



News & Publications

Governor Signs Legislation Allowing For Permits To Take Fully Protected Species

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On July 10, 2023, Governor Newsom signed Senate Bill 147 (“SB 147”), allowing for permits to take “fully protected” species, which include 37 species identified in different sections of the California Fish & Game Code, for certain renewable energy and infrastructure projects. Before enactment of SB 147, no authorization existed for these species to be taken, except for scientific research or in conjunction with the preparation of a natural community conservation plan. This meant that the presence of a “fully protected” species on a renewable energy development or other project site could stop that project in its tracks. SB 147 creates more certainty for renewable energy and certain other project developers because it establishes a permitting process for these species. The bill is an urgency statute, meaning that it takes effect immediately. The bill sunsets in 2033.

SB 147 establishes certain conditions that must be satisfied before an incidental take permit may be issued. One of these conditions requires that the permit must be processed pursuant to provisions in the California Endangered Species Act (“CESA”) that authorize the California Department of Fish and Wildlife (“CDFW”) to issue incidental take permits (“ITP”) and require permittees to minimize and fully mitigate impacts to the species.

Another set of conditions requires that the permit satisfy “conservation standards.” SB 147 refers to these “conservation standards” in the context of certain definitions in the Natural Community Conservation Planning Act that suggest standards requiring the applicant to identify methods and procedures necessary to bring the species to the point at which measures to minimize and fully mitigate are not necessary. In other words, measures that could

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require the permittee to essentially go above and beyond the typical minimization and mitigation measures associated with permits under CESA.

SB 147 is further restrictive in its scope of projects that are eligible for this new permitting regime. Take authorization for “fully protected” species under SB 147 is limited to a specific set of enumerated infrastructure projects, including utility-scale wind and solar projects, critical regional or local water agency infrastructure, and certain transportation projects.

SB 147 also includes a 10-year sunset provision. CDFW may issue ITPs under SB 147 to these projects until December 31, 2033, after which time no new ITPs may be issued. However, ITPs issued prior to that date will remain in effect.

SB 147 also made a few updates to the list of “fully protected” species. In particular, SB 147 revised the list of fully protected bird species by removing American peregrine falcon and brown pelican from the list; all other previously listed species, including California condor and Golden eagle, remain protected under CESA. SB 147 also removed thicketail chub from the list of fully protected fish. SB 147 did not revise the list of fully protected mammals or reptiles.

The new law is a double-edged sword for renewable energy and other infrastructure projects. On the one hand, the new permitting pathway is likely to open up opportunities to develop projects on lands previously deemed “off-limits” due to the presence of “fully protected” species. On the other hand, the new law is likely to create more permitting responsibilities and thus higher permitting costs for projects that anticipate the take of “fully protected” species. In the past, because take of “fully protected” species could not be authorized under CESA, and in those instances where take of such a species was not covered under a natural community conservation plan, CDFW typically has not gotten involved in violations of the “fully protected” species statutes, although it has participated in the CEQA process to address impacts to such species. The new law will now allow CDFW to more directly require take authorization for these species.

If you would like to know more about ITPs for fully protected species for your project, please reach out to Cox Castle’s natural resources permitting team.