

2003, and August 2005 revealed these areas to be occupied by the Smith's blue butterfly. The proposed development would remove an area (0.3 acre) of coastal sage scrub that includes approximately 650 seacliff buckwheat plants. This removal is expected to result in take of Smith's blue butterflies. Additional seacliff buckwheat plants may be removed due to management activities, including invasive plant removal.

The applicant proposes to implement measures to minimize and mitigate for take of the Smith's blue butterfly within the project site. Specifically, they propose to: (1) Protect in perpetuity 1.04 acres, containing at least 2,000 seacliff buckwheat plants, via a deed restriction; (2) manage the protected area in perpetuity; (3) remove invasive plant species, especially iceplant (*Carpobrotis sp.*) throughout most of the Parcel; and (4) undertake various measures during grading and construction activities at the project site to minimize impacts to Smith's blue butterflies and their habitat.

The impacts from proposed construction are considered to be minor to the species as a whole because the amount of habitat being disturbed is small relative to the amount of habitat available within the Carmel Highlands area and within the range of the species as a whole.

The Service's proposed action is to issue an incidental take permit to the applicant who would then implement the HCP. Two alternatives to the taking of listed species under the proposed action are considered in the HCP. Under the No-Action alternative, the proposed expansion would not occur and the HCP would not be implemented. This would avoid effects of habitat removal due to the proposed development on the Smith's blue butterfly. However, this alternative would not meet the needs of the applicant. Also, the proposed deed restricted area would not be managed in perpetuity.

Under the Redesigned Project alternative, the development footprint for the project would be relocated to another portion of the site, thus reducing or altering the area of impacted habitat for the Smith's blue butterfly. Alternate locations for new construction are limited within the Parcel due to the presence of steep slopes. An alternate construction site within the Parcel, adjacent to and uphill of the proposed site, was considered, but as this site was also occupied by seacliff buckwheat and Smith's blue butterflies, relocation of the project was not expected to substantially benefit the Smith's blue butterfly.

The Service has made a preliminary determination that the HCP qualifies as a "low-effect" plan as defined by our Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, 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. As more fully explained in our Environmental Action Statement and associated Low Effect Screening Form, the applicant's proposal to develop a single family home within the Parcel qualifies as a "low-effect" plan for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the Smith's blue butterfly. The Service does not anticipate significant direct or cumulative effects to the Smith's blue butterfly resulting from the proposed development of the project site.

(2) Approval of the HCP would have minor or negligible effects on unique geographic, historic, or cultural sites, and would not involve unique or unknown environmental risks.

(3) Approval of the HCP would not result in any cumulative or growth-inducing impacts and would not result in 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 HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not

intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

#### Public Review and Comment

If you wish to comment on the permit application, draft Environmental Action Statement, or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names, home addresses, etc., of respondents available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. In the absence of exceptional, documented circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10 (a) of the Act. If the requirements are met, the Service will issue a permit to the applicant. We will make the final permit decision no sooner than 30 days after the date of publication of this notice.

Dated: October 10, 2006.

**Diane K. Noda,**

*Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of an Application for an Incidental Take Permit for Construction of Four Single-Family Homes in Brevard County, Florida

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

**ACTION:** Notice.

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**SUMMARY:** Laura and Tariq Hussain (Applicants) request an incidental take permit (ITP) for a duration of one year, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate removal of about 0.97 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat, incidental to lot preparation for the construction of four single-family homes and supporting infrastructure in Brevard County, Florida (Project). 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.

**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 November 17, 2006.

**ADDRESSES:** Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or the Service's Jacksonville Field Office, Fish and Wildlife Service, 6220 Southpoint Drive, Suite 310, Jacksonville, Florida 32216-0912. Please reference permit number TE118200-0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Southeast Regional Office or the Jacksonville Field Office.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679-7313, facsimile: 404/679-7081; or 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 TE118200-0 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 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 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 (predominately in 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.

According to scrub-jay surveys accomplished from 1999 through 2003, proposed residential construction on the Applicants' four lots in the City of Palm Bay (Port Malibar Subdivision) would take place within 438 feet of locations where scrub-jays were sighted. Scrub-jays using the subject residential lots and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of southern Brevard and northern Indian River counties. Within the City of Palm Bay, 20 families of scrub-jays persist in habitat fragmented by residential development.

Since the Applicants' four residential lots fall within the 438-foot buffer established for two known scrub-jay territories, the lots likely provide scrub-jays with foraging, sheltering, and possibly nesting habitat. Accordingly, loss of this habitat due to residential construction could result in the take of two scrub-jay families, by reducing the amount of available habitat.

The Applicants propose to minimize impacts to the scrub-jay by avoiding land clearing activities on any lot during

the nesting season (March 1 through June 30) if active nests are found. The Applicants propose to mitigate the take of scrub-jays through contribution of \$16,296 to The Nature Conservancy's Conservation Fund for the management and conservation of the Florida scrub-jay. Funds in this account are earmarked for use in the conservation and recovery of scrub-jays, including habitat acquisition, restoration, and management.

The Service has determined that the Applicants' proposal, including the proposed mitigation and minimization measures, would 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 would qualify as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive 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 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 would be issued for incidental take of the Florida scrub-jay. The Service 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 an ITP. This notice is provided pursuant to section 10 of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Dated: September 21, 2006.

**Cynthia K. Dohner,**

*Deputy Regional Director, Southeast Region.*

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