



DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

I PERMITTEE

CITY OF CAPE CORAL
1015 CULTURAL PARK BOULEVARD
CAPE CORAL, FL 33915
U.S.A.

2. AUTHORITY-STATUTES
16 USC 1533(d)
16 USC 703-712

REGULATIONS
50 CFR 17.32
50 CFR 21.23
50 CFR 21.27
50 CFR 13

3. NUMBER
TE75891A-0

4. RENEWABLE
 YES
 NO

5. MAY COPY
 YES
 NO

6. EFFECTIVE
03/05/2014

7. EXPIRES
03/05/2039

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)
JOHN SZERLAG
CITY MANAGER

9. TYPE OF PERMIT
NATIVE THREATENED SP. HABITAT CONSERVATION PLAN - T
WILDLIFE; MIGRATORY BIRDS

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

Within the city limits, as of January 1, 2013, of the City of Cape Coral, approximately 76,800 acres. Mitigation on 125 acres in Alva Scrub Preserve, parcels 325 and 357 Sections 32, 33, and 34, Township 43 South, Range 27 East, Section 3, Township 44 South, Range 27 East. All in Lee County, Florida.

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY OR RENEWAL OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

Also valid for use by Permittee's authorized agents.

D. Acceptance of this Permit serves as evidence that the Permittee and its authorized agents understand and agree to abide by the terms of this Permit and all sections of Title 50 Code of Federal Regulations, Parts 13 and 17, pertinent to issued permits. Section 11 of the Endangered Species Act of 1973, as amended, provides for civil and criminal penalties for failure to comply with Permit conditions.

BLOCK 11 OF THIS PERMIT CONSISTS OF CONDITIONS A - M (5 PAGES TOTAL).

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

Reports will be provided to the U.S. Fish and Wildlife Service offices appearing in Condition 11.M of this Permit.

ISSUED BY

TITLE

Field Supervisor, South Florida Ecological Services Office, Vero Beach, Florida

DATE

03/05/2014

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Block 11:

- E. The lands identified in Block 10 above encompass 76,925 acres where the Permittee proposes to develop a 215-acre multi-use recreational facility known as Festival Park, allow residential and commercial construction, install associated infrastructure, and fund the restoration and long-term management of previously disturbed scrubby flatwoods on portions of Lee County's Alva Scrub Preserve parcels 325 and 357 (Project). Status surveys and biological analysis indicate that 75 acres of the Project area in and near Festival Park is occupied by three family groups of the threatened Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay). The entire 75 acres of habitat would be permanently altered due to Project construction. The *Aphelocoma coerulescens* on the Project site comprises the "covered species."

The Permittee, and any authorized agents, are authorized to take the covered species within the Project area incidental to earth moving, grading, and other land alteration, construction, and habitat management activities necessary to construct the Project as described in the Permittee's Habitat Conservation Plan (HCP), and as conditioned herein. This permit does not authorize take of any covered species resulting from unlawful activities.

- F. The Permittee, with reasonable notice, shall permit the contact office of the U.S. Fish and Wildlife Service personnel identified in Condition 11.M, below, or other properly permitted and qualified persons designated by the U.S. Fish and Wildlife Service, to enter the Project area boundaries at reasonable hours and times for the general purposes specified in Title 50 Code of Federal Regulations § 13.21(e)(2).
- G. The Permittee shall implement the following measures to ensure that take of the covered species is minimized and mitigated:
1. Land clearing activities in and near Festival Park, and anywhere else scrub-jays are found within the boundaries of the City of Cape Coral as those boundaries existed on January 1, 2013, will not occur during the scrub-jay nesting season (March 1 through June 30) to reduce the chance of nest destruction.
 2. After construction, native scrub oak species will be replanted on the Festival Park site where possible.
 3. Mitigation for the unavoidable impacts associated with the permanent alteration of 75 acres of occupied scrub-jay habitat will be accomplished by the restoration and long-term management of 125 acres of previously disturbed scrubby flatwoods habitat on portions of Lee County's Alva Scrub Preserve Parcels 325 and 357 (mitigation sites).

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4. The Permittee has agreed to provide \$465,025.00 for initial restoration of the mitigation sites and the first 5 years of monitoring.
 5. The Permittee has agreed to place \$323,000.00 in a non-wasting trust fund administered by Wildlife Foundation of Florida Mitigation Trust Funds, Incorporated to pay for long-term management of the Mitigation Area.
 6. An Interlocal Agreement was executed on June 21, 2011, between the Permittee and Lee County wherein the Permittee agreed to a schedule of the payment of the aforementioned funds, and Lee County agreed to be responsible for conducting restoration, long-term management, and monitoring of the Mitigation Area.
- H. The Permittee and the U.S. Fish and Wildlife Service agree that modification and amendments to the Permittee's HCP and this Permit may occur through its effective term. The following procedures shall govern the modification and amendment process:
1. This Permit is based upon the Permittee's expected compliance with the provisions and commitments established in the submitted HCP and the terms and conditions identified herein. Where a conflict occurs between the HCP and this Permit, the Permit shall control.
 2. Either the Permittee or the U.S. Fish and Wildlife Service may propose modifications and/or amendments to the HCP or this Permit by providing written notice. Such notice shall include a statement of the reason for the proposed modification and an analysis of the environmental effects of such modification or amendment, including effects on operations under the HCP and on the covered species. This analysis shall be conducted jointly by the Permittee and the contact office of the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service or the Permittee will use best efforts to respond to a proposed modification or amendment within sixty (60) days of receipt of such notice. Provided any such proposed modification or amendment would not result in any of the conditions identified in Condition 11.H.3 below, and absent any objection from the U.S. Fish and Wildlife Service or the Permittee, the proposed modification and/or amendment will be determined as minor and shall become effective upon written approval by the U.S. Fish and Wildlife Service or the Permittee. If, for any reason, a receiving party objects to a proposed amendment or modification, it must be processed in accordance with Condition 11.H.3, below.

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3. The U.S. Fish and Wildlife Service will not propose or approve modifications or amendments to the HCP or this Permit if the U.S. Fish and Wildlife Service determines that such modifications would result in operations under the HCP and Permit that are significantly different from those analyzed in connection with the original HCP, that would adversely affect the environment in new or significantly different ways from those analyzed in connection with the original HCP, or that would result in additional take of the covered species not analyzed in connection with the original HCP.
 4. Any amendment or modification shall conform with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the U.S. Fish and Wildlife Service's permit regulations at 50 C.F.R. § 13 and § 17.
- I. This permit also constitutes a Special Purpose Permit under C.F.R. § 21.27 for the take of *Aphelocoma coerulescens* in the amount and/or number and subject to the terms and conditions specified herein. Any such take of *Aphelocoma coerulescens* will not be in violation of the Migratory Bird Treaty Act of 1918 as amended (16 U.S.C. § 703.12).
- J. Any written correspondence required by this Permit shall include the following certification from the Permittee:

Under penalty of law, I certify that, to the best of my knowledge, the information submitted is true, accurate, and complete.

- K. The Permittee and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts to the covered species, changes in circumstances could arise which were not fully anticipated by this permit and which may result in substantial and adverse change in the status of the covered species. The U.S. Fish and Wildlife Service's policy regarding changed and unforeseen circumstances is contained in the final "No Surprises" rule published on February 23, 1998, (63 Fed. Reg. 8859) and codified at 50 C.F.R. Part § 17.

Unforeseen and/or changed circumstances may become apparent either to the Permittee, authorized agents, or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been

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anticipated by the HCP developers and the U.S. Fish and Wildlife Service at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the covered species. Changed circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that can reasonably be anticipated by HCP developers and the U.S. Fish and Wildlife Service, and that can be planned for. Should either unforeseen or changed circumstances arise, the Permittee and the contact office of the U.S. Fish and Wildlife Service identified in Condition 11.M. below, shall meet within twenty (20) working days following notification of such circumstances. The U.S. Fish and Wildlife Service and Permittee shall together agree upon appropriate and reasonable measures for addressing such circumstances, within the rule of applicable law, and the Permittee shall implement appropriate and reasonable measures within an additional thirty (30) working days, unless a longer period of time is agreed to by the U.S. Fish and Wildlife Service.

- L. Upon locating a dead, injured, or sick *Aphelocoma coerulescens* or any other threatened or endangered species, initial notification must be made immediately to the U.S. Fish and Wildlife Service Law Enforcement Office, 20501 Independence Boulevard, Groveland, Florida 34736; 352/429-1037. Notification should also be made, by the next work day, to the contact office of the U.S. Fish and Wildlife Service noted in Condition 11.M. Care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or to preserve biological materials for later analysis. In conjunction with the care of sick or injured threatened or endangered species or preservation of biological materials from a dead animal, the finder should take responsible steps to ensure that the site is not unnecessarily disturbed.
- M. For purposes of receiving reports, and monitoring compliance and administration of the terms and conditions of this permit, the contact office of the U.S. Fish and Wildlife Service is:

U.S. Fish and Wildlife Service
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960-3559
Telephone: 772/562-3909

END