

ORDINANCE 2017-__

AN ORDINANCE OF ESCAMBIA COUNTY, FLORIDA; AMENDING PART 1 OF THE ESCAMBIA COUNTY CODE OF ORDINANCES, AS AMENDED; AMENDING CHAPTER 30 TO ADD ARTICLE VII – PERDIDO KEY HABITAT CONSERVATION; ESTABLISHING GUIDELINES FOR COMPLYING WITH ESCAMBIA COUNTY’S HABITAT CONSERVATION PLAN FOR PROTECTING NATIVE WILDLIFE; ESTABLISHING RESTRICTIONS ON PERSONAL PROPERTY LEFT UNATTENDED OVERNIGHT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the United States Fish and Wildlife Service (FWS) has issued an Incidental Take Permit Associated with a Habitat Conservation Plan to Escambia County; and

WHEREAS, the Incidental Take Permit governs the “take” of the Perdido Key Beach Mouse, Sea Turtles, and Piping Plovers Incidental to Private Development and Escambia County-Owned Lands and Infrastructure Improvements on Perdido Key, Florida; and

WHEREAS, Escambia County was required to submit its Habitat Conservation Plan (HCP) in conjunction with the Incidental Take Permit application process; and

WHEREAS, the purpose of Escambia County’s HCP is to develop a framework for effectively conserving and improving the productivity of the Perdido Key beach mouse, sea turtle, and shorebird habitats on Perdido Key while providing County residents with a means for allowing “take” of, or impacts to, such species and associated habitats incidental to otherwise lawful activities; and

WHEREAS, implementation of the programs and policies contained in the HCP will allow County residents to engage in such activities in a manner compatible with the protection of the Perdido Key beach mouse, sea turtle, and shorebirds, and associated habitats; and

WHEREAS, the HCP “take” provisions allow minimized impacts to the protected species and associated habitats resulting from activities such as beach cleanup, use of recreational beach equipment, beach concessions, and similar activities performed according to County authorization; and

WHEREAS, the Board of County Commissioners has determined that because Escambia County’s obligations under the FWS Incidental Take Permit are limited to the geographic area identified in the HCP, the ordinance enacted hereby properly regulates such geographic area differently than it regulates other areas of the County; and

1 **WHEREAS**, the Board of County Commissioners has also determined that in
2 order to comply with its obligations under the FWS Incidental Take Permit it must
3 establish guidelines for identifying activities authorized under the HCP; and
4

5 **WHEREAS**, the Board of County Commissioners finds that both the HCP and the
6 guidelines established hereby serve important public purposes and are in the best
7 interest of the County and its citizens.
8

9 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
10 **COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:**
11

12 **SECTION 1.** Chapter 30, Article VII, of the Escambia County Code of Ordinances is
13 hereby created as follows:

14 **Sec. 30-300. Short title.**
15

16 This article shall be known as the “Perdido Key Habitat Conservation Ordinance,”
17 and may be cited as such.
18

19 **Sec. 30-301. Legislative findings and intent.**
20

21 (a) The board of county commissioners finds that it is in the best interest of
22 county residents to establish guidelines for compliance with the Incidental Take Permit
23 associated with a Habitat Conservation Plan issued to Escambia County by the United
24 States Fish and Wildlife Service.

25 (b) It is declared by the board of county commissioners that it shall be a
26 violation of this article to fail to comply with the conservation practices specified herein.

27 **Sec. 30-302. Definitions.**
28

29 Terms not specifically defined in this article shall be interpreted in accordance
30 with those definitions provided in the remainder of this Chapter 30. The following terms
31 and phrases, when used in this article, shall have the following meanings, unless the
32 context clearly indicates a different meaning:

33 (a) *Beach Vendor* means a commercial enterprise that provides public or
34 private services on the Gulf front beaches of Perdido Key, including but not limited to
35 beach chair or lounge rentals, umbrella rentals, mechanical beach cleaning, and other
36 such rental, concession, or commercial beach services.

37 (b) *Conservation Practices* means practices designed to minimize impacts to
38 federally protected species and their associated habitats as provided herein.
39

40 (c) *Federally Protected Species* means the Perdido Key beach mouse, sea
41 turtles, and shorebirds, as such species are more particularly described in the Escambia
42 County Habitat Conservation Plan.
43

1 (d) *Native Vegetation* means primary, secondary, and scrub vegetation, scrub
2 dunes, and other such native vegetation that sustains the essential life history functions
3 of federally protected species.

4
5 (e) *Nest Marking Authority* means the entity authorized to place nest markers
6 to protect and monitor sea turtle and shorebird nests, currently Florida Fish and Wildlife
7 Conservation Commission and National Audubon Society as to shorebird nesting areas
8 and the Florida Park Service as to sea turtle nests.

9
10 (f) *Perdido Key Gulf Front Property* means, for purposes of this Perdido Key
11 Habitat Conservation Ordinance only, privately-owned Gulf front lands on Perdido Key
12 in an area bordered on the west by the Florida/Alabama state line, on the south by the
13 mean high water line of the Gulf of Mexico, and on the north by the 1975 Coastal
14 Construction Control Line as recorded in the official records of Escambia County (Plat
15 Book 9, Page 72 A-P).

16 (g) *Perdido Key Habitat Conservation Plan Coordinator* (HCP Coordinator)
17 means the county administrator or his/her designee.

18 (h) *Perdido Key Property South of Semmes Road* means all privately-owned
19 lands on Perdido Key bordered on the north by Semmes Road and continuing south to
20 the intersection of the mean high water line of the Gulf of Mexico.

21 (i) *Personal Property* means any personal property, including but not limited
22 to all types of furniture, furnishings, canopies, tents, huts, umbrellas, motorized and
23 non-motorized watercraft and vessels, watersports equipment, land sports equipment,
24 decorations, fire pits, cooking equipment, clothing, food, litter, supplies, and personal
25 articles.

26 (j) *Sea Turtle Nesting Season* means the period beginning May 1 through
27 October 31 of each year.

28 (k) *Shorebird Nesting Season* means the period beginning March 1 through
29 August 31 of each year.

30 (l) *Sunrise* means the phenomenon of the sun's daily appearance on the
31 eastern horizon as a result of the earth's rotation; the time at which the first part of the
32 sun becomes visible in the morning at a given location.

33 (m) *Sunset* means the phenomenon of the sun's daily disappearance below
34 the western horizon as a result of the earth's rotation; the time at which the last part of
35 the sun disappears below the horizon in the evening at a given location.

36 (n) *Temporary Beach Storage Box* means the storage box operated by beach
37 vendors for storage of rental equipment and authorized for use on Perdido Key Gulf
38 front property as provided herein.

39 (o) *Wrack* means piles of seaweed, terrestrial plants, marine algae, and sea
40 life remains that are deposited on beaches by tidal action and are largely found along
41 the tideline.

42 **Sec. 30-303. Conservation Practices.**

1
2 To minimize impacts to federally protected species and their associated habitats,
3 the following conservation practices shall be observed:

4
5 (a) As to Perdido Key Gulf front property:

6
7 1. *Unattended personal property.* All unattended personal property, including
8 but not limited to items used by beach vendors to provide rental or concession services,
9 shall be removed daily from Perdido Key Gulf front property for the period beginning
10 one hour after sunset through one hour after sunrise.

11
12 2. *Wrack management.* Natural deposits of wrack shall be left in place year-
13 round due to wildlife benefits from forage, cover, and resting *unless* health risks or
14 nuisance odor conditions require removal as specified herein.

15
16 3. *Mechanical beach cleaning.*

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18 a. Mechanical beach cleaning shall be coordinated with and approved by
19 the HCP coordinator during shorebird nesting season and sea turtle nesting season.

20
21 b. Mechanical beach cleaning shall not occur within 300 feet of areas
22 marked for shore bird nesting.

23
24 c. Mechanical beach cleaning may not occur at a frequency greater than
25 monthly except in response to unusual events such as high winds, storms, red tide, or
26 drift algae accumulation that create health risks or nuisance odor conditions and that
27 may require removal of large amounts of wrack.

28
29 d. When removal of large amounts of wrack is deemed necessary, the
30 HCP coordinator may approve alternative methods of and frequencies for mechanical
31 beach cleaning. For example, after one full tidal cycle has occurred, the HCP
32 coordinator may approve removal of up to 2/3 of deposited wrack, provided the material
33 is buried at the seaward edge of dune vegetation.

34
35 4. *Prior permit requirements.* A copy of an approved Florida Department of
36 Environmental Protection Coastal Construction Control Line permit shall be provided to
37 the HCP coordinator prior to initiating activities requiring such permit.

38
39 5. *Temporary beach storage boxes.*

40
41 a. Temporary beach storage boxes shall be no larger than four feet wide
42 by eight feet long unless different dimensions are specifically authorized by the HCP
43 coordinator upon written request therefor.

44
45 b. Temporary beach storage boxes shall be placed approximately ten feet
46 from the southern edge of the dune vegetation line.

1
2 c. Temporary beach storage boxes shall be capable of being removed in
3 their entirety in the event of a declared emergency.
4

5 d. Multiple storage boxes at a vending location shall be placed at least 50
6 feet apart and positioned perpendicular to the water's edge.
7

8 (b) As to Perdido Key property south of Semmes Road, all native vegetation
9 shall be protected as habitat for the Perdido Key beach mouse as follows:
10

11 1. *Cutting and chemical applications.* No native vegetation shall be cut,
12 pruned, or removed, and no herbicide or pesticide shall be applied.
13

14 2. *Land disturbance activities.* All land disturbance activities are prohibited
15 without either:
16

17 a. Prior authorization from the HCP coordinator upon written request
18 therefor; or
19

20 b. A permit authorizing impact to beach mouse habitats, which shall be
21 provided to the HCP coordinator prior to initiating activities requiring such permit.
22

23 **Sec. 30-304. Violations.**

24 (a) Except as otherwise provided herein, failure to comply with the
25 conservation practices prescribed herein shall be a violation of this article.

26 (b) Moving, destroying, or in any way disturbing a nest marker placed by a
27 nest marking authority shall be a violation of this article.

28 (c) This article is not intended to authorize any violation of the Marine Turtle
29 Protection Act, F.S. § 379.2431, as amended, or the Endangered Species Act.
30

31 **Sec. 30-305. Exclusions.**

32 (a) This article shall not apply to:

33 1. Personal property stacked or neatly arranged under or immediately
34 adjacent to existing permanent structures and not placed on dunes or native vegetation.

35 2. Personal property used by persons engaged in protected species
36 research under the authority of the United States Fish and Wildlife Service.

37 3. Personal property for which the county administrator or his/her designee
38 has issued a permit as provided herein.

39 4. Wildlife resistant trash containers used exclusively for trash collection.

40 5. Nest markers placed by nest marking authorities and the placement and
41 monitoring thereof.

1 (b) Until January 1, 2020, beach vendors shall be exempt from compliance
2 with this Perdido Key Habitat Conservation Ordinance only as to compliance with
3 conservation practices governing beach furniture placement as specified herein.

4 **Sec. 30-306. Permits.**

5 (a) The county administrator or his/her designee may issue personal property
6 permits deemed appropriate and necessary for the following:

- 7
8 1. To reasonably accommodate persons with disabilities;
9
10 2. For the conduct of governmental, civic, educational, or similar activities;
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12 3. For the conduct of scientific research; or
13
14 4. For special events.

15 (b) Permits issued hereunder shall include the following:

- 16
17
18 1. The name and contact information of the permittee, who shall be the
19 owner or person in possession and control of the permitted personal property;
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21 2. The duration of the permit;
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23 3. The conditions governing the use of the permitted personal property;
24
25 4. A description of the permitted personal property;
26
27 5. The location where the permitted personal property is allowed; and
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29 6. A signed acknowledgement from the permittee that the permittee shall be
30 liable for any impacts to federally protected species resulting from the permitted use.

31
32 (c) The county administrator or his/her designee may, at his/her discretion, as
33 a condition for issuing a permit, require a refundable deposit or nonrefundable fee in
34 amounts to be established by resolution of the board of county commissioners.

35
36 **Sec. 30-307. Seasonal Waivers.**

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38 (a) Upon receipt of a seasonal waiver issued pursuant to this section, a beach
39 vendor authorized by the owner of Perdido Key Gulf front property to place heavy beach
40 loungers equipped with wind protection canopies (Canopied Lounger) on such property
41 may, except during sea turtle nesting season, leave such canopied lounge overnight
42 without violating this article.

43
44 (b) Beach vendors shall submit seasonal waiver applications to the HCP
45 Coordinator for each annual non-nesting season during which a beach vendor seeks a
46 waiver.

1
2 (c) Upon approval of a seasonal waiver application, the HCP Coordinator
3 shall issue a written seasonal waiver effective for a period beginning no sooner than
4 November 1 and ending no later than April 30 of each such annual non-nesting season
5 waiver period.
6

7 (d) Waivers hereunder shall be issued only as to canopied loungers and shall
8 operate as a waiver only as to the provisions of this article governing unattended
9 personal property on Perdido Key Gulf front property for the period specified in the
10 waiver.
11

12 **Sec. 30-308. Liability; Enforcement.**

13 (a) Persons violating this article shall be liable for impacts to federally
14 protected species resulting from such violations.

15 (b) Escambia County shall not be liable for any impacts to federally protected
16 species resulting from violations of this article.

17 (c) This Perdido Key Habitat Conservation Ordinance shall be enforced
18 according to the provisions of this chapter.

19 **Sec. 30-309. Jurisdiction.**

20 This ordinance shall be effective within the unincorporated areas of Escambia
21 County.

22 **SECTION 2. SEVERABILITY.**

23
24 If any section, sentence, clause or phrase of this Ordinance is held to be invalid
25 or unconstitutional by any court of competent jurisdiction, then said holding shall in no
26 way affect the validity of the remaining portions of this Ordinance.
27

28 **SECTION 3. INCLUSION IN THE CODE.**

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30 It is the intention of the board of county commissioners that the provisions of this
31 Ordinance shall be codified as required by Section 125.68, Fla. Stat.; and that the
32 sections, subsections and other provisions of this Ordinance may be renumbered or
33 relettered and the word "ordinance" may be changed to "section", "article", or such other
34 appropriate word or phrase in order to accomplish such intentions.
35

36 **SECTION 4. EFFECTIVE DATE.**

37
38 This Ordinance shall become effective upon filing with the Department of State.
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40 **DONE AND ENACTED** this _____ day of _____, 2017.
41

42 **BOARD OF COUNTY COMMISSIONERS**
43 **OF ESCAMBIA COUNTY, FLORIDA**
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By: _____
D.B. Underhill, Chairman

ATTEST: PAM CHILDERS
Clerk of the Circuit Court

By: _____
Deputy Clerk

(SEAL)

ENACTED:
FILED WITH THE DEPARTMENT OF STATE:
EFFECTIVE DATE:

DRAFT