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# **“Alternatives to Take” under Habitat Conservation Plans**

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Presentation to  
BDCP Steering Committee  
March 11, 2010

# Endangered Species Act Regulatory Requirement

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- HCP must specify: “what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized”
- Permit applicants must specify what alternative actions were considered that would result in less take of listed species than the proposed project
- Must identify the reasons why alternatives with less take were rejected

# Evaluating HCP Alternatives

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- HCP alternatives can be alternate approaches to covered activities or conservation actions – do not need to be full alternatives to the proposed project/action as in an EIR/S
- Compare level of take between alternative action and proposed action
- Provide rationale for rejecting the alternate action
- Practicability of implementation and project purpose can be used to reject alternatives

# Practicability Standard

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- Section 10 standard for permit issuance: “the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking”
- Practicable is not defined in ESA
- Clean Water Act definition of practicable: “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose”

# Relationship with EIR/EIS Alternatives

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- EIR/EIS Alternatives provide “complete packages” to compare to the proposed project and no action
- Alternatives to Take can be at the same level as EIR/EIS alternatives or can be less comprehensive
- Alternatives to Take can be specific actions (rather than full alternatives) that reduce the level of impact for a given species

# Example from Lower Colorado River MSCP

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## ■ Razorback Sucker

- Project causes loss of backwater habitat due to reduced flow in river reaches with new upstream diversions
- Alternative: Do not change point of diversion
- Rejected as not meeting project purpose

## ■ Southwestern Willow Flycatcher

- Project causes loss of riparian habitat where groundwater levels fall
- Alternative: Irrigate lands to maintain riparian habitat
- Rejected based on logistics, cost, and effectiveness considerations of bringing irrigation to so many small sites

# Example: East Contra Costa HCP/NCCP

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- San Joaquin Kit Fox
  - Alternative: Prohibit development on kit fox habitat in the urban development area
  - Rejected as infeasible because inconsistent with project purpose
- California Tiger Salamander
  - Alternative: Prohibit conversion of habitat to irrigated agriculture
  - Rejected because applicants do not control agricultural practices on private lands

# Example: Santa Clara Valley HCP/NCCP

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- South Central & Coastal Steelhead
  - Alternative: Refrain from implementing flood-control and other in-stream capital projects
  - Rejected as infeasible because it would not provide needed flood protection (project purpose) and not consistent with adopted plans
- Bay Checkerspot
  - Alternative: Do not implement actions (grazing, herbicides) for habitat management
  - Rejected: While management actions could result in take, these actions are necessary for the long term maintenance of suitable checkerspot habitat

# Typical Alternatives for HCP/NCCP

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- No Project = No HCP/NCCP (i.e., existing biological opinions)
- No Action = Avoid all take, so no compliance under ESA, CESA, NCCPA necessary
- Alternative that results in less take than the proposed project
- Alternative that results in greater conservation of species than the proposed project