

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Availability of an Environmental Assessment and Habitat Conservation Plan and Notice of Receipt of Applications for Incidental Take Permits by Gulf Highlands LLC and Fort Morgan Paradise Joint Venture on Privately Owned Lands in Alabama**

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

**ACTION:** Notice.

Gulf Highlands LLC and Fort Morgan Paradise Joint Venture (Applicants) seek incidental take permits (ITP) from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed take would be incidental to otherwise lawful activities, including construction of residential condominiums, commercial facilities, and recreational amenities on adjoining tracts of land owned by the Applicants. The proposed action would involve approval of the Habitat Conservation Plan (HCP) jointly developed by the Applicants, as required by Section 10(a)(2)(B) of the Act, to minimize and mitigate for incidental take of the Federally-listed, endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), the threatened green sea turtle (*Chelonia mydas*), and the threatened loggerhead sea turtle (*Caretta caretta*). The subject permits would authorize take of ABM and the three sea turtles along 2,844 linear feet of coastal dune habitat fronting the Gulf of Mexico in Baldwin County, Alabama. The Applicants' properties total 180.5 acres, but only 62 acres would be developed. Additionally, about 16 acres of platted road rights-of-way are encompassed by the project and bring the total area to 196.4 acres. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the ABM and sea turtles is provided in the Applicants' HCP, the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan/Applications for Incidental Take. The permit applications incorporate the Applicants' HCP as the proposed action for evaluation in the Service's EA. Copies of the EA on compact disk and the 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 not made a preliminary determination of whether issuance of the ITPs would be 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 Service must decide whether issuance of the proposed ITPs constitutes a major Federal action and whether to prepare a Finding of No Significant Impact based on the EA and public comment, or if preparation of an Environmental Impact Statement (EIS) is appropriate. The final determination will be made no sooner than 45 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 information, views, and opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit numbers TE007985-0 and TE031307-0 in such comments. You may mail comments to the Service's Regional Office (*see ADDRESSES*). You may also comment via the Internet to "[david\\_dell@fws.gov](mailto:david_dell@fws.gov)". Please submit comments over the Internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (*see FURTHER INFORMATION*). Finally, you may hand deliver comments to either Service office listed below (*see ADDRESSES*). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record

a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**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 10, 2001.

**ADDRESSES:** Persons wishing to review the application, HCP, and EA may obtain an electronic copy on compact disk 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), Ecological Services Field Office, 1208-B Main Street, Daphne, Alabama 36526, or Bon Secour National Wildlife Refuge, 12295 State Highway 180, Gulf Shores, Alabama 36603. Written data or comments concerning the application or HCP should be submitted to the Regional Office. Please reference permit numbers TE007985-0 and TE031307-0 in requests for the documents discussed herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional HCP Coordinator, (*see ADDRESSES* above), telephone: 404/679-7313, facsimile: 404/679-7081; or Ms. Celeste South, Fish and Wildlife Biologist, Daphne Field Office, Alabama (*see ADDRESSES* above), telephone: 251/441-5181.

**SUPPLEMENTARY INFORMATION:** The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles).

ABM habitat on the Applicants' properties consists of approximately 38 acres of primary/secondary dunes, 21.7 acres of escarpment, 21.8 acres of adjacent scrub and 90 acres of interior scrub. The total area of designated critical habitat among these habitats is 32.4 acres, consisting of open beach dunes and swales within the southern portions of the properties, extending from the mean high water line of the Gulf of Mexico northward for 500 feet.

The green turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests, four of which were found on shoreline beaches along the Applicants' properties.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the period 1994–2001 report no nests of the Kemp's ridley sea turtle on beaches along the Applicants' properties. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National

Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The two projects, Gulf Highlands Condominiums (GHC) and Beach Club West (BCW), are separate developments but are being considered together at the request of Gulf Highlands LLC and Fort Morgan Paradise Joint Venture, the respective Applicants. The two Applicants have joined together to produce a single Habitat Conservation Plan (HCP), as required by the Endangered Species Act, for their projects. The Applicants hope to obtain their permits and jointly implement the provisions of the HCP.

The EA considers the effects of six project alternatives, including a no-action alternative that would result in no new construction on the Project site, and a single family home alternative that would result in build out of the properties as originally platted. Neither of these alternatives would be economically feasible for the applicants. The remaining four alternatives involve various arrangements of high-rise condominiums. The important differences among these four alternatives relate to the amount of beach front developed, the width and placement of an undeveloped ABM "corridor" to allow ABM movements to and from the dune and escarpment habitats, and the placement of the condominium towers. One of these alternatives was suggested by the Service as a "less-take" alternative and would move the development approximately 300 feet north of the escarpment. The applicants have cited legal and economical reasons for why the less-take alternative could not be implemented.

In the Applicant's preferred alternative, the two projects involve construction of large condominium developments near the Gulf of Mexico on approximately 62 of the total 180.5 acres of wet beach, coastal dune, escarpment, wetlands, and scrub habitats owned by the applicants. An additional 16 acres of platted road rights-of-way, owned by Baldwin County, exist within the project boundary. The project area therefore encompasses about 196.4 acres. Applicant land holdings extend from the Gulf to Alabama Highway 180. Only part of this acreage would actually be developed, totaling about 62.7 acres of ABM habitat. The remaining area, some of which is ABM habitat, would be conserved in perpetuity. Six 20-story

condominium towers (two for BCW and four for GHC), thirteen single family units, and a commercial development including about 20 housing units on the upper level would be constructed. Collectively this development would contain 973 living units. Other facilities would include parking lots, access roads, swimming pools, tennis courts, patios, a club house, shops, a proposed medical facility, sidewalks, landscaped areas, small freshwater lakes-detention ponds, trails, and dune walkovers for access to the Gulf of Mexico. The condominium structures would be oriented on an east-west alignment starting approximately 660 to 730 feet north of the Gulf of Mexico. The applicants own approximately 2,844 feet of Gulf frontage. As proposed in the Applicants' preferred alternative, 1,835 feet of that frontage would be developed and 909 feet conserved in perpetuity. The area south of the structures would be sloped by the applicants and native vegetation planted.

All proposed alternatives include measures designed to avoid or minimize take. In addition to these measures, in the applicant's preferred alternative, a planned development adjoining the western boundary of the project, the French Caribbean, would not be constructed and would remain undeveloped as an ABM conservation area. Fort Morgan Paradise Joint Venture owns the French Caribbean development, and has offered to forego its construction. As this development has received a Corps of Engineers wetland permit, and was subject to review under section 7 of the Endangered Species Act, there is no ITP required for it.

Based on trapping data and other research, the ABM uses portions (some on a permanent basis, others episodically) of the entire tract of land, except for wetlands, heavily vegetated areas, and northern sections that lack suitable soil for burrowing. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators, permanent human disturbances and fragmentation of habitat and ABM populations. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and misorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicants have prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has not made a preliminary determination whether the issuance of the ITPs is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This determination will be made incorporating public comment received in response to this notice and will be based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of section 10(a)(1)(B) ITPs 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: October 15, 2001.

**Cynthia K. Dohner,**

*Acting Regional Director.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Comanche Indian Tribe Liquor Control Ordinance

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

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Comanche Indian Tribe Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on Comanche trust lands, in conformity with the laws of the State of Oklahoma, where applicable and necessary. Although the Ordinance was adopted on April 7, 2001, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

**DATES:** This Ordinance is effective on October 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kaye Armstrong, Office of Tribal

Services, 1849 C Street NW, MS 4631-MIB, Washington, DC 20240-4001; telephone (202) 208-4400.

**SUPPLEMENTARY INFORMATION:** Under the Act of August 15, 1953, Public Law 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 Comanche Indian Tribe Liquor Control Ordinance, Resolution No. 32-01, was duly adopted by the Comanche Business Committee on April 7, 2001. The Comanche Indian Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Comanche Indian Tribe.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Department Manual 8.1.

I certify that by resolution No. 32-01, the Comanche Indian Tribe Liquor Control Ordinance was duly adopted by the Comanche Business Committee on April 7, 2001.

Dated: October 10, 2001.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

The Comanche Indian Tribe Liquor Control Ordinance, Resolution No. 32-01, reads as follows:

#### Comanche Indian Tribe Liquor Control Ordinance

##### *Article I. Declaration of Public Policy and Purpose*

(1) The Comanche Business Committee finds that exclusive tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use in Comanche Indian Country, and to achieve maximum economic benefit to the Tribe.

(2) The introduction, possession and sale of liquor in Comanche Indian Country is a matter of special concern to the Comanche Business Committee.

(3) The Comanche Business Committee finds that a complete ban on liquor within Comanche Indian Country is ineffective and unrealistic. However, it recognizes the need for strict regulation and control over liquor transactions within Comanche Indian Country because of the many potential problems associated with the

unregulated or inadequately regulated sale, possession, distribution and consumption of liquor.

(4) Federal law forbids the introduction, possession, and sale of liquor in Indian country except when the same is in conformity both with the laws of the State and the Tribe, 18 U.S.C. 1161. As such, compliance with this ordinance shall be in addition to, and not substitute for, compliance with the laws of the State of Oklahoma.

(5) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales in Comanche Indian Country and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of Comanche Indian Country. Further, the Tribe has determined that said purchase, distribution and sale shall take place on designated Comanche tribal land only.

##### *Article II. Definitions*

As used in this title, the following words shall have the following meanings unless the context clearly require otherwise:

(a) *Alcohol*. That substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) *Alcoholic Beverage*. This term is synonymous with the term liquor as defined in paragraph (1)(g) of this Article.

(c) *Bar*. Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) *Beer*. 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 and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) *Business Committee*. The governing body of the Comanche Indian Tribe, as defined in Article VI of the Comanche Constitution approved by the Commissioner of Indian Affairs on January 9, 1967, as ratified by the tribal membership on November 19, 1966.

(f) *Comanche Indian Country*. For the purposes of this ordinance, Comanche Indian Country means all lands within the exterior boundaries of the former Kiowa, Comanche and Apache reservation over which the Comanche Indian Tribe exercises jurisdiction; provided, that it shall not include lands