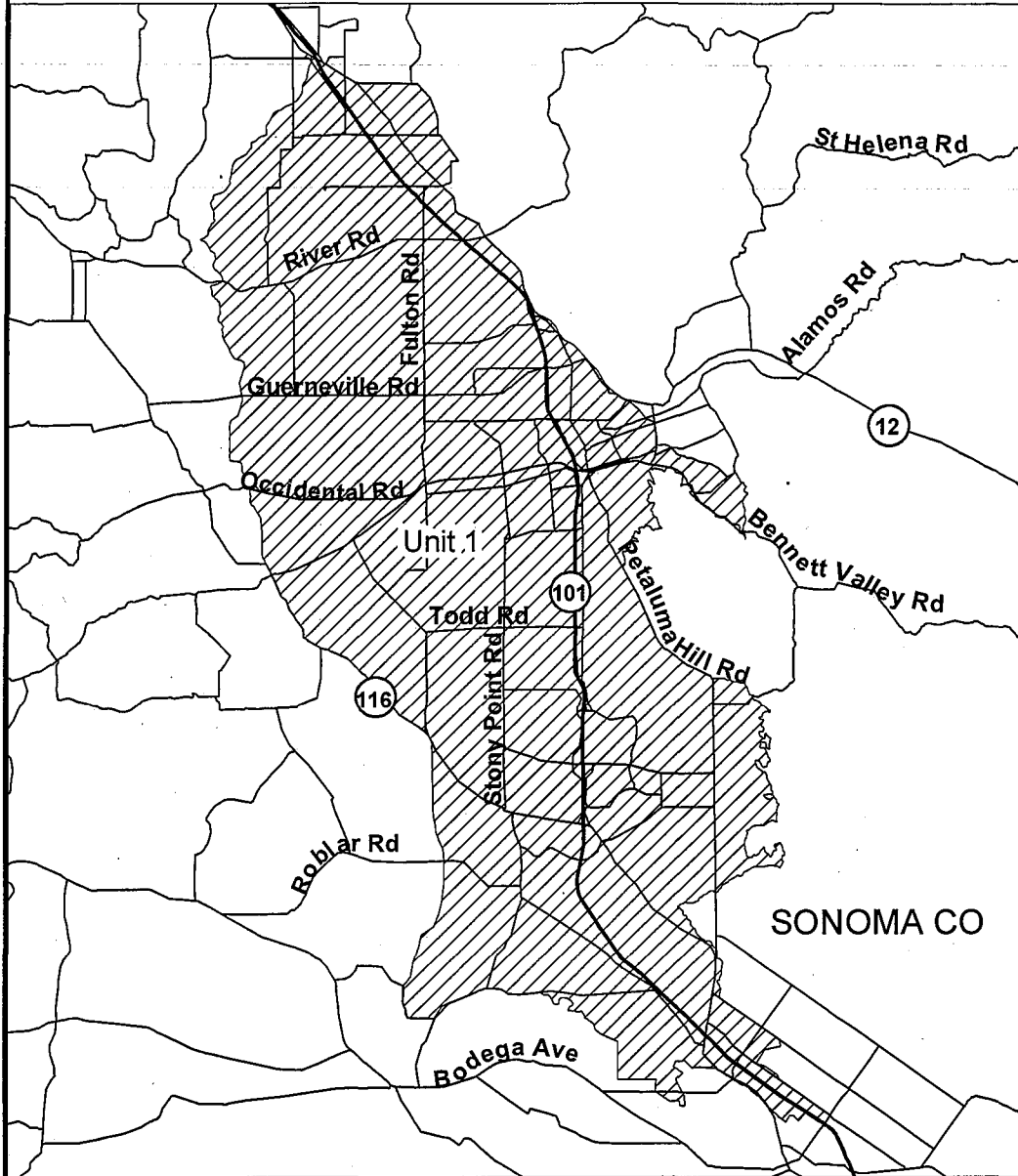


Map 1. Sonoma California Tiger Salamander,
Proposed Critical Habitat. Unit 1 -- Santa Rosa Plain.



Legend

— Local roads

4 0 4 Miles

5 0 5 Kilometers





United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846



In Reply Refer To:

Attachment B

JUL 29 2009

Pete Parkinson, AICP
Director
Sonoma County Permit & Resource Management Department
2550 Ventura Avenue
Santa Rosa, California 95403

Dear Mr. Parkinson,

The U.S. Fish and Wildlife Service is re-proposing Critical Habitat for the Sonoma County District Population Segment (DPS) of the endangered California Tiger Salamander. This action is being taken to comply with the settlement agreement for a lawsuit challenging the Service's 2005 decision regarding Critical Habitat for this species. The Critical Habitat proposal will be submitted to the Federal Register in the very near future (the settlement called for its publication by Aug. 3, 2009).

Attached is the Question and Answer document that the Service will have available for the public, including on our website, to accompany the announcement of the proposed Critical Habitat. Feel free to distribute this Q&A to parties who may have an interest in the subject. You can also direct them to our website: www.fws.gov/sacramento for the proposal, map of the proposed critical habitat, and news release

Sincerely,

[Redacted Signature]

Susan K. Moore
Field Supervisor

Enclosure

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IN AMERICA 

Questions and Answers
Proposed Critical Habitat
California Tiger Salamander Sonoma County Population

July 2009

Q. What is Critical Habitat?

A. The Endangered Species Act defines Critical Habitat as the geographic areas that contain features essential for the conservation of the species and may require special management consideration. 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.

Critical Habitat is protected through provisions of the Endangered Species Act that require Federal agencies to consult with the United States Fish and Wildlife Service (Service) on actions they fund or authorize that may adversely affect Critical Habitat. 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.

Q. Why is the Service re-proposing Critical Habitat for the Sonoma County Distinct Population Segment of California tiger salamander?

A. The Service announced on May 5, 2009, the settlement of a suit that challenged its 2005 final decision on proposed Critical Habitat for the Sonoma County Distinct Population Segment of the California tiger salamander (California tiger salamander). In the settlement, the Service agreed to re-propose as Critical Habitat the same 74,223 acres of the Santa Rosa Plain that were originally proposed in August 2005 as Critical Habitat. Under terms of this settlement, the Service must re-propose Critical Habitat within 90 days and complete the action by July 1, 2011. The order does not specify how much land must be designated as Critical Habitat in its final rule.

Q. What is the process of designating Critical Habitat and where are we in the process?

A. Around August 2009, the Service will publish in the Federal Register a proposed rule to designate 74,223 acres of Critical Habitat for the California tiger salamander. The Service will solicit comments on the proposed rule and comments will be accepted up to 60 days after Federal Register publication. During this time, the Service also will solicit scientific peer review of the proposed rule. After the close of the public-comment period, the Service will analyze all comments and information and incorporate them in a final rule, which must be completed by July 1, 2011. A draft economic analysis of the proposed revised Critical Habitat designation will be prepared in conformance with provisions of the ESA and a notice of availability will be published separately in the Federal Register. The comment period will be re-opened upon release of the draft economic analysis and during that period, the Service will accept comments on all aspects of the proposed Critical Habitat.

We may consider exclusion of areas from Critical Habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as Critical Habitat, provided such exclusion will not result in the extinction of the species. Exclusions may be based on economics, national security, or other reasons.

Q. What would designating Critical Habitat for the California tiger salamander mean for this population in Sonoma County? Will developers have to provide additional compensation if their property is designated as Critical Habitat?

A. Federal agencies must ensure that their activities do not adversely modify Critical Habitat to the point that it will no longer aid in the recovery of the California tiger salamander. The Service would need to revise the existing programmatic biological opinion with the United States Army Corps of Engineers (Corps) to add Critical Habitat and ensure the current conservation measures meet the adverse modification standard. We do not anticipate that modification of the biological opinion to add Critical Habitat is likely to change the overall scope of the programmatic biological opinion, but until the designation has been finalized, we cannot predict this with absolute certainty. However, because the Conservation Strategy was designed to contribute to the recovery of the California tiger salamander, we believe that designation of Critical Habitat is unlikely to require substantial deviation.

Q. Will the California tiger salamander conservation banking system remain in place through and after the process of establishing Critical Habitat? Will the requirements on the bank sites change and will the credits purchased be useable?

A. We do not expect that the existing banking system will change as a result of designating Critical Habitat. We believe that the conservation banks contribute to the recovery of the species, and as such will continue to be important elements of the Santa Rosa Plain Conservation Strategy (Conservation Strategy). Although we do not anticipate requirements for conservation banks to change, we cannot predict that with certainty at this time. Credits purchased will continue to be usable.

Q. How will the Service deal with California tiger salamander issues between the time when Critical Habitat is proposed and a final determination made?

A. The Service will continue to complete Section 7 consultation for projects following the existing programmatic biological opinion and the most current Interim Guidelines. For projects without a Federal nexus, the Service will make decisions consistent with the Conservation Strategy if a Section 10 permit is needed.

Q. Can properties be developed if Critical Habitat is designated?

A. Yes. If a federal agency is involved, that agency must consult with the Service to make sure Critical Habitat is not destroyed or adversely modified. 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.

Q. Will designation of Critical Habitat add costs or time to the process for getting a permit?

A. The Service will work with the Corps to expeditiously revise the current programmatic biological opinion to add Critical Habitat if designated. Therefore, the programmatic biological opinion will continue to help to expedite the process for completing Section 7 consultations with the Corps. If many areas proposed as Critical Habitat are excluded in the final designation for economic or other reasons (as allowed by the process), there will be little concern that any aspect of the existing Conservation Strategy is likely to change under a reinitiated programmatic biological opinion (PBO) with the Corps. However, the greater the extent of overlap between the final Critical Habitat designation and areas within development envelopes in the Conservation Strategy, the greater the possibility that there may need to be adjustments in some aspect of the PBO – we have no way of knowing at this time. The Conservation Strategy may not need to be changed, but the PBO might.

The PBO was always intended to be a major element of a larger Conservation Strategy, but not the only functional piece, because it does not address conservation of California tiger salamander where there are no jurisdictional wetlands. We also recognize that local agencies are implementing the mitigation requirements in the Conservation Strategy through their environmental review process on discretionary projects. However, we cannot say with certainty whether these measures by themselves will satisfy the balancing that the Service must do in determining whether or not an area can be excluded from Critical Habitat, or, if Critical Habitat is designated, whether the Service will be able to find that implementation of the Conservation Strategy through the existing PBO and local agency environmental review will satisfy the adverse modification standard without changes of any kind.

Q. What happens to a project that has purchased credits or mitigated pursuant to the PBO but has not commenced construction at the time final Critical Habitat goes into effect?

A. At the time the final Critical Habitat designation goes in to effect, the Corps would need to reconsult on permitted actions over which it had continuing jurisdiction. The extent of that jurisdiction over specific projects that had received permits would need to be defined by the Corps on a case-by-case basis, but in essence, if wetlands had been filled it is unlikely that reconsultation would need to occur, even if construction had not occurred.

Q. Will the designation of Critical Habitat change the Santa Rosa Plain Conservation Strategy?

A. We do not expect designation of Critical Habitat to change the Conservation Strategy. The Conservation Strategy document was finalized in December 2005. The Conservation Strategy was developed to contribute to the recovery of the California tiger salamander. The Conservation Strategy was a guiding document in the preparation of the current programmatic biological opinion. Numerous conservation banks and preserves have been established and have credits available to sell; several more are in the review process moving toward approval since the adoption of the Conservation Strategy. The Conservation Strategy provided biological

information and guidelines for establishing preserves and minimizing adverse effects of development projects to the California tiger salamander which both the Service and California Department of Fish and Game will continue to use.

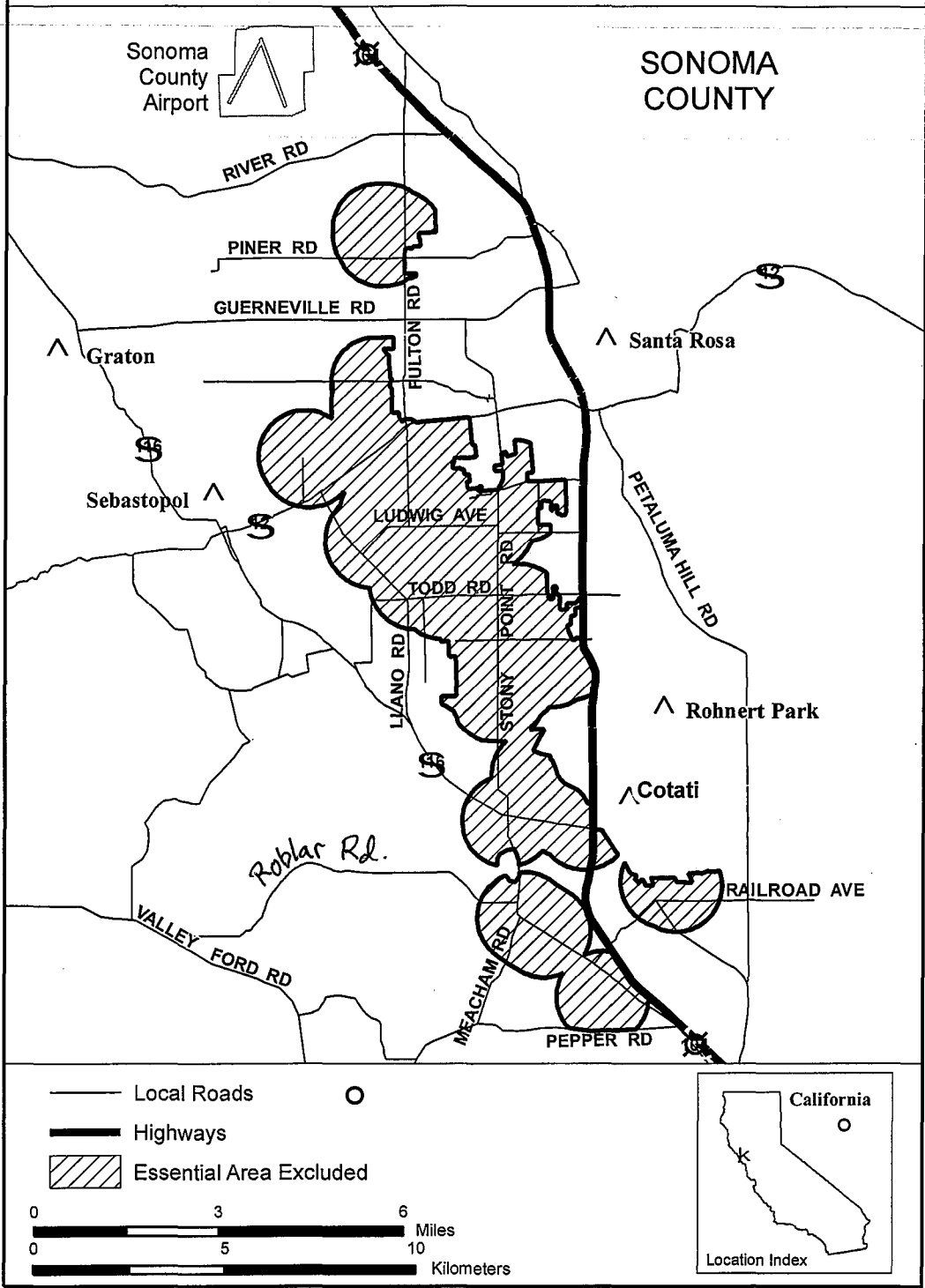
Q: Has the standard established by *Gifford Pinchot Task Force v. USFWS* increased the already rigorous standards for issuance of a Section 10 permit?

A: Jurisdictions that possess a section 10 permit often can be excluded from a Critical Habitat designation pursuant to ESA section 4(b)(2) even under the Gifford Pinchot standard of adverse modification, because we consider the benefits of exclusion to outweigh the benefits of inclusion in Critical Habitat. Such plans normally are designed to ensure the conservation of the species within the plan area, and they incorporate special management and protection measures within plan boundaries. However, when Critical Habitat is designated in jurisdictions that do not operate under a section 10 permit, the challenge of meeting the adverse modification standard is the same for landowners whether they obtain incidental take coverage through section 10 or through section 7.

Q. Is Critical Habitat being proposed for the listed plant species?

A. Critical Habitat is not being proposed for the listed plant species included in the Santa Rosa Plain Conservation Strategy as part of the proposed designation of Critical Habitat for the California tiger salamander.

Figure 1: Areas Containing the Essential Features Excluded for the Sonoma County Distinct Population Segment of the California Tiger Salamander



October 6, 2009

Susan Moore
Field Supervisor
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, California, 95825-1846

Dear Ms. Moore:

This letter provides the County of Sonoma's comments on the Fish and Wildlife Service's proposed designation of Critical Habitat for the Sonoma County Distinct Population Segment of the California Tiger Salamander (the Proposed Rule). The County's comments focus on three aspects of the Proposed Rule that are strong reasons to significantly reduce the area proposed for designation. The County believes that the Proposed Rule would:

1. Designate an area that is far broader than can be justified by the current scientific information on the distribution and abundance of the species;
2. Provide low overall benefit the species due to existing and possibly redundant regulatory mechanisms already in-place; and,
3. Exacerbate an already slowed economic climate in Sonoma County.

Geographical Extent of Critical Habitat. At the outset, it should be acknowledged that the extent of Critical Habitat in the Proposed Rule was determined through a court settlement that requires the Service to propose the same Critical Habitat that was proposed in August 2005. However, the Service acknowledged in 2005 that it did "not currently have the information to justify inclusion of all these lands in the final designation." The Service also noted that the 2005 proposal would have designated "areas that may or may not be essential to the conservation of the California tiger salamander in Sonoma County." Although this same language does not appear in the 2009 Proposed Rule, the same geographic area is involved and these same limitations are nonetheless evident. The County believed the extent of Critical Habitat proposed in 2005 far exceeded what could be justified by the best scientific information available at the time, and that assessment has only been confirmed by additional scientific information developed over the past four years.

The ESA defines critical habitat as specific areas within the area occupied by the species, at the time of the listing, that are essential for the conservation of the species and which may require special management considerations or protection. The Service can also designate critical habitat in unoccupied areas if it can be demonstrated that this additional area is necessary for the conservation of the species. In addition, the ESA states that the Secretary shall not designate the entire geographic range that can be occupied by the species unless it is determined critical to do so, presumably justified by rigorous science. As discussed in more detail below, the County

believes that the Proposed Rule exceeds these statutory criteria in several respects.

The *Santa Rosa Plain Conservation Strategy* was a new document at the time of the Service's final critical habitat determination in December 2005. Since then, the County and cities have used the Conservation Strategy to identify and mitigate CTS impacts. New preserves and mitigation banks have become established in the Conservation Areas identified in the Strategy. Most significantly for critical habitat purposes, the Strategy, through a peer-reviewed process, identified the areas deemed necessary for the conservation of the CTS.

In contrast, the Proposed Rule goes well beyond the Conservation Areas identified in the Strategy and would designate critical habitat on thousands of acres outside of the known occupied range of the CTS. Several of these areas have major dispersal barriers that preclude future natural colonization and therefore they lack at least one of the primary constituent elements (PCE's), which are identified in the Proposed Rule as essential to the conservation of the species. Based upon the core habitat areas identified in the Conservation Strategy, occurrence data from the CNDDDB and other sources of information, including negative surveys, most unoccupied areas of the CTS potential range should be excluded as critical habitat because there is no evidence that these areas are necessary for the conservation and recovery of the species.

Several protocol level CTS surveys have now been completed on the Santa Rosa Plain with negative results. Further, these studies show no recent occurrences nearby and generally confirm the extent of occupied CTS habitat shown in the Conservation Strategy. Since the Service has relied on negative surveys in the past to issue "no effect" determinations for projects in such areas, these areas should not be designated as critical habitat. Based on these recent surveys, on the Conservation Strategy and on CNDDDB data, the County believes that critical habitat for CTS should be excluded in the following geographical areas:

1. The Santa Rosa Plain north of Santa Rosa Creek: The Alton Lane Preserve is the only area north of Santa Rosa Creek that is known for California tiger salamanders. All of these animals are a result of transplantations to Alton Lane in the 1990s and more recently from the southern populations, and are not a native source population. Areas north of Mark West Creek, where CTS have *never* been found, are particularly inappropriate for inclusion.
2. The 100 year flood plain of the Laguna de Santa Rosa: The Laguna is not known to provide habitat for CTS due to the presence of non-native predatory fishes and water quality issues.
3. The Santa Rosa plain east of Highway 101 from Mountain View Avenue north: Highway 101 is known to be a major migratory barrier for CTS. Several CTS protocol level surveys have focused on the area east of Highway 101 and have recorded only a few occurrences in the southeastern area of Cotati and one occurrence near Rohnert Park, with the more northern areas thought to be vacant. The CTS has never been found east of Highway 101 north of Mountain View Avenue.

4. The area south of Pepper Road to Lichau Creek to the east: On the southern portion of the CTS range, the proposed critical habitat map expands the range in the Petaluma area, beyond the range of the species published by Service in May 2003. There are no occurrences in the Petaluma area or other scientific information that would support this extension of the range, let alone a critical habitat designation. In fact, there is only one vague record of CTS in this extended area from the mid 1800s (circa 1856) that suggests there was a sighting during this period within 20 miles of the town of Petaluma. To designate critical habitat in this area due to this dated and indiscriminate occurrence is not justified.
5. Vacant “Infill” Parcels: The Proposed Rule states: “[W]e made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for the California tiger salamander. The scale of the map we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat.” (74 F.R. at 41667). However, the proposed designation does not appear to exclude undeveloped or partially developed parcels within urbanized, developed areas that are completely or predominantly surrounded by developed areas. Such isolated vacant “infill” parcels also lack the requisite PCEs for the CTS, as such parcels cannot support isolated self-sustaining populations and are inaccessible to CTS from other areas. Excluding such “infill” parcels from the critical habitat designation would encourage development of such parcels instead of development on better CTS habitat in more open, less currently-developed areas. The critical habitat designation should thus exclude vacant or partially vacant parcels that are within the “interior” of already developed areas. Several examples of such “infill” areas are attached.

Existing Regulatory Mechanisms. With the current Conservation Strategy and the Programmatic Biological Opinion in place, we believe an expansive critical habitat designation will not significantly benefit the species. With the current regulatory mechanism in place, all undeveloped habitat that is disturbed and that involves either a federal nexus or is subject to CEQA requires mitigation as called for in the Conservation Strategy. It is important to note that these mitigation requirements are the primary driver for establishment of a system of contiguous CTS preserves. To the extent that a critical habitat designation complicates this process or creates a disincentive for landowners to develop within designated urban areas (the source of the mitigation requirements), the preservation goals of the Conservation Strategy will not be achieved.

Economic Impacts. The Service has not yet published the economic analysis required under the ESA for proposed critical habitat designations so we cannot comment in detail at this time. However, the County did comment on the economic analysis published in 2005 and noted that the Service’s analysis did not address economic impacts to agriculture and appeared to understate the economic impacts to public sector projects and the regional economy. Needless to say, each of these economic sectors is in a considerably more precarious situation than in 2005

and the economic effects identified then will only be more severe. Although the current severe recession is showing some signs of ending, no one is predicting a swift or dramatic recovery. We urge the Service to consider these near-term economic conditions in its forthcoming analysis and we will comment further at the appropriate time.

Thank you for the opportunity to comment and we look forward to continuing to work with the Service on CTS conservation efforts.

Sincerely,

Paul L. Kelley, Chair
Board of Supervisors