



**Billing Code 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2014–N147]; [FXES11120000–156–FF08ECAR00]**

**Endangered and Threatened Wildlife and Plants; Incidental Take Permit  
Application; Proposed Low-Effect Habitat Conservation Plan and Associated  
Documents; County of San Diego, California**

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Pauma Estates, Inc. (applicant) for a 5-year incidental take permit for the endangered arroyo toad pursuant to the Endangered Species Act of 1973, as amended (Act). We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a “low-effect” Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act

(NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low effect screening form, which are also available for public review.

**DATES:** Written comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** *Submitting Comments:* You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760-431-9624.

*Obtaining Documents:* To request copies of the application, proposed HCP, and EAS, contact the Service immediately, by telephone at 760-431-9440 or by letter to the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen A. Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone 760-431-9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Pauma Estates, Inc. (applicant) for a 5-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, Act). The application addresses the potential “take” of the endangered arroyo toad in the course of activities associated with the construction of the Pauma Estates residential development in unincorporated San Diego County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the proposed Habitat Conservation Plan (HCP) by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a “low-effect” Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low effect screening form, which are also available for public review.

## **Background**

Section 9 of the Act and its implementing Federal regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in any such conduct” (16 U.S.C. 1538). “Harm” includes significant

habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found at 50 CFR 17.22 and 50 CFR 17.32.

The applicant requests a 5-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking arroyo toad [*Anaxyrus (=Bufo) californicus*] as a result of permanent impacts to 10.74 acres (ac) of habitat the species uses for feeding and sheltering. The take would be incidental to the applicant’s activities associated with the construction of the Pauma Estates residential development in San Diego County, California, and includes in-perpetuity management activities within the proposed on-site biological open space area.

The Pauma Estates project proposes to grade 16 lots for residential homes, construct the associated initial infrastructure (private road and utilities installation), and improve 3.8 ac of public road. The applicant will grade and install the initial infrastructure improvements necessary to create residential lots that will subsequently be sold to individual buyers for final buildout (e.g., pads, driveways, and landscaping) at an unspecified time in the future.

The project will impact 10.74 ac of arroyo toad upland aestivation habitat permanently as a result of the residential development activities.

To minimize take of arroyo toad by the Pauma Estates project and offset impacts to its habitat, the applicant proposes to mitigate for permanent impacts to approximately 10.74 ac of occupied arroyo toad habitat through the on-site preservation of approximately 9.43 ac of occupied arroyo toad habitat within a dedicated conservation easement. In addition, the applicant proposes to improve the quality of arroyo toad habitat within the 9.43-ac biological open space area by providing funding for and implementing the in-perpetuity management of the biological open space area pursuant to an approved Resource Management Plan. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of activities to arroyo toad:

- Grading and construction within arroyo toad upland aestivation habitat will only take place during the arroyo toad breeding season (defined as March 15–July 31), when arroyo toads are less likely to occupy the upland habitat.
- A permanent arroyo toad barrier wall will be constructed between the development area and the on-site biological open space area.

The above described impacts and mitigation will occur within designated critical habitat for the arroyo toad. Although the project site is adjacent to occupied habitat for other federally threatened and endangered species, no other listed species or designated critical habitat occur within the project site.

### **Proposed Action and Alternatives**

The Proposed Action consists of the issuance of an incidental take permit and

implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the arroyo toad. If we approve the permit, take of arroyo toad would be authorized for the applicant's activities associated with the construction of the Pauma Estates residential development. In the proposed HCP, the applicant considers alternatives to the taking of arroyo toad under the proposed action. Three alternatives to the taking of the listed species under the proposed action are considered in the proposed HCP.

- (1) Under the Reduced Density Alternative, the project impact footprint would be reduced; however, the alternative would either render the project economically infeasible, or would result in insufficient funding to conserve and manage arroyo toad habitat areas not proposed for development.
- (2) Under the Increased Density Alternative, additional areas of arroyo toad habitat would be impacted by project development and adequate habitat for the arroyo toad would not remain for conservation and management, thereby providing no benefit to the species in the project area.
- (3) Under the No Action Alternative, no arroyo toad habitat would be impacted or conserved.

### **Our Preliminary Determination**

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a "low-

effect” plan as defined by the Habitat Conservation Planning Handbook (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats, including designated critical habitat;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, 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 this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

### **Next Steps**

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by

conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of arroyo toad.

### **Public Comments**

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

### **Public Availability of Comments**

Before including your address, phone number, e-mail address, 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 may 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.

**Authority**

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

**Karen A. Goebel,  
Acting Field Supervisor,  
Carlsbad Fish and Wildlife Office,  
Carlsbad, California.**

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