

## CHAPTER 12: PLAN IMPLEMENTATION

### 12.1 INTRODUCTION

This Chapter provides guidelines for the implementation of the SSHCP and describes actions that must be taken to administer the Plan. The following text will describe the responsibilities of the plan participants, oversight committees and agencies, detailed implementation processes, Plan amendment information, and reporting protocols.

### 12.2 ORGANIAZTIONAL STRUCTURE

The SSHCP is overseen by a Governing Authority composed of elected officials or their representatives from each of the local jurisdictions or agencies that are signatories to the Implementing Agreement. Collectively these local jurisdictions and agencies are referred to as the Plan Participants. The Governing Authority is ultimately responsible for proper implementation of the SSHCP and compliance with the Implementing Agreement. The GA will not be directly involved in the day-to-day implementation of the Plan, but instead will form a Conservancy to execute the goals, objectives and measures found within the SSHCP. The Governing Authority and Conservancy together are referred to in this Plan as the Implementing Entity. Two committees will be created to provide oversight and guidance to the Implementing Entity. A Technical Advisory Committee appointed by the Governing Authority and composed of members of the Development, Agricultural and Environmental community will be created to provide guidance to the Governing Authority. The Governing Authority will also form a Scientific Review Committee composed of scientists with expertise in the disciplines of ecological and biological sciences that will inform and guide the Conservancy.

#### 12.2.1 Plan Participants

Plan participants are the entities that will receive incidental take permits from the State and Federal regulatory agencies. It is anticipated that the following local government jurisdictions and agencies will participate in the SSHCP:

- City of Elk Grove
- City of Galt
- City of Rancho Cordova
- County of Sacramento
- Sacramento County Water Agency
- Sacramento Regional County Sanitation District

While the Plan Participants are collectively responsible for plan implementation, each permittee will hold a separate incidental take permit from the USFWS and DFG and will be responsible for enforcing the terms of the permit with regard to covered activities that they approve or carry out. Each participant will execute the Implementation Agreement (see Exhibit X) and will be required

to adopt an Implementing Ordinance (See Exhibit X) in order to extend coverage under the Incidental Take Permit to covered activities, as described later in this chapter.

The USFWS and DFG will issue incidental take permits to the Sacramento County Water Agency and the Sacramento Regional County Sanitation District that cover specific projects that they will approve or carry out. These activities include maintenance activities as described in the *Covered Activities Chapter* (Chapter 4) and expansion of infrastructure that is directly related to each agencies' function. Activities that are not within SCWA's or SRCSD's authority or direct control will not be covered under their incidental take permit.

### **12.2.2 Implementing Entity**

The Implementing Entity, described in further detail below, will also be a plan participant and will receive state and federal incidental take permits that cover various implementation activities, as described in the *Covered Activities Chapter* (Chapter 4).

#### **Governing Authority**

The Governing Authority is a body of elected officials or their appointed representatives that are responsible for proper implementation of the SSHCP and compliance with the Implementing Agreement.

#### **Conservancy**

The Conservancy will be established by the Governing Authority and will report directly to them. The Conservancy will be a private nonprofit public benefit corporation led by an Executive Director and staffed by biologists, acquisition personnel, grant writers and administrative staff. The Conservancy is responsible for land acquisition, preserve monitoring and management. While the Conservancy must seek the Governing Authority's permission to implement certain aspects of the SSHCP the Conservancy has the ability to implement others such as adaptive management protocols without first seeking the permission of the GA.

### **12.2.3 Technical Advisory Committee (TAC)**

The formation of a Technical Advisory Committee gives various stakeholder interests the opportunity to provide input into the SSHCP's implementation process. The TAC is also responsible for informing their respective constituents of any actions taken by the Governing Authority. This Committee will be comprised of a variety of stakeholders representing diverse interests including members of the development, landowner, agricultural, environmental and regulatory communities. The Committee's main role is to provide guidance directly to the Governing Authority concerning land or easement acquisitions, decisions regarding the fee structure, and compliance with plan goals and objectives. The Board of the Governing Authority will select members to sit on this committee. A meeting schedule will be established at the first meeting of the TAC. The TAC will be formed within six months of implementation of the SSHCP.

#### **12.2.4 Scientific Review Committee (SRC)**

A Scientific Review Committee will be formed to provide the Conservancy with guidance in areas of preserve design, preserve assembly, monitoring and management actions and adaptive management protocols. Science advisors will be members of the scientific community that are known to have expertise in areas of landscape ecology, preserve management, adaptive management, effectiveness and compliance monitoring and species ecology. The SRC is responsible for answering specific questions that may arise during plan implementation and is expected to research and prepare written reports that direct the Conservancy's actions. The SRC may also be asked to review actions taken by the Conservancy to determine effectiveness. The Board of the Governing Authority will select SRC members with input from state and federal regulatory agencies. The USFWS and DFG will be given seats on the Committee and will have the ability to override any decisions made by this Committee. Meetings will be held as needed. The SRC will be formed within six months of implementation of the SSHCP.

#### **12.2.5 Regulatory Agencies**

#### **12.2.6 Third Parties**

As the permit holders of both state and federal incidental take permits, Plan Participants can extend coverage under the ITPs to third parties for purposes of engaging in covered activities, provided the activities are consistent with the conservation strategy (Chapter 7) and any other conditions (Chapter 6) established under the SSHCP. Third parties are individuals, organizations, or agencies that receive incidental take permit coverage from one or more of the Plan Participants. Only projects that are approved by a Plan Participant are eligible for third party permits. Plan Participants are not obligated to provide take authorization to third parties.

#### **12.2.7 Other Participating Entities**

In most cases the coverage provided to third parties is through a process where one of the Plan Participants has permit authority over the project (i.e. a development project that applies to the Plan Participant for approval). There will however, be instances when an entity that is not subject to the Plan Participant's oversight (i.e. school district, irrigation district, water district, utilities etc.) but may wish to seek incidental take coverage under the SSHCP. When such circumstances arise it is reasonable that permit coverage should be provided to these projects consistent with the SSHCP implementation strategy. To provide coverage a binding contract between the Implementing Entity and the project applicant will be necessary to enforce the conditions of the Implementing Agreement.

### **12.3 DUTIES AND RESPONSIBILITIES**

This section describes the duties and responsibilities that are expected for the Plan Participants, Implementing Entity, TAC and SRC Committees and Regulatory Agencies.

### 12.3.1 Plan Participants

The Plan Participants are responsible for accepting and processing SSHCP applications, the preparation of mitigation and avoidance measures for each project consistent with the SSHCP and the collection of mitigation or other fees related to the SSHCP.

- Determining if Projects can utilize the SSHCP
- Assisting Project Applicants with the permitting process
- Collection and disbursement of fees to the Governing Authority

### 12.3.2 Governing Authority (GA)

The Governing Authority is responsible for implementing the SSHCP, ensuring compliance with conditions set forth in the Implementing Agreement and for ensuring overall compliance with the SSHCP. The Governing Authority will be advised by a the Technical Advisory Committee

The following responsibilities of the GA include but are not limited to:

- Monitoring and auditing Plan Participants to ensure compliance with plan requirements.
- Directing and approving amendments to the plan.
- Approving and issuing compliance and effectiveness monitoring reports to regulatory agencies and Plan Participants.
- Approving land acquisition transactions consistent with SSHCP goals, objectives and preserve design guidelines.
- Collecting fees from Plan Participants for land or easement acquisition, monitoring and management, and plan implementation. Fee collection should occur quarterly or as needed to close land and conservation easement projects.
- Adjusting fees in compliance with plan requirements.
- Managing the Plans non-wasting endowment.

### 12.3.3 Conservancy

The Conservancy will be overseen by the Governing Authority and advised by a Scientific Review Committee. The Conservancy will oversee the day-to-day operations necessary to implement the SSHCP. The following responsibilities of the Conservancy include but are not limited to the following:

- Preparation of annual compliance and effectiveness monitoring reports
- Pursuing and negotiating land or easement acquisitions.
- Pursuing grant opportunities for acquisition or restoration opportunities
- Crafting and implementing preserve management plans.

- Develop, negotiate and monitor conservation easements.
- Implement monitoring protocols.
- Execute active adaptive management protocols.
- Employ restoration and enhancement actions.
- Monitor for effectiveness and compliance of SSHCP implementation measures

#### **12.3.4 Technical Advisory Committee (TAC)**

The TAC will provide a vital role in providing guidance to the Governing Authority regarding plan implementation. The role of the TAC is to monitor on the ground activities as conducted by the Conservancy and provide feedback and recommendations to the Governing Authority as to how well implementation of the plan is proceeding and how to set up or improve plan implementation if necessary. The following responsibilities of the TAC include but are not limited to:

- Recommend and review land or easement acquisitions for consistency with SSHCP goals.
- Review and advise Governing Authority on Plan amendments.
- Review and recommend revisions to management plans.

#### **12.3.5 Scientific Review Committee (SRC)**

The Scientific Review Committee is vital to ensuring that the best available scientific practices are employed while implementing the SSHCP. The SRC will play a key role in shaping monitoring and adaptive management protocol, ensuring preserve design techniques are up to date, that preserve assembly is actually achieving stated goals and objectives and that plan goals, objectives, and measures are adequate. The following responsibilities of the Scientific Review Committee include but are not limited to:

- Review and recommend revisions to monitoring and management protocols.
- Review and suggest modifications to plan goals, objectives and measures.
- Recommend actions to implement management plans.
- Review and recommend revisions to adaptive management strategies.
- Provide insight to prioritize parcels for acquisition.

#### **12.3.6 Regulatory Agencies**

Regulatory agencies will guide and direct the Implementing Entity to ensure compliance with conditions of the Plan, Implementing Agreement and Incidental Take Permits. The Agencies will

also assist the Implementing Entity with grant opportunities provided by government agencies. The following responsibilities of the Regulatory Agencies include but are not limited to:

- Assistance with Section 6 or other government grant programs.
- Assisting with any amendment processes and approving any changes that may result.

## 12.4 APPLICATION PROCESS

Upon execution of the HCP Implementing Agreement, Plan Participants that are signatories to the SSHCP Implementing Agreement will be issued permits for the take of covered species. As the permit holders of both state and federal incidental take permits, Plan Participants can provide take coverage to “third parties” who engage in covered activities and comply with the SSHCP including all relevant conditions in Chapters 6 and 7.

For covered activities that are subject to local land use permits, government agencies with land use authority will issue take coverage under the SSHCP Incidental take permit. For projects that do not need local land use permits but are under the authority or direct control of SRCSD or SCWA, SRCSD or SCWA will issue permits. Projects that cross jurisdictional boundaries, such as roadway projects, will need to acquire permits from each respective jurisdiction.

The Plan Participant with permitting authority must determine if a project is subject to and can utilize the SSHCP. An application must be filed by a project proponent with the Plan Participant with permitting authority to determine if a project can utilize the SSHCP. A project application must include the following:

- 1) Standard Application form (See Appendix X)
- 2) Project description including specific activities or actions that will occur on site.
- 3) Site Map illustrating the exact location of the property.

Once an application has been submitted, the Plan Participant with permitting authority must determine if a project can utilize the SSHCP. The following questions will be used to determine if a project can qualify for incidental take coverage under the Plan.

**1. Is the project within the SSHCP permitting area?**

YES: Proceed to Question 3

NO: Proceed to Question 2

**2. Is it an infrastructure project specifically identified in the SSHCP to receive coverage (see Chapter 4)?**

YES: Application can be submitted

NO: Stop -cannot use SSHCP

**3. Is the project an activity that is covered under the HCP?**

YES: Application can be submitted

NO: Stop -cannot use SSHCP

**How to determine if a project is within the permitting area**

The permitting area is identified in Chapter 4 “Covered Activities Chapter”. The applicant’s parcels should be identified by Assessors Parcel Number and using a GIS based system the parcel location can be compared to the location of the permit area boundary.

**How to determine if a project is a covered activity**

A complete list of Covered Activities is identified within Chapter 4 “Covered Activities Chapter”. A projects description should be compared with the list and descriptions provided in Chapter 4.

If it is determined that a project is eligible to use the SSHCP the following actions will be taken by the Plan Participant with permitting authority.

1. Contact the SSHCP Conservancy to initiate a pre-construction survey that includes species and habitat cover-type surveys and a wetlands delineation. (Detailed survey requirements are outlined in Chapter 6).
2. Once pre-construction surveys are complete, the Plan Participant issuing take coverage will determine appropriate minimization and avoidance measures and compensation requirements in accordance with Chapter 6. Proposed mitigation must comply with the conditions as established in sections 12.5 (*Implementation Structure*) and 2.6 (*Fee Title or Easement Acquisitions*) of this chapter. The CEQA lead agency will incorporate conditions and measures in accordance with SSHCP conservation requirements, into their environmental documents.
3. The Plan Participant with permitting authority will prepare a report outlining any avoidance and minimization measures, total impacts and measures to mitigate for impacts including fee payments or easement or land delivery requirements and provide this report to the Project Applicant and the Implementing Entity.
4. The Plan Participant with permitting authority will issue final approval and take authorization after confirming that all measures and conditions as specified within the environmental document have been satisfied.

## 12.5 IMPLEMENTATION STRUCTURE

The SSHCP study area has been divided into 12 zones and 13 sub-zones. Conservation measures have been developed specific to conservation zones and/or sub-zones and broadly across zones to guide the SSHCP conservation strategy. Each measure must be satisfied to accomplish the goals and objectives set forth in the SSHCP document. In addition acquisition zones have been established to guide the acquisition of land or easements.

### 12.5.1 Implementation Fee System

The SSHCP utilizes a multiple fee system. Fees are based on habitat cover-types impacted by covered activities. The following will be applicable to all covered activities as defined in the Covered Activities Chapter of the SSHCP and where the habitat type is not exempt from take (e.g. Mine Tailings).

***Agriculture/Grassland Habitat*** - This fee will be assessed to Cropland, Irrigated Pasture-Grassland, Orchards, Valley Grasslands, and Vineyards. All of these cover-types will be assessed at a ratio of

1:1; for every acre lost one acre must be protected or a fee of \$XXX must be paid for every acre lost, or fraction thereof.

***Vernal Pool Wetland Habitat*** - This fee will be assessed to Vernal Pools at a ratio of 4:1; for every acre lost three acres must be protected and one acre must be restored or created or a fee of \$XXX must be paid for every acre lost, or fraction thereof.

***Other Wetland Habitat*** - This fee will be assessed to Freshwater Marsh and Seasonal Wetlands at a ratio of 4:1; for every acre lost three acres must be protected and one acre must be restored or created or a fee of \$XXX must be paid for every acre lost, or fraction thereof.

This fee will be assessed to Swales and Seasonal Impoundments at a ratio of 3:1; for every acre lost two acres must be protected and one acre must be restored or created or a fee of \$XXX must be paid for every acre lost, or fraction thereof.

This fee will be assessed to Open Water at a ratio of 2:1; for every acre lost one acre must be protected and one acre must be restored or created or a fee of \$XXX must be paid for every acre lost, or fraction thereof.

***Riparian Habitat*** - This fee will be assessed to Mixed Riparian Scrub, Mixed Riparian Woodland at a ratio of 4:1; for every acre lost three acres must be protected and one acre must be restored or created or a fee of \$XXX must be paid for every acre lost, or fraction thereof.

This fee will be assessed to Cottonwood Woodland at a ratio of 0.5:1; for every acre lost one-half of an acre must be protected or a fee of \$XXX must be paid for every acre lost, or fraction thereof.

***Oak Woodland Habitat*** - This fee will be assessed to Blue Oak Woodland at a ratio of 2:1; for every acre lost one acre must be protected and one acre must be restored or created or a fee of \$XXX must be paid for every acre lost, or fraction thereof.

#### **12.5.2 Timing of mitigation**

Mitigation of impacts via fee payment or land or easement dedication is required prior to any site disturbance, such as clearing or grubbing, the issuance of any permits for grading, building, or other site improvements, or the recordation of a final map, whichever occurs first.

#### **12.5.3 Get-Ahead Stay-Ahead**

The SSHCP desires to provide a fee-based mitigation system. A fee-based system provides the project proponent with the convenience of a truly streamlined permitting process and gives the implementing entity more control over where mitigation lands are protected. The disadvantage to a fee based system is that there are delays in acquiring mitigation lands from the time the impact occurs and there is a risk that the fees collected will not keep pace with the real-estate market. In other words, if fees are collected over a period of time in order to accrue enough money to purchase mitigation easements, then there is a risk that the fees collected will not keep up with escalating land prices. This could result in the acquisition of a lesser amount of land than is required for mitigation.

To offset the impacts of temporal loss and to guard against price inflation the SSHCP requires that 1,000 acres of mitigation land be protected in advance of impacts. At least 500 acres must be of a

combination of vernal pool wetland and grassland habitat. The remaining 500 acres can be a combination of any of the other habitat types.

Should the reserve of mitigation lands drop below 1,000 acres, Plan Participants will not be authorized to issue incidental take coverage by accepting payment of fees. Plan Participants may still issue take coverage provided that suitable conservation easements or land in fee title is provided to offset impacts of a proposed project.

## **12.6 FEE TITLE AND EASMENT ACQUISITION**

### **12.6.1 Minimum Parcel Size for Acquisition by Implementing Entity**

Since smaller parcels are typically more expensive to acquire and manage the Conservancy will not be permitted to acquire parcels smaller than 20 acres in size without authorization to do so by the Governing Authority. The Governing Authority can authorize the purchase of smaller parcels only if the purchase is necessary to protect an existing occurrence of a SSHCP covered species.

### **12.6.2 Fee Title and Easement Acquisition Requirements**

Prior to the acceptance of land dedications, the purchase of land in fee title or easement purchases, the Implementing Entity must determine the appropriateness of the land being considered for acquisition as it relates to the objectives of the SSHCP.

Acquisitions are made to advance implementation of the conservation strategy found in Chapter 7 of this document and must be done in accordance with conditions found within this Chapter. The following steps must be taken when acquiring land.

1. Identify and rank acquisition options based on stated Plan objectives and acquisition requirements found in Chapters 6, 7 and 12. Careful consideration must be made as to the acquisition requirements of a particular zone and habitat cover-type need.
2. Approach landowners to gauge interest in selling easements or fee title. If a landowner is interested execute necessary agreements to prepare a Preserve Documentation Report (PDR) (See Appendix X for PDR template).
3. Once willing landowners have been identified a Preserve Documentation Report must be prepared to assess the baseline inventory of habitat cover-types, species occurrences and general ecological health and function of the property.
4. If the PDR indicates that the property is suitable for acquisition based on biological resources, obtain a title report to determine what encumbrances exist on the property that might exclude it from contention for acquisition. Properties that have encumbered the water rights or surface mineral rights will automatically be excluded from contention for acquisition.
5. Conduct appraisal and prepare Phase I survey and environmental determination document.

6. Rank properties based on costs to acquire and ability to achieve Plan objectives. Properties that fulfill objectives that are difficult to achieve should receive high priority.
7. Prepare an offer for the landowner's consideration and negotiate terms of the acquisition.
8. If acquisition is an easement, prepare the easement document, servitude of pasturage (if necessary) and management plan. If the acquisition is in fee title, prepare a preserve management plan and if necessary restoration plan.
9. Examine any existing leases for compatibility with the management plan and objectives of the SSHCP.

### **12.6.3 Land Purchases In Fee Title**

It may be necessary for the Implementing Entity to purchase lands in fee title to allow for more intensive management actions to occur that would otherwise be possible on lands held under a conservation easement. Fee title acquisition will be the preferred method of protection of lands within the UDA to allow for intensive management actions and to ensure preservation of these lands in perpetuity especially considering that the pressure to develop these lands in the future will be great due to their location within the UDA. Lands purchased by the Implementing Entity will be held in perpetuity unless a compelling argument can be made for the sale of acquired lands. Reasons for the sale of land include loss of biological or ecosystem functions or to acquire capital to purchase lands with greater conservation value. All lands owned by the Implementing Entity will eventually be protected by a conservation easement that is held in perpetuity. A management plan must be developed by the Conservancy for acquired properties within one year of acquisition (close of escrow).

When two or more suitable parcels are available for acquisition at the same time, and the Implementing Entity does not have insufficient funds to acquire them all, the Implementing Entity must prioritize these lands for purchase. The following criteria should be considered when prioritizing land acquisitions:

- Known to support SSHCP covered species.
- Are large, unfragmented, and connected to existing preserves.
- Have few to no human disturbances.
- Are especially threatened yet present conservation opportunities.
- Sites where management can be used to enhance or restore natural ecosystem processes.
- Are Located within the UDA.
- Are 20 acres or greater in size and/or occur in larger, open space areas.

- Are offered at appraised value.
- Satisfies permit conditions, like get ahead/stay ahead.

#### 12.6.4 Land or Easement Dedication in Lieu of Fees

There may be instances when a project proponent wishes to set aside a portion of their project to satisfy mitigation requirements or to reduce fees in partial fulfillment of mitigation obligations. Other project proponents may own or will purchase property within a conservation area and will dedicate this property to the GA to reduce payment of fees or eliminate mitigation obligations on properties they wish to develop within the UDA.

Land or easement dedications must conform to the following conditions:

- Property supports SSHCP covered species, habitat cover-types and ecological functions of the SSHCP;
- Property is connected to existing preserves, will provide a connection to existing preserves or provides a wildlife corridor;
- Property is not dedicated in a zone that has already achieved full mitigation;
- Project proponent provides fees to cover costs for monitoring and management and operations.

The following steps must be taken when accepting land or easement dedications in lieu of fees:

1. Once willing landowners have been identified a Preserve Documentation Report must be prepared to assess the baseline inventory of habitat cover-types, species occurrences and general ecological health and function of the property.
2. If the PDR indicates that the property is suitable for dedication based on biological resources, obtain a title report to determine what encumbrances exist on the property that might exclude it from contention for dedication. Properties that have encumbered the water rights or surface mineral rights will automatically be excluded from contention for dedication.
3. Conduct appraisal and prepare Phase I survey and environmental determination document.
4. Negotiate terms of the dedication.
5. If dedication is an easement, prepare the easement document, servitude of pasturage (if necessary) and management plan. If the dedication is in fee title, prepare a preserve management plan and if necessary restoration plan.

6. Examine any existing leases for compatibility with the management plan and objectives of the SSHCP.

Each land or easement dedication will be evaluated on a case-by-case basis. A PDR will be prepared that calculates the amount of each habitat cover-type that is available on the dedicated property for use as mitigation. The total amount of land available to offset mitigation will be subtracted from the project proponent's mitigation obligation. Additional fees will be required to cover operations; management and monitoring and will be calculated based on the habitat cover-type for which mitigation is required. The Plan Participant with permitting authority will calculate fees.

In instances where land or easements are dedicated to the Implementing Entity and are in excess of what is required to compensate for impacts, credits will be provided to the landowner or entity that dedicated the land or easement. (i.e. a project is required to provide 90 acres of cropland habitat as mitigation but wishes to dedicate an easement or land on a 100 acre parcel with a cropland cover-type. The excess 10 acres of cropland mitigation will be held by the SSHCP Implementing Entity but credited towards the individual or entity that dedicated the land or easement for use or sale at a later date.

#### **12.6.5 Conservation Easements**

The acquisition of conservation easements is the preferred method for establishing the SSHCP preserve system outside of the UDA. This method is favored over fee title acquisition as it maintains private ownership of lands and generally costs less to acquire. The SSHCP may also benefit from reduced management costs as the landowner takes primary responsibility for maintaining habitat on their land consistent with an approved management plan.

Fee title land acquisition outside of the UDA will only occur after attempts to purchase easements have failed or are not desired by the landowner wishing to sell their property. If a landowner desires to sell their property in fee title only, the implementing entity will attempt to sell the property back to a private landowner with an in perpetuity easement in place.

Generally speaking, two types of conservation easements will be acquired, easements with standard management requirements and easements that require intensive management requirements. At least 2,500 acres of agricultural lands and 5,000 acres of vernal pool wetland/grassland habitat must be protected under a conservation easement with intensive management requirements. If landowners decline to enter into the more restrictive and intensive management easements the Implementing Entity will be required to purchase land in fee title so that the intensive management actions can be implemented. Appendix X describes in further detail the requirements of a standard and intensive management easement and provides easement templates with attached management plans.

Conservation easements purchased for purposes of satisfying mitigation requirements will be held by the SSHCP Conservancy. This applies to all easements that are purchased directly by the Implementing Entity or easements that are dedicated by a landowner or a project proponent to satisfy mitigation requirements. All conservation easements will be held in perpetuity and must have a third party enforcement beneficiary, preferably the California Department of Fish and

Game and/or the US Fish and Wildlife Service. All easements will include a preserve or land management plan that is incorporated into the conservation easement.

Properties cannot be purchased unless water and surface mining right can also be secured. Surface mining is not compatible with the objectives of this Plan and water rights are necessary to implement management actions required under this Plan.

In general all conservation easements will prohibit the following actions:

- Any activity on or use of the easement area inconsistent with the established SSHCP management plan;
- The legal or de facto division, subdivision or partitioning of the easement area; and
- Paving or otherwise covering the easement area with concrete, asphalt, or any other impervious material.

In addition the following actions are expressly prohibited unless and only to the extent that a generally prohibited activity is specified as an approved management practice in the preserve management plan:

- Construction or placement of any new building within the easement area;
- Unseasonable watering; use of fertilizers, herbicides, pesticides, biocides, or other agricultural chemicals; mosquito abatement activities; weed abatement activities; incompatible fire protection activities; and any and all other uses which may adversely affect the conservation purpose of the easement;
- Removing, destroying, or cutting trees, shrubs or other vegetation, except as required for (i) fire breaks; (ii) maintenance of existing roads or foot trails; (iii) prevention or treatment of disease; or (iv) utility line clearance;
- Use of motorized vehicles, including off-road vehicles, except on existing roadways;
- Transferring or abandoning any water or air rights necessary to protect, sustain, maintain or restore the biological resources and other conservation values;
- Planting, introducing or dispersal of non-native or exotic plant or animal species;
- Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the easement area and any activities or uses detrimental to water quality, including but not limited to degradation of pollution of any surface or sub-surface waters;
- Permitting a public right of access to the easement area without consent of the property owner;
- Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material;
- Filling, dumping, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand, or other material on or

- through the surface of the easement area, and granting or authorizing any surface entry for any of these purposes; provided, that this prohibition shall not preclude the extraction of minerals from depths greater than 200 feet beneath the easement area by means that do not involve any disturbances on the surface of the easement area or within the zone extending to 200 feet beneath the surface of the easement area;
- Altering the surface or general topography of the easement area, including building roads; and
  - Construction, reconstruction or placement of any building, billboard, sign, structure, or other improvement.

Additional prohibited uses relating to the establishment of a conservation easement on agricultural cover-types include:

- Planting and/or cultivation of orchards or vineyards; and
- Industrial uses and non-agricultural uses.

#### **12.6.6 Conservation Banks**

There are several conservation banks operating within Sacramento County that are expected to have credits available at the time the SSHCP begins implementation. Banks that are already established prior to plan implementation can be utilized by the SSHCP for purposes of achieving SSHCP conservation requirements. To be considered for inclusion as part of the SSHCP implementation strategy these banks must comply with SSHCP monitoring and management goals, conservation strategy goals and objectives, and must be within approved acquisition areas. If an existing bank wishes to be included as part of the SSHCP implementation strategy, the bank operator must apply with the SSHCP Governing Authority. Some banks have a credit system that allows a lesser amount of land to be protected than was impacted. The SSHCP cannot guarantee that preexisting agreements with regulatory agencies concerning credit allocations or ratios will still be valid. This is because the SSHCP Implementing Entity must satisfy permit requirements that are acreage based.

Nothing within the SSHCP will prohibit the creation of conservation banks nor will it prohibit the sale of credits outside of the SSHCP process. If a conservation bank that is established after the implementation of the SSHCP wishes to be a participating partner with the SSHCP, the bank operator must apply with the Governing Authority and must be willing to adopt SSHCP monitoring, management and conservation standards.

Conservation banks that have a service area that covers all or a portion of the SSHCP study area, but have land holdings that are located outside of the SSHCP study area cannot be utilized by the SSHCP. Additionally any credits sold by these banks to mitigate activities within the SSHCP study area cannot be counted toward the conservation goals of the SSHCP.

#### **12.6.7 Land Acquired Outside of the HCP Program**

##### **Acquisitions by Conservancies or Non-Profits**

The SSHCP Implementing Entity will not be the only organization that is acquiring land within the SSHCP study area. There are currently at least two non-profit conservancies working within the study area and it is anticipated that they will continue to operate and acquire land in coordination with the SSHCP. It is appropriate for the SSHCP to work with and to enter into cooperative agreements with these conservancies to create economic leverage when purchasing land or easements. For instance if a desirable property becomes available for acquisition but the SSHCP implementing entity only has a portion of the funding required to acquire the property, then it may be appropriate to acquire land through a partnership where the conservancy funds the shortfall. If a cost sharing does occur between a conservancy and the SSHCP it must be determined how many acres of credit will be allocated to the SSHCP to meet mitigation requirements. While that portion of the acquisition that is acquired by the conservancy cannot be counted toward meeting SSHCP mitigation requirements it can be counted toward stay-ahead provisions or to recovery “above and beyond” acquisition requirements assuming the acquisition is consistent with SSHCP goals and objectives and an in perpetuity conservation easement is placed on the land.

#### **Mitigation Outside of the SSHCP Process**

There may be instances when a project that is located outside of the SSHCP study area mitigates within the SSHCP acquisition area. If a project that is located outside of the SSHCP study area mitigates within an area that aids in the creation of the preserve system, it may be desirable for the SSHCP Implementing Entity to hold the property or easements to manage it consistent with SSHCP goals and objectives. These projects should be examined by the Governing Authority on a case-by-case base and may be allowed to use the SSHCP to meet mitigation requirements. While these acquisitions may help to acquire lands needed to complete the preserve system they cannot be counted toward meeting SSHCP mitigation requirements.

If a significant portion of a SSHCP acquisition area is protected by means other than through implementation of the SSHCP it may become necessary to amend the preserve acquisition strategy. If this problem does present itself then the SSHCP Implementing Entity will work with resource agencies and the TAC to revise the SSCHP acquisition strategies.

#### **12.6.8 Willing Sellers**

The SSHCP will only acquire lands for preservation from willing sellers. At no time will condemnation or eminent domain be used to require landowners to sell their property to meet SSHCP implementation objectives. In addition the SSHCP will not knowingly support or enter into any agreements or contracts with second parties where condemnation will be or has been utilized to acquire land or easements.

If at some point during implementation of the SSHCP the Implementing Entity is unable to find willing landowners to sell conservation easements or land to meet preserve requirements; the implementing entity will suspend issuance of incidental take permits until easement or land acquisitions can be made. Permits may be issued if the project proponent provides suitable conservation easements or land.

### **12.6.9 Land Grants or Gifts**

Land may be granted by some entity or gifted by an estate. If land is granted or gifted, the SSHCP Governing Authority will determine if the granted or gifted land is located within a location that achieves SSHCP conservation strategy goals and objectives. If the gift or grant is not located within an area that meets conservation goals or objectives, the Governing Authority will determine if the land can be sold to acquire land that does meet the SSHCP conservation goals. If the land cannot be sold or it is determined that the previous owner's wishes were to preserve the land then the Implementing Entity will not accept the property.

### **12.6.10 Neighboring Landowner Agreement Program**

An increase in population of listed species is expected to occur on preserves established under the SSHCP. As a result it is likely that some of these listed species will move into or utilize lands that are adjacent to preserves. Landowners near preserves may become concerned that listed species may expand onto their property creating restrictions on the use of their land and possibly making them liable for take of endangered or threatened species as they engage in otherwise lawful activities.

Neighboring Landowner agreements will be offered to property owners that are located within 1 mile of a preserve that has been established under the SSHCP. Neighboring Landowner Agreements will only be offered to landowners who are actively farming or grazing their land, as they are the most likely to be affected by increasing populations of covered species. Conversion of agricultural land to non-agricultural uses are not covered by these agreements. Only properties within the geographical scope of the SSHCP study area can be offered these agreements even if properties outside of the study area are within 1 mile of a SSHCP preserve.

These agreements will require a baseline inventory of the biotic resources that are present on the property. A change in cropland cover-type requires a new baseline survey. These agreements authorize the take of species that may appear on the landowner's property as a direct result of habitat management actions on adjacent preserves. These agreements do not provide incidental take coverage for species that are present on the property prior to the preparation of the required baseline survey.

Property owners will receive notice of Neighboring Landowner Agreements upon establishment of preserves that neighbor their property. Only those landowners that chose to opt-in will receive protection under the Agreements. Private landowners are not required to participate but will not be enrolled without an affirmative response to the offer to participate.

If a landowner who is enrolled in the Neighboring Landowner Agreement Program sells their property, the new landowner may continue coverage by entering into new agreement. To do so the new landowner must notify the Governing Authority of the intent to keep the land enrolled by completing and submitting a new application. A new survey is not required if a change in ownership occurs and the new landowner executes an agreement within 60 days after the change in ownership. If the agreement is allowed to lapse, a new baseline survey will be required before the new landowner can enroll in the program.

## Enrollment Procedure

- Landowners are required to complete and submit an application to the Governing Authority. Applications will be mailed to landowners eligible to enroll in the program.
- The Governing Authority has 30 days to either approve or decline the application.
- Once the Governing Authority approves an application an appointment is made to prepare a baseline survey for the property. This is done at the expense of the Governing Authority. The Governing Authority will have 30 days from the date that the application was approved to complete this survey.
- Upon completion and acceptance of the survey, both the Governing Authority and applicant will execute the agreement.

### 12.6.11 Management Plans

All lands that become part of the preserve system whether owned in fee title or under conservation easement must be managed consistent with the objectives of the SSHCP. While very detailed and intensive management plans will be prepared for each preserve owned by the Implementing Entity, it will also be necessary to prepare management plans for each easement purchased by the Implementing Entity. Examples of management plans that will be incorporated into easements are found in Appendix X. Management Plans are crafted based on habitat types or species targeted for protection. For example an easement that has been purchased on lands for purposes of protecting vernal pool habitat will have an associated management plan that establishes a grazing regime to enhance vernal pool habitat. Easements purchased to protect Sandhill Crane populations will require that the property be flooded after crops have been harvested and may establish a crop rotation schedule. Management Plans associated with easements will be relatively basic except where negotiations allow for more intensive management actions. It is the responsibility of the Conservancy to prepare each management plan. The SRC will provide guidance to the Conservancy when crafting or modifying management plans.

## 12.7 PLAN MODIFICATIONS & REVISIONS

A modification to the HCP can be requested by a permittee at any time. Requests for modification must be made in accordance with USFWS and DFG regulations and with the conditions established under the Implementation Agreement.

### 12.7.1 Administrative Revisions/Errata

Administrative revisions are changes to the Plan that do not alter the intent of the Plan's goals, objectives or measures. These changes are clerical (i.e. correcting errors in the text of the Plan) or non-substantive changes that clarify inconsistencies or ambiguities in the Plan (i.e. to reconcile slightly different descriptions of the same monitoring protocol). Administrative revisions do not require authorization from the USFWS or DFG. The following are examples of administrative revisions:

- Any revision that is already addressed in the Plan such as fee adjustments or adaptive management actions.
- Modification of management actions or monitoring protocols that are consistent with actions or protocols approved by the USFWS or DFG in the future.
- Decisions made to implement day-to-day operations of the Plan.
- Modifications made to research projects or implementation of new research projects.

### **12.7.2 Minor Modifications**

Minor modifications do not require revisions to the Incidental Take Permit or Implementing Agreement but may alter specific Plan objectives in order to meet Plan goals. While minor modifications do not require amendments to the Incidental Take Permits or Implementing Agreement they will require approval from the USFWS and DFG. The following are examples of minor modifications:

- Changes to Land Acquisition Areas that result from new information provided from ongoing implementation of the Plan and/or independent studies.
- Addition of Plan Objectives and Measures that advance the probability of achieving Plan goals, such as specific species or habitat goals.
- Discontinuation of management or monitoring actions that do not meet Plan goals.

Minor modifications require preapproval from the USFWS and DFG prior to implementation. All modifications will be submitted to the USFWS and DFG in writing. The request will detail the nature of the modification and will provide justification for why it is consistent with the objectives of the Plan. The USFWS and DFG will respond within 30 days. A lack of a response by the USFWS and/or DFG will constitute approval.

### **12.7.3 Plan Amendments**

Amendments are revisions to the Plan or the Implementing Agreement that require an amendment of the Incidental Take Permits. Amendments must be approved by the state and federal regulatory agencies that originally approved the Plan according to processes established in their regulations. An amendment generally requires a formal approval process including preparation of a new environmental document, consultation through the Section 7 process, and revised findings from the regulatory agencies.

The following are examples of Plan amendments:

- Adjustment to the plan or permit area that results in additional incidental take of a species or would exceed permitted habitat take amounts.
- The addition of a covered species.
- The addition of a covered activity that results in additional impacts not already covered by the Plan.

- Adjustments to the method for calculating compensation for take.
- Any change to the Plan that would create a funding shortfall.
- Adjustments to the fee that are not already permitted as a condition of the Plan.
- Extending permit duration beyond 50 years.

#### **12.7.4 Permit Renewal**

A permittee may apply for renewal of the federal section 10(a)(1)(B) permit as long as no major factors affecting any species covered by the HCP have changed significantly. The current USFWS permit renewal procedures are located at 50 CFR 13.22 of the federal code; however, the renewal process will be subject to renewal regulations at the time of request.

A request for renewal must be filed with the USFWS no less than 30 days prior to the expiration of the permit or the permit will become invalid at time of expiration. If a request for renewal is filed 30 days prior to expiration it will remain valid through the renewal period. However, no additional take of covered species, other than that specified in the original HCP permit, may occur.

The following must be submitted in order to request a permit renewal: request to renew referencing the original permit number, certification that no major factors affecting any species covered by the HCP have changed significantly, description of the take of covered species that has occurred during the lifetime of the original permit, a description of any part(s) of any project(s) that have not yet been completed, and a description of any additional projects or actions that will be taken during the lifetime of the new permit.

### **12.8 IMPLEMENTING AGREEMENT**

The Implementing Agreement is a legal document that identifies each participating jurisdictions responsibilities to implement the Plan, take coverage provided to Plan Participants, and assurances given by the regulatory agencies, among other things.

### **12.9 IMPLEMENTING ORDINANCE**

The Implementing Ordinance is a document that each Plan Participant must execute to formalize implementation of the Plan and the Implementation Agreement as part of its project review and approval procedures. The Ordinance helps ensure consistent and transparent implementation of the SSHCP and Implementing Agreement and provides the primary legal mechanism whereby the Plan Participants implement the Plan. An Implementing Ordinance must be adopted by each participating jurisdiction before take authorization under the incidental take permits can be extended to eligible projects.