

## **State Parks Responses to Questions Raised at the April 19, 2005 HCP Workshop**

On April 19, 2005, the Oceano Dunes SVRA and San Luis Obispo Coastal Divisions of State Parks sponsored the first of two informational workshops on the Habitat Conservation Plan currently under development. At this workshop, a number of questions and points needing clarification were raised by those in attendance, speaking individually, and through the five focus groups that were assembled during the workshop.

The questions and comments generally focused on five categories of issues that were important to workshop participants: The questions centered on issues related to:

- Depth and coverage of the HCP itself;
- The relationship of the HCP to other Planning Documents and Planning Processes;
- Adaptive Management and Mitigation Strategies;
- HCP implications on current users and uses and about balancing uses with conservation measures; and,
- Clarification of terms and process

The responses to each of the questions within these five clusters of concern are provided below with the intent of serving as a starting point for the second, follow-up workshop. Taken together with the HCP Summary Information handout provided prior to the first workshop, they are intended to form the basis for the discussion and information exchange that takes place at the second Public Workshop scheduled for June 8, 2005, in San Luis Obispo. Workshop participants are urged to review this information prior to attending the event.

### **Questions about the *Depth and Coverage* of the HCP itself**

1. Why are we doing an HCP here and now? What role does the lawsuit play in developing the HCP? What other HCP efforts are being undertaken by other State Parks throughout the state?

**Response:** The Central Coast is blessed with a wide variety of habitats and species, many of which are threatened and endangered. In addition, California State Parks provides for many varieties of recreational opportunities in parks they manage. Trying to find the balance between providing recreation and protecting threatened and endangered species is important, and State Parks feels that a HCP is the most effective method to help achieve this balance. Because take of federally and/or state listed species is a genuine concern at the parks, the HCP is needed to obtain incidental take authorization for ongoing activities occurring at the covered park units. The list of species is designed to cover the species most at risk to be affected by public recreation and resource management activities. The USFWS specifically recommended that State Parks use the HCP process to obtain incidental take authorization. This recommendation was supported by the California Department of Fish and Game. Without such take authorization, State Parks is at risk of violations of the federal and state Endangered Species Acts (FESA and CESA, respectively) from allowing public access in areas that support listed species. In addition, the California Coastal Commission has encouraged a multi-species approach to habitat protection and management in the area. Although the goals may be similar, the HCP process was already underway before the lawsuit was filed.

California State Parks has been involved in the San Bruno Mountain Area HCP, 1984 (lead by

San Mateo County, but included some State Park lands) and the Western Riverside County Multi-Species Habitat Conservation Plan, 2003 (including Lake Perris SRA, Chino Hills SP and Anza-Borrego Desert SP). This HCP and a HCP for Mount Diablo State Park are the only two in progress at this time.

2. Why hasn't State Parks prepared a separate HCP for each of the individual park units?

**Response:** There are two primary reasons: 1) the wildlife agencies encourage regional scale programs that have similar resource issues over small, single parcel HCPs, particularly when limited landowner participants are involved, and 2) HCPs are expensive to formulate and require a lot of staff, consultant, and wildlife agency involvement. It makes sense economically to combine the resources and efforts to a larger area, particularly when the resource conflicts are the same. In addition, the multi-park, multi-species HCP provides for a more consistent application of the conservation strategy. Overall management, mitigation, and monitoring can be developed that benefits an entire population where it occurs within these coastal units. The HCP will make park unit-by-park unit assessments of impacts and, where appropriate, prescribe park-specific management and mitigation.

3. What kinds of data will be collected to determine harm to listed species relative to specific uses?

**Response:** The HCP contains background data on species' ecological needs and presence within each park unit, the types of activities that take place in the units, and how such existing uses might affect the covered species. Such data was gathered through literature review of existing documents and maps (park general plans, species recovery plans, CNDDDB, etc), and interviews with park personnel, in particular Park Ecologists. Scientific experts are being used to collect information on some of the covered species. For some species, such as the snowy plover, ongoing management and monitoring programs have generated a lot of information that is used in the HCP to determine potential harm to species and, more importantly, measures to be used to protect species from potential harm (e.g., use of fences, signs, closures, stepped up enforcement during certain times of the year).

4. Why isn't Pismo State Beach covered by the HCP?

**Response:** The Pismo Dunes Natural Preserve, which is contained within Pismo State Beach, is included in the HCP area. If State Parks determines that listed species occur within other portions of Pismo State Beach (such as tidewater goby, steelhead, or California red-legged frog in Pismo Creek) and where park related activities could result in take of those species, then those areas would be considered for coverage under the HCP. For example, State Parks fisheries biologists are currently reviewing the status of steelhead and tidewater goby in Pismo Creek.

5. Activities not covered – what about herbicides?

**Response:** The USFWS does not encourage the inclusion of herbicide and other pesticide use under a Section 10(a)(1)(B) permit as they have very limited information on impacts to species. If the USFWS determines that enough information is available for a thorough analysis, then pesticides can be included. It is most likely that herbicides in snail habitat will continue to be used under the direction of the Ventura Field Office of USFWS on a case-by-case basis and under the Recovery Permit (10 (a)(1)(A)) that has been issued to the Resource Ecologist at the San Luis Obispo Coast District of State Parks. A Recovery Permit is issued for activities that aid the recovery of a species, such as habitat restoration.

6. Will conflict between Arroyo Grande Creek vehicle crossing and proposed alternative entrances to OHV areas be discussed?

**Response:** State Parks fisheries biologists are currently reviewing fisheries issues at Arroyo Grande Creek, and State Parks is consulting with NOAA Fisheries regarding the crossing.

Should the potential for take be determined, then the creek crossing would be covered in the HCP and also in the EIS/EIR. Currently an alternative access study contract has been initiated and will start as soon as approved by the Department of General Services (DGS). Depending on the outcome of the study, biological evaluations, and discussions with NOAA Fisheries, the AG Creek alternative entrances may be covered in the HCP and also in the EIR/EIS.

7. Are all new projects covered by the HCP?

**Response:** Through the process of formulating the HCP, State Parks was asked to provide a list of all foreseeable projects that could occur in the HCP area. In addition, Park general plans were reviewed to determine the extent of activities to be covered in the HCP. Any new project and/or other activity not specifically identified in the HCP as a “covered activity” that could affect a covered species or its habitat would not be covered by the take permit. The “implementation agreement” component of the HCP will, however, address the process of adding projects to the permit (through either minor or major amendments).

8. How will non-covered species such as Kangaroo Rat be dealt with in managing for covered species?

**Response:** The primary purpose of an HCP is to allow non-federal entities to obtain take authorization for certain listed or special status species that are likely to be affected by otherwise lawful activities within the HCP area. Species not at risk to take for whatever reason do not need to be covered by the incidental take permit. The HCP will discuss other species that are listed but not proposed for coverage along with an explanation for why those species are not covered. Generally, if a species is not known to occur within any of the area covered by the HCP or is not likely to be taken by otherwise lawful activities, then the species is not proposed for HCP coverage. In the case of the Morro Bay kangaroo rat, that species has not been documented in the HCP area for several years despite numerous surveys and is no longer considered to be present in the HCP area. As a result, the Morro Bay kangaroo rat is not included as a covered species. If State Parks receives new information indicating that the Morro Bay kangaroo rat is extant within any of the covered units, then State Parks would review the need for take coverage. Note that even if the Morro Bay kangaroo rat was rediscovered, incidental take would probably not be authorized until such time as it was determined how and why such take would not result in jeopardy of the species in the wild. Since activities to be conducted for the covered species are expected to protect and improve overall habitat conditions within park units (though exotic pest plant and animal control, reduction of trespassing, restoration of resource damaged areas, etc.), the species not covered under the HCP will benefit in the long-term.

9. Why are elephant seals not covered, given the possibility of movement to area?

**Response:** The HCP addresses listed species known to occur within the covered units and that are subject to potential take from otherwise lawful activities. Should elephant seals be found within any of the covered units, then State Parks would review the need for take coverage. If necessary, the HCP could be amended to add additional species.

10. Where do conservation easements fit in?

**Response:** One goal for the HCP is to create a conservation program that is self-mitigating within the boundaries of the HCP area. That is, all mitigation required to offset the take of the covered species would occur within the boundaries of the HCP area and the conservation activities to be carried out will be funded solely by State Parks. Conservation easements are typically used to acquire rights to development while still allowing private ownership of the underlying land, and are most often applied to privately owned land. Under this approach, since State Parks owns all of the land within the HCP area in fee, no conservation easements would be necessary. The exception to this is the Estero Bluffs property, which has a conservation easement owned by the Cayucos Land Conservancy. As a result, actions proposed by this HCP as it relates

to Estero Bluffs must also have the concurrence of the Cayucos Land Conservancy before these actions can be implemented.

**Questions about the *relationship of the HCP to other Planning Documents and Planning Processes*:**

1. How does an HCP (which has to be responsive to critical habitat issues) integrate with State Park's land use and park planning process, specifically, the General Plans for each of the Park units? Why hasn't State Parks chosen to update its General Plans instead of preparing an HCP?

**Response:** An HCP is a management plan that integrates with a park general plan, providing the park general plan is current. The HCP will assist State Parks in meeting some of the goals and objectives set forth in the relevant general plans - in particular, those related to the management and monitoring of special status species and natural habitats. The HCP process is a means of getting conservation measures on the ground more quickly, while being responsive to the most current land use issues and adaptive management processes. The HCP will use the existing general plans to guide the extent of covered activities in the HCP. Since State Parks is not proposing to cover any activity not included in a general plan, there is no compelling need to update the general plans as part of the HCP process.

State Parks is in the process of updating outdated park general plans on a statewide level. The general planning processes can take years and it will not necessarily net the same specific result that a HCP provides. The updates are being done on a priority level with some of the most outdated being addressed first. Updates to the general plans for the SLO Coast units have not yet commenced, and, for the most part, these plans still reflect current conditions and needs. When the time comes for an update, the new general plans will incorporate the more detailed principles of the HCP. Also note that a general plan does not support an incidental take permit as does an HCP, so parks could not use a general plan to deal with endangered species issues instead of an HCP.

2. How does an HCP integrate with parallel efforts by the State of California (i.e., the Calif. ESA, and Natural Communities Conservation Plans)?

**Response:** State Parks is seeking take coverage under both the state and federal Endangered Species Acts. The HCP must thus be developed to meet the requirements of both Acts. Specific to the state ESA, State Parks is seeking a 2081(b) (Incidental Take Permit), and not a permit under the Natural Community Conservation Planning Act, which involves a broader based planning effort. The HCP is also likely to be reviewed by the California Coastal Commission (CCC) for consistency with the Coastal Act. To that end, State Parks has been consulting with the CCC during development of the HCP.

3. How will the yet-to-be-determined classification of the Estero Bluffs impact or be impacted by the HCP?

**Response:** The HCP will identify specific habitat protection measures for the Estero Bluffs Unit as well as projected goals for sustaining covered species presence there, in particular snowy plovers. The HCP will assume that public access could be limited at certain times of the year to protect the resources and that State Parks will implement and enforce the conditions set forth in the HCP and take permit. Classification determinations are made by the State Park and Recreation Commission. An interim use plan is in place to manage the property as though it were a State Reserve. The HCP will help guide the appropriate management practices for the resources and recreation contemplated that will lead to a classification by the State Park and Recreation Commission.

4. Does the HCP need to undergo review and approval by the State Park and Recreation Commission?

**Response:** They have no review or approval role in the HCP process.

### Questions about *Adaptive Management and Mitigation Strategies*

1. Who decides issues regarding implementing “adaptive management”? How are changes made? Where does data come from to support proposed changes? What are the sources of data on success/failure of management practices, and who monitors?

**Response:** Adaptive Management is a process by which the conservation program for the HCP may be adjusted over time to: 1) fill data gaps, 2) to address uncertainties in the conservation of a species that is covered by the HCP, or 3) incorporate new information on species, monitoring protocols, or management techniques. Information could come from continuing research on the species, either within the HCP area or elsewhere, and from information gathered on the effectiveness of incidental take minimization and mitigation measures within the HCP area or elsewhere. Unlike prescriptive approaches that rely on rigid standards and guidelines, adaptive management acknowledges the various sources of uncertainty inherent in resource stewardship, takes an experimental approach, and is self-correcting if the management actions are failing to achieve the conservation goals.

The Adaptive Management program for the HCP is currently under development. The HCP will call for a stepped-up program of monitoring to provide the information necessary to better understand existing populations of species addressed by the HCP and ensure that the management program is effectively addressing the needs of those species. Data from other studies that have just recently been completed, such a recent study on populations of wintering shorebirds, will also be incorporated into the HCP. It is anticipated that State Parks will prepare annual monitoring reports for submittal to the Wildlife Agencies for their review. These reports, as well as other data that may become available, would form the basis for analysis and discussion of the need to adjust the conservation program. State Parks would confer with the Wildlife Agencies on any changes to the program. Changes to the program would be made with the concurrence and approval of the Wildlife Agencies.

2. Funds for contingencies - How much? What source? How certain does the funding source need to be? What happens if there is no money?

**Response:** The HCP must:

- Specify the measures State Parks will adopt to ensure adequate funding;
- Provide detailed budget information, including one-time, annual, and total costs; and
- Include a contingency amount for changed circumstances.

The State of California Operating funds for non-vehicular recreation administered state park units, such as Montaña de Oro State Park, come out of the State’s General Fund. State Vehicular Recreation Areas, such as ODSVRA, are funded primarily from the State-administered Off-Highway Motor Vehicle Trust Fund. The State of California operates on a July 1 through June 30 fiscal year and only authorizes budgets on an annual basis. Accordingly, specific monetary commitments are subject to approval through the annual process as defined by law and policy. Rather than no money being available for HCP implementation, a more likely scenario that must be addressed in the HCP is not enough money being available one year to fund all conservation activities. The HCP will thus prioritize activities to address potential funding shortfalls. Money allocated for contingencies could be based on a percentage of the overall annual budget or be based on costs in previous years. State Parks is committed to the success of this HCP and will commit the funds necessary to implement the Plan. The Implementation Agreement will address

specifically what happens if certain funds become unavailable and how CDPR and the wildlife agencies will address possible funding shortfalls. State Parks recognizes that failure to appropriate adequate funding for the HCP each year may result in USFWS revocation of the ITP, or more likely, a restriction on the species that would be covered by the ITP, should the funding shortfalls affect one species in particular (e.g., red-legged frog or shoulderband snail).

3. If the habitat of an endangered species increases in size, will the restricted areas continue to increase?

**Response:** Ideally, the HCP will be able to define the areas being managed so that they do not shift from year to year and provide certainty to the public as to what areas are off limits to certain recreational activities and which are not. Over the life of the HCP, and pursuant to adaptive management, it is possible that closed areas could be shifted. If the goals and objectives of the HCP are being met, however, there is no reason to believe that the closed areas would be expanded.

4. Will seasonal access be allowed or allowable in the HCP?

**Response:** As is done under current management, the HCP will identify areas that will be seasonally closed to protect nesting snowy plovers and terns and the types of measures needed to prevent unauthorized access to the closed areas. For the most part, State Parks will rely on the installation of fences and signs within the parks and will try not to close whole areas to public access. However, if State Parks determines that the public is not complying with the posted regulations (by damaging fences and signs, bringing dogs in unauthorized areas, riding horses off designated trails, etc), then full closure may have to be implemented.

5. What is the mechanism to prioritize protection of listed species over exotics removal?

**Response:** As part of the HCP, species-specific management plans will be prepared that will identify specific resource and monitoring needs of the species in areas where they occur. A management plan will identify whether or not the removal of an exotic species will benefit a species within the management area. Exotic species management will then be prioritized as to the benefits it provides to the species. In some instances, removing exotic species can enhance the habitat of a listed species and would, therefore, be considered a beneficial, high-priority project for habitat management. Where removing exotic species is likely to have a significant negative impact on a listed species, those projects may be rejected outright or placed as a low priority.

6. Cayucos Land Conservancy has the legal right of concurrence on management issues (Estero Bluffs) and specifically a HCP. How will that legal right be accommodated?

**Response:** California State Parks will meet with the Cayucos Land Conservancy during preparation of the draft recommendations to seek concurrence with the proposed activities in the HCP. The easement requires concurrence and State Parks anticipates being able to achieve a program that is within the intent of the easement.

### **Questions about HCP *implications on current users and uses and about balancing uses with conservation measures:***

1. How will the HCP affect current use?

**Response:** The HCP is not going to result in drastic changes in management and uses at the parks. Rather, it is formalizing an ongoing conservation program that has been developing at the parks as a result of statewide mandates to protect certain of the listed species that occur there, and as a result of FESA and CESA. The HCP will actually assure continued public access and recreation through a program that will minimize take of listed species and mitigate for any impacts of such recreational use.

2. How are trail closures going to be decided and implemented?

**Response:** It is hoped that trail closures will be kept to a minimum and implemented only if all other measures have failed to protect the resource. Should the need for a trail closure arise, State Parks staff will work to notify affected user groups of the proposed trail closure well in advance of the closure and post closure notices at the information kiosk and at the trail head. The purpose of the closure will be clearly stated (e.g., nesting taking place on or near trail, resource damage has necessitated rehabilitation, soil erosion problem). It is expected that any trails closed for the above mentioned, or for other reasons, would be temporary.

3. Will the HCP impact the amount of use that we will have?

**Response:** No. It is important to remember that without the HCP, State Parks is obligated by law to avoid *any* take of listed species that occurs within the park units. The HCP will provide State Parks with the opportunity to have limited take so long as the take is being minimized and mitigated.

4. Will all forms of recreation use get equal consideration?

**Response:** Yes, the HCP intends to treat all users equally and sustain the full range of existing recreational uses within the parks.

5. How will the loss of recreational use be mitigated?

**Response:** A loss of recreational use from that which currently exists today is not expected. As stated in 3, above, State Parks can and must restrict certain activities within the parks if a listed species occurs there now (in accordance with the requirements of FESA and CESA). The permit and implementation of the HCP allows State Parks to be more flexible in dealing with ESA conflicts.

6. If there is inadequate funding to support HCP, will users be denied access?

**Response:** State Parks is committed to funding the HCP so that all of the parks stay open and the general level of recreation is sustained.

7. Will the standards for SVRA users be equivalent to those of non-SVRA users?

**Response:** Yes, the HCP intends to treat all users equally and sustain the existing recreational uses within the parks.

8. Will there be ways to mitigate loss of use due to closures at specific locations?

**Response:** As stated above, any new closures will be kept to a minimum and will be implemented only if other resource protection measures have failed. All users groups must assist State Parks with HCP implementation by informing their constituents of the importance of complying with posted regulations and keeping their activities within the areas designated for such use.

9. In that the HCP is a response to federal legislation (i.e., ESA), are there also efforts to purchase additional land to replace access opportunities that are lost due to the HCP?

**Response:** At this time, the HCP does not anticipate the loss of existing recreational opportunities. Therefore, State Parks does not anticipate the need to purchase additional land.

10. If the restricted areas are expanded, will the parks expand with equal quality park property?

**Response:** The goal of this HCP is to define the areas being managed so that they do not shift from year to year and provide certainty to the public as to what areas are off limits to certain recreational activities and which are not. Over the life of the HCP, and pursuant to adaptive management, it is possible that closed areas could be shifted. If the goals and objectives of the

HCP are being met, however, there is no reason to believe that the closed areas would be expanded.

11. How can we be assured that use/access will be balanced between recreation and preservation?

**Response:** The HCP itself will be subject to public review and comment. It is hoped that the HCP will meet the compromise of sustaining existing recreational use, while protecting and managing habitat for the covered species. The public will be able to review the draft HCP to determine the success of this balance for itself and provide comments to State Parks and the Wildlife Agencies.

12. Does HCP consider the degree of impact by each defined use? Are some areas affected more because of “take” in other areas? Is there a balance?

**Response:** The HCP will address take by each use type. Each area will be evaluated for presence of listed species, how take might occur, and how to protect the species in the specific area. In terms of the mitigation, there is an overall goal to increase species presence to defined levels throughout the entire HCP area.

13. Is OHV impact being “pawned off” on Morro Strand? Will HCP address equity?

**Response:** As is the current approach, the OHV impact will largely be addressed at the ODSVRA through seasonal closures, stepped up enforcement during the nesting season, predator control, and other measures. Morro Strand has its own take minimization measures, including seasonal closures and prohibition against dogs on the beach. The HCP will strive to be equitable to all recreational users.

### Questions seeking clarification of *terms and process*

1. What is meant by the term ‘incidental’ as in “incidental take permit”?

**Response:** Incidental take is defined as “that is incidental to, but not the purpose of, otherwise lawful activities.” An example specific to the covered units would be a situation where a lawful beachgoer accidentally steps on a plover egg that is laid in an open area of the beach. Should that same beachgoer jump over a fence and enter a closed area and step on a plover egg, that action would be deliberate take and not incidental to an otherwise lawful activity. The person who jumps the fence could be prosecuted under FESA for a take violation and be fined \$50,000 and be imprisoned for one year.

2. Is the HCP mandated by the U.S. Fish and Wildlife Service? If so, what did State Parks do to trigger the preparation of an HCP?

**Response:** Federally listed species are protected under Section 9 of the ESA, which prohibits take in all its forms. The USFWS cannot mandate an HCP; rather, FESA allows the use of an HCP to obtain an incidental take permit. State Parks decided to prepare an HCP in support of a take permit to sustain public recreation at certain Parks that contain listed species and at which the risk of take is significant.