

**LEE COUNTY ORDINANCE NO. 05-07**

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTER 2 (ADMINISTRATION), ARTICLE VI (IMPACT FEES), DIVISION 3 (REGIONAL PARKS IMPACT FEE); AMENDING COMPUTATION OF AMOUNT (§2-306); AMENDING DIVISION 4 (COMMUNITY PARKS IMPACT FEE); COMPUTATION OF AMOUNT (§2-346); BENEFIT DISTRICTS ESTABLISHED (§2-348); AND

AMENDING APPENDIX L - COMMUNITY PARK IMPACT FEE BENEFIT DISTRICT DESCRIPTIONS;

PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida has adopted a comprehensive Land Development Code (LDC); and

WHEREAS, the Board of County Commissioners has the authority to adopt this revision pursuant to Article VIII of the Constitution of the State, F.S. Ch. 125 and F.S. §§ 163.3201, 163.3202 and 380.06(16); 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, pursuant to Lee Plan Goal 62, the County must plan, budget, and fund a comprehensive park system that properly meets the needs for the future of Lee County; and

WHEREAS, Lee Plan Policy 62.1.1. provides that the adopted capital improvement plan reflects the distribution of park facilities throughout the unincorporated County and that the use of community park impact fee districts provides a mechanism to distribute facilities based on population, travel patterns, and existing facilities; and

WHEREAS, pursuant to Lee Plan Policy 62.1.2., the capital improvement plan identifies how park impact fees, other earmarked capital funds, and all general funds are to be used for capital projects; and

WHEREAS, pursuant to Lee Plan Policy 62.1.3, land development will be required to bear a proportionate cost of new and expanded parks required by such development. The policy provides that part impact fees are the most equitable means of capturing these costs and that the County must impose impact fees for regional and community parks; and

WHEREAS, pursuant to Lee Plan Policy 70.1.3.5(a), the minimum acceptable level of service standard for regional parks is six (6) acres of improved regional park plan open for public use per 1,000 total seasonal population; and

WHEREAS, pursuant to Lee Plan Policy 70.1.3.5(b), the minimum acceptable level of service standard for community parks is .8 acres of developed standard community parks open for public use per 1,000 permanent population; and

WHEREAS, the Board initially adopted the Parks impact fee regulations and an impact fee schedule in 1985; and

WHEREAS, Lee Plan Policy 62.1.4 and LDC section 34-306 requires the staff to review and reanalyze the Parks Impact Fee Schedule every three years and pursue amendments to the fee schedule if supported by the reanalysis; and

WHEREAS, the Board approved a contract with Duncan Associates for the review and update of Parks Impact Fee Schedule; and

WHEREAS, the *"Park Impact Fee Update, Lee County, Florida"*, prepared by Duncan Associates, dated March 2005, forms the basis of the proposed amendments to the fee schedules for Regional and Community Parks; and

WHEREAS, the Parks Impact Fee Study prepared by Duncan Associates generated competent data allowing the use of a sophisticated methodology to calculate the impacts of development and to establish appropriate impact fees; and

WHEREAS, pursuant to Lee Plan Objective 51.1., the County must periodically examine the composition and location of population growth to determine if redistricting of community impact fee districts is warranted; and

WHEREAS, the Land Development Code Advisory Committee reviewed and approved the proposed amendments to the fee schedule with a recommendation to include a provision that allows for annual increases based on the rising costs of land and construction on April 25, 2005, and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Land Development Code on May 11, 2005 and recommended that the proposed amendments not go forward for adoption until issues are addressed with respect to impact fees and affordable housing; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments to the fee schedule on May 23, 2005, and found them consistent with the Lee Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

**SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 2**

Lee County Land Development Code Chapter 2, Article VI, Divisions 3 and 4 are amended to read as follows with strike through identifying deleted language and underline identifying new language:

**CHAPTER 2**

**ARTICLE VI. IMPACT FEES**

**DIVISION 3. REGIONAL PARKS IMPACT FEE**

**Sec. 2-306. Computation of amount.**

(a) The fee schedule set forth in this subsection is effective on June 1, 2005, except as otherwise stated herein. At the option of the feepayer, the amount of the regional parks impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to mobile home/RV park site refers to the number of mobile home or recreational vehicle sites permitted by the applicable final development order.

**THE PREVIOUS FEE SCHEDULE IS HEREBY DELETED AND REPLACED WITH THE FOLLOWING:**

<u>Land Use Type</u>	<u>Regional Parks Impact Fee per Unit</u>
Single-family residence	\$691.00
Multiple-family building, duplex, two-family attached or townhouse	518.00
Mobile Home not in mobile home park	691.00
Timeshare	518.00
Hotel /motel room	318.00
Mobile home / RV park site	504.00

~~Note: The fee schedule in effect prior to the adoption of this ordinance will be deleted from the LDC. As of September 15, 2001, this predecessor fee schedule will no longer be of any force or effect, except as to determining fees for building permits issued prior to September 15, 2001, or as otherwise indicated below:~~

~~————— Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or before September 14, 2001 will be assessed regional park impact fees based upon the fee schedule applicable on August 28, 2001, if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before two months after September 15, 2001.~~

~~————— Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or after September 15, 2001 will be subject to the~~

~~amended impact fee schedule. All permits and development orders issued after November 15, 2001 will be assessed impact fees in accordance with the amended impact fee schedule regardless of when the application was submitted to the county.~~

(b) Under this article, impact fees become due and payable at the time of building permit issuance. For purposes of this Code, a building permit is considered "issued" when the permit meets all of the following criteria:

- (1) the permit is approved by the county;
- (2) has been picked up by the owner or his agent; and,
- (3) all applicable fees have been paid.

(c) ~~[Also, NOTE: The development order process is separate and distinct from the building permit process and not relevant with respect to establishing when impact fees become due and payable, except as to RV parks.]~~

(d) The fee schedule in effect prior to June 1, 2005 will remain in effect until the new fees take effect as follows:

- (1) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted on or before July 1, 2005, will be assessed an impact fee based upon the fee schedule applicable on May 31, 2005, but only if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before October 1, 2005.
- (2) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted after July 1, 2005, or any building permit or mobile home move-on permit or development order issued after October 1, 2005, will be subject to the amended impact fee schedule.
- (3) After October 1, 2005, the Director may accept payment according to the fee schedule in effect prior to June 1, 2005 only if the following conditions are met. The Director's decision is not subject to appeal under §34-145 of this code.
  - a. The application for the permit or development order must have been properly submitted and sufficient for review on or before July 1, 2005; and,
  - b. The sole grounds for accepting payment under this subsection will be that a governmental action or failure to act in a timely manner caused the issuance of the permit or development order to be delayed beyond October 1, 2005; and,
  - c. The applicant submits a written request to the Director specifying the reasons for the request; and,

- d. The Director's decision must be in writing and it must set forth the governmental action or failure to act that caused unnecessary delay in the issuance of the permit or development order; and,
- e. The ability and authority to accept payments under this subsection will terminate on November 30, 2005.

(be) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit or recreational vehicle development order, the regional parks impact fee will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, no impact fee refund or credit will be granted if a net decrease results.

(ef) If the regional parks impact fee has been calculated and paid based on error or misrepresentation, it will be recalculated and the difference refunded to the original feepayer or collected by the county, whichever is applicable. If regional parks impact fees are owed, no participating municipality or county permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure in question is a part, until impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.

(dg) The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may opt to submit evidence to the county manager indicating that the fees set out in subsection (a) of this section are not applicable to the particular development. Based upon convincing and competent evidence, which must be prepared and submitted in accordance with the county administrative code, the county manager may adjust the fee to that appropriate for the particular development. The adjustment may include a credit for private recreational facilities provided to the development by the feepayer if the private recreational facilities serve the same purposes and functions as set forth in the Lee Plan for regional parks.

(eh) The impact fee schedule set forth in section 2-306(a) will be administratively reviewed and reanalyzed every three years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedule supported by the review and reanalysis.

#### DIVISION 4. COMMUNITY PARKS IMPACT FEE

##### **Sec. 2-346. Computation of amount.**

(a) The fee schedule set forth in this subsection is effective on June 1, 2005, except as otherwise stated herein. At the option of the feepayer, the amount of the community parks impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to mobile home/RV park site refers to the number of mobile home or recreational vehicle sites permitted by the applicable final development order.

**THE PREVIOUS FEE SCHEDULE IS HEREBY DELETED AND REPLACED WITH THE FOLLOWING:**

<u>Land Use Type</u>	<u>Community Parks Impact Fee per Unit</u>
<u>Single-family residence</u>	<u>\$788.00</u>
<u>Multiple-family building, duplex, two-family attached or townhouse</u>	<u>591.00</u>
<u>Mobile Home not in mobile home park</u>	<u>788.00</u>
<u>Timeshare</u>	<u>591.00</u>
<u>Hotel /motel room</u>	<u>363.00</u>
<u>Mobile home / RV park site</u>	<u>576.00</u>

~~Note: The fee schedule in effect prior to the adoption of this ordinance will be deleted from the LDC. As of September 15, 2001, this predecessor fee schedule will no longer be of any force or effect, except as to determining fees for building permits issued prior to September 15, 2001, or as otherwise indicated below:~~

~~Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or before September 14, 2001 will be assessed community park impact fees based upon the fee schedule applicable on August 28, 2001, if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before two months after September 15, 2001.~~

~~Building permit or mobile home move-on permit or recreational vehicle park development order applications submitted on or after September 15, 2001 will be subject to the amended impact fee schedule. All permits and development orders issued after November 15, 2001 will be assessed impact fees in accordance with the amended impact fee schedule regardless of when the application was submitted to the county.~~

**(b)** Under this article, impact fees become due and payable at the time of building permit issuance. For purposes of this code, a building permit is considered "issued" when the permit meets all of the following criteria:

- (1) the permit is approved by the county;
- (2) has been picked up by the owner or his agent; and,
- (3) all applicable fees have been paid.

**(c)** ~~[Also, NOTE: The development order process is separate and distinct from the building permit process and not relevant with respect to establishing when impact fees become due and payable, except as to RV parks.]~~

- (d) The fee schedule in effect prior to June 1, 2005 will remain in effect until the new fees take effect as follows:
- (1) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted on or before July 1, 2005, will be assessed an impact fee based upon the fee schedule applicable on May 31, 2005, but only if the building permit or mobile home move-on permit or recreational vehicle park development order is issued on or before October 1, 2005.
  - (2) A building permit or mobile home move-on permit or recreational vehicle park development order application submitted after July 1, 2005, or any building permit or mobile home move-on permit or development order issued after October 1, 2005, will be subject to the amended impact fee schedule.
  - (3) After October 1, 2005, the Director may accept payment according to the fee schedule in effect prior to June 1, 2005 only if the following conditions are met. The Director's decision is not subject to appeal under §34-145 of this code.
    - a. The application for the permit or development order must have been properly submitted and sufficient for review on or before July 1, 2005; and,
    - b. The sole grounds for accepting payment under this subsection will be that a governmental action or failure to act in a timely manner caused the issuance of the permit or development order to be delayed beyond October 1, 2005; and,
    - c. The applicant submits a written request to the Director specifying the reasons for the request; and,
    - d. The Director's decision must be in writing and it must set forth the governmental action or failure to act that caused unnecessary delay in the issuance of the permit or development order; and,
    - e. The ability and authority to accept payments under this subsection will terminate on November 30, 2005.

(be) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit or recreational vehicle development order, the community parks impact fee will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, no impact fee refund or credit will be granted if a net decrease results.

(cf) If the community parks impact fee has been calculated and paid based on error or misrepresentation, it will be recalculated and the difference refunded to the original feepayer or collected by the county, whichever is applicable. If community parks impact fees are owed, no participating municipality or county permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure

in question is a part, until impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.

(dg) The person applying for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order may opt to submit evidence to the county manager indicating that the fees set out in subsection (a) of this section are not applicable to the particular development. Based upon convincing and competent evidence, which must be prepared and submitted in accordance with the county administrative code, the county manager may adjust the fee to that appropriate for the particular development. The adjustment may include a credit for private recreational facilities provided to the development by the fee payer if the private recreational facilities serve the same purposes and functions as set forth in the Lee Plan for community parks.

(eh) The impact fee schedule set forth in section 2-346(a) will be administratively reviewed and reanalyzed every three years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedule supported by the review and reanalysis.

**Sec. 2-348. Benefit districts established.**

There are hereby established ~~eight~~ nine community parks impact fee benefit districts as shown in Appendix L. Subdistricts may be created by interlocal agreement.

**SECTION TWO: AMENDMENT TO LAND DEVELOPMENT CODE APPENDIX**

Lee County Land Development Code Appendix L is amended to read as follows with strike through identifying deleted language and underline identifying additional language:

**APPENDIX L COMMUNITY PARK IMPACT FEE DISTRICT DESCRIPTIONS**

**APPENDIX L - MAP**

[NOTE: See attached Exhibit "A" for map that is herein incorporated as Appendix L.]

**APPENDIX L - MAP 1 - DISTRICT DESCRIPTIONS**

**THE ENTIRE TEXT OF APPENDIX L (DISTRICT DESCRIPTIONS) IS HEREBY DELETED AND REPLACED WITH THE FOLLOWING:**

**District 41.** Bounded on the north by Charlotte County line. Bounded on East by Hendry County line. Then bounded on west by SR31 from north continuing south to Okeechobee Waterway (Caloosahatchee River) Continuing to follow City Limits of Fort Myers to southern boundary of Section 19 Township 44 Range 26 east to southeastern corner of Section 22 Township 44 Range 26. Then north along eastern boundary of Section 22 Township 44 Range 26 to northeast corner of Section 10 Township 44 Range 26. Following northern boundary of Section 10 Township 44 Range 26. Proceeds to north along western boundary of Section 03 Township 44 Range 26 then following Township 43 southern boundary to Hendry County Line which bounds on the east.



**District 42.** North boundary Charlotte County line. Bounded on east by the eastern boundary of Range 25. Bounded on the south by Okeechobee Waterway (Caloosahatchee River), then from Section 21 Township 44 Range 24 follows boundary of Cape Coral City Limits to the north and west ending at Charlotte Harbor which bounds this district to the west. District 42 also includes the enclaves within Cape Coral City Limits east of east boundary of Range 24.

**District 43.** Bounded by Hendry County line in the East. North boundary is the northern boundary of Township Line 44 to northeast corner of Section 03 Township 44 Range 26 then proceeds south along east boundary of Section 03 Township 44 Range 26 follows south boundary of Section 03 Township 44 Range 26. The west boundary then follows the east boundary of Section 10 Township 44 Range 26 to southeast corner to Section 22 Township 44 Range 26. Boundary follows along Section 27 Township 44 Range 26 west to the Cape Coral City Limits then follows Cape Coral City Limits south to the Gateway District #49. East from Gateway District #49 at northern boundary of Section 17 Township 45 Range 26, then south along east boundary of Section 17 Township 45 Range 26 to Township 45 south boundary line traveling east on south boundary line of Township 45 to northeast corner of Section 01 Township 46 Range 26, then south along east boundary of Section 01 Township 46 Range 26 to Northwest corner to Section 19 Township 46 Range 27 and follows north boundary Section 19 Township 46 Range 27 to Collier County Line which bounds district on the east.

**District 44.** Northern boundary City of Fort Myers City Limits and Southern boundary of Gateway District #49, east on northern boundary of Section 17 Township 45 Range 26. Bounded on the east by the northeastern boundary of Section 17 Township 45 Range 26 to northwest corner of Section 09 Township 46 Range 26. Bounded on the south from northwest corner of Section 09 Township 45 Range 26 to Section 07 Township 46 Range 25 following Section 07 Township 46 Range 25 and Section 12 Township 46 Range 24 northern boundaries, then south from northwest corner of Section 12 Township 46 Range 24 to northwest corner of Section 25 Township 46 Range 24, then west along northern boundaries of Section lines to City of Fort Myers Beach City Limits and then bounded by San Carlos Bay. Western boundary San Carlos Bay, the Intracoastal Waterway (ICW), and Cape Coral City Limits. District #44 also includes enclaves in City of Fort Myers City Limits and Six Mile Cypress Slough.

**District 45.** East boundary Cape Coral City Limits and Charlotte Harbor in Section 01 Township 43 Range 22 (Western boundary of District #42). South boundary Intracoastal Waterway (ICW) following west along Intracoastal Waterway (ICW), and east boundary of District #47 Gasparilla Island and then bounded on the north by the Charlotte County Line.

**District 46.** Represents Sanibel, North Captiva and Cayo Costa and is bounded on the north by the navigational channel into Boca Grande Pass, on the east by the Intracoastal Waterway (ICW) within Pine Sound and San Carlos Bay and western boundary of District #44, and on the south by the Gulf of Mexico, from the western boundary of District #44 to the main navigational channel into Boca Grande Pass.

**District 47.** Represents Gasparilla Island bounded by the Charlotte County line to the north, on the east by the Intracoastal Waterway (ICW) within Charlotte harbor from the Charlotte County line to the Boca Grande Pass including Cayo Pelau, on the south by the main navigational channel into Boca Grande Pass, and on the west by the Gulf of Mexico from Boca Grande Pass to the Charlotte County line.

**Districts 48.** East boundary Collier County line. South boundary City of Bonita Springs City Limits. West boundary City of Bonita Springs City Limits and City of Fort Myers Beach City

Limits to the northern boundary of Section 29 Township 46 Range 24. Northern boundary northwestern boundary of Section 29 Township 46 Range 24 outside of City of Fort Myers Beach City Limits east along northern Section lines to northwest corner to Section 25 Township 46 Range 24, then north from northwest corner to Section 25 Township 46 Range 24 to northwest corner of Section 12 Township 46 Range 24, then following the northern boundaries of Section 12 Township 46 Range 24, and Section 07 Township 46 Range 25, then following Alico Road to the northwest corner of Section 09 Township 46 Range 26, north from the corner of Section 09 Township 46 Range 26 to the northwest corner of Section 04 Township 46 Range 26, then east from the northwest corner of Section 04 Township 46 Range 26 to the northeast corner of Section 01 Township 46 Range 26, then south from the northeast corner of Section 01 Township 46 Range 26 to the northwest corner of Section 19 Township 46 Range 27, then east from the northwest corner of Section 19 Township 46 Range 27 to the Collier County line.

District 49. This District represents the Gateway Services District outside of the City of Fort Myers City Limits.

### **SECTION THREE: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with 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 be considered 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 invalid or 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 Manager, or his designee, without the need for a public hearing.

### **SECTION SIX: EFFECTIVE DATE**

The ordinance will take effect on June 1, 2005.

THE FOREGOING ORDINANCE was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner Albion, and being put to a vote, the vote was as follows:

ROBERT P. JANES	Absent
DOUGLAS ST. CERNY	Aye
RAY JUDAH	Aye
TAMMY HALL	Aye
JOHN E. ALBION	Aye

DULY PASSED AND ADOPTED THIS 24<sup>th</sup> day of May, 2005.

ATTEST:

CHARLIE GREEN, CLERK

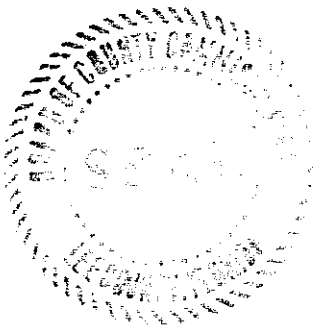
By: Michele G. Cooper  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: [Signature]  
Chairman

APPROVED AS TO FORM:

By: [Signature]  
Office of County Attorney



COMMUNITY PARK IMPACT FEE ZONES

Prepared by: dcahert@ee.gov.com  
Created: Feb 2005

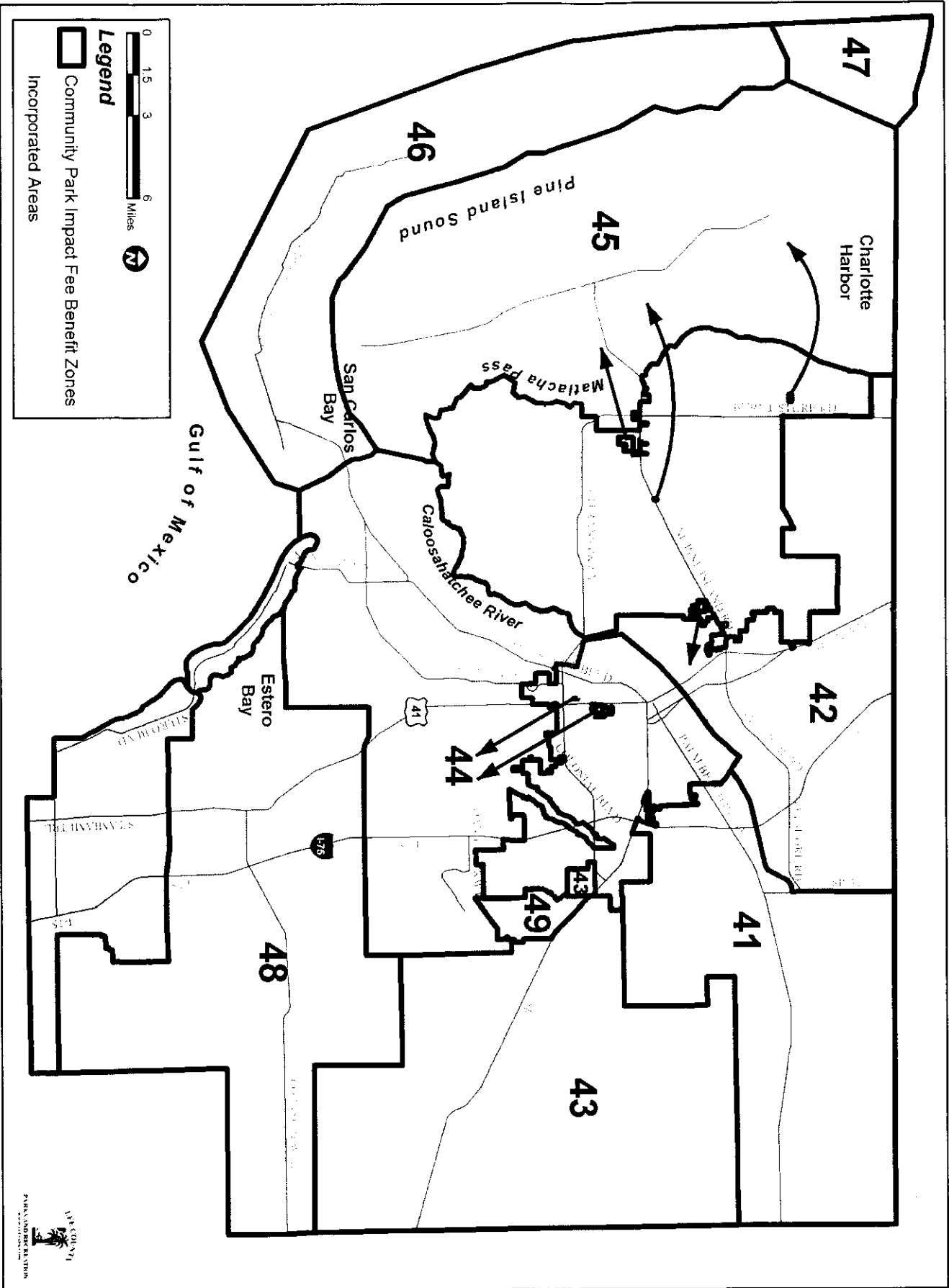


EXHIBIT A



RECEIVED  
PROPERTY OFFICE

2005 JUN -7 AM 10:42

FLORIDA DEPARTMENT OF STATE  
**Glenda E. Hood**  
Secretary of State  
DIVISION OF LIBRARY AND INFORMATION SERVICES

May 31, 2005

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

Attention: Michelle G. Cooper, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated May 26, 2005 and certified copies of Lee County Ordinance Nos. 05-07 and 05-08, which were filed in this office on May 27, 2005.

Sincerely,

Liz Cloud  
Program Administrator

LC/kcs