

ORDINANCE NO. 07-35

AN ORDINANCE AMENDING LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 14, ARTICLE III, REGARDING WELLFIELD PROTECTION; PROVIDING FOR STATUTORY AUTHORITY AND SCOPE OF ARTICLE (§14-201); PURPOSE AND INTENT OF ARTICLE (§14-202); AMENDING DEFINITIONS OF "AQUIFER", "DIVISION", "GROUNDWATER", "MONITOR WELL", "PROTECTION ZONE MAPS", "PUBLIC POTABLE WATER SUPPLY WELLFIELD", "TOXIC SUBSTANCES", "WELL"; REPEALING DEFINITION OF "EXTRACTION PROCEDURE TOXIC MATERIAL"; CREATING DEFINITION FOR "F.A.C.", "POLLUTANT", "PROPOSED PUBLIC WATER SUPPLY WELL", "SANITARY HAZARD" (§14-203); AMENDING CONFLICTING PROVISIONS (§14-205); EFFECTIVE DATE OF ARTICLE AND RETROACTIVE APPLICATION TO EXISTING ACTIVITIES (§14-206); REPEALING THE SUNSET PROVISION (§14-207); AMENDING APPLICABILITY OF ARTICLE (§14-208); EXEMPTIONS FROM ARTICLE (§14-209); VESTED RIGHTS (§14-210); PROTECTION ZONE MAPS (§14-212); REGULATED HAZARDOUS OR TOXIC SUBSTANCE AND SANITARY HAZARDS (§14-213); PROHIBITED AND REGULATED ACTIVITIES WITHIN PROTECTION ZONES (§14-214); ABANDONED WELLS (§14-215); CRITERIA FOR ESTABLISHING PROTECTION ZONES (§14-216); ADOPTING PROVISIONS RELATED TO AQUIFER STORAGE AND RECOVERY WELLS (§14-219); AMENDING AUTHORITY AND DUTIES OF NATURAL RESOURCES DIVISION (§14-241); CLOSURE PERMIT (§14-245); BOND (§14-246); RECONSTRUCTION OF DAMAGED FACILITIES (§14-249); EXCEPTIONS TO PERMIT REQUIREMENTS (§14-250); INSPECTIONS AND ENFORCEMENT GENERALLY (§14-252); RESPONSIBILITY FOR CLEANUP OF REGULATED SUBSTANCES AND LIABILITY FOR DAMAGES (§14-253); FEES (§14-256); ESTABLISHING APPENDIX N CONSISTING OF THE WELLFIELD PROTECTION ZONE MAPS; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code, which contains regulations applicable to the development of land in Lee County; and

WHEREAS, Florida Statutes, Chapters 376 and 403, Part VI, require the County to establish rules and procedures for the protection of public drinking water supplies from contamination by all manner of pollutants; and

WHEREAS, Florida Statutes §163.3202(2)(c) requires local land development codes to provide specific regulations implementing Comprehensive Plan provisions to provide for the protection of potable water wellfields; and

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the County maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, adopted the Lee County Wellfield Protection provisions in order to protect existing public potable water supply wells from the potentially irreversible and adverse effects of bacterial and chemical contamination from abandoned wells and sanitary hazards; and to control the storage, handling and use of hazardous or toxic substances within certain distances from wellfields; and

WHEREAS, Goal 63 of the Lee Plan requires the County to protect the groundwater supply from activities that have the potential to degrade or deplete the supply; and

WHEREAS, Lee Plan Policies 14.5.3, 24.1.9, 52.1.1 and 110.6.2 require County staff and private citizen committees to review existing development regulations to determine whether the regulations can be further fine tuned and streamlined in order to meet the goals, objectives and policies of the Lee Plan; and

WHEREAS, the Land Development Code Advisory Committee was created by the Board of County Commissioners to explore amendments to the Land Development Code; and

WHEREAS, the Land Development Code Advisory Committee has reviewed the proposed amendments to the Code and recommended their adoption; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code and recommended their adoption; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on September 24, 2007, and found them consistent with the Lee Plan, as indicated.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Lee County, Florida, that:

**SECTION ONE: AMENDMENT TO LEE COUNTY LAND DEVELOPMENT CODE
CHAPTER 14**

Lee County Land Development Code Chapter 14, Article III is hereby amended as follows with deleted text identified by strike through and added text identified by underlining.

Chapter 14

ENVIRONMENT AND NATURAL RESOURCES

ARTICLE III. WELLFIELD PROTECTION

DIVISION 1. GENERALLY

Sec. 14-201. Statutory authority; scope of article.

(a) Pursuant to the authority granted by F.S. ch. 125 and F.S. § 163.3202(2)(c), the standards, rules and regulations set forth in this article have been promulgated and approved by the Board of County Commissioners and apply to all abandoned wells and to certain public utility potable water supply wellfields in ~~the unincorporated area of the county unincorporated Lee County.~~

(b) The regulations set forth in this article apply to all areas surrounding a wellfield and designated as wellfield protection zones on the adopted protection zone map.

Sec. 14-202. Purpose and Intent of article.

(a) In order to properly protect certain existing potable water supply wellfields in ~~the within unincorporated area of the county Lee County,~~ the Board of County Commissioners declares that the storage, handling, use or production of hazardous substances ~~or~~ toxic substances or sanitary hazards and the location of abandoned wells in close proximity to public utility potable water supply wells is potentially harmful to the drinking water of the county, and that abandoned wells and certain land uses and activities involving hazardous substances, ~~or~~ toxic substances or sanitary hazards are hereby prohibited or regulated within certain defined protection zones around public utility potable water supply wellfields ~~in the unincorporated area of the county.~~

(b) The intent of this article is further to safeguard the public health, safety and welfare of the residents of the county by providing criteria for the regulation of activities ~~which that~~ may allow the entrance of brackish water into identified protection zones surrounding existing wellfields, and prohibiting or regulating hazardous substances, ~~or~~ toxic substances or sanitary hazards within identified protection zones surrounding such wellfields, thereby protecting existing public potable water supply wells from contamination. ~~The provisions of this article apply only to the unincorporated areas of the county.~~

(c) This article is intended to supplement the rules and regulations promulgated by the State and Federal government concerning groundwater supplies, wellheads, public drinking water, potable water, monitoring, sanitary hazards and similar public water supply provisions. These regulations include, but are not limited to: Florida Administrative Code Chapters 5E-2, 5E-9, 40E-3, 62-521, 62-522, 62-550, 62-555, 62-610, 62-730, 62-731 and 62-761; Code of Federal Regulations Title 40, Chapter I, Subchapter D - Part 122, Subchapter I- Part 261, and Subchapter J - Part 302; and Florida Statutes Chapter 376.

(d) The purpose of this article is to provide protection to potable water wellfields that are permitted to pump a minimum of 1,000,000 gallons of water per day.

Sec. 14-203. Definitions.

The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aquifer means an underground water-bearing a geologic formation, sufficiently group of formations, or a part of a formation, containing sufficient saturated permeable material to yield useful quantities of ground water to wells, and springs, or surface water (see rule 17-21-020(12) Rule 40E-3.201(3), and the Lee County Well Code 62-520.200(2), Florida Administrative Code F.A.C.).

Division means the division of natural resources management of the county Lee County Natural Resources Division (NRD), and any succeeding agency entity authorized to perform similar functions or duties.

EP (extraction procedure) toxic material means a substance determined to be toxic as defined under the EPA Resource Conservation and Recovery Act criteria (40 CFR 261.24).

F.A.C. means the Florida Administrative Code.

Groundwater means the water below that occurs below the land surface in a zone wherein all of the interstices are filled with water (see 17-28.120(33), Florida Administrative Code); where the pore spaces in the subsurface formations are fully saturated and under atmospheric or greater pressure.

Monitor well (also known as an observation well) means a well used primarily to monitor hydrologic parameters such as water levels or water quality (see F.A.C. rule 40E-3.021(19), Florida Administrative Code).

Pollutant means the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or levels that are or may be potentially harmful or injurious to animal or plant life, human health or welfare, or property, including outdoor recreation. (See Rule 62-520.200 (13), F.A.C.)

Proposed public water supply well means a well not yet constructed but either identified in a water use permit application submitted to the South Florida Water Management District (SFWMD) or identified in an existing water use permit granted by the SFWMD.

Protection zone maps means maps showing the location on the ground of the outer limits of protection zones for present public utility potable water supply wells and wellfields

which ~~that~~ are permitted to pump a minimum of 1,000,000 gallons of water per day or more. ~~The Florida Cities Waterway Estates Wellfield are not being included within the protections established by this article or depicted on the protection zone maps.~~

~~Public potable water supply wellfield with the exception of the Florida Cities Waterway Estates Wellfield,~~ means a tract of land containing a well (or group of wells) for which that is the subject of a consumptive use permit has been issued by the South Florida Water Management District; ~~which are is~~ in use and ~~are~~ providing water for public consumption; and, ~~which are is~~ the subject of an agreement between the county and the public utility operating the well (or group of wells) whereby the utility contributes its pro rata share of the administration and enforcement costs of this article. For brevity, the term "wellfield" refers to a public potable water supply wellfield.

Sanitary hazard means a physical condition that involves or affects any part of a drinking water system or the raw water source, and that creates an imminent or potentially serious risk to the health of any person who consumes water from that system. (See F.A.C Rule 62-550.200(75)).

Toxic substances or material means a hazardous wastes as defined in chapter 17-730 62-730.020, Florida Administrative Code 40 CFR 261.3; hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, PL 96-510, 94 Stat. 2767 40 CFR 302; a pollutant as defined in F.S. ch. §376.031(16); a substance which that is or is suspected to be carcinogenic, mutagenic, teratogenic or toxic to human beings, or to be acutely toxic as defined in rule 17-3.021(1); Florida Administrative Code F.A.C. Rule 62-302.200(1); or a substance which that poses a serious danger to the public health, safety or welfare (see rule 17-7510(35), Florida Administrative Code).

Well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of such the excavation is to conduct groundwater from a source bed to the surface, by pumping or natural flow, when groundwater from such the excavation is used or to be used intended for use in a public utility potable water supply wellfield system (see F.A.C. Rule 17-7510(35) 62-550.200(104), Florida Administrative Code).

The balance of the definitions remain unchanged.

Sec. 14-205. Conflicting provisions.

Whenever the requirements or provisions of this article are in conflict with or less restrictive than the requirements or provisions of any other lawfully adopted ordinance or statute, the more restrictive requirements apply.

Sec. 14-206. Effective date of article; retroactive application to existing activities.

The requirements and provisions of this article ~~will apply immediately upon the effective date of this article to all existing activities regulated under this article in the~~ within

~~unincorporated area of the county Lee County and relate back to September 1, 1989. Existing activities include all activities that were issued or approved by the County under a valid building permit or occupational license or for which a completed building permit or occupational license application was filed and accepted by the appropriate department or jurisdiction on or after September 1, 1989.~~

Sec. 14-207. ~~Sunset provision.~~Reserved.

~~(a) — The Board of County Commissioners has adopted this article for the purpose of providing interim protection to existing potable water wellfields which are permitted to pump 1,000,000 gallons of water or more per day. The county is a member of the Lee County Regional Water Supply Authority. The authority has been established as an independent special district in part to ensure the protection of the public potable water supply. Potable water wellfields make up a portion of the available public potable water supply. In adopting this article, the board has taken the first step in the establishment of the authority and in providing an overall program for the protection of the public water supply. This article is conceived as a part of that program.~~

~~(b) — In order to ensure that the wellfield protection efforts of the county are incorporated into any overall program to protect the public potable water supply. This article will remain in full force and effect until the board adopts an ordinance repealing these provisions either expressly or by implication.~~

Sec. 14-208. Applicability of article.

(a) This article only applies to a particular land use or activity, whether that land use or activity is classified as a residential or commercial use, when:

- (1) The aggregate sum of all quantities of any one regulated substance on a given parcel or in a certain building exceeds 110 gallons if the substance is a liquid, or 1,110 pounds if the substance is a solid; or
- (2) No single substance exceeds the limits referenced in subsection (a)(1) of this section but the aggregate sum of all regulated substances present on a given parcel or in a given building exceeds 110 gallons if the substances are liquids, or 1,110 pounds if the substances are solids.

(b) Where regulated substances are dissolved in or mixed with nonregulated substances, only the actual quantity of the regulated substance present will be used to determine compliance. Where a regulated substance is a liquid, the total volume of the regulated substance present in a solution or mixture of the substance with other substances will be determined by volume percent composition of the regulated substances.

(c) This article applies to all storage facilities for petroleum products which are not regulated by F.S. §376.317 or F.A.C. chapters 17-61 62-761 and 62-762, Florida Administrative Code.

- (d) This article applies to sanitary hazards.

Sec. 14-209. Exemptions from article.

(a) *General exemption.* Certain existing or proposed public and quasipublic land uses and activities may be declared exempt from the provisions of this article by the Board of County Commissioners. This exemption will be granted only upon a finding made by the board in a public meeting that the existing or proposed land use or activity serves an overriding public need which overrides the intent and purpose of this article and that it would be economically impractical or scientifically impossible for the land use or activity to comply with the requirements of this article or be relocated to an area outside of the protection zones established by this article. ~~When declaring such an exemption, the Board of County Commissioners will limit the exemption to the extent necessary to enable the existing or proposed public or quasipublic land use or activity in question to be conducted within a protection zone while still serving the intent and purpose of this article to the extent which is economically practical and scientifically possible. The~~ As a basis for granting the exemption, the board may attach any impose conditions to the grant of any exemption that it deems appropriate on the proposed land use or activity that are designed to ensure compliance with the provisions of this article to the greatest extent possible.

(b) *Special exemptions.* The following activities or uses are exempt from the provisions of sections 14-214(a)(2), 14-214(b)(2), 14-214(c)(2) and 14-214(d)(2):

- (1) *Application of pesticides.* The application of those regulated substances used as pesticides, herbicides, fungicides and rodenticides in recreation, agriculture, pest control and aquatic weed control activities ~~will be~~ is exempt from the provisions of this article provided that:
- a. Application of the substance ~~must be~~ is in strict conformity with the use requirement as set forth in the EPA registry for that substance and as indicated on the containers in which the substances are sold;
 - b. The application ~~must be~~ is in strict conformity with the requirements as set forth in F.S. chs 482 and 487, and F.A.C. chapters 5E-2 and 5E-9; ~~Florida Administrative Code~~;
 - c. The application of ~~any of the~~ pesticides, herbicides, fungicides and rodenticides ~~will be~~ is flagged in the records of the certified operator supervising the use. The certified operator must provide ~~specific notification in writing~~ written notice to the applicators under his supervision indicating that they are working at a site located in protection zone 1, 2, 3, or 4, ~~for which~~ and particular care is required. Records ~~will~~ must be kept of the date and amount of ~~those regulated~~ substances applied at each location, ~~and the~~ These records will must be available for inspection at reasonable times by the division; and

- d. ~~All nonresidential applicators of pesticides, herbicides, fungicides and rodenticides who apply those~~ applying regulated substances must obtain ~~an a single~~ operating permit covering all application operations ~~under one permit for using those~~ regulated materials and comply with ~~all the requirements as set forth in the regulations promulgated pursuant to this article.~~
- (2) *Continuous transit.* The transportation of any regulated substance ~~will be is~~ exempt from the provisions of this article provided that:
- a. The transporting motor vehicle is in continuous transit as defined in section 14-203; or
 - b. The transport of ~~such~~ regulated substances through existing permanent pipelines within zones 1, 2 and 3 is in accordance with the applicable regulations ~~applicable to protection zone 1, 2, and 3~~ requirements ~~within those respective zones.~~ In protection zone 4 ~~such transport activity is exempt provided that the currently authorized~~ the permitted uses and activities are not changed and ~~provided that~~ the leak detection and monitoring procedures as approved by the division are employed.

(3) through (6). *No change.*

- (7) *Construction activities.* ~~Constructing, repairing or maintaining any~~ The construction, repair or maintenance of a facility or improvement on lands within any protection zone ~~and earth mining within any protection zone will be is~~ exempt from the provisions of this article provided that all contractors, subcontractors, laborers, material men and their employees using, handling, storing or producing regulated substances ~~within any protection zone use the~~ applicable best management practices ~~provided set forth~~ in section 14-217. No operating permit is required.

(c) *Administrative exemption.* Any person affected by this article may petition the division for an administrative exemption from the prohibitions and monitoring requirements ~~of this article, provided that the person demonstrates by a preponderance of~~ The petition must set forth competent, substantial evidence that indicating: (1) special or unusual circumstances exist that support a waiver of the prohibition or monitoring requirements; and, (2) and adequate the technology exists that will be employed to isolate the facility or activity from the potable water supply in the event of a spill. In granting an ~~The grant of an~~ administrative exemption, ~~the division may attach any appropriate include~~ conditions and safeguards ~~which are~~ the division deems necessary to protect the wellfield.

Sec. 14-210. Vested rights.

- (a) Notwithstanding any provision of this article to the contrary, any proposed or existing land use or activity ~~which has~~ that obtained county approval prior to September

1, 1989, ~~will be allowed to~~ may develop consistent with the development approval ~~only after provided an operating permit for the land use or activity has obtained an operating permit is issued and remains viable.~~ For purposes of applying this section, only the following approvals will be considered:

- (1) A final development order;
- (2) A certificate of occupancy;
- (3) A general excavation permit;
- (4) A building permit; or
- (5) A certificate of completion.

The judicially recognized standards of equitable estoppel will be applied to determine if a development ~~should~~ will be allowed to develop consistent with prior development approval.

(b) ~~Mining operations which have that~~ received development approvals prior to ~~the effective date of this article~~ September 1, 1989 will be permitted to continue with the previously approved phased activities so long as the activities are consistent with the ~~prior approvals granted prior to September 1, 1989, the approval remains viable,~~ and no excavation occurs within 500 feet of a wellhead. Development approvals for mining include ~~having obtained zoning approval either as an IPD or as a special exception to~~ in the AG-2 zoning district, in addition to any other approvals listed in subsection section 14-211(a) of this section.

(c) ~~To the extent that an approved development can obtain any o~~Operating permits consistent with this article without conflicting with the for specific uses or development based upon design and construction specifications approved prior to the effective date of this article September 1, 1989, full compliance with the operating permit requirements will be required must be consistent with the provisions of this article.

Sec. 14-212. Protection zone maps.

(a) *Adoption.* The protection zone maps, contained in appendix N, have been developed by the county and are hereby adopted by reference and made a part of this article. The official protection zone maps will be placed are on file at the division office. Reproductions of the maps ~~will be made~~ are available for sale a fee at the division offices; ~~the office of land information services or other appropriate county agency.~~ The protection zone maps are based on groundwater modeling performed by Water Resource Solutions Inc. and presented in a report titled "Lee County Utilities Supporting Documentation for the Wellfield Protection Ordinance Updated" dated March 2005 and revised April 2007.

(b) *Interpretation of zone designation.* To determine the location of properties and buildings within ~~the~~ a particular protection zones delineated on the protection zone maps, the following rules ~~will~~ apply:

- (1) Properties located wholly within one protection zone, as depicted ~~reflected~~ on the applicable protection zone maps, ~~are be~~ governed by the restrictions applicable to that zone.
- (2) Properties having parts lying within more than one zone, ~~as reflected~~ depicted on the applicable protection zone maps, ~~are governed~~ by the restrictions applicable to the protection zone in which ~~each~~ that part of the property is located.
- (3) Where a travel time contour ~~which~~ that delineates the boundary between two protection zones passes through a building, the entire building is ~~considered~~ deemed to be in the more restrictive zone.
- (4) Where ~~the~~ a building or portion thereof is overlapped by protection zones of different wells or wellfields, the most restrictive regulations apply.
- (5) Where a property or portion thereof is overlapped by protection zones of different wells or wellfields, the most restrictive of the regulations ~~will prevail over the overlapped area~~ apply.
- (6) Where the protection zone boundary intersects an open waterbody, the boundary will be extended to include the entire limits of that waterbody.

(c) *Annual Periodic review.* The protection zone maps will be reviewed ~~at least~~ annually by the division at least every three to five years unless changes within a protection zone warrant earlier review of the zone maps. ~~Any a~~ Amendments, additions or deletions to the maps ~~must will~~ be approved by the Board of County Commissioners as amendments to this article. Copies of the maps will be made available to the ~~appropriate divisions of the county and to the county health department, the Southwest Florida Regional Planning Council, the South Florida Water Management District and any other agency requesting the maps~~ public and reviewing entities upon request. The basis for amending the maps may include but is not limited to the following:

- (1) Changes in the technical knowledge concerning the aquifers of the county.
- (2) Changes in the pumping rate of wellfields.
- (3) Wellfield reconfiguration.
- (4) The addition of new wells to a wellfield.
- (5) Approval by the Board of County Commissioners of additional wellfields.

Sec. 14-213. Regulated hazardous or toxic substances and sanitary hazards.

Regulated substances include, but are not limited to, those deleterious substances and contaminants which that have one or more of the following characteristics:

- (1) Substances, including degradation and interaction products, which because of quality, concentration or physical or chemical characteristics (including ignitability, corrosivity, reactivity and toxicity), infectious characteristics, radioactivity, mutagenicity, carcinogenicity, teratogenicity, bioaccumulative effect, persistence (nondegradability) in nature, or any other characteristic relevant to a particular material, that may cause significant harm to human health or the environment, including surface water and groundwater, plants or animals;
- (2) ~~Those s~~ Substances set forth in the following lists, as amended from time to time: ~~Lists of Hazardous Waste (identified as hazardous under 40 CFR part 261, subpart D); , 40 CFR 261, Appendix VIII Hazardous Constituents; and EPA Designation Reportable Quantities and Notification Requirements for Hazardous Substances Under CERCLA (and 40 CFR 302);~~
- (3) ~~Exhibit any of the~~ characteristics of ignitability, corrosivity, reactivity or toxicity as identified in 40 CFR 261.20–261.24;
- (4) Are priority toxic pollutants listed in 40 CFR ~~122.21~~ 129 by the EPA;
- (5) Contain a degradation product which is toxic, including petroleum-based products;
- (6) Are restricted-use pesticides, as that term is used in F.S ch. 487, and ~~which are listed in F.A.C. chapters 5E-2 and 5E-9, Florida Administrative Code;~~
- (7) Contain brackish or saline water which that contains total dissolved solids in excess of 1,000 parts per million and chlorides in excess of 500 parts per million; ~~or~~
- (8) Are raw or partially treated sewage; or
- (9) Sanitary hazards.

Sec. 14-214. Prohibited and regulated activities within protection zones.

- (a) *Protection zone 1.*
 - (1) *Prohibitions.* Except as provided in section 14-209, the following land uses or activities are prohibited in protection zone 1:

- a. The use, handling, production or storage of regulated substances associated with land uses or activities regulated by this article in quantities greater than those set forth in section 14-208(a).
- b. Wastewater effluent disposal, except for public access reuse of reclaimed water and land application under the conditions set forth and ~~as defined in F.A.C. chapter 17-610~~ 62-610, part III, ~~Florida Administrative Code~~. Where public access reuse is permitted the chloride content must be no greater than 500 milligrams per liter.
- c. Liquid waste disposal.
- d. Solid waste disposal.
- e. Earth mining within a 500-foot radius of an existing wellhead.

(2) *Regulations.*

- a. ~~Except as provided in section 14-209, all persons who engage in land uses or activities regulated under this article who store, handle, use or produce any of the regulated substances (excluding partially treated sewage from residential septic tank systems) within protection zone 1, in quantities greater than those set forth in section 14-208(a), will cease to do so within 90 days of the effective date of this article pursuant to the prohibitions set forth in this article, unless such persons obtain an operating permit authorizing the continuation of such land use or activity within the 90-day deadline. A closure permit (see section 14-245) will otherwise be obtained from the division and a timetable for discontinuance and closure must be submitted to the wellfield protection officer in accordance with the requirements of this article.~~

Except as provided in section 14-209, land uses or activities involving the storage, handling, use or production of regulated substances in quantities greater than those set forth in section 14-208 are prohibited within protection zone 1 unless an operating permit for the prohibited activity, issued on or before September 1, 1989, remains viable.

- b. The owners of any sanitary sewer, force main, gravity sewer or lateral must notify the division of any break in the sewer lines within 24 hours of ~~discovering such a break~~ discovery. The purpose of this requirement is to allow the division to monitor repairs to the line and any necessary cleanup activities.
- c. Any sStormwater or surface water discharges within this protection zone will must conform to existing South Florida Water Management

District and state department of environmental protection rules, as they may be amended or replaced.

- (b) *Protection zone 2.*
- (1) *Prohibitions.* Except as provided in section 14-209, the following land uses or activities are prohibited in protection zone 2:
- a. The use, handling, production or storage of regulated substances associated with activities regulated by this article in quantities greater than those set forth in section 14-208(a).
 - b. Wastewater effluent disposal, except that public access reuse of reclaimed water and land application under the conditions set forth and as defined in F.A.C. chapter 47-640 ~~62-610~~, part III, Florida Administrative Code, will may be permitted. Where public access reuse is permitted the chloride content will may be no greater than 500 milligrams per liter.
 - c. Liquid waste disposal.
 - d. Solid waste disposal.
 - e. Earth mining within a 500-foot radius of an existing wellhead.
- (2) *Regulations.* ~~Except as provided in section 14-209, all persons who engage in land uses or activities regulated under this article who store, handle, use or produce any of the regulated substances (excluding partially treated sewage from residential septic tank systems), or who own or undertake any of the activities regulated under this article will cease to do so within 90 days of the effective date of this article pursuant to the prohibitions set forth in this article, unless such persons obtain an operating permit authorizing the continuation of such land use or activity within the 90-day deadline. A closure permit will otherwise be obtained from the division and a timetable for discontinuance and closure must be submitted to the wellfield protection officer in accordance with section 14-245.~~
- a. Except as provided in section 14-209, land uses or activities involving the storage, handling, use or production of regulated substances in quantities greater than those set forth in section 14-208 are prohibited within protection zone 2 unless an operating permit for the prohibited activity, issued on or before September 1, 1989, remains viable or, an administrative exemption is granted under section 14-208 to allow issuance of an operating permit under section 14-244.

- b. ~~Any s~~ Stormwater or surface water discharge within this protection zone ~~will~~ must conform to existing South Florida Water Management District and state department of environmental protection rules, ~~as they may be amended or replaced.~~
- (c) *Protection zone 3.*
- (1) *Prohibitions.* Except as provided in this article, the following land uses or activities are prohibited in protection zone 3:
- a. The use, handling, production or storage of regulated substances associated with activities regulated by this article in quantities greater than those set forth in section 14-208(a).
 - b. Wastewater effluent disposal, except that public access reuse of reclaimed water and land application under the conditions set forth in F.A.C. chapter 17-610 62-610, part III, Florida Administrative Code ~~will~~ may be permitted. Where public access reuse is permitted the chloride content must be no greater than 500 milligrams per liter.
 - c. Liquid waste disposal.
 - d. Solid waste disposal.
- (2) *Regulations.*
- a. ~~Except as provided in section 14-209, all persons in protection zone 3 who store, handle, use or produce any land uses or activities involving the storage, handling, use or production of regulated substances on the effective date of this article, or any new land use or activity established thereafter, may continue to do so in accordance with the provisions and exemptions set forth in this article upon obtaining an occurring within protection zone 3 must be conducted in accordance with a valid operating permit issued pursuant to section 14-244.~~
 - b. ~~Within 90 days of the effective date of this article, all land uses or activities regulated by this article and located within protection zone 3 will make application for an operating permit from the division in compliance with the provisions of this article. Activities requesting an administrative exemption (see section 14-209(c)) or a closure permit (see section 14-245) will have a period of 120 days from the effective date of this article to make application. If after 180 days all the requirements necessary for the issuance of an operating permit have not been completed and the applicant has made a diligent effort to do so, an operating permit may be issued contingent on compliance by~~

~~a date certain.~~ All operating permits must be renewed annually and will be subject to the conditions set forth in section 14-244.

~~c. Any s~~Stormwater or surface water discharged within this protection zone will must conform to existing South Florida Water Management District and state department of environmental protection rules, ~~as they may be amended or replaced.~~

(d) *Protection zone 4.*

(1) *Prohibitions.* Except as provided in section 14-209, ~~any all~~ activity regulated by this article ~~which stores, handles, uses or produces any involving the storage, use, handling or production of a regulated substance in quantities greater than those set forth in section 14-208(a), which does not obtain a valid operating permit as set forth in section 14-244,~~ is prohibited in protection zone 4, unless a valid operating permit is obtained in accordance with section 14-244.

(2) *Regulations.*

a. Except as provided in section 14-209, any land uses or activity activities involving the storage, handling, production or use of regulated substances in protection zone 4, ~~in existence on the effective date of this article, or any new land use or activity established thereafter,~~ must obtain an be conducted in accordance with a valid operating permit issued pursuant to section 14-244.

b. ~~Within 90 days of the effective date of this article, all persons who engage in land uses or activities regulated by this article within protection zone 4 who store, handle, use or produce any regulated substances will obtain an operating permit from the division and will comply with the provisions of this article and the regulations promulgated pursuant to this article. All operating permits must be renewed annually.~~

~~c. Any s~~Stormwater or surface water discharged within this protection zone will must conform to existing South Florida Water Management District and state department of environmental protection rules, ~~as they may be amended or replaced.~~

(e) *Sanitary Hazard Zone.* Sanitary hazards are prohibited within a 100 foot radius around an existing or proposed public water supply well.

Sec. 14-215. Abandoned wells.

~~(a) The division will initiate a program that will result in the plugging of any wells that have been abandoned and that lie within the ten-year travel time of any well or wellfield protection zone as well as the Mid-Hawthorne Aquifer System. The program will include:~~

- ~~(1) An inventory, to be conducted by the division, of all known abandoned or out-of-use wells lying within the ten-year travel time of any well or wellfield regulated by this article in the unincorporated area of the county.~~
- ~~(2) A procedure for notifying by registered mail the owners of properties within whose boundaries such abandoned wells are located. The property owners will be notified within 30 days of the discovery of such wells. The letter of notification will include but not be limited to the following:
 - ~~a. Notice that an abandoned well exists on his property and that the county plans to properly plug the well.~~
 - ~~b. Approximate dates during which the county will plug the well and that county staff will require access to the property.~~~~

~~(b) Abandoned wells on any property lying within the ten-year travel time zone of any well regulated by this article will be physically plugged in accordance with the provisions of Lee County Ordinance No. 87-7 of the county, as amended, renumbered or replaced 06-09, section 9.3.4.~~

Sec. 14-216. Criteria for establishing protection zones.

- (a) *No change.*
- (b) The protection zones indicated on the protection zone maps are the planar geometric union of the largest of the travel time protection zones determined as follows:
 - (1) through (4) *No change.*
 - (5) Lower Hawthorne (Floridan) aquifer system. Lower Hawthorne ten-year: The land situated between existing or proposed water supply wells and the ten-year travel time contour.

(c) The aquifers referenced in this article are identical to those listed in the report titled "Final Report, Wellfield Protection Modeling, Lee County, Florida," Camp, Dresser and McKee, Inc., November 1987. "Lee County Utilities Supporting Documentation for the Wellfield Protection Ordinance Update" Water Resource Solutions, March 2005 and updated April 2007.

Sec. 14-219. Aquifer storage and recovery wells.

The installation of a water supply well is prohibited within 500 feet of an existing or permitted aquifer storage and recovery well, unless confinement exists between the production zone of the water well and the storage/production zone of the aquifer storage and recovery well.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 14-241. Authority and duties of ~~division of natural resources management~~ Natural Resources Division.

(a) ~~The division of natural resources management~~ Natural Resources Division will administer and enforce the provisions of this article.

(b) The division will perform the following duties:

(1) The division director will recommend revisions and amendments to this article as necessary.

(2) The division will make continuing studies and periodic reports and recommendations for the improvement of wellfield protection controls throughout ~~the unincorporated area of the county,~~ and work in cooperation with federal, state and local agencies and groups interested in ~~the field of~~ wellfield protection.

(3) through (7) *No change.*

Sec. 14-245. Closure permit.

(a) *Required Information.* Closure permit applications must provide the following information:

(1) A schedule of events to complete the closure of land use or activity that does or did store, handle, use or produce regulated substances. ~~As a~~ At minimum, the application will must address the following:

a. through c. *No change.*

(2) and (3) *No change.*

(b) through (d) *No change.*

Sec. 14-246. Bond.

(a) ~~Upon adoption of an appropriate county administrative code, no permit required under this article will be issued unless there is filed at the time of application, except in the case of an application by a political subdivision or agency of the state, a cash bond, rate bond or letters of credit with a corporate~~ As a condition of permit issuance, the division may require a surety, in the form of a performance bond, letter of credit or escrow agreement, in an amount required by that code deemed appropriate by risk management or the division to ensure that:

- (1) The permittee will operate its activities or closure of such activities, as applicable, in accordance with the conditions and requirements of this article and permits issued under this article.
- (2) The permittee will reimburse the county for any and all expenses and costs ~~which~~ the county incurs as a result of the permittee failing to comply with the conditions and requirements of this article.

(b) ~~Before a bond or letter of credit is accepted by the division as being in compliance with this section, the~~ A bond or letter of credit must be reviewed and approved by the county attorney's office and then be filed with the clerk of the Board of County Commissioners prior to issuance of the permit.

(c) The bond or letter of credit required by this section must be kept in full force and effect for the term of the permit ~~and for plus~~ one year after voluntary cessation of activities permitted under this article or expiration or revocation of the permit. Failure to keep a bond or letter of credit in full force and effect as required ~~in this section is grounds for revocation of the underlying permit or exemption~~ and may result in a fine against the property or violator.

Sec. 14-249. Reconstruction of damaged facilities.

(a) ~~Reconstruction of any portion of a structure or building in which there is any accommodating a land use or activity subject to the provisions of this article and which is damaged by fire, vandalism, flood, explosion, collapse, wind, war or other catastrophe must be in strict conformity~~ compliance with this article. This requirement will be imposed whether the damage was caused by fire, vandalism, flood, explosion, hurricane, wind, war or other catastrophe.

(b) Within 90 days of the receipt of written notice from the division, all existing land uses or activities regulated by this article ~~which that~~ use, handle, store or produce regulated substances ~~will~~ must file an application for an operating permit. ~~Any such~~ If the land use or activity which fails to apply for an operating permit within the 90 day time frame, then an application will file for a closure permit or exemption must be filed within 120 days of the receipt of written notice from the division. The permit application must be prepared and signed by a professional engineer registered in the state or professional geologist

licensed in the state. Within 30 days of receipt of ~~the notice from the division~~, the owner or operator will must file ~~with the division~~ proof of retention of the engineer or geologist. If application is made for an operating permit, ~~such the permit will be issued or~~ denied within 60 days ~~of the filing of the completed~~ after a complete application is filed. If the application for an operating permit is denied, then the activity must cease within 12 months of the denial and an application for a closure permit will must be filed with the division within 120 days of the denial of the operating permit.

Sec. 14-250. Exceptions to permit requirements.

(a) *Eligibility.* Activities with adequate technology to isolate the land use or activity from the potable water supply and protect the wellfield may apply for a special exception from the operating or closure permitting requirements of this article.

(b) *Procedure for granting exception.*

(1) *Application generally.*

a. A special exception application claiming special or unusual circumstances and adequate protection technology may be filed with the division. It will must be signed by the applicant and a professional engineer registered in the state or a professional geologist licensed in the state.

b. ~~Such application will~~ Applications must contain a concise statement by the applicant detailing the circumstances which the applicant feels ~~would~~ entitle him to a special exception.

c. ~~A~~ The application must be accompanied by the appropriate fee as determined by the applicable administrative code must be filed with the application to defray the costs of processing such application.

(2) *Contents of application.* The application for a special exception must contain but is ~~be~~ limited to the following elements:

a. ~~The application must include a~~ A description of the situation at the site requiring isolation from the wellfield, including:

1. A list of the regulated substances in use at the site.

2. A clearly legible site plan of the facility, including drawn at an appropriate scale and detailing all storage, piping dispensing, shipping, etc., facilities; travel time contours as identified on the protection zone maps; and, the limits of sanitary hazard zones.

3. A description of the operations at the facility ~~which would involve~~ involving regulated substances ~~which~~ that must be isolated from the wellfields.
 4. The location of all operations involving regulated substances.
 5. A sampling and analysis of the groundwater on the site of the activity seeking a special exception, to determine if any regulated substances are already present ~~which~~ that constitute a threat to the water supply.
 6. An analysis of the affected well showing whether or not ~~such~~ the well is already contaminated by any regulated substances and the extent of such contamination.
 7. A hydrogeologist's assessment of the site, ~~which must~~ addressing, ~~as a~~ at minimum, soil characteristics and groundwater level, groundwater directional flow and quality.
- b. The application must include a technical proposal to achieve the required isolation, including:
1. The components to be used and their individual functions.
 2. The system tying the components together.
 3. A discussion and documentation, such as published technical articles, substantiating the performance and reliability of the components individually and the system as a whole. If the system has not been field-tested, a discussion and laboratory test documentation to substantiate the proposal performance and reliability of the system must be included.
 4. Details of the specific plans to install the system at the site.
- c. If the proposed system does not have a proven history of successful in-field operation, it may still be proposed using proven components. A test plan for the system as installed ~~shall~~ must be provided to ~~provide~~ document that the proposed system works in the field.
- d. The application must include a technical proposal for backup detection of regulated substances that may elude the isolation system and escape to outside a perimeter ~~to be~~ established by division. ~~Such~~ The proposal will must include emergency measures to be initiated in case of escape of regulated substances.

- e. Site-specific, system performance criteria must be proposed to ascertain the success of the system. ~~Such This criteria will includes,~~ but ~~are-is~~ not limited to:
 1. Performance.
 2. Reliability.
 3. Level of maintenance.
 4. Level of sensitivity to regulated substances.
 5. Effect of rain, flood, power failure or other natural disaster.
 - f. The applicant must provide information on the on-site availability of substance removal technologies sufficient to remediate ~~any~~ the introduction of regulated substances into the water table at the site. Where the water is removed from on-site wells during the remedial process, a plan will must be proposed for the disposal of ~~such~~ the water.
 - g. A closure plan must be provided if the system does not prove successful in the testing required in this subsection.
 - h. The application will must include any other reasonable information deemed necessary by division due to site-specific circumstances.
- (3) *Review of application.* Within 30 working days ~~of~~ after receipt of an application for special exception, the division will ~~inform~~ notify the applicant whether ~~such~~ the application contains sufficient information ~~for a proper~~ upon which to base a determination ~~to be made~~. If the application is found ~~to be insufficient~~ not sufficient, then the division will provide ~~to the applicant a~~ written sufficiency statement, ~~by certified mail or hand delivery,~~ requesting the additional information ~~required~~ the division deems necessary for review. The applicant will ~~inform the division within~~ have ten working days ~~of from~~ the date of the written sufficiency statement ~~of his intent to either furnish~~ notify the division when the information requested will be submitted or have request that review proceed on the application processed as it stands.
- (c) *Conditions.*
- (1) Any special exception granted by the division ~~will be~~ is subject to the applicable conditions of this article and any other reasonable and necessary special conditions imposed by the division.

- (2) ~~The division will issue An operating permit will be issued by the division with the applicable subject to the standard conditions of this article and any other reasonable and necessary special conditions imposed by the division. Such sSpecial exceptions will be are subject to revocation or revision by the division for violation of any condition of the special exception. Prior to revocation, the division will provide by first issuing a written notice of intent to revoke or revise, sent by via certified mail, return receipt requested, or hand delivery. Upon revocation or revision, the activity will immediately be subject to the code enforcement proceedings provisions of this article.~~
- (3) Special exceptions for within protection zones 1 and 2 are may be granted for existing activities only. No new activity will be permitted into protection zones 1 and 2 after September 1, 1989, if the new activity is regulated by this article.

Sec. 14-252. Inspections; enforcement generally.

- (a) *Inspections.*
 - (1) The county wellfield protection officer and his designated inspectors are hereby authorized and empowered to make inspections at reasonable hours of all land uses or activities regulated by this article including nonresidential buildings, structures and lands within protection zones in the county, in order to determine if regulations relating to wellfield protection and other applicable county regulations are being followed.
 - (2) ~~As a condition of every operating permit shall be or special exception, the property owner grants~~ permission for inspection of the premises by an authorized county wellfield protection officer or inspector.
 - (3) Inspections may be made without notice, ~~and r~~Refusal to allow such an inspection ~~will be is~~ sufficient grounds for revocation of the operating permit or special exception issued by the division.
 - (4) If The refusal of a person who has common authority over a building, structure or land ~~does not to~~ permit an inspection, ~~such failure of such person to permit an inspection will be~~ will be deemed sufficient grounds and probable cause for a court of competent jurisdiction to issue an administrative warrant for the purpose of inspecting, surveying or examining the premises.
 - (5) If a building, structure or land appears to be vacant or abandoned, and the property owner cannot be readily contacted in order to obtain consent for an inspection, the wellfield protection officer or inspector may enter into or upon any open or unsecured portion of the premises in order to conduct an inspection thereof.

- (6) The wellfield protection officer or inspector will be provided with official identification and will exhibit ~~such~~this identification when making any inspection.
- (7) It will be the duty of all law enforcement officers to assist in making inspections when ~~such~~ assistance is requested by the wellfield protection officer or inspector.
- (b) *Remedies.* Whenever the wellfield protection officer or an inspector determines that there is a violation of this article, the officer or inspector ~~will~~ may elect to follow the procedures established by the county for bringing a case before the Lee County code enforcement board or any alternative code enforcement body adopted by the county hearing examiner or County Court. ~~The County may also pursue any legal means available to obtain compliance including, or will seek injunctive relief as provided in section 14-254. A notice to cease a land use or activity, or a permit or an exemption issued under this article, will not relieve the owner or operator of the obligation to comply with any other applicable federal, state, regional or local codes, regulations, rules, ordinances or requirements; nor will~~ Further, the notice, permit or exemption will not relieve any the owner or operator of any ~~liability for violation of such~~ the codes, regulations, rules, ordinances or requirements.

Sec. 14-253. Responsibility for cleanup of regulated substances; liability for damages.

Any person subject to this article ~~will be~~ is liable for any damage caused by a regulated substance present on or emanating from the person's property, for all costs of removal or remedial action incurred by the county, and damages for injury to, destruction of or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from the release or threatened release of a regulated substance. ~~Such~~ Removal or remedial action by the county may include, but is not limited to, the prevention of further contamination of groundwater, monitoring, and containment and cleanup or disposal of regulated substances resulting from the spilling, leaking, pumping, poring, emitting or dumping of any regulated substance or material ~~which that~~ creates an emergency hazardous situation or is expected to create an emergency hazardous situation.

Sec. 14-256. Fees.

(a) *Permit fees.* Prior to the issuance, renewal, modification or transfer of a permit or an exemption the applicant must pay a fee as set forth in the applicable county administrative code. ~~Such~~ The fee will be used to defray the cost of monitoring ~~the~~ compliance with this article.

- (b) *Administrative fees; service charge.*
- (1) The cost of administering and enforcing this article will be borne by the public utilities owning the public potable water wellfields protected by the provisions of this article. Each utility will be assessed its pro rata share of the cost of administering and enforcing this article.
 - (2) The county may create municipal service benefit units, as necessary, whereby the county may impose a service charge payable to the county as a pro rata share of the costs of administering and enforcing this article.
 - (3) The service charge payment to the county for wellfield environmental protection services may be based upon a stated dollar amount per a set amount of gallons per day of the permitted maximum daily withdrawal rate capacity of the utility evidenced by permits as issued by the South Florida Water Management District or any other method deemed equitable by the county.
 - (4) The service charge payable pursuant to this section must be deposited in a county fund and will be used exclusively by the county and its ~~division of water resources~~ Natural Resources Division to pay for the costs of the wellfield protection services directed by this article, and no part of such ~~these~~ funds will may be used for any purpose other than the administering and enforcing of this article.

SECTION TWO: CREATION OF APPENDIX N

The Lee County Land Development Code is hereby amended to add Appendix N, to be called "Wellfield Protection Zones". The appendix will consist of the map attached as Exhibit A to this ordinance.

SECTION THREE: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with or less restrictive than the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION FOUR: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FIVE: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION SIX: EFFECTIVE DATE

The amendments set forth in this ordinance will take effect upon filing of the ordinance with the Office of the Secretary of the Florida Department of State. However, the requirements and provisions of this ordinance relate back to September 1, 1989 in accordance with LDC Section 14-206 as stated above.

All uses and activities within the Wellfield Protection Zones, as established under this ordinance, must be brought into compliance with the amended provisions no later than December 31, 2008.

Commissioner Mann made a motion to adopt the foregoing ordinance, seconded by Commissioner Hall. The vote was as follows:

| | |
|-----------------|-----|
| Robert P. Janes | Aye |
| Brian Bigelow | Nay |
| Ray Judah | Nay |
| Tammara Hall | Aye |
| Frank Mann | Aye |

DULY PASSED AND ADOPTED THIS 4th day of December, 2007.

ATTEST:
CHARLIE GREEN, CLERK

By: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

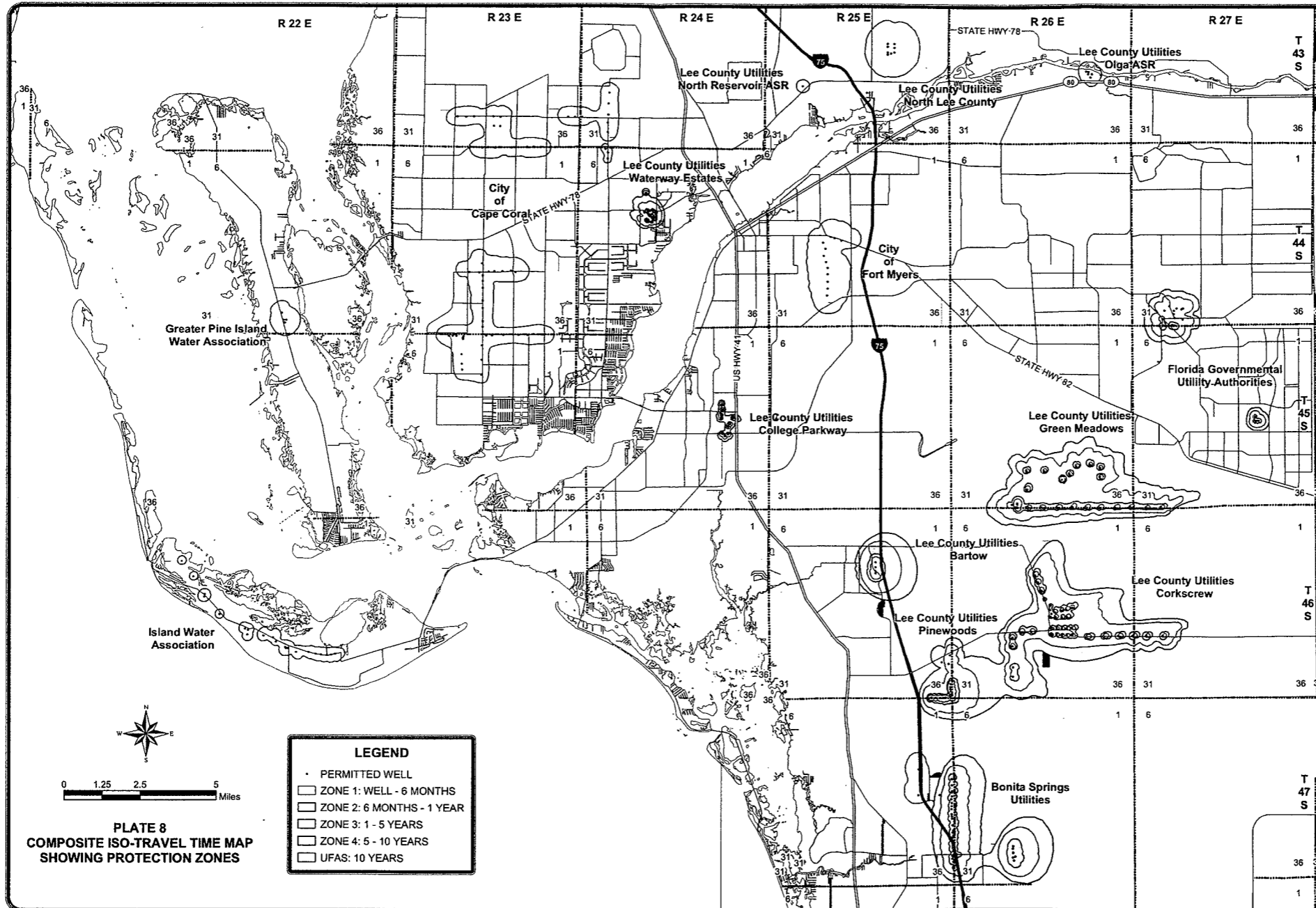
By: Ray Judah
Ray Judah, Chair



APPROVED AS TO FORM:

By: Dawn E. Perry-Lehnert
Dawn E. Perry-Lehnert
Office of County Attorney

Attachment of:
Exhibit 1 - Appendix N





FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

December 11, 2007

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Lisa L. Pierce, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated December 7, 2007 and certified copies of Lee County Ordinance Nos. 07-31 through 07-35, which were filed in this office on December 11, 2007.

Sincerely,

Liz Cloud
Program Administrator

LC/jru

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DIRECTOR'S OFFICE

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