



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R4-ES-2023-0066; FXES11140400000-234-FF04EF4000]

### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation

Plan for the Audubon's Crested Caracara, Brevard County, FL; Categorical

### Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Malabar PO, LLC and Stellar Communities, LLC (applicants) for an incidental take permit (ITP) under the Endangered Species Act. The applicants request the ITP to take the federally listed Audubon's crested caracara (*Polyborus plancus audubonii*) incidental to the construction, operation, maintenance, vegetative management, and occupancy of a residential development in Brevard County, Florida. We request public comment on the application, which includes the applicants' proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

**DATES:** We must receive your written comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES: *Obtaining Documents:*** You may obtain copies of the documents online in Docket No. FWS-R4-ES-2023-0066 at <https://www.regulations.gov>.

***Submitting Comments:*** If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- Online: <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2023-0066.
- U.S. mail: Public Comments Processing; Attn: Docket No. FWS-R4-ES-2023-0066; U.S. Fish and Wildlife Service, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Kenneth McDonald, by U.S. mail (see **ADDRESSES**), via phone at 772-562-3909, or by email at [kenneth\\_mcdonald@fws.gov](mailto:kenneth_mcdonald@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service, announce receipt of an application from Malabar PO, LLC and Stellar Communities, LLC (applicants) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicants request the ITP to take the federally listed Audubon’s crested caracara (*Polyborus plancus audubonii*) incidental to the construction, operation, maintenance, vegetative management, and occupancy of 266 residential units, clubhouse, maintenance facility, roads and parking spaces, green spaces, and other amenities on a 27.9-acre site in Brevard County, Florida. We request public comment on the application, which includes the applicants’ habitat conservation plan (HCP), and on the Service’s

preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

### **Proposed Project**

The applicants request a 5-year ITP to take Audubon's crested caracara via the impaired reproduction and survival of one Audubon's crested caracara nest and their young annually. Records of Audubon's crested caracara, both adult and juvenile, are ubiquitous within a 4921-foot (1,500-meter) radius of the project site. The site contains habitat suitable for Audubon's crested caracara foraging, and it is assumed to be part of an existing nesting territory.

Malabar PO, LLC and Stellar Communities, LLC plan to mitigate for unavoidable periodic failure of one Audubon's crested caracara nest and impaired foraging in the project footprint with a contribution of \$12,555.00 (based on 27.9 ac of proposed impact at a cost of \$450 per ac) to the Fish and Wildlife Foundation of Florida's caracara conservation fund. This sum will be allocated to restore abandoned citrus groves to habitat suitable for caracara nesting and foraging. The area of abandoned citrus grove restored to suitable caracara habitat will be equal to the area of existing suitable habitat that will be impacted by the proposed action. The contribution to the fund must be completed prior to construction. Upon contribution of the \$12,555.00, a letter will be secured from the Foundation by the Service confirming that the full amount of mitigation has been contributed.

### **Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

### **Our Preliminary Determination**

The Service has made a preliminary determination that the applicants' proposed project, including the additional construction activities, operation, maintenance, vegetative management, and public use, would individually and cumulatively have a minor effect on Audubon's crested caracara and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the eastern indigo snake and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

### **Next Steps**

The Service will evaluate the application and the comments to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER2261354 to Malabar PO, LLC and Stellar Communities,

LLC.

**Authority**

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500-1508 and 43 CFR 46).

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**Robert L. Carey,**

*Manager, Division of Environmental Review,  
Florida Ecological Services Office.*

[FR Doc. 2023-13781 Filed: 6/27/2023 8:45 am; Publication Date: 6/28/2023]