

active river channel is cleared of vegetation by scouring that occurs during flood events. In years with minimal rainfall, emergent vegetation that develops upstream of the crossings following their installation may persist until the next flood event.

The affected reach of the river supports populations of the endangered unarmored threespine stickleback and the following unlisted species of concern: the Santa Ana sucker, arroyo chub, southwestern pond turtle, and two-striped garter snake. Although not observed in recent years, the threatened California red-legged frog may occur in the affected reach.

Pursuant to section 9 of the Endangered Species Act, listed species are protected against take; that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are promulgated at 50 CFR 17.22 and 17.32.

The Service proposes to issue an incidental take permit to the applicant for the take of unarmored threespine sticklebacks and California red-legged frogs. The proposed permit would be effective upon issuance for species currently listed under the Endangered Species Act. Should the unlisted species covered by the Plan be federally listed as threatened or endangered during the term of the permit, take authorization for them would become effective concurrent with their listing under the Endangered Species Act. In addition, the applicant seeks Federal assurances that no additional land restrictions or financial compensation would be required for species adequately covered by the Newhall Plan. To receive assurances, all species covered by the Plan must be treated as if they are listed and the Plan, with its avoidance, minimization and management measures, must be implemented.

The proposed Federal action would authorize the incidental take, through harassment, of all unarmored threespine sticklebacks and California red-legged frogs within the individual crossing and diversion sites. Similarly, all Santa Ana suckers, arroyo chubs, southwestern pond turtles, and two-striped garter snakes would be harassed during their removal from harm's way prior to installation and removal of the river crossings and diversions. The Service anticipates that limited numbers of individuals of listed species and species

of concern would be killed or injured during installation or removal of the crossings and diversions. Such incidental take, in the form of injury or mortality, would be authorized through the incidental take permit.

To minimize the effects of the proposed project, the proponent would implement a take avoidance plan during installation and removal of the crossings and diversions. The take avoidance plan includes: preconstruction surveys of the various sites by qualified biologists prior to installation activities; installation of blocking nets to isolate the work area; visual searches and seining of the work area; and removal from harm's way of individual fish and wildlife that are encountered.

The Service has determined that the Newhall Plan qualifies as a "low-effect" Plan as defined by the Fish and Wildlife Service's Habitat Conservation Planning Handbook (November 1996). Low-effect Plans are those involving (1) minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Newhall Plan qualifies as a low-effect Plan for the following reasons:

1. The effects of the plan are minor or negligible on federally listed, proposed, or candidate species and their habitats. The effects of Newhall's actions on the Santa Clara River are minor in comparison to natural river processes (e.g., low flows and high flows). The installation, presence, and removal of the river crossings appear not to negatively affect the federally listed, candidate, and species of concern that inhabit the affected reaches. By slowing the flow of water, the crossings create habitat conditions favorable to many species native to the project area.

2. The effects of the project are minor or negligible on other environmental resources. Relative to vehicle traffic on Highway 126, which lies along the northern margin of the river's floodplain, the contribution of Newhall's farming activities to air pollution is negligible. The limited pulses of elevated turbidity that occur through installation and removal of Newhall's river crossings do not greatly affect water quality and soil. Within the footprint of the river crossings, there are no known cultural resources; considering the natural disturbance which occurs during flood flows and the historic use of the crossing areas, the presence of cultural resources is extremely unlikely.

3. No significant cumulative effects are expected to occur as a result of project implementation. There currently

are no other low-effect habitat conservation plans in preparation or foreseeable for the Santa Clara River. The effect of this action on natural resources is very limited and would contribute little to the cumulative effects of other projects if they did arise.

In addition, none of the exceptions to categorical exclusions (from 516 DM 2.3, Appendix 2) apply to the Newhall Plan. The Service therefore has determined that approval of the Newhall Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Therefore, no further National Environmental Policy Act documentation will be prepared.

This notice is provided pursuant to section 10(c) of the Endangered Species Act. The Service will evaluate the permit application, the Newhall Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: March 11, 1998.

**Thomas Dwyer,**

*Acting Regional Director, Region 1, Portland, Oregon.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### **Receipt of an Application for an Incidental Take Permit for the Coastal California Gnatcatcher Associated With Residential Development on the Bennett Property, City of Chula Vista, CA**

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of availability.

**SUMMARY:** Western Pacific Housing (applicant) has submitted an application with a Habitat Conservation Plan to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The applicant proposes to develop residential housing on a 5-acre parcel in the City of Chula Vista, California. The proposed permit would authorize the incidental take of one pair of the threatened coastal California gnatcatcher (*Poliotila californica*

*californica*) known to occur on this parcel.

The Service has determined that the Bennett Habitat Conservation Plan (Bennett Plan) qualifies as a low effect plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). The Service has further determined that approval of the Bennett Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This determination is explained in an Environmental Action Statement which is available for public review.

**DATES:** Written comments on the permit application, Bennett Plan, and Environmental Action Statement should be received on or before April 16, 1998.

**ADDRESSES:** Written comments should be addressed to the Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to (760) 431-9624.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kim Marsden, Fish and Wildlife Biologist, at the above address or call (760) 431-9440.

**SUPPLEMENTARY INFORMATION:**

**Availability of Documents**

Persons may obtain a copy of the permit application, Bennett Plan, and Environmental Action Statement by calling the Service's Carlsbad Fish and Wildlife Office at the telephone number above. Documents also will be available for public inspection by appointment during normal business hours at that office (see **ADDRESSES**).

**Background**

Section 9 of the Endangered Species Act and its implementing regulations prohibit the "taking" of threatened or endangered species. However, under limited circumstances the Service may issue permits to take endangered and/or threatened species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and/or threatened species are promulgated at 50 CFR 17.22 and 17.32.

Under the proposed action, construction activities would directly impact one pair of gnatcatchers by removal of 4.2 acres of foraging habitat on a 5-acre parcel. The parcel is bounded on three sides by development and on the fourth by a road. The parcel has been previously graded and revegetated with a mixture of plants that are native to both coastal and desert

areas of southern California and with horticultural ornamentals. The revegetated scrub is similar in stature to coastal sage scrub but is not considered to be coastal sage scrub. The applicant has submitted a habitat conservation plan that describes consideration of alternatives to the action and provisions for minimization and mitigation of impacts including off-site acquisition of 4.2 acres of coastal sage scrub within the preserve area of the City of Chula Vista's Multiple Species Conservation Program. The Bennett Plan also provides measures to avoid direct take of the California gnatcatchers if vegetation clearing would occur within the normal California gnatcatcher breeding season.

Two alternatives to the proposed project action were considered: the "no project" alternative and the "partial-clearing" alternative. Each of these alternatives was rejected because they would not meet the project purpose and were economically unfeasible.

The Service has determined that the Bennett Plan qualifies as a "low-effect" plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). Low-effect plans are those involving (1) minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Bennett Plan qualifies as a low-effect plan for the following reasons:

1. The effects of the plan are minor or negligible on federally listed, proposed, or candidate species and their habitats. The harassment of one pair of California gnatcatchers by removal of 4.2 acres of their foraging habitat is considered a negligible effect because: (a) The project site has been previously graded and revegetated to an assemblage of plants that does not comprise a natural community; and (b) the removal of this vegetation will not appreciably reduce any food resource, or affect reproduction because there is foraging habitat within 50 meters of the project site in naturally-occurring suitable habitat. In addition, the project will not affect any proposed or candidate species or their habitats.

2. The effects of the project are minor or negligible on other environmental resources. The effects on air quality will not be significant because of the small size of the project site and the limited duration of construction. Impacts to geology and soils are negligible because the site has been previously graded. Impacts to water quality are not anticipated as a result of this project because it is small, surrounded by existing development, not located close to any body of water, and ground

disturbing activities will be minimal. No known cultural sites exist on the site, therefore, no impacts to cultural resources are anticipated. No changes in land use or the socio-economic environment are expected to occur as a result of implementing the Bennett Plan because the project site is located in an existing housing subdivision surrounded by residential development and a paved road.

3. No significant cumulative effects are expected to occur as a result of project implementation. The site was previously graded and revegetated to an unnatural assemblage of plants. The loss of 4.2 acres of non-coastal sage scrub vegetation on previously graded land will not result in significant cumulative effects to the coastal California gnatcatcher.

In addition, none of the exceptions to categorical exclusions (from 516 DM 2.3, Appendix 2) apply to the Bennett Plan. The Service therefore has determined that approval of the Bennett Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further National Environmental Policy Act documentation will therefore be prepared.

This notice is provided pursuant to section 10(c) of the Endangered Species Act. The Service will evaluate the permit application, the Bennett Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: March 11, 1998.

**Thomas Dwyer,**

*Acting Regional Director, Region 1, Portland, Oregon.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Klamath Fishery Management Council Meeting**

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

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5