



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011



In Reply Refer To:
FWS-OR-09B0458-13I0136

JAN 23 2013

Mr. Chris Flynn
Senior Environmental Planner
California Department of Transportation
District 12
3347 Michelson Drive, Suite 100
Irvine, California 92612-1692

Attention: Ms. Kedest Ketsela, Associate Environmental Planner

Subject: Informal Section 7 Consultation for the I-5 HOV Lane Extension Project between Avenida Pico and San Juan Creek Road, Orange County, California

Dear Mr. Flynn:

This is in response to your email dated October 10, 2012, requesting that our informal consultation (FWS-OR-09B0458-11I0399) for the I-5 HOV Lane Extension Project between Avenida Pico and San Juan Creek Road be amended to address modifications to the project that will result in effects to the federally threatened coastal California gnatcatcher (*Polioptila californica californica*, gnatcatcher) that were not addressed in the original informal section 7 consultation. The California Department of Transportation (Caltrans) has assumed the Federal Highway Administration's responsibilities under the Act for this consultation in accordance with Sections 6004 and 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) 2005, as described in the National Environmental Policy Act Delegation Pilot Program Memorandum of Understanding between Federal Highway Administration and Caltrans (effective July 1, 2007) and codified in Renewed 23 U.S.C. 326 and 23 U.S.C. 327.

The Orange County Transportation Authority, in cooperation with Caltrans, City of Dana Point, City of San Clemente, and City of San Juan Capistrano, is proposing to widen Interstate 5 (I-5) between Avenida Pico and San Juan Creek Road. The proposed project will add one high-occupancy vehicle (HOV) lane in each direction on I-5 throughout the project limits, reestablish existing auxiliary lanes and construct new auxiliary lanes, and improve several existing on- and off-ramps. The project limits on I-5 extend from 0.4 mile south of the Avenida Pico Undercrossing (Post Mile [PM] 3.0) to 0.1 mile south of the San Juan Creek Road Undercrossing (PM 8.7).

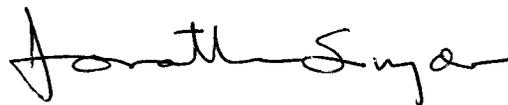
Changes to the project design plans have occurred to accommodate the reconstruction of an embankment to build retaining walls. This will increase temporary impacts to unoccupied coastal sage scrub habitat by 0.075 acre, which will increase the total temporary impacts to coastal sage scrub for the project from 0.32 acre to approximately 0.4 acre. The gnatcatcher is known to occur within habitat adjacent to this new impact area.

The following amended conservation measure is proposed to avoid and minimize potential impacts to the gnatcatcher. Changes from the original informal section 7 consultation are indicated with the underlined text.

6. Caltrans will ensure that the following conditions will be implemented with regard to project landscaping:
 - a. Caltrans will ensure that project landscaping does not include exotic plant species listed on the California Invasive Plant Council's (Cal-IPC) "Invasive Plant Inventory" list. A copy of the complete list can be obtained from Cal-IPC's web site at <http://www.cal-ipc.org>.
 - b. If invasive weed species are already growing within the project area, special care will be taken during transport, use, and disposal of soils containing invasive weed seeds to ensure that invasive weeds are not spread into new areas by the project. All heavy equipment will be washed and cleaned of debris prior to entering a new area to minimize the spread of invasive weeds. Eradication strategies will be implemented should an invasion of nonnative plant species occur.
 - c. The 0.4 acre CSS temporary impact area will be revegetated with native coastal sage scrub species. The proposed seed palette will be provided to the CFWO for review and approval prior to application in the field. A 3-year plant establishment period is proposed that will include exotic species removal and reapplication of seed as necessary.

We have determined that the above modification will not change the conclusion of our June 23, 2011, informal section 7 consultation. This slight increase in the temporary impacts for the project is not anticipated to significantly interfere with essential gnatcatcher breeding, feeding, or sheltering behaviors. In addition, the project's temporary impact areas will be restored, which will support the survival and recovery of the species. Therefore, the interagency consultation requirements of section 7 of the Act have been satisfied. With the exception of the conservation measures amended above, all conservation measures will be implemented as written in the informal section 7 consultation (FWS-OR-09B0458-11I0399) previously issued for the proposed action. By copy of this letter, we are formalizing this change to the June 23, 2011, informal section 7 consultation. If you have any questions regarding this amendment, please contact Sally Brown of this office at 760-431-9440, extension 278.

Sincerely,



For Karen A. Goebel
Assistant Field Supervisor