



April 6, 2021

U.S. Fish and Wildlife Service  
2493 Portola Road Suite B  
Ventura, California 93003  
Attn: Debora Kirkland (Ventura Fish & Wildlife Office)

**SUBJECT: IMPLEMENTING ENTITY FOR LOS OSOS HABITAT CONSERVATION PLAN**

Dear Debora Kirkland:

This letter serves to inform the U.S. Fish and Wildlife Service (“Service”) that the intent of the County of San Luis Obispo (“County”) is to identify the Land Conservancy of San Luis Obispo County (“Land Conservancy”) as the Implementing Entity for implementation of the Los Osos Habitat Conservation Plan (LOHCP).

As the recipient of the Programmatic Incidental Take Permit (ITP) based on the LOHCP, the County is responsible for the implementation of the LOHCP. That being said, due to the nature of the LOHCP, the County finds it beneficial and appropriate to partner with a non-profit conservation organization (e.g., land trust or conservancy) with expertise in land conservation and management of endangered species, among other skills necessary to implement the LOHCP, to ensure initial and continued success in implementing the LOHCP and maintaining good standing for the ITP.

The Land Conservancy is a local and experienced non-profit organization with expertise necessary to implement the LOHCP, such as land acquisition, conservation easements, habitat restoration, and monitoring. The County has approached the Land Conservancy to serve as the Implementing Entity, and the Land Conservancy has expressed strong interest. The County and the Land Conservancy are in discussions to determine the specific roles and responsibilities appropriate for both parties.

It is envisioned that the Implementing Entity would take on roles and responsibilities primarily focused on implementing the conservation program, which includes, but is not limited to, protecting new habitat, restoring habitat, and monitoring habitat incorporated within the LOHCP Preserve System; the County would take on roles and responsibilities primarily focused on screening and reviewing applications, participant compliance, and other regulatory functions. Such roles and responsibilities would be aligned with the

expertise and typical operation of both parties. An outline of the proposed roles and responsibilities for the County and Land Conservancy (serving as the Implementing Entity) has been included as an attachment. This outline serves to provide a brief overview of the roles and responsibilities and to demonstrate the relationship between the County and Implementing Entity. The details and specifics of the roles and responsibilities in the LOHCP will be updated to reflect the outline.

If the Land Conservancy chooses not to serve as the Implementing Entity, the County will approach other non-profit conservation organizations with the appropriate expertise to serve as the Implementing Entity. In the case that the County cannot identify a suitable existing non-profit conservation organization to serve as the Implementing Entity, the County intends to form a new non-profit entity, subject to review and approval from the Service and California Department of Fish and Wildlife (CDFW), to act as the Implementing Entity with roles and responsibilities similar to those envisioned for the Land Conservancy in the attached outline described above.

The County recognizes that the success of implementing the LOHCP will require significant coordination between the County, the Implementing Entity, state and federal resource agencies, and plan participants. As such, the County will establish a LOHCP Coordinator, a full-time County staff member, designated to oversee the Implementing Entity and coordinate directly with all agencies involved.

Although the Implementing Entity would take on specific roles and responsibilities to implement the LOHCP, the County is and will remain ultimately responsible for implementation of all aspects of the LOHCP and compliance with the terms and conditions of the ITP.

The County will secure a general funds loan to “jump-start” implementation of the LOHCP. The habitat mitigation fees collected will be used to repay the loan. Conservative revenue projections indicate that the County can expect to collect at least \$1,500,000 in fees during the initial years of development in Los Osos. This amount is conservative as it only accounts for the development of the 226 properties (approximately 40 acres of disturbance) on the Single-Family Dwelling Building Permit Waitlist for Los Osos and is based on fees developed in 2015-2016, and does not include properties on the Multi-Family Dwelling Building Permit Waitlist for Los Osos nor does it include increases to fees. It is anticipated that the fees will, at minimum, increase to account for inflation over the last few years. This projection is realistic as the proposed 1.3 percent growth rate would allow for all 226 properties to develop within the five-year life of the growth rate.

If you have any questions or would like to discuss, please contact me at (805) 781-5713 or via email at [kbrown@co.slo.ca.us](mailto:kbrown@co.slo.ca.us).

Sincerely,

Kerry Brown  
Supervising Planner

Cc: Leilani Takano, U.S. Fish and Wildlife Service  
Land Conservancy of San Luis Obispo County

Attachment: Proposed County and Implementing Entity Roles and Responsibilities

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**Attachment:  
Proposed County and Implementing Entity  
Roles and Responsibilities**

**Section 1:**  
**Coordination and Oversight**

- A. **County.** The County will lead implementation of the LOHCP in coordination with the Implementing Entity and affected agencies to ensure efficient and effective implementation of the LOHCP.
- B. **County.** The County will oversee and review work conducted by the Implementing Entity to ensure successful implementation of the LOHCP and compliance with the terms and conditions of the ITP.
- C. **County.** The County LOHCP Coordinator will serve as the point person and will be supported by other County staff and/or outside personnel with the appropriate biological expertise.
- D. **Implementing Entity.** The Implementing Entity will submit an invoice for the work performed within a month to the County within 21 calendar days following the last day of that month. The invoice must be submitted via email to the County LOHCP Coordinator and must provide a brief description of the work performed for each amount invoiced.
- E. **County.** The County will review the invoices from the Implementing Entity and submit payment to the Implementing Entity within 21 calendar days of receiving the invoice.

**Section 2:**  
**Screening, Review, and Processing of Applications**

- A. **County.** The County will screen all development and related projects to determine whether the projects meet the criteria for incidental take coverage under the LOHCP and ITP. If a project is identified as potentially eligible, the County will accept and review the application for incidental take coverage under the LOHCP and ITP, which includes:
  - i. Review of all applications to identify the specific avoidance and minimization measures, as well as best management practices, that are necessary for each project, based on the general approaches, as well as site and project-specific conditions.

- ii. Review of pre-construction surveys (which will also be reviewed by the Service and CDFW) and use results to evaluate additional measures to avoid and minimize impacts, including project design.
  - iii. Review of all applications to ensure that all participants implement the LOHCP avoidance and minimization measures to prevent impacts to other listed species not covered under the ITP.
- B. **County.** Following review, if the project meets the LOHCP eligibility criteria and the proponent of the project agrees to comply with the requirements of the LOHCP and terms and conditions of the ITP, the County will issue a Certificate of Inclusion that confers incidental take coverage to the proponent of the project. All required mitigation must be secured by the County and Implementing Entity prior to issuance of a Certificate of Inclusion.
- C. **County.** With the issued Certificate of Inclusion, the proponent of the project will be eligible to proceed with the local permitting process.
- D. **County.** The County will refer proponents of projects that are determined to be ineligible for incidental take coverage under the LOHCP and ITP to the appropriate state and federal agencies to discuss alternative options for incidental take coverage.

### **Section 3:**

#### **Securing and Holding of Mitigation**

- A. **Implementing Entity.** The Implementing Entity will accept from participants the following mitigation required to compensate for the impacts of their projects:
- i. Conservation easements for habitat set asides on parcels in the Priority Conservation Area that are developed as part of the LOHCP.
  - ii. Conservation easements for habitat acquired in fee title by the County using the Habitat Protection Fees.
- B. **Implementing Entity.** The Implementing Entity will work with the Service to ensure that the easement will protect parcels where habitat is of high long-term conservation value for the covered species.
- C. **Implementing Entity.** The Implementing Entity will serve as the easement holder and designate the County as the successor to the easement, in the event that the Implementing Entity at the time is dissolved.
- D. **County.** The County will accept from participants the following mitigation required to compensate for the impacts of their projects:

- i. Habitat mitigation fees, which include Habitat Protection Fees for those who do not set aside habitat.
  - ii. Habitat restoration and management fees, which are required for all participants.
- E. **County.** The County will deposit all habitat mitigation fees into a dedicated trust account to ensure that they are applied to implementation of the LOHCP. A portion of the fees will be used to establish the endowment that will be held by the National Fish and Wildlife Foundation and will be used to fund habitat management and monitoring post permit.
- F. **County and Implementing Entity.** The County and Implementing Entity will work with the Service to use habitat mitigation fees to acquire additional lands of high long-term conservation value to be included into the LOHCP Preserve System. This includes:
  - i. Conducting outreach to identify willing sellers (to be lead by County);
  - ii. Negotiating with landowners or their agents; and
  - iii. Securing fee title (to be held by County) or conservation easements (to be held by Implementing Entity).
- G. **County and Implementing Entity.** Lands acquired in fee simple title will be held by the County and permanently protected by conservation easements held by the Implementing Entity.

#### **Section 4:**

#### **Participant Compliance and Monitoring**

- A. **Implementing Entity.** The Implementing Entity will monitor easements over properties protected as part of the LOHCP for compliance to ensure long-term protection of habitat. Easement monitoring will follow the Implementing Entity's accredited policies and procedures.
- B. **Implementing Entity.** The Implementing Entity will work with participants to achieve voluntary compliance with the requirements of the LOHCP and terms and conditions of the ITP.
- C. **Implementing Entity.** If the Implementing Entity exhausted all standard procedures with a participant and voluntary compliance with the requirements of the LOHCP and terms and conditions of the ITP is not achieved, the Implementing Entity will notify the County.

- D. **County.** Once notified that voluntary compliance from a participant cannot be achieved, the County will use its police and enforcement powers to revoke the Certificate of Inclusion and issue a stop-work order on the project.

### **Section 5:**

#### **LOHCP Preserve System Habitat Management, Restoration, and Monitoring**

- A. **Implementing Entity.** The Implementing Entity will coordinate and consult with the County (including County Parks Department) and CDFW to enroll lands to be managed, restored, and monitored as part of the LOHCP Preserve System, which includes:
- i. Identifying the priority areas for habitat restoration and management and the techniques that will be used to ensure the habitat is protected in perpetuity;
  - ii. Determining the management goals and objectives for the property, which will be consistent with the biological goals of the LOHCP and the goals and objectives of the LOHCP Preserve System AMMP; and
  - iii. Developing and executing MOUs or other cooperative agreements with the eligible land management entities who may elect to enroll their lands, including CDFW and County Parks. Such agreements will specify what they will continue to do (i.e., as part of their maintenance of effort) and what the County and Implementing Entity will do directly, or under contract with the land manager, as mitigation under the LOHCP.
- B. **Implementing Entity.** The Implementing Entity will:
- i. Implement the Interim Adaptive Management and Monitoring Plan (IAMMP), which identifies high-priority restoration work within the Morro Dunes Ecological Reserve (MDER) to jump start the conservation program.
  - ii. Prepare and implement the LOHCP Preserve System AMMP, which will identify the goals and priority restoration and management projects for the lands within the Preserve System, based on a critical examination of the biological conditions on site, as well as the role of the preserve in the broader landscape.
  - iii. Prepare annual work plans and budgets to implement the LOHCP Preserve System AMMP. Work plans will identify the habitat management and monitoring tasks that will be conducted each year, based on the priorities and existing funding, derived from habitat mitigation fees and other sources (e.g., grants).
  - iv. Conduct or oversee habitat restoration, management, and monitoring. Ensure that habitat management, restoration, and enhancement activities are carried out as outlined in the LOHCP Preserve System AMMP, LOHCP, and ITP, and that the work is keeping pace with or exceeding the pace of the incidental take/impacts in compliance with the Plan's stay-ahead provision.

- v. Update the LOHCP Preserve System AMMP as part of the adaptive management process, in which changed conditions, new scientific information, and the results of prior projects and monitoring, among other changes, are addressed to promote long-term effectiveness of the conservation strategy.

## **Section 6:**

### **Documentation and Annual Reporting**

- A. **County.** The County, as part of the Covered Activities Implementation Monitoring, will create and maintain a database to record relevant information about each application submitted, which includes:
  - i. The amount and location of habitat impacted by each covered activity;
  - ii. Whether all of the required avoidance and minimization measures, and best management practices required in the Certificate of Inclusion were implemented and the effectiveness of such measures;
  - iii. The number and type of Certificates of Inclusion issued during each calendar year and cumulatively since the take permit was issued; and
  - iv. The mitigation provided (i.e., the acres protected via conservation easement and fees accepted).
- B. **County.** The County will submit data on all fees collected to the Implementing Entity on a monthly basis.
- C. **Implementing Entity.** The Implementing Entity will establish one or more databases that will continuously track the following:
  - i. The amount and location of new habitat protected (i.e. habitat acquired by the Implementing Entity and habitat set aside by project proponents on site);
  - ii. The amount and location of habitat subject to each type of restoration treatment (e.g., erosion control);
  - iii. The amount and location of habitat subject to enhanced management, including the type(s) of management activities conducted in the area (e.g., veldt grass control);
  - iv. Progress toward the biological goals and objectives, based on monitoring; and
  - v. Accounting for all fees collected and funds expended.
- D. **County and Implementing Entity.** The County will maintain a database of all avoidance and minimization measures, including survey results. The Implementing Entity will use such database to develop the annual report as well as to increase understanding of the species distribution and abundance.



- E. **County and Implementing Entity.** The County and Implementing Entity will collaborate to prepare the draft annual report to:
- i. Evaluate whether the area protected, restored, and managed as part of the conservation program is sufficient to meet the LOHCP stay-ahead provision;
  - ii. Document implementation of the LOHCP and the steps conducted to promote long-term effectiveness of the LOHCP at achieving the biological goals and objectives, which includes:
    - **[Implementing Entity.]** Updating the overall conservation program as well as the LOHCP Preserve AMMP, based on changed conditions, new scientific information, and results of monitoring;
    - **[County.]** The County will lead this effort.] Conducting periodic reviews of the fees to ensure they are sufficient. (The initial review will occur after three years, with subsequent reviews conducted at least once every five years or sooner if circumstances, including information in the annual report, indicate that the fees collected may not be sufficient to implement conservation measures required under the plan); and
    - **[County and Implementing Entity.]** Identifying proposed changes to the plan, including administrative changes as well as minor and major amendments.
- F. **County.** The County will review the annual report and coordinate revisions, as necessary. Following County approval of the annual report, the County will submit the approved annual report to the Service and CDFW for their review and feedback.

## **Section 7:**

### **Other Implementation Duties**

- A. **County.** The County will maintain a publicly available website that provides information about the LOHCP, including annual reports and monitoring studies.
- B. **County and Implementing Entity.** The County and Implementing Entity will, as feasible, seek outside funds to support research as well as additional restoration, management, and monitoring to complement the LOHCP conservation program strategy. Such funds sources would not replace or otherwise alter the mitigation responsibilities of the County or participants; rather, additional funding would be used to improve the quality of management of the LOHCP Preserve System.
- C. **County and Implementing Entity.** The County and Implementing Entity will engage with agencies and organizations in the LOHCP Area to build support for projects aimed at achieving the LOHCP goals and objectives. This includes conducting

outreach to researchers to engage them in studies that will fill data gaps, evaluate effectiveness of monitoring, and otherwise inform the conservation program.

- D. **County and Implementing Entity.** The County and Implementing Entity will, at least annually, or sooner if warranted, convene with the Service, as well as owners/agency managers of land within the LOHCP Preserve System, to keep these parties apprised of progress towards conservation goals and objectives and provide updates on funding, monitoring, adaptive management, and other topics relevant to long-term effectiveness of the LOHCP.