

CHAPTER 10: ASSURANCES

10.1 INTRODUCTION

This chapter provides information on the assurances provided to participants of the South Sacramento Habitat Conservation Plan as federal section 10 (a)(1)(B) permit holders under the federal “No Surprises” policy. It also discusses assurances that will be provided to private landowners bordering HCP preserves.

10.2 FEDERAL “NO SURPRISES” ASSURANCES

The U.S. Fish and Wildlife Service’s federal “No Surprises” regulation is set forth in 50 CFR 17.22 and 17.32. Under this regulation, so long as an HCP is being properly implemented, the USFWS cannot impose on federal section 10(a)(1)(B) permittees any additional conservation or mitigation measures that involve the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the HCP, except under limited circumstances.

Provided that the SSHCP Permittees properly implement the HCP and the implementation agreement, the USFWS will not require any Permittee to provide additional mitigation beyond that provided for in the HCP, except where necessary to avoid jeopardizing the continued existence of a listed species.

CESA Assurances:

Except as otherwise required by law, CDFG will not require any Permittee to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, for the purpose of conserving Covered Species with respect to Covered Activities, even in the event of Unforeseen Circumstances, provided the Permittees are properly implementing this Agreement, the HCP and the terms and conditions of the State Permit. The provisions of this Agreement and the HCP that address adaptive management and Changed Circumstances, including changes to the legal status of Fully Protected Species and non-Covered Species, are not Unforeseen Circumstances and therefore are not subject to these assurances. However, CDFG acknowledges that such adaptive management and Changed Circumstances provisions are not intended to require modifications to the HCP’s mitigation program that would require additional funding or to impose significant additional burdens on Permittees or Third Party Participants.

10.3 CHANGED AND UNFORESEEN CIRCUMSTANCES

Section 10 regulations [50 CFR 17.22 (b)(2)(iii)] require that an HCP specify the procedures to be used for dealing with unforeseen circumstances that may arise during the

implementation of the HCP. In addition, the Habitat Conservation Plan Assurances (No Surprises) Rule [50 CFR 17.22(b)(5)-(6) and 17.32(b)(5)-(6); 63 F.R. 8859] defines unforeseen circumstances and changed circumstances and describes the obligations of the Permittee and USFWS.

Changed circumstances are changes that affect a species or geographic area covered by the SSHCP that can reasonably be anticipated by developers of the SSHCP and for which a response can be planned. The SSHCP must address changed circumstances and identify measures that can be taken to respond to those changes. If additional conservation and mitigation measures are required to respond to changed circumstances and these measures have not been identified by the SSHCP, then they cannot be required by the USFWS without the consent of the permittee, provided the plan is being properly implemented.

The regulations also require that the SSHCP identify procedures for addressing unforeseen circumstances that could arise during the course of implementation of the Plan.

Unforeseen circumstances are changes that affect a species or geographic area covered by the HCP that could not reasonably be anticipated by plan developers at the time of the plan's negotiation and development and that result in a substantial and adverse change in status of the covered species. However, per Section 10 regulations, unforeseen circumstances will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

If the USFWS makes findings of unforeseen circumstances and requires additional mitigation, and a permittee is in compliance with the obligations of the SSHCP, the additional mitigation will be consistent with the original terms of the Plan. Any changes to the SSHCP must be limited to modifications within conserved habitat areas or to the conservation plan's operating conservation program for the affected Species. Any additional mitigation will not require the payment of additional compensation or apply to land or the natural resources identified under the plan for development per the original terms of the Plan without consent of the permittee.

The federal "No Surprises" regulations are an essential component of the SSHCP. Except as otherwise required by law or provided for under the SSHCP, including those provisions regarding Changed Circumstances, no further mitigation for the effects of the proposed project on covered species may be required from a Permittee, as long as the SSHCP is being properly implemented. The SSHCP will be properly implemented if the commitments and provisions of the HCP and the permit have been or are being fully implemented by the Permittees.

The USFWS has the burden of proving that unforeseen circumstances exist by using the best scientific and commercial data available. Findings must be documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The USFWS will consider, but not be limited to, the following factors:

- 1) Size of the current range of the affected species;
- 2) Percentage of range adversely affected by the HCP;
- 3) Percentage of range conserved by the HCP;
- 4) Ecological significance of that portion of the range affected by the HCP;
- 5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP; and
- 6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

Nothing in the "No Surprises" regulation limits or constrains the USFWS, or any other governmental agency, from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

Except where there is substantial threat of imminent, significant adverse impacts to a Covered Species, the USFWS shall provide the Permittees at least sixty (60) calendar days written notice of a proposed finding of Unforeseen Circumstances, during which time the USFWS shall meet with the SSHCP Permittees to discuss the proposed finding, to provide any affected Permittee with an opportunity to submit information to rebut the proposed finding, and to consider any proposed changes to the conservation strategies for the HCP Area.

Adaptive Management

Adaptive management will play a crucial role in guiding the long-term goals and objectives of the SSHCP. As such the monitoring, management and adaptive management protocols already in place as part of this Plan will, in part address many of the changed circumstances identified below, should they occur. For instance if an invasive species should invade a preserve system the SSHCP Implementing Entity will react to this event by following the suggested protocol found under changed circumstances but will also carry out adaptive management strategies recommended by the Plan. Such actions that could be implemented to address this problem include intensifying grazing followed by a burn the next year.

Changed Circumstances Advisory Group

Identifying appropriate responses to changed circumstances will require input from subject matter experts to assist Plan Permittees or the Implementing Entity in crafting a response to changed circumstances. This group of people will be referred to as the CCAG Changed Circumstances Advisory Group (CCAG) and will comprise a multi-agency, multi-discipline team of experts to serve in the event that a changed circumstance occurs. The Implementing Entity will convene the CCAG, which will include as appropriate to the changed circumstance, CCAG, USFWS and USACE biologists, Department of Pesticide Regulation, local wildlife rehabilitation centers, the U.C. Davis Raptor Center, Agricultural Commissioner, Mosquito and Vector Control District, etc. The CCAG is

not responsible for implementing proposed responses to changed circumstances. The primary purpose of the CCAG is to provide recommend proposed responses to changed circumstances that will then be employed by the SSHCP Conversancy. Not all members would be called on in the event of an incident. For example, it is unlikely that the Department of Pesticide Regulation would be needed after a fire. An initial CCAG roster shall be created upon adoption of the SSHCP and updated at least every two years or more frequently if necessary to keep contact information current in the event of an emergency.

Changed circumstances often have far reaching effects beyond the operation of an HCP. It is understood that during certain disasters, infrastructure, resource considerations and public safety concerns may preclude the immediate assembly of the CCAG. For the purpose of this document, the term “Emergency Status” will refer to that time after a changed circumstance has occurred but before an CCAG is convened where it is not feasible or appropriate to meet because the changed circumstance, wildfire, for example, is not controlled or due to infrastructure damage or resource demands that a majority of the offices of the team participants are closed or operating emergency operation centers linked with the Governor’s Office of Emergency Services (OES).

LISTING OF NEW SPECIES

Changed Circumstance: If a species not covered by the HCP is proposed for listing or becomes listed as endangered or threatened under FESA or CESA during the lifetime of the permit, the Permittee may request that the USFWS or DFG cover the species under the SSHCP’s Section 10(a)(1)(b) and/or Section 2081 permits. If the request is made, the permits issued to the permittees of this plan will be reevaluated by the USFWS and DFG and the HCP-covered activities may be modified, as necessary, to ensure that the activities covered under the HCP are not likely to jeopardize or result in take or adverse modification of any designated critical habitat of the newly listed species. The Plan participants will implement the modifications to the HCP-covered activities identified by USFWS and DFG as necessary to avoid the likelihood of jeopardy to, take, or adverse modification of the designated critical habitat of the newly listed species. Plan applicants shall continue to implement such modifications until such time as Plan Applicants have applied for and USFWS and DFG have approved an amendment of the section 10 permit or 2081 Permit, in accordance with applicable statutory and regulatory requirements, to cover the newly listed species, or until USFWS notifies Plan Participants in writing that the modifications to the HCP-covered activities are no longer required to avoid the likelihood of jeopardy or adverse modification of designated critical habitat of the newly listed species.

Unforeseen Circumstance: There are no unforeseen circumstances associated with the listing of new species.

LISTING OF COVERED SPECIES

Changed Circumstances: The SSHCP covers 30 species of plants and animals that are not currently listed as threatened or endangered under the FESA or CESA. Each non-listed

species covered under the SSHCP has been treated as though they are listed so in the event that a covered species does become listed, the permit will immediately become effective for that species. The SSHCP Participants request that the Section 10 and Section 2081 permit issued under the SSHCP cover these non-listed species and offers the same assurances as if they were listed. The SSHCP also covers nine plant species which cannot be covered for take under a section 10 permit. The SSHCP Plan participants are requesting that these nine plant species be included on the federal permit and are also offered the same no surprise assurances as other covered species. No additional changes or amendments to the Permit, Biological Opinion, Implementing Agreement or HCP will be required if covered species become listed.

Unforeseen Circumstance. There are no unforeseen circumstances associated with the listing of covered species.

DESIGNATION OF CRITICAL HABITAT

Changed Circumstances: If critical habitat for a species that is covered by the SSHCP and may be modified by activities covered by the SSHCP is designated under ESA during the term of the section 10 permit, USFWS may consider this to be a changed circumstance. In such case, the Section 10 permit will be reevaluated by USFWS and the HCP-covered activities may be modified, as necessary, to ensure that the activities covered under the HCP are not likely to jeopardize or result in take or adverse modification of any designated critical habitat of any covered listed species. The SSHCP Implementing Entity will implement the modifications to the HCP-covered activities identified by USFWS as necessary to avoid the likelihood of jeopardy to, take, or adverse modification of the designated critical habitat of any covered listed species. The SSHCP Implementing Entity shall continue to implement such modifications until such time as the SSHCP Implementing Entity has applied for and USFWS has approved an amendment of the section 10 permit, in accordance with applicable statutory and regulatory requirements, to cover the newly listed species, or until USFWS notifies the SSHCP Implementing Entity in writing that the modifications to the HCP-covered activities are no longer required to avoid the likelihood of jeopardy or adverse modification of designated critical habitat of any covered listed species.

Unforeseen Circumstance. There are no unforeseen circumstances associated with the designation of critical habitat.

DAMAGE TO THE PRESERVE SYSTEM CAUSED BY FLOODING

Changed Circumstances: A flood event occurs when a stream's capacity to hold water is exceeded by high water flows resulting in water coming out of the stream bank and entering the floodplain. For purpose of this document a flood is defined to mean the 100-year flood event as well as any high water event below the 100-year flood event that causes damage or alteration to habitats, species or ecosystems covered by the plan. According to FEMA, a 100-year flood is, "the flood elevation that has a 1% chance of being equaled or

exceeded each year”. The term flood can also apply to localized flooding events caused by levee breaks, pipeline breaks, dam breaks, drainage blockages and equipment failure.

According to the Sacramento Area Flood Control Agency (SAFCA), “Sacramento’s risk of flooding is the greatest of any major city in the country.” Five record floods have occurred in the Sacramento area in the past half century these were in 1951, 1956, 1964, 1986 and finally in 1997. The primary reason for this high risk of flooding is the area’s topological position in the Central Valley and a reliance on outdated, deteriorating and insufficient levees.

Since flooding is common in the Plan Area it is understood that some plant and animal species have adapted to this type of disturbance regime and many species and their ecosystems thrive after a flood event has occurred. Flooding can deposit soils rich in nutrients and biological materials, which can enhance habitat, expand a species range and even increase biological functions over time. Most flood events that occur in the Plan Area will have minimal negative impacts on native species or their habitats. However; flooding could destroy newly established restoration or creation sites, impact preserves by depositing debris or sedimentation, downing trees, scouring vegetation from stream banks etc. The severity of impacts caused by flooding will vary depending on several factors including flood duration, intensity and type of habitat that is affected. Should flooding occur that disturbs restoration or creation sites or results in other damages the following actions will be taken:

- Within 48 hours of securing from emergency status, the Implementing Entity will attempt to convene the plan’s CCAG to determine if there were adverse effects to a covered habitat or species within areas protected by the SSHCP. This will involve site reconnaissance, sampling or surveying and the preparation of a disturbance assessment report. Specific issues to be addressed should include but not be limited to damage to irrigation, pumping or security equipment, direct mortality of species, erosive forces, materials deposition including sand, gravel or invasive species (especially floating type seeds or plants), and the potential for damaging actions by good Samaritans (i.e. re-vegetation using invasive plant species).
- Within one year after the changed circumstance occurs re-convene the CCAG to prepare an assessment report to determine if natural processes are acting to resolve the problem. If not, develop response measures to remediate the disturbance.
- If restoration of habitat is deemed necessary, actions to repair the site must be completed within two years from the date of the occurrence of the changed circumstance.

- The Implementing Entity will set up proper monitoring protocols for the site in accordance with the monitoring plan as established in Chapter 8 if restoration is necessary.

Unforeseen Circumstances: Disturbance caused by flooding can be very expensive to repair and could potentially exceed the operating budget of the SSHCP. For purpose of this plan any event that exceeds \$500,000 in any year is an unforeseen circumstance. If the event does exceed \$500,000 per year the Implementing Entity has the option of seeking funding from other sources to properly implement a remediation program.

In addition, new structures could be built on streams or rivers that are outside of the Plan Area. These new structures such as dams or weirs have the ability to alter downstream flows or could fail impacting preserves within the SSHCP study area. Such events that are caused by actions outside of the local jurisdictions control are unforeseen circumstances.

A flood event greater than the 100-year event has not occurred within the Plan Area. Therefore, a flood and the damage resulting from an event greater than a 100-year event shall be considered an Unforeseen Circumstance.

IMPACTS TO HABITAT AS A RESULT OF FIRE

Changed Circumstances: Historically wildfires were a common occurrence throughout the Plan Area and native species in particular are well adapted to fire events. Wildfires help to control the buildup of thatch and woody material as well as the cover of exotic species and are a beneficial part of the natural cycle of historic California grassland landscapes. Wildfires, especially grassland fires, have become less frequent in the plan area as our ability and desire to control and manage fires has increased. This has allowed thatch and woody materials to build-up overtime, which in turn increases the fuel load beyond what is historically considered to be natural. When a fire event does occur the high fuel load results in fires that burn at greater intensities, spreads quickly and usually covers larger areas. While periodic fire has been shown to be beneficial to ecosystem health, uncontrolled, unplanned fires can have detrimental impacts to the ecological balances in the habitats of the SSHCP.

Prescribed burning to control buildup of thatch and woody debris are important tools for ecosystem management and will be addressed in the SSHCP management plan. In addition preventative measures such as fuel breaks will be included as best management practices in the Conditions Chapter. Should a wildfire occur in the HCP plan area the following actions should be taken:

- Within 48 hours of securing from emergency status, the Implementing Entity will attempt to convene the plan's CCAG to determine if there were adverse effects to a covered habitat or species. This will involve site reconnaissance, sampling or surveying and the preparation of a disturbance assessment report. Specific issues to be addressed should include but not be limited to damage to

irrigation, pumping or security equipment, direct mortality of species, access points generated by the fire fighting effort, contamination from fire retardants, and the potential for damaging actions by good Samaritans (i.e. the planting of non-native and potentially invasive vegetation to reduce the potential for soil erosion).

- Within one year after the changed circumstance occurs re-convene the CCAG to prepare an assessment report to determine if natural processes are acting to resolve the problem. If not, develop response measures to remediate the disturbance.
- If restoration of habitat is deemed necessary, actions to repair the site must be completed within two years from the date of the occurrence of the changed circumstance.
- The Implementing Entity will set up proper monitoring protocols for the site in accordance with the monitoring plan as established in Chapter 8 if restoration is necessary.

Unforeseen Circumstances: Disturbance caused by fire can be very expensive to repair and could potentially exceed the operating budget of the SSHCP. For purpose of this plan any event that exceeds \$500,000 in any year is an unforeseen circumstance. If the event does exceed \$500,000 per year the Implementing Entity has the option of seeking funding from other sources to properly implement the control program.

SPECIES AND HABITAT LOST TO DROUGHT

The threshold used by the Department of Water Resources (DWR) in identifying drought is considered to be runoff for a single year or multiple years in the lowest ten percent of historical range, and reservoir storage for the same time period at less than 70 percent of average. Droughts lasting more than three years are relatively rare in Northern California according to the DWR. Over the past century there have been eight multi-year drought events, five of which lasted three or more years and two of which lasted six years.

Drought is a natural, cyclical weather phenomenon that generally occurs over a period of several years which may allow plants and wildlife to adapt to the new conditions. However, given the state of our disturbed landscapes due to, increased competition from invasive species, development pressures, pollution, and habitat loss the adaptation of the covered species and habitats in the SSHCP area can not be counted on as certain. Therefore it can be anticipated that species may not be able to adapt to future drought conditions. If adverse effects are observed the following actions should be taken:

- Upon evidence that drought is occurring the Implementing Entity will convene the plan's CCAG to determine if there are adverse effects to a covered habitat or species within areas protected by the SSHCP. This will involve ongoing site

reconnaissance, sampling or surveying while drought conditions persist and the preparation of a disturbance assessment report.

- The CCAG is to prepare an assessment report each year while drought conditions persist to determine if natural processes are acting to resolve the problem. If not, develop response measures to remediate the disturbance if necessary; such actions should include securing alternative sources of water.
- If restoration of habitat is deemed necessary, actions to repair the site must be completed within two years from the date of the occurrence of the changed circumstance or once conditions have stabilized, whichever is later.
- The Implementing Entity will set up proper monitoring protocols for the site in accordance with the monitoring plan as established in Chapter 8 if restoration is necessary.

Unforeseen Circumstances: Disturbance caused by drought can be very expensive to repair and could potentially exceed the operating budget of the SSHCP. For purpose of this plan any event that exceeds \$500,000 in any year is an unforeseen circumstance. If the event does exceed \$500,000 per year the Implementing Entity has the option of seeking funding from other sources to properly implement the control program.

A drought event lasting longer than 6 years has not occurred in recorded history for the Sacramento or American River Basins, in the vicinity of the Natomas Basin. The potential damage from such a drought is not foreseeable, nor predictable. Therefore, a drought and the damage resulting from such event lasting longer than 6 years shall be considered an Unforeseen Circumstances.

SPECIES IMPACTED BY INVASION OF INVASIVE SPECIES

There are a number of invasive species already present within the SSHCP Study Area and it is unlikely that these invasive species will be eradicated within the foreseeable future. As invasive species are likely to be present on SSHCP established preserves, the SSHCP has a monitoring and management program (Chapter 9) designed to track, control and reduce all known occurrences of invasive species on SSHCP preserve lands (See section X of Chapter 9 for detailed control measures of known invasive species). There is however, the potential for new invasive species to become established within the SSHCP Study Area or for invasive species to move from one location to an area where they had not occurred in the past. If this occurs it is essential that immediate action be taken to contain and eliminate the invasive species threat.

In the event that an invasive species becomes established within the SSHCP preserve system the following actions will be taken:

- Within 48 hours of discovery of the invasive species the Implementing Entity will attempt to notify appropriate agencies of the location and extent of the infestation and convene the plan's CCAG to determine if there are adverse effects to the preserve.
- Within two weeks the CCAG will prepare a damage assessment report and action plan that outlines implementation measures that are necessary to control or eliminate the invasive species threat. See Chapter 9 for detailed control measures.
- Monitoring protocols for the invasive species will be implemented on all preserves operated by the SSHCP implementing entity. If the invasive species is found on additional preserves, the actions outlined in the action plan will be implemented to control or eliminate the invasive species threat.
- If restoration of habitat is deemed necessary, actions to repair the site must be completed within two years from the date of the occurrence of the changed circumstance.
- The Implementing Entity will set up proper monitoring protocols for the site in accordance with the monitoring plan as established in Chapter 8 if restoration is necessary.

Unforeseen Circumstances: Control of exotic species can be very expensive to implement and could potentially exceed the operating budget of the SSHCP. For purpose of this plan any event that exceeds \$500,000 in any year is an unforeseen circumstance. If the event does exceed \$500,000 per year the Implementing Entity has the option of seeking funding from other sources to properly implement the control program.

LOSS OF SPECIES TO DISEASES

Outbreaks of disease are a naturally occurring phenomenon and can take place frequently within plant and animal communities. The significance of such phenomena is dependent on a number of factors such as timing, community type, and species of concern. Diseases that may affect covered species in the plan area include Chytrid Fungus and Ranaviruses which is known to contribute to amphibian declines, and could be spread via infected organisms or contaminated equipment. Trichomoniasis, a digestive tract disease in raptors is a source of mortality in nestling and fledgling Cooper's Hawks in some urban populations. Also, West Nile virus and avian cholera are responsible for mortality in bird species found within the Plan Area.

Additionally some diseases could be transmitted from species inhabiting the SSHCP area to humans, livestock or other HCP covered species by direct means or vectors. A vector is an organism, such as a mosquito or tick that carries disease-causing microorganisms from one host to another. The habitats of the SSHCP could also provide a home for these vectors. This provides a multi-faceted problem of disease among covered species but also

the potential to be a reservoir for vectors or diseases affecting humans. Studies show that a healthy vernal pool ecosystem, for example, is actually a sink for the disease carrying mosquito, however public outcry against an HCP preserve must be planned for and a close relationship with the Sacramento-Yolo Vector Control District will need to be fostered especially given the arrival of the West Nile Virus to Sacramento County. Other diseases that may be encountered are rabies, encephalitis, plague and the bird flu.

In most areas, population levels of Covered Species typically occur in equilibrium with normal disease and predation, even if populations are occasionally experiencing severe, but localized reductions in numbers. However, the spread or introduction of diseases could adversely affect the populations of some covered species.

Should a disease, vector or nuisance organism adversely impact a covered species or create a situation whereby public outcry or public health considerations may call for an action that may adversely affect covered species the following steps shall be taken:

- Within 48 hours of discovery of an outbreak of disease the Implementing Entity will attempt to notify appropriate agencies of the location and extent of the infestation and convene the plan's CCAG to determine if there were adverse effects to the preserve.
- The CCAG will attempt to work cooperatively with the Sacramento-Yolo Mosquito and Vector Control District, County Health Officer, County Veterinarian, State Wildlife Labs of Fish and Game, County Media and Communication Office and other necessary partners to identify issues, risks and actions steps to deal with the threat as well as to prepare media information to educate the public.
- Within two weeks the CCAG will prepare a report of recommend actions that need to be taken to control or eliminate the outbreak. Such actions should include shifting funding to facilitate vector control or implementing predator control programs.
- If restoration of habitat is deemed necessary, actions to repair the site must be completed within two years from the date of the occurrence of the changed circumstance.
- Monitoring protocols for the invasive species will be implemented on all preserves operated by the SSHCP implementing entity.
- The Implementing Entity will set up proper monitoring protocols for the site in accordance with the monitoring plan as established in Chapter 8 if restoration is necessary.

Unforeseen Circumstances: If disease or predation results in a greater than 50 percent increase in normal disease or predation levels in a population of a Covered Species and threatens to

jeopardize the continued existence of the Covered Species within Sacramento County, an Unforeseen Circumstance will have occurred.

LOSS OF SPECIES TO EXPOSURE TO PESTICIDES/HERBICIDES

Changed Circumstances: It is conceivable that pesticides or herbicides will be applied by neighboring landowners and that the application methods used, such as aerial spraying, could result in accidentally over spraying and impacting adjacent preserves. While it is anticipated that in most cases a species occurrence will recover from this action, damage could occur to plants or animals that would require remediation efforts. Should accidental spraying of pesticides or herbicides occur on preserves protected by the Plan, the following actions shall be taken:

- Upon discovery/notification of the application of the pesticide or herbicide, the Implementing Entity will attempt to identify the pesticide, applicator, environmental conditions and elapsed time from exposure.
- Within 24 hours of discovery/notification of the application of the pesticide or herbicide, the Implementing Entity will attempt to convene the CCAG and present an interim damage report and summary of critical action steps taken since exposure. The CCAG will then recommend actions to address the continuing threats, if any, resulting from the unanticipated pesticide/herbicide exposure and prepare a monitoring and recovery plan to address direct mortality.
- Within one year after the changed circumstance occurs re-convene the CCAG to prepare an assessment report to determine if natural processes are acting to resolve the problem. If not, develop response measures to remediate the disturbance.
- If restoration of habitat is deemed necessary, actions to repair the site must be completed within two years from the date of the occurrence of the changed circumstance.
- Monitor the response of species/habitats to the action(s) taken, paying special attention to reproduction and morphology problems arising from pesticide exposure.

Unforeseen Circumstances: There are no unforeseen circumstances associated with losses of species due to pesticide/herbicide exposure.

LOSS OF SPECIES TO EXPOSURE TO TOXIC/OIL SPILLS

Changed Circumstances: While unlikely, it is conceivable that a pipeline, vehicle, aircraft or train accident, point source pollution discharge or illegal dumping of toxic waste could result in a hazardous substance affecting preserves established by the Plan. The areas of

highest risk would be in the vicinity of Highways 99 and 5, Mather Field and the Union Pacific railroad tracks. In the event an HCP project area is exposed to a hazardous substance, the following actions shall be taken:

- Within 24 hours of an event the Implementing Entity will attempt to notify appropriate agencies of the occurrence and convene the plan's CCAG to determine if there were adverse effects to the preserve.
- The CCAG will identify what agency, if any, has regulatory jurisdiction over the accident and in coordination with them conduct a damage assessment and formulate a response plan to address direct mortality, mitigation and monitoring.
- The Implementing Entity will carefully detail all costs and damages associated with the accident, and any monitoring and mitigation plan in order to facilitate a recuperation of costs from the responsible party.
- Within one year after the changed circumstance occurs re-convene the CCAG to prepare an assessment report to determine if natural processes are acting to resolve the problem. If not, develop response measures to remediate the disturbance.
- If restoration of habitat is deemed necessary, actions to repair the site must be completed within two years from the date of the occurrence of the changed circumstance.
- Monitor the response of species/habitats to the action(s) taken, paying special attention to reproduction and morphology problems arising from exposure to hazardous materials.

Unforeseen Circumstances: Clean-up and remediation of impacts that result from exposure to toxic substances could potentially exceed the operating budget of the SSHCP. While it is the intent of the SSHCP to recuperate expenses of remediation efforts by the violator, any event that exceeds \$500,000 in any year is an unforeseen circumstance. If the event does exceed \$500,000 per year the Implementing Entity has the option of seeking funding from other sources to properly implement the control program.

If one of the situations described above occurs and damages greater than 75% of the total mitigation lands an Unforeseen Circumstance will have occurred.

VANDALISM

Structures used by the Implementing Entity such as office buildings, fences, gates, irrigation systems, signs or other equipment used to manage the preserves could be damaged by vandalism. There is also the potential that preserves could be vandalized by off road vehicles or other illegal trespass actions. Damage that occurs as a result of foreseen

circumstances to structures will be replaced or repaired. Should vandalism occur in the HCP plan area the following actions should be taken:

- Within 48 hours the Implementing Entity will attempt to convene the plan's CCAG to determine if there were adverse effects to a covered habitat or species. This often will involve site reconnaissance, sampling or surveying. Specific issues to be addressed should include but not be limited to damage to irrigation, pumping or security equipment, direct mortality of species.
- Within one year after the changed circumstance occurs re-convene the CCAG to prepare an assessment report to determine if natural processes are acting to resolve the problem. If not, develop response measures to remediate the disturbance.
- If restoration of habitat is deemed necessary, actions to repair the site must be completed within two years from the date of the occurrence of the changed circumstance.
- The Implementing Entity will set up proper monitoring protocols for the site in accordance with the monitoring plan as established in Chapter 8 if restoration is necessary.

Unforeseen Circumstances: There are no unforeseen circumstances associated with vandalism.

10.3.1 PRIVATE LAND USED AS PUBLIC ACCESS TO HCP PRESERVES

Public access to HCP initiated conservation easements will be discouraged by the implementing entity. However, when allowed, public access will be permitted only with the landowner's consent.

10.4 FUNDING FOR CHANGED CIRCUMSTANCES

Funding for changed circumstances must be accounted for under the operating budget of the SSHCP. Local jurisdictions will not be expected or required to provide funding from General Fund operating budgets or any other sources of money controlled by local jurisdictions to cover actions that are required within this chapter.