

**CONSERVATION EASEMENT MONITORING FUNDING AGREEMENT**  
**Between Santa Clara Valley Water District**  
**and the Land Trust of Santa Clara Valley**  
**for the Lake Silveira Compensatory Mitigation Preserve**

This Conservation Easement Monitoring Funding Agreement ("Agreement") is entered into as of this \_\_\_\_\_ day of May 2019 ("Agreement Effective Date"), between Santa Clara Valley Water District, a special district organized and existing under the laws of the State of California, hereinafter referred to as "Valley Water" and the Land Trust of Santa Clara Valley, a California non-profit corporation, hereinafter referred to as "Land Trust", and together referred to as "Parties" and individually as "Party".

**RECITALS**

- A. Whereas, Valley Water is the owner in fee of the approximately 52.9-acre property of unimproved land encompassing a section of Llagas Creek from approximately 185 feet upstream of Olive Avenue downstream to Monterey Road within the southern limits of the City of Morgan Hill, within the County of Santa Clara, California (hereinafter referred to as the "Property"). The Property is depicted in **Exhibit-1** of this Agreement.
- B. Whereas, on May \_\_\_, 2019, Valley Water granted the Land Trust a 15.99± acre Conservation Easement ("Conservation Easement") all within the Property (hereinafter referred to as the "CE Property") for the purpose of ensuring that the CE Property will be retained forever in its natural, restored, or enhanced condition and to prevent any use of the CE Property that will impair or interfere with its conservation values. A true and accurate copy of the Conservation Easement (Deed # \_\_\_\_\_) is attached hereto as **Exhibit-2**.
- C. Whereas the monitoring and reporting on the CE Property is subject to the terms of both the Conservation Easement Deed and the Lake Silveira Compensatory Mitigation Preserve Management Plan (hereinafter referred to as the "Management Plan"), dated February 2019, which is incorporated by reference as if fully set forth herein. A true and accurate copy of the Management Plan is attached hereto as **Exhibit-3**.
- D. Whereas the purposes of the Conservation Easement are to ensure that the CE Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the Management Plan, and to prevent any use of the CE Property that will impair or interfere with its conservation values in perpetuity.
- E. Whereas, the purpose of the Management Plan is to ensure the CE Property is properly monitored, maintained, and managed in a manner that preserves its conservation values in perpetuity consistent with the Conservation Easement and Valley Water's mitigation goals.
- F. Whereas, under its terms, the Management Plan may be amended from time to time in accordance with the terms and conditions of this Agreement.
- G. Whereas, the Valley Water ("Grantor") is responsible for funding the perpetual management, maintenance, and monitoring of the CE Property and is designated as the Land Owner responsible to perform the tasks of the Land Owner pursuant to the Management Plan and the Grantor's duties listed in the Conservation Easement.

- H. Whereas, Valley Water or its' authorized agent is designated as the Land Manager ("Land Manager") and is designated as the Land manager responsible to perform the tasks of the Land Manager pursuant to the Management Plan.
- I. Whereas, the Land Trust ("Grantee"), in accordance with the Conservation Easement, is responsible to perform the tasks of the Conservation Easement Holder pursuant to the Management Plan and the Grantee's duties listed in the Conservation Easement.
- J. Whereas, given the expense associated with performance of the Grantee's duties in the Conservation Easement and Conservation Easement Holder's responsibilities under the Management Plan, the Land Trust receipt of funding from Valley Water for performance of these duties serves as consideration for its agreement to be the Conservation Easement Holder.
- K. Whereas, the Land Trust agrees to be the Grantee of the Conservation Easement and agrees the performance of tasks required pursuant to the Management Plan serves as consideration for Valley Water's payments under this Agreement.

**NOW THEREFORE, Valley Water and Land Trust agree to the foregoing and as follows:**

1. **Term.** The term of this Agreement shall commence on the Agreement Effective Date and continue so long as Land Trust continues to hold title to the Conservation Easement. Land Trust shall be the sole beneficiary to this Agreement and this Agreement shall not be transferable to any third-party unless prior approval is obtained from Valley Water and the U.S. Army Corps of Engineers – San Francisco District Regulatory Branch.
2. **Compensation.** The Parties agree that Land Trust has incurred \$24,500 in set-up costs related to entry into this Agreement. Land Trust agrees that \$350,000 constitutes the present-value of the Valley Water's funding requirements, in perpetuity, to the Land Trust as the designated CE Holder in accordance with the Conservation Easement and Management Plan, and for all other duties and obligations required of Land Trust under the Conservation Easement, the Management Plan, and this Agreement, and that this amount shall constitute full and final consideration for Land Trust's perpetual obligations under this Agreement. Valley Water and Land Trust therefore agree that \$350,000 (\$24,500 + \$325,500) shall constitute full and final consideration from Valley Water to Land Trust under this Agreement. Valley Water's payment of \$350,000 to Land Trust shall be made within 60 calendar days following execution of this Agreement.

Grantor shall also pay all costs of escrow and recording fees incurred in this transaction including documentary stamp tax, if required by law, and title insurance policy expenses.

3. **Conservation Easement Monitoring and Reporting Tasks.** The Conservation Easement Holder tasks are set forth in sections 6.0, 8.0 and Appendix D of the Management Plan. Collectively, these are referred to as the "CE Holder Monitoring and Reporting Tasks". During the term of this Agreement, the Land Trust shall perform all of the CE Holder Monitoring and Reporting Tasks, pursuant to the Management Plan.
4. **Grantee's duties.** Section 4 of the Conservation Easement separately requires the Land Trust to perform specified duties set forth therein ("Grantee's Duties").

5. **Valley Water's Mitigation and Monitoring Plan Annual Monitoring Report Review for Year 1 through Year 10 following construction completion of the Lake Silveira Compensatory Mitigation Preserve.** To offset unavoidable adverse impacts to wetlands and streams authorized by Clean Water Act § 404 permit, Valley Water prepared a 10-year mitigation and monitoring plan (MMP), approved by the Regulatory Agencies, for compensatory mitigation for the Upper Llagas Creek Project (Project). The overall objective of this MMP is to ensure that there will be no net loss of wetland or riparian function and values resulting from either direct, indirect and/or cumulative impacts associated with construction of the Project. The second objective of this MMP is to demonstrate that functions and values have improved post-construction for habitat impacted by construction of the Project. The MMP requires annual monitoring with established success criteria for the created wetlands and stream restoration. To keep the Land Trust apprised of monitoring results and adaptive management changes which may occur during this 10-year establishment/MMP period for the compensatory mitigation at Lake Silveira, the Land Trust will review and provide comment on the annual monitoring draft report consistent with the terms and conditions of the Project's Regulatory Agency's permits. Following review and comment of the annual monitoring report, an annual site visit will commence with representatives from Land Trust and Valley Water at the Lake Silveira Compensatory Mitigation Preserve to discuss the monitoring results and any potential changes promulgated by adaptive management. Valley Water will disseminate the final annual report to Land Trust after all resource agencies comments and changes have been incorporated. Please note this MMP pertains to all compensatory mitigation for the Project, however, Valley Water is requesting that the Land Trust limit their comments and review to the Lake Silveira Compensatory Mitigation Preserve. The compensation set forth in paragraph 2 above, includes all consideration for CE Holder Tasks during year 1 through year 10 following construction completion of the Lake Silveira Compensatory Mitigation Preserve pursuant to the Management Plan. During this ten-year period, Valley Water shall be responsible for implementation of Valley Water's MMP.
6. **Monitoring and Reporting Beginning Year 11 following construction completion of the Lake Silveira Compensatory Mitigation Preserve and completion by Valley Water of their MMP.** Prior to year 10 of Valley Water's MMP, Valley Water and Land Trust agree to meet to review, discuss, and confirm the Land Trust (CE Holder) Monitoring and Reporting Tasks from Year 11 in perpetuity pursuant to the Management Plan. The compensation set forth in paragraph 2, above, includes all consideration for Grantee's Duties and CE Holder Monitoring and Reporting Tasks from Year 11 in perpetuity pursuant to the Management Plan. The Land Trust agrees that the compensation set forth in paragraph 2, above, shall constitute full consideration for its performance of the Grantee's Duties and CE Holder Monitoring and Reporting Tasks from Year 11, in perpetuity.
7. **Non-performance.** If the Land Trust does not perform any of its obligations under this Agreement or the Management Plan or Conservation Easement (the terms of which are incorporated by reference into this Agreement), Valley Water may give written notice to the Land Trust for non-performance and demand full performance within 60 calendar days. If performance is not satisfactorily completed within 60 calendar days after service of written notice by Valley Water, Valley Water may elect to, at its sole discretion: 1) seek specific performance through a court of competent jurisdiction; 2) attempt to mediate with the Land Trust; 3) attempt to find an alternative holder of the Conservation Easement in accordance with Reversion clause of the Conservation

Easement Deed; or 4) to seek any other remedies available to it as a matter of law.

8. **Enforcement and Remedies.** All costs incurred in enforcing the terms of this Agreement, including, but not limited to, costs of suit and reasonable attorneys' fees, shall be borne by the breaching party to the extent that a breach of this Agreement is determined to have occurred by a court of law or where the non-breaching party is deemed to be the "prevailing party" in an action by a court of law.
9. **Termination of Agreement.** This Agreement shall terminate automatically when the Land Trust is no longer the holder of title to the Conservation Easement or when Land Trust files for bankruptcy. Upon termination of this Agreement, Land Trust shall be obligated to refund \$325,500 to Valley Water within 60 calendar days of termination of this Agreement. Land Trust shall not be entitled to any additional credit or off-set for services previously performed since the \$325,500 portion of the payment in section 2 is intended to secure annual monitoring and reporting responsibilities and services pursuant to the Management Plan, in perpetuity.
10. **Notices.** Any and all notices required to be given hereunder will be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing:

**Land Trust:**

Land Trust of Santa Clara Valley  
605 Tennant Ave.  
Morgan Hill, CA. 95037  
Attention: Executive Director

**Valley Water:**

Valley Water  
5750 Almaden Expressway  
San Jose, CA 95118  
Attention: Clerk of the Board

11. **Release.** The Land Trust releases Valley Water from any and all liability which may arise out of the performance of this Agreement by the Land Trust or its agents excepting such liability arising out of the negligence or willful misconduct by Valley Water or its agents.
12. **Choice of Law.** This Agreement is governed by California law.
13. **Jurisdiction.** Jurisdiction for any action brought to enforce the terms of this agreement shall be in the Santa Clara County Superior Court or the U.S. District Court, Northern District of California, San Jose Division.
14. **Amendments.** This Agreement may not be modified or amended except in writing signed by both parties which has been approved by the U.S. Army Corps of Engineers.
15. **Compliance with Laws.** Each party must, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all applicable federal, state and local laws, statutes, orders, ordinances, rules, and regulations.
16. **Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties with respect to consideration for the Land Trust's assumption of the CE holder responsibilities, Grantee's duties and CE Monitoring and Reporting Tasks, and it supersedes all prior written or oral understandings.

**17. Severability.** If any provisions of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

**18. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort and both parties have had an opportunity to have this Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be considered against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

WITNESS THE EXECUTION HEREOF, effective on the Agreement Effective Date hereinabove set forth.

"LAND TRUST":

THE LAND TRUST OF SANTA CLARA VALLEY,  
a California nonprofit corporation

"VALLEY WATER":

VALLEY WATER,  
a California Special District

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

Approved as to form:

By: \_\_\_\_\_  
Norma J. Camacho, Chief Executive Officer

Approved as to form:

\_\_\_\_\_  
Brian C. Hopper,  
Senior Assistant Counsel

## Exhibit 1

**SANTA CLARA VALLEY WATER DISTRICT**  
San Jose, California

PROJECT: LLAGAS CREEK

RESU File No.: 5010-229.1

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARCEL 1 AND PARCEL 3 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN BOOK 432 AT PAGE 29 IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF OLIVE AVENUE (60.00 FEET WIDE) WITH THE NORTHWESTERLY LINE OF PARCEL 3 AS SHOWN ON SAID MAP;**

THENCE ALONG SAID NORTHWESTERLY LINE, NORTH 61°50'14" EAST, 1,712.76 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3;

THENCE ALONG SAID NORTHEASTERLY LINE, SOUTH 70°23'40" EAST, 86.99 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE OF SAID PARCEL 3 AND ALONG THE NORHTWESTERLY LINE OF PARCEL 1 AS SHOWN ON SAID MAP, SOUTH 70°23'40" EAST, 132.15 FEET;

THENCE LEAVING SAID NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 55°08'06" EAST, 189.44 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 36°35'24", AN ARC LENGTH OF 114.95 FEET;

THENCE SOUTH 18°32'42" EAST, 134.07 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 360.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°53'06", AN ARC LENGTH OF 275.74 FEET;

THENCE SOUTH 24°34'39" WEST, 40.66 FEET;

THENCE SOUTH 77°04'33" WEST, 552.38 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 26.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $47^{\circ}08'34''$ , AN ARC LENGTH OF 21.39 FEET;

THENCE NORTH  $55^{\circ}46'53''$  WEST, 148.90 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 180.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $94^{\circ}40'37''$ , AN ARC LENGTH OF 297.44 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 122.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $59^{\circ}46'11''$ , AN ARC LENGTH OF 127.27 FEET;

THENCE SOUTH  $89^{\circ}18'41''$  WEST, 13.69 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 60.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $55^{\circ}22'46''$ , AN ARC LENGTH OF 57.99 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $65^{\circ}38'00''$ , AN ARC LENGTH OF 252.01 FEET;

THENCE NORTH  $80^{\circ}26'05''$  WEST, 187.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 140.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $65^{\circ}48'22''$ , AN ARC LENGTH OF 160.79 FEET;

THENCE NORTH  $14^{\circ}37'42''$  WEST, 55.16 FEET;

THENCE NORTH  $79^{\circ}47'32''$  EAST, 69.49 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 500.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $29^{\circ}02'53''$ , AN ARC LENGTH OF 253.49 FEET;

THENCE NORTH  $50^{\circ}44'39''$  EAST, 210.95 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1,000.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $09^{\circ}37'57''$ , AN ARC LENGTH OF 168.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 1,490.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $16^{\circ}04'40''$ , AN ARC LENGTH OF 418.11 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 400.00 FEET;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°31'24", AN ARC LENGTH OF 206.11 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL 3 TO WHICH A RADIAL BEARS NORTH 03°17'14" WEST, SAID POINT ALSO BEING THE POINT OF BEGINNING.

CONTAINING 15.993 ACRES OF LAND, MORE OR LESS.

**BASIS OF BEARINGS:**

BEARINGS ARE BASED ON AND IDENTICAL TO THAT CERTAIN PARCEL MAP FILED IN BOOK 432 OF MAPS AT PAGE 29, IN THE OFFICE OF THE RECORDER, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

**SURVEYOR'S STATEMENT:**

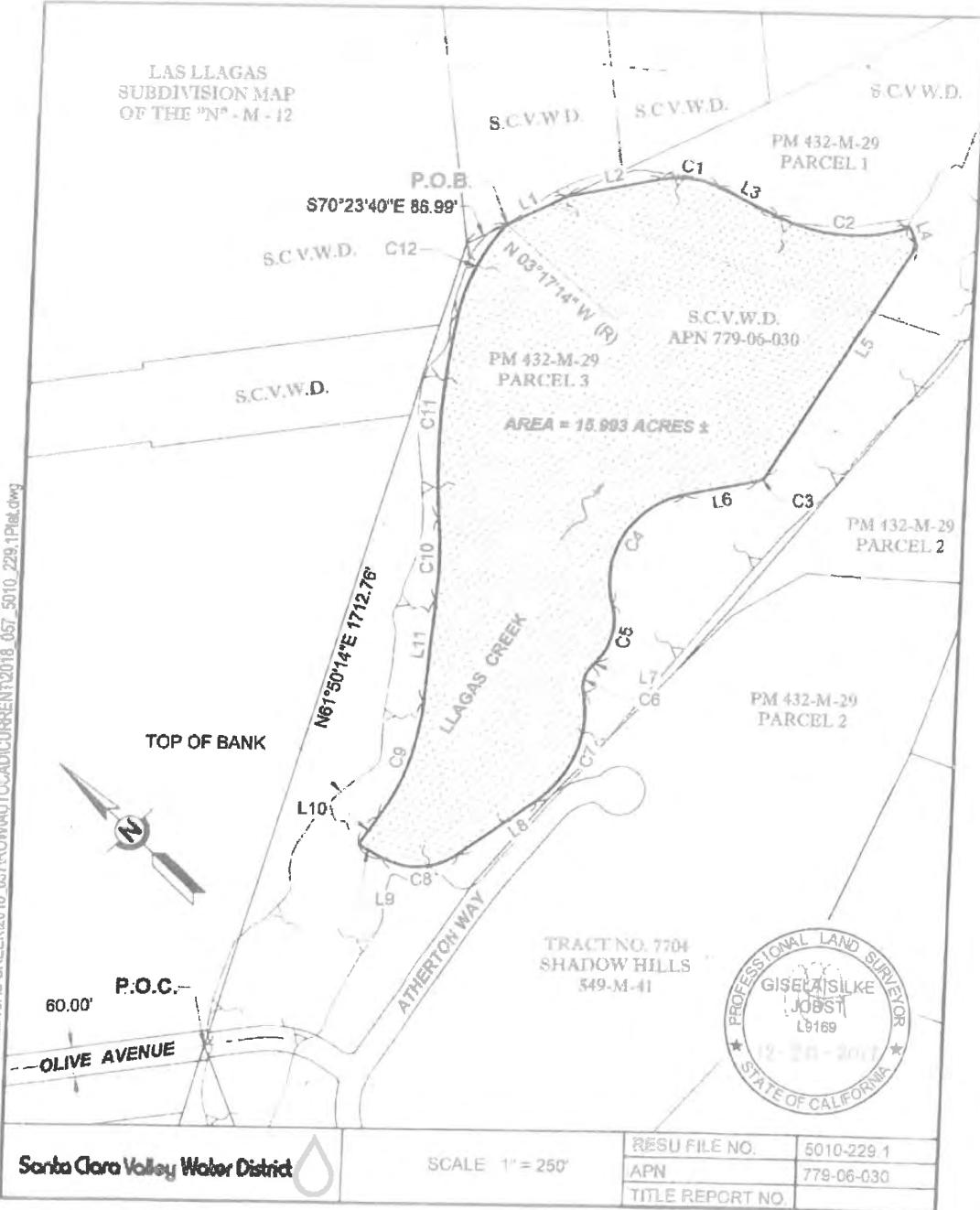
THE DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT.

GISELA SILKE JOBST, L9169

12-20-2017  
Date



SCC/NYD 3: REQUESTS/LLAGAS GREEK/2018 057ROWAUTOCAD/CURRENT2018\_057\_5910\_229\_1Plat.dwg



Attachment 2  
Page 9 of 89

Line Table		
Line #	Direction	Length
L1	S70°23'40"E	132.15'
L2	S55°08'06"E	189.44'
L3	S18°32'42"E	134.07'
L4	S24°34'39"W	40.66'
L5	S77°04'33"W	552.38'
L6	N55°46'53"W	148.90'
L7	S89°18'41"W	13.69'
L8	N80°26'05"W	187.51'
L9	N14°37'42"W	55.16'
L10	N79°47'32"E	69.49'
L11	N50°44'39"E	210.95'

Curve Table			
Curve #	Radius	Delta	Length
C1	180.00'	36°35'24"	114.95'
C2	360.00'	43°53'06"	275.74'
C3	26.00'	47°08'34"	21.39'
C4	180.00'	94°40'37"	297.44'
C5	122.00'	59°46'11"	127.27'
C6	60.00'	55°22'46"	57.99'
C7	220.00'	65°38'00"	252.01'
C8	140.00'	65°48'22"	160.79'
C9	500.00'	29°02'53"	253.49'
C10	1000.00'	9°37'57"	168.12'
C11	1490.00'	16°04'40"	418.11'
C12	400.00'	29°31'24"	206.11'

Santa Clara Valley Water District 	SCALE: N.T.S.	RESU FILE NO. 5010-229.1
		APN 779-06-030
		TITLE REPORT NO.

SHEET 2 OF 2

## Exhibit 2

RECORD WITHOUT FEE UNDER CALIFORNIA  
GOVERNMENT CODE SECTION 6103

AFTER RECORDING RETURN TO:

LAND TRUST OF SANTA CLARA VALLEY  
ATTN: KEVIN O'DAY, PRESIDENT  
605 TENNANT AVENUE  
MORGAN HILL, CA 95037

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**APN: 779-06-030**

Grantee is exempt under section 11922 Revenue  
and Taxation Code of the state of California.  
Declarant or Agent Determining Tax:

\_\_\_\_\_  
Name, Title

**DOCUMENT NO.: 5010-229.1**

**CONSERVATION EASEMENT DEED**  
**Lake Silveira Compensatory Mitigation Preserve for**  
**Upper Llagas Creek Flood Protection Project**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of  
the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the Santa Clara Valley Water District  
("Grantor"), a Special District, created by the California Legislature, in favor of the Land Trust of  
Santa Clara Valley ("Grantee"), a California non-profit corporation, with reference to the following  
facts:

**RECITALS**

A. Grantor is the sole owner in fee simple of certain real property containing approximately  
15.993 acres, located in the City of Morgan Hill, County of Santa Clara, State of California, and  
designated as a portion of Assessor's Parcel Number 779-06-030 (the "Easement Property"). The  
Easement Property is legally described and depicted in **Exhibit A** attached to this Conservation  
Easement and incorporated in it by this reference.

As a condition of the Grantor's fee purchase of the Property from the County of Santa  
Clara (County), approximately 52.9± acres as legally described and depicted in **Appendix A** of the  
Management Plan (**Exhibit B**), encompassing the entire Easement Property, the Grantor shall  
separately grant an open space easement to the County and the City of Morgan Hill (City) for park  
purposes of trail connectivity through linkage of the site to the regional system of trails within the  
geographic boundary of Santa Clara County, scenic viewshed protection, habitat conservation and  
open space preservation consistent with the 1995 Countywide Trails Master Plan, as amended from  
time to time (Open Space Easement). However, this Open Space Easement shall be subordinate to  
the Conservation Easement granted herewith.

B. The Easement Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Easement Property will provide high quality natural, restored and/or enhanced habitat for listed or special-status plant and/or animal species including but not limited to Western pond turtle, steelhead trout (South-Central Distinct Population Segment); and contain native and/or non-native habitats including riparian forest, oak woodlands and forests, sycamore woodland, and grassland; approximately 5 acres of created wetlands; and restored approximately 2,000 linear feet of Llagas Creek, created, enhanced and/or preserved jurisdictional waters of the United States and Waters of the State. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Easement Property.

C. This Conservation Easement provides partial mitigation for impacts of the Grantor's Upper Llagas Creek Flood Protection Project (Project) to wetlands and other waters of the United States/State. The Easement Property consists of approximately 15.993 acres of stream and watershed Protection, restores approximately 2,000 linear feet of Llagas Creek and creates approximately 5 acres of freshwater wetlands. Mitigation requirements for the Project are described in the U.S. Army Corps of Engineers ("USACE") Permit No. 2014-00086S, Central Coast Regional Water Quality Control Board ("CCRWQCB") Waste Discharge Requirements and Water Quality Certification (Order No. 34316WQ03 (July 27, 2017), and California Department of Fish and Wildlife ("CDFW") 1600 Streambed Alteration Agreement No. 1600-2015-0356-R3 (January 11, 2017).

D. The CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFW is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Wildlife Game Section 1348, and other provisions of California law.

E. The National Marine Fisheries Service (the "NMFS"), an agency within the United States Department of Commerce, has jurisdiction over the nation's ocean resources including habitat, protection, restoration and management of fish, necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

F. 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.*

G. The CCRWQCB provides regulatory authority over "waters of the state," which are defined as "any surface water or groundwater, including saline waters, within the boundaries of the state" (California Water Code Section 13050), pursuant to the California Porter-Cologne Water Quality Control Act and, together with the federal Clean Water Act. More specifically, the State Water Resources Control Board and its nine Regional Water Quality Control Boards have jurisdiction over the bed and banks of a stream channel, its riparian corridor, and its beneficial uses.

H. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3, Government Code Section 65965, and Government Code Section 65967. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

I. The agencies that require mitigation associated with this Conservation Easement are the CDFW, NMFS, CCRWQCB, and USACE. These agencies are together referred to in this Conservation Easement as the "Permitting Agencies".

J. A final, approved copy of the Management Plan, and any amendments thereto approved by the USACE, shall be kept on file at the respective offices of the USACE and Grantor. Grantee's approval of any amendments to the Management Plan shall not be unreasonable withheld. If Grantor, or any successor or assign, requires an official copy of the Management Plan, it should request a copy from the USACE at its address for notices listed in Section 12 of this Conservation Easement.

K. The Management Plan is included as **Exhibit B** and is incorporated by this reference into this Conservation Easement as if fully set forth herein. The Management Plan includes any amendments to the Management Plan approved by the USACE.

L. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

#### COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Easement Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the Management Plan, and to prevent any use of the Easement Property that will impair or interfere with the Conservation Values of the Easement Property ("Purposes"). Grantor intends that this Conservation Easement will confine the use of the Easement Property to activities that are consistent with such Purposes, including, without limitation, those involving the preservation, restoration and enhancement of the Conservation Values, as listed in the Recitals, native species and their habitats implemented in accordance with the Management Plan.

2. Grantee's Rights.

To accomplish the Purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (a) To preserve and protect the Conservation Values of the Easement Property.

(b) To enter the Easement Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the Management Plan and to implement at Grantee's sole discretion Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Easement Property.

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

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect and sustain the biological resources and Easement Property Conservation Values shall remain a part of and be put to beneficial use upon the Easement Property, consistent with the Purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Easement Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Easement Property, nor any other property adjacent or otherwise.

3. Third Party Beneficiary.

Grantor and Grantee acknowledge that the USACE is the third party beneficiary of this Conservation Easement with the right of access to the Easement Property and the right to enforce all of its provisions and all other rights and remedies of the Grantee under this Conservation Easement.

4. Prohibited Uses.

Any activity on or use of the Easement Property that is inconsistent with the Purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the Conservation Values of the Conservation Easement or otherwise interfere with the Purposes of this Conservation Easement, except for non-native invasive plant species management as specifically provided in the Management Plan.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways and trails identified in **Appendix E** of the Management Plan (Roads/Trails), is incorporated by this reference into this Conservation Easement as if fully set forth herein, and except as specifically provided in the Management Plan. Where the use of such off-road vehicles is solely for site management or monitoring activities, Grantee's use of the Easement Property shall not be limited to existing roadways and trails so long as such use is consistent with the Management Plan.

(c) Agricultural activity of any kind, except grazing for vegetation management as specifically provided in the Management Plan.

(d) Recreational activities, including, but not limited to, hunting or fishing are prohibited. However, walking, jogging, running, hiking, and horseback riding are permitted for public, non-commercial, recreational activities of the Grantor and its invitees, so long as such activities are consistent with the Purposes of this Conservation Easement as specifically shown in **Appendix E** of the Management Plan. Walking, jogging, running, hiking, and horseback riding use by the public shall be limited to the roads and anticipated or existing trails as depicted in **Appendix E** of the Management Plan. Any future recreational use, as described herein, shall be consistent with the Purposes of this Conservation Easement and governed by a duly executed joint use and management agreement between the Grantor and Grantee. Furthermore, receipt of all necessary permits and satisfaction of all regulatory requirements shall be conditions precedent for use of the Easement Property for such recreation. The USACE's written approval shall be required for any agreement not already incorporated in the Management Plan. This approval must be obtained prior to use of the Easement Property for recreational activities.

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

(f) Any legal or de facto division, subdivision or partitioning of the Easement Property including a request for a certificate of compliance pursuant to the California Subdivision Map Act (California Government Code Section 66499.35).

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, except for rehabilitation, repair, and maintenance of existing roads and trails identified in **Appendix E** of the Management Plan, creek crossing construction/rehabilitation, wetland side weir maintenance, wetland outlet control maintenance installation and repair of signage (i.e., trespassing, informational, mitigation, and open space interpretive signs), and habitat enhancement and management activities as specifically provided in the Management Plan. Permits such as a Streambed Alteration Agreement with the CDFW, Clean Water Act section 404 permit from the USACE, and Clean Water Act section 401 certification from the CCRWQCB must be obtained, if required.

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials except where construction materials may be temporarily stored in support of Easement Property management and maintenance activities as specifically provided in the Management Plan.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species except as approved by the California Department of Food and Agriculture's Biological Control Program for control of invasive species as specifically provided in the Management Plan.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Easement Property, or granting or authorizing surface entry for any of these purposes, except for infrastructure and facilities management and habitat enhancement of the Easement Property as specifically provided in the Management Plan.

(k) Altering the surface or general topography of the Easement Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Easement Property with concrete, asphalt or any other impervious material except for (i) rehabilitation, repair and maintenance of existing roads and trails identified on **Appendix E** of the Management Plan, (ii) construction of roads and trails as generally depicted on **Appendix E** of the Management Plan, (iii) creek crossing construction/rehabilitation, and (iv) those other habitat management activities specified in the Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease, (iv) for rehabilitation, repair and maintenance of existing roads and trails identified on **Appendix E** of the Management Plan, (v) construction of roads and trails as generally depicted on **Appendix E** of the Management Plan, (vi) for creek crossing construction/rehabilitation, and (vii) for other tasks as specifically provided in the Management Plan.

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or groundwater. To the extent any of these activities are required for construction, rehabilitation, repair and maintenance of roads and trails identified on **Appendix E** of the Management Plan, creek crossing construction/rehabilitation, or other tasks as specifically provided in the Management Plan, the Grantor or its designated Grantee will obtain proper authorizations including permits such as a Streambed Alteration Agreement with the CDFW, Clean Water Act 404 permit from the USACE, and Clean Water Act Section 401 certification from the CCRWQCB, if required.

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Property; changing the place or purpose of use of the water rights; 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 Property, 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 Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Easement Property, or the use or activity in question.

5. Grantee's Duties.

(a) To ensure that the Purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Easement Property as described in the Management Plan to identify and prohibit uses as set forth in Section 3 above; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Grantor who will submit these reports to the USACE on an annual basis in accordance with Section 5. Grantor's Duties.

(b) In the event the Grantee's interest in this Conservation Easement reverts to or is transferred to the State of California, CDFW will carry out the tasks specified in Section 5(a) to the extent that funds and staff are available for that purpose. If CDFW determines that it cannot carry out the specified tasks, the USACE may identify a replacement Grantee, acceptable to all, and CDFW, subject to obtaining all necessary approvals, will transfer this Conservation Easement to the identified replacement Grantee in compliance with Section 20(a) of this Conservation Easement.

6. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the Management Plan. Where Grantee has provided Grantor with reports on the results of the compliance monitoring inspections as set forth in Section 4(a)(2), above, Grantor shall provide these reports to the USACE on an annual basis.

7. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Easement Property, including the right to engage in or permit or invite others to engage in all uses of the Easement Property that are not prohibited or limited by, and are consistent with the Purposes of, this Conservation Easement.

8. Grantee's Remedies.

(a) If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). Notice shall be provided according to Section 20 of this Conservation Easement.

(b) If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Easement Property 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; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Easement Property to the condition in which it existed prior to any

violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Easement Property.

(c) If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Easement Property Conservation Values, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement. Grantee shall notify the Grantor and USACE within 30 days of such an occurrence.

(d) Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's 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 Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(e) If Grantor receives a Notice of Violation from Grantee or the USACE with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and the USACE. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

9. Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

10. Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any

other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

11. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes; or (ii) acts by Grantee or its employees.

12. Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by the USACE. These enforcement rights are in addition to, and do not limit, the rights of enforcement under the Management Plan. If at any time in the future Grantor or any subsequent transferee uses, allows the use, or threatens to use or allow use of, the Easement Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the USACE each has standing as an interested party in any proceeding affecting this Conservation Easement.

13. Reversion.

If the USACE determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation Purposes in the manner specified in this Conservation Easement or in the Management Plan then, pursuant to California Government Code Section 65967(e), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65967 (and any successor or other provision(s) then applicable) and approved by the USACE.

14. Access.

This Conservation Easement does not convey a general right of access to the public.

15. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Property. Grantor agrees that neither Grantee nor the USACE shall have any duty or responsibility for the operation, upkeep or maintenance of the Easement Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Easement Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Easement Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Easement Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 22(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Easement Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 6, 15 and 15(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party.

(2) Grantor shall hold harmless, protect and indemnify the USACE and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 15 (b) (2) shall be inapplicable to the USACE with respect to any Claim due solely to the negligence of the USACE or any of its employees. If any action or proceeding is brought against the USACE by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the USACE, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the USACE or reimburse the USACE for all charges incurred for services of the U.S. Department of Justice in defending the action or proceeding.

16. Extinguishment.

If circumstances arise in the future that render the preservation of the Conservation Values of the Easement Property, including wetland functions and values, or other Purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, only by judicial proceedings in a court of competent jurisdiction.

17. Condemnation.

Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is "property appropriated to public use," as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the California Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Easement Property, if at all, *only* as provided in Code of Civil Procedure section 1240.055. If any person seeks to acquire the Easement Property for public use, Grantee shall provide notice to the USACE and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with Government Code section 65966(j).

18. Transfer of Conservation Easement or Easement Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the USACE, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the USACE at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65967 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the USACE. Grantee shall require the assignee to record the assignment in the county where the Easement Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 19.

(b) Easement Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Easement Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the Management Plan, this Conservation Easement and any amendment(s) to those document. Grantor further agrees to give written notice to Grantee and the USACE of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the USACE shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 19.

19. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the USACE otherwise agree in writing, a replacement conservation

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easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Property.

20. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each the USACE, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3614  
Attn: Clerk of the Board

To Grantee: Land Trust of Santa Clara Valley  
605 Tennant Avenue  
Morgan Hill, CA 95037  
Attn: Kevin O'day, President

To USACE: U.S. Army Corps of Engineers  
San Francisco District  
450 Golden Gate Avenue, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Chief, Regulatory Branch

or to such other address a party shall designate by written notice to Grantor, Grantee, and the USACE. 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, three (3) days after deposit into the United States mail.

21. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the USACE, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the Purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Easement Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the USACE.

## 22. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the Purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement 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 Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the USACE with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 21.

(e) No Forfeiture.

Without limiting the provisions of Section 13, nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Easement Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Easement Property, except that liability for acts, omissions or breaches 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) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Property, or transported to or from or affecting the Easement Property.

(2) Without limiting the obligations of Grantor under Section 15 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9(b)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Easement Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party.

(3) Without limiting the obligations of Grantor under Section 15 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the USACE from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Easement Property at any time, except that this release and indemnification shall be inapplicable to the USACE with respect to any Hazardous Materials placed, disposed or released by the USACE or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against the USACE by reason of any such Claim, Grantor shall, at the election of and upon written notice from the USACE, defend such action or proceeding by counsel reasonably acceptable to the USACE for all charges incurred for services the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or the USACE any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 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 Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Property.

(5) 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. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), 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 Conservation Easement.

(6) 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. Grantor represents, warrants and covenants to Grantee and the USACE that activities upon and use of the Easement Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Easement Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the USACE pursuant to the Easement Property Assessment and Warranty signed by Grantor and attached as an exhibit to this Conservation Easement (**Exhibit C**), there are no outstanding mortgages, liens, encumbrances or other interests in the Easement Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the USACE.

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Easement Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Easement Property, without first obtaining the written consent of Grantee and the USACE. Such consent may be withheld if Grantee or the USACE determine(s) that the proposed interest or Transfer is inconsistent with the Purposes of this Conservation Easement or may impair or interfere with the Conservation Values of the Easement Property. This Section 22(k) shall not limit the provisions of Section 2(d) or 4(n), nor prohibit transfer of a fee or leasehold interest in the Easement Property that is subject to this Conservation Easement and complies with Section 18. Grantor shall provide a certified copy of any recorded or unrecorded grant or Transfer document to the Grantee and the USACE.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Easement Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Easement Property is specified in and governed by the Management Plan (**Exhibit B**).

23. Exhibits.

The following Exhibits referenced in this Conservation Easement are attached to and incorporated by reference herein:

**Exhibit A** - Legal Description and Surveyed Plat of Conservation Easement Property

**Exhibit B** - Lake Silveria Compensatory Mitigation Preserve Management Plan

**Exhibit C** - Easement Property Assessment and Warrenty

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

**GRANTOR:**

Santa Clara Valley Water District

Approved as to form:

General Counsel

BY:

Norma J. Camacho  
Chief Executive Officer

BY:

Brian C. Hopper  
Senior Assistant District Counsel

DATE:

**GRANTEE:**

Land Trust of Santa Clara Valley

Approved as to form:

BY:

(Name)  
(Title)

DATE:

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COUNTY OF SANTA CLARA } SS

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me \_\_\_\_\_,

Notary Public, personally appeared

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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**Exhibit A**  
**Legal Description and Surveyed Plat**  
**of the Conservation Easement**

**Exhibit B**  
**Lake Silveira Compensatory Mitigation Preserve**  
**Management Plan**

**Exhibit C**  
**Easement Property**  
**Assessment and Warrenty**

## Exhibit 3

# LAKE SILVEIRA COMPENSATORY MITIGATION PRESERVE MANAGEMENT PLAN



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MAY 2019

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## EXECUTIVE SUMMARY

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The United States Army Corps of Engineers (USACE), San Francisco District Civil Works, and the local sponsor, Santa Clara Valley Water District (SCVWD) are constructing flood protection improvements to approximately 13.9 miles of stream within Llagas Creek and its tributaries, West Little Llagas Creek and East Little Llagas Creek. Llagas Creek is a tributary of the Pajaro River in south Santa Clara County within the communities of Morgan Hill, San Martin and Gilroy. As the result of the loss of aquatic resources for impacts incurred through implementation of the flood protection project, 15.99 acres of compensatory mitigation will be established to protect the created wetlands and restored Llagas Creek. To comply with CWA regulations 33 CFR 332.7 (d)(2), this Management Plan, includes a detailed description of long-term management needs, annual cost estimates of those needs, and identifies a funding mechanism to meet those long-term needs. The purpose of this Management Plan (MP) is to ensure the Conservation Easement (CE) area is monitored, maintained, and managed in a manner that preserves its conservation values in perpetuity and is consistent with the Permitting Agencies and the SCVWD's mitigation goals.

To provide sufficient site protection for the CE, the SCVWD has identified a third party (i.e. non-profit resource management agency) CE Holder, Land Trust of Santa Clara Valley (LTSCV), to monitor the Property and enforce site protections as appropriate. The LTSCV will conduct biannual routine site inspections and land management of the CE. The Property owner of the 52.9 acres' parcel (Property) and the designated land manager (Land Manager) is the Santa Clara Valley Water District. The Land Manager is responsible to work with and coordinate with the CE holder to implement this MP, managing and monitoring the CE boundaries in perpetuity to preserve its habitat and conservation values. The Land Manager is responsible for maintaining CE in a condition at least as good as its current condition consistent with the CE and consistent with the performance standards identified in the final Mitigation and Monitoring Plan (MMP), although it is anticipated that the initial site improvements and MP implementation will result in improved environmental conditions. The final MMP (December 2018) is included in this MP as **Appendix F**.

The Property site, referred to commonly as Lake Silveira, is 52.9 acres of unimproved land bordering Llagas Creek from 185 feet upstream of Olive Avenue to Monterey Road within the southern limits of the City of Morgan Hill. The Conservation Easement (CE) for the Lake Silveira Compensatory Mitigation Preserve is 15.99 acres (all within the 52.9-acre Property) which includes a portion of the Lake and the approximately 2,000 linear feet of the historic channel to be restored. The pre-Project habitats within the CE include 6.55 acres of upland habitat; 6.28 acres of pond; 2.63 acres of seasonal wetlands; 0.32 acres of perennial marsh; and 0.21 acres of perennial waters. However, after the initial site improvements are complete, the CE area will include 2,000 linear feet of restored perennial stream channel. The initial site improvements include: restoration of approximately 2,000 linear feet of Llagas Creek, a wetland creation (~4.02 acres) within the former abandoned quarry, turtle basking habitat installation, instream complexity installation, upland log piles installation, native riparian plantings, invasive plant management and permanent fence installation. After construction of the initial site improvements is complete, a 10-year Mitigation and Monitoring Plan (MMP) will be implemented at the Property site with requisite criteria established for success. A wetland delineation of the CE area will be conducted at year 5 of the MMP to verify the quantity of wetlands created. Once the 10-year MMP is completed post-Project, this MP will take effect.

Objectives developed for the MP for the CE area are as follows: preserve, and allow for the improvement of, the conservation values of Lake and existing Llagas Creek within the CE; provide coordinated and unified management for the Lake; provide feasible, quantifiable, and effective conservation guidelines, standards, and priorities for monitoring, and adaptive management; be compatible with and promote cooperation among the various land owners/managers within the Property and Llagas watersheds (e.g., with respect to recreation and trail use within and adjacent to the CE) and to help ensure the survival of viable populations of special status species and healthy biotic communities in the area as a whole, and; provide flexibility as needed to adapt management practices in response to monitoring and field observations. To meet these objectives a series of monitoring tasks have been developed for the CE area.

The LTSCV will conduct biannual site inspections which will include monitoring and documenting stream bank stability and the structural diversity of riparian vegetation in the restored Llagas Creek channel. The LTSCV will also document and map the presence of invasive plant species within the CE area biannually. Other tasks include: monitor and document the structural integrity and functional capabilities of the inlet weir and outlet structure for the created wetlands; monitor the CE area for anthropogenic trash and debris; monitor the structural integrity of the 10 turtle perches for functionality; monitor the size and shape of the constructed wetlands annually. The LTSCV will also be biannually documenting issues that relate to site security as follows; monitor and document the condition of existing signage (i.e. Habitat restoration), fencing, and gates; monitor and document security issues including, but not limited to, signs and acts of vandalism and trespassing within the CE area; monitor and document any public access issues that are observed.

The Land Manager will be responsible for all regulatory permits and costs for implementation of corrective actions to ameliorate deficiencies noted during LTSCV biannual monitoring. If streambank erosion is deemed moderate to completely unstable and the source of the erosion is unknown, the Land Manager will investigate the cause of erosion and propose remedial measures in the annual report as warranted. If riparian vegetation structure and cover is compromised within the restored channel, the Land Manager will first investigate the cause of the degradation and propose remedial measures if warranted. If invasive plants are found within the restored channel or created wetlands, an assessment of the treatment method with success criteria for removal will be proposed in the annual monitoring report. The Land Manager is responsible for maintenance of the inlet side weir and outlet structures for functional integrity, repairs to established fencing, gates and signs, removal of trash and debris in CE area, adaptive management processes and annual reporting to the Permitting Agencies. The SCVWD will initiate a bullfrog population monitoring program prior to the restoration project construction at Lake Silveira and include three sets of day and night surveys to be conducted in spring or early summer (i.e. the bullfrog breeding season). The three sets of day/night surveys will be repeated every three years. If significant increases in the bullfrog population are observed, the SCVWD, in consultation with CDFW and USFWS, will undertake control measures, to reduce the population. Additionally, the SCVWD and/or Land Manager will ensure proposed development is in accordance with existing easements within the Property and do not compromise the CE by preserving its conservation values.

Cost estimates have been prepared for annual monitoring of the elements detailed in this MP (Table 5). The SCVWD will ensure adequate funding for the long-term management of the Conservation Easement by providing the following three measures of financial assurance: the SCVWD's Board of Directors will adopt a Resolution which details its current and projected financial state. The SCVWD will execute a Memorandum of Agreement with the USACE which

requires the SCVWD to provide the financial analysis to calculate the annual management costs, requires the SCVWD to revise the annual management costs at least every five years to account for the CPI, requires the SCVWD to provide sufficient revenue annually to cover the entire annual management costs, and requires the SCVWD to establish a standby fund. Lastly, the SCVWD will establish a standby fund in the amount equal to five years of annual management costs as estimated in the MP in the form of a letter of credit. This standby fund would be utilized in any year when the annual appropriations are insufficient to cover annual management costs, and the letter of credit would auto-renew after five years.

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(To be prepared and submitted after post-Project 10-year Mitigation and Monitoring Plan)

## ACRONYMS AND ABBREVIATIONS

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CAR	Coordination Act Report
CCRWQCB	Central California Coast Regional Water Quality Control Board
CDFW	California Department of Fish and Wildlife
CE	Conservation Easement
CE Holder	Land Trust of Santa Clara Valley, at time of publishing
City	The City of Morgan Hill, CA 95037
cfs	cubic feet per second, a unit representing discharge
County	Santa Clara County
CPI	Consumer Price Index
CWA	Clean Water Act
District	Santa Clara Valley Water District (see also: SCVWD)
EIR -	Environmental Impact Report
EIS	Environmental Impact Statement
EPA	United States Environmental Protection Agency
ESA	Federal Endangered Species Act
ESU	Evolutionary Significant Unit
JUA	Joint use agreement
Lake	Pre-Project Lake Silveira
Land Manager	Santa Clara Valley Water District, at time of publishing
LPSCD	Loma Prieta Soils Conservation District
LTSCV	Land Trust of Santa Clara Valley
MMP	Final Upper Llagas Creek Flood Protection Project Mitigation and Monitoring Plan
MP	Management Plan
NMFS	National Marine Fisheries

NOAA	National Oceanic and Atmospheric Administration
NRCS	Natural Resources Conservation Service
OHWM	Ordinary High Water Mark
Permitting Agencies	At the time of publication, these include: San Francisco District of the U.S. Army Corps of Engineers (USACE), Region 9 of the U.S. Environmental Protection Agency, the National Marine Fisheries Service (NMFS), the Central Coast Regional Water Quality Control Board (CCRWQCB), and the California Department of Fish and Wildlife (CDFW) Bay Delta Region 3
Project	Upper Llagas Creek Flood Protection Project
Property	A 52.9-acre parcel encompassing Lake Silveira and the Conservation Easement
PSA	Purchase and Sale Agreement
S-CCC Steelhead DPS	South-Central California Coast Steelhead Distinct Population Segment
SCC Vector Control	Santa Clara County Vector Control
SCVWD	Valley Water (see also: District)
SFEI	San Francisco Estuary Institute
SMP	Santa Clara Valley Water District's Stream Maintenance Program
SSCVWCD	South Santa Clara Valley Water Conservation District
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service

## I. INTRODUCTION

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The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. Under the Final Rule, Compensatory Mitigation for Losses of Aquatic Resources, 33 CFR part 332/40 CFR part 230, Subpart J ("Mitigation Rule"), all compensatory mitigation plans required for Department of the Army permits are required to address fundamental components. One of these components is the "site protection instrument" (see 33 CFR 332.4(c)). In accordance with the Mitigation Rule, the long-term site protection required for compensatory mitigation sites must be provided through real estate instruments or other available mechanisms, as appropriate considering relevant legal constraints, 33 CFR 332.7(a)(1). The site protection instrument described in this document for the permittee-responsible mitigation is a Conservation Easement, hereinafter referred to as the "CE". To further comply with CWA regulations 33 CFR 332.7 (d)(2), this Management Plan, includes a detailed description of long-term management needs, annual cost estimates of those needs, and identifies a funding mechanism to meet those long-term needs.

### 1.0 PROJECT BACKGROUND

The United States Army Corps of Engineers (USACE), San Francisco District Civil Works, and the local sponsor, Santa Clara Valley Water District (SCVWD) are constructing flood protection improvements to approximately 13.9 miles of stream within Llagas Creek and its tributaries, West Little Llagas Creek and East Little Llagas Creek. Llagas Creek is a tributary of the Pajaro River in south Santa Clara County within the communities of Morgan Hill, San Martin and Gilroy (Figure 1). See **Appendix E** for the Project map. The Upper Llagas Creek Flood Protection Project (Project) has the following protracted history:

- The first Final Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) was prepared by the Natural Resources Conservation Service, United States Department of Agriculture, and the SCVWD in 1982.
- The USACE, San Francisco District Civil Works was authorized under the Water Resources Development Act (WRDA) of 1999 and again in 2007 to construct the remaining reaches of the Project.
- In 2001, a draft Supplemental EIS/Supplemental EIR was prepared by the USACE and the SCVWD. At that time, under the authority of the Fish and Wildlife Coordination Act, the United States Fish and Wildlife Service (USFWS) assessed fish and wildlife impacts and mitigation needs for the proposed project.
- A Coordination Act Report (CAR) was prepared by USFWS in 2001 and revised in 2003 (USFWS, 2003). As a major mitigation element for the proposed flood protection improvements within the Llagas Creek watershed, USFWS recommended an onsite, in-kind restoration (permittee-responsible mitigation) of at least 1,980 linear feet of an abandoned section of Llagas Creek and conversion of the pre-Project Lake Silveira, hereinafter referred to as "Lake", to emergent marsh habitat (USFWS, 2003).

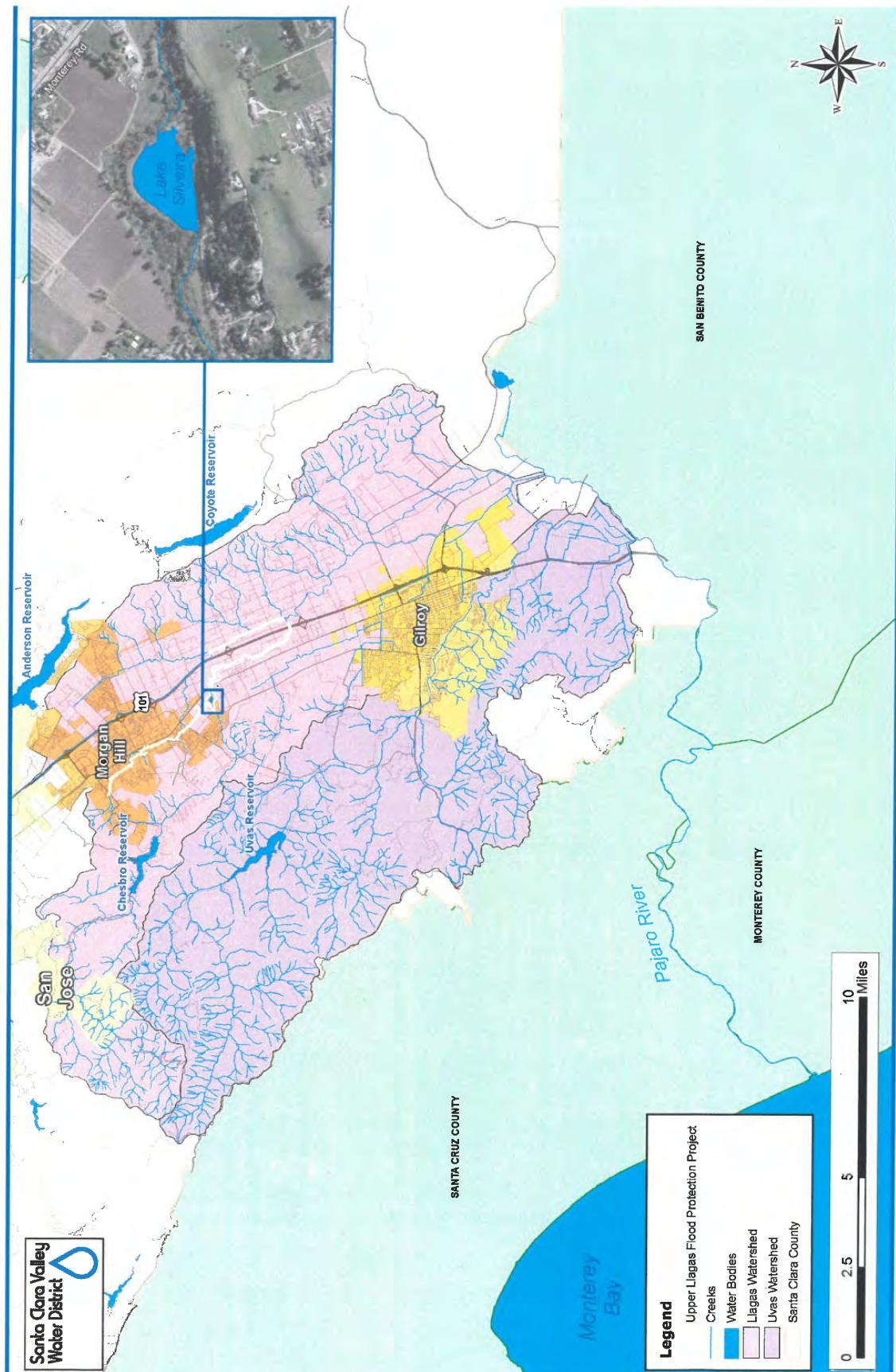
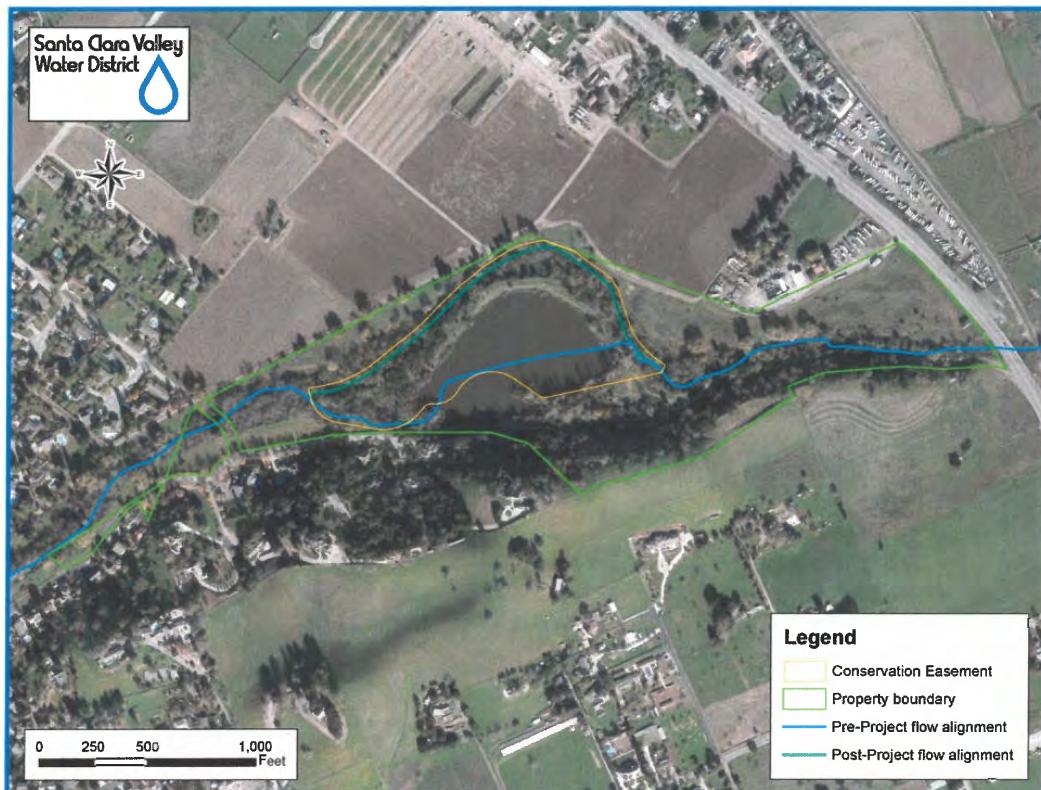


Figure 1. Regional Map Depicting the Property in the Context of the Larger Llagas and Pajaro Watersheds

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Based on the use of historical aerial photographs and recorded documents, a quarry operation began circa 1973 at the Lake's present-day site, which included creating a levee between existing Llagas Creek and the quarry. The Lake was artificially created circa 1980 when unknown parties breached this portion of the levee forcing stream flows into the abandoned quarry pit. The breach subsequently bypassed and dewatered an approximate 1,980 linear foot portion of the higher quality riparian habitat of Llagas Creek (Figure 2) with creek flows traveling through the Lake. The artificial 8.2-acre Lake is entirely within the 52.9-acre parcel (Property), purchased by Santa Clara County (County) on July 1, 1982, (Deed #7403031). See **Appendix A** for the legal Plat and Description of the Property.



**Figure 2. Aerial Image of the Property Illustrating Pre-Project Flow Alignment Through the Lake, the Property Boundary, Post-Project Flow Alignment, and the Conservation Easement Boundary**

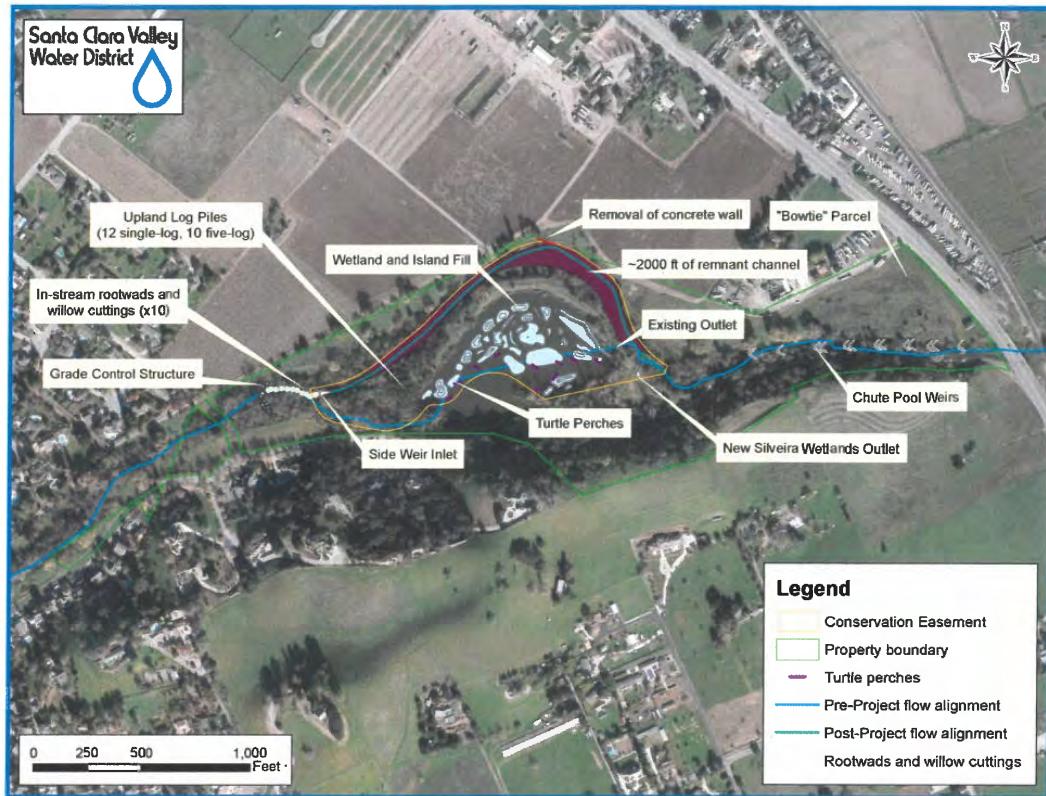
In 2006, USACE again prepared a revised Draft EIS/EIR for the Project which the USACE subsequently deemed insufficient due to changed environmental conditions, prompting the USACE to hire an environmental consultant in 2009 to prepare an environmentally comprehensive EIS/EIR. Due to lack of federal funding to complete the contract in 2011, the SCVWD, as the local sponsor, assumed the USACE environmental contract to keep the project moving forward. After the SCVWD assumed the contractual responsibility for the environmental

work related to the flood protection project, the SCVWD began holding regular meetings with the resource agencies (i.e. Central Coast Regional Water Quality Control Board, California Department of Fish and Wildlife, National Marine Fisheries Service, United States Fish and Wildlife Service) to work through issues of flood protection design and compensatory mitigation.

The United States Fish & Wildlife Service prepared and revised a CAR (USFWS, 2003), which had identified a portion of the Property as a compensatory mitigation recommendation for the Project, was one of the first issues in 2011 which the SCVWD Project team informally consulted on with the various resource agency's staff. At the time, the SCVWD did not own fee or possess an easement on the 52.9-acre County property (Property). Therefore, if this mitigation recommendation, as proposed under USFWS's CAR was still viable, the SCVWD would have to enter negotiations for the purchase of the Property from the existing land owner, the County. The SCVWD's Project team held meetings (4-28-2011 and 8-2-2012) with USACE-Civil staff (Ms. Terry Marks, Mr. Chris Eng) and resource agency staff from the USFWS, National Marine Fisheries Service (NMFS), Environmental Protection Agency (EPA), California Department of Fish and Wildlife (CDFW), and the Central Coast Regional Water Quality Control Board (CCRWQCB) to; 1) obtain concurrence from both state and federal agencies that this onsite, in-kind compensatory mitigation was still a viable mitigation recommendation for impacts to Llagas Creek and tributaries for permanent, unavoidable impacts as described in the CAR, and; 2) determine how best to maximize onsite ecological value for both the wetlands and creek restoration component of the mitigation recommendation for the Property.

During the April 28, 2011, interagency meeting, SCVWD staff discussed the benefits of removing the artificial impoundment from the fluvial system for water quality, sediment transport, and ecosystem function. The resource agencies requested SCVWD staff compile water quality information to demonstrate that the Lake degrades aquatic conditions for the local flora and fauna downstream of the impoundment. In response, the SCVWD conducted a seasonal water quality monitoring study at the Lake. The results of that study indicated that the artificial impoundment elevates stream temperatures and turbidity beyond acceptable limits as established in the Central Coast Regional Water Quality Control Board's Water Quality Control Plan Basin Plan for the Llagas Creek Watershed (Moore, 2012). Additional studies were conducted to evaluate baseline conditions and included: *Bathymetry, Hydrography, and Channel Geometry of the Lake, Morgan Hill Area, Santa Clara County, California (Balance Hydrologics, 2012)*; *Baseline Biological Survey of the Lake (Condor Consulting, 2012)*; *the Lake Special Study, Focused Surveys for Detection of California Red-Legged Frog and California Tiger Salamander Report (Moore, 2012)*. The results of these studies were presented to the resource agencies on August 2, 2012, at which time the SCVWD received concurrence from the various resource agency staff that the CAR recommendation for on-site in-kind mitigation within the Property would remain the same as described in the USFWS's 2003 CAR.

SCVWD negotiated planning, design, and land rights acquisition with the County for the proposed compensatory mitigation Property site. The design criteria outlined in the CAR formed the foundation for the restoration recommendation. Specifically, "*the project will restore at least 1,980 linear feet of historic creek channel; portions of Lake Silveira will be filled with soil generated from excavation of the Project (Reach 7a) to create an emergent wetland mosaic cattails and bulrushes and shallow open water*" (CAR, 2003). The CAR also prescribes enhancing the wetland with at least 25 pieces of large woody debris.



**Figure 3. Proposed Improvements to the Property to Meet Project Objectives**

A series of design objectives for the Property site (Figure 3) were developed with input received from the various resource agency staff during collaboration meetings on June 25, 2013 and June 28, 2013 and are as follows:

1. Maximize mitigation value for the Upper Llagas Creek Flood Protection Project (Project) and provide for overall increased ecological functions and values;
2. Provide improved habitat for steelhead, turtles, and other special status wildlife species known to occur at the site;
3. Reduce suitable habitat for non-native predatory fish;
4. Provide riparian habitat in Reach 7a to provide connectivity to existing high quality riparian habitat in reach 6 (downstream of Monterey Road) and upstream of the Lake to Chesbro Reservoir; improve or protect upstream and downstream functions and resources, hydraulic conveyance, groundwater recharge, ecological resources;
5. Contribute to improved sediment supply to downstream reaches; ensure geomorphic stability for the Lake, the historic channel, and downstream reaches;

6. Provide a stable, adjustable low-maintenance inlet to the Lake where primary low flows remain along the historic Llagas Creek channel downstream to the Reach 7a and Reach 6 confluence created by the Project;
7. Improve the Lake's water quality, including turbidity, temperature, and circulation/flushing;
8. Provide for public access opportunities while respecting neighboring communities, thus, this Project is planning the mitigation such that if the County or City of Morgan Hill (City) develops passive recreation in the area in the future the mitigation will be adequately buffered; and
9. Minimize design, permitting, construction, monitoring, and maintenance costs.

The Lake Silveira Restoration Design Development Report (HTH, 2013), documenting the previously stated objectives and the basis for the restoration design, was prepared for and disseminated to resource agency staff. Design refinements, including reviews by the City and County for the restoration of the Lake occurred from 2013 through 2017 and were included in the 100% design documents submittal received by the SCVWD Project team in January 2018. In 2013, SCVWD staff concurrently entered negotiations with the County for the fee purchase of the Property, which contains the entire existing Lake footprint.

The impact analysis for the Project's footprint was also completed based on final design plan (Table 1).

**Table 1. Impacts, Mitigation Ratios, and Required Mitigation**

Habitat Type	Impact Acreage	Impact Type	Mitigation Ratio	Required Mitigation (ac)	Mitigation Designed (ac)	Excess/Shortage (ac)
Native Riparian	22.22	Permanent	3:1	66.66	105.62	—
	N/A	Temporary	N/A	N/A	N/A	—
Nonnative Riparian	10.44	Permanent	2:1	20.88	N/A	—
	N/A	Temporary	N/A	N/A	N/A	—
<b>Riparian Total</b>	<b>32.66</b>	—	—	—	<b>114.07</b>	<b>26.53</b>
Grassland	3.53	Permanent	1:1	3.53	—	—
	39.75	Temporary	1:1	39.75	—	—
<b>Grassland Total</b>	<b>43.28</b>	—	—	<b>43.28</b>	<b>60.43</b>	<b>17.15</b>
Wetland	1.05	Permanent	2:1	2.1	4.09	1.99
	5.04	Temporary	1:1	5.04	—	—
<b>Wetland Total</b>	<b>6.09</b>	—	—	<b>7.14</b>	<b>4.09</b>	<b>TBD</b>
Aquatic	2.78	Permanent	1:1	2.78	—	—
	39.4	Temporary	1:1	39.4	—	—
<b>Aquatic Total</b>	<b>42.18</b>	—	—	<b>42.18</b>	<b>64.8</b>	<b>TBD</b>

**Notes:**

ac = acres

N/A = not applicable

TBD = to be determined

1 = 105.62 acres + 2.25 acres + 6.2 acres as described in previous paragraph

The planned mitigation elements (i.e. channel restoration, wetland creation, invasive blackberry control, revegetation, turtle perch construction, concrete removal) within the Property and subsequent Conservation Easement (CE) provide partial mitigation for flood protection impacts. The complete mitigation package for the approximately 13.9 mile-long, 400-acre Project footprint is summarized below for ease of reference. This Management Plan addresses the CE area only.

- Revegetation of 105.62 acres (on-site in-kind);
- A California Sycamore Genetic and Propagation Study;
- Aquatic habitat enhancements (464 instream complexities) within Reaches 4, 5, 6, 7A and the Lake. Instream habitat enhancement features including a sinuous low-flow creek channel, pools, large woody debris placements, boulder placements, root wad structures, and wing log deflectors, are to be installed in Reaches 4, 5, 6, and 7A;
- A drainage swale/filter strip to collect surface runoff from surrounding agricultural land in Reach 7a and within areas of Reach 4;
- Construction of turtle basking perches and islands within the Lake;
- Installation of a stream gage within Reach 6 to accurately assess flows downstream of wetland creation and stream restoration site post-Project construction;
- Installation of a fish screen within Reach 6 at the SCVWD Church Ave. Groundwater Recharge Facility;
- Girdling of non-native trees (i.e. tree of heaven) for bat habitat;
- Installation of log piles for upland habitat;
- Removal of invasive vegetation (i.e., Himalayan Blackberry and *Arundo donax*);
- Remediation of sites outside of the flood protection project footprint where concrete rubble, trash, and debris or steep slopes has otherwise limited native vegetation colonization;
- Installation of bat boxes;
- Infill plantings on areas of the creek where the project will not disturb soil but where the riparian corridor could benefit from the addition of riparian vegetation to improve the vertical and horizontal complexity of the riparian corridor, and;
- Steelhead lifecycle monitoring.

## **1.1 Purpose for Establishment of a Conservation Easement**

The Conservation Easement (CE) was established to conserve, protect, and compensate for unavoidable impacts to waters of the U.S. and critical habitat for the ESA listed steelhead trout. The CE area is comprised of 15.99 acres of land and water which includes 6.28 acres of pond (i.e. open water), 2.63 acres of seasonal wetlands, 0.32 acres of perennial marsh, and

0.21 acres of perennial water. Additionally, the CE area has 6.55 acres of upland habitat between the stream restoration site and the wetland creation in the existing condition. Once flow is restored, the CE will include approximately 2,000 linear feet of perennial stream in Llagas Creek which is critical habitat for South Central California Coast Steelhead Distinct Population Segment (S-CCC steelhead DPS). The Permitting Agencies are the San Francisco District of the U.S. Army Corps of Engineers (USACE), Region 9 of the U.S. Environmental Protection Agency, the National Marine Fisheries Service (NMFS), the Central Coast Regional Water Quality Control Board (CCRWQCB), and the California Department of Fish and Wildlife (CDFW) Bay Delta Region 3 (hereinafter referred to as the "Permitting Agencies").

## **1.2 Purpose of the Management Plan**

The purpose of this Management Plan (MP) is to ensure the Conservation Easement (CE) area is monitored, maintained, and managed in a manner that preserves its conservation values in perpetuity and is consistent with the Permitting Agencies and the SCVWD's mitigation goals. This MP is a binding and enforceable instrument, implemented by the CE covering 15.99 acres as described herein (See Figure 4 and **Appendix B**).

Objectives of the MP for the CE area are as follows:

- Preserve, and allow for the improvement of, the conservation values of Lake and existing Llagas Creek within the CE;
- Provide coordinated and unified management for the Lake;
- Provide feasible and effective conservation guidelines, standards, and priorities for monitoring, and adaptive management;
- Be compatible with and promote cooperation among the various land owners/managers within the Property and Llagas watersheds (e.g., with respect to recreation and trail use within and adjacent to the CE) and to help ensure the survival of viable populations of sensitive species and healthy biotic communities in the area ; and
- Provide flexibility as needed to adapt management practices in response to monitoring and field observations.

## **1.3 Conservation Easement Holder and Responsibilities**

To provide sufficient site protection for the CE, the SCVWD has identified a third party (i.e. non-profit resource management agency) CE Holder, Land Trust of Santa Clara Valley (LTSCV), to monitor the property and enforce site protections as appropriate. The LTSCV is a 501(c)3 non-profit corporation with a mission to protect and preserve natural habitats and agriculture within Santa Clara Valley. The LTSCV has acquired, maintained, and preserved over 1,400 acres within the County, since its inception in 1998.

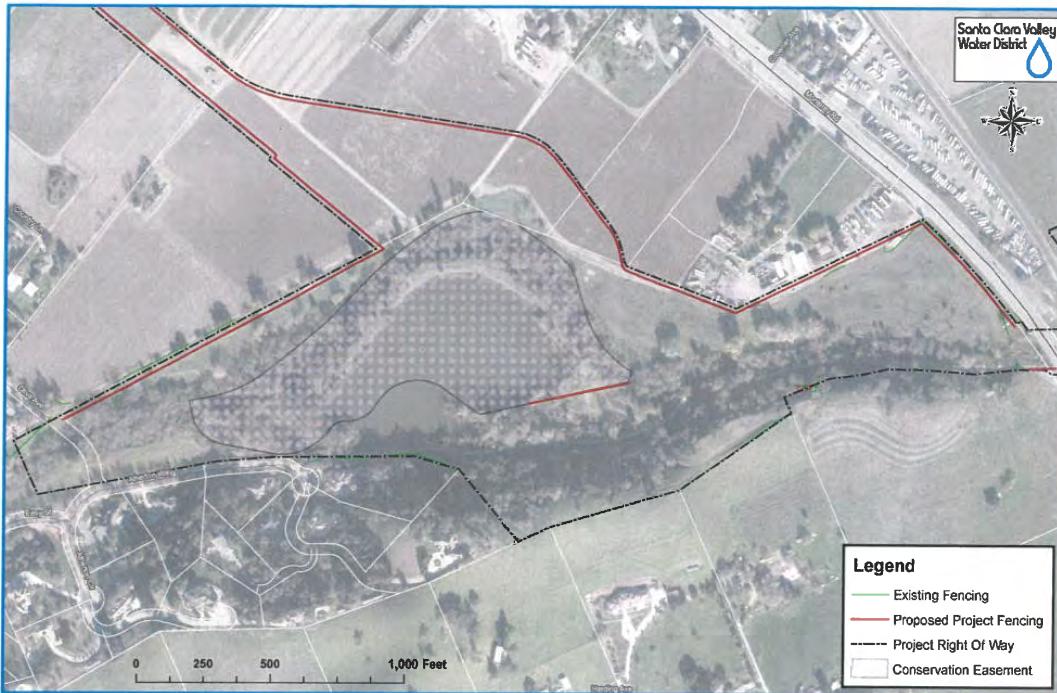
Implementation of the MP will begin after the 10-year Mitigation and Monitoring Plan is complete for the Project. Adaptive management actions may extend this 10-year time frame; however, the anticipation is that this MP will begin in year 11 post-Project construction. During this initial 10-year time frame, resource management routines will become established (i.e. Operations and Maintenance Plan for side weir and outlet structure) reducing the amount of speculation as to the frequency of routine maintenance at this facility. The site will be monitored annually and

reports prepared and disseminated to the Permitting Agencies. The SCVWD will be responsible for meeting the established objectives for habitat creation and stream restoration as outlined in the Final Upper Llagas Creek Mitigation and Monitoring Plan (December 2018) attached as **Appendix F**.

In accordance with this Management Plan (MP), the LTSCV will conduct biannual routine site inspections and land management of the CE. Please refer to Section 8 of this MP for Reporting details. The CE property will be visited twice a year by staff to visually inspect site conditions. These inspections will be conducted in the spring (on or about May 1<sup>st</sup>), after creek waters recede, and in the fall (on or about November 1<sup>st</sup>), prior to the onset of the rainy season. Conditions checked during inspections will include: presence of trash and debris or dumping, signs of erosion or sedimentation, evidence of trespass, fencing integrity, disturbance of vegetation or presence of new exotic/invasive vegetation within the CE area. After the inspections, any issues identified within the CE area which are not consistent with the terms of the CE, will be described in a detailed report to the Land Manager.

The LTSCV will inspect the Lake's inlet side weir and outlet structures designed for the regulated flow of water to the wetlands and restoration of approximately 2,000 linear feet of Llagas Creek. See Figure 3 for a brief description of the proposed initial Property site improvements. The LTSCV will inspect the inlet side weir and outlet structure for signs of excessive deposition/erosion which could render the structures inoperable. Additionally, the inspection will note any vegetation encroachment concerns as it pertains to function of both the inlet side weir and outlet structure. Any blockages to either the Lake's inlet and outlet structures will be noted as well as any structural deficiency in the inlet or outlet (i.e. structural issues or displacement of materials such as stop logs) or any vandalism of either structure, including graffiti. Any deficiencies for these facilities will be noted in the biannual inspection reports to the Land Manager.

The LTSCV will inspect site fencing as detailed in Figure 4. The fencing will be inspected for signs of degradation and trespass and all deficiencies will be noted in the biannual report to the Land Manager. The LTSCV will perform ocular surveys within the restored stream channel and wetlands for the presence of exotic or invasive vegetation which may attempt to re-colonize the site. This invasive vegetation will be identified to species and spatially referenced (i.e. GPS points or polygons) in the biannual reports. The LTSCV will note any anomalies to water quality (i.e. excessive turbidity, odor, sheen) within the created wetlands and restored stream channel. Sources of the water quality degradation will also be noted if known or suspected. If illegal dumping is suspected or water quality issues are pervasive and severe, LTSCV will contact the SCVWD's Pollution Prevention Hotline at 888-510-5151 for immediate assistance. For all other minor water quality issues, the LTSCV will note these issues in the biannual report to the Land Manager. The LTSCV will note the presence of trash and debris within the wetlands and Llagas Creek within the CE boundaries (15.99 acres) and spatially reference (i.e. GPS points or polygons) the location in the biannual reports. Please refer to Figure 4 for CE boundaries and **Appendix B** for the CE plat and legal description.



**Figure 4. Existing and Proposed Property Fencing**

#### 1.4 Land Manager and Responsibilities

The Property owner of the 52.9 acres' parcel (Property) and the designated land manager (Land Manager) will be the SCVWD prior to the start of construction of the Project. Land Manager responsibilities may be transferred to another party in accordance with Section 9 of this MP. The Land Manager is responsible to work and coordinate with the CE Holder to implement this MP, managing and monitoring the CE boundaries in perpetuity to preserve its habitat and conservation values. The Land Manager is responsible for maintaining CE in a condition at least as good as its current condition consistent with the CE, although it is anticipated that MP implementation will result in improved environmental conditions. The Land Manager is responsible to secure all future permits related to work described under this MP. At present, it is presumed that all maintenance for the CE, including the Project will be conducted under the countywide regional general permit, referred to as the SCVWD's Stream Maintenance Program (SMP). The continued routine maintenance of this facility is covered under the future (2024) SMP permits for incorporation of the Project's maintenance and the site maintenance related to the CE. The activities described in this MP are like routine countywide maintenance work, which occurs under the existing SMP permit (i.e. sediment removal, vegetation management, and minor maintenance).

The Land Manager is responsible for operations and maintenance of the constructed water management features (i.e. inlet side weir and outlet structure) at the site. To comply with CWA 40 CFR 230.96 (a)(1), the SCVWD has proposed performance standards for the wetland creation and stream restoration as described in the Final Upper Llagas Creek Flood Protection Project Mitigation and Monitoring Plan (December 2018) attached as **Appendix F**. It is

anticipated that water operations and maintenance frequency will be elucidated during the 10-year mitigation and monitoring plan period for the inlet side weir and outlet structure, before implementation of this Management Plan. Adjustment of the inlet side weir to allow for a minimum of 3 CFS (typical summer flow rate) to the restored channel and excess overflow to the wetlands will likely take several different hydrologic regimes (i.e. different water years) to refine the water operations practices. By the end of the 10-year mitigation and monitoring plan period, if performance standards have been met, the water operations regime will then be a standard operating procedure. Since these facilities are not yet constructed, it is difficult to anticipate specific operations and maintenance guidelines. However, the SCVWD is a water agency that owns and operates dams and other water infrastructure within the County for water supply purposes, so some basic procedures for operations can be anticipated.

The Land Manager is responsible for maintenance of the inlet side weir and outlet structure as deficiencies are noted in the biannual reports submitted by LTSCV. The routine inspections and subsequent biannual monitoring will identify the need for remedial action and the Land Manager will implement the remedial measures to correct the deficiency. There are several items that can compromise the integrity and function of the inlet side weir and outlet structure. These items include but may not be limited to: sediment, vegetation, and other debris blocking the entrance or outlet of the structure, cracks or other performance issues, displacement of constructed materials (i.e. stop logs for side weir), and damage due to vandalism. Minor maintenance for sediment removal (i.e. 2-3 cubic yards (cy)) and minor vegetation management activities (i.e. pruning) are presumed to be required periodically for functionality of both the inlet side weir and outlet structure. The frequency of these activities will be refined within the performance monitoring period, the first 10 years, post-Project construction. This description of minor maintenance does not refer to catastrophic events such as wildfires and mass-wasting which cannot be anticipated.

The Land Manager is responsible for repairs to established fencing that has degraded over time or has been vandalized. The routine inspections conducted by the LTSCV will identify fencing deficiency and the Land Manager will remediate those deficiencies as appropriate.

If invasive or non-native plants are identified during the LTSCV biannual ocular surveys as attempting to re-colonize within existing Llagas Creek or wetlands within the CE, the SCVWD will formulate a plan for removal or control of the invasive/non-native vegetation to be submitted with the annual Notice of Proposed Work for the SCVWD's SMP for resource agency approval. Work will commence after all request approvals are obtained through the SMP process.

The SCVWD will initiate a bullfrog population monitoring program prior to the restoration project construction at Lake Silveira and include three sets of day and night surveys to be conducted in spring or early summer (i.e. the bullfrog breeding season). The three sets of day/night surveys will be repeated every three years. If significant increases in the bullfrog population are observed, the SCVWD, in consultation with CDFW and USFWS, will undertake control measures, to reduce the population.

The Land Manager will work with Santa Clara County Vector Control (SCC Vector Control) during the 10-year mitigation and monitoring plan period post-Project construction for the created wetlands and restored stream with the intent to manage vector control proliferation with operational modifications to the wetlands. If operational modifications are not sufficient to prevent abatement of mosquito populations then other methodologies will be employed (i.e. emergent vegetation management, Integrated Pest Management cultural/physical control). During the 10-year mitigation and monitoring plan period, the CE area will be monitored by a

designated SCC Vector Control Technician via dipping for immature mosquitoes at various access points (i.e., surveillance) monthly throughout the year. SCC Vector Control will then evaluate the conditions within the wetlands and restored channel for mosquito abatement issues. Results of this analysis will be obtained by the Land Manager and disseminated to LTSCV.

## **2.0 PROPERTY DESCRIPTION**

### **2.1 Geographic, Geologic, and Hydrologic Settings**

The Pajaro River Watershed covers approximately 1,300 square miles and is bounded by the Santa Cruz Mountains to the north and west and the Gabilan Range to the south. The main tributaries are Corralitos, Uvas, Llagas, San Benito, Pacheco and Santa Ana Creeks. These tributaries converge and provide water to the Pajaro River, which drains to Monterey Bay. The Llagas Creek Watershed lies within the southern extension of Santa Clara County and drains an area of approximately 102 square miles.

#### ***Surface Water***

The Llagas Watershed has a typical Mediterranean climate; warm, dry summers and cool, wet winters. The mean annual precipitation varies from 21 inches on the valley floor to roughly 40 inches in the headwaters. Llagas Creek headwaters originate in the Santa Cruz Mountains at an elevation of 3,562 feet. The creek flows from the headwaters to almost 11 miles downstream to Chesbro Reservoir (LPSCD, 1967). This reservoir was constructed by the South Santa Clara Valley Water Conservation District (SSCVWCD) in 1955 to alleviate issues associated with excessive groundwater pumping for irrigation of agricultural crops. The reservoir has a rated capacity of 7,945 acre-feet and drains approximately 19.5 square miles of the watershed (SCVWD, 2005). Llagas Creek continues about six miles downstream of Chesbro before it is interrupted by the Lake. Stream flows to the Lake are largely controlled by releases from Chesbro Reservoir, which is managed for recharging the underground aquifers (SCVWD, 2005). Because of reservoir operations, the Llagas Creek flow above the Lake is perennial. Downstream of the Lake, Llagas Creek continues to flow southerly for 13.4 miles into the Pajaro River where the river traverses an additional 27.9 miles before discharging into Monterey Bay (Pacific Ocean). Llagas Creek downstream of the Lake to approximately San Martin Avenue is ephemeral and flows only after precipitation.

#### ***Groundwater***

The Gilroy-Hollister Valley Groundwater Basin is nestled between the northwest-trending Santa Cruz Mountains and the San Andreas Fault to the west and the Diablo Range and the Hayward and Calaveras faults to the east. The basin includes, in part, the floor of the Llagas Subbasin, a large structural trough that has been filled by sediment eroded from the adjacent mountain ranges, and the smaller valleys of tributary streams. The Lake is situated at the junction of one of the largest of these tributary valleys (Llagas Creek) and the main Llagas Valley trough. Groundwater beneath this confluence is retained in deposits of both the Llagas Subbasin and the alluvium beneath Llagas Creek. Two aquifers composed of unconsolidated alluvium are present under the valley floor near the Lake Silveira and Llagas Creek's historic channel complex (Balance Hydrologics, Inc. 2013b). A shallow aquifer composed of younger alluvium occurs 8 to 12 feet below the valley floor east of Lake Silveira. A deeper aquifer composed of older alluvium is present 20 to 30 feet below the valley floor. The two aquifers are separated by a 12 to 20 feet thick unit composed of cohesive gravelly clays of lacustrine origin. Results of an

aquifer pump test conducted during site investigations indicate that these aquifers are fundamentally unconfined and that the gravelly clay layer, which acts as an aquitard, is not continuous (Balance Hydrologics, Inc. 2013b). Pumping, draining, or other influencing groundwater potentially affects water levels north and east of the confluence in the tributary aquifer system beneath the valley floor along Llagas Creek, and within the main valley trough.

## 2.2 History of the Property

Prior to Euro-American modifications to the watershed, the habitats in the region of the Property were predominately Oak woodland, Oak Savanna, and grasslands which were interspersed with wet meadows (SFEI, 2008). Later, intensive ranching and agricultural practice, particularly prune and walnut orchards, dominated the valley floor in this region until population expansion brought more intensive urban/suburban land use changes (LPSCD, 1967).

The Property, prior to County ownership, was privately owned and the landowners operated a quarry within the Property under use permits issued by the County on July 22, 1973 (Permit Nos. 173.2005 and 22P60.6). The Landowners entered an agreement, Document #5376499, with the SSCVWCD, a public corporation created in 1938 under the grant of authority of a general act, recorded on August 11, 1976. See **Conservation Easement, Exhibit C - Property Assessment and Waranty, Attachment 2** for a copy of this document. The SSCVWCD, as part of its water preservation program, determined that there was a public need and necessity for a groundwater recharge facility on Llagas Creek and that a portion of the Property was suitable for such need. The gravel extraction County use permit provided for gravel excavation limited to a certain area of the property and not lower than the elevation of the bottom of the creek channel. However, there was a provision that these conditions could be waived to permit further excavation, if the excavated area were to be converted for use as a groundwater recharge facility upon completion of excavation. The SSCVWCD entered the agreement with the landowners to allow them to continue to excavate gravels, which specified an excavated area with side slopes of 3:1 and generally 10-40 feet deep and an area of a minimum of 4 acres and a maximum of 7 acres. The current Lake dimensions reflect this early direction to construct the quarry percolation pond to the specific parameters.

It is unclear from the historical documents why the SSCVWCD did not purchase the percolation pond after the quarry operations were completed to fulfill the 1976 agreement. The land owners sold the property to the County on July 1, 1982 (Deed #7403031). At this time, the northern levee separating Llagas Creek and the quarry pit had already been breached, which bypassed approximately 1,980 feet of Llagas Creek and directed all creek flows through the quarry pit. The County entered an agreement with the City of Morgan Hill, where the City would lease the Property from the County for the purposes of developing a future public park. The City prepared and adopted a Master Plan for the Property in 1989 which was approved by the County's Board of Supervisors on September 11, 1990. However, the City did not have enough funding to carry the master plan through to implementation, planning, design, and construction. Thus, the Property remains in its existing condition. The site is not a publicly sanctioned recreation facility although recreation is a prevalent activity at the site: Hiking, biking, and horseback riding have been observed throughout the course of Project planning and design.

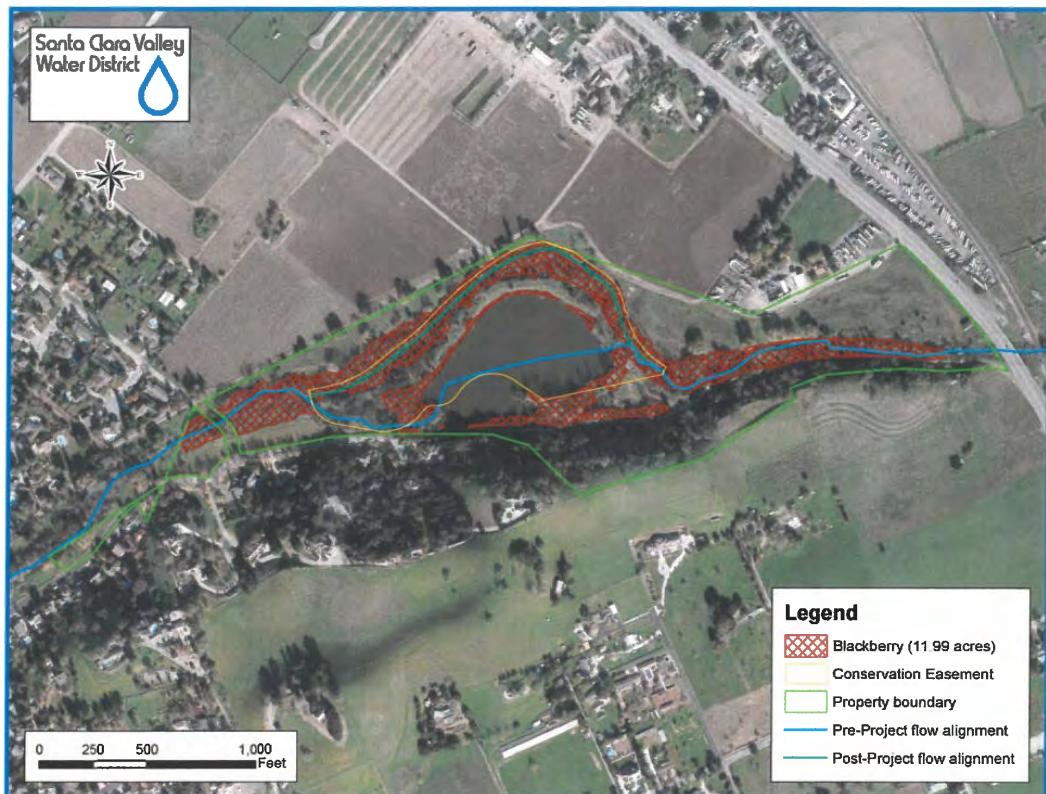
In 2001, the United States Fish and Wildlife Service, in preparation of their CAR for impacts incurred from the proposed Upper Llagas Flood Protection Project (Project), recommended channel restoration and wetland creation at the flooded quarry pit to increase the functions and values of the site for fish and wildlife. The SCVWD, as previously described in Project Background, obtained concurrence from the resource agency staff before entering negotiations

with the County for purchase of the Property for use as compensatory mitigation for unavoidable impacts eventually resulting from the construction of the proposed Project. The County Board of Supervisors approved the sale of the Property to the SCVWD on June 5, 2018. The SCVWD Project team began the planning and design of the proposed Property improvements (i.e. channel restoration and wetland creation at the existing Lake) in 2014, after the County had assured the SCVWD Project team they were willing to sell the Property to the SCVWD as required for the Project. The proposed Project improvements for the Property were included in the 100% construction documents submittal received by the SCVWD Project team in January 2018.

### **2.3 Pre-Project Conditions**

The Property site is 52.9 acres of unimproved land bordering Llagas Creek from 185 feet upstream of Olive Avenue to Monterey Road within the southern limits of the City of Morgan Hill (Figure 2). The Property is bordered to the northwest by an established mobile home park and residential housing while the area directly north and northeast is bordered by fallow and active farmlands. To the southwest the Property is bordered by large, luxury single-family dwellings. Directly south of the Property is a mix of agricultural/rangeland parcels and single-family dwellings. Notable land surface features in the 52.9-acre Property are as follows; an approximate 8.2-acre Lake; approximately 1,980 linear feet of abandoned Llagas Creek; 3,055 linear feet of active Llagas Creek channel; a paved access easement road belonging to the City along their underground sewer system alignment to the southern portion of the Property; several large expanses of flat ruderal grasslands; and a wooded, north-facing hillside is included in the Property site boundary to the southeast.

The Property site is comprised of four major plant communities; mixed riparian woodland, fresh water marsh, ruderal grasslands, and oak woodland. The following text characterizes the vegetation community in existing condition by section: the north bank of the Lake, the south bank of the Lake, the approximate 1,980 linear feet of Llagas Creek dewatered channel section, the upstream riparian corridor, and the downstream riparian corridor. Most notable within all sections is the presence of invasive Himalayan blackberry (*Rubus armeniacus*), which covers approximately 11.99 acres of the Property site, mostly in the riparian areas. The blackberry has homogenized the understory of the riparian forest and is a dominate feature of the Property site.



**Figure 5. Extent of Invasive Himalayan Blackberry Within the Property (Data from 2013 HT Harvey survey)**

#### **North Bank of the Lake**

This section on the north shore of the Lake runs between the entrance of Llagas Creek on the west end of the Lake to the outfall of Llagas Creek at the east end of the Lake. The northern margin of the Lake is bounded by an approximate 15-foot wide berm, presumably constructed from on-site material to isolate Llagas Creek from the previously active quarry. The base of the bank contains a narrow band of mixed willow (*Salix* spp.) and Himalayan blackberry. The upland portion of the bank is composed of non-native annual grassland species. The north and west facing banks support a stand of coast live oaks (*Quercus agrifolia*).

#### **South Bank of the Lake**

The south bank of the Lake runs between the inflow of Llagas Creek on the west end of the Lake to the outfall of Llagas Creek at the east end of the Lake. Several shallow portions (0–2 ft. depth) along the edge of the bank contain broad-leaved cattail (*Typha latifolia*). The predominant vegetation along the shore, above the Lake's ordinary high water mark (OHWM), is a mixed willow and Himalayan blackberry vegetation alliance. The upland areas contain scattered coast live oaks, Fremont cottonwood (*Populus fremontii*), and planted non-native

trees. A triangular patch of land southeast of the Lake contains non-native annual grassland species and a few small successional encroachments of coyote brush (*Baccharis pilularis*).

#### ***Llagas Creek—Dewatered Northern Channel***

This approximate 1,980 linear foot portion of abandoned Llagas Creek channel is a curved, concave-south section north of the Lake. Most of the channel contains an overstory of willow and a thick understory of Himalayan Blackberry, though there are several 500 to 1,500 square foot understory sections dominated by broadleaved cattail. An existing tall and wide berm separates the Llagas Creek bed from the Lake and contains non-native annual grasslands on the south facing slopes. The north-facing slope on this berm contains coast live oak and valley oaks, Northern California black walnut, western sycamore, and non-native trees. Agricultural fields are adjacent to the northern riparian edge of this abandoned section of the Llagas Creek channel.

#### ***Upstream Riparian Corridor***

The upstream riparian corridor describes the area from the western edge of the Lake to 500 feet west of the Santa Teresa Boulevard boundary. The abandoned section of the Llagas Creek channel continues to support a riparian vegetation community, dominated by an overstory of willow, and an understory of Himalayan blackberry. The predominant tree canopy is willow with a thick understory of Himalayan blackberry, except for one 500-foot corridor devoid of blackberry. The upland portion along the northern edge of the riparian corridor was a mixture of coast live oak, valley oak, and western sycamore. The riparian understory was dominated by non-native annual grasses. The northern most portion of this section had the most ecologically intact riparian habitat of the entire Property site, with very little blackberry cover, and diverse native shrub and tree habitat.

#### ***Downstream Riparian Corridor***

The downstream riparian corridor section begins at the east end of the Lake and exists approximately 500 feet downstream and easterly of the Monterey Road crossing. Llagas Creek, a perennial stream, flows in an easterly direction downstream of Monterey Road. The riparian corridor averages 80 feet wide and is composed of a shrubby tree overstory of mixed willow species and a dense understory of Himalayan blackberry. On the upland edge of this riparian corridor, there are a few scattered coast live oaks, valley oaks, and western sycamores. The upper 350-foot portion of the Llagas Creek channel contains broadleaved cattail. South of the City's existing paved access road, is a north-facing bank, populated by mixed woodland species, dominated by coast live oaks, valley oaks, California buckeyes (*Aesculus californica*), and poison oak (*Toxicodendron diversilobum*).

#### ***Pond***

The pre-Project Lake (i.e. pond) morphology reflects the origin as previously described as a gravel quarry/proposed percolation facility as the Lake is steep sided, particularly on the north shoreline and deep with gravels and sand comprising the visible substrate. Streamflow rates in Llagas Creek above the Lake are dependent upon operational releases from upstream Chesbro Reservoir and a pipeline connection from Uvas Reservoir- the Uvas-Llagas pipeline. The Lake is characterized as a palustrine feature based on its size: The Lake is smaller (8.2 acres) than the 20 acres used to define most lacustrine features (Cowardin 1979). Water from Llagas Creek enters the Lake from the west and flows approximately 965 feet across the Lake in an easterly

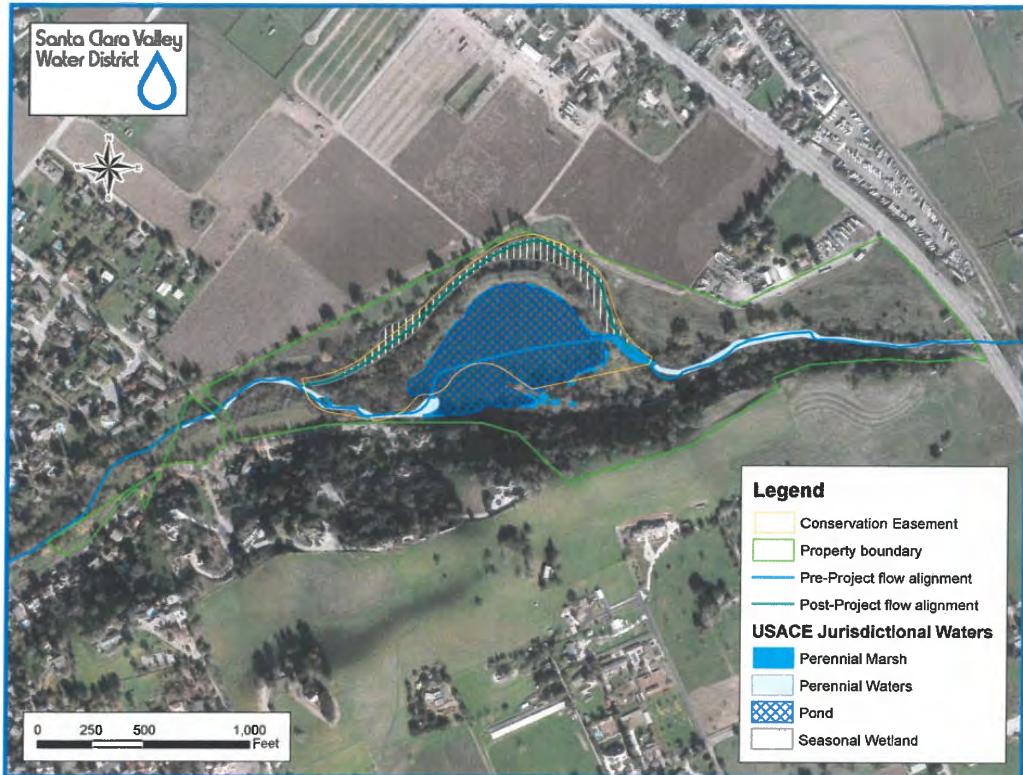
direction before re-entering existing Llagas Creek. The surface area of the Lake is approximately 8.2 acres with a maximum depth of 10.4 feet. However, most of the Lake has a depth greater than 7 feet and the littoral margin lacks flourishing flora (Balance Hydrologics Inc., 2012). The minimal emergent shoreline vegetation comprises less than 15 percent of the Lake perimeter and is predominately Common bulrush (*Typha latifolia*) and Yellow flag iris (*Iris pseudacorus*). Other predominate vegetation around the Lake perimeter includes willows (*Salix* spp.), Himalayan blackberries (*Rubus armeniacus*), Coast live oaks (*Quercus agrifolia*), and Cottonwoods (*Populus fremontii*). The dewatered section of Llagas Creek may still receive some fresh water inflow when Chesbro Reservoir flows over the spillway or from groundwater seepage into the stream bed. Standing water was noted in some portions of the dewatered section during the Project planning surveys.

#### ***Conservation Easement-Present Condition***

The Conservation Easement (CE) for the Lake Silveira Compensatory Mitigation Preserve is 15.99 acres which includes a portion of the Lake and the approximately 2,000 linear feet of the historic channel to be restored. The pre-Project habitats within the CE include 6.55 acres of upland habitat; 6.28 acres of pond; 2.63 acres of seasonal wetlands; 0.32 acres of perennial marsh; and 0.21 acres of perennial waters (Table 2; Figure 6).

**Table 2. USACE Jurisdictional Habitats  
Within the Conservation Easement Prior to the Project**

<b>Habitat</b>	<b>Area (acres)</b>
<i>Perennial Marsh</i>	0.32
<i>Perennial Waters</i>	0.21
<i>Pond</i>	6.28
<i>Seasonal Wetland</i>	2.63
<i>Upland (remainder)</i>	6.55
<b>TOTAL</b>	<b>= 15.99</b>



**Figure 6. Pre-Project Conditions Within the Conservation Easement Area (15.99 acres) Which Includes Perennial Marsh, Perennial Waters, Pond, and Seasonal Wetland**

## 2.4 Pre-Project Existing Infrastructure

### ***Existing Fencing***

The perimeter of the Property is currently partially fenced. Much of the southerly portion of the Property is secured with fencing while only a portion of the northerly side of the Property is fenced. Please refer to previous Figure 4 for the location of existing Property fencing.

### ***Existing Utilities***

Per the Title Report, dated March 14, 2018 obtained for the Property, APN's 779-03-114, 779-06-030, and 779-49-014, on August 12, 1953 Madrone Vineyard sold a portion of the Property to Western United Company (Easement Deed #906098) and reserved an easement for the purposes of a water line and ingress-egress. It is unknown if this waterline was ever installed or if it was installed whether the waterline is now abandoned. Based on the legal description, it is believed this easement is outside of the Conservation Easement footprint (15.99 acres).

The City of Morgan Hill purchased a 20-foot wide public utility easement along the southern portion of the Property on February 9, 1976 (Easement Deed #5210138). The City installed an underground 12-inch sanitary sewer facility, including access manholes at various locations. The City constructed a paved access road along the alignment of their underground sanitary sewer facility for operation and maintenance purposes. Based on the legal description, this easement is outside of the Conservation Easement footprint (15.993 acres).

The SCVWD Project team has identified one existing storm drain outfall within the Property that drains into the south-westerly location of the Property, outside of the CE area, near the terminus of Atherton Way. The Project design includes the construction of a drainage swale from this existing outfall to the inlet channel to the Lake.

## 2.5 Pre-Project Existing Easements and Agreements

Based on Title Report number 0621010141-RR, dated March 14, 2019 obtained for the Conservation Easement (15.993 acres), within a portion of APN 779-06-030 there are no existing easements within the Conservation Easement. See **Conservation Easement, Exhibit C - Property Assessment and Waranty, Attachment 1** for copy of Title Report number 0621010141-RR.

Based on Title Report number 0621010141-RR, dated March 14, 2019 obtained for the Conservation Easement, within a portion of APN 779-06-030, there is currently one exception on title, an agreement with the SCVWD (formerly the Santa Clara Valley Conservation District. See **Conservation Easement, Exhibit C - Property Assessment and Waranty, Attachment 1** for a copy of the Title Supplemental Report where this exception to title will be removed as a merger of title upon acquisition of the Property by the SCVWD.

The SCVWD, County, and City executed a Purchase and Sale Agreement (PSA) for the SCVWD's purchase of the Property. The City Council approved the PSA on March 7, 2018. The SCVWD Board of Directors approved the PSA on March 13, 2018. The County Board of Supervisors approved the PSA on June 5, 2018. See **Conservation Easement, Exhibit C - Property Assessment and Waranty, Attachment 2** for a copy of this PSA. Subsequently, in accordance with this PSA for the SCVWD's fee title acquisition of the Property, this PSA included the following provisions:

- SCVWD will grant the conservation easement (15.99 acres) for the Lake Silveira Compensatory Mitigation Preserve to the Land Trust of Santa Clara Valley (referred to as Mitigation Easement in the PSA), and then;
- As a condition of the SCVWD's fee purchase of the Property, approximately 52.9 acres, encompassing the entire CE area, the SCVWD shall separately grant an open space easement (referred to as a Conservation Easement in the PSA) to the County and the City for park purposes of trail connectivity for linkage of the site to the regional system of trails, scenic view watershed protection, habitat conservation, and open space preservation consistent with the 1995 Countywide Trails Master Plan, as amended periodically (Open Space Easement). However, this Open Space Easement shall be subordinate to the CE (Mitigation Easement) required for the Project's compensatory mitigation. The PSA states the following:
  - PSA, 6. (b)(vii) states: "Seller (County) acknowledges and agrees that the Conservation Easement (Open Space Easement) shall be subordinate and

subject to the terms and conditions of the Mitigation Easement (CE) over the Mitigation Easement Area as described in the Mitigation Easement and defined in the Conservation Easement (Exhibit G-Open Space Easement)."

- PSA, Exhibit G, Conservation Easement Agreement (Open Space Easement), page 2, Mitigation Easement; states: "The mitigation easement area covered by the Mitigation Easement shall be comprised of not more than 16 acres within the Property as reflected in Attachment 3-1 (the "Mitigation Easement Area") as more fully set out in exhibits and/or attachments to the final executed Mitigation Easement (CE), and, with respect to the Mitigation Easement Area, the Conservation Easement (Open Space Easement) shall be subordinate to the Mitigation Easement."

On August 28, 2018, the SCVWD Board of Directors approved the execution of a Joint Use Agreement (JUA) #A4201M between the City and the SCVWD for West Little Llagas Creek between Monterey Road and Ciolino Avenue in association with the Upper Llagas Creek Flood Protection Project. See **Conservation Easement, Exhibit C - Property Assessment and Warranty, Attachment 2** for an executed copy of this JUA.

This JUA states the following:

- "1) Scope of the License Grant to City. Subject to the terms and conditions of this Agreement, and contingent upon SCVWD's grant of a conservation easement to City as set forth above, SCVWD hereby grants to City a non-exclusive license to access and do any or all the following on the Premises:
  - a. To construct, operate, maintain, repair, replace, and remove City Improvements for recreational purposes on the Premises including, but not limited to, asphalt concrete surfaced pedestrian and bicycle trails, pedestrian bridges, fencing, fixture (trash receptacles, benches etc.) and signage. The construction of such City Improvements shall require prior review and approval by SCVWD as signified by issuance of a Water Resources Protection Ordinance Encroachment Permit ("SCVWD Permit"), and shall be compliant with all applicable legal and permitting requirements. It is fully understood and agreed the SCVWD in its reasonable discretion may approve or disapprove a request for any permit to construct any City Improvement on the Premises.
  - b. To provide non-motorized bicycling, walking, jogging and hiking activities in accordance with all applicable legal and permitting requirements to the extent such activities do not interfere with the SCVWD's mission of flood protection, water resource management, and stream stewardship.
  - c. To host special recreational events (e.g., races) that may include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as City first receives a SCVWD Permit to host that event.
- 2) Subordination to Conservation Easement and Mitigation Easement. To the extent this Joint Use Agreement conflicts with any provisions of the Mitigation Easement, the terms of the Mitigation Easement shall prevail. To the extent this

Joint Use Agreement conflicts with any provision of the Conservation Easement, the terms of the Conservation Easement shall prevail. To the extent this Joint Use Agreement conflicts with any provisions of the MMP, the terms of the MMP shall prevail.”

### **3.0 SPECIAL STATUS SPECIES (PROPERTY)**

Special Status Species include species that are designated under the ESA as rare, threatened, or endangered, as well as candidate species listing by the CDFW. Through extensive biological and ecological pre-Project evaluations there are two special status animal species documented to utilize the Property, South-Central California Coast (S-CCC) steelhead trout (*Oncorhynchus mykiss*) and the Western Pond Turtle (*Emys marmorata*).

#### **Steelhead**

The steelhead population in the Llagas Creek watershed is part of the S-CCC Steelhead Distinct Population Segment (DPS), which includes all naturally-spawned anadromous *O. mykiss* populations in streams extending from the Pajaro River system in Santa Cruz County south to, but not including, the Santa Maria River in San Luis Obispo County (71 FR 834) (NMFS 2005b). Under the ESA of 1973, this DPS qualifies for protection as a separate species. In 1997, the S-CCC steelhead DPS was listed as a “threatened” species—a species that is likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. In 2011, a 5-year review, as required by the ESA Section 4(c)(2), was conducted by National Oceanic and Atmospheric Administration (NOAA) Fisheries Southwest Regional Staff and Southwest Fisheries Science Center personnel. This review recommended that the current ESA classification as threatened, and the current DPS boundary be retained (NMFS, 2011).

The final critical habitat designation for the S-CCC Steelhead DPS was issued on September 2, 2005.

(70 FR 52488). Critical habitat is defined as stream channels within designated streams, laterally bound by the ordinary high-water line or by bankfull elevation. Critical habitat for S-CCC steelhead is present in the Project Area from Reach 4 (Llagas Creek downstream of Buena Vista Avenue) through Reach 6 (Llagas Creek at Monterey Road), and upstream of Reach 6 (Llagas Creek from Monterey Road to Chesbro Dam) which includes the Property since Llagas Creek flows is currently routed through the Lake (70 FR 52488) (Please reference **Appendix E** for Project Map). Llagas Creek is part of the Pajaro River Subbasin Hydrologic Unit (HU) 3305 and within the South Santa Clara Valley Hydrologic Subarea (HSA) 330530 (NMFS, 2005c).

Restoring the historic, dewatered creek channel within the Property will improve steelhead rearing habitat within these 2,000 linear feet of restored creek channel. In addition, the Project will also improve critical habitat downstream of the Property by improving sediment transport and water quality by re-establishing creek flows through this restored creek channel and by converting a portion of the pre-Project artificial river impoundment into a created wetland.

#### **Western Pond Turtle**

The western pond turtle, *Emys marmorata*, is the only remaining freshwater turtle species native to California. The species formerly ranged from western Washington and British Columbia to

northern Baja, California, with a few isolated populations along the Carson and Truckee rivers in Nevada and the Mojave River (Ernst et al., 1994).

Populations are declining in California with habitat destruction cited as the major cause of its decline (Brattstrom and Messer, 1988) and the species is listed as a Species of Special Concern by the CDFW. A proposal to list the species as threatened or endangered under ESA is under review by the USFWS.

Western Pond turtles have been observed at the Lake during pre-Project evaluations. The wetland creation, with the islands and sloughs within the marsh, are expected to promote enhanced foraging habitat for the turtle. In addition, the project improvements include 10 basking sites for the turtle (section 4.3 Turtle Basking Habitat).

## **II. PROJECT IMPROVEMENTS TO THE PROPERTY**

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### **4.0 PROJECT IMPROVEMENTS**

In the Lake's current state, degradation of water quality exists within the Lake and downstream of the Lake within Llagas Creek. Therefore, in accordance with the U.S. Fish & Wildlife Service's Coordination Act Report (USFWS, 2003), the following improvements are planned and further explained in their respective sections:

1. Llagas Creek Restoration (Section 4.1);
2. Wetland Creation (Section 4.2);
3. Turtle basking habitat (Section 4.3);
4. Instream complexity (Section 4.4);
5. Upland Log Piles (Section 4.5);
6. Native Plantings (Section 4.6);
7. Non-native Invasive Plant Species Management (Section 4.7); and
8. Permanent Fence Installation (Section 4.8)

#### **4.1 Llagas Creek Restoration**

Based on the use of historical aerial photographs and recorded documents, a quarry operation began circa 1973 at the Lake's present-day site, which included creating a levee between existing Llagas Creek and the quarry. The Lake was artificially created circa 1980 when unknown parties breached this portion of the levee forcing stream flows into the abandoned quarry pit. The breach subsequently bypassed and dewatered an approximate 1,980 linear foot portion of the higher quality riparian habitat of Llagas Creek (Figure 2) with creek flows traveling through the Lake. The Project will re-establish the historic creek channel to provide mitigation for impacts to critical habitat for the threatened S-CCC steelhead, resulting from construction of the Project (Figure 3). Once the inlet side weir structure is complete and flows are re-established through this natural section of Llagas Creek, there will be improved passage conditions for adult and juvenile fish as they will have unimpeded passage to upstream and downstream habitats. This mitigation element would also add rearing habitat back to the watershed while improving rearing habitat downstream by ameliorating most deleterious water quality effects (i.e. increased temperature and turbidity) created by the impounded water, pre-Project.

To reestablish the remnant channel, a pilot channel will be excavated from the upstream end of the dewatered section to approximately 550 feet downstream of the Project's split flow (i.e. side weir) inlet structure (Figure 3). The pilot channel is intended to guide flows, and encourage downstream channel formation via natural hydraulic "mining." Given the nature of the silty sediments in the historic channel, it is expected that flows will scour out a more substantial low flow channel relatively quickly. Excavation of this pilot channel within the historic channel will be minimized to avoid unnecessary impacts to the existing native riparian vegetation.

The longitudinal profile created during the planning phase illustrates a drop between upstream Olive Avenue (abandoned concrete low water crossing) and the Lake inlet. This condition is likely the result of the adjustment of Llagas Creek to the new, lower base level of the Lake when the quarry was breached. Because the Lake is a large sediment sink, the routing of flows and sediment into the Lake generated incision that migrated upstream to the Olive Avenue crossing (Balance Hydrologics, 2013). While Olive Avenue is functioning as a grade control structure for

the Llagas Creek invert elevation in the pre-Project condition, an additional grade control structure will be installed downstream of Olive Avenue to ensure long-term stability of the inlet and restored channel.

The re-established historic remnant channel will receive base low flows originating from upstream Chesbro Reservoir. When base flows in Llagas Creek upstream of the Lake are very low (less than 3 cfs), those flows will remain within Llagas Creek, the approximately 2,000 linear foot re-established natural section. During periods of higher flows, flow will be split to allow some water to the created wetlands within the Lake via the inlet side weir structure consisting of stop logs that will provide elevational control. Water operations for Llagas Creek and created wetlands will be delineated during the 10-year, post-Project mitigation and monitoring plan (MMP). The planned operation of Llagas Creek and the created wetlands will be adaptively managed post-Project to ensure maximum ecological value for both (see Article 7.0).

## 4.2 Wetland Creation

In conjunction with restoring the historic channel (Section 4.1), portions of the existing 8.2-acre Lake will be filled to create wetlands to mitigate for permanent impacts to waters of the U.S. for implementation of the Project. The wetlands within the Lake will be created by partially filling the Lake with approximately 275,000 cubic yards of surplus soils excavated from Reach 7a as a part of the Project. The marsh plain was designed to be partially inundated by the Lake, with an undulating surface that will vary from some deeper ponding areas to areas slightly elevated above the water surface. The Project's intent is to create a habitat mosaic of open water and vegetated marsh with the use of islands within the open water (Figure 3). From a wildlife perspective, there were several design considerations relative to the position and height of the islands. First, keeping most of the islands close to deeper water areas will benefit turtles and help reduce mammalian predator access to the islands. Second, diverse island heights will provide different habitat types for a variety of species, and will also provide some refuge under higher water events. Thus, varying island heights (1-4 feet) with some lower to the marsh plain surface and some several feet higher were incorporated into the final design plan (H.T. Harvey, 2013).

The Lake level is expected to remain relatively stable throughout the year at an assumed elevation of approximately 304 feet (NAVD88), with some slight decreases (approximately 0.5 feet) on hot days and temporary increases when flooding occurs. The Lake's outlet structure will control the Lake elevations so that if there is settlement of the wetland surface after construction, the water elevation can be adjusted to optimize the wetland viability and functionality. Water operations for the Lake will be delineated during the 10-year, post-Project MMP period. However, it is expected that over the long-term, this outlet structure will not need to be adjusted and that the seasonal water surface elevation in the wetland will only fluctuate within a range of  $\pm 0.5$  feet.

The conversion of open water area to vegetated marsh will result in up to 5.3 acres of filled Lake and 2.9 acres of open water. The 5.3-acre Lake fill area will support both wetland marsh and a fill slope on which riparian and oak woodland habitats will be established (See Section 4.6 Native Plantings). It is presumed that at a minimum the wetland marsh complex will create approximately 4.02 acres of wetland. This area will be verified with a post-Project construction wetland delineation in Year 5 of the MMP (SCVWD, 2018).

#### **4.3 Turtle Basking Habitat**

The Lake currently provides habitat for the western pond turtle. However, basking habitat for this species is limited at the Lake due to the relative scarcity of woody debris. The Project includes the installation of ten basking logs along the edge of the wetland plain in the open water portion of the Lake wetland mitigation area (Figure 3). The basking logs, coupled with the enhanced foraging habitat associated with the sloughs within the marsh habitat, are expected to promote an increase in western pond turtle use of Lake Silveira (H.T. Harvey, 2013).

The turtle perches will consist of two logs positioned at the water surface elevation and will be supported by logs that have been driven into the Lake substrate. The perch logs will be angled slightly to ensure that at least a portion of the logs will be above the water surface and therefore will provide sufficient turtle basking habitat throughout the full range of potential water level elevations. The perches will be positioned to maximize sun exposure.

#### **4.4 In-Stream Complexity**

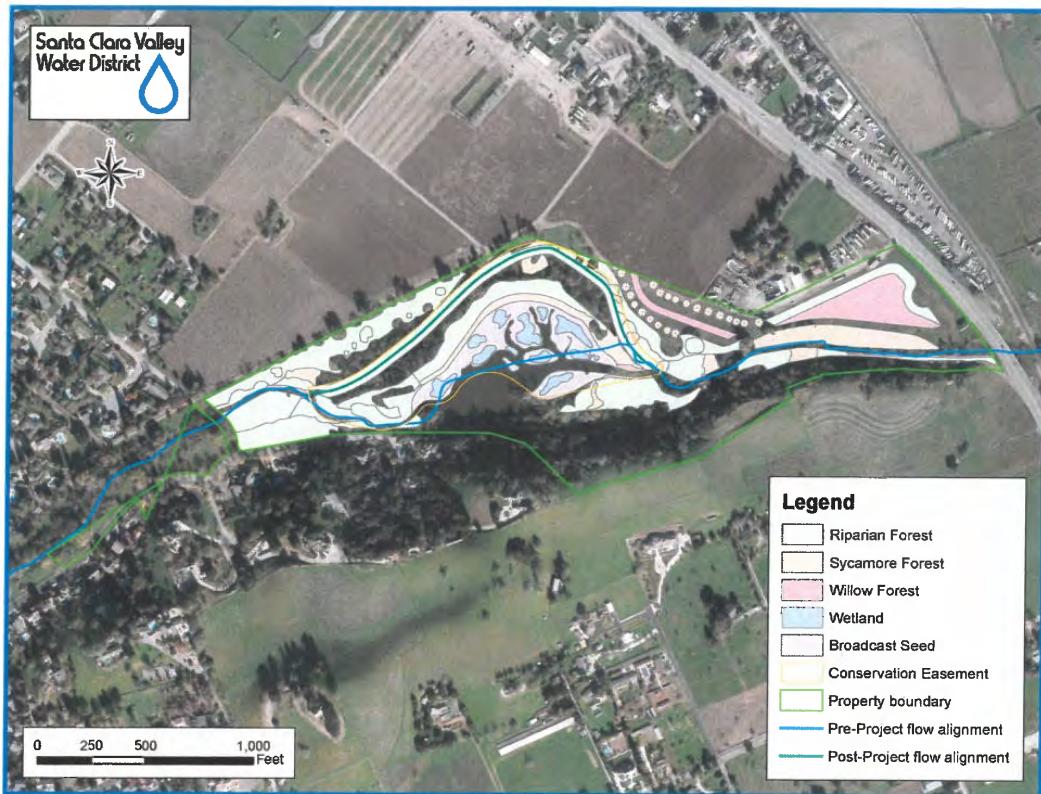
The Project will install 10 large rootwads and willow cuttings upstream of the side weir to improve steelhead rearing habitat by providing habitat structure and complexity (i.e. mosaic of habitat patches), shelter, and increased food resources. (Figure 3). The instream complexity will be monitored during the post-Project mitigation and monitoring period and will not be monitored beyond the 10-year establishment period.

#### **4.5 Upland Log Piles**

Log piles will be installed throughout the riparian mitigation areas above the top-of-bank as a habitat enhancement measure. Downed woody material provides wildlife habitat and, as it decomposes, facilitates the recovery of vegetation and soil nutrient cycling and improves nutrient holding capacity and soil water content. Single- and five-log piles will be installed above the top-of-bank throughout the riparian mitigation areas after the Project's earthwork has been completed. Logs will be obtained during construction and will range from 10 to 24 inches in diameter and from 8 to 10 feet long. Twelve single-log piles and ten five-log piles will be installed in upland habitat within the Property boundaries (Figure 3). There is no monitoring associated with this floodplain enhancement activity.

#### **4.6 Native Plantings**

The Property site (52.9 acres) supports riparian and upland habitats, pre-Project. The intent of the native planting plan and the invasive plant management mitigation elements for the Lake (Section 4.7 Invasive Plant Management) are to improve the quantity and quality (i.e. vertical and horizontal complexity) of the existing riparian corridor and associated upland habitat. The planting plan varies depending on location within the Property since growing conditions (i.e. soils, hydrology, shading etc.) determine sustainability. Additionally, the presence of high-quality vegetation precludes the need for new planting in some areas. The planting plan includes California native plant palettes that were specifically selected for the soil and hydrology conditions within the Project footprint. A total of 10.59 acres of active planting will occur within the Property (Figure 7, Table 3). Please see **Appendix C** for Project's planting and irrigation construction drawings, including planting palettes.



**Figure 7. Native Riparian Planting Palettes and Planting Locations Within the Property**

**Table 3. Plant Palette's and Associated Area for Active Planting Within the Property**

Plant Palette	Area (acres)
Riparian Forest	3.67
Sycamore Forest	1.36
Willow Forest	0.30
Forest Understory	0.26
Riparian Forest Infill	4.26
Sycamore Forest Infill	0.74
<b>Total acres of active planting:</b>	<b>10.59</b>

#### ***Historic Channel***

The historic Llagas Creek's native overstory is very well developed, and thus shades the ground surface and channel. This shading, combined with high groundwater and the reestablished channel flows, is expected to maintain soil moisture and microclimate conditions amenable to native plant recruitment. This natural recruitment will be supplemented with plantings of native understory consisting of container stock shrubs of 3 by species, on 20-foot centers. The species to be planted are mugwort (*Artemisia douglasiana*), California blackberry (*Rubus ursinus*), and

snowberry (*Symphoricarpos albus*). Willow cuttings will also be installed in gaps within existing trees canopies. Due to the expected high soil moisture and shade, no irrigation for plant establishment is proposed within this area. This area's understory is heavily overgrown with non-native blackberry, which will be removed and controlled over a 3–4 year period prior to planting native understory species (See Section 4.7 Invasive Plant Management) Areas left bare after non-native plant removal along this reach will be seeded with an understory seed mix comprising mugwort (*Artemisia douglasiana*), blue wildrye (*Elymus glaucus*), and creeping wildrye (*Elymus triticoides*) (H.T. Harvey and Associates, 2013).

#### ***Upland Terraces (On North Side of Historic Channel)***

The upland terraces north of the historic channel are level with the adjacent agricultural fields to the north, and elevated approximately 8-10 feet above the historic channel. Historically this area was likely an active floodplain, as evidenced by the presence of scattered, large native California sycamores (*Platanus racemosa*). At the northwest corner of the upper terrace adjacent to the maintenance road, the Project will remove an existing concrete wall where the slope graded to create a stable, plantable surface. The plant palette for the westernmost upper terrace areas will be the forest palettes, with some sycamores interspersed. The slope where the concrete wall is to be removed provides better sycamore establishment conditions, so a sycamore forest plant palette will be used within this area.

#### ***Existing Riparian Corridor from the Project's Proposed Side Weir Inlet Structure to the Lake***

This area is almost fully vegetated by existing native willow tree canopy, but the understory is denuded from past mechanical and chemical blackberry control by unknown individuals. Very little grading will occur in this area, except to stabilize the low flow channel to the Lake downstream of the flow-split side weir inlet structure. The understory of the existing willows will be restored by planting with container stock of mugwort, California blackberry, and snowberry; and seeding with mugwort, blue wildrye, and creeping wildrye.

#### ***Riparian and Oak Woodland on Fill Slope North of Wetland Marsh***

A large wedge of fill will be placed north of the wetland marsh plain and against the existing berm separating the Lake from the historic channel. The slope of the fill was designed at 3:1 to allow a plantable surface for which forest palette will be planted.

#### ***Wetlands and Islands***

The wetlands and islands will be planted and seeded with emergent wetland species around their lower perimeter and willow and cottonwood on their upper elevations.

#### ***Lake Outlet Channel and Southeast Planting Area***

The Project will install a new Lake outlet structure consisting of an adjustable weir gate, allowing for minor adjustments to the Lake's water surface elevation. This outlet structure will re-connect Lake flows downstream into existing Llagas Creek. The perimeter of this Lake area adjacent to the outlet structure will be planted with sycamore forest and the upper areas planted with the forest plant palette.

### ***Bowtie Parcel***

The Project will construct a new channel, Reach 7a, for West Little Llagas Creek flows to confluence with the mainstem of Llagas Creek immediately upstream of Monterey Road. This new channel is adjacent to the area within the Property commonly referred to as the "bowtie" parcel. The bowtie parcel consists of lowered terraced floodplains where the parcel will be planted with sycamore forest and the slopes above these floodplains will be planted with a forest planting palette (Figure 3, Figure 7).

#### **4.7 Invasive Plant Species Management**

There are currently extensive areas vegetated with non-native Himalayan blackberry at the Property, especially along the historic channel (Figure 5). The removal of this invasive plant will restore the area to a more natural condition, allow for active planting and natural recruitment of native plants, and improve overall habitat values. Approximately 11.99 acres of Himalayan blackberry removal will commence upon construction of the restoration site within the Property. Herbicide treatment (3-4 years) will follow the mechanical removal until the success criteria outlined in the mitigation and monitoring plan are met.

#### **4.8 Permanent Fence and Gate Installation**

The Project will install permanent fencing and gates nearly around the entire perimeter of the Property to aid in the prevention of trespassing within the Compensatory Easement, and will therefore prevent trampling of biota and compaction of soils. In addition to the existing fencing that is to remain, the placement of proposed new permanent fencing of the Property is illustrated in Figure 4 (Section 1.3).

### **5.0 PROJECT MITIGATION AND MONITORING PLAN (10-YEAR POST-PROJECT CONSTRUCTION)**

The objective of Project's Mitigation and Monitoring Plan (MMP) is to offset losses of the aquatic resource functions and values due to implementation of the flood protection project in the Llagas watershed. The Projects MMP has well defined and realistic targets which was developed in coordination with resource agencies through the lengthy planning process. The MMP will be implemented during year 1 of restoration planting. However, because the Project is phased, MMP implementation will also be staggered. This MP will focus on implementation of MMP tasks for the CE area only (15.99 acres), not the Property (52.9 acres).

Construction of the proposed Lake improvements will require approximately one year to complete, taking place during year one the Project's 2-3 year Phase 1 construction duration. Concurrent with construction of the wetland and restored channel, the 11.99 acres of Himalayan Blackberry within the Property will undergo mechanical removal and 3-4 years of follow up herbicide treatment (Figure 5). Following completion of construction, the revegetation mitigation areas will be planted in the fall, except for the forest understory (i.e. Riparian Forest) in the restored section of Llagas Creek (Figure 7) (See Section 4.6).

Elements of the MMP specific to the vegetation in the CE area includes success criteria for invasive plants, woody plant percent survival, woody plant percent cover, California sycamore percent survival, Instream complexity, and percent cover of wetland vegetation.

At year 10, the mitigation element for invasive plants will be deemed complete if there is  $\leq 0.5$  acres of Himalayan Blackberry remaining within the CE footprint. At Year 10 riparian and wetland vegetation should be well established and meeting specified success criteria. It should be noted that ecological success criteria (i.e. functions and values) will also be assessed for the CE site utilizing the California Rapid Assessment Methodology (CRAM). The objective of this evaluation is to ascertain if the created wetlands and stream restoration are improving the ecological value of the site.

Elements of the MMP related to creation of sustained wetland habitats and a stable stream channel in the restored section of Llagas Creek are as follows: qualitative hydrologic success; Lake wetland marsh monitoring creek walks; Channel and Bank Stability and Bed Material Observations; Annual Profile and Cross-sections Survey; Lake Flow Monitoring, Wetland Water Level Monitoring, and Basic Water Quality.

After the post-Project construction 10-year mitigation and monitoring period, a monitoring report will be assembled summarizing key monitoring data and observations. The 10 years of monitoring data is expected to establish a new baseline for longer term CE management and success of the Lake wetland marsh restoration. The SCVWD monitoring team will issue an addendum to the Project's Operations and Maintenance Manual (Upper Llagas Creek Maintenance Guidelines Manual-2018), utilizing data collected during the 10-year monitoring and maintenance plan, which will be used to improve operations and maintenance practices of the CE management, including the Lake's wetland marsh. These new operations and maintenance guidelines will detail the side weir and outlet controls as well as routine maintenance activities to keep the created wetlands and stream restoration viable and functioning to provide the maximum ecological value. Maintenance activities (e.g. minor sediment removal at inlet) associated with the Lake will also be included in the updated operations and maintenance guidelines.

### **III. CONSERVATION EASEMENT MANAGEMENT PLAN TASKS AND RESPONSIBILITIES**

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#### **6.0 MANAGEMENT PLAN PURPOSE**

The purpose of this Management Plan (MP) is to ensure that the CE area is monitored, maintained, and managed in a manner that preserves its conservation values in perpetuity and is consistent with the USACE-Regulatory and the SCVWD's mitigation goals. This MP is a binding and enforceable instrument, implemented by the CE covering 15.99 acres as described herein (See Figure 4 and **Appendix B**).

Objectives of the MP for the CE area are as follows:

- Preserve, and allow for the improvement of, the conservation values of Lake and existing Llagas Creek within the CE;
- Provide coordinated and unified management for the Lake;
- Provide feasible, quantifiable, and effective conservation guidelines, standards, and priorities for monitoring, and adaptive management;
- Be compatible with and promote cooperation among the various land owners/managers within the Property and Llagas watersheds (e.g., with respect to recreation and trail use within and adjacent to the CE) and to help ensure the survival of viable populations of special status species and healthy biotic communities in the area ; and
- Provide flexibility as needed to adapt management practices in response to monitoring and field observations.

#### **6.1 Task A— Administrative Costs and MMP Annual Monitoring Report Review**

Please refer to **Appendix F** of this MP for the Final Mitigation and Monitoring Plan (December 2018). After construction of the initial site improvements are complete, a 10-year Mitigation and Monitoring Plan (MMP) will be implemented at the Property site with requisite criteria established for success. A wetland delineation of the CE area will be conducted at year 5 of the MMP)to verify the quantity of wetlands created. Once the 10-year MMP is completed post-Project, this MP will take effect.

##### ***Sub-Task A1***

*Prepare Annual Monitoring Report in accordance with the Final MMP: Quantitative, data, and information will be summarized in an annual monitoring report based on the schedule outlined in Table 28 of the approved final MMP (December 2018) attached as **Appendix F**. These yearly reports will assess the criteria established for success as described in the Final MMP and will be submitted to the USACE and the CE Holder by January 31<sup>st</sup> for each given year of the 10-year MMP.*

### **Sub-Task A2**

*Administrative and legal cost one time lump sum reimbursement to review, comment, and approve the terms and conditions of this MP.*

### **Sub-Task A3**

*Review of the Annual Monitoring Report that assesses and evaluates the criteria established for success as described in the Final MMP (December 2018) attached as **Appendix F**.*

### **Sub-Task A4**

*Conduct an annual site visit to confirm the assessments and findings of the Annual Monitoring Report.*

### **Sub-Task A5**

*Provide any relevant written comments on the Annual Monitoring Report to the SCVWD, if applicable.*

### ***CE Holder Responsibilities***

Sub-Task A2 is the CE Holder's responsibility to submit an invoice for payment to the SCVWD within 30 days of the execution of this MP. SCVWD will have 60 days upon receipt of the CE Holder's invoice to review, process, and pay this invoice for this one time lump sum administrative and legal cost reimbursements to review, comment, and approve the terms and conditions of this MP and the SCVWD/CE Holder separate funding agreement.

Sub-Tasks A3, A4, and A5 are the CE Holder's responsibility which will include review of the Annual Monitoring Report, an annual site visit, and providing any relevant written comments by May 1<sup>st</sup> for each given year of the 10-year MMP.

### ***Property Owner (SCVWD) Responsibilities***

Sub-Task A1 is the SCVWD's responsibility to complete and submit to USACE and the CE Holder by January 31<sup>st</sup> for each given year of the 10-year MMP.

Please refer to Section 8 of this MP for reporting responsibilities for the CE Holder and the Land Manager.

## **6.2 Task B—Llagas Creek Restoration**

Please refer to Section 4.1 of this MP for a description of the initial Project improvement to re-establish Llagas Creek's channel north of Lake Silvera. The 2,000 linear feet of restored and re-established Llagas Creek channel will be monitored for signs of ecological degradation and the conditions documented. The restored areas will be monitored and the results will be documented using the CE Holder Monitoring Checklist (**Appendix D**). The CE Holder will attach the completed checklists to the biannual report submitted to the Land Manager.

### **Sub-Task B1**

**Streambank Stability:** Stable streambanks are indicative of intact hydrological and sediment regimes; therefore, the banks will be visually surveyed biannually for stability. The streambanks will be evaluated and categorized as follows: a **stable** streambank is defined as having perennial vegetation to waterline; no raw or undercut banks; no recently exposed tree roots. A **slightly stable** streambank is defined as perennial vegetation to waterline in most places; minor erosion. A **moderately unstable** streambank is defined as perennial vegetation to waterline sparse (scoured or removed by erosion); streambank held in place by tree roots and boulders; extensive erosion. A **completely unstable** streambank is defined as no perennial vegetation to waterline; streambanks only held in place by roots and boulders; severe erosion. If there are indications of streambank instability (**moderately unstable** to **completely unstable**), photographs and a georeferenced map identifying location of any unstable streambanks will accompany the checklist with an explanation as to the source of erosion, if known. If unknown, the CE Holder will indicate the cause is unknown on the checklist.

### **Sub-Task B2**

**Vegetation Diversity and Coverage:** Monitor and document existing riparian vegetation within the 2,000 linear feet of restored Llagas Creek channel. Existing riparian vegetation will be evaluated for structural diversity and cover as an intact riparian corridor generally indicates healthy and productive plant communities. This sub-task will monitor and evaluate two riparian indicators for vegetation in the restored stream channel. Habitat continuity and extent (**HABITAT**) indicates that the length, height and width of the riparian corridor in the restored stream channel has not been compromised and remains in stable condition. Are there unnatural gaps in the riparian corridor such as those created by opportunistic trail foraging or off-road vehicle use? Are there indicators of plant die-off or disease which may leave large gaps in the existing riparian vegetation? Is there any other condition that has compromised the width, length or height of the existing riparian corridor? Vegetation cover and structural complexity (**COVER**) is the second indicator for riparian vegetation. Is there a dominant tree canopy? Is there established understory (i.e. herbs, reeds, shrubs), groundcover (i.e. lichens, mosses, grasses, herbs, reeds and sedges) and native leaf litter?

**Please Note:** Monitoring and documenting the presence of invasive vegetation which may attempt to re-colonize within the 2,000 linear feet of restored Llagas Creek or within the wetlands within the CE area will be addressed in Section 6.4 Task D-Non-Native Invasive Plant Species Management.

### **Sub-Task B3**

If the streambanks within the restored 2,000 linear feet of Llagas Creek are determined to be unstable, the source of instability will be investigated and reported. The possible source of instability will be documented in the annual monitoring report. If warranted and remedial actions are necessary to ameliorate the condition, recommendations for remediation will be submitted in the annual monitoring report to permitting agencies. If the riparian vegetation monitoring provides indication of degradation of ecological integrity (i.e. unauthorized trail use, plant/tree disease, other condition that has compromised the width, length or height of the native riparian plantings, gaps within the riparian corridor, etc.) remedial actions as appropriate will be recommended in the annual monitoring report.

### ***CE Holder Responsibilities***

Sub-Task B1 and Sub-Task B2 are the CE Holder's responsibility which will include biannual monitoring for tasks described in these sub-tasks. Issues regarding Llagas Creek restoration will be monitored using the CE Monitoring Checklist (**Appendix D**).

### ***Land Manager Responsibilities***

Sub-Task B3 is the Land Manager's responsibility. The Land Manager will consider the information and recommendation(s) provided by the CE Holder in their biannual reports and will include the information in the Land Manager's Annual Report to the Permitting Agencies, including whether the Land Manager plans to or has taken any action to remedy the issue(s).

Please refer to Section 8 of this MP for reporting responsibilities for the CE Holder and the Land Manager.

## **6.3 Task C—Inspection of Lake's Side Weir Inlet Structure and Outlet Structure**

### ***Sub-Task C1***

*Monitor and document the structural integrity and functional capabilities of the inlet weir and outlet structure for the created wetlands. The ecological integrity of the created wetlands will depend on freshwater inflows from the side inlet weir, therefore, the structural integrity and operational functionality is imperative to the sustainability of the wetlands. The inlet weir will be inspected biannually by the CE Holder for deposition of sediment or debris which would impede the functionality of the stop logs (4 inch x 6 inch redwood boards) for elevation control of water into the Lake. The inlet weir will be inspected by observing the structural integrity of the foundation materials for signs of degradation or deformity. The structural condition of the stop logs will also be evaluated. If vegetation encroachment from nearby riparian vegetation is impeding the functionality of the stop logs, then the vegetation should be identified to species and reported on the checklist.*

*The outlet structure will be inspected for the presence of sediment deposition, vegetation encroachment or debris which would render the outlet inoperable. If vegetation encroachment is impacting the structure, the vegetation should be identified to species and reported on the checklist. The structural integrity of the outlet should also be evaluated by noting any cracks or deformities in the concrete. Any signs of vandalism (i.e. graffiti) for both the inlet and outlet structure should also be noted.*

### ***Sub-Task C2***

*Remove vegetation, debris, sediment, and perform routine minor maintenance to the side weir inlet structure or outlet structure to maintain functionality for the CE area. Additionally, minor maintenance may include annual lubrication of the operating gate mechanisms, so the structure may properly function.*

### ***CE Holder Responsibilities***

Sub-Task C1 is the CE Holder's responsibility which will include biannual monitoring as described in Task C1; identification of the vegetation, debris, and sediment that may compromising functionality of the inlet and outlet structures; report any vandalism of the features

and provide photos; and georeferenced maps of issues identified for the inlet and outlet structures. Issues with the Lake's inlet and outlet structures will be monitored using the CE Monitoring Checklist (**Appendix D**). This checklist will be attached to the biannual report.

#### **Land Manager Responsibilities**

Sub-Task C2 is the Land Manager's responsibility. The Land Manager will consider the information and recommendation(s) provided by the CE Holder in their biannual reports and will include the information in the Land Manager's Annual Report to the Permitting Agencies, including whether the Land Manager plans to or has taken any action to remedy the issue(s).

Please refer to Section 8 of this MP for reporting responsibilities for the CE Holder and the Land Manager.

#### **6.4 Task D—Non-Native Invasive Plant Species Management**

Please refer to Section 4.7 of this MP for a description of this Project improvements regarding non-native invasive plant species management.

##### **Sub-Task D1**

*Ocular surveys to document the presence of invasive vegetation which may attempt to colonize or re-colonize the CE area, within the restored 2,000 linear feet of Llagas Creek and the created wetlands. Ocular surveys will be conducted of the islands and littoral lake margins of the created wetlands, within the CE area for the presence of invasive plant species. If invasive species are found, they will be identified to species and mapped. The presence of invasive vegetation within the riparian CE limits will be documented and mapped (georeferenced). Invasive plant mapping should include identification of the plant to the species, and a determination as to if it is deemed invasive in California. The assessment will include a description of the degree of threat to native plants based on the California Invasive Plant County (Cal-IPC) inventory. Cal-IPC maintains a comprehensive list of invasive plants based on ecological impacts and categorizes plants that threaten California's natural areas. The inventory includes plants that currently cause damage in California (invasive plants) as well as "Watch" plants that are a high risk of becoming invasive in the future (designated with an asterisk). Please indicate if the species is deemed invasive or on the watch list and to what degree is the plant deemed invasive (i.e. high, moderate, limited). Polygons will be used to map each invasive species however, individuals can be grouped together, if they are the same species. Data should be post-processed using Trimble Pathfinder Office. Geographic Information System (GIS) layers will be developed from the GPS data for long-term tracking.*

##### **Sub-Task D2**

*If invasive plants are found within the 2,000 linear feet of restored Llagas Creek or within the created wetlands or within waters of the U.S. within the CE area, then an assessment of the treatment method with success criteria for removal will be proposed in the annual monitoring report to be submitted to the Permitting Agencies. The invasive removal sites will be assessed annually following initial removal until success criteria are achieved. Treatment areas, will be mapped with Global Positioning System (GPS) devices at the time of treatment. Annual assessments will be used to determine if additional control work or follow-up control work is necessary at treatment sites. Results of control activities including success or remediation will be reported annually to the Permitting Agencies.*

### ***CE Holder Responsibilities***

Sub-Task D1 is the CE Holder's responsibility which will include, at a minimum, identification of the presence of invasive vegetation which is attempting to re-colonize or colonize within the CE area. Issues with invasive plant species will be monitored using the CE Monitoring Checklist (**Appendix D**).

### ***Land Manager Responsibilities***

Sub-Task D2 is the Land Manager's responsibility. The Land Manager will consider the information and recommendation(s) provided by the CE Holder in their biannual reports and will include the information in the Land Manager's Annual Report to the Permitting Agencies, including whether the Land Manager plans to or has taken any action to remedy the issue(s).

Please refer to Section 8 of this MP for reporting responsibilities for the CE Holder and the Land Manager.

## **6.5 Task E—Trash/Debris and Water Quality**

### ***Sub-Task E1***

*Monitor and document the presence of anthropogenic trash and debris within the CE area. Large woody debris (i.e. downed trees and snags) plays an integral role in the ecology of the restored stream and wetlands and will not be removed within the CE area unless this large woody debris compromises the functionality of the CE area (i.e. inlet and outlet structures operations (Section 6.3)). Anthropogenic trash and debris within the CE area will be described within the Checklist and mapped to location using georeferenced data.*

*Monitor Llagas Creek (restored channel) and the created wetlands within the CE area for indicators of degradation of water quality (i.e. excessive turbidity, odor, sheen, water quality within the created wetlands and restored channel will be observed biannually for signs of degradation. If illegal dumping or water quality issues are an immediate concern, the SCVWD Pollution Hotline (1-888-510-5151) shall be notified immediately to report the incident and location. For all other minor water quality issues, a brief description of the potential issue will be included in the biannual report, documentation shall utilize photos and GPS points or polygons, along with a recommendation on how to address the potential issue.*

### ***Sub-Task E2***

*Remove anthropogenic trash and debris within the CE area. Investigate to determine the source of the water quality issues and take corrective action(s) as necessary within the CE area.*

### ***CE Holder Responsibilities***

Sub-Task E1 is the CE Holder's responsibility which will include, noting any trash/debris and any anomalies to water quality (i.e. excessive turbidity, odor, sheen) within the CE area. Sources of the water quality degradation will also be noted if known or suspected. Issues regarding trash/debris and water quality will be monitored using the CE Monitoring Checklist (**Appendix D**). This checklist will be included with the biannual report as an attachment. If illegal dumping is suspected or water quality issues are pervasive and severe, the CE Holder will contact the SCVWD's Pollution Prevention Hotline at 888-510-5151 for immediate assistance.

### **Land Manager Responsibilities**

Sub-Task E2 is the Land Manager's responsibility. The Land Manager will consider the information and recommendation(s) provided by the CE Holder in their biannual reports and will include the information in the Land Manager's Annual Report to the Permitting Agencies, including whether the Land Manager plans to or has taken any action to remedy the issue(s).

Please refer to Section 8 of this MP for reporting responsibilities for the CE Holder and the Land Manager.

### **6.6 Task F—Wetland Creation**

Please refer to Section 4.2 and Section 4.3 of this MP for a description of Project improvements regarding wetland creation and turtle basking habitat, respectively. Please note: Monitoring and documenting the presence of invasive vegetation which may attempt to re-colonize or colonize within the created wetlands will be addressed in Section 6.4 Task D-Non-Native Invasive Plant Species Management.

#### **Sub-Task F1**

*Prepare and submit to the Permitting Agencies a finalized Lake Operations Plan by the end of the post-Project 10-year mitigation and monitoring plan period to be incorporated into this Management Plan as Appendix G. Monitor and adjust the Lake's operational procedures, including using adaptive management protocols regarding the split flow of water at the side-weir inlet structure and maintaining the Lake's water surface elevation at outlet structure to optimize the ecological and biological functions and habitat values to the CE area.*

#### **Subtask F2**

*The created wetlands will be qualitatively monitored to provide a general indication that the geomorphic and hydrologic conditions are stable and continues to support the created habitats. Flows into the Lake's wetland marsh, via surface water, direct precipitation, or through groundwater movement, should maintain water levels to a degree that sustains wetland vegetation during normal hydrologic conditions. A wetland delineation will be conducted, mapped and verified in year 5 of the Mitigation and Monitoring Plan post-Project construction for the created wetlands. This wetlands delineation map will form the foundation (i.e. size and shape) for evaluation in this qualitative analysis. This wetland delineation map will be used to verify that the size and shape of the created wetlands within the CE area to ensure it has not decreased beyond normal hydrologic variations. This evaluation will be conducted by November 1<sup>st</sup> (fall report) in each given year. Each fall report in each year will include taking a GPS polygon of the created wetlands which shall be overlaid with the year 5 wetland delineation map created during the Mitigation and Monitoring Plan post-Project construction. Any differences in the created wetlands overlaid with the year 5 wetland delineation map will be described in the fall report for a given year with an explanation why conditions are believed to have changed, if this information is known.*

#### **Subtask F3**

*The structural integrity of the existing 10 turtle perches will be monitored for functionality. Any anomalies or issues with the turtle perches will be monitored, photographed, and mapped.*

#### **Subtask F4**

*If the created wetlands have significant deviation from the as-built condition, then the biannual report will indicate why the conditions are different if that information is known. This annual assessment will be used to determine if there may be revisions needed to the Lake's Operations Plan. Any suggested remediation efforts or revisions to the Lake's Operations Plan (Sub-Task F1-**Appendix G**) will be reported annually to the Permitting Agencies.*

#### **Sub-Task F5**

*Implementation of a bullfrog population monitoring program prior to the restoration project construction at Lake Silveira and include three sets of day and night surveys to be conducted in spring or early summer (i.e. the bullfrog breeding season). The three sets of day/night surveys will be repeated every three years. If significant increases in the bullfrog population are observed, the SCVWD, in consultation with CDFW and USFWS, will undertake control measures, to reduce the population.*

#### **Property Owner (SCVWD) Responsibilities**

Sub-Task F1 and Sub-Task F5 are the SCVWD's responsibility.

#### **CE Holder Responsibilities**

Sub-Task F2 and Sub-Task F3 is the CE Holder's responsibility which will include annual mapping of the created wetlands (fall report only for each given year) for comparison to the as-built condition of the created wetlands and monitoring of the structural integrity and functionality of the turtle perches. Issues with the created wetlands or the turtle perches will be monitored using the CE Monitoring Checklist (**Appendix D**).

#### **Land Manager Responsibilities**

Sub-Task F4 is the Land Manager's responsibility. The Land Manager will consider the information and recommendation(s) provided by the CE Holder in their biannual reports and will include the information in the Land Manager's Annual Report to the Permitting Agencies, including whether the Land Manager plans to or has taken any action to remedy the issue(s).

Please refer to Section 8 of this MP for reporting responsibilities for the CE Holder and the Land Manager.

### **6.7 Task G—Security: Vandalism and Trespass**

#### **Sub-Task G1**

*Monitor and document security issues including, but not limited to, signs and acts of vandalism and trespassing within the CE area.*

#### **Sub-Task G2**

*Perform the necessary corrective actions to address the security issue(s). Determine if adaptive management actions are needed to address this issue if repairs become prevalent.*

### ***CE Holder Responsibilities***

Sub-Task G1 is the CE Holder's responsibility which will include, at a minimum, identification of security issues, including signs and acts of vandalism and trespassing within the CE area. Security issues will be monitored using the CE Monitoring Checklist (**Appendix D**). This checklist will be attached to the biannual report as an attachment. The CE Holder shall utilize photos and GPS points or polygons, a brief description of the potential issue, a recommendation on how to address the potential issue, all included in the biannual reports.

### ***Land Manager Responsibilities***

Sub-Task G2 is the Land Manager's responsibility. The Land Manager will consider the information and recommendation(s) provided by the CE Holder in their biannual reports and will include the information in the Land Manager's Annual Report to the Permitting Agencies, including whether the Land Manager plans to or has taken any action to remedy the issue(s).

Please refer to Section 8 of this MP for reporting responsibilities for the CE Holder and the Land Manager.

## **6.8 Task H—Signage, Fencing, and Gates**

Please refer to Section 4.8 of this MP for a description of Project improvements regarding permanent fence and gate installation. Please refer to Figure 4 (Section 1.3) of this MP for the Project's fencing.

### ***Sub-Task H1***

*Monitor and document the condition of existing signage (i.e. Habitat restoration), fencing, and gates, specifically where repairs may need to be made within the CE area.*

### ***Sub-Task H2***

*Perform the necessary corrective actions to address restoration and repairs to signage, fencing, and gates. New signage, fencing, and gates will be installed as needed by adaptive management.*

### ***CE Holder Responsibilities***

Sub-Task H1 is the CE Holder's responsibility to monitor and document the condition of existing signage (e.g. habitat restoration), fencing, and gates, specifically where repairs may need to be made within the CE area. Existing signage, fencing, and gate issues will be monitored using the CE Monitoring Checklist (**Appendix D**). This checklist will be attached to the biannual report as an attachment. The CE Holder shall utilize photos and GPS points or polygons with a brief description of the potential issues with signage, fencing, and gates, all included in the biannual reports.

### ***Land Manager Responsibilities***

Sub-Task H2 is the Land Manager's responsibility. The Land Manager will consider the information and recommendation(s) provided by the CE Holder in their biannual reports and will

include the information in the Land Manager's Annual Report to the Permitting Agencies, including whether the Land Manager plans to or has taken any action to remedy the issue(s).

Please refer to Section 8 of this MP for reporting responsibilities for the CE Holder and the Land Manager.

### **6.9 Task I—Public Access**

Public Access is not a Project objective within the CE area. The SCVWD, County, and City executed a Purchase and Sale Agreement (PSA) for the SCVWD's fee purchase of the Property. As a condition of the PSA, approximately 52.9 acres, encompassing the entire CE area, the SCVWD shall separately grant an open space easement to the County and the City for park purposes of trail connectivity for linkage of the site to the regional system of trails, scenic view watershed protection, habitat conservation, and open space preservation consistent with the 1995 Countywide Trails Master Plan, as amended periodically (Open Space Easement). However, this Open Space Easement shall be subordinate to the CE for the Project's required compensatory mitigation (see Section 2.5f for details and See **Conservation Easement, Exhibit C - Property Assessment and Waranty, Attachment 2** for a copy of this PSA).

On August 28, 2018, the SCVWD Board of Directors approved the execution of a Joint Use Agreement (JUA) between the City and the SCVWD for West Little Llagas Creek between Monterey Road and Ciolino Avenue in association with the Upper Llagas Creek Flood Protection Project. See Section 2.5 for details and See **Conservation Easement, Exhibit C - Property Assessment and Waranty, Attachment 2** for an executed copy of this JUA. City of Morgan Hill is solely responsible for all costs for planning, design, construction, operation and maintenance associated with their said easement upon the Property. See **Appendix E** for the anticipated Public Access trail alignments within the Property.

#### **Sub-Task I1**

*Review and comment on any proposed planning, design, construction, or operation and maintenance for a park purpose of trail connectivity, scenic protection, habitat conservation and open space preservation within the Property.*

#### **Sub-Task I2**

*Verify the City or County has completed CEQA/NEPA for any proposed improvements within the CE and has received the proper approvals for proposed improvements within the CE area from all the permitting agencies.*

#### **Sub-Task I3**

*Monitor and document any public access issues that are observed when the City or County or other party develops the Property for a park purpose of trail connectivity, scenic protection, habitat conservation and open space preservation.*

#### **Sub-Task I4**

*Request and require the agency (City or County or other party) responsible for the development of public access to perform the necessary corrective actions to address Public Access issues.*

*Determine if adaptive management actions are needed to address this issue if the issue becomes prevalent.*

#### ***Property Owner (SCVWD) Responsibilities***

Sub-Task I1 and Sub-Task I2 are the SCVWD responsibilities as the Property Owner to ensure proposed development in accordance with existing easements within the Property do not compromise the CE by preserving its conservation values in perpetuity and for consistency with the Permitting Agencies and the SCVWD's mitigation goals and responsibilities.

#### ***CE Holder Responsibilities***

CE Holder is responsible for Sub-Task I3, since it is assumed public access will be developed within the Property by the City, County, or other authorized party sometime during the post-Project 10-year mitigation and monitoring plan period. Public Access issues will be monitored using the CE Monitoring Checklist (**Appendix D**). This checklist will be attached to the biannual report as an attachment.

#### ***Land Manager Responsibilities***

Sub-Task I4 is the Land Manager's responsibility. The Land Manager will consider the information and recommendation(s) provided by the CE Holder in their biannual reports and will include the information in the Land Manager's Annual Report to the Permitting Agencies, including whether the Land Manager plans to or has taken any action to remedy the issue(s).

### **7.0 ADAPTIVE MANAGEMENT**

While it is not anticipated that major additional management actions will be needed, one of the MP's objectives is to identify any issues that arise, and use an adaptive management approach to determine what follow-up actions might be appropriate. Adaptive management is an approach to natural resource management which incorporates effectiveness monitoring and changes to management practices over time, including corrective actions when needed, to support the Preserve's conservation values.

The management objectives and approaches described in this MP were established based on existing information on the pre-Project Property's condition and resources, the effects of past management activities, and the experience of natural resource professionals in designing resource management approaches. The management of the Property has been minimal since the County acquired the Property in 1982 as a potential future urban open-space recreational facility. Agreements between the County and City never resulted in the development of this urban recreational facility. Therefore, the Conservation Easement area (15.99 acres) within the Property is now focusing on the management of maximizing the ecological and habitat values on the existing wetlands, created wetlands, and channel restoration of approximately 2,000 linear feet of perennial stream-Llagas Creek as critical habitat for South-Central California Coast Steelhead DPS. The MP of the Conservation Easement is fully expected to significantly improve biological resource conditions. Nevertheless, there is some uncertainty involved in prescribing a management approach. Thus, the management approach described in this MP will be adapted as necessary to maintain and improve biological resource values based on monitoring results.

In addition, adaptive management is expected to involve implementation of new measures to protect natural resource values as new problems are noted, new research and techniques become available, or as problems are noted in new areas. For each of the resource issues described in this MP, specific criteria will be monitored. These monitoring results will be reviewed for potential management problems, but also analyzed to identify trends in resource management issues. Persistent problems or adverse trends will trigger an adaptive management decision-making process. First, based on the type and severity of the problem, and an assessment of whether the issue is within the SCVWD's control, experienced land management staff will determine whether corrective action is necessary, or whether further monitoring (perhaps at an increased frequency) is appropriate to characterize the problem. Second, if corrective action is needed, those staff will identify the most appropriate adaptive management response. Those staff chosen to accomplish monitoring and adaptive management decision-making responsibilities will have the knowledge, training, and experience to accomplish these responsibilities. Permitting Agencies will be consulted for approval of any such adaptive management changes or corrective actions. A reporting process with the permitting agencies is included into the annual reporting structure for the CE management (See Section 8.0 Task J-Reporting).

## IV. CONSERVATION EASEMENT ADMINISTRATION PROCEDURES AND FUNDING

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### 8.0 TASK J—REPORTING

During the post-Project, initial 10-year mitigation and monitoring plan, quantitative, data, and information will be summarized in an annual monitoring report based on the schedule outlined in Table 28 of the approved final MMP (December 2018) attached as **Appendix F** and will include adaptive management recommendations as warranted. This report will be submitted to the USACE by January 31 of each year for 10 years, four months following completion of hydrologic monitoring by September 30. After this post-Project 10-year mitigation and monitoring plan, the CE Holder will then assume the responsibility of preparing and submitting biannual reports to the Land Manager, who will in-turn prepare the annual report to be submitted to the U.S. Army Corps of Engineers – Regulatory Branch, San Francisco District (USACE).

The Land Manager Monitoring Reporting Template for the annual report to be prepared and submitted by the Land Manager to the USACE is included in **Appendix D**. The CE Reporting Template for the biannual reports to be prepared by the CE Holder and submitted to the Land Manager is included in **Appendix D**. The CE Monitoring Checklist is also included in **Appendix D**.

#### **Sub-Task J1**

*Prepare biannual reports by May 1<sup>st</sup> (spring report) and November 1<sup>st</sup> (fall report) in each given year. This biannual report will include a summary of the results of monitoring tasks conducted, make recommendations regarding (1) any habitat enhancement measures deemed necessary, (2) any problems that need attention and (3) any changes in the monitoring or management program that appear to be warranted. The biannual report will only cover the area included within the CE area.*

#### **Sub-Task J2**

*Prepare and provide the USACE an annual report of management tasks conducted and general site conditions within the CE.*

#### **Sub-Task J3**

*Provide an opportunity to the USACE to request a check-in to discuss any changes or other issues regarding CE management.*

#### **CE Holder Responsibilities**

CE Holder is responsible for Sub-Task J1 and will prepare biannual reports for submittal to the Land Manager and the Property Owner (if different) by May 1<sup>st</sup> (spring report) and November 1<sup>st</sup> (fall report) in each given year. The CE Holder Monitoring Report Template is provided in **Appendix D**.

### ***Land Manager Responsibilities***

The Land Manager is responsible for Sub-Task J2 and will prepare an annual report for submission to the Permitting Agencies by December 31<sup>st</sup> of each given year after completion of the CE Holder's spring and fall monitoring reports for the given year. The Land Manager Monitoring Report Template is provided in **Appendix D**. This annual report will include a summary of the results of monitoring tasks conducted and management actions taken, make recommendations regarding (1) any habitat enhancement measures deemed necessary, (2) any problems that need attention and (3) any changes in the monitoring or management program that appear to be warranted. The report will cover the area included within the CE area, but may include incidental information pertaining to the entire Property, although this information is not required and the areas outside the CE are not subject to agency review for mitigation purposes.

The annual report will be prepared for each of the first five years after the conclusion of the 10-year mitigation and monitoring plan period (i.e. total 15 consecutive years). Five years after the conclusion of the 10-year mitigation and monitoring plan period, the report frequency may be reduced to once every five years, after consultation with and written concurrence by all the Permitting Agencies.

### ***Permitting Agencies***

Sub-Task J3 is the Permitting Agencies' opportunity to discuss management of the CE. Each year following submittal of the annual report, each of the Permitting Agencies accepting compensatory mitigation within the CE area will be given the opportunity to request a check-in to discuss any changes or other issues regarding site management. The request for a check-in would be made by the Permitting Agencies within one month of receiving the annual report. Depending on the issue(s) to be discussed, the check-in would be scheduled as a phone conference call or sit-down meeting with the SCVWD. Each of the Permitting Agencies identified in Section 9.4 of this MP would have the option of participating.

## **8.1 Tasks, Responsible Party, Frequency, and Timing**

**Table 4. Management Plan Tasks, Responsible Party, Frequency, and Timing**

<b>Task</b>	<b>Task Description</b>	<b>Sub-Task #</b>	<b>Responsible Party</b>	<b>Frequency</b>	<b>Timing</b>
A	Prepare MMP Annual Monitoring Report (AMR), Initial Administration Costs, Review/comment on AMR, annual site visit	A1	SCVWD	Annual	December 31 <sup>st</sup>
		A2	CE Holder	One Time	30 days after MP execution
		A3	CE Holder	Annual	By May 1 <sup>st</sup>
		A4	CE Holder	Annual	By May 1 <sup>st</sup>
		A5	CE Holder	Annual	By May 1 <sup>st</sup>
B	Llagas Creek Restoration	B1	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		B2	CE Holder	Annual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		B3	Land Manager	Annual	By Dec. 31 <sup>st</sup>
C	Inspection of Lake's Side Weir Inlet Structure and Outlet Structure	C1	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		C2	Land Manager	Annual	By Dec. 31 <sup>st</sup>
D	Non-Native Invasive Plant Species Management	D1	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		D2	Land Manager	Annual	By Dec. 31 <sup>st</sup>

Task	Task Description	Sub-Task #	Responsible Party	Frequency	Timing
E	Trash/Debris, Water Quality	E1	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		E2	Land Manager	Annual	By Dec. 31 <sup>st</sup>
F	Wetland Creation	F1	SCVWD	Post-Project	10 years post-Project
		F2	CE Holder	Annual	Fall Report by Nov. 1 <sup>st</sup>
		F3	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		F4	Land Manager	Annual	By Dec. 31 <sup>st</sup>
		F5	SCVWD	Annual	By Dec. 31 <sup>st</sup>
G	Security: Vandalism and Trespass	G1	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		G2	Land Manager	Annual	By Dec. 31 <sup>st</sup>
H	Signage, Fencing, and Gates	H1	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		H2	Land Manager	Annual	By Dec. 31 <sup>st</sup>
I	Public Access	I1	SCVWD	N/A	N/A
		I2	SCVWD	N/A	N/A
		I3	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		I4	Land Manager	Annual	By Dec. 31 <sup>st</sup> (when applicable)
J	Reporting, including completion of the Monitoring Report and Monitoring Checklist (Appendix D)	J1	CE Holder	Biannual	By May 1 <sup>st</sup> & Nov. 1 <sup>st</sup>
		J2	Land Manager	Annual	By Dec. 31 <sup>st</sup>
		J3	Permitting Agencies	N/A	Within 30 days after receipt of Annual Report

## 9.0 TRANSFER, REPLACEMENTS, AMENDMENTS, AND NOTICES

### 9.1 Transfer

Any subsequent transfer of responsibilities under this MP to a different Land Manager shall be requested by the Land Manager in writing to the agencies overseeing the required mitigation in the subject area (Permitting Agencies), shall require written approval by the Permitting Agencies, and shall be incorporated into this MP by amendment. Any subsequent Property Owner will assume Land Manager responsibilities described in this MP and as required in the CE, unless otherwise amended in writing by the Permitting Agencies.

### 9.2 Replacement

If the Land Manager fails to implement the tasks described in this MP and is notified of such failure in writing by any of the Permitting Agencies or the CE Holder, 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 Permitting Agencies and the CE Holder to resolve the failure. Such meeting shall occur within 30 days or a longer period if approved by the Permitting Agencies. Based on the outcome of the meeting, or if no meeting is requested, the Permitting Agencies may designate a replacement Land Manager in writing by amendment of this MP. 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 Permitting Agencies may enter onto the CE Preserve to fulfill the purposes of this MP.

### **9.3 Amendments**

The Land Manager, Property Owner, CE Holder, and the Permitting Agencies may elect to meet and confer, upon the request of any one of them, to revise the MP to better meet management objectives and preserve the habitat and conservation values. There shall be no amendments to the components of this MP as these serve as a baseline from which to compare future conditions of the CE. However, future amendments to this MP may include supplements to these components. Any proposed substantive changes to the MP shall be discussed with the Land Manager, Property Owner, CE Holder, and Permitting Agencies and will be designed with input from all parties. Any amendments to the MP shall be approved by the Permitting Agencies, the CE Holder, Land Manager, and Property Owner in writing. Such amendments will be considered required management components and shall be implemented by the Land Manager. Amendments to the MP are not expected to trigger the need to amend the CE. Any amendments that result in a change in management costs will trigger an amendment to the costs table (Table 5).

### **9.4 Notices**

Any notices regarding this MP shall be directed as follows:

Land Manager and Property Owner:

Santa Clara Valley Water District (SCVWD)  
Ms. Norma Camacho  
Chief Executive Officer  
5750 Almaden Expressway  
San Jose, CA 95118  
Phone: (408) 630-2084  
ncamacho@valleywater.org

Permitting Agencies:

U.S. Army Corps of Engineers  
Ms. Katerina Galacatos  
Regulatory Project Manager  
Regulatory Division  
U.S. Army Corps of Engineers  
1455 Market Street, 16th Floor  
San Francisco, CA 94103-1398  
Phone: (415) 503-6763  
Katerina.Galacatos@usace.army.mil

California Department of Fish and Wildlife  
Ms. Brenda Blinn  
7329 Silverado Trail  
Napa, CA 94558  
Phone: (707) 944-5541  
Brenda.blinn@wildlife.ca.gov

Central Coast Regional Water Quality Control Board  
Mr. Mark Cassady  
Environmental Specialist  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906  
Phone: (805) 549-3689  
Mark.Cassady@Waterboards.ca.gov

Lake Silveira Compensatory Mitigation Preserve Management Plan CE Holder:

Land Trust of Santa Clara Valley  
Mr. Greg Leonard  
Executive Director  
605 Tennant Avenue, Suite H  
Morgan Hill, CA 95037  
Phone: (650) 799-9618

## **10.0 CONSERVATION EASEMENT MANAGEMENT PLAN FUNDING AND COST ESTIMATES**

### **10.1 Funding**

The Santa Clara Valley Water District will ensure adequate funding for the long-term management of the Conservation Easement by providing the following three measures of financial assurance:

1. The SCVWD's Board of Directors will adopt a Resolution which details its current and projected financial state, includes a finding regarding financial analysis conducted on the annual management costs of the Management Plan, and includes an annual pledge of revenue to cover 100% of the annual management costs estimated for the Management Plan which will be revised at least every five years to reflect the San Francisco-Oakland-San Jose Consumer Price Index (CPI) for the preceding five years;
2. The SCVWD will execute a Memorandum of Agreement with the USACE which requires the SCVWD to provide the financial analysis to calculate the annual management costs, requires the SCVWD to revise the annual management costs at least every five years to account for the CPI, requires the SCVWD to provide sufficient revenue annually to cover the entire annual management costs, and requires the SCVWD to establish a standby fund; and
3. The SCVWD will establish a standby fund in the amount equal to five years of annual management costs as estimated in the Management Plan in the form of a letter of credit. This standby fund would be utilized in any year when the annual appropriations are insufficient to cover annual management costs, and the letter of credit would auto-renew after five years. A decrease in the CPI would not require a change in the letter of credit.

The estimated costs of the MP tasks are presented in Section 10.2 Cost Estimate.

## 10.2 Cost Estimate

Table 5. CE Holder Management Plan Cost Estimates

SCVWD MMP: YEAR 1 - YEAR 10 AFTER COMPLETION OF CE SITE IMPROVEMENTS (YR 2022 ±)						
Task	Task Description	Sub-Task #	Annual Labor Hours	Labor Cost/Hour	Cost Estimate/Year	
A	Initial administration costs, Review Annual Monitoring Report (AMR), Conduct annual site visit, Comment on AMR, if applicable (Year 1 – Year 10)	A2	One Time Lump Sum Initial Cost	N/A	\$24,500 <sup>1</sup>	
		A3	3	\$200	\$600	
		A4	6	\$200	\$1,200	
		A5	3	\$200	\$600	
Sub-Total (Task A) Year 1 – Year 10			6	\$200	\$2,400	
<b>ANNUAL COST ESTIMATE TOTAL (Task A) Year 1 – Year 10</b>					<b>\$2,400</b>	
BEGIN IN YEAR 11 AFTER COMPLETION OF SCVWD MMP (YR 2032 ±): TASK B THRU TASK J						
Task	Task Description	Sub-Task #	Annual Labor Hours	Labor Cost/Hour	Cost Estimate/Year	
B	Llagas Creek Restoration	B1	4	\$200	\$800	
		B2	4	\$200	\$800	
C	Inspection of Lake's Side Weir Inlet and Outlet Structures	C1	4	\$200	\$800	
D	Non-native Invasive Plant Species Management	D1	8	\$200	\$1,600	
E	Trash/Debris and Water Quality	E1	5	\$200	\$1,000	
F	Wetland Creation	F2	8 (Fall only)	\$200	\$1,600	
		F3	2	\$200	\$400	
G	Security: Vandalism and Trespass	G1	4	\$200	\$800	
H	Signage, Fencing, and Gates	H1	4	\$200	\$800	
I	Public Access	I3	4	\$200	\$800	
J	Reporting, including CE Holder Monitoring Report and Monitoring Checklist (Appendix D)	J1	18	\$200	\$3,600	
Sub-Total (Task B through Task J) beginning Year 11			65	\$200	\$13,000	
Contingency (10%)					\$1,300	
<b>ANNUAL COST ESTIMATE TOTAL (Tasks B through J) beginning Year 11</b>					<b>\$14,300</b>	

<sup>1</sup> This one time lump sum initial payment is not included in the Annual Cost Estimate Total

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