

BOARD OF COUNTY COMMISSIONERS - ROUNDTABLE DISCUSSION

AUGUST 7, 2007

A meeting of the Board of County Commissioner was held at the Murdock Administration Complex in Room 119, Port Charlotte, Florida. The following members were present: Chairman Loftus, Commissioner Duffy, Commissioner Cummings, Commissioner D'Aprile, and Commissioner Moore. Also in attendance were County Administrator Loucks, County Attorney Knowlton, and Deputy Clerk Manley. The following members were absent: None.

The meeting was called to order at 9:00 AM.

I. County-wide Scrub-jay Habitat Conservation Plan [HCP]
Presentation

Scrub-jays and Scrub Habitat in Charlotte County

Habitat Conservation Plan [HCP]

2003 HCP Plan

Memo of Understanding with U.S. Fish & Wildlife Service [FWS]

Issues and Economics

Director of Environmental Extension Services James Tomson introduced Andy Stevens, Natural Resources Manager, and Spencer Simon of the Fish and Wildlife Service (FWS).

Mr. Simon introduced George Dennis, FWS Conservation Banking Coordinator, and Trish Adams, FWS Habitat Planning Coordinator.

Mr. Baker advised that his slide presentation would show what has previously been done with the County-wide Habitat Conservation Plan (HCP), where the County currently is, and some future solutions.

Mr. Baker reviewed the Scrub-jay Habitat and Major Population slides of Harbor Heights, Deep Creek and Washington Loop; indicated that Harbor Heights and Deep Creek have almost 2,000 acres of occupied, unoccupied, and private property Scrub-

habitat; that the Deep Creek site has one of the largest populations of Scrub-jays in the County, with about 54 family groups; and that the Washington Loop area is the meta population east of the Peace River, with about 2,000 acres. Mr. Baker advised that the initial part of the presentation is the County-wide HCP survey completed in 2002 conducted by County-retained Center for Avian Conservation.

Mr. Baker reviewed the slides describing a HCP and the proposed 2003-2004 County-wide HCP Plan Summary, reflecting donor areas, which would have involved eminent domain at that time, State and County areas, and additional proposed lands for acquisition.

Mr. Baker reported that the 2003/2004 County-wide HCP cost estimate was \$30 million, plus, and that the cost estimate using the same concept today requiring the use of eminent domain, is \$100 million, plus. Mr. Baker advised that an economic cost analysis would be required to get an actual cost of what it would cost to have an HCP permitted versus not being permitted.

Mr. Baker advised that Florida Scrub-jays are a State and Federally Threatened Species; that a Federal program and regulations are in place; that the Endangered Species Act is species specific, not habitat driven; that Section 10 of the Endangered Species Act authorizes the development of HCP's; that the Florida Wildlife Code prohibits the "take" of birds and eggs; defined the violation "take"; and commented on fines and penalties.

Mr. Baker commented on occupied and unoccupied acres in the four scrub-type habitat areas in Charlotte County; indicated that data provided from FWS reflects that currently there are 10,300 vacant lots within the review area polygon, and 130,000 ± vacant lots not occupied; and that in Charlotte County 3,220 acres are under State and County management, which is a misconception because Cecil Webb and Babcock Properties do not contain sufficient scrub habitat to mitigate for the County-wide HCP, and that it would not be feasible to modify conditions to establish habitat for Scrub-jays.

Mr. Baker stated that there is no moratorium; that building can occur as it stands now; that property owners need a FWS review; and must mitigate if there are Scrub-jay impacts. Mr.

Baker reported that there is not an approved County-wide Scrub-jay HCP in the State of Florida; that the City of Palm Bay in Brevard County has an approved HCP, and initiated a not-for-profit land trust; and indicated that long-term survivability of the Scrub-jay is doubtful without a County-wide HCP.

Mr. Baker commented on the Memo of Understanding (MOU) that was entered into with the FWS in March 2007 which established the buffer system; and the FWS Polygon System; and indicated that based upon the MOU the County would look at the buffer area annually to determine if there are shifts in the areas; and indicated that the FWS Polygon system reduced 797 acres from the review process from the previous zone mapping system.

Mr. Baker commented on choices that property owners in the polygon have; indicated that negative surveys are valid for 1 year from date of the survey, and that property owners can request an extension; that Scrub-jays discovered on the properties post survey are reported to the property owner and FWS; that the County would not place a stop work order on the property; but explained that a property owner proceeds at their own risk if notified by the County, State Officials, or FWS.

Mr. Baker discussed the economic analysis components and the benefits of having a County-wide HCP; and indicated that there is a need to identify funding methods, develop options, and find solutions.

Mr. Baker reviewed items that are needed; indicated that he discussed grant funding availabilities with the FWS and the Florida Fish and Wildlife Conservation Commission to pursue the biological assessment and the economic analysis; and pointed out that the grant deadline is August 24, 2007.

Mr. Baker stated that time is needed to implement a plan; commented on choices and what permitting concessions FWS can offer to the current 3 to 5 year process; and indicated that the current Capital Improvement Process (CIP) HCP was submitted to FWS in December 2004, and has not yet been approved. Mr. Baker commented on how the FWS State-wide Umbrella HCP would impact Charlotte County HCP plans, and what opportunity a private Scrub-jay mitigation bank, such as the Ryals Ranch Scrub-jay mitigation bank, offers the County. Mr. Baker reviewed

additional comments that resulted from a meeting with Don Ross of Earth Balance; indicated that the economic analysis would be needed to determine if the County-wide HCP is the least-cost option; and stated that the County could develop a process without up-front land acquisition, which would be the land trust component.

Mr. Ross reviewed the flow chart of possible funding sources put together by Don Ross, and stated that the chart outlines a non-profit as a main source of managing and acquiring the Scrub-jay reserves through multiple funding sources.

Mr. Baker reported that without a County-wide HCP Scrub-jays would continue their decline; that property owners continue to face uncertainty; and that continued decline in Scrub-jay populations may be followed by increased regulatory actions by FWS along with increased mitigation requirements. Mr. Baker stated that currently in parts of the State of Florida 2:1 mitigation was discussed, but that in other parts it is 4:1 mitigation, which is 4 times the actual lot value.

Chairman Loftus requested expansion on the land trusts.

Mr. Ross explained that the concept of a land trust has been used in many different realms, such as affordable housing; that an organization is set up, which requires some initial funding, and that once the funding is going it is self-perpetuating through a mechanism that the Board sets up. Mr. Ross stated that the advantage of creating a transparent non-profit organization that is outside the government itself is that you do not have the threat or cost of eminent domain because you do not use it.

Mr. Ross explained that when we develop some certainty around the market as to what a Scrub-jay lot really means and we have a targeted area that we would not encourage development in, the market would then tell us what the lots are worth; that the lots can then be acquired over time as circumstances change and the market is open to acquire the lots; and that the mechanism is needed to fund the process.

Mr. Ross stated that there are many beneficiaries in solving this problem; that the primary beneficiary is the lot owner who can build; that the current method of getting individual HCP's for

lots is time consuming, costly, and still a continued risk; that there is no absolute resolution to the issue; and indicated that the primary source of funds is from Scrub-jay lot mitigation fees.

Mr. Ross commented on other beneficiaries, such as utilities in Deep Creek where utility lines are already in, and benefits of infill; stated that the CIP Habitat Conservation Plan is pending, but is not for all times because 4 or 5 years down the line the County would need more road and utility work as the County infills; that there are sources of revenue, and that an economic analysis would help determine how much and how it is set up; that we can get there provided we assure the FWS that there is a process in place, and then have the funding sources in place to support that; and that the land doesn't have to be purchased tomorrow in order to get the HCP approved.

Mr. Simon stated that not all money would be needed up front; that there is flexibility built into a HCP plan in process; and that an agreement is first needed to develop the plan.

Commissioner Moore expressed concern with the County advising property owners that their lot is impaired, which he considers a "taking", and the land owner expecting payment for the lot.

Mr. Loucks stated that it is difficult to manage expectations; that whatever is done would not give immediate relief; and that from the dialogue today we need to understand what the manageability is and what the expectations and timeframes are.

Commissioner D'Aprile stated that the problem existed overnight, but won't go away overnight; agreed that this program is the right way to go; inquired where we are considering relocating the birds, what kind of maintenance is involved, what are the costs involved, where would the money come from, are the grants available, and is it a viable situation to solve the problem at hand; and indicated that action needs to be taken as quickly as possible.

Mr. Tomson advised that it is hard to answer **Commissioner D'Aprile's** questions without a biological assessment and economic analysis. **Commissioner D'Aprile** opined that this needs

to be done right away and expressed concern that so many land owners are affected with the use of their properties.

Commissioner Duffy inquired what initial steps need to be taken. Mr. Simon said that a biological assessment is needed first, which would answer many questions in terms of cost, land, and biological feasibility in developing a plan; stated that some counties have developed stake holder groups to do much of the leg work to help the Board make informed decisions; that a lot can be learned from what is going on in Sarasota County because its HCP plan is moving along; that we may not have to mitigate at the ratio last expected, but that FWS cannot tell all the answers right off; and recommended hiring a good consultant firm with HCP experience.

Commissioner Cummings reported that the bulk of the mapping has been done and that what appears to remain for doing a HCP is firming up the finer details of donor areas. Mr. Simon explained that what was learned from the early study is that it mapped habitat; that over time it was discovered that there was a lot of habitat, but birds were found outside the area; and that it is important to revisit what has been learned as new information becomes available.

Commissioner Cummings stated that no matter how it is done there must be some kind of map in order to have a plan; that Tippecanoe scrub was an example of losing families, but that the population increased with better management practices; that there is a lot of negotiation needed before a HCP is put in place; that the real issue for Charlotte County is the money; and recalled that previous negotiations were toward some ratio less than the 2:1 currently being experienced without a HCP.

Mr. Simon advised that he cannot commit or answer questions today because there are many areas of discussion needed; indicated that previous negotiations were based upon families; and opined that FWS might be able to look at the approach differently now.

Commissioner Cummings stated that all agree that from a standpoint of the ability to develop and the need to protect environmental resources that having a HCP is the smart thing to do, but indicated that the problem is getting over the funding hump; that the infill benefits could be looked at, but he is not

certain if they can be counted as a funding source; that Conservation Charlotte, the grants, and some of the County CIP mitigation funds could be looked at as a bank because there must be some cash up front.

Chairman Loftus stated that no decision can be made, but that something should be brought forward on the Scrub-jay land trust; opined that what has been laid out is good; recommended moving forward with the biological assessment; and inquired how long the biological assessment would take. Mr. Stevens stated that that the biological assessment is needed to initiate the economic analysis; that there is some grant funding available for the Florida Fish and Wildlife Commission to assist paying for the biological assessment and economic analysis; that the application for the grant funding is due August 24, 2007; and that it could take several months to do a biological assessment.

Chairman Loftus opined that the issue should be brought forward at the next meeting because of the application filing deadline; that we need to get in touch with the stake holders to get them involved in reviewing Sarasota County's plans; and that we should move forward on the plan as quickly as possible.

Commissioner Moore inquired where the FWS stands on the Ryals Ranch. Mr. Simon stated that the solicitor has reviewed the County's Capital Improvements Project HCP, made comments, and that the comments are being worked on; that the solicitor is working on a Conservation Bank Agreement, and that once an Agreement is approved through the regional process, it is hoped that the Field Supervisor will have signature authority. Mr. Simon agreed that the Ryals project represents a large area that can be managed and is critically important for the conservation of Scrub-jays in Charlotte County; stated that the regional office and solicitors are aware of the importance of getting the projects done and getting the Ryals property into a conservation bank, hopes it will be done within 6 months, and opined that there are other opportunities out there. **Commissioner Moore** expressed concern with the timeframe because of a hurricane evacuation route being delayed and that the Scrub-jay population is dying.

Commissioner Duffy commented on the amount of acreage needed for the Scrub-jay families. Mr. Simon explained that some of the

species are urban Scrub-jays and have smaller territories. **Commissioner Duffy** asked if current inventory counts toward the total acreage. Mr. Baker explained that some of the acreage could count; that because things have changed since the 2002 survey a biological assessment would provide a complete inventory; and that an economic analysis would help facilitate estimated costs.

Commissioner Duffy inquired what the cost was for a biological assessment and economic analysis. Mr. Baker reported that some other counties have paid \$350,000 - \$400,000 for both. **Commissioner Duffy** inquired what amount the County could get in grant funding. Mr. Simon advised that there is a 25% match for the grant; that an agreement is needed from the County to begin applying for the grants; and that the assessment and analysis would answer many questions being asked today.

Commissioner Duffy commented on sources of funding; indicated that a citizen suggested that the landowners who own the 10,300 Scrub-jay lots that are affected pay \$3,000, which would generate \$30 million and could be used to purchase land; inquired if there are land acquisition grants available; and stated that she likes the non-profit organization idea. Mr. Simon explained that the land acquisition grants cannot be used expressly for mitigation.

Mr. Loucks indicated that after the biological assessment and economic analysis are done and mitigation fees, etc. are determined, a HCP must be compiled, submitted, and reviewed, and asked what the timeframe was for the entire process.

Mr. Simon pointed out examples of other HCP's that would help Charlotte County proceed; explained the permitting procedure; and stated that if all is going perfectly it would take about a year for the HCP services process.

Mr. Loucks asked if it would be money ill spent to create a land trust and start acquiring land prior to the approval of the HCP. Mr. Simon indicated that his view on land acquisition is that land is an asset; that the County could acquire land, and that if the land does not work for the HCP the County still has that asset, which could be sold; and opined that since land prices don't normally go down in value, it would be wise to acquire land sooner, rather than later. **Chairman Loftus** asked

if the FWS would be willing to work with the County on land acquisitions before it has the HCP. Mr. Simon replied affirmatively, and pointed out that the biological assessment would provide a lot of information on how much land is needed and where.

Commissioner D'Aprile inquired if FWS was looking for direction from the Board today. Mr. Simon stated that he is hopeful that there could be some agreement to develop an exploratory or stake holders group, or to direct staff to apply for the HCP grants.

Commissioner D'Aprile inquired about the bird population dying out in areas of Charlotte County. Mr. Simon stated that he does not know the number for Charlotte County; that surveys of the same area over time would be required to determine that; that a study out of Sarasota suggests that since the original survey was done in the 1990's, Sarasota has lost approximately 6% of the birds each year; and that signs tell us that the indirect affects of development, habitat fragmentation, and succession would cause the birds to die out over time. **Commissioner D'Aprile** agreed that the study needs to be done as soon as possible. **Chairman Loftus** advised that we are looking for consensus today for staff to bring this back with direction to the Board at the August 14, 2007 meeting.

Mr. Loucks advised that the grants would be applied for immediately because the grant process does not require Board approval; and indicated that Board approval would be required when the grant is accepted and matching funds located. Mr. Loucks explained that at the Board meeting August 14, 2007, staff would request Board direction for creation of the stake holders group; and stated that guidance from FWS would be requested as to the composition of the group.

Mr. Loucks commented on the MOU, and inquired what the expectation is of FWS in County reviews of surveys or properties. Mr. Simon explained that if a negative survey is received and the County agrees that everything in the survey is done according to protocol, the County has the ability to issue a building permit immediately; and that if a survey is deemed suspect, then the County forwards the survey to FWS.

Mr. Loucks asked if there is expectation by FWS for suspect surveys that staff visit the site. Mr. Simon stated that FWS does not necessarily have an opinion for or against it and cannot decree across the board how the County would address an anomaly. **Commissioner Cummings** inquired what happens if a survey is stamped, with no apparent reason to be suspect, and FWS comes along later with a different opinion. Mr. Simon commented on meeting on an annual basis to review surveys and having a workshop with Environmental Consultants in SW Florida to explain expectations in an effort to reduce false-negative surveys.

Commissioner Cummings inquired what the penalty or fine would be if FWS does not agree with the survey analysis, and clarified that the County has no liability if it approves the survey and FWS disagrees with it later. Mr. Simon stated that basically that was the agreement because we agreed there would be some flexibility and that we would meet at the end of every year to evaluate the negative surveys to determine if there was a pattern; and opined that it would come as a surprise that a survey would come in for someone applying for a building permit and a year pass before FWS makes comments. Mr. Ross commented on the manner a consultant would use in preparing a survey.

Commissioner Cummings suggested doing whatever is needed to get the HCP study done; stated that the core issue is how to pay for it; and cautioned against using a broad based MSBU for funding; opined that it would come down to charging the lots to be developed some kind of fee, which could be less if there is a plan in place; cautioned in giving discounts; and suggested getting the funding straightened out and finding a reasonable ratio for the mitigation.

Commissioner Duffy requested clarification that if a staff member sees a Scrub-jay on a piece of property, the property owner does a survey, and no Scrub-jay is seen, if a permit can be issued. Mr. Simon stated that it is unlikely when a bird is seen that it is just moving through the area; that it has most likely established a territory; and opined that an additional survey could be done; and indicated that the costs involved are between the consultant and the applicant. **Commissioner Duffy** indicated that we have a survey process in place; that it is not the property owner's fault if birds are not seen during the time a

survey is done; and expressed concern of changing the rules while the game is in play.

Mr. Simon said there have been instances where land owners were made aware that Scrub-jays were on their property and who insisted on having a survey done as if to suggest that the survey would find something different; and stated that he hopes that the consultants are bound by the ethics of their profession and conduct the survey to the best of their ability and beyond. **Commissioner Duffy** inquired if we are allowed to count as part of the inventory any state lands where there is suitable habitat. Mr. Simon stated that the mitigation would have to demonstrate going above and beyond what is already occurring and that you would have to measure the value of mitigation being provided.

Commissioner Duffy opined that Charlotte County could use Sarasota County's HCP as a model, which could save time and money. Mr. Simon agreed, and stated that FWS could provide the County with examples of other areas that might also lend some values. **Commissioner Duffy** asked who we would want on a stake holders group. Mr. Simon provided an example of the stake holders group established for Collier County.

Mr. Simon opined that the Board should evaluate the types of questions it wants answered and identify those in the community the Board believes to be best suited to sit on a stake holders committee. **Commissioner Duffy** opined that the HCP could also accommodate tortoise turtles and indigo snakes.

Commissioner Moore clarified that the County submitted a HCP plan 2 1/2 years ago; that the HCP plan was reviewed and comments made; that advertising would occur after responses to comments; and inquired if things go well, when the HCP plan would be approved.

Mr. Simon stated that he hopes it would be before 2008. **Commissioner Moore** advised there is a major hurricane evacuation that hinges on this and asked if there was anything we can do to move this along. Mr. Simon said he encourages regular communication, but believes that is being done rather well. Attorney Knowlton advised that a condition precedent to closing the Murdock Village deal is that the HCP plan be in hand and approved; and stated that without it approved before March 2008

Murdock Village may not close. (Commissioner D'Aprile was not present for the remainder of the meeting.)

Chairman Loftus pointed out that the approval of the HCP plan is very important to the Murdock Village and Winchester hurricane route projects; and indicated that he would like staff to come back with information on the biological assessment, the economic analysis, and stake holders group on the August 14, 2007 meeting. Mr. Loucks advised that information would be brought to the Board, but that there would be additional work required before it could come to the Board for voting.

Commissioner Duffy asked if other counties and cities with approved HCP's have used the non-profit land trust. Mr. Simon advised that Palm Bay has used the non-profit land trust; that he is not personally familiar with it; but that it could be a viable opportunity. **Commissioner Duffy** requested that Mr. Baker get the Board information on how Palm Bay established the trust.

Commissioner Duffy inquired what the cost was to do the writing of the actual HCP document, and what a state HCP would do to the County. Mr. Simon indicated that he was not certain of actual cost. **Commissioner Duffy** asked what a State HCP would do to the County. Mr. Simon advised that a State-wide Umbrella HCP was being developed; that when the project is approved, it would allow land owners who qualify and commit to the criteria to be issued a HCP in less than 12 weeks; indicated that the mitigation rates and costs are fixed; and that the money generated for that mitigation would likely leave Charlotte County.

Mr. Simon advised that the effects of the State-wide Umbrella HCP are not known; and opined that a County-wide HCP would be less expensive for the citizens of Charlotte County, and that money would stay in the County. **Commissioner Duffy** inquired if the State could change the rules after the County does its own HCP. Mr. Simon stated that he was not certain what the life was on the State-wide Umbrella HCP, but opined that it would not change much over time. Mr. Dennis advised that the life on the State-wide Umbrella HCP is 7 years and indicated that there is a provision that it would not affect county plans.

Chairman Loftus thanked all participants.

MEETING ADJOURNED 10:35 AM

Signature on file in Commission Minutes
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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