

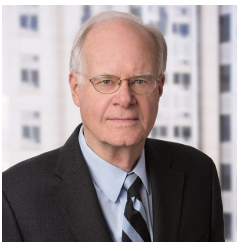
April 2015

Congress revised the Endangered Species Act of 1973 in 1982, adding a new section 10 that was intended to ameliorate the courts' increasingly strict interpretation of section 9, which essentially prohibits any action—public or private—with the potential to impair the survival of listed species or their habitat. By authorizing the issuance of “incidental take” permits, Congress would allow otherwise lawful development to occur, but only if its impacts were to be mitigated by a long-term habitat conservation plan (HCP).

Initially, the regulated community made relatively little use of this new mechanism, largely owing to its novelty and apparent complexity. During the Clinton administration, however, Secretary of the Interior Bruce Babbitt embellished section 10 by the addition of a “no surprises” policy, offering assurances that, even under changed circumstances, HCP permittees would be excused from the adoption of additional conservation measures. This new rule opened the floodgate to much broader acceptance of HCPs, which now protect more than 48 million acres nationwide. No HCP is more ambitious than the multiple species habitat conservation plan (MSHCP), currently being implemented in western Riverside County, California.

Download a PDF version of the white paper "[Gray and Green: Planning for Advanced Mitigation](#)" by Douglas Wheeler. This paper was presented at the International Association for Impact Assessments (IAIA) conference in April 2015.

Contacts



Douglas P.
Wheeler

Senior Counsel

> [Read the full article online](#)