

AUG 30 2011 CAS/BS

RESOLUTION

of the

ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS URGING THE UNITED STATES FISH AND WILDLIFE SERVICE TO WITHDRAW ITS APRIL 4, 2011 SAND AND BLUETAIL MOLE SKINK SURVEY PROTOCOL

Resolution No. 2011-M-32

WHEREAS, several areas of western Orange County, all within the sandhill ridges of Central Florida that stretch through portions of Putnam, Marion, Orange, and Lake Counties, provide habitat and potential habitat for the sand skink (*Neoseps reynoldsi*), a rare lizard species endemic to the area; and

WHEREAS, the United States Fish and Wildlife Service ("USFWS") has listed the sand skink as a "threatened" species under the requirements of the federal Endangered Species Act of 1973; and

WHEREAS, as a result of the sand skink's threatened status, USFWS initiated a survey protocol in July, 2002, which required owners of land in potential sand skink habitat to perform pedestrian and coverboard surveys to establish the presence or absence of skinks prior to changing the property's land use, *e.g.*, converting citrus groves to pasture or residential development; and

WHEREAS, on April 4, 2011, the USFWS issued a revised survey protocol (the "Revised Protocol") for the sand skink and bluetail mole skink (*Eumeces egregius lividus*), replacing the July 26, 2002 survey protocol for these skink species (the "Original Protocol"); and

WHEREAS, the Revised Protocol expands the historic documented range for the species to include areas that are located within the Counties specified, are underlain by the designated soil types, have elevations of 80 feet above mean sea level or higher, all regardless of the condition of the vegetative cover and regardless of current land management activities; and

WHEREAS, under the Original Protocol, if a pedestrian or coverboard survey indicated the presence of skinks by a characteristic disturbance in the soil surface, the USFWS would presume the presence of sand skinks on contiguous suitable habitat, but the physical extent of that presumption was left undefined and perhaps rebuttable by further evidence of the absence of skinks in that contiguous area; and

WHEREAS, the Revised Protocol increases the areas of suitable sand skink habitat and states that if a pedestrian or coverboard survey reveals sign of a sand skink, the USFWS will presume a skink-occupied "buffer" area extends to all contiguous suitable soils within 780 feet of the sign unless the land is below 80 feet elevation or is separated from the sign by a physical barrier (*e.g.*, a canal or a paved road); and

WHEREAS, under the Revised Protocol, it is theoretically possible that the buffer area around each skink sign could be as large as 44 acres, however, the buffer area could be smaller to the extent the land around the skink sign does not contain suitable soil types, sufficient elevation, or is bordered by a physical barrier, and a critical change in the revised protocol is that this presumption is not rebuttable; and

WHEREAS, if sand skinks occupy or, under the Revised Protocol are presumed to occupy land, then prior to the landowner disturbing the soil or changing the property's use (*e.g.*, citrus to pasture) mitigation might be necessary; and

WHEREAS, mitigation for the development of one acre of land occupied by or presumed to be occupied by sand skinks requires the purchase and preservation of two acres of occupied sand skink habitat, the prevailing current cost of which is approximately \$30,000 to \$35,000 per acre at a mitigation bank (two credits per impact acre = \$60,000 to \$70,000); and

WHEREAS, the USFWS's Revised Protocol apparently does not allow the landowner to use intensive surveys or any other method to rebut the presumption of skink presence in a 44-acre area of suitable soil and elevation surrounding any skink sign, and implementation of the Revised Protocol could cost a landowner \$70,000 for each acre of sand skink buffer area that he or she develops or disturbs; and

WHEREAS, the USFWS has not provided the regulated public with sufficient scientific data to demonstrate the new burdens of the Revised Protocol are necessary for protection of sand skinks; and

WHEREAS, when a federal agency such as the USFWS seeks to alter the legal rights of landowners in Orange County and impose substantial burdens upon them, it is appropriate to provide due process through rulemaking under the federal Administrative Procedures Act, providing the public with prior notice of the rule and opportunity to comment; and

WHEREAS, in its development of the Revised Protocol, the USFWS has failed to meaningfully involve the private citizens and public agencies of Orange County, both of which will be substantially impacted by the Revised Protocol; and

WHEREAS, the Board of County Commissioners' interest in this matter derives both from its responsibility to safeguard the welfare of Orange County citizens and from its status as a present and future owner of affected lands.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. Declaration of Opposition. Orange County hereby declares its opposition to the USFWS's imposition of the Revised Protocol because it substantially expands the financial burdens on private and public landowners without adequate scientific justification and without a process providing all affected stakeholders with an opportunity to review, comment and affect any potential protocol or regulation of the USFWS regarding sand skinks and bluetail mole skinks.

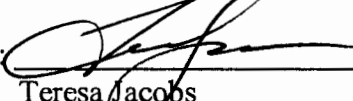
Section 2. Request for Action. For the reasons stated herein, Orange County requests that the USFWS withdraw the Revised Protocol.

Section 3. Delivery of Resolution. The Clerk of the Board of County Commissioners is hereby directed to forward a copy of this Resolution to the Regional Director, Southeast Region (Region 4), USFWS.

Section 4. Effective Date. This Resolution shall take effect upon the date of its adoption.

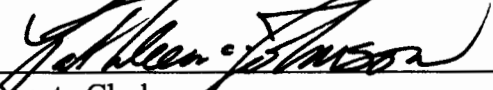
ADOPTED this _____ day of AUG 30 2011, 2011.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: 

Teresa Jacobs
County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: 

Deputy Clerk
COM 17201

