

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

[FWS-R8-ES-2009-N0077; 81440-1112-0000-F2]

**Endangered and Threatened Wildlife and Plants; Permits, Santa Cruz County, CA****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of receipt of application for Incidental Take Permit (ITP); availability of proposed low-effect habitat conservation plan; request for comment.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce the availability of an Incidental Take Permit (ITP) application and proposed Habitat Conservation Plan (HCP) under the Endangered Species Act of 1973, as amended (Act). We have received these, along with other pertinent documents available for review, from the Salvation Army (applicant). The applicant anticipates removing an approximate total of 0.084 acre of Mount Hermon June beetle (*Polyphylla barbata*)—occupied habitat, which includes 0.011 acre occupied by the Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*). Both of these species are listed as endangered under the Act. We request comments on the ITP 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 (NEPA), as amended.

**DATES:** We must receive any written comments on or before May 14, 2009.**ADDRESSES:** Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644-3958. To obtain copies of draft documents, see “Availability of Documents” under **SUPPLEMENTARY INFORMATION**.**FOR FURTHER INFORMATION CONTACT:** Jen Lechuga, HCP Coordinator (see **ADDRESSES**), telephone: (805) 644-1766 extension 224.**SUPPLEMENTARY INFORMATION:****Availability of Documents**

You may obtain copies of the ITP application and HCP by contacting the HCP Coordinator (see **FOR FURTHER INFORMATION CONTACT**). Documents will also be available for review by

appointment, during normal business hours, at the Ventura Fish and Wildlife Office (see **ADDRESSES**), or via the Internet at: <http://www.fws.gov/ventura>.

**Background**

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the “take” of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as “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). However, under limited circumstances, we may issue permits to cover incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. The Act’s take prohibitions do not apply to federally listed plants on private lands, unless such take would violate State law. In addition to meeting other criteria, actions to be performed under ITPs must not jeopardize the existence of federally listed fish, wildlife, or plants.

**Proposed Project**

We received an application from the Salvation Army for an incidental take permit (ITP), along with a proposed habitat conservation plan (HCP). The applicant requests a 3-year ITP under section 10(a)(1)(B) of the Act. If we approve the ITP, the applicant anticipates taking approximately 0.084 acre of Mount Hermon June beetle-occupied habitat, which includes 0.011 acre occupied by the Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*), incidental to the construction of a suite of infrastructure improvements at Camp Redwood Glen, in Santa Cruz County, California (project). The planned infrastructure improvements include small building additions, retaining walls, parking areas, patios, and paths, all of which are being developed primarily to increase the accessibility of the camp facilities for disabled persons. The project would occur within parcel 094-011-20 near the City of Scotts Valley, in Santa Cruz County, California. The project area encompasses approximately 4.5 acres within the 207-acre parcel, and the footprints of the infrastructure improvements would permanently eliminate 0.084 acre of Mount Hermon June beetle habitat, while temporarily impacting an additional 0.017 acre of Mount Hermon June beetle habitat. Approximately 0.012 acre of Ben

Lomond spineflower plants that co-occur within the Mount Hermon June beetle habitat would also be disturbed; 0.011 acre would be permanently removed, while less than 0.001 acre would be temporarily impacted.

The Salvation Army’s proposed HCP describes the following mitigation and minimization measures to address the effects of the project on the Mount Hermon June beetle and Ben Lomond spineflower. To mitigate for incidental take of the Mount Hermon June beetle and impacts to the Ben Lomond spineflower at the project site, the applicant will purchase 0.101 acre of conservation credits at the recently approved Ben Lomond Sandhills Preserve of the Zayante Sandhills Conservation Bank, operated by PCO, LLC. In addition, the applicant will implement a number of minimization measures intended to reduce impacts from the proposed project on the Mount Hermon June beetle and Ben Lomond spineflower. A summary of the minimization measures proposed by the applicant follows: (1) If ground disturbing activities are conducted during the Mount Hermon June beetle flight season, black plastic will be used to cover exposed soil to prevent burrowing of dispersing male Mount Hermon June beetles; (2) larvae and adult Mount Hermon June beetles identified during project activities will be captured and relocated; (3) night lighting will be minimized to prevent disruption of dispersing Mount Hermon June beetles; (4) the use of landscaping elements that deter use by Mount Hermon June beetles will be minimized; (5) Ben Lomond spineflower seeds will be collected from areas that would be disturbed and distributed in appropriate habitat; and (6) non-native plants will be removed from the Ben Lomond spineflower population that would be disturbed.

The project is located on soils known as “Zayante sands.” These soils support the Zayante sandhills ecosystem, which occurs exclusively in the Santa Cruz Mountains near the city of Scotts Valley and the communities of Ben Lomond, Mount Hermon, Felton, Olympia, Corralitos, and Bonny Doon. The Mount Hermon June beetle is restricted to Zayante sands soils in the Scotts Valley-Mount Hermon-Felton-Ben Lomond area, and is found in association with Zayante sandhills vegetation, which is characterized by a mosaic of ponderosa pines (*Pinus ponderosa*) and silverleaf manzanita (*Arctostaphylos silvicola*), and areas that are sparsely vegetated with grasses and herbs.

### National Environmental Policy Act

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 (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.). We explain the basis for this possible determination in our draft Environmental Action Statement (EAS) and associated Low Effect Screening Form. The draft HCP, Low Effect Screening Form, and EAS are available for public review.

We have made a preliminary determination that the HCP qualifies as a “low-effect” plan as defined by our Habitat Conservation Planning Handbook (November 1996). Our determination that a HCP qualifies as a low-effect plan is based on the following criteria: (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in significant cumulative effects to the environmental values or resources that would be considered significant. As more fully explained in our EAS and associated Low Effect Screening Form, the applicant’s proposal for the construction of infrastructure improvements qualifies as a “low effect” plan for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the Mount Hermon June beetle and Ben Lomond spineflower and their habitat. We do not anticipate significant direct or cumulative effects to the Mount Hermon June beetle or Ben Lomond spineflower resulting from the proposed project.

(2) Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the HCP would not result in any growth-inducing impacts and would not result in significant cumulative impacts or adverse effects on public health or safety.

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act,

nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making our final determination on whether to prepare such additional documentation.

### Public Review and Comment

If you wish to comment on the Low Effect Screening Form, draft EAS, or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document.

We will evaluate the permit application, HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If we determine that the application meets those requirements, we will issue the ITP for the incidental take of the Mount Hermon June beetle. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITP.

### Public Availability of Comments

Before including your address, phone number, e-mail 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 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 pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: April 8, 2009.

**Diane K. Noda,**

*Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.*

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**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Nottawaseppi Huron Band of the Potawatomi Indian Liquor Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Secretary’s certification of the Nottawaseppi Huron Band of the Potawatomi Indian Liquor Ordinance. The Ordinance regulates and controls the possession, sale, and consumption of liquor within the tribal lands. The tribal lands are located in Indian Country and this Ordinance allows for possession and sale of alcoholic beverages within their boundaries. This Ordinance will increase the ability of the tribal government to control the tribe’s liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

**DATES:** *Effective Date:* This Ordinance is effective April 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** David Christensen, Tribal Operations Officer, Midwest Regional Office, One Federal Drive, Room 550, Ft. Snelling, MN 55111, Telephone (612) 725–4554; or Elizabeth Colliflower, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone (202) 513–7640.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Tribal Council of the Nottawaseppi Huron Band of the Potawatomi Indians initially adopted this Liquor Ordinance on February 14, 2008, and adopted a revised version on November 20, 2008. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Nottawaseppi Huron Band of the Potawatomi Indian’s tribal land.