

ORDINANCE NO. 18 – 34

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AMENDING ORDINANCE NUMBER 04-41, AS AMENDED, THE COLLIER COUNTY LAND DEVELOPMENT CODE, WHICH INCLUDES THE COMPREHENSIVE LAND REGULATIONS FOR THE UNINCORPORATED AREA OF COLLIER COUNTY, FLORIDA, BY PROVIDING FOR: SECTION ONE, RECITALS; SECTION TWO, FINDINGS OF FACT; SECTION THREE, ADOPTION OF AMENDMENTS TO THE LAND DEVELOPMENT CODE, MORE SPECIFICALLY AMENDING: CHAPTER THREE – RESOURCE PROTECTION, INCLUDING SECTION 3.05.07 PRESERVATION STANDARDS, TO AMEND DESIGN STANDARDS RELATING TO OFF-SITE PRESERVES AND TO MODIFY REQUIREMENTS FOR MONETARY PAYMENT AND LAND DONATION OFF-SITE PRESERVE ALTERNATIVES; SECTION FOUR, CONFLICT AND SEVERABILITY; SECTION FIVE, INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE; AND SECTION SIX, EFFECTIVE DATE.

Recitals

WHEREAS, on October 30, 1991, the Collier County Board of County Commissioners adopted Ordinance No. 91-102, the Collier County Land Development Code (hereinafter LDC), which was subsequently amended; and

WHEREAS, the Collier County Board of County Commissioners (Board) on June 22, 2004, adopted Ordinance No. 04-41, which repealed and superseded Ordinance No. 91-102, as amended, the Collier County Land Development Code, which had an effective date of October 18, 2004; and

WHEREAS, on March 18, 1997, the Board adopted Resolution 97-177 establishing local requirements and procedures for amending the LDC; and

WHEREAS, all requirements of Resolution 97-177 have been met; and

WHEREAS, the Board of County Commissioners, in a manner prescribed by law, did hold advertised public hearings on April 10, 2018 and July 10, 2018, and did take action concerning these amendments to the LDC; and

WHEREAS, the subject amendments to the LDC are hereby determined by this Board to be consistent with and to implement the Collier County Growth Management Plan as required by Subsections 163.3194 (1) and 163.3202 (1), Florida Statutes; and

WHEREAS, this ordinance is adopted in compliance with and pursuant to the Community Planning Act (F.S. § 163.3161 *et seq.*), and F.S. § 125.01(1)(t) and (1)(w); and

WHEREAS, this ordinance is adopted pursuant to the constitutional and home rule powers of Fla. Const. Art. VIII, § 1(g); and

WHEREAS, all applicable substantive and procedural requirements of the law have otherwise been met.

NOW, THEREFORE BE IT ORDAINED by the Board of County Commissioners of Collier County, Florida, that:

SECTION ONE: RECITALS

The foregoing Recitals are true and correct and incorporated by reference herein as if fully set forth.

SECTION TWO: FINDINGS OF FACT

The Board of Commissioners of Collier County, Florida, hereby makes the following findings of fact:

1. Collier County, pursuant to § 163.3161, *et seq.*, F.S., the Florida Community Planning Act (herein after the "Act"), is required to prepare and adopt a comprehensive plan.

2. After adoption of the Comprehensive Plan, the Act and in particular § 163.3202(1). F.S., mandates that Collier County adopt land development regulations that are consistent with and implement the adopted comprehensive plan.

3. Section 163.3201, F.S., provides that it is the intent of the Act that the adoption and enforcement by Collier County of land development regulations for the total unincorporated area shall be based on, be related to, and be a means of implementation for, the adopted comprehensive plan.

4. Section 163.3194(1)(b), F.S., requires that all land development regulations enacted or amended by Collier County be consistent with the adopted comprehensive plan, or element or portion thereof, and any land regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent.

5. Section 163.3202(3), F.S., states that the Act shall be construed to encourage the use of innovative land development regulations.

6. On January 10, 1989, Collier County adopted the Collier County Growth Management Plan (hereinafter the "Growth Management Plan" or "GMP") as its comprehensive plan pursuant to the requirements of § 163.3161 *et seq.*, F.S.

7. Section 163.3194(1)(a), F.S., mandates that after a comprehensive plan, or element or portion thereof, has been adopted in conformity with the Act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such comprehensive plan, or element or portion thereof shall be consistent with such comprehensive plan or element or portion thereof.

8. Pursuant to § 163.3194(3)(a), F.S., a development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development are compatible with, and further the objectives, policies, land uses, densities, or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

9. Section 163.3194(3)(b), F.S., states that a development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of development are compatible with, and further the objectives, policies, land uses, densities, or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

10. On October 30, 1991, Collier County adopted the Collier County Land Development Code, which became effective on November 13, 1991. The Land Development Code adopted in Ordinance 91-102 was recodified and superseded by Ordinance 04-41.

11. Collier County finds that the Land Development Code is intended and necessary to preserve and enhance the present advantages that exist in Collier County; to encourage the most appropriate use of land, water and resources consistent with the public interest; to overcome present handicaps; and to deal effectively with future problems that may result from the use and development of land within the total unincorporated area of Collier County and it is intended that this Land Development Code preserve, promote, protect and improve the public health, safety, comfort, good order, appearance, convenience and general welfare of Collier County; to prevent the overcrowding of land and avoid the undue concentration of population; to facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing and other requirements and services; to conserve, develop, utilize and protect natural resources within the jurisdiction of Collier County; to protect human, environmental, social and economic resources; and to maintain through orderly growth and development, the character and stability of present and future land uses and development in Collier County.

12. It is the intent of the Board of County Commissioners of Collier County to implement the Land Development Code in accordance with the provisions of the Collier County Comprehensive Plan, Chapter 125, Fla. Stat., and Chapter 163, Fla. Stat., and through these amendments to the Code.

SECTION THREE: ADOPTION OF AMENDMENTS TO THE LAND DEVELOPMENT CODE

Section 3.05.07 Preservation Standards, of Ordinance 04-41, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

Section 3.05.07 Preservation Standards

* * * * *

H. Preserve standards.

1. Design standards.

* * * * *

f. Off-site vegetation retention.

i. Purpose and Intent. The purpose of this subsection f is to identify the criteria to satisfy on-site preserve requirements off site. The intent of the on-site preserve requirement is to retain, maintain, and preserve existing native vegetation on site as provided for in the Conservation and Coastal Management Element of the GMP. However, in limited situations on-site preserve may be considered less viable as a functional preserve if it is 21,780 square feet (one-half acre) or less and isolated. Therefore, in limited situations, providing for a preserve off site can achieve the goals and objectives of the GMP. This section shall not apply to lands located within the RLSA or RFMU districts.

~~i. Applicability. A property owner may request that all or a portion of the Collier County on-site native vegetation preservation retention requirement be satisfied offsite for only the following situations and subject to the restrictions listed below.~~

~~a) Properties zoned commercial where the on-site preserve requirement is less than 2 acres in size.~~

- b) ~~Park sites where the on-site preserve requirement is less than one acre in size.~~
 - c) ~~Essential service facilities other than parks, for any size preserves.~~
 - d) ~~Preserves less than one acre in size~~
 - e) ~~Affordable housing projects. The maximum percent of native vegetation retention allowed offsite shall be equal to the percent of affordable housing units, without limitation as to size of the preserve.~~
 - f) ~~Existing or proposed preserves with 75 percent or more coverage with exotic vegetation. Existing preserves not previously overrun with this type vegetation and which arrive at this state due to lack of management of the preserve shall mitigate off site at a ratio of 2 to 1.~~
 - g) ~~Created preserves which do not meet the success criteria in 3.05.07 H.1.e.viii or where preserves have not been planted in a manner which mimics a natural plant community.~~
 - h) ~~Preserves which do not meet the minimum dimensional requirements of this section.~~
 - f) ~~Portions of preserves located within platted single-family lots.~~
 - j) ~~Right of Way acquisitions to be conveyed or in the process of being conveyed to the County by non-governmental entities for all purposes necessary for roadway construction, including ancillary drainage facilities, and including utilities within the right-of-way acquisition area.~~
 - k) ~~All criteria listed for created preserves.~~
- ii. Restrictions, when one or more of the following situations occur. Applicability and prohibitions. Except where it is prohibited, applicants may request that the on-site native vegetation retention requirement be satisfied in full off site where the native vegetation requirement is 21,780 square feet (one-half acre) or less, and the preserves have not been identified on an approved development

order by the County. Off-site preserves are prohibited if one or more of the following is found on site:

a) ~~Xeric scrub, and hardwood hammocks which are one acre or more in size, mangrove (excluding mangrove fringes less than 40 feet in width, as measured from the root line, on artificially created shorelines), coastal dune and strand environments, and listed species habitat or corridors per the requirements or recommendations of the FFWCC or USFWS; shall not be allowed to have the on-site native vegetation preservation retention requirement provided offsite.~~

b) ~~Preserves shall remain onsite if that are located within or contiguous to natural flowways required to be retained per the requirements of the SFWMD, natural water bodies, estuaries, government required preserves (not meeting the off-site preservation criteria herein), NRPA's, or contiguous to property designated for purchase by Conservation Collier or purchased by Conservation Collier, or contiguous to properties containing listed species nests, buffers, corridors and foraging habitat per the requirements or recommendations of the FFWCC or USFWS. For the purpose of this section, natural flowways shall also include those identified during wetland permitting with applicable State and Federal agencies, regional drainage studies, or surface water management permits;~~ or

~~e) Remaining portions of on-site preserves must be a minimum of one acre in size and shall not meet the offsite criteria of sub-section 3.05.07 H.1.f.i.(f) and (g) above, unless preserved with higher quality habitat not qualifying for the off-site native vegetation retention alternative.~~

c) The on-site native vegetation retention requirement is greater than 21,780 square feet (one-half acre).

iii. Off-site preserves approved administratively. Except as limited in LDC section 3.05.07 H.1.f.ii., the County Manager or designee

may approve deviations to meet the on-site preserve requirements off site in only the following four situations:

- a) Essential services facilities;
- b) Affordable housing approved by the Collier County Community and Human Services Division;
- c) Projects where on-site native vegetation is fragmented; or
- d) Projects where on-site native vegetation is not contiguous to off-site preserve areas.

iv. Off-site preserves approved through a public hearing. Except as limited in LDC section 3.05.07 H.1.f.ii., applicants may request a PUD deviation or variance, as applicable, to meet the on-site preserve requirement off site.

- a) PUD deviations shall be processed in accordance with the procedures in LDC section 10.02.13.
- b) Variances shall be processed in accordance with the procedures in LDC section 10.09.00.

v. For the purposes of this section, the preserve requirement shall be based on the total acreage for the PUD or development order, as applicable, and not based on an individual phase or phases of a development, consistent with LDC section 3.05.07 H.1.a. If the on-site native vegetation retention requirement is satisfied off site, then all of the required preserve will be satisfied off site.

~~iii.~~vi. Off-site Alternatives. Off-site native vegetation retention requirements may be satisfied ~~met~~ by monetary payment or by land donation.

- a) Monetary payment alternative. Applicants shall make monetary payment to Collier County. Such funds ~~will~~ shall be used by the County for the purchase and management of off-site conservation lands within the county. The monetary payment amount shall be based on the post development appraisal value per acre multiplied by the preserve requirement, then multiplied by 1.25 to establish the endowment amount. The appraisal shall be performed by a state certified appraiser. In addition, the fee for initial exotic vegetation removal shall be paid by the applicant as

~~established in the Parks and Recreation Division Fee Schedule. location of the land to be impacted and be equal to 125 percent of the average cost of land in the Urban Designation or 125 percent of the average cost for all other Designations, as applicable, as defined by the FLUE, purchased by Collier County, through the Conservation Collier program. This monetary payment shall be made prior to the preconstruction meeting for the SDP or final plat construction plans.~~

b) Land donation alternative. In lieu of monetary payment, applicants may choose to donate land for conservation purposes at a ratio of 4:1 to Collier County or to another government agency. In the event of donation to Collier County, the applicant may acquire and subsequently donate land within the project boundaries of Winchester Head, North Golden Gate Estates Unit 53, another multi-parcel project or any other land designated by Conservation Collier donation acceptance procedures.

i) _____ Applicants who choose to donate land shall be required to demonstrate that the land to be donated contains native vegetation communities equal to or of higher priority (as described in subsection 3.05.07 A.) than the land required to be preserved onsite. In no case shall the acreage of land donated be less than the acreage of land required to be preserved onsite. Land donated to satisfy the off-site vegetation retention requirement must be located entirely within Collier County. Donations of land for preservation shall be made to a federal, state or local government agency established or authorized to accept lands for the conservation and management of land in perpetuity, subject to the policies and procedures of the receiving entity. Lands donated to Collier County must include a cash endowment ~~payment~~ for management of the

land. The cash endowment shall be established in the Collier County Parks and Recreation Division Fee Schedule. ~~The amount of this payment shall be equal to 25 percent of the average cost of land in the Urban Designation or 25 percent of the average cost in all other Designations, as applicable, as defined by the FLUE, purchased by Collier County, through the Conservation Collier program.~~

Applicants shall provide evidence that donations of land for preservation and endowments for management have been accepted by and donated to the entity stated above, at the time of the preconstruction meeting for the SDP or final plat and construction plans. ~~Exotics shall be removed in accordance with the time frames provided in 3.05.07 H.2.~~ State and Federal agency requirements for mitigation, remediation and monitoring for the donated land shall be the responsibility of the applicant.

~~iv.vii.~~ PUD zoning. ~~Where the off-site native vegetation retention alternative is used for portions of preserves not identified on a PUD master plan, a PUD amendment is not required.~~ Preserves or portions of preserves identified on a PUD master plan shall require an amendment to the PUD master plan to use the native vegetation retention alternative, subject to LDC section 10.02.13 E, unless the option to use the off-site native vegetation retention alternative is included in the PUD.

viii. Deviations or variances from LDC section 3.05.07 H.1.f. are prohibited.

g. Preserve management plans. Criteria i, ii, vii and viii below are required for all preserves whether a management plan for the preserve is required or not. Preserve Management Plans shall be required for all properties with 5 acres or more of preserve or where listed species are utilizing the preserve or where the preserve contains habitat which requires

management for fire (such as Pine Flatwoods, Palmetto Prairie or Scrub). The Preserve Management Plan shall identify actions that must be taken to ensure that the preserved areas will maintain natural diversity and function as proposed. A Preserve Management Plan shall include the following elements:

* * * * *

SECTION FOUR: CONFLICT AND SEVERABILITY

In the event that any provisions of this ordinance should result in an unresolved conflict with the provisions of the Land Development Code (LDC) or Growth Management Plan (GMP), the applicable provisions of the LDC or GMP shall prevail. In the event this Ordinance conflicts with any other Ordinance of Collier County or other applicable law, the more restrictive shall apply. If any phrase or portion of this 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 remaining portion.

SECTION FIVE: INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE

The provisions of this Ordinance shall become and be made a part of the Land Development Code 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 SIX: EFFECTIVE DATE

This Ordinance shall become effective upon filing with the Florida Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 10th day of July, 2018.



ATTEST:
CRYSTAL K. KINZEL, INTERIM CLERK

BOARD OF COUNTY COMMISSIONERS
OF COLLIER COUNTY, FLORIDA

By: Juana Cannon
Deputy Clerk

By: Andy Solis
ANDY SOLIS, Chairman

Attest as to Chairman's
signature only.

Approved as to form and legality:

Scott A. Stone
Assistant County Attorney

04-CMD-01077/ 1784 (6/11/18)

This ordinance filed with the
Secretary of State's Office the
13th day of July 2018
and acknowledgement of that
filing received this 13th day
of July 2018
By: Juana Cannon
Deputy Clerk



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

July 13, 2018

Ms. Crystal K. Kinzel, Interim Clerk
Collier County
Post Office Box 413044
Naples, Florida 34101-3044

Attention: Teresa Cannon

Dear Ms. Kinzel:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Collier County Ordinance No. 18-34, which was filed in this office on July 12, 2018.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb