

Dated: November 7, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application From the County of San Diego, California, for an Incidental Take Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The County of San Diego, California (County), has applied to the Fish and Wildlife Service for a 50-year permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) to incidentally take up to 85 species. Take would occur in conjunction with urban growth within the southern coastal portion of the County. The application includes the County of San Diego Subarea Plan (Subarea Plan) and an Implementing Agreement, both of which were prepared in accordance with the regional Multiple Species Conservation Program (MSCP). The Subarea Plan would provide for the incidental take of species listed under the Act and those that may be listed in the future. The County's planning area includes approximately 252,132 acres of unincorporated land. The Subarea Plan addresses 85 sensitive plant and animal species and their habitats, and creates a process for the issuance of permits and other authorizations under the Federal and California Endangered Species Acts, and the California Natural Community Conservation Planning Act. The County's Subarea Plan and Implementing Agreement are available for public review and comment. The Service specifically requests comment on the appropriateness of the "No Surprises" assurances contained in section 9 of the Implementing Agreement.

DATES: Written comments on the permit application should be received on or before December 15, 1997.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments may be sent by facsimile to (760) 431-9618.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Barrett, Assistant Field

Supervisor, at the above Carlsbad address; telephone (760) 431-9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Persons wishing to obtain copies of the documents or additional background material should contact the County of San Diego, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, Mail Station 0650, San Diego, California 92123; telephone (619) 260-8316. Documents will be available for public inspection, by appointment, during normal business hours (8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.), Monday through Friday, at the above County office and at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

Under section 9 of the Act and its implementing regulations, the take of wildlife species listed as threatened or endangered is prohibited. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempting to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits to take listed wildlife if such taking is incidental to, and not the purpose of, otherwise lawful activities. The taking prohibitions of the Act do not apply to listed plants on private lands unless such take is in violation of trespass law or would violate State law. Regulations governing permits for endangered and threatened species are in 50 CFR 17.22 and 17.32. Under section 10(a)(1)(B) of the Act, the Service may issue incidental take permits for listed species with an approved conservation plan. Among other criteria, issuance of such permits must not jeopardize the continued existence of listed plant and animal species.

The MSCP Plan is a regional habitat conservation plan that includes 12 local jurisdictions. Each jurisdiction is expected to apply for incidental take permits in conjunction with finalization of a subarea plan that is consistent with the regional MSCP Plan. The cities of San Diego and Poway finalized their subarea plans and received take authorizations under the MSCP on July 18, 1997, and July 19, 1996, respectively. The City of La Mesa has submitted an application, subarea plan, environmental assessment, and

implementing agreement for which a 30-day public review period was announced in the **Federal Register** on October 31, 1997 (62 FR 58976). The County of San Diego submitted an application with its Subarea Plan and Implementing Agreement on November 6, 1997.

The regional MSCP Plan covers an approximately 900-square-mile area (580,000 acres) in southwestern San Diego County. Under the MSCP Plan, approximately 171,917 acres of vacant land, including 167,667 acres of wildlife habitat, will be preserved and managed within a designated area referred to as the Multiple Habitat Planning Area.

Nearly half of the MSCP planning area is within the County of San Diego Subarea. Approximately 73 percent (184,248 acres) of the County Subarea provides habitat for native plants and wildlife, whereas the remaining 27 percent is disturbed, developed, or agricultural land. Of the existing habitat in the County Subarea, approximately 55 percent (101,268 acres) is expected to be preserved under the Subarea Plan, in a manner consistent with the regional MSCP Plan.

The Subarea Plan is divided into three segments: the Lake Hodges segment, the Southern segment, and the Metro-Lakeside-Jamul segment. The Lake Hodges and Southern segments include projects where development and preserve boundaries have been determined and delineated in the Subarea Plan. Several major and minor amendment areas have been designated in these segments. Take for species within these amendment areas would only be authorized after they have become part of the Subarea Plan through the appropriate amendment process. The Metro-Lakeside-Jamul segment is composed of lands where preserve boundaries will be determined in the future based upon standards, goals, and criteria described in the Subarea Plan and in the County's Biological Mitigation Ordinance.

Environmental Documentation

To ensure compliance with the National Environmental Policy Act and the California Environmental Policy Act, in January, 1997, the Service (lead Federal Agency) and the City of San Diego (lead local agency) completed a final Environmental Impact Report/Statement on the MSCP Plan and draft subarea plans. This culminated a 2-year period during which the Service complied with scoping and public notice requirements, providing extensive opportunity for public comment on the MSCP Plan, draft subarea plans, template implementing

agreements, and the draft Environmental Impact Report/Statement (60 FR 12246, 60 FR 25734, 60 FR 32990, 61 FR 45983, 61 FR 54675, 62 FR 14938). No further environmental documentation is necessary for the County Subarea Plan because it has not changed significantly since finalization of the Environmental Impact Report/Statement.

Five project alternatives were analyzed in the final Environmental Impact Report/Statement: (1) proposed project alternative (approve and implement the MSCP Plan that would establish a preserve within the Multi-Habitat Planning Area; (2) no project/no action alternative; (3) coastal sage scrub alternative; (4) biologically preferred alternative; and (5) public lands alternative. Each alternative was evaluated for its potential to result in significant adverse environmental impacts and the adequacy or inadequacy of the proposed measures to avoid, minimize, and substantially reduce and mitigate such negative effects.

The preferred alternative analyzed by the Service was approval of the MSCP Plan and issuance of incidental take permits with the mitigating, minimizing, and monitoring measures outlined in the proposed project alternative. The underlying goal of the preferred alternative is to implement ecosystem-based conservation measures aimed at the protection of multiple vegetation types on a regional scale, while accommodating compatible development. The MSCP plan is expected to result in the implementation of a comprehensive preserve strategy for coastal sage scrub and related vegetation types in the planning area, that is expected to provide long-term benefits to the 85 covered species and their habitats.

The Service will evaluate the permit application from the County of San Diego, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Authority

This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended, and Service regulations for implementing the National Environmental Policy Act (40 CFR 1506.6). All comments received will become part of the public record and may be released.

Dated: November 6, 1997.

John H. Doebl,

Acting Regional Director, Region 1, Portland, Oregon.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that Ordinance No. 15, Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona, was duly adopted and certified by the Kaibab Paiute Tribal Council on October 5, 1996. The Ordinance provides for the regulation of the sale, possession and consumption of liquor in the area of the Kaibab Indian Reservation, under the jurisdiction of the Kaibab Band of Paiute Indians, and is in conformity with the laws of the State of Arizona.

DATES: This Ordinance is effective November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street NW, MS 4603-MIB, Washington, D.C. 20240-4001; telephone (202) 208-3463.

SUPPLEMENTARY INFORMATION: The Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians is to read as follows:

Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona

Section 1-10-010: Legislative Control

Federal law currently prohibits the introduction of liquor into Indian country and expressly delegates to tribes the decision regarding when and to what extent liquor transactions shall be permitted on their reservations. The Kaibab Band of Paiute Indians (herein, the "Tribe") has decided to open certain lands described below within its jurisdiction to the possession, consumption and sale of liquor by enacting this Ordinance, which is adopted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588,

18 U.S.C. § 1161) and shall serve as the "Liquor Ordinance" referenced herein. The lands which are open to the sale, possession, and consumption of alcoholic beverages shall be only commercial establishments in which the Tribe owns a controlling interest and which are located on the Reservation; provided that any Tribal convenience store shall only be open to sale and possession, but not consumption, of alcoholic beverages.

Section 1-10-020: Control Desired

This Ordinance shall govern all liquor sales and distribution on the reservation, will increase the ability of the Tribe to control reservation liquor distribution and possession, and will provide an additional source of revenue for tribal operations.

Section 1-10-030: Goals of Regulation

Tribal regulation of the sale, possession, and consumption of liquor on the reservation is necessary to protect the health, security, and general welfare of the Tribe, and to address tribal concerns relating to alcohol use on the reservation. In order to further these goals and to provide an additional source of governmental revenue, the Tribe has adopted this Ordinance, which shall be liberally construed to fulfill the purposes for which it has been adopted. This Ordinance is authorized by the Preamble and Article VI, Section I (a), (b), (c), (d), (e), (h), (j), and (k) and Section 2 (e) of the Constitution and By-laws of the Tribe which provide, among other things, that the Tribal Council shall have the power "to promulgate ordinances and resolutions to promote and protect the peace, health, education, safety and welfare of the band, its members and all other persons within its jurisdiction."

Section 1-20-010: Definitions of Words

As used in This Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) "Alcoholic Beverage" is synonymous with the term "liquor" as defined at Section 1-20-010(d) hereof.

(c) "Beer" means any beverage obtained by the fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in