

**Billing Code 4310-55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R8-ES-2012-N204]**

**[FF08E00000-FXES11120800000F2-123-F2]**

**Proposed Low-Effect Habitat Conservation Plan for the State-Route 99/Cartmill  
Avenue Interchange Improvements Project, City of Tulare, Tulare County,  
California**

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

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** We, the U. S. Fish and Wildlife Service (Service), have received an application from the City of Tulare, Tulare County, California (applicant), for a 5-year incidental take permit for two species under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of two listed animals, the vernal pool fairy shrimp and the San Joaquin kit fox. The applicant would implement a conservation strategy program to avoid, minimize, and mitigate effects of the project’s

covered activities, as described in the applicant’s low-effect habitat conservation plan (HCP). We request comments on the applicant’s application and plan, and our preliminary determination that the plan 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:** We must receive written comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comment is in reference to the Low-Effect Habitat Conservation Plan for the State Route 99/Cartmill Avenue Interchange Improvements Project, City of Tulare, Tulare County, California:

- *U.S. Mail:* Nina Bicknese, Conservation Planning Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825.
- *In-Person Drop-off, Viewing, or Pickup:* Call (916) 414-6600 to make an appointment during regular business hours to drop off comments or view received comments at the address shown above.

**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:**

### **Availability of Documents**

You may obtain copies of the permit application, HCP, and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

### **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.

### **Background Information**

Section 9 of the Act prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, 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. 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). 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).

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.

The applicant seeks an incidental take permit for proposed covered activities within a 219-acre permit area surrounding the intersection of State Route 99 and Cartmill Avenue within the City of Tulare, Tulare County, California. The HCP does not include any unlisted animal species or unlisted plant species. The following two federally listed species will be included as covered species in the applicant's proposed HCP:

- San Joaquin kit fox (*Vulpes macrotis mutica*) (endangered)
- Vernal pool fairy shrimp (*Branchinecta lynchi*) (threatened)

For these covered species, the applicants would seek incidental take authorization. All species included in the incidental take permit would receive assurances under our "No Surprises" regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Activities proposed for coverage under the proposed incidental take permit (covered-activities) would be otherwise lawful activities that could occur consistent with the HCP, to include, but not be limited to:

- Widen and improve sections of existing roadway.

- Remove the existing Cartmill Avenue overpass, remove associated roadways and associated highway ramps, and dispose of those materials.
- Store equipment and supplies in a designated staging area.
- Construct a new Cartmill Avenue overpass, including a temporary structure (falsework). Construct new roadways and new highway ramps associated with the new overpass.
- Excavate seven new stormwater detention basins and dispose of excavated soil.
- Remove existing vegetation, including plant roots.
- Grade and re-contour ground, compact soil, and install road surfaces (paving).
- Install erosion control structures (such as silt fencing and barriers).
- Operate heavy equipment (including, but not limited to, pneumatic tools, scrapers, bulldozers, backhoes, heavy trucks, cement trucks, compactors, and water trucks.
- Control dust by watering soil surfaces.
- Excavate trenches to install traffic signals, lighting conduit, streetlights, and similar facilities.
- Sow native-plant species or other groundcover to prevent erosion and to restore areas disturbed by construction activities.
- Maintain and operate the completed project, including maintenance watering of any landscaping vegetation, future mowing of roadside vegetation, and future maintenance repairs to the constructed facilities.

The applicant's proposed project would improve the State Route 99/Cartmill

Avenue Interchange (Interchange) and correct nonstandard features of the existing Cartmill Avenue overcrossing. The new Cartmill Avenue overpass would provide 16.5 feet of vertical clearance over State Route 99, compared to the existing 15 feet, and provide space to accommodate any future widening of State Route 99. The approximately 2,700-foot long overpass-section of Cartmill Avenue would be widened from two lanes (approximately 38-feet wide) to become a six-lane divided arterial (approximately 128-feet wide). The new Cartmill Avenue overpass would transition from six lanes to the existing two lanes in a 400-foot section west of M Street, and in a 1,300-foot section east of the new Akers Street intersection/Tulare Irrigation District Canal crossing. The existing M Street intersection with Cartmill Avenue would be improved, and a portion of M Street would be reconstructed. An existing highway ramp in the southwest quadrant of the Interchange would be removed, realigned, and replaced with a new ramp. Three additional highway ramps would be constructed in the other Interchange quadrants. The existing frontage road (Road 100) in the northeast quadrant of the Interchange would be removed, and a new roadway (Akers Street) would be constructed in an area approximately 330 feet to the east of the existing road. Additional 12-inch-deep water detention basins would be excavated in each quadrant of the Interchange. The entire project would be constructed in a single phase.

The applicant proposes to avoid, minimize, and mitigate the effects to the covered species associated with the covered activities by fully implementing the conservation strategy described in the HCP. Avoidance and minimization measures will include

compliance with our January 2011 document “U.S. Fish and Wildlife Service Standard Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance.” Other avoidance and minimization measures include but are not limited to:

- Install barrier fencing around the entire work area.
- Install barrier fences around seasonal pools and other sensitive areas.
- Install of erosion control measures around seasonal pools.
- Implement actions to avoid migratory birds and active nests.
- Conduct environmental awareness training for onsite personnel.
- Conduct preconstruction surveys for kit fox and kit fox dens.
- Employ a qualified biological monitor to be on site during all initial ground-disturbing construction activities, to revisit the construction site at least weekly and assure that all avoidance and minimization measures are in good working order, and to prepare monitoring reports.
- The biological monitor will have the authority to stop work, if deemed necessary.

The applicant proposes to compensate for covered-species effects that cannot be avoided by purchasing preservation credits at the Service-approved conservation banks discussed in the HCP.

## **Alternatives**

Our proposed action is approving the applicant's HCP and issuing an incidental take permit for the applicant's covered activities. As required by the Act, the applicant's HCP considers alternatives to the take expected under the proposed action. The HCP considers the environmental consequences of one alternative to the proposed action, the No-Action Alternative. Under the No-Action Alternative, we would not issue a permit; the applicant would not improve the State Route 99/Cartmill Avenue Interchange and would not correct nonstandard features of the existing Cartmill Avenue overcrossing; project effects on covered-species habitat would not occur; and the applicant would not implement proposed mitigation measures. While this No-Action Alternative would avoid take of covered-species, it is considered infeasible because the applicant could not complete necessary traffic safety improvements or correct existing circulation, access, and capacity problems at the existing interchange.

Under the Proposed-Action Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the covered activities described above. The Proposed-Action Alternative would permanently affect approximately 36.44 acres and temporarily affect approximately 12.24 acres of low-quality San Joaquin kit fox foraging and breeding habitat, and would permanently affect 0.071 acre of low-quality vernal pool fairy shrimp aquatic habitat. To mitigate for these effects, the applicant proposes to purchase preservation credits equal to 58.73 acres of high-quality kit fox habitat and purchase preservation credits equal to 0.213 acre of high-quality vernal pool habitat at two Service-approved conservation banks.

## **National Environmental Policy Act**

As described in our EAS, we have made the preliminary determination that approval of the proposed HCP 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 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, or candidate species and their habitats; (2) implementation of the proposed HCP 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;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

## **Authority**

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). 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 San Joaquin kit fox and the vernal pool fairy shrimp from the implementation of the covered activities described in the Low-Effect Habitat Conservation Plan for the Proposed State Route 99/Cartmill Avenue Interchange Improvements Project, City of Tulare, Tulare County, California. We will make the final permit decision no sooner than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**Dated: \_December 10, 2012\_\_\_\_\_**

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

**[FR Doc. 2012-30186 Filed 12/13/2012 at 8:45 am; Publication Date: 12/14/2012]**