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**Billing Code 4510–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2014–N055; FXES11120000–145–FF08ECAR00]**

**Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan and Associated Documents; San Bernardino County, CA**

**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 City of Rialto (applicant), for a 3-year incidental take permit (permit); the application includes the applicant’s proposed habitat conservation plan (HCP), as required by the Endangered Species Act of 1973, as amended (Act). If approved, the permit would authorize incidental take of the endangered Delhi Sands flower-loving fly in the course of routine activities associated with the construction activities associated with the widening of San Bernardino Avenue, Riverside Avenue, and Willow Avenue.

We invite public comment on the permit application and proposed HCP, and on our preliminary determination that the HCP qualifies as “low-effect” for a categorical exclusion under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

**DATES:** To ensure consideration, please send your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** *Obtaining Documents:* You may request a copy of the incidental take permit application, proposed HCP, and associated documents by e-mail, telephone, fax, or U.S. mail (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Please send your requests or comments by any one of the following methods, and specify “San Bernardino Avenue, Riverside Avenue, and Willow Avenue Street Improvements HCP” in your request or comment.

*Submitting Comments:* You may submit comments or requests for more information by any of the following methods:

*E-mail:* [ken\\_corey@fws.gov](mailto:ken_corey@fws.gov). Include “San Bernardino Avenue, Riverside Avenue, and Willow Avenue Street Improvements HCP” in the subject line of your message.

*Telephone:* Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760-322-

2070.

*Fax:* Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760-322-4648,  
Attn.: San Bernardino Avenue, Riverside Avenue, and Willow Avenue Street  
Improvements HCP.

*U.S. Mail:* Kennon A. Corey, Palm Springs Fish and Wildlife Office, Attn.: San  
Bernardino Avenue, Riverside Avenue, and Willow Avenue Street Improvements HCP,  
U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon Way, Suite 208, Palm Springs,  
CA 92262.

*In-Person Viewing or Pickup of Documents, or Delivery of Comments:* Call 760-  
322-2070 to make an appointment during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kennon A. Corey, Assistant Field  
Supervisor, Palm Springs Fish and Wildlife Office; telephone 760-332-2070. If you use  
a telecommunications device for the deaf (TDD), please call the Federal Information  
Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

The applicant, City of Rialto, requests an incidental take permit under section  
10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking Delhi  
Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as a result of minor  
disturbances to habitat the species uses for breeding, feeding, and sheltering. Take of  
Delhi Sands flower-loving fly would be incidental to the applicant's routine activities

associated with the construction activities associated with the widening of San Bernardino Avenue, Riverside Avenue, and Willow Avenue, in the City of Rialto, San Bernardino County, California. We published a final rule to list Delhi Sands flower-loving fly as endangered on September 23, 1993 (58 FR 49881). The rule became effective September 22, 1993. A 5-year review of the species was published in March 2008.

## **Background**

Section 9 of the Act (16 U.S.C. 1531 et seq.) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the “take” of wildlife species listed as endangered or threatened. Take of listed wildlife is defined under the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in any 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). Under limited circumstances, we may issue permits to authorize incidental take of listed wildlife species, which the Act defines as take that is incidental to, and not the purpose of, the carrying out of otherwise lawful activities.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. In addition to meeting other criteria, activities covered by an incidental take permit must not jeopardize the continued existence in the wild of federally listed wildlife or plants.

## **Applicant's Proposal**

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 Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as a result of street improvements which will permanently and temporarily impact 0.74 acre (ac) (0.30 hectare (ha)) of habitat the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's routine construction activities associated with the widening of San Bernardino Avenue, Riverside Avenue, and Willow Avenue, in the City of Rialto, San Bernardino County, California.

A portion of the street widening project is on Delhi Sands soils. This soil type, which consists of fine wind-blown sand deposits, along with sparse native shrubs and annual plants defines the Delhi Sands flower-loving fly habitat. Less than 5 percent of the species' historic range is left, found in a few disjunct locations in southwestern San Bernardino and northwestern Riverside Counties. Development and exclusion by invasive plant species continue to be threats to this species. Conservation banks, like the Colton Dunes Conservation Bank, are this species' best chance at recovery.

To minimize take of Delhi Sands flower-loving fly at the City of Rialto's street widening project, the applicant proposes to mitigate for the permanent and temporary take of 0.74 ac (0.30 ha) of habitat by preserving 1ac (0.40 ha) of habitat occupied by Delhi Sands flower-loving fly. The applicant's proposed HCP also contains the following proposed measures to minimize the impact to the habitat adjacent to the street improvements:

- Fence work areas to keep workers off of habitat.
- Post signs to educate the public about the Delhi Sands flower-loving fly along the work area.
- Require environmental awareness training for all workers.
- Confine construction activities to existing roads or other paved areas.
- Require that all construction activities be completed during the time period October through June only (i.e., outside of the Delhi Sands flower-loving fly flight season).

### **Proposed Habitat Conservation Plan Alternatives**

In the proposed HCP, the applicant considers alternatives to the taking of Delhi Sands flower-loving fly under the proposed action. Our proposed action is to issue an incidental take permit to the applicant, who would implement the HCP. If we approve the permit, take of Delhi Sands flower-loving fly would be authorized for the applicant's routine construction activities associated with the widening of San Bernardino Avenue, Riverside Avenue, and Willow Avenue, in the City of Rialto. The applicant's proposed HCP does identify a no-build alternative that would not result in incidental take of Delhi Sands flower-loving fly, but it is infeasible for the City of Rialto to accept this alternative as it would result in roadway congestion and insufficient storm drain capacity due to future planned development.

### **Our Preliminary Determination**

We invite comments on our preliminary determination that our proposed action, based on the applicant's proposed activities, including the proposed minimization and mitigation measures, would have a minor or negligible effect on Delhi Sands flower-loving fly, and that the HCP qualifies as "low effect" as defined by our *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.

As more fully explained in our environmental action statement and associated low-effect screening form, the applicant's proposed HCP qualifies as a low-effect HCP for the following reasons:

- The project is small in size and does not jeopardize the continued existence of the Delhi Sands flower-loving fly.
- The applicant will mitigate impacts to the Delhi Sands flower-loving fly by purchasing 1 ac of occupied Delhi Sands flower-loving fly habitat within the

Colton Dunes Conservation Bank prior to ground disturbance.

- This project provides a net gain in preserved occupied habitat.

Therefore, our proposed issuance of the requested incidental take permit qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1, 516 DM 6 Appendix 1, and 516 DM 8.5(C)(2)). Based on our review of public comments we receive in response to this notice, we may revise this preliminary determination.

### **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 Delhi Sands flower-loving fly.

### **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, e-mail 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).

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**Scott A. Sobiech,**  
**Acting Field Supervisor,**  
**Carlsbad Fish and Wildlife Office,**  
**Carlsbad, California.**

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