

BONITA SPRINGS ORDINANCE NO. 10-__

AN ORDINANCE CREATING WITHIN BONITA SPRINGS LAND DEVELOPMENT CODE (LDC) CHAPTER 7 (ENVIRONMENT AND NATURAL RESOURCES) MANDATORY REQUIREMENTS REGARDING CRITICAL EAGLE NESTING HABITAT; CREATING PURPOSE OF DIVISION (§7-111); CREATING DEFINITIONS (§7-112); VIOLATION OF ORDINANCE; PENALTIES (§7-113); PROVISIONS OF ORDINANCE SUPPLEMENTAL (§7-114); APPLICABILITY OF ORDINANCE (§7-115); PUBLIC ACQUISITION OF RIGHTS AND INTEREST IN CRITICAL EAGLE NESTING HABITAT LANDS (§7-117); NOTIFICATION PROCEDURE (§7-118); MECHANISMS FOR THE PROTECTION OF CRITICAL EAGLE NESTING HABITAT (§7-119); COMPENSATION INCENTIVES FOR PROTECTION OF CRITICAL EAGLE NESTING HABITAT (§7-120); AND PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Bonita Springs City Council ("Council"), is the governing body in Bonita Springs;

WHEREAS, the Legislature of the State of Florida has authorized and delegated in Chapter 166 Florida Statutes, the responsibility to cities to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry;

WHEREAS, the Council has used Lee County's Ordinance as its transition ordinance and desires to create its own provisions applicable to the development of land in Bonita Springs;

WHEREAS, it is an objective found in Bonita Plan 7.6 to use its bald eagle habitat protection regulations to protect the ~~southern~~ Bald Eagle;

WHEREAS, Bonita Plan Policy 7.6.1 requires Bonita Springs to negotiate with owners of land surrounding eagle nests to provide an optimal management plan within which all development within critical eagle nesting habitat and buffer areas must be consistent;

WHEREAS, Bonita Springs recognizes that the Florida Fish and Wildlife Conservation Commission has adopted a Bald Eagle Management Plan and an implementing regulation, Rule 68B-16.002, Florida Administrative Code and Bonita Springs desires to work cooperatively with FWC to implement and to achieve consistency with the FWC management plan.

DRAFT FOR DISCUSSION PURPOSES

Page 1 of 12

DATE PREPARED: April 29, 2010

C:\Documents and Settings\ENVDCS8.BCC\Desktop\10-__ Eagle Ordinance (wo ETAC) .doc

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: LAND DEVELOPMENT CODE CHAPTER 7

Bonita Springs Land Development Code Chapter 7 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underlining.

CHAPTER 7 ARTICLE II DIVISION 3. SOUTHERN BALD EAGLE

Sec. 7-111. Purpose of ordinance

In order to ~~protect and preserve~~ maintain a stable or increasing population of the southern bald eagle in Bonita Springs by protecting eagle habitat, 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 city ~~county~~ can be maintained. This ordinance is intended to protect the critical nesting habitat of the southern bald eagle and promote national, state, and community ~~county~~ pride and esteem by negotiating with owners of land surrounding eagle nests to provide an optimal management plan for land subject to imminent development, including providing special compensation incentives to private property owners for loss of property committed to critical southern bald eagle nesting habitat. This ordinance is also intended to provide information and assistance to property owners to enable them to avoid violations of city, county, 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 ordinance 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. 7-112. Definitions.

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

Active nest means a nest that shows or showed evidence of breeding by bald eagles, such as an adult attending the nest or in incubating position, a clutch of eggs, or a brood of nestlings, at any time 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 been determined to be abandoned by the eagle technical advisory committee that is

intact or partially intact but has been inactive through five or more consecutive nesting seasons.

Alternate nest means a nest that is intact or partially intact and has been used by bald eagles at any time during the past five nesting seasons, but was not used during the current or most recent nesting season. An inactive nest is considered to be an alternate nest until it has been inactive for five consecutive nesting seasons, at which time it becomes an abandoned nest.

Southern Bald eagle (*Haliaeetus leucocephalus*), ~~as per 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 and city.

Buffer area means a natural or man-made area designated by the Bonita Springs City Council in accordance with section 7-119 that must remain predominantly in its natural or created state to protect eagles, nest trees, or other critical eagle nesting habitat. Buffer areas may range in any distance up to ~~750~~ 660 feet from a nest and be irregularly shaped areas, except that a larger buffer area may be offered voluntarily in accordance with section 7-120(3).

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, ~~flyways~~ flight paths, and secondary alternate nests within the buffer area.

Disturb means to agitate or bother a bald eagle to a degree that causes or is likely to cause based on the best scientific information available, (1) injury to eagle; (2) a decrease in its productivity by substantially interfering with normal breeding; feeding or sheltering behavior; or, (3) nest abandonment by substantially interfering with normal breeding; feeding or sheltering behavior.

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

Fledgling means a young eagle that is capable of flight and has left the nest, usually at 10-12 weeks of age. Fledglings may return to the nest for several weeks to be fed or to roost.

Flight path means the route within the buffer area most frequently traveled by eagles directly to and from their nest, perch trees, and important foraging areas.

Foraging Area means the location where eagles feed, typically near open waters

such as rivers, lakes, reservoirs, and bays where fish and waterfowl are abundant, or in area with little or no water where prey species are abundant (e.g., rabbit, rodents or carrion) are abundant.

Inactive nest means a nest that was not used during the current or most recent nesting season.

Lost nest means a nest where the nest or nest tree is destroyed by natural causes (e.g., nest that fell apart or was blown out of a tree, or tree itself was lost) and is not rebuilt in the same tree within three nesting seasons.

Nesting period season means the period of time, from October 1 to May 15, for most southern bald eagles, during which courtship, nest building, egg laying, incubation, brooding and the fledgling of the young occur, unless the young fledge before or after May 15.

Nestling means a young eagle (eaglet) that is incapable of flight and is dependent on its parents. Once an eaglet fledges (i.e., leaves the nest), it becomes a fledgling.

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

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 ordinance, 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 the Zoning provisions and Chapter 9.

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

Sec. 7-113. Violation of ordinance; penalty.

(a) Any person convicted of violation of any of the provisions of this ordinance may be punished as provided in section 1-5. Such person will also be responsible for costs and expenses involved in the case. Each day such violation continues will be considered a separate offense.

(b) Any violator of this ordinance may be required to restore the critical eagle nesting habitat to its original undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the county may take necessary corrective action, the cost of which will be placed as a lien upon the property.

(c) In addition, any violation of this ordinance is a public nuisance and may be restrained by injunction by any interested party.

(d) Bonita Springs will notify the FWC of wildlife complaints or potential FWC rule

violations. Bonita Springs will coordinate with FWC in enforcement activities.

Sec. 7-114. Provisions of ordinance supplemental.

This ordinance 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, or the permitting requirements of FWC's Bald Eagle Permitting Framework, that is incorporated in FWC Rule 68A-16.002, Florida Administrative Code, but is intended to supplement those laws to ensure protection of critical eagle nesting habitat in Bonita Springs.

Sec. 7-115. Applicability of ordinance

~~This ordinance will apply unless, prior to commencement of development which is subject to conditions imposed under this ordinance, where applicable, the property owner elects, in writing, not to participate. This ordinance applies only to all real property within 750660 feet (or 750 feet if impact fee credits are issued pursuant to section 7-120(3)) of a nest unless the nest has been determined to be is 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. Compliance with this ordinance will be required prior to receiving a building permit, development order, zoning approval, notice of clearing, vegetation removal permits or amendments thereto.~~

Sec. 7-116. RESERVED ~~Eagle technical advisory committee.~~

~~(a) The county eagle technical advisory committee (ETAC) will consist of five residents of the county appointed by the Board of County Commissioners for the purpose of advising the Board of County Commissioners on matters relating to the protection of the southern bald eagle. Each eagle technical advisory committee member should have extensive technical or practical knowledge of the southern bald eagle biology and must be qualified by either training or experience to render advice regarding the protection of critical southern bald eagle nesting habitat.~~

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

~~(c) The eagle technical advisory committee will review all pertinent or current eagle technical documents and provide expert advice to the Board of County Commissioners, the department of community development and the general public.~~

~~(d) The eagle technical advisory committee will review management plans and make recommendations to the Board of County Commissioners in accordance with section 7-119.~~

~~(e) The county department of community development, ordinance 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 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 southern bald eagle nests and will monitor nest sites on a regular basis, with the permission of the property owner, if required.~~

Sec. 7-117. Public acquisition of rights and interest in critical eagle nesting habitat lands.

(a) The city 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 city may acquire an interest through:

- (1) Receiving donations of critical eagle nesting habitat lands;
- (2) Purchase or conveyance by dedication of a perpetual conservation easement;
- (3) Outright purchase or lease of critical eagle nesting habitat;
- (4) Acquisition through eminent domain proceedings pursuant to article II, section 9, and article X, section 6, of the state constitution and applicable provisions of the Florida Statutes; or
- (5) Implementation by the City Council ~~Board of County Commissioners~~ of any combination of these or other actions to acquire rights and interests that balance the public and private interests.

~~(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. 7-118. Notification procedure.

Bonita Springs will notify the FGFWFC FWC and the U.S. Fish and Wildlife Service USFWS 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 750~~660~~ 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

DRAFT FOR DISCUSSION PURPOSES

Page 6 of 12

DATE PREPARED: April 29, 2010

C:\Documents and Settings\ENVDCS8.BCC\Desktop\10-__ Eagle Ordinance (wo ETAC) .doc

the nest.

Sec. 7-119. Mechanisms for the protection of critical eagle nesting habitat.

(a) Construction of sSingle- 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 ordinance 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. Such conditions may include, but are not limited to, distances from the nest, defining the dates, equipment, and hours of operation for exterior construction to avoid disturbing nesting eagles, eggs or nestlings.

(b) Agricultural activities. All persons intending to conduct new agricultural activities on property to which this ordinance is applicable ~~are encouraged to~~ must consult with ~~Bonita Springs staff and the eagle technical advisory committee~~ prior to ~~submittal~~ approval of an application for a notice of clearing or the commencement of ~~clearing~~ activities. Any improvements within 330’ must be conducted with a bald eagle management plan consistent with the FWC Bald Eagle Management Plan and designed to protect the habitat. Any proposal for improvements within 330’ must indicate that the crop planting or harvesting will not occur during nesting season to avoid impacts to the bald eagle habitat.

(c) *All other development.*

(1) All persons contemplating the development of property to which this ordinance is applicable are encouraged to consult with the ~~eagle technical advisory committee and the division of natural resources management~~ environmental sciences division as early in the planning and design process as possible to ensure enhancement or protection of critical eagle nesting habitat within the buffer area. No construction (structures or site work) may occur within 660 feet during the nesting season, unless otherwise modified in an approved bald eagle management plan, in accordance with the National Guidelines.

(2) ~~With assistance from the eagle technical advisory committee, all such persons are encouraged.~~ Property owners and/or developers are required 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. However, no new bald eagle management plan will be required for projects in which a bald eagle management plan was submitted to and accepted by Bonita Springs to support a building permit, local development order, Development of Regional Impact, or zoning application approval. A new or amended bald eagle management plan will be required if subsequent development or a change in use is proposed that is inconsistent with the previously reviewed bald eagle management plan, or if a new or revised bald eagle management plan is required by condition or stipulation of the existing authorization.

- (a) Prior to consideration and approval by resolution of the Bonita Springs City Council, all eagle management plans must be submitted and will be reviewed by environmental sciences staff.
- (b) The Director of Community Development or designee must recommend approval, denial, or approval of the proposed eagle management plan with conditions, or continue consideration of the proposed eagle management plan to seek technical advice from outside sources or to meet further with the applicant to revise or modify the proposed eagle management plan.
- (c) Staff will present the proposed bald eagle management plan to the City Council, along with the written staff opinion and any recommendation from outside sources, if any. This may include any advisory board set up by Resolution of City Council to assist with monitoring nests and eagle activity.

(3) All development within critical eagle nesting habitat and buffer areas must be consistent with the approved management plan.

(4) Management plans to protect or enhance critical eagle nesting habitat, must ~~address~~include, at a minimum, the following items, where applicable:

- (a) Description of the landscape ~~around~~within and surrounding the critical eagle nesting habitat, including FLUCCFS map, locations and height of active and alternate nest trees and perch tree(s), vegetation types, tree survey, and a description of the location, height, typespecies and density of understory and canopy vegetation, as related to visibility between the active nest and proposed development.
- (b) History and behavior patterns of the eagle pair;
- (c) A one inch equals 200 feet aerial map and a map at the scale of the development ~~which that~~ shows the location of the eagle's nest, flight path to and from the nest, location and size of visual obstacles, such as trees, between the nest and proposed development, nearest known foraging area for the eagle, location and type of existing and permitted developments within 1500 feet of the nest, 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) Conservation Measures designed to reduce/minimize potential adverse impacts of the development on the nesting bald eagles that may result in disturbance or abandonment of the nest. Such conservation measures include but are not limited to, compliance with the management plan or compliance with National or State guidelines, establishment of a planted landscape buffer, construction phasing indicating timing and location of construction activities during nesting and non-

nesting periods, i.e. no construction within 330 feet of a nest during nesting season, height limits on buildings within the buffer area, protection of the flight path and the nesting tree, monitoring of eagles and nest(s) using the federal monitoring guidelines, conservation easement, and other necessary measures to protect or enhance critical eagle nesting habitat;

- (f) ~~A critical eagle nesting habitat management plan which shall include t~~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) 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;
- (h) 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) The legal effect of management plans will be limited geographically to property owned or controlled by the proponent of the plan.

(6) In determining whether the proposed project and conservation measures protect or enhance eagle habitat in accordance with this ordinance and the Bonita Plan, division of environmental sciences staff and ~~The eagle technical advisory committee~~ will consider the intensity of the proposed and existing development, quality of habitat, behavior of the specific nesting eagles, extent of measures proposed in the eagle management plan, and the consistency with the guidelines promulgated by FGFWFC FWC and the U.S. Fish and Wildlife ServiceUSFWS in the review of management plans and may request technical assistance from the FGFWFCFWC or the U.S. Fish and Wildlife ServiceUSFWS whenever necessary. This review will be the basis of staff and ETAC's recommendation to the City Council.

(7) An approved management plan will remain effective notwithstanding the abandonment of a nest unless the abandonment occurs prior to the use of any incentives (see section 7-120 below) and the property owner relinquishes the incentives by amending the development order or taking other appropriate action.

Sec. 7-120. 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.~~

DRAFT FOR DISCUSSION PURPOSES

Page 9 of 12

DATE PREPARED: April 29, 2010

C:\Documents and Settings\ENVDCS8.BCC\Desktop\10-__ Eagle Ordinance (wo ETAC) .doc

~~In addition to the incentives already provided herein, If the City Council Board of County Commissioners~~ elects not to acquire a critical eagle nesting habitat, then the ~~board City~~ 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 in exchange for the property owner's agreement to institute mechanisms for protection or enhancement of critical eagle nesting habitat on the property:

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

- a. The property owner will be allowed to transfer density from within the buffer area to designated upland areas within the subject property at the same density permitted for the property as determined through the residential planned development process. For a buffer, area or portion thereof, composed of wetlands, an internal transfer of one development right per five acres will apply.
- b. The property owner will be allowed priority review and processing of zoning and development applications for the subject property, and, if applicable, one other parcel under unified control.

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

a. The city ~~shall~~ will ~~establish an account to pay community development waive~~ the zoning application fee on the subject property, ~~and, if applicable, one other parcel under unified control;~~

b. The city ~~shall~~ will ~~establish an account to pay community development waive~~ building permit application fees on the subject property, ~~and, if applicable, one other parcel under unified control; and~~

c. The city ~~shall~~ will ~~establish an account to pay community development waive~~ development review related fees on the subject property, ~~and, if applicable, one other parcel under unified control; and~~

d. The eagle preserve will be available to offset any indigenous preserve or open space requirement at a ratio of 1.5:1 (1.5 acre of indigenous preserve or open space area is offset by each acre of eagle preserve); provided however, that such incentive has not already been applied in accordance with section 3-415(b)(3) or section 3-474(e).

(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 (1) and (2) of this section, ~~shall~~ will be granted: The city ~~shall~~ will 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~~ will the credit towards regional park impact fee exceed the appraised value of the dedicated land.

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

~~(5) 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 ordinance.~~

(65) In no event will the amount of fees waived or credited 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~~ will be based on two current documented appraisals of the fair market value or sales price of the land. Appraisals must be prepared by qualified appraisers and are subject to approval by the City Manager.

(6) City Council may by Resolution establish an advisory board to provide input on any incentive plan.

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

If any provision of this ordinance, or its application, is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION FOUR: CODIFICATION AND SCRIVENER'S

Bonita Springs City Council intends that this ordinance will be made part of the Bonita Springs Land Development 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 City Manager or his designee, without the need for a public hearing.

SECTION FIVE: EFFECTIVE DATE

This ordinance will take effect 30 days after adoption or upon its filing with the Office of the Secretary of the Florida Department of State, whichever occurs last.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs,
Florida this ____ day of _____, 2010.

AUTHENTICATION:

Mayor City Clerk

APPROVED AS TO FORM: _____
City Attorney

Vote:

Nelson	_____	Spear	_____
McIntosh	_____	Simons	_____
Martin	_____	Lonkart	_____
Slachta	_____		

Date Filed With City Clerk: _____