

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Notice of Availability of a Draft Environmental Impact Statement/ Environmental Impact Report and Receipt of an Application for an Incidental Take Permit for the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan, Contra Costa County, CA**

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

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** This notice announces the availability of the draft East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (Plan), draft Implementing Agreement, and draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for public review and comment. In response to receipt of an application from the East Contra County Habitat Conservation Plan Association (Association), the Fish and Wildlife Service (Service) is considering the proposed action of issuing a 30-year permit for 28 species. The proposed permit would authorize take of individual members of species listed under the Federal Endangered Species Act of 1973, as amended (ESA). The permit is needed because take of species could occur during proposed urban development activities, rural infrastructure projects, and preserve management activities within a 175,435-acre planning area located in eastern Contra Costa County, California.

**DATES:** Two public meetings will be held on: Thursday, October 27, 2005, from at 1 p.m. to 3 p.m. and 6 p.m. to 8 p.m. Written comments should be received on or before December 1, 2005.

**ADDRESSES:** The public meetings will be held at: Pittsburg City Hall, 65 Civic Drive, Pittsburg, California 94565. Send comments by mail or facsimile to: (1) Lori Rinek, Division Chief, U.S. Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, California 95825; facsimile (916) 414-6713; and (2) John Kopchik, Principal Planner, Contra Costa County Community Development Department, 651 Pine Street, Fourth Floor North Wing, Martinez, California 94553, facsimile (925) 335-1299.

**FOR FURTHER INFORMATION CONTACT:** (1) Sheila Larsen, Wildlife Biologist, or Lori Rinek, Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office, telephone (916) 414-6600; or (2) John Kopchik, Principal

Planner, Contra Costa County Community Development Department, e-mail [jkopc@cd.cccounty.us](mailto:jkopc@cd.cccounty.us), telephone (925) 335-1227.

**SUPPLEMENTARY INFORMATION:****Availability of Documents**

Copies of the draft Plan, draft Implementing Agreement and draft EIS/EIR are available for public review from 9 a.m. to 5 p.m., at the Contra Costa County Community Development Department (see **ADDRESSES**). These documents also are available on the Association's Web site at: <http://www.cocohcp.org>.

In addition, copies of all documents are also available at the following Contra Costa County Library locations: 751 Third Street, Brentwood, CA; 6125 Clayton Road, Clayton, CA; Freedom High School, 1050 Neroly Road, Oakley, CA; 80 Power Avenue, Pittsburg, CA; Riverview Middle School, 205 Pacifica Avenue, Bay Point, CA.

You also may obtain copies of these documents for review by contacting Lori Rinek [see **FOR FURTHER INFORMATION CONTACT**]. Documents also will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office [see **ADDRESSES**].

**Meetings**

The initial Notice of Intent to prepare a draft EIS/EIR and hold a public scoping meeting on July 17, 2003, was published in the **Federal Register** on June 5, 2003 (68 FR 33736). Information on past and upcoming meetings is available on the Association's Web site at <http://www.cocohcp.org>.

**Background Information**

Section 9 of the Federal ESA of 1973, as amended, and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). 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 (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)]. Under limited circumstances, the Service may issue permits to authorize incidental take of listed fish or wildlife; *i.e.*, take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Although take of listed plant species is not prohibited under the Federal ESA, and therefore cannot be authorized under an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan. All species included on an incidental take permit would receive assurances under the Services "No Surprises" regulation 50 CFR 17.22(b)(5) and 17.32(b)(5).

The Service has received an application for an incidental take permit for implementation of the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (Plan). The application has been prepared and submitted by the East Contra County Habitat Conservation Plan Association (Association), a joint powers authority consisting of the following seven agencies: Contra Costa County; the cities of Brentwood, Clayton, Oakley, and Pittsburg; Contra Costa Water District; and, East Bay Regional Park District. The Association has prepared the Plan to satisfy the application requirements for a section 10(a)(1)(B) permit under the Federal ESA, of 1973, as amended, and a section 2835 permit under the California Natural Community Conservation Planning Act of 2002 (NCCPA). Thus the Plan constitutes a Habitat Conservation Plan pursuant to the Federal ESA, and a Natural Community Conservation Plan pursuant to the California NCCPA.

The Association seeks a 30-year incidental take permit for covered activities within a proposed 175,435-acre planning area, located entirely in eastern Contra Costa County, California. The Association has requested a permit for 28 species, 8 of which are currently listed as threatened or endangered under the Federal ESA. Of these 28 species, the Association requests a permit and assurances for 17 animal species and assurances for 11 plant species. Proposed covered species include 3 wildlife species currently listed as endangered under the Federal ESA [San Joaquin kit fox (*Vulpes macrotus mutica*), longhorn fairy shrimp (*Brachinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardii*)] and 5 wildlife species currently listed as threatened under the Federal ESA [Alameda whipsnake (*Masticophis lateralis euryxanthus*), giant garter snake (*Thamnophis gigas*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana aurora draytonii*), and vernal pool fairy shrimp (*Brachinecta lynchi*)]. Proposed covered species also include 9 wildlife species and 11 plant species

that are not listed under the Federal ESA at the current time: Townsend's western big-eared bat (*Corynorhinus townsendii townsendii*), tricolored blackbird (*Agelaius tricolor*), golden eagle (*Aquila chrysaetos*), western burrowing owl (*Athene cucularia hypugea*), Swainson's hawk (*Buteo swainsonii*), silvery legless lizard (*Anniella pulchra pulchra*), western pond turtle (*Clemmys marmorata*), foothill yellow-legged frog (*Rana boylei*), midvalley fairy shrimp (*Brachinecta mesovallensis*), Mount Diablo manzanita (*Arctostaphylos auriculata*), brittle scale (*Atriplex depressa*), San Joaquin spearscale (*Atriplex joanquiniana*), big tarplant (*Blepharizonia plumosa* ssp. *plumosa*), Mount Diablo fairy lantern (*Calochortus pulchellus*), recurved larkspur (*Delphinium recurvatum*), round-leaved filaree (*Erodium macrophyllum*), Diablo helianthella (*Helianthella castanea*), Brewer's dwarf flax (*Hesperolinon breweri*), showy madia (*Madia radiata*), and adobe navarretia (*Navarretia nigelliformis* ssp. *nigelliformis*).

If the proposed Plan is approved and the permit issued, take authorization of covered listed wildlife species would be effective at the time of permit issuance. Take of the currently non-listed covered wildlife species would be authorized concurrent with the species' listing under the Federal ESA, should they be listed during the duration of the permit.

The proposed Plan is intended to be a comprehensive and multi-jurisdictional document, providing for regional species conservation and habitat planning, while allowing the prospective permittees (the County and the cities that are members of the Association) to better manage anticipated growth and development. The proposed Plan also is intended to provide a coordinated process for permitting and mitigating the take of covered species as an alternative to the current project-by-project approach.

If the proposed Plan is approved and a permit is issued to the Association, project proponents would submit applications for incidental take authorization to their local land use authority (members of the Association holding a valid permit) as part of the standard project review and approval process. The local land use authority would review these applications for completeness and for compliance with the terms of the Plan. Take authorization would be issued to these parties by the local land use authority if the application is complete and compliant with the Plan. As part of the standard approval process, projects would require separate, project-level

environmental review under the California Environmental Quality Act and, in some cases, the National Environmental Policy Act.

An Implementing Entity created by the Association would be responsible for conducting broad conservation and management measures, such as acquiring and maintaining preserve land, restoring and enhancing habitat, tracking the success of the conservation strategy, and instituting any necessary changes. Projects conducted by the Implementing Entity would be consistent with the Plan and receive coverage for take.

In order to comply with the requirements of the Federal ESA, California ESA, and the California NCCPA, the proposed Plan addresses a number of required elements, including: species and habitat goals and objectives; evaluation of the effects of covered activities on covered species, including indirect and cumulative effects; a conservation strategy; a monitoring and adaptive management program; descriptions of changed circumstances and remedial measures; identification of funding sources; and an assessment of alternatives to take of listed species.

In order to define a reasonable range of expected growth, the proposed Plan defines two permit areas: the initial urban development area and the maximum urban development area. Although the initial and maximum urban development areas bound the range of the proposed permit area, the final permit area may lie somewhere in between, depending on local land use decisions that occur during the proposed 30-year permit term. The proposed Plan therefore encompasses a range of alternative permit areas. Both the initial and maximum urban development areas are based on current general plans of the local jurisdictions.

The proposed initial urban development area is defined by: (1) The Urban Limit Line (ULL) of Contra Costa County and the city limits of the participating cities (Pittsburg, Clayton, Oakley, and Brentwood), whichever is largest; (2) the footprint of specific rural infrastructure projects outside the ULL; and (3) the boundary of any land acquired in fee title or conservation easement and managed under the Plan. Up to 8,949 acres of ground-disturbing urban development activities within the ULL are proposed to be permitted under the initial urban development area.

The proposed maximum urban development area is the largest extent to which the permit area could expand under the terms of the proposed Plan. Under this scenario, an additional 4,252 acres of ground-disturbing urban

development activities within the permit area (for a maximum of 13,201 acres) could be allowed, as long as the conditions of the Plan are met.

Proposed covered activities and projects within the Plan fall within three distinct categories: Activities and projects associated with urban growth within the urban development area; rural infrastructure projects (totaling approximately 1,302 acres outside the ULL); and activities that occur inside the Plan preserves. Proposed activities within the Plan preserves include the following: Construction and maintenance of recreational or management facilities; habitat enhancement, restoration and creation; surveys for covered species, vegetation communities, and other resources; and emergency activities, including firefighting, and repair of existing facilities due to floods or fire. During the permit term, the proposed neighboring lands provision would allow agricultural lands within 1 mile of the preserve boundary to be eligible for take coverage during the course of routine agricultural activities with certain provisions and restrictions.

The conservation strategy was designed to minimize and mitigate the impacts of covered activities, contribute to the recovery of listed covered species, and protect and enhance populations of non-listed covered species, as proposed. The proposed conservation strategy provides for the establishment, enhancement, and long-term management of the preserves for the benefit of covered vegetation communities, covered species, and overall biodiversity and ecosystem functions. The proposed preserves would also serve to achieve other complementary goals such as recreation, grazing, and crop production, as long as the primary biological goals of the Plan are met and not compromised. The system of new preserves would likely be linked to existing protected lands to form a network of protected areas outside the area where new urban growth is proposed to be permitted under the Plan.

#### **National Environmental Policy Act Compliance**

Proposed permit issuance triggers the need for compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Accordingly, a joint NEPA/CEQA document has been prepared. The Service is the Lead Agency responsible for compliance under NEPA, and the Association is the Lead Agency with responsibility for compliance with CEQA. As NEPA lead

agency, the Service is providing notice of the availability of the draft EIS/EIR, which evaluates the impacts of proposed issuance of the permit and implementation of the Plan, and as well as a reasonable range of alternatives.

The draft EIS/EIR analyzes three alternatives in addition to the proposed Plan, described above. The proposed Plan is considered Conservation Strategy A (Alternative 1). The three alternatives are described below.

The Conservation Strategy B Alternative (Alternative 2) would provide for the same size planning area, located entirely in eastern Contra Costa County, with the same preserve size as the proposed Plan, except that the location of the preserve would be modified. Modification of the preserve locations would result in increased protection of chaparral and cultivated agriculture and decreased protection of grassland. Conservation Strategy B would also involve less riparian restoration than the proposed Plan. Other elements of the proposed Plan would remain the same under Conservation Strategy B, including species and communities covered, conservation measures, monitoring and adaptive management, and implementation approach.

Compared to the Proposed Plan, the Reduced Development Area Alternative (Alternative 3) would provide for a reduced level of take due to a reduced permit area. Existing open space or agricultural lands within the ULL that are not currently designated for development would be conserved. Under this alternative, the permit area would be 9,330 acres. Other elements of the proposed Plan would remain the same under the Reduced Development Area Alternative, including species and communities covered, conservation measures, monitoring and adaptive management, and implementation approach.

Under the No-Action/No-Project alternative (Alternative 4), the proposed Plan would not be adopted, and permits pursuant to Section 10(a)(1)(B) of the Act and Section 2835 of the NCCPA would not be issued by the Service and California Department of Fish and Game, respectively. Compliance with the Federal and California ESAs would continue to be addressed on a case-by-case basis.

#### Public Comments

The Service and Association invite the public to comment on the draft Plan, draft EIS/EIR, and draft Implementing Agreement during a 90-day public comment period beginning on the date of this notice. The comment period is

opened for 90 days to eliminate the need for an extension subsequent to the close of the comment period. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

The Service will evaluate the application, associated documents, and comments submitted to them to prepare a final EIS/EIR. A permit decision will be made no sooner than 30 days after the publication of the final EIS/EIR and completion of the Record of Decision.

This notice is provided pursuant to section 10(a) of the Federal ESA and Service regulations for implementing NEPA, as amended (40 CFR 1506.6). We provide this notice in order to allow the public, agencies, or other organizations to review and comment on these documents.

Dated: August 17, 2005.

**Ken McDermond,**

*Deputy Manager, California/Nevada Operations Office, Sacramento, CA.*

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**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-030-1320-EL, NDM91535]

#### Notice of Availability of Coal Lease Final Environmental Impact Statement, North Dakota

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability (NOA) of a Final Environmental Impact Statement (FEIS) on a Coal lease application received for Federal coal tracts in the West Mine Area, Freedom Mine, Mercer County, North Dakota; NDM91535.

**SUMMARY:** Under the National Environmental Policy Act (NEPA); provisions in the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*); implementing regulations and other applicable statutes the Bureau of Land Management (BLM) announces the availability of the Federal coal leasing FEIS.

The FEIS analyzes the impacts of issuing a Federal coal lease within the West Mine Area of the Freedom Mine, located in Mercer County, North Dakota, and includes 5571 acres of Federal coal.

**DATES:** Written comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their NOA of the FEIS in the **Federal Register**. The BLM will notify all parties

on the EIS mailing list of the dates when comments will be accepted.

**ADDRESSES:** Please address questions, comments, or concerns to the North Dakota Field Office, Bureau of Land Management, Attn: Allen J. Ollila, 2933 Third Avenue West, Dickinson, North Dakota 58601-2619, fax them to (701) 227-8510, or send e-mail comments to the attention of Allen J. Ollila at [mtndfo@blm.gov](mailto:mtndfo@blm.gov). Copies of the FEIS are available for public inspection at local public libraries and at the following BLM office locations: External Affairs Office, Montana State Office, 5001 Southgate Drive, Billings, MT 59107; North Dakota Field Office, 2933 Third Avenue West, Dickinson, ND 58601-2619.

#### FOR FURTHER INFORMATION CONTACT:

Allen J. Ollila or Lonny R. Bagley at the above address or telephone: (701) 227-7700.

**SUPPLEMENTARY INFORMATION:** On January 16, 2002, Coteau filed an application with BLM to lease Federal coal deposits beneath private surface at the following locations:

#### NDM91535

T. 144 N., R. 88 W., 5th P.M.

Sec. 2: Lots 3, 4, S<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>

Sec. 4: Lots 1, 2, S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>

Sec. 6: All

Sec. 8: N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, N<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>

T. 144 N., R. 89 W., 5th P.M.

Sec. 12: E<sup>1</sup>/<sub>2</sub>

T. 145 N., R. 88 W., 5th P.M.

Sec. 4: Lots 1, 2, 3, 4, S<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>

Sec. 10: N<sup>1</sup>/<sub>2</sub>

Sec. 14: All

Sec. 22: All

Sec. 26: N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>

Sec. 28: E<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>

Sec. 34: N<sup>1</sup>/<sub>2</sub>N<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>

Containing 5,571 acres (more or less), Mercer County, North Dakota.

The Federal coal tract being considered for leasing is in the West Mine Area of the Freedom Mine, located north and west of Beulah, North Dakota. The operator (Coteau Properties Company) of this mine applied to lease the tract as a maintenance tract, to extend the life of their existing mining operation under the provisions of the Leasing By Application regulations at 43 CFR 3425.

Private & State coal reserves within the West Mine Area currently have an approval to mine, and a reclamation plan from the Public Service Commission, State of North Dakota. Coteau Properties Company also has an approved air quality permit for