



## Memorandum

<b>To:</b>	SBCCP Public Advisory Committee
<b>From:</b>	Bernadette Clueit Rose Kronberg
<b>CC:</b>	Arielle Goodspeed, County of San Benito SBCCP Planning Team
<b>Date:</b>	March 27, 2023
<b>Re:</b>	<b>San Benito County Conservation Plan Proposed Plan and Permit Area Boundaries</b>

The San Benito County 2035 General Plan provides a vision and guiding principles for the preservation of natural resources of the County of San Benito (County) while accommodating future growth and development. The County has experienced significant growth in the past several years, and that trend is likely to continue. Increases in population, annexation, and development activities will also likely lead to the need for the construction, maintenance, and operation of new public infrastructure such as roads and landfills. Much of this development is currently occurring in sensitive habitats. The proximity of future development activities to the presence of sensitive species and their habitats increases the likelihood of new liabilities under the federal Endangered Species Act (ESA) and California Endangered Species Act (CESA).

To address this potential liability, the County is developing a multi-species and multi-phased Habitat Conservation Plan (HCP)/Natural Community Conservation Plan (NCCP), referred to as the San Benito County Conservation Plan (SBCCP or Plan), compliant with the ESA and the California Natural Community Conservation Planning Act (NCCP Act) of 2002 (as amended) to address and mitigate potential impacts to threatened and endangered species associated with growth and development in the County. The SBCCP will increase regulatory efficiency for acquisition of long-term permits, allowing incidental take of the Plan's covered species pursuant to ESA Section 10 and NCCP Act 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 the plan. 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. An NCCP must contribute to the recovery of listed species or prevent the listing of non-listed species rather than just mitigate the effects of covered activities.

An important milestone in developing an HCP/NCCP is defining the area in which all covered activities and all mitigation will be implemented. ICF is providing this memorandum (memo) to facilitate understanding of the development of geographic boundaries for an HCP and NCCP, and to discuss boundaries specific to the SBCCP. The objectives of this memo are to:

- Discuss different boundary types that are commonly applied in HCP/NCCP development;
- Define the criteria for defining one or more Plan boundary;
- Explain the process for developing the plan area and permit area boundaries; and
- Provide additional information in response to questions received from the Public Advisory Committee on the plan area boundary and preliminary permit area boundary of the SBCCP.

## Plan Boundary Types

The 2016 *Habitat Conservation Planning and Incidental Take Permit Processing Handbook* (HCP Handbook; U.S. Fish and Wildlife Service and National Marine Fisheries Service 2016) defines two types of boundaries that are defined early in HCP development.

**Plan area.** The area comprised of all areas that will be used for any activities described in the HCP, including covered activities and the conservation program. It includes all lands necessary for the HCP to be fully implemented. The plan area must at a minimum include the permit area, but often includes lands outside of the permit area. The plan area must be clearly delineated in the HCP with a map and written description. It may also be called the *HCP area, study area, or planning area*.

**Permit area.** The geographic area where the impacts of the covered activities occur for which incidental take permit coverage is requested. Although there is not a minimum permit area size, the permit area must be within the plan area and under the control of the permittee or holder of a Certificate of Inclusion. The permit area must be clearly delineated with a map and written description in the HCP and the incidental take permit.

The NCCP Act requires a Planning Agreement between CDFW and the applicant (i.e., the County), which provides a binding agreement among the parties to work together to develop the Plan, defines the process and goals for the Plan, and provides an outline for the planning effort. The Planning Agreement establishes processes for public participation, coordination with federal agencies regarding ESA requirements, independent scientific input and analysis to assist with development of a scientifically based plan, and identifies a preliminary list of natural communities, species, and conservation objectives intended to be the initial focus of the Plan. The Planning Agreement also defines the geographic scope of the conservation planning area to be addressed by the Plan.

**NCCP planning area.** In an NCCP, the geographic area to be addressed in the Plan is referred to as the *planning area* and is defined in the Planning Agreement (Fish and Game Code [FGC]

Section 2810[b][2]). The area must be of sufficient size to address the NCCP Act requirement of conservation at the landscape or ecosystem scale. For a joint HCP/NCCP the planning area corresponds to the plan area in the HCP definitions.

Prior to approval by CDFW, a proposed Planning Agreement must be made available for public review and comment for a period of 21 calendar days during which time interested parties may provide comment on any aspect of the Planning Agreement, including the proposed planning area. The draft Planning Agreement for the SBCCP was made available for public comment November 15, 2022 to December 6, 2022.

Other types of Plan boundaries may be defined if they help support development of the Plan in a more clear and transparent manner. For example, in some Plans, it has been necessary to define a portion of the permit area where only a subset of take from covered activities is permitted or where only conservation measures would occur.

## Plan Area and Permit Area Criteria

As noted above, there are no requirements for a minimum or maximum plan area or permit area size for an HCP. A smaller permit area typically results in coverage of fewer species and a shorter planning timeline. However, establishing a larger permit area may make the HCP more attractive to the County and other potential participants because it can provide regulatory streamlining for a wider range of projects and stakeholders. A larger HCP can also be more competitive if grant funding is sought for HCP planning or implementation tasks. When defining the permit area (i.e., the area where the incidental take authorization applies) or a larger plan area boundary (i.e., the geographic area evaluated in the HCP, which may be bigger than the permit area), applicants should consider existing boundaries meaningful to the specifics of the HCP such as political boundaries, land ownership boundaries, physical boundaries, and ecological boundaries (U.S. Fish and Wildlife Service and National Marine Fisheries Service 2016). Political boundaries such as municipal growth lines, county lines, or state lines may be relevant depending on the applicant and the covered activities. It is important to note that the permit area can only include lands where the permittee(s) have land use authority.

If covered activities do not occur on certain lands (e.g., federal or state land), the permit area boundary can exclude those land ownership types, although the plan area may include them if it is helpful to consider these lands for ecological context. For example, existing populations of covered species on adjacent federal lands may provide a source population to repopulate restored habitat constructed as HCP mitigation. Physical boundaries such as major highways, rivers, or watersheds may be useful to define plan areas, particularly when a covered species' range is affected by those boundaries. Other ecological boundaries that should be considered include the ranges of covered species, major natural community or ecosystem boundaries, watersheds, and the potential locations of mitigation sites (Schroder and Zippin 2015). Finally, HCPs often consider landscape- or regional-scale plan areas to maximize the conservation benefit of the HCP. This is particularly the case when the Plan is a joint HCP/NCCP since 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.

At minimum, the permit area for the SBCCP should be large enough to include the following elements.

- The entire footprint and associated areas of direct and indirect effects of the covered activities.
- All potential mitigation sites.

## Process for Defining San Benito County Conservation Plan Area and Permit Area

The first step to identify the plan area (the full geographic area considered by the SBCCP) was to develop a map in Geographic Information System (GIS) showing the various datasets that may be relevant for defining geographic scope. Based on input from the SBCCP Planning Team members, these datasets included:

- California Protected Areas Database (2022)
- County boundaries, zoning maps, land use (San Benito County 2015)

To determine the plan area, we assessed the relationship of the proposed covered activities to other key planning boundaries and planning efforts, as well as areas of potential mitigation. The following section describes the proposed plan area boundary, developed consistent with the criteria described in this memo.

### Proposed Plan Area

The HCP plan area and the NCCP planning area are both defined as the full geographic extent of San Benito County and are hereafter jointly referred to as the SBCCP plan area, or just plan area.

The geographic area to be addressed in the SBCCP covers approximately 890,000 acres, encompassing all of San Benito County, as depicted by the blue line in Figure 1. The plan area is in the Inner Coast Range Mountains of central coastal California, south of San Jose and west of the Central Valley. The plan area is surrounded by Monterey County to the west, Santa Clara and Santa Cruz counties to the north, and Merced and Fresno counties to the east and south. The SBCCP plan area is largely rural with approximately 98 percent unincorporated lands, the majority of which are in cropland, rangeland, forest, or protected open space.

The SBCCP plan area is topographically diverse, encompassing mountains, gently sloping foothills, rich agricultural valleys, and urban areas. Elevations range from 80 feet near Aromas in the northern part of the plan area to 5,241 feet at the top of San Benito Mountain to the south. The majority of the SBCCP plan area lies within the Pajaro River Watershed, which covers approximately 1,300 square miles and is bounded by the Santa Cruz Mountains to the north and Gabilan Range to the south. The Pajaro River's main tributaries are Corralitos, Uvas, Llagas, San Benito, Pacheco, and Santa Ana creeks and the river drains into Monterey Bay.



**Figure 1**  
**San Benito County Conservation Plan**  
**Proposed Plan Area Boundary**



## Proposed Permit Area

Based on initial guidance from the SBCCP Planning Team, the preliminary proposed permit area boundary consists of all unincorporated lands within San Benito County, excluding lands owned or managed by local, state, or federal governments and other protected lands for which the County does not have land use authority. Protected lands that are currently excluded from the proposed permit area are those lands listed in the California Protected Areas Database (CPAD). This database is the authoritative geographic information system (GIS) database of parks and open space in California, and contains records of lands that are owned in fee and protected for open space purposes by public agencies and non-profit organizations. Because these lands are protected for open space, development that could potentially result in take of a listed species is unlikely on these lands and they would most likely only be included in the permit area in the future if they could be incorporated into the conservation strategy as areas of mitigation. It will also be important to consider how additional conservation actions under the Plan can best expand, connect, buffer, or otherwise supplement existing protected areas.

USFWS' ESA compensatory mitigation policy (81 FR 95316) states that “[c]ompensatory mitigation sites may be established by willing parties on private, public, or tribal lands that provide the maximum conservation benefit for the listed, proposed, and at-risk species and other affected resources”. For an HCP, public lands or lands that have been used previously for mitigation are not automatically ineligible for inclusion to provide mitigation under an HCP’s conservation strategy. However, any proposed mitigation on such lands (e.g., creation or enhancement of habitat for an endangered species) needs to provide a measurable addition to the existing conservation value of the land in question for the species that would not have occurred otherwise. An example of this would be the addition of mitigation credits for a new species to an existing conservation bank that was set up for a different species. The standard for an NCCP is similar. Demonstrating a measurable addition to the existing conservation value of these lands can be challenging, particularly when the lands under consideration are public lands. As Plan development progresses, the potential inclusion of currently protected lands will be explored with any willing parties and will be evaluated in light of the needs of the covered species and whether a measurable increase in the conservation value of the lands is attainable.

The preliminary proposed permit area is 769,080.90 acres (Figure 21). The following is a list of lands that are currently not included in the proposed permit area based on the above-described criteria. This list is not comprehensive and is likely to change as Plan development progresses.

- Cities of Hollister and San Juan Bautista
- Pinnacles National Park
- Fremont Peak State Park
- Bureau of Land Management areas
- Bureau of Indian Affairs Trust Land

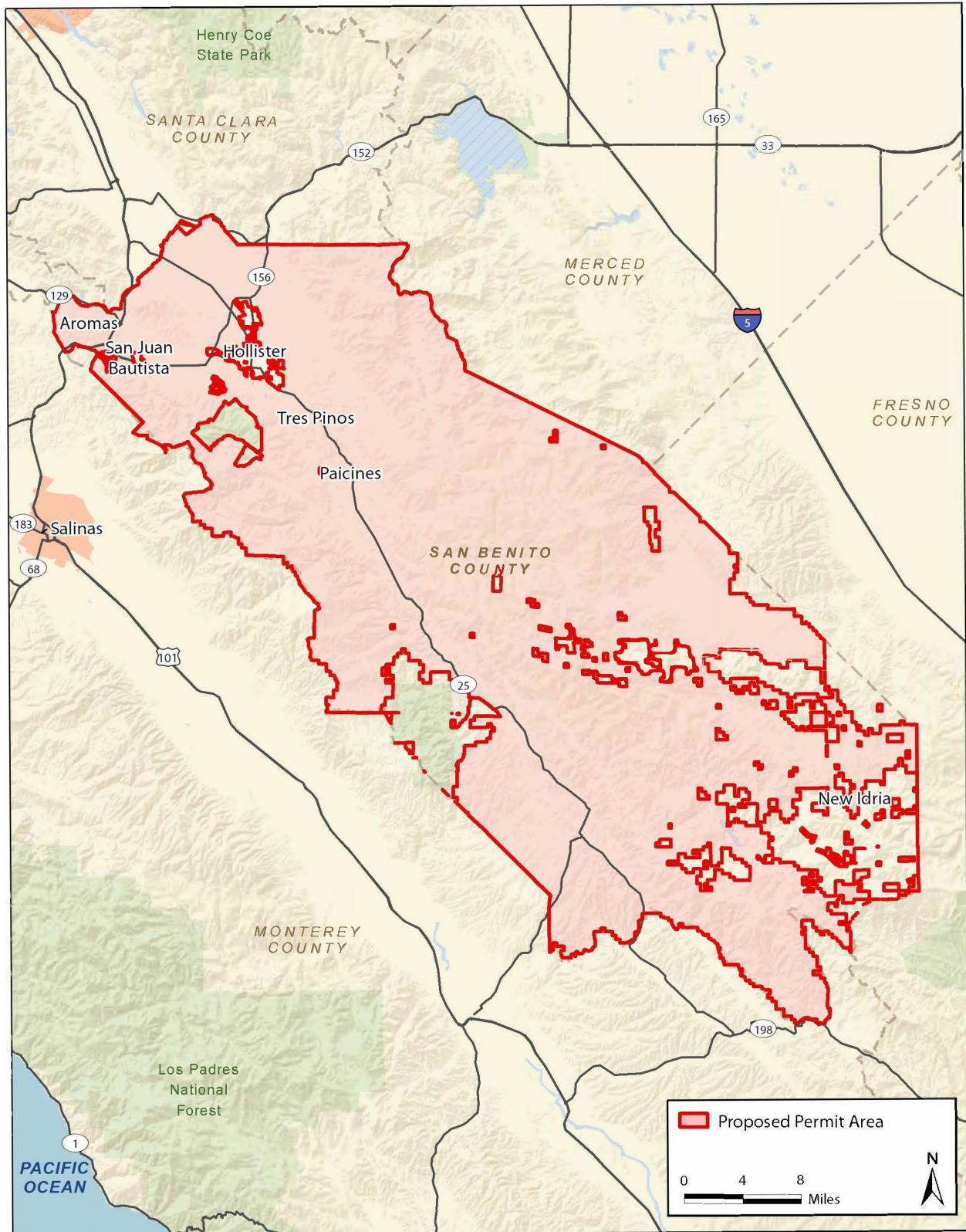
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<sup>1</sup> Note that some smaller excluded areas are not shown in Figure 2 due to map scale.

- California State Lands Commission areas
- Hollister Hills State Vehicular Recreation Area
- San Justo Reservoir
- Pajaro River Mitigation Bank
- Gonzalez Farm
- Rancho Larios Open Space Preserve
- Rocks Ranch

## Next Steps

It is important to note that as the SBCCP is developed, it is likely that the preliminary permit area will be adjusted to meet currently unknown constraints, newly described covered activities or covered activity locations, mitigation needs, or conservation opportunities. Changes may also be necessary to account for the addition or subtraction of covered species. Determining the exact location of the permit area boundary is often an iterative process that proceeds alongside the determination of these other components of the Plan. While the plan area may also change, it should be noted that once the Planning Agreement has been executed, the NCCP planning area may only be changed via an amendment to that agreement.



**Figure 2**  
**San Benito County Conservation Plan**  
**Proposed Permit Area**





## References

- California Protected Areas Database. 2021. Available: <https://www.calands.org/cpad/>. Accessed: March 18, 2022.
- County of San Benito. 2015. San Benito County 2035 General Plan. Adopted July 21, 2015.
- Schroder, K. C. and D. Zippin. 2015. Complex Permits under Section 10 of the Endangered Species Act. Endangered Species Act: Current and Emerging Issues Affecting Resource Development, Paper 4, Rocky Mountain Mineral Law Foundation Conference Proceedings.
- U.S. Fish and Wildlife Service and National Marine Fisheries Service. 2016. Habitat Conservation Planning and Incidental Take Permit Processing Handbook. December. Washington, D.C.