

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.*

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## 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

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 (areas of dry, sandy soils, supporting the 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 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 interruption of the natural fire regime, which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Residential construction for Maronda Homes, Inc. would take place within Section 23, Township 23 South, Range 35 East, Port St. John, Brevard County, Florida on Lot 07, Block 59. This lot is within locations where scrub-jays were sighted during surveys for this species from 1999 to 2003.

Scrub-jays affected by the issuance of this permit are found on the extreme western edge of a large area supporting a 16-family cluster of birds that inhabits urban areas, commercial development, and undeveloped native habitat in the Tico and Grissom territory cluster just south of Port St. John, Florida. This cluster of scrub-jays is part of a larger metapopulation complex of scrub-jays that persists in northern Brevard County. The number of scrub-jay families in the vicinity of the project site and in the northern Brevard County metapopulation has declined in recent years. Survey results indicate that the number of scrub-jay families has declined in the Tico and Grissom cluster from 72 in the early 1990s to 47 in 2002 (33 percent decline). Similarly, the number of families of scrub-jays within the northern Brevard County metapopulation, which includes the Tico and Grissom territory cluster, has declined from 102 to 67 families (34 percent decline) during this same time period. Both of these observed rates of decline approximate the four percent per year decline estimated by recent research findings.

The decline in numbers of scrub-jay families in northern Brevard County is the cumulative result of habitat destruction, fragmentation, and degradation. Metapopulation viability analysis suggests that this metapopulation of scrub-jays has a high quasi-extinction risk if no further conservation efforts are undertaken to acquire and manage land for the benefit of scrub-jays. However, with active acquisition and management of habitat in the metapopulation, the quasi-extinction risk decreases substantially.

The demographic viability, and thus future biological value, of scrub-jays within highly urbanized areas (e.g., residential areas, industrial sites, and other commercial development) is problematic in most situations, but the contribution urban scrub-jays have on metapopulation dynamics is not certain. Research conducted in central Florida suggests that juvenile and adult scrub-jays living within urban areas have low survival rates and that the persistence of scrub-jays in these environments is

largely dependent on immigration from other low-quality habitat. In this instance, urban scrub-jays may have a negative impact on the demographic viability of the overall metapopulation since available breeders are essentially lost to habitats in which mortality exceeds recruitment. Other research conducted in east-central Florida suggests that recruitment will exceed mortality if optimal habitat conditions exist, regardless of whether the habitat is in a pristine or urban setting. In this case, urban scrub-jays would be as demographically important as scrub-jays in more pristine habitats.

Regardless of whether the breeding territory is in an urbanized area or more pristine natural area, the success of a breeding pair is highly dependent on the quality of habitat within the territory. In most instances, scrub-jay habitat in urban settings is degraded due to long-term fire suppression and there is no indication that habitat in these settings will be managed in the future. Thus, we generally believe, and existing research supports, that in most urban settings, scrub-jays occupy less than optimal habitat and are therefore less demographically viable than birds occupying habitat in areas that are actively managed. Consequently, scrub-jays living within suburban areas of Port St. John and urbanized areas of Brevard County appear to be demographically doomed over the long term and the only potential biological value these birds currently have is in providing a source of breeders for other adjacent lands that are actively managed for conservation purposes. One such site is located approximately two miles north off of County Road 50 in the southern end of Titusville. The 52 acres of scrub at this site is managed for scrub-jays through Brevard County's Environmentally Endangered Lands Program (EELS). Future acquisition is proposed by EELS for areas northwest and south of the project site, but until these lands are secured and managed, dispersing scrub-jays from the city may not find suitable habitat.

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 agrees to avoid construction during the nesting season if active nests are found on site, but no other on-site minimization measures are proposed to reduce take of scrub-jays. The lot

encompasses about 0.24 acre and the footprint of the home, infrastructure, and landscaping preclude retention of scrub-jay habitat on the project site. On-site minimization may not be a biologically viable alternative because of increasing negative demographic effects caused by urbanization.

Based on the above information, scrub-jays in the vicinity of the Applicant's lot, currently have little long-term demographic value to the metapopulation overall. Consequently, the Service has determined that the loss of 0.24 acre of habitat is likely to result in only minor or negligible impacts on the species.

The Applicant proposes to mitigate for the loss of 0.24 acre of scrub-jay habitat by contributing a total of \$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 about 0.48 acre of suitable occupied scrub-jay habitat based on a replacement ratio of 2 mitigation acres per 1 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 determination may be revised based on our review of public comment 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 Applicant's HCP qualifies for the following reasons:

1. Issuance of the ITP 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. Issuance of the ITP would not have adverse effects on known unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Issuance of the ITP 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. Issuance of the ITP 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 issuance of this incidental take permit 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 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 3, 2005.

**Sam D. Hamilton,**

*Regional Director, Southeast Region.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Receipt of Two Applications for Incidental Take Permits for Construction of Single-Family Homes in Brevard County, FL

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

**ACTION:** Notice.

**SUMMARY:** Maronda Homes, Inc. of Florida and Duke Construction Corporation (Applicants) each request 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 Applicants anticipate taking a combined total of about 0.48 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly

nesting habitat incidental to lot preparation for the construction of single-family homes and supporting infrastructure in Brevard County, Florida (Project). The destruction of 0.48 acre of foraging, sheltering, and possibly nesting habitat is expected to result in the take of one family of scrub-jays over requested permit terms of 10 years (Maronda) and 2 years (Duke).

The Applicants' Habitat Conservation Plans (HCPs) describe the mitigation and minimization measures proposed to address the effects of the Projects to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We have determined that the Applicants' proposals, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCPs. Therefore, the ITPs are "low-effect" projects and qualify as categorical exclusions 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). Copies of the HCPs 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 applications and HCPs 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 applications and HCPs may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE099862-0, for Maronda Homes and number TE099859-0, for Duke Construction 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, U.S. 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. Erin Gawera, General Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232-2580, ext. 121.

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit