

## CHAPTER 23: PROTECTED SPECIES

### Article

#### **I. BALD EAGLE PROTECTION**

### **ARTICLE I: BALD EAGLE PROTECTION**

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#### **§ 23-1 Purpose.**

The purpose of this chapter is to protect and preserve the Bald Eagle by protecting, enhancing and preserving the nest of the eagle and its immediate environs. With reasonable compensation incentives and proper management, the population of the Bald Eagle in Cape Coral can be maintained.

(Ord. 165-06, 11-27-2006)

#### **§ 23-2 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BALD EAGLE (*HALIAEETUS LEUCOCEPHALUS*).** As per the Federal Endangered Species List and the State Threatened Species List, a mature eagle with white plumage on its head and tail feathers, or an immature eagle with dark plumage, which resides throughout Florida around estuarine areas and along the lakes and river drainage basins within the interior of the state.

**CITY.** The City of Cape Coral, Florida.

**COMMISSION.** The Florida Fish and Wildlife Conservation Commission.

**CRITICAL EAGLE HABITAT.** Lands which are essential to the feeding, breeding, sheltering and other vital behavioral patterns of eagles.

**DEVELOPER.** Any person undertaking development.

**DEVELOPMENT.** Any improvement or change of the land induced by human activities.

**DEVELOPMENT OF REGIONAL IMPACT (DRI).** Any development which, because of its character, magnitude or location, would have a substantial effect upon the health, safety or welfare of citizens of more than one county, as defined by § 380.06, as the same now exists or may from time to time be amended.

**EAGLE NEST MANAGEMENT ZONE.** A buffer area that shall consist of a circular area with the active nest of the bald eagle in the center with a radius of 1,100 feet or an irregularly shaped area of approximately equivalent acreage that should be protected and managed to promote optimum protection and nesting conditions for the bald eagle.

**HEAVY CONSTRUCTION.** Certain construction activities which result in large amounts of noise and land vibration which would result in detrimental impacts to nesting bald eagles. These activities include, but are not limited to, earth moving, excavation, well drilling, lot clearing and grading, concrete work, roofing, framing, pile driving, seawall and dock construction, earth compaction and other outdoor construction activities.

**LAND.** The earth, water and air above, below or on the surface.

**LARGE SCALE DEVELOPMENT.** Developments of one acre or greater including, but not limited to, planned development projects and developments of regional impact, which could have a significant effect on the natural environment and population of the city.

**LIGHT CONSTRUCTION.** Certain construction activities which, if properly performed, should not be detrimental to nesting bald eagles. These activities include, but are not limited to, manual house painting and stucco work, indoor finishing work and the placing of sod and landscaping.

**NEST.** A structural mass of sticks, twigs, leaves, mosses or other materials which is being occupied or has been occupied by the bald eagle for the hatching and nurturing of eagle young.

**NEST TREE.** A tree which contains the nest of a southern bald eagle.

**NESTING PERIOD.** The period of time during which courtship, nest building, egg laying, incubation, brooding and the fledging of the young occur. This period of time is from October 1 to May 15 for most bald eagles.

**PARCEL.** For purposes of this chapter only, one or more contiguous lots under unified control.

**PERCH TREE.** A tree used by bald eagles for resting, sleeping, foraging, hunting, feeding, lookout, display or thermal benefit.

**PERSON.** Any and all persons, including, but not limited to, an individual, firm, association, organization, partnership, business trust, trust, corporation or company.

**PLANNED DEVELOPMENT PROJECT (PDP).** A complex of structures and uses planned as an integral unit of development rather than as a single principal structure or use on a single lot.

**PROPERTY OWNER.** Any person having recorded legal title to real property.

**QUALIFIED EAGLE MONITOR.** A person formally educated in the biological sciences, well experienced in recognizing specific patterns and changes of eagle behavior and capable of recording those observations in a scientific manner, who has been approved by the Director of Community Development, or the Director's designee, to serve in this capacity.

**SINGLE-FAMILY RESIDENCE.** A single, free standing building designed for one dwelling unit and intended for occupancy by one family.

**SUBSTANTIAL COMPLETION.** That stage of construction activity at which all heavy construction and all outdoor construction activities which utilize heavy equipment have been completed.

**UNIFIED CONTROL.** 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 chapter, by binding his or her heirs, assigns or other successors in title or interest with covenants or restrictions of the development and subsequent use of the land.

(Ord. 165-06, 11-27-2006)

### § 23-3 Applicability.

The regulations contained in this chapter shall apply to all parcels of land located within an Eagle Nest Management Zone. For purposes of this chapter, all nests of bald eagles are presumed to be active nests until determined to be abandoned by the city in accordance with this section. For the purpose of determining whether a particular nest has been abandoned, the city shall utilize the Commission's annual Bald Eagle Nesting Survey in conjunction with eagle monitoring records maintained by the city's Department of Community Development. The Commission's annual Bald Eagle Nesting Survey shall be conclusive as to all nests identified in the survey. With respect to other nests, abandonment shall be determined by the city based on competent evidence. Where eagle nests and/or nest trees which have been identified in Commission or city records are damaged or lost as a result of natural causes, including but not limited to, electrical storms, wind storms, hurricanes, tornadoes or floods which are not the result of human action or inaction, the provisions of this section shall continue to apply for a period of time as established by the Commission.

(Ord. 165-06, 11-27-2006)

## § 23-4 Regulations.

(a) Except as provided elsewhere in this chapter, no construction or development shall take place within an Eagle Nest Management Zone until the plans for construction or development have first been submitted to and reviewed by the city and the Commission.

(b) Developments on parcels of one acre or more, including, but not limited to planned development projects and developments of regional impact, which contain all or part of an Eagle Nest Management Zone shall be required to submit a Bald Eagle Management Plan which complies with the requirements set forth in § 23-7 below. This plan shall be submitted at the time the initial environmental survey for the project is submitted to the city.

(c) Within that portion of an Eagle Nest Management Zone located within 350 feet of an active bald eagle's nest, the city may prohibit any development or construction from taking place. In the event the city prohibits the development or construction with respect to a parcel and the owner or developer is unable to reasonably accommodate this restriction through planning and design of conservation open space so that this restriction has the effect of depriving the owner of the practical use of the parcel, then the city shall, at the owner's request, purchase the parcel at its fair market value. For purposes of this chapter, the fair market value of the parcel shall be the value as determined by an independent real estate appraiser chosen by mutual agreement of the city and the owner. In the event the city and the owner are unable to mutually agree on the selection of an appraiser, then the city shall select an appraiser and the owner shall select an appraiser and those two appraisers shall then select a third appraiser, who shall then determine the fair market value of the parcel.

(Ord. 165-06, 11-27-2006)

## § 23-5 Restricted activities.

(a) *Prohibited activities.*

(1) During eagle nesting season, or until there is sufficient evidence that all young eagles in the nest have successfully fledged, or until the United States Fish and Wildlife Service or the Commission verifies that a nest is not being used or that no fledgling has survived, the following activities are prohibited within Eagle Nest Management Zones, except as provided in subsection (b) below:

a. All construction and development activities, including, but not limited to, excavation, land clearing, tree trimming or tree cutting; and

b. Lot mowing on vacant lots.

(2) The use of any chemicals which are known to be toxic to wildlife is prohibited at all times within Eagle Nest Management Zones.

(3) No person shall be permitted within 150 feet of the base of any tree which is occupied by an eagle or an eagle's nest, or beyond the edge of the nearest street to the tree, whichever is the greater distance, during eagle nesting season or until all young eagles have successfully fledged. This section shall not, however, be construed to, in any way, limit or restrict normal vehicular travel on or along any

public roadway or street located within the 150 feet distance. Furthermore, this section shall not be construed to prohibit or unduly restrict activities which are normally associated with residential living for persons who may reside within the 150 feet distance.

(4) The use by any person of any device, including, but not limited to, any foodstuff or lure, to entice a bald eagle away from its nest for any purpose, including, but not limited to, photography or observation, is prohibited without the prior written consent of the Commission.

(5) Nest trees shall not be removed, cut, trimmed or otherwise disturbed in any manner at any time unless the nest has first been declared to be abandoned pursuant to the provisions of this chapter.

(6) Perch trees located within an Eagle Management Zone shall not be removed, cut, trimmed or otherwise disturbed in any manner at any time unless the prior written approval of the city's Department of Community Development is obtained. It shall be the responsibility of the owner to request the prior written approval from the city's Department of Community Development and to provide the city's Department of Community Development with competent sufficient evidence that the location of the particular perch tree is such as to deprive the owner of the practical use of the parcel or that the perch tree is dead and, by its continued existence, poses a danger to life and property. In the event the removal of the perch tree is approved by the city, then the owner may be required to provide an alternative eagle perch if the alternative perch would mitigate the negative effects of the removal of the perch tree.

(b) *Exceptions.*

(1) If construction is begun and is substantially complete prior to nesting season, an owner may be permitted to perform light construction activities so as to complete the principal structure during nesting season if approved by the city and the commission. However, construction of accessory structures, including, but not limited to pools, pool enclosures (other than those which are fabricated off-site), docks, piers, seawalls, gazebos or worksheds shall not take place during nesting season.

(2) Scientific investigations approved by the Commission and/or the United States Fish and Wildlife Service shall be permitted, provided that the city's Planning and Environmental Resource Divisions are given prior notification of all the investigations and are provided with all study reports and publications.

(3) Licensed veterinarians shall be permitted to provide medical attention to any sick or injured eagle.

(4) Emergency repairs of damage caused by fire, wind, flood or similar disaster may be permitted by the city for any habitable building, as necessary to protect the structural integrity thereof or as necessary for the health or safety of its occupants.

(5) The city may permit the repairs of septic tank failures, storm water drainage systems, and ruptured water, sewer, electricity, telephone and other utility lines and pipes, as are necessary to protect the public health and safety.

(6) For public infrastructure projects commenced and substantially completed prior to the nesting period, the city may permit the completion of the construction activities, as are necessary to protect the public health and safety. For purposes of this subsection (b)(6) only, the term ***SUBSTANTIALLY COMPLETED*** shall refer to a public infrastructure project that is nearing

completion and shall not be construed as subject to the definition of “substantial completion” set forth in § 23-2 above.

(7) The city may permit the mowing of vacant lots when declared to be necessary by the Chief of the Cape Coral Fire Department to prevent or ameliorate a fire hazard.

(8) During the nesting period, heavy construction and development activities may be conducted within an Eagle Nest Management Zone if those activities are in accordance with an approved Bald Eagle Management Plan, which complies with the requirements set forth in § 23-7 below. The construction activity pursuant to this subsection, shall be permitted only if the developer agrees in writing, as part of the submission of the Bald Eagle Management Plan, that all construction activity will immediately cease in the event the Director of the Department of Community Development, or the Director’s designee, or the approved Qualified Eagle Monitor observe abnormal eagle behavior as provided for in § 23-7(f) below.

(Ord. 152-06, § 1, 10-30-2006; Ord. 165-06, 11-27-2006)

### **§ 23-6 Building permits.**

All building permits issued by the city for property located within all or part of an Eagle Nest Management Zone shall have affixed thereto a label which clearly states that the property lies within the Eagle Nest Management Zone. The City Building Official, Code Enforcement Officer or other person as may be designated by the City Council, shall issue stop work orders for any development or construction that is not in compliance with the provisions of this chapter or until any suspected infractions have been inspected and resolved.

(Ord. 165-06, 11-27-2006)

### **§ 23-7 Bald Eagle Management Plan.**

(a) Bald Eagle Management Plans shall be prepared by qualified experts with knowledge and experience in the biology of the Bald Eagle.

(b) The Bald Eagle Management Plan shall be reviewed by the Director of the Department of Community Development or the Director’s designee concurrently with other development plans for the project. The Director or the Director’s designee shall approve the Bald Eagle Management Plan if the Director or the Director’s designee determines that the Bald Eagle Management Plan provides appropriate safeguards to prevent disturbing the bald eagle to the degree that it interferes with or interrupts normal breeding, feeding or shelter habits, causing injury, death or nest abandonment and to avoid potential violations of federal, state and local laws. The Department of Community Development shall provide the applicant with written comments concerning the plan. Those comments may include, but not be limited to, modifications necessary to obtain development permits for the project.

(c) Approved Bald Eagle Management Plans shall run with the land and be binding on the owner, his or her successors, and assigns.

(d) The owner shall prepare, on an annual basis, a monitoring report on the condition of the eagle habitat. Monitoring reports shall be required for a period of five years from the date when final approval

of the project was obtained.

(e) All bald eagle management plans shall include, at a minimum, the following:

(1) *Site plan.* A site plan, drawn to scale, shall be submitted and shall depict the following:

- a. Location of any and all bald eagle nests and nest trees which are either on the site or within the Eagle Nest Management Zone applicable to the site;
- b. Areas of the parcel proposed to be cleared of any vegetation;
- c. Location of all existing and proposed structures, accessory structures and parking areas;
- d. Location of all perch trees frequented by eagles;
- e. Proposed densities on the parcel;
- f. A listing of all proposed uses by type (e.g. single-family, multi-family, commercial, professional, industrial);
- g. Height of all structures;
- h. Location of proposed and existing roadways;
- i. Phasing plans for construction, indicating activities proposed during nesting and non-nesting periods; and
- j. Size and location of areas proposed for designation as a Critical Eagle Habitat.

(2) *Outline of management activities.* An outline of proposed management activities shall be submitted and shall address the following:

- a. Proposed preservation of any exotic trees, including, but not limited to, Melaleuca, Brazilian Pepper and Australian Pine which are actually used as eagle nest or perch trees and any proposed removal of exotic vegetation from the site; and
- b. Proposed education plan for residents or occupants of the site through the use of written materials including, but not limited to, brochures and signage.

(3) *Statement of qualifications.* For bald eagle management plans that are seeking permission to perform heavy construction and/or development activities within an Eagle Nest Management Zone during the eagle nesting period, a proposed Qualified Eagle Monitor shall be identified and a statement of the qualifications including, but not limited to, relevant education, training and experience, of the proposed Qualified Eagle Monitor shall be submitted.

(f) The city may approve Bald Eagle Management Plans that will permit heavy construction and development activities within an Eagle Nest Management Zone during the eagle nesting period. A Bald Eagle Management Plan shall be considered for approval only if it identifies a Qualified Eagle Monitor, approved by the Director of the Department of Community Development or the Director's designee, who will monitor the heavy construction and development activities during the eagle nesting period.

Monitoring shall be implemented in accordance with the monitoring protocol described in the *United States Fish and Wildlife Service Bald Eagle Monitoring Guidelines* (“*USFWS Guidelines*”), dated September 2006, except that the monitoring protocol shall be applied to the entire 1,100 feet of the Eagle Nest Management Zone as opposed to any lesser dimension that may be identified in the *USFWS Guidelines*. The purpose of monitoring bald eagle nests under this section is to prevent disturbing the bald eagle to the degree that it interferes with or interrupts normal breeding, feeding or shelter habits, causing injury, death or nest abandonment and to avoid potential violations of federal, state and local laws. The Monitor shall immediately notify the City of Cape Coral if there is observation of abnormal behavior of the adult eagles or their chicks that may be elicited in response to development activities occurring within the Eagle Nest Management Zone, as described in the *United States Fish and Wildlife Service Monitoring Guidelines*. If the Director of the Department of Community Development, or the Director’s designee and/or the Monitor observes abnormal behavior, the city shall stop all construction and development activity. The city will report any suspension of work activities and/or observed abnormal eagle behavior to the Developer, United States Fish and Wildlife Service and the Commission. The City of Cape Coral, United States Fish and Wildlife Service and the Commission will coordinate a review of the reported behavior and circumstances associated with any suspension of work activities to make a written recommendation as to whether construction should resume or be modified, or if monitoring frequency should be increase.

(g) Any amendments to a Bald Eagle Management Plan must first be approved by the City Council after review and recommendations from the city’s Planning and Environmental Resources Divisions and the Commission Director of the Department of Community Development or the Director’s designee. Proposed amendments which would have the effect of decreasing or diminishing the development or construction restrictions with respect to a parcel may be permitted only if the applicant submits sufficient evidence that is found by the Director of the Department of Community Development or the Director’s designee to be sufficient to establish that the degree of protection offered by the original plan is no longer necessary.

(Ord. 165-06, 11-27-2006)

### **§ 23-8 Penalties.**

(a) Any person convicted of violating any of the provisions of this chapter shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail for a period not to exceed 60 days, or by both the fine and imprisonment. That person shall also pay all costs and expenses incurred by the city in instituting or having such an action instituted. Each day the violation continues shall be considered a separate offense.

(b) In addition to any other penalty provided by this chapter, any person who violates this chapter may be required to restore the Eagle Nest Management Zone to its condition prior to the violation. In the event restoration is not completed within a reasonable time after notice to the violator of the need for the restoration, then the city may undertake the restoration and the cost of the restoration shall constitute a lien upon the property until paid in full.

(c) In addition to any other penalty provided by this chapter, any violation of this chapter constitutes a public nuisance subject to restraint by injunction.

(Ord. 165-06, 11-27-2006)





## § 23-9 Supplemental regulations.

This chapter does not replace the Federal Endangered Species Act, the Federal Migratory Bird Act, the Federal Bald Eagle Act, the Florida Threatened Species Act or any other like regulation. Rather, this chapter is intended to supplement those laws to ensure protection of Critical Eagle Habitat.

(Ord. 165-06, 11-27-2006)

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