



AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, ESTABLISHING AN EXCEPTIONAL BENEFITS PROCESS AND PROCEDURE, PROVIDING FOR A SHORT TITLE, INTENT, APPLICABILITY, AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROTECTION OF THE CONSERVATION COLLIER LANDS; PROVIDING FOR EXCEPTIONAL BENEFITS COMPENSATION FOR ANY CONVEYANCE OF AN INTEREST IN CONSERVATION COLLIER LANDS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN CODE OF LAWS AND ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners adopted the Conservation Collier Ordinance 2002-63 on December 3, 2002 pursuant to a referendum to acquire, protect, restore and manage environmentally sensitive lands in Collier County; and

WHEREAS, the Board of County Commissioners has acquired over 400 acres of land for long-term conservation using these funds; and

WHEREAS, the Board of County Commissioners has previously determined that the public interest is best served by these lands being preserved and managed as preserves or for conservation forever, and that the best means of ensuring permanent preservation is to provide multiple layers of protection for conservation lands through third party conservation easements, deed restrictions, and shared title; and

WHEREAS, the Board of County Commissioners has determined that the public interest may be served in certain circumstances by allowing portions of lands acquired through the Conservation Collier Program (Program) to be dedicated to other public uses when such dedication results in an exceptional benefit to the Program; and

WHEREAS, the Board of County Commissioners has determined that an exceptional benefit to the Program can only be ensured by requiring that all conveyances of an interest in Program Lands be offset by: 1) the acquisition and transfer of lands into the Program and the permanent preservation of higher quality environmentally sensitive lands, greenways or open space or water resource lands of greater acreage or more suitable location than the interest in conservation lands conveyed, 2) payment, or 3) a combination thereof; and

WHEREAS, the Board of County Commissioners has determined that it is desirable to establish a public process and procedure for approving Other-use Dedication(s) of Program Lands when such dedication(s) is necessary to the public interest and results in an exceptional benefit to the Program.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:

Section 1. SHORT TITLE, INTENT, APPLICABILITY, AUTHORITY:

- 1.01 This Ordinance shall be known as the "Conservation Collier Exceptional Benefits Ordinance."
- 1.02 It is the intent of this Ordinance to recognize that while the public interest is best served when the Program Lands as defined in subsection 2.01 are allowed to remain as conservation lands in perpetuity, the public interest may also be served in certain circumstances where portions of Program Lands, subject to

existing grant restrictions or partnership agreements, are dedicated to other public uses thereby providing necessary public infrastructure in addition to an exceptional benefit to the Program.

- 1.03 It is the intent of this Ordinance to recognize that Other-use Dedications of portions of Program Lands that fail to result in an exceptional benefit to the Program as defined in subsection 2.04 are not in the public interest and shall be prohibited.
- 1.04 It is the intent of this Ordinance to provide a process and procedure whereby the Conservation Collier Land Acquisition Advisory Committee (CCLAAC) can evaluate and make a recommendation at a publicly-noticed meeting to the Board of County Commissioners as to whether Other-use Dedications of portions of Conservation Collier Lands provide an exceptional benefit to the Program.
- 1.05 The provisions of this Ordinance apply to the Conservation Collier Lands as defined in subsection 2.01.
- 1.06 It is the intent of the Board of County Commissioners that this Ordinance be construed to ensure the long-term protection and preservation of Conservation Collier Lands through the application of the criteria contained herein.
- 1.07 This Ordinance is adopted under the authority of Chapter 125, Florida Statutes. The County Manager, or his designee, shall administer this Ordinance.

Section 2. DEFINITIONS:

- 2.01 **Program Lands** are those lands acquired in whole or in part from funds obtained from the Conservation Collier Trust Fund as allowed by Ordinance No. 2002-63, as amended, as well as lands donated to the Conservation Collier Program.
- 2.02 **Dedications (Other-use Dedications)** means: 1) a conveyance of fee simple interest of Program Lands or an easement interest in Program Lands to an entity other than Collier County or 2) a change of the primary use of the Program Lands from conservation and preservation to some other use which benefits the public so long as fee simple interest remains in favor of Collier County.
- 2.03 **Interest in Program Lands** means a fee simple interest, easement, right-of-way, or a formal declaration of a use not initially intended for the property acquired as conservation lands. Uses not initially intended include, but are not limited to, utility systems and facilities and roadways.
- 2.04 **Exceptional Benefit to the Program** means that the proposed Other-use Dedications of portions of Conservation Collier Lands is consistent with the goals, objectives and policies of the program and is offset by the transfer into the Program of funds, land, or a combination thereof that results in a greater value or acreage for the Program.

Section 3. PROTECTION OF THE CONSERVATION COLLIER LANDS:

- 3.01 A governmental entity, including the County acting through one of its departments, may request an Interest in Program Lands by submitting a written petition to the County Manager or his designee on behalf of the Board of County Commissioners.

- 3.02 The County Manager or his designee will bring the petition to the CCLAAC who will evaluate and determine in a public forum whether a potential Other-use Dedication of portions of Conservation Collier Lands provides an Exceptional Benefit to the Program prior to any disposition of Program Lands.
- 3.03 The Petition Form shall:
- A. State the public purpose for which the Other-use Dedication is being requested.
 - B. Provide a history and discussion of the alternatives to requesting the specific interest in Program Lands and demonstrate with supporting documentation as to why other alternatives are not acceptable.
 - C. Demonstrate with supporting documentation that the requested Other-use Dedications of portions of Program Lands takes the minimum acreage and, to the maximum extent possible, minimizes deleterious intrusion, preserves higher quality or acreage of lands than those sought if a land exchange is being offered, impacts the lowest quality habitat, and avoids habitat fragmentation, noise and light pollution that would adversely affect the adjacent remaining Program Lands.
 - D. Demonstrate with supporting documentation a substantial public need for the particular interest in Program Lands requested, why there are no acceptable alternatives to meet the need, why the competing public use must occur at that location, and how the Other-use Dedications of portions of Program Lands will be offset to ensure an Exceptional Benefit to the Program.
 - E. Demonstrate how the Other-use Dedications of portions of Program Lands will not adversely affect any State or Federally listed species.
 - F. Demonstrate that the proposed compensation meets the goals and purposes of the Program and provides an Exceptional Benefit to the Program.
 - G. Include the current value of the land to be acquired as provided for in Section 4.02.
- 3.04 Prior to any action by the Board of County Commissioners regarding the Other-use Dedications of portions of Program Lands, the CCLAAC, or its successor(s), shall review and prepare findings and recommendations on the proposed compensation pursuant to Section 4 of this Ordinance to determine: 1) whether any substitute lands offered meet the criteria for acquisition under Ordinance 2002-63, as amended, Section 10; 2) whether the substitute lands offered meet the purposes for which the affected Program Lands were initially acquired; and 3) whether the proposed compensation pursuant to Section 4 provides an Exceptional Benefit to the Program. The CCLAAC shall make its findings and recommendations no later than 90 calendar days after receipt of the petition by the County Manager or his designee. If the affected Program Lands are within municipal boundaries, the petition for conveyance of an interest in Program Lands shall be submitted for review by that municipality. The municipality shall have 90 calendar days from receipt of the request by its mayor or manager to provide comments and recommendations to County Manager or his designee, who shall provide copies of the comments and recommendations received from CCLAAC and the applicable municipality to the Board of County Commissioners at the public hearing where the petition for Other-use Dedications of portions of Program Lands is being considered.

- 3.05 If the CCLAAC has been disbanded, the Petition will proceed directly to the Board of County Commissioners and/or Mayor of any affected municipality to request approval.
- 3.06 To recommend approval of the petition, the CCLAAC must determine that:
- A. There is a substantial public need for the Other-use Dedications of portions of Program Lands; and
 - B. There is no viable or reasonable alternative to meet the need other than the use of Program Lands; and
 - C. That the requested Other-use Dedications of portions of Program Lands is the minimum acreage necessary and, to the maximum extent possible, preserves higher quality or quantity lands than those sought if a land trade is being offered, impacts the lowest quality habitat, and avoids habitat fragmentation, noise, and light pollution to the adjacent remaining Program Lands; and
 - D. That the proposed compensation meets the goals and purposes of the Program for acquisition and is sufficient to ensure that the proposed conveyance will result in an Exceptional Benefit to the Program; and
 - E. That the proposed conveyance of an interest in and use of Program Lands does not adversely affect any State or Federally listed species; and
 - F. That the findings in this subsection A. through E. are expressly set forth along with the written commitment providing for compensation.
- 3.07 If CCLAAC finds that the Petition fails to meet any of the requirements of Section 3.06 of this Ordinance, the CCLAAC shall recommend that the Board of County Commissioners disapprove the petition.
- 3.08 The Petition shall be brought to the Board of County Commissioners at a publicly-noticed meeting in order to review and consider the recommendation of the CCLAAC and to determine whether the criteria set forth in subsection 3.06, A-E of this Ordinance has been met. An affirmative finding as to each criterion is necessary for the Board of County Commissioners to approve any Petition.
- 3.09 An affirmative vote of four-fifths of the full membership of the Board of County Commissioners shall authorize an appropriate conveyance of an interest in, or easement over, or declaration of other public use, on lands held for the Program.

Section 4. COMPENSATION FOR INTERESTS IN PROGRAM LANDS:

- 4.01 In order to ensure that the conveyance of an interest in Program Lands results in an Exceptional Benefit to the Program, the proposed conveyance must be offset by the acquisition and transfer into the Program of land or payment of funds that satisfies the definition of an Exceptional Benefit as stated in subsection 2.04 of this Ordinance.
- 4.02 The value of the land to be acquired as compensation for the use of Program Lands shall exceed the current value of the Program Lands proposed for other use. The current value of the interest in Program Lands shall be determined by the purchase policy as set forth in Section II of Resolution 2003-195, and as superseded. If the net value of the land to be acquired as compensation for the use of Program Lands does not exceed the then current value of the

Program Lands proposed for other use, the difference shall be made up monetarily, and those funds shall be remitted to the Program.

- 4.03 Land or funds, or some combination of both, conveyed into the Program shall exceed 100% of the value of lands or interest in lands proposed for conveyance out of the Program. In valuing the interest of Program Lands, the value of any development rights originally purchased shall be included.
- 4.04 With exceptions as approved by the Board of County Commissioners, if less than five (5) acres remain as Program Lands; the entire parcel may be purchased.
- 4.05 Quality of habitat for land offered as compensation for Environmentally Sensitive Lands as defined in Section 5.6 of Ordinance, No. 2002-63, as amended, also known as the Conservation Collier Ordinance, shall be determined by the rarity and diversity of native ecosystems, function of the habitat in terms of its ability to support wildlife, adjacency to or connectivity between existing Program Lands, and the presence of State or Federally listed species. If the affected Program Lands are not Environmentally Sensitive Lands, as defined in Section 5.6 of Ordinance No. 2002-63, as amended, the land offered for compensation pursuant to Section 4 of this Ordinance shall satisfy or exceed the purposes served by the conveyed Program Lands according to the acquisition criteria in Section 10 of Ordinance No. 2002-63, as amended.
- 4.06 Compensation pursuant to this Section shall be provided at the time of Board approval of any Other-use Dedication or transfer of interest in Program Lands.
- 4.07 The party acquiring the interest in Program Lands shall be responsible for all associated costs, including but not limited to, costs of appraisals, environmental surveys, boundary surveys, documentary stamps, costs of recording, title commitments and title insurance. These costs are not deemed to be part of the Exceptional Benefit valuation.

Section 5. EXEMPTIONS:

The following circumstances shall be exempt from the foregoing process as set forth in Sections 3 and 4 of this Ordinance.

- 5.01 Conveyance of an interest in Program Lands where the affected Program Lands will benefit by providing public access where there was previously no reasonable public access.
- 5.02 Conveyance of an interest in Program Lands at the time of, and as part of, the acquisition process is exempt from this Ordinance.
- 5.03 Conveyance of a conservation easement to a government or a non-profit conservation organization for the purpose of permanent preservation is exempt from this Ordinance.

Section 6. CONFLICT AND SEVERABILITY:

In the event this Ordinance conflicts with any other Ordinance of Collier County or other applicable law, the more restrictive shall apply. If any phase, or portion of the Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remainder portion.

Section 7. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Collier County, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 8. EFFECTIVE DATE:

The provisions of this Ordinance shall become effective upon filing with the Department of State.

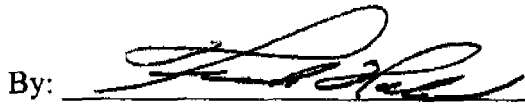
PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida this 28th day of November, 2006.

Attest:
DWIGHT E. BROCK, Clerk

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: 

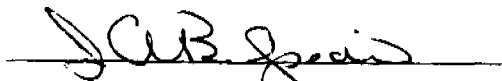
Deputy Clerk

By: 

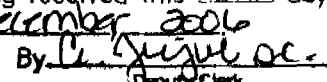
FRANK HALAS, Chairman

Attest as to Chairman's
signature only

Approved as to Form and Legal Sufficiency:



Jennifer A. Belpedio
Assistant County Attorney

This ordinance filed with the Secretary of State's Office the 28th day of December, 2006 and acknowledgement of that filing received this 13th day of December, 2006
By: 
Deputy Clerk