

Regulatory Framework and Protection of Coastal Prairie

Deborah Hillyard
California Department of Fish and Game

June 25, 2009

Various Regulatory Authorities and Decision Makers

- **California Environmental Quality Act**
 - Local Lead agency makes land use decisions
 - State agency can be Trustee or Responsible agency
- **California General Plan Act**
 - Required of every County and City in California
 - Local lead agency has authority for implementing
 - Seven required elements (Land Use, Open Space, Conservation, Housing, Circulation, Noise & Safety) plus optional elements

Various Regulatory Authorities and Decision Makers

- **California Endangered Species Act**
 - CDFG has authority for implementing
 - Applies to species listed under CESA
- **Natural Communities Conservation Act**
 - CDFG has authority for implementing
 - Ecosystem based, applies to species and habitats
- **Federal Endangered Species Act**
 - USFWS has authority for implementing

Various Regulatory Authorities and Decision Makers

- **California Coastal Act**
 - CCC has authority for implementing
 - Authority may be delegated to local Lead agency
- **Other State and Federal Acts**
 - Federal Clean Water Act, ESA
 - California Water Code, State Streambed Alteration Agreements, Porter-Cologne Act
 - Overlapping authorities



San Simeon Coast, San Luis Obispo County

California Environmental Quality Act (CEQA)

- Adopted by state Legislature in 1970 as Public Resources Code §21000-21177
- Overarching goal is to develop and maintain a high-quality environment now and in the future
- Specifically, California's public agencies must **identify** the significant environmental effects of their actions; and **avoid** or **mitigate** significant effects

California Environmental Quality Act

Agency roles

- Each public agency is responsible for complying
- **“Lead agency”** has the principal responsibility for carrying out or approving a project
- **“Trustee agency”** is a state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California
- **“Responsible agency”** is a public agency, other than the lead agency, which has responsibility for carrying out or approving a project

California Environmental Quality Act

Projects

- CEQA applies to **“projects”** proposed to be *undertaken, funded* or requiring *approval* by State and/or local government agencies
- Projects are activities which have the *potential to have a physical impact on the environment*

California Environmental Quality Act

Projects (cont)

- Projects may include the enactment of *zoning ordinances*, the issuance of *conditional use permits* and the approval of *tentative subdivision maps*
- Projects may be *exempt* either statutorily or categorically

California Environmental Quality Act

Process

- **Inform** governmental decision makers and the public about the potential significant environmental effects of proposed activities
- **Identify** ways that environmental damage can be *avoided or significantly reduced*

California Environmental Quality Act

Process (cont)

- **Require changes** in projects through the use of *alternatives or mitigation measures* when feasible
- **Disclose** to the public the reasons why a project was approved if significant environmental effects are involved

California Environmental Quality Act
Natural Communities
CEQA Guidelines, Appendix G

- Substantial adverse effect on any riparian habitat or other *sensitive natural community* identified in local or regional plans, policies, regulation or by the California Department of Fish and Game or US Fish and Wildlife Service
 - General Plan, Local Coast Plan
 - Natural Communities Conservation Plan
 - DFG List of Natural Communities Recognized by the Natural Diversity Data Base
- California Department of Fish and Game
<http://www.dfg.ca.gov/biogeodata/>



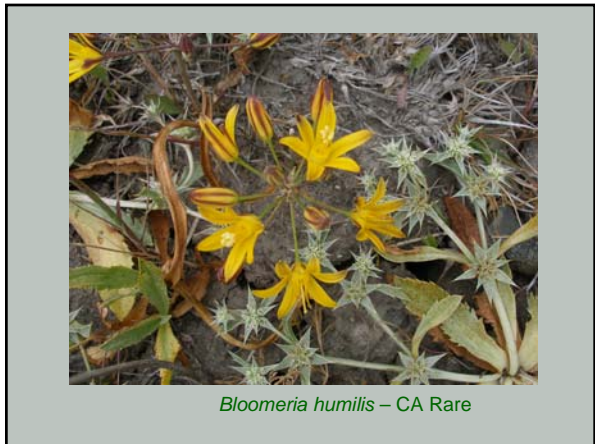
California Environmental Quality Act
Other plans and policies
CEQA Guidelines, Appendix G

- Conflict with the provisions of an adopted HCP, NCCP or other *approved conservation plan*
- Conflict with any applicable *land use plan, policy, or regulation* of an agency with jurisdiction over the project
 - County or City General Plan
 - Implementing Ordinances
 - Local Coastal Plan



California Environmental Quality Act
Species
CEQA Guidelines, Appendix G

- Have a substantial effect, either directly or through habitat modifications, on any *species* identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Dept of Fish and Game or US Fish and Wildlife Service
 - Federally listed species
 - State listed species
 - Candidate species
 - CNPS List 1B species
 - Locally significant species



California Environmental Quality Act
Species
CEQA Guidelines, Appendix G

- Interfere substantially with the movement of any native resident or migratory fish or wildlife species
- Mandatory findings of significance
 - Degrade the quality of the environment
 - Substantially reduce the *habitat of a fish or wildlife species*
 - Cause a *fish or wildlife population* to drop below self-sustaining levels



Roosevelt elk, San Simeon Coast

California Environmental Quality Act
Mandatory Findings of Significance
CEQA Guidelines, Appendix G

- Mandatory Findings of Significance
 - Threaten to eliminate a *plant or animal community*
 - Substantially reduce the number of restrict the range of an *RTE species*
 - Impacts which are individually limited, but *cumulatively considerable*, i.e. when viewed with the effects of past, current and probable future projects



Red Mountain, San Luis Obispo County

California Environmental Quality Act
Hierarchy of Mitigation

- **Avoiding** the impact altogether
- **Minimizing** the impacts by limiting the degree or magnitude of the action
- Rectifying the impact by **repairing, rehabilitating or restoring** the impacted environment
- **Reducing** or eliminating the impact **over time**
- **Compensating** for the impact by replacing or providing substitute resources
(CEQA Guidelines §15370)

California Environmental Quality Act

Authority to Mitigate

- The Lead agency has authority to **require feasible changes** in order to substantially lessen or avoid significant effects on the environment
- The Responsible agency shall have **more limited authority**; they may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve
(CEQA Guidelines §15041)

California Environmental Quality Act

Authority to Mitigate

- A Lead or Responsible agency shall not reduce the proposed **number of housing units** as a mitigation measure or alternative if there is another feasible, specific measure or alternative that would provide a comparable lessening of the significant effect
(CEQA Guidelines §15041)



Laguna Lake, San Luis Obispo County

California Environmental Quality Act

Resources

- Resources Agency CEQA website
<http://ceres.ca.gov/ceqa/index.html> and
<http://ceres.ca.gov/planning/ead/index.html>
- Governor's Office of Planning and Research
<http://www.opr.ca.gov/>
- California Department of Fish and Game
<http://www.dfg.ca.gov/>
- Guide to CEQA related websites
<http://ice.ucdavis.edu/ceqa/>

California Endangered Species Act

(CESA)

- Adopted by state Legislature in 1986 as Fish & Game Code, Chapter 1.5 - Endangered Species §2050-2115
- Policy of the State to **conserve, protect, restore** and **enhance** any endangered species or any threatened species and its habitat; and consistent with conserving the species, to **acquire lands** for habitat for these species.
- Administered by the DFG and the Fish & Game Commission (FGC)

California Endangered Species Act

Authorization of take

- Take may be authorized by issuance of a permit pursuant to Fish & Game Code §2081 (CESA)
- Permit issuance criteria include (§2081(b)) :
 - The take is "incidental" to an otherwise lawful activity
 - The impacts of the authorized take shall be minimized and fully mitigated
 - The applicant shall ensure adequate funding to implement required measures and monitoring efficacy
 - No permit may be issued if the permit issuance would jeopardize the species

California Endangered Species Act

Authorization of take

- Permit issuance criteria (§2081(b) (cont.):
 - The measures to "minimize and fully mitigate" standard includes several provisions:
 - Measures roughly proportional to the impact of the take
 - Impact of the take includes all impacts on the species that result from any act that would cause the proposed taking
 - Where various measures are available, required measures shall maintain the applicant's objectives to the greatest extent possible
 - Measures shall be capable of successful implementation

California Endangered Species Act

Authorization of take

- Take may also be authorized by:
 - Through a consistency determination by the Director of DFG that a *federal incidental take statement or permit* is consistent with CESA (Fish & Game Code §2080.1)
 - Through issuance of authorization under the *Natural Communities Conservation Planning Act* (Fish & Game Code, Chapter 10, §2800-2835)
- Alternate mechanisms provide for better protection of vegetation



Cirsium fontinale var. *obispoense*
CE, FE

California Endangered Species Act

Resources

- Department of Fish and Game home page
<http://www.dfg.ca.gov/>
 - CESA information
 - CESA regulations
 - Species information

California Coastal Act

Environmentally Sensitive Habitat Area (ESHA)

- Environmentally Sensitive Habitat Area
 - Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments
(CA Coastal Act, Section 30107.5)

California Coastal Act

Environmentally Sensitive Habitat Area (ESHA)

- Environmentally Sensitive Habitat Area
 - (CA Coastal Act, Section 30107.5)
 - Prohibits of significant disruption of habitat values
 - Limits development within ESHA to uses that are dependent on the resources
 - Requires adjacent development be sited and designed to be compatible with the continuance of the habitat
 - (CA Coastal Act, Section 30240)

Long Range Approach Use of Existing Regulations

- **Work to get your favorite natural communities recognized**
 - County General Plan/Local Coastal Plan
 - Implementing Ordinances
- **Should be based on scientific rationale**
 - Anticipate the need to defend the designation
 - Anticipate the need to defend the application on a case-by-case basis



Moro Coho Slough, Monterey County

Long Range Approach Proposing New Regulations

Environmental Legal Defense Fund, PA example

- Ready-made ordinances to protect ecosystems

Potential for Rare Natural Communities Act

- Scientific rationale should be the underpinning of regulation
 - Need to know what it is
 - Need to know how much there is
 - Need to know what it is to know how much there is



Science in Action

Long Range Approach Use of Regulations

Intersection of science and regulation

- Regulatory framework applies primarily to changes in land use, and therefore, to “not conservation”
- Regulatory framework rarely results in a true conservation outcome
 - Always couched in terms of what wasn't lost
- Application of regulations challenging
 - Dynamic systems in both time and space
 - Potential for boundary disputes

Challenges Implementation of Regulations

Wetlands model as case study for vegetation

- One parameter vs. two or three
 - Vegetation, soils, climate
- Development of a list of plant species
 - Obligate, Facultative, etc.
 - Effort needed vs. area covered
 - Potential for misinterpretation
- Identification of boundaries
 - **In vs. out:** how many, of what species, need to be how close (or far away) from what, to be in or out



Elkhorn Slough, Monterey County

Challenges
Implementation of Regulations

Impact assessment

- Potential natural vegetation vs. existing vegetation
 - Functional value (high quality vs. degraded)
 - Restoration potential
- Relationship to impact analysis
 - Value of site to be lost
 - Determination of mitigation ratios
- Potential for abuse
 - Intentional degradation prior to assessment
 - Importance of CEQA baseline

Challenges
Implementation of Regulations

Determination of appropriate mitigation

- Selection of mitigation site
 - Use of delineation methodology
- In-kind vs. out-of-kind mitigation
 - Species composition, including sensitive species



Challenges
Implementation of Regulations

Determination of appropriate mitigation

- Potential natural vegetation vs. existing vegetation
 - Functional value (degraded vs. high quality)
 - Mitigation ratios
- Value of extant vegetation vs. restoration
 - Mitigation ratios

** Mitigation rarely results in a true conservation outcome*

Challenges
Implementation of Regulations

Other conservation values

- Size and shape of site
- Context in the landscape
 - Adjacency and connectivity
- Rarity of the natural community

Challenges
Implementation of Regulations

Other conservation values

- Quality of the impact / mitigation site
 - Exotic invasive species
 - Fragmentation
 - Incompatible uses (recreation, grazing, etc.)
- Restoration / enhancement potential
- Manageability



Cambria Coast Ranch, San Luis Obispo County

Short Range Approach
Use of Existing Regulations

- **Get educated about applicable regulations**
- **Comment on planning documents**
 - General Plan Updates
 - Land Use Ordinances
 - Specific or Area Plans
 - Projects in sensitive habitats
- **Educate your decision makers**

Thank you

Deborah Hillyard
CA Department of Fish & Game