

**Habitat Conservation Plan,  
Chapter 3-5**

**Applicant  
Board of County Commissioners /  
Habitat Conservation Plan,  
Amending Chapter 3-5**

**Legislative**

**Countywide**



## MEMORANDUM

Date: January 19, 2015

To: Charlotte County Board of County Commissioners  
Planning and Zoning Board

From: Ty Harris, Community Development Department Director  
Shaun Cullinan, Charlotte County Planning and Zoning Official

Subject: Ordinance Amending Chapter 3-5, Planning and Development by creating Article XI,  
Habitat Conservation Plan (HCP)

---

On December 12, 2014, the United States Fish and Wildlife Service approved Charlotte County's Habitat Conservation Plan (HCP) and issued a County-wide Incidental Take Permit (ITP). The adoption of this ordinance is the final step in the preparation, approval and implementation of the County's Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP). The HCP and ITP must be incorporated into the County Code of Ordinances in order to begin implementing the provisions of the HCP and ITP.

Incorporating the HCP and ITP into the County's Code of Ordinances and will allow County landowners to begin operating under the County's Incidental Take Permit (ITP) where required. This action will reduce the regulatory burden on Charlotte County landowners and provides regulatory certainty for landowners by providing a reasonable alternative to obtaining individual Incidental Take Permits and seeking review from the United States Fish and Wildlife Service. To participate under the County's ITP, County landowners must pay a development fee directly to Charlotte County as outlined in the County's HCP. This alternative will permit landowners to conduct development activities impacting scrub habitat that may be occupied by the Florida scrub-jay.

**Recommendation:** Staff recommends that the Board of County Commissioners adopt the Ordinance amending Chapter 3-5, Planning and Development, by creating Article XI, Habitat Conservation Plan (HCP).

### CHARLOTTE COUNTY COMMUNITY DEVELOPMENT

Comprehensive Planning Division  
18400 Murdock Circle, Port Charlotte, FL 33948  
Phone: 941-743-1242 | Fax: 941-743-1292

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

O R D I N A N C E  
NUMBER 2015 -

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA, AMENDING CHAPTER 3-5, PLANNING AND DEVELOPMENT, BY CREATING ARTICLE XI, HABITAT CONSERVATION PLAN (HCP), PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR COLLECTION AND EXPENDITURE OF FEES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR VIOLATIONS AND PENALTIES; PROVIDING FOR APPENDICES (HABITAT CONSERVATION PLAN [HCP] AND INCIDENTAL TAKE PERMIT [ITP]); PROVIDING FOR INCLUSION IN THE CHARLOTTE COUNTY CODE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, due to the loss, fragmentation, and degradation of scrub habitat, the Florida Scrub-jay and Eastern Indigo Snake are designated as “threatened species” and are protected by state and federal regulations; and

WHEREAS, it is estimated that Charlotte County contains over 14,000 quarter-acre parcels that are located within scrub habitat that may be occupied by the Florida Scrub-jay; and

WHEREAS, development of land that impacts scrub habitat that may be occupied by the Florida Scrub-jay requires the issuance of an Incidental Take Permit from the United States Fish and Wildlife Service; and

WHEREAS, due to the high cost of mitigation fees and relatively low land values, landowners within Charlotte County have found it economically unfeasible to individually obtain Incidental Take Permits for properties containing Florida Scrub-jay habitat; and

1           WHEREAS, as an alternative to individual parcel owners pursuing Incidental  
2 Take Permits, Charlotte County has created the Charlotte County scrub-jay Habitat  
3 Conservation Plan to address county-wide development impacts to Florida Scrub-jay  
4 habitat; and

5           WHEREAS, the United States Fish and Wildlife Service approved the Charlotte  
6 County scrub-jay Habitat Conservation Plan and issued a county-wide Incidental Take  
7 Permit to Charlotte County; and

8           WHEREAS, as an optional alternative to obtaining individual Incidental Take  
9 Permits and seeking review from the United States Fish and Wildlife Service, Charlotte  
10 County landowners may pay a development fee directly to Charlotte County in order to  
11 conduct development activities impacting scrub habitat that may be occupied by the  
12 Florida Scrub-jay; and

13           WHEREAS, County staff is recommending that Chapter 3-5 of the Code of Laws  
14 and Ordinances be amended by creating Article XI. - *Habitat Conservation Plan*; and

15           WHEREAS, Article XI. - Habitat Conservation Plan, has previously been heard  
16 by the Charlotte County Planning and Zoning Board ("P&Z Board") and, based on the  
17 memorandum dated January 19, 2015, and the evidence presented to the P&Z Board,  
18 has been recommended for approval on February 2, 2015; and

19           WHEREAS, the Board considered Article XI. - *Habitat Conservation Plan* in a  
20 public hearing held on February 10, 2015; and

1           WHEREAS, the Board has determined that Article XI. - *Habitat Conservation*  
2 *Plan* is consistent with the County's Comprehensive Plan and is in the best interests of  
3 the County and its citizens.

4           NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners  
5 of Charlotte County, Florida:

6           Section1. Chapter 3-5 of the Code of Laws and Ordinances of Charlotte County,  
7 Florida, is hereby amended by creating new Article XI. - *Habitat Conservation Plan*, as  
8 follows:

9           **Article XI. - Habitat Conservation Plan**

10          **Sec. 3-5-266 Intent and purpose.**

11          This chapter is intended to provide Charlotte County landowners an optional  
12 alternative to developing their own Habitat Conservation Plan (HCP) and obtaining  
13 an Incidental Take Permit (ITP) from the United States Fish and Wildlife Service  
14 (USFWS) when proposed development within the Regulated Area may impact  
15 Florida Scrub-jay habitat or otherwise require state or federal permits related to  
16 Florida Scrub-jays. This Article is not a local regulation requiring mandatory  
17 participation, it merely serves to facilitate local permitting and development that is  
18 subject to state and federal regulations; therefore, any relief from these regulations  
19 shall be sought directly from the appropriate state or federal agency. The purpose of  
20 the Charlotte County Scrub-Jay HCP is to:

- 21          (a) Ensure compliance with the Endangered Species Act of 1973 as Charlotte  
22             County implements regulatory permitting programs for building and development.
- 23          (b) Provide applicants greater regulatory certainty during currently planned  
24             development in Charlotte County.

1 (c) Enhance the recovery and long-term viability of the Florida Scrub-jay within  
2 Charlotte County.

3 (d) Protect indigenous species characteristic of Florida scrub (including xeric oak  
4 scrub and scrubby flatwoods).

5 (e) Follow current standard protection measures for Eastern Indigo Snakes in  
6 existing Florida Scrub-jay habitats.

7 **Sec. 3-5-267. Definitions.**

8 (a) *County Minimization Review Process*: that review process detailed and  
9 incorporated as Appendix 3 within the HCP providing underbrush clearing  
10 restrictions, recommended plantings, and preservation requirements.

11  
12 (b) *Covered Activities*: all forms of residential and commercial development,  
13 including, but not limited to, construction of single-family homes, multiple-unit  
14 residential dwellings, commercial properties, public works projects, and all  
15 associated improvements of road and utility infrastructure that may be needed to  
16 service this development, as well as land management activities within the  
17 Reserve for long-term habitat improvements.

18  
19 (c) *Development Fee*: the fee a landowner must pay in order to mitigate Covered  
20 Activities within or transected by the Regulated Area pursuant to the Charlotte  
21 County ITP and HCP.

22  
23 (d) *Habitat Conservation Plan (HCP)*: the plan, as amended from time to time,  
24 developed by Charlotte County and approved by the USFWS, addressing  
25 impacts to the state and federally threatened Florida Scrub-jay and Eastern  
26 Indigo Snake as they relate to construction and development throughout  
27 Charlotte County.

1 (e) *Incidental Take Permit (ITP)*: the permit, as amended from time to time, received  
2 by Charlotte County and issued by the USFWS, allowing the take of Florida  
3 Scrub-jays and Eastern Indigo Snakes.

4  
5 (f) *Regulated Area*: the area that corresponds to the 2011 USFWS review area for  
6 Florida Scrub-jays and serves as the boundary within which future development  
7 will be subject to the HCP development fee.

8 **Sec. 3-5-268. HCP Development Fees.**

9 (a) Landowners must pay HCP development fees and comply with the County  
10 Minimization Review Process for all Covered Activities on undeveloped  
11 properties within (or transected by) the HCP regulated area, which is analogous  
12 the current USFWS scrub-jay review area. Fees are assessed pursuant to the  
13 fee table located in the HCP and are assessed even if a property partially falls  
14 out of the regulated area or is only partially developed.

15  
16 (b) The following are exempt from paying HCP development fees:

17 (1) Existing residences.

18 (i) If additions and/or ancillary structures on existing residences encroach  
19 onto an adjacent lot, then HCP development fees will be assessed on the  
20 adjacent lot.

21 (2) Parcels over three (3) acres with an existing residence as long as no clearing  
22 of woody vegetation has occurred.

23 (i) If there is clearing of any woody vegetation, however, then HCP  
24 development fees will be assessed based on the acreage of the woody  
25 vegetation area to be cleared.

26 (3) Certain improvements to existing residences:

27 (i) Constructing room additions or expansions within the same lot.

28 (ii) Razing and reconstructing within the previous structure's footprint.

29 (iii) Razing and constructing a larger structure within the same lot.

- 1 (iv) Constructing ancillary structures, including pools, decks, sheds, and
- 2 detached non-commercial garages within the same lot.
- 3 (v) Mulching/clearing of a 10-foot wide perimeter fire break between lots
- 4 with existing structures and undeveloped land.
- 5 (vi) Removal of dead trees that may pose damage to existing structures.
- 6

7 (c) Notwithstanding the foregoing, landowners seeking underbrush mulching permits  
8 must pay HCP development fees, and clearing activities shall not occur during  
9 the scrub-jay nesting season (March 1 through June 30) without a nesting survey  
10 showing that active nesting is not occurring on the lot.

11  
12 (d) HCP development fees collected by Charlotte County shall be expended in  
13 accordance with the terms and conditions contained in the HCP and ITP, as  
14 amended from time to time.

15 **Sec. 3-5-269. Enforcement.**

16 This Ordinance may be enforced by any code enforcement official.

17 **Sec. 3-5-270. Violations and penalties.**

18 (a) It shall be unlawful for any person to violate any of the terms, provisions or  
19 directions of this Ordinance, the ITP and the HCP.

20 (b) Violations for any provision of this Ordinance, including if an individual fails to  
21 obtain the appropriate authorization prior to development, shall be  
22 subject to a fee that is four (4) times the original HCP development fee.

23 (c) Violations may be taken before the code enforcement board or special magistrate  
24 for enforcement, and if the violation is proven a fine shall be assessed against  
25 the violator.

26 (d) Any fine assessed herein shall be payable within thirty (30) days. If the fine is  
27 unpaid after thirty (30) days, the County may place a lien on the property for the  
28 amount of the unpaid fine(s). The lien shall be filed in the office of the Clerk of the

1 Circuit Court and recorded in the Public Records of Charlotte County, Florida.  
2 The owner of the assessed property shall be liable for the amount of the lien and  
3 the cost of collection. Such lien shall be in favor of Charlotte County and may be  
4 satisfied at any time by payment thereof, including the recordation fee. Upon  
5 such payment, the county shall prepare a satisfaction and release of lien, which  
6 shall be recorded in the Public Records of Charlotte County, Florida.

7 **Sec. 3-5-271. Appendices.**

8 The HCP and ITP, as amended from time to time, are hereby incorporated by  
9 reference as appendices to this Ordinance and any conflict with the requirements  
10 herein shall be resolved in favor of and in accordance with the HCP and ITP.  
11 Complete copies of the HCP and ITP are available for inspection at the Charlotte  
12 County Natural Resources Division.

13 **Sec. 3-5-272. Conflict with State Law and Federal Law.**

14 Nothing in this Ordinance is intended to conflict with the provisions of the Florida  
15 Constitution, any Florida Statute, the Federal Constitution or any Federal Statute. In  
16 the event of a direct and express conflict between this Ordinance and either the  
17 Florida Constitution, the Florida Statutes, the Federal Constitution or the Federal  
18 Statutes, then the provisions of the Florida Constitution, Florida Statutes, Federal  
19 Constitution or the Federal Statutes, as applicable, shall control.

20  
21 Section 2. Inclusion in the Code of Laws and Ordinances, Charlotte County,  
22 Florida. It is the intention of the Board of County Commissioners and it is hereby  
23 ordained that the provisions of this Ordinance shall become and be made a part of the  
24 Code of Laws and Ordinances, Charlotte County, Florida, and the sections of this  
25 Ordinance may be renumbered to accomplish such intention.

26 Section 3. Severability. If any provision of this Ordinance or the application  
27 thereof to any person or circumstance is held invalid, the invalidity shall not affect other  
28 provisions or applications of this ordinance which can be given effect without the invalid

1 provision or applications. To this end, the provisions of this Ordinance are declared  
2 severable.

3 Section 4. Filing with the Florida Department of State. A certified copy of this  
4 Ordinance shall be filed with the Department of State of the State of Florida within 10  
5 days of enactment.

6 Section 5. Effective Date. This Ordinance shall become effective upon its  
7 filing with the Department of State of the State of Florida.

8

9

10

11

12

13

14

15

16

17

[SIGNATURE PAGE FOLLOWS]

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

PASSED AND DULY ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

By: \_\_\_\_\_  
William G. Truex, Chairman

ATTEST:  
Barbara T. Scott, Clerk of Circuit  
Court and Ex-Officio Clerk to the  
Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Janette S. Knowlton, County Attorney  
*LR14-3023*

1  
2  
3  
4

P:\wpdata\Vaughan-Birch\NR HCP Ordinance\HCP Final Ordinance for 2.10.15 BCC.doc

LR2014-3023

**ECONOMIC IMPACT STATEMENT**  
**An Ordinance amending Chapter 3-5, Planning and Development, by  
creating Article XI, Habitat Conservation Plan (HCP)**

**PURPOSE:** Analyze what the ordinance is designed to accomplish. Describe the present situation and the effect the ordinance will have thereon.

*This action is the final step in the preparation, approval and implementation of the County's Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP). The HCP and ITP were approved by the U.S. Fish and Wildlife Service in December 2014 and must be incorporated into the County Code of Ordinances in order to begin implementing the provisions of the HCP and ITP. This action will allow County landowners to begin operating under the County's Incidental Take Permit (ITP) where required and will reduce the regulatory burden on Charlotte County landowners and provides regulatory certainty for landowners.*

**IMPACT:** Consider costs and benefits, both monetary and non-monetary for the private sector (non-governmental entities) and the public sector (governmental entities). In discussing costs and benefits, distinguish between those which are social (borne by society as a whole) and those which are private (accrue to certain individuals or groups). Identify the specific groups which will be impacted.

*The proposal will provide the opportunity for individual property owners to being operating under the County's Incidental Take Permit (ITP) in lieu of filing an individual ITP. In terms of monetary costs, the federal Endangered Species Act (ESA) requires that the County demonstrate and provide funding assurances in the HCP that it can fulfill the obligations of the ITP. This is required because the underlying goals and objectives of the plan cannot be attained and proposed conservation strategy cannot be implemented without adequate funding. Costs associated with implementing the HCP include: Land acquisition and reserve development; Habitat assessment, planning and restoration; Habitat management and maintenance; Monitoring and adaptive management; Changed circumstances; and Plan administration and staffing. The HCP estimates costs as follows:*

<b>Plan Component</b>	<b>Permit Term</b>	<b>Post-Permit Term</b>
<i>Land Acquisition and Reserve Development</i>	<i>\$20,608,800</i>	<i>\$0</i>
<i>Habitat Assessment, Planning and Restoration</i>	<i>\$3,406,500</i>	<i>\$0</i>
<i>Habitat Management and Maintenance</i>	<i>\$10,631,300</i>	<i>\$13,405,900</i>
<i>Monitoring and Adaptive Management</i>	<i>\$615,600</i>	<i>\$776,200</i>
<i>Changed Circumstances</i>	<i>\$966,500</i>	<i>\$1,218,700</i>
<i>Plan Administration and Staffing</i>	<i>\$2,145,000</i>	<i>\$2,383,300</i>
<b>TOTAL</b>	<b>\$38,373,600</b>	<b>\$17,784,200</b>

- A. Cost of Implementation: \$56,157,800
- B. Source of Funds/Ultimate Burden of Costs: *Development Fees*
- C. Effect on Competition and the Employment Market: *There should be no impact on competition as the regulations are applied to Scrub Jay Habitat throughout Charlotte County.*
- D. Benefits on Implementation: *These changes will streamline the process for land owners and will permit land owners to operate under the County's Incidental Take Permit. This reduces the regulatory burden associated with the permit process for individual land owners and is estimated to save approximately \$160,920,000 in application fees, survey costs and consultant fees.*