

accommodate this concern, language was inserted stating that the Tribe/ Consortium retains legal custody and determines access to those records. Further, language was inserted stating that such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code, unless expressly agreed to by the Tribe.

Dated: August 19, 2005.

**Abraham E. Haspel,**

*Assistant Deputy Secretary—Office of the Secretary.*

[FR Doc. 05–17137 Filed 8–26–05; 8:45 am]

**BILLING CODE 4310–W8–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of an Application for an Incidental Take Permit for the Florida Scrub-jay Resulting From Construction of a Single-Family Home in Charlotte County, FL

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

**ACTION:** Notice.

**SUMMARY:** Mr. and Mrs. Nicholas Tamburri (Applicants) request an incidental take permit (ITP) for a period of one year, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (U.S.C. 1531 *et seq.*). The Applicants anticipate removal of about 1.2 acres of occupied Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) nesting, foraging, and sheltering habitat, incidental to partial land clearing of their 5-acre lot and subsequent residential construction of a single-family home and supporting infrastructure in Charlotte County, Florida. Up to three scrub-jay individuals could be taken as a result of the Applicants' proposed action. It is not currently known if these three scrub-jays are part of the same scrub-jay family.

The Applicants' Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the project to the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We announce the availability of the ITP application, HCP, and accompanying Environmental Assessment (EA). Copies of the application, HCP, and EA may be obtained by making a request to the Southeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Act and

National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the ITP application and HCP, and EA should be sent to the Service's Southeast Regional Office (see **ADDRESSES**) and should be received on or before October 28, 2005.

**ADDRESSES:** Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit number TE093169–0 in such requests.

Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or also at the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559 (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. Constance Cassler, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES** above), telephone: 772/562–3909, ext. 243.

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE093169–0 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](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 e-mail message. If you do not receive a confirmation from us that we have received your e-mail 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 (well-drained, sandy soil habitats supporting a growth 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 Florida has been exacerbated by tremendous urban growth in the past 50 years.

Xeric upland vegetative communities in southwestern Florida are restricted primarily to ancient coastal dunes which are typically much dryer and less susceptible to flooding due to their deep, well-drained soils. Historically, these areas extended in a nearly continuous, narrow band along the western mainland portions of northern Charlotte to southern Hillsborough County. However, the same physical attributes that resulted in the evolution of xeric vegetation on these sandy dunes also provided sites for both agricultural and urban development. Over the past 50 years, these ancient dunes have served as the backbone of residential and commercial growth in southwestern Florida. The project area is under tremendous development pressure, as is much of Charlotte County. Much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded, due to interruption of the natural fire regime that is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Florida scrub-jays were documented using this residential lot on ten separate occasions between October 9 and October 16, 2002, by consultants from AMS Engineering and Environmental, Incorporated. Based on the consultant's report, it appears that at least three scrub-jays use this residential lot. It is not known whether these scrub-jays previously nested on the subject lot, though the birds roost regularly on a turkey oak there. Scrub-jays using the

project site are part of a metapopulation of scrub-jays in Charlotte County that occurs east of the Peace River and Punta Gorda. The continued survival and recovery of scrub-jays in this area may be dependent on the maintenance of suitable habitat and the restoration of unsuitable habitat.

Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in the vicinity of the project will likely continue to reduce 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 are unlikely to persist in urban settings, and conservation efforts for this species should include acquisition and management of large parcels of land outside the direct influence of urbanization.

Construction of the project's infrastructure and facilities could result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction would reduce the availability of nesting, foraging, and sheltering habitat for three scrub-jays. The Applicants propose to minimize take of scrub-jays by avoiding land-clearing activities during the breeding or nesting season (March through June), by not planting additional trees which would allow perching of predatory birds, by eliminating most predatory bird perches (slash pines) to possibly reduce the risk of scrub-jays being killed by raptors, and by preserving and maintaining 3.8 acres of scrub-jay habitat on their 5-acre lot in perpetuity. The preserve would be accomplished through recorded deed restriction which must be in place within 30 days of ITP issuance and prior to any land-clearing activities.

The Applicants also propose to mitigate the take of scrub-jays through contribution of \$1,200 to an approved scrub-jay mitigation fund. This contribution must be made within 30 days of ITP issuance and prior to any land-clearing activities. The fund would be used to acquire and manage larger tracts of scrub habitat in the County.

The Service has made a preliminary determination that the issuance of the ITP is not 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. This preliminary information may be revised

due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service 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.

Dated: August 4, 2005.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. 05-17064 Filed 8-26-05; 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 the Florida Scrub-Jay Resulting From Construction of a Single-Family Home in Brevard County, FL**

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

**ACTION:** Notice.

**SUMMARY:** Maronda Homes, Inc. (Applicant) requests an incidental take permit (ITP) for a duration of 10 years, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (U.S.C. 1531 *et seq.*). The Applicant requests a permit to remove 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 Section 23, Township 23 South, Range 35 East, Port St. John, Brevard County, Florida. The proposed destruction of 0.24 acre of foraging, sheltering, and possibly nesting habitat could 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 scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Fish and Wildlife

Service (Service) has 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 the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). We announce the availability of the ITP application and HCP for the incidental take application. Copies of the application and HCP may be obtained by making a request to the Southeast 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 September 28, 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 TE103390-0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 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. Erin Gawera, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES** above), telephone: 904/232-2580, ext. 121.

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE103390-0 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](mailto:david_dell@fws.gov). Please submit comments over the Internet as an ASCII file, avoiding the use of special characters and any form