



Regional General Permit **20**

U.S. ARMY CORPS OF ENGINEERS

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Santa Clara Valley Habitat Plan Regional General Permit

EFFECTIVE: January 15, 2016

EXPIRES: (5 years from effective)

The U.S. Army Corps of Engineers, San Francisco District (District), hereby issues Regional General Permit 18 for implementation of covered activities in the Santa Clara Valley Habitat Plan (a Habitat Conservation Plan and Natural Community Conservation Plan) (U.S. Fish and Wildlife Service Native Endangered and Threatened Species Habitat Conservation Plan; Endangered and Threatened Wildlife; Migratory Birds, permit number TE94345A-O and California Natural Community Conservation Planning Act, permit number 2835-2012-002-03) in waters of the U.S. in Santa Clara County, California.

ISSUING OFFICE: U.S. Army Corps of Engineers, San Francisco District

ACTION ID: SPN-2012-00302S

AUTHORITIES: Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

LOCATION: Santa Clara County, California. The permit area includes all of the Uvas, Llagas, and Pajaro sub-watersheds within Santa Clara County, all of the Coyote Creek sub-watershed except for the Baylands, and a large portion of the Guadalupe River sub-watershed except for the Baylands. The permit area also encompasses small areas outside these sub-watersheds. The Uvas/Llagas/Pajaro sub-watersheds are part of the greater Pajaro River watershed draining to the Monterey Bay watershed (hydrologic unit code [HUC] 18060002). The Coyote Creek and Guadalupe River sub-watersheds are part of the greater San Francisco Bay watershed (HUC 18050006). Attachment 1 – Map of Regional General Permit Area

ACTIVITIES COVERED: The following RGP covered activities may be authorized under this permit:

1) Bridge removal and repair

Bridge removal would require demolition and removal of pilings, piers, abutments and/or pedestals, and bridge spans. Bridge materials to be salvaged would be removed and stockpiled near the site at a designated upland location. Repair activities may include widening existing piers and installing new or temporary piers, columns, and trestles to facilitate bridge repairs. Piles may be driven and concrete poured to construct bridge piers and footings. Enlarging the footings may require placing a sheet pile

cofferdam around the footing, excavating to the bottom of the footing, driving additional support piles, and expanding the footing with re-bar and concrete. Existing bridge superstructures are generally cast concrete and steel. Repairs may require concrete and steel reinforcement. Reinforcing steel would be placed as shown on project plans and securely held in position. Forms would be constructed adequately to prevent leaks while placing and curing the concrete.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.1 acre, 100 linear feet.

2) Bridge replacement, widening, and installation

Bridge construction activities may include installing bridge support structures (e.g., pilings, piers, abutments and/or pedestals, columns, and trestles). Piles may be driven and concrete poured to construct bridge piers and footings. Footing construction may require placing a sheet pile cofferdam around the footing, excavating to the bottom of the footing, driving additional support piles, and expanding the footing with re-bar and concrete. Existing bridge superstructures are generally cast concrete and steel. Replacement and installation of new bridges would require concrete and steel. These materials would be used as shown on plans and securely held in position. Forms would be constructed adequately to prevent leaks while curing the concrete.

Program Limits: 15 acres over 5 years.

Project Limits: 0.5 acre, 300 linear feet.

3) Culvert repair, replacement, and removal

Culvert repair and replacement may include removal and replacement of existing culverts, repairs to headwalls, end walls, down drains, flared end sections, rock energy dissipaters, and rock slope protection (RSP). Construction activities may include excavation and backfill with native soils or concrete around the culvert. Earth plugs may be used to contain slurry mixtures. Backfill areas may be paved after the culvert is repaired, replaced or removed; in rural settings the area may be left as compacted earth and gravel.

Program Limits: 8.5 acres over 5 years.

Project Limits: 0.25 acre each, 300 linear feet.

4) Culvert installation

Culvert installation may include construction of headwalls, end walls, downdrains, flared end sections, rock energy dissipaters, and RSP. Culverts may be installed by excavation and backfilling, or by pipe jacking (advancing the pipe through the ground with thrust). Native soils or concrete slurry may be used to backfill around the new culvert. Earth plugs may be used to contain slurry mixtures. The backfill areas may be paved after the new culvert is in place or, in rural settings, may be left as compacted earth and gravel.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.5 acre, 300 linear feet.

5) Outfall repair, replacement, removal, and installation

Repair and replacement of existing outfalls and installation of new outfalls associated with stormwater and water supply management facilities.

Program Limits: 5 acres over 5 years.

Project Limits: 0.1 acre, 50 linear feet.

6) Water intake structure repair, replacement, and installation

Activities associated with the repair or replacement of water intake structures, and installation of new water intake structures. Water intake structures in the RGP coverage area typically consist of concrete or metal culverts located at or near the top of stream channel banks or levees, in association with diversion structures such as gravel or inflatable dams. Water intake structure construction may include installation of concrete and/or rock riprap to stabilize banks and control erosion. Installation of new intakes would only occur in areas without anadromous fish (i.e., upstream of existing diversions).

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.25 acre, 100 linear feet.

7) Sediment removal

Mechanical sediment removal required when accumulated sediment reduces a channel's flow conveyance capacity and prevents facilities or appurtenant structures from functioning as intended. Sediment removal may occur along a channel reach, or at a small site such as a stream gauge, and would be done to match pre-sedimentation flow capacity (i.e., capacity would not be expanded) and pre-sedimentation geomorphic features (e.g., channel sinuosity). Sediment removal may also be needed for pond maintenance. Sediment removal may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 10 acres over 5 years.

Project Limits: 0.25 acre, 300 linear feet.

8) Removal of vegetation and storm debris involving soil disturbance

Vegetation and storm debris management activities involving hand or mechanical removal of vegetation and storm debris by scraping, discing, grading, excavating or other methods that result in soil disturbance. Vegetation management activities may occur along creeks, near bridges or at stream gauges.

Program Limits: No program limits, but must report on quantity of removals.

Project Limits: No limit.

9) Temporary construction access and dewatering

Construction of temporary access ramps; construction of cofferdams and berms to temporarily isolate in-channel construction activities from the active stream, and pumping of wet areas to temporarily expose the channel bottom in the designated construction area.

Program Limits: No program limits.

Project Limits: 0.1 acre, 50 linear feet.

10) Recreational facility construction, reconstruction, and maintenance

Construction of recreational facilities including trails, boat ramps, ponds and other facilities. Other facilities may include portions of buildings, educational displays, and other non-water dependent structures that may encroach into jurisdictional waters when complete avoidance is not practicable. Maintenance of existing recreational trail stream crossings and construction of new recreational trail stream crossings may be authorized under this activity category. Activities associated with boat ramp installation may include grading, paving, and armoring. Construction may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 6.25 acres over 5 years.

Project Limits: 0.25 acre, 200 linear feet.

11) Restoration, establishment, enhancement activities involving soil disturbance, including removal and modification of fish passage impediments.

Activities in waters of the United States associated with the restoration, enhancement, and establishment of streams, wetlands, and open waters, provided those activities result in net increases in aquatic resource functions and services.

Activities authorized under this category include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This activity category includes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters, this category does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This activity category does not authorize stream channelization. Compensatory mitigation is not required as the included activities must result in net increases in aquatic resource functions and services.

Stream restoration activities include: geomorphic enhancement, including physical re-configuration of channels and installation of structures to enhance channel complexity, based on California Department of Fish and Wildlife and National Marine Fisheries Service guidelines for salmonid habitat enhancement; riparian planting; removal of invasive vegetation; creating and expanding existing floodplain habitats and side channel habitats; and gravel augmentation to enhance spawning habitat. To implement these improvements, short channel segments may require temporary dewatering or bypass to allow construction. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work.

Removal of fish passage impediments may include removal of in-stream concrete low-flow crossings, culverts, weirs, concrete aprons under bridges, and possibly other features that create shallow water depths, vertical drops, or water velocities that exceed the swimming and leaping ability of fish. Such impediments may be modified to allow passage, or completely removed. In some cases, existing small culverts that impede fish passage may be replaced with bridged weir structures to provide access to tributary streams.

Program Limits: No program limit, but must report on annual impacts.

Project Limits: No project limit, but must document net increases in aquatic resource functions and services.

12) Installation of fish screens when such installation involves soil disturbance

Fish screens may be installed on existing unscreened water intakes. Fish screens may also be installed to isolate creeks from off-channel recharge ponds and lakes to prevent movement of fish in and out of these lakes and to support recreational fishing opportunities in these lakes. These project actions may occur in association with actions to maintain and replace existing water intakes. Fish screen structures typically consist of concrete structures with metal screens with appropriately sized openings to prevent entrainment of fish with diverted water. Fish screen structures may include a minimum amount of concrete and/or rock riprap as needed to stabilize banks and control erosion. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work. Although most work can usually be accomplished with equipment operated from the top of bank, some projects may require equipment and vehicles to be operated in the stream channel. Where construction activities are required in flowing streams, cofferdams or berms would be used to dewater the work site and isolate it from flowing water.

Fish screen installation activities in streams supporting federally listed anadromous fish species or their designated critical habitat are eligible for authorization under this RGP if the Corps determines the activities would have no effect on federally listed anadromous fish species or their designated critical habitat or if the Corps completes the necessary level of Endangered Species Act section 7 consultation with National Marine Fisheries Service (NMFS) for the activity.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.10 acre.

13) Bank stabilization

Bank stabilization involves repairing and stabilizing channel banks and levees that are eroding or are in need of erosion protection. There are a wide range of potential bank repair treatment options depending

on site conditions and long-term maintenance issues. The primary treatment options include hard, hybrid or soft depending on the type of materials used. Hard materials include rip-rap, gabions, rock, concrete blocks or other hard materials. Soft materials include biotechnical treatments emphasizing vegetation and earthen banks. Hybrid materials include a mix of hard and soft materials.

During the bank stabilization assessment process, sites with destabilized banks are evaluated for their soil conditions, channel and bank scour velocities, slope stability, channel form/position, and other active geomorphic conditions. Consideration of the cause of the bank failure (overland runoff, bank slumping, undersized culvert upstream, etc.) is also critical to determination of the appropriate treatment approach. Where practicable and appropriate, bank stabilization projects would also address the cause of the bank failure. The use of hard material would be minimized where possible.

Program Limit: 2.5 acres over 5 years.

Project Limits: 0.1 acre, 300 linear feet.

14) Minor maintenance of levees, canals and ditches

Minor maintenance activities are routine small-scale activities performed to make repairs and keep facilities operational. Maintenance activities may occur along levees, canals, and ditches and at stream gauges and would not change the footprint of existing facilities. Specific actions could include trash and debris removal that requires minor ground disturbance; replacement of concrete linings, pipes, valves or similar structures; replacement of weirs; minor erosion repair; and other minor maintenance activities.

Program Limit: 4 acres over 5 years.

Project Limit: 0.2 acre.

15) Surveying activities, including installation and maintenance of scientific measurement devices

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. Under this category, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This category includes the construction of temporary pads, provided the discharge does not exceed 0.08 acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not authorized under this category. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized under this category; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized under this category. Surveying activities under this category do not include installation of any permanent survey structures. Projects to be authorized under this category must include anticipated start and end dates for the surveying activities.

Devices, whose purpose is to measure and record scientific data, such as staff gages, piezometers, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed

primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. Scientific measurement device installation projects to be authorized under this category must include anticipated start and end dates for use of the installed device. For devices that would be used for long-term surveying activities, the applicant shall include a written explanation of the need for long-term surveying, and an estimated duration of the long-term survey period.

Program Limit: 0.8 acre over 5 years.

Project Limit: 0.08 acre.

16) Utility repair, removal, replacement, and installation

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States. This category includes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

This category includes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Program Limit: 3 acres over 5 years.

Project Limit: 0.2 acre.

17) Discharges associated with development

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision is also authorized. This category includes the construction of building foundations and building pads and

attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, and yards.

Program Limit: 5 acres over 5 years.

Project Limit: 0.5 acre, 300 linear feet.

If there is any question as to which Activity category a proposed activity would apply to, the Corps will determine the applicable Activity category.

This RGP does not cover any activities in waters of the U.S. conducted in emergency situations.

TERMS:

1. Applying for RGP authorization: Prior to commencing a proposed activity, applicants seeking authorization under this RGP shall notify the Corps in accordance with the procedure detailed in the *Santa Clara Valley Habitat Plan Regional General Permit Notification and Program Management Process* (Attachment 2).
2. Compensatory mitigation for RGP authorization: Mitigation for unavoidable impacts to waters of the U.S. must be accomplished by conforming to the *Compensatory Mitigation Strategy for Santa Clara Valley Habitat Plan Regional General Permit Prior to Approval of a Proposed In-Lieu Fee Program Program-level Interim Mitigation Strategy* and all Appendices (Attachment 3) or an approved Mitigation Bank or In-Lieu Fee Program. Mitigation proposals are required to be consistent with the Corps' mitigation rule (33 CFR Part 332). A final mitigation plan must be approved by the Corps prior to initiating work under this RGP.
3. Financial Assurance: A finalized description of financial assurances consistent with the Corps' mitigation rule (33 CFR Part 332) is required 30 days prior to initiating work under this RGP.
4. SCV Habitat Plan RGP Programmatic Not Likely to Adversely Affect (NLAA): Project activities requesting inclusion in the Programmatic Consultation must comply with all general and specific criteria outlined in the *NMFS NLAA Programmatic Reporting Procedures, Procedural Overview, and Minimization Measures for the SCV RGP* (Attachment 4).
5. Single and complete project: The project must be a single and complete project. For example, if construction of a residential development involves phases, the sum of all impacted areas would be the basis for deciding whether or not the project will be covered by this RGP.
6. After-the-fact projects: This RGP may not be used to authorize activities after they have impacted Waters of the U.S.
7. Compliance with SCV Habitat Plan Conditions: Activities to be authorized under this RGP must be Habitat Plan Covered Activities and must fully comply with the Habitat Plan.

8. Special conditions: The Corps may add special conditions to an authorization to ensure the activity complies with the terms and conditions of the RGP, and/or that adverse impacts on the aquatic environment or other aspects of the public interest are individually and cumulatively minimal.
9. Activity completion: Any activity authorized by the Corps under the RGP must be completed prior to the RGP expiration date. Activities authorized under the RGP that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided the activity is completed within 12 months of the date of the RGP's expiration, modification or revocation, unless the Corps exercises its discretionary authority to modify, suspend, or revoke the authorization of a specific project. The "authorization date" is the date the Corps verifies in writing that the activity meets the terms and conditions of the RGP.
10. Discretionary Authority: The Corps has the discretion to suspend, modify, or revoke authorizations under this RGP. This discretionary authority may be used by the Corps to also further condition or restrict the applicability of the RGP for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any public interest factor. Should the Corps determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to aquatic resources or otherwise be contrary to the public interest, the Corps will modify the authorization to reduce or eliminate those adverse effects, or notify the applicant that the proposed activity is not authorized by the RGP and provide instructions on how to seek authorization under an individual permit. The Corps may restore authorization under the RGP at any time it determines that the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. The Corps may also use its discretionary authority to modify, suspend, or revoke the RGP at any time.
11. Expiration of RGP: This permit shall be valid for a period of five years from the date of issuance, unless suspended or revoked by issuance of a public notice by the District Engineer. A review will be conducted to determine if continuance of the permit is in the public interest after the 5-year expiration date. If this permit expires or is revoked prior to completion of the authorized work, authorization of activities that have commenced or are under contract to commence in reliance on this permit will remain in effect provided the activity is completed within 12 months of the date this permit expired or was revoked. If the Corps has not reissued or extended the RGP by the expiration date, the RGP will no longer be valid. This RGP may also be modified, suspended or revoked by the Corps at any time deemed necessary.

SPECIAL CONDITIONS:

1. Threatened and Endangered Species, U.S. Fish and Wildlife Service (USFWS): No activity is authorized under the RGP that does not comply with the mandatory terms and conditions of the USFWS's *Final Biological Opinion for the Corps' Regional General Permit (RGP) for the Santa Clara Valley Habitat Plan (SCVHP)* (USFWS file number 08ESMF00-2015-F-1169-2; Corps file number 2012-00302S), dated October 16, 2015 (Attachment 5). The Biological Opinion contains mandatory terms and conditions to implement the reasonable and prudent measures that

are associated with “incidental take” authorization under this RGP. Authorization under this RGP is conditional upon your compliance with all of the mandatory terms and conditions of the Biological Opinion. Failure to comply with the terms and conditions of the Biological Opinion would constitute non-compliance with the RGP. The USFWS is the appropriate authority to determine compliance with the terms and conditions of the Biological Opinion, and with the ESA. The permittee must comply with all applicable conditions of this Biological Opinion, including those ascribed to the Corps.

2. Threatened and Endangered Species, National Oceanic and Atmospheric Administration (NOAA) NMFS: Project activities authorized under the RGP may be eligible for inclusion in the SCV Habitat Plan RGP NLAA program. If the activity fits within the parameters of the program, the work must comply with the requirements and procedures in the *Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Santa Clara Valley Habitat Conservation Plan Regional General Permit [Corps File No. 2012- 00302S]* (NMFS file number WCR-2015-3821), December 23, 2015 (Attachment 6). NMFS concurred with the determination that the project was not likely to adversely affect Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) DPS, South-Central California Coast (SCCC) steelhead DPS, North American green sturgeon southern DPS (*Acipenser medirostris*) and designated critical habitat for these species. The criteria and work restrictions are incorporated as special conditions to this authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.

Project activities not eligible for inclusion in the SCV Habitat Plan RGP NLAA program, must obtain a NMFS project-specific threatened or Endangered Species consultation prior to verification under this RGP.

3. Protected Species: Incidents where any individuals of Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) DPS, South-Central California Coast (SCCC) steelhead DPS, North American green sturgeon southern DPS (*Acipenser medirostris*) listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this RGP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the San Francisco District of the U.S. Army Corps of Engineers at (415) 503-6795. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure, or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.
4. Water Quality Certification: Section 401 Water Quality Certification is required for activities to be authorized by this RGP, with the exception of those occurring entirely within Section 10

waters. The Corps may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal impacts, individually or cumulatively.

5. Historic Properties: No activity is authorized under the RGP if the activity may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA), as amended, have been satisfied. Applicants must notify the Corps if the activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified historic properties. The Corps will consult with the State Historic Preservation Officer (SHPO), as appropriate, following the policy and procedural standards of 33 CFR Part 325 Appendix C.
6. Unanticipated Cultural Resources Discoveries: If previously unidentified cultural materials are unearthed during construction, all work shall be halted until a qualified archaeologist can examine the deposit and determine its nature and significance. In the event of discovery of possible human remains, state law requires that the County Coroner be contacted.
7. Fills within 100-Year Floodplains: The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
8. Proper Maintenance: Permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. Permittee is not relieved of this requirement if permittee abandons the permitted activity or sells the property associated with this permit. Permittee may make a good faith transfer to a third party. If permittee sells the property associated with this permit, permittee must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization. Should permittee wish to cease to maintain the authorized activity or should permittee desire to abandon it without a good faith transfer, permittee must obtain a modification of this permit from this office, which may require restoration of the area.
9. Aquatic Life Movements: No activity may substantially disrupt the necessary life cycle movement of aquatic species indigenous to the water body, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low-flow conditions. If feasible, they should be designed as open-bottom culverts.
10. Equipment: Heavy equipment working in wetlands must be placed on mats, or other measures, such as low-ground pressure equipment, must be implemented to minimize soil disturbance.
11. Tribal Rights: No activity or its operation may impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
12. Suitable Material: Fill material must be clean and free of contaminants and noxious plants. Fresh cement or concrete is not allowed in waters unless it is placed in sealed forms. Unsuitable fill

material includes vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires, concrete with exposed rebar.

13. Removal of Temporary Fills: Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and re-vegetated in accordance with the plans authorized under this RGP.
14. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration project).
15. Migratory Birds and Bald and Golden Eagles: The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
16. Access: The permittee must allow representatives from the Corps to inspect the authorized activity (and any avoidance or mitigation areas, if applicable) at any time deemed necessary to ensure that the activity is being, or has been, accomplished in accordance with the terms and conditions of the permit.
17. Transfer of RGP Authorization: If the permittee sells the property associated with this permit, the permittee must obtain the signature and mailing address of the new owner on the permit verification letter, and forward a copy to this office to validate the transfer.
18. Reporting Responsibilities: The permittee must submit an annual report in accordance with the procedures in in the *Santa Clara Valley Habitat Plan Regional General Permit Notification and Program Management Process* (Attachment 2).
19. For Section 10: For activities authorized through this permit under Section 10 of the Rivers and Harbors Act of 1899, the permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

20. For Section 408: Any proposed modification to an existing Corps projects (either federally or locally maintained) that go beyond those modifications required for normal Operations and Maintenance (O&M) require approval under 33 USC 408. There shall be no temporary or permanent alteration, occupation or use of these public works including but not limited to levees, sea walls, bulkheads, jetties and dikes for any purpose without the permission of the Secretary of the Army or his authorized representative for those cases where the proposed modification is determined to be minor. Under the terms of 33 USC 408, any proposed modification requires a determination by the Secretary that such proposed alteration or permanent occupation or use of a Federal project is not injurious to the public interest and will not impair the usefulness of such work.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344)
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed federal projects.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.

- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. The permit duration, as described above, establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.
7. Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the Corps, such as a Nationwide Permit or Letter of Permission. The Corps will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may include additional special conditions to a verification under this permit to ensure the activity has minimal impact.

PERMIT DURATION: This permit is valid for five years from issuance, and will expire on January 15, 2021. The Corps may re-evaluate the terms and conditions of this permit at any time it deems necessary to protect the public interest. This permit may be re-issued, after public notice and documentation of the decision. Activities under this permit must be verified in writing by the Corps. Verifications are valid until the permit expires.

CONTACTS AND ADDITIONAL INFORMATION:

Sahrye Cohen, Regulatory Project Manager
US Army Corps of Engineers, San Francisco District
1455 Market Street, 16th Floor
San Francisco, California 94103
Email: *Sahrye.E.Cohen@usace.army.mil*
Phone: 415-503-6779

ATTACHMENTS:

Attachment 1- Map of Regional General Permit Area

Attachment 2 - *Santa Clara Valley Habitat Plan Regional General Permit Notification and Program Management Process*, January 2016

Attachment 3 - Compensatory Mitigation Strategy for Santa Clara Valley Habitat Plan Regional General Permit Prior to Approval of a Proposed In-Lieu Fee Program Program-level Interim Mitigation Strategy Document and all Appendices, January 2016

Attachment 4 – NMFS NLAA Programmatic Reporting Procedures, Procedural Overview and Minimization Measures for the SCV HCP Habitat Plan RGP, January 2016

Attachment 5 - Final Biological Opinion for the Corps' Regional General Permit (RGP) for the Santa Clara Valley Habitat Plan (SCVHP) (USFWS file number 08ESMF00-2015-F-1169-2; Corps file number 2012-00302S)

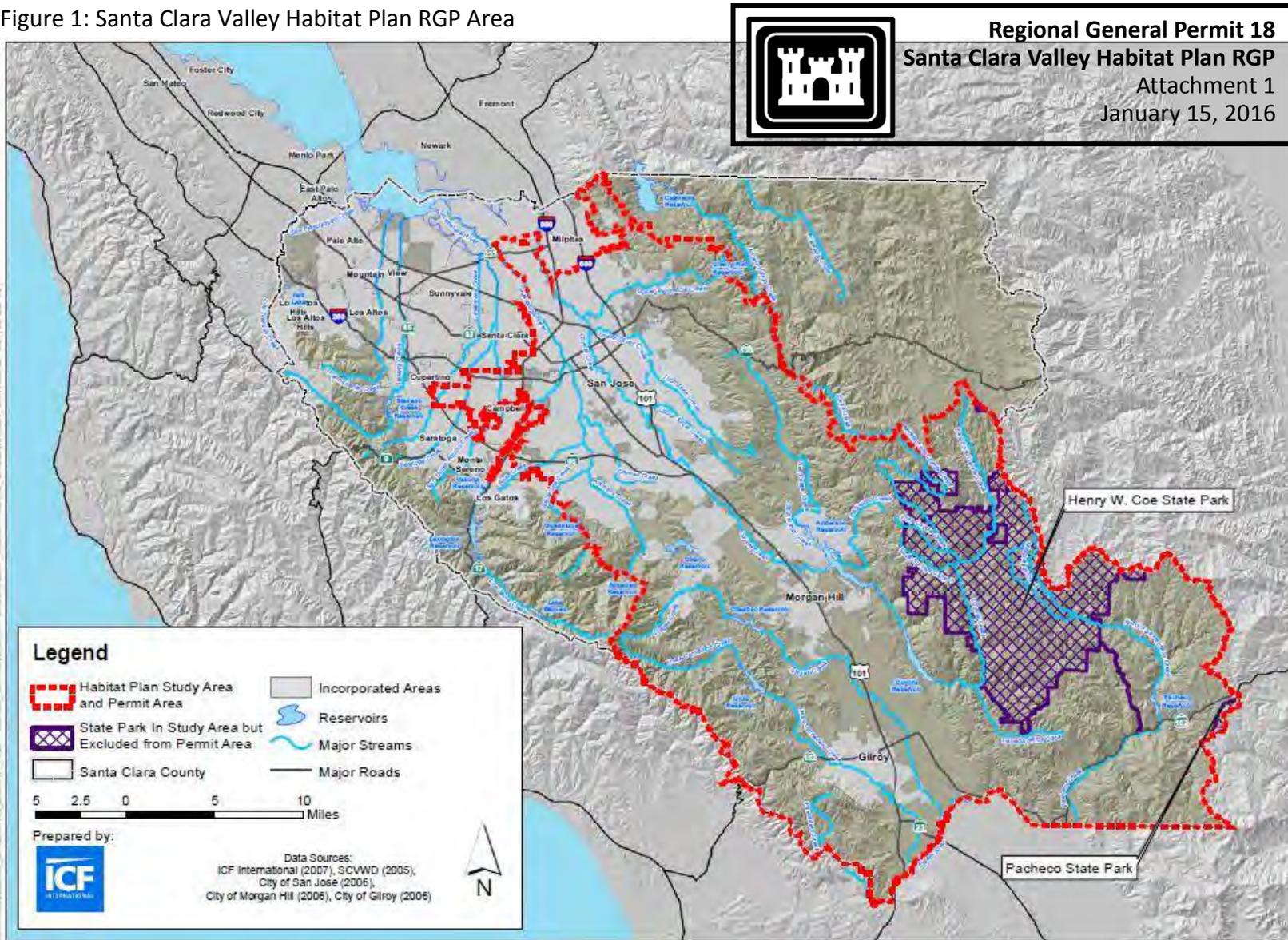
Attachment 6 - Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Santa Clara Valley Habitat Conservation Plan Regional General Permit [Corps File No. 2012- 00302S] (NMFS file number WCR-2015-3821) , December 23, 2015

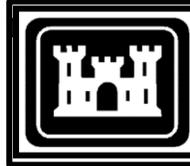
This permit becomes effective when the federal official, designated to act for the Secretary of the Army has signed below.

Tori White
Acting Chief, Regulatory Division

Date

Figure 1: Santa Clara Valley Habitat Plan RGP Area





Santa Clara Valley Habitat Plan Regional General Permit Notification and Program Management Process, January 2016

Overview

The Habitat Plan is a Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). It was finalized in August 2012 and received species permits under Endangered Species Act Section 10 and the California Natural Community Conservation Planning Act in mid-2013. The Co-Permittees associated with the Habitat Plan and the proposed RGP include:

- Santa Clara Valley Habitat Agency (Habitat Agency).
- Santa Clara County (County).
- City of San José.
- City of Morgan Hill.
- City of Gilroy.
- Santa Clara Valley Water District (SCVWD).
- Santa Clara Valley Transportation Authority (VTA).

Since its formation in 2013, the Habitat Agency has taken the lead on implementation program elements, including the RGP. The Habitat Agency will continue to take the lead on development of the RGP in consultation with the Co-Permittees, and both the Habitat Agency and Co-Permittees anticipate submitting projects under the RGP.

The overall program is intended to streamline the submittal and review process, shortening the timeline for permit review over the current nationwide permitting process. The Habitat Agency and Co-Permittees will collect, review, and bundle applications for monthly submittal to the Corps. The Corps will review the applications for completeness and respond to the Habitat Agency and Co-Permittees monthly. The proposed process is illustrated in Figure 1. More detail on the proposed notification requirements and program management, reporting, and tracking process is provided below.

Notification Requirements

The following information relates to notification requirements. Applicants shall not begin an activity until they are notified in writing by the local jurisdiction or the Habitat Agency that the activity may proceed under the Habitat Plan RGP with any special conditions imposed by the district or division engineer.

Projects Requiring Notification

Projects requiring notification include all of the below activities (from the RGP project description):

1. Bridge removal and repair
2. Bridge replacement, widening, and installation
3. Culvert repair, replacement, and removal
4. Culvert installation
5. Outfall repair, replacement, removal, and installation
6. Water intake structure repair, replacement, and installation
7. Sediment removal
8. Removal of vegetation and storm debris involving soil disturbance
9. Temporary construction access and dewatering
10. Recreational facility construction, reconstruction, and maintenance
11. Restoration, establishment, enhancement activities involving soil disturbance, including removal and modification of fish passage impediments
12. Installation of fish screens when such installation involves soil disturbance
13. Bank stabilization
14. Minor maintenance of levees, canals, and ditches
15. Surveying activities, including installation and maintenance of scientific measurement devices
16. Utility repair, removal, replacement, and installation
17. Discharges associated with development

Projects Not Requiring Notification

Most projects will require notification. However, possible projects not requiring notification could include outfall repair (5) or utility repairs (16). We look forward to discussing the conditions surrounding possible non-notifying activities, if there are others activities should be considered non-notifying, or if it is best to proceed during this first 5-year permit assuming all activities will be notifying.

Contents of Project Notifications

Project proponents requesting use of the RGP will provide specific information as required by the Habitat Plan and the Corps. Contents of project notification are generally consistent with the nationwide permit data requirements. Applications will include information outlined in the October 2012 RGP submittal as listed below.

Habitat Plan Requirements

1. An application form for coverage under the Plan.
2. A brief project description and map of the project.

- a. Location.
 - b. Assessor's parcel number.
 - c. Construction activity or maintenance methods.
 - d. Timing of the project.
 - e. Vicinity map.
 - 1) Provide enough information to locate the site within the study area.
 - 2) Include streams or water bodies (identify if the water body is federal or state jurisdiction).
 - f. Project detail map.
 - 1) Show the full parcel if inside the urban service area or development area if outside the Urban Service area.
 - 2) Include relevant landforms, roads, water bodies, and existing and proposed structures that will be affected by the proposed project.
3. Land cover map.
 - a. Desk or field verified map showing land covers on the project site.
 - b. Include acres of each land cover type.
 4. Map of wetlands and waters.
 - a. A map of all coastal and valley freshwater marsh, seasonal wetlands, ponds, riparian woodland, and streams on the project site.
 - b. Identification of proposed or approved federal or state waters.
 5. Results of applicable surveys for selected covered species.
 - a. Identify all required surveys and results of such surveys.
 - b. Identify all construction monitoring requirements, if any.
 6. Documentation of any additional avoidance and minimization requirements that will be implemented.

RGP Requirements

1. Name, address, telephone numbers, and signature of the project applicant and the project applicant's agent (if any).
2. Applicant's signature.
3. Project street address, and location of the proposed project (with latitude and longitude), including vicinity and project site maps.
4. Directions to the project site.
5. Name of waterbody.

6. Identification of the covered activity type, including a description of the complete proposed project (including associated work such as placement of cofferdams, access roads, pilings, staging areas, and all other structures), and the project's purpose and need.
7. A delineation of waters of the United States on the project site, conducted by a qualified professional, is required to be submitted before or when the application is submitted. Wetland delineations must be prepared in accordance with the *Corps of Engineers Wetland Delineation Manual* (U.S. Army Corps of Engineers 1987) and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (U.S. Army Corps of Engineers 2008). Activities in freshwater creeks, rivers and ponds must show the Ordinary High Water Mark (OHWM), including width and length of stream affected within the OHWM. Activities in wetlands must show wetland boundaries. The application package should indicate if the Corps has made a jurisdictional determination. If no jurisdictional determination has been made, the Corps will make a preliminary or approved delineation determination when processing the application.
8. A written statement describing how the activity has been designed to avoid and minimize adverse effects (temporary, permanent, direct, and indirect) to waters of the United States.
9. Drawings, including plan and cross section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the United States on the project site. If dredging will occur, cross section graphics must show existing and proposed bottom depths. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The OHWM should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation.
10. If fill will be placed as part of the project, indicate type and source of fill, and the method of placement. Cubic yardage of each type of fill, and surface area and linear feet of each type of fill. Description of whether fill is temporary or permanent. Temporary fill is fill that will be removed within one growing season.
11. If dredging will occur as part of the project, indicate the amount of dredge/excavation (volume and area), type and source of material to be extracted, the method of dredging/excavation (type of equipment and construction methodology), where spoils will be stored if applicable, and the ultimate disposal site of spoils. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.
12. If bank stabilization activities in excess of 300 feet in length are requested, the project applicant shall address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.
13. Numbered and dated pre-project color photographs showing all waters proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing.
14. For each general condition of this RGP, a brief narrative describing how the activity would comply with the condition, or that the condition does not apply.

15. A statement describing how the mitigation requirement will be satisfied. If the project applicant is providing project applicant-responsible mitigation, the project applicant may submit a conceptual or detailed mitigation plan.
16. If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. If the project may affect a listed species or critical habitat the Habitat Agency or Co-Permittees will confirm the species is covered by the HCP and will follow the measures in the Programmatic BO for the RGP.
17. An assessment of whether the project is in anadromous fish habitat. If the project is in anadromous fish habitat, then an assessment of whether the applicant will adhere to the general and specific criteria in the Not Likely to Adversely Affect (NLAA) program for the RGP. If the project cannot adhere to the terms of the NLAA, is larger than allowed under the NLAA, is not covered under the NLAA, or otherwise will result in a “may affect” determination by the Corps and NMFS, the Habitat Agency or Co-Permittees will direct the applicant to prepare a Biological Assessment (BA). If a BA is developed, it will also be provided with the application submittal to the Corps. If the project will be covered by the NLAA, the submittal will state how the project will comply with the required Conservation Recommendations in the NLAA BO.
18. An assessment of potential tribal and cultural resources including both a preliminary eligibility and an effects determination. The Corps will make the final determinations for eligibility and effect. For an activity that has the potential to cause effects to any historic properties listed, is determined to be eligible for listing on, or is potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties, the application must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The short checklist for required information may be found at http://ohp.parks.ca.gov/pages/1071/files/106checklist_shortform.pdf

The Co-Permittee or Habitat Agency will submit applications as they are completed with a coversheet indicating the project is subject to the RGP; if there are many applications per month (e.g., over 15), the Corps may request that the applications be bundled. If bundled, the bundle of applications will include a summary sheet indicating the project name, impact size, name of waterbody, land cover type being affected, anadromous waters being affected, cultural resource waters being affected, status of delineation, and information on if other supplemental documents are provided (i.e., cultural evaluation or biological assessment). The notifications will generally be organized into batched categories according to the additional review needed by other federal laws and regulations—to help facilitate Corps review.

Review Process for the Corps

Review process for Corps will include conducting an initial completeness review within 15 days of receipt. As a Co-Permittee or Habitat Agency will have previously reviewed the applications, most

applications are expected to be complete. At this stage the Corps will be able to determine if each application falls into one of the four following categories:

- complete but exceeds the limits of the RGP and therefore is not applicable,
- complete and applicable with no anadromous fish or cultural resource issues,
- complete and applicable with possible anadromous fish or cultural issues, or
- incomplete.

If the application is complete and not applicable, the Corps will transfer the application to the nationwide permit process or individual permit process and notify the Co-Permittee or Habitat Agency of this transfer. The Habitat Agency or Co-Permittee will notify the applicant of the transfer.

If the application is complete and applicable with no anadromous fish or cultural issues, and mitigation is consistent with the interim mitigation strategy or a future in-lieu fee mitigation program, the Corps will provide a permit authorization within 30 days of the completeness determination. If the project is incomplete, the Corps will request additional information and the Habitat Agency or Co-Permittee will respond within 15 days of the request. If mitigation needs additional refinement or clarification, permit authorization will occur within 40 days of the completeness determination. Approval of the final mitigation plan is required prior to initiating work under the RGP.

If the application is complete and applicable but may have anadromous fish or cultural issues, the Corps will review the project as efficiently as possible. The Corps may request additional information for coordination with the resource agencies and information from the applicant addressing how the project complies with the terms and conditions and conservation recommendations of existing Biological Opinions. If there are potential fish issues, the project may either fit within the parameters of the Corps' NLAA program or may exceed those parameters. If it fits within the parameters, the Corps will request concurrence with the NMFS. If it exceeds the parameters, the Corps will initiate consultation with NMFS with the BA provided by the applicant. The USFWS has already consulted on the impacts associated with the Habitat Plan, and is providing a BO for the RGP. However, the Corps may choose to coordinate with USFWS pursuant the terms and conditions of the BO. In general the process with NMFS will take 6 weeks for adherence to the NLAA program. Once the Corps receives concurrence from NMFS that the project adheres to the NLAA, the Corps will process the project under the RGP and complete the authorization within 30 days. If beyond the NLAA program, but otherwise complete and additional consultation is needed, this could take up to 135 days.

Notification of Project Changes

Applicants will notify the Co-Permittees or Habitat Agency if there is a change in the project or impacts are expected to differ from those that were authorized under this RGP. The applicant will submit a project-change memorandum that outlines how the project has changed including:

- A written statement describing how the activity has been designed to avoid and minimize adverse effects (temporary, permanent, direct, and indirect) to waters of the United States.
- Revised drawings, including plan and cross section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the United States on the project site.
- Revised estimates of type and source of fill, and the method of placement.

- Evaluation as to whether other conditions have changed including the potential to impact, anadromous fish, cultural resources or any other issues requiring consultation with additional agencies or re-consideration of project impacts.

The Co-Permittee or Habitat Agency will then contact the Corps to secure an amended authorization, and the Corps will review the project changes for completeness within 20 days. The project will then be reviewed under the timelines established in the review process section of this document. Project changes many require re-initiation of consultation with NMFS, SHPO or tribal groups.

Program Management, Reporting and Tracking Process

Notification

As described above, the Habitat Agency and Co-Permittees will provide applications as they are available. If a large number of applications are received, these may be bundled and provided to the Corps. Hard and electronic copies of the notification materials will be initially be provided but the submittals may move toward electronic submittal only.

Annual Reporting

The Habitat Agency will provide an annual report to the Corps by March 15th of each year. This coincides with the development of their annual report for the Habitat Plan and allows for complete accounting following the previous fiscal year. The annual report will contain the following information.

- A summary of the previous year's activities (January 1 to December 31) including:
 - total number of projects, by activity type – authorized vs. completed total impacts to wetlands or waters of the U.S. – also divided into impacts approved, impacts completed
 - total mitigation for impacts to wetlands or waters of the U.S. – also divided into mitigation approved, mitigation completed
- A summary of any issues related to using the RGP (e.g., review timing, consultation process, activity sizes, forecast of potential future need, etc.).
- Detailed information regarding impacts:
 - Project name
 - Corps permit number
 - Amount of authorized fill within wetlands and waters of the U.S.
 - Location of impact by HUC
 - Description of action,
 - USACE file number,
 - Location coordinates (latitude, longitude, and datum),
 - Permittee,

- Waterway,
- If any listed species and/or designated critical habitat is known in the action area,
- Status of construction (not constructed, under construction, or completed)
- Date of project implementation and duration of each project that USACE authorized under the 2013 NLAA Program.
- Status of work (pending, in-process, complete)
- Detailed information regarding mitigation is in the program-level interim mitigation strategy and includes:
 - Funds paid for mitigation
 - Amount of mitigation provided
 - Location of mitigation provided
 - Summary of mitigation status (pending, in-process, monitoring, complete)
 - Monitoring reports for mitigation plans or a summary of the monitoring results
 - Other information as outlined in the interim mitigation strategy or subsequent ILF
- A summary of the status of the In-Lieu Fee Program or Umbrella Mitigation Bank.

Data Management

As described in our August 25, 2015 letter to the Corps, the Habitat Agency is using Black Mountain Software, a government and special district accounting software, to track project impacts, fees, and associated mitigation obligations to assist with its annual reporting to the wildlife agencies and the Corps. This data management system will be used to ensure that project-by-project accounting can be accomplished.

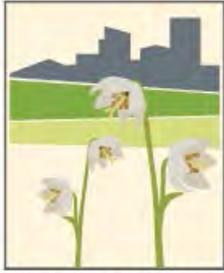
The Habitat Agency will maintain electronic copies of the applications in its offices. Additional spreadsheets and submittal tools may need to be developed during the course of implementation. For example, wetland delineation GIS data will also be collected by the Habitat Agency and reported to the Corps once a preliminary jurisdictional or approved jurisdictional determination is made.

Future Planning

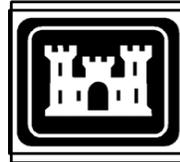
As the HCP/NCCP duration is 50 years, the Habitat Agency expects to seek subsequent RGP permit renewals. During this first 5-year permit, the Habitat Agency will work with the Corps to ensure that the program is working efficiently, is implementable, and is serving the needs of all parties. The annual report is a good place to compile this information and help inform changes that may be needed in subsequent permit renewals. Specific issues that will need to be resolved during this first permit term include:

1. Development of the ILF Program or Umbrella Mitigation Bank,
2. Resolution of the NMFS consultation process (i.e., use of Nationwide Permit NLAA, development of RGP-specific NLAA, development of a Program BO),
3. Resolution of the USFWS consultation process (e.g., making sure subsequent Section 7 consultations do not delay the process),

4. Resolution of the Section 106 process (e.g., making sure project's include enough information to support this assessment, developing a programmatic cultural consultation process), and
5. Resolution of the CWA Section 401 process (e.g., determining if any type of programmatic water quality certification is possible).



SANTA CLARA VALLEY
HABITAT AGENCY



Regional General Permit 18
Santa Clara Valley Habitat Plan RGP
Attachment 3
January 15, 2016

Compensatory Mitigation Strategy for Santa Clara Valley Habitat Plan Regional General Permit Prior to Approval of a Proposed In-Lieu Fee Program

Program-level Interim Mitigation Strategy Document

Background

The Santa Clara Valley Habitat Plan (Habitat Plan) was approved in July 2013 and is executed and managed by the Valley Habitat Agency (Habitat Agency). The Habitat Plan is intended to provide an effective framework to protect natural resources in Santa Clara County, while improving and streamlining the environmental permitting process for impacts to federally listed species and their critical habitat.

The U.S. Army Corps of Engineers (Corps) San Francisco District is developing a Regional General Permit (RGP) that would apply to Corps-regulated Habitat Plan activities (“covered activities”). The RGP will coordinate Corps regulations under Section 404 of the Clean Water Act with the Habitat Plan by establishing avoidance, minimization and compensatory mitigation standards that are as consistent as possible with the Habitat Plan. As part of its conservation strategy, the Habitat Plan was designed to compensate for the loss of wetlands and streams and is intended to serve as the basis for compensatory mitigation associated with Corps authorization of projects resulting in dredge or fill activities within waters of the United States.

Pursuant to the federal Mitigation Rule (33 Code of Federal Regulations [CFR] Part 332; hereafter, “mitigation rule”), the Habitat Agency is pursuing the establishment of an In-Lieu Fee (ILF) program that will work in conjunction with the RGP and the existing Habitat Plan mitigation program, including the current Habitat Plan aquatic resources mitigation fees collected by the Habitat Agency. The Habitat Agency will prepare and present to the Interagency Review Team (IRT) a Prospectus for an ILF program by January 2016, and the Corps will circulate the Prospectus for public review. Because there is no precedent for an ILF program linked to a Habitat Conservation Plan, the ILF program approval process is expected to take over 12 months.

At this time, the RGP is poised to be issued. An active RGP would offer several regulatory efficiencies, however its issuance does not inherently provide for a coordinated mitigation approach between the Corps’ Regulatory Program and the Habitat Agency mitigation program. Therefore, during the interim period after RGP adoption and before the ILF Program is approved, a strategy is needed for compensatory mitigation. Such a strategy is thought to be critical, in that a successful and mitigation rule-compliant strategy would avoid the need to require applicants to mitigate for impacts to aquatic resources twice (once pursuant to Section

404 and once pursuant to the Habitat Plan). The purpose of this document is to outline the Interim Mitigation Strategy (IMS) that is proposed to be implemented upon issuance of the RGP. This document describes the proposed strategy and demonstrates its compliance with the federal mitigation rule.

Interim Mitigation Strategy

Under the Habitat Plan RGP applicants would have three options for accomplishing mitigation:

1. Payment of the aquatic resources mitigation fees to the Habitat Agency, in accordance with the ILF program envisioned to be established by the Habitat Agency. The ILF program would be required to be consistent with the mitigation rule. If mitigation is satisfied through payment into a future-established ILF program, after accepting the applicant's fee, the Habitat Agency would be responsible for compensatory mitigation for impacts to waters of the U.S. associated with projects authorized by the RGP.
2. Purchasing credits at a Corps-approved mitigation bank that also provides mitigation acceptable under the Habitat Plan.
3. Proposing a permittee-responsible mitigation project (including all necessary mitigation plan components specified in the mitigation rule (33 CFR Part 332.4[c]2-14).

Only the first option is unique to the RGP. An ILF program (pending establishment) is the Corps' preferred option since it supports landscape-scale creation, restoration and enhancement of aquatic resources within the overall habitat conservation strategy of the Habitat Plan.

The proposed IMS described in this document would provide **permittee-responsible** compensatory mitigation consistent with its definition and required elements contained in the mitigation rule. Compensatory mitigation for impacts to waters of the U.S. would be accomplished by conforming to the minimum mitigation ratios established under the RGP. Mitigation proposals would be required to be consistent with the mitigation rule. The IMS approach would rely on one or more aquatic resource restoration and/or creation projects implemented by the Habitat Agency under the Habitat Plan. During the period before the ILF program is approved, the Habitat Agency would demonstrate for the Corps that applicants receiving authorization under the RGP would fulfill compensatory Section 404 mitigation requirements by designating a portion of one to four of the Habitat Agency's restoration and/or preservation sites as the compensatory mitigation for an applicant's project. Multiple sites may be needed to accommodate the various types of aquatic resources that may require mitigation, as all types may not be available at one site. Before any of the Habitat Agency's proposed restoration or preservation sites is deemed eligible by the Corps for use during the interim period, the Habitat Agency must submit a site-specific mitigation plan to the Corps that includes point by point documentation of how the site-specific mitigation plan complies with the mitigation rule requirements for a final mitigation plan (33 CFR 332.4[c]2-14). A template for the site-specific mitigation plans is currently pending Corps approval. The Corps-approved template will be attached as Appendix A, Site-Specific Mitigation Monitoring Plan (MMP) Template. The final, Corps-approved site-specific submittals will be formally added as additional appendices to this program-level document. Before any portion of the Corps-approved IMS

restoration or preservation site is approved by the Corps for use as project-specific compensatory mitigation, the Habitat Agency would submit a brief, project-specific mitigation proposal to the Corps for review and approval. A Corps-approved template for the project-specific mitigation plans is included as Appendix B, Project-Specific Mitigation Plan Template. The site-specific and project-specific mitigation plan templates may be revised with written Corps approval at the request of the Habitat Agency.

How the Interim Mitigation Strategy Would Comply with the Federal Mitigation Rule

To document consistency of the proposed IMS approach with the mitigation rule, this document compares the rule's requirements to the proposed IMS requirements that would apply to all Habitat Plan restoration, creation and preservation projects proposed as compensatory mitigation for impacts to waters of the United States authorized under the Habitat Plan RGP. For each mitigation plan requirement stipulated in the mitigation rule (i.e., items 2–14 in 33 CFR 332.4[c]), compliance with the proposed IMS approach is described. As stated above, before the approach could be implemented a similar, site-specific analysis would be required for each restoration, creation and preservation site proposed for use as permittee-responsible mitigation under the IMS.

Process for Permittee-Responsible Mitigation and Project-by-Project Tracking

Permittee-responsible mitigation under the RGP will be achieved in one of two ways: 1) a permittee will pursue mitigation without IMS coverage, or 2) a permittee will provide mitigation pursuant to the IMS by paying the Habitat Plan impact fees consistent with the Habitat Plan, and the Habitat Agency will develop mitigation to offset the project impacts. The Habitat Agency will allocate, document, and track the project-specific mitigation carried out under the IMS.

After the Corps approves one of the Habitat Agency's restoration, creation or preservation sites for use as permittee-responsible mitigation under the IMS, the following procedures would be followed to document the application of mitigation site acreage as compensatory mitigation for RGP-covered activities. During the IMS period, for each project for which an applicant is covered by the Habitat Plan and authorized by the RGP, impacts to wetlands or other waters and the associated mitigation requirements will be calculated and discretely assigned to a mapped portion of the Corps-approved restoration, creation, and/or preservation site. The Habitat Agency will maintain a log for each project, and send the Corps a project-specific report with exhibits (maps) documenting the allocated mitigation acreage at the approved site, including specific assignment to type and acreage of waters, and the Corps permit number for which impacts to waters will be mitigated for at that site.

Under the Habitat Plan, the Habitat Agency will restore, create, and preserve many land-cover types, including aquatic resources such as wetlands and streams. The Habitat Plan definitions of restoration, creation and preservation are focused on species, but for the purposes of aquatic resource mitigation will be applied consistent with definitions in the mitigation rule, as shown below and described in the RGP.

Habitat Plan definitions	2008 Mitigation Rule/RGP definitions
<i>Habitat Restoration:</i> The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a site that historically supported such functions, but no longer does because of the loss of one or more required ecological factors or as a result of past disturbance.	<i>Restoration:</i> The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: reestablishment and rehabilitation.
<i>Habitat Creation:</i> The manipulation of the physical, chemical, or biological characteristics present to develop a land cover type in an area that did not previously support it. Similar to restoration, creation results in establishment of new ecological function, value, <u>and</u> acreage of a natural community or land cover types.	<i>Establishment (creation):</i> The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.
<i>Preservation:</i> Preventing changes in land use from a natural state by, for example, acquiring land or a conservation easement.	<i>Preservation:</i> The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

The Habitat Agency will develop mitigation projects that are consistent with the RGP's restoration/creation and preservation requirements. The mitigation rule requires implementation of the compensatory mitigation project in advance of or concurrent with the activity requiring the authorized impacts, and additional compensatory mitigation to offset temporal losses of aquatic functions that will result.

A general consideration of the IMS concerns temporal loss, as defined in the mitigation rule. The mitigation rule defines *temporal loss* as the time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site. Under this IMS, the Habitat Agency has provided the assurance that aquatic resource restoration and creation on sites proposed to be used as permittee-responsible mitigation under the IMS have already been constructed, to minimize temporal losses. Under the IMS, project impacts in waters of the U.S. will not be approved by

the Habitat Agency or authorized by the Corps until the permittee-specific mitigation described in the project-specific mitigation proposal (see Appendix B) is fully constructed.

A Corps-approved compensatory mitigation site will be available for meeting permittee-responsible compensatory mitigation obligations once mitigation construction is complete and the site-specific conservation easement or other Corps-approved legal instrument and long-term management plans have been approved by the Corps. Each mitigation site will be monitored according to its site-specific mitigation plan, and upon successful completion of monitoring, the final amount of waters in the mapped project-specific portions of the site will be delineated to ensure the success criteria for aquatic resource creation and/or restoration are met for each project. If the final acreage of waters on any portion of the site is less than the acreage required for the corresponding RGP permit action, additional compensatory mitigation may be required by the Corps for that permit action.

In conjunction with restoration and creation actions required by the RGP to ensure that no net loss of streams and wetlands occurs, preservation will also be proposed for each compensatory mitigation project. The mitigation rule states that preservation may be used to compensate for loss of waters of the United States when all the following criteria are met:

- The resources to be preserved provide important physical, chemical, or biological functions for the watershed.
- The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the district engineer must use appropriate quantitative assessment tools, where available.
- Preservation is determined by the district engineer to be appropriate and practicable.
- The resources are under threat of destruction or adverse modifications.
- The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

Preservation is a key part of protecting watersheds and ecosystems within the Habitat Plan area. Overall, the Habitat Agency expects to preserve portions of the Coyote Creek sub-watershed, the Guadalupe River sub-watershed, both of which are part of the greater San Francisco Bay watershed (hydrologic unit code [HUC] 180600002), and the Uvas, Llagas, and Pajaro sub-watersheds which are part of the Monterey Bay watershed (HUC 180600002). Of the almost 50,000 acre Reserve System associated with the Habitat Plan, approximately 28,000 acres would occur in the San Francisco Bay watershed and 22,000 acres would occur in the Monterey Bay watershed. As required by the Habitat Plan, lands must be protected through placement of a conservation easement or other Corps-approved legal instrument such that lands will be permanently protected.

Roles and Responsibilities

The Habitat Agency is proposing the IMS for review and approval by the Corps San Francisco District. The strategy would rely on the Habitat Agency as the sole party to fulfill the compensatory mitigation commitments as described. However, permit applicants receiving authorization under the RGP would ultimately be responsible for fulfilling mitigation commitments should the Habitat Agency not fulfill its envisioned responsibilities. It is understood that the Corps would retain oversight for all related review and approvals during the strategy's implementation.

It is the responsibility of the Habitat Agency to ensure implementation of the Habitat Plan in accordance with the species permits. Similarly, it will be the responsibility of the Habitat Agency to monitor and manage in perpetuity the mitigation it develops under the IMS. The Habitat Agency is also required to execute administrative requirements of the Habitat Plan and will be responsible for developing and maintaining annual budgets; receiving, tracking and reporting fee revenues collected; researching land acquisition opportunities; acquiring land (with partners); implementing restoration projects; and management/monitoring of the IMS compensatory mitigation sites.

Objectives

The creation and restoration of aquatic resources on sites proposed to be used as permittee-responsible mitigation for applicants receiving RGP authorization would provide a "net gain" of aquatic resource functions and acreage. While a mitigation site may also include elements of enhancement and preservation, meeting other goals of the Habitat Plan, for purposes of addressing the IMS's compliance with the mitigation rule, net gain of aquatic resources is the expectation. The IMS would recognize the contribution of other elements such as enhancement and preservation, but would rely on "net gain" by restoration and/or establishment of waters as the most readily quantifiable type of compensatory mitigation.

All creation and restoration projects implemented by the Habitat Agency must follow the specific objectives for wetland, stream and pond restoration as set forth in the Habitat Plan Conservation Strategy. Acquisition, restoration, enhancement and creation is described beginning on page 5-75 of the Habitat Plan, which states that the Conservation Strategy "will result in restoration or creation of an estimated 339 acres of riparian forest and scrub, 75 acres of wetlands, 72 acres of pond and 10.4 miles of streams in the Reserve System if all anticipated impacts occur..." (page 5-76). Riverine and riparian forest and scrub goals and objectives are further described beginning on page 5-109 of the Habitat Plan, and wetland and pond conservation and management is described beginning on page 5-122. Table 1 below summarizes the Habitat Plan's total build out impacts, protection, restoration and creation objectives for aquatic resources, based on Table 5-13 of the Habitat Plan.

Table 1. Summary of Possible Impacts and Required Protection, Restoration and Creation of Aquatic Resource Land Cover Types under the Habitat Plan

Land Cover Type	Total in Study Area	Estimated Permanent Impact ¹	Estimated Protection	Estimated Restoration and Creation	Total Protection, Restoration and Creation
Willow Riparian Forest	6,310	289	578	339	917
Sycamore Alluvial Woodland	373	7	40	14	54
Freshwater Marsh	381	25	50	45	95
Seasonal Wetland	201	15	30	30	60
Pond	1,110	52	104	72	177
Stream (miles)	2,392	9.4	100	10.4	110.4

¹ This represents a 50-year impact number based on maximum build-out associated with the Habitat Plan.

The proposed IMS mitigation sites will be located within the Habitat Plan Reserve System, or in watershed areas otherwise consistent with the Habitat Plan. The Reserve System was designed using subwatersheds as building blocks to conserve aquatic resources, and the functions and values of these aquatic resources, including hydrologic processes. Conservation Measures in the Habitat Plan were developed using a baseline inventory of wetlands and non-wetland waters of the United States described beginning on page 3-17 of the Habitat Plan. Aquatic resources were mapped at a 0.25 acre minimum mapping unit as part of a planning-level delineation depicted on Figure 3-10 of the Habitat Plan). Biologists conducted field visits on a representative sample of sites to ground-truth the planning-level delineation, and all aquatic resources will be delineated and receive Corps-verified jurisdictional determinations on a project-by-project basis. The planning-level delineation showed a baseline inventory of wetlands and non-wetland waters of the United States totaling approximately 6,682 acres of riparian (6,310 acres of willow riparian and 373 acres of sycamore riparian), 583 acres of wetlands (381 acres of freshwater marsh and 201 acres of seasonal wetlands), 1,110 acres of ponds, and 2,392 miles of stream within the study area.

Under the IMS the Habitat Agency will track both project-specific compensatory mitigation and project-specific impacts in acres by habitat type. Based on this accounting and the required annual reporting, the Habitat Agency will be able to demonstrate and document no net loss of aquatic resources. Demonstrating no net loss is a requirement of the Habitat Plan and RGP.

The Habitat Plan requires that its conservation activities occur in rough-proportionality to permitted impacts. Thus, as impacts accrue, so does conservation, which helps to ensure no net loss of waters and to reduce temporal loss of aquatic resource functions.

Site Selection

In 2014, the Habitat Agency established the Aquatic Restoration/Creation Planning and Design Resource Group (Restoration Resource Group) to assist in identifying aquatic restoration and creation opportunities. An outcome of this process was a list of potential restoration projects that the Habitat Agency will maintain and update as new opportunities become known. Mitigation projects on the list are prioritized on the basis of potential compensatory mitigation opportunities they could provide to offset known and anticipated impacts to aquatic resources. The selection of potential mitigation sites under the IMS will focus on restoration, creation and preservation sites with potential to address the Corps RGP compensatory mitigation requirements and Habitat Plan priorities. Each mitigation site will be evaluated for its potential to provide appropriate compensatory mitigation for impacts to waters of the United States authorized under the RGP.

Site Protection Instrument

Each Corps-approved IMS mitigation site will be protected in-perpetuity by a site-specific conservation easement or other Corps-approved legal instrument. The conservation easement will provide long-term protection of compensatory mitigation sites by prohibiting incompatible uses that might otherwise jeopardize the objectives of the compensatory mitigation effort. A conservation easement template is currently pending Corps approval. The final, Corps-approved template will be attached to this Program-level IMS document as Appendix C. Corps approval of the site-specific conservation easement will be required prior to the site being available for meeting permittee-responsible compensatory mitigation obligations. The site-specific conservation easements will be recorded with Santa Clara County and added as appendices to this Program-level IMS document.

Baseline Information

For the overall Habitat Plan area, substantial baseline information was assembled and analyzed to inform design of the Reserve System. In addition to the aforementioned Aquatic Resources Inventory (see Figure 3-10 in the Habitat Plan, summarized in the text and Table 1 above), Chapter 5 of the Habitat Plan provides a summary of baseline physical and biological resource conditions in the Plan Area, beginning on page 5-13. Site-specific baseline delineations of project impact sites and compensatory mitigation sites will be conducted as required under the RGP to quantify impacts and aquatic resource acreages created, restored and enhanced.

For each creation/restoration site proposed for use as permittee-responsible mitigation under the IMS, detailed baseline information will be included in the site-specific mitigation monitoring plans (see Appendix A). Types of baseline information required in the site-specific MMPs include: vegetation conditions, waters of the U.S. delineation, detailed topography, historical conditions, hydrologic conditions and soil conditions. Copies of the site-specific MMPs and/or other relevant documentation of baseline conditions will be provided to the Corps for each creation/restoration project site proposed for use as permittee-responsible mitigation under the IMS.

Determination of available aquatic resource mitigation

For permittee-responsible mitigation, the mitigation rule requires an explanation of how the compensatory mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity. To meet this requirement, the Habitat Agency will submit documentation quantifying available aquatic resource acreages (wetlands and other waters) to the Corps for each creation/restoration/preservation site proposed for use as permittee-responsible mitigation under the IMS. The documentation will specify the aquatic resource type and amount (acreage, linear feet) available for preservation and/or the aquatic resource type and amount (acreage, linear feet) that will be created or restored (i.e. "net gain) under the mitigation plan proposed for that site.

Compensatory mitigation under the IMS will be accomplished by conforming to the minimum ratios set by the RGP. The RGP will provide the option of permittee-responsible mitigation, provided that any type of mitigation proposal acceptable under the RGP is consistent with the mitigation rule.

Mitigation Work Plan

A detailed work plan will be submitted as part of each site-specific MMP (see Appendix A) for each creation/restoration project proposed for use as permittee-responsible mitigation. Information that will be provided for each proposed permittee-responsible mitigation project includes:

- Geographic boundary
- Construction methods
- Timing
- Construction sequence
- Connections to existing waters and uplands
- Methods for establishing desired plant communities
- Plans to control invasive plant species
- Grading plan
- Topographic elevations
- Soil management
- Erosion control measures / best management practices (BMPs)
- Budget

For stream compensatory mitigation projects, the mitigation work plan will also include planform geometry, channel form (typical cross sections), watershed size, design discharge, and riparian area plantings.

Maintenance Plan

A maintenance plan will be provided as part of each site-specific MMP (see Appendix A) for each creation/restoration site proposed for use as permittee-responsible mitigation under the IMS. The maintenance plan will describe the maintenance activities and schedule required to

ensure the continued viability of the created/restored aquatic resources once initial construction is completed.

The Habitat Plan includes guidelines for vegetation management, water management, nonnative wildlife management, and private landowner education for wetland and pond creation and restoration sites within the Reserve System (text beginning on page 5-127 of the Habitat Plan). These maintenance practices are also governed by the overarching biological goals and objectives of the Habitat Plan.

Performance Standards

Performance standards and success criteria will be developed on a site-specific basis consistent with the Corps requirements, including the mitigation rule and the South Pacific Division's (SPD's) Regulatory Program Uniform Performance Standards for Compensatory Mitigation Requirements (Uniform Performance Standards). As required under the mitigation rule, the performance standards will be based on attributes that are objective and verifiable and can be assessed in a practicable manner. These standards will be ecologically based and used to assess whether the mitigation project is achieving its objectives, i.e. developing the desired resource functions and areal extent. Performance standards will be based on variables or measures of functional capacity described in functional assessment methodologies such as the California Rapid Assessment Method (CRAM) and will reference aquatic resources of similar type and landscape position. Appropriate reference sites that represent the highest condition aquatic resources will be identified within the Habitat Plan Area. These reference sites will serve as the basis for the mitigation site performance objectives. The site-specific performance standards and final success criteria will be included in the site-specific MMPs submitted to the Corps for review and approval. Performance standards and success criteria will be based on SPD's Uniform Performance Standards and will include:

- a. Requirements for $\geq 80\%$ survival of planted stock.
- b. Requirements for $\geq 75\%$ of reference site plant density or percent cover by hydrophytic plants.
- c. Requirement of $\geq 75\%$ of reference site target percent cover, density, or height of native species.
- d. Requirement of $\geq 75\%$ of reference site target species richness amount.
- e. Use of indices to compress large amounts of information.
- f. Use of Corps-approved reference wetlands or other aquatic resources sites as a benchmark.
- g. Requirements limiting occurrence of exotic and nuisance plant species to $\leq 100\%$ of reference site, with zero tolerance for species considered highly invasive per the Cal-IPC List.

Additionally, performance standards specific to aquatic resource type will be required to measure physical, hydrologic, and occasionally water quality conditions at mitigation sites.

Monitoring Requirements

Chapter 7 of the Habitat Plan (Monitoring and Adaptive Management Program), provides a basis for landscape-level monitoring requirements for Habitat Plan compensatory mitigation sites. The Habitat Plan includes specific monitoring requirements for stream and riparian forest and scrub communities, and wetland and pond communities. These monitoring requirements include protocols for assessing the overall condition of aquatic resources and evaluating whether compensatory mitigation sites are meeting the performance standards established under the Habitat Plan (see Habitat Plan beginning on page 7-41).

Site-specific monitoring methods and schedules will be provided in the site-specific MMPs (see Appendix A) for each creation/restoration project site proposed for use as permittee-responsible mitigation under the IMS. Monitoring protocols for specific mitigation projects will include quantitative, established sampling methodologies and regular photo-documentation. The duration of the monitoring period will be at least 5 years, with longer periods required for aquatic resources with a slow development rate, such as riparian corridors. The site-specific mitigation MMPs will be submitted to the Corps for review and approval.

Upon completion of the construction of each mitigation site, a notification memorandum will be provided to the Corps that contains:

- Date(s) all compensatory mitigation construction activities were completed;
- Modifications (if any) to the originally-approved schedule for future mitigation monitoring, implementation and reporting pursuant to final, Corps-approved site-specific MMP;
- Summary of compliance status with each special condition of the associated Corps permit or verification (including any noncompliance previously having occurred or currently occurring and corrective actions taken to achieve compliance);
- Color photographs of the aquatic habitats constructed at the compensatory mitigation site. For those aspects directly associated with pre-existing waters of the U.S., before photos shall also be provided;
- One copy of “as built” drawings for the entire compensatory mitigation project prepared in accordance with SPD Map and Drawing Standards.

Monitoring reports will be submitted to the Corps using the SPD mitigation monitoring form, with the appropriate supporting data including:

- Vicinity map(s)
- Compensatory Mitigation Site Map(s) (including the following information): Polygons by compensatory mitigation type as described in the approved site-specific MMP; photo

station locations; and annotated locations of sample points/transects/quadrants/soil pits/monitoring stations. Note: maps must comply with the SPD Map and Drawings Standard.

- Photographic record of the site during most recent monitoring visit at designated photo stations.
- Results of functional/condition assessments if required to be used for the compensatory mitigation project.
- Narrative report (optional).
- Critical survey elevations, properly benchmarked (if applicable).
- As-built drawing(s) (if any change from authorized design).

See “Other Information” below for the proposed schedule for monitoring and reporting submittals to the Corps.

Long Term Management Plan

A long-term management plan (LTMP) will be developed for each creation/restoration site proposed for use as permittee-responsible mitigation under the IMS. The LTMPs will describe how the proposed compensatory mitigation project will be managed after the final success criteria have been met, to ensure the long-term sustainability of the aquatic resources. Specifically, the LTMPs will identify: the party responsible for long term management of the compensatory mitigation site; a description of the long-term management needs; an annual cost estimate of the long-term management needs; and, a description of the Corps-approved funding mechanism that will be used to meet those needs. A site-specific LTMP template is currently pending Corps approval. The final, Corps approved LTMP template will be attached to this Program-level document as Appendix D. The LTMP template is based on the statewide mitigation banking template developed by the California multi-agency Project Delivery Team. Corps approval of the site-specific LTMPs will be required prior to the site being available for meeting permittee-responsible compensatory mitigation obligations. The site-specific LTMPs will be added as appendices to this Program-level IMS document.

Chapter 7 of the Habitat Plan, Monitoring and Adaptive Management Program, describes program-level LTMP requirements which include the following elements: developing reserve unit management plans, inventorying resources, updating GIS layers to assess landscape-level status and trends, monitoring success of restoration sites against success criteria, reviewing existing literature and scientific knowledge and making changes to monitoring and management based on new information (Table 7-1 and Figure 7-1 from the Habitat Plan).

Adaptive Management Plan

Chapter 7 of the Habitat Plan, (Monitoring and Adaptive Management Program), provides a basis for adaptive management requirements for Habitat Plan compensatory mitigation sites on a landscape scale. It describes adaptive management tasks that include evaluating the efficacy

of monitoring protocols, incorporating best available scientific information into management, evaluating and refining conceptual models, reviewing unexpected or unfavorable results, adjusting management actions and monitoring, and adjusting success criteria and conservation actions, if necessary (text beginning on page 7-19).

Site-specific adaptive management requirements will be included in the site-specific MMPs prepared for the IMS creation/restoration sites (see Appendix A); at the site-specific level, adaptive management will predominately focus on measures to address performance criteria.

Adaptive management requirements for IMS creation/restoration sites will include the following conditions in compliance with the South Pacific Division Mitigation and Monitoring Guidelines, and 33 CFR § 332.4 (c)(12) and 332.7(c):

- If the compensatory mitigation features cannot be constructed in accordance with the approved site-specific MMPs, the Habitat Agency must notify the San Francisco District Engineer (district engineer). A significant modification of the site-specific MMP requires approval from the district engineer.
- If monitoring or other information indicates that the compensatory mitigation features are not progressing towards meeting the established performance standards as anticipated, the Habitat Agency must notify the district engineer as soon as possible. The habitat agency and district engineer will evaluate and pursue measures to address deficiencies in the compensatory mitigation effort. The district engineer will consider whether the compensatory mitigation effort is providing ecological benefits comparable to the original objectives of the compensatory mitigation plan.
- The district engineer, in consultation with the Habitat Agency will determine the appropriate measures. The measures may include site modifications, design changes, revisions to maintenance requirements, and revised monitoring requirements. The measures must be designed to ensure that the modified compensatory mitigation effort provides aquatic resource functions comparable to those described in the site-specific MMP objectives.
- Performance standards may be revised in accordance with adaptive management to account for measures taken to address deficiencies in the compensatory mitigation effort. Performance standards may also be revised to reflect changes in management strategies and objectives if the new standards provide for ecological benefits that are comparable or superior to the approved site-specific MMP. No other revisions to performance standards will be allowed except in the case of natural disasters.

Potential problems that may trigger a need for adaptive management include failure to attain interim and/or final performance standards, fire, unanticipated channel instability, substantial infestation by invasive, non-native plants and animals, and unanticipated anthropogenic problems such as large scale trespassing and vandalism. Once problems are identified, the Habitat Agency will contact the Corps to identify potential courses of action and/or corrective measures. Based on such coordination, the Habitat Agency will recommend a course of action and develop a plan for implementing the measures. Minor problems, such as trash, vandalism,

isolated instances of plant mortality, or small-scale weed or pest infestations will be rectified as they are discovered during routine site monitoring and maintenance and included in annual reporting, and do not require reporting to the Corps. Large scale corrective measures will require coordination with the Corps, and such measures may include, but are not limited to, regrading part or all of the compensatory mitigation site, replanting more than 20 percent of the site to improve species cover or diversity, supplemental soil amendments, or installation of new or replacement of fencing and signage at a new location or with a new design, or modification of management activities such as large scale weeding or supplemental irrigation. In some cases, performance standards would be modified in accordance with 33 CFR 332.7(c)(4).

Financial Assurances

Under the mitigation rule, financial assurances are required to ensure a high level of confidence that compensatory mitigation efforts are successfully completed in conformance with the performance standards (i.e., “short-term” financial assurances), and to ensure the long-term sustainability of the aquatic resource features (i.e., “long-term” financial assurances). The mitigation rule handles funding for short-term financial assurances differently than funding for long-term management. As acknowledged in the preamble, “[t]he final rule clearly differentiates between financial assurances for construction and establishment of compensatory mitigation projects and funding for long-term management of those projects.”

Under the IMS, site-specific short-term mitigation costs will be described in the final site-specific MMPs. In accordance with the mitigation rule (33 CFR 332.3(n)(2)) short-term mitigation cost estimates will include planning, design, construction, construction monitoring, post-construction surveys, post-construction compliance requirements including monitoring and annual reporting, and contingency. The site-specific LTMPs for IMS mitigation sites will provide an annual cost estimate of the site-specific long-term management needs and a description of the Corps-approved funding mechanism that will be used to meet those needs.

Under the IMS, short term financial assurances will be provided in compliance with the mitigation rule requirements set forth at 33 CFR 323.3(n)(1), which stipulate that where an alternate mechanism (e.g., a formal, documented commitment from a government agency or public authority) is available to ensure a high level of confidence that the compensatory mitigation will be successfully completed, the district engineer may determine that short-term financial assurances are not necessary. In accordance with the mitigation rule, the Habitat Agency Board of Directors (Board) has proposed providing a “formal, documented commitment” in the form of a letter from the Board to the Corps stating that the Habitat Agency will fund the mitigation costs identified in the site-specific MMPs for any creation/restoration sites proposed for use as permittee-responsible mitigation under the IMS. The letter will state that the funding assurance for IMS compensatory mitigation site costs identified in the site-specific MMPs will be provided as a line item in the Habitat Agency’s annual budget. The letter will state that the Habitat Agency will include a line item in its annual budget that stipulates that, “annual funding in the amount of \$XX,XXX.00 is provided for the Valley Habitat Plan Regional General Permit IMS to address anticipated aquatic resource creation/restoration and monitoring costs.” The annually allocated funds will apply to the

acreage of the IMS mitigation site(s) committed as permittee-responsible mitigation under the IMS. For example, a specific site may be constructed with the goal of providing 10 acres of wetland creation/restoration. If the site's performance results in eight acres of wetland creation/restoration, and two acres of that are committed as permittee-responsible mitigation, the Board's formal financial commitment would apply to the two acres of wetlands, specifically. This assurance would be in place until the site's established final performance standards are met. Each project-specific (i.e., permit-specific) parcel allocated for use as permittee-responsible mitigation within the IMS mitigation site would be considered covered by the Board's formal commitment. Therefore, as each individual project-specific parcel within an IMS mitigation site is proposed for use as permittee-responsible mitigation under the IMS, the Corps' approval of such use would "trigger" the applicability of the Board's formal commitment of funding assurances for the aquatic resource acreage of that site that is committed for use as permittee-responsible mitigation. If the Board's letter is approved by the Corps San Francisco District Engineer, it will be attached to this document as Appendix F.

Under the IMS, long-term funding for permittee-responsible compensatory mitigation sites will be assured through the Habitat Plan endowment funds. Under the Habitat Plan, financial assurances for long-term management of mitigation sites are to be provided through establishment of endowment funds. Based on the cost model developed for the Habitat Plan, 10.35% of the fees collected will be set aside and invested in an endowment account with a capitalization rate of 3.23-3.5%. The site-specific LTMPs will include a PAR-like analysis to calculate the long-term management costs. In accordance with the mitigation rule requirements set forth at 33 CFR 332.7(d)(3), financing for long-term mitigation costs associated with permittee-responsible mitigation under the IMS will be provided through non-wasting endowments.

The IMS will make use of existing tools and systems established to track impacts and mitigation under the Habitat Plan. For example, a permittee requesting authorization under the RGP will provide a complete application to the Habitat Agency or a Co-Permittee and pay the mitigation fee associated with the type of impact expected. This information will be entered into the Habitat Agency's Black Mountain software. Approximately 88% of the fee will be used for mitigation development and monitoring and be placed in the Habitat Agency's program account and 12% will be used to endow the site and will be placed in the endowment account. Once a compensatory mitigation site has achieved the established performance criteria the Habitat Agency staff will track long-term management costs and funding using the Black Mountain Software.

The Habitat Plan includes detailed cost models to support the implementation of the Habitat Plan, including restoration, creation, enhancement and preservation actions. This cost information was verified by economic planning consultants who developed a nexus study (available on the Habitat Agency's website), and authorized by the elected boards of the member agencies. The governing board of the Habitat Agency has adopted a fee schedule to ensure that there are appropriate financial assurances in place to support mitigation project implementation and success. The Habitat Plan's 2015–2016 fee schedule is provided in Appendix E, with the aquatic resource fees provided below in Table 2. Aquatic resource fees are quite high due to the costs associated with the restoration and creation of scarce resources.

The higher fees are also expected to serve as a dis-incentive for applicants to impact these resources.

Table 2. Aquatic Resources Mitigation Fee

Aquatic Resource Type	Unit	Cost
Willow Riparian Forest and Mixed Riparian	Per acre	\$147,951
Central California Sycamore Woodland	Per acre	\$270,238
Freshwater Marsh	Per acre	\$181,429
Seasonal Wetlands	Per acre	\$396,957
Pond	Per acre	\$162,367
Stream	Per linear foot	\$622

The Habitat Plan includes two mechanisms for adjusting fee levels to ensure revenue keeps pace with rising costs over time: automatic adjustments and periodic assessments. Both adjustments will be performed by the Habitat Agency and provided to all participating co-permittees.

The Habitat Agency will update the aquatic resource fees automatically on an annual basis. The index to be used to adjust aquatic resource fees is the consumer price index (CPI) from the U.S. Bureau of Labor Statistics for the San Francisco–Oakland–San José Metropolitan Area. The Habitat Agency may decide to use other indices during Habitat Plan implementation if other indices are developed that better predict the costs of the Habitat Plan. Annual automatic adjustments in fees will either increase or decrease the total fee per acre. Fees are more likely to go up than down each year. Since 1977, the HPI has gone up in this Metropolitan Area in 24 of 30 years (80% of the time).

To ensure that the fees generated are adequately covering their share of the Habitat Plan costs, two types of fee reviews will be performed periodically. At least every 2 years, the Habitat Agency staff will analyze the fee amounts and compare them to actual and projected costs. The Habitat Agency staff will then report to the Implementation Board on whether the automatic fee adjustments are keeping pace with actual costs to provide an opportunity to adjust fees different than the automatic adjustments. In addition, every 5 years a fee assessment will be completed to review the costs and their underlying assumptions that were developed as part of the original funding plan. Automatic annual fee increases will resume after the periodic fee assessment and will continue until the next periodic assessment. Fees may go up or down depending on the results of the assessment.

The Habitat Agency will ensure that the fees paid for impacts are sufficient to address the short- and long-term mitigation obligations associated with each IMS compensatory mitigation site. The Habitat Agency will demonstrate assured funding by providing the endowment account balance to the Corps annually, with a summary of the proportional obligations of the IMS compensatory mitigation sites.

Other Information

Reporting

For each approved restoration, creation and preservation site utilized during the IMS period, the Habitat Agency will submit the following:

- A bi-annual e-mail IMS report by September 15 of each year documenting:
 - Mitigation commitments attributed to the site, including a table summarizing the originally delineated acreage/linear feet of all jurisdictional features onsite, project names and Corps permit identification numbers, and associated acreage of each aquatic resource type attributed as compensatory mitigation (preservation, restoration and creation) for each permit (RGP authorization).
 - Any pertinent management, monitoring and/or program-level information relevant to the mitigation site.
- An annual IMS report by March 15 of each year the IMS is in place, providing the same information required for the bi-annual report but containing data for the entire year and a comprehensive annual summary.
- A final report at IMS closeout, summarizing the data from all annual reports, including a timeline for ongoing monitoring and reporting of the permittee-responsible mitigation sites until they transition into the long-term management phase.
- Annual site-specific compensatory mitigation site monitoring reports containing information on whether the creation/restoration site is meeting its performance standards, and evaluating whether adaptive measures are necessary to ensure that the compensatory mitigation effort accomplishes its objectives. The annual site-specific monitoring reports will also include project-by-project tracking of the monitoring data for each project-specific (i.e., permit-specific) compensatory mitigation parcel within the IMS mitigation site. This will ensure that the performance of each permittee-responsible mitigation effort that is constructed within the IMS mitigation sites is tracked individually and documented in the administrative record during the IMS implementation period.

The Habitat Agency will also prepare Habitat Plan annual reports that document overall Habitat Plan and RGP permit compliance including accounting of impacts, conservation actions, management actions, restoration/creation actions, and monitoring activities and results. The Habitat Plan annual reports will also report on any issues or trends related to land acquisition, fee collection, and restoration. The Habitat Plan annual reports will summarize the previous fiscal year's implementation activities (July 1 to June 30) and be completed by March 15 following the reporting fiscal year. Habitat Plan annual reports will be submitted to the Habitat Plan Implementation Board, designated representatives of the Wildlife Agencies, and the Corps and will also be available to the public and posted on the Habitat Plan website.

IMS annual reports will contain the following financial and ledger information:

1. All income received and interest earned for aquatic resource mitigation.
2. A list of all permits for which aquatic resource mitigation funds were accepted, including the following information for each permit.
 - a. The Corps permit number (or the state permit number)
 - b. The hydrologic unit code in which the impact occurred
 - c. The amount of authorized impacts to waters of the United States
 - d. The amount of impacts authorized by the Habitat Plan to all aquatic land cover types
 - e. The avoidance and minimization measures that were applied to the project
 - f. The amount of required compensatory mitigation
 - g. The amount paid to the aquatic resources fund
 - h. The date the funds were received from the project applicant
3. A description of Program expenditures/disbursements from the account (i.e., the costs of planning, construction, monitoring, maintenance, contingencies, adaptive management, and administration) for the aquatic resource mitigation.
4. The balance of released mitigation values at the end of the report period for the RGP
5. The collective permitted impacts for each water type.

Summary

Overall, the Habitat Agency is implementing a regional, watershed-based Habitat Conservation plan (HCP)/Natural Community Conservation Plan (NCCP) that is designed to protect, preserve and enhance ecosystems in Santa Clara County. The IMS will take advantage of the framework proposed under the HCP/NCCP for restoration, creation, enhancement and preservation and use it to support permittee-specific mitigation for the RGP until the ILF program is established.

Regional General Permit 18

Santa Clara Valley Habitat Plan RGP

Interim Mitigation Strategy

Appendix A. Site-Specific Mitigation Monitoring Plan (MMP) Template

Section A-Title Page		
1. Mitigation Site Name: Click here to enter text.	2. Department of Army Permit Number: Click here to enter text.	3. Applicant's Name: first, middle, last; Company; email address Click here to enter text.
4. Applicant's Address: address; City; State, Zip Click here to enter text.	5. Applicant's Phone Numbers: business; fax Click here to enter text.	6. Preparer/Consultant's Name and Title (consultant is not required): first, middle, last; company; email address Click here to enter text.
7. Applicant's Address: address; City; State, Zip Click here to enter text.	8. Applicant's Phone Numbers: business; fax Click here to enter text.	9. Date of most recent revision to the Mitigation Plan: Click here to enter text.

Section B-Contributor Information	
1. Persons names who prepared the mitigation plan (collected baseline data, and/or wrote or edited plan): first, last, company; address; phone number; email address	
a. Click here to enter text.	b. Click here to enter text.
c. Click here to enter text.	d. Click here to enter text.

Section C-Distribution	
1. Names of persons who will receiving a copy of the report: first, last, company; address; phone number; email	
a. Click here to enter text.	b. Click here to enter text.
c. Click here to enter text.	d. Click here to enter text.

2. Table of Contents	
Section D	Brief Description of Proposed Compensatory Mitigation Site and Proposed Source of Compensatory Mitigation..... 2
Section E	Objectives 2
Section F	Description of Site Selection Criteria 3
Section G	Description of Landscape Position of Mitigation Site..... 3
Section H	Mitigation Site Specific Information and Baseline Information 4
Section I	Other Baseline Information 6
Section J	Mitigation Work Plan 7
Section K	Determination of Credits 10
Section L	Site Protection Instrument 10
Section M	Maintenance Plan 10

Appendix A. (Continued)

Section N	Ecological Performance Standards	12
Section O	Monitoring Requirements	13
Section P	Long Term Management Plan.....	14
Section R	Financial Assurances	15
Section S	Other Information.....	16
Section D-Brief Description of Proposed Compensatory Mitigation Site and Proposed Source of Compensatory Mitigation		
1. Mitigation Site or Title:	Click here to enter text.	
2. Location of Mitigation Site: Street Address; City; County; Latitude: N; Longitude: W	Click here to enter text.	
3. Other Location Description, If Known: State Tax Parcel ID; Municipality; Section; Township; Range	Click here to enter text.	
4. Brief Description of Proposed Compensatory Mitigation Site: permittee responsible	Click here to enter text.	

Section E-Objectives	
1. Aquatic Resources to be Provided: Type (willow, riparian forest and scrub, mixed riparian forest and woodland, Central California, sycamore alluvial woodland, coastal and valley freshwater marsh, seasonal wetlands, ponds, and streams); Amount acres/sq.ft./linear feet	Click here to enter text.
2. Method of Compensatory Mitigation:	Establishment: <input type="checkbox"/> Re-establishment: <input type="checkbox"/> Restoration: <input type="checkbox"/> Preservation: <input type="checkbox"/>
3. Resource type descriptions tables (attach): Table 1. Mitigation Site Description for Permittee Responsible Mitigation in the IMS. Resource Types: (willow, riparian forest and scrub, mixed riparian forest and woodland, Central California sycamore alluvial woodland, coastal and valley freshwater marsh, seasonal wetlands, ponds, and streams).	Table attached: <input type="checkbox"/> Resource Type: Click here to enter text.
3. Buffer Area:	Acreage: Click here to enter text. Average Width from OHWM or wetland edge: Click here to enter text. Vegetation community: Click here to enter text. Compensatory Mitigation Method: Establishment (ES): <input type="checkbox"/> Re-establishment (REE): <input type="checkbox"/> Restoration (RES): <input type="checkbox"/>

Appendix A. (Continued)

	Preservation (P): <input type="checkbox"/>
4. Non-Aquatic compensatory mitigation excluding buffer areas (acreage): Vegetation community types (use the Sawyer and Keeler-Wolf classification System):	Click here to enter text.
5. Brief summary of how the compensatory mitigation will address needs of the watershed	Click here to enter text.
Section F-Description of Site Selection Criteria	
1. Location of proposed compensatory mitigation site:	Click here to enter text.
2. General watershed condition: historic land use; existing land use; source of impairment; percent of impervious cover; brief description of how proposed compensatory mitigation site is consistent with restoration priorities identified in Habitat Plan	Click here to enter text.
3. Location of any invasive plant species at or near the mitigation project site; brief description of how invasive plant species on the mitigation site and in adjacent areas will be treated and managed	Click here to enter text.
4. Watershed size (area). (Use HUC 10 area)	Click here to enter text.

Section G-Description of Landscape Position of Mitigation Site	
1. Site topography (e.g., depression, slope, flat, riverine); site elevation; Land uses surrounding proposed compensatory mitigation site; adjacent land owners; existing buffer width; proposed buffer width; reasonable and foreseeable effects mitigation site will have on ecologically important aquatic or terrestrial resources, aquatic sites, cultural resources, or habitat for federally or state listed species	
Click here to enter text.	

Appendix A. (Continued)

Section H-Mitigation Site Specific Information and Baseline Information	
1. Site Information:	Existing easements, rights, or entitlements on the mitigation site; availability of water rights (if applicable), water right type, owner, water decree number; mineral rights (if applicable), mineral type(s), affects upon long-term protection of mitigation site Click here to enter text.
2. Hydrology:	Existing Hydrologic regime: Ephemeral: <input type="checkbox"/> Intermittent: <input type="checkbox"/> Perennial: <input type="checkbox"/> Estimated sources of hydrology (if different from existing): Click here to enter text. (For streams) Channel stability: Aggrading: <input type="checkbox"/> Degrading: <input type="checkbox"/> Stable: <input type="checkbox"/> Description of historic changes to channel morphology: Vertical incision/aggradation: <input type="checkbox"/> Lateral incision/aggradation: <input type="checkbox"/> Channel confinement: <input type="checkbox"/> Straightening: <input type="checkbox"/> Surface hydrology and hydraulics: Modeling (attached): <input type="checkbox"/> Field gage data (attached): <input type="checkbox"/> Direction Observations: Click here to enter text. location of site relative to hydrologic sources: Click here to enter text. Strahler stream order: Click here to enter text. connectivity to other aquatic resources: Click here to enter text. sub-surface hydrologic monitoring: Wells: <input type="checkbox"/> Piezometers: <input type="checkbox"/> Attach data: Click here to enter text. water budget depth, duration, timing: Click here to enter text.

Appendix A. (Continued)

<p>3. Soil Characteristics:</p>	<p>NRCS soil survey information (soil(s) mapped, description): Click here to enter text.</p> <p>Soils tests confirm soil(s) mapped? Y: <input type="checkbox"/> N: <input type="checkbox"/></p> <p>Soils fertility testing, soil permeability testing conducted? (information attached): Click here to enter text.</p> <p>Assessment of whether soils are appropriate for mitigation site (describe below or attach): Click here to enter text.</p> <p>Description of geology: Click here to enter text.</p> <p>Geology survey review attached? Y: <input type="checkbox"/> N: <input type="checkbox"/></p> <p>List any formations which may limit or expand mitigation site: Slips: <input type="checkbox"/> Fault Lines: <input type="checkbox"/> Seeps: <input type="checkbox"/> Landslides: <input type="checkbox"/> Other: Click here to enter text.</p>
<p>1. Habitat Characteristics:</p>	<p>Existing habitat types; presence of any known federally-designated critical habitat; historic plant communities; general description of land use(s) and land cover(s) in watershed</p> <p>Click here to enter text.</p>

Appendix A. (Continued)

Section I-Other Baseline Information	
1. Delineation of Waters of the U.S. (include location(s) of other non-jurisdictional aquatic resources;	Click here to enter text.
2. List of other resource agencies involved in approving the mitigation plan and delineation of jurisdictional boundaries (attach map)	Click here to enter text.
3. California Rapid Assessment Methodology (CRAM) assessment of mitigation site (attach)	Click here to enter text.
4. Existing and planned land uses adjacent to proposed mitigation site	Click here to enter text.
5. Historic conditions:	Aerial photos: <input type="checkbox"/> (attached) Site changes (agricultural diversions, deep ripping, land levelling, mining, other): Click here to enter text.
6. Interviews: land managers, adjacent land owners, ranchers (flood events, vandalism, homeless use, opportunities for education, general history, other) attach	Click here to enter text.

Appendix A. (Continued)

Section J-Mitigation Work Plan	
1. Geographic boundaries	Click here to enter text.
2. Construction method(s)	Click here to enter text.
3. Timing (implementation schedule)	Click here to enter text.
4. Sequence of construction	Click here to enter text.
5. Sources of water, connections to existing aquatic resources	Click here to enter text.
6. Plant species list attached	<input type="checkbox"/> attached
7. Source of seeds/plants	Click here to enter text.
8. Planting method(s)	Click here to enter text.
9. Plan depicting where and when species will be planted attached	<input type="checkbox"/> attached
10. Invasive/exotic species control plan attached	<input type="checkbox"/> attached
11. Proposed grading plan (check box). Drawing shall include: elevations, slopes of substrate attached grading plan drawing.	<input type="checkbox"/> attached
12. Soil management	Click here to enter text.
13. Erosion control measures; locations of fencing to protect against overgrazing or rooting by feral pigs which can cause trampling of vegetation, soil compaction, development of "cow contours," and bank destabilization	Click here to enter text.
14. Itemized Budget for wetlands projects, attach table with include at a minimum costs for following items:	<input type="checkbox"/> land acquisition <input type="checkbox"/> planning and engineering design <input type="checkbox"/> legal fees <input type="checkbox"/> mobilization <input type="checkbox"/> construction <input type="checkbox"/> monitoring

Appendix A. (Continued)

<p>15. For stream or pond restoration projects include Section-K items 1-14 and the following:</p>	<ul style="list-style-type: none"> (i) Rosgen classification including: bankfull depth mean and max; floodprone width; width/depth ratio; channel slope; sinuosity Click here to enter text. (ii) Planform geometry Click here to enter text. (iii) Channel cross-sections Click here to enter text. (iv) Longitudinal profile Click here to enter text. (v) Sediment grain sizes Click here to enter text. (vi) Watershed size Click here to enter text. (vii) Design discharge Click here to enter text. (viii) Description of avoidance and minimization measures (Attachment C of the RGP Application Package) Click here to enter text. (ix) Description of bioengineering (design should include native materials); description of: bank stabilization on targeted stream reaches, placement of large woody debris, gravel placement and cleaning Click here to enter text. (x) Description of riparian plantings (as appropriate) and removal of invasive, non-native plants Click here to enter text. (xi) Description of any existing riffle-pool complexes, and/or special aquatic sites Click here to enter text. (xii) Discussion of existing aquatic fauna and their times of breeding/spawning Click here to enter text. (xiii) Location of grazing rotation and targeted fencing to maintain appropriate vegetation and to reduce existing or potential erosion issue Click here to enter text. (xiv) Description of avoidance measures (e.g., fencing, flagging, contractor training, etc.) Click here to enter text.
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Appendix A. (Continued)

<p>16. For Preservation proposals include Section-K item 1 from above and the following:</p>	<p>(i) Preservation may be used to provide compensatory mitigation if all criteria outlined in the Department of the Army, Corps of Engineers 33C.F.R. Part 332, §332.3 (h)(1)-(2). Check box and provide description for all five criteria for each Preservation site: 1) preservation site provides important physical, chemical, or biological functions to the watershed; 2) preservation site contributes significantly to the ecological sustainability of the watershed; 3) Preservation is appropriate, practical, and necessary to the success of the Habitat Plan; 4) the resources are under threat of destruction or adverse modification which could adversely affect the Habitat Plan; 5) The preserved site will be permanently protected through an appropriate real estate or other legal instrument Click here to enter text.</p> <p>(ii) List all physical, chemical, or biological functions necessary for the Habitat Plan covered species recovery, including covered species that rely on aquatic habitats, are present Click here to enter text.</p> <p>(iii) Explanation how preservation site contributes to meeting the goals and objectives of the Habitat Plan, including preservation of aquatic resources; that are threatened by destruction or other adverse modification; and that meet the requirements of the NCCP Act (e.g., lands that provide ecosystem connectivity)</p>
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Appendix A. (Continued)

Section K-Determination of Credits	
<p>Credits for jurisdictional wetlands or non-wetland waters will not be available until after restoration/creation projects have been constructed. The number of credits available from a project will reflect the difference between pre- and post- project site conditions as determined by a Corps verified wetland delineation and functional assessment. One credit will be equal to one acre of jurisdictional wetlands or waters.</p> <p>Only projects that generate credits in excess of the current mitigation obligation (i.e., credits already allocated for implementation of covered activities prior to establishment of this Program) for the service area will be considered eligible for this Program. Restoration/creation projects that receive collaborative funding from multiple sources are encouraged under the Program, as allowed for in federal regulations (33 CFR Part 332). When determining the ultimate allocation of credit for the Program from a collaboratively funded project, the Habitat Agency may only claim mitigation credit proportional to the funding amount the Habitat Agency provided to the project, including cash and in-kind contributions.</p>	
1. Number and resource type credits to be provided:	Click here to enter text.

Section L-Site Protection Instrument
See Appendix C

Section M-Maintenance Plan	
1. Description of the compensatory mitigation site's maintenance activities within the Reserve System necessary to meet the Program's biological goals and objectives.	
2. Maintenance schedule attached	<input type="checkbox"/> attached
3. Maintenance costs table should be attached and include the following: costs related to reserve system staff to conduct maintenance; costs related to hiring contractors or delegation of management and maintenance activities to other local agencies with expertise in management and maintenance activities; to purchase or lease of equipment and supplies required to implement management and maintenance actions; construction and operation of wells and water pumping facilities; invasive species control; pond maintenance (when applicable); evaluation of monitoring results; costs to develop or renew grazing leases (when applicable)	<input type="checkbox"/> attached

Appendix A. (Continued)

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Appendix A. (Continued)

Section N-Ecological Performance Standards

The following ecologically-based performance standards (Habitat Plan Success Criteria) shall be used to determine if the compensatory mitigation project is achieving its objectives. The following performance standards categories shall be measured and based on the variables of functional capacity described in the California Rapid Assessment Methodology (CRAM) and compared to a reference aquatic resource of similar type and landscape position. Performance standards and success criteria will be based on SPD's Uniform Performance Standards and will include:

- a. Requirements for $\geq 80\%$ survival of planted stock.
- b. Requirements for $\geq 75\%$ of reference site plant density or percent cover by hydrophytic plants.
- c. Requirement of $\geq 75\%$ of reference site target percent cover, density, or height of native species.
- d. Requirement of $\geq 75\%$ of reference site target species richness amount.
- e. Use of indices to compress large amounts of information.
- f. Use of Corps-approved reference wetlands or other aquatic resources sites as a benchmark.
- g. Requirements limiting occurrence of exotic and nuisance plant species to $\leq 100\%$ of reference site, with zero tolerance for species considered highly invasive per the Cal-IPC List.

Additionally, performance standards specific to aquatic resource type will be required to measure physical, hydrologic, and occasionally water quality conditions at mitigation sites.

The ecological performance standards shall be attached in table format and clearly document the interim and final performance requirements of the compensatory mitigation site pursuant to guidance described in the Corps' Quality Management System Document 12505: SPD Uniform Performance Standards for Compensatory Mitigation Requirements. The California Rapid Assessment Methodology (CRAM) functional/condition assessment method shall be used to assess a mitigation project's "before" and "after" conditions, and the project's "after" score shall be included as a performance standard.

Successful attainment of the ecological performance standards shall be based on minimum five (5) year monitoring period. The Corps shall make the final determination on ecological performance standards for each specific mitigation plan.

attached

Appendix A. (Continued)

Section O-Monitoring Requirements

1. Monitoring Methods: should include quantitative sampling methods following established, scientific protocols (e.g., California Native Plant Society protocols) (Also see the 1987 Wetland Delineation Manual and applicable regional supplement). Sampling documentation, as part of monitoring reports, should include: maps showing locations of sampling points, transects, quadrants, etc. In addition, permanent photo stations should be established coincident with sampling locations.
2. Compensatory mitigation projects shall have a minimum monitoring period of five years. Monitoring periods may also be extended if the compensatory mitigation project is not meeting its ecological performance standards and the district engineer determines more time is needed to assess success. As an option to make extended monitoring periods more practicable, monitoring periods exceeding the 5-year minimum may have less frequent monitoring (e.g., quantitative monitoring every 2 years for a 10-year monitoring period, every 3 years for a 15-year monitoring period, etc.). In deciding on monitoring periods differing from the minimum five years, one should consider the aquatic resource type required as compensatory mitigation, as well as the method of compensatory mitigation. For example, wetland rehabilitation may take less time to achieve ecological performance standards than wetland re-establishment at a highly disturbed site.
3. Upon completion of the construction of each mitigation site, a notification memorandum will be provided to the Corps that contains: date(s) all compensatory mitigation construction activities were completed; modifications (if any) to the originally-approved schedule for future mitigation monitoring, implementation and reporting pursuant to final, Corps-approved site-specific MMP; summary of compliance status with each special condition of the associated Corps permit or verification (including any noncompliance previously having occurred or currently occurring and corrective actions taken to achieve compliance); color photographs of the aquatic habitats constructed at the compensatory mitigation site. For those aspects directly associated with pre-existing waters of the U.S., before photos shall also be provided; one copy of "as built" drawings for the entire compensatory mitigation project prepared in accordance with SPD Map and Drawing Standards
4. Permittee shall attach a completed Corps of Engineers South Pacific Division Mitigation and Monitoring Report Form, (Version September 26, 2014) with the following supporting data: vicinity map(s); compensatory Mitigation Site Map(s) (including the following information): Polygons by compensatory mitigation type as described in the approved site-specific MMP; photo station locations; and annotated locations of sample points/transects/quadrants/soil pits/monitoring stations. Note: maps must comply with the SPD Map and Drawings Standard; photographic record of the site during most recent monitoring visit at designated photo stations; results of functional/condition assessments if required to be used for the compensatory mitigation project; narrative report (optional); critical survey elevations, properly benchmarked (if applicable); as-built drawing(s) (if any change from authorized design)

Appendix A. (Continued)

Section P-Long Term Management Plan
See Appendix D

Section Q-Adaptive Management Plan	
<p>If monitoring or other information indicates that the compensatory mitigation site is not progressing towards meeting its performance standards as anticipated, the permittee shall notify the District Engineer as soon as possible. The District Engineer in consultation with the Habitat Agency and the Permittee will evaluate and pursue measures to address deficiencies in the compensatory mitigation site. Performance standards may be revised in accordance with an approved adaptive management plan.</p> <p>At a minimum identify the following:</p>	
1. Responsible parties who will identify deficiencies in the mitigation plan and develop measures in the event performance standards are not met.	Click here to enter text.
2. The following process shall be used to determine measures to correct deficiencies: Site modifications; proposed design changes; revisions to maintenance requirements; revisions to monitoring requirements	Click here to enter text.
3. Problems identified that triggered need for adaptive management:	<p>Fire:</p> <p>Natural Disaster:</p> <p><input type="checkbox"/></p> <p>Unanticipated channel instability:</p> <p><input type="checkbox"/></p> <p>Infestation of non-native, invasive plant or Animal species:</p> <p><input type="checkbox"/></p> <p>Anthropogenic problems:</p> <p><input type="checkbox"/></p> <p>Other: Click here to enter text.</p>
4. Recommended course of action:	<p>Small Scale (e.g., vandalism, trash, small scale weed or pest infestations) rectify as discovered, describe in report:</p> <p><input type="checkbox"/></p> <p>Large Scale (e.g., re-grading, re-planting more than 20% of site, supplemental soil amendments, large scale weed removal, irrigation issues, other) Coordinate with</p>

Appendix A. (Continued)

	Corps. <input type="checkbox"/>
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Section R-Financial Assurances

The Habitat Agency will ensure that the fees paid for impacts are sufficient to address the short- and long-term mitigation obligations associated with each IMS compensatory mitigation site. The Habitat Agency will demonstrate assured funding by providing the endowment account balance to the Corps annually, with a summary of the proportional obligations of the IMS compensatory mitigation sites.

Appendix A. (Continued)

Section S-Other Information	
1. Other Agency Permits (if required)	Click here to enter text.
2. Real estate records(if applicable) attached): Preliminary Title Report, legal description, parcel map; plat map; title insurance	<input type="checkbox"/> attached
3. Phase I Environmental Site Assessment attached	<input type="checkbox"/> attached
4. Biological Resources Survey attached	<input type="checkbox"/> attached
5. Cultural, Historical, Archaeological, and Native American Resources Report attached	<input type="checkbox"/> attached
6. GIS Data (polygons only): submit within 60 days of Corps written approval of mitigation plan and include the following:	<p>GIS data provided on a digital medium (attach CD or DVD)</p> <p><input type="checkbox"/></p> <p>File transfer protocol via shapefile format <input type="checkbox"/></p> <p>include maps of mitigation site in accordance with Corps SPD Map and Drawing Standards (check box); include as-built GIS data (polygons only) if any deviations have occurred</p> <p><input type="checkbox"/></p>

Appendix A. (Continued)

Table 1: Mitigation Site Description, Pre and Post Condition

Site No.	Pre-Construction Site Conditions	Post-Construction Site Conditions								FCAM ⁶ CRAM (if used)
	Habitat Types ¹	Habitat Types ²	Vegetation ³	Hydrology	Mitigation Method	Acres	Lin. Ft	Cowardin ⁴	HGM ⁵	
<i>Wetland Waters of the U.S.</i>										
1										
2										
3										
										Total:
<i>Non-Wetland Waters of the U.S.</i>										
4										
5										
6										
										Total:
<i>Buffer Habitats</i>										
7										
8										
9										
10								N/A		
										Total:
<i>Non-Aquatic Mitigation Excluding Buffer Areas⁷</i>										
11										
12										
13										
										Total:

Appendix A. (Continued)

Table 2 Instructions:

1. Site numbers should correspond to discrete sites shown and labeled on enclosed figure(s) (maps), cross-section(s), and GIS layer(s).
2. Habitat Types: Habitat types are: willow, riparian forest and scrub, mixed riparian forest and woodland, Central California, sycamore alluvial woodland, coastal and valley freshwater marsh, seasonal wetlands, ponds, and streams. Habitat types for pre-construction condition can be listed multiple times if the habitat is being utilized for multiple post-construction mitigation requirements.
3. Vegetation Classification: Vegetation community types are based on the most recent widely accepted classification system. The communities used in this example are from A Manual of California Vegetation by Sawyer and Keeler-Wolf.
4. Cowardin: Use the Classification of Wetlands and Deepwater Habitats of the United States to identify the System, Subsystem, and Class. For example: The Southern willow scrub in this example table is classified as System Riverine (R), Subsystem Intermittent (4), and Class Streambed (SB). The alkali marsh would be System Palustrine (P), there is no Subsystem for Palustrine wetlands, and Class. Unconsolidated Bottom and the Freshwater Marsh would be System Palustrine (P) and Class Emergent Marsh (EM).
5. HGM: Use the Hydrogeomorphic (HGM) Classification of Wetlands to identify the appropriate class. There are seven HGM classes, including Riverine, Slope, Mineral Soil Flats, Organic Soil Flats, Depressional, Estuarine Fringe, and Lacustrine Fringe. For Example: The Southern willow scrub in this example table is classified as Riverine and so is alkali marsh.
6. FCAM: If a functional or condition assessment method (FCAM) is used, identify the FCAM in the column header and complete that column by entering FCAM subclasses. The California Rapid Assessment Method (CRAM) is used as an example.
7. Refers to areas sometimes included in mitigation plans as a result of state or federal wildlife protection requirements (e.g., Endangered Species Act). Non-aquatic mitigation is included within a mitigation plan to address the needs of a separate resource agency, but is not considered compensatory mitigation for purposes of DA permits.

Appendix A
Site-Specific Mitigation Monitoring Plan

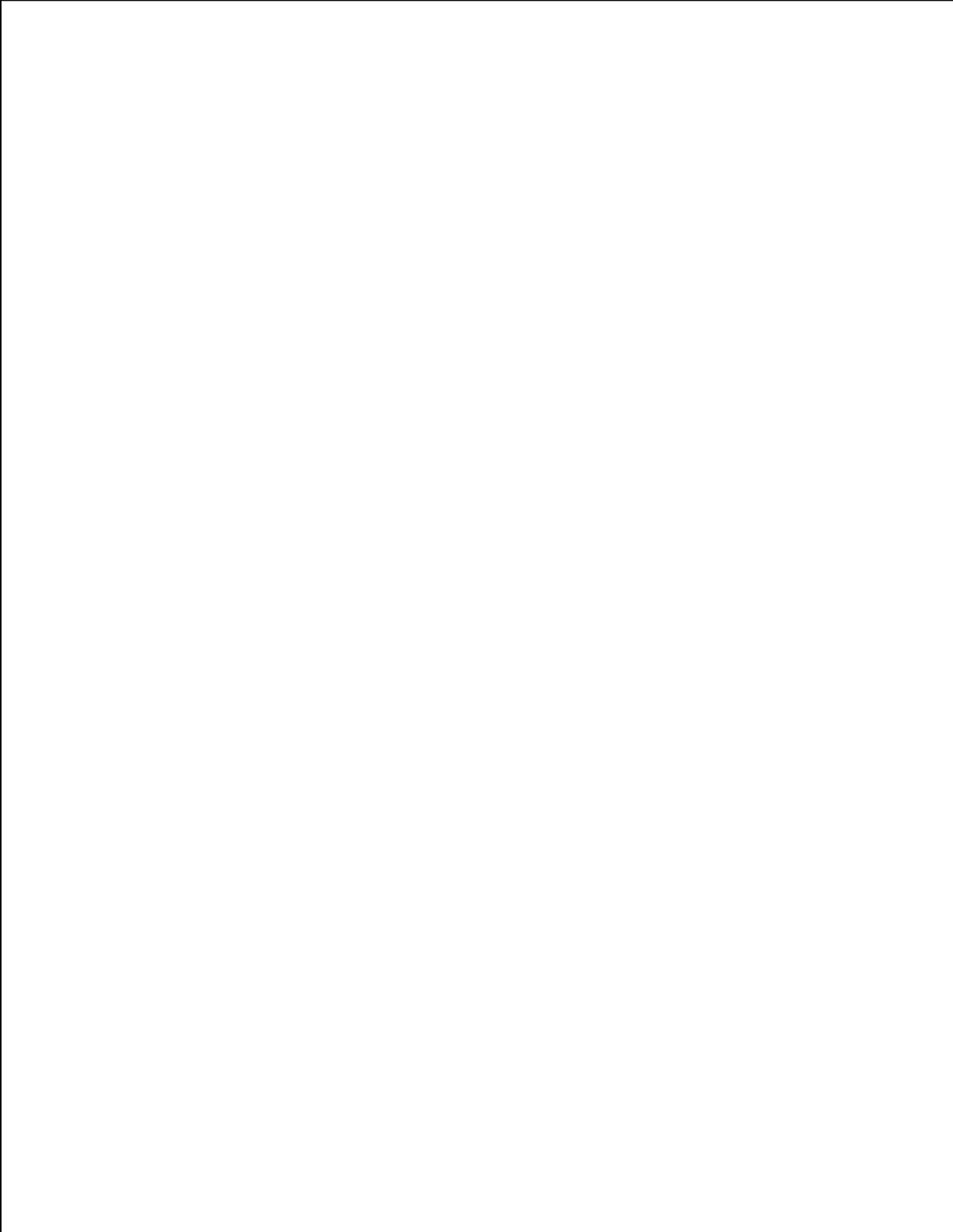
Appendix B
Project-Specific Mitigation Plan Template

The following information will be provided for project-specific mitigation proposals.

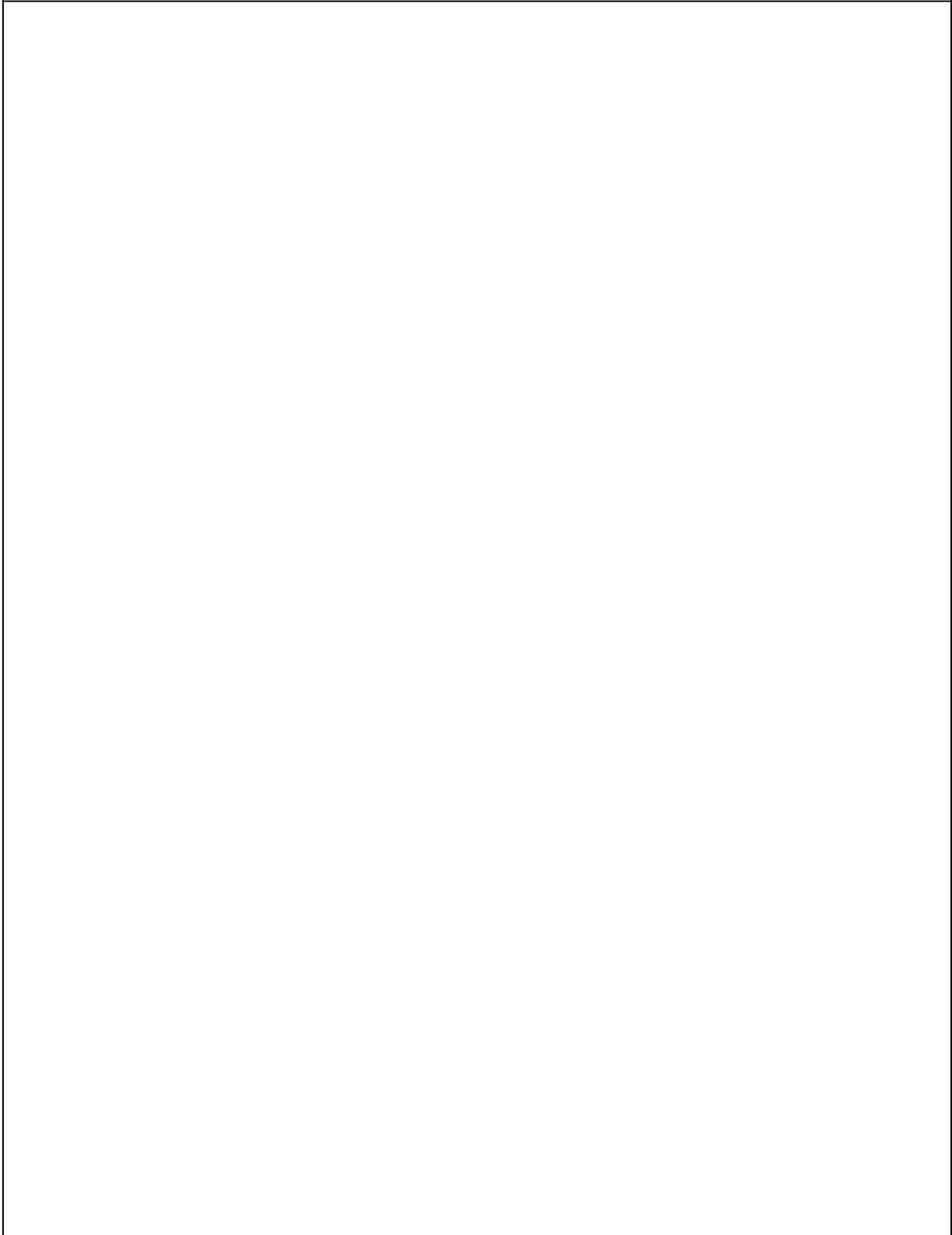
Section A: Project Information		
1. Project Name: Click here to enter text.	2. DA file number(s): Click here to enter text.	3. Permittee name: Click here to enter text.
4. Project Site Street Address Click here to enter text.	5. Project purpose: Click here to enter text.	6. Covered activity type: Click here to enter text.
7. Name of waterbody directly impacted by project or nearest named waterbody: Click here to enter text.	8. Area (in acres) of wetland waters of the U.S. to be filled: Click here to enter text.	9. Cowardin class(es) of wetlands filled: Click here to enter text.
10. Area (in acres) and/or length (in linear feet) of non-wetland waters of the U.S. to be filled: Click here to enter text.	11. Description of non-wetland waters (open water; perennial, intermittent, or ephemeral creek): Click here to enter text.	
Section B: IMS Compensatory Mitigation Project Information		
1. IMS Mitigation Site Name: Click here to enter text.	2. Required mitigation ratio(s) (per RGP and specific to aquatic resources landcover type): Click here to enter text.	3. Acreage(s) and method(s) of mitigation to be allocated for the project(per aquatic resource landcover type; e.g., 1 acre of freshwater marsh re-establishment, 200 linear feet of perennial preservation): Click here to enter text.
The following information is required per 33 CFR §332.4(c)(2) through (14). Provide a brief description for each item and then cite the section in the associated IMS Mitigation and Monitoring Plan where the information is provided in greater detail.		
4. Objectives: Click here to enter text.	5. Site Selection: Click here to enter text.	6. Site Protection Instrument: Click here to enter text.
7. Baseline Information: Click here to enter text.	8. Determination of Credits Click here to enter text.	9. Mitigation Work Plan: Click here to enter text.
10. Maintenance Plan: Click here to enter text.	11. Performance Standards: Click here to enter text.	12. Monitoring Requirements: Click here to enter text.
13. Long-term Management Plan: Click here to enter text.	14. Adaptive Management Plan: Click here to enter text.	15. Financial Assurances: Click here to enter text.
16. Other Information: Click here to enter text.		

Section C: Maps and Exhibits

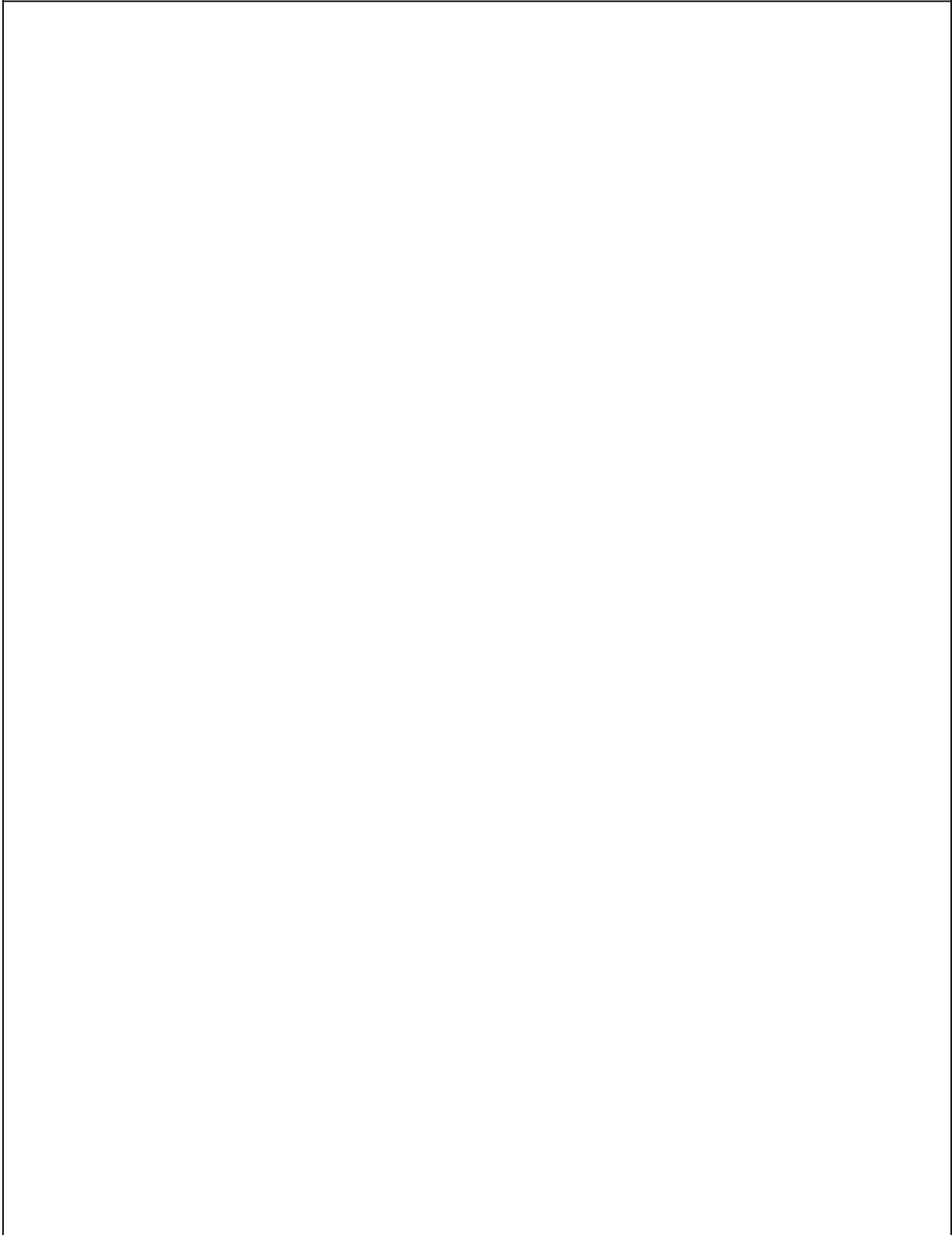
Project Vicinity Map:



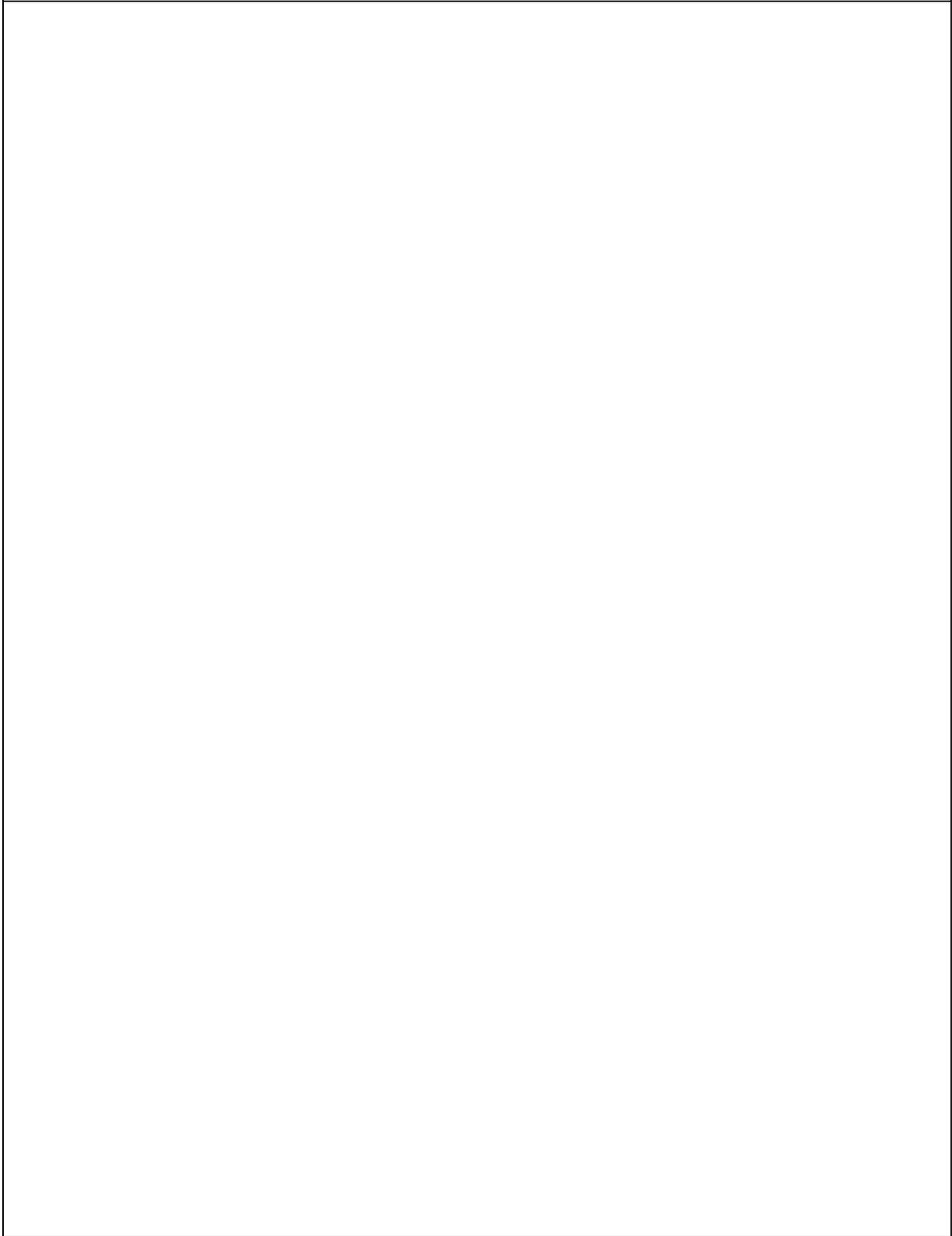
Project Location Map:



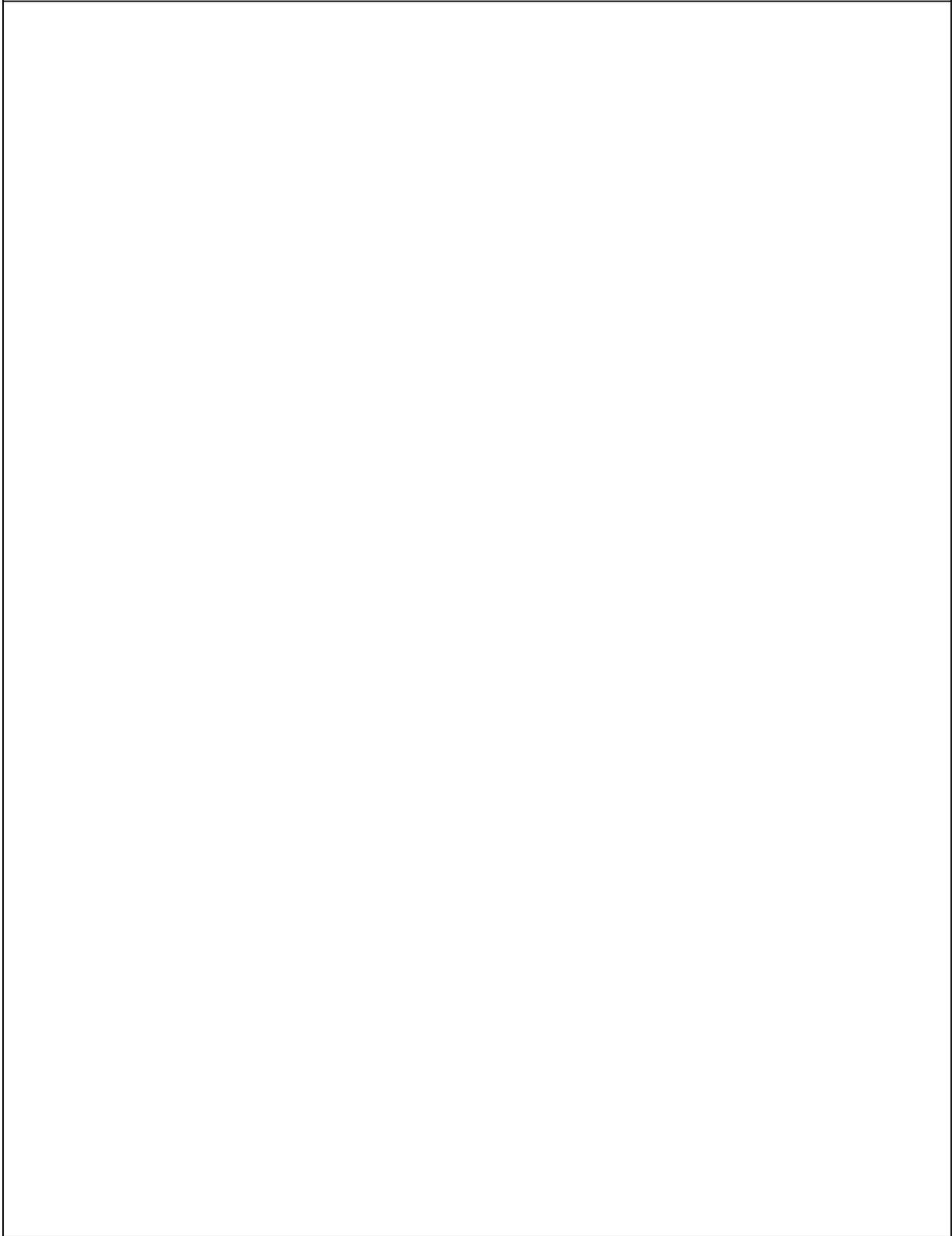
Project Jurisdictional Delineation Map:



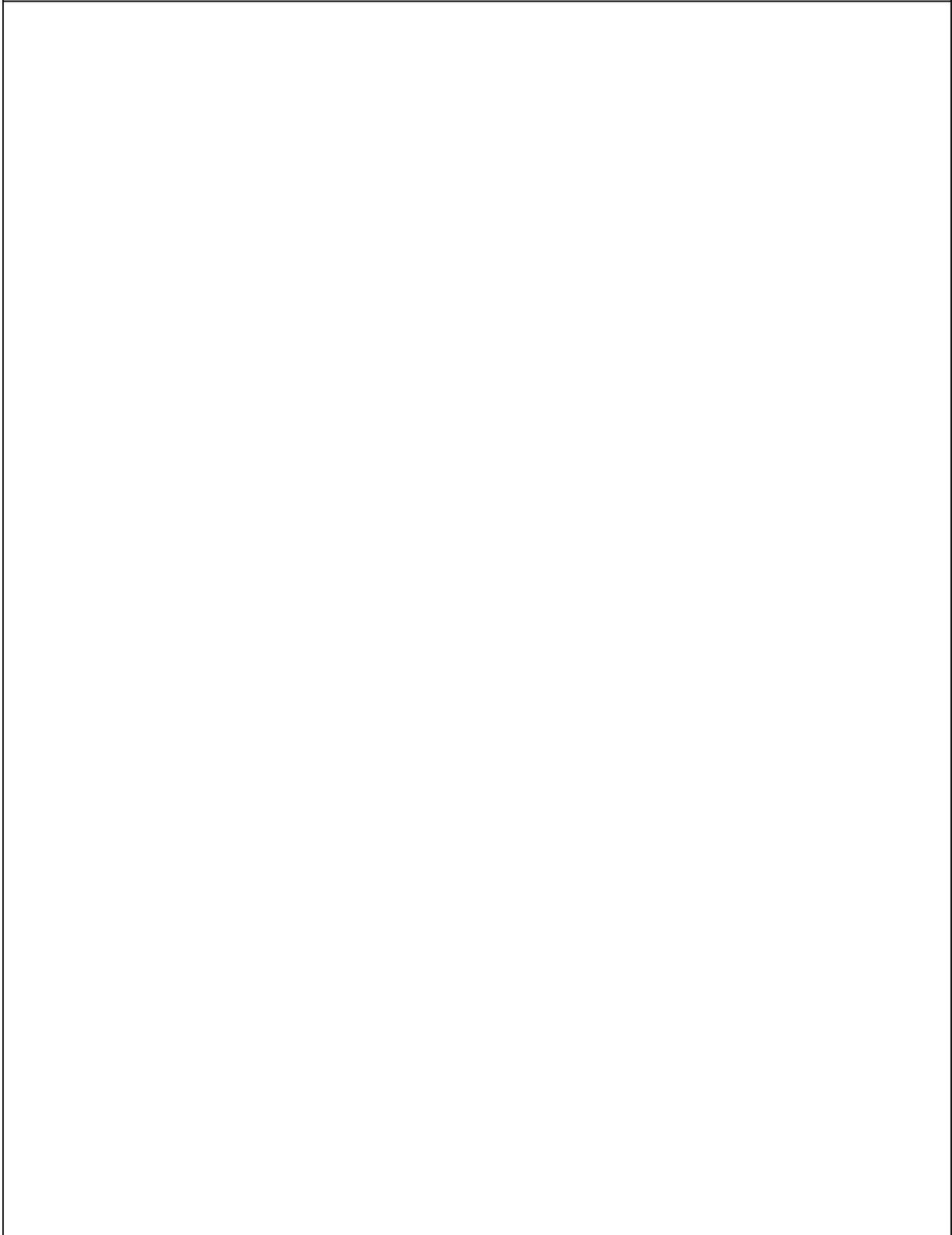
IMS Mitigation Site Vicinity Map:



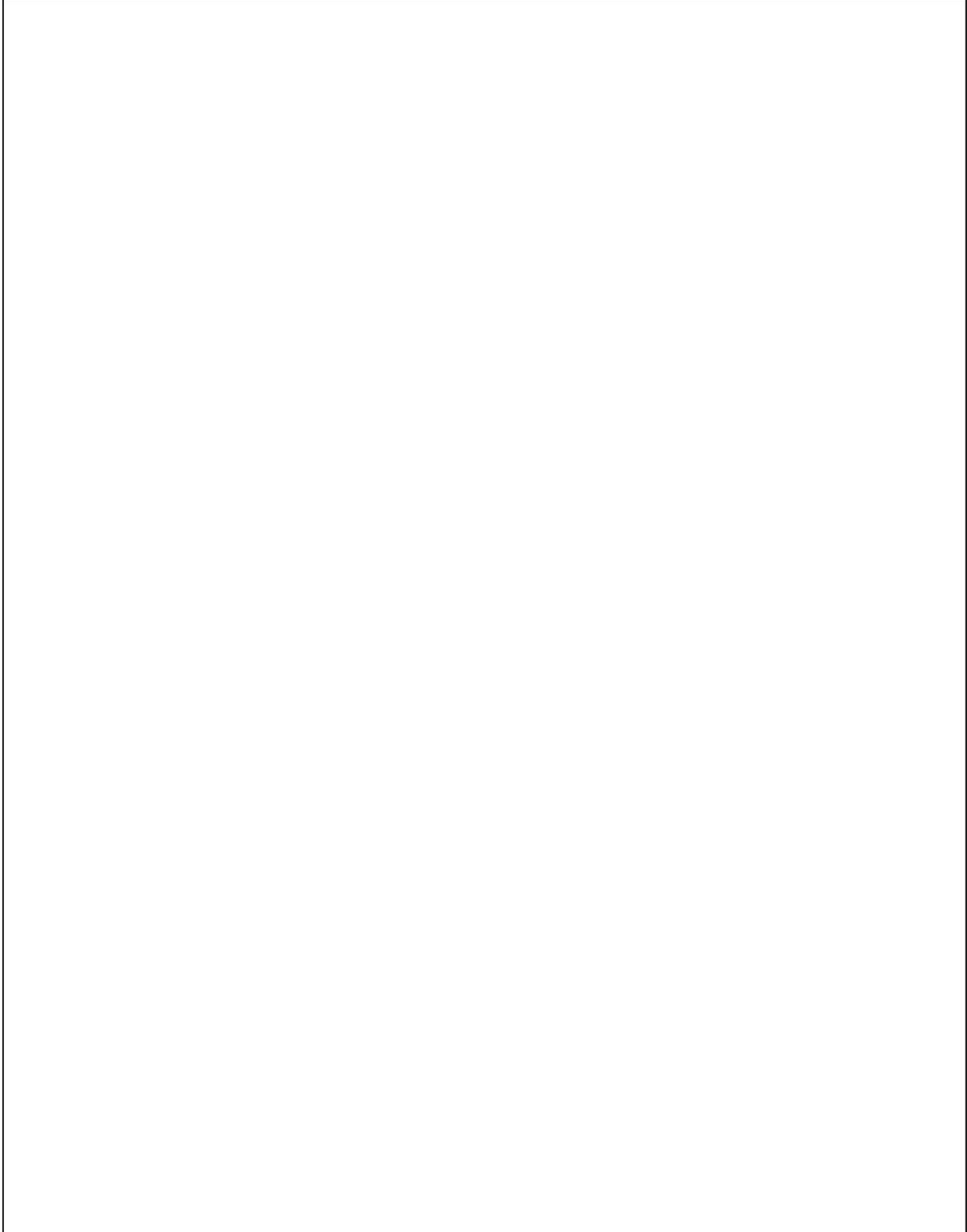
IMS Mitigation Site Location Map:



IMS Mitigation Site Plan Map:



Project Specific Mitigation Site identified and delineated on IMS Mitigation Site Plan Map (indicated with DA file number):

A large, empty rectangular box with a black border, intended for the user to provide details about project-specific mitigation sites. The box is currently blank.



RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

[Easement Holder]
[Easement Holder's Address]
Attention: _____

)
)
)
)
)
)
)

Space Above Line for Recorder's Use Only

TEMPLATE NOTES:

- *This template is prepared for use on privately-owned fee lands. Certain of the provisions below will likely require modification for conservation easements covering Permittee- or other public entity- owned properties (i.e. management plan, recreational uses, and condemnation provisions.)*
- *Consistent with the Habitat Plan, this template assumes the Implementing Entity will hold the conservation easements over privately-owned fee lands. Italicized bracketed language is included below for insertion in conservation easements the Implementing Entity determines will be held by another nonprofit organization, as allowed in the Habitat Plan.*
- *This template does not identify recreational/public access as allowable uses. Additional provisions (i.e. specific restrictions and allowed uses, as well as reference to “recreation plan” contemplated by SVHCP) would need to be included if any recreational uses are contemplated for the Easement Area/Property [use Easement Area or Property, as applicable depending on whether part or all of a legal parcel is being committed to the reserve area, selection made in Recital A].*
- *This template also assumes the Implementing Entity, and not the Landowner, will conduct the management and monitoring activities set forth in the Management Plan.*

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT (the “**Agreement**”) is made this _____ day of _____, 20__, by and between [insert full legal name of landowner] (“**Landowner**”), and [Santa Clara Valley Habitat Agency, a California Joint Powers Authority] (“**Easement Holder**”). Landowner and Easement Holder are also referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Landowner is the [insert description of ownership interest] of certain real property containing approximately _____ acres, located in the County of Santa Clara, State of California, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference

(the “**Property**”) and depicted on the map attached hereto as **Exhibit B** and incorporated herein by reference.

OR

A. Landowner is the [*insert description of ownership interest*] of certain real Property located in the County of Santa Clara, State of California, more particularly known as Assessor’s Parcel Number(s) XXXXXX. Landowner intends to grant this Conservation Easement over approximately xx acres of the Property (the “**Easement Area**”), as described in **Exhibit A** attached hereto and incorporated herein by this reference and depicted on the map attached hereto as **Exhibit B** and incorporated herein by reference.

B. This Agreement is being executed and delivered to satisfy certain habitat conservation requirements set forth in the following documents (collectively, the “**Habitat Plan Instruments**”):

(i) The Santa Clara Valley Habitat Plan (“**Habitat Plan**”), dated _____, prepared by County of Santa Clara County (“**County**”), City of San Jose (“**San Jose**”), City of Gilroy (“**Gilroy**”), City of Morgan Hill (“**Morgan Hill**”), Santa Clara Valley Water District (“**Water District**”), and Santa Clara Valley Transportation Authority (“**VTA**”), and approved by the United States Fish and Wildlife Service (“**USFWS**”) under Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 *et seq.*, as it may be amended from time to time) (“**ESA**”), and by California Department of Fish and Wildlife (“**CDFW**”) under the California Natural Community Conservation Planning Act (California Fish and Game Code Section 2800 *et seq.*, as it may be amended from time to time) (“**NCCPA**”); and

(ii) Implementing Agreement for the Santa Clara Valley Habitat Plan (the “**Implementing Agreement**”), dated August 14, 2012, by and among USFWS and CDFW (collectively, the “**Wildlife Agencies**”), Santa Clara Valley Habitat Plan Implementing Agency, a Joint Powers Authority (“**JPA**” or “**Implementing Entity**”), County, San Jose, Gilroy, Morgan Hill, Water District, and VTA (collectively, JPA, County, San Jose, Gilroy, Morgan Hill, Water District, VTA, are referred to herein as “**Permittees**”); and

(iii) The federal incidental take permit issued by USFWS to Permittees for the Habitat Plan pursuant to Section 10 of ESA; and

(iv) The state incidental take permit issued by CDFW to Permittees for the Habitat Plan pursuant to the NCCPA.

(v) The Regional General Permit issued by the U.S. Army Corps of Engineers (“**USACE**”) to the Permittees for compliance with the federal Clean Water Act. _

C. CDFW has jurisdiction, pursuant to Fish and Game Code Section 1802, over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for

biologically sustainable populations of those species, and CDFW is authorized to hold easements for these purposes pursuant to Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. USFWS is an agency of the United States Department of the Interior and is authorized by Federal law to be a third party beneficiary of the Conservation Easement and to administer the Federal Endangered Species Act, 16 U.S.C. § 1531, et seq. (“ESA”), the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, and the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f), et seq.

E. The USACE has jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, et seq.

F. The Easement Holder is a California joint powers authority, and authorized to hold conservation easements pursuant to, among other provisions of law, California Civil Code Section 815.3.

G. In addition to serving as the holder of the conservation easement interest created under this Agreement, JPA also serves as the “Implementing Entity” of the Habitat Plan, and as such, is responsible for overseeing implementation of the Habitat Plan Instruments, including carrying out planning and design, habitat restoration, monitoring, adaptive management programs, and periodic coordination with USACE, USFWS and CDFW. *[When used herein, the term “Implementing Entity” refers to the JPA acting in its capacity as the Implementing Entity under the Habitat Plan and the Implementing Agreement, which confer separate rights and obligations on JPA that will survive any future transfer of the Conservation Easement by JPA. In contrast, the term “Easement Holder” is used herein to refer to JPA as the initial holder of such conservation easement interest, as well as any other qualified successor or assignee to which this conservation easement interest has been transferred in accordance with the terms and conditions set forth below.] [TEMPLATE NOTE: The italicized language above will require revision if JPA is not the Easement Holder.]*

H. The *Easement Area/Property* possesses wildlife, habitat values, and associated open space values that are of great importance to Easement Holder, the people of Santa Clara County and the people of the State of California and of the United States (the “**Conservation Values**”). The **Initial Conservation Values**, described in **Exhibit C** attached hereto and incorporated herein by reference, are those Conservation Values that are identified in the Habitat Plan and present on the Easement Area/Property at the time of the execution of the Agreement.

I. Following recordation of this Agreement, the *Easement Area/Property* will be incorporated into the Reserve System (as such term is defined in the Habitat Plan) (“**Reserve System**”) and will count toward the land acquisition requirements set forth in the Habitat Plan.

J. The Implementing Entity *[has developed] [will develop]* a management plan, known as “_____,” that applies to the *Easement Area/Property* (the “**Management Plan**”). The Management Plan *[has been] [will be]* developed in accordance with the applicable requirements of the Habitat Plan Instruments *[and [identify any applicable reserve unit management plans]]*.

K. The Management Plan *[is] [upon completion, will be]* incorporated herein by reference. Landowner and Easement Holder recognize that changes (e.g., in weather cycles, natural resource management technologies, conservation practices) may dictate an adaptation in the management of the *Easement Area/Property*, consistent with the purposes of this Conservation Easement and the Habitat Plan Instruments. It may be revised from time to time with the written approval of the Landowner, Easement Holder and the Wildlife Agencies, so long as the revisions are consistent with the requirements of the Habitat Plan Instruments *[and [identify applicable reserve unit management plans]]*. A full and complete copy of the current Management Plan, including any such revisions, shall be kept on file at the offices of the Implementing Entity. *[Include if the Management Plan has not been developed as of the effective date of the agreement: The Easement Area/Property will be managed in accordance with the applicable requirements of the Habitat Plan until the Management Plan is developed.]*

L. The State of California recognizes the public importance and validity of conservation easements by enactment of California Civil Code Section 815 *et seq.*

AGREEMENTS

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815 *et seq.*, Landowner hereby voluntarily grants and conveys to Easement Holder, its successors and assigns, a conservation easement in gross forever in, on, over and across the Easement Area/Property described in Exhibit A and depicted on Exhibit B (the “**Conservation Easement**”), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Easement Area/Property, and the parties agree as follows:

1. **Purpose.** The purpose of this Conservation Easement is to ensure that existing and future natural values and associated wildlife and habitat values of the *Easement Area/Property* will be forever protected by preventing any use of the *Easement Area/Property* that would impair or interfere with the Conservation Values. Landowner intends that this Conservation Easement will confine the use of the *Easement Area/Property* to such activities that are consistent with the purposes set forth herein, including, without limitation, those involving the preservation, restoration, and enhancement of the *Easement Area/Property*’s Covered Species and their habitats.

2. **Baseline Documentation Report.** The parties acknowledge that a Baseline Documentation Report (the “**Report**”) has been prepared for the *Easement Area/Property* and approved in writing by Landowner and Easement Holder. A copy of the Report is on file with Landowner and Easement Holder at their respective addresses for notices set forth below. The parties agree that the Report contains an accurate representation of the biological and physical condition of the *Easement Area/Property* at the time this Agreement is recorded in the Official Records of Santa Clara County (“**Official Records**”), including a full inventory of all of the *Easement Area/Property*’s Covered Species and natural communities found thereon. Notwithstanding the foregoing, if a controversy arises with respect to the nature and extent of the physical or biological condition of the *Easement Area/Property* or the allowed uses of the *Easement*

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Area/Property, the parties shall not be foreclosed from utilizing any and all other relevant documents, surveys or other evidence or information to assist in the resolution of the controversy.

3. **Rights of Easement Holder.** To accomplish the purposes of this Conservation Easement, Landowner hereby grants and conveys the following rights to Easement Holder:

(a) To preserve, protect, sustain, restore, and enhance the Conservation Values for the *Easement Area/Property* described in **Exhibit C** or which develop on the *Easement Area/Property* in accordance with the Management Plan and the terms and conditions of this Conservation Easement;

(b) To enter upon the *Easement Area/Property* to monitor Landowner's compliance with, and to otherwise enforce the terms of, this Conservation Easement, and for scientific research necessary to support monitoring and in order to support adaptive management of the Conservation Values; *provided*, that Easement Holder shall not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the *Easement Area/Property*;

(c) To enter upon the *Easement Area/Property* to carry out, at Easement Holder's sole cost and expense, those management and monitoring requirements applicable to the Easement Area/Property that are set forth in the Management Plan and in Habitat Plan Chapters 5 and 7, *[including, without limitation, installation and maintenance of fencing around the perimeter of the Easement Area/Property to the extent referenced in the Management Plan as necessary to protect the Conservation Values;]* *provided*, that Easement Holder shall use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the *Easement Area/Property*;

(d) To prevent any activity on or use of the Easement Area/Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area/Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement;

(e) To require that all mineral, air and water rights held by Landowner that Easement Holder deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the *Easement Area/Property* shall remain a part of and be put to beneficial use upon the *Easement Area/Property*, consistent with the purposes of this Conservation Easement; and

(f) All present and future development rights and wind power rights allocated, implied, reserved or inherent in the *Easement Area/Property*; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property. Landowner understands and agrees that nothing in this Conservation Easement relieves Landowner of any obligation or restriction in relation to the development or use of the *Easement Area/Property* imposed by law, including but not limited to local land use restrictions.

Except where there is an imminent threat to the *Easement Area/Property* or its Conservation Values, Easement Holder and its employees, contractors or agents will only enter the Easement Area/Property at reasonable times and with at least forty-eight (48) hours advance notice to Landowner. The Landowner may waive these requirements in whole or in part by written notice to Easement Holder.

4. **Prohibited Uses.** Any activity on or use of the *Easement Area/Property* that adversely affects the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, Landowner, Landowner's personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or allowing any of the following uses and activities on the *Easement Area/Property*, unless, and then only to the extent that, a generally prohibited activity set forth below is: (i) an allowed use or practice (e.g., agricultural, rangeland or recreational uses) set forth on **Exhibit D** attached hereto and incorporated herein by reference; (ii) a management practice set forth in the Management Plan, (iii) necessary in connection with the performance of any of the conservation actions described in Habitat Plan Chapter 5; or (iv) otherwise necessary to maintain or enhance the Conservation Values:

- (a) Unseasonal watering;
- (b) Use of fertilizers, pesticides, biocides, herbicides or other chemicals;
- (c) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, excepting off-road vehicle use required to conduct any allowed management practice set forth in the Management Plan;
- (d) Any construction, reconstruction, relocation or placement of any road, building, billboard, fencing, or sign, or any other structure or improvement of any kind, or altering the surface or general topography of the *Easement Area/Property* without written approval by the Easement Holder and Wildlife Agencies unless otherwise allowed in the Management Plan;
- (e) Agricultural uses, including, without limitation, vineyards, nurseries, or intensive livestock use (e.g., dairy, feedlot) except as may be provided for in the Management Plan (e.g., prescribed grazing);
- (f) Any legal or de facto division, subdivision or partitioning of the *Easement Area/Property* or any fee transfer of less than the entire Easement Area/Property;
- (g) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (h) Planting, introduction, or dispersal of nonnative plant or animal species;
- (i) Filling, dumping, excavating, draining, dredging, mining, drilling, removing, or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks, or other material

on or below the surface of the *Easement Area/Property*, and granting or authorizing any surface entry for any of these purposes;

(j) Removing, destroying, or cutting of trees, shrubs, or other vegetation;

(k) Manipulating, impounding, or altering any water course, body of water, or water circulation on the *Easement Area/Property*, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or subsurface waters; and

(l) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Landowner, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(m) Commercial, industrial, residential, or institutional uses.

(n) Altering the surface or general topography of the Mitigation Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Mitigation Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(o) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks and/or fuels treatment, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease; and as specifically provided in the Development Plan or Management Plan.

(p) Without the prior written consent of Easement Holder, which Easement Holder may reasonably withhold, transferring, encumbering, selling, leasing or otherwise separating the mineral, air or water rights for the *Easement Area/Property* owned by Landowner; changing the place or purpose of use of the water rights owned by Landowner; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights or other rights in and to the use of water historically used on or otherwise appurtenant to the *Easement Area/Property* that are owned by Landowner, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the *Easement Area/Property*; and (iv) any water from wells that are in existence or may be constructed in the future on the *Easement Area/Property*.

[TEMPLATE NOTE: Section 4 “Prohibited Uses” for any Conservation Easement may include additional prohibited uses, or refinements of the above, to address specific site conditions, Landowner preferences and operations, and species and habitat needs, as contemplated by Habitat Plan Section 8.6.3 and approved by the Easement Holder and the Wildlife Agencies. Additionally, this prohibited uses section may require modification to address public access and recreation uses

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to the extent contemplated or required at the Easement Area/Property under the Management Plan.]

5. **Unlawful Entry.** Landowner shall undertake all reasonable actions to prevent the unlawful entry and trespass on the *Easement Area/Property* by persons whose uses or activities may degrade or harm the Conservation Values or are otherwise inconsistent with the purposes of this Conservation Easement.

6. **Landowner's Reserved Rights; Allowed Uses.** Landowner reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the *Easement Area/Property*, including without limitation, the following (collectively, the "**Allowed Uses**"): (a) those specific uses and activities identified in the Management Plan(s) or detailed in **Exhibit D** attached hereto, and (b) all other uses of the *Easement Area/Property* that are not expressly prohibited or limited by this Agreement, and are consistent with the purposes of this Conservation Easement as set forth in Section 1. Landowner shall have the right to exercise any of the Allowed Uses directly or to allow or invite others to engage in any of the Allowed Uses. While Landowner is not obligated under this Agreement to perform the management and monitoring actions set forth in the Management Plan(s), Landowner's exercise of the Allowed Uses shall be conducted in a manner that is consistent with the Management Plan(s) and Conservation Values.

7. **Easement Holder's Remedies.** If Easement Holder or any Third-Party Beneficiary (as defined in **Section 7(d)** below) determines there is a violation of the terms of this Agreement or that such violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Landowner, with a copy provided to Easement Holder and each other Third-Party Beneficiary. The notice of violation shall specify the measures the Landowner must take to cure the violation. If Landowner fails to cure the violation within thirty (30) days after receipt of written notice and demand from Easement Holder or any Third-Party Beneficiary, as applicable; or if the cure reasonably requires more than thirty (30) days to complete and Landowner fails to begin the cure within such thirty (30) day period; or Landowner fails to continue diligently to complete the cure, Easement Holder or any Third-Party Beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to recover any damages to which Easement Holder and the Third-Party Beneficiaries may be entitled for violation of the terms of this Agreement or for any injury to the Conservation Values, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the *Easement Area/Property* to the condition in which it existed prior to any such violation or injury. Without limiting Landowner's liability therefor, any damages recovered may be applied to the cost of undertaking any corrective action on the *Easement Area/Property* at the election of the party receiving such damages.

If Easement Holder or any Third-Party Beneficiary, each in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, Easement Holder and/or any Third-Party Beneficiary may pursue its remedies under this section without prior notice to Landowner or without waiting for the period provided for cure to expire. The rights of Easement Holder and the Third-Party Beneficiaries under this section

apply equally to actual or threatened violations of the terms of this Agreement. Landowner agrees that Easement Holder's and Third-Party Beneficiaries' remedies at law for any violation of the terms of this Agreement are inadequate and that Easement Holder and/or any Third-Party Beneficiary shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Easement Holder and the Third-Party Beneficiaries may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Easement Holder or any Third-Party Beneficiary to discover a violation or to take immediate legal action in response to such action shall not bar such party from taking legal action at a later time.

(a) **Costs of Enforcement.** Any reasonable costs incurred by the Easement Holder or any Third Party Beneficiary, where it is the prevailing party, in enforcing the terms of this Conservation Easement against the Landowner, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Landowner's negligence or breach of this Agreement shall be borne by Landowner. In any action where an agency of the United States is a party, the right to recover fees and costs shall be governed by federal law.

(b) **Enforcement Discretion.** Enforcement of the terms of this Agreement against Landowner shall be at the respective discretion of Easement Holder and each of the Third-Party Beneficiaries, and any forbearance by any such party to exercise its rights under this Agreement in the event of any breach of any term of this Agreement shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach of the same or any other term of this Agreement or of any of such party's rights under this Agreement. No delay or omission by Easement Holder or any Third-Party Beneficiary in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(c) **Acts Beyond Landowner's Control.** Nothing contained in this Agreement shall be construed to, or shall entitle, Easement Holder or any Third-Party Beneficiary to bring any action against Landowner for any injury to or change in the *Easement Area/Property* resulting from (i) any natural cause beyond Landowner's control, including, but not limited to, climate change, fire not caused by Landowner, flood, storm, and earth movement, or any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the *Easement Area/Property* resulting from such causes; (ii) acts by Easement Holder or any Third-Party Beneficiary or any of their employees, contractors or agents; or (iii) acts by persons that entered the *Easement Area/Property* unlawfully or by Trespass whose activities degrade or harm the Conservation Values of the *Easement Area/Property* or whose activities are otherwise inconsistent with this Conservation Easement where Landowner has undertaken all reasonable actions to prevent such activities [*for public agencies only: or (iii) acts by persons that entered the Easement Area/Property lawfully or unlawfully whose activities degrade or harm the Conservation Values of the Easement Area/Property or whose activities are otherwise*

inconsistent with this Conservation Easement where Landowner has undertaken all reasonable actions to discourage or prevent such activities].

(d) **Third Party Beneficiary Rights.** The parties intend for each of Implementing Entity (during any such period, if any, that Implementing Entity does not also constitute Easement Holder), USACE, USFWS and CDFW (collectively, “**Third-Party Beneficiaries**”) to be a third-party beneficiary of this Agreement. All rights and remedies conveyed to Easement Holder under this Agreement shall extend to and are enforceable by each of the Third-Party Beneficiaries in accordance with the terms hereof. Landowner and Easement Holder acknowledge that, as third party beneficiaries of this Conservation Easement, the Third-Party Beneficiaries shall have the same rights of access to the *Easement Area/Property* granted to Easement Holder in **Section 3** above, and with rights to enforce all of the provisions of this Agreement. If at any time in the future Landowner uses, allows the use, or threatens to use or allow use of, the *Easement Area/Property* for any purpose that is inconsistent with or in violation of this Agreement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and each Third-Party Beneficiary has standing as an interested party in any proceeding affecting the Conservation Easement. These rights are in addition to, and do not limit, the rights of enforcement under the Habitat Plan Instruments. In addition, if CDFW reasonably determines that the *Easement Area/Property* is not being held, monitored, or stewarded for conservation purposes in the manner specified in this Agreement, the Habitat Plan Instruments, or the Management Plan, the Conservation Easement shall revert to the State of California or another entity as described in California Government Code Section 65967, subdivisions (b) and (c), and subject to approval by CDFW.

8. **Public Access.** Nothing contained in this Agreement gives or grants to the public an independent right to enter upon or use the *Easement Area/Property* or any portion thereof. Nor shall this Agreement extinguish any public right to enter upon or use the *Easement Area/Property*.

9. **Costs and Liabilities.** Except for those specific obligations to be undertaken by Easement Holder under Section 3 above, Landowner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to Landowner’s ownership, operation, management, and maintenance activities on and relating to the *Easement Area/Property*. Landowner agrees that neither the Easement Holder nor Third Party Beneficiaries shall have any duty or responsibility for the operation or maintenance of the *Easement Area/Property*, the monitoring of hazardous conditions thereon, or the protection of Landowner, the public or any third parties from risks relating to conditions on the *Easement Area/Property*. Each of Landowner and Easement Holder shall remain responsible for obtaining any applicable governmental permits and approvals for any of such Party’s activity or use allowed on the *Easement Area/Property* under this Agreement, and each of Landowner and Easement Holder shall undertake all allowed activities and uses of the *Easement Area/Property* in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the *Easement Area/Property* by competent authority (collectively “**taxes**”), including any taxes imposed upon, or incurred as a result of, this Agreement, and shall furnish Easement Holder with satisfactory evidence of payment upon request. Landowner and Easement Holder shall keep the

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Easement Area/Property free from any liens, including those arising out of any obligations incurred by such Party for any labor or materials furnished or alleged to have been furnished to or for such Party at or for use on the *Easement Area/Property*.

10. **Indemnification.**

(a) **Indemnification by Landowner.** Landowner shall hold harmless, protect and indemnify Easement Holder and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a “**Landowner Indemnified Party**” and, collectively, the “**Landowner Indemnified Parties**”) from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' and experts' fees and costs), causes of action, claims, demands, orders, liens or judgments (each a “**Claim**” and, collectively, “**Claims**”), arising from or in any way connected with: (i) the activities of Landowner on the *Easement Area/Property*; (ii) the inaccuracy of any representation or warranty made by Landowner in this Agreement; (iii) the breach by Landowner of any provision of this Agreement; (iv) any injury to or the death of any person, or physical damage to any *Easement Area/Property* resulting from any act, omission, condition, or other matter related to or occurring on or about the *Easement Area/Property*, unless such injury or death or physical damage to any *Easement Area/Property* relates to an activity on, or use of, the Easement Area/Property by Easement Holder, including without limitation, those activities performed under the Management Plan, or negligent or willful misconduct of the Landowner Indemnified Party; or (v) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Landowner, or by any entity, other than one of the Landowner Indemnified Parties, acting at the time upon permission from Landowner, in any way affecting, involving or relating to the *Easement Area/Property*. If any action or proceeding is brought against any of the Landowner Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice from Easement Holder and the Third-Party Beneficiaries, defend such action or proceeding by counsel reasonably acceptable to the Landowner Indemnified Party.

(b) **Indemnification by Easement Holder.** Easement Holder shall hold harmless, protect, and indemnify Landowner and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each, an “**Easement Holder Indemnified Party,**” and collectively, the “**Easement Holder Indemnified Parties**”) from and against any and all Claims arising from or in any way connected with: (a) the activities of Easement Holder on the *Easement Area/Property*, including without limitation the Easement Holder's performance of management and monitoring activities set forth in the Management Plan; (b) breach by Easement Holder of any provision of this Agreement; (c) any injury to or the death of any person, or physical damage to any *Easement Area/Property* occurring on or about the *Easement Area/Property* resulting from any act, omission, condition, or other matter related to, an activity on, or use of, the *Easement Area/Property* by Easement Holder, including without limitation, those

performed under the Management Plan, unless due solely to the negligence or willful misconduct of the Easement Holder Indemnified Party; and (d) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Easement Holder in any way affecting, involving or relating to the *Easement Area/Property*. If any action or proceeding is brought against any of the Easement Holder Indemnified Parties by reason of any such Claim, Easement Holder shall, at the election of and upon written notice from Landowner, defend such action or proceeding by counsel reasonably acceptable to the Easement Holder Indemnified Party.

11. **Extinguishment.** The Conservation Easement created by this Agreement constitutes a property right. It is the Parties' intention that the terms and conditions of this Agreement shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. If circumstances arise in the future that render the purposes of this Agreement impossible to accomplish, this Agreement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. In addition, no such extinguishment shall affect the value of Easement Holder's interest in the *Easement Area/Property*, and if the *Easement Area/Property*, or any interest therein, is sold, exchanged or taken by power of eminent domain after such extinguishment, Easement Holder shall be entitled to receive the fair market value of the Conservation Easement at the time of such extinguishment. If such extinguishment occurs with respect to fewer than all acres of the *Easement Area/Property*, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

12. **Condemnation.** The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined in California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700. ***[TEMPLATE NOTE: If Easement Holder is CDFW or another state agency, substitute the preceding sentence with the following: This Conservation Easement is a "wildlife conservation easement" acquired by an agency of the State of California, the condemnation of which is prohibited except as provided in California Fish and Game Code Section 1348.3.]***

13. **Transfer of Conservation Easement.** This Agreement may be transferred by Easement Holder upon written approval of the Third-Party Beneficiaries, which approval shall not be unreasonably withheld or delayed; provided, that Easement Holder shall give the Third-Party Beneficiaries at least sixty (60) calendar days prior written notice of the proposed assignment or transfer. Easement Holder may transfer its rights under this Agreement only to an entity or organization: (a) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and California Government Code Section 65967(c) (and any successor or other provisions then applicable), or the laws of the United States; and (b) otherwise reasonably acceptable to the Third-Party Beneficiaries. Easement Holder shall require the transferee to record the conveyance in the Official Records of the County where the *Easement Area/Property* is located. The failure of Easement Holder to perform any act provided in this section shall not impair the validity of this Agreement or limit its enforcement in any way. Any transfer under this section shall be subject to the requirements of **Section 17** below.

14. **Transfer of Easement Area/Property.** Landowner agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which Landowner divests itself of any interest in all or any portion of the *Easement Area/Property*, including, without limitation, a leasehold interest. Landowner further agrees to give written notice to Easement Holder and the Third-Party Beneficiaries of the intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Easement Holder and the Third-Party Beneficiaries shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Agreement. The failure of Landowner to perform any act provided in this section shall not impair the validity of this Agreement or limit its enforceability in any way. Any successor in interest of Landowner, by acceptance of a deed, lease, or other document purporting to convey an interest in the *Easement Area/Property*, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Agreement.

15. **Notices.** Any notice, demand, request, consent, approval, or communication that Landowner, Easement Holder, or any Third-Party Beneficiary desires or is required to give to the others shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Landowner: _____

To Easement Holder: _____

Attn: _____

To Implementing Entity:
[Santa Clara Valley Habitat Agency]

Attn: _____

To USFWS: United States Fish and Wildlife Service

Attn: _____

To USACE: United States Army Corps of Engineers

Attn: _____

To DFG: California Department of Fish and Game
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
Attn: Regional Manager

With a copy to: Department of Fish and Game
Office of the General Counsel
1416 Ninth Street, 12th Floor
Sacramento, California 95814-2090
Attn: General Counsel

or to such other address as a party shall designate by written notice to the others. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) calendar days after deposit into the United States mail.

16. **Amendment.** This Agreement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by the parties hereto, or their successors in interest, it being understood that no easement holder or landowner will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Agreement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this Agreement to any extent or in any manner. Any such amendment shall be subject to the prior written consent of the Third-Party Beneficiaries; any amendment made without such consent is void and without effect. Any such amendment shall be consistent with the purposes of the Conservation Easement and shall not affect the perpetual duration of the Conservation Easement. Any such amendment must refer to this Agreement by reference to its recordation data, and must be recorded in the Official Records of the County where the *Easement Area/Property* is located.

17. **Merger.** The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the *Easement Area/Property* become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, a replacement conservation easement, with a new Easement Holder identified by the Implementing Entity and approved by the Third-Party Beneficiaries, containing the same protections embodied in this Agreement shall be recorded against the *Easement Area/Property*.

18. **No Hazardous Materials Liability.** Landowner represents and warrants that, after reasonable review of Landowner's records as of the date of this Agreement, Landowner has no knowledge or notice of any Hazardous Materials (as defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the *Easement Area/Property*, or transported to or from or affecting the *Easement Area/Property* [except as disclosed in the Report]. [Insert site-specific conditions, if applicable.] Landowner further represents and warrants that Landowner shall comply with all Environmental Laws (as defined below) in using the *Easement Area/Property* and that Landowner shall keep the

Easement Area/Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (as defined below). Without limiting the obligations of Landowner under this Agreement, Landowner hereby releases and agrees to indemnify, protect and hold harmless the Landowner Indemnified Parties (as defined in **Section 10(a)**) from and against any and all Claims (as defined in **Section 10(a)**) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the *Easement Area/Property* at any time, except any Hazardous Materials placed, disposed or released by Landowner Indemnified Parties, or their employees or agents. This release and indemnification includes, without limitation, Claims for (a) injury to or death of any person or physical damage to any *Easement Area/Property*; and (b) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below). If any action or proceeding is brought against any of the Landowner Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice, defend such action or proceeding by counsel reasonably acceptable to the Landowner Indemnified Party.

Despite any contrary provision of this Agreement, the parties do not intend this Agreement to be, and this Agreement shall not be, construed such that it creates in or gives to Easement Holder or the Third Party Beneficiaries any of the following:

- (a) The obligations or liability of an "Landowner" or "operator," as those terms are defined and used in Environmental Laws (as defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, "CERCLA"); or
- (b) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
- (c) The obligations of a responsible person under any applicable Environmental Laws; or
- (d) The right to investigate and remediate any Hazardous Materials associated with the *Easement Area/Property*; or
- (e) Any control over Landowner's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the *Easement Area/Property*.

The term "**Hazardous Materials**" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*; hereinafter "**RCRA**"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; hereinafter "**HTA**"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "**HCL**"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*; hereinafter "**HAS**"),

and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Agreement.

The term “**Environmental Laws**” includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials.

19. **Representations and Warranties.** Landowner hereby makes the following representations and warranties for the benefit of Easement Holder and the Third-Party Beneficiaries:

(a) **Authority.** Landowner has good and sufficient title to the *Easement Area/Property* (including all appurtenances thereto, including, without limitation, [*all minerals and mineral rights and all water and water rights*]), and Landowner has full right and authority to enter into this Agreement and convey the Conservation Easement to Easement Holder. There are no monetary liens and encumbrances recorded against the *Easement Area/Property* except as expressly identified in **Exhibit E**. All deeds of trust and mortgages recorded against the *Easement Area/Property*, or any portion thereof, are and shall continue to be subordinated to this Conservation Easement; documentation of such subordinations are contained in Exhibit E.

(b) **Compliance with Laws.** Landowner has not received notice of, and has no knowledge of, any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the *Easement Area/Property* [*except as disclosed in the Report*]. [*Insert site-specific conditions, if applicable.*]

(c) **No Litigation.** There is no action, suit or proceeding which is pending or threatened against the *Easement Area/Property* or any portion thereof relating to or arising out of the Landownership or use of the *Easement Area/Property*, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

20. **General Provisions.**

(a) **Controlling Law.** The interpretation and performance of this Agreement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable federal law.

(b) **Liberal Construction.** It is the intent of this Agreement to preserve the condition of the *Easement Area/Property* and each of the Conservation Values protected herein, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Agreement shall be liberally construed to effectuate the purposes of the Conservation Easement and to allow Landowner’s use and enjoyment of the *Easement Area/Property* to the extent consistent with such purposes. Liberal construction is

expressly required for purposes of effectuating this Agreement in perpetuity, notwithstanding changed conditions of any kind. The Conservation Easement created by this Agreement is the intended best and most productive use of the *Easement Area/Property*. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of any use and zoning restrictions of the State of California, the county in which the *Easement Area/Property* is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If a court of competent jurisdiction voids or invalidates on its face any provision of this Agreement, such action shall not affect the remainder of this Agreement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Agreement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Agreement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with **Section 16**.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Landowner's title in any respect.

(f) **Successors.** The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the *Easement Area/Property*.

(g) **Termination of Rights and Obligations.** A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in the Agreement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) **Additional Easements.** Landowner shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is subordinate to this Agreement), or grant or otherwise abandon or relinquish any water right or agreement relating to the Property, without first obtaining the written consent of Easement Holder and the Third-Party Beneficiaries. Easement Holder and the Third-Party Beneficiaries may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values. This section shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Agreement and complies with **Section 14**.

(i) **Recording.** Easement Holder shall record this Agreement in the Official Records of the county where the *Easement Area/Property* is located, and may re-record it at any time as Easement Holder deems necessary to preserve its rights hereunder.

(k) **Counterparts.** The parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF Landowner and Easement Holder have executed this Agreement the day and year first above written.

LANDOWNER:

Name: _____
Title: _____

EASEMENT HOLDER:

[Santa Clara Valley Habitat Agency, a California Joint Powers Authority]

By: _____
Name: _____
Title: _____

EXHIBITS:

- Exhibit A -- Legal Description of the *Easement Area/Property***
- Exhibit B -- Map of the *Easement Area/Property***
- Exhibit C -- Initial Conservation Values**
- Exhibit D -- Allowed Uses**
- Exhibit E -- Title Encumbrances**

Exhibit A

Legal Description of the *Easement Area/Property*

Exhibit B

Map of the *Easement Area/Property*

Exhibit C

Initial Conservation Values

[In accordance with Habitat Plan Section 8.6.3, this Exhibit C will set forth those land-cover types and covered species habitat described in Habitat Plan Chapter 3 that are present on the Easement Area/Property. Section 8.6.3 also requires the Conservation Easement to either include or incorporate by reference the initial pre-acquisition assessment of covered species and natural communities present, so Exhibit C should also be prepared in a way that satisfies this requirement. by either listing covered species and natural communities consistent with those in the pre-acquisition assessment or by including an explicit cross-reference and incorporation by reference to the pre-acquisition assessment. If a complete biological inventory is available, it will be incorporated by reference in this Exhibit C.]

PLEASE NOTE: The following sample Agreement is provided for reference. The Department of Fish and Game updates this document as needed, and it does not necessarily contain all provisions appropriate for a given project.

Exhibit D

Allowed Uses

Template Notes:

- ***As contemplated in Habitat Plan Section 8.6.3, this Exhibit D will include a list of specific allowable uses and improvements on the Easement Area/Property that will be developed with the Landowner, customized to protect the nature and resource values of the specific Easement Area/Property while allowing, to the extent practicable, the Landowner's current and future uses of the property***
- ***If the Easement Area/Property is cultivated agricultural land, Habitat Plan Section 8.6.3 requires the conservation easement to describe the agricultural practices to be undertaken to ensure the Easement Area/Property's suitability as foraging and breeding habitat for covered species and/or as landscape linkages for native species, measures to maintain or enhance aquatic or riparian habitat, if present, and how the Easement Area/Property meets the Habitat Plan goals and objectives.***
- ***If the Easement Area/Property is currently grazed or planned to be grazed, Habitat Plan Section 8.6.3 requires the conservation easement to describe the general nature of the grazing to be allowed, specify desired vegetation and other habitat conditions. Specific guidelines or conditions for grazing will be included in the Management Plan. In addition, the following will be included in this Exhibit D:***

Landowner shall have the right to maintain, repair, reasonably enlarge, and reasonably replace the improvements that exist on the Easement Area/Property and which are acknowledged in this Conservation Easement, in the same or different locations, provided that Landowner shall first obtain Easement Holder's and Wildlife Agencies prior written approval for any enlargement, relocation or replacement. Said approval shall not be unreasonably withheld, conditioned, or delayed but in no event shall that approval be granted if said enlargement or replacement would impair or diminish the Conservation Values of the Easement Area/Property. Notwithstanding the foregoing, (i) maintenance, repair, enlargement and replacement of improvements authorized in the Management Plan may be undertaken without additional Easement Holder or Wildlife Agency approval, and (ii) existing fences may be repaired and replaced for purposes of reasonable and customary management of livestock and wildlife, without further permission of Easement Holder or Wildlife Agencies; provided, all repair, and replacements shall be, designed and installed to protect, and not impair, the Conservation Values of the Easement Area/Property, including, but not limited to, wildlife corridors.

WATER RESOURCES:

Landowner may maintain such surface water resources on the Easement Area/Property as are noted in the Report as currently existing on the Easement Area/Property provided that said maintenance is consistent with the terms and conditions of this Conservation Easement and the Management Plan. Landowner may only develop new or enhance existing surface water resources with the prior written approval of Easement Holder and Wildlife Agencies which approval shall not be unreasonably withheld, conditioned, or unreasonably delayed, and then only if said development is necessary for allowed ranching operations or to enhance, restore, create, preserve, or protect the Conservation Values of this Conservation Easement, and the development does not impair the Conservation Values of this Conservation Easement and that such development is consistent with State Water Law]

Appendix C
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Santa Clara Valley Habitat Plan RGP

Interim Mitigation Strategy

Appendix D. Long-term Management Plan

For

Permittee-Responsible Mitigation for [Insert Project Name]

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Long-Term Management Plan

I. Introduction

A. Purpose of Establishment

The _____ mitigation site was established to compensate for unavoidable impacts to, and to conserve and to protect waters of the U.S., covered species and covered habitat. The mitigation property includes _____ acres of waters of the U.S. including _____ acres [*insert as applicable: of /all of which are*] preserved wetlands, _____ acres of created wetlands, _____ acres of covered species for [*specify threatened/endangered species*], and _____ acres of covered habitat for [*specify threatened/endangered species habitat*]. The Signatory Agencies are the _____ District of the U.S. Army Corps of Engineers, Region 9 of the U.S. Environmental Protection Agency, the _____ Office of the U.S. Fish and Wildlife Service, and the California Department of Fish and Wildlife (“CDFW”) _____ Region. Terms used in this management plan have the same meaning as defined in Mitigation and Monitoring Plan (MMP).

B. Purpose of this Long-term Management Plan

The purpose of this long-term management plan is to ensure the property is managed, monitored, and maintained in perpetuity. This management plan establishes objectives, priorities and tasks to monitor, manage, maintain and report on the waters of the U.S., covered species and covered habitat on the property. This management plan is a binding and enforceable instrument, implemented by the conservation easement covering the mitigation property. This long-term management plan template is intended to support mitigation properties within the Santa Clara Valley Habitat Plan area and provide details to support the Regional General Permit’s (RGP) Interim Mitigation Strategy (IMS). Mitigation parcels such as this are intended to fit within the overall landscape and ecological conservation goals envisioned in the Habitat Plan.

C. Land Manager and Responsibilities

The land manager is the Santa Clara Valley Habitat Agency [or insert other name if appropriate]. The land manager, and subsequent land managers upon transfer, shall implement this long-term management plan, managing and monitoring the property in perpetuity to preserve its habitat and conservation values in accordance with the MMP, the conservation easement, and the long-term management plan. Long-term management tasks shall be funded through the Endowment Fund established for the Habitat Plan; project specific assurances of funding will also be provided annually under the IMS until the long-term mitigation strategy is finalized. The land manager shall be responsible for providing an annual report to the regulatory agencies detailing the time

period covered, an itemized account of the management tasks and total amount expended. Any subsequent grading, or alteration of the site's hydrology and/or topography by the land manager or its representatives must be approved by the regulatory agencies and the necessary permits, such as a Section 404 permit, must be obtained if required.

II. Property Description

A. Setting and Location

The Property is located at _____ [*include address and county*], State of California, designated Assessor's Parcel No. _____. The Property is shown on the general vicinity map (Figure 1) and the site-specific property map (Figure 2). The general vicinity map shows the property location in relation to cities, towns, or major roads, and other distinguishable landmarks. The mitigation property map shows the mitigation property boundaries on a topographic map.

B. History and Land Use

[*Describe past and present land use including grazing practices*].
The land in the general area of the site is currently _____ [*Describe adjacent land and local area land uses.*]

C. Cultural Resources – (if applicable, refers to Cultural Resources Survey, Exhibit J in the BEI)

[*Describe all existing structures including roads, levees, fencing, and buildings, and their intended future use on the area. If such structures are likely to be considered "historical resources" of the state pursuant to Executive Order W-26-92 and historic resources preservation laws.*]

[*Describe any known archeological sites without providing their specific locations on the property, and include a summary of the results of any site surveys/inventories, including who conducted them. An assessment of the impacts of management should be given for such sites.*]

D. Hydrology and Topography

[*Describe hydrology and topography of site. Indicate whether wetlands are driven by surface flows (i.e., fluvial systems) or groundwater flows from offsite sources. Describe precipitation onto and off of the site.*]

E. Soils

[Describe soils on the site.]

F. Existing Easements

[Include descriptions/locations of existing easements, their nature (buried pipeline, overhead power, ingress/egress, etc), authorized users (if known), access procedures, etc. Depict easements, rights of way, ingress, and egress routes on an attached map.]

G. Adjacent Land Uses

[Detail the baseline adjacent land uses. These land uses may change over time; however, the description of the baseline conditions will give the manager some idea of the conditions present when the management plan was first developed. Also detailing adjacent land uses will bring to light areas that may be of management concern or items that may compromise biological integrity over time.]

III. Habitat and Species Descriptions

A. Biological Resources Survey of the Property

[A Biological Resources Survey, shall include a general description of geographic location and features, topography, soils, vegetation (assessment of native vs. exotic species), species present and potentially present, habitat requirements of each species and a quality assessment of all habitat types (i.e. life history requirements of covered species met, habitat diversity, connectivity to other habitats and protected areas), and species presence based on the results of protocol surveys. In addition, provide an inventory list, if available, of plant and animal species which are known or likely to occur on the property. An overview of native plant species present, if applicable, their habitat and management requirement should be presented here.]

A. Summary of Property Development Plan (if applicable)

[Describe all created and/or enhanced waters of the U.S., covered species and covered habitat. Include acreages and describe plant and animal species that occur within the waters of the U.S. Provide final map showing the location of waters of the U.S., covered species, and covered habitat.]

B. Endangered and Threatened Species

[Describe all endangered and threatened species that occur or may occur on the site. If applicable, provide map showing their location.]

C. Rare Species and Species of Special Concern

[Description of rare species and species of special concern that occur or may occur on the site. If applicable, provide map showing their location.]

IV. Management and Monitoring

The overall goal of long-term management is to foster the long term viability of the site's waters of the U.S., covered species and covered habitat. Routine monitoring and minor maintenance tasks are intended to assure the viability of the site in perpetuity.

A. Biological Resources

The approach to the long-term management of the site's biological resources is to conduct annual site examinations and monitoring of selected characteristics to determine stability and ongoing trends of the preserved and created waters of the U.S., including wetlands, *[list covered species and covered habitats]*. Annual monitoring will assess the property's condition, degree of erosion, invasion of exotic or deleterious (e.g., thatch producing) species, water quality, fire hazard, and/or other aspects that may warrant management actions. While it is not anticipated that major management actions will be needed, an objective of this long-term management plan is to conduct monitoring to identify any issues that arise, and using adaptive management to determine what actions might be appropriate. Those chosen to accomplish monitoring responsibilities will have the knowledge, training, and experience to accomplish monitoring responsibilities.

Adaptive management means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the regulatory agencies in discussion with the land manager. Adaptive management includes those activities necessary to address the effects of climate change, fire, flood, or other natural events, force majeure, etc. Before considering any adaptive management changes to the long-term management plan, the regulatory agencies will consider whether such actions will help ensure the continued viability of property's biological resources.

[The list that follows is not meant to be exhaustive and some sites may have more elements to consider and some may have fewer.]

The land manager for the site shall implement the following:

Long-Term Management Plan Template for Permittee-Responsible Mitigation for [Insert Project Name]

Page 5 of 18 (excluding figures/attachments)

Element A.1 Waters of the U.S., including wetlands

Objective: Monitor, conserve and maintain the site's waters of the U.S., including wetlands. Limit any impacts to waters of the U.S. from vehicular travel or other adverse impacts.

Task: At least one annual walk-through survey will be conducted to qualitatively monitor the general condition of these habitats. General topographic conditions, hydrology, general vegetation cover and composition, invasive species, erosion, will be noted, evaluated and mapped during a site examination in the spring. Notes to be made will include observations of species encountered, water quality, general extent of wetlands, and any occurrences of erosion, and weed invasion.

Task: Establish reference sites for photographs and prepare a site map showing the reference sites for the file. Alternatively, utilize photographic reference sites, if any, developed during interim management period. Reference photographs will be taken of the overall wetland mosaic at least every five years from the beginning of the long-term management, with selected reference photos taken on the ground more frequently, _____ times per year (*if applicable*).

Element A.2 Covered Species (if applicable)

Objective: Monitor, conserve and maintain the site's covered species.

Task: As part of the annual site walk-through, the status and any changes to the covered species will be noted. Any necessary tasks will be identified, prioritized and implemented as funding is available.

[Species monitoring objectives will be designed to be consistent with the Habitat Plan, if necessary.]

Element A.3. Covered Habitat (if applicable)

Objective: Monitor, conserve and maintain the site's covered habitat.

Task: As part of the annual site walk-through, the site's covered habitat will be examined for any changes, current condition or pending needs. Any necessary tasks will be identified, prioritized and implemented as

funding is available.

[Habitat objectives will be designed to be consistent with the Habitat Plan and ensure that wetland values are maintained.]

Element A.4 Threatened/Endangered Plant Species Monitoring *(if applicable)*

[Note: This methodology is an example specific to Limnanthes vinculans and may vary for other plant species as determined in consultation with the appropriate agencies. Plant species monitoring will be designed consistent with the Habitat Plan, if necessary.]

Objective: Monitor population status and trends.

Objective: Manage to maintain habitat for _____.

Task: Monitor status every year by conducting population assessment surveys. The annual survey dates will be selected during the appropriate blooming period and will generally occur from late March through April depending on the timing of the blooming period each year. Occupied habitat will be mapped and numbered to allow repeatable data collection over subsequent survey years. Abundance will be assessed semi-quantitatively using broad abundance categories, i.e., 0, 1 - 100, 101 - 500, 501 - 1,000, and >1,000 plants.

Task: Visually observe for changes to occupied habitat, such as changed hydrology or vegetation composition. Record any observed changes.

Task: Implement other tasks that enhance or monitor habitat characteristics for _____.

Element A.5 Threatened/Endangered Animal Species Monitoring *(if applicable)*

[Species monitoring objectives will be designed to be consistent with the Habitat Plan, if necessary. Species monitoring will be driven by requirements in the Habitat Plan]

Objective: Monitor population status and trends.

Objective: Manage to maintain habitat for _____.

Task: Monitor status every year by conducting population assessment surveys. *[The annual survey dates will be selected during the appropriate*

period each year.]

Task: Implement other tasks that enhance or monitor habitat characteristics for _____.

Element A.6 Non-native Invasive Species

[Note: Species-specific objectives and tasks will need to be developed in consultation with the appropriate regulatory agencies] Invasive species threaten the diversity or abundance of native species through competition for resources, predation, parasitism, interbreeding with native populations, transmitting diseases, or causing physical or chemical changes to the invaded habitat.

Objective: Monitor and maintain control over non-native invasive species, including but not limited to noxious weeds, that diminish site quality for which the mitigation site was established. The land manager shall consult the following sources for guidance on what species may threaten the site and on management of those species: The California Department of Food and Agriculture (CDFA) list of "noxious weeds" that are subject to regulation or quarantine by county agricultural departments, the [California Department of Food and Agriculture's Integrated Pest Control Branch](#), and the University of California State Integrated Pest Management Program list of "Exotic and invasive pests and diseases that threaten California's agricultural, urban, or natural areas".

Task: Mapping of non-native invasive species cover or presence shall occur during the first five years of management, to establish a baseline. Mapping shall be accomplished through use of available technologies, such as GIS and aerial photography.

Task: Each year's annual walk-through survey (or a supplemental survey) will include a qualitative assessment (e.g. visual estimate of cover) of potential or observed noxious weeds or other non-native species invasions, primarily in or around the wetlands. Additional actions to control invasive species will be evaluated and prioritized.

Element A.7 Vegetation Management

Objective: Analyze effects of mowing and grazing on habitat quality. If determined appropriate, develop and implement specific mowing and/or grazing actions in coordination with management at other local conservation sites to

maintain habitat quality. [Site specific targets for vegetation may be specified here and task revised or added to achieve those targets].

Objective: Adaptively manage vegetation based on site conditions and data acquired through monitoring to maintain biological values.

Task: Review and explore potential vegetation management regimes as proposals and/or opportunities and funding arise. If determined to potentially maintain site quality, develop specific grazing practices, amend this long-term management plan with resource agency approval to reflect those practices, and implement grazing actions as funding allows.

Task: Implement vegetation management techniques, if determined beneficial and as funding allows, to maintain vegetation height and composition similar to baseline conditions or as determined likely to maintain seasonal wetland function [or *threatened/endangered plant species habitat*]. Implementation of vegetation management techniques must be approved by the regulatory agencies.

B. Security, Safety, and Public Access

The property will be fenced and shall have no general public access, nor any regular public or private use, unless approved by the Corps. Research and/or other educational programs or efforts may be allowed on the site as deemed appropriate by the regulatory agencies, but are not specifically funded or a part of this long-term management plan.

Potential mosquito abatement issues will be addressed through the development of a plan by the land manager and the mosquito and vector control district in coordination with and approved by the regulatory agencies.

Potential wildfire fuels will be reduced as needed by mowing in areas where approved by the regulatory agencies.

Element B.1 Trash and trespass

Objective: Monitor sources of trash and trespass.

Objective: Collect and remove trash, repair vandalized structures, and rectify trespass impacts.

Task: During each site visit, record occurrences of trash and/or trespass.

Record type, location, and management mitigation recommendations to avoid, minimize, or rectify a trash and/or trespass impact.

Task: At least once yearly collect and remove as much trash and repair and rectify vandalism and trespass impacts.

Element B.2 Fire Hazard Reduction

Objective: Maintain the site as required for fire control while limiting impacts to biological values.

Task: Mow or graze to reduce vegetation in areas required by authority agency(ies), and as approved by the IRT, for fire control.

C. Infrastructure and Facilities

[Fence and gate maintenance and repair frequency will be dependent on trespass and access control issues, as well as whether grazing is utilized as a vegetation management technique and to what extent.]

Element C.1 Fences and Gates

Objective: Monitor condition of fences and gates.

Objective: Maintain fences and gates to prevent casual trespass, allow necessary access, and *[if applicable: facilitate grazing regime and management.]*

Task: During each site visit, record condition of fences and gates. Record location, type, and recommendations to implement fence and/or gate repair or replacement, if applicable.

Task: Maintain fences and gates as necessary by replacing posts, wire, and/or gates. Replace fences and/or gates, as necessary, and as funding allows.

D. Reporting and Administration

Element D.1 Annual Report

Objective: Provide annual report on all management tasks conducted and general site conditions to IRT and any other appropriate parties.

Task: Prepare annual report and any other additional documentation. Include a summary. Complete and circulate to the IRT and other parties by August 15 of each year.

Task: Make recommendations with regard to (1) any habitat enhancement measures deemed to be warranted, (2) any problems that need near short and long-term attention (e.g., weed removal, fence repair, erosion control), and (3) any changes in the monitoring or management program that appear to be warranted based on monitoring results to date.

V. Transfer, Replacement, Amendments, and Notices

A. Transfer

Any subsequent transfer of responsibilities under this long-term management plan to a different land manager shall be requested by the land manager in writing to the regulatory agencies, shall require written approval by the regulatory agencies, and shall be incorporated into this long-term management plan by amendment. Any subsequent Property Owner assumes land manager responsibilities described in this long-term management plan and as required in the Conservation Easement, unless otherwise amended in writing by the regulatory agencies.

B. Replacement

If the land manager fails to implement the tasks described in this long-term management plan and is notified of such failure in writing by any of the regulatory agencies, land manager shall have 90 days to cure such failure. If failure is not cured within 90 days, land manager may request a meeting with the regulatory agencies to resolve the failure. Such meeting shall occur within 30 days or a longer period if approved by the regulatory agencies. Based on the outcome of the meeting, or if no meeting is requested, the regulatory agencies may designate a replacement land manager in writing by amendment of this long-term management plan. If land manager fails to designate a replacement land manager, then such public or private land or resource management organization acceptable to and as directed by the regulatory agencies may enter onto the Bank property in order to fulfill the purposes of this long-term management plan.

C. Amendments

The land manager, property owner, and the regulatory agencies may meet and confer from time to time, upon the request of any one of them, to revise the long-term management plan to better meet management objectives and preserve the habitat and conservation values of the Bank

property. Any proposed changes to the long-term management plan shall be discussed with the regulatory agencies and the land manager. Any proposed changes will be designed with input from all parties. Amendments to the long-term management plan shall be approved by the regulatory agencies in writing shall be required management components and shall be implemented by the land manager.

If the CDFW or USFWS determine, in writing, that continued implementation of the long-term management plan would jeopardize the continued existence of a state or federally listed species, any written amendment to this long-term management plan, determined by either the CDFW or USFWS as necessary to avoid jeopardy, shall be a required management component and shall be implemented by the land manager.

D. Notices

Any notices regarding this long-term management plan shall be directed as follows:

Land Manager (name, address, telephone and FAX)

Property Owner (name, address, telephone and FAX)

Regulatory Agencies, Signatory Agencies:

U.S. Army Corps of Engineers
_____ District

[DISTRICT ADDRESS]

Attn: Chief, Regulatory Branch

Telephone:

Fax:

U.S. Fish and Wildlife Service

_____ Office

[FIELD OFFICE ADDRESS]

Attn: Field Supervisor

Telephone:

Fax:

U.S. Environmental Protection Agency

Region IX

75 Hawthorne Street

San Francisco, CA 94105

Attn: Director, Water Division

Telephone: 415-947-8707

Fax: 415-947-3549

California Department of Fish and Wildlife

_____ Region

[REGION ADDRESS]

Attn: Regional Manager

Telephone:

Fax:

California Department of Fish and Game

Habitat Conservation Branch

1416 Ninth Street, 12th Floor

Sacramento, CA 95814

Attn: Branch Chief

Telephone: 916-653-4875

Fax: 916-653-2588

VI. Funding and Task Prioritization

A. Funding

[The list of tasks in Table 1 is not meant to be exhaustive and some sites may have more elements to consider and some may have fewer depending on the attributes of the mitigation site.]

Table 1 summarizes the anticipated costs of long-term management for the property. These costs include estimates of time and funding needed to conduct the basic monitoring site visits and reporting, weed mowing, trash removal, fence repair, and a prorated calculation of funding needed to fully replace the fences every ____ years. The total annual funding anticipated is approximately \$_____, therefore, with the current annual estimated capitalization rate of,____ the total endowment amount required will be \$_____. The Habitat Agency will provide an annual assurance in its budget that these funds are available to address LTMP costs.

These interest monies will fund the long-term management, enhancement, and monitoring activities on habitat lands in a manner consistent with this long-term management plan.

[If CDFW is not the land manager and/or property owner insert: Land manager shall consult with CDFW on a year to year basis to determine the amount of funding available for management and monitoring activities. Following annual management activities, land manager may invoice CDFW for management activities following the invoicing instructions provided by CDFW.]

B. Task Prioritization

Due to unforeseen circumstances, prioritization of tasks, including tasks resulting from new requirements, may be necessary if insufficient funding is available to accomplish all tasks. The land manager and the BEI regulatory agencies shall discuss task priorities and funding availability to determine which tasks will be implemented. In general, tasks are prioritized in this order: 1) required by a local, state, or federal agency; 2) tasks necessary to maintain or remediate habitat quality; and 3) tasks that monitor resources, particularly if past monitoring has not shown downward trends. Equipment and materials necessary to implement priority tasks will also be considered priorities. Final determination of task priorities in any given year of insufficient funding will be determined in consultation with the BEI regulatory agencies and as authorized by the BEI regulatory agencies in writing.

Table 1. Property Management and Monitoring Activities, Level of Effort, Frequency and Cost.

General Bank Management & Description	Level of Effort	Cost per Unit	Cost	Frequency	Schedule	Annual Cost	
Element A.1 Waters of the U.S. , including wetlands							
Monitor waters if the U.S.	Walking survey; notes, photos	No. of hours	\$/hour	\$	2-3 surveys per year	winter, spring	\$
Reference photography	Compile and present	No. of hours	\$/hour	\$+ 100 exps.	annual	winter, spring	\$
Element A.2 Covered Species, if applicable							
Monitor Covered Species	Walking survey; notes, photos	No. of hours	\$/hour	\$	once per year	any time	\$
Element A.3 Covered Habitat, if applicable							
Monitor Covered Habitat	Map; assess abundance/health	No. of hours	\$/hour	\$	every year	April (May)	\$
Element A.4 Threatened/Endangered plant species monitoring, if applicable							
	Map; assess abundance/health	No. of hours	\$/hour	\$	every year	As appropriate	\$
Element A.5 Threatened/Endangered animal species monitoring, if applicable							
Monitor species	Map; assess abundance/health	No. of hours	\$/hour	\$	every year	As appropriate	\$
Element A.6 Invasive Species							
Assess weed growth, extent	Walking survey, map; research	No. of hours	\$/hour	\$	1-2 times per year	spring, summer	\$
Weed removal	Hand labor	No. of hours	\$/hour	\$	as needed	late spring, summer	\$
Element A.7 Vegetation Management							

Mowing	Contract mowing	No. of hours	\$/hour	\$	once per year	early summer	\$
Grazing research and management	Research and coordination	No. of hours	\$/hour	\$	as appropriate	as needed	\$

Table 1. Management and Monitoring Activities, Level of Effort, Frequency and Cost, continued.

General Management & Monitoring Activities	Description	Level of Effort	Cost per Unit	Cost	Frequency	Schedule	Annual Cost
Element B.1 Trash and Trespass							
Trash and trespass monitoring	Walking surveys	No. of hours	\$/hour	\$	3 times per year	as appropriate	\$
Trash removal and cleanup	Hand labor	No. of hours	\$/hour	\$	as needed	as needed	\$
Element B.2 Fire Hazard Reduction							
Fire hazard assess and contracting	Survey, contract, supervise	No. of hours	\$/hour	\$	as needed; once per year	late spring	\$
Element C.1 Fences and Gates							
Survey & assess fences	Walk; document conditions	No. of hours	\$/hour	\$	1-2 times per year	as needed	\$
Repair fencing	Hand labor	No. of hours	\$/hour	\$	as needed	as needed	\$
Replace fencing	Materials and labor	number of feet	\$/ foot	\$	replace every __ yr	ongoing	\$
Gate replacement	Materials and labor	1 gate	\$	\$	replace every __ yr	as needed	\$
Element D.1 Annual Report							
Annual report	Analyze & report; maps, photos	No. of hours	\$/hour	\$	once per year	due in summer	\$
Account administration		No. of	\$/hour	\$	as needed	annually	\$

	hours		
Vehicles and supplies		\$	\$
Totals			\$
Current annual capitalization rate			x.x%
<hr/>			
TOTAL ENDOWMENT			\$
<hr/>			

Appendix D
Long Term Management Plan Template

Appendix E
Habitat Plan's 2015–2016 Fee Schedule



Habitat Agency Fee Schedule: July 1, 2015 through June 30, 2016

Development Fee	Unit	2015-2016
Land Cover Fees¹		
Zone A: Ranchlands and Natural Lands	per acre	\$18,004
Zone B: Mostly Cultivated Agricultural Lands	per acre	\$12,482
Zone C: Small vacant urban sites	per acre	\$4,561
Serpentine Fee¹		
	per acre	\$58,586
Nitrogen Deposition Fee		
	per new vehicle trip	\$4.20
Nitrogen Deposition Fee	per new single family residence	\$42.00
Burrowing Owl Fee¹		
	per acre	\$53,414
Wetland Mitigation Fee¹		
Willow Riparian Forest and Mixed Riparian	per acre	\$147,951
Central California Sycamore Woodland	per acre	\$270,238
Freshwater Marsh	per acre	\$181,429
Seasonal Wetlands	per acre	\$396,957
Pond	per acre	\$162,367
Stream	per linear foot	\$622

¹Temporary fees are based on the amounts shown adjusted for the duration of the impact, as set forth in Chapter 9 of the Santa Clara Valley Habitat Plan

Appendix F

**Financial Assurances Commitment Letter from Santa
Clara Valley Habitat Agency Board**

To be submitted to and approved by the Corps 30 days prior to project construction.



Enclosure 1: Reporting Procedures, Procedural Overview and Minimization Measures.

The following project activities and associated specific criteria have been incorporated into the project design as minimization measures.

PROCEDURAL OVERVIEW:

1) Following concurrence on this programmatic determination from NMFS, the Corps will not need to initiate informal consultation for proposed projects that meet the criteria described below. For each project proposed for inclusion under the 2015 SCVHCP RGP NLAA Programmatic Consultation, the Corps will record and provide the following information to NMFS:

- Project Location (latitude and longitude in decimal degrees, datum used, county, waterbody name, and nearest public road);*
- Project Type and brief description, and*
- The Corps' determination and rationale for how the project meets the appropriate criteria described below.*

Notification Requirements. The Corps will provide NMFS the above project-specific information at least six weeks prior to permit issuance. Notification to NMFS by Corps and permit applicants can be an electronic mail or fax to the specified contact below in NMFS North Central Coast area office:

*Gary Stern, San Francisco Bay Branch Supervisor, NOAA's National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404;
gary.stern@noaa.gov; phone: (707) 575-6060; phone: (707) 575-6060; fax: (707) 578-3435.*

The Corps 6-week notification does not require a response from NMFS for a project to proceed; however, if NMFS has concerns with the project after receiving the notification, NMFS will contact Corps within 28 days of receipt with any listed species or critical habitat concerns, including whether the proposed project qualifies for the 2015 Habitat Plan NLAA Program.

2) If the Corps or NMFS determines that a project does not meet the "not likely to adversely affect" project criteria below, or if there are species or critical habitat within the action area that are not listed below as covered in the 2015 Habitat Plan NLAA Program, the Corps will make an effects determination(s) and will initiate consultation (either formal or informal, as appropriate) with NMFS as per 50 CFR 402.

3) *Projects with interrelated and/or interdependent actions that may affect a listed fish species or critical habitat are not covered under the 2015 Habitat Plan NLAA Program. “Interrelated actions” are those that are part of a larger action and depend on the larger action for their justification. “Interdependent actions” are those that have no independent utility apart from the action under consideration. Corps will need to consult separately for projects with interrelated or interdependent actions.*

4) *Corps will contact NMFS prior to permit issuance for those projects where technical assistance for fish passage, species presence, or grade control impacts on fish habitat is required as part of the project criteria below. Contact shall be made as early as possible to avoid project delay.*

5) *Corps expects that NMFS will provide Corps with the most recent Federal Register notices and other relevant documents pertaining to listed fish species’ location, distribution, timing, habitat requirements, and current information regarding critical habitat delineation and primary constituent elements.*

6) *Corps will meet annually with NMFS, and as needed, to evaluate and discuss the continued effectiveness of these procedures and criteria for avoiding adverse effects to listed fish species and critical habitat, and to update procedures, project design criteria, and maps, if necessary. The annual meeting will occur on or before May 1st of each year.*

The programmatic determination is effective for the duration of this RGP which is anticipated to be five years. Corps and NMFS may end this programmatic determination at any time or reinstate the programmatic informal consultation if either determines that it is not being implemented as intended, or if new information requires reinstitution of consultation. For example, NMFS may revoke their programmatic concurrence if Corps fails to provide annual reports. NMFS may also revoke any programmatic concurrence provided for individual projects at any time.

Annual reporting requirements. Each year and no later than May 1st, the Corps will provide a table to NMFS identifying the following for each project the Corps verified under the 2015 Habitat Plan NLAA Program the previous year:

- *Corps Project file number,*
- *Project type,*
- *Description of completed action as built,*
- *Location coordinates (latitude, longitude, and datum),*
- *Permittee,*
- *Waterway,*
- *County,*
- *Listed species and designated critical habitat in the action area,*
- *Status of construction (not constructed, under construction, or completed),*

- *Corps' determination and rationale for how each project met the "not likely to adversely affect" criteria,*
- *Date of project implementation and duration of each project that Corps authorized under the 2015 Habitat Plan NLAA Program.*
- *Status of projects that were not implemented that year.*

If adaptive measures to this RGP are necessary, they will be explored during the annual meeting described above. The annual report to NMFS will be submitted to: Gary Stern, San Francisco Bay Branch Supervisor, NOAA's National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404; gary.stern@noaa.gov; phone: (707) 575-6060; fax: (707) 578-3435.

GENERAL CRITERIA:

The following criteria apply to all projects under the 2015 Habitat Plan NLAA Program that may affect NMFS listed fish species:

- *No large woody debris (LWD) will be removed in active (wetted) channels. Relocation of LWD may be acceptable through coordination with NMFS, applicants must describe relocation of LWD in authorization request.*
- *Trees may be removed for access routes for construction equipment. If trees need to be removed from other portions of the project site, do not remove willows over 3 inches in diameter at breast height or reduce canopy cover provided by hardwoods or conifers. For channel access only, grubbing of root systems should be avoided or justified in the authorization request if absolutely necessary. Where practicable, replant any trees with stems over 3 dbh removed from project site to achieve 1:1 successful revegetation by one of the following methods: a) trees removed can be replanted at 3:1, or b) site can be monitored for 2 years and replanted until 1:1 successful revegetation is achieved.*
- *Limit new access routes requiring tree removal and grading to no more than two. Access routes should not be along the top of the stream bank but relatively perpendicular (45 to 90 degrees is acceptable) to bank.*
- *Where available, use existing ingress or egress points, or perform work from the top of the stream banks or bridges.*
- *Check heavy equipment daily for leaks prior to starting work. Do not use equipment until leak is fixed.*
- *Refuel outside of active stream channel or above ordinary high water at designated sites with suitable containment.*
- *A Spill Prevention and Control Plan will be created, and the Plan and all materials necessary to implement will be accessible on site.*

- *No work during wet weather or where saturated ground conditions exist; if a 60% chance of a 0.5 inch of rain or more within a 24-hour period is forecasted, then operations will cease until 24 hours after rain has ceased.*
- *Petroleum products, chemicals, fresh cement, or water contaminated by the aforementioned will not be allowed to enter flowing waters.*
- *Adequate erosion control supplies (e.g., gravel, straw bales, silt fences, mulch, shovels, etc.) will be stored on site.*
- *Any disturbed ground must receive appropriate erosion control treatment (mulching, seeding, planting, etc.) prior to the end of the construction season, prior to a cease of operations due to forecasted wet weather, and within seven days of Project completion. Operations will use all feasible techniques to prevent any sediment from entering a drainage system.*
- *Work pads, falsework, and other construction items will be removed from the 100-year floodplain by the end of the construction window.*
- *In areas expected or forecasted to get rainfall during the construction season, effective erosion control measures must be in place at all times during construction activities. Construction within the 5-year floodplain (20% occurrence interval in any given year) does not begin until all temporary erosion controls (e.g., straw bales, silt fences that are effectively keyed-in) are in place, downslope of project activities within the riparian area. Erosion control structures must be maintained throughout, and possibly after, construction activities. Sediment will be removed from sediment controls once it has reached one-third of the exposed height of the control. Whenever straw bales are used, they must be staked and dug into the ground no less than 12 cm. Catch basins will be maintained so that no more than 15 cm of sediment depth accumulates within traps or sumps.*
- *Stream dewatering or fish relocation are not permitted within anadromous waterbodies.*

COVERED ACTIVITIES

1) Bridge Removal and Repair

Bridge removal will require demolition and removal of pilings, piers, abutments and/or pedestals, and bridge spans. Bridge materials to be salvaged will be removed and stockpiled near the site at a designated upland location. Repair activities may include widening existing piers and installing new or temporary piers, columns, and trestles to facilitate bridge repairs. Piles may be driven and concrete poured to construct bridge piers and footings. Enlarging the footings may require placing a sheet pile cofferdam around the footing, excavating to the bottom of the footing, driving additional support piles, and expanding the footing with rebar and concrete. Existing bridge superstructures are generally cast concrete and steel. Repairs may require concrete and steel reinforcement. Reinforcing steel will be placed as shown on project plans and securely held in position. Forms will be constructed adequately to prevent leaks while placing and curing the concrete.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.1 acre, 100 linear feet.

Specific Criteria

- *Structures may not maintain or create passage impediments for salmonids.*
- *Piles of any size (steel, wood, or concrete – any size or number) may be installed using vibratory hammers. Impact hammers using steel piles (limited to piles 12-inch diameter or less). Hammer must be 3000 pounds or smaller. Must use a wood or nylon cushion block between the hammer and pile to attenuate sound. Limited to 20 piles per day. Impact hammers with wood piles limited to no more than 20 piles per day – no size limitation. Impact hammers with concrete piles must be 18-inch in diameter or less and no more than 20 piles per day. Pile driving must be done in a naturally dewatered area.*
- *Bridge widening or replacement projects designed to accommodate a projected increase in traffic due to new developments or provide access to new developments are not included in this consultation.*
- *This consultation does not apply to multi-year projects where falsework is left in the channel outside of the work windows.*
- *New bridges are not covered unless they replace an existing bridge that has been removed or will be removed prior to or concurrent with new bridge installation.*
- *The streambed within the work area and access routes must be outside of flowing or standing water. For anadromous streams, dewatering shall not be used to obtain dry conditions.*
- *Construction activities must cease if flows rise above the silt fence levels. Except for project footprint, the bed and banks must be undisturbed.*
- *If an existing bridge is replaced, the new bridge must be sized to pass 100-year flow event without encroachment into stream channel.*
- *In-channel piers, if necessary, must be cylindrical columns.*

2) Bridge Replacement, Widening, and Installation

Bridge construction activities may include installing bridge support structures (e.g., pilings, piers, abutments and/or pedestals, columns, and trestles). Piles may be driven and concrete poured to construct bridge piers and footings. Footing construction may require placing a sheet pile cofferdam around the footing, excavating to the bottom of the footing, driving additional support piles, and expanding the footing with rebar and concrete. Existing bridge superstructures are generally cast concrete and steel. Replacement and installation of new bridges will require concrete and steel. These materials will be used as shown on plans and securely held in position. Forms will be constructed adequately to prevent leaks while curing the concrete.

Program Limits: 15 acres over 5 years.

Project Limits: 0.5 acre, 300 linear feet.

Specific Criteria

- *Same as project type 1) Bridge Removal and Repair.*

3) Culvert Repair, Replacement, and Removal

Culvert repair and replacement may include removal and replacement of existing culverts, repairs to headwalls, end walls, down drains, flared end sections, rock energy dissipaters, and rock slope protection (RSP). Construction activities may include excavation and backfill with native soils or concrete around the culvert. Earth plugs may be used to contain slurry mixtures. Backfill areas may be paved after the culvert is repaired, replaced or removed; in rural settings the area may be left as compacted earth and gravel.

Program Limits: 8.5 acres.

Project Limits: 0.25 acre each, 300 linear feet.

Specific Criteria

- *Culverts covered by this consultation must meet NMFS Fish Passage Guidelines and be no longer than 100 feet as measured at the stream centerline.*
- *Except for project footprint, the bed and banks must be left as found.*
- *Replaced or upgraded culverts must be the same kind or go up in order of preference of alternatives and structure types set out in NMFS Fish Passage Guidelines (<http://swr.nmfs.noaa.gov/hcd/NMFSSCG.PDF>) and may not maintain or create a passage barrier for adult or juvenile salmonids.*
- *Culverts must be sized to accommodate a 100-year flow event and associated debris and sediment with headwater to diameter ratio <1 .*
- *Fine sediment cleaned out from the inside of culverts must be removed to an upland location, where it cannot enter stream networks or road drainages that are hydrologically connected to a stream, and stabilized.*

4) Culvert Installation

Culvert installation may include construction of headwalls, end walls, down drains, flared end sections, rock energy dissipaters, and RSP. Culverts may be installed by excavation and backfilling, or by pipe jacking (advancing the pipe through the ground with thrust). Native soils or concrete slurry may be used to backfill around the new culvert. Earth plugs may be used to contain slurry mixtures. The backfill areas may be paved after the new culvert is in place or, in rural settings, may be left as compacted earth and gravel.

Program Limits: 2.5 acres.

Project Limits: 0.5 acre, 300 linear feet.

Specific Criteria

- *New culverts on streams accessible to steelhead are not included in this consultation.*

5) Outfall Repair, Replacement, Removal, and Installation

Repair and replacement of existing outfalls and installation of new outfalls associated with stormwater and water supply management facilities.

Program Limits: 5 acres.

Project Limits: 0.1 acre, 50 linear feet.

Specific Criteria

- *For anadromous streams, all work must be done in naturally dry conditions, no dewatering is authorized, or must be done from the bank without entering flowing waters during construction.*
- *Outfall pipes must be designed to not allow fish entrance to avoid straying or injury.*
- *New stormwater outfalls must be fitted with trash collecting devices to prevent or minimize the discharge of trash and other anthropogenic storm debris from entering waterways.*
- *Outfall repair, replacement, removal, and installation at current water supply management facilities that are known to impede fish passage are not covered under this program.*

6) Water Intake Structure Repair, Replacement, and Installation

Activities associated with the repair or replacement of water intake structures, and installation of new water intake structures. Water intake structures in the Valley Habitat Plan coverage area typically consist of concrete or metal culverts located at or near the top of stream channel banks or levees, in association with diversion structures such as gravel or inflatable dams. Water intake structure construction may include installation of concrete and/or rock riprap to stabilize banks and control erosion. Installation of new intakes will only occur in areas without anadromous fish (i.e., upstream of fish passage barriers).

Program Limits: 2.5 acres.

Project Limits: 0.25 acre, 100 linear feet.

Specific Criteria

- *All water intakes must have screens that comply with NMFS Fish Screen Guidelines. Design drawings must be provided to NMFS for review and comment five weeks in advance of Corps approval.*

- *All associated structures (diversion dams, weirs, wing walls, etc.) must comply with NMFS fish passage guidelines.*
- *New water diversion facilities with a capacity to exceed 3 cfs diversion are not authorized with this NLAA consultation.*
- *Work to repair or replace existing diversions is limited to the period of December 15 and March 31st.*
- *No water diversion may occur until streamflows exceed the estimated unimpaired February median flow at the point of diversion.*
- *New water diversions on streams accessible to steelhead are not included in this consultation.*

7) Sediment Removal

Mechanical sediment removal required when accumulated sediment reduces a channel's flow conveyance capacity and prevents facilities or appurtenant structures from functioning as intended. Sediment removal may occur along a channel reach, or at a small site such as a stream gauge, and will be done to match pre-sedimentation flow capacity (i.e., capacity will not be expanded) and pre-sedimentation geomorphic features (e.g., channel sinuosity). Sediment removal may also be needed for pond maintenance. Sediment removal may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 10 acres.

Project Limits: 0.25 acre, 300 linear feet.

Specific Criteria

- *Sediment removal projects must be associated with a facility or man-made structure (e.g., bridge, outfall, gauge, grade control)*
- *Sediment removal projects may not exceed 300 linear feet along the channel bed.*
- *Sediment removal equipment must only be operated a dry channel bed.*
- *Excavated sediment must be placed on dump trucks for transport to an off-site disposal location that is in upland in a location where it will not re-enter the waterway.*
- *Work site must be accessed via existing roads.*
- *Pre- and post-project assessments for impacts to gravel and instream habitat complexity must be performed by a qualified fish biologist.*

8) Removal of Vegetation and Storm Debris Involving Soil Disturbance

Vegetation and storm debris management activities involving hand or mechanical removal of vegetation, anthropogenic materials deposited as storm debris, large woody debris removal, when such debris increases the potential for flood risk, bridge damage, or erosion of stream

banks. The materials will be removed from the banks or bridges where possible. In some situations it may require scraping, discing, grading, excavating or other methods that result in soil disturbance. Vegetation management activities may occur along creeks, near bridges, or at stream gauges.

Program Limits: 6.25 acres.

Project Limits: 0.25 acre, 300 linear feet.

Specific Criteria

- *Removal of woody vegetation would only be performed when pruning will not suffice to provide clearance for maintenance vehicles and heavy equipment. Prior to removal or stand thinning of trees, an assessment of the ecological health of the riparian and/or upland woodland would be conducted and submitted with the authorization request.*

9) Temporary Construction Access and Dewatering

Construction of temporary access ramps, construction of cofferdams and berms to temporarily isolate in-channel construction activities from the active stream, and pumping of wet areas to temporarily expose the channel bottom in the designated construction area.

Project Limits: 0.1 acre, 50 linear feet.

Specific Criteria

- *All Temporary construction access must be associated with Corps' regulated activities and comply with any and all restrictions associate with that activity.*
- *Dewatering of streams accessible to steelhead are not included in this consultation.*

10) Recreational Facility Construction, Reconstruction, and Maintenance

Construction of recreational facilities including trails, boat ramps, ponds and other facilities. Other facilities may include portions of buildings, educational displays, and other non-water dependent structures that may encroach into jurisdictional waters when complete avoidance is not practicable. Maintenance of existing recreational trail stream crossings and construction of new recreational trail stream crossings may be authorized under this activity category. Activities associated with boat ramp installation may include grading, paving, and armoring. Construction may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 6.25 acres.

Project Limits: 0.25 acre, 200 linear feet.

Specific Criteria

- *New recreational facilities on steelhead streams and streams that are direct tributaries to steelhead streams are not included in this consultation.*

11) Restoration, Establishment, Enhancement Activities Involving Soil Disturbance, Including Removal and Modification of Fish Passage Impediments.

Activities in waters of the United States associated with the restoration, enhancement, and establishment of streams, wetlands, and open waters, provided those activities result in net increases in aquatic resource functions and services.

Activities authorized under this category include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This activity category includes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters, this category does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This activity category does not authorize stream channelization. Compensatory mitigation is not required as the included activities must result in net increases in aquatic resource functions and services.

Stream restoration activities include: geomorphic enhancement, including physical re-configuration of channels and installation of structures to enhance channel complexity, based on California Department of Fish and Wildlife and National Marine Fisheries Service guidelines for salmonid habitat enhancement; riparian planting; removal of invasive vegetation; creating and

expanding existing floodplain habitats and side channel habitats; and gravel augmentation to enhance spawning habitat. To implement these improvements, short channel segments may require temporary dewatering or bypass to allow construction¹. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work.

Removal of fish passage impediments may include removal of in-stream concrete low-flow crossings, culverts, weirs, concrete aprons under bridges, and possibly other features that create shallow water depths, vertical drops, or water velocities that exceed the swimming and leaping ability of fish. Such impediments may be modified to allow passage, or completely removed. In some cases, existing small culverts that impede fish passage may be replaced with bridged weir structures to provide access to tributary streams.

Program Limits: No program limit, but must report on annual impacts.

Project Limits: No project limit, but must document net increases in aquatic resource functions and services.

Specific Criteria

- *The applicant must demonstrate (and NMFS agree) that the completed project provides a net environmental benefit to aquatic species and habitat.*
- *The streambed within the work area and access routes must be outside of flowing or standing water. Dewatering shall not be used to obtain dry conditions.*
- *All work on SCVWD owned fish passage facilities must be permitted under the Stream Maintenance Program consultation, rather than this programmatic consultation.*

12) Installation of Fish Screens

Fish screens may be installed on existing unscreened water intakes. Fish screens may also be installed to isolate creeks from off-channel recharge ponds and lakes to prevent movement of fish in and out of these lakes and to support recreational fishing opportunities in these lakes. These project actions may occur in association with actions to maintain and replace existing water intakes. Fish screen structures typically consist of concrete structures with metal screens with appropriately sized openings to prevent entrainment of fish with diverted water. Fish screen structures may include a minimum amount of concrete and/or rock riprap as needed to stabilize banks and control erosion. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work. Although most work can usually be accomplished with equipment operated from the top of bank, some projects may require equipment and vehicles to be operated in the stream channel. Where construction activities are required in flowing streams, cofferdams or berms will be used to dewater the work site and isolate it from flowing water.

¹ Dewatering and stream bypass activities are not covered in anadromous waterbodies.

Fish screen installation activities in streams supporting federally listed anadromous fish species or their designated critical habitat are eligible for authorization under the Habitat Plan RGP if the Corps determines the activities would have no effect on federally listed anadromous fish species or their designated critical habitat or if the Corps successfully completes a consultation with NMFS for the activity.

Program Limits: 2.5 acres over 5 years

Project Limits: 0.10 acre

Specific Criteria

- *All fish screen installations must comply with NMFS Fish Screen Guidelines.*
- *All associated structures (diversion dams, weirs, wing walls, etc.) must comply with NMFS fish passage guidelines.*
- *Water diversion facilities with a capacity to exceed 3 cfs diversion are not authorized with this NLAA Programmatic consultation.*
- *Existing diversions are limited to the period of December 15 and March 31st.*
- *No water diversion may occur until streamflows exceed the estimated unimpaired February median flow at the point of diversion.*
- *No new water diversions on steelhead streams and streams tributary to steelhead bearing stream will be authorized using this NLAA Programmatic Consultation.*

13) Bank Stabilization

Bank stabilization involves repairing and stabilizing channel banks and levees that are eroding or are in need of erosion protection. There are a wide range of potential bank repair treatment options depending on site conditions and long-term maintenance issues. The primary treatment options include hard, hybrid or soft depending on the type of materials used. Hard materials include rip-rap, rock, concrete blocks or other hard materials. Soft materials include biotechnical treatments emphasizing vegetation and earthen banks. Hybrid materials include a mix of hard and soft materials.

During the bank stabilization assessment process, sites with destabilized banks are evaluated for their soil conditions, channel and bank scour velocities, slope stability, channel form/position, and other active geomorphic conditions. Consideration of the cause of the bank failure (overland runoff, bank slumping, undersized culvert upstream, etc.) is also critical to determination of the appropriate treatment approach. Where practicable and appropriate, bank stabilization projects will also address the cause of the bank failure. The use of hard material will be minimized where possible.

Program Limit: 2.5 acres.

Project Limits: 0.1 acre, 300 linear feet.

Specific Criteria

- *Work in the channel bed must occur when the channel is seasonally dry.*
- *Access to bank stabilization sites must occur via existing access roads. Staging of equipment should occur on previously disturbed areas.*
- *When repairs are made, banks would be re-contoured to match the adjacent bank slope (i.e., returned to pre-failure configuration) to the extent possible.*
- *If healthy riparian vegetation exists adjacent to the bank failure site, care would be taken to minimize disturbance of such vegetation, including mature trees.*
- *Pre- and post-project assessments for impacts to gravel and instream habitat complexity must be performed by a qualified fish biologist.*

New Bank Stabilizations:

- *Projects will not exceed 300 linear feet of stream bank or 1,000 square feet in area.*
- *Bioengineering techniques intended to create shaded riverine aquatic habitat, accumulate coarse sediments, and increase in-stream habitat complexity shall be the first materials considered for use. Bio-engineering projects emphasize the use of live plant material in the construction of durable erosion control structures. Projects should be designed to begin the process of naturally restoring the streambank's plant and animal community. Approaches that widen the floodplain area or the margin of the river channel near the low flow water surface and at the toe of the bank are encouraged. Design should emphasize the use of natural and local building materials (e.g., stone, gravel, sand, soil, wood, branched logs, and native trees, shrubs, and grasses). Rock rip-rap may be used in limited and discrete areas such as fill in a toe trench at the base of the bank and further up the bank where shear stress during high stream flow events are greatest (not to exceed bankfull level). Any rock used should have the smallest diameter possible, be used sparingly, and be capped with sediment and native vegetation as part of the design. Natural drainage patterns should be considered and incorporated into the design where appropriate. Projects without bioengineered techniques must provide analysis of which techniques have been considered and why those techniques are not practicable.*
- *Projects that rely solely on rock rip-rap or other hardscape materials for bank protection are not allowed under this consultation.*
- *Gabions, concrete mats, tires, and rubble may not be used under this consultation.*
- *Cables may be used to anchor large woody debris. Natural drainage patterns should be considered and incorporated into the design where appropriate.*

Repair of existing bank stabilization:

- *Replacement of failing or damaged bank stabilization with rip-rap (no grouting or concrete mats) is allowed.*

- *Replacement or repair with gabions grouted rip-rap, debris (e.g., car bodies, pipe and tire revetments, etc.) is not allowed.*
- *Repair of gabions on steelhead streams and streams tributary to steelhead bearing stream will not be authorized using this NLAA Programmatic Consultation.*
- *The footprint of the repaired, replaced, or maintained bank stabilization must not exceed existing footprint. Projects shall not exceed 300 linear feet of stream bank or 1,000 square feet in area.*
- *Replacement with bioengineering techniques is encouraged. Rock rip-rap may be replaced with ungrouted rip-rap only.*
- *Rock rip-rap must be planted with native vegetation. Willow cuttings or other native plants will be placed in spaces between rocks/boulders – an average of one plant per square meter of bank stabilization.*
- *Rip-rap must be adequately sized for a 100-year flow event. Toe trenches may be used.*

14) Minor Maintenance of Levees, Canals and Ditches

Minor maintenance activities are routine small-scale activities performed to make repairs and keep facilities operational. Maintenance activities may occur along levees, canals, and ditches and at stream gauges and will not change the footprint of existing facilities. Specific actions could include trash and debris removal that requires minor ground disturbance; replacement of concrete linings, pipes, valves or similar structures; replacement of weirs; minor erosion repair; and other minor maintenance activities.

Program Limit: 4 acres.

Project Limit: 0.1 acre.

Specific Criteria

- *Projects must be no more than 300 feet in length.*
- *The work area and access routes must be outside flowing or standing water. Dewatering shall not be used to obtain dry conditions.*
- *Except for project footprint, the bed and banks must be left as found.*
- *The work site of a Minor Maintenance activity must be less than 0.1 acre (4,356 sq. ft.) of wetland or riparian vegetation, and any access or staging would be calculated as part of this total.*

15) Surveying Activities, Including Installation and Maintenance of Scientific Measurement Devices

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. Under this category, the term “exploratory trenching” means mechanical land clearing of the upper soil

profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This category includes the construction of temporary pads, provided the discharge does not exceed 0.08 acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not authorized under this category. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized under this category; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized under this category. Surveying activities under this category do not include installation of any permanent survey structures. Projects to be authorized under this category must include anticipated start and end dates for the surveying activities.

Devices, whose purpose is to measure and record scientific data, such as staff gages, piezometers, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. Scientific measurement device installation projects to be authorized under this category must include anticipated start and end dates for use of the installed device. For devices that will be used for long-term surveying activities, the applicant shall include a written explanation of the need for long-term surveying, and an estimated duration of the long-term survey period.

Program Limit: 0.8 acre.

Project Limit: 0.08 acre.

Specific Criteria

- *All associated structures (diversion dams, weirs, wing walls, etc.) must comply with NMFS fish passage guidelines.*

16) Utility Repair, Removal, Replacement, and Installation

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States. *Utility lines:* This category includes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term

“utility line” does not include activities that drain a water of the United States, such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area.

This category includes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Program Limit: 3 acres.

Project Limit: 0.2 acre.

Specific Criteria

- *All associated structures (diversion dams, weirs, wing walls, etc.) must comply with NMFS fish passage guidelines.*
- *Structures may not maintain or create passage impediments for salmonids.*
- *No new utilities on steelhead streams and streams tributary to steelhead bearing stream will be authorized using this NLAA consultation.*

17) Discharges Associated With Development

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision is also authorized. This category includes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, and yards.

Program Limit: 5 acres.

Project Limit: 0.5 acre, 300 linear feet.

Specific Criteria

- *No discharges associated with development on steelhead streams and streams directly tributary to steelhead streams will be included in this consultation.*



United States Department of the Interior

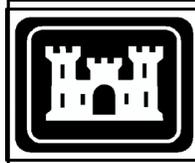
FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Suite W-2605
Sacramento, California 95825-1846



In Reply Refer to:
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2015-F-1169-2

OCT 16 2015

Jane M. Hicks
Department of the Army
San Francisco District, Corps of Engineers
1455 Market Street
San Francisco, California 94103-1398



Regional General Permit 18
Santa Clara Valley Habitat Plan RGP
Attachment 5
January 15, 2016

Subject: Formal Consultation on the Regional General Permit (RGP) for the Santa Clara Valley Habitat Plan, Santa Clara County, California (U.S. Army Corps of Engineers (Corps) file number 2012-00302S)

Dear Ms. Hicks:

This letter is in response to the Corps August 6, 2015, request for initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed RGP to implement covered activities (proposed project) in the Santa Clara Valley Habitat Plan in Santa Clara County, California (Corps file number 2012-00302S). Your request was received by the Service on August 10, 2015. At issue are the proposed project's effects on the federally threatened California red-legged frog (*Rana draytonii*) and its designated critical habitat, threatened Central California Distinct Population Segment of the California tiger salamander (Central California tiger salamander) (*Ambystoma californiense*) and its designated critical habitat, endangered least Bell's vireo (*Vireo bellii pusillus*), threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*) and its designated critical habitat, endangered San Joaquin kit fox (*Vulpes macrotis mutica*), endangered Tiburon Indian paintbrush (*Castilleja affinis* ssp. *neglecta*), endangered Coyote ceanothus (*Ceanothus ferrisiae*), endangered Santa Clara Valley dudleya (*Dudleya setchellii*), and endangered Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*). Critical habitat has been designated for the least Bell's vireo but does not occur in the action area for the proposed project. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The federal action on which we are consulting is the Corps issuance of a five-year RGP to the County of Santa Clara, City of San Jose, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, City of Morgan Hill, City of Gilroy, and Santa Clara Valley Habitat Agency, collectively known as the co-permittees, pursuant to Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*) and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*) to implement covered activities in the Santa Clara Valley Habitat Plan (<http://scv-habitatagency.org/178/Final-Habitat-Plan>; ICF International 2012; Service file number 81420-2009-F-0077, Service 2013) in waters of the United States (U.S.) in Santa Clara County, California.

In considering your request, we based our evaluation on the following: (1) your letter requesting consultation dated August 6, 2015; (2) the August 2012 Santa Clara Valley Habitat Plan (<http://scv-habitatagency.org/178/Final-Habitat-Plan>; ICF International 2012); (3) the Service's biological

opinion (enclosed) for the Santa Clara Valley Habitat Plan (Service file number 81420-2009-F-0077, Service 2013); (4) communications among the Service, the co-permittees, and the Corps; and (5) other information available to the Service.

The remainder of this document provides our biological opinion on the effects of the proposed project on the California red-legged frog and its designated critical habitat, Central California tiger salamander and its designated critical habitat, least Bell's vireo, Bay checkerspot butterfly and its designated critical habitat, San Joaquin kit fox, Tiburon Indian paintbrush, Coyote ceanothus, Santa Clara Valley dudleya, and Metcalf Canyon jewelflower.

Consultation History

- April 8, 2013: The Service issued the intra-Service biological opinion for the Santa Clara Valley Habitat Plan (Service file number 81420-2009-F-0077, Service 2013).
- August 10, 2015: The Service received from the Corps the letter requesting the initiation of formal consultation on the RGP to implement covered activities for the Santa Clara Valley Habitat Plan.
- September 2, 2015: The Service received from the Corps the request for a draft biological opinion for the RGP to implement covered activities for the Santa Clara Valley Habitat Plan.
- September 30, 2015: The Service issued the draft biological opinion to the Corps for the RGP to implement covered activities for the Santa Clara Valley Habitat Plan.
- October 7, 2015: The Service received comments from the Corps on the draft biological opinion for the RGP to implement covered activities for the Santa Clara Valley Habitat Plan.

Description of the Proposed Project

The Santa Clara Valley Habitat Plan area proposed to be covered under the RGP includes 460,205 acres of land located entirely within Santa Clara County. The proposed Santa Clara Valley Habitat Plan RGP coverage area is equal to the Santa Clara Valley Habitat Plan study area, less State parks lands in Henry W. Coe and Pacheco State parks (Figure 1). It does not include the extended study area for western burrowing owl conservation. The proposed RGP coverage area also includes almost all of the City of San José (less San Francisco Baylands habitats), all of the City of Morgan Hill, and all of the City of Gilroy.

The proposed RGP coverage area is defined as the area in which all RGP covered activities described below would occur, impacts would be evaluated, and RGP compensatory mitigation activities would be implemented. The proposed RGP area includes all of the Llagas/Uvas/Pajaro watersheds within Santa Clara County and the entire Coyote Creek watershed except for the San Francisco Baylands. A large portion of the Guadalupe watershed is also within the Santa Clara

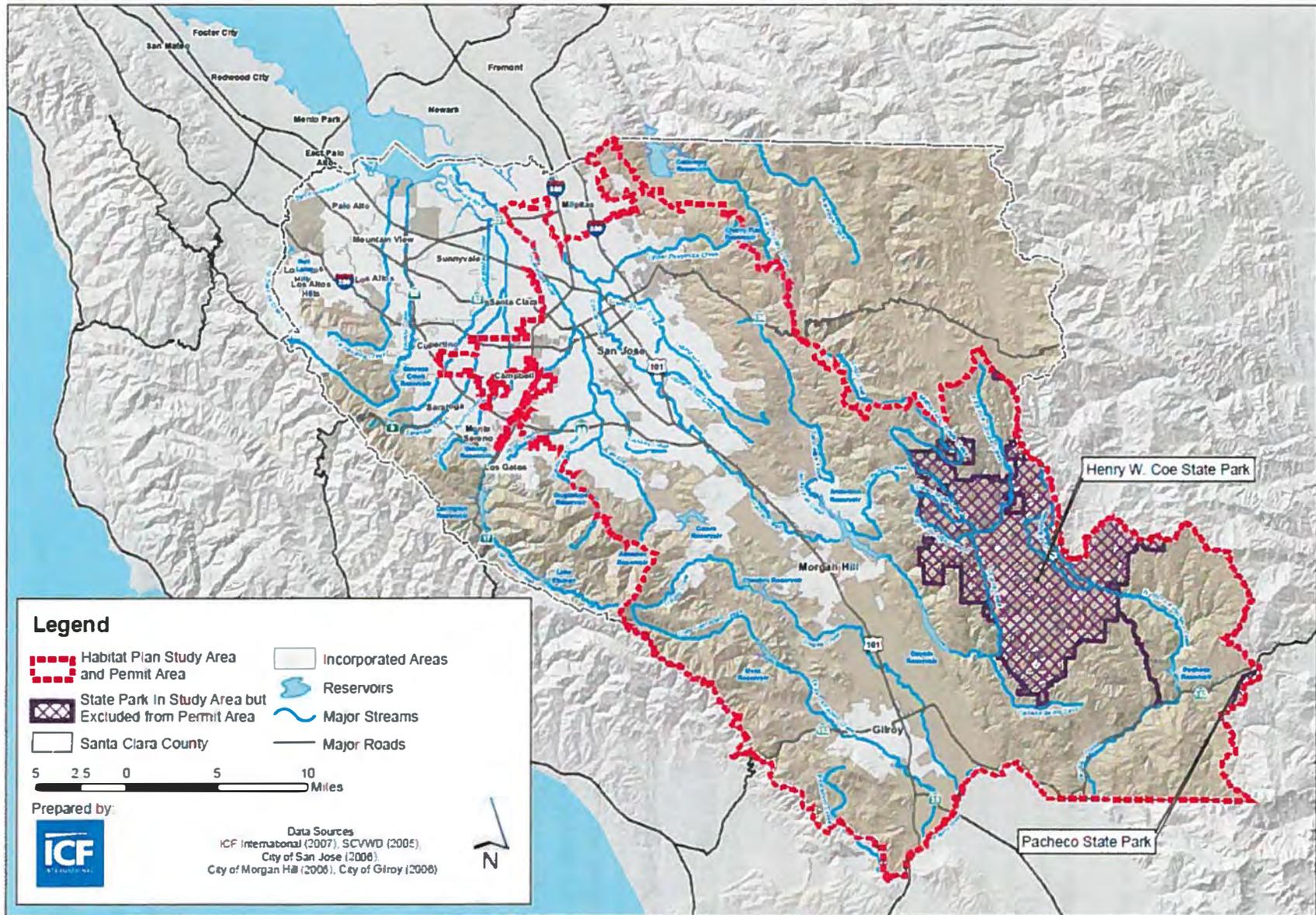


Figure 1. Santa Clara Valley Habitat Plan Study Area and Permit Area.

Valley Habitat Plan RGP area. The Santa Clara Valley Habitat Plan RGP area also encompasses small areas outside these watersheds. The proposed RGP would require co-permittees to comply with the terms and conditions of the Service permit number TE94345A-O, and the specific terms and conditions of the associated Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Service file number 81420-2009-F-0077, Service 2013; ICF International 2012). The list below identifies the Corps-regulated activities proposed for authorization under the Santa Clara Valley Habitat Plan RGP. The list includes those activities that may occur in waters of the U.S. The RGP project description includes project and program limits for losses of, *i.e.*, permanent impacts to, waters of the U.S.

1) Bridge removal and repair

Bridge removal would require demolition and removal of pilings, piers, abutments and/or pedestals, and bridge spans. Bridge materials to be salvaged would be removed and stockpiled near the site at a designated upland location. Repair activities may include widening existing piers and installing new or temporary piers, columns, and trestles to facilitate bridge repairs. Piles may be driven and concrete poured to construct bridge piers and footings. Enlarging the footings may require placing a sheet pile cofferdam around the footing, excavating to the bottom of the footing, driving additional support piles, and expanding the footing with re-bar and concrete. Existing bridge superstructures are generally cast concrete and steel. Repairs may require concrete and steel reinforcement. Reinforcing steel would be placed as shown on project plans and securely held in position. Forms would be constructed adequately to prevent leaks while placing and curing the concrete.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.1 acre, 100 linear feet.

2) Bridge replacement, widening, and installation

Bridge construction activities may include installing bridge support structures (*e.g.*, pilings, piers, abutments and/or pedestals, columns, and trestles). Piles may be driven and concrete poured to construct bridge piers and footings. Footing construction may require placing a sheet pile cofferdam around the footing, excavating to the bottom of the footing, driving additional support piles, and expanding the footing with re-bar and concrete. Existing bridge superstructures are generally cast concrete and steel. Replacement and installation of new bridges would require concrete and steel. These materials would be used as shown on plans and securely held in position. Forms would be constructed adequately to prevent leaks while curing the concrete.

Program Limits: 15 acres over 5 years.

Project Limits: 0.5 acre, 300 linear feet.

3) Culvert repair, replacement, and removal

Culvert repair and replacement may include removal and replacement of existing culverts, repairs to headwalls, end walls, down drains, flared end sections, rock energy dissipaters, and rock slope protection (RSP). Construction activities may include excavation and backfill with native soils or concrete around the culvert. Earth plugs may be used to contain slurry mixtures. Backfill areas may be paved after the culvert is repaired, replaced or removed; in rural settings the area may be left as compacted earth and gravel.

Program Limits: 8.5 acres over 5 years.

Project Limits: 0.25 acre each, 300 linear feet.

4) Culvert installation

Culvert installation may include construction of headwalls, end walls, downdrains, flared end sections, rock energy dissipaters, and RSP. Culverts may be installed by excavation and backfilling, or by pipe jacking (advancing the pipe through the ground with thrust). Native soils or concrete slurry may be used to backfill around the new culvert. Earth plugs may be used to contain slurry mixtures. The backfill areas may be paved after the new culvert is in place or, in rural settings, may be left as compacted earth and gravel.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.5 acre, 300 linear feet.

5) Outfall repair, replacement, removal, and installation

Repair and replacement of existing outfalls and installation of new outfalls associated with stormwater and water supply management facilities.

Program Limits: 5 acres over 5 years.

Project Limits: 0.1 acre, 50 linear feet.

6) Water intake structure repair, replacement, and installation

Activities associated with the repair or replacement of water intake structures, and installation of new water intake structures. Water intake structures in the Santa Clara Valley Habitat Plan coverage area typically consist of concrete or metal culverts located at or near the top of stream channel banks or levees, in association with diversion structures such as gravel or inflatable dams. Water intake structure construction may include installation of concrete and/or rock riprap to stabilize banks and control erosion. Installation of new intakes would only occur in areas without anadromous fish (*i.e.*, upstream of existing diversions).

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.25 acre, 100 linear feet.

7) Sediment removal

Mechanical sediment removal required when accumulated sediment reduces a channel's flow conveyance capacity and prevents facilities or appurtenant structures from functioning as intended. Sediment removal may occur along a channel reach, or at a small site such as a stream gauge, and would be done to match pre-sedimentation flow capacity (*i.e.*, capacity would not be expanded) and pre-sedimentation geomorphic features (*e.g.*, channel sinuosity). Sediment removal may also be needed for pond maintenance. Sediment removal may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 10 acres over 5 years.

Project Limits: 0.25 acre, 300 linear feet.

8) Removal of vegetation and storm debris involving soil disturbance

Vegetation and storm debris management activities involving hand or mechanical removal of vegetation and storm debris by scraping, discing, grading, excavating or other methods that result in soil disturbance. Vegetation management activities may occur along creeks, near bridges or at stream gauges.

Program Limits: No program limits, but must report on quantity of removals.

Project Limits: No limit.

9) Temporary construction access and dewatering

Construction of temporary access ramps; construction of cofferdams and berms to temporarily isolate in-channel construction activities from the active stream, and pumping of wet areas to temporarily expose the channel bottom in the designated construction area.

Program Limits: No program limits.

Project Limits: 0.1 acre, 50 linear feet.

10) Recreational facility construction, reconstruction, and maintenance

Construction of recreational facilities including trails, boat ramps, ponds and other facilities. Other facilities may include portions of buildings, educational displays, and other non-water dependent structures that may encroach into jurisdictional waters when complete avoidance is not practicable. Maintenance of existing recreational trail stream crossings and construction of new recreational trail stream crossings may be authorized under this activity category. Activities associated with boat ramp installation may include grading, paving, and armoring. Construction may require use of heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment.

Program Limits: 6.25 acres over 5 years.

Project Limits: 0.25 acre, 200 linear feet.

11) Restoration, establishment, enhancement activities involving soil disturbance, including removal and modification of fish passage impediments

Activities in waters of the U.S. associated with the restoration, enhancement, and establishment of streams, wetlands, and open waters, provided those activities result in net increases in aquatic resource functions and services.

Activities authorized under this category include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This activity category includes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters, this category does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (*e.g.*, stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This activity category does not authorize stream channelization.

Compensatory mitigation is not required as the included activities must result in net increases in aquatic resource functions and services.

Stream restoration activities include: geomorphic enhancement, including physical re-configuration of channels and installation of structures to enhance channel complexity, based on California Department of Fish and Wildlife and National Marine Fisheries Service guidelines for salmonid habitat enhancement; riparian planting; removal of invasive vegetation; creating and expanding existing floodplain habitats and side channel habitats; and gravel augmentation to enhance spawning habitat. To implement these improvements, short channel segments may require temporary dewatering or bypass to allow construction. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work.

Removal of fish passage impediments may include removal of in-stream concrete low-flow crossings, culverts, weirs, concrete aprons under bridges, and possibly other features that create shallow water depths, vertical drops, or water velocities that exceed the swimming and leaping ability of fish. Such impediments may be modified to allow passage, or completely removed. In some cases, existing small culverts that impede fish passage may be replaced with bridged weir structures to provide access to tributary streams.

Program Limits: No program limit, but must report on annual impacts.

Project Limits: No project limit, but must document net increases in aquatic resource functions and services.

12) Installation of fish screens when such installation involves soil disturbance

Fish screens may be installed on existing unscreened water intakes. Fish screens may also be installed to isolate creeks from off-channel recharge ponds and lakes to prevent movement of fish in and out of these lakes and to support recreational fishing opportunities in these lakes. These project actions may occur in association with actions to maintain and replace existing water intakes. Fish screen structures typically consist of concrete structures with metal screens with appropriately sized openings to prevent entrainment of fish with diverted water. Fish screen structures may include a minimum amount of concrete and/or rock riprap as needed to stabilize banks and control erosion. Heavy equipment such as scrapers, dozers, back hoes, cranes, loaders, dump trucks, and other earth moving equipment may be used to complete the work. Although most work can usually be accomplished with equipment operated from the top of bank, some projects may require equipment and vehicles to be operated in the stream channel. Where construction activities are required in flowing streams, cofferdams or berms would be used to dewater the work site and isolate it from flowing water.

Fish screen installation activities in streams supporting federally listed anadromous fish species or their designated critical habitat are eligible for authorization under the Santa Clara Valley Habitat Plan RGP if the Corps determines the activities would have no effect on federally-listed anadromous fish species or their designated critical habitat or if the Corps completes the necessary level of Act section 7 consultation with National Marine Fisheries Service for the activity.

Program Limits: 2.5 acres over 5 years.

Project Limits: 0.10 acre.

13) Bank stabilization

Bank stabilization involves repairing and stabilizing channel banks and levees that are eroding or are in need of erosion protection. There are a wide range of potential bank repair treatment options depending on site conditions and long-term maintenance issues. The primary treatment options

include hard, hybrid or soft depending on the type of materials used. Hard materials include rip-rap, gabions, rock, concrete blocks or other hard materials. Soft materials include biotechnical treatments emphasizing vegetation and earthen banks. Hybrid materials include a mix of hard and soft materials.

During the bank stabilization assessment process, sites with destabilized banks are evaluated for their soil conditions, channel and bank scour velocities, slope stability, channel form/position, and other active geomorphic conditions. Consideration of the cause of the bank failure (overland runoff, bank slumping, undersized culvert upstream, etc.) is also critical to determination of the appropriate treatment approach. Where practicable and appropriate, bank stabilization projects would also address the cause of the bank failure. The use of hard material would be minimized where possible.

Program Limit: 2.5 acres over 5 years.

Project Limits: 0.1 acre, 300 linear feet.

14) Minor maintenance of levees, canals and ditches

Minor maintenance activities are routine small-scale activities performed to make repairs and keep facilities operational. Maintenance activities may occur along levees, canals, and ditches and at stream gauges and would not change the footprint of existing facilities. Specific actions could include trash and debris removal that requires minor ground disturbance; replacement of concrete linings, pipes, valves or similar structures; replacement of weirs; minor erosion repair; and other minor maintenance activities.

Program Limit: 4 acres over 5 years.

Project Limit: 0.2 acre.

15) Surveying activities, including installation and maintenance of scientific measurement devices

Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. Under this category, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the U.S. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This category includes the construction of temporary pads, provided the discharge does not exceed 0.08 acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not authorized under this category. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized under this category; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized under this category. Surveying activities under this category do not include installation of any permanent survey structures. Projects to be authorized under this category must include anticipated start and end dates for the surveying activities.

Devices, whose purpose is to measure and record scientific data, such as staff gages, piezometers, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and

record scientific data, the measuring device and any other structures or fills associated with that device (*e.g.*, foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. Scientific measurement device installation projects to be authorized under this category must include anticipated start and end dates for use of the installed device. For devices that would be used for long-term surveying activities, the applicant shall include a written explanation of the need for long-term surveying, and an estimated duration of the long-term survey period.

Program Limit: 0.8 acre over 5 years.

Project Limit: 0.08 acre.

16) Utility repair, removal, replacement, and installation

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the U.S. This category includes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the U.S, provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term “utility line” does not include activities that drain a water of the U.S., such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

This category includes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the U.S., provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Program Limit: 3 acres over 5 years.

Project Limit: 0.2 acre.

17) Discharges associated with development

Discharges of dredged or fill material into non-tidal waters of the U.S. for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields.

Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

Discharges of dredged or fill material into non-tidal waters of the U.S. for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision is also authorized. This category includes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, and yards.

Program Limit: 5 acres over 5 years.

Project Limit: 0.5 acre, 300 linear feet.

Conservation Measures

The Corps-regulated activities proposed for authorization under the Santa Clara Valley Habitat Plan RGP are “covered projects” under the Santa Clara Valley Habitat Plan. The co-permittees will implement the conditions from the Santa Clara Valley Habitat Plan (*e.g.*, Chapter 6) including paying all applicable development fees to the Santa Clara Valley Habitat Agency identified in the Development Fee Table (Table 9-6 in the Santa Clara Valley Habitat Plan; updated fee schedules available at <http://scv-habitatagency.org/206/Habitat-Agency-Fee-Schedule>) and described in Chapter 9.4.1 of the Santa Clara Valley Habitat Plan (<http://scv-habitatagency.org/178/Final-Habitat-Plan>; ICF International 2012).

To remain exempt from the prohibitions of Section 9 of the Act, the non-discretionary Terms and Conditions for incidental take of federally-listed species shall be fully implemented as stipulated in the biological opinion entitled, “Biological and Conference Opinion, Issuance of a Section 10(a)(1)(B) Permit for the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan” (page 256, Service file number 81420-2009-F-0077, Service 2013) dated April 2013. Project authorization under the RGP is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the RGP authorization for your project. The Service is, however, the authoritative Federal agency for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Act. Project authorization under the RGP is conditional upon compliance with the conservation measures stipulated in the Santa Clara Valley Habitat Plan (<http://scv-habitatagency.org/178/Final-Habitat-Plan>; ICF International 2012) and in this biological opinion for the RGP (Service file number 08ESMF00-2015-F-1169-2).

Action Area

The action area is defined in 50 CFR § 402.02, as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.” For the proposed project, the action area encompasses the 460,205 acres of land within the permit area for the Santa Clara Valley Habitat Plan (Figure 1) located entirely within Santa Clara County, California. The Act regulations recognize that in some circumstances the Corps scope of analysis may be expanded beyond the limits of the Corps regulatory jurisdiction to address upland portions of a larger project. As a general rule, the Corps extends its scope of analysis beyond the jurisdictional waters where the environmental consequences of a larger project may be considered the products of either the Corps permit action or the Corps permit action in conjunction with other Federal involvement. For the purposes of this consultation, the Corps has defined the scope of analysis to include waters of the U.S. directly impacted by proposed project activities authorized under the proposed Santa Clara Valley Habitat Plan RGP.

Conclusion

If the provisions listed above are met, take of the California red-legged frog, Central California tiger salamander, least Bell’s vireo, Bay checkerspot butterfly, and San Joaquin kit fox will be authorized through the Santa Clara Valley Habitat Plan’s incidental take permit (Fish and Wildlife Permit No.: TE-94345A-0). The effects to listed species that would result from the issuance of this incidental

take permit were analyzed in the Service's enclosed April 2013 Intra-Service Biological Opinion on Issuance of a Section 10(a)(1)(B) Incidental Take Permit for the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Service file number 81420-2009-F-0077, Service 2013).

The Santa Clara Valley Habitat Plan requires specific avoidance and minimization measures for covered activities that have the potential to affect Santa Clara Valley Habitat Plan covered species, sensitive habitats, natural communities, and jurisdictional wetlands and other waters in Santa Clara County. Therefore, the co-permittees will implement all protection measures for the affected species as set forth in the Santa Clara Valley Habitat Plan.

The Corps-regulated activities proposed for authorization under the Santa Clara Valley Habitat Plan RGP, if implemented as described in this letter, comply with all applicable conditions required by the Santa Clara Valley Habitat Plan. This concludes consultation on the proposed RGP for the Santa Clara Valley Habitat Plan in Santa Clara County, California. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any additional take will not be exempt from the prohibitions of section 9 of the Act, pending reinitiation.

If you have questions concerning this determination on the RGP for the Santa Clara Valley Habitat Plan in Santa Clara County, California, please contact Joseph Terry, Senior Biologist, or Ryan Olah, Coast/Bay Division Chief, at the letterhead address, at telephone number (916) 414-6623, or email joseph_terry@fws.gov or ryan_olah@fws.gov.

Sincerely,



Jennifer M. Norris
Field Supervisor

Enclosure

cc:

Brenda Blinn, California Department of Fish and Wildlife, Napa, California
Edmund Sullivan, Santa Clara Valley Habitat Agency, Morgan Hill, California

LITERATURE CITED

ICF International. 2012. Final Santa Clara Valley Habitat Plan. August. Prepared by ICF International, San Francisco, California. <http://scv-habitatagency.org/178/Final-Habitat-Plan>. Accessed September 2, 2015.

U.S. Fish and Wildlife Service (Service). 2013. Intra-Service Biological Opinion and Conference Opinion on the Issuance of a Section 10(a)(1)(B) Incidental Take Permit to the County of Santa Clara, City of San Jose, City of Morgan Hill, City of Gilroy, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority for the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan. Service file number 81420-2009-F-0077. Sacramento Fish and Wildlife Office, Sacramento, California.



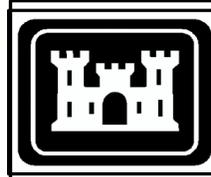
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

December 23, 2015

Refer to NMFS No: WCR-2015-3821

Lieutenant Colonel John C. Morrow
U.S. Department of the Army
San Francisco District, Corps of Engineers
1455 Market Street
San Francisco, California 94103



Regional General Permit 18
Santa Clara Valley Habitat Plan RGP
Attachment 6
January 15, 2016

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Santa Clara Valley Habitat Conservation Plan Regional General Permit [Corps File No. 2012-00302S]

Dear Colonel Morrow:

On December 7, 2015, NOAA's National Marine Fisheries Service (NMFS) received your request for a written concurrence that the U.S. Army Corps of Engineers (Corps) proposed issuance of a Regional General Permit (RGP) to implement activities covered in the Santa Clara Valley Habitat Plan (Habitat Plan) under Section 404 of the Clean Water Act of 1973, as amended (33 U.S.C. Section 1344 *et seq.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. Section 403 *et seq.*), is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for preparation of letters of concurrence.

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determination you made regarding the potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation. In this case, NMFS concluded the action would not adversely affect EFH. Thus, consultation under the MSA is not required for this action.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public



Law 106-554). The concurrence letter will be available through NMFS' Public Consultation Tracking System [<http://pcts.nmfs.noaa.gov/pcts-web/homepage.pcts>].¹ A complete record of this consultation is on file at the North-Central Coastal Office of NMFS in Santa Rosa, California.

Proposed Action and Action Area

The Corps proposes to issue a five-year RGP to conduct various activities within wetlands and waters of the U.S. associated with implementation of the Santa Clara Valley Habitat Plan (Habitat Plan). Implementation of covered activities is limited to those conducted by the Santa Clara Valley Habitat Agency (SCVHA) and its co-permittees in Santa Clara County, California. The co-permittees include: Santa Clara County, City of San José, City of Morgan Hill, City of Gilroy, Santa Clara Valley Water District, and the Santa Clara Valley Transportation Authority.

The activities to be authorized in the RGP consist of the following:

- a. Bridge repair;
- b. Bridge replacement, widening, and installation;
- c. Culvert repair, replacement, and removal;
- d. Culvert installation;
- e. Outfall repair, replacement, removal, and installation;
- f. Water intake structure repair, replacement, and installation;
- g. Sediment removal;
- h. Removal of vegetation and storm debris involving soil disturbance;
- i. Temporary construction access and dewatering;
- j. Recreational facility construction, reconstruction, and maintenance;
- k. Restoration, establishment, enhancement activities involving soil disturbance, including removal and modification of fish passage impediments;
- l. Installation of fish screens when such installations involve soil disturbance;
- m. Bank stabilization;
- n. Minor maintenance of levees, canals, and ditches;
- o. Surveying activities, including installation and maintenance of scientific measurement devices; and
- p. Discharges associated with development.

A description of each covered activity, specific minimization measures including annual and program limits for each activity, and program reporting requirements and procedures for the RGP were provided with the Corps' letter of December 7, 2015 (Enclosure 1, *Reporting Procedures, Procedural Overview and Minimization Measures*). The RGP will include activities in wetlands and waters of the U.S. within Santa Clara County, California as shown in Figure 1. The Corps anticipates there may be 10 to 20 individual projects authorized under the RGP per year over the 5-year period.

There are no interrelated or interdependent activities associated with the projects authorized under the RGP.

¹ Once on the PCTS homepage, use the following PCTS tracking number within the Quick Search column: WCR-2015-3821, or search for the project by name: Regional General Permit for Santa Clara Valley Habitat Plan.

The action area for the RGP is located within Santa Clara County and includes the cities of San José, Morgan Hill, and Gilroy (Figure 1). The action area also includes rural areas outside of the above cities in the Central California Coast Range and the Santa Clara Valley. Land uses in the action area include urban, rural residential, agriculture, public open space, and rangelands. The watersheds that support populations of threatened Central California Coast (CCC) steelhead in the action area are Coyote Creek and the Guadalupe River. Coyote Creek and Guadalupe River drain to South San Francisco Bay. The action area also includes Llagas and Uvas Creeks, tributaries of the upper Pájaro River that support populations of threatened South-Central Coast (SCCC) steelhead. The Pájaro River drains to Monterey Bay. The Habitat Plan and RGP area exclude tidally influenced portions of streams tributary to South San Francisco Bay.

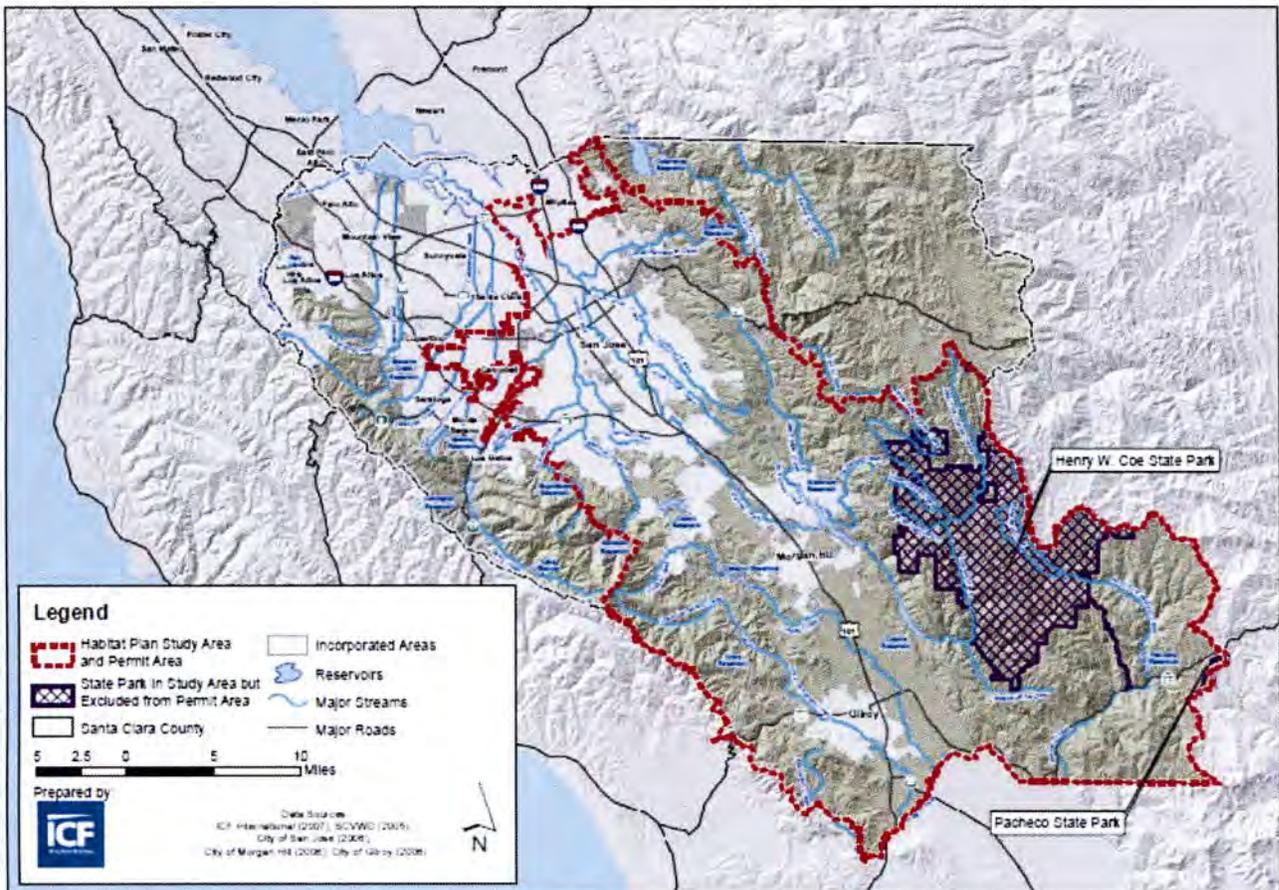


Figure 1. The Santa Clara Valley Habitat Plan study area and permit area.

Action Agency's Effects Determination

The Corps has determined implementation of the covered activities under the RGP program are not likely to adversely affect ESA-listed fish and their designated critical habitats, and has requested NMFS' concurrence with this determination. The Corps has determined the following Distinct Population Segments (DPS) and critical habitats under the jurisdiction of NMFS may be affected by activities authorized by the RGP:

Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*) DPS

Threatened (71 FR 834; January 5, 2006)

Critical habitat (70 FR 52488; September 2, 2005);

South-Central California Coast (SCCC) steelhead DPS

Threatened (71 FR 834; January 5, 2006)

Critical habitat (70 FR 52488; September 2, 2005);

North American green sturgeon southern DPS (*Acipenser medirostris*)

Threatened (71 FR 17757; April 7, 2006)

Critical habitat (74 FR 52300; October 9, 2009).

The life history of steelhead is summarized by Shapovalov and Taft (1954) and Busby *et al.* (1996). Steelhead are anadromous fish, spending some time in both fresh- and saltwater. Steelhead adults enter into freshwaters during their spawning migrations which typically occur between December and April (Shapovalov and Taft 1954; Fukushima and Lesh 1998). Steelhead smolts emigrate from freshwater during winter and spring with peak periods in April and May (Shapovalov and Taft 1954; Fukushima and Lesh 1998). Both CCC steelhead and SCCC steelhead critical habitat occur within the action area. The Corps determination of NLAA threatened steelhead and their critical habitats is based on the RGP's various avoidance and minimization measures, including temporal and spatial limits for each activity, and a complete avoidance of working in anadromous waterways unless the channel is naturally dry. Dewatering of anadromous habitat is not proposed or covered under the RGP.

The life history of threatened green sturgeon in California is summarized in Adams *et al.* (2002) and NMFS (2005). The southern DPS of North American green sturgeon are anadromous, making migrations to the Sacramento River in the spring, with peaks in April-June (Moyle *et al.* 1995). They hold in deep pools or holes in the mainstem Sacramento River to stage for spawning. Spawning occurs within the upper reaches of the Sacramento River, and eggs are broadcast spawned over large cobble substrate, where they settle into the spaces between the cobbles. The juveniles spend 1 to 4 years in freshwater, before migrating to the ocean. As juvenile green sturgeon age, they migrate downstream and live in the lower delta and bays, spending from 3 to 4 years there before entering the ocean. Green sturgeon occur in South San Francisco Bay and may occur in the tidally influenced reaches of streams tributary to South San Francisco Bay.

Regarding EFH, the Corps determined the proposed action would not have a substantial adverse impact on EFH for species managed under the Pacific Groundfish Fishery Management Plan (FMP), Coastal Pelagic FMP, and Pacific Coast Salmon FMP, pursuant to section 305(b) of the MSA. The Corps' EFH determination is based on the small amount of EFH present in the action area and the short-term temporary impacts of the individual projects.

Consultation History

The SCVHA has been working with the Corps and NMFS since 2012 to develop a programmatic approach to permit activities related to implementation of the Habitat Plan. The SCVHA seeks an RGP that will protect endangered species and natural resources while allowing for their maintenance of existing infrastructures and actions associated with future development in Santa Clara County. On November 1, 2012, NMFS received from ICF, a consultant for the SCVHA, a

copy of the SCVHA's application to the Corps for an RGP for implementation of activities covered under the Habitat Plan.

On July 10, 2013, representatives from the SCVHA and its consultants, partnering agencies, the Santa Clara Open Space Authority, the Corps, and NMFS met at the Corps' office in San Francisco during which the SCVHA provided an overview of the Habitat Plan. The group also discussed the SCVHA's conceptual plan for a programmatic consultation between the Corps and NMFS for project categories included in the Habitat Plan that may affect ESA-listed fish or aquatic habitat. NMFS provide a description of its practice related to programmatic consultations, and suggested that the RGP be limited to actions that were not likely to adversely affect ESA-listed fish species. For actions that may result in adverse effects to ESA-listed fish species, the Corps and NMFS would undertake individual consultations pursuant to section 7 of the ESA.

On October 22, 2013, representatives from the SCVHA and its consultants, partnering agencies, the Santa Clara Open Space Authority, the Corps, and NMFS participated in a conference call during which the SCVHA provided an overview of a revised list of project activities to include in its programmatic consultation for actions that would not result in adverse effects to ESA-listed fish species or aquatic habitat. NMFS provide a description of information needed in a biological assessment for a programmatic consultation.

On May 6, 2014, NMFS received, via e-mail, an electronic copy of a letter from the SCVHA written to the Corps providing procedures and criteria to be used in the proposed RGP. That document included descriptions of 17 proposed project types, some measures to avoid or minimize potential project effects, and limits to the size of individual projects and cumulatively for each project type during the life of the RGP. The SCVHA proposed to use an existing programmatic consultation between the Corps and NMFS² to address 17 proposed project types in the Habitat Plan.

On September 4, 2015, representatives from the Corps and NMFS met at the NMFS office in Santa Rosa to discuss the permitting and section 7 consultation for the 17 project types proposed by the SCVHA for implementation of the Habitat Plan. NMFS and the Corps agreed that the existing Corps-NMFS Programmatic NLAA consultation from August 2013 does not address the full range of activities proposed by the SCVHA, and an individual section 7 consultation for the Habitat Plan was appropriate. The Corps proposed to develop an RGP to authorize the 17 project types and NMFS committed to work with the Corps to develop avoidance and minimization measures for each project type.

On October 8, 2015, representatives from the Corps and NMFS participated in a conference call to discuss recommendations from NMFS to avoid and minimize potential effects of activities that would be authorized in the RGP.

On October, 9, 2015, NMFS provided to the Corps a draft version of general and specific criteria for the Habitat Plan's project types as well as measures to avoid and minimize effects on listed

² August 13, 2013 concurrence letter for Corps-NMFS Programmatic NLAA Consultation for seven project types undertaken by various applicants throughout the San Francisco and Sacramento Districts of the Corps.

fish. NMFS recommendations were based on the Habitat Plan's project description information transmitted in the SCVHA's May 6, 2014, letter to the Corps.

On October 16, 2015, NMFS provided additional and clarifying information related to bank stabilization actions and suggested a work window (June 15 – October 15) for activities undertaken on steelhead streams and streams directly tributary to those streams.

On December 7, 2015, the Corps provided to NMFS, via electronic mail, a letter initiating ESA and EFH consultations for the proposed issuance of a five-year RGP to the SCVHA for implementation of covered activities in the Habitat Plan.

Effects of the Action

Under the ESA, "effects of the action" means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is not likely to adversely affect listed species or critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial. Discountable effects are those extremely unlikely to occur. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat.

Based on the available information, NMFS has evaluated the proposed activities that may be performed under the RGP for adverse effects to the listed species and critical habitats listed above. The proposed covered activities may expose listed species and their critical habitats to several stressors, including the following: increased turbidity and sedimentation related to soil disturbance during and after project construction, exposure to construction equipment and toxic materials (*e.g.*, oils, grease, fuel), increased underwater noise (from pile driving), and minor changes to the bed and banks as a result of vegetation removal, sediment removal, and bank hardening.

Threatened green sturgeon may be present in South San Francisco Bay and within the tidally-influenced reaches of Coyote Creek and Guadalupe River. However, the RGP and Habitat Plan area exclude the tidally influenced portions of streams tributary to South San Francisco Bay. Based on the information provided by the Corps and the SCVHA, proposed activities under the RGP will occur in waterways that are upstream of estuarine areas that support threatened green sturgeon. Thus, NMFS has concluded green sturgeon and its designated critical habitat are not present in the Habitat Plan area and, therefore, the potential effects of activities authorized under the proposed RGP are discountable for this species.

For threatened CCC and SCCC steelhead, the RGP does not allow dewatering of anadromous habitat or fish capture and relocation. Project construction must be restricted to non-anadromous waterways or periods when anadromous waterways are naturally dry. By incorporation of this measure, in-water construction activities will only occur when CCC steelhead and SCCC steelhead are not present at work sites.

For all projects conducted within steelhead-bearing streams in the RGP area, the Corps will provide NMFS with project-specific information at least six weeks prior to permit issuance. Notifications will include specific project information, including design plans where appropriate, that will allow for NMFS to confirm the projects authorized under the RGP are consistent with the proposed avoidance and minimization measures.

1. Turbidity and Sedimentation

Turbidity and suspended materials can affect fish by disrupting normal feeding behavior, reducing growth rates, increasing stress levels, and by reducing respiratory function and predator detection (Cordone and Kelley 1961; Sigler *et al.* 1984; Berg and Northcote 1985; Newcomb and MacDonald 1991; Gregory and Northcote 1993; Waters 1995). The impacts of turbidity on salmonids are largely linked to factors such as background turbidity levels and the duration of the turbid conditions (Bisson and Bilby 1982; Sigler *et al.* 1984; Newcombe 2003). Turbidity and sedimentation can affect critical habitat for fish by reducing availability of food and feeding efficiency, degrading spawning areas, blocking or delaying migration, and increasing exposure to toxic substances (Newcombe and Jensen 1996).

NMFS expects many of the proposed covered activities in the channel and along the banks of waterways are likely to result in soil disturbance and therefore have the potential to increase turbidity levels and sedimentation of the stream bed. Work on culverts, bridges, storm water outfalls, levees, ditches/canals, storm debris removal and work to stabilize stream banks or implement stream bank restoration projects may result in small amounts of sediment entering streams during construction (non-anadromous habitat) and following construction when stream flow naturally returns during the first rainy season (anadromous habitat) as projects are likely to leave small areas of disturbed soils. Disturbed soils can be washed into streams by rain or when water rises in disturbed stream beds or up disturbed banks during storms. Threatened steelhead and their critical habitats may be exposed to the resulting turbidity and sedimentation.

The amount of sediment and/or turbidity in streams generated by the activities permitted under the RGP is anticipated to be very small, temporary, and localized because of the project size limitations and other measures (erosion control measures and vegetation removal limitations as examples). Work will be completed by hand or by equipment working from the roadway, bridge, or top of bank. Work that is not minor in steelhead streams will be restricted to periods when the channel is naturally dry. Due to these measures, the effects of sediment and turbidity from activities conducted under the RGP on listed steelhead and their critical habitats are expected to be insignificant.

2. Exposure to Construction Equipment, Toxic Materials, and Outfall Discharges

Work in streams can result in injury or death of fish if individuals are exposed to construction equipment. For example, fish can be crushed by construction equipment in stream channels, or exposed to fluids from construction equipment that are toxic. Implementation of the RGP's avoidance and minimization measures prevent in-water construction activities in steelhead-bearing streams unless the channel is naturally dry, and pollution control measures, such as checking heavy equipment daily for leaks and refueling vehicles outside of the stream bed reduce the chance of toxins entering stream bed, banks or flowing waters. These measures are anticipated to effectively avoid adverse effects to threatened steelhead from construction

equipment and avoid degradation of water quality. Because steelhead will not be present during in-water construction activities, they will not be exposed to construction equipment or any potential leaks of toxic materials.

Outfall discharges have the potential to result in impacts to steelhead habitat resulting from stormwater runoff. New development is anticipated within the permit area that will increase the amount of impervious surfaces in the action area. Roofs, parking lots, roads, and other impervious surfaces can have dramatic effects on hydrology (reviewed in Calder 1993, Urbonas and Roesner 1993, and Brabec *et al.* 2002). Impervious surfaces prevent water from soaking into the ground. Increased stormwater volume and velocity may lead to channel erosion and sedimentation. Polluted discharges in suburban areas typically originate from discrete urban and residential land use activities. For example, runoff from paved driving and parking surfaces may contain increased levels of heavy metals, hydrocarbons, and other pollutants leading to water quality degradation (Feist *et al.* 2011). The requirements set forth in the Santa Clara Valley Urban Runoff Pollution Prevention Program and by the California Regional Water Quality Control Boards (San Francisco Bay and Central Coast boards) apply to all Habitat Plan activities and are expected to avoid or minimize the above impacts associated with stormwater discharges at outfalls. Measures are required to avoid changes to stream hydrology and to prevent sediment and hazardous materials from entering streams within the action area. For these reasons, the combined direct and indirect effects of the outfall discharges on CCC steelhead and SCCC steelhead are considered insignificant or discountable.

3. Elevated Underwater Sound

The repair and installation of bridges is a covered activity under the Habitat Plan and some bridge work is likely to involve pile driving. Pile driving can adversely affect steelhead throughout exposure to high underwater sound pressure levels. These sound pressure levels are generated as piles are struck by impact hammers used to drive them into the bed of waterbodies and adjacent areas such as streambanks. The drastic change in underwater sound pressure caused by pile driving with an impact hammer can hemorrhage and rupture internal organs, including a fish's swim bladder and kidneys, leading to injury or death (Gaspin 1975; Hastings 1995; Gisiner 1998; Hastings and Popper 2005; Popper 2006; Halvorsen *et al.* 2011). In addition, exposure to high underwater sound pressure waves may cause damage to fish sensory systems such as auditory tissue (Enger 1981; Hastings *et al.* 1996).

The RGP's measures require all in channel pile driving in anadromous streams be restricted to periods when the streambed is naturally dry and minimization measures will limit the hammer size and pile number. Additionally, the riverbed and bank soils between pile driving sites and flowing or standing water will reduce sound pressure waves from pile driving to levels that are insignificant. Therefore, it is anticipated that effects of elevated sound levels during pile driving activities conducted under this RGP on steelhead will be insignificant.

4. Effects on Critical Habitat

The action area is located within designated critical habitat for CCC steelhead and SCCC steelhead. Primary constituent elements (PCEs) of designated critical habitat for CCC and SCCC steelhead include estuarine areas free of obstruction with water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and

saltwater; natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, and side channels; and juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation. PCEs include sites essential to support one or more life stages of the species. These sites in turn contain physical and biological features that are essential to the conservation of the species.

Construction projects authorized under the RGP are likely to affect designated critical habitat by changes to channel bed and banks. For example, removal of riparian vegetation can decrease shading and the input of large woody debris, raise water temperatures, and reduce instream cover (see, for example, Spence *et al.* 1996). Bank stabilization can reduce the quality of salmonid habitat by removing cover areas used as refuges from predators (Knudsen and Dilley 1987).

Many of the permitted activities under the proposed RGP may expose steelhead and their critical habitats to long-term or permanent changes to streambed and banks. For example, new bank stabilization projects will result in permanent changes to stream banks and often streambeds. Construction of some projects along streams may remove riparian vegetation. The response of steelhead and their designated critical habitats to these changes by activities authorized under the RGP are likely to be insignificant due to the proposed construction methods and materials that either minimize effects or focus on bio-engineering techniques (for bank stabilization) that preserve and enhance riparian and aquatic habitat. Additionally, limits imposed by the RGP restrict the size of projects and the number of projects which in turn limits the extent of potential impacts of proposed activities to very small areas in the steelhead streams of the action area.

Measures that avoid and minimize effects of covered activities on the bed and banks of waterways supporting listed steelhead are expected to avoid adverse effects to designated critical habitat in the action area. The removal of large woody debris from the wetted channel of steelhead streams is prohibited. For construction purposes or to prevent flooding of bridges and culverts, some tree removal may occur; however, NMFS does not anticipate tree removal will influence stream temperatures or channel stability because tree removal will be minimal and trees removed must be replanted in most cases. Similarly, bridge widening and replacement are expected to result in insignificant effects to steelhead and critical habitats because of the small size of the project limits for this activity (bridges are limited to 100 linear feet or 0.1 acre). Widened bridges are expected to result in insignificant effects to steelhead and their critical habitat in streams because of their small footprint relative to shade already provided by the bridge prior widening.

5. Fish Screens and Culverts

The RGP's notification requirements provide NMFS the opportunity to ensure all appropriate avoidance and minimization measures are implemented, including those for fish passage and protection of instream flows below water diversions. The RGP prohibits all bridges, culverts, and structures constructed in steelhead streams from creating fish passage impediments. Culvert repairs and replacements must be designed to conform to current NMFS fish passage guidelines. No new culverts may be constructed on steelhead streams. Similarly, repair or replacement of water intake structures must be equipped with screens that conform to NMFS fish screen design criteria, and all diversion intakes must provide a minimum bypass flow which exceeds the estimated unimpaired February median flow at the point of diversion. This minimum bypass

flow requirement will ensure adequate water quantity, safe passage/space, and cover/shelter downstream of water intakes. No new water diversions on streams accessible to steelhead may be constructed. These measures, combined with NMFS review of project specific designs, are anticipated to ensure projects authorized under the RGP do not adversely affect fish passage or instream flows in the steelhead streams.

6. Combined Effects

NMFS does not anticipate that effects from projects authorized by the RGP including turbidity and sedimentation, exposure to construction equipment and toxic materials, sound pressure waves, or changes to stream bed and banks will combine to produce adverse effects at the scale of individual projects or at the scale of the RGP program. For example, steelhead are unlikely to experience exposure to combined effects at the project scale because they will not be present when projects generating various stressors occur in freshwater streams³. Sound pressure waves from pile driving in freshwater streams to repair or construct bridges will be completed in naturally dry channels and outside the steelhead migration season at bridge sites.

At the scale of the RGP program, NMFS expects that projects will be separate in time and space such that each project's impacts, as described above, on the environment are unlikely to combine to a level that would adversely affect listed species or their critical habitats. Moreover, any effects on stream temperature at construction sites following removal of riparian vegetation would be unlikely to extend beyond the construction site due to the small amount of riparian vegetation removal allowed. All structures constructed within steelhead-bearing streams must ensure fish passage is not impaired, and all water intakes must be screened and provide adequate bypass flow to the channel downstream. For the above reasons, the potential effects of the proposed RGP are considered insignificant or discountable on listed fish, and are not expected to result in either a net change to existing habitat values or result in adverse impacts to designated critical habitat for CCC or SCCC steelhead.

Conclusion

Based on this analysis, NMFS concurs with Corps that the proposed action is not likely to adversely affect the subject listed species and designated critical habitats.

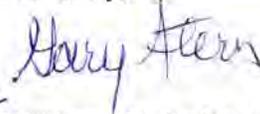
Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the Corps or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

³ Projects may only occur in naturally dry freshwater streams.

Please direct questions regarding this letter to Joel Casagrande, North-Central Coast Office, Central Coast Branch, at (707) 575-6016, or joel.casagrande@noaa.gov.

Sincerely,

FOR 

William W. Stelle, Jr.
Regional Administrator

cc: Sahrye Cohen, Corps, San Francisco, California
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Copy to ARN File #151422WCR2015SR00297
Copy to Chron File

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