

Background: Earlier this year, the U.S. Fish and Wildlife Service (Service) settled a lawsuit filed by the Center for Biological Diversity regarding the designation of Critical Habitat for the endangered California tiger salamander (CTS) here in Sonoma County. That settlement requires the Service to re-propose the same Critical Habitat (approximately 74,000 acres, see Attachment A) that was originally proposed in 2005. This proposal was published in the Federal Register on August 19, 2009, which started a 60-day comment period. The settlement requires a final Critical Habitat determination from the Service by July 1, 2011.

The history of regulatory actions taken with regard to the CTS under the federal Endangered Species Act as well as local conservation planning efforts is fairly convoluted and only briefly summarized here. In late 2005, the Santa Rosa Plain Conservation Strategy was completed and continues to be used by the County and cities to identify and mitigate CTS impacts through the CEQA process. Over the past five years, the County invested substantial time and energy in CTS conservation planning efforts, including over two years with a multi-jurisdictional and multi-stakeholder “Implementation Committee,” attempting to develop a local implementation plan for the Conservation Strategy. That effort stalled and in June 2008 your Board (and the City of Santa Rosa) put the process on indefinite hold for a variety of reasons, most notably a lack of funding to move the process forward. That picture has not improved over the past 16 months. A copy of the Board report for that action is on file with the Clerk and provides additional background.

Critical Habitat Designation

Several months ago, in anticipation of this Critical Habitat process, staff worked with the Service to put together an informational document on Critical Habitat to describe the process and potential local effects of a designation. See Attachment B. The main purpose of a Critical Habitat designation is to ensure that the actions of Federal agencies will not adversely modify areas that are essential for the conservation of an endangered species, like the CTS. The Service notes that:

“Designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other conservation area. It does not allow government or public access to private lands. . . . It does not mean that projects cannot go forward, but means that Federal agencies must consult with the Service to make sure critical habitat is not destroyed or adversely modified. A critical habitat designation has no effect on projects or activities that have no federal agency involvement.”

Several questions in the attachment address the potential effects of a Critical Habitat designation here in Sonoma County. The Service notes that two important tools are already in place that provide protection for the CTS One is the Santa Rosa Plain Conservation Strategy mentioned above. The other is a “Programmatic Biological Opinion” between the Service and the Army Corps that provides uniform CTS mitigation standards and process for projects in the Santa Rosa Plain that need a Corps wetland permit (which includes most large development projects). Although the Service cannot say with certainty how the permitting and mitigation requirements could change with a Critical Habitat designation, they do believe it is “unlikely to require substantial deviation” from the current provisions of the Conservation Strategy.

It is also important to note that a Critical Habitat designation has no effect on projects or activities that have no federal agency involvement. Federal agencies must consult with the Service to make sure Critical Habitat is not destroyed or adversely modified. However, the Service notes, “If no federal agency is involved, local agencies will continue applying the mitigation requirements in the Conservation Strategy in the same manner as they have already been doing.”

County Comments

The comments in the attached draft letter focus primarily on the extent of Critical Habitat proposed. While the settlement requires the Service to make an initial proposal to designate 74,000 acres as Critical Habitat, it does not mandate any particular size or location for the final designation. That decision will be made by the Service at the end of the end of the nearly two-year process that has just started. Therefore, County input to that process is very important.

At the conclusion of the 2005 Critical Habitat process, the Service found that, of the 74,000 acres originally proposed, about 17,000 acres met the biological criteria for Critical Habitat (see map, Attachment C). However, the Service also decided to exclude all Critical Habitat because of the conservation planning efforts that were underway at the time and high economic costs. That decision was ultimately overturned in court and exclusion of all Critical Habitat is extremely unlikely in this current process.

The attached letter focuses on three themes: (1) The proposed designation is geographically too broad. In particular, the areas north of Santa Rosa Creek, west of the Laguna, east of Highway 101 and south of Pepper Road do not meet the biological criteria for Critical Habitat. (2) The designation will exacerbate the already severe slowdown in the local economy. (3) A broad designation will have a low benefit to the species due to existing regulatory mechanisms already in place.

Economic Impacts

In the near future the Service will release a separate analysis of the economic impacts of the proposed Critical Habitat designation. Staff will work with the CAO's office, the Economic Development Board and County Counsel to develop County comments for the Chair's signature.

Staff recommends that your Board authorize the Chair to sign the attached letter.

Attachments:

- A. Proposed Critical Habitat Map (2009)
- B. Questions & Answers About Critical Habitat
- C. Area Excluded from Critical Habitat in 2005
- D. Draft Comment Letter

On File With Clerk: Agenda materials from June 24, 2008.

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Board Action (If other than "Requested")

Vote: