

**DEPARTMENT:** Development Services

**SUBJECT:**

SEP-HCP & CPS ENERGY SYSTEM-WIDE HCP MOA

**LOCATION:**

This project is located throughout Bexar County and would consist of various future projects in which would otherwise be ineligible to enroll in the SEP-HCP and that CPS Energy would utilize the incidental take authorization provided by their own HCP.

**BACKGROUND INFORMATION:**

Council District:	Various
Owner:	CPS Energy
Consultant:	Pape-Dawson Engineers
Acreage:	TBD

CPS Energy intends to use the SEP-HCP for authorization of incidental take of the Covered Karst Invertebrates under the following circumstances:

1. when it determines that ESA Section 10 authorization for one or more of the Covered Karst Invertebrates covered by the SEP-HCP is needed for CPS Energy Activities;
2. where CPS Energy Activities occur within the permit area for the SEP-HCP; and
3. where the SEP-HCP is available for use by CPS Energy (i.e., participation is achievable within the desired timeline for the CPS Energy Activities).

In such circumstances, CPS Energy would rely on the participation process and incidental take authorization of the SEP-HCP for addressing impacts to those Covered Karst Invertebrates addressed by such participation, and would not draw upon its own incidental take authorization for those same Covered Karst Invertebrates under the CPS Energy System-wide HCP and ITP.<sup>1</sup>

CPS Energy, at its discretion, may also participate in the SEP-HCP under other circumstances, including for authorization of incidental take of the GCWA, and has assumed for the purposes of this HCP that 10% of expected impacts to GCWA habitat resulting from CPS Energy Activities over the ITP Term will be authorized through participation in the SEP-HCP. Participation in the SEP-HCP may be desirable if CPS Energy is not able to find suitable mitigation opportunities in a timely manner, whereas the SEP-HCP might be able to offer immediate authorization with the payment of the applicable fees.

For circumstances in which CPS Energy cannot enroll directly in the SEP-HCP, CPS Energy has requested to establish an MOA with the SEP-HCP, so that CPS Energy can provide the SEP-HCP Conservation Program mitigation as defined in and required by the CPS Energy System-wide HCP to offset impacts of take resulting from Covered Activities authorized under the CPS Energy System-wide HCP and Incidental Take Permit.

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<sup>1</sup> CPS Energy and USFWS acknowledge that portions of a single project may be enrolled in different programs to achieve ESA compliance.

The delivery of mitigation by CPS Energy through their HCP will involve one or more of the following options:

1. permittee-responsible mitigation lands;
2. purchase of conservation credits from USFWS-approved conservation banks with service areas that contain the location of the Covered Activity, unless otherwise allowed by the USFWS on a case-by-case basis;
3. third party mitigation transactions; or
4. payment to a fee-in-lieu program.

CPS Energy may use any or a combination of these delivery options at its discretion. Consistent with the enrollment process, CPS Energy will obtain the required mitigation prior to implementing a Covered Activity, except in cases of Emergency Responses. If CPS Energy opts to implement its own permittee- responsible mitigation or work with a third party to implement a specific conservation transaction, CPS Energy will coordinate with USFWS to provide the necessary baseline documentation, real estate, and financial assurances specified in the USFWS mitigation guidance. CPS Energy will seek USFWS concurrence on the proposed mitigation for any CPS Energy Activity prior to enrolling the CPS Energy Activity in their HCP.

Additional information regarding the requirements and process for CPS to use their own HCP are included within the CPS Energy System-wide HCP documents (see Section 6.6 Covered Karst Invertebrates Conservation Program)<sup>2</sup>.

Mitigation of CPS Energy Projects in which CPS Energy uses their own HCP and Incidental Take and identifies the SEP-HCP as the beneficiary of the mitigation will be accomplished through the establishment of a Memorandum of Agreement with CPS Energy and could require one or more of the following:

- Payments for the establishment, management, monitoring, and perpetual funding for the SEP-HCP to establish and maintain a Karst Fauna Area
- Contributions towards the future establishment, management, monitoring, and funding for SEP-HCP Karst Fauna Areas

**RECOMMENDATION:**

Staff recommends approval of the CPS Energy request to develop and execute an MOA.

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<sup>2</sup> The CPS Energy System-wide HCP Section 6.6 Covered Karst Invertebrates Conservation Program, describes the measures CPS Energy will implement for Covered Activities where incidental take authorization for one or more of the Covered Karst Invertebrates is achieved through the application of this HCP and related ITP. These measures are not required for those Covered Species addressed by participation in the Southern Edwards Plateau HCP or other mechanism to achieve ESA compliance.