

**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.*

[FR Doc. E9–8474 Filed 4–13–09; 8:45 am]

**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.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs. I certify that this Liquor Ordinance of the Nottawaseppi Huron Band of the Potawatomi Indians was duly adopted by its Tribal Council by Resolution No. 11-20-08-03 on November 20, 2008.

Dated: March 26, 2009.

**George T. Skibine,**

*Deputy Assistant Secretary for Policy and Economic Development.*

The Liquor Ordinance of the Nottawaseppi Huron Band of the Potawatomi Indians reads as follows:

### **Liquor Ordinance**

#### ***Section 101. Conformity With State Law and This Ordinance***

The introduction, possession, transportation, and sale of intoxicating beverages shall be lawful within the Indian country under the jurisdiction of the Tribe, provided that such introduction, possession, transportation, and sale are in conformity with the laws of the State of Michigan and with the provisions of this Ordinance.

#### ***Section 102. Definitions***

As used in this ordinance the following definitions apply:

(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* means a compound for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(c) *Beer* means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent of alcohol by weight and not less than one-half of one percent of alcohol by volume. For the purposes of this Title, any such beverage, including ale, stout and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."

(d) *Immediate family* means spouse, brother, sister, child or parent.

(e) *Intoxicated person* means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(f) *Licensee* includes the licensee's employees and agents and means one who holds a valid license from the Tribe

to sell alcoholic beverages at retail on the Reservation.

(g) *Liquor* means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous or malt liquor, or combinations thereof and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating. Every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semi-solid, solid or other substance which contains more than one percent of alcohol by weight shall be conclusively deemed to be liquor within the meaning of this Ordinance.

(h) *Minor* means a person under 21 years of age.

(i) *Ordinance* means the Ordinance for the authorization and regulation of alcoholic beverages adopted pursuant to 18 U.S.C. 1161.

(j) *Person* means any applicant for a liquor license.

(k) *Reservation* means the Nottawaseppi Huron Band of the Potawatomi Indians Reservation.

(l) *Spirits* means any beverage which contains alcohol by distillation, including wines exceeding seventeen percent of alcohol by weight.

(m) *Tribal Council* means the Nottawaseppi Huron Band of the Potawatomi Indians Tribal Council, the governing body of the Nottawaseppi Huron Band of the Potawatomi Indians.

(n) *Tribe* means Nottawaseppi Huron Band of the Potawatomi Indians

(o) *Wine* means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural products containing sugar, to which any saccharine substances may have been added before, during or after fermentation and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

#### ***Section 103. Tribal License or Permit Required***

No person shall engage in the sale of intoxicating beverages within the Indian country under the jurisdiction of the Tribe, unless duly licensed, permitted or authorized to do so by the Tribe in accordance with the terms of this Ordinance and the State of Michigan, including Section 10 of the Tribal-State Class III Gaming Compact.

#### ***Section 104. Application for Tribal Liquor License; Requirements***

No Tribal license shall issue under this Ordinance except upon a sworn application filed with the Tribal Council containing the following:

(a) Agreement by the applicant to accept and abide by all conditions of the Tribal license and federal law.

(b) Sworn statement that the applicant has not been convicted of a felony.

(c) In the case of the tribally operated casino the application shall be in the name of the FireKeepers Casino and shall be filed by the General Manager of the Casino.

(d) Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least 10 days prior to consideration by the Tribal Council and has been published at least once in such local newspaper serving the community that may be affected by the license as the Huron Band of the Potawatomi Chairman or Secretary may authorize. The notice shall state the date, time and place when the application shall be considered by the Tribal Council pursuant to Section 105 of this Ordinance.

#### ***Section 105. Hearing on Application for Tribal Liquor License***

All applications for a Tribal liquor license shall be considered by the Tribal Council in open session at which the applicant, his attorney and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Tribal Council shall determine whether to grant or deny the application, based on:

(a) whether the requirements of Section 104 have been met, and

(b) whether the Tribal Council, in its discretion, determines that granting the license is in the best interests of the Tribe.

#### ***Section 106. Conditions of the Tribal License***

Any Tribal license issued under this Ordinance shall be subject to such reasonable conditions as the Tribal Council shall fix, including, but not limited to the following:

(a) The license shall be for a term of one year.

(b) The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

(c) The licensed premises shall be subject to patrol by the Tribal Police

Department, and such other law enforcement officials as may be authorized under federal or Tribal law.

(d) The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during the regular business hours.

(e) Subject to the provisions of subsection "f" of this section, no intoxicating beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of Michigan, and in accordance with the hours fixed by the Tribal Council, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of Michigan.

(f) No liquor shall be sold within 200 feet of a polling place on Tribal election days, or when a referendum is held of the people of the Tribe, or on special days of observance as designated by the Tribal Council.

(g) Any spirits resold for consumption at a Class III gaming establishment shall be purchased from the Michigan Liquor Control Commission, and beer and wine from distributors licensed by the Michigan Liquor Control Commission.

(h) All acts and transactions under authority of the Tribal liquor license shall be in conformity with the laws of the State of Michigan, and shall be in accordance with this Ordinance and any Tribal license issued pursuant to this Ordinance.

(i) No person under the age permitted under the law of the State of Michigan shall be sold, served, delivered, given or allowed to consume alcoholic beverages in the licensed establishment and/or area.

(j) Alcoholic beverages shall not be given away in any facility licensed under this Ordinance.

(k) No person licensed under this Ordinance shall sell, deliver, give away, or cause to be sold, delivered, or given away any alcoholic beverage to any intoxicated person, or any person who appears to be intoxicated.

#### *Section 107. License Not a Property Right*

Notwithstanding any other provision of this Ordinance, a Tribal liquor license is a mere permit for a fixed duration of time. A Tribal liquor license shall not be deemed a property right or vested right of any kind, and the granting of a Tribal liquor license shall not give rise to a presumption or legal entitlement to the granting of such license for a subsequent time period.

#### *Section 108. Assignment or Transfer*

No Tribal license issued under this Ordinance shall be assigned or transferred without the written approval of the Tribal Council expressed by formal resolution.

#### *Section 109. Cancellation and Suspension*

Any license issued hereunder may be suspended or canceled by the Tribal Council for the breach of any of the provisions of this Ordinance, or of the Tribal license, upon hearing before the Tribal Council after 10 days notice to the licensee. The decision of the Tribal Council shall be final.

#### *Section 110. Incorporation of Michigan Laws by Reference*

(a) In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as tribal law those Michigan laws, as amended, relating to the sale and regulation of alcoholic beverages encompassing the following areas: sale to a minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; hours of operation; and similar substantive provisions. The tribal laws that are defined by reference to the substantive areas of Michigan laws referred to in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Michigan to off-Reservation transactions unless otherwise agreed by the Tribe and State.

(b) Whenever such Michigan laws are incorporated by reference, amendments to those laws shall also be deemed to be incorporated upon their effective date in the State of Michigan, without further action by the Tribal Council.

(c) Nothing in this Ordinance shall be construed as a consent by the Tribe to the jurisdiction of the State of Michigan or any of its courts or subordinate political subdivisions or municipalities within the Reservation over any activity arising under or related to the subject of this Ordinance, nor shall anything in this Ordinance constitute an express or implied waiver of the sovereign immunity of the Tribe.

#### *Section 111. General Penalties*

Any person adjudged to be in violation of this Ordinance, including any lawful regulation under this Ordinance, shall be subject to a civil fine of not more than five hundred dollars (\$500.00) for each such violation. The Tribal Council may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may

also provide, in the case of repeated violations, for imposition of monetary penalties greater than the five hundred dollar (\$500.00) limitation set forth above. The penalties provided for in this section shall be in addition to any criminal penalties that may be imposed under applicable law.

#### *Section 112. Initiation of Action*

Any violation of this Ordinance shall constitute a public nuisance. The Tribe may initiate and maintain an action in Tribal Court to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance or elsewhere under Tribal or federal law. The Tribe shall not be required to give bond in an action under this section.

#### *Section 113. Regulations*

The Tribal Council is authorized to adopt such regulations as may be necessary to implement the provisions of this Ordinance.

#### **NOTICE OF APPLICATION FOR RETAIL ALCOHOLIC BEVERAGES LICENSE [or other purpose]**

The Tribal Council hereby gives notice that on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, [name of applicant] filed an application for a Tribe retail beverages license [or to transfer, or renew a license as the case may be] for [identify location of premises where beverages are to be sold]. Residents of \_\_\_\_ county [counties], or any person who has extended credit to the transferor, may protest against the issuance [or transfer or renewal] of the license. Protests may be mailed to the Tribe, Administration Building, \_\_\_\_, Michigan, \_\_\_\_, on or before the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

Dated \_\_\_\_ Signed \_\_\_\_

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#### **DEPARTMENT OF THE INTERIOR**

##### **Fish and Wildlife Service**

**[FWS-R9-IA-2009-N0078; 96300-1671-0000-P5]**

##### **Receipt of Applications for Permit**

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

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with