



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

SANTA CLARA VALLEY PLAN PERMITEES
(SEE ATTACHMENT A)

2. AUTHORITY-STATUTES
16 USC 1539(a)
16 USC 1533(d)
16 USC 703-712

REGULATIONS
50 CFR 17.22
50 CFR 17.32
50 CFR 21.23 & 21.27
50 CFR 13

3. NUMBER
TE94345A-0

4. RENEWABLE
 YES
 NO

5. MAY COPY
 YES
 NO

6. EFFECTIVE
7/30/2013

7. EXPIRES
7/30/2063

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)
SEE ATTACHMENT A
SEE BELOW

9. TYPE OF PERMIT
NATIVE ENDANGERED & THREATENED SP. HABITAT
CONSERVATION PLAN - E & T WILDLIFE: MIGRATORY BIRDS

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

Permit Area for all Covered Species, with the exception of the western burrowing owl, is the same as the Plan's Study Area, except it excludes portions of State Parks lands. The Permit Area for all Covered Species, with the exception of the western burrowing owl, is 460,205 acres. The Permit Area for the western burrowing owl (508,669 acres) includes the Permit Area and the *expanded Study Area for burrowing owl conservation* (see Figure 1-2 in the Plan).

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

C.1. Santa Clara Valley Permittees:

- a. County of Santa Clara
- b. City of San Jose
- c. Santa Clara Valley Water District
- d. Santa Clara Valley Transportation Authority
- e. City of Morgan Hill
- f. City of Gilroy
- g. Santa Clara Valley Habitat Agency

D. Further conditions of authorization are contained in the attached Special Terms and Conditions.

SPECIAL TERMS AND CONDITIONS

E. Acceptance of this permit serves as evidence that the County of Santa Clara, City of San Jose, City of Morgan Hill, City of Gilroy, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, and the Santa Clara Valley Habitat Agency (Permittees) and their designated agents agree to abide by the terms of this permit and all applicable sections of *Title 50 Code of Federal Regulations*, parts 13 and 17. Section 11 of the Endangered Species Act of 1973, as amended (Act), describes civil and criminal penalties for failure to comply with permit conditions. *Title*

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY

TITLE
DEPUTY REGIONAL DIRECTOR

DATE
JUL 30 2013

50 Code of Federal Regulations, part 13 (General Permit Procedures), section 17.22(b) (endangered wildlife permits), and section 17.32(b) (threatened wildlife permits) are provided in Attachment 1.

- F. The incidental take authorization granted by this permit is subject to full compliance and implementation of the August 2012 Final Santa Clara Valley Habitat Plan, Santa Clara County, California (Plan), which is hereby incorporated by reference.
- G. As defined in Section 3.15 of the Implementing Agreement (IA), the effective date of the permit will be the first business day after all of the following have occurred: execution of the IA by all Parties, issuance of both the State and Federal permits, adoption of an implementing ordinance by each of the Cities and the County, and formation of the Implementing Entity.
- H. The Plan contains two Permit Areas; one Permit Area applies specifically to the western burrowing owl and the second applies to all other Covered Species (see Figure 1-2 of the Plan). The Permit Area for all Covered Species, with the exception of the western burrowing owl, is 460,205 acres. The Permit Area for the western burrowing owl is 508,669 acres. Covered Activities in the *expanded Study Area for burrowing owl conservation* are limited to conservation actions for the western burrowing owl (See Section 5.4.6 of the Plan). Take must be incidental to otherwise lawful Covered Activities described in Chapter 2 of the Plan.

The Permittees and their designated agents are authorized to incidentally take the following five wildlife Covered Species that are currently listed under the Act: the threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*), the threatened California tiger salamander (Central California Distinct Population Segment) (*Ambystoma californiense*), the threatened California red-legged frog (*Rana draytonii*), the endangered least Bell's vireo (*Vireo bellii pusillus*), and the endangered San Joaquin kit fox (*Vulpes macrotis mutica*). Incidental take authorization is effective for these five wildlife species upon the effective date of the permit. The following four wildlife Covered Species are not currently listed under the Act: foothill yellow-legged frog (*Rana boylei*), western pond turtle (*Clemmys marmorata*), western burrowing owl (*Athene cunicularia hypugea*), and tricolored blackbird (*Agelaius tricolor*). Incidental take authorization of these currently unlisted Covered Species will become effective concurrent with their listing as threatened or endangered under the Act, to the extent that their take is prohibited by the Act. Take must be incidental to otherwise lawful Covered Activities described in Chapter 2 of the Plan.

The Service anticipates incidental take of the following Covered Species, currently listed under the Act, during the 50-year permit term: Bay checkerspot butterfly, California tiger salamander, California red-legged frog, least Bell's vireo, and San Joaquin kit fox. Incidental take in terms of numbers of individuals may be difficult to detect because of population dynamics, small body size, seasonal fluctuations in populations, and habitat type (i.e. underground burrows). However, take of these listed species can be anticipated by loss or degradation of suitable habitat modeled under the Plan, as summarized in the table below. Anticipated take of the Bay checkerspot butterfly, California tiger salamander, and California red-legged frog will be in the forms of death, injury, harm, and harassment. Take of the least Bell's vireo and San Joaquin kit fox will be limited to harm and harassment. No take in the form of direct death or injury is anticipated for these two species. Similarly, the Service anticipates incidental take of the following Covered Species, currently not listed under the Act, during the 50-year permit term: foothill yellow-legged frog, western pond turtle, western burrowing owl, and tricolored blackbird. Incidental take in terms of numbers of individuals may be difficult to detect because of population dynamics, small body size, seasonal fluctuations in populations, and habitat type (i.e. flowing streams). However, take of these nonlisted species can be anticipated by loss or degradation of suitable habitat modeled under the Plan, as summarized in the table below. Anticipated take of the foothill yellow-legged frog and western pond turtle will be in the forms of death, injury, harm, and harassment. As indicated in Section 2.6.4.1 of the Service's Intra-Service biological opinion, until a positive growth trend is achieved in the western burrowing owl's population, take will be primarily limited to loss and degradation of modeled habitat, as described in the table below. The Service anticipates that direct take of individual owls, in the form of mortality and injury, will occur once the positive growth trend goal is achieved. The number of individuals anticipated to be taken, in excess of those necessary to maintain the positive growth trend, will be based on the best available scientific data and determined by the Wildlife Agencies and the Implementing Entity on an annual basis during Plan implementation. See Section 2.6.4.1 of the Service's Intra-Service biological opinion specific details. Take of the tricolored blackbird will be limited to harm and harassment. No take in the form of direct death or injury is anticipated for the tricolored blackbird, as indicated in Section 2.6.4.3 of the Service's Intra-Service biological opinion. Take for this species will be limited to harm and harassment.

Maximum Allowable Take Resulting from Permanent and Temporary Effects n Modeled Habitat from Covered Activities (acres)

	Permanent	Temporary
Bay checkerspot butterfly		
Primary	300	54
California tiger salamander		
Central California DPS)		
Breeding	77	14
Non-Breeding	12,855	1,529
Total	12,932	1,543
California red-legged frog		
Primary	299	116
Secondary	12,937	1,489
Total	13,236	1,605
Foothill yellow-legged frog (length in miles)		
Primary	1.9	0.7
Secondary	4.8	1.3
Total	6.7	2.0
Western pond turtle		
Primary	1,824	440

Secondary	7,825	986
Total	9,649	1,426
Western burrowing owl		
Occupied Nesting	198	20
Potential Nesting	4,000	604
Overwintering	9,671	762
Total	13,869	1,385
Least Bell's vireo		
Primary	72	43
Tricolored blackbird ²		
Primary	276	93
Secondary	10,317	768
Total	10,593	861
San Joaquin kit fox		
Secondary	198	46
Secondary (Low Use)	28	6
Total	226	52
Mt. Hamilton Thistle		
Primary	26	4
Fragrant Fritillary		
Primary	550	59
Secondary	2,729	655
Total	3,279	714
Loma Prieta Hoita		
Primary	2,117	413
Secondary	266	60
Total	2,383	473
Smooth Lessingia		
Primary	550	68
Metcalf Canyon Jewelflower		
Primary	550	62
Most Beautiful Jewelflower		
Primary	550	92
Secondary	0	0
Total	550	92
Santa Clara Valley dudleya	No more than 5% of the existing 209 occurrences (11); or 6% of 228 occurrences (if 18 more occurrences are discovered)	
Coyote Ceanotus (individuals)	3,650 individuals or up to 5% of the total population (with a cap of 5% on the Anderson Dam Occurrence)	
Tiburon Indian Paintbrush		
Primary	550	91

- I. This permit shall constitute a Special Purpose Permit under 50 CFR section 21.27, for the take of the least Bell's vireo, which is currently listed under the Act and protected under the Migratory Bird Treaty Act (MBTA; 16 U.S.C. §§703-712). The nature and extent of authorized incidental take is specified in Chapter 4 of the Plan. Incidental take of the least Bell's vireo as a result of any Covered Activity carried out in accordance with this permit will not constitute a violation of the MBTA. Such Special Purpose Permit shall be valid for a period of three years from the effective date of this permit, provided this permit remains in effect for such period. Such Special Purpose Permit shall be renewed without application for so long as this permit remains in effect. Each such renewal shall be valid for the maximum period of time allowed under 50 CFR Section 21.27 or its successor at the time of renewal. This Permit shall also constitute Special Purpose Permits under the MBTA and 50 CFR 21.27 for each of the unlisted MBTA Covered Species that may become listed under the Act during the term of the permit. Such Special Purpose Permit shall become effective concurrent with the listing of the western burrowing owl and/or the tricolored blackbird under the Act.
- J. Take of plant species is not prohibited under the Act and is not authorized by this permit. However, nine plants are included on the Covered Species list in recognition of the conservation benefits provided for them under the Plan. The Covered Species list includes the following four plant

species, currently listed under the Act: the endangered Tiburon Indian paintbrush (*Castilleja affinis* ssp. *neglecta*), the endangered Coyote ceanothus (*Ceanothus ferrisae*), the endangered Santa Clara Valley dudleya (*Dudleya setchellii*), and the endangered Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*). The Covered Species list includes the following five plant species, currently not listed under the Act: Mount Hamilton thistle (*Cirsium fontinale* var. *campylon*), fragrant fritillary (*Fritillaria liliacea*), Loma Prieta hoita (*Hoita strobilina*), smooth lessingia (*Lessingia micradenia* var. *glabrata*), and most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*). Assurances provided under the No Surprises Rule at 50 CFR 17.3, 17.22(b)(5), and 17.32(b)(5) extend to all plant Covered Species.

- k. The take authorization granted by this permit does not address or affect the Permittees' independent obligation to comply with other applicable Federal, State, and local laws, including the California Endangered Species Act and the State of California's Fully Protected Species statutes. None of the Plan's Covered Species are currently Fully Protected Species.
- L. The Permittees and their agents shall adhere to the description of Covered Activities in Chapter 2 of the Plan, impacts described in Chapter 4 of the Plan, avoidance and minimization measures described in Chapter 6 of the Plan, conservation and mitigation measures described in Chapters 5 and 8 of the Plan, and monitoring and adaptive management described in Chapter 7 of the Plan. The Permittees shall require adherence to the Plan as an enforceable term and condition in all applicable contracts with their agents.
- M. The Permittees shall ensure that U.S. Fish and Wildlife Service (Service) personnel are given appropriate access (as defined under 50 CFR 13.21 (e)(2)) to monitor compliance with this permit.
- N. For Covered Activities that have the potential to affect historic properties, the Permittee(s) or project proponents under their jurisdictions, will retain a professional archaeologist meeting the Secretary of Interior's Professional Qualifications Standards for Archaeology to complete the tasks listed below to ensure compliance with section 106 of the National Historic Preservation Act:
 - 1. Define the Area of Potential Effect.
 - 2. Conduct a records search with the Information Center of the California Historical Resources Information System (IC) for previous surveys and documented cultural resources in the area.
 - 3. Conduct a sacred-lands search with the Native American Heritage Commission (NAHC).
 - 4. Provide written notification of the proposed project to the Native American contacts obtained from the NAHC.
 - 5. Conduct a cultural resources field survey commensurate with the level of the undertaking's potential to affect historic properties (i.e., monitoring, pedestrian surveys, shovel testing, geoarchaeological studies).
 - 6. Record newly identified cultural resources.
 - 7. Determine eligibility of newly identified sites under the National Register of Historic Places.
 - 8. Develop a cultural resource inventory report that includes survey and site descriptions, site inventory forms, determinations of eligibility of cultural resources under the National Register of Historic Places, and management recommendations. The report shall also include a project location map specifically identifying where the proposed activities will occur; map(s) of the area surveyed and where previously and newly identified sites are located; figures; tables; photographs; and copies of IC, NAHC, and tribal correspondence.
 - 9. Identify avoidance or other protection measures for sites determined significant.

Upon completion of the tasks outlined above, the professional archaeologist retained by the Permittees(s), or project proponents under their jurisdiction, will submit the report and associated documents to the State Historic Preservation Office, tribes, and interested parties.

- O. Reporting Requirements:
 - 1. The Permittees shall ensure that the Service's Sacramento Fish and Wildlife Office is contacted immediately regarding any violations or potential violations of the Act or the MBTA.
 - 2. The Service must be notified within one working day of finding any injured or dead listed species or within one working day of any unanticipated damage to habitat. Injured animals shall be cared for by a licensed veterinarian or other qualified person. Notification must include the date, time, and precise location of the individual/incident clearly indicated on a USGS 7.5 minute quadrangle and other maps at a finer scale, as requested by the Service, and any other pertinent information. Dead individuals must be sealed in a Zip-lock® plastic bag containing a paper with the date and time when the animal was found, the location where it was found, and the name of the person who found it. The bag containing the specimen must be frozen in a freezer located in a secure site. The Service contact persons are the Sacramento Fish and Wildlife Office's Conservation Planning Division Chief, 2800 Cottage Way, Room W-2605, Sacramento, California 95825, at (916) 414-6600; and the Resident Agent-in-Charge of the Service's Division of Law Enforcement, 5622 Price Avenue, Building # 1040, McClellan, California 95652, at (916) 569-8444.
 - 3. The Permittees or their designated agents shall record all observations of federally listed species (including injured, sick, or dead individuals) on California Natural Diversity Data Base (CNDDB) Field Survey Forms and prepare topographic maps clearly marked with the location of the observation and send them to the CNDDB - California Department of Fish and Wildlife, 1807 13th Street, Suite 202, Sacramento, California 95811. The Permittees shall provide the Service with copies of all forms and maps submitted to the CNDDB.
 - 4. Monitoring results shall be incorporated into the annual reports prepared by the Implementing Entity and submitted to the Service by March 15 each year. No annual report will be required for the first partial fiscal year. Section 8.11 of the Plan lists information that at a minimum, will be included in each annual report. Annual reports will be submitted to the Sacramento Fish and Wildlife Office's Conservation Planning Division Chief, at the address referenced above.
 - 5. A copy of this permit must be on file, in the possession of each Permittee and third party under their direct control, while conducting Covered Activities. Please refer to the permit number in all correspondence concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Sacramento Fish and Wildlife Office.

Attachment A

a. County of Santa Clara

f. City of Gilroy

c/o Sylvia Gallegos
County Govt Center, East Wing, 11th Floor
70 West Hedding Street
San Jose, CA 95110
408-299-5119

c/o Thomas J. Haglund, City Administrator
7351 Rosanna Street
Gilroy CA 95020
(408) 286-5800

b. City of San Jose
c/o Joseph Horwedel
Director of Planning, Building and Code Enforcement
200 E. Santa Clara St., 3rd Floor
San Jose, CA 95113
(408) 535-1956

g. Santa Clara Valley Habitat Agency
c/o Ken Schreiber, Interim Executive Officer
17575 Peak Avenue
Morgan Hill, CA 95037

c. Santa Clara Valley Water District
c/o Beau Goldie, Chief Executive Officer
5750 Almaden Expressway
San Jose, CA 95118
408-265-2600

d. Santa Clara Valley Transportation Authority
c/o Ann Calnan
3331 North First Street, Building B
San Jose, CA 95134-1927
408-321-5976

e. City of Morgan Hill
c/o Community Development Director
17575 Peak Avenue
Morgan Hill CA 95037-4128
(408) 778-6480