

LEE COUNTY ORDINANCE NO. 08-___

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) CHAPTER 14 (ENVIRONMENT AND NATURAL RESOURCES); AMENDING APPLICABILITY OF DIVISION (§ 14-115); EAGLE TECHNICAL ADVISORY COMMITTEE (§ 14-116); PUBLIC ACQUISITION OF RIGHTS AND INTEREST IN CRITICAL EAGLE NESTING HABITAT LANDS (§ 14-117); NOTIFICATION PROCEDURE (§ 14-118); MECHANISMS FOR THE PROTECTION OF CRITICAL EAGLE NESTING HABITAT (§ 14-119) AND COMPENSATION INCENTIVES FOR PROTECTION OF CRITICAL EAGLE NESTING HABITAT (§ 14-120); AND STANDARDS FOR AREAS OF SHALLOW FLOODING (§ 6-475); AND PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION AND SCRIVENER'S ERRORS; AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners ("Board"), is the governing body in and for Lee County;

WHEREAS, the Legislature of the State of Florida has authorized and delegated in Chapter 125 Florida Statutes, the responsibility to counties to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry;

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code (LDC), which contains regulations applicable to the development of land in Lee County;

WHEREAS, Chapter 163 Florida Statutes, requires Local governments to include a conservation element in their comprehensive plans for the conservation, use, and protection of natural resources, including fisheries and wildlife;

WHEREAS, the Lee Plan Goal 107: Resource Protection, requires Lee County to manage the County's wetland and upland ecosystems so as to maintain and enhance native habitats, floral and faunal species diversity, water quality, and natural surface water characteristics;

WHEREAS, the Lee Plan Objective 107.3: Wildlife, requires Lee County to maintain and enhance the fish and wildlife diversity and distribution within Lee County for the benefit of a balanced ecological system;

WHEREAS, the Lee Plan Policy 107.3.1: requires Lee County to encourage upland preservation in and around preserved wetlands to provide habitat diversity, enhance edge effect, and to promote wildlife conservation;

WHEREAS, Lee Plan Policy 107.3.2: requires Lee County to participate with the Southwest Florida Regional Planning Council and the Florida Game and Fresh Water Fish Commission in the development of a regional plan that identifies and protects areas utilized by wildlife to promote the continued viability and diversity of regional species;

WHEREAS, the Lee Plan Objective 107.6: Southern Bald Eagles, requires the County to continue to monitor Southern Bald eagle nesting activity and offer incentives to conserve buffer areas around Southern bald eagle nests;

WHEREAS, Lee Plan Policy 107.6.1: requires Lee County to maintain a policy of negotiations with owners of land surrounding eagle nests to provide an optimal management plan for land subject to imminent development;

WHEREAS, Lee Plan Policy 107.6.2: requires Lee County's Eagle Technical Advisory Committee to continue to conduct nest monitoring through the nesting season for all known eagle nests in Lee County and to use the information gathered from these assessments to modify, as needed, the adopted nest guidelines and to adopt guidelines for new eagle nests documented in Lee County;

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA that:

SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 14

Lee County Land Development Code Chapter 14 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underlining.

CHAPTER 14
ARTICLE II
DIVISION 3. SOUTHERN BALD EAGLE

Sec. 14-111. Purpose of division

In order to protect and preserve the southern bald eagle, it is necessary and appropriate to protect, enhance, and preserve the nest of the eagle and its immediate environs. With reasonable land compensation incentives and proper habitat management, the southern bald eagle population in the county can be maintained. This division is intended to protect the critical nesting habitat of the southern bald eagle and promote national, state, and county pride and esteem by providing special compensation incentives to private property owners for loss of property committed to critical southern bald eagle nesting habitat. This division is also intended to provide information and assistance to property owners to enable them to avoid violations of state and federal law. ~~The landowner has the opportunity to choose one of several options. One can do an eagle management plan which should assist significantly in the state and federal permitting process; one can bypass this division and deal directly with the state and federal governments; or one can do nothing and take the chance of being in violation of state and federal law.~~

Sec. 14-112. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Active nest means a nest which shows evidence of breeding by a bald eagle pair during the current or most recent nesting season.

Abandoned nest means a nest which ~~has not been occupied by the southern bald eagle for the hatching and nurturing of eagle young for a period of four consecutive years or has not used for more than five consecutive nesting seasons been determined to be abandoned by the eagle technical advisory committee.~~

Alternate nest or Inactive nest means any nest that has been used within the past five nesting seasons, but is or was not used during the current or most recent nesting season.

Buffer area means that area designated by the Board of County Commissioners in accordance with section 14-119 that must remain predominantly in its natural state to

protect eagles, nest trees, or other critical eagle nesting habitat. Buffer areas may range in any distance up to 660 750 feet from a nest and be irregularly shaped areas.

Critical eagle nesting habitat means habitat which, if lost, would result in the elimination of nesting eagles from the area in question. Critical eagle nesting habitat typically provides functions for the southern bald eagle during the nesting portion of that species' life cycle. This area includes eagle nest trees and their immediate environs and may include other areas or features such as perch trees, flight paths flyways, and alternate secondary nests.

FWC FGFWFC means the Florida Fish and Wildlife Conservation Game and Fresh Water Commission or its successor.

Flight path means the route(s) most frequently traveled by eagles directly to and from their nest(s) and perch trees and important foraging areas.

Lost nest means a nest where the nest or nest tree is destroyed by natural causes, three nesting periods have passed, and no new nest has been built.

Perch tree means a tree used by bald eagles for resting, sleeping, foraging, hunting, feeding, lookout, display or thermal benefit.

Southern bald eagle (*Haliaeetus leucocephalus*), as per identified in the federal and state threatened species list, means a mature eagle with white plumage on its head and tail feathers, or an immature eagle with dark plumage, which resides throughout the state around estuarine areas and along the lakes and river drainage basins within the interior of the state and county.

Unified control means ~~the unrestricted right of any owner or agent to enforce whatever conditions are placed on the use and development of a parcel of land through the provisions of this division, by binding his heirs, assigns or other successors in title with covenants or restrictions on the development and subsequent use of property.~~ has the same meaning as defined in section 10-1.

USFWS means the United States Fish and Wildlife Service or its successor.

Sec. 14-114. Provisions of division supplemental.

This division does not replace the Federal Endangered Species Act, the Federal Migratory Bird Treaty Act, the Federal Bald and Golden Eagle Protection Act or the Florida Endangered Species Act, but is intended to supplement those laws to ensure protection of critical eagle nesting habitat in Lee County.

Sec. 14-115. Applicability of division

~~This division will apply unless, prior to commencement of development which is subject to conditions imposed under this division, where applicable, the property owner elects, in writing, not to participate. This division applies only to all real property within 660 750 feet of a nest unless the nest is has been determined to be abandoned or lost. Abandonment will be determined by the eagle technical advisory committee based on competent evidence but in no event will be more than four years.~~

Sec. 14-116. Eagle technical advisory committee.

(a) *No change.*

(b) The term of office for a member of the eagle technical advisory committee will be two (2) years; however, so as to provide for staggered terms, two (2) members ~~will be~~ were appointed initially to one-year (1) terms, and the remaining three (3) members to two-year (2) terms.

(c) through (d) *No change.*

(e) The county department of community development, environmental sciences division ~~division of natural resources management~~, with assistance from the county attorney's office will serve as support staff to the eagle technical advisory committee.

(f) The eagle technical advisory committee will determine occupancy of southern bald eagle nests not included on FGFWFC FWC's annual southern bald eagle nesting survey.

(g) The eagle technical advisory committee, with assistance of appropriate staff, will maintain and update as necessary a list or map of ~~occupied~~ active, abandoned and alternate southern bald eagle nests and will monitor nest sites on a regular basis, with the permission of the property owner, if required.

Sec. 14-117. Public acquisition of rights and interest in critical eagle nesting habitat lands.

~~(a)~~ The county may acquire rights and interests in real property designated as a critical eagle nesting habitat. When a developer or property owner cannot accommodate critical eagle nesting habitat through reasonable site planning or proper access, the county may acquire an interest through:

(1) through (5) *No change.*

~~(b) Monies needed for the purchase of critical eagle nesting habitat, or the purchase of conservation easements to protect these habitats, may be funded by public and private donations. Funding may also be solicited in a general community appeal on license tag renewals and ad valorem tax envelopes issued by the county tax collector, and by monies appropriated from the general fund by the Board of County Commissioners from time to time. All funds received and the earnings from such funds will be escrowed in a special account for use in the acquisition of critical eagle nesting habitat or the purchase of conservation easements.~~

Sec. 14.118. Notification procedure.

Lee County will notify the ~~FGFWFC~~ FWC and the USFWS U.S. Fish and Wildlife Service upon receipt of any application for a planned development rezoning, a development order, a notice of clearing, or a building permit for any property located within ~~660~~ 750 feet of a nest. The notice must include any available information gathered by the eagle technical advisory committee regarding the behavior of the eagles who are occupying the nest.

Sec. 14-119. Mechanisms for the protection of critical eagle nesting habitat.

(a) *Single- or two-family dwelling unit (including accessory structures.)* Appropriate conditions limiting or prohibiting development during the nesting season may be attached to building permit approvals for property to which this division is applicable where such conditions are deemed necessary by the director of the department of community development (or designee) to prevent a “take” of the eagle, as that term is defined in ~~FAC rule 39-1.004(77)~~ loss of critical eagle nesting habitat.

(b) *Agricultural activities* All persons intending to conduct agricultural activities on property to which this division is applicable are required ~~encouraged~~ to consult with the eagle technical advisory committee prior to ~~submittal~~ approval of an application for a notice of clearing or the commencement of clearing activities. Clearing activities must be conducted in a manner which is protective of bald eagles and nest buffers, such as phasing of clearing activities, protection of buffers, or other protective measures. Any trees located within the defined buffer area around an eagle nest shall be considered trees worthy of preservation not subject to removal pursuant to section 14-377(a)(1)a. Any development order issued within eight years of agricultural clearing activities shall require reforestation of the defined eagle buffer area by planting and maintaining a sufficient size and number of trees listed in appendix E to provide a visual and habitat buffer to the nest(s).

(c) *All other development.*

(1) All persons contemplating the development of property to which this division is applicable are encouraged to consult with the eagle technical advisory committee and the environmental sciences division ~~division of natural resources management~~ as early in the planning and design process as possible.

(2) With assistance from the eagle technical advisory committee, all such persons are required ~~encouraged~~ to prepare a management plan that protects critical eagle nesting habitat. All such management plans will be reviewed by Lee County staff and the eagle technical advisory committee prior to approval by resolution of the Board of County Commissioners.

(3) *No change.*

(4) Management plans to protect critical eagle nesting habitat, must address, at a minimum, the following items:

a. Description of the land around the critical eagle nesting habitat, including locations and height of active and alternate nest tree(s) and perch tree(s), ~~vegetation types~~, and a description of the location, height, type and density of understory and canopy vegetation;

b. *No change.*

c. A one inch equals 200 feet aerial map and a map at the scale of the development which shows the location of the eagle's nest(s), flight path to and from the nest(s), location and size of visual obstacles such as trees between the nest(s) and proposed development, nearest known foraging area for the eagle(s), location and type of existing and permitted developments within 1500 feet of the nest(s), and other critical eagle nesting habitat features as well as the proposed development;

d. The boundaries, size, and shape of the proposed buffer area;

e. Measures to reduce potential adverse impacts of the development on the nesting bald eagles, including but not limited to establishment of a planted landscape buffer, construction phasing indicating timing and location of construction activities during nesting and non-nesting periods, height limits on buildings within

the buffer zone, protection of the flight path, monitoring, and other necessary measures;

f. ~~A critical eagle nesting habitat management plan which shall include~~ Techniques to maintain viable nesting habitat. These techniques may include controlled burning, planting, or removal of vegetation, invasive exotic species control, maintaining hydrologic regimes, and monitoring;

g. Perpetual conservation easement dedicated to the County over the eagle nest(s) and buffer(s);

h. ~~Deed restrictions, protective covenants, easements,~~ or other legal mechanisms running with the land that provide reasonable assurances that the approved management plan will be implemented and followed by all subsequent owners of the property in question;

i. A commitment to educate future owners, tenants, or other users of the development about the specific requirements of the approved eagle management plan and the state and federal eagle protection laws.

(5) *No change.*

(6) The eagle technical advisory committee will consider the guidelines promulgated by ~~FGFWFC~~ FWC and the ~~USFWS U.S. Fish and Wildlife Service~~ in the review of management plans and may request technical assistance from the ~~FGFWFC~~ FWC or the ~~USFWS U.S. Fish and Wildlife Service~~ whenever necessary.

(7) *No change.*

(8) In determining whether the proposed project meets the criteria in this division, division of environmental sciences staff and ETAC will consider: the intensity of the proposed and existing development, quality of habitat, behavior of the specific nesting eagles, and extent of measures proposed in the eagle management plan.

Sec. 14-120. Compensation incentives for protection of critical eagle nesting habitat.

~~Incentives for the preservation of critical eagle nesting habitat pursuant to approved management plans will be granted in accordance with the standards in section 10-474(e) provided, however, that nothing in this section may be construed to impair the value of incentives previously approved by the Board of County Commissioners pursuant to Ordinance No. 86-15.~~

~~In addition to the incentives already provided herein, If the Board of County Commissioners elects not to acquire a critical eagle nesting habitat, then the board may permit all or some of the following special compensation benefits as incentives to the developer or property owner for the purpose of protecting critical eagle nesting habitat:~~

~~(1) For a buffer area of 350 330 feet in radius or an approximate equivalent acreage, minimum, the following benefits will be granted:~~

~~a. through b. *No change.*~~

~~(2) For a buffer area of 660 550 feet in radius or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsection (1) of this section, shall be granted:~~

~~a. The county will ~~shall~~waive the zoning application fee on the subject property, and, if applicable, one other parcel under unified control;~~

~~b. The eagle preserve will be available to offset any indigenous upland preserve or open space requirement at a ration of 1:5:1 (eagle preserve area to indigenous preserve or open space area); provided however, that such incentive has not already been applied in accordance with section 10-415(b)(3) or section 10-474(e).~~

~~c. The county will ~~shall~~waive building permit application fees on the subject property, and, if applicable, one other parcel under unified control; and~~

~~d. The county will ~~shall~~waive development review related fees on the subject property., and, if applicable, one other parcel under unified control.~~

~~(3) For a buffer area of 750 feet in radius, or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsections (1) and (2) of this section, shall be granted: The county shall provide a credit against regional park impact fees on the subject property, and, if applicable, one other parcel under unified control located within the same~~

~~regional park impact fee district. In no event shall the credit towards the regional park impact fee exceed the appraised value of the dedicated land.~~

~~(4)(3)~~ In order to receive the benefits mentioned in this section, the buffer areas must be designated as critical eagle nesting habitat and must be conveyed to the county by either warranty deed or by dedication of a perpetual conservation easement.

~~(5)(4)~~ The increase in buffer area beyond the minimum radius is directly proportional to additional incentive benefits which may be requested and may be received by the developer or property owner pursuant to the terms of this division.

~~(6)(5)~~ In no event will the amount of fees waived or credited as set forth in subsections (2) and (3) of this section exceed twice the appraised value of the buffer area conveyed to the county. The appraised value shall be based on two current documented appraisals of the fair market value or sales price of the land. The required appraisals must be submitted by the property owner. Appraisals must be prepared by qualified appraisers and are subject to approval by the county ~~administrator~~ manager.

SECTION TWO: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION THREE: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause, or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FOUR: CODIFICATION AND SCRIVENER'S

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or re-lettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or re-lettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or his designee, without the need for a public hearing.

SECTION FIVE: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the application for such project is complete and found sufficient before the effective date hereof.

Commissioner _____ made a motion to adopt the foregoing ordinance, seconded by Commissioner _____. The vote was as follows:

Robert P. Janes	_____
Brian Bigelow	_____
Ray Judah	_____
Tammara Hall	_____
Frank Mann	_____

DULY PASSED AND DATED THIS _____ DAY OF _____, 2008.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair

APPROVED AS TO FORM:

By: _____
Office of County Attorney