



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2023-0230; FXES1114020000-245-FF02ENEH00]

Application for an Amendment to an Incidental Take Permit; Cibolo Canyon

Master Phase II Environmental Assessment and Habitat Conservation Plan for the Golden-Cheeked Warbler in Bexar County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: TF Cibolo Canyons, LP (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an amendment to their existing incidental take permit (ITP) supported by the proposed amendment to the Habitat Conservation Plan for a portion of the Cibolo Canyon Property (Master Phase II) (HCP) pursuant to the Endangered Species Act. The requested amendment to the ITP, if approved, would continue authorization of incidental take of the golden-cheeked warbler (*Setophaga chrysoparia*). The application package includes the proposed changes to the HCP and a draft screening form that has been prepared to evaluate the ITP application in accordance with the requirements of the National Environmental Policy Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these documents.

DATES: *Submission of comments:* We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Obtaining documents:* You may obtain copies of the ITP amendment application, proposed revisions to the HCP, draft screening form, or other related documents online in Docket No. FWS-R2-ES-2023-0230 at <https://www.regulations.gov>. Other related information may be obtained online at

<https://www.fws.gov/library/collections/texas-habitat-conservation-plans>.

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

- *Internet:* *<https://www.regulations.gov>*. Search for and submit comments on Docket No. FWS–R2–ES–2023–0230; or
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R2–ES–2023–0230; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

Please note which documents your comment references. For more information, see

Public Availability of Comments.

FOR FURTHER INFORMATION CONTACT: Karen Myers, Field Supervisor, Austin Ecological Services Field Office, Austin, Texas; telephone (512) 937-7371.

Individuals in the United States who are deaf, deafblind, 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 and make available a proposed amendment to the Habitat Conservation Plan for a portion of the Cibolo Canyon Property (Master Phase II) (HCP) in Bexar County, Texas, and an associated draft screening form. TF Cibolo Canyons, LP (applicant) has applied for an amended incidental take permit (ITP) (TE102437-0) supported by the proposed amendment to their HCP. If approved, the amended permit would continue for the remainder of the 30 years of the original permit to authorize incidental take of the federally listed, endangered golden-cheeked warbler (*Setophaga chrysoparia*; warbler) under the Endangered Species Act of 1973, as amended (ESA; 16

U.S.C. 1531 *et seq.*). The permit would continue to authorize incidental take of the species resulting from vegetation clearing for construction of homes, apartments, and other such facilities.

In addition, in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), we advise the public that:

1. We have prepared a draft NEPA screening form to evaluate the proposed amendment to the HCP and potential ITP issuance. We are accepting comments on the proposed amendment to the HCP and draft NEPA screening form.
2. The applicant and the Service have developed the proposed amendment to the HCP, which describes the measures the applicant has volunteered to take to meet the issuance criteria for a 10(a)(1)(B) ITP associated with the HCP. The issuance criteria are found at 50 CFR 17.22(b)(2).
3. The HCP would be implemented by the applicant and would remain effective until the expiration of the HCP and associated ITP.
4. As described in the HCP, the potential incidental take of the warbler could result from otherwise lawful activities covered by the HCP.

Background

Section 9 of the ESA and our implementing regulations at 50 CFR part 17 prohibit the “take” of fish or wildlife 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(19)). 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 are found

at 50 CFR 17.21–22 and 50 CFR 17.31–32, respectively.

Proposed Action

The proposed action involves the issuance of an amended 10(a)(1)(B) ITP to TF Cibolo Canyons, LP and approval of the proposed amendment to the HCP. The ITP would cover incidental “take” of the species associated with vegetation clearing and construction of homes, apartments, and other such facilities as described in the ITP and HCP.

The existing ITP expires February 18, 2036, and no extension has been requested. The original permit authorized incidental take of the species on 846 acres (ac) and resulted in 768 ac of mitigation on site (May 2, 2005; 70 FR 22682). The proposed amendment would add 144 ac of the original development area to the mitigation lands in exchange for an unoccupied 30-ac tract of the original preserve area, which would reduce the development area from 846 ac to 732 ac and increase the preserve area from 768 ac to 882 ac. The 144 acres being added to the preserve has sufficient habitat to support warblers periodically, while the 30 acres being removed does not contain warbler habitat and, therefore, does not support warblers. The proposed swap will result in less edge-to-area ratio in the preserve area, a reduction in the amount of habitat loss and take of the warbler due to the implementation of the HCP and will provide contiguity between two occupied portions of the preserve.

To meet the requirements of a section 10(a)(1)(B) ITP, the applicant would continue to implement the amended HCP. The HCP describes the conservation measures the applicant has agreed to undertake to minimize and mitigate incidental take, to the maximum extent practicable and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of species in the wild.

Next Steps

We will evaluate the ITP application, proposed amendment to the HCP, draft

NEPA screening form, and comments we receive to determine whether the HCP application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the proposed amendment to the HCP and issue the amended ITP to the applicant under section 10(a)(1)(B) of the ESA in accordance with the terms of the HCP and specific terms and conditions of the authorizing ITP. We will not make our final decision until after the 30-day comment period ends, and we have fully considered all comments received during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. 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 can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Jeffrey Fleming,
Regional Director, Southwest Region,
U.S. Fish and Wildlife Service.

[FR Doc. 2024-00752 Filed: 1/16/2024 8:45 am; Publication Date: 1/17/2024]