



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N026]; [FXES1112080000–167–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit

Application; Proposed Low-Effect Habitat Conservation Plan and Associated Documents; City of Santee, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Mrs. Rita Cutri (applicant) for a 3-year incidental take permit for the threatened coastal California gnatcatcher pursuant to the Endangered Species Act of 1973, as amended (Act). We are requesting comments on the permit application and on the preliminary determination that the proposed Habitat Conservation Plan qualifies as a “low-effect” Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and the associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760-431-9624.

Obtaining Documents: To request copies of the application, proposed HCP, and EAS, contact the Service immediately, by telephone at 760-431-9440 or by letter to the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760-431-9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Ms. Rita Cutri (applicant) for a 3-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, Act). The application addresses the potential “take” of the threatened coastal California gnatcatcher in the course of activities associated with the construction of the Cutri residential home project, in the City of Santee, San Diego County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the proposed Habitat Conservation Plan (HCP) by the applicant.

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a “low-effect” HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the Act as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct” (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed 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 incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant requests a 3-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking coastal California gnatcatcher

(Poliioptila californica californica) as a result of permanent impacts to 2.92 acres (ac) of habitat the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with the construction of the Cutri residential project in the City of Santee, California, and includes in-perpetuity preservation and management of 7.0 ac of coastal California gnatcatcher habitat.

The Cutri residential project proposes to construct a single-family residence on a 9.9-acre parcel in the City of Santee. The project will permanently impact 2.92 ac of coastal California gnatcatcher occupied habitat as a result of clearing and grading activities.

To minimize take of coastal California gnatcatcher by the Cutri residential development project and offset impacts to its habitat, the applicant proposes to mitigate for permanent impacts to 2.92 ac of occupied coastal California gnatcatcher habitat through the dedication of 7.0 ac of coastal California gnatcatcher habitat within an on-site conservation easement and funding long-term management to benefit the species. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of construction activities on the coastal California gnatcatcher:

- Clearing of habitat will not take place during the coastal California gnatcatcher breeding season (defined as February 15–August 31). In the event it is not feasible to clear outside of the breeding season, three pre-construction surveys for nesting birds will be conducted within the week prior to initiating grading activities to ensure construction activities do not occur within 300 feet of an active nest.

- A Service-approved biologist will conduct a training session for the grading contractor and will be present on site during the initial clearing and grubbing activities to ensure that impacts are limited to the project footprint.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the coastal California gnatcatcher. If we approve the permit, take of coastal California gnatcatcher would be authorized for the applicant's activities associated with the construction of the Cutri residential development project. In the proposed HCP, the applicant considers alternatives to the taking of coastal California gnatcatcher under the proposed action. Alternative development configuration was considered; however, because of the small size of the project site, further avoidance of impacts to coastal California gnatcatcher habitat could not be achieved. The Applicant also considered the No Action Alternative. Under the No Action Alternative, no incidental take of coastal California gnatcatcher habitat would occur, and no long-term protection and management would be afforded to the species.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) and as a "low-

effect” plan as defined by the *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to

issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of coastal California gnatcatcher.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

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.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).).

G. Mendel Stewart,

Field Supervisor,

Carlsbad Fish and Wildlife Office,

Carlsbad, California.

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