

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: March 7, 2002.

David P. Flemming,

Acting Regional Director.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for an Incidental Take Permit for Residential Development in Collier County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Vestcor Fund XV, Limited (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking red-cockaded woodpeckers (*Picoides borealis*) (RCWs) associated with the clearing of 18.3 acres of foraging habitat incidental to the construction of a multi-family housing development in Collier County, Florida.

The Applicants' Habitat Conservation Plan (HCP) describes the mitigation measures proposed to address the effects of the Project to the protected species. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation measures, will individually and cumulatively have a minor or negligible effect on these species covered in the HCP. Therefore, the ITP is a "low-effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE042708-0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "david_dell@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**).

Due to Court order, the Department of Interior has temporarily lost access to the internet and may not regain it by the time this notice is published. Commentors are encouraged to submit comments by mail or express courier, or to call (see **FURTHER INFORMATION**) to confirm whether our internet capability has been restored.

Finally, you may hand deliver comments to either Service office listed below (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.

DATES: Written comments on the permit application, Determination of Low Effect and HCP should be sent to the Service's Regional Office (see

ADDRESSES) and should be received on or before April 22, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and supporting documentation may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents 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), or Field Supervisor, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960-3559. Written data or comments concerning the application, HCP, or supporting documents should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE042708-0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679-7313, facsimile: 404/679-7081; or Mr. Michael Jennings, Fish and Wildlife Biologist, South Florida Ecological Services Field Office (see **ADDRESSES** above), telephone: 561/562-3909 extension 225.

SUPPLEMENTARY INFORMATION: The RCW is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available. The RCW is endemic to the pine forests of the southeastern United States and was once widely distributed across 16 states. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and

residential and commercial developments, and to hardwood and exotic species encroachment in existing pine forests due to fire suppression and hydrological alteration. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

In southwest Florida, there are an estimated 85 active RCW clusters; 51 percent are on Federal lands, 35 percent are on State lands, and 14 percent are on private lands. The known RCW populations on public lands are periodically monitored and the status of birds on these lands range from increasing to decreasing. Effective land management actions are currently ongoing in the Florida Fish and Wildlife Conservation Commission's Cecil Webb Wildlife Management Area where 27 known active RCW clusters occur. This population is about 40 miles north of the project area and the RCW population is considered stable. Big Cypress National Preserve is about 25 miles southeast of the project area and contains 43 clusters that are actively managed and this population is increasing. In relation to the project site, the closest public land (within two miles) that supports RCWs is the Picayune Strand State Forest where three active clusters exist. This population has been in decline for several decades, but much of the decline resulted from lack of habitat management prior to acquisition by the State of Florida. Recent implementation of aggressive land management actions within the State forest is likely to stabilize this population in the near future and result in long-term increases in the number of active clusters.

The Applicant's project lies within the urban boundary of Naples. Areas surrounding the project site are represented by a mosaic of urban uses and undeveloped property. The location of RCWs on private lands in the Naples area has never been well documented because of a lack of access for survey purposes. Based largely on anecdotal information, observations from roadsides, and limited information gathered from onsite observations in the 1980s and early 1990s, about 12 active clusters are thought to exist on private lands west of the Picayune Strand State Forest and dense urban areas further to the west.

Of the 12 RCW clusters on private lands, two historic localities are known from private lands near the project site. Application of a one-half mile radius

circle around these cluster sites indicates that the project site may be within the home range of one, and possibly both of these clusters. However, due to construction time constraints, and lack of access to neighboring properties, adequate RCW foraging habitat surveys could not be conducted on the project site to determine definitively whether RCWs forage in the area. Preliminary habitat assessments looked for, but did not find, active or inactive nest trees. Much of the project area consists of hydric pine flat woods that are relatively undisturbed. Lacking sufficient time to conduct foraging surveys, and the apparent suitability of the project site as foraging habitat and the proximity of RCW clusters, the Applicant opted to consider the entire project area to be RCW foraging habitat.

The Service worked with the Applicant in the design of the mitigation measures. To mitigate for loss of RCW foraging habitat, the Applicant will purchase a minimum of 18.3 acres of suitable RCW foraging habitat within (e.g., inholdings) or adjacent to the Belle Meade tract of the Picayune Strand State Forest. The Applicant will, in cooperation with the Florida Division of Forestry, develop a habitat management plan for the mitigation parcel(s), conduct any initial management actions required to restore acquired mitigation parcels, and contribute sufficient funds into a management endowment to ensure future management of the mitigation parcels. Except for avoidance of RCWs observed during construction, no project minimization measures were proposed by the Applicant because the property was acquired prior to the realization that RCWs may forage on the site. Accordingly, the smallest acreage necessary to construct the proposed multi-family units was acquired. Thus, the existing 18.3 acres will accommodate the proposed development, but does not provide sufficient area to create buffers or to otherwise minimize impacts to foraging habitat. The Applicant has indicated that downsizing the proposed development will not be economically viable. From a biological perspective, onsite preservation is not likely to result in conservation benefits to RCWs in this increasingly urban landscape. On-site preserves established for RCWs during previous section 7 consultations in this area have proven ineffective because they have become surrounded by urban development. The concept of on-site preserves for RCWs may be appropriate for large-scale developments that provide ample open space and sufficient

residual habitat, particularly when the preserves are adjacent to actively managed public lands. However, habitat preserves set aside within relatively small development projects of southwest Florida tend to result in small, fragmented parcels of habitat that become increasingly hostile to RCWs as urban development encroaches. In such cases, RCWs often abandoned these small, isolated preserves because sufficient habitat is not available.

As stated above, we have determined that the HCP is a low-effect plan that is categorically excluded from further NEPA analysis, which does not require the preparation of an EA or EIS. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the red-cockaded woodpecker and its habitat. We do not anticipate significant direct or cumulative effects on this species as a result of this project.

2. Approval of the HCP would not have adverse effects on known geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a federal, state, local, or tribal law or requirement imposed for protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service 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 RCWs on the Applicant's project site. The Service will also evaluate whether the issuance of a section 10(a)(1)(B) permit complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the Biological Opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: February 27, 2002.

Kemper M. McMaster,

Acting Regional Director.

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DEPARTMENT OF THE INTERIOR

Southern Idaho Ground Squirrel Candidate Conservation Agreement With Assurances

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of availability.

SUMMARY: Soulen Livestock, Inc. (Soulen Livestock) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a proposed Southern Idaho Ground Squirrel Candidate Conservation Agreement with Assurances (Agreement) between Soulen Livestock, the Service, the Idaho Department of Fish and Game, and the Idaho Governor's Office of Species Conservation.

Under the proposed Agreement, the parties would implement conservation measures for southern Idaho ground squirrels (*Spermophilus brunneus endemicus*) over approximately 43,145 acres of Soulen Livestock's land in Washington and Payette Counties, western Idaho. The intent of the Agreement is to conserve southern Idaho ground squirrels by protecting and enhancing ground squirrel habitat and populations, and reintroducing ground squirrels into currently unoccupied suitable habitat, in a manner that is consistent with Soulen Livestock's farming and ranching operations. The proposed term of the Agreement and the permit is 20 years. The Service has prepared an Environmental Assessment for approval of the Agreement and issuance of the permit.

We request comments from the public on the permit application, Agreement, and the Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before April 22, 2002.

ADDRESSES: Comments should be addressed to Dennis Mackey, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709, (facsimile: 208/378-5262).

FOR FURTHER INFORMATION CONTACT:

Dennis Mackey at the above address or telephone 208/378-5267.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the individual named above. You also may make an appointment to view the documents at the above address during normal business hours.

Background

Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily implement conservation activities on their property to benefit unlisted species that are proposed or candidates for listing under the Endangered Species Act, or other sensitive species. Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts, and reduce threats to unlisted species by assuring landowners that they will not be subjected to increased property use restrictions, beyond those identified in the agreement, if the species is listed in the future under the Endangered Species Act. Application requirements and issuance criteria for enhancement of survival permits through Candidate Conservation Agreements with Assurances are found in 50 CFR 17.22(d) and 17.32(d).

On October 30, 2001, the Service formally identified the southern Idaho ground squirrel as a candidate for listing under the Endangered Species Act (66 FR 54807). Southern Idaho ground squirrels are currently found within an approximately 518,000-acre area comprised of lower elevation shrub/steppe habitat in the Weiser River Basin, in southwest, Idaho. The species appears to have undergone a substantial population decline throughout its range since 1985. Southern Idaho ground squirrels are largely dependent on private lands: 85 percent of the occupied ground squirrel sites are located on private lands, mostly ranches and farms; 12 percent are under federal management by the Bureau of Land Management; and 3 percent of the sites are on lands managed by the Idaho Department of Lands. Conservation measures implemented on private lands are important for the long-term survival of the species.

Landowners may be willing to implement measures that enhance populations of sensitive species on their property, but reluctant to do so because of potential land-use restrictions that could occur should the species

eventually be listed under the Endangered Species Act. As a result of this potential regulatory concern, Soulen Livestock developed the Southern Idaho Ground Squirrel Candidate Conservation Agreement with Assurances, in cooperation with the agencies, and is applying to the Service for a permit under section 10(a) of the Endangered Species Act, authorizing incidental take of southern Idaho ground squirrels.

Under the proposed Agreement and permit, Soulen Livestock and the agencies would implement various conservation measures over the 43,145 acres of Soulen Livestock's property depending on present and future occupancy of sites by southern Idaho ground squirrels and the location of ground squirrel reintroduction/translocation sites. The proposed conservation measures can be described in three categories: (1) Measures to be applied on all 43,145 acres; (2) measures that would occur on currently occupied ground squirrel sites (30 acres); and (3) measures on 43,115 acres where ground squirrel occupancy and habitat suitability is currently unknown. On all 43,145 acres of enrolled lands, Soulen Livestock would not authorize the shooting, trapping, or poisoning of southern Idaho ground squirrels and would allow agency personnel access to these lands to conduct ground squirrel surveys. Currently, three sites, covering 30 acres have been identified in the site-specific plan as occupied by southern Idaho ground squirrels and specific conservation measures have been identified at these sites to protect ground squirrels from activities that may have adverse effects to individual ground squirrels or their habitat. The ground squirrel conservation measures on the 30 acres include: (1) Continue reintroduction efforts; (2) monitor ground squirrel populations and habitat characteristics to identify habitat enhancement/rehabilitation measures; (3) implement habitat enhancement measures such as seeding native or non-native vegetation species, fertilizing vegetation, prescribed burning, and providing escape cover; (4) minimize direct mortality from ground disturbing activities; (5) provide supplemental feeding, if necessary; (6) prohibit shooting, trapping, or poisoning of ground squirrels; and (7) control Columbian ground squirrels and badgers. Columbian ground squirrels compete with southern Idaho ground squirrels for food and burrow sites. Badgers can cause severe impacts on prey species, especially if they are at critically low numbers. The remaining