

CHAPTER 1: INTRODUCTION

1.1 Purpose and Need

The South Sacramento Habitat Conservation Plan (SSHCP) is a regional approach to addressing issues related to urban development, habitat conservation, open space protection and agricultural protection. The SSHCP will consolidate environmental efforts to protect and enhance wetland (primarily vernal pools), aquatic and upland habitats to provide ecologically viable conservation areas. It will also minimize regulatory hurdles and streamline the permitting process for projects that engage in development activities. The SSHCP will cover 41 different species of plants and wildlife including 12 that are state or federally listed as threatened or endangered. The SSHCP will be an agreement between state/federal wildlife and wetland regulators and participating local jurisdictions, which will allow land owners to engage in the "incidental take" of listed species in return for conservation commitments to the participating local jurisdictions. These commitments will be fulfilled through take avoidance and minimization measures and by using funds from a per-acre fee paid by developers to mitigate habitat impacts from new development or from land and easement dedications. Fees will be directed to both public and private mitigation sites that provide large-scale habitat preservation and limited habitat restoration opportunities. Supplementary monies will be sought from grants or other funding sources to acquire reserve lands that are required to preserve covered species but are in addition to mitigation requirements.

1.1.1 Benefits of the SSHCP

For the developer there is an expedited and predictable ESA and CWA permitting process at a reduced cost, expedited CEQA compliance process at a reduced cost, predictable and reduced mitigation costs, permit issuance and control by local jurisdictions and voluntary participation. For the environmental community the SSHCP will protect a broad diversity of species and habitats in a manner that provides long-term viability, conserves and enhances ecosystem functions and consolidates mitigation into a meaningful system of preserves that are located in areas of the highest quality habitat. For the agricultural community, the SSHCP provides the opportunity to voluntarily sell conservation easements, provide assurances for farmers concerned about liability of endangered species' use of adjacent lands, and reduce the negative consequences of increased property values from non-agricultural land speculation. The regulatory community benefits from reduced project oversight and the likelihood that additional federal listing will be unnecessary. The citizenry gain the solid protection of natural values that many of us moved to Sacramento for: agricultural land conservation and open space protection in the form of prairie and wetland preservation.

Additionally, but somewhat tangential, benefits of the SSHCP include the ongoing conservation efforts that have benefited from the planning process. Of note is the Sacramento Valley Open Space Conservancy's (SVOSC) Vernal Pool Prairie Preserve near the intersection of Florin and Excelsior Roads. SVOSC has utilized the HCP process as leverage to obtain grant monies for

purchasing properties inside the Prairie Preserve. They have also used HCP generated biological data to target potential areas of acquisition.

In the absence of an HCP, landowners have to negotiate individually with the federal and state regulators to mitigate for habitat loss. This is the current process that has proven expensive and not beneficial for species protection or recovery. The current process typically requires lengthy negotiations between the landowner and the regulators costing both parties considerable staff time and the landowner additional costs associated with carrying the property. The current process has also resulted in the protection of small, ill-shaped and fragmented habitats that are difficult to manage efficiently and typically not designed to provide long-term species protection.

1.1.2 Goals and Principles

Guiding Principles

The SSHCP guiding principles are to develop a Habitat Conservation Plan through a process that:

- Involves all stakeholders in the study area including developers, environmentalists, agriculturists, and government agencies.
- Educates stakeholders regarding the importance of the plan, its components, and its significance to them.
- Progresses in an efficient and expeditious manner through consensus building.

Goals

Through the utilization of said guiding principles, the SSHCP aims to achieve the following goals:

- Ensure long-term viability to aid and enhance recovery of sensitive species in the study area by protecting an adequate quality and quantity of habitat in an integrated manner.
- Accommodate development in appropriate sites with fair and reasonable mitigation cost structure.
- Protect agricultural lands and operations from constraints associated with the plan's implementation.
- Gain the trust of all stakeholders in the permitting process by providing certainty that their interests will be considered in a fair and predictable process.
- Rely on voluntary participation through incentives that make the HCP process preferable to the existing process.
- Provide a streamlined permitting process that reduces permitting cost to developers and taxpayers.
- Provide a comprehensive framework for use in linking plant and animal conservation with local land use programs, consistent with Sacramento County General Plan goals and policies.

1.2 Plan Setting

The geographic scope of the SSHCP study area includes 345,000 acres within South Sacramento County and includes the cities of Rancho Cordova, Galt and Elk Grove. The geographical boundaries of the Plan are defined as being bounded by Highway 50 to the north, the County line with Amador and El Dorado Counties to the east, San Joaquin County to the south, and Interstate 5 to the west. The area excludes the Sacramento-San Joaquin Delta portion of the County

1.2.1 Permit Area

The permit area is that locale in which the SSHCP is requesting authorization from the U.S. Fish and Wildlife Service and the California Department of Fish and Game for activities and projects that may result in the take of species covered by the plan. Permit areas have been designated as those locations within the SSHCP study area that are also within the Sacramento County Urban Services Boundary, within the incorporated cities of Galt, Rancho Cordova and Elk Grove and areas designated as agricultural-residential on the County's General Plan Land Use Diagram.

1.2.2 Permit Holder/Permit Duration

The SSHCP will hold an incidental take permit that is valid for a term of 50 years. The permit duration is based on the projected timeframe for build out to occur within the County's Urban Service Boundary and the current participating city's boundaries. While it is difficult if not impossible to prognosticate trends in development beyond a 15-20 year timeframe, a 50 year permit none the less seems reasonable and is believed to be necessary to provide enough time to complete the establishment of the preserve system. A full analysis of the biological underpinnings and conservation strategies will be conducted periodically (every 5-7 years) throughout the life of the permit. Following each analysis, additional or revised conservation goals and new adaptive management strategies may be implemented to ensure that the Plan meets its long-term objectives and to possibly accommodate amendments to projected take estimates.

It is anticipated that the following local jurisdictions will participate in the SHCP and will hold ESA take permits; the City of Elk Grove, City of Galt, City of Rancho Cordova, County of Sacramento, Sacramento County Water Agency, and Sacramento Regional County Sanitation District.

1.2.3 Covered Activities

Covered activities under this plan will allow for the reasonable expansion of urban areas within the USB and city limits. Activities covered within the USB in the unincorporated County or the cities of Elk Grove, Galt and Rancho Cordova include ground-breaking projects related to private, commercial and industrial development and associated infrastructure that is consistent with County and City General Plans, as well as projects related to transportation, water and waste water development. Consideration is also given to specified projects to be covered outside of the UDA, specifically, projects related to Agricultural-Residential development. In addition, guidelines have been established to allow for activity within the SSHCP preserve system related to the management

and monitoring of preserve systems and the restoration of habitat which will ultimately ensure the overall integrity of the preserve system.

1.3 Plan Development Process

The SSHCP process initially began in 1992 as a watershed study funded with monies granted from the USEPA. In 1993 the regulatory agencies proposed shifting from a watershed study to a more comprehensive approach such as a habitat conservation plan. A small group with County staff and stakeholders worked with a consultant to determine whether an HCP would be politically, economically and biologically viable. Despite concerns regarding the Fish and Wildlife Service's direction for vernal pool protection areas and per acre costs for purchasing and managing HCP lands higher than originally anticipated, the HCP was deemed feasible and further work was conducted for possible strategies and economic analysis.

In 1995, a Board-approved Steering Committee was created with members recruited from the guidance committee and others from outside the planning process. This committee consisted of an equal number of members representing the regulatory, agricultural, development and environmental communities, as well as County staff and Federal and State agency representatives.

The process of crafting the SSHCP began in September 1996 when the Steering Committee drafted project goals and principles to guide the development of the Plan. The Steering Committee also formed two subcommittees, biological and economic, and identified members for a Technical Advisory Committee. In February 1997, the Steering Committee recommended and the County hired consulting firms to assist in developing the HCP. The consultant, with direction from the four committees and the County Planning Department was responsible for most of the research and text writing necessary for developing the HCP.

After a hiatus in progress due to a lack of funding, loss of key County personnel and general dissatisfaction over the process, the County reassessed the viability of the SSHCP in 2001 and made major alterations to the process. It was concluded that the County would handle all aspects of project management and document preparation and would hire individual experts to assist in the preparation of specialized documents that could then be used by County staff to prepare various chapters of the SSHCP.

Potential Conversion to an NCCP/HCP

The SSHCP has a conservation (or recovery) standard and based on the preferred alternative that incorporates both habitat-specific and species-specific approaches to best provide for the conservation of all covered species and habitats within the study area. This approach is above the threshold required by the federal Endangered Species Act (FESA) and the California Endangered Species Act (CESA) and is consistent with the intent of the Natural Communities Conservation Planning Act (NCCP) both in current statute and as stated in SB 107.

1.4 Plan Participants and Public Review

Steering Committee

The development of the SSHCP is overseen by a Steering Committee comprised of representatives from the development, environmental, agricultural, landowner, and regulatory communities. While the Steering Committee was formed at the request of the Board of Supervisors, Committee members were not appointed nor did they have the authority to act on behalf of elected officials. The Committee's primary responsibility was to review work products and provide direction to consultants and government agencies who are crafting the Plan document. The Committee was scheduled to meet monthly but was convened only when work products needed review or when discussion was needed to resolve key issues. All meetings were open to the public and were often attended by interested parties.

Biological Subcommittee

The Biological Subcommittee was formed to focus on review of scientifically rigorous documents that the Steering Committee felt were too onerous for their review. The Committee was made up of members of the Steering Committee but frequently included experts in various fields of the biological sciences. These meetings, as are all HCP meetings, were open to the public.

Economic Subcommittee

Much like the Biological Subcommittee, the Economic Subcommittee was formed to address complex economic issues and report back to the Steering Committee with their findings.

Technical Advisory Committee

The Technical Advisory Committee was formed early on in the process to evaluate and establish species lists, habitat cover-types and biological goals and objectives. The members included professional scientists from relevant disciplines and Agency representatives.

Science Advisors

The SSHCP recognized early on that the need for independent scientific review of plan documents was important. However, the County made the decision to utilize the scientific community in a manner that differs from "normal" Scientific Advisory Panels. Instead of hiring a group of scientists to craft a generic preserve design strategy at the onset of Plan development and to provide fairly obvious and in some cases seemingly ineffectual guidelines, the County chose to utilize local experts on a case by case basis as they were needed. This method proved to be far more useful as it enabled consultants and planners to seek answers to specific questions.

Public Outreach

The County of Sacramento has strived to ensure that the public was afforded every opportunity to be part of the planning process and to provide comments and feedback as the Plan was developed. To ensure public participation every meeting of the Steering Committee, Biological Subcommittee and Economic Subcommittee was open to the public. The County maintained an e-mail list of

interested individuals and posted draft materials on a SSHCP Web site. The County has held a number of outreach meetings for the public and has made some presentations to organizations. Additional public outreach workshops and presentations to organizations were conducted including outreach for preparation of the EIS/EIR as required under CEQA and NEPA.

1.5 Regulatory Framework

Endangered Species Acts

Habitat Conservation Plans are essentially Federal and State Endangered Species Act (FESA) permitting documents. The SSHCP results in an incidental take permit from the U.S. Fish and Wildlife Service for plants and animals listed under the federal act and from the Department of Fish and Game for species listed under the California Endangered Species Act (CESA). The County of Sacramento, City of Elk Grove, City of Galt, City of Rancho Cordova, Sacramento County Water Agency, and Sacramento Regional County Sanitation District will be the permittees and will in turn authorize take under discretionary projects that comply with the SSHCP requirements.

Jurisdictional Wetlands

The County of Sacramento will seek a Section 404 programmatic Permit under the Clean Water Act from the U.S. Army Corps of Engineers (USACE) to allow fill of vernal pools and other wetlands and some minor impacts to stream corridors for projects permitted under the SSHCP. Generally, ACE wetland permits require individual projects to avoid impacts to the maximum extent possible. Obtaining ACE approval of the SSHCP conservation and mitigation strategies which includes filling of over 400 acres of wetlands will require compelling biological justification. However, wetland permitting is deemed an essential component of the SSHCP by stakeholders in the development community. Larger projects with wetlands impacts over the threshold acreage will still require individual Section 404 permits. However, we will seek an MOU, Letters of Permission or other instruments whereby the Corps agrees to carry out rapid permitting for such projects when they abide by the conservation and mitigation strategy of the SSHCP.

CEQA and NEPA Compliance

Part of the permitting process is to analyze and disclose for public review the environmental impacts of the proposed actions under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Once the programmatic-level EIR/EIS has been approved, subsequent projects may rely on the biological mitigation measures provided in the programmatic document. The NEPA/CEQA document will cover the Section 404 permit, as well as the federal and state endangered species act permits.

A project that utilizes the SSHCP is still subject to and must comply with CEQA regulations. It is anticipated however, that projects utilizing the SSHCP will also be able to satisfy CEQA mitigation standards as the conservation measures identified in the Plan will be adequate to meet CEQA mitigation requirements. This virtually eliminates the need to complete significant biological sections of an EIR/EIS as SHCPC conservation measures are incorporated into the environmental

document by reference. This has the potential to provide a significant cost savings to project proponents.

Other Permits or Agreements

The SSHCP will also pursue programmatic permitting or agreements with the Central Valley Regional Water Quality Control Board, regarding water quality and waste discharge under Section 401 of the federal Clean Water Act and the State's Porter-Cologne Water Quality Control Act. It may also seek a programmatic Stream Bed Alteration Agreement with the California Department of Fish and Game under Section 1600 of the Fish and Game Code.

Federal Law and Policy

The Endangered Species Act

Section 7 of the Federal Endangered Species Act (FESA) of 1973 states that any action authorized, funded or carried out by a federal agency must, in consultation of the USFWS ensure that its actions are not "likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species".

If necessary, the USFWS will issue a Biological Opinion (BO), which determines whether the permit action will jeopardize the continued existence of the listed species or adversely modify its critical habitat. The BO must include reasonable and prudent alternatives that would avoid such a result.

Section 4 of the FESA directs the USFWS to designate critical habitat for each listed species as well as recovery plans. Although recovery plans provide essential information regarding the conservation needs of listed species, there is no legal requirement that plans be implemented. Section 7(a)(1) of the FESA also mandates every federal agency to "carry out programs for the conservation of listed species". The term "conservation" is defined as the "recovery of a species so that it no longer warrants federal listing".

Initially, Section 9 of the FESA prohibited the "take" of federally listed species unless approved specifically for scientific research and/or conservation actions. The FESA definition of "Take" is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct". In 1982, amendments were made to authorize the incidental take of listed species to non-federal entities such as states, counties, local governments and private landowners under certain circumstances. Section 10 allows the USFWS to issue incidental take permits (ITP) after applicants submit an acceptable habitat conservation plan (HCP) that clearly specifies "the impact which will likely result from such taking and what steps the applicant will take to minimize and mitigate such impacts". Section 10 (a)(1)(B) describes the requirements the conservation plan must meet in order for the USFWS to issue an ITP. An ITP can be issued if an HCP meets the following conditions:

- The taking will be incidental to otherwise lawful activities.
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.
- The applicant will ensure that adequate funding for the plan will be provided.
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

Lands in Sacramento County are subject to the same rules and regulations pertaining to endangered species as on other private lands. Specifically, actions that could result in “take” of a federally listed endangered species are subject to regulation under the Endangered Species Act. For example, changes in agricultural land use (e.g., conversion of vernal pool wetlands to urban development) that could result in the loss of habitat considered important to a federally listed endangered species may be subject to regulation under the ESA.

Through the Consultation Program, the USFWS works with private landowners and other non-Federal entities to develop Habitat Conservation Plans under Section 10 of the ESA that authorize the incidental take of listed species. The HCP process allows private economic development to proceed while promoting listed species conservation.

The protection of federal listed species on federal lands is a priority, yet many federal listed species occur partially, extensively, or exclusively on private lands. Policies and incentives have been developed to protect private landowner’s interests on private lands, while encouraging the landowners to manage their lands in a way that benefits federally listed species. The following is a list of landowner assistance policies:

- **Habitat Conservation Planning (Section 10 of the ESA)** allows private landowners to develop land supporting listed species provided that they undertake certain conservation measures developed in conjunction with USFWS and/or NOAA. The **No Surprises Policy** assures participating landowners that they will incur no additional mitigation requirements beyond those they agreed to in their Habitat Conservation Plans, even if circumstances change.
- **The Safe Harbor Policy** encourages voluntary management for listed species to promote recovery on non-Federal lands by giving assurances to the landowners that no additional future regulatory restrictions will be imposed.
- **The Candidate Conservation Agreements with Assurances Policy** provides incentives for non-Federal property owners to conserve candidate species, thus potentially making listing unnecessary. Candidate species are those species for which sufficient information exists to

propose them as endangered or threatened. These species do not technically receive protection under FESA, but are considered by USFWS during project evaluations.

The following is a list of Incentive and Grant Programs available under the federal ESA. (Source: USFWS Our Endangered Species Program and How it Works with Landowners 2003):

- **The Private Stewardship Program** provides grants and other assistance on a competitive basis to individuals and groups engaged in local, private, and voluntary conservation efforts that benefit federally listed, proposed, or candidate species, or other “at-risk” species.
- **The Cooperative Endangered Species Conservation Fund (Section 6 of the ESA)** provides funding to States and Territories to participate in a wide array of conservation projects on non-Federal lands for candidate, proposed and listed species. For FY 2003, funding will be available to implement conservation projects for listed and species at risk (Conservation Grants \$7.5M); integrating habitat conservation into local land use planning through development of Habitat Conservation Plans (Habitat Conservation Planning Assistance Grants \$6.6M); furthering species conservation through acquisition of land and easements associated with approved Habitat Conservation Plans (HCP Land Acquisition Grants \$51.1M); and acquiring lands essential to the recovery of listed species (Recovery Land Acquisition Grants \$12.7M).

Mitigation measures for impacts to listed species and their associated habitat must be detailed within Habitat Conservation Plans and FESA requires that ITP not be issued unless the USFWS determines that the authorized taking will not jeopardize the species’ continued existence.

An HCP may also include non-listed species and species that are candidates for listing. The HCP handbook published by the USFWS in 1996 further outlines the requirements necessary for HCP (61 FR 63854). In 1999, the USFW produced the five-point policy as a final addendum to the HCP Handbook ((64 FR 11485). The five concepts addressed in this addendum include; permit duration, public participation, adaptive management, monitoring provisions, and biological goals.

In Sacramento County, federally listed species include the Sacramento Orcutt Grass (*Orcuttia viscida*), Slender Orcutt Grass (*Orcuttia tenuis*), the Vernal Pool Tadpole Shrimp (*Lepidurus packardi*) and the Vernal Pool Fairy Shrimp (*Branchinecta lynchi*).

The Clean Water Act

The 1972 Clean Water Act (CWA) was passed by Congress to “restore and maintain the chemical, physical and biological integrity” of the Nation’s waters. This Act gives jurisdiction to the United States Army Corp of Engineers (USACE) and Environmental Protection Agency (EPA) to regulate activities that result in the discharge of dredged or fill material into “waters of the United States” through section 404 of the CWA (33 USC 1344).

Although not specifically used within the CWA, the term “wetland” is identified for the purpose of federal regulation under section 404 of the CWA to mean “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions” (33 CFR 328.3(b); 40 CFR 230.3(t)). The Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory, 1987) “describes technical guidelines and methods using a multi-parameter approach to identify and delineate wetlands for the purposes of Section 404 of the CWA”.

The Clean Water Act (CWA) regulates what is referred to as “navigable waters” which is defined by the CWA as “waters of the United States”. Section 404(a) of the CWA gives the United States Army Corp Of Engineers (USACE) authority to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites. Section 404(b) requires the permits issued by USACE are in compliance with the guidelines developed by the Environmental Protection Agency (EPA) and Section 404(c) authorizes the EPA to veto a permit issued by the USACE if the discharge of material “will have a unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas” (33 USC 1344).

Until recently, the USACE broadly defined waters of the United States to include intrastate waters (waters connected to intrastate commerce) and that intrastate waters include among other things; (a) waters that are or would be used as habitat by birds protected by migratory bird treaties; or (b) waters that are or would be used as habitat by other migratory birds that cross state lines; or (c) waters that would be used for endangered species. A 2001 Supreme Court decision in *Solid Waste Agency of Northern Cook County v. United States Army Corp of Engineers (SWANCC)* eliminated CWA jurisdiction over isolated waters that are intrastate and non-navigable, where the basis for asserting jurisdiction by the USACE is solely based on what is referred to as “Migratory Bird Rule” (MBR).

Permits to fill wetlands (including vernal pools/wetlands) still require the applicant to delineate the wetlands using the criteria of the USACE. All delineations must be verified by USACE and may or may not require a 404 permit based on the USACE determination. The presences of federally listed species in vernal pools/wetlands require the USACE to initiate consultation with the United States Fish and Wildlife Service (USFWS).

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661-667e), authorizes the Secretaries of Agriculture and Commerce to cooperate with State and Federal agencies to “protect, rear, stock, and increase the supply of game and fur-bearing animals, as well as to study the effects of domestic sewage, trade wastes, and other polluting substances on wildlife”. The Act also authorizes the “preparation of plans to protect wildlife resources, the completion of wildlife

surveys on public lands, and the acceptance by Federal agencies of funds or lands for related purposes provided that land donations received the consent of the state in which their located.

Amendments enacted in 1946 require the USFWS consult with State Fish and Wildlife agencies in cases where the “waters of any stream or other body of water are proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license in order of “preventing loss of and damage to wildlife resources”.

These comments and recommendations are usually conveyed to the USACOE through the USFWS responses to 404 permit applications. The USACOE is not required to implement USFWS suggestions.

Executive Order 11990

Executive Order No. 11990, was issued by President Jimmy Carter in 1977 (42 U.S.C. 4321 et seq.), in order “to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative” on Federally owned properties (including those that are proposed for lease or sale to nonfederal parties) and on Federally funded (or sponsored) projects.

Compliance with Executive Order 11990 is provided within 404 permits and within NEPA and CEQA documents.

Migratory Bird Treaty Act

The 1918 Migratory Bird Treaty Act (MBTA) implements various conventions and treaties between the United States, Canada, Mexico, Japan and the former Soviet Union. These treaties are designed to protect bird species that live, reproduce, or migrate within or across international borders at some point during their annual life cycle. This Act prohibits the taking, killing, or possession of migratory birds including the taking of any parts, nest, or eggs of such birds (16 USC 703). The Migratory Bird Executive Order issued by President Clinton directed all federal agencies to work in concert with the USFWS to avoid or minimize impacts on migratory birds, restore and enhance habitat, prevent or abate pollution affecting birds, and incorporate conservation of migratory birds into the planning process.

CDFG Code 3513 makes it unlawful to “take or possess any migratory non-game bird as designated in the Migratory Bird Treaty Act or any part of such migratory non-game bird”.

Bald and Golden Eagle Protection Act

Under the Bald Eagle and Golden Eagle Protection Act, it is a violation to “take, possess, sell, purchase, barter, offer to sell, transport, export or import, at any time or in any manner, any Bald Eagle commonly known as the American Eagle, or Golden Eagle, alive or dead, or any part, nest, or egg, thereof...”. A “take” in this context is defined to include pursue, “shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, and disturb”. Both the Bald Eagle and Golden Eagle are found within the SSHCP Study Area.

State Law and Policy

Williamson Act

The Williamson Act (also known as the California Land Conservation Act of 1965), was passed by the California State Legislature to preserve agricultural and other open space lands. The intent of the Williamson Act is to slow the loss of prime agricultural land. Lands protected under the Williamson Act may be considered mitigation land for federally-listed species habitat under the HCP.

Under the Act, cities and counties can enter into contracts with private landowners of 10 years or more for the purpose of restricting specific parcels of land to agricultural or related open space uses. In return, landowners receive property tax assessments which are much lower than normal because they are based upon farming and open space uses as opposed to full market value. Local governments receive an annual subvention of forgone property tax revenues from the state via the Open Space Subvention Act of 1971.

Lands enrolled in the program are referred to as Agricultural Preserves. An Agricultural Preserve is an area devoted to plant and animal production for commercial purposes, and for other compatible uses. In Sacramento County, Agricultural Preserves are typically at least 100 acres in size, but can be comprised of several owners who agree to combine their land with neighboring lands to meet the 100-acre minimum, provided that all the properties are contiguous.

Proposals for establishing Agricultural Preserves are reviewed for consistency with the Sacramento County General Plan by the Sacramento County Board of Supervisors. To enroll in the program, a landowner or owners submit an application for consideration, and a public hearing is held by the Board of Supervisors on the application. If approved, the Board of Supervisors offers the landowner a Land Conservation Contract. In Sacramento County, Land Conservation Contracts are in effect for a term of twenty (20) years. (Note: The initial term is for ten years, with an automatic, annual renewal at the end of the first ten (10) years. At the end of the first ten years, either party has the right to non-renew in order to prevent additional years being automatically added. Once a non-renewal notice has been filed with the Board of Supervisors, the contract will expire 10 years after the date of the last renewal. This effectively makes the contract a minimum of 20 years.)

State of California Right to Farm Legislation

The State of California passed a state statute in 1981 that declares that a farm in operation for more than three years is not to be considered a nuisance due to changed conditions (urbanization) in the area (Section 3482.5 of the California Civil Code). This legislation gives farmers the basic "Right to Farm" without the fear of lawsuits brought by offended neighbors. The Right to Farm laws protect farmers from the nuisance laws that apply to ordinary neighbors. Specific annoyances that are not considered a legal nuisance to neighbors under the legislation include odor, noise, dust and the use of pesticides. However, the Right to Farm legislation does not give farmers complete freedom to operate. To be eligible for protection under the Act, a landowner must conduct agricultural practices in a legal and reasonable manner. In the 1980's the Farm Bureau prepared a model Right to Farm ordinance that most counties, including Sacramento County, have adopted into their own County Right to Farm ordinances (Sacramento County Right to Farm Ordinance is described below under "Local Law and Policies").

Land uses protected under the Right to Farm legislation would protect the agricultural land in operation, which may be considered mitigation land for federally-listed species habitat under the HCP.

State of California Endangered Species Act

The California Endangered Species Act (CESA) (State Fish & Game Code §§ 2050, et seq.) generally parallels the main provisions of the Federal Endangered Species Act and is administered by the California Department of Fish and Game (DFG) for terrestrial species, with assistance from the National Oceanic and Atmospheric Administration (NOAA) for freshwater aquatic species.

CESA prohibits the "taking" of state listed species except as otherwise provided in State law. Unlike its Federal counterpart, CESA applies the take prohibitions to species petitioned for listing (state candidates). Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock. California "Species of Special Concern" are animals that may be eventually listed by the State.

Section 2081 of CESA states that a take of an endangered, threatened and candidate species may be authorized if it is "minimized and fully mitigated" (b)(2) and does not "jeopardize the continued existence of species" (c). Furthermore, this statute states that the "Department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species capability to survive and reproduce, and any adverse impacts in the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and reasonably foreseeable impacts on the species from other related projects and activities".

Plant species found within the SSHCP that are listed by the State of California as Endangered include the Sacramento Orcutt Grass (*Orcuttia viscida*), and species listed as Threatened include the Slender Orcutt Grass (*Orcuttia tenuis*) and Boggs Lake Hedge-Hyssop (*Gratiola heterosepala*).

Bird species protected under CESA include the State Endangered American Peregrine Falcon (*Falco peregrinus anatum*) and Bald Eagle (*Haliaeetus leucocephalus*) and State Threatened species such as Greater Sandhill Crane (*Grus canadensis tabida*) and Swainson's Hawk (*Butes swainsoni*).

State of California Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act (Water Code Section 13020) mandates that “all the waters of the state shall be protected, that all activities and factors affecting the quality of water shall be regulated to attain the highest water quality within reason, and the state must be prepared to exercise its full power and jurisdiction to protect the quality of water in the state from degradation”. The Porter-Cologne Act directs the State Water Resources Control Board to formulate and adopt state policies for controlling water quality and designates the State Board as the state water pollution control agency for all purposes stated in the CWA. Water Code section 13260 requires “any person discharging waste, or proposing to discharge waste, within any region that could affect the waters of the state to file a report of discharge (an application for waste discharge requirements).” (Water Code Section 13260(a)(1). The Regional Water Quality Control Board issues a water quality permit, or a NPDES permit allowing the waste discharge, or a waiver of the waste discharge requirements.

The term “waters of the state” is defined as “any surface water or groundwater, including saline waters, within the boundaries of the state.” (Water Code Section 13050(e). “Beneficial uses of the waters of the state may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural, and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves”(f).

Waters of the State may provide habitat for federal and/or state listed species covered under the SSHCP. The impairment of water from a discharge may be permitted under a NPDES permit or water quality certification, which may be facilitated through the HCP process.

California Fish and Game Code Sections 3511, 4700, 5050 & 5515 (Fully Protected Species)

Prior to CESA, the California Legislature identified certain species within the Fish and Game Codes that would be “fully protected” and could not be taken or possessed at any time except for purposes of scientific research or for protection of livestock. Birds covered under the SSHCP that are listed under CFGC 3511 include, American Peregrine Falcon, Bald Eagle, Greater Sandhill Crane, White-Shouldered Kite, and Golden Eagle. The Ringtail is the only mammal listed as fully protected (CFGC 4700) included in the SSHCP. The SSHCP does not cover any reptile, amphibian (CFGC 5050) or fish (CFGC 5515) species that are listed as fully protected.

California Fish and Game Code Sections 3503 & 3503.5 (Birds & Birds of Prey)

Birds are protected by Section 3503 of CDFG Code, which makes it unlawful to “take, possess or needlessly destroy the nest or eggs of any bird” and by Section 3503.5, which makes it unlawful to “take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird”.

California Fish and Game Code Sections 1601-1607 (Streambed Alteration)

Section 1600-1607 of the California Department of Fish and Game Code regulates activities, which will “divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit” (CDFG Code 1601).

Streambed or Lakebed Alteration Agreements between CDFG and project proponents are required for projects which involve activities such as the re-channeling and diversion of streams, flood control projects, bank stabilization, dam construction, gravel mining and bridge and culvert crossings.

Riparian areas associated with rivers, streams and lakes are also regulated by CDFG under Sections 1600-1607. These areas often do not meet all three parameters used by the USACOE to delineate wetlands, thus may not be not regulated through Section 404 of the CWA.

Native Plant Protection Act (NPPA)

Plants that are not formally listed by State or Federal agencies but are listed as 1B or List 2 in the California Native Plant Society’s (CNPS) Inventory of Rare and Endangered Plants of California (2001) must be addressed through CEQA as directed by the 1977 Native Plant Protection Act (NPPA). This Act gives the CDFG authority to designate native plants as rare or endangered and the authority to “preserve, protect and enhance endangered or rare plants of this State” (CDFG Code Section 1901, Chapter 10).

Plants listed as 1B are considered to be rare, threatened or endangered in California and elsewhere. List 1B plants, which inhabit vernal wetlands in SSHCP Study Area, include Ahart’s Dwarf Rush (*Juncus leiospermus* var. *ahartii*), Bogg’s Lake Hedge-Hyssop (*Gratiola heterosepala*), Legenere (*Legenere limosa*) and Pincushion Navarretia (*Navarretia myersii*, ssp. *myersii*).

CNPS List 2 plants are rare, threatened, or endangered in California but more common elsewhere. Dwarf Downingia (*Downingia pusilla*) is the only known List 2 species, which inhabit vernal pools/wetlands in the SSHCP Study Area.

California's Delta Protection Act

Description to Come

AB 242 and Oak Woodland Conservation

The Oak Woodlands Conservation Act of 2001 (Assembly Bill 242) was passed by the California Legislature in 2001. This Act recognizes the importance of oak woodlands and the threats to oak woodland habitats from development, firewood harvesting, and agricultural conversions. The Act also recognized the aesthetic values of oak woodlands to the State, the critical role of oaks on private lands, and the importance of private land stewardship. The Act further acknowledges that oak woodlands increase the monetary and ecological value of real property (McCready 2004b).

The Oak Woodlands Conservation Act establishes the Oak Woodland Conservation Program. This Program, administered by the Wildlife Conservation board (WCB), provides up to \$10 million in funding to help local jurisdictions protect and enhance their oak woodland resources. It offers landowners, conservation organizations, and cities and counties an opportunity to obtain funding for projects designed to conserve and restore California's oak woodlands. It authorizes the WCB to purchase oak woodland conservation easements and provide grants for land improvements and oak restoration efforts. While the Program is statewide in nature, it is designed to address oak woodland issues on a regional priority basis. The Legislature created the Oak Woodlands conservation Program with the expressed intent to accomplish the following:

- Support and encourage voluntary, long-term private stewardship and conservation of California oak woodlands by offering landowners financial incentives to protect and promote biologically functional oak woodlands;
- Provide incentives to protect and encourage farming and ranching operation that are operated in a manner that protects and promotes healthy oak woodlands;
- Provide incentives for the protection of oak trees, providing superior wildlife values on private land, and;
- Encourage planning that is consistent with oak woodland preservation.

The WCB is authorized to award cost-share incentive payments to private landowners who enter into long-term agreements. Such agreements will be structured to include management practices that benefit oak woodlands and promote the economic sustainability of the farming and ranching operations. The Act requires that at least 80 percent of the money be used for grants for the purchase of easements, for restoration activities, or for enhancement projects. In addition, the funds may be used for grants that provide cost-share incentive payments and long-term agreements.

The remaining 20 percent of the funds may be used for public education and outreach efforts by local governments, park and open space districts, resource conservation districts, and non-profit organizations. Within this 20 percent category, funds may also be used for grants designed to

provide technical assistance and to develop and implement oak conservation elements in local general plans.

SB 1334 and Oak Woodland Conservation (oak woodland habitat)

SB 1334 requires that environmental analysis be done to determine if a project will result in a significant impact to Oak woodlands under CEQA. SB 1334 also requires County jurisdictions to adopt oak woodlands management plans and ordinances that require a discretionary permit for oak woodland conversions and set a minimum mitigation standard. This bill only applies to County jurisdictions.

Local Law and Policy

General Plan

The Sacramento County General Plan addresses the need to provide a framework for conservation of open spaces while identifying areas that will likely be developed as the Sacramento urban area expands. The open space definition used by the County is taken from the Government Code 65560, which describes open spaces for the preservation of natural resources. These include “areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecological and other scientific study purposes; banks of rivers and streams, and watershed lands”.

Under the Vegetation and Wildlife section of the Conservation Element of the General Plan (1993), the goal to “preserve and enhance high-quality, self-sustaining vernal habitats” is to be accomplished through the achievement of several objectives. The main objective is to preserve vernal pools on the 4 major landforms they commonly occur on. These include old (high) terrace, young (new) terrace mudflow pools and drainage ways. Preserves design criteria are outlined in County Policies CO-78 through CO-82. These preserve evaluation criteria are based on those described in Jones and Stokes (1990). Other objectives to preserve vernal pools in Sacramento County include: directing development around concentrated vernal pool areas, , create a vernal pool management program, coordinate with wetland regulators and to foster community awareness.

The Sacramento County General Plan is currently under revision and will incorporate the vernal pool/wetland conservation goals and strategies set forth in this report.

Sacramento County Right to Farm Ordinance

Sacramento County passed its Right to Farm ordinance on July 10, 1990. This ordinance is based largely on the state Right-to-Farm template. The Right to Farm Ordinance is included in chapter 2.35 of Title 2, an addition of Title 14, Chapter 14.05 of the Sacramento Code relating to

Agricultural Activities. The intent of the Sacramento County Right to Farm Ordinance, like the state Right to Farm Ordinance is to:

“insure that established agricultural operations that are operated in a manner that is consistent with proper and accepted customs and standards be allowed to continue.”

Land uses protected under the Right to Farm ordinance would protect the agricultural land in operation, which may be considered mitigation land for federally-listed species habitat or waters/wetlands under the HCP.

1.6 Biological Resources

Habitats

Riparian/Stream Habitats

Riparian habitats are essential to the landscape ecology of California’s Central Valley. Geography, physical setting and myriad of interacting physical and biotic elements define these dynamic and varied systems. Important watershed-scale physical functions that relate directly to human welfare include but are not limited to attenuation, conveyance and control of season recreation and aesthetics. Other important ecological function relate to habitat requirements of numerous riparian-dependent native plants and animals, including both resident and migratory species. Importantly, riparian systems and the drainage-ways that support them function physically and ecologically as linkages between different aquatic, wetland, and upland habitat types in a given region.

Owing in part to very extensive loss of riparian habitat in the Sate, particularly in the Central Valley since the latter part of the 19th century, a number of riparian-dependent plant and animal species are now listed as rare, threatened, or endangered with State and/or Federal needs of 1 covered species of plant, and 26 animals, all of which require or otherwise benefit from high quality functioning riparian habitat.

Upland Grasslands

One grassland type is found in the Plan Area: valley grassland. The term valley grasslands, California annual grasslands, and non-native annual grasslands are synonymously used in various habitat classification systems and throughout the literature to refer to most of the highly altered grasslands throughout the undeveloped lowlands and rolling hills of the Plan Area, central valley and foothills of California, and throughout most of the western states. Valley grassland also occurs as an understory within a variety of other habitat types including valley oak woodland, valley oak savannah, blue oak woodland, blue oak savannah, and chaparral and foothill woodland habitats.

Valley grassland is characterized as an annual herbaceous plant community whose plant composition varies with climatic, geographic, and land use factors such as rainfall, temperature,

elevation, slope, aspect, grazing and other herbivory (e.g. livestock, wildlife, rodent, songbird, insect use), and fire frequency and duration.

Vernal Pool and Associated Upland Grassland

California vernal pools are a type of seasonal wetland habitat that are characterized by a specific set of physical parameters and a unique assemblage of highly specialized endemic plants and animals. Owing in part to very significant loss of this habitat type in the state since the latter part of the 19th century, a number of vernal pool-dependent species are now listed as rare, threatened, or endangered with State and Federal Agencies. The South Sacramento Habitat Conservation Plan includes 13 covered species of plants and animals, which require vernal pool habitat.

Wetlands, Ponds and Lakes

The South Sacramento Habitat Conservation Plan area contains a number of natural and artificially created wetland habitats. The term “wetlands” includes a diverse assortment of habitats such as freshwater marshes, bogs, fens, prairie potholes, wet meadows, estuaries, ponds, swamps and swales. All of these areas of the landscape have this in common: they are frequently inundated or have soils that remain saturated long enough to support vegetation adapted to flooded soil condition and to exclude organisms that cannot tolerate such conditions. Wetlands occur throughout the U.S. and the world and are found in a variety of geomorphic settings.

Woodlands

Blue Oaks, interior live oaks and valley oaks are endemic to California. Together, these three species form the oak woodland habitats most commonly encountered in the SSHCP. For the purpose of the SSHCP, woodlands are defined as wooded areas with an average canopy cover of 10 percent or greater. Oak woodlands within the SSHCP are broken down into the several classifications.

- Blue Oak Woodland areas may be densely forested, while other portions may support sparse stands of individual blue oak trees.
- Blue Oak Savannah includes scattered individual blue oak trees, open-canopied blue oak stands, and small clusters of blue oaks. This habitat is typically transitional between valley grassland or vernal pool grassland and blue oak woodland habitat, and occurs predominantly on the eastern edge of the Plan Area.
- Valley oak woodlands frequently persist in valley bottoms on the deep alluvial soils present on the valley floor, and along the active floodplains of major waterways such as rivers, creeks, and streams. Valley oaks are relatively salt intolerant; therefore, they are not found in areas with direct exposure to coastal winds.
- Valley Oak Savannah areas include scattered individual valley oak trees, and very open-canopied valley oak stands. In some areas, this habitat is a function of past firewood harvest or agricultural land development rather than a true transition habitat between valley oak woodlands and valley grassland or vernal pool grassland habitat.
- Valley oak riparian woodlands can transition into other riparian habitats. Unlike other types of riparian woodland habitats, valley oak riparian woodland is typically found well above the ordinary high water mark above the active floodplain.

- Interior live oak woodlands are relatively uncommon in the SSHCP, most commonly found at higher elevation in the foothills, perched on hilltops, or along the sides of rolling hills in the eastern portion of SSHCP.

Species

The SSHCP covers 40 species of animals and plants. They are:

Mammals

American Badger

Pallid Bat

Ringtail

Western Red Bat

Yuma Myotis Bat

Birds

American Peregrine Falcon

Bald Eagle

White-Tailed Kite

Cooper's Hawk

Golden Eagle

Greater Sandhill Crane

Loggerhead Shrike

Long-Eared Owl

Merlin

Northern Harrier

Sharp-Shinned Hawk

Short-Eared Owl

Swainson's Hawk

Tricolored Backbird

Western Burrowing Owl

White-Faced Ibis

Yellow Breasted Chat

Reptiles

Giant Garter Snake

Western Pond Turtle

Amphibians

California Tiger Salamander

Western Spadefoot

Invertebrates

Mid-Valley Fairy Shrimp

Rickseckers Water Scavenger Beetle

Valley Elderberry Longhorn Beetle

Vernal Pool Fairy Shrimp

Vernal Pool Tadpole Shrimp

Plants

Ahart's Dwarf Rush

Boggs Lake Hedge-Hyssop

Dwarf Dowingia

Legenere

Pincushion Navarretia

Sacramento Orcutt Grass

Sanford's Arrowhead

Slender Orcutt Grass

1.7 Document Organization

This plan and supporting information are provided in the chapters and appendices below.

Chapter 1: Introduction, provides an overview of the SSHCP, the goals, actors, scope and process associated with preparing the document.

Chapter 2: Physical Resources, describes the geologic history and composition of the SSHCP area, the natural resources and associated environmental concerns.

Chapter 3: Land Use, provides an overview of existing land use conditions and examines future trends in development that could occur over the next 50 years throughout the SSHCP study area.

Chapter 4: Covered Activities, describes the activities for which authorization for the incidental take of SSHCP covered species is being sought through the issuance of a federal Endangered Species Act section 10 (a)(1)(B) incidental take permit and state Endangered Species Act section 2081 (b) permit.

Chapter 5: Impacts of Take Analysis and Take Levels, assesses the impact estimates of biotic communities and covered species, and the minimization of those impacts.

Chapter 6: Conservation Strategies Alternatives, provides an evaluation of alternatives on the basis of species population, habitat, landscape, and economic analysis.

Chapter 7: Preferred Conservation Strategy, describes the nature of the recommended strategy, the goals and objectives, and the associated preserve acquisition, restoration, enhancement, management and avoidance and minimization measures.

Chapter 8: Monitoring and Adaptive Management, describes the activities associated with compliance and effectiveness monitoring, the related reporting schedule and adaptive management strategies.

Chapter 9: Preserve Management Guidelines, details preserve design, selection criteria, establishment and the guidelines for ecosystem management.

Chapter 10: Forseen and Unforseen Circumstances and Assurances, provides information on the assurances provided to participants of the SSHCP as is stated in federal section 10 (a)(1)(B) permit holders under the federal "No Surprises" policy. It also discusses assurances that will be provided to private landowners bordering HCP preserves.

Chapter 11: Economic Analysis reviews the costs associated with plan implementation, and the various mechanisms for funding those costs.

Chapter 12: Plan Implementation, outlines the structure, strategy and process for implementing the SSHCP.

Appendix A: Species Analysis and Conservation Strategies Documents

Appendix B: Habitat Analysis and Conservation Strategies Documents

Appendix C: Permit Applications

Appendix D: Implementation Agreement

Appendix E: Implementation Ordinance

Appendix F: Mapping Protocol

Appendix E: Sample Conservation Easement