

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Notice of Availability of an Environmental Assessment and Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Construction of Two Residential Home Sites on the Leonard Farm, Hygiene, Colorado**

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

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** This notice advises the public that Tracy Leonard, has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), federally listed as threatened, and loss and modification of its habitat associated with construction and occupation of 2 residential home sites and a future orchard on the Leonard family farm. The duration of the permit would be 50 years from the date of issuance.

We announce the receipt of the applicant's incidental take permit application that includes a combined proposed Habitat Conservation Plan (HCP) and Environmental Assessment (EA) for the Preble's meadow jumping mouse for the Leonard farm. The proposed HCP/EA is available for public comment. It fully describes the proposed project and the measures the applicant would undertake to minimize and mitigate project impacts of the Preble's meadow jumping mouse. All comments on the EA/HCP and permit application will become part of the administrative record and will be available to the public.

**DATES:** Written comments on the permit application, Habitat Conservation Plan, and Environmental Assessment should be received on or before January 13, 2000.

**ADDRESSES:** Comments regarding the permit application and HCP/EA should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275-2370. Individuals wishing copies of the HCP/EA and associated documents for review should

immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act and Federal regulation prohibit the "take" of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize "incidental take" of listed species under limited circumstances. Incidental Take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The applicants plans to construct and occupy two residential home sites and a future orchard on their family farm. The Leonard family farm is located near the Town of Hygiene, in Boulder, Colorado. The projects will impact a maximum of 3.2 acres that may result in incidental take of the Preble's meadow jumping mouse. This includes 1.7 acres for the residential sites and 1.5 acres for the future orchard. Both sites will impact upland areas only.

Alternatives considered in addition to the Proposed Action, were an alternate site location, alternate site design, and no action. None of these alternatives eliminated potential take of Preble's. The onsite, offsite, and cumulative impacts of the Projects and all associated development and construction activities and mitigation activities proposed by the HCP will have no significant impact on the Preble's mouse, other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, or cultural resources. None of the proposed impacts occur within the riparian corridor. All of the proposed impacts are in upland areas outside of the 100 year floodplain. Of the 3.2 acres proposed for residential development, 1.7 acres falls within 300 linear feet of the 100 year floodplain (the building sites have been raised out of the floodplain). Utilizing the most extensive mouse protective habitat definition, the proposed development could impact up to 1.7 acres of potential mouse habitat for the residential lots. In addition, the proposed orchard next to the St. Vrain Creek could potentially impact up to 1.5 acres of mouse habitat. The mitigation will likely provide a net benefit to the Preble's mouse and other wildlife by

improving or creating new riparian areas and wetlands, planting of native grasses, and protecting existing mouse habitat along the St. Vrain Creek from any future development through a conservation easement.

Only one federally listed species, the threatened Preble's meadow jumping mouse, occurs on site and has the potential to be adversely affected by the project. To mitigate impacts that may result from the residential sites and the future orchard, the HCP provides protection of the St. Vrain Creek corridor and its associated riparian areas, irrigated pastures, and grasslands from all future development through the conservation easement with Boulder County, creation of 3.1 acres of wetlands, and enhancement of 3.0 acres through native grass planting. The creation of 3.1 acres of wetland and riparian zone at a 3:1 ratio will provide 1.03 acres of compensation. The enhancement of 3.0 acres through native grass planting at a 2:1 mitigation will provide 1.5 acres of compensation. The St. Vrain Creek corridor and its associated riparian areas, irrigated pastures, and grasslands will be protected from all future development through the conservation easement with Boulder County. This action preserves 8.4 acres of mouse habitat and will be applied to the conservation of the mouse which at a 10:1 mitigation ratio provides 0.84 acres of compensation. Total mitigation for the 3.2 acres impacted is conservation of 8.4 acres of usable mouse habitat, 3.1 acres of created wetlands, and 3.0 acres of enhanced habitat. All of the proposed mitigation area is within the boundaries of the Leonard farm property, all of which is included in the drainage basin of S. Vrain Creek. The mitigation also includes planting of willows and grasses, livestock grazing management to protect Preble's meadow jumping mouse habitat and relocation of Crane Hollow Road and the proposed building sites farther away from mouse habitat than originally planned.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Prebles meadow jumping mouse in conjunction with the construction and occupation of two residential lots on the Leonard farm and creation of a future orchard. The final permit decision will be made no sooner than January 13, 2000.

Dated: December 8, 1999.

**Ralph O. Morgenweck,**  
Regional Director, Region 6, Denver,  
Colorado.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Jackson Band of Miwuk Indians of the Jackson Rancheria

**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 DM8, and in accordance with the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. § 1161), as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983). This notice certifies that Ordinance No. 99-04, the JACKSON BAND OF MIWUK INDIANS OF THE JACKSON RANCHERIA, was duly adopted by the Jackson Rancheria Tribal Council on October 26, 1997. The Ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor in the area of Jackson Rancheria lands under the jurisdiction of the Jackson Rancheria.

**DATES:** This Ordinance is effective as of December 14, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jim James, Branch of Judicial Services, Division of Tribal Government Services, Office of Tribal Services, 1849 C Street NW, MS 4631-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

**SUPPLEMENTARY INFORMATION:** The JACKSON BAND OF MIWUK INDIANS OF THE JACKSON RANCHERIA Ordinance No. 99-04 is to read as follows:

#### Jackson Band of Miwuk Indians of the Jackson Rancheria Amador County, California Tribal Council Ordinance No. 99-04

##### *Sale and Consumption of Alcoholic Beverages*

The Tribal Council of the Jackson Band of Miwuk Indians of the Jackson Rancheria (hereinafter "Council"), governing body of the Jackson Band of Miwuk Indians of the Jackson Rancheria (hereinafter "Tribe"), hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages on Rancheria lands.

#### Preamble

1. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior, published in the **Federal Register** and such activities are in conformity with state law.

2. Pursuant to Article III Section 1 and Article VI of the Tribe's Constitution, the Tribal Council is the governing body of the Tribe with the power to enact ordinances to promote the general welfare and economic advancement of the Tribe and its members.

3. The Tribe is the owner and operator of a Conference Center located on the Rancheria known as the Jackson Rancheria Conference Center (hereinafter "Conference Center"), at which events will be held during which certain food items are provided to the Tribe and the general public.

4. Said Conference Center, located on trust land, is an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members.

5. The Tribal Council has determined that it is now in its best interest to offer for sale at events held at the Conference Center, for on-premises consumption only, alcoholic beverages.

6. It is the purpose of this Ordinance to set out the terms and conditions under which the sale of said alcoholic beverages may take place.

#### General Terms

1. The sale of alcohol at the Conference Center, for on-premises consumption only, is hereby authorized.

2. No alcoholic beverages may be sold at any location on the Rancheria other than the Conference Center. For the purpose of this section, the term "premises" shall include the Conference Center and an area of 50 yards around its perimeter.

3. The sale of said alcoholic beverages authorized by this Ordinance shall be in conformity with all applicable laws of the State of California, and the sale of said beverages shall be subject to state sales tax, federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco & Firearms. This includes but is not limited to the following examples:

A. No person under the age of 21 years shall consume, acquire or have in his or her possession at the Conference Center any alcoholic beverage.

B. No person shall sell alcohol to any person under the age of 21 at the Conference Center.

C. No person shall sell alcohol to a person apparently under the influence of liquor.

4. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following types of identification which shows his or her correct age and bears his or her signature and photograph: (1) Driver's license or identification card issued by any state Department of Motor Vehicles; (2) United States Active Duty Military card; (3) passport.

5. All liquor sales at the Conference Center shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of major credit cards.

#### Posting

This Ordinance shall be conspicuously posted at the Conference Center at all times it is open to the public.

#### Enforcement

1. This Ordinance may be enforced by the Tribal Council by implementation of monetary fines not to exceed \$500 and/or withdrawal of authorization to sell alcohol at the Conference Center. Prior to any enforcement action, the Tribal Council shall provide the alleged offender of this ordinance with at least three (3) days notice of an opportunity to be heard during a specially-called Tribal Council meeting. The decision of the Tribal Council shall be final.

2. This Ordinance also may be enforced by the Amador County Sheriff's Office at the request of the Tribal Council.

3. In the exercise of its powers and duties under this ordinance, the Tribal Council and its individual members shall not accept any gratuity or compensation from any liquor wholesaler, retailer, or distributor for the Conference Center.

#### Severability

If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

#### Amendment

This ordinance may only be amended by a majority vote of the Tribal Council.