



Frequently Asked Questions

SAN BENITO COUNTY CONSERVATION PLAN

The San Benito County Resource Management Agency has initiated the process of planning and developing a county-wide habitat conservation plan (HCP) and natural community conservation plan (NCCP) called the **San Benito County Conservation Plan (SBCCP)**. Below are questions and answers about the SBCCP as well as general HCPs and NCCPs.¹

HCP/NCCP General FAQs

HCPs and NCCPs are often combined into a single document that addresses the regulatory requirements of the federal Endangered Species Act (ESA) and the California state Natural Community Conservation Planning Act (NCCP Act). The combined document is referred to as an HCP/NCCP.

What is a Habitat Conservation Plan and Incidental Take Permit?

An HCP is required as part of the application for a Section 10(a)(1)(B) incidental take permit (ITP) under the ESA. The U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS), or both,

may each issue an ITP depending on the species covered by the HCP. San Benito County (County) is currently not anticipating covering any species regulated by NMFS, and this agency is not referenced in subsequent FAQs.

An ITP is required to comply with the ESA when non-federal activities that are otherwise lawful are reasonably certain to result in incidental take of threatened or endangered species (see next page for more information on incidental take). The purpose of the ITP is to authorize the incidental take of a listed species, not to authorize the activities that result in take. The HCP provides the proposed terms and conditions of the ITP such as the activities and species proposed for coverage under the ITP.

¹ HCP general information is adapted from the USFWS and NMFS's 2016 *Habitat Conservation Planning Handbook* and the USFWS web page, *Habitat Conservation Plans* (<https://www.fws.gov/service/habitat-conservation-plans>). NCCP general information is adapted from CDFW guidance documents that can be found on the CDFW web page, *Natural Community Conservation Planning* (<https://wildlife.ca.gov/Conservation/Planning/NCCP>).

What is a Natural Community Conservation Plan?

An NCCP is the California state counterpart to the federal HCP. It provides a means for complying with the NCCP Act and securing incidental take authorization under California Fish & Game Code Section 2835. A primary objective of an NCCP is to conserve natural communities at the ecosystem scale while accommodating compatible land uses. To be approved by the California Department of Fish and Wildlife (CDFW), an NCCP must provide for the conservation of species and protection and management of natural communities in perpetuity within the area covered by permits.

NCCPs are broader than HCPs because the NCCP Act requires that conservation measures improve the overall condition of a species, whereas an HCP typically only requires avoidance of a net adverse impact on a species. And while an HCP can be applied at a project-by-project or regional scale, an NCCP must be applied at the regional scale to promote the long-term recovery of species, protection of habitat and natural communities, and diversity of species at the landscape scale. Thus, the NCCP requirements go “above and beyond” the federal or state mitigation requirements.

Who needs an ITP?

Per April 26, 2018, USFWS internal guidance, it is up to the applicant to determine if they want to apply for an ITP as the USFWS does not require they apply for one. While seeking an ITP is a voluntary action by an applicant, unauthorized take of an ESA-listed species is a violation of the ESA. An ITP should be sought if the take is “reasonably certain” to occur when considering both the direct and indirect impacts of the activities on a listed species.

What is the process for getting an ITP and take authorization under an HCP/NCCP?

Undertaking development of an HCP or NCCP is a voluntary action initiated by the applicant (in this case, the County of San Benito). While USFWS and CDFW personnel provide detailed guidance and technical assistance throughout the process—and must ultimately approve the HCP/NCCP—the development of an HCP/NCCP is driven by the applicant.

The NCCP Act requires a Planning Agreement between CDFW and the applicant, which is a basic and preliminary outline of the conservation planning effort, including processes for public participation, coordination with federal agencies regarding ESA requirements, and independent scientific input and analysis to assist with development of a scientifically based plan. CDFW requires completion of the Planning Agreement as one of the first steps in undertaking NCCP development.

USFWS oversees development of a draft National Environmental Policy Act (NEPA) analysis. The issuance of a permit under the NCCP Act, as well as the adoption of the HCP/NCCP by a local or state jurisdiction permittee, requires compliance with the California Environmental Quality Act (CEQA). A draft CEQA document is typically produced concurrent with completion of the draft HCP/NCCP.

Once the regulatory agencies review and approve the draft HCP/NCCP, the draft HCP/NCCP and its CEQA and NEPA environmental compliance documents are released for public review and comment. The applicant is responsible for responding to comments on the CEQA document and the lead federal agency (USFWS for the SBCCP) is responsible for responding to comments on the NEPA document. If the HCP/NCCP requires revisions based on the public review process, such revisions are made to the HCP/NCCP and to the CEQA and NEPA documents. A final HCP/NCCP and CEQA/NEPA document(s) are prepared.

The final step is undertaken by the regulatory agencies during which each agency issuing a permit prepares a findings document to confirm all permit requirements are met. USFWS also prepares the ITP and writes a biological opinion under Section 7 of the ESA.

Why develop a joint HCP/NCCP?

Local agencies often choose to prepare a joint HCP/NCCP because the requirements of both documents are similar and because coverage is desired for both federally and state-listed species.

What is take?

Take of any threatened or endangered species is defined by the ESA as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined by USFWS (50 Code of Federal Regulations [CFR] 17.3) to include significant habitat modification or degradation where it actually kills or injures a listed species through impairment of essential behavior (e.g., nesting or reproduction).

Take of any threatened or endangered species is defined by the California Endangered Species Act (CESA) as to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. The CESA definition does not include harm, injury, or harassment (Fish and Game Code Section 86).

What are covered activities?

Covered activities are those activities for which take authorization will be provided by USFWS and CDFW for the species addressed in the HCP/NCCP (called covered species).

What is a threatened, endangered, or candidate species?

Under both state and federal law, species may be listed as threatened or endangered (collectively called listed species). Such species are designated under the federal ESA and its implementing regulations at 50 CFR 17.22 (endangered species) and 17.32 (threatened species).

Endangered species means any species that is in danger of extinction throughout all or a significant portion of its range. Threatened species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Candidate species are those which USFWS has sufficient information on their biological status and threats to propose listing, but for which the development of a proposed listing regulation is precluded by other higher priority listing activities. Candidates receive no protection under the ESA.

Under CESA, endangered species are native species or subspecies of bird, mammal, fish, amphibian, reptile, or plant which are in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease (Fish and Game Code Section 2062). Threatened species are native species or subspecies of bird, mammal, fish, amphibian, reptile, or plant that, although not presently threatened with extinction, are likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts (Fish and Game Code Section 2067). Candidate species are native species or subspecies of bird, mammal, fish, amphibian, reptile, or plant that the California Fish and Game Commission has formally noticed as being under review by CDFW for listing. Candidates are given full CESA protection (Fish and Game Code 2068).

What is a covered species?

Covered species are those species for which incidental take authorization is provided by an HCP/NCCP and associated ITP. Covered species may include listed species, as well as candidate, proposed, and other species not listed under the ESA or CESA. Non-listed species are typically covered by an HCP/NCCP if there is a reasonable belief that the species will become listed during the permit term of the conservation plan. If this were to occur, no additional federal or state permitting for the newly listed species would be required.

Are take permits needed for listed plants?

There are no federal prohibitions under the ESA for the take of listed plants on non-federal lands, unless taking of those plants is in violation of state law. However, before USFWS issues a permit for take of animals, USFWS must evaluate the effects of the permit on listed plants

because Section 7 of the ESA requires that issuance of an HCP permit must not jeopardize any listed species, including plants. In addition, an NCCP provides for the protection of plants and their habitats in the same way it does for animals. Therefore, listed plants that are likely to be affected by the action receiving take coverage under an HCP/NCCP are included as a covered species.

What is species mitigation?

Mitigation reduces or ameliorates potential adverse effects of a proposed activity on covered species. Mitigation addresses specific conservation needs of the covered species, are feasible, and enforceable. Mitigation measures may take many forms, such as preservation of existing habitat, enhancement or restoration of degraded or a former habitat, creation of new habitats, establishment of buffer areas around existing habitats, and modifications of land use or water management practices. Mitigation may also include purchasing habitat credit in a mitigation bank, such as a preserve owned and managed by a conservancy group.

For HCPs, applicants must develop a conservation strategy that includes both minimization and mitigation in a manner that ideally fully offsets the impacts of the taking. USFWS uses the phrase “fully offset” to mean completely mitigating any impacts expected to remain after avoidance and minimization measures are applied. To fully offset the impacts of the taking, HCPs generally include conservation measures that fully replace the biological values that would be lost from the covered activities. Fully offset also means the mitigation is commensurate (i.e., equal) with the impacts of taking.

The NCCP Act requires that conservation measures contribute to the recovery of covered species in part by protecting and maintaining habitat areas that are large enough to support sustainable populations of covered species. The NCCP Act also includes a requirement to maintain the proportionality between take and mitigation to ensure that conservation is achieved at the same or better rate than the loss of habitat.

What is the legal commitment of an HCP/NCCP?

The elements of an HCP/NCCP are made binding through acceptance of the ITPs by a permittee. While the ITPs have expiration dates, the mitigation identified in the HCP is in perpetuity (because permanent impacts on species are also in perpetuity). Violation of the terms of an ITP could result in illegal take under Section 9 of the ESA and/or under the NCCP Act.

What other laws besides the ESA, CESA, and NCCP Act are involved?

In issuing an ITP, USFWS must comply with NEPA and all other applicable statutory and regulatory requirements, including the National

Historic Preservation Act. USFWS is the lead agency under NEPA for an HCP. Similarly, in issuing an NCCP Act permit, CDFW must comply with CEQA. The lead agency for the CEQA document for an HCP/NCCP is often the HCP/NCCP applicant.

Because of the critical role that water plays in many listed species' life histories, impacts on species habitat often overlap with impacts on regulated aquatic resources. Covered activities that require work in waterbodies (e.g., rivers, wetlands) typically trigger compliance with laws regulating discharge, fill, and general disturbances of aquatic resources. These laws include, but are not limited to, the federal Clean Water Act, California Porter-Cologne Water Quality Control Act, and California Fish and Game Code Section 1602 (Lake and Streambed Alteration Agreement).

What is the process for regulatory tribal consultation?

Native American representatives include individuals representing federally and non-federally recognized Native American tribes whose traditional territory encompasses or intersects with the SBCCP area. Native American tribes must be consulted during the environmental review process under both federal and state regulations and may have cultural, natural, and traditional resources or assets that could be impacted by the outcome of the SBCCP. Therefore, buy-in from these stakeholders is often needed to implement conservation goals and objectives.

On the federal side, Section 106 of the National Historic Preservation Act both requires tribal consultation and largely drives the consultation process when a federal agency project may affect historic properties that are either located on Native American tribal lands, or when any Native American tribe attaches religious or cultural significance to the historic property. In addition, the regulations implementing NEPA require tribal consultation and involvement during the NEPA process. One requirement is to preserve important historic, cultural, and natural aspects of our national heritage, and the USFWS has a responsibility to engage in meaningful consultation with tribes with respect to cultural resources-related laws and executive orders, such as Executive Order 13175. It is the goal of the USFWS to include federally recognized tribes in their decision-making process, as specified in their Tribal Consultation Handbook. Furthermore, tribes are sovereign governments and thus more than just a member of the public, which gives them a unique status that entitles them to a government-to-government relationship with the US government.

Does the public get to comment on the HCP/NCCP?

Public comments must be considered in the permit decision. For the HCP, there will be at least one formal public comment period on the application for an ITP. Additionally, NEPA requires public comment on

certain types of NEPA documents, and USFWS runs these two comment periods concurrently. For the NCCP, the public has a chance to comment on the Planning Agreement after it has been signed. The NCCP Act also includes extensive requirements for public participation during plan development.

SBCCP-Specific FAQs

The SBCCP is in the early stages of development. These FAQs will be updated periodically with new information as the SBCCP is being developed.

What is the SBCCP?

The SBCCP is both an HCP and an NCCP. This planning document:

- Helps private and public entities plan and conduct projects and activities in ways that lessen impacts on natural resources, including specific threatened and endangered species
- Identifies regional lands—called reserves—to be preserved and/or restored to benefit those species
- Describes how reserves will be managed and monitored to ensure that they benefit those species

In providing a long-term, coordinated program for habitat restoration and conservation, the SBCCP aims to enhance the viability of threatened and endangered species throughout the County of San Benito while allowing for compatible economic growth.

Who is leading SBCCP development?

The County of San Benito (County) is the HCP/NCCP applicant and is leading the development of the SBCCP.

The County will work closely with the two permitting agencies: USFWS and CDFW, collectively referred to as the Wildlife Agencies, to ensure the County develops an HCP/NCCP that the Wildlife Agencies can permit. To support this close coordination, the County has formed a Planning Team comprised of representatives from the Wildlife Agencies and the San Benito County Resource Management Agency. This core planning team will oversee and guide SBCCP development.

Why is the SBCCP being developed?

The County is committed to protecting and preserving its valuable natural resources, including threatened and endangered species and the habitats that support them, while also supporting the County's agricultural economy and future growth. Toward this end and as recommended in its General Plan, the County has initiated development of a combined HCP/NCCP called the SBCCP.

The overall objectives of the SBCCP are to develop and implement a regional approach to habitat conservation within the County; partner with landowners, Tribes, conservation organizations, and other stakeholders to protect and enhance habitat for a variety of listed and sensitive species across a network of natural lands and working agricultural lands; provide a programmatic process for the mitigation of impacts to biological resources from development activities within the County; authorize the use of ITPs for development and other projects that potentially affect covered species and their habitat; and provide local control to the County to implement a streamlined endangered species permitting process for covered activities that will be described in the SBCCP.

What are the benefits of the SBCCP?

The SBCCP will ensure the long-term protection of the County's listed and sensitive species and its broader array of native species and habitats while simultaneously supporting the long-term viability of the County's agricultural economy; promoting smart, sensible economic growth and housing development; providing regulatory streamlining; and protecting natural landscapes that help define the character of the County.

The SBCCP will streamline the permitting and mitigation process for landowners wishing to conduct a covered activity that would or could result in take of a covered species. The SBCCP will provide the County local control of the endangered species permitting process. As such, the SBCCP will allow landowners to seek endangered species permitting from the County, which will provide increased certainty of project timelines and associated costs. Without a regional HCP/NCCP in place, local governments, other public agencies, and private entities must individually seek incidental take authorization from state and federal agencies for projects or activities that are likely to affect listed species. This is a lengthy process that can cost considerable time and money.

The SBCCP will also benefit the environment by establishing measures that avoid and minimize impacts on covered species and their habitats and establishing a mitigation program to fully offset any remaining impacts. Instead of evaluating and permitting projects and activities individually, which can result in piecemeal and disjointed conservation efforts, the SBCCP will provide for evaluation of impacts and mitigation requirements comprehensively and at a larger scale. This method is more efficient and effective for regional conservation of at-risk species and their habitats.

By the end of the permit term, the County will create a large, interconnected reserve system that is protected in perpetuity, comprised of

populations of the covered species, their habitats, and the County's diversity of natural communities. Ultimately, creation and management of the reserve system will be funded through mitigation and grants.

What are "No Surprises" assurances?

The SBCCP will provide regulatory assurances to non-federal entities (e.g., state agencies, local governments, special districts, private landowners) under the "No Surprises" regulation. The federal No Surprises regulation provides assurances to ITP holders that, as long as the permittee is properly implementing the HCP and the ITP, no additional commitment of land, water, or financial compensation will be required with respect to covered species, and no restrictions on the use of land, water, or other natural resources will be imposed beyond those specified in the HCP without the consent of the permittee.

How will stakeholders and the public participate in development of the SBCCP?

To ensure broad community participation throughout development of the SBCCP, the County formed and began convening a Public Advisory Committee (PAC) with members representing the County's diverse interests including agriculture, business, conservation advocacy, housing development, landowners, local government, public agencies, recreation, transportation, Tribes, and the community at large. The County intends to utilize the PAC as a forum to discuss and inform development of the SBCCP. The overarching goal of the PAC is to ensure the development of a quality plan that meets San Benito County's biological conservation goals while supporting planned development with a streamlined endangered species permitting process, and that reflects the broadest possible set of community interests and concerns.

The public will be invited to attend, listen, and comment during regularly scheduled PAC meetings. The County maintains an extensive mailing list and regularly contacts interested parties and stakeholders to announce meetings, publication of reports, and other important information about milestones in the development of the SBCCP.

What is the process for engaging with Native American tribes in the early development of the SBCCP?

Native American tribes are important stakeholders in plan development. As stakeholders, the tribes are unique in that their interests and history on the landscape stretches back for many thousands of years. Protecting tribal cultural resources associated with prehistoric and historic village sites and culturally significant landmarks important for cultural, ceremonial, medicinal, and traditional practices is a key component of tribal interests. Equally important, healthy and robust ecosystems are key for tribes' traditional land use and practices.

Coordination and involvement with Native American tribes in the planning of habitat conservation plans is an opportunity to protect traditionally important natural resources and areas, including access to those areas, as well as a chance to integrate considerations for other resources of cultural significance. Native American tribes may also have expert knowledge relating to the goals, objectives, and outcomes of the SBCCP.

The goals of early outreach to Native American tribes during plan development include relationship-building, issue identification and solution building, and data collection. Outreach and coordination with Native American tribes should occur as early as possible before the regulatory NEPA/CEQA process begins to allow for the identification and integration of Native people's concerns, perspectives, and knowledge into the development of the SBCCP where applicable. The process for engaging and connecting with Native American tribes may include discussions of information not appropriate to share with the general public. As a result, some meetings with Native American tribes may be held separately from other public engagement efforts to facilitate the opportunity for an open dialogue with tribes within a framework of confidentiality.

How long will the SBCCP last?

The permit term of the SBCCP will be determined in consultation with the Wildlife Agencies once more of the foundational components (e.g., covered activities, covered species) are known. Most regional HCP/NCCPs in California have a permit term between 30 and 50 years. Factors considered in determining a permit term include the duration of the planned covered activities; whether available information is sufficient to determine effects to covered species over the proposed permit duration; whether a conservation program can be designed to address the anticipated impacts; and the level of certainty that the conservation plan will enhance the habitat and increase the long-term survival of covered species. At the end of a permit term, the permits can often be renewed or extended.

Which lands will be covered by the SBCCP?

The land to be covered by the SBCCP has not been finalized. The County anticipates that the SBCCP will cover the entirety of the unincorporated County, where it has jurisdiction over the proposed covered activities. Areas in the County anticipated to not be covered by the SBCCP include the Cities of Hollister and San Juan Bautista, federally owned lands, and state parks.

What species are covered by the SBCCP?

The ESA and NCCP Act require applicants to list the species for which take authorization is requested; these species are commonly referred to as covered species. Covered species in an HCP/NCCP may include state- or federally listed or non-listed species, including state fully protected species. Non-listed species are often included in an HCP if the applicant thinks the non-listed species may become listed during the permit term.

The covered species list for the SBCCP has not been finalized; however, the current draft list is shown in Table 1 on the following page.

What will it cost to implement the SBCCP?

Costs for implementing an HCP/NCCP are related to administration, implementation of conservation measures (mitigation as well as conservation above and beyond mitigation), management of reserve lands, and monitoring to ensure the HCP/NCCP is being implemented as intended. A significant cost of HCP/NCCP implementation is often related to land acquisition or restoration that may be a required mitigation measure. Because the conservation measures for the SBCCP have not yet been developed, the cost of implementing the HCP/NCCP cannot currently be calculated.

Table 1. Preliminary Proposed San Benito County Conservation Plan Covered Species

Species	Scientific Name	Status ^{a, b}		
		State	RPR	Federal
Invertebrates				
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	--	--	FT
Vernal pool tadpole shrimp	<i>Lepidurus packardii</i>	--	--	FE
Amphibians and Reptiles				
Western spadefoot toad	<i>Spea hammondi</i>	SSC	--	FR
Foothill yellow-legged frog, West/Central Coast clade	<i>Rana boylei</i>	SE	--	PT
California red-legged frog	<i>Rana draytonii</i>	SSC	--	FT
California tiger salamander, Central California distinct population segment	<i>Ambystoma californiense</i>	ST	--	FT
Southwestern pond turtle	<i>Emys marmorata pallida</i>	SSC	--	
Blunt-nosed leopard lizard	<i>Gambelia sila</i>	SE, FP	--	FE
Birds				
California condor	<i>Gymnogyps californianus</i>	SE, FP	--	FE
Swainson's hawk	<i>Buteo swainsoni</i>	ST	--	--
Burrowing owl	<i>Athene cunicularia</i>	SSC	--	--
Least Bell's vireo	<i>Vireo bellii pusillus</i>	SE	--	FE
Tricolored blackbird	<i>Agelaius tricolor</i>	ST	--	--
Mammals				
Giant kangaroo rat	<i>Dipodomys ingens</i>	SE	--	FE
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	ST	--	FE
Plants				
San Joaquin woolly-threads	<i>Monolopia congdonii</i>	--	1B	FE

^a Status Key

Federal		State		California Rare Plant Rank (RPR)	
FE	Federally Listed as Endangered	SE	State-Listed as Endangered	1B	Rare, Threatened, or Endangered in California and Elsewhere
FT	Federally Listed as Threatened	ST	State-Listed as Threatened		
FC	Federal Candidate for listing	SC	State Candidate for listing		
PT	Proposed as Threatened	SSC	Species of Special Concern		
FR	Under Federal review	FP	Fully Protected		



FOR MORE INFORMATION

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SBCCP Website

<https://www.cosb.us/departments/resource-management-agency/planning-and-land-use-division/san-benito-county-conservation-plan-sbccp>