

IMPLEMENTING POLICY 14.1.5

RECENT CHANGES TO LEE PLAN POLICY 14.1.5:

POLICY 14.1.5: New development, including “planned development” rezoning approvals, and new subdivisions, and agriculture, that adjoining state-designated aquatic preserves and associated wetlands and natural tributaries shall provide must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands. This requirement will not apply to existing subdivided lots. For agriculture, this requirement:

- will be implemented through the notice-of-clearing process in chapter 14 of the land development code;
- will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and
- if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing.

SUMMARY OF CODE CHANGES NEEDED TO IMPLEMENT POLICY 14.1.5:

- a. “New development, including “planned development” rezoning approvals, new subdivisions, and agriculture, that adjoin state-designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands.” – MODIFY 1-2, 10-416, and 34-935.
- b. “For agriculture, this requirement...will be implemented through the notice-of-clearing process in chapter 14 of the land development code...” – ADD NEW PROVISIONS TO 14-374, 14-377, and 14-312.
- c. “For agriculture, ...will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands...” – ADD NEW PROVISIONS TO 14-377 and 14-312.
- d. “For agriculture, ...if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing. – ADD NEW PROVISIONS TO 14-377 and 14-312.

COMPOSITE CODE CHANGES TO IMPLEMENT POLICY 14.1.5:

CHAPTER 1 General Provisions

Sec. 1-2. Rules of construction and definitions.

(a) In the construction of this Land Development Code, and of all ordinances, the rules and definitions set out in this section shall be observed, unless inconsistent with the manifest intent of the Board of County Commissioners. The rules of construction and definitions in this section do not apply to any section of this Land Development Code that contains any express provisions excluding their application, or where the subject matter or context of such section may be repugnant thereto.

(b) Generally. *[no changes required]*

(c) The following words, terms and phrases, when used in this Land Development Code, will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

...

State-designated aquatic preserves and associated wetlands and natural tributaries means:

- (1) The following aquatic preserves as designated by the state of Florida:
 - a. Gasparilla Sound-Charlotte Harbor Aquatic Preserve, and
 - b. Matlacha Pass Aquatic Preserve, and
 - c. Pine Island Sound Aquatic Preserve;
plus
- (2) All wetlands, as defined in article IV of chapter 14 of this code, that adjoin any portion of these aquatic preserves; plus
- (3) All bays, lagoons, creeks, and other waterways that adjoin any portion of these aquatic preserves, but excluding man-made canals.

For the purpose of this definition, any portion of a wetland or natural tributary lying farther than ½ mile from the nearest point in an aquatic preserve will not be deemed to be an associated wetland or natural tributary.

...

[no other changes to section 1-2]

CHAPTER 10 Development Standards ARTICLE III, DESIGN STANDARDS AND REQUIREMENTS

Division 6, Open Space, Buffering and Landscaping

Sec. 10-416. Landscape standards.

(a) **General.** *[no changes required]*

(b) **Building perimeter plantings.** *[no changes required]*

(c) **Landscaping of parking and vehicle use areas.** *[no changes required]*

(d) **Buffering adjacent property.**

(1) – (8) *[no changes required]*

(9) Development abutting natural waterway.

Except where a stricter standard applies for the Greater Pine Island Area (as defined in Goal 14 of the Lee Plan and as described in section 34-2 of this code), there must be a 25-foot wide vegetative buffer landward from the mean high water line of all nonseawalled natural waterways. Where a proposed new development, including planned development rezoning approvals and new or subdivisions, is located in the Greater Pine Island Area abutting state-designated aquatic preserves and associated wetlands and natural tributaries, as defined in chapter 1 of this code, the width of the required buffer will be 50 feet landward from the water body and wetlands and the applicant must preserve or plant indigenous native vegetation throughout this buffer; however, these special requirements do not apply to portions of marinas that provide direct water access, or to land that has already been lawfully subdivided into building sites.

Existing vegetation within the buffer area must be retained. The removal or control of exotic pest plants must not involve the use of heavy mechanical equipment such as bulldozers, front end loaders, or

hydraulic excavators, unless approved at the time of development order.
(10) – (11) [no changes required]

CHAPTER 14
Environment and
Natural Resources
ARTICLE V, TREE PROTECTION

Sec. 14-374. Definitions.

(a) The following words, terms and phrases, and their derivations, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words in the present tense include the future and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

...

Greater Pine Island means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.

...

[no other changes to section 14-374]

Sec. 14-377. Exemptions from article.

(a) This article does not apply to the following:

- (1) Removal of trees on the following lands as specified in this subsection:
 - a. This article shall not apply to the removal of trees, other than trees worthy of preservation, on lands classified as agricultural land for ad valorem taxation purposes pursuant to F.S. § 193.461(3)(b). Trees, other than trees worthy of preservation, may be removed from agriculturally zoned lands only after the owner or his agent procures a notice of clearing from the administrator (see section 14-412(i) for procedures and for special requirements that apply to proposed

agricultural activities in Greater Pine Island). However, if an application to rezone the subject lands is filed within three years from the date when the most recent notice of clearing was issued, and the rezoning is granted, the applicable minimum open space requirements of chapter 10 shall be satisfied in the following manner: [no changes required]

- b. Land used for bonafide agricultural purposes that meets the criteria of or has been designated as wetlands.
 - c. If the property is located in the critical areas for surface water management, and is not used for bona fide agricultural purposes, indigenous vegetation shall not be cleared in areas that serve as listed species occupied habitat as defined in chapter 10, article III, division 8. The following shall apply: [no changes required]
 - d. If the property is located in the critical areas for surface water management, indigenous vegetation shall not be cleared within 25 feet of the mean high-water line or ordinary high-water line, whichever is applicable, of any natural waterway listed in appendix F. Indigenous vegetation may be cleared selectively to allow the placement of docks, pipes, pumps and other similar structures pursuant to applicable county ordinances.
- (2) The removal of trees on public rights-of-way conducted by or on behalf of a federal, state, county, municipal or other governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way or in the performance of its official duties.
 - (3) The removal of a protected tree that is dead or which has been destroyed or damaged by natural causes beyond saving or which is a hazard as the result of an act of God and constitutes an immediate peril to life and property.
 - (4) The removal of trees by duly constituted communication, water, sewer or electrical utility companies or federal, state or county agency, engineer or surveyor, working under a contract with such federal, state or county agency or when

such tree removal is done as a governmental function of such agency.

- (5) The removal of trees by duly constituted communication, water, sewer or electrical utility companies in or adjacent to a public easement or right-of-way, provided such removal is limited to those areas necessary for maintenance of existing lines or facilities or for construction of new lines or facilities in furtherance of providing utility service to its customers, and provided further that such removal is conducted so as to avoid any unnecessary damage or removal of trees.
- (6) The removal of trees protected by this article, other than a tree worthy of preservation, by a state-licensed land surveyor in the performance of his duties. The removal of trees protected by this article in a manner which requires clearing a swath of greater than three feet in width shall require approval of the administrator prior to such a removal and clearance.
- (7) The removal of protected trees on a lot zoned for single-family residential use or being used lawfully as a single-family residence or mobile home where the residence or proposed residence is located on a lot no greater than five acres in area. However, this exemption does not apply on the coastal islands listed in subsection (c) below.
- (8) The removal of protected trees, other than a tree worthy of preservation, on the premises of a licensed plant or tree nursery or tree farm where such trees are intended for sale in the ordinary course of the licensee's business.

(b) Any final development order or other final approval issued by the county which was granted after January 27, 1983, but before the effective date of the ordinance from which this article is derived may, at the discretion of the administrator, be exempted from compliance with this article, to the extent that the restrictions imposed by this article conflict with the approvals given in the final development order or other final approval, in which case the final development order or other final approval shall supersede this article as to those areas in conflict.

(c) The exemptions herein for single-family residential use in subsection (a)(7) above do not

apply to land located on the following coastal islands: Gasparilla Island, Cayo Costa Island, North Captiva Island, Captive Island, Buck Key, Greater Pine Island, Lover's Key Group of Islands, Black Island, Big Hickory Island, and Little Hickory Island (Bonita Beach).

- (1) The tree permit will be incorporated into the building permit for the site. Review of the tree removal will follow the criteria listed in sections 14-411 and 14-412. For clearing prior to building permit issuance, as a separate tree permit application must be submitted for review and compliance with sections 14-411 and 14-412. No tree permit is required for the annual removal of five trees or less from any single-family residential lot that contains an existing single-family dwelling unit.
- (2) As part of the tree permit site inspections, department of community development staff will also review understory or subcanopy plants and protected species for retention or relocation within the site.
- (3) For Greater Pine Island only, a tree removal permit will be required only on parcels or lots zoned or used for residential purposes that are two acres in size or greater.

Sec. 14-412. Issuance of permit.

(a) **Submission of application.** Application for a permit to remove any protected tree defined in this article shall be submitted to the administrator, in writing, on a form provided by the administrator, accompanied by a written statement indicating the reasons for removal.

(b) **Authority of administrator.** The administrator shall have the authority to issue the permit and to inspect all work performed under any permit issued under this article.

(c) **Required information.** All applications to remove any protected tree defined in this article shall be on forms provided by the administrator. Where an application has been submitted to the administrator for the removal of more than five trees, no tree removal permit shall be issued by the administrator until a site plan for the lot or parcel has been reviewed and approved by the administrator, which shall include the following minimum information:

- (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of the structures and improvements, if any.
- (2) A tree location map for the lot or parcel, in a form acceptable to the administrator. For the removal of five trees or less, an on-site examination by the administrator's designee shall be made in lieu of the tree location map requirement.
- (3) Any proposed grade changes that might adversely affect or endanger any trees on the lot or parcel, together with specifications reflecting how the trees can be safely maintained.
- (4) Any proposed tree replacement plan.

(d) **Criteria for granting.** The administrator shall approve a permit for issuance for the removal of any protected tree if the administrator finds one or more of the following conditions is present:

- (1) Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services.
- (2) Trees which pose a safety hazard to existing buildings or structures.
- (3) Trees which prevent reasonable access to a lot or parcel so long as the proposed access point complies with all other county regulations.
- (4) Diseased trees which are a hazard to people, buildings or other improvements on a lot or parcel or to other trees.
- (5) Trees so weakened by age, storm, fire or other injury as to, in the opinion of the administrator, jeopardize the life and limb of persons or cause a hazard to property.
- (6) Trees which prevent the lawful development of a lot or parcel or the physical use thereof.
- (7) The administrator may require that a tree protected by this article be relocated on the same lot or parcel in lieu of removal.

(e) **Submission of site plan when building permit not required.** Where a building permit issuance is not required because no structures are to be constructed and no other development of the lot is to occur, any person seeking to remove a tree protected under this article shall first file a site plan with the administrator meeting the requirements of subsection (c) of this section prior to receiving a tree removal permit from the administrator.

(f) **Inspection of site.** The administrator may conduct an on-site inspection to determine if any proposed tree removal conforms to the requirements of this article and what effect, if any, removal of the trees will have upon the natural resources, as identified in the Lee Plan, of the affected area prior to the granting or denying of the application. A permit fee will be required for the removal or relocation of any tree protected under the provisions of this article and shall be paid at the time of issuance of the permit. The fees established will be set in accordance with the county administrative code and paid to the administrator. Such fees are hereby declared to be necessary for the purpose of processing the application and making the necessary inspection for the administration and enforcement of this article.

(g) **Approval or denial.** Based upon the information contained in the application and after investigation of the application, the administrator shall approve or deny the application, and, if approved, the administrator is the party so designated by the Board of County Commissioners to issue the permit for a period not to exceed one year and to collect the permit fee.

(h) **Conditions.** The administrator may attach conditions to the permit relating to the method of identifying, designating and protecting those trees which are not to be removed in accordance with subsection (g) of this section. A violation of these conditions shall automatically invalidate the permit. Special conditions which may be attached to the permit may include a requirement for successful replacement of trees permitted to be removed with trees of the same size, compatible species and same number.

(i) **Notice of clearing.** Upon receipt of all necessary documents, the administrator may issue a notice of clearing in lieu of an individual tree removal permit. A notice of clearing will be the preferred method of confirming that proposed agricultural activities conform with the exemption criteria in section 14-377(a). Notices of clearing for agricultural purposes in Greater Pine Island must comply with the following additional requirements in accordance with Policy 14.1.5 of the Lee Plan:

- (1) Agricultural land that adjoins state-designated aquatic preserves and associated wetlands and natural tributaries.

as defined in chapter 1 of this code, must preserve or create a 50-foot-wide native vegetated conservation buffer area between all agricultural lands and the natural waterbody and associated wetlands.

- (2) The purpose of this conservation buffer is to capture or slow the movement of sediments, fertilizers, pesticides, pathogens, and heavy metals that may be concentrated in stormwater runoff and to allow for increased biodiversity and improved wildlife habitat.
- (3) Stormwater runoff that is discharged through this conservation buffer must be routed through an indirect discharge such as an overflow or spreader swale or similar conveyance of a sufficient dimensions to reduce discharge velocities to historic rates or rates less than two feet per second.
- (4) This conservation buffer area must be maintained as a forested buffer but may contain a grassed filter strip of up to 15 feet wide. A maintenance plan must be provided to control invasion of exotic vegetation. If native vegetation does not currently exist in the remainder of the buffer, native tree cover must be established within three years of issuance of the notice of clearing.
 - a. For purposes of this subsection, native tree cover means the planting and subsequent maintenance of longleaf pine, slash pine, and/or native oak trees at average spacings typical of indigenous pine flatwoods on Pine Island.
 - b. These trees must be Florida No. 1 or better grade, no less than four feet in height at time of planting, and with a guaranteed 80 percent survivability for a period of five years.
- (5) Additional recommended design criteria are available in "Conservation Practice Standards" from the National Resources Conservation Service:
 - i. Standard 391 (Riparian Forest Buffer).
 - b. Standard 393 (Filter Strip).
- (6) These conservation buffer regulations will not be construed in a manner that violates the Agricultural Lands and Practices Act, F.S. § 163.3162, or the Florida Right-to-Farm Act, F.S. § 823.14.

CHAPTER 34

Zoning

ARTICLE VI, DISTRICT REGULATIONS Division 9, Planned Development Districts

Sec. 34-935. Property development regulations.

The provisions of this section do not apply to PRFPDs. Property development regulations for PRFPDs are set forth in section 34-941.

(a) *Minimum area for planned developments.* [no changes required]

(b) *Minimum setbacks of structures and buildings from development perimeter boundaries.* [no changes required]

(c) *Uses permitted within required perimeter setback.* [no changes required]

(d) *Planned developments on in Greater Pine Island.* Where the proposed planned development is within the Greater Pine Island area and adjoins state-designated aquatic preserves or and associated wetlands and natural tributaries, as defined in chapter 1 of this code, a 50-foot-wide native vegetated buffer area must be provided between any structure or building and the water body and wetlands. ~~the mean high-water line of the water body shall be provided.~~ Indigenous native plants within this buffer must be maintained or planted.

(1) These requirements do not apply to:

- a. Portions of marinas that provide direct water access, or
- b. Land that has already been subdivided into building sites.

(2) No deviation from ~~this~~ these requirements shall be permitted except under extreme circumstances in which the requirements would have the effect of prohibiting all reasonable use of the property.

(e) *Minimum lot size, dimensions and setbacks.* [no changes required]

(f) *Height of buildings.* [no changes required]

(g) *Open space.* [no changes required]