

## **8.1 Overview**

Implementation of the Santa Clara Valley Habitat Plan begins when the Implementing Agreement is executed, the Section 10(a)(1)(B) incidental take permits and NCCP permit are issued, and the local ordinances take effect. Primary responsibility for Plan implementation rests with the Permittees. However, as described in this chapter, other groups are responsible for implementing some aspects of the Plan. The successful execution of the conservation strategy, monitoring program, covered activity approvals, and reporting that are part of the Plan require coordinated actions among the Permittees, Wildlife Agencies, public land managers, and the private sector.

This chapter describes the overall implementation policies of the Plan, including institutional arrangements, organizational structure, approval processes, land acquisition, and roles and responsibilities of signatories to the Implementing Agreement and other stakeholders.

## **8.2 Implementation Structure**

Day-to-day implementation of the Habitat Plan will be managed by staff of the Implementing Entity. The Implementing Entity has the authority to delegate some of its responsibilities to other entities including government agencies and nongovernmental organizations, though the Implementing Entity is ultimately responsible for ensuring implementation of the Habitat Plan. Many existing organizations and agencies in the Santa Clara County area already have significant expertise and experience in performing the necessary functions of the Implementing Entity. The Implementing Entity may be able to more effectively and efficiently ensure implementation of the Habitat Plan by contracting with these existing institutions. However, the Implementing Entity will have the authority to directly implement all aspects of the Habitat Plan itself should this be necessary. Options that could be considered to implement some or all of the duties of the Implementing Entity include those listed below.

- Staff hired by the Implementing Entity and independent of other agencies.
- A land trust specifically formed to help implement the Plan.

- Contracts with existing organizations that have relevant experience and expertise, such as experience with land management or monitoring (e.g., Open Space Authority, County Parks).

Other organizations with important roles in Plan implementation include the Wildlife Agencies, other public and private land management organizations, science advisors, and the public. The roles, responsibilities, and relationships of each group are described below and illustrated in **Figure 8-1**. Unless otherwise stated, all obligations and responsibilities described in this chapter rest with the Permittees and the Implementing Entity.

## 8.2.1 Permittees

The following agencies will be Permittees under the Plan.

- City of Gilroy.
- City of Morgan Hill.
- City of San José.
- County of Santa Clara.
- Santa Clara Valley Water District.
- Santa Clara Valley Transportation Authority.
- The Implementing Entity.

It is expected that each of these agencies will be a Permittee on the ESA Section 10(a)(1)(B) incidental take permit and the NCCP Act permit providing authorization for take that occurs from their covered activities and from covered activities within their respective jurisdictions (Chapter 2). Each will also be a signatory to the Plan's Implementing Agreement. The Permittees will vest the responsibility for implementing the Plan to the Implementing Entity as described below. To that effect, the Implementing Entity will oversee implementation of the Plan on behalf of the Permittees. However, the Permittees will ultimately be responsible for compliance with all the terms and conditions of the Plan's permits and for the performance of the Implementing Entity. Each local jurisdiction will designate staff to advise the Implementing Entity on Habitat Plan implementation (**Figure 8-1**) and provide a point of contact at the local jurisdiction for the Plan.

Many applications for coverage under the Habitat Plan will be submitted by private project proponents in the participating cities and the County. Each of these jurisdictions will be responsible for confirming that a project within its jurisdiction is eligible for coverage and for determining the completeness of each project application as described in Chapter 6 and in Section 8.7 *Roles and Responsibilities in Reviewing Application for Take Authorization* below. If the project is eligible for coverage and the project proponent has complied with all application requirements and other relevant terms of the Habitat Plan as determined by the participating jurisdiction, the participating jurisdiction will grant take authorization under the Habitat Plan as part of its normal project

review process (e.g., grading permit issuance, EIR certification). Participating local jurisdictions will also be responsible for reporting the relevant details of approved projects to the Implementing Entity (for entry into the Habitat Plan database and for required reporting to the Wildlife Agencies), for monitoring developer compliance with the avoidance and minimization requirements specified in the applicable conservation measures (see Chapter 6), and for collecting fees.

## 8.2.2 Implementing Entity

The Implementing Entity, proposed to be called the Santa Clara Valley Habitat Agency, is responsible for executing the requirements of the Habitat Plan, the permits, and the Implementing Agreement. The Implementing Entity will hold title to lands or easements it purchases and will oversee cooperative agreements with other land management entities that own and/or manage reserves for the Implementing Entity as part of the Reserve System. The Implementing Entity may also provide funding to local land management agencies and land trusts for them to purchase land for the Reserve System. The Implementing Entity will provide funds for reserve management and monitoring to those agencies and organizations with whom it contracts for such services.

The Implementing Entity will also coordinate with science advisors, outside consultants, and other land management agencies to ensure adequate and coordinated Plan implementation. The Implementing Entity will include, as part of staff or contract resources, a network of scientists, administrators, and other specialists that oversee and carry out planning and design, habitat restoration, monitoring, and adaptive management programs. Staff for these positions may be hired by the Implementing Entity or their functions contracted out to existing local agencies, nonprofit organizations, or private consultants. The Implementing Entity will also coordinate with Wildlife Agencies on a monthly basis and provide the Wildlife Agencies with annual reports.

The Implementing Entity will be a Joint Powers Authority (JPA) composed of the Cities of Gilroy, Morgan Hill, and San José, and the County. The JPA is limited to the four participating jurisdictions because the Joint Exercise of Powers Act requires that a JPA can only exercise powers held by all the participating agencies. Of the participating agencies, only the four jurisdictions have the authority to adopt the Habitat Plan fees (see Chapter 9 for details). Because all of the Permittees are responsible for implementing the Habitat Plan, all of the Permittees will have a role in the Implementing Entity.

The Implementing Entity will have two decision-making bodies, a Governing Board and an Implementation Board, as described below.

## Implementing Entity Governing Board

The Governing Board of the Implementing Entity will be composed of two representatives of each of the four participating jurisdictions, for a total of eight members. Each representative will be an elected official from the participating jurisdiction. The Governing Board is responsible for the governance and administration of the Implementing Entity. It may delegate its authority to the Implementing Board except for two duties that must remain with the Governing Board: adoption and modification of Habitat Plan fees and the approval of the Implementing Entity's annual budget. The Governing Board will meet at least twice each year.

## Implementing Entity Implementation Board

The Implementation Board will have representation by all Permittees. The 11-member Implementation Board will have two representatives each from the Permittees except for VTA, which, per its request, will have one representative. For the Permittees with two representatives, one must be an elected official. The Implementation Board will meet at least once every two months. The responsibilities of the Implementation Board will include, but are not limited to the following.

- Reviewing and making recommendations to the Governing Board regarding the adoption or modification of fees.
- Review and making recommendations to the Governing Board of annual operating and capital budgets of the Implementing Entity.
- Making decisions regarding the appointment of the Administrative Director and the hiring of or contracting with other Implementing Entity staff, services, or equipment.
- Making decisions regarding property acquisition or conservation easement purchase.
- Reviewing and making recommendations to the Administrative Director regarding grants and other funding opportunities.
- Establishing any committees or subcommittees to help the Implementing Entity fulfill its duties.
- Review and approval of annual reports prior to submittal to the Wildlife Agencies.
- Review of special cases of covered activities not subject to the jurisdiction of a Permittee (e.g., Participating Special Entities; see Section 8.4 *Participating Special Entities* below).
- Review and approval of requests by Permittees or private project proponents to provide non-monetary compensation for impacts in lieu of fees (see Chapter 9 for these provisions).

- Resolution of disputes among Permittees regarding implementation of the Plan.

## Implementing Entity Administration

Implementation tasks include support of permanent and seasonal administrative and technical staff who will be responsible for overseeing and ensuring the day-to-day tasks of implementing the Habitat Plan “on the ground.” Some or all of the activities of day-to-day implementation may be delegated to and carried out by contract agencies (including Permittees), nonprofit organizations, or contractors that specialize in the necessary functions and duties.

Implementing tasks will also address Plan activities such as identifying and acquiring suitable conservation properties, conducting inventories and monitoring surveys on Habitat Plan reserves, managing lands in the Reserve System, restoring wetlands and streams, creating ponds, maintaining a database of relevant information, tracking land cover and habitat losses and conservation, and reporting all relevant information to the Wildlife Agencies annually. All responsibilities of the Implementing Entity are described below in Section 8.3 *Responsibilities of the Implementing Entity*.

The Implementing Entity will receive advice from the groups discussed in the following sections. The ultimate decisions for all day-to-day activities of the Plan rest with the Implementing Entity and its Implementation Board.

### 8.2.3 Other Land and Water Management Agencies

Local land and water management agencies other than the Permittees are also important to the Plan’s success. Habitat Plan reserves will often border existing parks or public lands owned by other public agencies or private land trusts.

Land and water managers from relevant local organizations will be invited to coordinate closely with the Implementing Entity to ensure that management actions are compatible and consistent across the region. Significant cost savings can be achieved by coordination of local land and water management agencies in undertaking joint management actions that are consistent with this Plan.

### 8.2.4 Technical Advisory Committee

Many of the land management tasks outlined in Chapter 5 are common to other land management agencies in the county. Therefore, the Implementing Entity would benefit from the advice and partnerships with other land management agencies to perform common tasks. The Implementing Entity will form a Technical Advisory Committee that includes reserve management staff of the

Implementing Entity, staff representing the Permittees, and possibly third party contractors or other partners. Representatives of the Wildlife Agencies will serve as members of the Technical Advisory Committee. Senior managers of other local land management agencies could be invited to participate to share best practices and resources. The Technical Advisory Committee would serve as a coordinating body to provide advice on land management, monitoring, and other Habitat Plan activities in the Reserve System. Biologists at Local Partner agencies could also serve as members of the Technical Advisory Committee, if appropriate. The frequency of meetings of the Technical Advisory Committee will be determined by the Implementing Entity based on need and the activities of the Plan. The Technical Advisory Committee may form subcommittees to address specific issues. The Technical Advisory Committee may sunset at the end of the permit term.

## 8.2.5 Wildlife Agencies

It is important that the Wildlife Agencies (i.e., USFWS and CDFG) remain as active participants in the implementation of the Habitat Plan. The Wildlife Agencies are responsible for providing guidance to the Implementing Entity and Permittees on how to fulfill the terms of the permits. The Wildlife Agencies also share responsibility to monitor Plan compliance and notify the Implementing Entity as soon as possible if the Plan is not being implemented to their satisfaction. Wildlife Agency staff will take an active role in Plan implementation through review and approval of draft reserve unit management plans and specific covered activities (see Section 8.7.3 for a complete list of covered activities that require additional Wildlife Agency review). The Wildlife Agencies will also review and approve all land acquisition proposals to ensure consistency with the Habitat Plan conservation strategy described in Chapter 5.

The Wildlife Agencies will also assist the Implementing Entity in attempting to secure state and federal funding for Plan implementation (see Chapters 9 and 10). It is expected that the Wildlife Agencies will periodically attend Governing Board and Implementation Board meetings to assist their efforts to ensure that the Plan remains in compliance. Representatives of these agencies will serve as advisory members to the Governing and Implementation Boards and the Technical Advisory Committee.

To ensure regular communication between the Implementing Entity and the Wildlife Agencies, the Implementing Entity will convene and facilitate regular coordination meetings with Wildlife Agency staff to keep them apprised of progress towards conservation goals and objectives, Plan compliance, funding, monitoring and adaptive management, and other relevant topics. Meeting frequency will vary but will likely be monthly or bi-monthly during the first several years of implementation to ensure close communication. These meetings will serve as a means for the Wildlife Agencies to provide advice to the Implementing Entity prior to implementation of key conservation actions such as land purchases, aquatic conservation, habitat restoration, and adaptive management and monitoring. The meeting will also serve as a forum to

troubleshoot issues that arise before they influence permit compliance. These meetings may be separate discussions or part of Technical Advisory Committee meetings.

As stated in Chapter 5, the Wildlife Agencies will review all draft reserve unit management plans and provide comments to the Implementing Entity within 60 days of receipt of these documents. The Implementing Entity will revise the draft plan based on the Wildlife Agencies' comments, if any, and will provide a revised draft to the Wildlife Agencies, which will have an additional 60-day review period. If an initial draft reserve unit management plan or any subsequent revised draft reserve unit management plan adequately addresses a Wildlife Agency's comments, the Wildlife Agency will so notify the Implementing Entity within 60 days, and the reserve unit management plan will be deemed to be approved by that Wildlife Agency for purposes of this Plan, the Implementing Agreement, and the permits. In addition, if a Wildlife Agency does not provide comments within 60 days after receiving the revised draft reserve unit management plan, the Wildlife Agency will thereafter be deemed to have approved the revised draft plan for purposes of this Plan, the Implementing Agreement, and the permits. The Implementing Entity will incorporate comments submitted by the Wildlife Agency after the 60-day period in the revised draft reserve unit management plan to the extent that the Implementing Entity determines the comments can be incorporated.

As stated in Chapter 5, the Wildlife Agencies will review all land acquisition proposals and provide comments to the Implementing Entity within 30 days of receipt of each of these documents. The Implementing Entity will incorporate changes to the documents and provide revised drafts to the Wildlife Agencies within 15 days. These deadlines are established to ensure the timely review and comment on the documents by Wildlife Agency staff and to enable the Implementing Entity to acquire land as soon as possible. If the Wildlife Agencies do not respond within 30 days, the Implementing Entity may proceed with the land acquisition.

A subset of the covered activities will require additional review and approval by the Wildlife Agencies to ensure that the covered activity is adequately defined, consistent with the Habitat Plan, and incorporates appropriate conditions of approval in Chapter 6. See Section 8.7.3 *Wildlife Agency Responsibilities* for more discussion of this responsibility. See Section 7.2.3 *Program Implementation* for the Wildlife Agencies' role in the implementation of the monitoring program.

## Dispute Resolution

The Implementing Entity and the Wildlife Agencies will strive at all times to work in good faith with each other to reach mutual agreement on key implementation tasks such as adaptive management, monitoring, and conservation actions. If disagreements arise that cannot be resolved easily, the Implementing Entity will follow the “meet and confer” dispute resolution process outlined in Section 6.6.1 of the Implementing Agreement, and if necessary, the

“elevation of dispute” process outlined in Section 6.6.2 of the Implementing Agreement (**Appendix B**).

## Permit Suspension or Revocation

The Wildlife 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 Permittees are out of compliance with the Plan, the Implementing Agreement, or the permits. The USFWS has the ability to suspend or revoke all or part of the ESA permits if continuation of covered activities appreciably reduces the likelihood of the survival and recovery of the species in the wild<sup>1</sup>. CDFG has the ability to suspend or terminate all or part of the NCCP permit if revocation or termination is required to avoid jeopardizing the continued existence of that portion of a covered species’ (listed or non-listed) range that occurs within the Plan area and to fulfill a legal obligation of the CDFG under the NCCP Act<sup>2</sup>. If such a situation arises, the Wildlife Agencies will notify the Permittees of the actions they must take, if any, to prevent jeopardy to the listed species and maintain the permits, giving the Permittees a reasonable opportunity to implement such actions. See the Implementing Agreement for details.

If one or more of the permits are revoked, the Permittees have the obligation to fulfill all outstanding mitigation requirements, including management and monitoring of the Reserve System in perpetuity, for any take that occurs prior to the revocation. For example, if the Permittees were behind on compliance with the Stay-Ahead provision for land acquisition or restoration, they would be required to meet this obligation (see Section 16.7 of the Implementing Agreement for details [**Appendix B**]).

### 8.2.6 Scientific Review

The adaptive management process described in Chapter 7 requires that the Implementing Entity consult scientists outside of the Implementing Entity to help advise them on issues related to habitat management and monitoring (see also subheading *Structure of the Adaptive Management Decision-Making Process* below). Scientists with expertise in conservation biology, management of local natural communities and agricultural lands, and the ecology of covered species will be consulted by the Implementing Entity to provide input, as appropriate. The scientific expert’s primary function is to provide technical advice and help assemble the best available scientific data on reserve assembly, monitoring, and adaptive management. A separate group of scientists will be convened in an Independent Conservation Assessment Team to provide input on the overall Plan progress at least every five years. More detail on the structure, role, and schedule of this scientific input is provided in Chapter 7, Section 7.2.3 *Program*

<sup>1</sup> 50 Code of Federal Regulations Sections 13.28–13.29, 50 Code of Federal Regulations Sections 17.22(b)(8) and 17.32(b)(8).

<sup>2</sup> California Fish and Game Code Sections 2820 and 2823.



*Implementation* subheading *Independent Conservation Assessment Team*. Scientists may be consulted after the permit term to continue to provide advice on monitoring and adaptive management.

## 8.2.7 Public Input

Public input is fundamental to ensuring the success of and continuing support for the Plan throughout implementation. The NCCP Act requires that the Implementing Agreement provide for periodic reporting to the public on the progress of NCCP implementation. Meetings of the Governing Board and Implementation Board will be open to the public, and public comments will be solicited and heard at each meeting<sup>3</sup>. In addition, the public can contact the staff of the Implementing Entity to comment on various aspects of Plan implementation. All data and reports associated with the monitoring program for this Plan will be available to the public, with the exception of reports documenting surveys on private lands considered for acquisition or conservation easements not yet acquired by the Implementing Entity. Monitoring reports will also be posted on the Habitat Plan web site.

### Public Advisory Committee

The Implementing Entity will establish and appoint a public advisory committee to solicit input from stakeholders with interest in Plan implementation. The committee will advise the Implementing Entity. Staff from the Permittees should participate in public advisory committee meetings to help ensure broad coordination among those parties interested in and responsible for implementing the Plan. Meeting frequency will be determined by the Implementing Entity and the committee; quarterly meetings are recommended initially. Meetings will be open to the public. The committee may sunset at the end of the permit term.

The public advisory committee can provide input to the Governing and Implementation Boards, Technical Advisory Committee, and staff on all aspects of Plan implementation, with an emphasis on the following topics.

- Expenditure of funds for habitat conservation actions.
- The general application of conditions on covered activities (Chapter 6).
- Achieving the biological goals and objectives of the Plan.
- Operation of reserves, monitoring, and adaptive management.
- Technical information and expertise regarding monitoring, management, and restoration.
- Adherence to Plan commitments (e.g., No Surprises, neighboring landowner assurances).

---

<sup>3</sup> The Governing Board may need to also hold periodic closed-door sessions to discuss confidential items such as land transaction negotiations or legal matters.

## Annual Public Meeting

At least once annually, the Implementing Entity will convene a meeting to report on the progress of implementation directly to the public. The Implementing Entity will summarize habitat losses and gains, habitat restoration and creation, and management and monitoring accomplishments for the previous year. The meeting will provide an informal forum for the public to pose questions and provide comments directly to the Implementing Entity on the overall progress of Plan implementation. The annual public meeting may coincide with one of the regular Governing Board or Implementation Board meetings. Periodic formal review of Plan progress in a public forum may also be appropriate and could perhaps coincide with the 5-year conservation reviews by the Independent Conservation Assessment Team (see Section 7.2.3 *Program Implementation* subheading *Independent Conservation Assessment Team*).

## 8.3 Responsibilities of the Implementing Entity

The Implementing Entity is tasked with the actual implementation of the Plan. As described above, the Implementing Entity will be receiving advice on Plan compliance and implementation from a variety of sources, including the Wildlife Agencies, science advisors, and the public. The Implementing Entity will seriously consider all of this advice to implement the Plan effectively and cost-efficiently. The Wildlife Agencies have review and approval authority over certain components of implementation (e.g., land acquisition, reserve unit management plans, reservoir-specific dewatering plans, and major changes in monitoring and adaptive management). However, the ultimate decisions for Plan implementation and compliance with the permits, Implementing Agreement, and Habitat Plan rest with the Implementing Entity.

Although the Implementing Entity is responsible for all of these tasks, it may contract with a Permittee, other local organization, or consultants to perform one or more of their responsibilities. These responsibilities include but are not limited to those listed below.

### Administration

- Developing and maintaining annual budgets and work plans.
- Developing standardized forms and checklists for Application Package processing.
- Obtaining grants and other outside funding sources, including tracking and reporting grant compliance.
- Collecting Habitat Plan fees from Permittees directly for their covered activities or from participating jurisdictions after they collect fees from private project proponents (as described in Chapter 9).

- Receiving, managing, tracking, reporting, and expending funds to implement the Plan.
- Training staff of local jurisdictions to review applications for take authorization under the Plan. Assisting local jurisdictions to ensure that project proponents comply with the conditions on covered activities described in Chapter 6.
- Providing tools to the Permittees to support the application review process.
- Serving as the final arbiter of whether a project or activity is covered under the Plan.
- Administering the Neighboring Landowner Assurances program described in Chapter 10.
- Creating and maintaining a database to track Plan compliance, which includes 1) implementation of all conservation actions, 2) progress towards the biological goals and objectives, 3) implementation of the monitoring and adaptive management program, 4) implementation of conditions on covered activities, and 5) all impacts on land cover types, modeled habitat for covered species, occupied habitat for selected species, and covered plant occurrences.
- Creating and maintaining a database and models to support the evaluation of land acquisition opportunities and other conservation actions to meet the requirements of the Plan.
- Ensuring that conservation actions are being implemented roughly proportional in time and amount to the impacts on land cover types authorized under the Plan (e.g., see Section 8.6.1 *Stay-Ahead Provision*), and forecasting land acquisition needs in order to comply with the Stay-Ahead provision.
- Notifying the Permittees of the requirement to make the land in lieu of fee provision compulsory when the Plan is out of compliance or in jeopardy of being out of compliance with the Stay-Ahead provision, as well as notifying them when this requirement may be lifted (see Section 8.6.1 *Stay-Ahead Provision*). Land acquired must always meet the requirements of the Plan as described in Chapter 5.
- Calculating and publicizing the amounts of annual fee adjustments and distributing these calculations to the Permittees, in accordance with Chapter 9.
- Performing the periodic fee assessments described in Chapter 9.
- Convening regular meetings (i.e., Wildlife Agencies, Public Advisory Committee, Annual Meeting, Independent Conservation Assessment Team).
- Preparing the Annual Reports (see Section 8.10 *Data Tracking* below).

## Conservation Implementation

- Implementing all conservation actions described in Chapter 5 or coordinating with partners to implement conservation actions, and ensuring compliance with all Plan requirements.
- Researching land acquisition opportunities (fee title or conservation easement) to meet the requirements of the Plan.
- Negotiating and securing land and water acquisition or conservation easements with private landowners.
- Negotiating land acquisition or conservation easements in partnership with other organizations.
- Coordinating with Permittees to ensure that the Plan is implemented consistently and effectively.
- Reviewing offers of land in lieu of fees that may be made by project proponents (see Section 8.6.7 *Land Dedication In Lieu of Development Fee*) or conservation action in lieu of fees by a Permittee and making determinations on other implementation matters that require approval of the Implementing Entity, as specified in this Plan or the Implementing Agreement.
- Monitoring and enforcing, if necessary, landowner compliance with conservation easement terms<sup>4</sup>.
- Developing enforcement procedures for the Reserve System and individual reserves (e.g., public and pet access controls) that will be incorporated into the reserve unit management plans.
- Developing reserve unit management plans for groups of parcels that share common land cover types and habitats.
- Designing and implementing habitat enhancement, restoration, and creation projects and managing the affected areas in an adaptive management framework (see additional detail below). This task includes developing site-specific restoration management plans.
- Obtaining additional permits for site-specific projects in the Reserve System (e.g., wetlands permits and cultural resources compliance for restoration projects), as needed.
- Conducting outreach to landowners, local community groups and agencies, and the general public regarding the Plan and its goals.
- Developing and managing a volunteer program to provide an opportunity for the public to contribute to the successful implementation of the Plan.
- Periodic mapping of the study area to update the land cover maps and habitat models and calculations. Modeled habitat impacts (**Table 4-4**) and modeled

---

<sup>4</sup> Enforcement actions on private land under conservation easement for the Reserve System would be conducted by the Implementing Entity with assistance from the appropriate local jurisdiction. Enforcement actions on land in the Reserve System owned by a public agency would be conducted by that agency with assistance from the Implementing Entity.

habitat acquisition requirements (**Table 5-17**) will be tracked based on the most recent models available. Implementation of conditions described in Chapter 6 (e.g., species surveys) and the conservation strategy (Chapter 5) will be informed by the most current land cover maps and habitat models updated and maintained by the Implementing Entity as needed throughout the permit term.

- Coordinating and communicating with local land management agencies.
- Designing a scientifically valid monitoring program and monitoring habitat and species on reserves (see additional detail below and in Chapter 7), including site inventories, targeted studies, compliance monitoring, effectiveness monitoring, and status and trend monitoring.
- Monitoring changed circumstances identified in Chapter 10 that might arise and if they do, following the remedial measures and procedures outlined in Chapter 10.
- Developing partnerships with local academic institutions to help direct research towards management and monitoring needs of the Plan.
- Conducting or overseeing land and water management activities that are part of the conservation strategy.
- Monitoring and tracking land acquisition and other conservation actions within and adjacent to the study area performed by others to ensure coordination and compatibility with Plan actions.
- Developing and conducting educational programs for landowners and the public consistent with the conservation strategy.
- Ensuring involvement of the public, science advisors, interested agencies, and others in Plan implementation.

The Implementing Entity will utilize specialists as needed to ensure proper implementation of these tasks. Key functions and roles are described below and illustrated in **Figure 8-2**. The Implementing Entity will have several core staff members that are dedicated to Plan implementation, as described below.

### 8.3.2 Administrative Director

The administrative director would be a staff person dedicated to the Plan who reports to the Implementation Board and directs the activities of the Implementing Entity. The administrative director is responsible for implementing all of the tasks listed above, including periodic reporting to the Implementation Board. The administrative director will also oversee periodic reviews of the Permittees to ensure compliance with the terms of the permits, Implementing Agreement, and Plan on behalf of all Permittees. Finally, the administrative director will serve as the primary link between Implementing Entity staff, local jurisdictions, Wildlife Agencies, other decision makers, and the general public.

### **8.3.3 Science**

Scientific expertise is needed within the Implementing Entity to help direct all technical aspects of Plan implementation, including land and water management and the monitoring and adaptive management program. Implementing Entity staff or designees will collect and analyze data as required by the Plan, keep abreast 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 Reserve System incorporates the most appropriate strategies with the latest technology and best management practices. The Implementing Entity will be responsible for communication with external scientists, including agency scientists and the larger conservation science community. The Implementing Entity must also encourage relationships with agency and academic scientists to facilitate collaborations that will contribute to the Plan's conservation goals.

### **8.3.4 Real Estate Activities**

The Implementing Entity conducts relevant financial and legal analyses to guide selection of parcels for the Reserve System, and conducts or manages appraisals and transactions. A specialist will be needed with 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 other organizations who partner with it to acquire land to fulfill requirements of the Plan. Existing agencies may already have staff with these skills; the Implementing Entity could partner with such agencies to obtain these skills externally.

### **8.3.5 Grant Administration**

The Implementing Entity is responsible for managing all grants, contracts, and other funding sources during Plan implementation. The Implementing Entity must establish clear accounting procedures and methods for disbursing funds and actively pursue and acquire additional funding for Plan implementation. The Implementing Entity will actively write grant applications to secure these funds. The Implementing Entity may work with other organizations who partner with it to seek grants to fulfill Plan requirements. Existing agencies may already have staff with these skills; the Implementing Entity could partner with such agencies to obtain these skills externally. For any grants received, the Implementing Entity must also monitor, track, and report to the granting agency according to the grant requirements.

### 8.3.6 Budget Analysis

The Implementing Entity is 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.

### 8.3.7 GIS/Database Maintenance

The Implementing Entity will use GIS or other equivalent spatially-explicit database systems to collect, store, and utilize relevant spatial data necessary for Plan implementation and maintain them to track compliance and to guide reserve design and monitoring and adaptive management programs. For example, the Implementing Entity must be able to query the database to summarize take and conservation by year (by land cover types, plant occurrences, and modeled habitat for covered species) and cumulatively. The Implementing Entity will track all data related to the progress of meeting Plan goals and objectives. The Implementing Entity will also ensure development and management of the public website for the Habitat Plan.

### 8.3.8 Reserve Management and Monitoring

The Implementing Entity will direct the management of land acquired for the Reserve System and coordinate with managers of other protected areas to form a biologically cohesive network of protected lands in the study area. These activities will include regular patrol, trash removal, fence/gate installation and repair, road maintenance, and other necessary activities.

Some conservation actions that occur either in or outside the Reserve System may be performed by a Permittee. The Implementing Entity will coordinate with these Permittees and other local agencies to conduct conservation actions that it cannot perform itself or would perform less efficiently.

The Implementing Entity is responsible for developing reserve unit management plans for all units of the Reserve System to guide site-specific management (see Chapter 5). The Implementing Entity will develop site restoration plans (see Chapter 5), including designs and construction drawings, or will oversee contractors conducting these tasks. The Implementing Entity will also be responsible for interim management of acquired lands prior to completion of these reserve unit management plans.

The Implementing Entity is responsible for designing and implementing the monitoring and adaptive management program described in Chapter 7. The Permittees and the Implementing Entity are responsible for all management and monitoring on the Reserve System after the permits expire (i.e., in perpetuity).

## Management Conducted by Third Parties

The Implementing Entity may contract with a third party landowner, contractor, or other agency or organization to conduct management activities within the Reserve System on the Implementing Entity's behalf. Some of these management activities may result in take of covered species, as described in Chapter 4. To ensure that the third party manager adheres to the terms of the Habitat Plan, the permits, and the Implementing Agreement, the Implementing Entity will enter into a contract with this third party. The contract will specify the work to be performed, the applicable terms of the Habitat Plan and permits, and the take authorization that is extended to the third party, if applicable.

If a third party conducts land management on behalf of the Implementing Entity, another party must conduct the monitoring of those management activities to ensure independent assessment of the effectiveness of those actions.

## Structure of the Adaptive Management Decision-Making Process

Key to the success of the adaptive management program is a clear and effective structure for making decisions on the basis of new data from Plan monitoring and information from other sources. The organizational structure of the monitoring and adaptive management decision-making process is described in detail in Chapter 7 *Monitoring and Adaptive Management Program*. This structure has been designed to be efficient and agile in order to respond quickly to monitoring results or new scientific data.

In general, the Implementing Entity oversees the adaptive management and monitoring program. The Wildlife Agencies will provide input and help guide the program, but the Implementing Entity has ultimate responsibility for implementing the program and instituting changes through adaptive management. Additional responsibilities of the Implementing Entity include prioritizing management actions, disseminating information, developing annual and long-term work plans, and facilitating input from the public and outside scientists. The Administrative Director of the Implementing Entity will work with the Entity's science and management resources to implement the adaptive management and monitoring program. Reserve managers, who will be in charge of day-to-day activities within the reserves, will also contribute to annual work plans and formulate adaptive management recommendations for the Plan as a whole.

A pool of scientists will provide external input regarding implementation of the monitoring and adaptive management program. Input will be provided regularly or as needed to help guide monitoring protocols and experimental design, to interpret results and generate hypotheses, and to comment on the overall success of the monitoring and adaptive management program in achieving the biological goals of the Plan.



The Wildlife Agencies will provide feedback on the implementation of the adaptive management and monitoring program described in the annual work plans. Individuals with the Wildlife Agencies with particular expertise in management may also participate as science advisors. All forms of input will be collected by the Implementing Entity and incorporated into management and monitoring practices (see Chapter 7 *Monitoring and Adaptive Management Program* for more details). The Wildlife Agencies will have review and approval authority over major changes in the reserve unit management plans to ensure compliance with the permits, Implementing Agreement, and Habitat Plan.

An Independent Conservation Assessment Team will provide conservation reviews every 5 years. The scope of review for the Conservation Assessment Team will vary each time they are convened. The role of the Independent Conservation Assessment Team is described in detail in Chapter 7, Section 7.2.3 *Program Implementation* subheading *Independent Conservation Assessment Team*.

Local land managers will be invited to help guide Plan implementation as advisors to the Implementing Entity and the Implementation Board and these organizations will coordinate closely with the Implementing Entity. As mentioned above, these management agencies may wish to establish a formal committee to facilitate coordination and information sharing.

### **8.3.9 Public Outreach and Education**

As described in Chapter 5 (Section 5.3.2 *Landscape Conservation and Management*), the Implementing Entity will conduct outreach to local private and public landowners and residents that will include education on the management goals and objectives as well as implementation techniques. The focus of public education and outreach activities will be to raise landowner and public awareness of reserve management goals, actions and methods, and how the public can support them. To that end, the Implementing Entity will ensure development and management of a public web site for the Habitat Plan. Where appropriate, the Implementing Entity will develop and publish guidelines for local landowners and provide education programs to assist in the implementation of these guidelines. Public education and outreach will be coordinated with other local agencies providing similar services in the study area (e.g., County Parks, SCVWD, and Open Space Authority).

### **8.3.10 Legal and Financial Services**

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 Permittees may provide legal counsel to the

Implementing Entity. However, certain 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 development fees are adjusted with changing land costs and inflation.

### **8.3.11 Consultants and Contractors**

Consultants will be retained to meet any technical or scientific needs that cannot be effectively or efficiently addressed through in-house staff due to insufficient expertise or availability. It is expected that consultants will be utilized more heavily during the early stages of Plan implementation, becoming less necessary as the Implementing Entity develops and becomes more familiar with the Reserve System. Contractors will be needed for construction tasks within the Reserve System requiring specialized skills or the use of heavy equipment, such as road grading, restoration grading, plant propagation, restoration planting, building recreational facilities, and water-well construction and maintenance.

### **8.3.12 Responsibilities of the Local Jurisdictions**

The local jurisdictions with land use planning and development review and decision-making authority participating in this Plan (Cities of Morgan Hill, Gilroy, San José; County of Santa Clara) have a special responsibility to assist with implementation because of their authorities as local governments. As Permittees and members of the Implementing Entity, the participating local jurisdictions will support Plan implementation by:

- Receiving, reviewing, and approving applications for take authorization under the Plan from private project proponents according to the procedures and requirements described in Chapter 6.
- Requiring private project proponents to pay Habitat Plan fees established by the Implementing Entity (see Section 8.5 *Local Implementing Ordinances*) and as described in Chapter 9.
- Periodically, and at least annually, transferring the Habitat Plan fees to the Implementing Entity to support Plan implementation.
- Reporting, at least annually, to the Implementing Entity the applications and approvals for take authorization under the Plan, including take associated with projects exempt from fees and/or conditions of this Plan.
- Monitoring the implementation of conditions on covered activities on project sites.
- Participating in the Implementing Entity's Technical Advisory Committee.
- Coordinating closely with the Implementing Entity regarding Plan implementation.

## 8.4 Participating Special Entities

Public or quasi-public entities, such as special districts or entities not subject to the jurisdiction of the Permittees, may conduct or initiate projects or ongoing activities within the permit area that could affect listed species and that may require take authorization from USFWS and/or CDFG. Such organizations may include existing or future school districts, water districts, irrigation districts, transportation agencies, local park districts, geologic hazard abatement districts, or other utilities or special districts that own land or provide public services. These public agencies, known as Participating Special Entities, can request coverage under the Plan during Plan implementation; such coverage would provide take authorization for their projects<sup>5</sup>. Municipalities that are not a Permittee are not eligible to participate using this status<sup>6</sup>. The following is a partial list of special districts that occur in the permit area and that could be eligible as a Participating Special Entity provided they meet the criteria described below.

- Community College Districts
- K-12 School Districts.
- Burbank Sanitary District.
- Central Fire Protection District.
- County Library Service Area 1.
- County Sanitation District No. 2-3.
- Guadalupe Coyote Resource Conservation District.
- Loma Prieta Resource Conservation District.
- Pacific Gas and Electric Company.
- Pacheco Pass Water District.
- Pacheco Storm Drainage & Maintenance District.
- San Martin County Water.
- West San Martin Water Company.
- Santa Clara County Lighting Service Area.
- Santa Clara County Open Space Authority.
- Santa Clara County Vector Control District.
- South County Regional Wastewater Authority.
- South Santa Clara County Fire Protection District.
- South Santa Clara Valley Memorial District.

<sup>5</sup> Private entities may be able to opt-in to the Plan through a separate process described in Section 6.7.2 *Application Process for Private Projects*.

<sup>6</sup> To join the Plan, a city or county would need to amend the Plan using the process described in Chapter 10.

- Sunol Sanitary District.

The Participating Special Entity will submit a complete application for the proposed activity directly to the Implementing Entity with copies to the local jurisdiction in which the project occurs, and the Wildlife Agencies. This application will contain the following components.

- A detailed description of and rationale for the activity proposed for coverage under the Habitat Plan.
- Proposed avoidance and minimization measures to be applied to the covered activity (see Chapter 6).
- A map of the proposed activity area.
- An analysis of the potential impacts of the proposed activity on covered species and their habitats.
- All components of the Habitat Plan application package (described in Chapter 6).
- In order to grant take authorization to these local agencies, the Implementing Entity will need a legally enforceable contractual relationship with the Participating Special Entity. The Implementing Entity will issue, at its discretion, a Certificate of Inclusion to the Participating Special Entity that will allow the proposed activity to be covered under the Habitat Plan if it finds that the conditions listed below are met.
- The Implementing Entity signs a contract with the Participating Special Entity binding it to the relevant terms of the permits, Implementing Agreement, and Habitat Plan<sup>7</sup>.
- The proposed activity complies with all terms and requirements of the Plan, the permits, and the Implementing Agreement, and the Wildlife Agencies concur.
- The impacts of the proposed activity fall within those analyzed in the Habitat Plan, the ESA Section 7 biological opinion for the Habitat Plan, and the EIR/EIS in general type, location, magnitude, and effects.
- The impacts of the proposed activity do not deplete the amount of take coverage to such an extent that not enough is available for future covered activities.
- The proposed activity does not conflict with the conservation strategy or the ability of the Implementing Entity to meet the Plan goals and objectives.

As described above, the Wildlife Agencies must approve the inclusion of the Participating Special Entities.

The Certificate of Inclusion will be issued to the Participating Special Entity by the Implementing Entity upon payment of the fee specified in the contract and completion of any other steps required by contract to occur prior to issuance of

---

<sup>7</sup> In the event of failure to uphold the terms of the permit, Implementing Agreement, and Habitat Plan, the contract gives the Implementing Entity the ability to force action by the Participating Special Entity through legal means.

the Certificate of Inclusion. The Implementing Entity may require Participating Special Entities to pay fees over and above those specified in Chapter 9 to cover indirect costs of extending permit coverage under the Habitat Plan, including the costs of Implementing Entity staff time to assist with permit coverage, a portion of the costs of the initial preparation of the Plan, and a portion of the costs of conservation actions designed to contribute to species recovery. The Certificate of Inclusion will include an attached map depicting the parcel number, acreage, and owner of lands to which the take authorization(s) would apply. A template of the Certificate of Inclusion will be provided to the Wildlife Agencies for review and approval during Plan implementation, before the first Participating Special Entity is approved. Also see the Implementing Agreement for additional details and procedures that apply to Participating Special Entities. The Implementing Entity will track the amount of take authorization extended to Participating Special Entities against the total allowable take authorized under this Plan.

As described in Chapter 4, some management and monitoring activities will result in take of the covered species, even if the net result of the actions are beneficial (e.g., prescribed burning, handling species to identify or mark them). Any special district or other agency that carries out such activities on behalf of the Implementing Entity will require take authorization. If the special district or agency is either a Permittee itself, or carries out management and monitoring activities on Plan preserves as a contractor of the Implementing Entity, it will receive take authorization under the Habitat Plan permits. Management or monitoring agencies that are not a Permittee or a contractor of the Implementing Entity can secure take authorization as a Participating Special Entity.

### **8.4.1 San Martin**

The unincorporated community of San Martin, located between Gilroy and Morgan Hill, has been interested for several years in incorporating as a new jurisdiction. If this occurs during the permit term, a new town of San Martin would not be covered by the permits. To allow use of the Habitat Plan by a new jurisdiction in the permit area, the Permittees would need to amend the permits, the Plan, and the Implementing Agreement to include this new jurisdiction. The Habitat Plan already anticipates growth within San Martin as part of County jurisdiction. If future growth plans of a new jurisdiction of San Martin are consistent with the impacts anticipated in the Habitat Plan, a Plan amendment is expected to be straightforward. Any new jurisdiction would not be able to use the Participating Special Entity process for take coverage under the Plan.

## **8.5 Local Implementing Ordinances**

To implement the Habitat Plan on the local level, each participating jurisdiction must adopt an implementing ordinance that will reference the permits, Implementing Agreement, and Habitat Plan and the jurisdiction's obligations under the Plan. Ordinances will be considered for adoption by each jurisdiction

no later than 120 days after execution of the Implementing Agreement and issuance of the last permit by the Wildlife Agencies. A draft template for a Habitat Plan implementing ordinance is provided in **Appendix B** as an attachment to the Implementing Agreement.

The permits will be contingent upon the adoption of local implementing ordinances in Gilroy, Morgan Hill, San José, and the County. The Implementing Agreement and permits will specify that the permit is contingent upon the adoption of these implementing ordinances. This will allow the Wildlife Agencies to make a finding that the Plan is adequately funded, contingent upon the adoption of the implementing ordinances.

## 8.6 Land Acquisition

The Implementing Entity is responsible for ensuring acquisition of land for the Reserve System in accordance with the requirements in Chapter 5 (summarized in the Acquisition Actions in **Table 5-2a**). As described in Chapter 5, all land for the Reserve System must be acquired by Year 45 of the permit term. To be incorporated into the Reserve System and count toward the land acquisition requirements of the Plan, acquired lands must meet the following criteria.

- Contribute to meeting the goals and objectives of the Plan and overall success of the Habitat Plan as described in Chapter 5.
- Have a location, configuration, and quality consistent with the reserve design and assembly principles in Chapter 5, Section 5.2.3 *Reserve System*.
- Land acquired must meet multiple criteria in Chapter 5 for landscape linkages, land cover types, plant occurrences, modeled species habitat, selected wildlife species occupancy, and other land acquisition criteria.
- Permanently protect the biological functions and values that contribute to the Plan. Permanent protection must be ensured through a conservation easement consistent with the requirements of Section 8.6.3 *Conservation Easement* or by some other permanent dedication of land to the Reserve System<sup>8</sup>.
- Be managed in perpetuity according to a reserve unit management plan as described in Chapter 5, Section 5.2.5 *Land Management*. Acquisitions may be counted toward meeting the obligations of the Plan before the reserve unit 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 management plan consistent with the requirements of the Plan. Management in perpetuity will be ensured through the conservation easement or title record.
- Be monitored according to the requirements and guidelines in Chapter 7.

<sup>8</sup> For example, as described in Chapter 9, Section 9.4.2, up to 1,000 acres of the Reserve System may be met by incorporation of existing Open Space Authority lands that qualify as Type 1 open space. Some or all of these lands may be incorporated without conservation easements; see Section 9.4.2 for details.

- Have no hazardous materials or property encumbrances that conflict with Habitat Plan goals and objectives.
- Is not mitigation for a project or activity that is not covered by the Plan.

The land acquisition process will follow the steps listed below for land acquired in fee title or through conservation easements. All Permittees will have the opportunity to review land acquisition proposals as part of the Implementing Entity. Steps 1 through 16 apply if the Implementing Entity initiates contact with potential landowners. Steps 3 through 16 apply if a landowner contacts the Implementing Entity. These steps are also illustrated in **Figure 8-3**. The Implementing Entity could perform these steps on its own or they could be accomplished by an acquisition partner (e.g., a local land management agency).

1. Identify sites that have the potential to meet acquisition requirements for particular land cover types, plant occurrences, landscape linkages, or Conservation Analysis Zones, or to support suitable and occupied habitat for covered wildlife.
2. Approach property owner with proposal to acquire land through conservation easement or fee title.
3. If property owner is willing, secure concurrence from owner for pre-acquisition assessment of site. If a site visit is not feasible, conduct pre-acquisition assessment of site based on air photo analysis and available regional data sets (e.g., Habitat Plan data, CNDDDB, etc.).
4. Conduct necessary pre-acquisition assessment at the Implementing Entity's expense of land cover types, habitat for covered species, and presence of covered species. The Implementing Entity will develop standard protocols and a report template for pre-acquisition assessment prior to the first acquisition during implementation.
5. Determine if site meets Plan acquisition requirements. Through the due diligence process, ensure that property encumbrances (e.g., existing easements, rights-of-way, property title, resource extraction rights, presence of hazardous materials or archaeological or cultural sites) do not conflict with Plan goals and objectives. For easements, reach agreement on easement terms and any necessary management prior to purchase, where possible. Areas subject to incompatible easements or management will be excluded from the reserve system until those incompatibilities are resolved.
6. Discuss proposal to acquire property with Wildlife Agencies at a Technical Advisory Committee meeting or other venue (discussions may need to be confidential). The Implementing Entity will discuss land acquisition proposals with the Wildlife Agencies early in the process.
7. Conduct appraisal of property value (easement or fee) and water rights consistent with legal requirements for acquisition of public lands.
8. Rank available sites on the basis of cost versus ability to meet Plan requirements and biological goals and objectives. Sites that meet specific requirements, goals, and objectives that are generally difficult to fulfill should be assigned a high priority.

9. Obtain concurrence from CDFG and USFWS for all land acquisition. Wildlife Agencies have 30 days to respond to request for approval once all relevant and available information has been provided to them. If after 30 days there has been no response from an agency, the Implementing Entity will assume approval from that agency.
10. For high-ranking sites, make offer to property owner and develop easement conditions, if appropriate. Easement conditions should contain the framework of the expected management of the site that will be documented in more detail later in the reserve unit management plan.
11. Negotiate fair-market price and easement conditions, if applicable, with owner.
12. If a site is purchased in fee title, the Implementing Entity will prepare a reserve unit management plan for the site based on site conditions if the site is the first parcel in the reserve unit (see Chapter 5 for the six units). If the site is part of an existing reserve unit, the reserve unit management plan will need to be updated to incorporate the new site. If a conservation easement is purchased, the Implementing Entity will prepare a management plan with the landowner (although easement negotiations may resolve some management issues). Management plans will be consistent with the Plan's conservation strategy and the framework for adaptive management.
13. Examine all leases that apply to the property for consistency with Plan goals and objectives. Inconsistent leases may be terminated or modified to conform with the Plan. Areas subject to incompatible leases will be excluded from the Reserve System until these leases expire.
14. If acquired in fee title, assess structures and facilities on the property for hazards, covered species, and other values such as educational purposes, land management facility, or cultural or historic significance. Repair or demolish structures or facilities, as appropriate, to reduce public hazards or stabilize functions (e.g., repair of gates and fencing).
15. Initiate reserve management and monitoring according to approved reserve unit management plan.
16. Conduct habitat restoration, if applicable.

## 8.6.1 Stay-Ahead Provision

The conservation strategy of an NCCP must be implemented at or faster than the rate at which impacts on habitat or covered species occur so that conservation always stays ahead of impacts and rough proportionality is maintained between impacts on habitats or covered species and conservation measures (California Fish and Game Code 2820(b)(3)(B)). The rough proportionality standard of the NCCP Act states that

“...implementation of mitigation and conservation measures on a plan basis is roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan. These



provisions shall identify the conservation measures, including assembly of reserves where appropriate and implementation of monitoring and management activities, that will be maintained or carried out in rough proportion to the impact on habitat or covered species and the measurements that will be used to determine if this is occurring” (California Fish and Game Code 2820(b)(3)(D)(9)).

Similarly, the ESA also requires that HCPs minimize and mitigate the impacts of the taking to the maximum extent practicable (ESA Section 10(a)(2)(B)(ii)). When conducting their jeopardy analyses, USFWS will consider whether the mitigation proposed is scientifically and rationally related to the impact of the taking. In order to make findings that the proposed impacts are mitigated to the maximum extent practicable, USFWS will consider temporal losses (if any) resulting from the time of impact relative to the time of mitigation.

The *Stay-Ahead provision* requires that the amount of each land cover type conserved, restored, or created by the Implementing Entity as a proportion of the total requirement for each land cover type (**Tables 5-11 and 5-13**) must be roughly proportional to the impact on that land cover type as a proportion of the total impact expected by all covered activities (**Table 4-2**). For example, if 25% of the expected impacts on mixed serpentine chaparral have occurred, then at least 25% of the required land acquisition for mixed serpentine chaparral must also have occurred.

To provide flexibility during implementation, the Implementing Entity may fall behind by a maximum of 10% of its conservation strategy requirements (conservation overall and by each applicable land cover type) and still be in compliance with the Stay-Ahead provision for this Plan. This deviation accounts for the likely pattern of infrequent land acquisition of large parcels that will allow the Implementing Entity to jump far ahead of impacts with just one acquisition. **Figure 8-4** illustrates how the Stay-Ahead provision works for land acquisition in two theoretical cases. **Figure 8-4a** shows the pattern of land acquisition required if the rate of impact occurs at a constant rate throughout the permit term. **Figure 8-4b** illustrates how conservation must occur quickly if impacts occur during the beginning of the permit term. In both cases, the Implementing Entity is allowed a 10% deviation from the required trajectory of conservation. However, once the permits end (i.e., through expiration, suspension, revocation), the Permittees will be held responsible for any outstanding requirements in the permits, Implementing Agreement, and Habitat Plan (see the Implementing Agreement for a detailed discussion).

The Stay-Ahead provision also includes a requirement for acquisition of covered plant occurrences to stay ahead of impacts to these species (**Table 5-16**)<sup>9</sup>. The Stay-Ahead provision applies to each covered plant species separately (i.e., impacts to and conservation of covered plant occurrences cannot be aggregated for purposes of Stay-Ahead).

<sup>9</sup> Exceptions to this are described for the Coyote ceanothus in Chapter 5, Section 5.4.11.

## Measurement of Stay-Ahead Provision

During the first year after permit issuance, the Implementing Entity will be establishing its structure, collecting initial Habitat Plan fees, and actively pursuing land acquisition deals with willing landowners. To allow time for these start-up tasks to occur, the Stay-Ahead provision will only apply two years after the last local ordinance takes effect. After two years of Plan implementation, the Implementing Entity must measure its compliance with the Stay-Ahead provision by the following method. To measure compliance with the Stay-Ahead provision, land cover types are aggregated by natural communities (see groupings in **Table 3-1**). The amount of each natural community conserved, restored, or created as a proportion of the total requirement by natural community must be equal to or greater than the impact on the natural community as a proportion of the total impact expected by all covered activities. For example, if 40% of the total expected impacts on oak woodland land cover types have occurred, then at least 40% of the conservation of all oak woodland land cover types must also occur. This method of aggregating land cover types only applies to the measurement of the Stay-Ahead provision (requirements for acquisition by each land cover type [**Tables 5-11 and 5-12**] still apply and must be met by Year 45 of the permit term or by Year 40 if restoration or creation are to occur). This aggregation method provides incentives and flexibility to the Implementing Entity to acquire, restore, or create the most sensitive and difficult land cover types first within each natural community, even if impacts to these land cover types have not yet occurred.

Land acquired or funded in full or in part by state or federal agencies to contribute to species recovery under this Plan will also contribute to compliance with the Stay-Ahead provision. A portion of the Plan assumes funding by the state and federal governments. The Implementing Entity must recognize, however, that funds from public agencies will be available on budget cycles, and subject to administrative processes, that may or may not correspond to the timing of covered activities. Therefore, the Implementing Entity must acquire land and implement other conservation actions on its own and cannot rely on the timely availability of state or federal funds to implement these actions.

The Implementing Entity will monitor the status of the Stay-Ahead provision throughout Plan implementation. The Stay-Ahead provision will also be evaluated on an annual basis by the Wildlife Agencies. Beginning with the Year 2 annual report, the Implementing Entity will report on the status of the Stay-Ahead provision. As long as the pace of conservation measure implementation (i.e., preservation, restoration, or creation) does not fall behind the pace of covered activity impacts by more than 10% , the Stay-Ahead provision will have been satisfied.

If the Plan is found to be out of compliance with the Stay-Ahead provision, the Wildlife Agencies will determine if the Plan has maintained rough proportionality. If any of the Wildlife Agencies issue a notification to the Implementing Entity that rough proportionality has not been met, then the Wildlife Agencies and the Implementing Entity will meet to develop a plan to remedy the situation.

## Land Acquisition and Restoration Credit

The criteria for incorporating land into the Reserve System are described above. Land may be counted toward Plan requirements and the Stay-Ahead provision once it is incorporated into the Reserve System and if the lands are compatible with Plan goals and objectives. Infrastructure described as part of the Reserve System in Section 2.3.8 *Conservation Strategy Implementation* is assumed to be compatible with the Plan goals and objectives if it is implemented consistent with the conditions on covered activities described in Chapter 6, including Condition 9 *Prepare and Implement a Recreation Plan*. Existing and newly constructed infrastructure within the Reserve System does not count toward land cover type land acquisition requirements described in Chapter 5, but it does count toward the total Reserve System size requirements.

Compliance for land cover types for which restoration or creation are required will be measured when construction is completed. However, if the project fails to meet the success criteria developed during implementation for each site, the compliance credit will be revoked.

The Implementing Entity will receive credit for existing wetland land cover types that are part of the Reserve System except where wetland functions are degraded by their proximity to urban development. The thresholds for wetland preservation credit are described in Chapter 5 and in **Table 5-15**.

A key requirement of the land acquisition strategy is landscape connectivity and connections to existing open space. Land acquired early in the permit term may be isolated from existing open space until future acquisitions can connect it. Such acquisitions are eligible for credit under the Plan and for the Stay-Ahead provision. If it is clear later in the permit term that land acquired, in part, for connectivity purposes cannot be connected to existing Types 1–3 open space, compliance credit under the Plan will be revoked for the linkage requirement (other credit will remain).

Any rights-of-way or utility easements that are maintained or used regularly cannot be credited towards land acquisition requirements because of the disturbance that occurs within these areas. It is the responsibility of the Implementing Entity to document the frequency and type of use in these rights-of-way or easements to justify whether land acquisition credit should be applied in these areas.

Land cover restored or created can receive credit for restoration or creation and preservation (see Chapter 5 for land cover restoration and creation requirements, and how credit is applied). If the restoration/creation project occurs after recordation of the conservation easement (i.e., after preservation credit is assigned), the acreage of the restoration/creation project will be subtracted from the preserved land cover types that the project replaces. For example, a site that supports 100 acres of annual grassland is preserved by the Implementing Entity. When the conservation easement is recorded, the Implementing Entity receives 100 acres of annual grassland credit towards the preservation requirements of the Plan. Five years later, a 1-acre pond is created on the site. When the pond

restoration project is completed (i.e., when construction is complete), 1 acre is subtracted from the annual grassland preservation credit for the site and applied to pond creation and preservation.

The Implementing Entity must document the conditions of the restoration site prior to initiating restoration in order to determine whether the project is enhancing or restoring the wetland according to the definitions in the Plan (see **Appendix A**). If the site is being enhanced, then only preservation credit can be applied. If the site meets the definition of restoration, then restoration and preservation credit can be applied.

Wetland restoration credit may change if the wetland type changes (e.g., a pond becoming a perennial wetland if cattails colonize and dominate the site) before success criteria are met. Final restoration and creation credit will be determined once the success criteria of the restoration project are met. In no cases will the total amount of credit exceed the ground area present.

The Plan makes sharp distinctions between some land cover types when, in reality in the field, there are often gradual gradients between land cover types. In cases where it is difficult to draw a boundary between land cover types, a qualified biologist or botanist will identify each land cover type based on field conditions and professional judgment.

## Stay-Ahead Reporting and Process for Addressing Deficits in Land Conservation

The Implementing Entity will report the status of the Stay-Ahead provision in each annual report, beginning with the second annual report. If the Stay-Ahead provision is not met, the Implementing Entity and the Wildlife Agencies will meet and confer within 30 days of the annual report to assess the situation and develop and implement a mutually agreeable plan of action as described in the land acquisition actions (see Section 5.3.1 *Land Acquisition and Restoration Actions* in Chapter 5) and the Implementing Agreement to remedy the situation and achieve compliance with the Stay-Ahead provision. The mutually agreeable plan of action may include a range of potential solutions, including those listed below.

- Wait for key pending land acquisition deals to close that will bring the Plan into compliance with the Stay-Ahead provision.
- Speed delivery of funding sources or partnerships that will enable more land acquisition to bring the Plan into compliance with the Stay-Ahead provision.
- More aggressively solicit interest from key landowners who may be willing to sell land to the Implementing Entity that would enable compliance with the Stay-Ahead provision.
- Change the manner in which the Plan is implemented such as more direct acquisition of land by the Implementing Entity rather than relying on partnerships, shifting the Implementing Entity's budget allocations to place a

higher priority on land acquisition, or accelerating the process for being able to count land already acquired against Stay-Ahead requirements by, for example, recording easements more quickly.

- Require that project proponents provide land in lieu of fees (see below).
- Temporarily or permanently adjusting certain Plan provisions through an amendment or other process (e.g., the method for measuring compliance with the Stay-Ahead provision), with the approval of the Wildlife Agencies.
- Slowing or stopping take authorizations until conservation strategy obligations catch up with impacts.
- If, after the exercise of all available authority and utilization of all available resources, the Implementing Entity cannot comply with the Stay-Ahead provision, the Plan will be reevaluated, and an amendment may be warranted if adjustments to the take authorization, permit term, conservation obligations, or other aspects of the permits, Implementing Agreement, or Plan are necessary. See below for more information on the land in lieu of fee requirement when the Stay-Ahead provision is not being satisfied or is at risk of not being satisfied.

## Requirements for Providing Land Instead of Paying a Fee When Stay-Ahead Provision Is Not Being Met

If the Implementing Entity determines the Plan is at risk of noncompliance with the Stay-Ahead provision, the Implementing Entity will notify the Permittees. The Implementing Entity may determine that it is necessary to temporarily require project proponents (including Permittees) to provide land (or perform equivalent conservation actions in Chapter 5) instead of paying a fee. However, if the Stay-Ahead provision is not satisfied based on the criteria discussed above, the Implementing Entity must notify the other Permittees that it is necessary to temporarily require project proponents to provide land instead of paying fees, unless the Wildlife Agencies agree, after conferring with the Implementing Entity, that a different plan of action developed in concert with the Implementing Entity will remedy the situation and it is not necessary to require project proponents to provide land instead of paying a fee. Alternatively, a Permittee may have accrued sufficient credits to offset any fees due.

If the Wildlife Agencies determine the Plan is at risk of noncompliance with the Stay-Ahead provision, they will so notify the Implementing Entity in writing, and the Implementing Entity and Wildlife Agencies will meet to develop a mutually agreeable plan of action that will fulfill such requirements. If the Wildlife Agencies determine that the requirements of Section 8.6.1 *Stay-Ahead Provision* have not been fulfilled, they may, by written notice to the Implementing Entity, require it to initiate the requirement to dedicate land in-lieu of fees.

Land will be provided to the Implementing Entity according to the guidelines and criteria in Section 8.6.7 *Land Dedication In Lieu of Development Fee*. Project proponents will always have the option of providing land in lieu of the base

development fee as long as the land offered meets the criteria in Section 8.6.7 *Land Dedication In Lieu of Development Fee*. If the Implementing Entity initiated the requirement due its own determination that the Plan was at risk of noncompliance, the requirement to provide land instead of a fee will be lifted (i.e., it will revert back to an option) as soon as the Implementing Entity determines that it is no longer at risk of noncompliance with the Stay-Ahead provision. If the Implementing Entity or Wildlife Agencies initiated the requirement following noncompliance with the Stay-Ahead provision, the requirement will be lifted as soon as the Implementing Entity demonstrates in writing to the satisfaction of the Wildlife Agencies that the Plan is in compliance with the Stay-Ahead provision.

## Conservation Action Deadlines Beyond Stay-Ahead Requirement

As summarized above, the Implementing Entity is required to meet the Stay-Ahead provision so that land acquisition keeps pace with impacts. However, if impacts occur more slowly than expected, strict adherence to the Stay-Ahead provision would result in relatively slow growth of the Reserve System initially, followed by a rapid expansion of the Reserve System in order to meet the final acquisition targets. To ensure that the Implementing Entity makes steady progress towards the final land acquisition targets, in year 20 of implementation, the Implementing Entity will work with the Wildlife Agencies to conduct a formal and complete review of progress toward building the Reserve System. To ensure that the Implementing Entity makes steady progress towards final restoration/creation goals, interim deadlines are established in **Table 5-14** for each watershed in the study area. Section 5.3.6 *Riverine and Riparian Forest and Scrub Conservation and Management* also includes deadlines for riverine acquisition and restoration. The Stay-Ahead provision described above must always be followed.

Chapter 5 also establishes deadlines for conservation actions not related to land acquisition or habitat restoration/creation such as wildlife connectivity studies. See Chapter 5 for these additional deadlines that go beyond the Stay-Ahead requirement for land acquisition.

## Rough Proportionality and Stay-Ahead for the Burrowing Owl Conservation Strategy

The Stay-Ahead requirement for the western burrowing owl conservation strategy is unique because the strategy includes a combination of land acquisition, conservation actions, and management agreements over 5,300 acres<sup>10</sup> of occupied and potential nesting habitat by Year 45. This requirement only applies to occupied and potential nesting habitat (not overwintering only habitat) because these two habitat types are the most critical in meeting the conservation

<sup>10</sup> 600 acres of the 5,300 acres must be permanently protected occupied nesting habitat.

strategy goal of increasing the adult burrowing owl population by three birds per year. The Stay-Ahead requirement for burrowing owl will be applied similar to the Stay-Ahead provision for the Reserve System as a whole, but the calculation will be based on acres of modeled occupied and potential nesting habitat either preserved or managed instead of acres of natural communities preserved. Although temporary management agreements can count toward the burrowing owl Stay-Ahead provision, all management agreements (up to 4,700 acres) must be permanent by Year 45. In addition, managed or permanently protected occupied nesting habitat must remain within 10% deviation of permanent impacts to occupied nesting habitat based on a 3:1 ratio (management or protection to impacts). For example, if 50 acres of permanent impacts to occupied nesting habitat have occurred, then 150 acres of occupied nesting habitat must be under a management agreement or permanently protected.

In addition, to account for the conservation actions that will be applied and to provide an incentive to implement them quickly, the Implementing Entity may credit another 5% of the Stay-Ahead requirement against implementation of conservation actions on managed lands. Together with the allowable 10% deviation, this provides up to a 15% allowance in meeting Stay-Ahead for western burrowing owl. For example, if 66 acres of the 198-acre impact cap for this species has been used (33%), then 1,767 acres (33% of 5,300 acres) must be under management agreement for this species. If necessary, this requirement could be reduced to 1,219 acres (23% of 5,300) to account for 10% allowable deviation. If conservation actions are being successfully applied as determined through consultation with the Wildlife Agencies, the Stay-Ahead requirement for management agreements could be reduced by up to another 5%, to 954 acres (18% of 5,300 acres).

## 8.6.2 Land Acquired by Other Organizations or through Partnerships

It is anticipated that substantial amounts of land for the Reserve System will be acquired by Permittees such as County Parks. SCVWD may also acquire land for the Reserve System. Land that meets the terms of the Plan would be credited towards land acquisition requirements in Chapter 5. In other instances, agencies and organizations who are not Permittees such as the Open Space Authority or local land trusts (e.g., The Nature Conservancy, Peninsula Open Space Trust) will acquire land in the study area that will help meet the goals and objectives of this Habitat Plan. In these cases, it may be appropriate that the Implementing Entity receive credit toward Plan requirements if the acquisitions are made in partnership with the Implementing Entity, they are consistent with Plan goals, and the lands are enrolled into the Reserve System through placement of a conservation easement. It is expected that the Implementing Entity will be involved in many of the land acquisitions in the study area during the permit term. However, the Implementing Entity may own little or no land itself. For example, if the Implementing Entity partners with other groups and provides matching funds, larger land acquisitions will be possible than if the Implementing Entity were to purchase the land on its own. Land acquired through partnerships

with non-Permittees can be counted toward the Habitat Plan conservation requirements (i.e., contribution to recovery) only if the acquisition meets the criteria for Reserve System lands described in Chapter 5 and the criteria described above in Section 8.6 *Land Acquisition*.

Credit will be determined based on the purpose and location of the acquisition, the management of the land acquired, and consistency with the conservation strategy of the Habitat Plan. The Plan budget assumes that the Implementing Entity will always fund management and monitoring on land in the Reserve System; actual funding will be determined on a case-by-case basis. Land acquired through partnerships could be managed and monitored by the Implementing Entity or by other groups or agencies as long as a contract or other binding agreement is in place to ensure that management and monitoring occurs according to the terms of the Plan. Land acquired with state or federal money will be credited toward the state/federal contribution discussed in Section 9.4.3 *State and Federal Funding* (Chapter 9). All acquisitions credited toward the land acquisition requirements of the Plan can be credited toward the Stay-Ahead provision as discussed in Section 8.6.3 *Conservation Easements* above, regardless of who manages the property and regardless of the source of funding for acquisition or management.

## Land Acquisition during Plan Development (Interim Conservation)

Open space agencies and organizations in the study area have been acquiring land during Habitat Plan development. Consistent with the NCCP Act Section 2810(b)(8) and the Planning Agreement, parcels or portions of parcels acquired after approval of the Planning Agreement (October 2005) can be counted toward meeting Plan requirements according to the procedures and criteria described above for lands acquired by other organizations or through partnerships. In addition, lands acquired during Plan development can only be credited against Plan requirements to the extent the land is acquired without mitigation funds. If an acquisition occurs using some mitigation funds, only that portion of the acquisition funded by non-mitigation funds can be credited towards the Plan. The Implementing Entity may expend funds to augment management of these interim purchases if the augmentation is necessary to provide credit toward Plan land acquisition requirements.

Lands acquired during Plan development that may be counted toward Plan requirements must meet the criteria outlined in Section 8.6 *Land Acquisition* above. Likely interim land acquisitions are listed in **Table 5-5** and shown **Figure 5-4**. Other lands conserved during Plan development may not appear in **Table 5-5** or **Figure 5-4** if the conservation action took place during production of the final Habitat Plan or if preparers of the Plan were not aware the property had been conserved. Such lands may be counted toward Plan requirements using the same criteria described in this section.



## Private Mitigation Banks

A mitigation bank is privately or publicly owned land that is managed for its natural resource values. Mitigation banks may sell species credits, wetland credits, or both. The bank sells credits to private or public project proponents to offset their impacts, and the money is used to improve and maintain the resources. Conservation banks must be approved by USFWS and CDFG (and the Corps if the bank is also selling jurisdictional wetland credits). In exchange for permanently protecting the land, the bank operator is allowed by the Wildlife Agencies to sell species credits to developers who need to satisfy legal requirements for compensating for the impacts of projects that affect listed species or their habitat<sup>11</sup>. A conservation or mitigation bank is a free-market enterprise that performs the following functions.

- Offers landowners economic incentives to protect natural resources.
- Saves project proponents' time and money by providing them with the certainty of preapproved compensation lands.
- Provides for long-term protection and management of habitat.
- The goals of private mitigation banks are similar to those of regional HCPs or NCCPs, including this Plan.

Credits sold by private mitigation banks within the permit area can count toward the Habitat Plan if they are consistent with the conservation, monitoring, adaptive management, and other relevant provisions of the Plan. For the bank to be eligible to sell credits to project proponents (public or private) with activities covered by the Habitat Plan, the bank must meet all of the relevant standards of habitat enhancement, adaptive management, and monitoring outlined in Chapters 5 and 7. All impacts and mitigation for impacts covered under the Habitat Plan must occur within the permit area analyzed in USFWS's biological opinion for the Habitat Plan. Similarly, CDFG policy requires all impacts and mitigation to occur within the permit area. As such, mitigation banks located outside of the permit area may not be used.

Mitigation bankers wishing to establish a bank whose credits can count toward Habitat Plan requirements must notify the Wildlife Agencies to allow consideration of such provisions during bank development and agency approval. Bankers must also coordinate closely with the Implementing Entity to help ensure the bank's consistency with the Habitat Plan and use by Habitat Plan Permittees.

There are currently no approved conservation or mitigation banks in the study area. A bank near Gilroy on Lucky-Day Ranch is currently being proposed to USFWS and CDFG. There are several banks in adjacent counties whose service area extends into the study area. Credits sold by banks located outside the permit area cannot count toward Plan goals or Plan fees even if the bank's service area extends into the permit area.

<sup>11</sup> For additional information on banking see: [www.dfg.ca.gov/hcpb/conplan/mitbank/mitbank.shtml](http://www.dfg.ca.gov/hcpb/conplan/mitbank/mitbank.shtml).

### 8.6.3 Conservation Easements

Conservation easements will be used as an important tool in Plan implementation in three ways:

- Conservation easement placed on land or watercourses acquired in fee title by the Implementing Entity or one of its land acquisition partners to secure credit under the Plan (see Section 8.6 *Land Acquisition*).
- Conservation easement purchased from a private party and placed on the land or water still owned by the landowner (i.e., as an alternative to fee title acquisition).
- Conservation easement placed on land or water in public ownership at the time of permit issuance.

This section describes the process for developing acceptable conservation easements in all three cases. These guidelines and rules will be used by the Implementing Entity or by its partners acquiring conservation easements on behalf of the Implementing Entity with Habitat Plan funding.

All conservation easements acquired to meet the goals of the Habitat Plan will be in perpetuity and in accordance with California Civil Code Sections 815 et seq.<sup>12</sup> as well as the current policies of the Wildlife Agencies. All conservation easements will be voluntarily offered by the holder of the underlying fee. The conservation easements will be dedicated to the Implementing Entity or to another conservation organization (e.g., California Rangeland Trust, The Nature Conservancy) if that organization is approved by the Implementing Entity, the Wildlife Agencies, and the landowner. In addition, a binding agreement must exist between the Implementing Entity and the easement holder to ensure compliance with the permits, Implementing Agreement, and Plan. An objective of the easements is to have consistency in enforcement, monitoring, and maintenance. Conservation easements on land owned by the Implementing Entity must be held by another conservation organization.

USFWS and CDFG will be named as third party beneficiaries on all conservation easements. To ensure compliance with the Plan, all conservation easements will follow the template easement in **Appendix H** as close as is reasonably possible. Reasonable variations from the template may be needed to address site-specific constraints. CDFG and USFWS, along with the Implementing Entity, must review and approve any modifications to the template easement.

It is the responsibility of participating landowners to abide by the terms of these conservation easements. The terms and prices of conservation easements will be negotiated on a case-by-case basis between the landowner and the Implementing Entity. The specific terms of the conservation easement will be developed on a case-by-case basis depending on site conditions, landowner preferences and operations, and species and habitat needs. Some landowners may wish to reserve

---

<sup>12</sup> This section of California law allows placement of restrictions on the use of land for conservation purposes that is binding on all successive owners of that land.

a portion of their property for uses that are incompatible with the Habitat Plan such as a home site or a recreational facility with high intensity use. In these cases, the conservation easement may either exclude the incompatible site or apply to the entire property but define the portion of the site in which the incompatible uses are allowed<sup>13</sup>. The Habitat Plan will only receive credit for the portion of the property that is compatible with Plan goals and objectives.

Each conservation easement for the property or portion of the property that will be incorporated into the Reserve System will be drafted to:

- ensure that the property will be kept in its natural or existing condition (all or portions of the site may also be enhanced or restored),
- protect the existing, enhanced and/or restored conservation values of the property forever,
- ensure that the easement cannot be extinguished without the prior written consent of the Implementing Entity and the identified third party beneficiary Wildlife Agencies,
- confine the allowable uses of the property to those activities that do not interfere with the preservation or enhancement of those conservation values consistent with the Plan, and
- prevent any use of the property that would impair or interfere with the conservation values of the property.

The conservation values will be specifically described in terms of covered species and their habitat, as well as other land cover types and natural communities on the property. Conservation values will be described, at a minimum, using the land cover types and covered species habitat described in Chapter 3 and **Appendix D**. A legal description and map must be included in the easement.

Each conservation easement will prohibit certain activities as described in the Template Conservation Easement (**Appendix H**), except as necessary to meet the biological goals and objectives of the Plan (including infrastructure required to support monitoring, management, and maintenance) or to provide recreational services consistent with the Plan (see Chapter 6, Section 6.4.6, subheading *Condition 9. Prepare and Implement a Recreation Plan*). These allowances will be described in the reserve unit management plan that will be developed by the Implementing Entity. In addition, all recorded conservation easements must include or incorporate by reference the items listed below.

- The initial pre-acquisition assessment of covered species habitat and natural communities present.
- A detailed list of the allowable uses and use restrictions on the parcel, consistent with the minimum requirements stated above.

---

<sup>13</sup> There may be advantages to having the conservation easement apply to the entire site, for example, to avoid costly boundary surveys needed to define the conservation easement more narrowly than the property boundary.

- Any mandatory terms and conditions to maintain or enhance the habitat pursuant to Section 5.2.5 *Land Management* of this Plan.
- Provisions for access by the Wildlife Agencies and the Implementing Entity or its designee to monitor compliance with the terms of the conservation easement and to carry out all applicable management and monitoring requirements described in Chapter 5 and Chapter 7, respectively.
- The allowances or restrictions on public access and recreation on the site, compatible with the conservation goals of the Plan, *Condition 9 Prepare and Implement a Recreation Plan for each Reserve Subunit* in Chapter 6, Section 6.4.6, and landowner wishes.
- Conservation easements on grazing lands will describe the general nature of the grazing to be allowed. The easement will specify the desired vegetation and other habitat conditions and, if necessary, impose limits on the timing, stocking density, and duration of permitted grazing to meet those conditions. These desired conditions and grazing limitations will be allowed to fluctuate according to the adaptive management process. A baseline condition will be described to provide a benchmark to measure habitat enhancement on the site. The conservation easement may accomplish this requirement by reference to a separate reserve unit management plan prepared for the lands covered by the easement.
- The conservation strategy does not call for acquisition of cultivated agricultural land. However, conservation easements on cultivated agricultural land may accompany acquisitions that primarily service other strategic objectives. If cultivated agricultural land is acquired, the conservation easement will ensure that the land meets one or more biological goals and objectives of the Plan. If the site contains aquatic or riparian habitat that supports or could support covered species, the conservation easement will also generally describe measures to maintain or enhance those habitats. The conservation easement may accomplish this requirement by attaching or referencing a separate reserve unit management plan prepared for the lands covered by the easement. Alternatively, if the reserve unit management plan is prepared later, it may contain additional detail on site enhancement.
- Conservation easements will take into account issues of water use efficiency and runoff into adjacent or nearby streams and their potential effects on covered species, if applicable.
- Provisions for enforcement and available remedies for the Implementing Entity or appropriate other party in the event that title holder or third party violates the terms of the conservation easement.
- If the easement boundaries are different from the parcel boundaries, a legal description and map will accompany the easement.
- When a reserve unit management plan is prepared for private property according to Section 5.2.5 *Land Management*, the Implementing Entity will record a Memorandum of Unrecorded Reserve Management Plan, indicating where that reserve unit management plan may be found and that the terms of such reserve unit management plan will be followed. Such a title record

ensures that the reserve unit management plan will be tied to the conservation easement in the event property ownership changes. The title record also ensures management of the site in perpetuity.

To approve and accept a conservation easement, the Implementing Entity must have the following documentation.

- A pre-acquisition assessment of the property summarizing the baseline biological conditions including the presence and condition of natural communities and the presence and condition of covered species, if known (a complete biological inventory of the site would be conducted after the easement is recorded).
- A preliminary title report and legal description of the property.
- Assurance that any superior liens or interests will not substantially conflict with the property's conservation values.
- Evidence of all other easements, covenants, restrictions, reserved rights, and other property interests (including water rights).
- A clean Phase I environmental analysis for hazardous materials.
- A map and description of the parcel and its physical condition (e.g., roads, buildings, fences, wells, other structures) and its relation to other components of the Reserve System and other properties subject to other permanent protections for conservation purposes.
- A Property Analysis Report (PAR) or comparable assessment of the initial capital costs and ongoing management funds required to manage and monitor the lands (e.g., applicable components of Habitat Plan cost estimate).

## Easements on Land Acquired by or for the Implementing Entity

As described in Section 8.6 *Land Acquisition*, the Implementing Entity must secure permanent protection of a property in order to receive credit under the Plan. If the land is owned by the Implementing Entity or a Permittee, a conservation easement must be placed on the site to ensure permanent protection. For lands acquired for the Reserve System but owned by other public entities, permanent protection must also be ensured by a conservation easement consistent with the requirements of Section 8.6.3 *Conservation Easements*. In either case, conservation easement terms will be consistent with those described in this section.

## Easements on Private Land

This Plan assumes that the Implementing Entity and its partners will purchase some of the land for the Reserve System in conservation easements rather than in fee title. For example, conservation easements are appropriate where landowners

wish to remain on the property and the Plan’s conservation goals can still be met with an easement. Conservation easements have been used throughout California to preserve farms, ranches, and the working landscapes that they support. The conservation easements purchased by the Habitat Plan Implementing Entity are intended to preserve the natural features of a property. However, as a secondary benefit, these easements are also expected to protect working landscapes of all kinds throughout the study area. Only portions of properties that meet one or more of the goals of the Plan will be credited to the Plan as part of the conservation strategy. In some cases, an easement may be placed over more of a property than initially credited with the hope that other portions of the property may be restored or enhanced to accommodate Plan goals in the future. Additional credit may be applied to these other sites once they meet Plan goals.

Some ranchers may prefer selling a conservation easement to selling their land in fee title so they can remain on their land and continue to conduct livestock operations. Livestock grazing will be an important management tool in the Reserve System (see Chapter 5), so this use is likely to be compatible with the conservation goals of Plan and therefore suitable for conservation easements.

## Easements on Existing Public Lands

As described in Chapter 5, one component of the conservation strategy is to enhance the management and monitoring of high-value sites on existing public lands within County Parks and the Open Space Authority (**Table 5-5**). The Habitat Plan will provide additional funds or staff to these agencies to perform specific management and monitoring tasks in selected park units that will substantially benefit the covered species and natural communities. To ensure that these sites will be managed in perpetuity to benefit the covered species, the Plan proposes permanent conservation easements that allow recreational uses compatible with the conservation strategy of the Plan on approximately 12,000 acres of the County park lands identified and described in **Table 5-5** and illustrated in **Figure 5-4**. These sites will be enhanced to support the Habitat Plan and will be incorporated into the Reserve System.

Credit will be applied to the Habitat Plan once sites on existing public lands are placed under a conservation easement or other permanent dedication that is consistent with the easement requirements described in this section.

### 8.6.4 Grazing Leases, Licenses or Contracts within the Reserve System

Livestock grazing is an important management tool that benefits some terrestrial covered species. As a result, managed livestock grazing is expected to be used extensively in the Habitat Plan Reserve System. Existing grazing leases or

licenses<sup>14</sup> on a newly established reserve acquired in fee title will continue until a reserve unit management plan is prepared and approved by the Implementing Entity and the Wildlife Agencies. After the reserve unit management plan is approved, all grazing leases or licenses on the reserve will be reviewed by the Implementing Entity for consistency with the reserve unit management plan and with the terms of the Habitat Plan. If necessary, leases or licenses will be revised and brought into compliance with the Plan's conservation strategy and the framework for adaptive management to the extent allowable by the terms of the lease. Areas covered by incompatible leases will be excluded from the Reserve System until the incompatibilities are resolved. If land is acquired in fee title from a landowner who is also the grazing operator, the Implementing Entity will maintain the previous grazing regime with a willing former landowner (e.g., through a short-term lease) until a reserve unit management plan is prepared and approved by the Implementing Entity and the Wildlife Agencies. Once approved, this reserve unit management plan will establish the grazing regime on the site, which can then be incorporated into long-term grazing leases.

If livestock grazing is introduced to a reserve acquired in fee title or if the preexisting grazing lease or license expires, the Implementing Entity or other Permittee agency (e.g., County Parks) will enter into a lease agreement or license with the livestock operator. A contract may be necessary in the event that the livestock operator is paid by the Implementing Entity to graze livestock (e.g., when grazing a small site or using a prescription that does not provide an economic return to the operator). The contract, lease agreement, or license will specify the desired vegetation and other habitat conditions and impose limits on the timing, stocking density, and duration of permitted grazing to meet those conditions. Grazing contracts, leases, or licenses will be reviewed annually with the operator to adjust grazing practices to best meet habitat goals. At the expiration of the contract, lease, or license, the Implementing Entity will review monitoring data to determine whether the contract, lease, or license should be reissued with no changes in grazing management, reissued with changes in the grazing regime, or not reissued. All new and renewed contracts, leases, or licenses will include the following conditions of agricultural use and covenants to protect resources.

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

---

<sup>14</sup> A lease is a short- or long-term contract for use of a property, whereas a license is a short-term permit allowing use under an established program. Both leases and licenses may be applicable to livestock grazing in the study area.

The lease agreement will also outline the responsibilities of each party for maintaining reserve infrastructure (e.g., fences, watering facilities). In addition to maintenance of reserve infrastructure, lease agreements will also include the responsibilities of the grazing lessee to maintain or meet desired habitat conditions. Responsibilities of the grazing lessee may include, but are not limited to:

- Fence repair and maintenance;
- Weed control, including any necessary herbicide application;
- Feral pig management; and
- Pond maintenance.

Other maintenance actions may be included in the lease agreements if deemed appropriate by the Implementing Entity. Costs to perform these actions are included in the cost model assumptions (see Chapter 9, and **Appendix G**).

## 8.6.5 Willing Sellers

A key principle of the Habitat Plan is that land will only be acquired by the Implementing Entity for the conservation strategy from willing sellers. This principle will be strictly followed; the Implementing Entity will not condemn land from unwilling sellers in order to meet Plan conservation requirements. Likewise, the Implementing Entity will not partner or contract with a separate agency to condemn land from unwilling sellers for the Habitat Plan, nor will it contribute funding toward a condemnation from an unwilling seller.

Nothing in the Habitat Plan will prevent other organizations from exercising their powers of eminent domain for purposes other than implementation of the Habitat Plan and with funds other than those raised as a result of this Habitat Plan. If subsequent to such a condemnation, and after soliciting input from the Public Advisory Committee, the Implementation Board of the Implementing Entity finds that the condemned lands are integral to the successful implementation of the Habitat Plan, the Implementing Entity may seek agreement with the owner of the condemned lands to manage those lands in a manner consistent with the Habitat Plan.

Given the many land acquisition requirements in Chapter 5 (see Section 5.3.1 *Land Acquisition and Restoration Actions*), 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 at this time where this may occur and in what context it will occur (e.g., how much of the Reserve System has been acquired, the extent of resources remaining to protect). This situation, if it occurs, is only expected near the end of Year 45, when all land acquisition requirements must be met. By this time, 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 permit term. A review of progress



toward land acquisition goals will take place at least annually with each annual report submitted to the Wildlife Agencies.

If key landowners are not willing to sell, the Implementing Entity, in coordination with the Wildlife Agencies, will reconfigure the land acquisition strategy to ensure that the biological goals and objectives will be achieved and that the total extent and type of lands to be preserved under the Habitat Plan will be acquired. If such a reconfiguration is not possible, the options below will be considered.

- Requiring project proponents to provide land instead of fees to obtain coverage under the Plan (see Section 8.6.7 *Land Dedication In Lieu of Development Fee*).
- Slowing or stopping local permit issuance under the Habitat Plan until key land acquisitions can be made.

## 8.6.6 Gifts of Land

The Implementing Entity may accept land (or other conservation actions) as a gift or charitable donation. The Implementing Entity will evaluate the conservation benefit of the lands donated relative to the goals, objectives, and requirements of the Habitat Plan. Donated land that does not meet these goals, objectives, and requirements may be sold or exchanged to enable acquisition of land that does meet these goals, objectives, and requirements.

## 8.6.7 Land Dedication In Lieu of Development Fee

Private landowners or Permittees (i.e., project proponents) may own land that can help to meet the conservation goals of the Plan. Project proponents that own land within a priority conservation area (**Figure 5-8**) may wish to transfer fee title or place a conservation easement on the portion of their property within the Plan's conservation areas. If approved by the Implementing Entity and Wildlife Agencies, this transfer or easement dedication can reduce or eliminate the land cover, serpentine, burrowing owl, and/or temporary impact fees required for development of the remaining portion of the property. Some project proponents who wish to develop parcels may own other parcels within an area targeted for conservation by the Plan. Transferring title or dedicating a conservation easement on the site within the target conservation area could eliminate or substantially reduce some of the development fees to develop the other property. Alternatively, project proponents may prefer to acquire their own mitigation lands within target conservation areas and transfer title of these lands or dedicate easements on them to the Implementing Entity instead of paying all or a portion of the development fees. This section describes the process for allowing these situations.

Land cannot be provided in lieu of any required wetland fees. However, project proponents may implement their own wetland restoration or creation project in

lieu of all or a part of wetland fees. See Chapter 9, Section 9.4.1, subheading *Aquatic Restoration or Creation Provided in Lieu of Wetland Fee* for details.

## Criteria for Providing Land In Lieu of Development Fees

Land will be eligible for land cover, serpentine, burrowing owl, and/or temporary impact fee credit if the land satisfies the criteria below.

- The land satisfies the criteria for Reserve System lands in Chapter 5 and as summarized in Section 8.6 above.
- The land is within an area designated as high or moderate priority for acquisition (see Chapter 5, Section 5.3.1 *Land Acquisition and Restoration Actions* and **Figure 5-8**), or the unique and high values on the site justify its inclusion in these designated areas.
- The transaction is approved for the Reserve System by the Implementing Entity and the Wildlife Agencies, consistent with their review and approval authority over all land acquisitions for the Reserve System (see Section 8.6 *Land Acquisition*, Step 9).

Project proponents are encouraged to provide to the Implementing Entity baseline data on their offered properties that document their biological value to the Plan. Documentation should explain how the site meets land acquisition requirements and biological goals and objectives. However, the property owner must provide access to the proposed site to allow Implementing Entity staff or their designees to survey the site and verify its biological value for the Reserve System. If needed, surveys would be performed at no cost to the project proponent. The Implementing Entity should also consult local land managers when evaluating land in lieu proposals to help determine long-term management and monitoring issues, feasibility, and costs. The project proponent will pay the cost of other due diligence such as Phase 1 site assessment, appraisal, and title search.

The Implementing Entity will consider requests for a development fee reduction or waiver in exchange for land dedication (title transfer or conservation easement) on a case-by-case basis. The amount of the development fee reduction will be assessed according to the criteria provided in Chapter 9, Section 9.4.1, subheading *Criteria for Determining Fee Credit for Land Provided in Lieu of Development Fees*.

## Stream Setbacks

As described in Chapter 6, Section 6.5, subheading *Condition 11 Stream and Riparian Setbacks*, covered projects that occur adjacent to streams and riparian areas are required to establish setbacks from these resources. Landowners will not pay fees on the portion of their parcels that are dedicated as stream setbacks

(see Chapter 9 for details on required fees or fees waivers). In some cases, stream setback dedications may be suitable for inclusion in the Reserve System and therefore may be able to offset all or a portion of the development fee outside of the setback. To qualify for inclusion in the Reserve System, stream setbacks must be placed in a conservation easement according to the requirements in Section 8.6.3 *Conservation Easements* above. In addition, lands must meet the criteria described above for land in lieu of development fees.

## 8.6.8 Williamson Act Parcels

The California Land Conservation Act of 1965, or Williamson Act, established the state's primary program for the retention of private land in agriculture and open space use. The Williamson Act is a voluntary program that offers reduced property taxes on lands that have enforceable restrictions on their use via contracts between individual landowners and local governments. Each of the participating jurisdictions administers the Williamson Act program in their jurisdiction. According to data from Santa Clara County, 219,757 acres within the study area are currently under Williamson Act contracts. Williamson Act lands in unincorporated portions of the study area are found in the Santa Cruz Mountains, Diablo Range, and in the Santa Clara Valley floor in and near Morgan Hill and Gilroy.

A majority of the land anticipated to be part of the Reserve System is currently subject to Williamson Act contracts. The preservation of open space is consistent with Williamson Act contracts. However, the intention of these contracts is to preserve agriculture (livestock grazing or cultivated crops) on private lands. If the Implementing Entity acquires lands subject to Williamson Act contracts, the Implementing Entity is expected to allow these contracts to lapse at the end of their 10-year term (i.e., file for non-renewal). Alternatively, the Implementing Entity could apply to the County to convert the contracts to Open Space Easement Agreements pursuant to California Government Code 51255 through an existing County program. Such conversions would be subject to approval by the County Board of Supervisors.

## 8.7 Roles and Responsibilities in Reviewing Applications for Take Authorization

### 8.7.1 Permittee Responsibilities

Upon approval of the Plan by the Wildlife Agencies, the Permittees will be issued permits for take of covered species. For projects conducted by a Permittee, the Permittee will be responsible for assuring that the project conforms to the requirements of the Plan, following the process for utilizing take authorization described in Chapter 6, Section 6.7.1 *Evaluation Process for Permittee Projects*.

The Permittees will also be capable of extending Plan coverage to private landowners and other private project proponents within the permit area who are under their jurisdiction, provided that their projects or activities are covered by the Plan and are executed in accordance with the terms and conditions of the Habitat Plan, the permits, and the Implementing Agreement. Landowners and other project proponents who receive this coverage are referred to as *Third Party Participants*.

To receive take authorization under the state and federal permits, private project proponents must apply to their local jurisdiction (i.e., the appropriate city or the County, the local land use planning agency with land use authority for the project) for take authorization following the process described in Chapter 6, Section 6.7.2 *Application Process for Private Projects*.

The participating cities and the County will be the agencies with primary authority and responsibility for reviewing private development applications and authorizing take. Unless another entity is specifically identified in the Plan as responsible for a particular aspect of reviewing private development applications and authorizing take, the responsibility and authority will rest with the cities and the County. Each Permittee will hold all responsibility and authority for their own projects but will have to report their amount of take to the Implementing Entity for tracking purposes.

For project proponents within the permit area that are not subject to the land use authority of a Permittee (i.e., special districts), the project proponent must apply to the Implementing Entity as a Participating Special Entity (see Section 8.4 *Participating Special Entities*).

## 8.7.2 Implementing Entity Responsibilities

The Implementing Entity will have limited responsibility and authority in reviewing and approving take authorization. Its primary role will be to track the amount and type of take authorization, and to support the Permittee's decision-making process rather than to serve as a final authority to the Permittees. Accordingly, the Implementing Entity will provide tools for Permittees to use in their application review and project assessment process (e.g., checklists, template planning survey report, fee calculator). The Implementing Entity must track impacts of all covered activities in a way that detects when any impact cap is being approached. The Implementing Entity will notify the Permittees when any impact cap is imminent and what procedures should be followed to ensure that the cap is not exceeded. In addition, the Implementing Entity will provide advice, upon request, to the cities and the County as they process applications for take permits and will promote coordination among Permittees to ensure that the Plan is implemented consistently and effectively.

The Implementing Entity has specific authority related to reviewing and approving take authorization, as listed below.

- Reviewing applications from Participating Special Entities (Section 8.4 *Participating Special Entities*) and authorizing take as appropriate.
- Approving offers of land in lieu of fees (Section 8.6.7 *Land Dedication In Lieu of Development Fee*) and of restoration or creation of wetlands in lieu of wetland mitigation fees (see Chapter 9, Section 9.4.1 *Habitat Plan Fees* subheading *Wetland Mitigation Fee*). Local jurisdictions must forward such applications to the Implementing Entity for review, approval, and calculation on a case-by-case basis of the required fees, if any. Once the proposal is approved, the terms of the land offer, habitat restoration/creation, and any remaining fees will be forwarded to the local jurisdiction for their incorporation into the project conditions of approval.
- Reviewing and approving stream-setback exceptions requested by a local jurisdiction, and reviewing and commenting on, if necessary, stream-setback exceptions requested by a private applicant (see Chapter 6, Section 6.5, subheading *Condition 11 Stream and Riparian Setbacks*).
- Recalculating the fees annually according to the indices described in Chapter 9, Section 9.4.1 *Habitat Plan Fees* subheading *Adjustment of Mitigation Fees* or periodically according to the assessment process described in the same section, and providing the new fees to the Permittees. The Implementing Entity will notify each Permittee of the new fees.
- Approving the design requirements for rural road projects as they relate to the covered species and are consistent with the conditions described in Chapter 6, Section 6.4.4, subheading *Condition 6 Design and Construction Requirements for Covered Transportation Projects*.

### 8.7.3 Wildlife Agency Responsibilities

The Wildlife Agencies will not be involved in approving take authorization for Permittees or for private development projects within the jurisdiction of the Permittees on a project-by-project basis, except in limited circumstances (e.g., where Section 7 consultations are still required [see the Section 7 process in Chapter 1 and Section 7 Assurances in Chapter 10]) or as required by this Plan (see following section). The Wildlife Agencies will also have approval authority over inclusion of Participating Special Entities (Section 8.4 *Participating Special Entities*). The Wildlife Agencies may monitor the Permittees as they grant take to individual projects. The Permittees are not required to transmit copies of application materials to the Wildlife Agencies each time an application is approved. Permittees are required, however, to provide such information to the Wildlife Agencies upon request. The Wildlife Agencies may offer comments to Permittees, but the granting of take authorization to individual covered activities will remain the purview of the Permittees. The purpose of Wildlife Agency monitoring issuance of take authorization to covered activities is to facilitate communication so that errors or differences of opinion can be addressed before they become serious problems.

The Wildlife Agencies' main responsibility however, will be ensuring that the Permittees are in compliance with the state and federal permits, Implementing Agreement, and Plan. Reviewing and commenting on annual reports and monitoring reports (see Section 8.10 *Data Tracking*) will be a key means for the Wildlife Agencies to monitor compliance. The Wildlife Agencies will also review and approve all:

- Reserve unit management plans,
- Site restoration plans,
- Plant and pond creation proposals<sup>15</sup>,
- Covered species translocation activities,
- Tier 3 burrowing owl conservation actions,
- Burrowing owl management agreements,
- Burrowing owl passive relocation,
- Conservation easements, and
- Land acquisition proposals.

## Additional Review

A small subset of the covered activities will require additional review and approval by the Wildlife Agencies to ensure that the covered activity is adequately defined, consistent with the Habitat Plan, and incorporates appropriate conditions in Chapter 6. Early consultation with the Wildlife Agencies is strongly encouraged to ensure that relevant conditions of the Plan are incorporated into project designs and proper surveys are conducted in advance of project construction. These projects and the allowable scope of Wildlife Agency review are described below (see Chapter 2 for details on these activities).

- Highway, roadway, interchange upgrades, and mass transit projects occurring outside the planning limit of urban growth or in any in-stream area. The scope of the early design coordination will be limited to ensuring the relevant conditions of the Plan are incorporated into project design.
- Flood protection projects proposed by SCVWD that are covered by this Plan. The scope of this review will be limited to early conceptual design and to ensuring that impacts described in Chapter 4 are not exceeded and that the conditions in Chapter 6 are being applied properly to minimize effects on covered species.
- Levee reconstruction projects that go beyond the current footprint of the levee and results in permanent impacts to the stream.

---

<sup>15</sup> If the Implementing Entity establishes a Habitat Plan RGP or other approved permitting process with the Regional Boards, the Corps and Regional Boards would also have review authority over restoration and creation projects that are intended to meet the mitigation requirements of those agencies.

- Supplemental water pipeline alignment associated with dam seismic retrofit projects that occurs in natural land cover types.
- Borrow sites for dam seismic retrofit projects will also be subject to additional Wildlife Agency review due to the uncertain location and size of these projects. The scope of the Wildlife Agency review of proposed borrow sites will be limited to location, size, and impacts of the borrow sites to covered species and their habitat.
- Alamos Creek/Almaden Reservoir fish passage. The scope of the Wildlife Agency review will be limited to the effects of the selected fish passage alternative on the covered species.
- Dewatering events at reservoirs where flows will be released to local channels. This includes review and approval of a reservoir-specific dewatering plan, which will be developed prior to the first dewatering event at each covered reservoir.
- Reoperation of the Ford Road or Church Avenue groundwater recharge ponds, if SCVWD identifies a potential change in downstream flows at either facility that may affect covered species beyond that identified in Chapter 4 (no changes in downstream flows are expected at either site).
- Activities that are major new point sources of nitrogen deposition that could adversely affect serpentine natural communities and associated covered species (e.g., new power plant, large diesel generators, or other facilities). The Wildlife Agencies will determine if the effects analyzed in the Habitat Plan adequately address the effects of new major sources of nitrogen. If the effects were not adequately analyzed, a major amendment, as described in Chapter 10, may be appropriate.

## 8.8 Three Creeks HCP

As described in Chapters 2 and 5, the SCVWD is preparing a separate HCP for its water supply operations in the three watersheds that drain to the San Francisco Bay—the Coyote Creek, Guadalupe River and Stevens Creek watersheds (proposed Three Creeks HCP). The proposed Three Creeks HCP includes implementation of the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE). Many of the covered activities and conservation actions proposed in the Three Creeks HCP in the Coyote Creek and Guadalupe River watersheds are also included in this Plan. Both plans are consistent with each other for these overlapping covered activities and conservation actions.

The permits for the two plans will not overlap. SCVWD will request a permit from NMFS for the proposed Three Creeks HCP but not the Habitat Plan. SCVWD will request incidental take authorization for impacts not addressed in this Habitat Plan from USFWS for covered species affected by Three Creeks HCP covered activities through either Section 7 or Section 10 of the ESA, as appropriate. For example, the Habitat Plan does not cover the upper Guadalupe River Watershed above Vasona Lake (e.g., Lexington Reservoir is not covered by the Habitat Plan) but this area is covered by the Three Creeks HCP.

Similarly, the Habitat Plan excludes a small portion of the lower Coyote Creek Watershed in the City of Milpitas that is covered by the Three Creeks HCP (see **Figure 1-3**).

We expect consistent and cooperative implementation of the two plans because, where there is geographic and functional overlap of the two conservation plans, (a) the two plans provide for conservation goals, objectives, and actions that are consistent with each other, and (b) any proposed Three Creeks HCP conservation measures implemented prior to approval of the Habitat Plan will be consistent with the measures provided for in the Habitat Plan. For example, the Habitat Plan identifies areas where suitable habitat exists and may be acquired, protected, and managed to contribute to the recovery of listed species. SCVWD will provide mitigation for terrestrial species and habitats consistent with what has been proposed by the Habitat Plan—e.g., within the areas identified to be acquired and using the same criteria to guide acquisition, protection, management, and monitoring by the Habitat Plan.

## 8.8.1 Implementation Structure

As the sole permittee for the proposed Three Creeks HCP, the SCVWD is solely responsible for administering and implementing that plan and for compliance with the terms and conditions of its Implementation Agreement and permits, as well as all other applicable laws. USFWS, NMFS, CDFG, the draft settlement agreement parties, and the public will also participate in some way in the Three Creeks HCP implementation. The successful execution of the Three Creeks HCP conservation strategy, monitoring and adaptive management program, and reporting that are part of the Three Creeks HCP require coordinated actions between and among the SCVWD, the Wildlife Agencies, and in some cases, other parties.

## 8.8.2 Adaptive Management

SCVWD will be responsible for, and oversee, the monitoring and adaptive management program for the proposed Three Creeks HCP, which has been designed to be consistent with the monitoring and adaptive management program of this Plan (Chapter 7). The SCVWD will perform day-to-day activities, including prioritizing management actions, disseminating information, developing annual and long-term work plans, and formulating adaptive management strategies. SCVWD may implement additional and/or modified biological monitoring, studies, or management measures consistent with the Three Creeks HCP.

The Wildlife Agencies, among others, will provide input and help guide the proposed Three Creeks HCP's adaptive management program, but the SCVWD has ultimate responsibility for implementing the program and instituting changes through adaptive management.



## 8.9 Implementing Agreement

The NCCP Act requires an Implementing Agreement for all NCCPs, and specifies necessary provisions. Although not a requirement under ESA, 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, or for HCPs that include complicated conservation programs.

The purpose of an Implementing Agreement is to ensure that each party understands its obligations under the HCP Section 10(a)(1)(B) permits and NCCP permit, and to provide remedies should any party fail to fulfill its obligations. Accordingly, an Implementing Agreement has been prepared for this Plan (**Appendix B**). This agreement specifies the responsibilities of each party; how minimization, mitigation, and conservation measures will be implemented; reporting and enforcement procedures; and various other provisions agreed to by the parties. The Implementing Agreement references material in the Habitat Plan whenever possible. As a result, the Habitat Plan and the Implementing Agreement have been made as consistent as possible. In the unlikely event that there are inconsistencies among documents, the permits prevail first, then the Implementing Agreement, and finally the Habitat Plan.

## 8.10 Data Tracking

### 8.10.1 Database Development and Maintenance

The Implementing Entity will develop and maintain a comprehensive data repository (i.e., database) to track permit compliance and all other aspects of the Habitat Plan including land and stream management and monitoring. The data repository to track permit compliance will be operating within 12 months after all local ordinances take effect. The data repository will be structured 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). 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., data 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 primary types of information for which the data repository will be developed and maintained are listed below.

- Status of covered activities, including implementation and impacts on covered species and natural communities.
- Status of Habitat Plan natural community preservation/enhancement/creation/restoration conservation measures.
- Habitat Plan funding and expenditures.
- Monitoring and directed study results.
- Adopted changes to the Habitat Plan, including administrative changes, minor amendments, or major amendments (all defined in Chapter 10).
- All reports and documents generated by the Implementing Entity or the Permittees related to the Habitat Plan.

When the database is first operational after the first year of implementation, it will support as many of the components listed above as will be needed to report on Plan compliance. For example, funding and expenditures will begin in the first year but the results of directed studies will not be available for several more years.

The Implementing Entity may choose to develop a web-linked database to facilitate members of the public and Permittee staff obtaining site-specific information and controlled transfer of information by others into and out of the database. Examples of benefits that could be associated with maintaining controlled web-linked access to selected elements of the comprehensive Habitat Plan database are provided below.

- Development of database entry forms or use of handheld devices that could allow direct input of information into the database by those charged with implementing covered activities, conservation measures, monitoring surveys, and directed studies.
- Access by agencies implementing the Habitat Plan to digital monitoring, research, and other data for purposes of generating internal reports that may be needed to facilitate their participation in the Habitat Plan.
- Access by agencies implementing the Habitat Plan, other ecosystem restoration programs, outside researchers, and other interested parties to Habitat Plan reports and documents.

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

## 8.10.2 Compliance Tracking

The Implementing Entity will track all aspects of compliance with the permits, Implementing Agreement, and Habitat Plan. To track compliance, the Implementing Entity will maintain data as specified below.

- The amount of land cover (**Tables 4-2 and 4-3**), modeled habitat for covered species (**Table 4-4**), and critical habitat (**Table 4-9**) temporarily and permanently impacted by covered activities will be tracked by the Implementing Entity regularly, but no less than annually by overlaying impacts that year (and cumulatively) with each species model in a GIS exercise to ensure that impact caps are not exceeded. Modeled habitat impacts (**Table 4-4**) and modeled habitat acquisition requirements (**Table 5-17**) will be tracked according to the most recently developed land cover maps and habitat models. Implementation of species surveys described in Chapter 6 and the remaining Conservation Strategy (Chapter 5) will be directed by the most current land cover maps and habitat models updated and maintained by the Implementing Entity throughout the permit term.
- The location, extent, and timing of land acquisition and Habitat Plan reserve establishment within each Conservation Analysis Zone according to the requirements in Chapter 5 and in **Tables 5-11, 5-13, 5-16, 5-17, and 5-18**.
- Tracking implementation of management agreements for western burrowing owl nesting habitat (number of acres under management).
- The status of implementation of each conservation action listed in **Tables 5-2a and 5-2b**.
- The success of the conservations actions in meeting the biological objectives in Chapter 5 and in **Tables 5-1a through 5-1d**.
- Descriptions of recorded conservation easements, management agreements for western burrowing owl nesting habitat, lands acquired in fee title, interagency memorandums of agreement, or any other agreements entered into for the purposes of protecting, enhancing, restoring, or creating covered species habitat.
- The location, extent, and timing of impacts on land cover types (including direct and indirect impacts to wetlands) and plant occurrences, by year and cumulative total<sup>16</sup>, based on reports submitted by project proponents and Permittees for take authority under the Habitat Plan.
- The location and extent of annual and cumulative compliance with the species occupancy requirements.
- The location, extent, and timing of restoration or creation of applicable land cover types (**Table 5-12**).
- The location, extent, timing, and progress of plant occurrence creation and enhancement (**Table 5-16**).

<sup>16</sup> Although the tables in Chapter 4 describe impact limits by Permittee, this was done for estimation purposes only. During Plan implementation, take and compliance tracking will be measured against total impact limits for the Permittees collectively.

- The location, extent, timing, and success rates of implementation of all other conservation actions described in Chapter 5 (e.g., preparation of reserve unit management plans, including recreation plans, construction of artificial perches, conducting monitoring).

The Wildlife Agencies may also request other information from the Implementing Entity to verify compliance with the Plan and the Wildlife Agencies' decision documents (e.g., CEQA and NEPA mitigation measures, impacts to critical habitat units). The purpose of monitoring this information will be to track the Implementing Entity's progress toward successful implementation of the conservation strategy described in Chapter 5 of this Plan. This tracking of progress will help ensure that habitats for covered species and natural communities are conserved within the Reserve System at a rate commensurate with the timing and magnitude of impacts from covered activities. The data repository for permit compliance tracking will be operating within 12 months after all local ordinances take effect.

The data will also be linked to supporting information documenting Habitat Plan compliance. These reports and other data will be stored and archived electronically whenever possible. Appropriate supporting information includes the following categories.

- Application material submitted for covered activities.
- Preconstruction survey reports.
- Reports and other documentation related to the screening, selection, and acquisition of reserve lands.
- Designs for covered activities that demonstrate compliance with relevant conditions in Chapter 6 (e.g., urban-wildland interface design elements).

HabiTrak is a standardized database developed by CDFG and others to track NCCP implementation. The database developed for the Plan must be compatible with the HabiTrak system or its successor so that compliance tracking for this Plan can be compared with other NCCPs in California.

Compliance tracking will be supported by the monitoring and adaptive management program described in Chapter 7. In addition to compliance tracking, the monitoring program includes effectiveness monitoring, status and trends monitoring, and directed studies aimed at addressing key management or ecological questions. The data tracking system will be developed to assemble, store, and analyze all monitoring data in the program. The details of the monitoring program will not be developed until individual reserve unit management plans are prepared for each reserve (**Table 8-1**). By necessity, therefore, the data tracking system for the monitoring and adaptive management program cannot be finalized until after this Plan is completed.

## 8.11 Reporting

The Implementing Entity will prepare annual reports over the term of the Habitat Plan that document permit compliance (see Section 8.10.2 *Compliance Tracking*), impacts, conservation actions, management actions, restoration/creation actions, and monitoring results. The annual reports will summarize the previous fiscal year's implementation activities (July 1 to June 30) and be completed by March 15 following the reporting fiscal year. No annual report will be required for the first partial fiscal year. Annual reports will require synthesis of data and reporting on important trends such as land acquisition, fee collection, and habitat restoration. A due date of March 15 will allow time for the data from the previous fiscal year to be assembled, analyzed, and presented in a clear and concise format.

Annual reports will be submitted to the Implementation Board for review and approval. Annual reports will also be submitted to designated representatives of the Wildlife Agencies, and other interested parties such as the Corps and Regional Boards, and will be available to the public and posted on the Habitat Plan website. The Implementing Entity will also distribute these reports to the Independent Conservation Assessment Team and science advisors, as appropriate, for their review. These advisory bodies will use results presented in the annual reports, as well as other available information and any additional monitoring reports produced through the Adaptive Management Program, to assess success of the Habitat Plan in meeting the biological goals and objectives and to formulate recommendations to the Implementing Entity for Plan implementation in subsequent years.

The goals of the annual report are listed below.

- Providing the information and data necessary for the Permittees to demonstrate to the Wildlife Agencies and the public that the Plan is being implemented properly and as anticipated.
- Disclosing any problems with Plan implementation so they can be corrected.
- Documenting issues with Plan implementation that may require consultation with the Wildlife Agencies.
- Identifying administrative or minor changes to Plan components required to increase the success of conservation measures.

At a minimum, annual reports will include the following information.

- A description of all covered activities implemented during the reporting period categorized by major activity type (per Chapter 2) and acreage.
- A year-to-date and cumulative summary (i.e., from the start of the permit term) of permanent and temporary impacts on all land cover types. Impacts on riparian and wetland land cover types will also be reported by watersheds.

- A year-to-date and cumulative summary of impacts to modeled habitat of covered species<sup>17</sup> and to covered plant occurrences.
- A year-to-date and cumulative summary of the total impacts to critical habitat of the California red-legged frog, California tiger salamander, and Bay checkerspot butterfly.
- A year-to-date and cumulative summary of impacts associated with projects exempt from fees and/or conditions of this Plan.
- An accounting of all conditions on covered activities applied to these activities (see Chapter 6).
- A list of all riparian setback exceptions granted each calendar year (Chapter 6).
- A description of all natural community protection/enhancement/creation/restoration conservation actions implemented during the reporting period. Riparian and wetland restoration and creation will also be reported by the watersheds shown in **Figure 3-6** to facilitate regional coordination of wetland mitigation for the Corps and the Regional Boards.
- A year-to-date and cumulative summary of stream and riparian restoration conducted outside of the Reserve System.
- A year-to-date and cumulative summary of the extent of land cover types protected, enhanced, restored, or created. The success rate for restoration and creation projects will also be documented. If conservation easements were used, the report will describe who holds the easements. A map containing this information will also be provided.
- A year-to-date and cumulative summary of the extent of modeled habitat for covered species protected. This will be calculated by overlaying the most current species habitat models.
- A copy of all easements recorded during the reporting year.
- A year-to-date and cumulative summary of the protection of occupied habitat for select covered wildlife species described in Chapter 5.
- A year-to-date and cumulative summary of the protection or creation of covered plant occurrences and occupied habitat for selected covered wildlife species as defined in Chapter 5.
- A year-to-date and cumulative summary of permanent and temporary management agreements for the burrowing owl to demonstrate that the amount of managed lands for the burrowing owl at no time decreases during the permit term, as described in Chapter 5.
- A year-to-date and cumulative summary of exceptions to the burrowing owl passive relocation prohibition, as described in Chapter 6.
- An assessment of the progress toward all acquisition requirements by local, state, and federal sources, including land cover types, landscape linkages,

---

<sup>17</sup> Species habitat models will be updated during the permit term based on best available science. This data will be used for tracking compliance for impacts and conservation.

covered plant occurrences, and wetland protection. This assessment will include evaluation of compliance with the reserve design and assembly principles in Chapter 5 (e.g., minimizing edge).

- An assessment of compliance with the Stay-Ahead provision (Section 8.6.1 *Stay-Ahead Provision*) and a forecast of expected take and land acquisition needs for the next 2 years.
- An accounting of all revenues received, by type (e.g., development fees, wetland fees, grants) and an assessment of progress towards total revenue goals. Funding from local, state, and federal sources must be tracked separately. Any fee adjustments must also be reported.
- An evaluation of the economic assumptions on which the Plan was based (e.g., Plan costs, revenue rates and grant funding projections).
- An assessment of progress toward a complete funding strategy for implementation after the permit term (Chapter 9, Section 9.4.2, subheading *Interest Income*).
- A summary of all land and water management activities undertaken on and off the reserves and a discussion of the management issues facing the Implementing Entity.
- A presentation of the conceptual ecological models developed to date and any changes to them that have taken place.
- A description of the landscape-, natural community-, and species-level monitoring undertaken during the reporting period and a summary of monitoring results, including species status and trends.
- A description of the adaptive management process utilized during the reporting period (e.g., consultation with science advisors, convening of the Independent Conservation Assessment Team).
- A summary of the recommendations or advice provided by the Wildlife Agencies, science advisors, and the Independent Conservation Assessment Team (if applicable) regarding adaptive management and monitoring.
- A summary of the monitoring program objectives, techniques, and protocols including monitoring locations, variables measured, sampling frequency, timing, and duration, analysis methods, and who performed the analyses.
- An assessment of the efficacy of the monitoring and research program and recommended changes to the program based on interpretation of monitoring results and research findings.
- An assessment of the efficacy of habitat restoration and creation methods in achieving performance objectives and recommended changes to improve the efficacy of the methods.
- A description of all Habitat Plan directed studies undertaken during the reporting period; a summary of study results; and a description of integration with monitoring, assessment, and compliance elements.
- An assessment of the appropriateness of performance indicators and objectives (see **Table 7-1** for examples) based on the results of effectiveness

monitoring, and recommended changes to performance indicators and objectives.

- An assessment of changes in temperature in the study area (see Chapter 10, Section 10.2.1 *Changed and Unforeseen Circumstances*).
- A description of any actions taken or expected regarding changed circumstances, including remedial actions.
- A description of any unforeseen circumstances that arose and responses taken.
- A year-to-date and cumulative summary of Certificates of Inclusion issued for Neighboring landowner agreements, including the size and location of lands covered by them.
- A summary of any administrative changes, minor modifications (e.g., updates to **Figure 2-5**), or major amendments proposed or approved during the reporting year (see Chapter 10, Section 10.3 *Modifications to the Plan*).

Federal guidelines for the contents of monitoring reports also recommend inclusion of biological goals and objectives in these reports. However, **Tables 5-1a-d and 5-2a-b** serve this purpose. Therefore, biological goals and objectives do not need to be reported annually (progress towards meeting the goals and objectives will be reported, however).

Electronic copies of the following data will be provided upon request to the Wildlife Agencies and to the public<sup>18</sup>.

- Copies of all non-confidential, non-proprietary portions of the database that track covered activities and land acquisition in the possession and control of the Implementing Entity in its current state.
- Copies of all relevant GIS data in possession and control of the Implementing Entity in its current state, including land cover, the location of covered activities, and the boundaries of the current Habitat Plan Reserve System.
- Copies of all non-confidential, non-proprietary financial data in possession and control of the Implementing Entity in its current state.

## 8.12 Schedule and Deadlines

To ensure a successful Plan, 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 Plan terms and conditions. Schedule guidelines and major deadlines for Plan implementation are presented in **Table 8-1**. Tasks are divided

<sup>18</sup> Data provided to the public will be subject to any restrictions on proprietary or confidential data or services that may be utilized by the Implementing Entity such as proprietary aerial photos, parcel databases, confidential species locations, or pending land transactions.



among the Permittees, Cities and County, and the Implementing Entity. The Implementing Agreement will establish deadlines for certain tasks.

**Table 8-2** 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 Permittees and the Wildlife 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 Permittees and the Wildlife Agencies recognize that under certain circumstances, modifications to the deadlines beyond the flexibility provided in **Table 8-2** could be reasonable and appropriate. The Implementing Entity may modify, with the approval of the Wildlife Agencies, the deadlines through minor modifications or major amendments to the Plan, as described in Chapter 10, Section 10.3 *Modifications to the Plan*.

Before permits are issued, the Local Partners will set the groundwork for Plan implementation by establishing the implementation organization. Grant writing, land acquisition, and training of local jurisdiction staff may also commence before permit issuance. During the first 6 months of the permit term, emphasis will be placed on hiring key administrative staff for the Implementing Entity (or contracting out their functions), establishing the Public Advisory Committee, establishing local ordinances required to fund and implement the Plan, and developing implementation tools. At initiation of the permit term, tasks of grant writing, land acquisition, and Plan implementation training will transfer from the Permittees to the Implementing Entity or its agent (e.g., a local land management agency). During the permit term, the Implementing Entity will be responsible for these tasks. Both the local jurisdictions and the Implementing Entity will be responsible for collecting development fees throughout the permit term. Within the first year, the Implementation Entity will secure necessary staff and contract resources, identify scientific advisors, create a Plan implementation web site, establish the required database, and investigate wetland restoration opportunities.

Over the next 5 years, additional Reserve staff will be hired or contracted, and more specific reserve unit management plans will be created and initiated to manage and monitor the expanding Reserve System. Environmental compliance and design for wetland restoration and creation will be initiated. The Implementing Entity will also begin to develop strategies for post-permit funding for monitoring and management. Beginning with this period and extending throughout the remaining permit term, fees will be updated and adjusted on a regular basis, and conservation assessments will be conducted. In addition, the hiring and contracting of staff will be completed to manage the Reserve System and implement the Plan. Habitat restoration and design will continue, as will the adaptive management and monitoring of biological resources.

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 that will require restoration or creation must be completed by Year 40. All other land acquisition must be completed by Year 45, and

construction of all restoration and creation projects must be completed by Year 40 of the permit term. (See Chapter 9 for a discussion of funding adequacy to meet these deadlines.)

Before the end of the permit term, the Implementing Entity will also determine the administrative structure necessary to continue management on the Reserve System in perpetuity. For example, management responsibility may be delegated to one of the Permittees to continue to oversee in perpetuity. Alternatively, the Joint Powers Authority may extend its term to continue to oversee implementation of the Habitat Plan.

**Table 8-1.** Schedule for Major Implementation Tasks

<b>Time Period</b>	<b>Tasks and Milestones</b> (*Key Task Tied to Permit Compliance; see <b>Table 8-2</b> ) [If applicable, Habitat Plan reference included]	<b>Responsible Party<sup>1</sup></b>
<b>Prior to Permit Issuance (i.e., Year 0)</b>		
	Complete final versions of Implementing Agreement, Joint Exercise of Powers Agreement, and Permittee ordinances in preparation for permit issuance and Implementing Entity formation. [Chapter 8, Section 8.5]	Local Partners
	**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. [Chapter 8, Section 8.2.2]	Local Partners
	**In accordance with the Implementing Agreement and Joint Exercise of Powers Agreement, establish Habitat Plan implementation organizational structure (i.e., Implementing Entity’s Governing Board and Implementation Board). [Chapter 8, Section 8.2]	Local Partners
	Where feasible, apply for state/federal grants for land acquisition (after publication of Draft Habitat Plan). [Chapter 8, Section 8.3.5; Chapter 9, Section 9.4.3]	Local Partners
	Develop template Habitat Plan application package for use by private applicants and Permittees that includes all items required in Chapter 6, Section 6.8 (Items 1 through 6).	Local Partners
	Develop a checklist prior to the first ordinance taking effect for local planners to evaluate the Habitat Plan application package. This will help ensure compliance by each project receiving coverage under the Plan. The checklist must include a statement of certification that project applicants meet the relevant terms of the Habitat Plan. [Chapter 6, Section 6.7.2]	Local Partners
	Prepare a template form prior to the first ordinance taking effect for local planners to document that a private applicant’s project is consistent with the Plan. This consistency determination will be made based on the checklist described above. [Chapter 6, Section 6.7.2]	Local Partners
	Provide each Permittee with Plan maps (e.g., fee zone, land cover, private development coverage, modeled habitat) to allow local agency staff to process and evaluate applications for Habitat Plan coverage or evaluate their own projects under the Plan. [Chapter 2, Chapter 6, Chapter 9]	Local Partners
	Train local jurisdiction staff to review and process Habitat Plan applications. This task will be ongoing.	Local Partners
	Commence the recruitment process for Implementing Entity Administrative Director and key staff (if possible, to allow early implementation). [Chapter 8, Section 8.3.2]	Local Partners
<b>By Permit Issuance (Day 1)</b>		
	Prepare initial budget for Implementing Entity.	Permittees
<b>Post-Permit</b>		
0–6 months	Hire Implementing Entity Administrative Director and key staff (if not completed prior to permit issuance). This task will be ongoing. [Chapter 8, Section 8.2.2]	Implementing Entity

Time Period	Tasks and Milestones (*Key Task Tied to Permit Compliance; see Table 8-2) [If applicable, Habitat Plan reference included]	Responsible Party <sup>1</sup>
	Develop a set of biologist qualifications and establish pre-approved list of biologists per Chapter 6, Section 6.8.5. This task will be ongoing.	Implementing Entity
	Develop template pre-acquisition assessment and protocols prior to the first land acquisition. [Chapter 5, Section 5.2.3, subheading <i>Field Verification Prior to Acquisition</i> , and Chapter 8, Section 8.6]	Implementing Entity
	Train local jurisdiction staff to prepare, review, and process Habitat Plan applications. This task will be ongoing.	Permittees, with ongoing assistance from Implementing Entity
	Update GIS land cover layer with aerial photographs, satellite imagery, and other relevant data sources including serpentine soils maps at the outset of implementation. [Chapter 7, Section 7.2.2 <i>Program Phases</i> , subheading <i>Inventory Phase</i> , subheading <i>Document Baseline Conditions</i> ]	Implementing Entity
	Provide each participating local jurisdiction with detailed maps of fee zones and land cover so they can process and evaluate Habitat Plan applications. [Chapter 9, Section 9.4.1]	Implementing Entity
	Review private development applications for coverage under the Habitat Plan. This task will be ongoing. [Chapter 6, Section 6.7; Chapter 8, Section 8.7]	Cities and County
	Prepare and review applications for public sector activities under the Habitat Plan to be submitted to Implementing Entity. This task will be ongoing. [Chapter 6, Section 6.7; Chapter 8, Section 8.7]	Permittees
	Establish Technical Advisory and Public Advisory committees. [Chapter 8, Sections 8.2.4 and 8.2.7]	Implementing Entity
	Where feasible, apply for state/federal grants for land acquisition. This task will be ongoing. [Chapter 8, Section 8.3.5; Chapter 9, Section 9.4.3]	Implementing Entity, Permittees
	Determine the date by which the annual automatic update of development fees will occur. [Chapter 9, Section 9.4.1 <i>Habitat Plan Development Fees</i> , subheading <i>Automatic Adjustment of Mitigation Fees</i> ]	Implementing Entity
	Collect Habitat Plan fees. This task will be ongoing. [Chapter 9, Section 9.4.1]	Cities and County, Implementing Entity
6 months– 1 year	Hire key administrative staff of Implementing Entity or secure agreements or contracts with other organizations to fulfill these roles. [Chapter 8, Section 8.2.2]	Implementing Entity, Permittees
	Establish Habitat Plan Implementation web site. [Chapter 8, Section 8.3.9]	Implementing Entity
	Investigate aquatic enhancement, restoration, and creation opportunities on existing open space and newly acquired land to ensure Stay-Ahead on wetland impacts. This task will be ongoing. [Chapter 8, Section 8.6.1]	Implementing Entity Permittees
	Establish and maintain database to track permit compliance (e.g., land acquisition and Habitat Plan impacts). This task will be ongoing. [Chapter 8, Section 8.10.1]	Implementing Entity, Permittees

Time Period	Tasks and Milestones (**Key Task Tied to Permit Compliance; see Table 8-2) [If applicable, Habitat Plan reference included]	Responsible Party <sup>1</sup>
1–5 years	Continue to hire or contract out Implementing Entity technical and operational staff as Reserve System expands. [Chapter 8, Section 8.2.2]	Implementing Entity
	**Update fees annually according to Chapter 9. Provide new fee schedule to Permittees. This task will be ongoing. [Chapter 9, Section 9.4.1]	Implementing Entity, Cities and County
	At intervals specified in Chapter 9, perform financial assessment. This task will be ongoing. [Chapter 9, Section 9.4.1, subheading <i>Adjustment of Mitigation Fees</i> ]	Implementing Entity
	**Submit annual report to the Wildlife Agencies. This task is performed on an annual basis by March 15 of every year for the previous fiscal year (July 1 to June 30). [Chapter 8, Section 8.11]	Implementing Entity
	Conduct annual meeting to report on implementation progress of Habitat Plan. This task will be ongoing. [Chapter 8, Section 8.2.7]	Implementing Entity
	Prepare reserve unit management plans as described in Chapter 5 for the five expected reserve units. <ul style="list-style-type: none"> <li>• Upper Penitencia Creek,</li> <li>• Coyote Ridge,</li> <li>• Pacheco Watershed,</li> <li>• Southern Santa Cruz Mountains, and</li> <li>• Santa Teresa Hills.</li> </ul> ** Plans must be prepared within 5 years of the first parcel acquired in each reserve unit and updated as needed, but reviewed no less than every 5 years [Chapter 5, Section 5.2.5]	Implementing Entity
	Initiate adaptive management and monitoring of biological resources. This task will be ongoing. [Chapter 7]	Implementing Entity
	Establish pool of science advisors to provide technical advice to Implementing Entity and Permittees on monitoring and adaptive management. This task will be ongoing. [Chapter 7, Section 7.2.3; Chapter 8, Section 8.2.6]	Implementing Entity
	Initiate or continue management and monitoring in Reserve System. [Chapter 5, Section 5.2.5 and Chapter 7, Section 7.1.4]	Implementing Entity t
	**Continue to acquire land to assemble Reserve System and meet Stay-Ahead provision requirements (by Year 2). This task will be ongoing; however, all land acquisition must be completed by Year 45. [Chapter 5, Section 5.3.1; Chapter 8, Section 8.6.1]	Implementing Entity Permittees
	Begin wetland restoration and creation design and additional environmental compliance for restoration and creation. This task will be ongoing. [Chapter 5, Sections 5.3.6 and 5.3.7]	Implementing Entity

Time Period	Tasks and Milestones (**Key Task Tied to Permit Compliance; see Table 8-2) [If applicable, Habitat Plan reference included]	Responsible Party <sup>1</sup>
	Implement plant and aquatic land cover restoration and creation projects described in Chapter 5. This task will be ongoing; however, construction of all habitat restoration and creation projects for land-cover types and plant occurrences (Coyote ceanothus, smooth lessingia, and Metcalf Canyon jewelflower) must be completed by Year 40. [Chapter 5, Sections 5.3.1, 5.3.7, 5.4.11, 5.4.16, and 5.4.17; Chapter 8, Sections 8.12 and 8.6.1]	Implementing Entity
	Open selected reserves to public access according to reserve unit management plans. Develop enforcement procedures for the Reserve System before newly acquired land (excluding existing open space added to the Reserve System) is open to public access. [Chapter 6, Section 6.4.6. subheading <i>Condition 9</i> ; Chapter 8, Section 8.3]	Implementing Entity or applicable local agencies
	Begin implementation of required studies and prioritize implementation of remaining studies described in Chapter 5. [Chapter 7, Sections 7.2.1 and 7.2.2]	Implementing Entity
	Update land cover map with most recent aerial photograph and provide to local jurisdictions implementing the Plan (at least every 5 years). This task will be ongoing. [Chapter 7, Section 7.3.1]	Implementing Entity
	Develop a wildfire local operating agreement for the Reserve System with Cal Fire and with any other firefighting agency that has responsibility for the Reserve system lands within 4 years of permit issuance. [Chapter 5, Section 5.3.2, subheading <i>Fire Management</i> ]	Implementing Entity
	By the beginning of Year 4, renew the MBTA Special Purpose Permit for least Bell's vireo for another 3-year term. [Chapter 6, Section 6.3]	Implementing Entity
	By Year 5, develop stream management guidelines for private landowners, including an educational program to assist in the implementation of the guidelines (other public education and outreach tasks are also required, but do not have specific deadlines; see text). [Chapter 5, Section 5.3.2, subheading <i>Public Education and Outreach</i> ; Section 5.3.5, subheading <i>Private Landowner Education</i> ]	Implementing Entity
	At Year 5 and every 5 years afterwards, establish Independent Conservation Assessment Team and conduct assessment of entire conservation program. [Chapter 7, Section 7.2.3; Chapter 8, Section 8.2.6]	Implementing Entity
6–50 years	**Determine the target population size of Mount Hamilton thistle, fragrant fritillary, and Loma Prieta hoita by Year 10. [Chapter 5, Sections 5.4.12, 5.4.14, and 5.4.15]	Implementing Entity
	Initiate feasibility study when adequate monitoring data exist on wildlife movement in three focal areas described in Chapter 5, Section 5.3.2 or by year 10 of implementation, whichever comes first. [Chapter 5, Section 5.3.2]	Implementing Entity
	In year 20 of implementation, work with the Wildlife Agencies to conduct a formal and complete review of progress toward building the Reserve System. [Chapter 7, Section 7.2.3 <i>Program Implementation</i> , subheading <i>Program Infrastructure</i> ]	Implementing Entity

<b>Time Period</b>	<b>Tasks and Milestones</b> (*Key Task Tied to Permit Compliance; see <b>Table 8-2</b> ) [If applicable, Habitat Plan reference included]	<b>Responsible Party<sup>1</sup></b>
More than 50 years	Finalize post-permit implementation structure prior to permit expiration. [Chapter 8, Section 8.12]  Continue adaptive management and limited monitoring of biological resources to ensure management actions are working. [Chapter 7]	Implementing Entity  Implementing Entity

<sup>1</sup> The responsible party is the entity that must ensure the task or milestone is achieved. In many cases, the responsible party may delegate implementation of the task to a third party (e.g., a Permittee, landowner, or consultant).

**Table 8-2.** Key Deadlines for Plan Compliance

Key Implementing Entity Task With Deadline Tied to Permit Compliance <sup>1</sup>	Deadline(s)	Habitat Plan Reference	Deadline Flexibility
<b>Key Initial Deadlines</b>			
In accordance with the Implementing Agreement and Joint Exercise of Powers Agreement proposals, establish Habitat Plan implementation organizational structure (i.e., Implementing Entity's Governing Board and Implementation Board)	Prior to issuance of permits by Wildlife Agencies so that Implementing Entity can be issued the permits	Chapter 8, Section 8.2	The Permits will not cover the Implementing Entity's activities until the Implementing Entity has been formed and has submitted an application
Cities and County will consider the adoption of local ordinances to implement Habitat Plan	Within 120 days after the execution of the Implementing Agreement and the last permit is issued by the Wildlife Agencies	Chapter 8, Section 8.5	None
<b>Key Annual Deadlines</b>			
Update fees annually according to Chapter 9	Date to be determined by the Implementing Governing Board within the first 6 months of Plan implementation	Chapter 9, Section 9.4.1, subheading <i>Automatic Adjustment of Mitigation Fees</i>	Fee update can be delayed if the federal indices in <b>Table 9-9</b> are delayed
Submit annual report to Wildlife Agencies with all required information	By March 15 of each year for the previous fiscal year (July 1 to June 30)	Chapter 8, Section 8.11	Extensions available with prior approval by Wildlife Agencies
<b>Key Periodic or One-Time Deadlines</b>			
Prepare reserve unit management plans	Within 5 years of first acquisition in each reserve unit	Chapter 5, Section 5.2.5	Extensions available with prior approval by Wildlife Agencies
Acquire and enhance land; restore riparian woodland/scrub, wetlands, and streams; and create ponds in compliance with the Stay-Ahead Provision	Applies 2 years after the last ordinance takes effects and is measured annually thereafter	Chapter 8, Section 8.6.1	10% deviation below Stay-Ahead requirements is allowed
Determine the target population size of Mount Hamilton thistle, fragrant fritillary, and Loma Prieta hoita	Year 10	Chapter 5, Sections 5.4.12, 5.4.14, 5.4.15	Extensions available with prior approval by Wildlife Agencies
The Implementing Entity will work with the Wildlife Agencies to conduct a formal and complete review of progress toward building the Reserve System	Year 20	Chapter 8, Section 8.6.1	None

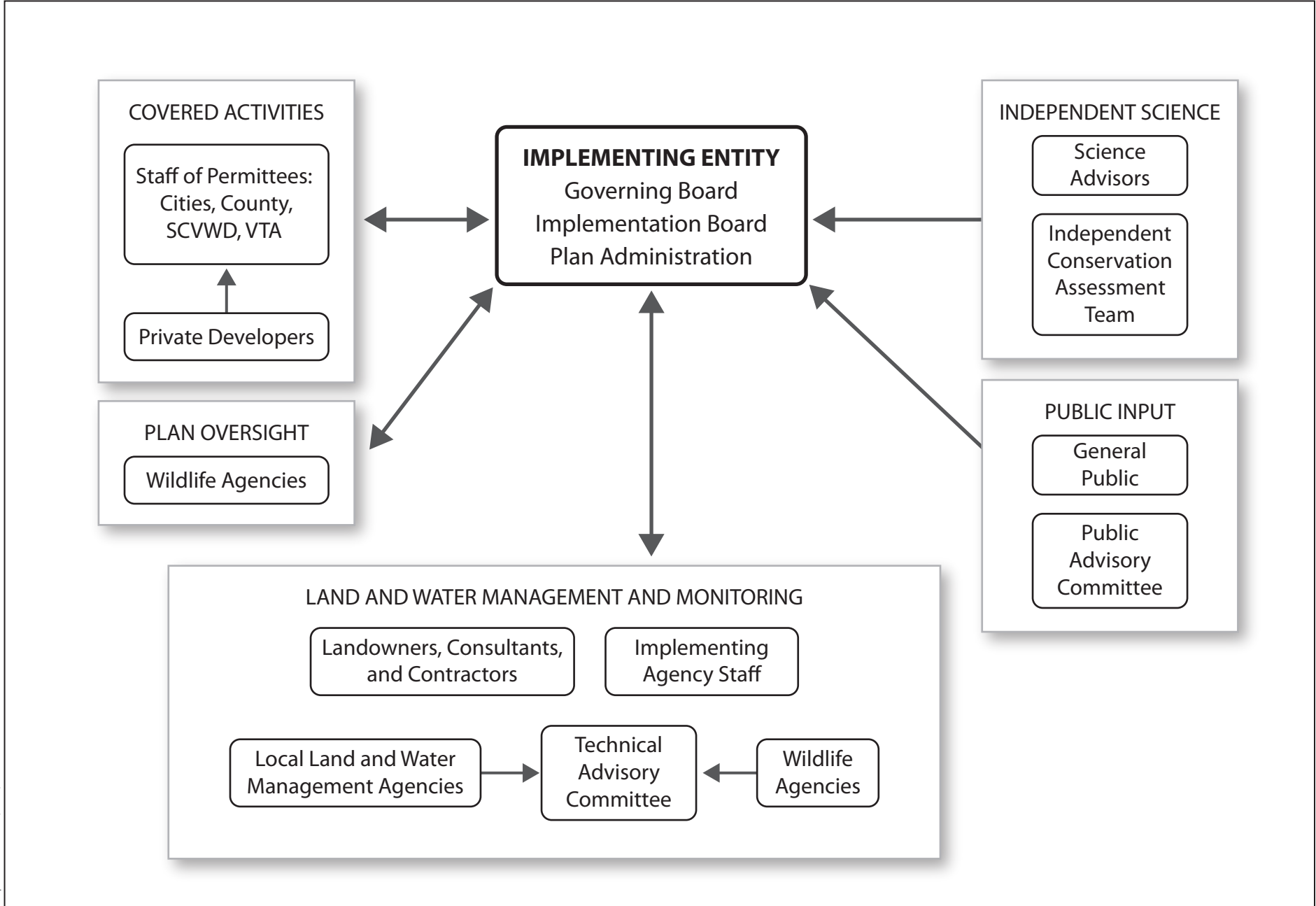


**Table 8-2.** Continued

Key Implementing Entity Task With Deadline Tied to Permit Compliance <sup>1</sup>	Deadline(s)	Habitat Plan Reference	Deadline Flexibility
Restore riparian and fresh water marsh and create ponds to contribute to species recovery	Years 15, 30, 40	Chapter 5, <b>Table 5-14</b>	Extend deadline by up to one year with approval of Wildlife Agencies if Implementing Entity demonstrates progress towards milestone
Complete construction of all restoration and creation projects for land cover types and plant occurrences (Coyote ceanothus, smooth lessingia, and Metcalf Canyon jewelflower)	Year 40	Chapter 5, Section 5.3.1 subheading <i>Acquisition and Restoration Requirements for Aquatic Land Cover Types</i> , and Chapter 5, Sections 5.4. 11, 5.4.16, and 5.4.17	Success criteria for created plant populations, created ponds, and restored riparian/wetlands will be proposed in reserve management plans and restoration/creation designs. Success criteria in some cases may not need to be demonstrated by year 40, but would have to be demonstrated by the end of the permit term. The Wildlife Agencies would review these proposals as they are submitted during Plan implementation
Acquire all land for the Reserve System according to the acreage requirements in Chapter 5 by land cover type, conservation analysis zone, and landscape linkage	Year 45	Chapter 5, Section 5.3.1; <b>Tables 5-11, 5- 17, 5-18; Figure 5-9</b>	Extend by up to two years with Wildlife Agency approval if Reserve System is within up to 5% of completion
Acquire modeled habitat for covered species in the Reserve System according to the requirements in Chapter 5	Year 45	Chapter 5, <b>Table 5-19</b>	Extend by up to two years with Wildlife Agency approval if Reserve System is within up to 5% of completion
Develop a Wildlife Agency-approved plan to address the continuing obligations of the Implementing Entity beyond the permit term	Year 45-47	Section 9.4.4 subheading <i>Funding for Post-Permit Management and Monitoring</i>	None

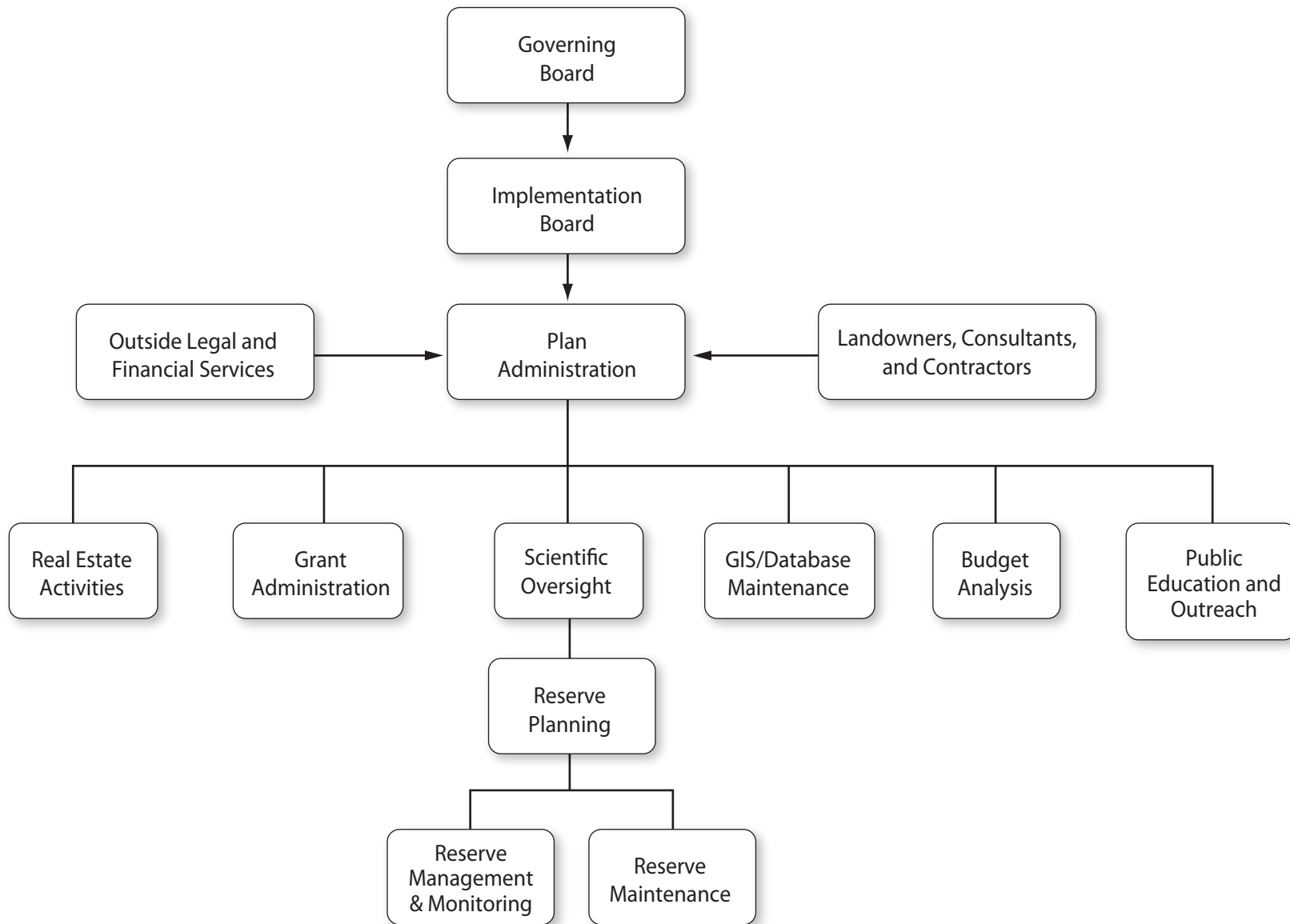
<sup>1</sup> Responsibility for all tasks lies with the Implementing Entity unless otherwise stated.





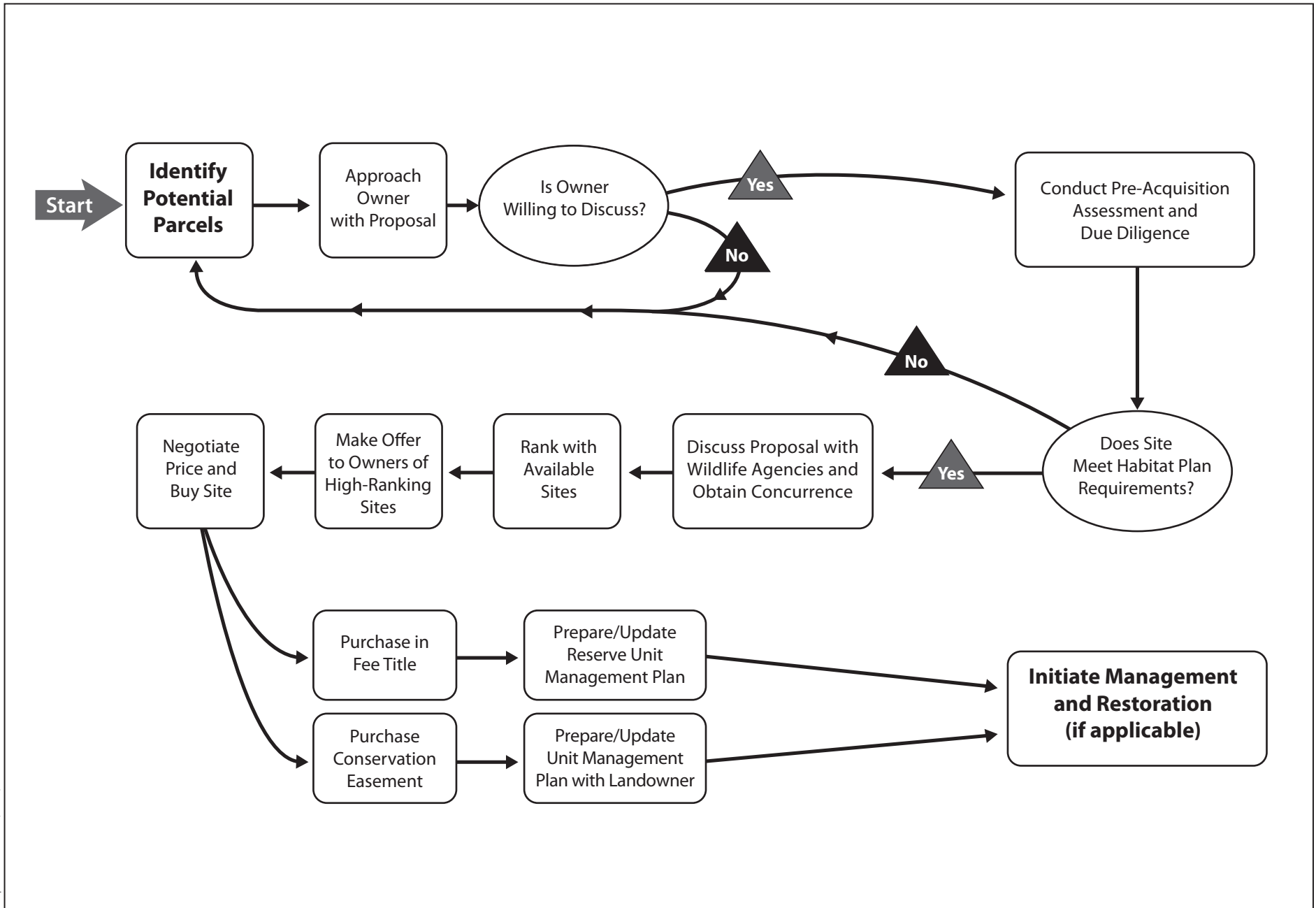
Graphics... 05489.05 (03-12) AB

**Figure 8-1**  
**Relationship of the Implementing Entity to External Parties**

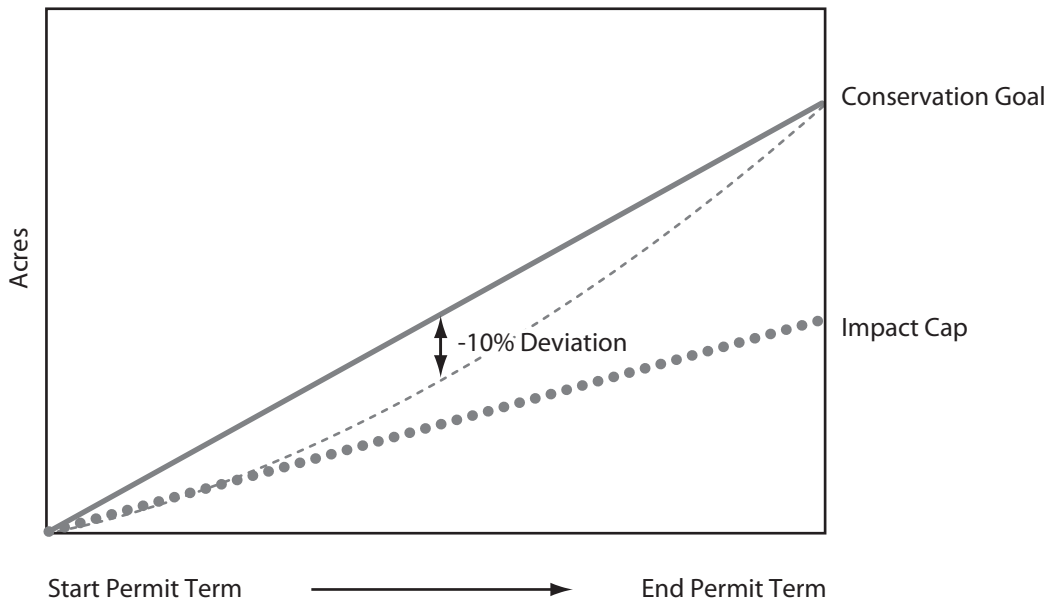


Graphics... 05489.05 (03-12) AB

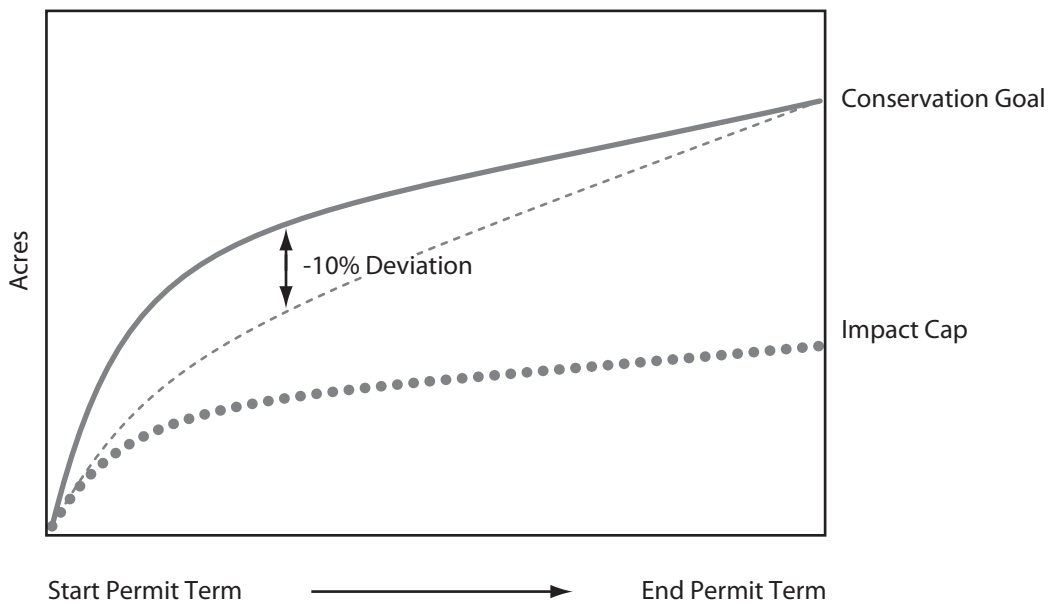
**Figure 8-2**  
**The Functions and Roles of the Implementing Entity**



Graphics... 05489.05 (03-12) AB



a. Theoretical rate of impacts and conservation if impacts occur at an even rate (linear) throughout the permit term.



b. Theoretical rate of impacts and conservation if most impacts occur early in permit term.