will represent the Party submitting the request for mediation.

- (iii) Selection of Mediator. Within 14 days of receiving a request for mediation, the involved Parties shall meet and confer to select a mediator agreeable to the Parties. Any mediator selected shall have expertise in the area of the dispute and be knowledgeable about the mediation process. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation.

Before accepting an appointment as mediator, the prospective mediator shall be required to disclose all circumstances likely to create a perception of bias or prevent a prompt meeting with the Parties. Upon receipt of such information, the Parties will meet and confer and decide whether to select another mediator.

- (iv) Representation During Mediation. The Parties may be represented by persons of their choice, who shall have full authority to negotiate on behalf of the Party they represent. The names, addresses, and telephone numbers of such representatives shall be communicated in writing to all Parties and the mediator.
- (v) Time and Place of Mediation. The Mediator shall set the time of each mediation session. The mediation shall be held at any convenient location within Santa Clara County that is agreeable to the mediator and the involved Parties. All reasonable efforts will be made by the Parties and the mediator to schedule the first session within thirty (30) days after selection of the mediator.
- (vi) Identification of Matters in Dispute. At least 10 days before the first scheduled mediation session, each involved Party shall provide the mediator with a brief memorandum not longer than 10 pages setting forth its position with regard to the issues that need to be resolved. At the mediator's discretion, the memoranda may be mutually exchanged by the Parties.
- (vii) Authority of Mediator. The mediator shall not have authority to impose a settlement on the Parties, but will attempt to assist the Parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the involved Parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the Parties, as determined by the mediator.
- (viii) Privacy. Mediation sessions are private. The Parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the Parties and consent of the mediator.
- (ix) Confidentiality. Confidential information disclosed to a mediator by the Parties or by witnesses in the course of mediation shall not be divulged by the mediator or the Parties. All records, reports, and other documents and information produced during mediation shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or a judicial forum. The Parties shall maintain the confidentiality of the mediation and shall not rely on, or

introduce as evidence in any arbitration, judicial or other proceedings any of the following: (a) views expressed or suggestions made by the other Party with respect to a possible settlement of the dispute; (b) statements made by the other party in the course of the mediation proceedings; (c) proposals made or views expressed by the mediator; or (d) whether the other Party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

- (x) No Record of Proceedings. There shall be no stenographic or other record of the mediation proceedings.
- (xi) Termination of Mediation. The mediation may be terminated in any of the following ways: (a) by the execution of a settlement agreement by the Parties; (b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or (c) by a written declaration of any Party to the mediation that it is terminating the mediation proceedings.
- (xii) Interpretation and Application of These Mediation Provisions. The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibilities.
- (xiii) Expenses. The expenses of witnesses for each Party shall be borne by the Party producing the witnesses. All other expenses of the mediation, including required travel and other expenses of the mediator, the expenses of any witness called by the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be the sole responsibility of the Agency.

#### **16. TERM OF MOU**

This MOU shall remain in effect until it is terminated by mutual agreement of the Parties.

#### **17. AMENDMENT OF MOU**

This MOU may be amended only by written agreement executed by all of the Parties.

#### **18. POST-PERMIT ISSUES**

The Parties anticipate that the Agency will be dissolved at the end of the 50-year Permit term and that one or more successor entities will need to be identified to fulfill the implementation responsibilities that will continue in perpetuity. In light of this, the Parties agree as follows:

- By no later than the beginning of year 45 of the Permit term, the Parties will begin the process of identifying all implementation responsibilities that will continue beyond the 50-year Permit term and related funding requirements (e.g., endowment for continuing obligations related to Reserve System lands);
- By no later than the end of year 48, the Parties will have identified one or more successor entities to fulfill the implementation responsibilities beyond the 50-year Permit term and a transition plan will have been completed; and



- By no later than the end of year 49, agreements with the successor entity(ies) will be in place and implementation of the transition plan will have begun.

## **19. REMEDIES FOR BREACH**

If a Party shall default on any obligation contained in this MOU, such default shall not excuse any Local Partner from fulfilling its respective obligations under this MOU. Any Party shall be entitled to pursue any and all legal and equitable remedies against any other Party in response to any alleged default under this MOU. Any and all of the remedies provided to the Parties hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Parties to any or all other remedies.

## **20. SEVERABILITY**

If any court determines that a part, term, or provision of this MOU is illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected by that determination.

## **21. SUCCESSORS; ASSIGNMENT**

This MOU shall be binding upon and shall inure to the benefit of the successors of the Parties. No Party may assign any right or obligation hereunder without the consent of the other Parties.

## **22. NOTICES**

Notices to the Parties shall be sufficient if delivered as follows:

County of Santa Clara  
County Executive  
70 W. Hedding Street, 11<sup>th</sup> Floor, E. Wing  
San Jose, CA 95110

City of San Jose  
City Manager  
200 East Santa Clara St.  
San Jose, CA 95113

City of Gilroy  
City Administrator  
7351 Rosanna St.  
Gilroy, CA 95020

City of Morgan Hill  
City Manager  
17575 Peak Avenue  
Morgan Hill, CA 95037

Santa Clara Valley Water District  
Chief Executive Officer  
5700 Almaden Expressway  
San Jose, CA 95118

Santa Clara Valley Transportation Authority  
General Manager

3331 North First St.  
Building B. Second Floor  
San Jose, CA 95134

Santa Clara County Open Space Authority  
General Manager  
6980 Santa Teresa Boulevard, Suite 100  
San Jose, CA 95119

With a copy to:

County Counsel  
County of Santa Clara  
70 W. Hedding St., 9th Floor, E. Wing  
San Jose, CA 95110

San Jose City Attorney  
City of San Jose  
200 East Santa Clara St.  
San Jose, CA 95113

Gilroy City Attorney  
City of Gilroy  
7351 Rosanna St.  
Gilroy, CA 95020

Morgan Hill City Attorney  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

District Counsel  
Santa Clara Valley Water District  
5700 Almaden Expressway  
San Jose, CA 95118

General Counsel  
Santa Clara Valley Transportation Authority  
3331 North First St.  
San Jose, CA 95134

Open Space Authority Legal Counsel  
Wittwer & Parkin, LLP  
147 S. River St., Suite 221  
Santa Cruz, CA 95060

**23. SECTION HEADINGS**

All Section headings contained herein are for reference only and are not intended to define or limit the scope of any provision of this MOU.

**24. COUNTERPARTS**

This MOU may be executed in counterparts and so executed shall constitute one MOU which shall be binding upon all Parties. A photocopy of the fully executed MOU shall have the same force and effect as the original.

## 25. SIGNATURES

By affixing his/her signature below, each of the persons signing this MOU warrants and represents that he/she has read and understands the MOU, that he/she is authorized to sign this MOU, and that the Party on behalf of whom he/she signs agrees to be bound by its terms.

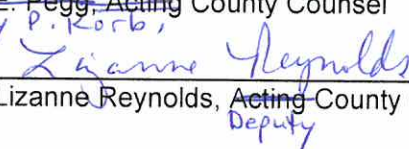
### COUNTY OF SANTA CLARA

By:   
Jeffrey V. Smith, County Executive

Date: 4/26/13

APPROVED AS TO FORM:

~~Lori E. Pegg, Acting County Counsel~~

By:   
Lizanne Reynolds, Acting County Counsel  
*Deputy*

Date: 4-26-13

### CITY OF SAN JOSE

By: \_\_\_\_\_  
Debra Figone, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

Richard Doyle, City Attorney

By: \_\_\_\_\_  
Vera Todorov, Senior Deputy City Attorney

Date: \_\_\_\_\_

### CITY OF GILROY

By: \_\_\_\_\_  
Thomas J. Haglund, City Administrator

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Linda Callon, City Attorney

Date: \_\_\_\_\_

### CITY OF MORGAN HILL

By: \_\_\_\_\_  
J. Edward Tewes, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Danny Wan, City Attorney

Date: \_\_\_\_\_

25. SIGNATURES

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**COUNTY OF SANTA CLARA**

By: \_\_\_\_\_  
Jeffrey V. Smith, County Executive

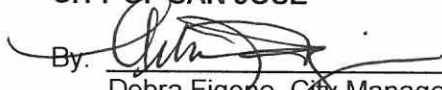
Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Lori E. Pegg, Acting County Counsel

By: \_\_\_\_\_  
Lizanne Reynolds, Acting County Counsel


Date: \_\_\_\_\_

**CITY OF SAN JOSE**

By:  \_\_\_\_\_  
Debra Figone, City Manager

Date: 4/11/13

APPROVED AS TO FORM:  
Richard Doyle, City Attorney

By:  \_\_\_\_\_  
Vera Todorov, Senior Deputy City Attorney

Date: 4/11/2013

**CITY OF GILROY**

By: \_\_\_\_\_  
Thomas J. Haglund, City Administrator

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Linda Callon, City Attorney

Date: \_\_\_\_\_

**CITY OF MORGAN HILL**

By: \_\_\_\_\_  
J. Edward Tewes, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Danny Wan, City Attorney

Date: \_\_\_\_\_

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**COUNTY OF SANTA CLARA**

By: \_\_\_\_\_  
Jeffrey V. Smith, County Executive

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Lori E. Pegg, Acting County Counsel

By: \_\_\_\_\_  
Lizanne Reynolds, Acting County Counsel

Date: \_\_\_\_\_

**CITY OF SAN JOSE**

By: \_\_\_\_\_  
Debra Figone, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Richard Doyle, City Attorney

By: \_\_\_\_\_  
Vera Todorov, Senior Deputy City Attorney

Date: \_\_\_\_\_

**CITY OF GILROY**

By: \_\_\_\_\_  
Thomas J. Haglund, City Administrator

Date: 4/15/13

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Linda Callon, City Attorney

Date: \_\_\_\_\_

**CITY OF MORGAN HILL**

By: \_\_\_\_\_  
J. Edward Tewes, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Danny Wan, City Attorney

Date: \_\_\_\_\_

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**COUNTY OF SANTA CLARA**

By: \_\_\_\_\_  
Jeffrey V. Smith, County Executive

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Lori E. Pegg, Acting County Counsel

By: \_\_\_\_\_  
Lizanne Reynolds, Acting County Counsel

Date: \_\_\_\_\_

**CITY OF SAN JOSE**

By: \_\_\_\_\_  
Debra Figone, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Richard Doyle, City Attorney

By: \_\_\_\_\_  
Vera Todorov, Senior Deputy City Attorney

Date: \_\_\_\_\_

**CITY OF GILROY**

By: \_\_\_\_\_  
Thomas J. Haglund, City Administrator

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Linda Callon, City Attorney

Date: \_\_\_\_\_

**CITY OF MORGAN HILL**

By:  \_\_\_\_\_  
Steve Rymer, City Manager

Date: 4/18/13

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Renee Gurza, City Attorney

Date: 4/18/13

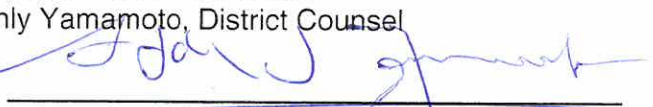


**SANTA CLARA VALLEY WATER DISTRICT**

By:   
Beau Goldie, Chief Executive Officer

Date: 4/16/13

APPROVED AS TO FORM:  
Stanly Yamamoto, District Counsel

By:   
Edward E. Yates, Senior Assistant District Counsel

Date: 4/12/13

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Michael T. Burns, General Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Robert Fabela, General Counsel

Date: \_\_\_\_\_

**SANTA CLARA COUNTY OPEN SPACE AUTHORITY**

By: \_\_\_\_\_  
Andrea Mackenzie, General Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
William P. Parkin, Legal Counsel

Date: \_\_\_\_\_

**SANTA CLARA VALLEY HABITAT AGENCY**

By: 

Date: 5/10/13

APPROVED AS TO FORM:

By: 

Date: 5/16/2013

**SANTA CLARA VALLEY WATER DISTRICT**

By: \_\_\_\_\_  
Beau Goldie, Chief Executive Officer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Stanly Yamamoto, District Counsel

Date: \_\_\_\_\_

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

By: Michael T. Burns  
Michael T. Burns, General Manager

Date: 4/15/13

APPROVED AS TO FORM:

By: Robert Fabella, General Counsel  
Robert Fabella, General Counsel

Date: 4/11/13

**SANTA CLARA COUNTY OPEN SPACE AUTHORITY**

By: \_\_\_\_\_  
Andrea Mackenzie, General Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
William P. Parkin, Legal Counsel

Date: \_\_\_\_\_

**SANTA CLARA VALLEY HABITAT AGENCY**

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Date: \_\_\_\_\_



**SANTA CLARA VALLEY WATER DISTRICT**

By: \_\_\_\_\_  
Beau Goldie, Chief Executive Officer

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Stanly Yamamoto, District Counsel

By: \_\_\_\_\_  
Edward E. Yates, Senior Assistant District Counsel

Date: \_\_\_\_\_

**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Michael T. Burns, General Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Robert Fabela, General Counsel

Date: \_\_\_\_\_

**SANTA CLARA COUNTY OPEN SPACE AUTHORITY**

By: Andrea Mackenzie  
Andrea Mackenzie, General Manager

Date: 4/17/13

APPROVED AS TO FORM:

By: William P. Parkin  
William P. Parkin, Legal Counsel

Date: 4/17/13

**SANTA CLARA VALLEY HABITAT AGENCY**

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Date: \_\_\_\_\_

### Principles of Participation in the Santa Clara Valley Habitat Plan

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These principles are to be used later for a side agreement between the Santa Clara County Open Space Authority (OSA) and the Santa Clara Valley Habitat Plan (Habitat Plan, or Plan) Implementing Entity, once the Entity is established:

- 1) The OSA states its willingness to cooperate and partner with the Habitat Plan Implementing Entity to help implement the Plan successfully. The OSA recognizes that acquisition of habitat is consistent with its mission as an open space agency.
- 2) The OSA is not a permittee under the Habitat Plan. However, the OSA has the option to apply for take authorization under the Plan as a Participating Special Entity. To receive this take authorization, the OSA would follow the procedures outlined in the Habitat Plan, including approval by the Implementing Entity and the Wildlife Agencies. To anticipate this, the estimated impacts of OSA activities on the covered species will be included in the Plan. Any Habitat Plan fees due would be offset by the value of land acquired by the OSA to date and incorporated into the Habitat Plan Reserve System.
- 3) The OSA has no specific funding commitment towards the Habitat Plan. However, the OSA commits to working with the Habitat Plan Implementing Entity for the duration of the permit to pursue joint land acquisition that is mutually beneficial to each agency on a case-by-case basis and help the Implementing Entity meet its local land acquisition commitments in cooperation with other local agencies, non-profit organizations, and foundations. The OSA intends to leverage its funds to acquire an estimated 5,000 acres for inclusion in the Reserve System, and will make efforts to acquire an additional 2,500 acres for the Reserve System, if feasible. Roles for the OSA in land acquisition may include cooperating on land management issues, brokering a land purchase but not owning it, contributing lands to a Habitat Plan acquisition and owning the land, or owning and managing land acquired by the Implementing Entity in exchange for management funding. The OSA's acquisitions and funding that is ultimately committed to the Habitat Plan are not to be used for mitigation, but are to be allocated instead to species recovery and conservation on an ecosystem-wide basis under the Natural Community Conservation Plan (NCCP) portion of the Habitat Plan.
- 4) Any lands that the OSA acquires in partnership with the Implementing Entity would meet the requirements of the Habitat Plan including a conservation easement and incorporation into a reserve unit management plan. The conservation easement would require management in perpetuity by the Implementing Entity consistent with the Habitat Plan and allow for compatible public access such as unpaved multi-use trails. The OSA does not expect to be directly reimbursed for the cost of land acquisition or conservation easement dedication for land that it continues to own; the OSA's evaluation of projects on a case-by-case basis allows the OSA to consider the financial benefits the OSA will receive through grant funding under the Plan and funding for management before granting a conservation easement.