

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

[FWS-R8-2011-N270; FF08E00000-FXES11120800000F2-112]

**Tehachapi Uplands Multiple Species Habitat Conservation Plan; Kern County, CA**

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

**ACTION:** Notice of availability of Supplemental Draft Environmental Impact Statement.

**SUMMARY:** The Fish and Wildlife Service (Service) announces the availability of a Supplemental Draft Environmental Impact Statement (SDEIS) for the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) and the draft TU MSHCP and Implementing Agreement (IA), for public review and comment. The SDEIS updates the analysis presented in the 2009 Draft EIS on the TU MSHCP, which we released for public comment on February 4, 2009. Specifically, the SDEIS addresses comments on the 2009 Draft EIS, and considers a 2010 analysis by the U.S. Geological Survey on occurrence of California condor in and around the TU MSHCP Covered Lands. We are considering the issuance of a 50-year incidental take permit (permit) for 27 species in response to receipt of an application prepared by Tejon Ranch Corporation (Tejon or Applicant) pursuant to the Endangered Species Act of 1973, as amended (Act).

**DATES:** Written comments must be received by on or before May 3, 2012.

**ADDRESSES:** *Obtaining Documents:* You may download copies of the SDEIS, 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 Upland Draft MSHCP/SEIS 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 Upland Draft MSHCP/SEIS Comments.

Hard bound copies of the SDEIS, 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:**

Steve Kirkland, 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 on-going ranch activities and future low density residential and commercial development activities on a portion of the Tejon Ranch. The Applicant has prepared the plan to satisfy the requirements for a section 10(a)(1)(B) permit ("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 any impacts 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 lands in Kern County, California. Activities covered by the permit would include ongoing activities that have historically occurred at the Ranch, such as grazing and film production, as well as 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, and take minimization, mitigation and conservation measures provided under the TU MSHCP. 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 plan area. 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 are known or have the potential to occur within the plan area and 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 croceator*), 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 plan, 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, no land development would be allowed within approximately 93,522 acres of Covered Lands, including the approximately 37,100 acre Tunis and Winters ridge area, which is designated as the Condor Study Area under the plan and is the area of the ranch most likely to be frequented by condors. An additional 23,001 acres would be preserved as open space within the Tejon Mountain Village planning area, resulting in the permanent conservation of approximately 82 percent of the Covered Lands (TU MSHCP Mitigation Lands).

Upon initiation of construction of the Tejon Mountain Village development, the TU MSHCP requires that the 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 MSHCP 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 plan 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 plan 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). The Service has prepared a SDEIS 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 SDEIS analyzes four alternatives in addition to the proposed TU MSHCP, summarized above. The Service has identified the proposed TU MSHCP as the Preferred Alternative. Additional alternatives are described below.

The No Action Alternative (referred to as the No Action/No MSHCP Alternative in the 2009 Draft EIS) has been revised. For the purposes of analysis, this alternative now 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 conditions of approval for the TMV Project by Kern County identify certain actions to be undertaken by the Service, including directing the operation of a feeding station and capture of condors that have become habituated. The No Action Alternative does not assume future action on the part of the Service, including future action identified as a condition of Kern County's approval of the TMV Project. Instead, it is assumed the Service would continue to provide technical assistance to Tejon regarding the California condor.

The proposed TU MSHCP Alternative generally remains the same as described

in the 2009 Draft EIS. The alternative has been updated to reflect the TMV Project Approvals, including approved mitigation measures required by the County, to reflect clarifications made to the California condor mitigation measures proposed in the applicant's revised MSCHP, and to reflect that the options to purchase easements over the areas formerly referred to as Potential Open Space have been recorded per the terms of the Ranchwide Agreement (referred to as Existing Conservation Easement Areas). Where appropriate, we added information or required mitigation measures associated with the TMV Project approvals to the SDEIS.

The Condor Only HCP Alternative continues to represent a species management approach that addresses only the California condor; the protection measures for the other federally listed species would be determined as a result of project-specific review and approval processes triggered by applicant requests. Like the Proposed TU MSHCP Alternative, the Condor Only HCP Alternative has been updated to reflect the TMV Project Approvals and to include the land conservation requirements contained in the Ranchwide Agreement. Under the Ranchwide Agreement, general plan development areas previously identified for the Condor Only HCP Alternative become Established Open Space Areas. Therefore, the development area under the Condor Only HCP Alternative is now the same as the development area under the Proposed TU MSHCP Alternative.

A new alternative, the Condor Critical Habitat (CCH) Avoidance MSHCP Alternative, has been added to this SDEIS to address several public comments that proposed development areas be reconfigured to 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 (I-5), and in 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 (referred to as the MSHCP General Plan Buildout Alternative in the 2009 Draft EIS) has also been revised. 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, it 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 the likelihood remote 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 Kern County approval, and the SDEIS assumes that it would proceed on a project-by-project basis and that the Service would issue incidental take authorization as appropriate through either the ESA Section 7 or Section 10 process.

#### Public Comments

If you wish to comment on the permit application, SDEIS, TU MSHCP, or draft IA, you may submit your comments to the address listed in **ADDRESSES**. Before including your address, phone number, email 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. While you may 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

The Service will evaluate the application, associated documents, and comments submitted before preparing a final EIS. A permit decision will be made no sooner than 30 days after the final EIS is filed with EPA, published and the Record of Decision is completed.

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

Dated: January 19, 2012.

**Alexandra Pitts,**

*Deputy Regional Director, Pacific Southwest Region, Sacramento, California.*

[FR Doc. 2012–2294 Filed 2–2–12; 8:45 am]

**BILLING CODE: P**

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Indian Affairs

##### Indian Gaming

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

**ACTION:** Notice of Tribal—State Class III Gaming Compact Taking Effect.

**SUMMARY:** This publishes notice of the Tribal-State Compact between the State of California and the Pinoleville Pomo Nation Taking Effect.

**DATES:** *Effective Date:* February 3, 2012.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Compact allows for one gaming facility and authorizes up to 900 gaming devices, any banking or percentage card games, and any devices or games authorized under State law to the State lottery. The Compact also authorizes limited annual payments to the State for statewide exclusivity. Finally, the term of the compact is until December 31, 2031. This Compact is considered to have been approved, but only to the extent that the Compact is consistent with the provisions of IGRA.

Dated: January 26, 2012.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2012–2441 Filed 2–2–12; 8:45 am]

**BILLING CODE 4310–4N–P**

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

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##### Notice of Availability of the Final EIS for the HB In-Situ Solution Mine Project, Eddy County, New Mexico

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

**ACTION:** Notice of Availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (Final EIS) for the HB In-Situ Solution Mine Project, and by this notice is announcing its availability.

**DATES:** The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register**.

**ADDRESSES:** Copies of the HB In-Situ Solution Mining EIS are available for public inspection at the Carlsbad Field Office, 620 E. Greene St., Carlsbad, New Mexico 88220. Interested persons may also review the Final EIS on the Internet at <http://www.nm.blm.gov/cfo/HBIS/index.html>.

**FOR FURTHER INFORMATION CONTACT:** For further information contact David Alderman, Project Manager; telephone 575–234–6232; address 620 E. Greene St. Carlsbad, New Mexico 88220; email [david\\_alderman@blm.gov](mailto:david_alderman@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** Intrepid Potash, Inc. (Intrepid) is proposing to extract the potash, a potassium compound commonly used for fertilizer, remaining in inactive underground mine workings using the solution mining method. Intrepid proposes to