

## CHAPTER 10: PLAN IMPLEMENTATION

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## **10.1 Introduction**

This Chapter provides guidelines for the implementation of the SSHCP and describes its administration including the authority and responsibilities of various entities that are responsible for implementation of the Plan. This Chapter also includes descriptions of implementation processes, Plan amendment processes, and reporting protocols. Additional detail on implementation is contained in Chapter 6, which explains the Take authorization process and conditions of project approval.

## **10.2 Incidental Take Permit**

### **10.2.1 ITP Issuance Process**

Federal and State resource protection agencies are authorized to issue permits for the incidental take of listed species (Figure 10-1), under the Federal Endangered Species Act and California Endangered Species Act. To obtain Incidental Take Permits (ITPs), the Permittees are submitting this HCP, which identifies the measurable Biological Goals and Objectives to conserve the Covered Species. The Plan Participants have also drafted an Implementing Agreement that sets forth the legal obligations of the parties, and the Plan Participants have prepared an EIR/EIS to evaluate the environmental impacts of the HCP and the related permits that will be issued by ACOE as part of this project.

It is anticipated that, once the Resource Agencies have determined that all regulatory prerequisites and conditions have been satisfied, FWS and CDFG will each issue an ITP for the County of Sacramento County, the City of Elk Grove, the City of Galt, the City of Rancho Cordova, the Implementing Entity, and two of the Plan Partner Agencies (Sacramento County Regional Sanitation District and Sacramento County Water Agency). It is also anticipated that FWS and CDFG will each issue a separate ITP to the Capital SouthEast Connector Joint Powers Authority.

### **10.2.2 Application of the ITP**

The ITPs will authorize Take by each Permittee, i.e., the County and the Cities, each Plan Partner Agency (Sacramento Regional County Sanitation District, Sacramento County Water Authority and the Capital SouthEast Connector Joint Powers Authority) and the Implementing Entity. Each Permittee will receive Take authorization for its own activities, such as infrastructure projects to be implemented by the County and Cities that are identified as Covered Activities (see Chapter 4). The Implementing Entity will receive Take authorization for restoration projects and ongoing management of Preserves. The County and the Cities may extend coverage to private parties (i.e., the Project Applicants). The Implementing Entity may extend coverage to Participating Special Entities by approving a Certificate of Inclusion. In all cases, Take authorization is subject to conditions that implement the goals, objectives, measures, and requirements of the SSHCP.

## **10.3 Organizational Structures, Authorities, Duties, and Responsibilities**

Plan implementation includes many complex duties and responsibilities and requires participation by many entities. This section provides an overview of each of the various participants involved in

the implementation of the Plan and some details of each entity's organizational structure, authority, duties, and responsibilities.

### **10.3.1 Resource Agencies**

The U.S Fish and Wildlife Service (FWS) and the California Department of Fish and Game (DFG) (collectively, "the Resource Agencies") are responsible for issuing federal and state ITPs under the SSHCP. The Resource Agencies will monitor the Implementing Entity and other Plan Participants to ensure compliance with conditions of the Plan, Implementing Agreement, Incidental Take Permits, and Ordinances. The Resource Agencies' approval is required for Amendments to the Plan (Section XXXXX). The Resource Agencies will work with the Implementing Entity to support implementation of the SSHCP, provide assistance with Section 6 grants, and assist with ongoing management and monitoring protocols.

#### **Authority**

- Issue ITPs.
- Revoke ITPs.
- Approve or deny Plan Amendments.

#### **Duties and Responsibilities**

- Assist Implementing Entity in obtaining funding under ESA Section 6 or other government grant programs.
- Evaluate and act upon any proposed amendments to the SSHCP.
- Monitor Plan Participants and Implementing Entity for compliance with the SSHCP, Implementing Agreement, ITPs and Ordinances.
- Assist with the development of monitoring and management protocols.
- Participate on the Technical Advisory Committee (TAC) to the extent feasible, and provide recommendations within the agency's areas of expertise regarding habitat restoration, creation, and enhancement, and other issues.

### **10.3.2 Permittees**

Permittees includes the County, the Cities, and the Plan Partner Agencies that prepared the HCP and are recipients of the ITPs and other permits or agreements from the State and Federal Resource Agencies. While the Permittees are collectively responsible for Plan implementation, each Permittee is individually responsible for enforcing the terms of the applicable ITP with regard to its own projects and projects of Project Applicants that are subject to the approval of a City or the County. Each City and the County must execute the Implementing Agreement (Section XXX, Exhibit X) and adopt an Implementing Ordinance (Section XXXX, Exhibit X) in order to extend coverage under the ITP to Project Applicants, as described later in this chapter.

### **i. Local Jurisdictions**

The County and the Cities that participated in the crafting the SSHCP and will receive coverage under the ITPs are:

- City of Elk Grove
- City of Galt
- City of Rancho Cordova
- County of Sacramento

#### **Authority**

- Implement Covered Activities in accordance with the SSHCP and the ITPs.
- Extend Take authorization to Project Applicants under the ITPs.
- Collect and disburse HCP-related fees to the Implementing Entity.
- Enforce SSHCP-related compliance appropriate to the Cities and the County.
- Adopt Ordinances implementing the Plan and other components.
- Propose SSHCP Amendments, as set forth in the Implementing Agreement. Amendments may include, but are not limited to:
  - Amendments to Conservation Strategy.
  - Other Amendments, as determined by the County and the Cities.

#### **Responsibilities and Duties**

- Implement the Plan and its components via enforceable ordinances or other effective mechanisms.
- Determine whether proposed projects are eligible for coverage under the ITPs.
- Assist Project Applicants in the permitting process.
- Identifying mitigation and avoidance measures for each project consistent with the SSHCP.
- Extend Incidental Take authorization to Project Applicants when appropriate, as part of the project review process set forth in Chapter 6.
- Receive comments on proposed projects from the Implementing Entity and report approved projects to the Implementing Entity.
- Ensure that Project Applicants comply with the terms and conditions of the SSHCP.
- Monitor Project Applicants' compliance with SSHCP avoidance and minimization measures.
- Collect and transfer HCP-related fees collected from Project Applicants to the Implementing Entity.

- Pay HCP-related fees on City- or County-sponsored Covered Activities consistent with the SSHCP.
- Consider increases to the HCP-related mitigation fee when circumstances warrant.
- Monitor implementation of the SSHCP by way of reviewing annual reports.

#### **ii. Plan Partner Agencies**

Plan Partner Agencies are public agencies that participated in developing the SSHCP. Three agencies, the Sacramento County Water Agency (SCWA), the Sacramento Regional County Sanitation District (SRCSD), and the Capital SouthEast Connector JPA, participated in the development of the SSHCP. The Plan Partner Agencies will receive Take authorization under the ITPs for their Covered Activities (see Chapter 4). The ITPs will provide Take authorization directly to SCWA and SRCSD, and the Capital SouthEast Connector JPA will be covered by a separate ITP. This means that these agencies do not have to apply to the County, any City, or the Implementing Entity for Take coverage. The Take coverage provided to the Plan Partner Agencies applies only to their own Covered Activities;<sup>1</sup> Plan Partner Agencies cannot extend Take authorization to Project Applicants or any other third parties.

The Plan Partner Agencies are:

- Sacramento County Water Agency
- Sacramento Regional County Sanitation District
- Capital SouthEast Connector Joint Powers Authority

#### **Authority**

- Conduct their own Covered Activities.

#### **Responsibilities and Duties**

- Submit plans for designated types of proposed projects to the Implementing Entity for its review and comment.
- Comply with terms of the applicable ITP and the Implementing Agreement.
- Provide information requested by the Implementing Entity for monitoring progress of or compliance with the SSHCP.
- Pay HCP-related fees on their own Covered Activities consistent with the SSHCP.

#### **10.3.3 Implementing Entity – the Joint Exercise of Powers Authority (JPA)**

Implementation of the SSHCP will be overseen by a Joint Exercise of Powers Authority (JPA). The JPA is responsible for SSHCP implementation, coordination, monitoring, and enforcement

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<sup>1</sup> Each Plan Partner Agency's Take authorization will cover its own employees, representatives, consultants and contractors.

functions. It will receive an ITP and may issue a "Certificate of Inclusion" to authorize Take coverage for Participating Special Entities where a Participating Special Entity's project is not subject to the regulatory authority of the County or the Cities.

The JPA will be composed of elected officials or their representatives from each of the Cities and County. As such, the JPA will be subject to the requirements of the Ralph M. Brown Act, the Public Records Act, and other laws providing for the conduct of the government's business in the open.

The JPA will retain staff as appropriate to provide the expertise necessary to implement the SSHCP. Staffing may include personnel such as an executive director, land acquisition agent, preserve manager, staff biologist and administrative staff at a level that is sufficient to implement the Plan. The Implementing Entity will ensure that the SSHCP has retained sufficient staff or contractors (including consultants) to accomplish all of the Implementing Entity's responsibilities and duties under the Plan, including, but not limited to land/easement acquisitions; Preserve monitoring and management; preparation of annual compliance, effectiveness, and financial accounting reports; species and habitat monitoring and management; restoration of habitat; and grant writing. The Implementing Entity will ensure that the level of staffing is adequate to run the day-to-day operations of the SSHCP preserve system.

The Implementing Entity will prepare annual written compliance, effectiveness, and financial accounting reports. Annual reports document Plan compliance and will be available to the Public Advisory Committee to help its members better advise the Implementing Entity.

The Implementing Entity is responsible for implementing the SSHCP and ensuring compliance with the Implementing Agreement and the SSHCP. In carrying out its duties, the Implementing Entity will confer with the Public Advisory Committee or other groups or individuals, as appropriate.

#### **Authority**

- Monitor compliance with SSHCP.
- Consider Participating Special Entities' requests for coverage and, at its discretion, approve Participating Special Entity agreements.
- Collect fees and accept dedications of interests in land, and expend fees for the purpose of implementing the SSHCP.
- Set and adjust appropriate amount of mitigation fees.
- Acquire, hold, and sell or exchange title to property as needed, including approvals of any dedication of land or easement in lieu of fee payment.
- Determine strategy for Preserve assembly (i.e., determine which parcels of land should be acquired, in what order).
- Review and approve dedications of land or easements in lieu of fee payments.

- Retain appropriate staff and/or contractors, as set forth in the JPA Agreement for the Implementing Entity, to ensure appropriate and adequate implementation of the Implementing Entity's responsibilities and duties.
- Enter into contracts and agreements with third parties as needed to implement the SSHCP (e.g., contracts with owners and operators of existing mitigation banks to ensure management consistent with SSHCP principles and contracts with consultants to assist in SSHCP implementation).
- Request reports, in addition to those required by the SSHCP, as needed for monitoring or enforcement.

### **Responsibilities and Duties**

- Monitor actions of Plan Participants to ensure compliance with SSHCP and notify Plan Participants if actions are not in compliance.
- Assist in the resolution of disputes among Plan Participants.
- Review applications for Participating Special Entities and determine whether the project qualifies for a Participating Special Entity Agreement.
- Collaborate and exchange information with the Public Advisory Committee (PAC) and the Technical Advisory Committee (TAC), when the Implementing Entity finds it appropriate to do so. If the Implementing Entity determines that it will be beneficial to obtain input from the PAC or TAC on a pending Implementing Entity decision, it should provide the relevant information to the PAC or TAC with sufficient time to allow the committee to review the data and respond to the Implementing Entity.
- Review compliance determinations submitted by Plan Participants, as described in Section 6.2.2.
- Prepare compliance and effectiveness monitoring reports for any activities of the Implementing Entity.
- Evaluate any proposed dedication of land by any entity for consistency with SSHCP goals, objectives, and preserve design guidelines.
- Develop agreements with third parties to assist in acquiring interests in land or in managing Preserves consistent with the SSHCP.
- Prepare annual budgets and determine appropriate amount of mitigation fees.
- Manage and track fees received and land interests acquired, monitoring and management costs, and other plan implementation costs.
- Provide public notice of fee amounts.
- Manage or contract for the management of the Plan's non-wasting endowment.
- Provide public information on the SSHCP, the process, the status of implementation, and specific projects.

- Research, pursue, and negotiate acquisitions of interests in land.
- Conduct Preconstruction Surveys.
- Pursue grant opportunities for acquisition or restoration opportunities.
- Prepare and implement appropriate management plans for each preserve.
- Monitor and enforce conservation easements.
- Implement monitoring and adaptive management protocols.
- Implement habitat restoration, creation, and enhancement measures.
- Implement habitat and species-specific conservation measures in compliance with the Conservation Strategy.
- Prepare work plans to assist with Plan implementation
- Assist the County and the Cities with questions regarding Plan implementation.
- Conduct public outreach in coordination with the Plan Participants.

#### **10.3.4 SSHCP Advisory Committees**

The Implementing Entity will form two committees to help inform decisions regarding SSHCP implementation and to provide an additional avenue for stakeholders and the general public to receive information regarding SSHCP implementation.

##### **i. Public Advisory Committee (PAC)**

A “Public Advisory Committee” (PAC) will provide advice to the Implementing Entity about SSHCP implementation, including subjects such as the assessment of fees, Plan Amendments, and progress toward Plan goals and objectives. At a minimum, PAC membership will be comprised of stakeholders representing the development, agricultural, and environmental communities; other individuals or representatives of other stakeholder groups may also be appointed, at the discretion of the Implementing Entity. The PAC members will be expected to inform their respective constituents of actions taken by the Implementing Entity and of general progress implementing the Plan. The PAC will be formed within six months of implementation of the SSHCP.

##### **Authority**

- The PAC will advise the Implementing Entity regarding the implementation of the Plan.

##### **Duties and Responsibilities**

- Review progress made toward implementing the Conservation Strategy and other SSHCP goals, and recommend actions to improve implementation, if needed.
- Share information with stakeholder groups and other interested members of the public.
- Review and advise the Implementing Entity regarding:
  - SSHCP Plan Amendments.

- Monitoring and Management Protocols.
- Modifications to SSHCP Goals, Objectives, and Measures.
- Implementation of Management Plans.
- Revisions to adaptive management strategies.
- Preserve design strategies.

**ii. Technical Advisory Committee (TAC)**

A Technical Advisory Committee (“TAC”) will be formed to inform the scientific decisions made by the Implementing Entity in implementing the Plan. The TAC’s purpose will be to provide the Implementing Entity with the best available data regarding scientific issues. Topics that the TAC may provide guidance on include creation or restoration of sustainable habitats and/or wetlands, biological functions and value of land or easements proposed to be acquired, and management plans and practices.

The TAC will be comprised of members selected by the Implementing Entity. In addition, each of the Resource Agencies may designate one member to sit on the TAC. Members of the TAC should have appropriate knowledge, education, or experience in an appropriate scientific field.

**Authority**

- Advise the Implementing Entity on location of wetlands to be restored or created.
- Advise the Implementing Entity on issues related to the management of Preserves.
- Advise the Implementing Entity on issues related to the monitoring and adaptive management practices of Preserves.
- Advise the Implementing Entity on other scientific issues as identified by the Implementing Entity or the TAC.

**Duties and Responsibilities**

- Review information regarding the location of wetlands to be restored or created, and provide recommendations to the Implementing Entity.
- Review information regarding the management plans for Preserves and provide recommendations to the Implementing Entity.
- Review information regarding the monitoring plans for Preserves and provide recommendations to the Implementing Entity.
- Provide other input, as requested by the Implementing Entity.

**10.3.5 Third Party Participants**

Third Party Participants include Project Applicants and Participating Special Entities. Third Party Participants are entities or individuals who are not Permittees but who may still receive take coverage under the SSHCP. Project Applicants who meet the requirements of the SSHCP may receive Take authorization from the County or a City, while Participating Special Entities may

receive Take authorization from the Implementing Entity. The Third Party Participants' proposed activities must satisfy the requirements of and be executed consistent with the goals, objectives, and requirements of the SSHCP.

**i. Project Applicants**

Project Applicants are individuals, organizations, or agencies that are extended Incidental Take authorization from one or more of the Cities or the County. Projects subject to the regulatory authority of a City or the County are eligible for Take authorization, if the Project Applicant submits all required project information in a timely manner and pays the appropriate SSHCP fees. Project Applicants: submit proposed projects to the appropriate City or County, submit all required project information, pay SSHCP-related fees, and conduct Covered Activities (as approved by the appropriate City or County).

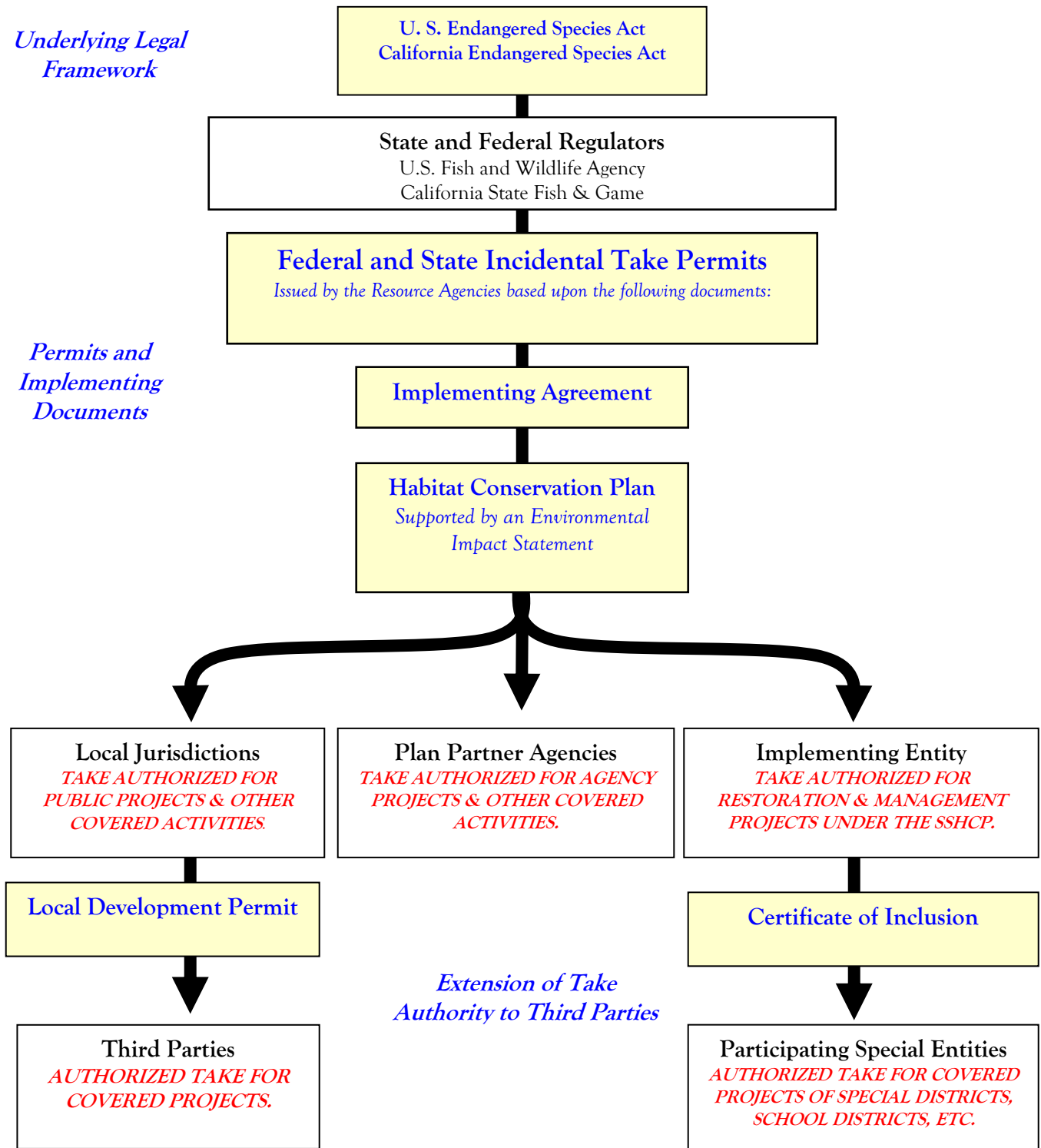
**ii. Participating Special Entities**

Some activities by other governmental entities (e.g., school districts, reclamation districts, irrigation or water districts, utilities, etc.) may need Incidental Take coverage under the SSHCP, but are not subject to the regulatory authority of a City or the County. The Implementing Entity may grant Incidental Take authorization to these Participating Special Entities under a Participating Special Entity Agreement if their projects are consistent with the goals, objectives, and requirements of the SSHCP. A Participating Special Entity Agreement is an agreement between the Implementing Entity and the Participating Species Entity that includes as enforceable terms or conditions all relevant terms and conditions of the SSHCP and the Implementing Agreement.

To receive Take coverage, a Participating Special Entity must file an application with the Implementing Entity in a form requested by the Implementing Entity (see Chapter 6). The Participating Special Entity applicant will be responsible for all costs associated with the processing the application and any costs of the Implementing Entity in administering, monitoring, or enforcing the Participating Species Entity Agreement. Participating Special Entities: submit their proposed projects to the JPA, enter into Participating Special Entity Agreements as approved by the JPA, conduct Covered Activities in accordance with the Participating Special Entity Agreements, and pay SSHCP-related fees consistent with the HCP.

- Figure 10-1

### Flow of Authority for the SSHCP



## 10.4 Implementation Structure

All Covered Activities that are within the SSHCP Plan Area are eligible for Take authorization under the ITPs, subject to predictable, established mitigation requirements. The basics of those mitigation requirements are covered in this section.

### 10.4.1 Method for Calculating Impacted Acreages

Calculations used to estimate the amount of habitat impacted by a project may be based on the SSHCP's Habitat Cover-Types Map or project planning surveys. The Cover-Types Map has been produced using remotely sensed imagery. While this information is accurate at a landscape level, it may not reveal the precise characteristics of particular properties. To verify the particular conditions on the ground, individual projects that are processed for Incidental Take authorization may require a site-specific planning survey to determine the exact location and extent of wetland, riparian, and other cover-types on the project site (see Chapter 6). These site-specific data will be used to update and verify the Cover-Types Map.

A Wetland/Riparian Delineation identifies and accurately maps the type and acreage of wetland or riparian habitat found on the site, categorizing wetlands into one of the six wetland or four riparian Cover-Types as classified on the SSHCP Cover-Types Map (Freshwater Marsh, Open Water, Seasonal Impoundment, Seasonal Wetland, Swale, Vernal Pool, Mixed Riparian Forest, Mixed Riparian Woodlands, Valley Oak Riparian or Cottonwood Riparian Woodland). The Wetland/Riparian Delineation is prepared by the project applicant and subject to verification by the Implementing Entity.<sup>2</sup>

The calculation of a project's impacted acreage is a two-step process of integrating the site-specific Wetlands/Riparian delineation with the generalized Cover-Types Map data. Using the Cover-Types Map, the acreages for all Cover-Types on a project site are generated using GIS. The mapped wetlands/riparian data are adjusted to conform to the site-specific delineation data. Because the acreage of all Cover-Types together must equal the total acreage of the project, the non-wetlands/riparian Cover-Types will be adjusted to compensate for any differences between the delineated acreage and wetlands acreage identified in the Cover-Types map. The remaining habitats on the project site may be determined by consulting the SSHCP Habitat Cover-Types mapping for the subject property or by submitting a land Cover-types survey to the appropriate review entity consistent with the classifications and minimum-mapping units in Appendix E: Land Cover-Type Report. When the mapping adjustment is made by relying on the SSHCP Habitat Cover-Types mapping for the subject property, only the predominant upland Cover-Type for the site will be adjusted.

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<sup>2</sup> The Implementing Entity will presume that Wetland/Riparian Delineations that have already been approved by ACOE are accurate and valid, provided the delineation was approved within 5 years of the Development application.

### **10.4.2 Timing of Fee Payments**

Mitigation of a project's impacts via dedication of interests in land or payment of fees is required prior to the issuance of any permits for grading, building, or other site improvements for the project (see Chapter 6). Fee payment or acceptance of easements generally will not be permitted more than 60 days in advance of site disturbance or issuance of a grading permit.

### **10.4.3 Appeals Process**

The Implementing Entity will review the data to determine the habitats on the project site and initial impact assessment. If a project proponent disagrees with the initial impacts assessment, he or she can appeal the assessment.

## **10.5 Fee Title and Easement Acquisition**

### **10.5.1 General Acquisition Criteria**

The SSHCP Conservation Strategy (Chapter 7) guides the final form and design of the SSHCP Preserve system based on anticipated conversion of Habitat. The Implementing Entity will assemble the Preserve System largely on a parcel-by-parcel basis over a period of decades. There will be many criteria to consider when making acquisition decisions. Some of the key criteria for acquisitions of interests in land, such as price and availability, will vary as the SSHCP Preserve System develops and as other circumstances change. Chapter 7 includes some of the criteria that the Implementing Entity may use to prioritize acquisitions of specified interests in land.

These criteria include: occurrences of uncommon Covered Species, land availability and cost, proximity to existing Development or Preserves, need for mitigation of a particular Habitat Cover-Type in a particular area, ability to enlarge an existing Preserve or contribute to Linkages between Preserves, and size of the parcel.

Since smaller parcels are typically more expensive to acquire and manage, the Implementing Entity generally will not acquire parcels or easements on parcels smaller than 20 acres in size unless the purchase will advance the goals and objectives of the SSHCP, such as protecting an existing occurrence of a SSHCP Covered Species, adding to a existing Preserve to enhance ecological integrity or to create connectivity between Preserves.

### **10.5.2 Process for Acquisition of Interests in Land**

Prior to the acceptance or purchase of interests in land, the Implementing Entity must determine the land's suitability for meeting the Objectives of the SSHCP and for advancing the Conservation Strategy (See Chapter 7). It is anticipated that the Implementing Entity will take the following steps when considering all fee title or conservation easement acquisitions, in addition to any steps required to ensure compliance with applicable federal and state laws, in determining whether to accept an offer of dedication or to acquire an interest in land.

1. Identify and rank acquisition options based on potential to achieve stated Plan objectives and acquisition criteria as cited in Section 10.6.1 and 10.6.2. Careful consideration must be made as to the acquisition requirements of a particular zone and

- Habitat Cover-Type needed. Properties that fulfill Objectives that are more difficult to achieve should receive higher priority.
2. Determine landowner interest in selling easements or fee title. Execute agreements for interested landowners necessary to prepare a Preserve Documentation Report (PDR) (See Appendix X for PDR template).
  3. Obtain a title report to determine if there are encumbrances that might exclude them from acquisition. Properties with encumbered water rights or surface mineral rights that cannot be subordinated to a conservation easement or habitat protection interest will be excluded from contention for acquisition unless these encumbrances do not influence the integrity of the Preserve.
  4. Examine any existing leases on the property for compatibility with the Management Plan and Objectives of the SSHCP.
  5. Prepare a PDR to assess the baseline inventory of Habitat Cover-Types, species occurrences, and general ecological health and function of the property.
  6. Conduct appraisal and require Phase I survey and environmental determination document.
  7. Prepare an offer for the landowner's consideration and negotiate terms of the acquisition.
  8. Prepare the easement document (for conservation easements) or deed (for acquisitions in fee title), servitude of pasturage (if necessary) and prepare a Management Plan and, if necessary, a Restoration Plan. All documents must be negotiated with the landowner and will likely undergo several iterations before final documents are approved.

In some circumstances, it will be necessary for the Implementing Entity to purchase lands in fee title. Fee simple ownership allows more intensive management than would otherwise be possible on lands held under a conservation easement. It is anticipated that in total at least 2,500 acres of agricultural lands and 5,000 acres of vernal pool wetland/grassland habitat will be acquired in fee title. If landowners decline to enter into more intensive management under easements, but wish to sell fee title, then the Implementing Entity may have to purchase the land in fee title to allow intensive management. Fee title acquisition is preferred within the UDA to allow for more intensive management of those Preserves, given their proximity to existing and planned future Development.

All interests in land owned by the Implementing Entity will be protected in perpetuity. A Management Plan must be developed for each property within one year of its acquisition (transfer of title).

There may be instances when a project proponent wishes to dedicate property to the Preserve to satisfy or partially satisfy mitigation requirements. Dedications of land must be consistent with the conditions established in the Conservation Strategy.

Conversely, in some areas within the UDA, the Plan Participants have already identified the parcels of land that will be needed to assemble the Preserve System. When those properties are

proposed for Development, the Plan Participants will require the establishment of Preserves consistent with the Conservation Strategy.

Properties cannot be integrated into the Preserve unless adequate water rights and all surface mining rights can be secured. Surface mining is not compatible with the objectives of this Plan and sufficient water for conservation/natural preserve purposes is necessary to implement management actions required under this Plan.

The Implementing Entity will evaluate each proposed dedication of an interest in land on a case-by-case basis. The PDR will determine the acreage of each Habitat Cover-Type that is available on the dedicated property. The value of the total amount of land available for dedication is subtracted from the project proponent's total mitigation obligation.

In the event that conservation land is donated or granted to the Implementing Entity by another entity or an estate, the Implementing Entity will determine if the land is consistent with the SSHCP Conservation Strategy. If not, then the Implementing Entity will determine if the land can be sold and the proceeds used to assist in implementing the SSHCP. If the land does not meet the SSHCP Conservation Strategy and its sale is restricted or prohibited, then the Implementing Entity will not accept the property.

In instances where land or easements are dedicated to the Implementing Entity and are in excess of required mitigation, credits may be provided to the land owner for sale or use at a future date, or can be sold to the Implementing Entity once monies are made available for the purchase, or given to the Implementing Entity for their sale at a future date. The excess acres may be held by the Implementing Entity and credited towards the proponent's use or future sale. The method for utilizing the excess acreage is at the discretion of the landowner. The Implementing Entity must either purchase the credits at fair market value or allow the credits to be used or sold to another project proponent to be used as mitigation.

### **10.5.3 Willing Sellers**

The SSHCP will only acquire lands for preservation from willing sellers. At no time will the Implementing Entity use condemnation or eminent domain to require landowners to sell their property to meet SSHCP objectives. In addition, the SSHCP will not knowingly support or enter into any agreements or contracts where condemnation will be or has been utilized to acquire land or easements for the purposes of conservation or mitigation. These basic tenets of the SSHCP are written into the Implementing Agreement.

If the Implementing Entity is unable to find landowners willing to sell sufficient interests in land to assemble the Preserve System, the Implementing Entity will suspend issuance of Incidental Take authorization until willing sellers become available. An inability to find willing sellers is defined as a period of three years where an acquisition cannot be made despite efforts in earnest by the Implementing Entity to acquire land or easements. Permits may still be issued for project proponents who provide suitable conservation easements or land to mitigate the impacts of their projects.

#### **10.5.4 Conservation Easements**

Outside of the UDA, it is anticipated that many of the interests in land acquired by the Implementing Entity will be in the form of conservation easements. It is anticipated that 90% of the Preserve System outside of the UDA will be established via easement acquisitions. Easement acquisition offers advantages over fee title acquisition in that it maintains private ownership of lands and generally costs less to acquire. The SSHCP may also benefit from reduced management costs because the landowner holds primary responsibility for maintaining habitat consistent with an approved Management Plan.

Outside the UDA, fee title land acquisition occurs only if available easements do not adequately meet the HCP Conservation Goals and Objectives or if attempts to purchase easements fail. Any property purchased in fee title because of the unavailability of easement options may be sold back to a private landowner after an easement is established.

The Implementing Entity will hold all conservation easements it purchases or accepts from a landowner or a project proponent to satisfy mitigation requirements. All conservation easements will be held in perpetuity and must have a third party enforcement beneficiary. All conservation easements will include a Preserve or Management Plan that is incorporated into the easement conditions.

Conservation easements will be negotiated individually between willing sellers and the Implementing Entity. Prescriptive conservation easements contain provisions that allow the Implementing Entity to manage the encumbered property. The property owner and the Implementing Entity can add more provisions only if both parties mutually agree to do so. All easements must include the minimum restrictions described below (see Appendix X: Template SSHCP easement); prescriptive easements will include additional provisions.

In general, all conservation easements prohibit: engaging in any activity on, or use of, the easement area inconsistent with the established SSHCP management plan; constructing or placing any new building within the easement area that is not expressly allowed by the easement; transferring or abandoning any water, air, or mineral rights necessary to protect, sustain, maintain or restore the biological resources and other conservation values; mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand, or other material on or through the surface of the easement area, and granting or authorizing any surface entry for any of these purposes; paving or otherwise covering the easement area with concrete, asphalt, or any other impervious material; planting and/or cultivation of orchards or vineyards.

#### **10.5.5 Conservation Banks**

Conservation Banks are areas set aside specifically to provide biological mitigation in perpetuity. They are often privately owned and are available to mitigate impacts from different projects. They vary greatly in the habitat or species they protect and may contain existing, restored, or created habitat.

Banks that have demonstrated consistency with SSHCP Conservation Strategy and monitoring and management goals, and that are within approved acquisition areas, can be utilized by the

SSHCP to meet the goals of the Plan. Qualified banks are required to apply with the SSHCP Implementing Entity. Only conservation banks with mitigation lands within the SSHCP Plan Area will qualify for participation.

The SSHCP cannot guarantee that preexisting agreements with regulatory agencies concerning credit allocations or ratios will still be valid. This is because the SSHCP Implementing Entity must satisfy acreage-based permit requirements. Nothing within the SSHCP will prohibit the creation of new conservation banks nor will it prohibit conservation banks from selling credits to projects not covered by the SSHCP process or plan area.

#### **10.5.6 Stay-Ahead Provision**

##### **i. Stay-Ahead Requirement**

The Implementing Entity will ensure that lands are added to the Preserve System at or faster than the pace at which Covered Activities impact habitat. This requirement is referred to as the “Stay-Ahead” Requirement. As further described in Chapter X, the amount of each Habitat Cover-Type added to the Preserve System as a proportion of the total requirement for each Habitat Cover-Type will be equal to or greater than the impact on that Habitat Cover-Type as a proportion of the total impact expected by all Covered Activities. For example, at or before the time twenty-five (25) percent of the expected impacts on Valley Grassland has occurred, the Implementing Entity will add twenty-five (25) percent of the required acreage of Valley Grassland to the Preserve System. The Implementing Entity will in good faith attempt to maintain strict proportionality between creation of the Preserve System and the impacts of Covered Activities, but the Implementing Entity will fulfill the requirements of this Section and Chapter X so long as it ensures that the pace at which the Preserve System is created does not fall behind the pace at which Covered Activities impact habitat by more than ten (10) percent for any Habitat Cover-Type. The Implementing Entity will measure and report on compliance with the stay-ahead requirement as described in Chapter X.

##### **ii. Preserve Lands Acquired Using State or Federal Funding**

As provided in Section XX and further described in Chapter X, completion of the Preserve System will require contributions of state and federal funding. Lands added to the Preserve System using funds from state or federal agencies will be counted toward the land acquisition requirements of the SSHCP and the Stay-Ahead requirement.

##### **iii. Failure to Stay Ahead**

If the Resource Agencies determine that the requirements of this Section or Chapter X have not been fulfilled, they will so notify the Implementing Entity in writing, and the Implementing Entity and Resource Agencies will meet to develop a mutually agreeable plan of action that will fulfill such requirements, as further described in Chapter X.

#### **iv. Dedication of Land in Lieu of Development Fee to Stay Ahead**

If the Implementing Entity concludes at any time that the pace at which lands are added to the Preserve System is likely to fail to meet the requirements of this Section XX, the Implementing Entity may recommend that all Permittees provide, and require Third Party Participants to provide, land in lieu of fees, as provided in Section XXX and further described in Chapter X. The Implementing Entity will provide written notice thereof to the other Permittees. The Implementing Entity's notice will recommend a scope of the land in lieu of fee requirement, for example, applying the land in lieu of fee requirement to Covered Activities that will impact ten (10) acres or more. All Permittees will thereafter apply the recommended land in lieu of fee requirement to Covered Activities that they implement; the Implementing Entity will apply the requirement to Participating Special Entities; and the County and Cities will consider applying the requirement to Private Party Participants.

The Implementing Entity may recommend terminating the land in lieu of fee requirement only after it determines that the pace at which lands added to the Preserve System without the requirement will likely meet the requirements of this Section XX. Upon making such a determination, the Implementing Entity will so notify the other Permittees in writing, and the Permittees may thereafter terminate the requirement with regard to their own Covered Activities and to Third Party Participants.

#### **10.5.7 Land Acquired Independent of the SSHCP Program**

##### **i. Acquisitions by Conservancies or Non-Profits**

There are currently at least four non-profit conservancies working within the Plan Area and it is anticipated that they will continue to operate and acquire interests in land. It may be appropriate for the SSHCP to work with and to enter into cooperative agreements with these conservancies. For instance, if a desirable property becomes available for acquisition but the SSHCP Implementing Entity only has a portion of the funding required, it may be appropriate to acquire land through a partnership where the conservancy funds a portion of the acquisition costs.

If a cost-sharing does occur between a conservancy and the SSHCP, it must be determined how many acres of credit will be allocated to the SSHCP to meet mitigation requirements. Land acquired in this manner may be counted toward meeting species recovery goals and associated acquisition requirements if the acquisition is consistent with SSHCP goals and objectives, an in-perpetuity conservation easement is placed on the land, and certain other conditions are met.

##### **ii. Mitigation Outside of the SSHCP Process**

There may be instances when land is acquired within the SSHCP Area for purposes of mitigation or open space protection that is not affiliated with the SSHCP program. If these lands contribute to the SSHCP Preserve System, the Implementing Entity should consider holding the protected property or easements to manage them consistent with SSHCP goals and objectives.

### **10.5.8 Management Plans**

All lands that become part of the Preserve System, whether owned in fee title or under conservation easement, must be managed consistently with the objectives of the SSHCP. To ensure that this occurs, the Implementing Entity will ensure that each property is subject to an appropriate Management Plan. Management Plans set parameters for ensuring the protection of the property's benefits to covered species and their habitats. The amount of detail required in the Management Plan will depend on factors such as the nature of the interest in land being acquired and the resources that are present on the property. For example, an easement that protects vernal pool habitat may have a Management Plan that requires a grazing regime to enhance vernal pools. Easements that protect Sandhill Crane populations may require that the property be flooded after crops have been harvested. Examples of Management Plans to be incorporated into easements are found in Appendix X.

## **10.6 Plan Modifications & Amendments**

A modification to the SSHCP can be requested by a Permittee at any time. Requests for modification must be made in accordance with USFWS and DFG regulations in effect at the time and with the conditions established under the Implementation Agreement. There are three categories of modifications differing in significance and process.

### **10.6.1 Administrative Revisions/Errata**

Administrative revisions are non-substantive changes to the Plan. These changes are clerical (e.g., correcting obvious errors in the text of the Plan) or other non-substantive changes that clarify inconsistencies or ambiguities in the Plan (e.g., reconciling slightly different descriptions of the same monitoring protocol). Administrative revisions do not require authorization from the USFWS or DFG. The Implementing Entity makes the final decisions on Administrative Revisions/Errata. The following are examples of administrative revisions:

- Corrections of typographical, grammatical and similar editing errors that do not change the intended meaning.
- Corrections of any maps or exhibits to correct any insignificant errors in mapping.

### **10.6.2 Minor Modifications**

Minor Modifications are changes to the Plan that do not require amendments to the ITPs or IA but may alter specific Plan objectives in minor ways to meet Plan goals. The following are examples of minor modifications:

- Changes to Preserve locations justified by newly obtained information.
- Addition of Plan Objectives and Measures that advance the probability of achieving Plan goals, such as specific species or habitat goals.
- Minor revisions to monitoring, reporting, or management protocols.

Minor Modifications may be proposed by any Plan Participant or the Implementing Entity and must be approved by all other Plan Participants, the Implementing Entity, and the Resources Agencies. The proposal must detail the nature of the proposed modification and provide a rationale for why it is consistent with the objectives of the Plan. The parties have thirty days to respond to the proposal and may offer modifications. The final proposal must be approved by all Plan Participants (including the Implementing Entity) and must be forwarded to the Resources Agencies for consideration. The Resource Agencies have 30 days to respond to a proposal for a Minor Modification of the Plan. A lack of a response by the USFWS and/or DFG will constitute approval of the modification.

### **10.6.3 Plan Amendments**

Plan Amendments are revisions to the Plan or the IA that require a corresponding Amendment to one of the ITPs. Plan Amendments must be approved by all Plan Participants according to processes established in their regulations. Plan Amendments may be proposed by any of the Plan Participants. The proposal must detail the nature of the proposed Plan Amendment, its rationale and any documentation needed to process it, including any required environmental studies. Consideration of the proposal by the Resources Agencies is subject to the internal processes of those agencies and may include a consultation through the Section 7 process with revised findings.

The following are examples of Plan Amendments:

- Adjustment to the Plan Area or permit area that results in additional Incidental Take of a Covered Species or habitat, or that would exceed permitted Take amounts.
- The addition of a Covered Species.
- The addition of a Covered Activity that results in additional impacts not already covered by the Plan.
- Extension of the permit duration beyond 50 years.
- Any other changes that would not fall within the scope and intent of Sections 10.6.1 through 10.6.4.

### **10.6.4 Adaptive Management**

Except as otherwise provided in Chapter XX, modification or substitution of ineffective management or monitoring actions and development of new management strategies consistent with the Adaptive Management Program described in Chapter XX shall not require any Amendment to the SSHCP, the IA or the Permits.

### **10.6.5 Land Use Changes**

The Plan Participants acknowledge that the adoption and amendment of General Plans, Specific Plans, Community Plans, zoning ordinances and similar land use regulations, and the granting of land use entitlements by the County and the Cities are matters within the sole discretion of the applicable land use jurisdiction. Changes in land use designations or regulations shall not require Amendments to the SSHCP or the approval of any of the other Plan Participants.

### **10.6.6 Permit Renewal**

A Permittee may apply for renewal of the ITP no less than 30 days prior to the expiration of the ITP. The current USFWS permit renewal procedures are located at 50 CFR 13.22 of the Code of Federal Regulations; however, the renewal process will be subject to the renewal regulations in effect at the time of the request.

If a request for renewal is filed 30 days prior to expiration of the ITP, the ITP will remain valid through the renewal period. However, no additional Take of Covered Species, beyond the level specified in the ITP, may occur without the approval of the Resource Agencies.

## **10.7 Implementing Agreement**

The Implementing Agreement (IA) is a binding legal document signed by all Plan Participants that identifies each of their responsibilities and obligations in Plan implementation. If there is a conflict between the SSHCP and the IA, the IA will take precedence. The IA may have to be amended to accommodate Amendments to the SSHCP. Modifications to the IA are made by agreement of the signatories in accordance with the terms of the agreement.

## **10.8 Implementing Ordinance**

The Implementing Ordinances are documents that each Local Jurisdiction must adopt to formally incorporate the Implementing Agreement and SSHCP into its project review and approval procedures. The Ordinance helps ensure consistent implementation of the SSHCP and Implementing Agreement and provides the primary legal mechanism through which the Local Jurisdictions implement the Plan.

The Implementing Ordinance must be adopted by each Local Jurisdiction before Incidental Take authorization can be extended to eligible projects. The format and adoption process for the Implementing Ordinance can conform to the needs of the individual jurisdictions and there may be terms of the ordinance that reflect the jurisdiction-specific terms of the Implementing Agreement. However, the Implementing Ordinances will contain common required language to ensure consistent implementation of the Plan.

## **10.9 Reporting**

### **10.9.1 Annual and 5-Year Implementation Reports**

The Implementing Entity must prepare an Annual Report summarizing the previous year's activities, including, but not limited to: the acreage of habitat impacted under the SSHCP, acreage of habitat protected and restored under the SSHCP, management actions, monitoring results, Adaptive Management protocols and status of compliance with each measure. Final reports are due to the Resources Agencies by April 1 following the end of the previous year's reporting cycle on December 31. This provides the Implementing Entity adequate time to review the draft Annual Report and approve the final.

The purpose of the Annual Report is to provide all Plan Participants, stakeholders and the Resource Agencies with an accounting of actions taken by the Implementing Entity and to provide verification that the Plan is being implemented properly. The Annual Report also identifies areas where implementation has been ineffective and should be modified. Every fifth year after initial implementation, the Annual Report shall also contain an audit of the Implementing Entity's operating procedures and effectiveness in implementing the SSHCP Goals, Objectives, and Measures.

After the ITPs expire, the Implementing Entity will continue to prepare reports that evaluate the effectiveness of the Preserve System. These effectiveness reports will be completed every 5 years following the expiration of the ITPs.

The following information is required to be addressed in each Annual Report:

- An accounting of Take of each habitat type, including a measurement of the acreage of Cover-Type lost to Covered Activities. This will be calculated for the reporting year and cumulatively.
- An accounting of land preserved by fee title or conservation easement and the acreage of Habitat Cover-Type protected. This will be calculated for the reporting year and cumulatively.
- An accounting of land restored as measured by the acreage of Habitat Cover-Type that is restored. This will be calculated for the reporting year and cumulatively.
- A summary of progress made towards the completion of all conservation measures.
- An accounting of all fees collected and a summary of fees collected for purposes of mitigation, restoration, operations and management, and administration.
- A discussion of any recommended actions necessary to achieve better compliance with SSHCP Goals and Objectives. The recommendations may include Modifications, Amendments or other actions.

The following are required to be addressed in each annual report and will also be required for each effectiveness report:

- An accounting of species richness and diversity on each Preserve. This is required for all Covered Species and may include other species at the discretion of the Implementing Entity.
- An accounting of invasive species infestations found on each Preserve, an estimate of acreage impacted by the species, and an evaluation as to whether the invasive species is causing any harm to Covered Species.

## 10.10 Public Participation

Successful implementation of the SSHCP is dependent upon public support. It is the intent of the Plan Participants to provide ample opportunities for public participation and input in the SSHCP implementation process. Toward this end, the Implementing Entity will host an annual public workshop on the status of the SSHCP. The Annual Report described in section 10.10.1 will serve as the foundation for each workshop. The workshop is an opportunity to examine how the Plan is working from various perspectives including progress toward biological benchmarks and maintenance of economic viability. The workshop will provide the public with the opportunity to ask questions of and provide feedback to the Implementing Entity.

To help ensure Plan transparency, the Implementing Entity will establish a web site where SSHCP-related documents, such as the Plan, its Appendices, the Implementing Agreement, the Biological Opinion, Annual Reports, Effectiveness Reports, and ITPs will be posted. Additionally, as noted above, all meetings of the Implementing Entity will be subject to California's open meeting law, the Ralph M. Brown Act.