

**WORKSHOP
SCRUB-JAY HABITAT CONSERVATION PLAN**

BOARD OF COUNTY COMMISSIONERS

JANUARY 6, 2004

A workshop of the Board of County Commissioners was held at the Murdock Administration Complex, in Port Charlotte, Florida. The following members were present: Chairman Matthew D. DeBoer and Commissioners Thomas D'Aprile, Adam Cummings, and Mac V. Horton. Also in attendance were County Administrator Bruce D. Loucks, County Attorney René Francis Lee, and Deputy Clerk Diane J. Nice. **(Commissioner Devos was not present for the workshop.)** The workshop was called to order at **10:09 A.M.** in Room 119 instead of Room 229 due to the number of people in attendance.

Chairman DeBoer read a January 6, 2004 memorandum from **Commissioner Devos** in support of a County-Wide Habitat Conservation Plan since it addresses the needs of public and private development and presents the best long-term opportunity for the species to continue in Charlotte County. **Chairman DeBoer** explained Scrub Jay habitat conservation is being driven by State and Federal governments; the County needs to decide the best way to resolve this matter; Board Members are aware of the adverse impacts to realtors, developers, home builders, and citizens including lot owners who have already filed for building permits for single family residences; and, hopefully, the workshop will provide an opportunity to gather information to achieve a quick resolution.

I. Introduction, Background, and History

Elliot L. Kampert, Natural Resources Manager, advised the purpose of the workshop is to discuss the Scrub Jay Habitat Conservation Plan (the HCP), possible scenarios, and solutions; reported members of the U.S. Fish and Wildlife Service and Florida Fish and Wildlife Conservation Commission are in attendance; stated he will provide an introduction and background; and Cathy Olson, Environmental Specialist II, will give the primary presentation. Mr. Kampert stated a HCP is required by the Comprehensive Plan, Policy 1.10.4 of the Natural

Resources Element; referenced documents in the packet dating back to the early 1990's on the need to address this matter on a County-Wide basis instead of on a project-by-project basis; advised development of Riverwood, Oyster Creek, and Heron's Cove have been delayed and modified to accommodate Scrub Jays as development occurs; the HCP will provide a total approach to preserving the best habitats for Scrub Jays and allow the species to continue through processes under the Federal Endangered Species Act (the Act); and inclusion of the HCP in the 1997 Comprehensive Plan was a key element that allowed the Department of Community Affairs (DCA) to find the Comprehensive Plan in compliance with applicable Federal and State regulations. Mr. Kampert pointed out the County does not have a protected species ordinance; therefore, the Comprehensive Plan furnishes actual permitting regulations to State and Federal agencies in order to avoid a redundancy in regulations; and reiterated the Comprehensive Plan requires implementation of a HCP in coordination with State and Federal agencies.

II. Charlotte County Habitat Conservation Plan

Cathy Olson, Environmental Specialist II, gave a slide presentation showing the extinction of Scrub Jays in three southern and several northern counties in Florida; Scrub Jays are a State and Federally threatened species in Charlotte County that are regulated by the Act and the Florida Wildlife Code; Section 10 of the Act allows for implementation of HCPs and incidental takes; HCPs are established to protect listed species and stream line permitting; the most important habitats would be purchased and managed based upon Scrub Jay requirements; outlined cost sharing opportunities including State and Federal management grants, partnerships with not-for-profit and profit organizations; and the primary benefits will be stream lining of permit review procedures for public and private projects and protecting the species. Ms. Olson enumerated steps in developing the HCP i.e. the inventory and assessment of existing scrub within the County has been performed by the Center for Avian Conservation; specify target areas as preservation and expendable areas (expendable areas do not have to go through the permit review process); develop the HCP and have it approved by the Board; and submit the HCP to the State and Federal agencies for review and approval prior to implementation. Ms. Olson reported at least 135 family groups and 419 individuals exist in

Charlotte County grouped in Englewood, Mid-County (Tippiecanoe, Florida Department of Environmental Protection Buffer Preserve, the Riverwood Conservation Easement, and Murdock Area), Deep Creek and Harbour Heights, and east of the Peace River; showed maps denoting private and public ownership of impacted lands; advised there are 5 subpopulations with 35 family groups, 8 of which have conservation (Gulf Cove, East Englewood, and Amberjack Slough) and 27 do not any protection within West County; there are 3 subpopulations with 10 family groups, 4 of which are located on conservation lands (Tippiecanoe, Tippiecanoe II, and Riverwood) and 6 do not have any protection in Mid-County; the largest population is located in Deep Creek and Harbour Heights i.e. 54 family groups, of which 2 are on conservation lands and 52 have no protection; and there are 36 family groups in East County, of which 4 are located on conservation lands (east of the Peace River and west of U.S. 17) and 32 have no protection. Ms. Olson explained strategies have been identified to develop an HCP: (1) County-Wide for public and private projects, (2) projects only within the Capital Improvements Program (CIP), or (3) maintain the Status Quo; stated the County-Wide HCP would provide a total plan, stream line permitting, and is best for the species but it is the most costly option i.e. the \$18 million was calculated on September 2003 land values, the values are increasing, and it will require the greatest management commitment; acquisition funding sources include Commercial Paper Loan, General Obligation Bonds, General Fund, Open Space Habitat Reservation Fund, Florida Communities Trust (FCT), other grants, and assessments on properties in expendable areas based on a proportionate share similar to an MSBU; the costs would be lower if an HCP would be applicable only to CIP projects and it would stream line public projects (no private construction projects) and drawbacks include difficulties in acquisition and assembly of contiguous lots for mitigation and it would not be as beneficial to the species; the same funding sources would be utilized for option 2; and the Status Quo strategy would require private and public entities to individually proceed through the process, it would be the least costly option for the County, mitigation would become scattered and be difficult to manage, and it would be the worst case for the species. Ms. Olson advised permitting through the U.S. Fish and Wildlife Service takes approximately 6 to 8 months after receipt of the individual HCP and paperwork by the agency. Ms. Olson requested direction from the Board and stated the HCP

needs to be finalized, brought back to the Board for approval, and submitted to State and Federal agencies for review and approval prior to implementation. Ms. Olson pointed out costs may be levied, under a County-Wide HCP, and spread over all the people impacted by the habitat i.e. in the Murdock Village area, the land acquisition costs are estimated at \$2,966,000 divided by the number of vacant lots, the levy would be \$456.17 per quarter acre lot plus approximately \$91.00 (20% management cost) for \$547.40 per quarter acre lot; costs would decrease if the land tracts are included but costs would increase in correlation to rising property valuations; a mechanism similar to an MSBU could be established for assessment of the \$546.17; and pointed out costs would be significantly higher in West and East County sectors.

III. Questions and Answers - Board and Staff

Chairman DeBoer expressed concern about the timing for adoption and implementation of the HCP in relation to releasing the hold on building permits. Ms. Olson indicated staff is working with U.S. Fish and Wildlife Service for an interim development control agreement and the Florida Fish and Wildlife Conservation Commission is willing to enter into a memorandum of understanding to streamline the process. **Chairman DeBoer** requested the time line for release of the permits. Ms. Olson explained it would be dependent upon finalization of a memorandum of understanding and, if an agreement were not entered into, then it would be necessary to wait until final approval of the HCP. **Chairman DeBoer** requested an explanation of the incident that required single family residential permits be subjected to the U.S. Fish and Wildlife process. Ms. Olson advised staff has been targeting parcels that are best for preservation, during meetings U.S. Fish and Wildlife Service and Florida Fish and Wildlife Conservation Commission staffs have requested single family permits be submitted for review under the Endangered Species Act, and pointed out the only exemptions have been on lot impacts under 1/10 of an acre. **Chairman DeBoer** questioned the timing when the request was initiated. Ms. Olson estimated several months ago. **Chairman DeBoer** requested the cost starting with surveys. Ms. Olson reported both agencies are accepting the County survey; the U.S. Fish and Wildlife Service has developed a short habitat conservation plan form which is sent out upon request; individuals need to complete the

form, provide the mitigation, and return it to the agencies for review and approval; and the typical mitigation is 2:1 (1/2 acre suitable lot for a 1/4 acre lot). **Chairman DeBoer** questioned the permit fee. Ms. Olson expressed understanding that there is no cost for the agencies' review or permit. **Chairman DeBoer** concluded an individual who paid \$20,000 for a lot would need to pay \$40,000 plus the cost of the original lot. Ms. Olson agreed unless the individual could acquire a less costly mitigation parcel. **Chairman DeBoer** requested an explanation on when a cost becomes burdensome enough to be considered a taking of property under the Burt Harris Act. René Francis Lee, County Attorney, advised properties would need to be reviewed on an individual basis; explained regulatory and physical takings; this may be interpreted as a regulatory taking as all beneficial use of the property would be taken from the owner; pointed out the County would have some liability, if the HCP is adopted and it prohibits the owners from doing that; and opined the County is moving in the right direction by identifying mitigation properties. **Chairman DeBoer** stated a time will come when there will be no land available for mitigation; pointed out Scrub Jay habitats have originated on lands after owners acquired the property and it would be difficult to take away property owners' rights to build in such an instance; stated the County continues to purchase property for Scrub Jay habitats in conjunction with CIP projects and for mitigation in unaffected areas. **Chairman DeBoer** questioned if the agencies are prepared to fund property acquisitions. Ms. Olson stated each county is responsible for funding. **Commissioner Cummings** questioned if the estimated \$550 would be a one time or annual assessment. Ms. Olson confirmed one time. **Commissioner Cummings** stated, if he were an impacted property owner, he would not want to be responsible for a management plan; the HCP should be done programmatically on a County-Wide basis; and requested an estimate of the time to finalize the HCP. Ms. Olson projected approximately two months to bring back the HCP to the Board, make revisions based upon Board direction, and secure approval within a year from U.S. Fish and Wildlife Service. **Commissioner Cummings** requested verification on discussions regarding an interim development agreement. Ms. Olson stated the discussions are in the beginning stages with U.S. Fish and Wildlife Service, pointed out such an agreement is not specifically authorized by the Endangered Species Act and it may take longer to enter into a formal agreement than to finalize and get approval of an HCP

since it is a designated process. **Commissioner Cummings** requested an explanation on the percentage of expendable and preservation lands. Ms. Olson stated it would depend on the Scrub Jay population in specific areas and pointed out a lot more scrub would be available for development than preservation in the Mid-County Murdock area whereas Scrub Jays are more populous in the Deep Creek and Harbour Heights areas and more land would need to be acquired, it is closely linked with the Scrub Jay population on the other side of Peace River, the U.S. Fish and Wildlife Service and Florida Fish and Wildlife Conservation Commission have agreed to allow to send mitigation from Deep Creek to East County. **Commissioner Cummings** requested the overall acreage. Ms. Olson offered to provide the data. **Commissioner Cummings** stated Deep Creek is located in the Infill Area and has infrastructure; there are substantial areas of Harbour Heights that may be preserved; also there would be some mixed opportunities along Shell and Prairie Creeks with South and Mid-Counties; he does not want to be in the same position of the County being dictated to by the State to purchase a certain parcel as was done with Winchester Boulevard so he agrees with establishing an HCP for CIP projects; he is concerned with spending local ad valorem funds for mitigation on private projects; suggested focusing on areas that are certain to be preserved and the most likely areas where people will be submitting building permits to offer land swaps while pursuing grant funds to reduce costs to private property owners, if the HCP is done programmatically, from Southwest Florida Water Management District (SWFWMD) Save Our Rivers, FCT, and a possible environmental lands referendum for funding; and earning credibility back from State and Federal agencies. **Commissioner Cummings** commented in support for moving forward with the HCP and using it in conjunction with community plans and density reduction. **Commissioner D'Aprile** requested the portion of the \$18 million that may be recovered from State and Federal sources. Ms. Olson stated it would depend on amounts allocated from grants and costs to the County would be reduced if an MSBU were established. **Commissioner D'Aprile** requested when the process was activated in light of the Hampton Apartments development where Scrub Jays are located but individual building permits have been put on hold. Ms. Olson recalled the Hampton Apartments project had an environmental survey indicating no Scrub Jays were found and both agencies approved it. Ms. Olson added no Scrub Jays were found on the Hampton Apartments

property during the County-Wide survey. **Commissioner D'Aprile** questioned if he owned a lot designated within a Scrub Jay Habitat but it did not have any Scrub Jays on it, could he build on it. Ms. Olson responded affirmatively if the lot is not within one of the documented areas. **Commissioner D'Aprile** commented in support of species preservation but not to the detriment of land owners where no endangered species are located; suggested leaving some of the trees on lots to allow Scrub Jays to live in residential areas; and requested the cost for the HCP including funding from Federal and State sources. Ms. Olson stated, with assistance from the GIS/MSBU Manager and his staff, the requested data will be brought back. **Commissioner Horton** expressed understanding that the best way to protect the Scrub Jays would be to implement a County-Wide HCP; stated the political and technical aspects need to be addressed; \$8 million will be needed to acquire mitigation land for current CIP projects and an additional \$10 million for private projects mitigation lands; and requested procedures if a person files for a building permit on a lot located within a Scrub Jay Habitat area. Ms. Olson explained the individual is given a packet of information on how to apply for the HCP through the agencies and the building permit is put on hold pending State and Federal approval. **Commissioner Horton** expressed the belief that the approximate \$550 sum is conservative, requested a realistic cost to mitigate a 1/4-acre lot, acknowledged the potential of entering into an interim agreement with the State, and questioned the possibility of entering into an agreement with the Federal agency. Ms. Olson reiterated the Endangered Species Act does not specifically authorize an interim plan, and it may take longer to finalize an interim agreement at the Federal level than to secure approval of the HCP. **Commissioner Horton** opined if the County acquires land for mitigation purposes under a County-Wide HCP and it is used for private projects, the affected property owners should make reimbursement. **Commissioner Horton** commented in support of moving forward with the \$18 million County-Wide HCP and questioned the possibility of placing a millage increase on the next referendum to establish a funding source. Attorney Lee stated the Board has the discretion to levy an ad valorem increase for this issue or to place a question on the referendum for voter approval; a referendum would be necessary to issue general obligation bonds whereas revenue bonds may be issued by a vote of the Board; and pointed out the repayment source would be from the property

owners that would use the mitigation area. **Commissioner Horton** reiterated support for moving ahead with the County-Wide HCP expeditiously and identifying a funding source. **Commissioner Horton** suggested Board Members assist staff in resolving political aspects at State and Federal levels. **Chairman DeBoer** questioned if a representative of the U.S. Fish and Wildlife Service is present who may speak with authority regarding an interim agreement. Spencer Simon, Supervisor of the U.S. Fish and Wildlife Service, Vero Beach, Florida Office, advised a copy of the proposed interim agreement was received from Mr. Kampert and expressed understanding in order to take Scrub Jays, a permit would have to be issued according to the Endangered Species Act and the HCP process, therefore, an interim agreement would not be possible. **Chairman DeBoer** requested an explanation of what would occur if a taking were done without a permit. Mr. Simon stated an unauthorized taking of Scrub Jays is a Federal offense and the U.S. Fish and Wildlife Service would coordinate with State agencies and law enforcement to investigate and resolve the dispute. An unidentified person from the audience requested the definition of a taking of Scrub Jays. **Chairman DeBoer** explained if the County issued a building permit on a lot designated as a Scrub Jay Habitat, the agency would consider that a taking of an endangered species. **Commissioner Cummings** agreed with **Commissioner Horton** on assisting staff with political aspects at State and Federal levels for the entry of an interim agreement. **Commissioner Cummings** questioned if the \$18 million is a realistic amount. Ms. Olson stated the \$18 million was based on September 2003 land values and calculations were performed last weekend that reflect the amount has increased to \$24 million. **Commissioner Cummings** concluded staff has decided on the land that should be acquired and how much will be preserved and expendable and questioned if the \$8 million is included the budget for mitigation of CIP projects. Mr. Kampert stated the \$8 million has not been included in the CIP and needs to be added to project costs. **Commissioner Cummings** expressed understanding that costs associated with land acquisitions for mitigation need to be funded with local monies even if FCT and SWFWMD grant funding is utilized. Mr. Kampert responded negatively; recalled FTC, U.S. Fish and Wildlife Service, and Florida Game and Fresh Water Fish funding was obtained and utilized for mitigation of Amberjack Slough; and pointed out applications for the grants must specify that monies would be used for mitigation purposes. **Commissioner Cummings**

stated the primary grant funds would come from FCT and Save Our Rivers. Mr. Kampert agreed at an approximately 50/50 split. **Commissioner Cummings** concluded approximately \$12 million would be paid for with grant funds; commented in support of moving forward with the County-Wide HCP and pursuing an interim development plan with State and Federal agencies; and levy a special assessment for mitigation costs relative to private projects. **Chairman DeBoer** requested that Representative Jerry Paul be allowed to speak. **(Board consensus.)** Jerry Paul, District 71 Representative, stated remarks made during the meeting reflect a clear diversity of opinion, no one has opposed protecting endangered species and natural resources as identified in the 1973 Endangered Species Act, there will be no simple solutions, staff is trying to do the right thing and protect the County's interest and the species, and requested the Board to apply a very high level of scrutiny to conclusions about what the Board is required to do and the scope of the Board's authority in relation to the Endangered Species Act. Representative Paul stated he has learned during his tenure as Chairman of the Environmental Regulation Committee and the Appropriations Committee for Environmental Policy Statewide that there has to be a balance between species, including man; pointed out in the early 1990's that 65% of the Scrub Jays along the West Coast of Florida were restricted to two counties; Scrub Jay habitats have been reduced in the other counties through reduction in habitats and forest re-management and the Scrub Jays have migrated to Charlotte County causing a 33% population increase; expressed uncertainty regarding Mr. Simon's interpretation that the County's issuance of a permit would be considered a taking; he has not found a law that prohibits a county from issuing a permit for a three bedroom, two bath house until the Federal government approves it; pointed out other counties would be in violation of the Endangered Species Act; questioned why a new level of scrutiny concerning habitats would be assessed against remaining counties; suggested looking at the big picture and not assuming automatically that building permits cannot be issued in identified areas until Federal approval; cautioned the Board in exercising provisions of the Burt Harris Act and using the Federal government made the County do it as a defense; and offered to work with the County on the interim plan and for the protection of Scrub Jays and man. **Commissioner Horton** questioned if the property owner or the County would be responsible for ramifications stemming from issuance of a

building permit. Representative Paul stated the Federal government has the ability to test regulatory aspects of an HCP, a private individual would use the County's issuance of a building permit as a defense, and suggested using common sense in establishing an HCP. **Commissioner Horton** agreed, pointed out no matter what the Board does it will cost time and money, commented in support of negotiating an interim agreement, and expressed confidence in staff to secure grant funding. **Chairman DeBoer** reported approximately 40% of the County's land is in government ownership; suggested the County continue acquisitions along public projects and from willing sellers, move forward with mitigation for County projects and, based on funding, private project mitigation; and consider using the release of the building permits as leverage for an interim agreement. **Commissioner D'Aprile** questioned if Scrub Jays would die as a result of habitat removal or if Scrub Jays are removed from their habitats. Ms. Olson explained Scrub Jays are not migratory birds, they are habitat and area dependent; it has been reported that once 60% build out is reached, it is very likely that Scrub Jays will die out for one reason or another; and translocation is an experimental methodology that has not been proven or accepted during the permitting process.

IV. Board Direction

Chairman DeBoer acknowledged Board Members support the long-range HCP; suggested moving forward with the HCP for County projects, as the first priority, and private projects, as the second priority, contingent upon securing acceptable funding sources; and having the County Attorney research and report to the Board at the January 13, 2004 meeting on the issuance of permits. **COMMISSIONER HORTON MOVED FOR APPROVAL OF THE MOTION AS STATED BY CHAIRMAN DeBOER, SECONDED BY COMMISSIONER CUMMINGS.** **Commissioner Cummings** suggested an addition to the motion to develop an interim plan with the State and pursue approval from the Federal government. **Chairman DeBoer** restated the end of the motion "on the issuance of permits and the interim plan." **COMMISSIONERS HORTON AND CUMMINGS ACCEPTED THE AMENDMENT TO THE MOTION.** **Chairman DeBoer** stated he does not anticipate all of the answers from the County Attorney at next Tuesday's meeting. Attorney Lee stated she would save her comments for the report next Tuesday. **CALL ON THE MOTION: DECLARED UNANIMOUS (4:0).**

V. Commissioner Comments

Commissioner Cummings expressed interest in the County Attorney's interpretation of the law and commented in support of pursuing an interim plan acceptable to State and Federal agencies. **Chairman DeBoer** stated an item will be brought back on the potential closure of the Lee County Trauma Center; CEOs from Charlotte County hospitals, the Trauma Center, and Keith Arnold will be meeting individually with Board Members regarding a change to a sixth cent sales tax in Lee County to cover the cost of making the trauma services available and support for Charlotte County making incremental payments for services that would be available at the regional trauma center. **Commissioner Cummings** advised his position is the same i.e. the local community needs to do their part and then Charlotte County may match it. **Chairman DeBoer** indicated he will request, at next Tuesday's meeting, that the County Administrator be given a salary increase pursuant to the contract, by a vote of confidence without objection, since specific goals and objectives were not set by which an evaluation could be done. **Chairman DeBoer** stated a retreat or a workshop would be scheduled to establish the goals and objectives. **(Board consensus.)** **Chairman DeBoer** reported the receipt of an e-mail from an individual on the Veterans Service Council that Charlotte County may be considered as a site for a Veterans Cemetery and requested direction to pursue it. **(Board consensus.)** **Commissioner Cummings** stated a meeting of the Water Authority is scheduled for Wednesday and requested verification of the Board's position on (1) the DeSoto County pipeline agreement to either deny the agreement or get Charlotte County's money back prior to incurring any potential debt and (2) North Port is again requesting voting membership on the Water Authority that he previously opposed because that would open the door to allow other cities' memberships and the only way he would consider allowing North Port to join as a voting member would be under a restructuring of the Water Authority to require North Port to be a customer and contribute as an actual participant. **Chairman DeBoer** concurred because that also describes Sarasota County and everything should become a regional source not just the Peace River.

MEETING ADJOURNED: 11:50 A.M.

Signature on file in Commission Minutes
Matthew D. DeBoer
Chairman

ATTEST:

BARBARA T. SCOTT, CLERK
OF THE CIRCUIT COURT AND
EX-OFFICIO TO THE BOARD
OF COUNTY COMMISSIONERS

By: Signature on file in Commission Minutes
Deputy Clerk

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