



SANTA CLARA
COUNTY
FARM BUREAU

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2800 Cottage Way, W-2605
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April 18, 2011

RE: Santa Clara Valley Habitat Conservation Plan Public Review Draft

Dear Ms. Mustin,

The Farm Bureau of Santa Clara County works on behalf of farmers and ranchers of all shapes and sizes throughout Santa Clara County. We represent the county's diversity of commodities and growing regions including cherries in Sunnyvale, nurseries in Milpitas, hay production in Coyote Valley, cattle ranching in San Antonio Valley, and peppers in Gilroy. Our members manage the lands that have provided endangered species habitat for generations and they own much of the land identified as potential acquisitions for the Reserve System. Without the support of the farming and ranching communities, Plan implementation will be difficult if not impossible.

The Santa Clara County Farm Bureau has yet to be sufficiently convinced that a Habitat Conservation Plan is in the best interest of Santa Clara County. This plan is inherently inequitable and is disproportionately burdensome for project proponents in rural areas. We believe the net effect of the Habitat Plan will be to severely limit the ability of agricultural operators and private landowners to maintain the industry's economic viability in the remaining rural portions of Santa Clara County. The Covered Activities and Conditions enumerated in the Plan threaten the agriculture community's ability to adapt operations in response to unforeseeable changing conditions over the proposed 50-year of the Plan.

Please consider our many comments below. These comments reflect our concerns that the costs of the Plan are greater than the benefits, that habitat is not adequately provided for in the Plan, and that the agriculture industry will be weakened by the Plan. We have tried to be as specific as possible in order to facilitate revisions to the Plan and to provide language directly from the Plan when appropriate. Nothing in this public comment letter should be construed as an endorsement of the Public Review Draft or an endorsement of the Plan if certain conditions are met.

COSTS and FEES

The Habitat Plan places a disproportionate share of the burden funding the Plan on activities in the rural and predominantly agricultural portions of the County—in Conservation Zones A and B—despite the fact that most of the major covered activities and most of the benefits of the plan accrue to the predominantly urban, northern portion of the County. The Santa Clara County Farm Bureau is concerned that this may unduly constrain on-going and future agricultural, agriculturally-related, and other necessary rural development projects in the southern portion of the County of the proposed 50-year term of the Plan.

In discussing the rationale in support of the various fees and their weighted application to activities in rural areas of the County, the Plan cites reduced permitting costs and regulatory streamlining as one of the principal benefits accruing to project proponents in the County, arguing that these fees are justified in part on this basis. Our review of the Draft Plan suggests the various fees and numerous new regulatory requirements and restrictions imposed by the proposed would, in fact, greatly increase the difficulty of conducting many routine on-going and foreseeable future projects and activities in rural areas of the County.

The other rationale articulated in support of the various fees is linked to presumed impacts of the various classes of project and activities, in particular including activities occurring in the rural southern portion of the County. While the general conceptual basis for straight impact-and-mitigation-based fees is more defensible than the supposed streamlining benefit previously mentioned, we are nonetheless concerned that many of these fees are generally disproportionate to the types of impacts involved and that these fees and other associated planning and environmental constraints imposed under the Plan will unfairly damage private property rights and uses of the private lands and unduly stifle legitimate economic activities in the rural portions of the County.

We are also not convinced that many of the types and classes of activities that would require mitigation and payment of fees under the Plan would currently require payment of fees or mitigation under the Federal Endangered Species Act (FESA) or California Endangered Species Act (CESA). Thus, once again, there is no evidence of any benefit to the rural and agricultural portions of the County proportionate to the many burdens the Habitat Plan would impose. On the contrary, we see little more in the Plan than almost unlimited potential for additional bureaucracy, delay, expense, and harm to the County's remaining agricultural economy.

Viable agriculture is the primary supporter of endangered species and their habitats in the Study Area. Agricultural lands used for livestock grazing, orchards, vineyards, field crops, and row crops all provide important benefits for natural communities. The Santa Clara Valley Habitat Plan recognizes some of these benefits and further notes on 4-116 "that the effects of ongoing agricultural activities on covered species will be relatively low." Not only do agriculture activities have a low probability of take, without a viable agriculture industry there will not be enough land available for endangered species to support their recovery, let alone continued existence, despite the best efforts of the Implementing Entity.

Given the importance of the continuation of agriculture's working landscapes for species protection, habitat preservation, and the success of the Plan, necessary agriculture infrastructure should not be assessed development fees under the Plan. Agriculture and ancillary uses; uses necessary to directly support local agriculture; and other uses compatible with agriculture which clearly enhance the long term viability of local agriculture and agricultural lands should be covered for incidental take and exempt from all fees associated with the Plan. This should include but not be limited to agriculture infrastructure such as packing sheds, coolers, food processing facilities, barns, shops, equipment storage, fruit stands, and livestock markets. Allowing for the agriculture industry to thrive will protect species and habitat by slowing the conversion of agricultural lands to residential development, which "causes habitat loss and fragmentation" as noted on page 4-40.

An exempt land cover designation called *developed agriculture* or *agriculture developed* is used throughout the Plan but is not defined within the Plan. Agriculture developed should include all structures and impermeable or compact surfaces used in agriculture operations as well as a surrounding buffer. These areas include but are not limited to corporation yards, equipment yards, parking areas, turnaround areas, loading areas, storage areas, livestock pens, and riding arenas, all of which may be asphalt, concrete, gravel, dirt, or any other common material and structures such as barns, shops, packing facilities, food processing facilities, coolers, and storage buildings. These land uses do not provide habitat value and their conversion should not be assessed a fee.

Some level of synergy should be developed between the requirements of the Habitat Plan and local agriculture mitigation requirements to prevent costly duplication. Project proponents, for instance a farmer seeking to build additional equipment storage near his fields, should not be assessed both a development fee under the Habitat Plan for mitigation and also have to comply with LAFCO's 1:1 ag mitigation policy. There is no need for both forms of mitigation.

Development fees should not be assessed for small rural roads and private driveways. This infrastructure is necessary to support agriculture and rural living. Imposing burdensome, expensive, new fees for critical infrastructure is unfair and disproportionately impacts rural project proponents. County standards generally require wider and more costly roads than project proponents would propose and development fees for these roads and driveways in addition to the cost of developing the roadways would add insult to injury. Insufficient science has been presented to support the notion that rural roads present a hazard to wildlife. Private roads have been shown to actually serve as corridors for wildlife movement, rather than disrupting wildlife movement as claimed in the Plan. At a minimum, development fees should not be assessed on 50-foot buffers for roads and driveways, since this type of infrastructure is unlikely to encroach into natural lands.

Land acquisition costs are underestimated in the Plan and implementation of the Plan would likely cause land cover fees to increase dramatically to fund acquisitions. According to the Plan, the average land acquisition cost factors for each category combination ranged from \$6,000 per acre to \$34,000 per acre. Land values in Santa Clara County are

significantly higher than what is reflected in the Plan. Lands with high habitat value and limited availability like serpentine lands will surely cost more than \$34,000 per acre and \$6,000 is a low estimate for even remote ranchlands. The average cost per acre assumed in the Plan is \$8,500 per acre. That may work in other counties, but Santa Clara County land values do not support this assumption. The cost of conservation easements is underestimated as well. Easements are assumed to be 50% of the cost of fee title though easements routinely sell for 80% of the value of fee title.

The process for reviewing fees is based on the Housing Price Index (HPI) for San Jose-Sunnyvale-Santa Clara. This HPI does not serve as a good indicator of housing prices in the Study Area, particularly for Morgan Hill, San Martin, and other unincorporated areas. More importantly, a housing price index is not a good indication of pricing for lands with habitat value. Over the course of the plan as fewer high priority lands are available, these lands will increase in value at a rate that does not strongly correlate to an urban HPI.

The Plan provides a process for reviewing development fees, but we did not encounter a process for revising Figure 9-1 *Land Cover Fee Zones*. As development continues over the 50-year term of the Plan, land uses will change throughout the Study Area and should be reflected on the fee zone map. Our review of the Habitat Plan indicates that a clear process for appealing land cover and species and habitat maps is lacking in the Plan. Project proponents must have a clear process for appealing any of the maps at any time, either prior to map adoption or during the term of the Plan.

The Western Burrowing Owl fee should not be assessed on the entire parcel and Western Burrowing Owl maps should be subject to change over the next 50 years as the population shifts and the needs of the species change. Western Burrowing Owl fees are difficult to review thoroughly since Chapter 9 *Funding* references a Figure 5-14, which is not part of the Habitat Plan.

An independent economic analysis of the Plan should be completed prior to issuance of a final draft. At a minimum, the economic analysis should consider impacts to the agriculture industry, rising costs of living due to increased costs for development, and the fiscal impact of reduced property tax revenues that corresponds to the transfer of lands from private to public ownership.

LAND ACQUISITION AND MANAGEMENT

The value of past and current managed livestock grazing in the Study Area is explicitly stated a few times throughout the Plan, though insufficient consideration is given to the past and future contributions of livestock grazing. Page 2-9 of the Habitat Plan notes that “significant parts of the study area have historically been grazed by cattle and managed by ranchers. Cattle ranching continues over much of the privately owned lands in the study area.” However, these activities are not explicitly tied to the presence of current endangered species and their habitats. There is an enormous amount of scientific data pointing to the importance of cattle ranching in providing appropriate habitat for several of the listed species covered by the Plan. For example, California tiger salamander and California red-legged frog actually have a mutually beneficial symbiotic relationship with

managed grazing such that grazing improves habitat for those species. The U.S. Fish & Wildlife Service and the California Department of Fish & Game recognize that privately owned rangelands support important ecosystems. The wildlife agencies support the California Rangeland Resolution, which explicitly states “these rangelands, and the species that rely on these habitats, largely persist today due to the positive and experienced grazing and other land stewardship practices of the ranchers that have owned and managed the lands and are committed to a healthy future for their working landscapes.” Elsewhere in the Resolution, the wildlife agencies commit to working to recover imperiled species and enhancing habitat on rangelands while seeking to minimize regulations on private lands and streamline processes. Unfortunately, none of these values are expressed in the Plan and the Plan does not value the current stewardship and conservation efforts of farmers and ranchers.

According to the Habitat Plan, rural parks and open space accounts for 121,071 acres within the roughly 510,000-acre study area. The addition of 45,000 acres of new land acquisitions for inclusion in the Reserve System could result in over 165,000 acres—or almost a third of the study area—owned and managed for open space and habitat benefits. While open space and habitat are laudable goals, those lands are better left in private ownership so that landowners have an economic incentive to properly manage the lands. As more and more lands are transferred from private to public ownership, the critical mass necessary to maintain viable farming and ranching communities is threatened. The 45,000 acres of new acquisitions would result in a significant and undeniable reduction in property tax revenues. Rather than acquiring lands that are already protected as open space, lands acquired for inclusion in the Reserve System should result in new contributions to habitat and species protection so that development fees are used to benefit species and their habitat. Purchasing lands that are already protected is not a worthy use of fees.

Without willing sellers, the Habitat Plan cannot be implemented. Input from our members shows strong support for conservation easements that mutually benefit farmers and ranchers and the Implementing Entity by meeting the conservation goals of the Plan while allowing managed grazing and selected farming activities. Use of conservation easements decreases the upfront costs of land acquisition and reduces the long-term management costs by keeping the farmer or rancher on the land to continue to manage the land. We strongly urge the Plan’s preparers to place an emphasis on conservation easements rather than fee title acquisitions.

In order to inform potential willing sellers of the opportunity for conservation easements, easement templates should be available for review. The easement terms have the potential to make the Plan a success or cause its demise. Easement templates should be available for the variety of land cover types so landowners are aware of the conservation actions and restrictions required for inclusion in the Reserve System. Landowners who are interested in remaining on the land will not enter into an overly prescriptive easement or a contractual agreement that lacks specifics. Sample Reserve Unit Management Plans should also be available for review and public scrutiny. Willing sellers will insist on knowing what they’re getting into and delaying the availability of management plans will only make

landowners less likely to participate in the Plan. Easements should be dedicated to whichever conservation organization the landowner requests, provided that the organization is credible and has demonstrated the capacity to manage conservation easements. The Nature Conservancy, California Rangeland Trust, and American Farmland Trust are examples of credible conservation organizations with good reputations with whom landowners might feel comfortable entering into a long-term agreement.

Conservation easements should be drafted with all required and applicable conservation actions included in the terms of the agreement so there are no surprises down the road. Reserve Unit Management Plans should be completed prior to conservation easement acquisitions so willing sellers know what to expect in terms of land management guidelines, monitoring requirements, and any habitat enhancement or restoration activities that may take place on the property. Conservation easement contracts should include disclosure that “federal No Surprises Regulation also does not prevent USFWS from asking the Permittees to voluntarily undertake additional mitigation on behalf of the affected species.”

According to the Plan, acquisition of cropland will focus on Riverine and Riparian Forest and Scrub land covers. The gray portions of Figure 5-7 *Land Acquisition Strategy* contradict this assertion, making it difficult to establish a clear understanding of the impacts to farmland. Clarity must be provided in this area, especially since page 5-144 notes, “economically viable agriculture may or may not be possible on sites where habitat restoration occurs.” Allowable agricultural operations on Reserve System lands are unclear. One incompatible use listed on page 8-36 is “planting, introduction, or dispersal of nonnative plant or animal species.” If interpreted strictly, this would prohibit raising bell peppers, cherries, garlic, cattle, alfalfa, or any of the county’s flagship crops, none of which are native to this area. The last bullet on page 8-37 notes “conservation easements on cultivated agricultural land will ensure...that land uses do not preclude the sight from meeting additional biological goals and objectives later in the permit term through habitat restoration.” Cultivated agriculture and habitat restoration are generally mutually exclusive and any potential future requirements for habitat restoration must be explicitly named in an easement contract.

Neighboring Landowner provisions in the Plan are severely limited in their usefulness. Neighboring landowner assurances are currently limited to just 3 of the 21 covered species without any explanation for the narrow application. The neighboring landowner program should include all of the covered species so that landowners can apply for protection for any species by establishing an environmental baseline.

The habitat benefits of the Habitat Plan are speculative, relying heavily on a number of variables out of the control of the Implementing Entity or participating agencies. The principles of the Conservation Strategy are dependent on acquiring the right lands, including minimizing edge, preserving connectivity, preserving the highest-quality communities, preserving irreplaceable and threatened resources, maximizing size efficiently, fully representing environmental gradients, considering watersheds, and considering full ecological diversity within communities, to name a few.

The assumptions of the Habitat Plan are largely based on General Plan documents for the participating cities and Santa Clara County. General Plans have a shorter timeframe than 50 years and are known to be very poor predictors of future development and species protection.

The Santa Clara County Park Charter Fund has consistently been approved by voters to acquire, develop, and maintain lands to be owned, operated, and managed by Santa Clara County without interference from other organizations. These lands are intended to serve multiple use activities rather than serving as land contributions and managed for endangered species to mitigate the County's development impacts. The inclusion of lands purchased using Park Charter Funds exposes the Plan to the very real possibility of litigation.

HABITAT MANAGEMENT

If the goal of the Habitat Plan is to promote habitat, the activities of farmers and ranchers that promote habitat should be covered by the Plan, regardless of the entity performing the work and regardless of presence within the Reserve Area. To promote rather than discourage beneficial activities, cleaning stock ponds, development of field and working facilities for livestock, livestock management, water delivery systems for stock and wildlife, spring development, channel clearing to reduce sedimentation in streams, and other conservation activities should be covered not only on public lands in the Reserve System but also on private lands outside the Reserve System. It is unclear in the Plan whether conservation activities undertaken by private property owners outside the Reserve System will be covered under the Plan. Page 9-23 states, "implementation of conservation actions described in Chapter 5 (or otherwise consistent with the Plan's conservation strategy) in or outside the Reserve System are not charged development fees and are not tracked as impacts by the Implementing Entity." *Conservation action* is defined in chapter 5 as tools, strategies, comprehensive programs, and actions to conserve natural communities, habitats, and landscape-level processes to conserve and help recover covered species in the study area. These activities, which support the biological goals in the Plan, should be exempt under the Plan so they received incidental take coverage and are not assessed development fees. Development fees on conservation activities outside the Reserve System would create a disincentive for farmers, ranchers, and other land managers to enhance and restore habitat and is therefore at odds with the Plan.

The adaptive management component of the Plan is necessary given consideration for the difficulty and impracticality of predicting habitat needs 50 years into the future. However, adaptive management should not create uncertainty for landowners, land managers, and lessees. We are concerned that the adaptive management component of the Plan will be used to create onerous new requirements rather than working collaboratively with land managers, including ranchers, to achieve conservation goals. The unpredictability of adaptive management is likely to make landowners wary of entering into conservation easements with the Implementing Entity. Flexibility is desirable for both parties, but under the existing draft language the Wildlife Agencies will require significant upfront commitments from land managers and lessees without providing adequate assurances in

return. Some degree of certainty and limitations on management changes must be included in the conservation easement contract or leasing agreement.

Non-covered species are frequently given consideration throughout the Habitat Plan without any explanation for their inclusion in the Plan. The most obvious example of this is provisions to protect fish and fish-bearing streams. When fish species were dropped and the National Marine Fisheries Service withdrew from the Plan, all references to activities affecting aquatic resources and protections for fish species and their habitats should have been removed from the Plan. Nonetheless, in-stream capital projects are covered by the Plan, a staggering 100 miles of streams are proposed for protection, and stream setbacks range from 35 to 200 feet based on the presence or absence of fish species. Santa Clara Valley Water District will most likely pursue an HCP at some point and it will without a doubt cover riparian areas and stream setbacks, creating duplicative regulations if these conditions remain in the SCVHP.

Terrestrial non-covered species are often given consideration in the Plan as well. Page 3-95 talks about bird species often found in urban landscapes, page 4-40 references American badger, Tule elk, black-tailed deer, and other non-listed mammals, and page 5-20 lends consideration to Coast Range newt, bobcat, and mountain lion. Though unrelated to the covered species, these references serve as the foundation for many of the principles in the Plan.

Conditions on covered activities should not exist for non-listed species. Species surveys, habitat surveys, preconstruction surveys, construction monitoring, and even avoidance and minimization require significant additional time and expense, which is not reasonable for non-listed species. Special conditions for non-listed species can be amended into the Plan if additional species become state or federally listed, and it is premature to include them now.

Of the 21 covered species, less than half of the species are listed under the Federal Endangered Species Act, the California Endangered Species Act, or both. It is not an unreasonable assumption that the covered species currently considered California Special Concern Species may become listed under the California Endangered Species Act at some point over the 50-year term of the Plan. However, the Plan demonstrates an astounding lack of rigor by including of 6 plant species with no designation other than that of a non-profit organization. The credibility of the organization is not in question, but the Habitat Plan is a tool for managing endangered species, not species that find favor with the Plan's preparers.

Scientific rigor is lacking in the Plan where species identification is concerned. Relying on information received from hikers, hunters, hobby birdwatchers, and recreational plant enthusiasts is not sufficient and should not be considered as part of the adaptive management or used to require avoidance and mitigation measures. The sightings must be verified in some manner if they are to be used to develop conservation activities. Peer-reviewed scientific research is the preferred basis for habitat assumptions.

Maintaining healthy water supplies is crucial for each of the covered species in the Plan. However, ensuring the quality of water in the Study Area is not the responsibility of the Implementing Entity. Water quality, sediment runoff, pesticide runoff, runoff into adjacent nearby streams, and other water quality or water use efficiency issues are the jurisdiction of the Regional Water Boards and are not in the purview of the HCP.

Stream setbacks are one of the most worrisome components of the Santa Clara Valley Habitat Plan. As page 5-17 of the Habitat Plan points out, “approximately 1,517 miles of mapped blue line streams within the Study Area are protected as Type 1, 2, or 3 open space.” With extensive existing protection for streams in the region and less than 12 miles of streams expected to be affected by covered activities over the 50-year term of the Plan, it is difficult to justify 200-foot setbacks, a minimum 100 miles of stream protection, and proposed restoration of over 12 linear miles of streams. In addition, Conditions 3 and 4 of the Habitat Plan would impose various conditions on covered activities along or within streams and creek corridors and could create additional barriers for routine agriculture activities including erosion control, bank stabilization, flood protection, weed and vegetation management, water diversions, and weir and dam maintenance and upgrades to name a few. It is difficult to foresee what cumulative effect these restrictions will have on the industry, leading to uncertainty and causing concern.

GOVERNANCE

77% of the study area and all of the lands identified for acquisition are in the unincorporated county yet there are only two County representatives on the Implementing Entity Governing Board. At least one Certified Rangeland Manager, at least one cattle rancher who actively grazes within the Study Area, and at least one grower who actively farms within the Study Area should be included on the Technical Advisory Committee of the Implementing Entity and at least one Certified Rangeland Manager should participate on the Independent Conservation Assessment Team.

Recreational use has no place in a Habitat Conservation Plan. The stated intent of the Plan is to promote the protection and recovery of natural resources and endangered species while streamlining the permitting process for planned development activities. Any deviation from these principles is a misuse of funds and abuse of public trust. Lands in the Reserve System should be closed to the public to prevent disturbance and destruction of species and habitat. Allowing public access on Reserve System lands would also have implications for neighboring landowners who would be subject to increased trespass, nuisance, trash, crime, tort liability, and other concerns.

A serious and reasonable concern of ours is the creation of an additional government agency. Farmers and ranchers are already subject to numerous local, state, and federal government regulators with overlapping, duplicative, and competing jurisdictions. One of our members recently counted the number of government entities with jurisdiction over his farming operation and got to 16 entities before giving up in frustration. What makes this scenario even more absurd is that he is a mushroom farmer, operating in a closed environment. The addition of another government entity with land use authority will create conflict with existing government bodies. As page 6-2 notes, “The

conditions...described in this chapter do not supersede requirements by other agencies and are not intended to provide a basis for non-compliance with other applicable design guidelines by other federal, state, and local agencies.” There are several organizations and government agencies within the Study Area that already perform functions similar to what is proposed for the Implementing Entity. Just to name a few, the Santa Clara County Open Space Authority, Peninsula Open Space Trust, Santa Clara County Parks, and The Nature Conservancy are all active in the Study Area and could serve as the management body for the Reserve System. The Implementing Entity should contract with one of these entities for management of the Reserve System, rather than funding up to 15 employees and acquiring facilities, equipment, and vehicles to manage the Reserve.

While the Habitat Plan is likely to have some benefits for projects that would require endangered species permits under existing conditions, it creates an additional step in the permitting process for projects that do not have an impact to endangered species or their critical habitats. Though the Plan has been sold as a way of streamlining the permit review process, a quick glance at Figures 6-5 and 6-6 demonstrates just how onerous this additional step will be. The only things project proponents can be certain of is higher fees and less certainty over the 50-year term of the Plan.

PROCESS

The Farm Bureau and other agriculture interests have provided significant public comment throughout the preparation of the Plan, much of which has been ignored. Many of the concerns that we expressed in a 2009 letter have yet to be addressed. Our organization did not receive a full copy of the Plan, though we have participated as a stakeholder throughout the process. The Santa Clara Valley Habitat Conservation Plan would pertain to 62% of the land in Santa Clara County, yet individual notice to landowners and residents has not been provided. Adequate public involvement has been lacking throughout the process and is lacking even now as the Plan moves toward completion.

During our reviews of the Plan, we identified countless inconsistencies, inadequate science, false assumptions, disorganization, and a lack of clarity throughout the document. Though not every example of these deficiencies can be enumerated, we have provided a few instances for your consideration. Page 9-6 mentions staffing assumptions for law enforcement for the Reserve System but the number of officers is not specified anywhere. Similarly, Table 9-2 *Implementing Entity Staffing Plan* does not provide for law enforcement officers. Figure 3-11 is no longer relevant to the Plan since fish species have been removed.

NECESSITY/PURPOSE

The need for a habitat plan in Santa Clara County has not been sufficiently demonstrated. In fact, the Plan itself undermines the perceived necessity for the Plan on page 5-8, “covered activities that result in permanent impacts are anticipated to occur primarily in areas with low-quality habitat.” The Santa Clara Valley Habitat Conservation Plan is a region-wide approach to endangered species compliance. This approach uses a broad brush to apply laws that were designed to be site-specific and in doing so creates greater uncertainty, increased costs, and more hoops to jump through. Rather than separately permitting and mitigating individual projects, the Plan evaluates natural resource impacts and mitigation

impacts comprehensively in a way that is more onerous and burdensome for landowners, lends itself to government bureaucracy and potential abuses, and is no more efficient or effective in protecting at-risk species and their essential habitats. Due to the Plan's blind application of development fees regardless of on-the-ground impacts to endangered species, the Plan will result in greater loss of existing endangered species and their habitat by creating a disincentive for project proponents to avoid endangered species and their habitat.

The current perilous status of the various covered species is due to past activities, yet under the Habitat Plan future development will bear the burden of paying for past negative impacts resulting from the urbanization of northern Santa Clara County. Even more unjust is the subsidization—both with time and money—of projects that actually do impact endangered species by projects that will have no noticeable impact on endangered species or their habitat and do not fall under the jurisdiction of the FESA and CESA. Laws and regulations at every level of government including local land use policies and zoning restrictions, the California Endangered Species Act, and the federal Endangered Species Act prohibit widespread conversion of endangered species habitat and do not allow for a decrease in the long-term viability of the species and their habitats. As the plan itself points out on 4-40, "Existing land use restrictions and requirements also substantially limit the footprint and extent of rural development. For example, almost all of the areas intended to be incorporated into the Reserve System are large land holdings designated as Hillside or Ranchland land uses under the County General Plan...Under County policies, most subdivision proposals for Hillside parcels are required to cluster development and preserve a minimum of 90% of the site as open space...These land use restrictions help to minimize the effects of rural development on covered species and natural communities." These laws should continue to be applied as they have been for decades to effectively and equitably address true impacts to endangered species.

The species component of the plan is largely in response to the needs of rural residential land use, which only accounts for 3% of the study area. Furthermore, the County has noted that only 8% of projects under the County's jurisdiction must pursue endangered species permits through the Wildlife Agencies. This means that 92% of projects will face huge additional expenses and an additional permitting step just so 8% of projects can more easily comply with FESA and CESA. Even then, the Plan has limited usefulness since other permits may be needed from US Army Corps of Engineers and the Regional Water Boards for Clean Water Act Sections 404 and 401 and a streambed alteration agreement with CDFG may be necessary under California Fish and Game Code sections 1600 et seq. The Plan does not comprehensively address wetland permitting and project-by-project wetland permitting—arguably the most difficult, costly, and time-consuming permitting process—is still required under the Plan.

ALTERNATIVES

The catalyst for undertaking preparation of a Habitat Conservation Plan in this county was the Bay checkerspot butterfly. As a result, the Bay checkerspot and serpentine soils are given an inordinate amount of attention in the Plan. If these habitats and species are the

primary focus of the Plan, perhaps the Plan can be scaled down to only address impacts to serpentine lands and the species they support.

If protection of endangered species and their critical habitats is the main concern, the conservation goals of the Plan can be implemented without acquiring lands. Greatly reduced development fees could still be applied to appropriate activities in the Study Area and those funds can be used to contract with landowners to implement conservation actions on their lands. While incidental take coverage could not be provided under this scenario, it would have enormous benefits to habitat, species, and natural communities, without the creation of a costly bureaucracy and while keeping lands in private ownership.

We do not support the framework of Habitat Conservation Plans because they assume the presence of species and habitat impacts for every project rather than only requiring mitigation for projects that truly have an impact on endangered species. Identifying priority areas for acquisition and protection when projects have mitigation requirements under FESA and CESA provides a good region-wide approach to comprehensive endangered species management.

Private mitigation banks should be preferred for land management under the Plan. Encouraging participation by multiple entities gives willing sellers several buyers rather than the monopsony that would be created if the current draft Plan were implemented. By having several mitigation banks competing in a free-market system, both buyers and sellers of land will have choices in the marketplace and land management costs, acquisition costs, and subsequently land cover fees will be minimized. The Wildlife Agencies should devote time and resources to approving mitigation banks in the Study Area to meet the needs of the Plan.

Thank you for your consideration of our comments. We look forward to your responses and we commit to staying involved throughout this process. Please contact Jennifer Williams on our staff at (408) 776-1684 or jwilliams@sccfarmbureau.org with comment responses and any questions.

Sincerely,



Tim Chiala,
President

Cc: Local Partners
Wildlife Agencies
Interested parties