



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

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|---|--|--|---|
| <input type="checkbox"/> Consent | <input checked="" type="checkbox"/> Departmental | <input type="checkbox"/> Correspondence Action | <input type="checkbox"/> Public Hearing |
| <input type="checkbox"/> Scheduled Time for | <input type="checkbox"/> Closed Session | <input type="checkbox"/> Informational | |

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: December 28, 2010

SUBJECT: Owens Lakebed Master Plan

DEPARTMENTAL RECOMMENDATION: Provide direction to staff and Supervisors Cervantes and Arcularius regarding the Owens Lakebed Master Plan.

SUMMARY DISCUSSION: The Los Angeles Department of Water and Power (DWP) has initiated a Master Plan for the Owens Lakebed following many years of dust mitigation efforts. The Plan will provide a framework for the future of the Lakebed, including potential solar energy development, habitat enhancement, and further dust mitigation. The Board has received several presentations about the Plan from staff and DWP representatives, and has appointed Supervisors Arcularius and Cervantes and the Planning Director to participate on the project Planning Committee.

The Planning Committee has been meeting about once per month since March. Staff has provided several updates to the Board regarding the process, the most recent on October 19, 2010. The Master Planning process has been on hold in November and December to address technical and administrative issues. Meetings of the Planning Committee are expected to resume in January, and it is hoped that the Master Plan can be ready for environmental review later in the spring.

Master Plan Implementation: One issue being considered is how to implement the Master Plan. The two options that have received the most attention are (1) a Memorandum of Understanding (MOU) and (2) a Natural Communities Conservation Plan (NCCP) (refer to the attached Agenda Request Form from October 19, 2010 for more information).

During the previous update to the Board on October 19, 2010, staff reported that no decision would be made at this time about whether or not to implement the Plan through an MOU or NCCP, and that the planning process would proceed in a manner to accommodate either option, based on discussions at the Agency Forum of September 29, 2010. However, it was subsequently reported to the Planning Committee that the Agency Forum had agreed to move forward with an NCCP for the Master Plan, and that should significant roadblocks arise with the NCCP process, members would shift to a plan with a master stream and lake bed agreement.

During the Board discussion on October 19, 2010, concern was expressed about proceeding with the NCCP option, primarily regarding the ability of the California Department of Fish and Game to implement the NCCP. In further discussions, it has been indicated that DWP would most likely be

the Administrator, and would be guided by a Governing Body, most likely a Joint Powers Authority (JPA) or other body.

Staff continues to believe that either an MOU or NCCP would be an acceptable implementing mechanism, but prefers an MOU since an NCCP is designed for biological resources. However, it appears as if there is a general preference on the Planning Committee and the Agency Forum to proceed with an NCCP.

Lower Owens River Project: the Planning Committee has been discussing whether or not to include the Owens River Delta within the planning area. In previous discussions, the 3,600-foot contour was considered for the Master Plan boundary. However, portions of the Lower Owens River (LORP) project area, including the Delta, fall within this contour.

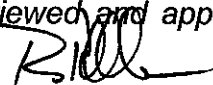
Staff is concerned about including any portion of the LORP, such as the Delta, within the planning area. Including the LORP within the planning area could require renegotiation of the MOU for the LORP, and could cause unforeseen complications and costs for the County's LORP obligations. Staff recommends that the County oppose efforts to include any portion of the LORP within the Master Plan.

Dust Mitigation: the primary purpose of DWP's activities on the Lakebed is dust mitigation. The Board has consistently expressed its support of minimizing water in dust mitigation activities on the Lakebed. Several participants on the Planning Committee appear to favor creation of habitat areas that may require substantial water outlays. Staff recommends that the Board reconfirm its support of minimizing water use on the Lakebed.

OTHER AGENCY INVOLVEMENT: Owens Lakebed Planning Committee and interested organization and individuals – DWP; Great Basin Unified Air Pollution Control District; State Lands Commission; Department of Fish and Game; Inyo County Water Department and other County Departments; Inyo and Mono County Agriculture Department; numerous tribes, business, community, agricultural, conservation, and groups.

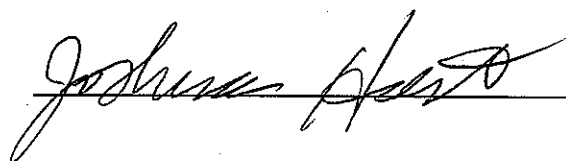
FINANCING: Resources from the County's general fund and Water Department budget are utilized to monitor DWP's activities and participate in related planning efforts.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>  12-19-10 OK
AUDITOR/CONT ROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i>

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 12-21-10

Attachments

Agenda Request Form dated October 19, 2010



AGENDA REQUEST FORM
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- | | | | |
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FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: October 19, 2010

SUBJECT: Owens Lakebed Master Plan

DEPARTMENTAL RECOMMENDATION: Provide direction to staff and Supervisors Cervantes and Arcularius regarding the draft goals and implementing mechanism for the Owens Lakebed Master Plan.

SUMMARY DISCUSSION: The Los Angeles Department of Water and Power (DWP) has initiated a Master Plan for the Owens Lakebed following many years of dust mitigation efforts. The Plan will provide a framework for the future of the Lakebed, including potential solar energy development, habitat enhancement, and further dust mitigation. The Board has received several presentations about the Plan from staff and DWP representatives, and has appointed Supervisors Arcularius and Cervantes and the Planning Director to participate on the project Planning Committee.

Natural Communities Conservation Plan vs. Memorandum of Understanding

At its regularly scheduled September 28, 2010 meeting, Supervisors Arcularius and Cervantes and staff presented an update regarding the Plan to the Board. Subsequently, on September 29, the Planning Director met with the Agency Forum convened for the project. Among many items discussed at the Forum, dialogue continued regarding the most appropriate implementing mechanism for the Plan, which is needed to ensure that the Plan is comprehensively instituted following its approval. The two options that have received the most attention are (1) a Memorandum of Understanding (MOU) and (2) a Natural Communities Conservation Plan (NCCP). An MOU would entail a basic agreement between the parties regarding the topics deemed appropriate. An NCCP would be guided by relevant State law and common practice (refer to Attachment 1 for more information).

Staff believes that either an MOU or NCCP would be an acceptable implementing mechanism, but prefers an MOU since an NCCP is designed for biological resources. Staff discussed this issue at the Agency Forum, and it was noted that many NCCPs address planning matters that involve non-biological issues, typically urban development. Also, an NCCP incorporates a Planning Agreement, which can address many topics deemed relevant.

Based on previous discussions in various forums, a general preference has been expressed by other participating entities for an NCCP. At the Agency Forum on September 29, it was decided that no decision would be made at this time about whether or not to implement the Plan through an MOU or NCCP, and that the planning process would proceed in a manner to accommodate either option. Any input the Board has regarding this issue would assist Supervisors Cervantes and Arcularius and staff in future discussions in this planning process.

Project Goals

During the September 28, 2010 Board item, a discussion occurred regarding the project goals. Supervisors Cervantes and Arcularius and staff have deliberated certain points regarding the project goals with the Planning Committee and Coordinating Committee extensively. In particular, much discussion has occurred regarding economic development and potential impacts on local businesses, utilities and service systems, and public services. The most recent version of the draft goals is attached, and any input from the Board would assist Supervisors Cervantes and Arcularius and staff in future discussions.

OTHER AGENCY INVOLVEMENT: Owens Lake Planning Committee and interested organization and individuals – Los Angeles Department of Water and Power; Great Basin Unified Air Pollution Control District; State Lands Commission; Department of Fish and Game; Inyo County Water Department and other County Departments; Inyo and Mono County Agriculture Department; numerous tribes, business, community, agricultural, and conservation groups; etc.

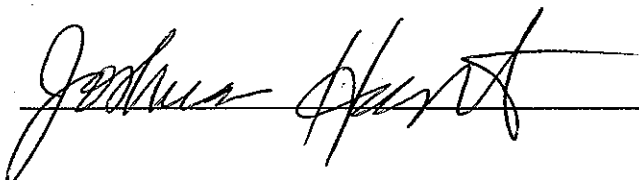
FINANCING: Resources from the County's general fund and Water Department budget are utilized to monitor DWP's activities and participate in related planning efforts.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i>

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 10-12-10

Attachments

1. Background Materials regarding Natural Communities Conservation Plans
2. Draft Master Plan Goals

Owens Lakebed Master Plan: Legal Framework Options Matrix

V. 9/6/2010

The purpose of this document (i.e. the future version) is to highlight the options for the legal planning framework for the Master Plan in a way that the Planning Committee can help select what will work best for it. The goal is to circulate this document by September 10 (back-up is Sept 13) and have one of you present the options at the Sept. 15 Planning Committee meeting.

	NCCP	Master Plan with MOU and Master Lake or Streambed Agreement (Section 1602)
Brief Description	Plan would follow the requirements of the NCCP. Additional agreements would be necessary (Master Lake or Streambed Agreement with DFG AND SLC Lease Agreements)	Master Plan would be the product of the Planning Committee. Additional agreements would be necessary (Master Lake or Streambed Agreement with DFG AND SLC Lease Agreements)
Key Elements	<p>Voluntary</p> <p>"Net Conservation Benefit"</p> <p>Product of HCP is typically Incidental Take Permits</p> <p>Assurances for Non-Listed Species</p> <p>Public process</p> <p>Landscape-level planning across habitats, ecosystem function & connectivity</p> <p>Funding for implementation</p> <p>Implementation Agreement signed by multiple</p>	<p>Multiple Parties sign onto the Memorandum of Understanding</p> <p>Cannot authorize "takes" under Section 1602 permit: no Incidental Take Permits</p> <p>Cannot provide assurances for Unlisted Species</p>

	parties Would require Master Lake and Streambed Agreement Conservation Easement would cover private lands State landowners would have to stipulate land use	
Unique Features	Would be unusual because OL has no T&E species Independent Science Advisory Process Requires "Net Conservation Benefit" — plan contributes to the species benefit through the whole plan Requires consultation with federal agencies Intangible Benefit of NCCP: NCCP merits respect Statute defines the structure	Would include operations
Strengths / Pros	Binding for all who sign Only way to secure a "no surprises" on legal assurances: <i>if a species became listed later, no additional requirements. When conditions change, additional requirements not required without consent of plan participants</i>	Binding for all who sign Focus on Species Found on Lakebed
Cons	Geared toward Threatened & Endangered (T&E) Species even though none currently on lakebed DWP Concerned about Work Load commitments / monitoring requirements for T&E species not	

	found on the lakebed	
Approval Process	<p>Planning Process Agreement ("Plan to Plan")</p> <p>Monitoring, Adaptive Management and Implementation required</p> <p>Peer Review—Requirements, reserve design, implementation agreement required</p> <p>DFG issues a permit for the incidental take</p> <p>Implementation Agreement</p>	Monitoring, Adaptive Management and Implementation planned
Interface with CEQA	<p>DFG would require a CEQA document before issuing the permit (CEQA document should cover both the Master Plan and NCCP simultaneously)</p>	DFG would require CEQA document before issuing the Master Agreement
Anticipated Time Necessary to Complete	<p>Best case scenario: 6 months after draft plan completed</p> <p>Time challenge is usually related to the financial reserves and land set asides</p>	3 months or more for Master Lake and Streambed Agreement
Does it Allow for Multiple Agencies/ Organizations to Implement?	Yes	<p>Maybe, Master Agreement is typically between DFG and one other party</p> <p>Possibly use an MOU for all parties and DFG forms a Master Agreement with DWP</p>
Considerations for Implementation	<p>SLC would still issue leases to DWP, but process would be streamlined</p> <p>Make terms of agreements and leases consistent for all</p>	<p>MOU could not provide "no surprises" assurances. Required through NCCP</p> <p>SLC would still issue leases to DWP, but process would be streamlined</p>
Does it Provide Flexibility for	Potentially more flexible than other option because you plan for flexibility in advance	<p>Make terms of agreements and leases consistent for all</p> <p>Yes</p>

Implementation (new initiatives, adaptive management)		Master Agreement (DFG) Allows for other projects to come online over time. Agreement could be amended
Assurance that implementation will occur	Yes	Yes through a "master agreement"
Similar Examples		Long-Term Maintenance Agreement with DFG:
How would existing activities be incorporated (mining, duck clubs, etc.)	Different entities could sign on "Hard Line": principal owners "Soft Line": owners could use the plan to streamline their process	Individual landowners & entities might have to pursue individual permits; however, the Master Agreement might be able to accommodate all the uses (would have to investigate further)
Next Steps & Questions	Would subset of the existing group have the expertise to serve as the scientific advisory panel	

Natural Community Conservation Plans Principles and Elements

Natural Community Conservation Plans (NCCP) are developed based on a state law which is administered by the California Department of Fish and Game. NCCPs are designed to provide for appropriate development while conserving natural communities and functioning ecosystems. NCCPs are grounded in a number of basic principles that frame the outcome of the planning process for future conservation, land use and governance. These fundamental principles are:

Locally Developed Collaborative Approach

NCCPs integrate the conservation of vegetation communities at a landscape level with endangered species laws and local land use and development processes. NCCPs are developed based on the voluntary participation of stakeholders. NCCPs are typically developed by local governments (cities, counties, special districts) in partnership with the state and federal wildlife agencies. The involvement of land owners, elected officials, conservationists, developers and other interested parties is a crucial part of the process and they participate in this partnership planning approach through working groups, public workshops, public hearings and other means. This partnership approach extends to implementing NCCPs, where responsibility for funding, land protection and management, and biological monitoring is shared.

Habitat Conservation

NCCPs are developed for habitat associations or natural communities to create an ecosystem-based preserve system which provides benefits to the wide array of species dependent on the natural communities. By developing conservation solutions at the ecosystem and habitat level, NCCPs can address declining but as yet unlisted species, unoccupied habitat crucial to species survival, and natural processes that sustain species and vegetation communities.

A Complement to Regulation, Not a Substitute

NCCPs can be used as an early intervention method of reconciling conservation of biological diversity with land development by integrating conservation with land-use planning. This reduces the conflicts inherent with conservation of species based solely on prohibitive regulations. NCCPs are broad, non-regulatory, advanced planning tools that complement species specific regulations by resolving conservation and land use conflicts across broad geographic areas.

Efficiency

In NCCPs, regional conservation and endangered species issues are integrated into the local land-use planning process. A regional plan is more streamlined than the traditional project-by-project approach to conservation and regulation. Agency resources are more efficiently utilized by creating and servicing regional plans rather than hundreds of small development permits. Local administration condenses many layers of regulation into a single layer which is comprehensive.

Although the details of individual local plans are different, the key elements are the same. These key elements include:

Regional Scope -- NCCPs are based on biological regions containing multiple natural communities.

Scientific Foundation -- NCCPs are based on the best science available, applied most efficiently. NCCPs are developed based on a set of conservation guidelines developed by independent scientific input. Each NCCP has a habitat conservation system designed using accepted principles of conservation biology and well-developed principles, goals, and objectives for species conservation.

High Conservation Standard -- NCCPs are approved based on their contribution to the recovery of the species they address. The plan must provide for the conservation and management of the species, which is accomplished through protection of existing habitat value, restoration of habitat, monitoring, and adaptive management.

Planning Agreements -- The development of NCCPs is guided by an initial agreement between state and federal wildlife agencies, local jurisdictions, and other stakeholders. The planning agreement defines the scope, principles and goals of the process.

Assurances to Landowners and Local Government -- Voluntarily participating in an aggressive, comprehensive approach to conservation by local interests is rewarded by long-term guarantees that no further action or financial obligation will be required of them beyond the plan terms. This shifts the liability for biological uncertainty, although smaller with NCCPs, to the public.

Adaptive Management Program -- Land protected in NCCPs is managed adaptively, using information from research and ongoing monitoring to modify land management actions and techniques as needed. All land conserved in an NCCP is managed for the conservation values identified in the plan.

Comprehensive Monitoring Program -- NCCPs include a program to comprehensively monitor key biological elements, including species, vegetation communities and ecosystem function. NCCPs also include monitoring of implementation provisions such as funding, preserve assembly and impact avoidance measures.

Amendment Provisions -- NCCPs contain provisions for amendments to deal with new issues or extraordinary, unanticipated conditions.

Implementing Agreement -- NCCPs are implemented based on an enforceable legal agreement between the local jurisdictions and state and federal wildlife agencies. The implementing agreement clearly identifies the provisions of the plan, roles of the participants, their responsibilities and requirements for implementation.

Funding -- The financial costs of developing and implementing the plan are shared among private participants, local, state and federal governments, bringing more resources to bear thereby providing for conservation of natural communities and ecosystems than relying on the traditional private sector-funded mitigation plans.

For more information about the NCCP program please visit our web site at <http://www.dfg.ca.gov/habcon/nccp> or call the Department of Fish and Game at (916) 653-4875.

NATURAL COMMUNITY CONSERVATION PLANNING (NCCP) PHASES

California Department of Fish and Game

Planning Agreement

Planning agreements are developed with interested jurisdictions, landowners and other interested parties. The purpose of the planning agreement is to specify the roles and responsibilities of the participants in developing the NCCP plan, identify the scope, natural communities, focus species, processes for scientific and public input, and an interim process for project review.

Committees

The NCCP process is facilitated by the formation of a variety of committees to accomplish all the tasks. There is usually a steering committee made up of the primary negotiators representing all the various interests groups. Often there is a biological technical committee which includes biologists from all the agencies and project consultants. In addition, there may be other committees to deal with specific issues such as funding, mitigation strategies, data management (GIS), land management, etc. The Department usually participates in all committees. Often toward the latter stages of planning, a smaller negotiating team is formed with just the applicants, their consultant, and the wildlife agencies.

Independent Scientific Input

NCCPs must be based on the best science available. NCCPs are developed based on a set of conservation guidelines developed by independent scientific input. The independent scientists use the principles of conservation biology and species conservation to develop the foundation for a habitat conservation system. The scientific advice also helps to identify any data gaps in the current knowledge.

Biological Data Collection

Species specific biological field data is collected, natural community types are mapped and field verified, and habitat evaluation models are developed if needed. The data is input into a geographic information system for further analysis. The data collected in this phase of plan development helps guide all future decisions for development of the plan.

Preserve Design

Preserve design involves the use of conservation biology principles, land ownership patterns and species and habitat distribution information. Preserve design can be contentious as private landowners come to the realization that a portion of their lands may be needed for establishing an adequate preserve. Public involvement in this phase is critical but also can result in significant delays or reanalysis of the preserve design. Guidance from the independent scientists is recommended.

Development of Draft Plan

The draft plan will contain all the conditions and mechanisms to assure the conservation of the species and make the plan work on a daily basis. It will include a preserve map, a preserve implementation strategy (project mitigation requirements, public land set asides, monitoring and adaptive management programs, etc.), funding assurances, a time table for implementation, and a draft Implementing Agreement (the contract).

Public Review of Draft Plan

Although the draft plan is usually developed with significant public input, the draft plan is the first time the public and elected officials see a comprehensive document. Public hearings are conducted by the local plan participants. The draft plan is also accompanied by a draft Environmental Impact Report and draft Environmental Impact Statement (DEIR/S). The public review draft also has to be reviewed by the local elected officials.

Final Plan Development

Following public review of the plan, the draft plan is revised based on the direction from local elected officials and public comments received during public review. A final Implementation Agreement is developed and the EIR/S is finalized.

Jurisdiction Approval of the Final Plan

The local jurisdiction holds an additional public hearing on the final plan and makes a decision to either adopt it or do further revisions. If the plan is adopted, it is then submitted to the Department of Fish and Game and the U.S. Fish and Wildlife Service for review and approval.

State and Federal Permit Issuance

The Department of Fish and Game and the U.S. Fish and Wildlife Service make final reviews of the plan and determine if it meets the standards for issuance of an NCCP Permit and Federal Endangered Species Act 10a Incidental Take permit respectively.

Implementation

Following the issuance of the State and Federal permits, the local jurisdictions may approve individual projects consistent with the plan without further requirements for individual projects to receive state and federal approval (although compliance with other laws such as Streambed Alteration Agreements or Clean Water Act permits may require further consultations). Permit holders must track habitat loss and protection, and monitor for permit compliance and biological effectiveness. Lands put into the preserve system must be protected in perpetuity and managed to benefit the covered species. Biological information collected through monitoring and research is used to modify management activities to ensure conservation success (adaptive management). The permittees provide annual reports to the wildlife agencies and the public.

V. Planning Agreement

Purpose

To launch the original Southern California NCCP pilot program, the wildlife agencies needed to assure participation by the local land use planning agencies and other important partners such as utility companies and large landowners. A system of Enrollment Agreements was developed where these participants could sign up. The agreements provided structure to the planning phase and assurance to the participants on what the outcome of the planning process would be.

Amendments to the NCCP Act in 2001 resulted in a new Section 2810 which set standards for planning agreements. The standards included direction related to data collection and independent scientific analysis. In 2002, additional standards for planning agreements were added to the Act.

The purpose of the planning agreement is to set the stage for NCCP planning by calling out components of the plan required by the NCCP Act, establishing the roles and responsibilities of the various parties, and initiating the process in a way that will set a clear path and reinforce the partnership for the effort.

The NCCP Act gives DFG the discretion to enter into planning agreements (§2810 (a)), yet later, in Section 2820(a), the first finding DFG must make to approve an NCCP is whether the plan was developed consistent with the process identified in the planning agreement. Thus, DFG essentially requires that all proponents of a new NCCP enter into a planning agreement. Since planning agreements are simply agreements to plan and can be terminated, proponents have all been willing to sign the agreement after some negotiation of the terms.

Components

Planning agreements should be between the primary responsible parties who will lead the planning effort. The NCCP Act requires that the planning agreement be developed "in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan." Since the land use permitting authority is typically the county and cities, they are the primary partners in urban development based NCCPs. However, for NCCPs on working landscapes (timber, ranching, farming) there is no local agency that has and use permit authority over the activities proposed to be addressed in the plan. DFG also encourages the federal wildlife/fish agencies (U.S. Fish and Wildlife Service, National Marine Fisheries Service) to be a party to the agreement.

Planning agreements include some standard introductory and legal agreement language, and planning process information. The NCCP Act (§2810) specifies the following components:

Define the geographic scope of the conservation planning area. The planning area should cover all of the land under the jurisdiction of the primary partners, or a significant portion that can be rationally explained based on land use patterns and ecosystem features. It should incorporate the broadest area possible to allow for flexibility in planning, and to address all the ecological processes and function of the ecosystem within the artificial boundaries of jurisdiction or land ownership.

Identify a preliminary list of those natural communities, and the endangered, threatened, candidate, or other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the plan. The natural communities should be listed using the DFG standard for describing vegetation communities, *A Manual of California Vegetation, Second Edition*. (Sawyer, J.O., T. Keeler-Wolf, and J. Evens. (MS 2007). California Native Plant Society. Sacramento). The list of species should include sensitive species, but not be exhaustive.

Identify preliminary conservation objectives for the planning area. The template planning agreement includes a suggested list of preliminary conservation objectives which can be expanded to address area specific issues.

Establish a process for the inclusion of independent scientific input to assist the department and plan participants. The Act goes on further to require input in four specific topic areas. DFG has developed additional guidance on how to set up an independent science advisory process that will satisfy these requirements. It can be found at <http://www.dfg.ca.gov/habcon/nccp/science>. In addition, Chapter VII discusses the details of incorporating independent scientific input.

Require coordination with federal wildlife agencies with respect to the federal Endangered Species Act. DFG encourages the federal wildlife/fish agencies (U.S. Fish and Wildlife Service, National Marine Fisheries Service) to be a party to the agreement. The template planning agreement was developed in partnership with the Services and contains approved language related to the ESA, NEPA, and other federal issues.

Encourage concurrent planning for wetlands and waters of the United States. The template planning agreement contains a section on coordinated planning for wetlands and waters of the US. This is an effort to streamline environmental permitting by also engaging the various state and federal agencies that regulate wetlands and waters. Since an NCCP must be focused at the ecosystem level, wetlands and streams would typically be addressed. However, the mitigation measures required by the wetland permitting agencies may be more constrained than a landscape focused NCCP and can result in what seems to be duplicative mitigation. Thus, it is important to coordinate the efforts. It

has been our experience that it is more effective to keep the NCCP and wetland permitting on parallel but separate tracks. This keeps both processes informed and hopefully complementary without risking bogging down one effort to fit with the other.

Establish an interim process during plan development for project review. During NCCP planning urban development does not stop. Projects continue to be proposed and permitted under CEQA and CESA. These projects may have a significant effect on the conservation outcome of the plan. An interim project review process is intended to assure that important conservation options are not precluded during the years it takes to develop the plan. This topic is covered in detail below.

Establish a process for public participation throughout the plan development and review. The NCCP Act devotes an entire section (§2815) to standards for public participation emphasizing that it should be initiated early in the planning process. The template planning agreement captures these requirements. The local sponsors may want to elaborate on public participation, but at a minimum should include regular meetings where the public can attend and dissemination of information through the internet.

There are a few additional topics addressed in planning agreements which are important to setting the ground work for NCCP planning. Some topics come from other areas of the NCCP Act (such as the findings) or are topics that will generally be cause for much debate so it is prudent to address them at the beginning of planning.

Assurances. Both DFG and the federal wildlife/fish agencies are able to provide assurances that "a deal is a deal" at the time of permit issuance. By reinforcing this in the Planning agreement, it provides certainty to the proponents of what they will get if they meet the standards for permit issuance.

Planning Goals. The Act requires a preliminary set of conservation goals. Planning goals are more focused on process and desired general outcome of planning.

Implementing Agreement. At the time of permit issuance, the parties also enter into an implementing agreement. It is a contractual agreement that spells out each party's obligations under the plan and permits.

Commitment of Resources. This section address who is responsible for funding both planning and implementation of the plan, and shows the wildlife agencies' intent to assist with obtaining funding to support the effort. The wildlife agencies also agree to provide technical and policy guidance. The NCCP Act also allows DFG to be reimbursed for its costs associated with NCCP planning. In the earliest stages of the NCCP program, DFG was assisted by local funds when the program had not yet been funded through state funds. Although this option remains in the Act, DFG does not typically ask for reimbursement.

Exhibits. DFG prefers that a map of the plan area be attached as an exhibit so that the public can understand the scope. Some proponents prefer to attach the list of proposed covered species as a table so that additional information can be included (i.e. scientific name, listing status). Additional information may be prudent as an exhibit.

Template

DFG uses a template planning agreement to standardize the contents of planning agreements for all new planning efforts. The most current template can be obtained from the Habitat Conservation Branch. DFG encourages proponents not to tinker with the language of the template because it is just an agreement to plan together, and such negotiations lengthen the process of getting started. However, virtually every group wants to adjust the language. It is important to distinguish between semantic changes and those that would change the intent of the NCCP Act or change responsibilities of the parties. For instance, often local governments try to weaken the language related to funding the plan primarily through locally assured sources. The agencies will gladly assist local governments to obtain grant funding, and often will contribute state and federal funds, but the plan is for the local's benefit and therefore funding it must be assured primarily by the locals.

Interim Project Review

In the years before a plan is approved certain proposed projects and activities that must comply with CEQA, FESA and/or CESA are likely to be proposed within the plan area. These projects, if not carefully planned, could eliminate natural resources and degrade ecological processes that are important for the conservation strategy. The purpose of having an interim process for project review is "...to allow for reasonable land development while avoiding foreclosure of future conservation planning options..." (Murphy, D. 1993. NCCP Conservation Principles and Application¹). The interim project review process should strive to minimize the short-term loss of habitat during the planning phase.

The NCCP Act (FGC Section 2810 (b)(8)) states that an interim process shall be established during plan development for project review. This interim review process should address discretionary projects subject to CEQA within the plan area that potentially conflict with the preliminary conservation objectives in the planning agreement or potentially conflict with guidance provided by the independent science advisors. These projects should be reviewed by the Department prior to, or as soon as possible after the project application is deemed complete pursuant to Section 65943 of the Government Code. The interim process must be described in the Planning agreement.

¹ California Dept. of Fish and Game and California Resources Agency. Southern California Coastal Sage Scrub Natural Communities Conservation Plan, Scientific Review Panel Conservation Guidelines and Documentation. Chapter 2.

The main purposes of the interim project review process are threefold: 1) to allow early review and consideration of proposed projects which could preclude the successful development of the plan; 2) to provide an opportunity for dialogue between the local agency, project applicants and the wildlife agencies; and 3) to ensure that project alternatives and mitigation options can be explored. The interim project review process should specifically (1) ensure that development, construction, or other projects or activities approved or initiated in the plan area before completion of the plan do not compromise successful design of the reserve system or implementation of the NCCP; (2) facilitate CEQA, CESA, and FESA compliance for interim projects that require it; and (3) provide mechanisms so that interim projects are not unduly delayed due to preparation of the plan.

The wildlife agencies should make recommendations to avoid and minimize impacts to sensitive resources on site, and should also recommend alternatives that will maintain options for reserve design and other components of a successful conservation strategy during the planning process. In order to assure that the necessary reserve design features and configuration are not precluded, the wildlife agencies should evaluate projects pursuant to the general principles of conservation biology as captured by the NCCP Act and reserve design tenets described in the NCCP General Process Guidelines². The tenets can be summarized as follows:

- Conserve target species throughout the planning area;
- Larger reserves are better than smaller reserves;
- Keep reserve areas close to each other;
- Habitat should remain contiguous;
- Link reserves with corridors;
- Reserves should contain a diversity of physical and environmental conditions; and
- Protect reserves from encroachment.

These tenets provide a general framework for the reserve design process. Additional theoretical and empirical underpinnings of the NCCP reserve design tenets can be found in conservation biology literature (Reed F. Noss, M.A. O'Connell, D.D. Murphy, 1997, Science of Conservation Planning).

² CDFG 1998, on the DFG website at www.dfg.ca.gov/habcon/nccp/Proc_Guid_cgsubr.htm

What Projects Should Be Reviewed?

Reportable Interim Projects for Local Jurisdictions

For purposes of this discussion, a Reportable Interim Project is a proposed development, construction or other project or activity subject to CEQA that is undertaken by or that requires a discretionary permit from a local agency and has the potential to adversely impact proposed covered species, natural communities, or conflict with the preliminary conservation objectives contained in the Planning agreement. These projects will be reported by the local agencies to the wildlife agencies if they meet the following criteria:

- A determination has been made by the local agency that the proposed project is not exempt from CEQA; and
- The proposed project is located in the "Reportable Area". The Reportable Area in some instances can be smaller than the planning area but is usually the entire planning area. For example a smaller Reportable Area can exist if there will be no new reserve systems located in some areas thereby not needing interim protection (such as urban infill areas).

The types of Reportable Interim Projects will vary depending on who the plan participants are. For instance, water distribution or major road construction activities may not be included if the local water district and CalTrans are not plan participants. Examples of Reportable Interim Projects typical for a local jurisdiction may include, but are not limited to:

- Residential, commercial, and industrial developments requiring an initial study;
- Road construction, road widening, and bridge construction or replacement;
- Construction of new or expanding waste water treatment plants;
- Construction of new sanitary landfills or expansion of existing landfills and related facilities;
- Variance to structural setbacks from streams and ponds;
- Installation of sewer lines;
- Construction of new park facilities;
- Flood control and storm water detention facilities;
- Floodway maintenance activities;
- Rural residential projects;
- New recreational facilities; and
- Communications services projects such as cellular phone antennas.

Examples of non-reportable interim projects may include, but are not limited to:

- Residential, commercial, and industrial developments not requiring an initial study (but may be a reportable project if a minimum acreage figure established by the planning partners is exceeded, e.g., 5 acres);
- Projects only requiring a building permit;
- Applications for construction of a second unit on a lot with an existing single family home; and
- Road and infrastructure maintenance.

Each NCCP should develop an appropriate list of types of interim projects for the Planning agreement so that the Interim Project Review Process is clear to all plan participants. It might be possible to develop criteria for types of interim projects to be evaluated so that important interim projects are not eliminated from the process. Also a document such as a flow chart or handbook could be produced to aid in the review process.

Reportable Interim Projects for Working Landscapes

Revisions to the NCCP Act in 2002 specifically included guidance for addressing planning on working landscapes. This type of NCCP would be developed to address non-permanent impacts to species and habitat. The Mendocino Redwood Company (MRC) example is discussed here to illustrate the types of interim activities that might be expected for a working landscape NCCP.

MRC is preparing an NCCP to address timber harvest activities on their lands. MRC will continue to manage its land and carry out commercial timber operations during preparation of the NCCP/HCP. As part of its commercial timber operations, MRC will propose new timber harvest plans ("THPs") and other new timber harvest activities after the effective date of their Planning agreement and pending approval of the NCCP/HCP. These are referred to as MRC's "Interim Activities". Via the Planning agreement, MRC ensured that all Interim Activities implemented during NCCP/HCP preparation are consistent with the preliminary conservation goals and objectives, and will not preclude important conservation planning options or connectivity between areas of high habitat value. The mutually agreed standards and measures for MRC's Interim Activities assured that no take of threatened or endangered wildlife protected by CESA or FESA would occur. MRC and DFG created interim guidelines to be applied to all Interim Activities to provide a high level of protection and mitigation. The interim guidelines address detailed protection measures for riparian habitat and streams, northern spotted owl, marbled murrelet, Point Arena mountain beaver, other sensitive species, hardwoods, old growth trees, etc.

Notification and Review Process

To facilitate the interim review process, the wildlife agencies should each designate at least one individual to receive notification of interim projects to speed up distribution and review. As discussed earlier, one of the objectives of interim project

review is to provide an opportunity for dialogue during plan preparation. Plan participants, including the lead agency and wildlife agencies should meet regularly to discuss interim projects and coordination of interim projects during the development of the NCCP. It is recommended that a specific regular meeting schedule be identified (e.g., once a month). Logistically, to minimize travel for plan participants some plans have suggested arranging interim project review meetings to occur on the same day as other plan meetings (e.g., Advisory Committee). If frequent regular meetings are problematic, conference calls in the intervals between the interim project periodic meetings help increase coordination.

These projects should follow the CEQA process, and comments should be provided to the referring local agency within the legally prescribed CEQA comment periods. As a part of our good faith partnership the wildlife agencies should review Reportable Interim Projects in a timely manner and provide constructive recommendations.

During the interim project review period, notification to the wildlife agencies of a proposed Reportable Interim Project will occur when the local agency determines that the proposed project: 1) is subject to CEQA, and 2) application is deemed complete. To ensure that the wildlife agencies can make informed decisions regarding the biological impacts of the project, the following minimum information should be provided in order for an application to be deemed complete:

- brief project description;
- general project location;
- name of the property owner and applicant;
- parcel description including size and assessor's parcel number;
- map of the proposed project on an 11" x 17", 1:24,000 aerial photo of the site or similarly formatted map; the map should show the project in a regional context that identifies major streets and highways.
- land cover types present; and
- any other biological information available to the local agency about the project area.

One of the more challenging aspects of the interim project review process is how the local agencies will respond to recommendations from the wildlife agencies. In the typical CEQA process, input from the wildlife agencies is often considered simply a recommendation that the lead agency may or may not follow. During planning agreement negotiations and NCCP planning, the lead agency should be encouraged to adopt a heightened attention and response to recommendations from the wildlife agencies. The wildlife agencies should be making suggestions that are necessary to ensure successful NCCP completion, thus the lead agencies should make every attempt to adjust projects to reduce or eliminate aspects of the project that could preclude NCCP conservation options. An optimal strategy is to include a discussion in the Planning agreement of how the lead agencies will respond to wildlife agency comments during interim project review.

Consideration of Independent Scientific Advice

As part of the interim project review process, the wildlife agencies and plan participants should also evaluate projects in light of the guidance provided by the independent science advisors (pursuant to FGC 2810(b)(5)). They are typically tasked with providing recommendations on appropriate reserve design and conservation objectives for the plan area. The plan participants should periodically meet to determine how scientific input and analysis developed during plan preparation or provided through the science advisory process should be incorporated into the interim project review process.

Mitigation of Interim Projects

Mitigation for impacts from interim projects should be designed to complement the long term conservation strategy that will be the outcome of the NCCP. Project design should be consistent with the preliminary conservation goals agreed to in the Planning agreement, and should minimize important habitat loss. As planning evolves, project design should use all available knowledge and concepts including results of new biological inventories, products of science advisors, and other external scientific input that may become available. Prior to the adoption of the plan, local agencies should approve mitigation on a case-by-case basis in consultation with the wildlife agencies.

Any unavoidable impacts to habitat, proposed covered species, and other biological resources should be mitigated to insignificant levels as required by CEQA by using one or more of the following options:

- Acquisition of compensation habitat;
- Dedication of habitat that fits with the plan's conservation design;
- Restoration of degraded habitat;
- Payment of mitigation fees that will cover replacement habitat protection, management, and monitoring in perpetuity;
- Transfer of development rights that results in permanently protected habitat;
- Purchase of credits at a Department-approved mitigation or conservation bank and;
- Other mitigation measures approved in writing by the wildlife agencies.

Appropriate mitigation should be identified in a mitigation plan prepared by the project applicant. As with other CEQA or CESA projects, the project should demonstrate capacity for funding appropriate mitigation and an endowment for management and monitoring and provide the appropriate financial security. The mitigation should be legally assured through the use of conservation easements or other land use designation that protects the property, and a non-wasting endowment secured in perpetuity. Habitat acquisitions and/or set asides should only occur in areas with long-term conservation value.

The take of state-listed candidate, threatened, or endangered species that occurs during the interim period can only be authorized through the permit processes available under CESA. An accounting of the interim take must be included in the analysis of take to be authorized under an approved NCCP (FGC Section 2810 (b)(8)). The plan participants and wildlife agencies should establish a process to track this take so it can be readily analyzed in the final plan and NCCP permit.

Habitat Protection Before Plan Adoption

Typically in the years before the plan is completed the local agencies may have the ability to preserve, enhance or restore, either by acquisition or other means (e.g., conservation easements; tax default property; designated setbacks or "no build" zones; density bonus transfers), lands in the plan area that support native species or natural communities. During the interim project coordination meetings the local agency should consult with the wildlife agencies regarding potential habitat lands to be protected. The wildlife agencies typically agree (usually in the Planning agreement or a dated letter) to credit such lands toward the land acquisition or habitat protection requirements of the plan, if, and to the extent that, the lands contribute to the plan's conservation strategy.

Lands, or portions of lands, acquired or preserved to mitigate the impacts of specific projects or activities that are approved prior to or during plan preparation may only be considered as mitigation for the resulting loss from those projects, and may not be credited toward the future mitigation or conservation requirements of the NCCP. However, such lands may be considered as part of the baseline land conservation component of the plan.

Existing Mitigation Programs

Coordination between the interim project review process and mitigation programs that may be in place in the plan area is also very important. Various areas in California have created unique approaches to addressing mitigation for impacts to resources in their area. The most typical type of mitigation program is an in lieu fee, where development projects pay a set fee (often based on the cost to acquire replacement acreage) into a mitigation account established by the local government. The mitigation fees are aggregated and used by the local government to acquire, manage, and monitor habitat elsewhere. These processes/programs may be conducted through a separate agreement such as a Memorandum of Understanding among the plan participants and may be expected to terminate upon completion of the NCCP. Where there is an existing mitigation program, the local governments should continue to require appropriate mitigation necessary to meet the intent of the NCCP interim process and the existing mitigation program.

Public Review of the Planning Agreement

The draft planning agreement itself must be made available for public review for a minimum 21 calendar days. The Act specifically exempts Planning agreements from complying with CEQA, and the only requirement for DFG is to make it available. DFG is not required to respond to comments received, however, it is wise to make adjustments to the agreement based on comments when the parties can agree.

The draft planning agreement is ready for public review when all parties have agreed and are ready to sign it. DFG and the local agency draft a notice of availability which summarizes what the document is about, where copies are available, what date the comments are due, and where to send comments. The notice of availability is e/mailed to the list of interested publics typically maintained by the local agency. The draft planning agreement (as a .pdf) is posted to the DFG NCCP website, a local agency website, and hard copies can be obtained from the local agency. Comments should be sent to the DFG Regional office.

Approval

DFG and the local agency compile the comments and determine if any changes to the planning agreement should be made. The compiled comments and proposed revised planning agreement are circulated for all the parties to review and approve. Once final language is agreed to, the locals sign it and forward it to DFG for signature. The Region forwards the final planning agreement copies with a signed tracking sheet to the Habitat Conservation Branch. The Branch obtains the Office of the General Counsel approval as to form. The Deputy Director for the Resource Management and Policy Division signs for DFG.

Steps

The steps in developing and approving a planning agreement, the responsibilities of the various sections of DFG, and the approximate time frames needed are listed below:

- 1) NCCP participants (including agency legal staff) develop draft Planning Agreement (PA), based on the Wildlife Agency PA template. (*several to many months*)
- 2) All partners concur on public review draft PA and any exhibits to be attached.
- 3) DFG Region produces Notice of Public Availability (from HCB template); partners develop PA distribution list (all pertinent interested parties). (*one to several weeks*)

- 4) Lead local agency emails Notice of Public Availability, public review draft PA, and all exhibits to Coordination Group (all partners) and the same packet (.pdf) is posted on the website for the plan and the DFG NCCP website. The Notice of Availability is mailed or emailed to the distribution list. Copies of the public review draft PA are made available at DFG Regional office and local partner(s) offices as stated on the Notice of Public Availability.
- 5) Public review period ensues, from date on Notice of Public Availability. Public comments are sent to DFG Regional office. (*at least 21 calendar days*)
- 6) DFG Region (and other partners if desired) reviews public comments for substantive PA-related issues. DFG Region summarizes substantive comments and distributes to partners and DFG HCB. PA is modified if necessary. (*0 to several months, depending on comments received*)
- 7) Tracking sheet (with HCB-assigned tracking number) is prepared in DFG Region. Tracking sheet needs sign-off from DFG Region, and is then attached to final PA (appropriate number of originals) and sent to DFG HCB for sign-offs from HCB and Office of the General Counsel. (*one to two weeks*)
- 8) PA is approved/signed by USFWS Field Supervisor (and other federal agencies if appropriate), Local Agency representative(s) for the plan (after approval by local elected officials), DFG General Counsel (as to form), and DFG RMPD Deputy Director. (*one to several weeks*)

Special Considerations for Water Districts, Utility Companies

The NCCP Act requires that planning be conducted on a landscape scale, and address ecosystems and ecological processes and functions. Reserve areas are planned in a way to meet the reserve design tenets (bigger, lumped, connected, etc.). To achieve the NCCP standard, planning where reserves and development will go must be within the jurisdiction of the proponents of the plan. They must have the authority to direct development to suitable locations and deny development in planned conservation reserves. This is why most NCCPs are led by county and city governments, the local land use authority.

It may be desirable to encourage other entities such as water districts and utility companies to participate in NCCP to achieve a higher conservation standard for compensating for their activities. This has worked well in the original southern California pilot area because all of the underlying local governments were also participating in NCCP planning. These governments had the land use authority, and the water districts and utility companies could contribute to the successful implementation of the areas' NCCPs.

But what about NCCP planning for water districts and utilities where there is no participation from the underlying local government? How can these entities provide DFG the assurance that planned reserves would be protected when they do not own the land nor control the land use on such lands? How can these entities provide sufficient conservation to meet the permit issuance standard?

These issues should be tackled at the earliest opportunity and addressed in the planning agreement. Many entities want the benefits of NCCP yet do not fully understand the requirements. Many see it as another permitting mechanism that should be available to anyone who wants it. DFG must assure that the NCCP standards are maintained. DFG must believe the proponents can reach the NCCP standard before signing the planning agreement.

There are two ways that DFG has overcome this obstacle so far. The first, most obvious, solution is to engage the underlying local government. This likely will only be successful if the local government has already been contemplating a large conservation planning effort due to increasing conflicts with ESA and CESA. Additional pressure from an influential water district or utility company (and a promise to help pay for the plan) may sway them to join.

The second method is to include a section in the planning agreement that puts the entity on notice that they may need to secure all of their conservation land prior to permit issuance. If they own land necessary to provide for the conservation of covered species and secure it for conservation in perpetuity (convey it in fee or via conservation easement to an appropriate conservation entity), then DFG would have the assurances necessary for plan approval (assuming all other conservation assurances are also provided). The following language could be added to the planning agreement to address this issue:

"In order to meet NCCPA standards, XX recognizes that it may have to commit additional land for conservation purposes, beyond what is currently in conservation, or demonstrate that they have control over land use on those lands needed for the conservation of the species. This could be in the form of conservation easements or other appropriate methods."

**NCCP Act of 2003
California Fish and Game Code**

CHAPTER 10. NATURAL COMMUNITY CONSERVATION PLANNING ACT

2800. This chapter shall be known, and may be cited, as the Natural Community Conservation Planning Act.

2801. The Legislature finds and declares all of the following:

- (a) The continuing population growth in California will result in increasing demands for dwindling natural resources and result in the continuing decline of the state's wildlife.
- (b) There is a need for broad-based planning to provide for effective protection and conservation of the state's wildlife heritage while continuing to allow appropriate development and growth.
- (c) Natural community conservation planning is an effective tool in protecting California's natural diversity while reducing conflicts between protection of the state's wildlife heritage and reasonable use of natural resources for economic development.
- (d) Natural community conservation planning promotes coordination and cooperation among public agencies, landowners, and other private interests, provides a mechanism by which landowners and development proponents can effectively address cumulative impact concerns, promotes conservation of unfragmented habitat areas, promotes multispecies and multihabitat management and conservation, provides one option for identifying and ensuring appropriate mitigation that is roughly proportional to impacts on fish and wildlife, and promotes the conservation of broad-based natural communities and species diversity.
- (e) Natural community conservation planning can provide for efficient use and protection of natural and economic resources while promoting greater sensitivity to important elements of the state's critical natural diversity.
- (f) Natural community conservation planning is a voluntary and effective planning process that can facilitate early coordination to protect the interests of the state, the federal government, and local public agencies, landowners, and other private parties.
- (g) Natural community conservation planning is a mechanism that can provide an early planning framework for proposed development projects within the planning area in order to avoid, minimize, and compensate for project impacts to wildlife.
- (h) Natural community conservation planning is consistent with, and will support, the fish and wildlife management activities of the department in its role as the trustee for fish and wildlife within the state.
- (i) The purpose of natural community conservation planning is to sustain and restore those species and their habitat identified by the department that are necessary to maintain the continued viability of those biological communities

impacted by human changes to the landscape.

(j) Natural community conservation planning is a cooperative process that often involves local, state, and federal agencies and the public, including landowners within the plan area. The process should encourage the active participation and support of landowners and others in the conservation and stewardship of natural resources in the plan area during plan development using appropriate measures, including incentives.

Acquisition

2802. The Legislature further finds and declares that it is the policy of the state to conserve, protect, restore, and enhance natural communities. It is the intent of the Legislature to acquire a fee or less than fee interest in lands consistent with approved natural community conservation plans and to provide assistance with the implementation of those plans.

Definitions

2805. The definitions in this section govern the construction of this chapter:

(a) "Adaptive management" means to use the results of new information gathered through the monitoring program of the plan and from other sources to adjust management strategies and practices to assist in providing for the conservation of covered species.

(b) "Changed circumstances" are reasonably foreseeable circumstances that could affect a covered species or geographic area covered by the plan.

(c) "Conserve," "conserving," and "conservation" mean to use, and the use of, methods and procedures within the plan area that are necessary to bring any covered species to the point at which the measures provided pursuant to Chapter 1.5 (commencing with Section 2050) are not necessary, and for covered species that are not listed pursuant to Chapter 1.5 (commencing with Section 2050), to maintain or enhance the condition of a species so that listing pursuant to Chapter 1.5 (commencing with Section 2050) will not become necessary.

(d) "Covered species" means those species, both listed pursuant to Chapter 1.5 (commencing with Section 2050) and nonlisted, conserved and managed under an approved natural community conservation plan and that may be authorized for take.

(e) "Department assurance" means the department's commitment pursuant to subdivision (f) of Section 2820.

(f) "Monitoring program" means a program within an approved natural community conservation plan that provides periodic evaluations of monitoring results to assess the adequacy of the mitigation and conservation strategies or activities and to provide information to direct the adaptive management program.

The monitoring program shall, to the extent practicable, also be used to meet the monitoring requirements of Section 21081.6 of the Public Resources Code. A monitoring program includes all of the following:

- (1) Surveys to determine the status of biological resources addressed by the plan, including covered species.
- (2) Periodic accountings and assessment of authorized take.
- (3) Progress reports on all of the following matters:
 - (A) Establishment of habitat reserves or other measures that provide equivalent conservation of covered species and providing funding where applicable.
 - (B) Compliance with the plan and the implementation agreement by the wildlife agencies, local governments, and landowners who have responsibilities under the plan.
 - (C) Measurements to determine if mitigation and conservation measures are being implemented roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan.
 - (D) Evaluation of the effectiveness of the plan in meeting the conservation objectives of the plan.
 - (E) Maps of land use changes in the plan area that may affect habitat values or covered species.
- (4) A schedule for conducting monitoring activities.
- (g) "Natural community conservation plan" or "plan" means the plan prepared pursuant to a planning agreement entered into in accordance with subdivision (a) of Section 2810. The plan shall identify and provide for those measures necessary to conserve and manage natural biological diversity within the plan area while allowing compatible and appropriate economic development, growth, and other human uses.
- (h) "Person" has the same meaning as defined in Section 711.2.
- (i) "Plan participant," prior to approval of a natural community conservation plan and execution of an implementation agreement, means a signatory to the planning agreement. Upon approval of a natural community conservation plan and execution of an implementation agreement, plan participants and any local agency that is a signatory to the implementing agreement are the permittees.
- (j) "Unforeseen circumstances" means changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more covered species.
- (k) "Wildlife" has the same meaning as defined in Section 711.2.
- (l) "Wildlife agencies" means the department and one or both of the following:
 - (1) United States Fish and Wildlife Service.
 - (2) National Marine Fisheries Service.

2809. Any person, or any local, state, or federal agency, independently, or in cooperation with other persons, may undertake natural community conservation planning.

Planning Agreements

2810. (a) The department may enter into an agreement with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species, including, but not limited to, those species listed pursuant to Article 2 (commencing with Section 2070) of Chapter 1.5. The agreement shall include a provision specifying the amount of compensation, if any, payable to the department pursuant to Section 2829.

(b) The agreement shall meet all of the following conditions:

- (1) The agreement shall be binding upon the department, other participating federal, state, and local agencies, and participating private landowners.
- (2) The agreement shall define the geographic scope of the conservation planning area.
- (3) The agreement shall identify a preliminary list of those natural communities, and the endangered, threatened, candidate, or other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the plan.
- (4) The agreement shall identify preliminary conservation objectives for the planning area.
- (5) The agreement shall establish a process for the inclusion of independent scientific input to assist the department and plan participants, and to do all of the following:
 - (A) Recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the plan.
 - (B) Recommend a set of reserve design principles that addresses the needs of species, landscapes, ecosystems, and ecological processes in the planning area proposed to be addressed by the plan.
 - (C) Recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the plan.
 - (D) Identify data gaps and uncertainties so that risk factors can be evaluated.
- (6) The agreement shall require coordination with federal wildlife agencies with respect to the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).
- (7) The agreement shall encourage concurrent planning for wetlands and waters of the United States.
- (8) The agreement shall establish an interim process during plan development for project review wherein discretionary projects within the plan area subject to Division 13 (commencing with Section 21000) of the Public Resources Code that potentially conflict with the preliminary conservation objectives in the planning agreement are reviewed by the department prior to, or as soon as possible after the project application is deemed complete pursuant to Section 65943 of the Government Code and the department recommends mitigation measures or

project alternatives that would help achieve the preliminary conservation objectives. As part of this process, information developed pursuant to paragraph (5) of subdivision (b) of Section 2810 shall be taken into consideration by the department and plan participants. Any take of candidate, threatened, or endangered species that occurs during this interim period shall be included in the analysis of take to be authorized under an approved plan. Nothing in this paragraph is intended to authorize take of candidate, protected, or endangered species.

(9) The agreement shall establish a process for public participation throughout the plan development and review pursuant to Section 2815.

(c) The approval of the planning agreement is not a project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) Prior to department approval of the planning agreement, the public shall have 21 calendar days to review and comment on the proposed planning agreement.

Public Participation

2815. The department shall establish, in cooperation with the parties to the planning agreement, a process for public participation throughout plan development and review to ensure that interested persons, including landowners, have an adequate opportunity to provide input to lead agencies, state and federal wildlife agencies, and others involved in preparing the plan. The public participation objectives of this section may be achieved through public working groups or advisory committees, established early in the process. This process shall include all of the following:

(a) A requirement that draft documents associated with a natural community conservation plan that are being considered for adoption by the plan lead agency shall be available for public review and comment for at least 60 days prior to the adoption of that draft document. Preliminary public review documents shall be made available by the plan lead agency at least 10 working days prior to any public hearing addressing these documents. The review period specified in this subdivision may run concurrently with the review period provided for any document required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that is associated with the natural community conservation plan. This subdivision shall not be construed to limit the discretion of a public agency to revise any draft documents at a public hearing.

(b) A requirement to make available in a reasonable and timely manner all draft plans, memoranda of understanding, maps, conservation guidelines, species coverage lists, and other planning documents associated with a natural community conservation plan that are subject to public review.

(c) A requirement that all public hearings held during plan preparation or review for approval are complementary to, or integrated with, those hearings otherwise provided by law.

(d) An outreach program to provide access to information for persons interested in the plan, including landowners, with an emphasis on obtaining input from a balanced variety of affected public and private interests, including state and local governments, county agricultural commissioners, agricultural organizations, landowners, conservation organizations, and the general public.

Findings

2820. (a) The department shall approve a natural community conservation plan for implementation after making the following findings, based upon substantial evidence in the record:

- (1) The plan has been developed consistent with the process identified in the planning agreement entered into pursuant to Section 2810.
- (2) The plan integrates adaptive management strategies that are periodically evaluated and modified based on the information from the monitoring program and other sources, which will assist in providing for the conservation of covered species and ecosystems within the plan area.
- (3) The plan provides for the protection of habitat, natural communities, and species diversity on a landscape or ecosystem level through the creation and long-term management of habitat reserves or other measures that provide equivalent conservation of covered species appropriate for land, aquatic, and marine habitats within the plan area.
- (4) The development of reserve systems and conservation measures in the plan area provides, as needed for the conservation of species, all of the following:
 - (A) Conserving, restoring, and managing representative natural and seminatural landscapes to maintain the ecological integrity of large habitat blocks, ecosystem function, and biological diversity.
 - (B) Establishing one or more reserves or other measures that provide equivalent conservation of covered species within the plan area and linkages between them and adjacent habitat areas outside of the plan area.
 - (C) Protecting and maintaining habitat areas that are large enough to support sustainable populations of covered species.
 - (D) Incorporating a range of environmental gradients (such as slope, elevation, aspect, and coastal or inland characteristics) and high habitat diversity to provide for shifting species distributions due to changed circumstances.
 - (E) Sustaining the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the habitat areas within the plan area.
- (5) The plan identifies activities, and any restrictions on those activities, allowed within reserve areas that are compatible with the conservation of species, habitats, natural communities, and their associated ecological functions.
- (6) The plan contains specific conservation measures that meet the biological needs of covered species and that are based upon the best available scientific information regarding the status of covered species and the impacts of permitted activities on those species.

- (7) The plan contains a monitoring program.
- (8) The plan contains an adaptive management program.
- (9) The plan includes the estimated timeframe and process by which the reserves or other conservation measures are to be implemented, including obligations of landowners and plan signatories and consequences of the failure to acquire lands in a timely manner.
- (10) The plan contains provisions that ensure adequate funding to carry out the conservation actions identified in the plan.

Implementation Agreements

- (b) A natural community conservation plan approved pursuant to this section shall include an implementation agreement that contains all of the following:
 - (1) Provisions defining species coverage, including any conditions of coverage.
 - (2) Provisions for establishing the long-term protection of any habitat reserve or other measures that provide equivalent conservation of covered species.
 - (3) Specific terms and conditions, which, if violated, would result in the suspension or revocation of the permit, in whole or in part. The department shall include a provision requiring notification to the plan participant of a specified period of time to cure any default prior to suspension or revocation of the permit in whole or in part. These terms and conditions shall address, but are not limited to, provisions specifying the actions the department shall take under all of the following circumstances:
 - (A) If the plan participant fails to provide adequate funding.
 - (B) If the plan participant fails to maintain the rough proportionality between impacts on habitat or covered species and conservation measures.
 - (C) If the plan participant adopts, amends, or approves any plan or project without the concurrence of the wildlife agencies that is inconsistent with the objectives and requirements of the approved plan.
 - (D) If the level of take exceeds that authorized by the permit.
 - (4) Provisions specifying procedures for amendment of the plan and the implementation agreement.
 - (5) Provisions ensuring implementation of the monitoring program and adaptive management program.
 - (6) Provisions for oversight of plan implementation for purposes of assessing mitigation performance, funding, and habitat protection measures.
 - (7) Provisions for periodic reporting to the wildlife agencies and the public for purposes of information and evaluation of plan progress.
 - (8) Mechanisms to ensure adequate funding to carry out the conservation actions identified in the plan.
 - (9) Provisions to ensure that implementation of mitigation and conservation measures on a plan basis is roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan. These provisions shall identify the conservation measures, including assembly of reserves where appropriate and implementation of monitoring and management activities, that

will be maintained or carried out in rough proportion to the impact on habitat or covered species and the measurements that will be used to determine if this is occurring.

Default

(c) If a plan participant does not maintain the proportionality between take and conservation measures specified in the implementation agreement and does not either cure the default within 45 days or enter into an agreement with the department within 45 days to expeditiously cure the default, the department shall suspend or revoke the permit, in whole or in part.

Information Available to Public

(d) Any data and reports associated with the monitoring program required by this section shall be available for public review. The entity managing the plan shall also conduct public workshops on an annual basis to provide information and evaluate progress toward attaining the conservation objectives of the plan.

California Environmental Quality Act

(e) To the extent provided pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code and any guidelines adopted pursuant thereto, if the impacts on one or more covered species and its habitat are analyzed and mitigated pursuant to a program environmental impact report for a plan adopted pursuant to this chapter, a plan participant that is a lead agency or a responsible agency under that division shall incorporate in the review of any subsequent project in the plan area the feasible mitigation measures and alternatives related to the biological impacts on covered species and their habitat developed in the program environmental impact report.

Assurances

(f) The department may provide assurances for plan participants commensurate with long-term conservation assurances and associated implementation measures pursuant to the approved plan.

(1) When providing assurances pursuant to this subdivision, the department's determination of the level of assurances and the time limits specified in the implementation agreement for assurances may be based on localized conditions and shall consider all of the following:

(A) The level of knowledge of the status of the covered species and natural communities.

(B) The adequacy of analysis of the impact of take on covered species.

(C) The use of the best available science to make assessments about the impacts of take, the reliability of mitigation strategies, and the appropriateness of monitoring techniques.

(D) The appropriateness of the size and duration of the plan with respect to quality and amount of data.

(E) The sufficiency of mechanisms for long-term funding of all components of the plan and contingencies.

(F) The degree of coordination and accessibility of centralized data for analysis and evaluation of the effectiveness of the plan.

(G) The degree to which a thorough range of foreseeable circumstances are considered and provided for under the adaptive management program.

(H) The size and duration of the plan.

(2) If there are unforeseen circumstances, additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources shall not be required without the consent of plan participants for a period of time specified in the implementation agreement, unless the department determines that the plan is not being implemented consistent with the substantive terms of the implementation agreement.

Species Coverage

2821. Concurrent with the approval by the department of a final natural community conservation plan, the department shall do both of the following:

(a) Establish a list of species that are authorized for take pursuant to Section 2835 and the department shall make specific findings to support coverage pursuant to Section 2820. For purposes of determining whether a species should receive coverage under a plan, the department shall use, in addition to the standards required for the adoption of a plan, one or more of the following criteria:

(1) Coverage is warranted based upon regional or landscape level consideration, such as healthy population levels, widespread distribution throughout the plan area, and life history characteristics that respond to habitat-scale conservation and management actions.

(2) Coverage is warranted based on regional or landscape level considerations with site specific conservation and management requirements that are clearly identified in the plan for species that are generally well-distributed, but that have core habitats that must be conserved.

(3) Coverage is warranted based upon site specific considerations and the identification of specific conservation and management conditions for species within a narrowly defined habitat or limited geographic area within the plan area.

(b) Find that the mitigation measures specified in the plan and imposed by the plan participants are consistent with subdivision (d) of Section 2801.

2822. The department may seek injunctive relief against any plan participant, person, or entity to enforce this chapter.

2823. The department shall suspend or revoke any permit, in whole or in part, issued for the take of a species subject to Section 2835 if the continued take of the species would result in jeopardizing the continued existence of the species.

2825. The department may adopt regulations for the development and implementation of natural community conservation plans consistent with this chapter.

2826. Nothing in this chapter exempts a project proposed in a natural community conservation planning area from Division 13 (commencing with Section 21000) of the Public Resources Code or otherwise alters or affects the applicability of that division.

2827. To the extent practicable, implementation of natural community conservation plans shall use the services of either the California Conservation Corps or local community conservation corps.

2828. Nothing in this chapter prohibits a local government from exercising any power or authority granted to it pursuant to state law to acquire land or water to implement a plan.

2829. (a) The department may be compensated for the actual costs incurred in participating in the preparation and implementation of natural community conservation plans. These costs may include consultation with other parties to agreements authorized by Section 2810, providing and compiling wildlife and wildlife habitat data, reviewing and approving the final plan, monitoring implementation of the plan, and other activities necessary to the preparation and implementation of a plan.

(b) The department may be compensated for those expenses identified in subdivision (a) according to a schedule in the agreement authorized by Section 2810.

Grandfathering

2830. Nothing in this chapter prohibits the taking or the incidental take of any identified species if the taking is authorized by the department pursuant to any of the following:

(a) A natural community conservation plan or amended plan approved by the department prior to January 1, 2002. Any permits, plans, implementation agreements, and amendments to those permits, plans, or implementation agreements described in this section are deemed to be in full force and effect as of the date approved or entered into by the parties insofar as they authorize the take of identified species pursuant to an approved natural community conservation plan and shall be governed solely by former Chapter 10 (commencing with Section 2800) as it read on December 31, 2001.

(b) Any natural community conservation plan, or subarea plan, approved, or amended on or after January 1, 2002, for which a planning or enrollment agreement meets any of the following criteria, which shall be solely governed in accordance with former Chapter 10 (commencing with Section 2800) as it read

on December 31, 2001:

(1) The natural community conservation plan was entered into between the department and plan participants prior to January 1, 2001, and is carried out pursuant to Rule 4(d) for the California Gnatcatcher (Federal Register Volume 58, December 10, 1993), including the southern subregion of Orange County.

(2) The natural community conservation plan was prepared pursuant to the planning agreement for the San Diego Multiple Species Conservation Plan.

(3) The natural community conservation plan was prepared pursuant to the planning agreement for the San Diego Multiple Habitat Conservation Plan.

(c) Any programmatic natural community conservation plan approved by the department on or before January 1, 2002.

(d) Any natural community conservation plan developed pursuant to a planning or enrollment agreement executed on or before January 1, 2001, and for which the department finds that the plan has been developed using a public participation and scientific analysis process substantially in conformance with the intent of paragraph (5) of subdivision (b) of Section 2810 and Section 2815.

(e) Any natural community conservation plan developed pursuant to a planning agreement executed on or before January 1, 2002, and which the department finds is in substantial compliance with Section 2820.

(f) (1) Any natural community conservation plan or subarea plan initiated on or before January 1, 2000, or amendments thereto, by Sweetwater Authority, Helix Water District, Padre Dam Municipal Water District, Santa Fe Irrigation District, or the San Diego County Water Authority, which the department determines is consistent with the approved San Diego Multiple Habitat Conservation Program or the San Diego Multiple Species Conservation Program, is exempt from Section 2810, and paragraph (1) of subdivision (a) of Section 2820, except as provided in paragraph (2), if the department finds that the plan has been developed and is otherwise in conformance with this chapter.

(2) The public water agencies identified in this subdivision and the department shall include independent scientific input as described in subparagraphs (A) to (D), inclusive, of paragraph (5) of subdivision (b) of Section 2810 into the proposed plans in a manner that focuses on the covered species that are proposed for take authorization and that are not otherwise covered in the San Diego Multiple Species Conservation Program or the San Diego Multiple Habitat Conservation Program.

The scientific input required by this paragraph shall be based on the best and most current scientific data generally available, and shall assure that documentation for coverage of all species is equal or greater than the San Diego Multiple Habitat Conservation Program.

Take Authorization

2835. At the time of plan approval, the department may authorize by permit the taking of any covered species whose conservation and management is provided for in a natural community conservation plan approved by the department.