

Land will be provided to the Implementing Entity according to the guidelines in Section 8.6.7. Project proponents will always have the option of providing land in lieu of the base 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 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.

## 8.6.2 Land Acquired by Other Organizations or through Partnerships

Agencies and organizations such as the Open Space Authority, State Parks, County Parks, The Nature Conservancy, Peninsula Open Space Trust, and local land trusts are expected to continue actively acquiring land in the study area after the Habitat Plan is approved, either on their own or in partnership with the Implementing Entity or other organizations. Because many of these acquisitions will help meet the goals and objectives of this Habitat Plan, it is appropriate that the Implementing Entity receive credit toward Plan requirements if the acquisitions are [made in partnership with the Implementing Entity and they are consistent with Plan goals](#). It is expected that the Implementing Entity will be involved in many of the land acquisitions in the study area during the permit term. 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 other agencies and organizations can be counted toward Habitat Plan requirements only if the acquisition meets the following criteria.

- [Contributes to the goals, objectives, and overall success of the Habitat Plan, consistent with the land acquisition priorities described in Chapter 5.](#)
- [Is not mitigation for a project or activities not covered by the Habitat Plan.](#)
- For land owned by a non-permittee, contains a permanent conservation easement according to the requirements described in Section 8.6.3 below or other permanent dedication of land to the Reserve System, [with CDFG and USFWS named as third-party beneficiaries](#).
- For lands owned and managed by County Parks (a Permittee), ~~restrictive covenants, easements or deed restrictions,~~ [will be recorded upon approval by or equivalent title restrictions recorded in favor of CDFG and USFWS](#) may substitute for a conservation easement. Lands owned and managed by State Parks (a Permittee) as part of Henry W. Coe State Park do not require a permanent conservation easement or deed restriction because of the legal status of that park ~~(see Chapter 2).~~

- Will be managed in perpetuity pursuant to a Reserve Management Plan (see Section 5.3.1 in Chapter 5).
- Will be monitored according to the requirements and guidelines in Chapter 7.
- Is approved by the Implementing Entity.

Partial credit will be determined based on the purpose and location of the acquisition, the management of the land acquired, and consistency with the goals and objectives of the Habitat Plan. 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 the 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.X.X (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 above, regardless of who owns or 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 if 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 above. Likely interim land acquisitions are shown listed in Table 5-21 and shown Figure 5-12 ~~[This table and figure are forthcoming]~~. Other lands conserved during Plan development may not appear in Table 5-21 or Figure 5-12 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.

agencies could also serve as members of the Technical Advisory Committee, if appropriate. [The committee may sunset at the end of the permit term.](#)

## 8.2.5 Wildlife Agencies

It is important that the Wildlife Agencies (i.e., NMFS, 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 implementation plans such as reserve management plans, System-wide management plans \(e.g., invasive plant control plan, recreation plan\), and monitoring plans.](#)

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 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 Board and the Technical Advisory Committee, ~~if one is formed.~~

[To ensure regular communication between the Implementing Entity and the Wildlife Agencies, the Implementing Entity will convene 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.](#)

[As stated in Chapter 5, the Wildlife Agencies will review all draft documents and provide comments to the Implementing Entity within 60 days of receipt of these documents. The Wildlife Agencies will notify the Implementing Entity in writing once their comments have been incorporated to their satisfaction, thus constituting approval of the implementation documents. These deadlines are established to ensure the timely review and comment on the implementation documents by Wildlife Agency staff and to enable the Implementing Entity to implement conservation actions as soon as possible. If the Wildlife Agencies do not respond within 60 days, the Implementing Entity will proceed to implement the relevant conservation actions as specified in the implementation plan. If comments are received by the Wildlife Agencies after 60 days, the Implementing](#)

[Entity will work with the Wildlife Agencies to incorporate their comments in the next draft of the implementation plan.](#)

[The Implementing Entity will strive at all times to work in good faith with the Wildlife Agencies 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 the Implementing Agreement, Section 21.1 \(Appendix B\).](#)

## 8.2.6 Science Advisors

The adaptive management process described in Chapter 7 requires that the Implementing Entity consult outside scientists to help advise them on issues related to habitat management and monitoring (see also the section *Structure of the Adaptive Management Decision-Making Process* below). Therefore, scientists with expertise in conservation biology, management of local natural communities and agricultural lands, and the ecology of covered species will be invited to provide input to the Implementing Entity, as appropriate. These scientists are referred to collectively as the science advisors. The science advisors’ 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 periodically in an Independent Conservation Assessment Team to provide a major outside review of overall Plan progress every five years. More detail on the structure, role, and schedule of this scientific input is provided below (see *Structure of the Adaptive Management Decision-Making Process*). [Science advisors may be retained 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 will be open to the public, and public comments will be solicited and heard at each meeting<sup>1</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 but not yet acquired by the Implementing Entity.

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### Public Advisory Committee

The Implementing Entity ~~may~~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 and the Wildlife Agencies should participate in 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 Board 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 of approval.
- 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 protections).

### 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

<sup>1</sup> The Governing Board may need to hold periodic closed-door sessions to discuss confidential items such as land transaction negotiations or legal matters.

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 meetings. Periodic formal review of Plan progress in a public forum may also be appropriate and could perhaps coincide with the 5-year conservation audits by the Independent Conservation Assessment Team (see below for a description of this group and its function).

### 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. However, the ultimate decisions for Plan implementation 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 wide-ranging responsibilities include but are not limited to those listed below.

#### Administration

- Developing and maintaining annual budgets and work plans.
- Obtaining grants and other outside funding sources, including tracking and reporting grant compliance.
- Receiving, managing, tracking, reporting, and expending funds, including fee revenues collected or paid by the Permittees.
- Training staff in local jurisdictions to review applications for take authorization in compliance with the Plan. Assisting local jurisdictions to ensure that project proponents comply with the provisions of the Plan (e.g., performance of required avoidance, minimization, and mitigation measures) and providing tools 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 databases to track all impacts of covered activities and progress towards the biological goals and objectives.

## Permit Area

The *permit area* is the area in which the Permittees are requesting authorization from USFWS, NMFS, and CDFG for activities and projects that may result in take of species covered by this Plan (i.e., incidental take coverage for impacts on *covered species* due to implementation of *covered activities*). The permit area constitutes those lands within the study area on which covered activities occur (see Chapter 2 for a description of covered activities).

### 1.2.3 Permit Term

The permit term is the time period in which all covered activities can ~~be implemented~~ [receive take authorization under the Plan](#), consistent with ~~other the~~ requirements of the Plan. The permit term is also the time in which all conservation actions must be successfully initiated to offset the impacts of the covered activities.

~~Each of the~~ The Local Partners ~~and State Parks is are~~ seeking permits from the Wildlife Agencies with terms of 50 years. [The Permittees will request a single joint permit from each of the three Wildlife Agencies for a total of three permits. These permits will be tied to this Plan and to the Implementing Agreement \(Appendix B\). Each permit will be issued to all Permittees collectively.](#) Prior to permit expiration, the Local Partners may apply to renew or amend the Plan and its associated permits and authorizations to extend their terms. The permit term of 50 years was selected because it allows for the full [and successful](#) implementation of the covered activities [\(Chapter 2\), the conservation strategy \(Chapter 5\), the monitoring and adaptive management program \(Chapter 7\), and the funding strategy \(Chapter 9\).](#) Each of these components is discussed below.

### Time to Implement Covered Activities

A summary of major local planning documents and their [respective](#) time horizons ~~associated with each~~ is provided in Table 1-1. These planning documents have durations between 10 and [540](#) years, [reflecting the time it takes to secure funding and permits and construct the projects identified in the plans.](#) [The largest source of covered activities is the urban growth of the three participating cities consistent with their general plans. The general plans have horizons of 10-15 years past the estimated Plan permit start of 2010. Each of the three cities' general plans describe how and where development may occur, but not all cities anticipate full buildout according to current general plans by the end of general plan time horizons. Because the City of Morgan Hill has restrictions on how many building permits are granted each year the city anticipates buildout to occur closer to year 2050 than to 2025. The City of San Jose anticipates that the Almaden Valley Urban Reserve and Coyote Valley Urban Reserve will eventually be built out, but specific plans must first be developed and adopted for each area. The timeline for such specific plan is uncertain but they are expected](#)

~~to be completed in a time frame consistent with the 50-year permit term. until at least 2020 with buildout occurring over a 5-20 year period afterwards. A permit term of 50 years will encompass the expected development within these planning boundaries. Growth in the rural areas of the county is much less constrained geographically than in the cities so it is expected to occur, at a fairly even pace throughout the 50-year permit term, based on trends over the past ten years. Note that any development proposed in future General Plan updates that goes beyond that described in Chapter 2 would not be covered by this Plan (see Chapter 10 for Plan amendment procedures).~~

~~The planning horizon for capital projects is even longer than that of urban development within cities. Ongoing maintenance activities of SCVWD, the County, and participating cities are expected to continue in perpetuity; consequently, take authorization for these activities is needed for as long a period as feasible. Because t~~Timelines for SCVWD's capital projects often extend for decades, ~~so~~ this agency requires a permit term that encompasses the planning horizons of as many of these projects as ~~is feasible~~possible. ~~For example, the Upper Llagas Creek Flood Protection Project was first identified over 50 years ago; the project still awaits federal funding. Other covered projects (see Chapter 2) may take several decades to receive the funding needed to implement them. Many public infrastructure projects have a lifespan of 50-100 years. Because much of the public infrastructure in the study area was constructed in the 1940's through the 1960's, local engineers expect most of this infrastructure to need replacement or major repair in the next 50 years (e.g., all County-maintained bridges are expected to need replacement or major repairs in the next 50 years).~~

~~Some covered projects are not expected to be implemented until later in the 50-year permit term. Such projects include the many bridge replacement projects, several flood control and water supply projects, and several road widening projects. A longer permit term is necessary to anticipate and adequately mitigate the impacts of these projects on the covered species.~~

~~Ongoing maintenance activities of SCVWD, the County, and participating cities are expected to continue in perpetuity; consequently, take authorization for these activities is needed for as long a period as feasible. As described in Chapter 4, these on-going covered activities are expected to affect the covered species throughout the 50-year permit term. For example, road maintenance performed by the County occurs annually. Maintenance on rural roads is expected to affect habitat for many covered species, including California red-legged frog, California tiger salamander, western burrowing owl, Metcalf canyon jewelflower, most beautiful jewelflower, and Mount Hamilton thistle. Many of these species occur on roadcuts or immediately adjacent to roads in drainages. Similarly, ongoing maintenance by SCVWD covered in this Plan (see Chapter 2) is expected to affect covered species for the duration of the permit term. For example, maintenance of canals has the potential to affect California red-legged frog, western pond turtle, and serpentine plants.~~

## Time to Implement, Monitor, and Adjust Conservation Actions

The length of the permit term also provides adequate time for the assembly of ~~the~~ ~~a r~~Reserve ~~s~~System and ~~active~~ development of a management program on reserve lands. Land will only be acquired from willing sellers. Landowners may not be willing to sell at a reasonable price for many years after the permits are issued. A 50-year permit term provides adequate time for willing landowners to become available and for the land agents of the Plan to negotiate a fair price for the land in fee title or conservation easement (see Chapter 5 for a description of the land acquisition requirements of the Plan and Chapter 8 for a description of the land acquisition process). It may take several years to close a single land acquisition deal. Because 100-200 such deals will be required to assemble the reserve system, adequate time is needed to ensure this can happen before the end of the permit term. Conservation actions that occur outside the reserve system on privately-owned stream segments (e.g., stream barrier removal or modification) will require similarly long time periods to negotiate and implement.

A ~~planning horizon~~permit term of 50 years also allows the monitoring and adaptive management programs to become well established so that they will continue in perpetuity successfully. As described in Chapter 7, the monitoring and adaptive management program will go through three distinct phases: data inventory, targeted studies, and long-term monitoring. Each phase will take many years to complete successfully<sup>5</sup>. One type of monitoring, called “status and trend monitoring”, will track long-term trajectories of species populations and other physical and biological conditions in the study area. A permit term of 50 years will provide adequate time to collect enough trend data for all of the covered species; if management responses are necessary, the permit term will also allow sufficient time to adjust management. Monitoring the success of restoration actions (described in Chapter 5) is expected to take 5-10 years for each restoration project. Most restoration actions cannot be initiated until land is acquired for the reserve system. A permit term of 50 years is necessary to allow enough time to complete land acquisition with at least 5-10 years remaining on the permit in which to successfully initiate or complete (and possibly remediate if necessary) all restoration actions.

A successful program for management, monitoring, and adaptive management is essential to the success of the ~~r~~Reserve ~~s~~System ~~post implementation~~ (after the permit term). The Permittees will be obligated during the permit term to address changes in circumstances foreseen by the Plan (see Chapter 10) and to remediate the conservation areas affected by these changes. A longer permit term is more likely to encompass a changed circumstance that will require a remedial action.

<sup>5</sup> Many regional HCPs and NCCPs approved in southern California over 10 years ago are still developing their monitoring programs, demonstrating that it takes decades to develop and implement a successful monitoring program on such a large scale.

## Time to Secure Adequate Funding

A 50-year permit term ~~also~~ allows sufficient time to generate [the necessary funding for Plan implementation. As described in Chapter 9, the Plan will be funded by a wide variety of local, state, and federal sources. Some of these sources will not be available for 10-30 years or more. To take advantage of these funding sources, therefore, the permit term must be at least 40 years.](#)

Funding is also needed during ~~this time~~ [the permit term](#) to generate the necessary funds for management and monitoring after the permit expires (e.g., an endowment). [In Chapter 9, the Plan describes how this will be accomplished and by when. The permit term must therefore allow sufficient time to accumulate the long-term funding.](#)

## Conclusions

Based on the implementation horizon for covered projects, the ongoing regulatory requirement of operation and maintenance (~~O&M~~) activities, ~~and~~ the need to acquire lands and develop a successful ~~r~~Reserve ~~s~~System, ~~and the need for adequate funding~~, the Local Partners have determined that a 50-year permit term will best address regulatory and biological considerations. In summary, the 50-year permit term provides sufficient time to accomplish the following critical elements of the Plan.

- [Allow sufficient time for cities to fully implement current general plans.](#)
- Fully implement the Permittees' [capital](#) projects that are covered by the Plan.
- Implement the Permittees' ongoing activities as long as is feasible.
- Allow sufficient time to assemble the Plan ~~r~~Reserve ~~s~~System from willing sellers and partnerships with local agencies and private landowners.
- Secure all necessary funding for Plan implementation during the permit term and secure funds during the permit term to generate funding for the Plan in perpetuity.
- [Develop an effective adaptive management program that will be implemented in perpetuity, given the current uncertainties in knowledge about the ecology of covered species and responses to resource management.](#)
- [Provide sufficient incentive for the Local Partners to continue to invest substantial funds to prepare the Habitat Plan \(i.e., the permit term covers enough projects and activities to make the large up-front investment in the Habitat Plan cost effective\).](#)