CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ECOSYSTEM CONSERVATION DIVISION
POST OFFICE BOX 944209
SACRAMENTO, CA 94244-2090

CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO. 2080-2018-011-05

Project: Curletti Farming Project

Location: Santa Barbara County

Applicant: Betteravia Ranches, LLC

Background

Betteravia Ranches, LLC (Applicant) proposes the Curletti Farming Project (Project) to establish and maintain new row crop agriculture, including construction of infrastructure, and a guest worker housing facility to accommodate employees. The project area totals 275.52 acres (Total Farming Area), including the 6.50-acre housing site, and is located along State Route 1 near the City of Santa Maria within unincorporated Santa Barbara County. As part of the Project, the Applicant also proposes to establish and endow a conservation easement (CE) of 472.86 acres (Easement Area) with the Santa Barbara County Land Trust as mitigation for the California tiger salamander (*Ambystoma californiense*) (CTS).

The Applicant has prepared a Low-Effect Habitat Conservation Plan (HCP) and received an Incidental Take Permit (ITP) (No. TE62704C) from the United States Fish and Wildlife Service (Service) on November 27, 2017, through section 10 of the federal Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.).

The project area lies within the historic range and federal critical habitat of CTS, and CTS have been documented within the project area. Seven known CTS breeding ponds have been recorded within 1.24 miles of the proposed Project Area: SAMA-2, SAMA-3, SAMA-21, GUAD-1, GUAD-2, GUAD-3, and GUAD-4. As recently as spring 2017, CTS larvae were captured in breeding pond GUAD-1 in large numbers during a survey effort conducted by local biologists. GUAD-2, located within the Easement Area, is the closest known breeding pool to the Total Farming Area where impacts are anticipated to occur. The Service has identified six potential CTS breeding ponds located within 1.24 miles of the Project Area, in addition to the above referenced known CTS breeding ponds: CASM-1, GUAD-5, GUAD-7, GUAD-9, GUAD-10 and GUAD-11.

In spring 2017, local biologists inspected known breeding ponds GUAD-1, GUAD-2, and GUAD-4 within the proposed Easement Area; and at that time, only GUAD-1 was holding water. Hundreds of CTS larvae were caught at GUAD 1 during this survey effort. The entire project area is located within a 1.24-mile radius of GUAD 1, which is approximately in the center of the site. The Easement Area also contains approximately 450 acres of upland

habitat suitable for CTS. Based on these two factors, CTS is presumed to occur within the Easement Area.

The Applicant obtained an ITP from the Service that authorizes incidental take of CTS for a period of 25 years commencing on November 27, 2017 (date of federal approval). The Applicant developed biological goals and objectives and included them in the HCP to ensure that it is consistent with the conservation and recovery goals for the species.

The Project will require use of heavy equipment (e.g., water truck, excavator, backhoe, loader, and flatbed trailer) and all necessary equipment to complete construction.

The Project has the potential to incidentally take[1] CTS where the described activities would take place within developed and farmed areas. In particular, CTS could be incidentally taken as a result of crushing or entombment by equipment or personnel (from collapsing of burrows) or entrapment from trench excavation. CTS is designated as a federally endangered species pursuant to the federal ESA and state threatened species pursuant to the California Endangered Species Act (CESA; Fish & G. Code, § 2050 et seq.) (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(3)(G).)

Anticipated incidental take of CTS is expected to be low, ranging between 0 to 7 individuals from implementation of the covered activities during project construction and between 0 and 3 individuals (annually) from ongoing operations and maintenance. Furthermore, the total number of individuals subject to incidental take will be low when compared to the overall CTS metapopulation in the area and the larger distinct population segment.

Loss of habitat for CTS will result from the following Project activities: (1) establishment of 180.24 acres of agriculture with row crops; (2) construction of farm labor housing on 6.50 acres; (3) installation of three one-acre oil wells; (4) installation of a new telecommunication facility and maintenance of an existing facility on one acre; (5) construction of a 4-acre solar facility; and (6) infrastructure and activities associated with the above actions. Project activities will result in a total loss of 194.74 acres of suitable CTS habitat. The Service, in cooperation with the California Department of Fish and Wildlife (CDFW), performed a habitat quality impact analysis using the Searcy and Shaffer (2008) model for the disturbance of 194.74 acres of CTS upland habitat and determined a reduction in reproductive value of 156,124 units. The CE for the Project includes sufficient acreage and habitat function to compensate for this calculated 156,124-unit loss of reproductive value; therefore, the habitat protection provided by the CE effectively mitigates for all Project impacts to CTS and its habitat.

The Project is expected to result in take of a species designated as federally endangered; therefore, the Applicant prepared an HCP in support of an application for an ITP pursuant to

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[1] Pursuant to Fish and Game Code section 86, "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 [for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "take…means to catch, capture or kill"].

section 10(a)(1)(B) of the federal ESA. On November 27, 2017, the Service issued an ITP (No. TE 62704C) to the Applicant. The HCP describes covered activities and specifies measures the Applicant will fulfill to minimize and mitigate incidental take of individuals of the listed species likely to occur from implementation of the Project. The ITP requires the Applicant to comply with terms of the HCP and its related ITP and incorporates additional conditions.

On July 18, 2017, the Director of CDFW received the initial notice from the Applicant requesting a determination that the Project ITP, including its HCP, is consistent with CESA for purposes of CTS pursuant to Fish and Game Code section 2080.1 (Cal. Reg. Notice Register 2018, No. 41-Z, p.1825.). On August 22, 2017, the Applicant sent the Director of CDFW a Rescind Request to further evaluate and coordinate with CDFW on the CE and associated instruments for funding management activities. On September 27, 2018, the Applicant once again submitted to the Director of CDFW a consistency determination (CD) request.

Determination

CDFW has determined that the Project is consistent with CESA for CTS because the mitigation measures contained in the ITP and its associated HCP meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the HCP and ITP will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance, minimization, and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of CTS. The mitigation measures in the ITP and its associated HCP include, but are not limited to, the following:

<u>Avoidance, Minimization, and Mitigation Measures</u>

- The Applicant will record a CE encompassing 472.86 acres with the Santa Barbara County Land Trust and establish an endowment for long term management as mitigation for the conservation of CTS, which would also support California red-legged frog (CRLF; *Rana draytonii*).

- The Applicant will ensure field crews participate in training prior to initiation of Project activities. Trainings will emphasize Project-specific information on CTS, avoidance and minimization measures, roles and responsibilities, and communication/reporting protocols.

- Project workers shall limit their vehicle use to existing routes of travel. The Applicant will prohibit cross-country travel unless access is determined critical for a particular activity and the route has been flagged to avoid or minimize adverse effects.

- The Applicant will ensure Project-related vehicle speeds will not exceed 10 miles-per-hour within CTS upland habitat.

- Prior to moving vehicles or equipment, employees shall look under the vehicles or equipment for CTS individuals. If an individual is observed, the vehicle shall not be moved until the animal has vacated the area on its own accord or has been relocated out of harm's way by the Service-approved biologist.

- A Service-approved biologist shall be present daily during the pre-initial ground disturbance period surveys, as well as during initial grading and excavation activities. Upon completion of initial ground disturbance, the biologist will periodically (minimum twice per week) visit the Project site throughout the construction period. During periods of rain or heavy fog/dew, the biologist will conduct daily pre-activity surveys to ensure no CTS individuals have migrated into the work area. No construction work will be initiated until the Service-approved biologist determines the work area is clear of CTS individuals.

- The Applicant shall implement "The Declining Amphibian Task Force Fieldwork Code of Practice" for all amphibian relocation activities. The Service-approved biologist shall relocate any CTS found within the Project footprint to an active rodent burrow system located no more than 300-feet outside of the Project area unless otherwise approved by CDFW and the Service. The Service-approved biologist shall identify relocation areas based upon best suitable habitat available. Only a Service-approved biologist shall relocate CTS. The Service-approved biologist shall document both locations by photographs and global position system (GPS) positions. The Service-approved biologist shall photograph and measure (snout-vent) CTS for identification purposes prior to relocation. The Applicant will provide all documentation to the Service and CDFW within 24 hours of relocation.

- The Applicant will avoid rodent burrows to the maximum extent possible. If burrows cannot be avoided, burrow excavation may be performed using hand tools or via gentle excavation using construction equipment, under the direct supervision of the Service-approved biologist. In lieu of burrow excavation, the Applicant may use steel plates or plywood to protect small mammal burrows from ground disturbance. The Applicant will remove plates and plywood nightly when a significant rain event is forecasted within 48 hours and if work is scheduled to cease for consecutive days.

- The Applicant will install exclusionary barriers at the discretion of the Service-approved biologist to minimize the potential for CTS to enter the worksite.

- The Service-approved biologist will inspect steep-walled excavations (e.g., trenches) that may act as pitfall traps for wildlife at least once per day and immediately before backfilling. In lieu of daily inspections (weekends, etc.), the Applicant will install exclusionary fencing, covers, ramps, or similar mechanisms to prevent wildlife entrapment.

- The Applicant will cap or seal with tape (or equivalent material) open pipe segments each night, or otherwise will store open pipe segments at least three-feet above ground.

- If covered activities must occur during the rainy season, the Applicant will not work during rain events (greater than 0.5 inches of rainfall), 48 hours prior to rain events, or during the 48 hours after these events.

Monitoring and Reporting Measures

- If a dead or injured CTS is found, the Applicant shall notify the Service's Ventura Field Office at (805) 644-1766 within 72 hours. In addition, In addition, CDFW requests the notification also be submitted to CDFW at the same time.

- The Applicant will conduct on-site construction monitoring, maintain daily monitoring logs, and prepare a post-construction compliance report.

- By January 31 following each year of permit issuance and Project implementation, the Applicant shall submit a report to the Service's Ventura Field Office to document the status of the Project. The Applicant shall also provide a copy of the report to CDFW.

Financial Assurances

- The Applicant will provide an endowment for the long term management of the Conservation Easement and convey it to the Santa Barbara Land Trust. A copy of the letter establishing and executing the endowment will be provided to CDFW. The Applicant will also provide a copy of the executed CE with the Santa Barbara County Land Trust for 472.86 acres as identified in the HCP as mitigation for conservation of CTS, which would also support CRLF.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of CTS, provided the Applicant implements the Project as described in the HCP and its associated ITP, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the HCP and its associated ITP. If there are any substantive changes to the Project, including changes to the minimization and mitigation measures in the HCP, or if the Service amends or replaces the ITP, the Applicant shall be required to obtain a new CD or a CESA ITP for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c).)

By: _____ Date: 10/26/18

Chad Dibble, Deputy Director

REFERENCES

Searcy, C. A., and H. B. Shaffer. 2008, Calculating biologically accurate mitigation credits: insights from the California tiger salamander. *Conservation Biology* 22: 997-1005.