

## INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered or threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create

the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described in the BA and since used here, are nondiscretionary and must be undertaken by the Service so that they become binding conditions of any grant or permit issued to the PEF, as appropriate, for the exemption in action 7(o)(2) to apply. The NRC and Corps have a continuing duty to regulate the activity covered by this incidental take statement. If the NRC and Corps (1) fail to assume and implement the terms and conditions or (2) fail to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, the NRC and Corps must report the progress of the action and its impact on the species to itself as specified in the incidental take statement.

#### **AMOUNT OR EXTENT OF TAKE ANTICIPATED**

Based on the Applicant's survey results and available biological information at this time, the Service anticipates that a family of scrub-jays may be incidentally taken as a result of the destruction of its territory along the Levy to South Central Florida transmission line that will impact occupied scrub-jay habitat. However, due to the delay in construction of the transmission line, surveys should be conducted within 2 years prior to any land clearing or construction to determine if the amount or extent of take for this action has increased. This incidental take will be in the form of "harass." If scrub-jays are found and impacts cannot be avoided, minimization measures will be implemented by PEF.

#### **EFFECT OF THE TAKE**

In the accompanying biological opinion, the Service determined that this level of take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

#### **REASONABLE AND PRUDENT MEASURES/TERMS AND CONDITIONS**

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action.

The action agency's BA includes methods to minimize on-site habitat disturbances and deal with unforeseen future circumstances. However, the Service has reviewed these measures and believes that the scrub-jay surveys mentioned in the BA should be conducted within 2

years of construction or any habitat modification that includes land clearing for this project. If scrub-jays are still observed within the action area appropriate conservation measures mentioned below should be implemented to minimize the level of incidental take impacts. Therefore, the measures described in BA are incorporated by reference into the Service's BO as required reasonable and prudent measures. The Service considers the following reasonable and prudent measures are necessary and minimize impacts of incidental take of Florida scrub-jays:

1. Avoid construction during the scrub-jay nesting season from March 1 through June 30 to the maximum extent practicable.
2. Notify the Service of any unauthorized take of scrub-jays during the construction of the proposed action.

## **TERMS AND CONDITIONS**

In order to be exempt from the prohibitions of section 9 of the Act, the NRC and Corps must implement the measures as described in their BA in order to fulfill their responsibilities for complying with the terms and conditions of this BO. These include conducting threatened and endangered species surveys within 2 years of construction or any habitat modification that includes land clearing for this project. These terms and conditions are non-discretionary. To implement the above reasonable and prudent measures, the Service has outlined the following terms and conditions for incidental take. In accordance with the Interagency Cooperation Regulation (50 CFR 402), these terms and conditions must be complied with to implement the reasonable and prudent measures for incidental take:

1. If clearing of occupied scrub-jay habitat is to occur within the species' nesting season (typically March 1 through June 30), the areas must be surveyed prior to clearing to determine if there are any active scrub-jay nests located within the vegetation. If an active scrub-jay nest is located, to the maximum extent practicable, clearing activities must not take place within 150 feet of the nest site until nestlings have fledged or until it has been determined that the nest has failed.
2. Unauthorized take of scrub-jays associated with the proposed activity should be reported immediately to the Service's Jacksonville Field Office (904) 731-3336. If a dead scrub-jay is found on the project site, the specimen should be thoroughly soaked in water and frozen for later analysis.

## **CONSERVATION RECOMMENDATIONS**

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the

purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on a listed species or critical habitat, to help implement recovery plans, or to develop information.

- Cooperate with Federal, State, or local research supporting implementation of recovery actions which may include long-term ecological monitoring on Florida scrub-jay, manatee, wood stork, and eastern indigo snakes in the project area.
- We recommend the applicants review and incorporate applicable management conservation recommendations and best management practices within the LNP site as well as other conservation lands identified in the wetland mitigation plan.

### REINITIATION NOTICE

This concludes formal consultation on the action outlined in the request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

The Service appreciates the cooperation of the NRC, Corps and applicant's environmental consultant during this consultation. If you have any questions regarding this biological opinion, please contact Annie Dziergowski (904) 731-3089.

Sincerely,



*for* David L. Hankla  
Field Supervisor

cc: FWC, Tallahassee, Ted Hoehn  
Service, Vero Beach, Al Begazo  
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