



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R8-ES-2025-0070; FXES1114080000-256-FF08ECAR00]

### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Quail Meadows Apartments 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 Quail Meadows Properties, 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 incidental to construction of the Quail Meadows Apartments 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, and 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. To make this preliminary determination, we prepared a joint draft environmental action statement and low-effect screening form, which is 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–2025–0070 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–2025–0070.
- *Email:* [fw8cfwocomments@fws.gov](mailto:fw8cfwocomments@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, [jonathan\\_d\\_snyder@fws.gov](mailto:jonathan_d_snyder@fws.gov) (email) or 760–431–9440 extension 307 (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 Quail Meadows Properties, LLC (applicant) for a 10-year incidental take permit (ITP) for one 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 (*Poliophtila californica californica*; gnatcatcher) associated with the construction of the Quail Meadows Apartments project, in the City of Encinitas, San Diego 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 Department of the Interior’s (DOI) NEPA regulations (43 CFR 46), and the DOI’s Departmental Manual (516 DM 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 is also 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 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 11.96-acre (ac) project site is an undeveloped property along Quail Gardens Drive, north of Encinitas Boulevard, that was formerly a greenhouse operation in the City of Encinitas, in San Diego County, California. The proposed Quail Meadows Apartments project includes the construction of 448 residential units spread across two five-story apartment buildings, a two-story fitness building/clubhouse, and 3.31 ac of land set aside 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 8.22 ac, including about 0.54 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 Quail Meadows Apartments 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 to increase the quality and extent of habitat for the gnatcatcher that occurs within and adjacent to the project area by restoring 2.93 ac of non-native grassland to coastal sage scrub, enhancing/preserving 0.38 ac of coastal sage scrub, and preserving 0.07 ac of wetland in a 3.31-ac on-site preserve. Further, the preserve will be located across the street from the San Diego Botanic Gardens, which offers additional foraging and nesting habitat for gnatcatchers. In total, 3.31 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.

Physical conditions of the on-site preserve will be maintained for the benefit of gnatcatchers and their habitat through appropriate access controls, trash removal, and related measures. A rarely used 0.07-ac utility easement adjacent to the preserve will be planted with native coastal sage scrub species to increase gnatcatcher foraging and

nesting habitat and reduce potential for non-native vegetation invasion into the preserve. Development landscaping will exclude invasive plant species as well as plants that require intensive irrigation, fertilizers, or pesticides adjacent to preserve areas. Water runoff from landscaped areas will be directed away from the biological conservation easement area and contained and/or treated within the stormwater management facilities identified in project plans. Lighting will be selectively placed, shielded, and directed away from the on-site preserve. In addition, lighting from homes abutting the preserve will be screened with vegetation, and spotlight-type lighting will be prohibited. Permanent fencing will prohibit access to the on-site preserve by homeowners and their pets, especially cats, 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 the gnatcatcher. 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 Action Alternative, the project would not be constructed, and no ITP would be issued. The property owner (applicant) would have no use of the privately owned property. Under the Total Sage Scrub Avoidance Alternative, the 0.99 ac of coastal sage scrub gnatcatcher habitat onsite would be avoided. The gnatcatcher habitat is composed of 17 small and fragmented patches of native vegetation scattered throughout the site, ranging in size from 0.001 ac to 0.25 ac. 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 in the southern portion of the project site and a 3.31-ac preserve would be established in the northern portion of the project site. A previous project iteration would have developed 11.6 ac of the 11.96-ac project site and only included a 0.33-ac preserve. Therefore, the project is the most biologically

conservative feasible configuration for development on the project site.

### **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 gnatcatcher 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 or negligible effect on the species and may qualify for application of a categorical exclusion pursuant to DOI's NEPA regulations and the DOI Departmental Manual.

### **Next Steps**

The Service will evaluate the application and 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 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 of the Endangered Species Act (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 (43

CFR 46).

**Jonathan Snyder,**  
*Acting Field Supervisor,*  
*Carlsbad Fish and Wildlife Office,*  
*Carlsbad, California.*

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