

comment letters are not required to contain the commentator's name, address, or any other identifying information. Such comments may be submitted anonymously to the Service.

Date: May 15, 2008.

**Gary G. Mowad,**  
Acting Regional Director.

**Editorial Note:** This document was received in the Office of the Federal Register on August 13, 2008.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R8-ES-2008-N0193; 1112-0000-81440-F2]

#### Receipt of an Application for an Incidental Take Permit for the Santa Cruz Gardens Low-Effect Habitat Conservation Plan, Santa Cruz County, CA

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

**ACTION:** Notice of availability.

**SUMMARY:** Porter-Livingston Development, Inc., a California-based corporation, and O'Hara-Balfour LP, a California Limited Partnership, (Applicants), have applied to the U.S. Fish and Wildlife Service (Service or "we") for an incidental take permit (permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We are considering issuing a 10-year permit to the Applicants that would authorize take of the federally endangered Ohlone tiger beetle (*Cicindela ohlone*) incidental to otherwise lawful activities associated with the construction of nine new single-family residences on 2.96 acres of a 58.5-acre property in Aptos, Santa Cruz County, California. Effects from covered activities on, and conservation measures for, the federally threatened Santa Cruz tarplant (*Holocarpha macradenia*) and the non-listed Gairdner's yampah (*Perideridia gairdneri* ssp. *gairdneri*) are also being considered.

We are requesting comments on the permit application and on our preliminary determination that the proposed Habitat Conservation Plan (HCP) qualifies as a "low-effect" HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended. We explain the basis for this possible determination in a draft Environmental Action Statement (EAS) and associated Low Effect

Screening Form. The Applicants' low effect HCP describes the mitigation and minimization measures they would implement, as required in section 10(a)(2)(B) of the Act, to address the effects of the project on the Ohlone tiger beetle, Santa Cruz tarplant, and Gairdner's yampah. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The draft HCP and EAS are available for public review.

**DATES:** Written comments should be received on or before September 17, 2008.

**ADDRESSES:** Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Ventura, California 93003. You may also send comments by facsimile to (805) 644-3958. To obtain copies of draft documents, see "Availability of Documents" under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Douglass Cooper, Fish and Wildlife Biologist, (see **ADDRESSES**) telephone: (805) 644-1766, extension 272.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Documents

You may obtain copies of the application, HCP, and EAS by contacting the Fish and Wildlife Biologist (see **FOR FURTHER INFORMATION CONTACT**). Documents will also be available for review by appointment, during normal business hours, at the Ventura Fish and Wildlife Office (see **ADDRESSES**) or via the Internet at: <http://www.fws.gov/ventura>.

#### Background

Section 9 of the Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. The taking prohibitions of the Act do not apply to federally listed plants on private lands unless such take would violate State law. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants.

The Applicant owns 58.5 acres of property (Santa Cruz Gardens) that includes coastal terrace prairie, mixed grassland, non-native grassland, coastal scrub, coast live oak woodland, and riparian habitats. The project site is located in the Live Oak Planning Area, an unincorporated part of Santa Cruz County, north of the town of Soquel. Santa Cruz Gardens is situated approximately one-third of a mile north of Soquel Avenue and west of Rodeo Gulch Road. The property is bounded (approximately) by the terminus of Benson Avenue, Tiffany Court, and residential areas to the south; Thurber Lane to the west; Winkle Avenue and undeveloped lands to the north; and Rodeo Gulch Road to the east. Currently, the project site is undeveloped, but ranching, including grazing horses and/or livestock, previously occurred there. Existing surrounding land uses include single-family homes to the north and south, and commercial and higher-density multi-family housing to the south along Soquel Drive. Lower-density residential is located east of the site along Rodeo Gulch and across Thurber Lane to the west. The Applicant proposes to construct nine single-family residences, which include the footprints of the homes and associated access roads, driveways, sidewalks, and underground utilities on 2.96 acres of land. Development of this portion of the project site will result in the loss of approximately 1.24 acres of coastal prairie, 0.87 acre of mixed grassland-scrub mosaic, 0.65 acre of coast live oak woodland and eucalyptus groves, and 0.2 acre of an existing emergency access road.

The Applicant proposes to implement the following measures to minimize and mitigate take of the Ohlone tiger beetle and effects to the Santa Cruz tarplant and Gairdner's yampah, including: Preserve (under a conservation easement), manage, and monitor a 9.3-acre coastal prairie/grassland management area for the benefit of the Ohlone tiger beetle, Santa Cruz tarplant, and Gairdner's yampah; hire a Service-approved monitor and biologist; implement a construction worker education program; ensure monitoring of all grading, clearing, and other ground disturbing activities; mark construction area boundaries; construct drift fencing around the construction area; control trash accumulation and install covered trash receptacles; remove invasive, nonnative plant species; construct signs; use best management practices; and implement other minimization measures. The

conservation easement would be held by the Center for Natural Lands Management, a non-profit conservation organization located in Fallbrook, California.

The impacts from the construction activities and use of the property associated with this residential construction project are considered to be negligible to the three species as a whole because: (1) The amount of habitat being disturbed is small relative to the amount of habitat available within the Applicant's property, Santa Cruz area, and within the range of the species; (2) no individual Santa Cruz tarplants and Gairdner's yampahs have been observed above ground in the project site since 1993; (3) most of the areas that will be disturbed during construction support few if any Ohlone tiger beetles; and (4) construction activities are expected to have negligible effects to the three covered species at the property.

The Service's proposed action is to issue an incidental take permit to the Applicant, who would then implement the HCP. Two alternatives to the taking of listed species under the proposed action are considered in the HCP. Under the No-Action Alternative, no permit would be issued, the proposed project would not occur, and the HCP would not be implemented. This would avoid immediate effects of construction and use of the property on the Ohlone tiger beetle, Santa Cruz tarplant, and Gairdner's yampah. However, under this alternative, the Applicant would not be able to develop the property, and conservation measures for the Ohlone tiger beetle, Santa Cruz tarplant, and Gairdner's yampah would not be implemented. A second alternative would result in a redesigned project with the reduction in the number of homes constructed and/or relocation of the development footprint to another portion of the parcel. However, much of the property is too steep to be developed, and relocation of the footprint elsewhere on the property would result in the removal of coastal terrace prairie that is known to be occupied by, and provides essential habitat for, the Ohlone tiger beetle, Santa Cruz tarplant, and Gairdner's yampah. The Service considers the proposed development footprint as more desirable than development elsewhere on the property because the modification of habitat for the Ohlone tiger beetle, Santa Cruz tarplant, and Gairdner's yampah would be minimal, and establishment of a conservation easement would benefit the three species.

The Service has made a preliminary determination that the HCP qualifies as a "low-effect" habitat conservation plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, 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. As more fully explained in our EAS and associated Low Effect Screening Form, the Applicant's proposed HCP qualifies as a "low-effect" plan for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the Ohlone tiger beetle, Santa Cruz tarplant, and Gairdner's yampah and their habitats. The Service does not anticipate significant direct or cumulative effects to the Ohlone tiger beetle, Santa Cruz tarplant, or Gairdner's yampah resulting from development and use of the Santa Cruz Gardens site.

(2) Approval of the HCP would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this

preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to the Applicant.

#### Public Review and Comment

If you wish to comment on the permit application, draft Environmental Action Statement or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names, home addresses, etc., of respondents available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. In the absence of exceptional, documented circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: August 11, 2008.

**Diane K. Noda,**

*Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[F-14837-A, F-14837-E2; AK-965-1410-KC-P]

#### Alaska Native Claims Selection

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

**ACTION:** Notice of decision approving lands for conveyance.

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