

Santa Clara Valley Habitat Conservation Plan/ Natural Community Conservation Plan

**Overview
Workshop**
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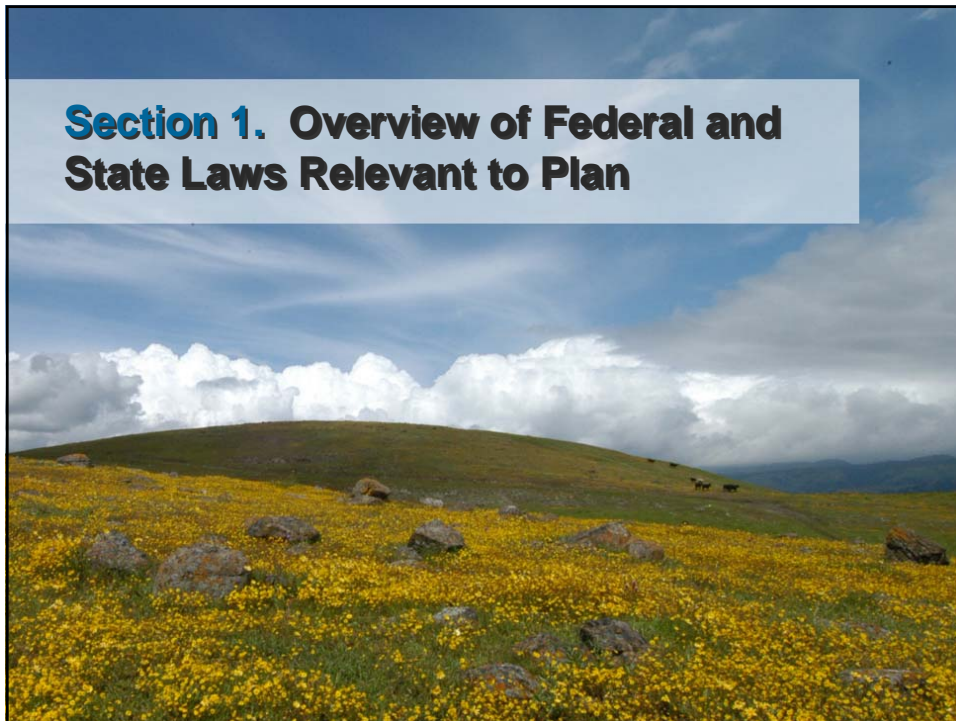
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SANTA CLARA VALLEY HCP/NCCP PARTNERSHIP



Jones & Stokes

Section 1. Overview of Federal and State Laws Relevant to Plan



Federal Endangered Species Act

- ◆ Purpose and policies
 - **Purpose:** Conserve ecosystems and species that depend on those ecosystems
 - **Policies:** Federal agencies should use existing authorities to conserve species and cooperate with state programs
- ◆ Responsibilities for administration
 - **Secretary of Commerce:** NOAA Fisheries (marine and anadromous species)
 - **Secretary of the Interior:** USFWS (most species)

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Section 4: Listings—Key Terms

- ◆ **Species:** species, subspecies, includes distinct population segments
- ◆ **Endangered Species:** in danger of extinction through all or significant portion of its range
- ◆ **Threatened Species:** likely to become endangered
- ◆ **Proposed Species:** proposed for listing in Federal Register



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Section 4: Listings—Key Terms (Cont.)

- ◆ **Candidate Species:** under consideration for proposing to list
- ◆ **Conservation:** methods to allow species recovery
- ◆ **Critical Habitat:** formally designated specific geographic areas essential to conservation of species
- ◆ **4(d) Rule:** if appropriate, specifies protection for species listed as threatened

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Section 9: Prohibited Acts

- ◆ **Prohibition:** all persons are prohibited from importing, exporting, taking, transporting, or selling fish and wildlife species listed as endangered under federal ESA
- ◆ **Persons:** prohibition applies to all private or public entities or individuals subject to U.S. government jurisdiction
- ◆ **Take:** action of or attempt to hunt, harm, harass, pursue, shoot, wound, capture, kill, trap, or collect a species

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Section 9: Prohibited Acts (Cont.)

- ◆ **Harm:** any act that kills or injures species, including significant habitat modification or degradation
- ◆ **Harass:** any act or omission, intentional or negligent, that creates the likelihood of injury to a species by annoying it to such an extent to significantly disrupt normal behavior patterns



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Section 9: Prohibited Acts (Cont.)

- ◆ **Listed Plants:**
 - Take prohibition applies to fish and wildlife species only;
 - Section 9 prohibits unlawful removal and reduction to possession, or malicious damage or destruction of any endangered plant under federal control;
 - Section 9 prohibits acts to remove, cut, dig up, or damage or destroy an endangered plant in nonfederal areas in knowing violation of any state law or in the course of criminal trespass

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Section 9: Prohibited Acts (Cont.)

- ◆ **Threatened Species:** under Section 4(d) of the federal ESA, the protections under Section 9 are discretionary; however, if no special rule regarding take is defined, Section 9 prohibitions apply (USFWS, not NOAA Fisheries)
- ◆ **Proposed Species, Petitioned Species, Candidate Species:** receive no protection under Section 9

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Exceptions to Section 9

- ◆ **Federal Agency Involvement (Section 7), No-Jeopardy Biological Opinion:** as part of the federal agency's formal consultation requirement under Section 7, statement authorizing the incidental take of a listed species
- ◆ **No Federal Agency Involvement (Section 10), Section 10 Permits:** Scientific, Enhancement of Survival, and Incidental Take Permits



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Section 10: Permits

- ◆ Section 10(a)(1)(A) Authorized Take Permits: issued by USFWS/NOAA Fisheries for
 - Scientific research and recovery permits - associated with activities such as captive breeding, trapping/banding;
 - Interstate commerce permits - associated with transport and captive breeding activities
 - Enhancement of survival permits (ESP) - associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances (CCAA)
- ◆ Section 10(a)(1)(B) Incidental Take Permits (ITP): issued by USFWS/NOAA Fisheries for take resulting from otherwise lawful activities

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What Is a Habitat Conservation Plan?

- ◆ Legal basis for HCPs under Section 10(a)(2)(A):
No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefore submits to the Secretary a conservation plan.
- ◆ Habitat Conservation Plan required for issuance of a Section 10(a)(1)(B) Permit

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Section 10 HCP Process: Primary Sources of Authority

- ◆ Federal Endangered Species Act Section 10 (16 U.S.C. 1539)
- ◆ USFWS Section 10 Regulations (50 CFR 17)
- ◆ NOAA Fisheries ESA Regulations (50 CFR 222)
- ◆ Handbook for Habitat Conservation Planning and Incidental Take Permitting Process, November 1996 (“HCP Handbook”)
- ◆ Final Addendum to the HCP Handbook (“Five-Point Policy”) (65 Fed. Reg. 106, 35242 – 35257, June 1, 2000)

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Section 7: Consultation

- ◆ **Requirement:** All federal agencies must, in consultation with USFWS/NOAA Fisheries, ensure that its actions do not jeopardize the continued existence of a listed species, or destroy or adversely modify the listed species critical habitat
- ◆ **Federal Action:** discretionary actions authorized, funded, or carried out by federal agency
- ◆ **Effects of the Action:** environmental baseline and indirect effects (“may effect” determination)
- ◆ **Process:** informal consultation (federal agency request species list, prepare **biological assessment**) and formal consultation (Service prepares **biological opinion**)
- ◆ **Jeopardy:** reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild

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Internal Section 7 Consultation on Section 10 Permit

- ◆ Consultation within USFWS or NOAA Fisheries—
separate Section 7 staff and Section 10 staff
- ◆ Additional Section 7 considerations
 - Indirect and cumulative effects
 - Listed plants (jeopardy determination)
 - Effects on listed critical habitat
 - Jeopardy v. no jeopardy

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USFWS/NOAA-Fisheries Section 10 Findings

- ◆ Take is incidental to otherwise lawful activity
- ◆ Applicant will, to the maximum extent practicable,
minimize and mitigate the impacts of taking
- ◆ Long-term funding for mitigation is ensured
- ◆ Taking will not appreciably reduce the likelihood of
survival and recovery of the species in the wild

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NEPA Compliance for HCPs

- ◆ Lead agency—USFWS or NOAA Fisheries
- ◆ EIS (regional or large project HCP), EA (small project HCP), or categorical exclusion (“low-effect” HCP)
- ◆ Proposed Action—issuance of Incidental Take Permit
- ◆ Analysis of the impacts on the human environment of implementing the HCP
- ◆ Scoping, public involvement, responding to comments
- ◆ Concludes with Record of Decision (ROD) for EIS

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California Endangered Species Act

California Fish & Game Code

- Sections 2070–2075 Listing process
- Section 2080 Prohibition against take
- Section 2081 Allowance for incidental take



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California Endangered Species Act Listing Process: Key Terms

- ◆ **Endangered:** native bird, mammal, fish, amphibian, reptile, or plant in serious danger of becoming extinct overall or a significant portion of its range
- ◆ **Threatened:** native bird, mammal, fish, amphibian, reptile, or plant not presently endangered but likely to become endangered if not given special protection
 - Excludes invertebrates and non-native species from listing
- ◆ **Candidate Species:** under review for listing

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Prohibited Acts

- ◆ **Endangered and Threatened Species (Section 2080):** prohibition against commerce and taking
- ◆ **Candidate Species (Section 2084):** discretionary protection (Fish and Game Commission)
- ◆ **Take (Section 86):** hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill
- ◆ Harm and Harassment constitute take if they are the proximate cause of death (DFG General Council)

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Take Authorization

- ◆ **Section 2080.1:** authorized take for joint federal/state-listed species with federal Section 7 or 10 authorization
- ◆ **Section 2081(a):** take for scientific, educational, or management purposes
- ◆ **Section 2081(b):** take incidental to otherwise lawful activities
- ◆ **Section 2086:** take incidental to agricultural activities under approved voluntary local program
- ◆ **Section 2835:** take authorized under regional NCCP

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Natural Community Conservation Planning Act of 2002

- ◆ SB107 passed legislature in 2001
- ◆ Signed by the Governor February 2, 2002
- ◆ Went into effect January 1, 2003
- ◆ Repealed and replaced existing 1991-NCCPA
- ◆ Greatly enhanced NCCPs—now “HCP plus”

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Natural Community Conservation Planning Act

- ◆ Need for broad-based planning to provide effective protection of wildlife resources and allow appropriate development and growth
- ◆ Reduce conflicts
- ◆ Voluntary program (alternative to Sect. 2081 permit)
- ◆ Promotes coordination and cooperation

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Southern California Coastal Sage Scrub NCCP Region



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NCCPA Components

- ◆ Planning Agreement
- ◆ Public involvement process
- ◆ Independent scientific review
- ◆ Natural Community Conservation Plan
- ◆ Implementation Agreement
- ◆ DFG NCCP determination
- ◆ CEQA compliance



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Public Review Process (Sec. 2815)

- ◆ DFG and participants shall establish a public participation process throughout plan development
- ◆ Draft documents made available to public for at least 60 days prior to adoption
- ◆ Documents made available 10 working days prior to public hearings
- ◆ Make available to public all draft plans, MOUs, maps, species lists, guidelines

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Public Review Process (Cont.)

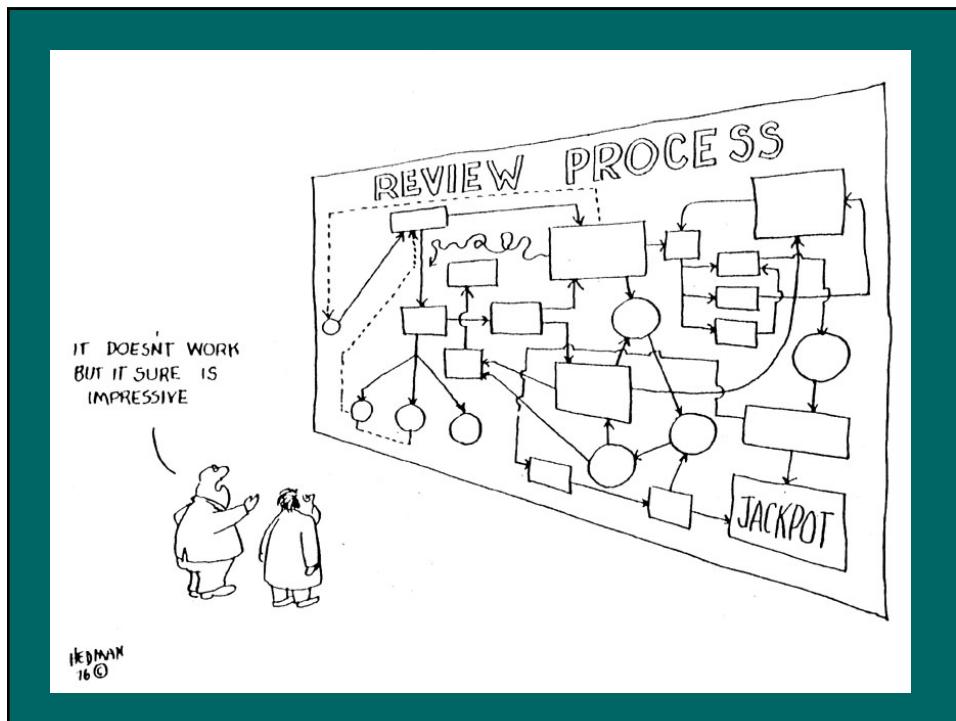


- ◆ May be concurrent with CEQA public review process and must integrate with hearings otherwise required by law



- ◆ Shall include an outreach program to provide access to information to all persons interested in the plan

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DFG Findings to Approve NCCP (Sec. 2820a)

- ◆ Consistent with Planning Agreement
- ◆ Protects habitat, natural communities, and species diversity on a landscape level (through creation of habitat reserves or “measures that provide equivalent conservation of covered species”)



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DFG Findings to Approve NCCP (Cont.)

- ◆ Reserve system and conservation measures must:
 - Conserve ecological integrity of large habitat blocks, ecosystem functions, and biodiversity
 - Provide *conservation* of covered species in plan area; linkages among reserves and with outside areas
 - “*conservation*” = recovery or preventing listing
 - Support sustainable populations of covered species
 - Provide range of environmental gradients and habitat diversity to support shifting species distributions
 - Sustain movement of species among reserves

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DFG Findings to Approve NCCP (Cont.)

- Identify activities allowed within reserves
- Specific conservation measures for covered species
- Includes monitoring program
- Includes adaptive management program
- Plan implementation schedule and landowner and participant obligations if schedule not met
- Provisions to ensure adequate funding
- Specific rationale for covered species (Sec. 2821a)

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Implementing Agreement (Sec. 2820b)

- ◆ Define species coverage and conditions
- ◆ Provisions for establishing reserves or other conservation measures
- ◆ Specific terms and conditions that, if violated, would result in permit revocation. Must include:
 - failure to provide funding
 - failure to mitigate (roughly proportional to impacts)
 - changes in plan or projects without prior wildlife agency approval
 - level of take exceeds permit

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Implementing Agreement (Cont.)

- ◆ Plan amendment procedures
- ◆ Provisions to ensure monitoring and adaptive management are implemented
- ◆ Provisions for oversight of plan implementation
- ◆ Provisions for periodic reporting to wildlife agencies and the public
- ◆ Mechanisms to ensure adequate funding

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Implementing Agreement (Cont.)

- ◆ Provisions to ensure mitigation is roughly proportional in timing and extent to impacts on habitat and covered species



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Assurances Provided

- ◆ For unforeseen circumstances: “additional land, water, or financial compensation or additional restrictions on use of land, water, or other natural resources shall not be required without the consent of plan participants” (Sec2820[f][2])
- ◆ Caveats on level of assurances tied to level of knowledge/data and plan size/duration

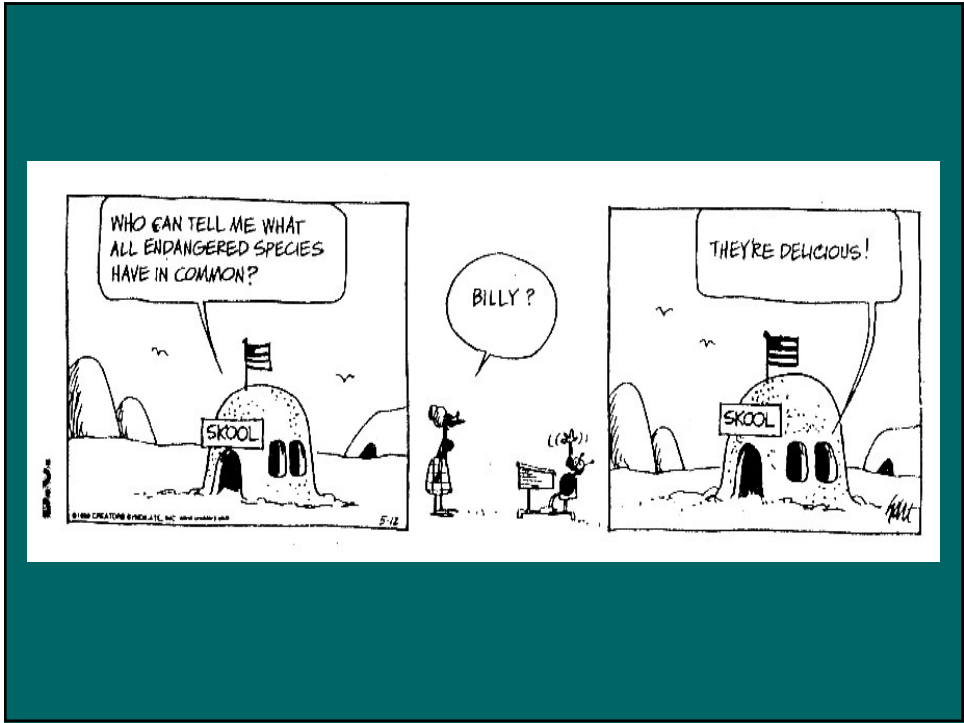
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Other California Fish and Game Code Protection

- ◆ Species protected under California Fish and Game Codes for which DFG may not authorize take, except for scientific research
 - Section 3511 Fully protected birds
 - Section 4700 Fully protected mammals
 - Section 5050 Fully protected reptiles and amphibians
 - Section 5515 Fully protected fish
...no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected [bird], [mammal], [reptile or amphibian], [fish]...

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ES-49



Fully Protected Species in Santa Clara County

- ◆ American peregrine falcon**
- ◆ Brown pelican
- ◆ California black rail
- ◆ California clapper rail
- ◆ California least tern
- ◆ Golden eagle**
- ◆ Southern bald eagle**
- ◆ White-tailed kite**
- ◆ Ring-tailed cat**
- ◆ Salt marsh harvest mouse
- ◆ San Francisco garter snake
- ◆ **Species being considered for HCP/NCCP

Other Relevant Federal Laws

- ◆ Bald Eagle and Golden Eagle Protection Act
- ◆ Migratory Bird Treaty Act
- ◆ Clean Water Act Sections 401 and 404 (wetlands and water quality permitting)
- ◆ National Historic Preservation Act (addressed in EIS)

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Section 2. The Santa Clara Valley HCP/NCCP

Context and Process

