



March 22, 2017

Mr. Ron York
National Land Group
3401 S. Sumter Blvd.
North Port, FL 34287

Reference: **HERON CREEK
SARASOTA COUNTY, FLORIDA
FLORIDA SCRUB JAY PRESERVE INFORMATION**

Mr. York,

Per your request, we have completed our research regarding the Florida scrub jay preserve area within the project limits. The following information is based on documents collected as well as our personal experience with the project.

During the initial Development of Regional Impact (DRI) review of the project, a protected species assessment was conducted to identify species by listed as Endangered, Threatened, or Species of Special Concern by both the Florida Fish and Wildlife Conservation (FWC) and United States Fish and Wildlife Service (FWS) which could potentially be impacted by development of the parcel. During this protected species assessment, it was determined that portions of the property contained habitats which were suitable for utilization by the Florida scrub jay (*Aphelocoma coerulescens*). Subsequently, a formal Florida scrub jay census was conducted by John Thaxton of Uplands, Inc. in September of 1992 and November of 1995. During this survey, it was determined that the species was present within the "Creek 9" portion of the Heron Creek parcel. It is worthwhile to note that the census also pointed out that much of the habitat had become overgrown and was transitioning into habitat that would not be suitable for the species. Due to the presence of the species on-site, a Florida Scrub Jay Habitat Management Plan was prepared by Uplands, Inc. in September of 1998. This management plan was created in anticipation of the need for an Incidental Take Permit (ITP) for the Florida scrub jay from the FWS. In addition to the management activities on the Heron Creek parcel, the plan required that portions of property owned by the City of North Port to the north of the project should also be managed to ensure that sufficient habitat for the family groups of Florida scrub jays remained.

During the initial phase of development, no occupied Florida scrub jay habitat was impacted. Therefore, there was no need for an ITP or associated habitat management activities. In 2001, the process of acquiring development approvals for the "Creek 9" portion of the project commenced. A Habitat Conservation Plan (HCP) was prepared and submitted for the project in February of 2002 to initiate Section 10 review of the project with FWS as required by the Endangered Species Act. During the FWS review of the HCP, staff requested that an updated formal 5-day Florida scrub jay survey be conducted within the project limits. The survey was conducted by W. Dexter Bender and Associates in the spring of 2002. During the survey, no Florida scrub jays were observed either on-site or in the immediate vicinity of the project. Additionally, the on-

site habitat had become so overgrown that it was effectively impassable and no longer suitable for utilization by the species. As such, a request was submitted to FWS to provide concurrence that an ITP relative to Florida scrub jays would not be required for the project. Field visits with FWS staff were conducted and a subsequent concurrence letter from FWS was issued which eliminated the need for an ITP for the species. The concurrence letter is attached for reference

Although the need for a permit was eliminated, the DRI development order approval still contains language requiring the implementation of the management plan. Unfortunately, as stated in the original Florida scrub jay census completed by Uplands, Inc., there is little habitat value to conducting the management activities within the Heron Creek parcel if the additional recommended management on City of North Port property is not conducted concurrently. Based on the most recent Sarasota County GIS Florida scrub jay survey data, no Florida scrub jays have been observed in the immediate vicinity of the project since the 2000 survey.

As the original DRI condition for the Florida scrub jay management plan was required as a direct result of the presence of the species on-site in 1995 and anticipated the need for an ITP from the FWS as well as additional off-site management activities within the City of North Port's property, it is reasonable to suppose that the management is unnecessary as there is no ecological or biological justification for requiring that the plan be implemented. As such, it is our professional opinion that conducting the activities outlined in the management plan would be ineffectual. Our recommendation is that Heron Creek submit a modification request for the DRI development order to eliminate the condition which required implementation of the management plan within the scrub jay preserve

Please contact me if you have any questions or require any additional information.

Sincerely,
Ian Vincent and Associates

Ian M. Vincent

Ian M. Vincent
Principal Ecologist



United States Department of the Interior

FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960



July 3, 2002

Douglas J. Rillstone
Greenberg Traurig, Attorneys at Law
101 East College Avenue
Post Office Drawer 1838
Tallahassee, Florida 32302

Dear Mr. Rillstone:

This letter is in response to your May 23, 2002, letter and subsequent supporting materials to the Fish and Wildlife Service (Service) regarding the need for an incidental take permit (ITP) pursuant to section 10 of the Endangered Species Act (ESA) for a proposed development for Heron Creek in the City of North Port, Sarasota County, Florida.

As you are aware, the Service received a Habitat Conservation Plan (HCP) on February 4, 2002, from W. Dexter Bender & Associates, Inc. on behalf of their clients in consideration of issuance of an ITP for the proposed Heron Creek project. Accordingly, we responded with a March 27, 2002, comment letter on the project. The HCP was submitted because survey information from previous years indicated that completion of the project would destroy occupied Florida scrub-jay (*Aphelocoma coerulescens*) habitat. However, based on the findings of a recent scrub-jay survey conducted after the submission of the HCP and provided to us on May 21, 2002, we understand that you and W. Dexter Bender & Associates, Inc. feel that the risk of taking scrub-jays due to construction of the Heron Creek project has been eliminated since no birds were located during the most recent survey. Accordingly, you have asked that the Service provide written notification that an ITP is not required.

In as much as the section 10 permitting process is a voluntary regulatory tool available to private landowners seeking compliance with the prohibitions of take under section 9 of the ESA, private landowners are ultimately responsible for assessing their risk of taking federally listed species and subsequently determining whether an ITP would be warranted. Embodied in this process, the Service typically provides recommendations about relative risks of taking federally listed species to help guide landowners in their decision making process. Accordingly, it is not the role of the Service to dictate whether an ITP is needed, as you have requested.

Considering our advisory role, we have reviewed historic scrub-jay distribution information and your current survey results and believe that the risk of destroying currently occupied scrub-jay habitat is low. Without more detailed information regarding potential seasonal use by scrub-jays or the value of habitat within the Heron Creek project area as dispersal habitat, we cannot evaluate the risk of taking scrub-jays due to alterations in the habitat.

Douglas J. Rillstone

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In addition, we have reviewed the "Heron Creek Florida Scrub Jay & Gopher Tortoise Enhancement & Management Plan" (Plan), dated July 28, 2000, which was provided to this office upon our request on May 30, 2002. The Service is interested in the implementation of the Plan, which has been incorporated by reference into the Development Order for Heron Creek, a Development of Regional Impact. The Plan provides for the restoration and management of scrub habitat to restore conditions more favorable to scrub-jays. In addition, the Plan provides for the excavation and relocation of captured gopher tortoises (*Gopherus polyphemus*). The Plan indicates that gopher tortoise burrows will be examined with a gopher tortoise scope to check for the occupancy of gopher tortoises and listed commensal species, including the eastern indigo snake (*Drymarchon corais couperi*), a federally listed species. According to W. Dexter Bender & Associates, Inc. and the Florida Fish and Wildlife Conservation Commission (FWC), the eastern indigo snake has not been observed at the project site. However, as a precaution we request that your clients implement the Service's "Standard Protection Measures for the Eastern Indigo Snake" (enclosed) during their construction activities. In addition, the Service remains willing to assist you and your clients should they decide to seek regulatory coverage for the eastern indigo snake, scrub-jay, or any other federally listed animal species during any phase in the development of their project or implementation of the Plan.

To better coordinate with the FWC on this project, we request that copies of annual monitoring reports or any other information regarding the status and implementation of the Plan be sent to this office. We appreciate the opportunity to assist in evaluating the Heron Creek development as it relates to scrub-jay conservation. We will hold the previously submitted HCP and supporting documentation in our files in the event new survey information suggests an elevated risk of taking scrub-jays or if additional threatened or endangered species are identified onsite and the need for an ITP is identified.

If you have any questions regarding these comments or need additional information, please contact Paula Halupa of my staff at the letterhead address or by telephone at (772) 562-3909, extension 257.

Sincerely yours,

Kalani S. Cairns

for

James J. Slack
Field Supervisor
South Florida Ecological Services Office

Enclosure

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Douglas J. Rillstone
July 3, 2002
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cc:
FWC, Punta Gorda (James Beaver)
V. Allen Hoffacker, Dexter Bender
Ronald York, Heron Creek

STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE

1. An eastern indigo snake protection/education plan shall be developed by the applicant or requestor for all construction personnel to follow. The plan shall be provided to the Service for review and approval at least 30 days prior to any clearing activities. The educational materials for the plan may consist of a combination of posters, videos, pamphlets, and lectures (*e.g.*, an observer trained to identify eastern indigo snakes could use the protection/education plan to instruct construction personnel before any clearing activities occur). Informational signs should be posted throughout the construction site and along any proposed access road to contain the following information:
 - a. a description of the eastern indigo snake, its habits, and protection under Federal Law;
 - b. instructions not to injure, harm, harass or kill this species;
 - c. directions to cease clearing activities and allow the eastern indigo snake sufficient time to move away from the site on its own before resuming clearing; and,
 - d. telephone numbers of pertinent agencies to be contacted if a dead eastern indigo snake is encountered. The dead specimen should be thoroughly soaked in water, then frozen.
2. If not currently authorized through an Incidental Take Statement in association with a Biological Opinion, only individuals who have been either authorized by a section 10(a)(1)(A) permit issued by the Service, or by the State of Florida through the Florida Fish and Wildlife Conservation Commission for such activities, are permitted to come in contact with or relocate an eastern indigo snake.
3. If necessary, eastern indigo snakes shall be held in captivity only long enough to transport them to a release site; at no time shall two snakes be kept in the same container during transportation.
4. An eastern indigo snake monitoring report must be submitted to the appropriate Florida Field Office within 60 days of the conclusion of clearing phases. The report should be submitted whether or not eastern indigo snakes are observed. The report should contain the following information:
 - a. any sightings of eastern indigo snakes;
 - b. summaries of any relocated snakes if relocation was approved for the project (*e.g.*, locations of where and when they were found and relocated);
 - c. other obligations required by the Florida Fish and Wildlife Conservation Commission, as stipulated in the permit.