

ARTICLE XII. - SEA TURTLE PROTECTION

Footnotes:

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Editor's note— Formerly, Art. XII, §§ 3-5-296—3-5-304, was derived from Ord. No. 89-31, adopted May 8, 1989. Secs. 3-5-296—3-5-300, and 3-5-302—3-5-304 were amended as herein set out by Ord. No. 98-041, §§ 1—8, adopted June 23, 1998.

Sec. 3-5-296. - Definitions.

Unless specifically defined herein, all words or phrases used in this article shall be ascribed the meaning which they have in common usage and which gives this article its most reasonable application.

Artificial light shall mean any source of light emanating from a manmade device, including but not limited to, fluorescent, incandescent, mercury, vapor, metal halide or sodium lamps, spotlights, street lights, vehicular lights, construction or security lights.

Beach shall mean the zone of unconsolidated material that is contiguous with the waters of the Gulf of Mexico and extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves).

Beach access point shall mean any path through or over the dune used by the general public or private property owners for the purpose of gaining access to the beach.

Board shall mean the Board of County Commissioners of Charlotte County.

Bug light shall mean any yellow colored light bulb that is marked as being specifically treated to reduce the attraction of insects to the light.

Coastal construction control line shall mean that line established by the Florida Department of Natural Resources pursuant to F.S. section 161.053.

Construction shall mean any activity intended to modify or improve site conditions including, but not limited to, building, clearing, filling, excavating, grading, mechanical cleaning or planting of vegetation, or the making of any material change in the size or use of any structure or the appearance of site conditions, or the placement of equipment or material upon such sites.

County shall mean Charlotte County.

Department shall mean the Charlotte County Community Development Department.

Downlighting shall mean light fixtures, generally canister shaped, which direct light predominantly downward and with baffles which reduce and control lateral light preventing the illumination of large areas of building or other reflective surfaces, which is also sometimes known as "wall washing" type illumination.

Dune shall mean a mound or ridge of loose sediments, lying landward of the beach and deposited by any natural or artificial mechanism, and which is of sufficient expanse and stability to absorb or moderate the destructive force of storm-generated ocean waves.

Dune profile shall mean the cross-sectional configuration of the dune.

Flagging shall mean the clear delineation of a sea turtle nest by placing one (1) or more stakes in the ground around, but not in, the nest.

Floodlight shall mean a reflector type light which is attached directly to a building and which is unshielded.

Ground-level barrier shall mean any natural or artificial structure rising above the ground which prevents beachfront lighting from shining directly onto the beach-dune system.

Hatchling shall mean any individual sea turtle, within or outside of a nest, which has recently hatched from an egg.

Low profile luminaire shall mean a light fixture set on a base which raises the source of the light no higher than twenty-four (24) inches off the ground, and designed in such a way that light is directed downward from a hooded light source.

Nest shall mean any place in which sea turtle eggs are naturally deposited or relocated beneath the sediments of the beach-dune system.

Nesting season shall mean the period from May 1 through October 31 of each year.

Nesting zone shall mean that area of beach and other uplands extending inland from mean high water a distance of three hundred (300) feet, and any other area known to be utilized by sea turtles for nesting purposes.

Permitted agent of the state shall mean any qualified individual, group or organization possessing a permit from DNR to conduct activities related to sea turtle protection and conservation.

Person shall mean any individual, firm, association, joint venture, partnership, estate, trust, corporation, group, state officer, or unit of federal, state, county, or municipal government, and all other associations and combinations, whether public or private.

Primary dune shall mean that portion of the dune system containing the highest point of elevation (crest). In those areas where the dune line is discontinuous or has been breached by natural or unnatural causes, the primary dune shall be considered to be the line formed by linking the proximal primary dune to the north and south of the breach.

Sea turtle(s) shall mean any species of marine turtle.

Shielded shall mean fitted with a non-reflective opaque hood, other covering or device which prevents the projection of light from being visible from the beach or from illuminating the nesting zone.

State shall mean the State of Florida.

Visible from the beach shall mean visible within a line of sight extending landward from the Gulf of Mexico from any point at mean low water [elevation.]

(Ord. No. 98-041, § 1, 6-23-98)

Sec. 3-5-297. - Unlawful to kill, molest, or injure sea turtles.

It shall be unlawful for any person to kill, molest, harass or cause direct or indirect injury to any species of sea turtle in Charlotte County or within its jurisdictional waters. It shall be unlawful to collect, transport, or possess any part of a sea turtle or sea turtle nest and/or egg by other than authorized personnel.

(Ord. No. 98-041, § 2, 6-23-98)

Sec. 3-5-298. - Coastal construction conducted within the nesting zone during the nesting season.

The intent of this section is to prevent the destruction of sea turtle nests as a result of construction activities conducted within the nesting zone. Construction within the nesting zone shall be limited to non-nesting season to the maximum extent possible (November 1 through April 30). Such construction occurring during any portion of the nesting season (May 1 through October 31) shall be conducted during daylight hours, and it shall be the responsibility of the builder to ensure compliance with the following:

- (1) *State permits.*
 - a. The builder shall obtain written approval from the Florida Department of Environmental Protection (DEP) pursuant to 62B-33, Florida Administrative Code, F.S. Ch. 161, and F.S. section 370.12.
 - b. At the time of application for building permits, the builder shall supply a copy of the DEP authorization to the community development department which will notify the authorized DEP turtle permit holder within forty-eight (48) hours of receipt of the application.
- (2) *Preliminary and daily surveys required.* A permitted agent of the state shall conduct a preliminary survey of the construction site on or prior to May 1 and shall determine if the affected areas is utilized or potentially utilized by sea turtles. If such determination is that the site is utilized or potentially utilized as nesting habitat, then subsequent to the preliminary survey, and beginning no later than May 1, daily nesting surveys of the construction site shall be conducted before that day's construction activities as agreed upon or at 9:00 a.m. by a permitted agent until the completion of the project or the end of the nesting season, whichever occurs first. Nests discovered within a project site during preliminary and daily surveys shall be flagged or relocated to a safe habitat, as determined by the permitted agent.
- (3) *Prevention of construction delays.* If daily nesting surveys are not initiated by May 1, construction activities will be delayed no longer than five (5) working days to provide sufficient time for inspection by a permitted agent.
- (4) *Use of exclusion fences.* A physical barrier used to prevent sea turtles from entering construction areas may be used as an exclusion fence, if permitted by DEP. Exclusion fences shall be monitored by DEP approved personnel and shall be repaired as necessary to prevent breaches.

Breaches which result in successful nesting within the excluded area shall be reported to a permitted agent of the DEP for appropriate action.
- (5) *Delineation of construction areas.* Preliminary surveys, daily nesting surveys, and permitted exclusion fences shall encompass all areas seaward of the primary dune upon which construction activities occur and upon which equipment and materials are moved to and from the construction areas.
- (6) *Noninterference.* Construction activities shall not interfere with sea turtle nesting, nests, or hatching activities; shall maximize preservation of native vegetation outside of the building footprint on the site; and shall maintain the natural existing beach profile and minimize interference with the natural beach dynamics and function.

(Ord. No. 98-041, § 3, 6-23-98)

Sec. 3-5-299. - Beachfront lighting.

- (a) *Intent.* The general intent of this section is to prevent the direct, indirect or cumulative artificial illumination of the nesting zone from sunset to sunrise throughout the nesting/hatching season. Such illumination may inhibit nesting by adult female sea turtles and disorient hatchlings.

- (b) *Light sources.* Both new and existing development shall ensure that point sources of light or any reflective surface illuminated by such point sources of light are not visible from the beach.
- (c) *New development.* Single-family and multifamily dwellings, commercial and other structures constructed within the nesting zone, including parking lots and dune walkovers, and any outdoor lighting associated with construction or development within three hundred (300) feet of the nesting zone shall be in compliance with the following:
- (1) Decorative lighting, including, but not limited to, floodlights and spotlights which are visible from the beach, or which illuminate surfaces that are visible from the beach, shall be prohibited.
 - (2) Wall or ceiling mounted light fixtures shall be shielded such that light sources do not illuminate the nesting zone, and such that the light source is not visible from the beach.
 - (3) Pole lighting shall be shielded in such a way that no light source illuminates the nesting zone.
 - (4) Low profile luminaries shall be utilized to illuminate beachfront parking areas, and these shall be positioned and shielded such that no light source illuminates the nesting zone.
 - (5) Dune crosswalks shall utilize low profile shielded luminaries only.
All light fixtures on dune crosswalks must utilize low wattage (i.e. twenty-five (25) watts or less) bug lights.
 - (6) Lighting on balconies which is visible from the nesting zone shall be shielded such that lights will not illuminate the beach.
 - (7) Temporary security lights at construction sites in or within three hundred (300) feet of the nesting zone shall not be mounted more than eight (8) feet above the ground and shielded such that the lights will not illuminate the nesting zone.
 - (8) Tinted glass shall be installed on all windows facing the Gulf of Mexico.
- (d) *Existing development.* Lighting from structures in existence as of May 1, 1990, located within the nesting zone shall be repositioned, modified, or replaced as necessary in order to comply with the following:
- (1) Lights illuminating buildings or associated grounds for decorative purposes shall be turned off from sunset to sunrise during each night of the nesting season unless shielded or redirected such that they will not illuminate the nesting zone. Recreational lighting for tennis courts and other outdoor recreation shall be turned off when the court or field is not in use.
 - (2) Lights illuminating dune crosswalks or any areas oceanward of the dune line shall be turned off from sunset to sunrise during each night of the nesting season, or must be modified to conform with the requirements for new development (section 3-5-299).
 - (3) Security lighting shall be permitted throughout the night so long as low profile luminaries are used and shielded in such a way that these lights do not illuminate the beach.
 - (4) Interior light bulbs shall be shielded if situated such that they are visible from the beach.
 - (5) Window treatments are encouraged for windows facing the Gulf of Mexico to prevent interior lights from illuminating the nesting zone. The use of heavy draperies or window shades, or careful placement of lamps and other lights shall be utilized to reduce nighttime nesting zone illumination.
- (e) *Publicly owned lighting.* Street lights and lighting at parks and other publicly owned beach access areas shall be subject to the following:
- (1) Street lights shall be located such that the bulk of their illumination will travel downward and away from the beach. These lights shall be equipped with shields that will prevent backlighting and render them invisible from the beach.

- (2) Lighting at parks or other public access points shall be shielded so that the light source is not visible from the nesting zone and does not directly or indirectly illuminate the nesting zone.

(Ord. No. 98-041, § 4, 6-23-98)

Sec. 3-5-300. - Design of vehicular circulation and parking areas.

Parking lots and roadways within the nesting zone, including any paved or unpaved area upon which motorized vehicles will operate, shall be designed, positioned or modified such that vehicular headlights will not cast light on the nesting zone. The nesting zone must be shielded from vehicular lighting through the use of hedges, dune vegetation, or other ground-level barriers, so long as these are flush with the ground, continuous and maintained to a minimum height of four feet above the surface of the parking area and do not impede or entangle sea turtles or hatchlings or damage the beach or dune system.

(Ord. No. 98-041, § 5, 6-23-98)

Sec. 3-5-301. - Timing of beach-dune stabilization and restoration projects.

Beach restoration and renourishment projects shall not be conducted during the nesting season unless daily surveys, and nest relocations as necessary, are provided by a permitted agent of the state.

(Ord. No. 89-31, § 11, 5-8-89)

Sec. 3-5-302. - Prohibition of activities disruptive to marine turtles.

- (a) The following activities will be prohibited on the beach from sunset to sunrise during nesting season for the protection of nesting females, nests and hatchling marine turtles:
- (1) The operation of all motorized vehicles, except emergency and law enforcement vehicles or those permitted on the beach for marine turtle conservation research, or as necessary for permitted beach restoration or renourishment activities.
 - (2) The building of campfires or bonfires.
 - (3) Any transient lighting which purposely and flagrantly illuminates a nesting zone, sea turtles, or hatchlings. This prohibition does not apply to individuals with appropriate permits from federal or state agencies.
- (b) All temporary structures, including but not limited to beach chairs, umbrellas, cabanas, as well as personal watercraft, boats, or other vessels and items that have the potential for entrapment of marine turtles and which may interfere with the use of the natural beach environment for nesting habitat, must be removed from the nesting zone from sunset until sunrise when not in use, or stored in areas situated to minimize interference with sea turtles.

(Ord. No. 98-041, § 6, 6-23-98)

Sec. 3-5-303. - Penalties for violation; resort to other remedies.

- (a) Florida Statutes section 370.021 provides that killing, molesting, or injuring a sea turtle shall be criminally prosecuted as follows:
- (1) Upon a first conviction, by imprisonment for a period of not more than ninety (90) days or by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by both.
 - (2) On a second or subsequent conviction within twelve (12) months, by imprisonment for not more than six