



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

FEDERAL FISH AND WILDLIFE PERMIT

3-201
(1/97)

1. PERMITTEE

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907

TELEPHONE: 321/952-3413
FACSIMILE: 321/952-3412

2. AUTHORITY-STATUTES

16 USC 1539(a)(1)(B)
16 USC 703-712
REGULATIONS (Attached)

50 CFR §§ 13, 17, & 21

3. NUMBER

TE118199-0

4. RENEWABLE

☒ YES

☐ NO

5. MAY COPY

☒ YES

☐ NO

6. EFFECTIVE

4/20/2007

7. EXPIRES

4/30/2037

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

9. TYPE OF PERMIT

THREATENED SPECIES - INCIDENTAL TAKE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

LANDS WITHIN THE CITY LIMITS AND ANY LANDS ANNEXED BY THE CITY OF PALM BAY, BREVARD 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 OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE, AND 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.

XX BLOCK 11 OF THIS PERMIT CONSISTS OF ITEMS A - R (10 PAGES TOTAL).

12. REPORTING REQUIREMENTS

REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS 11.Q AND 11.R OF THIS PERMIT.

ISSUED BY

TITLE

DEPUTY REGIONAL DIRECTOR, FWS,
SOUTHEAST REGION

DATE

4/18/07

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

- E. **Covered Species and Geographic Area.** Status surveys, annual monitoring, and/or other available scientific data indicate that areas covered by the Applicant's Habitat Conservation Plan (HCP) provide feeding, breeding, and/or sheltering habitat for the following covered species:

<u>Common Name</u>	<u>Scientific Name</u>
Florida Scrub-jay	<i>Aphelocoma coerulescens</i>
Eastern Indigo snake	<i>Drymarchon corais couperi</i>
Gopher tortoise	<i>Gopherus polyphemus</i>

The Permittee has identified various geographic areas covered by the HCP. Incidental take for *Aphelocoma coerulescens* is anticipated within lands delineated by the City limits as of November 6, 2003. This area encompasses approximately 42,535 acres. For *Drymarchon corais couperi* and *Gopherus polyphemus* the geographic area covered by the HCP includes all lands within the City limits at the issuance date of this Permit and any subsequent lands annexed into the City in the future. Currently, the City's limits include approximately 46,291 acres.

- F. **Incidental Take Authorized.** The Permittee, and its designated agents, successors, and assigns, including landowners with and the holders of development orders granted by the Permittee for covered areas described in Condition 11.E, are authorized to take, in the form of harassment or harm, the covered species incidental to the activities as described in the HCP and as conditioned herein. This Permit does not authorize take of any covered species resulting from unlawful activities.

This Permit is based on the Permittee's expected compliance with the provisions and commitments established in the HCP and the Permit's stated terms and conditions identified herein. Where a conflict occurs between the HCP and this Permit, the Permit shall control.

This Permit does not satisfy the Wildlife Code of the State of Florida 68A-27.004 or any protective policies established by the Florida Fish and Wildlife Conservation Commission regarding take or relocation of *Gopherus polyphemus*.

Take of *Gopherus polyphemus* under the terms of this Permit shall only apply upon publication by the U.S. Fish and Wildlife Service that *Gopherus polyphemus* has been listed as a threatened or endangered species pursuant to section 4 of the Endangered Species Act, as amended.

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

F. (Continued).

Subject to the continuing validity of this Permit, the following types of incidental take are authorized herein:

1. Harassment, injury, and/or death of *Aphelocoma coerulescens*, *Drymarchon corais couperi*, and *Gopherus polyphemus* resulting from land clearing, including, but not limited to: hand pruning, chain saw operations, bush hogs, mowers, tree cutters, and root raking.
2. Harassment, injury, and/or death of *Aphelocoma coerulescens*, *Drymarchon corais couperi*, and *Gopherus polyphemus* resulting from soil contouring, grading, or excavation.
3. Harassment, injury, and/or death of *Aphelocoma coerulescens*, *Drymarchon corais couperi*, and *Gopherus polyphemus* resulting from construction-related activities.

G. **Minimization/Mitigation Measures.** The Permittee shall employ the following measures to ensure that take of the covered species is minimized and mitigated. The Permittee is responsible for meeting the terms and conditions of this Permit and implementing the HCP.

1. The Permittee shall prohibit clearing of vegetation on vacant land within those areas occupied by *Aphelocoma coerulescens* (hereafter "*Aphelocoma coerulescens* polygons") as further described in Figures 3, 4, and 5 of the HCP, and within 150 feet of an active *Aphelocoma coerulescens* nest, from March 1 through June 30, each year, except as follows: (1) where biological surveys indicate there is no active *Aphelocoma coerulescens* nest, (2) vegetative conditions pose a persistent fire hazard to adjacent developed properties, or (3) within 25 feet of an adjacent developed lot, where nuisance vegetation is encroaching on the adjacent property.
2. Within 90 days of the effective date of this Permit, the Permittee shall develop and provide for U.S. Fish and Wildlife Service review and approval an educational pamphlet containing, at a minimum: (1) a description of the covered species, their habitat and Federal and State laws protecting them; (2) instructions to avoid killing, injuring, harming, or harassing covered species; (3) instructions to minimize impacts to *Aphelocoma coerulescens*, *Drymarchon corais couperi*, and *Gopherus polyphemus*; (4) telephone number(s) to be contacted if dead covered species are encountered; and (5) telephone number(s) of Florida Fish and

Continued...

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

G. 2. (Continued).

Wildlife Conservation Commission offices for obtaining *Gopherus polyphemus* relocation or take permits. Upon approval of the U.S. Fish and Wildlife Service, the Permittee shall make the educational pamphlets available through public facilities and civic organizations throughout the term of this Permit. The Permittee shall also ensure the educational pamphlets are distributed to construction personnel working within occupied *Aphelocoma coerulescens* habitat throughout the term of this Permit.

3. Concurrent with the requirements of Condition 11.G.2, the Permittee shall develop and incorporate into its official webpage information designed to inform the public of the biology of covered species, including, but not limited to, life history, habitat requirements, and of the benefits the covered species will receive from implementation of the HCP. All such information shall be provided for review and approval to the U.S. Fish and Wildlife Service, and to the Florida Fish and Wildlife Conservation Commission, Fish and Wildlife Research Institute, Wildlife Research Section, 4005 South Main Street, Gainesville, Florida, 32601.
4. Within 60 days of issuance of this Permit, the Permittee shall make effective a local ordinance establishing an Environmental Fee Fund (Fund) as further described in section 5.3 and Appendix C of the HCP. Deposits to the Fund shall be required for each building permit issued by the Palm Bay Building Division for any new structure on previously unimproved land. The local ordinance shall require a minimum deposit into the Fund of \$125.00 (base fee) for properties up to one-quarter acre. For properties larger than one-quarter acre, the Permittee shall pro-rate the base fee for every quarter acre above one-quarter acre. The Fund shall only be used to implement the HCP and this Permit.
5. Within 30 days of the issuance date of this Permit, the Permittee shall remit good funds in the amount of \$656,500.00 to the entity designated in writing by the U.S. Fish and Wildlife Service. The initial entity designated is The Nature Conservancy, but the designated entity may be amended by the U.S. Fish and Wildlife Service upon written notice to the Permittee from time to time.

Continued...

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

G. 5. (Continued).

If remitting by check:

The Nature Conservancy
Attention: Eppie Bang
222 South Westmonte Drive, Suite 300
Altamonte Springs, FL 32714-4269

If remitting by wire transfer:

Bank Name: Bank of America, Richmond, VA
Bank Address: 1111 East Mail Street, Richmond, VA 23219
ABA Routing Number: 051000017
Account Name: The Nature Conservancy
Account Number: 004112981822

6. At approximately 180-day intervals, beginning on or about 180 days from the issuance date of this Permit, the Permittee shall remit any funding within the Fund to the address/account listed in Condition 11.G.5. At the time of each transfer, the Permittee may retain up to ten percent of the total funding within the Fund until such time the Permittee has recuperated a total of \$656,500, after which time, the Permittee shall not be entitled to additional withholdings, except as follows. The Permittee may retain from any funds to be transferred, an amount equal to 50 percent of the costs of annual monitoring as required in section 5.4 of the HCP provided the monitoring costs have been previously quantified and reported in annual reports as specified in Condition 11.O.

H. **Implementation Measures.** The following measures shall be employed by the Permittee to ensure that the terms of this Permit and conditions of the HCP are implemented.

1. The Permittee shall conduct annual nest surveys within *Aphelocoma coerulescens* polygons beginning the first full survey season (March 1 through June 30) following issuance of this Permit. This requirement remains in effect only when nests are located in the polygons identified in Figures 3, 4, and 5 of the HCP. The Permittee is not required to conduct annual nest surveys in any polygon in which no nests are found for two consecutive years.
2. The Permittee shall conduct presence/absence surveys within *Aphelocoma coerulescens* polygons every two years, beginning the first full survey

Continued...

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

H. 2. (Continued).

season (March 1 through June 30) following issuance of this Permit. The surveys shall assess: (1) the number of *Aphelocoma coerulescens* families residing within the polygons and (2) the number of individual *Aphelocoma coerulescens* per family. This requirement remains in effect only when nests are located in the polygons identified in Figures 3, 4, and 5 of the HCP. The Permittee is not required to conduct surveys in any polygon in which there were no nests found for two consecutive years.

3. The Permittee shall maintain records of the number of building permits issued, amounts deposited into the Fund for each building permit issued, number of lots and acreage developed, and type of development within the City limits of Palm Bay during each calendar year this Permit is in effect.
- I. **Enforcement.** At least annually, the U.S. Fish and Wildlife Service will consider available information in determining whether the Permittee has responsibly fulfilled conditions of this Permit, and progressed towards meeting the biological goals of the HCP. In making this determination, the U.S. Fish and Wildlife Service may make unannounced visits to the City of Palm Bay to evaluate effectiveness of the Permittee's implementation of this Permit and the HCP. The U.S. Fish and Wildlife Service will also review enforcement issues reported by the Permittee pursuant to Condition 11.O and any other information requested or obtained by the U.S. Fish and Wildlife Service. Upon receipt of written documentation or knowledge of a substantive enforcement issue, the U.S. Fish and Wildlife Service will notify the Permittee in a timely manner and request corrective action be taken or to provide a written summary of any action already taken to resolve the enforcement issue. In the event the U.S. Fish and Wildlife Service determines that the Permittee has not effectively implemented and complied with the conditions of this Permit or measures specified in the HCP, or has not undertaken requested corrective actions, the U.S. Fish and Wildlife Service may suspend or revoke this Permit pursuant to 50 CFR §§ 13.27 and 13.28, respectively.
- J. **Relation to Other Laws.** This Permit also constitutes a Special Purpose Permit under 50 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).
- K. **Unforeseen Circumstances.** 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,

Continued...

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

K. (Continued).

unforeseen circumstances are defined as changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been 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 be reasonably anticipated by HCP developers and the U.S. Fish and Wildlife Service, and that can be planned for. The Permittee and the U.S. Fish and Wildlife Service acknowledge that even with the above detailed provisions for mitigating and/or minimizing impacts, circumstances could arise which were not fully anticipated by this Permit and which are considered unforeseen. Such circumstances may become apparent either to the Permittee or to personnel of the U.S. Fish and Wildlife Service. For purposes of implementation of this condition, unforeseen circumstances are defined as any significant, unanticipated adverse change in the status of species; any significant, unanticipated adverse change in impacts of the activity or in other factors upon which the HCP and Permit are based; or any other significant new information relevant to the Permit and activity that was unforeseen by the Permittee and the U.S. Fish and Wildlife Service that could give rise to the need to review the Permittee's conservation program.

If, during the implementation of the HCP and adherence to this Permit, a significant unanticipated situation occurs that would have a serious effect on species covered by this Permit or the ability of the Permittee to continue the effective implementation of the HCP and/or adherence to this Permit, the Permittee shall undertake actions described in section 6.1.3 of the HCP.

L. **HCP and Permit Amendment Criteria.** The Permittee and the U.S. Fish and Wildlife Service agree that modifications and amendments to the HCP and this Permit may occur through the effective term of the Permit. The following procedures shall govern the modification and amendment process.

1. 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 its environmental effects, including its effects on operations under the HCP and on the covered species. This analysis shall be conducted jointly between 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

Continued...

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

L. 1. (Continued).

of such notice. Absent any objection from the U.S. Fish and Wildlife Service or the Permittee, and provided such proposed modification or amendment does not fall within the limits of Condition 11.L.2, 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 the U.S. Fish and Wildlife Service determines that a proposed modification or amendment would exceed the limits of Condition 11.L.2, such proposed modification or amendment must be processed in accordance with Condition 11.L.3.

2. The U.S. Fish and Wildlife Service will not propose or approve minor modifications or amendments to the HCP or this Permit if the U.S. Fish and Wildlife Service determines that such modifications or amendments would result in operations under the HCP and Permit that are significantly different from those analyzed in connection with the HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the HCP or additional take of the covered species not analyzed in connection with the HCP.
3. 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.

M. **Emergencies.** The Permittee may act to relieve immediate threats to human safety in an emergency whenever a conflict between human safety needs and the Permit or HCP is unexpectedly encountered. In such an event, the Permittee may act as it believes is most consistent with this Permit, and shall notify the U.S. Fish and Wildlife Service by close of the next business day to initiate evaluation of any desirable modifications and/or amendments to the HCP or this Permit, in accordance with Condition 11.L.

N. **Funding and Financial Commitment.** The Permittee shall commit the funds necessary to implement the terms of this Permit and conditions of the HCP in accordance with the provisions of Condition 11.G. Expenditures and anticipated annual costs of HCP implementation shall be reported pursuant to Condition 11.O.

O. **Reporting Requirements.** The Permittee shall submit annual reports on or before January 15 each year to offices listed in Conditions 11.Q and R. The annual report shall describe implementation of the terms of this Permit and HCP.

Continued...

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

O. (Continued).

The Permittee shall identify incidents of non-compliance and measures employed to resolve such non-compliance. The annual report shall also include the following certification from a responsible official who supervised or directed the preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

The annual report also shall address the following:

1. Information specified in Condition 11.H,
2. Other minimization and/or mitigation measures undertaken,
3. Identification and explanation of the previous year's unforeseen and/or changed circumstances and the status of any amendments, changes, and/or additions to this Permit or the HCP, if such have occurred,
4. Actions taken due to human safety concerns,
5. A listing of any documented incidental take of covered species and factors that led to the take, and
6. An explanation of any adjustments to assessed mitigation funds.

P. **Disposition of Covered and Other Listed Species Specimens.** Upon locating a dead, injured, or sick specimen of any covered species or any other threatened or endangered species whose death, injury, or illness is causally related to the activities authorized by this Permit, initial notification must be made immediately to the U.S. Fish and Wildlife Service Law Enforcement Office, 20501 Independence Boulevard, Groveland, Florida 34736, telephone 352/429-1037. Care should be taken in handling sick, injured, or dead specimens to ensure effective treatment or to preserve biological materials for later analysis.

Q. **U.S. Fish and Wildlife Service Contact Office.** For purposes of monitoring compliance with the terms and conditions of this Permit, including review of annual reports, and coordination on unforeseen circumstances, the contact, address, and phone number of local U.S. Fish and Wildlife Service office is:

U.S. Fish and Wildlife Service
6620 Southpoint Drive South, Suite 310
Jacksonville, Florida 32216-0912
Telephone: 904/232-2580.

Continued...

CITY OF PALM BAY
120 MALABAR ROAD
PALM BAY, FLORIDA 32907
TELEPHONE 321/952-3413

TE118199-0

Block 11:

- R. Reports, and any correspondence generated from implementation, modification, or administration of the permit, shall also be provided by the Permittee to:

U.S. Fish and Wildlife Service
Ecological Services
Attn: Incidental Take Permits
1875 Century Boulevard, Suite 200
Atlanta, Georgia 30345
Telephone: 404/679-7313

END