



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

November 25, 2008

To: Liaison Group

From: Kenneth Schreiber, Program Manager

Subject: Status Report Re:

- Wildlife Agencies Identification of Significant Issues and Review Status
- Cancellation of December 11, 2008 Liaison Group Meeting
- February 19, 2009 Liaison Group Meeting

The Liaison Group previously received a copy of an October 2008 letter from the three Wildlife Agencies regarding 11 significant issues identified during review of the Habitat Plan's First Administrative Draft. The October letter noted that additional issues would be identified in a subsequent letter. A follow up letter with four issues plus a separate list of 11 issues was received in early November. Copies of the letters and list of issues are attached as well as an October 31, 2008 response to the first 11 issues.

Local Partner staff and consultants have been actively working with Wildlife Agency staff to address and resolve issues. Lengthy and productive meetings have occurred on November 12 (Mare Island Technical Committee), November 17 (Water District and Wildlife Agencies re the FAHCE HCP) and November 21 (Local Partner and senior Wildlife Agency staff). Additional meetings are scheduled for December 10 (Mare Island Technical Committee), December 11 (Local Partner and senior Wildlife Agency staff regarding aquatic issues and the FAHCE HCP), January 8 (Local Partner and senior Wildlife Agency staff) and January 14 (Mare Island Technical Committee). The pace of meetings will continue into February (11th and 27th) and March (11th and 17th).

It is anticipated that the Second Administrative Draft Habitat Plan, scheduled for release in late January but possibly deferred to February, will incorporate resolution of many of the technical issues raised by the Wildlife Agencies. It is also anticipated that some issues will raise policy considerations that will benefit from review and guidance from the Liaison Group. Liaison Group review of the significant issues will be most productive after the December and January Local Partner/Wildlife Agency meetings. Therefore, the Thursday, December 11, 2008 Liaison Group meeting has been cancelled.

The Liaison Group has been meeting on the third Thursday of even numbered months (February, April, June, August and October) except for the second Thursday in December. The first Liaison Group meeting in 2009 is scheduled for Thursday, February 19, 2009 from 4:00 to 6:00 pm. It is anticipated that the meeting will be held at the Water District Headquarters Building. A meeting schedule for the remainder of 2009 will be reviewed at the February 19th meeting.

Attachments: Wildlife Agency Letter re Significant Issues 1-11
Wildlife Agency Letter re Significant Issues 12-15
Additional Potentially Significant Issues
October 31, 2008 Letter Response to Significant Issues 1-11

Cc: Wildlife Agency Staffs
Local Partner Staffs
Stakeholder Group



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In reply refer to:
81420-2008-TA-1983 (Service)
151416SWR2007S00119 (NMFS)

Mr. Kenneth Schreiber
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County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110

Subject: Significant Issues Identified in the "Santa Clara Valley Habitat Plan, 1st Administrative Draft," dated August 1, 2008 – Installment One

Dear Mr. Schreiber:

The U.S. Fish and Wildlife Service (Service), NOAA's National Marine Fisheries Service (NMFS), and California Department of Fish and Game (CDFG) (collectively referred to as the Wildlife Agencies) are in the process of reviewing the "Santa Clara Valley Habitat Plan, 1st Administrative Draft," dated August 1, 2008 (Administrative Draft). Our agencies met on September 30, 2008, to identify significant issues in the Administrative Draft. Due to work load issues and a curtailed review period from three months to two months, we are submitting these preliminary comments (Installment One) in an effort to maintain the Local Partners' planning schedule. All of the issues raised below have been previously discussed at the staff level and remain unresolved in the Administrative Draft. As such, we request a written response to each of the significant issues discussed below. Upon receipt of your written response, the Wildlife Agencies will be available, as needed, to provide guidance on how to incorporate the requested changes into the second Administrative Draft. Please note we have not yet concluded review of the Administrative Draft and will submit subsequent comments highlighting additional

significant issues at a later date. We will also be submitting additional general edits and comments upon the completion of our review. Chapter and page references below correspond to the “clean” version of the Administrative Draft, not the track-change version.

1. **Aquatic Conservation Strategy:** To date an aquatic conservation strategy sufficient to address riparian dependent species’ needs remains unresolved. Both NMFS and CDFG do not believe the current strategy adequately conserves South-Central California Coast steelhead (S-CCC steelhead) in the Permit Area over the 50 year permit term. In an attempt to provide guidance to the Local Partners, the Service, NMFS, and CDFG are developing a draft aquatic conservation strategy to provide standards and criteria necessary to address site-specific and watershed-scale issues. Our goal is to provide standards that will allow us to provide take exemption and ensure conservation and recovery. We anticipate providing you with the draft strategy in November.
2. **Pacheco Reservoir Expansion:** Page 3 of the Santa Clara Valley Water District’s (SCVWD) Board Agenda Memo, dated September 23, 2008, states that “Pacheco Reservoir is being discussed in the development of the Valley Habitat Plan, both as a covered activity and as a potential conservation measure.” This statement is incorrect. As discussed in the June 19, 2008 pre-liaison meeting and again reiterated at the August 21, 2008 liaison meeting, the Wildlife Agencies will not be able to analyze the effects resulting from the expansion of Pacheco Reservoir in the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP or Plan). It would be inappropriate to cover the expansion of Pacheco Reservoir under this HCP/NCCP for the following reasons: a) the Local Partners do not own or control the reservoir; b) adequate project details are not available for the Wildlife Agencies to conduct an impacts analysis at this point in time; c) delta species, not proposed for coverage under the Plan, may be affected by the expansion of Pacheco Reservoir; and d) reservoir expansion is one of three alternatives being considered in the San Luis Low Point Improvement Project and will likely be evaluated under Section 7 of the Endangered Species Act. As such, the expansion of Pacheco Reservoir should be added to the list of “Projects and Activities not Covered by this Plan” in Section 2.4 of the Administrative Draft. As previously indicated, the HCP/NCCP could document the current project description, with the hopes of facilitating future Section 7 consultations with the Bureau of Reclamation. Coverage under the HCP/NCCP may be possible, when project details are available, but this would likely require a major amendment.

3. **Reoperation of Pacheco Reservoir:** Although the expansion of Pacheco Reservoir will not be covered under the HCP/NCCP, the Wildlife Agencies believe that the reoperation of the existing Pacheco Reservoir is necessary for the long term viability of S-CCC steelhead. Interior populations of S-CCC steelhead are a rare and essential component of the S-CCC steelhead distinct population segment. These interior populations only exist in the Pajaro River and Salinas River watersheds. Watersheds with extant interior populations are restricted in number and distribution. The Salinas and Pajaro River watersheds have been heavily altered due to various anthropogenic actions and as such, steelhead habitat in these interior areas is heavily degraded from historical conditions. Due to these impacts, the current distribution of interior populations is limited to the Arroyo Seco in the Salinas River, and Uvas and Pacheco Creek in the Pajaro River. The Study Area for the HCP/NCCP includes both Uvas and Pacheco Creeks.

We encourage the Local Partners to expedite negotiations with the Pacheco Pass Water District to reoperate the reservoir to benefit migration and rearing conditions for S-CCC steelhead as well as Pacific lamprey. Negotiations must include interim and long-term provisions to release water in a manner that benefits these covered species. We believe reoperation of the existing Pacheco Reservoir can result in significant conservation benefits to S-CCC steelhead and will contribute to their overall recovery. We are concerned that delays in the development and implementation of adequate bypass flows may preclude the ability of CDFG and NMFS to authorize take exemption for this species.

4. **Evaluation of Steelhead Passage Over Uvas Dam.** NMFS and CDFG provided a letter to the SCVWD, dated April 18, 2008, requesting a feasibility study for steelhead passage over the Uvas Dam. This letter was predicated on an Memorandum of Understanding between the previous owners of Uvas Dam and CDFG to trap and truck steelhead over the dam if steelhead were unable to make it through the outlet works of the dam (they cannot). To date, the requested study has not been initiated. We believe this evaluation is essential because the conservation benefits to steelhead are high. If the results of this feasibility study indicate that providing passage over Uvas Dam would benefit the Uvas steelhead population, then the SCVWD should include this as a proposed covered activity under the HCP/NCCP.
5. **Conservation Strategy Assurances:** Although the Administrative Draft documents required land acquisition acreages by land cover (Table 5-12 & Table 5-14), select Conservation Analysis Zones (Table 5-18), and species habitat (Table 5-20), we are concerned that there are few assurances that the Reserve System will be composed of large contiguous tracks of land with minimal edge. Page 5-8 of the Administrative Draft states that, "Areas designated for conservation and described in

this chapter include substantial amounts of high-quality habitat for covered species and of natural communities, as well as areas important for maintaining regional biological diversity. Covered activities are therefore designed to occur mostly in areas of low-quality habitat.” Although this approach is ideal, the Administrative Draft does not appear to provide assurances that this approach will be implemented. It is our understanding that every portion of the Permit Area will be contained within a fee zone. As such, applicants under the jurisdiction of the Local Partners would be able to carry out covered activities anywhere in the Permit Area as long as they are willing to pay the development fee (or provide other acceptable means of compensation). In addition, the assembly of the Reserve System will be dictated by the availability of willing sellers.

Furthermore, we are concerned about the potential for rural development to preclude the acquisition of lands identified as high priority conservation areas. There is a potential that exurban development may preclude the creation of large, contiguous blocks of reserve lands. These issues were discussed at the September 10, 2008 Mare Island meeting. It is our understanding that ICF Jones & Stokes will add additional text to the second Administrative Draft to address these issues. Upon further discussion amongst the Wildlife Agencies on September 30, 2008, we also recommend that the next Administrative Draft establish minimum acreage and edge requirements for the Reserve System.

6. **Participation of State Parks:** Prior to proceeding further with the assumption that State Parks will be a co-Applicant to the HCP/NCCP, the Wildlife Agencies request confirmation that State Parks will permanently protect State Park lands in perpetuity if those lands are intended to contribute to the Reserve System. Permanent protection could be ensured through conservation easements or other mechanisms approved by the Wildlife Agencies.
7. **Description of Covered Activities:** The description of many of the covered activities have been improved, based on previous Wildlife Agency comments. The addition of Tables 4-5 (a-h), which describe impact estimations and key assumptions, will be extremely useful in the Wildlife Agencies’ impacts analysis. However, the description of some covered activities still need to be refined. For example, Appendix F contains 67 pages of proposed covered activities, many of which are either poorly defined, have incidental take coverage already (i.e. the Stream Maintenance Program), or will not result in incidental take (i.e. development of feasibility studies). In addition, the description of the following proposed covered activities need to be better defined to enable the Wildlife Agencies to conduct an impacts analysis: mitigation and/or monitoring activities in creeks or adjacent riparian corridors that are not conducted as part of Plan implementation (p. 2-48), reservoir filling (p. 2-48), restoration projects in upland habitats not associated with

Habitat Plan implementation (p. 2-55), and implementation of [planning documents] that have been or will be developed by County Parks or City of San José Parks (p. 2-55).

8. **Levee Reconstruction:** Please specify in Chapter 2 if any of the levees within the Permit Area are U.S. Army Corps of Engineer (Corps) levees. We will not be able to cover incidental take associated with the reconstruction of Corps levees. The Service and NMFS are currently working with the Corps on a Section 7 consultation to address this issue. Reconstruction of non-Corps levees may be covered under the HCP/NCCP if the Local Partners are able to demonstrate that adequate mitigation and conservation will occur to offset the impact of maintaining the reconstructed levees free of all vegetation with the exception of grasses and non-woody shrubs. All levees that would be affected by these activities should be clearly mapped. Significant permanent removal of woody vegetation may limit the ability to conserve some covered species. The Administrative Draft does not clearly indicate what conservation actions would be implemented to address the loss of riparian vegetation, including large trees, on all of the levees in the Permit Area.

9. **Definition of “Protected Open Space”:** The inclusion of Type 2 and 3 Open Space in the term “protected open space” is misleading. According to Figure 2-4 in the Administrative Draft, Type 1 Open Space is the only type of open space with irrevocable protection through local, state, or federal authority. Type 2 and Type 3 Open Spaces do not have irrevocable protection. State Parks and County Parks lands should not be considered Type 1 or 2 Open Space. State and County Parks are multi-use agencies. Although their missions include ecological protection, ecological protection is not their primary mission. There have been a number of local examples where State Parks has chosen to pursue activities to serve other parts of its overall mission, which subsequently impacted native plants, wildlife, and their associated habitat. As such, the Wildlife Agencies request that all references to the term “protected open space” in the Administrative Draft be revised to only include Type 1 Open Space. If these changes are not made, the Wildlife Agencies will need to independently conduct this analysis, which will delay the Local Partner’s project schedule. Furthermore, an independent analysis will result in inconsistencies between the HCP/NCCP and the Wildlife Agencies decision documents.

The inclusion of Type 2 and 3 Open Space in the term “protected open space” is misleading for the following reasons. First, it artificially reduces estimated impacts to natural communities and covered species. For example, page 4-36 indicates that for covered plants without species models, “Estimates of temporary and permanent impacts were based on the impacts on land cover outside protected open space (i.e., open space Types 1, 2, and 3)...” Rock sanicle, a proposed covered plant species, is known from a single occurrence in the Permit Area, which occurs in Henry Coe State Park. We do not consider this single occurrence, in a State Park, as “protected.” The fact that the Local Partners are requesting incidental take coverage in County and State Parks demonstrates that impacts will occur in Type 2 and Type 3 Open Space.

Second, the inclusion of Type 2 and 3 Open Space in the term “protected open space” artificially inflates the baseline of protected natural communities and covered species habitat as well as the cumulative acreage of natural communities and covered species habitat protected once the conservation strategy is finalized. For example, according to Table 5-8, 45% of California tiger salamander primary habitat is currently “protected” because the percent is calculated by dividing the total modeled habitat in the Study Area by the total acreage of Types 1, 2, and 3 Open Space. However, the Wildlife Agencies consider lands protected only if they are defined as Type 1 Open Space in this HCP/NCCP. As such, only 8% of primary habitat for the California tiger salamander is actually currently “protected.” Likewise, Table 5-20 indicates that with the proposed conservation of 4,000 acres of bay checkerspot butterfly habitat, a total of 78% of the species habitat will be in “protected open space.” However, when only considering Type 1 Open Space, only 62% of the species’ habitat will be protected in perpetuity.

The use of the term “protected open space” will be especially problematic when the Wildlife Agencies refer to recovery plans to measure the HCP/NCCP’s contribution to recovery. For example, the 1998 “Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area” specifies the number of populations that must be “fully protected” to “ensure long-term conservation” of some of the plant species proposed for coverage under the HCP/NCCP. Please identify how many occurrences of covered plant species are in Open Space Type 1.

10. **Impact Assessment:** Beginning in September of 2007, both NMFS and the Service emphasized the need for an adequate impacts assessment for all covered species. An impact assessment evaluates both beneficial and adverse project effects to the species as a whole. This assessment is an essential component in the Jeopardy analysis for the Section 7 consultations that both NMFS and the Service will conduct in our review of the HCP/NCCP. CDFG will also use this assessment in its findings documents. The Wildlife Agencies were under the impression that this effort was ongoing. We have recently learned that our concerns were only partially addressed

through the addition of the Executive Summary Tables in the Administrative Draft. If a complete impact assessment is not included in the HCP/NCCP, the Local Partners should anticipate significant delays in the project schedule because the Service, NMFS, and CDFG will be required to conduct the impacts analysis independently. This analysis will require a significant amount of time and resources. As previously commented by the Wildlife Agencies, an adequate impacts assessment should include the following:

- a) An evaluation of environmental baseline conditions. The Final ESA Section 7 Consultation Handbook (March 1998) describes baseline as "... an analysis of the effects of past and ongoing human and natural factors leading to the current status of the species, its habitat, and ecosystem, within the action area." This analysis describes factors affecting the environment of the species in the action area. The baseline includes State, tribal, local, and private actions already affecting the species or that will occur contemporaneously with the consultation in progress.
- b) An evaluation of the impact of the proposed take. When possible, the impacts assessment should discuss how the loss of individuals and habitat will affect species reproduction, numbers, and distribution. When adequate data are available, the Local Partners should also attempt to address how adverse effects to, or loss of, habitat will affect overall habitat quality, quantity, and locations necessary for the conservation of proposed covered species. We recognize that there are substantial data gaps for some of the proposed covered species, and an analysis addressing all of these issues may not be possible. However, adequate data are available for some of the proposed covered species; especially some of the especially rare and endemic species, such as the bay checkerspot butterfly, Coyote ceanothus, Santa Clara Valley dudleya, smooth lessingia, and Metcalf Canyon jewelflower; all of which appear to be restricted to Santa Clara County. Proposed covered activities may also adversely affect important Santa Clara County populations of wider ranging species, such as the burrowing owl. We are not recommending additional modeling or data collection; our guidance is to incorporate information that has already been gathered into an assessment that demonstrates that proposed incidental take will not appreciably reduce each covered species' ability to survive and recover in the wild.
- c) An evaluation of how the conservation strategy (beneficial effects) will contribute to the recovery of each covered species for the purposes of the NCCP.

- d) For steelhead, the impacts assessment should also include an evaluation of the status of the species using the four population viability parameters defined by McElhaney et al. (2000). These viability parameters are: abundance, spatial structure, population growth rate, and diversity.

11. **Biological Goals and Objectives:** We recognize that the Local Partners have made some revisions to the biological goals and objectives based on previous comments submitted by the Wildlife Agencies. Individual biological objectives relating to land acquisition, restoration, and enhancement do not need to explicitly state timeframe, if the tables are revised to clearly indicate that restoration/enhancement/creation activities will occur by year 40 of Plan implementation and land acquisition will occur by year 45 (i.e. a footnote may be appropriate).

However, many of the biological goals and objectives in Tables 5-1 (a-d) do not meet the Service's and NMFS' five-point policy. The June 1, 2000 five-point policy states that "Biological objectives should include the following: species or habitat indicator, location, action, quantity/state, and timeframe needed to meet the objective" (FR Vol. 65, No. 106, page 35251). Please review all of the draft biological goals and objectives to ensure that they adhere to the five-point policy. For example, as drafted, none of the linkage-related objectives (i.e. Objectives 2.2, 2.3, 2.4, 2.5, or 2.7) are measurable or tied to locations. These objectives are not enforceable. Other examples of objectives that are not measurable include Objectives 3.2, 14.2, 15.2, and 17.3. Unless the Local Partners are able to suggest an alternative method to enable compliance monitoring for these measures, the five-point policy should be adhered to.

We are also concerned that many of the conservation actions in the biological goals and objective tables continue to state that they will only be carried out "if feasible," "where possible," "if appropriate," "if biologically appropriate," etc. The inclusion of these phrases will make enforcement difficult. These phrases should be removed from the Administrative Draft or they will need to be explicitly defined.

Thank you for your attention to these significant issues. We will bring to your attention additional issues as they arise during our continued review of the August 1, 2008 Administrative Draft. If you have any questions regarding this letter, please contact Cori Mustin, U.S. Fish and Wildlife Service, at 916-414-6600; Jonathan Ambrose, National Marine Fisheries Service, at 707-575-6091; or Dave Johnston, California Department of Fish and Game, at 831-466-0234.

Sincerely,

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Richard Butler
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cc:

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In reply refer to:

81420-2008-TA-1983-2 (Service)
151416SWR2007S00119 (NMFS)

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70 West Hedding Street
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Subject: Significant Issues Identified in the "Santa Clara Valley Habitat Plan, 1st Administrative Draft", Dated August 1 2008-Installment Two.

Dear Mr. Schreiber:

On October 20, 2008, the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (Service), and NOAA's National Marine Fisheries Service (NMFS) (collectively referred to as the Wildlife Agencies) provided you with a list of eleven issues of significance to our agencies regarding the "Santa Clara Valley Habitat Plan, 1st Administrative Draft," dated August 1, 2008 (Draft Plan). As noted, all of these issues had been previously discussed at the staff level, but remained unresolved at the issuance of the first administrative draft. As you know, the first letter did not contain the full list of issues, due to time constraints limiting the opportunities for the Wildlife Agencies to discuss the issues before forwarding them on to you. Since then, we have completed our internal discussions and this letter provides you with the remaining, previously discussed, significant issues. As before, we would appreciate a response in writing and expect that we will be scheduling meetings in the immediate future to discuss these issues.

12. Quantifying impacts to plants and defining the conservation measures. The concern of the Wildlife Agencies is that all of the covered plant species exist in very small numbers and in a very limited number of locations. As a result, impacts that appear somewhat insignificant (such a 'one occurrence' or 'twelve

plants') could be extremely significant. Likewise, conservation measures must be carefully designed with the ecology, distribution, and vulnerability of the specific species in mind.

For our agencies to evaluate the magnitude of impacts expected over the permit term, determine how those impacts ultimately affect the covered plant species and to make findings regarding the conservation of these species, we need more detailed information on this issue. Ultimately, our agencies need assurances that the Plan not only mitigates for any impacts, but conserves each covered plant species.

The Plan currently treats all discrete population elements as equal. For example, Table 5-17 refers to "occurrences" and "populations" but does not address the potentially significant differences among the occurrences for a specific plant species. Likewise, while committing to creating a specific number of new populations for each species, there is no information relative to how it will be determined that the newly created populations have contributed to the conservation of the species. As an example, Objective 23.2 (big scale balsamroot) calls for increasing the size of the two known populations that currently occur on protected open space and also the two newly created populations in the eventual preserve system. However, without consideration of the total range, including number of occurrences, number of plants in each occurrence, viability of each occurrence, existing and potential threats to each occurrence and possible impacts over the permit term, there is no way to evaluate how well this strategy mitigates impacts and contributes to recovery. For example, destruction of an isolated population on the periphery of the species range will have a disproportionate impact not adequately mitigated by creation of another population closer to a core area. Likewise, impacts to populations that are particularly large, vigorous, or safe from disturbance must receive proportionate mitigation and additional conservation.

We acknowledge this is an extremely difficult issue to resolve, since there is some uncertainty as to where impacts will occur and where the eventual reserve system will exist, but not adequately addressing this issue may have significant repercussions for these species. Because these species are very limited in distribution and number, the situation necessitates more thorough analysis and discussion in the conservation strategy. We believe a significant amount of work has been directed towards this issue by the local partners; however, in order to assess the impacts of the Plan on these particular species, an additional level of analysis is needed. Without additional information, the Wildlife Agencies would need to resort to a "worse case scenario" when assessing impacts of the Plan on covered species, which may result in the Wildlife Agencies finding that the Plan does not meet our issuance criteria for some proposed covered species.

We request that the Plan contain an analysis for each covered plant species to address the following factors. The analysis should describe the current range of

the covered plant species, how many discrete occurrences there are range wide, how many of those are likely to be impacted by covered activities over the permit term, an estimate of threats to the full range of the species during the permit term, the areal extent of each occurrence, estimated number of individuals in each occurrence, the vigor and sustainability of each occurrence and an identification of existing and potential threats to each occurrence. Once this is done, the mitigation/conservation strategy should be revised to reflect these conditions. This should be done in two stages: The first is a biological exercise of what is necessary to conserve the species within the Plan area. The second stage is to decide how that can be implemented within the limitations of the Plan. If it is not possible to exactly identify how this will be done, alternative methods for reaching the same goals should be proposed, thus providing flexibility during Plan implementation. Our findings for each plant species will be based on these parameters.

13. **Seed Banks:** As noted above, the species on the covered plant list exist in very limited numbers and with restricted ranges. As such they are particularly vulnerable to extinction and we believe that measures beyond traditional mitigation and conservation are warranted.

Seed banks provide this additional level of protection by preserving a sampling of a seed pool should the species become extinct in the field. In addition, seed banks provide additional benefit by allowing storage of materials from good years that can be available when restoration opportunities present themselves and by allowing more flexibility in selecting specific strains for replanting.

We request that measures to place seeds and/or other reproductive materials in a seed bank for each of the covered plants be added to the Plan. We recommend contacting existing seed banks and establish a procedure for depositing material in these banks.

14. **Reserve System:** In Section 5.3.1, page 5-41, the text states that the reserve system may be as much as 10% smaller than the proposed 45,000 acres, but that the final reserve system will meet all the acquisition requirements described in Chapter 5. Many other sections of the Plan refer to the 45,000 acre reserve system. It is important that the Plan clearly identify the minimum reserve size and reference that consistently through the document. The Plan must also demonstrate that each of the covered species and natural communities will be conserved and how the minimum reserve size is sufficient to accomplish this conservation in order for the Wildlife Agencies to provide take authorization and meet our issuance criteria.

A full table in the same format as Table 5-18 and 5-19 which shows the projected acquisitions in all the Conservation Analysis Zones would be a useful tool that could help demonstrate that conservation will be achieved in the reserves.

15. **Adaptive Management:** In order for the Federal agencies to make findings for the Plan, the adaptive management section must comply with the 5-Point Policy. Two relevant sections of that policy state:

“When an HCP, permit, and IA, if used, incorporate an adaptive management strategy, it should clearly state the range of possible operating conservation program adjustments due to significant new information, risk, or uncertainty. This range defines the limits of what resource commitments may be required of the permittee. This process will enable the applicant to assess the potential economic impacts of adjustment before agreeing to the HCP”, and;

“Prior to the issuance of a permit, there should be a clear understanding and agreement between the Services and the permittee as to the mitigation range of adjustments which might be required as a result of any adaptive management provisions. A mechanism for determining the magnitude of strategy change to be employed, based upon the results of the monitoring and the level of deviation significance from the desired condition, should be developed in advance.”

In other words, the strategy must make a concerted effort to identify likely sources of change leading to a need for a change in management, discuss, and commit to a range of mechanisms to compensate for those changes and commit specific funding to deal with them. The Department of Fish and Game concurs that this is a necessary part of the overall plan.

As currently drafted, the Wildlife Agencies do not believe the Plan contains the elements necessary to comply with the 5-Point Policy. Specifically, the Plan deals only generally with the adaptive management process and does not provide details about what issues might be expected for this Plan. The Plan contains limited information on the techniques proposed to compensate for the particular changes. Finally, it does not appear there is a designated funding source to address these needs; rather the funds can potentially come from a variety of sources.

It appears the approach is to defer development of more detailed information to a later stage, after the Implementing Entity is formed. However, the Wildlife Agencies need to understand at this stage how this issue will be addressed, before we can make formal findings. To do so, we request that an analysis, consistent with the Federal 5-Point Policy be completed and a designated funding allotment set aside to carry out the tasks identified in that analysis.

The Wildlife Agencies believe a more consensus based approach should be taken regarding the monitoring and adaptive management phase of the Plan. For example the Wildlife Agencies believe it is inappropriate to state “The ultimate decision for which course of action to take in adaptive management rests with the Implementing Entity and their senior staff or senior contract biologists (Plan p. 7-

98).” Final decisions should be made in conjunction with the Wildlife Agencies and not just with consultation with the Wildlife Agencies.

After completing our review of the first administrative draft, our agencies have additional potentially significant issues to discuss, but have not included them in this letter, as we have not yet had the opportunity to discuss them at the staff level. We expect to begin discussion of those issues very soon.

The Department of Fish and Game, United State Fish and Wildlife Service and National Marine Fisheries Service appreciate the very significant effort, in both time and financial resources that have been brought to this effort so far and look forward to continuing our collaborative effort. Partnerships such as this one can have substantial benefit for the environment while local agencies guide and approve development in their jurisdictions.

If you have any questions, please contact Dave Johnston, California Department of Fish and Game at (831) 466-0234 or Liam Davis, California Department of Fish and Game at (707) 944-5529; Jonathon Ambrose, National Marine Fisheries Service at (707) 575-6091 or Mike Thomas, United State Fish and Wildlife Service at (916) 414-6734.

Sincerely,

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Additional Potentially Significant Issues

1. Definition of Unforeseen Circumstances Chapter 10

We have concerns that the identified thresholds are appropriate for all criteria. For most cases, it appears that the analysis has identified a particular event that has occurred in the past and this standard is used as a baseline to what future events are unforeseen. The analysis provided for unforeseen circumstances (UC) is detailed and well done; however, where this baseline is used to establish what an UC will be becomes problematic. As noted in the various analyses, identified past events are generally not considered exceptional, but the accompanying UC set is often an event that can occur with only slightly less regularity. This creates a standard where anything other than a normally occurring event is an unforeseen circumstance.

For example, the section on drought, the event which has a 60% chance of occurring within the permit term is considered an UC. Another example is frequency and size of fire; we agree with the conservative approach to assume an increase in historic fire occurrence as a result of climate change. However the text on page 10-6 of the Draft Plan is not consistent with this assumption; the text assumes fewer wildfires (20 instead of 29) and a smaller acreage (19,700 instead of 28,275). It is not appropriate to use figures lower than historical levels as the threshold for determining unforeseen future events. We have similar concerns with many of the other items in this sections.

2. Justification for species specific conservation actions Chapter 4

This issue relates to the selection of conservation actions and how they relate to the adopted Recovery Plans for those covered species that have them. Where a RP exists, there should be a correlation between proposed conservation measures and the standards in that plan. For example, according to the Draft Plan, habitat protected in perpetuity for the BCB, is defined as Type 1 open space. Therefore 1,200 acres currently protected as Type 1 open space + 4,000 acres of proposed acquisition in the conservation strategy totals 5,200 acres. However, according to the Recovery Plan for serpentine soil species, approximately 8,674 acres of habitat are identified as areas that should be “fully protected” and are “essential to the recovery” of the BCB. The Plan should justify how the preservation of 5,200 acres is adequate for a species that is restricted to the plan area.

3. Sliding Plant impact analysis Chapter 4

According to Table 4-6, footnote 5, “If additional occurrences are discovered within Reserves and these occurrences are of higher conservation value than occurrences affected by covered activities, then the impact limit may be increased by one for every new occurrences found, except for Coyote ceanothus. Impact limits may be greater than maximum number of occurrences impacted by urban growth shown in table in order to account for expected impacts from other covered activities.” In essence, this allows additional impacts beyond what is described in the Draft Plan, or a “sliding scale” of take

for covered plants. The Wildlife Agencies can not do an adequate impact analysis if the amount of take is subject to change. Additionally this sliding scale may not meet the NCCP standard because the amount of conservation is fixed even when the biological parameters (i.e., take) change. Additionally, there does not appear to be a mechanism to describe how or who determines which occurrences have higher conservation value. We are also concerned that plants for which no impact is currently expected may be impacted in the future under this approach.

4. Identification of no-impact zones within CAZs to ensure no jeopardy Chapter 4

For some species there are areas of habitat that are of significantly greater ecological importance than others. For example, according to Tables 4-2 and 4-4, total permanent impacts to the BCB are in the 300-400 acre range. However, currently nothing precludes those impacts from all occurring within a single BCB core area. Similarly, these impacts could all occur within an area considered an important stepping stone site. The relative impact of 300-400 acres of impacts occurring on Coyote Ridge is significantly higher than if those impacts occurred elsewhere. In addition, as currently drafted, the conservation strategy may not adequately mitigate for these impacts because “less” valuable serpentine habitat could be purchased to offset the impact to higher value areas (i.e., an occupied non core area could be purchased to offset the impacts of development in a core area). The Wildlife Agencies believe there is a need to define some relatively high value areas as “no-impact areas” under this plan.

5. Burrowing Owl conservation strategy. Chapter 5

The proposed BO conservation strategy depends on acquisition of grasslands with specific parameters. We agree these parameters are more likely to result in purchase of grasslands more likely to be occupied by BO in the future; however, the approach could result with no discernible benefit for BO in the study area over the permit term. Given the status of the owl in the Bay area, the stay ahead provision will be critical for the species and is of particular interest to DFG. Since the target areas are relatively few in number and of high cost, their availability in the short term is questionable. If a significantly different conservation strategy is not possible, the Wildlife Agencies are unlikely to be able to include BO on the permit. Based on the conservation strategy for this species to date, we recommend either removing BO as a covered species or revising the conservation strategy for this species.

6. Agricultural lands

We continue to have concerns regarding the inclusion of a very significant amount of agricultural land in the conservation strategy. The primary goal of any HCP/NCCP is to conserve listed species; ag lands should only be included if there is a direct, demonstrable biological benefit that fits into the conservation strategy. As we have noted, this could include silage sources near tri-color black bird colonies. It could also include protection of grazing lands where the grazing regime does not damage the targeted resource value. We do not currently agree that protection of row crops or similar intensively managed

areas provide significant benefits to the covered species (i.e. they do not necessarily provide good connectivity, particularly given the recent concerns over E. coli transmission and the resulting potentially significant impacts to wildlife). 2500 acres seems a significantly optimistic figure unless these are grazing lands with limitations on management.

7. Clarification on how rural development impacts will be assessed

The Wildlife Agencies are unclear regarding the impacts for rural development. During implementation, will impacts for rural development (i.e., rural ranchettes) be limited to the footprint of the building and a 50' buffer, or does it include the entire parcel? We are concerned that if impact assessment is limited to the footprint and a buffer, critical features such as a breeding pond may be missed. For example a septic leach field in serpentine grassland may not result in only temporary impacts since the leach field is likely to remain moist well into the summer and introduce additional nutrients to otherwise nutrient poor soils, thus resulting in a change in the vegetative community in the vicinity of the leach field. Similarly runoff from irrigation systems may introduce a variety of chemicals into nearby water sources (i.e., breeding ponds) and result in additional impacts that may not be currently analyzed in the Plan.

8. Requirements that mitigation/conservation lands be occupied by covered species.

Please provide more detailed information on how target goals for covered species presence in the preserve system will be met.

9. Clarification on need for Neighboring Lands Agreements. Chapter 4

More discussion is required on NLA's. Our concern is that the current proposal may be too much of a free pass. The Wildlife Agencies are unclear regarding the rationale behind using a 1 mile radius as the threshold for the neighboring lands agreement. The text on page 4-23 of the Draft Plan states "Most of the covered species will not disperse more than 1 mile in consecutive years." However, several species (i.e., kit fox, vireo, CTS, CRLf, etc.) are capable of moving greater distances in much less time than a single year. Kit fox may move several miles in a single night. A biological justification should be provided for the 1 mile radius (or other radius used in the NLA).

10. Clarification on why species surveys are not required for covered activities on parcels of <1 acre

This item was previously discussed at a Mare Island meeting. We had previous discussions at Mare Island regarding this exemption as well as the associated footnote on page 6-12; however, the Wildlife Agencies are still uncertain regarding the exemption and would like to have more discussion on this issue. Is the Implementing Entity assuming presence on these lands? This does not seem consistent with footnote 7. Covered species are known to occur, or could occur and be affected by, activities that

occur on small parcels on the valley floor – especially the plant species. The Wildlife Agencies would also like clarification regarding the area of permanent impacts (i.e., is an entire parcel considered a permanent impact or is it the building footprint).

11. Special Entities-who enforces 3rd party contracts. Chapter 8

All three Wildlife Agencies have concerns regarding decisions to include third parties being made solely by the Implementing Entity. The recent experience with Gavilan College has highlighted the significance of this issue. For example, Gavilan College's proposed project, although an interim project now, could have been a Participating Special Entity, if the college were to have requested inclusion under the Plan after permit issuance. As that plan is currently proposed, there are significant connectivity issues associated with the college, and we are unclear on how these types of issues would have been analyzed under the Plan.

12. CalFire should be involved now.

After several Wildlife Agency meetings, we have determined that CalFire should be involved at this stage rather than developing a plan within the first three years of Plan implementation. While we agree that every issue does not need to be determined at this time, negotiations with CalFire should begin prior to Plan completion to identify and ensure any potentially significant conflicts are dealt with early so future discussions can be fairly routine. An existing MOU between USFWS/NMFS and the Forest Service will be provided and may be used as a starting point for discussion with CalFire. Also LM-8 (BGO tables) should be modified to require an outcome.

13. Remedial measures special funding adequacy. Chapter 9

The Wildlife Agencies are unclear regarding the origin and basis of the 3% estimated cost of remedial measures and the \$49,000 figure on page 9-16 of the Draft Plan. Three percent of the estimated cost of reserve maintenance and management (1,916,000 per year in Section 9.2.5) is \$57,480. The Federal Agencies must determine that the Plan will be adequately funded, but the Draft Plan currently does not substantiate why 3% of the operational budget for management measures will be adequate to deal with changed circumstances. In fact, the discussion of changed circumstances in Chapter 10 indicates there is substantial uncertainty surrounding adequate funding for remedial measures: "If the disease or nonnative invasive species results in substantial impacts on natural communities such that it cannot be addressed under the existing operating budget, the Implementing Entity will prepare a report identifying the problem and will include a cost analysis for funding a control program...The feasibility of such programs will depend on the success of additional fundraising" (p. 10-9). Uncertainty regarding the adequacy of funding is also discussed on p. 10-11, which states that remedial measures to respond to drought would include the implementation of "measures through the Adaptive Management Program (see Chapter 7) in ways consistent with existing funding and permit obligations and with the consent of the Implementing Entity." In other words, the extent and quality of remedial measures appear to be dictated by the budgeted cost to deal

with changed circumstances. Additional information should be provided to describe why the funding is sufficient to address remedial measures.

14. Water management ends at end of permit term. Chapter 9

According to Section 9.2.11, “Costs in perpetuity will not be incurred for ...water supply and fish habitat management...” This statement implies that these actions would terminate at the end of the permit term. However, this appears to be inconsistent with Section 9.2.6, which states “Water releases from Uvas and Chesbro Reservoirs are assumed to continue in perpetuity.” The Wildlife Agencies do not believe it is appropriate to state that fish habitat management or water supply actions may terminate at the end of the permit term. Some fish management actions (for example fish ladders) will need to be maintained in perpetuity, as would some water/streamflow management actions. These actions are part of the mitigation/conservation strategy and like all the mitigation/conservation actions must continue in perpetuity. We believe that this topic needs additional discussion.

15. General Aquatic Issues

Stream mitigation must be in-kind. For example, a steelhead reach impacted can't be mitigated for with a restoration of Fisher Creek.

There needs to be a formal statement somewhere in the document that on-stream ponds are not allowed.



Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan

October 31, 2008

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California Department of Fish and Game
Bay-Delta Region
P.O. Box 47
Yountville, CA 94599

Subject: Three Wildlife Agencies October Letter Identifying Significant Issues in the "Santa Clara Valley Habitat Plan, 1st Administrative Draft" dated August 1, 2008

Dear Ms. Goude, Mr. Butler and Mr. Armor:

This letter is in response to your October letter identifying significant issues associated with the 1st Administrative Draft of the Santa Clara Valley Habitat Plan (HCP/NCCP). An overview assessment of your issues is provided in Attachment #1 and a more detailed responses to each of your issues is provided in Attachment #2.

Our thanks to you and your staffs for taking the time and expending the effort to identify significant issues. It is our hope that early resolution of issues will enable us to maintain the Local Partner's planning schedule. The most current schedule, updated on October 16, 2008, is Attachment #3. Achieving adoption of the Habitat Plan and related Local Partner actions in 2010 is critical to a successful process and our responses and recommendations are aimed at maintaining this schedule. The process over the past years that led to the 1st Administrative Draft greatly benefited from an ongoing positive problem solving relationship between the Local Partners and Wildlife Agencies. We

are committed to continuing that working relationship and request focused and timely discussions with the Wildlife Agencies to finalize the significant issues identified in your letter.

We are also guided by the direction from both the Fish and Wildlife Service and Fish and Game staff that adoption of the Valley Habitat Plan needs to be coordinated with the Santa Clara Valley Water District's (SCVWD) 3 Creeks HCP. The two plans have overlapping covered activities and conservation strategies. It is important to remember that the 3 Creeks HCP includes a watershed beyond the planning area of the Valley Habitat Plan and has been developed as a separate plan for SCVWD to resolve challenges to its water rights. All three Wildlife Agencies have worked over the past 10 years in developing the 3 Creeks HCP and are signatories to a 2003 draft settlement agreement. Without a timely water rights resolution, the conservation strategies could be in jeopardy. In order to finalize the Valley HCP, we also request the Wildlife Agencies to dedicate staff to resolve issues with the 3 Creeks HCP.

We anticipate working with you not only on resolving identified significant issues but on continuing coordination of the plan development, noticing, public review and adoption processes for both documents. Resolution of issues in the October letter, and to the extent possible, the forthcoming letter is desired by early December 2008 and we propose the following schedule. Meetings to address specific issues related to the 3Creeks HCP will also be requested by SCVWD via a separate letter.

- November 12: Mare Island meeting to resolve data/analysis or format matters for items # 4-11 and possibly #1(see Attachment #1, Overview Assessment Table)
- November 20 or 21: Hold an initial workshop type meeting (four to five hours) with the three Wildlife Agencies and Local Partners to resolve and finalize issues.
- December 5, 2008: Complete staff report for the December 11, 2008 Liaison Group meeting (i.e., elected officials) on the status of significant issues resolution;
- December 3,4 or 5: Holding a workshop type meeting (four or five hour) with the three Wildlife Agencies to address remaining outstanding issues with major emphasis on the interface of the 3 Creeks HCP and the Santa Clara Valley HCP/NCCP.

Local staff and consultants are prepared to meet in any location that facilitates the necessary participation by your agencies. The target meeting dates have been selected within the context of meeting the Valley Habitat Plan and 3 Creeks HCP schedules necessary to finish the public review draft plans and environmental documents consistent with having Federal Register notices in June-August 2009 and public review in August-November 2009 (see Attachment #3, Valley Habitat Plan schedule).

You indicated a future letter from the Wildlife Agencies on additional issues not covered in the first letter. To hasten resolution, we propose the communication of and response to any future issues from the Agencies be less formally provided and to the extent possible, be integrated with the proposed workshops. We believe that the overall draft Plan review process will be facilitated by incorporating as many issue resolutions as possible into the Second Administrative Draft scheduled for release in the later part of January 2009.

We thank you for your continued involvement and look forward to working with the Wildlife Agencies in finalizing our conservation plans.

Sincerely,

Kenneth R. Schreiber, Habitat Plan Program Manager

Attachments: 1---Overview Assessment Table
2---Issue Responses
3---Valley Habitat Plan Schedule

Cc: Liaison Group
Management Team
Cori Mustin, FWS, Sacramento
Eric Tattersall, FWS, Sacramento
Mike Thomas, FWS, Sacramento
Russ Strach, NMFS, Sacramento
Jonathan Ambrose, NMFS Santa Rosa
Gary Stern, NMFS, Santa Rosa
Scott Wilson, CDFG, Yountville
Dave Johnson, CDFG, Santa Cruz
David Zippin, ICF Jones & Stokes, Oakland

ATTACHMENT #1

OVERVIEW ASSESSMENT

The 11 significant issues in the October letter from the Wildlife Agencies have varying degrees of policy, data and analysis and format considerations. The Local Partners propose using the November 12, 2008 Mare Island Technical meeting to address data and analysis and format issues. It is intended that this will facilitate focusing the meeting time with senior Wildlife Agency staff on policy issues. The following table provides the Local Partner's assessment of the components of each of the significant issues.

Issue	Policy	Data and Analysis	Format	Comments
1. Aquatic Conservation Strategy	X	X	X	
2. Pacheco Reservoir Expansion	X			
3. Reoperation of Pacheco Reservoir	X			
4. Evaluation of Steelhead Uvas Dam Passage		X		
5. Conservation Strategy Assurances			X	Initial discussion at October 8 th Mare Island meeting
6. Participation of State Parks	X	X		Forthcoming meeting with Parks regional staff but resolution is assumed to need involvement by Sacramento-based senior Fish and Game and Parks and Recreation staff
7. Description of Covered Activities		X		
8. Levee Reconstruction	X	X		Initial discussion at October 8 th Mare Island meeting
9. Definition of Protected Open Space			X	Initial discussion at October 8 th Mare Island meeting
10. Impact Assessment	X	X	X	
11. Biological Goals and Objectives		X		

ATTACHMENT #2

Responses to Significant Santa Clara Valley Habitat Plan Issues Raised in October 2008 Joint Wildlife Agency Letter

Item 1. Aquatic Conservation Strategy

The Local Partners appreciate the need and value of a strong aquatic conservation strategy. Table 5-22 highlights all of our proposed north county strategy and significant elements of the south county strategy. For the north county, there are 25 actions and 6 conditions. The north county strategy incorporates the strategies and actions found in the 3-Creeks HCP and adds actions and conditions which can be implemented by the local partners individually or as a whole.

The Wildlife Agencies have worked with SCVWD since 1997 in developing a comprehensive strategy for north county streams. In 2003 a draft settlement agreement was reached and signed by all of the Wildlife Agency participants in the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE). For Coyote, Guadalupe and Stevens Creek (not part of the Valley HCP), the parties agreed that the measures in the agreement “will restore and maintain healthy steelhead trout and salmon populations”. Subsequent to the 2003 agreement, SCVWD added additional conservation measures related to maintenance of dams which will further enhance the restoration of aquatic species habitat.

For the south county, there are 36 actions and 6 conditions directly applicable to South County streams that serve S-CCC steelhead. The strategy aims to apply the concepts developed for the north county actions to the south county streams. South county stream conservation issues that also need additional discussion include three significant issues raised in the joint letter (Pacheco Reservoir Expansion, Reoperation of Pacheco Reservoir and Evaluation of Steelhead Passage Over Uvas Dam)) and Riparian Setbacks. The local partners are concluding analysis of the conditions related to Riparian Setbacks and look forward to working with the wildlife agencies in finalizing this matter. A November meeting is being pursued to finish this condition.

For your ease of review the aquatic strategy can be found in the following sections of the 1st Administrative Draft:

- Section 5.2.4---Aquatic Habitat Protection and Water Management (pages 5-26 to 5-28);
- Section 5.3.1---Land Acquisition Actions (pages 5-46 to 5-70);
- Section 5.3.2---Landscape Conservation and Management (pages 5-75 to 5-79);
- Section 5.3.6---Riverine and Riparian Forest and Scrub Conservation and Management (pages 5-110 to 5-133);
- 5.3.7---Wetland and Pond Conservation and Management (pages 5-133 to 5-143);
- 5.4.2---South-Central California Coast Steelhead (pages 5-146 to 5-149);
- Section 5.4.5---Pacific Lamprey (pages 5-152 to 5-153); and
- Figures 5-8, Land Acquisition Strategy and Figure 5-10, Major Stream Conservation Actions.

Item 2: Pacheco Reservoir Expansion

We believe that it is appropriate to cover the expansion of Pacheco Reservoir in the HCP/NCCP and want to respond to your reasons for not including it in the Plan.

- a) **Control of Land:** While it is true that none of the Local Partners currently own or control the land that would be involved with the expanded reservoir, current ownership is not a requirement for inclusion in an HCP or NCCP and many Local Partners have included projects where their agency does not own all of the rights-of-way. In addition, the entire land acquisition strategy of the Habitat Plan relies on the acquisition of private land in the future, none of which is currently owned by the Local Partners. Since the same circumstance involving lack of control over the land applies equally to the Pacheco reoperation, which is to be covered under the HCP, it does not appear to be a consistently applied basis for exclusion.
- b) **Project Details:** There is sufficient information to know the maximum area of impact of this proposed project, similar to and at the same level of detail as other projects that are projected to occur over the next 50 years that are included within the HCP/NCCP. This level of detail is also consistent with that of projects similar in scale that are covered by approved HCPs and NCCPs.
- c) **Purpose of Project:** The purpose of an expanded Pacheco Reservoir is to increase local storage capacity for improved operational flexibility and reliability of existing water supplies. Expansion of the reservoir will not have an impact on water supplies available under contract to the Water District and hence it is inaccurate to state that delta species will be impacted by this activity. The impact on delta species due to delivery of water pursuant to the water supply contracts is being fully analyzed and covered in its own venue.
- d) **Importation of Water:** The SCVWD imports water from both the Federal Central Valley Project and the State Water Project. These long term water supply contracts are covered activities under the HCP/NCCP. Initially, it was because FWS indicated an interest in obtaining a commitment to complete a Countywide HCP/NCCP in connection with FWS approvals needed for renewal of the Water District's Federal Central Valley Project water contracts that prompted the District to join the Valley Habitat Plan effort. After water is imported, local storage and conveyance decisions are made. Pacheco Reservoir would be no different. This is the same setting that was present when FWS sought SCVWD participation in the HCP/NCCP.
- e) **Section 7 Consultation:** An expanded Pacheco Reservoir will be evaluated under future Section 7 consultation with the Bureau of Reclamation. However, we understand that analysis and conservation measures can be identified in the Valley Habitat Plan and that the take authorization can be granted via a subsequent Section 7 Biological Opinion and incidental take statement. The allowance for covering projects subject to Section 7 in the Valley HCP/NCCP is described in Chapter 10 of the First Administrative Draft Habitat Plan and was discussed at at recent Liaison Group meeting.

Item 3: Reoperation of Pacheco Reservoir

It is our understanding that the goal for the Wildlife Agencies for the reoperation of the existing Pacheco Reservoir is to establish a second run of S-CCC Steelhead in the Pajaro River Basin. As explained in the significant issue letter from the Agencies, this species is found only in the Pajaro and Salinas River Basins. The recent letter cites that human activities in these watersheds have reduced the occurrence of this species and therefore recovery is desired. The Habitat Plan Local Partners have identified several significant issues which make reoperation of the existing Pacheco Reservoir beyond the scope of this Habitat Plan.

First, the human activities cited in the recent letter appear to be outside and down-stream of the study area of the Habitat Plan and outside of the County of Santa Clara. The letter states that the reduction of habitat has already occurred and does not cite that additional habitat reduction is expected to occur

as a result of activities covered by this Habitat Plan. There are very few covered activities expected to occur within the Pacheco Creek watershed other than the Reservoir Expansion. We believe that the covered activities proposed in the Uvas and Llagas watersheds are offset by the extensive conservation actions proposed for S-CCC steelhead and other native fish in the Uvas watershed. Without construction of the expanded Pacheco Reservoir, the proposed conservation measure of establishing a second run of S-CCC steelhead in Pacheco Creek significantly exceeds the mitigation requirements for impacts of covered activities within the plan area and conservation measures that are logically linked to covered activities.

Second, none of the Local Partners own or control the Pacheco Pass Water District Reservoir. While the SCVWD is in the initial steps of negotiating an agreement with Pacheco Pass Water District and San Benito County Water District to investigate the Pacheco Pass Reservoir, the outcomes of the investigation are unknown.

Third, it is not known if establishing a second run is feasible. For instance, it is unknown if there is enough water in the existing reservoir to provide adequate flow in the reach below the dam given the stream's high percolation rate. Also, the Local Partners do not own the rights to this water.

Given these issues and constraints, we propose three alternatives:

- The Wildlife Agencies find that the proposed project is a recovery action related to impacts outside of the project area and provide 100% grant funding to the Local Partners to conduct feasibility studies. If found to be feasible, the Wildlife Agencies would then provide 100% implementation funds. The Local Partners would provide the in-kind services to implement the project, if feasible.
- The Habitat Plan Local Partners commit to work with our neighbors to the south and the Wildlife Agencies to develop a Habitat Conservation Plan. San Benito County is currently preparing an HCP feasibility study that they expect to complete by the end of 2008.
- Retain the Pacheco Reservoir Expansion Project as a covered activity in the Valley Habitat Plan. Should SCVWD enter into an agreement to provide for this expansion and it is found feasible to implement a recovery project, it would become a part of interim management of the existing reservoir and a part of the reservoir expansion project.

Item 4: Evaluation of Steelhead Passage Over Uvas Dam

SCVWD has worked with NMFS, CDFG, members of the Science Advisors and Stakeholders groups since October 5, 2004 on methods to improve conditions for steelhead trout in the Uvas and Llagas watersheds. To date these efforts have focused on methods to improve in-stream conditions in Uvas Creek in the stream reaches downstream of Uvas Dam. On April 18th, 2008, NMFS and CDFG issued a joint letter to SCVWD requesting that the District prepare a comprehensive Feasibility Study of Moving Steelhead above Uvas Dam. The agencies identified 14 separate elements to be included in the feasibility study including analysis of genetic impacts, habitat availability and quality, hydrology, infrastructure requirements, land use practices and financial feasibility.

SCVWD is preparing a draft assessment of the feasibility study. A workshop will be scheduled with the Wildlife Agencies and others in the next two months to further discuss the scope of the required feasibility study and initiate efforts to secure the necessary staffing and financial resources.

Item 5: Conservation Strategy Assurances

The Wildlife Agencies expressed concern that the Plan contains few assurances that the Reserve System will be composed of large contiguous tracks of land with minimal edge. We began discussing this issue at the October 8 Mare Island meeting and we look forward to continuing this discussion. Briefly, we believe there are adequate assurances in the Plan that ensure that enough land is acquired and land is acquired in the proper configurations to establish a Reserve System that will contribute to the recovery of the covered species. For example, the Reserve Design and Assembly Principles (pages 5-10 to 5-12 of the track changes version) must be followed with every parcel acquired. In addition to the overall land cover acquisition requirements in Tables 5-12 and 5-14, the requirements described in Tables 5-18 and 5-19 provide geographically specific land acquisition requirements. These requirements are defined by Conservation Analysis Zones, which are small enough to provide geographic specificity but large enough to provide flexibility to accommodate willing sellers. The conservation strategy also requires that land be acquired to conserve specific wildlife linkages, as described starting on page 5-46 of the track changes version. Some wildlife linkages are narrow (e.g., Linkages 7, 9, 18 on Table 5-6 and Figure 5-6), requiring land acquisition on specific or few parcels. In addition, the Plan requires the conservation of key covered plant populations (see Table 5-17 and the land acquisition requirements by Conservation Analysis Zone in the text). Similarly, to meet these targets, the Implementing Entity must acquire specific parcels because of the limited distribution of many of the covered plants.

The conservation strategy was written carefully to balance the need for clarity in the land acquisition requirements and the need to be discreet about the Implementing Entity's land acquisition strategy. The strategy was also designed to be as specific as possible in its requirements without compromising flexibility during implementation. We believe that the Plan strikes the proper balance between these competing needs and does not need to add more minimum acreage requirements. The Reserve and Assembly Principles identify the importance of reserves having a minimum amount of edge.

The Wildlife Agencies also raised concerns about the potential for rural development to preclude the preservation and acquisition of large, contiguous blocks of lands for the Reserve System. Almost all of the areas intended to be incorporated into the Reserve System are large land holdings designated as Hillside or Ranchland under the County General Plan. In these areas, the maximum development density allowed is one residence per 20 to 160 acres, based on the average slope of a parcel. Subdivision of sites designated Hillside or Ranchland seldom occurs. Any Subdivision proposal for Hillside parcels triggers the County requirements to cluster future development and preserve a minimum of 90% of the site as open space. If suitable, these large set-asides could be incorporated into the Reserve System at little or no capital costs to the Implementing Entity (long-term management and monitoring costs would still be incurred). County policies and regulations minimize grading in Hillside and Ranchland areas and the site design process emphasizes compact development. In summary, County development policies and regulations significantly limit the creation of smaller parcels and facilitate preservation of larger land areas compatible with the creation of a large and contiguous Reserve System.

Item 6: Participation of State Parks

The Wildlife Agencies request confirmation that State Parks will permanently protect State Park lands that will be part of the Reserve System. ICF Jones & Stokes is working with the State Parks regional office in Monterey to develop a proposal for the conservation of key ponds in Henry W. Coe State Park that will be incorporated into the Habitat Plan conservation strategy. We are also exploring alternatives to conservation easements that are acceptable to State Parks to permanently protect land

intended for the Reserve System. We expect to set up a meeting between State Parks and the Wildlife Agencies in November or early December to review these proposals.

We realize that a satisfactory commitment of State Parks and Recreation land to the Habitat Plan is a policy issue needing agreement of senior State Fish and Game and Parks and Recreation managers. As part of recent non-Habitat Plan events, Ken Schreiber has had initial brief conversations about the land commitment issue with Don Koch, Director of the California Department of Fish and Game, and Rick Rayburn, Chief of Natural Resources Division of the California Department of Parks and Recreation. We will work first with State Parks and Recreation Regional staff and Wildlife Agencies staff working on the Habitat Plan. Resolution of the land commitment issue will require discussions with senior State staff. Our target is to reach a decision on this issue by January 2009.

Item 7: Description of Covered Activities

The Wildlife Agencies note that the description of some covered activities need to be further refined. Four specific activities are identified and general comments are made regarding Appendix F. The covered activities requested to have additional information are:

- mitigation and/or monitoring activities in creeks or adjacent riparian corridors that are not conducted as part of Plan implementation (p. 2-48),
- reservoir filling (p. 2-48),
- restoration projects in upland habitats not associated with Habitat Plan implementation (p. 2-55), and
- implementation of [planning documents] that have been or will be developed by County Parks or City of San José Parks (p. 2-55).

We will work with the Local Partners who have requested that these covered activities be included to develop an expanded project description.

It is unclear how much additional detail is being requested for covered activities identified in Appendix F. It is important to reiterate that activities and projects described in Appendix F are not intended to be exhaustive or definitive lists of activities and projects covered by this Plan. These lists represent current planned activities that are proposed for coverage by the Local Partners. The types of projects included in these lists are described generally in Chapter 2. Projects that are likely to have larger impacts are described in more detail in Chapter 2. Future projects not listed in Appendix F will be covered by the Plan as long as they are described in Chapter 2.

Activities in Appendix F proposed by the cities of San Jose, Morgan Hill, and Gilroy are assumed to occur within the planning limit of urban growth and outside of streams, except where otherwise identified. The impact analysis assumes full development of all urban and rural land uses within the planning limit of urban growth. As such, impacts for the city projects described in Appendix F that occur within the planning limit of urban growth but outside of streams are accounted for in the impact analysis. Therefore, we do not feel it is necessary or appropriate to provide additional detail for these projects.

Activities in Appendix F that have impacts associated with in-stream areas are generally and/or specifically described in Chapter 2. Impacts for these projects are assessed on a project-by-project

basis in Chapter 4 as described in Tables 4-5a through h. We feel that these activities and associated impacts are adequately described in Chapter 2 and Chapter 4 and that no additional detail is necessary. Regarding projects that have already have incidental take coverage or projects that will not require incidental take (e.g., feasibility studies); these items were included at the request of the Local Partner that provided the information. ICF Jones & Stokes will confirm their removal from this list with the Local Partner that provided the project information.

Item 8: Levee Reconstruction

Corps levees exist on the Guadalupe River and Coyote Creek in the north part of the Permit Area and on Uvas Creek in the south part of the Permit Area. These levees were constructed and are maintained differently than levees in the Sacramento area which may be the frame of reference for the Wildlife Agencies. Unlike the levees in Sacramento, the levees within Santa Clara County were not constructed with the same types of vegetation which causes the concern on the Sacramento levees.

The SCVWD and the Corps inspect the levees on an annual basis. Through these inspections, the Corps has identified spots of vegetation not exceeding approximately 10% of area of the levees as locations where they have concerns. Some of this vegetation was planted as part of the mitigation required for Corps project approval and would require renegotiation of Corps requirements should it be required to be removed. Some of the vegetation is also not on District property and located on the landward side of the levee. Resolution of these spots must be achieved by 2009. Thereafter, the levees will need to be maintained in compliance with Corps regulations.

Vegetation related matters that may have created a coordination issue for the Wildlife Agencies and the Corps will be resolved prior to the conclusion of the Valley HCP. Therefore, there is no basis to exclude levee reconstruction as a covered project.

Item 9: Definition of “Protected Open Space”

This issue was discussed at length at the October 8 Mare Island meeting, at which time we reached resolution on how to address it. To clarify, all County Park lands are considered Types 3 or 4 Open Space, not Type 1 or 2. The only State Park land considered Type 1 Open Space is the Orestimba Wilderness in Stanislaus County, outside the study area. The rest of Henry Coe State Park is considered Type 2 Open Space. We are verifying this designation with State Parks staff. Type 1 Open Space in the study area adjacent to Henry W. Coe State Park is owned by the Santa Clara County Open Space Authority or private landowners and is subject to permanent conservation easements. To address the Wildlife Agency’s need for data on Type 1 Open Space and to address the requests made in the letter, we will do two things. First, we will include calculations of Type 1 Open Space (and %) in Tables 5-7, 5-8, 5-9b, 5-12, 5-17, and 5-20. Second we will remove the term “Protected Open Space” from the text, tables, and figures and replace it with a more explicit description of which types of Open Space are described (e.g., Type 1; Types 1, 2, and 3, etc.). With these changes, we believe that this issue will be resolved.

Item 10: Impact Assessment

The Wildlife Agencies requested that additional analysis be provided to support their ESA and NCCP Findings and the Section 7 analysis that USFWS and NMFS must perform. While these requests are reasonable, we do not believe that the additional analysis needs to be incorporated into the HCP/NCCP at this time. Much of what is requested appears to already be provided in the Plan (see details below). The Section 7 process typically begins at the start of the comment period on the public draft HCP/NCCP (summer of 2009). The Local Partners continue to offer the Wildlife Agencies the

technical assistance of ICF Jones & Stokes to conduct additional analyses that might be needed for the Section 7 process or for the CDFG NCCP Findings. This type of work is routinely provided on regional HCPs and NCCPs separate from the work on the HCP/NCCP so as not to delay the overall process. We would like the opportunity to discuss with the Wildlife Agencies the difference between analyses done to support the HCP/NCCP versus analysis only needed for the Section 7 process or NCCP Findings. We will incorporate any additional analysis into the 2nd Administrative Draft Habitat Plan needed to meet HCP and NCCP standards. Conducting analyses only to support the Section 7 process or NCCP Findings will unnecessarily delay the planning process.

We offer the following comments on the specific points for this item.

- a) *Provide an evaluation of environmental baseline conditions.* Much of the baseline conditions for all of the covered species described in this comment appear to be provided in the species accounts in Appendix D. Additional environmental baseline conditions (e.g., land cover types, natural communities, biological diversity, ecosystem processes, environmental gradients, existing open space, and land use patterns) are found in Chapters 2 and 3. It is unclear what additional information the Wildlife Agencies are requesting, so we look forward to receiving clarification at an upcoming meeting. Any additional information needed appears to support the Section 7 consultation process. Therefore, this analysis is not needed until that internal consultation begins after release of the public draft HCP/NCCP.
- b) *Provide an evaluation of the impact of the proposed take.* Again, we believe that the impact analysis in the Plan adequately quantifies take for the purposes of the ESA and NCCP Act. The Plan quantifies take for the covered plants in terms of numbers of populations. We are investigating the quality of the data to determine whether we can further quantify take according to numbers of individuals. For all covered wildlife except burrowing owl, we quantify take according to land cover acres and modeled habitat. A federal Court decision on the Natomas Basin HCP validated this approach as adequate for the purposes of ESA compliance. For burrowing owl we will be quantifying take according to number of individuals because all breeding pairs are known in the study area. The only other species for which we may have adequate population data is the Bay checkerspot butterfly. We will investigate whether it will be possible to further quantify take on this species.
- c) *Provide an evaluation of how the conservation strategy will contribute to the recovery of each covered species.* We believe that we have provided this information already. In Section 5.4, we summarize for each of the covered species all biological goals and objectives and conservation actions that will benefit the species. Please explain what, specifically, is needed to address this need.
- d) Assess steelhead trout impacts using four population viability parameters described in McElhaney et al. (2000). We acknowledge that the four population viability parameters cited are commonly used to evaluate the recovery needs of anadromous fish. We would like to discuss with NMFS and CDFG data needs for these parameters with respect to regulatory findings. In our experience, a qualitative discussion of the effects of covered activities on these

parameters is sufficient to meet regulatory requirements. However, we would like to clarify the Wildlife Agencies' expectations regarding the additional analysis.

Item 11: Biological Goals and Objectives

The Wildlife Agencies requested that the biological goals and objectives provide greater specificity regarding the “species or habitat indicator, location, action, quantity/state, and timeframe needed to meet the objective.” In general, we believe that the biological goals, objectives, and actions provide enough specificity and properly defer additional detail to the text of the chapter and to implementation. The language provided in the 5-point policy states that the objectives *should* include the specified information, but the policy does not require that each criterion be included. In fact, we are not aware of any regional HCP published after the five-point policy guidance was issued (June 2000) that integrates all of the recommended components in their biological goals and objectives. In addition, the five-point policy also specifies that “the biological goals and objectives are refined as the operating conservation program takes shape.” The language provided in the 5-point policy, along with the absence of these elements in other regional HCPs, indicate that these components provide suggestions for crafting goals and objectives, as appropriate.

Where appropriate, we include the recommended elements in the goals, objectives, and actions, specifically – “species” (see Target Species column in Tables 5-2a and b), “location” (see Conservation Action column in Tables 5.1a-d, as appropriate), and “action” (see Conservation Action column in Tables 5-1a-d). In addition, we provide guidance regarding the “quantity/state” that should be achieved in Table 7-1, acknowledging that conservation is better served by developing specific criteria and numbers during implementation.

We received strong recommendations from Brenda Johnston of CDFG not to memorialize these specific criteria within the biological goals and objectives based on her experience implementing regional plans in Southern California. According to Dr. Johnston, setting targets that are too specific and not justified by evidence sets the plan up for early failure or the need for extensive Plan amendments.

With regards to the specific examples the Wildlife Agencies provided as not being measurable or tied to location we have the following responses:

- Objectives 2.2, 2.3, 2.5, 2.7: Permeability can be measured by obtaining a baseline for movement/permeability before conservation actions take place and measuring change (increase/decrease) in the amount or frequency of movement for indicator species after conservation actions are implemented. The location is specified in both objectives. The exact monitoring stations will be sited during implementation. Regarding enforceability, these objectives are as enforceable as other more quantitative objectives: If permeability is not increased, the objective is not being met.
- Objectives 3.2, 15.2. We will change language to make them more measurable.
- Objective 14.2. An increase in the amount of undercrossings is quantifiable and measurable. We will add specific language describing the definition of “safe” for kit fox to make that component more measurable.

- Objective 17.3. Reproductive success is a common metric used by biologists that can be measured in various ways through monitoring.

The Local Partner's hosted and the Wildlife Agencies participated in six interactive workshops and many follow-up conference calls from December 2006 to February 2007 to develop appropriate goals and objectives for species and natural communities covered in the Plan. This extensive effort was intended to incorporate Agency concerns, feedback, and expertise into the goals and objectives, at that time. We will consider specific comments on the biological goals and objectives and revise and update them if the comments are appropriate. With regards to the terminology used in the objectives (e.g., if appropriate, where feasible) we will provide a section in which the terms are explicitly defined.

		WORKING DRAFT PROJECT SCHEDULE																																								
		SANTA CLARA VALLEY HABITAT PLAN																																								
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HABITAT PLAN																																										
1. Refine Policies/Issues for Elected Bodies	DONE																																									
2. Elected Body Reviews	DONE																																									
3. Liaison Group Directions	DONE																																									
4. FAHCE Covered Activity Defs and Impacts																																										
5. Prepare Admin Draft 1 Habitat Plan	DONE																																									
6. Wildlife Agency Staff Review Period																																										
7. Prepare Admin Draft 2 Habitat Plan																																										
8. Local Partner Elected Body Funding & Fees																																										
9. Wildlife Agency and Local Staff Review Period																																										
10. Prepare Public Draft Habitat Plan																																										
11. Publish Notice in Federal Register																																										
12. Public/Agencies Review Period (90 days)																																										
13. Prepare Final Habitat Plan																																										
14. See Approval process steps 1 and 2																																										
EIR/EIS																																										
1. Scoping	DONE																																									
2. Prepare Working Draft																																										
3. Wildlife Agency and Local Staff Review Period																																										
4. Prepare Admin Draft																																										
5. Wildlife Agency and Local Staff Review Period																																										
6. Prepare Public Review EIR/EIS																																										
7. Publish Notice of Availability in Federal Register																																										
8. Public/Agencies Review Period (90 days)																																										
9. Prepare Final EIR/EIS																																										
10. Publish Notice of Final EIS Availability in Federal Register---does this include IA and HP?																																										
11. 30 day public review period																																										
12. See Approval Process steps 1 and 2																																										
13. Federal Notice re Completion with Record of Decision (ROD)																																										
IMPLEMENTING AGREEMENT																																										
1. Prepare 1st Admin Draft IA																																										
2. Prepare 2nd Admin Draft IA																																										
3. Prepare public draft IA																																										
4. Federal Register Notice																																										
5. Public/Agencies Review period (90 days)																																										
6. Prepare Final IA																																										
7. See Approval Process steps 1, 2 and 3																																										
APPROVAL PROCESS																																										
1. Local Approval of Final Plan, Final EIR/EIS and Final IA--County First re EIR Certification																																										
2. Wildlife Agencies Approval of Plan, EIR and EIS and IA																																										
3. Establish Implementing Entity																																										
4. FG Findings Preparation																																										
5. FWS Biological Opinion Preparation																																										
6. NMFS Findings/Opinion																																										
5. Permits Issued by Wildlife Agencies																																										
6. Local Agencies Adopt Imp Ordinances																																										
* Ongoing issue of when Three Creeks Draft EIS will be available for folding into the Habitat Plan EIR/EIS																																										

Yellow/orange color is preparation and publication of Federal Register Notices

Red is local agency review and action

Blue is Wildlife Agency review and action

Question---what agency approvals are needed to release the ROD?

Question---can this step becombined with Plan and Envir approval?