



NATIVE ENDANGERED SP. HABITAT
CONSERVATION PLAN

Permit Number: ESPER8245217

Version Number: 0

Effective: 2024-02-15 **Expires:** 2049-02-14

Issuing Office:

Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

ES Sacramento Permit Office
2800 Cottage Way, Suite W-2606
Sacramento, California 95825-1846
permitsR8ES@fws.gov

Digitally signed by

Permittee:

San Luis Obispo County Planning &
Building Department
976 Osos Street, Room 300
San Luis Obispo, California 93402
U.S.A.

Name and Title of Principal Officer:

Trevor Keith Director of Planning and Building

Authority: Statutes and Regulations: 16 U.S.C. 1539 (a) 50 CFR 17.22, 50 CFR 13

Location where authorized activity may be conducted:

A 3,209-acre permit area in the unincorporated community of Los Osos in San Luis Obispo County, California.

Reporting requirements:

Annual reports are due by March 31 every year for the duration of the permit term. See the Permit authorizations and conditions below for more reporting requirements.



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Authorizations and Conditions:

- A. General conditions set out in Subpart B of 50 CFR 13, and specific conditions contained in Federal regulations cited above, are hereby made a part of this permit. All activities authorized herein must be carried out in accord with and for the purposes described in the application submitted. Continued validity, or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.
- B. The validity of this permit is also conditioned upon strict observance of all applicable foreign, State, local tribal, or other Federal law.
- C. Valid for use by the County of San Luis Obispo (Permittee) named above, and is defined as the entity that holds, or will hold, any right, title, ministerial or discretionary authority, or interest in any portion of the 3,209-acre permit area over the duration of this permit.
- D. Acceptance of this permit serves as evidence that the Permittee and its authorized agents and participants understand and agree to abide by the terms of this permit and all sections of Title 50 Code of Federal Regulations, Parts 13 and 17, pertinent to issued permits. Section 11 of the Endangered Species Act of 1973, as amended, provides for civil and criminal penalties for failure to comply with permit conditions.
- E. The authorization granted by this permit is subject to compliance with, and implementation of the *Los Osos Habitat Conservation Plan* and Appendix N: *Interim Adaptive Management and Monitoring Plan* (Jodi McGraw Consulting 2021; HCP). This permit is binding upon the Permittee and/or any authorized officer, employee, contractor, participant, or agent conducting permitted activities.
- F. The Permittee is authorized under the Federal Endangered Species Act of 1973, as amended (Act), to incidentally take (harm, injure, capture and/or kill) the federally threatened Morro shoulderband snail (*Helminthoglypta walkeriana*) as a result of the covered activities to the extent that the take of this species would otherwise be prohibited under section 9 of the Act and its implementing regulations or pursuant to a rule promulgated under section 4(d) of the Act. The take is authorized for activities impacting up to 532 acres occurring within the 3,209-acre permit area within the community of Los Osos, in San Luis Obispo County, California. Morro shoulderband snails occur almost exclusively on Baywood fine sands soil type but within both native and non-native vegetation types, as well as on and within anthropogenic features throughout the permit area. Individuals of all age classes can be difficult or impossible to locate due to their small size and cryptic nature, and therefore the number of individuals that could be taken as a result of the



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covered activities will be impossible to quantify. Therefore, undeveloped areas of native and non-native vegetation within the permit area will be used as a surrogate for take limits and is quantified in acres of disturbance or development within the permit area, up to 532 acres, for the 25-year permit term.

G. This permit is not transferable. The Permittee may convey take authorization to a participant with the completion of a Certificate of Inclusion (COI). The COI will define the covered activities, their location, binding conditions, Permittee access authorization, and describe the process to transfer a COI to a subsequent property owner or entity responsible for the covered activity. Specific steps, per 50 C.F.R. § 13.25, must be undertaken by the participant and the Permittee for this to be done. Prior to the transference of ownership of the covered property or authority of the covered activity, the participant and the new property owner or responsible entity must provide signed notification to the Permittee, identified in Condition M below, that a transfer of ownership or responsibility is pending. The notification will be provided per the schedule defined in the COI. This notification must include this permit number as it appears above and certificate number, the seller's or responsible entity's name, the Assessor's Parcel Number of the property or tax identification number of the facilities, and a signed agreement from the new property owner to fund and implement the conditions of the COI. The agreement signed by the new owner must state that the buyer is aware of and agrees to, the terms and conditions of the HCP and this permit and the specific terms of the COI. The new property owner must also agree to not exceed the incidental take amount allowed in this permit or the COI. Failure to follow these guidelines may result in a violation of section 9 of the Endangered Species Act, which may result in legal penalties, and/or the suspension or revocation of the Permit

H. The Permittee and the U.S. Fish and Wildlife Service agree that modification and amendments to this permit may occur through its effective term. The permit is based upon the Permittee's expected compliance with the provisions and commitments established in the HCP and the permit's stated terms and conditions identified herein. The following procedures shall govern the modification and amendment process:

1. Either the Permittee or the U.S. Fish and Wildlife Service may propose modifications and/or amendments to this permit by providing written notice. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations on the covered species. This analysis shall be conducted jointly between the Permittee and the Ventura Fish and Wildlife Office. The U.S. Fish and Wildlife Service or the Permittee will use best efforts to respond to a proposed modification or amendment within sixty (60) days of receipt of such notice. Absent any objection from the U.S. Fish and Wildlife Service or the Permittee, the proposed modification and/or amendment will be determined as minor and will become effective upon written approval by the U.S. Fish and Wildlife Service or the Permittee.



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2. The U.S. Fish and Wildlife Service will not propose or approve minor modifications or amendments to this permit if the U.S. Fish and Wildlife Service determines that such modifications would result in operations under the permit that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the HCP or additional take of the covered species not analyzed in connection with the HCP. If, for any reason, a receiving party determines that a proposed amendment or modification is not minor, it must be processed in accordance with the U.S. Fish and Wildlife Service's permit regulations at 50 C.F.R. § 13 and § 17.

3. Any amendment or modification must conform with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the U.S. Fish and Wildlife Service's permit regulations at 50 C.F.R. § 13 and § 17.

I. The Permittee and U.S. Fish and Wildlife Service (Service) acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts to the Morro shoulderband snail, changes in circumstances could arise which were not fully anticipated by this permit and which may result in substantial and adverse change in the status of the Morro shoulderband snail. The U.S. Fish and Wildlife Service's policy regarding changed and unforeseen circumstances is contained in the final "No Surprises" rule published on February 23, 1998 (63 FR 8859) and codified at 50 C.F.R. §§ 17.22(b)(5), 17.32(b)(5), 222.22(g).

Unforeseen and/or changed circumstances may become apparent either to the Permittee, authorized agents, participants, or to personnel of the U.S. Fish and Wildlife Service. For the purposes of implementation of this condition, unforeseen circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by the U.S. Fish and Wildlife Service at the time of development of the HCP, and that result in a substantial and adverse change in the status of the Morro shoulderband snail. Changed circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that can reasonably be anticipated by the U.S. Fish and Wildlife Service, and that can be planned for. Should either unforeseen or changed circumstances arise, the Permittee and the Ventura Fish and Wildlife Office will meet within twenty (20) working days following notice. The Ventura Fish and Wildlife Office and Permittee will together agree upon appropriate and reasonable measures for addressing such circumstances, within the rule of applicable law, and the Permittee will implement appropriate and reasonable measures within an additional thirty (30) working days, unless a longer period of time is agreed to by the Service.

J. A copy of this permit or COI must be in the possession of the Permittee and/or their authorized officer, employee, contractor, agent, or participant while conducting activities that could result in take of Morro shoulderband snails. Third party participants must retain a copy of their COI and abide by the provisions



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defined therein. This permit number should be provided in all correspondence concerning permit activities. Any questions regarding this permit should be directed to the Field Supervisor, Ventura Fish and Wildlife Office.

K. Any remains of dead, intact Morro shoulderband snail must be collected by a U.S. Fish and Wildlife Service-approved biologist and biodeposited at a professionally maintained facility that is widely accessible for scientific study. For this permit, this includes either the California Academy of Sciences (Golden Gate Park, San Francisco, California 94118, (415) 750-7037 and 7239) or the Santa Barbara Museum of Natural History (2559 Puesta del Sol Road, Santa Barbara, California 93105, (805) 682-4711). Arrangements regarding the deposition of potential museum specimens must be made with a receiving institution prior to the implementation of any fieldwork. Other arrangements for deposition of specimens may be made with prior written approval from the Ventura Fish and Wildlife Office.

L. For purposes of receiving reports, and monitoring compliance and administration of the terms and conditions of this permit, the electronic mail address and physical address for the contact office of the U.S. Fish and Wildlife Service is:

Via electronic mail to:

FW8VenturaITP@fws.gov

Hard copy correspondence to:

U.S. Fish and Wildlife Service

Ventura Fish and Wildlife Office

Attn: Los Osos Habitat Conservation Plan Contact

2493 Portola Road, Suite B

Ventura, California 93003

M. The Permittee agrees to implement measures to ensure that take of the Morro shoulderband snail is minimized and mitigated to the maximum extent practicable. These measures are included in the HCP in sections 5.2, 5.3, and 5.7. In addition to the measures in the HCP, to abide by the incidental take permit, the Permittee agrees to the following:

Implementing Entity

1. The selection of the Implementing Entity must be approved in writing by the Service.
2. Prior to conducting or authorizing covered activities that may result in take of the Morro shoulderband snail or negative effects to the covered species or issuing Certificates of Inclusion (COI), the Permittee shall establish a contract with an Implementing Entity, approved in writing by the



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Service. The contract's scope of work must include all tasks described in the HCP and Letter of Intent in Appendix O and assign each to either the Implementing Entity or the County. The Permittee will ensure that each task defined in the HCP is assigned to either the County or the Implementing Entity. Changes in assignment will be included in annual reporting.

Reporting

3. Annual Reports will be submitted to the Service no later than March 31 of each year.
4. The Permittee must complete the Adaptive Management and Monitoring Plan (AMMP) within 3 years of permit issuance with approval from the Service and California Department of Fish and Wildlife (CDFW). The Permittee must include performance measures for restoration of habitat for the covered species in the AMMP. If the Permittee does not complete the AMMP within 3 years of permit issuance with approval from the Service and CDFW and alternative forms of mitigation are not developed and approved, the Service will suspend the permit and the Permittee will cease issuance of COIs and additional development will be suspended until completion of the AMMP and approval in writing from the Service and CDFW is received by the County.
5. Annual reporting will include performance assessment of restoration activities completed for mitigation credit. If performance is not meeting the anticipated schedule, adaptive management (e.g. active restoration) will be conducted to improve success.
6. Reporting will include habitat impact tracking which entails information on unauthorized habitat impacts and mitigation fees paid by the Permittee to offset those unauthorized impacts.
7. Reporting will include the number of Morro shoulderband snails relocated and the GPS location of both the capture and the receiver site.
8. The County will create a database to track Certificates of Inclusion, acres impacted, non-compliance, as described in Section 5.4.1. A report produced by this database will be included in the annual reporting.
9. Annual reporting will include a report of the market value of potential conservation land to ensure that the habitat fee will provide funds for mitigation in the form of habitat preservation.
10. Annual reports will include development projections for the following year to ensure adequate mitigation credits are available, and to ensure the funding for the HCP Conservation Program, including the endowment, is sustained for the following 12-month period.
11. Annual reporting will include the condition of on-site habitat set-asides and remedial actions that are needed, if applicable.
12. Annual reporting will include all non-compliance instances and remedial actions that were taken to return to compliance.



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13. Annual reports will include funding tracking status and any adaptations to the fee or schedule that are warranted. The Permittee will submit a contingency funding plan for procuring adequate funds for management in perpetuity.

Mitigation

14. All restoration work on the Morro Dunes Ecological Reserve (MDER) or other CDFW properties or other mitigation lands included in the Conservation Program must be conducted by the Implementing Entity or an entity specializing in restoration of comparable habitat approved by the Service and CDFW in writing.

15. The Permittee will begin the process to renew the Memorandum of Understanding between the California Department of Fish and Wildlife and the County of San Luis Obispo (MOU) no less than 6 months prior to the expiration date. The Permittee will notify the Service when this process has been initiated and completed.

16. If the MOU expires or is breached, all permit activities will cease until alternative mitigation strategy is developed and implemented with written approval from the Service. Additionally, no Certificates of Inclusions will be issued by the Permittee until the MOU is renewed.

17. Mitigation in the form of restoration will accrue credits only when previously established and agreed upon performance criteria defined in the Interim Adaptive Management and Monitoring Plan, or AMMP are reached and confirmed by the Service in writing.

18. For subdivisions of large parcels or tracts, mitigation must be secured to offset impacts on the entire subdivided land holding prior to impacts to any new subdivided parcel or portion of the parcel consistent with the stay-ahead provision described in Section 6.2.4 of the HCP.

Funding

19. A financial tracking tool will be developed by the Permittee that will ensure fees received are adequately compensating for impacts to the species and providing for the endowment to fund the conservation strategy in perpetuity. The financial tracking will be combined with the impact tracking described above in Condition 6, 7, and 8. If the financial tracking indicates account balances are not sufficient to offset expenses for HCP administration, mitigation, land acquisition, or the endowment, the issuance of new Certificates of Inclusion for covered activities will be suspended until adequate funding is secured and demonstrated to the Service. Certificate issuance can commence upon approval and confirmation of adequate funding by the Service in writing.

20. Prior to any impacts to covered species, the Permittee must demonstrate the financial sustainability of the mitigation strategy. The Permittee must ensure mitigation fees are commensurate with impacts and will support implementation for the life of the permit and



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maintenance of mitigation in perpetuity through adequate funding of the endowment. The financial sustainability status will be included in annual reporting.

21. The Habitat Protection Fee will be determined by dividing the current cost for 76.5 acres of conservation land by the number of acres that are anticipated to incur the fee (Table 2-9, Table 5-7, Section 5.7.2.1.2). This fee will be adjusted during financial review for changing land costs to ensure fees generated will achieve the goals for habitat protection as described in Table 5-1, Section 5.7.2.1.2, and Section 7.4.

22. The fees collected by the Permittee will be deposited into a dedicated trust account held by a third party approved by the Service in writing, as specified in Section 6.1.1.5.

23. Prior to issuance of Certificates of Inclusion, the Permittee will identify the cost per square foot for each of the following aspects of HCP implementation: replenishment of general fund, administration, management and monitoring, endowment, and habitat protection. Modifications to the fee distribution will be identified with justification in annual financial reporting and part of the adaptive financial management described in section 7.4.

24. The fees designated for each purpose of the conservation strategy will be adjusted as necessary to fund their intended purpose to ensure the goals of the conservation strategy are achieved, as described in Section 7.4.

25. Within 12 months of the effective date of this permit, the Permittee will provide a concise but detailed general fund replenishment strategy (no more than three pages) to reimburse the funds from the County of San Luis Obispo general fund for the initial HCP implementation costs. The strategy will include the annual amount required from the general fund, the amount of interest incurred, an analysis of fee per square foot necessary to replenish the general fund while fully sustaining HCP implementation, the amount charged in fees to Certificate of Inclusion holders per square foot of disturbance for general fund replenishment, and the anticipated schedule for general fund replenishment. The Permittee also will include the general fund replenishment strategy document in annual financial reporting to ensure the financial sustainability of the HCP. The strategy will be adapted as needed during the adaptive financial management process described in Section 7.4 of the HCP.

Certificates of Inclusion

26. For covered activities that may adversely affect covered species, the County must require participation (through a local permit/mechanism) in the HCP through a COI, (as proposed in Section 6.1.1.3 of the HCP) to ensure compliance with the Act within the permit area.

27. Certificates of Inclusion will not be issued in excess of accrued mitigation credits and will be tracked in the implementation tracking and included in reporting requirements, as specified in Section



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5.4.1.

28. If the Permittee is at any time out of compliance with the permit, no additional Certificates of Inclusion will be issued until the County confirms permit compliance and receives authorization from the Service in writing.

29. The Permittee is responsible for all permit activities and violations of participants, as described in Section 6.1.1.4 of the HCP. The Permittee will track compliance of the implementation of the conditions of issued Certificates of Inclusion. The Permittee will report violations of conditions to the Service within 30 days and present a plan for remedial action and compensatory fees paid by the Permittee (or participant) to the HCP account, as appropriate.

30. The property covered under the Certificate of Inclusion will be subject to lawful inspection by the Permittee as described in sections 6.2.1 and 6.3.3 to ensure impacts have not exceeded the disturbance envelope (defined in sections 2.2.3 and 5.7.2). If additional take has occurred, the mitigation fees commensurate with the impacts will be paid into the mitigation account by the Permittee during that reporting period. The remedial transaction will be included in annual reporting.

31. The Certificate of Inclusion can be transferred to a new owner. Specific Certificate of Inclusion transfer requirements are defined within the Certificate of Inclusion and in Condition G above.

Morro Bay Kangaroo Rat Avoidance and Habitat Restoration

32. The County and individual landowners of the following parcels identified with Assessor's Parcel Numbers (APNs) will conduct Service and CDFW-approved comprehensive species assessment surveys (protocol or other approved method) for Morro Bay kangaroo rat by a qualified and Service-approved biologist to ensure covered activities avoid Morro Bay kangaroo rat: 074-229-024, 067-011-042, 067-011-041, 067-012-005, 067-012-010, 074-022-013, and Tract 1646: 074-022069, 074-022-070, 074-022-071, 074-022-072, 074-431-001, 074-431-017.

33. Restoration of potential Morro Bay kangaroo rat habitat will be prioritized in the AMMP.

Incorporate Best Available Science

34. Avoidance and minimization measures will be modified to include best available science as necessary, including Morro Bay kangaroo rat detection methods and Morro shoulderband snail capture and relocation methods and receiver site microclimate characteristics described in Section F.2.2.2 of Appendix F.