

RESOLUTION 2010-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF WAKULLA COUNTY, FLORIDA ENCOURAGING THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION TO CONSIDER AND ACKNOWLEDGE LOCAL GOVERNMENT HOME RULE AUTHORITY IN ITS RULE-MAKING AND ENFORCEMENT; NOTIFYING THE FLORIDA LEGISLATURE OF CONFLICTS; REQUESTING COOPERATION BETWEEN THE COMMISSION, THE LEGISLATURE AND LOCAL GOVERNMENTS IN RESOLVING CONFLICTS AND FINDING SOLUTIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Wakulla County possesses the home rule authority granted in the Florida Constitution and Florida Statutes to exercise the broad powers of self-government, including legislative, quasi-judicial, and enforcement powers related to building codes and zoning and land use within its County borders; and

WHEREAS, the Florida Fish and Wildlife Conservation Commission (the "FWCC") possesses the powers granted to it pursuant to art. IV, sec. 9 of the Florida Constitution, including the "regulatory and executive powers of the state with respect to wild animal life," which powers are subject to requirements to insure due process in the exercise of its regulatory and executive powers; and

WHEREAS, in the arena of captive wildlife regulation, the local government home rule powers and the FWCC powers can and do provide an opportunity, and the necessity, for mutual cooperation and recognition of each others' powers and authority; and

WHEREAS, local governments' exercise of legislative and quasi-judicial powers provides the appropriate mechanism to address land use and zoning and building code issues arising from the proposed uses and buildings involved in the possession of captive wildlife, as well as to insure that captive wildlife facilities are located in "appropriate neighborhoods" as directed by section 379.303, Florida Statutes, while protecting due process rights; and

WHEREAS, FWCC's exercise of its regulatory and executive powers provides the appropriate mechanism to address the qualifications of persons seeking licenses to possess captive wildlife and the adequacy of proposed animal enclosures to meet the needs and the welfare of the captive wildlife; and

WHEREAS, FWCC's current and proposed regulations purport to govern captive wildlife facility locations, particularly for Class I and Class II animals, without deference to or effective recognition of valid local government zoning ordinances and building

codes, which has led to FWCC's issuance of captive wildlife licenses and the construction and location of captive wildlife facilities which may or may not comply with local government zoning and building regulations; and

WHEREAS, the latest draft changes to current FWCC rules regulating captive wildlife provides only notice to a local government of a pending application for a Class I or Class II license, which does not adequately protect all parties involved from the potential co-location of incompatible uses, does not adequately provide due process for all affected parties through either legislative or quasi-judicial proceedings, and does not adequately acknowledge the existence or importance of compliance with local building codes or zoning regulations;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WAKULLA COUNTY THAT:

1. The Wakulla County Board of County Commissioners (the "Board") encourages the FWCC to amend its rules regulating captive wildlife so that those rules and the enforcement thereof acknowledge and recognize local government home rule ability and authority to enact zoning regulations determining appropriate locations of various uses, including the possession or maintenance of captive wildlife as a unique use of property. The Board also encourages the FWCC to amend its rules to require an applicant to display compliance with local government building codes and zoning regulations prior to FWCC issuance of a captive wildlife license, and to have an effective method of such display which includes a meaningful opportunity for participation and acknowledgment by the local government in the license application process.

2. The Florida Legislature is hereby notified of the conflicts in the exercise of the FWCC's constitutional regulatory and executive powers and the exercise of local governments' constitutional and statutory home rule legislative, quasi-judicial, and enforcement powers, created by the FWCC's issuance of licenses for Class I and Class II wildlife in areas that are potentially incompatible for the location of the possession and maintenance of captive wildlife. The Florida Legislature and the FWCC are hereby requested to consider these conflicts and participate with interested local governments in developing solutions whereby the FWCC's regulatory and executive authority over captive wildlife licenses can be conducted in cooperation with local governments' legislative, quasi-judicial, and enforcement powers related to building codes and zoning matters within their jurisdictional boundaries.

3. The Board requests that the FWCC cooperate with counties that desire to enact zoning legislation regulating the proper locations for the possession of captive wildlife in its rule-making processes and application of its rules, and that the FWCC refrain from adopting and enforcing rules and issuing licenses for ownership of captive wildlife that effectively allow placement of captive wildlife facilities within zoning districts that do not comply with a county's zoning ordinances or do not comply with a county's building codes.

4. The Board hereby directs the Clerk of the Circuit Court as Ex-Officio Clerk to the Board to forward a copy of this Resolution to each member of the Florida Fish and Wildlife Conservation Commission, the Executive Director of the Florida Fish and Wildlife Conservation Commission, the Wakulla County Legislative delegation, the Florida Association of Counties, and the Florida League of Cities.

PASSED, ADOPTED AND APPROVED THIS ____ day of _____,
2010.

WAKULLA COUNTY, FLORIDA

(SEAL)

Howard Kessler, Chair

ATTEST:

Brent X. Thurmond, County Clerk

APPROVED FOR FORM
AND CORRECTNESS

By: _____
Heather J. Encinosa, County Attorney