



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2023-0055; FF08ESMF00-FXES11140800000-234]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Aramis Solar Energy Generation and Storage Project, Alameda County, CA; Availability of Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit application; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft environmental assessment under the National Environmental Policy Act (NEPA) for an incidental take permit (ITP) under the Endangered Species Act (ESA), supported by a draft habitat conservation plan (draft HCP). IP Aramis, LLC (applicant) has applied for an ITP under the ESA for the Aramis Solar Energy Generation and Storage Project in Alameda County, California. The requested ITP, which would be in effect for a period of 32 years, if granted, would authorize incidental take of the federally threatened California red-legged frog, federally threatened Central Distinct Population Segment of the California tiger salamander (Central California tiger salamander), federally endangered San Joaquin kit fox, Federal candidate monarch butterfly, and non-listed golden eagle, which is protected under the Bald and Golden Eagle Protection Act (Eagle Act). We invite the public and local, State, Tribal, and Federal agencies to comment on the application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

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

ADDRESSES: *Obtaining Documents:* The draft environmental assessment, draft HCP,

and any comments and other materials that we receive are available for public inspection at <https://www.regulations.gov> in Docket No. FWS-R8-ES-2023-0055.

Submitting Comments: To submit comments, please use one of the following methods, and note that your information requests or comments are in reference to the draft environmental assessment, draft HCP, or both.

- *Internet:* Submit comments at <https://www.regulations.gov> under Docket No. FWS-R8-ES-2023-0055.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS-R8-ES-2023-0055; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see **Public Comments** and **Public Availability of Comments**, under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joseph Terry, Senior Fish and Wildlife Biologist, or Ryan Olah, Supervisor, Coast Bay Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, by phone at 916–414–6600. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft environmental assessment, prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. This notice also announces the receipt of an application from IP Aramis, LLC (applicant) for a 32-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Application for the

permit requires the preparation of a habitat conservation plan (HCP) with measures to avoid, minimize, and mitigate the impacts of incidental take to the maximum extent practicable. The applicant prepared the draft Aramis Solar Energy Generation and Storage Project Habitat Conservation Plan (draft HCP) pursuant to section 10(a)(1)(B) of the ESA. The purpose of the draft environmental assessment is to assess the effects of issuing the permit and implementing the draft HCP on the natural and human environment. The Eagle Act (16 U.S.C. 668-668d and 50 CFR § 22.80) regulations at 50 CFR 22.10 allow the Service to cover eagles under an HCP Section 10(a)(1)(B) ITP. Accordingly, the HCP was written to meet the requirements for the Service to issue the permit under ESA Section 10 and the Eagle Act. Criteria for issuance of an eagle permit are codified in 50 CFR 22.80(f).

Background

Section 9 of the ESA prohibits the take of fish or wildlife species listed as endangered; as applicable to the species affected by the proposed action, the ESA implementing regulations also prohibit take of fish or wildlife species listed as threatened, including the Central California tiger salamander and California red-legged frog, with exceptions for certain ranching activities on private and Tribal lands as described in 50 CFR 17.43(c)(3)(i)-(xi) and 50 CFR 17.43(d)(3)(i)-(xi). Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal habitat conservation plan (HCP) program, go to <https://www.fws.gov/service/habitat-conservation-plans>.

National Environmental Policy Act Compliance

The proposed ITP issuance triggers the need for NEPA compliance (42 U.S.C. 4321 *et seq.*). The draft environmental assessment was prepared to analyze the impacts of issuing an ITP based on the draft HCP and to inform the public of the proposed action,

any alternatives, and associated impacts, and to disclose any irreversible commitments of resources.

Proposed Action Alternative

Under the Proposed Action Alternative, the Service would issue an ITP to the applicant for a period of 32 years for certain covered activities (described below). The applicant has requested an ITP for three federally listed species, one Federal candidate species, and one non-listed species protected by the Eagle Act (described below).

Habitat Conservation Plan Area

The geographic scope of the draft HCP encompasses a 398-acre (ac) project permit area and a 453-ac mitigation permit area. The project permit area comprises an approximately 398-ac site where the power-generating facilities and battery energy storage system would be constructed in the unincorporated North Livermore area of Alameda County, California, approximately 2.25 miles north of the Livermore city limits and Interstate 580. The project permit area is bounded by Manning Road to the north, North Livermore Avenue to the east, and a private driveway to the south. The mitigation permit area is a 453-ac site located at Vieira Ranch, south of Patterson Pass Road and north of Tesla Road, in unincorporated eastern Alameda County, California.

Eagle Act Compensatory Mitigation

Retrofitting power poles with a high risk of avian electrocution in accordance with Avian Power Line Interaction Committee guidelines is the only form of compensatory mitigation that enables benefits to golden eagles to be quantified with reasonable certainty at this time. High-risk poles would be retrofitted within the eagle management unit. To offset the predicted loss of golden eagle productivity due to disturbance take and loss of breeding productivity to one breeding territory in the vicinity of the project permit area and the disturbance of one breeding territory during two breeding seasons at the mitigation permit area, the applicant would need to retrofit

approximately 129 to 298 power poles to offset 8.26 fledged young lost at a 1.2:1 ratio. The final power pole number depends on the type and expected longevity of each retrofit. Short-term retrofits that use plastic covers equate to avoided loss from retrofits that is maintained and effective for up to 10 years, which would require more poles. Long-term retrofits where avoided loss from retrofits is maintained and effective for up to 30 years require fewer poles. To complete the required compensatory mitigation, the applicant would either work directly with a utility company to complete the required power pole retrofits, with Service approval of the developed plan, or the applicant would work with a Service-approved in-lieu fee program to purchase credits to fulfill the required retrofits that must be completed. The draft HCP contains details of the analysis conducted to estimate the number of power pole retrofits required for compensatory mitigation.

To address the high cumulative impacts on golden eagle populations in this area, primarily due to mortality from wind turbines in the Altamont Pass Wind Resource Area, severe drought, and urban development, the applicant's proposed off-site 453-ac habitat mitigation area includes a known golden eagle nest site and overlaps in part with one golden eagle breeding territory. This nest site and the mitigation lands would be protected and managed to benefit golden eagles as described in the draft HCP.

Covered Activities

The proposed ESA section 10 ITP would allow take of the California red-legged frog, Central California tiger salamander, San Joaquin kit fox, monarch butterfly, and golden eagle from covered activities in the proposed HCP area, including all ground-disturbing activities and impacts from construction, operation and maintenance activities, and site decommissioning or repowering of the project, as well as activities necessary to implement management actions at the mitigation permit area. Covered activities at the 398-ac project permit area include all ground-disturbing activities and impacts from construction, including: (1) site access, staging, and preparation, including development

of access roads, internal project area roads, parking areas, and equipment staging areas, as well as limited excavation activities for utility poles and building foundations; (2) installation of a 100-megawatt solar photovoltaic and electrical collection system, including solar arrays, fencing, and utility lines; (3) installation of a project substation and generation intertie line occupying a 5,000 square foot area, and utility lines; (4) installation of a battery energy storage system occupying a 5-ac portion of the project permit area; (5) construction of an operation and maintenance (O&M) building and electrical controls occupying approximately 400 square-feet of the project permit area; (6) construction of project entrances and internal driveways to provide access for routine maintenance of the system; (7) installation of fences, lighting, and signage designed to enable passage of covered species while keeping the project area secure; (8) construction of a detention basin approximately 0.4 ac in size, designed to avoid water ponding, prevent the discharge of off-site stormwater runoff, allow for onsite infiltration within 48 hours (the basin would be routinely maintained to remove vegetative growth); (9) installation of water storage tanks onsite for fire suppression for the battery energy storage system, use for O&M activities, and to maintain proposed landscaping and vegetation; (10) installation of an agricultural landscaping buffer as a visual screen (i.e., buffer) to neighboring properties; (11) O&M activities, including routine preventative maintenance conducted by O&M staff and supported by outside contractors; (12) a sustainable agriculture program that consists of grassland management, sheep grazing, chicken rearing, beekeeping, and an agricultural landscaping buffer; and (13) restoration and management of grassland habitat at the project permit area. Covered activities at the 453-ac mitigation permit area include installation and maintenance of fencing, cattle grazing, maintenance of ponds or impoundments, mowing, controlled burning, erosion control or repair, invasive species control, fire management, monitoring, and plantings for covered species. The applicant is proposing to implement a number of best

management practices, as well as general and species-specific avoidance and minimization measures to minimize the impacts of the covered activities on the covered species.

Covered Species

The applicant has requested an ITP for two federally listed threatened species, one federally listed endangered species, one Federal candidate species, and one non-listed species protected by the Eagle Act: the threatened California red-legged frog (*Rana draytonii*), the threatened Central California Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) (Central California tiger salamander), the endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the candidate monarch butterfly (*Danaus plexippus*), and the non-listed golden eagle (*Aquila chrysaetos*). All species included in the ITP would receive assurances under the Service's "No Surprises" regulations at 50 CFR 17.22(b)(5).

No Action Alternative

Under the No Action Alternative, the Service would not issue an ITP, and the HCP would not be implemented. Permit denial would prevent the applicant from proceeding with the covered activities because there would be no other alternative means of complying with the ESA and Eagle Act. Under the No Action Alternative there would be no take of federally listed species, monarch butterflies, or golden eagles, and permanent protection of habitat for federally listed species, monarch butterflies, and the golden eagle at Vieira Ranch would not occur. The retrofit of power poles would also not occur. Under the No Action Alternative, agricultural uses (dry-land farming and grazing) would continue at the project site, and a new source of renewable solar energy would not be available to public utilities, municipal utilities, or private consumers.

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, the draft environmental assessment, and the draft HCP. 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 area and their possible impacts on the species;
5. Information on the seasonal use of the mitigation permit area by the monarch butterfly;
6. Information on establishing a monitoring program for the monarch butterfly at the mitigation permit area to inform adaptive management for the benefit of the species;
7. Information on how to enhance, restore, and adaptively manage breeding and nectar habitat for the monarch butterfly at the mitigation permit area while maintaining cattle grazing throughout the mitigation permit area to enhance upland refugia and dispersal habitat for the Central California tiger salamander and California red-legged frog, denning and dispersal habitat for the San Joaquin kit fox, and foraging habitat for the golden eagle;
8. Information on how to incorporate climate change into an adaptive management plan at the mitigation permit area for the benefit of the Central California tiger salamander, California red-legged frog, San Joaquin kit fox, monarch butterfly, and golden eagle;
9. Information on the effects of photovoltaic solar panels on annual grassland habitat quality, burrowing mammal activity, amphibians (e.g., Central

California tiger salamander and California red-legged frog), pollinators (e.g., monarch butterfly and Crotch's bumble bee), golden eagles, and microclimatic effects underneath the solar panels;

10. Information on the effects of sheep grazing and chicken rearing on pollinators (e.g., monarch butterfly and Crotch's bumble bee), amphibians (e.g., Central California tiger salamander and California red-legged frog), and golden eagles;
11. 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
12. Any other environmental issues that should be considered with regard to the proposed development and permit action.

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—might 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.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the application, associated documents, and any public comments we receive as part of our NEPA compliance process to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action

for the potential issuance of an ITP. If the intra-Service consultation confirms that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

Authority

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations at 50 CFR 17.32(b)(1) (ii), and the Eagle Act (16 U.S.C. 668-668d and 50 CFR § 22.80) regulations at 50 CFR 22.10 which allow the Service to cover eagles under an HCP Section 10(a)(1)(B) ITP. Criteria for issuance of an eagle permit are codified in 50 CFR 22.80(f).

Michael Fris,
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