

candidate species and their habitats; (2) implementation of the LEHCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the LEHCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based on this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the ESA. We will evaluate the permit application, the LEHCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the ESA. If the requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction of the sanitary sewer line and nonpotable water reuse line extensions and new access road. The final permit decision will be made no sooner than 30 days after the date of this notice.

Dated: January 31, 2005.

**Richard A. Coleman,**

*Acting Regional Director, Denver, Colorado.*

[FR Doc. 05-2850 Filed 2-14-05; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Home in Brevard County, FL

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

**ACTION:** Notice.

**SUMMARY:** Steven J. Therrien (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking about 0.24 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Brevard County, Florida (Project). The destruction of 0.24 acre of foraging,

sheltering, and possibly nesting habitat is expected to result in the take of one family of scrub-jays.

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We have determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low-effect" project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). We announce the availability of the HCP for the incidental take application. Copies of 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 is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

**DATES:** Written comments on the ITP application and HCP should be sent to the Service's Regional Office (*see ADDRESSES*) and should be received on or before March 17, 2005.

**ADDRESSES:** Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit number TE093117-0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912 (Attn: Field Supervisor).

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (*see ADDRESSES* above), telephone: 404/679-7313, facsimile: 404/679-7081; or Ms. Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (*see ADDRESSES* above), telephone: 904-232-2580, ext. 126.

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit comments by any one of several methods. Please reference permit

number TE093117-0 in such comments. You may mail comments to the Service's Southeast Regional Office (*see ADDRESSES*). You may also comment via the internet to *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 us that we have received your internet message, contact us directly at either telephone number listed above (*see FOR FURTHER INFORMATION CONTACT*). Finally, you may hand-deliver comments to either Service office listed above (*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 addresses 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.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (mostly consisting of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east-central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because

few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains of scrub-jay habitat is largely degraded due to the interruption of the natural fire regime, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Residential construction is proposed on Lot 8, Block 59, Unit 3, in Section 23, Township 23 South, Range 35 East, City of Port St. John, Brevard County, Florida. Lot 8 is immediately adjacent to Lot 7, on which a scrub-jay was observed by Brevard County staff in 2001–2002, and it is also part of territory cluster polygons mapped in 1999 and 2003. The project site is situated in the southern end of an area supporting a 47-family cluster of birds. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion slowly results in vegetative overgrowth. Thus, over the long term, scrub-jays within the City of Port St. John are unlikely to persist in urban settings, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

Construction of the Applicant's single-family residence and infrastructure will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction will reduce the availability of foraging, sheltering, and possible nesting habitat for one family of scrub-jays. The Applicant proposes to conduct construction activities outside of the nesting season. Other on-site minimization measures are not practicable as the footprint of the home, infrastructure, and landscaping on the 0.24-acre lot will utilize all the available land area. Retention of scrub-jay habitat on site may not be a biologically viable alternative because of increasing negative demographic effects caused by urbanization.

The Applicant proposes to mitigate for the loss of 0.24 acre of scrub-jay habitat by contributing \$3,216 to the Florida Scrub-jay Conservation Fund administered by the National Fish and

Wildlife Foundation. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The \$3,216 is sufficient to acquire and perpetually manage 0.48 acre of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average \$5,700 per acre, plus a \$1,000-per-acre management endowment necessary to ensure future management of acquired scrub-jay habitat.

We have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, and does not require the preparation of an EA or EIS. This preliminary information may be revised based on public comment received in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies as a low-effect plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. We do not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction project.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant 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 Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We have determined that approval of the Plan 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). Therefore, no further NEPA documentation will be prepared.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. 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. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council v. Norton*, Civil Action No. 98–1873 (D.D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing “No Surprises” assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with “No Surprises” assurances has been reinstated, the Service will not approve any incidental take permits or related documents that contain “No Surprises” assurances.

Dated: January 26, 2005.

**Sam Hamilton,**

*Regional Director, Southeast Region.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Law and Order on Indian Reservations

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

**ACTION:** Rescission of notice of intent to reassume judicial jurisdiction.

**SUMMARY:** This notice rescinds the Notice of Intent published by the Bureau of Indian Affairs in the **Federal Register** on April 29, 2003.

**DATES:** *Effective Dates:* February 15, 2005.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Reinfeld, Office of Self-Governance and Self-Determination, Office of the Assistant Secretary—