

Date: March 25, 2008

Committee Meeting Date: April 17, 2008

Board Meeting Date: May 1, 2008

**BOARD MEMORANDUM**

**ACTION ITEM**

**TO:** Congestion Management Program and Planning Committee  
Santa Clara Valley Transportation Authority  
Board of Directors

**THROUGH:** Michael T. Burns  
General Manager

**FROM:** John H. Ristow  
Chief CMA Officer

**SUBJECT:** Santa Clara Valley Habitat Conservation Plan / Natural Community  
Conservation Planning – Seven Key Policy Areas

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**Policy-Related Action: Yes**

**Government Code Section 84308 Applies: No**

**RECOMMENDATION:**

Approve the staff recommendations on Seven Key Policy Areas of the Habitat Conservation Plan / Natural Community Conservation Planning for submittal to the Liaison Group for consideration.

**BACKGROUND:**

In 2001, the U.S. Fish and Wildlife Service (USFWS) issued a Biological Opinion that required a regional Habitat Conservation Plan (HCP) be developed pursuant to Section 10 of the Federal Endangered Species Act (ESA) as a condition of approval for several projects including VTA's U.S. 101 Widening Project, 85/101 South Interchange Project, and Consolidated Biological Mitigation Project. The purpose of an HCP is to protect and enhance ecological diversity while allowing appropriate and compatible growth and development.

In 2004, VTA, Santa Clara County, the City of San Jose, and the Santa Clara Valley Water District (Local Partners) signed of a Memorandum of Understanding to develop both a habitat conservation plan (HCP) that fulfills the requirements of the ESA and a Natural Community Conservation Plan (NCCP) that fulfills the requirements of the California Natural Community Conservation Planning Act. In 2005, two new Local Partners, the Cities of Gilroy and Morgan Hill, joined the process, and all six Local Partners, the USFWS, and California Department of Fish and Game (CDFG) signed a Planning Agreement that is the foundation for development of the HCP/NCCP (Plan). The role of the Local Partners is to manage and fund development of the Plan for submission to the USFWS, CDFG, and National Marine Fisheries Service (Wildlife

Agencies) for approval. The HCP will enable USFWS and NMFS to issue permits to authorize incidental take of federally listed species covered in the plan. The NCCP will enable CDFG to authorize incidental take of state listed species covered in the plan. Once the overall Plan is finalized, the Plan will be presented to the VTA Board for their consideration.

### **DISCUSSION:**

In the development of the Plan, seven key policy areas have emerged that require review and comment from the Local Partners' governing bodies to ensure timely progress to final Plan approval by the Wildlife Agencies. These policy areas are briefly described below, with details included in Attachment A. The policy areas are the result of considerable discussion and negotiation between the Local Partners staff and the Wildlife Agencies.

Staff is requesting that the VTA Board approve forwarding the following staff comments to the HCP/NCCP Liaison Group for their consideration.

- **Permit Term.** The permit term is the time period in which all covered activities (see next bullet) can be implemented and incidental take authorization may be granted. The permit term is also the time in which conservation must be successfully initiated to offset the impacts of the covered activities. A 50-year permit term encompasses all the foreseeable development, capital projects, and operations and maintenance activities of the Local Partners. For VTA, the permit term covers projects included in VTP 2030 that occur in the Plan area and are expected to impact species covered in the Plan or their habitats. Note that the Wildlife Agencies require all land acquisition to occur before the end of the permit term to allow time for monitoring and adaptive management.
- **Covered Activities.** Covered activities are those projects or ongoing activities for which incidental take authorization is requested by the Local Partners. Covered activities are grouped into several general categories based on the assumption that the activities have similar impacts to similar species. For VTA, covered activities include projects such as road widening and bridge replacement, and planned transportation projects including the U.S. 101 Improvement Project in south Santa Clara County, Buena Vista Interchange, Caltrain Double Tracking, Coyote Valley Parkway Interchange, and East Middle Interchange.
- **Preferred Land and Stream Conservation Strategy.** The conservation strategy provides for the conservation and management of the species included in the Plan and their habitats. It includes the distribution of land that will be protected, the design of the reserve system, the biological goals and objectives for covered species, and recommended management activities. To facilitate the decision-making process, three alternative conservation strategies have been developed. The strategies differ primarily in the amount and location of land acquisition that is required, with the preferred conservation strategy including the preservation of approximately 45,000 acres of new land obtained from willing sellers through acquisition of fee title and conservation easements.

- **Habitat Plan – Related Project Review Process and Conditions of Approval.** The Plan provides a less costly, more efficient project review process that will result in greater conservation than the current project-by-project, species-by-species endangered species compliance process. This enables more efficient ESA, Section 7 consultation with USFWS and NMSF (still required for projects that impact federally-listed species) and facilitates CEQA compliance. Part of this streamlining is attributable to the conservation measures included in the Plan that avoid and minimize take of covered species. These measures are described as conditions of approval on covered activities. For VTA, applicable transportation projects will adopt design requirements and construction practices included in the Plan to minimize impacts on covered species, natural communities, and wildlife movement.
- **Habitat Plan Costs.** Estimating the full costs of the Plan is an essential step towards demonstrating adequate funding necessary to obtain approval of the Plan by the Wildlife Agencies. The estimated costs are regarded as a planning-level estimate to determine the amount of funding necessary to implement the Plan. The total cost in 2007 dollars over the permit term is estimated to be \$800 to \$900 million of which land and easement acquisition is 45% of the total cost, habitat/restoration is 22%, and reserve management/maintenance is 12%. Other costs include monitoring, environmental compliance, water supply and fish habitat management, recreation and public access, administration, and contingency.
- **Habitat Plan Funding.** Funding for the Plan will be from several major sources. The most significant source is impact fees (40%) generated from new development. Other funding sources include restoration fees (20%), state and federal grants (20%), and maintenance of ongoing open space acquisition efforts (20%). For VTA, impacts will be determined for each covered project or activity during environmental review, and an appropriate fee will be paid based on habitat type.
- **Habitat Plan Implementing Entity.** Implementation of the Plan is the responsibility of an Implementing Entity. The organizational structure of this governing body is based on the needs of the Local Partners and can be one of several types such as a joint powers authority, special district, non-profit organization, or a hybrid organization. It is also possible that one of the Local Partner can serve as the Implementing Entity.

#### **ALTERNATIVES:**

The alternative is to provide comments on one or more of the seven key policy areas. Any such comments will be forwarded to the HCP/NCCP Liaison Group.

#### **FISCAL IMPACT:**

Review and commenting on seven key policy areas does not have fiscal implications.