



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2025-0407; FXES11140800000-256-FF08ECAR00]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Piraeus Point Project, City of Encinitas, 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 Lennar Homes of California, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act (ESA). The applicant requests the ITP to take the federally threatened coastal California gnatcatcher incidental to construction of the Piraeus Point Project, in the City of Encinitas, San Diego County, California. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the National Environmental Policy Act (NEPA), Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual (DM). To make this preliminary determination, we prepared a joint draft environmental action statement and low-effect screening form, both of which are 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-2025-0407 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–2025–0407.
- *Email:* fw8cfwocomments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Snyder, Acting Field Supervisor, Carlsbad Fish and Wildlife Office, jonathan_d_snyder@fws.gov (email) or 760-309-7993 (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 Lennar Homes of California, LLC (applicant) for a 10-year ITP for one covered species pursuant to section 10(a)(1)(B) of the ESA, as amended (16 U.S.C. 1531 et seq.). The application addresses the potential “take” of the threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher) associated with the construction of the Piraeus Point Project in the City of Encinitas, San Diego County, California.

We request public comment on the application, which includes the applicant’s 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 DOI’s NEPA regulations (43 CFR part 46), and the DOI’s DM (516 DM 1, DOI NEPA Handbook appendix 2, 8.5 C.(2)). To make this preliminary determination, we prepared a joint draft environmental action statement and low-effect screening form which are available for public review.

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 of the Interior 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 threatened 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)).

Proposed Project

The proposed project site includes a 5.99 acres (ac) development footprint in a 6.88 ac undeveloped property located east of Piraeus Street and north of Plato Place, and 0.68 ac street vacation along portions of Piraeus Street and Plato Place, in the City of Encinitas, in San Diego County, California. The proposed Piraeus Point project includes the construction of 134 residential units spread across 14 three-story residential buildings, a pool, pool house, lounge seating, and 6.41 ac of land set aside (1.46 ac onsite and 4.95 ac offsite) as a biological open space preserve in the City of Encinitas, California.

The applicant requests a 10-year ITP under section 10(a)(1)(B) of the ESA. If we

approve the permit, the applicant anticipates taking gnatcatcher resulting from impacts to the project site, including about 2.64 ac of native coastal sage scrub vegetation that this species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with the construction of the Piraeus Point project.

The applicant's proposed HCP contains measures to minimize the effects of construction activities on the gnatcatcher. 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 500 feet of an active nest.

The applicant proposes restore 1.59 ac of non-native vegetation to coastal sage scrub within the adjacent off-site preserve. In total, 6.41 ac of coastal sage scrub habitat for the coastal California gnatcatcher will be conserved through a biological conservation easement, with funding secured in a non-wasting endowment account, to ensure management and monitoring in perpetuity.

Proposed Action and Alternatives

The proposed action consists of the issuance of an ITP to address the incidental take of gnatcatchers from implementing the proposed HCP. To comply with the requirements for an HCP under ESA section 10(a), alternatives to the project and the incidental take of gnatcatcher were evaluated.

Under the no project/no development alternative, the project would not be constructed, and no ITP would be issued. The applicant would have no use of the privately owned property. Under the reduced development footprint alternative, the 2.64

ac of coastal sage scrub gnatcatcher habitat onsite would be avoided. The gnatcatcher habitat consists of 2.64 ac of coastal sage scrub and southern mixed/maritime chaparral habitat in two main patches in the northern and center portion of the project site. Therefore, the total avoidance of habitat would also prevent any reasonable economic use of the site. With implementation of the project, the development would be situated primarily in the southern portion of the project site. A 1.46 ac preserve would be established in the northern portion of the project site, and an off-site preserve of 4.95 ac would be preserved in perpetuity.

The applicant selected the project as proposed over these alternatives because it achieves the project's primary goal of providing housing, is financially feasible to implement, and would result in the preservation, restoration, and management of coastal California gnatcatcher habitat and prevent it from being further degraded.

Our Preliminary Determination

The Service made a preliminary determination that the applicant's HCP would have minor or negligible effects on the gnatcatcher. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) ITP would be a low-effect ITP that may qualify for application of a categorical exclusion pursuant to NEPA, DOI's NEPA regulations, and the DOI DM. Please see the draft environmental action statement and low-effect screening form for more information.

Next Steps

The Service will evaluate the application and any comments received resulting from this notice 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 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 Endangered Species Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22 and 50 CFR 17.32), and NEPA (42 U.S.C. 4321 et seq.) and the DOI's implementing regulations (43 CFR part 46).

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U.S. Fish and Wildlife Service.

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