

9 IMPLEMENTATION

9.1 Introduction

As summarized in Chapter 1, five local government entities developed the South Sacramento Habitat Conservation Plan (SSHCP or Plan) to apply for federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) Incidental Take Permits from the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW). These five local government entities and the future SSHCP Implementing Entity are permit applicants and will become the Plan Permittees. One CESA and one federal ESA Incidental Take Permit will be issued to the six Plan Permittees. The ESA and CESA Incidental Take Permits are not severable, meaning that the six Plan Permittees will share a single state Incidental Take Permit and a single federal Incidental Take Permit. Upon issuance of the Incidental Take Permits, the Plan Permittees will be responsible for implementation of the SSHCP. Successful implementation will require participation and coordination among the Plan Permittees (both the Land Use Authority Permittees and the Plan Partner Permittees), the Implementing Entity, the Permitting Agencies (including the Wildlife Agencies [USFWS and CDFW]), the Technical Advisory Committee (TAC) and other advisory committees formed under this Plan, private-sector organizations, and the general public.

The SSHCP Plan Permittees also requested that the United States Army Corps of Engineers (USACE) develop a permitting process to expedite permits issued under Section 404 of the Clean Water Act (CWA), a process from the Regional Water Quality Control Board (RWQCB) for Water Quality Certification under Section 401 of the CWA, and a process to issue Reports of Waste Discharge under the California Porter-Cologne Water Quality Control Act (Porter-Cologne Act). The Plan Permittees also seek a process to obtain Streambed Alteration Agreements from CDFW under the California Fish and Game Code.

This chapter provides a detailed overview for how the SSHCP will be implemented, including descriptions of each entity involved with Plan implementation, a description of the duties and responsibilities for each of those entities, organizational structures, the administration and day-to-day operations required to implement the Plan, willing seller Preserve acquisition process and rules, and annual reporting responsibilities and reporting protocols.

9.2 Plan Permittees

The six Plan Permittees are the County of Sacramento, City of Galt, City of Rancho Cordova, Sacramento County Water Agency (SCWA), Capital Southeast Connector Joint Powers Authority (Connector JPA), and the Implementing Entity. Each of these agencies will be a Permittee on the ESA and CESA Incidental Take Permits that will provide authorization for

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species take that results from Covered Activities that are implemented by the Plan Permittee, from Covered Activities implemented by third parties under the jurisdiction of a Land Use Authority Permittee (i.e., Sacramento County, City of Rancho Cordova, and City of Galt), or Covered Activities implemented by a Participating Special Entity under the jurisdiction of the SSHCP Implementing Entity.

As discussed below, each Plan Permittee will also be a signatory to the SSHCP Implementing Agreement (see Section 9.6), and will adopt an Implementation Ordinance or resolution (see Section 9.7.1). To implement the Plan, the Plan Permittees will form an Implementing Entity, as described in Section 9.3.1.

The six Plan Permittees are divided into three categories: Land Use Authority Permittees, Plan Partner Permittees, and the Implementing Entity. The roles and responsibilities for Land Use Authority Permittees and Plan Partner Permittees are defined in Sections 9.2.1 and 9.2.2, and the structure, roles, and responsibilities for the Implementing Entity are described in Section 9.3.1.

9.2.1 Land Use Authority Permittees

The three Land Use Authority Permittees are the County of Sacramento, City of Galt, and City of Rancho Cordova. Upon approval of the SSHCP by the Wildlife Permitting Agencies, the Plan Permittees will be issued ESA and CESA Incidental Take Permits for incidental take of Covered Species.

For Covered Activities conducted by a Land Use Authority Permittee, the Land Use Authority Permittee will be responsible for ensuring that the Covered Activity conforms to the requirements of the SSHCP and the ITPs, following the process for using take authorization as described in Chapter 10, SSHCP Permit Application Process).

The Land Use Authority Permittee will be responsible for determining when a Covered Activity that occurs within its jurisdiction, including one of its own projects, is eligible to use the SSHCP. If the Land Use Authority Permittee determines that a Covered Activity is eligible to use the SSHCP, the Land Use Authority Permittee can extend incidental take coverage provided by the Plan's ESA and CESA Incidental Take Permits to the Covered Activity within its jurisdiction, as part of the Land Use Authority Permittee's normal project-review process (e.g., grading permit issuance, California Environmental Quality Act (CEQA) certification).

Before extending Incidental Take Permit coverage to a Covered Activity, the Land Use Authority Permittee must receive confirmation in writing from the Implementing Entity that the project's proposed species and habitat take is consistent with the SSHCP "jump-start" and "stay-ahead" requirements (Section 9.4.6). Each Land Use Authority Permittee is also responsible for ensuring that the proposed project's design and construction is in compliance with all SSHCP requirements (see Chapter 10), and for ensuring that monitoring of required

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SSHCP Avoidance and Minimization Measures (AMMs) (see Chapter 5, Covered Activities) occurs during project construction.

For each Covered Activity they approve, the Land Use Authority Permittee will be responsible for collecting all project information required for the SSHCP annual report (see Chapter 8, SSHCP Monitoring and Management Programs) and providing that information to the Implementing Entity.

Land Use Authority Permittees will be responsible for paying development fees related to their own projects and for approving Covered Activity projects and collecting development fees from Third-Party Project Proponents. As discussed in Section 1.1, Third-Party Project Proponents are private project applicants proposing to implement an SSHCP Covered Activity and seeking ministerial¹ or discretionary² project permits from one of the three Land Use Authority Permittees. See Chapter 12, Economics Analysis and Funding Program, for a description of the SSHCP development fee schedule.

Land Use Authority Permittees will provide the Implementing Entity copies of each approved project application package, whether it is their own application package or a Third-Party Project Proponent's application, for entry into the SSHCP Data Repository (see Section 9.8) and to provide information needed to prepare the required SSHCP annual report to the Permitting Agencies (Section 9.9).

Each Land Use Authority Permittee will adopt the SSHCP development fees as set by the SSHCP Implementing Entity (see Section 9.3.1). Each Land Use Authority Permittee will also be responsible for transferring to the Implementing Entity SSHCP development fees that are collected from Third-Party Project Proponents, and development fees will be collected for the Covered Activities they directly implement.

Land Use Authority Permittees will also have a special responsibility to assist with implementation of the SSHCP because of their authorities as land use agencies and as members of the Joint Exercise of Powers Authority (JPA) Governing Board (JPA Board) of the SSHCP Implementing Entity (see Section 9.3.1).

As discussed in Section 9.1 and described in detail in the Aquatic Resources Program (Appendix I of the SSHCP Environmental Impact Statement/Environmental Impact Report), the Land Use Authority Permittees have requested that USACE develop a multi-level CWA 404 permitting

¹ A ministerial permit is a permit that requires little to no judgment on behalf of the Land Use Authority Permittee. An example of a ministerial permit is a building permit where as long as a parcel is zoned to allow the building of a structure, the applicant only needs to follow building codes to construct their project.

² A discretionary permit is a permit that requires the use of judgment by a Land Use Permittee before the permit can be issued. An example of a discretionary permit is a permit for a general plan amendment.

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process for Covered Activities. The Land Use Authority Permittees have also requested that RWQCB develop a process for Covered Activities to obtain Water Quality Certification under CWA 401 and to issue Reports of Waste Discharge under the California Porter-Cologne Act. In addition, the Land Use Authority Permittees have requested a master or a programmatic Streambed Alteration Agreement from CDFW for future Covered Activities that alter stream channels within the Plan Area.

The Land Use Authority Permittees will ensure that Covered Activities that they undertake and Covered Activities conducted by Third-Party Project Proponents are always consistent with the requirements of the SSHCP and the requirements of the Aquatic Resources Program. As discussed in the Aquatic Resources Program, the Land Use Authority Permittees will assist Third-Party Project Proponents in determining which CWA 404 permit vehicle can be used for each proposed Covered Activity.

Land Use Authority Permittees Responsibilities in Reviewing Third-Party Requests for Take Authorization

The Land Use Authority Permittees may extend Permit coverage to Third-Party Project Proponents who are proposing Covered Activities within their jurisdiction, provided that the projects or activities are designed and executed in accordance with all requirements of the SSHCP, the SSHCP Implementing Agreement, the terms and conditions of the Incidental Take Permits, the SSHCP Aquatic Resources Program, the proposed multi-level CWA 404 and CWA 401 permitting agreements for Covered Activities, and the Covered Activity Master Streambed Alteration Agreement proposed to CDFW. To use take authorization provided by the ESA and CESA Incidental Take Permits and the authorizations provided by the other SSHCP regulatory permits and agreements, a Third-Party Project Proponent must apply to the Land Use Authority Permittee with jurisdiction over the project (i.e., the City of Rancho Cordova, City of Galt, or County of Sacramento) as discussed in Chapter 10.

Each Land Use Authority Permittee will designate staff to assist Third-Party Project Proponents with questions regarding SSHCP requirements and the permit application process (see Chapter 10).

9.2.2 Plan Partner Permittees

The Sacramento County Water Agency and the Capital Southeast Connector Joint Powers Authority are the two “Plan Partner Permittees.” The two Plan Partner Permittees are public agencies that participated in developing the SSHCP and will be permittees on the ESA and CESA Incidental Take Permits, but they do not have land use approval authority in the Plan Area. (The Incidental Take Permits will provide incidental take authorization directly to the Plan Partner Permittees. This means that these Plan Partner Permittees will not have to apply to the

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County of Sacramento, the cities, or the Implementing Entity before they implement SSHCP Covered Activities.)

The Plan Partner Permittees cannot extend their take coverage to Third-Party Project Proponents or any other entity wishing to implement an SSHCP Covered Activity. Before implementing a Covered Activity, the Plan Partner Permittee must receive confirmation in writing from the Implementing Entity that the proposed species and habitat take is consistent with the SSHCP's jump-start and stay-ahead requirements (see Section 9.4.6). The Plan Partner Permittees will be responsible for transferring SSHCP fees for the Covered Activities they implement to the Implementing Entity.

Plan Partner Permittees will prepare and provide the Implementing Entity with copies of each project application package for projects that they implement for (1) review of species and habitat take amounts, (2) entry into the SSHCP Data Repository, and (3) preparing annual reports to the Permitting Agencies. Plan Partner Permittees will also be responsible for ensuring that the project design and construction fully complies with the Conservation Strategy (Chapter 7), monitoring all SSHCP avoidance and minimization requirements (see Chapter 5), and paying fees related to their own projects.

Plan Partner Permittees will also be eligible to use the proposed multi-level CWA 404 permitting process described in the Aquatic Resources Program to receive permit authorization to impact federal and state aquatic resources under Section 404 of the CWA and the CWA 401 permit strategy for Water Quality Certification, and to issue Reports of Waste Discharge under the California Porter-Cologne Act. In addition, Covered Activities implemented by a Plan Partner Permittee are eligible to use the proposed Master Streambed Alteration Agreement for SSHCP Covered Activities.

9.3 Implementation Structure

This section identifies all of the participants involved in implementation of the SSHCP, and provides an overview of each participant's responsibilities and duties.

9.3.1 Implementing Entity

The SSHCP Implementing Entity is a JPA called the South Sacramento Conservation Agency (Agency). The Joint Exercise of Powers Agreement that will form the Agency will be executed by the County of Sacramento, City of Galt, and City of Rancho Cordova (the Land Use Authority Permittees). The Agency is a distinct entity from its member authorities. See the Joint Exercise of Powers Agreement Creating the South Sacramento Conservation Agency.

The Implementing Entity oversees implementation of the SSHCP. The Implementing Entity will ensure that enough qualified staff is retained to accomplish all of the Implementing Entity's

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responsibilities and duties. Staff for these positions may be hired by the Implementing Entity, or their functions can be contracted out to existing local agencies, nonprofit organizations, or private consultants. Staff or qualified consultants will be retained on an as-needed basis.

The Implementing Entity will hold title to Preserve lands or conservation easements it purchases, and will oversee any cooperative agreements with other entities that own and/or manage Preserves or conservation easements for the Implementing Entity as part of the SSHCP Preserve System. The Implementing Entity will provide funds for Preserve management and monitoring to those agencies and organizations with whom it contracts for such services.

The Implementing Entity will be a Permittee on the ESA and CESA Incidental Take Permits, and can use the Incidental Take Permits to implement its own Covered Activities. The Implementing Entity can also extend incidental take coverage to the Covered Activities proposed by Participating Special Entities. The Implementing Entity is the only Plan Permittee that can extend take coverage to Participating Special Entities. Participating Special Entities are defined in this section under the heading “Implementing Entity Responsibility in Reviewing Participating Special Entities Requests for Take Authorization.”

The Implementing Entity cannot extend incidental take coverage to third-party projects that are under the jurisdiction of a Land Use Authority Permittee; all Third-Party Project Proponents seeking incidental take coverage must obtain approvals from the Land Use Authority Permittee with jurisdiction over that activity or project.

As with the other Plan Permittees, the Implementing Entity may use the proposed multi-level CWA 404 permitting process described in the Aquatic Resources Program (Appendix I of the SSHCP Environmental Impact Statement/Environmental Impact Report) to obtain CWA 404 permits authorizing impacts to federal and state aquatic resources and may use the agreement with RWQCB for Water Quality Certification under CWA 401 and issuance of Reports of Waste Discharge under the California Porter-Cologne Act, and may use the CDFW Master Streambed Alteration Agreement for future Covered Activities.

The Implementing Entity is composed of a JPA Board, an Implementation Committee, an Executive Director, and staff and/or outside consultants to help with day-to-day implementation of the Plan. The JPA Board is limited to the three Land Use Authority Permittees because only these three entities can exercise powers to levy land-use-related fees. The JPA Board will be subject to the requirements of the Ralph M. Brown Act and the Public Records Act.

The JPA Governing Board

The structure of the SSHCP Implementing Entity includes a JPA Board composed of three elected officials from the County of Sacramento, two elected officials from the City of Rancho Cordova, and one elected official from the City of Galt, for a total of six members. The JPA

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Board may delegate its authority to administer the Plan to the Implementation Committee or to the Executive Director. However, the establishment or modification of development fees, hiring of the Executive Director, approval of the Implementing Entity's annual budget and annual report, approval of the purchase of easements or other interests in land to form the SSHCP Preserve System, and the resolution of disputes among Plan Permittees regarding implementation of the Plan or disputes with Third-Party Project Proponents must remain the responsibility of the JPA Board and cannot be delegated to others. The JPA Board will also act as the arbitrator should decisions made by the Implementation Committee or Executive Director be challenged.

The Implementation Committee

The Implementation Committee will assist the JPA Board with any implementation duties that the JPA Board sees fit to assign to it. Each Plan Permittee will select a member to represent them on the Implementation Committee. Members will include a single representative from each of the three Land Use Authority Permittees and the two Plan Partner Permittees, for a total of five members. The Implementation Committee will meet at least once every 2 months.

The Implementation Committee is responsible for, but not limited to, the following actions:

- Making recommendations to the JPA Board regarding the adoption or modification of SSHCP development fees
- Making recommendations to the JPA Board of annual operating and capital budgets of the Implementing Entity
- Making recommendations regarding hiring the Executive Director
- Approving, acquiring, selling, or exchanging interests in land or easements that are owned by the SSHCP Agency
- Approving modifications to the SSHCP Preserve Resource Management Plan
- Approving applications submitted by Participating Special Entities for coverage under the Plan Permits³
- Approving annual reports prior to submittal to the JPA Board
- Establishing committees or subcommittees to help implement the Plan

³ The Implementing Entity will only approve applications submitted by Participating Special Entities. As described in more detail under the heading "Implementing Entity Responsibility in Reviewing Participating Special Entities Requests for Take Authorization," Participating Special Entities are organizations that do not require permits from Land Use Authority Permittees, such as school districts, reclamation districts, irrigation or water districts, sewer districts, utilities, other land use jurisdictions that are not local Land Use Authority Permittees (e.g. City of Elk Grove), etc. When a Land Use Authority Permittee has jurisdiction over a project, that project must be processed through the appropriate Land Use Authority Permittee.

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The Implementation Committee will seek input from the TAC (see Section 9.3.4) through the Executive Director prior to approving SSHCP land management and monitoring plans.

The Executive Director and Plan Staff

An Executive Director and Plan staff will oversee day-to-day implementation of the SSHCP. However, many of the tasks necessary to implement the SSHCP can be contracted to outside parties such as consultants, nonprofit organizations, and contract agencies that specialize in certain functions that are required to be performed as part of Plan or permit requirements. Staff and/or contractors will be hired on an as-needed basis. The Executive Director will seek input from the TAC (see Section 9.3.4) prior to approving land or easement acquisitions.

The Implementing Entity will use specialists as needed to ensure proper implementation of the tasks listed below. It is anticipated that the Implementing Entity will employ staff or contract with consultants to fill the following Plan implementation roles:

- **An Executive Director** dedicated to Plan implementation and directs all the activities of the Implementing Entity. The Executive Director will ensure that all the tasks listed previously under “The Implementation Committee” are implemented, and will report to the JPA Board. The Executive Director will also oversee Plan Permittees to ensure compliance with the SSHCP requirements, the terms of the permits, and the Implementing Agreement on behalf of all Plan Permittees. Finally, the Executive Director will serve as the primary link between the JPA Board, the Implementing Committee, Implementing Entity staff, Plan Permittees, each Permitting Agency, and the general public.
- **A Program Manager** with biological resource expertise will help direct all natural resource aspects of Plan implementation, including land and aquatic resource management, monitoring, and the adaptive management program. The Program Manager or designees will collect and analyze species and environmental data as required by the Plan, stay informed of current scientific methods and concepts, and provide continuous oversight of the monitoring and adaptive management program (e.g., monitoring methods, study designs) to ensure that the Preserve System incorporates the most appropriate strategies with the latest technology and best management practices. The Program Manager will oversee the work products of consultants or outside entities that are employed to help with implementing the SSHCP. The Program Manager will oversee Preserve Managers and be responsible for communication with external scientists, including Wildlife Agency scientists and the larger conservation science community. The Program Manager will also encourage relationships with Wildlife Agency and academic scientists to facilitate collaborations that will contribute to implementation of the SSHCP

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Conservation Strategy. During the early stages of SSHCP implementation, the Program Manager may also function as the Preserve Manager.

- **One or more Preserve Managers** may provide on-site management of individual SSHCP Preserves to implement individual Preserve Management Plans. Each Preserve Manager will be a qualified biologist with resource management experience. A Preserve Manager may be assigned to a region of the SSHCP Preserve System and may oversee multiple individual Preserves or Preserve parcels.
- **A real estate specialist** will be needed as the Implementing Entity conducts financial and legal analyses to guide selection of parcels for the Preserve System, and conducts or manages appraisals and transactions. The real estate specialist will have expertise in real estate law, zoning, and local regulations to fulfill the fiduciary duties of the Implementing Entity for its properties. The Implementing Entity may work with real estate specialists from other local organizations to acquire land to fulfill the Conservation Strategy. Also, Plan Permittees may already have staff with these skills; the Implementing Entity could partner with other Plan Permittees to obtain these real estate skills.
- **An accountant** will be responsible for developing and monitoring budgets, processing invoices, managing financial reserves, identifying cost savings, and managing administrative contracts (e.g., liability insurance). The Implementing Entity must also track expenditures and cash flow and establish and maintain an internal accounting system and procedures. Plan Permittees may already have staff with these skills and could partner with the Implementing Entity to manage the SSHCP budget.
- **A GIS specialist** will use GIS or other equivalent spatially explicit database systems to collect, store, and use relevant spatial data necessary for Plan implementation. The GIS specialist will also maintain the database to track compliance and guide Preserve design, monitoring, and adaptive management programs. For example, the Implementing Entity must be able to query the database to summarize take and conservation by year and cumulatively. The Implementing Entity will track all data related to the progress of meeting Plan goals and objectives.
- **A database specialist** will maintain the SSHCP Data Repository (Section 9.8 and Chapter 8). The database specialist will have a background in biometrics and statistics, and will participate in the development of the Preserve System Management Program and the SSHCP Monitoring Program.
- **Legal counsel** will provide guidance during Plan implementation on an as-needed basis for drafting and reviewing conservation easements, reviewing land purchases, assisting with land transaction negotiations, assisting with legal challenges, and assisting with easement violations if they occur. To the extent possible, in-house attorneys for the Plan Permittees may provide legal counsel to the Implementing Entity. However, certain

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circumstances may require specialized third-party legal assistance. Financial analysis assistance will be required periodically to review the program's cost/revenue balance and ensure that SSHCP fees are adjusted with changing land costs and inflation.

Tasks associated with Plan implementation by the Executive Director and Plan staff will include the following:

- Identifying parcels suitable for SSHCP land acquisition or conservation easements
- Preparing SSHCP Preserve land or easement acquisition proposals
- With the approval of the JPA Board, executing acquisitions of SSHCP Preserve lands or easements
- Approving requests by permittees Third-Party Project Proponents, or Participating Special Entities to provide mitigation in lieu of fees⁴
- Approving re-establishment/establishment of wetland sites
- Monitoring and enforcing the conditions of SSHCP conservation easements established on private lands
- Preparing the Preserve Resource Management Program, including the land management toolbox described in Chapter 8, for approval by the Implementation Committee
- Preparing and implementing individual SSHCP Preserve Management Plans consistent with the Preserve Resource Management Program
- Implementing SSHCP Resource Management Programs that have been approved by the Implementation Committee
- Identifying needs for adaptive management actions and implementing as necessary, and monitoring the effects of adaptive management actions, as described in Chapter 8
- Preparing proposals for re-establishment and establishment of species habitat and aquatic resources for approval by the Permitting Agencies, and implementing re-establishment and establishment Covered Activities
- Tracking take of species, species habitat, and loss of aquatic resources caused by implementation of Covered Activities
- Tracking preservation of species occurrences, species habitat, and aquatic resources to establish the SSHCP Preserve System in the Plan Area

⁴ There are five projects within the Urban Development Area (UDA) where hard line preserves have been identified and are assumed as part of the SSHCP conservation strategy. These preserves are considered pre-approved under the SSHCP (see Appendix K) and therefore do not require approval by the Implementing Entity other than to ensure that the preserve boundaries and other SSHCP requirements are consistent with the SSHCP.

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- Maintaining a data repository of the monitoring data described in Chapter 8 and other relevant information
- Monitoring actions of Plan Permittees, Third-Party Project Proponents Covered Activities, and Participating Special Entities to ensure compliance with the SSHCP, Implementing Agreement, and permits, and notifying Plan Permittees if actions are not in compliance
- Collecting SSHCP development fees from Participating Special Entities and Plan Permittees
- Managing and tracking SSHCP development fees received from Participating Special Entities and Plan Permittees
- Managing the non-wasting SSHCP endowment or contract for management of the endowment (see Chapter 12)
- Managing and tracking Preserve monitoring and management costs and other Plan implementation costs
- Tracking impacts of all Covered Activities in a way that detects when any impact-cap or other Permit limit is being approached
- Tracking that the 2% “stay-ahead” requirement (see Section 9.4.6) is being met for all seven land cover type groupings and reviewing project application packages before approving take for each Covered Activity and Covered Activity project
- Managing and tracking information as required by the SSHCP’s In-Lieu Fee Program (see Section 9.3.3)
- Preparing permit compliance, effects, and effectiveness monitoring reports that compile and analyze annual information from all Plan Permittees, and providing these to Permitting Agencies on schedule
- Developing agreements or contracts with parties for Implementation Committee approval to acquire Preserve land, conservation easements, or mitigation or conservation bank credits
- Developing agreements or contracts with parties for Implementation Committee approval to assist in SSHCP Preserve management
- Entering into contracts and agreements with owners and operators of existing mitigation banks or conservation banks
- Entering into contracts with consultants, non-profit organizations, and other entities to assist in implementation of the SSHCP
- Reviewing design surveys and pre-construction surveys of third-party projects by Plan Permittees (see Chapter 5 and Chapter 10)

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- Assisting the other five Plan Permittees with questions regarding SSHCP requirements
- Creating tools for Plan Permittees to use in their application review and project assessment process (e.g., checklists, template planning survey report, fee calculator)
- Collaborating and exchanging information with the committees formed under this Plan

Implementing Entity Responsibilities in Reviewing Third-Party Requests for Take Authorization

The Implementing Entity's primary role for projects proposed by Third-Party Project Proponents under the jurisdiction of Land Use Authority Permittees will be to ensure that take availability remaining on the Incidental Take Permits is sufficient to permit that project, to review surveys that are required by the third-party project, and to approve dedications in lieu of paying SSHCP fees. The Implementing Entity will not be involved in processing third-party requests for take authorization. Requests for third-party take authorization will be the sole responsibility of the Land Use Authority Permittee that has jurisdiction over the project. The Implementing Entity will provide tools for Plan Permittees to use in their application review and project assessment process (e.g., checklists, template planning survey report, and fee calculator). However, when a Land Use Authority Permittee does not have land use authority over a Third-Party Project Proponent, the Implementing Entity will be responsible for reviewing SSHCP applications and approving third-party project proposals.

The Implementing Entity will also track the amount of take by land cover type resulting from all Covered Activities, including third-party Covered Activities approved by Land Use Authority Permittees. The Implementing Entity must track impacts of all Covered Activities in a way that detects when a permit impact cap is being approached. This includes permit caps on habitat impacts or take of species occurrences, as well as tracking the amount of impact relative to the amounts of jump-start and stay-ahead mitigation that is already established in the SSHCP Preserve System (see Section 9.4.6). The Implementing Entity will notify all Plan Permittees when any impact cap is imminent and what procedures should be followed to ensure that each cap is not exceeded. In addition, the Implementing Entity will provide advice, upon request, to the Land Use Authority Permittees (cities and the County of Sacramento) as they process third-party applications for take, and will promote coordination among Plan Permittees to ensure that the Plan is being implemented consistently and effectively.

Implementing Entity and Permitting Agency Coordination when Reviewing Third-Party Requests for Take Authorization

The Implementing Entity will coordinate with the Permitting Agencies concerning the following:

- Approval of Preserve land in lieu of paying SSHCP fees (Section 9.4.4, Land Dedication In Place of SSHCP Fees). The Land Use Authority Permittees must forward such offers

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to the Implementing Entity. If the Implementing Entity approves, then the Implementing Entity will forward the offer to the Permitting Agencies for review and approval.

- Approval of re-establishment/establishment of wetlands in lieu of paying development fees. The Land Use Authority Permittees must forward such offers to the Implementing Entity for review and approval. If the Implementing Entity approves, then the Implementing Entity will forward the offer to the Permitting Agencies for review and approval.
- Review and approval, of all Stream and/or Preserve Setback modifications or exceptions. The Land Use Authority Permittees must request setback modifications or exceptions from the Permitting Agencies. Third-Party Project Proponents must request setback modifications or exceptions from a Land Use Authority Permittee.

Implementing Entity Responsibility in Reviewing Participating Special Entities Requests for Take Authorization

Entities that are not subject to the regulatory authority of a local Land Use Authority Permittee (e.g., school districts, reclamation districts, irrigation or water districts, sewer districts, utilities, other land use jurisdictions that are not local Land Use Authority Permittees) may wish to receive incidental take coverage under the Plan. The Implementing Entity may extend incidental take authorization to these Participating Special Entities if the proposed project or activity is an SSHCP Covered Activity defined in Section 5.2 or is an activity that meets the criteria for Covered Activities in Section 5.1, and the project or activity is consistent with all of the requirements of the SSHCP. Participating Special Entities will enter into an agreement with the Implementing Entity that conditions the project or activity to all terms and conditions of the SSHCP and the Implementing Agreement.

To use the SSHCP permits, a Participating Special Entity must file an application with the Implementing Entity in a form requested by the Implementing Entity (see Chapter 10). The Participating Special Entity applicant will be responsible for all costs associated with processing the application and any costs of the Implementing Entity in administering, monitoring, and enforcing the terms of the agreement.

9.3.2 Wildlife Agencies

As discussed in Chapter 1, USFWS and CDFW (collectively, the Wildlife Agencies) are responsible for issuing ESA and CESA Incidental Take Permits.

The role of the Wildlife Agencies is to monitor Plan compliance and notify the Implementing Entity as soon as possible if the Plan is not being implemented in compliance with the Incidental Take Permit, Implementing Agreement, or the SSHCP (Section 9.10.6).

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The responsibilities and duties of the Wildlife Agencies include the following:

- Participating on the SSHCP TAC/Interagency Review Team (IRT) (see Sections 9.3.3 and 9.3.4)
- Reviewing and approving SSHCP monitoring protocols
- Reviewing and approving any modifications to SSHCP AMMs
- Reviewing and approving SSHCP habitat re-establishment/establishment plans
- Reviewing and approving SSHCP monitoring plans
- Reviewing and approving SSHCP Preserve Management Plans
- Reviewing and approving SSHCP adaptive land management actions
- Reviewing and approving SSHCP proposed land dedications⁵
- Reviewing SSHCP proposed land and easement acquisitions, land dedications,⁶ and acquisition of mitigation or conservation bank credits

Ongoing communication and coordination between the Implementing Entity and the Wildlife Agencies will be essential to ensure proper implementation of the SSHCP. The Wildlife Agencies may attend meetings of the JPA Board or the Implementation Committee, and will be a sitting member on the TAC (see Section 9.3.4). Additional coordination meetings between Wildlife Agency staff and Implementing Entity staff and/or Plan Permittee staff may also be necessary to address any issues that may arise concerning implementation of the Plan, and to keep the Wildlife Agencies informed of progress related to various requirements of Plan implementation. These meetings will be held on an as-needed basis.

The Wildlife Agencies will review each SSHCP annual report prepared by the Implementing Entity to confirm compliance with all requirements of the SSHCP, Implementing Agreement, and the Incidental Take Permits or other agreements. During this review, the Wildlife Agencies will also evaluate and determine how to respond to activities or adaptive management proposed by the Implementing Entity for the next year (see discussion of SSHCP annual reports in Section 9.9).

Role of Wildlife Agencies in Reviewing Third-Party Requests for Take Authorization

The Wildlife Agencies will not be involved in approving individual Covered Activities, including Covered Activities proposed by Third-Party Project Proponents. The Plan Permittees are not required to transmit copies of third-party project application packages (Chapter 10) to the

⁵ There are five projects within the UDA where hard line preserves have been identified and are assumed as part of the SSHCP conservation strategy. These preserves are considered pre-approved under the SSHCP (see Appendix K) and therefore do not require approval by the Wildlife Agencies other than to ensure that the preserve boundaries are consistent with the SSHCP Conservation Strategy.

⁶ See preceding note.

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Wildlife Agencies prior to approval of the project by Plan Permittees. However, individual project application packages will be provided to the Wildlife Agencies at their request.

In compliance with the Incidental Take Permit terms and conditions, the Plan Permittees and the Third-Party Project Proponents will ensure that Wildlife Agency personnel are given appropriate access to any Covered Activity project site, any mitigation site, or other areas where Covered Activities are conducted, and will allow Wildlife Agency staff to verify compliance with SSHCP requirements.

The Wildlife Agencies may want to review project application packages prior to Plan Permittee approvals for projects that border an existing Preserve or border an SSHCP planned Preserve, or projects that include a wildlife crossing structure. In addition, the Wildlife Agencies may wish to review master plan documents (see Section 5.5.1) for consistency with the SSHCP. The review can be conducted at TAC meetings or separately. The Wildlife Agencies will review these projects in accordance with time limits applicable to each Land Use Authority Permittee.

9.3.3 Other State and Federal Permitting Agencies

As discussed in Chapter 1, USACE is proposing a multi-level permitting process under CWA 404 for future SSHCP Covered Activities. RWQCB would also develop a process to issue a Water Quality Certification under CWA 401 and a program to issue a Report of Waste Discharge under the California Porter-Cologne Act for future SSHCP Covered Activities. The SSHCP will also seek a master Streambed Alteration Agreement from CDFW under the California Fish and Game Code, Section 1600 et seq., for future SSHCP Covered Activities.

The role of these state and federal Permitting Agencies is to monitor compliance with aspects of the SSHCP related to the Aquatic Resources Program (Appendix I of the SSHCP Environmental Impact Statement/Environmental Impact Report) and to notify the Implementing Entity as soon as possible if implementation is not in compliance with the aquatic resources permitting strategy prepared for the SSHCP (Section 9.10.6).

The responsibilities and duties of the aforementioned state and federal Permitting Agencies differ based on their permitting processes, but generally include the following:

- Participating on the TAC/IRT (see below)
- Reviewing and approving all SSHCP aquatic habitat re-establishment/establishment plans
- Reviewing and approving SSHCP monitoring protocols related to aquatic habitat re-establishment/establishment

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- Reviewing and approving modifications to SSHCP AMMs related to aquatic habitat re-establishment/establishment
- Reviewing and approving SSHCP monitoring plans related to aquatic resources re-establishment/establishment
- Reviewing SSHCP adaptive land management actions related to aquatic resources re-establishment/establishment

Ongoing communication and coordination between the Implementing Entity and all Permitting Agencies will be essential to ensure proper implementation of the permitting process. The Permitting Agencies may attend meetings of the JPA Board or the Implementation Committee and will be a permanent member on the TAC (see Section 9.3.4).

Additional coordination meetings between Permitting Agency staff and Implementing Entity staff and/or Plan Permittee staff may also be necessary to address any issues that arise concerning implementation of the Aquatic Resources Program, and to keep the Permitting Agencies informed of progress related to various requirements of Plan implementation. These meetings will be held on an as-needed basis.

As discussed in Chapter 1, one of the benefits of the SSHCP is to provide “one stop shopping” that allows a Third-Party Project Proponent to pay one fee that will fund multiple permitting processes for their Covered Activity project (see Chapter 12 for a discussion of SSHCP fees). To allow the Land Use Authority Permittees to collect a fee to compensate for impacts to aquatic resources, the Plan Permittees elected to establish, as a component of the SSHCP fee structure, an In-Lieu Fee Program pursuant to the Federal Mitigation Rule (33 CFR 332). The In-Lieu Fee Program will ensure proper implementation, tracking, and reporting of fees collected to implement CWA 404 compensatory mitigation projects (i.e., aquatic resources re-establishment and establishment). Aquatic resource re-establishment and establishment projects will be paid for through development fees that the Land Use Authority Permittees Implementing Entity will collect from qualifying Third-Party Project Proponents that implement a Covered Activity. The Implementing Entity is responsible for ensuring that the compensatory mitigation requirements associated with Covered Activities are implemented.

Pursuant to the 2008 USACE Final Mitigation Rule, an Interagency Review Team (IRT) must be established to direct the implementation of compensatory mitigation projects, including compensatory mitigation site selection, project prioritization, and project execution. As discussed in Section 9.3.4, the TAC will function as the SSHCP IRT. The role of the TAC/IRT is to review and approve compensatory mitigation projects that re-establish or establish aquatic resources. The TAC/IRT includes standing members who participate in discussions about all compensatory mitigation projects. The Plan Permittees propose that the TAC function as the

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IRT. As such, participation by USACE, U.S. Environmental Protection Agency, and RWQCB at the TAC is necessary when the meeting agenda includes discussion of compensatory mitigation projects.

Deadlines for Permitting Agencies to review compensatory mitigation projects are necessary to ensure that the process occurs in a timely manner; otherwise, significant delays could jeopardize these projects and ultimately the ability of the Implementing Entity to implement the Conservation Strategy. The Permitting Agencies will review compensatory mitigation projects and provide comments to the Implementing Entity within 30 days of their receipt. The Implementing Entity will incorporate changes to the proposals based on comments received by the Permitting Agencies and provide copies of the final proposal to the Permitting Agencies within 15 days.

The Permitting Agencies will review each SSHCP annual report prepared by the Implementing Entity and other Plan Permittees to confirm compliance with all requirements of the SSHCP, Implementing Agreement, and Incidental Take Permits or other agreements. During this review the Permitting Agencies will also evaluate and determine how to respond to activities or adaptive management proposed by the Implementing Entity for the next year (see discussion of SSHCP annual reports in Section 9.9).

Role of Permitting Agencies in Reviewing Third-Party Requests for Take Authorization

The Permitting Agencies will not be involved in approving individual Covered Activities, including most Covered Activities proposed by Third-Party Project Proponents. The Plan Permittees are not required to transmit copies of most third-party project application packages (Chapter 10) to the Permitting Agencies prior to approval of the project by Plan Permittees. However, individual project application packages will be provided to the Permitting Agencies at their request. In compliance with the Incidental Take Permit's terms and conditions, the Plan Permittees and the Third-Party Project Proponent will ensure that Permitting Agency personnel are given appropriate access to any Covered Activity project site or other areas where Covered Activities are conducted, and will allow Permitting Agency staff to verify compliance with SSHCP AMMs or other SSHCP requirements.

9.3.4 Technical Advisory Committee/Interagency Review Team

A TAC/IRT will be formed to provide a forum for the Plan Permittees, the Executive Director, and the Permitting Agencies to discuss and review specific components of Plan implementation.

The responsibilities and duties of the TAC/IRT include the following:

- Reviewing and approving SSHCP Preserve Monitoring Plans

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- Reviewing and approving SSHCP Preserve Management Plans
- Reviewing and approving SSHCP property transactions for satisfying the Conservation Strategy such as land or easement acquisitions, purchase of conservation or mitigation bank credits, land dedications, and gifts of land
- Reviewing and approving SSHCP habitat re-establishment/establishment plans
- Reviewing and approving SSHCP success criteria for habitat and wetland re-establishment/ establishment projects
- Reviewing and approving SSHCP species monitoring protocols, including appropriate reference sites
- Reviewing and approving SSHCP adaptive land management actions
- Reviewing and approving modifications to SSHCP AMMs
- Ranking land or easement acquisitions for priority
- Reviewing relevant new scientific studies and reports for applicability in preserve management
- Advising on other scientific issues as identified by the Executive Director

As discussed previously in Section 9.3.1, the JPA Board or Implementation Committee is ultimately responsible for approving the aforementioned plans and actions, and the Permitting Agencies will have approval authority over those plans and actions. Plans or actions not approved by the Permitting Agencies will not be submitted by the Executive Director to the Implementation Committee or the JPA Board for approval.

The TAC will be composed of Implementing Entity staff, including the Executive Director, one member from each of the Plan Permittees, and one member from each of the Permitting Agencies. Other entities with expertise in any of the topics to be discussed by the TAC, including representatives of the building industry, the agricultural community, the scientific community, and the environmental community, will also be invited to participate in TAC meetings. In addition, there are several conservancies and resource protection agencies that operate within the Plan Area and are implementing plans with similar objectives to the SSHCP. Individuals from these organizations will likely be able to provide guidance and expertise based on their experiences monitoring and managing similar landscapes.

The Implementation Committee will form the TAC within 6 months of the SSHCP permit issuance. TAC meetings will be determined by the Executive Director based on the needs of the Plan.

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9.3.5 Public Input

Successful implementation of the SSHCP depends on continued public support. It is the intent of the Plan Permittees to provide ample opportunities for public participation in and input on implementation of the SSHCP. Meetings of the JPA Board and the Implementation Committee will be open to the public, and comments will be solicited at these meetings. The public is also welcome to contact the Implementing Entity for information concerning implementation and operation of the SSHCP. In addition, the Implementing Entity will maintain a website to provide the public with information about SSHCP implementation. The SSHCP document and appendices, Implementing Agreement, Incidental Take Permits, and other permits and agreements will be available on the public website. In addition, each SSHCP annual report will be posted to the Implementing Entity's website.

Annual Public Workshops

The Implementing Entity will host an annual public workshop on the status of SSHCP implementation. That year's annual report will serve as the foundation for each public workshop. The workshop is an opportunity to examine how SSHCP implementation is functioning from various perspectives, including progress toward each SSHCP biological objective and goal and the financial status of the Plan. The workshop will provide the public with the opportunity to ask questions and to provide input to the Implementing Entity.

9.3.6 Dispute Resolution

All parties involved in implementation of the SSHCP are obligated to work together to ensure efficient and effective implementation of the SSHCP. However, should the Implementing Entity and the Permitting Agencies disagree on how to implement the SSHCP, the Implementing Entity will follow the dispute resolution process outlined in the Implementing Agreement (Appendix C).

9.4 Preserve Acquisition

This section describes the process that the Implementing Entity will use to acquire properties or easements to implement the SSHCP Preserve System described in Chapter 7. Many criteria will be considered when making land or easement acquisition decisions. Some of the key criteria for land or easement acquisitions, such as price and availability, will vary as the SSHCP Preserve System develops and as other circumstances change.

9.4.1 Willing Sellers

Land will only be acquired by the Implementing Entity for the SSHCP Preserve System from willing sellers. At no time will the Implementing Entity use condemnation or eminent domain to require landowners to sell their property to fulfill the SSHCP Conservation Strategy. In addition,

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the Implementing Entity will not support or enter into any agreements or contracts where condemnation will be or has been used by another party to acquire land or easements.

It is possible that one or several landowners who own key resources of interest to the Implementing Entity will refuse to sell, or that negotiations to sell will fail. It is impossible to predict where this may occur and in what context it will occur (e.g., how much of the Preserve System has been acquired, the extent of resources remaining to protect). This situation, if it occurs, is only expected to occur near the end of the Permit Term, when most or all of the development impacts will likely have occurred; consequently, any delays in land acquisition associated with a lack of willing sellers will affect few Covered Activities. This situation can be avoided if the Implementing Entity begins negotiations with key landowners early in the SSHCP Permit Term. A review of progress toward land acquisition goals will take place at least annually with each annual report submitted to the Permitting Agencies.

9.4.2 Process for Acquisition of Preserve Land

The Implementing Entity will acquire properties within the Plan Area by fee title or by conservation easement to preserve species habitat consistent with the requirements in Chapter 7. Prior to the acceptance or purchase of Preserve land, the Implementing Entity will determine the land's suitability for meeting the biological goals and objectives of the SSHCP and for advancing the Conservation Strategy. Lands acquired must do the following:

- Contribute to meeting one or more Biological Goals and Measurable Objectives of the Plan and the overall Biological Goals of the SSHCP Conservation Strategy, as described in Chapter 7.
- Contain biological functions and values that when protected will contribute to meeting the Conservation Strategy of the SSHCP. Permanent protection must be ensured through a conservation easement consistent with the requirements of Section 9.4.3 by some other permanent dedication of land to the Preserve System.
- Be managed in perpetuity according to a Preserve Management Plan as described in Chapter 8. Land acquisitions may be counted toward meeting the obligations of the Plan before a Preserve Management Plan has been completed if the Implementing Entity owns the land, or if the property owner is bound by a conservation easement or other agreement that requires preparation of a land management plan consistent with the requirements described in Chapter 8. Management in perpetuity will be ensured through the conservation easement or title record.
- Not be below sea level.
- Not be an existing preservation site already being used for mitigation.

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The Implementing Entity will take the following steps when reviewing and considering any fee title or conservation easement acquisition, in addition to any steps required to comply with applicable federal and state laws governing real estate transactions:

1. The Implementing Entity will determine landowner interest in selling an easement or selling in fee title and will approach the property owner with a proposal to acquire land through conservation easement or fee title.
2. The Implementing Entity will obtain a title report to determine if there are encumbrances that might exclude property 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 acquisition unless these encumbrances do not influence the integrity of the proposed Preserve. A Phase I survey with an environmental determination document for the presence of hazardous materials will be included with the title report.
3. The Implementing Entity will examine any existing leases on the property for compatibility with the land management and Biological Goals and Measurable Objectives of the SSHCP, including water and surface mining rights. Inconsistent leases must be terminated or modified to conform to the Plan.
4. The Implementing Entity will conduct an appraisal.
5. The Implementing Entity will prepare a Pre-Acquisition Preserve Documentation Report (PDR) (see Appendix G, Preserve Management and Monitoring Details) for the Pre-Acquisition PDR template. The Pre-Acquisition PDR will assess the baseline inventory of SSHCP land cover types (see Chapter 10), species known occurrences, availability of water for future Preserve maintenance, existing and historical management practices on the property, and general ecological health and functions of the property.
6. The Implementing Entity will identify and rank property acquisitions, via the TAC. Ranking will be based on the potential to achieve targeted SSHCP objectives and meet Preserve acquisition criteria (see Section 7.5, Description of the Conceptual SSHCP Preserve System), and based on cost relative to the parcel's ability to meet the SSHCP Biological Goals and Measurable Objectives. Properties that fulfill more difficult-to-achieve Biological Goals and Measurable Objectives will receive higher priority, such as a property that will provide Preserve linkages, has known occurrences of a plant Covered Species, or supports an important SSHCP land cover type with limited available inventory.
7. The Implementing Entity will prepare a land acquisition proposal.
8. The Implementing Entity will prepare an easement document (for conservation easements) or a deed (for acquisitions in fee title).

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9. The Implementing Entity will prepare an offer for the landowner's consideration and negotiate the terms of the acquisition.
10. The Implementing Entity will record a conservation easement on the acquired property.
11. The Implementing Entity will prepare an Initial Preserve Management Plan (see Chapter 8). The Initial Preserve Management Plan will incorporate the existing management methods of the acquired property, ensuring that changes to preserve management are not made without cause.

As described in Chapter 7, it will be necessary for the Implementing Entity to purchase some lands in fee title. Fee title ownership allows more intensive habitat management than would otherwise be possible on lands held under a conservation easement. Fee title acquisition is preferred for SSHCP Preserves within the Urban Development Area (UDA) to allow for more intensive management of those Preserves, given their proximity to threats from existing and planned future development. As discussed below, all interests in land owned in fee title by the Implementing Entity and all conservation easements will be protected in perpetuity.

9.4.3 Conservation Easements

All lands acquired for the SSHCP Preserve System will need a conservation easement, even lands that are held in fee title by the Implementing Entity. Within the UDA, most of the SSHCP Preserve System is expected to be held in fee title by the Implementing Entity. Outside the UDA, the Implementing Entity intends to minimize the amount of fee title acquisition for the SSHCP Preserve System. Therefore, most of the SSHCP Preserve System outside the UDA will be in the form of conservation easements where the land is not owned by the Implementing Entity. Easement acquisition offers advantages over fee title acquisition in that it promotes partnerships between private landowners and the SSHCP, continues beneficial ranching and farming operations in the Plan Area, keeps land in private ownership, and generally costs less to acquire.

Conservation easements will be negotiated individually between willing sellers and the Implementing Entity. The terms of the easement and prices paid for easements will be variable depending on the purpose of the easement and the degree to which the easement restricts land uses.

The Implementing Entity will hold in perpetuity all conservation easements it purchases or accepts from a landowner. In addition, all conservation easements will have a third-party enforcement beneficiary (CDFW and/or USFWS). Conservation easements will contain provisions that allow the Implementing Entity to manage the encumbered property if it becomes necessary, such as if a property is abandoned by the owner. On lands owned in fee title by the Implementing Entity, conservation easements will be held by an SSHCP Permitting Agency such as CDFW or USFWS.

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All conservation easements acquired by the SSHCP Implementing Entity will be in accordance with California Civil Code Sections 815 et seq. All conservation easements will follow the easement templates found in Appendix D, including restrictions on use. The SSHCP will include at least two types of conservation easements: one for Rangeland and one for Cropland/Irrigated Pasture. Reasonable variations from the template may be allowed to address site-specific constraints. CDFW and USFWS, along with the Implementing Entity, must review and approve any modifications to the template easement.

All conservation easements shall exclude the area already encumbered by right-of-way easements and public utility easements and the area necessary to implement future roadway widening or new roadways, along with all appurtenances consistent with the current General Plans of the Land Use Authority Permittees. The conservation easement should also consider the appropriate setbacks from the future right-of-way/public utility easement to maintain the integrity of a Preserve.

Reselling Acquired Lands after Establishing Conservation Easements

The Implementing Entity expects to purchase a maximum of 15% of the Preserve System located outside of the UDA in fee title and the remaining approximately 85% of the Preserve System located outside the UDA in easements. However, if conservation easements are not available, but fee title option are, the Implementing Entity may purchase more than 15% of the lands needed to establish the Preserve System outside the UDA in fee title. If more than 15% of the Preserve System is acquired in fee title, the Implementing Entity will eventually attempt to sell properties to private landowners until fee title holdings amount to no more than 15%. Properties sold to private landowners will be encumbered with a conservation easement.

Easements on Public Lands

Several publicly owned parcels within the Plan Area offer the potential to contribute to implementation of the SSHCP Preserve System. Should a public entity decide to encumber all or a portion of its properties with an SSHCP conservation easement, land dedication credits will be granted to that public entity in accordance with Section 9.4.4. Land dedication credits will be granted once sites on existing public lands are placed under a conservation easement that is consistent with the easement requirements described in this chapter.

Agricultural Enhancements on Easements

Landowners who sell easements on lands that become part of the Preserve System and who engage in farming activities are eligible for monetary payments for the purpose of agricultural enhancement. These payments can only be used to improve the property that is under conservation easement and must be shown to provide a beneficial use to Covered Species.

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Examples of what the payments can be used for include the installation or repair of wells, fences, barns, drainage/irrigation systems; demolition of structures, and clearing of land that does not impact wetland or riparian resources. To be eligible for the Agricultural Enhancement Program the easement must include the terms of using the monetary payments and will include a list of all improvements that are approved for the property. The list of improvements can be amended from time to time with the approval of all signatories to the easement.

9.4.4 Land Dedication in Place of SSHCP Fees

A Third-Party Project Proponent may wish to dedicate land to the Implementing Entity for inclusion in the SSHCP Preserve System to satisfy the land acquisition component or re-establishment/establishment component of the project's SSHCP development fee requirements (see Chapter 12 regarding fees). If a Third-Party Project Proponent wishes to dedicate Preserve land (to meet either the land preservation or re-establishment/establishment measures of the Plan) and the Implementing Entity and the Permitting Agencies determine that the proposed land dedication is consistent with the SSHCP Conservation Strategy, then this land dedication can offset all or part of the SSHCP land acquisition or re-establishment/establishment fees required. SSHCP fees not associated with land acquisition (e.g., administration and land management fees) are still required and must be paid by the Third-Party Project Proponent. Likewise, if a Third-Party Project Proponent wishes to dedicate land to satisfy re-establishment/establishment measures, then the re-establishment/establishment fee component, with the exception of monitoring and management costs, will be waived.

Lands proposed for dedication must comply with the SSHCP Conservation Strategy. In addition, land cannot be integrated into the SSHCP Preserve System unless adequate water rights and all surface mining rights can be secured. Surface mining is not compatible with the objectives of the SSHCP, and sufficient water for conservation/natural preserve purposes is necessary to implement management actions required under the SSHCP. The Implementing Entity and the Permitting Agencies will evaluate each property proposed for dedication on a case-by-case basis, as follows:

- Third-Party Project Proponents will prepare a Pre-Acquisition PDR (see Chapter 10), including a biological letter report (see Chapter 10). Third-Party Project Proponents will pay the cost of preparing the Pre-Acquisition PDR, including a Phase I site assessment, appraisal, and title search. If the Third-Party Project Proponent wishes to use the property for re-establishment/establishment, it must prepare a re-establishment/establishment plan (Chapter 8) for review and approval by the Implementing Entity and Permitting Agencies.
- The Implementing Entity will determine whether the proposed land dedication and any re-establishment/establishment plan meets the SSHCP's Conservation Strategy described in Chapter 7. Third-Party Project Proponents must provide the Implementing Entity and

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the Permitting Agencies access to the proposed dedication property to survey the site and verify its biological value to the SSHCP Conservation Strategy.

- The Implementing Entity will use the Pre-Acquisition PDR to determine the acreage of SSHCP land cover types present on the subject property, and the suitability of the land cover types and property for inclusion in the SSHCP Preserve System.
- The Implementing Entity will use the re-establishment/establishment plan to determine compliance with the SSHCP Conservation Strategy, including AMMs and conservation action selection criteria.
- The Implementing Entity will evaluate whether the acres of SSHCP land cover types present on the subject property is less than, equal to, or in excess of required mitigation (see SSHCP Land Cover Credits) for the Third-Party Project Proponent's Covered Activities.
- For re-establishment/establishment proposals, the Third-Party Project Proponent will monitor and manage the re-established/established site to ensure that the habitat meets minimum success criteria, as determined by the TAC (Chapter 8). The Implementing Entity and Permitting Agencies will evaluate the performance of the re-established/established land cover type to determine if the property can be used to satisfy the SSHCP Conservation Strategy requirements.

SSHCP Land Cover Credits

SSHCP Land Cover Credits are acres of land dedicated by project proponents that are in excess of the land acquisition or re-establishment/establishment acres required for mitigation for project impacts. Land Cover Credits shall be generated only when the Implementing Entity makes a written determination that the land proposed to be dedicated is consistent with the SSHCP's Conservation Strategy and suitable for assembly into the Preserve System. Fee credits shall accrue on an acre-for-acre basis by land cover type, with one fee credit or fraction thereof allowed for each acre of land cover type that is dedicated to the Preserve System. Land Cover Credits will be counted toward the stay-ahead provision of the Conservation Strategy (Section 9.4.6).⁷

Before a property is dedicated by fee title or by conservation easement, the Implementing Entity will provide the project proponent with a statement of the acres and types of SSHCP land covers, if any, the Implementing Entity determines can be SSHCP Land Cover Credits. Within 10 business days after acceptance of the property and recordation of an easement to the satisfaction of the Implementing Entity, the Implementing Entity will issue a dated SSHCP Land Cover

⁷ Re-established/established acreage can only be counted toward the "stay-ahead" provision after the re-established/established habitat has met SSHCP success criteria.

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Credit Certificate to the project proponent that sets forth the acres of each SSHCP Land Cover Credit in the rest of the property.

Future Uses of Land Cover Credits

Project proponents can use SSHCP Land Cover Credits for their future Covered Activities in the Plan Area. Impacts to a specific SSHCP land cover type can only be offset using credits of the same SSHCP land cover type. Mitigation requirements for re-establishment/establishment of an SSHCP land cover type can only be offset with SSHCP Land Cover Credits for re-establishment/establishment of the impacted land cover type. If project proponents wish, they can sell their SSHCP Land Cover Credits to the Implementing Entity or another project proponent wishing to implement a Covered Activity in the Plan Area. However, SSHCP Land Cover Credits may only be used to offset the land acquisition component or re-establishment/establishment component of the SSHCP fee payment, and the project will still be required to pay all other applicable SSHCP fees (Chapter 12).

9.4.5 Early Enrollment Program

Under the Early Enrollment Program, the Implementing Entity will broker agreements with willing landowners to place a temporary easement to encumber properties needed for the SSHCP Preserve System. The Implementing Entity will pay landowners for the easement or fee-title acquisition at a future date as development fees are available. The process for evaluating properties for easements or future fee-title acquisition is described in Section 9.4.3. Early enrollment properties will be prioritized based first on the Implementing Entity's need for the property at the time (e.g., contains land cover types or modeled species habitat that is in short supply, is needed to create a linkage between other Preserve parcels), and second on the order in which the property was enrolled in the program. The temporary easements will become permanent easements when the property is added to the SSHCP Preserve System. The use of temporary easements to protect properties provides the landowner with assurances that, should the property not be needed by the SSHCP, the easement can be extinguished. The Plan Permittees anticipate that all properties enrolled in the Early Enrollment Program will become part of the Preserve System and will consist of permanent easements. Early enrollment properties can be used by the Implementing Entity to satisfy the stay-ahead provision (Section 9.4.6).

Properties that are brought into the Early Enrollment Program will continue to be managed by the landowner to maintain the habitat value of the property. The Implementing Entity will take responsibility for managing and monitoring these lands once the property is placed under a permanent conservation easement.

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Basic components of the Early Enrollment Program are as follows:

1. ***Land Preserve.*** Property owners who enter the Early Enrollment Program must agree to land use restrictions that preserve the subject property's habitat values. The property owner will also agree to make the property available to the Implementing Entity in the future for acquisition in fee title or conservation easement.
2. ***Early Enrollment Program Documents.*** Three documents will be required to enroll properties in the program:
 - a. ***Preserve Documentation Report.*** Because lands brought into the Early Enrollment Program are intended to become part of the Preserve System, the Implementing Entity will prepare a Pre-Acquisition PDR, including a Biological Letter Report (see Section 10.4.3, Components of the SSHCP Project Application Package), Phase I site assessment, appraisal, and title search. The Implementing Entity will evaluate each property to ensure that it is consistent with the Conservation Strategy described in Chapter 7.
 - b. ***Option to Purchase or Use as Mitigation.*** The landowner will grant the Implementing Entity an option agreement on the land that will allow its acquisition in fee title or conservation easement.
 - c. ***Temporary Easement.*** Land will be secured under a temporary easement that requires the landowner to maintain the habitat values of the property until the Implementing Entity has purchased a permanent easement on the property.
3. ***Purchase of Early Enrollment Properties by the Implementing Entity.*** The Implementing Entity will acquire the property (or buy a permanent easement) when SSHCP fees become available. The price paid for a property cannot exceed available SSHCP fees.
4. ***Final Disposition of Preserve Lands.*** Any lands that have not been purchased to fulfill mitigation requirements may be purchased by the Implementing Entity at the end of the option agreement term.

9.4.6 Jump-Start and Stay-Ahead Provisions

The SSHCP requires and the Implementing Entity will ensure that progress toward assembling the SSHCP Preserve System will always stay ahead of Covered Activity impacts. This will ensure that Preserve assembly will keep pace with development and that the Implementing Entity is making steady progress toward assembling the entire SSHCP Preserve System. This will satisfy California Fish and Game Code Section 2081(b), which requires that impacts to state-listed species be fully mitigated in advance of the impacts. This will also satisfy the federal ESA,

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which requires that Habitat Conservation Plans (HCPs) minimize and mitigate the impacts of taking “to the maximum extent practicable,” and requires that the taking “will not appreciably reduce the likelihood of the survival and recovery of any Covered Species in the wild” (ESA Section 10(a)(2)(B)(ii)). In preparing permit decision documents, USFWS will consider whether the mitigation proposed under the SSHCP is scientifically and rationally related to the impacts of the proposed taking, and will consider temporal losses resulting from the time of impacts relative to the time that the conservation benefits of the mitigation are in place.

HCPs that are also Natural Community Conservation Plans must follow the rough step requirement, which can allow land acquisition to fall behind the pace of impacts. The SSHCP improves upon that process by implementing two provisions: the “jump-start” and “stay ahead” provisions. Prior to implementation of SSHCP Covered Activities, the Implementing Entity will protect SSHCP land cover types and Covered Species habitat in advance of impacts, called the jump-start provision (Section 9.4.6.2). The jump-start provision will ensure that there is enough Preserve area and habitat benefits to fully offset the initial habitat loss and species take expected when the Plan is first implemented. The jump-start provision will apply to all SSHCP land cover types.

Over the term of the permit, the Implementing Entity will maintain a “cushion” of mitigation that is established in advance of impacts, called the stay-ahead provision (Section 9.4.6.3). The stay-ahead provision includes maintaining a cushion that provides species habitat and known occurrences and nest sites for certain species. The stay-ahead provision will avoid temporal impacts to Covered Species that occur when mitigation is delayed from the time that impacts occur to when the associated mitigation benefits are available to the species (e.g., environmental benefits resulting from Preserve management, habitat enhancement, and habitat re-establishment activities).

9.4.6.1 Land Cover Type Groupings for Jump-Start and Stay-Ahead Provisions

The jump-start and stay-ahead provisions will place the 17 SSHCP “natural” land cover types (see Chapter 3, Biological Resources Setting) into seven groups (Table 9-1). By grouping SSHCP land cover types, the Implementing Entity is afforded the flexibility to meet the stay-ahead provision based on the best easement/land acquisition opportunities available rather than being limited by separate acreage goals for each of the 17 land cover types. Land cover types were grouped based on species habitat needs.

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**Table 9-1
Land Cover Types by Land Cover Category**

Land Cover Grouping	Land Cover Types in the Grouping	Land Cover Types Acceptable for Acquisition to Meet Jump-Start-Stay Ahead Provision
Valley Grassland	Valley Grassland	Valley Grassland Valley Grassland (Vernal Pool Ecosystem)
Vernal Pool	Vernal Pool	Vernal Pool
Other Vernal Pool Invertebrate Habitat	Swale Stream/Creek (Vernal Pool Invertebrate Habitat)	Swale Stream/Creek (Vernal Pool Invertebrate Habitat)
Other Wetland	Seasonal Wetland Freshwater Marsh Stream/Creek Open Water	Seasonal Wetland Freshwater Marsh Stream/Creek Open Water
Riparian	Mixed Riparian Woodland Mixed Riparian Scrub Mine Tailing Riparian Woodland	Mixed Riparian Woodland Mixed Riparian Scrub
Agricultural	Cropland Irrigated Pasture-Grassland Orchard Vineyard	Cropland Irrigated Pasture-Grassland
Oak Woodland	Blue Oak Woodland Blue Oak Savanna	Blue Oak Woodland Blue Oak Savanna

The acres of land cover mitigation and acres of species modeled habitat mitigation specified in the Conservation Strategy (Chapter 7) will not be affected by the groupings. All of the mitigation acres identified in Chapter 7 will eventually be obtained by the Implementing Entity before the end of the Permit Term and regardless of the stay-ahead provisions or use of these land cover groups to measure compliance with the SSHCP jump-start and stay-ahead provisions.

The jump-start and stay-ahead provisions of the SSHCP Conservation Strategy can be achieved in whole or in part by the dedication of land or acquisition of fee title or easements (Sections 9.4.2, 9.4.3, 9.4.4), or the acquisition of credits from a Permitting Agency–approved conservation bank or mitigation bank (Section 9.4.8).

Temporary easements can be counted toward the jump-start and stay-ahead provisions; however, in the event that the temporary easement expires, that land can no longer be counted toward satisfying these provisions.

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9.4.6.2 The Jump-Start Provision

To eliminate the chances of mitigation falling behind impacts at the outset of Plan implementation, the Implementing Entity will acquire at least 5% of the preservation required for each land cover by the SSHCP Conservation Strategy before Incidental Take Permits are issued by the Wildlife Agencies. See Table 9-2 for the total acres that must be acquired per grouping before Incidental Take Permits are issued.

For example, the Conservation Strategy requires preservation of 22,014 acres of Valley Grassland land cover type over the term of the permits. Before the Incidental Take Permits are issued, the SSHCP Implementing Entity will preserve at least 5% of 22,014 acres, or 1,100 acres, of Vernal Pool Grassland land cover to meet the jump-start provision.

The Implementing Entity will acquire the minimum acreage of each land cover grouping as prescribed in Table 9-2.

**Table 9-2
Jump-Start Provision Acreage Requirements (at Permit Issuance)**

Land Cover Grouping	Total Acres of Required Preservation by Land Cover Grouping ^a	Initial Acreage Required (before Permit Issuance) to Meet Jump-Start Provision (i.e., 5% of Required Preservation)
Valley Grassland	22,014	1,100 ^b
Vernal Pool	966	48
Other Vernal Pool Invertebrate Wetland Habitat ^c	304	15
Other Wetland ^d	504	25
Agricultural	9,696	484
Riparian	964	48
Oak Woodland	47	2

- ^a Based on the sum of required preservation for each land cover type (refer to Table 7-2) that is comprised by the land cover grouping.
- ^b This 1,100 acres must be preserved within the Vernal Pool Ecosystem (Chapter 3, Section 3.2.3).
- ^c Includes all Swale and Stream/Creek (Vernal Pool Invertebrate Habitat) habitat that is considered invertebrate habitat.
- ^d Includes Seasonal Wetland, Freshwater Marsh, Stream/Creek, and Open Water.

9.4.6.3 The Stay-Ahead Provision

Over the 50-year Permit Term, the stay-ahead provision will maintain a “cushion” of preserved Covered Species modeled habitat and re-established/established modeled habitat for the SSHCP vernal pool invertebrate Covered Species. The stay-ahead provision requires that the Implementing Entity maintain enough Preserve land to be at least 2% ahead of the remaining preservation required for each SSHCP land cover grouping by the SSHCP Conservation Strategy at all times. This means that each project proposing to use the SSHCP must be checked against the stay-ahead provision prior to issuing Incidental Take Permits to

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ensure that the project does not result in stay-ahead preserve land dropping below the 2% threshold. The Early Enrollment Program will provide a mechanism for the Implementing Entity to implement the stay-ahead provision.

For example, if half of the Incidental Take Permit's 22,014-acre maximum impact cap on Valley Grassland cover type has been used by Covered Activities, 11,007 acres of impact to Valley Grassland can still occur. At this stage of implementation, 11,007 acres of Valley Grassland would be required to mitigate the remaining 11,007 acres of impact (1:1 ratio). In this case, 2% of 11,007 acres, or approximately 220 acres, of Valley Grassland habitat must be preserved in advance of impacts to maintain the stay-ahead provision before any additional impacts to Valley Grassland habitat is allowed.

The status of the stay-ahead requirements for each land cover grouping will be discussed in each SSHCP annual report (see Section 9.9, Reporting). On an ongoing basis, the Implementing Entity will determine if at least 2% of the remaining mitigation requirements for each of the seven habitat categories is preserved ahead of impacts.

The stay-ahead provision also applies to colonies of tricolored blackbird (*Agelaius tricolor*) occurrences and the five plant Covered Species: Bogg's Lake hedge-hyssop (*Gratiola heterosepala*), dwarf downingia (*Downingia pusilla*), legenere (*Legenere limosa*), pincushion navaretia (*Navaretia myersii*), and Sanford's arrowhead (*Sagittaria sanfordii* Green). As discussed in Chapter 7, prior to impact to an occurrence of a plant Covered Species, at least one occurrence of the same species must be preserved.

9.4.6.4 Process if the Stay-Ahead Provision Is Not Being Met

The Implementing Entity is responsible for monitoring compliance with the stay-ahead provision on an ongoing basis as take coverage is extended to Covered Activities. As discussed in Section 9.2.1, the Plan Permittees will provide the Implementing Entity with information from each project application package, including the projected acres of impacts that are expected to occur to each land cover type and species modeled habitat if a project were to be implemented.

Because the Implementing Entity will be monitoring compliance with the stay-ahead provision as information from each project application is submitted, it is unlikely that the Plan will ever drop below the 2% threshold for any land cover type group. However, if the Implementing Entity determines that the amount of impact that is anticipated to occur will exceed the stay-ahead provision's 2% threshold for any land cover group, then the Implementing Entity will notify the Plan Permittees that SSHCP fee payments cannot be accepted out of concern that the 2% threshold will be exceeded, and immediately notify the Permitting Agencies. The Implementing Entity will convene a meeting with Plan Permittees and Permitting Agencies to discuss strategies to stay in

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compliance with the stay-ahead provision, including the acquisition of additional Preserve land. The fee suspension will be lifted as soon as the Implementing Entity and the Permitting Agencies agree that the SSHCP is no longer at risk of noncompliance with the stay-ahead provision.

While SSHCP fee payments are suspended, take coverage can still be extended to Covered Activities if the Plan Permittees or Third-Party Project Proponents dedicate land in lieu of fees, or show proof of acquisition of appropriate conservation or mitigation bank credits within the Plan Area (see Section 9.4.8).

The status of the stay-ahead provision will be addressed in each annual report (see Chapter 8). See Section 9.10.6 and the SSHCP Implementation Agreement for more information regarding the process to remedy potential noncompliance with the SSHCP and the permit terms and conditions.

9.4.7 Gifts of Land

In the event that property is donated or gifted to the SSHCP Implementing Entity by another entity or an estate, the Implementing Entity will determine if the land is consistent with the SSHCP Conservation Strategy. If it is consistent, the property will be added to the SSHCP Preserve System.

If the property is determined to not be consistent with the SSHCP Conservation Strategy, the Implementing Entity will discuss with the donor if the land can be sold and the proceeds used to implement the SSHCP Conservation Strategy. 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.

Gifted properties must be monitored and managed consistent with the SSHCP monitoring and management guidelines and protocols as discussed in Chapter 8 of this document. While gifted lands can be used to satisfy the SSHCP Conservation Strategy, they will not be used to satisfy the mitigation needs of any project. Gifted lands should also be considered in the context of Appendix J, Voluntary Additional Conservation. Prior to accepting gifts of land, the Implementing Entity must identify a source of funding to pay for the long-term endowment that is necessary to monitor and manage the property.

9.4.8 Private Conservation or Mitigation Banks

A conservation or mitigation bank is privately or publicly owned land that is permanently protected and managed for its natural resource values. The Implementing Entity may choose to purchase credits from a conservation or mitigation bank located within the Plan Area to satisfy the requirements of the SSHCP Conservation Strategy, including the jump-start and stay-ahead provisions. Conservation and mitigation banks used for the SSHCP must be approved by

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USFWS and/or CDFW (and USACE if the bank is also selling jurisdictional wetland credits). The Implementing Entity will establish agreements with Plan Area conservation and mitigation banks to expedite use of the banks for SSHCP purposes. Banks that are physically located outside of the Plan Area, but where the bank's service area extends into the Plan Area, cannot be used to mitigate for Covered Activities under the Plan. Banks used for the SSHCP must meet all requirements of the SSHCP Conservation Strategy, Monitoring Plan, and Management Program as determined by the Implementing Entity and the Permitting Agencies.

Nothing within the SSHCP prohibits the creation of new conservation or mitigation banks in the Plan Area. The SSHCP also does not prohibit existing Plan Area conservation or mitigation banks from selling credits to projects located inside or outside the Plan Area.

9.4.9 Grazing Leases, Licenses, or Contracts within the Preserve System

As discussed in Chapter 8, livestock grazing will be used to help manage Covered Species habitat on several SSHCP land cover types in the Preserve System. Existing grazing leases or licenses on properties that are acquired as part of the Preserve System will remain in effect, and the current grazing regime will be continued until a Preserve Management Plan can be prepared and approved by the Implementing Entity and Wildlife Agencies (Chapter 8). Once a Preserve Management Plan has been approved, the Implementing Entity will review the terms of the existing grazing lease or license for consistency with the Preserve Management Plan. If deemed necessary by the Implementing Entity, the existing lease or license will be made consistent with the Preserve Management Plan until the end of the lease or license period to the extent feasible.

When properties are acquired without a preexisting grazing lease or license and an approved Preserve Management Plan calls for grazing, the Executive Director will enter into a lease agreement or license with a livestock operator that includes the requirements of the Preserve Management Plan. As discussed in Chapter 8, the Preserve Management Plan will specify the timing, stocking rates, duration of grazing, and residual dry matter standards. The Preserve Management Plan will be reviewed annually with the livestock operator. In some instances, a livestock operator may not realize an economic benefit from grazing on the land, and compensation to the livestock operator may be necessary.

The Preserve Management Plan will also identify the responsibilities of each party in terms of maintaining Preserve infrastructures (e.g., fences), controlling weeds and pests, and reporting. The Preserve Management Plan will include the following conditions of agricultural use and covenants to be incorporated by reference into contracts, leases, and licenses to protect resources:

- Grazing capacity and stocking rates
- Evaluation of fencing of riparian areas

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- Residual dry matter guidelines
- Conditions under which the desired stocking rate can be changed or exceeded (e.g., seasonal adjustments to maintain habitat quality and annual adjustments in response to rainfall)
- Grazing and livestock practices
- Pest control restrictions
- Reporting requirements

9.5 Easements on Setbacks

9.5.1 Preserve Setbacks

As required by AMM EDGE-3, projects that occur adjacent to existing and planned Preserves in the UDA are required to establish minimum Preserve Setbacks to protect Covered Species habitat and occurrences. Preserve Setbacks will be established concurrent with issuance of development permits for projects adjacent to planned or existing Preserves (Section 9.5.1). Refer to Chapter 5, Section 5.2.5, for Covered Activities allowed in Preserve Setbacks.

Setback Requirements for Proposed Projects Adjacent to Existing or Planned Preserves

The following lists the land use requirements for projects adjacent to Preserve Setbacks. Compliance with each requirement will be enforced by the Land Use Authority Permittee with jurisdiction over the proposed project.

- Each Preserve Setback will be encumbered by a Preserve Setback easement that gives the Implementing Entity the ability to enforce restrictions on Covered Activities within the Preserve Setback in perpetuity (refer to Section 5.2.5 and Appendix D, Sample Easement). The Preserve Setback easement will require development of a Preserve Setback Management Plan by the Implementing Entity in cooperation with the project proponent and the TAC. The Preserve Setback Management Plan will be compatible with the Preserve Management Plan for the adjacent Preserve (Chapter 8).
- Any discretionary review of a proposed project by a Land Use Authority Permittee, including rezones, conditional use permits, variances, parcel and subdivision maps, boundary line adjustments, development plan review, and design review, will ensure that sufficient area exists outside of the minimum 50-foot-wide Preserve Setback to accommodate primary and accessory structures, paved areas, septic systems, and other uses or activities that might affect the Preserve Setback.
- Any new lot created that contains land within an existing Preserve Setback must be conditioned as follows: The portion of the lot within the Preserve Setback must be

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permanently restricted by an easement (Appendix D) held by the SSHCP Implementing Entity or another approved public or private land conservation organization that has the ability to provide adequate protection and prevent adverse impacts within the Preserve Setback. The final map will not be recorded, and no activity, including issuance of grading permits for ground disturbance and/or construction, will be allowed prior to providing proof of an easement to the Land Use Authority. Easements will remain tied to the land, and will move from deed to deed as the land is transferred from one owner to another.

- For building lots that exist as of the date of the issuance of SSHCP Incidental Take Permits, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear structural setbacks may extend into the Preserve Setback, provided that an easement is applied that prohibits clearing or construction in the Preserve Setback.

Preserve Setback Fee Calculations

The area within a Preserve Setback will not be counted when calculating SSHCP fees for project impacts, except where allowed Preserve Setback Covered Activities (e.g., bike paths) occur. Preserve Setbacks will not be used to mitigate impacts to SSHCP Covered Species modeled habitat.

9.5.2 Stream Setbacks

As required by AMM STREAM-1, AMM STREAM-2, and AMM STREAM-3, projects that occur adjacent to certain stream corridors are required to establish minimum setbacks to protect riparian ecological functions and maintain water quality. Land that is set aside to satisfy these setbacks cannot be used to offset SSHCP fees, but will not be assessed fees (unless a Covered Activity is allowed to occur within the setback) (see Chapter 5, Section 5.2.6, for Covered Activities allowed in Stream Setbacks). Refer to AMM STREAM-1, AMM STREAM-2, and AMM STREAM-3 in Section 5.4.1 for minimum Stream Setback requirements.

Nonconforming Structures and Uses within Stream Setbacks

Legally existing but nonconforming structures and uses of land within Stream Setbacks may be continued. Encroachment into the setback will only be allowed where previous allowable (i.e., permitted or otherwise legal) development or disturbance exists. Existing impervious surfaces within the setbacks that resulted from previous allowable disturbances or developments will not be expanded. If a legally existing but nonconforming use has been discontinued for a period of more than 90 days, it will not thereafter be re-established, with the exception of agricultural uses that are following prescribed best management practices for crop rotation. However, resumption of agricultural uses must be strictly confined to the extent of disturbance existing at the time of adoption of the SSHCP.

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Land Use Requirements for Covered Activities within Stream Setbacks

The following lists the land use requirement for Covered Activities within Stream Setbacks (Chapter 5, Section 5.2.6).

- Any discretionary review of a proposed project by a Land Use Authority Permittee, including rezones, conditional use permits, variances, parcel and subdivision maps, boundary line adjustments, development plan review, and design review, will ensure that sufficient area exists outside of the Stream Setback to accommodate primary and accessory structures, paved areas, septic systems, and other uses or activities that might interfere with the functioning of the stream.
- Any new lot created that contains land within a setback must be conditioned as follows: The portion of the lot within the setback must be permanently restricted by an easement (Appendix D) held by the SSHCP Implementing Entity or another approved public or private land conservation organization that has the ability to provide adequate protection and to prevent adverse impacts within the setback. The final map will not be recorded, and no activity, including issuance of grading permits for ground disturbance and/or construction, will be allowed prior to submittal of easement to the Land Use Authority. Easements will run with the land and be binding on the property owner and successors.
- Any lands proposed for development in the UDA that include all or a portion of a Stream Setback will, as a condition of any major subdivision or major site plan approval, provide for vegetation or re-vegetation of any portions of the setback that are not vegetated at the time of the application or that were disturbed by prior land uses. Vegetation will include native or natural tree and plant species for that SSHCP land cover type, consistent with the AMMs in Section 5.4.1 (e.g., trees will not be planted in Grassland land covers).
- For building lots that exist as of the date of adoption of the SSHCP, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear structural setbacks will extend into the Stream Setback, provided that an easement is applied that prohibits clearing or construction in the Stream Setback.
- Roads and road crossings that must run through the Stream Setback will be designed consistent with the road design AMMs found in Section 5.4.1. An analysis will be conducted by Third-Party Project Proponents and approved by the Implementing Entity or Land Use Authority Permittee to ensure that no economically feasible alternative to locating the road in the Stream Setback is available.

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Small Lot Waivers for Stream Setbacks

Waivers are primarily intended to provide relief to property owners of small lots (10 acres or smaller) where setback conditions may constrain the use of their property to a point that it is not usable consistent with existing land use entitlements.

A waiver for the Stream Setback may be granted by the Land Use Authority Permittee and with the consent of the Implementing Entity under the following conditions:

- A preexisting lot (defined as existing as of the date the SSHCP is formally adopted) for which there is insufficient room outside the Stream Setback for uses permitted by the underlying zoning and for which there is no other reasonable or prudent alternative to placement in the setback, including obtaining variances from setback or other requirements that would allow conformance with the setback requirements
- An economic hardship whereby an applicant demonstrates to the Land Use Authority Permittee's satisfaction that the subject property is not capable of yielding a reasonable economic return as a result of unique circumstances specific to the subject property, as follows:
 - An economic hardship related to or arising from the characteristics of the property due to the particular physical surroundings, shape, or topographical conditions of the property involved, rather than the personal situations of the applicant or the result of any action or inaction by the applicant or the owner or predecessors in title
 - The necessity of acquiring additional land to locate development outside the Stream Setback will not be considered an economic hardship unless the applicant can demonstrate that there is no adjacent land that is reasonably available or could be obtained, used, expanded, or managed to fulfill the basic purpose of the proposed activity
- For reasons of public health and safety, if the following is demonstrated to the satisfaction of the Land Use Authority Permittee:
 - The proposed project will serve an essential public health or safety need or
 - The proposed use is required to serve an existing public health or safety need, and
 - There is no alternative available to meet the established public health or safety need
- Those developments that have had setbacks applied in conformance with previously issued requirements

A Stream Setback waiver will only be granted if it is shown that the activity is in conformance with all applicable local, state, and federal regulations, and that the waiver granted is the minimum relief necessary to relieve the hardship.

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The Third-Party Project Proponent will submit a written request for a Stream Setback waiver to the Land Use Authority Permittee or Implementing Entity if a Land Use Authority Permittee does not have oversight of the project or if the project is to be implemented by one of the Plan Permittees. The written request will include specific reasons justifying the waiver and any other information necessary to evaluate the proposed waiver request. The Land Use Authority Permittee or Implementing Entity may require an alternative analysis that clearly demonstrates that no other feasible alternatives exist and that minimal impact would occur as a result of the project or development.

In granting a request for a Stream Setback waiver, the Land Use Authority Permittee or the Implementing Entity may require project design features in addition to the applicable AMMs, including site design, landscape planting, fencing, signs, and water quality best management practices to reduce adverse impacts on water quality, streams, vernal pools and other wetlands, floodplains, and other sensitive resources.

All Stream Setback waivers that have been approved by a Land Use Authority Permittee will be subject to review and comment by the Implementing Entity and Permitting Agencies. The Implementing Entity and Permitting Agencies will have 30 days to respond in writing to a complete request for a waiver. If the Implementing Entity or Permitting Agencies do not agree with the granting of a waiver by the Land Use Authority Permittee, a meeting will be convened to discuss options that are available to the Third-Party Project Proponent.

Fees for Impacts in Stream Setbacks

The area within a Stream Setback will not be counted as impacted when calculating SSHCP fees for project impacts, except where allowed Stream Setback Covered Activities (e.g., bike paths) occur. Stream Setbacks will not be used to mitigate impacts to SSHCP Covered Species modeled habitat.

9.6 SSHCP Implementing Agreement

Implementing Agreements are recommended by USFWS for large-scale HCPs that address significant portions of a species range, for HCPs with long-term mitigation and monitoring programs, and for HCPs that include complicated conservation programs.

The purpose of the SSHCP Implementing Agreement is to ensure that all parties understand their roles and responsibilities under the HCP, the Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit, and the California Endangered Species Act Incidental Take Permit, and to provide remedies should any party fail to fulfill its obligations. Accordingly, an Implementing Agreement was prepared for the SSHCP (Appendix C). This Implementing Agreement specifies the responsibilities of each party, how the Plan Permittees will ensure that the SSHCP

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Conservation Strategy will be implemented, how reporting and enforcement procedures will be implemented, and various other provisions agreed to by the parties.

The Implementing Agreement references material already presented in the SSHCP document. As a result, the SSHCP and the Implementing Agreement have been made as consistent as possible. In the unlikely event that there are questions on the requirements of the SSHCP during Plan implementation, the content of permits prevail first, then the content of the Implementing Agreement, and finally the content of SSHCP document, as described in the Implementing Agreement (Appendix C). The Implementing Agreement may have to be amended to accommodate amendments to the SSHCP. Modifications to the Implementing Agreement would be made by agreement of the signatories in accordance with the terms of the Implementing Agreement.

9.7 Ordinances and Resolutions

9.7.1 Implementing Ordinance or Resolution

Each Plan Permittee, including the Implementing Entity, must adopt an implementing ordinance or resolution to formally incorporate the SSHCP, Implementing Agreement, and ESA and CESA Incidental Take Permits into its project review and approval procedures (see Appendix H). The ordinance or resolution will help ensure consistent implementation of the SSHCP, Implementing Agreement, and permits, and will provide the primary legal mechanism through which the Plan Permittees will implement the SSHCP.

The implementing ordinance or resolution must be adopted by each Plan Permittee before any Covered Activities occur, or before take coverage can be extended to Covered Activities proposed by third parties. The format and adoption process for the implementing ordinance or resolution can conform to the needs of the individual jurisdictions, and there may be terms of the ordinance or resolution that reflect the jurisdiction-specific terms of the SSHCP and Implementing Agreement. However, the implementing ordinances or resolutions will contain common required language to ensure consistent implementation of the SSHCP. The ESA and CESA Incidental Take Permits will be contingent upon adoption of local implementing ordinances or resolutions by the Plan Permittees. The Implementing Agreement and the permit terms and conditions will specify that the Incidental Take Permits are contingent upon the adoption of these implementing ordinances or resolutions. This will allow the Permitting Agencies to make a finding that the SSHCP will be implemented as described in the SSHCP document, and will be adequately funded in perpetuity, contingent upon the adoption of the implementing ordinances or resolutions.

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9.7.2 Aquatic Resources Protection Ordinance

Each Plan Permittee, including the Implementing Entity, must adopt a Wetland Protection Ordinance. The purpose of the ordinance is to ensure compliance with the Aquatic Resources Program (Appendix I of the SSHCP Environmental Impact Statement/Environmental Impact Report) prepared as part of the SSHCP. The ordinance will also assure, through its enforcement provisions, no-net-loss of aquatic function and services; streamline aquatic resource permitting in a coordinated fashion; and satisfy the requirements of the federal CWA (Sections 404 and 401), California Fish and Game Code Section 1600, and the Porter-Cologne Act.

This Wetland Protection Ordinance will regulate all aquatic resources within the SSHCP Plan Area as defined by the Aquatic Resources Program for the SSHCP. The ordinance must be adopted by each Plan Permittee before any Covered Activities or fill of wetlands occur. The format and adoption process for the Wetland Protection Ordinance can conform to the needs of the individual jurisdictions. However, the ordinances will contain common required language to ensure consistent implementation of the Aquatic Resources Program prepared as part of the SSHCP.

9.7.3 “Catch-Up Fee” Ordinance

Each Land Use Authority Permittee will adopt a catch-up-fee ordinance that addresses the unusual circumstance when a Third-Party Project Proponent pays required SSHCP development fees prior to Land Use Authority Permittee issuance of an SSHCP permit, and the SSHCP development fee is thereafter increased. If this occurs, the Third-Party Project Proponent will be required to pay a “catch-up” fee to ensure that the fee paid is consistent with the fee structure at the time of SSHCP permit issuance.

Third-Party Project Proponents will be notified of the need to pay the catch-up fee by the appropriate Land Use Authority Permittee, or by the Implementing Entity when a Land Use Authority Permittee does not have jurisdiction over the project. It is the Implementing Entity’s responsibility to notify Land Use Authorities of pending fee increases.

9.8 Data Repository Development and Maintenance

The Implementing Entity will develop and maintain a comprehensive SSHCP data repository to track permit compliance and all other aspects of the SSHCP, including results of land management and monitoring. The data repository will group and search separate SSHCP databases that contain all monitoring data (Chapter 8) and project-specific data. It will allow the Implementing Entity to query data from different databases from a central interface and more easily prepare SSHCP annual reports (Chapter 8). The initial data repository will be operating within 12 months to track permit compliance after all local implementing ordinances or resolutions take effect. The data repository will be structured by the Implementing Entity

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Database Specialist (Section 9.3.1) to be “user friendly,” such that a trained staffer (as opposed to a technician or programmer) can enter data. Additionally, the data repository will allow for future expansion and integration with an external database (e.g., linkage to agency or other GIS map libraries). Outside users may contact the Implementing Entity with data requests. The Implementing Entity expects to develop a simple form that can be completed for each request and sent electronically to the Implementing Entity. Depending on the request, access could be granted to the data repository, or data from a specific time period could be provided. The data repository will be structured to facilitate the following requirements:

- Data documentation such that future users can determine why, how, and where data were collected (documentation standards (i.e., metadata about the data) should be consistent for all types of monitoring and over time; adequate documentation will facilitate the future use of monitoring data)
- Quality assurance and quality control of the data
- Access and use of the most current information in assessment and decision making (the database will allow repeated access to current and past information over time)
- Storage of spatial information in a GIS-linked or similar database
- Data queries and reports

The types of information for which the data repository will be developed and maintained include the following:

- Status of Covered Activities, including implementation and impacts on Covered Species
- Status of SSHCP preservation/establishment/re-establishment measures
- SSHCP funding and expenditures
- SSHCP Baseline Land Cover Map
- Inventory of available SSHCP land cover types
- AMM implementation and monitoring
- Preserve monitoring, including species surveys and monitoring the results of adaptive management decisions
- Compliance with the stay-ahead provision (Section 9.4.6.3)
- Adopted changes to the SSHCP document, including administrative changes, minor amendments, and major amendments
- All reports and documents generated by the Implementing Entity or the Plan Permittees related to the SSHCP

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After the first year of implementation, the data repository will support as many of the components listed above as will be needed to prepare the initial SSHCP annual report. For example, funding and expenditures will begin in the first year, but the results of some monitoring will not be available for several more years.

The Implementing Entity will comply with the data-sharing requirements of the Implementing Agreement. If the Implementing Entity allows additional access to the data repository, such access will require strict controls and monitoring to ensure that the integrity of the data repository is maintained (e.g., use of passwords to limit access of a particular entity to selected data repository functions, and sampling data entry forms to ensure that entered information is complete, compatible, and accurate).

9.9 Reporting

9.9.1 Annual and 5-Year Implementation Reports

The Implementing Entity will prepare an annual report summarizing the previous year's activities and a summary of all activities that have been implemented since permit issuance, including the acreage of habitat impacted (effects) from each SSHCP Covered Activity, information on direct harm or harassment of individuals of each Covered Species, acreage of modeled habitat protected under the SSHCP, Preserve land management actions implemented, monitoring results, adaptive management protocols implemented that year, habitat re-establishment/establishment, and status toward fulfillment of each Biological Goal and Measurable Objective presented in Chapter 7. Details regarding the content of the annual report are provided in Section 8.4.1, Annual Reports.

Final reports are due to the Permitting Agencies by January 31 following the end of the previous year's reporting cycle. The reporting cycle is October 1 of one year through September 30 of the following year. No annual report will be required for the first partial fiscal year. A due date of January 31 will allow time for the data from the previous fiscal year to be assembled, analyzed, and presented.

The purpose of the annual report is to provide each Permitting Agency, each Plan Permittee, the TAC, and other stakeholders with an accounting of actions taken by all permittees and to provide verification that the SSHCP permits and the Implementing Agreement are being implemented properly. The annual report will also identify areas where implementation has been ineffective and needs to be modified. The goals of the annual report are as follows:

- Provide the information and data necessary for the Plan Permittees to demonstrate to the Permitting Agencies and the public that the Plan is being implemented properly and as anticipated.
- Disclose any problems with Plan implementation so they can be corrected.

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- Document issues with Plan implementation that may require coordination with the Permitting Agencies.
- Identify administrative or minor changes to Plan components required to increase the success of the Plan.

Every fifth year after initial implementation, the SSHCP annual report will also contain an audit of Plan implementation. The audit will be conducted by a panel of experts approved by the Wildlife Agencies. The panel will include persons with expertise in fields related to habitat management and monitoring.

Reports will be reviewed by the Implementation Committee and JPA Board prior to submittal to designated representatives of the Permitting Agencies, Plan Permittees, and the TAC. Annual reports will be made available to the public via posting on the SSHCP website. The Permitting Agencies and the TAC will use results presented in the annual reports and other available information to assess success of the SSHCP in meeting the Biological Goals and Measurable Objectives, and to formulate recommendations to the Implementing Entity for Plan implementation in the next year.

Each year, no more than 30 days after receiving the annual report, the TAC will convene to review report results to assess success of the SSHCP and to formulate recommendations to the Implementing Entity for Plan implementation in the next year.

9.9.2 20-Year Review

Twenty years after permit issuance, the Plan Permittees and Permitting Agencies will conduct a comprehensive review of progress toward achieving the SSHCP Conservation Strategy. The Implementing Entity will prepare a summary progress report and provide the report to the Permitting Agencies for review and comment.

9.10 SSHCP Modifications and Amendments

A modification to the SSHCP can be requested by a Plan Permittee or a Permitting Agency at any time. Requests for Plan modification must be made in accordance with the Implementation Agreement. SSHCP modifications are not anticipated to occur on a regular basis. Three categories of modifications will be recognized. In order of significance, they are as follows: administrative revisions, minor modifications, and permit amendments. This section defines the categories and provides examples for each.

9.10.1 Administrative Revisions

Administrative revisions are non-substantive changes or corrections to the Plan that do not require approval from the Permitting Agencies. These changes are clerical (e.g., correcting

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obvious errors in text) or other non-substantive changes that clarify inconsistencies or ambiguities in the SSHCP (e.g., reconciling slightly different descriptions of the same monitoring protocol). Administrative changes will not result in any changes to the impacts analysis, conservation strategy, or decision documents. Administrative changes will be made in writing, documented by the Executive Director, and summarized in each annual report. The Implementation Committee will make the final decision on administrative revisions. The following are examples of administrative revisions:

- Making corrections of typographical, grammatical, and similar editing errors that do not change intended meanings or obligations
- Making corrections of any maps or exhibits to correct insignificant errors
- Making day-to-day implementation decisions such as modifying irrigation schedules for created/restored habitats on the basis of observed water needs of planted vegetation
- Conducting additional monitoring surveys
- Modifying SSHCP monitoring protocols to align with Permitting Agency monitoring protocols that may be modified
- Adopting new monitoring protocols that may be promulgated by the Permitting Agencies in the future
- Making annual adjustments to the SSHCP fees to keep pace with the inflation of land values, consistent with the SSHCP fee ordinance
- Making changes to the membership of the JPA Board, Implementation Committee, TAC, or any advisory committees to the JPA Board without changing the representation of the permittees, agencies, or organizations

9.10.2 Minor Modifications

Minor modifications to the Plan are changes that do not adversely affect the impact assessments or conservation strategy described in the SSHCP, and do not adversely affect the ability of the Implementing Entity to achieve the Conservation Strategy commitments of the SSHCP. In addition, minor modifications will not change the scope or nature of the Covered Activities, and will not trigger new National Environmental Policy Act (NEPA) analysis. Therefore, minor modifications are changes to the SSHCP that will not require amendments to the permits or Implementing Agreement. The following are examples of minor modifications:

- Updates to the land cover map or to species occurrence data that are consistent with the predictions and expectations of the SSHCP

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- Minor changes to the Biological Goals and Measurable Objectives in response to monitoring results or adaptive management
- Minor changes to survey or monitoring protocols that are not proposed in response to adaptive management
- Modification of monitoring protocols for SSHCP effectiveness not in response to changes in standardized monitoring protocols from the Permitting Agencies
- Modification of existing or adoption of additional Preserve assembly requirements that improve the likelihood of achieving a Covered Species Biological Goal or Measurable Objective
- Revisions to the Preserve Management Program
- Discontinuation of ineffective Preserve assembly requirements and adoption of new Preserve assembly requirements that improve the likelihood of achieving the Conservation Strategy
- Modification of existing or adoption of new habitat re-establishment/establishment success criteria if results of monitoring and research or new information indicate that the initial success criteria need revision
- Modification of existing or adoption of additional Measurable Objectives where such changes more effectively achieve an SSHCP Biological Goal
- Modification of conditions on Covered Activities in response to AMM monitoring results or new technology
- Minor changes to the annual reporting protocols
- Other changes that do not result in adverse effects on Covered Species beyond those analyzed in the SSHCP (Chapter 6, Effects Assessment and Level of Take), the associated biological opinion, or the associated NEPA and CEQA document, and do not limit the ability of the Implementing Entity to achieve the Biological Goals and Measurable Objectives of the SSHCP

Minor modifications may be proposed by any Plan Permittee or the Permitting Agencies. The modification proposal must detail the nature of the proposed modification, provide a rationale for why it would not change the impact analysis, and describe how it would be consistent with the SSHCP Conservation Strategy. The other parties will use reasonable efforts to respond to proposed modifications within 30 days of receipt of such notice. Proposed modifications will become effective upon the other parties' written approval or shall be deemed approved by a party if no response is received within 30 days of receipt of such notice. If the Permitting Agencies feel that the proposal lacks specific information, the Permitting Agencies may request additional

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information to authorize or deny the modification. If the Permitting Agencies deny the modification, they will provide an explanation for the denial.

The Permitting Agencies will not approve minor modifications to the Plan if they determine that the modifications would result in adverse effects on Covered Species or natural communities that are substantially different from those analyzed in the SSHCP. If any Permitting Agency denies a proposed modification, it may be proposed as a permit amendment as described below.

9.10.3 Amendments

Amendments are revisions to the SSHCP or the Implementing Agreement that may affect an impact analysis and so would require a corresponding amendment to one or all of the SSHCP permits. Amendments to the SSHCP and the Incidental Take Permits would follow the same formal review process as the original Plan and permits, including a NEPA/CEQA review, Federal Register notices, a new internal Section 7 consultation with USFWS, and new findings prepared by CDFW and USFWS.

Amendments must be approved by all Plan Permittees according to processes established in their regulations. Amendments may be proposed by any of the Plan Permittees. The proposal must detail the nature of the proposed amendment, its rationale, and any documentation needed to process it, including any required environmental studies. The Implementing Entity's Implementation Committee will submit a proposed amendment to the Permitting Agencies in a report that includes a description of the need for the amendment, an assessment of its impacts, and any alternatives by which the objectives of the proposal might be achieved.

The following are examples of changes that would require an amendment:

- Adjustment to the Plan Area or permit area boundary that could allow or could result in additional incidental take of a Covered Species or habitat, or that could exceed permitted take amounts
- The addition of a Covered Species
- The addition of a Covered Activity that could result in additional significant impacts not considered in the previous impact analysis or not already covered by the SSHCP permits
- An increase in the allowable take limit of existing Covered Activities or addition of new Covered Activities to the Plan
- Modifications of any important action or component of the SSHCP Conservation Strategy, including funding, that may substantially affect levels of covered take, effects of the Covered Activities, or the nature or scope of the Conservation Strategy—this

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includes a reduction in the Conservation Strategy in the event that Covered Activities and fee funding do not occur as expected (see below for additional explanation)

- A major change in a Biological Goal or Biological Measurable Objective if monitoring or research indicates that they are not attainable because technologies to attain them are either unavailable or infeasible
- An increase in land acquisition requirements in excess of 5% of the original acreage requirements
- Addition of a new Plan Permittee

It is possible that, even over the full 50-year term of the Incidental Take Permits, Covered Activities and covered take might not occur to the extent projected in Chapter 6. If this occurs, fee revenues would likely fall short of projections. A shortfall of fee revenues could make it difficult or impossible for the Implementing Entity to complete the Preserve System and other components of the Conservation Strategy. If this situation appears likely, the Plan Permittees and the Permitting Agencies will develop mutually agreeable terms, which could include the following:

- Extending the term of the permits to allow completion of the Conservation Strategy
- Reducing the amount of take covered and accordingly reducing the conservation obligations of the Plan Permittees

Amendment Process for Endangered Species Act Section 10(a)(1)(B) Permit

To amend the Section 10(a)(1)(B) permit, the JPA Board will submit a formal application to USFWS. This application must include a revised HCP, a permit application form, any required fees, a revised Implementing Agreement, and the required compliance document under NEPA. The appropriate NEPA compliance process and document will depend on the nature of the amendment being proposed. A new scoping process may be required, dependent on the nature of the amendment. If additional scoping is deemed appropriate and necessary, USFWS will publish a Notice of Intent in the Federal Register to initiate the scoping process. Upon submission of a completed application package, USFWS will publish a notice of the application in the Federal Register, initiating the NEPA and HCP amendment review process. After public comment, USFWS may approve or deny the permit amendment application.

9.10.4 Future Land Use Planning Changes

The Plan Permittees acknowledge that the adoption and amendment of general plans, specific plans, community plans, zoning ordinances, and similar land use regulations; the granting of land use entitlements by the Land Use Authority Permittees (the County of Sacramento and the cities); and

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annexations by the cities are matters within the sole discretion of the applicable land use jurisdiction. Changes in land use designations or regulations would not trigger preparation of a minor modification or an amendment to the SSHCP if the changes would not result in additional impacts to SSHCP Covered Species or affect completion of the SSHCP Conservation Strategy. The TAC will be responsible for deciding when changes in land use designations or regulations would result in additional impacts to SSHCP Covered Species or when changes in land use designations or regulations would affect completion of the SSHCP Conservation Strategy.

9.10.5 Permit Renewal

A Plan Permittee may apply for renewal of Incidental Take Permits no less than 120 days prior to the expiration of the Incidental Take Permits.

If a request for renewal is filed 120 days prior to expiration of the Incidental Take Permits, the Incidental Take Permits will remain valid through the renewal period. However, no additional take of Covered Species, beyond the level specified in the Incidental Take Permits, may occur.

9.10.6 Permit Suspension or Revocation

The Permitting Agencies have the ability, in accordance with applicable state and federal law, to suspend or revoke all or part of the permits in the event that any of the Plan Permittees are out of compliance with the Plan, the Implementing Agreement, or the permits. USFWS has the ability to suspend or revoke Incidental Take Permits if continuation of Covered Activities appreciably reduces the likelihood of the survival and recovery of the species in the wild (USFWS and NMFS 1998). CDFW has the ability to suspend or terminate all or part of an Incidental Take Permit if revocation or termination is required to avoid jeopardizing the continued existence of that portion of a Covered Species' range that occurs within the Plan Area and to fulfill a legal obligation of CDFW.

As discussed in Section 9.3.6, Dispute Resolution, and in the Implementation Agreement, the Permitting Agencies and the Plan Permittees will meet to remedy non-compliance with stated SSHCP goals and objectives or to resolve differences. If the Permitting Agencies should determine that permit revocation or suspension is necessary, they will notify the Implementing Entity and other Plan Permittees. The notification will explain the rationale for the suspension or revocation, and, where applicable, will provide any additional actions that the Plan Permittees can take to maintain the permits.

If one or more of the permits are revoked, the Plan Permittees have the obligation to fulfill all outstanding mitigation requirements, including management and monitoring of the Preserve System in perpetuity, for any take that occurred prior to the revocation. For example, if the Plan Permittees are behind on compliance with the stay-ahead provision for land acquisition or

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restoration, they will be required to meet this obligation. See the Implementing Agreement (Appendix C) for additional details.

9.11 Implementation Schedule and Deadlines

To ensure that the SSHCP is successful, the Implementing Entity will make progress on a variety of tasks simultaneously. Tasks during the first several years of implementation will be particularly important to ensure positive momentum and early compliance with SSHCP terms and conditions. Schedule guidelines and major deadlines for Plan implementation are presented in Table 9-3. The Implementing Agreement will establish deadlines for certain tasks.

Table 9-3 lists those key implementation tasks with deadlines that are tied to permit compliance. As described in the table, these deadlines have various levels of flexibility depending on the circumstances. Implementation deadlines are important to establish a mutual understanding among the Plan Permittees and the Permitting Agencies about how the Plan will be implemented over time and to ensure that the Plan will be implemented in a timely manner. However, the Plan Permittees and the Permit Agencies recognize that, under certain circumstances, modifications to the deadlines beyond the flexibility provided in Table 9-3 could be reasonable and appropriate. The Implementing Entity may modify the deadlines through minor modifications to the Plan.

Before permits are issued, the Plan Permittees will set the groundwork for Plan implementation by establishing an implementation organization. Land acquisition and training of Plan Permittee staff may also commence before permit issuance. Prior to issuance of ESA and CESA Permits, the SSHCP Land Cover Baseline Map and local ordinances or resolutions required to fund and implement the Plan will be finalized. During the first 6 months of the Permit Term, emphasis will be placed on hiring key staff for the Implementing Entity (or contracting out their functions), establishing the TAC, and developing implementation tools (Table 9-3). Within the first year, the Implementing Entity will secure necessary staff and contract resources; create a Plan implementation website; establish the required data repository; and investigate habitat preservation, establishment, and re-establishment opportunities.

Over the next 5 years, additional Preserve staff will be hired or contracted, and more specific Preserve Management Plans will be created to guide management and monitoring of the expanding Preserve System. Environmental compliance and design for wetland re-establishment and establishment will be initiated. Beginning with this period and extending throughout the remaining Permit Term, SSHCP fees will be updated and adjusted on a regular basis. In addition, hiring and contracting staff will be completed to manage the Preserve System and implement the SSHCP. Habitat preservation, establishment and re-establishment, and design will continue, as will adaptive management and monitoring of biological resources.

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Between Years 6 and 50, the Implementing Entity will continue to implement the Conservation Strategy, implement monitoring and adaptive management, and refine these programs as monitoring and other data are collected. Land acquisition must be completed by Year 50, and construction of all restoration and creation projects must be completed by Year 45 of the Permit Term (see Chapter 12 for a discussion of funding adequacy to meet these deadlines).

Before the end of the Permit Term, the Implementing Entity will determine the administrative structure necessary to continue management of the Preserve System in perpetuity. For example, management responsibility may be delegated to one of the Plan Permittees to oversee in perpetuity. Alternatively, the JPA may extend its term to continue to oversee implementation of the SSHCP.

Table 9-3
Schedule for Major Implementation Tasks

Time Period	Tasks and Milestones	Responsible Party
<i>Prior to Permit</i>		
Prior to Permit	Complete final versions of Implementing Agreement, Joint Exercise of Powers Agreement, and Plan Permittee ordinances in preparation for permit issuance and Implementing Entity formation.	Plan Permittees
Prior to Permit	Establish Implementing Entity through execution of the Joint Exercise of Powers Agreement. File with state Secretary of State within 30 days of its effective date.	Plan Permittees
Prior to Permit	In accordance with the Implementing Agreement and Joint Exercise of Powers Agreement, establish SSHCP implementation organizational structure (i.e., JPA Board and Implementation Committee).	Plan Permittees
Prior to Permit	Conduct fee nexus study and establish the SSHCP fee structure.	Plan Permittees
Prior to Permit	Establish separate accounts to isolate SSHCP fees from all other fees.	Plan Permittees
Prior to Permit	Determine schedule for transfer of development fees collected by the Plan Permittees to the Implementing Entity.	Plan Permittees
Prior to Permit	Finalize the SSHCP Land Cover Baseline Map.	Implementing Entity
Prior to Permit	Develop template SSHCP project application package for use by Third-Party Project Proponents and Plan Permittees that includes all items required in Chapter 10.	Plan Permittees
Prior to Permit	Develop a checklist prior to the first ordinance taking effect for local planners to evaluate the SSHCP project application package (Chapter 10). The checklist must include a statement of certification that Third-Party Project Proponents meet the relevant terms of the SSHCP.	Plan Permittees
Prior to Permit	Provide additional tools for Plan Permittees to use in their application review and project assessment process (e.g., template planning survey report, fee calculator).	Implementing Entity
Prior to Permit	Establish the process by which Land Use Authority Permittees will notify the Implementing Entity of any proposed incidental take and the process to receive confirmation in writing from the Implementing Entity that the proposed take is consistent with the SSHCP's permits, and that an adequate amount of jump-start and stay-ahead mitigation is in place to address that amount of incidental take proposed by the project.	Plan Permittees

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**Table 9-3
Schedule for Major Implementation Tasks**

Time Period	Tasks and Milestones	Responsible Party
Prior to Permit	Provide each Plan Permittee with SSHCP maps (e.g., SSHCP Baseline Land Cover Map, Covered Species modeled habitat maps) to allow Land Use Authority Permittee staff to process and evaluate applications for SSHCP coverage or evaluate their own projects under the Plan.	Plan Permittees
Prior to Permit	Train Land Use Authority Permittee staff to prepare, review, and process SSHCP applications. This task will be ongoing through the 50-year permit term.	Plan Permittees, with ongoing assistance from Implementing Entity
Prior to Permit	Commence the recruitment process for the Implementing Entity Executive Director and key staff (if possible, to allow early implementation).	Plan Permittees
Prior to Permit	Prepare initial budget for Implementing Entity.	Plan Permittees
Prior to Permit	Acquire lands and commence re-establishment/establishment projects to comply with the jump-start provision.	Pre-Acquisition
<i>0 to 6 Months After Permit</i>		
Begin 0–6 Months after Permit	Hire Implementing Entity Executive Director and key staff (if not completed prior to permit issuance).	Implementing Entity
Begin 0–6 Months after Permit	Hire key staff of Implementing Entity or secure agreements or contracts with other organizations to fulfill these roles. Continue to hire or contract out Implementing Entity technical and operational staff as Preserve System expands (Chapter 9).	Implementing Entity, Plan Permittees
Begin 0–6 Months after Permit	Develop the SSHCP data repository. Develop processes for tracking collected fees, land acquisition, and SSHCP impacts. This task will be ongoing.	Implementing Entity, Plan Permittees
Begin 0–6 Months after Permit	Establish SSHCP implementation website.	Implementing Entity
Begin 0–6 Months after Permit	Develop a set of biologist qualifications and establish a pre-approved list of biologists for Covered Activity construction monitoring, Preserve monitoring, and Preserve management. This task will be ongoing.	Implementing Entity
Begin 0–6 Months after Permit	Develop a template for pre-acquisition assessment and protocols prior to the first land acquisition.	Implementing Entity
Begin 0–6 Months after Permit	Establish the Technical Advisory Committee.	Implementing Entity
Begin 0–6 Months after Permit	Determine the date by which the annual automatic update of SSHCP fees will occur (Chapter 12).	Implementing Entity
Begin 0–6 Months after Permit	Prepare the Preserve System Monitoring and Management Program, including the management toolbox described in Chapter 8. Complete within 18 months of Incidental Take Permit issuance.	Implementing Entity

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**Table 9-3
Schedule for Major Implementation Tasks**

Time Period	Tasks and Milestones	Responsible Party
<i>6 Months and Beyond After Permit</i>		
Begin 6 Months to 1 Year after Permit	Investigate establishment and re-establishment opportunities on existing open space and SSHCP Preserve land. This task will be ongoing (Chapter 7).	Implementing Entity, Plan Permittees
Begin 1 year after Permit	Update SSHCP fees annually. Provide new fee schedule to Permittees. This task will be ongoing (Chapter 12).	Implementing Entity, Land Use Authority Permittees
During lifespan of Permit	At intervals specified in Chapter 12, perform financial assessment. This task will be ongoing.	Implementing Entity
Begin 1 year after Permit	Prepare and submit annual report to the Permitting Agencies. This task will be performed on an annual basis by March 15 of every year for the previous fiscal year (July 1 through June 30).	Implementing Entity
Begin 1 year after Permit	Conduct an annual public workshop to report on implementation progress of the SSHCP. This task will be ongoing.	Implementing Entity
Years 0–45 after Permit	Implement establishment and re-establishment projects. This task will be ongoing; however, construction of all habitat re-establishment/establishment projects must be completed by Year 45.	Implementing Entity
Begin 3 Years after Permit	A comprehensive development fee audit will be completed at least every 3 years for the first 15 years of the Plan (i.e., years 3, 6, 9, 12, and 15) and at least every 5 years thereafter (i.e., years 20, 25, 30, 35, 40, and 45), where year 1 is the first full calendar year of SSHCP implementation.	
Begin 5 Years after Permit	Use recent aerial photographs (at least every 5 years) to track and map land cover conversions, especially conversion of vernal pools. This task will be ongoing.	Implementing Entity
20 Years after Permit	In Year 20 of implementation, work with the Permitting Agencies to conduct a formal and complete review of progress toward building the Preserve System and achieving each Biological Goal and Measurable Objective.	Implementing Entity
Prior to Permit Expiration	Finalize an implementation structure for continued monitoring and management of the Preserve System after permit expiration.	Implementing Entity
After Permit Expiration in Perpetuity	Continue adaptive management and limited monitoring of Preserve System biological resources to ensure that management actions are working (Chapter 8).	Implementing Entity

9.12 References

USFWS and NMFS (U.S. Fish and Wildlife Service and National Marine Fisheries Service). 1998. *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*. Final. March 1998.