

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[FWS-R2-ES-2018-N078;
FXES11130200000-189-FF02ENEH00]

**Draft Safe Harbor Agreement
Amendment and Application for an
Enhancement of Survival Permit for
the Rio Salado Project, in Tempe,
Arizona**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability; request
for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receiving the City of Tempe's survival enhancement permit application, under the Endangered Species Act. The requested amended permit would allow for the City of Tempe to conduct, to a greater degree, adaptive biological monitoring and would authorize incidental take of the yellow-billed cuckoo as a result of operation and maintenance activities associated with the Rio Salado Project, in the City of Tempe (Tempe Reach), Maricopa County, AZ. In accordance with National Environmental Policy Act (NEPA) requirements, we have determined that the proposed action qualifies under a categorical exclusion. We are accepting comments on the draft safe harbor agreement amendment (Draft SHA Amendment), and draft NEPA screening form supporting the use of a categorical exclusion.

DATES: *Submission of Comments:* We will accept comments received or postmarked on or before October 1, 2018.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents at <https://www.fws.gov/southwest/es/arizona/>. Alternatively, you may obtain CD-ROMs with electronic copies of the documents by writing to the Acting Field Supervisor, U.S. Fish and Wildlife Service, 9828 North 31st Avenue, Phoenix, AZ 85051-2517; calling (602) 242-0210; faxing (602) 242-2513, as well as by email. A limited number of printed copies of the documents are also available, by request, from the Acting Field Supervisor. Copies of the documents are also available for public inspection and review, by appointment only, at the Service's Phoenix office (above) or at U.S. Fish and Wildlife Service, 500 Gold Avenue SW, Room 6093, Albuquerque, NM 87102.

Submitting Comments: To submit written comments, please use one of the

following methods, and note that your comment is in reference to the Draft SHA Amendment and Application for an Enhancement of Survival Permit for the Rio Salado, Tempe, AZ.

- *U.S. Mail:* Brenda Smith, Acting Field Supervisor, Phoenix office (address above).
- *Fax:* (602) 242-2513.
- *Email:* FW2_HCP_Permits@fws.gov.

We request that you submit comments only by the methods described above. Generally, we will post any personal information you provide us (see Public Availability of Comments for more information).

FOR FURTHER INFORMATION CONTACT:

Brenda Smith, Acting Field Supervisor, (602) 242-0210 (telephone).

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce receiving the City of Tempe's application to amend an existing enhancement of survival permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested amended permit would allow for the City of Tempe to conduct, to a greater degree, adaptive biological monitoring (annual monitoring until 2020, and then at least every 3 years after), and would authorize incidental take of the yellow-billed cuckoo as a result of operation and maintenance activities associated with the Rio Salado Project, Tempe Reach (approximately from McClintock Drive to Priest Drive, excluding Tempe Town Lake within the Salt River floodplain). The amended permit would expire on May 1, 2058, to coincide with the expiration date of the original permit (50 years after the issuing date of May 1, 2008). We invite the public to review and comment on the Draft SHA Amendment and draft NEPA screening form supporting the use of a categorical exclusion in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*).

The applicant plans to conduct operation and maintenance activities associated with the Rio Salado Project, Tempe Reach, including maintenance of vegetation, roads, trails, water delivery system, flood control capacity, and storm water facilities. Initial implementation of the Rio Salado Project, Tempe Reach, was a cooperative project between the Applicant and the U.S. Army Corps of Engineers to restore, enhance, and maintain 159 acres of native riparian and wetland vegetation along the lower Salt River in Maricopa County, Arizona.

Background

Enhancement of survival permits issued for safe harbor agreements encourage non-Federal landowners, including non-Federal operators holding easements on private lands, to implement conservation measures for habitat that is, or is likely to develop into, suitable habitat for listed species, by assuring landowners/operators that they will not be subjected to increased property use restrictions if suitable habitat develops and the covered species is detected in the future. Application requirements and enhancement of survival permit issuance criteria for safe harbor agreements are provided under section 10(c) of the ESA and its implementing regulations from the Code of Federal Regulations (CFR) at 50 CFR 17.22, and the NEPA and its implementing regulations at 40 CFR 1506.6.

Proposed Action

The proposed action is the Service's issuance of a permit for covered activities in the permit area for up to 50 years, pursuant to section 10(a)(1)(A) of the ESA. The permit would cover "take" of the yellow-billed cuckoo associated with covered activities occurring within the permit area.

The Draft SHA Amendment commits the City of Tempe to implement conservation measures to improve habitat for the covered species on Rio Salado lands uses while allowing for covered activities within the project area to continue.

To meet section 10(a)(1)(A) permit requirements, the applicant developed and proposes to implement the SHA and SHA Amendment, which describe the actions the City of Tempe has agreed to undertake to improve habitat within the Rio Salado Project, Tempe Reach, area.

Expected benefits include, but may not be limited to: Improvement of riparian habitat which can be used by both covered species and other native fauna, limiting the amount of new disturbance to riparian habitat, and improving environmental exposure to the public.

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the SHA Amendment. We will fully consider all comments we receive during the public comment period, and we will not make our final decision until after the comment period ends.

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 section 10(c) of the ESA and ESA 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).

Dated: August 20, 2018.

James Broska,

Acting Deputy Regional Director, Southwest Region, Albuquerque, New Mexico.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2018-N081;
FXES1114080000-178-FF08ECAR00]

Habitat Conservation Plan for the Least Bell's Vireo; Categorical Exclusion for Chandler's Sand and Gravel Project, Orange, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Chandler's Sand and Gravel, LLC for a 10-year incidental take permit for the endangered least Bell's vireo pursuant to the Endangered Species Act, as amended. We are requesting comments on the permit application and on our preliminary determination that the applicant's

accompanying proposed habitat conservation plan (HCP) qualifies as low effect, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in our environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before October 1, 2018.

ADDRESSES:

Submitting Comments: You may submit comments by one of the following methods. Please include "OC Mine HCP" at the beginning of your comments.

- *U.S. Mail:* Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760-431-9624.

- *Email:* fw8cfwocomments@fws.gov.

Obtaining Documents: You may obtain copies of the documents by the following methods:

- *Internet:* https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html.
- *Telephone:* 760-431-9440.
- *U.S. Mail:* Carlsbad Fish and Wildlife Office (address above).
- *In-Person:* You may examine the documents by appointment during regular business hours at the Carlsbad Fish and Wildlife Office (address above). Please call to make an appointment (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 760-431-9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Chandler's Sand and Gravel, LLC (applicant) for a 10-year incidental take permit 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 anticipated "take" of the endangered least Bell's vireo (*Vireo bellii pusillus*; vireo) associated with regrading a 14-acre property and filling an abandoned pit mine on site in the City of Orange, Orange County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant's proposed habitat conservation plan (HCP).

We are requesting comments on the permit application and on our

preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The basis for this determination is discussed in our EAS and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the take of animal 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). "Harm" includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed species. "Incidental taking" is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The project is located on a 14-acre property in the City of Orange in Orange County, California. The applicant requests a 10-year permit under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking vireo as a result of permanent impacts to 2.0 acres of riparian woodland that the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with the regrading of the property and filling the abandoned pit mine on site.

The applicant proposes to mitigate permanent impacts to 2.0 acres of occupied vireo habitat through the creation of 1.48 acres and enhancement of 1.88 acres of vireo habitat on site and enhancement of 2.53 acres of vireo habitat off site. All of the created and enhanced habitat will be conserved and managed in perpetuity.

The applicant's proposed HCP also contains measures to minimize the effects of construction activities on the vireo, including the following: