



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2017–N107; FXES11140800000–178–FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit

Application; Proposed Low-Effect Habitat Conservation Plan for the Coastal

California Gnatcatcher and Associated Documents; Brea, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Orange County Waste & Recycling for a 5-year incidental take permit for the threatened coastal California gnatcatcher pursuant to the Endangered Species Act. We are requesting comments on the permit application and on our preliminary determination that the applicant’s accompanying proposed habitat conservation plan qualifies as low effect, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in our environmental action statement and 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.
- *Email:* fw8cfwocomments@fws.gov; please include “Olinda Alpha Landfill HCP” in the subject line.

Obtaining Documents: You may obtain copies of the proposed HCP and EAS on the Carlsbad Fish and Wildlife’s HCP website at https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html. 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 Relay Service (FRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Orange County Waste & Recycling (applicant) for a 5-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.*; ESA). The application addresses the potential “take” of the threatened coastal California gnatcatcher (*Poliophtila californica californica*; gnatcatcher) in the course of activities associated with the construction, operation, and maintenance of the Olinda Alpha Landfill projects, in the City of Brea, Orange County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant’s

proposed habitat conservation plan (HCP).

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA). The basis for this determination is discussed in our environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. “Take” is defined under the ESA 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 ESA, the Service may issue permits to authorize incidental take of listed species. “Incidental taking” is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant’s Proposed Project

The applicant requests a 5-year permit under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking gnatcatcher as a result of permanent

impacts to 5.78 acres (ac) of coastal sage scrub habitat that the species uses for breeding, feeding, and sheltering, as well as 2.85 ac of nonnative grassland habitat that may support gnatcatcher foraging and/or dispersal. The take would be incidental to the applicant's activities associated with the construction of the Olinda Alpha Landfill projects in the City of Brea, California, and includes restoration and in-perpetuity preservation and management of 11.56 ac of gnatcatcher habitat.

The Olinda Alpha Landfill projects propose to construct a desilting basin, perform a partial cap closure, install screening trees for the Brea Power Plant, and construct a winch concrete pad on 12.56 ac located on the 565-ac Olinda Alpha Landfill property in the City of Brea. The project will permanently impact 5.78 ac of coastal California gnatcatcher-occupied coastal sage scrub habitat as a result of clearing and grading activities.

To minimize take of coastal California gnatcatcher by the Olinda Alpha Landfill projects and to offset impacts to its habitat, the applicant proposes to mitigate for permanent impacts to 5.78 ac of occupied gnatcatcher coastal sage scrub habitat through the restoration, conservation, and in-perpetuity management of 11.56 ac of coastal sage scrub suitable for the gnatcatcher by a Service-approved restoration contractor and the Puente Hills Habitat Preservation Authority. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of construction activities on the gnatcatcher:

- Prior to the initiation of work activities on the project sites, grading limits will be clearly delineated with flagging and/or temporary fencing and silt fencing, as necessary, to help guide work activities and avoid impacts to areas beyond

the project boundaries.

- Prior to the initiation of work activities on the project sites, a Service-approved biologist will conduct a brief training session for all project personnel regarding the conservation measures and regulations described herein, as well as general information and methods that will help avoid and minimize disturbance to the gnatcatcher in the vicinity of project activities.
- A Service-approved biologist will monitor grading of the site daily (or as determined necessary by the monitoring biologist) and provide a letter summarizing compliance with this HCP and the construction limits of the proposed projects to the Service within 1 month of completion of grading.
- Vegetation clearing will take place outside of the bird nesting season (February 15 through August 31) to the fullest extent practicable. Clearing may only occur during this period once a Service-approved biologist has conducted at least three surveys of the impact areas for nesting birds, with each survey taking place 1 week apart, and the last survey conducted within 24 hours prior to clearing. The qualified biologist will document compliance with the Migratory Bird Treaty Act and other applicable regulations that protect nesting birds. If an active bird nest is observed, a 300-foot buffer must be established, within which no project activities will occur until the nest is no longer active. A reduced buffer may be established by the monitoring biologist if it is deemed appropriate and will not result in the alteration of nesting behaviors. To fulfill this measure, all project activities that are deemed necessary to occur during the bird nesting season will be monitored by the

qualified biologist, as well as any active nest detected in the vicinity of project activities.

- Project sites will be kept as clean as possible to avoid attracting predators. All food-related trash will be placed in sealed bins or removed from the site regularly.
- Staging areas for each project will be limited to developed or previously disturbed areas.

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 gnatcatcher. If we approve the permit, take of gnatcatcher would be authorized for the applicant's activities associated with the construction of the Olinda Alpha Landfill projects. In the proposed HCP, the applicant considers alternatives to the taking of gnatcatcher under the proposed action. Alternative development configurations for each project component were considered; however, because of site-specific regulatory requirements and the topography of the 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 resulting from habitat modification 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 HCP and

issuance of an incidental take permit qualify for categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a low-effect plan as defined by the Habitat Conservation Planning Handbook (December 2016).

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 ESA (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 ESA 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 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 ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Scott A. Sobiech,

Acting Field Supervisor,

Carlsbad Fish and Wildlife Office,

Carlsbad, California.

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