

LEE COUNTY ORDINANCE NO. 15-08

AN ORDINANCE AMENDING AND RESTATING LEE COUNTY ORDINANCES 05-17 AND 13-09 PERTAINING TO THE LEE COUNTY CONSERVATION 20/20 LAND PROGRAM; AND ESTABLISHING PROVISIONS RELATED TO THE ANNUAL REVIEW OF THE PROGRAM AS WELL AS ACQUISITION, MANAGEMENT, AND FUNDING FROM AND THROUGH THE GENERAL FUND; PROVIDING FOR SEVERABILITY; CODIFICATION; INCLUSION IN THE CODE; PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; SCRIVENER'S ERRORS; AND, AN EFFECTIVE DATE.

WHEREAS, the public health, safety and welfare is served, promoted and enhanced by the acquisition and management of environmentally critical or sensitive lands for the protection of natural flood plains, marshes or estuaries; for surface water management and water supply, for the restoration of altered ecosystems; and to provide wildlife management areas and recreation opportunities; and the conservation of said natural resources; and,

WHEREAS, applicable Florida Statutes reflect that such land acquisition and improvement serves a public purpose; and,

WHEREAS, Lee County has determined it is in the public's interest to submit to voter referendum the issue of whether the County should be authorized to levy and use certain ad valorem tax funds to finance the purchase and improvement of said lands; and,

WHEREAS, it is further in the public's interest to have any resulting acquisition and improvement program procedurally implemented in a manner that sets specific guidelines for the program and provides the County with recommendations to ensure effective and successful completion of the program; and,

WHEREAS, the Board of County Commissioners recognizes the need for the creation of an advisory committee in order to advise the County and public in the implementation of the program and in proceeding with projects constituting a part of the limited general obligation bond acquisition and improvement program; and,

WHEREAS, on July 31, 1996, the Board of County Commissioners adopted Lee County Ordinance No. (LCO) 96-12 to implement the Lee County Conservation Land Acquisition and Stewardship Program ("Program") through the creation of the "Land Committee"; and,

WHEREAS, on September 13, 2005, LCO 96-12 was amended, restated and repealed by LCO 05-17, which was subsequently amended on May 28, 2013 by LCO

13-09 in order to implement the recommendations of the Special Advisory Committee known as the Conservation 20/20 Blue Ribbon Committee; and

WHEREAS, the Board of County Commissioners now desires to codify, amend and restate LCO 05-17, as amended by LCO 13-09, in order to reflect the Board's desire to clarify expenditures applicable to the lands purchased and managed under this Program.

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

SECTION ONE: NAME

This Ordinance shall be known as the Lee County Conservation Lands Implementation Ordinance.

SECTION TWO: CREATION OF AN ADVISORY COMMITTEE

The Board of County Commissioners hereby creates and establishes the Conservation Lands Acquisition and Stewardship Committee (CLASAC), ~~hereinafter called "The Land Committee".~~

SECTION THREE: OBJECTIVES AND DUTIES

The CLASAC ~~Land~~ Committee will advise and provide recommendations to the Board concerning the County's environmentally critical or sensitive land purchase and improvement program, "The Land Program," more commonly known as the Conservation 20/20 program. Upon formation of the Land Committee, the Board, with input from the Committee, shall establish reasonable rules, guidelines and milestones in order for the Committee to meet its objectives and duties as provided herein.

The Land Committee will perform the following functions:

- A. Review and provide recommendations concerning the County's ~~levy of millage and~~ use of ad valorem funds in order to finance and implement the Land Program.
- B. ~~Recommend~~ Establish the parameters of The Land Program to include, but not limited to, criteria for land purchases, procedures to implement the Program, and process for ranking purchase projects. The Land Program parameters will be confirmed by the Board by subsequent Resolution.

- C. ~~Develop for Board approval, an Annual Property Acquisition Map depicting properties that are either nominated for acquisition and are actively being pursued for purchase, or have been purchased by the County under the Land Program.~~
- D. Make recommendations regarding the use of Management Funds Set aside no less than ten percent (10%) of the Program revenues for a trust fund to enable restoration, perpetual management and public access for the acquired properties. Procedures for expenditures from the Management trust fund will be recommended to, and approved by, the Board of County Commissioners.
- E. Review established Land Program criteria and guidelines and provide recommendations for amendments and/or modifications to The Land Program that serve to enhance the effective operation of same.
- F. Provide periodic input and updates on the implementation and operation of The Land Program, to include but not limited to land purchase status, expenditures and availability of funds.
- G. Disseminate to and coordinate with Lee County local governments, potentially affected property owners and the general public by public hearing or otherwise, information concerning the program guidelines and the rationale for parcel selection.
- H. Coordinate with and assist as necessary Lee County staff in acquiring and managing the Program lands.
- I. Offer amendments and/or modifications to this Ordinance as necessary to effectively and successfully implement the Program.
- J. Once the purchase price and terms of purchase of land under the Land Program is complete and ready for Board approval, the Committee may review and provide a recommendation to the Board concerning the negotiated purchase price and terms of purchase. The Committee may recommend purchase as proposed or may recommend not moving forward with the negotiated price. For those purchases where the Committee recommends not moving forward, the Committee must provide the basis for its recommendation. The Board has the discretion to accept or reject the Committee's recommendation. In making its recommendation, the Committee may consider the following:
 - 1. Appraisals prepared for the property.
 - 2. Analysis of the valuation method used and the comparable sales data, adjustments, and assumptions made to support the valuation.

3. Effect of encumbrances on the valuation of the property.
4. Development Regulations and existing entitlements applicable to the property and potential for development of the property under current development regulations and entitlements.
5. Expenses associated with the maintenance of the property.
6. Any further matters deemed necessary by the Committee for an analysis of the negotiated purchase price.

As a part of the presentation of the parcel to the Board for purchase, County Staff will provide the Board a written report of the Committee's recommendation. The report must include a summation of the majority's recommendation, including justifications if given, and a summation of the minority's recommendation, including justifications if given.

SECTION FOUR: PROGRAM CRITERIA

Notwithstanding the duties and objectives as specified in Section Three, supra, the Land Program shall be subject to the following general criteria:

- A. All land acquisitions and land improvement functions must be consistent with the legal and financial parameters of any County ~~levy of millage and~~ use of ad valorem tax proceeds providing funds for The Land Program.
- B. All land purchases shall conform to those laws applicable to the County purchase of real property or any interest therein.
- C. All lands shall be purchased in a legal interest sufficient to meet the objectives for the uses of the acquired lands herein, this may include, where appropriate, the use of easements and the purchase of development rights as other possible means to acquire interests in those lands identified in paragraph G of Conservation Easements as another possible means to acquire environmentally sensitive lands. Notwithstanding, property owners may donate and the County may accept donations of environmentally sensitive lands into the Conservation 20/20 Program, so long as the donated property meets the Conservation 20/20 Program criteria and the Board of County Commissioners formally accepts the donation.
- D. Evaluation criteria ~~Priorities~~ for land purchase will be reviewed and amended, as necessary ~~must be reviewed and amended, if necessary, at~~

least on an annual basis. Criteria for ranking and prioritizing purchases will be approved by the Board of County Commissioners.

- E. This is a willing buyer/seller program. Purchases will be for fee simple and/or other property interests, such as easements and purchase of development rights, as approved by the Board of County Commissioners.
- F. All lands considered for purchase with an asking price of \$499,999 or less will be appraised by at least one state certified appraiser. All lands considered for purchase with an asking price of \$500,000 or more will be appraised by no less than two state certified appraisers. If there is a difference of 20% or more between the valuations provided within the two appraisals, the property must be appraised by a third state certified appraiser.
- G. In general, the lands considered for purchase should have critical or sensitive conservation value, be large enough in size to be effectively managed or be a unique/rare habitat type, contribute positively to surface water management, water quality, water recharge and supply, flood control, wildlife habitat, appropriate passive public recreation, or open space.
- H. Program management funds can be spent on existing Conservation 20/20 lands for water quality improvement projects that enhance or restore the natural communities on site. The county can spend acquisition funds to purchase new properties strictly for conservation and for properties that meet both conservation and water quality goals. The county will pay for non-restoration water quality improvement projects from non-Conservation 20/20 funds.
- I.H. Land purchases will be consistent with those lands as identified in the Lee County Comprehensive Plan as being appropriate for conservation and protection of natural resources efforts and public recreation.
- J.I. Lands to be acquired under The Land Program will be subject to the County's receipt of off-site mitigation credits from appropriate agencies or agency, as the case may be.
 - 1. For purposes of this Section I., the term "Mitigation" means, includes and applies to, wetlands, wildlife and vegetative habitats, water quality and any other forms of mitigation as defined and described by Federal and State permitting agencies when reviewing permit applications for projects which require compensatory mitigation as defined, for project environmental impacts.
 - 2. For purposes of this Section I., any lands acquired under the Lands Program providing compensatory mitigation credits for project

environmental impacts, such credits may be used for County projects and other public projects as advanced by the State of Florida, municipalities within Lee County and the School District of Lee County, subject to review and recommendation to the Board of County Commissioners by the Land Committee on a case-by-case basis.

3. For purposes of this Section I., it is the intent of this Ordinance that the requirement for the eligibility of mitigation credits from permitting agencies for lands acquired under the Program be liberally construed, so as not to preclude the acquisition of a desired, selected property that may or may not provide future mitigation credits.

K.J. Any lands identified as a priority for purchase can be removed from said listing or acquisition upon the request of any affected land owner.

L.K. Appraisers used for valuation of lands to be acquired under The Land Program must be State qualified in the property type appraised. The County will select Qualified Appraisers through the formal Procurement process on a bi-annual basis.

SECTION FIVE: APPOINTMENT AND COMPOSITION

The Board of County Commissioners shall appoint fifteen (15) members to the Land Committee, as herein established. It is the intent to establish an advisory committee with a balance of environmental, business, government and civic interests in Lee County. The membership will be established by the Board upon consensus vote after a review of recommendations of appointees. Each Board member shall nominate three (3) members to the Committee.

SECTION SIX: TERMS OF MEMBERS

The members to the Land Committee shall be appointed by the Board for a term up to three (3) years. The membership hereof shall be appointed within thirty (30) days after the favorable adoption of the non-binding Referendum of November 5, 1996 on the land acquisition issue. The Board will make subsequent appointments or reappointments in the same manner as the original appointments. Members may be replaced subject to confirmation of the Board. Unless otherwise provided by the Board, replacement members will serve the unexpired term.

The Board may remove any member who is absent for four (4) consecutive meetings upon a recommendation from the Land Committee.

SECTION SEVEN: RULES OF PROCEDURE

- A. The Land Committee and its members shall comply with all applicable requirements of the Florida Sunshine Law, Public Records Law, Financial Disclosure Requirements (~~Chapter 112, Fla. Stat.~~), if required, and the Lee County Lobbying Ordinance.
- B. The Land Committee may adopt additional procedures of operations provided there is no conflict with State Law, the Lee County Charter or ordinance.
- C. Roberts Rules of Order shall dictate parliamentary procedure. The Committee will elect its own officers for a one (1) year term.
- D. All members will serve without compensation.
- E. The Committee shall adopt a meeting schedule consistent with the effective implementation and operation of the Program and the objectives set forth in this Ordinance. Regardless, in no event will the Committee meet less than quarterly unless such revised schedule is first approved by the Board. The Committee adopted meeting schedule or revisions thereto shall be forwarded to the Board of County Commissioners.
- F. ~~Chapter 112, Part 3 (Code of Ethics) of the Florida Statute, applies to all Committee members. In addition to the prohibitions and limitations provided under Chapter 112, F.S. requirements of Section Seven A. above,~~ the following ~~prohibitions~~ limitations will apply:
 - 1. Committee members and their relatives may not represent a property owner that has submitted his or her property for review and approval by the Committee.
 - 2. Committee members and their relatives may not directly or indirectly sell property owned by the Committee member or his or her relatives (directly or indirectly through a separate legal entity) to the County.
 - 3. Committee members and their relatives (directly or indirectly through a separate legal entity) may not receive compensation resulting from the sale of realty to the County. This includes, without limitation, real estate commissions, listing fees, brokerage fees, or other consideration paid by an individual, real estate firm, company, or agency.
 - 4. Subsection F is not meant to restrict the sale of property by a real estate firm, company, or agency in which the Committee member's relative is only an employee of that firm, company, or agency and the

real estate commissions or compensation received from the sale is not shared with, or provided to, the Committee member or his or her relative.

5. For purposes of this subsection, the term "relative" includes, an individual who is related to a Committee member as father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, person who is engaged to be married to the Committee member or who otherwise holds himself or herself out as or is generally known as the person whom the Committee member intends to marry or with whom the Committee member intends to form a household, or any other natural person having the same legal residence as the public officer or employee.
6. Failure of a Committee member to meet these requirements will result in immediate dismissal from the Committee.
7. The Board of County Commissioners may waive these requirements on a case by case basis in accordance with the provisions of § 112.313(12), F.S., and applicable Lee County Administrative Code provisions after full disclosure of the proposed transaction or relationship.

SECTION EIGHT: ANNUAL REVIEW AND APPROPRIATION

A. Annually, County staff will provide the Board of County Commissioners and the Land Committee with a report regarding the current financial and operational status of the Program. This report will address, at minimum, the following:

1. Acquisition Fund.

 - a. An accounting of the revenue received and expenditures made during the preceding year with respect to the acquisition of property under the Program.
 - b. A summary of the properties purchased and the price paid.
 - c. A list of the properties currently under negotiation for acquisition.
 - d. A list of property nominations submitted and pending review along with the asking prices.

2. Management Fund.

- a. An accounting of the revenue received and the expenditures made during the preceding year with respect to the management of property purchased under the Program.
- b. A five-year projection of the anticipated restoration costs; management costs; and, annual operating expenses.

3. Fund Replenishment.

- a. The Acquisition Fund should maintain a fund balance of not more than \$100 million and not less than \$40 million. Once the fund balance drops below this amount, the County will replenish the fund.
- b. The Management Fund is budgeted annually in the General Fund as part of the County's Continuation Budget and is based on the five-year projection of anticipated restoration costs, management costs, and annual operating expenses.

B. The Conservation 20/20 Program is an ongoing County activity financed through the Lee County General Fund.

C. Upon appropriation of funds into the Acquisition Fund and/or the Management Fund, it is the Board's intention that these fund balances be used solely to meet the intent of the Program and for no other purpose.

SECTION NINE: AMENDMENT AND REPLACEMENT

Changes to this ordinance require a super-majority vote of the entire Board of County Commissioners.

SECTION TEN: SEVERABILITY

The provisions of this Ordinance are severable and it is the legislative intention to confer upon the whole or any part of the Ordinance the powers herein provided for. If any provision of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of the Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included herein.

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~~Ordinance would have been adopted had such unconstitutional provision not been included herein. Any additional, subsequent amendments to this Ordinance shall not in any way affect the validity of the levy of millage and use of tax proceeds for the Land Acquisition Program or the referendum vote of November 5, 1996. The provisions of this Amended and Restated Ordinance, as a procedural implementing document, shall be deemed separate and apart from the ad valorem tax financing and related actions.~~

SECTION ELEVEN: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION TWELVE: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County Code; and that sections of this Ordinance may be renumbered or relettered and that the word "Ordinance" may be changed to "Section", "Article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the Code is accomplished, sections of this Ordinance may be renumbered and relettered and typographical errors which do not affect the intent may be authorized by the County Manager, or his designee, without need for a public hearing, by filing a corrected or recodified copy of same with the Clerk of the Circuit Court.

SECTION THIRTEEN: EFFECTIVE DATE

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

The foregoing Ordinance was offered by Commissioner Manning, who moved its adoption. The motion was seconded by Commissioner Mann and, being put to a vote, the vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 21st day of April, 2015.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *Theresa King*
Deputy Clerk

BY: *Brian Hamman*
Brian Hamman, Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

[Signature]
County Attorney's Office



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

April 27, 2015

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Theresa King

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy for Lee County Ordinance No. 15-08, which was filed in this office on April 27, 2015.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

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