



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-2012-N220]

[FF08E00000-FXES11120800000-134]

**Tehachapi Uplands Multiple Species Habitat Conservation Plan; Kern County, CA;
Final Environmental Impact Statement**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a final Environmental Impact Statement (EIS), Tehachapi Uplands Multiple Species habitat Conservation Plan (TU MSHCP), and Implementing Agreement (IA), related to an application by Tejon Ranchcorp (Tejon or applicant) for an Incidental Take Permit (ITP or permit) pursuant to the Endangered Species Act (Act). The final documents reflect changes made to the 2011 Supplemental Draft EIS and TU MSHCP/IA resulting from comments received during the 90-day public comment period. Responses

to comments from the 2011 comment period are included in the EIS. This notice provides an opportunity for the public to review the final documents and responses to comments. The proposed 50-year ITP would authorize incidental take of 27 species associated with plan-wide activities and limited development activities on portions of Tejon Ranch.

DATE: Written comments must be received by 5 p.m. Pacific Time, [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Obtaining Documents:* You may download copies of the EIS, TU MSHCP, and IA on the Internet at <http://www.fws.gov/ventura/>. Alternatively, you may use one of the methods below to request hard copies or a CD-ROM of the documents.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email:* fw8tumshcp@fws.gov. Include “Tehachapi Uplands MSHCP/EIS Comments” in the subject line of the message.
- *U.S. Mail:* Roger Root, Assistant Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *In-Person Drop-off, Viewing, or Pickup:* Call (805) 644-1766 to make an appointment during regular business hours at the above address.
- *Fax:* Roger Root, Assistant Field Supervisor, (805) 644-3958, Attn.: Tehachapi Uplands MSHCP/EIS Comments.

Hard bound copies of the EIS, TU MSHCP, and IA are available for viewing at the following locations:

1. U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
2. Kern County Library, Frazier Park Branch, 3732 Park Drive, Frazier Park, CA 93225.

FOR FURTHER INFORMATION CONTACT: David Simmons, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, at 805-644-1766.

SUPPLEMENTARY INFORMATION:

Introduction

We have received an application for an incidental take permit covering 27 listed and unlisted species that may be taken or otherwise affected by plan-wide activities and future low-density residential and commercial development activities on a portion of the Tejon Ranch (Ranch). The applicant has prepared the TU MSHCP to satisfy the requirements for a section 10(a)(1)(B) permit under the Act (16 U.S.C. 1531 et seq.). The permit is requested to authorize the incidental take of species that could potentially result from plan-wide activities occurring throughout the 141,886 acres of lands proposed to be covered by the permit (“covered lands”), and from approximately 5,533 acres of mountain resort and other development within and adjacent to the Interstate-5 corridor and Lebec community within the covered lands in Kern County, California. The TU MSHCP proposes a conservation strategy to minimize and mitigate to the maximum

extent practicable the impacts of any incidental taking that could occur to covered species as the result of the covered activities.

Background

Section 9 of the Act and Federal regulations prohibit the “take” of wildlife species listed as endangered or threatened (16 U.S.C. 1538). The Act defines the term “take” as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Pursuant to section 10(a)(1)(B) of the Act, the Service may issue permits to authorize “incidental take” of listed animal 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 permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized by an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them by a habitat conservation plan. All species included on an incidental take permit would receive assurances under the Service’s “No Surprises” regulation [50 CFR 17.22(b)(5) and 17.32(b)(5)].

The applicant seeks a 50-year incidental take permit for covered activities within 141,886 acres of covered lands on Tejon Ranch in Kern County, California. Proposed

covered activities include plan-wide activities, which consist of both ongoing activities that have historically occurred at the Ranch, such as grazing and film production, and new activities, including limited public access for passive recreational purposes. Up to 200 acres could be disturbed to facilitate plan-wide activities. Proposed covered activities also include planned future community development of approximately 5,533 acres within and adjacent to the Interstate-5 corridor in the Tejon Mountain Village Planning Area and the Lebec/Existing Headquarters Area. The permit would also cover take minimization, mitigation and conservation measures provided under the TU MSHCP and intended to minimize and mitigate the effect of take to the maximum extent practicable. The permit would not cover hunting or mineral extraction.

Species proposed for coverage in the TU MSHCP are species that are currently listed as federally threatened or endangered or have the potential to become listed during the term of the permit and have some likelihood to occur within the covered lands. Should any of the unlisted covered wildlife species become listed under the Act during the term of the permit, take authorization for those species would become effective upon listing. Twenty-one animal species and six plant species known to occur or having the potential to occur within the covered lands are proposed to be covered by the permit (Covered Species). The permit would include the following federally listed animal species: California condor (*Gymnogyps californianus* – federally listed as endangered and State listed as endangered and fully protected), least Bell's vireo (*Vireo bellii pusillus* – federally listed as endangered), southwestern willow flycatcher (*Empidonax traillii extimus* – federally listed as endangered), and Valley elderberry longhorn beetle (*Democerus californicus dimorphus* – federally listed as threatened). The permit would

also include the following species currently unlisted under the Act: western yellow-billed cuckoo (*Coccyzus americanus occidentalis*– Federal candidate for listing); Tehachapi slender salamander (*Batrachoseps stebbinsi*), bald eagle (*Haliaeetus leucocephalus*), American peregrine falcon (*Falco peregrinus anatum*), little willow flycatcher (*Empidonax traillii brewsteri*), golden eagle (*Aquila chrysaetos*), white-tailed kite (*Elanus leucurus*), ringtail (*Bassariscus astutus*), tricolored blackbird (*Agelaius tricolor*), Tehachapi pocket mouse (*Perognathus alticola inexpectatus*), burrowing owl (*Athene cunicularia*), yellow-blotched salamander (*Ensatina eschscholtzii croceater*), western spadefoot (*Spea hammondi*), purple martin (*Progne subis*), yellow warbler (*Dendroica petechia brewsteri*), coast horned lizard (*Phrynosoma coronatum* (both *frontale* and *blainvillii* populations)), two-striped garter snake (*Thamnophis hammondi*), round-leaved filaree (*Erodium macrophyllum*), Fort Tejon woolly sunflower (*Eriophyllum lanatum* var. *hallii*), Kusche's sandwort (*Arenaria macradenia* var. *kuschei*), Tehachapi buckwheat (*Eriogonum callistum*), striped adobe lily (*Fritillaria striata*), and Tejon poppy (*Eschscholzia lemmonii* ssp. *kernensis*).

The TU MSHCP includes a conservation strategy intended to avoid, minimize, and mitigate to the maximum extent practicable any impacts that would occur to covered species as the result of the covered activities. Under the TU MSHCP, and consistent with the Tejon Ranch Conservation and Land Use Agreement between Tejon and the Sierra Club, National Audubon Society, Natural Resources Defense Council, Endangered Habitats League, and Planning and Conservation League (Ranchwide Agreement), no land development would be allowed within approximately 93,522 acres of the covered lands that constitute the mitigation lands, including the approximately 37,100-acre Tunis

and Winters ridge area. The Tunis and Winters ridge area is designated as the Condor Study Area under the TU MSHCP and is the area of the ranch most likely to be frequented by condors. An additional 23,001 acres would be preserved as mitigation lands within the open space within the Tejon Mountain Village Planning Area, resulting in the permanent conservation of approximately 82 percent of the covered lands. In addition to the TU MSHCP mitigation lands, approximately 12,795 acres of covered lands are subject to existing conservation easements acquired pursuant to the Ranchwide Agreement and are required to be managed in accordance with the TU MSHCP. In total, approximately 91 percent of the covered lands would be permanently conserved under the TU MSHCP and Ranchwide Agreement.

Upon initiation of construction of the Tejon Mountain Village development, the TU MSCHP requires that the TU MSHCP mitigation lands be permanently protected by phased recordation of conservation easements or equivalent legal restrictions over all such lands by the end of the permit term. The TU MSCHP also requires implementation of general and species-specific take avoidance, minimization, and mitigation measures to reduce potential impacts to the covered species. With regard to the California condor, the TU MSHCP requires the ongoing monitoring of covered activities by a qualified biologist to reduce the potential for any human/condor interactions and the permanent enforcement of covenants, conditions, and restrictions on residential development to minimize any impacts to condors. The TU MSHCP also provides funding for condor capture, care, and relocation in the unlikely event that a condor becomes habituated to human activities. No lethal take of condors would be authorized under the permit.

National Environmental Policy Act Compliance

The Service's proposed issuance of an incidental take permit is a Federal action and triggers the need for compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.). The Service has prepared an EIS that evaluates the impacts of proposed issuance of the permit and implementation of the TU MSHCP, and also evaluates the impacts of a reasonable range of alternatives. The Final EIS analyzes four alternatives in addition to the proposed TU MSHCP, summarized above. The Service has identified the proposed TU MSHCP as the preferred alternative. The proposed TU MSHCP alternative and the remaining four alternatives are summarized below.

The proposed TU MSHCP alternative, described above, generally remains the same as described in the 2011 Supplemental Draft EIS. It has been updated to reflect approved mitigation measures required by the county and the State; to reflect clarifications made to the covered species mitigation measures proposed in the applicant's revised TU MSHCP; to reflect information related to the final location of two communication towers; to clarify the number of hunting cabins allowed on covered lands; and to update various acreages associated with the revised TU MSHCP. Where appropriate, we added information and required mitigation measures associated with the TMV project approvals to the Supplemental Draft EIS.

The no-action alternative, for the purposes of analysis, remains the same as described in the 2011 Supplemental Draft EIS and assumes that the Ranchwide Agreement would remain in effect, that development of the TMV project and other future commercial or residential development allowed within the covered lands under the

Ranchwide Agreement would not occur, and that existing ranch uses would continue at current levels into the future.

The condor-only HCP alternative generally remains the same as described in the 2011 Supplemental Draft EIS and continues to represent a species management approach that addresses only the California condor. Take of other federally listed species would be avoided under this alternative through project-specific review and approvals, and by siting development in a manner that avoids occurrences of the species. Development and open space preservation would be consistent with those elements described in the Proposed TU MSHCP Alternative. Plan-wide activities would also be the same as those described in the proposed TU MSHCP alternative, except that all management and mitigation elements would be limited to California condor–related measures as set forth in the proposed TU MSHCP alternative. Similarly, the conservation measures and adaptive management elements of the condor-only HCP alternative would be limited solely to those for the California condor set forth in the proposed TU MSHCP alternative.

The condor critical habitat (CCH) avoidance MSHCP alternative remains the same as described in the 2011 Supplemental Draft EIS. Plan-wide activities would continue and the proposed development areas avoid federally designed critical habitat for California condor. Under this alternative, no commercial or residential development would occur in any designated critical habitat for California condor. The TMV project would not occur, as that project would extend into California condor critical habitat. Instead, development would follow Kern County General Plan designations and would cluster most commercial and residential development in the southwestern portion of the covered lands, in the portion of the TMV planning area nearest to Interstate 5, and in

other areas outside condor critical habitat. The CCH avoidance MSHCP alternative also assumes implementation of the Ranchwide Agreement, where development boundaries outside critical habitat conform to the development setbacks and general boundaries provided in that agreement.

The Kern County General Plan Buildout alternative remains the same as presented in the 2011 Supplemental Draft EIS. While the Ranchwide Agreement has resulted in the recordation of conservation easements on 12,795 acres of the covered lands (existing conservation easement areas), the remainder of the covered lands to be precluded from development under the Ranchwide Agreement do not currently have conservation easements recorded. As noted above, because the Ranchwide Agreement is a private agreement between parties, and Service is not a party to and has no contractual standing under the agreement, the agreement can be amended (or even terminated) by mutual agreement of the parties such that the land preservation outcome of the Ranchwide Agreement on covered lands may not be realized. While the Service considers remote the likelihood that the Ranchwide Agreement would be terminated, for purposes of comprehensive NEPA analysis, this alternative does not assume continuation of the Ranchwide Agreement except for the permanent protection of the already-recorded conservation easements on the existing conservation easement lands.

Under the Kern County General Plan buildout alternative, development is assumed to proceed in accordance with the Kern County General Plan, including implementation of the TMV project (per the TMV project approvals). Development of the covered lands would require additional Kern County approval, and the EIS analysis assumes that development would proceed on a project-by-project basis and that the

Service would issue incidental take authorization as appropriate through either section 7 of the Act or the section 10 process under the Act.

Public Involvement

We published a Notice of Intent (NOI) to prepare an EIS for a California Condor Habitat Conservation Plan (Condor HCP) in the **Federal Register** on June 25, 2004 (69 FR 35663). The NOI announced a 30-day public scoping period that ended on July 26,

2004. On March 26, 2008, a NOI to prepare an EIS for the TU MSHCP was published in the **Federal Register** (73 FR 16052). The NOI announced a 30-day public scoping period

that ended on April 25, 2008. We published a revised notice of intent (NOI) to prepare an EIS for this project in the **Federal Register** on June 4, 2008 (73 FR 31876), this NOI clarified the proposed action and corrected a posting error in the March 2008 NOI. On February 4, 2009, we published a notice of availability of the Draft Plan, EIS, and IA in the **Federal Register** (74 FR 6050). The Draft documents were initially available for a 90-day public comment period, which was extended, with a Notice of a 60-day Extension

issued on May 5, 2009. On February 3, 2012, we published a notice of availability of the Supplemental Draft EIS, Plan and IA in the **Federal Register** (77 FR 5564). The Supplemental Draft documents were available for a 90-day public comment period, which concluded on May 3, 2012.

Public Review

Copies of the Final EIS, TU MSHCP, and IA are available for review (see **ADDRESSES**). Any comments we receive will become part of the administrative record and will be available to the public. 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. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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.

Decision

We will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the Act. A permit decision will be made no sooner than 30 days after the publication of the Environmental Protection Agency's notice of the EIS in the Federal Register and completion of a Record of Decision.

This notice is provided pursuant to section 10(a) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: _October 16, 2012_

Alexandra Pitts
Deputy Regional Director,
Pacific Southwest Region,
Sacramento, California.

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