Understanding the
Habitat Conservation Planning Process
in California

A Guidebook for Project and Regional Conservation Planning

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About the Authors

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California’s climate, topography, and geology make it one of the richest biological regions of the world outside the tropics. California has more threatened and endangered species protected under the federal Endangered Species Act (federal ESA) than any other state except Hawaii. In addition, California has one of the strongest state endangered species laws in the United States. The California Endangered Species Act (California ESA) protects many species of wildlife and plants that are not protected under its federal counterpart. California’s great biological diversity, strong conservation laws, and rapid growth create a recipe for conflict. This conflict is often resolved through the planning processes of the federal and California Endangered Species Acts.

This guidebook provides an overview of federal and California laws that protect threatened and endangered species. The authors provide recommended approaches to both project planning and regional conservation planning where these species could be adversely affected by private, local agency, and state agency actions.

The purpose of this guide is to provide those who are involved in projects or planning efforts an understanding of the regulations and issues affecting protected species, focusing on the requirements for habitat conservation plans, and advice and recommendations regarding best approaches to project planning and regional conservation planning for protected species.

**ENDANGERED SPECIES: A TALE OF TWO PLANNING PROCESSES**

Federal and state laws that protect threatened and endangered species each provide planning procedures for the protection of these species. The federal ESA offers Habitat Conservation Plans (HCPs). The California Natural Community Conservation Planning Act (NCCPA) provides for Natural Community Conservation Plans (NCCPs) that include compliance with the California ESA.

**Habitat Conservation Plans**

HCPs are the federal mechanism for resolving conflict between development and the protection of threatened and endangered species. In many areas of California, development of land for housing and other needs adversely affects wildlife and fish protected by the federal ESA. Proponents of development projects can address this concern by preparing a Habitat Conservation Plan.

HCPs spell out the measures to be taken that will protect endangered species affected by the project. When an HCP receives the approval of a federal wildlife agency (either the U.S. Fish and Wildlife Service or NOAA Fisheries), the project proponent receives a

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1 16 U.S.C. §§ 1531 and following.
2 Cal. Fish & Game Code §§ 2050 and following.
permit that allows the resulting impacts on threatened or endangered species. By encouraging development projects to include measures to reduce the impact on endangered species, habitat conservation planning reconciles the goals of species protection and economic development.  

The federal ESA was enacted in 1973 in response to concerns that previous efforts to protect endangered species did not address the need to protect the ecosystems on which these species depend. The federal ESA prohibits the “taking” of endangered species of fish or wildlife. A “take” is defined to mean “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The definition of “harm” has an important impact on land use decisions. Harm is defined under federal law as “significant habitat modification or degradation” that results in death or injury to wildlife by “significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” Habitat modification that harms an endangered species constitutes a prohibited take.

Prior to 1982, only federal agencies could obtain an exemption for projects that resulted in the taking of a threatened or endangered species. Private landowners and local agencies faced violating the federal ESA if a project resulted in the take of a federally listed species. This statutory inflexibility led Congress to amend the federal ESA in 1982. The intention of the 1982 amendment was to protect endangered species on non-federal land by requiring permit applicants to minimize and mitigate their impacts on endangered species. In exchange, they received a permit documenting compliance with the federal ESA. However, the cost and uncertainty associated with developing an HCP discouraged many private landowners from seeking Incidental Take Permits. Between 1982 and 1992, only 14 Incidental Take Permits associated with Habitat Conservation Plans were approved.

After 1992, new regulations, policies, and guidelines were adopted that provided additional protective assurances to landowners. As a result, the number of approved HCPs nationwide increased to more than 290 by 1999. As of July 2003, 427 Habitat Conservation Plans have been approved nationwide, covering more than 30 million acres and 200 threatened and endangered species. In California, 127 HCPs and subsequent amendments (adding species or land to an existing Habitat Conservation Plan) have been approved. Hundreds of other HCPs are in development nationwide.

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9 50 C.F.R. § 17.3. See Babbitt v. Sweet Home, 515 U.S. 687 (1995) (interpreting this regulation as prohibiting habitat modification which will actually kill or injure a particular member of an endangered species where such harm is proximate and foreseeable).
10 Section 10(a)(1)(B) of the federal ESA authorizes the federal wildlife agencies to issue permits for the taking of endangered wildlife or fish if it is “incidental” to other lawful activities. 16 U.S.C. § 1539(a)(1)(B).
Habitat Conservation Plans have evolved to address a wide range of development activities. Their scope encompasses small housing developments as well as forestry and regional development activities covering millions of acres. Some project HCPs address a single species on less than 1 acre. Regional HCPs may address dozens of species on thousands or millions of acres, requiring multiple partners in their development and implementation.

**Natural Community Conservation Plans**

In the late 1980s, rapid urban development and declining wildlife populations in Southern California put urban development and the federal and California Endangered Species Acts on a collision course. At the center of the conflict was the fate of more than 340,000 acres of coastal sage scrub occupied by the coastal California gnatcatcher, a small songbird whose range extends across San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties. Environmentalists petitioned state and federal wildlife agencies to designate the gnatcatcher as endangered, against the opposition of the development community.

To address this conflict, the California Legislature passed the Natural Community Conservation Planning Act in 1991. The Act provided for a regional planning process focused on protecting biological communities rather than single species. The goal of the Act was to conserve species before they became endangered. The plans developed under the Act are called Natural Community Conservation Plans (or NCCPs).

The first significant effort to use this new species protection tool occurred in the mid-1990s in Southern California when state wildlife officials opted to use the Natural Community Conservation Planning Act to protect the gnatcatcher. Federal wildlife officials designated the California gnatcatcher as a threatened species in 1993, meaning that it was likely to become endangered in the foreseeable future. They also adopted a special rule that allowed the Natural Community Conservation Planning Act to provide the plan for conservation of the gnatcatcher.

In 1996, the first two Natural Community Conservation Plans were approved: the Central/Coastal Orange County Natural Community Conservation Plan and the San Diego Multiple Species Conservation Program (covering most of western San Diego County). By the end of the 1990s, nine NCCPs were under way in San Diego, Orange, Riverside, Los Angeles, and San Bernardino Counties. In August 2000, an NCCP was approved for the massive CALFED Bay–Delta Program covering water infrastructure and habitat restoration projects throughout the Sacramento-San Joaquin Delta, San Francisco Bay, and Central Valley.

A new Natural Community Conservation Planning Act became effective on January 1, 2003. The new NCCPA codifies many of the elements used to develop the early NCCPs. Under the Natural Community Conservation Planning Act, the California Department of Fish and Game may authorize take for species that may become protected under the California ESA in the future.

The Natural Community Conservation Planning Act addresses the need for broad-based planning to accommodate conflicting demands for wildlife conservation and urban development. The Act’s conservation requirements go beyond state and federal requirements for mitigation of impacts by requiring plan preparers to contribute to the recovery of threatened and endangered species and their habitat.

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13 *Id.* at 6.

14 *See* 16 U.S.C. § 1532(6) and (20).
THE ROLE OF LOCAL AGENCIES

Endangered species live in habitats that are not confined by property lines and city and county limits. Agricultural and urban development has pushed many species to the brink of extinction. Several California species have already gone extinct. As California continues to grow, pressure on endangered and threatened species will increase. Federal agencies; state agencies; and local, state, and national conservation organizations are actively acquiring and managing land for conservation in California. Local agencies can complement these efforts through regional Habitat Conservation Plans and Natural Community Conservation Plans, which provide an alternative to project-by-project mitigation. Regional conservation planning at the local level can help relieve the pressure of urban development before California loses more of its natural heritage. Many land use planners consider regional conservation planning to be one element of the emerging planning techniques known as “Smart Growth.”

Federal and state wildlife conservation laws supplement local agencies’ land use authority with legal and planning tools that can be combined to achieve effective species protection and habitat conservation. Local agencies that adopt a proactive approach to habitat conservation planning can grow more efficiently and create more livable communities. For example, residents in many jurisdictions in California are demanding more open space and access to natural areas in which to experience nature. Regional conservation planning can help to achieve these goals. Some local jurisdictions are beginning to combine regional federal and state conservation plans with more traditional regional planning tools. By integrating general plans, specific plans, open space plans, and transportation plans, local agencies can create a comprehensive regional planning process. For example, Riverside County is engaged in an ambitious effort to combine a general plan update, transportation plan, and Habitat Conservation Plan into a single planning process for the western County; this undertaking is known as the Riverside County Integrated Project.

WHAT IS COVERED IN THIS GUIDE?

Individual project Habitat Conservation Plans and California ESA compliance differ in many ways from regional HCPs and NCCPs. Federal and California laws and regulations applicable to project planning and regional conservation planning are summarized in Chapters II and III. Chapter II outlines the requirements of the federal ESA and specifically addresses the regulatory requirements for Habitat Conservation Plan preparation and permitting. Chapter III describes the California laws protecting threatened and endangered species, including the California ESA, Natural Community Conservation Planning Act, and other relevant sections of the California Fish and Game Code.

Chapter IV provides a recommended approach to project planning for compliance with the federal ESA and the California ESA. Chapters V and VI provide recommendations for preparing a regional conservation plan in compliance with the federal ESA and the California Natural Community Conservation Planning Act. Chapter V provides a recommended approach to initiating and conducting the planning process. Chapter VI provides a description of the elements of a joint regional Habitat Conservation Plan/Natural Community Conservation Plan.

Extensive appendices provide useful information for preparation of Habitat Conservation Plans, California ESA compliance, and Natural Community Conservation Plans. The full texts of the federal ESA, the California ESA, and the Natural Community Conservation Planning Act are provided in Appendices A, B, and C, respectively. Important federal guidance and regulations regarding Habitat Conservation
Plan preparation and permit processing are provided in Appendices D and E. Appendices F and G provide lists of Web sites useful in preparing conservation plans. Appendix H includes the permit application used by federal wildlife agencies. Appendix I includes lists of animal and plant species in California that are protected by California and federal law.