



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS–R8–ES–2023–0251; FXES1114080000–245–FF08ECAR00]

### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Montebello Hills Phase B Project, City of Montebello, CA; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Metro Heights Montebello, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally threatened coastal California gnatcatcher and endangered least Bell's vireo incidental to construction of the Montebello Hills Phase B Project, in the City of Montebello, Los Angeles County, California. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

**DATES:** We must receive your written comments on or before **[INSERT DATE 30**

**DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES: *Obtaining Documents:*** You may obtain copies of the documents this notice announces, along with any comments and other materials that we receive, online in Docket No. FWS–R8–ES–2023–0251 at <https://www.regulations.gov>.

***Submitting Comments:*** If you wish to submit comments, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2023–0251.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2023–0251; U.S. Fish and Wildlife Service, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.:

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 760–431–9440 (telephone). Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Metro Heights Montebello, LLC (applicant) for an 11-year incidental take permit (ITP) for two covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential “take” of the threatened coastal California gnatcatcher (*Polioptila californica californica*) and the endangered least Bell’s vireo (*Vireo bellii pusillus*) associated with the construction of the Montebello Hills Phase B Project, in the City of Montebello, Los Angeles County, California. We request public

comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as "low effect," and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

### **Background**

The proposed project is the second part of the larger 488-acre Montebello Hills Development and Conservation Project (also known as Montebello Hills Specific Plan). The Service consulted with the U.S. Army Corps of Engineers under section 7 of the Endangered Species Act on the effects to the coastal California gnatcatcher from the proposed issuance of a Clean Water Act section 404 permit for the Montebello Hills Development and Conservation Project in 2009 and in 2019. Ultimately, U.S. Army Corps of Engineers did not issue a 404 permit, because they determined that waters within the Montebello Hills Development and Conservation Project area are excluded from Clean Water Act jurisdiction. Phase A of the Montebello Hills Development and Conservation Project was initiated in 2019 and is currently under construction.

### **Proposed Project**

The proposed project includes the construction of 851 residential homes, a park, and fuel modification zones on 86.78 acres in the City of Montebello, California. The applicant requests an 11-year ITP under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking coastal California gnatcatcher and least Bell's vireo as a result of impacts to 86.78 acres, including about 32 acres of native coastal sage scrub vegetation these species use for breeding, feeding, and sheltering. The take would

be incidental to the applicant's activities associated with the construction of the Montebello Hills Phase B Project.

Coastal California gnatcatchers are common in coastal sage scrub vegetation within the Montebello Hills, with a maximum of 160 pairs recorded in 2012. The proposed project area contained 7 pairs prior to initiation of the Phase A of the Montebello Hills Development and Conservation Project in 2019 and 3 pairs in 2023. Least Bell's vireos are common in riparian woodlands near the proposed project area within Whittier Narrows Recreation Area, but were first observed within the project area in May of 2023. Riparian vegetation, suitable for vireo, occurs in small patches within the coastal sage scrub vegetation community.

The applicant's proposed HCP contains measures to minimize the effects of construction activities on the coastal California gnatcatcher and least Bell's vireo. During construction, a Service-approved biological monitor will be present to ensure avoidance and minimization measures are understood by the contractors and implemented as anticipated. Impacts to preserved vegetation adjacent to the Project footprint will be avoided by surveying, staking, and fencing the limits of proposed impacts and controlling erosion, sedimentation, and pollution within the footprint of impacts. Vegetation removal will occur outside the breeding season to avoid active nests, and impacts to productivity will be minimized by limiting construction within 200 feet of an active nest.

The applicant proposes to increase the quality and extent of habitat for the gnatcatcher and vireo that occurs within and adjacent to the project area by (1) restoring, preserving, and managing 91.51 acres of native vegetation communities within the 276.83-acre Montebello Hills Habitat Reserve (Habitat Reserve), and (2) restoring, preserving, and managing 12 acres of native vegetation communities in the Puente Hills. In total, 100.11 acres of coastal sage scrub habitat for coastal California gnatcatcher and 3.4 acres riparian woodland habitat for least Bell's vireo will be protected in perpetuity

with conservation easements and managed in accordance with long-term management plans, with funding secured in non-wasting endowment accounts to ensure the quality and extent of restored habitats are maintained over time.

Because the Habitat Reserve will be surrounded by residential development, the proposed project also includes several design features to minimize the potential for degradation of habitat that is preserved as part of the project. The fuel modification zone was minimized by incorporating fire-resistant features into the project design and will be planted with coastal sage scrub species approved for use by the local fire authority to maintain foraging habitat for coastal California gnatcatchers. Development landscaping will exclude invasive plant species and incorporate primarily drought-tolerant plants to minimize artificial irrigation. Lighting will be shielded and designed to minimize spillover into the Montebello Habitat Reserve. Fencing will prohibit access to the Habitat Reserve by homeowners and their pets, and no-trespassing signs will be posted at likely points of entry.

### **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 coastal California gnatcatcher and least Bell's vireo. To comply with the requirements for an HCP under ESA section 10(a), alternatives to the project and the incidental take of coastal California gnatcatcher and least Bell's vireo were evaluated. Under the No Action Alternative, the project would not be constructed, and no ITP would be issued. The No Action Alternative would not meet the primary goal of the proposed project, which is to construct residential homes within the project area. It would also represent a loss of the value of the infrastructure (roadways, utilities, and storm water facilities) previously constructed to facilitate development of Phase B, including revegetation of 41.85 acres of coastal sage scrub on slopes as part of the Phase A

development. Alternatives to the proposed project are constrained by the Phase A development and would necessitate extensive changes to the developed subdivisions in Phase A from a land use, circulation, and utility perspective. There are no other feasible alternatives, based on the description of already installed improvements that would avoid incidental take of coastal California gnatcatcher and least Bell's vireo.

### **Our Preliminary Determination**

The Service has made a preliminary determination that the applicant's proposed project would individually and cumulatively have a minor effect on the coastal California gnatcatcher, least Bell's vireo, and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) ITP would be a "low-effect" ITP that individually or cumulatively would have a minor effect on the species and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A "low-effect" ITP is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

### **Next Steps**

The Service will evaluate the application and the comments received to determine whether to issue the requested ITP. 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 preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the permit to the applicant for incidental take of coastal California gnatcatcher and least Bell's vireo.

## **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 its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500-1508 and 43 CFR 46).

## **Kristine Petersen,**

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Carlsbad, California.*

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