

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Residential Development Proposal Called Phoenix VIII, in the City of Orange Beach, Baldwin County, AL**

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

**ACTION:** Notice.

Brett Real Estate, Robinson Development Company, Inc. (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). The ITP would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse, *Peromyscus polionotus ammobates* (ABM). The Applicant made the decision to assume ABM are present based on surveys on adjacent property. The project would be called Phoenix VIII and consists of a single fourteen-story condominium tower with 81 residential units, parking areas, and a swimming pool on 5.06 acres. Associated landscaped grounds and a dune walkover structure would also be constructed. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP) and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of

the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

**DATES:** Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before December 18, 1997.

**ADDRESSES:** Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Drawer 1190, Daphne, Alabama 36526. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be processed. Please reference permit number PRT-834795 in such comments, or in requests of the documents discussed herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679-7110; or Ms. Celeste South, Fish and Wildlife Biologist, Daphne, Alabama, Field Office (see **ADDRESSES** above), telephone: 334/441-5181.

**SUPPLEMENTARY INFORMATION:** The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse, *Peromyscus polionotus*, and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this

species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicant's property did not reveal habitat occupied by ABM; however, the Applicant is seeking compliance with the Act in an abundance of caution. The Applicant's property does not contain designated critical habitat for the ABM. Construction of the Project may result in the death of, or injury to, ABM. Habitat alterations due to condominium placement and subsequent human habitation of the Project may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of several alternatives. One action proposed is the issuance of the ITP based upon submittal of the HCP as proposed. This alternative provides for restrictions that include conserving almost 86 percent of the Project's best ABM habitat conserved (essentially primary and secondary dunes), establishment of one walkover structure across primary and secondary dune features, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, restoration of dune systems, the creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the HCP proposes to provide an endowment of \$20,865 to acquire ABM habitat offsite or otherwise perform some other conservation measure for the ABM. The HCP provides a funding source for these mitigation measures, as well as monitoring of the HCP, should an ITP be issued by the Service. Another alternative is consideration of a different project design that might result in more impacts to the ABM and its habitat. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major

Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

- Issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of the effected species in the wild.
- The HCP contains provisions which sufficiently minimize and/or mitigate the impacts of issuing the ITP.
- Issuance of the ITP would not have significant effects on the human environment in the project area.
- The proposed take is incidental to an otherwise lawful activity.
- Adequate funding will be provided to implement the measures proposed in the submitted HCP and authorizing ITP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 4, 1997.

**H. Dale Hall,**

*Deputy Regional Director.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Wildwash Sand and Gravel Mine, San Bernardino County, CA

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of availability.

**SUMMARY:** E. L. Yeager Construction Company, Incorporated, of Riverside, California, has applied to the Fish and Wildlife Service for a 20-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The Service proposes to issue an incidental take permit for the federally-listed threatened desert tortoise (*Gopherus*

*agassizii*) at the proposed mine site, located in San Bernardino County, California. The permit also would include the state-listed threatened Mojave ground squirrel (*Spermophilus mohavensis*) and the unlisted loggerhead shrike (*Lanius ludovicianus*), should these species be listed during the life of the permit. This notice announces the availability of the permit application and the environmental assessment. The permit application includes the habitat conservation plan for the Wildwash Sand and Gravel Mine and an implementing agreement. The Service requests comments on these documents, including the appropriateness of the "No Surprises" assurances contained in section 12.3.a of the implementing agreement. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

**DATES:** Written comments should be received on or before December 18, 1997.

**ADDRESSES:** Comments should be addressed to Ms. Diane Noda, Field Supervisor, Ventura Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644-3958.

**FOR FURTHER INFORMATION, CONTACT:** Mr. Ray Bransfield, Fish and Wildlife Biologist, at the above address or call (805) 644-1766.

#### SUPPLEMENTARY INFORMATION:

##### Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address or telephone. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

##### Background

The permit applicant proposes phased mining of up to 100 acres of desert habitat adjacent to Interstate 15. Portions of the site are occupied by the desert tortoise. One loggerhead shrike was observed on site during biological surveys. The site is considered potentially suitable habitat for the Mojave ground squirrel, although surveys were not conducted for this species. During the initial mining phase, lasting 5 years, the applicant would mine sand and gravel on up to 35 acres of land. During the subsequent phase(s), lasting 15 years, the applicant would mine up to an additional 65 acres.

The applicant needs an incidental take permit from the Service because endangered and threatened wildlife species are protected against "take" pursuant to section 9 of the ESA. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 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 threatened and endangered species are at 50 CFR 17.22 and 17.32.

As part of the permit application, the applicant prepared a habitat conservation plan that addresses the desert tortoise, Mojave ground squirrel, and loggerhead shrike. Pursuant to section 10(a)(1)(B) of the Federal ESA, the Service proposes to issue a permit to the applicant for incidental take of the threatened desert tortoise, and for the Mojave ground squirrel and loggerhead shrike should Federal take authorization for these latter two species be necessary during the life of the permit. The ground squirrel and shrike would be named on the permit; however, incidental take authorization for these species would become effective only if they become listed under the Federal ESA.

The proposed sand and gravel mine would result in the loss of habitat for the desert tortoise, Mojave ground squirrel, and loggerhead shrike as the ground is disturbed and the vegetation communities are removed during mining activities. This mining could directly and indirectly affect these species.

The proposed action would authorize the incidental take of all desert tortoises on the 100 acre site in the form of harassment from being moved out of harm's way. Additionally, two desert tortoises may be taken in the form of direct mortality associated with mining activities and vehicle travel on the mine access road. If Mojave ground squirrels are present on site, they would likely be killed during the initial grading of the mining areas. Loggerhead shrikes are unlikely to be killed or injured by the proposed action.

The applicant's habitat conservation plan contains measures to minimize and/or mitigate the effects of the mining on the three species. Before mining begins, an amount of desert tortoise habitat equal to that being destroyed would be purchased and placed under management for recovery of the desert tortoise. A fence to prevent desert tortoises from entering the mine would be constructed under the supervision of