

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Proposed Residential Development Called Heron's Cove, Charlotte County, Florida**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Heron's Cove, L.C. (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). The ITP would authorize for a period of 15 years the incidental take of a threatened species, the Florida scrub-jay, *Aphelocoma coerulescens*. The proposed residential development is called Heron's Cove and will consist of 16 homes located on about 173 acres in section 7, Township 40 south, Range 23 East, Charlotte County, Florida (Project). Approximately 40 acres of the Project site are considered habitat for the Florida scrub-jay. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an EA and HCP for the incidental take application. Copies of the EA and/or 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 made a preliminary determination that issuing 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 of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 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 comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted

and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

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 January 15, 1998.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy 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), or U.S. Fish and Wildlife Service, 1360 U.S. Highway 1, Suite 5, Vero Beach, Florida 32961-2676. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number PRT-837313 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679-7110; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562-3909.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay (FSJ) is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The FSJ is found exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that FSJ numbers have been reduced by at least half in the last 100 years. In Charlotte County alone, it is estimated that as of 1992, only 1,793 acres of scrub habitat remained. Many of the remaining FSJ now occupy small,

isolated patches of habitat and are vulnerable to extirpation because of habitat fragmentation, fire suppression, increased predation, natural stochastic events, and other anthropogenic impacts. Most of the scrub habitat on the Project site is also overgrown or was previously altered due to land clearing. The Service, through consultation with other experts, believes that FSJ will decline, over time, in these type of situations without active management of remaining habitat patches.

Based on existing soils data, much of the FSJ habitat that was once widespread along coastal and riverine portions of Lee, Charlotte, and Sarasota Counties has been lost or degraded, including xeric habitat within the Project area and adjoining lands. Even with the large loss of habitat, FSJ using the Project are still considered to be part of a larger complex of demographically connected FSJ that occupy xeric uplands of southwest Florida. This complex of FSJ families is considered one of five remaining areas where relatively large numbers of birds remain demographically linked. The continued survival of FSJ in southwest Florida may be dependent on the maintenance of suitable habitat and the restoration of unsuitable habitat in northern Charlotte County, including the Project site and adjoining lands.

FSJ use of the Project site and adjacent lands has been assessed on two occasions. In 1994, banding studies revealed that five scrub-jay families containing at least 20 individuals used parts of the Project site. However, no single territory was exclusively encompassed within the Project site nor were any nests documented within the Project site. Nesting surveys conducted in 1997 located five nests on vacant lots in the subdivision adjacent to the Project site. The principal value of the Project site to FSJ is for foraging and cover.

Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, FSJ incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential development will reduce the availability of feeding and sheltering habitat.

The Applicant's HCP and the Service's EA describe the following minimization and mitigation strategy to be employed by the Applicant to offset the impacts of the Project to the FSJ:

- Micro sighting of access roads, driveways, home foundations to avoid or minimize impacts to xeric vegetation.

- To compensate for the destruction of 18 acres of FSJ habitat by preserving, restoring, and managing about 37 acres of xeric uplands. Seventeen acres of the proposed mitigation will be implemented within the boundaries of the Project.

- The Applicant will conserve an additional 20 acres of FSJ habitat, via a perpetual management agreement, within Serene Estates (section 20, Township 40 East, Range 24 South, Charlotte County), a 200 acre parcel of land controlled by the Applicant.

- Within the larger 200 acre parcel owned by the Applicant, the Applicant has also agreed to preserve and manage an additional 80 acres of xeric uplands. Although not intended for the mitigation needs of the Project, the Applicant has requested that the 80 acres of habitat be available for use as a future private mitigation bank.

- Funding and perpetual management of the on-site conserved area encompassing 17 acres and the 20 acre off-site mitigation area will be provided via terms and conditions of the ITP and an Implementation Agreement (IA), respectively. The IA will be executed between the Service and the Applicant, and will outline specific funding and management commitments for the on-site and off-site mitigation areas for a 99 year period. A copy of the final IA will be provided to interested parties upon request.

- Clearing of vegetation and/or construction would not be allowed within 150 feet of any active FSJ nest during the nesting season, approximately March 1 to June 30 to comply with State law.

The EA considers the environmental consequences of four alternatives. Two alternatives involve a project design of a lesser construction footprint (e.g., lesser number of homesites and associated infrastructure). The no action alternative may result in loss of habitat for FSJ and exposure of the Applicant under Section 9 of the Act. The proposed action alternative is issuance of the ITP according to the HCP as submitted and described above. Under the proposed alternative, the effect of the minimization and mitigation strategy will be that the majority of the FSJ habitat on site will be conserved for FSJ use, even after the Project is completed. Further, the restoration/conservation of the 20 acres of off site FSJ habitat, along with the Applicant's commitment to manage an additional 80 acres of FSJ habitat, will result in a protected and managed area capable of supporting about five families of FSJ under optimal habitat. Though the proposed mitigation bank will be used

to off-set future impacts to FSJ in portions of southwest Florida, the Service believes that the protection of an 80 acre block of xeric habitat along with the 20 acres needed for mitigating Project impacts will enhance FSJ survival in this part of the state.

Suitable or restorable FSJ habitat also exists on property surrounding the Serene Estates mitigation site. Future land acquisition by the County, State, or for other mitigation needs may result in additional protected lands adjoining the off-site mitigation area. Increases in the size of protected and managed FSJ habitat in this area will increase the probability of FSJ persistence in northern Charlotte County.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. 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. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

- Issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of the affected species in the wild.
- The HCP contains provisions which sufficiently minimize and/or mitigate the impacts of issuing the ITP.
- Issuance of the ITP would not have significant effects on the human environment in the project area.
- The proposed take is incidental to an otherwise lawful activity.
- Adequate funding will be provided to implement the measures proposed in the submitted HCP and authorizing ITP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP 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: December 4, 1997.

H. Dale Hall,

Deputy Regional Director.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Department of the Interior and Department of Health and Human Services Internal Agency Procedures Manual for Contracting Under Title I of the Indian Self-Determination and Education Assistance Act

AGENCY: Bureau of Indian Affairs and Indian Health Service, Interior.

ACTION: Notice.

SUMMARY: The congress has declared that each provision of the Indian Self-Determination and Education Assistance Act (Act) and each provision of contracts entered into thereunder shall be liberally construed for the benefit of the Indian tribes or tribal organizations (T/TO). To carry out this policy, the Department of the Interior and Department of Health and Human Services Internal Agency Procedures Manual for Contracting Under Title I of the Indian Self-Determination and Education Assistance Act (Manual) was drafted to facilitate and enhance contracting with T/TOs under Title I of the Act, as amended, 25 U.S.C. 450 *et seq.*, and the regulations promulgated thereunder, 25 CFR part 900 (published in the **Federal Register** on June 24, 1996, and effective on August 23, 1996). The public is invited to review and comment on the draft Manual.

DATES: All written comments on the Manual should be submitted by January 15, 1998.

ADDRESSES: Written comments must be addressed to: Merry L. Elrod, Office of Tribal Programs, Indian Health Service, 5600 Fishers Lane, Room 6A-05, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: For additional information and/or to receive copies of the manual and letter dated October 30, 1997, to tribal leaders and other interested parties inviting comments on the draft Manual, the public may contact either: James Thomas, Division of Self-Determination Services, Bureau of Indian Affairs, 1949 C Street, NW., MS 4603-MIB, Washington, D.C., 20240, telephone 202/208-5727, or Merry Elrod, Office of Tribal Programs, Indian Health Service, 5600 Fishers Lane, Parklawn Building, Room 6A-05, Rockville, MD, 20857, telephone 301/443-1044.

Dated: December 9, 1997.

Hilda A. Manuel,

Deputy Commissioner of Indian Affairs.

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