



Sonoma County Habitat Conservation Plan/ Natural Community Conservation Plan

Meeting Objectives

- Share information about the Conservation Sonoma program and development of a Habitat Conservation Plan (HCP) and a Natural Community Conservation Plan (NCCP)
- Identify areas of interest and concern
- Introduce and elicit interest for the Public Advisory Committee (PAC)



Agenda

1. Welcome and Introductions
2. Regulatory Context for Habitat Conservation Plan and Natural Community Conservation Plan Development
3. Progress to Date on Sonoma County HCP/NCCP
4. Overview of Public Engagement Opportunities
5. Meeting Evaluation and Closing



Participation Protocols

- Aiming to hear from everyone – please be concise
- Working toward shared understanding – ask questions and learn from each other
- Capturing your thoughts –
 - Use the mic/get close to the Owl
 - Written comments: comment form; Zoom chat



Menti Poll Q1 – What are you interested in learning today about the HCP/NCCCP?

Go to

www.menti.com

Enter the code

7215 6562



Or use QR code



Regulatory Context for HCP/NCCP Development

HCP/NCCP Development Overview

- Federal Endangered Species Act Background
- California Endangered Species Act Background
- HCP/NCCP Process
- Questions

Federal ESA Regulatory Authority

- **Department of Commerce**

National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) jurisdiction: Marine species and most anadromous fish



- **Department of Interior**

U.S. Fish and Wildlife Service (USFWS) jurisdiction: Terrestrial and freshwater aquatic species



Overview of Federal Endangered Species Act

Section 2

- Findings and Declarations of Purpose

Section 3

- Definitions

Section 4

- Determination of Endangered and Threatened Species
- Includes Listing, Critical Habitat and Recovery

Section 5

- Land Acquisition

Section 6

- Cooperation with States

Section 7

- Interagency Cooperation

Section 8

- International Cooperation

Section 9

- Prohibited Acts (Take Prohibition)

Section 10

- Exceptions
- Includes Habitat Conservation Plans, Safe Harbors, CCAAs

Section 11

- Penalties and Enforcement
- Includes Citizen Suit Provision

Section 12

- Endangered Plants
- Includes Listing, Critical Habitat and Recovery

Section 13

- Conforming Amendments

Section 14

- Repealer

Section 15

- Authorization of Appropriations

Section 16

- Effective Date

Section 17

- Marine Mammal Protection Act of 1972

Section 18

- Annual Cost Analysis

ESA Section 3: Definitions

- **Species:** Includes *species* or *subspecies* of fish, wildlife, or plants and any *distinct population segments* of any vertebrate fish or wildlife which interbreeds when mature
 - **Distinct Population Segment (DPS) or Evolutionary Significant Unit (ESU)** identify distinct population segments of species of anadromous fish that warrant protection in certain geographic area
- **Endangered Species:** Species in danger of extinction through all or significant portion of its range
- **Threatened Species:** Species likely to become endangered within the foreseeable future
- **Proposed Species:** Any species proposed for listing in Federal Register
- **Candidate Species:** Under consideration for proposing to list; file with sufficient information on vulnerability and threats to support issuance of proposal to list but other priorities preclude listing

ESA Section 9: Prohibited Acts

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



ESA Section 9: Prohibited Acts (Cont.)

Harm: Any act which actually kills or injures species, including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering

Harass: Any act or omission, intentional or negligent, that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering



Source: 50 CFR 17.3



ESA Section 9: Prohibited Acts (Cont.)

Threatened Species:

- Under Section 4(d) of the ESA, the protections under Section 9 are discretionary for both USFWS and NMFS

Proposed Species, Petitioned Species, Candidate Species:

- Receive no protection under Section 9



Section 10: Incidental Take Permit/10(a)(1)(B)

- Primary method of ESA compliance where complete avoidance is not feasible and Section 7 is not an option
- Section 10 was added by Congress in 1982 to allow incidental take and to foster “creative partnerships between the public and private sectors and among governmental agencies in the interest of species and habitat conservation”
- Popularized under Clinton and Babbitt in 1992, with no surprises assurances



ESA Section 10: Incidental Take Permit Findings

- Take is **incidental to otherwise lawful activity**
- Applicant will **minimize and mitigate the impacts of taking to the maximum extent practicable**
- Applicant will ensure that **adequate funding** for the plan is provided
- Taking will **not appreciably reduce the likelihood of survival** and recovery of the species in the wild



ESA Section 11: Penalties and Enforcement

- Seeking an ITP is a voluntary action, however unauthorized take of an ESA-listed species is a violation of the ESA
- Services can seek civil or criminal penalties under the ESA for violations of Section 9.
 - Civil fines up to \$25,000 per violation
 - Criminal penalties up to \$50,000 and imprisonment for one year
 - Criminal convictions can result in confiscation of equipment and vehicles used in the ESA violation



California Endangered Species Act

Regulatory Authority: California Department of Fish and Wildlife

- Statutes: Fish and Game Code Chapter 1.5, Sections 2050-2115.5
- Regulations: California Code of Regulations, Title 14, Chapter 6, Sections 783.0–787.9
- California Fish and Game Commission also plays an important role in administering Fish and Game Code

CESA: Definitions

- **Endangered:** Native bird, mammal, fish, amphibian, reptile, or plant *in serious danger of becoming extinct overall or a significant portion of its range*
- **Threatened:** Native bird, mammal, fish, amphibian, reptile, or plant not presently endangered but *likely to become endangered* if not given special protection
- **Candidate Species:** Under review for listing
 - ✓ Non-native species are excluded
 - ✓ 2022 court ruling determined that terrestrial invertebrates are eligible for listing



CESA Prohibited Acts

- Endangered and Threatened Species (Section 2080): Prohibition against commerce and taking
- Candidate Species (Section 2084): Discretionary protection (Fish and Game Commission)
- Take (Section 86): Hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill
 - Unlike federal ESA definition it **does not** include harm, injury or harassment



CESA Section 2835 Findings to Approve NCCP

- Consistent with Planning Agreement
- Protects habitat, natural communities, and species diversity on a landscape level (through creation of habitat reserves or “measures that provide equivalent conservation of covered species”)
- Reserve system and conservation measures must:
 - ✓ Conserve ecological integrity of large habitat blocks, ecosystem functions, and biodiversity
 - ✓ Provide **conservation of covered species** in plan area, including creating linkages among reserves and with outside areas
 - ✓ Support sustainable populations of covered species
 - ✓ Provide range of environmental gradients and habitat diversity to support shifting species distributions
 - ✓ Sustain movement of species among reserves

CESA Section 2835 Findings to Approve NCCP (Cont.)

- Describe covered activities and limit of allowable take of covered species
- Identification of activities allowed within reserves
- Specific conservation measures for covered species
- Includes monitoring program
- Includes adaptive management program
- Plan implementation schedule and permittee obligations if schedule not met
- Provisions to ensure adequate funding
- Specific rationale for how conservation measures offset take and support the recovery of covered species (Section 2821(a))

Comparison of ESA and CESA

ESA

CESA

Take of individuals prohibited

Take of individuals prohibited

Habitat often protected (harm)

Habitat may be protected (required for NCCP)

4(d) rules allow reduced prohibitions for threatened species

Same prohibitions for threatened and endangered species

Section 7 incidental take statement or Section 10 incidental take permit

Section 2081(b) or 2835 incidental take permit

Plants protected only where federal action involved

Plants somewhat protected under NPPA/CESA

Federal agency consultation process

No state agency consultation process

NEPA trigger for Section 10 permit

CEQA trigger for 2081(b) or 2835 permit

What is a Habitat Conservation Plan?



- Legal definition of a conservation plan under ESA Section 10(a)(2)(A):
 - *No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefore submits to the Secretary a conservation plan*
- Habitat Conservation Plan (HCP) is required for issuance of a Section 10 Incidental Take Permit

Elements of an HCP (1 of 2)

HCP Element	Required or Recommended?
Program goals	Recommended
Plan area (geographic coverage)	Required
Covered species	Required
Biological goals and objectives	Required
Covered activities	Required
Permit duration	Required
Impact on species (level of take)	Required
Indirect impacts	Required
Cumulative impacts	Recommended
Impacts to critical habitat	Recommended
Conservation measures	Required
Avoidance and minimization measures	Required
Expected outcomes with conservation	Recommended

Elements of an HCP (2 of 2)

HCP Element	Required or Recommended?
Monitoring plan	Required
Adaptive management plan	Required
Implementation cost estimate	Required
Funding strategy	Required
Assurances requested	Required
Changed circumstances and remedial measures	Required
Unforeseen circumstances provisions	Required
Implementation structure	Recommended
Permit amendment process	Required
Alternatives to take	Required

What is a Natural Community Conservation Plan?

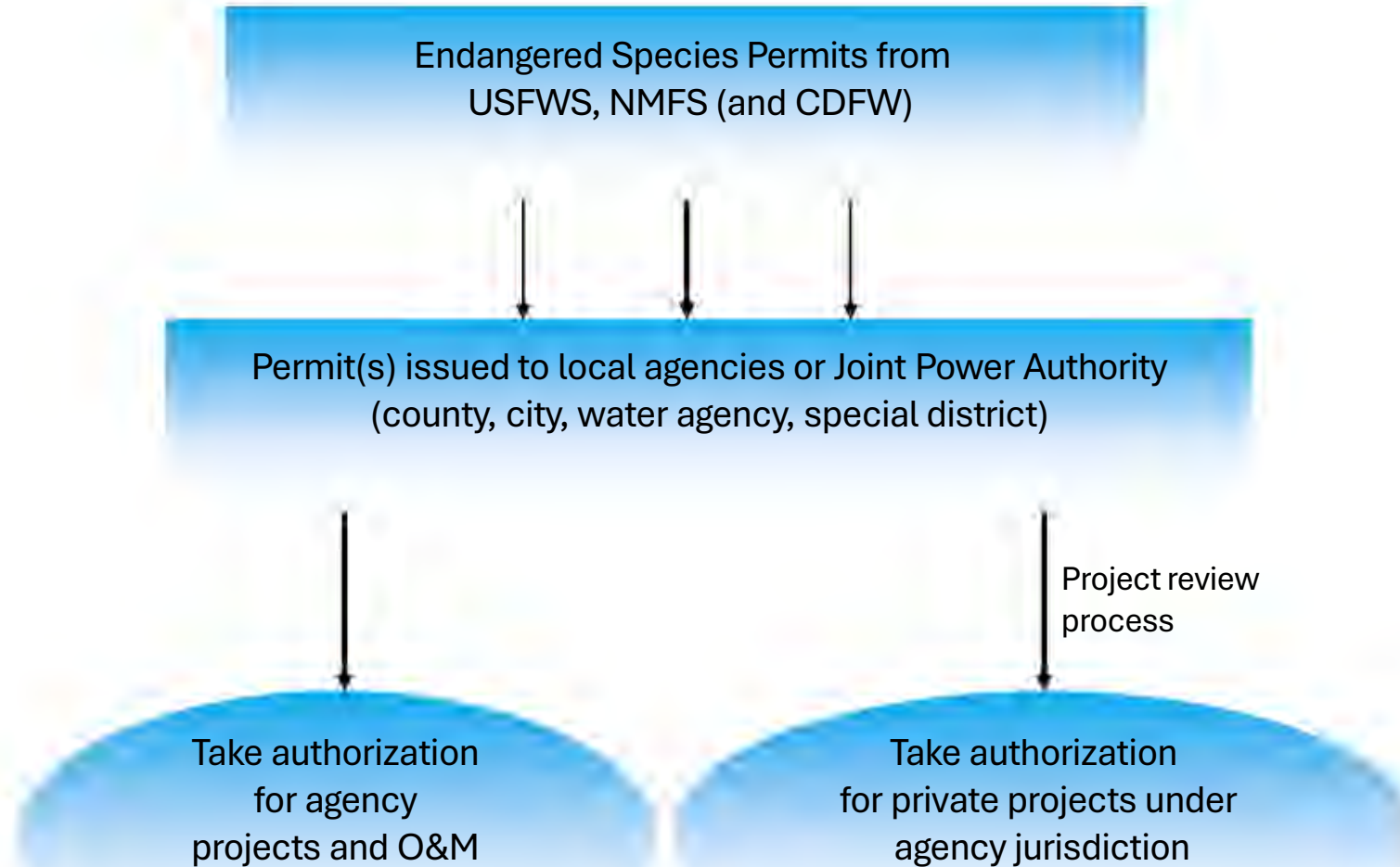
- ***Fish and Game Code Section 2835*** Incidental take permitted for listed species and one of the only mechanisms for incidental take of California Fully Protected Species.
- ***Landscape-scale conservation*** Protects habitat, natural communities, and species diversity on a landscape level (through creation of habitat reserves or “measures that provide equivalent conservation of covered species”).
- ***Regulatory Assurance*** Similar long-term assurances as HCPs for CESA compliance, including ability to plan for species that are not yet listed, but are likely to become listed within the permit term.

Unique Requirements of NCCPs

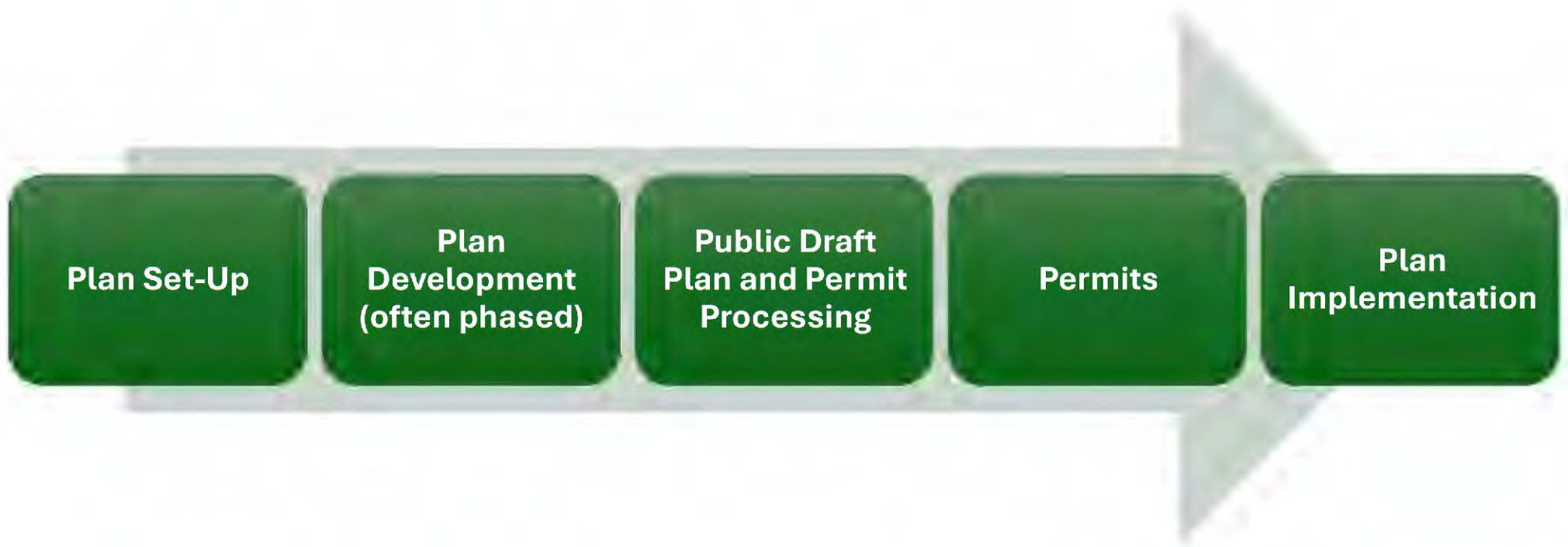
A scenic landscape featuring a dirt path leading through a field of wildflowers towards a blue lake and mountains in the background. The path is made of reddish-brown earth and is flanked by tall, dry grasses and various wildflowers, including some with bright yellow and orange blooms. In the distance, a large, calm blue lake stretches across the middle ground, with rolling hills and mountains under a clear blue sky in the background.

- Planning Agreement
- Public participation
- Independent scientific review
- Implementing Agreement
- CDFW Findings to approve a NCCP

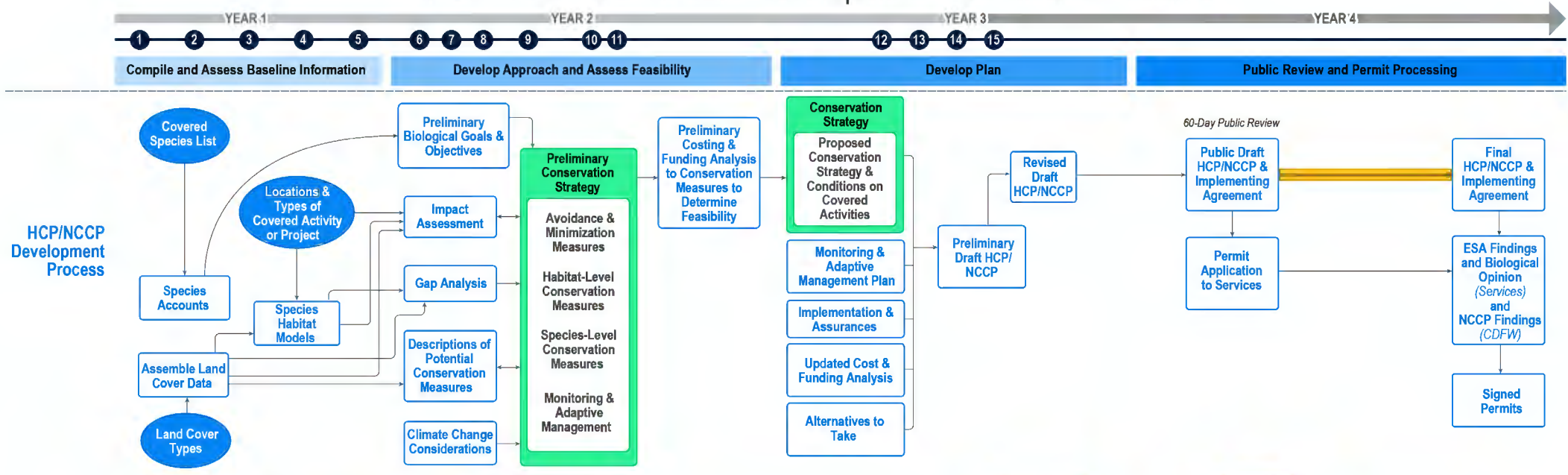
Programmatic HCP/NCCP: How it Works



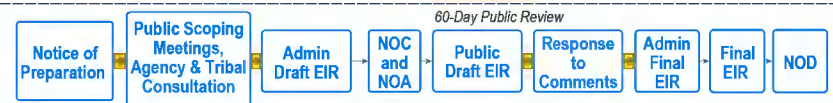
The HCP/NCCCP Process



HCP/NCCP and EIR/EIS Development Process and Timeline



HCP/NCCP Applicant-Led CEQA Process



Service-Led NEPA Process



KEY DECISIONS & QUESTIONS

- | | | | |
|---|--|--|---|
| <p>1 What are the covered activities?</p> <p>2 Who is eligible to use the permit's take authorization?</p> <p>3 What is the plan area and permit area?</p> <p>4 What are the covered species?</p> | <p>5 How will stakeholders participate in developing the HCP/NCCP?</p> <p>6 What is the desired permit term?</p> <p>7 What are the impacts of the covered activities considering changes over the permit term due to climate change?</p> <p>8 What are the options for offsetting impacts of the covered activities?</p> | <p>9 What are the biological goals and objectives for the covered species?</p> <p>10 What feasible conservation measures can achieve the biological goals and objectives and do they consider climate change?</p> <p>11 What is the adaptive management framework?</p> <p>12 How will plan implementation be overseen and managed?</p> | <p>13 What implementation assurances will be requested?</p> <p>14 How much will the plan cost to implement and how will it be funded?</p> <p>15 What are the protocols for amending the plan?</p> |
|---|--|--|---|

LEGEND

EIR Environmental Impact Report	NCCP Natural Community Conservation Plan	ESA Endangered Species Act	NMFS National Marine Fisheries Service	NOC Notice of Completion
EIS Environmental Impact Statement	CEQA California Environmental Quality Act	CDFW California Department of Fish and Wildlife	Service USFWS or NMFS	NOD Notice of Determination
HCP Habitat Conservation Plan	NEPA National Environmental Policy Act	USFWS U.S. Fish & Wildlife Service	NOA Notice of Availability	



4/26/23



Key Benefits of HCP/NCCP

- **Local Control** The Sonoma County HCP/NCCP will shift management of ESA and CESA compliance for activities covered in the Plan from federal and state regulatory agencies to the local level.
- **Improved and increased species conservation** The Sonoma County HCP/NCCP will provide a more efficient process for protecting natural resources by approaching mitigation on a landscape-scale that will be more ecologically valuable and easier to manage than individual mitigation sites typical of a project-by-project permitting approach.
- **Streamlined permitting** With increased local control of the ESA and CESA compliance process, permitting times will be reduced and mitigation requirements and fees will be standardized.



Progress to Date on Sonoma County HCP/NCCP



Goals of Current Plan Development Phase

- Identify Plan development participants (future potential co-permittees)
- Confirm geographic scope of HCP/NCCP
- Execute Planning Agreement with Plan development partners and CDFW
- Initiate public engagement process
- Begin technical analyses
- Convene Science Advisors panel
- Secure funding for next phase of Plan development

Goals: Progress to Date

Identify Plan development participants (future potential co-permittees)

- Multiple meetings held with local jurisdictions, special districts, and other local agencies
- Letters sent to local Native American Tribes inviting participation

Confirm geographic scope of HCP/NCCP

- Proposed scope is county-wide with likely exclusion of coastal zone and Baylands

Goals: Progress to Date (Cont.)

Execute Planning Agreement with Plan development partners and CDFW

- Draft of Planning Agreement in negotiation, public draft anticipated by end of 2024

Initiate public engagement process

- Draft Community Engagement Plan in review
- Dedicated project website developed
- Public workshops and community engagement survey
- Convene a public advisory group: anticipated Spring 2025

Goals: Progress to Date (Cont.)

Begin technical analyses

- Feasibility assessment for required conservation strategy for California tiger salamander underway
- Draft list of proposed covered species developed
- Draft list of covered activities identified
- Still to come:
 - Initial assessment of effects of covered activities
 - Identification of high-level biological goals for HCP/NCCP
 - Development of framework for HCP/NCCP conservation strategy

Goals: Progress to Date (Cont.)

Convene Science Advisors Panel

- Planning Agreement must be executed
- Initial technical analyses must be completed
- Anticipated timing for panel workshop: mid-2025

Secure funding for next phase of Plan development

- Notice of funding for next round of Section 6 Planning Assistance grants expected late fall 2024

Menti Poll Q2 – What would you like to see prioritized in the HCP/NCCCP?

Go to

www.menti.com

Enter the code

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Or use QR code



Questions and Discussion

Public Engagement for the Sonoma County HCP/NCCP



Public Advisory Committee Purpose & Structure

- The PAC's purpose is to serve as a sounding board with the specific charge to review, consider, and comment on Sonoma County HCP/NCCP components
- Membership of diverse interests initially identified by Conservation Sonoma participants
- A forum to discuss and inform development of the Sonoma County HCP/NCCP
- All PAC meetings will be open to the public to attend and provide comment
- Interest-based, consensus-seeking approach
- Anticipated to meet no more than quarterly

Public Advisory Committee Responsibilities

Review working draft materials prepared during the planning process on covered activities, biological resources, conservation strategies, costs to implement the Sonoma County HCP/NCCP, and funding strategies.

Offer perspectives and communicate interests while seeking to understand the issues presented and the perspectives and interests of other PAC members.

Inform, educate, and involve their constituencies on a regular basis, including providing notification of upcoming meetings and information on how to attend such meetings.

Work cooperatively with other PAC members.

Commit to attending PAC meetings on a regular basis.

PAC members expected to serve for a minimum term of 2 years and encouraged to serve for the duration of Sonoma County HCP/NCCP development which is currently anticipated to be a 4-5-year process.

Public Engagement Activities & Next Steps

- Currently soliciting interest for participation in PAC
- Planning for community engagement survey
- For those interested in participating in the PAC, contact ConservationSonoma@sonoma-county.org



Questions and Discussion

Next Steps and Wrap Up

- Meeting evaluation and comment form
 - ✓ (Google form in Zoom Chat)
- Learn more: <https://permitsonoma.org/conservationsonoma>
- Subscribe to mailing list
 - ✓ (bottom of website homepage)
- Social media updates: Permit Sonoma
- General questions or additional information: contact ConservationSonoma@sonoma-county.org



Draft List of Proposed Covered Species

Fish

Chinook salmon – CA coastal ESU

Coho salmon – central CA coast ESU

Steelhead – central CA coast DPS

Amphibians

CA tiger salamander – Sonoma County DPS

Foothill yellow-legged frog – North Coast DPS

California red-legged frog

Reptiles

Northwestern pond turtle

Invertebrates

Western bumble bee

Monarch butterfly

California freshwater shrimp

Mammals

Pallid bat

Salt-marsh harvest mouse

American badger

Birds

Western burrowing owl

Tricolored blackbird

Marbled murrelet

Northern spotted owl

Plants

Sonoma sunshine

Burke's goldfields

Sebastopol meadowfoam

Many-flowered navarretia

Two-fork clover