



**Billing Code 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2015–N038]**

**[FF08ESMF00–FXES11120800000–156]**

**Proposed Low-Effect Habitat Conservation Plan for the California Tiger Salamander and California Red-Legged Frog, Sonoma County, California**

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

**ACTION:** Notice of availability; receipt of permit application, proposed habitat conservation plan; request for comment.

**SUMMARY:** We, the U. S. Fish and Wildlife Service (Service), have received an application from Steven Sannella (applicant) for a 5-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the

potential for “take” of two listed animals, the California tiger salamander and California red-legged frog. 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 (HCP). We request comments on the applicant’s application and HCP, and our preliminary determination that the HCP qualifies as a “low-effect” HCP, 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:** To ensure consideration, please send your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

We will make the final permit decision no sooner than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES: *Submitting Comments:*** Please address written comments to Vincent Griego, Coast Bay Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414-6713.

***Reviewing Documents:*** You may obtain copies of the HCP and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**, or from the Sacramento Fish and Wildlife Office website at <http://www.fws.gov/sacramento>. Copies of these documents are also available for public inspection, by appointment, during regular

business hours, at the Sacramento Fish and Wildlife Office.

**FOR FURTHER INFORMATION CONTACT:** Vincent Griego, Coast Bay Division; 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:**

**Introduction**

We have received an application from Steven Sannella (applicant) for a 5-year incidental take permit under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Act). The application addresses the potential for “take” of two listed animals, the California tiger salamander and California red-legged frog. Below, we refer to both species, collectively the Covered Species. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant’s low-effect HCP. We request comments on the applicant’s application and HCP, and our preliminary determination that the HCP qualifies as a “low-effect” habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (43 U.S.C. 4321 *et seq.*; NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

## **Background Information**

Section 9 of the Act (16 U.S.C. 1531–1544 *et seq.*) and Federal regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. 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). 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). 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 HCP 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.

### **Proposed Project**

The draft HCP addresses potential effects to the Covered Species that may result from the proposed activities. The applicant seeks incidental take authorization for covered activities within 13.31 acres located at 215 Valley View Drive, City of Petaluma, Sonoma County, California. The federally endangered California tiger salamander (Sonoma County Distinct Population Segment (*Ambystoma californiense*)) and federally threatened California red-legged frog (*Rana draytonii*) are the Covered Species in the applicant's proposed HCP.

The applicant would seek incidental take authorization for these two Covered Species and would receive assurances under our "No Surprises" regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

### ***Proposed Covered Activities***

The following actions are proposed as the “Covered Activities” under the HCP: The 13.31-acre property will be subdivided to create 3 additional lots, comprising the following: Lot 1 will be approximately 3.25 acres; Lot 2, approximately 3 acres; and Lot 3, approximately 3.23 acres, with the remainder lot being 3.83 acres. The existing developed area, the 3.83-acre lot, will not be further developed or renovated, nor will the other three new lots be developed at this time. The proposed general rural residential development, driveways, and sewage disposal system will comprise 1.54 acres of development/disturbance. The proposed building envelopes, which include the building staging areas and landscape areas, are proposed as follows: Lot 1 would have 5,200 square feet; Lot 2 would have 6,773 square feet; and Lot 3 would have 17,186 square feet. The applicant seeks a 5-year permit to cover the activities associated with this proposed development within the 13.31-acre site (the permit area).

### ***Proposed Mitigation Measures***

The applicant proposes to avoid, minimize, and mitigate the effects to the Covered Species associated with the Covered Activities by fully implementing the HCP. The following mitigation and minimization measures will be implemented:

- Mitigate for the loss of 1.54 acres of upland habitat for California tiger salamander by purchasing 1.54 acres of California tiger salamander credits from a Service-approved conservation bank. The applicant will also mitigate for the loss

of 1.54 acres of upland habitat for California red-legged frog by purchasing 1.54 acres of California red-legged frog credits from a Service-approved conservation bank;

- Immediately prior to the start of work, a pre-construction survey will be conducted in the construction area for California tiger salamander and California red-legged frog by a Service-approved biologist. If California tiger salamander or California red-legged frog are found, the Service will be notified and the relocation of the individual will be completed with approval by the Service;
- A Service-approved biologist will conduct an Employee Education Program for all construction personnel. At a minimum, the training will include a description of the California tiger salamander and California red-legged frog and their habitat, the importance of the species and their habitats, and the general measures that are being implemented to protect the California tiger salamander and California red-legged frog as they relate to the project. Instruction will include the appropriate protocol to follow in the event California tiger salamander or California red-legged frogs are found on site;
- A Service-approved biological monitor will be on site each day during initial site grading of development sites. Thereafter, an on-site person will be designated to monitor on-site compliance with all minimization measures. The Service-approved biologist will ensure that this individual receives training consistent with that outlined in the HCP;
- Before the start of work each morning, the biological monitor will check for

animals under any equipment such as vehicles and stored pipes. The biological monitor will check all excavated steep-walled holes or trenches greater than 1 foot deep for any California tiger salamanders or California red-legged frogs. Any listed animals found will be removed by the biological monitor and translocated under approval by the Service;

- An erosion and sediment control plan will be implemented to prevent impacts to the wetlands and construction on habitat outside the work areas;
- Best Management Practices, including a Storm Water Pollution Prevention Plan, will be implemented during construction to prevent any construction debris or sediment from impacting adjacent habitat;
- The number of access routes, number and size of staging areas, and the total area of activity will be limited to the minimum necessary to achieve the project goal. The staging areas will be located in hardscaped areas or areas to be developed to prevent creating temporary impacts to suitable habitat. Any areas that are temporarily disturbed (within one season) will be restored to pre-disturbance conditions immediately following construction. The Service-approved biological monitor will identify the boundaries of the work and staging areas and ensure that that contractor does not disturb any ground outside the designated construction areas. The contractor will obtain approval from the monitor to go outside designated areas;
- All foods and food-related trash items will be enclosed in sealed trash containers at the end of each day, and removed completely from the site once every three

days;

- No pets will be allowed anywhere in the project site during construction;
- A speed limit of 15 mph on dirt roads will be maintained, if applicable;
- All equipment will be maintained such that there will be no leaks of automotive fluids such as gasoline, oils, or solvents;
- Hazardous materials such as fuels, oils, solvents, etc., will be stored in sealable containers in a designated location that is at least 200 feet from aquatic habitats. All fueling and maintenance of vehicles and other equipment and staging areas will occur at least 200 feet from any aquatic habitat;
- Grading and clearing will typically be conducted between April 15 and October 15 of any given year, depending on the level of rainfall and/or site conditions;
- Project areas temporarily disturbed by construction activities will be re-vegetated;
- If California tiger salamander or California red-legged frog are found, the proponent will coordinate with the Service to prevent take of individuals and mitigate for loss of habitat.

### ***Proposed Action and Alternatives***

Our proposed action (see below) is approving the applicant's HCP and issuance of an incidental take permit for take resulting from implementation of the Covered Activities. As required by the Act, the applicant's HCP considers alternatives to the take under the proposed action. The HCP considers the environmental consequences of two alternatives to the proposed action: (1) the No-Action Alternative; and (2) the Reduced

Development Alternative.

#### No-Action Alternative

Under the No-Action Alternative, we would not issue an incidental take permit; the applicant would not build the proposed project; the project site would remain undeveloped, the existing upland habitat would not be disturbed, and the applicant would not implement proposed mitigation measures. While this No-Action Alternative would avoid take of the Covered Species, it is considered infeasible because it would result in unnecessary economic burden on the applicant. It also could result in sale of the parcel to a party that would develop the property without maintaining any habitat on site. For this reason, the No-Action Alternative has been rejected.

#### Reduced Development Alternative

Under the Reduced Development Alternative, the size of the proposed residences would be reduced but not the required access roadway. The Service would issue a permit, and the applicant would implement the proposed mitigation measures. While this Reduced Development Alternative would reduce the loss of California tiger salamander and California red-legged frog habitat, it would still potentially result in take of these species, and it would not reduce the project footprint to a biologically meaningful extent. This alternative would result in unnecessary economic burden to the applicant. For these reasons, the Reduced Take Alternative was rejected.

## Proposed Action

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 the permanent loss of 1.54 acres of California tiger salamander and California red-legged frog upland habitat. The habitat would be converted to rural residential and associated infrastructure and road access. To mitigate for these effects, the applicant proposes to purchase (a) 1.54 acres of California tiger salamander credits from a Service-approved conservation bank located in Sonoma County, and (b) 1.54 acres of California red-legged frog credits from a Service-approved conservation bank located in Alameda County.

## **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. 4321–4347 *et seq.*), as provided by NEPA implementing regulations in the Code of Federal Regulations (40 CFR 1500.5(k), 1507.3(b)(2), 1508.4), by Department of the Interior regulations (43 CFR 46.205, 46.210, 46.215), and by the Department of the Interior Manual (516 DM 3 and 516 DM 8). Our EAS found that the proposed HCP qualifies as a “low-effect” HCP, as defined by our “Habitat Conservation Planning and Incidental Take Permitting Process Handbook” (November 1996).

Determination of whether a habitat conservation plan qualifies as low-effect is

based on the following three criteria: (1) Implementation of the proposed HCP 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 HCP, considered together with the impacts of other past, present, and reasonably foreseeable 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; and

(5) Identification of any other environmental issues that should be considered with regard to the proposed rural residential project and permit action.

You may submit your comments and materials by one of the methods listed above in **ADDRESSES**. Comments and materials we receive, as well as supporting documentation we used in preparing the EAS, will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

#### **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**

We will evaluate the permit application, including the HCP, 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 California tiger salamander and California red-legged frog from the implementation of the covered activities described in the low-effect Habitat Conservation

Plan for the California tiger salamander and California red-legged frog, City of Petaluma, Sonoma County, California. We will make the final permit decision no sooner than 30 days after publication of this notice in the **Federal Register**.

**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 in the Code of Federal Regulations (CFR) 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.*).

Dated: June 11, 2015.

**Jennifer M. Norris,**  
**Field Supervisor,**  
**Sacramento Fish and Wildlife Office,**  
**Sacramento, California.**

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