

Dated: December 31, 2004.

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Senior Permit Biologist, Branch of Permits,
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for Westlake Ranch LLC in Clatsop County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: This notice advises the public that Westlake Ranch LLC and Randy and Tasha Curs (Applicants) have applied to the Fish and Wildlife Service (Service) for an incidental take permit (ITP), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The requested 50-year permit would authorize the incidental take of the threatened Oregon silverspot butterfly (*Speyeria zerene hippolyta*, "butterfly"), associated with the construction and residential development of 75 lots on approximately 165 acres, five miles north of the city of Gearhart, in Clatsop County, Oregon.

We are requesting comments on the permit application and on whether the proposed Habitat Conservation Plan (HCP) qualifies as a "low effect" HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in a draft Environmental Action Statement (EAS), which is also available for public review.

DATES: Written comments must be received by 5:00 p.m. on February 11, 2005.

ADDRESSES: Comments should be addressed to Kemper McMaster, State Supervisor, Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266, fax number (503) 231-6195 (for further information and instruction on the reviewing and commenting process, see Public Review and Comment section below).

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, Fish and Wildlife Biologist, Fish and Wildlife Service (see ADDRESSES), or telephone (503) 231-6179.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, proposed HCP, or EAS, should contact the Service by telephone (see FOR FURTHER INFORMATION CONTACT) or by letter (see ADDRESSES). Copies of the subject documents also are available for public inspection during regular business hours at the Oregon Fish and Wildlife Office (see ADDRESSES).

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the "take" of a fish or wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under section 3 of the ACT as including to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in such conduct" (16 U.S.C. 1538). The Service may, under limited circumstances, issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ACT as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22. The Applicants are seeking a permit for the incidental take of the butterfly during the 50-year term of the permit.

Proposed covered activities under this HCP include development of 75 residential lots on approximately 165 acres by Westlake Ranch LLC and Randy and Tasha Curs. Incidental take of the butterfly would be likely only in areas containing its larval host plant, the early blue violet (*Viola adunca*). The proposed development area on Westlake Ranch LLC contains a total of 12 early blue violet patches. Eight of the proposed residential lots would impact early blue violets. One of the 12 early blue violet patches is about 0.13 acre in size. The other eleven patches are no more than five meters square. Ten of the 11 patches contain less than ten plants each. The remaining patch of the 11 contains greater than 20 plants, but is located outside of the development footprint. No early blue violets would be impacted on the Curs' property.

The proposed minimization and mitigation measures include setting aside a 6.5 acre area in perpetuity that contains a 0.5 acre patch of violets and a 0.55 acre patch of dune goldenrod (*Solidago spathulata*), which is a native plant that serves as an adult butterfly nectar source. The 6.5 acres would be protected under a conservation easement and be managed through annual mowing or other means to

reduce competition from non-native plants. The Service would assist in the development of the annual mowing plan and be consulted regarding future management decisions. In addition, the Curs would continue to follow the terms of an existing agreement with the Service to manage a 1.5 acre area for the maintenance of early blue violets for the life of the proposed 50-year permit.

Approval of the HCP may qualify as a categorical exclusion under NEPA, as provided by the Departmental Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) and as a "low effect" plan as defined by the Habitat Conservation Planning Handbook (Service, November, 1996). Determination of low effect HCPs is based upon the plan having: minor or negligible effects on federally-listed, proposed, or candidate species and their habitats; minor or negligible effects on other environmental values or resources; and, impacts that considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to the environmental values or resources which would be considered significant. If it is found to qualify as a low-effect HCP, further NEPA documentation would not be required.

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. We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. 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. If we determine that the requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the Act to the Applicants for take of the butterfly, incidental to

otherwise lawful activities in accordance with the terms of the permit. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: January 6, 2005.

David Wesley,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 05-605 Filed 1-11-05; 8:45 am]

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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: Deleta Earle (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 0.23 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 0.23 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 DM2, 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 February 11, 2005.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE090970-0 in such requests. 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 Field Supervisor, Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (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 TE090970-0 in such comments. You may mail comments to the Service's 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 below (see **FURTHER INFORMATION**). 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 address 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 (predominately in oak-dominated scrub). Increasing urban and agricultural development have 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 is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

The applicant's residential construction will take place within Section 5, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida. Lot 21, Block 340, Port Malabar Unit 9, is within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999 to 2002. Scrub-jays using the subject residential lot 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