

## Chapter 9 - CONSERVATION RESTRICTED OVERLAY ZONE, MANATEE PROTECTION REGULATIONS

[HISTORY: Adopted by the City Commission of the City of North Port 9-17-1990 by Ord. No. 90-28 (Section 8). Amendments noted where applicable.]

### Sec. 9-1. - Title.

This chapter shall be known and may be cited as the "Conservation Restricted Overlay Zone, Manatee Protection Regulations" of the City of North Port, Florida.

### Sec. 9-2. - Findings.

- A. The City finds that the development of land within areas designated as Conservation/Restricted Overlay Zones on the City's Future Land Use Map may adversely affect the health, safety and welfare of the community by degrading geological, historical, recreational, economic and aesthetic values, and may adversely affect water quality, water quantity and aquatic and wetland-dependent wildlife.
- B. The City Commission also finds that Manatees are protected under the Marine Mammal Protection Act of 1972 (as amended in 1996), the Endangered species Act (ESA) of 1973, and the Florida Manatee Sanctuary Act (1978).

### Sec. 9-3. - Intent.

- A. These regulations are intended to protect, maintain, enhance and restore both the immediate and the long-term health, safety and general welfare of the citizens of the City by:
  - (1) Protecting the public's interest in environmentally sensitive areas from the adverse impacts of development while protecting the rights of property owners.
  - (2) Protecting, maintaining and restoring the chemical, physical and biological integrity of natural habitats, such as wetlands, floodplains and shore lands, within the conservation/restricted area.
  - (3) Protecting, maintaining and restoring the chemical, physical and biological integrity of ground- and surface waters.
  - (4) Preventing activities which adversely impact ground- and surface waters, natural habitats and native flora and fauna.
  - (5) Encouraging the construction of stormwater management systems that aesthetically and functionally approximate natural systems.
  - (6) Protecting natural drainage systems.
  - (7) Minimizing runoff pollution of ground and surface waters.
  - (8) Minimizing erosion and sedimentation.
  - (9) Prohibiting certain uses which are detrimental to the Myakkahatchee Creek and Myakka River systems.
  - (10) Minimizing impacts on the City's archaeological resources.
- B. In addition, the intent of the Conservation/Restricted Overlay Zone is to assure that all development within this zone receives special regulatory attention so as to minimize adverse impacts on the City's freshwater, marine and archaeological resources. The Conservation/Restricted Overlay Zone contains three (3) geographical subareas which include the North Myakkahatchee Creek, South Myakkahatchee Creek/Myakka River and the Little Salt Springs Archaeological Site, and provides for the protection of other archaeologically significant sites that may be identified.

- C. In addition, the purpose of this article is also to provide adequate protection of endangered species as defined by the Florida Fish and Wildlife Commission and the West Indian Manatee (*Trichechus Manatus*) through regulation and control of development proposals with an effect on watercraft-related activities that could affect the West Indian Manatee, their habitat, respite areas, travel corridors, or other areas that affect their survival, success and persistence as a species within North Port tidally influenced waters and southwest Florida.

Sec. 9-4. - Relationship to Comprehensive Plan.

The regulations contained herein implement Objective 1 and Policy 1.10, of the Conservation and Coastal Zone Management Element and Goal 2, Policy 2.7.9 of the Future Land Use Element of the Comprehensive Plan, which states that the City will review all applicable ordinances which provide for the protection and enhancement of its critical water resources and biologically productive flora and fauna habitats," and "The City shall coordinate with the Florida Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, the USFWS, the West coast Inland Navigation District (WCIND), and other local, State, and Federal agencies, as applicable, to maintain and enhance manatee populations throughout the region. Coordination activities may include, but shall not be limited to, development review, enforcement of manatee protection zones, and public education," and "Any multi-family, commercial or office development proposed on property within the City of North Port which abuts the Myakkahatchee Creek flowing from the Warm Mineral Springs to the Myakka River will be required to contact the Florida Department of Environmental Protection (FDEP) manatee experts to determine the best management practices for development, and any mitigation necessary, to protect manatees which may utilize this tributary."

Sec. 9-5. - Relationship to other regulations.

In addition to meeting the requirements of this chapter, development within the Conservation/Restricted Overlay and Manatee Protection Zones shall comply with all applicable Federal, State, local and water management district regulations, including, but not limited to, existing water quality, stormwater, floodplain, wetland and endangered species regulations.

Sec. 9-6. - Interpretations.

Interpretations of this section shall be made by the City Manager or designee.

Sec. 9-7. - Conflicts.

Whenever the requirements of these regulations differ from those imposed by the City, Federal or State regulation, law or statute, the most restrictive or imposing the higher standards shall apply.

Sec. 9-8. - Appeals.

- A. Any person aggrieved by the interpretation of the City Manager or designee may appeal to the Zoning Board of Appeals. The criteria for granting an appeal shall be based upon substantial competent evidence proving that the interpretation renders the with no reasonable use. The granting of any appeal shall not be in conflict with State Statutes. The Zoning Board of Appeals' decision, based upon previously submitted evidence, may be appealed to the Circuit Court of Sarasota County within thirty (30) days of such decision.

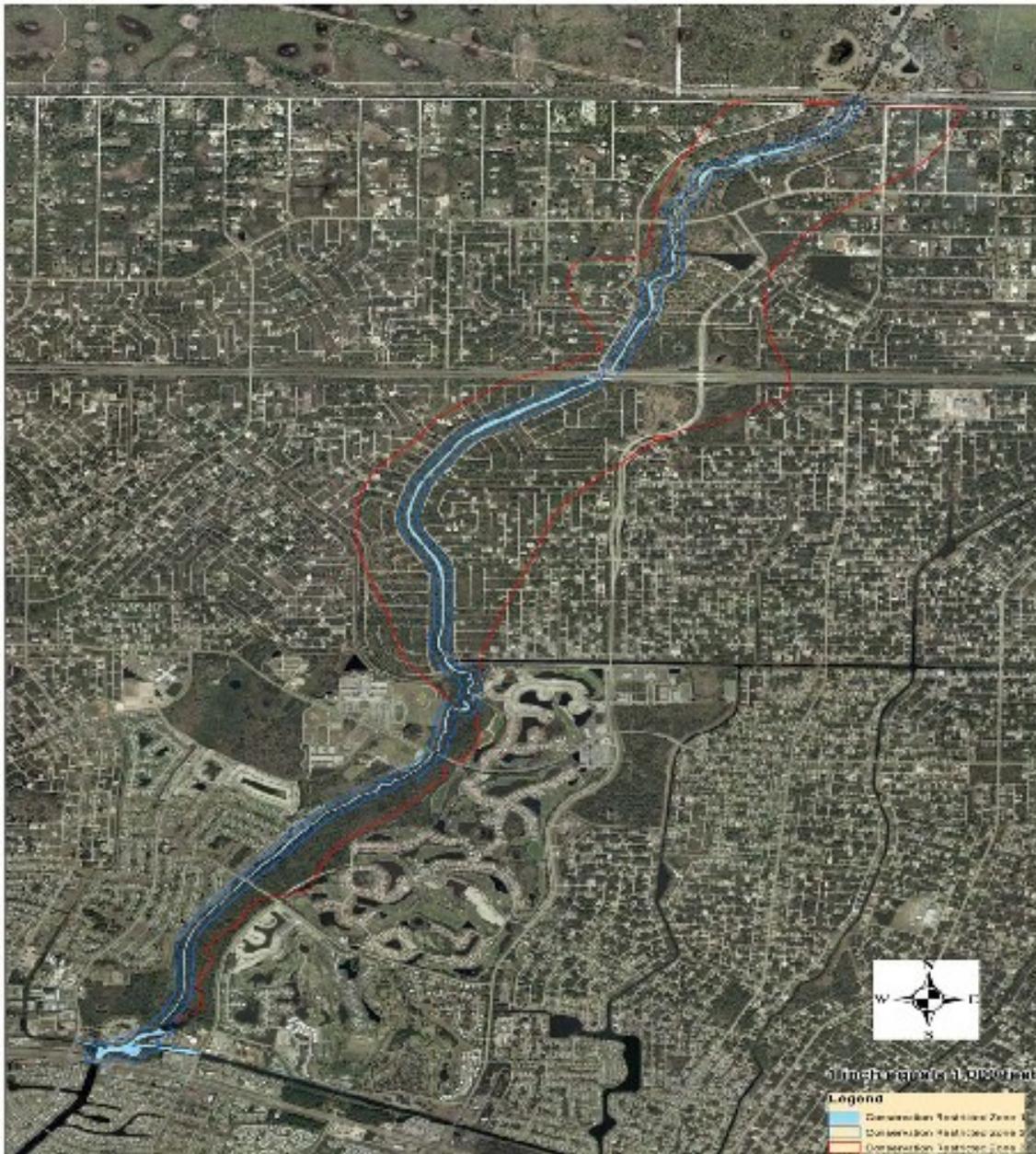
(1) Applications for an appeal shall be filed pursuant to Sec. 1-10.

Sec. 9-9. - Severability.

If any section, subsection, phrase or portion of this chapter is for any reason 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 portions thereof.

ARTICLE I. - CONSERVATION RESTRICTED OVERLAY ZONE

Sec. 9-10. - Creation of protected environmentally sensitive zones within subareas.



**Figure 9-10A**

A. North Myakkahtatchee Creek subarea.

- (1) There is hereby created a Zone of Maximum Protection (Zone 1) in which special restrictions on development apply. The boundaries of this zone shall be the water area and contiguous jurisdiction wetlands from Mean High Water line of the Myakkahtatchee Creek as delineated in Figure 9-10A and Myakkahtatchee Creek Bypass Canal rights-of-way.
- (2) There is hereby created a Contiguous Protective Zone (Zone 2) in which special restrictions on development apply. The boundaries of this zone shall be one hundred fifty (150) feet landward from the landward edge of the Zone of Maximum Protection as shown in Figure 9-10A.

- (3) There is hereby created a Conservation Zone (Zone 3) in which special restrictions on development apply. The boundaries of this zone shall be the remainder of the conservation/restricted area landward from the Contiguous Protective Zone (Zone 2).
- (4) Endangered species as defined by the Florida Fish and Wildlife Commission that are sited, shall be reported to the City for tracking purposes.
  - (a) If an endangered species is sited, the following shall apply:
    - (i) A map of the location shall be provided.
    - (ii) The Florida Fish and Wildlife Commission shall be notified within forty-eight (48) hours.
    - (iii) The City shall place a sign indicated the area is restricted.

Sec. 9-11. - Activities presumed to have an insignificant adverse impact on the Zone of Maximum Protection (Zone 1).

- A. The following uses and activities are presumed to have an insignificant adverse impact on the beneficial functions of the Zone of Maximum Protection and shall therefore be permitted:
  - (1) Scenic, historic, wildlife or scientific preserves.
  - (2) Minor maintenance or repair to existing structures or improved areas.
  - (3) Cleared walking trails having no structural components.
  - (4) Dredge and fill when it is determined that it is clearly in the public interest and when it is part of an approved plan for the restoration or of the creek area. Dredge and fill is regulated by Chapter 14, Article III of this Unified Land Development Code.
  - (5) Stormwater management facilities.
- B. All other activities and uses not expressly permitted under this section shall be prohibited unless it is shown by competent and substantial evidence that the specific activity would have no adverse impact on the beneficial functions of Zone 1. Examples of prohibited activities include, but are not limited to:
  - (1) Digging or excavation of any portion of the Myakkahatchee Creek or its tributaries and interconnected drainage canals, for any purpose, is specifically prohibited without the approval of the City, State and Federal agencies.
    - (a) State and Federal agencies include Southwest Florida Water Management District (SWFWMD), US Army Corporation of Engineers (USACOE), Florida Fish and Wildlife Conservation Commission (FFWCC), Florida Department of Environmental Protection (FDEP), and Florida Department of State Division of Historical Resources (DHR).
  - (2) Dumping of any materials directly or indirectly into the Myakkahatchee Creek or its tributaries and interconnected drainage canals, is prohibited. The dumped materials may pollute these waterways which serve as the City's drinking water source. The dumped materials may also obstruct the flow of water in the waterway and increase flooding.
  - (3) Construction of any catwalks/boardwalk, rock dams or crossings or any kind, over the Myakkahatchee Creek or its tributaries and interconnected drainage canals is prohibited except as approved by the City. If the construction of a catwalk/boardwalk is permitted, additional regulations shall apply as determined by the City Manager or designed. These crossings can obstruct the flow of water in the waterway and increase flooding.

Sec. 9-12. - Activities presumed to have an insignificant adverse impact on the Contiguous Protective Zone (Zone 2).

- A. The following uses and activities are presumed to have an insignificant adverse impact on the beneficial functions of the Contiguous Protective Zone (Zone 2) and shall therefore be permitted:
- (1) All uses and activities included in Zone 1.
  - (2) Educational facilities for the study of wildlife, conservation or ecology.
  - (3) Gazebos or similar structures in conjunction with a nature trail or similar trail.
  - (4) Unpaved parking facilities and rest rooms related to the construction of passive recreation areas.
  - (5) Selective clearing or trimming of vegetation not listed as threatened, endangered, or of special concerns if the activity clearly will not adversely affect the integrity, water quality functions or wildlife habitat functions of the land portion of this zone.
  - (6) Single-family homes, provided that the following additional restrictions are applied:
    - (a) Rear yard setback of fifty (50) feet from the Zone 1/Zone 2 boundary.
    - (b) Coverage with an impermeable surface and the clearing or disturbance of vegetation combined shall not exceed twenty-five percent (25%) of the gross area of the lot proposed for development.
    - (c) Alternative or central wastewater systems only. See definition, Chapter 61.
    - (d) Fill placed on the land shall not decrease the water storage capacity or alter the hydrologic regime of the zone.

- B. All other activities and uses not expressly permitted under this section shall be prohibited unless it is shown by competent and substantial evidence that the specific activity would have no adverse impact on Zone 2. Examples of prohibited activities include, but are not limited to:
- (1) Dumping of any materials onto City Property or vacant lots in Zone 2.
  - (2) Construction of any facilities on City Property in Zone 2 for recreational purposes is prohibited without City approval. These facilities include but are not limited the following: facilities for Bicycle Motocross (BMX) activities, four (4) wheeling, skate boarding, camping.

Sec. 9-13. - Activities presumed to have an insignificant adverse impact on the Conservation Zone (Zone 3).

- A. The following uses and activities are presumed to have an insignificant adverse impact on the beneficial functions of the Conservation Zone and shall therefore be permitted:
- (1) All uses and activities in Zone 1.
  - (2) All uses and activities in Zone 2.
  - (3) Single-family, duplex and multifamily development on alternative wastewater systems if central sewer is not available.
  - (4) Commercial development as part of a Planned Community Development District only.
- B. All other activities and uses not expressly permitted under this section shall be prohibited unless it is shown by competent and substantial evidence that the specific activity would have no adverse impact on the beneficial functions Zone 3. Examples of prohibited activities include, but are not limited to:
- (1) Dumping of any materials onto City Property or vacant lots in Zone 3.
  - (2) Construction of any facilities on City Property in Zone 3 for recreational purposes is prohibited without City approval. These facilities include but are not limited to the following: facilities for BMX activities, four (4) wheeling, skate boarding, camping.

Sec. 9-14. - Special design standards within Zone 3.

The following special design standards shall apply within Zone 3 for all commercial, industrial and multifamily development:

- A. Wherever possible, natural buffers a minimum of fifty-two (52) feet in width shall be retained between all development in Zone 3 and all other conservation zones. If a natural buffer does not exist, an equivalent shall be created using native species native to immediate environment.
- B. The developer shall completely restore any portion of either Zone 1 or 2 which is damaged during construction in Zone 3. Complete restoration means that the damaged area shall, within two (2) years, be operating as effectively as the natural system did prior to being damaged. The burden of proof shall rest with the developer in proving that the restoration has been completed.
- C. Other protective measures necessary to prevent significant adverse impacts on the beneficial functions of Zones 1 or 2 owing to development within Zone 3 may be required. The factual basis of the decision to require the measure shall be stated as a finding during the development permit review process. Protective measures may include, but are not limited to, the following:
  - (1) Maintaining natural drainage patterns.
  - (2) Limiting the removal of vegetation to the minimum possible to carry out the development activity.
  - (3) Expeditiously replanting denuded areas.
  - (4) Stabilizing banks and other unvegetated areas.
- D. Using deed restrictions and other legal mechanisms to require the developer and successors to protect the environmentally sensitive areas of the property.
- E. Requiring that all development within Zone 3 shall be setback no less than fifty (50) feet from the landward boundary of Zone 2.
- F. Prohibiting point source and non-point source discharges, except for stormwater, which may be discharged only if it meets the following minimum standard. Stormwater discharges shall include an additional level of treatment equal to fifty percent (50%) of the treatment criteria specified in Sec. 18-10 of this Unified Land Development Code.
- G. Requiring that any development within a PCD (Planned Community Development District) as defined in Chapter 53 of this Unified Land Development Code, shall be required to submit to the City an environmental assessment of the property proposed to be developed. The assessment shall be prepared by a competent ecologist, biologist or related professional. At a minimum, the assessment shall address the presence of affected species, significant archaeological resources and recommend measures to protect significant resources.

Sec. 9-15. - Development within South Myakkahatchee Creek/Myakka River Subarea.

Chapter 49, Wetlands Protection Regulations, of this Unified Land Development Code and all other applicable Federal, State and local environmental regulations, codes and ordinances shall regulate development within the South Myakkahatchee Creek/Myakka River Subarea (US 41 southward).

Sec. 9-16. - Protection of archaeologically significant resources of Little Salt Springs site.

- A. The following uses and activities are presumed to have an insignificant adverse impact on the Little Salt Springs site and shall therefore be permitted:
  - (1) Passive recreation.
  - (2) Scientific research.
  - (3) Structures relating to scientific research.
  - (4) Unpaved parking areas, rest rooms and nature trails.
  - (5) Elevated boardwalks.

- B. All other activities and uses not expressly permitted under this section shall be prohibited unless it is shown by competent and substantial evidence that the specific activity would have no impact on the archaeological or environmental integrity of the site.

Sec. 9-17. - Protection of other significant archaeological sites.

When competent evidence exists as to the archaeological significance of a parcel of land, the City shall require, before any development commences, that the property owner or developer submit an analysis prepared by a competent professional in the field of archaeology establishing the archaeological significance of the property and providing for the protection of the archaeological resources on the property pursuant to Chapter 58 of the ULDC.

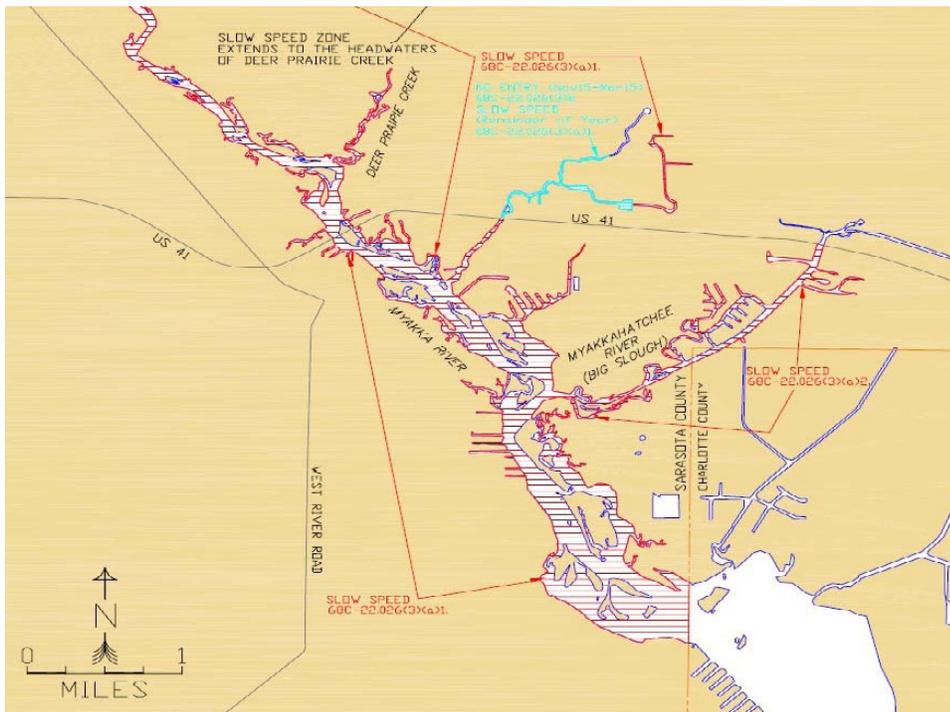
Sec. 9-18. - Uses not specifically mentioned.

Where a developer or other interested party describes a use not specifically cited within these regulations, the Director of the department responsible for land development services shall classify the use as either permitted or not permitted and the requirements that apply. In making that determination, the Director shall review the uses permitted by these regulations. The decision shall state findings substantiating the Director's conclusions. Under no circumstances shall the Director authorize a use not otherwise permitted by these regulations.

ARTICLE II. - MANATEE PROTECTION

Sec. 9-19. - Territorial jurisdiction.

The provisions of these regulations shall be applicable and enforceable throughout all waterways located throughout the City of North Port.



Map shows Sarasota County-wide manatee protection zone.

Sec. 9-20. - Prohibitions.

- A. It shall be unlawful for any person to kill, molest, harass, or cause direct or indirect injury to a manatee or manatee habitation.
- B. It shall be unlawful for any person to collect or possess any part of a West Indian Manatee.

Sec. 9-21. - Review process.

- A. Any development within any waterway in the City of North Port shall be required to submit to the City an application showing the proposed development and its effect on the manatees and their habitats.
- B. The City may require an assessment report. The assessment shall be prepared by a competent ecologist, biologist or related professional. At a minimum, the assessment shall address the presence of affected species, significant archaeological resources and recommend measures to protect significant resources.
  - (1) Prior to any dredging, excavation or filling activities, the Florida Department of State Division of Historical Resources (DHR) should be contacted to determine if the site has significant archaeological resources. The DHR may require a professional cultural resource survey pursuant to Chapter 1A-46, F.A.C. to be conducted.
- C. The development application shall be submitted in compliance with Chapter 33, Article II, Major Site and Development, of these regulations.
- D. No development proposal for a boat facility shall be deemed consistent with the provisions of the Manatee Protection Plan if there is an existing boat facility on the property that is in violation of the City of North Port Code.

Sec. 9-22. - Enforcement.

- A. The City of North Port shall have the power to enforce the provisions of this article, or any permit and or approval issued hereunder, by equitable or legal judicial proceedings, including the power to enjoin violations by mandatory and prohibitory injunctions, as well as the power to enforce its findings and determinations by injunction or other legal or administrative process, including code enforcement proceedings. Each day of any such violation shall constitute a separate and distinct offense.
- B. The City Manager or designee is hereby authorized to issue a stop work order to a person where the City Manager or designee determines that work at the site:
  - (1) Is proceeding in violation of this section; or
  - (2) Poses an imminent and significant hazard to the public health, safety, or welfare, or to the environment.