

*Our Response:* We evaluated the two sites mentioned by the commenter. They are the Hartunian (Scenic Avenue) Preserve and the Southwestern Santa Rosa Vernal Pool Preservation Bank (Engel Bank).

The Hartunian Preserve is approximately 14 hectares (ha) (34 acres (ac)) in size and has one shallow swale that could support successful breeding during a rainy season of above-average rainfall. This preserve was not listed in the emergency rule and has not been included in the final rule because breeding by the species is not likely to occur during years of low to average rainfall.

Upon review of all information available, we have concluded that the Engel Bank does meet the biological requirements for California tiger salamander breeding and we have included this site as an eighth breeding site. Engel Bank is a 16-ha (40-ac) preserve that contains approximately 7-ha (18-ac) of wetlands and has documented records of the species. However, California tiger salamanders require a fairly large upland component. Approximately 9 ha (22 ac) of protected uplands are available at this site. Therefore, due to the limited upland habitat protected within the Engel Bank, a sustainable population at this site is dependent on the activities occurring on the surrounding private property.

*Issue 9:* Many commenters stated that the California tiger salamander is adequately protected by current regulations. Examples of current regulations cited include the application of the Porter-Cologne Water Quality Control Act and the California Environmental Quality Act (CEQA) by CDFG. Both of these require one-to-one mitigation for projects impacting the species. Commenters also mentioned strict local land use controls enacted by Sonoma County and cities within the Santa Rosa Plain. In addition, commenters noted that the Sonoma County Agricultural and Open Space District has acquired potential California tiger salamander habitat that is set aside as open space through a county-wide sales tax. They felt these preserves are adequate for the animal. Several other commenters stated that current legal protections have been inadequate for the species, and losses of breeding sites have occurred.

*Our Response:* CDFG lists the California tiger salamander as a species of special concern and has no specific regulatory mechanism to require mitigation for impacts to this species. In some instances, the CDFG has obtained one-to-one mitigation for destruction of California tiger salamander breeding

sites. However, five breeding sites have been eliminated in Sonoma County during the past 2 years without new breeding sites being created. The use of CEQA and the Porter-Cologne Water Quality Control Act have not halted the loss of habitat for this species in Sonoma County. The land use controls enacted by the County and cities have not required adequate compensation for the loss of breeding sites. The Sonoma County Agricultural and Open Space District has acquired acreage through a one-quarter of a cent county sales tax. However, the acreage purchased does not overlap with areas known to contain California tiger salamander breeding sites. A majority of their purchased lands lie outside of the Santa Rosa Plain. Of the lands they have purchased within the Santa Rosa Plain, the majority fall within the floodplain of the Laguna de Santa Rosa River. There are no known records of the California tiger salamander within this 100 year floodplain.

*Issue 10:* Many commenters stated that the comment period did not allow sufficient time for meaningful public input. A number of them said that more time was needed to complete surveys that currently are underway.

*Our Response:* The comment period for the proposed rule was initially open for 60 days, closing on September 20, 2002. On August 26, 2002, the comment period was extended until October 21, 2002. The comment period was re-opened on October 31, 2002, for an additional 45 days. In total, the comment period was open for 145 days.

At least 12 surveys are ongoing in Sonoma County in three areas not previously known to have California tiger salamander occurrences, and to date, there have been no detections of the animal. We agree that additional survey information is valuable. However, the Service has not had the flexibility to wait until surveys are finished because an order, issued by the district court in *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, required us to complete this rule before the expiration of the protection afforded the DPS by the emergency rule.

*Issue 11:* One commenter stated that we should extend the comment period because we had not made available to the public documents on which the emergency listing and permanent listing was based.

*Our Response:* As stated in the emergency rule, the complete file for the rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office. In addition, the

proposed rule stated that all comments received during the comment period were available for public review. The complete file for this rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office.

*Issue 12:* Several commenters felt we should complete peer review and incorporate that analysis into a proposed rule.

*Our Response:* In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited review from 12 experts in the fields of ecology, conservation, genetics, taxonomy and management. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts. The five peer reviewers who sent comments supported listing of the Sonoma County California tiger salamander. They provided additional documentation on the distribution, genetics, and threats to the species. This information has been incorporated into this final rule.

*Issue 13:* Numerous commenters felt the proposal to list the Sonoma County California tiger salamander was based on one study conducted by a group with a very specific agenda against property rights and development. They said listing decisions should be based on specific studies by non-partisan professionals. Two commenters felt that the proposed rule was based on inaccurate or incomplete data. Numerous commenters felt the data we utilized on the California tiger salamander was at least 10 years old and was thus not current or accurate. One recognized herpetologist provided additional peer-reviewed articles on the California tiger salamander from scientific journals. Another professional biologist noted the proposed rule was based on research conducted as recently as 2001 by knowledgeable herpetologists.

*Our Response:* We used the best scientific and commercial information available during the status review process and preparation of the emergency and final rules to make our listing determination. We utilized museum records; CNDDDB information; aerial photographs documenting the land use changes over the last 60 years; reports produced by the Sonoma County Agricultural Commissioners and the Sonoma County Planning and Development Department; unpublished reports by biologists; and peer-reviewed articles from scientific journals in making that determination.