

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[Docket No. FWS-R8-ES-2021-0003;
FXES11140800000-212]

**Endangered and Threatened Species;
Receipt of an Incidental Take Permit
Application and Low-Effect Habitat
Conservation Plan for the Coastal
California Gnatcatcher; Rancho Vista
Seniors Project, City of Oceanside,
San Diego County, California**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft habitat conservation plan (HCP) and draft categorical exclusion for activities associated with construction of the Rancho Vista Seniors Project. Rancho Vista 2018, LLC (applicant), developed a draft HCP as part of their application for an incidental permit (ITP) under the Endangered Species Act of 1973, as amended. We prepared a draft low-effect screening form and environmental action statement in accordance with the National Environmental Policy Act to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite public comment on these documents.

DATES: To ensure consideration, please send your written comments on or before April 28, 2021.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS-R8-ES-2021-0003 at <http://www.regulations.gov>.

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

- *Online:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2021-0003.

- *Email:* fw8cfwocomments@fws.gov. Please reference Rancho Vista Senior Project in the subject line of your email.

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT:

Janet Stuckrath, Fish and Wildlife Biologist, Carlsbad Fish and Wildlife Office, via phone at 760-431-9440 extension 270, or via email at fw8cfwocomments@fws.gov.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), received an application from Rancho Vista 2018, LLC (applicant), for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would authorize take of the federally threatened coastal California gnatcatcher (*Polioptila californica californica*, gnatcatcher), incidental to activities associated with the development of the Rancho Vista Seniors Project which includes construction of approximately 29 single-family detached senior housing residences, 3 community recreation areas, open space areas, drainage systems, and other infrastructure improvements on approximately 16.87 acres in San Diego County, California. The Service prepared a draft low-effect screening form and environmental action statement in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite public comment on these documents.

Background

The Service listed the gnatcatcher as threatened on March 30, 1993 (58 FR 16742), and published a revised final rule designating critical habitat on December 19, 2007 (72 FR 72010). Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under the ESA, “take” is defined to include the following activities: “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532). Section 4(d) of the ESA allows the Secretary to extend protections for endangered species to those listed as threatened. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our “No Surprises” regulations (50 CFR 17.32(b)(5)).

Project

The project is located on a 16.87-acre site in the City of Oceanside in San Diego County, California. The applicant requests a 3-year incidental take permit for permanent impacts to 8.91 acres of occupied gnatcatcher habitat. The applicant proposes to mitigate impacts through the onsite preservation of 5.52 acres of Diegan coastal sage scrub; onsite conversion of 2.43 acres of non-native and disturbed habitats to Diegan coastal sage scrub; and the purchase of mitigation credits sufficient to offset impacts to 2.34 acres of gnatcatcher-occupied coastal sage scrub habitat at an offsite location selected in coordination with and approved by CFWO. The offsite mitigation area will provide equal or higher quality habitat than that found on the project site and will be conserved, managed, and monitored in perpetuity. The applicant also proposes to implement measures to minimize the effects of construction activities on the gnatcatcher.

Our Preliminary Determination

The Service has made a preliminary determination that neither the issuance of the ITP nor the implementation of the project is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), nor will they individually and cumulatively have more than a minor or negligible effect on the gnatcatcher and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion as provided by our NEPA regulations at 43 CFR 46.205 and 46.215.

Next Steps

We will evaluate the proposed HCP and any comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, we will issue the permit to the applicant for incidental take of the gnatcatcher.

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(c) of the ESA (16 U.S.C. 1539 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2020-N148;
FXES11140200000-212-FF02ENEH00]

Draft Environmental Assessment and Habitat Conservation Plan; CPS Energy Programmatic Habitat Conservation Plan, Bexar County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce that CPS Energy has applied for an incidental take permit (ITP) under the Endangered Species Act (ESA) that would authorize incidental take of one endangered songbird, the golden-cheeked warbler, and eight endangered karst invertebrates. We make available a draft environmental assessment (dEA) under the National Environmental Policy Act and a habitat conservation plan (HCP) for CPS Energy's covered activities in and around San Antonio, Bexar County, Texas. The dEA evaluates the impacts of, and alternatives to, implementation of the proposed HCP.

DATES: To ensure consideration, written comments must be received or postmarked on or before 11:59 p.m. eastern time on April 28, 2021. We may not consider any comments we receive after the closing date in the final decision on this action.

ADDRESSES: Accessing Documents:

Internet: The dEA and HCP: You may obtain electronic copies of these documents on the Service's website at <https://www.fws.gov/southwest/es/AustinTexas/>.

U.S. Mail: You may obtain the documents by writing to the following addresses. In your request for

documents, please reference CPS Energy HCP.

- *DEA and HCP:* A limited number of CD-ROM and printed copies of the dEA and HCP are available, by request, from Mr. Adam Zerrenner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758; telephone 512-490-0057; fax 512-490-0974.

- *ITP Application:* The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; Attention: Environmental Review Branch.

Submitting Comments: Regarding any of the documents available for review, you may submit written comments by one of the following methods. In your comments, please reference CPS Energy HCP.

- *Email:* FW2_AUES_Consult@fws.gov.

- *Hard Copy:* Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758; telephone 512-490-0057; fax 512-490-0974.

We request that you submit comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT:

Adam Zerrenner, Field Supervisor, by mail at U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758; via phone at 512-490-0057; or via the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing 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). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Background

CPS Energy has applied to the Service for an ITP under section 10(a)(1)(B) of the ESA. The requested ITP, which would be in effect for a period of 30 years, if granted, would authorize

incidental take of nine endangered species: Golden-cheeked warbler (*Setophaga [=Dendroica] chrysoparia*), Madla Cave meshweaver (*Cicurina madla*), Government Canyon Bat Cave spider (*Tayshaneta [=Neoleptoneta] microps*), Government Canyon Bat Cave meshweaver (*C. vespera*), Helotes mold beetle (*Batrissodes venyivi*), two ground beetles with no common names (*Rhadine exilis* and *Rhadine infernalis*), Robber Baron Cave meshweaver (*C. baronia*), and Cokendolpher cave harvestman (*Texella cokendolpheri*) (collectively the covered species). The proposed incidental take would result from activities associated with otherwise lawful activities, including electric transmission and distribution lines; natural gas transmission and distribution lines; electric or natural gas substations, switching stations, metering stations, and similar site-based facilities; and lighting on public roadways (covered activities).

Alternatives

Proposed Action

The proposed action involves the issuance of an ITP by the Service for the covered activities in the permit area, under section 10(a)(1)(B) of the ESA. The ITP would cover "take" of the covered species for covered activities within the permit area. An application for an ITP must include an HCP that describes the conservation measures the applicant has agreed to undertake to minimize and mitigate for the impacts of the proposed taking of covered species to the maximum extent practicable. The applicant will fully implement the HCP if approved by the Service. The terms of the HCP and ITP will also ensure that incidental take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

No Action Alternative

We have considered one alternative to the proposed action as part of this process: No Action. Under a No Action alternative, the Service would not issue the requested ITP and the applicant would either consult under the ESA on a project-by-project basis, rather than programmatically, or conduct those activities in a manner that avoids incidental take. Additionally, the applicant would not implement the conservation measures as described in the CPS Energy HCP.

Next Steps

We will evaluate the dEA, HCP, and comments we receive to determine whether the ITP application meets the