



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region



IN REPLY REFER TO:

FWS/R6
ES

MAILING ADDRESS:
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228-1807

FINDING OF NO SIGNIFICANT IMPACT FOR ISSUANCE OF AN INCIDENTAL TAKE PERMIT FOR THE UTAH PRAIRE DOG TO CEDAR CITY CORPORATION AND THE PAIUTE INDIAN

The U.S. Fish and Wildlife Service (Service) is proposing to issue two section 10(a)(1)(B) Incidental Take Permits (ITP) under the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended (ESA), to the Cedar City Corporation and the Paiute Indian Tribe (Applicants). The ITPs would authorize the incidental take of the federally threatened Utah prairie dog (*Cynomys parvidens*) (UPD), on the Cedar City Golf Course and the Paiute tribal lands in Iron County, Utah. The duration of the proposed ITP is 20 years. The Environmental Assessment (EA) evaluates the potential environmental effects associated with issuance of an ITP and implementation of a Habitat Conservation Plan (HCP) to cover normal maintenance practices for a golf course and recreational tribal lands. The HCP is needed because human use of these areas was being negatively impacted.

The Applicants have prepared the HCP which describes the actions necessary to manage their lands free of Utah prairie dogs. The HCP also presents minimization and mitigation measures to reduce and offset the effects of these actions on Utah prairie dogs and their habitat. The primary mitigation measures of the HCP are preservation and restoration of 303 acres of habitat through the acquisition of private land and a dedicated conservation easement to be held by the Utah Division of Wildlife Resources (DWR).

The actions necessary to manage the golf course and tribal lands free of UPD are described in full in the HCP. All actions identified in the HCP and summarized below will be authorized in the permits for the described action with the exception of lethal trapping. Lethal trapping is not incidental to an otherwise legal activity and can not be permitted pursuant to section 10 of the Endangered Species Act.

The described actions will be completed in two phases and will require the removal of the animals from 18 acres of high human use where they cause damage and create a question of safety. Starting on the golf course, live trapping and translocation of as many animals as possible will be carried as necessary during appropriate trapping windows as identified in translocation guidelines created by the Utah Prairie Dog Recovery Team. These animals will be translocated to previously approved translocation sites throughout the range of the species. This action will contribute to recovery goals identified in the 1991 Recovery Plan for Utah prairie dogs. As soon as restoration efforts at the mitigation site have met success criteria, trapping will be initiated on

the tribal lands and carried out as described previously. Although the HCP identified lethal trapping to remove animals after as many animals as possible have been live trapped and translocated from these lands in two years lethal trapping will not be authorized under these permits. Intensive live trapping and translocation during the trapping window will continue as necessary to

The Service finds that the proposed issuance of a section 10(a)(1)(B) ITP for Utah prairie dog in association with management of the Cedar City Golf Course and the Paiute Tribal lands, as described in the HCP with the exception of lethal take will not have a significant effect on the human environment for the following reasons:

1. The 18 acres (13.5 on the golf course and 4.5 on the tribal lands) of privately owned, occupied habitat and up to 293.5 acres of privately owned potential habitat (250 on the golf course and 43.5 on tribal lands) (as defined in the EA/HCP and analyzed in the Service's Biological Opinion) represents 0.2 percent of the occupied habitat in the West Desert Recovery Area. Loss of this habitat will not jeopardize the survival or recovery of the Utah prairie dog nor result in the destruction or adverse modification of proposed critical habitat as none has been designated. All of these lands identified above are isolated and surrounded by Cedar City.
2. The identified goal of the HCP to protect 303 acres of habitat in perpetuity will offset the loss of habitat at the golf course and the tribal lands. This habitat will contribute to recovery by protecting animals and habitat adjacent to occupied BLM lands and contributing to habitat connectivity.
3. The identified goal to enhance 198 acres of the 303 acres will contribute to recovery of the species by improving habitat to meet vegetation guidelines proposed by the UPD recovery team.
4. The identified goal to contribute to the establishment of UPD colonies on public land through the translocation of animals from the golf course and tribal lands contributes to recovery goals identified in the 1991 Recovery Plan.
5. The impact upon populations of native species, including sensitive species, will be minimal due to the current condition of the golf course and Paiute tribal lands.
6. Implementation of the HCP will have negligible to no impacts to vegetation; general wildlife; threatened and endangered species and species of special concern; wetland, riparian, and aquatic resources; geology and soils; land use; cultural resources; air quality; water resources and water quality; and environmental justice.

The Service has examined three alternatives for the proposed action, including: 1) the Preferred Alternative, issuance of a section 10(a)(1)(B) Incidental Take Permit under the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884) as amended to the Applicants; 2) an alternative to mitigate on site; and 3) No Action alternative. The second alternative consisted of trying to manage the animals on site in a specified area. This alternative was rejected because it didn't fully meet the needs of the applicants and would not comply with ESA as it did not fully mitigate the impacts. A full description of the action can be found in the EA.

The Preferred Alternative was selected over the other alternatives because: 1) it offers the best opportunity to achieve the goal of management and use of the golf course and tribal lands while promoting the conservation and restoration of Utah prairie dog habitat; 2) The golf course and tribal land prairie dog colonies are considered isolated and not essential for the recovery of the species; and 3) this alternative meets the stated purpose and need of the EA by complying with the provisions of the ESA.

Documents used in the preparation of this finding of no significant impact include: the HCP (Iron County, 2006) and the EA for the HCP (USFWS 2006), the biological opinion on the Applicants permit application (USFWS 2006), and the recommendations and findings for the Applicants activities (USFWS 2006). All documents are incorporated by reference, as described in 40 CFR 1508.13.

On May 15, 2006, the Service issued a notice of availability in the *Federal Register* (Vol. 71, No. 93 FR 2006) announcing the receipt of the ITP application from the Applicants and the availability of the HCP and EA for public review. A 90-day public comment and review period was open until August 14, 2006. The HCP and EA were available at, or could be requested through the Mountain-Prairie Regional Office, Region 6 (Regional Office) of the Service. A Notice of availability of the HCP and the EA was also distributed to individuals and organizations on a mailing list maintained by the Service. Copies of the mailing list and correspondence received, in addition to any responses, regarding the preparation of the EA are on file at the Salt Lake City Field Office. The Service received three comments during the public comment period. Responses to those comments are attached.

Based on my review and evaluation of the enclosed EA and HCP and other supporting documentation, I have determined that issuance of an ESA section 10(a)(1)(B) permit TE-079479-0 to the Applicants for take of the federally threatened Utah prairie dog on the golf course and Paiute Tribal Lands, Iron County, Utah, is not a major Federal Action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the NEPA of 1969. Accordingly, preparation of an environmental impact statement on the proposed action is not required. Therefore, an environmental impact statement will not be prepared.

Mike Stempel

1/4/7

**U.S. Fish and Wildlife Service
Regional Director**

Date

Acting

RELATED DOCUMENTS:

Iron County, Cedar City Corporation, Paiute Indian Tribe, 2006 Cedar City Golf Course and the Paiute Indian Tribal Lands Habitat Conservation Plan

U.S. Fish and Wildlife Service. 2006. Final Environmental Assessment for the Issuance of an Incidental Take Permit Under Section 10(a)(1)(B) of the Endangered Species Act for the Utah prairie dog, Cedar City Golf Course and the Paiute Tribal Lands Habitat Conservation Plan. 2005.

U.S. Fish and Wildlife Service. 2006a. Intra-Service Consultation on the Issuance of a 10(a)(1)(B) Permit for the Cedar City Golf Course and Paiute tribal lands Habitat Conservation Plan

U.S. Fish and Wildlife Service. 2006b. Findings and Recommendations on Issuance of an Incidental Take Permit for the Utah prairie dog to the Cedar City and the Paiute Indian Tribe for the Cedar City Golf Course and the Paiute Indian Tribal Lands Habitat Conservation Plan

Public Comments on the Draft Cedar City Golf Course and Paiute Tribal Lands Habitat Conservation Plan (HCP) and Environmental Assessment

This appendix summarizes and responds to the comments received on the Draft Habitat Conservation Plan (HCP) and Environmental Assessment. The 90-day public comment period for the DEA began on May 15, 2006, and ended on August 15, 2006.

The sections below summarize the number and type of comments received, describe how those comments were incorporated into the Final EA, and respond to substantive issues raised in the comments.

Number and Type of Comments Received

The U.S. Fish and Wildlife Service received three public comments on the Draft Cedar City Golf Course and Paiute Tribal Lands Habitat Conservation Plan (HCP) and Environmental Assessment. One comment letter was received from Forest Guardians, one letter was received from a private citizen reiterating Forest Guardians comments and one was from Bureau of Indian Affairs requesting a technical change that has been made. The Utah Field Office reviewed and responded to all substantive comments. Issue statements were formulated and responses for those issues are presented below. Substantive comments are defined as those that do one or more of the following:

- Question, with reasonable basis, the accuracy of the information in the EA;
- Question, with reasonable basis, the adequacy of the environmental analysis;
- Present reasonable alternatives other than those presented in the EA;
- Or cause changes or revisions in the proposal. In other words, they raise debate or question a point of fact or policy.

Comments in favor of or against the preferred alternative or other alternatives, or those that only agree or disagree with Agency policy are not considered substantive.

Comments from Forest Guardians

1. Comment: The EA omits discussion of the biological status of the UPD beyond the site of the golf course and Paiute tribal lands. It does not provide any substantive discussion or rationale for how this HCP meets the requirement that it not preclude the survival and recovery of the species.

Response: The HCP is the applicant's document and is only subject to the following requirements, pursuant to section 10(a)(2)(A) for the Act and Federal regulation at 50 CFR 17.22(b)(1), 17.32(b)(1) and 222.22:

- A description of the impacts likely to result from the proposed taking of the species for which permit coverage is requested;
- Measures the applicant will undertake to monitor, minimize, and mitigate such impacts; the funding that will be made available to undertake such measures; and procedures to deal with unforeseen circumstances;
- Alternative actions the applicant considered that would not result in take, and the reasons why such alternatives are not being utilized; and,
- Additional measures FWS may require as necessary or appropriate for the purposes of the plan. These additional measures are described in our 5-points policy (65 Federal Register 35242)

We have determined that the applicant has provided the required information in support of their permit. Ensuring that the project meets the requirement that it not preclude the survival and recovery of the species is the responsibility of the Service before issuing the permit. To this end, we authored a biological opinion that provides substantive discussion on how the project does not preclude survival and recovery of the UPD. The Status section of our biological opinion discusses the biological status of the UPD beyond the site of the golf course and Tribal lands. We found that the project is unlikely to jeopardize the continued existence of the UPD. {can restate the reasons in the conclusion or just refer reader to the document}

2. Comment: The loss of the golf course and tribal land colonies will likely retard recovery.

Response: The colonies occupying the golf course and the Paiute tribal lands (covered lands of the proposed HCP) are essentially surrounded by Cedar City. On the east side of the golf course are the Cedar Mountains. Almost immediately after you move east from the golf course the habitat transitions into piñon juniper forest which is not conducive for UPD dispersal. North, west and south of the golf course and tribal lands are suburban housing and commercial development. Most of this area has been developed for years, and consequently lost as viable Utah prairie dog habitat. While there is some remaining occupied habitat within 0.25 mile of the covered lands, it is highly fragmented.

The literature suggests that UPDs may disperse (mostly juveniles and males) an average 0.33 mile (Mackley et al. 1988). Given the current development scenario adjacent to the HCP covered lands, the Service believes that the colonies within the covered lands do not contribute to the

genetic viability of the West Desert Recovery Area and therefore the loss of these colonies will not impact recovery efforts.

On the other hand, the mitigation (protection of Wild Pea Hollow) identified in the proposed action will aid in recovery of the species. Wild Pea Hollow is not surrounded by development and is within 0.5 miles of other colonies located on federal lands, allowing for connectivity and genetic exchange. These mitigation lands currently support a small but growing colony of UPDs. Restoration efforts on Wild Pea Hollow will improve the habitat and encourage the continued growth of the colony and potentially provide animals for dispersal and recolonization of colonies after catastrophic events and genetic intermixing between other adjacent colonies.

3. Comment: The HCP fails to minimize and effectively mitigate impacts of UPD take and therefore violates ESA 1539 U.S.C. (a)(2)(A)(ii).

Response: The HCP outlines avoidance and minimization measures in section 5. These measures include live trapping and translocating animals as per the Recommended Translocation Procedures of Utah Prairie Dog. The Service has concluded that these efforts will reduce the number of animals on the covered lands as well as contribute to recovery efforts to establish additional colonies on federal lands.

The mitigation measures are identified in section 6 of the HCP. The mitigation includes the protection of 303 acres identified as Wild Pea Hollow, which currently supports a small colony of UPD, to offset the loss of the animals on the golf course. The increase of suitable habitat created by the restoration efforts should lead to increased UPD which will offset the loss of the colony on the Paiute tribal lands. Mitigation also includes the long term management of Wild Pea Hollow to benefit the UPD. This includes monitoring of habitat and UPDs, potential habitat management as necessary, potential dusting for plague if necessary and grazing management. The Service believes the benefits of protecting Wild Pea Hollow will offset the loss of the isolated urban colonies located on the covered lands of the HCP, and contribute to species recovery.

4. Comment: The HCP appreciably reduces the likelihood of the survival and recovery of the species in the wild and therefore violates ESA 1539 U.S.C.(a)(2)(B)(iv).

Response: The proposed HCP will result in the eventual loss of UPD colonies which are surrounded by Cedar City and are highly fragmented from other colonies within the West Desert Recovery Area. Due to this fragmentation, the Service believes that these colonies do not contribute to the long term survival of the species. Therefore their loss will not appreciably reduce the likelihood of survival and recovery of the species in the wild. For further discussion regarding this issue please refer to the Biological Opinion issued by the Service December, 2006.

5. Comment: Lethal trapping of UPD is not a legal form of take and therefore violates ESA 1539 U.S.C.(a)(2)(B)(i).

Response: The ESA authorizes incidental “take” of a listed species through Section 7 and Section 10 of the act. Lethal control identified in the HCP will not be authorized in the 10(a)(1)(B) permit issued for this HCP.

6. Comment: The current 4(d) rule for UPD only allows UPD shooting.

Response: The forms of take allowed by a 4(d) rule are irrelevant to the forms of take that may be covered under a section 10(a)(1)(B) permit. Section 4(d) of the Act provides that when a species is listed as threatened, we are to issue such regulations as are necessary and advisable to provide for the conservation of the species. Our implementing regulations (50 CFR 17.31) for threatened wildlife generally incorporate the prohibitions of section 9 of the Act for endangered wildlife, except when a “special rule” promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. The prohibitions at 50 CFR 17.31 generally make it illegal to import, export, take, possess, ship in interstate commerce, or sell a member of the species. The “take” that is prohibited includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting the wildlife, or attempting to do any of those things. A special rule for a specific threatened species establishes only those particular prohibitions that are necessary and advisable for its conservation. In such a case, the general prohibitions in 50 CFR 17.31 do not apply to that species, and instead, the special rule defines the specific take prohibitions and exceptions that apply.

Thus, special rules pursuant to 4(d) define the types of activities that do not need a permit, but do not limit the activities for which the Service may issue a permit in accordance with the issuance requirements of such permits.

7. Comment: The primary mitigation for the massive take proposed at the Cedar Ridge Golf Course and Paiute Tribal Land is those prairie dogs that are removed will be translocated to Wild Pea – land owned by the County with an easement held by DWR.

Response: The primary mitigation for the impact of the proposed taking is protection of Wild Pea Hollow. The County and DWR are partners in the HCP and will be signatory to the IA (true?). Additionally, our regulations do not require that the Applicant mitigate for the taking, only that the impact of the taking is mitigated. The Applicant has arranged for mitigation that appropriately mitigates the impact of the taking. Furthermore, the impact of the taking on the survival and recovery of the UPD is minor given the peripheral location of the covered lands and the fact that it is surrounded by Cedar City. Thus, the population on the covered lands does not have much of a future nor a crucial role in recovery of the species. Conversely, the proposed mitigation will allow for an expansion of occupied habitat in an area that is key to recovery in the West Desert Recovery Unit and can sustain a viable population of UPDs.

8. Comment: The Conservation Easement allows for agricultural and recreational uses which can degrade UPD habitat.

Response: The only agricultural use authorized in the conservation easement is grazing. Other agricultural uses are prohibited unless authorized for wildlife habitat management. When managed properly, grazing can be a compatible land use. Hunting, trapping and fishing are permitted on the Property only to the extent such activities are consistent with state and federal laws and regulations. We do not anticipate that any lawful hunting, trapping, and fishing would degrade UPD habitat.

9. Comment: SITLA retained mineral leases therefore the CE allows mineral development.

Response: The Grantor did retain all mineral rights to the property. However, the conservation easement prohibits exploration or extraction of minerals via open-pit or surface mining methods as well as subsurface methods that may impair the property's conservation values.

10. Comment: The CE is not restrictive enough to protect UPD.

Response: The Service has determined that the stated purpose of the conservation easement, to protect the property for the purpose of Utah prairie dog habitat, including its restrictions and allowed uses is protective of Utah prairie dogs.

Habitat Conditions at Wild Pea Hollow and Enforceability of the HCP.

11. Comment: The site is infested with cheat grass.

Response: A Baseline Inventory of the Wild Pea Hollow site was completed subsequent to purchase by the County and prior to restoration efforts. Vegetation transects indicate that while cheat grass occurs on the site in high concentrations, it does not dominate the site. Reseeding efforts have been undertaken to restore native habitat and increase plant diversity. The covered activities identified in the HCP will not occur until the restoration criteria have been met.

12. Comment: There does not appear to be a requirement for successful vegetative restoration at Wild Pea Hollow prior to removal of the golf course UPDs.

Response: Wild Pea Hollow must be protected in perpetuity prior to removal of any animals from the Golf Course. The protection of this habitat and the existing colony will offset the loss of the animals on the Golf Course. Wild Pea Hollow has undergone habitat restoration in efforts to expand the existing colony. Not until the restoration efforts have met the success criteria identified in the HCP will animals be authorized for removal from the Tribal Lands. Animals removed from the tribal lands will not be translocated to Wild Pea Hollow. They will be translocated to other approved translocation sites. The improved and expanded habitat and the increased number of animals will offset the loss of animals on the Tribal lands.

13. Comment: The implementation Agreement provides the no surprises assurance which has been struck down by courts.

Response: On June 10, 2004, the court in Spirit of the Sage Council et al. v. Norton et al. Civil Action No. 98-1873 (D.D.C.) vacated the Permit Revocation Rule for incidental take permits (50 CFR 17.22(b)(8) and 17.32(b)(8) and remanded it to us for further proceeding consistent with the rulemaking provisions of the Administrative Procedure Act. On May 25, 2004, we issued a proposed rule to reestablish the provisions of the vacated Permit Revocation Rule. On December 10, 2004, we completed the rulemaking and published the final rule to establish new incidental permit revocation regulations (69 FR 71723). This rule was effective January 10, 2005. A memo from our Director dated January 19, 2005 indicates that we may issue new incidental take permits with No Surprises Assurances pursuant to 50 CFR 17.22(b)(5) and 17.32(b)(5).

14. Comment: The HCP states that major amendments to the HCP can be proposed by any signatory to HCP and an interagency implementation committee will review – Major amendments must be subject to NEPA and public review.

Response: The HCP states that Major Amendments may be *proposed* by any signatory to the HCP and will be reviewed by the implementation committee *who can then make comments to the Service who has the final decision which will be based on the need for public review and compliance with applicable law.* Major amendments are subject to NEPA and public review.

15. Comment: The FWS failed to adequately consult on impacts to bald eagles.

Response: Pursuant to Section 7 of the ESA, the Service completed consultation on the proposed action. In our consultation, we determined that the project was not likely to adversely affect bald eagles for the following reason: although bald eagles are known to winter in Iron County, given the proximity of the development of Cedar City, it is unlikely that they are foraging on the golf course or on tribal lands. UPDs are not known to be a primary prey item for bald eagles.

Inadequate Consideration of Cumulative Impacts

16. Comment: The EA fails to adequately consider cumulative impacts to UPD from proposed HCP.

Response: A discussion of the cumulative impacts can be found in the Environmental Consequences section. Cumulative effects for Alternative 1 can be found on Page 15, Alternative 2 can be found on Page 18 and Alternative 3 can be found on Page 20.

Alternative to the proposed action

17. Comment: The EA fails to consider visual barriers in consideration of alternative 2.

Response: Visual barriers such as solid fences extending underground three feet have been used effectively in some situations that are either short in duration (i.e. the installation of a pipeline); or in situations that are limited in size and the intent is to exclude the animals from a specified area such as a cemetery. Usually in these cases, there is other suitable habitat in the adjacent area

that UPDs are already utilizing. However, at the golf course and tribal lands, efforts to exclude the animals with a buried fence would force the animals to disperse into adjacent unsuitable habitat that is developed. Therefore, visual barriers were not considered as part of alternative 2.

Other Errata

18. Comment: Clarify who owns Wild Pea Hollow.

Response: The land to be protected in perpetuity known as Wild Pea Hollow was owned by SITLA prior to being acquired by the County. In 200X, the County purchased the land from SITLA with the intent to include it as mitigation in this HCP. The Conservation Easement has not been issued but will be conveyed to the State of Utah in conjunction with the issuance of the permit.

19. Comment: The HCP fails to incorporate best available science on UPD reproduction.

Response: The commenter did not specify what scientific information on UPD reproduction was not included in the HCP. As stated previously, the HCP is the applicant's document and is not required to contain all science on the covered species. To our knowledge, our biological opinion and findings documents incorporates the best available information on UPD reproduction known to us. If there is published literature on UPD that the Service is not aware of, we will consider it to determine whether that would change our findings and analysis of the project. If the information becomes available after we issue the permit, we will review it to determine whether it would result in changed or unforeseen circumstances as addressed in the HCP and respond appropriately.