



This document is scheduled to be published in the Federal Register on 06/18/2012 and available online at <http://federalregister.gov/a/2012-14649>, and on [FDsys.gov](http://FDsys.gov)

**Billing Code 4310-55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R8-ES-2012-N139]**

**[FF08ESMF00-FXES11120800000F2-123-F2]**

**Proposed Low-Effect Habitat Conservation Plan for the California Tiger Salamander, Calaveras County, California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Juan San Bartolome (applicant) for a 10-year incidental take permit for one species under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of one listed animal, the threatened Central California Distinct Population Segment of the California tiger salamander (tiger salamander). The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant’s low-effect habitat conservation plan (Plan). We request

comments on the applicant's application and Plan, and the preliminary determination that the Plan qualifies as a "low-effect" habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

**DATES:** We must receive written comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comment is in reference to the Low-Effect Habitat Conservation Plan for the California Tiger Salamander, Calaveras County, California.

- *U.S. Mail:* Mike Thomas, Conservation Planning Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825.
- *In-Person Drop-off, Viewing, or Pickup:* Call 916-414-6600 to make an appointment during regular business hours to drop off comments or view received comments at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mike Thomas, Chief, Conservation Planning Division, or Eric Tattersall, Deputy Assistant Field Supervisor, at the address

shown above or at 916-414-6600 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **Availability of Documents**

You may obtain copies of the permit application, plan, and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

### **Public Availability of Comments**

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Background Information**

Section 9 of the Act prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harm” is defined in the regulations as

significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

The applicant seeks an incident take permit for covered activities within 109 acres of grassland associated with the construction of 15-lot subdivision, with a minimum 5-acre parcel size, on the north side of Highway 12, in northwest Calaveras County, just west of Burson, California. The following federally listed species will be included as a covered species (covered species) in the applicants' proposed Plan:

- Central California Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) (threatened)

The applicant would receive assurances under our "No Surprises" regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)) for take of tiger salamanders.

Covered activities include the following:

- Grading and ground leveling associated with construction of 15 residential homes,
- Vegetation removal and planting,
- Use of heavy equipment (not limited to bulldozers and backhoes),
- Erosion control structures (such as silt fencing and barriers),
- Dust control (such as watering surface soils),
- Construction of driveways and roadways,
- Trenching and installation of utilities and irrigation systems, and

- Landscaping associated with all of the above activities and structures.

The applicant proposes to avoid, minimize, and mitigate the effects to the covered species associated with the covered activities by fully implementing the Plan.

Minimization measures will include, but are not limited to:

- An employee education program,
- Temporary construction fencing,
- A 15-mile per hour speed limit,
- Construction work time windows (i.e., to avoid the rainy season and nighttime work), and
- A deed restriction or conservation easement on 54 acres of the site for protection of tiger salamander upland habitat.

The applicant proposes to build a 15-lot subdivision, with a minimum 5-acre parcel size. Thirteen of the lots would be between 5.0 and 5.5 acres, one lot would be 9.0 acres, and the largest and most northerly lot would encompass 26.57 acres, including an existing pond that would be left undisturbed. The subdivision includes 15 single-family residences with associated landscaping, utilities, and roadways.

## **Alternatives**

Our proposed action is approving the applicant's Plan and issuance of an

incidental take permit for the applicant's covered activities. As required by the Act, the applicant's Plan considers alternatives to the take under the proposed action. The Plan considers the environmental consequences of two alternatives to the proposed action, the No Action Alternative and a Reduced Take Alternative. Under the No Action Alternative, we would not issue a permit; the applicant would not build the proposed subdivision, the on-site upland grassland habitat would not receive protection, and no take would occur for the construction of the residence and its associated structures. For these reasons, the No-Action Alternative has been rejected.

Under the Reduced Take Alternative, we would issue an incidental take permit for the development of 10 residential units instead of the proposed 15. However, due to the relatively small project site dimensions, the County's zoning ordinance of a minimum 5-acre parcels, and infrastructure that would still be required by the landowner (e.g., roads, utilities, etc.) any further reduction in the number of lots would make the project economically unviable. In addition, even though this alternative would result in larger lot size and slightly less vehicular traffic due to the reduced number of homeowners, the impacts to the covered species relative to the increase in preserved upland habitat would be small. For these reasons, the Reduced Take Alternative was rejected.

Under the Proposed Action Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above. The Proposed Action Alternative would result in permanent loss of 55 acres of upland

grassland habitat for the California tiger salamander. To mitigate for these effects, the applicant proposes to protect, enhance, and manage in perpetuity 54 acres of on-site grassland habitat.

### **National Environmental Policy Act**

As described in our EAS, we have made the preliminary determination that approval of the proposed Plan and issuance of the permit would qualify as a categorical exclusion under NEPA (42 U.S.C. 4321 et seq.), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). Our EAS found that the proposed plan qualifies as a “low-effect” habitat conservation plan, as defined by our Habitat Conservation Planning Handbook (November 1996). Determination of low-effect habitat conservation plans is based on the following three criteria: (1) Implementation of the proposed plan would result in minor or negligible effects on federally-listed, proposed, and candidate species and their habitats; (2) implementation of the proposed plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making the final determination on whether to

prepare an additional NEPA document on the proposed action.

### **Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the subject area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

**Authority**

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the Plan, and comments we receive to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the Central California Distinct Population Segment of the California tiger salamander from the implementation of the covered activities described in the Low-Effect Habitat Conservation Plan for the California Tiger Salamander, Calaveras County, California. We will make the final permit decision no sooner than 30 days after the date of this notice.

**Dated: \_\_\_ June 11, 2012**

---

**Susan K. Moore**

**Field Supervisor  
Sacramento Fish and Wildlife Office,  
Sacramento, California.**

[FR Doc. 2012-14649 Filed 06/15/2012 at 8:45 am; Publication Date: 06/18/2012]