

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[FWS-R8-ES-2014-N056; FF08E00000-FXES11120800000F2-145]

**Proposed Low-Effect Habitat Conservation Plan for the Bay Checkerspot Butterfly and Serpentine Grasslands, City of Santa Clara, Santa Clara 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 the City of Santa Clara, doing business as Silicon Valley Power (applicant), for a 30-year incidental take permit for five species under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of one listed animal and four listed plants. 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 (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 May 19, 2014. We will make the final permit decision no sooner than May 19, 2014.

**ADDRESSES:** *Submitting Comments:* Please address written comments to Ellen McBride, Conservation Planning Division, 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 permit application, HCP, and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**, or from the Sacramento Fish and Wildlife Office Web site 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:** 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 the City of Santa Clara, doing business as Silicon Valley Power (SVP; applicant), for a 30-year incidental take permit for five species under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of one listed animal, the Bay checkerspot butterfly, and four listed plants: the Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*), coyote ceanothus (*Ceanothus ferrisiae*), Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*), and Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*). Below, we refer to all five 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 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” habitat conservation plan, 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.

**Background Information**

Section 9 of the Act (16 U.S.C. 1531–1544 et seq.) and our regulations in the Code of 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.

Although take of listed plant species is not prohibited under the Act, 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.

**Proposed Project**

The draft HCP addresses potential effects to the Covered Species that may result from the proposed covered activities. The applicant seeks incidental take authorization for covered activities within the 2.86-acre Don Von Raesfeld Pico Power Plant (DVR), which is located west of the intersection of Lafayette Street and Duane Avenue and immediately north of SVP’s Kifer Receiving Station, Santa Clara County, California. The following five federally listed species will be Covered Species in the applicant’s proposed HCP:

- Bay checkerspot butterfly (*Euphydryas editha bayensis*) (threatened)
- Santa Clara Valley dudleya (*Dudleya setchellii*) (endangered)
- Coyote ceanothus (*Ceanothus ferrisiae*) (endangered)
- Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*) (endangered)
- Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*) (endangered)

The applicant would seek incidental take authorization for these five 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: Approximately 40 acres of serpentine habitat for the covered species will be indirectly affected through nitrogen oxide (NO<sub>x</sub>) deposition and NH<sub>3</sub> emissions resulting from pollution control processes. The applicant proposes to continue to operate a 2.86-acre electric power plant, which is a natural gas-fired, combined-cycle electric generating facility with two General Electric LM-6000PC Spring combustion turbine generators, a single condensing steam turbine generator, deaerating surface condenser, mechanical draft plume-abated cooling tower, and associated support equipment. The plant is rated at nominal net generating capacity of 122 megawatts (MW), with the ability to peak fire at 147 MW. The plant has an emission-reduction system, which includes water injection and a selective catalytic reduction unit to control nitrogen oxides, and an oxidation catalyst to control carbon monoxide. The power plant will not directly affect serpentine species, but emissions from the power plant could result in indirect effects. The applicant seeks a 30-year permit to cover the deposition and emissions associated with the operations of this proposed development within the 40 acres surrounding the development site. The power plant is not expected to cause direct effects to covered species or their habitat.

#### *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:

- Acquisition of and placing a conservation easement on 40 acres of serpentine habitat on the nearby DVR Ecological Preserve for protection of the serpentine-endemic species;
- Purchase of Bay Area Air Quality Management District (BAAQMD) air pollution credits in the amount of 43.3 tons for NO<sub>x</sub>;
- Population monitoring on the preserve site, including adaptive management;
- Invasive weed management;
- Controlled grazing; and
- Vegetation monitoring.

General minimization measures will include:

- Limiting vehicular access of the preserve to existing paved roads; and
- Maintenance of all equipment for accessing the preserve to avoid fluid leaks.

#### *Proposed Action and Alternatives*

Our proposed action (see below) is approving the applicant’s HCP and issuance of an incidental take permit for the applicant’s 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 one alternative to the proposed action, the No Action Alternative, as well as alternatives for power supplied to Silicon Valley Power’s customers.

#### *No-Action Alternative*

Under the No-Action Alternative, we would not issue an incidental take permit, the applicant would cease operations of the power plant, the project area would continue to experience nitrogen deposition from vehicular use along nearby highways, and no take would occur for the operation of the power plant. While the No-Action Alternative would avoid take of covered species, it is inconsistent with one of the primary objectives of Silicon Valley Power’s program to provide electrical power to its business customers and to replace the power obtained through a long-term sales agreement that expired in 2005, after the DVR came on line. In addition, the No-Action Alternative could result in greater fuel consumption and air pollution in the State, because older, less efficient plants with higher air emissions would continue to generate power instead of being replaced with cleaner, more efficient plants, such as the DVR. It also could result in the transfer of the mitigation property, the DVR Ecological Preserve, to a party that would fully develop the property without maintaining any habitat or federally listed species on site. Also, during limited availability of in-state generated electricity, imported electrical energy has proven to be expensive and not always available. Additionally, under the No-Action Alternative, the 40-acre DVR Ecological Preserve for serpentine endemic species would not be acquired or set up for management in perpetuity. For these reasons, the No-Action Alternative has been rejected.

#### *Power Supply Alternative*

Similarly, alternative routes for the natural gas pipeline, electric transmission line, and waste water pipeline were also reviewed and found either to be infeasible, to fail to avoid or

minimize any potential significant environmental effects, or to have the potential to cause significant environmental effects that are otherwise avoided or minimized by the DVR.

Various alternative technologies, scaled to meet the DVR objectives, with the technology of the DVR were compared. Technologies examined were those principal electricity generation technologies that do not burn natural gas: solar, wind, and biomass. Both solar and wind generation result in the absence or reduction in air pollutant emissions, visible plumes, and need for emissions control. Water consumption for both wind and solar generation is substantially less than for a natural, gas-fired plant because there is no thermal cooling requirement.

However, solar and wind resources would require large land areas in order to generate 122 MW of electricity. Specifically, central receiver solar thermal projects require approximately 5 acres per megawatt; therefore, 122 MW would require approximately 610 acres, or over 200 times the amount of land area taken by the DVR site and linear facilities. Parabolic trough solar thermal technology requires similar acreage per megawatt. Wind generation “farms” generally require between 5 to 17 acres per megawatt, with 122 MW requiring between 610 and 2,074 acres. Additionally, solar and wind energy technologies cannot provide full-time availability due to the natural intermittent availability of the source.

Although air emissions are significantly reduced or eliminated for both wind and solar facilities, both can have significant visual effects. Wind facilities can also affect birds and bats, depending on the turbine technology, and solar facilities typically have associated land disturbance that may affect other listed species.

For biomass generation, a fuel source such as wood chips (the preferred source) or agricultural waste is necessary. Biomass facilities generate substantially greater quantities of air pollutant emissions. In addition, biomass plants are typically sized to generate less than 20 MW, which is substantially less than the capacity of the 122-MW DVR project. In order to generate 122 MW, six biomass facilities each generating 20 MW would be required.

Because of the typically lower efficiencies and intermittent availability of alternative generation technologies, they do not fulfill a basic objective of this plant: to provide power from a load-following facility to meet the growing demands for reliable power within the City of Santa Clara. Consequently, it has

been concluded that geothermal, hydroelectric, solar, wind, and biomass technologies do not present feasible alternatives to the DVR.

For the above reasons, the various alternatives to power delivery for Silicon Valley Power's customers were 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 an estimated permanent loss through indirect effects to 40 acres of grassland habitat for the Bay checkerspot butterfly, Santa Clara Valley dudleya, Metcalf Canyon jewelflower, Coyote ceanothus, and Tiburon paintbrush. To mitigate for these effects, the applicant proposes to protect, enhance, and manage in perpetuity 40 acres of nearby serpentine grassland.

#### 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 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 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" habitat conservation plan, 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 DVR operations 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 Bay checkerspot butterfly from the implementation of the covered activities described in the Low-Effect Habitat Conservation Plan for the Bay Checkerspot Butterfly and Serpentine Grasslands, City of Santa Clara, Santa Clara 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.; NEPA), 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.; Act).

Dated: April 14, 2014.

**Jennifer M. Norris,**

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

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**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

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### **Final Environmental Impact Statement (FEIS) for the Proposed Los Coyotes Band of Cahuilla and Cupeño Indians 23-Acre Fee-to-Trust Transfer and Casino-Hotel Project, City of Barstow, San Bernardino County, California**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Los Coyotes Band of Cahuilla and Cupeño Indians, National Indian Gaming Commission (NIGC), U.S. Environmental Protection Agency (EPA), and the City of Barstow serving as cooperating agencies, intends to file a FEIS with the EPA for the Los Coyotes Band of Cahuilla and Cupeño Indians Fee-to-Trust and Casino-Hotel Project proposed to be located within the City of Barstow, San Bernardino County, California, and that the FEIS is now available for public review.

**DATES:** The Record of Decision (ROD) on the proposed action will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the **Federal Register**. Any comments on the FEIS must arrive on or before 30 days following the date the EPA publishes its Notice of Availability in the **Federal Register**.

**ADDRESSES:** You may mail or hand-deliver written comments to Amy Dutschke, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** John Rydzik, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way,