

habitat loss and fragmentation that 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 that 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 that is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Surveys conducted during the summer of 2004 found two scrub-jay family groups using a total of about 2.5 acres that will be impacted by the Project. The remaining habitat for these two families of scrub-jays is protected within the Lyonia Preserve, a county-owned and managed parcel dedicated to scrub and scrub-jay conservation. Lyonia Preserve is contiguous with the Project site and contains another 18 families of scrub-jays.

Scrub-jays using the Project site are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of western Volusia County. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in 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 target acquisition and management of large parcels of land outside the direct influence of urbanization. The retention of small patches of habitat similar to the onsite mitigation proposed by the Applicant can provide benefits to scrub-jays by creating "stepping stones" used by scrub-jays dispersing between larger parcels of conservation lands in Volusia County.

Construction of the Project's infrastructure and facilities will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed expansion of the regional library and associated infrastructure will reduce the availability of foraging, sheltering, and possible nesting habitat for two families of scrub-jays.

The Applicant proposes to minimize impacts to scrub-jays by reducing the Project's footprint and avoiding active nest sites during the breeding season. The Applicant proposes to mitigate the take of scrub-jays by protecting and managing scrub-jay habitat within Lyonia Preserve pursuant to an agreement between the Service and County of Volusia. In that agreement, Volusia County agreed to provide long-term protection of scrub-jay habitat and to implement land management activities that will enhance habitat for this species. Until the Service and County of Volusia entered into this agreement, no such protection was afforded to scrub-jays in Lyonia Preserve. In return for their commitment to protect and manage scrub-jay habitat within Lyonia Preserve, the agreement stipulates that the County of Volusia's Public Works Department and Volusia County School District may use the Lyonia Preserve as a scrub-jay mitigation site for locally sponsored projects, such as the expansion of the regional library. The Applicant proposes to use a portion of their scrub-jay enhancement credits as mitigation for the Project.

The Service has made a preliminary determination that issuance of the requested ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of National Environmental Policy Act (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. This notice is provided pursuant to section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

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 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: January 27, 2006.

**Cynthia K. Dohner,**

*Acting Regional Director, Southeast Region.*

[FR Doc. E6-4985 Filed 4-5-06; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Availability of an Environmental Assessment and Umbrella Incidental Take Permit Coverage for Small Lot Developments Throughout 34 Florida Counties

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

**ACTION:** Notice.

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**SUMMARY:** The U.S. Fish and Wildlife Service has prepared, and proposes to make available for use by the public for a term of seven years, a combined Habitat Conservation Plan and Environmental Assessment (HCP/EA) that addresses incidental take of the threatened Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) that would result from residential, commercial, industrial, and similar development activities on properties one acre or smaller in size located in urban areas. The Service anticipates that the HCP/EA will act as an "umbrella" document for qualifying landowners who might need an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) on an estimated total of 14,928 acres of scrub-jay foraging, sheltering, and nesting habitat throughout 34 counties. The HCP portion of this document identifies minimization and mitigation measures that will be required of individual landowners wishing to participate under the umbrella HCP/EA. A more detailed description of the mitigation and minimization measures required pursuant to section 10 of the Act is provided in the HCP/EA and in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Written comments on the HCP/EA should be sent to the Service's Regional Office (see **ADDRESSES**) and received on or before June 5, 2006.

**ADDRESSES:** Persons wishing to review the HCP/EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Requests must

be in writing to be processed. Please reference permit number TE109021-0 in such requests. The document 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); Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216; or Field Supervisor, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida, 32960.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679-7313, facsimile: 404/679-7081; Mr. Michael Jennings, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232-2580, ext. 113.; or Ms. Trish Adams, Fish and Wildlife Biologist, South Florida Ecological Services Office, Vero Beach, Florida (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:** If you wish to comment, you may submit written comments by any one of several methods. Please reference permit number TE109021-0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also request documents or 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 below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to any 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, and subsequent fire suppression, has resulted in habitat degradation, loss and fragmentation which have adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals (U.S. Fish and Wildlife Service 1990. Recovery plan for the Florida scrub-jay, U.S. Fish and Wildlife Service, Atlanta, Georgia).

Since the listing of the scrub-jay in 1987 (52 FR 42661), owners of property in urban areas that are occupied by scrub-jays have been challenged with the difficulty of complying with section 9 of the Endangered Species of 1973, as amended (Act), which prohibits the take of scrub-jays. The majority of land owners with property in urban areas that is occupied by scrub-jays have been faced with the choice of complying with the Act by not clearing or constructing in occupied scrub-jay habitat, complying with the Act by obtaining a section 10(a)(1)(B) incidental take permit (ITP) prior to land clearing, or potentially violating the take prohibitions under section 9 of the Act by clearing lots without coverage from an ITP. Each of these alternatives has limitations; land owners may incur costs associated with ongoing property tax burdens and local government assessments for infrastructure improvements while not developing property they own, or they may incur costs and time constraints associated with obtaining an ITP. Lot owners who choose not to pursue an ITP for land clearing, may be faced with violating section 9 of the Act, which can result in fines and/or imprisonment.

The cost and complexity of complying with the Act is thought to have precluded many individual lot owners from seeking ITPs for otherwise lawful activities, such as land clearing and construction. Additionally, most local governments have not embraced large-scale scrub-jay conservation planning efforts and have not encouraged their residents to comply with the Act because of perceived legal and fiscal constraints the Act may impose on them. The failure of individual lot owners to seek regulatory relief from the prohibitions of take has also resulted in the continued degradation of scrub-jay

habitat because their properties remain unmanaged and impacts are not mitigated.

Indian River County and the City of Sebastian successfully completed an ITP application and received authorization, TE026007-0, to take scrub-jays resulting from residential and commercial development. This planning effort resulted in the only area-wide HCP that is currently available to land owners whose property is occupied by scrub-jays. However, the plan area for this HCP and area covered by the incidental take authorization is restricted to the city limits of the City of Sebastian and, therefore, offers no regulatory or financial relief to landowners in other areas of the state.

Recognizing the limitations that the above-mentioned alternatives place on owners of property in urban areas, the Service considered methods to streamline the section 10(a)(1)(B) permitting process, while still providing conservation benefits to the Florida scrub-jay. This umbrella HCP/EA is the culmination of our review of streamlining options. Although the focus of this HCP/EA is on modifications to existing permitting processes, the premise for these modifications is based on available biological information indicating that Florida scrub-jays in some urban areas will not persist long-term and are unlikely to substantially contribute to the recovery of the species.

The umbrella HCP/EA is intended to result in conservation benefits to the scrub-jay through minimization and mitigation of impacts. To minimize take of the scrub-jay, land clearing activities would not take place during the scrub-jay nesting season (March 1 through June 30). To mitigate for the loss of up to 14,928 acres of scrub-jay habitat, participating landowners would have the option of providing funding to acquire and perpetually manage two acres of habitat for every one acre of habitat that will be impacted, or of acquiring scrub-jay habitat in a Service-approved conservation bank. Funds provided by participating landowners would be used to purchase or otherwise encumber scrub-jay habitat, manage and restore scrub-jay habitat, monitor scrub-jays or their habitat, or conduct applied research for the benefit of scrub-jays. Landowners would provide funding to a dedicated account managed by The Nature Conservancy (TNC). The TNC would subsequently use these mitigation funds to purchase scrub-jay habitat based on priority areas identified by the Service, fund habitat management or restoration projects.

At this time, no scrub-jay conservation banks have been approved by the Service. We include conservation banks as a mitigation option in the umbrella HCP/EA in order to maintain incentives for private interests that may want to develop a scrub-jay conservation bank in the future. Conservation banks have been established for a few other listed species throughout the Southeast, as well as in other regions of the country. A conservation bank typically comprises a tract of land managed to restore, enhance, and protect a listed species' habitat with the purpose of making units of habitat value available for sale to third-party project applicants who need to compensate for impacts to listed species that would result from their projects. Ideally, a conservation bank would make listed species mitigation practicable for project proponents who otherwise would find it difficult to develop their own mitigation plan.

The Service has made a preliminary determination that issuance of incidental take permits in accordance with the proposed HCP/EA 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 (NEPA). This preliminary determination is based on information contained in the HCP/EA and may be revised, however, due to public comment received in response to this notice.

The Service will also evaluate whether issuance of section 10(a)(1)(B) ITPs in accordance with the proposed HCP/EA complies with section 7 of the Act (16 U.S.C. 1531 *et seq.*) by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in our final analysis to determine whether or not to make the HCP/EA available for use by qualifying landowners and to issue ITPs. This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: March 21, 2006.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E6-5036 Filed 4-5-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### **Draft Safe Harbor Agreement With Assurances and Application for an Enhancement of Survival Permit for the Houston Toad in Bastrop County, TX**

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

**ACTION:** Notice of availability; receipt of application.

**SUMMARY:** Small Family Investments, Ltd. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The requested permit, which is for a period of 12 years, includes a draft Safe Harbor Agreement (SHA) for the endangered Houston toad (*Bufo houstonensis*) in Bastrop County, Texas. We invite the public to review and comment on the permit application and the associated SHA.

**DATES:** To ensure consideration, written comments must be received on or before May 8, 2006.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, P.O. Box 1306, Room 4102, Albuquerque, New Mexico, 87103. Persons wishing to review the draft SHA or other related documents may obtain a copy by written or telephone request to Paige Najvar, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512-490-0057; Fax 512-490-0974). The documents will also be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Service's Austin office. The Draft Agreement may also be obtained from the Internet at [http://www.fws.gov/ifw2es/Documents/R2ES/Small\\_SHA\\_for\\_notice.pdf](http://www.fws.gov/ifw2es/Documents/R2ES/Small_SHA_for_notice.pdf). Comments concerning the draft SHA or other related documents should be submitted in writing to the Field Supervisor at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Please refer to permit number TE-120475-0 when submitting comments. All comments received will become a part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:**

Paige Najvar at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512-

490-0057; Fax 512-490-0974), or [Paige\\_Najvar@fws.gov](mailto:Paige_Najvar@fws.gov).

**SUPPLEMENTARY INFORMATION:** The Applicant has applied to the Service for a section 10(a)(1)(A) enhancement of survival permit for the endangered Houston toad in Bastrop County, Texas for a period of 12 years.

The Applicant intends to work collaboratively with Environmental Defense and the Service to implement conservation measures that are expected to provide a net conservation benefit to the Houston toad and will improve the quality of Houston toad habitat on the 836-acre property in Bastrop County, Texas. The Applicant has agreed to undertake conservation measures such as prescribed burning and brush thinning activities in order to control invasive woody understory species and decrease existing fuel load. These conservation measures are expected to facilitate the establishment of native, herbaceous vegetation while expanding and enhancing potential breeding, foraging, and hibernating habitats for the Houston toad currently occupying the property and the adjacent Bastrop State Park.

Incidental take of toads may occur on the property due to habitat management actions conducted in accordance with the conservation measures in the SHA, on-going ranch activities, and the possible cessation of management activities by the Applicant.

We provide this notice pursuant to section 10(c) of the Act, the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*), and its implementing regulations (40 CFR 1506.6).

**Geoffrey L. Haskett,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. E6-4993 Filed 4-5-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### **Proposed Finding for Federal Acknowledgment of the Mashpee Wampanoag Indian Tribal Council, Incorporated of Massachusetts**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Proposed Finding.

**SUMMARY:** Pursuant to 25 CFR 83.10(h), notice is hereby given that the Associate Deputy Secretary (ADS) proposes to determine that the Mashpee Wampanoag Indian Tribal Council, Inc., P.O. Box 1048, Mashpee, Massachusetts 02649, c/o Mr. Glenn Marshall, is an