

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 3238 (Garcia) – As Amended April 8, 2024

SUBJECT: Electrical infrastructure projects: endangered species: natural community conservation plans

SUMMARY: Provides exemptions from, and streamlining of, planning, environmental review, and environmental permitting processes for the development of electrical infrastructure projects. Specifically, **this bill:**

- 1) Requires the director of the Department of Fish and Wildlife (DFW) to publish a consistency determination authorizing the incidental take of a species that is listed under both the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA) if the Director receives a notice from a public utility undertaking an electrical infrastructure project that has already been issued a permit under ESA. The take authorization shall be under the same terms and conditions provided under the federal permit and the director shall publish the consistency determination within 30 days of receiving notice from a public utility.
- 2) Defines “electrical infrastructure project” as a project for the construction and operation of an electrical transmission line and associated infrastructure for purposes of this bill.
- 3) Limits DFW’s review of a request to amend an existing Natural Community Conservation Plan (NCCP) to the following:
 - a) Any new species listed under CESA that were not previously considered in the approved NCCP; and
 - b) Any new activities that would result in new or more substantial impacts to covered species than previously identified in the approved NCCP.
- 4) Requires DFW, when reviewing a request to amend an approved NCCP, to establish a rebuttable presumption that the mitigation and conservation measures provided in the previously approved plan have been, or are being successfully implemented, and to only impose new mitigation and conservation measures that are necessary to address potential impacts to any newly listed species under CESA or any new or more substantial impacts to covered species under the approved plan.
- 5) Exempts the approval of an amendment to an NCCP that adds additional conservation measures and amended permits or authorizations from the California Environmental Quality Act (CEQA). Defines “additional conservation measures” as any provisions, actions, operational protocols, or requirements that enhance or supplement the conservation measures in the existing NCCP.
- 6) Exempts projects that expand existing public right-of-way across state-owned land to accommodate the construction, expansion, modification, or update of electrical infrastructure from CEQA until January 1, 2035.

- 7) Designates the California Public Utilities Commission (CPUC) as the lead agency under CEQA for an electrical infrastructure project. Provides the following regarding CPUC's environmental review of an electrical infrastructure project pursuant to CEQA:
 - a) CPUC shall prescribe procedures for an applicant's preparation, under CPUC supervision, of the following environmental documents: an environmental impact report (EIR), negative declaration, mitigation negative declaration, addendum, or analysis of applicability of a CEQA exemption;
 - b) CPUC may provide guidance for, and assist in, preparation of environmental documents;
 - c) CPUC shall independently evaluate environmental documents and take responsibility for their contents;
 - d) Applicant may submit with its application an administrative draft of an EIR, mitigated negative declaration, negative declaration, addendum, or draft analysis of applicability of a CEQA exemption in lieu of an initial study or proponent's environmental assessment; and
 - e) CPUC shall use environmental documents submitted by an applicant when exercising its independent judgment to determine whether a project is exempt from CEQA or necessitates preparation of an EIR.
- 8) Defines "resource agency" as the State Lands Commission, the San Francisco Bay Conservation and Development Commission (BCDC), DFW, the California Coastal Commission, State Water Resources Control Board (State Water Board), or an applicable regional water quality control board.
- 9) Requires a resource agency to only consider an environmental effect of an electrical infrastructure project that occurs within the resource agency's jurisdiction and is subject to the resource agency's discretionary approval related to the project.
- 10) Requires an application for an electrical infrastructure project to be in a form prescribed by CPUC and accompanied by information required by CPUC to support the preparation of necessary environmental documents.
- 11) Requires the CPUC to consult with BCDC for an electrical infrastructure project located in the geographic jurisdiction of BCDC for purposes of coordinating the processing and sequencing of the applications to expedite the permitting process.
- 12) Requires BCDC to assume permitting authority for processing and issuing marsh development permits using the local protection programs as guidance in the Suisun Marsh Secondary Management Area and the portions of the Primary Management Area with a local protection program.
- 13) Requires BCDC, the State Water Board, or the applicable regional water quality control board to take final action on the electrical infrastructure project within 90 days of CPUC's approval if the applicant has filed a complete application for a permit or waste discharge requirement with those agencies before the approval by CPUC.

- 14) Requires CPUC to certify necessary environmental documents for, and to approve, an electrical infrastructure project within 270 days of receiving a complete application, except under specified circumstances.
- 15) Exempts projects that would require a certificate of public necessity and convenience (CPCN) from CPUC and any other electrical infrastructure projects from existing requirements to compare prospective projects with cost-effective alternatives such as energy efficiency, distributed generation, and demand response resources.
- 16) Provides that the following apply to an electrical infrastructure project that has been approved by the Independent System Operator (ISO) in a transmission plan prepared pursuant to the ISO's Federal Energy Regulatory Commission tariff:
 - a) The statement of objectives sought by the project applicant, including the underlying purpose and project benefits, required by CEQA, shall be those identified by the ISO's approved transmission plan;
 - b) The range of reasonable alternatives analyzed under CEQA shall be alternative routes or locations for the construction of the project approved in the relevant ISO's approved transmission plan;
 - c) Any statement of overriding considerations shall be those identified by the ISO's approved transmission plan prepared pursuant to ISO's Federal Energy Regulatory Commission tariff; and
 - d) There shall be a rebuttable presumption that there is an overriding economic, legal, social, technological, or other benefit of the project that outweighs the significant effect on the environment if the project has been identified by the ISO in a transmission plan.
- 17) Defines "necessary electrical infrastructure project" for purposes of this bill as either of the following:
 - a) A project approved by the ISO in a transmission plan prepared pursuant to the ISO's Federal Energy Regulatory Commission tariff; or
 - b) The project is necessary to serve an actual or forecasted electrical demand increase associated with transportation or building electrification or is a distributed energy project, energy storage project, or renewable generation source where the electrical line facilities or substation would support the interconnection of the project or source to the electrical grid.
- 18) Provides that CPUC has the exclusive power to approve and site a "necessary electrical infrastructure project."
- 19) Establishes an in lieu permit process at CPUC whereby the approval and siting of a "necessary electrical infrastructure project" pursuant to this bill is in lieu of any approval, concurrence permit, certificate, or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by the federal law, for the use of the site and related facilities.

- 20) Provides that the in lieu permit process described in #19, above, shall not apply to the authority of the State Lands Commission to require leases and receive lease revenue, or BCDC, the State Water Board, or regional water quality control boards.
- 21) Includes a declaration that provisions of this bill relative to the approval of “necessary electrical infrastructure projects” address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.
- 22) Sunsets the CPUC permit and CEQA streamlining provisions of this bill (#7 through #21, above) on January 1, 2035.
- 23) Provides that no state reimbursement is required by this bill because local agencies affected by this bill have the authority to levy service charges, fees, or assessments sufficient to pay for the mandates contained therein.

EXISTING LAW:

- 1) Provides that fish and wildlife resources are held in trust for the people of California by and through DFW [Fish and Game Code (FGC) § 711.7].
- 2) Provides, under CESA and federal ESA, for the listing and protection of species determined through biological scientific analysis to be endangered or threatened with extinction [FGC § 2070–2079.1; U.S. Code (U.S.C.) Title 16 § 1533].
- 3) Prohibits the taking of an endangered species, threatened species, or candidate species listed pursuant to CESA unless DFW authorizes the taking of the listed species under an ITP and if the taking is incidental to an otherwise lawful activity, the impacts are minimized and fully mitigated, and the issuance of the permit would not jeopardize the continued existence of the species (FGC § 2081; 2084).
- 4) States that any person, or any local, state, or federal agency, independently, or in cooperation with other persons, may undertake an NCCP (FGC § 2809).
- 5) Defines “conserve,” “conserving,” and “conservation” to mean to use, and the use of, methods and procedures within the NCCP plan area that are necessary to bring any covered species to the point at which the measures provided pursuant to CESA are not necessary, and for covered species that are not listed pursuant to CESA, to maintain or enhance the condition of a species so that listing pursuant to CESA will not become necessary (FGC § 2805).
- 6) Provides the scope of findings that DFW must make to approve an NCCP and requires that an NCCP include an implementation agreement that contains provisions specifying procedures for amendments to the NCCP and the implementation agreement (FGC § 2820).
- 7) Clarifies that a project proposed in an NCCP planning area is not exempt from CEQA (FGC § 2826).
- 8) Requires, pursuant to CEQA, lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or EIR for this action, unless the project is exempt from CEQA [Public Resources Code (PRC) § 21000 *et seq.*].

- 9) Defines “project” as an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, including an activity that involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies (PRC § 21065).
- 10) Defines, under CEQA, “responsible agency” as a public agency, other than the lead agency, which has responsibility for carrying out or approving a project by, for example, issuing a permit necessary for a project (PRC § 21069).
- 11) Defines, under CEQA, “trustee agency” as a state agency that has legal jurisdiction over natural resources affected by a project, that are held in trust for the people of California (PRC § 21070).
- 12) Requires, under CEQA, a lead agency to consult with responsible and trust agencies prior to determining whether or not negative declaration or EIR is required for a proposed project (PRC § 21080.3).
- 13) Requires CPUC to certify the “public convenience and necessity” (CPCN) for a transmission line over 200 kilovolts (kV) before an electrical corporation may begin construction. The CPCN process includes CEQA review of the proposed project. A CPCN is not required for the extension, expansion, upgrade, or other modification of an existing electrical transmission facility, including transmission lines and substations (Public Utilities Code § 1001).
- 14) Requires the CPUC, by January 1, 2024, to update General Order (GO) 131-D to authorize investor-owned utilities to use the permit-to-construct (PTC) process or claim an exemption under GO 131-D Section III(B) to seek approval to construct an extension, expansion, upgrade, or other modification to its existing electrical transmission facilities, including electric transmission lines and substations within existing transmission easements, rights-of-way, or franchise agreements, irrespective of whether the electrical transmission facility is above 200 kV (Public Utilities Code § 564).
- 15) Requires the California Energy Commission (CEC) to adopt a strategic plan for the state’s electric transmission grid, which recommends actions required to implement investments needed to ensure reliability, relieve congestion, and meet future growth in load and generation (PRC § 25324).
- 16) Authorizes the CEC to designate electric transmission corridor zones (TCZs) in order to identify and reserve land that is suitable for high-voltage transmission lines. Specifies the CEC may designate a TCZ on its own motion or in response to an application from a person seeking a TCZ designation based on its future plans to construct a high-voltage electric transmission line. Makes the CEC the lead agency, for purposes of CEQA, for the designation of any TCZ (PRC §§ 25330–25341).
- 17) Grants CEC the exclusive authority to license thermal powerplants 50 megawatts (MW) and larger (including related facilities such as fuel supply lines, water pipelines, and electric transmission lines that tie the plant to the grid). The CEC must consult with specified agencies, but the CEC may override any contrary state or local decision. The CEC process is a certified regulatory program (i.e., the functional equivalent of CEQA), so the CEC is exempt from having to prepare an EIR. Defines “electric transmission line” as any electric

powerline carrying electric power from a thermal powerplant located within the state to a point of junction with any interconnected transmission system (PRC § 25500 *et seq.*).

- 18) Authorizes additional facilities not subject to the CEC's thermal powerplant licensing process to "opt-in" to a CEC process for CEQA review until June 30, 2029, in lieu of review by the appropriate local lead agency. These opt-in permitting procedures apply to the following energy-related projects:
- a) A solar photovoltaic or terrestrial wind electrical generating powerplant with a generating capacity of 50 MW or more and any facilities appurtenant thereto;
 - b) An energy storage system capable of storing 200 MW hours or more of electrical energy;
 - c) A stationary electrical generating powerplant using any source of thermal energy, with a generating capacity of 50 MW or more, excluding any powerplant that burns, uses, or relies on fossil or nuclear fuels;
 - d) A project for the manufacture, production, or assembly of an energy storage, wind, or photovoltaic system or component, or specialized products, components, or systems that are integral to renewable energy or energy storage technologies, for which the applicant has certified that a capital investment of at least \$250 million will be made over a period of five years; and
 - e) An electric transmission line carrying electric power from an eligible solar, wind, thermal, or energy storage facility to a point of junction with any interconnected electrical transmission system (PRC §§ 25545–25545.13).
- 19) Provides CEC the exclusive power to certify the site and related facilities described in #18, above, and provides that CEC's approval preempts state, local, or regional authorities, except for the authority of the State Lands Commission to require leases and receive lease revenues, if applicable, or the authority of the California Coastal Commission, BCDC, the State Water Board, or the applicable regional water quality control boards, and, for manufacturing facilities, the authority of local air quality management districts or the Department of Toxic Substances Control. Requires the CEC to determine whether to certify the EIR and to issue a certificate for the site and related facilities no later than 270 days after the application is deemed complete, or as soon as practicable thereafter. Applies to these facilities the procedures and requirements applicable to Environmental Leadership Development Projects including mitigation of greenhouse gas emissions, requiring applicants to pay the costs of expedited administrative and judicial review, and requiring the courts to resolve lawsuits within 270 days, to the extent feasible (PRC § 25545 *et seq.*).
- 20) Establishes the policy of the state that eligible renewable energy resources and zero-carbon resources supply 90% of all retail sales of electricity by December 31, 2035; 95% of all retail sales of electricity by December 31, 2040; 100% of all retail sales of electricity by December 31, 2045; and 100% of electricity procured to serve all state agencies by December 31, 2035 (Public Utilities Code § 454.53).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill provides several process exemptions across CESA, NCCPs, and CEQA for electrical infrastructure projects. According to the author, “Achieving the state’s ambitious climate goals will require unprecedented construction of electrical infrastructure to provide reliable renewable energy to electrify homes, commercial buildings, and transportation. To accomplish this, changes are needed. The total package of measures in [this bill] modifies existing processes to streamline and accelerate electrical infrastructure development. Specifically, [this bill] includes measures that modernize existing [CPUC] permitting and expedite [CEQA] procedures, consistent with the 18-party *Joint Motion for Adoption of Phase 1 Settlement Agreement* (Settlement) filed in a recent CPUC rulemaking related to permit streamlining and compliance with SB 529 (2022) and AB 1373 (2023).... [This bill] will remove duplication and ensure that the processes used by the CPUC and other agencies can handle the volume of electrical infrastructure projects necessary to support state goals.”
- 2) **Background.** The federal ESA and CESA were enacted to prevent the extinction of fish, wildlife, plant, and invertebrate species. Both acts rely on scientific analysis to determine which species face extinction and impose protections for those species that are in peril. Although there are differences between the federal and state acts, the overarching intent of both is to regulate and impose mitigation on activities that could contribute to the extinction of species. Species are referred to as “listed” if they have been designated as “threatened” or “endangered” by either ESA or CESA.

ESA and CESA prohibit “take” of a listed species. For purposes of CESA, “take” means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill. The U.S. Fish and Wildlife Service (USFWS) and DFW may issue permits under ESA and CESA, respectively, to allow the “take” that is incidental to an otherwise legitimate activity. CESA prohibits the take of any listed species while ESA prohibits the take of listed fish and wildlife species (the take of listed plant species is not prohibited under ESA). In California, species that are being considered for listing under CESA (i.e., candidate species) are afforded the same protections as listed species until the scientific evaluation is complete and the Fish and Game Commission make a final decision regarding if the species should be listed or not.

According to federal regulations, alterations of a listed species’ habitat is unlawful if it “actually kills or injures wildlife by significantly impairing essential behaviors including breeding, feeding, or sheltering.”¹ Federal court decisions have upheld the principle that habitat modification could be considered prohibited taking, even if no death or injury to individual members of the species could be proven. It would be enough to show that the modification harmed the species as a whole.² Unlike federal law, CESA does not include “harm” or “harass” in the definition of take, but DFW also interprets the take prohibition to include destruction or modification of habitat essential to species’ survival.

¹ 15 Code of Federal Regulations § 17.3. The U.S. Supreme Court upheld this regulation in *Babbitt v. Sweet Home*, endorsing the idea that “harm” could reasonably be construed to encompass indirect effects of habitat modification on individuals of the listed species.

² *Palila v. Hawaii Department of Land & Natural Resources* (1979). Upheld in *Palila v. Hawaii Department of Land & Natural Resources* (1986)

Incidental Take Permits. ITPs are granted as exceptions under CESA and ESA to enable prohibited take for otherwise lawful activity. Examples of “lawful activities” for which an ITP may be issued include infrastructure development, housing development, and scientific research. DFW may not approve an ITP for a species listed under CESA if the activity for which the permit is sought would jeopardize the continued existence of the species. Impacts to species must be minimized and fully mitigated and mitigation measures must be roughly proportional in extent to the impact of the take of the species.

Consistency Determinations. There are 60 animal and 117 plant species listed under both ESA and CESA. If an applicant has obtained a federal ITS or ITP for a species listed under both ESA and CESA, the applicant may submit copies of the federal documents, along with an application fee, to the Director of DFW for evaluation of if those documents are consistent with CESA. If, in DFW’s estimation, those federal documents are consistent, a consistency determination is issued and no further state authorization or approval is needed under CESA. The Director is required to make a consistency determination within 30 days.

The differences between CESA and ESA may prevent the Director from issuing a consistency determination. For example, ESA does not prohibit the take of listed plants, but CESA does. Additionally, CESA has higher mitigation standards than ESA, so documents prepared for a federal ITS/ITP may not exhibit adequate funding to achieve this higher standard or describe the mitigation in enough detail to meet CESA standards. See Table 1 for more information about the differences between the state and federal definitions and standards.

Because of these differences and the inability to for DFW to add any conditions to the federal ITS/ITP, receiving a consistency determination generally requires an applicant to initiate early collaboration between the USFWS and DFW to generate a federal ITS/ITP that meets California standards. This early collaboration makes the consistency determination process relatively easy thereby saving the applicant time by eliminating the need to pursue a duplicative state ITP. Species listed under CESA but not ESA are not eligible for a consistency determination and require an ITP issued under CESA. This bill eliminates the Director’s discretion when evaluating a request for a consistency determination for an electrical infrastructure project and requires the Director to issue a consistency determination regardless of whether the federal permit provides equivalent protections as CESA (see #1 under Summary, above).

Natural Community Conservation Planning. The NCCP program was created in 1991 as a way to increase the effectiveness of both CESA and ESA. Both programs had been considered costly and ineffective because they were enforced one developmental project at a time and then focused on conservation efforts one species at a time. Project-by-project application of CESA and ESA was leading to costly delays, red tape, and uncertainty for project applicants, and resulting mitigation measures were considered impromptu and patchy. Conservation is made more effective with large areas habitat that enable wide variety of natural plant and animal interaction. In February 2002, Governor Davis signed into law the current NCCP Act, replacing the previous sections of the FGC (§ 2800 *et seq.*).

The NCCP Act is a *voluntary*, regional, ecosystem-based conservation. The necessary components of an NCCP are a planning agreements, a public participation process, an independent scientific review, a NCCP document, an implementation agreement, a DFW

determination, and CEQA compliance. The benefit of an NCCP is that it enables participants to list any species (also called “covered” species”) in their NCCP. Including non-listed species provides assurance to participants that they would not have to develop new conservation requirements in the event the non-listed species were to become listed in the future.

Under the NCCP Act, DFW may provide certain assurances to plan participants [FGC § 2820 (f)] with the level of these assurances tied to the degree of knowledge and data available to DFW when the plan was submitted and the scope and duration of the NCCP. The NCCP Act also authorizes a “no surprises” assurance with respect to unforeseen circumstances indicating that “... additional land, water, or financial compensation or addition restriction on the use of land, water, or other natural resources shall not be required without the consent of plan participants....”

When compared to permits for small individual projects, regional plans are general less costly per acre of development and per acre of conserved resource, because of their economy of scale and reduced constraints they present to land use planning. Once approved, NCCPs typically enable faster projects approvals, greater certainty in permitting, and increased confidence in the quality of conservation. All in all, the NCCP Act represents a delicate balance and agreement between environmental protection and planning needs of the state. The NCCP Act has not been amended since its inception except for technical clarifications.

There are currently 17 approved NCCPs and six NCCPs in various stages of planning, which together cover more than eight million acres and will provide habitat for nearly 400 listed species.³

Habitat Conservation Plan (HCP). An HCP is a planning document required to obtain an ITP under the federal ESA. An HCP range in scale; they can cover a single species or be a more comprehensive, regional plan that covers multiple parties and multiple species. The regional multi-species HCPs are similar to an NCCP and allow the permittee to address a broad range of activities and to bring them under the coverage of the ITP’s legal protection. Multi-species HCPs, like NCCPs, allow for an analysis of a wider range of factors affecting listed species and ease ESA compliance by replacing individual project review with a comprehensive and regional review.

Table 1 – Comparison of Federal ESA and CESA

	Federal ESA	CESA
Endangered Species	Any species which is in danger of extinction throughout all or a significant portion of its range [16 U.S.C. § 1532 (6)].	A native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is 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,

³ [Summary of NCCPs](#)

		or disease (FGC § 2062).
Threatened Species	Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range [16 U.S.C. § 1532 (20)].	A native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts (FGC § 2067).
Candidate Species	No protections.	Protected as if listed.
Take	Means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct [16 U.S.C. § 1532 (19)].	Means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (FGC § 86).
ITPs	Minimize and mitigate to the maximum extent practicable the impacts of take; ensure adequate funding; and take must not appreciably reduce the survival and recovery in the wild (16 U.S.C. § 1539).	Minimize and fully mitigate take proportional to the extent of impact; ensure adequate funding; and take must not jeopardize the continued existence of the species (FGC § 2081).
Conservation Plans	HCP: required as a part of an application for a federal ITP, can include listed and non-listed species.	NCCP: Promote community-scale conservation, can include listed, non-listed, and fully protected species.
Modified from DFW, <i>Compare CESA to the Federal ESA</i> (https://wildlife.ca.gov/Conservation/CESA/FESA)		

The San Diego Gas & Electric (SDG&E) NCCP/HCP (SDG&E Plan). In 1995, SDG&E developed a dual NCCP/HCP that is set to expire in 2050. The SDG&E Plan extends from southern Orange County south to the Mexican border and was the first plan approved in San Diego County. The SDG&E Plan covers (authorizes the take of) 110 plant and animal species⁴ over 2,245,800 acres that consist of 36 different habitat types.⁵ Creating an HCP/NCCP enables SDG&E to avoid, minimize, and mitigate impacts to these species and their habitats while allowing SDG&E to install, maintain, operate, and repair its existing gas and electric system and undertake anticipated expansion of that system. When the SDG&E Plan was created 29 of those species were listed as endangered, threatened, or rare in California (see Table 2).

⁴ [SDG&E NCCP covered species list](#)

⁵ [SDG&E NCCP land cover types](#)

Table 2 – Species that listed under CESA or both CESA and ESA in the 1995 management authorization for the SDG&E Plan. Dual-listed species are in **bold**.⁶ Note: status in parentheses represents state status in 1991.

Plant Species	Animal Species
<ul style="list-style-type: none"> • California orcutt grass (endangered) • Coastal dunes milk-vetch (endangered) • Dehesa bear-grass (endangered) • Dunn’s mariposa lily (rare) • Encinitas baccharis (endangered) • Gander’s butterweed (rare) • Nevin’s barberry (endangered) • Orcutt’s spineflower (endangered) • Otay mesa mint (endangered) • Otay tarplant (endangered) • Salt marsh bird’s beak (endangered) • San Diego button-celery (endangered) • San Diego mesa mint (endangered) • San Diego thorn-mint (endangered) • Short-leaved dudleya (endangered) • Slender-pod jewelflower (rare)* • Small-leaved rose (endangered) • Thread-leaf brodiaea (endangered) • Willowy monardella (endangered) <p><i>*state delisted in 2008</i></p>	<ul style="list-style-type: none"> • American peregrine falcon (endangered)* • Bald eagle (endangered)[†] • Belding’s savannah sparrow (endangered) • California brown pelican (endangered)* • California least tern (endangered) • Least Bell’s vireo (endangered) • Light-footed clapper rail (endangered) • Southwestern willow flycatcher (endangered) • Swainson’s hawk (threatened) • Stephens’ kangaroo rat (threatened)** <p><i>* federal and state delisted in 2009</i> <i>† federal delisted in 2007</i> <i>** additionally listed as federally threatened in 2022</i></p>

Two broad categories of activities covered in the Plan: operations and maintenance (O&M) and new construction. O&M pertains to existing facilities and generally does not require permits. According to the SDG&E Plan, O&M impact is minimized then mitigated for, therefore CEQA is not required. New construction projects, however, are subject to CEQA pursuant to GO 131-D. Both the current NCCP Act and the NCCP Act of 1991 clarify that these projects are not exempt from CEQA.

Previous plan amendments. An NCCP cannot account for every future need, so amendments are allowed. Guidelines for the amendment process are a required portion of plans prepared pursuant to the current NCCP Act, but was not a required component of plans finalized under the NCCP Act of 1991. Amendments are generally classified as major or minor amendments. Major amendments are significant enough to trigger the need for the amendment to undergo CEQA review. SDG&E Plan clarifies that “each new SDG&E project will be subject to CEQA.”

⁶ [SDG&E NCCP Management Authorization](#)

The SDG&E Plan has undergone two minor amendments since its inception. The first was to clarify management of vernal pools in 2004 and the second was to provide an additional 20 new impact acres in 2022. In 1995, the SDG&E Plan anticipated permanently impacting 124 acres over its first 25 years, but, to prepare for unforeseen circumstances, allowed for 400 impact acres before requiring an amendment. By 2022, SDG&E indicated that it nearly exhausted its impact acres with less than 10 acres left, but still needed to undergo wildfire safety activities.⁷ DFW approved a minor amendment to hold SDG&E over while a major amendment was being pursued. This minor amendment granted SDG&E an additional 20 impact acres for wildfire safety activities (e.g., equipment repair and replacement, tree trimming, underground facilities, vegetation control). This minor amendment was exempt from CEQA under a statutory exemption for the prevention or mitigation of an emergency.

Plan major amendment. In pursuit of a major amendment, SDG&E divorced its HCP/NCCP in 2021 “to allow each agency (USFWS and DFW) latitude to conduct its required environmental review on its own, independent timeline.” The HCP amendment expands the plan area by 25% to encompass all of SDG&E’s service area. For the expansion and to implement new activities, SDG&E requested the amendment to cover 41 species (i.e., 25 animals and 16 plants), of which 31 are currently listed as threatened or endangered under the ESA. Implementation of the HCP amendment allows for an additional 400 impact acres, 210 acres of temporary impacts, and 210 acres of wildfire fuels management impacts to habitat supporting covered species.⁸

The HCP amendment covers all SDG&E O&M, new construction, and wildfire fuels management that may result in take of covered species in the HCP plan area. New construction activities include installing or replacing structures to upgrade facilities or to extend service to new customers. New construction, when in preserves or proposed preserves, is limited to 1.75 acres per project. Impacts greater than 1.75 acres from new construction in preserves or proposed preserves would require a minor amendment approved by the USFWS as described in the HCP amendment. Construction activities are expected to be minor as “[SDG&E’s] infrastructure is largely in place, so future impacts will principally be limited to those involved in fire hardening and other operation and maintenance of [SDG&E’s] existing system.”

The USFWS approved the HCP major amendment in 2023. According to the SDG&E, this process took six years. To date, DFW has not received an amendment to the NCCP, but SDG&E says it has been working toward the NCCP amendment for seven years. According to SDG&E, the NCCP amendment will differ from the HCP amendment and not expand the footprint of the plan, but it is unclear to the Committee if the same activities and species will be impacted. This bill requires DFW to limit its analysis of amendments to NCCPs to only certain species and new activities and further exempts these amendments from thorough environmental analysis through CEQA. This effectively degrades the NCCP standard.

CEQA. This bill proposes a number of CEQA exemptions for electrical infrastructure projects. CEQA was enacted in 1970 in an effort to disclose and mitigate the potential environmental damage that certain development projects (e.g., housing developments) might cause. CEQA provides a process for evaluating the environmental effects of applicable

⁷ [Wildfire safety amendment \(2022\)](#)

⁸ [HCP major amendment](#)

projects undertaken or approved by public agencies.

CEQA is within the jurisdiction of the Assembly Natural Resources Committee and this bill's provisions related to CEQA will be more thoroughly vetted should this bill advance to that committee; however, two of the CEQA exemptions pertain to departments within this Committee's jurisdiction: 1) Section 4 of this bill exempts an NCCP amendment from CEQA review; and 2) Section 5 of this bill exempts the *expansion* of an existing right-of-way across state-owned land (e.g., a state park or state wildlife area) from CEQA. In addition, this bill [proposed Public Utility Code § 2845.10(d)] limits the ability of DFW to serve its role as a "trustee agency" under CEQA (discussed below).

DFW's role under CEQA. DFW serves as both a "trustee agency" and a "responsible agency" under CEQA. In its role as a "trustee agency," DFW consults and works with other public agencies to inform decision-makers and the general public about the potential environmental impacts of proposed projects (e.g., through the review of environmental documents) and to reduce those environmental impacts to the extent feasible (e.g., by recommending mitigation measures). In its role as a "responsible agency," DFW is involved in the CEQA process for a particular project because the project needs to obtain a permit from DFW in order to proceed. This bill provides that DFW can only engage in the CEQA process for an electrical infrastructure project if DFW has to issue a permit for a given electrical infrastructure project to proceed [Notably, this bill also appears to try to remove DFW's permitting authority for "necessary electrical infrastructure projects" in proposed Public Utility Code § 2846.1(a)(1)(B)]. The limitation on DFW's engagement in the CEQA process would force DFW to abdicate its mandate to protect the public trust and manage fish and wildlife for the benefit of all Californians (see #1 under Existing Law, above).

GO 131-D. Section 6 of this bill aims to streamline approvals for electrical infrastructure projects by CPUC. These provisions effectively codify changes to GO 131-D which establishes the process for permitting and siting electric transmission infrastructure in California. GO 131-D was first adopted in 1970 and last updated in 1995. The level of analysis performed by the CPUC pursuant to GO 131-D varies with the size (measured in voltage) of the transmission project.

GO 131-D Reforms. Since the last update of GO 131-D in 1995, the energy landscape and infrastructure planning process have evolved significantly. In the last decade, there has been the energy crisis, energy deregulation, formation of ISO, and significant increase in new renewable energy generation. SB 529 (Hertzberg), Chapter 357, Statutes of 2022, sought to revise the permitting process at the CPUC. SB 529 directed the CPUC to revise GO 131-D to authorize a utility to use the PTC process or claim an exemption to seek approval to construct an extension, expansion, upgrade, or other modification to its existing transmission facilities regardless of the voltage level by January 1, 2024. In May 2023, the CPUC opened a rulemaking to solicit comments that would revise the GO 131-D rules.⁹ Based on the feedback, the assigned commissioner determined the issues to be considered in the proceeding should be separated into two phases.

⁹ CPUC, "CPUC To Update Transmission Siting Regulations To Address Electricity Reliability and Climate Goals"; <https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-to-update-transmission-siting-regulations-2023>

Phase 1 includes consideration of changes to GO 131-D necessary to conform it to the requirements of SB 529 and updates to outdated references. Phase 2 includes consideration of all other changes to GO 131-D that may be proposed by CPUC staff or other stakeholders during the course of this proceeding. Phase 1 was completed on December 14, 2023.

Proposed settlement agreement for changes to GO 131-D. In September 2023, Southern California Edison (SCE), Pacific Gas and Electric (PG&E), and SDG&E filed a proposed settlement agreement on behalf of several stakeholders¹⁰ that proposes numerous reforms to GO-131 D. It is important to note that the changes submitted to CPUC by this bill's sponsor and others are *proposed* and not yet final. CPUC is expected to complete Phase 2 of the process mandated by SB 529 later this year.

This bill incorporates some of the changes to GO 131-D contained in the proposed settlement agreement, but also proposes changes that go well beyond those in the proposed settlement. Most relevant to this Committee's jurisdiction, Sections 1 through 4 of this bill make changes to CESA and NCCP processes and permitting; these changes are *not* contained in the proposed settlement agreement submitted to CPUC by the sponsor and others. For a more detailed discussion of GO 131-D and the SB 529 process to update it, please refer to the analysis of this bill by the Assembly Utilities and Energy Committee.

4) **Policy considerations.** This bill raises a number of substantial policy issues that fall within this Committee's jurisdiction:

- *Automatic consistency determination.* This bill eliminates DFW's discretion when it receives a consistency determination for an electrical infrastructure project that has received an ITP under ESA for a species that is listed under both ESA and CESA. DFW would be unable to ensure the protections for a dual-listed species are adequate. It is not clear why this is advisable under any circumstance, let alone when faced with the prospect of a change in federal administration in the near future.
- *Limitations on DFW review of an NCCP amendment.* This bill limits the review of an NCCP amendment to only the new covered actions or covered species that are proposed to be added to an existing NCCP in an amendment. In practice this will be difficult to achieve as the point of an NCCP is to take a comprehensive view of a landscape and the activities occurring within it. This holistic view is lost when only taking into account a piece of the overall puzzle. Finally, this change would apply not only to SDG&E's NCCP but to the remaining 16 approved NCCPs as well.
- *CEQA exception for NCCP amendments.* This exemption is problematic, especially when combined with the limitations this bill places on DFW's review of an NCCP amendment. In effect, this bill will result in no environmental review of the activities or impacts to listed species at any point. The new activities and impacts will not have been

¹⁰ The settling parties are SCE, PG&E, SDG&E, BearValley Electric Service, Inc., Liberty Utilities (CalPeco Electric) LLC, PacifiCorp, American Clean Power, Independent Energy Producers Association, Center for Energy Efficiency and Renewable Technologies, Environmental Defense Fund, LS Power Grid California LLC, REV Renewables, LLC, Large-Scale Solar Association, California Energy Storage Alliance (CESA), Horizon West Transmission, LLC, Trans Bay Cable LLC, GridLiance West LLC, and the City of Long Beach, California, a municipal corporation acting by and through its Board of Harbor Commissioners.

analyzed in the original environmental document (i.e., such activities and impacts are additions or new to the NCCP) and this bill eliminates environmental review at the time of amendment. It is difficult to see how appropriate mitigation for new activities and impacts to listed species will be determined without environmental review.

- 5) **Proposed committee amendments.** In order to address some of the concerns outlined under Policy Considerations, above, the Committee may wish to ask the author to accept the following amendments:

Amendment 1 – Delete the automatic consistency determination provisions of this bill:

Strike Section 1 of this bill.

Amendment 2 – Retain existing requirement that CEQA apply to NCCPs:

~~SEC. 3. Section 2826 of the Fish and Game Code is repealed.~~

~~SEC. 4. Section 2826 is added to the Fish and Game Code, to read:~~

~~2826. (a) For purposes of this section, “additional conservation measures” shall mean any provisions, actions, operational protocols, or requirements that enhance or supplement the existing conservation measures specified in a natural community conservation plan that is being amended.~~

~~(b) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the approval of an amendment to a natural community conservation plan that adds additional conservation measures, and amended permits or authorizations associated with the amendment.~~

- 6) **Arguments in support.** Supporters write that this bill will expedite critical electrical infrastructure needed to support the state’s ambitious climate and energy goals. These groups also indicate that this bill contains provisions consistent with the Settlement proposed at the CPUC to modernize CPUC permitting rules for electrical infrastructure. The sponsors observe that decarbonization must happen at an increasing rate to achieve these goals, but “today’s permitting and environmental review processes cause needless delays, historically resulting in transmission project timelines of a decade or more.” Concerning elements of this bill under this Committee’s jurisdiction, the sponsors write that this bill “proposes changes to conservation planning and species take, and tailored exemptions from CEQA.”
- 7) **Arguments in opposition.** A number of environmental organizations write in opposition of the exemptions found in this bill indicating that these would benefit not just clean energy projects, but also “dirty” energy and that this bill is duplicative of ongoing rulemaking at the CPUC. Regarding impacts to species, the groups write that this bill would “gut protections for species listed under CESA as well as the NCCP Act – a law long regarded as the gold-standard for conservation and land use planning.” These organizations also express concern that the language in this bill ineffectively mimics CEC’s AB 205 process as it does not provide any of the protective details of AB 205 and would “exempt [projects] from the Coastal Act, CESA, and local permitting.”

Oppose unless amended. The Environmental Defense Fund (EDF), a signatory to the Settlement, had previously indicated a Support if Amended position on this bill. “Upon further review, EDF has concluded that this bill should not move forward unless all provisions except [current Section 6—the provisions in the Public Utilities Code] are removed.” EDF indicates that the Public Utilities Code sections would likely save over 1,000 days of CPUC permitting process, but “the other aspects of the bill compromise environmental integrity too much.... [which is] too big of a price to pay.” EDF observes that this bill avoids compliance with CESA, prohibits DFW from analyzing the full impacts of an NCCP amendment, and “creates a rebuttable presumption that all mitigation was successfully carried out by the permit holder even if they did not complete mitigation.”

- 8) **Triple referral.** This bill has also been referred to the Assembly Utilities and Energy Committee and Assembly Natural Resources Committee. This bill passed the Assembly Utilities and Energy Committee 13–1 on April 4, 2024 and will go to the Assembly Natural Resources Committee next should it pass this Committee.
- 9) **Related legislation.** SB 420 (Becker) of 2023 would have removed the requirement on new electrical transmission facility projects less than 138 kV proposed by the state’s six largest investor-owned utilities from a determination of need from the California CPUC before construction. SB 420 was vetoed by the Governor on October 7, 2023.

SB 619 (Padilla) of 2023 would have authorized an electrical corporation, at the time it files an application with the CPUC for a CPCN or PTC for new construction of any electrical transmission facility 138 kV or greater to, at the same time, submit an application for that facility to the CEC. Prohibits the CEC from considering the necessity for the electrical transmission facility. SB 619 was vetoed by the Governor on October 7, 2023.

AB 1373 (Garcia), Chapter 367, Statutes of 2023, among other things, requires the CPUC, in a proceeding when evaluating the issuance of a certificate of public convenience and necessity for a proposed transmission project, to establish a rebuttable presumption with regard to the need for the proposed transmission project in favor of an ISO governing board-approved need evaluation if specified requirements are met.

AB 205 (Committee on Budget), Chapter 61, Statutes of 2022, allows certain energy projects, including electric transmission lines between certain non-fossil fuel energy generation facilities, to become certified leadership projects under the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 through a certification process through the CEC. With this certification, actions or proceedings related to the certification of an environmental impact report need to be resolved within 270 days to the extent feasible.

SB 529 (Hertzberg), Chapter 357, Statutes of 2022, exempts an extension, expansion, upgrade, or other modification of an existing transmission line or substations from the requirement of a CPCN and directs the CPUC to revise its general orders, by January 1, 2024, to instead use its PTC process for these approvals.

SB 887 (Becker), Chapter 358, Statutes of 2022, directs, among other provisions, the CPUC, on or before January 15, 2023, to request CAISO to identify the highest priority anticipated transmission facilities that are needed to deliver renewable energy resources or zero-carbon resources.

SB 107 (Sher), Chapter 4, Statutes of 2002, established the current NCCP Act and repealed the NCCP Act of 1991.

REGISTERED SUPPORT / OPPOSITION:

Support

San Diego Gas and Electric Company (sponsor)
Large Scale Solar Association
Silicon Valley Leadership Group

Opposition

California Coastal Protection Network
Center for Biological Diversity
Defenders of Wildlife
Endangered Habitats League
Planning and Conservation League
Sierra Club California

Oppose Unless Amended

Environmental Defense Fund

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